

RESPONSIBILITIES OF BROADCASTING LICENSEES AND STATION PERSONNEL

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

PART 2

JANUARY 27, 28, APRIL 25, 26, 27, 28, 29, MAY 2, 3,
AUGUST 30, AND 31, 1960

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



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EXECUTIVE SESSION

(Released to the Public May 2, 1960)

RESPONSIBILITIES OF BROADCASTING LICENSEES
AND STATION PERSONNEL

WEDNESDAY, JANUARY 27, 1960

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

The special subcommittee met, pursuant to call at 2:40 p.m., in room 1333, New House Office Building, Hon. Oren Harris (chairman) presiding.

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

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

The CHAIRMAN. Let the subcommittee come to order.

Are you Mr. Mammarella?

Mr. MAMMARELLA. Yes, sir.

The CHAIRMAN. The Special Subcommittee on Legislative Oversight of the House Committee on Interstate and Foreign Commerce is in executive session this afternoon for the purpose of a preliminary inquiry. And, Mr. Mammarella, it is necessary for me, as the chairman, to inform you of the purpose of this hearing, the reasons for the asking of the questions which are about to be asked of you, and the authority of the subcommittee to make this inquiry.

In the first place, I would like to provide you with a copy of the rules of procedure, if you do not already have them.

Appendix I thereto, is the text of rule XI, 26 of the Rules of the House of Representatives, and appendix II outlines the scope of subcommittee activities.

The text of the House Resolution 56, of the 86th Congress, 1st session, is set forth in the pamphlet, which has just been handed to you, and you will find it at pages 3 to 5.

Subdivision (6) thereof authorizes the committee to make investigations and studies concerning advertising, fair competition, and labeling. Subdivision (3) empowers the committee to investigate a range of matters pertaining to radio and television. Subdivision (13) authorizes the committee to make investigations and studies concerning the administration and enforcement by departments and agencies

of the Government of provisions of law relating to subjects which are within the jurisdiction of the committee.

Among the agencies of the Government which are thus subject to our jurisdiction are the Federal Communications Commission and the Federal Trade Commission.

On page 2 of the "Subcommittee Rules of Procedure," subdivision (4) provides:

If the subcommittee determines that the interrogation of a witness in a public hearing might endanger national security or unjustly injure his reputation or the reputation of other individuals, the subcommittee shall interrogate such witness in an executive session for the purpose of determining the necessity or advisability of conducting such interrogation thereafter in a public hearing.

On page 4 of the "Rules of Procedure," subdivision (13) provides:

At every investigative hearing, public or executive, witnesses may be accompanied by their own counsel for the purpose of advising them—

and I emphasize the word "advising"—

concerning their constitutional rights. The failure of a witness to secure counsel shall not excuse such witness from attendance in response to a subpoena.

These subdivisions are in conformity with similar rules laid down in rule XI, 26 of the Rules of the House of Representatives.

In making a study and investigation of the adequacy of the Federal Communications Act of 1934, as amended, and of its administration, and of the adequacy of the Federal Trade Commission Act and the administration thereof pertaining to advertising, fair competition and labeling, it is necessary to obtain from you certain information.

One of the purposes of our investigation is to ascertain whether licensed radio and television broadcasting facilities are being used as a method of unfair competition or for deception of the listening public or for effectuating purposes contrary to the public interest. Section 317 of the Communications Act of 1934, as amended, provides as follows:

All matter broadcast by any radio station for which service money, or any other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person.

The subcommittee is in possession of information and allegations that television stations in the Philadelphia area and elsewhere have broadcast matter for which valuable consideration has been paid without any announcement having been made of such payment.

Mr. Mammarella, we have information that since 1952 until recently, you were producer of a television program known as "Bandstand" or "American Bandstand," broadcast over station WFIL-TV in Philadelphia and the ABC network and that you were also associate producer commencing in the early part of 1958 of the "Dick Clark Show," another television program broadcast over that station and network.

In 1956 Dick Clark was made MC on "American Bandstand," then a local show.

In August 1957 "Bandstand" went on the ABC network 5 days a week—a 2-hour show, one-half hour being local.

Early in 1958 the "Dick Clark Show" began as an ABC network program once a week on Saturday.

We also have information that in Swan Records Corp. you have a 25 percent stock interest and Dick Clark has or had a 50-percent interest. In turn, Swan Records owns certain music publishing companies such as BAE Music, Inc., and Request Music, Inc.

You also, we are informed, have an interest in Wildcat Music, Inc., and in Milt Kellem Music, Inc.

We are also informed that you have an interest in Anita Pressing, Inc., and that Mr. Clark has or had a 50 percent interest in that company.

Similarly, we are informed that Wildcat Music, Inc., owns an interest in Raye Products, Inc., in which Mr. Clark has or had about a 42-percent interest.

Furthermore, we are informed that you own a 20-percent interest in Startime Industries, in which Mr. Clark has or had a 40-percent interest. In Lawn Records, Inc., our information shows that you hold 25 percent and Dick Clark now or formerly 50 percent.

We have information and allegations that you have engaged in unfair and deceptive practices in connection with the manufacture, sale, distribution, and placing of records and music for use as broadcast material over the Dick Clark programs above referred to, for which programs you were either the producer or associate producer. We have information that undisclosed payments have been made to you to secure the airing of records on these television shows.

According to an item in the Philadelphia Bulletin of November 19, 1959, Mr. Mammarella, it is stated as follows:

When Mammarella disclosed that he had left ABC, he announced that he would open his financial records to any lawful agency empowered to investigate television.

When our investigators interviewed you in November 1959 and again on January 21, 1960, you refused to answer any questions pertaining to the fact whether at any time you directly, or indirectly, had received or been offered money or any other consideration, or thing of value, to play, or cause to be played particular records on any of the Dick Clark shows or any other shows with which he has been connected.

Now, I notice, Mr. Mammarella, you have with you your counsel. Is that true?

Mr. MAMMARELLA. Yes, sir.

The CHAIRMAN. I think at this time it would be advisable for him to be identified for the record.

Mr. MAHONEY. My name is Patrick G. Mahoney, sir, 707 Dewey Building, Philadelphia, Pa.

The CHAIRMAN. I notice you have someone else with you.

Mr. CINTIO. My name is Romolo J. De Cintio, 2100 P.N.B. Building, Philadelphia, Pa. We are general counsel for various enterprises in which Mr. Mammarella has had or has an interest.

Mr. MAHONEY. I represent Mr. Mammarella in his individual capacity, sir.

The CHAIRMAN. Well, now, are you here representing Mr. Mammarella or someone else?

Mr. CINTIO. Mr. Mammarella.

The CHAIRMAN. Mr. Mammarella, both of these gentlemen here are representing you?

Mr. MAMMARELLA. Yes, sir.

The CHAIRMAN. Well, I must again emphasize the fact that you are permitted, as I have read the Rules of the House, and the rules of procedure of this committee, to have counsel with you. But only for the purpose of advising you, and therefore, you will have to do your own talking.

Mr. MAMMARELLA. Yes, sir.

Mr. MAHONEY. Mr. Harris, may I be permitted to make a preliminary statement with reference to submitting the income tax statements, the records that have been subpoenaed here?

The CHAIRMAN. Well, not at this time. We will talk to you about that at the appropriate time.

Mr. MAHONEY. All right, sir.

The CHAIRMAN. Right now we have Mr. Mammarella here as a witness.

Will you be sworn.

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

Mr. MAMMARELLA. I do, sir.

The CHAIRMAN. Have a seat.

TESTIMONY OF ANTHONY MAMMARELLA

The CHAIRMAN. Mr. Mammarella, this subcommittee has announced public hearings to begin February 8, in connection with further problems in the broadcast industry.

During the course of the investigation and preparation for this series of hearings, which will start at that time, members of our staff talked to you about some of the problems that are interrelated to this whole subject matter.

You were reluctant, and, as I understand, refused to answer questions the staff members asked you. You refused to talk to them. Therefore, it is necessary for us to take this action. And I did so through an executive session of the subcommittee, not making this stage of it, a public hearing, because this is preliminary to what the subcommittee plans to do beginning the second week in February.

Mr. Lishman, if you have any further preliminary matter that should be brought to the attention of Mr. Mammarella and the record at this time, you may proceed.

I think the record should show at this time, that Mr. Stagliano was also subpoenaed—that is, records—and there is some indication that he was supposed to be here. However, the subpoena served on him had a provision that his personal appearance was not requested. Therefore, he is not here.

If you have some further explanation—

Mr. MAMMARELLA. I thought the understanding was that although his presence was not required here, it was my understanding, that Mr. Howze said, if they could examine the books in Philadelphia, they would not have to come down here.

The CHAIRMAN. That is true.

Mr. MAMMARELLA. And that they were going to make an arrangement to make an appointment and examine the books there; that it would not be necessary to bring them down here.

Mr. LISHMAN. Mr. Mahoney, didn't Mr. Howze get in touch with you yesterday and inquire whether or not Mr. Stagliano would be here today?

Mr. MAHONEY. No, sir; he did not. Mr. Howze contacted me—I believe a wire had been sent to Mr. Mammarella, but not to Mr. Stagliano, and Mr. Howze called me and told me—I believe he said the purpose of this meeting was to determine the admissibility of the income tax records and Mr. Mammarella's assertion of his privilege. But he did not mention Mr. Stagliano.

I believe that is correct, is it not, Mr. Howze?

Mr. HOWZE. My recollection, sir, is that I mentioned both—Mr. Stagliano and Mr. Mammarella.

Mr. MAHONEY. Well, I think if I am allowed to make this statement I requested to make, I do not think there will be any problem here, as to Mr. Stagliano.

The CHAIRMAN. Yes; all right.

Mr. MAHONEY. Sir, Mr. Mammarella wishes to cooperate with the subcommittee as much as possible, and we are not here for the purpose of interposing the fifth amendment or a privilege. We merely want the statutory assurance that any evidence that he gives here, he will be immune from any prosecution, as a result of any evidence or testimony that he gives or any papers that he submits. We have with us the income tax records and the work sheets, and we will be glad to submit them to the committee, with that understanding.

The CHAIRMAN. Well, of course I have no authority, Mr. Mahoney, to give Mr. Mammarella any such assurance, because I do not know what he is going to say. I do not know what the facts are in connection with it. And I do not know what proceedings somebody else might bring who has a responsibility of their own. So we might as well be fair and frank with you. I cannot, and this subcommittee cannot, give you any such assurance—that is, immunity from any prosecution.

Mr. MAHONEY. I believe, sir, there is a statutory provision to that effect—that any testimony given before a committee or subcommittee of the House or Senate, any evidence there given, the witness is immune from prosecution, any criminal prosecution—except as to official papers and records.

Mr. BENNETT. Do you have a citation of that, or a House rule?

Mr. LISHMAN. Is that the Federal immunity statute? I think he can claim whatever rights he may have under that statute. But we cannot guarantee what his rights are under that statute.

Mr. MAHONEY. Would you like the citation of that?

The CHAIRMAN. Well, I understood that you were asking the subcommittee to give you such assurance. We cannot do it. If you are relying on the statute—

Mr. MAHONEY. Sir, we do not want to create the impression that we have at any time waived our right under that statute. The request to review these records was made outside of this subcommittee. It was made in a law office.

Mr. BENNETT. Mr. Chairman, does the statute give the subcommittee the right to grant immunity?

Mr. MAHONEY. No, sir; it is just as a matter of right.

Mr. BENNETT. What is the citation?

Mr. MAHONEY. Title 18, section 3486.

The CHAIRMAN. I have it here, Mr. Mahoney. If you want to proceed by reading this into the record, we will be glad to permit you to do it. I interpret this, as I read it, to mean—

in the course of any investigation relating to any interference with, or endangering of, or any plans or attempt to interfere with or endanger the national security, or defense of the United States, by treason, sabotage, espionage, sedition, seditious conspiracy, or the overthrow of this Government by force or violence.

Therefore, I do not feel that the purpose of this hearing this afternoon would come within the purview of that section.

However, Mr. Mahoney, if you wish to include the entire section in the record at this point, then you may do so.

Mr. MAHONEY. Sir, this particular act is not the citation on which I am relying. Unfortunately, I do not have the exact citation, but I know that both the Interstate Commerce Act and the Criminal Code make a provision for immunity from the use of testimony before a House committee.

Mr. BENNETT. What are you requesting the subcommittee to do?

Mr. MAHONEY. Sir, I am not requesting the subcommittee to give us that assurance, since I do not think they have the statutory power to do so.

The CHAIRMAN. What is that now?

Mr. MAHONEY. I say I am not requesting the subcommittee to give us that assurance, because I do not think you have the statutory power to do so. I believe it is in the statute. I merely want to point out we are not waiving any right to any immunity we have.

The CHAIRMAN. That makes the record, and I think that should be sufficient to proceed.

Now, do you have any further comment you want to make regarding the income tax problem? You started to mention that a moment ago.

Mr. MAHONEY. Yes, sir. We are agreeable, sir, to offer the records requested—a copy of the income tax returns from 1956 to 1959, and also the work papers.

The CHAIRMAN. Thank you very much.

Mr. LISHMAN, you may ask such questions as you desire.

I assume you do not have those papers with you.

Mr. MAHONEY. Yes, sir, we do.

The CHAIRMAN. Can you give them to the staff this afternoon?

Mr. MAHONEY. Yes, sir.

The CHAIRMAN. Very well, you may proceed.

Mr. MAHONEY. Those records, of course, will be returned to us, sir.

The CHAIRMAN. Yes—when the subcommittee has concluded its use.

Mr. CINTIO. If I may interject, sir, the 1959 records are estimates. Actually Mr. Mammarella's 1959 return has not been completed, because he does not have all his W-2 forms, the 1099's, and so forth. So that he will need them in preparation of his 1959 return.

The CHAIRMAN. The subcommittee will certainly accommodate him in that responsibility.

Mr. LISHMAN. Mr. Mammarella, will there be any audit working papers, other than the ones you are going to leave with us this afternoon, still in Mr. Stagliano's office, or in your office in Philadelphia?

Mr. MAMMARELLA. Not to my knowledge.

Mr. LISHMAN. In other words, this will be a complete set of all the working papers.

Mr. MAMMARELLA. To my knowledge, sir, this will be the sum total of my personal papers.

Mr. LISHMAN. Now, Mr. Mammarella, at one time you were employed by a radio and television station in Philadelphia; is that correct?

Mr. MAMMARELLA. Yes, sir.

Mr. LISHMAN. Will you please state the name of that station and the station owner?

Mr. MAMMARELLA. The name of the station is WFIL-TV. The station is a member of the Triangle Publications stations. It is a station owned by Triangle Publications, Inc. As for the technical name of the actual owner, I may be wrong. But I know it is a Triangle Publications station.

Mr. LISHMAN. Yes, sir. And you were an employee of the station licensee?

Mr. MAMMARELLA. I was an employee of WFIL-TV.

Mr. LISHMAN. When did you commence that employment?

Mr. MAMMARELLA. In 1950.

Mr. LISHMAN. And at that time was Dick Clark working for the station?

Mr. MAMMARELLA. No, Dick Clark was not working with the station.

Mr. LISHMAN. When did he begin to work for that station?

Mr. MAMMARELLA. To the best of my knowledge, around the spring of 1952.

Mr. LISHMAN. When you commenced working for the station, what position did you hold?

Mr. MAMMARELLA. I was a part-time switchboard operator.

Mr. LISHMAN. And how long have you worked for WFIL?

Mr. MAMMARELLA. I worked for WFIL from 1950 until November 13, 1959.

Mr. LISHMAN. And what positions did you hold, during the period of time that you were employed by WFIL?

Mr. MAMMARELLA. When I started, I was a part-time, weekend switchboard operator. That is, the station switchboard, telephone. I was switchboard operator for—this is an approximate thing—3 or 4 months. And then I was moved into the film department, at which time I used to preview films, and I think I was with them 8 or 9 months. And I quit.

Then I was rehired a couple of weeks later and put on the crew, camera crew. When I quit, I was not out of the employment of the station for more than 10 days or 2 weeks. It was that brief a time. I was back as a cameraman. And I was a cameraman, and stage manager, until about February or March of 1953. At that time I was asked if I would become—move upstairs into the production staff, and if I would join their production staff. And at that time I had a title—which was a long one—it was something to the effect of program packager and writer and developer. It was a name that was long which did not mean very much.

One of my duties was that I was assigned to—in those days it was just called "Bandstand." It was not called "American Bandstand."

I was assigned to the production staff of "Bandstand," plus I was assigned to other shows.

Mr. LISIMAN. What date were you assigned to the production staff of "Bandstand"?

Mr. MAMMARELLA. My recollection is that it was some time, I think, in February or March of 1953. I do not really remember the exact date. But it was early in 1953, I was assigned to that.

Mr. LISIMAN. At that time, who was master of ceremonies on "Bandstand"?

Mr. MAMMARELLA. A man named Bob Horn.

Mr. LISIMAN. Eventually he left?

Mr. MAMMARELLA. That is right. He left in 1956, and Dick Clark was assigned as the master of ceremonies of the show.

Mr. LISIMAN. In 1956?

Mr. MAMMARELLA. Yes, sir.

Mr. LISIMAN. Then in 1956, were you producer of American Bandstand?

Mr. MAMMARELLA. Well, it was still not called American Bandstand, but I was still then—I continued on, in my same capacity with the show, when they assigned Dick Clark as the MC of the show—I continued on with the show. Then in August, 1957—August 5 of 1957—we had a 4-week trial on the ABC network, as a network show, and then when it went on the network for that 4-week trial, they changed the name to "American Bandstand," for the network. And the show was successful, and then they just continued the show on, when the trial basis was over.

Mr. LISIMAN. Was that show a 2-hour show, 5 days a week?

Mr. MAMMARELLA. Yes, sir.

Mr. LISIMAN. With one-half hour local, and 1½ hours being on the ABC network?

Mr. MAMMARELLA. Yes, sir.

Mr. LISIMAN. And when did you become associate producer of the "Dick Clark Show"?

Mr. MAMMARELLA. When that show went on the air, which was the second Saturday in February of 1958. I think it was February 15. But there again—but it was like the second week in February of 1959.

Mr. LISIMAN. Where did the "Dick Clark Show" originate?

Mr. MAMMARELLA. The "Dick Clark Show" originated in New York City.

Mr. LISIMAN. Was that a half-hour show?

Mr. MAMMARELLA. It was a half-hour Saturday night show, from 7:30 to 8 o'clock.

Mr. LISIMAN. While you were producer of "American Bandstand," and associate producer of the "Dick Clark Show," what was the nature of your duties?

Mr. MAMMARELLA. Well, if I may do the "Dick Clark Show" first, because that is easier—as associate producer, the ABC network had expressed the desire that there should be a half-hour Saturday night type show. They had tried a similar show of some kind like that. It was not successful. They felt that Dick was very popular—Mr. Clark was very popular and had a big following. They thought they would try a type of show like that.

So we got together and came up with a format, as the show existed. And it was my function, basically, on that show to help get the acts—in other words, determine which acts should go on that show—in other words, which performers should perform on the show. And also to, during the day—and the whole show was done in one day—there were no other rehearsals except on Saturday—we rehearsed all day Saturday and put the show on on Saturday night. I was not the producer of the show. Another gentleman was. But my main function during the course of that day would be in a sense a kind of ride herd, because of the wide difference of opinion between people in New York about the type of music and the type of performer that we had—that we featured. And these people had never had any connection with the modern popular song and singer of the day.

So it was my basic function to see that they kept it within the framework of the idea that Mr. Clark and I had as to how that should be run.

That is one thing.

On "American Bandstand" the function was a lot wider, because this was a Philadelphia show. I was there 5 days a week.

I was the producer of the show. The term producer will vary, I would imagine, from station to station and network to network. I was the producer of the show insofar as the show ran—I had the duty of—well, making sure that the sets were proper, making sure that—of the audience. In other words, I was responsible so that at a certain time to say to the man at the door "It is time to bring the audience in."

I was more or less a liaison with the commercial people in the commercials, although the director had much more to do with the commercials. He used to rehearse them and talk over the problems. But usually, initially, when a new commercial sponsor came on the show, he would sit down with Mr. Clark and myself and discuss what he had in mind, and get our views as to how the commercial should be done. We would talk it over and bang it around as to how we felt it should best be presented—especially when they felt it was a commercial slanted toward teenagers. They felt Dick had a greater knowledge of what teenagers liked, so they used to ask his opinion all the time. And we might make suggestions to them as to how it should be done on the air.

I was a kind of liaison. If they had a complaint, they would usually complain to me. I was responsible to another man who was the executive producer of the show, a Mr. Louis Klein.

Also, in the course of the show we usually had a guest, or sometimes two guests a day. I was responsible for making sure the guest was there, or determining that he was there, briefing him on what was going to occur, at what time he would appear on the show, where he would have to be, and what would be expected of him, and find out, from the artist, whether there was anything that he would like Dick to mention, or he would like the opportunity to mention—like he was appearing the following week so-and-so, or he had a new album out, or something like that.

It was the general function of running the show and riding herd on the show.

The only thing I probably—basically, the only thing I did not handle on the show was financing, money. If there was any money necessary to buy things, I would suggest that we needed a new curtain, or that we needed the floor repainted, or that we needed a new set, or that we needed props, that we needed something, and I would submit this to Louis Klein, who was the production manager, and was also the executive producer of "American Bandstand". Then he would determine whether or not there was sufficient funds for it, or whether or not we should have the new equipment, or whatever it might be.

So basically, it was generally putting together the show, and I also shared in the duty of programing the music of the show. That is basically it.

If there is any specific thing, it is a very hard thing to spell out what your job is when somebody says "What do you do?"

Mr. LISHMAN. Mr. Mammarella, while you were producer and associate producer of these two respective shows, were you also employed at that time in those capacities by WFIL?

Mr. MAMMARELLA. Well, to clarify that, I—as far as "American Bandstand" is concerned, whether it was called "Bandstand" when it was local, or "American Bandstand," I was employed by WFIL-TV. As far as the Saturday night "Dick Clark Show" was concerned, originally my association with the "Dick Clark Show" as associate producer was an ABC payroll check. Later on, it became Drexel Productions. It continued on. It was the same show, and just continued right on. But there was a change at a certain point in time, which I am not clear on at all, as to what time it became Drexel Productions. Then I was paid by and worked for Drexel Productions.

Mr. LISHMAN. Is it correct, Mr. Mammarella, that you and Dick Clark had the responsibility for the selection of records programed on each of these shows?

Mr. MAMMARELLA. Yes, sir.

Mr. LISHMAN. No one else had that responsibility?

Mr. MAMMARELLA. No, sir.

Mr. LISHMAN. Is it correct that Drexel Television Productions, Inc., is a New York corporation, wholly owned by Dick Clark?

Mr. MAMMARELLA. Well, the technicalities of it, I do not really know. This was my impression, that it was a New York corporation, wholly owned by Dick Clark.

Mr. LISHMAN. You received a salary from that corporation?

Mr. MAMMARELLA. Yes, sir; from Drexel Productions.

Mr. LISHMAN. Did you have a written contract with WFIL?

Mr. MAMMARELLA. No, sir.

Mr. LISHMAN. Did you have a written contract with Drexel?

Mr. MAMMARELLA. No, sir.

Mr. LISHMAN. Is it also a fact that during this period, when you were a producer and associate producer, you received a salary from Swan Records?

Mr. MAMMARELLA. Yes, sir.

Mr. LISHMAN. What were your duties with Swan Records?

Mr. MAMMARELLA. Well, the duties with Swan Records was a duty which would come into a field which they call A. & R. in the music business, which is artists and repertoire. And it would be this duty,

to listen to the music, or to what they call demonstration records—to listen to the music and to determine whether or not you felt, first of all, that the song was one that was something you would like to have recorded, and if it was a song that you felt was worthy of something, as to which artist you might think would best do it, or in the question of a finished record—in other words, people will go out and produce a record and then they will submit it to a record company and say, "Would you like to buy this record?" In other words, the record is not on any label: it is just a master, in tape form, and they make a dub of it, and you listen to it. And you would listen to it to determine whether or not you felt it was good enough, whether you felt it was commercial enough, or that potentially it might possibly be a hit.

Mr. LISHMAN. Now, what is the nature of Swan Record Co.'s business?

Mr. MAMMARELLA. It is known as a record manufacturer.

Mr. LISHMAN. Is it correct also, Mr. Mammarella, that during this same period you were on another payroll, of Wildcat Music?

Mr. MAMMARELLA. Yes, sir.

Mr. LISHMAN. What business is Wildcat Music in?

Mr. MAMMARELLA. Music publishing, the publishing of music, sir.

Mr. LISHMAN. And what were your duties in connection with the music publishing company?

Mr. MAMMARELLA. Well, in the capacity on the show, many people would submit songs that you—would constantly submit songs to you and ask you if you would publish it. And for a long time I had no publishing association whatsoever. And an opportunity came up to get into the publishing association. I figured with so many songs—and also if you had a good song, that I would meet a lot of artists in the course of a year, that you could always submit to an artist these songs for their consideration, as to whether or not they like the song, which was basically my capacity with—

Mr. LISHMAN. Mr. Mammarella, we have brought out the fact that you were on four different payrolls; is that correct?

Mr. MAMMARELLA. Yes, sir.

Mr. LISHMAN. Were you on any other payrolls?

Mr. MAMMARELLA. Well—excuse me. This is a difficult question—if you will excuse me, I would like to check a point.

Mr. LISHMAN. Yes.

(The witness consulted with counsel.)

Mr. MAMMARELLA. No, sir; I was not on the payroll.

Mr. LISHMAN. We will come back to that again, because we may have a difference of interpretation on the word "payroll."

Mr. MAMMARELLA. All right.

Mr. LISHMAN. In connection with Chess Records, among others, you were the recipient of regular checks in certain amounts. Now, whether that constitutes your being on Chess Records payroll or not is a matter of interpretation. But we will come to that. Were there any other companies with whom you were the recipient of funds, as you were from Chess Records?

Mr. MAMMARELLA. As it was from Chess Records—any other companies?

Mr. LISHMAN. Yes; did any other company pay you money while you were a producer and associate producer?

Mr. MAMMARELLA. I received funds from other companies; yes, sir.

Mr. LISHMAN. Could you name those companies, please?

Mr. MAMMARELLA. From Chess Records, Universal Distributors, Edward S. Barsky, Inc., distributors—Jamie Records, Gone Records.

Mr. LISHMAN. Do you have a list of these companies?

Mr. MAMMARELLA. They would be here in the reports that we turned over, that we are submitting to you.

Mr. LISHMAN. I would like to have the record show the number of companies from which you received payment. Then we will inquire as to the purpose of those payments later on.

Mr. MAMMARELLA. If you are ready—

Mr. LISHMAN. Yes; I am ready.

Mr. MAMMARELLA. Chess Records Co.; Cosnat Distributing Co.; Gotham Record Distributing Co.; Barsky Distributors; David Rosen Co., which is a record distributing company; Marnel Distributing Co., which is a record distributing company; Duke Records.

Mr. MAHONEY. Is your question limited, sir, just to record companies?

Mr. LISHMAN. Record companies and record distributing companies and persons representing talent.

Mr. MAMMARELLA. Managers or something like that?

Mr. LISHMAN. Bookers.

Mr. MAMMARELLA. I beg your pardon?

Mr. LISHMAN. Bookers.

Mr. MAMMARELLA. You mean booking agents and managers and things like that?

Mr. LISHMAN. Yes.

Mr. MAMMARELLA. Future Records.

Mr. LISHMAN. During the period you were a producer and associate producer on these two shows, you were receiving these payments you have just mentioned?

Mr. MAMMARELLA. Yes, sir.

Mr. LISHMAN. Now, let us get back to the first four that you mentioned.

Mr. MAMMARELLA. Excuse me—the first four?

Mr. LISHMAN. Well, Drexel, Triangle, Swan, and Wildcat—I would like to get the salaries from those four companies in the record, if we can.

Mr. MAMMARELLA. All right.

Mr. LISHMAN. Now, is it a fact that Drexel Television Productions, Inc., a wholly owned Dick Clark corporation paid you a salary of \$250 a week?

Mr. MAMMARELLA. Yes, sir.

Mr. LISHMAN. And Triangle Publications, which is the station licensee, operating station WFIL, paid you \$150 a week?

Mr. MAMMARELLA. That is right, sir.

Mr. LISHMAN. And Swan Records, for which you were apparently the A and R man—

Mr. MAMMARELLA. I acted in that capacity.

Mr. LISHMAN. They paid you \$250 a week.

Mr. MAMMARELLA. The salary range—I think the original salary was something like \$200.

Mr. LISHMAN. But it ranged from \$200—

Mr. MAMMARELLA. \$250—something like that.

Mr. LISHMAN. And Wildcat Music, Inc., paid you approximately \$103 and \$104 a week?

Mr. MAMMARELLA. Yes, sir.

Mr. LISHMAN. Now, what functions did you perform for the other companies whose names you have just given us?

Mr. MAMMARELLA. Well, all right. There were many things that have nothing to do with my job as producer of Bandstand, when it was local or American Bandstand. Many times these people would come to you for all kinds of advice, and ask you what they should do in a case like this, should they put out this kind of record or should they get out that kind of record. Many times they would ask me to sit and listen to both sides of the record, to tell them which side of the record I thought—or they would bring me demonstration records, and ask me, "Should I buy this record—do you think this is worthwhile—my buying and putting out this as a record?"

One record company, as in the case of Chess Records a while back, I think in 1956, was having a problem in Philadelphia with Philadelphia distribution. They came to see me and we sat down and discussed their problem and their distribution, and tried to suggest ideas as to what they could do. They were not happy with the man they had. They asked if I thought I could recommend someone else to take over his distribution.

They had two employees that worked for the company that was distributing the records that they were fond of—the Chess Co., was fond of—and they wanted to know if there was a way that if someone else distributed the records, could these two fellows go along with it and maintain their jobs. One fellow was a promotion man. The other fellow was the salesman—used to go out on the road and sell. And we tried to inquire and made some calls.

Mr. LISHMAN. Could we have the names of those two men from Chess?

Mr. MAMMARELLA. The two men from Chess Records?

Mr. LISHMAN. Yes.

Mr. MAMMARELLA. Leonard and Phil Chess.

Mr. LISHMAN. Were these the two men from Chess Records who contacted you?

Mr. MAMMARELLA. Yes, they came to Philadelphia.

Mr. LISHMAN. Was this during the time when you were producer and associate producer of the Dick Clark shows?

Mr. MAMMARELLA. No, there was no Dick Clark Show at the time.

Mr. LISHMAN. American Bandstand?

Mr. MAMMARELLA. Only American Bandstand.

Mr. LISHMAN. Did any one else from Chess Records ever contact you, either here in Philadelphia or elsewhere?

Mr. MAMMARELLA. At that time?

Mr. LISHMAN. At any time.

Mr. MAMMARELLA. Yes. Their present promotion man, National promotion man, has called me.

Mr. LISHMAN. What is his name?

Mr. MAMMARELLA. Max Cooperstein.

Mr. LISHMAN. Do you know Mr. Sid McCoy of Chess Records?

Mr. MAMMARELLA. Sid McCoy? Not to my recollection, sir.

Mr. LISHMAN. Mr. Mammarella, I would like to show you a photostatic copy of a portion of the U.S. Information return for the calendar year 1958 income taxes, Chess Records Corp., 2120 South Michigan Avenue, Chicago, Ill., which states that during the year 1958, there was paid to you by Chess Records the sum of \$900, and ask you if that is correct?

Mr. MAMMARELLA. Yes, sir.

Mr. LISHMAN. Mr. Chairman, I would like to have that placed in the record.

The CHAIRMAN. Let it be received.
(Document referred to follows.)

U. S. INFORMATION RETURN FOR CALENDAR YEAR 1958 1958

KIND AND AMOUNT OF INCOME PAID

1. Name of payee	2. Address of payee	3. Amount paid	4. Name of payor	5. Address of payor
Mr. Sid McCoy		350.00	Chess Record Corp.	2120 S. Michigan Ave., Chicago, Ill.

U. S. INFORMATION RETURN FOR CALENDAR YEAR 1958 1958

KIND AND AMOUNT OF INCOME PAID

1. Name of payee	2. Address of payee	3. Amount paid	4. Name of payor	5. Address of payor
Mr. Tony Martorella	199 Northshore Court Lansing, Mich.	200.00	Chess Record Corp.	2120 S. Michigan Ave., Chicago, Ill.

U. S. INFORMATION RETURN FOR CALENDAR YEAR 1958 1958

KIND AND AMOUNT OF INCOME PAID

1. Name of payee	2. Address of payee	3. Amount paid	4. Name of payor	5. Address of payor
Mr. Harry Keys c/o Personalized Music 7343 Harbury Road Pittsburgh, Pa.		700.00	Chess Record Corp.	2120 S. Michigan Ave., Chicago, Ill.

Mr. LISHMAN. Now, Mr. Mammarella, I am going to show you another portion of the return, Information return for calendar year 1957, Federal income taxes, of the Chess Record Corp., and it states that during that year Chess Records paid you \$750.

Mr. MAMMARELLA. That is right.

Mr. LISHMAN. I would like to have that placed in the record.

The CHAIRMAN. Let it be received for the record.

(The document referred to is as follows.)

U.S. DEPARTMENT OF COMMERCE
BUREAU OF BROADCASTING
1937

STATION: _____
CLASSIFICATION: _____
LICENSE NO.: _____
EXPIRES: _____

NAME: _____
ADDRESS: _____
CITY: _____ STATE: _____

NAME: _____
ADDRESS: _____
CITY: _____ STATE: _____

U.S. DEPARTMENT OF COMMERCE
BUREAU OF BROADCASTING
1937

STATION: _____
CLASSIFICATION: _____
LICENSE NO.: _____
EXPIRES: _____

NAME: _____
ADDRESS: _____
CITY: _____ STATE: _____

NAME: _____
ADDRESS: _____
CITY: _____ STATE: _____

U.S. DEPARTMENT OF COMMERCE
BUREAU OF BROADCASTING
1937

STATION: _____
CLASSIFICATION: _____
LICENSE NO.: _____
EXPIRES: _____

NAME: _____
ADDRESS: _____
CITY: _____ STATE: _____

NAME: _____
ADDRESS: _____
CITY: _____ STATE: _____

Mr. LISHMAN. During the year 1958, Mr. Mammarella, you received a series of checks from Chess Record Corp.; is that correct?

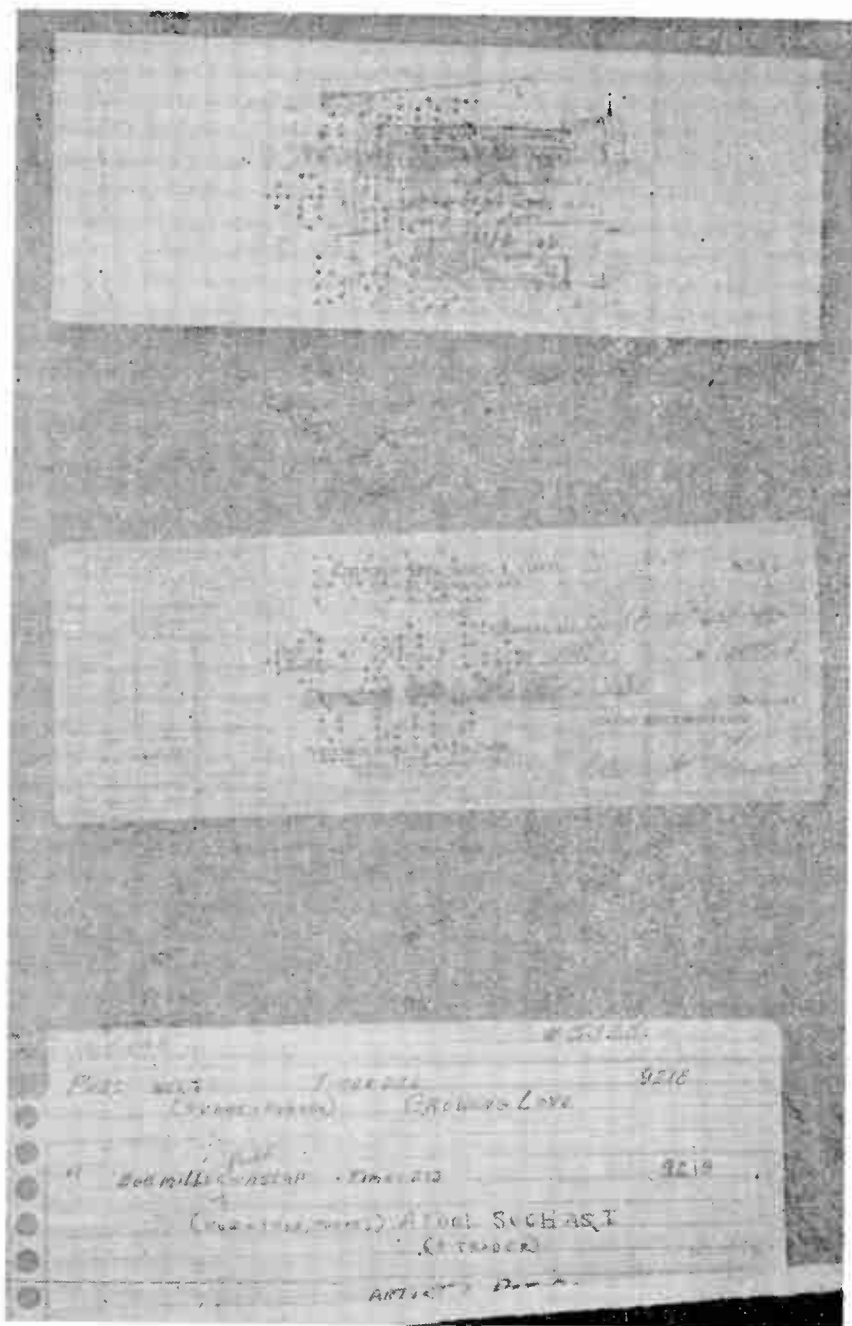
Mr. MAMMARELLA. Yes, sir.

Mr. LISHMAN. I show you a photostatic copy of a canceled check, together with an endorsement on the back which purports to be your signature. This check is dated September 10, 1958, Chess Record Corp. No. 8584, and I ask you if this amount was paid to you, and is that your endorsement on the back of this photostatic copy of the canceled check?

Mr. MAMMARELLA. Yes; that appears to be my signature.

Mr. LISHMAN. I would like to have that document in the record, Mr. Chairman.

The CHAIRMAN. Let it be received.
(The document referred to follows.)



Mr. LISIMAN. Mr. Mammarella, I show you another photostatic copy of a canceled check, both the face and back, with your endorsement. This check, drawn by Chess Record Corp., dated August 11, 1958, in the amount of \$100 to you—I ask you if that amount was received by you and is that your endorsement?

Mr. MAMMARELLA. Yes; that seems to be my signature.

Mr. LISIMAN. I would like to have that check in the record.

The CHAIRMAN. Let it be received in the record.

(The document referred to follows.)

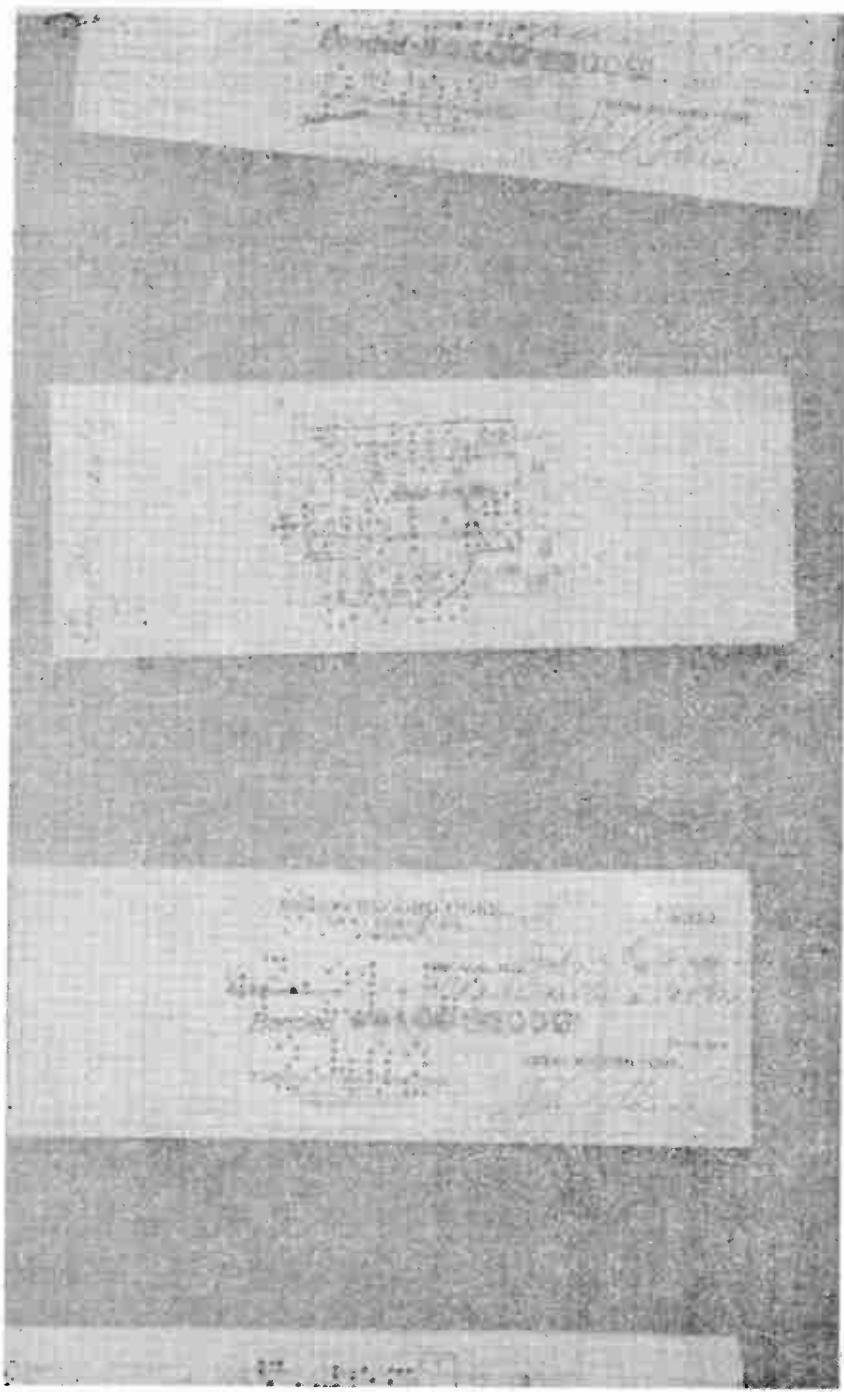
Mr. LISHMAN. Mr. Mammarella, I am going to show you another photostatic copy of a canceled check, together with your endorsement on the back. This is a check of Chess Record Corp., to your order, dated July 10, 1958, and this is in the amount of \$100.

Mr. MAMMARELLA. Yes; that is my signature.

Mr. LISHMAN. I offer this as an exhibit for the record.

The CHAIRMAN. Let it be received for the record.

(The document referred to follows.)



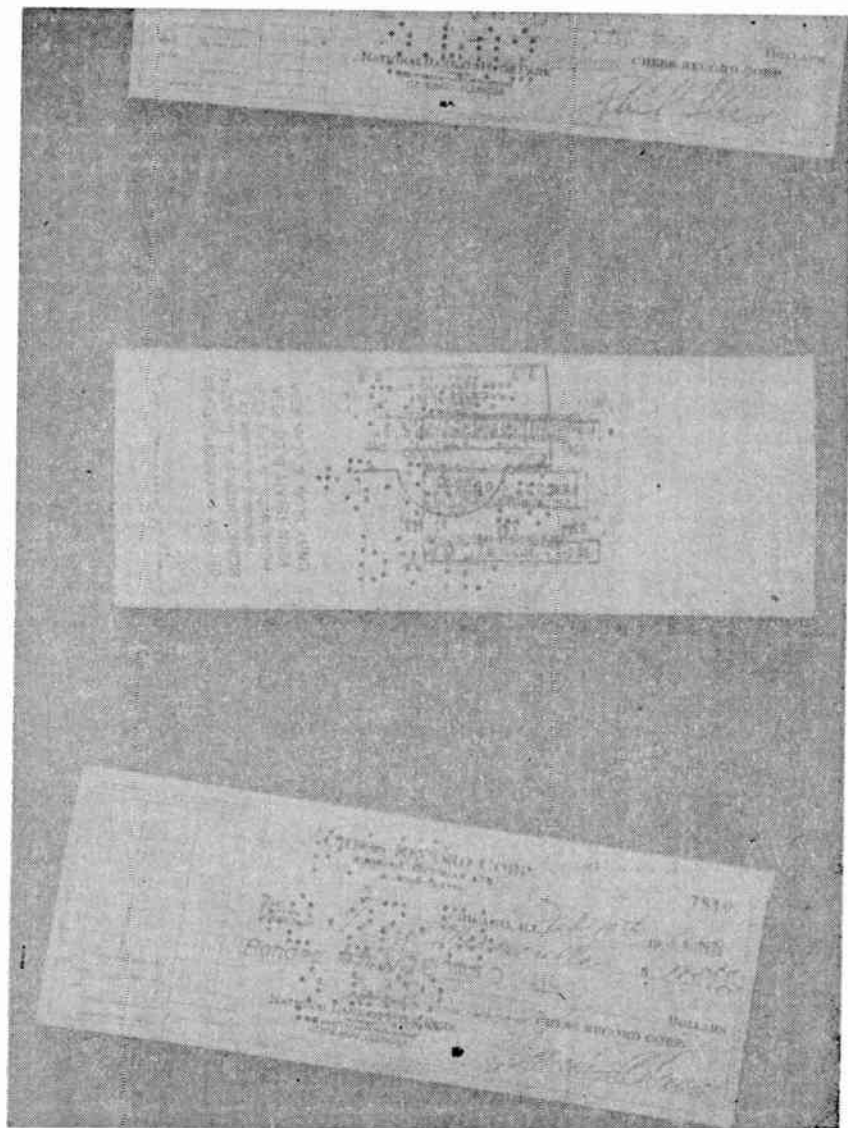
Mr. LISHMAN. In the interest of expedition, Mr. Mammarella, I am going to hand you a group of six photostatic copies of checks made payable to you by Chess Record Corp., each in the amount of \$100, each bearing your signature on the back, and dated respectively, May 9, 1958, June 9, 1958, April 8, 1958, March 7, 1958, February 10, 1958, and January 7, 1958.

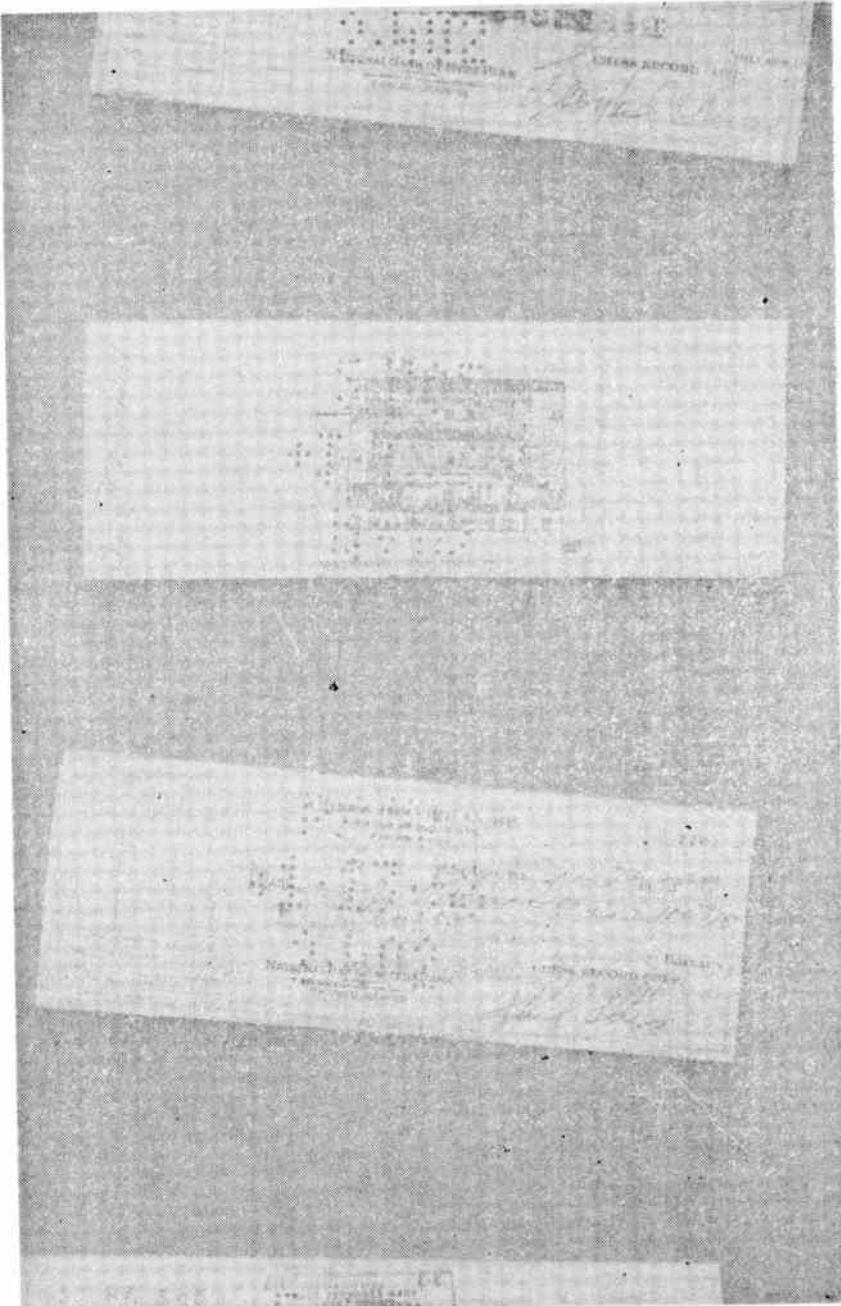
I ask you to state for the record whether or not you received the amounts as shown in these checks from Chess Records?

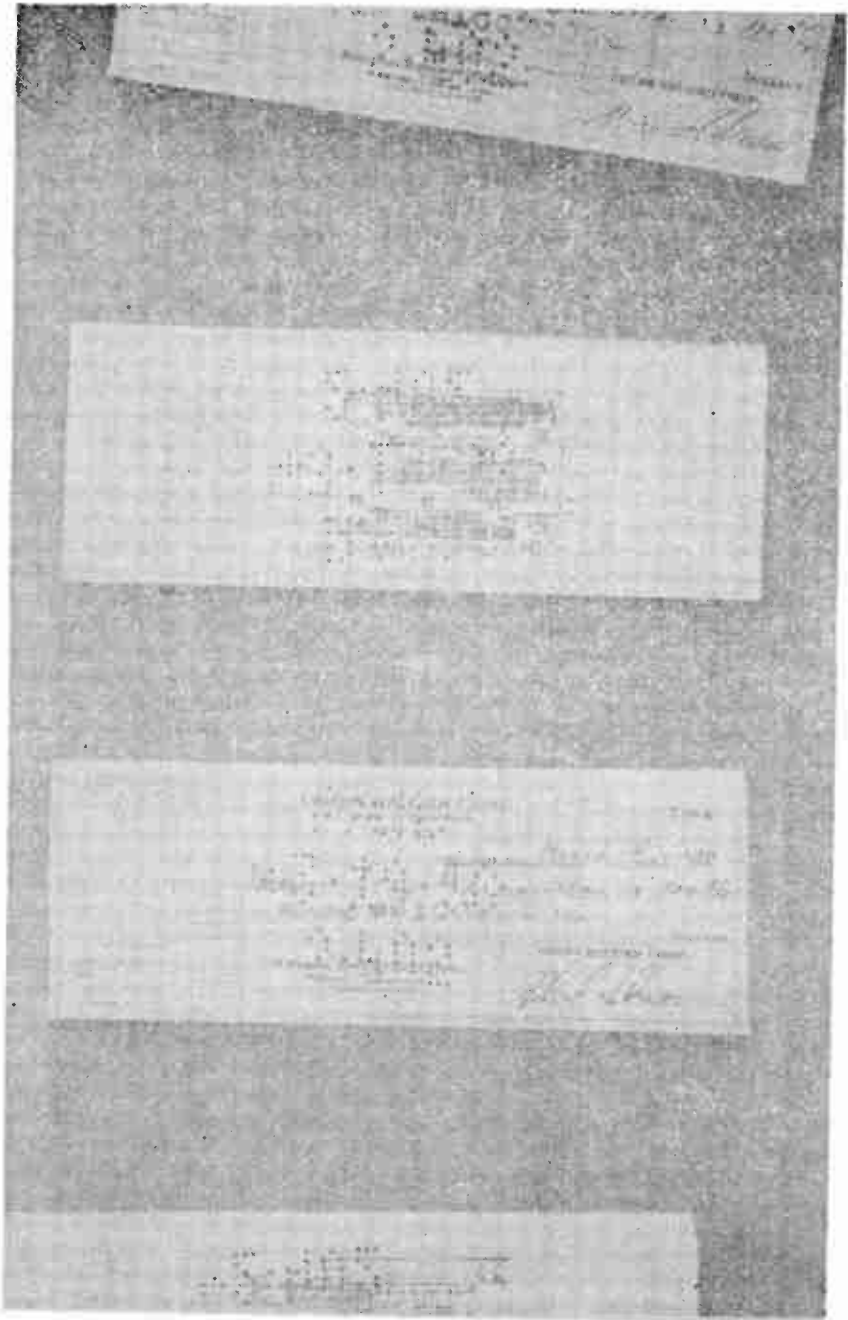
Mr. MAMMARELLA. Yes, sir.

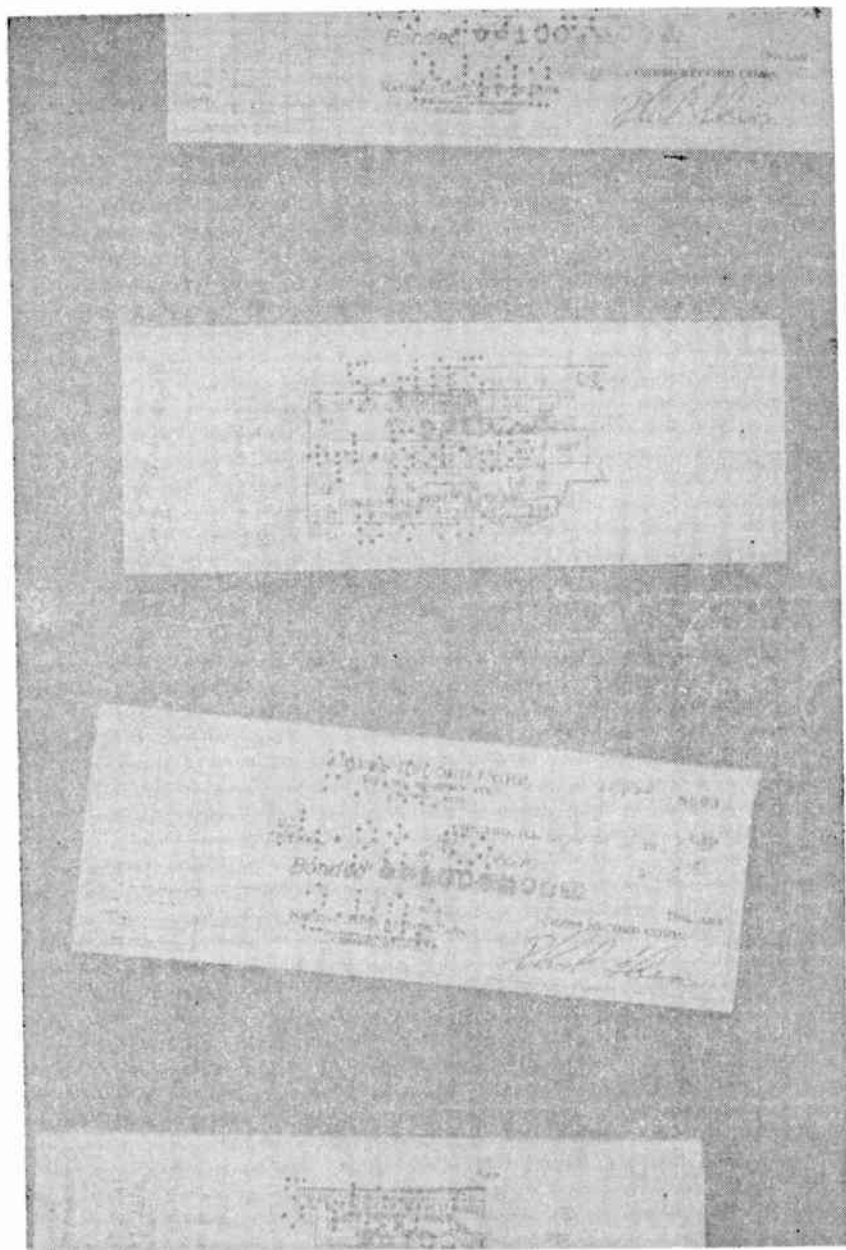
Mr. LISHMAN. Did Chess Records also make the payments to you in the years 1957 and 1959? I would like to have that group of checks identified by the witness in the record.

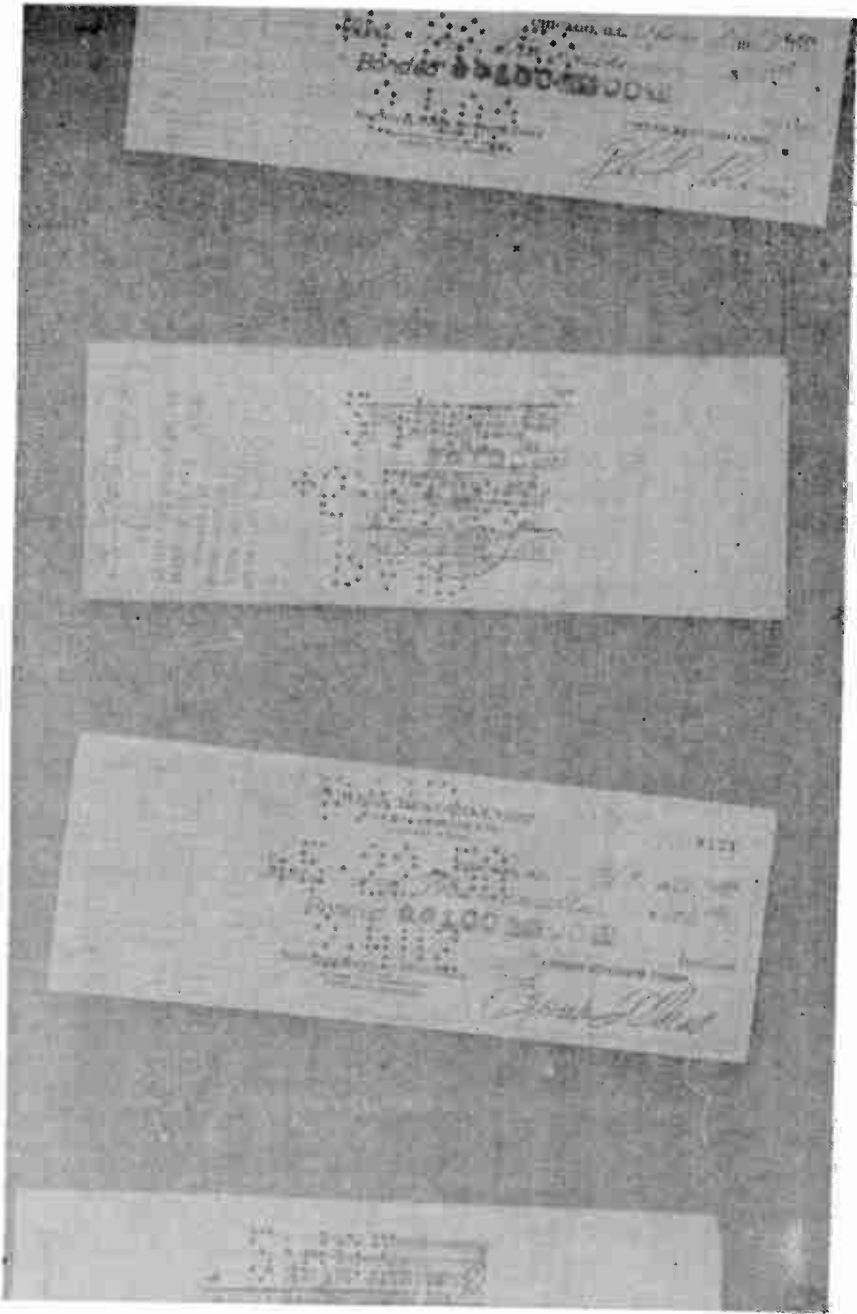
The CHAIRMAN. Let them be received in the record.
(The documents referred to follows:)

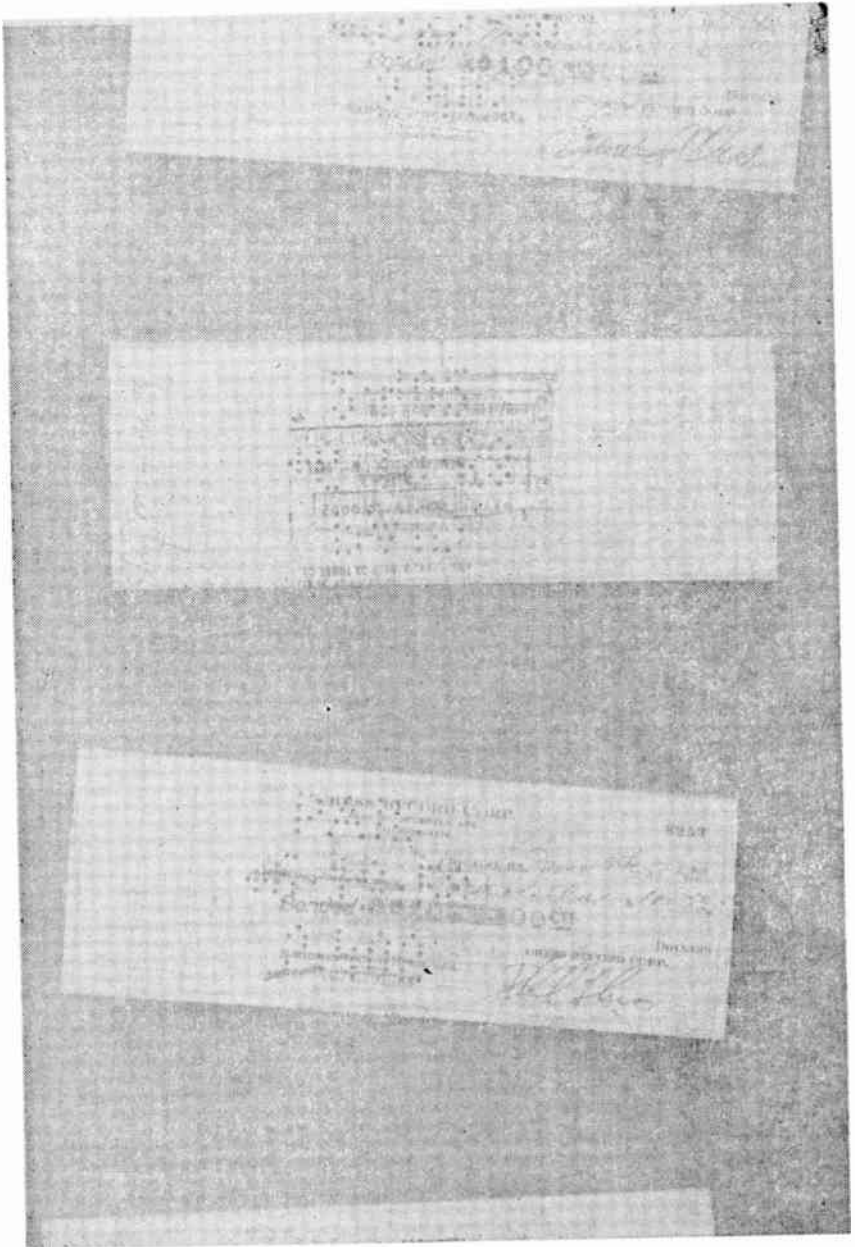












Mr. MAMMARELLA. In the year 1957, the answer is "Yes." In the year 1959, the answer is "No."

Mr. LISHMAN. And will the records that you are to leave with us this afternoon show the amounts of such payments received by you from Chess Records, as well as other companies you have mentioned?

Mr. MAMMARELLA. Yes, sir.

Mr. LISHMAN. Did Chess Records ever pay you any amount in cash?

Mr. MAMMARELLA. No, sir.

Mr. LISHMAN. Did you ever receive any valuable gift from Chess Records, or any representative of Chess Records?

Mr. MAMMARELLA. Yes, sir.

Mr. LISHMAN. What were those gifts?

Mr. MAMMARELLA. I received Christmas of last—1958—a punch-bowl.

Mr. LISHMAN. What other gifts have you received from Chess?

Mr. MAMMARELLA. A holder and pen.

Mr. LISHMAN. Is that all?

Mr. MAMMARELLA. Well, the previous year, at Christmas time, flatware—silverware.

Mr. LISHMAN. Is that all, just those three gifts?

Mr. MAMMARELLA. To the best of my recollection at this moment.

Mr. LISHMAN. Did any of the companies named by you, or their representatives, ever make any payments in cash to you?

Mr. MAMMARELLA. Yes, sir.

Mr. LISHMAN. Would you name the company and the person who made the cash payment.

Mr. MAMMARELLA. Excuse me, sir. May I ask a question. Are you distinguishing between cash and checks?

Mr. LISHMAN. Yes.

Mr. MAMMARELLA. You mean actual cash?

Mr. LISHMAN. Actual cash money. I would like to have the amount and the time and the name of the person who gave it to you.

Mr. MAMMARELLA. All right—cash payment.

The CHAIRMAN. Mr. Mammarella, you are stating you did receive actual cash payment; is that right?

Mr. MAMMARELLA. Yes, sir.

The CHAIRMAN. From various companies. That is, recording companies and record distributing companies?

Mr. MAMMARELLA. Well, not from various ones.

The CHAIRMAN. Well, from some companies?

Mr. MAMMARELLA. Yes.

The CHAIRMAN. Are you having difficulty deciding which one it was?

Mr. MAMMARELLA. You mean what was my difficulty?

The CHAIRMAN. Well, we are losing so much time here.

Mr. MAMMARELLA. My difficulty was that I didn't want to—I could not find the exact amount that the gentleman was asking for.

The CHAIRMAN. Yes. I thought perhaps if you were going to take some time to go through and give the exact amount, and all of that at this moment, it might suffice to say that you did receive the funds and then a little later you could give the staff the details as to how much and so forth.

Mr. MAMMARELLA. Fine.

The CHAIRMAN. So that suffices at this time, Mr. Lishman.

Mr. LISHMAN. Yes, sir.

Mr. BENNETT. May I ask him this question? Did you record these cash payments in your books? Do you keep a set of books and records; your own personal records?

Mr. MAMMARELLA. No.

Mr. BENNETT. Well, did you make any written memorandums of these cash payments we are talking about?

Mr. MAMMARELLA. No, unfortunately I did not.

Mr. BENNETT. You will have to reply on your memory?

Mr. MAMMARELLA. To a certain extent.

Mr. BENNETT. Well, you were referring to some papers and figures.

Mr. MAMMARELLA. Excuse me just 1 second.

The CHAIRMAN. Do you understand what the question is?

Mr. MAMMARELLA. Yes, sir—in other words, did I remember this or did I make a record. No, I did not keep records.

The CHAIRMAN. Well, can you answer Mr. Lishman's question?

Mr. MAMMARELLA. I am sorry.

The CHAIRMAN. Can you answer the original question of Mr. Lishman, which you have been trying to get information on?

Mr. MAMMARELLA. Did I receive cash? Yes, sir.

The CHAIRMAN. And he asked you from whom; who paid you the cash and how much. Do you have that?

Mr. MAMMARELLA. Yes, sir. I received cash payments from Universal Distributing Co. in Philadelphia.

The CHAIRMAN. In what amount?

Mr. MAMMARELLA. I am not sure of this amount in 1957. I am not sure of the amount, because I am not sure in this particular instance as to whether or not it was all in cash, or part in cash, or all in check. But in that particular year, it was \$500, was the amount. Now I am not sure right now whether that was either all in cash—that is in my own mind doubtful.

The CHAIRMAN. But some of it was.

Mr. MAMMARELLA. I think some of it was, it is possible that all of it may have been by check. But I think some of it may have been that year.

The CHAIRMAN. What about some other year?

Mr. MAMMARELLA. I am going to go down it year by year, if I can. In the year 1958, Universal Distributors, there is a total here of \$2,300.

Mr. LISHMAN. Would you identify the person that made that payment to you?

Mr. MAMMARELLA. It was—I did not receive a lump sum of money.

Mr. LISHMAN. What person or persons made these payments to you?

Mr. MAMMARELLA. A man named Harry Finfer.

Mr. LISHMAN. Did any artist or talent or manager of talent make any cash payments to you?

Mr. MAMMARELLA. Well, no, sir.

Mr. LISHMAN. Any check payments?

Mr. MAMMARELLA. No, sir—no artist or manager made any payments.

Mr. LISHMAN. Was Universal the only one that made cash payments to you in 1957—and check payments—aside from the ones you have already testified to?

Mr. MAMMARELLA. To the best of my knowledge, sir, yes.

Mr. BENNETT. Can we find out what these cash payments were for?

Mr. LISHMAN. I thought after we first ascertained the companies and amounts, we would then inquire as to what these payments were made for.

Mr. BENNETT. Very well.

Mr. MAMMARELLA. 1959 is only an estimated one—it is not finished.

Mr. LISHMAN. What is the estimate?

Mr. MAMMARELLA. I can only report on what is right here recorded—\$600.

Mr. LISHMAN. From whom?

Mr. MAMMARELLA. From Harry Finfer.

Mr. LISHMAN. And are those the only cash payments that you received during 1957, 1958, and 1959?

Mr. MAMMARELLA. To the best of my knowledge, sir, yes, they are the only ones.

Mr. LISHMAN. Now, these payments you testified to were all in addition to the salary payments you have already stated for the record?

Mr. MAMMARELLA. Yes, sir.

Mr. LISHMAN. For what purpose were these payments made?

Mr. MAMMARELLA. As I say, for many reasons. As in the case of Edward Barsky, he was having difficulty with his particular distributorship, and I used to go down to Ed's, or Ed would come out and we would get together—we were friends—and got together and talked about his distributorship.

One time I had heard that one of his manufacturers that he represented as a distributor in Philadelphia was very unhappy with him and was thinking possibly of relieving him of his distributorship. I want to add that I called him, that I said, "Ed, they are unhappy with you. They think you are laying down on the job. Why don't you get on the ball? Why don't you see if you cannot go out and work and hustle and try to do something for their label, so that at least you can show them that you are working, that you are doing things."

So we went over his particular records of that company to try to determine which one of them was worth his effort to go out and for him to go out and promote and ask various stations to program.

In other words, which ones potentially would be able to sell—so that he could show the record company, the record manufacturing company, that he was on the job. And we went over those things. We discussed about him getting off the ground and working.

At some time later, after this, when things seemed to be going pretty well for him—

Mr. LISHMAN. For what purpose did you receive the \$2,300 from Universal?

Mr. MAMMARELLA. Well, from Universal is kind of a different thing. Harry Finfer and I were friends from back in the days when I first started with the show. He was a promotion man, running around trying to earn a living. I used to help out Harry a lot in those days. He would come to me and ask me if I would not help him, if I would

not put in a good word for him, and we used to cry on each other's shoulders. We were kind of close, and kind of friends. Neither one of us was making a lot of money in those days, very much money.

As we went on, and later Harry got himself into a position where he joined another company, and was kind of like the manager of a distributorship, instead of just a promotion man, and I used to go down and he would call me up and say, "I have a lot of new things that guys have presented to me, and I am thinking about starting my own record label. Come down and listen to these things and see if you think any of these things are worthwhile, and are there any of them I should take, or are there any of them you do not think are worth playing, or, too, that you think maybe the current market might go for."

And we would sit down and go over these, listen to them, and I would give him my opinion and tell him that I thought it was not worth taking, not bother with this and not with that. And Harry and I also expressed great friendship. He always said we were great friends. And it was on this basis that I received the money from Harry.

Mr. LISHMAN. What business was Universal in?

Mr. MAMMARELLA. They were record distributors, sir.

Mr. LISHMAN. And what position did Harry Finfer hold with Universal?

Mr. MAMMARELLA. Well, to my knowledge he was like the manager of the distributing company. In other words, he ran the distributing company.

Mr. LISHMAN. Well, how many records distributed by Universal wound up being played on either "American Bandstand" or the "Dick Clark Show"?

Mr. MAMMARELLA. Well, for clarification purposes, if I may make a distinction, the difference between the two shows—the afternoon show, which was "American Bandstand," is where the kids come and attend and they dance and you play records basically for 2 hours, intermingled with guests and interviews and that type of thing.

The Saturday night show, artists performed because they have had a hit record, and they would be an attraction to be on the show.

The difference is that an artist appearing on the Saturday night show would already have a hit record, except in some instances where maybe it was not so, but we needed somebody to round out the show.

How many of those records would get onto "American Bandstand"? How many of the records that he handled? That would be difficult to say. I do not know.

Mr. LISHMAN. Can you give us an estimate?

Mr. MAMMARELLA. No, I could not possibly even estimate through the years how many would get on.

Mr. BENNETT. Well, did any of them get on because of these cash payments that you received?

Mr. MAMMARELLA. No, sir.

Mr. BENNETT. Why were you paid in cash? Did you request it?

Mr. MAMMARELLA. No, I never requested of anyone at any time that they give me any money.

Mr. BENNETT. Did you make this as a charge, these cash payments that you received, or was this a voluntary contribution to you, so to speak?

Mr. MAMMARELLA. This, sir, was a voluntary contribution on his part.

Mr. BENNETT. Was it geared to the number of their records you played on these programs?

Mr. MAMMARELLA. No, sir.

The CHAIRMAN. Well, was any of it for the purpose of playing a particular record on the program?

Mr. MAMMARELLA. No, sir. This was never brought up. Harry never asked me, "Here is so much, play this record." Or, "I will give you so much to play this record." This was never a conversation that came up between the two of us.

Mr. BENNETT. Well, why did you get some of the money in cash and some of it by check? Will you clarify that for us? That is a rather unusual way of doing business, is it not?

(The witness consulted with his attorney.)

Mr. BENNETT. The attorney is telling him how to answer the question. I do not think we should permit him to do that.

Mr. MAHONEY. Sir, I just said, tell him what you learned of their operation. In other words, he knows the answer. I am just trying—

Mr. BENNETT. He can answer the question.

Mr. MAMMARELLA. All right—excuse me. May I ask him a question?

The CHAIRMAN. You can ask him for advice, yes.

Mr. BENNETT. I object to him getting the answer from his attorney, Mr. Chairman. You cautioned him yourself against that.

Mr. MAMMARELLA. I am not asking him for the answer, sir.

Mr. BENNETT. I heard him give you the answer, or suggest the answer.

Mr. MAHONEY. May I make a statement, sir?

The CHAIRMAN. Now, wait a minute. Let us proceed here in order. What is the last question that was asked?

Mr. MAMMARELLA. I think it was, why did you get some money in cash and some in checks.

The CHAIRMAN. Can you answer that question?

Mr. MAMMARELLA. I just wanted to ask my attorney one thing before I answer, if I may.

The CHAIRMAN. All right.

(The witness consulted with his attorney.)

Mr. MAMMARELLA. Well, there could be different reasons for it, as to why—

The CHAIRMAN. We are not asking you—

Mr. MAMMARELLA. Well, I am trying—

The CHAIRMAN. We are not asking you what could possibly be. We ask you why.

Mr. MAMMARELLA. Well, the only reason from Harry Finfer I received the money in cash was the fact that I saw him frequently, we saw each other frequently, and he may have preferred to give it to me in cash.

Mr. BENNETT. And other times he preferred to give it to you as a check?

Mr. MAMMARELLA. And other times he preferred to give me a check.

Mr. ROGERS. How were the amounts figured? Did you have regular fees that you charged?

Mr. MAMMARELLA. No. Regular fees that I charge?

Mr. ROGERS. Yes, from Harry Finfer.

Mr. MAMMARELLA. No, I never charged any fee from anybody.

Mr. ROGERS. Well, how did he know when to give you the money and when not to?

Mr. MAMMARELLA. I do know. There was never any prearrangement for this. There was never any time in which I said, "Harry, I want money to play your records," or never any time when I said, "I won't play your records unless you give me money." And there was never any time when he said to me, "Tony, I would like to give you some money if you play some records."

Mr. ROGERS. Getting down to cases—you meet him on the street and he hands you \$300?

Mr. MAMMARELLA. Well, no. I might go down to his office and listen to some records or something like that, and in the course of the conversation he would say, "Here, I have something for you. Why don't you take this?"

Mr. ROGERS. How much would that be?

Mr. MAMMARELLA. It might be \$300, it might be \$400.

The CHAIRMAN. And then did you not take one or more records back with you to play on the "Bandstand"?

Mr. MAMMARELLA. No, sir. When I said go down to listen to records—I would go down to listen to records that are not—might not even be on a label yet, might be just in the form as to whether or not—in other words, they are known as demonstration records, or they might be a master that is not yet—a record that is not yet a finished record. And on the show we only play finished records.

Mr. ROGERS. Well, did you consider this a fee for a service you rendered, or just a gift?

Mr. MAMMARELLA. I consider it as a gift.

Mr. ROGERS. Did you pay income tax on it?

Mr. MAMMARELLA. Yes, I have.

Mr. ROGERS. Why did you do that if you considered it a gift?

Mr. MAMMARELLA. Well, on advice of counsel.

Mr. ROGERS. You knew that there was some question about it?

Mr. MAMMARELLA. After I talked with counsel, that there might be some question as to whether or not this might be a gift or not, yes.

Mr. ROGERS. In other words, you knew there was something suspicious about that operation as it was. Is that what you mean? And you thought you had better get it clarified?

Mr. MAMMARELLA. No, I thought I had better clarify whether or not—even though I may have considered it one thing—whether or not that it might be considered something else that should be reported.

Mr. ROGERS. But you reported it as income, did you not?

Mr. MAMMARELLA. I then reported it as income.

Mr. ROGERS. And you did not know how much you were going to get each time?

Mr. MAMMARELLA. There was never any prearrangement at that time.

Mr. ROGERS. And the other people you received money from the same way, did they just hand it to you on the street or in a club?

Mr. MAMMARELLA. No. You mean cash?

Mr. ROGERS. Cash or checks, either one.

Mr. MAMMARELLA. No. In the case of—well, in most cases I believe it was sent to my home.

Mr. ROGERS. Checks?

Mr. MAMMARELLA. Yes, sir.

Mr. ROGERS. And you considered that fees or gifts?

Mr. MAMMARELLA. I consider some of those fees and some of them gifts.

Mr. ROGERS. Fees for what?

Mr. MAMMARELLA. For any services that I might have done.

Mr. ROGERS. What were those services?

Mr. MAMMARELLA. Well, I helped some of the companies— A & R records for them.

Mr. ROGERS. Did you get fees from anybody you did not play records for on your program?

Mr. MAMMARELLA. It is a hard way when you put it, "did I not get fees from anybody I did not play records for."

Mr. ROGERS. Well, what I mean is this, to clear it up. You were apparently operating a consultation service.

Mr. MAMMARELLA. All right. If I can answer it this way—we played a lot of records on the show for people for which no fee or any consideration of any kind was received.

Mr. BENNETT. Who were they? Any of these companies we are talking about? Any of these companies from which you did get some payment?

Mr. MAMMARELLA. I am now confused as to the meaning of the question.

Mr. BENNETT. You said you played some records for companies and did not get any pay. Were those the companies that you were employed by and got cash payments from and salary from?

Mr. MAMMARELLA. I still do not understand the question.

Mr. BENNETT. Well, Mr. Rogers asked you about playing these records, and you answered that you played records for certain companies and did not get any pay for it. Now, what were those companies?

Mr. MAMMARELLA. What I meant is that in the course of playing records, you play records for any company that might have a record that you feel is good programming or worthy of being put on the air—there is no question of—you have got—

Mr. BENNETT. Did you play records irrespective of your pay or your fees or cash or anything else—did you play records on your show from any of these companies from whom you received cash or from whom you received pay? I am not asking you now whether you played them for pay. But did you play any of the records on your show?

Mr. MAMMARELLA. Records of these were certainly programed, sure.

Mr. BENNETT. To what extent did you play these records? Did you play more of their records than you did records of other companies?

Mr. MAMMARELLA. Well, no. To whatever extent we felt that their records should be played. In other words, if we felt—it was never a question of who handled the record. If we felt the record was a good record and one that we should play, then we played it. If one man, who maybe distributed 30 different labels, had four or five records that

we felt merited play on the air, we would play four or five. If we felt he only had one, only one would be played.

Mr. BENNETT. You had some stock in some of these record companies, did you not?

Mr. MAMMARELLA. Swan Record Co.

Mr. BENNETT. The more records they sold, the more money you would make.

Mr. MAMMARELLA. That is true.

Mr. BENNETT. It was to your interest to see that they made money as a big stockholder.

Mr. MAMMARELLA. I was certainly interested in Swan making a profit; yes.

Mr. BENNETT. Did that have any bearing on how often you played their records?

Mr. MAMMARELLA. We try not to make that have a bearing. We try to be what we consider fair.

Mr. BENNETT. If you could sell the records by playing them over the air, it was money in your pocket, was it not, because of your interest in the company?

Mr. MAMMARELLA. Yes, regardless of how they sold—whatever profits the company had I would share the profit.

Mr. BENNETT. The more profit they made, the more profit that you would make.

Mr. MAMMARELLA. Yes.

Mr. BENNETT. And the way you help sell the records is playing them on the air, is it not? Is that not one of the best ways?

Mr. MAMMARELLA. Well, it is a little different. It is an indirect way—if you put it that way. A record in order to be sold must be heard.

Mr. BENNETT. Certainly. A lot of people hear them when you get them on one of the programs you are on, like Dick Clark.

Mr. MAMMARELLA. Yes, sir; you have a large audience.

Mr. BENNETT. Now, you did not keep any record of these cash payments yourself? You just relied on your memory of what you received? Is that right?

Mr. MAMMARELLA. Yes, sir; I did not keep any records.

Mr. BENNETT. Did the people you got the money from keep any records of it?

Mr. MAMMARELLA. I would imagine they did.

Mr. BENNETT. You never asked them whether they did or did not?

Mr. MAMMARELLA. I beg your pardon?

Mr. BENNETT. Did you ever ask them whether they did or did not keep a record of the cash payments?

Mr. MAMMARELLA. As a matter of fact, I did ask them whether they had kept a record.

Mr. BENNETT. The answer was "yes"?

Mr. MAMMARELLA. And the answer was "yes," they did keep a record.

Mr. BENNETT. That is why you are giving out the information now—it is in their records and not yours?

Mr. MAMMARELLA. I am giving you the information now because you are asking for it.

Mr. BENNETT. Well, are you relying on your memory or on what is in the records of these companies?

Mr. MAMMARELLA. In cases I would be relying on what was in the record and in cases I would be relying on what was in memory.

Mr. BENNETT. You think you got any money that was not in their records, that they forgot to record?

Mr. MAMMARELLA. No, sir.

Mr. BENNETT. What is in their record covers all of it.

Mr. MAMMARELLA. What is in their record covers all of it.

Mr. BENNETT. Thank you; that is all.

The CHAIRMAN. Well, at this point, let us see if we cannot nail this down, or at least clarify it a little further.

Universal Recording is a distributing company.

Mr. MAMMARELLA. Universal is a distributorship; yes.

The CHAIRMAN. In other words, they take records from various sources.

Mr. MAMMARELLA. Various manufacturers which send their records to a distributor to distribute.

The CHAIRMAN. A lot of them would come in without labels on them, would they not?

Mr. MAMMARELLA. No. If I made that unclear, then I am sorry. No. A lot of people who would like to make a record, or produce a record, will send a record around to many record companies, seeing if that particular company would like to take their product.

In other words, a lot of people just produce records. They do not have a record company, but they can produce records. They get a singer and get a band together and they go into a studio and make a record. But they have no record company through which to sell the record. So they go to various record companies and sell this master, if they can, to a record company.

The CHAIRMAN. And the record company that takes it first is the one that gets it.

Mr. MAMMARELLA. Yes—whoever likes it. If somebody likes it, they say, "OK, we will take it," and make whatever contractual arrangements have to be made with the producer of the record. Then it will go on X, Y, or Z label.

The CHAIRMAN. Did any of these masters come to Universal before it had the company tag or label on it?

Mr. MAMMARELLA. Yes.

The CHAIRMAN. You were very close to this gentleman in the Universal Recording Co., and he would call you to come there, and ask your advice about a number of records—you said you listened to records he had down there. I guess the way you explained it here, it would take several hours, or a day at a time.

Mr. MAMMARELLA. Well, not a day at a time. I would go down there for several hours.

The CHAIRMAN. And for the advice and counsel you gave him, he would either give you some cash or a check, occasionally.

Mr. MAMMARELLA. Well, not in a sequence. It was not a question that if I went down on a Monday night and spent a couple of hours and went over stuff with him, that he would give me any money. I go down, and we just talk, and then maybe we go out and have a coffee—go over some records and stuff and have coffee, and it will be

nothing. But every so often, I would go down and he would say, "Here is something for you."

The CHAIRMAN. Well, the point is this, was the Universal Recording—

Mr. MAMMARELLA. Universal Distributors.

The CHAIRMAN. Universal Distributors. And you would go down and talk to them. Universal paid you sums of money, the money that you have referred to here this afternoon.

Mr. MAMMARELLA. Yes, sir.

The CHAIRMAN. Who owned Universal?

Mr. MAMMARELLA. As far as I know, Harry Finfer was a part owner, and a man named Lipsius. I don't know how to spell that.

The CHAIRMAN. What about Dick Clark?

Mr. MAMMARELLA. To the best of my knowledge, he did not own any part of Universal Distributors.

The CHAIRMAN. None of Universal?

Mr. MAMMARELLA. To the best of my knowledge.

The CHAIRMAN. Universal would give you these sums of money.

Mr. MAMMARELLA. Yes, sir.

The CHAIRMAN. And then you were 20 percent, or whatever it is, owner in Swan Records Co., is that right?

Mr. MAMMARELLA. Yes, sir.

The CHAIRMAN. Did Swan get its records, some of them, from Universal Distributing?

Mr. MAMMARELLA. No, sir.

The CHAIRMAN. None of them?

The CHAIRMAN. Where did Swan get its records?

Mr. MAMMARELLA. We get most of our records—two gentlemen named Frank Slade and Bob Crew, produce most of the masters for Swan Records.

The CHAIRMAN. When you were going down to Universal to talk to this man who ran the company and were paid you these sums of money—would not some of those records you discussed eventually wind up in Swan Recording Co., with the Swan label?

Mr. MAMMARELLA. No, sir.

Mr. MOSS. Mr. Chairman, would you yield?

The CHAIRMAN. Yes.

Mr. MOSS. Did Universal distribute Swan records?

Mr. MAMMARELLA. No, sir.

Mr. MOSS. It had no part of the Swan label?

Mr. MAMMARELLA. No, sir.

The CHAIRMAN. And then these records, some of them, that you played down there, would eventually wind up on the "Bandstand" show?

Mr. MAMMARELLA. They might possibly, yes, sir.

The CHAIRMAN. Well, did they or did they not?

Mr. MAMMARELLA. Well, it would be difficult to recall. I would say that probably yes, that some of them probably did.

The CHAIRMAN. That would give them a tremendous push, would it not?

Mr. MAMMARELLA. If it were played on "American Bandstand"?

The CHAIRMAN. Yes.

Mr. MAMMARELLA. It would certainly be an asset.

The CHAIRMAN. Some of them are played innumerable times?

Mr. MAMMARELLA. Some of them on the show were played almost every day—some of them.

The CHAIRMAN. And through this procedure, would some of them become hits?

Mr. MAMMARELLA. Well, this is—

The CHAIRMAN. What is referred to as hits?

Mr. MAMMARELLA. Well, yes. But when you say through this procedure—you say that because the record is played it becomes a hit, that is one thing. A record, of course, in order to sell has to be heard, people have to hear it. But there are a lot of records that are heard by people that do not sell. So that—

The CHAIRMAN. That is precisely the point.

Mr. MAMMARELLA. There are a lot of records played on the air that do not sell. And some records that play on the air sell and become hits.

Mr. BENNETT. Would you yield for a moment?

Mr. MOSS. Could I ask you a question? How many recordings would be used during a 2-hour session of the "Bandstand"?

Mr. MAMMARELLA. Well, during a 2-hour session of the "Bandstand"—well, the most that you could use on a 2-hour session would be—

Mr. MOSS. Ten records?

Mr. MAMMARELLA. In 2 hours, no. The most you could use would be about 32.

Mr. MOSS. About 32 recordings?

Mr. MAMMARELLA. That would be the most. I do not think that that many were actually used, because of other factors.

Mr. MOSS. Supposing you say you use 25 a day, 25 recordings a day.

Mr. MAMMARELLA. Yes, sir.

Mr. MOSS. Now, each day you have the task of selecting the music to be played on the program, is that correct?

Mr. MAMMARELLA. No, sir.

Mr. MOSS. Who selected the music?

Mr. MAMMARELLA. I, and Mr. Clark shared that.

Mr. MOSS. Well, Mr. Clark did not come on the "Bandstand" until 1956. You went with it as a producer before that, did you not?

Mr. MAMMARELLA. Even prior to that, prior to that Mr. Horn—

Mr. MOSS. When Mr. Horn was there, did you share the responsibility of selecting music?

Mr. MAMMARELLA. No, not until maybe the last 7 or 8 months that he was there.

Mr. MOSS. And how long were you on the program while Mr. Horn had it?

Mr. MAMMARELLA. I was on the program from—as I say—some-time early in 1953, until 1956, in the middle of that, in June or July, and I am not sure of that particular date when Mr. Horn left. I think it was in June that he left the show.

Mr. MOSS. Then you have from 1954 or 1955, I guess, until 1959, when you actively participated in the selection of the recordings which would be used on the program?

Mr. MAMMARELLA. That would be approximately correct, timewise, in that period.

Mr. MOSS. Now, you indicate that a recording played repeatedly would have a far better chance of becoming a success, at least on the record market, than a recording played occasionally.

Mr. MAMMARELLA. Yes. There are no two ways about it.

Mr. MOSS. What was the method of response used by "Bandstand" to gage whether or not a recording played once in an afternoon would be repeated the next day?

Mr. MAMMARELLA. It would go back one step prior to—it would go back to a step to determine what records should be played. In other words, why you would play a record to begin with.

Mr. MOSS. This was a rock and roll type program, was it not?

Mr. MAMMARELLA. We played all forms of popular music, of which rock and roll was only one form.

Mr. MOSS. Dominantly, as I recall.

Mr. MAMMARELLA. Well, it all depends on what your definition would be of rock and roll music.

Mr. MOSS. Well, my definition would undoubtedly be more harsh than yours, as to what might be rock and roll.

Mr. MAMMARELLA. Some people would consider country music, rock and roll and some people would consider the blues, rock and roll. But I don't think that is really important here.

Mr. MOSS. I would say raucous discord would be my definition of what would be rock and roll.

Mr. MAMMARELLA. The teenagers would disagree.

Mr. MOSS. I said it would be harsher than yours.

Mr. MAMMARELLA. Yes. We played all forms of music, from rock and roll to country music, hillbilly music, occasionally a waltz would actually get in. And sometimes when Patti Page had some big hits that were waltzes, they were played.

But in general most any kind of music was played.

Mr. MOSS. A large part of the music, or an important part of the total programming, was in a field where you employ some of the less generally recognized labels—in other words, newer talent and newer music, is that correct?

Mr. MAMMARELLA. I am not sure that I followed that.

Mr. MOSS. Well, you didn't use, we will say, an awful lot of RCA labels, or Columbia, or Decca. You tended to use newer labels—there has been a tremendous diversity in the recording industry.

Mr. MAMMARELLA. Well, in the past several years new labels came into effect. But we still used RCA, Columbia.

Mr. MOSS. What labels, generally, were distributed by Universal Distributing Co.?

Mr. MAMMARELLA. Well, I could not possibly remember all of them.

Mr. MOSS. Were they, for instance, the RCA distributor?

Mr. MAMMARELLA. No, they were not. They were the Cadence distributor, who handled artists, the Everly Bros., Andy Williams, who were both pretty big stars. They handle a label called Era.

Mr. MOSS. They generally handle the newer less well known labels.

Mr. MAMMARELLA. They handle what would be known as lesser labels, independent labels, as against major labels.

Mr. MOSS. Do you have any idea as to the label identification of the music you used on Bandstand, the ratio of established, well known labels as opposed to the number of new, independent or less known labels?

Mr. MAMMARELLA. There are records—every station keeps a record of the programs.

Mr. Moss. Have we the records of the programs—labels used on these 2-hour shows?

Mr. LISHMAN. Yes, sir. I will tell you this. It is my understanding that Mr. Clark, himself, is preparing a list. However, we will not rely on his list entirely—we have our own list prepared. We will check that against whatever information we eventually receive from Mr. Clark. But I can give you a rough idea of the number of records played in a month.

Mr. Moss. That is all right.

Mr. LISHMAN. It covers all these pages, on both sides.

Mr. Moss. That is all right, if we have the idea.

Mr. LISHMAN. And I can give you the names of the labels and how many times they were played. We also, have an analysis of all that, that will eventually go in the record.

Mr. Moss. I would like to look at that later. I just want to go back now to the question I asked a few minutes ago—how did you determine, in view of the fact that you were playing at least a fairly significant percentage of your total program from new, independent or less well known labels, which usually indicates new, less well known artists, and new and less well known composers—how did you devise or what method was devised to determine whether or not a recording merited repeating?

Mr. MAMMARELLA. Well, we could only determine it this way. As I said before, if I could just take you back slightly, back one step prior to this point—

Mr. Moss. All right, let's go back.

Mr. MAMMARELLA. In other words, it would start with the selection of the records—when you first selected it, when you first decided, "Yes, we will play this record." Dick and I would sit many times in the office and listen to new stacks of records and every day we had an appointment set up for three different distributors who would come in and have an appointment time, at which time they would come in and play their new records for us, and we would listen to their new releases, plus the fact that we would listen to releases that they did not bring in, that came in through the mail. In other words, a distributor might have 30 new releases. He might only bring six out to play for us for our consideration. Yet, however, from other sources, from the publisher of a tune, or from the manufacturer itself, or from the artist, might send you other records that you would listen to. So you listen to all these records to find out whether there was anything there that you felt was exciting or new or different or might be appealing. That was one possible way of selecting a record.

There were other reasons why we might start to play a record that we never played before. In other words, you get information. People come into the office, used to come into the office, from all over the country. In other words, you might have the national promotion man for RCA who would be coming in from Detroit, and he would come in to chat with you and ask you whether or not you knew so and so record on RCA was doing well or not, and you would ask him what was happening around the country. He might give you a list of three or four records that were doing very well in Detroit. Then another

man might come in from another part of the country and you might ask him—maybe it would be Atlanta. You would ask him what was happening around the country. He might mention one of these same records that was doing well in Atlanta. Then you would say, well, if the thing is doing well in Detroit and Atlanta, we ought to find out who is handling it and listen to it and see if it is the type of thing we could play. Because there you would have an indication that there is something that is already selling somewhere, although it is not a national hit—it is a hit in maybe two or three different areas. And so you might pick it on that basis.

If you found that that was a record that was unknown to you, that was already selling, you might start to play it because it was a record that you knew had appeal.

Mr. Moss. Well, now, this answer will probably be developed from the material the staff has prepared. But how many tunes did you inaugurate on the "Bandstand" show? A fairly good number, did you not?

Mr. MAMMARELLA. You mean play for the first time on the air anywhere?

Mr. Moss. Played for the first time.

Mr. MAMMARELLA. I would actually doubt that we played too many records for the first time on the air anywhere. I would say that that probably would be a small number. That would be—it probably would be a small number.

Mr. Moss. How many?

Mr. MAMMARELLA. I would have no real idea of trying to—

Mr. Moss. How old are you?

Mr. MAMMARELLA. Thirty-five, sir.

Mr. Moss. You have been in and around broadcasting now for approximately 10 years?

Mr. MAMMARELLA. Between 9 and 10 years; yes, sir.

Mr. Moss. What was your background prior to going into broadcasting? I think you indicated you started as a part-time employee, operating the switchboard.

Mr. MAMMARELLA. Yes, sir.

Mr. Moss. Were you going to school or what were you doing?

Mr. MAMMARELLA. No. Prior to that I had just finished college. I started college in 1942, but left for the service, and then came back, and when I came back I finished up in 1950.

Mr. Moss. And for a period of approximately 3 months you worked on a part-time basis?

Mr. MAMMARELLA. You mean in broadcasting?

Mr. Moss. Yes, sir.

Mr. MAMMARELLA. Yes, as a switchboard operator, week-end switchboard operator.

Mr. Moss. And then you went into the camera section.

Mr. MAMMARELLA. Well, I went into the film end of it.

Mr. Moss. Film reviewing.

Mr. MAMMARELLA. Yes.

Mr. Moss. And that was for a period of about 8 months?

Mr. MAMMARELLA. Something like that.

Mr. Moss. But after a year you went into production, I think you indicated.

Mr. MAMMARELLA. Yes.

Mr. MOSS. Camera crew.

Mr. MAMMARELLA. Yes.

Mr. MOSS. You stayed in the camera crew for what—2 years?

Mr. MAMMARELLA. No; about a year, I guess.

Mr. MOSS. Then you went into production itself.

Mr. MAMMARELLA. Yes, sir.

Mr. MOSS. What was your first production job?

Mr. MAMMARELLA. I was assigned to two shows. I was assigned to "American Bandstand" and I was assigned to a ladies' show that was on in the afternoon.

Mr. MOSS. This was in 1953?

Mr. MAMMARELLA. Yes.

Mr. MOSS. You were assigned to production. Now, up to this point your duties did not involve, in any way, a selection of music or talent or anything of that sort.

Mr. MAMMARELLA. That is true.

Mr. MOSS. So you now have approximately 6 years during which you gained your background in this particular area. What were the first duties assigned you in production? That is, in connection with these two shows. These were locally broadcast and locally produced, is that correct?

Mr. MAMMARELLA. Oh, yes. In those days, yes.

Mr. MOSS. Was the format of "Bandstand" the same as it was at the time it became network?

Mr. MAMMARELLA. Basically, yes.

Mr. MOSS. What was the format of the other show?

Mr. MAMMARELLA. The format of the other show was an audience participation show.

Mr. MOSS. Involving music?

Mr. MAMMARELLA. Well, no. Basically—there was some music involved.

Mr. MOSS. Then your familiarity with music and talent has been gained from the "Bandstand" experience, entirely.

Mr. MAMMARELLA. Yes.

Mr. MOSS. And of course, the "Dick Clark Show."

Mr. MAMMARELLA. Yes.

Mr. MOSS. And extending from 1953. Well, then, let us take "Bandstand." What were your initial duties in connection with "Bandstand?"

Mr. MAMMARELLA. My initial duties were the running of the show, the making up of the format, the MC used to make up the music rundown and hand it to me and say schedule these records.

Mr. MOSS. He would select the records?

Mr. MAMMARELLA. Yes, and give them to you and ask you to schedule them. In other words, he would just write them down in a running order.

Mr. MOSS. And you would schedule them for their actual spot on the show.

Mr. MAMMARELLA. Actual position on the show. You would fit them in the format. In other words, the opening of the show and a record, then you would have a commercial, and two records and something else.

Mr. Moss. At this time were you using any live talent or any artists as guests on "Bandstand?"

Mr. MAMMARELLA. Well, yes, we were using guests when it was local.

Mr. Moss. People visiting to push a record of their own?

Mr. MAMMARELLA. There have always been people—

Mr. Moss. I just want to establish what the practice was here.

Mr. MAMMARELLA. Oh, yes, it was the same.

Mr. Moss. So at this point you began to get an acquaintance with some of the artists in this particular type of music.

Mr. MAMMARELLA. Yes, sir.

Mr. Moss. When did you first undertake the responsibility, on your own, of selecting music?

Mr. MAMMARELLA. Well, it is difficult to say when.

Mr. Moss. At this point Mr. Horn was the MC.

Mr. MAMMARELLA. Sometime during the term that Bob Horn was the MC of the show.

Mr. Moss. I think you indicated earlier about 7 or 8 months prior to his departure.

Mr. MAMMARELLA. Yes; something like that.

Mr. Moss. About mid-1955? Clark came to the show in February 1956, I think you indicated.

Mr. MAMMARELLA. No, no. Clark came to the show June or July of 1956.

Mr. Moss. All right. Then toward the latter part of 1955 you assumed the duties of making selections of recordings.

Mr. MAMMARELLA. Yes—somewhere along there.

Mr. Moss. Now, up to this point you had no previous background in the field at all.

Mr. MAMMARELLA. Of selecting records?

Mr. Moss. Yes. You had from 1953 until 1955, you had scheduled—these were the duties assigned to you on the program. And then sometime in 1955, 7 or 8 months before Horn left the show, you started taking a part in the selection of records as well as in the scheduling.

Mr. MAMMARELLA. Yes, because he felt I was capable enough to do so.

Mr. Moss. And when did you first start receiving payments from the recording companies and the distributing companies which you have previously listed as having made payments to you?

Mr. MAMMARELLA. Sometime in 1956.

Mr. Moss. 1956. These payments, then, were made because of the advice you had given to the distributors on overcoming deficiencies in their distribution, and to recording companies in the selection of the recordings which they should place their label on.

Mr. MAMMARELLA. Yes, to my mind that is what this was for.

Mr. Moss. And at this point you had had approximately 6 months' experience in this field.

Mr. MAMMARELLA. Well, timewise; as monthwise, I do not know.

Mr. Moss. And did you feel that this was at all unusual, that they should at this point seek you out for your advice, practically placing you in the role of a business consultant in a complex and highly competitive business?

Mr. MAMMARELLA. They used to seek my advice even before that.

Mr. MOSS. Well, that is all that I have at the moment.

Mr. BENNETT. I just have a couple of clarifying questions.

You did not get any money from any record companies—you were not on their payroll until you became associated with this television show. Is that what you told Mr. Moss?

Mr. MAMMARELLA. I never received—do you mean that I never received any money from any record company until I became associated with these companies?

Mr. BENNETT. Yes.

Mr. MAMMARELLA. In time that would be true.

Mr. BENNETT. Your value to the record companies, so far as them paying you for something is concerned, started at the time you started the television shows.

Mr. MAMMARELLA. Yes, sir.

Mr. BENNETT. Now, were you ever in the record business before you got on these television shows?

Mr. MAMMARELLA. No, sir.

Mr. BENNETT. You never had any connection with the business in any way shape or form?

Mr. MAMMARELLA. No, sir.

Mr. BENNETT. It all dates from the time you got on these two shows.

Mr. MAMMARELLA. Yes, sir.

Mr. BENNETT. Did you ever have any stock interest in any record company before you got on these television shows?

Mr. MAMMARELLA. No, sir.

Mr. BENNETT. When did you get your big stock interest in Swan Records? Was that after your association with the "Bandstand" and Dick Clark shows?

Mr. MAMMARELLA. In the Swan Record Co.?

Mr. BENNETT. Yes.

Mr. MAMMARELLA. No, we formed the Swan Record Co.

Mr. BENNETT. When? I don't care about the date. But it was after you became associated with "American Bandstand," was it not?

Mr. MAMMARELLA. Oh, sure, yes, sir.

The CHAIRMAN. It was while you were on the "Bandstand."

Mr. MAMMARELLA. After having joined.

Mr. BENNETT. Did Swan Record Co. make money?

Mr. MAMMARELLA. Yes, sir; it made some money.

Mr. BENNETT. Did it make more money as it went along? Did it make more money the second year than it did the first year?

Mr. MAMMARELLA. I would not know the figures.

Mr. BENNETT. What is the approximate value of your holding in the Swan Co. in dollars?

Mr. MAMMARELLA. What do I think it is worth?

Mr. BENNETT. Yes.

Mr. MAMMARELLA. I would not know. I would have to ask the accountant on that.

Mr. BENNETT. What would you sell it for?

Mr. MAMMARELLA. Oh, well, before I sold it I would certainly go to the accountant and ask what is the company worth on the books.

Mr. BENNETT. You do not have any idea what it is worth?

Mr. MAMMARELLA. No, not at this time I do not.

Mr. BENNETT. You do not have the slightest idea? Do you remember what it cost you to buy it?

Mr. MAMMARELLA. Oh, yes. It cost very little to buy it.

Mr. BENNETT. What is it worth? How many times more is it worth now than when you bought it?

Mr. MAMMARELLA. I would still have to find out—even before I could answer that, I would still have to find out what its value was. In other words, what were its assets as of now—to say how much it was worth.

Mr. BENNETT. Did Clark sell his interest to you?

Mr. MAMMARELLA. No, sir.

Mr. BENNETT. He still owns his interest?

Mr. MAMMARELLA. No, sir.

Mr. BENNETT. He sold it to somebody else?

Mr. MAMMARELLA. The company itself bought the interest.

Mr. BENNETT. How much did they pay Clark?

Mr. MAMMARELLA. \$30,000.

Mr. BENNETT. You had half of the amount of stock that he had or did he have the same amount?

Mr. MAMMARELLA. He had 50 percent of the stock and I had 25 percent of the stock.

Mr. BENNETT. I just feel, Mr. Mammarella, that either you are very naive, which I doubt, or that you think the members of this subcommittee are very naive, which may or may not be true. But I just have the feeling that you have been less than frank in telling us the story.

I just want to ask you one or two other questions.

Do you maintain to us that there was no connection between your interest in these record companies and the success of those companies and the salaries and money that you were paid from them and the records that you played on these programs?

Mr. MAMMARELLA. Do you mean—now, when you are talking about any company in general—

Mr. BENNETT. I am talking about the companies that you are interested in.

Mr. MAMMARELLA. You mean Swan Record Co.?

Mr. BENNETT. And the record companies that paid you.

Mr. MAMMARELLA. Well, certainly Swan has made money. It is worth more today than it was when it was made. And I have made money from Swan.

Mr. BENNETT. You have not made money?

Mr. MAMMARELLA. I say I have made money from Swan Records.

The CHAIRMAN. And Swan has made money from you.

Mr. MAMMARELLA. Yes, and Swan has made money from me, yes.

Mr. BENNETT. You have made money for Swan, too.

Mr. MAMMARELLA. Well, we have made—you mean have we played Swan Records on the show?

Mr. BENNETT. I mean you have made money for them, by playing the records on the air, is that not true?

Mr. MAMMARELLA. Well, as a result of that they would make money. That would contribute to their making money.

Mr. BENNETT. The same thing applies to these other companies that were paying you. They made money because their records were played on your show.

Mr. MAMMARELLA. It contributed to them making money; yes, sir.

Mr. BENNETT. But you deny that you had any knowledge of anything about these payments in cash or checks being paid to you because of their interest in having their records played on your show.

Mr. MAMMARELLA. No, I did not say it that way. I at no time—at no time did any one of these men come to me and say, "Here is some money—go play my records."

Mr. BENNETT. I do not mean that. But I mean is it not a fact that there was a gentlemen's agreement, or an understanding between you and these companies, whose records you were playing, it was to your mutual advantage, theirs and yours, to have their records played on your show?

Mr. MAMMARELLA. Well, I think this, if I may say this, and say this in all sincerity, and everything I have tried to say and tried to tell, I have tried to be as honest as I possibly can. I have tried to tell you exactly what. I would say this. Had you asked me 6 months ago about all of this, I think I would have taken a real firm stand and said there is no question, that question never came up. But as of today, and the very fact that there is a hearing, certainly since the time that your gentleman came down, the committee's gentleman came down to see me, that I have given a lot of thought to this, this certainly enters my mind now, and that this could be.

Mr. BENNETT. Well, I am not charging you with consciously doing anything wrong. I am not going into that area at all because of the situation. But it just seems obvious to me that you were in this record business because you were in a position on the television industry, and your ability to help make these record companies prosper, and hence make money for yourself. And whether that is right or wrong, or whether that—

Mr. MAMMARELLA. Well, as far as going into the record business, into the Swan Record business, we felt that we knew something, we knew enough about music and about going into the business, and certainly our intention was to make money. And we also tried to say to ourselves that we would run this strictly—we would run this as strictly as we can without trying to take undue influence. Now I say we said this to ourselves. And 6 months ago had you asked me, I would have said without hesitation that, no, I did not think, on the "Bandstand," we had ever taken advantage of it.

Mr. BENNETT. OK.

The CHAIRMAN. It is almost 5 o'clock now. There are a good many questions yet that must be gone into. Probably we got into this a little earlier than we should have, before the staff completed the investigation. Nevertheless, the interests, of course, dictate the action of the subcommittee.

I think under the circumstances, since it is going to require a good bit of time to develop all of these facts, from the background information we have, we had better recess this session until 1:30 tomorrow afternoon.

(Whereupon, at 5 p.m. the hearing was recessed until 1:30 p.m., Thursday, January 28, 1960.)

EXECUTIVE SESSION

(Released to the Public May 2, 1960)

RESPONSIBILITIES OF BROADCASTING LICENSEES
AND STATION PERSONNEL

THURSDAY, JANUARY 28, 1960

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

The special subcommittee met, pursuant to recess, at 1:30 p.m., in room 1333, New House Office Building, Hon. John James Flynt, Jr., presiding.

Present: Representatives Harris, Mack, Rogers of Texas, Flynt, Moss, and Derounian.

Also present: Robert W. Lishman, chief counsel; Beverly M. Coleman, principal attorney; Herman C. Beasley, chief clerk; James Kelley, investigator; Charles P. Howze, Jr., attorney; Oliver Eastland, attorney; and Jack Marshall Stark, minority counsel.

Mr. FLYNT. The subcommittee will come to order.

Let the record show Mr. Mammarella is in attendance, together with his attorneys, Mr. Patrick Mahoney and Mr. Romolo J. De Cintio, both members of the bar of Philadelphia, Pa.

When the subcommittee recessed yesterday, it recessed to meet again at 1:30, Thursday, January 28, 1960. The subcommittee has reassembled for a continuation of the purposes for which it convened yesterday.

Mr. Lishman, you may proceed.

TESTIMONY OF ANTHONY MAMMARELLA—Resumed

Mr. LISHMAN. Mr. Mammarella, do you have an interest in Alton Co.?

Mr. MAMMARELLA. Yes; the Alton Co.—I only have a verbal agreement. This is a company between a friend of mine, Albert Albertini—the purpose of this is we wanted to experiment with a mail-order type of thing. And we took an ad out in the Diners Club magazine, as a matter of fact, in the Christmas issue, to see whether or not this was a worthwhile experiment.

Mr. LISHMAN. Does Alton have a record label?

Mr. MAMMARELLA. No.

Mr. LISHMAN. Do you know of an Alton Record—

Mr. MAMMARELLA. Yes; there is an Alton Record label.

Mr. LISHMAN. But that is not connected—

Mr. MAMMARELLA. No; this is a contraction of two names—Al and Tony.

Mr. LISHMAN. Do you know where the Alton Record Co. is located?

Mr. MAMMARELLA. Well, the record company itself—I know where it is distributed from, because it is distributed from Swan.

Mr. LISHMAN. From Swan?

Mr. MAMMARELLA. Yes.

Mr. LISHMAN. And do you know the principals of the Alton Co., the record company?

Mr. MAMMARELLA. I think in the Alton Co. there is a gentleman named Julius Dixon. I am not clear on that. I think that Julius Dixon is a principal of the Alton Record Co.

Mr. LISHMAN. Would Swan Records have any information as to who the people are in Alton?

Mr. MAMMARELLA. Yes—Bernard Binnick would know.

Mr. LISHMAN. Is the Dixon D-i-x-o-n, or D-i-c-k-s-o-n?

Mr. MAMMARELLA. Mr. Lishman, I do not know. I mentally assume it is x-o-n. I do not really know.

Mr. LISHMAN. Did you assist in anyway, in having Alton records played on either one of the Dick Clark shows?

Mr. MAMMARELLA. I am sure in the course of time, I perhaps programmed the Alton Records.

Mr. LISHMAN. Do you recall whether or not you did?

Mr. MAMMARELLA. I would say yes.

Mr. LISHMAN. Who is the record distributor for Swan in the Philadelphia area?

Mr. MAMMARELLA. Chips Record Distributors.

Mr. LISHMAN. And who are the principals in Chips?

Mr. MAMMARELLA. Chips Record Distributors is Harry Chipetz, who runs it, and I think that as of now that Mr. Clark, who held an interest in it, has divested himself of that interest.

Mr. LISHMAN. Mr. who?

Mr. MAMMARELLA. Dick Clark was a stockholder or a member of that company.

Mr. LISHMAN. In order to clarify the record at this point, I will ask you to correct me if this statement is wrong. Up to November 14—and I won't speak beyond that date—you had a 25-percent interest and Dick Clark had a 50-percent interest in Swan records; is that correct?

Mr. MAMMARELLA. Yes, sir.

Mr. LISHMAN. And that company in turn, wholly owned Bae Music, Inc., and Request Music, Inc., the first one being an ASCAP company and the second one being a BMI publishing company; is that correct?

Mr. MAMMARELLA. That is right.

Mr. LISHMAN. Then in the Anita Pressing Co., you owned a 25-percent interest, Dick Clark owned a 50-percent interest, and Mr. Binnick owned a 25-percent interest; is that right?

Mr. MAMMARELLA. Yes; that is right.

Mr. LISHMAN. And that company was formed in, about August 1959, and did most of the Swan Records pressing.

Mr. MAMMARELLA. That is right.

Mr. LISHMAN. In Wildcat Music, Inc., do you have any interest?

Mr. MAMMARELLA. Yes, sir.

Mr. LISHMAN. What is your interest there?

Mr. MAMMARELLA. Fifty percent interest.

Mr. LISHMAN. And prior to November 14, Dick Clark had an interest in that company?

Mr. MAMMARELLA. No, sir; not in Wildcat.

Mr. LISHMAN. Does Wildcat Music, Inc., have an interest in Raye Products, Inc.?

Mr. MAMMARELLA. Yes, sir.

Mr. LISHMAN. And what is the business of Raye Products, Inc.?

Mr. MAMMARELLA. Raye Products, Inc., manufactured record carrying cases.

Mr. LISHMAN. And Wildcat Music, Inc., owned about 21 percent of Raye Products, Inc.?

Mr. MAMMARELLA. That is right, sir.

Mr. LISHMAN. And does Dick Clark have, or did he have, an interest in Raye Products, Inc.?

Mr. MAMMARELLA. Yes, sir.

Mr. LISHMAN. About 42 percent?

Mr. MAMMARELLA. Yes—because the exact percentage might be 44 or something like that. Wildcat Music had 21. I think the other party involved had 33. And the Clark interest was the remainder, which I think might be 46.

Mr. LISHMAN. Did Mr. Edward S. Barsky have an interest in it?

Mr. MAMMARELLA. He has the 33-percent interest.

Mr. LISHMAN. What does Startime Industries manufacture?

Mr. MAMMARELLA. That manufacturers a stuffed cat, stuffed animal.

Mr. LISHMAN. Just one animal?

Mr. MAMMARELLA. That is the only thing they have manufactured up to this point.

Mr. LISHMAN. And what interest have you owned in that, or do you own?

Mr. MAMMARELLA. Twenty percent.

Mr. LISHMAN. And up to the November 14 date, is it a fact that Clark owned 40 percent?

Mr. MAMMARELLA. Yes, sir.

Mr. LISHMAN. And were the products of this company used as gifts and prizes on Dick Clark's TV show?

Mr. MAMMARELLA. Yes, sir; they were given out on the show.

Mr. LISHMAN. Was any announcement made that Dick Clark had an interest in this company which supplied these gifts and prizes, at the time this was being done, on the program?

Mr. MAMMARELLA. This toy held a tag on it—included with the toy is a tag on it, in the form of a record. The thing was known as a "Platter-Puss," and on the record was—this cardboard disk that was on the cat was a picture of Dick Clark. This was done in a merchandising aspect. We thought of the idea and formed this, and then it was presented to the merchandising, whether or not it would be acceptable as a merchandising item.

Mr. LISHMAN. Do you have an interest in Lawn Records Corp.?

Mr. MAMMARELLA. Yes, sir.

Mr. LISHMAN. About a 25-percent stock interest?

Mr. MAMMARELLA. As of now?

Mr. LISHMAN. Yes, sir.

Mr. MAMMARELLA. As of now it is 50 percent.

Mr. LISHMAN. And as of November 14, did Dick Clark have a 50-percent interest in that company?

Mr. MAMMARELLA. As of November 14, I think then he had a 50-percent interest in the company.

Mr. LISHMAN. And what is the business of the Lawn Records Corp.?

Mr. Moss. May I ask a question at that point. You now have a 50-percent interest in Lawn Records. How much did you have on November 14, or approximately that date?

Mr. MAMMARELLA. Twenty-five, I think it was, at that time.

Mr. Moss. You had 25 percent. Did you acquire any from Clark? He had 50 percent, you had 25 percent. Who had the other 25 percent?

Mr. MAMMARELLA. There is a point here—if I may check a point on this. There were originally three shares of one-third each.

Mr. Moss. $33\frac{1}{3}$ percent each.

Mr. MAMMARELLA. Yes.

Mr. Moss. Who were the three holders—you, Clark, and who else?

Mr. MAMMARELLA. It was myself, Bernie Binnick, and the other share was held in the name of Harry Chipetz.

Mr. Moss. When did Clark acquire an interest in it?

Mr. MAMMARELLA. Well, I think the thing was that, Mr. Chipetz was a strawman for Mr. Clark.

Mr. Moss. In other words, he held the interest for Clark?

Mr. MAMMARELLA. That is right.

Mr. Moss. Now, you indicated that Clark owned a 50-percent interest. He never owned more than $33\frac{1}{3}$?

Mr. MAMMARELLA. I think that is right.

Mr. Moss. All right. How is ownership held at the present time?

Mr. MAMMARELLA. Fifty percent each, between Mr. Binnick and myself.

Mr. Moss. Did you buy the Clark interest?

Mr. MAMMARELLA. Yes; it was—half a share each was taken by Mr. Binnick and myself.

Mr. Moss. Did each of you buy it, or did the corporation buy it?

Mr. MAMMARELLA. No; I think in this case we bought it.

Mr. Moss. What was the value of it?

Mr. MAMMARELLA. It is on record.

Mr. Moss. What does Lawn Records do?

Mr. MAMMARELLA. Actually, it didn't do anything. It was for the purpose of another record label.

Mr. Moss. With a specific artist in mind?

Mr. MAMMARELLA. No. In other words, you have another record label, and we were going to hold it, and some day we might activate it as another record label.

Mr. Moss. It has never produced anything at all?

Mr. MAMMARELLA. Actually, to my knowledge, it has not.

Mr. Moss. What assets, of any value, does it have then?

Mr. MAMMARELLA. None. It was a corporation that was formed for the purpose of the record, but there was nothing there.

Mr. Moss. Thank you.

Mr. LISHMAN. Mr. Mammarella, are there any other corporations or companies or groups in which you and Dick Clark had any interest prior to November 14, 1959?

Mr. MAMMARELLA. Other than those that are mentioned in this?

Mr. LISHMAN. Other than those that have already been referred to in this record.

Mr. MAMMARELLA. No; that Mr. Clark and I had an interest in?

Mr. LISHMAN. These are the only ones?

Mr. MAMMARELLA. These are the only ones we ever had an interest in.

Mr. LISHMAN. As I understand it, you were an A. & R. man for Swan Records; is that correct?

Mr. MAMMARELLA. Yes. That was one of the duties I performed for them.

Mr. LISHMAN. And as A. & R. man, did you have anything to do with the selection of talent?

Mr. MAMMARELLA. Oh, yes.

Mr. LISHMAN. Just what would you do in that regard?

Mr. MAMMARELLA. Well, in the selection of talent, we constantly auditioned and listened to new people. And you listened to them, and you would bring them in, and audition them, and see what they could do, and see whether or not you feel that they have what you would call commercial ability. In other words, if they had what you considered the ability to sell a song, the type of personality that could sell a song.

You tried to determine the type of song that they could do, or they did well. And then you would go on from there. Either you decide that no, you did not think that this artist was particularly worth anything, and you would not do anything about it; or you might decide that this artist was worth something, that you should maybe develop him, or maybe sign him, or do a session with him, or something like that.

Mr. LISHMAN. Supposing you decided that the talent should appear on a Swan Record label. What arrangements would you make with such talent?

Mr. MAMMARELLA. If you decided he should appear, you would sign him to a recording contract.

Mr. LISHMAN. In the normal contract—what would those terms provide?

Mr. MAMMARELLA. Well, the terms would provide for a royalty to be paid to the artist, and it would be a term contract. You would not sign him for life or anything like that. But you might sign him for a year, or you might sign him to a term for a specific number of sides. There are many different ways you can sign an artist. You might sign an artist on the basis of—well, we will sign you for 6 months and put out two sides, make two different records with you, and if they click, then we can sit down and talk about a longer term, or a greater royalty, or something like that; and if they did not, then he would be a free agent to go to any other record company.

Mr. LISHMAN. Did anyone else in Swan Records have authority to decide whether or not a particular talent would have a record?

Mr. MAMMARELLA. Well, put it this way: Even though I acted in that capacity, I would not take it as the sole authority. In other words, someone would come in. I would not take it upon myself alone and sign that artists. I would always confer with Bernard Binnick, who was the other holder in Swan Records.

Mr. LISHMAN. Did you also consult with Mr. Clark?

Mr. MAMMARELLA. I am sorry—you are talking—

Mr. LISHMAN. I am talking to the time prior to November 14.

Mr. MAMMARELLA. Oh, yes. If you are going to do something, if the three of the people agree on it, it is much easier than if you find that one person thinks it is great and the other two do not. But it was kind of a thing that we all asked each other, and nobody took the thing and said absolutely, "I want this—or else." We did not do that type of thing. It is not that type of position.

Mr. MOSS. How many artists did you have under contract with Swan Records?

Mr. MAMMARELLA. How many do we have? Well, I really do not know, but it would be on file. We have—

Mr. MOSS. Did you have quite a number?

Mr. MAMMARELLA. Well, sir, what would you call quite a number?

Mr. MOSS. Half-a-dozen, a dozen, 2 dozen?

Mr. MAMMARELLA. Well at any one given time I would imagine we may have had, and I am guessing, maybe as many as eight.

Mr. MOSS. As many as eight.

Mr. MAMMARELLA. Yes.

Mr. MOSS. Do you ever recall making a recording under the Swan label which was not subsequently played on one of the programs, "Bandstand" or the "Dick Clark Show"?

Mr. MAMMARELLA. I cannot pinpoint it. I would have to go back over all the records. I think that there may have been some that were never played—a few that were never played on the show.

Mr. MOSS. How many of those, would you say, were artists producing recordings, which were not being played on your show? One, two, fifty percent of them?

Mr. MAMMARELLA. If I may explain this, Mr. MOSS. If you had eight artists signed to your label, you would not have a record out on all those eight artists at the same time.

Mr. MOSS. I recognize that. At one time you would have eight, and you probably had others, previously.

Mr. MAMMARELLA. Yes. At any one time, you might have two or three releases out.

Mr. MOSS. Can you ever recall a time when you had a release out that was not being used on your program?

Mr. MAMMARELLA. Oh, yes; I am certain there were times we had releases out that we did not use on the program. I am almost certain of that. Again, I would have to check back on all the releases to find out.

Mr. MOSS. Did you ever act as an agent for any of the artists under contract to Swan?

Mr. MAMMARELLA. You mean as their manager or something like that?

Mr. MOSS. Manager or agent, whatever you want to call it.

MR. MAMMARELLA. No; I have never been a manager or an agent.

MR. MOSS. Did you ever receive any kind of payments from any of the artists under contract to Swan?

MR. MAMMARELLA. No, sir.

MR. MOSS. Did you ever share in any of the royalties assigned to them under the agreement?

MR. MAMMARELLA. Of an artist; no.

MR. LISHMAN. Mr. Mammarella, do you remember the record "Tallahassee Lassie"?

MR. MAMMARELLA. Yes, sir.

MR. LISHMAN. And do you remember the name of the artist in that?

MR. MAMMARELLA. Yes; Freddie Cannon.

MR. LISHMAN. What function did you exercise in connection with your position as A. & R. man for Swan Records in the selection of Freddie Cannon to record "Tallahassee Lassie"?

MR. MAMMARELLA. Well, actually the two people who produced the record were two gentlemen named Frank Slay, Jr., and Bob Crew. They had produced records for Swan before. They found this young man. They produced a record with him and then presented it to us, to see whether or not we would want to take over the master that they had produced.

Bernie Binnick picked up the master record from Slay and Crew—Frank Slay and Bob Crew—and brought it down to us, to Mr. Clark and myself. We sat down and listened to it.

We felt that it was not in its form a good commercial record. We thought that there were some things that were wrong with it. We met at Mr. Binnick's house, I think, in the evening, and we listened to other records, other masters other than this—the other ones I do not recall, but I do recall this one. We listened to it, and we decided that it was not right in its present form; that it needed some accentuation of beat in some places, and that the opening was too long, and things such as that.

As a matter of fact, that night while we were there we called—of this I am not sure—

MR. LISHMAN. When was this?

MR. MAMMARELLA. Mr. Lishman, I am not really certain, but it would be sometime prior to the release date of "Tallahassee Lassie" as a Swan record. The release date would be somewhere in our records, as to when it was released. Some time prior to it. I do not recall when.

But in any event, that evening, I am not sure whether we called Frank Slay or Bob Crew—I think we called Frank Slay in New York, at his apartment, and discussed this record with him and told him that we did not think that it was, in its present form, good, but we thought it was potentially a good record, a good commercial record, if they would make certain changes in it—cut the opening, accentuate the beat in certain places, and do it differently than they had originally done it. They agreed that the suggestions were valid. They made the changes in the record. And at some future time we released the record as a record on Swan Records.

MR. LISHMAN. Well, when you were reviewing this, whether it would go on the Swan Record label, did you consult with Dick Clark about it?

Mr. MAMMARELLA. The three of us were in the room at the same time.

Mr. LISHMAN. Who made the final decision that you use Freddie Cannon on this record?

Mr. MAMMARELLA. To use Freddie Cannon on the record?

Mr. LISHMAN. That he would record this record.

Mr. MAMMARELLA. Frank Slay and Bob Crew made the recording with Freddie Cannon, prior to our even knowing about Freddie Cannon or the song. After they made it, they sent the master to us.

Mr. LISHMAN. What kind of arrangement did you enter into with the music publisher on this?

Mr. MAMMARELLA. Well, I think Slay and Crew are the publishers on that.

Mr. LISHMAN. Wasn't Connolley Music Co. the publisher?

Mr. MAMMARELLA. Well, Connolley Music Co.—I would not recall or no. Connolley Music may be owned by Slay and Crew—I do not know.

Mr. LISHMAN. Well, did you make any arrangements with the publisher, Connolley Music, for an assignment of the copyright?

Mr. MAMMARELLA. No; I did not.

Mr. LISHMAN. Did anyone connected with Swan Records make such an arrangement?

Mr. MAMMARELLA. If there is such an arrangement, I would imagine that Bernie Binnick might have made it. But I do not know.

Mr. LISHMAN. Did Dick Clark enter into such an arrangement?

Mr. MAMMARELLA. That I do not know either, sir.

Mr. LISHMAN. Do you know, or can you recall what remuneration was paid for this record?

Mr. MAMMARELLA. Well, you mean to Slay and Crew, who originally produced it?

Mr. LISHMAN. Yes.

Mr. MAMMARELLA. We have a working agreement with them as producers of records that there is a royalty paid to them for each record that they might produce for us. And also outside of the royalty paid to them, since they put out a certain amount of money to originally record, money for the session, I do not know whether we have done it in all cases, but you sometimes advance them the amount of money that they put out to have, originally recorded, the record.

Now, that also would be—whatever arrangements with Slay and Crew, would also be in the records of Swan somewhere—whatever arrangements they made, whatever moneys they were paid.

Mr. LISHMAN. Do you know of any arrangement that ever was made, either by you or by Dick Clark, or by Mr. Binnick, to require a music publisher to assign the copyright in order to have it recorded by Swan?

Mr. MAMMARELLA. No.

Mr. LISHMAN. And to be aired by Dick Clark?

Mr. MAMMARELLA. No. You mean in other words give us the copyright and we will put it on Swan, and Dick Clark will play the record?

Mr. LISHMAN. Yes.

Mr. MAMMARELLA. No; not to my knowledge.

Mr. LISHMAN. You are really positive on this?

Mr. MAMMARELLA. When you say positive—

Mr. LISHMAN. Yes; I want a positive answer on that.

Mr. MAMMARELLA. I can break it down this way. To my knowledge I never, and I would not think that either Mr. Binnick or Mr. Clark ever told anyone, "Give us the copyright, we will record the song on Swan and play it on the 'Dick Clark Show'." I do not think that ever happened.

Mr. LISHMAN. I will put it another way. To your knowledge does Swan, or you, or Dick Clark ever receive a copyright?

Mr. MAMMARELLA. Yes. In some cases on Swan—I think in the case of a man—of Dickie Dew, which is the name of an artist, that is on Swan. He wrote some songs that were recorded on Swan Records. And I think he shared the copyright with either BAE or Request. I do not remember whether he is an ASCAP publisher or a BMI publisher.

Mr. LISHMAN. And is that the only time that you know of or can remember?

Mr. MAMMARELLA. For Swan Records?

Mr. LISHMAN. Yes.

Mr. MAMMARELLA. There may have been others, Mr. Lishman, but that would also be in either BAE or Request. In the case of Dickie Dew, it would not be a question of saying to him, "Either you give up part of the copyright or we do not record you."

Mr. LISHMAN. Well, as part of the consideration of having a record aired on the "Dick Clark Show," do you know of any incident where the consideration for that was the assignment of the copyright to either you or to Dick Clark, or any other person or company?

Mr. MAMMARELLA. Well, let me put it this way. Copyrights have been assigned to either—there have been copyrights that have been assigned to either Wildcat, which I had an interest in, and copyrights assigned to maybe a company that Dick had an interest in. But to my knowledge, it was never on the basis of saying to anyone, "If you will give us the copyright, we will play the song."

Mr. LISHMAN. Well, what was the basis for the assignment of the copyright?

Mr. MAMMARELLA. The basis for the assignment of the copyright would be that in a lot of these cases, the people who held the publishing rights did not have an active publishing office, and a publisher will go after it. This is a common practice in the business.

Publishers will go after songs of recordings and ask either for a split copyright, whereby they would do all the work and promotion on the song, on behalf of the publishing interests.

Mr. ROGERS. I do not understand that.

Mr. MOSS. I do not either. It is very interesting, but it is completely confusing.

Mr. MAMMARELLA. All right.

Mr. MOSS. What other consideration was involved in the transfer of copyrights to you? What did you give of value?

Mr. MAMMARELLA. If a copyright was transferred?

Mr. MOSS. Yes.

Mr. MAMMARELLA. You would give of value that you would go out and you would maybe send material out on it, saying this was a song—

Mr. MOSS. Mr. Mammarella, if I have a copyright and I give it to you, and you go ahead and promote it, that does not do me a bit of

good. You have got to give me some consideration. You give me a royalty. What do you give me? What was the consideration that you used to get the copyright?

Mr. MAMMARELLA. Well, let me put it this way. These copyrights that could be picked up in this way were not just a publisher who had a copyright, who would give it to another publisher. This was generally a practice in the business—when a record company owned a copyright.

Mr. Moss. We are talking of you specifically.

Mr. MAMMARELLA. Yes. Well, I think that in Wildcat the copyrights that were picked up in most cases, I think it was 50 percent of the copyright was picked up, because the man who owned the original copyright owned the record. And he would be willing to share the copyright for what promotion you could give that copyright, which would enhance the value of his copyright, but also enhance the chances of his record.

Mr. ROGERS. Would you yield at that point, Mr. Moss?

Mr. MAMMARELLA, usually the copyright is owned by an individual, is it not, in the beginning? I mean, when you get the copyright, it is usually an individual that gets it.

Mr. MAMMARELLA. Well, the basic copyright is first the song itself, which is owned by the individual, the songwriter. Then the songwriter places his copyright with a publisher, who now owns the publishing copyright. And this is the copyright that you are talking about in this case, the publishing copyright to a song.

Mr. ROGERS. And the owner of the original copyright of the song, of course—

Mr. MAMMARELLA. The writer never changes.

Mr. ROGERS. He gets a royalty.

Mr. MAMMARELLA. He gets a royalty regardless of who the publisher is.

Mr. ROGERS. And he makes the deal with the publisher?

Mr. MAMMARELLA. Yes. A writer will go to a publisher and say "Do you want to publish this song?"

Mr. ROGERS. In other words, the writer controls who is going to have the publisher's copyright.

Mr. MAMMARELLA. I think in the first instance.

Mr. ROGERS. And then the publisher can assign that copyright, or any part of it, to anyone else he wants to?

Mr. MAMMARELLA. The publishing rights, yes.

Mr. ROGERS. And that is what he assigned to Wildcat and these other record companies, to get them to get it out over the country.

Mr. MAMMARELLA. That is right.

Mr. ROGERS. And to sell more records.

Mr. MAMMARELLA. That is right.

Mr. Moss. Well, but then Wildcat was a publisher itself. So in giving the publishing rights to Wildcat, what consideration did Wildcat give for the publishing rights?

Mr. ROGERS. Well, Mr. Mammarella, it was certainly to the interests of these publishers, owners of the publisher's copyright, to sell an interest in that copyright to Wildcat or some other organization that

was owned by people like yourself that had the tools to put this thing out, and to prefer it over other records, was it not?

Mr. MAMMARELLA. Well, putting it that way, the answer would be—the answer would be Yes, it would. Sure.

Mr. Moss. Of course, this still does not get down to the consideration, because if you have assigned it, unless you get something in return, what have you gained, even if they do promote it successfully?

Mr. ROGERS. Well, let me put it this way, too, Mr. Moss. The fact of the matter is this, Mr. Mammarella. The publisher, the owner of the publisher's copyright, would prefer to transfer an interest in that copyright to you, or to a company in which you owned an interest, for a less sum than he would be willing to transfer an interest to someone who did not have the same means of selling the records as you did or as a diskjockey, would he not?

Mr. MAMMARELLA. But you see, the reason he was—that he would be willing to transfer the copyright, the publishing copyright, or part of the publishing copyright, was not because all he owned was the copyright. In these cases, it was the practice that you transfer part of the publishing rights of a song that you owned the record.

Mr. ROGERS. I understand. And he wanted to make some money out of it.

Mr. MAMMARELLA. In other words, whatever promotion you would give the copyright that he was sharing with you would give his record a better chance of selling, and he would make his money out of the record.

Mr. ROGERS. Yes. Now, what did Wildcat pay him for that interest?

Mr. MAMMARELLA. Usually nothing—just would turn over part of the copyright, split the copyright.

Mr. ROGERS. In other words, they would turn it over—Wildcat did not pay them anything for it. They turned it over to Wildcat and transferred that interest because Wildcat had you in the organization, and the owner of the publisher's copyright knew that he could sell more records that way than he could any other way.

Mr. MAMMARELLA. He might have figured that way, or might have felt that way.

Mr. ROGERS. And your obligation, insofar as consideration was concerned, was not to pay him any money for this copyright, but to use you as a medium to get this out in preference to other records, so you could sell more, was it not?

Mr. MAMMARELLA. Well, the person giving up part of the copyright might feel that way.

Mr. Moss. That is why they gave up part of the copyright. And that was done in return for—

Mr. ROGERS. For him—

Mr. Moss. Pushing the record.

Mr. DEROUNIAN. As it turned out, isn't that what actually happened, because of this arrangement—you sold more records.

Mr. MAMMARELLA. In some cases.

Mr. DEROUNIAN. In quite a few cases.

Mr. MAMMARELLA. In some cases this would happen.

Mr. Moss. Now, you were part owner of Wildcat Publishing.

Mr. MAMMARELLA. Yes, sir.

Mr. Moss. Were you part owner of any other publishing activity?

Mr. MAMMARELLA. Milton Kellem Music.

Mr. Moss. Wildcat was owned by whom?

Mr. MAMMARELLA. Milton Kellem and myself, sir.

Mr. Moss. Equal owners?

Mr. MAMMARELLA. Yes, sir.

Mr. Moss. And that was Wildcat.

Mr. MAMMARELLA. That is right.

Mr. Moss. Now, you had another publishing house—

Mr. MAMMARELLA. Milton Kellem Music.

Mr. Moss. How was that owned?

Mr. MAMMARELLA. I owned 50 percent of the stock in that.

Mr. Moss. Equal ownership?

Mr. MAMMARELLA. That is right.

Mr. Moss. Did you folks ever publish a song where you did not own the copyright in part or in whole?

Mr. MAMMARELLA. No—I don't follow that, I'm sorry.

Mr. Moss. Was your business publishing music?

Mr. MAMMARELLA. Yes.

Mr. Moss. In both of these?

Mr. MAMMARELLA. Yes, both were music publishing firms.

Mr. Moss. How extensive a publishing business did you have? How many tunes did you publish, promote?

Mr. MAMMARELLA. I would not know. Milton Kellem would have a record of everything ever published by the company. It is not a large company like, say, Irving Berlin or Shapiro-Bernstein.

Mr. Moss. Did you have any hits?

Mr. MAMMARELLA. Yes, they had a couple of hits. Probably the biggest hit that Wildcat had was a thing called "Get a Job."

Mr. Moss. Called what?

Mr. MAMMARELLA. A song called "Get a Job."

Mr. Moss. How many pieces of sheet music did you sell on that? Have you any idea?

Mr. MAMMARELLA. Not very much, because—

Mr. Moss. Was your principal activity the act of publishing and selling of sheet music?

Mr. MAMMARELLA. No. The principal activity is basically to do this. But even on big hits of the day—

Mr. Moss. Your own business.

Mr. MAMMARELLA. We did not.

Mr. Moss. What did you do—solicit artists who might be interested in the songs you owned?

Mr. MAMMARELLA. Oh, yes. You try to take the songs and send them out to artists who might be interested in recording them. Oh, sure.

Mr. Moss. Well, did you make any recordings—did any of the publishing houses make any recordings?

Mr. MAMMARELLA. Did publishing houses?

Mr. Moss. I am only interested in yours—no one else's.

Mr. MAMMARELLA. Yes. I think that Milton cut two different sessions.

Mr. Moss. Under a wholly owned label?

Mr. MAMMARELLA. No; went in and cut, in much the same way we talked about before, producing a master.

Mr. Moss. He cut it and leased it to a record company?

Mr. MAMMARELLA. A record company; that is right.

Mr. Moss. Then the publishing house was primarily for the purpose of holding copyrights, and promoting them with artists who might be able to use the music for recording purposes?

Mr. MAMMARELLA. Yes; because in today's music field, for some reason or other, not nearly the amount of sheet music sells as did in former years. It used to be that in former years, I understand you could sell maybe half a million sheets of music, say maybe 20 years ago. Today, on a very big hit, that might be of the ballad type, you might sell 50,000, which would be a lot of sheet music for today's market.

Mr. Moss. You never did that?

Mr. MAMMARELLA. Sold that many? No, we never had any song I think that sold that many sheets of music.

Mr. Moss. Did you ever purchase a copyright, in either Milton Kellern or Wildcat? Did you ever acquire any by purchase?

Mr. MAMMARELLA. Not to my knowledge, Mr. Moss.

Mr. Moss. It is always a matter of arrangement with the writer, where you would take a part assignment of the publishing rights?

Mr. MAMMARELLA. Yes.

Mr. Moss. As a rule did you also get the assignment of the recording rights?

Mr. MAMMARELLA. Oh, no. Any record company can take any published work and send to the publisher for a contract, saying "We are going to record this song." You do not get recording rights as a publisher, in that sense.

Mr. Moss. You can acquire any rights you want to get.

Mr. MAMMARELLA. It does not work that way. As a publisher, any company that wants to record it just sends you—there is some kind of license that says "We are going to record this song, and would you send us a recording license for it." If you want to record it, the publisher issues that.

Mr. Moss. Does the publisher right include the right to record, or is that retained by the author, the composer?

Mr. MAMMARELLA. No. The publisher, as I understand it, has the right to have it recorded, or to issue a license to a record company to record it.

Mr. Moss. Doesn't the composer have a right to determine how much of his copyright he is going to give you when you merely undertake the publication of it?

Mr. MAMMARELLA. Well, as I understand it—

Mr. Moss. Does that include broadcast rights, then?

Mr. MAMMARELLA. The writer gets broadcast rights. You cannot take that away from him.

Mr. Moss. You have got to undertake a specific assignment then by the original owner of the copyright of whatever portion of his right he wishes to grant you, or me, or whoever else he might be doing business with.

Mr. MAMMARELLA. Now I do not follow you.

Mr. MOSS. Well, customarily, as a publishing house, did you also have the right to record, or to grant licenses to those interested in recording?

Mr. MAMMARELLA. Yes; as a publishing house you did.

Mr. MOSS. Copyrights held by you extended to recording rights, as well as actual publishing rights?

Mr. MAMMARELLA. Yes, sir. I know what you mean. Yes.

Mr. MOSS. But you did not have broadcast rights?

Mr. MAMMARELLA. Well, now I do not understand again. You mean the right for it to be on the air?

Mr. MOSS. You have probably gone through this many times. You pick up a copyright. You find an artist. You cut a master, and you market it under a Swan label. And it goes on the air.

Mr. MAMMARELLA. Yes.

Mr. MOSS. Did you, at the point of going on the air, have to go back to the composer and get his permission to put it on the air, through some additional agreement, or did you already have that in your original agreement?

Mr. MAMMARELLA. On that basis, I do not know that much about the details of the rights and whatnot, but I know this much. Once you have the publishing rights—

Mr. MOSS. Then you did not get publishing rights. You got a complete assignment of copyright.

Mr. MAMMARELLA. Well, to me that was called publishing rights.

Mr. MOSS. I think it goes beyond that.

Mr. MAMMARELLA. I do not know. When everybody says they have—whenever they say they have the publishing rights—

Mr. MOSS. You actually had assigned the full right, the full copyright, without any restriction.

Mr. MAMMARELLA. Well, what I have always understood by somebody having the publishing copyright of a song, that he had the right to license records, and he would inform—

Mr. ROGERS. Would you yield? Do you pay a royalty to the composer? You have all the rights regarding the song, except the royalty to the composer?

Mr. MAMMARELLA. Yes, you must pay royalty to the composer. The composer has a contract with a publisher in which in the composer's contract it outlines all his royalties that he would get from what they call the mechanicals, sheet music. These music magazines where they just print the lyric and that type of thing. He gets a royalty out of that.

Mr. ROGERS. Well, the publisher's copyright that you are talking about includes everything except an obligation to pay the composer a royalty, that is specified in the contract, by which you got the publisher's copyright.

Mr. MAMMARELLA. Yes. Once you turn it over to a publisher, then he handles all the phases of that copyright. Yes; that is true.

Mr. ROGERS. Mr. Mammarella, there is one thing. Now, you and Mr.—what was that other fellow's name in Wildcat?

Mr. MAMMARELLA. Kellem.

Mr. ROGERS. Did you operate this business jointly? Were you active in it?

Mr. MAMMARELLA. I was active insofar as I would try to listen to tunes and try to find tunes that I thought were good, and that we might get somebody to publish. And when we had tunes—not publish—that we might get someone to perform or record. In the case when we had tunes that I thought were good enough for someone to record, I would suggest them to certain people and ask them if they would consider it for recording.

Mr. ROGERS. Well, that was primarily the business of the organization, was it not, to try to get these things together?

Mr. MAMMARELLA. Yes, to get it recorded is the way that you can—

Mr. ROGERS. Now, this "Get a Job"—is that the record you were talking about?

Mr. MAMMARELLA. That was a copyright.

Mr. ROGERS. Would you outline for the subcommittee, as briefly as possible, how you got hold of this publisher's copyright?

Mr. MAMMARELLA. I think "Wildcat" held 50 percent of that copyright.

Mr. ROGERS. How did you get hold of that? Would you just outline to us the procedure you went through to get hold of that?

Mr. MAMMARELLA. Well, I did not actually, myself, get hold of it. Milton Kellem got hold of it. He heard the song and he thought it was good, and he went out to try to find who the publisher was, of the song, to see if he could get part of the copyright.

Mr. ROGERS. Who was the publisher?

Mr. MAMMARELLA. The publisher was a man, I believe, Kae Williams.

Mr. ROGERS. And he was the one that owned the song, had the publisher's copyright?

Mr. MAMMARELLA. Yes.

Mr. ROGERS. And do you know what the circumstances were by which you got hold of it?

Mr. MAMMARELLA. No. I know that Milton Kellem went after it. As a matter of fact, at the time when he called me he said he heard this song and said he was going to go after it, and he told me he had found out who the publisher was. And I said "Don't bother going after the copyright."

Mr. ROGERS. Why did you tell him that?

Mr. MAMMARELLA. I did not think it was worth going after. But Milton was sure it was going to be a hit.

Mr. ROGERS. Was the song pretty well played? Was it a hit before Milton decided he wanted to get hold of some of it?

Mr. MAMMARELLA. It was evidently being played and getting reaction.

Mr. ROGERS. As a matter of fact, Mr. Mammarella, it was a hit before you all ever got any part of that publisher's copyright, was it not?

Mr. MAMMARELLA. It was evidently selling and getting some action, which is what made him notice it, and he thought it was going to be a big hit.

Mr. ROGERS. You got all this information from him—he told you what had happened?

Mr. MAMMARELLA. Yes. He originally called me and said there was a thing called "Get a Job" by a group that he thought was going to be a big hit, and he was going to try to go after the copyright.

Mr. ROGERS. Even though you told him not to bother about getting it, he did go out and he got 50 percent of it.

Mr. MAMMARELLA. Yes.

Mr. ROGERS. What were the circumstances under which he got this 50 percent? How did he get it, what did he pay for it, and what were the circumstances of the transaction?

Mr. MAMMARELLA. That I do not know. I do not think he paid anything for it.

Mr. ROGERS. You mean he got 50 percent of a hit and did not pay anything for it?

Mr. MAMMARELLA. To my knowledge, he did not.

Mr. ROGERS. As a matter of fact, it had been played on the Dick Clark Show before you all ever got any interest in it, had it not?

Mr. MAMMARELLA. That I would not be sure of.

Mr. ROGERS. Where is Mr. Kellem now?

Mr. MAMMARELLA. In New York City.

Mr. ROGERS. He is still active in this business?

Mr. MAMMARELLA. Yes.

Mr. ROGERS. You all still own these companies?

Mr. MAMMARELLA. Yes.

Mr. ROGERS. Was he examined by any of the staff members of this subcommittee in this investigation?

Mr. MAMMARELLA. No. Not "no" to the question: was he examined? I went to New York one day and met Milt in the restaurant downstairs of the Brill Building, and he told me, he was with some other people at lunch—and he told me that he had been, or his records had been subpeaned.

Mr. ROGERS. Now, you told him not to bother to worry about this "Get a Job" record, and you also state that you do not think he paid anything for it.

Mr. MAMMARELLA. I do not think so.

Mr. ROGERS. Well, you would have known if he had paid something for that 50 percent, would you not, Mr. Mammarella? Because half this business belongs to you.

Mr. MAMMARELLA. Sir, although the business half belongs to me, I would not know. I never looked into those things.

Mr. ROGERS. You seem to have awfully loose business transactions. Yesterday you told me a fellow just handed you something and said "Here, take it," and it might turn out to be \$300. And now you have a half interest in a business and you do not know whether a man paid something for a hit record or not. I mean I do not understand doing business like that. Maybe it is the best way to do it.

Mr. MAMMARELLA. No, it is not. But in business, unfortunately, if I had kept maybe precise records and acted in a better business manner—but it never—I never was interested or thought about the details of these things. If that sounds unbelievable—

Mr. ROGERS. Well, what you mean by the fact, that you say you do not think he paid anything for it, is that it was the usual practice not to pay anything for these interests because you were going to render a service in putting them out that was worth a lot more money than a few dollars?

Mr. MAMMARELLA. No, I do not say that. As a matter of fact, when I decided and talked with Milt Kellem about the possibility of going into the publishing business with him, I told him, and he agreed, too, a specific thing, that I told him that under no circumstances should he use my name in connection with it, nor promise any publisher or any man that he was going to get part of a copyright from, promise him anything, make any promises that it would be played on "American Bandstand," nor to use my name in this connection. And he agreed that that was right, because I said I did not want to use my name that way.

Mr. ROGERS. Mr. Mammarella, now let's be realistic. Do you think that he abided by what you told him not to do?

Mr. MAMMARELLA. He promised me he would not.

Mr. ROGERS. I don't care about him promising you. Are you telling this subcommittee that he went out and got these publisher's copyrights free of charge, and did not mention the fact that he was associated with you and that there would be a great interest to get these records and this music put out pretty soon and make a lot of money out of it?

Mr. MAMMARELLA. Let me put it this way. I would not have believed it then that he would have gone out and done, because several times he would say—I would mention this thing and bring it up to him, and several times he would verify the fact that, no, he would not do it.

Mr. ROGERS. But you believe now that he did, don't you?

Mr. MAMMARELLA. Now, I have a few different thoughts on a lot of things.

Mr. ROGERS. We ran into some things on the network officials that suffered with the same disease you are, Mr. Mammarella. They said they did not think that in the first place, but now they have had a chance to view this backward, and they think it happened.

Mr. MAMMARELLA. Well, it often happens when you look back on something, you get a different view of it than when you are in the middle of something.

Mr. ROGERS. You made pretty good money out of this wildcat business?

Mr. MAMMARELLA. Whatever income I have is in the records that I turned over.

Mr. ROGERS. I mean it was a pretty lucrative business—wasn't it, Mr. Mammarella?

Mr. MAMMARELLA. Well, there again it is a question, I forget. It was \$4,000, \$5,000, or \$6,000, something like that.

Mr. ROGERS. I believe that is all I have.

Mr. LISHMAN. Mr. Mammarella, do you, as a songwriter or publisher, own any copyrights pertaining to musical compositions?

Mr. MAMMARELLA. There are copyrights in my name.

Mr. LISHMAN. You own—

Mr. MAMMARELLA. There are copyrights in my name, as a songwriter.

Mr. LISHMAN. Do you have any as a publisher?

Mr. MAMMARELLA. In my name?

Mr. LISHMAN. In your name.

Mr. MAMMARELLA. Either in Milt Kellem or in—

Mr. LISHMAN. But not in your own individual name, as a publisher.

Mr. MAMMARELLA. No, sir.

Mr. LISHMAN. Now, approximately how many copyrights do you own as a songwriter, in your own name?

Mr. MAMMARELLA. There are two songs that are in my name completely, and I think there are two songs that are in my name at 50 percent. Now, that I am not positive of. But that would be a matter of record.

Mr. LISHMAN. Have you ever used the name of Anthony September?

Mr. MAMMARELLA. Yes, sir.

Mr. LISHMAN. Under what circumstances have you used that name?

Mr. MAMMARELLA. As a name for a songwriter.

Mr. LISHMAN. Have you ever written or composed any songs that were played on the "American Bandstand" or the "Dick Clark Show"?

Mr. MAMMARELLA. There are songs that have been played on the "American Bandstand" in which my name is the writer.

Mr. LISHMAN. Well, did you write the words or the music of both of those songs?

Mr. MAMMARELLA. Actually, no.

Mr. LISHMAN. Well, who were the actual writers or composers?

Mr. MAMMARELLA. There are two songs—one was called "Butterfly," and one was called "99 Ways," which was released as a single record by an artist named Charlie Gracey, in which a man named Bernie Lowe came and asked me would I put my name—would I allow him to use my name as the writer of those songs. And I said "Yes." He asked me to do it. I have known Bernie Lowe for a few years. And I said "yes," if he wanted to. There were two songs at the time. He had a record that he was making, using these two songs. This I believe was some time in 1956, or maybe early 1957, the date of which I am not sure.

Mr. LISHMAN. What consideration did these writers receive for allowing you to appear to be the writer and composer of these two songs?

Mr. MAMMARELLA. What consideration did they receive?

Mr. LISHMAN. Yes.

Mr. MAMMARELLA. Can I answer the other way around—what consideration I received, which I think would be a little easier—and give you the same answer.

Mr. LISHMAN. What did they receive as a result of all this arrangement?

Mr. MAMMARELLA. From me?

Mr. LISHMAN. From anyone.

Mr. MAMMARELLA. Well, they received nothing from me. They came and asked me as a favor if I would do this. And I said "yes," I would. And then they said "Well, we will give you part of the royalties of the one song, the 'Butterfly' song—not the '99 Ways.'"

Mr. LISHMAN. How much of those royalties did they agree to give you?

Mr. MAMMARELLA. They said—well, it was not they. It was only one person who spoke to me—Bernie Lowe said—

Mr. LISHMAN. Bernie Lowe, you say?

Mr. MAMMARELLA. That is right.

Mr. LISHMAN. Would you identify Bernie Lowe?

Mr. MAMMARELLA. Bernie Lowe is a song writer and among other things is a record manufacturer, of a record company known as Cameo Records.

Mr. LISHMAN. And what did he say?

Mr. MAMMARELLA. He asked me if I would do it, and I said "Yes." And he said "Well, for doing it I will give you a third of the writer's royalties on 'Butterfly,' for putting my name on the two songs—'Butterfly' and '99 Ways.'" "99 Ways" was to receive no consideration.

Mr. LISHMAN. Now, are you affiliated with Broadcast Music, Inc., under the name of Anthony September?

Mr. MAMMARELLA. Yes.

Mr. LISHMAN. Are you affiliated with it under any other name?

Mr. MAMMARELLA. No. But at BMI I am—my name—Anthony S. Mammarella appears, and that Anthony September is the writing name.

Mr. LISHMAN. And is it correct that in the papers you left with us yesterday, we will find the royalties you received from Broadcast Music, Inc.?

Mr. MAMMARELLA. Yes—except possibly for 1959, where I have not received a statement from them as yet.

Mr. LISHMAN. Now, are you affiliated with ASCAP in any way?

Mr. MAMMARELLA. As a writer—no.

Mr. LISHMAN. In any way.

Mr. MAMMARELLA. Well, through the publishing company. But not as a writer.

Mr. LISHMAN. Have you, personally, ever received any money, gifts, copyright interest or anything of value for arranging to have phonograph records played on the "American Bandstand" or the "Dick Clark Show"?

Mr. MAMMARELLA. Not to my recollection.

Mr. LISHMAN. Well, have you ever personally received any money, gifts, copyright interest, or other things of value for arranging to have artists appear on the "American Bandstand" or the "Dick Clark Show"?

Mr. MAMMARELLA. No, sir, not to my recollection.

Mr. Moss. Mr. Chairman, I would like to suggest that that question go to "Bandstand," rather than "American Bandstand"—because there were two, as I understand—one became "American Bandstand," but it operated for quite a while as "Bandstand".

Mr. MAMMARELLA. To the three names, the answer would be the same.

Mr. LISHMAN. Do you have any records that might refresh your recollection in that connection, in connection with the answer you have just given?

Mr. MAMMARELLA. Mr. Lishman, I do not know. I do not ever recall ever having received anything from anyone for arranging to have put an artist on either the afternoon show, whether it were local or network—

Mr. LISHMAN. Or phonograph records.

Mr. MAMMARELLA. Or phonograph records—anyone that came to me with money and said “Here, would you get this on the show.” I have no recollection of that.

Mr. LISIMAN. Why did you get the payments of money from Chess?

Mr. MAMMARELLA. Well, here again, you go into the thing where I considered those payments that I received from Chess for things I had done for them—not for playing of records.

Mr. LISIMAN. Why did you get the money from Universal?

Mr. MAMMARELLA. Well, this was also a different thing. This was something—Universal was something entirely different. Harry Finfer and I were supposed to be close friends.

Mr. LISIMAN. Well, Mr. Mammarella, I think you will remember that there were a series of checks \$100 each month from Chess.

Mr. MAMMARELLA. That is right.

Mr. LISIMAN. Which would seem to indicate a regularity of payment.

Mr. MAMMARELLA. That is right.

Mr. LISIMAN. Why should they send you \$100 each month?

Mr. MAMMARELLA. I had assumed it was because I had helped them and gave them some service, and they continued to send them until one point at which when I saw Glenn Chess sometime in 1958, either in the late spring or summer of 1958, and I told Glenn Chase that I was no longer performing any service or giving them any advice, or anything like that, and I would appreciate it if he would stop sending the checks, at which time he did.

Mr. LISIMAN. Did you tell him orally, or write to him?

Mr. MAMMARELLA. No, I told him that orally. He came to Philadelphia. I don't remember what month it was. But he came to Philadelphia.

Mr. LISIMAN. How many times did you see this gentleman?

Mr. MAMMARELLA. I don't know. Maybe about four or five times.

Mr. ROGERS. Mr. Mammarella, I notice you answered quite a few times, according to your best recollection and information that you have. Now, do you mean by that, that your recollection is not too good, or it might be something you do not recollect that took place—some transactions that might be on the borderline that you are trying to keep out of your answer, or what?

Mr. MAMMARELLA. No, sir. In the course of activities through the years, I do not know about anyone else, but I have to speak for myself—it would be very difficult to remember everything that you possibly did, or anybody, or every one that you possibly met.

Mr. ROGERS. But you have not been asked about that now. If you got money for playing a record on a show, “American Bandstand,” or the “Dick Clark Show,” wouldn't you think you would remember it?

Mr. MAMMARELLA. The only thing I can remember, that is in my mind, is that never at any time that I can remember did anyone ever come and say, “Here is some money. Play this record for me on the show.”

Mr. ROGERS. Well, if somebody had done that, would you remember it?

Mr. MAMMARELLA. I might not remember every case of somebody that might have done that.

Mr. ROGERS. What you mean is, then, that there is an open area somewhere, where some of these things might have transpired, and you do not want to be put in a position of committing perjury or false swearing if it is dug up. Is that what you mean?

Mr. MAMMARELLA. No. In my mind; no. How can you be, in the course of years—if I gave you a positive answer on everything, and then I remember something, or something like that—I am not looking for an out. To my recollection, I never remember having done anything like that.

Mr. ROGERS. You never remember having done anything like that?

Mr. MAMMARELLA. No.

Mr. ROGERS. Did you ever get any of these hundred dollar fees when you were on the switchboard?

Mr. MAMMARELLA. No, sir.

Mr. ROGERS. The only time you ever got them was when you were in a position to play records, was it not?

Mr. MAMMARELLA. Yes, sir.

Mr. ROGERS. Thank you.

Mr. LISHMAN. Now, Mr. Mammarella, how many labels does Chess have?

Mr. MAMMARELLA. To my knowledge, three.

Mr. LISHMAN. What are they?

Mr. MAMMARELLA. Chess, Checker, and Argo.

Mr. LISHMAN. Were any of those records played on the "Dick Clark Show" or "American Bandstand" during the time that you were receiving payments from Chess Records?

Mr. MAMMARELLA. I am certain they would be played.

Mr. LISHMAN. When did the payments from Chess terminate?

Mr. MAMMARELLA. Sometime in 1958.

Mr. LISHMAN. 1958?

Mr. MAMMARELLA. 1958.

Mr. LISHMAN. After the termination of these payments, did these labels continue to be on records that were played on either of these two shows?

Mr. MAMMARELLA. Mr. Lishman, I gave them no more consideration after I told them to stop sending me the money, as I did while he was.

Mr. LISHMAN. If I should tell you that in a sample month, during the period after payments had ceased to you from Chess, that only one Chess record was played, and played once during the month, would that refresh your recollection as to whether or not the cessation of payments had something to do with the frequency with which Chess Record labels would appear on the air, on the "Dick Clark Show" and "American Bandstand"?

Mr. MAMMARELLA. No. If that is true, and however that may—

Mr. LISHMAN. Well, I will show you the record on it.

Mr. MAMMARELLA. I take your word for it. I am sure you would not quote it if it were not so.

Mr. LISHMAN. I don't want to have any doubt about that, Mr. Mammarella. I will show you the record that we have from an im-

partial source, as to what records were played in the month of October 1959.

Mr. MAMMARELLA. There are, I believe, in two of these things, an error in the label on this. "Liza Jane," by Dale Hawkins, is either on Chess or Checker. I do not believe Dale Hawkins records for Coral.

Mr. MAHONEY. That is page 2.

Mr. LISHMAN. Well, first of all, did you find—this report was not prepared by us: this was prepared by BAR, which is one of the only companies in the United States, as I understand it, which monitors by tape the recordings. And if it is a mistake, it is a mistake on the part of that company which furnished us this record. But in the record supplied by that company, it appears that during this month of October 1959 no records under the label of Checker or Argo were aired on the "Dick Clark Show" or "American Bandstand," and it appears that one record under the Chess label was played twice.

Mr. MAMMARELLA. On this particular sheet, which is the month of October 1959, there are some few mistakes.

Mr. LISHMAN. Well, we would welcome corrections. As I say, this was furnished to us by an independent expert.

Mr. MAMMARELLA. The "Liza Jane" by Dale Hawkins which appears three or four times is either a Chess or a Checker record, not a Coral. Also, you have another artist here by a label that I do not think exists—it is the wrong label—you have a Carter label written down here. It should be Carlton.

Mr. LISHMAN. What page is that?

Mr. MAMMARELLA. I will check back. I passed over it a couple of times.

Mr. LISHMAN. Well, we can remember it. But do you find any Argo records on that?

Mr. MAMMARELLA. No; I cannot find any.

Mr. LISHMAN. And is it a fact that that list only shows that one Chess record was played twice during that month?

Mr. MAMMARELLA. Except the Dale Hawkins—you mean one Chess?

Mr. LISHMAN. Yes.

Mr. MAMMARELLA. "Devoted to Debbie." Well, there are two things. This does not mean that more than that was not scheduled to be aired.

Mr. LISHMAN. Well, I am not asking you what was scheduled. This is the monitoring, what went over the air.

Mr. MAMMARELLA. Might I have—

Mr. LISHMAN. We can come back to that.

Mr. MAMMARELLA. Might I request to look at something that is now in your possession, and not in mine? Might I request to look at the tax return that I turned over for 1958 and 1959?

Mr. LISHMAN. May I make this suggestion, Mr. Chairman. The list that has just been handed the witness is quite voluminous, so in the interest of saving time could we ask the witness to supply the subcommittee with a sworn statement concerning the number of times during the month of October 1959 records under the label of Chess, Checker, and Argo were aired on either "American Bandstand" or the "Dick Clark Show" TV programs. And you could supply that to us for the record later.

Mr. MAMMARELLA. Yes; from this. The only thing I wanted to say—the reason I asked for these, which you may have back now—is that you have taken a statement of one month, and I would like to give two answers, if I may—not two answers to the same thing.

Mr. LISHMAN. We want to be accurate here, you understand.

Mr. MAMMARELLA. I am trying to be as much as I can. This is a chart from a certain outfit for October of 1959 in which, to my knowledge, having seen this, and rushed through this thing, a Chess record appears—a Chess or Checker record appears four times—this “Liza Jane,” which is marked down on Coral—it is actually either a Chess or a Checker record. Of that I am not sure. But Dale Hawkins—he may be now, but I do not think at that time he was a Coral artist. The other thing is that I asked Chess to stop the checks in 1958, which they did. And there are no checks from Chess in 1959. And this is a 1959 list, a year after.

Mr. LISHMAN. Why did you ask them to stop making payment to you?

Mr. MAMMARELLA. Because prior to that I had given them advice and talked to them about problems and whatnot, and I had no longer been doing that with them. The other thing is that, although I shared the duty of programing records, once the show got on the air I did not share the duty of guaranteeing that every record that was programed would go on the air.

The other thing was at this particular time of year—and I am not sure—I would have to have all the volumes or programing at the station—they could just very well be this particular month the Chess Record Co. did not have anything particular that was doing very well, or that we thought was worthy of being played.

Mr. LISHMAN. Well, Mr. Mammarella, do you own now or have you ever owned any interest in the earnings of any radio or television or recording artist?

Mr. MAMMARELLA. Own any interest in any radio, television, or recording artist?

The CHAIRMAN. Before we go any further, I want to get this cleared for the record. You are going to furnish the information which was referred to a moment ago?

Mr. MAMMARELLA. Well, I have to find out first whether I can get the information. You mean for that month, as to whether that is true or not?

Mr. LISHMAN. Yes. If you cannot get it, we will get it somewhere else. If it is available to you, we would like to have it from you.

Mr. MAMMARELLA. The only way it would be available to me would be if the station would give me all their records.

Mr. LISHMAN. You have no records of your own?

Mr. MAMMARELLA. Of what is played on the air?

Mr. LISHMAN. Yes.

Mr. MAMMARELLA. I would have no reason to keep any record of what is played on the air, sir.

Mr. LISHMAN. I will repeat the question.

Do you now own or have you ever owned an interest in the earnings of any radio or television or recording artist?

Mr. MAMMARELLA. No, sir; I don't own any interest in any radio or television or recording artist, and I have never owned any interest in a radio or television or recording artist.

Mr. LISHMAN. In the earnings?

Mr. MAMMARELLA. No.

Mr. LISHMAN. Do you now have or have you ever acted as personal manager of any radio, television, or recording artist.

Mr. MAMMARELLA. No, sir; I have never been a personal manager of anyone.

Mr. LISHMAN. Are you acquainted with Mr. Al Wilde of SRO Artists, Inc.?

Mr. MAMMARELLA. Yes; I am.

Mr. LISHMAN. Are you aware that Mr. Wilde manages LaVerne Baker, Leslie Uggams, Duane Eddy, Dale Hawkins, and other—

Mr. MAMMARELLA. Yes; that is SRO management—yes, SRO—yes; I am aware that he is the manager.

Mr. LISHMAN. Have any of the artists managed by Wilde made personal appearances on "American Bandstand" or the "Dick Clark Show" while you were a producer or associate producer?

Mr. MAMMARELLA. Yes, sir.

Mr. LISHMAN. Do you recall the date of the appearances of those artists?

Mr. MAMMARELLA. No, sir.

Mr. LISHMAN. Did they appear frequently?

Mr. MAMMARELLA. Duane Eddy has appeared frequently, Leslie Uggams appeared once, I am sure, on the afternoon show. LaVerne Baker has appeared on the show. LaVerne has appeared on the afternoon show a couple or three times, at least, I would say.

Mr. LISHMAN. Have phonograph records on which any of these artists managed by Wilde appeared as recorded artists ever been played on the "American Bandstand" or the "Dick Clark Show"?

Mr. MAMMARELLA. Oh, yes; we have played Duane Eddy records and Leslie Uggams and LaVerne Baker; yes.

Mr. LISHMAN. Quite often?

Mr. MAMMARELLA. Duane Eddy records, I would say, pretty often; LaVerne Baker, probably up and down, because she runs hot and cold.

Mr. LISHMAN. Now, what part, if any, did you play in arranging for the playing of records by these artists or their personal appearances on the "American Bandstand" or the "Dick Clark Show"?

Mr. MAMMARELLA. Well, inasmuch as I shared in the programming and the accepting of artists for the show, yes, I am sure that I have many times programmed either Duane Eddy or LaVerne Baker.

Mr. LISHMAN. With whom would you make those arrangements?

Mr. MAMMARELLA. For the programming of the artist, for the appearance of the artists?

Mr. LISHMAN. Yes.

Mr. MAMMARELLA. For the appearance of the artists, it would be made sometimes through the distributor, sometimes Al Wilde would call and do it.

Mr. LISHMAN. How about the records?

Mr. MAMMARELLA. The playing of the records? Why, Al Wilde would call and ask, "Are you going to play the record?" "Do you think it has got it?" or something like that.

Mr. LISHMAN. Were you ever compensated in any way for the making of those arrangements?

Mr. MAMMARELLA. No, sir.

Mr. LISHMAN. Did you ever hear of any arrangement whereby Mr. Wilde influenced the recording artist to refrain from appearing on any radio or television shows in competition with "American Bandstand" or the "Dick Clark Show"?

Mr. MAMMARELLA. No; not to my knowledge.

Mr. LISHMAN. I am not asking you your knowledge. Did you ever hear that that has been done?

Mr. MAMMARELLA. I think there was a time when a half hour of nighttime show, local, in Philadelphia. But when I got back there was a rumor that there was an objection on the part of "American Bandstand" to artists appearing on this nighttime show.

Mr. LISHMAN. Did you ever have any discussions with Mr. Wilde about this matter?

Mr. MAMMARELLA. Yes; we talked about it.

Mr. LISHMAN. When, do you recall?

Mr. MAMMARELLA. Sometime prior—I don't know the date—some time prior to the artist Dale Hawkins taking over as co-MC of this particular show in Philadelphia.

Mr. LISHMAN. And what was the substance of your discussions with Mr. Wilde about the recording artists not appearing on other shows in competition with the "American Bandstand"?

Mr. MAMMARELLA. That wasn't the substance of the conversation, my conversation with Mr. Wilde was the fact that I had heard that he was going around saying that he was Dick Clark's manager, or he represented Dick Clark, and in the name of Dick Clark, getting artists to appear on the Tuesday night show in which his artist, Dale Hawkins, would appear.

Mr. LISHMAN. And was that all you said—that was the whole substance of your conversation with Mr. Wilde?

Mr. MAMMARELLA. As far as I can remember, that is about the sum and substance of it.

Mr. LISHMAN. Did you discuss this matter with Dick Clark?

Mr. MAMMARELLA. I am sure that Dick and I must have talked about it and wondered about the show and what the purpose was of a show that was similar to the Saturday night show being put on. We were under the impression that maybe it was a show that was not—that would maybe eventually get on the network.

Mr. LISHMAN. Have you or any of the companies in which you have an interest ever received any complaints from labor unions representing talent or artists on account of the practice of reimbursing artists or talent out of funds previously furnished by a record manufacturer, record distributor, record promoter, artist or personal manager of an artist?

Mr. MAMMARELLA. Yes; there was a complaint.

Mr. LISHMAN. How many such complaints did you receive personally?

Mr. MAMMARELLA. Well, they never complained on those matters directly to me.

Mr. LISHMAN. To whom did they make these complaints?

Mr. MAMMARELLA. To Mr. Clark.

Mr. LISHMAN. Do you know approximately how many such complaints were made?

Mr. MAMMARELLA. I can only recall—I think I can only recall twice.

Mr. LISHMAN. And who made these complaints on behalf of the labor union?

Mr. MAMMARELLA. I am trying to think of the man's name. I don't recall the man's name, I think the man is in New York at the AFTRA office.

Mr. LISHMAN. What did you say?

Mr. MAMMARELLA. I think the man—I think one of the men—

Mr. LISHMAN. There were two men, I believe, weren't there?

Mr. MAMMARELLA. Yes; I am trying to recall the name.

Mr. LISHMAN. They were both from a labor union in New York City?

Mr. MAMMARELLA. I think they both were from the AFTRA office in New York. I think it was from the National AFTRA office in New York.

Mr. LISHMAN. And were you present when they made these complaints to Dick Clark?

Mr. MAMMARELLA. Of that I am not sure.

Mr. LISHMAN. Well, how did you know that these complaints had been made, if you weren't present?

Mr. MAMMARELLA. Dick and I discussed that; I know.

Mr. LISHMAN. What was the nature of that discussion?

Mr. MAMMARELLA. One time, as I recall, somebody complained that they had not been paid for an appearance on the show, and the other time, if I remember correctly, it was in the nature of, someone said that they had been paid for the show for appearing on the show, but they had to give the money back, or something like that.

Mr. LISHMAN. Had that occurred on the American Bandstand or Dick Clark Show?

Mr. MAMMARELLA. No, not to my knowledge, that anyone who had been paid was ever required to give it back.

Mr. LISHMAN. Who paid the talent on American Bandstand?

Mr. MAMMARELLA. There was a system at the beginning and which terminated at a certain date, Mr. Clark would have this more accurately, would know about this more accurately than I would, because I did not have anything to do with the running of Click Corp. which handled the finances for American Bandstand.

Mr. LISHMAN. And who handled the payment of talent from the Dick Clark Show?

Mr. MAMMARELLA. Dick himself signed all checks.

Mr. LISHMAN. Was that on behalf of Click Corp., or in his own name?

Mr. MAMMARELLA. I believe Mr. Lishman, that that was Click Corp. that he paid all the artists out of.

Mr. LISHMAN. Who were the principals in Click Corp.?

Mr. MAMMARELLA. To the extent of my knowledge, Dick Clark.

Mr. LISHMAN. Did Mr. Bernie Lowe also own a one-third interest in Chip's distributing agency?

Mr. MAMMARELLA. As far as I know, I think so; yes.

Mr. LISHMAN. And is it not correct that Dick Clark formerly had a one-third interest in that company, too?

Mr. MAMMARELLA. Yes.

Mr. LISHMAN. I believe you testified that Bernie Lowe also had an interest in Cameo Records; is that correct?

Mr. MAMMARELLA. To my knowledge, he is the owner of Cameo Records.

Mr. LISHMAN. And is it a fact that Cameo Records are manufactured by Bernie Lowe Enterprises?

Mr. MAMMARELLA. Now, the delineation, I don't know whether Cameo Records as a matter of fact are under the name Cameo Records or the name Bernie Lowe Enterprises, I don't know that much about Bernie Lowe's business transactions. As far as I have always known, Cameo Records is owned by Bernie Lowe, and whether it is manufactured under the name Cameo Records—that is the label that it is under, or whether Cameo Records comes under Bernie Lowe Enterprises, that I don't know. Mr. Lowe would have to answer that.

Mr. LISHMAN. Do you know whether Mr. Lowe also owns one-half of the Mallard Pressing Co. and Dick Clark owns the other half of Mallard Pressing?

Mr. MAMMARELLA. As far as the breakdown of whether it was 50-50 or anything like that, I don't know the percentage. But I was aware that Mr. Lowe and Mr. Clark owned a portion of Mallard Pressing, the percentages I don't know.

Mr. LISHMAN. Did you ever have any business dealings with Mallard Pressing Co.?

Mr. MAMMARELLA. You mean personally?

Mr. LISHMAN. Yes.

Mr. MAMMARELLA. Only in respect to this, there were a couple of occasions when people called me to say that they had sent parts, or whatever it is, stampers, or whatever it is, that actually you put in a press to press a record, and that they had not received the records, and they complained to me, and I have on a couple of occasions called up a man named Eddie McAdams, who was working at Mallard Pressing, and told Eddie that somebody may have called and said he hasn't received his records yet, to alert him to the fact that somebody was waiting for records, or there was a delay in records.

Mr. LISHMAN. Did McAdams work for WFIL?

Mr. MAMMARELLA. No; Eddie McAdams worked for Mallard Pressing, for the pressing plant itself.

Mr. LISHMAN. Did you ever steer any business to Mallard Pressing Co.?

Mr. MAMMARELLA. Well, in the sense that I may have been—somebody may have come to me and asked whether they should press, should they press at Mallard or something like that.

Mr. LISHMAN. That is one phase of it.

The second phase of it I will go into later.

Mr. MAMMARELLA. I have no recollection of that. I have a recollection of calling or meeting a fellow named Hank Haslam, who was either general sales manager or salesman for Mallard Pressing, and reviewing with Hank, saying, "Have you made a pitch to So-and-So, and made a pitch to So-and-So," you know, for pressing in your plant.

Mr. LISHMAN. Mr. Mammarella, did you ever, on behalf of yourself or on behalf of any company in which you have an interest, tell a songwriter that in order to have his songs aired on either "American Bandstand" or the "Dick Clark Show," that they must give an order for record pressing to Mallard?

Mr. MAMMARELLA. No, sir.

Mr. LISHMAN. Who was popularly known as Dick Clark's manager?

Mr. MAMMARELLA. I think I know what you mean. Many people thought I was, but I never was Dick Clark's manager.

Mr. LISHMAN. Who was his manager?

Mr. MAMMARELLA. His manager was—the first manager, I believe, that he ever had was a man called Charles Reeves.

Mr. LISHMAN. Who was Mr. Josephson?

Mr. MAMMARELLA. Mr. Josephson is now Dick's manager. Mr. Reeves was his manager for a while, and then Mr. Josephson was—I don't remember what capacity he was originally called in, but Mr. Josephson handled other artists before or was counsel for other artists, and Mr. Josephson was with the organization—whether he was with Dick as counselor or not at the beginning I am not quite sure, but Mr. Reeves was the original, as far as I know, was the first manager that Dick ever had, and Mr. Josephson became his manager, and Mr. Reeves was given a different position.

Mr. LISHMAN. Were you ever present at any meetings, as a songwriter or composer or representative, which were attended by Mr. Josephson in which there was discussed the terms and conditions under which the songwriter's composition would be aired on the "Dick Clark" and "American Bandstand" shows?

Mr. MAMMARELLA. Mr. Lishman, I am not quite sure I understand that. The terms under which a songwriter's composition would be aired?

Mr. LISHMAN. Yes, would be televised, telecast, on these two programs.

Mr. MAMMARELLA. Do you mean what setting would be used?

Mr. LISHMAN. No; the terms and conditions that would have to be met, and I will specifically say, where such songwriter or his representative was told that he must give an order for a certain number of records to be pressed by Mallard?

Mr. MAMMARELLA. No, sir.

Mr. LISHMAN. You were never present at any such meeting?

Mr. MAMMARELLA. I have no recollection of any conversation like that; no, sir.

Mr. LISHMAN. You say you have no recollection. Were you ever present at any meeting of that kind?

Mr. MAMMARELLA. No; I would say "no," I can't recall any meeting like that that I was ever present at.

Mr. LISHMAN. Were you ever present at any meeting with Dick Clark and Mr. Josephson where whether or not a songwriter's song would be aired was discussed?

Mr. MAMMARELLA. I don't think so; no.

Mr. LISHMAN. Are you acquainted with a manager of talent or artist in New York by the name of Jack Beekman?

Mr. MAMMARELLA. The name is familiar—

Mr. LISHMAN. Do you recall receiving a telegram from Jack Beekman in June 1959 with reference to a recording by Ronnie Hall?

Mr. MAMMARELLA. What was the nature of the telegram?

Mr. LISHMAN. From Beekman?

Mr. MAMMARELLA. Yes, sir, the telegram to which you refer.

Mr. LISHMAN. Well, in that telegram—it was on or about June 5—Beekman told you he was aware that they had to make some noise with Ronnie Hall's record.

Mr. MAMMARELLA. Oh—as to the specific telegram—if this is the man I am thinking of—I think this man was a friend of one of the men at the station. I may be incorrect as to this man.

Mr. LISHMAN. Do you remember the name of the songs that were involved?

Mr. MAMMARELLA. No.

Mr. LISHMAN. If I said, "Why Can't It Happen To Me" was one song, would that refresh your memory?

Mr. MAMMARELLA. No; that doesn't ring a bell, sir.

Mr. LISHMAN. And if I said the other song, "Suddenly It Happened," would that ring a bell with you?

Mr. MAMMARELLA. No; that doesn't ring a bell.

Mr. LISHMAN. Would it refresh your recollection if I told you that they were written by E. Rona Gellen.

Mr. MAMMARELLA. No, sir.

Mr. LISHMAN. And that both sides of the record were cut by Ronnie Hall.

Mr. MAMMARELLA. No.

Mr. LISHMAN. But you admit you got this telegram?

Mr. MAMMARELLA. No, I don't admit that I got the telegram. I am trying to recall the name, and I am trying to recall the circumstances under which I remember the name, and I am not sure whether this was the person, and that Ronnie Hall—if this is the person, Jack Beekman or Beacon—

Mr. LISHMAN. Beekman.

Mr. MAMMARELLA. Jack Beekman—I think this is the case—Jack Beekman is a friend of a man at the station named Jack Steck, and I was called in one day, I think, to Jack Steck's office, if this is the case—and I can't positively say, but this is the kind of association I have as of this minute with the name Beekman.

Mr. LISHMAN. Well, do you remember that Miss Gellen delivered two copies of this record to you in Philadelphia?

Mr. MAMMARELLA. No, Mr. Lishman. Hundreds of records were delivered.

Mr. LISHMAN. You don't remember?

Mr. MAMMARELLA. No, I don't; hundreds of records were delivered.

Mr. LISHMAN. Do you remember meeting Miss Gellen in Philadelphia?

Mr. MAMMARELLA. The name is—

Mr. LISHMAN. Do you remember meeting Ronnie Hall in Philadelphia?

Mr. MAMMARELLA. If I can go back to this thing, if this is the connection, Jack Steck at the station asked me to come up to his office one day to meet this man, and the artist, the young boy—I think the young boy was in his early twenties—then I remember meeting Jack Beekman and the young boy, and I remember that there was a record; and if that is the instance, and if the telegram says he realizes that some noise has to be made, it would be because I told him that the record would have to show some signs of life before we could show an interest in it, before we could play it on the air.

Mr. LISHMAN. Is it a fact that at that meeting you stated that it would cost \$500 to get Ronnie Hall an appearance on one of Dick Clark's shows in addition to assignment of the published royalties to one of your music publishing companies?

Mr. MAMMARELLA. Absolutely not.

Mr. LISHMAN. Is it a fact that at that meeting you told Ronnie Hall and Mr. Beekman that you had let Dick Clark hear the record; Clark liked it, and had told you to bring Ronnie Hall in so he could look him over?

Mr. MAMMARELLA. I remember no such conversation.

Mr. LISHMAN. Well, do you have any records that would refresh your recollection on that?

Mr. MAMMARELLA. No, sir, I would have no way of knowing—of remembering that.

Mr. LISHMAN. Did you bring Ronnie Hall in to meet Dick Clark?

Mr. MAMMARELLA. I have no recollection of having done that—unless—as I say, if this is the case that I am talking about, where Mr. Steck was the one that called me into the office—if in coming down to the office I asked him to stop in the office and say hello to Dick, that is one thing—if this occurred. I have no recollection of this.

Mr. LISHMAN. Well, was either of Ronnie Hall's records ever played on any of the Dick Clark shows?

Mr. MAMMARELLA. I would say offhand no.

Mr. LISHMAN. Did he ever make a personal appearance on any of the shows?

Mr. MAMMARELLA. Mr. Lishman, the record of the show would show that; I do not recall.

Mr. LISHMAN. Now, when did you sever your connections with WFIL and the ABC network?

Mr. MAMMARELLA. The 13th of November.

Mr. LISHMAN. Did you have any conversations with any officers or representatives of WFIL or the ABC network at that time?

Mr. MAMMARELLA. I talked with no one at ABC at all.

Mr. LISHMAN. Whom did you talk with?

Mr. MAMMARELLA. I talked to Mr. Roger Clipp.

Mr. LISHMAN. And who is he?

Mr. MAMMARELLA. Mr. Roger Clipp is the vice president of Triangle Publication Stations, and is in charge of all their broadcasting.

Mr. LISHMAN. Wasn't anyone else present at this conversation beside you?

Mr. MAMMARELLA. Yes, George Koehler, who is the station manager of WFIL.

Mr. LISHMAN. What was said at that conference?

Mr. MAMMARELLA. I said that I had had words from Marvin Josephson, who was Dick's manager, that ABC was going to require everyone who had any outside interest to divest their interest or to resign; and I had decided that I would rather not divest my interests, that I would rather resign. And I resigned there.

Mr. LISHMAN. What was the date of that conversation?

Mr. MAMMARELLA. Friday, the 13th of November of last year.

Mr. LISHMAN. And what date did you resign?

Mr. MAMMARELLA. That day.

Mr. LISHMAN. At this point, Mr. Chairman, I would like to have in the record the statement made by American Broadcasting Co. on the date of November 18, 1959, which has to do with the divestment by Dick Clark and others who appeared on ABC programs of their outside interests.

The CHAIRMAN. Let it be received for the record.
(The statement referred to follows:)

[From American Broadcasting Radio and Television News, American Broadcasting Co., New York, N.Y., Nov. 18, 1959]

Following is a statement by the American Broadcasting Co.:

"Because of great public interest in certain areas of television programing, the American Broadcasting Co. is thoroughly investigating its own programs with particular emphasis on those which feature diskjockeys.

"While American Broadcasting Co. employs many diskjockeys on its various owned stations, it features only one such personality, Dick Clark, on its television network.

"With particular reference to the Dick Clark programs, which are the best known in their field, we have examined all evidence available to us concerning these programs and their production organizations, and have concluded that Dick Clark has neither solicited nor accepted any personal considerations, money or otherwise, to have any performer appear, or to play any records, on any of his programs.

"To avoid any potential conflict of interests and to insure impartiality and objectivity in the free selection of music on its programs, American Broadcasting Co. has instituted a policy whereby performers and others who select and play records will be required to divest themselves of all interests in the recording, music publishing, and allied fields.

"Dick Clark has volunteered to divest himself of such interests. We are satisfied that American Broadcasting Co. has been apprised of all pertinent details relating to the various Dick Clark programs and his related activities.

"We have concluded our investigation with renewed faith and confidence in Dick Clark's integrity."

Mr. LISHMAN. And at this time also, Mr. Chairman, in lieu of the original, I would like to have this mimeographed copy of a letter dated November 30, 1959, addressed to Charles P. Howze, attorney on our staff, from Rosen, Seton & Sarbin, attorneys for Dick Clark, together with an affidavit of Richard W. Clark, verified November 16, 1959.

The CHAIRMAN. For the record, the letter referred to addressed to Mr. Charles P. Howze, Jr., staff attorney, Special Subcommittee on Legislative Oversight—Mr. Howze is a member of the staff who has been one of the investigators in connection with the problem?

Mr. LISHMAN. Yes, sir.

The CHAIRMAN. Did Mr. Howze receive this letter?

Mr. LISHMAN. Mr. Howze is here, and he can answer.

Mr. HOWZE. Yes, sir; I did.

The CHAIRMAN. Received it for the subcommittee?

Mr. HOWZE. Yes, sir.

The CHAIRMAN. Let it be received.

Mr. MAHONEY. Will we be permitted to see this letter, the letter from Seton?

The CHAIRMAN. I want to ask Mr. Howze a further question.

Mr. Howze, is this information received from these parties at your request as a staff member of the subcommittee?

Mr. HOWZE. It is, Mr. Chairman. I asked during an interview with Mr. Clark at which the attorney, Mr. Seton was present—Mr.

Clark was uncertain about some of the answers, and Mr. Seton's letter contains fuller answers to the questions.

The CHAIRMAN. I just wanted to get it properly identified for the record. So let it be received.

(The letter and affidavit referred to follow:)

LAW OFFICES ROSEN, SETON & SARBIN,
New York, N.Y., November 30, 1959.

CHARLES P. HOWZE, Jr., Esq.,
Staff Attorney, Special Subcommittee on Legislative Oversight, House Office Building, Washington, D.C.

DEAR MR. HOWZE: Thank you for your letter of November 19. The delay in this reply has been caused by obtaining the information you requested, and the fact that I have been out of State on several days.

Before proceeding to set forth some of the details which you requested, I should like to refer to the enclosure.

During the period of approximately 6 hours that Mr. Kelly and you interviewed Dick Clark in my presence, Dick Clark, to the best of my knowledge, answered every question which was asked of him. I do not recall any question asked by Mr. Kelly or by you as to whether or not he had signed an affidavit which in any way pertained to the subject matter of your inquiry.

I have given considerable thought to this subject since our meeting, and have concluded to send you a copy of the affidavit, enclosed herewith, which Dick Clark submitted to American Broadcasting Co. on November 16.

I think that Mr. Kelly and you will recall that there was not one question which either of you posed to Dick Clark which I advised him not to answer, or which he refused to answer. The enclosure goes one step further, and contains some information which was not requested in any of the questions which you asked of Dick Clark.

I hope that you will find the submission of this affidavit entirely consistent with the way in which Dick Clark, with my assistance, answered all of the questions which you gave to him.

I now give you a summary of the factual corporate information which you requested, with respect to the ownership of interests by Dick Clark in the fields of music publishing and phonograph records. I have attempted to make this as accurate as possible, but I am unable personally to vouch for all of it, since some of the corporations were organized by other attorneys, and I have not seen the original papers, minute books, or stockbooks of these corporations. However, to the best of my knowledge the following facts are accurate:

Click Corp. was incorporated in Pennsylvania on March 8, 1957; 250 shares of the A stock are owned by Richard W. Clark; 3 shares of the A stock are owned by his wife, Barbara Clark; and 1 share of the B stock (nonvoting) is owned by Margaret W. Mallery (Barbara's mother).

See-Lark Enterprises, Inc., was incorporated in Pennsylvania on July 19, 1957; 250 shares of the A stock are owned by Richard W. Clark; 3 shares of the A stock are owned by his wife, Barbara Clark; and 1 share of the B stock (nonvoting) is owned by Margaret M. Mallery.

The January Music Corp. (formerly the January Corp.) was incorporated in Pennsylvania on July 22, 1958; one share of the A stock is owned by Richard W. Clark; one share of the A stock is owned by his wife, Barbara Clark; and one share of the B stock (nonvoting) is owned by Margaret W. Mallery.

Chips Distributing Corp. was incorporated in Pennsylvania on December 23, 1957. Richard W. Clark has a one-third ownership interest, as do each of Harry Chipetz and Bernard Lowe.

Swan Record Corp. was incorporated in Delaware in December 1957, and qualified to do business in Pennsylvania. Richard W. Clark has a 50 percent ownership interest, while each of Bernard Binnick and Anthony Mammarella has a 25 percent ownership interest.

Request Music, Inc., is a Pennsylvania corporation organized on August 26, 1959, as a wholly owned subsidiary of Swan Record Corp., to take over the music publishing activities formerly conducted by the Request Music Division of Swan Record Corp.

Bae Music, Inc., is a Pennsylvania corporation organized on August 26, 1959, as a wholly owned subsidiary of Swan Record Corp., to take over the music publishing activities formerly conducted by Bae Music Division of Swan Record Corp.

Globe Record Corp. was incorporated on March 10, 1958, as a New York corporation, and is wholly owned by Richard W. Clark.

Kincord Music Corp. is a New York corporation incorporated on March 10, 1958, and is a wholly owned subsidiary of Globe Record Corp.

Mallard Pressing Corp. is a Pennsylvania corporation incorporated on May 26, 1958; 50 percent of the ownership interest is in Richard W. Clark and the other 50 percent ownership interest is in Bernard Lowe.

Anita Pressing Corp. is a Pennsylvania corporation incorporated on August 12, 1959. The ownership is the same as that of Swan Record Corp. Anita Pressing Corp. presses records only for Swan Record Corp.

Lawn Record Corp. is a Pennsylvania corporation incorporated on October 28, 1959. Although the ownership is intended to be the same as Swan Record Corp., no stock has yet been issued. I enclose copy of my letter to American Broadcasting Co. dated November 19, 1959, which is self-explanatory.

Binlark Co. is a limited partnership. I enclose a proof of the notice of publication in the New York Law Journal, which I believe contains the facts you requested.

Jamie Record Co. is a Philadelphia corporation incorporated on May 21, 1956. The stockholders as follows: Harry Finfer, 25 percent; Harold B. Lipsius, 25 percent; Samuel D. Hodge, 25 percent; Richard W. Clark, 25 percent. I am informed that Jamie owns no interest in any subsidiaries, in whole or in part, and I am advised that Jamie has no interest in Guyden Records, which is owned by a separate corporation as to which Richard W. Clark has no interest.

Arch Music Co., Inc., is a New York corporation incorporated on December 4, 1948. The entire ownership is in Dick Clark, who acquired it on November 10, 1958, from R. & B. Promotions, Inc. R. & B. Promotions acted in the nature of a promoter, since it obtained all the shares from Anne Port and Leon R. Port pursuant to an agreement dated August 26, 1958. Leon Port is an attorney, and Anne Port is his mother. I believe that they obtained the ownership interest several years ago either from a client or from an estate of a client.

Drexel Television Productions, Inc. (formerly known as Drexel Productions, Inc.) is a New York corporation organized on July 21, 1958. Dick Clark is the sole stockholder.

Sea-Lark Music, Ltd., is a British corporation organized within the last 6 months. It is just starting to do business, and we are still completing the various organizational details. It is owned 50 percent by Dick Clark and the other 50 percent is owned by Belinda (London) Ltd., or its nominee.

Jolie Musik verlag G.m.b.H. is a German corporation which is still in the process of organization. It is owned 50 percent by Dick Clark and the other 50 percent by Alberbach (Hamburg) G.m.b.H. or its nominee.

If I have omitted giving you information as to any corporation as to which you inquired, it is an inadvertence on my part and I shall be pleased to supplement this on further word from you.

Sincerely yours,

CHARLES B. SETON.

LAW OFFICES, ROSEN, SETON & SARBIN,
New York, N.Y., November 19, 1959.

Re Dick Clark record manufacturing interests.

Mr. OLIVER TREYZ,
American Broadcasting Co.,
New York, N.Y.

DEAR MR. TREYZ: Some weeks ago I was requested by Mr. Binnick, the manager of Swan Record Corp., to organize a new Pennsylvania corporation to be known as Lawn Record Corp. I was informed that it was intended to use a new record label "Lawn," and it was desired to have a separate corporation to do this. The ownership of Lawn Record Corp. was to be exactly the same as that of Swan Record Corp.

The certificate of incorporation was filed in Pennsylvania on October 28, 1959, and my office has been in the process of preparing minutes, etc., in the normal course. No certificates of stock have been issued, no bank account has been opened, and there has been no business carried on by the new corporation.

I have just spoken to Dick Clark on the phone, and he informed me that although he remembers discussions with Mr. Binnick some time ago looking

toward a new corporation, he did not even know that it had been technically organized.

This is, of course, an interest which Dick Clark intends completely to divest, since the corporation was organized to be in the field of record manufacturing.

Sincerely yours,

CHARLES B. SETON.

COMMONWEALTH OF PENNSYLVANIA,
County of Philadelphia, ss:

Richard W. Clark, being duly sworn, deposes and says:

1. I am over 21 and reside in Wallingford, Pa. I am known principally as a performer on television programs which consist mostly of the performance of phonograph records containing music of the day. I am the only person who has had a daily program of such records performed on a national television network for more than 2 years, and I am therefore probably the best publicly known diskjockey. In itself, this gives to me an unusual degree of responsibility to the public.

2. The current interest by the Government and by the public in various parts of radio and television programing, particularly programs using popular music, naturally includes my activities. I have been requested by American Broadcasting Co., which is the only network over which my programs (other than local) are broadcast, to sign an affidavit which I understand to be a new policy which ABC is adopting and is requiring of all diskjockeys with whom they deal, most of whom perform on local stations owned by ABC. This affidavit is to state that I have never engaged in any practices which are generally described in the music business as "payola" which in most general terms may be described as an agreement to perform a record, or a song, or to have an artist perform on a radio or television program, in return for some kind of payment, whether in cash or otherwise, to the person making the agreement, or to some person or corporation designated by him, with the understanding that if such payment is not made, the record or song or vocalist will not be heard on the program.

I immediately informed ABC that I have never made any such agreement, verbal or written, and that I was entirely willing to swear under oath to this. I do this right now.

3. (a) I swear that I have never promised or agreed with any person, firm, or corporation, that in return for any money, property, or any other consideration to be paid to me, or to any relative or other person, firm, or corporation on my behalf that:

(1) I would employ or otherwise allow any vocalist, musician, other performer or group, to perform on any radio or television program, or

(2) that I would perform any musical composition or phonograph record on any radio or television program.

(b) Since I swear I never made any such promise or agreement, I likewise swear that neither I nor any other party mentioned above has ever received any money, property or any other consideration, based on any such promise or agreement.

4. (a) I swear that I have never solicited money, property, or other consideration to be paid to me, or to any relative or other person, firm, or corporation on my behalf, in connection with any personal appearance or performance of a record or song above referred to, and likewise I have never refused to schedule on any radio or television program any personal appearance or performance of a record or song above referred to, because I was refused payment of any money, property, or any consideration to be paid to me, or to any relative or other person, firm, or corporation on my behalf.

(b) I also swear that at no time was any relative of mine, or any person employed by me or by any firm or corporation in which I was or am interested, authorized by me to make any such promise or agreement.

5. Paragraphs 3 and 4 are subject to the following qualification: The daily "American Bandstand" program has been produced, since August of 1957, by Click Corp. which has always been and is owned entirely by me. During the early months of Click's production of the show (January 1958 to about October 1958), Click was faced with the problem of operating under certain budget limitations which severely limited the number of entertainers it could have on the show. Frequently Click was approached by artists' managers, record manufacturers or record distributors who sought to have Click utilize a certain entertainer. The record manufacturers and distributors were interested in promoting the

careers of entertainers who were performing on records manufactured or distributed by them since they had a direct interest in the sale of such records. However, in view of Click's budget limitations, it could not afford to hire such performers and to pay them the applicable union scale. Click pointed out that if the manager, distributor, or manufacturer was willing to reimburse Click for the amount Click was obliged to pay the performer as minimum union scale, that Click would utilize such performer, assuming that Click thought the performer should be on the program in the first place as a matter of good programming.

In the instances where such agreement was made and the performer appeared, Click would mail its check to the performer to the address given by the performer in the amount of the appropriate union scale, and the manager, distributor, or manufacturer would reimburse Click for the amount paid to the performer. Later, the checks, instead of being mailed by Click directly to the performers, were mailed by Click to AFTRA (American Federation of Television and Radio Artists), which was given the performer's address as shown on Click's files. Although most of the managers, distributors or manufacturers who undertake to reimburse Click did so, occasionally some defaulted in this obligation. In no instance were checks to performers held up pending reimbursement. Once the performers had appeared, the obligation to pay them was fixed and under union rules had to be paid within a fixed period. This payment was made wholly independent of the reimbursement received or to be received from the manager, distributor or manufacturer, and there was no obligation on the part of the performer to reimburse Click or myself. About October 1958, the combination of a change in policy as to the number of performers appearing on the show, some relaxation as to the amount of available budget and my own preference resulted in the elimination of the practice described in this paragraph. Since that time, such practice has never been utilized.

6. If at some time I am requested to testify under oath concerning all of my business activities, I shall testify willingly and answer all proper questions and tell only the truth. The above paragraphs 3 and 4 requested by ABC state clearly, as they requested, what I did not do.

In making such a statement, I feel that it is only proper for me at the same time and place to say what I did do in the fields of music publishing and records, which particularly in the climate of the times might be considered subject to misinterpretation or difference of opinion.

7. As is a custom with many performers, in addition to my television appearances and activities, I have been and am the owner, in whole or part, of various business operations, a number of which are directly connected to the record and music world. This includes ownership of record production companies, a share in companies conducting a record pressing operation, and a share in a record distributing company. I also own full or partial interests in miscellaneous music publishing companies.

Among the thousands of records that I have played on the "American Bandstand" program and Saturday night program are, of course, included records which have been pressed, produced or distributed by the companies in which I have an interest. Also, a number of the songs on the records have been published by companies in which I have an interest. Obviously, some of the copyrights published by my firms, or from which my firms profited, or records owned, distributed or pressed by companies in which I had an interest were given to my firms or companies because of the position I held, but again I swear that I made no agreement, or understanding, express or implied, verbal or in writing, to play any record or use any artist because of any direct or indirect benefit to me. Also, at one time I personally was assigned a portion of the publishing income from a song, and again I swear that I made no such agreement or understanding. Needless to say, the number of these records is only a small proportion of the overall numbers which which have been played by me or which have been given exposure by me on television.

8. The relationship between me and the music publishing and record companies in which I have interests, particularly at this time when questions of possible conflict of interest are being so minutely examined by the American public, may be subject to criticism. In view of the public interest questions which have been raised, I sat down and discussed this with officials of the American Broadcasting Co., and we have mutually agreed that it would be in the public interest for me, or for anyone in my position, to dispose of all my music publishing and record interests. Despite the fact that these activities are common practices by many performers, I have decided to dispose of all such interests. I am taking steps to do this without delay.

9. The interests which I plan to dispose of are as follows:

Music publishing: Arch Music Co., Inc. (100 percent ownership); The January Music Corp. (100 percent); Sea-Lark Enterprises, Inc. (100 percent) and its associated foreign corporations;

Record manufacturing: Globe Record Corp. (100 percent) releasing on the Hunt label, with its wholly-owned music publishing subsidiary KinCORD Music Corp.; Swan Record Corp. (50 percent) with its wholly-owned music publishing subsidiaries, BAE Music and Request Music; Jamie Records (25 percent);

Record pressing: Mallard Pressing Corp. (50 percent) and Anita Pressing (50 percent), a sister company to Swan Record Corp., which presses exclusively for Swan Record Corp.; and

Record distributing: Chips Distributing Corp. (33 $\frac{1}{3}$ percent).

10. At one time I had a 25 percent interests in a personal management and promotional firm called SRO Artists, Inc. I have no interest now in this company either direct or indirect, and received no payment or other consideration when I disposed of my interest. I also intend to withdraw from any future interest in any activity similar to the recent touring unit called "Dick Clark's Caravan of Stars," with which I did not appear and in which I had a financial interest.

11. In addition to the above activities, I want to comment on certain gifts received by me, my wife and child during these years. I believe that except for gifts from one person, there are no gifts which were received worthy of discussion here. The Christmas presents or birthday gifts received from fans, from business acquaintances and from friends are in general just that. I have also received such industry and office items as a color television set, record players, tape recorders, etc.

12. The one exception referred to above is a record manufacturer, Mr. Lou Bedell, of Era and Dore Records. During 1958, he gave me three presents of more than nominal value. The first was a fur stole, which he gave to my wife. I insisted on paying for it, and despite his reluctance, he finally took a check from me for \$300. I have since asked him and learned from him that he paid \$1,000 for this fur piece and that it was charged as a promotion expense to one of his record companies. At about the time of my birthday at the end of 1958, while we were out for a social evening with him and his wife, he presented to my wife a necklace and to me a ring. My wife and I were most reluctant to accept these. However, we kept them because it was embarrassing to do otherwise. Although my wife has worn the necklace, I have never worn the ring. I have since asked and been informed by Mr. Bedell that the ring and necklace together cost \$3,400 and were charged to one of his companies as a business promotion expense.

I emphasize that these were given to us as presents, and I swear that there was no agreement or understanding as to anything in the past or in the future with which they were connected.

13. As in the case of many established television performers, I also have earned money from various items that were sold by various manufacturers and distributors, which items bore my name or likeness, including "Dance with Dick Clark" record albums. I also have earned money from the manufacture or distribution of premiums for sponsors of my programs.

14. My wife is listed as the coauthor of a song called "Dickie Doo" which she named and I coauthored. She has received royalties for same. I once received \$100 from Capitol Records for writing for the cover of a record album.

15. I invested approximately \$10,000 in a limited partnership which partially financed a small-budget motion picture called Jamboree. The limited partnership was entitled not only to a share of the film profits, but also to a share of the two small publishing companies organized to publish some of the songs performed in the motion picture. The limited partnership has sold all of its rights in the picture and for some months has been attempting to negotiate the sale of its rights in the two publishing companies.

16. There were also a few records in the past few years in which I had an interest not through any of the companies listed above, all of which were unprofitable.

17. To the best of my knowledge and recollection there is no interest in the field of music publishing, record production, pressing or distribution in which I am directly or indirectly interested other than those listed above, except some publicly listed stocks.

18. Early yesterday morning one of my programing associates revealed to me certain information which he had concealed from me. I had no previous knowledge or suspicion of these facts. His resignation has been accepted.

Sworn to and subscribed before me this 16th day of November 1959.

_____, *Notary Public.*

Mr. LISHMAN. Mr. Mammarella, I would like you to turn to the last page of this mimeographed sheet which has just been introduced. And in this affidavit, sworn to by Mr. Clark, on November 16, 1959, paragraph numbered 18 in the affidavit states: "Early yesterday morning one of my programing associates revealed to me certain information which he had concealed from me. I have had no previous knowledge or suspicion of these facts. His resignation has been accepted."

Mr. MAMMARELLA. Yes, sir.

Mr. LISHMAN. Are you the programing associate that Mr. Clark refers to?

Mr. MAMMARELLA. Yes, sir, I am.

Mr. LISHMAN. Now, what was the certain information which you concealed from Dick Clark?

Mr. MAMMARELLA. On the Sunday after I resigned—I resigned on Friday the 13th—on the following Sunday, which was the 15th, I guess, I got a call from—it may have been Saturday—what is the date of this statement?

Mr. MAHONEY. Mr. Lishman, would it be reasonable to allow the witness to read the entire letter, in fairness to him, to know what that last paragraph refers to?

Mr. MAMMARELLA. I know what that refers to; that is all right.

A number of people were called to the New York office of Mark Josephson, who was Dick Clark's manager, and still is, I guess.

They wanted to know anything from anybody, they wanted to talk to various people.

I waited around, and knowing the facts as to the moneys that I had received from record companies, in the presence of Mr. Clark, Mr. Seton, and Mr. Josephson I said that I thought there were some things in my background that, not to throw Dick a curve, I should tell them. Mr. Seton and Mr. Josephson were lawyers. They said to me, "Well, if you have any confidential information that would be detrimental to you, we would inform you now that if you tell us in our presence we will use it if we have to."

Well, we were all friends in the room, and so I told them, after they had informed me that I should tell them anything that they could use in Dick's behalf, even though it might be against me. I said, "Well, we are all friends, and I think it only fair that Dick know that I received the moneys that you now have in the record."

And I explained to him the circumstances under which I received them, to the best of my ability.

And they thanked me for having told them, and that was the sum total of it.

And then I believe it was Mr. Seton who informed ABC of what I had told them at this meeting on Sunday night.

Mr. LISHMAN. And it is a fact that Dick Clark previously had never known of these payments made to you by Chess, Universal, and others?

Mr. MAMMARELLA. To the best of my knowledge, I don't think Dick had any knowledge of it until I told him.

Mr. LISHMAN. Did you ever receive any payments in connection with the airing of phonograph records or the appearance of talent on "American Bandstand" or the "Dick Clark Show" where you did not get the entire amount yourself?

Mr. MAMMARELLA. None of the moneys that I ever received from any of these sources was ever shared with anybody or given to anybody.

Mr. LISHMAN. Well, to narrow it down, with respect to the payments you testified you received yesterday, both in cash and by check, did you ever share any of that with anyone else?

Mr. MAMMARELLA. No, sir.

Mr. LISHMAN. Did you know a Henry Andrews, sometimes called—

Mr. MAMMARELLA. Hank Andrews. I am sorry, I do know him.

Mr. LISHMAN. What is his position?

Mr. MAMMARELLA. Hank Andrews is a person who for shows, television shows, will get prices for those shows.

Mr. LISHMAN. Was he ever connected with the "Dick Clark Show"?

Mr. MAMMARELLA. Well, I don't think he was in direct connection—I don't think he ever worked for the "Dick Clark Show." He got prices for the Saturday night show.

Mr. LISHMAN. Was he an employee of Drexel TV Productions?

Mr. MAMMARELLA. Not to my knowledge. I think he just was a freelance man who performed this service and got prices.

Mr. LISHMAN. Do you know Vera Hodes?

Mr. MAMMARELLA. Vera Hodes? Yes.

Mr. LISHMAN. What business is she engaged in?

Mr. MAMMARELLA. Vera used to handle what was then Dick's publishing firms.

Mr. LISHMAN. What firms were those, if you know?

Mr. MAMMARELLA. The names I am not sure of. I think one was Arch—I think there was one that was the name of a month, I am not sure whether it was February or March—I think it was the name of a month.

Mr. LISHMAN. Did you ever have any meetings with her in respect to phonograph records which would be played on either of the Dick Clark shows?

Mr. MAMMARELLA. Vera would either play for me a record that was a recording of a song that they owned, saying that they thought it was good and that it would be good for programing, or she would call me and say that there is a record going to come out such and such a time, or by such and such an artist—Vera and I would talk about records.

Mr. LISHMAN. Did you ever play any of the records that she recommended, or arrange to have them played?

Mr. MAMMARELLA. Yes, we programed some of the records that she would recommend.

Mr. LISHMAN. Did you ever arrange to have as talent any artist that she had recommended to you?

Mr. MAMMARELLA. I can't think of a specific instance, but I would say yes, that I probably did.

Mr. LISHMAN. How many bank accounts do you have, Mr. Mammarella?

Mr. MAMMARELLA. Savings bank accounts? Two, sir.

Mr. LISHMAN. And how many other bank accounts?

Mr. MAMMARELLA. I have one checking account.

Mr. LISHMAN. Would you give us the names of the banks where these accounts are held?

Mr. MAMMARELLA. One banking account is the Home Unit—I think it is a savings and loan—

Mr. LISHMAN. Is that located here—

Mr. MAMMARELLA. No, in Philadelphia. And the other one—a few months ago I opened up one in Western Savings Fund Society in Philadelphia.

Mr. LISHMAN. Where are your other accounts?

Mr. MAMMARELLA. And then the checking account is in the Merchantville National Bank in Merchantville, N.J.

Mr. LISHMAN. And those are the only accounts you have either under your own name or any other name?

Mr. MAMMARELLA. They are all in my wife's name and my own.

Mr. LISHMAN. And you have no other accounts?

Mr. MAMMARELLA. I have no other bank account or checking account.

Mr. LISHMAN. Do you have any accounts in the names of corporations of which you are the owner?

Mr. MAMMARELLA. Well, there would be a Swann account, and a Bae account, and a Request account. You mean that I am the sole owner of?

Mr. LISHMAN. Yes.

Mr. MAMMARELLA. No, those are the only three accounts that I have.

The CHAIRMAN. Mr. Mammarella. I did not get in on all of the questions regarding the complaint made by the American Federation of Television and Radio Artists.

Mr. MAMMARELLA. Yes, sir.

The CHAIRMAN. Did I understand you to say that you were present when two members of the organization complained to Mr. Clark?

Mr. MAMMARELLA. No, Mr. Harris. If I may, I believe I said—and I am not sure of this—that I recalled two instances—and I was not sure whether I was present at the time of the complaint—but that I did know of the two complaints, and that I had discussed the complaints with Dick Clark. I think that is what I originally said.

The CHAIRMAN. Yes. Well, I didn't get all of your answer.

Mr. MAMMARELLA. That I had no complaints, but whether or not I was actually physically present at the time of the complaint of this I am not sure.

The CHAIRMAN. But you did know of complaints?

Mr. MAMMARELLA. I did know of complaints.

The CHAIRMAN. Did you know of the nature of the complaints?

Mr. MAMMARELLA. Yes. I think I said that I thought the nature of one complaint was that an artist had complained that he had not received payment for appearing on the show, and that another artist had complained that he had—that he was asked to give the money back after having received it.

The CHAIRMAN. That who asked to give the money back?

Mr. MAMMARELLA. That the artist was asked to give the money back from someone after he had received the money. In other words, he appeared on the afternoon show and was paid.

The CHAIRMAN. Do you know what action was taken following that?

Mr. MAMMARELLA. Yes. I think in that case what Dick did was to go through his canceled checks of Click Corp., and in the particular instance that was cited, he found the canceled check of the artist that was endorsed by the artist and deposited in the artist's bank.

The CHAIRMAN. Why did he send the money back?

Mr. MAMMARELLA. Well, according to what the union, I believe, determined, and according to the fact that Dick Clark found the man's canceled check, and the fact that it was deposited in the artist's own bank account, they were, I think, satisfied that the artist actually had received the check and deposited it in his own account, and had done nothing else but kept it himself.

The CHAIRMAN. You mean as a return?

Mr. MAMMARELLA. Maybe I am not clear. The artist received a check for having appeared on the show—this was what was found to be the case after the complaint was registered—the artist who appeared on the show received a check. That artist then deposited the check in his own bank account, endorsed by himself, and then as the check cleared, Dick Clark got back a canceled check from the artist who had complained that he gave the money back, but had actually cashed his own check—not cashed it, but had deposited it in his account, and he had not turned the money over to anybody.

The CHAIRMAN. What was it that Mr. Clark returned to him, then?

Mr. MAMMARELLA. Mr. Clark just paid him one time, just paid him—am I saying this wrong?

Mr. MAHONEY. It is to me.

Mr. MAMMARELLA. Mr. Harris, forgive me if I can't get this across—

The CHAIRMAN. Well, that is all right.

Mr. MAMMARELLA. An artist appeared on the show, and received payment for having appeared on the show, he took the check—the artist, now, took his own check that he received in payment, endorsed his check and deposited it in his own, the artist's bank account. But before we found out that the artist had actually done this, we had received a complaint in the union, this artist said that he had to turn the check back to somebody, when the truth of the matter turned out to be that the artist had actually deposited the check in his own account. And all Dick got back when it cleared the bank was the canceled check. In other words, the artist didn't give the money back to anybody, the artist kept the money in his own account.

Mr. LISIMAN. Mr. Mammarella, I would like to ask a few questions about this, because we have definite allegations about this. Maybe you are not the witness to go into it with, but do you have any knowledge whatsoever of a situation where, let us say, the union fee for the artist's appearance was \$155; is that correct?

Mr. MAMMARELLA. Yes, sir; for a half hour of programing.

Mr. LISIMAN. Now, is it correct that the artist would pay that \$155 to one of the Dick Clark companies?

Mr. MAMMARELLA. Let me—

Mr. LISHMAN. Let's go through this a step at a time, because we have several of these items that we have allegations about. Is that correct, that it would be paid to one of the Dick Clark companies?

Mr. MAMMARELLA. After we are through this—Dick can answer that much better, but I think I can give you a chronology on the things that might help to explain it.

Mr. LISHMAN. It is very clear, the complaints we have received are very sharp; they are very clear; there is no mystery about them.

Mr. MAMMARELLA. There was a time on the show when Dick did not have enough of a budget for the show—

Mr. LISHMAN. Now you are getting into explanations and apologies for why it was done, I want to find out what was done, and then we can take up the apologies later.

Mr. MAMMARELLA. As far as the artist's paying the money, I am not quite sure whether it was the artist, but I know that that was the procedure, that someone—

Mr. LISHMAN. The artist or his manager?

Mr. MAMMARELLA. Someone.

Mr. LISHMAN. Paid \$155 in effect to Dick Clark—you can say through his company.

Mr. MAMMARELLA. That is right.

Mr. LISHMAN. Subsequently the artist in some cases was reimbursed in the amount of approximately \$123, which represented deductions for workmen's compensation, or whatever it is that goes into a payroll deduction.

Mr. MAMMARELLA. That is right.

Mr. LISHMAN. So that when it all wound up, you had a situation where an artist, contrary to union rules, was appearing as free performer on the "Dick Clark Show" or "Bandstand"; is that correct?

Mr. MAMMARELLA. Yes.

Mr. LISHMAN. That is the kind of complaints we have had.

Mr. MAMMARELLA. That was the situation.

Mr. LISHMAN. As I said, I don't know whether you are the proper witness to go into this with.

Mr. MAMMARELLA. Well, as I say, I didn't handle that end of it. I knew about the procedure, and there was a chronology in time when that happened, that occurred when the show was local, and when there was not enough money in the budget, and whatnot. And in truth, whatever that situation might be, the truth of the matter was that the show was an important show, and an artist felt that to be on it was, you know, a good boost for him. And when Dick would say, "We can't put another artist on, because we can't afford it," they would beg and plead to get on the show, and what not, and I think that is why this arrangement came about, so that it wouldn't cost them any money, so that the artist would be paid from Dick's funds, and somebody would reimburse him, so that the artist would get on, otherwise the artist would not get on.

In a point in time, of which I do not remember—Dick's records in Click Corp. would probably have the date—in talking with the union—and I think we originally talked to Bob Goldy, who was the local AFTRA representative of the situation, and decided—I think when we went into the network the show was in quarter hours, and

we were paying on the basis of quarter hours, because the show was broken down commercially in quarter-hour segments—in the beginning this satisfied the union, and I forget what it was for a quarter hour, \$79, or some such figure, but something less than \$155, at which time it was an out-and-out payment for the artist; there was no reimbursement.

And also, when we knew the nature of the complaints that you have mentioned, where people were talking about the so-called kickback, and what not, we then sat down and talked about it on—to devise a system, how could we assure that this would not happen, that the artist would not ever feel that he had to give that money back to somebody. And so we used to send—and I think up until I left, and it probably still continues, we send all the checks to the AFTRA offices itself, and this has been going on for quite some time now, with an accompanying letter from Dick, stating that this money is for their performance on "American Bandstand," and it is theirs to do with as they please, to deposit in their own account, and so forth.

The other situation did exist.

The CHAIRMAN. How long did that arrangement go on?

Mr. MAMMARELLA. The other situation, sir, the original situation of reimbursing so that it was a nullified thing?

The CHAIRMAN. That is right.

Mr. MAMMARELLA. Mr. Harris, I guess Dick's records would show how long. I wouldn't really know—I would take a qualified guess and say 9 months to a year, or something like that; I don't really know.

The CHAIRMAN. Do you have any estimate of how many such artists were involved in such kickbacks?

Mr. MAMMARELLA. Let's put it this way. We were on 52 weeks a year, and we normally would use an artist a day, and sometimes two, that was the general case. There may have been fluctuations one way—maybe a couple of days we might use two—but it was generally one a day, and sometimes two, for the period of a year, and if that situation—

The CHAIRMAN. Five days a week?

Mr. MAMMARELLA. Five days a week, sir—and if that situation did last a year, then it would be multiplied by 260 people, something like that, maybe 280, 5 times a day, something like that.

Mr. LISMAN. Now, Mr. Mammarella, there was some testimony yesterday which, on reading it today, I find wasn't very clear. I would like to go back to the Universal distributing situation.

Mr. MAMMARELLA. Yes, sir.

Mr. LISMAN. Now, what is a "demo" record? This is for getting it on the record.

Mr. MAMMARELLA. A "demo" record—if I can use myself as an example, I have an idea for a song—so I am not a singer, but even if I were a singer, I go down to a studio and I sit down and somebody plays the piano and sings the song, it is a demonstration record, in other words, you are just demonstrating to another the song itself or the artist itself, or a style of music, it is not a finished record that you would consider a finished product ready to release, it is a demonstration record to demonstrate either the song, the artist, or the style; that is a "demo."

Mr. LISHMAN. Now, would Universal have "demo" records that they would bring to demonstrate to you and discuss with you as to whether it should have a Swan label?

Mr. MAMMARELLA. Have a Swan label?

Mr. LISHMAN. Yes.

Mr. MAMMARELLA. No; I don't think they had discussed it for a Swan label, because they had their own records, Jamie records.

Mr. LISHMAN. And does Dick Clark have an interest in Jamie records?

Mr. MAMMARELLA. In Jamie records—it was my understanding that he had an interest in Jamie records, although I never had a—

Mr. LISHMAN. And what is Guyden?

Mr. MAMMARELLA. Guyden is also another label by Universal distributors, as I understand it.

Mr. LISHMAN. Did Jamie and Guyden sometimes put out a record on a joint label?

Mr. MAMMARELLA. That I don't know; I don't recall that ever having been done.

Mr. LISHMAN. We have seen records with that hyphenated name on them.

Mr. MAMMARELLA. That might be possible, I am not saying it couldn't exist.

Mr. LISHMAN. I am asking you if you know. You don't know?

Mr. MAMMARELLA. No; I don't know.

Mr. LISHMAN. What is Gone Record?

Mr. MAMMARELLA. Yes; Gone Record is a New York record company owned by George Goldner which is distributed by Universal.

Mr. LISHMAN. When you had your discussions with people at Universal about the deal on records, would you give them advice as to how the "demo" could be made a commercial success?

Mr. MAMMARELLA. Yes; I would sit down with them and say, "I don't think that that part is right," or something like that, and if they did this to the record, or did it in a certain style, maybe it could be a commercial record.

Nobody can predict that a record will be a hit with any kind of certainty, you may think that you can.

Mr. LISHMAN. Would you make a suggestion to the effect that if the changes that you suggested were made that there would be a good possibility that it would be aired either on the American Bandstand or Dick Clark show?

Mr. MAMMARELLA. No, Mr. Lishman, I would never say, "If you turn out a good record we will play it on the show," because you can never tell even with your ideas about a record until it actually was finished, you might go into a recording session with what you think is a great idea, and it just doesn't come off as a good song.

Mr. LISHMAN. When you were deciding what record you would have—and you said that you and Dick Clark were responsible for programing—what basis did you use in choosing the records for the program?

Mr. MAMMARELLA. We sat and listened to the record, and as I said, there were many bases on which you would choose a record for the program. There are, I guess, oh, four different ways.

You might check the national charts, Billboard, Cash Box, news—

Mr. LISHMAN. Let's start first with a new record, a fresh record.

Mr. MAMMARELLA. Well, a brand new record, you would have, oh, maybe in the course of a week 70 or 80 records, new records, come in, and you would sit down and listen to as many as you possibly could, in the course of a week you might not be able to listen to them all. And you would listen to a record, and depending upon the kind of a recording it was, how it would be done, you would try to judge from it which of these new records had something different to offer, something in the way of a different sound, or a different beat, or a particularly strong, what you considered strong lyric, or a particularly novel song that was different enough to catch—that you felt might capture the imagination of the audience and appeal to the audience.

Mr. LISHMAN. Didn't you consider the possibilities of the commercial exploitation of the record when you were making this choice?

Mr. MAMMARELLA. You are saying making a choice of new records? Well, I guess the appeal of the record, you always kind of put side by side—if it appealed to your audience, then a gage of how well it appealed would be, I guess, how well it sold. I don't think you can disassociate the two in that effect, if you think a record is real good, you think it because you think potentially this would have a wide appeal to your audience, and if a record of a song has a wide appeal to an audience, then it will have a wide commercial appeal, because then people, if they like it well enough, would buy it.

Mr. LISHMAN. Did you evaluate the record on the basis of its musical quality primarily, or did you evaluate it on the basis of how big a seller it would be once it was aired.

Mr. MAMMARELLA. No; I think it was evaluated more, Mr. Lishman, this way. You had a particular audience that your show was geared for, you were trying to evaluate records that your audience—that you felt your audience would enjoy, that your audience would like. We had a teenage audience, the show was geared for teenagers, and we basically tried to get things that generally would appeal to them, a new type of sound—the younger element always goes for the things that are new, the new sounds.

The older people get, the less they go for new sounds, and they would rather remain with sounds that they are familiar with.

Mr. LISHMAN. Have you ever heard anything about killing a record or suppressing a record?

Mr. MAMMARELLA. Yes, in this respect, you hear them talk about it, that a record has been out for a certain length of time and has got a certain amount of air play, and that it didn't show enough reactions, so people stopped playing it; and maybe the manufacturer said they would kill the record; if they had only stayed with it 3 more weeks, it might have been a hit. But I don't think it is possible—I don't think it is really possible to suppress a record.

Mr. LISHMAN. Can a record be killed by refusing to broadcast it?

Mr. MAMMARELLA. Well, you would have to get to every station—you would have to get to every station and every broadcaster to do this. You get information about records—the way records get started, most of the records that "American Bandstand" plays. As a matter of fact, most of the records that a lot of stations play, they play not

because they personally found or discovered the records, but because they, through the national magazines, have discovered that the record is appearing on all charts—Billboard, Cash Box, and maybe Music Reports, or some other chart—and the station might have had that record lying around for a few weeks and not thought much of it. But here it is showing up, so they might take it out and reconsider it. A record can start its initial reaction in Cleveland or Minnesota, or Allentown, or something like that.

Mr. LISHMAN. Now, Mr. Mammarella, can a record also be killed by having its distribution killed?

Mr. MAMMARELLA. By having its distribution killed?

Mr. LISHMAN. Yes.

Mr. MAMMARELLA. Well, I don't know of anything like that, but I would say that—

Mr. LISHMAN. I am speaking now of reprisals against a competitor.

I will give you a case. Suppose Swan didn't want a different kind of a label to receive wide distribution in Philadelphia, couldn't an effective stop be put in its distribution by controls observed over retail outlets and distributors in the Philadelphia area?

Mr. MAMMARELLA. No, sir.

Mr. LISHMAN. Hasn't that been done?

Mr. MAMMARELLA. Not to my knowledge.

Mr. LISHMAN. Have you ever heard of it?

Mr. MAMMARELLA. No, sir, I have never heard of a record that was suppressed that way or a label that was suppressed that way. I don't think it is possible.

Mr. LISHMAN. Do you know of any situation where a master record has been bought and then just buried?

Mr. MAMMARELLA. Well, you frequently hear of that, A company might buy a master record that they feel is something, or for whatever reason they may have in mind, and then never release it, but only if the contract that they make with the person who owns the master allows them to do that. But usually the contract you get, a record has to be released.

Mr. LISHMAN. Do you know Sam Clark?

Mr. MAMMARELLA. Yes, Mr. Clark at ABC Paramount Records.

Mr. LISHMAN. Have you ever had discussions with him on the airing of records on American Bandstand or the Dick Clark Show?

Mr. MAMMARELLA. Mr. Clark has called me personally a couple of times—he is a closer friend of Dick Clark. I have only met Sam Clark one or two times. He has called me and told me of certain records that he has that look good, and things like that.

Mr. LISHMAN. And did you arrange to have them programed?

Mr. MAMMARELLA. I can't remember a specific instance, but there might be a time, yes; and there might be a time, no; I don't know.

Mr. LISHMAN. Are you familiar with the credit rate return that was permitted by Swan records from outlets?

Mr. MAMMARELLA. I have in the past few weeks, since I left the station, become active in seeing about that part of the company. I could not give you a very good picture of it. I have started to get into that, to learn that part of it to find out what is going on.

Mr. LISHMAN. Doesn't that rate vary with respect to the labels?

Mr. MAMMARELLA. You mean from different companies?

Mr. LISHMAN. Yes.

Mr. MAMMARELLA. I am almost certain it does.

Mr. LISHMAN. Would it range from as low as 5 percent to as high as 100 percent?

Mr. MAMMARELLA. Yesterday's rating?

Mr. LISHMAN. Return.

Mr. MAMMARELLA. No. Let me put it this way: Most companies would have a—as I understand it now, most companies would have a set policy. I have heard of some companies having a 5-percent and some companies having a 10-percent return privilege, which means that the records that they don't sell they turn back—which aren't sold and are dead merchandise. Most distributors that you walk into you will find have dead merchandise. Now, most companies have a policy on how many returns there should be. But some companies from time to time will relieve them of their dead merchandise. I don't know whether they will ever do it 100 percent.

Mr. LISHMAN. I just want to find out, Is it or isn't it a fact that Swan records has allowed a comparatively low rate of return on its records, as compared with other companies?

Mr. MAMMARELLA. That I wouldn't actually know. I know what the rate of return is—the actual rate of return is on ours—but I would not know as compared to other companies how many companies, or what companies, have a similar rate of return, a higher or lower rate of return, I honestly do not know that much about it.

Mr. LISHMAN. Isn't it a fact that records which compete with Swan records in the Philadelphia area are faced with the situation that they have to give a much higher rate of return because they don't have the opportunity of having their records aired over either American Bandstand or the Dick Clark Show?

Mr. MAMMARELLA. I don't think that would be true, Mr. Lishman.

Mr. LISHMAN. You don't think it would be true; but have you ever heard of this complaint?

Mr. MAMMARELLA. No, I have never heard of that complaint.

Mr. LISHMAN. Well, we have that complaint.

Mr. MAMMARELLA. As I say, I don't think that that would be true, because in talking about records, now, one record is not in competition with another record. In other words, when Elvis Presley puts a record out, and say an artist on Swan puts a record out, and there are two different artists and two different songs. They are not in competition with each other. I mean, you don't sell one over the other because of a better distributor setup, or anything like that; it is just that one appeals and one doesn't.

Mr. LISHMAN. Can't distributors for their own self-interest keep under the table all the records that they know they can get 100 percent return credit on? If they know that on the Swan records they will only get a 7½ percent return, isn't it human nature—that is, they will push the Swan records and not the ones they know that they can return 100 percent?

Mr. MAMMARELLA. There again, from whatever knowledge I have of the business, that wouldn't be true. A dealer who is in a store to sell records can't push a Swan record over an RCA record or a Columbia record, because it doesn't make any difference, either people come in to buy a specific record—when people go in to buy records—

and this is mainly true of young people—when they go in to buy a record, they go in to buy a specific record, and you could yell—and the dealer would push only ones on a record, and if the kids don't want it, or the people that are buying single records don't want it—you don't go in and buy a record just because somebody says, buy this one, that is not the reason you buy a record. You buy records specifically because you go into a store to specifically buy a certain record.

Now, older people buy records on a different basis. Older people don't, as I understand it, buy very many single records, they buy albums. And a lot of times older people will just go into a record store when they want music, and they browse around. And I think there is more of an opportunity there for a dealer to suggest.

Mr. LISHMAN. I will put a case to you, Mr. MAMMARELLA. Supposing a songwriter or composer came to Swan and attempted to have the Swan label, and was turned down because they couldn't meet Swan terms. Then he went out and got the label of another company, let's say, in New York, and made arrangements to have that record distributed in Philadelphia—and this is a single popular record—the shipments of that record are made from New York to Philadelphia for distribution. Then when persons go into the outlet to purchase this record, they are told they don't have it, the stores say they do not have it, it hasn't been received, when proof exists that the records have been shipped out from New York, and as much as \$5 and \$10 have been offered to retail outlets in Philadelphia to purchase this second record which Swan had turned down because the people would not meet Swan's demands.

Now, have you ever heard of that situation?

Mr. MAMMARELLA. No, I have not. I don't see how that could be possible.

Mr. LISHMAN. And you have never heard of that complaint being made?

Mr. MAMMARELLA. No, I have never heard of that complaint, I have heard of a lot of things, but I have never heard of a complaint of a record being suppressed by a record dealer that refused to sell a record that he had on hand. A record dealer, I don't think, does that much business or has that great a margin of profit, that if he has a record in the store—I don't think a record dealer gives a good darn who is the manufacturer of that record, either he has got something that he can sell or something that he can't sell. That is the first time I ever heard that complaint.

Mr. LISHMAN. Are you acquainted with the artists Fabian and Avalon?

Mr. MAMMARELLA. Yes, Fabian and Frankie Avalon, they are two Philadelphia boys.

Mr. LISHMAN. Are you familiar with the fact that their recordings have been aired quite frequently on "American Bandstand" and "Dick Clark Show"?

Mr. MAMMARELLA. Oh, yes.

Mr. LISHMAN. Did you arrange for the programing of these records?

Mr. MAMMARELLA. Well, when you say did I arrange for them, I have programed both of these young men's records, Bob Marcucci, and Peter De Angelis.

Mr. LISHMAN. What are the labels of their records?

Mr. MAMMARELLA. They are Chancellor records.

Mr. LISHMAN. And who are the principals of Chancellor records, do you know?

Mr. MAMMARELLA. As far as I know, Bob Marcucci and Peter De Angelis, there may be others, I don't know.

The CHAIRMAN. Who discovered these fellows, do you know?

Mr. MAMMARELLA. Bob Marcucci, as I understand it, who is their manager—with Frankie Avalon they tried a long time, I think they worked with him a couple of years before he had a hit. And with Fabian, I don't think it took them as long for him to get a hit. But I know that Frankie Avalon had been recording for a couple of years, and the reason they had so much faith in Frankie Avalon is that even before this young man had a hit, or was well-known, you know, had any kind of national name, at every dance that he would go to and appear, at record hops and things like that at which artists frequently go around and appear in, at every dance that he would appear at the kids would react in a very excitable manner displaying fondness for this kid.

His first hit in this case was a thing called "Dede-Dinah," which was the first time he had ever had a hit record. He had had other records that were not. But after "Dede-Dinah" his success kind of grew, until he is a pretty constant record seller, and has had some very large hits after that.

Fabian is a young man who is bigger and more virile looking, he is kind of an opposite type than Frankie Avalon, who is small and a shy looking type young man. Fabian is a bigger, and as I say, more virile type, and sings—although many people claim that he has no talent—but sings a different type of song, and has been very successful, to the point where they both have made pictures, and that sort of thing, and appearances on many of the large television shows around the country, because they have become good attractions, regardless of what we might think of their particular talent.

Mr. LISHMAN. Mr. Mammarella, is it a fact that when artists appear on either "American Bandstand" or the "Dick Clark Show" that they engaged in what is known as lip synchronization, in other words, they don't really sing the songs which they appear to be singing?

Mr. MAMMARELLA. Yes.

Mr. LISHMAN. In other words, is it a fact that if Mr. Avalon appeared on the "Dick Clark Show" or "American Bandstand," he would go through the lip motions of singing, whereas in reality the sound would be coming from an electronic device?

Mr. MAMMARELLA. The audience at home would hear his record, he would mouth the words—he may sing out loud in the studio, but nobody back home would hear him, it would be the record they would hear.

Mr. LISHMAN. And would that be true of other talent that appeared on the show as well?

Mr. MAMMARELLA. That would be true of all talent, with the exception of instrumental groups, which might do both, play live and—

Mr. LISHMAN. Is any announcement made to the viewing public that they are really listening to a canned reproduction of the artist who appears to be singing in front of them?

Mr. MAMMARELLA. Mr. Lishman, a direct answer to that is no, no formal announcement is made. However, in further answer to it, frequently—a week doesn't go by that an artist on that lip syncing is not referred to. And I think we have fairly well established through the years on the show that artists do lip sync, and actually you are not hearing the artist sing live. I don't think there is any deception on that.

And also there are 150 to 200 people in the audience who are well aware of the fact that this is not a live performance, that this is a lip sync.

I think it is fairly well established in most of the shows of this type around the country that the people are not singing live.

Mr. LISIMAN. It is also fairly well established that the viewing audience at home do not know about this.

Mr. MAMMARELLA. Well, only insofar as that in the interview with the guests very frequently they talk about the fact that he has done a lip sync, that he is doing a lip sync.

Mr. LISIMAN. But no announcement is made by the station?

Mr. MAMMARELLA. No; no formal announcement is made to that effect.

Mr. LISIMAN. Now, Mr. Mammarella, as I understand it, yesterday you gave assurances to the chairman of the subcommittee that you would cooperate with the staff, and that after we have had the opportunity of studying your testimony, that you will furnish the staff members further information.

Mr. MAMMARELLA. I will be available.

Mr. LISIMAN. So that it won't be necessary to ask you to return to be heard in this manner before the subcommittee in an executive session, except at the direction of the chairman, at or about the time we will have public hearings.

Mr. MAMMARELLA. That is true; yes.

Mr. LISIMAN. I have nothing further, Mr. Chairman.

Mr. MAHONEY. Mr. Lishman, would you clear up that affidavit that we talked about earlier of October 1959? I think you asked Mr. Mammarella to submit an affidavit concerning the number of times that Chess records were made, and yet—

Mr. LISIMAN. I am going to say this, Mr. Mahoney—and I am glad you called that to our attention—in view of the fact that Mr. Mammarella does not now have available to him, as he pointed out, the records upon which he could make such an affidavit, I think the burden will fall on the subcommittee and its staff to ascertain that information from other sources.

The CHAIRMAN. It is for that reason I made the inquiry.

Mr. MAMMARELLA. I big your pardon, sir?

The CHAIRMAN. It was for that reason I made the inquiry, since the matter was not clear at that time. So you will find it, I think, in the record.

Mr. MAMMARELLA. I would check the label on that, some of those labels are not correct.

Mr. DI CIENTO. Gentlemen, it is my understanding also that the subpoena that has already been served on Mr. Mammarella will be a continuing subpoena, so he won't have to be subpoenaed in case you want him?

The CHAIRMAN. It is a continuing subpoena, and we will notify Mr. Mammarella when we expect to determine it.

Mr. MAMMARELLA. The same way by telegram, as I received it this time?

The CHAIRMAN. All right.

One other thing. You asked for a copy of the transcript, the proceedings of yesterday. Now, as a matter of courtesy, we will let you see it. And you have that, I suppose; do you not?

Mr. MAMMARELLA. No, we haven't seen it.

Mr. BEASLEY. Mr. Williamson has it available.

The CHAIRMAN. It has not been turned over to you yet?

Mr. MAMMARELLA. No.

The CHAIRMAN. I understand you wanted it early this morning for today.

Mr. MAMMARELLA. No, I think—

Mr. DI CIENTIO. It is too late.

Mr. MAMMARELLA. We went back home yesterday and came back this morning, because I made no preparation to stay over—no, I think I suggested it myself, because I had seen in the rules of the subcommittee whereby you could ask for a copy of the transcript upon paying for it.

The CHAIRMAN. No, not when it is in executive session, until the subcommittee, or unless the subcommittee takes action making it public. We do however, as a courtesy to the people involved, permit them to see it. We cannot—I wanted to make this clear—we cannot let you have it to take it with you now under the circumstances, because we have no assurances that it will not get into other hands.

Mr. MAMMARELLA. I see.

The CHAIRMAN. And consequently, so long as it is an executive session transcript, we will have to treat it that way.

Mr. MAMMARELLA. Sure.

The CHAIRMAN. Because that is an obligation and duty under the rule of the House of the committee. But if you want it, if you have any question about any part of the transcript that you want to review, we would permit you to come here and look over it.

Is that all?

Mr. LISIMAN. That is all for the present.

The CHAIRMAN. Mr. Mack, do you have anything else?

Mr. MACK. No.

The CHAIRMAN. Well, thank you very much. We appreciate the degree of cooperation, I will put it that way, that you have given. I must confess that I feel somewhat as Mr. Bennett expressed yesterday, that a great deal of this has seemed to me less than frank. I realize that you have a problem. But I am hopeful that this is not another instance in which somebody is trying to take the fall and covering up for somebody else.

And I say that for your own good.

Mr. MAMMARELLA. Thank you.

The CHAIRMAN. You may go until further notified.

Mr. MAMMARELLA. Thank you.

(Whereupon, at 4:30 p.m., the subcommittee adjourned subject to the call of the Chair.)

EXECUTIVE SESSION—CONFIDENTIAL

(Released to the Public May 2, 1960)

RESPONSIBILITIES OF BROADCASTING LICENSEES
AND STATION PERSONNEL

MONDAY, APRIL 25, 1960

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

The subcommittee met at 11:55 a.m., pursuant to other business, in room 1334, New House Office Building, Hon. Peter F. Mack, Jr., presiding.

Present: Representatives Mack, Moss, Bennett, Springer, and Devine.

Also present: Robert W. Lishman, chief counsel; and Herman C. Beasley, chief clerk.

Mr. MACK. The subcommittee will come to order.

This morning the subcommittee is meeting to consider the requests of three witnesses to be heard in executive session, and to accord them a hearing should the subcommittee decide that the requests are justified. The subcommittee's authority to hear witnesses in executive session derives from rule XI, 26(m), which provides in part that:

If the committee determines that evidence or testimony at an investigative hearing may tend to defame, degrade, or incriminate any person, it shall: (1) receive such evidence or testimony in executive session.

Before we proceed to consider the requests under the rule that witnesses be accorded the privilege of appearing in executive session, I should like to outline the purposes of these hearings, of which this is the first session.

The Subcommittee on Legislative Oversight was appointed under the authority of section 136 of the Legislative Reorganization Act of 1946 by House Resolution 7 and House Resolution 56, 86th Congress, 1st session. To make investigations and studies into allocation of the radio spectrum, ownership and control of radio and television stations, advertising, and fair competition are among the duties assigned to the subcommittee.

The subcommittee has been concerned with the laws in these fields and with the administration of the laws by the Federal Communications Commission and the Federal Trade Commission. The Federal Communications Commission was given in the Federal Communications Commission Act of 1934 a broad mandate to insure that the

allocation, licensing and operation of broadcasting stations would serve the public interest.

The Federal Trade Commission has the authority, indeed it has the duty, to investigate and police practices deemed by the Federal Trade Commission Act out of keeping with an honest and vigorous competitive business system.

The subcommittee has received considerable information indicating either that the FCC and the FTC have been lax and inattentive in some respects or that the authority of these agencies is inadequate or unclear. If the latter is the case, and if our investigations disclose situations regarding broadcasting or unfair competition that should be brought under regulation, the subcommittee has a duty to recommend legislation designed to cope with the situation.

The subcommittee has been swamped with allegations of predatory competitive practices in the marketing of popular music and phonograph records and of use of the publicly licensed airways to promote selfish commercial interests. The Attorney General of the United States, in his letter of December 30, 1959, transmitting a report to the President, deplored the widespread use of these facilities which belong to the people in the interests of what he called "naked commercial selfishness."

In February of this year the subcommittee held 2 weeks of hearings on the "payola" question. We discovered then that while many broadcasters and their employees are persons of integrity, a substantial number of them are unable to resist the ruthless pressures put on them by an intensely competitive popular phonograph record industry. In these hearings the subcommittee will explore further the reasons for such competition and why it generates the pressures that it does on broadcasting personnel.

Our first witness this morning is Mr. George Paxton. Mr. Paxton, will you be sworn?

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

Mr. PAXTON. I do.

Mr. MACK. Mr. Paxton, under the rules of the House you are permitted to be accompanied by counsel to advise you of your constitutional rights. Are you accompanied by counsel this morning?

TESTIMONY OF GEORGE PAXTON; ACCOMPANIED BY ANDREW FEINMAN, ATTORNEY AT LAW

Mr. PAXTON. Yes, sir.

Mr. MACK. Would you identify yourself for the record?

Mr. FEINMAN. My name is Andrew Feinman. I am an attorney in the State of New York. My address is 608 Fifth Avenue and I represent Mr. Paxton and his music publishing corporations.

Mr. MACK. Mr. Feinman, you are familiar with the rules of the House and of this subcommittee?

Mr. FEINMAN. Yes, I am.

Mr. MACK. You are here for the purpose of advising the witness of his constitutional rights?

Mr. FEINMAN. I am fully familiar.

Mr. MACK. Mr. Paxton, it is my understanding that you have requested an executive session of the subcommittee. Would you care to restate that request?

Mr. PAXTON. I did request an executive session with the subcommittee.

Mr. MACK. Do you feel that you are entitled to an executive session for the reasons stated in the rules of the House?

Mr. PAXTON. Yes.

Mr. MACK. Pursuant to the request which was made at our last meeting, your request for an executive session has been granted.

Mr. Paxton, do you have any preliminary statement that you desire to make, or would you prefer to have us proceed with questions?

Mr. FEINMAN. We have no prepared statement, Mr. Chairman.

Mr. MACK. Thank you.

Mr. LISHMAN, did you desire to question the witness at this time?

Mr. LISHMAN. Yes, sir.

Mr. MACK. Mr. Lishman is chief counsel of this subcommittee.

Mr. LISHMAN. Mr. Paxton, you are one of the owners of Coronation Music, Inc., 1619 Broadway, New York City?

Mr. PAXTON. That is correct.

Mr. LISHMAN. Who is the other owner?

Mr. PAXTON. Marvin Cane.

Mr. LISHMAN. What position do you hold in the company?

Mr. PAXTON. President.

Mr. LISHMAN. Are you also president of George Paxton, Inc., of the same address?

Mr. PAXTON. Yes, sir.

Mr. LISHMAN. What business is Coronation Music, Inc., in? What is its business?

Mr. PAXTON. Music publishing.

Mr. LISHMAN. Is George Paxton, Inc., also a music publishing company?

Mr. PAXTON. Yes, sir.

Mr. LISHMAN. Are you also one of the owners of Coed Records, Inc., of the same address?

Mr. PAXTON. Yes, sir.

Mr. LISHMAN. And what is the business of Coed Records, Inc.?

Mr. PAXTON. Coed Records manufactures records.

Mr. LISHMAN. How long have you been in the music publishing business?

Mr. PAXTON. Twelve years.

Mr. LISHMAN. How did you happen to go into the business?

Mr. PAXTON. It's a long story. I was a band leader previously, music arranger. I have been a musician since I was 14 years of age, studied, and I wanted to stay in town. The next step from band leading and arranging was to start music publishing firms, which I did.

Mr. LISHMAN. Did you give up band leading when you went into the music publishing business?

Mr. PAXTON. Yes, sir.

Mr. LISHMAN. Did you find the music publishing business more profitable than band leading?

Mr. PAXTON. In the beginning, no.

Mr. LISHMAN. Subsequently, did you?

Mr. PAXTON. That's a hard question. I imagine it was more satisfactory because of the fact I was to remain home with my family instead of travel.

Mr. LISHMAN. What are the chief sources of income of a music publishing firm?

Mr. PAXTON. What are the chief sources?

Mr. LISHMAN. Yes, sir.

Mr. PAXTON. Well, the times have changed. When I started the chief sources were sheet music, one, and mechanical income, two, along with performance. I imagine, if you were to say, the chief sources of income for any publisher would be performances, sheet music, and the income from record royalties, mechanical royalties.

Mr. LISHMAN. Would you say that the income from sales of sheet music is greater to a music publisher than the income from mechanical royalties?

Mr. PAXTON. At this date, no; but in days gone by it could have happened.

Mr. LISHMAN. Today what is it—

Mr. PAXTON. Today it is mechanical royalties and performances. Sheet music plays a very unimportant part, that is to some publishers, sir. There are some standard publishers that publish standard music and standard music is all important.

Mr. LISHMAN. Do you have any interest in any companies, other than the three already named?

Mr. PAXTON. Yes. You mentioned Coronation Music. You probably have a reason for mentioning Coronation Music and I would surmise what it is, but Coronation Music is nonexistent today. Winneton Music, W-i-n-n-e-t-o-n, is the parent publishing company to Coronation.

Mr. LISHMAN. Any other companies that you have an interest in?

Mr. PAXTON. Yes. Whiting Music.

Mr. LISHMAN. What is your interest in Winneton?

Mr. PAXTON. I am president and owner.

Mr. LISHMAN. Does that have the same address?

Mr. PAXTON. Sixty percent owner.

Mr. LISHMAN. Who owns the balance?

Mr. PAXTON. Marvin Cane.

Mr. LISHMAN. And is that address 1619 Broadway?

Mr. PAXTON. All the addresses are 1619 Broadway.

Mr. LISHMAN. What other companies do you have an interest in?

Mr. PAXTON. Whiting Music, W-h-i-t-i-n-g, Music.

Mr. LISHMAN. What is your interest in that?

Mr. PAXTON. I would call me a partner in that. I have a contract that will give me a 50-50 partnership in the operation if I make an improvement test as far as performances are concerned during the first 4 years of the deal.

Mr. LISHMAN. Who do you have that agreement with?

Mr. PAXTON. The Whiting estate—Margaret Whiting, Barbara Whiting, and Mrs. Eleanor Whiting.

Mr. LISHMAN. And what business is Whitney Music in? Is that in music publishing?

Mr. PAXTON. Yes, sir; Whiting.

Mr. LISHMAN. Whiting; yes, sir. What other companies besides those do you have an interest in?

Mr. PAXTON. Schatsworth, S-c-h-a-t-s-w-o-r-t-h, Music, Inc.

Mr. LISHMAN. What is your interest in that business?

Mr. PAXTON. A 50-50 partner with Mr. Louis Busch, B-u-s-c-h, California; music publishing.

Mr. LISHMAN. What other companies?

Mr. PAXTON. That's it.

Mr. LISHMAN. Now, you have testified that the chief sources of income to a music publishing house come from mechanical royalties and the payment of performance rights collected either through ASCAP or BMI; is that correct?

Mr. PAXTON. Correct.

Mr. LISHMAN. And the income from sheet music is relatively minor today, is that correct?

Mr. PAXTON. Correct.

Mr. LISHMAN. In your opinion what single factor induces most, the volume of sales which in turn produces mechanical royalties?

Mr. PAXTON. I would say the exposure of the record.

Mr. LISHMAN. Exposure where?

Mr. PAXTON. On the air and television.

Mr. LISHMAN. Exposure by a diskjockey, in other words?

Mr. PAXTON. It would have to be a diskjockey; yes, sir.

Mr. LISHMAN. And would that same factor also be the chief factor in producing the largest possible revenue from performance rights payments?

Mr. PAXTON. It could lead to that, yes.

Mr. LISHMAN. So that the diskjockey plays a very important position in the music publishing business?

Mr. PAXTON. Yes; he always has, since the advent of radio.

Mr. LISHMAN. Through the diskjockey you get the exposure which leads to your increased income, is that correct?

Mr. PAXTON. That is correct.

Mr. LISHMAN. When was Coed Records first organized?

Mr. PAXTON. That was, I believe, around May in 1958.

Mr. LISHMAN. Was that your first venture into the production of phonograph records?

Mr. PAXTON. Yes, sir.

Mr. LISHMAN. Do you have any interest in any other record companies?

Mr. PAXTON. No.

Mr. LISHMAN. On or about September 29, 1958 did Luther Dixon and Alyson Khent, the writers of a song called "Sixteen Candles" assign this song to Coronation Music, Inc.?

Mr. PAXTON. Yes, sir.

Mr. LISHMAN. Did Coronation agree to publish the song?

Mr. PAXTON. Yes, sir.

Mr. LISHMAN. They were songwriters?

Mr. PAXTON. Yes.

Mr. LISHMAN. Did they agree to pay these songwriters specified royalties?

Mr. PAXTON. Yes, sir.

Mr. LISHMAN. Did Coronation agree to pay them 50 percent of all the receipts in respect of any licenses issued authorizing the manufacture—

Mr. PAXTON. Yes, sir.

Mr. LISHMAN. Of parts?

Mr. PAXTON. Of what?

Mr. LISHMAN. Of parts of instruments serving mechanically to reproduce the composition?

Mr. PAXTON. Yes.

Mr. LISHMAN. That meant that 50 percent of all the royalties received from record companies, licensed to record that song, would be paid to the writers, is that correct?

Mr. PAXTON. That is correct.

Mr. LISHMAN. It was also agreed that Coronation might license Coed Records, Inc. to produce and sell the record at a royalty of one-half cent per record side, is that correct?

Mr. PAXTON. Yes.

Mr. LISHMAN. Did Coronation also agree to pay the writers certain other royalties?

Mr. PAXTON. Yes, sir; agreed to pay the writers 6 cents a copy for sheet music.

Mr. LISHMAN. Did they also agree to pay a performance payment of 1 cent for each commercial radio performance?

Mr. PAXTON. No; only if they were not members of any performance organization.

Mr. LISHMAN. I would like to show you a photostatic copy of this—

Mr. FEINMAN. We have the original contract here, Mr. Lishman.

Mr. LISHMAN. And ask you if this is a true and correct copy of the original agreement between Coronation Music and the two songwriters, Luther Dixon and Alyson Khent?

Mr. FEINMAN. Except for the fact that the initials of Alyson Khent do not appear on your copy it is precisely the same as the original.

Mr. LISHMAN. Mr. Chairman, I would like to have this photostatic copy identified by this witness.

Mr. MACK. Mr. Paxton, is that a true copy of the original?

Mr. PAXTON. Yes, sir.

Mr. MACK. With the exception of the initials?

Mr. PAXTON. Yes.

Mr. MACK. Without objection it will be included at this point in the record.

(The material referred to follows:)

AGREEMENT MADE THIS 29TH DAY OF SEPTEMBER 1958, BETWEEN CORONATION MUSIC CORP. (HEREINAFTER CALLED "PUBLISHER") AND LUTHER DIXON & ALYSON KHENT JOINTLY AND/OR SEVERALLY (HEREINAFTER CALLED "WRITER")

WITNESSETH

In consideration of the agreement herein contained and of the sum of \$1.00 in hand paid by Publisher to Writer, receipt of which is hereby acknowledged, the parties agree as follows:

1. Writer hereby sells, assigns, transfers, and delivers to Publisher, its successors and assigns, a certain heretofore unpublished original musical composition, written and/or composed by the above named Writer, now entitled, "Sixteen Candles", including the title, words and music thereof, and the right to secure

copyright therein throughout the entire world, and to have and to hold the said copyright and all rights of whatsoever nature thereunder existing.

2. Writer hereby warrants that the said composition is his sole, exclusive and original work, and that he has full right and power to make the within agreement, and that there exists no adverse claim to or in the said composition.

3. In consideration of this agreement, Publisher agrees to pay Writer jointly, in respect of said composition the following:

(a) In respect of regular piano and vocal copies, sold and paid for in the United States of America, a royalty of three cents (3¢) per copy.

(b) In respect of band parts and orchestrations sold and paid for in the United States of America, a royalty of six cents (6¢).

(c) In respect of regular piano and vocal copies, band parts, orchestrations and for the use of said composition in any folio or composite work, sold and paid for in any foreign country, a royalty of fifty percent (50%) of all net sums received by Publisher.

(d) For purposes of royalty statements, if a composition is printed and published in the United States of America, as to copies and rights sold in the Dominion of Canada, revenue therefrom shall be considered as of domestic origin.

If, however, the composition is printed by a party other than Publisher in the Dominion of Canada, revenue from sales of copies and rights in Canada shall be considered as having originated in a foreign country.

(e) As to "professional material" not sold or resold, no royalty shall be payable.

(f) An amount equal to fifty percent (50%) of all receipts of Publisher in respect of any licenses issued authorizing the manufacture of parts of instruments serving mechanically to reproduce said composition, or to use said composition in synchronization with sound motion picture;

(g) So long as Writer is not a member of any Performing Rights organization, Publisher agrees to pay to Writer, as performing royalties, not less than one cent (1¢) per performance per commercial amplitude modulation United States broadcasting station licensee of Publisher for each full performance of said composition consisting of not less than one full chorus. Such number of performances shall be estimated as accurately as shall be possible from an actual check of performance records of broadcasting stations constituting a representative cross-section of Publisher's licensees; and statements showing the number of performances computed, and accountings with respect to the same, shall be furnished at least semi-annually.

(h) Except as is specifically provided for in the subdivisions of this paragraph 3, no other royalties of any kind shall be paid by Publisher to Writer.

4. It is understood and agreed by and between all of the parties hereto that all sums hereunder payable jointly to Writer shall be divided amongst them respectively as follows:

Name	Share
LUTHER DIXON-----	50%
ALYSON KUENT-----	50%

5. Publisher shall render Writer, as above, on or before _____; each August 15th covering the 6 months ending June 30th; _____; each February 15th covering the 6 months ending December 31st; hereafter, so long as it shall continue publication or the licensing of any rights in the said composition, royalty statements accompanied by remittance of the amount due.

6. Publisher agrees to publish, or cause to be published, the said composition in professional copies within six months from the date hereof, and to distribute the same to its broadcast licensees and others in order to encourage the public performance thereof. In the event that Publisher determines that subsequent public demand for such composition has been created, Publisher further agrees to publish such music in saleable form. Should Publisher fail to publish said music in professional form within the period hereinabove set forth, Writer's sole right shall be to demand the return of said composition, whereupon Publisher must within one month after receipt of such notice either publish in professional form, or cause to be published in professional form, the said composition, or at its option, pay Writer \$100. Upon failure so to publish or to so pay the aforesaid amount, all rights of any and every nature, and the right to secure copyright and/or any copyright secured by Publisher before publication, in and to the said composition, shall revert to and become the property of Writer and shall be reassigned to Writer, and neither party shall be liable to

the other on this contract. The payment of the additional sum referred to in this paragraph shall extend the publication date for a period of one year from the date of such payment, and upon such extended date, and the giving by Writer of notice, as hereinabove set forth, all rights shall revert to Writer, as hereinabove set forth, in the event that Publisher does not publish the work in professional form within one month after receipt of such notice.

7. Anything to the contrary notwithstanding, nothing in this agreement contained shall prevent Publisher from authorizing publishers, agents and representatives in countries outside of the United States and Canada (and in Canada if said composition is printed by a party other than Publisher in Canada) from exercising exclusive publication and all other rights in said foreign countries in said composition on the customary royalty basis; and nothing in this agreement shall prevent Publisher from authorizing publishers in the United States from exercising exclusive publication rights and other rights in the United States in said composition, provided Publisher shall pay Writer the royalties herein stipulated. If foreign publication or other rights in said composition are separately conveyed, otherwise than as a part of Publisher's current and/or future catalog, then, but not otherwise, any advance received in respect thereof shall be divided in accordance with paragraph 3(f) and credited to the account of Writer.

8. Writer may appoint a certified public accountant who shall at any time during business hours have access to all records of Publisher, and of the United States publisher whom Publisher causes to publish said composition relating to said composition for the purpose of verifying royalty statements rendered or which are delinquent under the terms hereof.

9. In the event that Publisher shall fail or refuse, within sixty days after written demand, to furnish, or cause to be furnished, royalty statements described in paragraph 5, or to give Writer access to the records, as set forth in paragraph 8, or in the event that Publisher shall fail to make the payment of any royalties due within thirty days after written demand therefor, then Writer shall have the option, to be exercised upon ten days' written notice, to cancel this agreement.

Upon such cancellation, all rights of Publisher of any and every nature, and to said composition, shall cease and come to an end and the said rights, including, but not limited to, the right to secure copyright and/or any copyright theretofore secured by Publisher, shall revert to and become the property of, and shall be assigned to Writer. Publisher agrees that it will thereupon execute any and all assignments or other documents which may be necessary or proper to vest the said rights in Writer.

10. Writer hereby consents to such changes, editing and arrangements of said composition, and the setting of words to the music and of music to the words, and the change of title as Publisher deems desirable. Writer consents to the use of Writer's name and likeness and the title of said composition on the music, recordings, player rolls and in connection with publicity and advertising concerning Publisher and said composition, and agrees that the use of such name, likeness and title may commence prior to publication and may continue for a reasonable period after the termination of this agreement.

11. Written demands and notices other than royalty statements provided for herein shall be sent by registered mail.

12. Any legal action brought by Publisher against any alleged infringer of said composition shall be initiated and prosecuted at its sole expense, and of any recovery made by it as a result thereof, after deduction of the expense of the litigation, a sum equal to fifty percent (50%) shall be paid to Writer.

(a) If a claim is presented against Publisher alleging that the said composition is an infringement upon some other composition, and because thereof Publisher is jeopardized, it shall thereupon serve written notice upon Writer, containing the full details of such claim and thereafter until the claim has been adjudicated or settled shall pay any moneys coming due Writer hereunder in escrow to any bank or trust company to be held pending the outcome of such claim; provided, however, if no suit be filed within twelve months after written notice to Writer by Publisher of the adverse claim, the said bank or trust company shall release and pay to Writer all sums held in escrow, plus any interest which may have been earned thereupon. Such payment shall be without prejudice to the rights of Publisher in event of a subsequent adverse adjudication.

(b) From and after the service of a summons in a suit for infringement filed against Publisher in respect of the said composition, any and all payments hereunder thereafter coming due Writer, shall be paid by Publisher in trust to any bank or trust company until the suit has been finally adjudicated and then be disbursed accordingly, unless Writer shall elect to file an acceptable bond in the sum of such payments in which event the sums due shall be paid to Writer.

13. The parties hereto hereby agree to submit to arbitration in New York City under the rules of the American Arbitration Association and pursuant to the New York Arbitration Law, any differences arising under this agreement, and hereby agree individually and jointly to abide by and perform any award rendered by the Arbitration and that a judgment of the Supreme Court of the State of New York may be entered upon such award.

14. "Writer", as used herein, shall be deemed to include all composers signing this agreement.

15. This agreement is binding upon the parties hereto and their respective successors in interest and represents the entire understanding between the parties.

16. It is expressly understood that the Publisher may license Coed Records at the rate of one and a half (1½¢) cents per record side.

IN WITNESS WHEREOF the parties hereto have caused this agreement to be duly executed the day and year first above written.

CORONATION MUSIC CORP.
By GEORGE PAXTON.

Writer: LUTHER DIXON (L.S.) 791 Halsey St., Brooklyn, N.Y.

Writer: ALLYSON R. KHENT (L.S.) 450 E. 65th St., New York City.

Mr. SPRINGER. Mr. Chairman, I think our agreement was 12:15 and personally I hope we will abide by that.

Mr. MACK. Mr. Lishman, would it be appropriate to adjourn?

Mr. LISHMAN. Yes, sir; you may stop right here.

Mr. MACK. In accordance with our agreement plans we will adjourn at this time. President De Gaulle, president of France, is addressing a joint session of Congress today and the members of this subcommittee will want to attend, so that the subcommittee will stand adjourned until 2:30 this afternoon.

(Whereupon, at 12:17 p.m., Monday, April 25, 1960, the subcommittee adjourned, to reconvene at 2:30 p.m., the same day.)

AFTERNOON SESSION

The subcommittee reconvened at 2:45 p.m., upon the expiration of the recess.

Mr. Moss (presiding). Mr. Paxton, will you resume the witness stand, please.

TESTIMONY OF GEORGE PAXTON—Resumed

Mr. LISHMAN. Now, Mr. Paxton, prior to the recess, you had testified about an agreement whereby Coronation Music had the right to license Coed records to record the song "Sixteen Candles," at 1½ cents per record side. Is that correct?

Mr. PAXTON. That is correct.

Mr. LISHMAN. Although the agreement between Coronation Music and the writer of "Sixteen Candles" was not executed until September 29, 1958, it is correct, is it not, that a phonograph record had been made prior to that time by Coed records, using a group of artists known as The Crests?

Mr. FEINMAN. What was the date you had in your contract?

Mr. LISHMAN. September 29, 1958.

Mr. FEINMAN. The witness is not sure when it was recorded, when the actual recording was made.

Mr. PAXTON. I am not sure as to the date. It was during that immediate time, however.

Mr. LISHMAN. What was the date of the contract?

Mr. PAXTON. The contract says 29th of September.

Mr. LISHMAN. Prior to that time, is it not a fact that a phonograph record had been made by Coed Records?

Mr. PAXTON. I am not sure, sir.

Mr. LISHMAN. You are not sure?

Mr. PAXTON. No. I imagine it must have been more or less of a simultaneous thing. The recording and the signing of the contract.

Mr. LISHMAN. What are the Crests; is that a vocal or an instrumental group?

Mr. PAXTON. That is a vocal group.

Mr. LISHMAN. When was this record cut by Coed?

Mr. PAXTON. That is what I don't know.

Mr. LISHMAN. Do you know that it was made for the first time by Dick Clark, on September 15, 1958?

Mr. PAXTON. No.

Mr. LISHMAN. Do you know that it was played in September 1958 by Dick Clark?

Mr. PAXTON. No.

Mr. LISHMAN. Do you know Vera Hodes?

Mr. PAXTON. Yes.

Mr. LISHMAN. Did you ever have any conversations about this record with her?

Mr. PAXTON. No; I am not the gentleman you want for this particular—

Mr. LISHMAN. Would that be Mr. Cane?

Mr. PAXTON. Yes, sir.

Mr. LISHMAN. Well, Coed Records, Inc., did record, by the Crests, the song "Sixteen Candles"; did they not?

Mr. PAXTON. Yes.

Mr. LISHMAN. Was the number 506, Coed Records?

Mr. PAXTON. I believe you are right.

Mr. LISHMAN. Do you know whether Coed record 506 was played by Dick Clark on his "American Bandstand" show?

Mr. PAXTON. At any time?

Mr. LISHMAN. Yes.

Mr. PAXTON. Hearsay, yes. And I have seen it. I saw it performed.

Mr. LISHMAN. Do you recall when the record was first played on "American Bandstand"?

Mr. PAXTON. No.

Mr. LISHMAN. Mr. Chairman, at this point I would like to ask that this witness be asked to step aside in order that a staff member may give testimony concerning an exhibit prepared from material supplied by Clark's attorney and Dick Clark. This exhibit will show the dates and the number of times that Dick Clark exposed, on

the air, the song, "Sixteen Candles," recorded by the Crests on a Coed record.

Following the testimony from the staff assistant, we will recall Mr. Paxton to the stand and perhaps during his testimony Mr. Paxton's memory may be refreshed as to some of these incidents.

Mr. MOSS. Mr. Paxton, will you stand aside for a few minutes while we hear from Mr. Martin?

Mr. PAXTON. Yes, sir.

TESTIMONY OF RAYMOND WILLIAM MARTIN

Mr. LISHMAN. Mr. Martin, will you be sworn, please.

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

Mr. MARTIN. I do.

Mr. LISHMAN. Identify yourself, please.

Mr. MARTIN. Raymond William Martin, employed as special assistant to the subcommittee. My appointment was July 1, 1958.

Mr. LISHMAN. Mr. Martin, in connection with the performance of your duties as a staff member, did you have occasion to make a study of approximately 15,000 cards furnished to the subcommittee by Dick Clark?

Mr. MARTIN. Yes, sir.

Mr. LISHMAN. What were these 15,000 cards?

Mr. MARTIN. Mr. Clark had had prepared and made available to the subcommittee staff 15,000, approximately 15,000, 3- by 5-inch cards. Each card represented a single play of a song on the "American Bandstand."

Now, these cards were played in alphabetical order according to the title of the song. For example, in any particular song there would be that many cards under that title, each representing one single play on the "American Bandstand."

On each card was the date of the play and the title of the song, and in some cases the name of the artist.

Mr. LISHMAN. Mr. Martin, the "American Bandstand" is an ABC network program: is that correct?

Mr. MARTIN. That is correct, sir.

Mr. LISHMAN. Is that a program on which Dick Clark acts as the master of ceremonies, or the diskjockey?

Mr. MARTIN. Yes, sir; that is correct.

Mr. LISHMAN. How often is that show on the air?

Mr. MARTIN. It is telecast Monday through Friday, I believe, from 4 to 5:30.

Mr. LISHMAN. Is it on the network for 2 hours each of those afternoons, or only an hour and a half?

Mr. MARTIN. I believe the first 2 hours are network; the last half hour is local.

Mr. LISHMAN. What station does this show originate from?

Mr. MARTIN. From station WFIL-TV in Philadelphia.

Mr. LISHMAN. How long has Dick Clark had that show; do you know?

Mr. MARTIN. To the best of my knowledge, sir, he began televising over the network around August 5, 1957.

Mr. LISHMAN. Now, as a result of studying these 15,000 cards, which were furnished by Mr. Clark, did you and Mr. Sparger, also of the staff, make certain tabulations?

Mr. MARTIN. Yes, sir; we did.

Mr. LISHMAN. I will hand you a three-page document and ask you to identify it.

Mr. MARTIN. Yes, sir.

Mr. LISHMAN. What is this document?

Mr. MARTIN. This is an analysis made by Mr. Sparger and myself of the songs owned by January Music Publishing Co., one of Mr. Clark's publishing companies, which reflect the number of plays by Mr. Clark of each particular song, the date of the plays, and the corresponding Billboard rating for that particular song during the week that Mr. Clark was playing it.

Mr. LISHMAN. Were these tabulations prepared by you from the 15,000 cards supplied by Mr. Clark?

Mr. MARTIN. That is correct, sir.

Mr. LISHMAN. To clarify this for the record, did you state that the January Corp. was a wholly owned company of Mr. Clark?

Mr. MARTIN. That is correct, sir.

Mr. LISHMAN. Does he still own that company?

Mr. MARTIN. To the best of my knowledge, sir, Mr. Clark has divested himself of all interest in that company.

Mr. LISHMAN. As of what date?

Mr. MARTIN. Subsequent to November 30, 1959.

Mr. LISHMAN. But during the period covered by the tabulation, showing the number of times Mr. Clark played the record shown thereon, this was a company owned by Mr. Clark?

Mr. MARTIN. That is correct, sir.

Mr. LISHMAN. And the plays that are shown on this tabulation are plays of records by Mr. Clark while he was either a diskjockey or a master of ceremonies on the "American Bandstand" program; is that correct?

Mr. MARTIN. Yes, sir; that is correct.

Mr. LISHMAN. Mr. Chairman, I would like to have this three-page tabulation, identified by this witness, placed in the record at this point.

Mr. Moss. Is there objection to the request by counsel?

Hearing none, the tabulation will be placed in the record at this point.

(The tabulation referred to follows:)

MONTH OF JANUARY

All Winter Long:
 Andie: Linda Laurie.
 No plays.
 Croc A Doll:
 RCA Victor: The Impacts.
 No plays.
 Foot Jive:
 ABC Par: Keymen.
 Sparton: Keymen.
 No plays.
 Furry Murry:
 RCA Victor: Tradewinds.

Plays	Play dates	Survey, week ending—	Rating	Billboard issue
5	June 26, 29, 30; July 1, 2.....	July 5, 1959	0	June 29, 1959
5	July 6, 7, 8, 9, 10.....	July 12, 1959	0	July 6, 1959
0	.....	July 19, 1959	0	July 13, 1959
2	July 22, 23.....	July 26, 1959	0	July 20, 1959
2	July 27, 29.....	Aug. 2, 1959	0	July 27, 1959
1	Aug. 7.....	Aug. 9, 1959	0	Aug. 3, 1959
0	.....	Aug. 16, 1959	96	Aug. 10, 1959
0	.....	Aug. 23, 1959	91	Aug. 17, 1959
0	.....	Aug. 30, 1959	0	Aug. 24, 1959
0	.....	Sept. 6, 1959	0	Aug. 31, 1959

Hypnotized:

Chancellor: Fabian.
 Reo: Fabian.
 (?): Buddy Sheppard.

One play on unknown label with Sheppard, October 19, 1959. Not listed as recording. (Same on January list.)

Seesaw:

Jubilee: The Royal Tones.
 Quality: The Royal Tones.

Plays	Play dates	Survey, week ending—	Rating	Billboard issue
1	Feb. 11, 1959.....	Feb. 15, 1959	0	Feb. 9, 1959
1	Feb. 27, 1959.....	Feb. 22, 1959	0	Feb. 16, 1959

Sixteen Candles:

Coed: Crests.
 Synthetic: The Glitters.
 Keel: Tops in Pops.
 Remington: Don Raleigh.
 Martin Gilbert: Joe Hudson.
 RCA LP: Ray Martin.
 Puccio: Vic Corwin.
 Bell: Danny Lanham.

Plays	Play dates	Survey, week ending—	Rating	Billboard issue
3	Sept. 15, 16.....	Sept. 21, 1958	0	Sept. 15, 1958
0	-----	Sept. 28, 1958	0	Sept. 22, 1958
0	-----	Oct. 5, 1958	0	Sept. 29, 1958
0	-----	Oct. 12, 1958	0	Oct. 6, 1958
0	-----	Oct. 19, 1958	0	Oct. 13, 1958
0	-----	Oct. 26, 1958	0	Oct. 20, 1958
1	Oct. 19, 1958.....	Nov. 2, 1958	0	Oct. 27, 1958
0	-----	Nov. 9, 1958	0	Nov. 3, 1958
0	-----	Nov. 16, 1958	0	Nov. 10, 1958
0	-----	Nov. 23, 1958	0	Nov. 17, 1958
2	Nov. 25, 24.....	Nov. 30, 1958	91	Nov. 24, 1958
4	Dec. 2, 3, 4, 5.....	Dec. 7, 1958	81	Dec. 1, 1958
2	-----	Dec. 14, 1958	68	Dec. 8, 1958
3	Dec. 17, 18, 19.....	Dec. 21, 1958	48	Dec. 15, 1958
3	Dec. 22, 24, 26.....	Dec. 28, 1958	32	Dec. 22, 1958
3	Dec. 29, 30, 31.....	Jan. 4, 1959	25	Dec. 29, 1958
3	Jan. 6, 7, 8.....	Jan. 11, 1959	18	Jan. 5, 1959
3	Jan. 12, 14, 16.....	Jan. 18, 1959	12	Jan. 12, 1959
1	Jan. 19.....	Jan. 25, 1959	5	Jan. 19, 1959
2	Jan. 27, 30.....	Feb. 1, 1959	4	Jan. 26, 1959
1	Feb. 3.....	Feb. 8, 1959	4	Feb. 2, 1959
2	Feb. 10, 12.....	Feb. 15, 1959	2	Feb. 9, 1959
1	Feb. 16.....	Feb. 22, 1959	2	Feb. 16, 1959
1	Feb. 23.....	Mar. 1, 1959	3	Feb. 23, 1959
0	-----	Mar. 8, 1959	4	Mar. 2, 1959
0	-----	Mar. 15, 1959	10	Mar. 9, 1959
0	-----	Mar. 22, 1959	15	Mar. 16, 1959
0	-----	Mar. 29, 1959	21	Mar. 23, 1959
0	-----	Apr. 5, 1959	44	Mar. 30, 1959
0	-----	Apr. 12, 1959	51	Apr. 6, 1959
0	-----	Apr. 19, 1959	64	Apr. 13, 1959
0	-----	Apr. 26, 1959	0	Apr. 20, 1959

So Much:

End: Little Anthony-Imperial.
 Quality: Little Anthony-Imperial.

Plays	Play dates	Survey, week ending—	Rating	Billboard issue
0	-----	Oct. 26, 1958	0	Oct. 20, 1958
5	Oct. 27, 28, 29, 30, 31.....	Nov. 2, 1958	0	Oct. 27, 1958
5	Nov. 3, 4, 5, 6, 7.....	Nov. 9, 1958	0	Nov. 3, 1958
3	Nov. 10, 13, 11.....	Nov. 16, 1958	0	Nov. 10, 1958
5	Nov. 17, 18, 19, 20, 21.....	Nov. 23, 1958	0	Nov. 17, 1958
4	Nov. 24, 25, 27, 28.....	Nov. 30, 1958	0	Nov. 24, 1958
3	Dec. 1, 3, 5.....	Dec. 7, 1958	0	Dec. 1, 1958
2	Dec. 8, 10.....	Dec. 14, 1958	0	Dec. 8, 1958
0	-----	Dec. 21, 1958	0	Dec. 15, 1958

Teenage Neighbor :

Chancellor : The Four Dates.

No plays.

You Don't Know Girls :

Felsted : Kathy Linden.

London : Kathy Linden.

Plays	Play dates	Survey, week ending—	Rating	Billboard issue
3	July 13, 14, 15.....	July 19, 1959	0	July 13, 1959
0	.....	July 26, 1959	0	July 20, 1959
1	July 27 (guest on show).....	Aug. 2, 1959	99	July 27, 1959
0	.....	Aug. 9, 1959	93	Aug. 3, 1959
0	.....	Aug. 16, 1959	92	Aug. 10, 1959
0	.....	Aug. 23, 1959	0	Aug. 17, 1959

Young Ideas :

RCA Victor : Chico Holiday.

Decca-London : Tommy Steele.

Plays	Play dates	Survey, week ending	Rating	Billboard issue
0	.....	Apr. 19, 1959	0	Apr. 13, 1959
1	Apr. 20.....	Apr. 26, 1959	0	Apr. 20, 1959
1	Apr. 28.....	May 3, 1959	0	Apr. 27, 1959
1	May 7.....	May 10, 1959	89	May 4, 1959
2	May 11, 14.....	May 17, 1959	78	May 11, 1959
0	.....	May 24, 1959	78	May 18, 1959
0	.....	May 31, 1959	74	May 25, 1959
0	.....	June 7, 1959	88	June 1, 1959
0	.....	June 14, 1959	83	June 8, 1959
0	.....	June 21, 1959	0	June 15, 1959

You're a Big Girl Now :

Time : The Bellnotes.

No plays.

Mr. LISHMAN. Mr. Martin, I would like your concentrated attention, and for the benefit of Mr. Paxton, I would like to have a copy of this in his hand as the testimony goes along.

Let us not at this time deal with anything except the item entitled "Sixteen Candles", which is at the bottom of page 1, of this exhibit.

Do you see what I am referring to?

Mr. MARTIN. Yes, sir.

Mr. LISHMAN. Do you see the paragraph I am referring to there?

Mr. MARTIN. Yes, sir.

Mr. LISHMAN. Is it a fact that the record "Sixteen Candles" is shown by these cards to have been performed by the Crests on a Coed record?

Mr. MARTIN. That is correct, sir.

Mr. LISHMAN. Was it also played on other records?

Mr. MARTIN. Yes, sir; there appears to be a recording made of this particular song on at least six other labels, sir.

Mr. LISHMAN. When did Mr. Clark begin to play this record on the show "American Bandstand"?

Mr. MARTIN. According to the information gleaned from the cards, the 15,000 cards representing plays, the first play by Mr. Clark was on September 15, 1958.

Mr. LISHMAN. How many times did he play that record?

Mr. MARTIN. According to our information he played it three times during the month of September, with one date blank, which indicated by the cards that there was a play in September, but no particular day was given. That would be the 15th and the 16th and another play in September.

Mr. LISHMAN. And according to Billboard what was the rating of that song at that time?

Mr. MARTIN. At that time the song did not appear on the Billboard listing, known as the Top One Hundred, which reflected, according to the Billboard information and statistics, the top 100 songs of that particular week.

Mr. LISHMAN. When was the next time Mr. Clark played this particular record?

Mr. MARTIN. The next time Mr. Clark played the record was on October 19, 1958.

Mr. LISHMAN. How many times did he play it then?

Mr. MARTIN. One time during that month.

Mr. LISHMAN. What was its rating?

Mr. MARTIN. Its rating was zero. In other words, it did not appear on the Top One Hundred.

Mr. LISHMAN. Do you recall the date when Mr. Clark received the assignment of "Sixteen Candles" from the Coronation Music Co?

Mr. MARTIN. Yes, sir.

Mr. LISHMAN. What date was that?

Mr. MARTIN. It was assigned to the January Music Corp., Mr. Clark's publishing company, on November 18, 1958.

Mr. LISHMAN. Very good.

Now, at the time of that assignment by Coronation Music Co. to January Corp., what was the rating of that song according to Billboard?

Mr. MARTIN. The last Billboard issue prior to the assignment was a day immediately prior, November 17, 1958. At that time the song was not on the Billboard list of the Top One Hundred.

Mr. LISHMAN. Is it a fact, that according to the records we have received from Mr. Clark that 6 days after his wholly owned company, the January Corp. received the copyright assignment of the song "Sixteen Candles," he played that record two times?

Mr. MARTIN. Yes, sir; it was played on the 24th and 25th of November.

Mr. LISHMAN. What happened then to the rating?

Mr. MARTIN. The issue of Billboard, appearing on November 24, 1958, for a survey week ending November 30, which is 6 days following the issue of the magazine, showed the rating to be 91.

December 22, December 24, December 26, a total of three plays. The rating reflected in Billboard was 32.

December 29, 30, 31, a total of three plays. The rating reflected in Billboard was 25.

On January 7 and 9, 1959, a total of three plays, Billboard reflected a rating of 18.

On January 12, 14, and 16, 1959, total of three plays. The Billboard rating reflected the song to be No. 12 in the chart.

On January 19, one play, the song had risen to No. 5 in the Billboard charts.

With the plays of 27 and 30 of January, 1959, the song had climbed to No. 4 on the charts.

One play on February 3, 1959, the song remained at No. 4.

Two plays on February 10 and February 12, 1959, the song had climbed to No. 2 in the charts.

One play on February 16, 1959, the song remained at No. 2.

And there was one subsequent play on February 23, and the song had dropped to No. 3.

Following that there were no more plays by Mr. Clark.

Mr. LISHMAN. So that from the period March 8, to April 26, 1959, although this record "Sixteen Candles" did still appear among the Top One Hundred on Billboard, Mr. Clark played it not at all?

Mr. MARTIN. That is correct, sir.

I might point out that immediately after Mr. Clark ceased to play the song it went into a steady decline on the charts and, finally, on April 20, 1959 it disappeared from the Top One Hundred.

Mr. LISHMAN. The data compiled by you on this exhibit, pertaining to the records "All Winter Long," "Croc A Doll," "Furry Murry," "Hypnotized," "Seesaw," "So Much," "Teenage Neighbor," "You Don't Know Girls," "Young Ideas," and "You're a Big Girl Now," were all taken from the cards submitted to us by Mr. Clark?

Mr. MARTIN. That is correct, sir.

Mr. LISHMAN. This tabulation correctly reflects the information that you found from the examination of these cards, insofar as they show the number of times these records were played, within the times indicated.

Mr. MARTIN. Yes, sir.

Mr. LISHMAN. Would you say that a study of this particular exposure of the record "Sixteen Candles" indicated that Mr. Clark only played a record in accordance with the popularity it had already achieved?

Mr. MARTIN. Well, I believe I would have to say, sir, that our analysis would reflect that, prior to Mr. Clark's gaining the assignment of the copyright, there were only five plays given to the song. At that time there was absolutely no rating whatsoever indicated in the Billboard charts.

Subsequent to the assignment of the song on the 18th of November to the January Corp., the song was played 31 times.

The song broke into the charts, as I indicated, on November 24, at 91. From then until the song became No. 3 on the charts, Mr. Clark gave very consistent and consecutive play to the song.

Mr. LISHMAN. Would you say from the records you have examined, as submitted by Mr. Clark, that the indications are, it was his incessant exposure, over a comparatively short period of time, that made this song popular insofar as Billboard ratings were concerned?

Mr. MARTIN. Well, this analysis would certainly indicate that, sir.

Mr. LISHMAN. I have no other questions.

Mr. MOSS. Do you wish to excuse Mr. Martin and recall Mr. Paxton, Mr. Lishman?

Mr. LISHMAN. Yes, please.

Mr. MOSS. Mr. Paxton, will you return to the stand?

TESTIMONY OF GEORGE PAXTON—Resumed

Mr. LISHMAN. Mr. Paxton, I will hand you a document and ask you to identify it, please.

Mr. PAXTON. Yes, it is authentic.

Mr. LISHMAN. What is the document?

Mr. PAXTON. An assignment of the copyright of "Sixteen Candles" to the January Corp. by Coronation Music.

Mr. LISHMAN. Is that assignment dated November 1, 1958?

Mr. PAXTON. Correct.

Mr. LISHMAN. Did you execute that as president of Coronation Music, Inc.?

Mr. PAXTON. Yes, sir.

Mr. LISHMAN. Mr. Chairman, I would like to have this assignment placed in the record at this time.

Mr. MOSS. Is there any objections?

Without objection the copy of the assignment will be placed in the record at this time.

(The document referred to follows:)

Know all men by these presents that the undersigned Coronation Music, Inc., having its principal place of business at 1619 Broadway, New York 19, N.Y., does hereby transfer, set over and assign unto the January Corp., having its principal place of business at 47-6 Revere Road, Drexel Hill, Pa., all of its right, title and interest in and to the musical composition entitled "Sixteen Candles" words and music by Luther Dixon and Allyson R. Khent; and all rights of any and every nature in and to said musical composition.

The undersigned also sets over and assigns unto the January Corp., all of its rights under its contract with Edward Kassner Music Co., Ltd., dated October 15, 1958, including but not limited to the right to receive royalties and/or other compensation for the manufacture or sale of phonograph recordings containing said composition entitled "Sixteen Candles" at one and a half (1½) cents.

In witness whereof, the undersigned has executed the foregoing and affixed its seal this 18th day of November, 1958.

CORONATION MUSIC, INC.,
By GEORGE PAXTON, *President*.

Mr. LISHMAN. Mr. Paxton, at the time you made this assignment of the record, "Sixteen Candles," to the January Corp., on behalf of Coronation Music, you knew, did you not, that the January Corp., was wholly owned by Mr. Richard W. Clark?

Mr. PAXTON. Yes, sir.

Mr. LISHMAN. Prior to November 18, 1958, the date of this assignment, had there been any negotiation or conversations between representatives of Coronation Music, Inc., and the representatives of Richard W. Clark, or of the January Corp.?

Mr. PAXTON. Yes, sir.

Mr. LISHMAN. Who carried on these negotiations?

Mr. PAXTON. Mr. Marvin Cane and Vera Hodes.

Mr. LISHMAN. Who is Vera Hodes?

Mr. PAXTON. She was representing the January Music Corp.

Mr. LISHMAN. Was she generally known in New York as the person who handled Dick Clark's music publishing business?

Mr. PAXTON. She was.

Mr. MOSS. What was the last name of Vera?

Mr. PAXTON. Hodes.

Mr. LISHMAN. Was it the purpose of this negotiation to get Dick Clark to promote this record, "Sixteen Candles," on his show "American Bandstand" over the ABC network?

Mr. PAXTON. That is a rather pointed question.

(Witness confers with counsel.)

Mr. PAXTON. For all intents and purposes I guess I could answer, "Yes."

Mr. LISHMAN. Was it, or not? You were in the music publishing business; Mr. Clark was in the music publishing business. Why would you assign the copyright to him if it was not for that purpose?

Mr. PAXTON. It develops into a very long story, sir. I will just say, "Yes."

Mr. LISHMAN. I would like to hear the long story because if there was any other reason why you made the assignment, I would like to hear about it.

Mr. PAXTON. First, let me say I am not trying to withhold or hide any information from you. Although we did assign a copyright to January Corp., we assigned it with the hopes that there would be plays, further plays or more plays, there is no doubt about that.

Actually, having them documented we did not expect—so I brought a long story down into a short story.

Mr. MOSS. Mr. Paxton, who contacted you first? Who made the first contact?

Mr. PAXTON. Sir, I did not do any of the negotiations. My partner, Marvin Cane, did all of the negotiating.

Mr. MOSS. But if you were negotiating away a right of the partnership—

Mr. PAXTON. I can tell you how it happened, if you would like to hear it from me.

Mr. MOSS. Did you authorize him or were the negotiations undertaken with your knowledge?

Mr. PAXTON. He is my general manager and he is always authorized to do whatever he sees fit.

I believe he can explain to you that there was not too much negotiation.

Mr. MOSS. Who was contacted first?

Mr. PAXTON. I believe he contacted Vera.

Mr. MOSS. He contacted Vera.

Mr. PAXTON. I believe the way it went is that he talked to her a couple of times and suggested at one meeting that January Music Corp. take the publishing over.

I did not hear about it until she actually accepted.

Mr. MOSS. Did you get anything out of it after they took over?

Mr. PAXTON. What do you mean?

Mr. MOSS. Did you get any cut? You were to pay them at 1½ cents a recording?

Mr. PAXTON. That is correct.

Mr. Moss. Did Coronation Music or did George Paxton share in any portion of that 1½ cents?

Mr. PAXTON. No.

Mr. Moss. Not in any way?

Mr. PAXTON. No.

The only thing we retained was 50 percent of the performance credits paid through BMI Society.

Mr. Moss. You retained performance credits, only?

Mr. PAXTON. Yes, sir.

Mr. Moss. And not 1 cent from recording sales?

Mr. PAXTON. No. That was given to him and he was to pay the writers.

Mr. Moss. He was to pay the writers?

Mr. PAXTON. Yes.

Mr. Moss. To plug the music?

Mr. PAXTON. That was not the stipulation.

Mr. Moss. Was it understood?

Mr. PAXTON. It was never actually said, sir, in all truth.

Mr. Moss. Was it understood?

Mr. PAXTON. It was understood, from our end it was understood.

They never committed themselves. I am not speaking here for Dick Clark. I am just trying to tell you the truth, sir.

Mr. Moss. Were these people so naive as to feel—

Mr. PAXTON. There was no naivete about it at all, sir.

Mr. Moss. You were confident that they understood your reasons for assigning the rights to them?

Mr. PAXTON. I was more hopeful than confident.

Mr. Moss. Were you also confident that they would go along and do what you expected?

Mr. PAXTON. I would have to be trustful because I thought the song had merit, No. 1.

Mr. Moss. Was it rumored that this sort of arrangement could be made with the Dick Clark organization?

Mr. PAXTON. It was rumored. It is the nature of the business.

Mr. Moss. Could anyone else make the same arrangements?

Mr. PAXTON. I don't know who does, but I am sure arrangements have been made.

Mr. Moss. Any other rumors?

Mr. PAXTON. Specific rumors, no.

Mr. Moss. But you do know of this rumor, however?

Mr. PAXTON. I personally didn't know about it until it was brought to my attention.

Mr. Moss. That is always the case.

Mr. PAXTON. It was known to others before me.

Mr. Moss. Mr. Bennett?

Mr. BENNETT. The record was not going anywhere at the time you sold it to the January Corporation?

Mr. PAXTON. Sir, I am supposed to tell the truth, am I not?

Mr. BENNETT. Yes.

Mr. PAXTON. The record was doing fairly well. It had a lot of potential.

Mr. BENNETT. It was not doing well in the Billboard rating?

Mr. PAXTON. Billboard compilation is always 2 weeks late.

Mr. BENNETT. Where else was it doing well?

Mr. PAXTON. It was doing well from our field reports, fairly well, sir.

Mr. BENNETT. Then why did you want to get rid of it? If it was doing well, why did you need any help to distribute it?

Mr. PAXTON. Well, can I use the only cliché "every little bit helps"?

In a highly competitive business it seemed like it might be all right to do it.

Mr. BENNETT. Is it a fact that the common interest rather than Dick Clark made the record.

Mr. PAXTON. It was said, yes.

Mr. BENNETT. You so understood?

Mr. PAXTON. I argued the point at times, personally, but I thought it was possible that he could make something singlehanded.

Mr. BENNETT. You did not get anything out of it, you said?

Mr. PAXTON. I did not get anything out of it.

Mr. BENNETT. You told Mr. Moss you kept the performance credits?

Mr. PAXTON. Which is a very important part.

Mr. FEINMAN. May I clarify for the record?

Mr. MOSS. Let Mr. Paxton clarify for the record.

Mr. PAXTON. You want me to explain?

Mr. MOSS. Yes.

Mr. PAXTON. Simply that we owned the record company and we would get the benefits from the sale of records.

Mr. MOSS. Did you have a performance right, also?

Mr. PAXTON. Yes, sir; we always retained 50 percent of the performances, but he still owns the copyright or owned it.

He was assigned the copyright. It is a very technical thing. It is hard to understand, I know.

Mr. MOSS. Mr. Paxton, we are most anxious to understand every detail.

Mr. PAXTON. Well, it is a technicality. When I assigned him the copyright he owned it to license for the world.

However, I was to retain 50 percent of the performance rights.

Mr. MOSS. Is that when it is played live in a nightclub?

Mr. PAXTON. No, that is when it is played on the air.

Mr. MOSS. When it is played on the air you are paid?

Mr. PAXTON. I was to get 50 percent directly from the Performing Rights Society.

Mr. LISHMAN. May I interrupt to clarify?

Mr. MOSS. Yes.

Mr. LISHMAN. Were those world performance rights, or just the performance rights in the United States and Canada?

Mr. PAXTON. World.

Mr. MOSS. In order to understand this, it was licensed as it was, subsequently, to Synthetic, Keel, Remington, Martin-Gilbert, RCA, Bell, Puccio. As licensed to those manufacturers or record companies, what profits did you receive from the sale of those recordings?

Mr. PAXTON. These records I received no profits from.

Mr. MOSS. On each of the Coed labels, did you receive the profit of the record company?

Mr. PAXTON. Yes, sir.

Mr. Moss. Now, were there broadcast rights or performance rights tied up in the playing of any other record, or was it necessary that in each of the performances the royalty was to accrue 50 percent to your account?

Mr. PAXTON. No matter what records were played, the royalties would accrue 50 percent to my account.

I can tell you one thing: When there are six or seven records made of a song and the song becomes popular through one artist, that is the only one that is played.

I would say 99 percent played. So the other six records as far as performance is concerned play no part as far as broadcasting is concerned.

Mr. Moss. Is that by custom?

Mr. PAXTON. By custom.

Mr. Moss. Or agreement?

Mr. PAXTON. By custom.

Mr. Moss. Mr. Lishman?

Mr. LISHMAN. Mr. Paxton, what was on the flip side of the record "Sixteen Candles"?

Mr. PAXTON. It was a song called "Beside You." I hope I am right.

Mr. LISHMAN. Was that also by the Crests?

Mr. PAXTON. Yes, sir.

Mr. LISHMAN. Who pressed this record?

Mr. PAXTON. RCA Victor, Columbia.

Mr. LISHMAN. Did Mallard press some of the records of "Sixteen Candles"?

Mr. PAXTON. About 10,000 or 15,000.

Mr. LISHMAN. You knew at the time you gave the order for pressing that 50 percent of Mallard was owned by Dick Clark?

Mr. PAXTON. Yes, sir.

Mr. LISHMAN. About how many records of "Sixteen Candles" were sold?

Mr. PAXTON. 468,235 to date.

Mr. LISHMAN. Who distributed the record?

Mr. PAXTON. We have 35 distributors in different areas of the country for Coed.

Mr. LISHMAN. In other words, Coed is its own national distributor?

Mr. PAXTON. Yes, sir.

Mr. LISHMAN. Did you ever correspond with or speak to Dick Clark personally, or over the telephone about the Coed record "Sixteen Candles"?

Mr. PAXTON. No.

Mr. LISHMAN. Did you ever discuss it with Mammarella?

Mr. PAXTON. Never.

Mr. LISHMAN. Do you know Bernard Lowe?

Mr. PAXTON. I know him from years ago, but I have not talked to him in 5 years.

Mr. LISHMAN. You never discussed "Sixteen Candles" with him?

Mr. PAXTON. No.

Mr. LISHMAN. Do you know Harry Finfer of Universal Records?

Mr. PAXTON. Yes, sir.

Mr. LISHMAN. Did you ever discuss it with him?

Mr. PAXTON. Yes.

Mr. LISHMAN. What was the nature of the discussion with Mr. Harry Finfer of Universal Records?

Mr. PAXTON. I did not discuss it personally, again, I believe, more than once because that is not my area.

The boys that work for me do that.

Mr. LISHMAN. Did Mr. Cane discuss it with him?

Mr. PAXTON. Yes. However, I do remember discussing it with him once, I believe, when we had lunch and asked him if he could possibly get Dick Clark to play it.

Mr. LISHMAN. Did you ever discuss this record "Sixteen Candles" with Mr. Charles D. Reed?

Mr. PAXTON. Never heard of the gentleman.

Mr. LISHMAN. Do you know Mr. Martin Josephson?

Mr. PAXTON. Never heard of him.

Mr. LISHMAN. Did you ever discuss "Sixteen Candles" with any other representative or associate of Dick Clark, or Tony Mammarella?

Mr. PAXTON. No.

Mr. Cane may have, but I am not sure.

Mr. LISHMAN. Did Mr. Martin Cane ever report to you any conversations or any negotiations he had, either with Mr. Clark or Tony Mammarella, with respect to the record "Sixteen Candles"?

Mr. PAXTON. No. I don't know if he ever talked to them. I don't believe he did. I think he just talked to Vera.

Mr. LISHMAN. In November, 1958, an employee by the name of Norman Reubin—

Mr. PAXTON. Yes.

Mr. LISHMAN. Which of your companies did he work for?

Mr. PAXTON. He worked for Winterton Music and George Paxton, Inc.

Mr. LISHMAN. He worked for whom?

Mr. PAXTON. George Paxton, Inc., and Winterton Music, Inc.

Mr. LISHMAN. What were his duties?

Mr. PAXTON. Song plugger, try to get records played, songs recorded.

Mr. LISHMAN. Did he ever report to you any conversations or any negotiations he had with Dick Clark?

Mr. PAXTON. No, he was never able to see Dick Clark personally.

Mr. LISHMAN. Did he ever report any conversations or negotiations he had with Tony Mammarella?

Did he ever see him?

Mr. PAXTON. He may have; I don't know. I know he could not get to talk to either one of them, and he did report to me that at one time that he may have talked to our distributor in Philadelphia, which was Harry Finfer.

Mr. LISHMAN. What did Mr. Finfer say?

Mr. PAXTON. To him, I don't know. To me, he said he would try.

Mr. LISHMAN. Did Mr. Reubin ask Mr. Finfer to get Mr. Clark to play the record "Sixteen Candles" on the show, "American Bandstand"?

Mr. PAXTON. I would say so. I don't think Mr. Reubin would have had any weight at all.

Mr. LISHMAN. Who paid the artist's fee for this song, "Sixteen Candles"?

Mr. PAXTON. The artist's fee?

Mr. LISHMAN. Yes.

Mr. PAXTON. Could you clarify that? The artist's royalty?

Mr. LISHMAN. Yes.

Mr. PAXTON. Coed Records.

Mr. LISHMAN. Now, these artists also appeared on the "American Bandstand" show; did they not?

Mr. PAXTON. I am sure they did, yes.

Mr. LISHMAN. Do you know who paid their fees when they appeared on the "American Bandstand" show?

Mr. PAXTON. No.

Mr. LISHMAN. Did Coed Records pay that fee?

Mr. PAXTON. That was not in my area. I don't believe so.

Mr. LISHMAN. Would Mr. Cane know?

Mr. PAXTON. I believe he would.

Mr. LISHMAN. Now, it is a fact that Coronation Music made an outright assignment of "Sixteen Candles" to January Corp.?

Mr. PAXTON. Yes.

Mr. LISHMAN. What consideration did they receive in return?

Mr. PAXTON. Actual consideration?

Mr. LISHMAN. Yes, sir.

Mr. PAXTON. You have everything documented here. Is that what you are referring to?

Mr. LISHMAN. You generally don't assign a valuable copyright to someone else unless you get something back. What did you get back?

Mr. PAXTON. We get some plays back. We got some air play, but we didn't get it in writing or any specifics as to what we were going to get.

Mr. LISHMAN. Did you receive any money from Mr. Clark?

Mr. PAXTON. No.

Mr. LISHMAN. Did you receive any other consideration from him other than his playing the record on the show?

Mr. PAXTON. No, sir.

Mr. LISHMAN. So that was the entire consideration of the assignment?

Mr. PAXTON. I would say so.

Mr. LISHMAN. Now, is it a fact that subsequent to the assignment, Coronation and January Corp. jointly informed BMI that the performance fees were to go 50 percent to January and 50 percent to Coronation?

Mr. PAXTON, do you know how much was received by the January Corp. as a result of this 50-50 split?

Mr. PAXTON. In money or performances?

Mr. LISHMAN. In the money from the performances.

Mr. PAXTON. \$3,124.56.

Mr. LISHMAN. How much did Mr. Clark get?

Mr. PAXTON. That is what he got. He got that much and I got that much—January Corp.

Mr. Moss. 1½ cents a record on 680,000. This is not records; this is performances. This is performances. These are judged at 4 cents local and 6 cents network. That was not in the agreement, was it?

Mr. PAXTON. In the agreement? It was a separate letter.

It might as well have been in the agreement. We consider it such.

Mr. LISHMAN. Is that the letter you addressed to BMI?

Mr. PAXTON. Yes.

Mr. LISHMAN. Is that the letter dated November 18, 1958?

Mr. PAXTON. Yes.

Mr. LISHMAN. Was that signed by Vera Hodes on behalf of the January Corp.?

Mr. PAXTON. Yes.

Mr. FEINMAN. In our copy of the agreement Miss Hodes' signature does not appear. We presume it was signed.

Mr. Moss. Have we that letter for the record?

Mr. LISHMAN. We have that letter. If they will vouch for this as being a true and accurate copy and I have a chance to see it, we might put it in.

Mr. Moss. Do you vouch for that being a true and accurate copy of the letter?

Mr. PAXTON. Yes, sir.

Mr. Moss. Then, if there is no objection, we will place that letter in the record at this point.

(The letter referred to follows:)

NOVEMBER 18, 1958.

Mr. AL FEILICH,
Broadcast Music, Inc., New York, N.Y.

DEAR AL: This is to advise you that the performance fees for the composition titled "Sixteen Candles" are to be divided as follows: The January Corp., 50 percent; Coronation Music, Inc., 50 percent.

Thank you.

Cordially,

THE JANUARY CORP.,
VERA HODES.

Agreed and accepted:

CORONATION MUSIC, INC.,
By GEORGE PAXTON.

Mr. BENNETT. Was there any provision for profits or royalties aside from this performance fee?

Mr. PAXTON. Yes, sir.

Mr. BENNETT. Then there is the royalty for January Corp., 1½ cents.

Was there any other division of profits contingent on your sales?

Mr. PAXTON. No. They received the 1½ cents on each record directly from Coed Records.

Mr. BENNETT. From every record sold?

Mr. PAXTON. From every record sold.

Mr. BENNETT. How much did January Corp. make on that?

Mr. PAXTON. \$9,723.54.

Mr. BENNETT. Then they made a gross profit on the record in their deal with you of some \$13,800?

Mr. PAXTON. No; the \$9,700, sir, has to be split with the writers.

Mr. BENNETT. Yes.

Mr. Moss. Now, when you talk of 680,000 sales you are talking of pressings under the Coed label?

Mr. PAXTON. Yes, sir.

Mr. Moss. Do you have any knowledge of the number of pressings under the other seven labels?

Mr. PAXTON. I am well enough versed in this business to give you some idea, but I don't know, sir. I would not want to hazard a guess for one reason.

Two or three of these are packages. LP's, long playing, and they are packaged in with other songs.

So maybe something else in the package carried along "Sixteen Candles."

Mr. MOSS. In the package, the license still required payment of a royalty to the January Corp.?

Mr. PAXTON. That is correct.

Mr. MOSS. Is there a substantial number of pressings under the other labels?

Mr. PAXTON. Oh, yes; under the Coed mark.

Mr. MOSS. No. You had 680,000 under Coed.

Mr. PAXTON. 648,000.

Mr. MOSS. Is there a substantial number under the other seven labels?

Mr. PAXTON. Usually it would be very little.

Mr. MOSS. Well, RCA?

Mr. PAXTON. Just because RCA, it does not mean a thing.

Mr. MOSS. Would there be 10,000 on each label? What is meant by "a little"?

Mr. PAXTON. It could be 3,000, 4,000, 10,000. Some of them could go up to 50,000 I guess; 40,000.

Mr. MOSS. So it could be a substantial number?

Mr. PAXTON. It could be, but I doubt it.

Mr. BENNETT. How many of your records had been sold prior to the date you made the deal with Clark?

Mr. PAXTON. Prior to the day we made the deal with Clark? I would say—I can only hazard a guess, again.

Mr. BENNETT. Do you not have the records?

Mr. PAXTON. I don't have the exact records.

Mr. MOSS. How long would it take to supply that information for the record?

Mr. PAXTON. I have to get it from my office, I guess.

Mr. MOSS. How long will that take you?

Mr. PAXTON. Actually, you see what happens here, is that there is a lag between sale and payment. It would still be a guess.

Mr. MOSS. Take the shipments of the label.

Mr. PAXTON. We could go by that. That would not be hard to get.

Mr. MOSS. Let us hold the record open at this point to receive it.

Would that be satisfactory, Mr. Bennett?

Mr. BENNETT. I still would like an answer now.

Mr. MOSS. Subject to correction.

Mr. PAXTON. I don't know about the dates you say he played the record. It seems to me they are incorrect.

Mr. BENNETT. I am interested in what were the approximate total sales of the record before you made the deal with Clark.

Mr. PAXTON. We made the deal on what day?

Mr. BENNETT. The 18th of November.

Mr. PAXTON. The 18th. I would say we may have sold in the neighborhood of 60,000 to 70,000.

Mr. BENNETT. Can you get from your office records how many records you had pressed prior to November 18, 1959?

Mr. PAXTON. Surely.

I would say it would be in the neighborhood of between 50 and 100. No more than a hundred, and I doubt very much over 60.

(The information follows:)

AFFIDAVIT

STATE OF NEW YORK

County of New York, ss:

MAY 1960.

George Paxton, being duly sworn, deposes and says: That I am president of George Paxton Corp., Winneton Music Corp., and Coed Records, Inc.

The following constitutes my answer to questions propounded by the counsel of and various members of the Special Subcommittee on Legislative Oversight of the House Committee on Interstate and Foreign Commerce in executive session of the said subcommittee on April 25, 1960.

In answer to the question as to the number of records shipped by Coed Records, Inc., of the record "Sixteen Candles" prior to November 18, 1958; the number of such records shipped was 9,450.

In answer to the question as to who paid for advertisements in Billboard magazine advertising the record "Sixteen Candles" on December 8, 1958, and January 15, 1959, the said advertisements were paid for by Coed Records, Inc. However, pursuant to agreement with January Music Corp., one-half of the cost of these advertisements were charged to January Music Corp., and deducted from royalties due to them.

In answer to the question as to who paid the performing group known as the Crests for their appearance on the "American Bandstand" show and/or other "Dick Clark Shows," a search of the records of George Paxton Corp., Winneton Music Corp., and Coed Records, Inc., and its affiliated and associated companies shows that the Crests were not paid by any company in which the affiant has an interest.

Sworn to and subscribed before me this 3d day of May, 1960.

GEORGE PAXTON.

GERTRUDE T. BELL,
Notary Public.

[SEAL]

Commission expires March 30, 1961.

Mr. Moss. On this matter of appearance on the "Dick Clark Show," will you check your records and let us know whether you paid them?

Mr. PAXTON. I certainly will, sir.

Mr. Moss. Mr. Paxton, have you ever made any arrangement similar to this with respect to any other record in which your company owned the copyright?

Mr. PAXTON. No.

Mr. Moss. Now, I refer to a copy of the letter which was placed in evidence as the last exhibit; does that just cover the situation in the United States and Canada?

Mr. PAXTON. Yes, sir.

Mr. Moss. On the performance rights?

Mr. PAXTON. Yes, sir.

Mr. Moss. I show you a photostatic copy of the letter on the letter-head of the January Corp. addressed to BMI, Foreign Relations Department, dated, November 4, 1959, and informing BMI that the American publisher's share of the foreign performances on "Sixteen Candles" are to be collected by BMI and divided equally between Coronation Music, Inc., and January Corp., and signed, Vera Hodes and ask you if this is the correct representation of the agreement so far as Coronation Music, Inc., and January Corp. were concerned pertaining to the foreign record sales, performances.

Mr. PAXTON. This is sort of news to me. I didn't think that we were supposed to get 50 percent foreign, according to our contract.

Mr. Moss. Did you ever get 50 percent of the foreign performance payments?

Mr. PAXTON. They are so late in tabulation I don't think at this point we have received them. I haven't seen any received.

Mr. Moss. Does Mr. Cane know about this?

Mr. PAXTON. No.

Mr. Moss. Who would know about it, in your organization?

Mr. PAXTON. Me, just me. There has been a lot of correspondence going back and forth as far as foreign goes.

We have a deal with the foreign music publishers. I hate to get in these things because, again, it becomes technical.

We have a deal with a foreign music publisher called Kassner, in which we give an advance yearly for our whole catalog. He collects the performance money over there and applies it against our advance.

Mr. Moss. You mentioned that this would not be contemplated within the terms of your contract?

Mr. PAXTON. I didn't think it came within the terms.

Mr. Moss. Your contract with Kassner or your contract with January?

Mr. PAXTON. I thought our contract with January merely called for 50 percent of the American performance rights, but apparently they are giving us 50 percent of the foreign, which is O.K. with me.

Mr. Moss. Continue, Mr. Lishman.

Mr. LISHMAN. Mr. Paxton, in an attempt to refresh your memory as to this foreign situation in regard to performance payments, I will show you a photostatic copy of a letter dated December 12, 1958, addressed to Mr. Edward Kassner and apparently signed by you.

See if that will help you to refresh your memory.

Mr. PAXTON. I am aware of this.

Mr. LISHMAN. Does that straighten out this letter of November 4, 1959?

Mr. PAXTON. No, for the simple reason that there is nothing in that saying I am to receive 50 percent of the performing rights in this paper, am I correct, in the one you have just shown me?

Mr. LISHMAN. That is right.

Mr. PAXTON. Therefore, that was all done with a subsequent letter which was sent to BMI, as we brought out earlier.

Mr. LISHMAN. Yes, but this letter of December 12, that I have just handed you states:

"You will account to January, for royalties."

Mr. PAXTON. Is that the one you just showed me?

Mr. LISHMAN. Yes.

Mr. PAXTON. I am sorry. May I see that again?

Mr. LISHMAN. Yes.

Mr. PAXTON. I thought you were showing me something else. Yes, I understand that.

Mr. LISHMAN. Does that supersede the 50 percent arrangement that is referred to in this November 4 letter of Vera Hodes?

Mr. PAXTON. It would. What is the date of the Vera Hodes letter?

Mr. LISHMAN. November 4.

Mr. PAXTON. Of what year?

Mr. LISHMAN. 1959.

Mr. PAXTON. 1959.

Mr. LISHMAN. It could not supersede it. This is November 12, 1958. Had there been some new kind of agreement in between?

Mr. PAXTON. No. No new agreement. What we were trying to do was clarify the situation. This is all because of Kassner. I will try to explain it to you, sir.

Kassner being my foreign representative and paying me in advance was merely trying to pay me, charge my account with the money that he should have paid January. He has been trying to do that.

We have written him numerous letters telling him he can't do that because January owns the copyright, he must account to January.

But he, in his strange way, keeps skirting the issue and trying to charge my account with the money that he should be paying to January Music.

Does that mean anything to you?

Mr. LISHMAN. No.

Mr. PAXTON. That is why I hated to get into it.

Mr. LISHMAN. What I am trying to find out is, you said you did not know whether or not you were entitled to 50 percent of the foreign performance payments?

Mr. PAXTON. That is correct.

Mr. LISHMAN. I am trying to find out what kind of agreement you had with Dick Clark, or one of his companies with respect to these foreign payments.

Mr. PAXTON. Evidently January assumed that we made the 50 percent deal on the world.

Mr. LISHMAN. I follow that. Now what?

Mr. PAXTON. I assumed that it was just for America.

Mr. Moss. Now, you assigned in that agreement of November 18 certain rights under the agreement or arrangement with Kassner?

Mr. PAXTON. Yes, sir.

Mr. Moss. What did you assign at that point?

Mr. PAXTON. I assigned a copyright.

Mr. Moss. What did you assign in relationship to Kassner at that point?

Mr. PAXTON. He was to have the foreign rights on the song, all rights, publishing rights.

Mr. Moss. What does your agreement provide to give you. He gives you an advance, then he charges against it all of the payments he would make to you, had he not given you the advance?

Mr. PAXTON. Yes.

Mr. Moss. Until the payments equaled the advance, then he makes additional payments to you?

Mr. PAXTON. That is correct.

Mr. Moss. Now, under the terms of this agreement the undersigned also sets over and assigns to the January Corp. all of its rights under its contract with Edward Kassner Music Co., Ltd., dated October 15, 1958, including, but not limited to, the right to receive royalties and/or other compensation for the manufacture or sale of phonograph recordings of said composition entitled "Sixteen Candles"?

Mr. PAXTON. That is correct.

Mr. Moss. What rights have you assigned? Does Kassner have all the rights you enjoy in the United States?

Mr. PAXTON. Yes, that January enjoys in the United States.

Mr. Moss. Yes, so you assign to January Corp. the rights in connection with this one song which you would ordinarily enjoy under your frank estimate?

Mr. PAXTON. That is right.

Mr. Moss. That would include the performance rights, include the right to license recordings?

Mr. PAXTON. That is correct.

Mr. Moss. And it included—of course, it did not include any profits or recordings?

Mr. PAXTON. Sheet music. He was to account directly to January Music.

Mr. Moss. On this one recording?

Mr. PAXTON. Yes.

Mr. BENNETT. What did the January Corp. do with this record that you could not have done, yourself?

Mr. PAXTON. As what, as publishers?

Mr. BENNETT. As anything.

Mr. PAXTON. Well, they were publishers. It would have to be as a publisher. I just want to get your question clear so that I can answer it clearly.

Mr. BENNETT. Is January Corp. the only corporation that handled this deal?

Mr. PAXTON. You mean disregarding who owned it?

Mr. BENNETT. Yes.

Mr. PAXTON. No.

Mr. BENNETT. Many other companies?

Mr. PAXTON. Yes.

Mr. BENNETT. For what reason did you give it to January Corp.?

Mr. PAXTON. I think we discussed it earlier. We were just hopeful we would get more exposure.

Mr. BENNETT. Would you have been dealing with January Corp. in this matter at all had it not been wholly owned by Dick Clark?

Mr. PAXTON. I don't think so. I know not.

Mr. BENNETT. You know you would not?

Mr. PAXTON. Yes.

Mr. BENNETT. He is the only one—do any of these other music publishing companies, similar to January Corp., have anyone on radio or TV that would play records?

Mr. PAXTON. Any other? I don't know. You mean such as DJ's or something like that? I don't know of any.

There may be some.

Mr. BENNETT. Was this record plugged by any other diskjockey at the time you made this deal with Clark?

Mr. PAXTON. Before and after.

Mr. BENNETT. Who were they?

Mr. PAXTON. There were 125,000 performances on the song.

Mr. BENNETT. 125 what?

Mr. PAXTON. 125,000 performances logged on the song.

Mr. BENNETT. At the time you sold it to January Corp.?

Mr. PAXTON. Before, in the incipient stage of the song, all the way down to the end.

Mr. LISHMAN. Mr. Paxton, is it not a fact that Mr. Cane reported to you that January Corp. wanted more than a 50 percent interest in the copyright?

Mr. PAXTON. I believe we discussed it on that basis.

Mr. LISHMAN. Didn't you or your representatives, in effect, tell Mr. Clark he could fly a kite because the song already had shown a movement on its own? Did a conversation like that occur with Mr. Clark?

Mr. PAXTON. I am sure the terminology you used did not exist.

Mr. LISHMAN. Wasn't that the tenor of the conversation?

Mr. FEINMAN. Are you talking about a conversation between Mr. Cane and Mr. Paxton?

Mr. LISHMAN. Yes, or any representatives of Coronation Music with January Corp.?

Mr. PAXTON. I don't know exactly. The part I played, in it was when Mr. Cane came to me and told me that Vera Hodes would take the song as publisher. It was my suggestion to him that we retain something of it as we had an indication, definite indication, that the song would be a hit.

And I had not, to my knowledge, known whether he had ever played it, or not, at that date.

Mr. LISHMAN. Didn't the representatives of the January Corp. insist on more than a 50-percent interest at the outset?

Mr. PAXTON. I believe she may have asked for everything. I am sure that—

Mr. LISHMAN. By she, you mean Vera Hodes?

Mr. PAXTON. Yes.

Mr. LISHMAN. She is Dick Clark's representative?

Mr. PAXTON. Yes.

Mr. LISHMAN. Now, coming back to the amount of performance payments received in, let us say, the United States and Canada by January Corp., could you state approximately what that total was?

I can refer you to a check, No. 774, of May 11, 1959—I beg your pardon. First, I will go to the performance payment?

Mr. PAXTON. You would like to know the—

Mr. LISHMAN. Yes, I would like to know from you the approximate amount that January Corp. received on performance.

Mr. PAXTON. We just gave it to you exactly, \$5,124.56, sir.

Mr. LISHMAN. How much did the January Corp. receive in mechanical royalties on the record?

Mr. PAXTON. I would—

Mr. LISHMAN. I want to confine this to "Sixteen Candles".

Mr. PAXTON. \$9,723.54 to date.

Mr. LISHMAN. What other income, if any, has the January Corp. received from assignment?

Mr. PAXTON. Negligible amount on sheet music.

Mr. LISHMAN. Royalties from other record companies?

Mr. PAXTON. And the royalties from other record companies which I don't know about, and foreign royalties to be received, which I don't know about.

I don't think they come to much, however, because I don't think the song was a hit, foreign.

Mr. LISHMAN. Now, the licensing agreement between January Corp. and Coed Records did not call for a royalty on the records actually sold, did it?

Mr. PAXTON. Yes.

Mr. LISHMAN. Did it call for a royalty on records actually sold or royalty on records manufactured?

Mr. PAXTON. Records manufactured.

Mr. LISHMAN. I will show you a copy of a license signed by the January Corp., dated January 8, 1959, to Coed Records, Inc., which relates to Coed Record No. 506 and ask you if you will identify that as a correct copy of that license?

Mr. PAXTON. Yes, that is correct.

Mr. LISHMAN. Mr. Chairman, I would like to have this license, identified by the witness, placed in the record.

Mr. Moss. Is there objection?

Hearing none, the item will be made a part of the record at this point.

(The document referred to follows:)

JANUARY 8, 1959.

Re License issued at request of publisher, now represented by this office.

COED RECORDS, INC.,
1619 Broadway,
New York, N.Y.

Manufacturer's code: COED

Rate: 1½ cents

Musical work: "Sixteen candles."

GENTLEMEN: I am the agent and trustee for the January Corp. (hereinafter designated as the "publisher") who owns the copyright or controls the mechanical recording rights of the above copyrighted musical work.

Music by Luther Dixon and Allyson R. Khent.

Words by _____.

Record No. 506.

Artist: The Crests.

You have advised me in my capacity as agent and trustee for said publisher that you wish to use said copyrighted work under the compulsory license provision of section 1(e) of the Copyright Act upon the parts of instruments serving to reproduce mechanically the copyrighted work.

Upon your doing so, you shall have all the rights which are granted to, and all the obligations which are imposed upon, users of said copyrighted work under the compulsory license provision of the Copyright Act, after use or permission or knowing acquiescence by the said publisher in the use of the copyrighted work upon the parts of instruments serving to reproduce mechanically the copyrighted work (viz: phonograph records) by another person, except that with respect to records thereof manufactured by you:

1. You shall pay royalties and account to me as agent and trustee for and on behalf of said publisher quarterly on the basis of records manufactured; and
2. For such records manufactured, the royalty shall be 1½ cents; and
3. This license covers and is limited to one particular recording of the musical composition set forth above as performed by the artist on the record number set forth above; and this license does not supersede nor in any way affect any prior licenses now in effect respecting recordings of said musical composition; and
4. In the event you fail to account to me and pay royalties as herein provided for, my principal shall have the right to repudiate and revoke this license by giving you written notice to such effect; and
5. You need not serve or file the notices required by the Copyright Act.
6. This license is limited to the United States, its territories and possessions.

Very truly yours,

THE JANUARY CORP.,
By HARRY FOX, *Agent and Trustee.*

We acknowledge receipt of a copy thereof:

COED RECORDS, INC.,
By GEORGE PAXTON.

Mr. LISIMAN. January Corp. presumably retained half of the mechanical royalties and paid the writers half?

Mr. PAXTON. Yes.

Mr. LISIMAN. Coed Records, Inc., retained the profit from the sales of the records?

Mr. PAXTON. Yes, sir.

Mr. LISIMAN. Coed also retained one-half of the publisher's share of the performance royalties; is that not correct?

Mr. PAXTON. That is correct.

Mr. LISIMAN. Did Coed contribute one-half of the writer's performance royalties?

Mr. PAXTON. What is that?

Mr. LISIMAN. Did Coed contribute one-half of the writer's performance royalties?

Mr. PAXTON. Either I don't understand you, or—the writers' royalties are paid directly from the performance agency to the writers.

Mr. LISIMAN. BMI paid them?

Mr. PAXTON. Yes.

Mr. LISIMAN. Do you recall how this record was first brought to Mr. Clark's attention?

Mr. PAXTON. I really don't know, sir.

Mr. LISIMAN. Mr. Cane, you say, may know about that?

Mr. PAXTON. He will know a lot more than I will about that.

Mr. LISIMAN. Mr. Paxton, I am going to hand you a photostatic extract from a page of the December 8, 1958, issue of Billboard, and ask if you can identify that?

Mr. PAXTON. It looks like an ad. I don't know who put it in.

Mr. LISIMAN. You do not recall if you put it in?

Mr. PAXTON. I may have.

Mr. LISIMAN. Mr. Chairman, I would like to have this extract from the December 8, 1958, issue of Billboard, stating that the Nation's No. 1 hit ballad of "Sixteen Candles," on Coed record 506 and so on, with a notation at the bottom stating, "Check the best selling charts in all trade papers to see one of the biggest jumps of any current record."

Mr. Moss. Is there objection?

Hearing none, the request is granted.

(The document referred to follows:)

THE NATION'S NEXT **NO. 1** BALLAD!

16

BOKE
IMMEDIATELY
BY ALL
MARKETS

SAID
OVER
235,000
TO DATE

CANDLES

by
**THE
CRESTS**

COED REG. #506

Check the Best Selling Charts
in all Trade Papers to see
one of the biggest tunes of
any current record

Published by **JANUARY CORP.**
1850 Broadway New York 19, N.Y.

— WORLDWIDE DISTRIBUTION —

Mr. LISHMAN. Now, Mr. Paxton, I would like to hand you another photostatic copy of an extract from the January 5, 1959, issue of Billboard which proclaims, respecting "Sixteen Candles" by the Crests, Coed record 506, "On its way to a million and No. 1. The first big ballad of 1959."

Then I particularly call your attention to the insert on this ad "Thanks, Dee Jays, Dealers, and Distributors, for establishing Coed as a record company and not just a label."

And I ask you if you can identify this ad?

Mr. PAXTON. Yes.

Mr. LISHMAN. Do you recall who paid for that ad?

Mr. PAXTON. No; I think it may have been split between January and us. I am not sure.

Mr. LISHMAN. Mr. Chairman, I would like to have this exhibit identified by the witness placed in the record.

Mr. Moss. If there is no objection, the exhibit will be placed in the record at this point.

(The material referred to follows:)

ON ITS WAY TO A
MILLION
AND #1

FIRST
BIG
BALLAD
OF
'59

THANKS, DEE JAYS,
DEALERS AND
DISTRIBUTORS, FOR
ESTABLISHING
COED AS A RECORD
COMPANY AND
NOT JUST A LABEL.

16

CANDLES'

by

THE CRESTS

COED RECORD #506

NEW YORK
JANUARY CORPORATION
140 E. 47th St. New York 17, N.Y.

Mr. Moss. Have we established a date for these advertisements? Who paid for these?

Mr. LISMAN. On the first one we have information it was paid for by the George Paxton Co., Inc. Mr. Paxton was not sure who paid for it.

Mr. Moss. Can that be established from your records?

Mr. PAXTON. Certainly. It won't take any time to do that at all.

Mr. Moss. Will you undertake to do that?

Mr. PAXTON. Certainly.

Mr. FEINMAN. What were the dates?

Mr. Moss. Dates of January 5, 1959; December 8, 1958. They appear to be full-page ads from Billboard.

Mr. PAXTON. I think they are.

(See witness affidavit inserted at p. 855.)

Mr. BENNETT. Is this the only deal you ever made with January Corp.?

Mr. PAXTON. Yes, sir.

Mr. BENNETT. Have you made any since, similar to this?

Mr. PAXTON. No, sir.

Mr. BENNETT. Do you know of any similar type arrangement by any of your competitors?

Mr. PAXTON. That any other publishers have made?

Mr. BENNETT. Yes.

Mr. PAXTON. I would not know, sir. I have so much trouble keeping up with my own affairs. I would imagine it has been done, though.

Mr. BENNETT. Is this the one and only deal you have ever had with January?

Mr. PAXTON. So far as I recall.

Mr. BENNETT. What is the total profit you made out of this record?

Mr. PAXTON. Well, profit is a hard word to use for the simple reason that we were in the throes of building a record company and you would have to apply so many things against the money income. I can tell you how much we grossed on it.

Mr. BENNETT. All right.

Mr. PAXTON. It would be in the neighborhood of \$250,000.

Mr. BENNETT. You did not split that with anyone except your own firm?

Mr. PAXTON. That is correct.

Mr. BENNETT. How long have you been in this business, Mr. Paxton?

Mr. PAXTON. In the record business, or publishing?

Mr. BENNETT. In the record business.

Mr. PAXTON. Record or publishing?

Mr. BENNETT. Both.

Mr. PAXTON. 12 years; and 2½ years in the record business.

Mr. BENNETT. Did you ever have a song gross anything like this before, or since?

Mr. PAXTON. I never had as big a hit as a manufacturer. I have had bigger hits as a publisher.

Mr. BENNETT. Did you ever in your experience pay any money or give anything of value to diskjockeys to play your products on the air?

Mr. PAXTON. Did I ever? I have given things of value. I would not complete the sentence, sir, the way you did, though, to play things on the air. There are two ways this word has been used as far as I can see, following the newspapers.

It has been intimated that payola means for the purpose of exposure, absolutely documented exposure, and I have never found it to be such with me.

I am talking about myself, now.

Mr. BENNETT. What about the understanding of payment or money, giving something of value with the understanding—

Mr. PAXTON. It has been mostly used in my experience, sir, as an entree, as a means for entree and for licensing purposes.

I can honestly say that anything that has been given by me, by my organization, has never been with the desire to have anything played that was inferior. It is the natural means of building a relationship in a highly competitive business with the man that can expose your product.

Mr. BENNETT. How much have you paid, either cash or things of value, to diskjockeys in the last 5 years?

Mr. PAXTON. I would say relatively small compared to other companies. I would say maybe \$10,000 or \$15,000; something like that.

Mr. BENNETT. Did you ever pay anything to Clark or give him anything of value?

Mr. PAXTON. No.

Mr. BENNETT. What about Tony Mammarella?

Mr. PAXTON. No.

Mr. BENNETT. Would you object to naming some of those diskjockeys to whom you did give something?

Mr. PAXTON. I would have to search my mind.

Mr. LISHMAN. Does Joe Smith suggest anything to you?

Mr. PAXTON. I remember signing a check to Joe Smith, yes.

Mr. LISHMAN. Did you pay him 1 cent for records sold, as a result of his plugging of your songs on a Boston radio station?

Mr. PAXTON. It is possible we did, yes.

Mr. LISHMAN. There has been testimony here to that effect.

Mr. PAXTON. Well, I would admit it then.

Mr. MOSS. Mr. Paxton, did you pay any form of payola prior to the time you entered the record business? Did you give us an estimate of \$10,000 to \$15,000 in payments?

Mr. PAXTON. I would say most of it has been since I entered the record business.

Mr. MOSS. That was not my question. My question was, had you paid it prior to going into the record business?

Mr. PAXTON. I am sure, sir, there was some.

Mr. MOSS. To whom and—

Mr. PAXTON. I could not tell you. It goes back so far, sir.

Mr. MOSS. To diskjockeys?

Mr. PAXTON. There may have been gifts, yes.

Mr. MOSS. Would that be because you had an interest in recordings?

Mr. PAXTON. Yes.

Mr. MOSS. And titles you wanted to see plugged?

Mr. PAXTON. Yes.

As I started to say to Mr. Bennett, actually my system, my particular system, has been to send gifts for entree.

Mr. Moss. No followup gifts?

Mr. PAXTON. Nothing for specific—

Mr. Moss. How many arrangements have you made where you paid a royalty per recording sold in an area serviced by a diskjockey?

Mr. PAXTON. Not too many.

Mr. Moss. How many?

Mr. PAXTON. I could estimate 20.

Mr. Moss. Will you supply for the subcommittee the names of those to whom you have made payments of this type?

Mr. PAXTON. Will I supply?

Mr. Moss. Yes.

Mr. PAXTON. Yes.

(The information referred to above follows:)

AFFIDAVIT

STATE OF NEW YORK

County of New York, ss:

George Paxton, being duly sworn, deposes and says:

That the following constitutes the answer to the questions propounded by Mr. Moss of the House of Representatives Special Subcommittee on Legislative Oversight in relation to the names of diskjockeys with whom arrangements were made for payment, such payment being gaged by the number of records sold: Stan Richards, Norm Prescott, Rocky Gross, Frank Ward, Lew Platt, Joe Deane, Ed Meath, Joe Finan, Jay Michaels, Dick Lawrence, Ronnie Grainger, Joe Smith, Don McLeod, Larry Brown, Irv Michalnik, Lucky Pierre, Tom Clay, Peter Tripp.

GEORGE PAXTON.

Sworn to before me this 13th day of May 1960.

[SEAL]

KATHLEEN E. WATSON,
Notary Public.

Commission expires March 30, 1961.

Mr. Moss. On your books do you always carefully segregate the expenses involved in this type of payment, whether it be in cash or in kind?

Mr. PAXTON. In cash or in what, sir?

Mr. Moss. In cash or in kind; a gift, anything of value. Do you segregate these items on your books?

Mr. PAXTON. I believe so.

Mr. Moss. You will supply, then, the list of those to whom you made payments?

Mr. PAXTON. Yes, sir.

Mr. Moss. Now, you made a statement that this is a normal natural means of doing business.

Do you think it is a proper one?

Mr. PAXTON. I definitely don't think it is proper because I, as everyone else, would like to retain all my profits.

Mr. Moss. I do not blame you.

Mr. PAXTON. I can't see any other way that I would think would be better suited for me. I can only say that in order to compete, and I am a small "I", I just take the business from a competitive angle.

Mr. Moss. Do you think activities of this sort should be outlawed?

Mr. PAXTON. I would like to see them outlawed.

Mr. Moss. You would like to seek business entirely on the merit of your product?

Mr. PAXTON. Well, sir, again let me say something: I have a feeling, and a very strong feeling, and I do think I know what I am talking about here, that if payola as we can name it succinctly, were outlawed, which I would love, I think, I still think, the same music would emerge successfully.

Mr. MOSS. You mean we would have had the outbreaking of the rather peculiar music we have had in the past few years?

Mr. PAXTON. I don't think that has anything to do with it.

Mr. MOSS. I don't know of any time in our history where we have had such comparably bad, uniformly bad music.

Mr. PAXTON. I don't want to challenge your technical knowledge. The only thing, I can always say that if there is one that can always tell what is good and what is bad, I would like to meet that man.

Mr. MOSS. Let us say, where so many people have been protesting as to the offensive nature of it, its jolting and jarring effect on nerves.

Mr. PAXTON. I am a musician. I have arranged for Perry Como, Dinah Shore, any of them you can mention. Benny Goodman, Tommy Dorsey. I am an established musician. I can read music at sight and I love good music. I will say this. My calculations are not just based on hearsay. I feel that the majority of the opponents to the present day fad are people, quite a few, who haven't been too lucky, too successful, plus the fact that it seems like a teenaged audience is buying the singles and they seem to demand the type of music that they are getting.

Mr. MOSS. I thought we were paying all these inducements in order to have music listened to and have it played over the air.

Mr. PAXTON. Not I, sir. I pay to have my record listened to or my song listened to.

Mr. MOSS. You are familiar with the fact that we have had some testimony before this subcommittee indicating—

Mr. PAXTON. Talking about my particular situation?

Mr. MOSS. You made an all-inclusive statement which I realize is—I do not know—

Mr. PAXTON. I personally dislike most of the music today, if you want to know the truth.

Mr. MOSS. You dislike it?

Mr. PAXTON. Yes.

Mr. MOSS. I do, too.

Mr. PAXTON. But I can't do anything about it because—

Mr. MOSS. I do not have any prejudice against a little bit of rhythm. I used to play drum when I went to school. I never heard of so many singers who cannot sing.

Mr. PAXTON. That I have to agree with you 100 percent.

Mr. MOSS. You mean that would have occurred without payola?

Mr. PAXTON. I think so. I think the youth of today—

Mr. MOSS. They use all the tricks in the world to put these characters forward and make them able to sound as if they can get a noise out.

Mr. PAXTON. I think the emotion of the youth called for it, desired it, wanted it. I don't think anything could have stopped it.

Mr. MOSS. Well, we disagree.

Mr. BENNETT. Now, when you listen to a television or radio program, do you see a difference between the knowledge you have and

that which the public has as to the interest of the person putting on the program in the product being presented? Let us take payola. The man playing the record, in the mind of the public, is presumed to be a fellow who knows something about music, is very much interested in it, and is one who is not associated either with the production, the manufacture, or distribution of that music. Is that a fair statement?

Mr. PAXTON. Yes.

Mr. BENNETT. Now, if you are going to buy something you turn on your television set and somebody appears describing an automobile. Take for example one of the outstanding Sunday night programs, Ed Sullivan. He brags about the Lincoln car or the Mercury or whatever other Ford product he talks about. I know and you know that he is getting paid to say what he says about it. Is that not true?

Mr. PAXTON. That is correct.

Mr. BENNETT. So that we are in a position to evaluate the extent of the credit or value we should place on his opinion. But when we listen to a diskjockey play a record and then say, "this is one of the top tunes of the country" and, "isn't this beautiful and wonderful," the public does not know that that man is being paid by people like you to play that record. Is that not true?

Mr. PAXTON. It is and it isn't. That song may have reached its popularity already before he makes the statement.

Mr. BENNETT. The public does not know that he is being paid and has an interest in whether that music sells or whether it does not sell. To the public he is just expressing an educated opinion about the song.

Mr. PAXTON. Correct.

Mr. BENNETT. Do you think the public is entitled, in a case like that, to know that the man has a financial interest in the playing of that record or sale of that record? I think it all boils down to that simple a thing.

Mr. PAXTON. Then you would intimate that every man who makes that statement has a financial interest in the record?

Mr. BENNETT. No. I am saying that any man, any diskjockey, who is getting paid to plug a record ought to be telling the public of his interest.

Mr. PAXTON. I agree with you.

Mr. BENNETT. The evil that is practiced, in my opinion, is the fact that the diskjockey is being paid to advertise something but he is not telling the public that he is getting paid to do so.

Mr. PAXTON. I agree with you 100 percent. However may I just say one thing? I don't want to waste your time. But you take the case, and I have studied this because I know how important it is to America and to everything else that the right music be played, and as a publisher also, I would love to have better songs. I am sure you understand that better songs mean longer life, more residuals. However, how do you account for the fact that during this period of the emergence and sustainment of rock and roll, shall we say, there have been many, many beautiful ballads also sung and exposed and talked about in the same vein with no support, retail support? And don't think it has not happened. A specific example is a song called—

Mr. Moss. The answer, I think, you just gave to a very reasonable fact. The good music did not require the support, the good music did not require the payment of payola.

Mr. PAXTON. You don't follow me.

Mr. MOSS. You say it did not survive?

Mr. PAXTON. There have been many, many good songs pushed in with these songs you and I don't like. Those songs have been exposed and they have been emulated, the diskjockey has played great songs, "The Sound of Music," six records on it, Patti Page, all the big artists, and those records are played not once or twice but they are played quite often and there are a lot of men that play them, that like them, and are trying to, and have tried to, put them across to the public. The fact that the public does not support them and go into the record stores and buy those records is getting down to what I started to discuss with you earlier. I said no matter what happened, the same music would still be around.

Now, what it will be 2 or 3 years from now, I don't know.

Mr. MOSS. Let me give you another fairly reasonable example. One of my children is a teenager, one is immediately preteen. They listen to these programs when I am not home. They have an allowance which permits them to buy just a few recordings. So they buy this—

Mr. PAXTON. Trash.

Mr. MOSS. Trash. And they won't play it more than once or twice after they buy it. They buy it because it has been pushed at them.

Mr. PAXTON. But they are also hearing "The Sound of Music." Why don't they buy that?

Mr. MOSS. After a while of that, after a few years of that, I find my youngsters not wanting to buy—

Mr. PAXTON. They are growing a little older.

Mr. MOSS. They are buying better music now. They are on a program of developing a library of the next step, the Broadway hits, the shows.

Mr. PAXTON. They change.

Mr. MOSS. But they bought this, not because they liked it, but because it was the popularly pushed item by the diskjockeys who set the tone for the kids.

Mr. PAXTON. You certainly have a point.

Mr. MOSS. Then one of the biggest effects on, or impact on, these youngsters is from Mr. Dick Clark.

Mr. PAXTON. I would agree with that. Don't get me wrong. I am not here to protect Dick Clark.

Mr. MOSS. If you ever got home early you have heard this raucous sound in the middle of the afternoon.

Mr. PAXTON. I make it but I don't listen to it.

Mr. MOSS. I try not to, but sometimes I have difficulty avoiding it. But I think that is why you are getting it.

Mr. PAXTON. It would be a horrible state of affairs if all of a sudden everyone were to, shall we say, play the good music—

Mr. MOSS. It would be horrible?

Mr. PAXTON. No, it would be great but it would be horrible if no one went out to buy it.

Mr. MOSS. We have to have some of it new.

Mr. PAXTON. And all the manufacturers would die, that is the only thing.

Mr. MOSS. They die pretty fast.

Mr. BENNETT. This practice would die a lot sooner if payola were stopped.

Mr. PAXTON. I certainly hope you stop it. It would save me a thousand dollars a year. I would enjoy it, because my amount of net is pretty bad.

Mr. LISHMAN. Mr. Paxton, would you consider the exposure of these popular records by diskjockeys the same as advertising?

Mr. PAXTON. The same as advertising?

Mr. LISHMAN. Yes, sir.

Mr. PAXTON. You would have to make it in the same nature, yes.

Mr. LISHMAN. In other words, when you transferred a copyright on "Sixteen Candles" to Dick Clark you did it in order to get the advertising the record would receive from his plugging it on the air, isn't that correct?

Mr. PAXTON. Yes.

Mr. LISHMAN. Would not you consider that the royalty payment Dick Clark got was really royalola on a much larger and vaster scale than the payola that the diskjockeys got?

Mr. PAXTON. What is that?

Mr. LISHMAN. He gets royalola.

Mr. PAXTON. That is a new one.

Mr. LISHMAN. Did he not? Did not the amount of the royalties he received, in your opinion far exceed—

Mr. MOSS. It is necessary that you respond verbally. Shaking your head to indicate agreement does not get on the record.

Mr. PAXTON. All right.

Mr. LISHMAN. Is not it a fact, in your opinion and from your experience in the music business, that the amount that Dick Clark collected in royalties far exceeded the amount that an ordinary diskjockey would get in payola on a given record?

Mr. PAXTON. Definitely.

Mr. LISHMAN. Is not it a fact that your transfer of the copyright of "Sixteen Candles" to Dick Clark was payola on a much bigger scale than has ever existed before?

Mr. PAXTON. If you interpret it as such, that is the way it is.

Mr. LISHMAN. Well, you have stated that he gave you no consideration other than the hope on your part that he would plug the record.

Mr. PAXTON. That is the interpretation of the word payola. I imagine you are right, sir.

Mr. LISHMAN. I have no other questions.

Mr. MOSS. Mr. Paxton, you have no idea as to the type of licensing agreements Mr. Clark's firm may have negotiated with these other record companies?

Mr. PAXTON. No, I wouldn't have any idea of that.

Mr. MOSS. You can only estimate his take from the royalties received on the sales of the Coed label?

Mr. PAXTON. That is all.

Mr. MOSS. And on the performance of the song on the air?

Mr. PAXTON. What was that last?

Mr. MOSS. Performance right, performance of the song on the air regardless of the label. You know the full amount there but you have only your portion of the actual record sales?

Mr. PAXTON. Yes.

Mr. BENNETT. I am asking you, as an expert in this business, do you have any idea what the total take of January Corp. was as a result of this deal?

Mr. PAXTON. As a result of this deal?

Mr. BENNETT. Yes.

Mr. PAXTON. I would hate to be wrong.

Mr. BENNETT. I am just asking you for an educated guess, based on your long experience.

Mr. PAXTON. I would say it should be in the neighborhood of \$13,000 to \$15,000.

Mr. MOSS. You do not have any idea what the additional profit might be from pressing this recording?

Mr. PAXTON. He only pressed 10,000 or 15,000 for us.

Mr. MOSS. How much did he make on that?

Mr. PAXTON. He would make about 2 cents a record, I guess. I think it comes to around that, 2 or 3 cents a record; \$200 or \$300. He may have done a little more. It may have been 25,000. I doubt very much whether it was that high, though.

Mr. MOSS. Mr. Lishman, you have no further questions for Mr. Paxton?

Mr. LISHMAN. No, sir.

Mr. MOSS. Paxton, thank you. You are now excused.

Mr. PAXTON. Thank you very much.

Mr. MOSS. I wish to caution you that this executive session is at your request and that the record of this hearing will be considered very carefully by this subcommittee. Also, I have requested that you supply certain specific material for the record. I trust you have made a note of that and that you will get it to us just as quickly as you possibly can.

Mr. FEINMAN. Mr. Chairman, can we supply this by affidavit to the subcommittee?

Mr. MOSS. Yes. Consult with counsel and satisfy his requirements as the manner of supplying it to the subcommittee.

(Affidavits referred to above appear on pp. 855 and 867.)

Mr. BENNETT. Upon what basis did you ask for this executive session?

Mr. FEINMAN. Mr. Bennett, I asked for an executive session on the basis of the fact that the testimony Mr. Paxton might give before this subcommittee might constitute a crime in the State of New York, in which most of the transactions took place.

Mr. BENNETT. You say "might." Can you give us anything further than that?

Mr. FEINMAN. It is a question of their interpretation of the statute, sir.

Mr. BENNETT. What is that?

Mr. FEINMAN. Commercial bribery statute. I think it is section 335 of the penal law of the State of New York, which makes it a crime for a person employed by a person or corporation to accept gifts or gratuities or payments from some other person.

Mr. BENNETT. I do not think the executive session protects you on that.

Mr. MOSS. You gentlemen are excused.

(Whereupon, the subcommittee proceeded to other business.)

(The testimony taken at this executive session was released by the subcommittee by vote taken November 3, 1959.)

The subcommittee met in executive session, pursuant to other business, in room 1334, New House Office Building, Hon. John E. Moss presiding, a quorum being present.

Mr. MOSS. Our next witness, Mr. Lishman?

Mr. LISHMAN. Mr. Cane.

Mr. MOSS. Mr. Marvin Cane, will you raise your right hand?

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

Mr. CANE. Yes, sir.

Mr. MOSS. Will you identify yourself for the record?

**TESTIMONY OF MARVIN CANE, ACCOMPANIED BY COUNSEL,
ANDREW FEINMAN**

Mr. CANE. Marvin Cane.

Mr. MOSS. And your address and occupation?

Mr. CANE. Home address?

Mr. MOSS. Business.

Mr. CANE. 1619 Broadway, New York City.

Mr. MOSS. Occupation?

Mr. CANE. Music publisher.

Mr. MOSS. Are you accompanied by counsel?

Mr. CANE. Yes, sir.

Mr. MOSS. Will you identify yourself for the record?

Mr. FEINMAN. Andrew Feinman, 608 Fifth Avenue, New York.

Mr. MOSS. Mr. Marvin Cane, are you requesting that the subcommittee hear your testimony in executive session?

Mr. CANE. Yes, sir.

Mr. MOSS. For what reason?

Mr. FEINMAN. Mr. Chairman, I again make the request in behalf of Mr.—

Mr. MOSS. Mr. Counselor, let me point out under the rules of this subcommittee you cannot make such a request. An attorney is permitted to appear and advise the witness as to his constitutional rights. The request must be made by the witness.

Mr. Cane, for what reasons have you requested this executive session?

Mr. CANE. I just took it on my counsel's advice that it would be the best thing.

Mr. MOSS. Are you familiar with the rules of the subcommittee?

Mr. CANE. Quite frankly, no.

Mr. MOSS. Will you look at a copy of the rule 26(m)?

Will you read rule 26(m) on page 9 and inform the committee as to the reasons for your request or if your request comes within the scope of that rule?

Mr. CANE. To be honest with you, I don't understand it.

Mr. MOSS. Is it your contention that your testimony would tend to either defame, degrade, or possibly incriminate you or any other person?

Mr. CANE. I guess so. I don't know. If you want to know the truth, I don't know what you are even driving at.

Mr. MOSS. You have asked for the taking of your testimony in an executive session of the subcommittee of the Congress.

Mr. CANE. Right.

Mr. MOSS. Under the Rules of the House such a session is held if the subcommittee determines upon a request from you, that any testimony at an investigative hearing may tend to defame, degrade, or incriminate any person. Now, if that is the determination, then the subcommittee shall receive such evidence or testimony in executive session.

Mr. BENNETT. Mr. Chairman, although I agree with what you have said about the rules providing that a witness may only have his attorney to advise him of his constitutional rights, we have in the past permitted an attorney at the outset of testimony of the witness to make this kind of request.

I think it is obvious that the witness did not consider any possible rule at all. He is only making the request because the attorney advised him.

I do not think it would be out of order, improper, or violation of the rules, to let the attorney—

Mr. MOSS. I quite agree with you. However, I point out that the reason I asked the witness, rather than the attorney, to proceed to explain is that the attorney said that the request did not come from the witness but was made by him. The attorney cannot make such a request. It must be a request of the witness.

Mr. BENNETT. The witness says he is making it on advice of the counsel.

Why do you not state for the record, Mr. Attorney, why you made this recommendation? We have nothing in the record to show why this request is made.

Mr. FEINMAN. For the record, I telephoned Washington and asked to talk to Mr. Lishman, who was busy. I talked to Mr. Ranstad and asked for an executive session. Mr. Ranstad telephoned the next day that we would appear on April 25, in executive session.

Under the rules, however, I do believe that on the ground that the testimony which might be elicited might tend to degrade or incriminate, it would warrant an executive session by this subcommittee.

Mr. MOSS. Then are you advising your client to request an executive session on the ground that the testimony might incriminate him?

Mr. FEINMAN. I said, may tend to defame, degrade, or incriminate himself or some other person.

Mr. MOSS. Now, is it himself or some other person with whom you are concerned?

Mr. FEINMAN. Yes. Within the framework of the allowable grounds for an executive session, I would say generally, that both himself and other persons would fit into our request for an executive session.

Mr. MOSS. We will proceed.

Of course, this does not prejudice any right in receiving testimony.

Mr. LISHMAN?

Mr. LISHMAN. Mr. Cane, are you one of the owners of Coronation Music, Inc., of 1619 Broadway, New York City?

Mr. CANE. Yes, sir.

Mr. LISHMAN. What position do you hold in the company?

Mr. CANE. General manager.

Mr. LISHMAN. Are you also one of the owners of Coed Records, Inc., of the same address?

Mr. CANE. Yes, sir.

Mr. LISHMAN. Are you also connected with George Paxton, Inc., of the same address?

Mr. CANE. Employee.

Mr. LISHMAN. What position do you hold?

Mr. CANE. General manager.

Mr. LISHMAN. How long have you been in the music publishing business?

Mr. CANE. 1947, about 13 years.

Mr. LISHMAN. Do you have any interest in any other music publishing company besides the one just mentioned?

Mr. CANE. No, sir.

Mr. LISHMAN. Do you have any interest in any record distributing company?

Mr. CANE. No, sir.

Mr. LISHMAN. Or manufacturing company?

Mr. CANE. Coed Records.

Mr. LISHMAN. Any other besides that?

Mr. CANE. No, sir.

Mr. LISHMAN. How long have you been with Coed Records?

Mr. CANE. From its inception.

Mr. LISHMAN. When was that?

Mr. CANE. Close to two years.

Mr. LISHMAN. Are you familiar with the assignment of the song "Sixteen Candles" by Luther Dixon and Alyson Khent to Coronation Music?

Mr. CANE. I know it was assigned. I don't know technically, that is not my end of the business, but I will try to answer if you want to ask me anything about it.

Mr. LISHMAN. You know there was such an assignment?

Mr. CANE. Yes.

Mr. Moss. Mr. Lishman, I am having a little difficulty hearing. You asked about the assignment to January Music?

Mr. LISHMAN. No; the assignment by the songwriters, Luther Dixon and Alyson Khent, to Coronation Music.

Mr. Moss. Fine. Go ahead. I could not hear.

Mr. LISHMAN. Are you familiar with the fact that Coronation Music eventually assigned the copyright on "Sixteen Candles" to the January Corp.?

Mr. CANE. Yes.

Mr. LISHMAN. Did you have anything to do with negotiating this assignment?

Mr. CANE. Yes.

Mr. LISHMAN. Who did you negotiate with?

Mr. CANE. Vera Hodes.

Mr. LISHMAN. Who is she?

Mr. CANE. She is, what I understood she was, one of the owners of January Music Corp.

Mr. LISHMAN. Was she accepted as a representative of Dick Clark and his music publishing business?

Mr. CANE. Yes.

Mr. LISHMAN. Who were you representing in the negotiation?

Mr. CANE. Myself and George Paxton.

Mr. LISHMAN. Coronation Music, in other words?

Mr. CANE. Yes.

Mr. LISHMAN. Did you approach Vera Hodes about this matter or did she come to you?

Mr. CANE. No, I came to her.

Mr. LISHMAN. About when did you do that?

Mr. CANE. It must have been around November 1958.

Mr. LISHMAN. Why did you go to Miss Hodes?

Mr. CANE. Well, she was the publisher in business with diskjockey Dick Clark. It is a practice in our business, in my building anyhow, we have coffee together every morning, all the music publishers, we happen to assemble in the morning, and my conversation, the first time when my record first came out was that it was a pretty good record, I was wondering whether or not she could talk to Dick Clark and get it played on television, which is normal procedure.

She told me that she would talk to him about it but if the record had any merit, the district or in Philadelphia would get it to him anyhow, and not to be concerned about it if I thought it was as good as I thought it was.

She claimed he would not play an inferior record.

That is when I first discussed with her the possibility of getting a record played on television.

Mr. LISHMAN. After that first discussion, did you have further discussion with Vera Hodes?

Mr. CANE. Yes.

Mr. LISHMAN. What was the nature of those discussions?

Mr. CANE. Again, furtherance, can we get it on television, is he playing it because it is difficult while you are doing your business during the day to listen to Dick Clark in the afternoon on television.

It would be word of mouth if somebody played it and you didn't hear it.

So I called her a few times. One morning I kind of had an idea and I asked her whether or not she would be interested in publishing the song. I thought that would be a good combination. The record had already been accepted generally around the United States.

All the diskjockeys immediately liked it and were playing it.

Mr. LISHMAN. Did Vera Hodes indicate to you that if you wanted the January Corp., to get this assignment they would have to have the entire copyright?

Mr. CANE. It wasn't discussed immediately. When the time came, when we discussed it and she called me, she said she would like to have it, she would like to publish it. I told her I would like to talk to my partner, George Paxton. I went and talked to George Paxton and George said, in view of the fact that we had already discussed—I had broached this subject with her. Mr. Paxton had not known about it but since I was general manager, he had left it up to me, he had not known anything about it, if I made a decision he would stick by it, to call her back and say the deal would be all right, she would

be able to publish the entire song but we would have to retain 50 percent of the performance rights of the said song because we had already laid the groundwork and had done most of the promoting throughout the country and we would retain the selling agency for the song.

Mr. LISHMAN. Did Vera Hodes attempt to keep the entire 100 percent of the performance rights as a condition of taking this assignment?

Mr. CANE. Not that I remember, no. It was my end of the proposition. So I said, "You can have the copyright but I have to retain 50 percent of the performance rights."

Mr. LISHMAN. She never insisted on—

Mr. CANE. No.

Mr. LISHMAN. Are you positive on that?

Mr. CANE. Well, we are going back a couple of years now.

It was never a big to-do about it.

Mr. LISHMAN. Didn't you go back to Mr. Paxton and get further instructions?

Mr. CANE. Yes. As a matter of fact, you're right.

Mr. LISHMAN. Didn't he tell you that he would not give your 100 percent of the performance rights to Dick Clark's company?

Mr. CANE. The exact conversation I really don't remember.

Mr. LISHMAN. You don't have to remember the exact conversation. Isn't it a fact that you went back to Mr. Paxton, your partner, and received instructions from him that you should not accede to the demand for 100 percent performance payment?

Mr. CANE. That would be accurate.

Mr. LISHMAN. And that at the most they should get 50?

Mr. CANE. That is accurate.

Mr. LISHMAN. Isn't that a little unusual?

Mr. CANE. Unusual?

Mr. LISHMAN. Yes, for a music publisher to assign the whole works?

Mr. CANE. No, very commonplace in our business as long as I can remember, very ordinary.

Mr. LISHMAN. To assign—

Mr. CANE. Yes, very ordinary.

Mr. LISHMAN. What consideration is generally passed for these assignments?

Mr. CANE. The very fact that if a recording artist of any important nature who had television outlets—in the olden days—I am going back 8 or 10 years, he was on radio.

Mr. LISHMAN. The January Corp. is a music publishing company, is that correct?

Mr. CANE. Yes.

Mr. LISHMAN. And the Coronation Music Co. is a music publishing company?

Mr. CANE. Right.

Mr. LISHMAN. Is it customary for one music publishing company to transfer, by assignment, its copyright in its entirety to another music company for no consideration?

Mr. CANE. It is the first time we have done anything like that. I would not say particularly it was customary because I have never done it before.

Mr. LISHMAN. Have you ever heard of any other music company doing this, disregarding Dick Clark's being a diskjockey?

Mr. CANE. To be perfectly honest with you, I wouldn't, probably, know about anybody else's turnover of a copyright, whereas I am sure no one realized we had turned over our copyright either, until it was brought out in the open. Those would be business dealings I would not possibly know about.

Mr. LISHMAN. Why did you pick Vera Hodes and January Corp. to make this assignment?

Mr. CANE. To be very honest, I thought it would be a terrific combination. We were a brand new record company and the record was accepted all over and it looked excellent, the prospects of having a hit looked very good. Dick Clark was probably the most popular diskjockey in the country and it looked like a wonderful combination. It looked like a good business proposition.

Mr. LISHMAN. Don't you mean, by assigning him the copyright and giving him this financial interest through his music publishing company, you would thereby obtain his exposure of the record on the air?

Mr. CANE. Unquestionably.

Mr. LISHMAN. That is the only reason you went through with this arrangement?

Mr. CANE. One hundred percent.

Mr. MOSS. Had you ever heard any rumors around that such an arrangement could be made with Mr. Clark?

Mr. CANE. No. It was just a brainstorm on my part.

As I said, we had never done it before.

Mr. MOSS. You never heard any rumors that this sort of deal had been worked before with Mr. Clark?

Mr. CANE. No, I didn't, as a matter of fact.

Mr. MOSS. You went to Vera Hodes—

Mr. CANE. Right; who, incidentally, is an old acquaintance of mine for at least 10 years.

Mr. MOSS. You have known her 10 years?

Mr. CANE. Right. She has been a secretary in the publishing business for many years.

Mr. MOSS. What was the firm she was with prior to going with the January Corp.?

Mr. CANE. She worked with two concerns, if I am not mistaken. She worked for Roulette Records and I think she was Phil Carl's secretary.

Mr. MOSS. Is that not a fairly new company?

Mr. CANE. I would say they are about 6 years old.

Mr. MOSS. You have known her for 10 years?

Mr. CANE. Yes.

Mr. MOSS. When did you first meet her?

Mr. CANE. In the building of some publisher.

Mr. MOSS. You went to her, to solicit her help in getting this on the Dick Clark show?

Mr. CANE. Yes, sir.

Mr. MOSS. She said if it had any merit it would get there anyway?

Mr. CANE. Yes.

It seemed like a long wait. I had been waiting for years.

Mr. MOSS. Did you suggest perhaps a little ownership would be a good thing?

Mr. CANE. Not at first.

Mr. MOSS. Who first suggested it?

Mr. CANE. I did.

Mr. MOSS. You first suggested it to her?

Mr. CANE. Absolutely.

Mr. MOSS. Had you discussed this with your employer?

Mr. CANE. No, sir.

Mr. MOSS. What percentage did you have in the Coronation Music Co.?

Mr. CANE. I am a partner.

Mr. MOSS. A full partner?

Mr. CANE. Yes, sir.

Mr. MOSS. What other valuable properties did Coronation have? When was it organized?

Mr. CANE. I think it was probably organized around when Winneton Music was organized. It is at least 4 or 5 years old.

Mr. MOSS. It is no longer operating?

Mr. CANE. Sure, it is. I don't know what you mean by "operating."

Mr. MOSS. I thought we had testimony this morning indicating that Coronation Music no longer existed.

Mr. CANE. Once you have a publishing company, isn't it always in existence? Is my recollection correct?

Mr. LISMAN. I understood the testimony of the preceding witness that only the parent corporation is now operating.

Mr. CANE. I would imagine Winneton is the senior operating firm. There are other firms there, I don't know whether you call them active or not.

Mr. MOSS. Well, do you still work for Coronation Music Co.?

Mr. CANE. Technically I do, but there is no work to be done.

Mr. MOSS. This is a partnership?

Mr. CANE. There is no work to be done at the moment.

Mr. MOSS. Does it own anything? Has it any assets?

Mr. CANE. I wouldn't know.

Mr. MOSS. You are a partner in it?

Mr. CANE. That is right.

Mr. MOSS. You are a partner, you are a 50 percent owner in Winneton?

Mr. CANE. Yes.

Mr. MOSS. Are you an owner in Whiting?

Mr. CANE. No. I have nothing to do with Whiting.

Mr. MOSS. Are you an employee?

Mr. CANE. Yes.

Mr. MOSS. What is your capacity in Whiting?

Mr. CANE. Promotion, song plugger.

Mr. MOSS. What about Jaxton?

Mr. CANE. I receive no money from them.

Mr. MOSS. How do you get reimbursed?

Mr. CANE. I don't. I do it as a personal favor.

Mr. Moss. For the love—

Mr. CANE. For the love of maybe George Paxton.

Mr. Moss. Coed Records?

Mr. CANE. Coed, I am a partner.

Mr. Moss. What percentage do you own?

Mr. CANE. 50 percent.

Mr. Moss. Full 50 percent of Coed?

Mr. CANE. Yes.

Mr. Moss. Was Coed licensed by Coronation?

Mr. CANE. Now you are getting into something—

You see, I am a promotion man. I don't actually know. I don't want to say it was or was not. I am sure Mr. Paxton can pass that along to you or maybe the attorney can.

Mr. Moss. Who is George Paxton?

Mr. CANE. I beg your pardon?

Mr. Moss. Are you interested in George Paxton?

Mr. CANE. Not a dime.

Mr. Moss. Is that a holding company for his interests?

Mr. CANE. It has been in business a long time, about 10 years. I have not worked for George that long.

Mr. Moss. How long have you worked for Mr. Paxton or with him?

Mr. CANE. I only came back to work with George Paxton about 3 years ago.

Mr. Moss. How long were you away?

Mr. CANE. I was away a year and a half.

Mr. Moss. Have you worked with him since?

Mr. CANE. I started originally in 1952 but I had been working for somebody else.

Mr. Moss. Except for a year and a half you have been with him for 8 years?

Mr. CANE. Yes, sir.

Mr. Moss. And you have been a partner since when?

Mr. CANE. As a matter of fact, Coronation was a company that Mr. Paxton had copyrighted, the name, and way before I had entered—we had never had a song in Coronation, to my knowledge.

Mr. Moss. When did you acquire interest?

Mr. CANE. I don't have an interest in Coronation.

Mr. Moss. You said you were a partner.

Mr. CANE. That is wrong. I was under the impression you were talking about Winneton.

Mr. Moss. You have no interest whatsoever?

Mr. CANE. I have no interest, right.

Mr. Moss. What firms do you have interest in?

Mr. CANE. Winneton, Edgewine, and Coed.

Mr. Moss. What is Edgewine?

Mr. CANE. Music publishing company.

Mr. Moss. Does Mr. Paxton have an interest in that?

Mr. CANE. Yes.

Mr. Moss. He did not give us that one.

Mr. CANE. It is a small company.

Mr. Moss. What does it own?

Mr. CANE. Just some copyrights.

Mr. Moss. It owns some copyrights?

Mr. CANE. I tell you what it is. It is an affiliate or subsidiary of our Winneton Music Corp.

Mr. MOSS. Is it a sort of little warehouse over here where you have assigned some copyrights to the folks that they will grow up and produce?

Mr. CANE. Sometimes for promotion purposes to get records played on the air, if you have one company and you have five or six records at one time, and everything comes under the name of one company, they won't take you seriously. If you have two companies and you put them out under different names, you have a better chance of getting it promoted.

Mr. MOSS. Under any of these companies, have you participated in the assignment of any copyright interest?

Mr. CANE. No.

Mr. MOSS. Any one?

Mr. CANE. No.

Mr. MOSS. Under any condition?

Mr. CANE. No.

Mr. MOSS. Excepting the one made to the January Corp.?

Mr. CANE. I think you will find out that the song, "Sixteen Candles", was put in Coronation Music way, way, way before the song became popular.

Mr. MOSS. Have you ever participated, in any manner, in any deal assigning an interest from any of these companies to anyone?

Mr. CANE. No.

Mr. MOSS. Except the assignment to January?

Mr. CANE. No.

Mr. MOSS. This is the only incident?

Mr. CANE. Yes; the only instance.

Mr. MOSS. And you suggested to Miss Hodes—do you think this was a proper relationship, to give them the copyright? Was there an understanding as to what you were to get in return for giving this up?

Mr. CANE. Not one iota.

Mr. MOSS. You did not have the slightest idea what you were going to get?

Mr. CANE. I had the slightest idea what I wanted to get.

Mr. MOSS. Was there an implication of what you were going to get?

Mr. CANE. None whatsoever. It is the thing you don't talk about.

Mr. MOSS. Do you think Miss or Mrs. Hodes—

Mr. CANE. Miss.

Mr. MOSS (continuing). Was under the impression that you were just being somewhat philanthropic in your action?

Mr. CANE. No.

Mr. MOSS. Not even by the slightest inference did you two arrive at any understanding as to what you could expect from this assignment, that valuable assignment? You were successful on this record already.

Mr. CANE. It was starting to grow.

Mr. MOSS. How many copies had you sold?

Mr. CANE. To be honest with you, I wouldn't remember at that time. It wasn't great.

Mr. MOSS. Do you know anything about these ads that went into Billboard on December 8? Did you have anything to do with those? You were in promotion. It takes a couple of days to prepare that. That was on the 18th of November you folks concluded your agreement.

According to that ad, does it not say 235,000 copies were sold?

Mr. CANE. That is what it says.

Mr. MOSS. Would you assume that that is a correct figure?

Mr. CANE. I would not remember at that time if the figure was absolutely correct.

Mr. MOSS. But you figure it was a success?

Mr. CANE. I would say so.

Mr. MOSS. You wanted it to be a bigger success?

Mr. CANE. Absolutely.

Mr. MOSS. At that point in your discussions with Miss Hodes, was there any understanding of a quid pro quo in exchange?

Mr. CANE. No. I just assumed that if he took it or she took it, that it would naturally be to my advantage to have the No. 1 man participating in the same record. It was just normal procedure.

Mr. BENNETT. Your first conversation with Miss Hodes, in your first conversation with her, you called her up and asked her if she could not get Clark to play the record?

Mr. CANE. Yes.

Mr. BENNETT. You made it clear to her you wanted to get this record played on Clark's program?

Mr. CANE. Right.

Mr. BENNETT. She said if it were a good record it would get on there?

Mr. CANE. Right.

Mr. BENNETT. You were not satisfied with that. That was not enough assurance to you?

Mr. CANE. No.

Mr. BENNETT. You wanted to make Clark a partner in the deal?

Mr. CANE. Yes.

Mr. BENNETT. You wanted to make Clark a partner in the record so as to be sure to get the record on the program?

Mr. CANE. I had hoped that it would be a much better combination, which is normal.

Mr. BENNETT. Your whole object in the beginning of your negotiation—

Mr. CANE. Was to make the record that much more popular.

Mr. BENNETT. To make some kind of arrangement to put the record on Clark's program?

Mr. CANE. Right.

Mr. MOSS. Now, in your conversations with this young lady, do you want me to believe that you had absolutely no encouragement indicating that if you would make the January Corp., partner or assign them something of value, that your chances would be enhanced of getting it on the air?

Mr. CANE. I am sure in your end of business there are certain things when you are discussing things with other important people you don't, I am sure you don't always talk about what you actually mean.

Mr. Moss. I am profoundly amazed at the lack of candor in this business, the only situation I have ever encountered where it is completely lacking. That is why I find it most difficult to be convinced that that is the true story.

Mr. CANE. You are 100 percent right and I am amazed sometimes the way business is done in our business but, never having been in any other business, that is the way I have been schooled. That is exactly what happened.

Mr. Moss. Do you get these ideas or impressions by a process of osmosis?

Mr. CANE. I don't know.

Repeat that, again?

Mr. Moss. Do you get these ideas or understandings by a process of osmosis?

Mr. CANE. No, not by process of osmosis but by a process of what is happening over the years I have been in the music business.

Mr. Moss. You did not feel that these people would think you were perhaps trying to bribe them by giving them a half interest to get them to play it on the air?

Mr. CANE. No.

Mr. Moss. You have never heard of this being done before, or had you?

Mr. CANE. Of course, it is done all the time.

Mr. Moss. You heard this might be a good approach, is that right?

Mr. CANE. Not quite. It seemed like a good approach to me.

Mr. Moss. Have you ever heard of any precedent for it?

Mr. CANE. For years all the big bandleaders and everybody on radio have had their own publishing companies and they promote their own songs. They have their own songs and they write their own songs. It is very normal.

Mr. Moss. I am interested in finding out why you would go to this lady and proposition her in a manner in which, I think even under the most charitable circumstances, would be described as commercial bribery—buying a favor.

Mr. CANE. I really thought I was clear but maybe I am not.

I actually discussed this with her because I thought it would be a wonderful combination, getting my record up to the top.

Mr. Moss. You said to her, then, "If we sort of merge here, you can get the record played, then it is sure to be a booming success, it is already a little success, and if we can get together on a deal"——

Mr. CANE. Right.

Mr. Moss. "Why, we will have a big success."

Mr. CANE. In so many words but we did not elaborate. We didn't have to elaborate. The minute I got on the phone—this time I was not even on the phone. It was when she called me back——

Mr. Moss. You ran into her——

Mr. CANE. Right. I said, he would be a terrific team, the hottest guy on, you have got it.

Mr. Moss. Now she says, "I am going to have"—what percentage? What was her first counteroffer? How much of the copyright did she want?

Mr. CANE. 100 percent.

Mr. Moss. So you negotiated, did you not, you had to negotiate to get it down to 50. You had to have a little understanding.

Mr. CANE. We never negotiated—it wound up 100 percent. She has 100 percent.

Mr. MOSS. The performance rights were reserved 50 percent to you?

Mr. CANE. Yes.

Mr. MOSS. She wanted everything?

Mr. CANE. Yes.

Mr. MOSS. Now, you had to negotiate, did you not?

Mr. CANE. Yes.

Mr. MOSS. You had to talk her down?

Mr. CANE. Well, there was no talking—

Mr. MOSS. That was not osmosis, was it?

Mr. CANE. I went in to talk to Mr. Paxton and he said, "As long as you have made the first proposition, you go back and tell her she may have the copyright but we have to retain 50 percent of the performance right because we have already done so much work on it and we think that is only fair."

Mr. MOSS. Just that, offhand?

Mr. CANE. Just like that. It did not take 7 minutes. Actually, at that time it was not that big a deal.

Mr. MOSS. How did you arrive at the deal you made with your friend up in Boston at 1 cent a record? Did you make that one, too?

Mr. CANE. Yes.

Mr. MOSS. How was that one arranged?

Mr. CANE. Well—

Mr. MOSS. No understanding again?

Mr. CANE. "Listen to the record, if you like it, play it."

Mr. MOSS. 1 cent on every sale just because he sat down and listened to it?

Mr. CANE. And if he liked it, please play it.

Mr. MOSS. If he liked it, please play it?

Mr. CANE. That is the truth.

Mr. MOSS. Had he ever heard it before you agreed to pay him 1 cent each?

Mr. CANE. No.

Mr. MOSS. How many other diskjockeys did you agree to give 1 cent each on their simply listening?

Mr. CANE. I would not know, offhand.

Mr. MOSS. Did you give it to any others?

Mr. CANE. Yes.

Mr. MOSS. Before they had heard the record?

Mr. CANE. Yes.

Mr. MOSS. One cent each if you just listen?"

Mr. CANE. Yes.

Mr. MOSS. No other understanding?

Mr. CANE. "Please play it."

Mr. MOSS. No agreement?

Mr. CANE. No, sir, absolutely none.

Mr. BENNETT. Would you call it a gentlemen's agreement?

Mr. CANE. I would call it a general understanding. This wasn't done with 9,000 diskjockeys, mind you.

Mr. MOSS. You know, for 2 years I have listened to this sort of thing, "just an understanding." We have had rigged quiz shows,

nobody ever talked to anybody but there was always a very definitive understanding.

Now, I have been trying desperately to find out how these understandings are arrived at. How do you know that he understood you?

Mr. CANE. It was the rapport that you have between two gentlemen, two guys.

Mr. MOSS. Rapport between two gentlemen.

Mr. CANE. You know your man.

Mr. MOSS. Yes, if I were going to bribe anybody I would know him well.

Mr. CANE. I don't know. They are just different understandings.

Mr. LISHMAN. What is different about them?

Mr. CANE. Well, the position of both jockeys was entirely different.

Mr. LISHMAN. One was on a national network and the other was on a local station. Is that the reason why Dick Clark could command "royolla" instead of payola?

Mr. CANE. No. I, on Clark, he did not demand anything because I did not even discuss it with him.

Mr. LISHMAN. You discussed it with his agent?

Mr. CANE. Right. Again I can only repeat it was my idea. She did not demand anything except what she wanted. When I brought the subject up she probably thought about it and decided that sounded like a good business proposition.

Mr. LISHMAN. Who suggested that you have the record pressed by Mallard? Did you offer to have that done?

Mr. CANE. I don't remember. That is not my end of the business.

Mr. LISHMAN. Whose end of the business would it be?

Mr. CANE. That would be Mr. Paxton's end of it.

Mr. LISHMAN. It is a fact that Mallard did press some of the records?

Mr. CANE. A few. It was necessary.

Mr. LISHMAN. \$25,000 of them?

Mr. CANE. I would not know, but not too many. We were way behind in pressing with RCA Victor and Columbia and for that immediate outlying area we did have some pressed at Mallard.

Mr. LISHMAN. In the course of arriving at this understanding, did you have any talks or negotiations with Tony Mammarella?

Mr. CANE. No.

Mr. LISHMAN. Did you ever meet him?

Mr. CANE. Yes.

Mr. LISHMAN. When?

Mr. CANE. I met him at a cocktail party.

Mr. LISHMAN. When?

Mr. CANE. A year ago.

Mr. LISHMAN. Do you know Bernard Lowe?

Mr. CANE. No.

Mr. LISHMAN. Do you know Harry Finfer?

Mr. CANE. Yes.

Mr. LISHMAN. Did you have any discussion with him about this matter?

Mr. CANE. No.

Mr. LISHMAN. Do you know Charles Reed?

Mr. CANE. No. I know who he is.

Mr. LISHMAN. Do you know Mr. Josephson?

Mr. CANE. I don't think I could bribe anybody, if you want to know the truth.

Mr. MOSS. What were you buying?

Mr. CANE. I beg your pardon?

Mr. MOSS. You were not buying from a rate sheet, were you?

Mr. CANE. No, sir.

Mr. MOSS. Nor from the published ad schedules of the broadcaster?

Mr. CANE. No, sir.

Mr. MOSS. Mr. Lishman.

Mr. LISHMAN. Mr. Cane, would you say that the understanding you had with Joe Smith, Boston diskjockey, paying 1 cent per record for the copies sold, was the same kind of understanding you had with Dick Clark through his agent, Miss Vera Hodes, that he would get 100 percent of the copyright and 50 percent of the performing rights, with this understanding that he play the record?

Mr. CANE. No.

Mr. LISHMAN. Aren't they the same kind of understanding?

Mr. CANE. Absolutely not.

Mr. LISHMAN. What is the difference in these two kinds of understanding?

Mr. CANE. I don't know. We would have to discuss it.

Mr. LISHMAN. Go ahead and discuss it. I would like to find out what the difference is.

Mr. CANE. The difference in the understanding?

Mr. LISHMAN. Yes; with Joe Smith you understood that he would play the record.

Mr. CANE. If he would like the record he would play it for me in Boston.

Mr. LISHMAN. He would get 1 cent for every record sold?

Mr. CANE. In Boston.

Mr. LISHMAN. Did you understand that Dick Clark would get 100 percent of the copyright?

Mr. CANE. Right.

Mr. LISHMAN. You understood he would get 50 percent of the performance rights?

Mr. CANE. Or the company would.

Mr. LISHMAN. You understood that his record pressing company would get a contract for pressing records?

Mr. CANE. No.

Mr. LISHMAN. You did not understand that?

Mr. CANE. No; not at all.

Mr. LISHMAN. But then you understood that he would play the record if he liked it.

Mr. CANE. If he liked it, yes. Incidentally, he had already played it before.

Mr. LISHMAN. What is the difference between those two kinds of understanding?

Mr. CANE. No; never even heard of him. I don't know anybody in the Dick Clark organization at all. I know Dick personally.

Mr. MOSS. Mr. Cane, you seem to hedge quite definitely there following your "No" after Mr. Finfer.

Mr. CANE. Yes. You see, he is my distributor in records in Philadelphia.

Mr. LISHMAN. Are you reconsidering your answer?

Mr. CANE. Yes; I think it was Mr. Finfer who suggested that if we were overloaded with orders on our record that there was a pressing plant at Philadelphia called the Mallard Pressing Plant. That is why it just flashed to me for that second.

Mr. MOSS. Is it difficult to get recordings pressed? You were doing business—

Mr. CANE. It is very difficult when a record starts to move in big numbers.

Mr. MOSS. It is difficult?

Mr. CANE. Very difficult.

Mr. MOSS. Had you been faced with the problem in getting the pressing done by RCA and Columbia?

Mr. CANE. Yes. That is what you call custom pressing. They, naturally, must have a lot of custom contracting like they have with us but they also have their own pressing with their own record labels. In order to meet a fast hit you have to get those record out to satisfy the demand. If you don't get them out in time you lose a sale.

Mr. MOSS. You say Mr. Finfer said if you were having difficulty—

Mr. CANE. And we knew about it and we were having difficulty. He was the Philadelphia distributor and he was not getting enough records.

Mr. MOSS. When did you have difficulty?

Mr. CANE. When the record started to hit real good.

Mr. MOSS. When was that?

Mr. CANE. Evidently around November.

Mr. MOSS. When did you get the pressings made at Mallard?

Mr. CANE. I don't remember. I am sure it is probably in the papers. I wouldn't know offhand.

Mr. MOSS. Had you ever any business with Mallard before?

Mr. CANE. No.

Mr. MOSS. Had you ever had a hit before?

Mr. CANE. No.

Mr. MOSS. Have you ever had any since?

Mr. CANE. Yes.

Mr. MOSS. Any more pressing by Mallard?

Mr. CANE. No.

Mr. MOSS. Only in this one instance?

Mr. CANE. Only that once. Actually, we have not had a hit—let me clarify it—we have not had a hit in the category of the song we are talking about.

Mr. MOSS. Did you hit a half million?

Mr. CANE. On this?

Mr. MOSS. On any other?

Mr. CANE. No.

Mr. MOSS. Labels or any other titles?

Mr. CANE. No, sir. This was the big one. This was the one over half million that we have done.

Mr. MOSS. What was your next best one?

Mr. CANE. I think we had a thing called "The Angels Listened In."

Mr. MOSS. How many did you sell of that?

Mr. CANE. I don't know. I imagine it is in the 200,000 group.

Mr. MOSS. Have you had any difficulty getting pressings made since?

Mr. CANE. No.

Mr. MOSS. You were not really in too much difficulty here. You only had between 10,000 and 15,000 pressed.

Mr. CANE. Again I would just like to clarify myself. That is not in my province. That is in Mr. Paxton's province.

Mr. MOSS. You raised the matter about Mr. Finfer's interest.

Mr. CANE. Because he called me.

Mr. MOSS. You must have some knowledge if he called you and acquainted you with the fact that you were having difficulty.

Mr. CANE. I do the promoting. I talked to all the distributors.

Mr. MOSS. Who told you you were having difficulty in getting enough records pressed?

Mr. CANE. I could tell from conversations around the office. Distributors would call me up and say, "We ordered 2,000 and I only got 400; where is the rest of them? Everybody is screaming."

Mr. MOSS. 2,000; you got 400 and you sold all these—

Mr. CANE. I get your point. You are making it fast. I don't think it gets right down to that. It gets bigger than that when you have 30 distributors calling up. They all want their records to satisfy the demand and if they don't get them on time it, naturally, led to a problem. I think the fact of the matter is that we were inexperienced, too. I am sure if it happened today we probably would not have that problem. But inexperienced, you only learn; naturally, it takes time.

Mr. BENNETT. I have one or two questions to see if we cannot get a little more clarification on this agreement you made with January.

I cannot understand your great reluctance in not admitting or conceding what this contract with January Corp., was really about. Was there anything that January Corp. was to do?

Did they agree to do anything in this agreement whereby you gave them the copyright?

Mr. CANE. No.

Mr. BENNETT. Not a single thing?

Mr. CANE. No, sir.

Mr. BENNETT. Are you so generous—

Mr. CANE. No—

Mr. BENNETT. Wait a minute.

Are you so generous with your property that you are willing to give it away to somebody without getting anything in return either in writing or orally or having an understanding?

Mr. CANE. No; I am not that generous.

Mr. BENNETT. But you did it in this case.

Mr. CANE. In this particular case, it was a brainstorm, I took a gamble and it worked out fine.

Mr. BENNETT. What do you mean it was a brainstorm? Do you call it a brainstorm, to give your property away without any assurance that you are going to get anything in return for it?

Mr. CANE. No.

Mr. BENNETT. Is that the brainstorm?

Mr. CANE. At the time it was not exactly property. It was a gamble.

Mr. BENNETT. I know it was a gamble but a copyright is property. You gave that away.

Mr. CANE. Yes.

Mr. BENNETT. You got that because Congress passed a law saying that a person could copyright a song and he owns it.

Mr. CANE. Right.

Mr. BENNETT. It may or may not have value.

Mr. CANE. Well, it had value.

Mr. BENNETT. You gave that value away with nothing in return.

Mr. CANE. I expected something in return.

Mr. BENNETT. What did you expect?

Mr. CANE. I expected that record to get exposure on the "Dick Clark Show."

Mr. BENNETT. If the record had not been played on the "Dick Clark Show," you would have gotten absolutely nothing as a result of your giving away the property.

Mr. CANE. I would have gotten very little in the return. They would have worked on the record, naturally.

Mr. BENNETT. How would they do that?

Mr. CANE. As other publishers do, promoting records with disk-jockeys.

Incidentally, this was not the first song that they published.

Mr. BENNETT. I am certain of that. But the fact is that the only real consideration that you could have gotten from the January Corp. for giving up this valuable copyright is, if Clark played the record on the program?

Mr. CANE. Yes, sir.

Mr. BENNETT. Yet you want the subcommittee to believe that there was no understanding—express or implied, between you and this girl—

Mr. CANE. I don't imagine she would be foolish—I don't think she would probably want to put anybody on any kind of a spot.

Mr. BENNETT. The strange thing to me is you went to her initially and propositioned her to get Clark to play the record. That is how the thing got started.

Mr. CANE. You are right, it happened to be a strange thing and I probably would never do it again. In all probability the record would have been a hit and it was starting to become a hit without Dick Clark. That is the strange part about it.

Mr. BENNETT. You went to her because you wanted Clark to play the record?

Mr. CANE. That is right.

Mr. BENNETT. After you made this giveaway, after giving up the copyright, did you check to see if Clark did play the record?

Mr. CANE. As well as I could, and he had played it.

Mr. BENNETT. How did you check it? With Vera?

Mr. CANE. I asked Vera and she told me he had played it. I asked my distributor and he said he had played it. My wife heard him play it.

Mr. BENNETT. You asked Vera if he had played it?

Mr. CANE. Right.

Mr. BENNETT. Everything was understood between you perfectly, but nothing is in writing?

Mr. CANE. Exactly.

Mr. LISHMAN. Mr. Cane, when did Universal become your distributor in the Philadelphia area?

Mr. CANE. I would hesitate answering that because I would be inaccurate.

Mr. LISHMAN. Was it at or about the time of the assignment of "Sixteen Candles"?

Mr. CANE. No; before.

Mr. LISHMAN. How much before?

Mr. CANE. I would not remember.

Mr. LISHMAN. Do you know the Jamie Record Co.?

Mr. CANE. Yes.

Mr. LISHMAN. Do you know that Dick Clark has one-quarter interest in it?

Mr. CANE. I do not.

Mr. LISHMAN. Do you know that Mr. Finfer has one-quarter interest in it?

Mr. CANE. I thought Mr. Finfer owned the whole record company. That is about all I know of Jamie Records. It is a Philadelphia concern. I am never down there.

Mr. LISHMAN. Has Coed ever used any other distributor in the Philadelphia area?

Mr. CANE. We had one before Finfer.

Mr. LISHMAN. Who was it?

Mr. CANE. Chipetz. Chips.

Mr. LISHMAN. When did you engage Chips?

Mr. CANE. The very first record we put out.

Mr. LISHMAN. When was that, 1957?

Mr. CANE. At the very inception of the company.

Mr. LISHMAN. Would that be in 1957?

Mr. CANE. Yes—it must have been at least 6 months before "Sixteen Candles."

Mr. LISHMAN. Isn't it a fact that Mr. Clark had an interest in the Chipetz Distributing Co.?

Mr. CANE. If it did, it did not do me any good because I got out of there real fast because he did not do me any good at all. I don't know anything about any of Clark's outside activities. We only kept him about—he only lasted about a month, and he did a very poor job for us and we let him go.

Mr. LISHMAN. Who?

Mr. CANE. Chips. So if he had Clark, if Clark owned it, that is something I didn't know about.

Mr. LISHMAN. Do you know whether or not there were diskjockeys other than Dick Clark who were contacted by Coronation or anyone on its behalf in order to get them to plug the song?

Mr. CANE. Yes. She used to give me a report, Vera Hodes, saying she had spoken to various diskjockeys and it looked as if it was going to be a good record, and I believe her.

Mr. LISHMAN. Vera Hodes was contacting diskjockeys?

Mr. CANE. Yes, that is her job.

Mr. LISHMAN. Wasn't her job primarily representing Dick Clark's interest?

Mr. CANE. Yes.

Mr. LISHMAN. She, in turn, contacted diskjockeys throughout the country?

Mr. CANE. Yes.

Mr. LISHMAN. To get them to promote Dick Clark's music publishing interests?

Mr. CANE. I don't know if she used Dick Clark's name.

Mr. LISHMAN. His company's name?

Mr. CANE. I don't know whether all the jockeys knew it was Clark's company.

Mr. LISHMAN. Do you know who paid the artists' fees for their appearance on "American Bandstand" and the "Dick Clark Show"?

Mr. CANE. I think it is Drexel Productions, isn't it?

Mr. LISHMAN. Did the Crests ever appear on these performances?

Mr. CANE. Yes; a few times.

Mr. LISHMAN. Did Coed ever reimburse Clark for their appearance on the program?

Mr. CANE. I wouldn't know that.

Mr. LISHMAN. Who would know that?

Mr. CANE. I would have to look it up. An accountant or somebody.

Mr. LISHMAN. Can you supply that for the record?

Mr. CANE. Yes.

Mr. LISHMAN. Mr. Chairman, we would like to have for the record the amount of any money advanced by Coed records to the Crests, directly or indirectly, to cover the cost of their appearance on the "American Bandstand" in the "Dick Clark show."

Mr. FEINMAN. Do you want that twice? We have already asked Mr. Paxton for that information and he has agreed to supply it.

Mr. LISHMAN. Are you sure we have asked for that?

Mr. FEINMAN. Yes.

(Above information from Paxton affidavit follows:)

In answer to the question as to who paid the performing group known as The Crests for their appearance on the "American Bandstand show" and/or other Dick Clark shows, a search of the records of George Paxton Corp., Winneton Music Corp. and Coed Records, Inc., and its affiliated and associated companies shows that The Crests were not paid by any company in which the affiant has an interest.)

Mr. LISHMAN. If we have it supplied for the record once that is enough.

But, Mr. Cane, did you ever make any arrangement for the appearance of these artists on "American Bandstand" or the "Dick Clark show"?

Mr. CANE. No, there was a young fellow who worked for us who used to and handle that, named Jerry Morse. He is out of the business. He went to work in California for a television company. That is easily found out for you, though. I will be only too glad to give it to you. I imagine we did what everybody else was doing in normal channels if they were paid.

Mr. LISIMAN. Do you know whether Coed or any of the companies you are connected with ever reimbursed Clark or Click Corp. or Drexel Television Productions, Inc., for the appearance of the Crests on either the "American Bandstand" or the "Dick Clark Show"?

Mr. CANE. I am sure we never reimbursed anybody. I could be wrong but I doubt that very much.

Mr. LISIMAN. Could you verify that and advise us for the record?

Mr. CANE. Yes, certainly.

(See excerpt from George Paxton's affidavit quoted above.)

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

Mr. BENNETT. How much money did you pay out or what gifts did you make to diskjockeys to get this record played?

Mr. CANE. That is the first time I have been asked about it. I really don't know offhand but I can supply it.

Mr. BENNETT. Approximately. Do you have any recollection?

Mr. CANE. No, sir.

Mr. BENNETT. You do not know—well, did you pay other diskjockeys for plugging this record?

Mr. CANE. Yes.

Mr. BENNETT. How many?

Mr. CANE. I do not know because that was not my end of it. I can find that all out for you.

Mr. BENNETT. Do you have any idea how much money?

Mr. CANE. No, sir, I have nothing to do with the finances of the company.

Mr. BENNETT. Were you not paying Mammarella through your man, Finfer?

Mr. CANE. Never. I don't even know Mammarella. Nobody with Clark ever got anything from us.

Mr. BENNETT. We have had testimony here when Mammarella was before this subcommittee to the effect that he got cash payments from Finfer for several years, 1957, 1958, and 1959.

Mr. CANE. I would not doubt that. That is a distributor in Philadelphia. It has nothing to do with us.

Mr. BENNETT. You never gave Finfer any money?

Mr. CANE. I am sure of that.

Mr. BENNETT. Do you remember the name of one other diskjockey you paid for plugging this record?

Mr. CANE. Joe Smith.

Mr. BENNETT. That is the fellow who was at the Republican Convention a few years ago.

Mr. CANE. More than likely.

Mr. BENNETT. You cannot give us the name of any other diskjockey?

Mr. CANE. No, sir. Amounts of money, no.

Mr. BENNETT. Give us the name of another diskjockey whom you paid.

Mr. CANE. Norman Prescott.

Mr. BENNETT. Who is he?

Mr. CANE. Diskjockey in Boston.

Mr. BENNETT. Any others?

Mr. CANE. Joe Finan in Cleveland.

Mr. BENNETT. Anybody in Detroit?

Mr. CANE. I would not remember in Detroit.

Mr. BENNETT. Chicago?

Mr. CANE. No.

Mr. BENNETT. Indianapolis?

Mr. CANE. No.

Mr. BENNETT. Out on the west coast?

Mr. CANE. No.

I am trying to think in Detroit. Tom Clay.

Mr. BENNETT. What station is he with?

Mr. CANE. He is out of there since. I don't remember the call letters of the station.

Mr. BENNETT. Alan Freed?

Mr. CANE. No, I don't even know Alan Freed.

Mr. BENNETT. Can you not give us a rough idea what you paid in cash or gifts?

Mr. CANE. No, sir. I can get that information for you.

Mr. BENNETT. You knew you were coming down here to testify. Did you not anticipate some of these questions?

Mr. CANE. Yes. My partner was here. I thought probably we would be called in together and he could answer. I am not a figure man, I am sorry, I am not.

Mr. BENNETT. Do you know how much money you made from "Sixteen Candles"?

Mr. CANE. How much I made?

Mr. BENNETT. Yes.

Mr. CANE. No.

Mr. BENNETT. Do you have any idea?

Mr. CANE. I haven't the vaguest idea.

Mr. BENNETT. Did you get half the cut that was made on it?

Mr. CANE. Yes.

Mr. BENNETT. That was about \$125,000.

Mr. CANE. I don't know how we got it but I am sure I will get it.

Mr. BENNETT. You have not got it yet?

Mr. CANE. No.

Mr. BENNETT. Have you gotten any remuneration?

Mr. CANE. Yes.

Mr. BENNETT. Is there a dispute between you and your partner on the amount?

Mr. CANE. No.

Mr. BENNETT. Why are you not paid?

Mr. CANE. I have been paid. Not all of it. Some of it has gone back in business.

As I say, I don't handle that end of it. I am not the financial man in the business. We are partners.

Mr. BENNETT. You do not have to be a financial man to know how much money you get.

Mr. CANE. Yes. I think that is just a question of the way you style it or the way I style it.

Mr. MOSS. You know, you make it very difficult for me to follow. You say you are not a financial man.

Mr. CANE. That is right.

Mr. MOSS. In this business?

Mr. CANE. Yes.

Mr. MOSS. You negotiated the arrangement with Miss Vera Hodes?

Mr. CANE. Right.

Mr. MOSS. You were the one who contacted the diskjockeys and arranged for the payment of 1 cent per recording sold in their area?

Mr. CANE. Right.

Mr. MOSS. Now, you did this independent of any knowledge of the ability of your firm to underwrite the payments or the obligations incurred by you?

Mr. CANE. I didn't understand you.

Will you repeat that, please?

(The record was read by the reporter.)

Mr. CANE. I don't understand. You mean that we didn't have the ability to pay?

Mr. MOSS. You just testified, in response to questions by Mr. Bennett, that you have no knowledge at all of the figures or the financial details of your company.

Mr. CANE. I didn't say that. I said I had no knowledge of the financial payoff on the sale of "Sixteen Candles."

It has nothing to do with me making a proposition to somebody and saying I will pay them 1 cent a record. I knew I could pay them 1 cent a record but it had nothing to do with my finding exactly how much at this moment.

Mr. MOSS. You had a brainstorm on giving away a copyright.

Mr. CANE. That is right.

Mr. MOSS. You knew that you could pay 1 cent a record?

Mr. CANE. Right.

Mr. MOSS. Then you must have some knowledge of the financial details of your business.

Mr. CANE. I'm sorry, I don't.

Mr. MOSS. None whatsoever?

Mr. CANE. None whatsoever. I find I get along much better and I don't get high pressure and ulcers. That is the understanding we have had. That is the way I have done all my life. Whether that is wrong or right, as far as you are concerned, I agree with you it probably sounds a little hokey but that is the truth, so help me God.

Mr. MOSS. You have already sworn to that some time ago.

Mr. CANE. I will swear again.

Mr. MOSS. I find myself faced with the same difficulty of being persuaded that that is exactly what we are getting.

Mr. CANE. There is nothing to hide, actually. It is a very good good question except I can't answer it but I can get the figures for it.

Mr. BENNETT. How long will it take to get these figures?

Mr. CANE. As long as it takes me—

Mr. FEINMAN. I think we can supply them in a few days.

The District Attorney of New York County has a great deal of the checks and supporting vouchers, but I think we can get copies from him. We can certainly get it to you before the end of the week.

Mr. BENNETT. That is all I have.

Mr. MACK (presiding). Mr. Devine, any questions?

Mr. DEVINE. No questions.

Mr. BENNETT. Are you going to supply the information we have asked for by the end of this week?

Mr. FEINMAN. Sure.

Mr. MACK. Thank you. Then we have the understanding that you will supply this information?

Mr. FEINMAN. By all means.

Mr. MACK. Without objection, it will be received for the record. (The information referred to follows:)

AFFIDAVIT

STATE OF NEW YORK,
County of New York, ss:

Maryne Cane, being duly sworn, deposes and says:

The following constitutes my answer to the question propounded by the Special Subcommittee on Legislative Oversight of the House Committee on Interstate and Foreign Commerce of the House of Representatives of the U.S. Congress with regard to the amount paid by Coed Records, Inc., to diskjockeys, etc., for promotion of records:

<i>Name</i>	<i>Amount received</i>
Johnny Brantley-----	\$445. 00
Larry Brown-----	913. 00
Jack Carney-----	200. 00
Tom Clay-----	200. 00
Howard Cook-----	350. 00
Joe Cicone-----	50. 00
Joe Deane-----	625. 00
Dick Lawrence-----	386. 69
Ernie Durham-----	175. 00
Gene Edwards-----	50. 00
Joe Finan-----	1, 000. 00
Bill Fox-----	50. 00
Lew Goldberg-----	400. 00
Ronnie Grainger-----	1, 087. 00
Rocky Gross-----	90. 10
Fred Hohl-----	25. 00
Jim Holloway-----	25. 00
Wes Hopkins-----	275. 00
Danny Leonard-----	200. 00
Don McLeod-----	225. 00
Ed Meath-----	575. 00
Irv Micalnik-----	910. 00
Jay Michaels-----	1, 100. 00
Lucky Pierre-----	453. 93
Lew Platt-----	449. 97
Bill Powell-----	200. 00
Norman Prescott-----	1, 100. 00
Stan Richards-----	1, 050. 00
Fred Salem-----	100. 00
"Buggs" Scruggs-----	100. 00
Tommy Small-----	200. 00
Joe Smith-----	800. 00
Lynn Tripp-----	5, 050. 00
Frank Ward-----	425. 00
George Woods-----	150. 00
Chuck Young-----	325. 00

MARVINE CANE.

Sworn to before me this 17th day of May 1960.

KATHEEN E. WATSON,
Notary Public, State of New York.

Commission expires March 30, 1961.

Mr. MACK. Thank you very kindly for your testimony, Mr. Cane.

Mr. CANE. Thank you.

(Whereupon, the subcommittee proceeded to other business.)

RESPONSIBILITIES OF BROADCASTING LICENSEES AND STATION PERSONNEL

TUESDAY, APRIL 26, 1960

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

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

Present: Representatives Harris (presiding), Moss, Bennett, and Springer.

Also present: Robert W. Lishman, chief counsel; Beverly M. Coleman, principal attorney; James P. Kelly, investigator; Herman Clay Beasley, chief clerk; and Jack Marshall Stark, minority counsel.

The CHAIRMAN. The subcommittee will come to order.

This morning the subcommittee resumes hearings into alleged improper practices in the broadcast of music over the air. It must be emphasized, however, that the subcommittee is not undertaking a general investigation of the music business. It is concerned only with those phases which relate to matters within the jurisdiction of this subcommittee.

Under the Legislative Reorganization Act of 1946 and House Resolutions 7 and 56 of the 86th Congress, this subcommittee is charged with the responsibility of determining whether Federal regulatory agencies are administering the statutes dealing with subject matter within the jurisdiction of the Committee on Interstate and Foreign Commerce in accordance with the intent of Congress, and whether existing statutes are adequate to accomplish their purpose.

Among the matters the subcommittee has a duty to investigate are statutes relating to advertising, fair competition, and labeling, and those pertaining to the allocation of the radio spectrum and the ownership and control of radio and television stations.

Testimony previously heard by the subcommittee revealed a widespread practice of making gifts to programming personnel of broadcasting stations to influence the selection of records to be played over the air. That testimony also touched upon, but did not fully disclose, the extent to which the music industry has come to depend upon the exposure of its wares over the air to stimulate sales of records.

Because of the great volume of new records released each week, the competition to obtain a place on broadcasting schedules is intense.

The subcommittee has received numerous complaints that many of those who are in a position to influence the selection of music for broadcasting—e.g., networks, station licensees, and diskjockeys—are

affiliated with or have investments in corporations which publish music, manufacture, press or distribute records, or manage musical talent. These ties give rise to conflicts of interest between the duty to select program material which will best serve the public interest, and the temptation to devote a disproportionate part of broadcast time to music from which these related businesses receive a share of the revenues. The larger the audience reached by a particular program, the greater is the temptation to exploit it for personal profit.

Moreover, it is alleged that diskjockeys have used their control over broadcast programs as an instrument of unfair competition between their companies and their competitors, and also as a means of exacting tribute from new artists and composers and small businessmen. By refraining from playing a song unless all or part of the copyright is assigned to an affiliated enterprise, or unless the record is manufactured, pressed or distributed by such an enterprise, or by repeatedly playing a song or record in which an affiliated enterprise is allowed to share the profits, persons in the music industry are encouraged to expect that the diskjockey will promote a record heavily if, and only if, rights are given to, or business is done with one of the companies. In none of these situations does the diskjockey inform the listening public of the personal profit he reaps from the playing of the records.

A related complaint which has been made to us is that broadcasting stations, networks and others have entered into agreements for exploitation of the name, picture, voice or likeness of persons who broadcast over radio or television which may constitute unfair competition or be otherwise contrary to the public interest.

I want to make clear this morning, as I have attempted at earlier hearings, that the subcommittee has not and does not prejudge these complaints. But under the House resolutions previously noted, it has a duty to ascertain the facts and to determine whether networks, station licensees, diskjockeys or other persons who select material for broadcasting are engaging in practices not revealed in previous hearings which are contrary to the public interest, or which constitute unfair methods of competition, and if so, whether such practices can and should be prevented under existing laws, or whether new legislation is needed.

The Chair would also like to state that the subcommittee is fully aware of the statements or contentions of some as to the inconvenience that might be caused in attending these hearings. It is not the purpose of the subcommittee to make it inconvenient for anyone. The subcommittee will gladly do what it can, within reason and propriety, to accommodate those who are to testify during these hearings.

The Chair would also like to state that it is his hope that this series of hearings can be concluded this week. The House will undoubtedly interrupt some of the hearings. Just to what extent, I do not yet know.

There have been some requests made of the subcommittee. The Chair, as has been publicly stated, received a request from the attorneys of one, Mr. Dick Clark, that he be the first witness to appear in this series of hearings. The Chair has discussed the program with the staff, and the subcommittee has considered it. We have simply determined that, in orderly procedure, we cannot have Mr. Clark as the first witness. He will come later.

The Chair has also received a request from two of the witnesses to be heard in executive session under rule 11 of the House of Representatives. That request of course will be considered as we reach those witnesses.

This morning, the first witness in this series of hearings will be Mr. Paul Ackerman.

Mr. Ackerman, do you mind the photographers and the cameras?

Mr. ACKERMAN. No, sir.

The CHAIRMAN. The Chair will recess for 10 seconds.

(At this point a short recess was taken.)

The CHAIRMAN. Mr. Ackerman, will you be sworn?

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

Mr. ACKERMAN. I do, sir.

The CHAIRMAN. You may be seated.

The subcommittee would like to suggest at the outset, that we have order insofar as possible. You are here as guests of the subcommittee during the course of these hearings, and it is our purpose to expedite these hearings. Your cooperation will be greatly appreciated.

STATEMENT OF PAUL ACKERMAN, MUSIC EDITOR OF THE BILLBOARD

The CHAIRMAN. State your name for the record, please, sir.

Mr. ACKERMAN. Paul Ackerman.

The CHAIRMAN. Will you give your residence or address, Mr. Ackerman?

Mr. ACKERMAN. 144-15 Newport Avenue, Nesconset, Long Island.

The CHAIRMAN. What is your business or profession?

Mr. ACKERMAN. Music editor of the Billboard.

The CHAIRMAN. Mr. Lishman, you may proceed now.

Mr. LISHMAN. Mr. Ackerman, do you have a statement?

Mr. ACKERMAN. Yes, I have, sir.

Mr. LISHMAN. Will you proceed with it.

Mr. ACKERMAN. My name is Paul Ackerman. I am the music editor of the Billboard, a business publication which covers both the radio and record industries. I wish to thank the committee for the opportunity to express several of my thoughts.

The music business whose product—songs and records—touches the lives of so many people, is unique in the sense that laymen know so little about its inner workings. In view of the spotlight now placed upon the music business, it is perhaps worthwhile to examine some of its complexities. An understanding of its practices and traditions may cast some light on the problem affecting all of us; namely, "Why is the industry susceptible to abuses of various sorts, including, of course, payola?"

In the next several minutes I will attempt to touch briefly on the following points:

1. The historical basis of payola, first during the era of music publisher dominance and now during the era of record-manufacturer dominance.

2. Tin Pan Alley, as a nationwide rather than a Broadway concept, and the increasing mutuality of interest between the record industry and radio broadcasting.

3. Historical changes in steps whereby a song reaches the consumer, from the time of its conception.

4. Mechanical and performance royalties and their significance in the current situation.

5. How competition for exposure, arising from overabundance of product has given rise to current abuses.

6. Possible solutions to the dilemma.

First, historically, payola is an outgrowth of a music-business tradition—song plugging. Song plugging is the art, to use a kind word, of persuading a vaudeville performer, or a band leader, or a disk-jockey, to perform a particular song or record.

In this way "exposure" is obtained, and exposure is necessary to popularize a song or a record.

It must be understood that much song plugging has been completely honest. Nevertheless, under the pressure of competition, song plugging could and does easily assume a more sinister aspect and enter the realm of "payola." In fact, the line of demarcation as to where legitimate song plugging ends and payola begins has always been difficult to determine.

In the case of many aggressive music publishers, the dividing line disappeared many years ago, and the payment of money or other material inducements became important factors in determining a performer's choice of song material.

In the late 1930's, when the record business was relatively small compared with what it is today, and when the diskjockey was unimportant in comparison to his status today, payola already was rampant, but had not yet become of such general importance because music had not yet become such a major part of radio station programming.

Use of records on stations was relatively minor. Some labels even frowned upon such use—feeling that it hurt sales in retail stores.

Where was the payola evil of the 1930's centered? It was centered where it always is, at the primary source of exposure, at that time: dance bands, whose performances at hotels and ballrooms throughout the country were broadcast via remote wire over network and independent radio stations.

Respectable publishers, alarmed at the spread of payola, tried to curb the evil. About 20 years ago the late John G. Paine, at one time chairman of the board of the Music Publishers Protective Association and later general manager of ASCAP, and the late Edward B. Marks, pioneer publisher, were moving spirits in an attempt to draw up a Code of Fair Practice in conjunction with the Federal Trade Commission. Attorney Joseph V. McKee, onetime acting mayor of New York, was retained to aid in the matter.

The move collapsed. Publishers in general opposed such a code, feeling it would impose severe strictures on song promotion. Some of those publishers who favored the proposed code resignedly stated they would have to fall in line with general practices, for survival reasons. In other words, they embraced payola; payola prior to the

age of the diskjockey and prior to the great expansion of the record business.

Since those years, dramatic changes have taken place in the music business. The publisher is no longer the kingpin. Sheet music, which in the 1920's and 1930's was the chief source of income for publishers and songwriters, today means relatively nothing in the popular music field.

The publisher and writer derive a large part of their income from mechanical and performance royalties. The recording, as an instrument whereby performance credits are obtained through performance on the air, and mechanical royalties through exposure, has become vitally important.

This being the chief exposure point, it is here that promotional activities became centered; and it is here where payola again became effective.

Whereas once payola was primarily a relationship between music publisher and performing artist, such as a band leader, it is now very often a relationship between record manufacturer and/or distributor and the diskjockey. This mirrors the change in the business, from the days when it was publisher oriented to the present, when it is record oriented.

Several important factors are implicit in this changing scene. First, the music business, since the 1930's has grown tremendously. In those past years, Tin Pan Alley was largely New York controlled. Record companies were few in number, and even fewer companies had national distribution.

My next point: Today, Tin Pan Alley is a nationwide rather than a Broadway concept. Song hits and hit records come from virtually every State in the Union. There are literally several thousand record companies, of which some 600 are consistently active in that they release a product on a regular schedule. Hundreds of companies release records on an occasional basis—whenever they can raise the money to take a “flyer” in what seems to be a deceptively simple gamble.

A second factor in the changing scene is the growing mutuality of interest between records and radio. In the early 1930's, the depression years, the record industry was in dire economic straits. There were few retail record dealers. As the decade drew to a close, and with the beginning of the 1940's, record manufacturers, who first were hostile to the spinning of their product on the air, began to find that air play actually helped to sell more records at the retail level. The romance started.

In the early 1950's, as radio suffered more and more from the inroads of television, radio sought to cut its operating costs. At hand was a marvelously cheap means of programing: records; records with name talent.

Whereas once radio stations maintained orchestras and produced live dramatic programs, it was found that this was no longer economically feasible nor necessary. Bing Crosby, Perry Como, Tommy Dorsey, etc., were all available on wax.

Whereas it had previously been a romance, it was now a marriage, with the record industry gaining a tremendous promotional medium and the broadcasters finding the answer to their programing problems.

Pertinent to an explanation of the mechanics of the music industry is a brief analysis of how a song finally reaches the public—the consumer or buyer. This, in fact, is the third point in this statement.

Prior to the record era, the songwriter took his material to a publisher. The latter, if he thought well of the song, contracted to become the copyright proprietor and handle exploitation. The publisher then published sheet music and sought recordings. The publisher might also seek to place the song in a film, an important promotional medium.

Today, in an era of declining publisher importance, the songwriter often goes directly to the record company and seeks to place his material with the artist, and repertoire director.

Many songwriters, in fact, go even further. They will produce a master record, at their own expense, and try to place this with a record company. As the dominant factor in the music business today, many record companies have subsidiary publishing enterprises, and thus secure revenue from both sources.

The copyright on a new song may fall into the record firm's subsidiary publishing company, or the record company may place the song with an outside publisher.

In the rock-and-roll era, there was a tremendous increase in the number of record firms with publishing subsidiaries. This came about in a natural way. Rock and roll drew its original or early song material from the specialty fields known as country music and rhythm and blues. Much of this music was unavailable through traditional Broadway or Tin Pan Alley music channels.

Unlike the product of so-called professional songwriters, this material is folk oriented in the sense that the performing artist is often the writer. A record label in the country field, or in the rhythm and blues field, therefore, did not seek song material from New York's Tin Pan Alley. It relied on the song product of its own artists, and published and recorded the material itself.

I will now proceed to the fourth point, having to do with mechanical and performance royalties.

A publisher has very little control over the recording of his copyright, once he has granted permission to the first manufacturer. This fact derives from the Copyright Act of 1909, and is known as the automatic or compulsory licensing provision. The provision means, briefly, that after the initial permission has been granted to a company, any manufacturer may record the same song upon proper payment of mechanical royalties. These royalties are fixed in the statute at 2 cents per side per record sold—although often a publisher will agree to a rate of 1½ cents.

The 2-cents-per-side mechanical royalty rate is much lower than royalty schedules in foreign countries, where the amount is fixed by negotiation between representatives of the copyright owners and the phonograph record industry.

It is obvious that even in the case of a big hit record, say a million-copy seller, the mechanical royalties can total at most \$20,000 which is divided equally between the publisher and the songwriters, of whom there are generally two.

Such a big record is a rarity today, and even records achieving a sale of one-half million are not too common. This fact, coupled with the lack of income from sheet music, highlights the present plight of

the independent publisher and points up the importance of so-called performance money as vital to his subsistence, as mentioned earlier.

Performances not only result in substantial royalties, but also popularize a song so that additional recordings result—with the possibility that the song may ultimately take on the value of a standard.

The bulk of performing rights income derives from the broadcasting industry, whose stations hold blanket licenses granted by ASCAP and BMI. For a small percentage of their gross billings, stations under a blanket license are permitted unlimited use of the ASCAP and BMI repertoire. In the case of ASCAP, performance income totals about \$30 million annually, which, after deductions including expenses and several million set aside for foreign societies, is divided among nearly 7,000 songwriter and publisher members. BMI's annual gross is one-third this amount, allocated among its members.

Inasmuch as the distribution of performance income is so largely predicated upon a logging of performances on the air, the effect of payola in this area is obvious.

It is to be noted that performance income derived from a song does not accrue merely from performances of a current record. Live performances play a part, too, and especially in the case of ASCAP songs, the general value of a copyright enters into the evaluation of a song. Thus, a song like "Stardust" continues to have consistent value even though hit records on the song may be lacking at the moment.

In any consideration of copyright income, we would be remiss if we did not mention the music business phenomenon of the "cut-in." In the years of publisher domination, it was commonplace for a publisher to "cut himself in" on the songwriter's share of the royalties. Thus, an examination of writer credits on some great standard songs will reveal "writers" who are better known as publishers.

Today, in a changed music business, the publisher himself is often the victim of predatory "cut-in" tactics. Name recording artists, for instance, will often demand a "piece" of the copyright; otherwise they will refuse to record the song. The demands vary; a common one is for one-half of the mechanical rights. Another is for a share of the total copyright.

There are other versions of the "cut-in." A recording company with a publishing firm of its own may demand a "piece" of the copyright. The publisher is often so anxious for a record that we will agree, particularly if the the label and artist are well known.

With sheet-music royalty gone, with publishers so dependent upon mechanical and performance royalties, and so often the victims of "cut-in" tactics, many have tried to conquer the situation by diversifying their activities. Many, in addition to being publishers, own rights and sell these to larger labels which then produce and market the finished product. Many publishers have entered the personal management business, handling singers and instrumentalists.

Thus, just as record manufacturers are in the publishing field, we also have an increasing number of publishers in the record business.

Our next point: The interrelation of competition for exposure and abundance of product.

One of the banes of the record business, and this laps over into radio, is the abundance of product. About 130 single records and about 100 long-play records are released weekly.

Competition for exposure is extreme, for, without wide public exposure, the potential buyer would never hear of most of these records. This is true not only at the broadcast level, where payola enters into play, but also at the retail level, where payola again enters into play. We are familiar with aspects of payola at the broadcast level.

At the retail level it often takes the form of free records furnished by distributors to dealers. The dealers are expected to "push" labels which are generous with free merchandise. Dealer cooperation often takes the form of listing certain records on so-called popularity lists of radio stations and trade papers.

Many of these listings are therefore invalid and, inasmuch as they are used as programing and buying guides, they serve to subvert the airways and mislead the consumer public.

Parenthetically, the Billboard, years ago, in addition to its chart showing national popularity, also published lists of city and territorial best sellers. These latter lists necessarily were compiled from relatively small samples.

The lists were discontinued by the Billboard when it became evident that record manufacturers and distributors were able to "reach" enough dealers with free merchandise and thereby invalidate the territorial listings.

Needless to say, other such lists continue to be published by various publications and for stations despite what the entire trade knows to be the unreliability of such sampling, where the corruption of just a small number of dealers can invalidate an entire list.

The overabundance of product also creates an evil condition at the level of the independent record distributors servicing retail stores. Many of these distributors handle a quantity of lines, in extreme cases 40 or more. It has become common for the distributor to expect large quantities of free records, say 300 singles for every 1,000 purchased. Manufacturers agree to this, fearful lest the distributor refuse to promote or push the manufacturer's product.

Although loosely regarded by manufacturers and distributors as "promotion," most free records are ultimately sold at the retail level. The artist receives no royalty. Neither do the publisher, the songwriter, nor the music performance trust fund. Nor, very often, does the Federal Government receive excise tax.

Much of the investigation of the music industry has centered around the so-called singles record business, which is a very small part of the total record business. The singles business is a declining one and in December represented only 20 percent of the industry's dollar volume. The industry's annual dollar volume is over \$400 million at the retail level based upon list price. Longplay records currently account for approximately 80 percent of the total dollar volume.

It is estimated that jukeboxes, of which there are about 500,000, account for 45 percent of single records sold in this country.

Although the programing of longplay records by radio stations is increasing, it is interesting to note that the major part of station programing still is drawn from singles—or, in other words, from a product which today is aimed essentially at the teenage market.

Finally, one may ask: Are there any solutions?

What is to be done with, and for, the music industry?

Several points are drastically necessary. One is the introduction of a level of morality to a business which has, all too often, a buccaneering aspect.

A second desirability is the protection of small business interests.

With regard to the first, it is necessary that the record industry indicate its good intent; its willingness to end flagrant abuses; its support of a law making payola and subversion of the airways a criminal offense.

The industry should also consider the advisability of establishing a permanent office to function on various levels, such as public relations, contact with Federal regulatory agencies, etc.

It should also establish a self-policing program and a code of ethics. A logical head of such an office could be an individual of national stature, drawn from outside the music business. He would be akin to arbitrators or commissioners now functioning in the film business, the garment industry, baseball and football leagues.

The Billboard has already taken the initiative to assure that a meeting of record industry leaders be held to consider these points.

The music business, despite its failings, is a creative one with real cultural and economic values. American music enjoys international prestige. It is to be hoped that such legislation as may arise out of this investigation will foster these values, as well as introducing higher standards of business practice.

Evils to be eliminated are payola and its corollary abuse, the open-handed distribution of free records beyond normal promotional requirements, with the intent to subvert.

It is urged that any corrective steps taken be chosen to avoid crippling individual enterprise and the reasonable use of radio as a promotional medium.

I wish to thank the subcommittee for its time and indulgence.

Mr. LISHMAN. Mr. Ackerman, do you wish to have included in the record the appendix, containing facts and figures of the record industry, without reading it?

Mr. ACKERMAN. Yes, sir. I thought the subcommittee might find that of some interest.

The CHAIRMAN. Let it be received in the record.

(The document referred to follows:)

APPENDIX

FACTS AND FIGURES OF THE RECORD INDUSTRY

1959—a banner year. Undoubtedly the all-time high in dollar sales. Estimates for total dollar volume range from \$450 million to \$480 million at retail. This would show an increase of approximately 19 percent for 1959 over 1958.

The dollar figures at retail from 1947 through 1959 are as follows:

	<i>Million</i>		<i>Million</i>
1947.....	\$204.0	1954.....	\$189.0
1948.....	172.6	1955.....	234.0
1949.....	157.9	1956.....	320.0
1950.....	172.7	1957.....	400.0
1951.....	179.0	1958 (estimate).....	390.0
1952.....	189.5	1959 (estimate).....	450-480.0
1953.....	192.8		

Industry estimates for this business for 1966—just 6 years from now—place the total dollar volume at retail in excess of \$600 million.

Breakdown of sales (by outlet and by speed)

Dollar sales break out to approximately (estimate) :	<i>Percent</i>
For racks (rack sales in supermarkets, drug, and variety stores)-----	18
For clubs (record clubs selling direct to consumer through the mails)----	19
For jukeboxes (jukeboxes * * * there are approximately 500,000 jukeboxes; they buy approximately 45,000,000 per year)-----	10
For stores (retail stores, department stores, and others who sell records or have a record department)-----	53

However, dollar sales at retail break out by speed :

[Percent]

	Total business ¹	Racks ¹	Clubs	Retail outlets ² (market-analy- sis division figures)
Long plays-----	80	80	100	71.45 in 1959.
Singles-----	³ 20	20	-----	26.76 in 1959.
Extended plays-----	(4)	(4)	-----	1.79 in 1959.

¹ Estimate.

² Actual.

³ Of this 20 percent figures for the total business, it is estimated that jukebox operators purchase approximately 45 percent of all the singles sold in a given year.

⁴ We do not have any specific information on percentage of extended plays sales versus other speeds for both total business or racks. Clubs do not sell singles or extended plays.

The Billboard Publishing Co., through its Market Analysis Division, has been engaged and is currently engaged in a continuing weekly study of record sales in retail stores. This division produces a research package that is supplied every 4 weeks, by means of private subscriptions, to record manufacturers. This research data is obtained by means of personal visits by members of the over 4,000 interviewers under contract to the Billboard. These interviewers are assigned specific stores and the stores cooperate by keeping a diary of their sales for 2 consecutive days. These diaries are picked up and returned to us and the material is placed on punchcards and tabulated. The stores and the interviewers are paid for their services. The entire project is supervised, insofar as methods and procedures, by the School of Retailing of New York University. The purpose of this continuing study is to supply the industry with accurate and up-to-date data that was heretofore not available. No one company could support such an operation and thus this division of the Billboard came about and services all companies in the business by means of accurate and detailed trend stories in the pages of the Billboard plus making available to all manufacturers a guide for future growth. The subscription price to manufacturers is on a sliding scale and based on the total dollar volume of the manufacturer, thereby making it possible for one and all to make use of this service.

The complete confidential reports, issued only to subscribers to this service, also provide competitive figures by label, broken down by speed, price, mono versus stereo, etc. The reports are compiled from diaries of actual cash-register sales, from scientifically selected rotating samples of record dealers across the Nation.

Actual figures from the Market Analysis Division of the Billboard on retail store sales for 1959, taken from the continuing study of record sales in stores re-search package

Retail stores only	Dollar sales		Percent change
	1959	1958	
Total	\$235,610,000	\$199,300,000	18.2 increase over 1958.
Singles sales	63,050,000	71,300,000	11.6 decrease under 1958.
Long plays sales	168,350,000	119,300,000	41.1 increase over 1958.
Extended plays sales	4,210,000	7,600,000	44.6 decrease under 1958.
	Unit sales		
Total	\$105,230,000	\$107,735,000	2.3 decrease under 1958.
Singles sales	64,200,000	72,700,000	11.7 decrease under 1958.
Long plays sales	37,940,000	29,100,000	30.4 increase over 1958.
Extended plays sales	3,090,000	5,035,000	38.6 decrease under 1958.

Mr. LISHMAN. Now, did you have an addendum to this record?

Mr. ACKERMAN. Yes, sir. Before closing, I would like to add a few informal remarks on the subject of payola. Since preparing my statement, I have pondered what steps could be recommended to any organization which finds its employees subjected to the pressures, temptations, and outright bribes which unfortunately have been common in the record business.

If an organization, as a result of its functions, has provided exposure to records during the past several years, it would have to have been incredibly naive not to have guarded against probings for weak spots among its personnel. The Billboard and other trade publications in the record field, as well as radio and TV broadcasters using recorded music, all have been constantly subjected to such attempts.

A significant question, then, is whether a system can be installed which can guard against the weakness of any individual employees who might fall prey to venality, or who by developing close personal association in the field might become suspect of bias, whether conscious or subconscious. It is our belief that only the group or committee system of responsibility can provide an adequate safeguard.

Like all the organizations mentioned, we have had to take action to protect our reputation for scrupulous honesty and reliability, of which we are very proud, by the occasional elimination of individuals who might be regarded as a potential security risk.

Although we have never encountered proof of actual dishonest intent, we have eliminated individuals whose involvement with other

companies was deemed imprudent and a violation of our stringent company rules prohibiting participation in any personal activities in fields we cover without permission of a superior.

Such a recent case involved a staff member who accepted gratuities in exchange for advance information from our charts before they were approved for release, and for advice on records made by small companies which were gaining in popularity, so that rights to these records could be bought by a larger company.

However, it has been many years since we installed the group or committee system at the Billboard, a procedure which has made us secure in the knowledge that even if any individual were so foolish as to have dishonest intentions, our editorial columns, record reviews, and popularity charts could not be influenced to a point where our readers could be misled.

In our case, this system means that every record that received a high review rating is heard by all members of our review panel, which votes on the rating it should be given. Thus, any corrupt individual would have only one vote among at least five knowledgeable professionals. Our record popularity charts, likewise, are protected by a system in which a team handles the tabulations in our Cincinnati office, a process which involves computations of many sets of data but no area of individual judgment or choice.

This data is all subject to cross-checking by supervisory personnel both in Cincinnati and New York every week. Finally, late sales data is added into these tabulations by a team in our New York office.

We have been interested to note that many radio broadcasters now seem to be switching over to the group system, to avoid placing the tremendous responsibilities of record selection in the hands of a single individual who must, as a result, be subjected to pressures which some simply cannot withstand.

In conclusion, we believe that the fiber of the American people is so strong that while one weak individual may occasionally be found, it would be virtually impossible to seduce an entire group, especially if its members are trained in an environment which emphasizes integrity, objectivity, and high professional standards.

The CHAIRMAN. Do you have anything further, Mr. Lishman?

Mr. LISHMAN. Yes, sir.

The CHAIRMAN. Does that conclude your statement?

Mr. ACKERMAN. Yes, sir, Mr. Harris.

The CHAIRMAN. Mr. Lishman, you may proceed.

Mr. LISHMAN. Mr. Ackerman, on page 1 of your statement, the second last full paragraph from the bottom, you state that song plugging is the art, to use a kind word, of persuading a vaudevillian performer or a bandleader or a diskjockey to perform a particular song or record.

Now, isn't it true that payola also generally embraces the payment of money, let us say, to a diskjockey, for the purpose of exposing on the air the labels of a particular company, in contradistinction to a particular song or record?

Mr. ACKERMAN. Yes, I believe that is true, Mr. Lishman. This particular paragraph was historical in its intent. I was thinking of the days prior to the great expansion of the record business.

Mr. LISHMAN. Well, today is it true or is it not true that payola payments are made to enhance the exposure of labels of the donating company?

Mr. ACKERMAN. Yes.

Mr. LISHMAN. Much more often than for the plugging of a particular record?

Mr. ACKERMAN. Well, I would say this. I would say some disk-jockeys are on a retainer which has a broad coverage. It does not apply to a specific record so much as to the product of the company, although once in a while I think the company may contact a jockey and say something like "Please lay heavily on such and such a record."

Mr. LISHMAN. But we have received testimony here from some disk-jockeys to the effect that they are on regular weekly or monthly retainers, either of a record distributor, or a record manufacturer, for the purpose of laying heavily on the labels of the company making the payments. And I gain the impression from the testimony we have so far received that that is the customary payola practice.

Mr. ACKERMAN. Yes. That is true, sir.

Mr. LISHMAN. And that the payment for the plugging of a particular record, while that happens, is more or less exceptional in this kind of business.

Mr. ACKERMAN. Yes. Except that the record label, you see, may be interested in a particular artist. For instance, it may have problems with its own artists, in which case it would ask the jockeys to put a major effort upon a particular record. But, in general, I believe you are correct.

Mr. LISHMAN. Now, why is exposure over the air so important in the popularizing of a song?

Mr. ACKERMAN. It is important because this is the only way that the song or the record reaches the public, and the public, in the last analysis, is the buyer.

Mr. LISHMAN. Could you say that there is some kind of a relationship between the amount of exposure that a record gets on the air over a comparatively short period of time, and the profits that that record may earn?

Mr. ACKERMAN. Yes. I would say that was one proviso. If the record doesn't have some commercial appeal in the first place, no amount of exposure will help it. But granted that it has something of the groove, then there is a relationship between exposure and sales.

Mr. LISHMAN. Have you ever calculated about how many records the normal diskjockey could expose over a week?

Mr. ACKERMAN. I have never really calculated it.

Mr. LISHMAN. You mentioned the fact that there are between 150 or 200 new records released each week.

Mr. ACKERMAN. Well, it varies. Sometimes it is 130, and sometimes 150.

Mr. LISHMAN. Well, is it not reasonable to assume that all these records could be exposed?

Mr. ACKERMAN. I don't think so. I don't think they really could all be exposed adequately.

MR. LISHMAN. And is it a fact that the bottleneck to all this business of exposure is the diskjockey, or the person who selects the records for broadcasting?

MR. ACKERMAN. Yes.

MR. LISHMAN. And he is the person on whom all the economic pressures of those desiring to make a profit are centered?

MR. ACKERMAN. Yes. This has been the traditional way. As I said in my statement, we see indications now where stations have been setting up committee systems. But I think that has arisen since the Harris committee hearings. Generally, it has been the diskjockey.

MR. LISHMAN. Well, would you say that when a diskjockey owns a publishing company, owns a record manufacturing company, owns a record distributing company, and owns a music publishing company, that he is pretty well exacting, about all that can be exacted, in the way of profit from a song?

MR. ACKERMAN. I would say so. And, further, I would say that it all seems to add up to final subversion of the airwaves.

MR. LISHMAN. Now, Mr. Ackerman, among records having some commercial appeal or merit, those which are given the greatest exposure, and not necessarily those with the greatest merit, may enjoy the greater commercial success; is that correct?

MR. ACKERMAN. Could you give me that, again, sir?

MR. LISHMAN. Well, we start from your premise that before a record can go anywhere, it must, as you say, have something in the groove.

MR. ACKERMAN. Yes.

MR. LISHMAN. But now you have a whole host of records, all of which have something in the groove. Some of them have greater merit than others. Is that correct?

MR. ACKERMAN. Yes.

MR. LISHMAN. Now, is it possible, by giving incessant exposure of an inferior quality record in that group, to make it a much greater commercial success than other records in the group which are of greater musical merit?

MR. ACKERMAN. I think that is very definitely possible, although I would still like to make the point that before the record finally has any actual sales, it would still have to have something in the groove.

MR. LISHMAN. Yes, sir. In other words, you cannot make something out of nothing. But once you have something you can really build it up.

MR. ACKERMAN. Yes.

MR. LISHMAN. Now, in your statement you mentioned that payola in the form of payments to singers and other performers was a rather old practice.

MR. ACKERMAN. Yes.

MR. LISHMAN. Now, if you set aside the question of ethics involved, do you see any distinction between the acceptance of money by an individual artist, or a bandleader, and the acceptance of money or gifts by a broadcasting personality for the plugging of music?

MR. ACKERMAN. Well, setting aside ethics, I would say the only distinction would be that the artist would be more likely to be more selective in the sense that he would select those songs which he thought he could perform well.

Mr. LISHMAN. Whereas the broadcasting personality might not have that feeling of pride?

Mr. ACKERMAN. That is right.

Mr. LISHMAN. Because he recognizes that maybe he is in a purely commercial venture?

Mr. ACKERMAN. Well, that is a hard question.

Mr. LISHMAN. Why wouldn't the broadcasting personality have the same kind of pride that the artist would have?

Mr. ACKERMAN. Well, because if he could not perform it well himself, perhaps he might figure that some other artist might do a pretty fair job with it.

Mr. LISHMAN. And could it be, too, that the tremendous volume of business that the broadcasting personality does, makes it difficult for him to sit back and be selective?

Mr. ACKERMAN. Yes, I think this is true.

Mr. LISHMAN. Now, you mentioned in your statement that phonograph records were fairly unimportant during the early days of radio.

Mr. ACKERMAN. Yes.

Mr. LISHMAN. Now, could you give us a breakdown of the reasons for this?

Mr. ACKERMAN. Yes. Well, for one thing, the record had not captured the imagination of the public to the extent that it now has captured it. I think there has been a change in home entertainment patterns. We no longer have sheet music. Sheet music used to be the chief vehicle of a song. This is no longer true.

Second, stations relied upon live orchestras, which they no longer rely on.

Third, there was a certain amount of hominess attached to the performance of a recording, as against the performance of a live orchestra.

Mr. LISHMAN. Mr. Ackerman, are there any good reasons for believing that the heavy pressures put on diskjockeys and other programming personnel over a period of time result in large sales of a record?

Mr. ACKERMAN. Yes.

Mr. LISHMAN. What are some of these reasons?

Mr. ACKERMAN. Because through heavy pressures on the jockey, if the record has something in it in the first place, it will be assured of considerable exposure, and this is very necessary to the ultimate sale of the record.

Mr. LISHMAN. Do you agree that because broadcasting stations are licensed, in theory, on the condition that they operate in the public interest, that the licensee is under an obligation respecting the nature of the music which is broadcast over the licensed facilities?

Mr. ACKERMAN. I certainly do, sir.

Mr. LISHMAN. What kind of an obligation do you think that the station licensee should live up to in connection with the broadcasting of music over his licensed facilities?

Mr. ACKERMAN. I think I should bear in mind the needs of a local community. And I would suggest that stations try to program from the total record business, rather than from a fragment of the record business which amounts to 20 percent of the dollar volume.

Mr. LISHMAN. Now, do you think that the strong commercial pressures put on the station licensee, and the broadcasting personnel, by the record industry and others make this public interest obligation of the licensee more difficult to fulfill?

Mr. ACKERMAN. Yes.

Mr. LISHMAN. Do you have any suggestions as to how some of this excessively strong commercial pressure could be eliminated or eased?

Mr. ACKERMAN. Well, I think, for one thing, possibly a law making payola a criminal offense would help. And secondly, I think stations should try to set up a committee system so that there is not any one person responsible for the music programing.

Mr. LISHMAN. Well, in your opinion, is it correct that much of the popular music featured on the air today is played, not because the broadcaster feels the music is good quality, but because, in his judgment, it has good commercial marketability?

Mr. ACKERMAN. I think that is true. I think that is true.

Mr. LISHMAN. Do you feel, in other words, that the public interest feature of the broadcaster's obligations are being subordinated to the commercial advantages that can be obtained from pushing certain types of popular music?

Mr. ACKERMAN. Yes. I think in many instances that is true, although I would like to add that there are an increasing number of stations which seem to be changing toward more rounded music programing, such as long-play records. But, in a general way, I believe that is a fair assumption.

Mr. LISHMAN. Now, in your statement you referred to rock-and-roll as though it were a thing in the distant past. Do you think that rock-and-roll as a major element of program content is really a thing that isn't likely to reoccur?

Mr. ACKERMAN. It is not yet a thing of the past, but if you listen to 130 records a week, it is very obvious today that the manufacturers are seeking something else. The arrangements are becoming more professional. For instance, more violins are being used. There seems to be a seeking for something else.

Mr. LISHMAN. Now, in your statement you also said that country and western rhythm and blues have a folk quality, and also that the performer is often the writer of the song?

Mr. ACKERMAN. Yes.

Mr. LISHMAN. Now, aren't many of the recordings of this music performed by individuals or small instrumental or singing groups.

Mr. ACKERMAN. That is very true, sir, although I don't think that a deciding factor in performances, is the cost of the recording.

Mr. LISHMAN. I was coming to that. Now, isn't it a fact that that kind of music is cheaper to produce than music played by a large orchestra?

Mr. ACKERMAN. Yes. But I think I could point out that there is a considerable body of fairly good music, like small jazz combinations, trios, which I think, too, would be relatively cheap.

Mr. LISHMAN. Would you say that the smaller cost of broadcasting music has been an important element in this whole economic picture, considered by record manufacturers, and others?

Mr. ACKERMAN. I would be rather wary of saying that. I think that the competition for hits is of such extreme nature that the broad-

casters, for one, I don't think really care whether the song is an ASCAP song or a BMI song. I think the record manufacturer is under such pressure for hits that the size of the recording group or the costs of the recording session is not too much of a factor.

Mr. LISHMAN. Now, on page 6 of your statement, Mr. Ackerman, in the second full paragraph, you state:

It is estimated that jukeboxes, of which there are about 500,000 account for 45 percent of single records sold in this country.

Mr. ACKERMAN. That is right, sir.

Mr. LISHMAN. Now, I would like to ask you if you know why this phenomenon has occurred?

Mr. ACKERMAN. Well, the single records business, as I said, is a declining one, it has grown year by year—it has grown to be a smaller and smaller percentage of the total record business. As a matter of fact, single records as a home entertainment item has become virtually miniscule. Part of this might be the price of a single record. There is considerable thought now being given to a drastic cut in the price of single records.

Mr. LISHMAN. Do you feel the self-policing program which you mention on page 6 of your statement can be effective unless there is an open and vigorous means of enforcement provided, or an accompanying code?

Mr. ACKERMAN. No, I would think that it would have to be, yes.

Mr. LISHMAN. Has any consideration been given to this feature.

Mr. ACKERMAN. Well, the Billboard sponsored a meeting of record manufacturers at which this was proposed. This was very, very recently. The move has not gone very far at this point.

Mr. LISHMAN. Did you discuss methods of enforcing the code of ethics, or did you concentrate on merely getting up a platitudinous statement about being against sin?

Mr. ACKERMAN. Well, I don't like the word "platitudinous." We have been trying.

Mr. LISHMAN. We have had so many codes of ethics offered, it is getting to be a kind of a drug on the market. But we have seen very little evidence of enforcement of these codes. That is what I am getting at. Have you given serious consideration to the problem of doing something more than formulate the words?

Mr. ACKERMAN. Well, we have been trying very hard to pull together the various organizations within the record industry, such as the Record Industry Association of America, a group called ARMADA, and frankly, it is very hard going. I don't think any of us have gotten very far on it. But there is some indication that something may come out of this.

Mr. LISHMAN. In your opinion, is there any real difference between a broadcasting personality airing a song in which he has a direct financial interest, either through a record pressing company, a publishing company, a manufacturing company or a distributing company, and an ordinary run of the mill diskjockey who takes payola payments for plugging the record?

Mr. ACKERMAN. Well,—

Mr. LISHMAN. Is there much real difference between those two kinds of situations, so far as the evils of this business are concerned?

Mr. ACKERMAN. A broadcaster having a music firm.

Mr. LISHMAN. He has a music firm, he has a record pressing company, he has a record manufacturing company, he has a record distributing company, and he also is the personality that broadcasts the material coming from those companies.

Mr. ACKERMAN. Yes. Would this be—I believe this is possibly an answer: In the one case, the machinery for evil-doing exists. In the second case, there is—the venality is a fact. You see, when the jockey receives payola, that is it.

Mr. LISHMAN. But don't you think that the situation is conducive to the presentation over the airwaves of material in which this personality has a commercial interest, rather than the airing of material which would be in the public interest?

Mr. ACKERMAN. Well, certainly, the chances are there, which perhaps make it easier.

Mr. LISHMAN. Has the group with whom you have had your discussions concerning this code of ethics considered this problem?

Mr. ACKERMAN. No; we have not, sir.

Mr. LISHMAN. Don't you think it would be a good one to consider?

Mr. ACKERMAN. Yes.

Mr. LISHMAN. I notice on your addendum on page 2, you refer to a recent case involving a staff member who accepted gratuities in exchange for advance information from your charts before they were approved for release. He also gave advice on records made by small companies which were gaining in popularity, so that the rights to these records could be bought by a larger company.

Now, before asking you questions about that part of your statement, I would like to ask you the significance of the words "so that rights to these records could be bought by a larger company." Do you mean that a larger company could cover a particular record?

Mr. ACKERMAN. No.

Mr. LISHMAN. And would that be a rather good competitive advantage?

Mr. ACKERMAN. Oh, yes.

Mr. LISHMAN. And this staff member, I understand, is no longer with you?

Mr. ACKERMAN. That is right, sir.

Mr. LISHMAN. And I believe it was called to your attention by this subcommittee, that he had been receiving payments?

Mr. ACKERMAN. That is right, sir.

Mr. LISHMAN. From a person who is scheduled to be a witness here?

Mr. ACKERMAN. Yes.

Mr. LISHMAN. But the information for which this person had been compensated was not of the type which would in any way reflect on the reliability of the ratings issued by your paper?

Mr. ACKERMAN. That is right, sir.

Mr. LISHMAN. I just wanted to clear that up for the record. Thank you. I have no further questions.

Mr. MOSS. Mr. Springer?

Mr. SPRINGER. Mr. Ackerman, first of all I would like to say that I am much pleased with the thought you have given in the preparation of the statement. I think it is well done.

Mr. ACKERMAN. Thank you.

Mr. SPRINGER. As a subcommittee, we are faced with doing certain things to correct situations, and my idea in these questions is not to question your intentions, but to see if we cannot highlight this to a point where we can get an understanding of what can be done and what cannot be done.

Mr. ACKERMAN. Yes, sir.

Mr. SPRINGER. Now, I think we are all agreed that payola is a matter about which corrective measures ought to be taken. If you were to define payola, what would be your definition?

Mr. ACKERMAN. Well, the granting of gratuities leading to the playing of a record or the favoring of a record or a record manufacturer, to the unfairness of other records. I don't know if I phrased that correctly.

Mr. SPRINGER. Do you mean playing them in a jukebox or over the air?

Mr. ACKERMAN. Over the air, sir.

Mr. SPRINGER. Therefore, I can limit what you are talking about on payola to the fact that this occurs on the airwaves?

Mr. ACKERMAN. Yes.

Mr. SPRINGER. Now, turning to page 4, down at the bottom of the page, the third paragraph from the bottom of the page, you talk here about the business phenomenon of the cutting. You are familiar with that?

Mr. ACKERMAN. Yes.

Mr. SPRINGER. Now, you don't mean that this subcommittee should pass any legislation with reference to that matter?

Mr. ACKERMAN. I don't think so. I would be inclined to regard that as a relationship between the publisher—if he is foolish enough to grant half of his copyright to a performing artist, possibly that is up to him.

Mr. SPRINGER. You think that is largely an industry matter, but you have brought it to the attention of the subcommittee rather as a development in this whole picture?

Mr. ACKERMAN. Yes.

Mr. SPRINGER. Now, on page 5, going to the sixth paragraph, beginning with the words "At the retail level, it often takes the form of free records furnished by the distributors to dealers. The dealers are expected to push labels which are generous with free merchandise."

Now, you don't think that is anything for this subcommittee to legislate?

Mr. ACKERMAN. Well, yes, I do. You see, I believe this is payola of a sort, too.

Mr. SPRINGER. All right. Now——

Mr. ACKERMAN. You see, because——

Mr. SPRINGER. You are not a lawyer, are you, Mr. Ackerman?

Mr. ACKERMAN. No, sir.

Mr. SPRINGER. It is my understanding that if you do this beyond the ordinary practice of advertising your product with a distributor or a retailer of any product, that that is a violation of the FTC regulations. So isn't that situation already covered?

Mr. ACKERMAN. I don't know.

Mr. SPRINGER. It is my understanding that anyone who gives someone merchandise over and above what you have described here as being

common in the ordinary course of business, is in violation of the Federal Trade Commission regulations relating to giving away produce in order to get a retailer to push your produce?

Mr. ACKERMAN. Yes, I see.

Mr. SPRINGER. The only purpose of this questioning is to try to get at the things which I think must be reviewed by this subcommittee.

Now, let us pinpoint it down a little more if we can. Would you say in your definition that there are other people involved in payola on the airwaves, other than the person who gives a gratuity to a disk-jockey, or to a station program manager, or to a station manager, or any other station personnel for the purpose of getting his record played?

Mr. ACKERMAN. Well, I am trying to think who might be involved. It could be the manufacturer, the distributor, and various personnel at the station, such as the program director.

Mr. SPRINGER. All right. Now, do you think that we would have payola properly covered if we passed a law stating that it would be a violation for any person to pay any other person who is a part of station personnel for the purpose of getting his record played on that station?

Mr. ACKERMAN. I think that would go a very long way.

Mr. SPRINGER. Now, can you suggest anything else that ought to be covered by a law with reference to payola?

Mr. ACKERMAN. Possibly, as I perhaps mentioned before, the choice of the program material.

Mr. SPRINGER. I am sorry, I didn't hear you.

Mr. ACKERMAN. The choice of the program material should not be in the hands of a single man, so that because it is much harder to corrupt a group or a committee than it is to corrupt a single individual.

Mr. SPRINGER. Now, you are making this suggestion, Mr. Ackerman, as a part of what the interior management of a station ought to do. You are not suggesting to this subcommittee that we pass a law with reference to that?

Mr. ACKERMAN. No. That is right.

Mr. SPRINGER. There is one other part of payola which has come up, which thus far nobody has suggested be covered by law. This is where you have an artist performing on a program and he is in effect in the record business or he is receiving splits on records or rights or copyrights. He is interested in those at the same time he is broadcasting over the airwaves. That is a rather nebulous point, which this hearing, I think, is now going to bring out, more than it is the question of actually payment, because we have already had so much testimony on that.

Mr. ACKERMAN. Surely.

Mr. SPRINGER. Do you have any suggestions for covering that angle?

Mr. ACKERMAN. Well, I don't know the legislation of it, but I would say that it certainly is a fact that a big artist on a TV show, singing some of the songs that he has already recorded, this means much money through increased sales of his records, and through performance money if he has a piece of the copyright. So if it could be done legally, I believe it would be a help if there were some sort of rein or check upon that kind of thing.

Mr. SPRINGER. Is it your suggestion, then, that by some legalism that we include or prohibit that type of performance over the airways?

Mr. ACKERMAN. Sure.

Mr. SPRINGER. It is my understanding from what you said that the industry itself has gone directly into some of these matters in that they have made some of these artists divest themselves of interest in record companies and other companies which produce music to be broadcast over the airwaves. To your knowledge how extensive has that performance been?

Mr. ACKERMAN. I would say not very extensive. I would say that those that we hear have been divested, grows out of the activity of the Harris committee, out of fear in some quarters.

Mr. SPRINGER. Later on in these hearings we will have a performer here who is nationally known. To your knowledge, has that performer, Dick Clark, divested himself of his interest in record companies, copyrights, and other rights in order to keep on performing under the auspices of ABC?

Mr. ACKERMAN. Frankly, I do not know. I could not furnish the documentation on such a query. We do hear this although frankly it is hearsay.

Mr. SPRINGER. Is there any other form of payola that you think ought to be encompassed in a possible statute?

Mr. ACKERMAN. No, I think we have covered all the main facets.

Mr. SPRINGER. Since the payola investigation was opened by this subcommittee last fall, Mr. Ackerman, do you know if any meetings have been held by the industry itself with reference to this entire matter?

Mr. ACKERMAN. I don't—well, yes, the meeting that Billboard sponsored.

Mr. SPRINGER. Could you state on or about when such meeting was held?

Mr. ACKERMAN. This was held, I think, the week before last. This was a meeting sponsored because many manufacturers told us that they would like to begin operating in a more legitimate way. It was suggested to us that perhaps something might be done toward the drawing up of a code of ethics.

Mr. SPRINGER. Now, will you tell me what segments of the entire overall industry were represented?

Mr. ACKERMAN. I say about 40 to 45 record manufacturers. This was a very hastily called meeting, and many were not there. But I would say a pretty good cross section of the independent labels.

Mr. SPRINGER. Forty out of about how many total record companies operating?

Mr. ACKERMAN. Well, that is a pretty hard question. There are actually several thousand labels, but this is misleading. There are about 600 which we release on a regular schedule, and perhaps 75 to 100 which control the bulk of the business.

Mr. SPRINGER. And these are represented?

Mr. ACKERMAN. A good part of them, sir.

Mr. SPRINGER. Now, do you know of any meeting that has been held between the record manufacturers and the broadcasters in TV and radio?

Mr. ACKERMAN. Yes.

Mr. SPRINGER. Would you tell on or about what time such meeting took place?

Mr. ACKERMAN. Yes. Following the Billboard-sponsored meeting, a committee was appointed of three men, the purpose of which was to sit down with a committee of the NAB and discuss common problems. And the first step in this direction was already taken late last week.

Mr. SPRINGER. Now, was that with reference to payola?

Mr. ACKERMAN. I think it was with reference primarily to the distribution of sample records to the stations pertaining to the confusion in section 317 of the Communications Act.

Mr. SPRINGER. Now, Mr. Ackerman, it is my understanding from your testimony that most of the situations involving payola occurred on single records; is that true?

Mr. ACKERMAN. That is correct, sir.

Mr. SPRINGER. Now, I note, going first to the dollar sales, that in 1959, the increase over 1958, of the longplaying records was approximately 41 percent.

Mr. ACKERMAN. Yes.

Mr. SPRINGER. And there was a decrease in single record sales of approximately 11½ percent?

Mr. ACKERMAN. Yes.

Mr. SPRINGER. And the extended play sales was decreased about 44 percent?

Mr. ACKERMAN. Yes, sir.

Mr. SPRINGER. And also in the unit sales, the increase of the longplay records was from 29 million to approximately 38 million?

Mr. ACKERMAN. Yes.

Mr. SPRINGER. And there was a decrease in sales of the single play records from 72 to 64 million, and the extended play records from 5 million to 3 million?

Mr. ACKERMAN. Yes.

Mr. SPRINGER. Now, do you think that that trend is good?

Mr. ACKERMAN. That is a hard question. I think the record industry would very much like to see a revitalization of the single record business, because this is the excitement part of the record business, and even though it is small from the dollar volume standpoint, it is important from the talent development standpoint.

Mr. SPRINGER. Would you say that this increase in the longplay records occurred on radio?

Mr. ACKERMAN. Definitely not.

Mr. SPRINGER. Where would you say it did occur?

Mr. ACKERMAN. In the old-fashioned way, sir, at the retail store level, the consumer advertising, record clubs—for instance, the Columbia Record Club grosses about \$30 million annually simply from the club alone. You see, this is mail order.

Mr. SPRINGER. Then this means that there essentially would be no decrease in the short play on radio, insofar as you know?

Mr. ACKERMAN. Could I have that again?

Mr. SPRINGER. Would you read that question back?

(The pending question was read by the reporter.)

Mr. ACKERMAN. Of single records, you mean, sir?

Mr. SPRINGER. Yes.

Mr. ACKERMAN. Well, except to this effect, since the hearings here we have noticed that more and more stations are switching toward programing of the longplay records.

Mr. SPRINGER. And away from the shortplay records?

Mr. ACKERMAN. Yes. As to whether this will persist, I don't know.

Mr. SPRINGER. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Moss?

Mr. MOSS. No.

The CHAIRMAN. Mr. Derounian?

Mr. DEROUNIAN. No.

The CHAIRMAN. Mr. Devine?

Mr. DEVINE. No.

The CHAIRMAN. Anything further, Mr. Lishman?

Mr. LISHMAN. No.

The CHAIRMAN. Mr. Ackerman, you are the music editor of Billboard; is that right?

Mr. ACKERMAN. That is right.

The CHAIRMAN. Are you familiar with the current issue of Billboard which just came out April 25?

Mr. ACKERMAN. Somewhat, sir; yes.

The CHAIRMAN. Do you know Mr. Bill Lawrence?

Mr. ACKERMAN. Mr. Bill Lawrence?

The CHAIRMAN. Bill Lawrence, Inc., 1409 Fifth Avenue, Pittsburgh 9, Pa.

Mr. ACKERMAN. No, sir.

The CHAIRMAN. This is an interesting advertisement in here. It says:

Effective immediately, payola will be discontinued until further notice.

Mr. Ackerman, let me thank you very much on behalf of the subcommittee for your appearance and your testimony here today, in which you have so clearly explained the historical background and operations in this field.

This record should be exceedingly helpful as we develop this matter in its perspective, so that not only this subcommittee, but the public, may be aware of what the facts are.

Mr. ACKERMAN. Thank you.

The CHAIRMAN. At this time we have some information which has been compiled by Mr. W. M. Blaisdell, economist, in the copyright office of the Library of Congress, on the economic aspects of the compulsory license in copyright law. This is a very informative discourse prepared on this subject which I believe the record should include at this point.

Unless there is some opposition, it will be included in the record.

(Information referred to follows:)

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PREFATORY NOTE

Under an authorization by Congress, the Copyright Office of the Library of Congress has undertaken a program of studies looking to a general revision of the copyright law (title 17 of the United States Code). These studies are first circulated, in preliminary form, to a panel of consultants appointed by the Librarian of Congress, for their comments and views. Thereafter, each of the studies, together with the comments and views received, is made available for general distribution to all interested persons.

The present study on "The Economic Aspects of the Compulsory License in the Copyright Law," prepared by W. M. Blaisdell, is the 12th in the series of studies being issued for general distribution.

This study No. 12 supplements study No. 1, previously issued, on "The Compulsory License Provisions of the United States Copyright Law," by Prof. Harry G. Henn.

The Copyright Office is eager to have the views of all persons and groups concerned with the problems considered in the various studies. All persons receiving this study are invited to submit to the Copyright Office, Library of Congress, a statement of their views on the problems presented in this study.

ABE A. GOLDMAN,
Chief of Research.
ARTHUR FISHER,
Register of Copyrights.

NOVEMBER 1958.

**EXCERPT FROM
THE ECONOMIC ASPECTS OF THE COMPULSORY
LICENSE IN THE COPYRIGHT LAW**

by

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Economist

Copyright Office

The Library of Congress

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THE ECONOMIC ASPECTS OF THE COMPULSORY LICENSE

I. THE ECONOMIC NATURE OF COMPULSORY LICENSE

Section 1(c) of the Copyright Act of 1909 provides that, once a recording of a musical composition has been agreed to by the owner of the copyright of that composition, then anyone may make a recording of the composition upon the payment of a statutory fee to the copyright holder. This type of provision, known as the compulsory license, is relatively infrequent in American law, except in connection with industries affected by a public interest, and in such cases usually only as a limitation on price; there is no such limitation in other areas of copyright. This specific provision places three limitations on the contractual freedom of the owner of the copyright to a musical composition; it establishes limits on (1) the persons with whom he may refuse to contract; (2) the times at which he may contract; (3) the price at which he may contract. Moreover, the copyright owner may not place any time limitation on the period during which the copyrighted property may be used, provided only that the statutory price is paid. Just as soon as one recording has been agreed to, anyone is free to record the same composition without time limit so long as he makes the required payments, known as "mechanical royalties."

There are several possible variations on each of these three major aspects of the compulsory license provision. For example, the freedom to record might become effective only after a certain time period, or the statutory fee might be varied as a percentage of a price or it might be related to the fee paid by the first recorder. In addition, the compulsory concept itself might be limited to a fixed period after a specified event such as the signature to the first negotiated contract for recording. Also, a tribunal might be established to determine a "fair and equitable fee" to be paid by those taking advantage of the provision. Still other variations might be applied, such as a sliding scale of fees increasing as the number of sales of the record increased.

In the present organization of the music business recordings of various kinds are of increasing significance, and the compulsory license is important, particularly to the producers of popular records, where the large volume of sales creates the chance of large profits. Once a composition has reached the public domain compulsory license is no longer applicable, of course. However, it is applicable to the copyrighted "standards," i.e., compositions which have been accepted more or less permanently into the musical culture, and to copyrighted classical selections, but since these latter make up a relatively small portion of the total record production, in this study emphasis will be placed on the music business as it treats popular recordings.

II. THE FUNCTIONAL ORGANIZATION OF THE MUSIC RECORDING BUSINESS

A. COMPOSERS AND LYRICISTS

The music industry starts with the composition of a tune; it may be designed for a particular purpose such as popular use, television use or moving picture use. It is hoped, of course, that a specially designed tune will end up in all these uses and perhaps others.

A large number of the composers and lyricists who produce the tunes are organized professionally into the Songwriters Protective Association¹ (SPA). This organization, now some 25 years old, functions primarily to protect the professional status of songwriters through the maintenance of a standard form of contract for use between individual songwriters and the publishers of musical compositions. In its most recent negotiations in 1947-48, it also established a "basic agreement" between the SPA and the Music Publishers Protective Association, which a music publisher must sign before he may purchase the compositions of SPA members under the 1947 revised uniform popular songwriters' contract. About 2,700 songwriters now belong to the organization and over 900 music publishers have signed the basic agreement. Although the SPA has used the group principle in dealing with music publishers, the standard SPA contract is applied individually by each songwriter to the sale of an individual composition to a publisher.

There is no clear information available as to the extent of the influence of SPA. It seems to be generally agreed that it is composed primarily of writers who are also members of ASCAP. One industry source states that—

The majority of the (popular) hit songs are presently written by nonmembers of SPA and published by firms not having a contract with that organization.

It may be inferred, an inference which is supported by some who are familiar with the industry, that most writers affiliated with BMI are not members of SPA, though some are. Also, there is a belief that regardless of the extent of the use of the SPA contracts (which are copyrighted), the standards established by those contracts are generally effective as a "floor" in the relationships between all songwriters and music publishers.

In contrast to the free-lance concept which dominates the SPA operation, the Composers and Lyricists Guild of America (CLGA) includes in its membership primarily those who write songs for the motion-picture producers. The CLGA has about 500 members and there is a large overlap between its membership on one hand, and that of SPA, the American Federation of Musicians (AFM) and the Writers Guild of America (WGA), on the other. There has been considerable talk about the possible merger of SPA and CLGA,² but no merger has taken place. The CLGA has sought to become the bargaining agent for its members in negotiations with the motion picture producers, but the National Labor Relations Board has decided that, for purposes of the National Labor Relations Act, the

¹ The name of this organization was recently changed to the American Guild of Authors and Composers. For convenience we shall refer to it herein under its former designation.

² See, e.g., *Billboard*, June 23, 1956, and July 7, 1956; also *Variety*, Feb. 6, 1957.

members of CLGA are "not employees, but are independent contractors."³

Composers and lyricists also appear in other economic guises. As individuals, they may own or participate in music publishing firms, or recording firms, or they may also be recording artists. It is not unusual for a single individual to participate in several aspects of the music business.

The songwriter as such does not ordinarily deal directly with the licensing of his music for recording or for other uses. In practice he assigns his property to a music publisher under an SPA contract. The compulsory license provision affects the songwriter, however, inasmuch as it affects his revenues from the property which he has assigned to the music publisher.

B. MUSIC PUBLISHERS

The major effect of the 1947 revised uniform popular songwriters' contract (SPA) is to transfer to a music publisher all the rights in a musical composition, including the right to copyright it, under detailed and specific limitations which protect the position of the songwriter. No such contract between a songwriter and a music publisher is valid without the countersignature of the SPA; when a songwriter joins the SPA he transfers to it the recording rights to all his compositions, and it is only through countersignature on his contracts that the SPA releases these rights to a music publisher. In the present state of the music business, no music publisher would purchase a musical composition without obtaining the right to record it.

To the extent that individual songwriters do not belong to SPA, they presumably must protect their rights with respect to recording of their compositions. Within SPA, it may be inferred, the use of the organization countersignature to release recording rights is a method of tightening the organization. Individual songwriters would presumably insert special provisions in their contracts with music publishers in order to cover the potentially very valuable recording right.

Many of the major music publishers are organized into the Music Publishers Protective Association (MPPA). However, some of the very large publishers, notably those controlled by the Warner Bros. motion-picture interests, do not belong. Organized in 1918, the MPPA has a membership of about 50 firms.

Although the negotiations with respect to the Minimum Basic Agreement (MBA) and the uniform popular songwriters' contract are carried out by representatives of the MPPA for its members, the MBA itself is a contract between SPA and each individual publisher, and the songwriters' contract is between the individual composer and an individual publisher.

The music publishers arrange for the dissemination of musical compositions through various media. With the development of motion pictures, electronic recording, and radio and television broadcasting, the functions of the music publishers have expanded greatly from their earlier activities in the publication and sale of sheet music. These newer developments have shifted the major sources of publishers' and songwriters' income from sales of sheet music and minor amounts of recording and performance royalties, to greatly expanded

³ 117 NLRB No. 4, Jan. 4, 1957.

recording and performance royalties combined with a relatively small revenue from the sales of sheet music. Between 1951 and 1955, while sheet music royalty payments fell by 44 percent in volume, the volume of mechanical royalty payments by record producers to music publishers increased by 60 percent, the synchronization payments by motion-picture producers to music publishers rose by 63 percent, and the performing-rights payments by users of copyrighted musical compositions to performing rights organizations increased by 96 percent.⁴

Closely affiliated with the MPPA is the office of Harry Fox, trustee. It is understood that Mr. Fox is the general manager of the MPPA, and also that his office acts independently in a trustee capacity for others than members of the MPPA. The Fox office issues recording licenses and collects recording fees ("mechanicals") for those music publishers he represents as trustee in this connection. The collection function fulfilled by the Fox office is understood to be conducted on a nonprofit basis for the members of the MPPA, and against a percentage fee for other publishers. In these functions of licensing and collecting, the Fox office acts not only for domestic publishers, both members and nonmembers of MPPA, but also for foreign music publishers through contracts with foreign mechanical rights organizations, notably the Bureau International de l'Edition Mechanique (BIEM), the major mechanical rights organization in Europe. In connection with its function as collection agency for the mechanicals due to publishers from recording companies, the Fox Office also verifies the accuracy of such payments by examining the books of account of record producers.

In addition to the MPPA, the so-called "standard" music publishers are organized into the Music Publishers Association of the United States, which is the trade association for this group. However, there is no clear line of demarcation between "standard" and "popular" compositions. Some members of MPPA have large catalogs of standard works in addition to their popular catalogs.

The music-publishing industry is made up of about a dozen outstanding large firms and several thousand smaller firms, many of which are inactive in that they may merely hold copyrights and collect royalties on them rather than actively engaging in promotional and distributive operations. In 1958 ASCAP had 1,081 publisher members.⁵

Several of the largest music publishers are controlled by motion-picture interests: MGM and 20th Century Fox, Paramount Pictures, Warner Bros., and Columbia Pictures.⁶ Successful composers and recording artists frequently have their own music publishing firms, and both NBC and CBS own at least one such publisher affiliated with ASCAP and one each affiliated with BMI.⁷

It is primarily upon the music publisher that the direct impact of the compulsory license falls. In practice he is the holder of the copyright to musical compositions, and after his first agreement with a record producer for the recording of a tune anyone may record the tune upon payment of the statutory royalty. In the absence of the

⁴ Cf. memorandum prepared by MPPA to the Department of the Treasury, dated Feb. 19, 1957, re H. R. 5478, a bill to amend the personal holding company provisions of the Internal Revenue Code.

⁵ The Billboard, Mar. 3, 1958.

⁶ Cf. hearings, Senate, Committee on the Judiciary, 83d Cong., 1st sess., on S. 1106 "Jukebox Exemption," p. 103.

⁷ Cf. House Judiciary Committee hearings, 1956, serial 22, pt. 2, vol. 2, "Television," pp. 4203 and 4206.

compulsory license, the music publisher, as owner of the copyright, would be free to negotiate for the recording of the copyrighted material. He could negotiate with whom he chose, offer an exclusive contract if he wished, ask any price he desired, and suggest such time period as he cared to; in general, he could negotiate within the framework usually applicable to business operations having to do with the assignment or licensing of property rights.

In the absence of compulsory license, it may be assumed that the music publisher would recognize his own interest to be in licensing as many recordings and at such royalty rates as would produce the largest net amount of royalties from record sales and public performances, the latter particularly on radio and television, rather than being faced with the necessity of licensing all comers to record a composition at not more than the statutory royalty.

C. RECORD PRODUCERS

When a music publisher has accepted a composition from a songwriter, one of his first moves, frequently even before sheet-music publication, is to attempt to have it recorded by a record producer. In recorded form a composition is immediately available for broadcast which is considered to be the major form of "exposure" to the buying public.

Record producers will consider perhaps 50 compositions before they agree to the recording of 1. Having accepted a composition, a recording contract is made with the music publisher. The payment to be made for the recording privilege (mechanical royalty) is negotiated on the basis of the statutory provision in section 1(e) of the Copyright Act, i.e., the compulsory license provision. In practice the "2-cent per part" limitation in the statute is a ceiling on the payment. When the 78 revolutions-per-minute record was standard in the industry, its playing time was a definition of "part." The industry is now dominated by the extended-play and long-play speeds, and it has developed a new rule of thumb for extended-play and long-play records to the effect that the recording royalty shall be one-quarter cent per minute of playing time or fraction thereof, but not less than 2 cents per side.⁸

However, in negotiating a recording contract the bargaining strength of the two parties is important and in general the royalties agreed to in recording contracts are something less than the statutory rate; in fact, it is reported that, on rare occasions, a music publisher has been willing to waive any mechanical royalty in order to get a new composition recorded by an outstanding artist.⁹ The license for use of the tune is usually issued by the Fox Office and the mechanical royalty is paid to the Fox Office on a quarterly basis.

Although there are probably more than 1,000 record producers in existence at any one time,¹⁰ a limited number of them are active at any

⁸ Cf. Henn, Harry G., "The Compulsory License Provisions of the U.S. Copyright Law," p. 61; and letter from Sydney Kaye, Esq., dated Oct. 2, 1956, published with the Henn study (General Revision Study No. 1, issued by the U.S. Copyright Office, June 1957). A schedule of royalty rates based on the manufacturer's suggested retail price, and included in the MPPA "long form" license is published in Henn, Harry G., *op. cit.*, p. 61; and in a letter from Ernest S. Meyers, Esq., dated June 14, 1957, published with that study. However, it seems that the dominance of the extended-play and long-play speeds is such that the royalty based on the length of play of the record is generally used.

⁹ Information from trade sources.

¹⁰ "Music Performance Trust Funds," 15th combined reports and statements, p. 5, reports 1,167 phonograph-record producers signatory to the 1954 phonograph-records trust agreement as of June 30, 1956. Of the 1,018 signatories at Dec. 31, 1955, 951 reported no sales in the last half of 1955.

one time. The record industry trade association, the Record Industry Association of America (RIAA), formed in 1952, reported 53 members as of December 31, 1956.¹¹ The functions of the RIAA are largely technical research, taxation and legislative activity, and statistical compilation.

Four or five of these producers are usually recognized as "major producers," although there is no recognized definition of a "major." Only four producers have annual gross sales of more than \$10 million,¹² and several others are "semimajors," reaching for an annual gross sales figure of \$10 million.

The relationships between record producers and other parts of the music industry are highly complex and widespread. Both RCA Victor Division and the Columbia Record Company are closely affiliated respectively with the NBC and CBS broadcasting interests, which in turn own music publishers. This gives these two "majors" a distinctive position in the industry in that they can offer special inducements to recording artists in the form of radio and television appearances which are considered to be of major importance both in the sale of records and in the professional advancement of recording artists in the amusement industry.

D. MOTION PICTURE PRODUCERS

Since the advent of sound motion pictures in 1929 the motion-picture industry has been a large user of music. The motion-picture producer negotiates with the music publisher just as a record producer negotiates, but the use of a copyrighted musical composition in a motion picture is not considered to be subject to the compulsory license provision. Although the law applicable to this situation is not clear,¹³ in practice the fees for such use of copyrighted music on a motion picture sound track are negotiated freely between the copyright owner (or his agent, the Harry Fox Office) and the motion-picture producer; and a single payment is usually made for both the right to use the music on the sound track (synchronization right) and the right to perform the music in exhibiting the motion pictures (performing right). The increasing use of theatrical motion pictures on television, and particularly the production of motion pictures specially for television use, have greatly enlarged the market for synchronization rights.

Prices paid for synchronization rights (together with the performing rights as to theatrical exhibition) vary widely. In a theatrical motion picture, some of the factors affecting the negotiation are the total budget of the picture, the importance of the star actors, and the place which any given musical composition will have in the film. Fees may run from as little as \$500 to as much as \$20,000. In TV films, the fee for a single use of a song in a syndicated film usually runs from \$250 to \$500, which includes unlimited runs for several years on a worldwide basis.¹⁴

Conversely, the motion-picture industry is becoming an increasingly important source of musical material for phonograph records. A

¹¹ Annual report of the RIAA, Jan. 1-Dec. 31, 1956, p. 5.

¹² *Ibid.*, p. 5, and "Bylaws of the RIAA," sec. 2.

¹³ See Kupferman, T. R., "Rights in New Media," in "Law and Contemporary Problems," vol. 19, No. 2 (1954), pp. 173-174; and Duhin, Joseph S., "Copyright Aspects of Sound Recording," in "Southern California Law Review," vol. 26, No. 2 (1953), p. 139 ff.

¹⁴ Information re "sunk rights" taken from the *Billboard*, Feb. 22, 1957.

good deal of original music is now composed for motion pictures, and this material, first recorded on the sound track of a picture, is used for further recording on disks or tapes. In practice, if original copyrighted musical material is first used on the sound track of a motion picture, it is not thereby considered available for recording under the compulsory license provision; the right to first production of such original musical material in the form of recordings is subject to price negotiation, and only after such right has been given to one record producer is it possible for other record producers to invoke the compulsory license provision.

Due to their interest in music the relationships of the motion-picture producers ramify throughout the music business: they are major owners of music-publishing houses, and are thus influential in MPPA and ASCAP; they own recording companies, and they can direct their original motion-picture musical compositions, through their own music publishers, to their own recording companies, if they so desire.¹⁵

In connection with compulsory license, the motion-picture companies are affected as a source of compositions for recording, and hence as composers or copyright owners. This does not minimize their influence in the music business in other capacities not directly a part of their motion picture activities.

E. RECORDING ARTISTS

A major factor in the saleability of a recorded tune is the recording artist or artists. Artists who perform for recording companies include both the solo artists and "name" groups, and the instrumental accompanists. Each phonograph record producer has his "stable" of solo artists, usually under exclusive contract; the contracts with these artists are probably his most valuable asset. In some cases a very well-known artist can maintain a nonexclusive position vis-a-vis phonograph recording, but this is unusual.¹⁶

The contracts between solo artists and phonograph-record producers are made under the provisions of a Code of Fair Practice negotiated between the record producers and the American Federation of Television & Radio Artists (AFTRA). This code is a minimum agreement and individual artists are free to negotiate higher wages and better conditions of employment if they are able to do so. Well-known artists are apparently given annual minimum guarantees with additions dependent upon the success of their records.¹⁷

Well-known solo-recording artists are frequently "names" in the music business for reasons other than their recorded performances. They may own publishing houses and thus be influential in MPPA, ASCAP, or BMI, or they may also be composers or lyricists belonging to SPA. A very well-known performer may have a publishing house which is a member of ASCAP and another affiliated with BMI.

The instrumental musicians who perform for phonograph records, either directly under contract with a phonograph-record producer, or

¹⁵ Such action is not always considered desirable. In 1957 RKO-Teletadio Pictures owned both RKO Music (a publisher) and RKO-Unique (a record producer), but the picture producer transferred the album recording rights to a specific sound track to the subsidiary music publisher (RKO Music) with instructions to negotiate their sale in the open market. "The (RKO film) sound-track album rights will be put on the open market by the publishing subsid," with the purpose of giving "the RKO publishing subsid a better bargaining position with the other disk companies." *Variety*, Feb. 20, 1957.

¹⁶ "Bing Crosby is staying with Decca for another 3 years. However, the new pact gives the crooner the greenlight to do occasional groovings under other disk banners." *Variety*, June 6, 1956.

¹⁷ E.g., Jo Stafford's new 5-year contract with Columbia Records "is described as 'one of the costliest' in the business with guarantees well into 6 figures." *Variety*, May 5, 1956.

indirectly as on a sound track under the control of a motion-picture producer are all members of the American Federation of Musicians (AFM), or the Musicians Guild of America (MGA), and are covered by the applicable minimum basic contracts of those unions. Some instrumental groups, such as well-established dance bands or symphony orchestras, are under exclusive recording contract to a particular record producer, but the accompanists for recording artists are frequently free-lance musicians employed for the specific recording session.

With the rapid technological developments in recording and the cumulative popularity of recorded music, together with the "exposure" of recorded music by broadcasters, the need for performing instrumentalists has been drastically reduced. This is, of course, the major complaint of AFM. Most of the recording instrumentalists are concentrated in Hollywood and New York, where they work on an individual free-lance basis for the recording companies. In the calendar year 1955 the total wages received by members of the AFM for recording sessions was \$4,171,000.¹⁸

Neither group of performing artists is directly affected by the compulsory license provision. They are either under contract to a recording company or hired on a free-lance basis by those companies. They are not involved directly in the negotiations leading to the recording of a copyrighted musical composition. Only if their contracts contain provisions for compensation related to the number of records sold would they participate directly in the returns from a hit tune. Of course, if a recording artist does have a hit tune his recording company presumably would recognize this attainment in connection with later recordings.

As indicated, a record producer's most valuable asset may well be his "stable" of recording artists. Exclusivity of contract, for recording purposes, between artist and producer is the usual rule. But these contracts are usually for a limited time period, and after a year or two a successful artist will find himself free to renew, or to shift to another producer. The moment an artist shows any promise of popularity, he is signed by some record producer. If he really becomes popular, then the advantages to him of a contract with a producer affiliated with radio or television become apparent; appearances on the air are the best possible exposure for obtaining lucrative personal appearance contracts, which every performer wants.

F. PERFORMING RIGHTS ORGANIZATIONS

In contrast with, and completely separate from, the so-called "mechanical" royalty, i.e., royalties paid under the compulsory license provision of the Copyright Act, are the royalties paid for the right to perform musical compositions in public. Each public performance for profit of a copyrighted musical composition is subject to a performing license from the copyright proprietor. The several forms and the large number and wide distribution of public performances for profit now existing, as well as the great number of compositions performed, make the issuance of licenses by individual copyright owners a practical impossibility. Therefore, organizations have been formed to license the performing rights in a large catalog of copyrighted

¹⁸ "Official Proceedings, 59th Annual Convention, AFM, 1956," p. 131.

musical compositions. These organizations issue blanket licenses to those who wish to perform publicly for profit the compositions controlled by them. The licensing contract provides for payment of performing royalties to the organization which in turn makes payments to composers and publishers in accordance with arrangements established by the organization.

Performing royalties are a legal liability of the organization under whose control the performance is given, e.g., radio or TV broadcasting station, a restaurant, or a hotel.¹⁹ Payments of such royalties are made directly to the performing rights organization (ASCAP, BMI, or SESAC) under the provisions of a contract which usually licenses the contracting organization to arrange for unlimited performances of copyrighted musical material in the catalogs controlled by the particular performing rights organization.

Performing royalties are to be distinguished from mechanical (recording) royalties, the latter being a legal liability of the record producers who pay the royalties to the music publishers holding the copyright.

Performing rights organizations are not directly affected by the compulsory license provision. However, they are closely allied to both the composers and the music publishers, who receive mechanical royalties from the record producers. Moreover, the use of records in broadcasts is a major source of performing royalties; and the popularity of a recording, particularly as used in broadcasts, will affect the amount of the performing royalties received by the composer and publisher.

G. SUMMARY

How a musical composition becomes a record

Within the framework of the music business, the typical course which a musical composition takes from the composer to the final user can now be followed, particularly in those areas where compulsory license applies, i.e., the recording of a copyrighted musical composition and the distribution of records. The composer of a musical composition (together with one or more colleagues collaborating as composers or lyricists) transfers all his rights in the composition to a music publisher through the negotiation of a contract, frequently on the SPA standard songwriters' form. Presumably the composer is also a member of ASCAP or has contractual arrangements with a music publisher affiliated with BMI or SESAC. Except for the receipt of royalties for the performance, recording, or other use of the composition, all of which are covered in the SPA contract, and presumably in any other similar songwriter-publisher contract, the composer has now lost direct control of his created property.

The music publisher, having secured copyright in the composition, now attempts to license it for recording purposes. When the publisher succeeds in licensing the recording right, he files with the Copyright Office a notice of use or loses his defense against any suit for infringement of the recording right. The license for recording of the copyrighted composition is usually issued to the phonograph record

¹⁹ Under the *Alden-Rochelle decision* (56 USPQ 28 (S.D.N.Y. 1942); 80 F. Supp. 888 (S.D.N.Y. 1948); 80 F. Supp. 900 (S.D.N.Y. 1948)) motion-picture theaters do not pay performing royalties on performances of copyrighted music in the films they exhibit; the payment is made "at the source" i.e. by the film producer to the copyright owner. However, if a motion-picture theater presents live performers who perform copyrighted musical works, the theater is liable for the payment of the performing royalty.

producer by the Harry Fox Office which sets up an account for the receipt of mechanical royalties from the record producer.²⁰ The license for such use having been issued, any other person, under the compulsory license provision, may then arrange to have the copyrighted composition recorded upon notifying the copyright owner and agreeing to pay mechanical royalties to him or his agent, the Fox Office, and sending a duplicate of the notification to the Copyright Office.²¹

In practice the music publisher (copyright proprietor) is usually prepared to agree to additional recordings of his copyrighted musical compositions at the standard royalty rates without special negotiation; and recording companies generally obtain licenses at those rates. A very popular composition may be issued in as many as 15 or 20 different recordings by different record producers under the compulsory license system, but without ever specifically activating the statutory compulsory licensing provisions as such. Under these conditions payments of mechanical royalties by 15 or 20 producers will be made for the account of the music publisher who is the proprietor of the copyright. On rare occasions a music publisher may not wish a particular record producer to record his composition; under these conditions the record producer may nevertheless proceed, under the compulsory license provisions, to notify the publisher and the Copyright Office, record the composition, and arrange to make payments in accordance with the statute.

The Fox Office, after deducting expenses,²² pays the remainder to the publisher, who, in turn, pays the songwriter(s). The mechanical royalty for the songwriter(s), according to the provisions of the uniform popular songwriters contract (SPA), is not less than 50 percent of the publisher's receipts on that account.

Recording artists and instrumental musicians are employed by the record producer and are paid by him under provisions of the applicable AFTRA, AFM, and MGA contracts.

H. THE DISTRIBUTION OF RECORDS

The general pattern of record distribution is for a distributor to cover a certain geographic area for a producer, and for the retail outlets in that area to purchase their supplies from the distributor. Currently the distribution of phonograph records is undergoing rapid metamorphosis. Formerly sold largely through music stores and record shops, phonograph records are now available at retail in drug-stores, grocery stores, department stores, book stores and in general wherever a rack may be set up, and are distributed through record "clubs." Also records are getting into consumers' hands more and more frequently through advertising "deals." For example, with the purchase of a specific merchandise item a coupon is received by the purchaser which permits him to purchase a record at a reduced price. Also, discounts on records at retail are perhaps the rule rather

²⁰ Standard royalty rates have been established by trade practice, and are generally less than the maximum fixed by the statute.

²¹ Sec. 101(e), Copyright Act.

²² The maximum deduction for expenses is 3½ percent, an increase from a maximum of 2½ percent effective until about 1955. However, since the 1917 revised uniform popular songwriters' contract provides that no more than 2½ percent may be so used, the additional 1 percent must be borne by the publishers to the extent it is required (sec. 4(h), songwriters' contract). Cf. *Variety*, Oct. 31, 1956; increasing volume of sales in the phonograph record business has made it unnecessary for the Fox Office to use the entire 1 percent additional fee.

than the exception, although the volume of retail discount sales is not known.

III. SUPPLY, DEMAND, AND THE COMPULSORY LICENSE

A. THE SUPPLY AND DEMAND PATTERN

The usual industry practice seems to be for a songwriter to contract with a music publisher for the exploitation of a composition, and thus the ownership of most musical copyrights is in the hands of those publishers. Also, both industry information and logic would lead to the conclusion that the uniform popular songwriters' contract of SPA establishes the "floor" for negotiation of such a contract. It would probably not be overstating the case to say that the framework of the music industry places in the hands of music publishers the control over the supply of copyrighted popular musical materials, and that the rights of songwriters are largely protected by the minima established by SPA.

In negotiating recording licenses, the music publisher is limited under the compulsory license provision by the facts that (1) he cannot give an exclusive recording license, (2) he cannot limit the time period for the use of the license except as it is limited by the life of the copyright,²³ and (3) he cannot exact a mechanical royalty of more than "2 cents on each such part manufactured."

In this framework, the music publisher has not been able to exact from record producers the full statutory fee for most types of recording, and at times he has been willing to forego the fee entirely in order to get the public "exposure" which a recording by a "big name artist" will give. The most he can hope for is that the composition will prove to be popular, and that a number of recording companies will produce recordings which will result in ample mechanical performing royalties.

A large part of the demand for copyrighted musical material comes from the recording companies. They decide the particular compositions to be recorded. It is the "A. & R. man"—the head of the artists and repertoire department—who usually makes this decision, and it is his responsibility to match up artists, tunes, accompanists, and musical arrangements to catch the fancy of a very unpredictable public taste. Not only must he make these decisions for compositions for which his company is the first licensee, but also he must be on the lookout for all compositions which other companies have recorded and which may offer an opportunity to catch the public fancy with a new arrangement, new artists, and new accompanists. In negotiating for a license (whether the first or a subsequent license) the recording company knows that it will get the license for the life of the copyright, and that, in all probability, it will need to pay something less than the statutory royalty rate; it also knows that, if the composition promises any public acceptance, the recording will be immediately faced with competition from several (perhaps up to a score) of competing recordings of the composition. Even a single producer may release several different recordings of the same musical material. As a result of his negotiating strength, the record producer may also require that the music publisher agree to contribute a specified amount to the promotional effort to publicize the composition.

²³ A maximum of 28 years because under sec. 1 of the 1947 revised uniform popular songwriters' contract the copyright reverts to the composer at the end of the original term.

The revenue received by the creators and owners of recorded copyrighted musical material is not the retail price of records, but rather the mechanical and performing royalties which are paid for the use of the material. In the present buoyant state of the music business, with worldwide distribution of records, and a seemingly insatiable public appetite for new tunes,²⁴ there is still such a flood of available compositions²⁵ that the mechanical royalty fee does not even attain the statutory maximum. It is clear that the competitive possibilities under the compulsory license are so great that no record producer finds it necessary, for most types of recording, to agree to pay even the statutory level of mechanical royalties on a new composition. Although performing and synchronization royalties are increasing at a faster rate than mechanical royalties,²⁶ and form the bulk of the gross income of the composers, mechanical royalties still loom large in the gross amounts paid to composers and lyricists.²⁷

It should be recognized that "music publishers" and "record producers" are not necessarily clear-cut divisions of the industry, but rather functional concepts. In practice, as has been pointed out, music publishers may be owned by artists, composers, motion-picture companies, broadcasting companies, performing rights organizations, and even recording companies; the motivation of "music publishers" is not necessarily unitary and unified. Similarly, "record producers" are affected by their relationships with broadcasting companies, performing rights organizations, music publishers, and motion-picture companies. One clear fact is that the composers, and lyricists, in this conglomerate of motivation, have not been able to obtain the maximum statutory fee under the compulsory license provision, even though organization into the SPA and the widespread use of a standard contract has improved their position remarkably in the last 25 years.

It is also clear that this diversification of function in the music business is growing rather than diminishing. In a recent trade-magazine article, it is stated, in part:²⁸

Diversification is the key word of today's music business, with more and more firms branching out in all directions. Independent radio broadcasters and their staffers are going into record manufacturing song publishing, TV film syndication, and the talent-management game. Publishers are cutting records for their own labels and managing disk talent. TV producers and performers are setting up their own publishing firms, record labels, and talent-management divisions.

A certain amount of this activity has always existed, but heretofore it has usually been conducted on a relatively minor scale—and in many cases—on [sic] a decidedly hush-hush atmosphere. Today, however, diversification has become an accepted way of doing business not only around the Brill Building, but in all segments of the music business and related industries.

However, in all the confusion and melange of motivation and function, it stands out boldly that three items are required to make records: compositions, artists, and recording equipment and skills. Currently compositions are controlled by the music publishers, and artists as well as the recording equipment and skills are controlled by the recording companies.

²⁴ " * * * about 150 new disks or 300 tunes have been hitting the market each week." It is not clear whether these figures include "cover" records i.e. varying recorded arrangements of the same composition. *Variety* Apr. 3 1957.

²⁵ In the fiscal year ended June 30, 1956, published and unpublished musical works were registered in the Copyright Office to the number of 58,330.

²⁶ Cf. p. 4 *supra*.

²⁷ Cf. p. 15 *infra*. Composers and lyricists got an estimated \$4.75 millions from mechanical royalties and an estimated \$12.2 millions from performing royalties in 1956.

²⁸ *The Billboard*, July 7, 1956.

B. WHO GETS WHAT IN THE MUSIC RECORDING BUSINESS?

In the present organization of the music recording business, the major direct beneficiaries of phonograph record production are the songwriters (composers and lyricists), the music publishers, the recording artists and the record producers. How much does each of these groups receive annually from music recordings?

1. *The songwriters*

After assigning a composition to a music publisher, the songwriter receives royalties, assuming there are any, from his publisher (mechanical royalties) and from a performing rights organization (performing royalties).

Mechanical recording royalties are received either directly by publishers or from the Fox Office, collecting agency for such royalties; at least one-half of all mechanical royalties are probably passed on to the songwriters. Record companies pay an average of 6.5 percent of their revenues to songwriters and publishers.²⁹ In 1956, the recording industry sold recordings with an approximate retail value of \$325 million of which about \$150 million went to the record producers.³⁰ Six and one-half percent of \$150 million gives \$9.75 million paid for mechanical royalties; of this about one-half,³¹ or \$4.88 million was allocated to songwriters. A 2½ percent deduction for collection expenses leaves a total of about \$4.75 million paid to songwriters.

2. *Music publishers*

In the estimate made for the revenues of songwriters, the music publishers received an equal amount. Therefore, the estimate of gross revenues for music publishers is the same as that for songwriters, or about \$4.75 million.

However, in both cases the estimate of revenues is gross; i.e., both publishers and songwriters have business expenses to pay before they arrive at a "net income" figure. The gross revenue of an individual received for creative effort is somewhat different from gross revenue received by a business organization in the course of exploiting creative works, and no typical expense pattern is available as a basis for reducing the gross estimates to net figures.

3. *Recording artists*

According to information from the trade, phonograph-record production involves an average cost of 13 percent of gross revenue for the services of recording artists. In 1956 record producers received gross revenues of \$150 million; ³² 13 percent of this is \$19.5 million.

This includes both instrumental artists and others. AFM reports annually on the revenues of its members from recording and transcription activities; in 1955, they received a total of \$4.2 million.³³ This figure seems to be consistent with the estimated total of \$19.5 million.

²⁹ Information from trade sources.

³⁰ Variety, Mar. 13, 1957. In this article, total sales during 1956, computed at retail prices, are estimated by the executive secretary of RIAA at \$325 millions. This figure is divided by 2.1 to obtain the revenues of the record producers.

³¹ 1947 revised uniform popular songwriters' contract, pars. 4 (g) and (h). This provides that the songwriter, including both composer(s) and lyricist(s), shall receive not less than 50 percent of all mechanical royalties collected by the publisher, after a maximum deduction of 2½ percent for collection expenses. Most popular songs are probably sold at or above the "floor" established by provisions of this contract.

³² Cf. p. 14, *infra*.

³³ "AFM Official Proceedings, 1956," p. 131.

4. Record producers

Of the \$150 million gross received by record producers,³⁴ trade sources indicate that the average net profits are 4 percent of the gross. Thus, in 1956 record producers received an estimated \$6 million net.

5. Summary

The estimates of revenue for the four groups follow:

[Millions]		
	Gross	Net
Songwriters.....	\$4.75	(?)
Music publishers.....	4.75	(?)
Recording artists.....	19.5	(?)
Record producers.....	150.0	\$6

It must be recognized that the gross revenues of the songwriters, the music publishers, and the recording artists, are derived from the \$150 million gross of the record producers.

The following table shows the relationships among the various flows of revenue described in the preceding paragraphs.

Estimated gross revenues of phonograph-record producers, songwriters, music publishers, and recording artists from the music recording business (1956)

	<i>Millions</i>
Gross revenues from sales of phonograph records at wholesale.....	\$150.0
a. Paid to recording artists as salaries and wages.....	19.5
b. Paid as mechanical royalties (Copyright Act, sec. 1e).....	9.75
1. Paid as operating expenses (Fox Office).....	\$0.25
2. Paid to music publishers.....	9.50
(a) Paid to composers and lyricists.....	4.75
(b) Retained by publishers.....	4.75
c. Paid out as other business expenses.....	114.75
d. Phonograph record producers' profit.....	6.0

ADDENDUM

REVENUES FROM PERFORMING ROYALTIES

In addition to revenues from mechanical royalties, songwriters and music publishers receive performing royalties from performing rights organizations, primarily ASCAP and BMI; little is publicly known about SESAC, but its gross revenues are presumed to be relatively small. Performing royalties are derived predominantly from the performances of recorded musical works, i.e., radio and television performances of disks or tapes or films.³⁵ Hence these performing royalties are closely related to the recording industry, in that they stem from the use of recording techniques.

³⁴ See table.

³⁵ In 1957, 83.41 percent of ASCAP's gross receipts from licensees was from radio and television local stations and networks. Hearings before Subcommittee No. 5, House Select Committee on Small Business, 85th Cong., 2d sess., pursuant to H.R. 56, Policies of ASCAP, p. 542.

In 1956 ASCAP received total revenue of \$24.9 million, of which \$4.5 million was used for administrative expenses.³⁶ After reserves of \$1.8 million for foreign societies, \$9.3 million was paid by ASCAP to songwriters, and \$9.3 million to music publishers. Also, the songwriters received some part of the ASCAP royalties paid to music publishers through their ownership of ASCAP-member publishing companies, but it is impossible to estimate the amount involved.

BMI collects performing royalties from those who perform its catalog and, after deducting expenses, pays the remainder to its publisher-affiliates who, under the provisions of the standard SPA songwriters contract, pay at least one-half of that amount to songwriters. For the fiscal year ended July 31, 1956, BMI received a gross of \$9.7 million and paid out as expenses \$3.9 million leaving \$5.8 million for payments to publisher-owners and songwriters. A total of \$5.7 million was paid, of which the publishers presumably retained about \$2.85 million and paid about \$2.85 million to composers and lyricists; about \$150,000 was retained by BMI as addition to its corporate surplus.³⁶

Thus, in summary, the songwriters received estimated mechanical and performing royalties in 1956 as follows:

	<i>Millions</i>
From mechanical royalties.....	\$4. 75
From performing royalties:	
From ASCAP.....	9. 3
From BMI.....	2. 85
	<hr/>
Total.....	16. 90

A like amount, similarly derived, is estimated to have been received by the music publishers.

Hence, it is estimated that the songwriters as a group, and the music publishers as a group, each received about \$17 million from mechanical and performing royalties in 1956. However, of the total of nearly \$34 million, a sum of \$9.5 million was received from mechanical royalties, and a sum of \$24.3 million was from performing royalties, indicating the dominance of performing royalties in the revenues of these two groups from the recording industry, directly or indirectly.

The following table shows the relationships among the various flows of revenue described in this addendum. In combination with the table, supra page 14, the revenue flows from both mechanical and performing royalties may be traced.

³⁶ "Broadcasting. Telecasting," Sept. 9, 1957, p. 62. Because ASCAP is a membership organization and BMI is a corporation designed not to make profit, it is difficult to cast their financial statements into a uniform mold. However, it is believed that the figures as given are basically comparable as between the two organizations.

*Estimated performing royalties received by songwriters and music publishers through
ASCAP and BMI (1956)*

	<i>Millions</i>	
Revenues from performing royalties.....	\$34.6	
a. Received by ASCAP.....		24.9
1. Paid as expenses.....	\$4.5	
2. Paid to music publishers.....	9.3	
3. Paid to composers and lyricists.....	9.3	
4. Reserved for payments to foreign organizations.....	1.8	
b. Received by BMI.....		9.7
1. Paid as expenses.....	\$3.9	
2. Paid to music publisher affiliates.....	5.7	
(a) Retained by publishers.....	2.85	
(b) Paid to composers and lyricists.....	2.85	
3. Retained by BMI as general surplus.....		.15

The CHAIRMAN. Mr. Goldstein.

TESTIMONY OF BERNARD GOLDSTEIN, PRESIDENT, COMPUTECH, INC., NEW YORK CITY; ACCOMPANIED BY DONALD B. PIERSON

The CHAIRMAN. Are you Mr. Goldstein?

Mr. GOLDSTEIN. Yes, sir.

The CHAIRMAN. Do you object to the cameras?

Mr. GOLDSTEIN. I do not.

The CHAIRMAN. Mr. Goldstein, will you be sworn, please.

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

Mr. GOLDSTEIN. I do.

The CHAIRMAN. You may have a seat.

State your full name for the record, please, sir.

Mr. GOLDSTEIN. Bernard Goldstein.

The CHAIRMAN. And your address or residence, Mr. Goldstein.

Mr. GOLDSTEIN. 300 Central Park West, New York City.

The CHAIRMAN. What is your business or profession?

Mr. GOLDSTEIN. I am vice president of the Computech, Inc., which is an electronic data processing firm located in New York City.

The CHAIRMAN. Mr. Goldstein, were you employed by Dick Clark, or the Dick Clark Associates Co., to make a check of the records which he had used in the past?

Mr. GOLDSTEIN. I am afraid I don't understand. Were we employed to make certain computations and to arrive at certain mathematical results based on the records he has played on his program, yes, that was our project, sir.

The CHAIRMAN. Perhaps in layman's language I put it correctly, but in technical language which you use, you are correct?

Mr. GOLDSTEIN. Yes, sir.

The CHAIRMAN. You did do this work at the request of Mr. Clark?

Mr. GOLDSTEIN. Yes, I did. And if I may say, Mr. Chairman, I would like to make a very brief statement reviewing this project and reviewing for this subcommittee in a few words something about Computech.

The CHAIRMAN. Yes, we would be glad to have you do that. But I wanted to establish a classification of your role in connection with the matter about which you are here to testify.

Mr. GOLDSTEIN. Yes, sir.

The CHAIRMAN. Preliminary to what you are about to say, you were employed by Mr. Clark or his organization to do this work?

Mr. GOLDSTEIN. Yes, sir.

The CHAIRMAN. And you made your report to Mr. Clark who employed you to do the work.

Mr. GOLDSTEIN. Yes, sir.

The CHAIRMAN. I think you may go ahead.

You were asked to bring with you certain information and data in connection with these hearings.

Mr. GOLDSTEIN. Yes, sir; I have brought it down, it amounts to approximately 300 pounds of information, some of which you see on the table before me, the balance of which is in that suitcase.

The CHAIRMAN. I hope we don't have to take the time to go through all of it.

Mr. GOLDSTEIN. I hope so myself.

The CHAIRMAN. But you did bring it with you, and it is here available for the subcommittee?

Mr. GOLDSTEIN. Yes, sir.

The CHAIRMAN. Very well. You may proceed with your statement.

Mr. GOLDSTEIN. Gentlemen, Computech is an electronic data processing organization. It is composed of engineers, mathematicians, statisticians, psychologists, technicians, and machine operators who serve industry, Government and eleemosynary organizations in the processing of data which has individual or general interest.

Our clients are among the major advertising agencies in this country, the major industries, and the U.S. Government.

Some time ago Mr. Clark and his attorneys came to our organization and requested us to conduct a study, a study that involved the analysis of record plays on the "American Bandstand" show.

At that time Mr. Clark stated to us that we would have complete access to all of his records, and he would secure for us within the best of his ability the cooperation of those records which we had to examine and which were not within his control.

Mr. Clark stated to us that as far as he was concerned, we would have total liberty, and the chips would fall where they may relative to the finding of this study. In turn, we were just as anxious to make this a condition of all work, and stated this to Mr. Clark.

Since this was a mutual feeling, we had no difficulty in arriving at our contractual responsibilities to each other to continue with this study.

The study basically concerns itself with the analysis of records plays on the "American Bandstand" show for the period of August 5, 1957, through November 30, 1959.

I should point out at this time that this study is a study of the universe of this condition, it is not a sample, it is, if you will, a census. In the volumes before me you will see every single play on the program for this time period. You will see the dates each song was played, you will see compilations by week, you will see measurements by week, and you will see popularity scores.

And if I may, I would like at this point to explain what the popularity score was.

Before proceeding with this study we determined that for this data to have any meaningfulness, we would have to consider the introduction of an independent variable. We could, with the information made available to us, divide all songs played on the Dick Clark program into two basic groups which, for the purposes of the study, we called group A and group B.

Group A are those songs in which, based upon information given to us and research on our own, Mr. Dick Clark could conceivably have had or have received some possible financial gain to himself.

Group B titles were those titles in which no such possible financial gain could have accrued.

If we had merely tabulated and counted and presented frequencies showing the number of group A records and group B records that

were played, we would be ignoring a very important fact in the analysis of record placement. This fact, as I believe it was delineated by Mr. Ackerman before me, is the following: That some records by definition have a right to be played more than other records. We attempted to measure and give weight to this right, based upon certain qualities, inherent qualities that the records would have. We first thought of comparing the plays on Mr. Clark's to plays on other disk-jockey programs. We found that access to this information was most difficult, and there were too many failures of such a procedure, for it to have meaning for us.

We finally arrived at what we have found is a very satisfactory measurement of right to be played. We called this the popularity score.

The popularity score is a statement by both Billboard magazine and Cashbox as to the standing in the top hundred of the particular titles in question.

The popularity standing was converted to a score by a very simple procedure. We simply took the standing, and in all cases for any week in which there was activity on a given title, subtracted it from 101. This gave us a score value, a score value that we were able to add, divide, manipulate and maintain the complete integrity of the particular numbers.

Let me give you an example, if I may.

If a song was rated 100 on the popularity list, and if it was subtracted from 101, it got a point value of 1. If a song on the other hand was rated first in the top hundred in these two publications, the 1 was subtracted from 101, and it got a score value of 100. It was simply the inversion of the standing as published in these two trade publications for our calculations.

Now, if I may, I just need a few minutes more to present our conclusions.

The nature of the top 100 ratings in Billboard and Cashbox was very desirable for the following reasons: It was a matter of public record, it was beyond the control of both Mr. Clark's "Bandstand" show and ourselves as his data processing organization in this particular study: it was in numerical form, and it was easily accessible. For these reasons it was selected.

We have drawn up a number of charts which I would like to present to the subcommittee which describe the conclusions of our study.

Gentlemen, the chart you see before you is a bar graph, four bar graphs, as a matter of fact, that are divided into two parts, one for B songs and one for A songs.

The first bar graph, if you will, entitled "All Record Plays," shows that of all record plays on the "American Bandstand" show for the period from August 5, 1957, to November 30, 1959, 27.0 of these plays were of titles that there conceivably could have been some financial, secondary gain for Mr. Dick Clark. The balance, up to 100 percent, were plays of B titles in which no such possible interest could have existed.

If we will turn to the third bar graph, we find that these songs, the total popularity points collected by all these songs divides themselves 24.5 percent for A titles, the balance for B titles, as rated in Billboard magazine.

In Cashbox magazine, the final bar graphs demonstrate that 23.4 per cent of the popularity points accrued to A titles and the balance to B titles.

What we have shown in the second bar graph is nothing more than a combination of the Billboard and Cashbox popularity scores, showing 23.9 for A titles, the balance for B titles.

Now, why have we combined them?

We have combined them because it has some academic, if you will, value in averaging out the two different techniques by which these two different trade publications rate the top 100 songs. Billboard approaches the rating of its songs from a very scientific point of view. Some of their procedures have already been described. We have been told by Billboard magazine that their computation is done in Cincinnati, they use computers, their sample was designed by Dr. J. Stevens Stock of the New York University School of Retailing. They have many academic sanctions behind their work.

Cashbox, on the other hand, though we were not able to get full information of them, our impression was that this was a much more intuitive rating of the songs, this was "bellybutton gazing," if you will, by Cashbox magazine.

Mr. Moss. Did you by any chance check the testimony before this subcommittee in connection with the Cashbox rating, where some people had been encouraged to borrow letterheads from stations to write reports to them stating the positions of popularity which were nonexistent?

Mr. GOLDSTEIN. No, sir; I didn't, frankly because we were denied Cashbox cooperation other than being allowed to buy their book issues where this information was printed. I do not know on what basis Cashbox does print these.

It is interesting to know, however, that despite the scientific approach of Billboard, and if you will, the less scientific approach of Cashbox, that basically they are coming up very close to each other in an overall picture, which you can see on that chart.

Now, we can graphically see here the very close relationship between record plays and record popularity. This is—and I am passing very quickly through our study—

The CHAIRMAN. I am sorry, I was called to the phone when you started on this study. Before you leave it I would like to know for my own information what this is. I hate to ask you to repeat it.

Mr. GOLDSTEIN. I would be happy to, sir.

The CHAIRMAN. Does this include all records made, or is this related only to the Dick Clark record play.

Mr. GOLDSTEIN. Our universe here is only those records played on the Dick Clark program, this is all we have examined. We have not—this is not records produced by the industry.

The CHAIRMAN. In other words, all records played on this chart means all records played on his show?

Mr. GOLDSTEIN. Correct.

The CHAIRMAN. For what period of time?

Mr. GOLDSTEIN. For the period of August 5, 1957, through November 30, 1959. This in total—

The CHAIRMAN. The total popularity, Billboard and Cashbox—

Mr. GOLDSTEIN. This is a combined score value of Billboard and Cashbox.

The CHAIRMAN. In other words, that is the value placed on them by both Billboard and Cashbox?

Mr. GOLDSTEIN. Yes, combined.

The CHAIRMAN. Combined. And then of course the next two figures represent the score for each of them?

Mr. GOLDSTEIN. Divided and pulled apart; yes, sir.

Mr. Moss. Does this represent percentage of material played or percentage of that which was a variable and could have conceivably been played?

Mr. GOLDSTEIN. Percentage of material played.

Mr. Moss. Only percentage of material played?

Mr. GOLDSTEIN. Yes, sir.

Mr. Moss. Does it include the theme song?

Mr. GOLDSTEIN. Yes, it does, sir.

Mr. Moss. Why?

Mr. GOLDSTEIN. The theme song—

Mr. Moss. It is played every day, isn't it?

Mr. GOLDSTEIN. Yes, sir.

Mr. Moss. At the beginning and at the close of the program?

Mr. GOLDSTEIN. Yes.

Mr. Moss. Doesn't that weight the B title rather seriously? Is that not self-service weighting?

Is it reported to reflect on Mr. Clark's activities?

Mr. GOLDSTEIN. The theme song was included for the following reasons: The directions of this study were that we were to consider everything played on the program. Now, certainly—

Mr. Moss. Who owns the theme song?

Mr. GOLDSTEIN. I have no idea—

Mr. Moss. Clark does not, does he?

Mr. GOLDSTEIN. No, he does not. It is not classified as an interest song. And this is my point, if I may. If Mr. Clark did own the theme song, indeed you would want me to include it; therefore, if I take a very dispassionate view and include everything, I am giving you the total picture.

Mr. Moss. We are referring of course to the play of the recordings for entertainment, not the identification of the program sign-on and the sign-off. What would the effect on the B and A listings be if we were to remove from consideration the rather substantial number of playings represented there by the theme song?

Mr. GOLDSTEIN. I do not have that information. This is calculable, if I may roughly answer the question, the total record plays, that very first column you see there, the blue section of that column would decrease. The theme song never did secure any popularity rating, therefore it would not have affected the popularity score of Billboard or Cashbox, it never did receive any popularity score.

Mr. Moss. I recognize that. And that is why, considering that you used a popularity score, I am rather surprised that you should have considered the title song at all in arriving at the total number of plays in the percentages in the A and B group. It ran for two plays a day, did it not?

Mr. GOLDSTEIN. Yes.

Mr. Moss. How many days are we concerned with here?

Mr. GOLDSTEIN. We have discussed the theme song in an entire section of our report—

Mr. MOSS. I have not read that. I am interested in why you used it.

Mr. GOLDSTEIN. If I may quote from a section of our report—

Mr. MOSS. Where are the Ampar-Cameo labels included in this study?

I am told there were 1,322 plays of the theme song.

Mr. GOLDSTEIN. Correct.

Mr. MOSS. Which is a rather substantial number when we take in this business here of statistical gymnastics.

Mr. GOLDSTEIN. Sir, on page 11 of our report, which I believe the subcommittee has, we have made the following statement:

The theme song of the "Bandstand" show, "Bandstand Boogie," is a B title in which there was no possible financial interest, was played by far more frequently than any other title, a total of 1,322 times. It has been included in our calculations in accordance with the directions of the study, which were to consider and evaluate all music played on the bandstand show for the aforementioned time period. It is interesting to note that despite the high frequency of play it never did achieve any popularity rating from Cashbox or Billboard.

We have not tried to hide this fact, sir, indeed, we have made a separate section of this report which calls this to your attention.

Mr. MOSS. I am not contending that you tried to hide the fact. I am merely interested in the fact that it does have an effect on the outcome by providing a more favorable impression for your client than would have been true had the 1,322 plays been eliminated.

I was interested in where you listed the recordings of Ampar Record Corp. or Cameo Music, which is a music publishing company, and of the musical interests of the close associates of Mr. Clark, Mr. Mamarella, and Mr. Bernie Lowe. Are they A or B?

Mr. GOLDSTEIN. I have no knowledge of the music interests of Mr. Mamarella. I have never met him. I have never met Mr. Bernie Lowe.

Mr. MOSS. And where is Ampar and its titles held through Cameo? A or B?

Mr. GOLDSTEIN. Now, Ampar, I am sorry if I am hesitant here, is Ampar the firm—

Mr. MOSS. American Paramount, a subsidiary of the American Broadcasting Co., the employers of Clark.

Mr. GOLDSTEIN. Is this the firm that released the premium records?

Mr. MOSS. I have no idea what kind of record they released, I do not think I own any of them.

Mr. GOLDSTEIN. Well, I am afraid that I stand with you—

Mr. MOSS. I merely asked you, where are those titles, in A or B?

Mr. GOLDSTEIN. If these titles—

Mr. MOSS. Let's change it about so that we can get a quick answer to the question.

Did you consider it separately?

Mr. GOLDSTEIN. We considered separately Ampar records, if they were played on the Dick Clark program, possibly could have been classified as—

Mr. MOSS. That is not what I asked you. I asked you whether the records were classified, not how they could be considered.

Mr. GOLDSTEIN. You will find these in both groups, A and B.

Mr. MOSS. Ampar records are in B group?

Mr. GOLDSTEIN. Ampar records, if they were played on the Dick Clark program—

Mr. Moss. No direct or indirect consideration with Mr. Clark or the records owned by his employer?

Mr. GOLDSTEIN. That is correct.

Mr. Moss. And yet they are included in B?

Mr. GOLDSTEIN. If they were played on the program and there was no other conceivable area of possible interest.

Mr. Moss. Well, what standard, then, what criterion was used in classifying those Ampar records which fell in B category and those falling in A category?

Mr. GOLDSTEIN. Those Ampar records that may conceivably fall in a category are classified as interest records if they were—

Mr. Moss. Sir, I am not asking you about what could conceivably happen. You have presented here a compilation project, a completed project. I am referring to that which did, rather than that which could, conceivably, have occurred. I want my answers on that basis. Conceivably, in this game of statistics anything can occur, and that is why it is most important that we know precisely what did occur.

Mr. GOLDSTEIN. Sir, the release of records under the Ampar label by itself did not classify these titles as interest titles. There would have to be some other reason for these to be classified as interest titles, as stated in this report.

Mr. Moss. Well, then, generally Ampar is in B?

Mr. GOLDSTEIN. I don't know.

Mr. Moss. You classify that a record goes in B, a category in which Mr. Clark has no direct interest?

Mr. GOLDSTEIN. I can't answer that, I don't know generally where they are. We have not—

Mr. Moss. Did you supervise the compilation of this material?

Mr. GOLDSTEIN. Yes, I did, sir.

Mr. Moss. Who do you have competent to answer my question?

Mr. GOLDSTEIN. We did not consider, sir, the record label as a classification item. We considered and listed in our tabulations the record title—

Mr. Moss. I do not know what purpose this study serves, but if it serves any purpose, if it is to be other than self-serving, then I think you must give weight to those recordings owned or controlled by the employers of Mr. Clark. And you must give some weight to those properties held by his very, very close associates, and on occasion, partners, such as Mr. Mamarella. To do otherwise, just to narrow it down as you have here, produces a product that is interesting as an academic examination, but valueless for any other purpose. Unless there is a desire to impress those who are willing to look only at the superficial results without giving any consideration to what went into the end product.

What happened to Bae, Kincord, and Request Publishing Co.'s? Are any of their properties considered in this compilation?

Mr. GOLDSTEIN. I list on page 13 of my report the various types of interest which we have considered.

Mr. Moss. I have that. Again, this tells us what you did consider, but there are omissions, and it is therefore the omissions which become important rather than those things which are considered.

Again, I do not know the purpose of this study. I have looked it over with great interest, and I find it, like a lot of statistics thrown at us here, interesting, stimulating, open to a variety of interpretations, and having certain interesting omissions.

The CHAIRMAN. Would the gentleman yield?

Mr. Moss. Yes.

The CHAIRMAN. I think it is appropriate to raise the question as to the purpose of the study. I think it should be made very clear; the subcommittee staff, in its effort to try to develop the facts and information, asked for the cooperation of Mr. Dick Clark and his organization in helping to provide this information.

Mr. Clark agreed that he would assist in presenting this information. We asked for information pertaining to records in which he had an interest, and which were played on his shows, and those records in which he did not have an interest. As a result of the investigation of the subcommittee staff, Mr. Clark employed these people to make this computation. This was turned over to the subcommittee staff. The staff in turn has had an opportunity to go over the computations made in this technical way.

That is very briefly what it is.

Mr. Moss. I think that is very nice of Mr. Clark. However, the selection of criteria going into his study of this type is all important, and I think therefore the cooperation would have been more meaningful had he consulted with our staff, so that there could have been an agreed-upon standard to guide the material to be selected and considered in this study. The fact is that they have gone to the expense of having it made without agreement as to the controlling criteria. In view of the interesting omissions, I merely restate my puzzlement as to the value of the material.

The CHAIRMAN. Well, I was not commenting on that. I was commenting on why we had this information, or how it happened to come.

I think we have reached the time when we should recess.

Mr. SPRINGER. Mr. Goldstein, just one question: In your survey of this whole thing, do you at any time in your computations come to any conclusions as to the financial interest in dollars and cents of Dick Clark which is included in that 24 percent and that 23 percent?

Mr. GOLDSTEIN. No, sir. We have simply examined this from the point of view, if something was touched and affected, if you will, by an organization as listed here as a potential interest organization, it is classified, we have not approached this from the point of view of accountants, but as data processors and have made our calculations.

Mr. SPRINGER. May I ask just one further question: Of the 24 and the 23 percent, how much separate broadcast is included of self-interest; how many separate cases were made of things that he had an interest in; was it 1,000 or 2,000?

Mr. GOLDSTEIN. I wouldn't have the broadcasts.

Mr. SPRINGER. Would you have that this afternoon?

Mr. GOLDSTEIN. I will try and find it for you.

Mr. DEROUNIAN. How much was your organization paid for the survey by Mr. Clark?

Mr. GOLDSTEIN. Sir, our organization was paid in accordance with our standard rate in data processing, which I would be happy to provide this subcommittee, but with all due respect to the relationship between us and our client, as well as the information to our competitors, I would prefer to present this to you in executive session.

Mr. DEROUNIAN. I would wish it under any circumstances.

The CHAIRMAN. The subcommittee will recess until 2 o'clock, and we will return at that time.

(Whereupon, at 12:20 p.m., the subcommittee recessed, to reconvene at 2 p.m., the same day.)

AFTERNOON SESSION

The CHAIRMAN. The subcommittee will come to order.

TESTIMONY OF BERNARD GOLDSTEIN—Resumed

The CHAIRMAN. Mr. Moss, had you concluded the interrogation of the witness at that particular time?

Mr. MOSS. At that point, yes, Mr. Chairman.

The CHAIRMAN. Mr. Goldstein, I believe you were about to explain another chart, were you not?

Mr. GOLDSTEIN. Yes, sir. I had some answers to a number of points that were brought up this morning.

I would like to point out that I have delivered to the subcommittee a copy of our invoice to Mr. Richard Clark, and this is a matter of subcommittee record at the present time.

The CHAIRMAN. You have been testifying from a report which you indicated that you had submitted to the subcommittee, and several members of the subcommittee have asked you questions about this report.

Is it the subcommittee print referred to as "Analysis of Records Plays Furnished to the House Subcommittee" that you have been referring to?

Mr. GOLDSTEIN. This is the first chance I have had to see this report, Mr. Chairman. As printed here it appears, on very rapid examination, to be our analysis.

The CHAIRMAN. That is the same as the report I have here in the folder?

Mr. GOLDSTEIN. Yes, sir.

The CHAIRMAN. I think if we are going to pursue this report with questions, it would be advisable to have it included in the record. If there is no objection, it will be included in the record at this point.

(Report referred to follows:)

[SUBCOMMITTEE PRINT]

ANALYSIS OF RECORD PLAYS
FURNISHED TO THE
HOUSE SUBCOMMITTEE
ON
LEGISLATIVE OVERSIGHT

BY

CHARLES B. SETON, ESQ.

ATTORNEY FOR

RICHARD W. CLARK

ON

MARCH 8, 1960



Printed for the use of the Special Subcommittee on Legislative Oversight of the House Committee on Interstate and Foreign Commerce

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Computech is an organization devoted to the solution of problems associated with technical and commercial computation and data processing.

The scope of its work ranges from problems tending to be unique or "one time" to the development of methods applicable to a whole industry.

AN ANALYSIS OF RECORD PLAYS
ON THE ABC NETWORK
AMERICAN BANDSTAND SHOW
FOR THE PERIOD OF
AUGUST 5, 1957
THROUGH
NOVEMBER 30, 1959

BERNARD GOLDSTEIN,
DONALD B. PIERSON
(For Computech, Inc.).

February 9, 1960

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ANALYSIS OF RECORD PLAYS FURNISHED TO THE HOUSE SUBCOMMITTEE ON LEGISLATIVE OVERSIGHT

CONCLUSIONS

This project has been an analysis of record plays on the ABC Network American Bandstand show for the period of August 5, 1957, through November 30, 1959.

The application of the techniques of data reduction was made to 1,885 different titles which were played a total of 15,662 times. These techniques have permitted an analysis of all titles played as well as a comparative analysis between those titles in which there existed some type of possible financial interest as opposed to those titles in which no such possible interest existed.

Computech has found that based upon popularity, as defined by Cashbox and Billboard rating charts, the number of record performances in which there existed a possible interest is consistent with the number of record performances in which no such potential interest existed.

In brief, this analysis establishes that the playing of interest records was consistent with the popularity of these records based upon independent and authoritative popularity ratings.

PROCEDURE

The following is an abbreviated step-by-step procedure of our processing approach to this project:

1. An accuracy check was made by random sampling of 3- by 5-inch cards with actual program lists.
2. Hand-checked all 3- by 5-inch cards (approximately 15,000)—
 - (a) Title and artist consistency;
 - (b) Date readability; and
 - (c) Assignment of song numbers.

Errors of the following types were found:

- (a) No date;
- (b) Unreadable; and
- (c) Month and day interchanged.

These cards were corrected under the direction of Miss Frannie Gomel of the American Bandstand office in Philadelphia.

3. Key punch, verify, and interpret song master cards.
4. Prepared a list of song masters which was delivered to Miss Frannie Gomel for verification.
5. Key punched and verified detail cards.
6. Accuracy check on Mallard lists and reaudit of list. Accuracy check on Chips list. Corrections made to master cards for interest codes.
7. Prepared report, "Summary of Song Plays by Date Within Song," and produced summary cards by week for popularity coding.
8. Coded Billboard and Cashbox popularity ratings.
9. Prepared report, "Program Listing."

10. Computer conversion of popularity ratings to score values.
11. Prepared report, "Popularity Rating."
12. Prepared report, "Song Masters and Summary Information."
13. Prepared final report.

CLASSIFICATION OF TITLES PLAYED ON THE ABC NETWORK AMERICAN BANDSTAND

(Definition of A Titles and B Titles)

For the purpose of this data-reduction study, all titles played on the ABC Network American Bandstand show have been classified into one of two groups. The first group, which for simplicity's sake we have called "A titles," includes all titles in which there could be any direct or indirect financial benefit to Dick Clark. The second group, which has been called "B titles," includes all titles in which no such direct or indirect financial benefit to Dick Clark existed.

THE POPULARITY SCORE—AN EXPLANATION OF ITS USE, PURPOSE, AND JUSTIFICATION

During the preliminary phase of this study, it became apparent that an "independent" measurement would have to be applied against the frequencies of the various titles played on the Bandstand program. Without such a yardstick, all that would evolve would be a mere frequency (number of plays) comparison between A titles and B titles. What was needed was a measurement which ignored the "possible interest" factor entirely and, instead, compared the frequency of plays to a "public taste" test. This test could later be evaluated in terms of A title and B title comparison. The test had to be beyond the control of both the Bandstand and its data-processing organization.

First, we examined the possibility of selecting the plays of other diskjockey programs as a standard of comparison. This data was difficult to get access to and was not ideally suited to our needs. It was then determined to use the published ratings of Cashbox and Billboard magazines as the independent variable—and these have turned out to be an ideal measurement. Both rating services have industry acceptance, are calculated by taking into consideration many different factors of popularity, are a matter of public record, were readily available, and, most important, were in numerical form.

The following procedure was used to introduce this factor. The number of plays for each song was summarized for each week; the Cashbox and Billboard ratings, if any, were then recorded for each title. Since we had eventual interest in average popularity, this rating was converted to a score value in order that they could be added. This point deserves explanation. For example, if a title was on the rating charts of Cashbox for 2 weeks and was 76th and then 82d, we could not add the figures up and arrive at a meaningful value. However, by subtracting both individually from 101, we arrived at "Popularity Score" values of 25 and 19, respectively. These numbers could then be manipulated in the desired manner while maintaining their complete integrity.

If a consistency of averages between A titles and B titles resulted, the statement could be made that, within the bounds of programing format, the public taste was being met without consideration of "possible interest." This is exactly what has occurred.

TABLE I.—Analysis of A-title types

	Number of titles	Titles played	Percent of titles played
Type P—Publisher:			
Arch Music Co., Inc.....	44	6	13.6
Sea Lark Enterprises, Inc.....	34	14	41.2
The January Corp.....	36	7	19.4
Total.....	114	27	23.7
Type Q—Pressing plant:			
Mallard Pressing Corp. (total).....	846	144	17.0
Type M—Manufacturing:			
Hunt Records.....	26	11	42.3
Swan Records.....	108	40	37.0
Jamie Record Co.....	207	18	8.7
Total.....	341	69	20.2
Type A—Artist management:			
Duane Eddy.....	41	10	24.4
Lavern Baker.....	76	5	6.6
Dale Hawkins.....	30	11	36.7
Leslie Uggams.....	18	1	5.6
Robert Straus.....	2	0	0.0
Total.....	167	27	16.2
Type D—Distributor:			
Chlips Distributing Co. (total).....	9,740	128	1.3
Type R—Royalty:			
Dick Clark Albums.....	24	6	25.0
"Be My Girl".....	1	0	0.0
Total.....	25	6	24.0
Grand total.....	11,233	401	3.5

SUPPLEMENTAL DATA ON A TITLES

B titles.....	1,586
A titles.....	299
Types of A titles:	
Royalty (R).....	6
Publisher (P).....	27
Pressing plant (Q).....	144
Manufacturing (M).....	69
Artist management (A).....	27
Distributor (D).....	128
	1,401
Single A titles:	
Royalty (R).....	5
Publisher (P).....	23
Pressing plant (Q).....	82
Manufacturing (M).....	16
Artist management (A).....	13
Distributor (D).....	76
Multi-A titles (more than one).....	84
	299

† These exceed 299 because a number of titles are 84 multi-A titles.

TABLE II.—Multi-A title analysis

	Number of titles	Number of titles—Also other A types					
		P	Q	M	A	D	R
Publisher.....	27		2	0	0	1	1
Pressing plant.....	144	2		33	5	40	0
Manufacturing.....	69	0	33		10	28	0
Artist management.....	27	0	5	10		0	0
Distributor.....	128	1	40	28	0		0
Royalty.....	6	1	0	0	0	0	

TABLE III.—*Summary data*

	B titles	Percent	A titles	Percent	Total
Titles.....	1,586	84.1	299	15.9	1,885
Plays.....	11,432	73.0	4,230	27.0	15,662
Range.....	7,463	76.3	2,320	23.7	9,783
Activity weeks.....	4,925	75.2	1,622	24.8	6,547
Cashbox popularity score.....	122,633	76.6	37,541	23.4	160,174
Billboard popularity score.....	106,696	75.5	34,574	24.5	141,270
Total popularity score.....	229,329	76.1	72,115	23.9	301,444

TABLE IV.—*Mean measurement for A titles and B titles*

	A titles	B titles	Total	"Possible interest" ratio ¹
Mean number of plays.....	14.1	7.2	8.3	1.96
Mean "Activity" range.....	7.8	4.7	5.2	1.66
Mean activity weeks.....	5.4	3.1	3.5	1.74
Mean popularity score.....	241.0	144.0	160.0	1.67

$$^1 \text{ Interest ratio} = \frac{\text{Mean A title score}}{\text{Mean B title score}}$$

Comparison of record plays to popularity:

All titles.....	0.0521
A titles.....	.0585
B titles.....	.0500

THEME SONG—BANDSTAND BOOGIE

The theme song of the Bandstand show, "Bandstand Boogie," a B title in which there was no possible financial interest, was played, by far, more frequently than any other title—a total of 1,322 times. It has been included in our calculations in accordance with the directions of this study which were to consider and evaluate all music played on the Bandstand show for the beforementioned time period. It is interesting to note that despite the high frequency of play, it never did achieve any popularity rating from Cashbox or Billboard.

ERROR ANALYSIS

The nature of the input data has resulted in some minor inaccuracies in the final tabulations. There were errors in the data on individual record plays and on the lists of A and B records. Computech has attempted to correct these whenever possible by audits and other checking procedures.

An additional source of error arose from the hand coding of the Billboard and Cashbox rating lists. These ratings were sampled and checked for accuracy and corrections made before any data reduction techniques were applied. The Cashbox ratings, after week 74, are shifted forward by 1 week to allow for the predating of the weekly publication which was discovered by Computech at that phase of data coding.

The data-reduction procedure which was accomplished on high speed processing equipment, is considered to be error-free due to the automatic checking features of the International Business Machines machinery and the programed tests which were included by Computech.

In total, errors have been evaluated to be of infinitesimal influence because of their relative relationship to the vast amount of data verified as correct.

A TITLE CODES

The following are the codes for the various types of possible interest which have been examined in this report:

P—Publisher:

The January Corp.
Sea-Lark Enterprises Inc.
Arch Music Co., Inc.

Q—Pressing plant:

Mallard Pressing Corp.

M—Manufacturing:

Jamie Record Co.
Hunt Records (Globe)
Swan Records

A—Artist management:

SRO Artists, Inc.

D—Distributor:

Chips Distributing Co., Inc.

R—Royalty:

“Dance with Dick Clark” albums
“Be My Girl”

GLOSSARY OF TERMS

Data reduction.—The application of arithmetic, mathematical, or statistical techniques to obtain or extract only the needed information from a larger amount of related information.

Activity weeks.—Number of weeks during which a given title was played at least once.

“Possible interest” ratio.—The relationship, expressed numerically, between A titles and B titles.

“Activity” range.—The number of weeks between the first play of a title and the last play.

Mean.—The average measurement or value.

ABOUT COMPUTECH INC.

Computech is an organization devoted to the solution of problems associated with technical and commercial computation and data processing. Computech serves its clients by providing competent processing, programing, and systems services.

The executive offices and data processing service center are located in midtown Manhattan. The service center maintains a fully equipped, integrated IBM data-processing installation. All necessary ancillary equipment is available in the service center. Computech also leases, as required, digital computers (IBM 650, 704, Univac LGP-30, etc.) and other equipment such as card-to-tape converters and data plotters.

(5)

Computech's staff is composed of engineers, methods and systems men, programmers, and machine technicians who are familiar with all types of commercial computers and data-processing equipment.

Among the services Computech has performed is the following:

1. Nuclear propulsion, design and shielding for the U.S. Government. Engineering and computer programming for the study of secondary gamma rays in nuclear aircraft engines to determine optimum weight and size.

2. Pure mathematics: Mathematical analysis via the electronic computer for the U.S. Government and others.

3. Mathematics-statistics: Random solutions for war games for the U.S. Government; engineering problems; commercial statistical studies.

4. Various specialized procedures for firms in the New York area; such as sales analysis, payroll analysis, inventories, etc.

The "Analysis of Record Plays on the ABC Network American Bandstand Show" project was managed by project Managers Bernard Goldstein and Donald B. Pierson. Their backgrounds are as follows:

Bernard Goldstein

A graduate of the Wharton School of Finance and Commerce of the University of Pennsylvania, where he was graduated a B.S. in economics degree, Mr. Goldstein received specialized courses in statistical analysis and accounting procedures.

He served in an executive capacity at R. H. Macy's before entering the U.S. Navy as an officer in the Supply Corps, working on procurement and logistics problems.

He has completed graduate courses at Columbia University in statistics, sales forecasting, and related courses.

Donald B. Pierson

Awarded a B.S.M.E. degree by Notre Dame University, Mr. Pierson also served as an instructor at the university prior to joining the U.S. Navy in 1952, where he was assigned to the Bureau of Aeronautics as a project officer in armament development.

In 1955 he became project engineer at Allstates Engineering Co., assigned to computational procedures concerned with aircraft-engine analysis and nuclear-reactor design.

Mr. Pierson was an independent consultant on electronic data processing prior to joining Computech.

He has completed special graduate courses at the University of Pennsylvania and Columbia University in the fields of computer methods and engineering.

Among its clients, Computech services major organizations in the following industries and fields:

- Advertising agencies.
- Market research organizations.
- Chemical industry.
- Educational institutions.
- Charitable and public interest organizations.
- Paper industry.
- U.S. Government.
- Data-processing industry.

Mr. GOLDSTEIN. Mr. Chairman, the report remains essentially the same as printed here. However, I have in my hand a copy of this report dated, April 21, in which the notation occurs that this report revises the report dated February 9, 1960, which isn't reproduced here; the changes are infinitesimal and reflect the reclassification of a few titles as a result of additional information subsequently made available.

Essentially we are dealing with the same thing.

The CHAIRMAN. Well, let the authentic report which you hold in your hand be the one included in the record.

Mr. GOLDSTEIN. Fine.

The CHAIRMAN. Now, you may proceed to the next chart.

Mr. GOLDSTEIN. If I may answer a few of the other questions that were brought up this morning: I was asked this morning, the number of broadcast dates that we were concerned with. I have an order of magnitude of approximately 610.

One of the members of the subcommittee asked that question.

I have also, during the lunch recess, rather rapidly made some calculations—I am sorry, sir, in the order of magnitude of 610 broadcasts were covered by this study.

Mr. SPRINGER. My point was: How many broadcasts was 23 percent; how many time was Dick Clark interested in songs or records broadcast. That was my question.

Mr. GOLDSTEIN. You want that percentage—

Mr. SPRINGER. The number, whether it is 2,000, 3,000, all I want is approximately.

Mr. GOLDSTEIN. That will be 15,662 plays. That percentage represents 4,230 plays.

Mr. SPRINGER. 4,200—4,200 times in 2 years and 4 months he played something in which he was interested?

Mr. GOLDSTEIN. In which there could conceivably be an interest; yes, sir.

Mr. SPRINGER. Thank you.

Mr. GOLDSTEIN. Finally, our recalculations, with the exclusion of "Bandstand Boogie," would change the 27 percentage you see presented in this chart to 29.4.

Put the other chart up, and I will proceed.

Gentlemen, this chart represents—on the top of the chart we have a statement:

Result of analysis establishes that the playing of interest titles was consistent with their popularity.

That was one of the conclusions of this study.

Below it, we have a series of very simple calculations which justify that conclusion. On the first line "All titles." We have taken the sum total of the plays that took place during this period, divided it by the sum total of the popularity score, and it resulted in a ratio which is simply a number which in turn describes two numbers from which it was developed, and arrive at .0521. We have done the same with A titles, possible interest titles, divided the sum total of these plays by the sum total of their popularity score and arrived at .0585, and likewise with B titles, arriving at .0500.

As you see, these numbers begin differing the third digit after the decimal.

To go on from here, we can ask ourselves, and we did ask ourselves, is this: Are we coming up against the standard riddle of the chicken and the egg, do plays result from popularity and vice versa, is there any meaning in this area?

We then contacted Mr. Tom Noonan from Billboard magazine, who cooperated in gathering the data on this study, and we asked him, what influence did Billboard magazine have in its scoring system, through which we arrived at the hundred most popular songs in the United States, what factors did they give to Dick Clark's influence in this area.

Mr. Noonan spent a number of hours making this calculation for us. He contacted his Cincinnati office as well. He presented that data, which he described as Mr. Clark's highest influence in the music industry, that the maximum weight given to Dick Clark would be 2.3 percent of the total factors, or 100 percent, that they consider in the development of their popularity ratings from 1 down through 100.

Mr. LISHMAN. Mr. Goldstein, did you know that Mr. Noonan was here today?

Mr. GOLDSTEIN. I did, sir. I spoke to him this morning.

Mr. LISHMAN. Did you say that he prepared the information that is on this chart?

Mr. GOLDSTEIN. Yes, sir.

Mr. LISHMAN. Have you got any of the papers that he furnished you?

Mr. GOLDSTEIN. He furnished me no papers, sir.

Mr. LISHMAN. How did you get the information from him?

Mr. GOLDSTEIN. Through a telephone conversation.

Mr. LISHMAN. When?

Mr. GOLDSTEIN. Approximately 60 days ago.

Mr. LISHMAN. How long did that telephone conversation last?

Mr. GOLDSTEIN. The telephone conversation I referred to, it was really a series of conversations interrupted by Mr. Noonan's calculations and long distance calls, but I would say on over a 2- to 3-hour period.

Mr. LISHMAN. And you swear that he gave you that figure as being the maximum weight given to the Dick Clark records in the rating?

Mr. GOLDSTEIN. Yes, 2.3 percent.

Mr. LISHMAN. He is in the room.

Mr. GOLDSTEIN. I might point out that he described this as the closest estimate he could arrive at, at that time.

Mr. LISHMAN. What do you mean by influencing, and what did Mr. Noonan understand you to mean by influencing?

Mr. GOLDSTEIN. The weight—Mr. Noonan has described the Billboard rating system as a system where a number of factors are taken into consideration. He has—the total ingredients in the Billboard rating system as described to me by Mr. Noonan are the following factors:

Record sales, local stations, weighted stations, jockey picks, and final sales, and last-minute information.

Mr. LISHMAN. Does this purportedly represent Clark's influence on popularity in general?

Mr. GOLDSTEIN. As determined by Billboard magazine.

Mr. LISHMAN. That is very mysterious to us. We don't believe it measures that at all, and we would like to have Mr. Noonan present to answer questions on it.

Mr. GOLDSTEIN. Certainly.

Mr. LISHMAN. We think you are drawing a totally erroneous conclusion.

But go ahead.

Mr. GOLDSTEIN. As our final chart, gentlemen, I will present to you a visual——

Mr. Moss (presiding). I would like to ask one question regarding this new chart.

In the first place, are you presuming to measure the impact of Mr. Clark on the entire music industry?

Mr. GOLDSTEIN. I believe Billboard, in providing me with that information, meant that is the impact of Mr. Clark on the derivation of the top 100 songs in the country today for the week that they were publishing their scores.

Mr. Moss. Is it supposed to indicate the influence he has on the sale of recordings in the top 100 tunes, as compiled by Billboard?

Mr. GOLDSTEIN. I do not know that, sir.

Mr. Moss. What does it represent?

Mr. GOLDSTEIN. This represents the weight given to Dick Clark in Billboard's calculations arriving at the top 100 songs for the given period.

Mr. Moss. How do you mean weight given Dick Clark in arriving at the Billboard's calculations as to the top 100 tunes?

Mr. GOLDSTEIN. Sir, I believe Mr. Noonan would be able to answer that question better than I.

Mr. Moss. You are the one who is offering this particular exhibit in evidence before this subcommittee; it either has a meaning or it has no meaning. It is my judgment at the moment that it has no meaning, because you cannot tell us what the meaning is. Unless you are prepared to say what the meaning is, then I must conclude that it has no meaning, and that I am correct in my assumption.

Are you prepared to tell us the precise meaning of this chart, the purpose for which it is presented to this subcommittee?

Mr. GOLDSTEIN. Sir, I cannot tell you the Billboard procedure in arriving at their top hundred songs; I can only report to this subcommittee that this is the information which was given to us.

Mr. Moss. I understand Mr. Noonan is in the room; is that correct? Is Mr. Noonan here?

I am going to ask that you stand aside briefly and permit Mr. Noonan to come forward, if Mr. Noonan is willing, and give us the benefit of his knowledge as to the meaning of this particular exhibit.

Mr. GOLDSTEIN. Yes, sir.

Mr. Moss. Mr. Noonan, do you have any objection to the photographers taking your picture?

Mr. NOONAN. No.

Mr. Moss. The subcommittee will suspend for a brief time.

(Pause.)

Mr. Moss. Will you stand and be sworn?

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

TESTIMONY OF THOMAS NOONAN, BILLBOARD MAGAZINE

Mr. NOONAN. I do.

Mr. MOSS. Would you identify yourself for the record?

Mr. NOONAN. Thomas Noonan.

Mr. MOSS. Mr. Lishman.

Mr. LISHMAN. Mr. Noonan, what data relating to Dick Clark does Billboard include in its rating?

Mr. NOONAN. Actually, the chart is composed of two basic ingredients, one being air play or air exposure—not the counting of air plays, but the air exposure a record receives, plus the records sales.

Mr. Clark, in our tabulations, would be one of a weighted factor. In other words, in the exposure of a record there are weighted stations, you might say, or weighted individual jockey programs, and these are given because these particular programs or these particular individuals do have more influence on the resulting sales of a record by their exposing a particular record. Therefore their weekly tabulations or weekly reports of what was most played on their programs are weighted on our overall system.

Mr. LISHMAN. Well, would Mr. Clark be weighted more than any other individual?

Mr. NOONAN. No, he would be in a weighted group, and he would be weighted similarly to other people. I don't think—it is a very difficult question for this reason, that naturally in compiling a charter we are not considering the individual power of an individual playing records on the air or his program. We are trying to come to a just method of measuring air play, which is difficult at best.

Mr. LISHMAN. Well, in calculating the weight to be given to Mr. Clark in this rating, does Billard take into account that he or his companies have paid payola to numerous diskjockeys throughout the country in order to get repetitive plays of records in which his publishing companies or his other companies had an interest?

Mr. NOONAN. We try to take what we call hype or payola consideration in a certain degree, insofar as checking returns, to see if we notice distinctive things happening on a frequent basis. However, hype or payola cannot be checked that accurately by our systems in getting these reports.

Mr. LISHMAN. How can you give a 2.3 percent rating to Dick Clark if you don't know the extent of the payola that he has paid to others in getting records exposed, in which he or his companies had a financial interest?

Mr. NOONAN. The fact is that this particular percentage that we are discussing here certainly has nothing to do with the influence of Dick Clark on the exposure and sales of a record.

Mr. LISHMAN. This does not? What does this represent?

Mr. NOONAN. This represents what his list—he produces a list each week—what his list of most played records on his show represents in weighting factor in the final tabulation of our chart each week. This, however, was based, this particular percentage, I recall was determined at a particular period, and of course, as we know, the record business has many various ups and downs throughout the year, so that this could vary depending on whether it was a peak sales period or a slow sales period, et cetera.

Mr. LISHMAN. But you didn't have the number of plays for each of the titles?

Mr. NOONAN. No, sir, not at all. In fact, we don't have the number of plays of any title that we tabulate for chart purposes.

Mr. LISHMAN. Well, then, how could a chart or measurement accurately reflect the degree of influence of Mr. Clark unless you had an actual count of the number of records he played and the time in which he played them?

Mr. NOONAN. Sir, I don't think there is any popularity chart in this business that reflects the influence of an individual over sales or air play throughout the country. I don't think our chart—we just try to determine a rank position of titles in a given week based on sales and exposure; we cannot at all get into the influence of an individual in the entire business.

Mr. LISHMAN. Does the figure 2.3 percent in any way indicate whether or not Dick Clark repeatedly played records in which he or his companies had a financial interest?

Mr. NOONAN. Sir, it could never, no, sir; it doesn't now, and any percentage that we would work up could never reflect the number of plays or influence.

Mr. LISHMAN. What does that figure represent?

Mr. NOONAN. What it represents is what a listing coming in from a Dick Clark show, what this listing would have a weight of in the overall tabulation of a particular week's charts.

Mr. LISHMAN. Does the 2.3 percent figure represent a measurement of Dick Clark's influence on record sales?

Mr. NOONAN. No; it does not.

Mr. LISHMAN. And it doesn't reflect in any way the percentage or indicate the number of times in which he played a particular record?

Mr. NOONAN. No, it cannot; it did not and cannot.

Mr. LISHMAN. I am still not clear just what it does mean.

Mr. NOONAN. In effect, the way we measure air exposure of records is that we receive listings from radio and television stations that there is—they call them the top 40 listings. It is a terminology, it can have 10, 20, or 50 listings to it. It is a listing in rank order only as to how they are played on the show. It has nothing to do with the number of times it is played in a given period. These are tabulated, and some of these listings are weighted, whereas others are not, depending on their importance.

We try to judge the weighting by the metropolitan market that they are programming to, in other words, the potential audience.

I would like to say that the sales portion of our chart does not come from the radio stations or the television stations. The sales part we get from retail stores.

Mr. LISHMAN. Would you venture an opinion as to the influence that Dick Clark's exposure of records has on their sale?

Mr. NOONAN. I couldn't be specific about that for the simple reason we have never tried to calculate it. There is no question in anybody's mind in this industry that Dick Clark probably is the most influential single person in the industry, but to what degree, I can't make an estimate.

Mr. LISHMAN. In other words, it is accepted in the trade that Dick Clark is the most important influential element in the whole industry in obtaining the successful commercial exploitation of a record?

Mr. NOONAN. That is true.

Mr. LISIMAN. I have no other questions.

Mr. MOSS. Mr. Springer, do you have any questions?

Mr. SPRINGER. This is a little mystifying to me. Let me see if I can straighten it out.

You are with the company?

Mr. NOONAN. I am with the Billboard Publishing Co.

Mr. SPRINGER. Every week you come up with how many ratings?

Mr. NOONAN. Well, every week we come up with many charts, one of which is the top 100, which lists a hundred sides, record sides, which are from the singles field.

We also have LP charts, classical charts, low price LP charts.

Mr. SPRINGER. On the "Dick Clark Show" you would have singles for the most part?

Mr. NOONAN. That is right.

Mr. SPRINGER. Now, you have a hundred singles in your weekly chart?

Mr. NOONAN. A hundred sides, sir, because, you see, there can be what we call a two-sided hit, or it can be a one-sided hit. So therefore, we list 100 top sides. Some of those sides can be one record; in other words, two sides can comprise one record.

Mr. SPRINGER. But you have a hundred hits; is that right?

Mr. NOONAN. That is right.

Mr. SPRINGER. Now, does this rating of 2.3 percent mean of the number or the percentage that appeared on those one hundred that were on the "Dick Clark Show"?

Mr. NOONAN. No, sir, because we don't know all of the tunes—in our tabulations we have no way of tabulating or getting information as to the plays of all tunes on the Dick Clark show or any show, therefore we tabulate just from a condensed list of 10 or 20 positions.

Mr. SPRINGER. Now, then, does this chart represent the fact that Dick Clark broadcast from your 100 hits 2.3 percent of the time?

Mr. NOONAN. No, sir.

Mr. SPRINGER. I still do not understand what your three-tenths represents.

Mr. NOONAN. What it means, if I may put it this way, if we receive 100 different lists, to use round figures, and of these 100—these are all air exposures, we also receive sales reports—but on the air exposure section of the compilation, we receive 100 lists, some of these depend on the metropolitan market, large cities like New York, Chicago, Los Angeles, Baltimore, Philadelphia, et cetera, some of these lists are taken out of the overall picture and weighted, and these are just simply weighted to give them a more factor in the overall chart tabulation.

Therefore, Mr. Clark's list would be weighted along with others. This percentage here represents in this particular week when this tabulation was done, it represents the factor that that condensed list from Mr. Clark's show would represent in the overall tabulation of our chart. However, I would like to point out that we are not trying to present a chart of the number of air plays or how many times a record was exposed, et cetera; we are trying to present an accurate picture that a dealer or jukebox operator or rack jobbers can use as a buying guide. So we are not trying to mislead any of these people, and there-

fore must heavily rely on sales information in the overall tabulation of our chart.

Therefore, the exposure factor is less than, let's say, the sales factor that is added to the chart. So therefore, Mr. Clark, in any given week, frankly we wouldn't want any radio or television show to influence our chart to that degree, because this would be soon known in the industry, and could affect the final tabulations of our chart.

Mr. SPRINGER. Let me ask you, on that rating, did I understand you to say that this is for 1 week?

Mr. NOONAN. Yes, sir.

The reason I say 1 week is because naturally when you have two elements of the chart the air exposure phase of it is pretty constant; in other words, the same amount of lists that we use, the sale picture can vary depending upon the time of the year. December is the height of the record industries, the last 4 weeks of the year, therefore, we would have more cumulative point in the sales picture.

Mr. SPRINGER. Does this represent the 2 years and 4 months' time?

Mr. NOONAN. No, sir.

Mr. SPRINGER. It just represents 1 week?

Mr. NOONAN. Yes, sir.

Mr. SPRINGER. You just made that survey for 1 week?

Mr. NOONAN. Yes, sir.

Mr. SPRINGER. And you are setting that 1 week up as it appears in the testimony to represent what is characteristic of Dick Clark over a long period?

Mr. NOONAN. No, sir. I was asked to come up with a figure, and frankly, the only way I could, I couldn't spend the time to go back there into 2 years. I took a 1-week chart tabulation and worked out this figure. And I did this very hurriedly, I did call my Cincinnati office, because all of the tabulations are not done in New York or in Cincinnati. So, trying to pull this together, I frankly came up with this figure in possibly a somewhat slipshod fashion, and I don't think I can exactly outline here even now the exact system, I would have to study it, to come up with another figure.

Mr. SPRINGER. Have you made this kind of a survey with any other great artists—Bing Crosby?

Mr. NOONAN. No, sir.

Mr. SPRINGER. Perry Como?

Mr. NOONAN. No other artists, sir.

Mr. SPRINGER. In fact, of all those broadcast during the week, the percentage of 2.31 is rather substantial for one artist, is it not, sir?

That is one-fiftieth of the market, or a little over.

Mr. NOONAN. That is right, except, just to clarify the situation, Mr. Clark is not an artist, he is just a diskjockey, and we don't do this on any particular artist or diskjockey.

Mr. SPRINGER. But 2.3 would still be a pretty substantial effect, would it not?

Mr. NOONAN. Yes, sir.

Mr. SPRINGER. A pretty substantial impact if one person had that much impact in a period of a week on your total listing of the top 100; is that right?

Mr. NOONAN. That is very true.

Mr. SPRINGER. That is all, Mr. Chairman.

Mr. MOSS. Mr. Derounian.

Mr. DEROUNIAN. Mr. Noonan, in this very uncrystal clear chart business, I am confused and I am sure everyone on the subcommittee and in the audience, is also confused.

Now, why do you suppose you were asked to make a survey just for 1 week on Dick Clark?

Mr. NOONAN. I wasn't asked for 1 week, I was just asked for a figure, sir, and the only way I could come up with it fast was to take a 1-week chart to try and develop some kind of a figure.

Mr. DEROUNIAN. Which week did you take between August 5, 1957, and November 30, 1959?

Mr. NOONAN. Sir, it was not within that period at all; it was—

Mr. DEROUNIAN. Then this chart has no relation to the previous chart that Mr. Goldstein was talking about?

Mr. NOONAN. No, sir; it does not.

Mr. DEROUNIAN. I have no further questions.

Mr. MOSS. Mr. Devine?

Mr. DEVINE. No questions.

Mr. MOSS. Would you agree with my statement before we called you here, that this has no significance whatsoever?

Mr. NOONAN. In the overall study that this subcommittee is making, sir, this has absolutely no significance.

Mr. MOSS. And you would find it most difficult to undertake a very lengthy explanation of what 2.3 percent represents?

Mr. NOONAN. Yes, sir; I would. I would be very happy to, but it would take considerable time.

Mr. MOSS. Do you think you would ever reach the point where you would come up with a definite statement as to its meaning?

Mr. NOONAN. No, sir; I would have to call in consultants.

Mr. MOSS. Are there any other questions?

If not, you may be excused—oh, Mr. Lishman.

Mr. LISHMAN. Mr. Noonan, did the Computech people, when they called you up, tell you why they wanted this information?

Mr. NOONAN. Sir, I don't honestly recall if they told me or not. I think it was somewhat obvious to me that they were working along the lines that they were.

Mr. LISHMAN. Do you recall when they made this phone call to you?

Mr. NOONAN. No, sir; I frankly do not.

I do know, however, it was after the November 30 period.

Mr. LISHMAN. Do you recall what week is represented by this figure?

Mr. NOONAN. No, I don't, sir.

Mr. LISHMAN. Was it a week in which Mr. Clark was not on a network?

Mr. NOONAN. No, I don't think so, sir.

Mr. LISHMAN. Was it after November 30?

Mr. NOONAN. Yes, sir.

Mr. LISHMAN. I have no further questions.

Mr. MOSS. Mr. Noonan, we want to thank you for your appearance here, and you are now excused.

Mr. NOONAN. Thank you.

Mr. MOSS. Mr. Goldstein will return to the witness chair.

**TESTIMONY OF BERNARD GOLDSTEIN, ACCOMPANIED BY DONALD
B. PIERSON—Resumed**

Mr. LISHMAN. I have a number of questions I would like to ask when he has completed his testimony, Mr. Chairman.

Mr. MOSS. Mr. Goldstein, you may continue with your testimony.

Mr. GOLDSTEIN. If I may point out one further aspect about this chart, it is true that this 2.3 percent represents a time not included in this body of our study. However, Mr. Noonan at that time pointed out to me that the figure he had arrived at, 2.3 percent, was the highest it had ever been.

Mr. MOSS. What had ever been?

Mr. GOLDSTEIN. The weight given to Dick Clark in its consideration.

Mr. MOSS. What weight given to Clark?

I tried to get you to explain to me what this factor is and how it is applied. Now, what does it represent?

Mr. GOLDSTEIN. I certainly am not capable of answering that, even Mr. Noonan appears to require a great deal of time to answer that question.

Mr. MOSS. He told me he didn't think he could ever reach the point of being definitive in his definition.

Mr. GOLDSTEIN. I simply am reporting my conversation with a representative of Billboard magazine on this matter.

Mr. MOSS. When you say titles which could have been played, were these titles actually on labels in circulation, or were they titles owned or controlled which never appeared on recordings, or do you know?

Mr. GOLDSTEIN. Yes, I can answer that, sir.

Relative to interest type question, interest type M, interest type A, and D, and R, very definitely these were existing records that could have been played. Interest type P, publisher interest, some of these titles—

Mr. MOSS. I think we can come down to a much quicker reply. In the chart now before us, you have included the titles which could have been played?

Mr. GOLDSTEIN. Yes, sir.

Mr. MOSS. Were all of those titles on recordings commercially available?

Mr. GOLDSTEIN. Yes, sir.

Mr. MOSS. Every single one of them?

Mr. GOLDSTEIN. Yes, sir; I must reserve an area for myself in the interest type P, publisher interest. I do not, I cannot definitely state whether all of those 116 titles did actually go into pressing; I believe they did, and I certainly can research that rather rapidly.

Mr. MOSS. At this moment, then, you cannot say whether this includes only those titles actually placed on recordings?

Mr. MOSS. Mr. Goldstein, you are obviously a very competent man. You have made a presentation to this subcommittee of a figure. We don't know what it is, we don't know how to use it, and no one can tell us.

Do you not think we might be a little further along if we just disregarded it?

Mr. GOLDSTEIN. In defense, sir, I will say that I put the following question to Mr. Noonan: Of all the factors that he considered in devel-

oping a scale of 100 songs which were most popular in this country for a given week, what is, in measurable terms, the influence of Dick Clark? And this is the answer I received.

I cannot explain it beyond that, and this is not critical to our data presentation. And with your permission I will go on from here.

Mr. Moss. You may proceed.

Mr. GOLDSTEIN. On page 6 of our study—this is the final chart I have to present this afternoon, I am not sure where it is on the subcommittee print—we have, in terms of titles, listed for the various “interests” categories those played as opposed to those that could have been played.

The result of this section of our study indicates that of those titles for the given time period that Mr. Richard Clark could conceivably have an interest in could gain from the play, 31½ percent of these titles were made on the “American Bandstand” show.

Mr. GOLDSTEIN. With the exception of interest type B, I can say that, and in type P, I can say it with almost complete confidence.

Mr. Moss. I want either a yes or no, you can or you cannot. Is that your testimony?

Mr. GOLDSTEIN. I cannot, for sure, make that statement as to type P.

Mr. Moss. You cannot?

Mr. GOLDSTEIN. Yes, sir.

Mr. Moss. You may continue.

Mr. GOLDSTEIN. I have finished. We have finished our very rapid presentation of our study.

I want to make the final closing remarks relative to this study.

Before me are many thousands of pages of information. Mr. Clark has, through this study, made available to the subcommittee a historical documentation of every song that was played on his program for this period. This information is available to you gentlemen, it is here in totality. This really is a critical area of study. You may examine it, you may historically research the complete picture that existed on this program for the stated time period.

As I have mentioned in the opening sentences of my testimony, we have presented here, in paper form, the universe, the complete population, the very census of what took place on that program.

I trust that you will find it of value in your subsequent discussions. I know that I, my company, would be most pleased to cooperate with this subcommittee in its interpretation, if there is any desire for it.

Thank you.

Mr. Moss. Of course, we are very much interested in whether or not it in fact constitutes something of value.

Will you tell me, in arriving at your answer, are you dealing with averages for the period between August 5, 1957, and November 30, 1959?

Mr. GOLDSTEIN. Are we dealing with averages in this study?

Mr. Moss. Yes.

Mr. GOLDSTEIN. Very frequently we are, sir, we are dealing with the mean measurement, which is an average.

Mr. Moss. In talking of the percentage of Mr. Clark's properties played, are we dealing with averages?

Mr. GOLDSTEIN. No, we are not. We are dealing with percentages there.

Mr. Moss. You took a breakdown of the number of his properties appearing in any given week in relation to the number of properties owned?

Did he own more properties at the end of 1959, than he owned on the date of August 5, 1957?

Mr. GOLDSTEIN. That is not within the bounds of our study. I have no answer to that.

Mr. Moss. To be really meaningful, to give us a picture of the development of his pattern of play, would we not have to relate it, not to averages, but to specific ownership, in a given period with the specific plays in a given period?

Mr. GOLDSTEIN. I don't feel that it is necessary to make this study meaningful.

Mr. Moss. You conceive that it would have some significance?

Mr. GOLDSTEIN. I find it difficult to see that it would have any significance.

Mr. Moss. Take an average, if on August 5 he did not own a single title, he could not play a single record. If on November 30, when he owned a half dozen titles, and had a dozen corporate titles in which he had an interest, he could have played that many records. Do you mean there is no significant difference in the answer you have developed in applying the statistical material you have used to an August 5, 1957, performance in contrast to a November 30, 1959, performance?

Mr. GOLDSTEIN. Sir, that information is available in one of our tabulations. I do not see its statistical importance.

Mr. Moss. You do not see it?

Well, there is no point in you and I discussing this further, if you do not see its statistical importance.

If we had no ownerships, there would be no need for the B title group, would there?

Mr. GOLDSTEIN. Sir, the only way, if there is a statistical importance to this, which I question in my own mind, the only way to do it is to do it at great expense. Now, there was a limit to what Mr. Clark wanted to spend to present his life, broadcasting life, to you. He very definitely had a budget, and we had a budget. We felt that the data that we did derive from this information, that concerned itself with 1,885 different titles played, almost 16,000 different times which has been accumulated, processed in many different ways for your examination, is meaningful.

Now, I do not deny there may be meaningfulness in what you suggest. I just in all due deference suggest that we selected those measurements and procedures which we were allowed to in the light of two factors, one being cost, and one being time.

I might point out that we expected to be here approximately 60 days ago, and hence from this study that it was being conducted and processed, there was very definitely a time pressure on it.

Mr. Moss. Mr. Lishman.

Mr. LISHMAN. Mr. Goldstein, are you or Mr. Pierson a member of the American Statistical Association?

Mr. GOLDSTEIN. No, sir.

Mr. LISHMAN. Isn't it correct that most statisticians in this country belong to that association?

Mr. GOLDSTEIN. Sir, this is not a statistical study. I pointed that out in the very opening of our conversation here. This is a data processing

procedure. This is a data reduction study in which we can select our meaningful information from the great mass of data.

In anticipation of such a question, we have a statistical consultant from our firm, Mr. Rosedith Sitgreaves, professor of statistics at Columbia University. Dr. Sitgreaves was called in to examine this study in totality, and first said to us: "No. 1, your procedures have a clean bill of health as far as I am concerned; No. 2, you recognize that there really isn't—you are not talking about statistics here, gentlemen, you are talking about the mean."

And I said to Dr. Sitgreaves at that time that this is what we wanted to talk about, we understand the meaning, the public understands the meaning, the subcommittee understands the meaning. We have no intention of getting into the rarefied atmosphere of statistical bickering, and do not put this forth as a statistical study, that is a data reduction study. And Mr. Pierson and myself are data processors.

Mr. LISHMAN. Isn't it correct, that the conclusions of this report seem to depend heavily on the assumption, that the reverse order rank of a title in a list of 100 most popular titles is a good measure of the number of times a disinterested diskjockey would be likely to play that title?

Mr. GOLDSTEIN. Would you repeat that, sir?

Mr. LISHMAN. Would you read the question?

(The pending question was read by the reporter.)

Mr. GOLDSTEIN. I am not sure that I understand you, sir.

Mr. LISHMAN. In your direct testimony you talked about using, for your popularity score, the number 101, and then placing yourself in a position whereby you could manipulate the figures here to arrive at the conclusion: is that correct?

Mr. GOLDSTEIN. Yes, sir.

Mr. LISHMAN. Now, didn't you, in using that procedure, rely heavily on the assumption that the reverse order of rank of the title in a list of 100 most popular titles is a good way of measuring the number of times a disinterested diskjockey would play a record? What does it mean, if it doesn't mean that?

Mr. GOLDSTEIN. If you had a diskjockey program in which the programming format was committed to a top 40 or top 100, which would be a good example in this particular case here, then it would be a very significant measurement to see if he was calling his top 100. Is this what Billboard and Cashbox are calling their top 100?

On the other hand, if you will refer to our conclusion on page 1, you will see that we have used the popularity score as a measurement of justification, solely that, not as a measurement of predetermined programming format.

Mr. LISHMAN. Maybe I had better try and get at this another way. Does it seem reasonable to you to assume, that the top title on the list scored at 100 is likely to be played only twice as often as a title halfway down the list which is scored 50?

Mr. GOLDSTEIN. Well, sir, I think I now see what you are getting at. You may be inferring some arbitrary relationship and measurements there. I can only say that if they are arbitrary, they act in the same way with B titles as they act with A titles, everything is treated in accordance with the same principle, and therefore you end up with measurements that can be compared.

Mr. LISHMAN. Well, forgetting statistics and everything, does it seem like commonsense that a title at the top of the list, say, at 100, will be played twice as often or half as often as one that is scored half-way down the list? What have you got to back that up?

Mr. GOLDSTEIN. I am afraid that we would have to ask the entire music industry to answer that type of question.

Mr. LISHMAN. I just wondered how you arrived at this study.

Mr. GOLDSTEIN. We don't know what the lineal relationship is between placement on the list and number of plays, we have not made any statements as to that.

Mr. LISHMAN. Returning to page 3 of the subcommittee reprint of your table 1, what is the purpose of table 1 entitled "Analysis of A title types"?

Mr. GOLDSTEIN. The purpose of this table was to describe numerically those so-called interest titles that were played as compared to those so-called interest titles that could have been played.

Mr. LISHMAN. Under type P, which deals with the publisher, what is the purpose of the showing of percent of titles played which appears in the third column of this section?

Mr. GOLDSTEIN. The only purpose of showing that was to very rapidly enable the reader to view a relationship between the first two columns of that table.

Mr. LISHMAN. Now, let us take the first publishing company in type P, that is Arch Music, Inc. That is a company which Dick Clark has an interest in?

Mr. GOLDSTEIN. So I have been informed.

Mr. LISHMAN. Do you know what the interest is?

Mr. GOLDSTEIN. I do not, I have never concerned myself—the classification—

Mr. LISHMAN. That is enough.

Mr. GOLDSTEIN. Fine.

Mr. LISHMAN. Now, on the number of titles listed as having been attributable to Arch Music Co., you have 44?

Mr. GOLDSTEIN. Yes, sir.

Mr. LISHMAN. Is that correct?

Mr. GOLDSTEIN. Yes, sir—I am sorry, in the reprint dated April 21, that has been raised to 46.

Mr. LISHMAN. Is that 46 figure correct?

Mr. GOLDSTEIN. Yes, sir.

Mr. LISHMAN. Do you know how many of these titles were actually recorded?

Mr. GOLDSTEIN. This is the area, in response to Mr. Moss that I should have some time to research—I do know this, that in this situation company rights were granted for 46 titles.

Mr. LISHMAN. I am not talking about that, I am asking how many of these titles were actually recorded. We are not interested in something that wasn't on a record. We are not investigating something in a vacuum. We are interested in whether or not Dick Clark, over a comparatively short period of time, played his records incessantly or records in which he and his companies had an interest. As far as we can ascertain, the computations you supplied throw no light on this.

You have presented to this subcommittee a statement, in effect, informing us that there were 46 titles of Arch Music Co., a Dick Clark

company, played by Dick Clark during the period August 5, 1957, to November 30, 1959; is that correct?

Mr. GOLDSTEIN. No; there were seven titles played.

Mr. LISHMAN. Seven titles played. But there were 46 titles available to be played, is that correct?

Mr. GOLDSTEIN. Yes, sir.

Mr. SPRINGER. Is that 46 titles over 2 years and 4 months?

Mr. GOLDSTEIN. Yes, sir; they were available, according to the figures which have been submitted to us.

Mr. LISHMAN. Now, our computations show that excluding long play records there are only nine records available for playing. In order to help you in your researches in this matter, I will let you look at some letters we have received from record companies. These indicate that some of the records of Arch Music Co. which you say were available during this period, actually were not released until after November 30, 1959. They weren't available, they were not on records during this period.

I will ask you to look at these letters addressed to the subcommittee.

Mr. GOLDSTEIN. In this area of type P interest, the reason I was not able to answer Mr. Moss' question with a simple yes or no was that you have pointed out a legitimate criticism of our definition of terms in the area of type P. We have, because our column headed "Number of titles" with all reasonableness assumed that.

Because of our column, you with all reasonableness assumed that we were referring to all records there.

I have before me a document from Arch Music Co. which indicates that records, as you have stated, records were not made of all these titles, there was lack of some activity on some of these titles. For this, gentlemen, I apologize. This is simply a reflection of inadequacy to make this particular area clear to you.

Mr. LISHMAN. May we have these letters back, please?

Now, as a matter of fact, Mr. Goldstein, if you correct the number of titles that were available to nine, and you correct the number of titles played to seven—and this is a Dick Clark company—instead of coming up with the percent of titles played at 13.6 as your computation shows, you come up with a percentage of 77.8.

Now, there is quite a discrepancy between 13.6 and 77.8.

Mr. GOLDSTEIN. There certainly is, sir. However, if you take it down to the grand total at the bottom of the page, you will find that, assuming your information to be correct, it only reflects on the 3.5 in the area of 1 percent.

Mr. LISHMAN. Now, let us come to the next one—

Mr. MOSS. Let us make it clear on the record at this point, we have only dealt with the first item. We have a long way to go yet.

Mr. LISHMAN. I am going down the list.

Now, we come to the next item on type P publisher, Sea-Lark Enterprises, Inc., is that correct?

Mr. GOLDSTEIN. Yes.

Mr. LISHMAN. And that is another Dick Clark publishing company, is that correct?

Mr. GOLDSTEIN. Yes, sir; I have been informed of such.

Mr. LISHMAN. Now, how many titles do you state were available for playing during the period August 5, 1957, to November 30, 1959?

Mr. GOLDSTEIN. There were 34.

Mr. LISHMAN. We find that there were 13 titles available on records. Where did you get the basic information that you used concerning the number of titles that were available during this period?

Mr. GOLDSTEIN. The basic information was provided by the various publishing corporations.

Mr. LISHMAN. In other words, it was furnished to you by Mr. Clark or his representatives?

Mr. GOLDSTEIN. That is correct.

Mr. LISHMAN. Did he furnish this to you in writing?

Mr. GOLDSTEIN. Yes, sir; I have it right in front of me at this moment.

Mr. LISHMAN. Did he send you in writing a statement that there were 46 titles available on records for playing by him during the period August 5, 1957, to November 30, 1959, which were owned by Arch Music Co.?

Mr. GOLDSTEIN. No, he stated the position very clearly. It was our lack of properly listing these that has caused this error in this area. I have before me the initial list provided by Mr. Clark, and you will see that against various titles there were not listed artists, which I assume by definition means that the items were not recorded.

Mr. Moss. Did you request the material received from Mr. Clark's various companies?

Mr. GOLDSTEIN. This material—did I specifically request it from these various companies?

Mr. Moss. Yes.

Mr. GOLDSTEIN. No, sir, this material was gathered for me by one of Mr. Clark's attorneys.

Mr. Moss. Did you indicate the specific type of material you wanted?

Mr. GOLDSTEIN. Yes, sir.

Mr. Moss. Why, then, did you have an interest in unpublished or nonproduced titles?

Mr. GOLDSTEIN. That was a reflection of an error we made in assuming that these songs were released and were actual records. This is a reflection of our learning process, if you will, concerning the music industry. We made an assumption there which is now established as incorrect.

Mr. LISHMAN. Well, if we correct Sea-Lark Enterprises in accordance with the number of titles which are actually available, and even take as correct that the available titles were played 14 times as shown in your chart, instead of coming up with the percentage 41.2 as the percentage of titles played, we come up with 77.7 percent.

Now, we come to the January Corp., which is another of Clark's publishing companies. And you list the number of titles available for playing during this period as 36; is that correct?

Mr. GOLDSTEIN. Yes.

Mr. LISHMAN. Again I call your attention to the fact that, according to the information we have, there were only 10 such records available during this period. Accepting the fact that these titles were played several times during that period, we come up with a much different percentage than the 19.4 shown by you.

Now, when you got this information from Mr. Clark or his representatives, did you insist on getting the information pertaining to all the music publishing companies in which Mr. Clark had an interest?

Mr. GOLDSTEIN. That is what we asked for, sir, yes.

Mr. LISHMAN. Did they give you only the Arch Music Co., Sealark Enterprises, and the January Corp. as being the companies in which he had a music publishing interest?

Mr. GOLDSTEIN. Yes, sir. We were informed that the firms of Bae and Request are divisions of the Swan Records Manufacturing Co., and are therefore included as interest titles under that category.

Mr. LISHMAN. Just a minute, now, isn't it correct that Swan is a record manufacturing company?

Mr. GOLDSTEIN. Yes, sir.

Mr. LISHMAN. And isn't it correct that Bae is an independent subsidiary of Swan and Bae is engaged in the music publishing business?

Mr. GOLDSTEIN. Yes, sir.

Mr. LISHMAN. Why wasn't it included under publishing?

Mr. GOLDSTEIN. It was included—

Mr. LISHMAN. It is not a manufacturer.

Mr. GOLDSTEIN. It is not a manufacturer. But we were concerned with the classification of interest records, and we therefore classified interest records when they came under the Swan classification.

Mr. LISHMAN. Well, it is a fact that the company, Bae, gets performance payments and mechanical royalties, isn't it?

Mr. GOLDSTEIN. I don't know.

Mr. LISHMAN. And do you know for a fact that some of the Bae records were not recorded on the Swan label?

Mr. GOLDSTEIN. I don't know.

Mr. LISHMAN. Now, with Request, wasn't that likewise a separate subsidiary corporation of Swan, and also engaged in the music publishing business, and not the record manufacturing business?

Mr. GOLDSTEIN. That is what we were informed, sir.

Mr. LISHMAN. Why wasn't it placed under the category of music publishers?

Mr. GOLDSTEIN. Because—

Mr. LISHMAN. Was it because you were afraid to show too many records available from a Dick Clark company?

Mr. GOLDSTEIN. No, sir.

Mr. LISHMAN. Well, why wasn't it placed there?

Mr. GOLDSTEIN. Because the classification of an interest title was taken care of by the Swan classification.

Mr. LISHMAN. How could that be taken care of in a Swan classification when they are in different lines of business?

Mr. GOLDSTEIN. Our concern in the chart provision and the report provision was whether a title was an interest or not. What you point out, whether it should be declared as a P interest as opposed to an M interest, was not our concern.

Mr. LISHMAN. We come to the third company which was left out of the publishing group, and that is Kincord. Now, that is a subsidiary of Hunt Records, which is listed under manufacturing, is that correct?

Mr. GOLDSTEIN. The subsidiary Kincord was an oversight on the part of the gentleman who provided us with this information. We have verified that Kincord has published nine songs. Two of these songs were pressed by Mallard, which right away gives the A Request classification of interest. One was never released. Four were manufactured under the Swan label. Two we have yet to research.

I am basically reporting this information to demonstrate that although we have overlooked this small area, still the titles themselves have come under an interest classification.

I do want to point out, sir, that at the time this study was done, there was much pressure, much pressure to present these findings, on us.

Mr. LISHMAN. Well, in view of your explanation, why didn't you include Bae, Request, and KinCORD under your type R classification, the royalty classification? Is it not true that these companies provided a collection point for royalties for Mr. Clark and his interest?

Mr. GOLDSTEIN. Well, the royalty classification is a classification that we have set up to take care of royalties as they would accrue to Mr. Clark as an artist. On the song "Be My Girl," Mr. Clark was a writer on that particular song. On the Dick Clark albums, there was a royalty payment accruing to Mr. Clark from the record manufacturers. The royalty classification is a classification of Mr. Clark as an artist, rather than a publisher.

Mr. LISHMAN. Now, you have Mallard Pressing Co. listed under type Q as a pressing plant?

Mr. GOLDSTEIN. Yes, sir.

Mr. LISHMAN. And you have here the number of titles, which I assumed were pressed by Mallard during this period, as 846?

Mr. GOLDSTEIN. Yes, sir.

Mr. LISHMAN. Were you furnished a list of all the titles on both the A and B sides on each record pressed by Mallard?

Mr. GOLDSTEIN. We were initially furnished such a list. We in turn audited this list. We went to Mallard's files, we selected out invoices on a random basis from these files. These invoices indicated record numbers, they did not concern themselves with titles, this was a very difficult research problem. We then proceeded in the selection of approximately 30 to 40 percent of the invoices from the files. We proceeded to the telephone and made long distance calls to the record manufacturers over the country, converting the record number as listed on the invoice files to titles. Upon the completion of this, we checked the accuracy of the Mallard list as provided to us. We still—at this point we classified this list as approximately 90 percent accurate.

We went back and repeated this procedure for a second time, when we selected 50 percent more of these invoices and verified their titles again. At this point we were satisfied that our Mallard classification was in the area of 95 to 97 or 99 percent correct.

Mr. LISHMAN. Does this 846 figure, as the number of titles against Mallard Pressing, indicate both sides of the same record?

Mr. GOLDSTEIN. It indicates the second side of the record when that title was securable.

Mr. LISHMAN. We have only been supplied with 410 titles. The cards we received from Mr. Clark indicate that this 846 must include both sides of the record.

Mr. GOLDSTEIN. We were unable to secure much information on the second side of the records.

Mr. LISHMAN. Does the list of artists under type A, the artist management classification, represent the complete list of artists provided for you by Mr. Clark or his representatives?

Mr. GOLDSTEIN. Yes, sir.

Mr. LISHMAN. Why isn't Billy Williams included in this list?

Mr. GOLDSTEIN. I have no idea.

Mr. LISHMAN. Did you check to make sure that every artist was included?

Mr. GOLDSTEIN. We were informed that these were the artists, as represented by SRO artists, and therefore have included them all. We were not informed that Billy Williams is so classified.

Mr. LISHMAN. Now, under type A, artists management, you have 41 titles of records recorded by Duane Eddy, is that correct?

Mr. GOLDSTEIN. Yes, sir.

Mr. LISHMAN. Did you check to see whether or not he actually had made 41 records?

Mr. GOLDSTEIN. Yes, I did, sir,

Mr. LISHMAN. And this is the accurate figure?

Mr. GOLDSTEIN. This is the accurate figure as I know of it.

Mr. LISHMAN. Were these records during the period August 5, 1957, to November 30, 1959?

Mr. GOLDSTEIN. To my knowledge?

Mr. LISHMAN. Yes.

Mr. GOLDSTEIN. To my knowledge.

Mr. LISHMAN. And against Lavern Baker, you have 76 as the number of titles. Were these all recorded during this period?

Mr. GOLDSTEIN. I believe so.

Mr. LISHMAN. Do you have information to that effect, anything in writing?

Mr. GOLDSTEIN. No.

Mr. LISHMAN. Where did you get this information?

Mr. GOLDSTEIN. This information was arrived at for me by Mr. Ed McAdams.

Mr. LISHMAN. And who is he?

Mr. GOLDSTEIN. Mr. Ed McAdams is on the staff of Mr. Dick Clark.

Mr. LISHMAN. Did he telephone you this information?

Mr. GOLDSTEIN. No, this was in Philadelphia, we worked this up together.

Mr. LISHMAN. He told you orally?

Mr. GOLDSTEIN. No, he had the list of actual titles from which we counted these up.

Mr. LISHMAN. Now, against Dale Hawkins, we have 30 titles recorded. Were these all recorded during this period August 5, 1957, to November 30, 1959?

Mr. GOLDSTEIN. To my knowledge, these were the instructions to Mr. McAdams.

Mr. LISHMAN. Well, again you have got this number of titles from Mr. McAdams, and you assumed that the information furnished you concerned recordings made during this period, is that correct?

Mr. GOLDSTEIN. Certainly we did not concern ourselves with recordings made after this period. The recording of a title before this period whether it still would be eligible for play at a subsequent date still makes it eligible for consideration, that is in all of these cases a basic assumption.

Mr. LISHMAN. With regard to some of the 76 titles by Lavern Baker, isn't it possible that some of these records might have been made several years ago?

Mr. GOLDSTEIN. It is possible, yes, sir. However, they are available for public play at subsequent dates.

Mr. LISHMAN. Did you ascertain whether any of Lavern Baker's had been played repeatedly over a comparatively short period of time?

Mr. GOLDSTEIN. Yes, that information is available in here, it can be researched at a moment's notice.

Mr. LISHMAN. Coming to Leslie Uggans, you have 18 titles against his name. Were those all recorded prior to November 30, 1959?

Mr. GOLDSTEIN. I believe so.

Mr. LISHMAN. Again, this is information give you by Mr. McAdams?

Mr. GOLDSTEIN. Yes, sir.

Mr. LISHMAN. And with Robert Straus you have 2 titles. Were those recorded prior to November 20, 1959?

Mr. GOLDSTEIN. I believe so, sir.

Mr. LISHMAN. Now, in type D, distributor, against Chips Distributing Co., you have a total of 9,740 titles, is that correct?

Mr. GOLDSTEIN. Yes, sir.

Mr. LISHMAN. Did you cross-check the labels distributed by Chips against the record plays?

Mr. GOLDSTEIN. Yes, we did, sir. I would be happy to explain the procedure, if you like.

Mr. LISHMAN. How was the total of the Chips number of titles compiled?

Mr. GOLDSTEIN. This was a very difficult problem. The Chips itself had kept no records of a formalized nature, title by title, that they had distributed. What we did was to go to the catalogs and the publicity releases of manufacturers whom Chips distributed for and selected these. We went to the publicity releases that Chips put out in the Philadelphia area and collected titles from these. We went to the personal files of Mr. Harry Chipetz and collected titles from there. And we were able to arrive at this figure as a reasonable estimate of the number of titles that went through the Chips Distributing Co. to November 30.

Mr. LISHMAN. But it was not taken from the books and records of Chips?

Mr. GOLDSTEIN. There were no formal records to take this from. This was one of the difficult problems that provided itself to us. We simply, as you will note in our united report of April 21, have an asterisk next to that number and a statement on the bottom to the effect that this is estimated.

Mr. Moss. I would like to ask a question at this point. Do I understand you to state that the Chips Record Distributing Corp. had no records of purchases or shipments which would accurately reflect the titles carried in its inventory over this very, very recent period?

Mr. GOLDSTEIN. Your understanding is correct.

Mr. Moss. Did they sell any records?

Mr. GOLDSTEIN. I imagine they did, sir.

Mr. Moss. Do you know whether they did?

Mr. GOLDSTEIN. Well, I have visited their office in Philadelphia, and they seemed rather active.

Mr. Moss. But no records?

Mr. GOLDSTEIN. They have not kept records by titles. I understand, and I have been informed, that it is the practice—

Mr. MOSS. Did they have any records for you?

Mr. GOLDSTEIN. Oh, yes.

Mr. MOSS. What kind?

Mr. GOLDSTEIN. These are the records I have described, these are catalogs put out by publishers.

Mr. MOSS. Did they carry all the items in the catalogs?

Mr. GOLDSTEIN. They distributed—

Mr. MOSS. Did they carry all the titles in the catalog, do you know?

Mr. GOLDSTEIN. I do not know.

Mr. MOSS. This figure, then, of 9,740 titles, you don't know whether that is even remotely accurate?

Mr. GOLDSTEIN. We attempted to adjust for the proportion of records that they did carry.

Mr. MOSS. Well, during the course of this almost, what, 2 years and 3 or 4 months, they must have had a list of the total number of individual records being sold and purchased?

Mr. GOLDSTEIN. They did not, sir.

Mr. MOSS. They did not?

Mr. GOLDSTEIN. No. I understand that it is the practice for a distributor to order in lot assortments, and the very fact of the matter is that there was not—we would have been very pleased if this type of record existed, we very much recognized the limb that we were going out on in attempting to estimate this figure. But it simply did not exist.

Mr. MOSS. This is a very important figure, because you were taking 9,000 titles and tossing them into this bin as a measure of how many of them were played. Yet you don't know how many were played? You have a list of those played, but you don't know whether these were titles actually stocked and distributed actively by Chips Distributing Corp.? This is an arbitrarily determined figure, unrelated to the sales or the purchases of this distributing corporation, one reconstructed from catalogs, and from certain material distributed by them, but not the merchandise itself; is that correct?

Mr. GOLDSTEIN. The 9,740 figure, that is so. It was a reconstructed figure, yes, an estimated figure.

Mr. MOSS. It is amazing to me, that for a very recent intermediate past sales period, a company that is active in business is without records, and they must undertake to reconstruct them.

Let me just say something. You have acknowledged here that you have taken on the determination of important elements, insofar as this subcommittee is concerned; namely, whether or not a man used a very advantageous spot to exploit it for his own benefit. Yet you have repeatedly acknowledged that the material used by you in coming up with your conclusions is material for which you cannot answer.

Now, frankly that leaves me with the feeling that you have acted in any manner but a responsible one, that you were far more interested in getting the money than getting the facts. It tends to convince me that we should disregard every figure that you have submitted as being insupportable.

Mr. GOLDSTEIN. Sir, I beg to point out that our entire discussion on table 1 in no way reflects upon the conclusion of this study.

Mr. Moss. You can assure me of that, but let me assure you that I am not so naive as to believe your assurance is any more important or significant than the figures you have thrown at us.

Mr. GOLDSTEIN. The conclusion of this study is related to the data you see before me, and not related to table 1. Table 1 is a supplementary table, concerned with an entirely different issue than the conclusion of this study is concerned with.

Mr. LISHMAN. Mr. Goldstein, were you provided any data relative to master records leased by Clark companies?

Mr. GOLDSTEIN. No, sir.

Mr. LISHMAN. Nothing in your study takes into account any lease of master records by any company in which Dick Clark had an interest, is that correct?

Mr. GOLDSTEIN. Yes, sir. I understand a master record to be one from which copies are pressed from, and I do not know of any time we took this into consideration.

Mr. LISHMAN. Did you make any other type of analysis beside the one submitted to the subcommittee?

Mr. GOLDSTEIN. Any other type?

Mr. LISHMAN. Well, did you make any more detailed analysis than the simple averages of the A and B groups that you have presented to us?

Mr. GOLDSTEIN. We made several simple ones which we disregarded; yes.

Mr. LISHMAN. Did you submit them to your client?

Mr. GOLDSTEIN. No, we did not.

Mr. LISHMAN. Did you submit a preliminary report or analysis to your client which you took back and reworked?

Mr. GOLDSTEIN. Yes, we did.

Mr. LISHMAN. What did that preliminary analysis show?

Mr. GOLDSTEIN. That preliminary analysis—I am sorry, I forgot that in that preliminary analysis there was an attempt to use some techniques of correlation on the data. Incidentally, the results of that correlation were most favorable, but subsequently revealed it was an unjustified statistical technique to use on that data. That was submitted to the client very briefly as a “rough” of how it was shaping up.

Mr. LISHMAN. Do you think that the titles in the A group were all of approximately equal interest to Mr. Clark?

Mr. GOLDSTEIN. I have no information on that, Mr. Lishman. Intuitively I will answer not, they probably weren't. I don't know, I have never examined the depth of interest nor converted this into dollars. I have simply, if somebody has been touched by the companies listed on one of the pages of this report, it became an interest song. The degree of interest I am sure varies between situations.

Mr. LISHMAN. But nevertheless, even though you didn't feel they all had an equal interest, or approximately equal, you put them all in the same group, is that correct?

Mr. GOLDSTEIN. They were classified as interest songs, that is correct.

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

Mr. Moss. Mr. Bennett?

Mr. BENNETT. No questions.

Mr. Moss. Mr. Springer?

Mr. SPRINGER. I think from all this testimony we have some idea of what you investigated and what you came up with; I think I understand that. I don't think it is comprehensive enough to cover all this subcommittee would like to know, but I think you have made a pretty fair explanation of what you have done. Now, have you made any other such survey for any other artist?

Mr. GOLDSTEIN. No, we have never done that.

Mr. SPRINGER. This is your first attempt in this field, is that correct?

Mr. GOLDSTEIN. This is the first experience that Computech has with data processing that has semijudicial implications, if you will, and we have not—that is the first one we have had. As far as we know, this is the first one that any data-processing organization has done in this field.

Mr. SPRINGER. Let me analyze this and see if we can bring this into focus. During this 2 year and 4 months' period, there were 401 songs played in title A, correct?

Mr. GOLDSTEIN. It has been cited to me as 402.

Mr. SPRINGER. Four hundred different songs in which he was interested, right?

Mr. GOLDSTEIN. Yes, sir.

Mr. SPRINGER. They were played on this program in 2 years and 4 months?

Mr. GOLDSTEIN. Yes, sir.

Mr. SPRINGER. Now, those 402 songs were played approximately 4,200 times?

Mr. GOLDSTEIN. That is correct, sir.

Mr. SPRINGER. That means that each of these records was played an average of about 10 times?

Mr. GOLDSTEIN. Sir, I beg to make a correction here. The 402 figure arises because some of these records are multi-interest, that is, pressed by Mallard, distributed by Chips. Actually, we have 299 titles, on page 7 of our report, 299 separate and distinct titles that were interest titles that were played on the Dick Clark program.

Mr. SPRINGER. There were approximately 30 songs or 35 records in which he was interested that were played on this show?

Mr. GOLDSTEIN. Sir?

Mr. SPRINGER. 300?

Mr. GOLDSTEIN. Yes, sir.

Mr. SPRINGER. Played approximately 4,200 times; is that right?

Mr. GOLDSTEIN. Yes, sir.

Mr. SPRINGER. And that would average about 13 times that each one of those records was played; is that correct?

Mr. GOLDSTEIN. Yes, sir.

Mr. SPRINGER. Do you have any knowledge of what the average life of a hit record is?

Mr. GOLDSTEIN. I don't sir. But I do have information relative to A and B titles as to the average life that they had on the Dick Clark program which I can present to you.

The average life of all records was 5.2 weeks; of interest records, A titles, 7.8 weeks; of non-interest records, B titles, 4.7 weeks.

Mr. SPRINGER. Several weeks. There is no instance where he played this more than once a day, is there?

Mr. GOLDSTEIN. With the exception of the theme song which was played more than once a day. But no interest record was played more than once a day.

Mr. SPRINGER. The impact of playing a Dick Clark interest D record 13 times on his show would be rather substantial, would it not?

Mr. GOLDSTEIN. I don't know just what the impact would be, I simply have these figures.

Mr. SPRINGER. Now, I understand that you are more or less a statistician, but you certainly would have a better idea now, after having done this entire survey, of what the impact of playing a Dick Clark record would be, would you not? Wouldn't you have an opinion somewhat qualified in this field?

Mr. GOLDSTEIN. I am afraid I would not. My own experience with attempting to determine impact was my conversations with Mr. Noonan, and I remain more confused now than I was at the time of that conversation. I don't know what the impact of Dick Clark is, but I do know that he is very respected in the music industry as an influential force. I have no way of putting parameters on this and measuring it. My knowledge of the music industry is too limited to afford me to make that kind of statement.

Mr. SPRINGER. The playing of Dick Clark's own records on such a show would certainly have some impact on sales, would it not?

Mr. GOLDSTEIN. As a layman's opinion, I would answer "Yes."

Mr. SPRINGER. Was this a 5-day-a-week program all of this time?

Mr. GOLDSTEIN. I don't know. As far as I know—I have the data here, but I just cannot recall.

Mr. SPRINGER. It would mean that if he played the tune twice a week, that tune would have been played, then, probably for about 6½ weeks using the 13-average measure, would it not?

Mr. GOLDSTEIN. Yes, sir.

Mr. SPRINGER. In other words, if this averages out, as I have indicated, he would have exposed it at least twice a week during the ordinary average life of a record on the Dick Clark show?

Mr. GOLDSTEIN. Yes, sir.

I would point out that you have a hooker in that analysis. The hooker is this: Mallard Pressing Corp. is an independent pressing plant operating in the Philadelphia market. As an independent pressing plant I think we can say by definition that it is concerned with hits primarily. It is attempting to meet retail demands in a local market by the pressing of hits and getting them into the hands of the public that is demanding them. Therefore, you have—any record that was pressed by Mallard we classified as an interest song, but the point I am trying to make is that you have a built-in bias going there, because Mallard's definition in the record community is such that it is primarily concerned with hits, and not duds, and hence you get this piling in the interest category of a disproportionate number of hits being so classified simply because they passed through the Mallard pressing plant.

Mr. SPRINGER. Now, Dick Clark was interested in the Mallard Pressing Co.?

Mr. GOLDSTEIN. I was informed of this by his attorney.

Mr. SPRINGER. What interest did he own in the Mallard Pressing Co.?

Mr. GOLDSTEIN. I am sorry, I don't know.

Mr. SPRINGER. Was it substantial?

Mr. GOLDSTEIN. I really don't know.

Mr. SPRINGER. That is all, Mr. Chairman.

Mr. MOSS. Mr. Bennett?

Mr. BENNETT. Mr. Goldstein, as I understand it, looking on the first page of your report, the conclusion that a layman, or one who is not skilled or expert in your field, would reach from the study that you conducted here, is that Clark played as many records produced by other people as he did of his own, in the same percentage area?

Let me read this statement and you tell me what it means:

Computech has found that, based upon popular as defined in Cashbox, and so forth, rating charts, the number of record performances in which there existed a possible emphasis—

now, is that possible interest in Clark's—

Mr. GOLDSTEIN. Yes, sir.

Mr. BENNETT. "Consistent with the number of record performances in which no such potential interest existed."

Does that mean in which he had no interest?

Mr. GOLDSTEIN. Yes.

Mr. BENNETT. In other words, this was a comparative study of the number of times records owned by him were played as against records in which he had no interest?

Mr. GOLDSTEIN. Yes; having brought in the independent variable of public popularity, which—

Mr. BENNETT. I would like to get this classified so that simple folks could understand what you are trying to do.

Does your study warrant any conclusion that by playing his own records, whether he played them once or he played them a hundred times, it was to Clark's financial benefit and profit?

Mr. GOLDSTEIN. The study does not concern itself at all with what Mr. Clark may or may not have gained financially at any time. We have not touched on this area at all.

Mr. BENNETT. The one plain and simple thing that you are trying to show is that actually, over a given period, he did not play his own records any more often than he played any other records; is that the sum and substance?

Mr. GOLDSTEIN. I am sorry if I appear obstinate, but I must assert this, when consideration of public popularity is introduced, because it is very germane, we have in boldface had figures stated in this report that, on the average he has played an interest song more than he has played, on the average, a noninterest song. That is a very firm statement here, and would not back up the statement you made.

However, when we bring in the independent variable of public popularity, the popularity score, and use this to measure the validity of the number of plays that a given record has received, we then can make—we can draw the conclusion that the analysis establishes that the playing of interest records was consistent with the popularity of these records based upon independent and authoritative popularity ratings.

Mr. BENNETT. But the study does not prove or disprove whether by playing a record once, whether by playing it twice, or whether

by playing it a dozen times on his program, a record owned by Clark, or by a firm in which he had a sole ownership or substantial ownership, did or did not make money as a result of that playing?

Mr. GOLDSTEIN. That is, the study does not concern itself with that.

Mr. BENNETT. It does not have anything to do with it?

Mr. GOLDSTEIN. Absolutely, sir.

Mr. MOSS. Mr. Derounian?

Mr. DEROUNIAN. No questions.

Mr. MOSS. Mr. Devine?

Mr. DEVINE. No questions.

Mr. MOSS. Mr. Rogers?

Mr. ROGERS. I have no questions.

Mr. MOSS. I have just a few additional questions.

You take the subcommittee print, on page 3, table 1, "Analysis of A-title Types," and you come up with a grouping of 11,233 titles, which means the number of titles available whether or not they actually existed on recordings; is that correct?

Mr. GOLDSTEIN. In the area of P-titles, that is correct.

Mr. MOSS. Now, of the 9,248 titles, under type D, distributor interest, are any of those duplicated under type Q, type P, or type R?

Mr. GOLDSTEIN. Yes, they are, sir, and if you turn to page—

Mr. MOSS. I am merely asking you.

Mr. GOLDSTEIN. Yes, sir.

Mr. MOSS. Now, if we show type A and break it down into two categories, one with a primary interest, a direct interest, and one with a secondary interest such as pressing and distributing, we might find that under type A, type M, and type P, the more profitable interests, the rate of play of interest records would climb amazingly, would it not?

Mr. GOLDSTEIN. I don't know.

Mr. MOSS. Now, you look at those figures and think about it for a minute. You are going to eliminate 10,596 titles?

Mr. GOLDSTEIN. Yes, sir.

Mr. MOSS. Would that not have a very significant effect, with the D interest only 1.3 percent, according to you, and the Q interest only 17 percent? If we just eliminated one or both, it would have a significant impact on increasing the percentage of play of interest type holdings, would it not?

Mr. GOLDSTEIN. Yes, sir; you certainly could take that part of the story out and have a different grand total.

Mr. MOSS. Would a man as a rule make more money as the proprietor of a copyright on a successful recording, or as the presser of the successful recording?

Mr. GOLDSTEIN. This is a question a little out of my field. I would assume that he would make more money as the proprietor of the recording.

Mr. MOSS. Do you think that would be a reasonable assumption?

Mr. GOLDSTEIN. Yes.

Mr. MOSS. Do you think he might make more as the manufacturer, the owner of the label, than he would in pressing it?

Mr. GOLDSTEIN. I think that is a reasonable assumption.

Mr. Moss. Do you think he might make more if he controlled the artist and had an arrangement with the artist than if he pressed the recording?

Mr. GOLDSTEIN. I don't know.

Mr. Moss. We are just going into the reasonableness.

Would you go along with me that it would be a reasonable assumption that he probably would make more?

Mr. GOLDSTEIN. Well, my knowledge of artist management is limited—

Mr. Moss. The knowledge of the average, well-informed person.

Mr. GOLDSTEIN. If the manager of an artist gets 10 percent of an artist's fees, I would assume that it would be more.

Mr. Moss. I agree with you.

Do you not think, then, that those categories are more significant from the standpoint of the interest of the owner than the pressing and distributing operation?

Mr. GOLDSTEIN. Well, certainly you are asking me questions in an area in which I simply have no information.

Mr. Moss. Mr. Goldstein, I do not want to be unfair to you.

Who laid out the standards, the criteria which would control in this study?

Was it under your direction?

Mr. GOLDSTEIN. Yes; I designed this study.

Mr. Moss. Then you have already made these determinations. I think it is appropriate, and fair and reasonable, therefore, that I ask you why. In view of your own admission, you did not break this down into a category which would more significantly contribute to an understanding by this subcommittee and give a more meaningful end product when the study was complete.

Mr. GOLDSTEIN. Gentlemen, we desired to present the data to you in a meaningful way. This was our very sincere desire. We desired to present it to our client in a meaningful way.

We did not break it down by interest type. However, at this stage of study this is not a big job. Two weeks ago we provided master cards, 1,885 of them, to your subcommittee. That is a 5- or 6-hour job to do—

Mr. Moss. That is very interesting, but it still does not answer my question that it would have been more meaningful if we had broken the category A down into two groupings.

Mr. GOLDSTEIN. There are, of course, many ways to design the study. There are many breaks, demographic, or any other way that you might want to break your data.

We had a time factor, we had a cost factor. We wanted to present you the whole picture. You are in a position, from the data we are presenting to you here now and the cards we have sold to this subcommittee, to further break down this data and see if it has a meaningful relationship at that level.

Mr. Moss. How many labels were distributed by Chips Distributing Corp.?

Mr. GOLDSTEIN. Labels?

I don't know.

Mr. Moss. Would not labels be more meaningful here than titles?

Mr. Clark's interest was in labels, when it got up to the retailing of the disks themselves through his distributor.

Mr. GOLDSTEIN. Our interest in measuring in this program was in titles. This is the measurement we had to use to evaluate this program in terms of interest, was in titles. This was our difficulty, in converting record numbers to titles, because we had—we started with station logs of what was played on a program. This is what everything had to be converted into to be meaningful.

Mr. Moss. You do not know how many labels he had?

Mr. GOLDSTEIN. The Chips Distributing Co.? No, sir.

Mr. Moss. Or how many of the Chips Distributing labels were owned in part or wholly by Mr. Clark?

Mr. GOLDSTEIN. Well, I can say that I was informed relative to record manufacturing concerns, which I consider as labels, that Mr. Clark had interest in a hundred records, Swan records and Jamie records. And this is presented on page 6 of our report. I do not know of any other interest in record companies.

Mr. Moss. We have the Hunt Record Co. and the Jamie Record Co., and I think Kincord—Swan had records—

Mr. GOLDSTEIN. Hunt and Globe were synonymous in the study.

Mr. Moss. It is such an interesting list of 31 companies that it is difficult to get them all labeled here.

I realize that you have difficulty. But you do not know how many labels were distributed?

Mr. GOLDSTEIN. From my information, these three labels were labels in which Mr. Clark had some sort of interest.

Mr. Moss. On page 1 of the printed report, your conclusion, a very brief conclusion, says:

In brief, this analysis establishes that the playing of interest records was consistent with the popularity of these records based upon independent and authoritative popularity ratings.

Mr. GOLDSTEIN. Yes, sir.

Mr. Moss. Now, we have established some errors in table 1 on page 3, the so-called Clark factor has been disavowed by its source. The Cashbox ratings, as I pointed out earlier today, appear to be rigged, because we have had numerous diskjockeys indicate that that was the fact.

Do you feel now that the material that you have so carefully developed fully and beyond question supports the conclusion contained in your study?

Mr. GOLDSTEIN. I do, sir, for the following reasons:

The Clark factor, if we will accept for the moment—

Mr. Moss. If we what?

Mr. GOLDSTEIN. If we view the Clark factor, the 2.3 percent, it has no bearing on the conclusion. This is simply the subsidiary factor—

Mr. Moss. Why did you give it to us?

Mr. GOLDSTEIN. Because this was interesting, I thought, relative to the—

Mr. Moss. Interesting but not relevant, and yet you presented it before this subcommittee as part of your charts supporting the conclusion of your study.

Mr. GOLDSTEIN. That chart has nothing to do with the conclusions of my study—

Mr. MOSS. Does this one?

Mr. GOLDSTEIN. This chart has nothing to do with the conclusions either.

Mr. MOSS. Do any of the charts have anything to do with the conclusions of your studies?

Mr. GOLDSTEIN. Yes.

Mr. MOSS. Which ones?

Mr. GOLDSTEIN. I will show you right now.

You criticize table 1. Some of your criticism is valid. Table 1 has nothing to do with the conclusions of this study.

Mr. MOSS. What are the relevant exhibits in the report filed with us and in the material you have supplied us which are relevant to the study and therefore to the conclusions?

Mr. GOLDSTEIN. Table 3, page 10, which is table 4 in the calculations on the bottom of that table, the Clark factor has the 2.3 percent.

The statement by Mr. Noonan, this has nothing to do with the conclusions of this study. Table 1 has nothing to do with the conclusions of the study.

The conclusions of this study relate to these very two charts you see before you here. The other information was brought in as interesting, we thought it pertinent to the overall issue under discussion before this subcommittee, and certainly of interest to our client, for whom the record was prepared initially.

This report was prepared for our client, and not directly for this subcommittee.

Mr. MOSS. Now, let me understand, does table 3 have anything to do with the study?

Mr. GOLDSTEIN. Very definitely.

Mr. MOSS. How could table 3 have anything to do very definitely with the study when it is but a summary of much of what is in table 1, which is completely unrelated to this study, according to your testimony?

Mr. GOLDSTEIN. It is not a summary of table 1.

Mr. MOSS. It is not a summary of any of the material in table 1?

Mr. GOLDSTEIN. No.

Mr. MOSS. B titles for sale, A titles for sale—we have got different A titles and different B titles in table 3 than we do in table 1?

Mr. GOLDSTEIN. In a sense you do, sir, because in table 1 you are considering A titles which were never played on the "Bandstand" show, you are comparing numbers of those that were played to those that were never played.

On table 3 you are only concerned with A titles as they were played on the "Bandstand" show. Here we are talking about our universe again.

Mr. MOSS. You have the number of titles, and then the titles played, and percent of titles played; is that correct?

Mr. GOLDSTEIN. I am sorry—

Mr. MOSS. One, number of titles, that is the first column; titles played is second, and percent of titles played is the third.

Mr. GOLDSTEIN. Yes.

Mr. Moss. You say it is based on part of the first table. I thought it was revised.

Mr. LISHMAN. The first column was all wrong, and the last column was all wrong.

Mr. Moss. The first column was all wrong and the last column was all wrong.

Is this related to your study [referring to chart]?

Mr. GOLDSTEIN. Very definitely.

Mr. Moss. It is related to your conclusions?

Mr. GOLDSTEIN. Yes, sir.

Mr. Moss. Well, you have included the Cashbox popularity. Would you include that in the future study?

Mr. GOLDSTEIN. You will see that—yes, we have included the Cashbox. You have informed me in the early part of this discussion that you have very little confidence in this as a measurement. So did we. This is why we have also shown the Billboard.

Mr. Moss. It is included there?

Mr. GOLDSTEIN. Yes, it is included there.

Mr. Moss. And in the Billboard do you have this Clark factor?

Mr. GOLDSTEIN. That has no relationship to the popularity score as calculated from Billboard ratings. That simply reflects upon which came first, the chicken or the egg type of question, which may evolve. It has nothing to do with the conclusions of this study.

Mr. Moss. And for the B you would still include the playing on 1,300 occasions of the title song?

Mr. GOLDSTEIN. Yes, I have included it in accordance with the directions of my study.

Mr. Moss. Directions from whom?

Mr. GOLDSTEIN. From our client, Mr. Clark, to analyze—

Mr. Moss. Mr. Clark directed you to, and therefore you again included it?

Mr. GOLDSTEIN. He directed us to include all titles played on the program for this time period.

I might point out that the 27.0 that you see there, if you exclude in total "Bandstand Boogie," the theme songs, it would be raised to 29.4.

Mr. Moss. That is a significant rise. And you would still enrich A by including all of the undetermined number of titles which may have been distributed but for which no support can be found?

Mr. GOLDSTEIN. That is a total I am not considering in this section of the study.

Mr. Moss. It is considered in no way?

Mr. GOLDSTEIN. What could have been played was not considered in a section of the study where we examined, in total, what was played.

Mr. Moss. It is not related in any way to what was available?

Mr. GOLDSTEIN. Correct.

Mr. Moss. Now you have me really confused.

I think with that happy note I will stop.

Does anyone else have any questions?

If not, Mr. Goldstein, you are excused.

Mr. GOLDSTEIN. Thank you.

The CHAIRMAN. Is Dr. Daly in the room?

Are you Dr. Daly?

Mr. DALY. Yes, sir; I am.

The CHAIRMAN. Dr. Daly, would it be too inconvenient for you to return in the morning?

Mr. DALY. Not at all, sir.

The CHAIRMAN. The subcommittee is going to have to adjourn now, it is 4:30. And if you will return in the morning at 10 o'clock, we will appreciate it.

Mr. DALY. Thank you, sir.

The CHAIRMAN. The subcommittee will adjourn until 10 o'clock tomorrow morning.

(Whereupon, at 4:30 p.m., the subcommittee adjourned, to reconvene at 10 a.m., Wednesday, April 27, 1960.)

RESPONSIBILITIES OF BROADCASTING LICENSEES AND STATION PERSONNEL

WEDNESDAY, APRIL 27, 1960

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

The special subcommittee met, pursuant to recess, at 10:45 a.m., in the caucus room, Old House Office Building, Hon. Oren Harris (chairman of the special subcommittee) presiding.

Present: Representatives Harris (presiding), Mack, Bennett, Moss, Springer, and Derounian.

Also present: Robert W. Lishman, chief counsel; Beverly M. Coleman, principal attorney; James P. Kelly, investigator; Herman Clay Beasley, chief clerk, and Jack Marshall Stark, minority counsel.

The CHAIRMAN. The subcommittee will come to order.
Dr. Joseph F. Daly.

TESTIMONY OF DR. JOSEPH F. DALY, CHIEF MATHEMATICAL STATISTICIAN, U.S. BUREAU OF THE CENSUS

The CHAIRMAN. Will you stand and be sworn?

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

Dr. DALY. I do.

The CHAIRMAN. You are Dr. Joseph F. Daly?

Dr. DALY. Yes, I am.

The CHAIRMAN. What is your address or residence, Dr. Daly?

Dr. DALY. I live at 6217 85th Place, in Hyattsville.

The CHAIRMAN. What is your business or occupation?

Dr. DALY. I am chief mathematical statistician at the U.S. Bureau of the Census.

The CHAIRMAN. You are assigned here in Washington, are you not?

Dr. DALY. Yes, I am.

The CHAIRMAN. Do you have a statement that you would like to present, Dr. Daly?

Dr. DALY. Yes. I think I could save the time of the subcommittee by reading parts of this statement which I have prepared at the request of Mr. Oliver Eastland of the staff of the Special Subcommittee on Legislative Oversight.

I was asked by him to evaluate the statistical relevancy of a document which I will refer to as the Computech report that was discussed here yesterday.

In this connection I think I should say that I have the degree of Ph. D. in statistics which I received from Princeton in 1939; that I am a fellow of the Institute of Mathematical Statistics, and a fellow of American Statistical Association.

I studied the document in the form of the subcommittee print "Analysis of Record Plays" on the ABC network "American Bandstand" show, and on the basis of my analysis of this report, I conclude that the principal conclusion of the report is not supported by the summary that is presented in table 3.

I believe it was established yesterday that if any part of this report, "Analysis of Record Plays," is relevant to the problem here it has to be table 3.

I would like to show, by an example, that the results of table 3 are completely insensitive to any differential treatment of A and B types, so that this table 3 could not possibly support the principal conclusion of the Computech study, namely, that if a consistence of averages between A titles and B titles resulted, the statement could be made that within the bounds of programing format the public taste was being served without consideration of possible interests.

This is a pretty strong statement, the statement that table 3 leads you to believe that the public taste was being served without consideration of possible interests. What I would like to show by this example is that if the timing of the various record plays had been selected in such a way as to favor A titles over B titles, we still could have come out with exactly the result that is presented in table 3.

I won't try to bore you with the details of the example. The main idea back of it is this, that if during the course of a record's popularity it rises for a while on the Billboard standings, and then for a while goes down, you can get the same average points per play by playing it on the way up as you can by playing it on the way down.

So let us suppose—and I would like to make it very clear that I am not asserting that this happened, I am only giving a hypothetical example to show that this table 3 can't support the conclusion—let us suppose that we had one A title that did not appear on the Billboard list the first week, but the program played it twice. It didn't appear on the Billboard list the second week, and it was played, let's say, three times. By the third week it had gotten up to No. 81 and was played three times. By the fourth week it had gotten up to No. 51. But the fifth week it had gotten slightly over the hill and was down, say to 56. If you use Computech's methods of assigning points, this would give that particular title a score of 345 points in 14 plays.

We could also take a couple of more A titles which never had the good fortune of making the top 100 on Billboard, let's say, and play those 14 times over a 5-week period. As a result of this sort of thing, playing this A title before it had gotten popular and stopping the play of it as soon as it had passed its peak, we would have gotten a result of 14 plays on this record and 28 more on the other 2, which would give you 42 plays, 2 title, 345 points.

Table 3 shows that he had 299, about 300 titles, 4,230 plays, instead of my 42, and 34,574 points instead of my 345. So that this A title

which was played on the way up, along with 2 other ones which never made the top 100, could have given a result which bears the same general relationship as the figures in table 3.

You could do the same thing with B titles. But this time you play B titles only after they have reached their peak in popularity, when you are forced, let us say, by request to play them. And you never play them on the way up. And you can still, by picking out these titles properly, come up with a result that looks exactly like table 3, which then ends up by saying that we could, as they say, find that the A titles, 299 A titles, had 27 percent of the total plays and 24 percent of the Billboard points, the B titles had 73 percent of the plays and 76 percent of the Billboard points, but you could not conclude from this that the timing, the selection, the general choice of plays had no relation to possible points. The matter is completely irrelevant to the question of possible interest.

I would like to make this very clear that I am not saying that this sort of thing actually occurred, I am not saying that he never played A titles after they had passed their peak or never played B titles before they have passed their peak. All I am saying is that if this had happened, and if it had happened consistently, we still would have gotten exactly the same picture as appears in table 3.

So here is a case where, although Mr. Goldstein indicated that he was not practicing statistics, he was only doing data processing, he really did try to draw a conclusion from this data. And when he drew this conclusion, it never occurred to him to look to see whether he couldn't have gotten the same result if his hypotheses of no interests was not true.

I would like to adjust one remark, then, that I am sure that the subcommittee knows well, that when you draw conclusions from numbers, you are practicing statistics. I think the subcommittee realizes that this is a tricky business.

But I would like to say that there are statisticians who are trained to see that the conclusions they draw are really supported by the data, and that this business of statistics is something that really should be left to people who are professionally trained in the art.

This completes my presentation.

The CHAIRMAN. Mr. Lishman.

Mr. LISHMAN. Mr. Chairman, I have no questions, but I think it would be a good idea, if the prepared statement of Dr. Daly were included in the record, in addition to the remarks he has made, centered around the paper.

The CHAIRMAN. Yes, your entire statement, which you have given a brief description of, may be included in the record.

(The prepared statement of Dr. Daly follows:)

STATEMENT OF DR. JOSEPH F. DALY. EVALUATING THE EXHIBIT "ANALYSIS OF RECORD PLAYS FURNISHED TO THE HOUSE SUBCOMMITTEE ON LEGISLATIVE OVERSIGHT ON THE ABC NETWORK 'AMERICAN BANDSTAND' SHOW"

Mr. Oliver Eastland, a member of the staff of the Special Subcommittee on Legislative Oversight of the House Committee on Interstate and Foreign Commerce, transmitted to me the subcommittee's request that I evaluate the statistical relevance of a document entitled "An Analysis of Record Plays on the ABC Network 'American Bandstand' Show for the Period August 5, 1957, Through November 30, 1959," prepared by Computech, Inc., and furnished to the sub-

committee on March 8, 1960, by Charles B. Seton, attorney for Richard W. Clark.

The following facts may be of interest in establishing my competence to evaluate such a statistical study:

(1) I received my Ph. D. degree in mathematical statistics from Princeton University in 1939.

(2) I hold the title of fellow of the institute of mathematical statistics and the title of fellow of the American Statistical Association.

(3) I am classified by the Civil Service Commission as Chief Mathematical Statistician (GN-15) on the staff of the Assistant Director for Statistical Standards of the U.S. Bureau of the Census.

Having examined the subject document (hereinafter referred to as the Computech report), it is my professional opinion that the method of analysis used by Computech does *not* support its principal conclusion. This conclusion, expressed in the last paragraph of page 2 of the subcommittee print of the Computech report, reads (*italics mine*): "If a consistency of averages between A titles [*those in which Clark appeared to have some financial interest*] and B titles [*those in which, on the basis of Computech's information, Clark had no financial interest*] resulted, the statement could [*presumably validly*] be made that within the bounds of programing format the public taste was being served *without consideration of 'possible interest.'*" Leaving aside the question of whether A and B titles were properly classified by Computech, the fact is that the analysis, summarized in table III of the Computech report, is extremely insensitive to differential treatment of A and B titles.

In compiling table III of the report, Computech indicates that a "popularity" point score was assigned to each play of a title, the score depending on the standing of the title in the Billboard and Cashbox lists of the top hundred for the week in which the play occurred. Thus, for example, Billboard's No. 1 tune of the week would have a Billboard score of 100, No. 11 a score of 90, and so on, with No. 100 getting a score of 1. It is my understanding that titles not on the list at the time they were played were given a score of zero.

Table III then shows that 299 group A titles were given a total of 4,230 plays and accounted for 34,574 Billboard points (27 percent of the total plays and 24 percent of the Billboard points), and that 1,586 group B titles were given a total of 11,432 plays and accounted for 106,696 Billboard points (73 percent of the plays and 76 percent of the Billboard points). From this result, and a corresponding result for Cashbox points, the report draws its principal conclusion quoted above.

Without any necessary implication that the following practice actually occurred, let us suppose that the program had a uniform policy of attempting to play A titles before they reached their peak of popularity, with a view to furthering their sale, and had a policy of not playing B titles until they had passed their popularity peak. More specifically, let us postulate one A title with the following history:

"A" title history

	Week 1	Week 2	Week 3	Week 4	Week 5	Total
Billboard standing.....			81	51	56	-----
Point value.....	0	0	20	50	45	-----
Number of plays.....	2	3	3	3	3	14
Total points.....	0	0	60	150	135	345

Suppose further that two other A titles were each given 14 plays in some 5-week period, but never appeared among the top 100 during these weeks. We would then have, for A titles, the following results, as compared with table III:

	Example	Table III
Number of titles.....	3	299
Number of plays.....	42	4,230
Billboard points.....	345	34,574

Now let us imagine three B titles with the following histories:

"B" title history

	B-1			B-2			B-3			Total
	Week 1	Week 2	Week 3	Week 1	Week 2	Week 3	Week 1	Week 2	Week 3	
Billboard standing.....	51	61	81	56	66	76	21	61	81	-----
Point value.....	50	40	20	45	35	25	80	40	20	-----
Number of plays.....	3	3	3	3	3	3	3	3	3	27
Total points.....	150	120	60	135	105	75	240	120	60	1,065

Let us further imagine 13 other B titles, none of which was on the list of the top hundred for the 3 weeks covered by our example, and each of which were played about twice a week for these 3 weeks for a total of 87 plays and zero points. For B titles we would then have, as compared to table III:

	Example	Table III
Number of titles.....	16	1,586
Number of plays.....	114	11,432
Billboard points.....	1,065	106,696

It is now easy to see that Computech's table III could have resulted if this process were repeated 100 times with relatively minor variations. Thus, the summary figures presented in the Computech report could conceal the grossest sort of differential treatment of A and B group titles.

This example is not intended to imply that such differential treatment did in fact occur. As can readily be seen by renumbering weeks in the example above, the actual situation could even have been exactly the reverse. The sole purpose of the example is to show that Computech's analysis is not relevant to the conclusion that no "possible interest" could have been involved in the programing of plays.

The CHAIRMAN. I wonder if I might, in my own mind, describe what you have said, Doctor. The Computech presentation which was made here yesterday, to show how these records classified as A and B on the chart were actually played, is something that is truly a mathematical statistical presentation. From your own analysis of it, it is not necessarily a true picture of the situation; is that your conclusion?

Dr. DALY. It certainly does not support the conclusion that they drew from it.

The CHAIRMAN. I thought that was the idea.

Mr. SPRINGER. Doctor, were you here yesterday?

Dr. DALY. I was here for part of yesterday, sir.

Mr. SPRINGER. Did you see the chart which showed, according to Billboard, the impact that the "Dick Clark Show" had with reference to the titles that would be played?

Dr. DALY. No, I did not.

Mr. SPRINGER. It showed there, according to Billboard, the maximum impact would have been 3.5 percent.

Dr. DALY. No; my study of this just had to do with the content of the reports, and I did not follow that part of the discussion, sir.

Mr. SPRINGER. Was it your belief from having examined the report that the report did not truly attempt to determine the sequence in which the records were played at that particular time?

Dr. DALY. There is nothing in the report that bears at all on the sequence in which records are played; they simply made a summary analysis which would have given the same result no matter what sequence the records were played in.

Mr. SPRINGER. That was my point yesterday. What I was trying to find out yesterday was whether or not, if you played a record as you indicated, at a certain point, you could get more results in the way of sales and in popularity and rating than if you played the tune at another time. Is that what you are trying to bring out?

Dr. DALY. That is what I was bringing out, that this method of analysis will not reveal that sort of behavior at all. It would be completely insensitive to the order in which the tunes were played.

Mr. SPRINGER. I believe I can make the statement that it is common knowledge among those who know anything about the record field that a great deal of the success of a record depends upon when it is played; isn't that true; that is, when you pick the record up and push it?

Dr. DALY. I have no particular competence in that field, but I couldn't disagree with the statement.

Mr. SPRINGER. There was one further thing which was not revealed yesterday that I think would have been significant. I don't know how it could have been done, there was nothing revealed as to the financial gain that resulted to Dick Clark in 2 years and 4 months as a result of these 15,000 exposures. That is certainly significant in the whole picture of payola, don't you think?

Dr. DALY. I would rather not comment on that, sir. My only study of this had to do with the relevance of their conclusion, and I don't pretend to know anything about the record business.

Mr. SPRINGER. There is certainly nothing in the report to show the effect of his financial interest, is there?

Dr. DALY. No, sir; there is not.

Mr. SPRINGER. Thank you.

I think you have made a very good statement, Doctor.

The CHAIRMAN. Mr. Moss.

Mr. Moss. Doctor, I want to compliment you on your statement because I think it deserves compliments. I think it agrees with the statement I made yesterday. That is very flattering to me because you are far more competent in this field than I am.

You say the study does not support the conclusion. What type of study might be designed which could reasonably be expected to support the conclusion contained in this report?

Dr. DALY. I think it would be presumptuous of me to try to give an answer to that without putting considerable time to it.

Mr. Moss. I do, too, but I would like to see if you, from your very great background, could advise us as to some of the criteria which would have to be used, the standards which would guide, to even reasonably approach a conclusion such as that contained in this report—to, I should say, reasonably support, or remotely support it.

Dr. DALY. Let me say something which may sound for a moment like a digression, but isn't.

The business of statistics is an attempt to apply a certain bag of tools to solving problems where you have incomplete and inconsistent information. You try to state this problem in such a way that if the

conclusion you are trying to support were true, you would get one result, and if it were false in any one of a number of different ways, you would get a different result.

Now, sometimes—and a good statistician learns this early—he has to admit that there is nothing in his particular bag of tools that will enable him to distinguish between whether this is true or false, and the good statisticians learn to say, “We don’t know” pretty early in the game.

I think there could be some analysis which could be made which would bring out the existence of certain types of interest in the choice of timing of these plays. Without actually trying the analysis you couldn’t tell whether it was going to give a meaningful result or not, you have to think of all the possible ways that interest could have been applied and set up a criterion that would be sensitive to this. Presumably the difference between the standings on successive weeks would throw some light on the problem.

Mr. Moss. Would that even be significant in view of the fact that it would appear—again getting into a field of statistics which you can cite to support a conclusion—it would appear that the number of plays themselves have a very definite impact upon the ratings which would then become the basis for determining whether or not the play was in response to a public interest?

Are we not sort of in a ring-around-the-rosy proposition here in trying to determine which figure we should grab first and where we should stick it in order to start?

Dr. DALY. You are certainly in a situation where a logical person would try to design an experiment which would actually measure the effect of this on plays.

I am a little surprised that the people who are in this business haven’t done more work on determining just what the effect of exposure is. But as I say, I am not an expert in that field, and I never have any desire of getting into it.

Mr. Moss. Would you agree, though, that basic to the employment of a rating system in a computation of the type attempted here, that you would first have to carefully weigh and evaluate the rating system?

Dr. DALY. In order to draw a valid conclusion from it that there was no possible interest attached to the playing of the records, you would have to evaluate this; in order to come to the conclusion that the analysis is not relevant, you don’t have to do this.

Mr. Moss. Would it also be necessary to get some starting point to perhaps evaluate the impact of Mr. Clark’s program, the playing of recordings on his programs, would have on the ratings systems? The play boosts sales across the Nation, the total impact of the play, would that not have to be considered?

Dr. DALY. In order to reach this conclusion, it would.

Mr. Moss. It would have to be?

Dr. DALY. Of course, it surprises me that it hasn’t been studied in some more scientific fashion anyway, just from a point of self-interest.

Mr. Moss. Is it not possible to, if you are not too weighted down with the conscience of need for a scientific approach, to put together statistics which would appear to support almost any conclusion?

Dr. DALY. I think there are two ways this can happen, sir.

If you are cautious and have a lot of experience in this business, you may be pretty certain that there are no loopholes in your study when you draw the conclusions.

You can, and I guess there but for the grace of God go I and other people, you can get pressured into these things sometimes, and come up with a sort of half-completed analysis, and then be forced to make some sort of written presentation of it that really isn't solid.

I, for one, would not draw the conclusion that there was any deliberate attempt to mislead here.

Mr. Moss. Oh, I would not either. But then, if you have a deadline you must meet, to satisfy a client, you can put together a fairly attractive package as long as it is not probed too deeply by those examining it. It might appear to support almost any conclusion.

Dr. DALY. Certainly by not looking you can always make the statement that we find nothing to contradict this hypotheses—all you have to do is not look, and you can always make the statement, my results are consistent with this.

Mr. Moss. And you can bring a number of unrelated computations into your study to illustrate various points, but not to support the final conclusion, and this tends to make it appear even more detailed and complete?

Dr. DALY. I think in all fairness, it might be said that this looks like they were groping toward something, didn't quite find it, and then had to come up with a final, formal presentation.

Mr. Moss. I am not questioning your good faith. I am calling attention to the fact that when you start dealing with numbers and statistics, you are in a field where there are more tricks than the gymnast ever thought existed, and they do not have to be in bad faith.

Dr. DALY. That is right. But you do have a professional responsibility to try to find these loopholes yourself instead of expecting the customer or someone else to find them.

Mr. Moss. You have to do a lot of testing and probing, and sometimes it involves a long period of time before you can develop anything reliable?

Dr. DALY. That is correct.

Mr. Moss. Thank you.

The CHAIRMAN. Mr. Derounian.

Mr. DEROUNIAN. No questions.

The CHAIRMAN. Mr. Lishman, do you have any further questions?

Mr. LISHMAN. Dr. Daly, if a statistical method could not be devised which would show that repeated plays over a short time of a record, on the air, would be reflected in figures dealing with the sales of records, the mechanical royalties derived from the records, and the performance rate payments derived from the records, wouldn't that be a meaningful statistic basis from which you could draw the conclusion that where a person has all these sources of income available to him from sales, mechanical royalties, performance rights payments, that he can enhance that income? Not just by playing the record once or twice over a short period of time, but by incessant playing of the record over a comparatively short period of time? Wouldn't it be possible to devise some statistical analysis that could provide the basis for such a conclusion?

Dr. DALY. I am sure that every market research firm tries to do exactly this in assessing the effect of advertising campaigns. How successful they are I don't know, because I haven't been in this field, but it is certainly open to experimentation and something that could be measured.

Mr. LISIMAN. Dr. Daly, don't you believe that the Computech people must have known that what we were interested in was simply: Did Dick Clark derive income by preferential exposure of records in which he had a financial interest?

Now, knowing that, don't you think that they could have addressed their studies to bringing out that fact rather than what was presented here?

Dr. DALY. Mr. Lishman, I can't pass judgment on what was in their minds.

I do honestly believe that if they had behaved like a lot of statisticians I know, they would have addressed themselves to that problem rather than to the one that they did.

Mr. LISIMAN. What problem did they address themselves to?

It has been difficult for me to find out what problem this Computech analysis was addressed to, that is relevant to our legislative investigation. What do you conceive to be the problem that the Computech analysis addressed itself to?

Dr. DALY. I have an idea that what really happened is that they got presented with 15,000 cards, and they got so concerned with the details of processing this that they really forgot what the main object was. I am not trying to be difficult, but I do think this sometimes happens to you when you get a big mass of data.

Mr. LISIMAN. I have no further questions.

Mr. Moss. I have one I would like to ask.

I note that this organization has some contracts with the Government.

Do you suppose they used the same approach in coming up with answers that might contribute to some of the confusion we have as to the precise spot where the Government is at this moment, with respect to some of its important endeavors?

Dr. DALY. Again I am not trying to be difficult, but I don't think I would have any hesitation in asking Computech to work a mathematical problem for me where I give them the precise specifications and all I was asking them to do was make the computations in accordance with my precise instructions. I don't think I would ask them to plan a job for me.

Mr. Moss. Thank you.

The CHAIRMAN. Doctor, thank you very much for your statement here today.

Mr. Morton Raff.

**TESTIMONY OF MORTON RAFF, MATHEMATICAL STATISTICIAN,
U.S. BUREAU OF LABOR STATISTICS**

The CHAIRMAN. Will you be sworn, please, sir?

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

Mr. RAFF. I do.

The CHAIRMAN. State your name for the record.

Mr. RAFF. Morton S. Raff.

The CHAIRMAN. What is your address or residence?

Mr. RAFF. 708 Boundary Avenue, Silver Spring, Md.

The CHAIRMAN. May I inquire, do you have a doctorate degree?

Mr. RAFF. No.

The CHAIRMAN. Mr. Raff, what is your business or profession?

Mr. RAFF. I am a mathematical statistician in the U.S. Bureau of Labor Statistics.

The CHAIRMAN. How long have you been engaged in this work?

Mr. RAFF. I have had this job for 5 years.

The CHAIRMAN. What is your background and education and other experience?

Mr. RAFF. I have a master's degree of arts, degree in statistics from the American University. I have been a visiting lecturer in statistics at the Johns Hopkins University from 1956 through 1959. My professional biography is given in American Men of Science.

The CHAIRMAN. Do you have a statement, Mr. Raff?

Mr. RAFF. A written statement which I submitted to Mr. Lishman and which I can read now if you like.

The CHAIRMAN. You may proceed.

Mr. RAFF. At the request of the subcommittee staff, I have made a statistical review of the Computech report analyzing the record selections played on the "American Bandstand" show. My objective has been to examine the validity of the statistical evidence presented in the report, in order to see what light is shed on the question of whether or not preferential treatment was given to the playing of titles in which Dick Clark had a financial interest.

My qualifications for such a review are as follows: Since 1955 I have been the mathematical statistician in the Office of Statistical Standards of the Bureau of Labor Statistics, U.S. Department of Labor. From 1956-59 I was a visiting lecturer in statistics at the Johns Hopkins University. I am a member of the American Statistical Association and have published technical articles in their journal (March 1951, June 1956). I have an M.A. degree in statistics from the American University (1955). My professional biography is included in American Men of Science.

The Computech report, in my judgment, does not offer any real evidence one way or the other on the point at issue. The data presented could be consistent either with strongly preferential treatment of Dick Clark's own records or with objective treatment. The evidence given does not support the stated conclusion that there was no preferential treatment.

The chain of reasoning which appears to underlie the report's conclusions contains one link having such a serious flaw as to invalidate any conclusion which might be drawn. The chain of reasoning is as follows:

- (1) All titles played on the show are classified into two groups according to whether or not Dick Clark had a financial interest in them.
- (2) A suitable way to judge whether there was preferential treatment is by comparing the frequencies with which the two classes of titles were played on this show with the frequencies that would have been expected on a completely disinterested show.

(3) The latter frequencies can be estimated by a suitable use of the popularity ratings published in two weekly trade journals.

(4) An appropriate measure of such frequencies is the reverse-order rank of each title in the list of 100 most popular titles, so that the most popular title is scored 100 and the least popular is scored 1.

(5) The presence or absence of preferential treatment is judged by comparing the percent of A titles in the total number of plays with the percent of A score points in the total number of score points.

This is equivalent to comparing the average score per play for the A titles with the average score per play for the B titles.

In terms of the latter comparison, the principal numerical finding of the report is that the average score per play among the A titles is 72,115 divided by 4,230 equals 17.0, while the average score per play among the B titles is 229,329 divided by 11,432 equals 20.1.

Thus the A titles played on the show were slightly less popular than the B titles played, by the authors' method of scoring, but the difference is probably too small to warrant any conclusion one way or the other.

The weak link in the chain is the method of scoring (link No. 4). There is no reason to believe that the reverse-order ranks are anywhere near proportional to the frequency of plays by other disk-jockeys, or to the volume of record sales, or to the frequency of plays in a representative selection of jukeboxes.

It seems quite unlikely that the leading title on the list (scored 100) is played only twice as often as a title halfway down the list (scored 50), unless the authors have some evidence to back up this assumption. The report contains none, and I doubt very much that any exists.

It is not possible to draw meaningful conclusions from any comparisons involving total or average scores when the method of scoring popularity is so inappropriate. Since the only data offered in support of the report's conclusions are of exactly this kind, I do not believe that the report has any value as evidence on the question at issue.

The CHAIRMAN. Does that conclude your statement?

Mr. RAFF. Yes, sir; it does.

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

Mr. LISHMAN. I have no questions.

The CHAIRMAN. Mr. Springer?

Mr. SPRINGER. No questions.

The CHAIRMAN. Mr. Derounian?

Mr. DEROUNIAN. No questions.

The CHAIRMAN. Mr. Moss?

Mr. MOSS. No questions.

The CHAIRMAN. Thank you very much for your presentation, Mr. Raff.

Mr. Joseph Tryon.

TESTIMONY OF JOSEPH L. TRYON, TEACHER OF ECONOMICS AND STATISTICS, GEORGETOWN UNIVERSITY

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

Mr. TRYON. I do, sir.

The CHAIRMAN. State your name for the record.

Mr. TRYON. Joseph Tryon.

The CHAIRMAN. What is your address at present, Mr. Tryon?

Mr. TRYON. 1528 North 17th Street, Arlington, Va.

The CHAIRMAN. What is your business or profession?

Mr. TRYON. I am a teacher of economics and statistics at Georgetown University.

The CHAIRMAN. How long have you held that position?

Mr. TRYON. This is my second year full time there at Georgetown.

The CHAIRMAN. What previous experience have you had?

Mr. TRYON. I was teaching assistant at Harvard University in the graduate statistics course. That was for 2 years, in 1952 and 1953.

The CHAIRMAN. Do you have a statement you would like to present?

Mr. TRYON. Yes, I do.

The CHAIRMAN. You may proceed with your statement.

Mr. TRYON. My name is Joseph Tryon. I teach economics and statistics at Georgetown University. I am a member of the American Economic Association, the American Statistical Association, and the Economic Society. I was trained in statistics at the University of Minnesota and at Harvard University.

The subcommittee staff has retained me to give a disinterested opinion on the value of the analysis performed by Computech of the record plays of Mr. Clark. This study is the one submitted on Mr. Clark's behalf by his attorney, Mr. Seton. I was also asked to advise and assist the staff on certain statistical procedures used in their own analysis of the data on which the Computech analysis was based.

My comments on the value of the Computech analysis are as follows:

1. The conclusion of the analysis submitted on behalf of Mr. Clark was as follows:

In brief, this analysis establishes that the playing of interest records was consistent with the popularity of these records based upon independent and authoritative popularity ratings.

An examination of the data presented shows, however, that other conclusions are also consistent with the data. Unfortunately, the relationship between popularity and number of record plays is very much a chicken-and-egg proposition: Which causes which? For the sake of argument, let us hypothesize that popularity is dependent on the number of plays rather than the reverse.

If this hypothesis were true, we would expect any records which were played frequently to have high popularity ratings. The records with "possible interest" to Mr. Clark were played more frequently, and, according to the hypothesis, should have had higher popularity ratings.

Thus, if frequency of playing was determined by "possible interest" (instead of popularity), we would expect that titles with "possible interest" would have higher popularity ratings. This is exactly what the data shows.

I do not draw the conclusion that Mr. Clark played the records with "possible interest" more frequently in order to increase their popularity. However, on the basis of the data presented in the analysis, this conclusion is as valid as the one presented by Mr. Goldstein.

There is clearly no way to discriminate between the hypothesis suggested here and the conclusion presented in the analysis. Possibly the original authors of the analysis were aware of this fact, for their conclusions were stated simply as being "consistent" with the data. No effort was made, however, to show that an alternative hypothesis such as the one suggested above was inconsistent with the data.

2. There are some characteristics of the analysis which prevent any discrimination between various hypotheses about the influence or lack of influence of "possible interest" on the number of times Mr. Clark played records. First is the use of simple averages for the A and B groups. An average tells nothing about the variability of treatment of individual records.

An average may be the same where equal playing has been given all records within a group or where some have been heavily played and others seldom played. The use of averages may thus effectively cover up favoritism shown to some records in the A group.

The data presented does not permit this to be determined, but tables I and II show clearly that Mr. Clark's possible interest was not equal for all records in the A group. Presumably he had considerably less possible interest in records in which his only interest was through the Chips Distributing Co. (59 records) than in those in which his interest existed through both pressing plant and artist management (5 records).

Table II suggests that there is the possibility that a good share of the 299 titles analyzed in group A may have had a relatively low possible interest for Mr. Clark. Lacking a full tabular distribution of plays and degree of interest, it is impossible to draw any sound inferences about whether or not possible interest influenced plays per record.

3. A second characteristic of the analysis which prevents reaching any clear conclusion is that no criterion is presented as to how the number of plays ought to be related to the popularity rating. Should the number of plays be exactly proportional to the popularity rating?

I infer that the criterion used was one of strict proportionality. The dubiousness of this criterion is demonstrated by asking, should a record which ranks 50th be played twice as often as that which ranks 100th? Or that which ranks first be played 100 times more often than the one which ranks 100th?

The analysis offers no guide on this question. The data indicates that on the average, A titles had a mean popularity score of 241 as against 144 for B titles, i.e., A titles had an average rating 67 percent higher than B titles. Should the A titles therefore be played on the average 67 percent more often?

No criterion is provided, but in fact the A titles were actually played 14.1 times per title while B titles were played 7.2 times, or A titles 96 percent more often than B titles.

What these figures really mean I cannot say, because the precise significance of the popularity rating is not at all clear. It is clear, however, that no firm conclusion can be drawn from the data as it is presented. The only way in which some conclusion could be reached would be to compare plays per record between the A and B groups for records which all have the same popularity rating. This data is not shown, hence no firm conclusion may be drawn.

4. The point is made in the analysis that the theme song of the Bandstand show, "Bandstand Boogie," was played far more frequently than any other title, yet it never achieved any popularity rating from Cashbox or Billboard. Quite apart from the fact that it is suggested that an inference be drawn on the basis of a single record, the conditions under which the record is played are not at all similar to those under which other records are played during the program.

The theme does not get the benefit of the patter which accompanies the other records. If the record had been played regularly during the program and had received the same support in discussion by Mr. Clark that other records had received, the comparison might be revealing. Played as a theme song, however, its history does not seem particularly relevant.

5. On the basis of the examination made of the analysis, I think it is fair to say that the analysis cannot sustain firm conclusions of any sort. The data as presented is consistent with the conclusions presented. But they are also consistent with too many opposing conclusions. The inability to discriminate between favorable and unfavorable conclusions makes the analysis of practically no value.

The CHAIRMAN. Does that conclude your statement?

Mr. TRYON. Yes; it does.

The CHAIRMAN. Do you have any questions, Mr. Lishman?

Mr. LISHMAN. Yes; I have a few.

Mr. Tryon, when you were retained by the staff, what instructions did you receive?

Mr. TRYON. I was asked to give a professional opinion on the value of the Computech study. The staff told me that two other Government statisticians had looked at the study, but they wanted to get a nongovernment opinion, a disinterested person to render an opinion. They did not show me the other statements in order to prevent any prejudice on my part when I actually looked at the study.

They also asked that I provide a further analysis. They wanted a study which would be based on sound statistical procedures, and this I did, but not until I had written the analysis which I gave you in the statements.

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

Mr. TRYON. From you, Mr. Lishman.

Mr. LISHMAN. Your conclusions regarding the Computech study is that it is of no value in determining whether Mr. Clark showed any favoritism toward the records in which he had an interest; is that correct?

Mr. TRYON. Yes; that is right.

The way the study is set up, it really shows nothing, there is no discrimination at all between possible explanations, ones that are favorable to Mr. Clark and ones that are not favorable to him.

I might say that I think Mr. Goldstein was on the right track. He introduced popularity as a variable, but he never really carried through on the analysis. What he did was to take one average of popularity for the A group and one for the B group, and hence there is really no variable between the two.

Mr. LISHMAN. Now, Mr. Tryon, in your statement you mentioned a way in which some conclusion could be reached, regarding whether or not Mr. Clark favored records in which he had an interest.

Did you attempt to make such an analysis?

Mr. TRYON. Yes, I did.

Mr. LISHMAN. What data did you use in making this analysis?

Mr. TRYON. I used the same data which Computech used. This data was obtained from the IBM cards which they gave to the subcommittee staff, and I worked from a listing of those cards.

Also, the subcommittee staff assisted in identifying certain characteristics about the records which were played, but basically it is the same Computech data that Mr. Goldstein used in his own study.

Mr. LISHMAN. Mr. Tryon, that part of the material which was supplied to you by the staff was derived, was it not, from the 15,000 cards which Dick Clark had furnished the subcommittee.

Mr. TRYON. That is right.

They also provided some identification information about certain records. This was a matter of records in the group that he might have had some interest in. And I will explain that later.

Mr. LISHMAN. I would like to have you present the results of this analysis that you made, Mr. Tryon.

You have made a number of tables and exhibits, and as soon as you have identified them as having been prepared by you in accordance with the method you have described, I should like to have them introduced into the record.

Will you start, Mr. Tryon, with table 1, and state the manner in which this table was prepared by you?

Mr. TRYON. These tables and the graphs which were taken from them were all based on the Computech data, and I would like to explain them as I go along.

First, I would sort of like to outline the problem as I see it.

The subcommittee members have asked what sort of a statistical procedure might actually reveal whether there was some favoritism shown to Mr. Clark, and I would like to present a method which I think does show whether this was the case or not.

Briefly, the problem is to determine whether Mr. Clark favored those records in which he had some financial interest.

Now, let's make the assumption that popularity is the result of exposure. This is something which I think has been amply demonstrated by testimony of previous witnesses.

We will just take a simple example. Suppose that in order to reach a popularity rating of 500 on the Billboard scoring, on this same system that Computech used, suppose that it requires a thousand plays by diskjockeys all over the country, not just Mr. Clark but diskjockeys all over the country. Now, if Mr. Clark were really interested in raising the popularity, and he attempted to do so by playing his records more frequently, what you would find is that for a given level of popularity he had actually played the record more frequently. If he had no interest and had not made any attempt to influence popularity, he would have played it less frequently.

Thus, if you look at the records which achieved a given level of popularity and see whether he played those in which he had an interest more frequently than the no interest group, you should be able to determine whether or not he actually favored those records.

This is exactly what I did. I used the Billboard total score per record as calculated by Computech. We did not use the Cashbox

rating for the reasons that were brought out in testimony yesterday mainly that—

Mr. LISHMAN. Evidence had been received before this subcommittee that Cashbox ratings appeared to have been rigged in some instances?

Mr. TRYON. That is right. And for this reason we stuck to the Billboard rating.

What I did was to take the average total plays for given levels of popularity, and this is what is shown in table 1.

I also broke down the records according to the possible interest which he may have had in them. And if you will look at table 1 you will see down in the left side it shows the type of interest, the first row shows records in which he had no interest, next is publishing, pressing or manufacturing interest, the next one is distributor interest and multiple interest, and then ABC titles—

Mr. LISHMAN. Just a minute. By ABC titles you mean Ampar titles?

Mr. TRYON. That is right. These are the titles which Mr. Moss asked about yesterday, the ones on the B list which are Ampar records, and the ones which the staff identified on the B list as having some positive interest.

They also identified some more titles which were probably distributed through Chips, and that was given a separate category.

Then the last category, other interest titles on the B list, these were the ones which were tentatively identified by the staff as having had an interest because of the connection with Cameo, Mallard, Hunt, Bae, Swan, January, or Jamie.

Now, let's take a look at this table and see just what it actually shows.

The first line, where the no interest number of plays is shown, we find that for records which had no rating of popularity at all, in other words, they never showed up on the Billboard popularity score, he played them an average of 2.94 times. Let's just go down that column.

For those in which he had publishing, pressing, or manufacturing interest, we find that he played them 7.2 times. For those in which he had solely a distributor interest, the average is 4.6, and multiple interest, 9.51, and so on down the column.

Now, clearly he played those in which he had some interest a large number of times, more frequently than those in which he had no interest. This is in the no rating column.

The same picture shows up when we go across the table for various levels of popularity.

For the titles which reached a popularity rating of only 1 to 99, we find that those that were of no interest to him he played 7.61 times, those in which he had a publishing, pressing, or manufacturing interest, he played them 11.7; distributor interest, 13.8; multiple interest, 17.9, again substantially more frequently than those in which he had no interest.

And if you will examine the table, you will see that very clearly this persists right across for the various levels of popularity that the records may have achieved.

This has been shown graphically in figure 1-A, which is the second sheet in this mimeographed handout.

Mr. LISHMAN. Just a minute, Mr. Tryon.

Mr. Chairman, at the conclusion of Mr. Tryon's testimony I would like to introduce all the exhibits that he is now identifying. He has just identified table 1 as having been prepared by him, and he is now about to describe his preparation of figure 1-A, which would be the second exhibit, but I think it would probably be advisable to put all the exhibits in at one point at the conclusion of his testimony.

The CHAIRMAN. Yes, let them be received following his statement.

Mr. TRYON. Figure 1-A shows a comparison of the average plays per title for the various interest groups with the B group, noninterest groups.

We see that the B titles in which he had no interest lie below the other types of records, those in which he had a multiple interest, publishing, pressing, manufacturer and distributor interest. The B titles lie consistently below these other types of records in which he had an interest.

This graph shows very clearly that for a given popularity rating he favored those records in which he had some interest.

I think that this conclusion is inescapable.

Mr. LISHMAN. Do you want to turn now to figure 1-B and describe how you put this information together and from where you obtained the data embodied in it?

Mr. TRYON. Figure 1-B is the same sort of comparison for those A, B, C titles or the Ampar records which were identified yesterday, and for the Chips titles which were identified by the staff members which showed up on the B listing.

These are the ones which were included in the Computech study as B titles, but as to which there is at least some conceivable interest on the part of Mr. Clark.

We see in this case that again the records in which he had an interest lie above those in which he had no interest.

Now, I think that this is of considerable interest, because—

Mr. LISHMAN. You are now discussing figure 1-B; is that correct?

Mr. TRYON. That is right, figure 1-B, just those records which were—as a matter of fact, all these records were on the B list originally; however, the Chips titles and the ABC titles or the Ampar titles, the ones we talked about yesterday, these were separated out by the staff members and given a separate analysis here.

Mr. LISHMAN. You note that the Chips and the Ampar titles also lie above the no interest line?

Mr. TRYON. That is correct.

Mr. LISHMAN. But not as far above it as those in which he had a publishing, pressing plant, manufacturing, or other interest.

Do you attach any significance to this fact?

Mr. TRYON. Yes, I certainly do.

I think that these ABC titles and the Chips titles are ones in which he had a relatively low degree of interest. The ones in which he had a multiple interest or in which he had publishing or pressing or manufacturing interest, he had a direct interest, the ones in which the additional sales of these records would presumably directly—the benefits of this would directly accrue to him. Those in the ABC title, on the other hand, the monetary benefit would accrue to ABC, not to Mr. Clark.

Mr. LISHMAN. Would you say that you could draw the conclusion from this that Mr. Clark proportionately gave more exposure to those records in which he had a greater financial interest than those in which he had a lesser financial interest?

Mr. TRYON. Yes; I think this is a reasonable inference to draw from this data.

Mr. LISHMAN. Now, your analysis does not mention any titles where there was an artist-management connection on the part of Mr. Clark, either through his records or otherwise. Now, were these titles omitted from your study?

Mr. TRYON. Yes, they were. There were 17 titles which were excluded from the study; 12 were titles for which Mr. Clark's interest depended only on artist management, and for which there was some question as to when the artist came under contract to Mr. Clark; 4 others were titles in an album arrangement and this was considered too small a group for analysis, and the last one was the "Bandstand Boogie" theme song, which I consider to be irrelevant to the analysis.

Mr. LISHMAN. Mr. Tryon, in your testimony you have mentioned exposure of records on the air. Now, we all know that records may be exposed on the air as a result of concentrated playing within a comparatively short period of time, or a sporadic playing over a long period of time. Did you make any analysis of this problem and the significance of repetitive exposure of a record?

Mr. TRYON. What I did on this problem was to determine how long or how many weeks he played on the average for a given title, as against its popularity rating. This is essentially the same sort of analysis, instead of simply the number of plays per record. This was based on the number of weeks during which he played the records, and table 2 shows the results for this analysis.

Mr. LISHMAN. You prepared table 2?

Mr. TRYON. That is right.

Mr. LISHMAN. And how did you prepare it?

Mr. TRYON. This again was taken from the Computech data which they provided the staff.

Mr. LISHMAN. And table 2 shows the average number of weeks in which Mr. Clark played the titles for various levels of popularity scores based on Billboard popularity ratings; is that correct?

Mr. TRYON. That is right. It is the same breakdown as for the number of plays.

Mr. LISHMAN. And it is the same breakdown that occurs in table 1; is it not?

Mr. TRYON. Exactly.

Mr. LISHMAN. And table 1 is entitled "Average Number of Plays per Title for Various Levels of Billboard Popularity Score."

Mr. TRYON. That is right.

Mr. LISHMAN. Now, would you explain this table 2?

Mr. TRYON. Well, if we make the same sort of comparison, we find that those titles in which he had no interest and which never achieved any popularity rating, he played for an average of 1.79 weeks. For those in which he had a publishing, pressing, or manufacturing interest, he played them for an average of 3.28 weeks; multiple interest, 3.86; and so on down the table.

In other words, we see very clearly that he played those records in which he had some financial interest over a longer period of time as well as, as was demonstrated in table 1, a greater number of plays. He played them over a longer period of time, and a greater number of plays.

Mr. LISHMAN. Now, Mr. Tryon, in addition to the analysis made by you and which you have thus far presented in your testimony, did you also make another type of analysis?

Mr. TRYON. Yes.

Mr. LISHMAN. And figure 2 is entitled "Comparison of the Patterns of Popularity and Plays per Title (Mr. Clark's interest records), and B Titles (no interest), Based on Samples of 28 Titles"; is that correct?

Mr. TRYON. Yes; that is correct.

Mr. LISHMAN. Now, would you explain their comparison?

Mr. TRYON. Well, this analysis is relevant to the suggestion that Dr. Daly made; namely, that there might be some preferential treatment regarding the timing of plays. What we did was to take 28 records in which he had an interest—these are the A records—and then a sample of 28 B titles records in which he had no interest.

This comparison was restricted to records which achieved a popularity and were played by him for at least 10 weeks. This was done in order to have a relatively homogeneous group of data. We used the popularity period as the basic unit, as it were, for this comparison, and then averaged the popularity ratings for these 28 titles of each type, and then related the same data to the timing and number of plays which he made of these 28 records.

Now, figure 2 shows the results of this analysis. And I think that this again clearly shows preferential treatment.

Incidentally, I might say that—

Mr. LISHMAN. Preferential treatment for what?

Mr. TRYON. For the A titles, those in which he had some financial interest.

I might say that the horizontal axis here can be roughly interpreted as 1 week for every 10 percent of the popularity period, because they averaged out in such a way that the popularity period was approximately 10 weeks.

Now, what does this figure show?

Well, we see that the plays of the A records, those in which he had an interest—

Mr. LISHMAN. And that is the solid line?

Mr. TRYON. That is right, the solid line.

Mr. LISHMAN. It rapidly ascends?

Mr. TRYON. It rapidly ascends, and considerably earlier than the B titles, relative to the time that they showed up on the popularity rating.

The zero on this scale indicates when they started showing up on the Billboard popularity rating.

The A records clearly rise faster and earlier than the plays for the B records.

Similarly, we find that once popularity has been achieved, or popularity starts, we find that the plays of the A records begin to flatten out, you get a plateau, and then they drop off fairly quickly thereafter.

The plays of the B records, on the other hand, once the popularity has started showing up on the Billboard rating, you find that his plays of these B records continue to increase until it reaches a peak something like, say, 2 weeks after the initial popularity rating.

We might note here, incidentally, that this graph also reflects what I had suggested earlier; namely, that he plays those records which have a given popularity level, he plays the ones in which he has an interest more frequently than those in which he has no interest.

You will note that the popularity rating for the A records, the ones in which he has some interest, is below that of the B records for the entire popularity period. In spite of this fact, the number of plays that he gives is above the B plays for practically the entire period. And this is a reflection of the conclusion that I drew earlier to this.

Mr. LISHMAN. Mr. Tryon, would this diagram made by you indicate that Mr. Clark played his own records very assiduously up to the time he managed to get them to the peak of popularity, and then drop that record and start in on another one of his records and drive that up toward that peak?

Mr. TRYON. Well, I think that you couldn't really say that he drops it immediately—

Mr. LISHMAN. But he tapers off rather rapidly?

Mr. TRYON. Yes, sir.

Mr. LISHMAN. In other words, did you find any instances where Mr. Clark played a record in which he had an interest, for the first time, only when it had reached its peak?

Mr. TRYON. None of the records in this 28 fitted that pattern, although there were several of the B title records, the records in which he had no interest—

Mr. LISHMAN. Isn't it a fact that he would take a record that had no rating and after exposure over a several week period, it would go from a 91 rating to a No. 2 rating?

Mr. TRYON. I am sorry—

Mr. LISHMAN. I am referring to the record "Sixteen Candles"; have you had a chance to look at the data on that?

Mr. TRYON. Yes.

Mr. LISHMAN. Is that a fact?

Mr. TRYON. I am sorry, would you repeat the question?

Mr. LISHMAN. I am asking you, in connection with your studies and preparation of these diagrams, whether you came across the fact, as in the case of the record "Sixteen Candles," that when Mr. Clark first acquired that record, its rating on Billboard was zero. Six days after he got the copyright signed, it proceeded to reach the rank, as I recall, of 91, because of his plays. And gradually, over a 2- or 3-month period, by his insistent playing, he assisted in getting it to reach the No. 2 spot on the honor roll of the top 100 tunes.

Mr. TRYON. I wasn't aware of the fact that he didn't secure the publishing rights until after it had already been issued. But the pattern that you indicate certainly was one that existed. I wasn't aware of the—

Mr. LISHMAN. Would this diagram indicate that that pattern persisted in the 28 instances of records you examined here?

Mr. TRYON. Yes, it is a fairly consistent pattern.

Mr. LISHMAN. Now, what are your conclusions from the overall analysis you have made and given testimony to?

Mr. TRYON. My conclusions are that Mr. Clark clearly and systematically favored the records in which he had some interest. He favored them first by playing them more often, he favored them by playing them longer, he favored them by playing them earlier relative to when they became popular. And it also appears that he favored those in which he had the strongest interest—he favored those records most.

I think that these are conclusions which are inescapable if you analyze the data carefully.

Mr. LISHMAN. Why do you think Mr. Clark favored those records in which he had an interest?

Mr. TRYON. Well, this is a question which I don't feel it appropriate for me to answer.

My analysis is purely a statistical one. It shows what happened, but not necessarily why. Why is a question which can best be answered on the basis of other evidence.

I was asked by the staff to perform a disinterested statistical analysis, and this is what I have done. I believe it to be professionally competent. I do not think, however, that it is appropriate for me to impute motives for the behavior which was noted. That, I believe, is the responsibility of the subcommittee on the basis of the entire evidence that is presented to them.

Mr. LISHMAN. Thank you, Mr. Tryon.

I have no further questions, Mr. Chairman.

The CHAIRMAN. Mr. Moss.

Mr. Moss. Well, I have one, and it concerns chart B. This is the sampling of 28 titles in B category and in A category. Notwithstanding the fact that it shows that those titles in A category were played more frequently and for a longer period of time, the average of those titles did not achieve popularity of the B titles, did they?

Mr. TRYON. I am sorry; is this the last diagram, is that the one you are referring to?

Mr. Moss. Yes.

Mr. TRYON. Figure 2?

Mr. Moss. It is the last diagram.

Mr. TRYON. Yes, that is right.

Mr. Moss. The popularity of the B records, contrasted with the popularity of the A records, was greater and over a longer period of time?

Mr. TRYON. Not over a longer period of time, because we simply standardized it to use the period over which they were popular as the standard.

Mr. Moss. That is correct. But they were higher in popularity?

Mr. TRYON. That is right.

Mr. Moss. Notwithstanding that fact, the A titles were played more frequently?

Mr. TRYON. Yes. This is a reflection of what I suggested earlier, namely, that for a given level of popularity he played them more frequently, and this is just a reflection of the same fact.

This chart was drawn up in order to show that he tended to favor those records not only in number of plays, but also in time sequence relative to the time when a record became popular.

Mr. Moss. I think that the chart nicely proves that it has far more validity than the one we received from Computech. There are a few more variable factors brought in here which would seem to make it more objective than the one we received through the courtesy of Mr. Clark's counsel.

Mr. Tryon. I might say, Mr. Moss, that I think Mr. Goldstein was sort of groping in this direction in his testimony yesterday. He suggested that some sort of a correlation analysis could be performed, but that they had not had time to do it.

Well, essentially this is the type of analysis that he ought to have done if he had pursued the problem to its logical conclusion.

Mr. Moss. And to be offered in evidence before this subcommittee, it should have been pursued to its logical conclusion?

Mr. Tryon. Well, I would think so; yes.

Mr. Moss. Thank you.

The CHAIRMAN. Mr. Bennett?

Mr. Bennett. I have no questions.

The CHAIRMAN. Mr. Springer?

Mr. Springer. Just one or two. Turning to page 3, the third sentence, Mr. Tryon, the first paragraph—

Mr. Tryon. This was my introductory statement, is that right?

Mr. Springer. Yes; the one that you read.

Mr. Tryon. Yes.

Mr. Springer. "An average tells nothing about the variability of treatment of individual records." Now, that is one of the chief objections that you have to the Goldstein report, is that true?

Mr. Tryon. Yes.

Mr. Springer. It gives no indication as to how many times a particular record was played that might have been popular or might have been made popular by reason of the number of exposures. And for that reason the report is not significant in that respect?

Mr. Tryon. Yes, sir.

Mr. Springer. Now, let us get your opinion in a nutshell of what was—were you here yesterday?

Mr. Tryon. Yes, I was.

Mr. Springer. To get your opinion in a nutshell. Actually the only thing shown in the percentage was the number of times that records were played on the "Dick Clark Show" in which he had an interest and in which he didn't have an interest?

Mr. Tryon. That is right.

Mr. Springer. That was about all there was to it; is that correct?

Mr. Tryon. Yes; you couldn't draw any conclusion.

Mr. Springer. Going to page 4 of your statement, down just below the middle of the page, beginning with this sentence:

No criterion is provided, but in fact the A titles were actually played 5.1 times per title, while B titles were played 7.2 times, or A titles 96 percent more than B titles.

Now, that is significant, is it not?

Mr. Tryon. I would say no, for this reason: He certainly played the A titles more frequently, but their contention was that this was—there was nothing wrong with this, because they were also more popular. The reason that you really can't draw any firm conclusion from this is that the index of popularity doesn't really tell you

whether they should be played twice as often, three times as often, one and a half as often, or how often.

Mr. SPRINGER. Let me ask you if this is a fair statement, Mr. Tryon. It is true that he played the titles in which he had an interest twice as often as he played the ones in which he didn't have an interest? Is that a fair statement?

Mr. TRYON. Yes; that is certainly true.

Mr. SPRINGER. That is a factual statement?

Mr. TRYON. Yes; that is correct. If I may point out, I think what is more meaningful are the figures that are on table 1. Do you have a copy of it?

Mr. SPRINGER. Yes, I do; I know what is in there.

Mr. TRYON. Those in which he had no interest—let's just take it for any given popularity level—those in which he had no interest, and there was no popularity rating, he played them 2.94 times per record. Those in which he had a publishing, pressing, or manufacturing interest, he played 7.2 times.

Now, for this particular group, we find that the number of plays is roughly, let's see, what is it, a little over two times as frequent for those in which he had publishing, pressing, or manufacturing interest and those in which he had no interest. And this, I think, is significant, because we have isolated the factor of popularity. We have held it constant for this group, and in this particular one it happens to be no rating.

Mr. SPRINGER. Let me see if my analysis is correct again. He played his records twice as much as he played the records in which he did not have an interest. Would the percentage in favor of his records be even more when you say that he played his records only 4,000 times as against 12,000 times that the B titles were played?

Mr. TRYON. Would you elaborate on that?

Mr. SPRINGER. The chart as I understood it showed that it was approximately 25; the A titles were played 25 percent of the time, and the B titles 75 percent of the time. Yet from what I understand you to say here, he played his A titles twice as often as he played his B titles.

Mr. TRYON. For a given level of popularity; yes.

Mr. SPRINGER. For a given level of popularity?

Mr. TRYON. That is right. The reason that you have to consider level of popularity is to eliminate the influence—well, let's put it this way. The contention was that he played records consistent with their popularity. This is what the Computech tried to show, consistent with their popularity; in other words, the higher the popularity, the more he should play it. If we take a given level of popularity, did he favor those records in which he has an interest against those in which he had no interest? That is what this table shows, that he clearly did play those in which he had an interest more frequently.

Mr. SPRINGER. Roughly twice as much?

Mr. TRYON. It depended somewhat on the degree of interest and also on the level of popularity. But you certainly can clearly see that he did play them on the order of twice as frequently.

Mr. SPRINGER. Ninety-six percent, to be exact, according to your figures?

Mr. TRYON. That was for the group as a whole; yes.

Mr. SPRINGER. That is all, Mr. Chairman.

The CHAIRMAN. Are there any further questions of this witness?

(No response.)

The CHAIRMAN. Mr. Tryon, thank you very much for your testimony before the subcommittee.

Mr. TRYON. Thank you.

(Mr. Tryon's charts follow :)

TABLE I.—Average number of plays per title for various levels of Billboard popularity score

Type of interest	Total popularity score based on Billboard popularity ratings									Number of titles
	No rating	1-99	100-199	200-299	300-399	400-499	500-599	600-699	700 and over	
No interest ¹	2.94	7.61	9.96	15.6	17.9	21.3	24.6	25.3	33.6	1,350
Publishing, pressing or manufacturing ²	7.02	11.7	18.7	25.1	25.6	23.9	37.6			117
Distributor.....	4.62	13.8	15.8		18.1					76
Multiple interest ³	9.51	17.9	23.9	23.9	33.1		36.0			88
ABC titles in B list ⁴	3.31		14.5			30.6				84
Chips titles on B list ⁵	2.64	10.3	14.4	17.3	20.4		31.4			105
Other interest titles on B list ⁶	4.60	8.3				21.6				47
Total.....										⁷ 1,867

¹ Excludes titles which were tentatively identified by subcommittee staff as having interest through Chips, ABC, and other connections.

² Any title which was coded in the Computech IBM listing as publisher, pressing plant, or manufacturer, but not in combination with any other type of interest.

³ All titles coded on the Computech listing with more than one type interest.

^{4,5} These titles were tentatively identified by the subcommittee staff as belonging to ABC-Paramount (Mr. Clark's employer), or as being distributed by Chips.

⁶ Tentatively identified as having an interest because of connection with Cameo, Mallard, Hunt, Bae, Swan, January, or Jamie.

⁷ 17 titles were excluded from this table. 12 were titles for which Mr. Clark's interest depended only on artist management and for which there was some question as to when the artist came under contract to Mr. Clark. 4 were titles in an album, too small a group for analysis. 1 was "Bandstand Boogie," the show theme.

Figure IA - Comparison of Average Plays per Title for Various Interest Groups with the B, noninterest Group

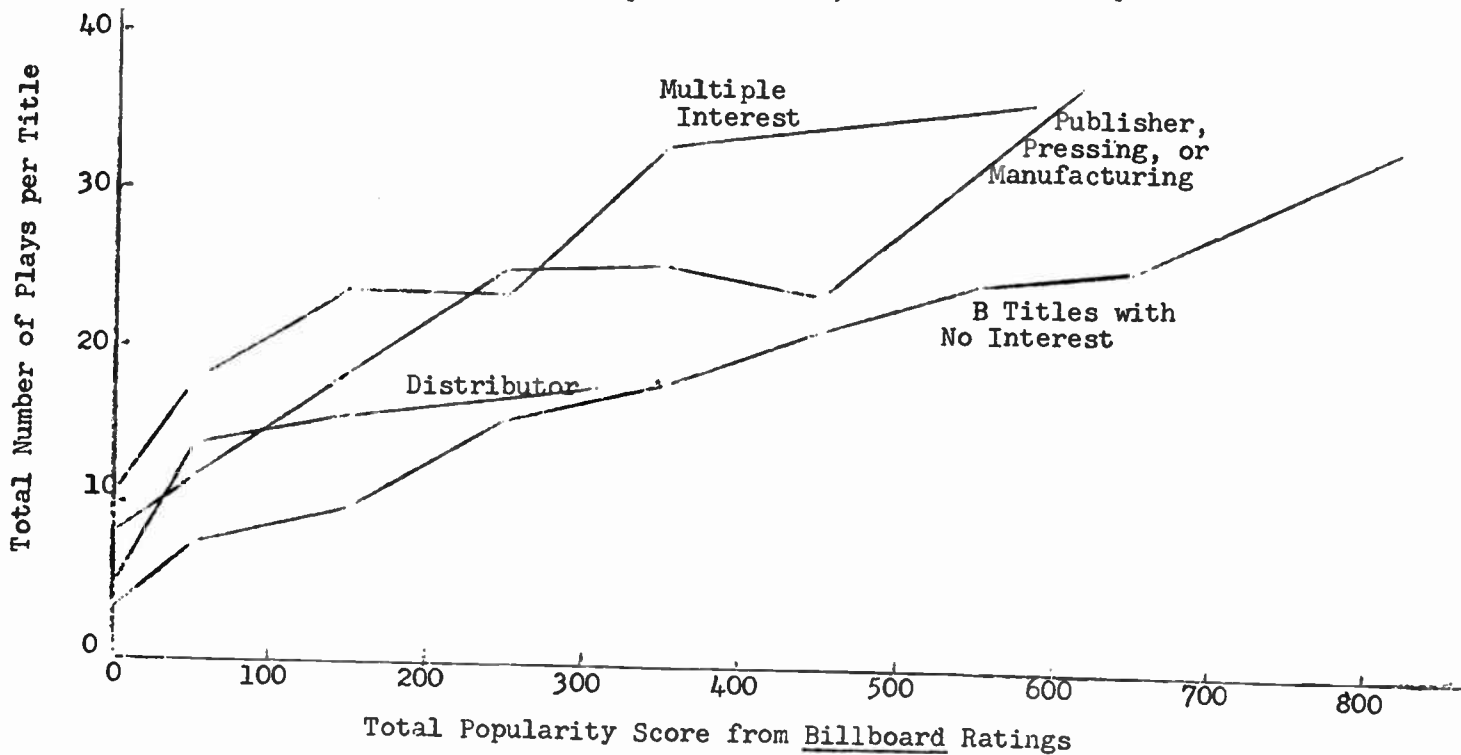


Figure IB - Comparison of Average Plays per Title for Chips and ABC Titles which were tentatively identified on the B list with the group of titles tentatively identified as having no interest.

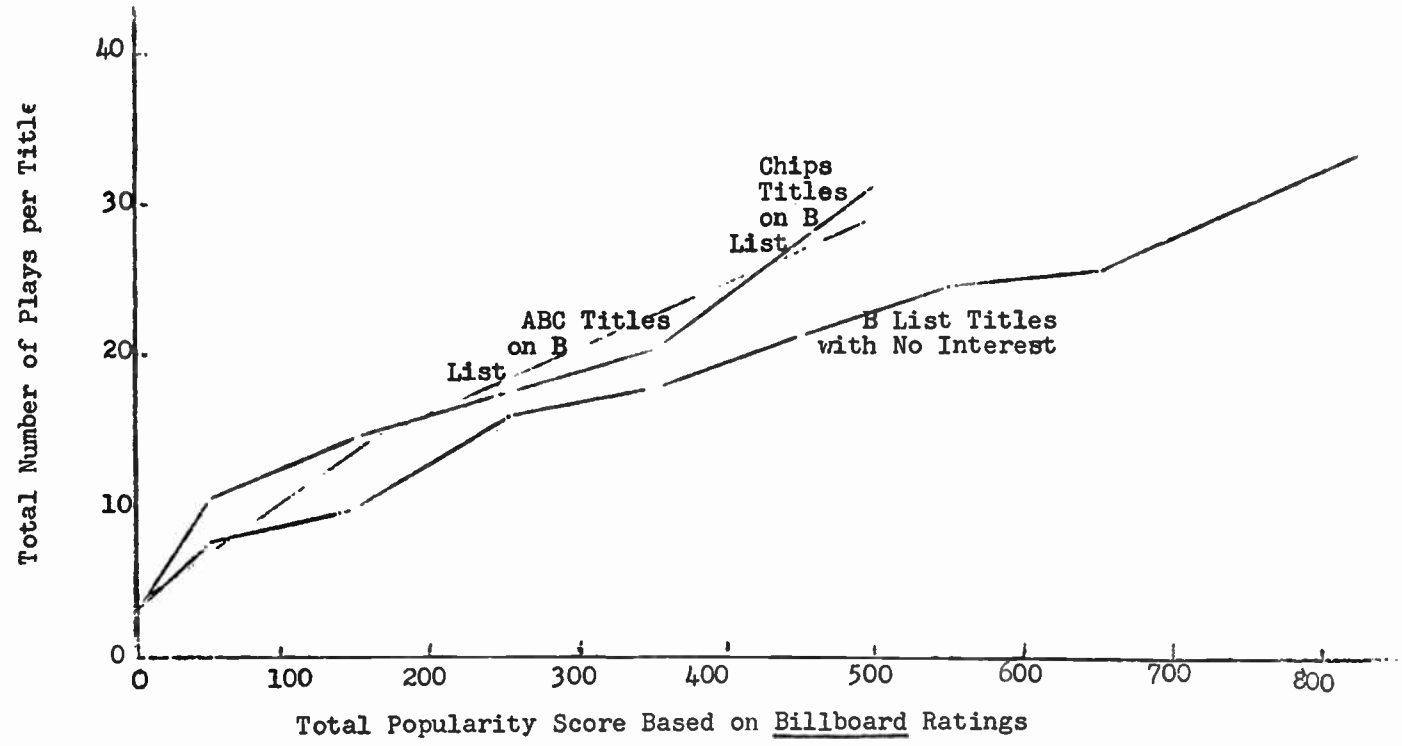
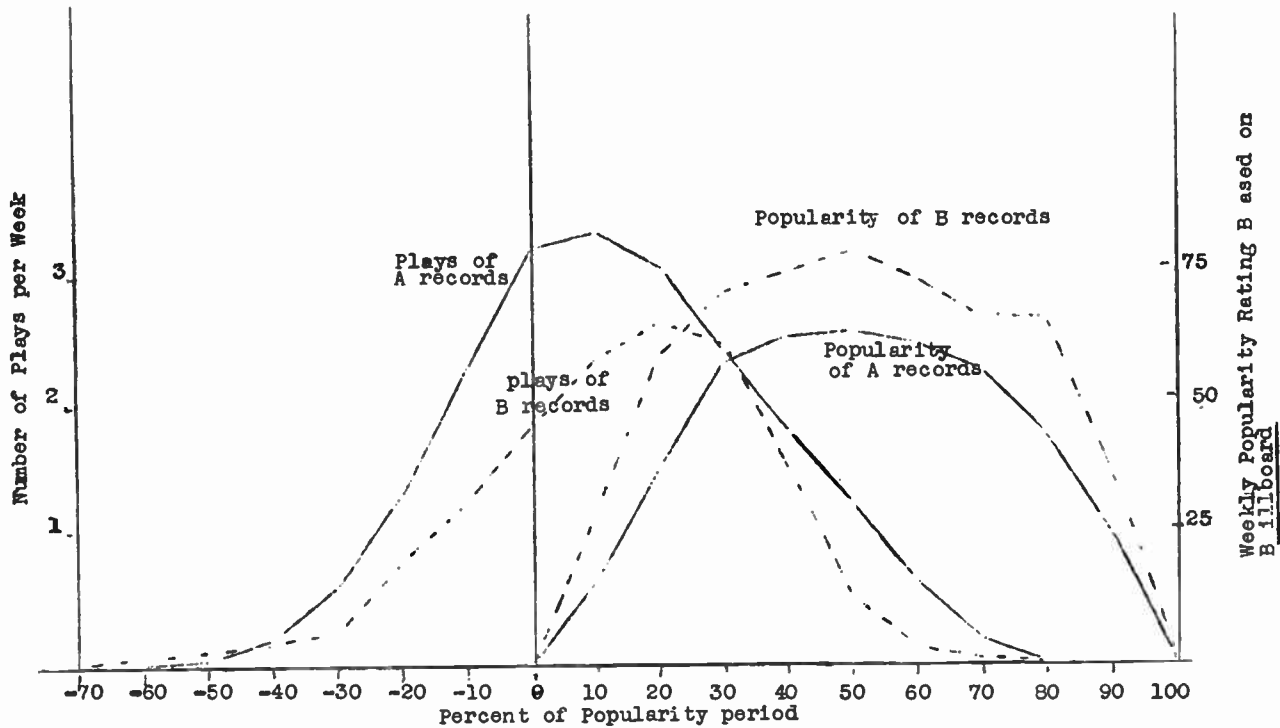


TABLE II.—Average number of weeks in which Mr. Clark played titles for various levels of popularity scores based on Billboard popularity ratings

Type of interest	No rating	1-99	100-199	200-299	300-399	400-499	500-599	600-699	700 and over	Number of titles †
No interest ¹	1.79	3.63	4.65	6.3	7.2	8.5	9.1	10.3	11.4	1,350
Publishing, pressing, or manufacturing ²	3.28	5.3	7.4	8.7	8.7	8.0		11.4		117
Distributor.....	2.49	6.1	6.4		6.9					76
Multiple interest ³	3.86	6.0	8.1	8.3	10.0			12.5		88
ABC titles in B list ⁴	1.86		5.4				10.4			84
Chips titles in B list ⁵	1.79	4.0	6.8	7.0	7.0		10.8			105
Other interest titles in B list ⁶	2.40	3.86				8.7				47
Total.....										† 1,867

For all footnotes see corresponding footnotes beneath table I.

Figure II - Comparison of the patterns of popularity and plays per title per week for A titles (Mr. Clark's interest records) and B titles (no interest). Based on samples of 28 titles each.



The CHAIRMAN. The subcommittee will recess until 2 o'clock, or as soon as the rollcall has been completed in the House.

We will hear from Mr. Harry Finfer and Mr. Harold Lipsius when we return.

Following their testimony, the subcommittee will go into executive session to consider a request made by three other witnesses that are here and scheduled to be heard today. They have requested an executive session for their testimony, and under the rules of the House committee we must consider their request.

I make that announcement so that everyone will know that shortly after we return, or as soon as we complete with these witnesses, we will go into executive session, and we will have to ask that the room be cleared.

The subcommittee will now be in recess.

(Whereupon, at 12:20 p.m., the subcommittee recessed, to reconvene at 2:30 p.m., the same day.)

AFTERNOON SESSION

Mr. MACK (presiding). The subcommittee will come to order.

Is Mr. Harry Finfer present?

Will you be sworn, please, Mr. Finfer?

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

TESTIMONY OF HARRY FINFER, ACCOMPANIED BY CHARLES R. WEINER, COUNSEL

Mr. FINFER. I do.

Mr. MACK. Are you accompanied by counsel?

Mr. FINFER. Yes.

Mr. MACK. Will you identify yourself for the record?

Mr. WEINER. Charles R. Weiner, member of the Philadelphia bar.

Mr. MACK. Under the rules of the House, you are permitted to advise your client or the witness of his constitutional rights. And I assume that you are familiar with the rules of the House; is that correct?

Mr. WEINER. I am, sir.

Mr. MACK. Mr. Lishman, do you have some questions?

Mr. LISHMAN. Yes, sir.

Mr. Finfer, are you the adviser and manager of Universal Record Distributing Co.?

Mr. FINFER. Yes, sir.

Mr. LISHMAN. And that is located at 1330 Girard Street, Philadelphia?

Mr. FINFER. Girard Avenue.

Mr. LISHMAN. Do you also own an interest in Jamie Record Co., a record manufacturer?

Mr. FINFER. Yes, sir.

Mr. LISHMAN. Is that also at the same address?

Mr. FINFER. Same address.

Mr. LISHMAN. What interest do you have in the Jamie Record Co.?

Mr. FINFER. Twenty-five percent.

Mr. LISHMAN. Was there a time when Dick Clark owned an interest in the Jamie Record Co.?

Mr. FINFER. Yes.

Mr. LISHMAN. What interest did he own in the Jamie Record Co.?

Mr. FINFER. The same thing.

Mr. LISHMAN. One quarter?

And has Mr. Clark divested himself of that one-quarter?

Mr. FINFER. He has.

Mr. LISHMAN. When did he do that?

Mr. MACK. I am wondering, Mr. Finfer, if you could speak up. I have difficulty hearing you.

Mr. LISHMAN. When did Mr. Clark divest himself of that interest?

Mr. FINFER. A little while back.

Mr. LISHMAN. Was it in December of last year?

Mr. FINFER. I don't have the date clear in my mind. But he has divested himself.

Mr. LISHMAN. Was it approximately December 1959?

Mr. FINFER. That is quite possible.

Mr. LISHMAN. Was it earlier than that?

Mr. FINFER. I don't know. I couldn't tell you.

Mr. LISHMAN. Who purchased his one-quarter interest?

Mr. FINFER. Mr. Lipsius, myself, and Mr. Sam Hodge.

Mr. LISHMAN. And you don't recall the date when you purchased this stock or interest?

Mr. FINFER. No, I don't.

Mr. LISHMAN. What price was paid to Mr. Clark for his interest?

Mr. FINFER. I don't have that information.

Mr. LISHMAN. Did Mr. Clark own 125 shares?

Mr. FINFER. That is correct.

Mr. LISHMAN. And you don't recall what you paid him for that 125 shares?

Mr. FINFER. At the moment, I don't.

Mr. LISHMAN. Was it \$15,000?

Mr. FINFER. It might be, it could very well be.

Mr. LISHMAN. Do you have any records which would show accurately?

Mr. FINFER. I don't have any records with me.

Mr. LISHMAN. Don't you remember that it was 15,000?

Mr. FINFER. To the best of my knowledge, your information might be correct. I don't know. But I would say it would be.

Mr. LISHMAN. Do you recall when Mr. Clark acquired his 125 shares in this company?

Mr. FINFER. Can you repeat that?

Mr. LISHMAN. Do you recall when Mr. Clark acquired his 125 shares in the Jamie Record Co.?

Mr. FINFER. You mean the time?

No; I don't—I don't have that information.

Mr. LISHMAN. Did you and Mr. Lipsius invite him to have an interest in this company?

Mr. FINFER. Yes.

Mr. LISHMAN. And why did you invite him to have an interest in the company?

Mr. FINFER. The reason I invited him was that I wanted to make use of his expert knowledge on records.

Mr. LISHMAN. In getting his 125 shares, what did Mr. Clark pay?

Mr. FINFER. \$125.

Mr. LISHMAN. And you are sure you don't remember that he received \$15,000 in December from you and your associates for his 125 shares?

Mr. FINFER. He received some, but whether that is the correct figure—

Mr. LISHMAN. Did he receive more than \$15,000?

Mr. FINFER. I don't know the exact figure, but it is in the neighborhood.

Mr. LISHMAN. What did you pay for the share of Mr. Clark's stock that you bought?

Mr. FINFER. You see, my attorney handled that whole situation, and I was away at the time.

Mr. LISHMAN. Don't you recall what you paid for your share?

Mr. FINFER. At the moment I don't.

Mr. LISHMAN. You knew you were going to be a witness in this proceeding, didn't you?

Mr. FINFER. Yes, sir.

Mr. LISHMAN. And you knew the kind of questions we were going to ask you, didn't you?

Mr. FINFER. No; I didn't.

Mr. LISHMAN. Haven't you been interviewed by investigators?

Mr. FINFER. Yes.

Mr. LISHMAN. Didn't they ask you questions similar to those I am now asking you?

Mr. MACK. I don't think you need any advice on that, Mr. Finfer; you can answer the question as to whether they did or did not, there is no constitutional question involved in that.

Mr. FINFER. Yes, sir.

Mr. LISHMAN. And didn't you tell them that Mr. Clark was paid approximately \$15,000 for his interest when it was allegedly divested?

Mr. FINFER. Yes.

Mr. LISHMAN. And that was a correct answer, wasn't it?

Mr. FINFER. I say approximately, because my attorney happened to be there at the time, and we were questioned together.

Mr. LISHMAN. Very good.

What business is Jamie Records in?

Mr. FINFER. What records?

Mr. LISHMAN. What business is it in?

Mr. FINFER. Record manufacturing.

Mr. LISHMAN. And it was in the record manufacturing business when Mr. Clark had his one-quarter interest in it?

Mr. FINFER. Yes.

Mr. LISHMAN. Now, is it correct that Universal Record Distributing Co. was incorporated in September 1955?

Mr. FINFER. Will you give me dates? I am not familiar with it.

Mr. LISHMAN. Well, approximately.

Mr. FINFER. Yes, it was September 1955.

Mr. LISHMAN. What investment do you have in this company?

Mr. FINFER. No investment.

Mr. LISHMAN. Who is the principal in this company?

Mr. FINFER. Who are the principals?

Mr. LISHMAN. Yes, sir.

Mr. FINFER. Mr. Lipsius.

Mr. and Mrs. Lipsius.

Mr. LISHMAN. And Mr. Lipsius also had a quarter interest in the Jamie Record Co.; is that correct?

Mr. FINFER. That is correct.

Mr. LISHMAN. Now, during the time that you and Mr. Lipsius and Dick Clark had a one-quarter interest in the Jamie Record Co., did you or Mr. Lipsius take records to Mr. Clark for him to listen to and for the purpose of getting him to play those records on his broadcast?

Mr. FINFER. Well, I did. I presented these records to Mr. Clark, I brought these records around that I thought it was good enough for him to listen to and advise me on these records.

Mr. LISHMAN. What kind of advice did you expect him to give?

Mr. FINFER. Well, to be commercial enough to be able to sell.

Mr. LISHMAN. Did you ever receive the record 506 on the song "Sixteen Candles"?

Mr. FINFER. Yes, I did.

Mr. LISHMAN. Did you take that record to Dick Clark or to Tony Mamarella?

Mr. FINFER. I did.

Mr. LISHMAN. To whom did you take it?

Mr. FINFER. Well, they were both there at the time.

Mr. LISHMAN. And what position did Mamarella then hold?

Mr. FINFER. Producer.

Mr. LISHMAN. Producer of what?

Mr. FINFER. The "Bandstand."

Mr. LISHMAN. The "American Bandstand"?

Mr. FINFER. Yes, sir.

Mr. LISHMAN. And that was a show in which Dick Clark was the MC or diskjockey?

Mr. FINFER. That is correct.

Mr. LISHMAN. Did Mr. Clark or Mr. Mamarella listen to this record "Sixteen Candles"?

Mr. FINFER. They did.

Mr. LISHMAN. What was their reaction?

Mr. FINFER. They liked the record.

Mr. LISHMAN. Now, did you or any representative give Mr. Clark and Mamarella any money or other thing of value to play the record?

Mr. FINFER. No, not at all.

Mr. LISHMAN. Did you tell Mr. Clark and Mr. Mamarella that the owners of the copyright would assign the copyright to Mr. Clark if he would plug the record?

Mr. FINFER. I did not.

Mr. LISHMAN. Who were the owners of the copyright at that time?

Mr. FINFER. I don't know.

Mr. LISHMAN. Who brought the record to your attention?

Mr. FINFER. Well, this is a normal thing. When we get samples of records, we don't know who owns what. We are a distributor for that

label, and it is our service to the manufacturer to take these records to the diskjockeys in the hopes of having them play them.

Mr. LISHMAN. Why did you happen to single out this one record, "Sixteen Candles," to bring to Mr. Clark and Mr. Mammarella?

Mr. FINFER. Can you say that again?

(The pending question was read by the reporter.)

Mr. FINFER. They are not the only ones who got the record. There were other diskjockeys who got the record, too. We didn't single this record out for Dick Clark's purpose; as a distributor we have to take these records to everybody that can possibly play these records.

Mr. LISHMAN. Did you have an agreement with Mr. Mammarella as to what records would be played?

Mr. FINFER. No agreement whatsoever.

Mr. LISHMAN. Did you ever make any payments or cause payments to be made to Mr. Mammarella?

Mr. FINFER. Yes, sir.

Mr. LISHMAN. Was this in your capacity as part owner of Jamie Records, or in your capacity as manager and an officer of Universal Distributing Co.?

Mr. FINFER. This was Universal Distributing Co.

Mr. LISHMAN. Well, Mr. Finfer, I will hand you three sheets and ask you to follow me while I ask you some questions.

These three sheets purport to represent payments made to various diskjockeys and station personnel in Philadelphia and other areas by and on behalf of Universal Records, and I would like to ask you to state whether this correctly represents the payments indicated. Will you start on the first sheet, which covers the period July 1, 1957, to December 31, 1957, the first person on the list to be paid was Lloyd "Fat Man" Smith, station WHAT, Philadelphia, the amount \$180.

Mr. FINFER. That is correct.

Mr. LISHMAN. The next payment was made to Grady and Hurst, WCAU, Philadelphia, \$257.

Mr. FINFER. That is correct.

Mr. LISHMAN. What position did Mr. Smith have at WHAT?

Mr. FINFER. He was a diskjockey.

Mr. LISHMAN. How about Grady and Hurst at WCAU?

Mr. FINFER. Diskjockey also.

Mr. LISHMAN. The next one is Tom Donahue of WIBG-Philadelphia, \$350.

Mr. FINFER. Correct.

Mr. LISHMAN. Was he a diskjockey?

Mr. FINFER. Yes.

Mr. LISHMAN. The next is Joe Niagara of WIBG, \$800.

Mr. FINFER. Correct.

Mr. LISHMAN. The next is Ed Hughes of WICK-Scranton, \$75.

Mr. FINFER. Correct.

Mr. LISHMAN. And was he a diskjockey?

Mr. FINFER. Yes.

Mr. LISHMAN. And Joe Niagara was a diskjockey?

Mr. FINFER. Correct.

Mr. LISHMAN. The next is "TV" Whitfield of WHAT-Philadelphia, \$220; is that correct?

Mr. FINFER. That is correct.

Mr. LISHMAN. And what was his position?

Mr. FINFER. Diskjockey.

Mr. LISHMAN. The next one is Jack O'Reilly of WPEN, \$600.

Mr. FINFER. Correct.

Mr. LISHMAN. And his position?

Mr. FINFER. Diskjockey.

Mr. LISHMAN. And George Woods of WDAS-Philadelphia, \$1,850.

What was his position?

Mr. FINFER. Diskjockey.

Mr. LISHMAN. Paul Landesman, WHGB-Harrisburg, \$400.

Mr. FINFER. Diskjockey.

Mr. LISHMAN. And Hy Litt, WHAT and WDAS-Philadelphia, \$325.

Mr. FINFER. Diskjockey.

Mr. LISHMAN. Mitch Thomas, WDAS-Philadelphia, \$475.

Mr. FINFER. Diskjockey.

Mr. LISHMAN. Larry Brown, WPEN, \$1,095.44. What was his position?

Mr. FINFER. Diskjockey.

Mr. LISHMAN. Bud Brees, WPEN-Philadelphia, \$850.

Mr. FINFER. Diskjockey.

Mr. LISHMAN. Steve Wade, WAED-Allentown, \$50.

Mr. FINFER. Diskjockey.

Mr. LISHMAN. Tony Mammarella, station WFIL-Philadelphia, \$500. What was his position?

Mr. FINFER. Producer of "Bandstand."

Mr. LISHMAN. Kae Williams, WHAT and WDAS-Philadelphia, \$100.

Mr. FINFER. Diskjockey.

Mr. LISHMAN. Jack Barry, WVCH-Chester, Pa., \$50.

Mr. FINFER. Diskjockey.

Mr. LISHMAN. Bill Camperson, WHOL-Allentown, \$35.

Mr. FINFER. Diskjockey.

Mr. LISHMAN. Gert Katzman, WPEN-Philadelphia, \$100.

Mr. FINFER. Record librarian. A hundred dollars of that represents a gift that she received.

Mr. LISHMAN. Now we come to the period January 1, 1958, to June 30, 1958. The first on this list is Joe Niagara, WIBG-Philadelphia, \$600.

Mr. FINFER. Diskjockey.

Mr. LISHMAN. Tom Donahue, WIBG-Philadelphia, \$300.

Mr. FINFER. Diskjockey.

Mr. LISHMAN. Bud Brees, WPEN-Philadelphia, \$550.

Mr. FINFER. Diskjockey.

Mr. LISHMAN. George Woods, WDAS-Philadelphia, \$1,700.

Mr. FINFER. Diskjockey.

Mr. LISHMAN. Tony Mammarella, WFIL-Philadelphia, \$1,100.

Mr. FINFER. Producer of "Bandstand."

Mr. LISHMAN. Lloyd "Fat Man" Smith, WHAT-Philadelphia, \$35.

Mr. FINFER. Diskjockey.

Mr. LISHMAN. Mitch Thomas, WDAS-Philadelphia, \$300.

Mr. FINFER. Diskjockey.

Mr. LISHMAN. Paul Landersman, WHGB-Harrisburg, \$275.

- Mr. FINFER. Diskjockey.
 Mr. LISHMAN. Kae Williams, WIIAT and WDAS-Philadelphia, \$250.
 Mr. FINFER. Diskjockey.
 Mr. LISHMAN. Jack O'Reilly, WPEN-Philadelphia, \$350.
 Mr. FINFER. Diskjockey.
 Mr. LISHMAN. Gert Katzman, WPEN-Philadelphia, \$50.
 Mr. FINFER. Record librarian.
 Mr. LISHMAN. Larry Brown, WPEN-Philadelphia, \$787.35.
 Mr. FINFER. Diskjockey.
 Mr. LISHMAN. Hy Litt, WIBG-Philadelphia, \$125.
 Mr. FINFER. Diskjockey.
 Mr. LISHMAN. Red Benson, WPEN-Philadelphia, \$300.
 Mr. FINFER. Diskjockey.
 Mr. LISHMAN. Ed Hurst, WCAU-Philadelphia, \$225.
 Mr. FINFER. Diskjockey.
 Mr. LISHMAN. Julian Graham, WDAS-Philadelphia, \$25.
 Mr. FINFER. Diskjockey.
 Mr. LISHMAN. Billy Dupree, WDAS-Philadelphia, \$15.
 Mr. FINFER. Diskjockey.
 Mr. LISHMAN. Bill Camperson, WHOL-Allentown, \$25.
 Mr. FINFER. Diskjockey.
 Mr. LISHMAN. Now we come to the period July 1, 1958, to July 30, 1959. The first name on this list is Paul Landersman, WHGB-Harrisburg, \$600.
 Mr. FINFER. Diskjockey.
 Mr. LISHMAN. Red Benson, WPEN-Philadelphia, \$1,325.
 Mr. FINFER. Diskjockey.
 Mr. LISHMAN. Larry Brown, WPEN-Philadelphia, \$1,929.64.
 Mr. FINFER. Diskjockey.
 Mr. LISHMAN. Bud Brees, WPEN-Philadelphia, \$1,225.
 Mr. FINFER. Diskjockey.
 Mr. LISHMAN. Ed Hurst, WCAU-Philadelphia, \$300.
 Mr. FINFER. Diskjockey.
 Mr. LISHMAN. Bill Curtis, WHAT-Philadelphia, \$437.50.
 Mr. FINFER. Diskjockey.
 Mr. LISHMAN. George Woods, WDAS-Philadelphia, \$3,825.
 Mr. FINFER. Diskjockey.
 Mr. LISHMAN. Tony Mammarella, WFIL-Philadelphia, \$2,400.
 Mr. FINFER. Producer of "Bandstand."
 Mr. LISHMAN. Hy Litt, WIBG, \$1,225.
 Mr. FINFER. Diskjockey.
 Mr. LISHMAN. Mike Lawrence, WIBG, \$300.
 Mr. FINFER. Diskjockey.
 Mr. LISHMAN. Mitch Thomas, WDAS, \$50.
 Mr. FINFER. Diskjockey.
 Mr. LISHMAN. Bill Franklin, WHAT, \$25.
 Mr. FINFER. Diskjockey.
 Mr. LISHMAN. Kae Williams, WHAT and WDAS, \$625, with a notation of \$400 to accounts receivable; is that correct?
 Mr. FINFER. Yes, meaning that he had a record shop, and we have given him credit for records purchased.
 Mr. LISHMAN. Bill Camperman, WHOL-Allentown, \$175.

Mr. FINFER. Correct.

Mr. LISHMAN. Tom Donahue, WIBG, \$825.

Mr. FINFER. Diskjockey.

Mr. LISHMAN. Jack O'Reilly, WPEN, \$600.

Mr. FINFER. Diskjockey.

Mr. LISHMAN. Julian Graham, WDAS, \$285.

Mr. FINFER. Diskjockey.

Mr. LISHMAN. Lee Fisher, \$150, WDAS.

Mr. FINFER. It is the same person using another name.

Mr. LISHMAN. A different name. But you gave him the two sums, then?

Mr. FINFER. Correct.

Mr. LISHMAN. The next one is Doug Henderson, WDAS, \$425.

Mr. FINFER. Diskjockey.

Mr. LISHMAN. Sid Marks, WHAT, \$200.

Mr. FINFER. Diskjockey.

Mr. LISHMAN. George Johnson, WDAS, \$276.50.

Mr. FINFER. Diskjockey.

Mr. LISHMAN. Joe Niagara, WIBG, \$1,300.

Mr. FINFER. Diskjockey.

Mr. LISHMAN. Lloyd "Fat Man" Smith, WHAT, \$75.

Mr. FINFER. Diskjockey.

Mr. LISHMAN. Carson Rennie, WPEN, \$300.

Mr. FINFER. Correct.

At that time he was musical—assistant program director.

Mr. LISHMAN. William Franklin, WHAT, \$25.

Mr. FINFER. Diskjockey.

Mr. LISHMAN. Now, Mr. Finfer, for what purpose did you make these payments to these diskjockeys and station librarians and production managers?

Let's start with diskjockeys, why did you make the payments to the diskjockeys?

Mr. FINFER. On the basis of them listening to the records and deciding which ones that they would be able to play for us.

Mr. LISHMAN. You mean records, the label of which were distributed by Universal Records Distributing Co.?

Mr. FINFER. That is correct.

Mr. LISHMAN. Did you in any way have an understanding with these people that your records would be played?

Mr. FINFER. There was never an understanding, it was on the basis that we were a distributor, and that at any time I chose for them to listen to one of my products they would advise me as to whether it was good enough to be played, there was no arrangement before that.

Mr. LISHMAN. You would take a handful of records around to one of these gentlemen and sit down in front of a phonograph and he would listen with you while you played a record, is that correct?

Mr. FINFER. That is correct.

Mr. LISHMAN. And about how often would this happen?

You take the case, let's say, of a man you paid, like George Woods, who received \$3,825 in 1959. Now, about how many times would you go to call on Mr. Woods with some records for him to listen to?

Mr. FINFER. He would come in most of the times to listen to them, and if there was an occasion where I had a record and it sounded

pretty good and I thought I would like him to have it for that particular time, I would take it out to him myself and play it for him.

Mr. LISHMAN. It wouldn't be very likely if he had been listening to your records, say, for 6 or 7 months and you had been paying him sums of money and he hadn't played any of your records. The chances are not very good that you would continue paying him thereafter, are they?

Mr. FINFER. That is correct. But he hasn't played our records.

Mr. LISHMAN. Did you pay these sums, such as that to George Woods amounting to over \$3,000 from July 1, 1958, to June 30, 1959, in one lump sum?

Mr. FINFER. No, individual sums.

Mr. LISHMAN. And would it be at or about the time that he had the label that you brought to him?

Mr. FINFER. I didn't get that question.

Mr. LISHMAN. And would the payments you made be at or about a time when he aired one of the labels that you had brought over to him?

Mr. FINFER. I can't follow that question.

Mr. LISHMAN. Well, did you pay him on a monthly basis?

Mr. FINFER. It was on a monthly basis, yes.

Mr. LISHMAN. Were all these people on a regular retainer basis?

Mr. FINFER. We paid on a monthly basis.

Mr. LISHMAN. On a monthly basis?

Mr. FINFER. On a monthly basis.

Mr. LISHMAN. And you say it was for the purpose of listening to the records and giving you advice?

Mr. FINFER. That is correct.

Mr. LISHMAN. And you had no understanding whatsoever?

Now, when we come to a production manager, like Tony Mammarella, you paid him in one instance \$500, and in another instance \$1,100—

Mr. FINFER. No, that is collectively.

Mr. LISHMAN. Is it collectively?

Mr. FINFER. Yes, sir.

Mr. LISHMAN. Well, during the periods of July 1957, to December 31, 1957, on this list which you have just identified, it shows Tony Mammarella as receiving \$500, and you said that is correct.

Mr. FINFER. That is correct. But that is over that period.

Mr. LISHMAN. Now, let's take that one \$500. What did you pay him the \$500 for?

Mr. FINFER. I believe that was a gift for his wife when they had a child.

Mr. LISHMAN. In other words, that was a pure, friendly gesture?

Mr. FINFER. Yes.

Mr. Moss. How was that charged on the books of your company, if it was a gift to his child?

Mr. FINFER. That was charged to promotion.

Mr. Moss. Charged to promotion. It wasn't friendly, then, was it; it was business?

Mr. FINFER. I suppose if that is what it is, that is what it is.

Mr. Moss. No, it is not the case that, "if that is what it is, that is what it is." You characterize the expenditure when you direct its charge off your books. If it is a personal book it is a personal gift

and is not treated as a business expense. If it is charged to promotion, it is clearly a business expense. Is it a case of anything other than just your records speaking for themselves?

Mr. FINFER. That is correct.

Mr. LISHMAN. Now, Mr. Finfer, there is another payment to Tony Mammarella during the period of January 1, 1958, to June 30, 1958, and you previously testified that this was a payment correctly stated of \$1,100. Now, why did you give this \$1,100 to Mr. Mammarella?

Mr. FINFER. That was on the basis of him listening to the records, but that is a collective amount.

Mr. LISHMAN. In other words, the \$500 earlier is included in this?

Mr. FINFER. I don't know what that \$500 represents, but I do know \$1,100 is over that period.

Now, that \$500 could be one payment as a gift, as I said, but the \$1,100 is for that length of period.

Mr. LISHMAN. Is it for each of those 6 months?

Mr. FINFER. Yes, sir.

Mr. LISHMAN. In other words, you paid him on a monthly basis?

And during that 6-month period, the monthly payments totaled \$1,100?

Mr. FINFER. We paid him on a monthly basis, but there was no regular set thing.

Mr. LISHMAN. Was this an oral agreement you had with Mr. Mammarella, or was it in writing?

Mr. FINFER. No, it was an oral agreement.

Mr. LISHMAN. And what did he do for this \$1,100?

Mr. FINFER. He would do the same thing, to advise me of the records I brought to him.

Mr. LISHMAN. And you charged this to promotion expense?

Mr. FINFER. I did.

Mr. LISHMAN. Now we come to another payment to Mr. Mammarella in the period July 1, 1958—here is a third payment that you made. And this one is in the amount of \$2,400, and it was made during the period July 1, 1958, to July 30, 1959.

Mr. FINFER. That is the period of a year.

Mr. LISHMAN. Does that mean that you paid Tony Mammarella \$200 a month?

Mr. FINFER. Approximately, yes, sir.

Mr. LISHMAN. And during all this time he was program production manager of Dick Clark?

Mr. FINFER. Producer of the "American Bandstand."

Mr. LISHMAN. Producer of the "American Bandstand?"

Mr. FINFER. Yes, sir.

Mr. LISHMAN. And you insist you had no understanding with him, that any of the money that you paid to him at these different times was with any understanding that Dick Clark would air any of the record labels of Universal Distributing Co.?

Mr. FINFER. That is correct.

Mr. LISHMAN. That had absolutely nothing to do with it?

Mr. FINFER. No bearing whatsoever.

Mr. LISHMAN. Now, we turn to Jamie Records Co. Are you familiar with the payments that were made by Jamie Record Co. to diskjockeys?

Mr. FINFER. Some of them; yes, sir.

Mr. LISIMAN. Now, Mr. Finfer, you own one-quarter interest in the Jamie Record Co.?

Mr. FINFER. Now it would be one-third.

Mr. LISIMAN. One-quarter since you bought from Mr. Clark?

Mr. FINFER. Yes.

Mr. LISIMAN. Now, will you look at that transcript of account for the fiscal year ending April 30, 1959, a photostatic copy of which we have just handed you. This purports to show, from the books of Jamie Record Co., Inc., payments charged to promotion account; do you have that in front of you?

Mr. FINFER. Yes, I have.

Mr. LISIMAN. I won't read you all the items that are shown on this sheet, but I will read certain of them and ask you to identify them, and to also identify the payee.

We will take the second item, which has a charge mark in the margin, and it shows the payment on May 13, 1959, of \$100 to Lou Platt. Who is Lou Platt?

Mr. FINFER. Lou Platt was the manager of Diskjockey Hound Dog of Buffalo, N.Y.

Mr. LISIMAN. He was a diskjockey in Buffalo, N.Y.?

Mr. FINFER. That is correct.

Mr. LISIMAN. Why did Jamie Records pay a diskjockey in New York? Did a representative go there with their records and have the diskjockey listen to them, or was the diskjockey brought down to Philadelphia?

Mr. FINFER. I was up there on a business trip.

Mr. LISIMAN. That had nothing whatever to do with playing a record on the Jamie label in Buffalo?

Mr. FINFER. No, it wasn't on that basis.

Mr. LISIMAN. Well, this man is not a distributor, is he?

Mr. FINFER. No, as I said, he is the manager of this diskjockey who is called Hound Dog.

Mr. LISIMAN. You had the record—

Mr. FINFER. I had many, many records.

Mr. LISIMAN. Let's assume you had some records with you from Mr. Platt.

Mr. FINFER. This is a token of appreciation I gave him, \$100.

Mr. LISIMAN. It wasn't for listening? The \$100 wasn't paid to him to listen to anything?

Mr. FINFER. For listening as well as playing.

Mr. LISIMAN. After listening, what was he supposed to tell you in order to earn the \$100?

Mr. FINFER. He didn't have to tell me anything.

Mr. LISIMAN. What did you pay him the \$100 for? What did you expect from him?

Mr. FINFER. He was to advise me on the records.

Mr. LISIMAN. What kind of advice, if the record was already pressed, manufactured—

Mr. FINFER. For his market, every market has an identification for certain types of records. Some records start one place and others in others. If he advised me on the record as being a potential record for his given area, that was the advice.

Mr. LISHMAN. The next item on this list is a payment of \$50 on July 18, 1959, to Paul Landersman. And who is Mr. Landersman?

Mr. FINFER. He was a diskjockey in Harrisburg.

Mr. LISHMAN. Why did Jamie pay the \$50 to him?

Mr. FINFER. For the same purpose, to give advice on the records.

Mr. LISHMAN. And the next one on this list shows a payment on July 28, 1959, of \$100 to Ed Hurst. Now, who is Ed Hurst?

Mr. FINFER. He was a diskjockey.

Mr. LISHMAN. Why did Jamie records have to pay Mr. Hurst?

Mr. FINFER. For the same reason.

Mr. LISHMAN. Just to listen?

Mr. FINFER. To listen and to advise us.

Mr. LISHMAN. Now we come to July 7, 1959, and we find a payment of \$100 to Joe Niagara. And who is Joe Niagara?

Mr. FINFER. He was a diskjockey also.

Mr. LISHMAN. And why did you pay him \$100?

Mr. FINFER. For the same reason.

Mr. LISHMAN. It seems to me that there were some dual payments going on here for the same service. As I have been reading to you, they were apparently on the payroll of Universal Distributing Co. and low and behold, they are now turning up on the payroll of Jamie Record Co.

Is there an arrangement whereby you get one set of advice for the record distributing company and another set of advice for the record manufacturing company, or just what is this advice?

Or are they getting paid twice for doing the same thing?

Or did they listen twice?

Mr. FINFER. Well, they didn't listen twice, it was just that—

Mr. LISHMAN. Why are they getting paid twice for the same thing by two different companies? You have given me the same answer so far, to every question I have asked you. I don't understand this business, where the same person gets paid twice for giving the same advice to the same man. If you get your advice once and you have paid for that advice, why isn't that the end of it?

Do you have any answer?

Mr. FINFER. I don't have the answer to that.

Mr. LISHMAN. But there was no understanding that it was for the purpose of getting Jamie records exposed on the air. You are certain of that? That is one thing you are sure of?

All right, we come to the next payment on August 15, 1959 of \$25 to Paul Landersman. You have already identified him as a diskjockey.

Now, why did Jamie again pay him this \$25?

Mr. FINFER. You see, these figures here don't represent a steady thing; it is on the basis that we were lucky to get a record, of them selecting one of our records, and we thought that they were entitled to it for what they had done to help us. These are not record payments.

Mr. LISHMAN. We come to the next one that Jamie paid, \$300 to George Woods. You have already identified him as a diskjockey—

Mr. Moss. Mr. Chairman, the witness has just stated that he thought it was proper to give them payment for what they had done "to help them." Now, I think that is the very heart of the questions Mr. Lish-

man has been putting to him in so many different ways, what they did to help them.

I would like to have him, if he would, explain what he means by what they did to help them.

Mr. FINFER. Well, there two ways to define that. One is listening to a hit record, and another is to listen to records that could possibly be hits.

Now, such being the case, as a distributor we have got records in that had already made hits in other parts of the country.

Mr. MOSS. What did they do to help them?

Mr. FINFER. Listen to the records and decide.

Mr. MOSS. How do you know they listen?

Mr. FINFER. I was there.

Mr. MOSS. They always listened in your presence?

Mr. FINFER. In my presence, yes; if I wasn't there, my promotion man was there.

Mr. MOSS. And if they listened you paid them?

Mr. FINFER. I didn't pay them then, it was on the basis that we would take care of them on a monthly basis.

Mr. MOSS. Did you have any means of determining whether or not they played the records?

Mr. FINFER. There were times when we listened to their shows, yes.

Mr. MOSS. Only occasionally. You were not too much interested in whether they played them as long as they listened to them?

Mr. FINFER. We have listened and monitored the shows pretty regularly.

Mr. MOSS. The only service they ever provided, then, was to listen? Is that correct?

Mr. FINFER. That is true. That is right.

Mr. MOSS. The only thing they ever did was to listen?

Mr. FINFER. That is right. There are many records they didn't play.

Mr. MOSS. And you had no set schedule—

Mr. FINFER. We had no set schedule.

Mr. MOSS. Of listening fees?

Mr. FINFER. That is correct.

Mr. MOSS. Well, did you consult with the board of directors and the auditor or office manager to determine how much the company could afford to give these people for listening, and how many you could pay to listen to the same records?

Was there any percentage factor involved in this?

Mr. FINFER. No, there wasn't.

Mr. MOSS. Just willy-nilly; sort of a devil-may-care attitude, you listen, and here is the money?

Mr. FINFER. It was just on the basis of what we decided that we were able to do.

Mr. MOSS. Who decided?

Mr. FINFER. Well, collectively.

Mr. MOSS. Who?

Mr. FINFER. It was a collective thing whereby myself and my associates—

Mr. Moss. Who were your associates? Did you sit down at a formal meeting and discuss Mr. X and how grateful you were to him, and Mr. Y, and how grateful you were to him for listening?

How did you arrive at these fees?

Mr. FINFER. I would say that is true.

Mr. Moss. What is true?

Mr. FINFER. On the basis of them listening and what they have done for us after they have listened to the records.

Mr. Moss. Were you not fearful, that without some standard of measurement of your gratitude, you might overpay one, and slight another, and they would learn about it and feel offended?

Mr. FINFER. No, not at all.

Mr. Moss. No danger of that?

Mr. FINFER. No, because we had no set deal for any amount of play per person. There was no set deal whatsoever with anybody.

Mr. Moss. No set deal for any amount of play per person?

That gets a lot closer to what I think the truth is to this business of hearing. Playing for a person makes more sense than listening for a person, and I notice your programs inadvertently used it in there. Was there not a play factor in this at all?

Mr. FINFER. Yes, if he liked the record, they played the record; if they didn't like it, they didn't play it, regardless.

Mr. Moss. Then when you were told they liked it, you understood they would play it?

Mr. FINFER. We assumed they would play it.

Mr. Moss. Did you ever send them a check before they had played it?

Mr. FINFER. Before?

Mr. Moss. Yes.

Mr. FINFER. No, this didn't work on an individual record basis, this was an overall basis.

Mr. Moss. Did you ever send them anything when they did not play your labels?

Mr. FINFER. Well, there were occasions when we stopped a period.

Mr. Moss. Did your stopping coincide with their stopping?

Mr. FINFER. No, it did not.

Mr. Moss. You know, this becomes the most erratic, the most uncertain, the most reckless and most amazing business that I have ever heard of. All you people, by some process I have described before as osmosis, arrive at an understanding. No one ever talks about it, but everyone knows about it. You never lay it on the table, and with complete disregard of all sound business management policies, interest in a budget, yield from a record, or anything else, you just give money away as rapidly as you can, out of pure gratitude. But I have noticed this, you are very prudent in the end. You always charge it as a business expense and not as a gift, and if it is a business expense, there is an implication that you have received something of value. If it is a gift we do not expect that you receive anything, and we do not permit you to write it off on your taxes. But these things you always write off.

Your story just does not match your facts.

Mr. LISHMAN. Mr. Finfer, in answer to the questions of Mr. Moss, you indicated that you consulted with your associates in Jamie Rec-

ords with respect to the amounts that would be paid to these various disk jockeys; is that correct?

Mr. FINFER. Yes.

Mr. LISHMAN. Who were the associates you consulted with?

Mr. FINFER. With Mr. Harold Lipsius.

Mr. LISHMAN. And who were your other associates?

Mr. FINFER. They were never in our discussion, just Harold and myself.

Mr. LISHMAN. As I understand it, you paid this money in appreciation for their services in giving you advice; is that correct?

Mr. FINFER. That is correct.

Mr. LISHMAN. Dick Clark was the principal in the Jamie Record Co., was he not?

Mr. FINFER. That is correct.

Mr. LISHMAN. Isn't he regarded as America's leading diskjockey?

Mr. FINFER. That is correct.

Mr. LISHMAN. Well, if he is America's leading diskjockey and he is one of the principals in this company, why was it necessary for Jamie to go outside and pay all this money for advice from lesser disk-jockeys in other cities and in other stations? You had the expert right there. He had an interest in your company. Why was it necessary?

Mr. FINFER. Yes, but he is limited to what he can play, and I am limited to what we can get—

Mr. LISHMAN. Where could you go for better advice?

Mr. FINFER. Advice I have got, but I had to have air play. I went out and got the air play myself by traveling the country. I went out and promoted the record after I had got the advice.

Mr. LISHMAN. Was the kind of advice you received limited to the amount of records that the adviser can play; is that how this works?

Mr. FINFER. It is limited to what his program can do or play.

Mr. LISHMAN. In other words, the diskjockey has only that capacity for advice which is proportionate to his capacity to air the record; is that how this works?

Mr. FINFER. That is correct.

Mr. LISHMAN. I didn't understand your answer.

Now, did Mr. Clark ever tell you to stop paying the diskjockeys money?

Mr. FINFER. He wasn't aware of it. He was not aware of this.

Mr. LISHMAN. Wasn't Mr. Mammarella aware of it?

The CHAIRMAN. Mr. Lishman, Mr. Mack has a question.

Mr. MACK. I had a question on that same point, because I did not understand the witness. I understood the witness to say that the reason it was not satisfactory to have Dick Clark do the listening, was because he wanted additional air play. Is that what you said?

Mr. FINFER. No, I didn't.

Mr. MACK. That is what confused me, because I distinctly recall you saying that you went out—that you wanted to get air play.

Mr. FINFER. He would listen—I would bring him a record, and he would listen to the record and advise me—I would get the air play myself in my travels throughout the country.

Mr. MACK. Again I will ask you, if you did not refer to or say air play. Did you?

Mr. FINFER. I don't know.

Mr. MACK. I distinctly recall that you mentioned the word.

Mr. FINFER. Possibly, I don't know.

Mr. MACK. That it was your mission to go out and secure the air play.

Mr. FINFER. Well, by my efforts in getting the records to these various people.

Mr. MACK. Then that would have been the reason you had these other people do the listening; is that correct, so that you could get the air play?

Mr. FINFER. That is correct.

Mr. MACK. I did not mean to interrupt you, but I wanted to make that point clear.

That is all I have.

Mr. LISIMAN. Mr. Finfer, is it correct that in June 1958, the directors of Jamie Record Co. authorized the payment of a salary to Dick Clark of \$200 a week from May 1, 1958, to commencement date of the company's fiscal year?

Mr. FINFER. That is correct.

Mr. LISIMAN. Is it correct that the first salary payment to Mr. Clark was not made until July 2, 1959, for the period May 1, 1958, to April 30, 1959?

Mr. FINFER. That is correct.

Mr. LISIMAN. And is it correct that the gross salary he received during this period from Jamie Records was \$10,400?

Mr. FINFER. That might be correct, I don't know.

Mr. LISIMAN. Is it correct that this salary was paid to Mr. Clark as compensation for his giving Jamie records the benefit of his advice and experience with respect to the sale of records?

Mr. FINFER. That is correct.

Mr. LISIMAN. So the thing works in this way: Mr. Clark got paid \$10,000 or more for his advice to Jamie, and Jamie in turn was paying money to outside diskjockeys; is that correct?

Mr. FINFER. That is correct.

Mr. LISIMAN. In what respect did the payment of \$10,400 to Mr. Clark differ from the payments that you made to these other diskjockeys?

Was it given for a different purpose?

Mr. FINFER. No, that was salary, that was what each as individuals received.

Mr. LISIMAN. Was it given because he was airing Jamie record labels?

Mr. FINFER. No, it wasn't, it was on the basis only of listening to it and being part of the company.

Mr. LISIMAN. What were Mr. Clark's duties with the Jamie Record Co.?

Mr. FINFER. Only to advise us on our releases, to listen, and to advise us on our releases.

Mr. LISIMAN. The same as the other diskjockeys?

Mr. FINFER. That is correct.

Mr. LISIMAN. And he got paid the same as they did, only in a slightly larger amount; is that correct?

Mr. FINFER. He had an interest with us.

Mr. LISHMAN. Now, coming back to this transcript of the accounts of the Jamie Record Co., we come across the item of 267 in the left-hand column, and it shows that on October 23, 1959, \$500 was paid to Agnes Mammarella. Now, do you know Agnes Mammarella?

Mr. FINFER. That is Tony Mammarella's wife. I thought that \$500 here could be the same—

Mr. LISHMAN. Why did you give that \$500?

Mr. FINFER. That was a gift because of her giving birth to a baby.

Mr. LISHMAN. And was that charged to record promotion expense?

Mr. FINFER. Well, it says here.

Mr. LISHMAN. That is charged to promotion?

Mr. FINFER. That is what it says here.

Mr. LISHMAN. Now, were some of these payments that you made to diskjockeys and others in connection with record advice in the form of cash?

Mr. FINFER. Some were, and some were by check.

Mr. LISHMAN. We come to this item, \$300 cash to Niagara. Does that mean \$300 cash to Joe Niagara, the diskjockey?

Mr. FINFER. That is correct.

Mr. LISHMAN. Why did he get this \$300 cash? Again, for the purpose of consultation?

Mr. FINFER. That is correct.

Mr. LISHMAN. And there is an item of \$25 to George Johnson, Jr., another diskjockey; was that for the same purpose?

Mr. FINFER. Yes.

Mr. LISHMAN. And another one of \$100 to Frank Ward; was that for the same purpose?

Mr. FINFER. That is correct.

Mr. LISHMAN. And these are all payments made by Jamie Record Co.; is that correct?

Mr. FINFER. That is correct.

Mr. LISHMAN. At a time when Mr. Clark had an interest in the company; is that correct?

Mr. FINFER. That is correct.

Mr. LISHMAN. And was there also a payment of \$100 made to Frank Ward in Miami?

Mr. FINFER. Yes, there was.

Mr. LISHMAN. And he is a Miami diskjockey, is he not?

Mr. FINFER. That is correct.

Mr. LISHMAN. And was there a \$200 payment made to Bill Allen?

Mr. FINFER. That is correct.

Mr. LISHMAN. And is he not a diskjockey in Nashville?

Mr. FINFER. Nashville, Tenn.; that is correct.

Mr. LISHMAN. Well, you were getting your service from quite a wide range of the country, were you not?

Mr. FINFER. That is correct, because basically—

Mr. LISHMAN. Were you trying to get geographical differences taken care of?

Mr. FINFER. There is a difference on every record manufactured. Bill Allen happened to be in the territory where they specifically play certain types of records, which happen to be authentic rhythm and blues records.

Mr. LISHMAN. Now, if you turn to the first sheet of the Jamie Record Co. transcript, showing payments charged to the promotion account for the 8 months' period ending December 31, 1959, you will find that on June 15, 1959, there was a payment of \$500—first, on the 15th there was a payment of \$30 to Bill Gavin.

Mr. FINFER. That is for—he has a record survey.

Mr. LISHMAN. Then on the same day you paid \$1,000 to Mammarella.

Now, why did you pay him \$1,000 on that day?

Mr. FINFER. I cannot answer that, I don't know.

Mr. LISHMAN. You don't know why. Was it for services?

Mr. FINFER. Yes.

Mr. LISHMAN. Promotion services?

Mr. FINFER. Promotion; yes, sir.

Mr. LISHMAN. And at that time he was production manager of the "American Bandstand"?

Mr. FINFER. Producer of the "Bandstand"; yes, sir.

Mr. LISHMAN. On the same day you also gave \$500 to Joe Niagara, who is a diskjockey?

Mr. FINFER. That is correct.

Mr. LISHMAN. And at these times when you were making these payments, Mr. Clark had his one-quarter interest in the company?

Mr. FINFER. That is correct.

Mr. LISHMAN. And it was never brought to his attention that you were making these payments to diskjockeys, a company in which he owned one-quarter interest?

Mr. FINFER. Never.

Mr. LISHMAN. You are positive of that?

Mr. FINFER. Yes, sir.

Mr. LISHMAN. Was that ever brought to the attention of Mr. Mammarella? He must have known, he was getting something from Jamie.

Mr. FINFER. Who was that?

Mr. LISHMAN. Mr. Mammarella. Mr. Mammarella knew he was being paid by Jamie, didn't he?

Mr. FINFER. That is correct.

Mr. LISHMAN. And isn't it a fact that Mr. Mammarella and Mr. Clark are in the same office?

Mr. FINFER. That is correct.

Mr. LISHMAN. Have you ever been in their office?

Mr. FINFER. Yes, I have.

Mr. LISHMAN. About how big is that office?

Mr. FINFER. It is rather small.

Mr. LISHMAN. Rather small. It was so small that the two desks are back to back; is that correct?

Mr. FINFER. That is correct.

Mr. LISHMAN. With a common telephone between them?

Mr. FINFER. That is correct.

Mr. LISHMAN. And yet Mr. Clark did not know anything at all about the fact that his production manager was getting all of these payments from a company in which he owned one-quarter interest; is that what you say?

Mr. FINFER. That is correct.

Mr. LISHMAN. And wasn't Mr. Clark given monthly and annual financial statements of Jamie Record Co. showing these promotion accounts?

Mr. FINFER. I believe so.

Mr. LISHMAN. Didn't he have a course in business administration at Syracuse University?

Mr. FINFER. That I don't know.

Mr. LISHMAN. Doesn't he follow the financial affairs of a company in which he is interested very closely?

Mr. FINFER. I can't answer that.

Mr. LISHMAN. Are you positive he didn't know that these promotion accounts included payola payments to diskjockeys throughout the country?

Mr. FINFER. I don't believe he did.

Mr. LISHMAN. Well, what did he do with these monthly accounts showing the operations of this company? Why did he request them?

Mr. FINFER. Why?

Mr. LISHMAN. Yes. Didn't he want to know what you were doing?

Mr. FINFER. That is correct.

Mr. LISHMAN. Don't you suppose he looked at them after he got them?

Mr. FINFER. Well, he might have. I wasn't there, I don't know. I am only speaking of what I know. I don't know if he has ever seen these, because this is the first time I have ever seen this sheet myself.

Mr. LISHMAN. These were taken from the books of the Jamie Record Co., you don't have any doubt of that, do you?

Mr. FINFER. I don't know that. This is the first time I have seen it.

Mr. LISHMAN. Now we have a payment to Harry Miller of \$600 on June 7, 1959; what was that payment for?

Mr. FINFER. The same reason, he was a diskjockey.

Mr. LISHMAN. And that was for his advice?

Mr. FINFER. That is correct.

Mr. LISHMAN. On July 2, 1959, we have a payment of \$400 to Joe Finan. Mr. Finan was a witness before us, and he was a diskjockey in Cleveland; is that correct?

Mr. FINFER. That is correct.

Mr. LISHMAN. Concerning what records?

Mr. FINFER. I beg your pardon?

Mr. LISHMAN. Did you keep track of what records you asked his advice about?

Mr. FINFER. No, I did not.

Mr. LISHMAN. Are there any records of the company which would show what advice was given?

Mr. FINFER. No, not on any individual records.

Mr. LISHMAN. Was any advice ever received in writing, from any of these diskjockeys?

Mr. FINFER. No, just verbal.

Mr. LISHMAN. Was some of this advice just received over the phone?

Mr. FINFER. Never on the phone. I was there in person.

Mr. LISHMAN. Now, the next item, on July 2, 1959, is \$100 to Bob Carr. Who is he?

Mr. FINFER. He was a promotion man from my Cleveland distributor.

Mr. LISHMAN. The next one, on July 3, 1959, \$100 to Carson Rennie. Was he in Cleveland?

Mr. FINFER. He was in Cleveland.

Mr. LISHMAN. Was he a librarian of the station?

Mr. FINFER. No; he was the assistant program director.

Mr. LISHMAN. Then we come to—I will skip this one, because the name is not legible, and I will come to the next one, on July 6, 1959, you paid \$100 to Thomas A. Sedgwick; is that right?

Mr. FINFER. I don't know what that is.

Mr. LISHMAN. Well, it is listed here as promotion expense for a diskjockey in Cleveland or Detroit.

You don't know that?

Mr. FINFER. No, sir.

Mr. LISHMAN. We will pass him.

The next one is Earl Wolf on July 2, 1959, he received \$100. And where is he a diskjockey?

Mr. FINFER. He is not a diskjockey, he is a promotion man for my Detroit distributor.

Mr. LISHMAN. The next one is September 3, 1959, in the amount of \$200 to Doug Henderson.

Mr. FINFER. He was a diskjockey in Philadelphia.

Mr. LISHMAN. And he again was paid for his advice?

Mr. FINFER. That is correct.

Mr. LISHMAN. You have another payment of \$50 to him on October 27, that is for his advice again?

Mr. FINFER. That is correct.

Mr. LISHMAN. And then we have another payment on December 30 to Bob Mitchell, in the amount of \$75.

Mr. FINFER. That is correct.

Mr. LISHMAN. Now, Mr. Finfer, all these payments made to production managers, diskjockeys, and so forth, all connected with the broadcasting business, according to your testimony, were for the purpose of obtaining, of compensating these people for their advice; is that correct?

Mr. FINFER. That is correct.

Mr. Moss. Mr. Lishman, I wonder if we might deem from the witness' testimony, Jamie Records is a manufacturing company; is that correct?

Mr. FINFER. In a sense we were a label owner.

Mr. Moss. You were a label owner. In what sense?

Mr. FINFER. As a label, we didn't actually manufacture records, we had others manufacture the record for us. All we owned was a label.

Mr. Moss. That is what Jamie was?

Mr. FINFER. Yes, sir.

Mr. Moss. You were not a distributor of other records?

Mr. FINFER. Not Jamie, no.

Mr. Moss. Jamie was strictly the owner of—how many titles?

Mr. FINFER. Just one, Jamie.

Mr. Moss. Not labels, titles?

Mr. FINFER. Titles.

Mr. Moss. Yes.

Mr. FINFER. Many.

Mr. MOSS. How many?

Mr. FINFER. I couldn't say, offhand.

Mr. MOSS. 1,000?

Mr. FINFER. No.

Mr. MOSS. Fifty?

Mr. FINFER. Fifty or thereabouts; yes.

Mr. MOSS. Well, I have done a little checking, and I have discovered that you had 51 records, or 102 titles.

Mr. FINFER. Well, that is 50 records.

Mr. MOSS. And yet you paid out thousands of dollars to get a few people to listen to 51 records. If you paid them \$100 apiece, it wouldn't add up to what you paid Mr. Clark for his advice on these 51 records.

How much did you pay Mr. Clark?

Mr. FINFER. I don't recall the exact figure.

Mr. MOSS. You paid him a salary, did you not?

Mr. FINFER. That is correct.

Mr. MOSS. You paid him a salary approximately a year after he became associated with you. You gave him a quarter interest for \$125?

Mr. FINFER. That is correct.

Mr. MOSS. And a year later you started to pay him a weekly rate in excess of his original investment by \$75 a week, \$200 a week?

Mr. FINFER. That is correct.

Mr. MOSS. On a regular basis, so that he could give you all of his knowledge on 51 records, 102 titles, over this entire period of time from June 16, 1957, until December 9, 1959. For 2½ years of advising you on 102 titles, or 51 records, you paid him a total salary of some \$16,700, plus the profits on the stock you arranged for him to take, a gross take of \$31,575.

Now, how many of these titles developed or evolved during the period June 16, 1957, to December 9, 1959?

Have you had any titles since then that have developed, or any before that that have developed?

How many did you put into production during this period?

Mr. FINFER. I don't have the figures, but it might have been and it might not have been.

Mr. MOSS. When did you go into business?

Mr. FINFER. I don't recall the exact date.

Mr. MOSS. All you paid Mr. Clark for, then, was to advise you. Now, how was this advice delivered—were there regular days when you would meet with him to discuss business?

Was it a formalized or—

Mr. FINFER. It was informal. I would be out on a record, and if I recorded any I would come back and call him to find out whether he would be available for me to bring in some of the things I had.

Mr. MOSS. And how often in the course of a week, or a month, was he available?

Mr. FINFER. I say most of the time he was available.

Mr. MOSS. Well, how many times?

Two hundred dollars a week, now, let's see how many times he was available.

Mr. FINFER. I couldn't say.

Mr. MOSS. Was he available once a week?

Mr. FINFER. He was available more than that, much more than that.

Mr. MOSS. More than once a week?

Mr. FINFER. Yes.

Mr. MOSS. How many hours?

When you say available, how do you mean available? Did he talk to you on the telephone?

Mr. FINFER. I mean in person.

Mr. MOSS. In person. Did you call on him, or did he stop by the office?

Mr. FINFER. No, he never stopped by the office, I called on him.

Mr. MOSS. Where, in his office or studio?

Mr. FINFER. At his office.

Mr. MOSS. And you sat down and asked him his opinion?

Mr. FINFER. That is correct.

Mr. MOSS. And then you left, satisfied that you had value received?

Mr. FINFER. That is right.

Mr. MOSS. I notice that in your payments to Mr. Clark that you took off reductions for social security taxes. Did you do that on the payments to the other diskjockeys?

Mr. FINFER. I don't believe so.

Mr. MOSS. You don't know?

Mr. FINFER. I don't believe so.

Mr. MOSS. Well, did you make any withholdings on them?

Mr. FINFER. No, we didn't.

Mr. MOSS. No withholdings?

I want you to know, because of the very, very unusual practice here, that I am going to make it my business to address letters to both the Social Security Administration and to the Internal Revenue Service and suggest that they review very carefully the testimony you have given us. You are making these payments on the basis where you receive nothing of value at all, you are making a reduction, and yet you are charging them off as expenses. I want to find out by just what logic, or rule of law, or regulation you arrived at that permits you to do these things which most people cannot do.

The CHAIRMAN. Mr. Bennett.

Mr. BENNETT. Mr. Finfer, when you had Clark listen to your records, did he have a victrola in his office?

Mr. FINFER. He did.

Mr. BENNETT. And was Mammarella there, or was anybody else there?

Mr. FINFER. Yes, there would be a few people there.

Mr. BENNETT. How many records would you bring at one session?

Mr. FINFER. It all depends, it depends on what I have.

Mr. BENNETT. Well, Mr. Moss just brought out you had 50 records.

Mr. FINFER. Yes, but that 50 records represents a long period.

Mr. BENNETT. Well, what would be a typical number that you would bring over?

Mr. FINFER. One or two at the most.

Mr. BENNETT. One record?

Mr. FINFER. One or two, yes.

Mr. BENNETT. Now, we had a witness the other day that had a new term for this kind of stuff, service. He called it a "consultation fee," when a person like you paid a diskjockey or had him on the payroll. Has the idea of consultation even been brought to your attention?

Mr. FINFER. No.

Mr. BENNETT. You do not have a description of this kind of arrangement?

Mr. FINFER. No.

Mr. BENNETT. Can you give me a description?

Really, what kind of an arrangement was this that you had with these diskjockeys?

Mr. FINFER. You see, I never had an arrangement. It was just presenting my records to them and getting them to listen to them to determine the value of these records for me, and that was it. You see, we were unfortunate that we didn't have any hit records, they were given to us by manufacturers.

Mr. BENNETT. There are a lot of people in music who can appraise music other than diskjockeys, are there not?

Mr. FINFER. On what basis?

Mr. BENNETT. Well, most of the large newspapers have a music editor or music writer, and most magazines have them. Do you ever employ any of these people to appraise or evaluate any of your records?

Mr. FINFER. Never.

Mr. BENNETT. Did you ever think of it?

Mr. FINFER. Never.

Mr. BENNETT. Is it not true that many of those people are just as expert in the music business as diskjockeys, in evaluating music?

Mr. FINFER. It is pretty hard to determine whether they do have that knowledge.

Mr. BENNETT. You never thought of consulting anybody or getting the advice of anyone except diskjockeys; is that true?

Mr. FINFER. Yes.

Mr. BENNETT. How would you evaluate these people?

When you paid one diskjockey \$100 and another one \$500, how did you determine whether the one was worth \$500 and the other fellow was worth only a hundred; how did you make that determination?

Mr. FINFER. It is a hard thing to do, to make a decision like that. But what we feel, that is what we did. That is the way we felt.

Mr. BENNETT. How did you do it?

You have some pretty diverse figures here of payments to diskjockeys; you would pay one \$100, another \$500, and another \$1,000.

Mr. FINFER. This was no basis—

Mr. BENNETT. How did you determine whether a diskjockey was worth \$1,000 and whether another diskjockey's advice was worth \$100?

Mr. FINFER. I can't answer that.

Mr. BENNETT. Did it have anything to do with the size of the station that the man was connected with?

Mr. FINFER. Not at all.

Mr. BENNETT. Did it have anything to do with his personal reputation as a diskjockey?

Mr. FINFER. Yes, sir.

Mr. BENNETT. What part did that play?

Mr. FINFER. On the basis of the people listening to his show, he had more people listening to his show—this was popularity in the sense that his name was being mentioned.

Mr. BENNETT. Was Clark worth more money for a record appraisal than Mammarella?

Mr. FINFER. I can't answer that, I don't know.

Mr. BENNETT. But you paid Clark more money than you did Mammarella, did you not?

Mr. FINFER. That is correct.

Mr. BENNETT. Why?

Mr. FINFER. I wanted Dick Clark to be a part of our organization, since he was the first one in getting us off the ground, in the sense that I brought him a record of one of our artists who at this point happens to be one of our biggest artists, and because of Dick liking the artist and guiding him in various releases that he put out with him. I thought he should be part of our organization, in the sense that he spent time in listening and deciding.

Mr. BENNETT. But you are not able to say that Clark is any better at judging music than Mammarella? You cannot say that?

Mr. FINFER. No, I can't.

Mr. BENNETT. But you paid him a lot more money?

Mr. FINFER. That is correct.

Mr. BENNETT. For reasons best known to you?

Mr. FINFER. Well, it is just salary, the money that he earned was just salary.

Mr. BENNETT. If you could stop being cagey about this, you could answer this question.

How much were you paying these diskjockeys for their services in appraising your music, and how much were you paying them for playing the music?

Mr. FINFER. I couldn't separate the two.

Mr. BENNETT. You could not separate them?

Mr. FINFER. I couldn't separate the two.

Mr. BENNETT. You were paying them for both, though, were you not?

Mr. FINFER. That is correct.

Mr. BENNETT. And that includes Mr. Clark, does it not?

Mr. FINFER. No; it does not include Mr. Clark.

Mr. BENNETT. You were not paying Mr. Clark for airing your music?

Mr. FINFER. Not for airing the music, no.

Mr. BENNETT. None of the money you paid him—

Mr. FINFER. There are many records he did not play for me, Jamie records.

Mr. BENNETT. You concede, though, do you not, that part of this money you were paying these diskjockeys was for the value that you got out of their playing your records on the air; you do not dispute that, do you?

Mr. FINFER. No. Listening is the first consideration to determine the value of the records.

Mr. BENNETT. If listening was the first consideration, why did you go only to diskjockeys and not to other people in the music field?

Mr. FINFER. Because for our type of music I don't believe that there is anybody else that could be a judge of music.

Mr. BENNETT. What artist did Clark get off the ground for you? You mentioned that a minute ago.

Mr. FINFER. I beg your pardon?

Mr. BENNETT. You mentioned a minute ago that Clark had gotten an artist off the ground and you felt grateful to him for that. Who was the artist?

Mr. FINFER. Duane Eddy.

Mr. BENNETT. How did he get him off the ground?

Mr. FINFER. Well, a friend of mine recorded Duane Eddy on the coast and submitted the record to me for our label, which we were going to start. And I brought the acetate record to Dick Clark which I think was called "Moving and Grooving," and he liked it, and he put the record on, and subsequently he asked whether Eddy would like to make an appearance on the show, and that started him.

Mr. BENNETT. Did Eddy appear on the Clark program?

Mr. FINFER. He did.

Mr. BENNETT. Is he a singer?

Mr. FINFER. No, he plays guitar.

Mr. BENNETT. You paid Clark \$16,000 over an 80-week period, according to the facts developed by our Subcommittee staff. During the same period you paid Mammarella \$4,000. Did you get more advice from Clark than you did from Mammarella on records?

Mr. FINFER. Well, that is pretty hard to say.

Mr. BENNETT. Why did he get that much more money? I ask this because, frankly, I do not believe what you are saying—

Mr. FINFER. He is an owner, he is one of the company members.

Mr. BENNETT. I know that. But he also got a salary of \$16,700, and that was for listening to records. Did he do anything else?

Mr. FINFER. That is all. If he decides to play them, he plays them.

Mr. BENNETT. Clark did not do any more for you than any other diskjockey, did he?

Mr. FINFER. I believe he did.

Mr. BENNETT. I mean, he listened to records, and that is what other diskjockeys did.

Mr. FINFER. There is a way of listening to records, so as to advise me whether to record these things. He gave me complete advice from recording, down to playing these records.

Mr. BENNETT. Was the advice which Clark gave you as compared with these others better because Clark was broadcasting over a network and these other fellows only over single local stations?

Mr. FINFER. That had nothing to do with it.

Mr. BENNETT. Not a thing?

Mr. FINFER. Not a thing.

Mr. BENNETT. And the fact that Clark was a prominent figure in the entertainment world had nothing to do with your inducing him to become a quarter interest stockholder in your firm for the nominal fee of \$125, is that true?

Mr. FINFER. That is true.

Mr. BENNETT. Why did you pick Clark to be your partner?

Mr. FINFER. Why did I pick Clark, is because I knew Dick Clark before he had his network show, and the gentleman knew music, my kind of music.

Mr. BENNETT. But you did not put him in the firm until after he got on the network, did you?

Mr. FINFER. I don't know whether it was at the same time, but I have asked him repeatedly to come in with me before he was on the network, and he came in subsequently, many months afterwards.

Mr. BENNETT. Now, as far as Clark is concerned, there is quite a difference in the amount of money he would make by virtue of owning stock and the amount of money he would get by virtue of being on salary; is that true?

Mr. FINFER. I don't know.

Mr. BENNETT. You know what the difference is between the tax on capital gains and the tax on straight income for a person in a high bracket, do you not?

Mr. FINFER. No.

Mr. BENNETT. You are not aware of that?

Mr. FINFER. I am not aware of that.

Mr. BENNETT. I doubt it.

Well, anyway, if you are not aware of it, the maximum tax on a long-term gain, or a gain on capital held more than 6 months, is 25 percent, and Clark appeared to be in the 75 percent bracket. So on the \$15,000 he got from your company for the \$125 he invested over a 2-year period, he paid \$3,000-some-odd, and had the rest. On the \$10,000 you paid him in salary, because he was in the 75 percent bracket, the Government got \$7,500 and he got \$2,500. So there is quite a difference in how you have your investment, is that not true?

Mr. FINFER. That is true.

Mr. BENNETT. These ordinary "rinky-dink" jockeys get their money in cash payments or flat fee payments that they have to report as income. But Clark got his two ways, at least from you: One, by virtue of capital gain, and the other, by virtue of his salary; is that not true?

Mr. FINFER. I don't know how you figure that out.

Mr. BENNETT. That is all.

The CHAIRMAN. Mr. Moss has a question. Do you have more questions, Mr. Lishman?

Mr. LISHMAN. I have about two or three more questions.

Mr. MOSS. You mentioned that one reason you wanted Mr. Clark on your team might be because he had taken an interest in one of your artists, Duane Eddy; is that correct?

Mr. FINFER. That is correct.

Mr. MOSS. When did he take the interest in Mr. Eddy?

Mr. FINFER. You mean the date? I just don't recall.

Mr. MOSS. Before you got him into your firm as a stockholder or subsequent to his coming in?

Mr. FINFER. Much before.

Mr. MOSS. Much?

Mr. FINFER. Yes.

Mr. MOSS. This was just a friendly gesture on Mr. Clark's part?

Mr. FINFER. Yes.

Mr. MOSS. Do you know whether Mr. Eddy was represented by the management firm of SRO?

Mr. FINFER. At the time he wasn't, but he is now.

Mr. MOSS. He is now?

Mr. FINFER. On my suggestion he is.

Mr. MOSS. On your suggestion. And SRO Artists, Inc., until we assume this recent action to divest, was owned 25 percent by Mr. Dick Clark?

Mr. FINFER. I did not know at the time, but I have requested that the—

Mr. MOSS. You had no idea, when you recommended to Mr. Eddy that he go to SRO, that Mr. Clark had any interest?

Mr. FINFER. That is correct.

Mr. MOSS. This is just another interesting coincidence?

Mr. FINFER. That is right, that is correct.

Mr. MOSS. That is what you want me to believe?

Mr. FINFER. That is correct.

Mr. MOSS. All right, I think the record should show that Mr. Clark was one-quarter owner in SRO, as he was in Jamie, and as he appears to have been in many things which produced additional revenues for him as a result of his serving on the "Bandstand."

The CHAIRMAN. Mr. Lishman.

Mr. LISHMAN. Mr. Finfer, are you familiar with the Mallard Pressing Co.?

Mr. FINFER. I know of them.

Mr. LISHMAN. Do you know that Mr. Clark had an interest in the Mallard Pressing Co. at one time?

Mr. FINFER. Yes, I did.

Mr. LISHMAN. Did Jamie Records have any records pressed by Mallard?

Mr. FINFER. Not at all.

Mr. LISHMAN. Who pressed the records of Jamie?

Mr. FINFER. Many plants, Paramount Records.

Mr. LISHMAN. Primarily Paramount?

Mr. FINFER. Yes.

Mr. LISHMAN. How much did Jamie gross in 1959?

Mr. FINFER. I don't know. I don't have the figures.

Mr. LISHMAN. Would it be \$800?

Mr. FINFER. I don't know, I couldn't tell you.

Mr. LISHMAN. Who distributes Jamie records?

Mr. FINFER. You mean locally or nationally?

Mr. LISHMAN. Well, take it both ways, locally?

Mr. FINFER. Locally, Universal Records.

Mr. LISHMAN. Nationally?

Mr. FINFER. Jamie Records Co., and their distributors.

Mr. LISHMAN. Do you know the Jamie Garden Distributing Co.?

Mr. FINFER. Yes; that was formed afterward.

Mr. LISHMAN. Do you have an interest in that?

Mr. FINFER. Yes, I do.

Mr. LISHMAN. Did Mr. Clark ever have an interest in the Jamie Garden Distributing Co.?

Mr. FINFER. No.

Mr. LISHMAN. Now, do you know, Mr. Finfer, whether it is a common practice of either a record manufacturer or a distributor to concentrate a push on only one side of a record in hope of making the record popular?

Mr. FINFER. No.

Mr. LISHMAN. You are familiar with the promotion methods used in connection with record distribution, aren't you?

Mr. FINFER. That is correct.

Mr. LISHMAN. And you do not know whether or not it is a practice, to concentrate in pushing one side of a record in the hopes that by doing so, you will also make the other side a success?

Mr. FINFER. At first you use your own judgment as to what many people think about the record as to which side you want to work on first. And then if it happens to be the other side, then you change on the other side, it depends on the consumer at that particular point.

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

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

Mr. MACK. One short question.

Does Dick Clark now do your listening for you?

Mr. FINFER. He still does.

Mr. MACK. How do you handle this arrangement?

Mr. FINFER. How do I handle it?

Mr. MACK. Yes.

Mr. FINFER. The same way I handled it before, just walk in with my product, and have him listen to it and judge by that.

Mr. MACK. And you paid him for this listening?

Mr. FINFER. Do I pay him?

Mr. MACK. Well, I am asking you the question.

Mr. FINFER. No, I don't pay him.

Mr. MACK. You do not?

He does not charge you anything for the listening service?

Mr. FINFER. He didn't charge me before.

Mr. MACK. I thought he received a salary for this?

Mr. FINFER. That was no charge, he had an interest in the company with us.

Mr. MACK. It was not a salary, it was an arrangement through his interest in the company?

Mr. FINFER. Well, it was a salary.

Mr. MACK. It was for listening, though, was it not?

And now he does it for free?

Mr. FINFER. Not only listening, but to determine the value of a record, and how to record also; he gave me the advice of the complete thing, not only as to listening, but to make any changes to a point of a better sale than if I had put out the original record without his advice.

Mr. MACK. So you used to pay him for this service, and now you do not pay him. Why?

Mr. FINFER. Why?

I am not permitted to.

Mr. MACK. Were you permitted to pay him before?

Mr. FINFER. Nobody said I couldn't.

Mr. MACK. Then it must be illegal, if you cannot now.

Mr. FINFER. I don't know.

Mr. MACK. That certainly raises a very interesting question. But he performs the same service now without a fee, is that correct?

Mr. FINFER. That is correct.

Mr. MACK. Now, as a matter of fact, are not all of these diskjockeys paid by the respective radio stations to perform a listening service?

Mr. FINFER. Yes.

Mr. MACK. Paid by the stations?

Mr. FINFER. That is correct.

Mr. MACK. Then they shouldn't get any additional pay from you, is that not correct?

Mr. FINFER. That is correct.

Mr. MACK. Then would it not be fair to assume under those circumstances, that a fee paid to this diskjockey, or to any diskjockey, would be to encourage him or induce him to play your records?

I will yield to my colleague.

Mr. BENNETT. Do you still have the same arrangement with Mammarella?

Mr. FINFER. I have no arrangement whatsoever with anybody.

Mr. BENNETT. You just said in reply to a question asked by Mr. Mack that Clark is listening to your records and advising you. Is Mammarella listening?

Will you answer so that the reporter can take it down?

Mr. FINFER. He is not there to listen.

Mr. BENNETT. Clark is doing the same thing for you now, as he was doing before he had his interest in that company?

Mr. FINFER. That is correct.

Mr. BENNETT. Does that same thing apply to Mammarella; is he still on your payroll?

Mr. FINFER. No.

Mr. BENNETT. Does he give you advice?

Mr. FINFER. No.

Mr. BENNETT. He is not listening to any of your records?

Mr. FINFER. No, not at all.

Mr. BENNETT. Why not?

Mr. FINFER. I wouldn't know where to find him.

Mr. BENNETT. Would it be because Mammarella is no longer with the program? Would that be why?

Mr. FINFER. Yes.

Mr. MACK. You are getting the same service from Mr. Clark as you formerly received, and you are getting a similar service from these other diskjockeys that you formerly received?

Mr. FINFER. That is correct.

Mr. MACK. And in the past you paid them a tremendous amount of money for this service. Now, is the service that you are currently getting as good as it was when you were paying for it?

Mr. FINFER. Yes.

Mr. MACK. Well, if that is true then, you must be making a tremendous amount of money now, a lot more than you were. You are saving the tremendous sums that you formerly paid for listening fees. Do your books reflect that?

Mr. FINFER. Well, business isn't as good.

Mr. MACK. As a matter of fact, it is not as good now as it was when you were paying these listening fees?

Mr. FINFER. I don't know if it is as a result of it, but business is bad.

Mr. MOSS. How bad?

Mr. MACK. I think that answers my question.

Mr. MOSS. Would you yield briefly?

Mr. MACK. I yield to my colleague.

Mr. MOSS. Do you, in your business, seek advice from your competition, pay for advice from competitors?

Mr. FINFER. From my competition?

Mr. MOSS. You do not?

Mr. FINFER. I seek advice, but I don't pay for it.

Mr. MOSS. You do not pay for advice from your competition. Were Mr. Clark and Mr. Mammarella in any partnership arrangement on Swan records, a competitor, at the time you were paying them?

Mr. FINFER. That was without my knowledge.

Mr. MOSS. You did not check it, then, to see whether you were dealing with competitors or not?

Mr. FINFER. I did not. I didn't know.

The CHAIRMAN. Mr. Derounian.

Mr. DEROUNIAN. No.

The CHAIRMAN. Were you responsible for negotiating with Mr. Goldner of Gone Records to distribute Jamie records?

Mr. FINFER. Yes.

The CHAIRMAN. Did you suggest to Mr. Goldner that he or anyone else transfer the copyright to one, or any, of Mr. Clark's publishing companies?

Mr. FINFER. I did not.

The CHAIRMAN. The subcommittee will have to recess—first let me say, that is all for you, Mr. Finfer, and you can be excused. Thank you.

We must go answer this rollcall. The subcommittee will return immediately after the rollcall.

Mr. Lipsius, you may be excused if you like. We will not need you.

The subcommittee will recess for about 20 minutes. And I hope we can make a little more progress when we get back.

(A recess was taken.)

The CHAIRMAN. The subcommittee will come to order.

Mr. Orville Lunsford, accompanied by Leslie Johnson, counsel, will you be sworn.

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

Mr. LUNSFORD. I do.

TESTIMONY OF ORVILLE LUNSFORD, ACCOMPANIED BY LESLIE JOHNSON, COUNSEL

The CHAIRMAN. State your name for the record, please.

Mr. LUNSFORD. Orville Lunsford.

The CHAIRMAN. What is your residence?

Mr. LUNSFORD. Chillicothe, Ohio.

The CHAIRMAN. What is your business or profession, Mr. Lunsford?

Mr. LUNSFORD. I am a song writer.

The CHAIRMAN. I observe that you have your attorney with you?

Mr. LUNSFORD. Yes, sir.

The CHAIRMAN. Which is permitted under the rules of the House, and I think he should be identified for the record.

Mr. JOHNSON. Leslie Johnson, Logan, Ohio.

The CHAIRMAN. Mr. Johnson, are you familiar with the provisions of the rules?

Mr. JOHNSON. I have read the rules, yes, sir.

The CHAIRMAN. Mr. Lishman, you may proceed.

Mr. LISHMAN. Mr. Lunsford, I understand you have composed a number of songs. Could you give us the names of some of these songs, please?

Mr. LUNSFORD. "Rubber Dolly," was one, "The All-American Boy," was two, and "What I Get for Loving You," is three, "My Everything," was four.

Mr. LISHMAN. You have stated you composed a song entitled "All American Boy."

Mr. LUNSFORD. That is right.

Mr. LISHMAN. About what time did you write this song?

Mr. LUNSFORD. Around the first of November.

Mr. LISHMAN. Did you have the song put on tape at the Kane Recording Co. in Cincinnati, Ohio?

Mr. LUNSFORD. I did.

Mr. LISHMAN. About when?

Mr. LUNSFORD. November 4.

Mr. LISHMAN. What year?

Mr. LUNSFORD. 1959.

Mr. LISHMAN. Was not that 1958?

Mr. LUNSFORD. 1958.

Mr. LISHMAN. You entered into an agreement shortly after that time, didn't you, assigning your rights in the song to Fraternity Records, Inc., of Cincinnati, Ohio?

Mr. LUNSFORD. I did.

Mr. LISHMAN. On what date did you enter into this agreement with Fraternity Records assigning the rights in "All American Boy"?

Mr. LUNSFORD. The 5th of November, 1958.

Mr. LISHMAN. November 5, 1958. Who was the president of Fraternity Records, Inc.

Mr. LUNSFORD. Harry Carlson.

Mr. LISHMAN. Was he the gentleman with whom you negotiated this assignment?

Mr. LUNSFORD. Yes, sir.

Mr. LISHMAN. Under this agreement dated November 5, 1958, is it correct that Fraternity Records was to handle the recording and distribution of the song as well as its publication in sheet music form?

Mr. LUNSFORD. That is right.

Mr. LISHMAN. Now, was it your understanding that Fraternity Records usually had its songs pressed into records by RCA Victor?

Mr. LUNSFORD. That is correct.

Mr. LISHMAN. Was it your understanding that Fraternity placed orders with RCA Victor for pressing records of "The All American Boy"?

Mr. LUNSFORD. That is right.

Mr. LISHMAN. About how many records were ordered pressed by RCA Victor?

Mr. LUNSFORD. I understand that they pressed out around 400,000.

Mr. LISHMAN. How did you learn of this order of 400,000 records of "All American Boy" to be pressed by RCA Victor?

Mr. LUNSFORD. Mr. Carlson told me.

Mr. LISHMAN. When did he tell you that, approximately?

Mr. LUNSFORD. Approximately in April.

Mr. LISHMAN. Of what year?

Mr. LUNSFORD. 1958.

Mr. LISHMAN. Did you have a conversation with Mr. Harry Carlson at that time?

Mr. LUNSFORD. Yes.

Mr. LISHMAN. And what was the substance of that conversation?

Mr. LUNSFORD. Well, he told me that they pressed that many records, or approximately that many.

Mr. LISHMAN. Now, did you have a number of other conversations with Mr. Carlson about this record?

Mr. LUNSFORD. Yes, I have.

Mr. LISHMAN. Did you have a conversation with him in late December 1958, or early in January 1959, regarding the playing of "The All American Boy" on the "American Bandstand" program?

Mr. LUNSFORD. I did.

Mr. LISHMAN. What was the nature of that conversation?

Mr. LUNSFORD. Well, he told me—I was in the office and when Mr. Clark called, and he told me, he said, "It is the same old tale, you scratch my back and I'll scratch yours. Give Dick Clark's program an order for pressing records, and they will get on it."

Mr. LISHMAN. Did Mr. Carlson tell you what representative of Dick Clark had made that statement to him?

Mr. LUNSFORD. No, he didn't.

Mr. LISHMAN. Now, I am going to hand you a document and ask you if this is an affidavit, sworn to by you on January 26, 1960?

Mr. LUNSFORD. It is.

Mr. LISHMAN. Mr. Chairman, I would like to have this affidavit of Mr. Lunsford introduced into the record at this time.

The CHAIRMAN. What does it refer to?

Mr. LISHMAN. It refers to the arrangements, which Mr. Lunsford states he made through Mr. Carlson, with respect to Dick Clark or his representative concerning the pressing of the record "All American Boy," by the Mallard Pressing Co. The Mallard Pressing Co. was a company at that time, in which Mr. Clark had a financial interest.

Is that correct?

Mr. LUNSFORD. That is right.

The CHAIRMAN. Is this your statement, Mr. Lunsford?

Mr. LUNSFORD. Yes, sir.

The CHAIRMAN. That you just referred to?

Mr. LUNSFORD. Yes.

The CHAIRMAN. And it has to do with the explanation of what you have just given?

Mr. LUNSFORD. Yes, sir.

The CHAIRMAN. Let it be received for the record.

(The document referred to follows:)

STATE OF OHIO,

County of Ross, ss:

Orville Lunsford, being duly sworn, deposes and says:

1. I am the composer of a song entitled "The All American Boy." In early November 1958 I had this song taped at Kane Recording Co., Cincinnati, Ohio.

2. On November 5, 1958, I entered into an agreement with Fraternity Records, Inc., 313 Race Street, Cincinnati, Ohio, under which I assigned my copy-

right to this composition to Fraternity Records, Inc., in return for a royalty of 2½ cents per record sold. Fraternity was to handle its recording and distribution as well as its publishing in sheet music form.

3. Shortly thereafter I learned from Mr. Harry Carlson, the president of Fraternity Records, that approximately 400,000 records of the song had been pressed by RCA Pressing Co., of Indianapolis, Ind., and other companies. The record sold well from the start.

4. In late December 1958 or early January 1959, I was told by Mr. Carlson that Dick Clark, the diskjockey, or his "business manager" had telephoned him regarding the playing of the record on his show. Mr. Carlson said that they had liked the record as a whole but objected to the mention of the word "Cadillac" in the lyrics. I refused to agree to any change in the lyrics.

5. Shortly thereafter, I was told by Mr. Carlson that he had been advised by Dick Clark's "business manager" that Clark would really give the record a "ride," but only if Fraternity Records gave Mallard Pressing Co., in Philadelphia, an order for 50,000 records. I understand from Mr. Carlson that he actually did give Mallard an order for 50,000 records in early January 1959.

6. Almost immediately, I heard my song played every other day on Clark's show, "American Bandstand," and on the "Dick Clark Show" also. The record became a big hit. It was No. 2 in record sales across the Nation for awhile.

7. I think it is also important to note that the singer whose name appears on the label of "All American Boy" was not the actual singer of the song. Bobby Bare was the actual singer of "All American Boy." Bill Parsons sang only the flip side of the record, a song which I also wrote, entitled "Rubber Dolly" but the record label credits him with singing both songs.

8. In January 1959, Bill Parsons, the singer whose name appears on the label of the record, made a personal appearance on both "American Bandstand" in Philadelphia and the "Dick Clark Show" in New York in connection with the promotion of "All American Boy."

9. In June 1959, Bill Parsons showed me a royalty statement, dated June 5, 1959, which had been sent to him by Fraternity Records. This statement lists over 100 diskjockeys with the amounts which each diskjockey had been paid by Fraternity Records for playing the record. I remember the name "Milt Grant" as appearing in this list. The total amount paid these diskjockeys was over \$9,000, according to the statement.

10. Billboard magazine's quarterly report, published in June or July 1959, reported that the number of records of "All American Boy" sold was over 1 million. To date, I have received royalties from Fraternity Records on only 465,000 records.

ORVILLE LUNSFORD.

Sworn and subscribed before me this 26th day of January 1960.

EARL F. MCCOLLISTER,
Notary Public.

Commission expires October 2, 1960.

Mr. LISHMAN. Now, Mr. Lunsford, did Mr. Carlson in fact authorize the "All American Boy" to be pressed by Mallard Pressing Co. of Philadelphia?

Mr. LUNSFORD. I understand that they were to press 50,000 for him at that time.

Mr. LISHMAN. How did you obtain this understanding?

Mr. LUNSFORD. He told me.

Mr. LISHMAN. Who told you?

Mr. LUNSFORD. Mr. Carlson.

Mr. LISHMAN. Mr. Carlson told you that he had actually placed an order for 50,000 records to be pressed by Mallard Pressing Co. of Philadelphia?

Mr. LUNSFORD. That is right.

Mr. LISHMAN. Did Mr. Carlson, who is present in the room, also tell you that it was necessary to do it this way in order to get Mr. Clark to air this record on his program?

Mr. LUNSFORD. He told me that he would give it a "ride."

Mr. LISHMAN. If you got the record pressed by Mallard?

Mr. LUNSFORD. That is right.

Mr. LISHMAN. You are sure of that?

Mr. LUNSFORD. Yes, sir.

Mr. LISHMAN. Now, is it correct that shortly after you learned about this order being given for the pressing of 50,000 records by Mallard, that you heard your song "All American Boy" played almost every other day on Dick Clark's show "American Bandstand"?

Mr. LUNSFORD. That is right.

Mr. LISHMAN. And did you also hear it aired on almost every performance of the "Dick Clark Show"?

Mr. LUNSFORD. I did.

Mr. LISHMAN. About what time did that occur?

Mr. LUNSFORD. That was in January, I would say, around in January somewhere.

Mr. LISHMAN. Now, did the record become a hit?

Mr. LUNSFORD. Yes, it did.

Mr. LISHMAN. Is it correct that it was the No. 2 record in sales across the whole Nation for a short time?

Mr. LUNSFORD. That is right.

Mr. LISHMAN. Now, the singer whose name appears on the label of "All American Boy" was not the actual singer of the song, is that right?

Mr. LUNSFORD. That is correct.

Mr. LISHMAN. What is the name of the singer on the label?

Mr. LUNSFORD. Bobby Bear.

Mr. LISHMAN. And who actually sang the song?

Mr. LUNSFORD. Bobby Bear sang the song, Bill Parsons' name was on the label.

Mr. LISHMAN. Did Bill Parsons sing the flip side of the record?

Mr. LUNSFORD. He did.

Mr. LISHMAN. And what was the flip side of the record?

Mr. LUNSFORD. "Rubber Dolly."

Mr. LISHMAN. But the label credited him with singing both sides?

Mr. LUNSFORD. That is right.

Mr. LISHMAN. And is it correct that in January 1959, Bill Parsons, the singer whose name appears on the label of the record, made a personal appearance on both "American Bandstand" in Philadelphia and the "Dick Clark Show" in New York in connection with the promotion of "All American Boy"?

Mr. LUNSFORD. That is correct.

Mr. LISHMAN. Did you ever learn whether money had been paid to diskjockeys for the purpose of promoting the popularity of your record "All American Boy"?

Mr. LUNSFORD. I saw Bill Parsons' statement in June, I think it was, and there was about—

Mr. LISHMAN. Was that a royalty statement?

Mr. LUNSFORD. That was a royalty statement, yes—and there were about a hundred names on it—

Mr. LISHMAN. When did you see this statement?

Mr. LUNSFORD. In June or July.

Mr. LISHMAN. Of 1959?

Mr. LUNSFORD. Yes.

Mr. LISHMAN. And what did this statement show?

Mr. LUNSFORD. There were about a hundred names on it, but I couldn't swear that they were all diskjockeys, I didn't know some of them.

Mr. LISHMAN. Did this list of 100 names have opposite each name an amount in dollars?

Mr. LUNSFORD. That is correct.

Mr. LISHMAN. And who showed this royalty statement to you?

Mr. LUNSFORD. Bill showed it to me.

Mr. LISHMAN. Bill Parsons?

Mr. LUNSFORD. That is right.

Mr. LISHMAN. And did he tell you that those sums represented moneys paid to these persons for record promotion?

Mr. LUNSFORD. That is correct.

Mr. LISHMAN. Did Milt Grant appear on that list?

Mr. LUNSFORD. Yes, if I remember correctly, it did.

Mr. LISHMAN. And who is Milt Grant?

Mr. LUNSFORD. I don't know.

Mr. LISHMAN. Do you recall whether the total amount shown on this list, as having been paid to these persons, was over \$9,000?

Mr. LUNSFORD. It was around that figure; yes.

Mr. LISHMAN. Now, did your distributor, Mr. Carlson, have a clause whereby there would be deducted from the amounts due to you the amounts expended for promotion?

Mr. LUNSFORD. No, I didn't have any clause in it to that effect.

Mr. LISHMAN. And do you recall that the Billboard magazine quarterly report published in June or July 1959, reported that the number of records of "All American Boy" sold, was over \$1 million?

Mr. LUNSFORD. Over 1 million copies.

Mr. LISHMAN. Over 1 million copies, I mean; is that correct?

Mr. LUNSFORD. That is correct.

Mr. LISHMAN. What have you received in royalties to date from Fraternity Records?

Mr. LUNSFORD. Somewhere in the neighborhood of \$11,000.

Mr. LISHMAN. And what would that represent?

Mr. LUNSFORD. It represented the sale of around 460,000.

Mr. LISHMAN. Records?

Mr. LUNSFORD. That is right.

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

The CHAIRMAN. Mr. Moss, any questions?

Mr. Moss. No questions.

The CHAIRMAN. Mr. Bennett?

Mr. BENNETT. No questions.

The CHAIRMAN. Mr. Lunsford, thank you very much for your testimony. You may be excused.

Mr. LUNSFORD. Thank you, sir.

(Witness excused.)

The CHAIRMAN. Mr. Harry Carlson.

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

Mr. CARLSON. I do.

The CHAIRMAN. Have a seat, Mr. Carlson.

TESTIMONY OF HARRY CARLSON

The CHAIRMAN. State your name for the record, please, sir.

Mr. CARLSON. My name is Harry Carlson.

The CHAIRMAN. What is your address, Mr. Carlson?

Mr. CARLSON. My home address is 2372 Madison Road, Cincinnati.

The CHAIRMAN. And what is your business or profession?

Mr. CARLSON. I am the president of Fraternity Records.

The CHAIRMAN. Mr. Lishman, you may proceed.

Mr. LISHMAN. Mr. Carlson, what type of business is Fraternity Records, Inc., engaged in?

Mr. CARLSON. Fraternity is an independent label. We record in studios across the Nation. We have distribution all over the world, and in this country we have distribution in almost all major cities. Most of our records are pressed by RCA Victor, even though we have used other facilities, such as King Records, Columbia Records, and at one time Mallard Records. Our records are drop-shipped to the distributors, that is the normal procedure.

Mr. LISHMAN. Do you remember entering into an agreement on behalf of Fraternity Records, Inc., on November 5, 1958?

Mr. CARLSON. Yes, indeed I do. I have the contract with me.

Mr. LISHMAN. With Orville Lunsford and William Parsons?

Mr. CARLSON. The original meeting was on November 4. Mr. Orville Lunsford came to my office, and at the time I was visiting with Mr. William Sachs, the executive editor of Billboard magazine, and my brother Paul, and we were listening to records. My secretary came in and said there was a gentleman outside that wanted to have a record made from acetate, from those he had made by King. We listened to them and became very excited, and the next morning we had a contract made up by Taft, Stettinus & Hollister, which we have a copy of.

That contract, if I may bring it in at this point, states "It is understood that the two of you have written and owned a song, 'The All American Boy,' and that the tapes embody the performance of Mr. Parsons' rendering these two songs," that is signed by Mr. Lunsford and Mr. Parsons.

Mr. LISHMAN. Now, did you employ various RCA record pressing companies?

Mr. CARLSON. We do that normally, Mr. Lishman. We press, if we have a record of any merit for sales potential, we press in Hollywood, Calif., we press in Indiana, Ill., and Rockaway, N.Y.

Mr. LISHMAN. About how many records of this song were pressed by RCA Victor companies?

Mr. CARLSON. They pressed—I can't give you the exact figure, I didn't even bring it, but I would say they pressed in the neighborhood of 550,000 to 600,000, in the neighborhood, very near.

Mr. LISHMAN. When did you place the records with the various RCA Victor companies for pressing?

Mr. CARLSON. The record was released approximately 10 days after we acquired the masters, or the tapes, rather.

Mr. LISHMAN. And you acquired them on or about when?

Mr. CARLSON. The date of November 5, 1958.

Mr. LISHMAN. Did you place these orders by telephone or in writing?

Mr. CARLSON. Yes, our normal procedure is, we have to place our orders in Chicago with Mr. Bill Leonard who is the sales representative for RCA Victor in our area, and he in turn conveys that order to the plants. Normally we begin with only the Indianapolis plant, that is where we have our diskjockeys' samples pressed, rather than pressing them in these plants.

Mr. LISHMAN. Did you also place orders for the pressing of the record "All American Boy" with Mallard Pressing Co. of Philadelphia?

Mr. CARLSON. We placed orders to the total of, I think, about 116,000 records.

Mr. LISHMAN. Now—perhaps I had better see if I can make certain of the exact number of records you had pressed by Mallard.

Mr. CARLSON. Mr. Perry has the exact total.

Mr. LISHMAN. The exact total from the paper supplied the subcommittee by you is 119,750 records?

Mr. CARLSON. Yes. Well, this was taken from our books and furnished to Mr. Perry.

Mr. LISHMAN. And Mallard billed you \$16,938.07 for pressing these records, is that correct?

Mr. CARLSON. Yes, it is all on that information, I don't have it here.

Mr. LISHMAN. That is a correct figure?

Mr. CARLSON. Yes. Our canceled checks show the exact amount.

Mr. LISHMAN. When did you place your first order for pressing with Mallard?

Mr. CARLSON. I believe the date would be on there.

Mr. LISHMAN. The date for the first one we have here is early in January 1959, would that be correct?

Mr. CARLSON. It would be approximately—

Mr. LISHMAN. January 12?

Mr. CARLSON. Approximately 2 months after the record was released.

Mr. LISHMAN. The first date we have from your records is January 12, 1959.

Mr. CARLSON. Well, that would be, as I say, approximately.

Mr. LISHMAN. The first invoice for your first purchase apparently covered 3,500 records.

Have you ever placed orders with Mallard Pressing Co. for any other records other than "All American Boy"?

Mr. CARLSON. No, I haven't.

Mr. LISHMAN. How did you happen to place this order with Mallard Pressing Co. for this song?

Mr. CARLSON. Mr. Lishman, frequently, or not too frequently, I go in to Philadelphia to see our distributor, and I do this on various records that we have. During some of these visits I have had an opportunity to meet Ed McAdam, who is operating the Dick Clark plant, and I have met Dick Clark on several occasions, perhaps three or four times. I was naturally aware of the pressing plant, and it may look as though it were collusion, the fact that we went in to have some records pressed there, but to be very basic, when we had those

records pressed I called Ed McAdam myself who is the head of the plant, and we had discussed before the possibility of some day, if we had a record, of having it pressed there, and it does facilitate to a great extent distribution, especially in a highly populated area, such as Philadelphia is. Dick Clark did not play this record until it was a national hit, he never played the record.

Mr. LISHMAN. We have the history of the playing of this record, which we will go into at a later time, Mr. Carlson.

You have heard the testimony of Mr. Lunsford regarding certain conversations he said he had with you, in which you were alleged to have stated that, you were told that "All American Boy" would be given attention on Dick Clark's show if orders were given to the Mallard Pressing Co. Do you agree with Mr. Lunsford's testimony?

Mr. CARLSON. No, I do not, Mr. Lishman. First of all, I approached them, they didn't approach me.

Mr. LISHMAN. Do you deny ever having made those statements to Mr. Lunsford?

Mr. CARLSON. Yes, I deny it.

Mr. LISHMAN. Did you have any contact with Mr. Mammarella in connection with this transaction?

Mr. CARLSON. No, I had no contact, whatsoever, with either Dick Clark or Tony Mammarella. They were never in on any discussion regarding the pressing of "All American Boy" by Mallard.

Mr. LISHMAN. The only man you discussed it with was Ed McAdam?

Mr. CARLSON. Yes.

Mr. LISHMAN. What was his position?

Mr. CARLSON. Ed McAdam at that time was in charge of the Mallard Pressing Corp.

Mr. LISHMAN. What caused you to depart from your policy of using the pressing facilities of RCA Victor, in favor of using the facilities of Mallard Pressing Co., in this particular instance?

Mr. CARLSON. Mr. Lishman, having more than one source of supply is frequently advantageous, and also, as you are well aware, it is important for little companies like ours to have contacts. We need every possible contact that we can make, whether it is a Jack Paar show, or an Arthur Godfrey, or a Dick Clark, or an Ed Sullivan—we have had artists on all of them. And that is one of the highlights, I think, in the operation of a little company like ours, when you have an artist that has the opportunity to appear.

Mr. LISHMAN. Mr. Carlson, you first met Mr. McAdam, did you not, through Mr. Harry Chipetz?

Mr. CARLSON. That is correct.

Mr. LISHMAN. And Mr. Chipetz is one of the principals with Dick Clark in the Chips Distributing Co., is he not?

Mr. CARLSON. I didn't know that until today.

Mr. LISHMAN. How many times between that first meeting, and your first order with Mr. McAdam for the "All-American Boy" records, have you visited or talked with Mr. McAdam?

Mr. CARLSON. Well, it would be hard to say how many times. I met him one time in Chicago at a music convention, and Mr. Hasland, who was at the plant, came to my suite. Several people were there, and we had a cocktail, and it is, I think—certainly, as far as we are

concerned it was as ethical as anything that we could do—it wouldn't be too different from going to another company to have it done.

Of course, I can understand very well, with Dick Clark and his particular limelight, it makes everybody appear guilty whether they are or not, I mean, it makes you assume that there must be a collusion—

Mr. Moss. Mr. Chairman, I think I want to take exception to that statement. We are having another instance here of a witness reciting various interesting coincidences. And we have been faced with people, not only in connection with Mr. Dick Clark, but in every other instance in payola, with the most interesting coincidences.

Now, did you ever use Mallard Pressing prior to the time you had "All-American Boy"?

Mr. CARLSON. No.

Mr. Moss. Have you used it since?

Mr. CARLSON. No.

Mr. Moss. So, in other words, we are faced, Mr. Carlson, with another interesting coincidence, a coincidence repeated time and time again, and you infer that we are unduly suspicious, just because this coincidence concerns Mr. Clark.

Do you not think, it is the repeating of the coincidence that raises the suspicion, rather than Mr. Clark?

We have listened for almost 2 years to coincidences of various types in connection with the investigations of this subcommittee, and here is yet another one. You have never ordered them before, and you have not ordered them since, and yet you are in the business regularly. We heard testimony from another gentleman, and we have no reason to believe he would be untruthful. You tell us he is, that you never discussed it with him, and yet what you did, actually supports the testimony he has given us.

I just want to make it clear that it is not Mr. Clark this subcommittee is interested in; the facts, you must admit are most intriguing, this additional coincidence.

Mr. LISIMAN. Mr. Carlson, is it not a fact that Mr. McAdam called you up on the phone and said to you, "Now, if you will just send an order for pressing to Mallard Pressing, we will arrange to have this thing aired on the "Dick Clark Show"; is that not the way this happened?

Mr. CARLSON. Mr. Lishman, in our instance it did not happen that way.

Mr. LISIMAN. Did not Mr. McAdam call you up and offer the facilities of Mallard Pressing?

Mr. CARLSON. I had many, many conversations with Mr. McAdam, and I called—in fact I telephoned to see if I couldn't get "The All-American Boy" played on the network when it first came out. I explained that it certainly looked like it had the qualities of being a hit. And the attitude was that it might possibly offend the Elvis Presley fans.

Mr. LISIMAN. Isn't it a fact that Dick Clark tried to change the words of the lyric to cut out the word "Cadillac" that was used in it?

Mr. CARLSON. Not to my knowledge.

Mr. LISIMAN. Now, if I were to tell you that this record was played by Mr. Clark 18 times beginning December 30, 1958, and ending Feb-

ruary 3, 1959, would you not consider this a rather unusual number of plays of this record in such a short period of time?

Mr. CARLSON. Well, the nature of the recording—the play of the records in the last several years—across the Nation there has been a top 44 man, and a top 54 man, and it has been a rather normal procedure that whenever there is a hit record, and it is established as a hit, that stations play that record a great deal more than one that is not a hit. And Dick Clark in this instance, playing it that much, I would say was a very great deal of play.

Mr. LISHMAN. Mr. Lunsford has testified that Mr. William Parsons, the singer, whose name appears on the label, is not the actual singer of this record. However, Mr. Parsons did make a personal appearance on both the “Dick Clark Show” and the “American Bandstand” in January 1959, and plugged this record; is that correct?

Mr. CARLSON. That is correct.

Mr. LISHMAN. Did you arrange for his personal appearances on these programs?

Mr. CARLSON. Either I did or General Artists Corp., I have forgotten. I presume that I did.

Mr. LISHMAN. With whom did you make the arrangement for having Mr. Parsons appear?

Mr. CARLSON. I believe through—I would normally call Mr. Chipetz in Philadelphia, if we had an artist who had a current hit, to see if we could get him on the show.

Mr. LISHMAN. Did any officer or agent in your employ, in promoting Fraternity records, advise Billboard that the record had sold approximately 1 million copies?

Mr. CARLSON. Unfortunately, my brother Paul, without my knowledge or consent, had sent in a report that the records sold a million, which of course—

Mr. LISHMAN. Was that a fact? Had it really sold a million copies?

Mr. CARLSON. No. It was an overenthusiastic anticipation of a major potential hit that never materialized to that extent.

Mr. LISHMAN. But Billboard nevertheless published it as a million-record seller; is that correct?

Mr. CARLSON. Correct. I never saw it myself.

Mr. LISHMAN. And wouldn't that have the effect of causing an increase of sales in the record?

Mr. CARLSON. No.

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

The CHAIRMAN. Mr. Moss, any questions?

Mr. Moss. When did you order the recordings from Mallard Pressing Co.?

Mr. CARLSON. When did I order them, in January, I believe is the date.

Mr. Moss. What date?

Mr. CARLSON. I don't have that.

Mr. LISHMAN. The first one we have is January 12, 1959.

Here is the invoice list.

Mr. Moss. That is the date of the invoice billing by Mallard Pressing Co. to you. What was the date of your order to Mallard to go ahead and print? It wouldn't be the same date?

Mr. CARLSON. It would perhaps be a few days prior.

Mr. MOSS. How many days? Where is Mallard's plant located?

Mr. CARLSON. It is in Philadelphia.

Mr. MOSS. And you were over in Cincinnati?

Mr. CARLSON. Yes.

Mr. MOSS. Did you mail your order?

Mr. CARLSON. By telephone; we telephone all of our orders.

Mr. MOSS. You telephone all orders?

Mr. CARLSON. Yes.

Mr. MOSS. How long does it take them to make a pressing?

Mr. CARLSON. Once the tape is mastered and the lacquer and all is available for pressing, that requires, usually, about 24 to 36 hours. After that the pressing can be done overnight, I mean they can get it into operation, and if they have the label copy they will keep it running that way.

Mr. MOSS. Has the subcommittee a copy of your long distance telephone statement to indicate when you phoned Mallard to have them press these?

Mr. CARLSON. Well, there would be many calls during that period.

Mr. MOSS. To Mallard? There would be first one, would there not? This is the only time that you have done business with them, so the first call to them would be the one in which you had made the arrangement, wouldn't it?

Mr. CARLSON. We had many telephone conversations before the pressing of the records.

Mr. MOSS. How many?

Mr. CARLSON. Well, several.

Mr. MOSS. When did you start these telephone conversations?

Mr. CARLSON. I would say perhaps several months prior to that, 6, 8, or 10 months prior to that.

Mr. MOSS. 6, 8, to 10 months prior to this?

Mr. CARLSON. Yes.

Mr. MOSS. How many phone calls did you have in that period?

Mr. CARLSON. Well, there wouldn't be very many.

Mr. MOSS. When did you start discussing with Mallard that you would have to go ahead and press?

Mr. CARLSON. I did that in one of my trips to Philadelphia during that period.

Mr. MOSS. What?

Mr. CARLSON. I say, on one of my trips to Philadelphia, originally perhaps—

Mr. MOSS. What date?

Mr. CARLSON. It is almost impossible to remember a date of that kind. I say within a period of 6 months prior to this, I am trying to be as correct as I know how.

Mr. MOSS. Well, there is a matter of coincidence that appears here that is very interesting. On December 30 and 31, 1958, "All American Boy" was played on "American Bandstand." On January 2, 5, 6, 7, 8, 9, 12, 14, 16, 20, 21, 22, 26, 28, and 29 it was also played. And in January, they billed you for an initial pressing of 3,500 on the 12th, 1,000 on the 13th, 10,250 on the 14th, an additional 2,000 on the 14th, and an additional 1,000 on the 14th, 1,000 on the 16th, 8,000 on the 16th, 1,500 on the 19th, 1,500 additional on the 19th, 2,000 on the 20th, 3,100 on the 20th, 7,000 on the 21st, 1,000 on the 22d, 13,000 on the

26th, 5,000 on the 27th, 9,000 on the 28th, 2,000 on the 29th, and 3,900 on the 30th. That is a very interesting coincidence, another one of those coincidences. And you can't tell us when you first discussed it, and the actual pressing?

Mr. CARLSON. Those totals that you list now, those are drop shipments from that plant, they are not individually placed orders.

Mr. MOSS. They represent billings to you, and that is all I stated them to be when I put them in the record.

Mr. CARLSON. Yes.

Mr. MOSS. Incidentally, one of them appears to be for, I think it was on the date of February 9, invoice No. 2494, for a carton of 100 records, with the notation, "For Dick Clark." Was this by any arrangement at all?

Mr. CARLSON. No, it wasn't.

Mr. MOSS. Was it just a sort of a burst of gratitude, or what was it?

Mr. CARLSON. Congressman, it has been the nature of our business, whether it is right or wrong, when you have a record that is gaining popularity, diskjockeys across the Nation have hops, and we have many times given records to diskjockeys, radio stations for the purpose of—

Mr. MOSS. Now, is it your statement, that these 100 records are for Mr. Clark's hops?

Mr. CARLSON. He gave hops, and I think still does, and I assume that is what it would be for. I wasn't even aware of that.

Mr. MOSS. Did he request them?

Mr. CARLSON. No.

Mr. MOSS. How did you determine that—did you give all diskjockeys 100 recordings?

Mr. CARLSON. No; we didn't.

Mr. MOSS. Well, what was the average, what was the criteria used in determining the number to be provided for that purpose?

Mr. CARLSON. Well, perhaps you will have requests not only from diskjockeys, you will have them from churches, from schools—everybody asks for these records to give away at hops.

Mr. MOSS. You didn't have a request from Mr. Clark; you just said you didn't.

Mr. CARLSON. No; we didn't.

Mr. MOSS. I just asked you what criteria you employed in determining how many records you would ship to diskjockey A and B and Mr. Clark or whoever else you gave them to?

Mr. CARLSON. Well, if we have a diskjockey write to us and ask for records for hops—

Mr. MOSS. I didn't ask you that. I asked you if you had requests from diskjockeys. Mr. Clark, you have testified, didn't ask you.

Mr. CARLSON. No; I didn't.

Mr. MOSS. Then how did you determine how many to give?

Mr. CARLSON. Frankly, I didn't even know about the hundred records until Mr. Perry came to my office. I hadn't seen the invoice.

Mr. MOSS. Who is Mr. Perry?

Mr. LISIMAN. Mr. Perry is the staff attorney assigned to this case.

Mr. MOSS. Who would order a hundred records from your pressing to be sent to Mr. Clark? Who has the authority to order them?

Mr. CARLSON. Well, the authority didn't come from me. I wasn't aware of it.

Mr. MOSS. You were the owner, the manager——

Mr. CARLSON. And president of it.

Mr. MOSS. Did you pay the invoice?

Mr. CARLSON. Yes.

Mr. MOSS. If you paid the invoice, you must have acknowledged that it was a proper shipment?

Mr. CARLSON. It is, because it is not uncommon, and I frankly didn't know about it until Mr. Perry came——

Mr. MOSS. Mr. Carlson, wouldn't you agree with me that it is most uncommon for people to take records from your stock without your permission?

Mr. CARLSON. I will grant that.

Mr. MOSS. That is uncommon, isn't it?

Mr. CARLSON. I will grant that.

Mr. MOSS. One hundred records were shipped in a carton to Mr. Clark. You don't know under whose authority, but you did not protest the payment of the invoice?

Mr. CARLSON. No; I did not; I wasn't aware of it.

Mr. MOSS. So at least you acknowledged by the payment that it was a proper shipment. Now, did you ship to other diskjockeys who did not ask that you do so?

Mr. CARLSON. We always had, when people have asked us for records for promotion——

Mr. MOSS. I asked you specifically. I specifically modified it to cover only those who did not request them.

Mr. CARLSON. No, we did not.

Mr. MOSS. This is the only diskjockey to receive records without a request of any kind?

Mr. CARLSON. That is right.

Mr. MOSS. And the records were given him without authority from anyone?

Mr. CARLSON. That is correct.

Mr. MOSS. Do you know how these recordings were labeled? Were they labeled for resale?

Mr. CARLSON. That I don't know.

Mr. MOSS. You must have some idea.

Mr. CARLSON. I think they were only commercial stock, because we didn't press diskjockey samples, the record was a hit at that time.

Mr. MOSS. You didn't press any samples at this time?

Mr. CARLSON. No, only at RCA and Indianapolis.

Mr. LISHMAN. Mr. Carlson, would it be possible to dance to this record "All-American Boy"? I have heard it, and it appears to be, mostly, a monolog, I am just wondering how it appears on Dick Clark——

Mr. CARLSON. You can dance to it.

Mr. LISHMAN. You can?

Mr. CARLSON. Yes.

Mr. LISHMAN. It deals with Elvis Presley, does it not?

Mr. CARLSON. It is actually a satire.

Mr. MOSS. Did you ever receive a request or a suggestion and then conveyed by you to Mr. Lunsford that the word "Cadillac" be omitted in the lyrics?

Mr. CARLSON. Not to my knowledge; no. I think at one time there was a question—there was another record, I don't recall the name of it, where some automobile manufacturer was getting publicity for the name being used of that particular automobile, and it created a certain amount of interest, and frankly there was something said about the word "Cadillac" in this record, but it was never changed, it was left in there.

Mr. MOSS. Did you talk with Mr. Lundford about the possibility of changing the word "Cadillac"?

Mr. CARLSON. Well, apparently it must have been when the record came out, because it never was changed.

Mr. MOSS. That isn't what I asked you. Did you ever discuss it with Mr. Lunsford?

Mr. CARLSON. Vaguely I recall there was some comment, somebody had said something about using the word "Cadillac" in the record, and whether that would be a deterring factor in its potential sales value.

Mr. MOSS. You did discuss the word "Cadillac" in the recording, with Mr. Lunsford? You appear to have a very hazy recollection, but you do have a recollection. Now, isn't it quite possible that Mr. Lunsford's statement, made under oath in late December of 1958 or early January of 1959, was true:

I was told by Mr. Carlson that Dick Clark, the diskjockey, or his business manager, had telephoned him regarding the playing of the record on his show. Mr. Carlson said that they liked the record as a whole, but objected to the mention of the word "Cadillac" in the lyrics. I refused to agree to any change in the lyrics.

Is that a correct statement or is it a false statement?

Mr. CARLSON. Would you read that to me again, please?

Mr. MOSS (reading):

I was told by Mr. Carlson that Dick Clark, the diskjockey, or his business manager, had telephoned him regarding the playing of the record on his show. Mr. Carlson said that they liked the record as a whole, but objected to the mention of the word "Cadillac" in the lyrics. I refused to agree to any change in the lyrics.

Mr. CARLSON. I never discussed that with Dick Clark or his manager.

Mr. MOSS. You what?

Mr. CARLSON. I never discussed that with Dick Clark or his manager. In the discussion that I had with him, if I may say so was, that his objection to the record was the inference as to Elvis Presley, that it was a satire on Elvis Presley rather than the "Cadillac."

Mr. MOSS. Wasn't there a possibility that the word "Cadillac" was a part of that objection to the satire? You see, Mr. Carlson, you are under oath.

Mr. CARLSON. I understand that.

Mr. MOSS. And now, here is a very clear recollection against a very hazy recollection, and I am asking you if this is true or if it is false. I would like to know.

Mr. CARLSON. Well, the answer that I gave you—and I can only give you the best that my memory serves me—is that the objection was not to the word "Cadillac," it was to the Presley satire.

Mr. MOSS. Would the problem of the satire on Presley be overcome by eliminating the reference to "Cadillac"?

Mr. CARLSON. No.

Mr. Moss. Was that idea conveyed? But you did discuss with Mr. Clark or his business manager certain objections they had to the recording?

Mr. CARLSON. The only question that ever arose was the inference to Elvis Presley.

Mr. Moss. That isn't what I asked you. I asked you if you did discuss with Mr. Clark or his business manager this recording. You followed up, and said that the only discussion was about the problem of the satirical nature of the recording. So I say, did you discuss it?

Mr. CARLSON. I discussed it with someone in Philadelphia, it could have been our distributor, it could have been Ed McAdam.

Mr. Moss. But it could not have been Mr. Clark or his business manager, is that your testimony?

Mr. CARLSON. No. I honestly don't believe that I ever discussed that facet with Dick Clark. I haven't spoken to him more than a few times.

Mr. Moss. But you did discuss it with his business manager?

Mr. CARLSON. I would say that if I discussed that, if I discussed that facet, it was with Ed McAdam or our distributor, because if we called our distributor in Philadelphia, he would see Dick Clark frequently, and if there was a problem about a certain record, whether he would play it or wouldn't—

Mr. Moss. Your statement is a categorical denial that you ever discussed this matter with either Mr. Clark or his business manager?

Mr. CARLSON. Yes.

Mr. Moss. Do you also deny that you ever told Mr. Lunsford that you had had such a discussion?

Mr. CARLSON. I deny that I discussed with Mr. Lunsford that I discussed it with Mr. Clark.

Mr. Moss. You deny that you ever told Mr. Lunsford that you had discussed it with Mr. Clark?

Mr. CARLSON. That is correct.

Mr. Moss. Do you deny that you have ever suggested to Mr. Lunsford that someone, Mr. X, had suggested the deletion of the reference to "Cadillac"? I want to see how much of Mr. Lunsford's statement is true.

He appeared to have a very clear recollection of all this, and you don't seem to have such a clear recollection. Now, do you categorically deny that you ever discussed with Mr. Lunsford the problem raised by the word "Cadillac" in the lyrics?

Mr. CARLSON. Mr. Lunsford and I may have discussed it, and I am not positive—

Mr. Moss. You do not categorically deny it, then?

Mr. CARLSON. We may have discussed it. He came to my office almost every day, and he was aware of everything that was going on, because he sat there with me, we were working together trying to make the record come in.

Mr. Moss. Mr. Carlson, have you spoken to Mr. Dick Clark or any person representing him within the last 2 weeks?

Mr. CARLSON. No. I have spoken to Ed McAdams in the last 2 weeks.

Mr. Moss. I will ask you again, have you spoken to Mr. Dick Clark or anyone representing him during the past 2 weeks?

Mr. CARLSON. No; I have not.

Mr. MOSS. You have not?

Mr. CARLSON. No.

Mr. MOSS. Now, did you ever tell Mr. Lunsford that the record would be given a boost if a pressing order was placed with Mallard?

Mr. CARLSON. I am sure that I told him that with the play from Dick Clark, the record would have an advantage.

Mr. MOSS. Are you sure that you told him, that with the play by Dick Clark the record would have an advantage?

Mr. CARLSON. That it would have an advantage; yes.

Mr. MOSS. That isn't the question I asked you, you told him that it would be given that advantage as the result of, or concurrent with, or following the placing of an order with Mallard Pressing?

Mr. CARLSON. No; I did not tell him that.

Mr. MOSS. You categorically deny that you made any such statement?

Mr. CARLSON. Yes.

Mr. MOSS. Have you ever paid any payola?

Mr. CARLSON. Never.

Mr. MOSS. Have you paid any consultation fees?

Mr. CARLSON. Never.

Mr. MOSS. Any listening fees?

Mr. CARLSON. Never.

Mr. MOSS. You never supplied Mr. Parsons with a statement showing payments to certain diskjockeys by Fraternity, or on behalf of Fraternity, or for the purpose of promoting Fraternity.

Mr. CARLSON. No; the only thing that he had on his list, in cities where we have men representing us, which we do if we have a hit record, we pay those promotion men. We have a man in New York, we have one in Detroit, one in Chicago, and they only work for us as a part of perhaps a group of three or four companies. They are called promotion men.

Mr. MOSS. You pay only the promotion men employed by your distributors?

Mr. CARLSON. That is correct. They are employed by us.

Mr. MOSS. Do you underwrite promotion costs in part, or on the whole, made by your distributors?

Mr. CARLSON. Do we underwrite promotion costs?

Mr. MOSS. Promotion costs, in whole or in part?

Mr. CARLSON. We share in promotion costs, yes.

Mr. MOSS. On what ratio? Is there a ratio? What is the formula?

Mr. CARLSON. Well, the formula is, as a rule, the common practice in the industry, for example, is that a distributor orders 1,000 records of a release for promotional activity, and to help stimulate that record, getting it started, so to speak. It is a common practice to perhaps give 300 records. That will occur—

Mr. MOSS. Now, is that all the payment that you participate in?

Mr. CARLSON. We participate only in that sense.

Mr. MOSS. Only in that sense?

Mr. CARLSON. Only in that sense.

Mr. MOSS. In no other?

Mr. CARLSON. In no other.

Mr. MOSS. How do you pay the promotion men themselves?

Mr. CARLSON. We send them a check every week.

Mr. MOSS. And when you pay a fixed salary to them, is that a large salary or a small salary?

Mr. CARLSON. It isn't too large an amount. We have, for example, a chap in Detroit who used to be record promotion man for a company and distributor, and he went out on freelance, and he might take a record of ours or other labels, and we would pay him, say, \$50 a week to promote that record.

Mr. MOSS. What is the highest priced promotion man you have?

Mr. CARLSON. Well, the most that we pay, and have been required to pay, is \$75. That might be a New York man. And they cover cities, Baltimore, Washington, Philadelphia.

Mr. MOSS. Have you ever paid any royalties to Mr. Billy Parsons?

Mr. CARLSON. Yes, we have.

Mr. MOSS. Does he owe you anything?

Mr. CARLSON. Well, he no longer records for us.

Mr. MOSS. That isn't the question. Does he now owe you anything?

Mr. CARLSON. There were a great many recordings made by Billy Parsons which were charged against him, which is a very normal practice.

Mr. MOSS. Which were charged against what?

Mr. CARLSON. His royalty.

Mr. MOSS. A great many recordings made which were charged against his royalty?

Mr. CARLSON. That is correct. We were making an album with Bill Parsons. And those are normally charged against any artist on any label. And we turned over to Parsons not long ago several of those recording tapes.

Mr. MOSS. You never deducted from Mr. Parsons' royalties any expenses reflecting payments for promotion to diskjockeys, or for other promotion expenses?

Mr. CARLSON. Never.

Mr. MOSS. Mr. Chairman, this is my last question.

Has the staff examined the books of Mr. Carlson to determine the state of the accounts of Mr. Parsons?

I am told they have not.

Mr. Chairman, I would ask that Mr. Carlson be instructed to supply the subcommittee the detailed breakdown of the accounts of Mr. Parsons.

Mr. CARLSON. I would be glad to do that.

Mr. MOSS. That is all of my questions, Mr. Chairman.

The CHAIRMAN. Mr. Bennett, any questions?

Mr. BENNETT. No.

The CHAIRMAN. Mr. Carlson, I think you very much. You may be excused.

Mr. CARLSON. Thank you, Mr. Chairman.

Mr. MOSS. Mr. Chairman, it is understood that he is to supply that information?

The CHAIRMAN. Yes; he said he would supply that information.

You will do that?

Mr. CARLSON. I will be glad to. I will have to mail it.

The CHAIRMAN. That will be all right.

Mr. CARLSON. Thank you.

(The information referred to follows:)

FRATERNITY RECORDS,
Cincinnati, Ohio.

We had originally charged Bill Parsons with one-half the cost of amounts paid to the following freelance promotion men who were used to promote the record "The All American Boy":

Dave Fox, 20151 Schaefer, Detroit 38, Mich.

Dick Fitzsimmons, Boston, Mass.

Jerry Tiefer, 1270 Sixth Avenue, New York, N.Y.

Ray Ruch, 347 Gascoigne Drive, Waukesha, Wis.

Bob Smith, 4657 Main Street, Skokie, Ill.

Irwin Zucker, 6087 Sunset Boulevard, Hollywood 28, Calif.

Robert Kerr Organization, 41 West 53d Street, New York 19, N.Y.

Bill Parsons questioned these charges and we agreed to absorb the entire amount which totaled \$1,846. A corrected statement dated July 28, 1959, was given to Bill Parsons to replace the original. Our copy from our workpaper files is attached showing these charges.

FRATERNITY RECORDS
413 RACE STREET
CINCINNATI 2, OHIO

ROYALTY STATEMENT
FOR

BILL PARSONS

July 28, 1959

ROYALTIES EARNED -

Sales - F835 - "All American Boy"	473,726	
Royalties at 2-1/2¢ each	\$11,843.15	
LESS ADVANCES - Per Schedule I	5,547.21	
LESS CHARGES - Per Schedule II	<u>14,258.55</u>	12,412.55
BALANCE - DEFICIT	(\$ 7,962.61)	6,116.61

(Penciled notations):

See corrected statement issued dated 7/28/59

\$1846.00 prom. exp. deducted

FRATERNITY RECORDS
413 RACE STREET
CINCINNATI 2, OHIO

CHARGES TO BILL PARSONS

1958

Nov:	20	----	Dave-Fox---	1/2-promotion-expense-F835-----	0--	50.00
	20	----	Dick-Fitzsimmons---	1/2-promotion-expense-F835-----		50.00
Dec:	2	----	Dave-Fox---	1/2-promotion-expense-F835-----		50.00
	5	----	Bill-Parsons ¹ -share-expenses--	Columbus-trip-----		25.00
	6	----	Jerry-Zeifer---	1/2-promotion-expense-F835-----		37.50
	6	----	Dave-Fox---	1/2-promotion-expense-F835-----		37.50
	6	----	Dick-Fitzsimmons---	1/2-promotion-expense-F835-----		25.00
	6	----	Goodie-Goodlander---	1/2-promotion-expense-F835-----		25.00
	15	----	Jerry-Zeifer---	1/2-promotion-expense-F835-----		37.50
	16	----	Dick-Fitzsimmons---	1/2-promotion-expense-F835-----		25.00
	16	----	Dave-Fox---	1/2-promotion-expense-F835-----		25.00
	16	----	Goodie-Goodlander---	1/2-promotion-expense-F835-----		25.00
	18		Bill-Parsons ¹ -share expenses -	Cleveland trip		37.50
	22	----	Goodie-Goodlander---	1/2-promotion-expense-F835-----		75.00
	22		Copy Art Photographers -	photos of Bill Parsons		71.40
	23	----	Jerry-Zeifer---	1/2-promotion-expense-F835-----		37.50
	23	----	Dick-Fitzsimmons---	1/2-promotion-expense-F835-----		50.00
	23	----	Dave-Fox---	1/2-promotion-expense-F835-----		50.00
	23		Bill Parsons' share expenses -	Miami trip		50.00

1959

Janv:	5	----	Jerry-Zeifer---	1/2-promotion-expense-F835-----		75.00
	5	----	Dave-Fox---	1/2-promotion-expense-F835-----		50.00
	5	----	Dick-Fitzsimmons---	1/2-promotion-expense-F835-----		50.00
	5		Bill Parsons' share expenses -	Washington trip		50.00
	7		Bill Parsons' travel exp. -	air line ticket to Cleveland and extra fare on Miami trip		64.39
	8		Bill Parsons' share expenses -	Detroit trip including railroad fare		69.70
	9		Bill Parsons' share expenses -	trip to Washington, Baltimore, Pittsburgh		100.00
	15	----	Dave-Fox---	1/2-promotion-expense-F835-----		37.50
	15	----	Jerry-Zeifer---	1/2-promotion-expense-F835-----		37.50
	15	----	Dick-Fitzsimmons---	1/2-promotion-expense-F835-----		25.00
	19		Olins Beach U-Drive-It -	Miami trip		29.45
	19		Beach Club Hotel -	Miami trip		30.90
	21		R. C. Willets -	Pictures of Bill Parsons		18.00
	22	----	Jerry-Zeifer---	1/2-promotion-expense-F835-----		37.50
	21		Bill Parsons' share expenses -	New York trip		100.00
	21		Hooven Letter Service -	biographies		37.83
	21		Robbins Advertising -	biography & pictures		37.10
	21		Star Title Strip -	F835 title strips		82.28
	21		H. Wuebbold & Co. -	pictures		68.39
	29	----	Dave-Fox---	1/2-promotion-expense-F835-----		50.00
	29	----	Dick-Fitzsimmons---	1/2-promotion-expense-F835-----		50.00
	29	----	Jerry-Zeifer---	1/2-promotion-expense-F835-----		37.50
	31		Stamford Productions -	Allan Freed Show		145.00

Feb. 5	Bill Parsons' share expenses - Washington & Baltimore	\$ 50.00
7	Bill Parsons' share expenses " "	75.00
10	Jerry-Teifer---1/2-promotion-expense-F835-----	75.00
10	Dave-Fox---1/2-promotion-expense-F835-----	50.00
12	Jordaniers - Bill Parsons' share of session costs	540.00
12	Copy Art Photographers - pictures of Bill Parsons	63.10
12	Printcraft - Pictures of Bill Parsons	133.70
12	Toots Shor Rest. - 1/2 cost of promotion party	368.67
14	Bill Parsons' share expenses - Springfield & Chicago	100.00
16	Bill Parsons' share - Hashville session - M. Thomasson	50.00
	" " " " " S. Coffeen	50.00
	" " " " " D. Kirkham	65.20
	" " " " " B. Moore	195.60
	" " " " " H. Bradley	391.20
	" " " " " W. Garland	195.60
	" " " " " G. Martin	195.60
	" " " " " L. Brandon	195.60
	" " " " " M. Harman	130.40
	" " " " " F. Cramer	195.60
18	Billboard - 1/2 cost of ad	461.57
18	Cash Box - 1/2 cost of ad	415.46
18	Music Vendor - 1/2 cost of ad	107.50
18	Wm. S. Randolph - 1/2 cost of pictures, Toots Shor Pty.	61.50
19	Bill Parsons' share expenses - trip to Springfield, Milwaukee, and Chicago	100.00
19	Jerry-Teifer---1/2-promotion-expense-F835-----	80.00
19	Dave-Fox---1/2-promotion-expense-F835-----	50.00
25	Music City Recordings	21.75
27	Bill Parsons' share expenses - Wash. & Oregon trip	117.50
Mar. 5	Jordaniers - Bill Parsons' share of session costs	777.75
10	Bill Parsons' share expenses - West Coast trip	250.00
9	Refund from Stamford Productions	CREDIT (104.53)
18	Bill Parsons' share - Nashville session - H. Bradley	363.75
	" " " " " W. Garland	181.88
	" " " " " R. Moore	181.88
	" " " " " M. Harman	181.88
	" " " " " G. Martin	169.76
	" " " " " F. Cramer	169.76
	" " " " " H. Randolph	169.76
	" " " " " L. Brandon	169.76
20	Bill Parsons' share expenses - San Francisco and Los Angeles trip	250.00
24	Refund - Click Corporation	CREDIT (68.07)
21	Dave-Fox---1/2-promotion-expense-F838-----	50.00
21	Jerry-Teifer---1/2-promotion-expense-F838-----	75.00
25	Ray-Rush---1/2-promotion-expense-F838-----	25.00
24	Bill Parsons' share expenses - West Coast trip	200.00
27	Bill Parsons' share expenses - Grand Rapids trip	25.00
30	Air Line ticket to Grand Rapids	32.89

RESPONSIBILITIES OF BROADCASTING LICENSEES

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Schedule II
Page 3

Apr. 3	Bradley Studios - Bill Parsons' share expenses	\$1,318.39
3	Music City Recordings	25.00
7	Bob Smith--1/2-promotion-expense-F838-----	62.50
11	Jerry Tetfer--1/2-promotion-expense-F838-----	75.00
11	Dave Fox--1/2-promotion-expense-F838-----	50.00
13	Irwin Zueker--1/2-promotion-expense-F838-----	50.00
14	Diners Club - Bill Parsons' share (1/2)	86.16
14	Robert Kerr--1/2-promotion-F838-----	62.50
14	Printcraft - Pictures of Bill Parsons	43.57
14	Wm. S. Randolph - 6 prints for ASCAP	9.14
25	Irwin Zueker--1/2-promotion-expense-F838-----	50.00
29	Copy Art Photographers - Pictures of Bill Parsons	30.95
May-8	Irwin Zueker--prom-matting-on-F838-----	16.00
8	Diners Club - expenses for Bill Parsons	27.45
18	Traveling Expense to record Bill Parsons (Chicago)	60.00
22	Irwin Zueker--1/2-promotion-expense-F838-----	25.00
23	Bill Parsons' share - session at Kings	230.00
June 7-9	Bill Parsons' share - session at Kings	550.16
19	Bill Parsons' share - session at Kings	167.50
July 13	Charlie Lamb Agency - 1/5 cost of ad	55.45
13	Music Vendor - 1/2 cost of ad	200.00
13	Robbins Advertising - Fan club cards	53.56
13	Cash Box - 1/2 cost of ad	620.91
13	Billboard - 1/2 cost of ad	596.96
8	Fountain Square Hotel - for Bill Parsons	88.39
	Total	\$14,258.55

NOT TO BE CHARGED TO PARSONS
(Total of above stricken items)

Carried Forward-----	\$362.50	\$ 850.00	\$1,355.00	
\$ 50.00	25.00	25.00	75.00	
50.00	75.00	37.50	25.00	
50.00	37.50	50.00	62.50	
37.50	50.00	50.00	75.00	
37.50	50.00	37.50	50.00	
25.00	75.00	75.00	50.00	
25.00	50.00	50.00	62.50	
37.50	50.00	80.00	50.00	
25.00	37.50	50.00	16.00	
25.00	37.50	50.00	25.00	
<u>\$362.50</u>	<u>\$850.00</u>	<u>\$1,355.00</u>	<u>\$1,846.00</u>	-----Total

C O P Y

FRATERNITY RECORDS
413 RACE STREET
CINCINNATI 2, OHIO

ROYALTY STATEMENT

FOR
BILL PARSONS

July 28, 1959

ROYALTIES EARNED -

Sales - F835 - "All American Boy"	473,726
Royalties at 2-1/2¢ each	\$11,843.15
LESS ADVANCES - Per Schedule I	5,547.21
LESS CHARGES - Per Schedule II	<u>12,412.55</u>
BALANCE - DEFICIT	(\$6,116.61)

I CERTIFY THAT
THIS IS A TRUE AND CORRECT COPY

/s/ P. LARRY CARLSON

RESPONSIBILITIES OF BROADCASTING LICENSEES

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COPY

Schedule I

FRATERNITY RECORDS
413 RACE STREET
CINCINNATI 2, OHIO

ADVANCES TO BILL PARSONS

1958		
Nov. 19	American Airlines - ticket to Nashville	\$ 38.72
	The Hermitage Hotel - Nashville (DJ Convention)	33.66
Nov. 25	Bill Parsons - Cash Advance	200.00
Dec. 16	Bill Parsons - Cash Advance	500.00
22	Delta C & S Airlines - ticket to Miami	94.49
29	Bill Parsons - Cash Advance	100.00
1959		
Jan. 3	Fountain Square Hotel	35.00
5	AFTRA - Initiation - Bill Parsons	50.00
5	TWA - ticket to Washington and Pittsburgh	70.07
5	Max's Gentry Shop - Coat for Bill Parsons	60.59
10	Bill Parsons - Cash Advance	100.00
15	Roberta Parsons - Cash Advance	250.00
15	TWA - ticket to Detroit	38.94
17	AFTRA - Fees for Bill Parsons	6.00
20	Roberta Parsons - Cash Advance	100.00
20	American Airlines - ticket to Dick Clark Show	81.85
21	Cincinnati Musicians Assn. - Union Membership	52.50
26	Fountain Square Hotel	19.70
Feb. 2	Bill Parsons - Cash Advance	250.00
5	American Airlines - ticket to Washington & Baltimore	62.92
10	Fountain Square Hotel	10.27
12	Benets Pharmacy - drugs for Bill Parsons	32.97
12	Max's Gentry Shop - suit for Bill Parsons	64.69
13	Roberta Parsons - Cash Advance	100.00
14	American Airlines - ticket to Springfield	73.04
16	Fountain Square Hotel	6.50
18	Benjamin Franklin Hotel - Philadelphia, Pa.	28.19
17	Summers & Son - Guitar for Bill Parsons	128.10
19	Drs. McCandless & Brockmeier - for Bill Parsons	10.00
19	Roberta Parsons - Cash Advance	200.00
25	Bill Parsons - Cash Advance	200.00
25	Christ Hospital - for Bill Parsons	11.00
25	Bankhardts - Luggage for Bill Parsons	27.07
25	Fountain Square Hotel	18.20
Mar. 3	Delta C & S Airlines - ticket to Spokane, Wash.	136.40
7	Roberta Parsons - Cash Advance	200.00
7	Bill Parsons - Cash Advance	300.00
23	Fountain Square Hotel	7.14
24	Benets Pharmacy - drugs for Bill Parsons	9.07
26	Hotel Benjamin Franklin - Seattle, Wash.	6.72

C O P Y

Schedule I
Page 2ADVANCES TO BILL PARSONS
Continued

Mar. 26	Hotel Multnomah - Portland, Oregon	\$ 11.70
12	United Airlines - ticket from Spokane to Seattle and Portland	26.89
20	Bill Parsons - Cash Advance	100.00
25	Roberta Parsons - Cash Advance	300.00
17	Fairmont Hotel - San Francisco, Calif.	34.47
22	Hollywood Roosevelt Hotel - Hollywood, Calif.	60.63
Apr. 1	Bill Parsons - Cash Advance	300.00
14	Benets Drugs - drugs for Bill Parsons	4.64
May 8	Roberta Parsons - Cash Advance	50.00
June 2	Bill Parsons - Cash Advance	200.00
9	Bill Parsons - Cash Advance	50.00
9	Fountain Square Hotel	37.85
15	Bill Parsons - Cash Advance	50.00
18	Roberta Parsons - Cash Advance	50.00
18	Fountain Square Hotel	85.33
24	Benets Pharmacy - drugs for Bill Parsons	9.67
25	Bill's Moving and Storage - shipping guitar to Cin.	8.00
25	Fountain Square Hotel	49.23
25	Bill Parsons - Cash Advance	25.00
27	Bill Parsons - Cash Advance	75.00
27	General Motors Acceptance Corp. - payment on car	255.00
July 3	Bill Parsons - Cash Advance	<u>50.00</u>
	Total Advances	\$5,547.21

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Schedule II

FRATERNITY RECORDS
413 RACE STREET
CINCINNATI 2, OHIO

CHARGES TO BILL PARSONS

1958			
Dec. 5	Bill Parsons' share expenses - Columbus trip	\$	25.00
18	Bill Parsons' share expenses - Cleveland trip		37.50
22	Copy Art Photographers - photos of Bill Parsons		71.40
23	Bill Parsons' share expenses - Miami trip		50.00
1959			
Jan. 5	Bill Parsons' share expenses - Washington trip		50.00
7	Bill Parsons' travel expenses - airline ticket to Cleveland and extra fare on Miami trip		64.39
8	Bill Parsons' share expenses - Detroit trip including railroad fare		69.70
9	Bill Parsons' share expenses - trip to Washington, Baltimore, Pittsburgh		100.00
19	Olins Beach U-Drive-It - Miami trip		29.45
19	Beach Club Hotel - Miami trip		30.90
21	R. C. Willets - Pictures of Bill Parsons		18.00
21	Bill Parsons' share expenses - New York trip		100.00
21	Hooven Letter Service - biographies		37.83
21	Robbins Advertising - biography & pictures		37.10
21	Star Title Strip - F835 title strips		82.28
21	H. Wuebbold & Co. - pictures		68.39
31	Stamford Productions - Allan Freed Show		145.00
Feb. 5	Bill Parsons' share expenses - Washington & Baltimore		50.00
7	Bill Parsons- share expenses i " "		75.00
12	Jordaniers - Bill Parsons' share of session costs		540.00
12	Copy Art Photographers - pictures of Bill Parsons		63.10
12	Printcraft - pictures of Bill Parsons		133.70
12	Toots Shor Rest. - 1/2 cost of promotion party		368.67
14	Bill Parsons' share expenses - Springfield & Chicago		100.00
16	Bill Parsons' share - Nashville session - M. Thomasson		50.00
	" " " " " S. Coffeen		50.00
	" " " " " D. Kirkham		65.20
	" " " " " B. Moore		195.60
	" " " " " H. Bradley		391.20
	" " " " " W. Garland		195.60
	" " " " " G. Martin		195.60
	" " " " " L. Brandon		195.60
	" " " " " M. Harman		130.40
	" " " " " F. Cramer		195.60
18	Billboard - 1/2 cost of ad		461.57
18	Cash Box - 1/2 cost of ad		415.46
18	Music Vendor - 1/2 cost of ad		107.60

c o p y

, Schedule II
page 2

Feb. 18	Wm. S. Randolph - 1/2 cost of pictures, Toots Shor Party	61.50
19	Bill Parsons' share expenses - trip to Springfield, Milwaukee, and Chicago	100.00
25	Music City Recordings	21.75
27	Bill Parsons' share expenses - Wash. & Oregon trip	117.50
Mar. 5	Jordaniers - Bill Parsons' share of session costs	777.75
10	Bill Parsons' share expenses - West Coast trip	250.00
9	Refund from Stamford Productions	CREDIT (104.53)
18	Bill Parsons' share - Nashville session	363.75
	H. Bradley	181.88
	W. Garland	181.88
	R. Moore	181.88
	M. Harman	181.88
	G. Martin	169.76
	F. Cramer	169.76
	H. Randolph	169.76
	L. Brandon -	169.76
20	Bill Parsons' share expenses - San Francisco and Los Angeles trip	250.00
24	Refund - Click Corporation	CREDIT (68.07)
24	Bill Parsons' share expenses - West Coast trip	200.00
27	Bill Parsons' share expenses - Grand Rapids trip	25.00
30	Air Line ticket to Grand Rapids	32.89
Apr. 3	Bradley Studios - Bill Parsons' share expenses	1,318.39
3	Music City Recordings	25.00
14	Diners Club - Bill Parsons' share expenses (1/2)	86.16
14	Printcraft - Pictures of Bill Parsons	43.57
14	Wm. S. Randolph - 6 prints for ASCAP	9.14
29	Copy Art Photographers - Pictures of Bill Parsons	30.95
May 8	Diners Club - expenses for Bill Parsons	27.45
18	Traveling Expense to record Bill Parsons (Chicago)	60.00
23	Bill Parsons' share - session at Kings	230.00
June 7-9	Bill Parsons' share - session at Kings	550.16
19	Bill Parsons' share - session at Kings	167.50
July 13	Charlie Lamb Agency - 1/5 cost of ad	55.45
13	Music Vendor - 1/2 cost of ad	200.00
13	Robbins Advertising - Fan Club Cards	53.56
13	Cash Box - 1/2 cost of ad	620.91
13	Billboard - 1/2 cost of ad	596.96
8	Fountain Square Hotel - for Bill Parsons	88.39
Total		12,412.55

C O P Y

ROYALTY STATEMENT
FOR

BILL PARSONS

JANUARY 5, 1960

ROYALTIES EARNED FOR PERIOD 7/28/59 - 1/5/60 (SCHEDULE ATTACHED)	\$1,075.06
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LESS CHARGES:

Session - August 7-8	\$167.25
Bradley Studio - Overdub	<u>79.66</u>

246.91

NET	\$ <u>828.15</u>
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LESS DEFICIT FROM STATEMENT OF 7/28/59	<u>6,116.61</u>
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TOTAL DEFICIT TO DATE - - - - -	(\$5,288.46)
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I CERTIFY THAT THIS IS
A TRUE AND CORRECT COPY

Harry Carlson

C O P Y

ROYALTIES EARNED

BY

BILL PARSONS

FOR PERIOD 7/28/59 - 1/5/60

ROYALTIES EARNED -

Sales - F835 - "ALL AMERICAN BOY" - 21,312	
Royalty at \$.025 each - - - - -	\$532.80

FOREIGN ROYALTIES -

From Record Companies:	
Trutone, Africa	\$ 66.66
W & G Record Processing Co.	325.66
Trutone, Africa	.21
James Parks, New Zealand	38.86
W & G Record Processing Co.	210.54
London Records	1,077.18
Quality Records, Ltd., Canada	<u>1,616.70</u>
Total	\$3,335.81
10% of Total - - - - -	333.58

Publishing Royalties:

Quality Records, Ltd., Canada	\$ 4.22
Keel Mfg. Co.	193.40
Decca	30.34
Imperial Industrial Co.	2.98
Quality Records, Ltd., Canada	459.39
Decca	21.40
Keel Mfg. Co.	7.30
Synthetic Plastics Co.	196.42
Parade Record Co.	304.75
Imperial Industrial Co.	.99
Quality Records, Ltd., Canada	345.10
Compo Co. Ltd., Canada	<u>5.06</u>
Total	\$1,571.35
10% of Total - - - - -	157.14

SHEET MUSIC SALES - 2,577 @ \$.02 each - - - - -	<u>51.54</u>
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TOTAL ROYALTIES EARNED	\$1,075.06
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The CHAIRMAN. Mr. Parsons, will you be sworn, sir? Do you solemnly swear that the testimony you give to this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. PARSONS. I do.

TESTIMONY OF BILLY PARSONS, ACCOMPANIED BY LESLIE JOHNSON, ATTORNEY

Mr. JOHNSON. Mr. Chairman, may I ask that the record show that the witness was subpoenaed, because his very appearance here might injure him in his business and profession and calling?

The CHAIRMAN. Very well. The record will so state.

What is your name, for the record?

Mr. PARSONS. Billy Parsons.

The CHAIRMAN. What is your residence?

Mr. PARSONS. Crossville, Tenn.

The CHAIRMAN. What is your business, Mr. Parsons?

Mr. PARSONS. Musician.

The CHAIRMAN. What kind? A good one?

Mr. PARSONS. I hope so.

The CHAIRMAN. I mean by that, do you sing or play instruments?

Mr. PARSONS. Sing and play the guitar, different instruments.

The CHAIRMAN. Are you on a regular program?

Mr. PARSONS. I have been touring with a group out of Nashville, Tenn., the Everly Brothers. In the past month or so I have been ill, in the hospital, and I haven't been working at all, staying with my father in Crossville, Tenn.

The CHAIRMAN. You must have been on "Grand Old Opry"?

Mr. PARSONS. No, I never appeared on "Grand Old Opry."

The CHAIRMAN. I observe that you have your attorney with you.

Mr. PARSONS. Yes, I do.

The CHAIRMAN. I think you should identify yourself for the record.

Mr. JOHNSON. Leslie Johnson.

The CHAIRMAN. And your address?

Mr. JOHNSON. Logan, Ohio.

The CHAIRMAN. Very well, Mr. Lishman, you may proceed.

Mr. LISHMAN. Mr. Parsons, are you the singer whose name appeared on the label of the record "All American Boy" published by Fraternity Records, Inc.?

Mr. PARSONS. Yes, I am.

Mr. LISHMAN. Did you enter into a contract November 5, 1958, assigning all your rights in this song to Fraternity Records, Inc.?

Mr. PARSONS. Fraternity Records and Buckeye Music.

Mr. LISHMAN. Do you know Mr. Harry Carlson, president of Fraternity?

Mr. PARSONS. Yes, I do.

Mr. LISHMAN. Did Mr. Carlson ever have any telephone conversations, to your personal knowledge, with any employee or associate of Dick Clark?

Mr. PARSONS. Well, only what I was told by Mr. Carlson, and also his brother Paul, who acted as my personal manager at the time. At the time he had these conversations with some associates of Dick Clark,

I was on a promotion tour for the recording company, and when I returned he telephoned me that he had set it up with Mr. Clark that I would appear on the show, I believe, on January 24, also the show in Philadelphia the following Thursday, and that he had made an order of 50,000 records from Mallard Pressing.

And before that he hadn't played the record.

Mr. LISHMAN. Just a minute, Mr. Parsons. I asked you, to your personal knowledge, did you ever hear Mr. Carlson have a telephone conversation either with Mr. Dick Clark or any of his associates or representatives concerning "All American Boy"?

Mr. PARSONS. I did not.

Mr. LISHMAN. You never did?

Mr. PARSONS. I did not.

Mr. LISHMAN. Did you ever hear Mr. Carlson have a telephone conversation with any representative or employee of Mallard Pressing Co. relating to "All American Boy"?

Mr. PARSONS. Not to my knowledge, I never heard of such conversation.

Mr. LISHMAN. Were you ever in a room when he had a telephone conversation with the people in Philadelphia about "All American Boy"?

Mr. PARSONS. I couldn't say that I was; no.

Mr. LISHMAN. Did you understand that in return for the placing of orders with the Mallard Pressing Co. for "All American Boy," it would be given a special treatment on "American Bandstand" or the "Dick Clark Show"?

Mr. PARSONS. Well, prior to this, Dick Clark had refused to play the record, according to what Mr. Carlson had told me, and after this he did play the record frequently, and I made two appearances on the show.

Mr. LISHMAN. Did Mr. Carlson ever tell you that in order to get special treatment by Dick Clark on his show that you would have to have the record pressed at the Mallard Pressing Co.?

Mr. PARSONS. Yes, he did.

Mr. LISHMAN. When did he tell you that?

Mr. PARSONS. Either late December or early January, I couldn't give you the correct date.

Mr. LISHMAN. December 1958 and January 1959?

Mr. PARSONS. Yes.

Mr. LISHMAN. Have you personally appeared on "American Bandstand" or the "Dick Clark Show"?

Mr. PARSONS. Yes, I have.

Mr. LISHMAN. When?

Mr. PARSONS. I believe the first appearance was the "Dick Clark Show" in New York on January 24, if I am not mistaken, and then the following show in Philadelphia on the Thursday following that.

Mr. LISHMAN. Did you plug the song "All American Boy"?

Mr. PARSONS. Yes, I did.

Mr. LISHMAN. Were you paid for these appearances?

Mr. PARSONS. Yes.

Mr. LISHMAN. How much?

Mr. PARSONS. I'm not sure, I think it was the minimum union scale.

Mr. LISHMAN. Were you the actual singer of "All American Boy"?

Mr. PARSONS. No, I was not.

Mr. LISHMAN. How many records of "All American Boy" were sold?

Mr. PARSONS. According to a statement from Mr. Carlson, 473,000.

Mr. LISHMAN. Do you have any information that more records than that were sold?

Mr. PARSONS. At the time of the record cutting Mr. Carlson told me that the record had passed a million, and I would be presented with a gold record; yes.

Mr. LISHMAN. Did you ever see this in any issue of Billboard magazine?

Mr. PARSONS. I do remember it being published in some magazine at the time.

Mr. LISHMAN. But you don't remember whether it was Billboard?

Mr. PARSONS. I don't remember whether it was Billboard.

Mr. LISHMAN. Have you ever received any royalties from the sale of "All American Boy" records?

Mr. PARSONS. The only royalties that I received from Fraternity Records were expenses at the time I was touring, promoting the records for Fraternity, it was sent to my family. The amount was something over \$3,000. I have had no royalty checks since then, just statements.

Mr. LISHMAN. You never received a royalty check from "All American Boy"?

Mr. PARSONS. If I might explain, sir, I got something like \$3,000 or more actual cash, my family did, while I was on the road promoting the record.

Mr. LISHMAN. And was that credited to your account on royalties from the sale of that record?

Mr. PARSONS. Yes, it was.

Mr. LISHMAN. Do you owe money to Fraternity Records, Inc.?

Mr. PARSONS. Yes; according to their statements I do.

Mr. LISHMAN. How much?

Mr. PARSONS. I believe my last statements showed that I owed them something over \$6,000.

Mr. LISHMAN. Why do you owe them the \$6,000?

Mr. PARSONS. Well, they say that they spent something over \$14,000 on promotion.

Mr. LISHMAN. Of this record, "All American Boy"?

Mr. PARSONS. On the promotion of the record, "All American Boy."

Mr. LISHMAN. And they are charging you for your share of that promotion?

Mr. PARSONS. They are charging me with something like—I don't remember the exact amount for promotion, sir, but all together it was something like \$14,000. I have the statements at home.

Mr. LISHMAN. Where did you get the statement showing \$14,000 for promotion payments?

Mr. PARSONS. From Fraternity Records, Mr. Harry Carlson.

Mr. LISHMAN. Could you supply that to the subcommittee?

Mr. PARSONS. I can; yes, sir.

Mr. LISHMAN. And how was it determined that you should pay \$6,000 of this promotion expense?

Mr. PARSONS. Well, sir, they charged me with recordings that were made after "All American Boy" that were used in Nashville, Tenn., and they were supposed to release an album of me. It was never released, and they charged me with that, also for several thousand dollars promotion, and the \$3,000 that they had provided to my family while I was on the road promoting this record. All together it came to, I don't remember the exact amount, but I believe he said that my royalties should have been \$11,000, it all came to \$17,000, so that left me owing \$8,000. Later on we had another statement for oversea sales, it was a thousand, I believe, which left me owing \$6,000 and something. I believe that is correct. I haven't got the exact statement.

Mr. LISMAN. Could you supply us with this statement received from Fraternity Records, sir?

Mr. PARSONS. I can, sir.

(The information referred to above follows:)

FRATERNITY RECORDS, CINCINNATI, OHIO

Royalty statement for Bill Parsons, July 12, 1959

Royalties earned:	
Sales, F835, "All American Boy"-----	473, 726
Royalties at 2½ cents each-----	\$11, 843. 15
Less advances, per schedule I-----	5, 547. 21
Less charges, per schedule II-----	14, 258. 55
Balance, deficit-----	(7, 962. 61)

SCHEDULE I.—*Advances to Bill Parsons*

Date		Amount
<i>1958</i>		
Nov. 19	American Airlines, ticket to Nashville.....	\$38. 72
19	The Hermitage Hotel, Nashville (DJ convention).....	33. 66
25	Bill Parsons, cash advance.....	200. 00
Dec. 16	Bill Parsons, cash advance.....	500. 00
22	Delta C & S Airlines, ticket to Miami.....	94. 49
29	Bill Parsons, cash advance.....	100. 00
<i>1959</i>		
Jan. 3	Fountain Square Hotel.....	35. 00
5	AFTRA, initiation, Bill Parsons.....	50. 00
5	TWA, ticket to Washington and Pittsburgh.....	70. 07
5	Max's Gentry Shop, coat for Bill Parsons.....	60. 59
10	Bill Parsons, cash advance.....	100. 00
15	Roberta Parsons, cash advance.....	250. 00
15	TWA, ticket to Detroit.....	38. 94
17	AFTRA, fees for Bill Parsons.....	6. 00
20	Roberta Parsons, cash advance.....	100. 00
20	American Airlines, ticket to "Dick Clark Show".....	81. 85
21	Cincinnati Musicians Association, union membership.....	52. 50
26	Fountain Square Hotel.....	19. 70
Feb. 2	Bill Parsons, cash advance.....	250. 00
5	American Airlines, ticket to Washington and Baltimore.....	62. 92
10	Fountain Square Hotel.....	10. 27
12	Benets Pharmacy, drugs for Bill Parsons.....	32. 97
12	Max's Gentry Shop, suit for Bill Parsons.....	64. 69
13	Roberta Parsons, cash advance.....	100. 00
14	American Airlines, ticket to Springfield.....	73. 04
16	Fountain Square Hotel.....	6. 50
17	Sunmers & Son, guitar for Bill Parsons.....	128. 10
18	Benjamin Franklin Hotel, Philadelphia, Pa.....	28. 19
19	Drs. McCandless and Brockmeier, for Bill Parsons.....	10. 00
19	Roberta Parsons, cash advance.....	200. 00
25	Bill Parsons, cash advance.....	200. 00
25	Christ Hospital, for Bill Parsons.....	11. 00
25	Bankhardt's, luggage for Bill Parsons.....	27. 07
25	Fountain Square Hotel.....	18. 20

RESPONSIBILITIES OF BROADCASTING LICENSEES

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SCHEDULE I.—Advances to Bill Parsons—Continued

Date		Amount
Mar. 3	Delta C & S Airlines, ticket to Spokane, Wash.	
7	Roberta Parsons, cash advance	\$136.40
7	Bill Parsons, cash advance	200.00
12	United Airlines, ticket from Spokane to Seattle and Portland	300.00
17	Fairmont Hotel, San Francisco, Calif.	28.89
20	Bill Parsons, cash advance	34.47
22	Hollywood Roosevelt Hotel, Hollywood, Calif.	100.00
23	Fountain Square Hotel	60.63
24	Benets Pharmacy, drugs for Bill Parsons	7.14
25	Roberta Parsons, cash advance	9.07
26	Hotel Benjamin Franklin, Seattle, Wash.	300.00
26	Hotel Multnomah, Portland, Oreg.	6.72
Apr. 1	Bill Parsons, cash advance	11.70
14	Benets Drugs, drugs for Bill Parsons	300.00
May 8	Roberta Parsons, cash advance	4.64
June 2	Bill Parsons, cash advance	50.00
9	Bill Parsons, cash advance	200.00
9	Fountain Square Hotel	50.00
15	Bill Parsons, cash advance	37.85
18	Roberta Parsons, cash advance	50.00
18	Fountain Square Hotel	50.00
24	Benets Pharmacy, drugs for Bill Parsons	85.33
25	Bill's Moving & Storage, shipping guitar to Cincinnati	9.67
25	Fountain Square Hotel	8.00
25	Bill Parsons, cash advance	49.23
27	Bill Parsons, cash advance	25.00
27	General Motors Acceptance Corp., payment on car	75.00
July 3	Bill Parsons, cash advance	255.00
		50.00
	Total advances	5,547.21

SCHEDULE II.—Charges to Bill Parsons

Date		Amount
1958		
Nov. 20	Dave Fox, 1/2 promotion expense F835	\$50.00
Dec. 2	Dick Fitzsimmons, 1/2 promotion expense F835	50.00
5	Dave Fox, 1/2 promotion expense F835	50.00
6	Bill Parsons' share expenses, Columbus trip	25.00
6	Jerry Teifer, 1/2 promotion expense F835	37.50
6	Dave Fox, 1/2 promotion expense F835	37.50
6	Dick Fitzsimmons, 1/2 promotion expense F835	25.00
6	Goodie Goodlander, 1/2 promotion expense F835	25.00
15	Jerry Teifer, 1/2 promotion expense F835	37.50
16	Dick Fitzsimmons, 1/2 promotion expense F835	25.00
16	Dave Fox, 1/2 promotion expense F835	25.00
16	Goodie Goodlander, 1/2 promotion expense F835	25.00
18	Bill Parsons' share expenses, Cleveland trip	37.50
22	Goodie Goodlander, 1/2 promotion expense F835	75.00
22	Copy Art Photographers, photos of Bill Parsons	71.40
23	Jerry Teifer, 1/2 promotion expense F835	37.50
23	Dick Fitzsimmons, 1/2 promotion expense F835	50.00
23	Dave Fox, 1/2 promotion expense F835	50.00
23	Bill Parsons' share expenses, Miami trip	50.00
1959		
Jan. 5	Jerry Teifer, 1/2 promotion expense F835	75.00
5	Dave Fox, 1/2 promotion expense F835	50.00
5	Dick Fitzsimmons, 1/2 promotion expense F835	50.00
5	Bill Parsons' share expenses, Washington trip	50.00
7	Bill Parsons' travel expenses, airline ticket to Cleveland and extra fare on Miami trip	64.39
8	Bill Parsons' share expenses, Detroit trip including railroad fare	69.70
9	Bill Parsons' share expenses, trip to Washington, Baltimore, Pittsburgh	100.00
15	Dave Fox, 1/2 promotion expense F835	37.50
15	Jerry Teifer, 1/2 promotion expense F835	37.50
15	Dick Fitzsimmons, 1/2 promotion expense F835	25.00
19	Olins Beach U-Drive-It, Miami trip	29.45
19	Beach Club Hotel, Miami trip	30.90
21	R. C. Willets, pictures of Bill Parsons	18.00
22	Jerry Teifer, 1/2 promotion expense F835	37.50
21	Bill Parsons' share expenses, New York trip	100.00
21	Hooven Letter Service, biographies	37.83
21	Robbins Advertising, biography and pictures	37.10
21	Star Title Strip—F835 title strips	82.28
21	H. Wuebbold & Co., pictures	68.39
29	Dave Fox, 1/2 promotion expense F835	50.00
29	Dick Fitzsimmons, 1/2 promotion expense F835	50.00
29	Jerry Teifer, 1/2 promotion expense F835	37.50
31	Stamford Productions, Allan Freed Show	145.00

SCHEDULE II.—Charges to Bill Parsons—Continued

Date		Amount
Feb. 5	Bill Parsons' share expenses, Washington and Baltimore	\$50.00
7	Bill Parsons' share expenses, Washington and Baltimore	75.00
10	Jerry Telfer, 1/2 promotion expense F835	75.00
10	Dave Fox, 1/2 promotion expense F835	50.00
12	Jordaniers, Bill Parsons' share of session costs	540.00
12	Copy Art Photographers, pictures of Bill Parsons	63.10
12	Printercraft, pictures of Bill Parsons	133.70
12	Toots Shor Restaurant, 1/2 cost of promotion party	368.67
14	Bill Parsons' share expenses, Springfield and Chicago	100.00
16	Bill Parsons' share, Nashville session:	
	M. Thomasson	50.00
	S. Coffeen	50.00
	D. Kirkham	65.20
	B. Moore	195.60
	H. Bradley	391.20
	W. Garland	195.60
	G. Martin	195.60
	L. Brandon	195.60
	M. Harman	130.40
	F. Cramer	195.60
18	Billboard, 1/2 cost of ad.	461.57
18	Cash Box, 1/2 cost of ad.	415.46
18	Music Vendor, 1/2 cost of ad.	107.50
18	William S. Randolph, 1/2 cost of pictures, Toots Shor party	61.50
19	Bill Parsons' share expenses, trip to Springfield, Milwaukee, and Chicago	100.00
19	Jerry Telfer, 1/2 promotion expense F835	80.00
19	Dave Fox, 1/2 promotion expense F835	50.00
25	Music City Recordings	21.75
27	Bill Parsons' share expenses, Washington and Oregon trip	117.50
Mar. 5	Jordaniers, Bill Parsons' share of session costs	777.75
10	Bill Parsons' share expenses, west coast trip	250.00
9	Refund from Stamford Productions (credit)	(104.53)
18	Bill Parsons' share, Nashville session:	
	H. Bradley	363.75
	W. Garland	181.88
	R. Moore	181.88
	M. Harman	181.88
	G. Martin	169.76
	F. Cramer	169.76
	H. Randolph	169.76
	L. Brandon	169.76
20	Bill Parsons' share expenses, San Francisco and Los Angeles trip	250.00
24	Refund, Click Corp (credit)	(68.07)
21	Dave Fox, 1/2 promotion expense F838	50.00
21	Jerry Telfer, 1/2 promotion expense F838	75.00
25	Ray Ruch, 1/2 promotion expense F838	25.00
24	Bill Parsons' share expenses, west coast trip	200.00
27	Bill Parsons' share expenses, Grand Rapids trip	25.00
30	Airline ticket to Grand Rapids	32.89
Apr. 3	Bradley Studios, Bill Parsons' share expenses	1,318.39
3	Music City Recordings	25.00
7	Bob Smith, 1/2 promotion expense F838	62.50
11	Jerry Telfer, 1/2 promotion expense F838	75.00
11	Dave Fox, 1/2 promotion expense F838	50.00
13	Irwin Zucker, 1/2 promotion expense F838	50.00
14	Diners Club, Bill Parsons' share (1/2)	86.16
14	Robert Kerr, 1/2 promotion F838	62.50
14	Printercraft, pictures of Bill Parsons	43.57
14	William S. Randolph, 6 prints for ASCAP	9.14
14	Irwin Zucker, 1/2 promotion expense F838	50.00
25	Copy Art Photographers, pictures of Bill Parsons	30.95
May 29	Irwin Zucker, promotion mailing on F838	16.00
8	Diners Club, expenses for Bill Parsons	27.45
18	Traveling expense to record Bill Parsons (Chicago)	60.00
22	Irwin Zucker, 1/2 promotion expense F838	25.00
23	Bill Parsons' share, session at Kings	230.00
June 7-9	Bill Parsons' share, session at Kings	550.16
19	Bill Parsons' share, session at Kings	167.50
July 13	Charlie Lamb Agency, 1/2 cost of ad.	55.45
13	Music Vendor, 1/2 cost of ad.	200.00
13	Robbins Advertising, fan club cards	53.56
13	Cash Box, 1/2 cost of ad.	620.91
13	Billboard, 1/2 cost of ad.	596.96
Aug. 18	Fountain Square Hotel, for Bill Parsons	88.39
	Total	14,258.55

Mr. LISHMAN. I have no further questions.

The CHAIRMAN. Mr. Mack.

Mr. MACK. I have no questions.

The CHAIRMAN. Mr. Bennett.

Mr. BENNETT. When you were paid for your appearance on the "Dick Clark Show," were you required to divide your fee with anyone else?

Mr. PARSONS. Do you mean, does someone else get a percent of it?

Mr. BENNETT. Did you have to pay any of it back?

Mr. PARSONS. Yes, sir; I was informed by Fraternity Records that everything that was paid to me from a show like that would have to be returned, and I didn't receive anything from it. As a matter of fact, I got statements, income tax statements from shows that I never saw the checks for.

Mr. BENNETT. So you didn't get anything?

Mr. PARSONS. Actually, from a couple of TV shows that I did, I did receive the checks, but I think they were deducted on the statements that I got from Mr. Carlson. And I have the statement to show. And I couldn't honestly say without checking the statements. But all that was paid to me, to that effect, was returned.

Mr. BENNETT. You are saying that for your services the check was made payable to you from Dick Clark, or from the corporation running the show?

Mr. PARSONS. Yes.

Mr. BENNETT. And then you were required to give the check back to him or give it back to the person—

Mr. PARSONS. To the best of my knowledge, yes, sir. Mr. Carlson informed me that that would be the way it operated, and at that time his brother was my personal manager.

Mr. BENNETT. Mr. Carlson's brother, the brother of the man who was a witness here?

Mr. PARSONS. Yes, his brother, Paul Carlson, was my personal manager. And they handled all that type of stuff. And I was informed that it would all be returned, yes.

Mr. BENNETT. Anyway, you didn't get them. You got nothing for your appearances, no money?

Mr. PARSONS. No. Actually, I received the checks, but they were paid back, it was charged against me on my statements.

Mr. BENNETT. If it was charged back you didn't get it?

Mr. PARSONS. I didn't get it.

Mr. BENNETT. What were you supposed to have gotten?

Mr. PARSONS. It was minimum union scale.

Mr. BENNETT. What is the minimum?

Mr. PARSONS. To the best of my knowledge, the Saturday night show amounted to something like \$130, the weekday show is maybe \$40 or \$50, I don't remember the exact amount, whatever minimum scale is for the Saturday night "Dick Clark Show." You have rehearsals, and you are paid for the rehearsals too, and I believe the total came to something like \$130 for three rehearsals and one appearance.

Mr. BENNETT. You may go ahead, Mr. Lishman.

Mr. LISHMAN. I am through.

Mr. MACK (presiding). Mr. Moss.

Mr. Moss. Mr. Parsons, did you receive a statement from Fraternity Records listing payments to diskjockeys?

Mr. PARSONS. I couldn't say, sir. I have a list of a lot of names, with a lot of names I don't even recognize that he has listed as promotion. As far as saying definitely, as to diskjockeys, there are several names on the list that I don't know personally, I couldn't say who they are. I can provide you with a statement as to the promotion men in different cities that I am charged with paying—

Mr. Moss. How much are you charged with paying promotion men?

Mr. PARSONS. Well, different amounts, sir. Say a promotion man in New York, maybe he will charge me \$75, maybe 15 or 25 times.

Mr. Moss. Fifteen or twenty times?

Mr. PARSONS. Yes.

Mr. Moss. How long are you required to pay the promotion charges of recordings?

Mr. PARSONS. Well, from the time I signed a contract with Fraternity, November 5, 1958.

Mr. Moss. What kind of a contract do you have?

Mr. PARSONS. Well, your first statement is actually due 6 months from the time you signed your first contract, but it was much after that before I got a statement, because I was expected—

Mr. Moss. Do your managers as well as the producer of your records—

Mr. PARSONS. Correct, sir.

Mr. Harley Carlson, of Fraternity Records, and his brother—

Mr. Moss. And what method of payment did they arrive at, how were you to be paid?

Mr. PARSONS. How was I to be paid?

Mr. Moss. Yes.

Mr. PARSONS. I was to be paid a royalty on the records—

Mr. Moss. Which records, any and all records?

Mr. PARSONS. Any and all records I recorded, I had one more release on Fraternity after that, which I never did receive statements on.

Mr. Moss. How many recordings have you made for Fraternity?

Mr. PARSONS. Sir, I recorded several, I recorded about 14 sides, which were supposed to have been released in an album according to the agreement with Fraternity, which they never did release.

Mr. Moss. How many recordings for Fraternity were released?

Mr. PARSONS. "The All-American Boy," and "One More," "Care-free Wanderer," and "Educated Rock-n-roll."

Mr. Moss. In other words, four sides.

Mr. PARSONS. Four sides.

Mr. Moss. Fourteen titles recorded?

Mr. PARSONS. I couldn't say it was 14, sir. I believe it was more than that actually, but we got enough for an album, which takes 12 sides.

Mr. Moss. Does your account charge for all expense in connection with any of those other titles?

Mr. PARSONS. I am charged with all of it; yes, sir.

Mr. Moss. Do you have any determination as to whether or not these will be recorded? Do you select them?

Mr. PARSONS. No, I do not, sir. At the time we recorded these other songs, Mr. Carlson told me that he wanted to release an album which takes 12 sides, 12 songs to record an album. We went to Bradley Studios in Nashville, Tenn., recorded them, and they were never released. Shortly after that I was asked to sign a power-of-attorney to them, which I refused to do, and after that we never seemed to agree—

Mr. MOSS. How did you live during this time? Was all of your income tied up under your contract with Carlson?

Mr. PARSONS. Well, at the same time, sir, for about, I would say, about 5 months, or something like that, I toured promoting the "All-American Boy" record all over the United States on different TV shows, radio programs, and diskjockeys, and so forth.

Mr. MOSS. And your only compensation was your royalty return?

Mr. PARSONS. At the time I was doing this touring, Mr. Carlson was paying my family so much, just enough to live on.

Mr. MOSS. That isn't compensation, unless it was in addition to the royalty.

Mr. PARSONS. It was deducted from the royalty I should have had.

Mr. MOSS. It was deducted from, therefore it was not in addition to, and it was not compensation, it was merely giving you advances against it.

Mr. PARSONS. Advances against my royalty, yes, sir.

Mr. MOSS. So the only compensation received by you was on the basis of the royalties?

Mr. PARSONS. That is correct, sir.

Mr. MOSS. For personal appearances. Now, when you appeared on these shows, you have indicated that you had to reimburse Mr. Carlson either through turning the check over to him or having him offset deductions made from your royalties; is that correct?

Mr. PARSONS. I don't think you understood clearly.

When I would appear on a TV show, I understand that they pay you minimum scale, and a check would be made to Fraternity Records because they handle all my business.

Mr. MOSS. Now, you appeared on "American Bandstand"?

Mr. PARSONS. Yes, sir.

Mr. MOSS. Was a check mailed by them to Fraternity Records?

Mr. PARSONS. I definitely remember I received a check myself from "American Bandstand;" and I did cash the check, and to the best I can remember, it was \$130-some. But to the best of my knowledge, this is repaid by Fraternity Records and is charged against me on my statements.

Mr. MOSS. Now, you do have a statement from Fraternity Records showing the list of payments to individuals who may or may not have been discharged?

Mr. PARSONS. Yes, sir.

Mr. MOSS. And you are going to supply that to the Subcommittee?

Mr. PARSONS. I am.

Mr. MOSS. And you are going to supply the subcommittee all copies of statements received from Fraternity Records?

Mr. PARSONS. Yes, sir.

Mr. MOSS. That is all the questions I have.

The CHAIRMAN. As I understand it, Mr. Parsons, Fraternity Records, Inc., has a contract with you.

Mr. PARSONS. Has a contract with me?

The CHAIRMAN. Yes.

Mr. PARSONS. Not at the present time; no, sir.

The CHAIRMAN. They did have?

Mr. PARSONS. I had a release from Fraternity Records about a month ago.

The CHAIRMAN. When were you under contract with Fraternity Records?

Mr. PARSONS. I was under contract with Fraternity Records from November 1958, until June, either January or February of 1960. The contract read 6 months with an option of 1 year, which would make it 18 months, and if the option was picked up, that they were to release at least four records a year by me, and they only released the two records in the period of time I was with them.

The CHAIRMAN. And what were the two records?

Mr. PARSONS. "All-American Boy", and "Rubber Dolly", and the next record was "Carefree Wanderer" and "Educated Rock-n-Roll".

The CHAIRMAN. Did you sing, "All-American Boy"?

Mr. PARSONS. I did not.

The CHAIRMAN. Did you sing, "Rubber Dolly"?

Mr. PARSONS. Yes, I did.

The CHAIRMAN. Of course, I suppose it is not pertinent to this investigation here, but it occurred to me it is a rather unusual thing to have a contract with them and then have them charge you \$6,000. Maybe I just didn't understand it.

Mr. PARSONS. On a promotional deal, at the time I was traveling, promoting the record, as far as I knew it was completely legitimate, you don't get a royalty statement until 6 months afterward.

The CHAIRMAN. I assume that to be true.

Do you know anything about a telegram, or do you know whether Mr. Carlson received a telegram from Dick Clark recently?

Mr. PARSONS. I was in Fraternity's office, I would say, some time in January of 1960, discussing with Mr. Carlson a release from him so that I could go with another recording label and perhaps get the masters that I have recorded and paid for. And he showed me a telegram. All he said was, "Just thank you for your statement," or something to that effect, from Dick Clark.

The CHAIRMAN. There is nothing wrong with that?

Mr. PARSONS. Nothing.

The CHAIRMAN. Do you know anything about what statement he had reference to?

Mr. PARSONS. I do not, sir. I had had no connection with Fraternity Records for quite some time at that time.

The CHAIRMAN. Well, thank you very much. You may be excused.

The following witnesses may be excused: Mr. Lawrence Brown, Mr. George Woods, Mr. Milton Kelleem, Mr. Al Wilde, and Mr. Charles E. Reeves.

We have three witnesses who have requested to be heard in executive session.

Mr. Bernard Lowe, are you here in the room?

Mr. LOWE. Yes.

The CHAIRMAN. Will you come around for a moment, Mr. Lowe? Do you have your counsel with you?

Mr. LOWE. Yes, sir.

The CHAIRMAN. Mr. Counsel, you have written me a letter on behalf of Mr. Bernard Lowe in which you requested that he be heard in executive session under rule XI, paragraph M, of the House rules.

Mr. STEINBERG. That is correct, sir.

The CHAIRMAN. Is it your opinion that his testimony would tend to defame, degrade, or incriminate some person?

Mr. STEINBERG. I believe so. Of course, I don't know what questions you are going to ask, but there are some questions which were asked by investigators of your subcommittee which I think would have that tendency, if those questions were asked here, I think they would tend to defame, degrade, or incriminate some other persons.

The CHAIRMAN. Very well, then; you may be seated.

Mr. MOSS. Mr. Lowe, do you feel that your testimony here is going to tend to defame or degrade or incriminate yourself?

Mr. LOWE. As far as incriminate, I understand there is a local statute in Pennsylvania and another one in New York where it might.

Mr. MOSS. In other words, you are afraid that you might come within the commercial bribery statute, is that the point?

Mr. LOWE. Yes.

The CHAIRMAN. Mr. Harry Chipetz.

Mr. STEINBERG. I wrote the same letter on behalf of Mr. Chipetz.

The CHAIRMAN. I think we had better identify you for the record.

Mr. STEINBERG. My name is Sigmund H. Steinberg. I am a member of the bar of Philadelphia, 1528 Walnut Street is my address.

The CHAIRMAN. And you are Mr. Chipetz?

Mr. CHIPETZ. I am Mr. Chipetz.

The CHAIRMAN. And Mr. Steinberg represents you?

Mr. CHIPETZ. Yes.

The CHAIRMAN. Is it your considered opinion that your testimony would tend to incriminate or defame or degrade some person?

Mr. CHIPETZ. Yes, sir.

The CHAIRMAN. That is your—

Mr. CHIPETZ. Other persons than myself.

The CHAIRMAN. Other persons than yourself?

Mr. CHIPETZ. Yes, sir.

The CHAIRMAN. Do you know something about the investigation and what the staff has requested of this man, Mr. Steinberg?

Mr. STEINBERG. Yes, sir. We cooperated rather fully, they were there for several weeks, and we gave them all possible information that they asked.

The CHAIRMAN. You were present at the time of the investigation?

Mr. STEINBERG. I was present throughout the time of questioning—I wasn't when they looked over the records, but I was present throughout the questioning.

The CHAIRMAN. And it was your opinion from what they asked and the discussions that they had, it is your opinion as a lawyer that it would come under rule XI?

Mr. STEINBERG. I believe so, sir. That is my opinion.

The CHAIRMAN. Very well, you may step aside for the moment.

Mr. Goldner? Are you Mr. Goldner?

Mr. GOLDNER. Yes, sir.

The CHAIRMAN. Do you have your counsel with you?

Mr. GOLDNER. Yes, sir.

The CHAIRMAN. Mr. Counsel, will you identify yourself for the record?

Mr. TROOB. My name is Warren Troob, New York City.

The CHAIRMAN. Mr. Goldner, I have a request from your attorney on your behalf to be heard in executive session, because your testimony may tend to degrade, defame, or incriminate some person. Is that your opinion?

Mr. GOLDNER. Yes; it might tend to incriminate some people, or defame them.

The CHAIRMAN. Mr. Counsel, have you been present during the investigation when the investigators were talking to Mr. Goldner?

Mr. TROOB. I was.

The CHAIRMAN. And you are familiar with what he has told them and what they asked of him?

Mr. TROOB. I am.

The CHAIRMAN. Is it your opinion also that his testimony would come within the purview of rule XI?

Mr. TROOB. I believe it would.

The CHAIRMAN. Very well, have a seat.

The subcommittee will go into executive session at this moment, and we would like to ask that the room be vacated as expeditiously as possible.

I think before you leave, in order that everyone may know, apparently the subcommittee will not be able to conduct a public hearing tomorrow. This caucus room has been reserved by another group, the National 4-H Clubs. They are having their conference or national meeting here in Washington, and some time ago, months ago, it was reserved for that purpose.

Tomorrow afternoon the House will be in session under the 5-minute rule on the housing bill, and therefore we would not be authorized to sit tomorrow afternoon. Consequently it will not be possible for us to have a public hearing tomorrow if we are unable to conclude with these witnesses in executive session this evening, and it is getting very late now. We will try to conclude with them in the morning.

The next public session, then, will be in this caucus room at 10 o'clock on Friday morning.

(Whereupon, at 5:50 p.m., the subcommittee went into executive session.)

EXECUTIVE SESSION

(Released to the Public May 2, 1960)

The special subcommittee met, pursuant to recess, at 5:50 p.m., in the caucus room, Old House Office Building, Hon. Oren Harris (chairman of the special subcommittee) presiding, a quorum being present.

The CHAIRMAN. Will you be sworn, Mr. Goldner?

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

Mr. GOLDNER. Yes, sir.

TESTIMONY OF GEORGE GOLDNER, ACCOMPANIED BY WARREN TROOB, COUNSEL

The CHAIRMAN. Will you state your name for the record?

Mr. GOLDNER. George Goldner.

The CHAIRMAN. What is your address?

Mr. GOLDNER. My address is 10 Reimer Road, Scarsdale, N.Y.

The CHAIRMAN. What is your profession or business?

Mr. GOLDNER. I am a record manufacturer.

The CHAIRMAN. What is the name of your manufacturing company?

Mr. GOLDNER. I have several labels, one is Gone Recording Corp., Music, Inc., and Gold Disc Records, Inc.

Mr. LISHMAN. Real Gone Music?

Mr. GOLDNER. Yes, sir; Real Gone Music, Bonny and N Music.

The CHAIRMAN. Mr. Bennett.

Mr. BENNETT. Mr. Chairman, I wanted to state to the witness and to his attorney, for the record, what my views are about these executive sessions in this type of a situation. The entire subcommittee has been very reasonable in applying this rule that provides for executive hearings. But my own personal feeling has been that for the most part the executive hearings that we have had here with witnesses during the course of these hearings do not come under the rule, and yet we have taken the trouble to hear them privately. I just want to be sure, speaking for myself at least, that the witness and his counsel understand that although we do hear this testimony in executive session it does not necessarily mean that it won't be released to the public any time after we are through with the hearing.

Mr. GOLDNER. I see.

Mr. BENNETT. And furthermore, it is my opinion that this kind of a hearing does not afford the witness any protection that he is not entitled to in a public hearing.

The CHAIRMAN. Mr. Lishman.

Mr. LISHMAN. Mr. Goldner, did you know Dick Clark?

Mr. GOLDNER. Yes, sir.

Mr. LISHMAN. How long have you known him?

Mr. GOLDNER. Since he—oh, I would say about the second week after he started his "American Bandstand Show."

Mr. LISHMAN. Have you ever made any payments to Dick Clark directly or indirectly?

Mr. GOLDNER. If you are speaking of money; no, sir.

Mr. LISHMAN. Well, have you ever made any valuable considerations to him in the form of copyrights or material things?

Mr. GOLDNER. Yes, sir.

Mr. LISHMAN. Will you describe what these are?

Mr. GOLDNER. I think there is a total of four copyrights that were assigned for Real Gone Music or N Music.

Mr. LISHMAN. And are you the sole proprietor of those companies?

Mr. GOLDNER. I am the majority stockholder.

Mr. LISHMAN. Will you please describe the manner in which these companies assigned their copyrights to Dick Clark?

Mr. GOLDNER. They are regular assignment forms which we filled out and sent to Dick Clark.

Mr. LISHMAN. Did you send it to him personally, these assignments?

Mr. GOLDNER. Well, I believe there is an address attached to Sea-Lark letterheads, something like that, we send it to Sea-Lark Music or January Music at the address that was known.

Mr. LISHMAN. And addressed to Mr. Clark?

Mr. GOLDNER. Yes, sir.

Mr. LISHMAN. And what consideration was given for the assignment of these copyrights?

Mr. GOLDNER. Well, the only consideration was what I was looking for, what I hoped to gain was favor, in giving him these copyrights. Dick Clark did not call me personally to ask me for any copyrights, in fact, I don't even remember any discussion, I don't think there were any discussions with Dick Clark personally in reference to my copyrights that I have ever had with him. There were people in my office that worked for me and then eventually went to work for Dick Clark, and I am speaking of a Miss Vera Hodes.

Miss Hodes was in constant conversation with Dick Clark through the time she was working with me, so that she should have been the one to have discussed anything with Dick Clark relative to this.

Mr. LISHMAN. Were these copyrights assigned by your capacity to the Sea-Lark Co.?

Mr. GOLDNER. Yes.

Mr. LISHMAN. And the consideration given by Sea-Lark for the assignment was what?

Mr. GOLDNER. There was no commitment on the part of Dick Clark to me personally or to anyone that I know of in my organization. I said I was looking for favor or hoping to gain favor with Dick Clark by agreeing to assign the tunes to his firms.

Mr. LISHMAN. Well, did he pay you or your company any money for the assignment?

Mr. GOLDNER. No, he never paid me any money, no.

Mr. LISHMAN. Did he play these songs on his show?

Mr. GOLDNER. Yes, I think he played all of the songs, possibly with the exception of one.

Mr. LISHMAN. Now, let's have a list of these songs.

Mr. GOLDNER. I think there is a record of those songs.

Mr. LISHMAN. Can you tell me what those songs were?

Mr. GOLDNER. I remember the first one was "Could This Be Magic?"; the second one, I believe, was "Every Night"; the third one was "Beside My Love," and the fourth one was—

Mr. LISHMAN. "Beside My Love"?

Mr. GOLDNER. I mentioned "Beside My Love".

Mr. LISHMAN. "Every Night I Pray"?

Mr. GOLDNER. "Every Night I Pray", and one other.

Mr. LISHMAN. "So Much"?

Mr. GOLDNER. That is it.

Mr. LISHMAN. Now, did the assignment assign the entire copyright of "Could This Be Magic?" to Sea-Lark?

Mr. GOLDNER. In any case, if I had the ownership of the copyright, I would have assigned the entire 100 percent to Dick Clark.

Mr. LISHMAN. Including the performance payments?

Mr. GOLDNER. Including everything connected with the publishing of the tune.

Mr. LISHMAN. Well, would you ever have—would you have retained 50 percent of the performance payments?

Mr. GOLDNER. No, I retain nothing, instead I assigned 100 percent of the tune to Sea-Lark.

Mr. LISHMAN. What benefit would you get out of this?

Mr. GOLDNER. Hoping that he would play my records.

Mr. LISHMAN. And the only profit you would make would be on the sales of records?

Mr. GOLDNER. Yes, sir; that would be my profit.

Mr. LISHMAN. You wouldn't receive anything at all, either from mechanical royalties—

Mr. GOLDNER. Not anything from the publishing end of the tune.

Mr. LISHMAN. Nothing?

Mr. GOLDNER. Nothing.

Mr. LISHMAN. The only profit you could expect would be from the sale of the records?

Mr. GOLDNER. Yes, sir.

Mr. LISHMAN. Now, just to make the record clear, the song "Could This Be Magic" belonged to your company?

Mr. GOLDNER. Real Gone Music.

Mr. LISHMAN. That was assigned to Sea-Lark, a Dick Clark company?

Mr. GOLDNER. Yes, sir.

Mr. LISHMAN. The song "So Much" belonging to your company was assigned to the January Corp.?

Mr. GOLDNER. Yes, sir.

Mr. LISHMAN. The song "Every Night I Pray" belonging to your company was assigned to Sea-Lark?

Mr. GOLDNER. Yes, sir.

Mr. LISHMAN. And the song "Beside My Love" belonging to your company was assigned to Sea-Lark?

Mr. GOLDNER. Yes, sir.

Mr. LISHMAN. Did Dick Clark play all these songs on his show, the "American Bandstand" and the "Dick Clark Show"?

Mr. GOLDNER. I believe three of the four were played, I don't think "Beside My Love" was played.

Mr. LISHMAN. And what happened to the three that were played? Did they—

Mr. GOLDNER. "Could This Be Magic" was a chart record; "Every Night I Pray" was a chart record; "So Much" was a chart, too; three records hit the top 100 charts.

Mr. LISHMAN. Did they hit the top before Dick Clark started plugging them?

Mr. GOLDNER. I don't think so.

Mr. LISHMAN. Now, Vera Hodes, who formerly worked for you, she became associated with Dick Clark; is that correct?

Mr. GOLDNER. That is correct.

Mr. LISHMAN. Now, was she the person who managed Dick Clark's publishing companies?

Mr. GOLDNER. Yes; she became Dick Clark's professional manager, or took care of his publishing firm.

Mr. LISHMAN. Did you ever hear that Vera Hodes wanted a hundred percent of the copyright of "Sixteen Candles"?

Mr. GOLDNER. Yes; I heard the story.

Mr. LISHMAN. From whom did you hear that?

Mr. GOLDNER. I will tell you, it was quite a story in the trade. There was an awful lot of talk about it, so I probably heard it from at least 14 sources in New York and Philadelphia and different places.

Mr. LISHMAN. And did you also hear that George Paxton refused to go along with that and agreed only to give 50 percent of it—

Mr. GOLDNER. I heard words to that effect; yes.

Mr. LISHMAN. Of the performance payments?

Mr. GOLDNER. I heard the eventual windup was that there was only a 50-percent split on the tune.

Mr. LISHMAN. On the payment for performance, rather?

Mr. GOLDNER. Yes, sir.

Mr. LISHMAN. Now, have you ever had any records pressed by Mallard?

Mr. GOLDNER. Some.

Mr. LISHMAN. How many?

Mr. GOLDNER. Well, we checked with the representatives, Jones & Eastland, and we got a total figure of \$5,000-and-some-odd; I don't know what the odd amount is, but it was just a little better than \$5,000.

Mr. LISHMAN. Did you have your records pressed by Mallard in order to curry favor with Dick Clark, who had an interest in that company?

Mr. GOLDNER. Not really. I think if that had been my reason to go to Mallard I would have given him more business, but I did not give him that amount of business, so, therefore, I cannot say that.

Mr. LISHMAN. Were you or one of your companies the national distributor for Jamie-Guyden Records?

Mr. GOLDNER. Yes; I was the national distributor for Jamie-Guyden Records.

Mr. LISHMAN. From February 1958 to September 1959?

Mr. GOLDNER. That is right, sir.

Mr. LISHMAN. Did you know then that Dick Clark owned an interest in Jamie Records?

Mr. GOLDNER. No; I did not know it until just about, oh, maybe a month before we decided to give up any outside activity, any label activity.

Mr. LISHMAN. Now, in connection with your record business, had you made or caused payments to be made to diskjockeys, stations licensees, or station personnel in broadcasting?

Mr. GOLDNER. Yes, sir.

Mr. LISHMAN. Have you made payments to the diskjockeys George Woods, Joe Niagara—

Mr. GOLDNER. Well, in the George Woods case, this is the only one I believe—it was not a direct payment for playing records or for listening or any other purpose, but I think we participated in the

payment of an account that we had his show at a Philadelphia theater, and we paid part of that money for the performance of that group of artists on his show. So the money was paid to George Woods, but it was not paid for the purpose of playing records.

Mr. LISHMAN. Do you know Joe Niagara?

Mr. GOLDNER. Yes, sir.

Mr. LISHMAN. And was he a diskjockey in Philadelphia?

Mr. GOLDNER. That is right.

Mr. LISHMAN. Did you pay him money for playing some of your records?

Mr. GOLDNER. Yes, sir.

Mr. LISHMAN. How much?

Mr. GOLDNER. I believe we paid him in the vicinity of \$500 a month.

Mr. LISHMAN. For how long a period?

Mr. GOLDNER. Oh, I think it was about 3 months or thereabouts, 4 months.

Mr. LISHMAN. Now, you didn't pay him that for getting his advice, did you?

Mr. GOLDNER. No, sir.

Mr. LISHMAN. You paid him \$500 a month in order to get him to play the records?

Mr. GOLDNER. That is right.

Mr. LISHMAN. In which your company had a financial interest?

Mr. GOLDNER. Yes, sir.

Mr. LISHMAN. Did you ever pay any diskjockey for the purpose merely of having him listen and get his advice?

Mr. GOLDNER. No, sir.

Mr. LISHMAN. Every time you paid a diskjockey or station licensee personnel, you paid for the purpose of getting the result of having the record exposed on the air?

Mr. GOLDNER. Yes, sir; that is right.

Mr. LISHMAN. And you paid many such diskjockeys for that purpose?

Mr. GOLDNER. Yes, sir.

Mr. LISHMAN. Now, in addition to Joe Niagara, will you please name a few?

Mr. GOLDNER. I paid Tom Clay, I paid—

Mr. LISHMAN. Tom Clay in Detroit.

Mr. GOLDNER. I paid Tommy Small in New York.

Mr. LISHMAN. Could you approximate the amounts you paid each of these and we can save some time?

Mr. GOLDNER. In most cases there was no regular payment to these people, except in some cases which lasted for a period of 12 months or thereabouts.

Mr. LISHMAN. In the case of Tom Clay—

Mr. GOLDNER. Tom Clay's lasted about 12 or 14 or 16 months, I believe.

Mr. LISHMAN. And about how much did he get?

Mr. GOLDNER. I think anywhere from one to—I think it was around \$100 a month, but then again you also have this amount on record.

Mr. LISHMAN. I thought we could save time here because we can establish the fact that you are the first witness who has testified that

the payments were given for the purpose of actually having the record played over the air.

Now, what was the next diskjockey you named?

Mr. GOLDNER. Tommy Small.

Mr. LISHMAN. And where is he?

Mr. GOLDNER. New York City.

Mr. LISHMAN. And how much was he paid?

Mr. GOLDNER. No regular amount, sir.

Mr. LISHMAN. Approximately how much?

Mr. GOLDNER. Approximately, somewhere in the vicinity of \$1,000 a year.

Mr. LISHMAN. Now, would you name some more diskjockeys?

Mr. GOLDNER. Yes. There was Scruggs in Cincinnati, there was Gibson in Cincinnati, there was Harry Dixon in Detroit, there was a Joe Howard in Detroit, there was——

Mr. LISHMAN. How about Chicago?

Mr. GOLDNER. Chicago, there were a couple of payments, I believe, again, there has been some people that we have. Is there any way that I can look at a list of names, and then I can read them off to you?

Mr. LISHMAN. Have we got that list of names here?

No, we don't have them.

But I am establishing the fact through you that you did pay these diskjockeys.

Mr. GOLDNER. Yes, sir.

Mr. LISHMAN. How about Howard Miller in Chicago?

Mr. GOLDNER. No, I never gave Howard Miller anything.

Mr. LISHMAN. Al Benson?

Mr. GOLDNER. I never paid Al Benson money for playing records. I gave Benson money, but it was for the purpose of paying part of the cost of a listing that Benson puts out.

Mr. LISHMAN. Now, you did all this as record promotion expense through one of your record companies; is that correct?

Mr. GOLDNER. That is right.

Mr. LISHMAN. Did you ever have any talent appear on the "Dick Clark Show"?

Mr. GOLDNER. Yes, sir.

Mr. LISHMAN. Who did you have appear?

Mr. GOLDNER. We had the Chantelles appear, we had Anthony and the Imperials appear, we had the Flamingoes appear, and possibly the Dubs, but I just don't remember if the Dubs appeared.

Mr. LISHMAN. The Gone All-Stars?

Mr. GOLDNER. Yes, the Gone All-Stars appeared.

Mr. LISHMAN. The talent who appeared on either the "Dick Clark Show" or "American Bandstand" were paid by Dick Clark?

Mr. GOLDNER. Truthfully, I don't know. I remember a couple of years back there was some question of how the money was to be paid, whether it was Dick Clark, personally, through some company he had at the Bandstand, or through the distributor. I would say in the last year and a half or so the information was that it was strictly that Dick Clark paid the artists for appearing. But at the beginning I do not remember how it was done.

Mr. LISHMAN. Wasn't it a fact that in many instances the record manufacturer or distributor reimbursed the amount paid to talent?

Mr. GOLDNER. Record distributor reimburse, you say?

Mr. LISHMAN. Yes.

Mr. GOLDNER. Yes, it is the distributors I would say up to this very day through the country, with the various local TV shows, that in some instances the artist is actually being paid by the record company exactly what the boy that was sitting here before, the "All American Boy," that Parsons mentioned.

Mr. LISHMAN. Did you have to reimburse payments, that were necessary to compensate your talent, for appearing on the "Dick Clark Show"?

Mr. GOLDNER. On the "Dick Clark Show"?

Just recently, in fact it was just the other day, I was called by Chips. We had one record distributed by Chips, and we had an artist appear on the show, and he asked me to send him a check to reimburse him for moneys that he had laid out for the appearance of an artist on the "Dick Clark Show." This happened just the other day—two artists, excuse me.

Mr. LISHMAN. Have you ever given Tony Mammarella any checks?

Mr. GOLDNER. Yes, I remember the one check for \$1,000 which was a gift to Mr. and Mrs. Tony Mammarella.

Mr. LISHMAN. Did you ever give him any other checks?

Mr. GOLDNER. It is very possible I may have given him a small check, but it would be absolutely insignificant for the purpose of our discussion here today.

Mr. LISHMAN. Did you ever give any gift other than checks—

Mr. MOSS. Mr. Lishman, I wonder if we could go back just very briefly. You indicated that very recently Chips called and asked that you reimburse them for payments that they had made to an artist appearing on Clark's show?

Mr. GOLDNER. Yes, sir.

Mr. MOSS. Now, how recently?

Mr. GOLDNER. This was only a matter of within a month, otherwise I wouldn't have remembered.

Mr. MOSS. Now, was it for a reimbursement of recent date?

Mr. GOLDNER. No, a reimbursement of December of 1958.

Mr. MOSS. December of 1958?

Mr. GOLDNER. Yes, sir.

Mr. MOSS. Have you paid this?

Mr. GOLDNER. Yes, I sent them a check.

Mr. MOSS. You sent them a check?

Mr. GOLDNER. Yes, sir.

Mr. MOSS. Will you supply us the details?

Mr. Chairman, I would ask that we be supplied with the details of this transaction.

Mr. GOLDNER. If I have them.

Mr. MOSS. Is it not true that through your records you would be able to give us the precise information as to how many times you have reimbursed for appearances on Mr. Clark's shows?

(Reference to above payments follow—see check.)

NO RECEIPT REQUIRED
RETURN IF NOT CORRECT
THIS CHECK PAYS IN FULL THE FOLLOWING ITEMS

DATE	INVOICE	AMOUNT
	<i>in full payment</i>	
<i>for appearance of</i>		
<i>Billy Roberts & Co</i>		
<i>Travelers on the</i>		
<i>Commercial Road Bank</i>		
<i>show</i>	DISCT. <i>1958</i>	
NET AMOUNT		

CO-OP DISTRIBUTING COMPANY
1650 BROADWAY NEW YORK 19, N. Y.

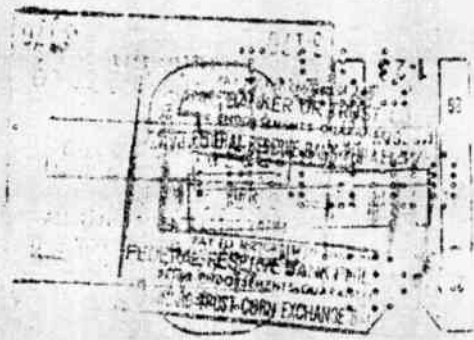
No. 1016 B

Apr 8 19*60* 1-777
260
PAY TO THE ORDER OF *Chapman Bond Co.* \$*248.00*
Two Hundred Forty Eight and 00/100 DOLLARS

Sterling National Bank & Trust Company
OF NEW YORK
BROADWAY AT 39TH STREET
NEW YORK

CO-OP DISTRIBUTING COMPANY
George Goldner
PRES

FOR DEPOSIT ONLY
Co-Op Distributing Co., Inc.
22 1 138 1



Mr. GOLDNER. Well, precisely I can give you these two. I know that this check covered two, one group and one individual artist, a girl singer and a vocal group that I know we are just reimbursing Chips at his asking us, you know, for the money.

Mr. MOSS. When you reimburse a distributor, do you charge this against the account of the artist?

Mr. GOLDNER. Yes, this has been common practice in the trade.

Mr. MOSS. And it is the practice you follow?

Mr. GOLDNER. Yes, I follow it.

Mr. MOSS. So that if the artist appears on Clark's show, and you reimburse him, the artist has in fact been required to make a free appearance on the show?

Mr. GOLDNER. Well, let's take these two artists in question that I know about. The two artists cost me in the vicinity of maybe \$15,000 in pressing, recordings, promotion, et cetera, and I never sold a record with these two artists.

Mr. MOSS. You are giving me the justification. I do not want that, all I want to know is the fact of the practice, and the fact is that they do not receive anything for the appearance?

Mr. GOLDNER. I can't agree on that.

Mr. MOSS. You say that they appear on the show, and the rules of the American Federation of Radio and Television Artists require that a minimum payment be made to them.

Mr. GOLDNER. I get that, yes.

Mr. MOSS. So in order to avoid difficulty with the association, Mr. Clark gives them a check, he pays them, you reimburse Mr. Clark, and then charge the reimbursement against the royalty account of the artist. So the fact is that the artist, after all of this meandering, has not received a dime as a result of that appearance?

Mr. GOLDNER. Well, as I said, I can't agree with you, because I can give you two specific instances where the artist received the check, and it cost me \$15,000, or maybe a little less.

Mr. MOSS. You are giving me justification, Mr. Goldner, you are giving me justification for the practice. But the fact of the matter is that the man reimburses Mr. Clark out of his own account. Now, whether or not you ultimately recover against the advances is a different question.

Mr. GOLDNER. Then I agree with you.

Mr. MOSS. That is all, I just wanted to have it straight on the record.

Mr. GOLDNER. Right, except in my own mind I know that sometimes you don't recover the money.

Mr. MOSS. I didn't ask you to justify the practice, I merely asked you to put the facts of the practice on the record.

Mr. LISHMAN. Mr. Goldner, isn't it a fact that you never made any gifts to Mr. Mammarella prior to his connection with Dick Clark?

Mr. GOLDNER. Oh, I wouldn't say that at all, I think that prior to his—I knew Mr. Mammarella for years prior to his joining Mr. Clark, and I think we may have given Mr. Mammarella many Christmas presents in the past, of small value, I don't think it was anything of great value.

Mr. LISHMAN. Did you ever give him anything as much as a \$1,000 check?

Mr. GOLDNER. Not in the form of money, I have never given Mr. Mammarella any sizable moneys outside of this \$1,000.

Mr. MOSS. Mr. Lishman, can't we segregate these more precisely by determining whether Mr. Goldner, over this period of time that he gave gifts to Mr. Mammarella, gave gifts that were personal gifts?

Mr. GOLDNER. When you say "gifts," it would be sports—

Mr. MOSS. You are in business, you know what a gift is, you can deduct—

Mr. GOLDNER. Well, sport shirts, that is a gift?

Mr. MOSS. It is a personal gift—or was it an expense of your business?

Mr. GOLDNER. We may have also done what Finfer brought out before, we may have charged off this \$1,000 to Mr. and Mrs. Anthony Mammarella, charged it off against promotion, it is very possible.

Mr. MOSS. That is not what I asked you, I asked you, previous to this \$1,000—

Mr. GOLDNER. There are no gifts.

Mr. MOSS. All of this year? You said you had given gifts to Mr. Mammarella?

Mr. GOLDNER. I said, through the years, I have known Mr. Mammarella for several years prior to his joining Mr. Clark.

Mr. MOSS. And these gifts you have given him through the years—

Mr. GOLDNER. Were not of monetary value, I didn't give him any money.

Mr. MOSS. Were these personal items or business gifts?

Mr. GOLDNER. They could be charged to the business as far as I am concerned, whether I am right or wrong I don't know at this moment, but I assume I am right.

Mr. MOSS. Did you invite him in as a personal friend, like a member of the family to whom you were making a personal gift, or was he a business acquaintance to whom you gave a gift hoping to ingratiate yourself with him?

Mr. GOLDNER. I would say in all cases that any record manufacturer giving anything to anyone in the music industry is looking to ingratiate himself at all times.

Mr. MOSS. All right, it was a business gift, it was an effort to ingratiate yourself?

Mr. GOLDNER. In the final analysis, I would have to go along with that.

Mr. MOSS. That is all I have.

Mr. LISHMAN. That is all.

The CHAIRMAN. Mr. Mack.

Mr. MACK. I will just inquire as to how long you have known Mr. Mammarella?

Mr. GOLDNER. I would say for a period of about 7 or 8 years.

Mr. MACK. You didn't know him before he secured the job as switchboard operator at the Philadelphia radio station?

Mr. GOLDNER. No, I met him when he was connected with the "Bandstand" show, when he was Bob Horn's manager of the "Bandstand"—what is that term—

Mr. MACK. Producer?

Mr. GOLDNER. Yes, the producer of the "Bob Horn Show."

Mr. MACK. He was a producer before Dick Clark joined the show, is that correct?

Mr. GOLDNER. He was there for several years prior to Dick Clark's joining the show.

Mr. MACK. He was producer?

Mr. GOLDNER. As producer of the show, yes.

Mr. MACK. That is all I have, Mr. Chairman.

The CHAIRMAN. Mr. Moss, anything further?

Mr. MOSS. Mr. Goldner, I note that you assigned three of these copyrights to Sea-Lark?

Mr. GOLDNER. Four, sir.

Mr. LISHMAN. And one to January?

Mr. GOLDNER. To me it is the same thing—yes, go ahead, three to Sea-Lark.

Mr. MOSS. How many did that sell?

Mr. GOLDNER. How many did the three sell? "Could This Be Magic" alone? I think a very good figure would be a quarter of a million records.

Mr. MOSS. Approximately a quarter of a million records?

Mr. GOLDNER. Yes.

The CHAIRMAN. Of each of them or all four?

Mr. MOSS. Just the one title, "Could This Be Magic."

How much would that earn for Dick Clark, roughly?

Mr. GOLDNER. I honestly don't know what the performance money would mean—

Mr. MOSS. Gross?

Mr. GOLDNER. You are asking about performance, I assume?

Mr. MOSS. You assigned performance?

Mr. GOLDNER. I assigned everything.

Mr. MOSS. These were absolute assignments?

Mr. GOLDNER. Absolute assignments; yes, sir.

Mr. MOSS. And your take was entirely as a profit on manufacture?

Mr. GOLDNER. Yes.

Mr. MOSS. How much did you make on a quarter of a million records?

Mr. GOLDNER. I would say a gross profit of about \$40,000.

Mr. MOSS. Normally, would his take, with all rights under the copyright, be the equivalent of yours, or less?

Mr. GOLDNER. Much less.

Mr. MOSS. How much less; 25 percent less?

Mr. GOLDNER. Much less than that.

Mr. MOSS. Fifty percent less?

Mr. GOLDNER. If Clark made a total amount of \$4,000 or—in the vicinity of \$4,000 or \$5,000, I think that would be a very good figure.

Mr. MOSS. Now, in giving this to Clark, you were under no illusions as to the objection sought by the gift?

Mr. GOLDNER. It was a calculated risk on my part.

Mr. MOSS. Was it a gift, or was it a fairly good understanding that in return for an assignment he would plug the record?

Mr. GOLDNER. I never had a conversation with Dick Clark.

Mr. MOSS. He didn't ask you? Was it an understanding?

Mr. GOLDNER. There was no understanding.

Mr. MOSS. What about this former employee of yours, Miss Hodes?

Mr. GOLDNER. I would venture to say she would have more to say on that.

Mr. Moss. Did you talk to her? You made the assignment, didn't you?

Mr. GOLDNER. Yes, I had some signed papers, I think I signed all the papers, it is very possible that she may have done it.

Mr. Moss. Was she working for you?

Mr. GOLDNER. She was working for me.

Mr. Moss. She was working for you when the assignment was made?

Mr. GOLDNER. Right.

Mr. Moss. Was she also working for Clark?

Mr. GOLDNER. I understood that Clark had given her some kind of a share in the companies of Sea-Lark and January, some months later. Now, at the time I could not say exactly when just—

Mr. Moss. Mr. Goldner, you own the copyright?

Mr. GOLDNER. I owned the copyright, my corporation did.

Mr. Moss. And you decided to give it away, and you delegated it to Miss Hodes—you delegated the right to Miss Hodes to assign it on your behalf, is that correct?

Mr. GOLDNER. That is correct.

Mr. Moss. And you had an understanding with her, then, as to what you expected in return for the assignment, didn't you?

Mr. GOLDNER. Well, as I said before, it was a calculated risk, regardless of what the conversation might have been—

Mr. Moss. I don't want to know what the conversation was, but, it was an understanding, was it not?

Mr. GOLDNER. Mr. Moss, I am a traveling man and a recording man, I spend 14 or 15 hours rehearsing, recording, and traveling quite a bit, and therefore when you ask me about a girl that works in my office as a secretary handling copyrights—and her specific job was to handle copyrights in my office—it would be very difficult—

Mr. Moss. How many copyrights have you assigned?

Mr. GOLDNER. A total amount of possibly 7 or 8 or 10, something like that.

Mr. Moss. And you have assigned them to whom?

Mr. GOLDNER. Primarily the four to Dick Clark, and I think there were three or four or five to Alan Freed in New York.

Mr. Moss. In other words, you have assigned them in each instance to a diskjockey?

Mr. GOLDNER. Yes.

Mr. Moss. And you assigned them for the specific purpose of making the property more valuable?

Mr. GOLDNER. No question about that, I was looking to—I mean, to make my properties more valuable as far as the recording artists.

Mr. Moss. And this was done on the theory that it was very much of a certainty that the assignment would accomplish an increase of the value of the property?

Mr. GOLDNER. I was hoping for that, sir.

Mr. Moss. Only hoping for, or didn't you have something more than hoping?

Mr. GOLDNER. It was a very well calculated risk, but I would say that the chances were in my favor.

Mr. Moss. Did Miss Hodes just come to you and say, "I think you ought to give this to Clark"?

Mr. GOLDNER. She said it exactly like that.

Mr. Moss. Or, "I have talked with him, and I have talked with Mammarella, and I think if you make the assignment you will find that the record will start being played"?

Mr. GOLDNER. No, I think she said exactly what you said at first, because it hit a bell the minute you did that, and I think Vera Hodes did come to me and say, "I think we will give this to Dick Clark," like that.

Mr. Moss. Did you ask her if she had talked to Clark or any of his representatives?

Mr. GOLDNER. Yes, I can recall asking about that.

Mr. Moss. In other words, there was an understanding, without laying it on the table, is that right?

Mr. GOLDNER. Let me say this. I did ask whether or not there was any discussion, because I know Dick, and I know his thinking pretty good, relative to giving him something, and Dick, as far as I was concerned, does not like to be given anything or have anything thrown at him, such as people bearing gifts—

Mr. Moss. He has changed, he has sure taken a lot.

Mr. GOLDNER. That is very true. I am speaking about Dick Clark at the beginning, I have had no business dealing with Dick Clark since, I will say it must be a year and a half.

Mr. Moss. You did give the copyright. You did feel certain that the magic would be worked and it would be played?

Mr. GOLDNER. I had hoped for that, yes, sir.

Mr. Moss. You had better than a hope, because you said that Miss Hodes told you she talked with him or with Mammarella as his representative?

Mr. GOLDNER. No, I said that Miss Hodes said to me, "George, I think we will give this to Dick Clark."

And I asked her, "What makes you think Dick Clark is going to take the tune because you offer it to him?"

I think Dick Clark could pick up a thousand tunes a week if it were just a question of going to Dick Clark and saying, "Here, we want to give you this tune." I don't think so, I don't think that that is the way it worked.

Mr. Moss. She indicated that it was pretty certain that he would take it?

Mr. GOLDNER. She felt quite certain that he would take it, that is right, because of the fact that it is very possible that at this particular time that these tunes came up, Miss Hodes might have been a partner of Dick Clark's.

Mr. Moss. It is quite possible that she may have been a partner?

Mr. GOLDNER. Yes.

Mr. Moss. Were they all assigned at the same time?

Mr. GOLDNER. No, they were assigned at different times.

Mr. Moss. Were any of them assigned after she had acquired her interest?

Mr. GOLDNER. Yes, I think so.

Mr. Moss. Which ones were assigned after she had acquired her interest?

Mr. GOLDNER. I would say the last two.

Mr. MOSS. Then she was at the point of taking the last two as a partner of Dick Clark?

Mr. GOLDNER. I believe so, yes.

Mr. MOSS. All right, we can determine that. You will supply us with the exact dates of the assignments?

Mr. GOLDNER. Oh, sure, certainly. You didn't ask me for that before, did you, sir?

Mr. MOSS. No, I am asking you that now.

Mr. GOLDNER. OK. This was something else I was asked for before.

Mr. MOSS. What were the flip sides of these four?

Mr. GOLDNER. "Whoever You Are" was the back side of "Every Night I Pray."

Mr. MOSS. I would like to check these.

"Whoever You Are"?

Mr. GOLDNER. That is right.

Mr. MOSS. Did you own a copyright on that?

Mr. GOLDNER. Real Gone Music.

Mr. MOSS. You for all practical purposes?

Mr. GOLDNER. Yes, my firm owned it.

I don't remember the other tunes.

Mr. MOSS. You don't remember the other?

Mr. GOLDNER. No.

Mr. MOSS. Will you supply those for us?

Mr. GOLDNER. Certainly, I will be glad to.

(Information referred to above follows:)

GONE RECORDING CORP.,
New York, N.Y., April 28, 1960.

LEGISLATIVE OVERSIGHT SUBCOMMITTEE,
House of Representatives
Washington, D.C.

(Attention: Mr. Oliver Eastland.)

DEAR MR. EASTLAND: As per your directions to me on Wednesday, April 27, 1960, during my testimony before your committee, enclosed you will please find the following:

1. Check of our associate company, Co-op Distributing to Chips Distributors, dated April 8, 1960, in the amount of \$248.07, full payment of Bobby Roberts and the Timbers appearances on the "American Bandstand" program in 1958.

2. (a) Gone Record No. 5020, Side 1, "Beside My Love," originally owned by Realgone Music, Inc., and assigned to Sea-Lark Music. Side 2, "Gonna Make a Change," Realgone Music Inc.

(b) Gone Record No. 5011, Side 1, "Could This Be Magic," Realgone Music, assigned to Sea-Lark Music. Side 2, "Such Lovin," Realgone Music, Inc.

(c) End No. 1015, Sidel, "Every Night I Pray," Realgone Music, Inc., assigned to Sea-Lark Music. Side 2, "Whoever You Are," Realgone Music, Inc.

(d) End No. 1036, Side 1, "So Much" January Corp., Side 2, "Oh Yeah," Realgone Music, Inc., and Kensington Music.

Very truly yours,

GEORGE GOLDNER, *President.*

GONE RECORDING CORP.,
New York, N.Y., May 18, 1960.

SPECIAL SUBCOMMITTEE ON LEGISLATIVE OVERSIGHT,
House Office Building, Washington, D.C.
(Attention: Beverly M. Coleman, principal attorney.)

DEAR MR. COLEMAN: The following is information requested in your letter dated May 12, 1960, paragraph 2.

"Could This Be Magic", assigned to Sea-Lark Enterprises on August 12, 1957.

"Beside My Love", assigned to Sea-Lark Enterprises on January 9, 1958.

"Every Night I Pray", George Goldner as writer of song signed writers contract with Sea-Lark Enterprises on February 20, 1958.

"So Much", license dated October 16, 1958, from January Music to End Music, Inc.

Hoping the above information is satisfactory.

Very truly yours,

GEORGE GOLDNER, *President.*

Mr. Moss. Now, you took care of Mr. Clark, you hope, through the assignment of copyrights. What was your expectation when you paid \$1,000 to Mr. Mammarella?

Mr. GOLDNER. Nothing.

Mr. Moss. No expectation?

Mr. GOLDNER. Nothing. I gave it to him as a gift for his baby, he had just had the baby.

Mr. Moss. Was he in need?

Mr. GOLDNER. I guess when you give someone something, you don't think that——

Mr. Moss. How did you charge this on your books?

Mr. GOLDNER. I said before, I thought it was charged to promotion, I thought it was.

Mr. Moss. A thousand dollars, and you expected nothing at all for it?

Mr. GOLDNER. From Tommy Mammarella? Not a thing.

Mr. Moss. I remember a little while ago you told me that whenever a record man gives anyone in the music business anything he expects something in return.

Mr. GOLDNER. He hopes.

Mr. Moss. He hopes. What did you hope for?

Mr. GOLDNER. From Tony Mammarella? Truthfully, very little, if anything.

Mr. Moss. Were you already getting what you wanted from Tony?

Mr. GOLDNER. No, in fact my records will show that I got very little anyway, and show that Tony Mammarella was not a person who I looked for to produce plays on the Bandstand for me, I never went to Tony Mammarella, and I never asked him to play a record for me, so that I don't believe that Tony actually——

Mr. Moss. Let me point out—was he associated with Clark at that time?

Mr. GOLDNER. Associated in any way? As a producer of the Bandstand?

Mr. Moss. Associated with Clark?

Mr. GOLDNER. The truth of the matter is, I knew nothing about all these associations.

Mr. Moss. It was quite complex. He was associated with Clark?

Mr. GOLDNER. Yes.

Mr. Moss. Now, let's see what you look at. I don't know whether you do it or not. "Could This Be Magic" was played 43 times, and 25 of them before it received any rating, zero.

Mr. GOLDNER. I believe that is right.

Mr. Moss. That was sort of unique, wasn't it?

Mr. GOLDNER. That is on a national basis.

Mr. Moss. "So Much" was played 27 times, and it never got off the ground?

Mr. GOLDNER. It wasn't a big record, it was a chart record.

Mr. Moss. It was what?

Mr. GOLDNER. It was on the top 100 chart, it wasn't a very big record.

Mr. Moss. We can't find it on the top 100.

Mr. GOLDNER. "So Much"? Absolutely, that hit the chart.

Mr. Moss. You mean it was on Cashbox? We could check the Reliable Rating Service. Cashbox seems to be a publication where every diskjockey who can get a letterhead can get on their list. You are talking about Cashbox?

Mr. GOLDNER. I really don't remember which chart.

Mr. Moss. Was it ever really rated on Billboard?

Mr. GOLDNER. I think it was.

Mr. Moss. We can't find it, and we have checked it very thoroughly. "Every Night," 17 plays, 10 of them before it was ever given a rating on Billboard. Did you have other labels that were played on the Clark shows?

Mr. GOLDNER. Other labels? Jamie records were played on the Clark show.

Mr. Moss. Jamie?

Mr. GOLDNER. Jamie-Guydon records.

Mr. Moss. Was \$1,000 the only gift that you made to Mammarella?

Mr. GOLDNER. The only one.

Mr. Moss. That you charged off on your business? Are you sure of that?

Mr. GOLDNER. Well, let's see now. Tony Mammarella was connected with Milt Kellern. There were some tunes of absolutely no value that were given to the Wildcat Music firm. There is no question in my mind that when I gave it to Wildcat I was trying to do Tony Mammarella a favor if they ever became valuable in any way.

Mr. Moss. And you expected something back?

Mr. GOLDNER. I will have to disagree, I never expected anything from Tony Mammarella, I never asked him for anything and I never expected anything. I like him.

Mr. Moss. Is he the only one from whom you never expected anything?

Mr. GOLDNER. Outside of Dick Clark, with whom I never discussed the actual play of a record—I have gone to Dick Clark and asked him to play the records where there were no deals, and sometimes he played the records and sometimes he didn't. When I put money in the hands of a diskjockey I expected the people to play the record.

Mr. Moss. Do you regard the four copyrights assigned to Clark as payola?

Mr. GOLDNER. I don't think so, sir.

Mr. Moss. How would you describe them?

Mr. GOLDNER. It is pretty hard.

Mr. Moss. What is the difference between giving a man a copyright and giving him a thousand dollars?

Mr. GOLDNER. I don't know the difference, I can't honestly say.

Mr. Moss. Your objective in both instances is the same; is it not?

Mr. GOLDNER. Yes, sir.

Mr. Moss. You gave the copyright because you expected to enhance the value?

Mr. GOLDNER. Absolutely.

Mr. Moss. And you gave the money to the diskjockeys for the same reason?

Mr. GOLDNER. Yes, sir.

Mr. Moss. Well, if you concede that, why wouldn't you concede that it is the same thing?

Mr. GOLDNER. For the simple reason that I think there was an awful lot of feeling among the people in the music business when Dick Clark went on the air—they would do anything in the world to make this boy a tremendous success, whichever way—

Mr. Moss. Did everyone know him?

Mr. GOLDNER. I said, after people began to know him, such as myself, because I did not know Dick Clark prior to his going on the air.

Mr. Moss. That desire still was not so strong in you that you gave anything, without expecting something of value, was it?

Mr. GOLDNER. I agreed with you before that we had hoped that our records would become much more valuable.

Mr. Moss. I know that you agreed with me before, and I agreed with you, you are being completely candid, but then when you start saying that they all wanted him to succeed—

Mr. GOLDNER. I said it was a general feeling.

Mr. Moss. There is a certain jealousy in that which doesn't seem to be characteristic of this business.

Mr. GOLDNER. I will go along with you there. I understand what you are saying now pretty clearly. And I say this, that the feeling in the industry was that Dick Clark was going to become a very powerful personality in the business.

Mr. Moss. And you had better all be friends?

Mr. GOLDNER. No, he wasn't the type of person to say, "If you are not my friend, to heck with you," it was nothing like that.

Mr. Moss. No; I think he is far more mercenary than to put it to anything that approaches a relationship, purely, of friendliness or compassion.

That is all the questions I have.

The CHAIRMAN. Mr. Lishman, do you have anything else?

Mr. LISHMAN. No, sir.

The CHAIRMAN. Mr. Goldner, thank you very much for your appearance here.

Mr. GOLDNER. Thank you, sir.

Mr. TROOB. I want to say something off the record.

(Discussion off the record.)

Mr. GOLDNER. I would much rather say this for the record, that as long as there are people like yourselves in this country, I still feel safe as an American citizen.

And I want to thank you very much for your interest in the music industry and what you are doing for the industry. And I am sure that a lot of good will come out of what you are doing. And I for one, as a music manufacturer, want to thank you.

The CHAIRMAN. Mr. Goldner, your counsel has just suggested to the subcommittee that we give most serious consideration before the testimony is made public. Do you have anything to say about that insofar as your own situation is concerned?

Mr. GOLDNER. That was a thought on Mr. Troob's part solely. He did not discuss this with me. If Mr. Troob thought it wise to make that suggestion, I think he has his own reasons for it, whatever they may be. But as far as I am concerned, I am his client, and if Mr. Troob thinks it's wise, I probably would go along with him on that basis, because he has much more wisdom as far as what the repercussions might be than I do. But I personally don't see anything to hurt me personally from what I have said.

The CHAIRMAN. That is a matter that the subcommittee will decide. It is a prerogative of the subcommittee to determine whether or not your testimony should be made public, and if so, when. So it can be done only by action of a majority vote of the subcommittee.

The subcommittee will adjourn until tomorrow morning at 10 o'clock at the Public Works Committee room.

(Whereupon, at 6:40 p.m., the subcommittee took a recess until 10 a.m., Thursday, April 28, 1960.)

EXECUTIVE SESSION

(Released to the Public May 2, 1960)

RESPONSIBILITIES OF BROADCASTING LICENSEES
AND STATION PERSONNEL

THURSDAY, APRIL 28, 1960

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

The special subcommittee met, pursuant to recess, at 10 a.m., in room 1302, New House Office Building, Hon. Oren Harris (chairman of the special subcommittee) presiding.

Present: Representatives Harris, Moss, Bennett, Springer, and Derounian.

Also present: Robert W. Lishman, chief counsel; Beverly M. Coleman, principal attorney; Herman C. Beasley, chief clerk; and Jack Marshall Stark, minority counsel.

The CHAIRMAN. The subcommittee will come to order.

Mr. Lowe.

Mr. LOWE. Yes, sir.

The CHAIRMAN. Mr. Chipetz, this is an executive session, that is, no one is permitted in the room while the witnesses are testifying. So I am going to ask you to step out.

Will you be sworn Mr. Lowe?

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

Mr. LOWE. I do.

TESTIMONY OF BERNARD LOWE, ACCOMPANIED BY SIGMUND H.
STEINBERG, COUNSEL

The CHAIRMAN. What is your name, please?

Mr. LOWE. Bernard Lowe.

The CHAIRMAN. Will you give your address or place of residence?

Mr. LOWE. 1445 Locust Street, Philadelphia.

The CHAIRMAN. What is your business or profession, Mr. Lowe?

Mr. LOWE. I am a songwriter, musician, and record manufacturer.

The CHAIRMAN. Mr. Lishman, you may proceed.

Mr. LISIIMAN. Mr. Lowe, what is your business?

Mr. LOWE. I am a songwriter, arranger, musician, and record manufacturer.

Mr. LISHMAN. What companies do you have an interest in?

Mr. LOWE. Cameo records—

Mr. LISHMAN. Will you please state the business of each company?

Mr. LOWE. Cameo Records is a record manufacturing company. Parkway Records is a record labeling company.

Music Publishing Co. is a publishing company where we publish our songs.

And Mayland Music Publishing Co.

Mr. LISHMAN. Are those all the companies in which you have an interest?

Mr. LOWE. Yes, sir.

Mr. LISHMAN. And in all the companies you named, are you the principal owner?

Mr. LOWE. Yes, sir.

Mr. LISHMAN. In any of those companies, does Dick Clark have any interest?

Mr. LOWE. No, sir.

Mr. LISHMAN. Did he ever?

Mr. LOWE. No, sir.

Mr. LISHMAN. Did Mr. Mammarella ever have an interest in any of those companies?

Mr. LOWE. No, sir.

Mr. LISHMAN. Now, at one time did you have an interest in Mal-lard Pressing Co.?

Mr. LOWE. Yes, I did.

Mr. LISHMAN. And up until December of 1959, is it correct that Dick Clark had a 50-percent interest?

Mr. LOWE. Yes, sir.

Mr. LISHMAN. And you had a 50-percent interest?

Mr. LOWE. Yes, sir.

Mr. LISHMAN. Have you coauthored a number of songs with a man known as Cal Mann?

Mr. LOWE. Yes, sir.

Mr. LISHMAN. And were these songs under an exclusive writers' agreement with Ross Jong Nickel, Inc., which is an affiliate of Hill and Range Songs, Inc., and Aberbach?

Mr. LOWE. Well, I wrote many songs with this man before we were under contract to Ross Jong Nickel, Inc., and I have written many songs with them since the contract expired. I don't know the exact dates of that contract.

Mr. LISHMAN. Is it correct that the contract is dated February 6, 1956?

Mr. LOWE. That is correct.

Mr. LISHMAN. It was for a term of approximately 1 year?

Mr. LOWE. Yes, sir.

Mr. LISHMAN. And is it correct that during the latter part of the contract term that you and Mr. Mann wrote the song "Butterfly" and "Ninety-nine Ways"?

Mr. LOWE. That is right.

Mr. LISHMAN. Is it correct that you were not satisfied with the way Jong Nickel was promoting the songs?

Mr. LOWE. Not that particular song, no. It was a matter that they hadn't done anything for us in the first 6 months of the contract.

Mr. LISHMAN. Now, did you want to record "Butterfly" and "Ninety-nine Ways" yourself?

Mr. LOWE. Yes, sir; I did.

Mr. LISHMAN. And did you write "Butterfly"?

Mr. LOWE. Yes; I did.

Mr. LISHMAN. And did you write "Ninety-nine Ways"?

Mr. LOWE. Yes, sir.

Mr. STEINBERG. May I interrupt to say, with accuracy, with Cal Mann?

Mr. LISHMAN. With Cal Mann, of course?

Mr. LOWE. Yes.

Mr. LISHMAN. Did there come a time when Tony Mammarella appeared listed as the composer of this song under the name of Anthony September?

Mr. LOWE. Yes, sir.

Mr. LISHMAN. Will you please state how that came about?

Mr. LOWE. The song came out in December.

Mr. LISHMAN. Which song would this be?

Mr. LOWE. Both songs.

Mr. LISHMAN. "Butterfly" and "Ninety-nine Ways"?

Mr. LOWE. That is right. The song was released in December and had no writer's name to it, to my recollection, until maybe a month later. Now, it got to a point where we had to have somebody's name on there as a writer, as we didn't want to put our own names on there for two reasons: One was that we were dissatisfied with Hill & Range, we didn't want to turn the song over to them, whether that be right or wrong, but we didn't want to turn it over to them.

The second one was, we knew if we put it in ASCAP we wouldn't see any appreciable payment of money for 4 or 5 years and we weren't doing too well.

Mr. LISHMAN. Under BMI, under which Tony was listed—

Mr. LOWE. He wasn't listed there, but it appeared that he wrote the songs at BMI.

Mr. LISHMAN. The principal reasons were, then: First, you were dissatisfied with the exclusive contract arrangement you had with Jong Nickel—

Mr. LOWE. Right.

Mr. LISHMAN. And secondly, you were not satisfied with the promise of royalty payments which would have been derived from ASCAP?

Mr. LOWE. No, sir; that isn't exactly right. They pay properly, but you get money from BMI much faster than you get money from ASCAP.

Mr. LISHMAN. Very good. In other words, you would be sure of getting your royalty quicker from BMI than you would from ASCAP?

Mr. LOWE. Yes, sir.

Mr. LISHMAN. When was Mallard Pressing Corp. established? If I say May 1958, would that be—

Mr. LOWE. That would sound right.

Mr. LISHMAN. How much did you put into it when it was established?

Mr. LOWE. \$7,500.

Mr. LISHMAN. How much did Mr. Clark put into it?

Mr. LOWE. \$7,500.

Mr. LISHMAN. Was Mr. Clark president and director?

Mr. LOWE. To the best of my knowledge, yes, sir.

Mr. LISHMAN. And you were vice president, treasurer, and director?

Mr. LOWE. Yes, sir.

Mr. LISHMAN. Was Mr. Dick Clark a director?

Mr. LOWE. Of course, that was the way the corporation was set up; to the best of my knowledge; yes, sir, that is right.

Mr. LISHMAN. Now, did Mr. Ivan Ballen, of Stenton Music Co., Inc., which pressed records for various companies, suggest that Mallard Pressing Co. be founded?

Mr. LOWE. No, it didn't come about exactly that way. Mr. Ballen came in to me and said that he had a complete pressing plant sitting there doing nothing and he knew I was pressing a lot of records, and why couldn't we get together and—because I had known him a long time—get together and maybe he could get started up again and do some business and press my records.

Mr. LISHMAN. Did you give Mr. Clark the \$7,500 that he put into Mallard?

Mr. LOWE. No, I did not.

Mr. LISHMAN. Did there come a time when one of your corporations drew a check in the amount of \$7,000 to Click Corp.?

Mr. LOWE. Yes; there was a check.

Mr. LISHMAN. And was that check drawn to the order of Click Corp. on or about January 9, 1958?

Mr. LOWE. Yes, sir.

Mr. LISHMAN. And Click Corp. is owned by Dick Clark?

Mr. LOWE. I understand.

Mr. LISHMAN. And why did you give this \$7,000 check to Click Corp.?

Mr. LOWE. This goes back to the "Butterfly"; as I said before, I was purely a songwriter fooling around with trying to make a record, because we just weren't getting too far, Cal Mann and myself, and we made this record, and we put the record out in Philadelphia, and it took, as I say, it took off immediately. We knew within a few days it was going to be a big, big hit.

I saw what was going, what was coming of this hit, and I was working in the basement, undercapitalized, and didn't know too many people in the country. And I went out to Clark—I had known him when I was a piano player in the "Paul Whiteman Show" and he was doing commercials—

Mr. LISHMAN. About how long ago was this?

Mr. LOWE. I worked for Whiteman about 6 or 7 years—

Mr. LISHMAN. The time you went to Clark?

Mr. LOWE. The time I went to Clark. It must have been after the record had been out maybe a week, 2 weeks.

Mr. LISHMAN. What month and year would that be?

Mr. LOWE. In December of—it would have had to be sometime in December of 1956.

Mr. LISHMAN. December of 1956?

Mr. LOWE. Yes, sir.

Mr. LISHMAN. And at that time where was Dick Clark employed?

Mr. LOWE. Well, he was a local disk jockey in Philadelphia on the "Bandstand"—he was doing the "Bandstand" but it was a local show.

Mr. LISHMAN. In other words, he wasn't on a network?

Mr. LOWE. No; he was not.

Mr. LISHMAN. When did he go on the network?

Mr. LOWE. I couldn't give you the exact date, but it seems to me it was about the following August.

Mr. LISHMAN. August 1958?

Mr. LOWE. That would be August 1957.

Mr. LISHMAN. Will you continue?

Mr. LOWE. I went out to Dick and said, "Dick, I think I have finally hit one, I have tried it out, and orders are coming in, and it is being played around town, and everybody tells me it is going to be a big one"—and from the orders you could see that unmistakably it was going to be a big record. I said, "The only thing I fear is I am weak around the country."

If I may say so, the record pattern took a different tack than it does today, the cover record was a big factor in those days, a small company would come out with a record in those days and get it started in one area, and as soon as a big company saw it was going to be a hit, they would immediately go in and cover it with a big artist and with big promotion and with their big outfit and promotion, and most of the little records got knocked out of the box. And I was pretty determined not to go just back to songwriting, and I wanted to try to hang onto the record.

So I went out to Dick and I said, "If you can help me with this record"—and I don't mean by that, playing the record, because, as I said before, it was a local show and the record had already taken off in Philadelphia—I said, "If you could help me by calling some guys around the country, disk jockeys that you know and that would know you, and tell them just the truth, that it is a hit record, and that it is the original version, and there is no shame to play it, because it is a hit, I would be willing to give you 25 percent of whatever I make out of the publishing."

He said, "Bernie, I don't want it, you can forget about it, because I know you well enough and long enough, but I am going to do it for you anyway."

Mr. LISHMAN. Did Mr. Clark call up disk jockeys all over the country and ask them to push this song "Butterfly"?

Mr. LOWE. Yes, he did—I don't know how many or all over the country, but when I eventually got out myself to work on the record, I bumped into quite a few jockeys that told me that he had called them for me.

Mr. LISHMAN. Do you know a Margaret W. Mallery?

Mr. LOWE. Yes, I do now.

Mr. LISHMAN. Who is she?

Mr. LOWE. I know now that she is Dick Clark's mother-in-law.

Mr. LISHMAN. Did you, on behalf of Mayland Music Publishing Co., Inc., sign a check, dated December 27, 1957, No. 403, to the order of Margaret W. Mallery in the amount of \$7,000, and bearing the notation on it "On the account of 'Butterfly' "?

Mr. LOWE. Yes, sir.

Mr. LISHMAN. I will hand you a photostatic copy of this check with the endorsement and ask you if this is a true and correct copy of the check?

Mr. LOWE. Yes, sir.

Mr. MOSS. Mr. Chairman.

The CHAIRMAN. Mr. MOSS.

Mr. MOSS. To whom was that check made payable?

Mr. LISHMAN. Mrs. Margaret W. Mallery.

Mr. MOSS. For \$7,000?

Mr. LISHMAN. Yes, sir.

Mr. Chairman, I would like to have this photostatic copy of a check identified by the witness as having been drawn by him inserted in the record at this point.

The CHAIRMAN. Let it be received.

(Copy of check referred to follows:)

Mr. LISIMAN. Now, Mr. Lowe, for what purpose was this \$7,000 check given to Mrs. Mallery, Dick Clark's mother-in-law?

Mr. LOWE. Well, this is the sequence of circumstances.

I said to Dick, "Dick, when I first came to you and I was starting out, I told you if I made it and I came through and things went along, I was going to give you 25 percent of the publishing, and I know you said you didn't want it, but I am very grateful, I am glad to be in business, and things are working out pretty good, I want to give it to you."

And he said, "Well, O.K., if you want to give it to me."

And then I said, "How do you want me to draw the check?"

And he said, "Draw it to Margaret Mallery."

And at that time I didn't know who Margaret Mallery was, I didn't know Dick's mother-in-law, but he said draw it that way, so I drew it that way.

The CHAIRMAN. How was this \$7,000 treated on the books of Mayland Music?

Mr. LOWE. Here is the thing, if I may go ahead: Within a week he sent the check back to me with, if I remember, \$5 or \$7 interest—

Mr. LISIMAN. Just a minute.

At that point I would like to hand you a canceled check dated January 6, 1958, drawn to the order of Mayland Music Co., Inc., in the amount of \$7,005.38, signed "Margaret W. Mallery," with a notation "Reimburse loan" in parentheses on the back of it, together with the endorsement on the back showing it was deposited, and I ask you if this is a canceled check made to the order of Mayland Music Co. on January 6.

Mr. LOWE. You see, I never saw this check, I mean it came into the office, and whoever handles the checks, and so forth—

Mr. LISIMAN. You don't deny that that amount of money was received by Mayland Music?

Mr. LOWE. No, I don't deny it.

Mr. LISIMAN. From Mrs. Mallery?

Mr. LOWE. That is right.

Mr. LISIMAN. Mr. Chairman, I would like to have that check introduced in the record at this time.

Mr. MACK (presiding). Without objection, it will be included in the record at this point.

(Copy of check referred to follows:)

NO. _____ PHILADELPHIA, PA. JAN. 1 1958

THE FIRST PHILADELPHIA
 BROADCASTING AND TELEVISION COMPANY

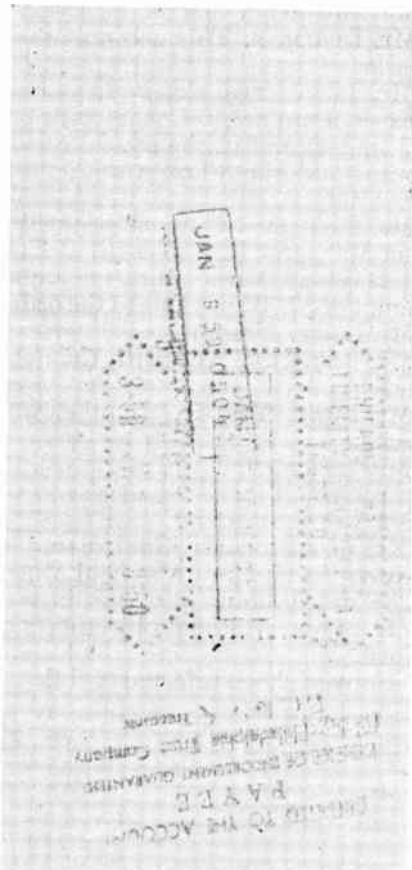
ALTO

Mr. MYLANE MUSIS, COMMISSIONER, 81956 \$ 7.005.00

Seven thousand and 50/100 and 3/100 DOLLARS

W. M. [Signature]

(REIMBURSE COPY)



Mr. LISHMAN. Who did you think Margaret W. Mallery was when you gave her this check?

Mr. LOWE. Well, as a matter of fact, I think Dick said at the time that it was his mother-in-law.

As I said before, unless I made a mistake, I didn't know who his mother-in-law was, I never heard the name at that time.

Mr. LISHMAN. Could you give me an explanation of the hand-written notation on the face of the check that it was reimbursement for a loan?

Mr. LOWE. Sir, that was done on Dick's part, not on mine. I don't know why he put that on the check.

Mr. LISHMAN. This account was carried on the books of Mayland as a loan?

Mr. LOWE. Yes, sir; it was carried that way because, as I understood it, I am not too smart with books, I am better with music. But as I understand it, the second check was drawn before the end of the month, and the whole transaction was treated in 1 month by the accountant.

Mr. LISHMAN. Now, subsequent to the check which Mayland got from Margaret L. Mallery that has just been introduced in evidence, did Mayland Music, Inc., on January 9, 1958, draw a check in the amount of \$7,000 payable to the order of Click Corp.?

Mr. LOWE. Yes, sir.

Mr. LISHMAN. And with the notation "Butterfly" on the left-hand side?

Mr. LOWE. Yes, sir. In other words, he asked me to make the first check—

Mr. LISHMAN. I will show you this check, a photostatic copy of it, and ask you if this is the check?

Mr. LOWE. Yes, sir.

Mr. LISHMAN. Mr. Chairman, I would like to have this photostatic copy of the check of Mayland Music to Click Corp., in the amount of \$7,000 dated January 9, 1958, introduced into the record at this point.

Mr. MACK. Without objection it will be included at this point in the record.

(Copy of check referred to follows:)

Mr. LISHMAN. Now, what was the purpose of this check?

Mr. LOWE. As I stated before, I told him I wanted to give him the \$7,000 for what he had done to help me with the record. Now, he asked me to make the first one out to Margaret Mallery, whom I didn't know at the time, so if he asked me to make it out that way, I made it out that way.

Now, he sent the check back and asked me to make a replacement check—I would say replacement—make the check out to Click Corp. instead.

Mr. LISHMAN. Now, when did Mr. Clark perform the services of calling up other diskjockeys and others in order to tell them about "Butterfly"?

Mr. LOWE. That wasn't immediately, 1 or 2 weeks after the record came out.

Mr. LISHMAN. And when did it come out?

Mr. LOWE. Around December of 1956.

Mr. LISHMAN. And why did you wait until Dick Clark was on the network program of ABC before you paid him \$7,000 for his services as a local diskjockey?

Mr. LOWE. First of all, I didn't pay him for his services as a local diskjockey, it was for helping me with the calls around the country. The record had taken off before he ever played it locally. The reason I didn't pay him until a year later was because most of the money came in sporadically and it probably wasn't all in until practically a year later.

Mr. LISHMAN. Isn't it correct that Clark also plugged the record locally?

Mr. LOWE. Yes, he did.

Mr. LISHMAN. So it covered two things?

Mr. LOWE. No, sir; I wouldn't say that. It was a big hit record, there was no choice to play that record, it was No. 1 in Philadelphia inside of 2 or 3 weeks.

Mr. LISHMAN. Don't you believe that repeated exposure of a record over a comparatively short time will help its commercial exploitation?

Mr. LOWE. Well, sir, I have heard this question since I have been sitting here a couple of days, I couldn't help but hear it.

My own professional opinion as a musician is that if the kids don't want it, you can play it a million times and it won't help. But if the record has something, there is no question about it, exposure will help. They can't buy if they don't hear it, that I will agree.

Mr. LISHMAN. Well, if payola comes in in order to get the record exposed—

Mr. LOWE. You have got to get the record exposed.

Mr. LISHMAN. There are so many records and all of them can't be exposed and in order to get the one you want exposed you have to pay for it, is that right?

Mr. LOWE. I never found it exactly that way.

Mr. LISHMAN. We will come to payment to diskjockeys. I want to find out if these are for listening fees, too?

Mr. LOWE. No, sir.

Mr. LISHMAN. We will come to that.

Did Dick Clark actively participate in the direction of Mallard Pressing Co.?

Mr. LOWE. No, sir; to my knowledge he did not.

Mr. LISHMAN. But getting back to that first check, if that check was intended as a loan—

Mr. LOWE. It was not intended as a loan, it was only treated that way on the books because the entire transaction took place within the one period, the one accounting period, and as I say, although I don't know much about accounting, I have been told that if you give a check out and it comes back with interest on it, it should be put in a column of a loan.

Mr. LISHMAN. Should it be done for tax purposes?

Mr. LOWE. Not on my part—I don't know.

Mr. LISHMAN. Did Clark ever tell you that he was making a loan to Mrs. Mallery?

Mr. LOWE. No, sir.

Mr. LISHMAN. Was Mallard primarily a sales organization filling orders obtained for pressing from record companies?

Mr. LOWE. Yes, sir.

Mr. LISHMAN. Was it housed in the same office as Stenton Music?

Mr. LOWE. Yes, sir.

Mr. LISHMAN. And did Stenton do the actual pressing of records?

Mr. LOWE. Yes, sir.

Mr. LISHMAN. Did Mallard guarantee Stenton a minimum of 1 million pressings a year?

Mr. LOWE. Yes, sir.

Mr. LISHMAN. And is it correct to say that Mallard's gross sales from May 26, 1958, to November 30, 1959, were in excess of \$800,000?

Mr. LOWE. Sir, I am not familiar with the Mallard figures at all.

Mr. LISHMAN. But you had a 50-percent interest in it?

Mr. LOWE. I did, but I was very busy with my own business; I never took any interest in the business.

Mr. LISHMAN. Was Mr. Henry Haslund the production manager who ran the business?

Mr. LOWE. Yes, sir.

Mr. LISHMAN. And didn't he furnish you and Mr. Clark with monthly statements concerning its operation?

Mr. LOWE. I believe so.

Mr. LISHMAN. And didn't those monthly statements show that you received in gross the amount I have just mentioned for the period?

Mr. LOWE. Sir, I am not sure of the figures. I know we made money; I know what I got when I sold out.

Mr. LISHMAN. Would that be wrong, or would we have to get the accountants to submit their information?

Mr. LOWE. I don't know who looked at the Mallard books; I wouldn't deny that that is the figure, but I just don't happen to know.

Mr. STEINBERG. May I say that I am sure that if the staff says that is the figure it is accurate, and he will accept it?

Mr. LOWE. I don't know the exact figure.

If that is what it says, it must be correct?

Mr. LISHMAN. You will accept it?

Is it correct that of that \$800,000 a substantial amount came from sales to companies in which Dick Clark had an interest?

Mr. LOWE. I don't know which amount, but I know this: That when I——

Mr. LISHMAN. Will you turn to page 5 of the report that I just handed to you and go through it?

Mr. LOWE. You see, from my own point of view, I know that we were going to press Swan and Cameo records.

Now, down there, he never had any interest in Cameo records, but in guaranteeing a man that he would press a million records a year down there, I think it was, I figured that we could cover that with our own stuff.

Mr. LISHMAN. Let me ask, since you have raised the subject of the Cameo label, did Dick Clark have an interest in the song "You Have Gotta Have a Heart Like a Rock"?

Mr. LOWE. Yes, sir.

Mr. LISHMAN. And "Back to School Again"?

Mr. LOWE. Yes, he had, I think, if I remember, 50 percent of the performances. I own the copyright.

Mr. LISHMAN. But they were on the Cameo label?

Mr. LOWE. They were.

Mr. LISHMAN. And were they presented by Mallard?

Mr. LOWE. I believe they were.

Mr. LISHMAN. Now, coming back to the question that I asked originally, wasn't it a fact that of this \$800,000 gross of Mallard Pressing, a substantial amount of it was paid to Mallard by a company in which Clark had an interest, and I asked if you would turn to the top of page 5 of the statement compiled from the books of Mallard and ask you if this isn't correct?

Mr. LOWE. Just to try to verify this for you, yes—now, I can't swear to this, because I have only heard that he had an interest in Hunt, Click, Swan—Alton, I am pretty sure—if you mean an interest in the company or whether Swan handled the pressing of the record, of course that is a small difference—I don't think he owned any part of the company.

Mr. LISHMAN. Let's get something into the record here.

According to the books of Mallard, of which you are a 50-percent owner with Mr. Clark, the Hunt label, owned by Clark's Globe Record Co., records which were pressed by Ampar Record Co., a subsidiary of ABC-Paramount, amounted to \$13,595 to Mallard.

Mr. LOWE. Yes, sir.

Mr. LISHMAN. The amount that came from Click Corp., which was owned by Dick Clark, was \$19,354.

Mr. LOWE. Yes, sir.

Mr. LISHMAN. Now, what record would Click have to be pressed?

Mr. LOWE. I think that was his "All Time Hits" that he gave away as a premium.

Mr. LISHMAN. Now, Swan records paid him \$73,466.53.

Mr. LOWE. Yes, sir.

Mr. LISHMAN. Alton Record Co., care of Swan, distributor of two of Alton's records, \$9,277.

Mr. LOWE. Right.

Mr. LISHMAN. Long records, a label of the Swan Co., \$544.23.

Mr. LOWE. Right.

Mr. LISHMAN. Hitmaker records, care of Swan, which distributed one Hitmaker record, \$752.

Mr. LOWE. Right.

Mr. LISHMAN. Making a total of revenue, received by Mallard, from companies in which Dick Clark had an interest during the period May 26, 1958, to November 30, 1959, of \$116,988.76.

Mr. LOWE. Yes, sir.

Mr. LISHMAN. Ninety-eight, rather.

Mr. LOWE. Of course, during that time I pressed some Cameo records here, too.

Mr. LISHMAN. And is it true that they accounted for about \$77,478?

Mr. LOWE. It isn't listed on here.

Mr. LISHMAN. Yes, it is, the next paragraph.

Mr. LOWE. Yes, sir.

Mr. LISHMAN. And isn't it true that Doe records, a Clark company, according to the books of Mallard, paid it \$171,072 during this period?

Mr. LOWE. It must be.

Mr. LISHMAN. Now, on December 11, 1959, is it correct that Morris Ballen bought 15 shares of Dick Clark class A stock for \$7,060.35 and 15 shares of Lowe's class A stock for the same amount, or a total of \$14,121.70?

Mr. LOWE. Yes, sir.

Mr. LISHMAN. Now, is it correct that on December 14, 1959, Mallard bought from Clark the remaining shares of class A stock for \$16,474.42?

Mr. LOWE. No, I think it is under, I think it was more than that, the total sales price was \$30,723.

Mr. LISHMAN. We are coming to that. Is it the class A stock, the remaining shares?

Mr. LOWE. I am sorry, sir, I don't know, class A—

Mr. LISHMAN. And then his 70 shares of class B stock for \$7,000?

Mr. LOWE. Yes, sir.

Mr. LISHMAN. And were similar purchases by Mallard made of your stock?

Mr. LOWE. Yes, sir.

Mr. LISHMAN. And it is correct, in total, Clark received about \$30,534.70 for the stock for which you originally paid \$7,500?

Mr. LOWE. Yes, sir.

Mr. LISHMAN. And that meant a profit of about \$23,000 or more?

Mr. LOWE. Yes, sir.

Mr. LISHMAN. Approximately 300 percent profit on that original investment?

Mr. LOWE. Yes, sir.

Mr. LISHMAN. And did you get the same profit?

Mr. LOWE. Yes, I did.

Mr. LISHMAN. And during this time did either you or Mr. Clark take out anything in the form of salary or dividends?

Mr. LOWE. No, sir.

Mr. LISHMAN. Now, Mr. Lowe, you also are a one-third owner with Dick Clark and Harry Chipetz in Chips Distributing Co.?

Mr. LOWE. Yes, sir.

Mr. LISHMAN. How did Mr. Clark pay for his interest in Click Corp.?

Mr. LOWE. Pardon?

Mr. LISHMAN. How did Dick Clark pay for his interest in Chips?

Mr. LOWE. I don't know that. He paid, I know.

Mr. LISHMAN. Maybe we can get this information from Chips.

Now, did you and Mr. Clark participate in the management of Chips?

Mr. LOWE. No, sir.

Mr. LISHMAN. What was Chips' business?

Mr. LOWE. Distributing records.

Mr. LISHMAN. Did you and Mr. Clark receive monthly and fiscal year financial reports of Chips?

Mr. LOWE. Yes, sir.

Mr. LISHMAN. Is it correct that Chips charged against its promotion account, substantial amounts of money which were paid to diskjockeys?

Mr. LOWE. I wouldn't know what the promotion was or what amounts or what was on it.

Mr. LISHMAN. In the statements that were submitted to you by Chips, monthly and fiscal year end financial reports, did you notice the amounts that were charged to promotion expenses?

Mr. LOWE. No, sir; I did not. I know there was promotion, if I ever even glanced at it just to see whether it was making money or losing money.

Mr. LISHMAN. Now, you are the only stockholders, is it not true, in Bernard Lowe Enterprises, Inc.?

Mr. LOWE. Yes, sir.

Mr. LISHMAN. Would it be correct to say that during the periods from the beginning of this company in 1956, to December 31, 1959, they paid approximately \$98,000 in promotion expenses?

Mr. LOWE. No, sir that would not be correct.

Mr. LISHMAN. Do you have the figures that were—

Mr. LOWE. Yes; I know the figures and we discussed it with Ross and Grimaudo. They were the normal trade discount that is general practice with every record company in the business. That was not given for promotion.

Mr. LISHMAN. Is it correct that Bernard Lowe Enterprises made payments to diskjockeys which were charged to the promotion account?

Mr. LOWE. Yes, sir; there were some.

Mr. LISHMAN. Do you have a sheet before you showing the payment made by Bernard Lowe Enterprises to diskjockeys for the years 1957, 1958, and 1959?

Mr. LOWE. The first line; yes, sir.

Mr. LISHMAN. And in 1957, it shows a payment in April to Barry Kaye for \$100; is that correct?

Mr. LOWE. Item 3, payment to Barry Kaye; is that what you are referring to?

Mr. LISHMAN. Look at page 4.

Mr. LOWE. Yes, sir; that is where I am. The first item on there.

Mr. LISHMAN. Is it correct that Bernie Lowe Enterprises paid Larry Brown of WPEW \$500?

Mr. LOWE. Yes, I did; but may I add that this was because he interceded in my behalf on a record that I bought in New York. So did Hy Litt later. But Larry's function was to convince Philadelphia

distributors not to throw a roadblock in my way for taking the record over, which meant that if I got the record it would change hands from one distributor to another. And Lary convinced them that it would be better off that way, and they actually did make more that way, the distributors, not later. That is what the \$500 was for.

Mr. LISHMAN. Jocko Henderson.

Mr. LOWE. He is a diskjockey.

Mr. LISHMAN. From station WADO of New York?

Mr. LOWE. I presume—he has been in Baltimore and Philadelphia and New York.

Mr. LISHMAN. Your company paid him \$168?

Mr. LOWE. Yes, sir. If I remember correctly, that was for the performance of an artist on the show who was supposed to have been loaned—

Mr. LISHMAN. Very good. How about Barry Kaye, he is a diskjockey, you paid him \$300?

Mr. LOWE. Yes, sir. At times some these amounts that I gave, I gave because they were jockeys and I just wanted them to keep me in mind out there on the road.

Mr. LISHMAN. Did your company pay to Hy Litt \$1,365?

Mr. LOWE. Yes, sir. And that was all for one purpose. This one record that I am talking about, that I did pick up in New York, which was the biggest record that I ever had, he was absolutely instrumental in convincing the people—or helping me, however it was—he helped me get the record.

Mr. MOSS. Who was he?

Mr. LOWE. A diskjockey.

Mr. MOSS. I would like to hear about this convincing. What record did he help you with?

Mr. LOWE. What was the name of it? "Silhouettes," by the Rays.

Mr. MOSS. Did you own this or was this one you wanted to distribute?

Mr. LOWE. No, I bought it.

Mr. MOSS. You bought the copyright?

Mr. LOWE. No, the master.

Mr. MOSS. You bought the master?

Mr. LOWE. Yes, sir.

Mr. MOSS. You were the sole owner?

Mr. LOWE. Yes, sir.

Mr. MOSS. Personally or through one of these—

Mr. LOWE. Bernie Lowe Enterprises, of which I own 100 percent.

Mr. MOSS. How much was he paid? \$1,300 to Hy?

Mr. LOWE. Yes, sir.

Mr. MOSS. What did he actually do for you? Did he listen to it?

Mr. LOWE. No, sir.

Mr. MOSS. He never listened to it?

Mr. LOWE. He played it.

Mr. MOSS. He played it?

Mr. LOWE. He played it before I got it. And his reaction was so great he said, "You have got to go get this, it is going to be a hit." And then he called, I guess, a couple of people in New York who controlled the record—

Mr. MOSS. Was he in New York?

Mr. Lowe. No, he was in Philadelphia, but he worked in New York, he was very frequently——

Mr. Moss. Did he work for you?

Mr. Lowe. No, sir.

Mr. Moss. Why did he call you and tell you you should go ahead?

Mr. Lowe. Well——

Mr. Moss. Did he own any part of your company?

Mr. Lowe. No.

Mr. Moss. Did he come around and tell you that he had something that looked pretty good and for a fee he would put you onto it?

Mr. Lowe. No, he didn't. He called me on the phone and said, "This record is going to be a big one."

Mr. Moss. Did he ever tip you off on any other record?

Mr. Lowe. No, that is the only one.

Mr. Moss. Since?

Mr. Lowe. No, sir.

Mr. Moss. This is just another one of those interesting coincidences?

Mr. Lowe. No, this is not just a coincidence.

I will correct that last statement. He may have tipped me on some of the others, but this is the only one I ever got.

Mr. Moss. He never tipped you on anything else that was sufficiently impressive to recall?

Mr. Lowe. He may have tipped me on other things that I should have gotten and didn't, but that is the only one I got.

Mr. Moss. Why was it \$1,365?

Mr. Lowe. I will explain it to you.

I gave him \$1,000 by check, and then later I gave him a television set that might have cost \$365, I am not sure, maybe the accountant can verify that.

They say \$265 and then a check for 100 and then 1,000. That is the way it was broken up.

Mr. Moss. Did Peter Tripp also put you onto a record?

Mr. Lowe. No, sir.

Mr. Moss. What did he do?

Mr. Lowe. He did nothing.

Mr. Moss. Was it a case that you just liked him?

Mr. Lowe. I don't think it was a case of——

Mr. Moss. So you paid him \$1,000?

Mr. Lowe. I never met the man.

Mr. Moss. Why did you give him \$1,000?

Mr. Lowe. I will try to explain it.

I just was not getting my records played over there, any of them.

Mr. Moss. You paid him \$1,000 to get your records played?

Mr. Lowe. I did not give it to him personally; I gave it to a friend of mine who said, "I am friendly with a man named Peter Tripp," and I said "I would like to give him that for good will."

Mr. Moss. You did not give it to him for good will; you gave it to him to get your record promoted. Why are you not honest enough to admit it?

Mr. Lowe. I will deny it.

The reason was, I did not get my record played on that show.

Mr. Moss. And you were told that if you gave him \$1,000 you would get your record played?

Mr. LOWE. I was not told that.

Mr. MOSS. Did they get played after the payment of the \$1,000?

Mr. LOWE. Not to any appreciable extent.

Mr. MOSS. Did they get played?

Mr. LOWE. I think so.

Mr. MOSS. Do you know whether they got played?

Mr. LOWE. I am not sure.

Mr. MOSS. We will find out. Why do you not tell us now? You paid \$1,000?

Mr. LOWE. Yes, sir. I sent \$1,000 to him—

Mr. MOSS. Did you not have a pretty good understanding from the intermediary that if you paid the \$1,000 you would be treated better?

Mr. LOWE. That was my understanding.

Mr. MOSS. All right.

Mr. LISHMAN. Mr. Lowe, isn't it correct that without going through all the other items of payment to the diskjockeys by Bernard Lowe Enterprises, Inc., for the period 1956 to the end of 1959, you paid at least \$4,668 to various diskjockeys?

Mr. LOWE. Yes, sir.

Mr. LISHMAN. Now, is it also correct that in connection with—

Mr. LOWE. I would just like to call one thing to your attention, that No. 5, which is Howard Miller, I never had any personal conversations with him, and I will swear that that was not for the purposes of records. He ran rock-and-roll shows once in a while in Chicago, and that is one of the reasons I wanted to be in executive session, because I think he is a very fair man. He ran rock-and-roll sessions in Chicago in which some of my artists might have appeared. Now, the distributor would call me and say, "At least we want the house to be full that night, it looks good, so would you buy some tickets to the show, and we will distribute them out here in Chicago?" And the payments I made to Howard Miller were for that purpose, to buy tickets to these shows that were distributed to kids in Chicago—

Mr. MOSS. Did you make the payment directly to Mr. Miller?

Mr. LOWE. They were made to Howard Miller Enterprises, Inc., as I remember, which is the firm that handles—which he uses to handle—

Mr. MOSS. Did he play your records?

Mr. LOWE. I do not know. I would assume he did.

Mr. MOSS. Did your distributors tell you that he was playing some of your records?

Mr. LOWE. I think they did. But not at that particular time when they asked me to buy the tickets.

Mr. MOSS. Did you buy tickets to any other diskjockey's hop?

Mr. LOWE. No, sir; no one ever asked me.

Mr. MOSS. No one ever asked you.

Again, this is one of those coincidences. Fine.

The CHAIRMAN. Anything further, Mr. Lishman?

Mr. LISHMAN. I have just a few questions.

Isn't it correct that your company, Mayland Music Publishing Co., Inc., paid \$6,380.75, to Tony Mammarella?

Mr. LOWE. Yes, sir.

Mr. LISHMAN. Commencing in May 1957 and through October 1959?

Mr. LOWE. Yes, sir.

Mr. LISHMAN. What was the purpose of these payments by your company, Mayland, to Tony Mammarella?

Mr. LOWE. This goes back to the "Butterfly" story. This is the one-third that I said I would give him to put his name on the two songs.

Mr. LISHMAN. And did Tony Mammarella assign a copyright on the song to Mayland Music Publishing?

Mr. LOWE. Mayland owned the song as publisher, Tony was just listed as writer.

Mr. LISHMAN. But didn't Tony Mammarella copyright the song under the name Anthony September?

Mr. LOWE. Yes, sir.

Mr. LISHMAN. And then didn't he assign that copyright back to you?

Mr. LOWE. Yes, sir.

Mr. LISHMAN. And wasn't it true that in the first instance you and another man had really written the song?

Mr. LOWE. Yes, sir.

Mr. LISHMAN. And wasn't all this done to conceal it from the obligations you had under an exclusive contract with Jung Nickel?

Mr. LOWE. I said, sir, that was partly true in the beginning, because of the fact that there was a faster collection of money from BMI.

Mr. LISHMAN. And isn't it true that at this time Tony Mammarella was connected with Dick Clark?

Mr. LOWE. Yes, he was. He had also known Tony from years back, when we did the Whiteman show, I think he was a cameraman at the time. And I also point out that this was a local show at the time.

Mr. LISHMAN. Now, I would like to have you identify five photostatic copies of checks drawn by Mayland Music Publishing House, Inc., and signed by you, to the order of Anthony September Mammarella, and I will describe these five checks.

The first one is dated May 9, 1957, in the amount of \$1,800, and on the left-hand side is a notation, "Account of 'Butterfly,'" and on the back is the endorsement of Anthony September Mammarella. And I ask you if this is a correct photostatic copy of this check?

Mr. LOWE. Yes, sir.

Mr. LISHMAN. I will hand you another check, Mayland Music, Inc., dated September 27, 1957, to the order of Anthony September Mammarella, signed by you, in the amount of \$1,000, also "On account of royalties to 'Butterfly,'" and bearing the endorsement on the back, and ask you if this is a correct photostatic copy?

Mr. LOWE. Yes, sir.

Mr. LISHMAN. I hand you another check of Mayland Music Publishing Co., Inc., dated December 5, 1957, payable to the order of Anthony Mammarella in the amount of \$1,000, signed by you and for the account of "Butterfly," with the endorsement on the back, and ask you if this is a correct copy?

Mr. LOWE. Yes, sir.

Mr. LISHMAN. I hand you another check of Mayland Music Publishing Co., Inc., dated February 1958, in the amount of \$600, paid to the order of Tony Mammarella, signed by you and bearing the endorsement on the back, and ask you if that is a correct copy?

Mr. LOWE. Yes, sir.

I didn't draw that check out, I signed it, but it is on my account.

Mr. LISHMAN. The Mayland Music Co?

Mr. LOWE. Yes, sir.

Mr. LISHMAN. I hand you a photostatic copy of a check dated October 20, 1959, Mayland Music Publishing Co, Inc., to the order of Anthony September Mammarella in the amount of \$1,980.75, apparently signed by you, endorsed on the back, and ask you if this is a correct copy?

Mr. LOWE. Yes, sir.

Mr. LISHMAN. Mr. Chairman, I would like to have all those checks, identified by the witness, introduced into the record.

The CHAIRMAN. Let them be received for the record.

(Copies of checks referred to follow:)

110 No. MAYLAND MUSIC PUBLISHING CO., INC.

May 9, 1957 108 108

ORDER OF *Anthony Saffron for Remittance* \$1800 ¹⁰⁸/₁₀₈

Over: Remittance with 10% discount and 10% DOLLARS

<i>o/c. Guthrie</i>									

DO NOT WRITE IN THESE SPACES
THIS CHECK CANNOT BE CASHED OR DEPOSITED IN FULL OR FOR PARTIAL PAYMENT
IF NECESSARY TO BE DEPOSITED

Fidelity-Philadelphia Trust Company

Exhibits submitted Memorably
Paul W. Allen

PAY TO THE ORDER OF
MAYLAND MUSIC PUBLISHING CO., INC.
FROM REMITTANCE GUARANTEED

MAY 15 57

PAID BY BANK OF AMERICA
MAY 15 1957

66-286

DO NOT DETACH
 THE SOURCE OF THIS CHECK IS PRINTED AT THE END OF THIS CHECK
 PAYEE'S FOLLOWING - TO FACILITATE PAYEE'S BANK
 PAYEE'S ACCOUNT NUMBER IS 1001
 IF RETURNED TO BE RETURNED

on a paper reporter
"Butterfly"

PAY TO THE ORDER OF

Fidelity-Philadelphia Trust Co., Inc. No. **281**
Sept 27 1957
 PAY TO THE ORDER OF *Anthony J. Testa* *1000.00*
One Thousand *00* DOLLARS

Fidelity-Philadelphia Trust Company
 PHILADELPHIA, PA.

Bernard Lowe



DO NOT DETACH
THIS HOLDER CHECK IS ISSUED IN PAYMENT OF FUND AS PER
STANDARD REQUIREMENTS. THE CIRCULATION OF THIS CHECK
IS OBLIGATORY. PLEASE RETURN TO THE ISSUING OFFICE
IF INCORRECT TO BE RETURNED

MAYLAND MUSIC PUBLISHING Co., INC.

No. 445

July 7 1958

3-50
370

Pay TO THE ORDER OF Tony Nammarella

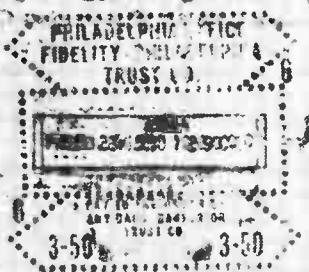
\$600.00/100

Six hundred

and 00/100 DOLLARS

Fidelity-Philadelphia Trust Company
PHILADELPHIA, PA.

Bernard Lowe



Tony Nammarella
Bernard Lowe
LAW

DO NOT DETACH											
THIS CHECKED CHECK IS VALID IN PAYMENT OF CHECK AS PER REVERSE SIDE. THE ENDORSEMENT OF PAYEE IS NOT NECESSARY EXCEPT IN CASE OF PAYMENT TO AN ENDORSEE											
MAYLAND MUSIC PUBLISHING Co., Inc. No. 969											
October 20 1959 2.00											
PAY TO THE ORDER OF <i>Anthony September Manuella</i> \$1,980 ⁷⁵ / ₁₀₀											
<i>One thousand nine hundred eighty and ⁷⁵/₁₀₀ - DOLLARS</i>											
<i>Bernard Love</i>											
Fidelity-Philadelphia-Trust Company PHILADELPHIA, PA.											

3		4	
ANY BANK, BANKING COMPANY OR SAVINGS AND LOAN ASSOCIATION IS AUTHORIZED TO CASH THIS CHECK			
OCT 20 1959			
3		4	
MERCANTILE NATIONAL BANK PHILADELPHIA, PA.			

Anthony S. Manuella

Mr. LISHMAN. Did there come a time, Mr. Lowe, when you made a loan of \$5,000 to Tony Mammarella?

Mr. LOWE. Yes, I did.

Mr. LISHMAN. And was that loan evidenced by a check on Mayland Music Publishing Co., Inc., dated January 29, 1959, drawn to the order of Anthony Mammarella in the amount of \$5,000?

Mr. LOWE. I loaned him \$5,000; yes, sir.

Mr. LISHMAN. A personal loan?

Mr. LOWE. Yes.

Mr. LISHMAN. I am handing you a photostatic copy of this \$5,000 check that has just been described and ask you if this is a correct copy?

Mr. LOWE. Yes, sir.

The CHAIRMAN. You identify this as an authentic copy, do you?

Mr. LOWE. Yes, sir.

The CHAIRMAN. Let it be received.

(Copy of check referred to follows:)

NO POST OFFICE

THIS CHECKER CHECK IS MADE IN PAYMENT OF FINE AS BY
 ENCLOSURE REQUIRED THE DEPOSITARY OF THIS IN THIS
 WILL CERTIFICATE MARK IN F.A. 1
 IF MISSING IT TO BE RETURNED

Personal Loan

MAYLAND MUSIC PUBLISHING Co., Inc. No. 793

Jan 29 1959

DAY TO THE ORDER OF *Anthony Mammarella* \$ 5000 ~~00~~

Five Thousand DOLLARS

Bernard Lorne

Fidelity-Philadelphia Trust Company
 PHILADELPHIA, PA.

55-415 PAY TO THE ORDER OF 55-415
 ANY BANK, BANKER OR TRUST CO.
 AS AN ENCLOSURE IS GUARANTEED

B AF 30 59 0001

PERS. 2168 165 PERSONAL CHK
 15 15 MERCHANTVILLE, N.J.

Anthony Mammarella

Mr. LISHMAN. Did Mr. Mammarella repay this loan?

Mr. LOWE. Yes, he did.

Mr. LISHMAN. When did he do that?

Mr. LOWE. I don't have the exact date on the check.

Mr. MACK. Was it paid with interest?

Mr. LOWE. No interest.

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

The CHAIRMAN. I announced at the outset that there would be every possible effort made to finish with the witnesses by 11:30.

Mr. Mack.

Mr. MACK. Mr. Chairman, I am not going to take much time.

I want to inquire if you made other loans without charging interest?

Mr. LOWE. I don't think I have ever charged interest to anybody, every loan I have ever made was a personal loan to a friend.

Mr. MACK. You have never charged it?

Mr. LOWE. I have never charged interest on any loan.

Mr. MACK. Do you make a practice of loaning money?

Mr. LOWE. I have loaned some money; yes, sir.

Mr. MACK. Have you loaned money to all of your friends?

Mr. LOWE. No, sir.

Mr. STEINBERG. He has had some bad experiences.

Mr. MACK. Yes, that would be my impression; people go broke that way.

You just loaned money to a few people?

Mr. LOWE. A personal friend I have known a long time.

Mr. MACK. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Bennett.

Mr. BENNETT. You said earlier that if the kids did not like a record, it didn't make any difference how much it was played. That is probably true. But is it not also true that the guy playing the record does have some influence on the judgment of the kids who are listening to the program?

Mr. LOWE. Sir, I don't think so.

Mr. BENNETT. You do not think so?

Mr. LOWE. No.

Mr. BENNETT. You do not think that with Dick Clark's enthusiastic and loyal audience of kids—kids who respect his judgment as to the value or popularity of the record and accept his judgment over their own—that if Dick Clark says this is good it must be good? You do not think there is that attitude?

Mr. LOWE. I can cite you one instance—I just happened to remember it because it is so funny—

Mr. BENNETT. Can you answer that question, do you think that is true?

Mr. LOWE. No, I don't think so.

Mr. BENNETT. You do not think it is true?

Mr. LOWE. No.

I could cite you an instance—

Mr. BENNETT. Is there a difference in the value that you derive from having your record played by one diskjockey rather than another?

Did Dick Clark give you more value, for example, is he worth more in playing the records, than other diskjockeys?

Mr. LOWE. I would say so.

Mr. BENNETT. Than just the ordinary diskjockey?

Mr. LOWE. Being on a network, I would say so.

Mr. BENNETT. Well, if he was not on a network, would he be worth more to you?

Mr. LOWE. According to the show.

Now, the "Bandstand" show always was a top-rated show. It would be according to the rating of the show.

Mr. BENNETT. So there is a difference in the value according to which diskjockey plays the record?

Mr. LOWE. In sales, yes.

Mr. BENNETT. Yes. Sales is the thing that gets you the money, is it not?

Mr. LOWE. Yes, sir.

Mr. BENNETT. That is why Clark's advice was sought, that is why he was asked to play these records; and that is why he was invited to come into these various companies, including your own, is that not true?

Mr. LOWE. He never owned any of my company.

Mr. BENNETT. You were partners in the same company, were you not?

Mr. LOWE. It was purely an investment, I mean as far as making my own records are concerned, I just made my own records. I had no connection with him in the manufacture of—I mean, the going into a room with a singer and a song and making a record.

Mr. BENNETT. I did not mean that, I meant you were in partnership in business.

Mr. LOWE. In business. But that was an investment.

Mr. BENNETT. That is right. But he was a good kind of a partner to have in this kind of business; is that not so?

Mr. LOWE. For financial gain, I don't think it meant anything.

Mr. BENNETT. Why did you have him in?

Mr. LOWE. Just because we were very friendly, and we talked about it at times.

Mr. BENNETT. Did you ever ask one of these "rinky-dink" jockeys to go in business with you and buy some stock in the company?

Mr. LOWE. No, I didn't.

Mr. BENNETT. That is all.

The CHAIRMAN. Mr. Moss.

Mr. Moss. Do you own "Back to School Again"?

Mr. LOWE. Yes, sir.

Mr. Moss. Completely?

Mr. LOWE. Yes, sir.

Mr. Moss. No portion of it is assigned to anyone else?

Mr. LOWE. Fifty percent of the performances were assigned to Dick Clark.

Mr. Moss. When did you assign 50 percent of the performance to Dick Clark?

Mr. LOWE. I can't remember the date.

Mr. Moss. I want you to find out as quickly as you can.

Mr. Chairman, I ask that the record be held open at this point to receive this, and I would like to have it before morning.

Mr. LOWE. I will try to get it for you by phoning your office.

The CHAIRMAN. Can you get it that soon?

Mr. LOWE. I don't know if they have a record of when it was assigned to him, 50 percent of the performances, on the date.

(Date of assignment on "Back to School"—Aug. 29, 1959.)

Mr. MOSS. Why did you give him the 50 percent? Or did you give it to him? Did you sell it to him?

Mr. LOWE. I did not sell it to him.

Mr. MOSS. You gave it to him?

Mr. LOWE. Yes, sir.

Mr. MOSS. Why?

Mr. LOWE. I was in the music publishing business at the time, and it is not uncommon to split performances and copyright.

Mr. MOSS. For nothing? Did you give it to him so he would play it?

Mr. LOWE. No, sir.

Mr. MOSS. When you gave the \$1,000 to this unfriendly diskjockey, who was your emissary?

Mr. LOWE. Milton Kellem.

Mr. MOSS. Was he not a partner of Tony Mammarella's?

Mr. LOWE. Yes, sir.

Mr. MOSS. You knew that?

Mr. LOWE. At the time, yes, sir.

Mr. MOSS. Were you sure that Mr. Clark got the money?

Mr. LOWE. Yes.

Mr. MOSS. How did he get it, in check or cash?

Mr. LOWE. Cash.

Mr. MOSS. Did he get cash?

Mr. LOWE. I am pretty sure he did.

Mr. MOSS. What was the rating on Billboard or the other—

Mr. LOWE. Cashbox.

Mr. MOSS. Of "Back to School Again" when you assigned it to Mr. Clark?

Mr. LOWE. It never went into the top—

Mr. MOSS. What was the rating?

Mr. LOWE. I don't know, sir.

Mr. MOSS. It did not go up to the top hundred?

Mr. LOWE. It might have gone into the top hundred, but I am pretty sure it didn't get up to the top 20 or 30 or anywhere up there. It was not that big a record.

Mr. MOSS. Do you remember when you brought it out?

Mr. LOWE. No, I do not.

Mr. STEINBERG. May I suggest, I will be glad to ascertain the dates and transmit them as soon as we possibly can. We have given all information heretofore asked for, and we will do this.

Mr. MOSS. Let's have the witness tell us.

You are only here to advise him on constitutional rights.

Mr. STEINBERG. I am sorry.

Mr. LOWE. I can't remember the dates on them, but I will try.

Mr. MOSS. Mr. Chairman, an assignment was made, an assignment of a record in his office, he has to have some proof of ownership or where ownership lies. It must be dated, and that should not be a difficult thing to ascertain.

Mr. LOWE. I may be able to get it faster by calling BMI and seeing if they have a record of when it was assigned, when 50 percent was assigned.

Mr. MOSS. How much do you allow to your distributors on promotion?

Mr. LOWE. We hold it between 5 and 7 percent.

Mr. MOSS. What is the industry practice?

Mr. LOWE. That is it.

Mr. MOSS. It isn't 22?

Mr. LOWE. No, not on promotion—I am talking about free records now for rack jobbers—

Mr. MOSS. Do you allow discount on gross purchases for promotion?

Mr. LOWE. No, to my knowledge, it is 300 on 1,000, and they usually go up the first 10,000, and it averages out to about 7 percent a year.

Mr. MOSS. And that is the only kind of allowance you make, the free records?

Mr. LOWE. Yes, sir.

Mr. MOSS. And no cash reimbursement?

Mr. LOWE. No, sir.

Mr. MOSS. Or anything at all?

Mr. LOWE. No, sir. The only payments I made are listed individually here, I mean to jockeys.

Mr. MOSS. That is all.

The CHAIRMAN. Thank you very much, Mr. Lowe. And you will supply the information?

Mr. LOWE. Yes, sir. That is the date on which the performances of "Back to School Again" were signed over to Dick Clark?

Mr. MOSS. Correct.

Mr. LOWE. I will find it; yes, sir.

The CHAIRMAN. The subcommittee thanks you for your presence, and your testimony, and you may be excused.

Mr. STEINBERG. May I at this time request a copy of the testimony? I understand that it is available, and we will be glad to pay for it.

The CHAIRMAN. You have asked for an executive session, Mr. Steinberg. Now, under the rules of the House, anything taken in executive session cannot be given out or made public until the subcommittee so decides. So, consequently, we are not permitted under the rules to make it available even to you or him until the subcommittee authorizes the release of it.

You may come down here, or Mr. Lowe may come down here, and look it over in the subcommittee office if you so desire. If the subcommittee decides, as the rules provide, to release it, make it public, then of course you are entitled to a copy.

Mr. STEINBERG. Thank you, sir.

Mr. BENNETT. Mr. Chairman, I do not believe the witness' testimony comes within the rules entitling him to an executive session. I am not requesting that the testimony be released at the moment, but I certainly think that at the proper time it ought to be released and made public. Certainly the witness has not said anything that ought not to be said in a public session.

The CHAIRMAN. The subcommittee will, of course, make the determination.

(Whereupon, at 11:25 a.m., the subcommittee proceeded to other business.)

The special subcommittee met, pursuant to other business, at 11:25 a.m., in room 1302, New House Office Building, Hon. Oren Harris (chairman of the special subcommittee) presiding, a quorum being present.

The CHAIRMAN. Mr. Chipetz, will you take the stand?

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

Mr. CHIPETZ. I do, sir.

TESTIMONY OF HARRY CHIPETZ, ACCOMPANIED BY SIGMUND H. STEINBERG, COUNSEL

The CHAIRMAN. State your name for the record.

Mr. CHIPETZ. Harry Chipetz.

The CHAIRMAN. Will you state your address, please?

Mr. CHIPETZ. 1415 North Broad Street, Philadelphia, Pa.

The CHAIRMAN. What is your business?

Mr. CHIPETZ. Wholesale record distributor.

The CHAIRMAN. Mr. Lishman, you may proceed.

Mr. LISHMAN. Mr. Chipetz, are you the head of Chips Distributing Co. in Philadelphia?

Mr. CHIPETZ. That is correct, sir.

Mr. LISHMAN. Was there a time when Dick Clark held a one-third interest in this company?

Mr. CHIPETZ. Yes, sir.

Mr. LISHMAN. When did he acquire that one-third interest?

Mr. CHIPETZ. Sometime in late 1957.

Mr. LISHMAN. Who are the other principals in Chips Distributing Co.?

Mr. CHIPETZ. Bernie Low and myself, Harry Chipetz, and Dick Clark.

Mr. LISHMAN. And how much did Clark pay for his one-third interest?

Mr. CHIPETZ. \$10,000.

Mr. LISHMAN. And how was that payment made?

Mr. CHIPETZ. By check, sir.

Mr. LISHMAN. Was that a check issued by Clark's wholly owned corporation?

Mr. CHIPETZ. Sir, I really don't know.

Mr. LISHMAN. Now, when did Mr. Clark divest himself of his interest in Chips?

Mr. CHIPETZ. I believe it was December 18, 1959.

Mr. LISHMAN. How did he accomplish that?

Mr. CHIPETZ. We gave him book value of the corporation, which amounted to \$23,000, and I believe about \$300; \$23,300, an approximation.

Mr. LISHMAN. So that, assuming that Mr. Clark paid \$10,000 in 1958, he realized a profit in excess of \$13,000; is that correct?

Mr. CHIPETZ. That is correct, sir.

Mr. LISHMAN. Do you know whether or not Mr. Clark's interest in this company was concealed through a Mr. Thomas?

Mr. CHIPETZ. This I do not know, sir. But I do know that it was our intent that it not be known.

Mr. LISHMAN. Isn't it correct that the 300 shares of Chips was originally issued in your name?

Mr. CHIPETZ. Yes, sir.

Mr. LISHMAN. And that three certificates for 100 shares each were given to you?

Mr. CHIPETZ. Yes, sir.

Mr. LISHMAN. Isn't it correct that two were endorsed by you in blank?

Mr. CHIPETZ. Yes, sir.

Mr. LISHMAN. And one of these was delivered to Bernard Lowe?

Mr. CHIPETZ. Yes, sir.

Mr. LISHMAN. And the other for 100 shares was delivered to Richard Clark?

Mr. CHIPETZ. That is correct, sir.

Mr. LISHMAN. Is it correct that both Mr. Clark and Mr. Lowe were provided with monthly financial statements and annual statements pertaining to Chips?

Mr. CHIPETZ. That is correct, sir.

Mr. LISHMAN. Mr. Chipetz, I am handing you a 5-page photostatic transcript taken from the books of Chips Distributing Co., entitled "Payments to Diskjockeys for Year Ending September 30, 1958, and September 30, 1959."

Do you have that document before you?

Mr. CHIPETZ. Yes, sir.

Mr. LISHMAN. Will you turn to—instead of going through all the details in this document, will you turn to the last page?

Mr. CHIPETZ. Yes, sir.

Mr. LISHMAN. And in the lower left-hand corner you will notice a summary of information which precedes in the transcript.

Mr. CHIPETZ. Yes, sir.

Mr. LISHMAN. And a statement, "Payments to Diskjockeys for the 1958 Fiscal Year, \$5,225"; is that correct?

Mr. CHIPETZ. Yes, sir.

Mr. LISHMAN. Were those payments made to diskjockeys by Chips Distributing Co., Inc., as stated here?

Mr. CHIPETZ. That is correct, sir.

Mr. LISHMAN. The next item is for the fiscal year 1959, and it shows that during that time \$14,610 was paid by Chips Distributing to diskjockeys?

Mr. CHIPETZ. \$14,360, sir.

Mr. LISHMAN. Diskjockeys received, during that period, \$14,360?

Mr. CHIPETZ. That is correct.

Mr. LISHMAN. And \$250 during that period was given for Christmas presents?

Mr. CHIPETZ. That is correct, sir.

Mr. LISHMAN. Making a total for the period of \$14,610?

Mr. CHIPETZ. That is correct, sir.

Mr. LISHMAN. Now, is it correct that the total payments shown for the two periods by Chips to diskjockeys was \$19,585?

Mr. CHIPETZ. \$14,835—I am sorry, sir, you are correct.

Mr. LISHMAN. And plus the \$250 for Christmas presents, brings the total to \$19,835 paid by checks?

Mr. CHIPETZ. That is correct.

Mr. LISHMAN. I would like, Mr. Chairman, to have this information compiled by the accountant of the subcommittee staff and agreed to by the Chips Distributing Co. as being correct in the record at this time.

Mr. MACK (presiding). You want the entire thing?

Mr. LISHMAN. The entire thing. It saves time rather than break it down for the record.

Mr. MACK. And you have identified this as being accurate?

Mr. CHIPETZ. Yes, sir.

Mr. MACK. Without objection it will be included at this point in the record.

(Information referred to follows:)

Chips Distributing Co., Inc., payments to diskjockeys (fiscal year ending Sept. 30, 1958 ¹ and Sept. 30, 1959)

Check			Station account charged	WIBG Joe Niagra	WDAS George Woods	WPEN Larry Brown	WPEN Bud Breeze	WHAT and WDAS Kae Williams	WPEN Jack O'Reilly	Payments to other diskjockeys		
Number	Date	Amount								Name	Amount	Station
113	1958 Jan. 16	\$100	Promotion	\$100								
1039	Feb. 8	25	do.					\$25				
1060	Feb. 14	200	do.	200								
1107	Mar. 1	50	do.							Reggie Lavong	\$50	WHAT.
1108	do.	50	do.						\$50	Lloyd Smith (Fatman)	25	WHAT.
1109	Mar. 3	25	do.									
1159	Mar. 11	200	do.	200								
1160	do.	150	do.		\$150							
1184	Mar. 14	75	do.							Mitch Thomas	75	Formerly WDAS.
1221	Mar. 22	100	do.		100							
1240	Mar. 28	150	do.		150							
1226	Mar. 25	25	do.							Paul Landerman	25	WIIGB Harrisburg.
1263	Apr. 3	75	do.							Mitch Thomas	75	WDAS.
1281	Apr. 4	50	do.						50			
1280	do.	50	do.				\$50					
1282	do.	100	do.			\$100						
1284	Apr. 7	100	do.		100							
1309	Apr. 14	200	do.	200								
1332	Apr. 17	100	do.	100								
1389	Apr. 29	50	do.		50							
1394	Apr. 30	25	do.					25				
1411	May 3	200	do.	200								
1412	do.	150	do.		150							
1413	do.	75	do.							Mitch Thomas	75	
1414	do.	50	do.						50			
1415	do.	50	do.					50				
1539	May 29	25	do.							Steve Wade	25	Formerly WAAB Allentown.
1560	June 5	75	do.							Mitch Thomas	75	
1578	June 10	200	do.	200								
1579	do.	150	do.		150							
1580	do.	50	do.						50			
1581	do.	50	do.					50				
1634	June 17	25	do.							Paul Landerman	25	
1701	July 3	200	do.	200								
1702	do.	150	do.		150							
1703	do.	50	do.						50			
1704	do.	50	do.					50				

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RESPONSIBILITIES OF BROADCASTING LICENSEES 1149

1742	July 14	25	do							Paul Landerman	25	WIIAT.
1781	July 24	25	do							Bill Curtis	25	
1800	July 29	200	do		200							
1811	July 31	200	do	200								
1841	Aug. 6	150	do			150						
1868	Aug. 13	50	do						50			
1869	do	50	do				50					
1924	Aug. 20	25	do							Paul Landerman	25	
1960	Sept. 3	100	do				100					
1961	do	25	do							Bill Curtis	25	
1979	Sept. 5	25	do							Paul Landerman	25	
2002	Sept. 9	150	do			150						
2003	do	50	do						50			
2004	do	300	do	300								
2005	do	150	do		150							
2006	do	100	do							Hy Lit	100	
2113	Sept. 29	150	do		150							
Total fiscal year ending Sept. 30, 1958		5,225		1,900	1,500	400	350	50	350		675	
2130	Oct. 2	300	Promotion	300								WDAS.
2157	Oct. 3	150	do			150						
2166	Oct. 9	100	do				100					
2168	do	150	do		150							
2169	do	50	do					50				
2215	Oct. 17	25	do							Paul Landerman	25	
2289	Oct. 31	100	do							Doug Henderson	100	
2297	Nov. 3	100	do				100					
2301	Nov. 4	150	do			150						
2302	do	50	do						50			
2303	do	300	do		300							
2304	do	200	do	200								
2368	Nov. 19	100	do							Jocko (D. Henderson)	100	
2443	Dec. 1	300	do	300								
2495	Dec. 8	150	do			150						
2496	do	150	do		150							
2497	do	50	do						50			
2498	do	100	do				100					
2606	Dec. 22	150	do		150							
2536	Dec. 17	25	Christmas							Lloyd Fatman	25	
552	Dec. 19	25	do				25					
576	Dec. 22	25	do							Red Benson	25	
576	do	25	do							Ed Hurst	25	
577	do	25	do							Joe Grady	25	
579	do	25	do			25						
581	do	25	do							Paul Landerman	25	
2583	do	25	do							Hy Lit	25	
2584	do	25	do		25							
2585	do	25	do	25								

¹ Covers period Jan. 9 to Sept. 30.

³ Transferred from loans and exchange account.

Chips Distributing Co., Inc., payments to diskjockeys (fiscal year ending Sept. 30, 1958 ¹ and Sept. 30, 1959)—Continued

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RESPONSIBILITIES OF BROADCASTING LICENSEES

Check			Station account charged	WIBG Joe Niagra	WDAS George Woods	WPEN Larry Brown	WPEN Bud Breeze	WIIAT and WDAS Kae Williams	WPEN Jack O'Reilly	Payments to other diskjockeys		
Number	Date	Amount								Name	Amount	Station
	<i>1959</i>											
2678	Jan. 5	\$300	Promotion	\$300								
2679	do	300	do		\$300							
2681	Jan. 7	100	do				\$100					
2731	Jan. 9	150	do							Tom Donahue	\$150	WIBG.
2740	Jan. 10	150	do				\$150			Jocko (Henderson)	100	
2741	Jan. 12	100	do						\$50			
2743	do	50	do									
2844	Jan. 30	150	do				150					
2852	Feb. 2	300	do		300							
2853	do	300	do	300								
2854	do	150	do							T. Donahue	150	
2855	do	100	do							Hy Lit	100	
2857	Feb. 5	100	do				100					
2859	do	50	do						50			
2913	Feb. 10	25	do					\$25				
2932	Feb. 14	25	do					25				
2981	Feb. 24	150	do							Tom Donahue	150	
3020	Feb. 27	300	do	300								
3024	Mar. 2	300	do		300							
3026	Mar. 4	100	do	100								
3044	Mar. 9	50	do						50			
3046	do	150	do				150					
3047	Mar. 10	25	do							B. Curtis	25	WHAT.
3048	do	50	do							Leon Fisher (Lee)	50	WDAS.
3128	Mar. 19	150	do							T. Donahue	150	
3153	Mar. 23	100	do		100							
3160	Mar. 31	300	do		300							
3164	Apr. 1	50	do							Leon Fisher	50	
3165	do	300	do	300								
3166	Apr. 2	150	do							Hy Lit	150	
3167	do	25	do							Doug Henderson	25	
3168	do	150	do				150					
3169	do	50	do						50			
3245	Apr. 10	100	do	100								
3247	Apr. 13	150	do							T. Donahue	150	
3248	do	25	do									
3249	do	100	do		100							
3317	Apr. 28	50	do							Geo. Johnson	50	Loan WDAS.

RESPONSIBILITIES OF BROADCASTING LICENSEES

3373	May 1	300	do	300							
3374	do	150	do			150					
3375	do	50	do					50			
3378	May 5	100	do						Hy Lit		100
3416	May 12	300	do		300						
3419	May 13	150	do						T. Donahue		150
3435	May 14	25	do						Bill Curtis		25
3500	May 22	100	do	100							
3537	June 2	150	do						Hy Lit		150
3564	June 5	400	do	400							
3565	June 8	300	do		300						
3566	June 9	50	do					50			
3567	do	150	do						T. Donahue		150
3568	do	150	do			150					
3570	June 11	150	do						Bob Mitchell		150
3613	June 19	100	do						H. Miller		100
3615	do	150	do						Bob Mitchell		150
3661	June 26	150	do						T. Donahue		150
3699	July 3	150	do						Bob Mitchell		150
3752	July 10	50	do					50			
3753	do	150	do			150					
3758	July 14	25	do				25				
3783	July 17	150	do						T. Donahue		150
3818	July 23	400	do	400							
3837	July 28	150	do						Bob Mitchell		150
3876	Aug. 7	150	do						T. Donahue		150
3893	do	150	do			150					
3894	do	50	do					50			
3895	Aug. 18	150	do	150							
3896	Aug. 10	300	do		300						
3923	Aug. 18	25	do						Lloyd Mitchell		25
3968	Aug. 21	25	do				25				
3970	Aug. 26	150	do						Bob Whitehall		150
3996	Sept. 1	150	do			150					
4005	Sept. 1	100	do	100							
4016	Sept. 3	300	do	300							
4017	Sept. 3	150	do						T. Donahue		150
4033	Sept. 8	300	do		300						
4074	Sept. 17	25	do				25				
4094	Sept. 21	150	do						Bob Mitchell		150
4095	Sept. 21	150	do						T. Donahue		150
4144	Sept. 29	100	do						Doug Henderson		100
4066	Sept. 15	50	do						T. V. Whitfield		50
4084	Sept. 18	10	do						Lloyd Fatman		10

WRVD.
Loan WIBC.

WIAT.

¹ Covers period Jan. 9 to Sept. 30.

Chips Distributing Co., Inc., payments to diskjockeys (fiscal year ending Sept. 30, 1958¹ and Sept. 30, 1959)—Continued

Check			Station account charged	WIBG Joe Niagra	WDAS George Woods	WPEN Larry Brown	WPEN Bud Breeze	WIIAT and WDAS Koe Williams	WPEN Jack O'Reilly	Payments to other diskjockeys		
Number	Date	Amount								Name	Amount	Station
4139.....	1959 Sept. 28	\$25	Promotion.....							Bill Curtis.....	\$25	
Total, fiscal year ending Sept. 30, 1959.....		14,610		\$3,975	\$3,375	\$1,825	\$500	\$175	\$550		4,210	
Total, fiscal year ending 1958.....		5,225		1,900	1,500	400	350	50	350		675	
Total, fiscal year ending 1959.....		14,610		3,975	3,375	1,825	500	175	550		4,210	
Grand total.....		19,835		5,875	4,875	2,225	850	225	900		4,885	

RECAPITULATION

Payments to D.J.'s	Account		Total
	Promotion	Christmas	
Fiscal year 1958.....	\$5,225	-----	\$5,225
Fiscal year 1959.....	14,360	\$250	14,610
Total.....	19,585	250	19,835

¹ Covers period Jan. 9 to Sept. 30. Source: Cash disbursement journal.

Mr. LISIMAN. Now, Mr. Chipetz, I will hand you a three-page photostatic document entitled "Chips Distributing Co., Inc.—Payments to Click Corp. (charged to promotion account)," covering 1958, and ask you if this is a correct representation of what appears on the books of Chips Distributing Co. during this period?

Mr. CHIPETZ. Yes, sir; it is correct.

Mr. LISIMAN. And does it show the total paid by Chips Corp. to Click Corp. for artists and charged to promotion account of Chips, \$644.50?

Mr. CHIPETZ. Yes, sir. I would like to explain that, sir.

Mr. LISIMAN. Yes, sir. First, may we have this in evidence, and then you may explain?

Mr. CHIPETZ. Sure.

Mr. LISIMAN. I would like to have this document, identified as accurate by the witness, introduced in the record at this point.

The CHAIRMAN. You identify this as an authentic copy of the original?

Mr. CHIPETZ. Yes; I do.

The CHAIRMAN. Let it be received.

(The information referred to follows:)

Chips Distributing Co., Inc.—Payments to Click Corp. (charged to promotion account)

Check			Artist
Number	Date	Amount	
<i>1958</i>			
108 ¹	Jan. 13	\$248.00	Dicky Doo & Don'ts.
117.....	Jan. 17	155.00	Bert Taylor.
1001.....	Jan. 20	155.00	Dale Wright.
1177.....	Mar. 13	332.00	T. Fredericks.
1194 ¹	Mar. 19	87.00	Cathy Linden.
1198.....	Mar. 20	87.00	Kenneth Rogers (Carlton Records).
1222.....	Mar. 24	138.00	Billy & Lilly (Swan Records).
1223 ¹.....	..do.	332.00	Heartbeats (Roulette).
1224.....	Mar. 25	256.50	(Chancellor.)
1228.....	Mar. 27	155.00	L. Pearson.
1261 ¹	Apr. 1	256.50	Playmates.
1345.....	Apr. 18	87.00	Randy Starr.
1380.....	Apr. 25	332.00	Mello Kings.
1408 ¹	May 2	155.00	Larry Ellis.
1417.....	May 5	87.00	Valarie Carr.
1467 ¹	May 15	87.00	Jerry Granahan.
1484.....	May 20	87.00	Gar Bacon.
1554 ¹	May 30	354.50	H. Linden, \$155; Playmates, \$199.50.
1561.....	June 5	155.00	Leslie Uggans.
1575.....	June 6	155.00	Frankie Castro.
1594 ¹	June 13	87.00	Mary Swan.
1653.....	June 20	258.00	Four Shields.
1659.....	June 23	138.00	Timbers.
1686.....	July 1	155.00	L. Briggs.
1690 ¹	July 2	310.00	The Shades.
1721.....	July 9	242.00	Jerry Granahan, \$155; Bobby Hendricks, \$87.
1739 ¹	July 11	405.00	Elegants.
1743 ¹	July 14	155.00	Bobby Hamilton.
1772.....	July 18	175.00	Bill Waters.
1778.....	July 21	175.00	De John Sisters.
1782.....	July 24	310.00	Wildtones.
1799 ¹	July 29	242.00	Tommy Paine, \$155; Eddie Fontaine, \$87.
1802.....	July 30	87.00	Bobbi Robcocks.
Total.....		6,440.50	

¹ Photostats of checks obtained.

Mr. CHIPETZ. Mr. Lishman, I would like to explain this to the subcommittee.

Mr. LISHMAN. Yes, sir.

Mr. CHIPETZ. It was a practice of manufacturers and myself to try to get as many artists as we possibly could on "American Bandstand." Now, in order to do so, we made out checks to Click Corp., who in turn paid the artists for their appearance in accordance with AFRTA rulings.

Mr. LISHMAN. Now, Mr. Chipetz, is it correct that the three diskjockeys receiving the largest amounts from Chips Distributing were Joe Niagra, George Woods, and Larry Brown?

Mr. CHIPETZ. That is correct, sir.

Mr. LISHMAN. Would it be correct to say that Chips paid Joe Niagra, in 1958, approximately \$1,900?

Mr. CHIPETZ. That is correct, sir.

Mr. LISHMAN. And in 1959, \$3,975?

Mr. CHIPETZ. That is correct, sir.

Mr. LISHMAN. Making a total to Joe Niagra from Chips of \$5,875?

Mr. CHIPETZ. That is correct, sir.

Mr. LISHMAN. And now the second largest diskjockey recipient of money from Chips was George Woods?

Mr. CHIPETZ. That is correct, sir.

Mr. LISHMAN. In 1958, he received approximately \$1,500?

Mr. CHIPETZ. That is correct.

Mr. LISHMAN. And in 1959, \$3,375?

Mr. CHIPETZ. That is correct, sir.

Mr. LISHMAN. Or a total of \$4,875?

Mr. CHIPETZ. That is correct, sir.

Mr. LISHMAN. Now, the third largest diskjockey recipient from Chips was Larry Brown; is that correct?

Mr. CHIPETZ. That is correct.

Mr. LISHMAN. And in 1958, he received \$400?

Mr. CHIPETZ. That is correct.

Mr. LISHMAN. And in 1959, \$1,825?

Mr. CHIPETZ. That is correct, sir.

Mr. LISHMAN. Making a total of \$2,225?

Mr. CHIPETZ. That is correct, sir.

Mr. LISHMAN. Now, why did Chips make payments to these three diskjockeys and others?

Mr. CHIPETZ. These payments were made so I could get these diskjockeys to listen to my records, inasmuch as there was about 200 releases that come to these diskjockeys from various recording companies, and inasmuch as I had to get them to listen to it before they would even consider playing it.

Mr. LISHMAN. Wait a minute.

Were these payments made to these diskjockeys and others by Chips for the purpose of obtaining air exposure of your records distributed by Chips?

Mr. CHIPETZ. The payments were made for the purpose of getting the diskjockeys to listen to my records. Once they listened to them I had hopes that they would play them, but that was not always the case.

Mr. LISHMAN. During the time that these payments were being made by Chips to diskjockeys, Dick Clark had a one-third interest in Chips, did he not?

Mr. CHIPETZ. That is correct.

But also for the record, I would like to say that Dick Clark had nothing to do with the operation of Chips Distributing, he was merely an investor.

Mr. LISHMAN. Didn't he know the amounts that Chips was charging for the promotion account?

Mr. CHIPETZ. Dick Clark did not know of the amounts charged to the promotion, as far as the diskjockeys were concerned.

Mr. LISHMAN. Did he know of the practice?

Mr. CHIPETZ. I never discussed that with him.

Mr. Moss. Mr. Lishman, may I interrupt?

I notice it has been agreed by the witness that Clark was provided with monthly financial statements, and with fiscal year statements. I wonder if it would be helpful if we had submitted for the record at this point, statements—are they operating statements or merely a summary of a financial statement?

Are they actual profit and loss?

Do they show details of expense?

Mr. LISHMAN. They are summarized on page 5 of the actual account.

Mr. Moss. Are copies of those made available to Mr. Clark?

Mr. LISHMAN. Annually.

Mr. Moss. How about the monthly statements? In what form were the monthly statements presented?

There is a close interest here in securing the monthly report. We want to follow it much more closely than the testimony.

That is all.

Mr. LISHMAN. Mr. Chipetz, why was Dick Clark's interest in Chips Distributing Co. to be concealed?

Mr. CHIPETZ. The purpose—when I entered into Chips Distributing, I went in with the idea that I was going to either make a success or a failure on my own. I didn't want to depend on Mr. Clark's stature, otherwise I feel that I would have reversed my decision and made it known. But I concealed it for that particular reason. I did not know whether Mr. Clark was going to be on "Bandstand" for a week or indefinitely.

Mr. LISHMAN. Did Mr. Clark ask you to conceal his interest?

Mr. CHIPETZ. I don't think he ever asked me to, sir.

Mr. LISHMAN. Why didn't you issue the stock in Mr. Clark's name?

Mr. CHIPETZ. I felt that that would reveal his interest in the business.

Mr. LISHMAN. Wouldn't that have enhanced your business?

Mr. CHIPETZ. As I said previously, I wasn't depending on my business, based on Mr. Clark, because I had been very successful in the recording business on the distributing level without Mr. Clark.

Mr. LISHMAN. Just a moment here.

Wasn't there a time when Clark's network, ABC, in effect issued a policy statement requiring Clark and others to make a decision to divest themselves of outside interests or give up broadcasting?

Mr. CHIPETZ. Yes, sir.

Mr. LISHMAN. Now, isn't it a fact that Mr. Clark wanted to have his interest in this company concealed originally?

Mr. CHIPETZ. I don't know his wishes, sir, but I explained mine.

Mr. LISHMAN. Did you go to Mr. Clark and say, "We would like to have you in here with a one-third interest in Chips Distributing"?

Mr. CHIPETZ. No, sir; I spoke—

Mr. LISHMAN. How did he happen to get this one-third interest?

Mr. CHIPETZ. I spoke to Mr. Bernard Lowe about my desire of possibly going into the business, in the recording business on a distributor level for myself, and I needed additional capital to make the venture. Thereafter, I believe Mr. Lowe spoke to Mr. Clark. And that is how it was formulated, to the best of my knowledge.

Mr. LISHMAN. Well, if I were to tell you that Mr. Clark stated to our investigators that he had been told by you that this promotion money in Chips was used to make payola payments to diskjockeys, would that surprise you?

Mr. CHIPETZ. That would, sir.

Mr. LISHMAN. Did you ever tell Mr. Clark that the amounts in promotion expense were used for payola?

Mr. CHIPETZ. No, sir.

I remember having a discussion after the Oversight Subcommittee had started their investigation, and we discussed it just lightly and generally, not as per distributor and investor.

Mr. LISHMAN. But at that time didn't Mr. Clark have knowledge that the company was engaged in making payments to diskjockeys?

Mr. CHIPETZ. He never knew of the payments to diskjockeys.

Mr. LISHMAN. He knew the practice was going on from you, didn't he?

Mr. CHIPETZ. I can't speak from whether he knew or not, I never spoke to him in regard to it. That is something that you would have to ask Mr. Clark.

Mr. LISHMAN. Well, did Mr. Clark ever ask you to look into it?

Mr. CHIPETZ. Look into what, sir?

Mr. LISHMAN. Payola.

Mr. CHIPETZ. No, sir.

Mr. LISHMAN. Not even after the investigation of this subcommittee began?

Mr. CHIPETZ. Not to the best of my knowledge, he never asked me to look into it, because he had nothing to do with the operation of Chips Distributing.

Mr. LISHMAN. What was the discussion you had with Mr. Clark, after the subcommittee activities began to reach the press?

Mr. CHIPETZ. If I remember correctly, it was just whether the practice of payola was still being carried on.

Mr. LISHMAN. And what did you tell him?

Mr. CHIPETZ. I believe I told him it was rumored that it was.

Mr. LISHMAN. Didn't he ask you specifically about Chips?

Mr. CHIPETZ. No, sir; he did not ask me specifically about Chips.

Mr. LISHMAN. Why did he want to have a discussion with you about whether it was going on in the business generally?

Mr. CHIPETZ. I happened to be there playing records for Mr. Clark, and it was just an additional point of conversation. I usually visit

with Mr. Clark once a week, like every other distributor in Philadelphia.

Mr. Moss. Does he hold a levee there every week?

It is a custom that comes from the past, for the absolute monarch to hold levees for lesser subjects.

Mr. CHIPETZ. That is what I thought you meant, sir.

Mr. LISHMAN. I would like to ask Mr. Chipetz why it is necessary to spend so much money on local Philadelphia diskjockeys for advice or consultation or listening, running into thousands of dollars, when you had the country's greatest diskjockey right there in Philadelphia with a one-third interest in your company.

Now, didn't Mr. Clark ever discuss with you that that might be a little too much, to be paying thousands of dollars to local diskjockeys in Philadelphia, when he was right there and could do it free?

Mr. CHIPETZ. Sir, Mr. Clark merely had an interest, an investment in Chips. He had nothing to do with the policy, we never discussed it.

The purpose of paying these diskjockeys was to get my records listened to, inasmuch as they received almost 200 records a week, and if they didn't listen to my records, they couldn't possibly play them.

Mr. Moss. I wonder if I might just pursue a point here.

I have just been looking at your year-end statements——

Mr. CHIPETZ. Yes, Mr. Moss.

Mr. Moss. You say that this was only an investment by Mr. Clark?

Mr. CHIPETZ. Yes, sir.

Mr. Moss. It appears that he is a rather judicious individual. He is prudent in the handling of his business matters. Each month you gave him a statement?

Mr. CHIPETZ. No, it was sent to him by the accountant.

Mr. Moss. Well, you caused it to be sent.

In 1958, at year end, it showed that you had net sales of \$345,000, approximately, give or take a few hundred. At year end 1959, you had sales of \$770,000. The cost of sales went from \$363,000 to \$567,000. Your total operating expenses went from \$56,000 to \$115,000. Your net profit was reduced from 5.2 to 2.30. And Mr. Clark, during this period, never asked you any questions?

Mr. CHIPETZ. No, sir; he never asked any questions.

Mr. Moss. You doubled your sales, you doubled your expenses, and you have your profit, and he never did ask a question?

Mr. CHIPETZ. No, sir.

Mr. Moss. It was purely a business arrangement?

Mr. CHIPETZ. Purely an investment.

Mr. Moss. Purely an investment.

Wouldn't you ask questions?

Mr. CHIPETZ. Depending on the arrangement of the investment, sir.

Mr. Moss. The investment is only as good as the business.

Mr. CHIPETZ. My arrangement with both Mr. Clark and Mr. Bernie Lowe was that I run the business, otherwise I don't want them as investors.

Mr. Moss. Didn't you ask yourself why the expenses——

Mr. CHIPETZ. I can give you an explanation if you will allow me to.

Mr. Moss. I would be happy to hear it.

Mr. CHIPETZ. To begin with, our expenses were a lot less, because we had just gone into business, and our staff wasn't as great as it was in 1959. We grew and our expenses grew.

Mr. Moss. But your sales doubled?

Mr. CHIPETZ. That is true, because we acquired additional lines.

Mr. Moss. The only thing that grew disproportionately were the operating expenses, and one of the items which seemed to grow most disproportionately was the item for promotion.

Mr. CHIPETZ. I don't think so, not according to the report, if I remember correctly.

Mr. Moss. I have a very bad copy here.

Mr. CHIPETZ. I think they grew in proportion, if I remember correctly, sir.

Mr. Moss. The promotion account here does not show as much as you paid Mr. Niagra.

Mr. LISHMAN. May I interrupt a minute at this point?

Mr. Moss. Yes.

Mr. LISHMAN. Mr. Chipetz, isn't it a fact that the approximate amount of profit after income taxes of Chips for the 9 months in 1958, and for the fiscal year 1959, was \$33,000.

Mr. Moss. Would you repeat that, sir, so I can understand it?

Mr. LISHMAN. Isn't it correct that for the 9 months in 1958, and for the fiscal year 1959, Chips profits, after taxes, amounted to approximately \$33,000?

Mr. CHIPETZ. Judging from memory, but basically I assume that if these facts were taken from the books, I would say that that is correct.

Mr. LISHMAN. Isn't it also correct that, according to the testimony that you have already given, that during this same period of 9 months in 1958, the fiscal year of 1959, Chips paid \$20,000 to diskjockeys, which is more than half their profit?

Mr. CHIPETZ. That is because we got credit, either in the form of cash or credit memorandums, to offset some of that promotion.

Mr. LISHMAN. Mr. Chipetz, that is a practice in the industry, is it not?

Mr. CHIPETZ. It is a common practice in the industry, sir.

Mr. LISHMAN. I have no more questions.

The CHAIRMAN. Is that all?

Mr. LISHMAN. Mr. Moss has some questions.

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

Mr. MACK. No questions.

The CHAIRMAN. Mr. Derounian?

Mr. DEROUNIAN. No questions.

The CHAIRMAN. Mr. Moss, do you have any further questions?

Mr. Moss. It is not clear in my mind what the \$6,440.50 paid to Click Corp. was for.

Mr. CHIPETZ. Those payments were payments made—let me give you the explanation so that you will fully understand it.

We were desirous of getting as many of our artists on the "American Bandstand" as possible. In order to do so, we would make out a check to Click Corp. in accordance with AFRTA rulings. Click Corp. in turn would pay the artists for their appearance on "American Bandstand."

Mr. Moss. Click was the corporation owned by Mr. Clark?

Mr. CHIPETZ. Yes, sir.

Mr. Moss. And it was a booking or management firm?

Mr. CHIPETZ. No.

Mr. Moss. What was it? Why did you pay them for appearances on "American Bandstand"?

Mr. CHIPETZ. They in turn paid the artists who we wanted on.

Mr. Moss. Was Click the operating company of Mr. Clark's show on "American Bandstand"?

Mr. CHIPETZ. I believe so, yes.

Mr. Moss. Then Mr. Clark would issue a Click check to your artists?

Mr. CHIPETZ. Yes, sir.

Mr. Moss. And you would issue a Chips check to Click to cover the check issued to the artist?

Mr. CHIPETZ. That is correct, sir.

Mr. Moss. And then would you charge this against the royalty due the artist?

Mr. CHIPETZ. No, sir; we had nothing to do with that, sir.

Mr. Moss. Then, did you go back to—you were a distributing company?

Mr. CHIPETZ. Yes, sir.

Mr. Moss. Did you go back, then, to the manufacturing company and seek reimbursement from them for the payments to Click?

Mr. CHIPETZ. Yes, sir.

Mr. Moss. You did?

Mr. CHIPETZ. Yes, sir.

Mr. Moss. And then, according to testimony heard yesterday, it is the custom for a manufacturer to charge these reimbursements to you, to the royalty account of the artist, and so we take a long road around to make it very definite that the appearance of payment will be created, but the fact will be avoided, the artist does not get paid?

Mr. CHIPETZ. Mr. Moss, in a lot of instances—I mean, this is just hearsay—the artist kept the money, in a lot of instances.

Mr. Moss. We have heard of instances where the artist kept the money, Parsons testified that he had, but his manufacturer, the label, still credited or charged it to an account.

Mr. CHIPETZ. That is quite possible.

Mr. Moss. So he did not get paid?

Mr. CHIPETZ. In some instances that is so. I merely mentioned in this—

Mr. Moss. We were told that this is the custom.

Mr. CHIPETZ. I don't think that is the custom, personally. In some instances—

Mr. Moss. Then it doesn't cost Mr. Clark anything for talent?

Mr. CHIPETZ. No, it didn't cost Mr. Clark anything for talent.

Mr. Moss. It didn't cost the show anything for talent?

Mr. CHIPETZ. No.

Mr. Moss. Do you know whether he has a budget for talent?

Mr. CHIPETZ. Truthfully, I don't think he had a budget for talent at that time.

Mr. Moss. I would call this "Clarkola". It seems to be very helpful to him. It is payola to him?

Mr. CHIPETZ. Certainly it is the practice of other television stations.

Mr. Moss. This was a nice, cozy arrangement that you had to discuss in order to arrive at it, wasn't it?

Mr. CHIPETZ. This was a general practice of all the distributors, it wasn't just my arrangement.

Mr. Moss. How did you learn about it?

Mr. CHIPETZ. They called a meeting in regard to this, and set down the policy to be followed.

Mr. Moss. The distributors called a meeting?

Mr. CHIPETZ. No, the "American Bandstand" called a meeting.

Mr. Moss. Clark—you said it was a general practice. It was a general practice then on the "American Bandstand"?

Mr. CHIPETZ. No.

Mr. Moss. This was the chiseling operation?

Mr. CHIPETZ. That is a matter of opinion, sir.

Mr. Moss. A man appears as talent in a show that is making as much as "American Bandstand" for its owner and its star, and in the final analysis, he does not actually get any payment; is that not chiseling?

Mr. CHIPETZ. I agree with you, in cases where they didn't get paid, I don't think it is proper. But where they got paid I think it is proper. A lot of them did get paid.

Mr. Moss. Was there any limit to the number of your artists that you could get on "American Bandstand"?

Mr. CHIPETZ. There were quite a few artists that I couldn't get on.

Mr. Moss. I assumed that. I said, was there a limit to the number you put on?

How did you know that you could get the Dickey Doo and Don'ts on?

Mr. CHIPETZ. I would go to either Mr. Clark or Mr. Mammarella and ask them if they could put this artist on. It was the format of their show to have one or two artists a day.

Mr. Moss. What labels were these?

Mr. CHIPETZ. They were various labels.

Mr. Moss. Swan records?

Mr. CHIPETZ. Swan is one, Feldstadt is another—would you read them off, it would refresh my memory.

Mr. Moss. Dicky Doo and Don'ts.

Mr. CHIPETZ. Swan.

Mr. Moss. That is Mr. Clark's?

Mr. CHIPETZ. Yes, he had an interest in that.

Mr. Moss. Bert Taylor?

Mr. CHIPETZ. That I believe may have been Feldstadt—that is a question.

Mr. Moss. Dale Wright?

Mr. CHIPETZ. Dale Wright was Fraternity.

Mr. Moss. That is Mr. —

Mr. CHIPETZ. Harry Carlson.

Mr. Moss. He has some interesting arrangements. We know his artists do not get paid.

T. Fredricks?

Mr. CHIPETZ. I think that was Big Top records.

Mr. Moss. Who owns that?

Mr. CHIPETZ. Helen Raines, sir.

Mr. Moss. Cathy Linden?

Mr. CHIPETZ. Feldstadt records.

Mr. Moss. Kenneth Rogers?

Mr. CHIPETZ. Carlton records.

Mr. Moss. Billy & Lilly, that is Swan, one of Mr. Clark's records.

Mr. CHIPETZ. Yes.

Mr. Moss. The next one is Chancellor, L. Pearson.

Mr. CHIPETZ. Chancellor is not correct.

Mr. Moss. No, Pearson.

Mr. CHIPETZ. I think that is Chancellor, is it not, or it looks like Chancellor.

Mr. Moss. That is the one above, the blank is Chancellor.

Mr. CHIPETZ. That is Chancellor, and Pearson I don't remember now, but I think that was also Feldstadt.

Mr. Moss. Randy Starr?

Mr. CHIPETZ. Randy Starr was Dale records, I believe.

Mr. Moss. I guess the staff can identify these for us.

This was entirely, then, reimbursement for appearances on Bandstand in the period of 6 months; is that correct?

Mr. CHIPETZ. That is correct, sir.

It was discontinued, I might add, in July 1958.

Mr. Moss. What other methods—

Mr. CHIPETZ. There were no methods, the artists actually got paid for an appearance without any—

Mr. Moss. You mean they got paid from that time on?

Mr. CHIPETZ. From that time on.

Mr. Moss. Since when?

Mr. CHIPETZ. July 1, 1958.

Mr. Moss. What did they do, have an upsurge of conscience at that point?

Did you have Mr. Clark call on you and ask for the opportunity of investing in your company?

Mr. CHIPETZ. Pardon me, sir?

Mr. Moss. Did Mr. Clark call on you and ask for the opportunity of investing in your company?

Mr. CHIPETZ. No, sir. I spoke to Mr. Bernie Lowe, and he in turn spoke to Mr. Clark.

Mr. Moss. Was Mr. Lowe an associate of Mr. Clark's?

Mr. CHIPETZ. He is a friend of Mr. Clark's.

Mr. Moss. Is he well identified as being close to Mr. Clark?

This is a business proposition, you go to a friend and he talks to Mr. Clark about it?

Mr. CHIPETZ. I spoke to Mr. Clark and Mr. Lowe also.

Mr. Moss. You went and asked Mr. Clark if he would like to come in?

Mr. CHIPETZ. No. I spoke to Mr. Lowe first, he approached Mr. Clark, and then we got together.

Mr. Moss. Are you an associate of Mr. Lowe's?

Mr. CHIPETZ. Yes, sir. Mr. Lowe has an interest in the Chips Distributing.

Mr. Moss. Were you operating prior to the time Mr. Clark came with you?

Mr. CHIPETZ. Yes, sir; not as Chips Distributing.

Mr. Moss. What did you have then?

Mr. CHIPETZ. I was sales manager for Cosnat Distributing Corp. in Philadelphia. I started with Cosnat.

Mr. Moss. What was the business?

Mr. CHIPETZ. Records, sir.

Mr. Moss. You started this company—

Mr. CHIPETZ. Yes, sir, in Philadelphia.

Mr. Moss. And became sales manager. What percentage of ownership did you hold?

Mr. CHIPETZ. Ownership in Cosnat?

I was on salary and commission, sir.

Mr. Moss. You said you started it.

Mr. CHIPETZ. I brought Cosnat into Philadelphia. They had already been in business.

Mr. Moss. It was a chain organization, is that it?

Mr. CHIPETZ. They had already been in business in New York City.

Mr. Moss. So you got an office opened in Philadelphia?

Mr. CHIPETZ. Well, I had previously been working for another distributing company.

Mr. Moss. And when did you first become acquainted with Mr. Lowe and Mr. Clark?

First, let us establish when you brought Cosnat into Philadelphia.

Mr. CHIPETZ. About 1951.

Mr. Moss. From 1951 to 1958, you operated as sales manager?

Mr. CHIPETZ. Yes, sir.

Mr. Moss. In 1958 you decided to strike out on your own?

Mr. CHIPETZ. I decided in 1957.

Mr. Moss. In 1957?

Mr. CHIPETZ. I finally made the move in 1958.

Mr. Moss. And you contacted Mr. Lowe, who was a songwriter?

Mr. CHIPETZ. Yes, sir.

Mr. Moss. Did he have any other interest at that time?

Mr. CHIPETZ. I believe he had Cameo Records at that time.

Mr. Moss. Cameo Records, and he had high hopes?

Mr. CHIPETZ. Yes, sir.

Mr. Moss. And you contacted him and suggested he contact Mr. Clark?

Mr. CHIPETZ. No, sir; I did not suggest that.

Mr. Moss. Did he suggest to you that it would be a good idea to talk to him?

Mr. CHIPETZ. Here is the point. In other words, while I was with Cosnat, in that year of 1957, I made about \$28,000. I felt that I had reached a limit.

Mr. Moss. This was before Mr. Clark went on "Bandstand"?

Mr. CHIPETZ. Yes, sir.

Mr. Moss. While you were with this record distributing company—

Mr. CHIPETZ. He was already on "Bandstand," Mr. Clark.

Mr. Moss. Locally?

Mr. CHIPETZ. Yes.

Mr. Moss. I said nationally a moment ago, before he went on the network nationally.

Mr. CHIPETZ. He was not on nationally, I don't believe, until August 1957.

Mr. Moss. Did you have him listen to your records prior to—

Mr. CHIPETZ. Oh, yes; I have known Clark, as I say, since, approximately 1954.

Mr. Moss. Had you ever made any gifts to him?

Mr. CHIPETZ. Just Christmas gifts, sir.

Mr. Moss. Only Christmas gifts? Did you ever pay him tokens of gratitude for listening to your records?

Mr. CHIPETZ. No, sir.

Mr. Moss. Did you pay anyone else such tokens of gratitude?

Mr. CHIPETZ. The diskjockeys as mentioned—but it wasn't for gratitude.

Mr. Moss. Why did you not pay Mr. Clark?

Mr. CHIPETZ. He was a friend.

Mr. Moss. You did not pay your friends?

Mr. CHIPETZ. There were some I suppose I didn't pay. But each relationship was different, sir.

Mr. Moss. What kind of gifts did you give him?

Mr. CHIPETZ. Mr. Clark? I remember giving him a Christmas dish, a chafing dish. Last year I gave him a tiepin.

Mr. Moss. Do we have any record, in the subcommittee file of this period pertaining to Mr. Clark.

Mr. MACK. You gave him a tiepin last year in 1959?

Mr. CHIPETZ. Yes, sir.

Mr. Moss. You decided to strike out on your own, you contacted Mr. Lowe, and you suggested to Lowe that he talk to Clark?

Mr. CHIPETZ. I didn't suggest to Mr. Lowe.

Mr. Moss. Somebody suggested it to him?

Mr. CHIPETZ. It just worked out that way.

Mr. Moss. No one even mentioned—

Mr. CHIPETZ. As I said, I would have gone in business when I had the money, if I had enough money I would have gone on my own.

Mr. Moss. Did you see anybody else other than Mr. Clark about it?

Mr. CHIPETZ. I couldn't find other people.

Mr. Moss. I think that is all.

I am frankly frustrated. Is it possible to sit down and talk about going into business without talking to the people you are going into business with?

You people talk about nothing. You must have telepathic communications. I asked who suggested that Clark be brought in, and you said no one, it just developed that way. That is not the truth, as you know it. I am not a fool, and I do not like to be treated as one. I would like to have something that is even remotely believable.

Mr. CHIPETZ. It may have been Mr. Lowe—

Mr. Moss. Was it not true that you and Mr. Lowe got together and decided that if you could get Dick Clark into a record deal that you would really have it made?

Mr. CHIPETZ. No siree.

Mr. Moss. No siree? Did you not have any idea of the significance, of the value, of a top diskjockey?

Mr. CHIPETZ. Sir, I made more money in any year prior to going into business than I did when I went into business. And that was for a period of 5 years.

Mr. Moss. The way you people keep records, it's a wonder you have anything left over.

The CHAIRMAN. Mr. Mack.

Mr. MACK. I would like to inquire if anyone ever approached you about getting a record on the "Dick Clark Show"?

Mr. CHIPETZ. Quite a few people approached me.

Mr. MACK. Did anyone ever give you money at the time that they were making this request?

Mr. CHIPETZ. To put a record on the "Dick Clark Show"?

Mr. MACK. You said they approached you, for whatever purpose they approached you.

Mr. CHIPETZ. Everybody would like to have their records played on Dick Clark's show, but never did I give anybody any inkling or one iota that I could get a record on "American Bandstand," or any other show, for that matter.

Mr. MACK. Would you tell the subcommittee what they said when they approached you about this?

Mr. CHIPETZ. They would like to get a record on the "Dick Clark Show," any artist, whether of small stature or large, they would like to get their record on "American Bandstand."

Mr. MACK. And there were many of them?

Mr. CHIPETZ. Yes. I wasn't the only one. They were approached throughout the United States, publishers, distributors, manufacturers.

Mr. MACK. Why did they come to you?

Mr. CHIPETZ. They not only came to me because I was a distributor, but they went to other distributors, they went to other manufacturers, they went to other publishers.

Mr. MACK. I am more interested in you than I am in the other distributors or manufacturers at this moment.

Mr. CHIPETZ. Yes, sir.

Mr. MACK. Now, why did they come to you?

Mr. CHIPETZ. I don't know why they came to me, other than if they wanted to have a record distributed.

Mr. MACK. Did any of these people come to you to get their records on the "Dick Clark Show"?

Mr. CHIPETZ. I had a lot of people that came to me that wanted their records on the "Dick Clark Show."

Mr. MACK. They made a request and got their records on the "Dick Clark Show"?

Mr. CHIPETZ. I didn't say they got them; they requested to get them on.

Mr. MACK. My question was: Did anyone make a request and finally get his record on the "Dick Clark Show"?

Mr. CHIPETZ. It all depended on the type record that they had and what the record was doing nationally in most cases.

Mr. MACK. Will you answer my question?

Mr. CHIPETZ. As I said, there were many people coming, having me take a record to "American Bandstand," and if they liked the record it would get on.

Mr. MACK. Mr. Chairman, I would like to get an answer.

The CHAIRMAN. Will you answer the question, Mr. Chipetz?

Mr. CHIPETZ. Will you repeat the question, and I will try to give you an answer.

Mr. MACK. Will you read it?

The CHAIRMAN. Read the question back, Mr. Reporter.

(The pending question was read by the reporter.)

Mr. CHIPETZ. I suppose there were cases of that type; yes. But, at the same time, there were a lot of people who requested it and didn't get it on.

If you will be specific, I could give you a more direct answer.

Mr. MACK. I would like for you to be specific. How many people who made a request to you finally ended up by having it on the show?

Mr. CHIPETZ. Practically all the people I carried wanted it on the "American Bandstand."

The CHAIRMAN. The question was, Mr. Chipetz, "How many people who came to you to get their records on the 'Dick Clark Show' actually got their record on the show?"

Mr. CHIPETZ. Very few.

Mr. MACK. But a few of them did get their records on the show?

Mr. CHIPETZ. Well, if they were a manufacturer in some cases, some did—Dick Clark did play my records in cases where they were wanted to be played.

Mr. MACK. Your answer was, "Very few." Does that mean a few did get their records on the show?

Mr. CHIPETZ. I will say Dick Clark made some of my records. Now, I am answering you to the best of my ability.

Mr. SPRINGER. Was your answer, "Some of my records"?

Mr. CHIPETZ. I mean distributing records, records which I distributed.

Mr. MOSS. Would the gentleman yield?

Mr. MACK. I would be glad to yield.

Mr. MOSS. I note the computation we had yesterday indicates that of the Chips titles, the complete list, the titles Mr. Clark had, which achieved any popularity at all, were played on the average of 31.4 times, while those same category of titles not distributed by Chips were only played 21.6 times.

So it would seem to me that there was some effectiveness in contacting this gentleman and giving him a distributorship on the records.

The CHAIRMAN. Is there anything further?

Mr. MACK?

Mr. MACK. No questions.

The CHAIRMAN. Mr. Springer?

Mr. SPRINGER. No questions.

The CHAIRMAN. Mr. Chipetz, thank you very much for your appearance. You may be excused.

Mr. CHIPETZ. Thank you.

Mr. STEINBERG. May the same request that I made before of Mr. Lowe's testimony apply to this witness, if the subcommittee should decide to let us have a copy of the transcript?

May I ask when the copy will be available to us?

The CHAIRMAN. The copy will be available in the office at any time after tomorrow morning.

Mr. STEINBERG. Thank you.

The CHAIRMAN. The subcommittee will adjourn.

(Whereupon, at 12:10 p.m., the subcommittee adjourned to 10 a.m. Friday, April 29, 1960.)

RESPONSIBILITIES OF BROADCASTING LICENSEES AND STATION PERSONNEL

FRIDAY, APRIL 29, 1960

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

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

Present: Representatives Harris, Mack, Bennett, Moss, Springer, and Derounian.

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

The CHAIRMAN. The subcommittee will come to order.

The Chair would like to announce at the outset that the attendance here indicates the interest and I know that where there is a rather large audience in a room of this kind, the coming and going and the moving about has a way of deflecting the interest from what we are trying to do here. I would like to remind you that you are here today as guests of the subcommittee in its work, as authorized and directed by the House of Representatives, and I am going to ask the cooperation of our guests in maintaining order.

In the opening statement I made on April 26, in announcing that we were resuming hearings into alleged improper practices in the broadcast of music over the air, I again stated the purpose, that under the Legislative Reorganization Act of 1946 and House Resolutions 7 and 56 of the 86th Congress, this subcommittee is charged with the responsibility of determining whether Federal regulatory agencies are administering the statutes dealing with subject matters within the jurisdiction of the Committee on Interstate Commerce, and in accordance with the intent of Congress, whether such existing statutes are adequate to accomplish their purpose.

I reiterate—I will not read the entire statement—but I reiterate this morning, the purpose of this so there will be no misunderstanding about it.

Are you Mr. Dick Clark?

Mr. CLARK. Yes, sir.

The CHAIRMAN. Mr. Clark, will you be sworn?

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

Mr. CLARK. I do.

The CHAIRMAN. Have a seat.

TESTIMONY OF RICHARD W. CLARK, ACCOMPANIED BY PAUL A. PORTER, COUNSEL

The CHAIRMAN. Mr. Clark, will you give your residence or address?

Mr. CLARK. My address is in Wallingford, Pa.

The CHAIRMAN. What is your business or profession?

Mr. CLARK. Entertainer.

The CHAIRMAN. Do you have a statement that you wish to present to the subcommittee at the outset?

Mr. CLARK. Yes, sir; I do.

The CHAIRMAN. I observe that you have your counsel with you. Under the rules of the House it is provided that anyone appearing before a committee may be accompanied by an attorney, if he desires, for the purpose of advising him of his constitutional rights. Therefore, you are permitted to have your attorney sit with you for that purpose, and I think that is pretty well understood.

Mr. CLARK. Yes, sir; I understand.

The CHAIRMAN. I think at this time we should identify your counsel for the record.

Mr. PORTER. My name is Paul A. Porter, 1229 19th Street, Washington, D.C.

The CHAIRMAN. Mr. Porter, I know it is not necessary, but for the record, are you familiar with the rules of the House as to how they provide for matters of this kind?

Mr. PORTER. I am.

The CHAIRMAN. Mr. Clark, you may proceed with your statement.

Mr. CLARK. Mr. Chairman and gentlemen, I feel that I have been convicted, condemned, and denounced even before I had an opportunity to tell my story. Further, there has been printed in the press what appears to me to be a prejudgment of my case. For these reasons, I respectfully request that I be given the opportunity to read this statement without interruption.

My name is Dick Clark. I reside in Wallingford, Pa. I am a radio, television and motion picture performer, and, until last winter, I was active in the record and music publishing industries.

I want to make it clear, immediately, that I have never taken payola. In brief, I have never agreed to play a record or have an artist perform on a radio or television program in return for a payment in cash or any other consideration.

I will now discuss my interests in the record and music industries and, in general, my other business enterprises. Then I propose to comment on certain specific matters in which your investigators seemed most interested. I will try to keep this review as objective as possible, although I realize that complete objectivity on a personal level is almost impossible.

At the outset, I want to emphasize that I have given your staff complete and unlimited access to all documents, accounts, books and papers which they requested.

I have repeatedly answered their questions and members of my own staff, my counsel and accountants have also answered their questions in numerous and lengthy interviews.

As a matter of fact, I feel certain that there is no aspect of my professional and business activities which has not been thoroughly explored by your staff investigators. Although I was advised by counsel that I was under no legal duty to do other than make my records available and appear here and testify in response to the committee subpoena, I have voluntarily submitted to a number of lengthy interviews by members of your staff singly and in groups. I point this out only because I want to make it clear that I have nothing to conceal from you.

First, I will discuss my broadcast activities.

My first experience in broadcasting was during my college years, 1947-51, as a performer and announcer on WAER-FM, a student-operated station at Syracuse University in New York, where I was enrolled. During my undergraduate years I also worked on a part-time basis for WRUN, Utica, and WOLF, Syracuse, in a variety of positions from mailroom boy to announcer.

After I graduated from Syracuse in June 1951, I rejoined WRUN for a short period before accepting an opportunity with WKTV, a television station in Utica.

Early in 1952, I was offered and accepted an announcer's job with WFIL radio in Philadelphia.

Less than 4 years ago, I had the opportunity to participate on a local televised show over WFIL in Philadelphia called Bandstand. I worked hard on the format and techniques of this program and in August of 1957, the show was placed on the daily ABC network schedule as a low-budget, afternoon sustaining program under the name "American Bandstand." The program succeeded and soon had sponsors.

On this program, I play records and interview recording stars. The recording stars perform and teenagers dance. I seek to provide wholesome recreational outlets for these youngsters whom I think I know and understand.

In the fall of 1957, I was given a chance to program a Monday night show over the ABC network featuring recording stars. This program did not receive the necessary acceptance, and, as a result, closed down after a few weeks.

However, in February of 1958, ABC decided that I should try the evening hours again with a Saturday night show. This time I succeeded, and this show, the "Dick Clark Show", is still on the air. On this program, which originates from New York, I present recording stars who perform their top records.

My fourth attempt at network programming, a weekly Sunday night show, called "Dick Clark's World of Talent", was not successful. This show, which was first televised over ABC on September 27, 1959, was canceled after the thirteen-week cycle because it just did not attract the necessary viewer interest.

In addition to these broadcast activities, I have in the past several years developed a number of outside interests.

I have noted, in silence until now, with dismay the many innuendoes which have suggested some connection between the number of corporations which I formed or in which I had an interest and payola. The inference seems to be that a number of corporations are worse than one or two.

The facts, however, are that there were very ordinary business reasons for each of these corporations which I shall attempt to detail for you in a moment.

I would like to make a few general comments first.

I will now explain my motive and purpose for organizing, investing, or otherwise participating in these various companies.

As everyone who has any familiarity with television is aware, television performers cannot look forward with any assurance to long runs or continuing popularity. Television can be an extraordinarily fickle medium, and I realized that my position could be a precarious one to sustain. I was then well aware that any performer's popularity depends in large part on factors totally beyond his control: public taste, other people's efforts, advertising philosophy, network policy and many other variables. An example of the hazards involved was the speedy end of my second and fourth attempts at a network program.

So, because of the frequently erratic nature of the television business, I sought the opportunity for diversified investments of my energies and resources. I sought out investments and opportunities which would continue after my performing popularity had waned or disappeared. It was then most natural for me to look to the music industry, the field I knew best, for such investments.

I knew, of course, that practically every major performer involved in the music field had made investments and was otherwise active in the recording, publishing, manufacturing or distribution fields. I decided that this made good sense for me as well. I had a unique opportunity to become very familiar with, and if I may say so, to develop some expert knowledge concerning the popular music tastes of a large sector of the American public, and especially of the young people who attend my shows, whom I meet in many personal appearances and who write to me.

So I set about acquiring interests in, or forming, companies active in the fields of music publishing, record manufacturing, record pressing and record distribution, in addition to companies active in television production, motion-picture production, literary rights and arranging personal appearances. I also made investments in other fields as opportunities presented themselves, such as real estate.

In not one of these instances did it occur to me that I was engaging in any impropriety. I followed normal business practices under the ground rules that then existed.

As your investigators are aware, I have recently completely divested myself of all interests in the music publishing, record manufacturing, record pressing and record distribution fields.

Parenthetically, I mentioned that one of my companies, Rosho, still receives royalties on two albums; also Sea-Lark Enterprises, which I am liquidating in an orderly manner, still services the few remaining orders for three Dick Clark All-Time Hits albums, offered as promotional records for products of my sponsors. Finally, my wife and I receive occasional and nominal composer royalties on two songs.

After going through the process of giving up these interests, in which I had a deep personal as well as financial interest, often at not particularly advantageous terms, it is particularly painful to have the genuineness of this divestiture questioned. If it wasn't genuine,

the distinguished counsel that I employ have misled me, and that I doubt very much.

I will discuss each company with which I have been connected in the chronological order in which I acquired an interest or formed the company, with details of operation or divestiture where pertinent. In order to save the time of this committee, such details as date of formation, stock ownership, officers, directors, and other relevant data concerning these companies, are set out in appendix A to this statement.

1. Click Corp: I formed Click in March 1957, to go into the music publishing business and to handle record hops at a time when the "Bandstand Show" was seen only in Philadelphia. In August 1957, the company became active as the producer of "American Bandstand" when the daily show went on the ABC television network. That is still its main business.

2. Jamie Record Co.: In May 1957, I acquired a 25-percent interest in the Jamie Record Co., a record manufacturing concern in Philadelphia. The managing head of the firm, Mr. Finfer, held a 25-percent interest, as did the attorney for the company, Mr. Lipsius. The remaining 25 percent interest was held by Mr. Samuel Hodge.

I had no part in the day-to-day operations of the firm, but I did consult with Mr. Finfer on the problems of material, record selection, arrangements and rearrangements and product availability. This means that I was active in a vital area of this company's operations.

When I first acquired my interest, Jamie records was losing money. None of the principals had invested more than a nominal amount in the company. As with many new record companies, Jamie was started on a proverbial shoestring. I invested \$125, which you have brought out, I understand.

Much has been made of the fact that with this small investment, I received \$15,000 for my stock interest when I sold it in December 1959, and also received over the period in which I held any interest compensation totaling \$16,700.

When I acquired my interest in this company in May 1956, I was not performing my network show. While I do not have financial statements for the fiscal year ending April 30, 1957, I do have an audited statement for the following year which I will submit to you. This statement shows that on May 1, 1957, the company had earned nothing, and had a deficit balance of \$450.94.

The company had moderate success during the subsequent fiscal year which ended April 30, 1958. The audited statement for that period shows total sales of \$18,998.69, and a net profit of \$2,722.89. I drew no salary for that period.

The next audited statement, which I will also submit to you, is for the period ending April 30, 1959. In that fiscal year, the company's sales increased to \$754,613.58 and the net profit was \$22,094.06. This was the year in which I drew compensation in the amount of \$10,400.

I do not have an audited statement for the following period, as I sold my stock back to the company in December of 1959. Unaudited information supplied at the time I sold the stock reflected that from May 1 to October 31, 1959, there were gross sales of \$497,802.25 and

net profits were \$30,614.84. My compensation for the period May 1, 1959, to the time I sold my stock was \$6,300.

In connection with my function in this company and the compensation I received for performing that function, let me state categorically that I was not paid to listen to records with a view toward possible use on any program on which I appeared. The records I listened to were submitted to me because of my responsibilities for selecting material to be recorded by Jamie records. I rejected some of the records submitted, I suggested that others be rearranged, and in some cases I approved the proposed recording for release. My responsibilities in this area were not those of a diskjockey but were those of a creative executive with a small record manufacturing company. I think that is important.

In the event the committee is interested as to the reasons for the expansion of the company's sales, I will be glad to explain them. In brief, we were able to develop at least one major artist, namely Duane Eddy, and some hit records which were responsible for the accelerated volume of sales. I am prepared to elaborate on this in such detail as the committee may require.

Some questions have been raised about Jamie distributing payola and it was suggested that I should have been aware of this practice. I did not receive monthly reports but the financial statements that I did receive showed among the expenditure items labeled "promotion."

For example, for the fiscal year ending April 30, 1959, the expense statements shows a total of \$12,694.19 for promotion out of gross sales of \$754,613.58. If I had analyzed this statement in detail at all, which I do not recall, this would not have seemed out of line.

I learned for the first time yesterday that Jamie records had paid Tony Mammarella, the former producer of "American Bandstand," or his wife, amounts which, Mr. Finfer stated, were charged to promotion.

The committee commented on the size of the office Mr. Mammarella and I shared, which was indeed small, and I may add that my office is still extremely small, and that we could listen to each other's phone conversations and that it seemed incredible that I would not have known that a company in which I had a one-quarter interest was making payments to Mr. Mammarella.

Gentlemen, I loved and respected Tony Mammarella. I could not, during the entire period of our association, have conceived that this man would do anything improper, unethical or illegal. He is a man of the highest religious convictions, devoted to his family, and he had never, to my knowledge, done anything of which he should have been ashamed. Any rumors I may have heard about Tony Mammarella were dismissed by me as I assumed that he dismissed the many vicious and unfounded rumors about me when they came to his attention. I do not want to discuss Mr. Mammarella except to state categorically that I had no knowledge of any improper practice by him at the time of our association.

Finally, I was surprised to learn that some people were apparently shocked to hear that I made 30-some thousand dollars from a \$125 investment in Jamie records. Believe me, this is not as unusual as it may seem. The music industry is the only business I have any personal knowledge of where a man can invest less than \$500 and profit

by as much as \$50,000 to \$100,000 from one single record. And anyone in any walk of life has this opportunity whether they are a broadcaster or not. I think this probably explains why there are over 2,000 record companies in existence.

3. Binlark Co.: This was a limited partnership, formed in July 1957, to invest in a film called "Jamboree." This partnership has been dissolved.

4. Sea-Lark Enterprises, Inc.: I formed this company in July 1957, as a BMI music publishing company. Sea-Lark's entire catalog of music has been sold.

5. Chips Distributing Corp.: I owned one-third of the stock of this company which was formed in December 1957. I invested \$10,000 in the formation of this company. The active head of the company, Harry Chipetz, and Bernie Lowe each owned a one-third interest. I was not active in the operation of this company but treated it simply as an investment. In December 1959, I sold my stock interest back to this company.

6. Swan Record Corp.: Although already in record manufacturing through my interest in Jamie, this company was formed in December 1957, because different partners were involved. I was active along with Mr. Mammarella and Mr. Binnick in the management of this company. No record was accepted by Swan which had not been approved by myself or Mr. Mammarella, and no decision of any importance was made by the company without our approval and advice.

Mr. Mammarella and I also frequently made suggestions as to the arrangement and rearrangement of the records or songs submitted to this company. Mr. Binnick ran the day-to-day operations of the company and Mr. Mammarella and myself were the creative heads of the company.

I received \$20,800 from the company for its fiscal year ending November 30, 1958, and \$25,000 from the company for the fiscal year ending November 30, 1959. I sold my 50-percent interest in this concern back to the corporation in December 1959.

7. Globe Record Corp.: This company, which was formed in March 1958, issued records under the Hunt label, which records were distributed nationally by Am-Par Records. Since I owned all of the stock of this company and since its records were to be distributed by Am-Par, which did not distribute either Jamie or Swan, Globe was incorporated and a separate enterprise. All record matrices acquired by this Company have been disposed of, and the company is being dissolved.

8. Kincord Music Corp.: This was a wholly owned music publishing subsidiary of Globe. All music it acquired has been disposed of, and this company, too, is being dissolved.

9. Rosho Corp.: This company, which I wholly own, was formed in March 1958. It is the basic corporate vehicle for such literary rights of mine as might prove valuable.

10. Mallard Pressing Corp.: Mallard is a record pressing company, formed in May 1958, which I owned jointly with Bernie Lowe. I have sold my stock interest in this company.

11. SRO Artists, Inc.: I was to be a 25-percent stockholder in this artist management company, with Al Wilde the chief executive and

remaining stockholder. A primary purpose of this company was to book my own personal appearances. I did not receive any income from this company. I relinquished my contractual interest in October 1959.

12. The January Music Corp.: I formed January in June 1958, as a second basic publishing firm in addition to Sea-Lark. My purpose, as was a custom in the trade, was to have a second publishing firm so that different copyrights could be placed in January or Sea-Lark as appropriate. The entire catalog of this concern has been sold.

13. March Productions Corp.: This company, formed in July 1958, is wholly owned by me. Its primary activity is the handling of personal appearances, tours, and the like. At one time it also supplied a regular column to a fan magazine.

14. Drexel Television Productions, Inc.: I formed this company in July 1958, in New York, to produce my new Saturday night television show which was to originate in New York.

15. February Corp.: February was formed in July 1958, primarily to handle the preparation of a weekly newspaper column.

16. Arch Music Co., Inc.: I purchased Arch in December 1958, in order to have an ASCAP publishing firm. January and Sea-Lark, which I already owned, were BMI affiliates. As you are aware, one company cannot be both a BMI and an ASCAP affiliate. Arch's entire music catalog has been sold.

17. Teen Post, Inc.: This company, in which I had a small minority interest, planned to publish a newspaper for teenagers. The venture was not successful.

18. Raye Products, Inc.: This company was formed in December 1958 to manufacture a record carrying case that bore my name and likeness and the title "American Bandstand" under a license from Triangle Publications, Inc., WFIL-TV, which controlled the merchandising rights to my name and likeness and the title at that time. I have disposed of my interest in this company.

19. Post-Grad Products, Inc.: This company was formed in January 1959, by myself and a group of investors to go into the cosmetics business. The business was not a success and I have acquired the stock issued to most of the other investors. The company is now in the television performance field.

20. Drexel Shows, Inc.: This wholly owned subsidiary of Drexel Television Productions, Inc., was formed in January 1959 to produce the Sunday night "World of Talent" television show as a joint venture with Impa Productions, Ltd., owned by Messrs. Irving Mansfield and Peter Arnell.

21. Drexel Films Corp.: This motion picture production company, which I wholly own, was formed in January 1959, to negotiate a contract for two pictures with United Artists.

22. Claban Publishing Corp.: Claban was formed in February 1959 to put out a single issue magazine as a joint venture with a company already in the field.

23. Drexel Pictures Corp.: I formed this company in March 1959 to carry out a motion picture contract with Columbia Pictures. We have completed one of the two pictures called for under our agreement. I did not use Drexel Films for this venture because of the nature of the contract terms with Columbia.

24 and 25. Sea-Lark Music, Ltd., and Jolie Musikverlay: The first was an English and the second a German publishing company. The companies were in their formative stage when I disposed of my interest in them.

26. Startime Industries Corp.: This company was formed in May 1959 to make a "Dick Clark" item—in this case a stuffed animal—under license from Triangle Publication. Raye Products could not be used for this venture because the investors were not the same as in Raye. I have also disposed of my interest in this company.

27. Anita Pressing Corp.: This was a sister corporation of Swan Record Corp., formed in August 1959, which never got off the ground. It was to enter the record pressing business by pressing some Swan records and had the same stockholders as Swan. I assigned my stock subscription rights in this company to the other stockholders in December 1959.

28. Salutem Corp.: This is a real estate corporation which I formed in August 1959 to buy a piece of land in Maryland.

29 and 30. BAE Music, Inc., and Request Music, Inc.: These two companies were formed in August 1959 as the wholly owned ASCAP and BMI subsidiaries of Swan Record Corp. My indirect interest in these companies ended with the disposal of my Swan stock.

31. Wallingford Realty Corp.: I formed this corporation in September 1959 to buy a piece of land in Delaware.

32. Lawn Record Corp.: Lawn was formed in October 1959, as a sister corporation to Swan with the same stockholders as Swan. Its purpose was to release records under a new label. It had not been activated when I relinquished my interest to the other stockholders in December 1959.

33. Character Licenses, Inc.: This company was formed in December 1959, to take care of all licensing arrangements for merchandise bearing my name or likeness, or referring to one of my shows. Triangle, ABC, Click, and Drexel were to own its stock. However, the company has not been activated because of a later decision to handle licensing through Triangle Publications, Inc.

As I hope is obvious from the above review, the various corporations listed just grew. There was no master plan. Various companies were formed to handle different types of business. Others in the same field were organized because different partners were involved in different situations.

Natural subsidiaries resulted in other companies and the necessity for different ASCAP and BMT music publishing affiliates account for others.

Let me stress again, in the simplest possible language, that none of these companies was formed or operated so as to secure the payment of "payola" in some ostensibly legal form.

After your committee first brought to public view some of the objectionable practices and activities in the music, record, and broadcasting fields, I met on November 11 and 15, 1959, with Leonard Goldenson, president of American Broadcasting-Paramount Theaters, Inc., and other top ABC network officials.

On November 16, I submitted an affidavit to ABC and WFIL-TV stating that I had never taken payola. This affidavit is attached as appendix B to this statement. Also attached as part of appendix C

are the affidavits of Charles Reeves, executive producer of my Saturday night television show, Louis Heyward, producer of the show, and Garth Dietrick, director of the show. In these affidavits they disclaim ever having indulged in payola practices.

At the first meeting I have referred to, we discussed whether in this environment of payola, rigged quizzes and general soul-searching in the television industry, it was desirable for me to retain my position as a television performer, on the one hand, and to retain my music and record interests, on the other hand, without being compromised by any possible conflict of interest between these two activities.

Mr. Goldenson informed me that it was ABC's view that the only way I could remain as a network performer and effectively solve this problem was to divest myself of my music and record interests. This I agreed to do, and this I have done.

Now that I have generally described the course of my activities and investments over the last several years, I turn to the specific business practices and other matters as to which your investigators showed the greatest interest. I am sure I will not be able to anticipate every point which will be of interest to this committee but I do want to discuss what seemed to be of major interest.

From the time that your staff members interviewed me, it was clear from their questions that they wanted to find out whether I used my corporate music and record interests to exact tribute from talent, music and record interests as a consideration for playing their records on my shows.

I told your staff that the answer to this question was "No." Let me state again under oath that the answer is "No." However, I want to make it equally clear that although my record interests were set up to operate in a normal competitive manner, I have no doubt but that some of the copyrights received by my publishing firms and some of the records owned, distributed or pressed by the companies in which I had an interest, were given to my firms at least in part because of the fact that I was a network television performer.

However, the conflict between my position as a performer and my record interests never clearly presented itself to me until this committee raised questions of payola and conflicts of interest. At the lengthy session on November 11 with ABC officials we discussed this question in great detail. Although, as I have said, I was not conscious of any improper conduct, the more we discussed and analyzed my own situation, the clearer it became that I should remove any basis for an inference or a conclusion that my outside activities and interests would influence my judgment and activities on the air. This, as I have said, has now been achieved. I can now program my shows, pick my records and select performers free of any fear that somebody might think that I am "playing the angles."

At this point I wish to add that I certainly am not condemning those performers who still retain interests in the record industry.

May I repeat that. At this point I wish to add that I certainly am not condemning those performers who still retain interests in this record industry. I only wish to state how I solved what I conceived to be my own problem.

Turning then to my publishing interests, and analyzing these activities in terms of the general question of whether they "exact trib-

ute," neither I, nor any employee of my publishing companies, to my knowledge, ever entered into any agreement or understanding with individuals or companies who assigned copyright interests to my companies that I would play or give any preference to their compositions on my programs.

Most of the songs held by my three publishing firms, January, Sea-Lark and Arch, were obtained from composers by agreements normal to the music publishing business.

These contracts provided, consistent with standard industry terms, that the publisher was to own the copyright of the song, was to pay the composers 50 percent of the moneys obtained from mechanical licenses such as phonograph records, and certain amounts normal to the music business for sheet music, orchestrations, and the like.

In addition, about 15 of the titles held by Arch Music Co. were part of that company's catalog when I purchased the company.

A third and smaller source of songs obtained by my publishing companies were from other music interests. Your investigators were specifically interested in the assignment of interests in three particular titles to my companies without payments. I would like to comment on these.

First, let me treat with the payments received from Bernie Lowe in connection with the song "Butterfly":

I had known Bernie Lowe for a number of years; our friendship went back to the days when he was the pianist and conductor of the Paul Whiteman Orchestra on television and I was Mr. Whiteman's commercial announcer. At the time I was also a radio diskjockey on WFIL Philadelphia. It was shortly after this period in Mr. Lowe's career that he started a recording firm of his own. On several occasions, he brought his recordings to me for use on my radio shows and, subsequently, my television show, which was on local television at the time.

After several tries, none of which had been very successful, Mr. Lowe came to me one day in late 1956 or early 1957, and told me of a song "Butterfly", which he had recorded with a new artist, Charlie Gracie. I listened to the record, and agreed with him that it sounded like a hit. I was pleased to see that he had finally come up with a record that might succeed. He knew I was in the process of setting up a publishing firm and offered to assign to me 25 percent of the publisher's royalties on the song. I pointed out that this was unnecessary; that I would be very happy if he was able to get his first hit for his own record company. Lowe insisted that I take a financial interest in the song. I again said it was unnecessary and the discussion ended.

In the next few days, "Butterfly" began to show signs of becoming a hit. It was played on most Philadelphia stations. I played it during the first days of its release. In an effort to help Lowe alert diskjockeys of the fact that his record was the first, the original version of the song, and a very successful record in Philadelphia, I took copies of the record with me to a New York meeting of diskjockeys from across the country to vouch for the fact that the record had gone well in Philadelphia.

"Butterfly" became one of the nation's biggest sellers, was sold all over the world, and without a doubt was one of the year's big rec-

ords. At the end of 1957, Lowe advised me that my share of "Butterfly" royalties would amount to over \$7,000. I told him again that the payment wasn't necessary. His answer was that he had made a promise and that he intended to fulfill his promise and he did.

Turning next to the recording "At The Hop," in the summer of 1957, two Philadelphians I had known brought a treatment of a song to me, which they had entitled "Doing The Bop." Although I could see great potential in the beat and feel of the song, I told them that the lyrics would have to be rewritten, because the "Bop" as a dance fad had passed and was, topically, a dead issue.

I spent considerable time with them discussing appropriate changes. I pointed out that the really big nationwide fad with youngsters, just getting under way, was the record hop.

I suggested rebuilding the song and its story to tell what went on at a hop. In fact, I suggested the title "At the Hop." I described some of the typical scenes I had seen at hops, the dances engaged in and the language used. From this background, we fashioned a new set of lyrics, which were timely, appropriate and of interest to young people. Subsequently, the tune was redone, and recorded.

"At the Hop" was played in Philadelphia by many diskjockeys before I began playing it. I received requests for it myself and began to program it. I had been playing the song for several days when I was again visited by my two songwriting friends. They told me of the song's increasing acceptance and that they wanted to assign 50 percent of the copyright to my publishing firm. They stated that the song would not have become a hit if I had not made any suggestions for rewriting and that I deserved this interest. They knew, of course, that I was already programing the record. But I had neither asked for, nor promised, anything in connection with the tune. It was obviously a hit. In fact it became popular throughout the country and the world and sold over a million copies.

Time and time again, I have been asked by the committee investigators to tell the story of "Sixteen Candles" and the acquisition of the U.S. copyright for this song by the January Music Corp. At the time the copyright was originally offered to January, Miss Vera Hodes was professional manager of the firm.

She has had a long history in the music business and has known many people connected with the industry. Although I personally did not handle the details of this copyright transfer to my corporation, I was told by Miss Hodes that the participation was offered to January by the executive head of Coed Records, Marvin Cane. At the time he offered Miss Hodes the copyright for January, as far as I am able to determine, I was already playing "Sixteen Candles" on my television program.

Miss Hodes told me that she pointed this out to him in their conversations but that Mr. Cane was interested in assigning the copyright to January on a basis where his publishing firm would receive 50 percent of the U.S. performing rights. The offer was accepted by Miss Hodes.

Miss Hodes has given me an affidavit to the effect that she never, verbally or in writing, "said to any person either (a) that giving a song, or an interest in a song, to any of these three corporations (January, Sea-Lark, and Arch) could in any way assist in getting

Dick Clark to play records of this song on any television program, or (b) that not giving a song or an interest in a song to any of these three corporations would lessen the chances that Dick Clark would play a record of that song on any television program." This affidavit is attached to my statement as part of appendix C.

Turning next to my record pressing company interest—and I had only one active interest, my 50-percent interest in Mallard Pressing Corp. of Philadelphia—neither I nor anyone connected with Mallard, to my knowledge, ever said or intimated to anyone that either doing or not doing business with Mallard would have any effect on that records I played on my programs.

I would like to refer to affidavits which were prepared by the general manager of Mallard, Mr. Haslam, and the production manager of Mallard, Mr. McAdam, in which they both swear to this effect. These affidavits are attached to my statement as part of appendix C.

I understand that testimony has been presented here claiming that in one specific instance there was a connection between the playing of a record called "All American Boy" on my program, and the appearance on my program of an artist credited with recording that song and having a portion of the run of that particular record pressed at Mallard. I am informed that Mr. Carlson, the president of the record company which owned this record, swore that there was no such connection. I swear that I never had any conversation with Mr. Carlson directly or indirectly suggesting that if he were to press this or any other record at Mallard this would help him to get records played on any of my programs or to get any artists who recorded for his label to appear on my programs.

Turning next to my record manufacturing interests, again neither I, nor anyone else to my knowledge, ever intimated that doing business with Globe, Swan or Jamie would have any effect on what records I played on my programs. I attached as part of appendix C, an affidavit from Bernard Binnick, manager of Swan Record Corp., in support of this statement.

Now, I want to turn to a further question which involves me personally, and that is, did I accept gifts with an express or implied understanding that in return I would favor the records of the donor on my program?

The answer is "No."

I believe that, except for gifts from one person, there are no gifts which I have received which require detailed treatment. The Christmas presents or birthday gifts received from fans, from business acquaintances and from friends are in general just that. I have also received such industry and office items as a color television set, record players, tape recorders and miscellaneous gear.

However, the one exception referred to above, an exception which received well-publicized comment last month, were gifts from a record manufacturer, Mr. Lou Bedell, of Era and Dore records.

During 1958, he gave my wife and me three presents of much more than nominal value. The first was a fur stole, which he gave to my wife who, only the previous week, had purchased one herself. We were both embarrassed, I insisted on paying for it, and despite his reluctance, he took a check from me that evening for \$300. I have since asked him and learned from him that he paid \$1,000 for this fur

piece and that it was charged as a promotion expense to one of his record companies.

At about the time of my birthday at the end of 1958, while we were out for a social evening with Mr. Bedell and his wife, he presented a necklace to my wife and a ring to me. My wife and I were most reluctant to accept these gifts. However, we kept them because it was difficult under the circumstances to do otherwise. Although my wife has worn the necklace, I have never worn the ring. I have since asked and been informed by Mr. Bedell that the ring and necklace together cost \$3,400 and were charged to one of his companies as a business promotion expense.

I emphasize that these items were given to us as presents. I did not receive them because of any agreement or understanding that I was to give Mr. Bedell's records any special treatment. Nor did I give Mr. Bedell's records or his artists any special treatment because of these gifts.

Next I would like to discuss a trade practice in which this committee has expressed an interest. Namely, the reimbursement of talent fees. As this committee has been informed in prior testimony, it has not been an uncommon practice in the broadcast industry for stations, program packagers and networks to accept reimbursement for talent fees paid to performers from record companies and talent agents.

During the early months of Click's production of "American Bandstand," from January 1958 to October 1958, Click did frequently receive such reimbursement.

During this period of time in 1958, Click did not have a sufficient budget to allow it to pay more than a small number of performers the AFTRA scale. The program was in its tentative or experimental stage. I, myself, received a nominal salary. We advised many of the artists' managers, record manufacturers and record distributors who wanted to arrange for appearances of entertainers, in whom they were interested, on the "Bandstand" show of our situation.

As a result, a number of such managers, manufacturers and distributors agreed to reimburse Click for the fees paid by Click to the performers in compliance with union scales. However, I want to stress the fact that we did not accept talent just because reimbursement of fees was offered.

We only accepted those performers who we thought should be on the show. In October 1958, more than a year before this practice was questioned by this committee, Click stopped accepting reimbursement for performer fees because of a change in policy on the number of performers appearing on the show, some relaxation as to the amount of available budget, and my own preference. There has been no reimbursement of performer fees to Click since that time.

It was suggested in testimony given to this committee, by an artist named Bill Parsons, that there may have been some reimbursement by him of the talent fees which he received for an appearance on "American Bandstand" and for an appearance on my Saturday night program.

In both instances, Mr. Parsons received applicable union scale payments which were paid to him by checks respectively from Click Corp., and from Drexel Productions, Inc., payable to his order.

I will offer the canceled checks, endorsed on the back by him. I swear that neither Click Corp., nor Drexel Productions, Inc., was reimbursed by Mr. Parsons, or by anyone else, for his appearances on these two programs.

Now that I have given you in some detail the scope of my interests and activities and have attempted to put in perspective certain specific events which seem to be of the greatest interest to your investigators, I would like to add this comment. Obviously, I do not have personal knowledge of all of the day-to-day operations of these various companies. Many hundreds of transactions were involved and of course I could not keep up with them all. Nor did I try. I did obtain administrative personnel whom I thought to be competent and trustworthy.

I have had a crowded and complicated schedule for the last few years. The production of six or seven network shows per week, motion picture activities, writing, personal appearances, and record hops have not afforded me the opportunity for really close administration or careful supervision of these various companies.

I undertook to lay down policy and made myself available for conferences whenever the need arose. By and large, however, these many activities carried on in my behalf were delegated to others. They, necessarily, had to be.

Of one thing I am very sure and that is that I never consciously used my privileged position as a broadcaster to wrongfully promote or unfairly favor my outside interests.

I would now like to comment upon the Computech analysis which was prepared at my request and presented in this record by your staff.

From what I have read and what has been reported to me, there has been considerable discussion of this analysis and its conclusions have been severely attacked. It is with some hesitancy that I raise this question but in fairness and justice to the individuals I retained for this purpose, I feel that I must make at least two points with respect to the study.

The chronology of this project, I submit, is of some importance. I ask you to remember that I was subpoenaed at the end of December 1959, to appear before this committee on February 9. After consultation with counsel, I authorized them to retain the services of an outside independent agency for the purpose of making a survey of all the titles and plays on "American Bandstand" since it went on the network. So this necessarily was a job that had to be expedited on a priority basis.

The second point I wish to emphasize is that even before the results of this survey were in, I advised your investigators that it was in process and identified the company I had engaged for this purpose. I was clear in my own conscience that this analysis would establish that my record plays were based on my judgment of what would be popular. My own interpretation is that this study establishes just that.

In any event, your investigators were promised this data before I knew what the results would be. I think it is appropriate for me to add that I was repeatedly requested by your staff to make this data available. This I promised to do as quickly as it was completed and I directed my counsel to do so, and they did.

I do not intend, nor do I have the qualifications to defend or explain this analysis. I can only say to you that I requested it to be made in good faith and I have confidence that my instructions were carried out in the best of faith.

I have been profoundly disturbed at the examination of Mr. Goldstein, the project manager. It will be a source of great regret to me personally if, as a result of his professional activities on my behalf, his integrity or reputation is brought into question.

I am told by the personnel of Computech that some points in the analysis submitted by your own experts are also subject to serious challenge. They informed me that certain assumptions made by your own experts are not justified. I have no way of knowing this, but if this battle of experts that has been developed before your committee is going to be used as the basis for any conclusion respecting my own conduct, I submit that the interests of fairness require that the Computech experts and their consultants be given a further opportunity to submit comments on the counteranalysis that has been placed in this record by committee witnesses.

Finally, gentlemen, let me say that I felt that the results of the Computech survey verified my own belief that I played records according to their popularity. There also seems to be a question as to whether I can make or break a record. This is a separate question which I am willing to discuss if the committee desires.

I must admit that when I saw Computech's factual compilations showing the percentage of plays of records in which I had some conceivable interest, I was surprised at the high percentage of such plays. Even taking into account that a large number of these plays were of records which were pressed by Mallard which was primarily in the business of pressing the overflow of hit records, and that another large group were distributed by Chips which handled a large number of records in the singles field, a field from which most of the records on my programs were obtained, the percentage of plays of records in which I had a conceivable interest was high enough to warrant an inference that I was favoring records in which I had some interest.

The truth, gentlemen, is that I did not consciously favor such records. Maybe I did so without realizing it. In that connection, I would note that until this committee's activities, no one had really pointed out the inconsistency of performing records and owning an interest in record and music companies.

At this point, I would like to add a few comments as to the standards I have used in selecting the records and artists for my programs. Needless to say, there have been countless reasons behind the selection of hundreds of records and artists. The one basic question is: Will the audience be entertained?

Other questions are: Is it the kind of music they will like well enough to put money into jukeboxes to hear?

Will they request it?

Will they eventually buy the record themselves?

I have felt that if a record has any of these "ifs" connected with it, it would be well to program it.

Records, nowadays, are selected for play based mostly on the possibility of pleasing the greatest number of people. This in no way

has anything to do with the style of music, the artists involved, the labels, the publishers, or the licensing societies.

If you desire to follow the tastes of your audience, and be as far ahead of that taste, or at worst neck-and-neck with it, you are required to seek out avenues of early information regarding the possibilities of a record's success. Often it's a professional guess based on tips, information gathered through the grapevine, a storekeeper's excitement, requests, mail, actual sales, and any other means of getting the feel that a record has the magical ingredient of a hit.

As long as your professional guess of hits-to-come is consistently right, you're in business. My record of guessing has been pretty good. In other words, the records most played were the hits of the day, the biggest sellers.

It goes without saying that the above generalities apply in most cases of consistent play on the air. There have been many cases of single plays, an artist available for an appearance, but no hit record involved, and many wrong guesses as to hits. In these cases, if the record didn't show signs of being a hit, it would be dropped from programing.

Sometimes I aired a record because it proved to have a visually interesting effect, that is, the teenagers always danced a specific kind of dance to the record, which gave us a little touch of variety. For obvious reasons records having religious qualities were not aired. I am sure it is not appropriate to have dancing going on during such music, although some artists have performed semireligious works on the programs, usually around Christmas.

This brings up the topic of artists. Regarding "American Bandstand," most of the bookings were made on artists who were available at the time for an appearance in Philadelphia. Usually a request from a distributor, manager, or record company would come through; the artist is available in the next 3 weeks, the artist will be in town Tuesday, the artist is making a 2-week promotion tour and will pass through Philadelphia on the 9th, will you use him, her, or them?

Depending upon availability of time, the recording and its suitability for our programing, the artist might or might not be booked.

We have aired practically every name artist in popular music, as well as a large number of unknowns, literally hundreds of artists in the past 2½ years. They have sung, played, and performed virtually every kind of music in the popular field: rock and roll, country and western, jazz, classics, boogie-woogie, big band music, semiclassical, and even opera, all the facets of music that make up the popular field.

My Saturday night show is the current answer to the old "Hit Parade." Therefore, the artists requested to appear on that show had usually one or more of the following qualifications:

1. The artist had a current hit record. This was the most frequent barometer used.
2. The artist had a hit record on the way down and a new release just coming out.
3. The artist had the fast-rising hit of tomorrow.
4. The artist had an established name, no hit, but asked to appear.
5. The artist could be used for programing variety.
6. The artist was available to fill in a last-minute hole.

It would take me hours and many sheets of paper to completely tell you the story of booking artists and selecting music to keep up with the trends. Generally, though, these shows owe part of their success to the intelligent following of teenage tastes in music, movies, fads, and custom. By keeping up with as many aspects of teenage life, and presenting the songs and artists that please young people, and, believe it or not, please millions of adults at the same time, one cornerstone of the shows has been laid. This obviously cannot account totally for their respective measures of success, but being "with the music" of the day and programing for the majority taste is one way of explaining the success of my shows.

I would like to make one further point: Air play alone cannot make a record a hit. As is said in the music business, "if it is not in the groove," it won't make it. In short, if the unknown quality that causes a record to be a hit is not there, no amount of pushing can make it a hit.

Finally, I would like to comment briefly on the following statement in your chief counsel's memorandum of March 16, 1960, on the "Dick Clark Investigation," which was made public, where he said:

Many persons interviewed are reluctant to talk for fear of reprisals in the form of being denied future opportunity of having their records aired or their talents displayed on his or other broadcast programs.

As you probably know, in the past 6 months of investigation, I have been subjected to countless rumors and accusations from a variety of sources, but the implication to be drawn from this particular comment caused me the most distress. This statement really stirred my parents and my wife to voice anger and outrage. I admit it was difficult for me not to make a statement on this point, but, as was my policy throughout, I thought it best to wait to speak of it to you now.

I have never in my life threatened reprisals or used devious methods in negotiating with the hundreds of artists, managers, record companies, publishers, or songwriters that I have dealt with in my career. Many of the individuals involved are now not even vaguely associated with the music or entertainment industry and have absolutely no present connection with the business. These persons would have nothing to lose by commenting or complaining about me. They could not possibly fear reprisals for speaking out if they had anything to say.

I am not, of course, foolish enough to believe that some individuals with whom I have come in contact have, for one reason or another, not taken a liking to me, but should any man accuse me of exacting tribute or using coercion, this man would not be telling the truth.

As the time has rolled along during the "Dick Clark Case," I have received countless telegrams, letters, calls, and personal offers of help from hundreds of my associates in show business. Talent I have worked with, actors, singers, and musicians, have offered to speak in my behalf. The most important as well as the everyday people in our industry have offered time and time again to assist me in any way. I tell you of these instances, which touched me personally, to try, in some way, to indicate the manner in which I have always conducted my personal and business affairs. I believe I have conducted my affairs in a fashion that has won for me friendships, loyalty, and a feeling of good will.

I would like to thank you for the opportunity to read this statement. I have noticed that many of the people who have testified before you in the past months have said something to the effect that they were pleased to be here. I would not be completely frank if I were to say that. In all honesty, not much that has happened to me in the past 6 months has been pleasant. I frankly admit engaging in practically every phase of show business and music, of making money from my efforts, and of doing what many other show business personalities have done. I have tried to be as factual and as candid as possible in this statement and in the many hours I have spent chatting with your investigators. I do not contend that I haven't made some mistakes along the way; however, I have always sought to conduct my affairs with honesty and integrity.

This investigation has not been an easy or pleasant ordeal. It has been difficult for my family and friends as well as for me. It is certainly not easy to sit by awaiting the chance to speak, but if by your committee's activities new ethical standards for the music business can be established, I am glad to have participated.

I thank you for the chance to read the statement.

The CHAIRMAN. Does that complete your statement?

Mr. CLARK. Yes, sir.

The CHAIRMAN. Mr. Clark, you have given a very detailed analysis of your activities. You seem to reflect some feeling, as I see it, that this subcommittee has engaged in an unfair investigation of your activities in the broadcasting industry. You are certainly entitled to your feelings and your opinions about it. You are easy to listen to, and in the presentation of the statement there are some things that I want to have the record show at this point before any interrogation starts.

In the first place, you seem to reflect through the statement that the investigators have been the ones interested. Now, I think we have a very fine and efficient staff. The investigators were doing the job as the subcommittee had directed them to do. So your numerous references to investigators is not necessarily because the investigators were interested but because they are employees of this subcommittee, and I, as the chairman, directed them to get all the information, and to get the information for this subcommittee.

Mr. CLARK. I understand.

The CHAIRMAN. Certainly they were instructed to do it in a manner, and they have performed their duties in a manner that is acceptable, proper, and without impugning anyone.

Mr. CLARK. That is true, they are a very cordial group of gentlemen.

The CHAIRMAN. I thought in fairness to you and in fairness to the subcommittee and to the American people that little bits of your affairs coming out from time to time, or a halfway, shoddy investigation, would be a great disservice, and I insisted that the investigation be completed and all the facts determined before we entered into this hearing, which of course has created much interest and concern throughout the country, of which you are well aware.

Mr. CLARK. Yes, sir.

The CHAIRMAN. In the second place, I have no apology, whatever, for this subcommittee; and its investigation of your activities has not been any different from the investigation of others who are using the media, the broadcasting industry.

I wanted to make that statement to let you know that you were not singled out here as the only individual to provide information the subcommittee is interested in, for what it considers important legislation in this field. And on that score, I think your statement was most appropriate.

Mr. LISHMAN, do you have any questions?

Mr. LISHMAN. Yes, sir.

Mr. CLARK, will you please turn to page 18 of your statement. And I would like to ask you a few questions about Mayland Music, Inc., Bernie Lowe and Click Corp., and the record song "Butterfly."

Is it correct that the song "Butterfly" was owned by Mayland Music, Inc.?

Mr. CLARK. As far as I know; yes.

Mr. LISHMAN. And is it correct that Mr. Bernie Lowe is the owner of that company?

Mr. CLARK. That I do not know.

Mr. LISHMAN. We received testimony from Mr. Lowe in executive session to the effect that he was. Will you accept that as correct?

Mr. CLARK. I will accept his word; yes.

Mr. LISHMAN. Have you ever been associated in any of your corporations with Mr. Lowe?

Mr. CLARK. Yes.

Mr. LISHMAN. Which corporations were those?

Mr. CLARK. The Chips Distributing Co. and the Mallard Pressing Co.

Mr. LISHMAN. Was he also distributor for Swan Records?

Mr. CLARK. That is right.

Mr. LISHMAN. So you had a variety of relationships with Mr. Bernie Lowe, is that correct?

Mr. CLARK. That is true.

Mr. LISHMAN. Now, do I understand your testimony to be that Mr. Lowe offered you royalty payments on "Butterfly" and that you refused, but that he insisted, and eventually thrust \$7,000 upon you, which you accepted as your share of royalties on this song?

Mr. CLARK. I don't know about the choosing of the word "thrust."

Mr. LISHMAN. Well, did he give it to you?

Mr. CLARK. Yes, sir.

Mr. LISHMAN. And you accepted it?

Mr. CLARK. That is true.

Mr. LISHMAN. And your testimony is that you had no agreement with him about this matter? I refer you to pages 18 and 19 of your statement.

Mr. CLARK. I told him it wouldn't make any difference one way or the other.

Mr. LISHMAN. Did you or did you not have an agreement with him that you would receive a share of the royalties on this song? That is a simple question.

Mr. CLARK. It was an oral agreement, yes, that I would receive a share of the royalties.

Mr. LISHMAN. Well, where in your statement do you refer to this agreement that you had with Mr. Lowe?

The whole tenor of your statement was that you had no agreement with him, that it wasn't necessary to have an agreement, that he came, nevertheless, and gave you the \$7,000.

Mr. CLARK. Well, I don't know whether that is a technicality or not, Mr. Lishman, an agreement—

Mr. LISHMAN. I just want to refresh your recollection by handing you a photostatic copy of a letter signed by you dated December 4, 1959, addressed to Mayland Music. The first sentence says:

Some time ago we entered into an oral agreement in which you gave me 25 percent of the publisher's share of the song "Butterfly."

I will hand you this photostatic copy containing your signature and ask you if this is not a correct copy of that letter signed by you?

Mr. CLARK. I don't have to see it, Mr. Lishman, I remember writing it.

Mr. LISHMAN. Would you like to revise your testimony now and state that you did have a definite agreement with Mr. Lowe's company, Mayland Music, that you would get 25 percent of the royalties from this song?

Mr. CLARK. Mr. Lishman, I tried to outline in here the series of events and how it came about. I do not know whether that is an agreement or not an agreement. If the industry as a lay person might call it an agreement, but it was a one-sided agreement initially, and in the end the royalties were paid. If this is an agreement within the terms of the law, I will be very happy to concede that it is an agreement.

Mr. LISHMAN. Mr. Clark, I didn't use the word "agreement," you used it. It is in your letter:

Some time ago we entered into an agreement.

Mr. CLARK. I don't know what the significance of an agreement is, but if I wrote "agreement" I wrote it as a I interpreted it.

Mr. LISHMAN. In other words, Mr. Lowe was not just giving you this \$7,000 out of pure friendship?

Mr. CLARK. I think friendship had a great deal to do with it.

Mr. LISHMAN. Well, what was this oral agreement, what did you agree to do in order to get this 25 percent of the royalties on the song "Butterfly"?

Mr. CLARK. I agreed to do absolutely nothing.

Mr. LISHMAN. You agreed to do nothing, but nevertheless, pursuant to an oral agreement, you got \$7,000. Is that what you mean to say?

Mr. CLARK. Yes.

Mr. LISHMAN. Why did you have to enter into an agreement to do nothing?

Mr. CLARK. Mr. Lishman, you are an attorney, you put a lot more significance into the word "agreement" than I did when I wrote that letter.

Mr. LISHMAN. I am taking your testimony here, which states in effect that you had no agreement, and now we have a letter which said you did have an agreement. I am trying to get this straightened out. I am perfectly willing to sit here and listen to your explanation. If you had the oral agreement, what did you agree to do?

We have asked this question of numerous diskjockeys who have received payola and we have had much difficulty in getting the answers from them. I am asking you, what did you agree to do to get the \$7,000?

Mr. CLARK. Absolutely nothing.

I said I would be very, very happy, as I pointed out in the statement, if he had a hit record. He said, you are going into the publishing business, I want to help you get started and I will give you a hunk of royalties on this particular song. I said it is not necessary. Now, whether that is an agreement or no I don't know, but some time later the payment was made, and I accepted it. There were certain services I rendered to him, but I never made any agreement along those lines.

His main problem was that he had what they call in the business a cover record, a large company that covered this record, and he asked me at one point if I thought he would lose it, and I said "I don't have the vaguest idea, but I will tell the fellows across the country that this is big in Philadelphia," which I pointed out in the statement I did.

MR. LISHMAN. There is another incidence about the \$7,000 payment which you got from Mayland Music. Are you familiar with the fact that originally the first check for \$7,000 was drawn payable to the order of Margaret W. Mallery?

MR. CLARK. Mr. Lishman, may I go on and give you that complete statement there?

MR. LISHMAN. Is that correct?

MR. CLARK. That is true, yes.

MR. LISHMAN. And who was Margaret W. Mallery?

MR. CLARK. Margaret W. Mallery is my mother-in-law, who is a widow. And at the time Mr. Lowe brought me this information that he had \$7,000, I fortunately was in a position not to need it. I said to him, "Bernie, there is one way I would like to be able to forward to my mother-in-law such moneys as she needs for the education of her children and the operation she needs," and so forth, "make the check out to her and we will put it in a bank here in Philadelphia and she can draw on it when she wants it."

Now, as I thought about it, it occurred to me that it is quite conceivable that not only I would have to pay taxes on it, but Mrs. Mallery might. So I closed the account, we paid interest on it, treated it as a loan, had it paid to the Click Corp., and the due taxes were paid on it.

There was no subterfuge, the fact that she is my mother-in-law is a pretty well-known fact, and she is also listed in practically every corporation I own.

MR. LISHMAN. But after the \$7,000 check was paid to Mrs. Mallery, did you then arrange to have the check in the amount of \$7,005.38 made payable to the order of Mayland Music, Inc?

MR. CLARK. Yes, sir; I did.

MR. LISHMAN. And did you cause the notation in parentheses to be placed on that check "Reimburse loan"?

MR. CLARK. Yes, sir; I did.

MR. LISHMAN. I will hand you the canceled check and ask you if what I have stated is correctly indicated on that check?

MR. CLARK. Yes, sir.

MR. LISHMAN. Subsequent to Mayland Music receiving this check as reimbursement of a loan, did Click Corp., which is wholly owned by you, receive another check for \$7,000 from Mayland Music?

MR. CLARK. Yes, I think I mentioned that.

Mr. LISHMAN. Now, I would like to have you turn to pages 9 and 10 of your statement.

In connection with Jamie records, that was a company in which you had an interest—

Mr. CLARK. That is true.

Mr. LISHMAN. Do you understand that Jamie records engaged in the payment of payola to various diskjockeys?

Mr. CLARK. I was made aware of that fact upon the reading of the newspapers yesterday or the day before when the testimony was given.

Mr. LISHMAN. What business was Jamie records in?

Mr. CLARK. The manufacturing of records.

Mr. LISHMAN. Well, what interest did you have in Jamie records?

Mr. CLARK. Twenty-five percent.

Mr. LISHMAN. And who were the other owners of that company?

Mr. CLARK. I think I have outlined in my statement, Mr. Lishman, Mr. Finfer, Mr. Lipsius and Mr. Hodge.

Mr. LISHMAN. Now, during the 20-month period, is it correct that Jamie records paid out in the form of promotion approximately \$3,100 to diskjockeys for the purpose of having them plug songs of Jamie records?

Mr. CLARK. I have no knowledge of that, Mr. Lishman. You will have to ask Mr. Finfer.

Mr. LISHMAN. Mr. Finfer has already been asked, and he admits the payment, but he doesn't call it payola, I believe he had other names for it, consultation fees, and so on.

Now, turning to page 10, the Chips Distributing Corp., you own one-third of the stock in that company?

Mr. CLARK. Yes, sir.

Mr. LISHMAN. And Mr. Chipetz and Bernie Lowe also own a one-third interest; is that correct?

Mr. CLARK. Yes, sir.

Mr. LISHMAN. Are you aware of the fact that in a 20-month period this company paid approximately \$20,000 in payola to various diskjockeys in order to get them to play the songs being distributed by that company?

Mr. CLARK. Mr. Lishman, I don't know what the promotional expenses in detail were made for or why they were made. I imagine you got that information from Mr. Chipetz. I was aware somewhere along the line, through a very casual conversation with Harry Chipetz, that he had paid payola. I can't pinpoint the day that he first told me, and I don't think it is terribly important. You will probably wonder why I didn't know in detail. Frankly, it never occurred to me to look into it in detail.

Mr. LISHMAN. Mr. Clark, did you tell one of our investigators that you equated the promotion account of Chips with payola, and that you had undertaken no steps whatsoever to cause its discontinuance?

Mr. CLARK. I don't remember the first part of that conversation, but one of your investigators along the line said to me something to the effect that, "If you had any knowledge of payola going on at Chips, why didn't you stop it," and I gave him the answer that I would no more think of telling Harry Chipetz how to run his business than the man in the moon, because it was his responsibility, and this was not a particularly unusual practice in this business.

Mr. LISHMAN. You did know about it going on?

Mr. CLARK. That I did.

Mr. LISHMAN. And you did know it at the time you divested yourself of the interest in the company?

Mr. CLARK. That—I am not sure of the date, it would be maybe shortly before I divested—before I divested, yes.

Mr. LISHMAN. And this was your business too, wasn't it?

Mr. CLARK. Yes.

Mr. LISHMAN. Well, isn't it sometimes convenient, Mr. Clark, not to get to know too much, and then if someone asks the questions, then you wouldn't have the answers?

Mr. CLARK. Mr. Lishman, in certain businesses it may be, but it hasn't been a practice with me. I have been pretty busy.

Mr. LISHMAN. Well, it seems to me that, with rather substantial amounts of money that you were making in these various businesses, you must have followed their operations to some degree, or otherwise they wouldn't have been so successful.

Now, do you mean to say that when you get financial statements from Chips Distributing Corp. showing approximately \$20,000 paid out in promotion and you are in the business, and you know that payola is a practice in this business, didn't you ever inquire whether any of that \$20,000 for promotion was for paying diskjockeys?

Mr. CLARK. Never.

Mr. Lishman, the statements that I got in all of my businesses, there is one thing that I have never fallen in love with and never enjoyed, and that is accounting. I told your accounting investigators this, and we had quite a discussion about my accounting background, the fact that I went to a business school, and so forth. The only thing I ever failed in my life is mathematics. I don't like accounting, I don't read statements well, I don't think anybody does. My wife reads all the personal accounts at my home and keeps the books. When I look at a statement I look to see if there is a profit; if there is a profit and I own a third of it, I divide it by three, and if it comes out, say, \$6,000, I figure that is my profit for the year. I am not versed in the ways of breaking down profit and loss statements.

Mr. LISHMAN. Mr. Clark, I think this is an appropriate time to introduce a summary of your investments in wholly owned and other companies, the increases in your stockholder's equity, and the salaries received by you in the period 1957 to 1959.

I believe a copy of this has been previously furnished your counsel and also to your accountant.

Am I correct in understanding that the figures presented in this document just handed to you have been agreed upon by your counsel?

Mr. CLARK. Yes.

Mr. LISHMAN. And you don't dispute the accuracy of the figures in this document?

Mr. CLARK. I haven't looked at it that closely, Mr. Lishman. I probably wouldn't know whether it was right or not.

Mr. LISHMAN. Well, do you know whether or not your accountant has examined this document?

Mr. CLARK. I am sure he has.

Mr. LISHMAN. Haven't you spoken to him about it?

Mr. CLARK. He provided me the copies of it.

Mr. LISHMAN. Did he indicate to you that he objected to its accuracy?

Mr. CLARK. No, sir.

Mr. LISHMAN. Mr. Chairman, I would like to have this document introduced in the record at this point.

Mr. MOSS. Mr. Chairman, I think it would be advisable to bring out more clearly that there is no challenge to the accuracy of these figures. Mr. Clark has indicated that he has not looked at them.

You state that his counsel has agreed to them. Is your counsel authorized to agree to them?

Mr. LISHMAN. His accountant.

Mr. MOSS. Is your accountant authorized to agree to them?

Mr. CLARK. I think so, Mr. Moss.

Mr. MOSS. You have confidence in him?

Mr. CLARK. Yes.

Mr. MOSS. You accept these as facts?

Mr. CLARK. Yes.

The CHAIRMAN. That is understood, Mr. Clark, not only by you, but by your accountant and also your attorney?

Mr. CLARK. I think so, yes.

The CHAIRMAN. Very well, then, let it be received for the record with this identification, it can be so-called an understanding.

(Summary of investments follows:)

RICHARD W. CLARK

Summary of investments in wholly owned and other companies, increases in stockholder's equity, etc., and salaries received by him, 1957-59

(Details on schedule appended)

	Cash invested	Increase in stockholder's equity over investment	Salaries ¹ received or accrued	Cash received
Active companies.....	\$10,988	\$170,053		
Salaries received.....			\$79,729	\$79,729
Salary accrued.....			24,141	
Subtotal.....			103,870	
Companies being liquidated.....	6,750	122,302		
Sale price of certain assets.....		¹ 21,900		21,900
Salary received.....			1,200	1,200
Companies in which Clark sold his interests.....	25,225			25,225
Profit on sales of stocks.....		¹ 85,490		85,490
Salaries received.....			62,500	62,500
Claban Publishing Co., Inc.....	250	6,500		
Binlark Co. (a partnership).....	10,560	2,775		10,560
Total.....	53,773	409,020	¹ 167,570	286,604

¹ Before deduction of Federal, State, and local income or capital gains taxes.

	Investment		Stockholder's equity		Increase or (decrease) in stockholder's equity versus investment	Gross salaries paid or accrued to Clark from inception of companies (1957-59)
	Date	Amount	1959	Amount		
I. Active corporations in which Clark owns all or substantially all the stock:						
Drexel Television Productions, Inc., and its wholly owned subsidiary	July 1, 1958	\$250	Dec. 26	\$30,313	\$30,063	\$8,835
Drexel Shows, Inc.	Jan. 19, 1959	250	Dec. 31	50,740	50,490	2,170
Subtotal		500		81,053	80,553	11,005
Drexel Pictures Corp.	Mar. 5, 1959	1,000	Dec. 31	1,000		
Drexel Films Corp.	Jan. 2, 1959	1,000	do	123	(877)	6,500
Post-Grad Products, Inc.	January 1959	5,238	do	2,063	(3,175)	
Clek Corp.	Mar. 8, 1957	1,000	Nov. 30	37,929	36,929	86,365
Rosko	Mar. 27, 1958	250	do	17,266	17,016	
March Productions Corp.	July 13, 1958	1,000	Dec. 31	27,156	26,156	
February Corp.	July 29, 1958	1,000	do	14,451	13,451	
Subtotal		10,988		181,041	170,053	103,870
II. Corporations in which Clark owns all or substantially all the stock and which are in process of liquidation:						
January Music Corp.	July 22, 1958	1,000	Nov. 30	11,593	10,593	
Sea-Lark Enterprises, Inc.	July 29, 1957	1,000	do	82,879	81,879	
Arch Music Co., Inc.	November 1958	4,000	do	(63)	(4,063)	1,200
Globe Record Co. and its wholly owned subsidiary	Mar. 10, 1958	500	Oct. 31	34,249	33,749	
Kincord Music Corp.	Mar. 11, 1958	250	Nov. 30	394	144	
Subtotal		6,750		129,052	122,302	1,200
Additional proceeds to January Music, Sea-Lark Enterprises, and Arch Music from sales of certain assets in course of liquidation (before deduction of Federal, State and local taxes).				21,900	21,900	

	Investment		Date sold	Proceeds	Profit	Salaries
	Date	Amount				
III. Companies in which Clark has sold his interests and percentage of ownership held:						
Chips Distributing Co., Inc. (33 $\frac{1}{3}$ percent).....	March 1958.....	\$10,000	December 1959.....	\$23,360	\$13,360	
Anita Pressing Co. (50 percent).....	August 1959.....	500	do.....	500		
Mallard Pressing Co. (50 percent).....	May 1958.....	7,500	do.....	30,534	23,034	
Startime Industries Corp. (40 percent).....	May 1959.....	2,000	February 1960.....	6,600	4,600	
Jamie Record Co. (25 percent).....	June 1957.....	125	December 1959.....	15,000	14,875	\$16,700
Swan Record Corp. (50 percent).....	December 1957.....	500	do.....	30,000	29,500	45,800
Rayo Products Co. (46 percent).....	September 1958.....	4,600	January 1960.....	4,721	121	
Subtotal.....		25,225		110,715	85,480	62,500
IV. Company in which Clark holds 50 percent of the stock: Claban Publishing Co., Inc.	March 1959.....	250		² 6,750	6,500	
			Withdrawal of capital			
V. Partnership:						
Binark Co. (27 percent interest).....	1957.....	11,890	\$11,880		3,122	
Less share invested by Richard A. Clark, Sr.....		1,320	1,320		347	
Net share of Richard W. Clark.....		10,560	10,560	13,335	2,775	
Total.....		53,773		462,793	409,020	167,570

¹ Held in trust for Barbara Clark, his wife.

² Approximate amount.

Summary of investments in, current net worth, and proceeds received from companies owned in whole, or in part by Richard W. Clark

I. Active corporations in which Clark owns all or substantially all the stock :		
A. Investments	\$10, 988	
B. Retained earnings	170, 053	\$181, 041
C. Gross salaries received by Clark from inception of companies (before deduction of personal Federal, State, and local income taxes)		103, 870
Subtotal		<u>284, 911</u>
II. Corporations in which Clark owns all or substantially all the stock and which are in process of liquidation :		
A. Investment	\$6, 750	
B. Retained earnings	122, 302	129, 052
C. Additional proceeds to corporations from sales of assets in course of liquidation (before deduction of Federal, State, and local income taxes)		21, 900
D. Gross salaries received by Clark from inception of companies (before deduction of personal Federal, State, and local income taxes)		1, 200
Subtotal		<u>152, 152</u>
III. Companies in which Clark has sold his interests :		
A. Investment	\$25, 225	
B. Profit on sale or redemption of stock (before deduction of Federal, State, and local income taxes)	85, 490	110, 715
C. Salaries received by Clark from inception of companies (before deduction of personal Federal, State, and local income taxes)		62, 500
Subtotal		<u>173, 215</u>
IV. Company in which Clark holds 50 percent of the stock, Claban Publishing Co., Inc. :		
A. Investment		250
B. Approximate amount to be realized by Clark (based upon best available figures)		6, 500
Subtotal		<u>6, 750</u>
V. Partnership (Binlark Co.) :		
A. Investment		11, 880
Less share invested by Richard A. Clark, Sr.		1, 320
		<u>10, 560</u>
Less capital withdrawn by Clark		10, 560
Subtotal		<u>0</u>
B. Profit from Binlark Co. (before deduction of personal Federal, State, and local income taxes)		2, 775

Mr. LISHMAN. Mr. Clark, in this document, its schedules cover a summary of your investments in wholly owned and other companies increasing stockholders' equity and salaries received by you during 1957 to 1959, is that correct?

Mr. CLARK. Yes.

Mr. LISHMAN. Is it correct that the summary on the first sheet shows the cash invested by you in companies during this period amounted to \$53,773?

Mr. CLARK. Mr. Lishman, if I may again say, whatever is down here is what my accountant says is true, I told Mr. Moss that I believed my accountant. I can't verify it any more than that.

Mr. LISHMAN. Well, that is what the first column shows, is that not correct?

Mr. CLARK. Yes.

Mr. LISHMAN. The second column shows the increase in your equity as a stockholder over your original investment, is that not true?

Mr. CLARK. Yes, sir.

Mr. LISHMAN. And does it not show that the increase in your equity as a stockholder over your original investment came to \$409,020?

Mr. CLARK. That is true. That is what the statement shows.

Mr. LISHMAN. And as I understand it, your accountant, Mr. Rosenthal, and our accountant, Mr. Ross, and others, are in agreement with these figures.

Now, in the third column we have listed the total salary received or accrued by you during this period of deduction of taxes as \$167,570.

Mr. CLARK. Yes.

Mr. LISHMAN. So that the cash received by you so far amounts to \$286,604, is that correct?

Mr. CLARK. That is what it shows on the statement, yes.

Mr. LISHMAN. Now, is it correct that the largest sheet details the summarized figures which I have just read to you?

Mr. CLARK. As I say, this is the first time I have looked at it at any length, I assume so, yes.

Mr. LISHMAN. In other words, on this larger sheet, in the first column we have the date and the amount of your original investments, and then in the succeeding columns going across from left to right we have the increases of your equity amounts in each of these companies, is that correct?

Mr. CLARK. It seems to be, yes.

Mr. LISHMAN. Isn't it correct that in order to get a successful commercial exploitation of a record, it is necessary for that record to have exposure on the air?

Mr. CLARK. I think that is a pretty safe statement, yes.

Mr. LISHMAN. And isn't it also necessary to have that exposure frequently over a comparatively short period of time?

Mr. CLARK. Not necessarily.

Mr. LISHMAN. Well, generally speaking?

Mr. CLARK. Generally speaking, yes.

Mr. LISHMAN. Now, who are the people who are interested in a diskjockey exposing a song on the air?

Mr. CLARK. Songwriter, music publisher, writer, the artist—

Mr. LISHMAN. The songwriter is interested?

Mr. CLARK. The songwriter.

Mr. LISHMAN. The music publisher is interested?

Mr. CLARK. Yes. The artist.

Mr. LISHMAN. The artist.

Mr. CLARK. The record manufacturing company.

Mr. LISHMAN. Yes.

Mr. CLARK. The distributor—and any friends of the people involved along the way.

Mr. LISHMAN. And last but not least, the diskjockey.

Mr. CLARK. I misunderstood your question.

Mr. LISHMAN. Now, they are all pushing this thing along. Under your normal conditions what compensation does a songwriter get for his song?

Mr. CLARK. He gets a share of the royalties.

Mr. LISHMAN. He gets a share of the mechanical royalties and performance royalties?

Mr. CLARK. That's right.

Mr. LISHMAN. And what under normal conditions does a music publisher get?

Mr. CLARK. He gets the same amount that the songwriter gets, with the exception of any sheet music that he might sell.

Mr. LISHMAN. In other words, he gets profits from mechanical royalties and performance royalties?

Mr. CLARK. Yes.

Mr. LISHMAN. The talent or artists, what do they get out of it?

Mr. CLARK. It depends on the stature of the talent and the contractual obligations of the record company to him, they get so much, period.

Mr. LISHMAN. The record manufacturer, what does the record manufacturer get?

Mr. CLARK. It depends upon his distribution agreement.

Mr. LISHMAN. He makes a profit on the sales of records, is that true?

Mr. CLARK. That is true, yes.

Mr. LISHMAN. Now, the record distributor makes a profit on the sales of the distribution of labels, is that correct?

Mr. CLARK. Yes—yes, various labels.

Mr. LISHMAN. Let's take the case of a diskjockey who doesn't have a single interest, either as a songwriter, a publisher, as talent, a record manufacturer or record distributor, he is just a plain naked diskjockey, isn't it correct, that all these people who are trying to make a commercial success out of this song are urging him and doing everything they can to get this diskjockey, especially if he is on a network or on a large station, to give exposure to the record? Isn't it true the songwriter will try it?

Mr. CLARK. That is true, yes.

Mr. LISHMAN. Wouldn't the music publisher try it?

Mr. CLARK. Yes.

Mr. LISHMAN. Well, the talent, naturally, might even pay you to get on the show, for all I know. The record manufacturer will certainly try it?

Mr. CLARK. Yes.

Mr. LISHMAN. And so will the record distributor?

Mr. CLARK. Yes.

Mr. LISHMAN. Now, we have all these people, all with a reservoir of possible profits that they are willing to split with the diskjockey, or give him a payment if he will only give them exposure, because they know without exposure their product will not become a commercial success, is that correct?

Mr. CLARK. You are asking me is that correct to what, Mr. Lishman?

Mr. LISHMAN. Is it correct that without exposure of the record it will never become a commercial success?

Mr. CLARK. If you want to leave out the word "never", I will agree with you.

Mr. LISHMAN. It is very unlikely?

Mr. CLARK. Very unlikely, it is true.

Mr. LISHMAN. So we have that situation. Now, what is your definition of payola in general, not in your particular case, but what do you understand payola to mean?

Mr. CLARK. You will find that on page 1 of the statement: "I want to make it clear, immediately, that I have never taken payola. In brief, I have never agreed to play a record or have an artist perform on a radio or television show in return for a payment in cash or any other consideration."

Mr. LISHMAN. Now, Mr. Clark, you used the word "agreed". You know we have had 20 or 30 diskjockeys here, and not one of them have ever stated that they agreed to take payola, it is always some kind of a telepathic understanding that if everything is going good in appreciation for what they are doing, somehow miraculously they get their money. But not a one of them, with the exception of Norman Prescott and he was in executive session, not a one of them have said that there was any agreement about this thing, it just seems to happen through some kind of psychic understanding among the people involved. So you insist, then, that in order to really have payola, you have to have this agreement, is that right?

Mr. CLARK. Yes.

Mr. LISHMAN. Do you know of any diskjockey that has ever entered into such an agreement?

Mr. CLARK. Firsthand knowledge, no.

Mr. LISHMAN. Have you ever heard of anybody who ever made such an agreement?

Mr. CLARK. At secondhand knowledge, yes.

Mr. LISHMAN. Is it very likely that a man who is taking payola will enter into an agreement about it? Is that a likely thing?

Mr. CLARK. It is quite possible.

Mr. LISHMAN. It is possible, but I mean, would it be normal?

Mr. CLARK. Not unnormal.

Mr. LISHMAN. Now, Mr. Clark, will you turn to page 16 of your statement. Will you look at the last full paragraph, and I will read you a sentence beginning with the word "however":

However, I want to make it equally clear that although my record interests were set up to operate in a normal, competitive manner. I have no doubt but that some of the company rights received by my publishing firms and some of the records owned, distributed or pressed by the companies in which I had an interest, were given to my firms at least in part because of the fact that I was a network television performer.

Now, aren't the most important words in that sentence the fact that company rights were involved by your companies at least in part because of the fact that you were a network television performer?

Mr. CLARK. I have already conceded that point, Mr. Lishman.

The CHAIRMAN. Mr. Lishman, before you pursue that any further or get too far away from the agreement, the situation that you men-

tioned a moment ago, may I interrupt just for this question on that particular point?

Mr. Clark, how long have you been in the entertaining business?

Mr. CLARK. Not quite 14 years. I went in when I was 17.

The CHAIRMAN. In other words, you have had a lot of experience in this business?

Mr. CLARK. Yes, sir.

The CHAIRMAN. And you are familiar with the industry practices and information and the proprieties and so forth that go along with it?

Mr. CLARK. Yes.

The CHAIRMAN. In this business we have had a lot of information, as Mr. Lishman mentioned a while ago, that the practice is rather rampant of certain people taking what is referred to as payola. Almost every one of them say that they did that without any understanding or agreement that it was consultation fees, listening fees, et cetera.

Now, you have already stated that you did not engage in the practice. Is there, within the industry, an understanding of implied agreement as to what takes place in connection with such activity, that you know anything about?

Mr. CLARK. I haven't had that much close association with it, Mr. Harris. I said I had been in the business for 14 years, but I have never sat in on a session where anybody negotiated any payola, and I have never had any lengthy conversations about it.

The CHAIRMAN. I thought that maybe those discussions and conversations with people engaged in certain business would be picked up here and there.

We had Norman Prescott from Boston who outlined the entire activity and how it was carried on, and he very readily stated that he could listen to any one particular program and he could tell you whether or not there was an actual occurrence of payola. He seemed to think that people in the business could readily discover it.

Mr. CLARK. Is Mr. Prescott still in the business? He is not as far as I know.

The CHAIRMAN. I don't think so.

I just wondered, since we have tried over the weeks now to get some answer to this question, and I thought maybe you might help the subcommittee if you have any such knowledge as to whether or not there is any implied agreement in such an activity that you had ever heard discussed within the industry itself; if not, why of course I want you to say so.

Mr. CLARK. I honestly don't—first of all, I am not exactly sure of what you want from me, Mr. Chairman. But as I say, my experience with payola in the music business has been pretty fifthhand. I don't have any direct—I never sat in a room like Mr. Prescott did, if he did, and negotiated it, or what have you. He has the advantage of me there, he has firsthand knowledge.

The CHAIRMAN. Well, the reason I raised the question at this point, as hard as we have tried to get an answer, we have not been able to get one. There have been many, many instances of substantial sums of money paid, and yet they all say there was no agreement, there

was no understanding, it was not for any particular reason at all, except they just did, that is all.

I am still seeking an answer to that question.

Mr. CLARK. I don't think that is too unusual.

The CHAIRMAN. Well, I thought this would be a good point to get that in.

Mr. CLARK. I think it would be interesting, Mr. Harris, if I might just briefly comment. I don't know Mr. Prescott. I have never met him as far as I know, but he has been commended and extolled for what a great thing he has done; I think it would be very interesting to talk to other men who have left the industry and get their opinions.

The CHAIRMAN. We have done that.

Mr. CLARK. Have they substantiated it?

The CHAIRMAN. Some that are still in the industry and others that have left.

Mr. CLARK. Have they substantiated it?

The CHAIRMAN. The general trend through the whole was that there was no understanding, they just accepted the money and the money was paid.

Mr. CLARK. There is almost the weight of evidence against Mr. Prescott. I am not implying what he says is right or wrong, he probably has greater knowledge about what he is talking about than I do.

The CHAIRMAN. Having admitted he engaged in it, he probably would have greater knowledge about it.

Mr. Moss.

Mr. Moss. Mr. Chairman, my observations will not be necessarily in the nature of a question directed to Mr. Clark, but I feel compelled to make some observations regarding the general tone running through the statement, which seemed to lead the people or intend to convey the impression that the subcommittee might be guilty of picking on him.

And I want to point out that this is an ordeal for the subcommittee. Each of us is very busy, each of us has rather significant responsibilities, this being one of them, an assignment we get, a job which can be most distasteful, but nevertheless one which, notwithstanding the general tenor of your statement, you at least agree has made some contribution.

I point out that we have had no one appear before this subcommittee who ever did anything wrong before they appeared. I recall very well the dramatic comments of one, Mr. Charles Van Doren, and a few officials who have left the Government after or prior to appearing before this subcommittee. We do not, quite clearly, seek to get anyone. All we do is expose the facts of practice to public scrutiny. And in doing it, we seek the utmost cooperation, particularly in the field of radio and television because this is a unique industry, probably the only one where, by regulation do we create value. Nothing of value exists until it is regulated and restricted and licensed, and the only justification for the license is that the operator and the performers undertake, in the public interest, to inform and to entertain and to inform and to educate. And it is a very profitable license.

When we are faced, repeatedly—and Mr. Clark, let me assure you that, with a single exception, neither in TV Quiz shows or in payola

has anyone told us that there was ever an agreement. No one ever discusses these things. This is another very unique facet of this industry, it is one where telepathic communications, intellectual osmosis takes place. And that is the manner of communication.

As to all of the practices which readily come up as we investigate, no one admitted to, no one engages in, no one has an agreement. It is an industry on the basis of payola where there is perhaps more brotherly love than in any other business. People just cannot restrain themselves from giving away their wealth, pure affection, nothing expected—occasionally a man might deign to listen to a recording, of course he doesn't have to give his opinion.

This is the picture we have. If you read the testimony week after week, and artist after artist, and diskjockey after diskjockey, and distributor and manufacturer, that is the picture. That is the official record of testimony under oath, a startling thing, a shocking thing. And I just wanted to make this observation, because your statement conveys the same feeling, that perhaps we are probing where we should not, or being a little unfair, as the statements show of virtually every other witness appearing before us. And I just want you to know that I want some sympathy, too. This is an ordeal, let me assure you.

MR. CLARK. Mr. Moss, may I make a comment?

THE CHAIRMAN. Yes, of course.

MR. CLARK. I in no way wanted to imply in the statement that I thought you were picking on me. I indicated on page 1 or 2 that it is extremely difficult to be personally objective. And when you have been pursued and have had your name in the headlines and have had reporters break into the privacy of your home, it is a little difficult not to wonder, "My goodness, what have I done to deserve all this?"

And I am not at this point crucifying the press, that is their job, or even the man who broke into my house, that is his job. It is slightly illegal, I think. And I almost lost a baby-sitter in the process, which is probably one of the most valuable things in the world these days.

But seriously, I don't feel persecuted. If I have conveyed that impression—I may have a small grain of that, but I have not done anything that I think I should be ashamed of or that is illegal or immoral, and I hope to eventually, when we finish, convince you of this.

THE CHAIRMAN. Mr. Derounian.

MR. DEROUNIAN. Mr. Clark, you mentioned a little while earlier that you were bad in math. I should say I do not feel sorry for you, because apparently you know how to count, and I think more students in this country are going to want to fail math if they can be as successful as you are, and I congratulate you for your astuteness.

MR. CLARK. I would not recommend that, Mr. Derounian.

MR. DEROUNIAN. When did you sign the affidavit for ABC and when was the request for the affidavit made to you?

MR. CLARK. I think that is outlined in the statement here if I can find the exact dates.

MR. DEROUNIAN. Just tell me when and whether it was someone from ABC who asked you to sign an affidavit?

MR. CLARK. We had a meeting, at which time they asked of me, "Have you ever taken payola?" and I outlined my various corporate

enterprises and activities to them and said, "No, I have never taken payola. Do you want me to say so?", and they said yes, so I wrote the affidavit which is attached somewhere.

Mr. DEROUNIAN. Did you know that other persons at ABC had been provided standard form affidavits to sign stating that they had not accepted payola?

Mr. CLARK. I think that happened afterwards, and I was the first one to sign.

Mr. DEROUNIAN. From the evidence we have, Mr. Clark, I would describe your affidavit as a Christian Dior affidavit, because it was tailored to your need. Are you acquainted with the fact that yours was a particular kind of affidavit?

Mr. CLARK. Yes, sir; I wrote that affidavit, because mine followed after that.

Mr. DEROUNIAN. Do you know that we have testimony to the effect that other diskjockeys who have admitted receiving payola could have signed your affidavit and been honest about it and still have accepted payola?

Mr. CLARK. I am not aware of that testimony, no.

Mr. DEROUNIAN. Mr. Clark, your estimated gross for the ABC network was about \$12 million a year. Another diskjockey who testifies here, grossed only \$250,000. ABC gave him an ordinary type of affidavit to sign which he could not sign in honesty. He stated he could sign your affidavit in honesty and still have accepted the payola. Would that make any difference in your thinking as to whether you received special treatment in the type of affidavit you were allowed to sign on payola?

Mr. CLARK. I don't think I received any special treatment.

Mr. DEROUNIAN. The record will show that you did, and maybe you will want to change your statement later.

Do you know a Mr.——

The CHAIRMAN. Would the gentleman yield at that point?

Mr. DEROUNIAN. Yes.

The CHAIRMAN. The question of the affidavit has come up on occasion, during the hearings, and as chairman of the subcommittee I tried to restrain further discussion of it. I might say the subcommittee members did accept the suggestion.

Now, the witness has referred to the affidavit, and there have been some questions asked here. And I think probably that the entire affidavit should go into the record at this point, if we are going to discuss and refer to it from time to time.

Mr. CLARK. It is in the appendix, Mr. Chairman.

The CHAIRMAN. Well, if the gentleman would permit, I did not so indicate, but you referred to the appendixes to your statement, and without objection each of the references may be included in the record, and that would also include the affidavit, so it will all get in the record. All of that information with your statement may be included in the record immediately following your statement, Mr. Clark.

Mr. CLARK. Mr. Derounian, could I have just a moment, please, to read the affidavit that you have referred to, not my own, but the standard form, and then may I answer your question?

I think you wanted to know——

Mr. DEROUNIAN. You can answer the question, Mr. Clark.

Mr. CLARK. I have said I never have taken payola. I don't know by whose rules or definitions we are going, but by what I considered to be the ground rules or the definition of that word, I have never taken payola, and I would sign any affidavit, ABC's affidavit, my own, or one that you would like to draw up, because I feel, I believe in my heart, I have sworn here, and I will tell you the truth, I have never taken payola, and I believe that I have been engaged in the music publishing business and the record pressing business and countless other things, as others have, and I have not condemned them for doing this, this was good, sound business, and no one ever blew the whistle or said, "This is a bad thing to do." I think the crime I have committed, if any, is that I made a great deal of money in a short time on little investment. But that is the record business.

If you were to find a commercially successful record and you picked it up for \$125, you could parlay that to \$50,000 or \$100,000 in a period of 6 to 8 months. And that is why everybody is in the record business.

I dare say you probably know somebody who has written a song, or perhaps you have friends or somebody down in the street who has written one. There has never been so many people making records, for the obvious reason that there is a great deal of money to be made from it. But it isn't necessarily illegal or immoral that you put a small amount in and get a large return.

Mr. DEROUNIAN. How do you distinguish your activity from the activity of other diskjockeys who have honestly admitted receiving payola?

We are going to take the definition of the industry based on its customs and practices. We are not going to take your definition, because you are a party in interest, but you have a right to your opinion.

Mr. CLARK. Excuse me, sir.

You said by the customs and practices of our industry. I don't think anybody ever said Dick Clark took payola, except someone who looked into the industry and made that assumption.

Mr. DEROUNIAN. Well, may we say that your investment and financial affluence as a result of your activities certainly leaves room for doubt that you did not accept payola?

Mr. CLARK. Maybe in your mind, but not in mine.

Mr. MOSS. Would the gentleman yield?

I will cover this more fully when we get into examination this afternoon, but I would just like to add to the gentleman's observation that there are coincidences which appear to raise questions as to whether or not payola was taken. And I would refer you to "Sixteen Candles," in which you acquired a copyright interest on November 18 of 1958. Now, in the 10 weeks preceding that assignment date, you played this recording but four times. Starting on November 25, after the assignment, you proceeded to play it a total of 27 times—on November 24, 6 days after acquiring the interest, you played it 27 times.

Mr. CLARK. You said in the 10 weeks before. Was that in a total of 10 weeks, or the week before, or what?

Mr. MOSS. September through to November 24.

Mr. CLARK. Was there a play in September?

Mr. Moss. You played it the 15th and the 16th of September.

Mr. CLARK. When it was brand new and unheard of.

Mr. Moss. You played it in October?

Mr. CLARK. Yes.

Mr. Moss. Twice?

Mr. CLARK. Yes.

Mr. Moss. Twice in September. And then you acquired an interest in the copyright?

Mr. CLARK. Yes.

Mr. Moss. And then you really laid it on, because you had played it 27 times by the 24th day of November?

Mr. CLARK. It was also by then one of the Nation's best sellers.

Mr. Moss. Oh, yes. Let me show you what happened to it after you started playing it. It went from zero on Billboards to 91, to 81—

Mr. CLARK. When was it 81, Mr. Moss?

Mr. Moss. Eighty-one was the 7th day of December, which would reflect the week from the 24th to the 8th. Then it went to 68, 48, 32, 25, 18, 12, 5, up to 2, and then of course the pattern which always seems to prevail followed. At what was determined as a peak, the play slacked off almost completely. It was good promotion.

Mr. CLARK. It was good programing.

Mr. Moss. Good programing. And it is a good investment for programing; it makes it possible to bring more to the top.

These questions are raised, Mr. Clark, because these figures are so interesting, and the coincidence—there are others.

Mr. CLARK. I provided you with the figures, which in my mind said I have no particular—

Mr. Moss. Well, we are very grateful to you. However, I would point out that by the process of subpoena we can secure anything we require.

Mr. CLARK. That is true.

Mr. Moss. And so while we have gratitude, we do not feel overwhelmed. I will make further observations on some of these questions. I thank the gentleman for yielding to me.

Mr. DEROUNIAN. Mr. Clark, did you ever play Elvis Presley records on your network program?

Mr. CLARK. Yes, indeed.

Mr. DEROUNIAN. How many times would you say you played those?

Mr. CLARK. I have no idea.

Mr. DEROUNIAN. Did you play them frequently?

Mr. CLARK. Not as frequently as you might expect, because he is a very fortunate man, like Perry Como and Pat Boone and some other recognized artists, and his records are played quite frequently over many different outlets.

Mr. DEROUNIAN. Why would you not play them if you played popular songs?

Mr. CLARK. I don't mean to intimate that I didn't play them.

Mr. DEROUNIAN. But you did not play them with the frequency that you played other records?

Mr. CLARK. That is quite possible.

Mr. DEROUNIAN. And Elvis, being an outstanding artist, probably did not have to give any payola to get his records played; is that not so?

Mr. CLARK. I don't know what your inference is.

Mr. DEROUNIAN. Let me put it this way, Did you play his records as often as you played Duane Eddy's records in which you had an interest?

Mr. CLARK. No, sir.

Mr. DEROUNIAN. All I can say, Mr. Clark, is that you say you did not get any payola, but you got an awful lot of royola.

The CHAIRMAN. Do you have any further response?

Mr. CLARK. I have a Presley record here, Mr. Derounian, that was played 24 times, which I think is substantial.

Mr. DEROUNIAN. How many times did you play Duane Eddy? Nobody heard of him until you played him.

Mr. CLARK. The intimation, then, is that he would never have had a hit record?

Here is a Duane Eddy record that was fairly large, it only got eight plays, but that was unusual, to say the least "Some Kind of Earthquake."

"Forty Miles of Bad Road," it got 33 plays as compared with the 28 plays for Elvis Presley. I don't think that is too far out of line.

Mr. DEROUNIAN. It is quite a meteoric rise for someone who was not heard of before you played him.

Mr. CLARK. Mr. Derounian, there are countless thousands of people I have dealt with in the past few years that were never heard of, that is part of the reason that I have been very lucky and successful, they never had an avenue to be shown or even known by the public. Two of the biggest stars in the country right now are two young men who would probably never have been heard of. And I had no direct financial interest in them or their careers or what have you. This has happened to countless hundreds of artists I have dealt with who have become very, very big stars, including, if I may name a few, some who are now used in every major television show in the country that before, couldn't even be seen on a network television show.

Mr. DEROUNIAN. Mr. Clark, you mentioned that you did not see anything wrong in all these business interests of yours. Why did you divest yourself of so many last fall?

Mr. CLARK. Because I had to make a choice of whether I wanted to remain as a television performer or go into the music business. I preferred television. There was no other choice available to me.

May I inject in the record—you talked about a very good friend of mine, Duane Eddy, who, when he heard I was going to leave, wanted to cancel a tour and come with me. It was a very personal thing.

Mr. DEROUNIAN. You made him, and now he wants to do something for you. That is between the two of you.

Mr. CLARK. May I also just mention the names of a few people that I am credited with having some effect on their popularity—and they didn't record for any of my companies or what have you.

One of the biggest stars in the country is Bobby Darin. And he made some appearances on my program quite some time back. And he still comes back and does something when he has a chance.

Connie Francis is probably the Nation's No. 1 vocalist, she appeared on my first Saturday night show. I played her first record some 40 times, I think it shows in the record, I never made a penny from it.

There are two boys, Fabian and Frankie Avalon, for years I have been walking around with people saying, "What kind of dough are you making out of Avalon and Fabian," it gets to be a running gag, and the investigators were surprised to find I didn't have any arrangement with them.

Mr. DEROUNIAN. They do not sing very well either.

Mr. CLARK. That is something I would like to discuss at some other meeting. But these are not some of the people that I have an interest in.

The CHAIRMAN. Mr. Clark, a moment ago when we included in the record the appendixes to your statement, I understand that the additional statement dated January 18, 1960, with reference to Drexel Television Production, Inc., is not a part of your statement. Is that true, or do you recall?

Mr. CLARK. I am told by my counsel that we eliminated it.

The CHAIRMAN. I think in order to have the record complete that we should have it, and if there is no objection, that will be included immediately following the information that was included with your statement. That is apparently some questions or answers.

Mr. CLARK. We have no objections to including it.

The CHAIRMAN. At this time the subcommittee will recess for the noon hour.

I am informed that Mr. Clark does not wish to make any statement or any comment to the press or television, and so forth. So I am going to excuse Mr. Clark, and after he has retired, then I will adjourn the meeting.

(At this point, Mr. Clark left the hearing room.)

The CHAIRMAN. The subcommittee will recess until 2 o'clock.

(Whereupon, at 12:25 p.m., the subcommittee recessed, to reconvene at 2 p.m., the same day.)

AFTERNOON SESSION

The CHAIRMAN. The subcommittee will come to order. Mr. Bennett has a few questions he wanted to ask at this point, Mr. Lishman, before you resume.

Mr. CLARK. Mr. Chairman, excuse me. May I go back a moment to a question that Mr. Derounian asked this morning regarding the affidavit to which I swore?

The CHAIRMAN. Yes.

Mr. CLARK. Mr. Derounian asked me had I signed the standard ABC affidavit. I would like to read to him from the affidavit, though he isn't here, for the record, paragraphs 3 and 4 of that.

Mr. BENNETT. What page is that?

Mr. CLARK. Excuse me, it is on appendix, is that B, page 1?

Mr. BENNETT. What part of the affidavit; how far along?

Mr. CLARK. Paragraph No. 3, Mr. Bennett. If I may very briefly touch upon this because I think it is important in regard to what he had to say to me:

I swear that I have never promised or agreed with any person, firm or corporation, that in return for any money, property or any other consideration to be

paid to me, or to any relative or other person, firm or corporation on my behalf that:

(1) I would employ or otherwise allow any vocalist, musician, other performer or group, to perform on any radio or television program, or

(2) that I would perform any musical composition or phonograph record on any radio or television program.

b. Since I swear that I never made any such promise or agreement, I likewise swear that neither I nor any other party mentioned above has ever received any money, property, or any other consideration, based on any such promise or agreement.

4. (a) I swear that I have never solicited money, property, or other consideration to be paid to me, or to any relative or other person, firm or corporation on my behalf, in connection with any personal appearance or performance of a record or song above referred to, and likewise I have never refused to schedule on any radio or television program any personal appearance or performance of a record or song above referred to, because I was refused payment of any money, property, or any consideration to be paid to me, or to any relative or other person, firm or corporation on my behalf.

The importance of this, I think, lies in the fact that is essentially what every other person was asked by ABC to sign. I think that is as strong a statement as I can make in my affidavit that I have never taken "payola", and if you wish to make a stronger one, I will be happy to sign that one to again state under oath I have never taken "payola."

The CHAIRMAN. Mr. Bennett.

Mr. BENNETT. Mr. Clark, would you define "payola" for us, as you understand the term? You said repeatedly that you never took "payola." Give us for the record your definition of "payola"?

Mr. CLARK. Mr. Bennett, I have mentioned in my statement—I would go back to it if I may.

Mr. BENNETT. Can you find it in your statement?

Mr. CLARK. In the third paragraph on the first page. I want to make it clear immediately I have never taken payola. In brief I have never agreed to play a record or have an artist perform on a radio or television program in return for a payment in cash or any other consideration.

Mr. BENNETT. Where are you reading from?

Mr. CLARK. Paragraph No. 3 on the first page.

Mr. BENNETT. That is not an answer to my question. You said again you have not taken payola; I know you have said that repeatedly. But give me your definition of payola.

Mr. CLARK. I think, if I may, I think it is clear here, the agreement to play a record or have an artist perform on a radio or television program in return for payment in cash or any other consideration.

Mr. BENNETT. Under your definition there has to be a specific agreement between the diskjockey and the other person to play—

Mr. CLARK. Mr. Bennett—

Mr. BENNETT. Let me finish the question.

Mr. CLARK. Excuse me.

Mr. BENNETT. Play the record in order for there to be payola?

Mr. CLARK. Yes, sir, and I think by the general terms in the industry and the fact that the word "payola" is open to so many different interpretations now, I think all we can go by is the general definition—I was going to say, as I define it, but that is not the best way to put it.

I think people outside the industry called many different activities payola. The fact that the milkman leaves an extra pint of cream at the door when he solicits your business can be called payola if you so desire.

Practically and gratuity can be called payola.

Mr. BENNETT. What I was wondering is what you called it because since you deny you have taken it you have to tie it up with some kind of a definition because otherwise it is meaningless.

Let me ask you a specific question about it: Suppose a record company pays a diskjockey \$10,000 a year; they have him listen to a record occasionally; but there is no specific agreement that in return for the \$10,000 he will play any record. But upon receipt of the \$10,000 he does play some of their records. Do you disassociate entirely that kind of arrangement with payola?

Mr. CLARK. Mr. Bennett, I think the importance there and the significant fact is what was going on in the minds of the two parties involved whether or not they had an agreement or not is important, but what was—but the closest thing in their mind was the important thing.

Mr. BENNETT. I think so, too. I think that is the important thing, the mutual gentlemen's agreement or this tacit understanding, so to speak, that goes along with this.

Do you think there is something to that, rather than any specific agreement?

Mr. CLARK. Well, when I say I don't take payola no one has ever said to me "Play this record and I will give you X-thousand dollars." No one has ever said "Put Joe so and so on the television program and it will be worth your while." Nor have I ever solicited, saying, "Press records at my plant and I will play your record," or "Give me a portion of your publishing income and I will do so and so in return."

That to me is payola.

Mr. BENNETT. But you have gotten some real nice salary contracts, and made considerable sums of money through your association with the record-producing industry. I think you will concede that at least a part of the reason for your being so heavily associated with the music industry is the fact that you are a diskjockey and a good one, I guess, and the fact that you are on a large network, and have a large audience. I think you would agree, would you not, that that very fact makes you an attractive personality to become an associate in a record producing or manufacturing firm?

Mr. CLARK. Obviously.

Mr. BENNETT. Do you know Allen Freed?

Mr. CLARK. No, I do not. Well, I know of him. I spoke to him once on the telephone.

Mr. BENNETT. On the telephone.

Mr. CLARK. Yes.

Mr. BENNETT. You have never met him personally?

Mr. CLARK. Not to the best of my knowledge, never met him in person.

Mr. BENNETT. He is in the same business only on a smaller scale, is he not? Works with the same people?

Mr. CLARK. Yes, as countless thousands of other people are.

Mr. BENNETT. I know, but he is or was, one of the bigger name diskjockeys for ABC; is that not true?

Mr. CLARK. Yes.

Mr. BENNETT. You are the biggest one of them all, are you not?

Mr. CLARK. That becomes a public relations problem in my answer. It has been said.

Mr. BENNETT. Are you familiar with the practices that Freed employed in respect to getting himself on the payroll of record companies?

Mr. CLARK. I have no knowledge at all of any of Allen Freed's activities.

Mr. BENNETT. I can tell you it is a fact that Freed owned an interest in one or more, either record-producing, manufacturing, or distributing companies, the same as you did, and that he also was on the payroll of several record distributors or record producers.

Do you see any difference between a diskjockey being on the payroll of a company in which he owns no interest as against being on the payroll of a company in which he does own an interest?

Mr. CLARK. All the difference in the world, Mr. Bennett.

Mr. BENNETT. Will you point out the difference?

Mr. CLARK. Yes, sir. I was not here for the testimony, but I understand the subcommittee was somewhat shocked to find out that I only paid \$125 for an investment in a record company from which I drew \$30-some-odd thousand.

Mr. BENNETT. Well, you got something like \$18,000 as a salary from that company; isn't that correct?

Mr. CLARK. Yes, sir. There is a difference——

Mr. BENNETT. What is the difference between this and Allen Freed getting \$16,000, let us say——

Mr. CLARK. I can't speak at all of Freed's activity, because I don't know what functions he performed.

Mr. BENNETT. Any diskjockey getting a salary from another company?

Mr. CLARK. Let me see. My own activities and why I should draw a salary of that nature. First, I was a principal in the company; I owned a quarter of it—25 percent. I think it is important to know what we have talked of as a licensing fee and a fellow who owns a piece of it and creating it for the future and creating catalog and selecting music. This is, in a way, a function of the artist and repertoire man, an A. & R. man, if you will. If you get 30 or 40 recordings to look over, or if you find a group, or if you discover a sound, or you know of a dance craze, and create a song to go with it, I think you are creating a definite function for your company. I can go through specifically and list functions that I have performed or all of them.

Mr. BENNETT. You have listed them in your statement, and I have read your statement.

Mr. CLARK. Well, even in more detail, if you desire. But I think there is a difference there, because I specifically performed functions, and important functions that made a great deal of money for it, other than the fact that I was on the air.

Mr. BENNETT. Well, wouldn't the other diskjockey, if he were getting the same salary, do essentially the same thing?

Mr. CLARK. I cannot for a moment sit here and take a guess as to what that situation would be.

Mr. BENNETT. If he was doing the same things then there wouldn't be any difference, would there, whether he was interested in the company or not?

Mr. CLARK. I think it is more important that he owned a portion of the company. I think it is a very, very important factor. Because by my ownership—

Mr. BENNETT. Do you see anything wrong with a diskjockey getting \$10,000 a year from a firm that he has no interest in and a salary for consulting and advising?

Mr. CLARK. You are asking me to make a moral judgment on something I know nothing about, Mr. Bennett. I don't know what the arrangements were or what have you.

Mr. BENNETT. This is a specific question, and I am not moralizing.

Mr. CLARK. If I can carry through one more point, you asked me if there is a difference in owning a portion of a company. I think there is a standard policy there in the music companies that has gone on for years and years and years. There is absolutely nothing wrong in making money for your interests.

Mr. BENNETT. You mean it is more ethical in one case than the other; is that it?

Mr. CLARK. I feel it is more ethical; yes.

Mr. BENNETT. In 1959, Jamie showed a net profit of \$22,000. Your salary was \$10,000 that year. Did any other officer get that big a salary?

Mr. CLARK. Yes, sir, to the best of my knowledge they all got salaries commensurate with their services they rendered to the corporation.

Mr. BENNETT. In this business of "payola" when it came to the attention of ABC, they talked to you about it. Did they hand you a three-question affidavit to sign?

Mr. CLARK. No, sir; I covered that, I think, in earlier testimony.

Mr. BENNETT. You did not sign any three-question affidavit?

Mr. CLARK. No, but—

Mr. BENNETT. This is the affidavit you signed, the one you referred to awhile ago.

Mr. CLARK. You will notice at the end of that the three-question affidavit of ABC is incorporated in my affidavit which is more lengthy. If you want an answer, did I sign that affidavit, I think I could say "Yes," but not all by itself. It stood by itself at the end of my affidavit, if you will.

Mr. BENNETT. Where is it at the end of your affidavit?

Mr. CLARK. Sections 3 and 4, Mr. Bennett, if you can find it.

Mr. BENNETT. That isn't at the end; that is at the beginning.

Mr. CLARK. I am sorry, the pages are ruled out. Wait a minute, a half moment, please. Excuse me, this is the one I just read, I can't find it.

Mr. BENNETT. Your affidavit was on file before they got out this three-question affidavit.

Mr. CLARK. But this portion you are speaking of was incorporated in mine as one of the first that was used later.

Mr. BENNETT. What paragraph is it incorporated in?

Mr. CLARK. That I can't swear to.

Mr. BENNETT. I don't think it is.

Mr. CLARK. It is page 2 of this mimeographed sheet, Nos. 3 and 4.

Mr. BENNETT. Is that verbatim? What was that—that is only two sections; there were three questions in the other affidavit.

Mr. CLARK. Do you have a copy of the ABC affidavit?

Mr. BENNETT. I don't have it before me. Do we have a copy of it?

Mr. LISIMAN. Which one is this?

Mr. BENNETT. The three questions.

Mr. CLARK. I think you will find I signed what everybody else signed.

Mr. BENNETT. It is not the identical language. It may be language that means the same thing. Is that not true?

Mr. CLARK. As I said—

Mr. BENNETT. It is language that you say means the same thing. I do not know whether it does or does not.

Mr. CLARK. I have not seen it.

Mr. BENNETT. Anyway, you did not sign the three-question affidavit as such, you signed the other affidavit which ABC submitted to our subcommittee?

Mr. CLARK. Mr. Bennett, I signed it, my affidavit, which incorporates what is involved in the three-question affidavit. So I have signed that. But it's a small—

Mr. BENNETT. You did not sign it as such. Why are we quibbling about it?

Mr. CLARK. I don't know.

Mr. BENNETT. I just want to know whether you signed a three-question affidavit as such. Did you or did you not?

Mr. CLARK. I did not, sir.

Mr. BENNETT. And nobody asked you to sign it, as such?

Mr. CLARK. It wasn't necessary. It was already in the affidavit I had signed.

Incidentally, I will be glad to sign it if you can find the copy. I will sign an affidavit—

Mr. BENNETT. I just am trying to find out whether you did or whether you did not.

Who drew this affidavit for you? Did you draw it yourself?

Mr. CLARK. My counsel.

Mr. BENNETT. Mr. Porter?

Mr. CLARK. Mr. Porter, no; my personal counsel in New York, Mr. Charles Seton.

Mr. BENNETT. Did Mr. Goldenson suggest the phraseology in the affidavit?

Mr. CLARK. I am sorry; I didn't hear you.

Mr. BENNETT. Did Mr. Goldenson of ABC suggest some of the language in your affidavit?

Mr. CLARK. Specific language, so far as I know he never suggested any specific language.

Mr. BENNETT. Did he suggest an attorney for you to draw the affidavit for you?

Mr. CLARK. No; it was my attorney.

Mr. BENNETT. Did he suggest that you get an attorney to draw it up?

Mr. CLARK. I don't have the faintest recollection.

Mr. BENNETT. Did your attorney consult with ABC attorneys on the drafting of this affidavit?

Mr. CLARK. You would have to ask my attorney that. I don't know.

Mr. BENNETT. You do not know whether they did or not?

Mr. CLARK. No.

Mr. BENNETT. I would say a good deal of time was spent on the affidavit.

Mr. CLARK. It's true.

Mr. BENNETT. It is a very, very carefully worded affidavit throughout.

Allen Freed did practically the same kind of an operation that you were engaged in. He was interested in two or three record distributing companies, three at least, and he was on the payroll of several record manufacturing or distributing companies in which he did not own an interest.

Mr. CLARK. I think you have drawn a difference there.

Mr. BENNETT. So far as I can see that is the only difference between his operation and yours, and yet ABC fired him and retained you.

Mr. CLARK. I don't know the——

Mr. BENNETT. Do you know why?

Mr. CLARK. I have no idea of the reasons why Mr. Freed was relieved of his duties. I don't know that much about his activity except I think you pointed up one thing. If he was on the payroll of several record companies in which he didn't have an interest, I would say it would be difficult to explain.

Mr. BENNETT. Why?

Mr. CLARK. If you own an interest in a record company and you perform functions for it, and I will be glad to detail them in as elaborate fashion as you want, I think you have a legitimate reason to be paid because you own a company or a portion of it.

Mr. BENNETT. Do you think it is wrong for a diskjockey to be on the payroll of a record company even though concededly he is being paid for going down and listening to records?

Mr. CLARK. Mr. Bennett, I didn't say it was wrong, I said it would be difficult to explain and I think that again depends on the arrangements he made and only he knows what they are. You should ask him.

Mr. BENNETT. Yes; I have asked him these questions. I am just trying to find out from you the basis for the distinction made by ABC in your case as against that of Freed. Frankly, I cannot see very much difference from the type of activities you were carrying on, except that yours involved a tremendous amount of money.

Mr. CLARK. Mr. Bennett——

Mr. BENNETT. You are on a network and he was on only one station.

Mr. CLARK. I think the only real honest answer to that is to know the two individuals involved. I know myself. I don't know Mr. Freed.

Mr. BENNETT. Will you read the last answer?

(The last answer, as recorded, was read by the reporter.)

Mr. BENNETT. Well, I presume it does not have any real significance to you, but I think it does so far as ABC is concerned, so far as this committee is concerned, and insofar as I am concerned, why, in essentially the same circumstances, one diskjockey would be fired for the practice, and another would be retained.

Mr. CLARK. Mr. Bennett, may I offer an observation on two things that have transpired here today: One was brought up earlier of the fact that there were no agreements, nobody ever had an agreement, and nobody has been able to shed any light on these things. You bring up a case that is similar to mine.

I don't think in all honesty that you can say because there are similarities in the case and coincidences, that I should be—it should be insinuated that there is something wrong with my activities. By the same token—

Mr. BENNETT. There was enough wrong with Freed's activities in this area, in the opinion of ABC, that they fired him and announced they were firing him and the reasons therefor.

Mr. CLARK. I imagine there would be pretty good reasons why.

Mr. BENNETT. I beg your pardon?

Mr. CLARK. I would imagine there were some good reasons why.

Mr. BENNETT. He had to kick back to ABC when he was on a theatrical program. Did you ever give a kickback on outside activities?

Mr. CLARK. No.

Mr. BENNETT. That is another case of discrimination.

Did you kick back to them in this record case business, this Dick Clark record case; did you get a royalty out of that?

Mr. CLARK. Let's first take the word "kickback": it is a kind of inflammatory word.

Mr. BENNETT. Well, let's put it this way—

The CHAIRMAN. The Chair is going to have to remind the gentleman that Mr. Freed was a pretty important witness, but the subcommittee has not yet determined and made public the testimony of Mr. Freed, and until that is done I hoped we could refrain from commenting on his testimony which, under the rules of the House, provide for a way for it to be made public.

Mr. BENNETT. I have not quoted his testimony, Mr. Chairman. Anyway, if it got down to that fine a point, I would ask that his testimony be made public.

The CHAIRMAN. That is a matter for the subcommittee to determine. And the subcommittee has not so determined it yet. I do not feel that I can permit this to continue and become a part of the public record without first having the subcommittee pass on it, as the rules of the House provide.

Mr. BENNETT. Mr. Chairman, in the first place, I have not quoted Mr. Freed's testimony.

The CHAIRMAN. Now, I cannot argue with the gentleman about that.

Mr. BENNETT. All right.

Did you answer the last question?

Mr. CLARK. I was about to.

In normal merchandising activities in the television, radio, motion picture business, it is not unusual for there to be several parties to participate in the royalties paid for the use of the name and like-

ness. In the case of my merchandising, a portion was shared by ABC, a totally normal usual course of business, certainly not what is known as a kickback.

Mr. BENNETT. What kind of business was this?

What are you talking about?

Mr. CLARK. You asked me about the royalties paid on a record carrying case that bore my likeness, and also the one that had the American Bandstand on it, and they shared in the royalties from these.

Mr. BENNETT. Did they advertise on your show?

Mr. CLARK. They were seen given away as prizes.

Mr. BENNETT. Were they advertised?

Mr. CLARK. I don't think they were advertised, no.

Mr. BENNETT. Were they talked about?

Mr. CLARK. We used them as gifts to be given away to contestants and participants in the program.

Mr. BENNETT. Was it ever said that they could be purchased? Was the audience told they were available for sale?

Mr. CLARK. I assume without a doubt that they know it's for sale. There was no secret about that.

Mr. BENNETT. Was ABC's interest in it revealed during the course of the program?

Mr. CLARK. No, sir. I don't mean to indicate there is anything wrong in that. It is just—

Mr. BENNETT. I am not saying whether there was or was not, but was their interest in the record case revealed on the program?

Mr. CLARK. No, it would be unusual if it were.

Mr. BENNETT. It would be unusual.

I think it would be highly unusual and improper and against the statute for them to advertise something that they have an interest in without disclosing it, but that is beside the point so far as you are concerned.

Did you indicate to the television audience that you had an interest, a financial interest, in the case?

Mr. CLARK. No, I did not, but I think they assumed that I made money from it.

Mr. BENNETT. You did not disclose it? You let them assume, if they could?

Mr. CLARK. No, I did not disclose it. The fact that my name and likeness was on it, I presume they knew I was paid for it.

Mr. BENNETT. Did you ever disclose that a record being played on your program which was owned by one of your companies was, in fact, owned by you?

Mr. CLARK. No.

Mr. BENNETT. Did you ever—

Mr. CLARK. With the exception, Mr. Bennett, of the few selections I played from the albums which bore my name. Again I didn't say, get on the air and say: "Here is a song from my album, I am going to make money from it."

Mr. BENNETT. When you played a record that was owned by the January Record Co., which you owned in its entirety—

Mr. CLARK. January Music.

Mr. BENNETT. January Music, did you say to the television audience: "This is a record owned by Dick Clark which is one of the reasons I am telling you it is good"?

Mr. CLARK. No.

Mr. BENNETT. So far as the audience was concerned, they were left with the impression that you had no interest in any record that you were playing; is that not true?

Mr. CLARK. It is a fair assumption.

Mr. BENNETT. What about your interest in entertainers, performers, that were on the show? Did you disclose that fact at any time during your programs?

Mr. CLARK. I think as I outlined in my statement, the company that was originally set up had turned into a personal management firm, was set up to conduct my personal appearances. It was also arranged to be a music publisher and any allied show business enterprises which it got. It never got into personal appearances that I made because we had other arrangements with another company. It eventually ended up with a list of six or seven artists that were in the artistic management field, if you will. And from—

Mr. BENNETT. Yes. But did you ever indicate to the audience that you had an interest in performers?

Mr. CLARK. Can I just finish and then wrap it up?

Mr. BENNETT. Yes, if you would answer that, please.

Mr. CLARK. But it ended with the six people and I told the man who was my associate in the business, I want no part of personal management. It's full of too many headaches, calls in the middle of the night and arrangements and contracts, "That is your business; take it," and I never took a penny from that corporation, never participated in any earnings, and I never mentioned on the air that I managed any artists.

Mr. BENNETT. Did you ever receive any money, direct or indirect, from any entertainer who was on your program?

Mr. CLARK. If you are referring to the reimbursement of talent fees to the Click Corp., I mentioned that this morning. Personally—

Mr. BENNETT. You received it indirectly then?

Mr. CLARK. It's a wash operation, Mr. Bennett. There is no money. There is no money made in that and this is a thing quite common in our industry and practically every network and every station, reimbursement of a talent's fee is not unusual. I personally made no money from it, from the particular transaction.

Mr. BENNETT. Getting back to your affidavit for a minute, I have before me a statement, a memorandum of an interview had by two of the members of our staff, James P. Kelly and Raymond Cole, with you sometime in April, a month or so ago, in which they say this:

According to Clark—

this has to do with paragraph 18 of your affidavit—

According to Clark and Marvin Josephson, Goldenson and ABC insisted on the inclusion of this paragraph in the affidavit to make sure that ABC's skirts were clean.

Mr. CLARK. That is true, you asked me if they made that suggestion.

Mr. BENNETT. You said you did not even know they were in conference with each other.

Mr. CLARK. No, sir; I think you inquired if my lawyer had had conferences with their attorneys. I was not thinking of this specific meeting because I had already mentioned that. I thought you meant perhaps sometime apart from when I was there or other than what I called to your attention already.

Mr. BENNETT. Did you yourself discuss this affidavit during the time it was being drawn with representatives of ABC?

Mr. CLARK. Yes, sir; it's mentioned here in the statement I made this morning that we had two meetings with them, one in the morning and, whatever the date was, 1, 2 or 3 days later.

Mr. BENNETT. There is this further reference in this memorandum that I referred to a minute ago which says this:

They—

referring to ABC—

had originally suggested that the language be much stronger, but toned it down at Clark's insistence.

Is that right?

Mr. CLARK. We generally discussed paragraph No. 18.

Going back to paragraph No. 18, Mr. Bennett, I say in general, what was in this affidavit was discussed and there was a desire on the part of ABC to have a strong statement regarding the individual mentioned here or not mentioned, as the case may be, and I for one did not wish to mention him by name.

Mr. BENNETT. That is Tony Mammarella.

Mr. CLARK. Yes, indeed, as I indicated to you earlier.

Mr. BENNETT. So you made them tone it down and take his name out, is that it?

Mr. CLARK. I didn't think it was necessary to put in anything that would seem to be a condemnation of his activities or cry of outrage or what have you. If I had been told I had information given to me, fine, I was amenable to putting it in. It was in extremely strong language.

Mr. BENNETT. As a matter of fact, this affidavit was cooked up between you and ABC as sort of a public relations operation in order to assure the public this whole matter had been scrutinized and was now taken care of?

Mr. CLARK. I don't think that is true, Mr. Bennett, because the statement was never released to anyone other than your committee, the FCC and FTC.

Mr. BENNETT. Was it not announced that an affidavit or a statement, which was made public, had been obtained from you in which you had agreed to divest yourself of certain interests?

Mr. CLARK. Yes, I think so.

Mr. BENNETT. Some parts of the affidavit were made public.

Mr. CLARK. Only in the most general terms that they had asked me questions and I had answered. This was not a publicity piece.

Mr. BENNETT. Well, they did put out some publicity on it, but they did not put out all of the affidavit. Why not?

Mr. CLARK. Because I think they honored your committee in waiting to see that all of the facts be brought out on an appropriate occasion for the same reason that I didn't say a word to the press for almost 6½ months.

Mr. BENNETT. Our subcommittee was not in contact with you or ABC at the time this affidavit was being drawn, were they?

When did our investigators first contact you?

Mr. CLARK. No, I think it was a day or two.

Mr. BENNETT. You were expecting to be called soon?

Mr. CLARK. Yes. As a matter of fact, it soon arrived.

Mr. BENNETT. I have a press release on this dated November 18, and the last line says this:

We have concluded our investigation with renewed faith and confidence in Dick Clark's integrity.

That publicity was a public relations operation, was it not, and intended to be such?

Mr. CLARK. Mr. Bennett, I think you have to go back and you couldn't experience this. When this investigation first started, I made the first page of every newspaper in the country for 2 days, because the investigators had come to see me. As a matter of fact, they came to see me and were kind enough to wait a day because I had to do a television program on a Tuesday night and had to go to New York, but I made press headlines all over the country from the fact that investigators had come to see me, and 2 days later I disappeared completely. There was no story to be told, nothing to be done other than two men from Washington came to interview me, and the inference drawn by that and by some members of the press and the public was a damaging one saying, "Ha, ha, ha, what is this?" There was nothing to be told at that point and I think we had to have some reassurance of faith in why on earth is this going on. Do you or do you not have confidence in the integrity of the man?

Mr. BENNETT. Why did they not release the affidavit in its entirety to let the people see?

Mr. CLARK. I am afraid you will have to ask ABC that.

Mr. BENNETT. Our subcommittee never told them to keep it a secret, did they?

Mr. CLARK. I have no knowledge of that.

Mr. BENNETT. Well, they never told you to keep it a secret?

Mr. CLARK. No.

Mr. BENNETT. Surely they did not tell ABC to keep it a secret either.

That is all I have for the moment, Mr. Chairman.

The CHAIRMAN. Mr. Lishman, you may proceed.

Mr. LISHMAN. Mr. Clark, do you recall executing a contract dated July 9, 1958, on behalf of Drexel Productions, Inc., with American Broadcasting Co., called a program package agreement?

Mr. CLARK. Yes, I have a vague recollection of it. The details don't come to mind.

Mr. LISHMAN. I would like to read paragraph No. 20 in that agreement to see if you can give us the answers to a few questions.

Contractor warrants that contractor and Clark will act at all times with due regard to public morals and conventions. If contractor or Clark shall have committed or does commit any act, or if contractor or Clark shall have done or does anything which shall be an offense involving moral turpitude under Federal, State, or local laws which might tend to bring contractor or Clark into public disrepute, contempt, scandal, or ridicule or which might tend to reflect unfavorably upon ABC television, the sponsors or any of their advertising agen-

cies in any way or otherwise injure the execution of any program which Clark appeared or would have appeared except for some unforeseen situation, ABC television shall have the right to terminate this agreement effective forthwith on notice to contractor given at any time prior to the 30 days following the day on which the Commission of such act or the doing of such thing shall have become known to ABC television.

Do you recall—

Mr. CLARK. Yes, sir; that is a standard contract clause.

Mr. LISHMAN. That is a standard clause. Did this contract permit you to accept side payments for the personal appearances?

Mr. CLARK. I don't know.

Mr. LISHMAN. You don't know.

Mr. CLARK. If you have the contract there—

Mr. LISHMAN. I have the contract right there.

Mr. CLARK. Perhaps we can find it.

Mr. LISHMAN. Yes.

Mr. CLARK. In the interests of time can I consult for a moment with my manager to find out if he can find the information Mr. Lishman wants?

The CHAIRMAN. Well, of course, you can.

Mr. CLARK. Mr. Lishman, excuse me, could you be more specific in that?

Mr. LISHMAN. Is there any provision in that contract which permits you to receive payment for your personal appearances?

Mr. CLARK. Yes.

Mr. LISHMAN. There is. Where is it?

Mr. CLARK. Page 28—page 25 under letter "A."

Mr. LISHMAN. Did this contract allow you to take payments of money from outfits like American Airlines for putting in a plug for them in the course of your program?

Mr. CLARK. There is no specific contractual coverage here, but this is again fairly standard and also was approved by ABC.

Mr. LISHMAN. Well, now, going back to that clause 20 that I just read from the contract; is it a fact?

Mr. CLARK. On page 28—

Mr. LISHMAN. Is it correct that paragraph 20 of this agreement was amended by letter agreement of January 21, 1960?

Mr. CLARK. I think so; yes.

Mr. LISHMAN. And didn't that amendment strike out the provision which gave ABC the right to terminate at any time prior to—I am quoting now—

at any time prior to the 30 days following the commission of such act or the doing of such thing shall have become known to ABC television.

Mr. CLARK. Your question again, Mr. Lishman, is what?

Mr. LISHMAN. I asked you if this amendment of January 20, 1960, didn't strike out those words that I have just read, and make a substitution which I will now read.

Mr. CLARK. Yes; there seems to be—

Mr. LISHMAN. Those words are stricken out.

Mr. CLARK. Yes.

Mr. LISHMAN. And instead of giving ABC the right to terminate for the reasons stated in the provision within 30 days following the

day at which the commission of such act was known to ABC television the following provision was inserted as a substitute :

Following the date after January 20, 1960, on which the commission of such act or the doing of such thing shall have become generally known to the public.

Now was that a substitute provision that was placed in there?

Mr. CLARK. Yes, that is right, which gives ABC more cancellation power than they had before. That was, incidentally, at the time of the renewal of the contract for a period of 6 months.

Mr. LISHMAN. What discussion was then had in connection with this? Was ABC worried about things you might have done, in breach of the provisions in that contract, which were made public.

Mr. CLARK. I don't have any knowledge.

Mr. LISHMAN. Is that what they were fearful of?

Mr. CLARK. I don't have now any idea why it was written that way.

Mr. LISHMAN. Was there any discussion of why it was changed?

Mr. CLARK. Not with me; no.

Mr. LISHMAN. You were given the right, were you, under that contract to accept as much as \$7,000 from American Airlines for plugs?

Mr. CLARK. Yes, sir; which is again common practice.

Mr. LISHMAN. Isn't it correct to say it was not provided in the contract but apparently you got special dispensation from ABC enabling you to do that?

Mr. CLARK. My memory doesn't serve me.

Mr. LISHMAN. I can show you a letter addressed to——

Mr. CLARK. In that case.

Mr. LISHMAN. To Mr. Marvin Joseph——

Mr. CLARK. You seem to know more about it than I do, and if you have the letter, I can't do anything but agree. I don't really know. You are asking me, Mr. Lishman, what I haven't the vaguest idea about.

Mr. LISHMAN. I am attempting to find out whether or not ABC in your case followed the rule which it applied in other situations or whether they were a little more, let us say, lenient in your case than they were in others.

Mr. CLARK. Mr. Lishman, practically every major television show in the country has a slug at the end that says :

Transportation was provided by Coxaxta Air Lines, the route of the Sky Chiefs, fly at your convenience——

or what have you, that is standard operating procedure.

Mr. LISHMAN. Let's pursue this a little further. I am going to read you one paragraph of a standard form contract, that ABC required other diskjockeys to sign and I am going to ask you if you could have signed this under oath, and this is the question—that others were required to sign.

I am going to start with one first :

Do you now have or has any relative of yours ever had an ownership of, or beneficial interest in a musical company right or performance right or any music publishing, recording, pressing or merchandising concern? Answer yes or no.

Could you have answered that question "No?"

Mr. CLARK. Do I now? No. Did I then? Yes.

Mr. LISHMAN. At the time when this affidavit was submitted, would you have sworn that you did not have any interest or any relative of yours had an interest?

Mr. CLARK. No; I could not.

Mr. LISHMAN. You could not have signed that.

Mr. CLARK. No; because I did have interests at that time.

Mr. LISHMAN. I will now read you another provision from the standard that was required by ABC of others and ask you if you could have signed this one:

Do you now receive or have you ever received payment of or credit for anything of value, directly or indirectly such as through a relative or business entity in which you or such relative has or has had a financial interest for the promotion of broadcasts of any music, musical composition, or any recordings, yes or no.

Could you have answered that no?

Mr. CLARK. No; I did have such interests.

Mr. LISHMAN. In other words, you could not have answered that no?

Mr. CLARK. That's right. May I ask what that is, the significance of it? Excuse me, may I ask what it is?

The CHAIRMAN. The Chair would, I think, answer that in this way: The only way it could be answered is that the subcommittee has information that this is a standard form of affidavit which ABC sent to its employees in general.

Mr. CLARK. Mr. Chairman, I think, the reason I used the word "significance" is. Now I can say, everything has gone, now I can adhere to that standard.

Then; no. There was no rule at that time.

The CHAIRMAN. This was in November; was it not?

Mr. CLARK. The affidavit was signed in November; yes.

The CHAIRMAN. Were you advised as to whether or not there was a general affidavit that was submitted to employees by ABC back in November or December, the latter part of the year some time.

Mr. CLARK. I was aware that ABC was requiring of their employees that an affidavit be signed. As to the exact date, I don't know when. The only important thing is I did divest myself of all of these interests and as Mr. Lishman asked, at that time I could not sign that. Now, yes, I can, therefore I can stay on as employee.

The CHAIRMAN. Yes, I don't think anyone questions that, Mr. Clark, but for the purpose of Mr. Lishman's question, I think the record should show what the situation was at the time.

Mr. CLARK. I see.

Mr. LISHMAN. Mr. Clark, wasn't it correct you signed your affidavit in November 1959, November 16, I believe; is that correct?

Mr. CLARK. I think that is right; yes.

Mr. LISHMAN. At or about the same time ABC was requiring other diskjockeys and others in positions similar to yours to sign an affidavit which is entirely different from yours. The affidavits that they were requiring of these other people didn't attempt to place the narrowest possible definition to the word "payola" that anyone skilled in semantics could devise. They really went after them and made them talk turkey. They didn't fiddle around with a fake definition of payola.

Mr. CLARK. Mr. Lishman, I don't think that is really equitable on your part. I have told you that I will sign that ABC affidavit.

I think it is incorporated in my affidavit now and we hokey up an affidavit for a publicity stunt.

Mr. LISHMAN. I didn't ever make that statement.

Mr. MOSS. Mr. Chairman.

Mr. LISHMAN. But I am going to read to you—

Mr. MOSS. I have been listening to this, and I would say the witness is evading a clear question. The fact that he would sign that now is not the significant thing. We are making an inquiry into the standards which guided the American Broadcasting Co. of demanding of other employees an affidavit and of demanding of you a different type of affidavit. The significant thing is that you by your admission could not have signed that other type of affidavit at that time.

Now you can, because you have acted to divest yourself of the holdings which would prevent a truthful signing of it at that time.

Mr. CLARK. Excuse me, Mr. MOSS, I didn't know, and I still don't know what Mr. Lishman read to me. What he read to me, I think was something that transpired several weeks later saying "Gentlemen, get out of the music business if you want to stay working here" at the moment I signed it—

Mr. MOSS. I think in the statement he used the term "affidavit," did you not, Mr. Lishman?

Mr. LISHMAN. Yes, I read from your affidavit. I will hand it to you.

Mr. CLARK. Well, I don't know what that previous thing was, Mr. Lishman. The one that I asked you what was it?

Mr. LISHMAN. If you wish to know, that was the form of affidavit that ABC sent to Mr. Freed and he said, if you wish to know his answer, he said, "if you can show me that Dick Clark can sign it, I will sign it."

Mr. CLARK. When did they send it to him?

The CHAIRMAN. The Chair is going to have to insist that if we are going to get out and discuss testimony that was taken in executive session we are simply going to have to have the subcommittee to meet and make it public.

I hope everybody will keep that in mind.

Mr. BENNETT. Mr. Chairman, I think this might be a good time to make it public.

The CHAIRMAN. It might be, but we don't have the subcommittee here to make that determination.

Mr. BENNETT. We have enough of the subcommittee here. Would it be in order to move that we make it public?

The CHAIRMAN. We do not have a quorum present for that purpose.

Mr. BENNETT. I think it is highly important in cross-examining Mr. Clark.

The CHAIRMAN. Maybe so.

Mr. BENNETT. In fact I think it is one of the most significant things about this whole inquiry.

The CHAIRMAN. The Chair has tried to indicate as far as he could as to general affidavits.

Mr. BENNETT. If we don't release it, it seems to me Mr. Chairman, that our counsel and other members are going to be hampered in getting the real facts here with respect to the signing of this affidavit which in my judgment is a very important item of our investigation.

Mr. CLARK. Mr. Chairman, may I add something to this question at hand now?

The CHAIRMAN. Let us have order, please.

Mr. CLARK. I started to say something to the effect that these statements perhaps were given to ABC personnel and I assumed they said "can you sign this" and if they said no, they said "Will you divest" as they gave me the opportunity to divest. The important question here is could you sign an affidavit that you never took payola and I feel in all honesty that I always can sign an affidavit that I never took payola.

The CHAIRMAN. Mr. Clark, that is not the point raised by counsel and counsel is certainly in order in raising the question. You have already stated that you knew of the general affidavit. I think it is appropriate to ask you to give the difference in the general affidavit which you have presented to them and your own affidavit which you presented, and I think it is appropriate and it can be proceeded with. That is the only question.

Mr. LISHMAN. Until we have the testimony in executive investigation released, I don't think we should pursue this question of the difference in types of affidavit that were required by ABC of personnel other than Mr. Clark, and the special nature of this lengthy affidavit that was devised for his particular case.

The CHAIRMAN. I think the record has already been made about that, and I think it is very clear as to what took place.

Mr. CLARK. May I submit, Mr. Lishman, mine was a forerunner from which the other language was used in both and so forth.

Mr. LISHMAN. The affidavits that were submitted, the others were submitted on November 13, you signed yours on the 16th, so I do not see how yours was the forerunner. If you wish to—you can ascertain from ABC itself the records with respect to that statement.

Now, I will hand you a memorandum so you may follow this while I ask a few questions about a matter that was brought up by Mr. Derounian this morning where you testified that you believe you had given the Elvis Presley records a fairly good airing in comparison with the number of exposures you gave to the records of Duane Eddy.

Now, it is correct, is it not, that you have a dual interest in Duane Eddy? In other words, SRO is his manager; is that correct?

Mr. CLARK. That is correct.

Mr. LISHMAN. And you have an interest in SRO?

Mr. CLARK. I did, yes.

Mr. LISHMAN. You did. What was that interest?

Mr. CLARK. I don't know, I will have to look it up.

Twenty-five percent.

Mr. LISHMAN. Did you ever receive any money from SRO?

Mr. CLARK. No.

Mr. LISHMAN. You had another interest in Mr. Duane Eddy, is that correct?

Mr. CLARK. That is correct.

Mr. LISHMAN. He recorded on Jamie Records?

Mr. CLARK. That is correct.

Mr. LISHMAN. And what interest did you have in Jamie Records?

Mr. CLARK. Twenty-five percent.

Mr. LISHMAN. And that is a record manufacturing company?

Mr. CLARK. That is correct.

Mr. LISHMAN. So that you had an interest in the profits from the sales of records of that company?

Mr. CLARK. That is correct.

Mr. LISHMAN. And anything that could be done to enhance the sales of records of that company would enhance your outside revenue from that company; is that correct?

Mr. CLARK. That is one inference you could draw from it, yes.

Mr. LISHMAN. Now, is it correct that during the period August 5, 1957, to November 30, 1959, you played 19 titles of Elvis Presley for a total of 173 times?

Mr. CLARK. I could not vouch for that. I didn't make the survey.

Mr. LISHMAN. This is taken from Computech.

Mr. CLARK. Well, from what the Computech people say with what was done with their statistics, I still don't know whether it was correct or not. I will assume it is.

Mr. LISHMAN. That would mean an average of a little over nine times a title.

Mr. CLARK. All right.

Mr. LISHMAN. Now we turn to Duane Eddy. During the same period, on 11 titles you played him 240 times.

Mr. CLARK. All of this is true, Mr. Lishman.

May I save time?

Mr. LISHMAN. Well, I just want to point out that you played him on an average of 21.8 percent as against the 9 percent for Elvis Presley titles; is that correct?

Mr. CLARK. Yes.

May I indicate to you some reasons why, and some other salient information on this point?

Mr. LISHMAN. Yes, sir.

Mr. CLARK. Elvis' records, like Frank Sinatra, Perry Como, and Pat Boone, and other people are played continuously all day and all night. This is true of many artists. There are some artists that don't need as much play as others. You are presuming that because I had a financial interest in Duane Eddy I played many more times of Duane Eddy, or I suppose anyone else you could pick. This does not go along with your survey of titles which shows 19, 22, 54 plays, and so forth, for people in whom I had no interest at all.

Why not quote a couple of those to balance out the record, for instance, 30 plays of Frankie Avalon?

Mr. Moss. Mr. Chairman, I am going to object to what has now reached, what has now developed as argumentation on the part of the witness. I think he should respond to the questions of counsel. I do not think it necessary at this point that we stop at each and every question to undertake to explain in detail the point of the inquiry and then have to sit and listen to an argument or a justification.

We are attempting to place on the record here responses to given questions.

Mr. CLARK. Mr. Moss, my reputation is at stake.

Mr. Moss. I am not interested, Mr. Clark. I want to see this proceed. We could take the next 3 weeks if we permit this type of interrogation.

I think you should respond to the questions of counsel, and I think that should be sufficient.

The CHAIRMAN. Mr. Lishman, you proceed with your questions and Mr. Clark, you will respond to them as you understand the answers.

Mr. LISHMAN. Mr. Clark, wasn't some of the Computech analysis submitted to this subcommittee for the purpose of showing that you did not prefer your own records or records in which you had an interest when you exposed them on the air; wasn't that one of the purposes?

Mr. CLARK. Mr. Lishman, in my statement I have told you, I think, that I ordered the survey made with no holds barred. I gave them all available access to every piece of information. I was the only one who had this information, as far as I know. I was not trying to conceal anything.

Mr. LISHMAN. I am not talking about that.

Mr. CLARK. Or draw any special interpretations from it.

Mr. LISHMAN. I will try to rephrase this a little differently then.

Didn't Computech tell this subcommittee that you played records on the basis of their popularity as shown by the scoreboard ratings of Billboard and Cashbox?

Mr. CLARK. Yes.

Mr. LISHMAN. Is that correct, in your opinion?

Mr. CLARK. Yes.

Mr. LISHMAN. Well, now, if a record is popular, why don't you play it? You have just explained to us you wouldn't play a record when it is popular because it is too trite.

Mr. CLARK. I am not allowed at this point to go on in great detail, Mr. Lishman.

Mr. LISHMAN. I am trying to find out now. I will take this same period, and I will name another personality.

Frank Sinatra has popular records, doesn't he?

Mr. CLARK. Occasionally, yes. [Laughter.]

Mr. LISHMAN. Well, don't you think in the period August 5, 1957, to November 30, 1959, that he moved some popular records?

Mr. CLARK. Mr. Lishman, Mr. Sinatra's audience is slightly different from mine.

Mr. LISHMAN. Well, do you know that you didn't play him once during that period?

Mr. CLARK. Yes; I am quite aware of that. As I didn't play any Ezio Pinza.

Mr. LISHMAN. Perry Como is supposed to have produced some popular records, isn't he?

Mr. CLARK. Yes.

Mr. LISHMAN. How many times in this 2-year period did you play Perry Como records?

Mr. CLARK. I don't know, without looking it up.

Mr. LISHMAN. Would it surprise you if I told you you only played four records?

Mr. CLARK. No; not particularly. But, again, he has a different audience appeal.

Mr. LISHMAN. Again, with Frankie Laine, I understand during this period he was rather popular, and if the way you selected the playing of your record was to indicate popularity, as Computech attempted to show here, how many records of Frankie Laine did you play during this period?

Mr. CLARK. I have no idea.

Mr. LISHMAN. I will tell you; one.

Mr. CLARK. Mr. Lishman—

Mr. LISHMAN. We will come to Bing Crosby. Now, during this period he has produced some popular records, hasn't he?

Mr. CLARK. He is probably the biggest record seller there ever was.

Mr. LISHMAN. Yes, sir.

How many records of Bing Crosby did you play during that time?

Mr. CLARK. I have no idea.

Mr. LISHMAN. One—"White Christmas." [Laughter.]

Mr. LISHMAN. Now, Mr. Clark, were you so busy pushing records in which you or your companies had an interest, that whether or not the thing was popular didn't count and what counted was "Where can I get the income out of this record?" Wasn't that the paramount question?

Mr. CLARK. It's a very flammatory and unjust conclusion, Mr. Lishman. You are challenging a man who admittedly—and you admit he has been successful doing what he is doing—catered to the popular taste. I outlined to you in the statement how I selected the records and if you do not accept that as fact, I can't tell you any more other than the fact I know my audience. I know what they want to hear and I play it.

Mr. LISHMAN. In that connection, I would like you to turn to page 10 of your statement, because we don't want to get away from that either.

On page 10, paragraph 6, you state:

No record was accepted by Swan which had not been approved by myself or Mr. Mammarella, and no disk of any importance was played by the company without our approval and advice.

Is that correct?

Mr. CLARK. Yes.

Mr. LISHMAN. I will hand you a paper, and I would like to ask you a few questions about this. This paper you have before you shows the number of Swan records, from August 5, 1957, to November 30, 1959, as being 50; is that approximately correct?

Mr. CLARK. Yes; I think so.

Mr. LISHMAN. It also shows the number of records played on your program during that time as being 30 of that 50; is that correct?

Mr. CLARK. I assume you got this from our survey; that is correct.

Mr. LISHMAN. Of the 30 records played, there were 65 plays, and before any of those records were on any Billboard or Cashbox list, they were played 467 times?

Mr. CLARK. Yes.

Mr. LISHMAN. And you played 60 percent of the records that were manufactured by Swan during that time?

Mr. CLARK. Yes.

Mr. LISHMAN. So that your average play per record played was 21.6?

Mr. CLARK. I assume that is correct.

Mr. LISHMAN. After these records had reached their peak in the Billboard ratings, you played them 49 times; is that correct?

Mr. CLARK. If that is what the survey shows; yes.

Mr. LISHMAN. So we have a situation where you say you are catering to popularity, as recorded by Billboard rating, and we find that prior to being rated you played a record 467 times, and after they reached their peak you only played them 49 times.

How does that correspond with catering to the popular taste as reflected in Billboard?

Mr. CLARK. As I indicated in my statement, Mr. Lishman, part of this game is knowing what will be popular. You are kind of a professional crystal ball gazer, and if you are right most of the time, you are all right: if you are guessing wrong consistently, you are out of business.

The reason you play a song before it hits the rating charts is because you have some indication that it is going to be a hit and the reason you stop playing it after it gets to be a hit is because this is the smart thing to do. The man who plays a record to death drives his audience away. We have always prided ourselves in playing not only songs which, if not at this very moment, will be popular someday. As long as your guess rating is right, you are all right.

There is no statistical way to learn this, there is no way to go to school to learn this. There is only one way to do this and that is your judgment, and I think the record shows I have been pretty consistent. I don't say I haven't made any mistakes, but if I hadn't made any mistakes I would get out of the television business and I would just open up a room of big hits.

Mr. Moss. Mr. Chairman, I wonder if, in referring to the survey, we can understand which survey.

Mr. LISHMAN. I am referring to Billboard.

Mr. Moss. Am I correct, Mr. Lishman, is this material developed from the play cards supplied by Mr. Clark's organization, to our staff?

Mr. LISHMAN. Yes, sir.

Mr. Moss. It is not the Computech survey?

Mr. LISHMAN. No; not this material.

I would like to hand you, Mr. Clark, another document and ask you a few questions about that.

If you will notice, Mr. Clark, on the first page we have a record by the Click-Clacks entitled "Dickie Doo." The play was commenced on this December 28, 1957. Is that correct?

Mr. CLARK. Yes.

Mr. LISHMAN. You played it once on December 26, three times on December 30, and five times—

Mr. CLARK. Excuse me, sir, there was never more than one play a day.

Mr. LISHMAN. You played it once on the 26th of December; is that correct?

Mr. CLARK. Yes.

Mr. LISHMAN. Then you played it once on the 30th of December.

Mr. CLARK. Yes.

Mr. LISHMAN. Once on January 1?

Mr. CLARK. Yes.

Mr. LISHMAN. One on January 3?

Mr. CLARK. Yes; I will concede all of this if it will save time, Mr. Lishman.

Mr. LISHMAN. In other words, you played this 16 times before it ever appeared as rated on Billboard; is that correct?

Mr. CLARK. I don't see the figure 16, but I guess somebody has added them up, but in any case, yes.

Mr. LISHMAN. After, on January 27 you played it once; is that correct?

Mr. CLARK. Yes.

Mr. LISHMAN. On the 28th you played it again?

Mr. CLARK. Yes.

Mr. LISHMAN. On the 29th, you played it again?

Mr. CLARK. Yes.

Mr. LISHMAN. On the 30th again and the 31st again?

Mr. CLARK. Yes.

Mr. LISHMAN. And for the week ending February 2, 1958, Billboard showed that that record reached number 58 in the top 100; is that correct?

Mr. CLARK. Yes; it seems to be indicated here.

Mr. LISHMAN. Following that you played it 18 times; is that correct?

Mr. CLARK. If that is the count; yes.

Mr. LISHMAN. And then it reached No. 28.

Mr. CLARK. Yes.

Mr. LISHMAN. On the Billboard rating.

From then on—from February 26 on you did not play it again, did you?

Mr. CLARK. The record shows "No."

Mr. LISHMAN. And from there it descended from 28 plays to zero?

Mr. CLARK. That is the normal course.

Mr. LISHMAN. On May 10, 1958; that is correct?

Mr. CLARK. Yes; you usually go up and down.

Mr. LISHMAN. If you will turn to page 2, you will see the record "Happiness"; is that another Swan record?

Mr. CLARK. Yes, sir. I understand all of these are.

Mr. LISHMAN. Yes, sir. If you will notice, you played this record 27 times before it got on the Billboard rating?

Mr. CLARK. Yes.

Mr. LISHMAN. After it had been on the Billboard rating you played it 19 times; is that correct?

Mr. CLARK. Yes.

Mr. LISHMAN. Now we turn to page 3 and we have the record "Ne Ne Na Na Na Nu Nu." Is it correct you played that 15 times before it appeared on the top 100 on Billboard?

Mr. CLARK. Yes.

Mr. LISHMAN. And subsequently you played it nine times?

Mr. CLARK. Yes; we seem to be skipping over the ones I did not play at all, Mr. Lishman. Is there any reason why?

Mr. LISHMAN. I am going to ask you some questions after we get this established. I just wanted to ask, isn't it significant that in these plays where you, as a diskjockey, have an interest as the owner of Swan Records, or part ownership, of taking such pains to play a record like, say, "Happiness" 27 times before it even gets on the ratings?

Mr. CLARK. Mr. Lishman, before a record—

Mr. LISHMAN. Similarly, with all these other records that I have indicated all being Swan records, long before they are on any rating, you are playing them pretty strong.

Mr. CLARK. Mr. Lishman, you haven't made a survey and I wouldn't expect you to, of the other tunes in which I had no interest, in which the course and pattern was quite the same, maybe not quite as interesting as this. A record does not necessarily have to be on the chart for one in a knowledgeable position to know that it was a hit. This, again, is part of what I do try to know ahead of time—what is going to happen.

Mr. LISHMAN. Are you familiar with the exhibit that was placed in the record here a few days ago entitled "Comparison of the Pattern of Popularity and Plays Per Title Per Week," for A title, meaning records in which you had an interest, and B title, records in which you had no interest?

Mr. CLARK. I know it has been made, but I am not familiar with it.

Mr. LISHMAN. You are not familiar with it.

Mr. CLARK. No. In the vaguest way, I know they correlate them closely, as I recall.

Mr. LISHMAN. Well, do you dispute the accuracy of the trend shown here as to when you began playing a record and in comparison with their peaks of popularity and when you began playing B records?

Mr. CLARK. Excuse me: is this your survey or mine?

This is the survey I presume that was taken by the subcommittee statisticians or the interpretation drawn.

Mr. LISHMAN. That is correct.

Mr. CLARK. I am told by the officials of Computech, serious errors have been made, and I don't wish to dispute them because I haven't the vaguest idea of what each of these statisticians are talking about. I really don't. I am afraid I have gotten lost in the burden of it and I would be very happy to ask the gentlemen from Computech to come back and clarify their statement to me.

Mr. LISHMAN. Maybe we had better turn to another subject we can more easily understand, and I will hand you a chart, Mr. Clark. I want you to look at this chart No. 1 which was prepared by the staff of this subcommittee, and which purports to show the interests that you and Mr. Mammarella had outside of the broadcasting business, and ask you if this correctly represents these interests that you and Mr. Mammarella held prior to the time when you divested yourself.

Mr. CLARK. I can say as far as my own companies are concerned, yes; this is probably very accurate. There are some here on which I have no personal knowledge.

The CHAIRMAN. Are you familiar with this chart, Mr. Clark?

Mr. CLARK. I have never seen it before; no.

The CHAIRMAN. You haven't had an opportunity to look it over then until now?

Mr. CLARK. Until this very moment I looked it over.

The CHAIRMAN. I notice it is a pretty large—

Mr. LISHMAN. Perhaps I can go through and ask questions and eliminate the items in which Mr. Clark doesn't have knowledge.

The CHAIRMAN. If Mr. Clark is familiar with it enough to know what it purports to be and represents and can testify on it at this

time, then it will be perfectly all right. Otherwise I think he should have an opportunity to analyze it before he can testify on it.

Mr. LISHMAN. I am perfectly willing for him to have the opportunity.

The CHAIRMAN. But it is a chart which purports to show a good many connections, it seems to me.

Mr. LISHMAN. Is the witness coming back?

(Discussion off the record.)

The CHAIRMAN. Would you prefer to have an opportunity to go over this and study it before you testify on it, Mr. Clark?

Mr. CLARK. I don't think any lengthy study is necessary, Mr. Chairman. I can pick out a couple of things here that I don't know anything about, and a couple of others I think errors. I don't know exactly what we want to do with it yet.

The CHAIRMAN. I think as I understand it, Mr. Counsel, the purpose of this is to show in chart form, Mr. Clark as a central partner or owner and his connection with various and sundry businesses of which he is a part to show his connection with it in operation, businesses which he has in detail explained to the subcommittee today; is that true or not?

Mr. LISHMAN. Yes, sir.

The CHAIRMAN. Do you understand what this proposes?

Mr. CLARK. Yes, sir. There are two things that come to mind, Mr. Chairman, the relative interests in each of those is not indicated by the chart. Obviously it is just a graphic chart, and if we were to chart out even further the people that I ever had anything to do with in this business and had some relationship and some dealings, it would probably take a wall behind you to cover it.

It could go forever.

The CHAIRMAN. Well, we don't intend to do that. [Laughter.]

I think, Mr. Lishman, if you have some other matters that you can inquire about and give Mr. Clark an opportunity, since he seems to think there would be a lot of missing links to this, give him an opportunity to explain more fully when we come back on Monday.

Mr. LISHMAN. Mr. Chairman, I would like at this same time to hand him three more charts and he may have the opportunity of looking at these.

The second chart indicates Mr. Clark's enterprises before divestiture. These relate to his interest.

The third chart indicates the music and records businesses of Mr. Clark before divestiture.

The fourth chart indicates Mr. Clark's sources of income before divestiture.

The purpose of all these charts, of course, is to ascertain all the converging economic forces involved in the commercial exploitation of a record and how significant ownership and other interests in these various factors entering the popular music field are occupied by Mr. Clark.

Mr. CLARK. Mr. Lishman, I think with everything with which I am personally connected, this information is in my appendix, not in a chart form but in a written out narrative. I don't think I have missed any of these in my statement and its appendix.

Mr. LISHMAN. Mr. Chairman, is it my understanding that Mr. Clark will have an opportunity of looking at these various charts before they are received in the record?

The CHAIRMAN. I am sorry I did not hear the request, Mr. Lishman.

Mr. LISHMAN. Am I correct in understanding that before these charts are accepted for the record, Mr. Clark will have an opportunity for inspecting them and commenting on them and correcting them where they are inaccurate?

The CHAIRMAN. Unless he himself would readily recognize what is in any one of them and would be willing to comment on them at this time.

Mr. CLARK. Mr. Chairman, I would be very happy to do whatever you—if I can expedite whatever Mr. Lishman wants to do. I don't know exactly what I am supposed to say about these.

Mr. LISHMAN. Before these charts can be placed in our record we have to be satisfied that they accurately portray the statements that are contained on them. We have done our very best to make them accurate.

Mr. CLARK. Is there a way to submit some sort of memorandum on them and proceed?

The CHAIRMAN. I don't think so.

Mr. CLARK. I just thought—

Mr. LISHMAN. I would suggest—

The CHAIRMAN. As a matter of fact, I might say now, Mr. Clark, I don't know what your convenience is, but there are some members of the subcommittee who want to ask some questions and we will not be able to conclude this afternoon, therefore we are going to have to come back Monday.

Mr. PORTER. May I approach the chair, Mr. Chairman?

The CHAIRMAN. Yes.

Let's have order.

Mr. PORTER. I think, in view of circumstances, Mr. Lishman, you can forego the further questioning with reference to the charts mentioned here until we get them properly identified and presented and an opportunity to testify. If you have other questions besides that, I think you should proceed with them.

Mr. LISHMAN. Yes, sir.

Mr. Clark, do you agree the plays given a record should depend on popularity?

Mr. CLARK. In the main; yes.

Mr. LISHMAN. Do you agree that records of the same popularity should be accorded equal treatment regardless of whether or not you have had an interest in them?

Mr. CLARK. Not necessarily so.

Mr. LISHMAN. Why not?

Mr. CLARK. There are too many factors involved to give a "Yes" or "No" answer to that question.

Mr. LISHMAN. Why shouldn't two records having equal popularity be given equal treatment?

Mr. CLARK. One might not be danceable. It might be done by some of the artists you mentioned before who do not suit my particu-

lar audience. There are a number of factors, Mr. Lishman, more than just two or three.

Mr. LISHMAN. But generally speaking, wouldn't it be true that records with the same popularity ought to be accorded almost equal treatment to really do an impartial job?

Mr. CLARK. No; for the same reasons I just stated. I think it is the same question as the one you asked me before.

Mr. LISHMAN. Well, do you know that you played no-interest records, records that you had no interest in, which achieved a popularity score of between 1 and 99 on Billboard, an average of 7.61 times?

Mr. CLARK. I am sorry you will have to repeat it.

Mr. LISHMAN. Do you know that you played records in which you had no interest, which achieved a popularity score of between 1 and 99 on the top 100 Billboard rating, an average of 7.61 times?

Mr. CLARK. Is that from the Computech survey?

Mr. LISHMAN. It is based on the data that was submitted by Computech.

Mr. CLARK. That is probably so. I am trying to look it up here.

Mr. LISHMAN. We would like to have you—

Mr. CLARK. Yes, that is true, 7.2.

Mr. LISHMAN. We have 7.6.

Mr. CLARK. Did you have a figure of 7.8?

Mr. LISHMAN. 7.8. Records in which you had no interest.

Mr. CLARK. 7.2 according to my figures.

Mr. LISHMAN. And which records did achieve a popularity score of between 1 and 99 on Billboard you played an average of 7.61 times, is that correct?

Mr. CLARK. I could not agree to that because that is not the survey that I have but I think we are close enough so that we can say "Yes," that is generally so, we are talking about—

Mr. LISHMAN. Those records, however, in which you had a multiple interest, either as a part owner of a record-pressing plant or of a music publishing firm holding a copyright or record manufacturing company or record distributing company—those records in which you held that kind of a multiple interest which had this same popularity score of between 1 and 99 on the Billboard rating were played an average of 17.9 percent.

Mr. CLARK. I have 14.1; but again it is a small degree.

Mr. LISHMAN. Well, in any event, that shows that you were playing records in which you had a multiple interest more than twice as many times as records which had the same popularity rating in Billboard, is that correct?

Mr. CLARK. Yes, there is another important factor.

Mr. LISHMAN. I am just drawing a conclusion that that certainly did not represent equal treatment of records having the same popularity rating on the Billboard score.

Mr. CLARK. Based on their popularity as to the highest point they ever reached, I would say there was cause to play them in that ratio.

You will note here in this survey comparison of record plays to popularity, all record titles 0.521. "A" title 0.585, noninterest 0.50. So we are talking about two-tenths of a point. The survey did indicate that the records that I played and the amount I played them was in direct comparison with how high they reached on the charts.

Mr. LISHMAN. We lumped all these popularities together.

Mr. CLARK. From 1 to 99.

Mr. LISHMAN. Yes, that is the same thing that Computech did.

Mr. CLARK. We are getting into an area, I don't—I think you will find, Mr. Lishman, you and I, you know we are somewhat at a disadvantage. Your man is giving you the answers and my man is giving me the answers and neither one—why don't we put the two of them on?

Mr. LISHMAN. Just a moment, Mr. Clark. I am not asking anyone to give me the answers except you. You seem very ready to give answers that are not responsive to the question. I have noticed that all day and I have not yet raised my objections to it.

You are here to answer the questions and my job is to ask them.

The CHAIRMAN. Do you understand the question, Mr. Clark?

Mr. CLARK. I don't know what question has been asked now, Mr. Chairman.

Mr. LISHMAN. There is no question now. [Laughter.]

Now the "American Bandstand" show is broadcast over the ABC network, is it not?

Mr. CLARK. Yes, sir.

Mr. LISHMAN. Does the American Broadcasting Co. have an affiliate which is engaged in the manufacture of records?

Mr. CLARK. Yes, sir.

Mr. LISHMAN. What is the name of that company?

Mr. CLARK. I don't know what the legal name is. It is distributed under ABC Paramount Records.

Mr. LISHMAN. Am-Par?

Mr. CLARK. Yes.

Mr. LISHMAN. Do you have any understanding, express or implied, that you would promote Am-Par records on the air?

Mr. CLARK. None whatsoever.

Mr. LISHMAN. Did any officer or employee of Am-Par ever suggest or request that you play a particular record or a certain portion of Am-Par records on your show?

Mr. CLARK. That is a two-part question.

Mr. LISHMAN. Well, did any officer or employee of Am-Par ever request that you play a particular record?

Mr. CLARK. Yes, in the normal course of business.

Mr. LISHMAN. What record did they request you to play?

Mr. CLARK. I received periodic requests from the Am-Par distributor in Philadelphia and the Am-Par executives calling to my attention their usual series of releases as they would contact anyone in my position.

It is impossible to mention specific titles to you.

Mr. LISHMAN. But you did play Am-Par titles which were suggested to you by their promotion people, is that correct?

Mr. CLARK. As I did many others, yes. True.

Mr. LISHMAN. Was the album "Dance With Dick Clark" released by Am-Par?

Mr. CLARK. Yes, sir.

Mr. LISHMAN. Did you receive mechanical royalties on that record?

Mr. CLARK. Yes, sir.

Mr. LISHMAN. Did you receive performance royalties on that record?

Mr. CLARK. Yes.

Mr. LISHMAN. Did you play that record on your show?

Mr. CLARK. Yes.

Mr. LISHMAN. How often?

Mr. CLARK. I don't know. In looking at the survey, I think it would be easy to find out. It would be listed under different titles.

Mr. LISHMAN. How many copies of the record were sold?

Mr. CLARK. Of the album? The first time out, I don't know without looking it up. Can I give you a guess?

Mr. LISHMAN. Yes.

Mr. CLARK. About 60,000 or 70,000 or 80,000, between LP's and standard.

Mr. LISHMAN. Did any officer, employee of Am-Par speak to you about playing this record, "Dance With Dick Clark"?

Mr. CLARK. No.

Mr. LISHMAN. Did the fact it had any effect on your personal interest in the royalties, induce you to give it a big play?

Mr. CLARK. No, of course not.

Mr. LISHMAN. Did you have an interest in Mallard Pressing Co.?

Mr. CLARK. Yes.

Mr. LISHMAN. What was that interest?

Mr. CLARK. One-half.

Mr. LISHMAN. Did that company have any assets?

Mr. CLARK. I don't know without looking—total assets were listed as 124,000-some-odd dollars.

Mr. LISHMAN. And wasn't the bulk of those assets accounts receivable in the amount of \$95,000?

Mr. CLARK. That is right.

Mr. LISHMAN. What business was Mallard engaged in?

Mr. CLARK. Record pressing.

Mr. LISHMAN. Did it press records?

Mr. CLARK. Physically press them?

Mr. LISHMAN. Yes.

Mr. CLARK. We rented or had an arrangement with a man who actually owned the building, so that I guess it would be safe to say that it was responsible for pressing the records.

Mr. LISHMAN. Isn't it a fact that all Mallard did was to take orders for pressing of records and farm them out to the Stenton Music Co.?

Mr. CLARK. We had a contract with the Stenton Music Co. to produce records at a certain price, which I don't know without looking it up.

Mr. LISHMAN. Isn't it a fact that Mallard did not own any record-pressing machinery?

Mr. CLARK. We had—I can't answer that for sure, I don't know. We certainly had interest in the machinery that was there based on loans, and so forth.

Mr. LISHMAN. Did Mallard get more orders sometimes than Stenton Music Co. could fill for record pressings?

Mr. CLARK. Yes, I imagine so.

Mr. LISHMAN. Do you know how many records were pressed by Mallard for companies in which you had an interest?

Mr. CLARK. I do not. Can I give you a guess again?

Mr. LISHMAN. Yes, sir.

Mr. CLARK. I am told that somewhere between 40 and 50 percent of the work was done for allied interests—either in my company or my partner's company.

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

The CHAIRMAN. Mr. Clark, you have been sitting in this place now for quite a while. I imagine you are getting tired, too. I realize, of course, that you would like very much to have completed your testimony today, as I would have so much liked to have concluded it, because of the heavy schedule of the subcommittee. But I think due to the hour and the fact that some of the other members of the subcommittee have questions they want to ask, we will conclude for the day. I think the proper thing to do would be to conclude today and come back Monday morning at 10 o'clock.

Now it is my hope that we can conclude your testimony by noon Monday or shortly thereafter, anyway.

On Tuesday of next week the president of the American Broadcasting Co., Mr. Goldenson, will be the witness, followed by Mr. Hoberman.

The Chair previously announced a tentative program beginning with Monday of next week in connection with Federal Power Commission matters. In view of the fact we have been unable to conclude the matter presently before the subcommittee, and there are some other things that have occupied the attention of the subcommittee, and particularly the staff who have been engaged in this work, we will be unable to go into that on Monday of next week.

I have tried to arrange the schedule of the committee to meet Monday, May 9, for the Secretary of Health, Education, and Welfare who has a schedule before the committee in connection with legislation. Therefore, the other matter that tentatively was scheduled to begin Monday in connection with the Federal Power Commission will be scheduled to begin on Tuesday, May 10.

I regret to have to suggest that you come back on Monday. I know it is going to be inconvenient to you, but it is part of the business.

Mr. CLARK. Mr. Harris, is there any—and this is a gratuity on your part—is there any way to know whether or not I will be through around noon so I can scoot back and be on the air that afternoon? Or is that an impossible thing to tell at this point?

The CHAIRMAN. What time do you go on the air?

Mr. CLARK. Locally, 3:30, and 4 o'clock on the network, God willing. [Laughter.]

The CHAIRMAN. I would doubt you would be able to get back by 3 o'clock if you ask my opinion about it. It is entirely possible that you could get back by 4 o'clock.

I should think we would be able to conclude by not later than 1 o'clock. Would that give you enough time?

Mr. CLARK. Yes.

The CHAIRMAN. The subcommittee will adjourn until 10 o'clock Monday next.

(Whereupon, at 4:05 p.m., the hearing was recessed to reconvene at 10 a.m., Monday, May 2, 1960.)

RESPONSIBILITIES OF BROADCASTING LICENSEES AND STATION PERSONNEL

MONDAY, MAY 2, 1960

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

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

Present: Representatives Harris, Mack, Rogers of Texas, Moss, Bennett, Springer, Derounian.

Staff members present: Robert W. Lishman, Chief Counsel; Beverly M. Coleman, Principal Attorney; James P. Kelly, Investigator; Herman Clay Beasley, Chief Clerk; and Jack Marshall Stark, Minority Counsel.

The CHAIRMAN. The subcommittee will come to order.

At the outset I would like to state that the subcommittee, as provided by the Rules of the House with reference to testimony being taken in executive session, has decided to make public the testimony of Mr. Mammarella, Mr. Paxton, Mr. Cane, Mr. Bernard Lowe, Mr. Chipez, and Mr. Goldner.

The subcommittee has decided that counsel could refer to such testimony—incidentally, he does not know it as yet—may refer to such testimony in Mr. Freed's statement to the subcommittee as would be appropriate in connection with the interrogation of this witness and the witnesses to follow.

Before Mr. Clark comes back, I think we will call Mr. Kelly, one of the investigators, who was active in this investigation all the way through, for the purpose of putting certain information in the record that I feel would be necessary in developing this case.

Apparently some questions and discrepancies have developed in connection with some of these matters and we feel an opportunity should be given to clear them up.

Mr. Kelly, will you come around.

Will you be sworn, please?

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

Mr. KELLY. I do.

The CHAIRMAN. Mr. Lishman, I understand there are four points or problems that you would like to develop very briefly about this witness, in order to have it in the record for the procedure.

You may proceed.

TESTIMONY OF JAMES P. KELLY

Mr. LISHMAN. Mr. Kelly, will you please state for the record the position you held with the subcommittee?

Mr. KELLY. I held the position of staff investigator with the subcommittee.

Mr. LISHMAN. And when did your services cease?

Mr. KELLY. On April 14, 1960.

Mr. LISHMAN. And you immediately took up a position as investigator for another House committee; is that correct?

Mr. KELLY. That is correct, sir.

Mr. LISHMAN. What is your background and experience as an investigator?

Mr. KELLY. I worked 7 years with the New York City Police Department, Narcotics Bureau, as a detective investigating narcotics. I worked for approximately 3 years with the Senate Labor Rackets Committee.

Mr. LISHMAN. That is Senator McClellan's committee?

Mr. KELLY. That is correct. And in the fall of 1959 I came with this committee—September.

Mr. LISHMAN. In the course of your duties with this committee, did you have occasion to interview Mr. Tony Mammarella?

Mr. KELLY. Yes, sir; I did.

Mr. LISHMAN. Did you also have occasion to interview Mr. Richard W. Clark?

Mr. KELLY. Yes, sir; I did.

Mr. LISHMAN. Did you have more than one interview with either of these gentlemen?

Mr. KELLY. I had a total of two interviews with Clark, one on November 18, 1959, and another on March 1, 1960. I spoke to him once on the telephone. I had two interviews with Mammarella. One was on the same date, November 18, 1959, and a subsequent one, I believe, in February or March of 1960.

Mr. LISHMAN. And following these interviews or shortly thereafter, you or the person associated with you caused a written memorandum to be made detailing these interviews?

Mr. KELLY. That is correct, Mr. Lishman.

Mr. LISHMAN. Now, let's come down to the first interview you had with Mr. Clark. What was the date of that?

Mr. KELLY. That was November 18, 1959.

Mr. LISHMAN. Was Mr. Mammarella present?

Mr. KELLY. No, sir; I had interviewed Mr. Mammarella earlier on the same date.

Mr. LISHMAN. What were the results of your first interview with Mr. Clark, what did you learn?

Mr. KELLY. The first day that Mr. Howze and I interviewed Mr. Clark, we tried to determine the extent of Clark's interests in record manufacturing companies and other related interests so that we could, through our investigation, connect this with the interest of any records he might have played on the "American Bandstand".

Mr. LISHMAN. Now, Mr. Kelly, on the same day did you also have an interview with Mr. Mammarella?

Mr. KELLY. Yes, sir; the Mammarella interview took place at the office of his attorney, Mr. Romulo Di Cintio in Philadelphia, and lasted from about 2 p.m. to 5 p.m.

Mr. LISHMAN. And did you learn that Mr. Mammarella had been informed of ABC's policy announced on Thursday, November 12, to the effect that the network was compelling personnel connected with the choice of record selections on network programs to divest themselves of outside music business interests?

Mr. KELLY. Mr. Mammarella so informed us that he had an interview with Mr. Roger Clipp, who was the station manager of WFIL. I believe the interview was on the 13th, which would have been Friday. During this interview he had, either then or shortly before that, been apprised of ABC's policy, and he stated in his interview with Mr. Clipp that his intention was to quit the "American Bandstand" rather than divest himself of any outside interest he might have.

Mr. LISHMAN. What position had Mr. Mammarella held with "American Bandstand"?

Mr. KELLY. He was an associate producer and assistant to Dick Clark on that show.

Mr. LISHMAN. And was that a network performance at that time.

Mr. KELLY. From August 5, 1957 it had been network.

Mr. LISHMAN. Now, you had an interview with Mr. Clark on March 1, 1960?

Mr. KELLY. Yes, sir. And also on November 18, from 6 p.m. to midnight.

Mr. LISHMAN. And at this second interview you had with Mr. Clark, did you discuss the affidavit that Mr. Clark had signed on November 16?

Mr. KELLY. Yes, sir; I did.

Mr. LISHMAN. What was the substance of that discussion with Mr. Clark?

Mr. KELLY. The discussion—having read the affidavit, I was particularly intrigued by the last paragraph, which, for the purpose of the record, is paragraph 18.

Mr. LISHMAN. How does that paragraph read?

Mr. KELLY. It reads as follows:

Early yesterday morning one of my programing associates revealed to me certain information which he had concealed from me. I had no previous knowledge or suspicion of these facts. His resignation has been accepted.

Mr. LISHMAN. Did you question Mr. Clark about what that last paragraph meant?

Mr. KELLY. Yes, sir; I did.

Mr. LISHMAN. Will you please describe the nature of the questioning that you engaged in and the substance of the answers you received?

Mr. KELLY. I wanted to find out from Mr. Clark whether or not Tony Mammarella was the programing associate that he referred to. He said that he was.

I then asked Mr. Clark what he had learned from Mr. Mammarella. He stated that early in, I think—I think the first affidavit was drawn up on Sunday, November 15, 1959, in the home of Leonard Golden-son, the president of ABC-Paramount Pictures, the ABC network of which WFIL is an affiliate.

Mr. LISHMAN. It is also the licensee of station WABC?

Mr. KELLY. In New York City.

Mr. LISHMAN. And is it correct that the "Dick Clark Show" originates from that station?

Mr. KELLY. I believe WABC is radio, but Clark was on one of their TV outlets, the "Dick Clark Show" on Saturday night. A little history on this.

Mr. Marvin Josephson, who was also present at this particular interview—

Mr. LISHMAN. Who is he?

Mr. KELLY. He is Mr. Clark's associate in Drexel Productions, Inc., which is the production firm for the "Dick Clark Show" on Saturday nights. He said that they had called Mammarella in New York on Saturday, November 14, because they had heard vague rumors that he "might be mixed up in something." Mammarella told Clark that there were certain areas that he would find it difficult to explain.

I then asked Clark what he meant by this, and he said, "I didn't want to know what he meant by it." And when we questioned him about their attitude, he said, "I did not want to know what he was doing because it would impose an obligation on me when I was questioned about it later."

I said, "Like if the Harris committee in Washington called you and wanted to know what you knew about Mammarella's activities?" and he said "Right."

Clark said in this conversation with Mammarella on the 14th, he and Josephson suggested that he sign an affidavit. Mammarella said he would sign if he had to, but he said, "There are some things difficult to explain, and I know you will understand."

I said, "Did you ask him then what he was doing?" And he said, "No, we did not."

I think Clark also suggested that the reason Mammarella didn't sign an affidavit was because he had told Roger Clipp, who was the station manager of WFIL in Philadelphia, that he was through with this show and therefore it was of no interest to ABC what he, Mammarella, had done in the past.

And Josephson then said that he told Tony, "Look, you are out now, and we don't want to get caught with our pants down."

Mr. LISHMAN. Is that a quote?

Mr. KELLY. That is a quote.

Now, at Goldenson's home in Mamaroneck—this was the meeting on November 15, on Sunday—the ABC people were very anxious to find out why Tony was out of the show. And in a subsequent interview with Mr. Goldenson, I questioned him about this. He stated that they discussed with Clark why Tony had been out of the show, and he said that Clark did not want to discuss it because he had a personal regard for Mr. Mammarella and he did not want to go into these facts. And Mr. Goldenson said they did not want to know from Mr. Clark or anyone what Mr. Mammarella had done. He was not as intrigued with this 18th paragraph as we were.

As a matter of fact, ABC had insisted that this paragraph be put into Clark's affidavit, and Mr. Josephson stated that ABC "wanted to keep its skirts clean".

Mr. LISHMAN. Mr. Kelly, you read and you attended part of the executive session at which the testimony of Mr. Mammarella was obtained?

Mr. KELLY. Yes, sir.

Mr. LISHMAN. Does it correctly reflect that testimony, when I say that he testified before the subcommittee that he had received payments of money from a number of record distributors, including Chess, Universal, Edward S. Barsky, Inc., Cosnat Distributing, Gotham Record Distributing, Marnell Distributing, David Rosen Co., and others?

Mr. KELLY. That is correct.

Mr. LISHMAN. So that in your interview with Mr. Clark did you ascertain whether or not Mr. Mammarella had ever told him or Mr. Josephson about the fact that he had been receiving payments of money from these record-distributing companies?

Mr. KELLY. Mr. Clark never said that.

As my previous testimony indicated, he said he didn't want to know what Mammarella had done, and that Mammarella had not told him. As a matter of fact, I interviewed Mr. Chess myself along with Mr. Eastland and Mr. Howze.

Mr. LISHMAN. Mr. Kelly, I would like to hand you Mr. Mammarella's testimony in executive session on that point to see if, in executive session, Mr. Mammarella himself didn't testify before us that he told Mr. Clark quite a bit about the details of this situation.

Mr. KELLY. Would you like me to read this?

Mr. LISHMAN. Yes.

What is the document you have in front of you?

Mr. KELLY. I will identify it as the original copy of the report or proceedings of hearings held before the Special Subcommittee on Legislative Oversight, the Committee on Interstate and Foreign Commerce, executive session, dated January 28, 1960.

Mr. LISHMAN. And is it the testimony of Mr. Anthony Mammarella?

Mr. KELLY. The testimony is Anthony Mammarella, resumed. He also testified on the 27th.

Mr. LISHMAN. Yes, sir.

Mr. KELLY. On page 156 of this document, you asked Mr. Mammarella—

The CHAIRMAN. Before you read that, Mr. Kelly, are you about to present part of this testimony in further explanation of the interviews that you had?

Mr. KELLY. Yes, sir.

Mr. LISHMAN. What was the certain information that you concealed from Dick Clark?

Mr. MAMMARELLA. On the Sunday after I resigned—I resigned on Friday 13—on the following Sunday, which was the 15th, I guess, I got a call from—it may have been Saturday—what is the date of this statement?

Mr. MAHONEY.—

Mr. Mahoney was one of Mr. Mammarella's attorneys at that hearing—

Mr. Lishman, would it be reasonable to allow witness to read the entire letter in fairness to him to know what the last paragraph refers to.

Mr. MAMMARELLA. I know what that refers to. That is all right. A number of people have been called to the New York office of Marvin Josephson,

who is Dick Clark's manager and still is I guess. They wanted to know anything from anybody, they wanted to talk to various people. I waited around, and knowing the facts as to the moneys I had received from record companies, in the presence of Mr. Clark, Mr. Seton, and Mr. Josephson, I said that I thought there were some things in my background that, not to throw Dick a curve, I should tell them. Mr. Seton and Mr. Josephson were lawyers. They said to me, "Well, if you have any confidential information that would be detrimental to you, we would inform you that if you tell us in our presence we will use it if we have to."

Well, we were all friends in the room, and so I told them, after they had informed me that I should tell that anything that they could use in Dick's behalf, even though it might be against me, I said, "Well, we are all friends, and I think it only fair that Dick know that I received the moneys that you now have in the record."

And I explained to him the circumstances under which I received them, to the best of my ability.

Mr. LISHMAN. May I interrupt?

Mr. Kelly, you were present in that room, and the record will show that Mr. Mammarella, in answer to questions, admitted that he had received moneys from the various record distributing companies and others who have already been mentioned?

Mr. KELLY. The record will indicate that, Mr. Lishman.

And they thanked me for having held it, and that was the sum total of it. And then I believe it was Mr. Seton who had informed ABC of what I had told them at this meeting on Sunday night.

Mr. LISHMAN. That is all for that point.

The CHAIRMAN. Mr. Springer.

Mr. SPRINGER. When you say "them," does that include Mr. Clark? Did you say Mr. Clark was not present at this interview?

Mr. KELLY. Yes, he was.

Mr. SPRINGER. He was present in the room?

Mr. KELLY. The time referred to was a meeting held in Marvin Josephson's office in New York; Mr. Seton, Mr. Clark, Mr. Josephson, and Mr. Mammarella. There were others. I don't know whether they were there at the same time.

Mr. LISHMAN. Now, in the course of your March 1, 1960, interview with Mr. Clark, who else was present?

Mr. KELLY. At the interview?

Mr. LISHMAN. Yes.

Mr. KELLY. Mr. Josephson, to whom I previously referred, who was Clark's associate, who acted as his attorney for this interview, Mr. Edward Jones and Mr. Ray Cole of this subcommittee. The interview was held at the WFIL office. I think we used the board room upstairs, and then we repaired for a while to a small restaurant in the neighborhood known as the Brown Jug to get something to eat, and we continued the discussion there. Then we returned to the board room.

Mr. LISHMAN. Mr. Kelly, did you question Mr. Clark directly about whether or not he had ever taken payola?

Mr. KELLY. Yes, sir; I did.

Mr. LISHMAN. And what did he state?

Mr. KELLY. He said that he had not, he said it was a reprehensible act, "Why should I jeopardize this show and everything I have here by taking payola?" He said with the potential he had, he would be crazy to think of ruining it by getting a reputation for taking money or payola.

So at this point I asked him another question. I said, "Did you ever give payola," and he said "Yes." I asked him why, and he said, "Why not." So I pursued this particular point, and he indicated that he had conversations with Harry Chipetz, who was one of the principals in Chips record distributing firm, in which Clark himself had a one-third financial interest, and he stated that Chipetz had told him that they had paid payola. He said that Chips had furnished him with financial statements which showed promotion expenses, and I said, "Now, Dick, you are a university graduate, you went to Syracuse, you majored in business, you took accounting."

He said, "Yes; but I never liked it."

I said, "But you do know how to read a statement?"

At this point Mr. Josephson objected very strenuously to Mr. Clark's use of this term, and then he stated to me shortly thereafter that certain money was paid in payola without a doubt.

As a matter of fact, he indicated that he was not shocked or chagrined at all when Chipetz told him they were paying payola because these were the facts of life as far as the record business was concerned, and this was the way the record industry was operated. It didn't concern him that the company in which he had a one-third financial interest was engaged in payola, and he was aware of the fact that this money was paid to diskjockeys, some of them in Philadelphia.

Mr. LISHMAN. Did you ask him whether there was much difference between giving payola and taking it?

Mr. KELLY. I honestly could not reconcile the two points.

Mr. LISHMAN. You did ask him that?

Mr. KELLY. One was reprehensible, but the other was allowable because it was what the industry does.

Mr. LISHMAN. It is correct, is it not, that the testimony before the subcommittee indicates that Chips paid approximately \$20,000 to various diskjockeys and others connected with the broadcasting business.

Mr. KELLY. I believe that is in the record.

Mr. LISHMAN. Yes.

In your interview with Mr. Mammarella, did he indicate to you what his responsibilities were so far as programing the records to be broadcast were concerned?

Mr. KELLY. Yes, sir; he did.

Mr. LISHMAN. What did he say in that regard?

Mr. KELLY. We got into that particular subject in this manner: Mr. Howze and I were concerned with finding out who was responsible for the programing of records because it had been our information that whoever programs the records would have an interest, or, if he did have a financial interest in any record company, would probably see to it that he got some of his own records aired.

So it became important to find out and to fix the responsibility as to who did the programing on "American Bandstand."

In our conversation with Mammarella on November 18, in the presence of his attorney, Mr. DiCintio, who was there, I asked him who did the programing for the Clark show, the "American Bandstand," and he said, "We did; we shared it." And I said, "Sort of a 50-50 arrangement?" And he said, "That's right." I said, "How did you do it?" He said, "Dick and I would sit down and we would listen to the records and I would select some and he would select some."

I said, "Would it usually average out that way?" He said, "That is correct."

Mr. LISHMAN. About how many records did Mr. Mammarella indicate could be played on that network program?

Mr. KELLY. He told me that they programed a total of about 32 records a day.

Mr. LISHMAN. Did he tell you what they considered to be the average length of time occupied in airing a record?

Mr. KELLY. Well, the average record is about 2 minutes and 20 or 30 seconds, or more so.

Mr. LISHMAN. Did Mr. Mammarella indicate that prior to Dick Clark's association with the show "American Bandstand" that he had also programed some 8 months' record selections for his predecessor on the "Bandstand" program?

Mr. KELLY. I did not then indicate it although he did say he was in charge of programing for a while, but we did not get into the specifics on it. However, in his testimony he does indicate—

Mr. LISHMAN. His testimony in executive session indicates—

Mr. KELLY. There were 7 or 8 months on the Bobby Horn show when he did program the records. And it became a point of interest later on when we interviewed him and he indicated that even prior to Mammarella and Clark coming together that he had taken care of Mammarella when he was with Horn.

Mr. LISHMAN. Did you also interview Mr. Goldenson?

Mr. KELLY. Yes; I did.

Mr. LISHMAN. Who is Mr. Bernard Goldenson?

Mr. KELLY. He is the president of American Broadcasting-Paramount Theatre, Inc.

Mr. LISHMAN. When did you interview him?

Mr. KELLY. On April 5, 1960, at his office.

Mr. LISHMAN. And what did you question him about?

Mr. KELLY. I questioned him, among other things, about the November 19, meeting that was held in his home.

Mr. LISHMAN. Who was present at this interview?

Mr. KELLY. At that particular meeting he said himself, Sy Segal, who was the vice president and financial treasurer of ABC-Paramount Pictures; Omar Elder, who was a vice president and general counsel of ABC-TV, Marvin Josephson, who was Clark's associate in Drexel, Inc., and Charles Seton, Clark's attorney, and Dick Levy, tax lawyer for Clark in Philadelphia.

Mr. LISHMAN. Now, when you interviewed Mr. Goldenson about this, were you accompanied by another member of the subcommittee staff?

Mr. KELLY. Yes; Mr. Raymond Cole was with me at the time.

Mr. LISHMAN. And what did you ask Mr. Goldenson?

Mr. KELLY. I wanted to find out exactly what went on in this meeting of November 15, and specifically, in regard to what Clark had told them that Mammarella had done. Again I was intrigued by their paragraph 18 in that nobody seemed interested in what he had done and why this paragraph was inserted in Clark's affidavit. He stated that at this meeting of the 15th, Dick related that Tony Mammarella had told him that he had done things that were wrong and Goldenson told Clark, "If he did, you will have to get rid of him."

Now, he said that Clark had not told him what Tony had done that was wrong, and nobody had pressed Dick Clark for a fuller explanation of this. And then in my questioning I said, "Didn't anybody tell you what Mr. Mammarella had done that was wrong?" and he said "No."

According to the interview that I had with Clark and Josephson on March 1, they had stated that ABC and Goldenson insisted on the inclusion of this paragraph in the affidavit to make sure that ABC's skirts were clean. And they had originally suggested that the language be much stronger, but they toned it down at Clark's request.

Now, I tried to understand how they would know what tone to use unless Clark had communicated with them to some extent what Tony had done, and that this would imply that Clark himself knew. But he said they were not aware of what Tony had done and nobody had told them.

Mr. LISHMAN. And did you ask them what the facts were, that Clark had no previous knowledge of, in connection with Mammarella?

Mr. KELLY. That is correct. And they said they didn't know.

I then questioned him about that press release which came out about 2 days after the meeting. It was released to the press, I think at 6 p.m., on the 17th, and it was written by a vice president in charge of press releases up there by the name of Foster.

Mr. LISHMAN. I will hand you a copy of that press release and ask you if that is the one you are referring to?

Mr. KELLY. This is a facsimile of it; yes, sir.

Mr. LISHMAN. Mr. Chairman I would like to have this ABC press release, identified by the witness as the one he is talking about, included in the record. We have the original here.

The CHAIRMAN. I think this was referred to last Friday. I believe it was put in the record at that time.

Mr. LISHMAN. Very good.

Will you continue?

Mr. KELLY. In regard to this press release, Mr. Weinbach, who was another vice president in charge of something up there—he is vice president and general counsel of American Broadcasting Division of ABC-Paramount Pictures, Inc.—he very kindly went out and got a copy of this. And I asked Mr. Goldenson, the president, if he had ever seen this before, and he said "No," this was the first time that he had ever seen this press release. So I asked him to read the paragraph, and it reads as follows:

With particular reference to the Dick Clark programs, which are the best known in their field, we have examined all evidence available to us concerning these programs and their production organizations and have concluded that Dick Clark has neither solicited nor accepted any personal considerations, money or otherwise, to have any performer appear or play any records on any of his programs.

I then asked him what investigation he had made and what all this meant. Then he said that the only evidence they had was the affidavit which Clark submitted to them and which testimony here indicates they dictated to him on Sunday, November 15.

In other words, the affidavit, the terms of which they dictated to Clark, he then turns to them and they read this, and this is the available evidence that they have and on which they base this press release, and in which they reaffirm their faith in Mr. Clark and his integrity.

They admit that they made no investigation whatsoever into his background.

Mr. LISHMAN. When you say "gentlemen," who are the people?

Mr. KELLY. Mr. Goldenson, Mr. Elder, and Mr. Weinbach.

Mr. LISHMAN. And was it to all these gentlemen collectively that you asked these questions, with reference to what investigation ABC did make?

Mr. KELLY. Yes, sir, because I had a prior interview with Mr. Weinbach and Mr. Elder in which I asked them, and they said they had no facilities to make an investigation, that they called the person in and talked to him. If he sounded all right, he is all right, and if he is evasive and doesn't answer the questions, he is all right.

Mr. Elder said in one particular case one person they fired was evasive and didn't answer the questions. I said, would he be subject to further investigation? And he said "Yes".

I said, "What investigation did you make of this person?", and he said, "None. We canceled his contract."

They rely solely on their appraisal of the individual whom they suspect of wrongdoing.

Mr. LISHMAN. Did he tell you that Allen Freed had been evasive and refused to sign an affidavit?

Mr. KELLY. Yes, he did. As a matter of fact, that was the case in point.

Mr. LISHMAN. Who told you that?

Mr. KELLY. Mr. Elder was the one that told me that.

Mr. LISHMAN. And did Mr. Elder also tell you that no further investigation was necessary in connection with Allen Freed because ABC had canceled Freed's ABC contract?

Mr. KELLY. That sort of took care of the matter for them, yes.

Now, I questioned Mr. Goldenson, incidentally, in regard to—along the lines of the Clark affidavit and his questioning of Clark, and I said—I asked Mr. Goldenson how he felt about Clark's conflicts of interest, and he said that he had questioned the objectives of Clark as a diskjockey in having all these outside interests, he did not see how he could remain objective. He said, in setting down ABC policy, he told Clark he would have to divest himself of these companies if he were to remain in their family, the network.

And using a bit of hindsight, he said, "Had I known the extent of Clark's activities earlier, I would have insisted that he divest himself completely."

So then he went on to say that if it could be proved that Clark had heavily played records in which he had an interest, it would have been contrary to ABC policy and ground for a termination of Clark's contract.

Mr. LISHMAN. Did Mr. Goldenson tell you that ABC's contract with Mr. Clark was through Drexel TV Production, Inc.?

Mr. KELLY. Yes, sir; he did.

Mr. LISHMAN. Did he tell you that ABC's Paramount Pictures owned five TV and six radio stations?

Mr. KELLY. That is correct.

Mr. LISHMAN. And that ABC has 234 affiliated TV stations?

Mr. KELLY. And 354 affiliated radio stations.

Mr. LISHMAN. He told you that?

Mr. KELLY. Yes.

Mr. LISHMAN. And what were your instructions when you were sent out to investigate this matter?

Mr. KELLY. The basic instructions were to find the extent of Clark's interest in the particular related industry, and whether or not they affected his financial interests, the fact of his activity as a disk-jockey—it was a general investigation into payola.

Mr. LISHMAN. I have no further questions.

The CHAIRMAN. You may step aside, Mr. Kelly.

Mr. Clark, will you resume the chair, please?

TESTIMONY OF RICHARD W. CLARK, ACCOMPANIED BY PAUL A. PORTER, COUNSEL—Resumed

The CHAIRMAN. When the subcommittee adjourned on Friday last to meet this morning, it was agreed that you would return, that you would have an opportunity in the interim to look over the chart that was presented to you, and therefore a little clearer explanation could be given of your private business operations in connection with this matter as you described in your opening statement, Mr. Clark.

Mr. Lishman, you may proceed where we left off at that time.

Mr. LISHMAN. Mr. Clark, have you had the opportunity of looking at charts No. 1 through 4?

Mr. CLARK. Yes, sir; I have.

Mr. LISHMAN. Can you point out where they are inaccurate?

Mr. CLARK. There are some errors. Shall we start with No. 1?

Mr. LISHMAN. Yes, sir.

Mr. CLARK. I am not sure, Mr. Lishman, first of all, what is the exact purpose to which you will put these charts, so my comments may be relevant or irrelevant as the case may be.

Mr. LISHMAN. I want to make clear the legislative purpose of these charts.

One of the fundamental cornerstones of our jurisdiction is to ascertain whether the airways of the Nation are being used in the public interest or whether predominantly commercial interests step into the picture, and we have excessive unannounced commercial use of the airways for the enhancement of the profits of either companies or persons. And we are endeavoring to ascertain whether the present law, which contains only the generalized standard of the airways, that the airways must be used in the public interest, is precise enough, or whether it needs to have some guidelines laid down in order that in the future some of the problems that we have discovered in our investigation may be corrected. And in your situation you have to be, according to the testimony of the witnesses we have received, you are expert in the music business, the most important single factor in the popular music business, which can insure the commercial exploitation of a record. So we are very much interested, particularly in your outside commercial interests, and the bearing they may have upon what you put on the air.

Mr. Clark, as an individual, we are not singling you out. It is a situation that has grown up in the whole field, and it is true, as you said in your opening statement, that some of the practices that are referred to in our hearings have been engaged in for some time by

others, and apparently are not illegal, and that you, according to the way you saw it, were playing according to the rules of the game as it was then laid down.

But we must recognize that we have the duty of finding out if the rules of the game are serving the public interest.

Mr. CLARK. I understand.

Mr. LISHMAN. There is one thing I would like to disabuse you or anyone of. At no time has this subcommittee or staff attempted to go after any particular individual because of the persons individual situation, in fact as far as I am personally concerned I wish you very well, and I will say I am very glad to see that a young man like you could have reached success so quickly. And I am sincere about it.

Mr. CLARK. Thank you.

My comments regarding the chart, then, if we start in the upper lefthand corner, the Bernard Lowe Enterprises, I think you realize I have no interest in that; that is, as indicated here, business association; I don't know the intimate details of the operations of that business.

Mr. LISHMAN. Of course, one of the reasons for the broken lines is to indicate that you have no interest in that particular business. But it is a fact that in other enterprises—for example, Bernard Lowe himself was associated with you in Mallard?

Mr. CLARK. Yes, sir; I realize that. But if you should question me as to intimate questions regarding the operations of the four companies listed under Bernard Lowe Enterprise—

Mr. LISHMAN. We have no intention of doing that, Mr. Clark.

Mr. CLARK. All right. The Clark-Feld Productions in the third box over—as far as I know, there never was such a thing; there was a March Production Corp., 100 percent owned by me, which contracted with GAC Super Production.

The CHAIRMAN. Yes—Mr. Lishman, I do not want to continually interrupt you, I want you to go ahead and conclude your interrogation—but if the chart means anything to me, the purpose is to show that you do not have an interest in the Bernard Lowe Enterprises, but the connection with that as indicated on the chart up there to Chips Distributing Co., Inc., which has your name, Lowe, Chipetz, Record Distributors, and that, then, refers directly to you and to Mammarella. It seems to me that that should be explained.

Mr. CLARK. Mr. Chairman, as I tried to indicate Friday, if we were to carry the dotted lines out from Chips Distributing Co. to every company—every line of records that it distributed—the chart would be tremendous. I am only trying, if I may, to say, yes, I know about the Bernard Lowe Enterprises, but I am not free to answer questions as to the details of that business. I think Mr. Lishman already knows this, but I just wanted to point it out before we went on further.

The CHAIRMAN. He just so indicated—perhaps you had better go ahead, then.

Mr. LISHMAN. Could we shorten this by saying that what this is intended to represent, in graphic form, is the companies and persons who directly or indirectly had some kind of relationship which was significant in the selection, according to our contention, in the selection of the records which were made on your program? For example,

up in the upper left-hand corner the Bernard Lowe Enterprises, Mayland Music Co., Inc., is one of his subsidiaries. And that, in turn, is the company which had the copyright of "Butterfly", is it not?

Mr. CLARK. Yes, sir.

Mr. LISHMAN. And wasn't that copyright assigned to one of your companies?

Mr. CLARK. Yes, sir.

Mr. LISHMAN. So that there is, even there, an indirect interest or an indirect significance—

Mr. CLARK. Mr. Lishman, I am not quibbling, believe me; I only wish to indicate in order for the chart to be complete, it literally, in that sort of instance, then, would have to list literally thousands of individual companies, officers and relatives and so forth, that it is impossible to carry it, I think, to the third step. I don't disagree; I am not trying to impair your progress. I am just trying to point it out ahead of time.

Mr. LISHMAN. Is there any way—

Mr. Moss. Mr. Chairman, I wonder if I might interrupt a moment.

As I understand it, counsel asked Mr. Clark whether or not the chart was substantially accurate—whether it was accurate. I objected on Friday, and I am going to object again to the witness questioning counsel or undertaking to present argument that the chart is either correct—I think for the purposes for which was developed by the subcommittee is a matter of subcommittee business which can be appropriately developed on the record as we proceed with the examination of the witness. But if we have a counterexamination by the witness and argumentation as we go along, this hearing will go on from now to eternity. And I think we should hold him very tightly in line, giving him the fairest of treatment but expecting answers, not argument.

The CHAIRMAN. I think, Mr. Clark, you do have a right to explain what part of this chart is not factual as you have indicated.

Mr. LISHMAN. Did you find anything, exclusive of the question of its lack of not comprehensively covering every possible record distributing company or record manufacturer, did you find anything on the irrelevance of fundamental objection to the correctness of the chart?

Mr. CLARK. Mr. Lishman, I have no objection to the chart at all, and believe me, I am not arguing with you.

Mr. LISHMAN. Do you have any objection to the chart being incorporated in its present form in this record?

Mr. CLARK. I really have no objection unless you want me to go through and pick up very small inaccuracies. I would be very happy to do that.

Mr. LISHMAN. That is what I wanted to get at, whatever factual inaccuracy there was in the chart. We tried to make it as accurate as humanly possible.

Mr. CLARK. All right, in box No. 3 there is no such thing as Clark-Feld Production. I own a corporation called March Corp. which is a 100 percent corporation which contracted with GAC Productions.

Mr. LISHMAN. May I interrupt to refresh your memory? I have a copy of a letter dated June 26, 1959, addressed to GAC Super Productions, 640 Fifth Avenue, and it is signed March Productions Co.

by R. W. Clark, president, and in the first paragraph it states that "all shows contemplated by this agreement shall be designated and known as Clark-Feld Productions, hereinafter referred to as CF."

I also hand you this.

Mr. CLARK. I don't have to see it.

There is no company called Clark-Feld Productions, as it would be called project A, that was Clark-Feld Productions.

In the Binnick Corp. in the lower left hand corner, I do not think Mr. Mammarella had a participation in that company. Perhaps you have information other than what I have.

I don't think he was a participant.

Mr. LISHMAN. I think that was changed to Robert Marucci.

Mr. CLARK. I was following the summit line down. Thank you.

That is all that I can see of any importance on chart 1.

Mr. LISHMAN. I would like to have this chart introduced in the record, and if any further authentication of its accuracy is needed, I am prepared to place the staff member to testify as to how he made up this chart.

The CHAIRMAN. Mr. Clark, you did refer to what you said were some slight inaccuracies in the chart. Are there any other inaccuracies, whether slight or not, that you would want to refer to if this is going to be in the record?

Mr. CLARK. Mr. Chairman, I want to do exactly what Mr. Moss wants me to do, I want to answer it as accurately and as quickly as possible. Any other corrections I have I don't think are of any great significance.

If it is absolutely certain that it has to be 100 percent per se, it will take a few more moments to go through it. But I don't think it will make any difference in the long run.

The CHAIRMAN. I certainly do not want anything to go in the record that you acknowledge to be inaccurate and is not an actual fact. We want factual information here, and that is all.

Mr. CLARK. In the first box on the left-hand corner, the Paramount Pressing Co., at the time of my interest I don't think it engaged in the business, I don't think it operated. It was set up, it should have proceeded. But as I recall in my statement, I returned my investment in that before it got under operation. I don't consider that a major important point.

I have, as indicated by the chart, no interest directly in Capital Records or Marnell Distributing Co. There is an indirect interest in Milton Kellern and Wildcat Music. The Alton Co. I have no knowledge of; I don't know anything at all about that.

The Universal Distributing Co. I have, as I have indicated, no personal interest. I agree that this is correct, there is an indirect interest, as I have with every distributorship in the country.

The same thing held true with Edward Barsky, Inc., distributors. Mr. Barsky had an investment in Rayo Production and also, incidentally, was a record distributor. I have no knowledge of his business.

I think that completes chart No. 1.

The CHAIRMAN. With that explanation, and calling attention to the key which is at the bottom right-hand side of the chart, we will let it go in the record.

(Chart No. 1 appears facing p. 1250.)

Mr. CLARK. On chart No. 2, there is one basic inaccuracy, though not materially important.

In the center, directly right of the circle, Drexel Films is shown as a wholly owned subsidiary of Drexel Television Productions, which shows above. That should be starred, I would presume, according to the key.

And again, under the Swan Record Corp., during the period of my interest, Paramount Pressing Corp. did not operate.

In the upper right-hand corner, Columbia Pictures, Inc., "Gidget in Hawaii" should read "Gidget," which received an endorsement fee; as I recall for that, "Gidget in Hawaii" is another motion picture.

I have explained Clark-Feld Productions, I think. There is no entity; if there is that name, it is the name of a project.

Other than that, I don't have any questions on it.

The CHAIRMAN. With that explanation, let this be included in the record.

(Chart No. 2 appears facing p. 1250.)

Mr. LISHMAN. We come to chart No. 3.

Mr. CLARK. In the left-hand portion under "Clark Manufacturing Co."—

The CHAIRMAN. Before you explain that, Mr. Lishman, I think you should make a statement for the record as to what this chart proposes to show.

Mr. LISHMAN. This chart shows the music and record businesses of Mr. Clark before his divestitures from these outside interests.

The CHAIRMAN. Very well.

Mr. CLARK. The Lawn Record Mfg. Co. that is listed on the left-hand side to the best of my knowledge was never in active operation. The chart is a little bit difficult to follow in that Mallard Record Pressing Corp. never did press Am-Par records, it pressed one Globe record, and therefore the line, I think, should be drawn from Globe to Mallard.

Nor did—

Mr. LISHMAN. May I ask about that?

Mr. CLARK. Yes, sir.

Mr. LISHMAN. Is it a fact that you had some kind of a verbal arrangement with Mr. Sam Clark of Am-Par?

Mr. CLARK. Yes, sir.

Again I point out it is a very insignificant technicality, I will not argue with you. It was an order for the Globe Corp., I think.

Mr. LISHMAN. Did Am-Par order the pressing of the record from Mallard?

Mr. CLARK. I did.

Mr. LISHMAN. And paid for them?

Mr. CLARK. In the Globe account, yes, sir. It is again a detail. I don't know whether you are interested in that, I just call it to your attention.

I received no salary from the Chips Records Distributing Co. as indicated by the arrow at the bottom right-hand corner, I did get a

capital gain. It might be construed by this chart that the Chips Record Distributing Co. distributed Am-Par records—ABC-Paramount records. They did contribute one subsidy loan, as I recall it, I don't know the exact name of it, but it was not the major line. It might be an inference drawn from the chart.

There are other things, such as the weight or the number, but that is not indicated in the chart. For instance, independent record manufacturing companies, one might draw the inference that this happens with every one, and that of course is not true.

Other than that, I think the chart is accurate.

Mr. LISHMAN. That is chart No. 3.

The CHAIRMAN. Let it be received for the record with that explanation.

(Chart No. 3 appears on opposite page.)

Mr. LISHMAN. We come to chart No. 4, which shows the sources of Mr. Clark's income before divestiture.

Mr. CLARK. I believe there is one major correction there, and that is the box in the upper right-hand side, Talent Management. That was not a source of income. I never received any income from that operation.

Mr. LISHMAN. In other words, that box should be eliminated?

Mr. CLARK. Yes, sir.

Mr. LISHMAN. Do you have any other comments on this chart?

Mr. CLARK. I actually in some cases have not received the money yet, but, under the terms of the contract, I will. That is an insignificant detail.

Mr. LISHMAN. Chart No. 4.

The CHAIRMAN. Let it be received.

(Chart No. 4 appears on opposite page.)

Mr. LISHMAN. Mr. Clark, to complete the record, I am going to hand you a series of contracts and ask you to identify them as being correct photostatic copies.

The first one is in the form of a letter agreement dated September 16, 1957, addressed to Click Corp., your attention, and signed by Roger W. Clipp, vice president, Radio and Television Division, Triangle Publications, Inc., and bearing your signature, of acceptance on September 23, 1957, in the lower left-hand corner, and ask you if this is a correct copy of this agreement?

Mr. CLARK. Mr. Lishman, this is correct, though I believe it has been superseded by a second one, which you probably have.

Mr. LISHMAN. Mr. Chairman, I would like to have this agreement identified by the witness as correct placed in the record at this point.

The CHAIRMAN. You do identify this as authentic?

Mr. CLARK. Yes, sir.

The CHAIRMAN. Let it be received.

(Letter of September 16, 1957 referred to follows:)

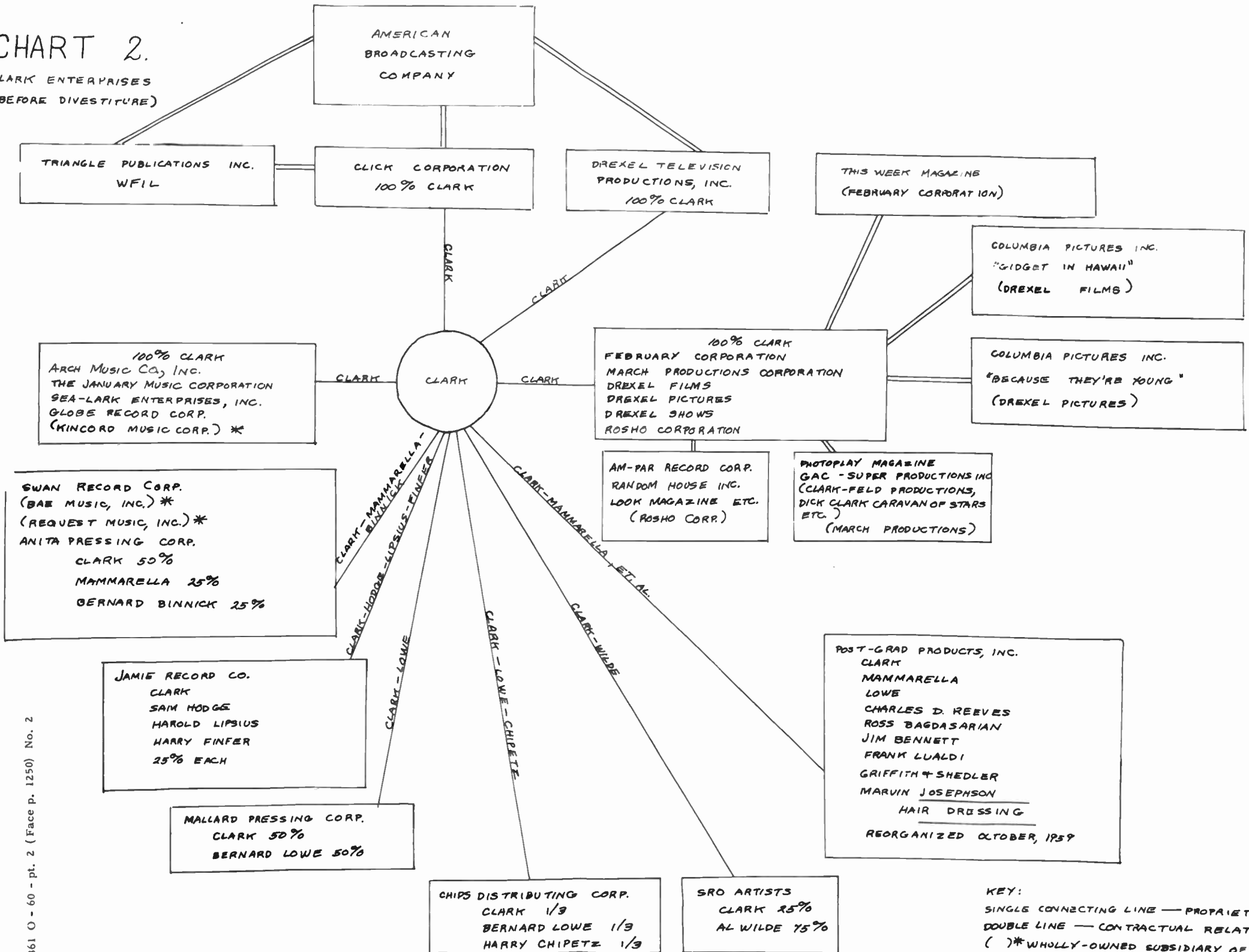
SEPTEMBER 16, 1957.

CLICK CORP.,
American Bandstand Division, WFIL-TV, Philadelphia, Pa.
(Attention of Dick Clark.)

DEAR MR. CLARK: This will serve to confirm discussions between us concerning the origination of "American Bandstand" for WFIL-TV and the ABC-TV network. This agreement supersedes any and all contracts between us, i.e., between Dick Clark and WFIL and WFIL-TV. Your company, Click Corp., Ameri-

CHART 2.

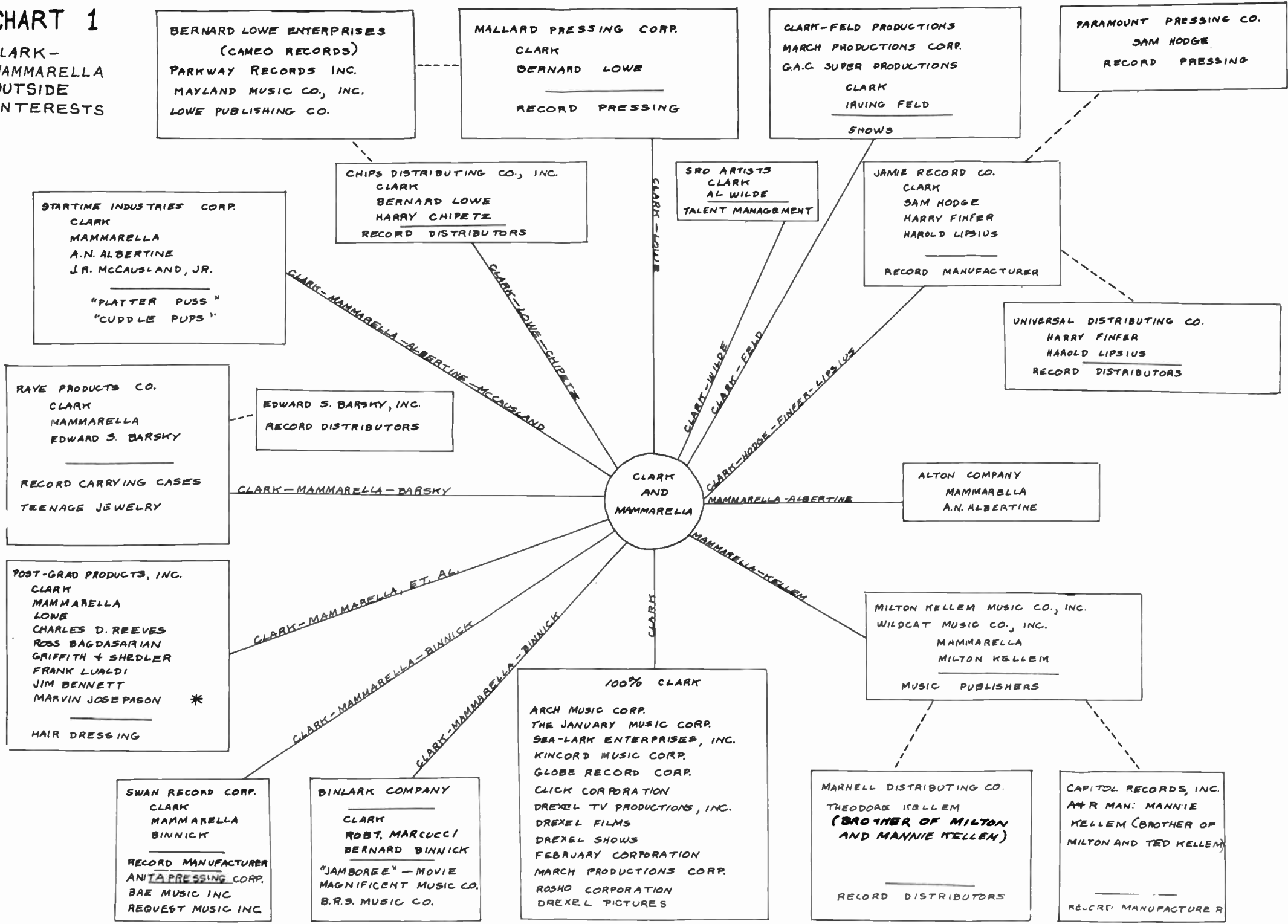
CLARK ENTERPRISES
(BEFORE DIVESTITURE)



KEY:
SINGLE CONNECTING LINE — PROPRIETARY INTEREST
DOUBLE LINE — CONTRACTUAL RELATIONSHIP
(*)*WHOLLY-OWNED SUBSIDIARY OF COMPANY UNDER WHICH LISTED

CHART 1

CLARK-MAMMARELLA OUTSIDE INTERESTS



CLARK-MAMMARELLA INTERESTS BEFORE DIVESTITURE

KEY:
SOLID LINES — PROPRIETARY INTEREST
DOTTED LINES — BUSINESSES OF ASSOCIATES

* REORGANIZED OCTOBER, 1959

CHART 4

DICK CLARK
SOURCES OF INCOME
(BEFORE DIVESTITURE)

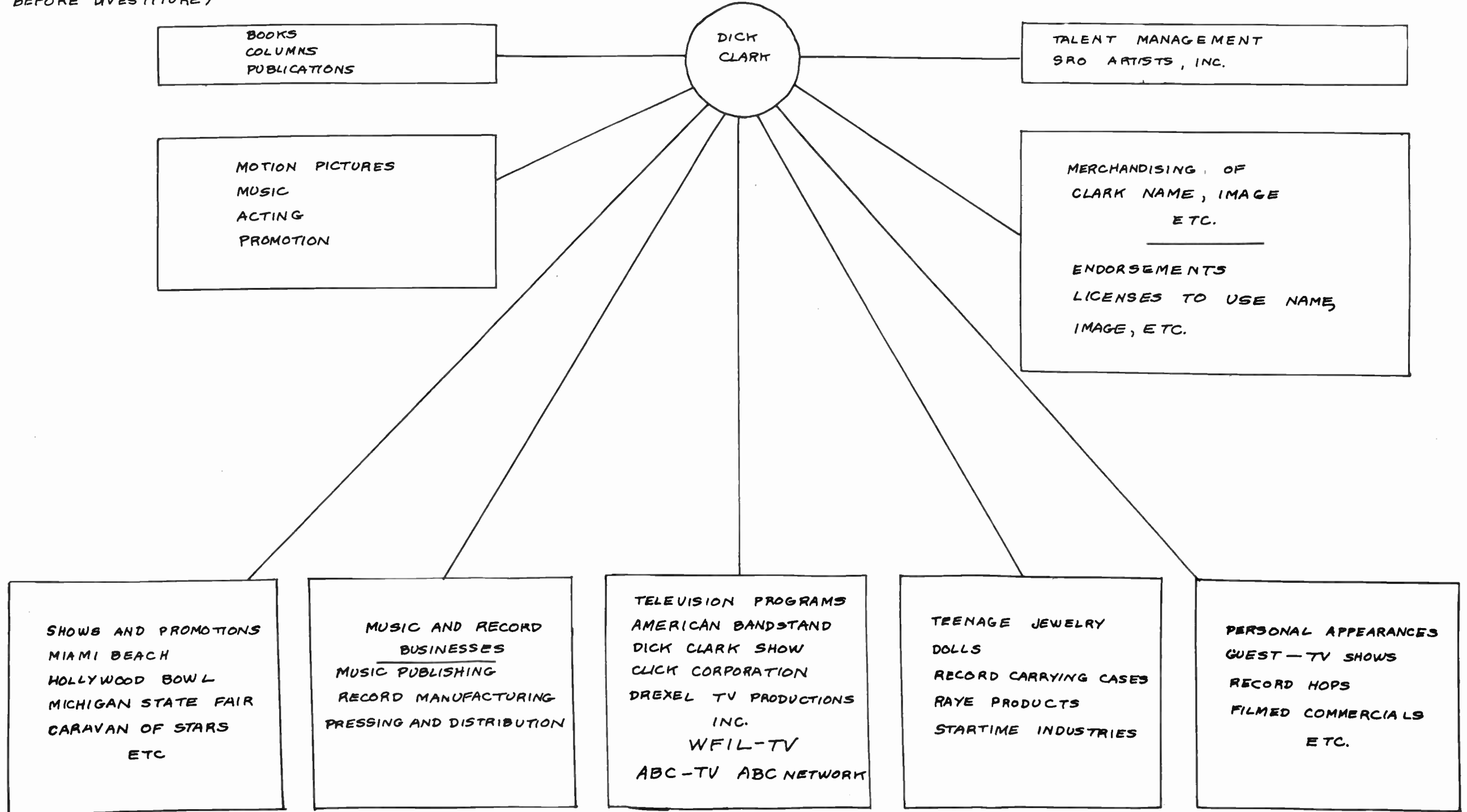
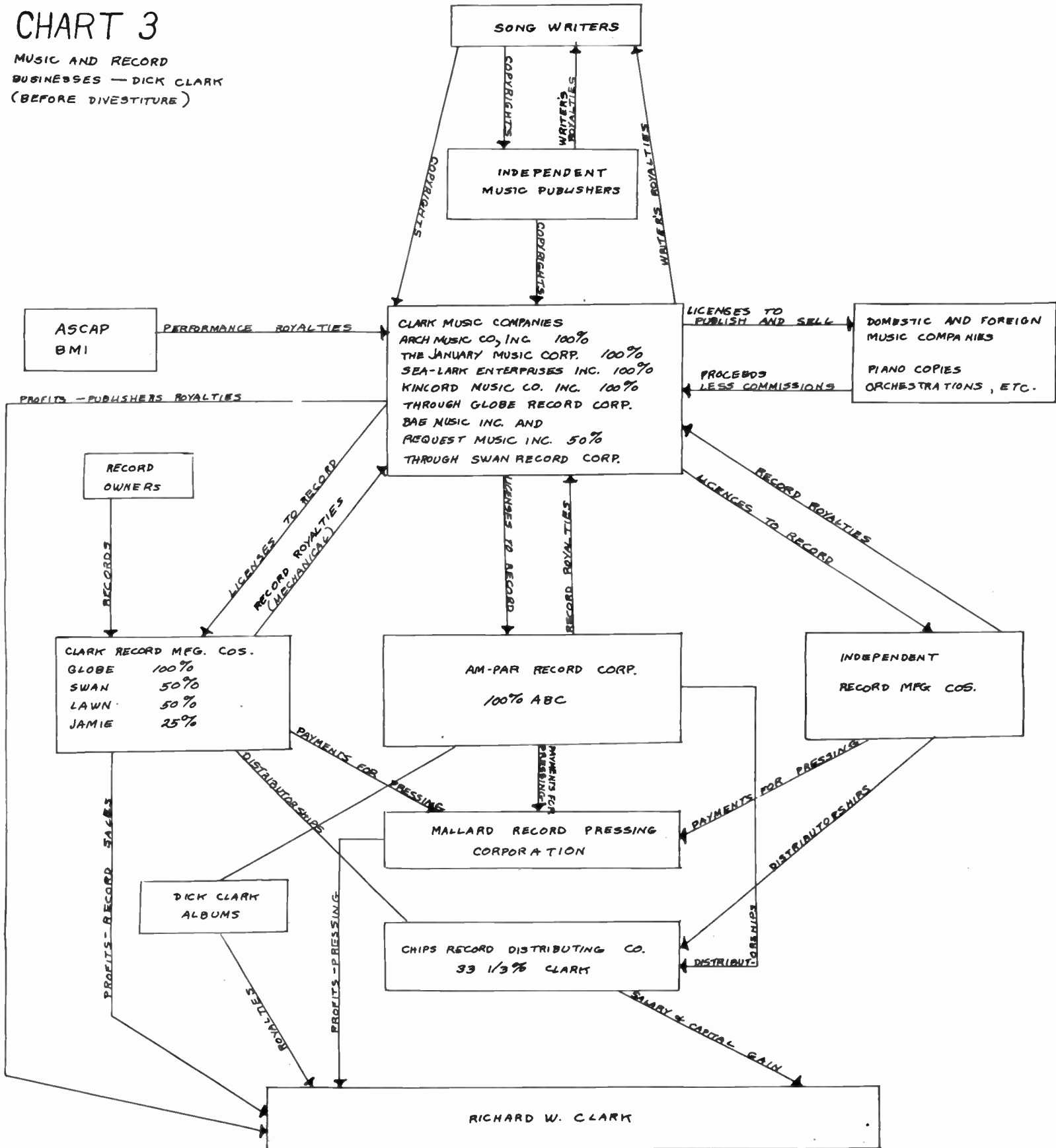


CHART 3

MUSIC AND RECORD
BUSINESSES — DICK CLARK
(BEFORE DIVESTITURE)





can Bandstand Division, hereinafter referred to as Click Corp., agrees to produce "Bandstand" for the Radio and Television Division, Triangle Publications, Inc., hereinafter called Triangle, for a consideration of \$2,000 weekly. For this amount Click Corp. will provide the services of Dick Clark as master of ceremonies and guests for the program and put the program in form suitable for presentation on the air by WFIL-TV for the ABC-TV network.

Click Corp. will pay Triangle weekly the sum of \$350 for office space, telephone, a share of production, a share of advertising, promotion, publicity and for secretarial assistance. Should this amount be found inadequate to cover the requirements of that program, Click Corp., will pay Triangle a greater amount weekly sufficient to cover these increasing expenses.

In certain instances, specifically where special guests are involved, Triangle will pay Click Corp. for expenses incurred beyond the normal and reasonable expenses covered in the first paragraph.

It is understood that Triangle retains exclusive control of the titles "Bandstand" and "American Bandstand" and of the format of the program as developed by the station and established through the years since 1952.

It is further understood that this letter of agreement assigning to Click Corp. some of the responsibilities for the production of the program, in no way transfers to Click Corp. any other control of the program. Except as detailed herein, namely, for the services of Dick Clark, for the presentation of the program on the air and for the obtaining of services of guests, the station retains full and exclusive rights to the program. The station shall continue to assume liability for accidents to visitors and guests.

The term of this agreement shall be for a period of 156 weeks commencing with the first telecast of the first program furnished to the ABC-TV network on Monday, August 5, 1957. Triangle retains the option to extend the term of this agreement for two additional 52-week periods, each such option to be for one additional 52-week period. Each such option may be exercised by us upon 4 weeks written notice to you prior to the expiration of the 52-week period then about to expire. In the event ABC-TV decides not to carry the program, Triangle retains the option to continue to use the services of Dick Clark under conditions different than those specified herein but at terms mutually satisfactory. Payment for the first 52 weeks of this agreement, i.e., from August 5, 1957, through August 4, 1958, shall be in the amount of \$2,000 per week unless the program is not carried by the network. Remuneration for succeeding 52-week periods shall be at a mutually satisfactory rate to be negotiated. Similarly, charges to Click Corp. for office expense, production, promotion, etc., shall likewise be negotiated.

Click Corp. is to provide the services of Dick Clark exclusively to Triangle as far as radio and television are concerned. Clearance for television appearances other than those on "American Bandstand" and for radio, motion pictures, and for endorsement of products or services must come from Triangle. If remuneration is involved, conditions must be mutually satisfactory.

In connection with the network telecast of "American Bandstand" you agree that Dick Clark will deliver normal network commercials at no additional fee.

The station alone has the right to cancel this agreement on 30 days notice for good and cause and without notice for any act on the part of Dick Clark involving moral turpitude.

This letter when signed by both parties shall constitute an agreement between us.

Sincerely yours,

(Signed) Roger W. Clipp,
ROGER W. CLIPP,

Vice President, Radio and Television Division, Triangle Publications, Inc.

(Signed) Dick Clark,
DICK CLARK.

(For Click Corp., American Bandstand Division).

Date: September 23, 1957.

Mr. LISIMAN. I hand you another photostatic copy of an agreement dated March 10, 1958. This is a letter addressed to you as president of Click Corp., and signed by Roger W. Clipp, vice president of Triangle Publications, and ask you if this is a correct copy of this agreement which also bears your signature in the lower left-hand corner?

Mr. CLARK. Yes, sir; that is authentic.

Mr. LISIMAN. I would like to have this contract received.
 The CHAIRMAN. Let it be received.
 (Letter of agreement dated March 10, 1958, follows:)

TRIANGLE PUBLICATIONS, INC.,
 March 10, 1958.

Mr. R. W. CLARK,
 President, Click Corp., American Bandstand Division, WFIL-TV,
 Philadelphia, Pa.

DEAR MR. CLARK: This agreement between Click Corp. and Triangle Publications, Inc. supersedes the agreement between us dated September 16, 1957, and any and all contracts, discussions or agreements, orally or in writing, between Dick Clark and WFIL and WFIL-TV.

You have advised us that Dick Clark is the majority stockholder of Click Corp. and that Click Corp. has the exclusive right to his personal services for all purposes of this agreement. It is understood between us that this agreement calls for the personal services of Dick Clark and Click has represented to us that Dick Clark will perform all the services required by this agreement with Click Corp.

Click Corp., American Bandstand Division (referred to as "Click") agrees to produce the television show "American Bandstand" for the Radio and Television Division, Triangle Publications, Inc. (referred to as "Triangle") for broadcast over WFIL-TV and the ABC-TV Network as it may be scheduled during the hours of 2 to 6 p.m. Click agrees to provide suitable guests for the program, and to put the program in form suitable for presentation on the air over WFIL-TV and the ABC-TV Network.

Click agrees to pay Triangle \$350 weekly for office space, telephone, its share of advertising, promotion, publicity, and for secretarial assistance. This amount of \$350 is based on current expenses. Should those expenses increase and the \$350 therefore be inadequate to cover the above expenses, then Click agrees to pay to Triangle a greater amount weekly sufficient to cover its proportional share of the increased expenses.

Click further agrees that, in the network telecast of "American Bandstand" Dick Clark will deliver normal network commercials at no additional fee.

Click further agrees that it will supply the services of Dick Clark exclusively to Triangle in the radio and television fields, except for motion pictures made primarily for theater release, and with the exception of network radio and television, providing that all arrangements and agreements for his appearance on network radio and/or television will not conflict with his other obligations to Triangle.

This agreement shall become effective immediately and shall continue in operation until August 4, 1962. Triangle promises and agrees to pay Click the following amounts in consideration of the promises here contained on the part of Click:

	<i>Per week</i>
From Aug. 5, 1957, to Aug. 4, 1958.....	\$2,000
From Aug. 5, 1958, to Aug. 4, 1959.....	2,150
From Aug. 5, 1959, to Aug. 4, 1960.....	2,325
From Aug. 5, 1960, to Aug. 4, 1961.....	2,575
From Aug. 5, 1961, to Aug. 4, 1962.....	2,900

Further, in certain instances where special guests are involved, Triangle agrees to reimburse Click for expenses incurred beyond the normal expense for guests insofar as the expenses exceed the normal expense.

So far as merchandising is concerned (as the term is commonly used and understood) Triangle and Click Corp. are to share in all net profits after reasonable expenses are computed. This applies to the sale of pennants and yearbooks, articles of apparel ornamentation, for example, and similar items produced in connection with "American Bandstand", Click Corp. Dick Clark or any radio or television or other profitmaking venture in which Clark is involved. Income from all such merchandising is to be divided between Click Corp. and Triangle

on the following basis: All merchandising (net to Triangle) proceeds from "American Bandstand" are to be divided 75 percent Triangle, 25 percent Click, and all merchandising proceeds from other merchandising ventures not in connection with "American Bandstand" (net profits to Click) are to be divided 90 percent to Click, 10 percent to Triangle.

Regarding profits from other enterprises involving Dick Clark and/or Click Corp. (such as motion pictures, music publishing, record making and the like) these are to be divided 90 percent to Click, 10 percent to Triangle after reasonable expenses. In connection with the sale or lease of syndicated films of "American Bandstand" or the sale or lease of kinescopes of the program, net profits after expenses are to be divided 75 percent to Triangle, 25 percent to Click.

In all cases complete accountings shall be made to Click by Triangle and by Triangle to Click and all expenses shall be reasonable expenses.

Triangle further agrees that it will continue to assume liability for accidents to visitors and guests participating in "American Bandstand" at the WFL-TV studios.

This agreement and its terms shall be binding only so long as ABC-TV continues to carry the program "American Bandstand" on substantially the same basis as it is now being carried. In the event that ABC-TV substantially changes the basis on which it is carrying the program or stops carrying the program, then the terms of this agreement shall not be binding, but Triangle will have the option to continue to use the services of Dick Clark under terms and conditions to be mutually agreed upon.

It is understood and agreed by us all that Triangle will retain exclusive control and ownership of the titles "Bandstand" and "American Bandstand" and of the format of the program as developed by the station and established through the years since 1952. It is further understood that control of the program and the exclusive rights to its use will remain with Triangle and are not transferred to Click.

Triangle has the right to cancel this agreement without notice should Click be unable to carry out its part of the contract for the service of Dick Clark or in case of any act on the part of Dick Clark involving moral turpitude. Triangle also has the right to cancel this agreement on 30 days' notice for any good cause.

Click Corp. indicates in signing this agreement that it has knowledge of the agreement between Triangle and ABC Television covering "American Bandstand" (copy attached) and agrees to honor its provisions provided, however, that we are not and shall not be bound by, and that we have and shall have no obligation to honor, any one or more of the provisions in said agreement which in any way relate to or affect Dick Clark and/or us on and after August 5, 1962.

This letter when signed by the two parties to it, shall constitute an agreement between us and shall be binding on us.

Sincerely yours,

RADIO AND TELEVISION DIVISION,
TRIANGLE PUBLICATIONS, INC.,
By (S) Roger Clipp,
ROGER W. CLIPP, *Vice President.*

Agreed :

CLICK CORP.,
AMERICAN BANDSTAND DIVISION,
By (S) R. W. Clark,
R. W. CLARK, *President.*

Mr. LISHMAN. I hand you another letter agreement dated August 7, 1958. Again it is a letter addressed to Click Corp. by Roger W. Clipp, vice president, and bears your signature of acceptance at the bottom, and I ask you if this is a correct copy of that agreement?

Mr. CLARK. This appears to be correct, Mr. Lishman.

Mr. LISHMAN. I would like to have this letter agreement in the record, Mr. Chairman.

The CHAIRMAN. Let it be received.

(Letter of agreement, dated August 7, 1958, follows:)

TRIANGLE PUBLICATIONS, INC.,
Philadelphia, Pa., August 7, 1958.

CLICK CORP.,
American Bandstand Division,
WFIL-TV,
Philadelphia, Pa.

(Attention: Dick Clark).

DEAR MR. CLARK: When signed by both of us this letter will serve as an amendment to our present agreement dated March 10, 1958.

Retroactive to June 16 WFIL will pay you the additional sum of \$450 a week for services rendered in connection with the "American Bandstand" program.

This is in accordance with our several discussions.

Will you please sign this and return a copy to me for our records.

Sincerely yours,

RADIO AND TELEVISION DIVISION,
TRIANGLE PUBLICATIONS, INC.,
By R. W. Clipp,
ROGER W. CLIPP, *Vice President.*

Agreed:

CLICK CORP.,
AMERICAN BANDSTAND DIVISION,
By R. W. Clark,
R. W. CLARK, *President.*

Mr. LISHMAN. I hand you another photostatic copy of a letter of agreement dated July 31, 1959, and this is the one addressed by the Click Corp. to Triangle Publications, Inc., and bears the signature in the lower left-hand corner of acceptance by R. W. Clipp of Triangle, and ask you if that is a correct copy?

Mr. CLARK. That is correct.

Mr. LISHMAN. Mr. Chairman, I would like to have this letter agreement received.

The CHAIRMAN. Let it be received.

(Letter of agreement, dated July 31, 1959, follows:)

CLICK CORP.,
Drexel Hill, Pa., July 31, 1959.

TRIANGLE PUBLICATIONS, INC.,
Philadelphia, Pa.

GENTLEMEN: The following, when signed by you and by us, shall constitute a modification of the agreement between you and us dated March 10, 1958:

The fourth paragraph beginning "so far as merchandising is concerned" on page 2, the fifth paragraph beginning "Regarding profits" on page 2, and the sixth paragraph beginning "In all cases" on page 2, shall be and hereby are deleted.

Except as above modified, said agreement is hereby ratified and affirmed.

Very truly yours,

CLICK CORP.
By RICHARD W. CLARK, *President.*

Agreed to:

TRIANGLE PUBLICATIONS, INC.,
By R. W. CLIPP.

Mr. LISHMAN. Now, I hand you a photostatic copy of an agreement dated March 10, 1958, as it is marked August 5, 1957, between American Broadcasting Co., Inc., and Triangle Publications, Inc., and bearing your signature at the bottom, indicating your acceptance of the entering into of this contract, and ask you is this is a correct copy?

Mr. CLARK. This is correct.

Mr. LISMAN. Mr. Chairman, I would like to have this contract in the record.

The CHAIRMAN. Let it be received.

(Agreement dated March 10, 1958, follows:)

AMERICAN BROADCASTING CO.,
New York 23, N.Y., March 10, 1958 (as of August 5, 1957).

TRIANGLE PUBLICATIONS, INC.,
*Radio & T.V. Division,
46th & Market Streets,
Philadelphia 39, Pa.*

GENTLEMEN: The following when signed by you and us will constitute an agreement between you and us.

1. You hereby agree to furnish exclusively to us for network television broadcast during the term hereof, as same may be extended, a complete program package of a series of television programs consisting of, but not limited to, musical variety, audience participation, dance contests and guest performances and interviews, said package to include the services of Dick Clark including but not limited to his acting as a Master of Ceremonies on and in connection with each program to be broadcast under this agreement as hereinafter set forth.

2. We understand that you are presently broadcasting a series of programs as described in paragraph 1 hereof from 2:30 p.m. to 5:00 p.m., CNYT Monday through Friday. Subject to the provisions of paragraph 7 hereof, you hereby agree that each program furnished to us hereunder will be one hour and one-half in length, or shorter as we may determine and advise you, and may be broadcast and will be broadcast by you from your studios in Philadelphia over our television network Monday through Friday between the hours of 2:00 p.m. to 5:00 p.m., CNYT for either a continuous hour and one-half or a noncontinuous hour and one-half segmented into half-hour periods, or for a continuous or non-continuous longer period pursuant to paragraph 7 hereof, or for a lesser period of time between 2:00 p.m. and 5:00 p.m., CNYT, as we may determine, under the title AMERICAN BANDSTAND, which title as between you and us shall be our sole property until such time as the program no longer originates from any station controlled by you for broadcast over the ABC Television network as a result of the termination of this agreement at which time ownership of the said title shall, as between you and us, vest exclusively in you and become your sole property unless, of course, such termination is pursuant to a breach of this agreement on your part, in which event our rights hereunder in said title shall continue at all times, as between you and us, you shall have the exclusive right to use the name AMERICAN BANDSTAND in local programming over Station WFIL-TV and we shall have no right to the use of the same in any program which does not originate at a station controlled by you unless you breach this agreement.

All merchandising rights in and in connection with the said series of programs shall be and are hereby vested exclusively in us until such time as this agreement terminates, unless, of course, such termination is pursuant to a breach on your part, in which event our rights hereunder shall continue. You agree that we may authorize any person, firm or corporation, on terms to be negotiated between us and such person, firm or corporation, to license any and all such merchandising rights for the manufacture and/or exploitation, by sale or otherwise, of any articles and services. We will endeavor to make all merchandising arrangements (including arrangements for free distribution of merchandise) arrived at by us or such person, firm or corporation with your prior reasonable approval and in our mutual best interests, but your failure to give such approval shall not prevent us from entering into such arrangements. We also agree that all net proceeds actually received by us arising from such exploitation shall be shared equally between you and us. We shall furnish you from time to time, at reasonable intervals, a statement of income and expense relating to the computation of such net proceeds. Notwithstanding anything herein contained, after the termination of this agreement, we and/or any such authorized person, firm or corporation shall continue to have such merchandising rights as aforesaid as may have been licensed by us or such authorized person, firm or corporation, during the term of this agreement, to any parties for the

manufacture and/or exploitation by sale or otherwise of any articles and services and you and we shall continue to share in the net proceeds arising therefrom.

If we elect to have the program broadcast for a period of time less than an hour and one-half within said time period, we agree to so advise you upon four weeks' prior written notice. The present time period of network broadcast as of the date hereof is to be a continuous hour and one-half from 3:00 p.m. to 4:30 p.m., CNYT each day Monday through Friday. Commencing November 18, 1957, network broadcast will be for a segmented hour and one-half, one half-hour from 3:00 p.m. to 3:30 p.m., CNYT and one hour from 4:00 p.m. to 5:00 p.m., CNYT, each day Monday through Friday.

3. Notwithstanding anything herein contained, you hereby grant us the right to change from time to time upon four (4) weeks' prior written notice the broadcast time of one or more of said programs between the hours of 2:00 p.m. to 5:00 p.m., the length of broadcasts thereof to be determined solely by us.

4. The term of this agreement shall be for a period of 260 weeks commencing with the telecast of the first program furnished us hereunder on Monday, August 5, 1957. You hereby agree that, during the term hereof, said series of programs shall be exclusive to us and that you shall not offer said series or any similar series to any other person, firm or corporation; that, further, we shall have and you hereby grant us the right of first refusal for said series or similar series after the term hereof upon at least the same terms and conditions as contained in any bona fide offer between you and any other person, firm or corporation for the network broadcast of any such series, regardless of whether or not Dick Clark is employed by you in connection with the American Bandstand series and as long as you are not affiliated primarily with another network.

5. During the term of this agreement, we may terminate this agreement upon four (4) weeks' prior written notice to you.

6. In consideration of all rights, licenses and privileges herein granted to us by you, we agree to pay you the following sums:

A. While the said series of programs is broadcast over our network, one hour and one-half daily Monday through Friday:

(i) \$3,175.00 per week for the first fifty-two (52) weeks during which this agreement may be in effect:

(ii) \$3,500.00 per week for the second fifty-two (52) weeks;

(iii) \$3,850.00 per week for the third fifty-two (52) weeks;

(iv) \$4,350.00 per week for the fourth fifty-two (52) weeks;

(v) \$5,000.00 per week for the fifth fifty-two (52) weeks.

B. In the event any program of the said series is broadcast for any period of time on any particular day for less than one hour and one-half, the applicable price above shall be reduced by sixty (60%) percent of the applicable sum set forth in paragraph 7 hereof relating to additional payments to you in the event any program is longer than one hour and one-half in length.

7. You hereby grant us the right to require you at any time during the term hereof, as same may be extended, to furnish to us any and all of the said programs with a maximum length each of two (2) hours or two and one-half (2½) hours instead of one hour and one-half by adding one-half hour or one hour, as the case may be, to the network broadcast of such programs between 2:00 p.m. and 5:00 p.m., CNYT. In the event we exercise this right, by four (4) weeks' notice in writing to you to that effect, we shall pay you, in addition to the applicable foregoing sums designated in paragraph 6 hereof, the additional sum of One Hundred and Sixty (\$160) Dollars for each such additional half-hour ordered by us and broadcast by you or us during the first fifty-two (52) week period of this agreement, and during each fifty-two (52) week period thereafter. One Hundred (\$100) Dollars in addition to the sum payable by us for each such additional half-hour during the preceding fifty-two (52) week period. You agree that we also have the right, as stated in paragraph 1 hereof, to shorten the length of any and all of said programs and in such event the applicable sums payable to you under Paragraph 6 hereof shall be reduced by sixty (60%) percent of the applicable sum which would be payable to you under this paragraph if the length of such program or programs were to be extended rather than shortened.

8. In addition to the foregoing, you also grant us the right to record the programs to be broadcast hereunder for purposes of using same for reference, file and audition purposes. We agree to make any payments that may be re-

quired by AFTRA, AFM or any other union or guild, as a result of the rebroadcast of any program either live or by recording and/or on a repeat, delayed, supplemental and/or syndicated basis by recording by us and/or our designees. The said programs and any and all parts thereof and services furnished by you in connection therewith and proceeds of such services including but not limited to the "materials" referred to in paragraph 11 hereof may be originally broadcast and/or rebroadcast either live or by recording and/or on a repeat, delayed, supplemental and/or syndicated basis by recording, as we may elect, by us and/or our designees. Any syndication undertaken by our designees shall be at their standard syndication fees and you and we shall share equally all not proceeds received by us, without payment to you of any other compensation, as a result of such syndication. The term "recording" and "recordings" as used herein, shall mean and include any recording or recordings made (whether before, during or after the broadcast transmission) by kinescope, tape, wire, film, disc or any other similar or dissimilar method or recording aural and/or visual portions of television programs, whether now known or hereafter developed, including the photography of such programs on film in a manner similar to that used in the production of motion pictures. All recordings and all rights therein, as between you and us, shall be our sole property. We shall furnish you from time to time at reasonable intervals, a statement of income and expense relating to the computation of such net proceeds.

9. Each program may be broadcast and/or rebroadcast over our network on a sustaining basis or on a commercially sponsored basis, subject, however, to the following:

(a) ten (10) minutes of commercial time within one hour of the program may be sold for local commercial sponsorship by the stations carrying said programs.

(b) one-half hour, or one hour or one hour and one-half in the event we exercise our rights under paragraph 7 hereof, of each of the programs is to be made available to and by us solely for network commercial sponsorship, to be sold by us as we may determine. In the event that any such network sponsorship is not obtained, the said one-half hour, hour or hour and one-half will be carried by us over our network on a sustaining basis and in no event will be made available for local commercial sponsorship. From the commencement of the term hereof up to April 1, 1958, we agree to pay you, in addition to the compensation provided for in paragraph 6 hereof (and paragraph 7 hereof if applicable), a maximum sum of Eighty (\$80) Dollars for each quarter-hour segment of each program for which such network commercial sponsorship has been obtained, said sum of Eighty (\$80) Dollars to be reduced pro rata on the basis of the number of commercial minutes in any particular quarter-hour segment actually sold for such sponsorship in the event all three minutes of such quarter-hour segment have not been sold. Commencing April 1, 1958, in lieu of the foregoing sum of Eighty (\$80) Dollars per quarter-hour segment, we agree to pay you a maximum sum of Two Hundred (\$200) Dollars for each quarter-hour segment for which such network commercial sponsorship has been obtained, said sum of Two Hundred (\$200) Dollars to be similarly reduced pro rata as the aforesaid sum of Eighty (\$80) Dollars.

(c) we shall have the right to carry public service and/or promotion spots for all or any part of the ten (10) minutes of commercial time referred to in subdivision (a) hereof in the event that same is not sold for local commercial sponsorship pursuant to said subdivision (a) :

(d) (notwithstanding anything herein contained, we may at any time recapture any and all of the 10 minutes of local commercial time referred to in subdivision (a) hereof for the purposes of sale for network commercial sponsorship as we may determine upon twenty-eight (28) days prior written notice of such recapture; provided, however, that we shall not recapture any fifteen (15) minute segment until and unless the fifteen (15) minute segment immediately following (in the event such recapture is to occur in a time period preceding the half-hour then available for network commercial sponsorship) or the fifteen (15) minute segment immediately preceding (in the event such recapture is to occur in a time period following the half-hour then available for network commercial sponsorship) has been sold by us for network commercial sponsorship.

Notwithstanding anything contained in this agreement, you hereby agree that Dick Clark will not render any services during the term of this agreement for any person, firm or corporation in connection with any product

competitive with any products advertised over our network in connection with the said programs within fifteen minutes preceding and fifteen minutes following the advertising of such products over our network, and in no event will Dick Clark endorse or allow his name, likeness or representation to be used in connection with any product competitive with any products advertised in connection with the said programs.

10. You hereby warrant and represent:

(a) that you have an employment agreement with Dick Clark under which you can supply and require him to supply such of his services as may be required hereunder and that Dick Clark has read and approved a copy of the agreement herein between you and us;

(b) that under the terms of your agreement for the services of Dick Clark, he may perform such services in radio and television for us as we may from time to time agree upon with him except when such services would conflict with the performance of his services being rendered for you in local radio and television at the time we enter into negotiations with him for his performance for us of such services.

(c) that all rights, licenses and privileges granted to us by this agreement may be conveyed to us by you;

(d) that you are free to enter into and fully perform this agreement.

Notwithstanding the foregoing provisions of sub-paragraph (b) hereof, you agree that the services of Dick Clark in such local radio and television will in no way conflict with, prevent or affect such of his services as may be required by this agreement in connection with the network broadcast of the American Bandstand series having origination at any station controlled by you.

11. You hereby agree that all materials furnished by you or any persons in your employ including but not limited to ideas, creations, literary, musical and artistic materials and intellectual properties will be your own, in the public domain, or usable and transferrable by you pursuant to licenses acquired by you and shall not infringe upon or violate any rights of any person, firm or corporation or constitute a libel or slander against any of the foregoing.

12. We, any sponsors and/or their advertising agencies may disseminate, reproduce, print and publish and license others so to do the name, likeness, representation and/or biographical material of any and all persons employed or hired by you appearing on or in connection with any of the programs hereunder for the purposes of advertising, publicity and exploitation of the said programs and/or any and all sponsor's products in connection therewith, except guest artists appearing on the programs, but you agree to use your best efforts to acquire the right to allow our use of the foregoing in connection with such guest artists; provided, however, that no use of any of the foregoing shall constitute a specific endorsement by any such person in connection with any sponsor's products. You hereby further agree and guarantee that Dick Clark will, as we may from time to time determine, announce network commercials on and in connection with any and all programs in the American Bandstand series and do leads into and leads out of such commercials, whether same be live, filmed or otherwise and that you and Dick Clark will cooperate fully with us in the advertising, publicity and exploitation of the programs, including but not limited to requiring Dick Clark to attend publicity photographic sessions, interviews by reporters and editors of newspapers, magazines, trade journals and similar publications, travel, at our expense and request and where such travelling will not unreasonably interfere with his performance of services in local radio and television in Philadelphia pursuant to his employment agreement with you under paragraph 10 hereof, to various places throughout the country for appearances at fairs, on our affiliates' local programs and the like, to make guest appearances and/or for purposes of interviewing him on other of our T.V. shows as we may direct him, and to allow us and our designees to shoot at home pictures of him unless same is not feasible because of some reasonable personal matter.

13. You agree that you and all persons having any connection with the said programs will act at all times with due regard to public morals and conventions. If you or any such person shall have committed, or does commit, any act, or shall have done or do anything which shall be an offense involving moral turpitude under federal, state, or local laws, or which might tend to bring you or such person into public disrepute, contempt, scandal, or ridicule, or which might tend to reflect unfavorably upon us, the sponsors, if any, or their advertising agencies, if any, or otherwise injure the success of the program, we shall have the right to cancel this agreement forthwith without payment of any compensation to you

or to require you to terminate all services of any such person in connection with the programs, within thirty (30) days after we have acquired knowledge thereof.

14. You will at all times indemnify, defend, and hold harmless American Broadcasting Co., a Division of American Broadcasting Paramount Theatres, Inc., the sponsors, if any, their advertising agencies, if any, any stations over which the program is broadcast and any licensee of ours from and against any and all claims, damages, liabilities, judgments, costs, and expenses (including counsel fees) arising out of (i) the use of any materials or services furnished by you for the program, (ii) any acts done or words spoken by you, your employees, or other persons in connection with the production, rehearsals, or broadcasts of the program, unless such acts or words shall have been requested or supplied by us, or (iii) any breach by you of any warranty or agreement made by you herein. We shall have the right to participate in or assume the defense of and settlement of any and all actions instituted to which the foregoing indemnity applies, including appeals from judgements relating thereto, by counsel of our own choosing. You agree that your counsel in such matters will cooperate fully with us. We will similarly indemnify and hold you harmless from and against any and all claims, damages, liabilities, costs and expenses, including counsel fees, arising out of the use of any materials or services furnished by us in connection with the production, rehearsal, or broadcast of the program, any acts done or words spoken by us or our employees in connection with the production, rehearsals, or broadcasts of the programs, or any breach by us of any warranty made to you herein: *Provided, however*, That you shall promptly notify us of any claim or litigation to which the indemnity set forth in this sentence applies: *Provided further*, That at our option we may participate in or assume defense of any such claim or litigation. If we participate in any such defense, you agree that your counsel will fully cooperate with us in regard thereto. If we assume the defense of any such claim or litigation, our obligations with respect thereto shall be limited to holding you harmless from and against any loss or damage or cost caused by or arising out of any judgement or settlement approved by us in connection therewith. Nothing herein contained shall constitute a waiver of any of your obligations hereunder.

15. If the broadcast of the program over our network is prevented or omitted because of difficulties in connection with our network due to Act of God or other cause, of a similar or different nature, beyond our control, or because of our recapture of the broadcast time period, which right of recapture is hereby granted to us, for the purpose of broadcasting an event of public importance (including a sports event), same shall not constitute a breach by us of this agreement and we shall not be obligated to pay you any compensation for the program, except as may be required by any applicable collective bargaining agreement to which we are a party.

16. Notwithstanding anything herein contained, in the event we terminate this agreement at any time, we shall have the right to renew this agreement upon the same terms and conditions herein contained within thirteen (13) weeks after the effective date of such termination, without payment of any compensation to you for the period prior to the date upon which such renewal is to become effective, upon four weeks prior written notice to you.

17. Subject to the terms and conditions of this agreement, all intellectual properties and materials of any kind or nature furnished by you and which may be used on or in connection with the programs hereunder shall be our sole and absolute property for any and all purposes whatsoever.

18. You hereby agree that in the event Dick Clark, for any reason whatsoever, no longer serves as Master of Ceremonies of the said programs, we shall have the right to terminate this agreement forthwith. In any event, we shall not be obligated to pay you any sums hereunder for any program which we may decide not to carry over our network as a result of the failure for any reason of the said Dick Clark to perform as Master of Ceremonies on and in connection with any such specific program. In the event that Dick Clark fails to perform his services for reasons of illness, disability, accident, or other reasons beyond his control for three consecutive weeks or an aggregate of six weeks in any one year during the term hereof, we may terminate this agreement and all your and our obligations hereunder shall terminate, except for those owed by you to us and us to you as of the effective date of such termination.

19. You hereby agree that we shall have equal rights with you regarding the production of any and all programs hereunder including but not limited to the choice of material and talent to be used herein and that the programs to be

furnished us hereunder shall be in conformity with our standards and policies, which, we agree, shall be reasonable.

20. The entertainment package shall be furnished by you as an independent contractor and you agree that any and all contracts of employment for personnel of the program and any other contracts which you make in connection with your performance of this agreement shall be made by you as principal and that there shall be no liability whatsoever on our part to any party to any such contract entered into by you. You further agree to discharge and to accept the exclusive responsibility and liability for all obligations to be paid and discharged in connection with all persons employed by you and/or imposed upon employers under and pursuant to any Federal, state, or local laws and regulations now or hereafter in force or effect. You also agree to indemnify us against any claims, losses, expenses (including counsel fees) and/or judgments by third parties for the damages resulting from your failure to comply with the provisions and/or regulations of any labor organization having jurisdiction in the premises.

21. If either you or we shall violate any of the material terms of this agreement, either you or we, as the case may be, shall have the right to terminate this contract forthwith without further obligation and without prejudice to such rights as you or we may have to recover damages for the breach of this agreement.

22. All notices to be given hereunder shall be addressed to you at your address as designated herein on page 1 of this agreement or at any other address as you may advise us in writing and to us at 7 West 66th Street, New York 23, New York. Any notice given by mail shall be deemed to be given on the day it is mailed.

23. Neither you nor we may assign this agreement without the prior written consent of the other except that we may assign this agreement and all rights herein to any party acquiring a substantial portion of our television or sound radio business, or to any corporation controlling us, controlled by us, or under common control with us.

24. Any controversy or claim arising out of or relating to this contract or the breach thereof shall be settled by arbitration in accordance with the provisions of the American Arbitration Association and judgment upon the award rendered may be entered in the highest court of the forum, state or federal having jurisdiction.

25. This agreement is made subject to all federal, state, and municipal laws or regulations now or hereafter in force: shall be construed according to the laws of the State of New York; and shall not be changed, modified, or discharged in whole or in part except by an instrument duly signed by you and us. Waiver of any provisions hereof under any circumstances will not constitute a general waiver of any rights hereunder.

26. This agreement constitutes the entire agreement between you and us with respect to the subject matter hereof and shall substitute and replace any and all prior negotiations and agreements which may have existed between you and us.

If the foregoing is in accordance with your understanding, will you kindly indicate your consent by signing in the space provided below.

Very truly yours,

AMERICAN BROADCASTING COMPANY
(A Division of American Broadcasting-Paramount Theatres, Inc.)
By MORTIMER WEINBACH.

Accepted:

TRIANGLE PUBLICATIONS, INC.,
By ROGER W. CLIPP.

In order to induce the execution of the foregoing agreement by American Broadcasting Company, a Division of American Broadcasting-Paramount Theatres, Inc., which I hereby acknowledge I have read, and in consideration of the benefits to be derived by me thereby, I hereby agree to be bound by and to comply with all provisions herein contained which in any way relate to or affect me and warrant that I have not entered and agree not to enter into any commitment in conflict with said provisions: *Provided, however,* That I am not and

shall not be bound by, and that I have and shall have no obligations to comply with, any one or more provisions in the foregoing agreement which in any way relate to or affect me on and after August 5, 1962: *And provided*, That I do not have any obligation or liability to American Broadcasting Company, a Division of American Broadcasting-Paramount, Inc., under the foregoing agreement and/or under this inducement clause on and after August 5, 1962.

DICK CLARK.

Mr. LISHMAN. Mr. Clark, are you familiar with the fact that this contract was amended at least three times, once on April 18, 1958, and again April 21, 1958, and again on July 31, 1958?

Mr. CLARK. That is quite possible.

Mr. LISHMAN. I will hand you the three letter agreements and ask you if these are accurate copies of the amendatory agreements?

Mr. CLARK. They appear to be correct, Mr. Lishman.

Mr. LISHMAN. Mr. Chairman, I would like to have the three amendatory agreements just identified by date as being correct in the record.

The CHAIRMAN. Does this refer to the original agreement?

Mr. LISHMAN. Yes.

The CHAIRMAN. Which was included in the record a few minutes ago?

Mr. LISHMAN. Yes, sir.

The CHAIRMAN. Let it be received.

(The three documents referred to follow :)

AMERICAN BROADCASTING Co.,
LEGAL DEPARTMENT,
New York, N.Y., April 18, 1958.

TRIANGLE PUBLICATIONS, INC.,
Radio and Television Division,
Philadelphia, Pa.

Attention of Mr. George Koehler.

GENTLEMEN: This is to confirm our previous understanding that the "American Bandstand" series will not be broadcast for only 1 hour between 4 p.m. and 5 p.m., CNYT, daily Monday through Friday, effective Monday, April 21, 1958, pursuant to our letter to you of March 21, 1958. Instead, the network will continue to carry the telecast of this program in its present time spot, i.e., 3:30 to 5 p.m., CNYT, Monday through Friday, until further notice to you from us.

Very truly yours,

RICHARD H. ROEMER.

AMERICAN BROADCASTING Co.,
LEGAL DEPARTMENT,
New York, N.Y., April 21, 1958.

TRIANGLE PUBLICATIONS, INC.,
Radio and Television Division,
Philadelphia, Pa.

Attention of Mr. George Koehler.

GENTLEMEN: Referring to my letter of April 18, 1958, regarding the continuation of the network broadcast of the "American Bandstand" program for 1 hour and one-half rather than shortening same to 1 hour, my reference to a 3:30 to 5 p.m., CNYT, Monday through Friday, broadcast was, of course, in error. The network will continue to carry the telecast of this program in its present time spot, that is, 3 to 3:30 p.m., and 4 to 5 p.m., CNYT, Monday through Friday, until further notice to you from us.

Very truly yours,

RICHARD H. ROEMER.

AMERICAN BROADCASTING Co.,
 LEGAL DEPARTMENT,
 New York, N.Y., July 31, 1958.

TRIANGLE PUBLICATIONS, INC.,
 Radio and Television Division,
 Philadelphia, Pa.

Attention of Mr. Roger Clipp.

GENTLEMEN: This will confirm that effective with the week of June 16, 1958, we shall increase by \$450 per week the applicable sums payable to you under paragraph 6 of the agreement between you and us dated March 10, 1958, as of August 5, 1957, relating to the "American Bandstand" television program.

This increase of \$450 shall be reduced pro rata based on the actual length of any broadcasts of the program over our network that are less than the present length of 1½ hours, in addition to any reductions of the applicable sums referred to above presently allowable under said agreement.

Very truly yours,

RICHARD H. ROEMER.

Mr. LISHMAN. Mr. Clark, I hand you another agreement dated February 27, 1960, but as of January 4, 1960, between Triangle Publications, Inc., the licensee of station WFIL and the American Broadcasting Co. which bears your signature, and ask you if this is a correct copy of such an agreement?

Mr. CLARK. Yes, sir, this is correct.

Mr. LISHMAN. Mr. Chairman, I would like to have this agreement entered into the record.

The CHAIRMAN. Let me see it. It will be received.

(The document referred to follows:)

AMERICAN BROADCASTING COMPANY,
 New York 23, N.Y., February 27, 1960
 (as of January 4, 1960).

TRIANGLE PUBLICATIONS, INC.,
 45th and Market Streets
 Philadelphia 39, Pa.

GENTLEMEN: This will refer to the agreement between us dated March 10, 1958, as of August 5, 1957, as amended.

Our aforesaid agreement shall be and is hereby further amended as follows, effective as of January 4, 1960:

1. Paragraph 4 thereof shall be and is hereby amended by extending the term thereof so as to expire on January 1, 1965.

2. Paragraph 4 thereof shall be and is hereby further amended so as to provide that the first refusal contained therein shall not be applicable after a period of six (6) months following the expiration of the terms of this agreement. We shall have a period of seven (7) business days in which to accept or reject your written notice to us of any such offer, and such written notice shall not be given prior to November 1, 1964. If this agreement is terminated by us prior to the expiration thereof then we shall have no first refusal rights thereafter.

3. Paragraph 5 thereof shall be and is hereby amended by adding thereto the following:

"Effective with the calendar year 1961, however, our right to terminate this agreement shall be in thirteen (13) week cycles computed from January 2, 1961 at not less than twenty-eight (28) days written notice to you prior to the last scheduled telecast of any such cycle."

4. Paragraph 6 thereof shall be and is hereby amended by providing for the following payments to Triangle in lieu of the amounts set forth therein effective January 4, 1960:

"(a) \$5,800 per week commencing January 4, 1960.

"(b) \$6,800 per week commencing January 2, 1961.

"(c) \$7,800 per week commencing January 1, 1962.

"(d) \$8,550 per week commencing December 31, 1962.

"(e) \$9,300 per week commencing December 30, 1963."

In addition to the above sums we agree to pay you for each week commencing January 4, 1960, an additional performing talent subject to our prior approval of bookings and accounting of payments therefor. Such additional sums are to be paid as billed after the appearance of such performing talent and the \$650 limitation is the extent of our obligation, including reimbursement for AFTRA fees and payroll taxes.

5. Paragraph 6 thereof shall be and is hereby amended by adding thereto subdivision (c) as follows:

"(c) We agree to reimburse you for your increased costs due to increases in union scales on and after January 4, 1960, for persons performing as talent on the program. We agree to pay you one-half of your increased costs on and after January 4, 1960, in the event your current arrangement with AFTRA under which you now pay talent at the 30-minute network rate is modified or withdrawn."

6. Paragraphs 6 and 7 thereof shall be and are hereby amended by deleting Paragraph 6(b) thereof and the last sentence of Paragraph 7 and by providing the following in lieu thereof:

"If we exercise our right to shorten the length of the programs, the payments set forth in Paragraphs 6 and 7 shall remain unchanged, except that for each week for which we have reduced the length of the program to one-half hour per day, which we shall not do on less than twenty-eight (28) days prior notice to you, the payments to you hereunder shall be modified as follows:

"A. (1) During the year 1960, the applicable amount set forth in Paragraph 6 shall be changed to \$5,300.

"(2) During the year 1961, the applicable amount set forth in Paragraph 6 shall be changed to \$5,633.

"(3) During the year 1962, the applicable amount set forth in Paragraph 6 shall be changed to \$5,967.

"(4) During the year 1963, the applicable amount set forth in Paragraph 6 shall be changed to \$6,300.

"(5) During the year 1964, the applicable amount set forth in Paragraph 6 shall be changed to \$6,633.

"B. The additional amount of \$650 per week referred to in Paragraph 4 of this letter agreement shall not be applicable.

"C. The \$50 payment for each network commercial minute in this program series broadcast each week starting with the 31st such minute per week, as set forth in the amendment to Paragraph 9(b) described below, shall be changed so as to start with the 16th such minute per week."

7. Paragraphs 2, 3, 7 and 9 thereof shall be and are hereby amended by limiting the maximum length of the programs to two (2) hours a day, between 2:00 P.M. and 5:30 P.M., C.N.Y.T. of which not more than one (1) hour a day is to be released on a local cooperative basis, it being understood that if we elect to break up the program into segments, the interval between segments shall be limited to one break of not more than one-half hour.

8. Paragraph 8 thereof shall be and is hereby amended so that if we elect to replay the recording of a previously broadcast program instead of telecasting a new program our payment to you for such replay program shall be the same price as though an original program had been broadcast, less any savings in your costs, it being understood that if programs are replayed for a period of a week, our overall payment to you for such week shall be reduced by the amount of such savings plus \$225 in 1960, by \$500 in 1961, by \$625 in 1962, by \$750 in 1963, by \$875 in 1964.

9. Paragraph 9 thereof shall be and is hereby amended by adding the following to Paragraph 9(b) thereof:

"Commencing January 4, 1960, in lieu of the foregoing sum of \$200 per quarter-hour segment, we agree to pay you a maximum sum of \$275 for each quarter-hour segment for which such network commercial sponsorship has been obtained, said sum of \$275 to be similarly reduced pro rata as the aforesaid \$200. In addition thereto, commencing January 4, 1960, we agree to pay you the sum of \$50 for each network commercial minute in this program series broadcast each week, starting with the 31st such minute per week, thereby excluding the first thirty (30) network commercial minutes per week."

10. Paragraph 9 thereof shall be and is hereby further amended by ending the first paragraph of 9(d) thereof after the word "recapture" in line 5 and deleting the remainder of such first paragraph up to and including the words "network commercial sponsorship."

11. Paragraph 12 thereof shall be and is hereby amended by inserting in line 7 thereof after the word "therewith" the words "and/or ABC."

12. Paragraph 13 thereof shall be and is hereby amended by deleting from the last two lines thereof the words "after we have acquired knowledge thereof" and inserting in lieu thereof the words "following the date, after February 27, 1960, to which the commission of such act or the doing of such thing shall have become generally known to the public."

It is further agreed that the words "after February 27, 1960" contained in this amendment shall be deleted from the agreement at the end of the fifty-two (52) week period commencing March 31, 1960, unless the parties hereto otherwise agree in writing that such words shall be retained in the agreement thereafter.

It is understood that we shall not have the right to cancel such agreement in the event that the commission of an act referred to in the second sentence of such Paragraph 13 is done by a performing guest on the program.

13. Paragraph 15 shall be and is hereby amended by deleting from the last three lines thereof the words "except as may be required by any applicable collective bargaining agreement to which we are a party" and inserting in lieu thereof the words "except for your out-of-pocket applicable union scale requirements for performing talent and, in addition thereto, your out-of-pocket expenses not to exceed \$600 a program."

14. Paragraph 16 thereof shall be and is hereby amended by deleting therefrom the words "thirteen (13) weeks" in line 4 thereof and inserting in lieu thereof the words "sixty (60) days."

15. Paragraph 17 thereof shall be and is hereby amended by adding thereto the words "except, of course, for matter in the public domain."

16. Paragraph 18 thereof shall be and is hereby amended by adding the following to the first sentence thereof: "or to require you to furnish a substitute subject to our prior written approval."

17. Paragraph 18 thereof shall be and is hereby further amended by inserting in line 10 thereof the word "calendar" after the word "one."

18. Paragraph 18 thereof shall be and is hereby further amended by adding thereto the following:

"Dick Clark shall have the right to a vacation not to exceed a total of three (3) weeks in any calendar year at a time or times subject to the prior written approval of ABC, it being understood that for each such week of vacation you shall provide a substitute subject to our prior written approval and the payment due to you hereunder for each such week shall be reduced by the sum of \$500."

19. Paragraph 10(a) thereof shall be and is hereby amended by deleting therefrom the words "that you have an employment agreement with Dick Clark under which you can supply" and inserting in lieu thereof the words "that you have an agreement under which you can supply Dick Clark."

20. You warrant that during the term hereof Dick Clark will be exclusive to us for radio and for television except as follows:

(a) With respect to local radio on WFIL and local television on WFIL, he shall have the right to appear thereon but not in conflict with his obligations hereunder.

(b) With respect to theatrical motion pictures in which he does not appear, he shall have the right to appear in spot commercial recorded announcements on radio and television, except for network radio and network television, which advertise such theatrical motion pictures.

(c) With respect to theatrical motion pictures in which he does appear, his legitimate stage, variety, night club, and all other personal appearances, guest or otherwise, in any and all media outside of radio and television;

books (hard and soft cover) newspapers, magazines, and periodicals¹ made by Dick Clark, he shall have the right to appear in spot commercial recorded announcements on radio and television which advertise his foregoing activities.

21. At our request you warrant that Dick Clark will enter into negotiations with us six (6) months prior to the expiration of this agreement for a period of ninety (90) days with respect to his services following the expiration of the term of this agreement, and during the term hereof Dick Clark shall not enter into any agreement with respect to his television or radio services following the term hereof except in accordance with the provisions of this paragraph. If such negotiations do not result in agreement between Dick Clark and ABC, then you warrant that Dick Clark will not enter into any agreement with any third party with respect to his services in television or radio during the period commencing ninety (90) days prior to the expiration of this agreement and ending ninety (90) days after the expiration of this agreement which is less favorable financially to Dick Clark than ABC had offered without first giving ABC the right, within seven (7) business days after the receipt by ABC of written notice of the terms of any such proposed agreement with any third party, to match the financial terms of any such proposed agreement and thereby acquire the rights to the services of Dick Clark following the expiration of the term hereof.

22. We shall not be obligated to telecast all or any part of any program over any one or more stations, our sole obligation being that of payment.

Except as herein expressly modified all the terms and conditions of our aforesaid agreement shall remain in full force and effect.

Will you kindly confirm your acceptance of the foregoing by signing a copy of this letter in the space provided therefor and returning same to us.

Yours very truly,

AMERICAN BROADCASTING COMPANY
(A Division of American Broadcasting-Paramount Theatres, Inc.).
By OMAR F. ELDER, JR.

Accepted and Agreed to:

TRIANGLE PUBLICATIONS, INC.
By ROGER W. CLIPP

In order to induce the execution of the foregoing agreement by American Broadcasting Company, a Division of American Broadcasting-Paramount Theaters, Inc., which I hereby acknowledge I have read, and in consideration of the benefits to be derived by me thereby, I hereby agree to be bound by and to comply with all provisions therein contained which in any way relate to or affect me and warrant that I have not entered and agree not to enter into any commitment in conflict with said provisions.

DICK CLARK.

Mr. LISIMAN. I hand you a photostatic copy of another agreement dated as of January 4, 1960, between Click Corporation and Triangle Publications, Inc., and ask you if this is a correct copy. Is that correct?

Mr. CLARK. Yes, sir, this is correct.

Mr. LISIMAN. Mr. Chairman, I would like to have it put in the record at this point.

The CHAIRMAN. Let it be received.

(The document referred to follows:)

¹ And "one-shots" written by or contributions to which are (above change initialed by contracting parties).

As of January 4, 1960

Click Corporation
c/o WFIL-TV
460 & Market Streets
Philadelphia 39, Pa.

Attention: Mr. Richard W. Clark

Gentlemen:

This Agreement between Click Corporation and Triangle Publications, Inc., for the term hereof commencing with the date hereof, supersedes any and all prior agreements between you and us and any and all contracts, discussions or agreements, orally or in writing, between Dick Clark and WFIL and WFIL-TV.

You have advised us that Dick Clark is the majority stockholder of Click Corporation and that Click Corporation has the exclusive right to his personal services for all purposes of this Agreement. It is understood between you and us that this Agreement calls for the personal services of Dick Clark and Click has represented to us that Dick Clark will perform all the services required by this Agreement with Click Corporation.

1. Click Corporation (referred to as "Click") agrees to produce the television show "American Bandstand" for the Radio and Television Division, Triangle Publications, Inc. (referred to as "Triangle") for broadcast over WFIL-TV and the ABC-TV Network as it may be scheduled between the hours of 2:00-5:30 PM, Monday through Friday, subject to the approval of Triangle in the first instance and of ABC-TV Network in the second instance; provided, however, that the total length of broadcast of each program, both locally and network, will not be more than two hours and may be less, from time to time and at any time on at least 28 days' written notice to Click, provided, further that if the program is broadcast for two hours per day, at least one hour will be broadcast on an ABC-TV network basis and be available for regular network commercial sale. If the programs are broken into segments, the interval between segments shall be limited to one break of not more than one half hour. Click's obligation with respect to producing the program shall be limited to furnishing the services of Dick Clark, suitable guests and the services of office and administrative personnel.

2. Click agrees to pay Triangle \$350 weekly for office space, telephone, its share of advertising, promotion, publicity, and for secretarial assistance. This amount of \$350 is based on current expenses.

3. Click further agrees that, in the network telecast of "American Bandstand", Dick Clark will deliver normal network commercials at no additional fee. Click further agrees that it will supply the services of Dick Clark exclusively to Triangle in the local radio and television fields, except for motion pictures made primarily for theater release, and with the exception of network radio and television, providing that all arrangements and agreements for his appearance on network radio and/or television will

* Should these expenses increase and the \$350 be inadequate to cover the above expenses, then Click agrees to pay to Triangle a greater amount weekly, sufficient to cover its proportional share of the increased expenses.

*Five
in
file*

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not conflict with his other obligations to Triangle.

4. This Agreement shall become effective immediately and shall continue in operation until January 1, 1965. Triangle promises and agrees to pay Click the following amounts in consideration of the promises here contained on the part of Click:

- a. \$4275 per week commencing January 4, 1960
- b. \$4775 per week commencing January 2, 1961
- c. \$5275 per week commencing January 1, 1962
- d. \$5775 per week commencing December 31, 1962
- e. \$6275 per week commencing December 30, 1963

In addition to the foregoing payments, Triangle will pay Click the sum of \$50 for each network commercial minute sold, commencing with the 31st, during each week the program is broadcast. Triangle will also pay Click, for each week that payments to acts at then current half-hour scale exceeds \$1500, such additional sums as Click must pay for additional acts at scale, up to a maximum of \$650 per week (including required union payments and taxes) averaged over each 13 week cycle commencing with the date hereof. If any portion of the program is broadcast in Philadelphia only, Triangle will, in addition, pay Click \$1.00 for each commercial appearing in said portion of the program.

*900
Bill*

5. In the event the network broadcast of the program is cut to one hour per day, the above payments to Click shall remain the same. If, however, the network broadcast of the program is cut to one half-hour per day, the weekly payments to Click, in lieu of those designated above in paragraph 4 in letters "a" through "e", will be the sum of \$2775 plus 2/3 of the difference between \$2775 and the applicable sums set forth in said letters "a" through "e" of paragraph 4. In addition, where the network broadcast of the program is cut to one half-hour per day the \$50 payable to Click for each network commercial minute sold during each week will commence with the 16th commercial rather than the 31st, and Click shall not be entitled to any additional sums for additional acts whether or not payments to acts at then current half-hour scale exceeds \$1500 per week.

6. Further, in certain instances where special guests are involved, Triangle agrees to reimburse Click for expenses incurred beyond the normal expense for guests insofar as the expenses exceed the normal expense, and are incurred with Triangle's express approval.

Paul

7. Triangle agrees to reimburse Click for Click's increased costs due to increases in union scales on or after January 4, 1960 for persons performing as talent on the program. Triangle agrees to pay Click one half of Click's increased costs in the event the current arrangement with AFTRA under which Click now pays talent at the thirty minute network rate is modified or withdrawn.

8. In the event Triangle licenses the replay of any programs hereunder, Triangle will pay Click the applicable sums set forth above less any savings affected by Click, it being understood that if programs are replayed for a period of a week, Triangle's payment to Click for such week shall be reduced by the amount of such savings plus \$225 in 1960, \$500 in 1961, \$625 in 1962, \$750 in 1963, \$875 in 1964. In the event

any programs are not broadcast as a result of pre-emptions, Triangle agrees to pay Click its out-of-pocket applicable union scale requirements for performing talent, and, in addition thereto, its out-of-pocket expenses not to exceed \$200 a program.

9. Triangle further agrees that it will continue to assume liability for accidents to visitors and guests participating in "American Bandstand" at the WFIL-TV studio.

10. During the calendar year 1960, Triangle shall have the right to terminate this Agreement by giving Click at least twenty-five days prior written notice. Effective with the calendar year 1961, however, Triangle's right to terminate this Agreement shall be in thirteen-week cycles computed from January 2, 1961 on not less than twenty-five days written notice to Click prior to the last scheduled telecast of any such cycle.

11. It is understood and agreed by Click that Triangle will retain exclusive control and ownership of the Titles "Bandstand" and "American Bandstand" and of the format of the program as developed by the station and established through the years since 1952. It is further understood that control of the program and the exclusive rights to its use will remain with Triangle and are not transferred to Click.

12. Click will afford Dick Clark three weeks of paid vacation time during each calendar year, the time of such vacation to be approved by ABC-TV. In such event, Click agrees to provide a substitute for Dick Clark, which substitute shall be subject to the approval of ABC-TV. The compensation payable to Click during the three week period Dick Clark is on vacation shall be \$500 less than the applicable amounts set forth in letters "a" through "e" of paragraph 4 above.

13. If Dick Clark shall have done or does anything which shall be an offense involving moral turpitude under Federal, State or Local laws, or which might tend to bring Triangle or Dick Clark into public disrepute, contempt, scandal or ridicule, or which might tend to reflect unfavorably upon the American Broadcasting Company Television Network, the sponsors, if any, or their advertising agencies, if any, or otherwise injure the success of the program, Triangle shall have the right to terminate this Agreement forthwith, without payment of any compensation to Click, within thirty days following the date ~~of~~ ^{February 27, 1960} ~~of~~ ^{gk} ~~such act or the doing of such thing~~ ^{gk} ~~shall have become generally known to the public.~~ ^{gk} ~~It is further agreed~~ ^{gk} ~~that the words "before February 27, 1960" contained in the foregoing~~ ^{gk} ~~sentence shall be deleted from this Agreement as the one of the first~~ ^{gk} ~~week period commencing March 15, 1960 unless the parties hereto otherwise~~ ^{gk} ~~agree in writing that such words shall be retained in the agreement~~ ^{gk} ~~hereafter.~~ ^{gk} ~~pk~~ ^{pk}

14. In the event Dick Clark no longer serves as master of ceremonies of the said programs, Triangle shall have the right to terminate this Agreement forthwith. In the event that Dick Clark fails to perform his services for reasons of illness, disability, accident or other reasons beyond his control, for three consecutive weeks or an aggregate of six

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weeks in any one calendar year during the term hereof, Click may terminate this Agreement and all Triangle's and Click's obligations hereunder shall terminate, except for those owed by Triangle to Click and Click to Triangle as of the effective date of such termination.

15. Click Corporation indicates in signing this Agreement that it has knowledge of the Agreement between Triangle and ABC Television covering "American Bandstand" (copy attached) and agrees to honor its provisions. *id RWR*
~~provided, however, that Click is not and shall not be bound by, and that Click has and shall have no obligation to honor, any one or more of the provisions in said agreement which in any way relate to or affect Dick Clark and/or Click on or after January 1, 1965.~~ *RWR*

16. This Agreement constitutes the entire understanding between the parties hereto with respect to the subject matter herein contained, and this Agreement cannot be changed or terminated orally.

This letter when signed by each of us shall constitute an agreement between Triangle and Click and shall be binding on Triangle and Click.

* Copy of amendment attached *RWR*

Sincerely yours,
Radio and Television Division
Triangle Publications, Inc.

By *Roger W. Clipp*
Roger W. Clipp
Vice-president

AGREED:

Click Corporation

Richard W. Clark
Richard W. Clark, President

Mr. LISHMAN. I hand you another contract between American Broadcasting Co., Triangle Publications, Inc., Drexel Corp., Dick Clark, and Click Corp., dated July 31, 1959, and ask if this is a correct copy of such an agreement?

Mr. CLARK. This is correct, Mr. Lishman. There is another one, we think in addition.

Mr. LISHMAN. I would like to have this in the record, Mr. Chairman.

The CHAIRMAN. Let it be received. These are all 1959?

Mr. CLARK. Yes, sir.

(The document referred to follows:)

AGREEMENT

Agreement made this 31st day of July 1959 by and among American Broadcasting Company, a division of American Broadcasting-Paramount Theatres, Inc., 7 West 66th Street, New York 23, N.Y. ("ABC"), Triangle Publications, Inc., Radio and Television Division, 46th and Market Streets, Philadelphia 39, Pennsylvania, ("Triangle"), Richard W. Clark, 47-6 Revere Road, Drexel Hill, Pa., ("Clark"), Drexel Television Productions, Inc. (formerly called Drexel Productions, Inc.), 680 Fifth Avenue, New York 19, New York ("Drexel") and Click Corporation, American Bandstand Division, % WFIL-TV, 46th and Market Street, Philadelphia 39, Pennsylvania, ("Click").

1. All merchandising rights in, and in connection with, American Bandstand, The Dick Clark Show, and any other radio or television programs in which Dick Clark appears on the American Broadcasting Networks insofar as merchandising rights involve the name or likeness of Dick Clark, shall be and are hereby vested as follows:

- 33 $\frac{1}{3}$ % thereof in Triangle,
- 33 $\frac{1}{3}$ % thereof in ABC,
- 16 $\frac{2}{3}$ % thereof in Click, and
- 16 $\frac{2}{3}$ % thereof in Drexel

during the terms of the current contracts between ABC and Drexel, and between Triangle and Click, as the same may be extended or modified from time to time, and thus, for example, this Agreement will automatically terminate in the event that American Bandstand is no longer carried on ABC and originated by Triangle.

2. Operation of a merchandising Department, which shall license or otherwise grant any of the aforesaid merchandising rights to any individual, firm or corporation, for the manufacture, sale or free distribution, shall rest under the joint control of Triangle, ABC and Drexel. Administration of the Department shall be in the hands of a person or persons, which person or persons shall be subject to the joint approval of all three corporations. The procedures and policies to be followed in the administration of the Department, and the operation thereof, shall be subject to the continuing approval of all three corporations. Licensing of any article shall be subject to the approval of a Board of three representatives: Triangle, ABC and Drexel each to designate one representative. Click designates Drexel to act in its behalf in the control of the administration of the Department. This approval must be unanimous; failure of any party to approve the article or the terms or conditions under which it shall be licensed, shall result in rejection of the article. For purpose of clarification and to avoid any misunderstanding, this Department will handle the licensing of all merchandising rights, whether the merchandise be offered for sale over the air through direct mail response, over the counter, in retail establishments, or over the air as a paid or free premium in connection with any specific sponsor: provided however, that nothing contained in this agreement shall prevent any party hereto from manufacturing, distributing or otherwise engaging in any business (other than merchandise licensing business) involving any item which has been or is proposed to be licensed under this Agreement, for free or otherwise, it being the intention of this Agreement to vest merchandising licensing rights as such under this Agreement, but not to affect the rights of any party hereto to engage or invest in a manufacturing, distributing or in any other kind of business, whether or not involving an item to be licensed under this Agree-

ment. The foregoing sentence shall not detract from the right of all three corporations to unanimously approve the licensing of any article hereunder, including an article falling within the purview of this Agreement and manufactured or distributed as above set forth by a party to this Agreement.

3. Net proceeds from merchandising rights administered under this Agreement shall be shared as follows, after reasonable expenses have been deducted. $\frac{1}{4}$ rd to Triangle, $\frac{1}{8}$ rd to ABC, $\frac{1}{8}$ th to Drexel and $\frac{1}{8}$ th to Click. Monthly reports on activity, and accounting statements are to be provided by the Administrator of the merchandising department, to Triangle, ABC and Drexel, together with any sums due Triangle, ABC, Drexel, and Click. All merchandise licensing rights agreements in effect through any party hereto as of August 1st, 1959, are to be assigned to perpetuity jointly to ABC, Triangle, Drexel, and Click and will be administered by the new merchandising Department, and the procedures outlined herein instituted as of that date. ABC agrees that it will take all necessary steps to cause assignments to be made from ABC Merchandising, Inc. to ABC, Triangle, Drexel, and Click, and Triangle agrees that it will do likewise. Any agreements entered into during the term hereof shall be vested jointly in ABC, Triangle, Drexel, and Click in perpetuity.

4. Anything to the contrary herein contained notwithstanding, it is agreed that nothing herein contained shall in any way restrict Clark's exclusive right to use and license others to use his name, voice, biographical material, representation, and likeness in the media listed below, and by any and all means, now or hereafter known or devised for the advertising, publicizing, and exploitation of such media, which are hereby expressly excluded from the scope of the term "merchandising rights" as used in Paragraph 1 hereof:

(a) legitimate stage, variety, nightclubs, and all other personal appearances, guest or otherwise, in any and all media outside of radio and television;

(b) books (hard and soft cover), newspapers, magazines, periodicals, and "one-shots" written by or contributions to which are made by Clark;

(c) music publishing;

(d) record and tape industry; and

(e) motion pictures.

5. Nothing contained herein shall be deemed to modify or otherwise affect ABC's rights to use the name, likeness and/or biographical material concerning Dick Clark and/or the title "American Bandstand" pursuant to the existing agreements between ABC and Triangle and between ABC and Drexel, as the same may be hereinafter modified or extended, nor shall anything herein contained be deemed to modify or otherwise affect Triangle's right to use the name, likeness, and/or biographical material concerning Dick Clark and/or the title "American Bandstand" pursuant to existing agreements between ABC and Triangle and between Triangle and Click, as the same may be hereinafter modified or extended.

6. It is the intention of the parties hereto to set up a new corporation to implement this Agreement, and all the terms and conditions hereof, in which their interests will be as stated herein.

7. This Agreement contains the entire understanding of the parties hereto relating to the subject matter herein contained, in a complete and independent agreement and is not a modification or part of any other agreement. This Agreement shall be construed under the laws of the State of New York applicable to contracts fully to be performed therein and cannot be changed or terminated orally.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

AMERICAN BROADCASTING COMPANY
(A division of American Broadcasting-
Paramount Theatres, Inc.)

By OMER F. ELDER JR.
TRIANGLE PUBLICATIONS, INC.
(Radio and Television Division)

By R. W. CLIPP
RICHARD W. CLARK
CLICK CORPORATION

By RICHARD W. CLARK,

President.

DREXEL TELEVISION PRODUCTIONS, INC.
By MARVIN JOSEPHSON,

Vice President.

The CHAIRMAN. Your lawyers have been quite busy this year.

Mr. CLARK. They have been busy for quite a while, Mr. Chairman.

Mr. LISIMAN. Mr. Clark, I hand you another agreement dated July 31, 1959, between American Broadcasting Co., Triangle Broadcasting, Richard W. Clark, Drexel Television Productions, Inc., and Click Corp. and ask you if this is a correct copy of such an agreement?

Mr. CLARK. This is the one, Mr. Lishman, that amends the last one, that we were looking for.

Mr. LISIMAN. I would like to have this one in the record, Mr. Chairman.

The CHAIRMAN. The one just referred to?

Mr. LISIMAN. Yes, July 31.

The CHAIRMAN. Let it be received.

Mr. LISIMAN. I hand you a supplemental agreement of the date of February 8, 1960, between the same parties and ask you if this is a correct copy?

Mr. CLARK. Yes, sir; this is correct.

Mr. LISIMAN. I have another—can we have this in the record, Mr. Chairman?

The CHAIRMAN. Let it be received.

(The documents referred to follow:)

JULY 31, 1959.

TRIANGLE PUBLICATIONS, INC.,
Radio & Television Division,
46th and Market Streets,
Philadelphia 39, Pa.

RICHARD W. CLARK,
47-6 Revere Road,
Drexel Hill, Pa.

DREXEL TELEVISION PRODUCTIONS, INC.
(formerly called Drexel Productions, Inc.)
680 Fifth Avenue, New York 19, N.Y.

CLICK CORP.,
American Bandstand Division,
c/o WFIL-TV, 46th and Market Streets,
Philadelphia, Pa.

GENTLEMEN: Reference is made to the agreement among us dated July 31, 1959, relative to merchandising rights in "American Bandstand," "The Dick Clark Show," and any other radio or television program in which Dick Clark may appear on the American Broadcasting Co. networks.

Our aforesaid agreement shall be and is hereby amended as follows:

1. The corporation to be set up under Paragraph 6 of the aforesaid agreement shall be organized forthwith in a manner satisfactory to all parties hereto. The parties hereto, shall license thereto all of the aforesaid merchandising rights that each of the parties may control, based upon a division of net proceeds as stated in the aforesaid agreement. This corporation will operate in lieu of and in the same manner as the Merchandising Department referred to in Paragraph 2 of the aforesaid agreement. Pending the organization and qualification of such corporation, none of the parties hereto shall license any of the aforesaid merchandising rights or conduct any business in connection therewith except with the written approval of all the parties hereto.

2. Clark, Drexel, and Click agree that they shall not make any arrangements with respect to the use of the name, voice, or likeness of Dick Clark and/or the title "American Bandstand," "The Dick Clark Show," and any other radio or television programs in which Dick Clark may appear, for uses other than set forth in the aforesaid July 31, 1959 agreement, without first giving Triangle and ABC reasonable prior notice thereof and an opportunity to consult with Clark, Drexel, and Click thereon before any commitment is made.

3. Each of the parties warrants and represents that it has not heretofore granted to any party (other than to the parties to this agreement) any of the aforesaid merchandising rights, except for license agreements heretofore issued.

Will you kindly indicate your acceptance of the foregoing by signing a copy of this letter in the space provided therefor and returning same to us.

Yours very truly,

AMERICAN BROADCASTING Co.
 (A Division of American Broadcasting-Paramount Theatres, Inc.)
 By OMAR F. ELDER, Jr.

Accepted and Agreed to:

TRIANGLE PUBLICATIONS, INC.
Radio and Television Division.
 By ROGER W. CLIPP,
 RICHARD W. CLARK
 CLICK CORP.
 By R. W. CLARK, *President.*
 DREXEL TELEVISION PRODUCTIONS, INC.
 By MARVIN JOSEPHSON

AMERICAN BROADCASTING Co.,
New York 23, N.Y., February 8, 1960.

TRIANGLE PUBLICATIONS, INC.,
Radio and Television Division,
46th and Market Streets,
Philadelphia, Pa.

RICHARD W. CLARK,
Care of WFIL-TV,
46th and Market Streets,
Philadelphia, Pa.

DREXEL TELEVISION PRODUCTIONS, INC.,
 (formerly called Drexel Productions, Inc.)
680 Fifth Avenue, New York 19, N.Y.

CLICK CORP.,
American Bandstand Division,
c/o WFIL,
Philadelphia Pa.

GENTLEMEN: Reference is made to the Agreement among us dated July 31, 1959, as amended by Letter of Amendment of same date, relative to merchandising rights in "American Bandstand," "The Dick Clark Show," and any other radio or television programs in which Dick Clark appears on the American Broadcasting networks insofar as merchandising rights involve the name or likeness of Dick Clark.

This is to confirm that by prior mutual consent among the parties the aforesaid Agreement, as amended, was not implemented by setting up the corporation as provided for therein. Accordingly, our aforesaid Agreement, as amended, shall be and is hereby further amended as follows:

1. Until such time as one or more of the parties hereto shall determine to the contrary by thirty (30) days advance written notice to the other parties, the setting up of the corporation referred to in Paragraph 6 of the aforesaid Agreement and Paragraph 1 of the aforesaid Letter of Amendment shall be deferred and Triangle will operate in lieu of and in the same manner as the said corporation, subject to all of the same terms and conditions of the Agreement, as amended as the corporation would be subject to were it in active operation.

2. In addition to the monthly reports and accounting statements provided for in Paragraph 3 of the Agreement, and so long as Triangle is acting in lieu of the corporation pursuant hereto, Triangle will remit to each party on a semi-annual basis said party's applicable share of net proceeds from merchandising rights under the Agreement, as amended. In the event the merchandising operation results in a net loss in any such semiannual period, each party will remit to Triangle its applicable share thereof. The other parties hereto shall have the right to inspect Triangle's books and records with respect to merchandising

rights under the Agreement as amended and to make copies and extracts thereof. Triangle agrees to render bookkeeping and accounting services at no charge except for an annual CPA audit to be made by Price Waterhouse & Co. unless the parties hereto agree upon another CPA firm.

The aforesaid Agreement as amended by said Letter of Amendment, and as amended hereby, is hereby in all respects ratified, confirmed, and approved.

Yours very truly,

AMERICAN BROADCASTING Co.,
(A Division of American
Broadcasting-Paramount
Theaters, Inc.),

By OMAR F. ELDER, Jr.

Accepted and Agreed to:

TRIANGLE PUBLICATIONS, INC.,
Radio and Television Division,

By ROGER W. CLIPP.

RICHARD W. CLARK.
CLICK CORP.

By RICHARD W. CLARK, *President.*

DREXEL TELEVISION PRODUCTIONS, INC.,

By MARVIN JOSEPHSON, *Vice President.*

MR. LISHMAN. I have another agreement between Drexel Productions, Inc., and American Broadcasting, dated August 30, 1958, and ask you if this is a correct copy?

MR. CLARK. I am told this is correct as a portion of many others.

MR. LISHMAN. Mr. Chairman, I would like to have this in the record.

THE CHAIRMAN. Yes, let it be received.

MR. LISHMAN. I hand you an agreement dated January 6, 1958, between you and the American Broadcasting Co. and ask you if this is a correct copy of such agreement?

MR. CLARK. This is correct.

MR. LISHMAN. Mr. Chairman, I would like to have this one in the record.

THE CHAIRMAN. Let that be received for the record.

MR. LISHMAN. Thank you.

(The documents referred to follow:)

DREXEL PRODUCTIONS, INC., IN CARE OF BROADCAST MANAGEMENT, INC.,

New York 19, New York, August 30, 1958.

AMERICAN BROADCASTING Co.,

(A Division of American Broadcasting-Paramount Theatres, Inc.)

New York, New York.

GENTLEMEN: We refer to paragraph 19 of the agreement between us dated as of July 9, 1958.

You have designated ABC Merchandising, Inc., as the "agency or other merchandising organization to be used in connection with the licensing of such rights" covered by said paragraph 19, and have requested our approval of such designation.

We hereby consent to the appointment of ABC Merchandising, Inc., for a period of one year from the date hereof, it being understood that ABC Merchandising, Inc., shall retain as a fee to cover all of its services and expenses an amount not to exceed 40% of the gross proceeds which it receives from licensing such rights. It is hereby understood and agreed that ABC Merchandising, Inc., shall have the right to enter into any licenses pursuant to said paragraph 19 during said one-year period for a maximum period, including options, of three years from the date hereof.

Very truly yours,

DREXEL PRODUCTIONS, INC.,
By R. W. CLARK, *President.*

Initialed: RIIK. US.

JANUARY 6, 1958.

Mr. RICHARD CLARK,
 47-6 Revere Road,
 Drexel Hill, Pa.

DEAR MR. CLARK: The following when signed by you and us will constitute an agreement between you and us.

1. We hereby employ you and you hereby agree to perform for us certain artistic and professional services, as more fully described in paragraph 3 hereof as required by us and as we may from time to time direct you on and in connection with a series of television programs to be owned and produced by us and to be broadcast over our network tentatively entitled the "Dick Clark Show." The said programs shall consist of, among other items, musical variety, audience participation, dance contests, and guest appearances and interviews.

2. Said series shall be broadcast once per week on Saturday during each week of the term hereof for one hour or one-half hour, as we may determine, between 7:30 p.m. and 8:30 p.m., CNYT commencing on or about February 15, 1958. We reserve the right to change at any time and from time to time the day and time of day any program or programs are scheduled for broadcast as long as such change does not interfere with the services you are then currently performing in local television in Philadelphia pursuant to your employment agreement with WFIL-TV which is presently in existence.

3. Your services hereunder on and in connection with the said programs and any other programs or series of programs in connection with which your services are used hereunder shall include but not be limited to the following as we may from time to time direct you:

- (a) serving as a Master of Ceremonies and host;
- (b) taking part in commercials including leads into and leads out of same;
- (c) being present at and taking part in rehearsals in connection with the said programs.

4. Your services pursuant to this agreement shall be performed for us in New York City or such other places as we may designate.

5. The term of this agreement shall be for 364 weeks commencing Saturday, February 15, 1958. We shall have the right during the term hereof to terminate this agreement, upon four (4) weeks prior written notice to you, at the end of any thirteen (13) week cycle during the first and second 52 week periods hereunder, at the end of any 26 week cycle during the third 52 week period hereunder, and at the end of any other 52 week period thereafter during the remainder of the term of this agreement.

6. We shall in no way be obligated to broadcast said series of programs referred to in paragraph 1 hereof but your services hereunder shall be exclusive to us in network radio and television for the full period of said 364 weeks, whether or not, at our option, we are broadcasting the said series of programs or any other programs or series of programs which make use of your services during said 364 week period: provided, however, that after the first fifty-two (52) week period hereunder, in the event your said services, for a period of thirteen (13) consecutive weeks or more or twenty-six (26) weeks or more in the aggregate during any succeeding fifty-two (52) week period, are not used by us in connection with any program or series of programs, said exclusivity and this agreement, notwithstanding paragraph 5 hereof, may be terminated by either you or us at any time upon two weeks' prior written notice. Notwithstanding the foregoing clause, we shall have the right to suspend the use of your services in connection with any series of programs for summer hiatus purposes for a maximum period from and including the last week in June up to and including the first week in September during any and all 52 week periods hereunder. Such summer hiatus period or any part thereof shall not be included in computing the period, pursuant to this paragraph, of consecutive or aggregate weeks during any fifty-two (52) week period hereunder that your services have not been used by us so as to affect your said exclusivity to us and the continuation of this agreement. The running of any such period affecting your said exclusivity consisting of said consecutive or aggregate weeks shall be tolled:

(a) In the event that we offer to use your services in connection with any program or series of programs similar to that described in paragraph 1 hereof upon at least the same prices referred to in paragraph 10 hereof;

(b) For the duration of any periods wherein by reasons or causes beyond our control pursuant to paragraph 21 hereof, we could not make use of your services for broadcasting;

(c) For the aggregate of the number of times any programs in connection with which you are to render your services hereunder are preempted pursuant to our rights of preemption and recapture under paragraph 21 of this agreement.

7. You agree to accept no offers made to you during the term hereof for the performance of any services by you after the expiration of this agreement in network radio or television except upon our prior written approval; provided, however, that you may accept any such offers made to you during the seventh fifty-two (52) week period that this agreement may be in effect for your performance of such services after the expiration of this agreement but only after we have been given written notice of any and all such bona fide offers, immediately upon your receipt thereof, and have not, or our affiliated radio network, the American Broadcasting Radio Network, Inc., has not, within one week of our receipt of such notices, exercised our or its exclusive option, as the case may be, which is hereby granted to us and our said affiliated radio network, to employ you after the expiration of this agreement upon at least the same terms and conditions as contained in any such bona fide offers. Said exclusive option as described in the preceding sentence shall also apply to all such offers made to you during the year following the seventh fifty-two (52) week period of this agreement if your services hereunder are actually being used by us in broadcasting during any part of the past thirteen (13) week period of said seventh fifty-two week period.

8. We agree that you shall be entitled to a four (4) week vacation during the first fifty-two (52) week period hereunder and a six (6) week vacation thereafter, unless during any fifty-two (52) week period we elect to suspend your services for summer hiatus purposes pursuant to paragraph 6 hereof for as long as or greater than your vacation period hereunder. The time of such vacation periods will be as we may designate and advise you.

9. You agree that during the first fifty-two (52) week period hereunder, you will not undertake any guest appearances in network radio and television without our prior written consent and we agree that thereafter, you may undertake three (3) such guest appearances during any thirteen (13) week period hereunder upon our prior written consent which will not be unreasonably withheld. You further agree that in no event will you render any services to nor undertake any guest appearances for any person, firm or corporation, except in connection with your local services in Philadelphia in television for WFIL-TV and your services in connection with the network broadcast of the afternoon program "American Bandstand" presently originating from Philadelphia and being broadcast over our television network facilities, when any such activities would be connected, directly or indirectly, with the advertising or exploitation of any product competitive to any product advertised on any programs or series of programs in connection with which you may be rendering services pursuant to this agreement. You further agree that any services or guest appearances undertaken by you in local radio or television or any services of any nature whatsoever to be rendered by you will in no way conflict with or affect the services to be performed by you hereunder.

10. In consideration of the services to be performed by you hereunder and all rights, licenses, and privileges granted to us, we agree to pay you and you agree to accept the following compensation. (All references below to "the program" in subparagraph (a) and (b) refer to each program in the series referred to in paragraph 1 hereof):

(a) For each week the program is broadcast on a sustaining basis:

(i) during the first twenty-six weeks hereunder, \$500.00 per week when the program is one-half hour in length and \$650.00 per week when same is one hour;

(ii) during the second twenty-six weeks hereunder, \$550.00 per week when the program is one-half hour in length and \$700.00 per week when same is one hour;

(iii) during the second fifty-two week period hereunder, \$600.00 per week when the program is one-half hour in length and \$750.00 per week when the same is one hour;

(iv) during the third, fourth, fifth, sixth and seventh fifty-two week periods hereunder, \$650.00, \$700.00, \$750.00, \$800.00 and \$850.00 respectively per week when the program is one-half hour in length and

\$800.00, \$850.00, \$900.00, \$950.00 and \$1,000.00 respectively per week when the same is one hour.

(b) For each week the program is broadcast on a network commercially sponsored basis:

(i) during the first twenty-six weeks hereunder, \$750.00 per week when the program is one-half hour in length and \$900.00 per week when same is one hour;

(ii) during the second twenty-six weeks hereunder, \$850.00 per week when the program is one-half hour in length and \$1,000.00 per week when the same is one hour;

(iii) during the second fifty-two week period hereunder, \$1,000.00 per week when the program is one-half hour in length and \$1,250.00 per week when same is one hour;

(iv) during the third, fourth, fifth, sixth and seventh fifty-two week periods hereunder, \$1,250.00, \$1,500.00, \$1,750.00, \$2,000.00 and \$2,250.00 respectively per week when the program is one-half hour in length and \$1,750.00, \$2,000.00, \$2,250.00, \$2,500.00 and \$3,000.00 respectively per week when same is one hour.

(c) In the event a vacation is due you during any fifty-two (52) week period hereunder pursuant to paragraph 8 hereof, you shall receive the sum of Five Hundred (\$500) Dollars per week for each vacation week during the first fifty-two (52) week period hereunder and the sum of Six Hundred (\$600) Dollars per week for each vacation week after said first fifty-two (52) week period.

(d) In the event, during any particular week or weeks your services hereunder are not used by us in connection with any program or series of programs and this agreement is in effect, we shall pay you the sum of Five Hundred (\$500) Dollars for any such week during the first fifty-two (52) week period hereunder, Seven Hundred and Fifty (\$750) Dollars per week during the second fifty-two (52) week period hereunder, and One Thousand (\$1,000) Dollars per week thereafter. You shall not be entitled to such payments under this subparagraph in the event your services are not used by us as a result of the prevention or omission or the preemption and recapture of any program pursuant to paragraph 21 hereof.

(e) In the event we elect to suspend your services for summer hiatus purposes pursuant to paragraph 6 hereof, we shall not be obligated to make any payments to you during such summer hiatus in the first fifty-two (52) week period hereunder, but shall pay you Seven Hundred and Fifty (\$750) Dollars per week during said hiatus in the second fifty-two (52) week period and One Thousand (\$1,000) Dollars per week during any such hiatus thereafter.

(f) We hereby agree that you shall be entitled to a thirty (30%) percent share of all net profits (same to be determined in accordance with normal accounting methods subject, at your option, to examination by an impartial C.P.A. of reputable standing at your own expense) accruing from the sale by us of the said series of programs, or any other programs or series of programs for which your services hereunder may be used by us, to network advertisers and to thirty (30%) percent of all monies, constituting above-the-line costs in our budget (said budget to be determined solely by us), for the said series or any other programs or series of programs for which your services may be used by us hereunder, which monies are not actually expended or will not be expended by us for above-the-line costs. We also hereby agree that you shall be entitled to 50% of all net proceeds received by us as a result of the syndication of any and all such programs and series of programs without payment to you of any other compensation as a result of such syndication, and in this connection you hereby acknowledge that since such programs and series of programs are and will be owned by us, any designees of ours may undertake such syndication, at their standard syndication fee.

11. We shall not be required to make any payments to you in addition to your compensation specified herein unless the aggregate of the minimum union rates payable to you pursuant to any applicable collective bargaining agreement which we are a party to and which is in effect at the time of the performance of your services hereunder shall exceed your compensation specified hereunder, in which event we shall pay you or shall cause to be paid to you, in addition to the compensation specified herein, the amount of such excess. Any reference to "rate,"

"fee," or "compensation" contained in any such collective bargaining agreement shall be deemed for purposes of this Agreement to refer to the minimum rate, minimum fee or minimum compensation set forth in such collective bargaining agreement.

12. We shall have the right to broadcast any programs or series of programs in connection with which you may be rendering services to us hereunder, in whole or in part on a commercial sponsorship basis of any type whatsoever, including but not limited to single, multiple, participating, cooperative, regional, territorial, and/or any combination of any and all types.

13. In the event that you fail to perform your services for reasons of illness, disability, accident or other reasons beyond your control for three consecutive weeks or an aggregate of six weeks during the first fifty-two (52) week period hereunder, four (4) consecutive weeks or an aggregate of eight (8) weeks during the second fifty-two (52) week period hereunder, and five (5) consecutive weeks or an aggregate of nine (9) weeks during any fifty-two (52) week period thereafter, we may terminate this agreement and all our obligations hereunder forthwith. It is understood that during any period of time that you are so unable to perform your services, you shall not be entitled to any compensation therefor.

14. We may completely fulfill our obligations hereunder by making the applicable payments to you but we shall not be required to use your services.

15. You grant us the exclusive right to use and license others to use your name, voice, biographical material, representation and likeness in any and all media and by any and all means now or hereafter known or devised for informative purposes and for the advertising, publicizing and exploitation of the said series of programs and any other programs and series of programs in connection with which your services may be used hereunder and the exploitation for purposes of sale or otherwise of any and all elements of and subsidiary rights existing in or in connection with any and all programs of said series and any other such programs and series of programs, all of which elements and rights, as between you and us, of course, are exclusively owned by us. You shall be entitled to a share in the net profits accruing from the exploitation by us of any such subsidiary rights, said share to be mutually agreed upon between us. Said use and the licensing of the use of your name, voice, biographical material, representation and likeness may be undertaken also in connection with sponsors' products used in connection with said series and such other programs and series of programs, said use by us or others not to be undertaken in such manner as to constitute a specific endorsement by you of any of sponsors' products without your prior written consent. As used herein, the term "subsidiary rights" shall mean any and all rights with respect to syndication, dramatic, motion picture, recording, book publication, magazine publication, radio and television broadcasting in foreign countries, merchandising and other subsidiary purposes in connection with which any and all programs and series of program and/or any element or elements thereof may be used.

16. You will devote your best talents, efforts, abilities in connection with your services hereunder and will attend all reasonable program conferences. You further agree to cooperate fully with us and our designees for publicity and exploitation purposes of the said series of programs and any other programs and series of programs in connection with which you may be rendering services hereunder, including, but not limited to, making yourself available for and attending, within reason, publicity photographic sessions, interviews by reporters and editors of newspapers, magazines, trade journals and similar publication, to travel, at our expense and request, to various places throughout the country as we may designate for appearances at fairs at a mutually agreed upon price, on our affiliates' local programs, and the like, for purposes of making guest appearances and being interviewed on other of our television programs, or our affiliated radio network's radio programs as we may direct you, and to allow us and our designees to shoot at-home pictures of you unless same is not feasible because of some reasonable personal matter.

17. You warrant and represent that you are free to enter into and fully perform this agreement and to grant the rights herein conveyed to us and you agree that all ideas, creations, literary, musical and artistic materials and intellectual properties (herein called "materials") furnished by you hereunder will be your own and original creation, except for matters in the public domain, or materials which you are fully licensed to use, and that the materials and the use thereof

will not violate the right of privacy of, or constitute a libel or slander against, or violate any other rights of any person, firm or corporation.

18. The said series of programs and any other programs and series of programs and your services hereunder in connection therewith and any and all proceeds of such services including but not limited to the "materials" referred to in paragraph 17 hereof may be originally broadcast and/or rebroadcast either live or by recording and may be broadcast and/or rebroadcast, as the case may be, on a repeat, delayed and/or supplemental basis by recording, and/or on a syndicated basis by recording pursuant to paragraph 10(f) hereof. The terms "recording" and "recordings" as used herein shall mean and include any recording or recordings made (whether before, during or after the broadcast transmission) by electrical transcription, tape recording, wire recording, disc, film, or any other similar or dissimilar method of recording programs, whether now known or hereafter developed. All such recordings and all rights therein, including your services and proceeds thereof, shall be our sole property. In addition to the foregoing, you grant to us the right, furthermore, to record your performance of any programs to be broadcast hereunder for purposes of using same for reference, file and audition purposes. You shall be paid 75 percent of your ordinary applicable compensation under paragraph 10 hereof for any broadcast of a recording for repeat broadcast purposes, unless such repeat broadcast is made because of our inability to broadcast any program live because of reason or causes beyond our control pursuant to paragraph 21 hereof, in which case you shall be paid 50 percent of your said ordinarily applicable compensation.

19. In the event that due to technical failure or difficulty or any other similar or different cause beyond our control, any recordings of any program are, in our opinion, incomplete or of an inferior quality, you will perform such services in connection with the re-enactment of the program, in whole or in part, as may be necessary to enable us to acquire satisfactory and complete recordings of such programs.

20. You warrant and represent that you have the right to make and enter into this agreement and to grant us the rights, licenses, and privileges herein contained and conveyed to us and that there are no contracts or agreements expressed or implied between you and any other party which will prevent from fulfilling any of your obligations hereunder or which will in any way impair the rights granted to us hereunder. You agree to indemnify and defend us, any and all sponsors of the said series of programs and any and all participating sponsors, our and their advertising agencies, and any and all stations broadcasting the programs and hold us and them free and harmless from and against any and all actions, liabilities, claims, expenses (including counsel fees), losses, damages, judgments, and the like caused by or arising out of the breach of any warranty or agreement herein contained or the broadcast of any material or scripts furnished by you hereunder or any statements made or acts done by you in connection with the production, rehearsal, and/or broadcasts of the programs. We shall have the right to participate in or assume the defense of and settlement of any and all actions instituted to which the foregoing indemnity applies, including appeals from judgments relating thereto, by counsel of our own choosing. You agree that your counsel in such matters will cooperate fully with us. We will similarly indemnify and hold you harmless from and against any and all claims, damages, liabilities, costs and expenses, including counsel fees, arising out of the use of any materials or services furnished by us in connection with the production, rehearsal, or broadcast of the program, any acts done or words spoken by us of our employees in connection with the production, rehearsal, or broadcasts of the programs, or any breach by us of any warranty made to you herein: provided, however, that you shall promptly notify us of any claim or litigation to which the indemnity set forth in this sentence applies, provided further, that at our option we may participate in or assume the defense of any such claim or litigation. If we participate in any such defense, you agree that your counsel will fully cooperate with us in regard thereto. If we assume the defense of any such claim or litigation, our obligations with respect thereto shall be limited to holding you harmless from and against any loss or damage or cost caused by or arising out of any judgment or settlement approved by us in connection therewith. The exercise by us of any rights hereunder shall not be deemed to constitute a waiver of any of your obligations hereunder.

21. In the event the broadcast of any program is prevented or omitted for any reason or cause beyond our control, including but not limited to government regulation or order, strike, failure of broadcast facilities because of war or other

calamity such as fire, earthquake, or similar Acts of God, or otherwise, or because of the pre-emption and recapture of the program for the broadcast of any event of public importance (including sports events and special programs), then and in any such event, the same shall not constitute a breach of this Agreement and we shall not be required to make any payment to you with respect to such program, except that in the event the program being broadcast for which the pre-exemption has been made is sold for network commercial sponsorship, then you shall be entitled to your ordinarily applicable compensation under paragraph 10 hereof if the program preempted would have been broadcast on a network commercially sponsored basis. Notwithstanding the foregoing, we shall have the right to preempt at least three programs making use of your services during any all fifty-two (52) week periods hereunder for any reason whatsoever without payment of any compensation to you.

22. You acknowledge that the services to be performed by you hereunder are unique and irreplaceable.

23. As between you and us, all materials, whether or not furnished by you, used on or in connection with any programs, shall be our sole and absolute property for any and all purposes whatsoever.

24. You will act at all times with due regard to public morals and conventions. If you at any time shall have done or shall do any act or thing which shall be an offense involving moral turpitude under federal, state, or local laws, or which might tend to bring you into public disrepute, contempt, scandal or ridicule, or which might tend to insult or offend the community or any organized group thereof or which might tend to reflect unfavorably upon us, the sponsors, if any, or their advertising agency, if any, or injure the success of any programs, we shall have the right to terminate this agreement forthwith upon notice to you at any time prior to the termination of thirty (30) days after the date on which we acquired knowledge thereof.

25. We, the sponsors, if any, and their advertising agencies, if any, may open all correspondence intended for you which any of them receives and may answer or cause to be answered any correspondence relating to your services in connection with the program. We will use our best efforts to forward unopened to you mail marked "Personal".

26. You are or will become, and remain during the period of this Agreement, a member in good standing of any labor unions with which we may have agreements lawfully requiring such union membership. This agreement shall be subject to the AFTRA Code of Fair Practice.

27. Any controversy or claim arising out of or relating to this contract or the breach thereof shall be settled by arbitration in accordance with the provisions of the AFTRA Code of Fair Practice and judgment upon the award rendered may be entered in the highest court of the forum, state or federal, having jurisdiction.

28. If you shall violate any of the material terms of this agreement we shall have the right, at our election, to terminate this contract forthwith without further obligation and without prejudice to such rights as we may have to recover damage for the breach of this agreement.

29. All notices to be given hereunder shall be addressed to you at your address so designated herein on page 1 of this agreement or at any other address as you may advise us in writing and to us at 7 West 66th Street, New York 23, New York. Any notice given by mail shall be deemed to be given on the day it is mailed.

30. Neither you nor we may assign this agreement without the prior written consent of the other, except that we may assign this agreement and all rights herein to any party acquiring a substantial portion of our television or sound radio business, or to any corporation controlling us, controlled by us, or under common control with us.

31. This agreement is made subject to all federal, state, and municipal laws or regulations now or hereafter in force; shall be construed according to the laws of the State of New York; and shall not be changed, modified or discharged in whole or in part except by an instrument duly signed by you and us. Waiver of any provisions hereof under any circumstances will not constitute a general waiver of any rights hereunder.

32. This agreement constitutes the entire agreement between you and us with respect to the subject matter hereof and shall substitute and replace any and all prior negotiations and agreements which may have existed between you and us.

If the foregoing is in accordance with your understanding, will you kindly indicate your consent by signing in the space provided below.

Very truly yours,

AMERICAN BROADCASTING Co.
(A Division of American Broad-
casting-Paramount Theatres,
Inc.)

By MORTIMER WEINBACH.

Dick Clark,
DICK CLARK.

Accepted:
(Confirmed.)

Mr. LISHMAN. Mr. Clark, I hand you another letter agreement of March 27, 1958, between you and American Broadcasting Co. and ask you if this is a correct copy of such an agreement?

Mr. CLARK. It is correct.

Mr. LISHMAN. I hand you an amendment of that—I would like to have this agreement introduced in the record, Mr. Chairman.

The CHAIRMAN. Let it be received.

Mr. LISHMAN. That agreement was amended as of July 25, 1958, and I hand you a copy and ask you if that is correct.

Mr. CLARK. This is correct.

Mr. LISHMAN. I would like to have this amendment introduced in the record.

The CHAIRMAN. Let it be received.

(The documents referred to follow:)

MARCH 27, 1958.

Mr. RICHARD CLARK,
47-6 Revere Road,
Drexel Hill, Pa.

DEAR MR. CLARK: The following when signed by you and us shall constitute a modification of the Agreement dated January 6, 1958 between you and us.

1. The following sentence shall be and is hereby deemed a part of paragraph 5 of said Agreement, effective January 6, 1958, with the same force and effect as if the following had been originally set forth therein: "Any cycles or periods referred to herein may be extended or shortened by us by not more than two weeks to conform to any sponsorship cycles."

2. Paragraph 15 of the Agreement shall be and hereby is deleted and the following shall hereby be substituted as paragraph 15 in place and instead thereof, effective January 6, 1958, with the same force and effect as if the following had been originally set forth in said January 6, 1958 agreement as paragraph 15 thereof:

"15. You grant us the exclusive right during the term of this agreement to use and license others to use your name, voice, biographical material, representation and likeness, (hereinafter sometimes collectively called "the foregoing") in any and all media and by any and all means now or hereafter known or devised:

"(a) for the advertising, publicizing and exploitation of the said series of programs and any other program and series of programs referred to in paragraph 6(a) hereof and

"(b) in connection with sponsors' products advertised in connection with said series and any other programs and series of programs referred to in paragraph 6(a) hereof, such use by us or others not to be undertaken in such manner as to constitute a specific endorsement by you of any of sponsors' products without your prior consent, and

"(c) for the advertising, publicizing and exploitation for purposes of sale or otherwise of any one or more articles that may be merchandised using, in whole or in part, the name "Dick Clark," "Dick Clark Show," and/or any other elements of said series of programs and any other programs and series of programs referred to in paragraph (a) hereof.

"It is agreed that we shall not make any commitment for any merchandise to which this subparagraph (c) relates without your prior written consent as to the specific article to be merchandised, such consent not to be unreasonably withheld, and in this connection, you agree to give us written notice as to your giving or withholding of such consent, within seventy-two (72) hours of your

receipt of our notice to you of our intent to authorize the merchandising of any specific article. If we do not receive such written notice from you within said seventy-two (72) hours, you shall be deemed to have given us such consent. We need not obtain such consent, however, in regard to articles manufactured and used primarily for the publicizing and exploitation of products of sponsors of any and all said programs. We shall have the right to designate an agency or other merchandising organization to be used in connection with the licensing of such rights, the choice of such agency or other merchandising organization to be subject to your prior approval, which shall not be unreasonably withheld. All net proceeds accruing from the exploitation, by sale or otherwise, of any articles merchandised pursuant to this paragraph 15 shall be divided equally between you and me. Net proceeds, as herein used, shall be deemed to include all monies accruing from such exploitation, after the deduction therefrom of any merchandising or licensing agent's fees, and that are actually received by or owed to us; provided, however, that any monies owed to us shall form part of such net proceeds only in the event that a corporation affiliated with us serves as such merchandising or licensing agent. Anything to the contrary herein contained notwithstanding, it is agreed that nothing herein contained shall in any way restrict your exclusive right to use and license others to use your name, voice, biographical material, representation and likeness in the media listed below and by any and all means now or hereafter drawn or devised for the advertising, publicizing and exploitation of such media, which are hereby expressly excluded from the scope of the term 'merchandise' as used in this paragraph 15:

"(i) legitimate stage, variety, night clubs and all other personal appearances, guest or otherwise, in any and all media outside of network radio and network television;

"(ii) books (hard and soft cover), newspapers, magazines, periodicals and 'one-shots' written by or contributions to which are made by Dick Clark;

"(iii) music publishing;

"(iv) record and tape industry;

"(v) motion pictures.

"Notwithstanding anything hereinabove contained to the contrary, it is specifically understood and agreed that your right to use and license others to use your name, voice, biographical material, representation and likeness may be understood in the media designated above only insofar as such use is in no way undertaken in connection with the program or service in competition with any product or service then currently sponsoring any programs in which you appear under this agreement, except insofar as ----- the advertising of such competitive products is not used as directly sponsoring the specific medium or media using any of 'the foregoing' and is incidental and coincidental to the use of any of 'the foregoing' in the above designated media. By way of example, but not in limitation the following shall be deemed 'incidental' and 'coincidental' and 'not used as directly sponsoring,' as said phrases are used herein:

"A. Advertising of a competitive product in any book, magazine, newspaper, periodical or one-shot written by you or to which you contribute when such advertising is part of multiple advertising contained in or relating to any and all of the aforesaid media using any of 'the foregoing.' ('multiple advertising' as herein used shall be deemed to mean advertising by more than six advertisers, none of which is a primary advertiser of the particular medium containing advertising of a competitive product.)

"B. The use of any of 'the foregoing' in connection with the composing and performance of a musical or dramatic-musical work, when the credit given to Dick Clark for such composition is not directly tied in with the advertising of a competitive product:

"C. The use of any of the foregoing on or in connection with the manufacture, distribution and exploitation of phonograph records and tapes.

"Notwithstanding anything hereinabove contained, it is also further understood and agreed that the use by you and the licensing of the use of any of 'the foregoing' in the aforesaid media referred to in subparagraphs (i) through (v) hereof and in the advertising and publicizing of same shall not be undertaken by you when any such media or such advertising or publicizing makes reference to or uses the name Dick Clark Show, and that we shall continue to have exclusive rights to use and license others to use any of the foregoing in connection with the merchandising of any articles using, in whole or in part, the name 'Dick Clark Show' as set forth in subparagraph (c) of this paragraph 15."

3. The word "program" appearing in paragraph 6(a) of this Agreement shall be and is hereby changed to the word "programs."

Our signature at the foot hereof together with yours underneath the word "Accepted" shall constitute the foregoing modification of our January 6, 1958, Agreement a binding and enforceable agreement between you and us.

Very truly yours,

AMERICAN BROADCASTING CO.
(A Division of American Broadcasting-Paramount Theaters, Inc.),
By MORTIMER WEINBACH.

Accepted :

(Signed) Richard W. Clark.
(Typed) DICK CLARK.

AMERICAN BROADCASTING CO.
(A DIVISION OF AMERICAN BROADCASTING-PARAMOUNT THEATERS, INC.),
New York, N.Y. (As of July 25, 1958).

Mr. RICHARD W. CLARK,
47-6 REVERE ROAD,
Drexel Hill, Pa.

DEAR MR. CLARK: You and we have agreed and do agree that the written Agreement between you and us dated January 6, 1958, as amended March 27, 1958, shall be and the same hereby is terminated and of no further force or effect, effective as of August 29, 1958.

Please sign below to indicate your agreement hereto and acceptance hereof.
Very truly yours,

AMERICAN BROADCASTING CO.
(A Division of American Broadcasting-Paramount Theaters, Inc.),
By MORTIMER WEINBACH.

Accepted and Agreed :

RICHARD W. CLARK.

AMERICAN BROADCASTING CO.
(A DIVISION OF AMERICAN BROADCASTING-PARAMOUNT THEATERS, INC.),
New York, N.Y. (As of July 25, 1958).

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Please sign below to indicate your agreement hereto and acceptance hereof.
Very truly yours,

AMERICAN BROADCASTING CO.
(A Division of American Broadcasting-Paramount Theaters, Inc.),
By MORTIMER WEINBACH.

Accepted and Agreed :

RICHARD W. CLARK.

Initialed, R. H. K.

Mr. LISHMAN. I hand you another photostatic copy of an agreement of January 21, 1960, between Drexel Television Productions, Inc., and American Broadcasting Co., and ask you if this is a correct copy?

Mr. CLARK. This is correct, Mr. Lishman, but there is an original agreement which this amends.

Mr. LISHMAN. I am going to hand you—Mr. Chairman, may it be received?

The CHAIRMAN. Let it be received for the record.

Mr. LISHMAN. I will now hand you a mimeographed program package agreement, a mimeographed copy made July 9, 1958, by and between American Broadcasting Co. and Drexel Productions, Inc., and

ask you if this is a correct copy of this agreement, which is described as program package agreement. I would say if you have any doubts as to whether it is correct, we would be happy to obtain a photostatic copy of that document and substitute it in the record.

Mr. CLARK. We have no objection to it. This is correct.

Mr. LISMAN. I would like to have that document, "Program Package Agreement," in the record.

The CHAIRMAN. Let it be received.

(The documents referred to follow:)

JANUARY 21, 1960.

DREXEL TELEVISION PRODUCTIONS, INC.,
New York, N.Y.

GENTLEMEN: This will modify the agreement between you (formerly known as Drexel Productions, Inc.) and us dated as of July 9, 1958, as amended, as follows:

The last two lines of paragraph 20, which read "following the date on which the commission of such act or the doing of such thing shall have become known to ABC Television", are hereby deleted and the following language is hereby substituted therefor: "following the date, after January 20, 1960, on which the commission of such act or the doing of such thing shall have become generally known to the public."

It is agreed that the words "after January 20, 1960," contained in the foregoing amendment shall be deleted from said agreement at the end of the 52-week period commencing March 5, 1960, unless the parties hereto otherwise agree in writing that such words shall be retained in the agreement thereafter.

If this is in accordance with your understanding and acceptable to you, please sign and return to us a copy of this letter.

Very truly yours,

AMERICAN BROADCASTING Co.
(A Division of American Broadcasting-Paramount Theaters, Inc.),
By OMAR F. ELDER, Jr.

Accepted and agreed to:

DREXEL TELEVISION PRODUCTIONS, INC.,
By MARVIN JOSEPHSON.

AMERICAN BROADCASTING Co.

(A Division of American Broadcasting-Paramount Theaters, Inc.)

PROGRAM PACKAGE AGREEMENT

Agreement made as of the 9th day of July 1958 by and between American Broadcasting Company, a division of American Broadcasting-Paramount Theaters, Inc., 7 West 66th Street, New York, New York (herein called "ABC Television") and Drexel Productions, Inc., c/o Broadcast Management, Inc., 113 West 57th Street, New York, New York (herein called "Contractor").

In consideration of the mutual covenants herein contained, the parties hereto have agreed and do agree as follows:

1. Contractor shall furnish to ABC Television a program package suitable for a series of television programs presently entitled "The Dick Clark Show" (herein collectively called the "Programs" and individually called a "program") pursuant to the applicable provisions set forth herein and in Exhibit A, attached hereto and hereby made a part hereof.

2. Subject to the provisions of par. II of Exhibit A hereof, the program package shall consist of the elements listed in said Exhibit A and shall be suitable for programs of not to exceed thirty (30) minutes in length and to be broadcast once each week. The programs are presently being broadcast from 2:30 P.M. to 6:00 P.M. (CNYT) on Saturday of each week.

3. Each program may be broadcast by ABC Television and ABC Television may authorize each program to be broadcast, in whole or in part on a sustaining basis, and/or, at any time or from time to time, in whole or in part on a commercially sponsored basis by any method or combination of methods of commercial sponsorship, now or hereafter known, without limitation. The word "broadcast" as used in this Agreement means the broadcast, transmission, and

exhibition of the programs throughout the world by means of television and television devices, methods, and improvements now or hereafter developed, over such network television facilities as ABC Television may from time to time select.

4. (a) The term of this Agreement shall commence August 30, 1958, and shall continue for a period of three hundred and thirty-eight (338) consecutive weeks, consisting of twenty-six (26) consecutive cycles of thirteen (13) consecutive weeks each (herein called "Cycles"); each successive period of fifty-two (52) consecutive weeks commencing with the first day of the third (3rd) Cycle, is herein called a "Contract Year".

(b) ABC Television may terminate this Agreement effective

(i) at the end of any Cycle during the first (1st) through sixth (6th) Cycles, inclusive;

(ii) at the end of the eighth (8th) or tenth (10th) Cycles;

(iii) at the end of the fourteenth (14th), eighteenth (18th), twenty-second (22nd) or twenty-sixth (26th) Cycles

by giving Contractor at least four (4) weeks' notice thereof. For the purpose of this subparagraph (b) only, any Cycle may be extended or shortened by ABC Television by not more than two weeks to conform to any sponsorship cycles.

(c) ABC Television shall have the right to take a hiatus with respect to the furnishing of the program package by Contractor hereunder, if ABC Television takes a hiatus with respect to the broadcasting of the programs, for a period not to exceed thirteen (13) consecutive weeks from and including June 15 up to and including the first week in September during any Contract Year, by giving Contractor notice of each hiatus at least three (3) weeks prior to the scheduled date of the last broadcast preceding the commencement thereof, ABC Television shall not be required to pay Contractor any compensation with respect to the weeks in each such hiatus except as provided in subparagraph (b) of paragraph 5 hereof, nor shall Contractor be required to furnish the program package in such weeks.

5. (a) For the performance of all of Contractor's obligations hereunder, and for all of the rights herein granted by Contractor, ABC Television shall pay Contractor as follows with respect to each week during which Contractor furnishes the program package hereunder:

(i) during the first (1st) and second (2nd) Cycles, the sum of \$6,415;

(ii) during the third (3rd) and fourth (4th) Cycles, the sum of \$6,630;

(iii) during the fifth (5th) and sixth (6th) Cycles, the sum of \$6,705;

(iv) during the seventh (7th) and eighth (8th) Cycles, the sum of \$7,026.50;

(v) during the ninth (9th) and tenth (10th) Cycles, the sum of \$7,109;

(vi) during the eleventh (11th) and twelfth (12th) Cycles, the sum of \$7,437.65;

(vii) during the thirteenth (13th) and fourteenth (14th) Cycles, the sum of \$7,528.40;

(viii) during the fifteenth (15th) and sixteenth (16th) Cycles, the sum of \$7,864.92;

(ix) during the seventeenth (17th) and eighteenth (18th) Cycles, the sum of \$7,963.75;

(x) during the nineteenth (19th) and twentieth (20th) Cycles, the sum of \$8,308.92;

(xi) during the twenty-first (21st) and twenty-second (22nd) Cycles, the sum of \$8,419.73;

(xii) during the twenty-third (23rd) and twenty-fourth (24th) Cycles, the sum of \$8,774.41;

(xiii) during the twenty-fifth (25th) and twenty-sixth (26th) Cycles, the sum of \$8,895.20.

The foregoing sums are subject to a reduction of \$350 per week pursuant to subdivision (ii) of subparagraph (c) of paragraph 10 hereof. In addition to the foregoing sums, ABC Television shall reimburse Contractor, as billed by Contractor to ABC Television, in the amount of any union welfare or pension funds, workmen's compensation, disability benefits, unemployment compensation or insurance payments, social security taxes or any premiums, taxes or contributions measured by payrolls required to be paid by Contractor on behalf of personnel performing services on or in connection with the programs.

(b) ABC Television shall pay Contractor as follows with respect to each week during which Contractor is not required by ABC Television to furnish the program package pursuant hereto, whether for hiatus or other discontinuance of broadcasting of the programs:

(i) during the first two (2) Cycles, the sum of Five Hundred Dollars (500):

(ii) during the third (3rd) through sixth (6th) Cycles, inclusive, the sum of Seven Hundred and Fifty Dollars (\$750):

(iii) during the seventh (7th) through twenty-sixth (26th) Cycles, inclusive, the sum of One Thousand Dollars (\$1,000):

provided, however, That no payment shall be due Contractor pursuant to this subparagraph (b) if the programs are not broadcast pursuant to paragraph 15 hereof.

(c) If, during the term of this Agreement, Contractor shall be required to increase the compensation payable to personnel performing services on or in connection with the programs pursuant to any present or future rules or regulations of, or agreements entered into with, any union or guild now or hereafter having jurisdiction over such personnel, in excess of the applicable minimum union rates in effect on the date of this Agreement, or if no such rates are in effect, then the compensation prevailing upon the date of this Agreement, then, and in any of such events, the applicable amounts payable to Contractor pursuant to subparagraph (a) of this paragraph 5 shall be increased accordingly. Similarly, if Contractor shall have the right to decrease the compensation payable to personnel performing services on or in connection with the programs pursuant to any present or future rules or regulations of, or agreements entered into with, any union or guild now or hereafter having jurisdiction over such personnel, below the applicable minimum union rates in effect on the date of this Agreement, or if no such rates are in effect, then the compensation prevailing upon the date of this Agreement, then, and in any such events, the applicable amounts payable to contractor pursuant to subparagraph (a) of this paragraph 5 shall be decreased accordingly.

(d) Contractor shall make a weekly accounting to ABC Television for each week during which the programs are broadcast and ABC Television shall have the right to examine the books of Contractor with respect to the program package to be furnished hereunder at all reasonable times. During all Cycles, ABC Television shall be entitled to receive or retain fifty percent (50%) of the "Budget Savings" (as hereinafter defined) effected by Contractor. "Budget Savings" shall be deemed to mean the difference between the amounts specified in subparagraph (a) of this paragraph 5 and the actual amounts expended by Contractor with respect to any program: *provided, however*, That for the purpose of determining Budget Savings, Contractor shall arbitrarily be entitled to credit as an expense the sum of \$850 each week, plus the following sums each week:

(i) during the first and second Cycles, the sum of \$350;

(ii) during the first Contract Year, the sum of \$500;

(iii) during the second Contract Year, the sum of \$750;

(iv) during the third Contract Year, the sum of \$1,000;

(v) during the fourth Contract Year, the sum of \$1,250;

(vi) during the fifth Contract Year, the sum of \$1,500;

(vii) during the sixth Contract Year, the sum of \$1,750;

It is further understood and agreed that Contractor will not be entitled to charge against the amounts received by it from ABC Television for purposes of determining Budget Savings, sums in excess of the following for each week in which a program package is to be furnished hereunder:

(i) for the executive producer, the sum of \$350 per week;

(ii) for the associate producer, the sum of \$250 per week;

(iii) for office help, accounting, legal, insurance and office supplies, the sum of \$415 per week;

(iv) for gratuities and petty cash expenses, the sum of \$300.

Contractor shall be entitled to average out expenditures other than those specified in the subparagraph (d) during each Cycle so that Budget Savings in any one week of a Cycle may be applied to make up excess expenses incurred by Contractor in any other week of a Cycle. Contractor shall also be entitled to average out in any fifty-two (52) week period such expenses for accounting, legal, insurance and office supplies as may be billed on a monthly, quarterly, or annual basis. The preceding sentences shall in no way affect the maximum amounts payable by ABC Television to Contractor pursuant to subparagraphs (a) and (b) of this paragraph 5.

(e) In addition to the amount specified in subparagraph (a) of this paragraph 5, ABC Television shall pay Contractor thirty percent (30%) of all net profits (the same to be determined in accordance with normal accounting methods, subject at Contractor's option to examination by a registered Certified Public Accountant with reputable standing at Contractor's own expense) accruing from the sale by ABC Television of the program hereunder, or any programs or series of program on which Clark's services may be used by ABC Television hereunder to network advertisers. Net profits shall be determined for fifty-two week periods commencing August 30, 1958, and each fifty-two week period shall be accounted without reference to prior profits or losses; *provided, however*, That for the first fifty-two week period hereunder an amount equal to one-half of the loss sustained by ABC Television in producing the programs from February 15, 1958, until August 23, 1958, shall be used in computing profits, if any, for such period. ABC Television shall account to Contractor within thirty days after the end of each fifty-two week period hereunder.

(f) Payment of the compensation due Contractor hereunder shall be made to Drexel Productions, Inc., care of Broadcast Management, Inc., 113 West 57th Street, New York 19, New York.

6. Payment to Contractor hereunder will be made not later than Thursday following the end of the week in which any "live program" (as hereinafter defined) for which such payment is intended was broadcast; for this purpose, the work week shall end at the close of broadcasting on Monday. If any program is a "recorded program" (as hereinafter defined), payment will be made not later than Thursday following the end of the week in which such program was recorded; provided, however, that if such payment shall have been made at a rate lower than the rate applicable at the date of the broadcast, and such program is thereafter broadcast, ABC Television shall then pay to Contractor the difference between the payment theretofore made and the rate applicable at the date of broadcast. Nothing herein contained shall be deemed to obligate ABC Television to broadcast any program or program package, and ABC Television shall have fully discharged its obligations hereunder, if any, by payment to Contractor of the applicable amounts herein provided.

7. During the period commencing on the day and year first above written and ending with the expiration or sooner termination of this Agreement, Richard W. Clark (herein called "Clark") will be exclusive to ABC Television in network radio and television, whether or not, at ABC Television's option, ABC Television is broadcasting the programs or any other programs or series of programs which make use of the services of Clark during the term of this Agreement; provided, however, that, if Clark's services, for a period of thirteen (13) consecutive weeks or more or twenty-six (26) weeks or more in the aggregate during any Contract Year, are not used by ABC Television in connection with any program or series of programs, said exclusivity and this Agreement, notwithstanding paragraph 4 hereof, may be terminated by either Contractor or ABC Television effective at any time upon two (2) weeks' prior written notice to the other. Any summer hiatus or part thereof taken by ABC Television as provided in subparagraph (c) of paragraph (4) hereof, shall not be included in computing the period, pursuant to this paragraph 7, of consecutive or aggregate weeks during any Contract Year that Clark's services have not been used by ABC Television so as to affect the said exclusivity to ABC Television and the continuation of this Agreement. The running of any such period affecting said exclusivity on Clark consisting of said consecutive or aggregate weeks shall be tolled:

(a) in the event ABC Television offers to use Clark's services in connection with any program or series of programs similar to the programs covered by this Agreement (whether 30 or 60 minutes in length and/or whether sustaining or commercial) with at least the same applicable arbitrary credits as referred to in subparagraph (d) of paragraph 5 hereof or paragraph II of Exhibit A hereof; as the case may be;

(b) for the duration of any periods wherein by reasons or causes beyond ABC Television's control pursuant to paragraph 15 hereof, ABC Television could not make use of Clark's services for broadcasting;

(c) for the aggregate of the number of times any program in connection with which Clark is to render his services hereunder is preempted pursuant to ABC Television's right of preemption and recapture under paragraph 15 of this Agreement.

8. (a) The programs may be broadcast and rebroadcast, on such day and hour as ABC Television may elect, and at any time and from time to time ABC Television may change the day and hour of the broadcast and/or rebroadcast of any

of the programs; provided, however, that with respect to any change in the day or hour of the original network broadcast of any live program ABC Television shall give Contractor at least one (1) week's notice prior to the last broadcast before such change; and provided further that such change does not interfere with Clark's services he is then currently performing in local television in Philadelphia pursuant to this employment agreement with WFIL-TV which is presently in existence.

(b) The programs may be commercially sponsored by such sponsor or sponsors as ABC Television may select or authorize. ABC Television will give Contractor oral or written advice of any new sponsor of the network broadcast of the programs at least one (1) week prior to the broadcast on which sponsorship of the program by such sponsor is scheduled to commence.

9. (a) The program package shall, subject to the exceptions contained herein, be furnished in connection with programs, the original network broadcast of which occurs in consecutive weeks from the date of commencement of the term hereof, except as otherwise provided in this Agreement.

(b) The program package shall be furnished by Contractor for performance of the programs at such places in the greater New York area as ABC Television may from time to time designate or at such other places as ABC Television may from time to time designate but ABC Television agrees to pay any additional reasonable, out-of-pocket expenses incurred by Contractor as a result of performances of the programs at such other places after discussions with Contractor as to a prebroadcast estimate of such expenses.

(c) The program package when furnished for live programs shall be furnished at the time of broadcast thereof and at scheduled rehearsal times fixed by ABC Television, and when furnished for recorded programs, shall be furnished at such times and intervals as ABC Television may from time to time designate by giving Contractor at least seventy-two (72) hours' notice thereof, provided that such time and intervals do not interfere with Clark's services he is then currently performing in local television in Philadelphia pursuant to his employment agreement with WFIL-TV which is presently in existence.

10. (a) Contractor agrees that Clark will at ABC Television's request, participate in the presentation of commercial announcements on or in connection with the programs, leads into and leads out of such announcements, previews, warm-ups, and aftershows.

(b) Contractor agrees that Contractor and Clark will each devote their best talents, and abilities in connection with the programs and will attend all reasonable program conferences. Contractor further agrees that it and Clark will cooperate fully with ABC Television and its designees for publicity and exploitation purposes of the programs hereunder and any other programs and series of programs in connection with which Clark may be performing services for ABC Television, including, but not limited to, making Clark available for and attending, within reason, publicity photographic sessions, interviews by reporters and editors of newspapers, magazines, trade journals, and similar publications, to travel at ABC Television's expense and request to various places throughout the country as ABC Television may designate for appearances at fairs at a mutually agreed upon price, on ABC Television affiliates' local programs, and the like, for purposes of making guest appearances and being interviewed on other of ABC Television's television programs or ABC Television's affiliated radio network's radio programs as ABC Television may direct Clark, and to allow ABC Television and its designees to shoot at-home pictures of Clark unless same is not feasible because of some reasonable personal matter.

(c) The program package shall be prepared and furnished by Contractor as an independent contractor. In this connection, it is understood and agreed that:

(i) the programs and all elements thereof including but not limited to the title, content, scripts, format, subject matter and casts thereof and personnel in connection therewith shall be prepared, produced, performed, and broadcast under the sole direction and control of ABC Television, but it is the mutual intention and desire of the parties hereto to cooperate and collaborate in the presentation of the programs, it being understood, however, that should any disagreement arise in connection with the preparation and/or production and/or performance and/or subject matter and/or direction and/or broadcast of any program and any elements thereof, ABC Television will discuss the problem with Contractor, but the ultimate decision with respect thereto shall be made by ABC Television;

(ii) the program package and all the elements thereof shall be subject to the approval of ABC Television and each program to be broadcast and all elements thereof shall be subject to the approval of ABC Television prior to broadcast;

(iii) without being in limitation of any of ABC Television's rights under this subparagraph (c) of this paragraph 10 hereof, it is specifically understood and agreed that ABC Television shall have the right to require Contractor to change from time to time and at any time, as ABC Television may elect, any and/or all of the personnel to be provided by Contractor and performing any and/or all of the functions called for pursuant to subparagraph (c) of paragraph 5 hereof and paragraph 1 of Exhibit A hereof. In this connection, any persons furnished by Contractor as substitutes for any of the personnel required by ABC Television to be changed by Contractor pursuant hereto shall be only upon ABC Television's prior approval. The preceding two sentences shall not apply to Clark, however. ABC Television furthermore, in addition to its rights hereunder, shall have the right at any time to terminate Contractor's furnishing of an executive producer, notwithstanding paragraph 1 of Exhibit A hereof, upon one week's prior notice to Contractor and in such event the package price referred to in subparagraph (a) of paragraph 5 hereof shall be reduced by the amount of \$350 per week.

11. (a) The program package shall be furnished by Contractor for broadcast on live basis, including the making of recordings thereof for broadcast subsequent to such live broadcast (herein called "live programs") or, as ABC Television may at any time or from time to time elect, for original broadcast by means of recording (herein called "recorded programs"). The terms "recording" and "recordings", as used herein shall mean and include any recording or recordings made (whether before, during or after a broadcast transmission) by tape, wire, film, disc or any other similar or dissimilar method of recording aural and/or visual portions of television programs, whether now known or hereafter developed, including the photography of such programs on film in a manner similar to that used in the production of motion pictures.

(b) As between Contractor and ABC Television, all recordings and all rights therein shall be the sole property of ABC Television and may be used for audition, file and reference purposes without the payment of any additional compensation to Contractor. If ABC Television shall use any recording in any manner after the original network broadcast thereof (other than for delayed and supplemental broadcasts), ABC Television will pay Contractor:

(i) if recorded programs are syndicated,

(A) an amount equal to fifty percent (50%) of all net proceeds received by ABC Television as a result of the syndication of the programs, plus

(B) an amount equal to any payments which Contractor is required to make to others as a result of such syndication, without payment to Contractor of any other compensation as a result of such syndication, and in this connection Contractor hereby acknowledges that since such recorded programs are and will be owned by ABC Television, any designee of ABC Television may undertake such syndication, at their standard syndication fee; and

(ii) if recorded programs are used for repeat broadcasts, an amount equal to

(A) seventy-five percent (75%) of the amount specified as an arbitrary credit in subparagraph (d) of paragraph 5 hereof, or paragraph II of Exhibit A, as the case may be, or

(B) fifty percent (50%) of the amount specified in subparagraph (d) of paragraph 5 hereof, or paragraph II of Exhibit A, as the case may be, as an arbitrary credit if such repeat broadcast is made because of ABC Television's inability to broadcast any program because of reason or causes beyond ABC Television's control pursuant to paragraph 15 hereof, plus in either event

(C) an amount equal to any payments which Contractor is required to make to others as a result of such repeat broadcasts.

(c) in the event that, due to technical failure or difficulty, or any cause of a similar or different nature beyond the control of ABC Television, the recording of any program or portion thereof is, in ABC Television's opinion, incomplete or of an inferior quality, Contractor will, within twenty-one (21) days following

the making of such defective recording, furnish the program package for the reenactment of such program, in whole or in part, as may be necessary to enable ABC Television to acquire a satisfactory and complete recording of such program. ABC Television will reimburse Contractor in the amount of Contractor's actual, necessary out-of-pocket costs and expenses with respect to the services or portion thereof which is so re-enacted; provided, however, that ABC Television shall not be required to reimburse Contractor with respect to the services of such personnel unless the aggregate of the minimum union rates, payable to such personnel pursuant to any applicable collective bargaining agreement, shall exceed the compensation already paid or payable to such personnel by Contractor for the recording originally made, in which event ABC Television will pay Contractor the amount of such excess.

12. Contractor warrants and represents that Contractor is free to enter into and fully perform this Agreement, and that it has the right to grant ABC Television the rights, licenses and privileges herein contained and conveyed to ABC Television and that there are no contracts or agreements expressed or implied between Contractor and any other party or Clark and any other party which will prevent Contractor from fulfilling any of its obligations hereunder or which will in any way impair the rights granted to ABC Television hereunder.

13. Contractor warrants that all ideas, creations, literary, musical, and artistic materials and intellectual properties (herein called "materials") furnished by Contractor hereunder will be Contractor's own and original creation, except for matters in the public domain, or materials which Contractor or ABC Television is fully licensed to use, and that the materials and the use thereof will not infringe upon or violate any rights of any kind or nature whatsoever of any person, firm, or corporation. As between Contractor and ABC Television, all materials, whether or not furnished by Contractor, used on or in connection with the programs, shall be ABC Television's sole and absolute property for any and all purposes whatsoever. In addition, Contractor agrees and acknowledges that the format of the programs is the sole and absolute property of ABC Television for any and all purposes whatsoever.

14. Contractor agrees to indemnify and defend ABC Television, any and all sponsors of the programs and any and all participating sponsors, ABC Television's and their advertising agencies, and any and all stations broadcasting the programs and hold ABC Television and them free and harmless from and against any and all actions, liabilities, claims, expenses (including counsel fees), losses, damages, judgments and the like caused by or arising out of the breach of any warranty or agreement herein contained or the broadcast of any material or scripts furnished by Contractor hereunder or any statement made or acts done by Contractor and/or any person whose services are furnished by Contractor hereunder in connection with the production, rehearsals, and/or broadcasts of the program. ABC Television shall have the right to participate in or assume the defense of and settlement of any and all actions instituted to which the foregoing indemnity applies, including appeals from judgments relating thereto, by counsel of its own choosing. Contractor agrees that its counsel in such matters will cooperate fully with ABC Television. ABC Television will similarly indemnify and hold Contractor harmless from and against any and all claims, damages, liabilities, costs, and expenses, including counsel fees, arising out of the use of any materials or services furnished by ABC Television in connection with the production, rehearsal, or broadcast of the program, any acts done or words spoken by ABC Television or its employees in connection with the production, rehearsals, or broadcasts of the programs, or any breach by ABC Television of any warranty made to Contractor herein; *provided, however*, That Contractor shall promptly notify ABC Television of any claim or litigation to which the indemnity set forth in this sentence applies; *provided further*, That at ABC Television's option ABC Television may participate in or assume the defense of any such claim or litigation. If ABC Television participates in any such defense, Contractor agrees that its counsel will fully cooperate with ABC Television in regard thereto. If ABC Television assumes the defense of any such claim or litigation, its obligations with respect thereto shall be limited to holding Contractor harmless from and against any loss or damage or cost caused by or arising out of any judgment or settlement approved by ABC Television in connection therewith. The exercise by ABC Television of any rights hereunder shall not be deemed to constitute a waiver of any of Contractor's obligations hereunder.

15. If the production of any recorded program, or the original network broadcast of any live programs, is prevented or canceled because of act of God, force majeure, epidemic, fire, casualty, lock-out, strike, labor condition, riot, war, blackout, air raid alarm, air raid, act of public enemy, order or decree of any governmental agency or tribunal, failure of technical facilities, illness or incapacity of the star, or other reason or cause of a similar or different nature, beyond ABC Television's control, or because of the preemption or the recapture of the then scheduled original network broadcasting time period of such program for the purpose of broadcasting an event of public importance (including sports events and special programs) ABC Television shall not be obligated to pay Contractor any compensation for any such program, except that ABC Television will reimburse Contractor in the amount of the actual, necessary out-of-pocket costs and expenses incurred by Contractor with respect to any such program; provided same are reasonable and that an itemized breakdown of same is presented to ABC Television. If such prevention or cancellation of any program is because of the recapture of the broadcast time period for the purpose of broadcasting an event of public importance on a network commercially sponsored basis, in lieu of the reimbursement in the foregoing sentence, ABC Television shall pay Contractor the compensation which Contractor would have received had such program been broadcast, less the amount of any savings which Contractor agrees to use its best efforts to effect as a result of the fact that such program is not broadcast. If any such prevented or canceled program was a recorded program, ABC Television shall have the right to substitute such recorded program in place of any subsequent program for which Contractor might be required to furnish the program package hereunder, and, in such event, the payment to Contractor with respect to the program for which such recorded program is substituted shall be a sum equal to the amount, of any, of which the compensation which would have been payable to Contractor with respect to such program exceeds the sum which Contractor was paid for such recorded program. Notwithstanding the foregoing, ABC Television shall have the right to pre-empt at least three (3) programs during the first two Cycles and during each Contract Year thereafter for any reason whatsoever without payment of any compensation to Contractor other than the amount of the actual, necessary out-of-pocket costs and expenses incurred by Contractor with respect to any such program, provided same are reasonable and that an itemized breakdown of same is presented to ABC Television.

16. The program package, and the rights, services, materials, and other elements of the program package to be furnished hereunder are unique and irreplaceable.

17. (a) If Contractor, at any time, breaches any material provision of this Agreement, or at any time fails, neglects or refuses to perform any of Contractor's material obligations hereunder, ABC Television shall not be required to pay Contractor any amounts hereunder during such period of breach or non-performance, and at ABC Television's option, ABC Television may, without further obligation and without prejudice to such rights as ABC Television may have to recover damages for the breach of this Agreement, terminate this Agreement at any time during such period of breach or non-performance, provided, that if such breach can be cured, ABC Television shall first give Contractor notice thereof and ABC Television may not terminate this Agreement for such breach unless contractor shall have failed to cure the same within the ten (10) day period following delivery of such notice to Contractor.

(b) In the event that Clark shall be unable to perform services on any program because of illness, disability, accident, incapacity or other reasons beyond Clark's control, Contractor will furnish a substitute who shall be subject to ABC Television's prior approval, provided, however, that if such inability to perform shall have continued for three (3) consecutive weeks or an aggregate of six (6) weeks during the first two (2) Cycles, four (4) consecutive weeks or an aggregate of eight (8) weeks during the first Contract Year, and five (5) consecutive weeks or an aggregate of nine (9) weeks during any Contract Year thereafter, ABC Television shall have the right at its option, upon notice to Contractor given within one (1) week after the happening of such contingency, either,

(i) to terminate this Agreement; or

(ii) to require Contractor to terminate the services of Clark and to furnish for the balance of the term hereof a substitute who shall be subject to ABC Television's prior approval.

The term "incapacity" shall mean any material physical, mental, or other disability which renders Clark incapable of fully performing all services required to be furnished by Contractor hereunder, and/or any material alteration or change in Clark's facial or physical appearance, or any material impairment of Clark's voice.

18. Contractor shall secure standard broadcaster's liability insurance applicable to all broadcasts of the programs hereunder, acceptable to ABC Television and having total limits of at least \$250,000 any one claim and \$500,000 all claims. Contractor shall maintain such insurance during such period or periods of time when the programs are being broadcast as ABC Television may elect during the term of this Agreement. Such insurance shall include coverage of ABC Television, the stations over which the programs are broadcast, the sponsors of the programs, if any, their advertising agencies, if any, and the officers, directors, agents and employees of ABC Television. Such insurance policy shall include a provision requiring the insurance company to give ABC Television prompt notice of any revision, modification or cancellation of such policy. Promptly after securing such policy, Contractor will furnish ABC Television with a copy thereof. Contractor shall also procure and use its best efforts to maintain appropriate insurance coverage against liability for expenses or damages to persons and/or properties.

19. Contractor grants to ABC Television the exclusive right during the term of this Agreement to use and license others to use Clark's name, voice, biographical material, representation and likeness (hereinafter sometimes collectively called "the foregoing") in any and all media and by any and all means now or hereafter known or devised:

(i) for the advertising, publicizing and exploitation of any program furnished by Contractor on which Clark appears or would have appeared but for some unforeseen circumstance;

(ii) in connection with sponsors' products advertised in connection with any programs furnished by Contractor on which Clark appears or would have appeared but for some unforeseen circumstance, such use by ABC Television and others not to be undertaken in such manner as to constitute specific endorsement by Clark of any of the sponsors' products without Clark's prior consent;

(iii) for the advertising, publicizing and exploitation for purposes of sale or otherwise of any one or more articles that may be merchandised using, in whole or in part, the name "Dick Clark", "Dick Clark Show", and/or any other elements of the programs and any other programs and series of programs furnished by Contractor on which Clark appears or would have appeared but for some unforeseen circumstance.

It is agreed that ABC Television shall not make any commitment for any merchandise to which this subparagraph (iii) relates without Contractor's prior written consent as to the specific article to be merchandised, such consent not to be unreasonably withheld, and in this connection, Contractor agrees to give ABC Television written notice as to Contractor's giving or withholding of such consent, within seventy-two (72) hours of its receipt of ABC Television's notice to Contractor of ABC Television's intent to authorize the merchandising of any specific article. If ABC Television does not receive such written notice from Contractor within said seventy-two (72) hours, Contractor shall be deemed to have given ABC Television such consent. ABC Television need not obtain such consent, however, in regard to articles manufactured and used primarily for the publicizing and exploitation of products of sponsors of any and all said programs furnished by Contractor on which Clark appears or would have appeared but for some unforeseen circumstances. ABC Television shall have the right to designate an agency or other merchandising organization to be used in connection with the licensing of such rights, the choice of such agency or other merchandising organization to be subject to Contractor's prior approval which shall not be unreasonably withheld. All the net proceeds accruing from the exploitation, by sale or otherwise, of any article merchandised pursuant to this paragraph 19 shall be divided equally between Contractor and ABC Television. Net proceeds, as herein used, shall be deemed to include all monies accruing from such exploitation, after the deduction therefrom of any merchandising or licensing agent's fees, and that are actually received by or owed to ABC Television; *provided, however*, That any monies owed to ABC Television shall form part of such net proceeds only in the event that a corporation affiliated with ABC Television serves as

such merchandising or licensing agent. Anything to the contrary herein contained notwithstanding, it is agreed that nothing herein contained shall in any way restrict Contractor's or Clark's exclusive right to use and license others to use Clark's name, voice, biographical material, representation and likeness in the media listed below and by any and all means now or hereafter known or devised for the advertising, publicizing and exploitation of such media, which are hereby expressly excluded from the scope of the term "merchandise" as used in this paragraph 19:

- (a) legitimate stage, variety, night clubs and all other personal appearances, guest or otherwise, in any and all media outside of network radio and network television;
- (b) books (hard and soft cover), newspapers, magazines, periodicals and "one-shots" written by or contributions to which are made by Clark;
- (c) music publishing;
- (d) record and tape industry;
- (e) motion pictures.

Notwithstanding anything hereinabove contained to the contrary, it is specifically understood and agreed that Contractor's or Clark's right to use and license others to use Clark's name, voice, biographical material, representation and likeness may be undertaken in the media designated above only insofar as such use is in no way undertaken in connection with any product or service in competition with any product or service then currently sponsoring any programs in which Clark is supposed to appear under this Agreement, except insofar as the advertising of such competitive products is not used as directly sponsoring the specific medium or media using any of "the foregoing" and is incidental and coincidental to the use of any of "the foregoing" in the above designated media. By way of example, but not in limitation, the following shall be deemed "incidental" and "coincidental" and "not used as directly sponsoring," as said phrases are used herein:

(A) advertising of a competitive product in any book, magazine, newspaper, periodical or one-shot written by Clark or to which Clark contributes when such advertising is part of multiple advertising contained in or relating to any and all of the aforesaid media using any of "the foregoing." ("Multiple advertising" as herein used shall be deemed to mean advertising by more than six advertisers, none of which is a primary advertiser of the particular medium containing advertising of a competitive product.)

(B) the use of any of "the foregoing" in connection with composing and performance of a musical or dramatic-musical work when the credit given to Clark for such composition is not directly tied in with the advertising of a competitive product;

(C) the use of any of "the foregoing" on or in connection with the manufacture, distribution and exploitation of phonograph records and tapes.

Notwithstanding anything hereinabove contained, it is also further understood and agreed that the use by Contractor or Clark and the licensing of the use of any of "the foregoing" in the aforesaid media referred to in subparagraphs

(a) through (e) hereof and in the advertising and publicizing of same shall not be undertaken by Contractor or Clark when any such media or such advertising or publicizing makes reference to or uses the name "Dick Clark Show", and that ABC Television shall continue to have exclusive rights to use and license others to use any of "the foregoing" in connection with the merchandising of any articles using, in whole or in part, the name "Dick Clark Show" as set forth in subdivision (iii) of this paragraph 19.

20. Contractor warrants that Contractor and Clark will act at all times with due regard to public morals and conventions. If Contractor or Clark shall have committed or does commit any act, or if Contractor or Clark shall have done or does anything, which shall be an offense involving moral turpitude under federal, state, or local laws, or which might tend to bring Contractor, or Clark into public disrepute, contempt, scandal or ridicule, or which might tend to reflect unfavorably upon ABC Television, the sponsors, if any, or their advertising agencies, if any, or otherwise injure the success of any programs on which Clark appears or would have appeared but for some unforeseen circumstance, ABC Television shall have the right to terminate this Agreement effective forthwith upon notice to Contractor given at any time prior to the thirtieth (30th) day following the date on which the commission of such act or the doing of such thing shall have become known to ABC Television.

21. To the extent that the same does not conflict with the provisions of any applicable state or federal law, Contractor warrants and represents that, Contractor has signed and adopted, or will sign and adopt, the 1956-58 AFTRA Code of Fair Practice for Network Television Broadcasting, that Contractor will conform to the said CODE during the term of this Agreement and that prior to the broadcast of the first program hereunder Contractor will deliver a copy of the said CODE, signed by Contractor, to AFTRA.

22. (a) Contractor warrants that the persons whose services are furnished by Contractor as a part of the program package will be or become, and remain during the term of this Agreement, at their own expense, members in good standing of any labor union with which ABC Television may have an agreement lawfully requiring such membership.

(b) If, at any time during the term of this Agreement, ABC Television is or becomes a party to any collective bargaining agreement covering services of the nature of the services performed by any person whose services Contractor furnishes as a part of the program package, and if such collective bargaining agreement provides that ABC Television must, in its agreements with independent contractors who furnish program packages to ABC Television, include a provision requiring such independent contractors to sign, adopt, and conform to such collective bargaining agreement, ABC Television will notify Contractor to such effect and, if Contractor has not already signed and adopted such collective bargaining agreement, Contractor will promptly sign and adopt the same, and Contractor will conform to such collective bargaining agreement during the term of this Agreement.

23. Nothing herein contained shall be construed so as to create a partnership or joint venture between Contractor and ABC Television; and Contractor, who is an independent contractor hereunder, shall have the entire responsibility as employer of the persons whose services are furnished by Contractor as a part of the program package, and as to all such persons Contractor will discharge all of the obligations of employer under any federal, state, or local law, regulation or order now or hereafter in force, including, but not limited to, those relating to taxes, unemployment compensation or insurance, social security, workmen's compensation, disability benefits, tax withholding and employment of minors, and including the filing of all returns and reports required of employers and the payment of all taxes, assessments, contributions, and other sums required of them.

24. Contractor shall receive the following credit in the broadcast of each program:

"This is a Drexel Productions, Inc., production in association with the ABC Television Network."

Except as hereinabove specified the style, manner, and placement of such credit shall be determined by ABC Television acting in the exercise of its sole discretion and any inadvertent or unintentional failure to give such credit shall not be a breach of this Agreement.

25. ABC Television, the sponsors, if any, and their advertising agencies, if any, may open all correspondence intended for Contractor or any person whose services are furnished by Contractor as a part of the program package, which any of them receives, and may answer or cause to be answered any correspondence relating to Contractor's furnishing the program package and the services of the persons furnished by Contractor as part of the program package. ABC Television will use its best efforts to forward mail marked "personal", unopened, to any person furnished by Contractor as part of the program package.

26. A waiver by either party of any of the terms and conditions of this Agreement in any instance shall not be deemed or construed to be a waiver of such term of condition for the future or of any subsequent breach thereof. All remedies, rights, undertakings, obligations, and agreements contained in this Agreement shall be cumulative and none of them shall be in limitation of any other remedy, right, undertaking, obligation, or agreement of either party.

27. All notices required to be given hereunder shall be given in writing either by personal delivery, by mail or by telegraph at the respective addresses of the parties hereto hereinabove set forth or such other address as may be designated in writing by either party. Notice given by mail or by telegraph shall be deemed given on the date of mailing thereof or of delivery of such telegram to a telegraph office, charges prepaid or to be billed.

28. This Agreement has been made subject to all federal, state and municipal laws or regulations now or hereafter in force.

29. Neither Contractor nor ABC Television may assign this Agreement without the prior written consent of the other, except that ABC Television may assign this Agreement and all rights herein to any party acquiring a substantial portion of its television or sound radio business, or to any corporation controlling it, controlled by it, or under common control with it.

30. This Agreement has been made in the State of New York and shall be governed by the laws of the State of New York applicable to contracts fully to be performed therein.

31. This Agreement contains the entire understanding of the parties hereto relating to the subject matter herein contained and shall substitute and replace any and all prior negotiations and agreements which may have existed between Contractor and ABC Television and this Agreement cannot be changed or terminated orally.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

AMERICAN BROADCASTING Co.
(A Division of American Broadcasting-Paramount Theaters, Inc.),
By: MORTIMER WEINBACH,
DREXEL PRODUCTIONS, INC.
By: RICHARD W. CLARK.

EXHIBIT A

(Attached to and forming a part of the written agreement between ABC Television and Drexel Productions, Inc., dated as of January 16, 1959).

Subject to the provisions of subparagraph (c) of paragraph 10 of this Agreement.

I. (a) (each program package to be furnished by Contractor hereunder shall consist of the following elements:

(i) the services of Richard W. Clark as principal performer, master of ceremonies and host;

(ii) the services of an executive producer, a producer, a director, and an associate producer;

(iii) all guests;

(iv) the handling of all mail, office and administrative details connected with the preparation, production and broadcast of the programs.

(b) ABC Television shall furnish the following elements for each program:

(i) one (1) program assistant and one (1) associate director;

(ii) office space, including telephone and telegraph;

(iii) phonograph records as selected by Contractor;

(iv) the right to use the format of "The Dick Clark Show";

(v) film, production, broadcasting and rehearsal facilities and personnel as ABC Television may deem appropriate or necessary;

(vi) the services of an announcer.

(c) the program package to be furnished hereunder by Contractor shall not be deemed to include any commercial elements except as expressly provided in subparagraph (a) of paragraph 10 of the Agreement herein.

11. ABC Television shall have the right to require Contractor to furnish the program package for thirty-minute programs to be broadcast on a sustaining basis or for sixty-minute programs to be broadcast on a sustaining or commercially sponsored basis once a week in lieu of furnishing a thirty-minute program to be broadcast on a commercially sponsored basis once a week, as provided in the Agreement. ABC Television shall pay Contractor as follows with respect to each week during which Contractor furnishes the program package:

(a) When the programs are thirty minutes in length and broadcast on a sustaining basis;

(i) during the first and second Cycles, the sum of \$3,919;

(ii) during the third to sixth Cycles, the sum of \$3,969;

(iii) during the seventh to tenth Cycles, the sum of \$4,019;

(iv) during the eleventh to fourteenth Cycles, the sum of \$4,069;

(v) during the fifteenth to eighteenth Cycles, the sum of \$4,119;

(vi) during the nineteenth to twenty-second Cycles, the sum of \$4,169;

(vii) during the twenty-third to twenty-eighth Cycles, the sum of \$4,219;

(b) when the programs are sixty minutes in length and broadcast on a sustaining basis:

- (i) during the first and second Cycles, the sum of \$5,500;
- (ii) during the third to sixth Cycles, the sum of \$4,550;
- (iii) during the seventh to tenth Cycles, the sum of \$5,600;
- (iv) during the eleventh to fourteenth Cycles, the sum of \$5,650;
- (v) during the fifteenth to eighteenth Cycles, the sum of \$5,700;
- (vi) during the nineteenth to twenty-second Cycles, the sum of \$5,750;
- (vii) during the twenty-third to twenty-sixth Cycles, the sum of \$5,800.

(c) when the programs are sixty minutes in length and broadcast on a commercially sponsored basis:

- (i) during the first and second Cycles, the sum of \$8,000;
- (ii) during the third to sixth Cycles, the sum of \$8,410;
- (iii) during the seventh to tenth Cycles, the sum of \$9,086;
- (iv) during the eleventh to fourteenth Cycles, the sum of \$9,529.60;
- (v) during the fifteenth to eighteenth Cycles, the sum of \$9,992.57;
- (vi) during the nineteenth to twenty-second Cycles, the sum of \$10,226.83;
- (vii) during the twenty-third to twenty-sixth Cycles, the sum of \$10,984.52;

In addition to the foregoing sums, ABC Television shall reimburse Contractor, as billed by Contractor to ABC Television, in the amount of any union welfare or pension funds, workmen's compensation, disability benefits, unemployment compensation or insurance payments, social security taxes or any premiums, taxes, or contributions measured by payrolls, required to be paid by contractor on behalf of personnel performing services on or in connection with the programs, Contractor agrees to negotiate in good faith with ABC Television with respect to the reduction of the prices to be paid to it pursuant to subparagraphs (a), (b), and (c) hereof, it being understood that the amounts which may be credited for the purposes of subparagraph (d) of paragraph 5 of the Agreement shall be as follows:

(1) When the programs are broadcast on a sustaining basis:

(A) during the first and second Cycle, \$550 per week when the program is thirty minutes in length and \$700 when the same is sixty minutes in length;

(B) during the first Contract Year, \$600 when the program is thirty minutes in length and \$750 when the same is sixty minutes in length;

(C) during the second, third, fourth, fifth, and sixth Contract Years, \$650, \$700, \$750, \$800, and \$850 respectively per week when the program is thirty minutes in length and \$800, \$850, \$900, \$950, and \$1,000 respectively per week when the program is sixty minutes in length;

(2) when the programs are broadcast on a commercially sponsored basis and are sixty minutes in length:

A. during the first and second Cycles, \$1,350 per week;

B. during the first Contract Year, \$1,600 per week;

C. during the second, third, fourth, fifth, and sixth Contract Years, \$2,100; \$2,350; \$2,600; \$2,850 and \$3,350, respectively, per week.

ABC Television shall have the same rights and Contractor shall have the same obligations in and in connection with all programs in the program package that may be furnished by Contractor as required by ABC Television under this paragraph II of this Exhibit A that each has and in connection with the programs that are to be furnished by Contractor pursuant to the Agreement as described in paragraphs 1 and 2 of the Agreement.

III. Contractor warrants and represents that it has an employment agreement with Clark for his exclusive services in radio and television for at least the maximum term of this Agreement and agrees that neither it nor Clark shall agree to accept any offer made to it or him during the term hereof for the performance of any services by Clark after the expiration of this Agreement in network radio or television except upon ABC Television's prior written approval provided, however, that Contractor or Clark may accept any such offers made to it or him during the sixth Contract Year that this Agreement may be in effect for Clark's performance of such services after expiration of this Agreement but only after ABC Television has been given written notice of any and all such bona fide offers, immediately upon Contractor or Clark's receipt thereof, and have not, or its affiliated radio network, whether such radio network be a separate corporation controlled by American Broadcasting-Paramount Theatres, Inc., or a division of American Broadcasting-Paramount Theatres, Inc., has not, within one week of its receipt of such notices, exercised

ABC Television's or its exclusive option, as the case may be, which is hereby granted to ABC Television and its said affiliated radio network, to purchase a program package in which Clark will perform services or to employ Clark's services directly, as the case may be, after the expiration of this Agreement upon at least the same terms and conditions as contained in any such bona fide offers. Said exclusive option as described in the preceding sentence shall also apply to all such offers made to Contractor or Clark during the year following the sixth Contract Year of this Agreement if the program package or, by reason of any other agreement, Clark's services on programs similar to those being furnished in the program package hereunder is or are actually being used by ABC Television in broadcasting during any part of the last thirteen (13) week period of said sixth Contract Year.

IV. Contractor agrees that Clark during the first two (2) Cycles will not undertake any guest appearances in network radio and television without ABC Television's prior written consent and ABC Television agrees that thereafter, Clark may undertake three (3) such guest appearances during any thirteen (13) week period hereunder upon ABC Television's prior written consent which will not be unreasonably withheld. Contractor further agrees that Clark in no event will render any services to nor undertake any guest appearances for any person, firm or corporation except in connection with his local services in Philadelphia in television for WFIL-TV and his services in connection with the network broadcast of the afternoon program "American Bandstand" presently originating from Philadelphia and being broadcast over ABC Television's television network facilities, when any such activities would be connected directly or indirectly, with the advertising or exploitation of any product competitive to any product advertised on any programs or series of programs in connection with which Clark may be rendering services pursuant to this Agreement. Contractor further agrees that any services or guest appearances undertaken by Clark in local radio or television or any services of any nature whatsoever to be rendered by Clark will in no way conflict with or affect the services to be performed by Clark hereunder.

V. (a) In the event that Contractor shall, during the term of this Agreement, create or secure the right to a proposed television program series on which Clark would appear, Contractor shall first submit such proposed program series to ABC Television and only after then to only such person as ABC Television may designate and Contractor shall not have the right to offer any such program series to others (even though, of course, only for broadcast on ABC Television) unless ABC Television consents thereto. If ABC Television creates or secures the right to a proposed television program series on which ABC Television wants Clark to appear, it shall submit the same to Contractor and Contractor and ABC Television shall thereupon negotiate in good faith with respect thereto. The foregoing sentence shall in no way limit or affect the provisions and effect of paragraph 7 (a).

(b) In the event that Contractor shall, during the term of this Agreement, create or secure the right to a proposed television program series, other than a proposed series in which Clark would appear, Contractor will offer ABC Television a first opportunity to purchase such program series. Within seven (7) days after being advised of any such program series, ABC Television may require Contractor to negotiate in good faith with it with respect to such program series for a period of fourteen (14) days thereafter. If Contractor and ABC Television shall then fail to agree on the terms and conditions of any such sale of license, Contractor shall then have no further obligation hereunder to ABC Television with respect to such program series.

VI. Clark shall have the right to take a vacation of not to exceed four (4) weeks during the first two Cycles and not to exceed six (6) weeks during each Contract Year thereafter, provided, that Clark may not take a vacation during any Contract Year in which ABC Television takes a hiatus pursuant to subparagraph (c) of paragraph 4 of the Agreement for a period as long as or greater than the vacation period specified above. The dates of each such vacation shall be determined by ABC Television. During each such vacation, Contractor shall furnish a substitute for Clark who shall be subject to the prior approval (as to artist and price) of ABC Television. Contractor shall be entitled to a credit in determining budget savings during any week Clark is on vacation of Five Hundred Dollars (\$500) during the first two Cycles and Six Hundred Dollars (\$600) thereafter (herein called the "Vacation Credit"), which shall be in lieu of and instead of the applicable credit to Contractor in para-

graph 5(d) of the Agreement or in paragraph II(c) (i) of this Exhibit "A", as the case may be, as to each such week. In addition, as to each such week, ABC Television shall reimburse Contractor in full for the cost of said substitute as such cost shall have been agreed to by the ABC Television.

AMERICAN BROADCASTING Co.

AS OF JULY 9, 1958.

(A Division of American Broadcasting-Paramount Theaters, Inc.),
New York, N.Y.

GENTLEMEN: Under date of July 9, 1958, you are entering into an agreement (herein referred to as the "Package Agreement") with Drexel Productions, Inc. (herein referred to as "Contractor"), in which Contractor agrees to furnish a program package to you for the television program series presently entitled "The Dick Clark Show" (herein referred to individually as a "program" and collectively as the "programs"), which program package includes my services as principal performer. It is my desire that you enter into such an agreement with Contractor in order that I may appear on programs broadcast over ABC Television facilities.

In consideration of your entering into the Package Agreement, I hereby agree as follows:

1. I acknowledge that I have carefully examined the Package Agreement. I warrant and represent that Contractor has the right to enter into the Package Agreement upon the terms and conditions therein contained, and agree to comply with all provisions therein contained which in any way relate to or affect me. I also warrant and represent that I have not entered and agree not to enter into any commitment in conflict with said provisions. I also acknowledge that you would not have entered into the Package Agreement but for the execution of this Agreement by me.

2. I acknowledge that my services, and the rights and privileges granted to ABC Television hereunder, and pursuant to Package Agreement, are unique and irreplaceable.

Very truly yours,

RICHARD W. CLARK.

DREXEL PRODUCTIONS, INC.,
Care of BROADCAST MANAGEMENT, INC.,
New York, N.Y., September 5, 1958.

AMERICAN BROADCASTING Co.

(A Division of American Broadcasting-Paramount Theaters, Inc.),
New York, N.Y.

GENTLEMEN: We refer to the proposed agreement between you and us, dated as of July 9, 1958.

In order to remove any possible ambiguity as to the relationship of subparagraphs (d) and (e) of paragraph 5 of said agreement, it is hereby specifically understood and agreed that any budget savings passed on to ABC Television pursuant to subparagraph (d) shall not be deemed an expense to ABC Television in computing net profits pursuant to subparagraph (e) and any budget savings retained by us pursuant to subparagraph (d) shall be deemed an expense to ABC Television in computing net profits pursuant to subparagraph (e).

Very truly yours,

DREXEL PRODUCTIONS, INC.
By RICHARD W. CLARK,
President.

Accepted and Agreed:

AMERICAN BROADCASTING Co.
(A Division of American Broadcasting-Paramount Theaters, Inc.),
By MORTIMER WEINBACH.

Mr. LISHMAN. Mr. Clark, the other day you identified, as accurate, a quotation from a letter signed by you, Click Corp. to Mayland Music, Inc., dealing with the record "Butterfly." This morning I would like to have you again identify this document so that we may have the entire letter placed in the record rather than only one paragraph.

We have a typewritten copy for easier reading.

Mr. CLARK. This is correct.

Mr. LISHMAN. Mr. Chairman, I would like to have this letter, just identified as correct by the witness, introduced in the record at this time.

The CHAIRMAN. Let it be received.

(The document referred to follows:)

CLICK CORP..

Wallingford, Pa., December 4, 1959.

MAYLAND MUSIC, INC.,
Philadelphia, Pa.

GENTLEMEN: Some time ago we entered into an oral agreement in which you gave to me 15 percent of the publisher's share of the song "Butterfly."

Consistent with my present activities in divesting all of the interests of myself and my corporations from any interest in the music publishing and phonograph record businesses, this gives you formal notice that Click Corp. hereby completely relinquishes all interest in the said song, and that you have no further obligation of any kind to Click Corp. as to past or future earnings on said song. It goes without saying, of course, that the above release to you is from me personally as well as Click Corp.

Sincerely,

RICHARD W. CLARK,

President, Click Corp.

I approve the above:

RICHARD W. CLARK.

Mr. LISHMAN. Mr. Clark, I am going to hand you a Thermo-Fax copy of what appears to be, a license between Sea-Lark, granted Sea-Lark Enterprises, Inc., by one John Vincent, dated January 26, 1959, and covers title "Don't You Just Know It," master No. 3430, artist Huey Smith and ask you if this is a correct copy of this license?

You may keep that if you wish.

Mr. CLARK. This is correct.

Mr. LISHMAN. Mr. Chairman, I would like to have this Thermo-Fax copy of the document just identified by the witness introduced in the record at this point.

The CHAIRMAN. This is an authentic copy, is it not, Mr. Clark?

Mr. CLARK. Yes, sir.

The CHAIRMAN. It will be received.

(The document referred to follows:)

SEA-LARK ENTERPRISES, INC.,

Drexel Hill, Pa., January 26, 1959.

Re title "Don't You Just Know It"; master 3430 artist, Huey Smith.

GENTLEMEN: We apply for and you hereby grant to us a nonexclusive license to use the above-named musical composition, both words and music, solely in the United States and Canada in recording the master record above designated, and in the manufacture and sale of commercial phonograph records to be pressed from your said master record, subject to the following conditions:

We shall pay royalties and account to you on the first days of February, May, August, and November for records sold or otherwise distributed by us to the public during the quarters ending on the last days of December, March, June and September, respectively at the rate of one-half cent per record.

You reserve to yourself all rights in said musical composition not herein specifically granted.

Yours truly,

SEA-LARK ENTERPRISES, INC.,

By R. W. CLARK, President.

Accepted and agreed to:

By JOHN VINCENT.

Please sign both copies and return one copy to us.

Mr. LISHMAN. Mr. Clark, you were present while Mr. Kelly testified this morning.

Mr. CLARK. Yes, I was.

Mr. LISHMAN. Do you have any comments?

Mr. CLARK. Yes.

Mr. LISHMAN. On the accuracy of Mr. Kelly's testimony?

Mr. CLARK. Yes, sir.

Mr. LISHMAN. Will you please state what they are?

Mr. CLARK. Mr. Kelly, I am sure, made an honest error in relating to you some of our discussion. The indication was that I told him I didn't know of Mr. Mammarella's activities or any information that he had given me. I told Mr. Kelly that I did not know of Mr. Mammarella's activities until Mr. Mammarella told me, and he, as I recall, in his relating of the story said, something about "I don't want to know," this is a true quote.

On the meeting of, I would guess, Wednesday, November 11, as closely as I can pinpoint it, Mr. Mammarella and I and several others met for a discussion. He told me that evening that "There are some things that I have done that will be difficult to explain." I said, "Fine, don't tell me about them, I don't want to know at this point."

Three days later he proceeded to tell me of these things, and from that point on I knew. When questioned by Mr. Kelly, he asked me what transpired at the meeting of November 11. I said, I related that conversation "I don't want to know," and he said, thinking at that point anything I knew of Mr. Mammarella's activities, I would be, when called upon to swear by oath, I would have to relate that conversation.

Two or three days later, as Mr. Kelly mentioned, Mr. Mammarella, of his own free will and volition told us of some of the things that he had done. I at no point wanted to hide it whenever questioned about Mr. Mammarella's activities by any of your investigators.

They seemed very understanding when I said "I did not wish to discuss his affairs with you, I am sure he will give you in toto any information you want." They said "fine."

I was never pressed on that point, to the point where I felt forced to comment on Mr. Mammarella's activities.

At no point was I intentionally hiding or concealing from you information that you wanted. I was just when asked about him, I would say "Please ask Mr. Mammarella." And they said "Fine."

There was one other discrepancy, just a point of information. On the meeting of Wednesday, November 11, Mr. Mammarella indicated to us at that time that he intended to resign, which he did.

I hope that clarifies it. I didn't want to imply or have any implication drawn that I was trying to conceal information from you.

I just did not want to comment about his activities. I preferred to have—to have him tell his own story and your investigators agreed with that point.

Mr. LISHMAN. Is it correct that you toned down the language that Mr. Goldenson suggested for paragraph 18 in the last paragraph of the affidavit?

Mr. CLARK. There was another, Mr. Kelly made the statement, that, I don't know if you want an answer to that, may I extend and go into it?

Mr. LISHMAN. Yes.

Mr. CLARK. Mr. Kelly indicated that I signed an affidavit that was dictated to me by the ABC people. This is not true. We had a discussion of paragraph 18, which was to indicate that any knowledge I then had of Mr. Mammarella came to me an eve before or 2 days before, in other words this was to indicate that I had no knowledge of his activities, those activities that he told me about during our association.

They did not dictate it to me. We had a discussion about how strong the language should be, and I indicated at that point that this man was close to me, and I felt warmly about him and did not want to, did not feel it was appropriate at this time to use harsh language. In no way did they dictate this to me and in no way did they dictate the affidavit that had to be signed. Does that answer the question?

Mr. LISHMAN. Well, when did Mr. Mammarella first tell you that he had been accepting money from record manufacturers and record distributing companies?

Mr. CLARK. That would have been Saturday morning or early—Saturday night or early Sunday morning the 14th or 15th of November.

Mr. LISHMAN. Was that information relayed to Mr. Goldenson, the president of ABC before you signed this affidavit?

Mr. CLARK. I do not know whether the information was related to Mr. Goldenson or not.

Mr. LISHMAN. Did you discuss it with Mr. Goldenson?

Mr. CLARK. Excuse me, what did I discuss with him, Mr. Lishman?

Mr. LISHMAN. The fact that Mr. Mammarella had told you about his having received payments of money from record distributors and manufacturers. Did you discuss that with Mr. Goldenson prior to your signing of the affidavit?

Mr. CLARK. I don't honestly know whether I discussed it with Mr. Goldenson as such.

It certainly was discussed at the meeting.

Mr. LISHMAN. You certainly discussed paragraph 18. And is it correct that you tried to tone down the language in that, that was suggested by Mr. Goldenson?

Mr. CLARK. As far as I know, the language was not suggested by Mr. Goldenson.

Mr. LISHMAN. Well, or one of his representatives. Or, as I understand it, there were several ABC representatives present; is that correct?

Mr. CLARK. That is true; yes.

Mr. LISHMAN. Well, did you have anything to do with toning down the proposed language in paragraph 18, irrespective of who first proposed that language?

Mr. CLARK. Yes, sir; I did.

Mr. LISHMAN. Now, in the course of toning that down did you also have to discuss, in the presence of Mr. Josephson and Mr. Goldenson, the fact that Mr. Mammarella had already told you several days previously that he had taken payments of money from record distributors and manufacturers?

Mr. CLARK. Mr. Lishman, I do not know whether Mr. Goldenson was present; there were several people there.

Mr. LISHMAN. Representatives of ABC.

Mr. CLARK. That is true; yes, sir.

Mr. LISHMAN. Vice presidents.

Mr. CLARK. I would guess so, but I am technically not sure whether they were vice presidents or not.

Mr. LISHMAN. Was Mr. Elder present?

Mr. CLARK. Mr. Elder was present at the meeting; yes.

Mr. LISHMAN. And Mr. Weinbach, was he there?

Mr. CLARK. To the best of my recollection, Mr. Weinbach was not there.

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

The CHAIRMAN. It is now 12 o'clock. I think before members of the subcommittee start interrogating this witness it might be well to recess for the noon hour. I understand, Mr. Clark, that you have made arrangements in view of our conversation last Friday, and you are not required for your broadcast this afternoon.

Mr. CLARK. That is true; yes.

The CHAIRMAN. Therefore, this will not interfere with your regular contractual obligation?

Mr. CLARK. No, sir.

The CHAIRMAN. The subcommittee will adjourn until 2 o'clock this afternoon.

(Whereupon, at 12:05 p.m. a recess was taken until 2 p.m. of the same day.)

AFTERNOON SESSION

The CHAIRMAN. The subcommittee will come to order.

Mr. Lishman, did you have some additional questions?

Mr. LISHMAN. I have a few questions relating to the testimony of Mr. Freed.

The CHAIRMAN. You may proceed.

TESTIMONY OF RICHARD W. CLARK—Resumed

Mr. LISHMAN. When Mr. Freed testified before the subcommittee, on April 25, 1960, at page 8 and following in the transcript, he indicated that when he signed as a diskjockey with ABC on WABC, he was told there was an unwritten obligation, and this is what he said:

Mr. Freed testified "As I was about to sign the contract he," referring to Mr. Weinbach of ABC, "said 'I trust that you will be sure to lay very heavily on ABC-Paramount records now that you are in the family and I also trust that you would play nothing but Paramount Theaters with your station show.'"

I would like to ask you if when you signed your contract with American Broadcasting Co., there was any indication to you, either written or unwritten, that you were expected to lay heavily on Am-Par's records?

Mr. CLARK. None, whatsoever. There is a small technical point, Mr. Lishman. My contract is with Triangle and I also have—well, the answer is sufficient, none whatsoever.

Mr. LISHMAN. At pages 18 and following, Mr. Freed indicated the type of affidavit that he was requested to fill out. He said that this was presented to him on November 13, in the form of an interoffice

memorandum from ABC which contained an affidavit, carrying three questions.

I am going to hand you a copy of what Mr. Freed said that he was requested to sign. Do you know whether or not this same form of affidavit was presented to Tony Mammarella on November 13, 1959?

Mr. CLARK. I would have no way of knowing.

Mr. LISHMAN. Mr. Freed testified before the subcommittee that he could not sign that affidavit, because he did, in fact, have a music publishing company, and that he had, in fact, received payments of value. And that he did, in fact, on some occasion have a beneficial interest in a musical copyright.

Were you presented this same kind of affidavit that was required of Mr. Freed?

Mr. CLARK. I signed an affidavit of more detail than this. Mr. Lishman, may I add that had I on Friday, had this in front of me I would have better understood what you asked me. I didn't fully understand that at the time. I would have answered this affidavit, "no" to question No. 1, "no" to question No. 2, and three, "yes." I would have signed it.

As a matter of fact, in my affidavit, I have signed as such. You will note under question No. 3 it says, "If the answer is yes, explain in detail," which I did.

Mr. LISHMAN. I will read you some testimony of Mr. Freed where he was shown one of the—the affidavit that you signed for ABC, and your affidavit, on page 1, if you have a copy before you.

Mr. CLARK. Just a moment, sir.

Yes, I have it.

Mr. LISHMAN. On page 1, your affidavit reads in part as follows:

This affidavit is to state that I have never engaged in any practices which are generally described in the music business as payola, which in most general terms may be described as an agreement to perform a record or a song or to have an artist perform on a radio or television program in return for some kind of payment, whether in cash or otherwise to the person making the agreement or to some person or corporation designated by him, with the understanding that if such payment is not made the record or song or vocalist will not be heard on the program.

Now, that is contained in your affidavit, is it not?

Mr. CLARK. That is true.

Mr. LISHMAN. Mr. Freed was then asked:

Now, in your opinion, is that the definition of payola that is generally accepted in the trade?

Mr. FREED. I am afraid this is more like a bribery explanation the way he phrases it. In other words, a fellow comes to me and says "Here is a hundred dollar bill. Play this record" or he brings the record to me and he says, and you say to him "I can't play the record unless I get a hundred dollars." This is what he says payola is. Payola is anything.

Mr. LISHMAN. It has to be an agreement.

Mr. FREED. No, it does not.

If he says so, he is wrong. I know the record business very well. I have been in it 20 years and in the radio business. I say if you are going to use the word payola in the investigation you have got to use it whether you have received money or gifts or something before you play the record or whether you got them after you played the record because you were a nice guy. There can't be two different types of payola.

Then he was asked—

Do you understand payola to mean an agreement if you don't pay me the money, I won't play your song?

Mr. FREED. No, sir.

Now, he was then asked "Do you believe that the definition is correct?"

Mr. Freed said "No, it is not."

What have you got to say about his definition of payola and his criticism of the definition of payola contained in your affidavit?

Mr. CLARK. I have two comments to make about his testimony, Mr. Lishman. First of all, payola has a definite connotation in the music business. The receipt of royalties, normal business procedures, making of income from interests in which you have ownership, that is not payola.

You dealt with part No. 2 of this statement, and it goes on and on to get even more specific, that is one portion of the affidavit I signed.

I never did that. It goes on to say, and we can read the rest, which are even more specific than that. So that we pinpointed it as closely as any conceivable situation would arise. If you take the general word and give to it the widest possible interpretation I think it is an extremely dangerous thing you do because then you impugn the honesty of other people.

Mr. LISHMAN. Well, the other more detailed parts of your affidavit were shown to Mr. Freed. He read them, they were quoted to him and he still persisted in his statement.

I will read from his testimony at page 31. He was asked this question:

If the definition of payola that is contained in the Clark affidavit was contained in your affidavit—

meaning Freed's—

could you have signed that agreement and not have committed perjury?

Mr. FREED. Yes, sir.

Then continuing—

But you still would have been guilty, however, of payola in the commonsense?

Mr. FREED. In the commonsense I would have been guilty.

But with the elaborate definition of payola you could swear to this without hesitation?

Mr. FREED. I would be as clean as the driven snow.

You would, yes, notwithstanding the fact that you have accepted cash and other articles of value in return for plugging records?

Mr. FREED. Well, I don't admit it. I did it for plugging records but that goes along with it, I guess. Let us say I was on the payroll of some of the distributors of manufacturers. By the way I coined that phrase consultant.

Now, do you have any comments on Mr. Freed's contention that he could have signed your affidavit and still would have been like the driven snow, but he could not sign the one that was offered to him because he would have committed perjury.

Mr. CLARK. Mr. Lishman, I indicated to you Friday, I don't know anything of Mr. Freed's business or personal activities firsthand. I never had any specific dealings with him, as best I can recall.

I assume that because he was under oath that he would not perjure himself.

That is as far as I would like to comment.

Mr. LISHMAN. Then at pages 33 and 34, Mr. Freed asked:

Will you say that ABC has a dual standard, one for you and the other one for Dick Clark?

Mr. FREED. No doubt about it. I have nothing personal against Mr. Clark. I think he is a fine young man. But there are double standards at the American Broadcasting Co.

Do you believe they feel he is a more valuable asset to them than you are?

Mr. FREED. His gross income must be in the neighborhood of \$12 million a year for the network as against the \$250,000 a year I was grossing for the local station.

So when a fellow can be sacrificed he can be sacrificed.

What is your opinion in that matter?

Mr. CLARK. ABC does not have a double standard. The affidavit I signed was as stringent, if not more stringent, than every employee in their business that had anything to do with the selection of music.

I don't know why Mr. Freed refused to sign that affidavit. I presume he has his own reasons, mainly because he could not swear that he had not taken payola.

Mr. MACK. Mr. Lishman, have you determined whether ABC asked Mr. Clark to sign the original affidavit signed by Mr. Freed?

Mr. LISHMAN. I understand Mr. Freed's testimony to be that he was not asked to sign an affidavit in exactly the same form as Mr. Freed; is that correct?

Mr. CLARK. Excuse me, I think you mean I said this, not Mr. Freed.

Mr. LISHMAN. Yes.

Mr. CLARK. I was asked to make an affidavit, as I stated in my opening statement, and, Mr. Chairman, I signed a lengthy affidavit which incorporates these questions one, two, and three in much more detail.

Mr. LISHMAN. But not in the precise language.

Mr. CLARK. In the precise language, I don't think so, but I think in that the meaning and the outcome of it all is exactly the same.

Mr. LISHMAN. Well, now, let's just turn to No. 3 and what Mr. Freed was required to sign. No. 3, there.

Mr. CLARK. I would say yes to that.

Mr. LISHMAN. Do you now have or have you or any relative of yours ever had an ownership of or beneficial interest in a musical copyright or performance right or in any music publishing, recording, pressing, or merchandising concern?

Mr. CLARK. My answer would have been yes, and now, no, because I have divested myself of those interests.

Mr. LISHMAN. Do you know that Mr. Freed testified that he told the ABC representative that he would sign the affidavit they handed him "when I see Block's signature," meaning Martin Block, "and Clark's signature, you will get mine."

Mr. CLARK. I have no knowledge of that, Mr. Lishman.

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

Mr. MACK (presiding). I am still somewhat confused on the affidavit. Mr. Clark, did ABC let all the diskjockeys draw up their own affidavits?

Mr. CLARK. I don't know, sir. I don't think so.

Mr. MACK. In the case of the affidavit which you signed, was that drawn by you or ABC?

Mr. CLARK. My counsel, sir.

Mr. MACK. By whom?

Mr. CLARK. My counsel.

Mr. MACK. So in effect you drew up the affidavit?

Mr. CLARK. Yes.

Mr. MACK. So this was done on your terms, and was not done by ABC?

Mr. CLARK. The fact still remains, Mr. Chairman, as I mentioned Friday—

Mr. MACK. I am only trying to clarify the record at this time.

Mr. CLARK. Yes.

This is true: the affidavit I signed is more complete than the one that they required and I said at the time I would be very happy to sign the ABC affidavit. I don't think it is as complete and as—gives all the information that they wanted as the one I gave them.

Mr. MACK. Did you refuse to sign the ABC affidavit?

Mr. CLARK. I did not.

Mr. MACK. Well, were you asked to sign the ABC affidavit?

Mr. CLARK. No, sir.

Mr. MACK. ABC did not ask you to sign their affidavit?

Mr. CLARK. No, sir.

Mr. MACK. Did ABC request that you draw up an appropriate affidavit and submit it to them?

Mr. CLARK. They asked me simply to state my complete—make a complete affidavit. They asked me had I ever taken payola. I said no, I have never taken payola and I would like to give you a complete rundown as to my business activity and their extent as to the record industries.

Mr. MACK. Do you know if ABC permitted other diskjockeys to draw up their own affidavits?

Mr. CLARK. I do not know that.

Mr. MACK. I believe Mr. Moss had been recognized and this time I shall recognize Mr. Moss, of California.

Mr. Moss. Mr. Clark, were the others for the fact and showing that there was a difference in the type affidavit you were permitted to sign and the type offered others? I want to make it clear that in my judgment none of them would be difficult for anyone to sign if payola is as you define it.

We have only had two witnesses before this subcommittee who, in my judgment, would not be able to sign it. None of them would be able to do anything. Isn't that the essence of yours, that you did not for a consideration agree to do, or not to do, a certain thing?

Mr. CLARK. Mr. Moss, I have sworn under oath I have never taken payola.

Mr. Moss. I didn't ask you that, Mr. Clark. I asked you if that was not the essence of your agreement, of your affidavit?

Mr. CLARK. Would you repeat the question, please?

Mr. Moss. I will have the reporter repeat it to you.

(The question was read by the reporter.)

Mr. CLARK. I think I understand your question. I think it is yes.

Mr. Moss. I think so too. And so we then get back to what is an appropriate definition for the term of payola?

Mr. CLARK. Yes, sir.

Mr. Moss. It is your contention, according to your testimony that ownership relieves you of any onus of payola?

Mr. CLARK. As it is commonly expressed in the music business, if you own an interest in a music publishing firm, you, by receipt of royalties are not guilty of payola.

Mr. Moss. Well, that is a very interesting definition. That would seem to me to imply a double standard. If you are in a position to demand, by this telepathic communication which characterizes this industry, only a payment rather than a portion of proprietorship you are guilty of payola.

How many copyrights do you own through the various companies in which you held ownership prior to divesting yourself of ownership?

Mr. CLARK. May I have just a moment, please?

Mr. Moss. Certainly.

Mr. CLARK. 114.

Mr. Moss. Is this total ownership, I am not talking now of ownership of those played or recorded.

Mr. CLARK. That is in total.

Mr. Moss. That is in total. Well I will check a little farther, although I want the record to show that I have a reservation on the total because the computation I had hurriedly prepared indicated approximately 160.

Mr. CLARK. 116?

Mr. Moss. 160. But the number is not significant, because the important thing is how did you acquire these copyrights, by purchase?

Mr. CLARK. Some of them.

Mr. Moss. How many of them?

Incidentally, does your computation include BAE, Request, and KinCORD?

Mr. CLARK. No, sir; your figure is probably correct.

Mr. Moss. My computation is based on the totals, including KinCORD, Bae, and Request.

Mr. CLARK. I would not attempt to dispute that at all. I don't know exactly how many titles were in the Arch Music Co., I think 14 when we first purchased it.

Mr. Moss. On your titles recorded and available from Arch, you had a total of nine.

Mr. CLARK. I am sorry, sir.

Mr. Moss. On titles recorded and available from Arch you had a total of nine recorded and available.

Mr. CLARK. If I may take just a moment.

Forty-four altogether.

Mr. Moss. How many of those did you acquire by purchase?

Mr. CLARK. As I say, I don't recall. If I may take a guess, I think it's 14.

Mr. Moss. You acquired all of them by purchase?

Mr. CLARK. Fourteen of the forty-four.

Mr. Moss. Fourteen of the forty-four by purchase?

Mr. CLARK. I bought the catalog. This company was in business before I bought it.

Mr. Moss. How many were assigned you without monetary consideration or assigned to companies in which you held substantial interest?

Mr. CLARK. Of the Arch Co. or all, sir?

Mr. MOSS. All.

Mr. CLARK. I don't know.

Mr. MOSS. Do you have any idea as to an approximate number?

Mr. CLARK. I would guess practically all of them.

Mr. MOSS. Practically all of them?

Mr. CLARK. Mr. Moss, may I add—

Mr. MOSS. Were some of them valuable?

Mr. CLARK. Some were, some weren't, yes.

Mr. MOSS. Were some of them quite valuable?

Mr. CLARK. Yes.

Mr. MOSS. Then you received, out of the generosity of others, valuable considerations?

Mr. CLARK. Mr. Moss, may I add something—

Mr. MOSS. Well, did you?

Mr. CLARK. I received, as every other music publisher—

Mr. MOSS. I do not care how many others did it, that does not make it right, and I point out that you are the only nationally televised diskjockey. You enjoyed a unique opportunity to exploit the records, whoever owned them. You had the best exposure for a recording of any other?

Mr. CLARK. That is true.

Mr. MOSS. So I would repeat my question and have the reporter read it to you.

(The last question was read by the reporter.)

Mr. CLARK. If I can just answer "Yes" or "No," I would say "No," because there—that is what I wanted to add.

Mr. MOSS. You received nothing of value when you received those copyrights?

Mr. CLARK. Mr. Moss, I cannot answer that question "Yes" or "No."

Mr. MOSS. Did you receive something of value in the copyrights?

Mr. CLARK. Yes, sometimes.

Mr. MOSS. We are talking of them in total now, so if you received it on one occasion you received it, Mr. Clark.

Mr. CLARK. I understand, yes.

Mr. MOSS. And you have testified that a number of them were valuable?

Mr. CLARK. That is correct.

Mr. MOSS. So we can assume there was a value cumulative as a result of these assignments?

Mr. CLARK. Yes, sir.

Mr. MOSS. Why did people assign these to you?

Mr. CLARK. May I now go to the explanation?

Mr. MOSS. Certainly, I want the fullest explanation on this point.

Mr. CLARK. First of all, in the music business a man usually writes a song, that is how it starts normally. A songwriter puts together an idea. Then if he is not a music publisher, he seeks out a publisher who will print it, who he hopes possibly will get it recorded and eventually make sheet music of it. The vast majority of these copyrights, I don't have a percentage, I would guess over 90 percent, came from songwriters who came in and sometimes received royalty advances, sometimes were paid a fee to write a particular song.

Mr. MOSS. By you?

Mr. CLARK. Yes.

Mr. MOSS. You paid them a fee to write a particular song?

Mr. CLARK. Yes.

Mr. MOSS. How many instances?

Mr. CLARK. I don't know without looking it up.

Mr. MOSS. Well, would you supply that for us?

Mr. CLARK. It would be a handful. It would be less than half a dozen. It's a most unusual case.

Mr. MOSS. It would be less than half a dozen?

How many did you advance royalties on, in connection with the assignment?

Mr. CLARK. Do you want me to look it up?

Mr. MOSS. Yes, I want this to be as complete as possible.

Mr. CLARK. This again is an unusual case.

The normal course of business is that you receive the song and you publish it. You make the standard considerations in contractual terms.

The CHAIRMAN. We have two items Mr. Clark wants to look up and we can recess now to go to the rollcall.

Mr. CLARK. There are 11, sir.

The CHAIRMAN. Look up whatever you want to. The subcommittee will have to recess to answer the rollcall. This is a vote, so we have to go vote.

Mr. CLARK. May I answer the last question then?

The CHAIRMAN. Yes.

Mr. CLARK. Mr. Moss, there were 11 advancements of royalties.

Mr. MOSS. Eleven advancements for music royalties?

Mr. CLARK. Yes, sir.

Mr. MOSS. And less than half a dozen written on assignment?

Mr. CLARK. Yes, sir.

The CHAIRMAN. We should be back in about 20 minutes.

(A short recess was taken.)

The CHAIRMAN. The subcommittee will come to order.

Mr. MOSS, you may resume.

Mr. MOSS. Mr. Clark, it is established that 11 persons received advance royalties in connection with their assigned copyrights to firms in which you held a substantial interest, and that less than 6 were paid for writing on assignment, of creating on an assignment, and a total of 17, if we take the 6 figure?

Mr. CLARK. Yes, sir.

Mr. MOSS. What were the 11 titles receiving advance royalties?

Mr. CLARK. Oh, dear. I have the names of the writers; I don't have the names of the songs.

Mr. MOSS. What was that?

Mr. CLARK. I have the names of the writers. I don't have the names of the songs.

Mr. MOSS. That is all right then, and you have the titles written on assignment?

Mr. CLARK. There is no way for me to get that, sir.

Mr. MOSS. Fine. This is anyway a total of 17 out of 114 copyrights held by you or by firms in which you had an interest. That excludes of course the 114 total, I have read and checked the figures and the total comes to 162.

Mr. CLARK. I would agree.

Mr. MOSS. If you would include those three firms. Would you have any reason why those firms could not be appropriately included in such tabulation?

Mr. CLARK. None whatsoever.

Mr. MOSS. Then we have established that approximately 144 or 145 copyrights were assigned, and if I recall your answer correctly you said it was an established practice for people to assign to music publishers, is that correct?

Mr. CLARK. Yes, sir; you will find this true of most every music publisher.

Mr. MOSS. When did you become a music publisher?

Mr. CLARK. To the best I recall, in 1957.

Mr. MOSS. When did you go network?

Mr. CLARK. August, 1957.

Mr. MOSS. In 1957, you entered the music business as a publisher. At that moment what other interests did you hold? Were you in the pressing business?

Mr. CLARK. No, sir.

Mr. MOSS. Were you in the artist management business?

Mr. CLARK. No, sir.

Mr. MOSS. Were you in the distribution business, record distribution business?

Mr. CLARK. May I check the date, please? I was in the distribution business in 1957.

Mr. MOSS. You entered it when?

Mr. CLARK. December.

Mr. MOSS. Of 1950 what?

Mr. CLARK. 1957.

Mr. MOSS. You went to the network in August, you say?

Mr. CLARK. Yes, sir.

Mr. MOSS. Were you in record manufacturing?

Mr. CLARK. Yes, sir.

Mr. MOSS. When did you go into record manufacturing?

Mr. CLARK. The same month, December of 1957.

Mr. MOSS. Then you went into record manufacturing after you went network?

Mr. CLARK. Yes, sir.

Mr. MOSS. In fact, you went into business either the month before the show became network or after the show became network. Are there any exceptions to that statement?

Mr. CLARK. May I ask to have it repeated?

Mr. MOSS. Well, I am trying to establish when you started to branch out into business. After it was assured that the show would go network?

Mr. CLARK. Yes.

Mr. MOSS. So when these people came to you they were not coming to an established music publisher, initially?

Mr. CLARK. Initially, no.

Mr. MOSS. And the companies of which you disposed of last year in all instances were held for a period of not too long over 2 years?

Mr. CLARK. That, I would say, is right.

Mr. Moss. Then was it your purpose to establish the companies in order to permit the taking of each and every opportunity to exploit your added prominence as the diskjockey of the only nationally televised show?

Mr. CLARK. I would say no, sir.

Mr. Moss. All right. Why did you then diversify so quickly into so many areas of a business related in each instance to your principal occupation?

Mr. CLARK. Mr. Moss, as I indicated in my opening statement, the businesses that I know best are all radio, television, and music. It was a very, very normal thing for any performer to develop—

Mr. Moss. Mr. Clark, that is why I am asking you. Remember we have a coincidence. There is an arrangement made for your show to go network and at that point you start organizing or acquiring interests in all of these companies related to the recording of music.

This is rather a significant coincidence, and I ask you if the reason for this stepped up activity was that you sought the opportunity to fully exploit your new position of prominence.

Mr. CLARK. No, sir. Mr. Moss, I was in the music publishing business in July of 1957, before I went to the network.

Mr. Moss. Well, you went network in August.

I assume that there must have been some discussions leading up to this, and an agreement with Triangle Publications that they would be willing to make you available to the network, and I assume that these negotiations took more than a day.

Mr. CLARK. They did. I was also in the record manufacturing business in May of 1957.

Mr. Moss. Well, I asked you a few moments ago for the exceptions. However, you were a diskjockey increasing in prominence in the Philadelphia area in May 1957.

Mr. CLARK. That is true; yes.

Mr. Moss. So I go back to the question as to why the diversification of the Clark interests which appeared to be almost contemporaneous with the making of "Bandstand" a network show.

Mr. CLARK. Mr. Moss, it is coincidental and not unusual and there are very good reasons why.

Mr. Moss. Do you know any other diskjockey who has such highly diversified interests?

Mr. CLARK. I have no firsthand information, though it is well known in the industry.

Mr. Moss. Well, I have met some rather prominent diskjockeys in the last few months, and our staff has interviewed others than those I have been privileged to meet, and I have been rather diligent in following and in studying the testimony, and the memorandum of interviews, and I have not been able to discover any counterpart to your activities.

Mr. CLARK. Mr. Moss, you won't find a counterpart, but you will find gentlemen who are diskjockeys who are publishers, who are record manufacturers, who are managers of artists.

Mr. Moss. Correct.

Mr. CLARK. Who are distributors.

Mr. Moss. Correct.

Mr. CLARK. And sometimes have multiple interests. My point, if I may go here for just a moment, was as you reach prominence no singer initially has a publishing company of his own, hardly ever. No television performer usually ever has a television packaging firm of his own. It is rare in the beginning.

As you go along and you achieve success you extend yourself into the other industries in a hope that when—

Mr. MOSS. Why?

Mr. CLARK. Why? For the same basic reason that most people try to insure their financial success in the future.

Mr. MOSS. Mr. Clark, this is all I want you to tell me.

Mr. CLARK. I have told you.

Mr. MOSS. You see, I asked you why you did this? It occurred, I asked you, I thought a very proper question. You sought the opportunity to exploit your position of prominence. I don't say that there is anything venal about that or anything unusual.

Isn't that what you were doing? Is exploitation a word that you take a dislike to?

Mr. CLARK. I don't know what your interpretation of exploitation is.

Mr. MOSS. I would take the standard dictionary interpretation of it.

Mr. CLARK. Which is—I don't know what the definition is offhand. Exploitation has in some instances poor connotations. In the motion picture business an exploitation movie is usually not a very good movie.

Mr. MOSS. Well, they developed very fine things by exploitation. We have also done things we shouldn't by exploitation. Well, let's say that you were sufficiently prudent not to overlook any opportunity to make money as a result of your new connection.

Mr. CLARK. Is that true?

Mr. MOSS. All right. That is another way of saying that you want to exploit it.

You didn't overlook any opportunity; did you?

Mr. CLARK. Yes.

Mr. MOSS. Which one?

Mr. CLARK. Well, there are many, still yet unexplored.

Mr. MOSS. You had a talent management. You had merchandising in your name, in your image, endorsements, you had personal appearances, guest TV shows, record hops, film commercials, teenage jewelry, dolls, record-carrying cases, those were the firms who did it, I guess—television programs, music and record businesses in all of its aspects, you pressed recordings for others.

Mr. CLARK. Yes, sir.

Mr. MOSS. Pretty thorough, I would say, on this.

May I point out, Mr. Clark, that this is the thing that stimulates our interest, because you, in acquiring these companies, were in a position to either actively or by practice insist upon a consideration for the exploitation of a tune on the air.

You say you didn't do this. And where you say you didn't do it, then we must look at the practice or the patterns of your shows as they evolved from program to program, and this is a fact you recognized when you employed Computech to undertake a study which would tend to disprove that you had, in fact, given any preference to

music because of an interest which you might have in that music.

Mr. CLARK. May I repeat again, Mr. Moss, I gave them full access to the records and said, "Please do as you will to them and come up with a conclusion."

Mr. Moss. Well, did you sit down and review with them what type of conclusion or what type of use you wanted made of these?

Mr. CLARK. They knew full well that I would bring it to you.

Mr. Moss. You wanted to have this reflected in averages.

Mr. CLARK. I didn't get into a discussion of the technical aspects of it at all.

Mr. Moss. You didn't at all. Of course, it was done on the basis of averages, and this is not a very sound method. You almost always have to compare from a basis of some standards.

So we made a study of the study, and of your own cards, 15,000-some-odd cards, and we employed, first, as impartial and as highly qualified statisticians as we could. One came from the Bureau of the Census, a man with extremely fine background in statistics. He went into another agency of Government for another man, and into the university, and our study shows that in every instance, in every instance, by any reasonable test, the records in which you had any interest received more play than the records in which you held no interest.

Mr. CLARK. I don't dispute that, Mr. Moss.

Mr. Moss. Now, did you do all of the selecting of recordings on Bandstand?

Mr. CLARK. Did I do all of the selecting? No.

Mr. Moss. Who helped you?

Mr. CLARK. Mr. Mammarella.

Mr. Moss. Mr. Mammarella. I will point out that the Computech survey reflects an assumption that the test should be your interest in all of the recordings played. Of course, this is fallacious because there was another man aiding in the selections, and so in order to even be meaningful from a standpoint of averages, and averages in this instance are really not meaningful at all, but if you were to even accept that basis, then it would still be necessary to weight that study to reflect the plays of recordings in which Mr. Mammarella had an interest as well as those in which you had an interest.

Mr. CLARK. That, I guess again, is a matter of interpretation, Mr. Moss. I didn't share—

Mr. Moss. It isn't a matter of interpretation, Mr. Clark.

Mr. CLARK. I personally did not share in any of Mr. Mammarella's income.

Mr. Moss. You what?

Mr. CLARK. I didn't share in Mr. Mammarella's income.

Mr. Moss. I didn't say you did. But if you have two people selecting recordings for one program, and you say "We are going to determine whether there is any tendency to give preference to self-interest records," and you only measure the self-interest of one of the parties you have not done a complete job.

You must measure the combined interest of the two parties. That is, I think, a pretty reasonable statement. You only get half the picture if you fail to do that, and so even if we take the Computech study

and weight it with the impact of Mammarella's interest, because he was with you up until last November——

Mr. CLARK. True.

Mr. Moss. It is not very long ago, why, we would come out with a substantially different answer even on averages which would reflect a more than average percentage; and, of course, they did not say anything in their findings except that you did not appear to play a recording in a number of instances in disproportion to the ratings it received.

Mr. CLARK. Yes, I think that is what they said.

Mr. Moss. That had received no ratings.

Mr. CLARK. There are exceptions.

Mr. Moss. What we did was to take those recordings with comparable ratings, testing those popular recordings in which you had an interest and in which you had no interest, and we found that you played more frequently and for a total of more plays, recordings in which you had either a publishing, pressing, or manufacturing interest, a distributor interest, a multiple interest. You played even those which were properties of ABC and Paramount more frequently than those which were not, and even now, just as a matter of distribution, you played them more frequently than those in which you had no interest.

Mr. CLARK. I have not seen the results of that survey.

Mr. Moss. Well, I point out that this is a survey taken at the direction of the subcommittee of a committee of the Congress of the United States, by men whose qualifications, I think, no one will challenge.

Mr. CLARK. I have not.

Mr. Moss. And neither they nor the Congress have any personal interest in the results. The people are their clients.

Now that certainly leads, I think, the committee close to the edge of the conclusion that perhaps interest here had an important impact on the selection of material. I would not want to be unfair so let's look—I took one here the other day to look at, where you acquire a copyright, which would have some minor——

Mr. CLARK. I am sorry, I did not hear you.

Mr. Moss. I said I cited an instance the other day of a declaration where we had acquiring of a copyright interest——

Mr. CLARK. Yes, sir.

Mr. Moss. I think the tune was—I don't recall it—yes, the tune was "16 Candles"; played four times prior to the assignment date of the copyright to you or to your firm. And then you played it—that was in a 10-week period, too. And you immediately started playing it and you played it 27 times in about the same period of time. This is after you got the copyright.

Then we had one called "High Sign." Do you recall that recording?

Mr. CLARK. Yes, sir.

Mr. Moss. I understand it had been difficult to establish the precise date of the recording. But anyway, the transfer of copyright occurred after the recording. It occurred on it, just immediately prior to the 13th day of March in 1958. That is according to what BMI advises, and you played it then once on the 12th and 20 times before

you got a rating on it. And then after you got it rated and it first appeared on Billboard, its position was 88th.

You played it 21 times to a plateau?

Mr. CLARK. Yes, sir.

Mr. MOSS. The total of 42 plays, and after it reached a plateau you dropped off and played it once?

Mr. CLARK. May I explain why?

Mr. MOSS. Yes.

Mr. CLARK. That would be what I would do with, I think, most any song, Mr. MOSS.

Mr. MOSS. We will deal with that in a little while, Mr. Clark. I want to discuss it.

Mr. CLARK. In general.

Mr. MOSS. Now, there was one called "I Believe In You," Oldtown label—I do not know who owned the label, but it was Robert and Johnny—they were the artists?

Mr. CLARK. Yes, sir; I remember.

Mr. MOSS. And we did not find any plays on that one, but it was assigned to you in June 1958, and you played it on the 20th day of June, and then you played it 17 times. It did not go very high at any time; it hit 93d, and you played it 4 more times, 21 times. And then it sort of folded. It got up to 93d and you played it five times after the peak was reached.

"Young in Years," a Mercury label, was assigned to you in August of 1959.

Mr. CLARK. Excuse me, Mr. MOSS—

Mr. MOSS. "Young in Years"—Mercury, the Diamonds?

Mr. CLARK. I don't think that was assigned. I think that was written by two young writers who brought us the tune.

Mr. MOSS. They brought you the tune?

Mr. CLARK. That is a slightly technical term in the business; this is not the same sort of assignment we have discussed in other cases.

Mr. MOSS. Let's have that clear on the record.

Mr. CLARK. If I were to write a song and you were a publisher and I brought it to you and you published it, I would not be, in the vernacular of the trade, assigning the song to you; whereas, if I published a song and assigned it to your publishing company, that would be an assignment.

Mr. MOSS. Well, this was a Mercury label?

Mr. CLARK. Yes, sir.

Mr. MOSS. It was recorded, and they brought it to you?

Mr. CLARK. No. The tune was taken to the artist who accepted the tune and recorded it.

Mr. MOSS. Do you own the Mercury label?

Mr. CLARK. No.

Mr. MOSS. Do any of your associates own the Mercury label?

Mr. CLARK. No.

Mr. MOSS. Mercury had recorded it, then, before it was brought to you?

Mr. CLARK. No, sir. I am sorry if I didn't make it clear.

Mr. MOSS. Then what did they give you? just a copyright? the performance and rights?

Mr. CLARK. No. If I may explain in detail: This tune was written by one or two or three songwriters, I don't know; it was in our list of tunes available for recording. As a matter of fact, I think it was an adaptation of a classic. The song was then submitted to the recording artists who liked the song and said, "Fine, we would like to record it." They recorded it, and subsequently it was released. That is the normal way that things happen. That is about the most frequent way a song gets recorded.

Mr. MOSS. It was recorded and then it was released?

Mr. CLARK. Yes, sir.

Mr. MOSS. Was that before you received the copyright?

Mr. CLARK. No; we owned the copyright before we submitted the song to the artist.

Mr. MOSS. In any event, this one here was played 28 times and did not get a rating?

Mr. CLARK. No, sir; it never did.

Mr. MOSS. Those are taken fairly much at random—just to check the copyrights of those played—and we find that there is a rather high number of plays on those songs on which copyright ownership occurs. Now, is this just a coincidence?

Mr. CLARK. I wouldn't be completely candid with you if I told you it was coincidence, but I think I can point to as many examples of tunes in which I shared no interest in which the pattern was more or less the same.

The best thing that a person can do if he is playing music on the air is to catch it before it becomes a hit and play it. When it reaches the plateau that you mentioned, sometimes you continue to play it for a variety of reasons, but the normal thing that I would do would be to slowly taper off.

Mr. MOSS. Well, that might be true; you are in the business and I am not. But that is a sharp contradiction, to say that you respond to the popular demand for music—you are attempting to create a demand in an area of music, to guide it, because of a unique opportunity.

We would have difficulty in testing you precisely because there is no other nationally televised show, but on the examination of the very successful young men who have appeared here in regional areas, I think it is pretty well established on the record of this subcommittee that you enjoy each of them in a region, with a listening audience, enjoy a unique opportunity to create a demand for a recording.

I would be willing to say that there are a few of them, with some of the music of recent years, who would be able to identify at the beginning and end of 10 tunes played in sequence without any stop.

Mr. CLARK. May I express an opinion?

Mr. MOSS. Yes.

Mr. CLARK. Mr. MOSS, it is apparent, or it seems very apparent to people who are not in the music business, that it is possible to create the demand for a record; in other words, that you are able to force its popularity. People who have been in the business far longer than I know that as a rule of thumb I cannot force upon the public anything they do not want—anything that, as we say in the business, that is not in the groove cannot become a hit. It is literally impossible to force a record to become a hit. If there is an unknown ingredient in there—and I am not able at all to tell you what that is;

no one knows that secret; you can only guess—if there is that magic ingredient for it to become a hit, it is there, but it cannot be forced; you cannot take just anything and force it into becoming a popular record.

Mr. Moss. Of course, that is debate. Because Mr. Manmarella, for instance, said a record cannot be sold unless it is heard.

Mr. CLARK. That is true.

Mr. Moss. And that is characteristic of the witnesses we have had. Almost every one of the distributors and the manufacturers have made it clear in justifying their payment of payola that all they have ever paid for was listeners; they wanted it to be heard.

Now, they were not so crude as to say they paid for that, but they gave money out of appreciation for people listening to it. So the hearing appears to be accepted as an essential ingredient in making it possible to create a demand—exposure.

Mr. CLARK. That is correct.

Mr. Moss. And that is no different than merchandising anything else.

Mr. CLARK. I was not commenting on that point. I was only adding, if I may, the thought that you can't make a hit record out of anything. There seems to be the implication that you can take any song and play it and make it a hit. That is impossible, unless for some unknown reason there is that something in there.

Mr. Moss. I would say—maybe you say it is impossible. I could become somewhat acid on some of the tunes of the last few years and say that anything is possible. When you played it 28 times, you did not even get it off the ground. What was the ingredient there that caused the continuation of something that was so forlorn in its acceptance or its approach to the public?

Mr. CLARK. Mr. Moss, I have never for a moment suggested that I am infallible and don't make mistakes.

Mr. Moss. Well, I think it is very difficult for any of us—meaning me—to plead infallibility.

This gets really to the essence of the reason for the inquiry, Mr. Clark. We started out a few minutes ago, or a few hours ago, and I asked you why the magic of proprietorship made it different in this case of payola. Now, we have established that you did get something of value.

Now, you told me the reason you got it is because it was the custom for people to approach publishers. Well, we have established that you did not even become a publisher until, even taking from this very late date, long after you divested yourself of your holdings, less than 3 years ago—

Mr. CLARK. That is true.

Mr. Moss. So the only thing you were established as, Mr. Clark, was the master of ceremonies of a radio or TV program. You were at the moment the outstanding, the singular nationally televised disk-jockey. That is the only identification in the public mind, and I think probably the only identification in the minds of distributors, of authors, other publishers—those who started approaching you and seeking to interest you in these valuable properties.

Now, why would they do it? Why would they approach you, other than that? Can you think of a good reason?

Mr. CLARK. Yes, a variety of reasons.

Mr. MOSS. All right. You were not an established publisher, were you?

Mr. CLARK. No; I was not.

Mr. MOSS. You were not an established manufacturer of recordings?

Mr. CLARK. No; that is true.

Mr. MOSS. You had no well-known labels?

Mr. CLARK. At the time, no; at the outset.

Mr. MOSS. But you had a darn good spot for exposure on television?

Mr. CLARK. That is true.

Mr. MOSS. So they came to you, as the testimony shows, and time and time again here they went to others who had a good spot for exposure. And when they were so open as to make a proposition they said they did not have to—by “they” I mean distributors, manufacturers, and others who approached diskjockeys—they did not have to, because it was understood—this is that osmosis that I referred to the other day—it was understood. You had been around the business a long time, but you did not understand what payola was.

Mr. CLARK. I had heard of it, of course.

Mr. MOSS. Had you heard of the practice?

Mr. CLARK. Yes.

Mr. MOSS. The ugly thought never once entered your mind as these people approached you that this was, after all, in the flesh, payola, first coming to offer you its benefits?

Mr. CLARK. Mr. Moss, that never occurred to me, and never will until the rules of the music business are changed, because as the rules stand now, no one says it is immoral or illegal for an artist or a person in my position or a singer or anyone else to engage in a publishing business or a record business or a pressing business—

Mr. MOSS. Mr. Clark, this subcommittee is not a court of law, we are not up here to prosecute you, and achieve a conviction. We are a factfinding body to determine that very question as to whether or not there might be a need for such laws.

Mr. CLARK. I am in full agreement with the discussion.

Mr. MOSS. We have that responsibility of legislating, and we are going to legislate, we have to know what we are doing. We have to know how this works. We had a lot of lesser lights here, and they reluctantly, in many instances, each contributed a small part to a total understanding, I think, of what the practice was.

Now we get into network operation, that is why we have you here. We want to find out what the practice is there. It seems to be far better organized.

Mr. CLARK. Mr. Moss, one thing, I hope I have not been a reluctant witness. I have tried to give you every conceivable, possible help.

Mr. MOSS. Well, as I told you the other day, Mr. Clark, if that had been the case, if there has been reluctance, as we sit here as the people's representatives we have the power to compel that cooperation. I am pleased that you did give it to us. But did you demand the opportunity to be heard before this subcommittee prior to the time that we first served you a subpoena?

Mr. CLARK. No, I did not, but I might have.

Mr. MOSS. I did not think so.

Mr. CLARK. Mr. Moss, incidentally, I volunteered to appear voluntarily before I received the subpoena.

Mr. Moss. Well, I am pleased to know that.

Now in this matter of payola, I think there is a part that has never been discussed. Let's take the case of one of your friends, Mr. Goldner. He assigned the copyright of "Could This Be Measured?"

Mr. CLARK. Yes.

Mr. Moss. On August 12, 1957, that is the first one he assigned to you. Shortly after you went on national television. And you played it 45 times.

Mr. CLARK. It was also a hit, as I recall.

Mr. Moss. Well, I think in most instances, as I look this over, you can play—and I point out that Mr. Ackerman, music editor of Billboard, a very distinguished authority in this field, seemed to concur in his testimony that the playing has a real impact on making it a hit. You played it 45 times, I might point out, in a very short period of about 12 weeks, 10 or 12 weeks, maybe 16. We take the longest possible time here. It would appear that you might have covered that in 16 weeks.

And then shortly thereafter, on the 20th of February 1958, Mr. Goldner assigned you "Every Night." Do you recall that one?

Mr. CLARK. Yes, indeed.

Mr. Moss. And Mr. Goldner, I think, is a publisher, so he was in a position to do his own exploiting, but he elected for some reason to come to you with this property, which was quite valuable.

Now that was his probing, if there was no understanding, certainly that was his first thrust, the first probe to get your reaction, and it was very, very favorable. And so Mr. Goldner pops up again and he gives you another copyright which you proceed to play. And this you would not characterize as payola?

Mr. CLARK. No, sir.

Mr. Moss. A coincidence?

Mr. CLARK. No, sir.

Mr. Moss. Gratitude?

Mr. CLARK. A portion of it, maybe.

Mr. Moss. Was the first one gratitude?

Mr. CLARK. The first one, I think, was, as I discussed before in my statement, very often copyrights came to my firms from people who said, "I understand you are starting a publishing business"——

Mr. Moss. It could not have been done very often, because this, I pointed out, was in August of 1957.

Mr. CLARK. When I was starting, and it had no properties in it to speak of.

Mr. Moss. And it never entered your head that they were coming to you because they felt you could do something very significant for them?

Mr. CLARK. I have admitted that in my statement, it is conceivable that some of these people brought the copyrights to me because I was on the air.

Mr. Moss. I think these gentlemen were a little more candid than you are, because some of these gentlemen in executive session admitted very candidly that that was the precise reason they took them to you.

Mr. CLARK. I don't deny it.

Mr. MOSS. And it never entered your head that that is why they were doing it?

Mr. CLARK. I think you misunderstood me.

I have already outlined in my statement that some of the copyrights handled in my firms without a doubt came to my firm because I was a television performer, for the same reason that the song went to the leading singer in the company and went into his publishing firm.

Mr. MOSS. They came to you, and you recognized that they came to you in part because of your prominence in the particular field?

Mr. CLARK. I have recognized that; yes.

Mr. MOSS. And yet you say this is not payola?

Mr. CLARK. This is not payola.

Mr. MOSS. You took them, knowing that there was an expectation on the part of the giver—

Mr. CLARK. Not necessarily.

Mr. MOSS. That there would be a benefit?

Mr. CLARK. No, sir.

Mr. MOSS. You said that you acknowledged that that thought entered your head, so you did or you did not?

Mr. CLARK. I said I acknowledged it in my statement, looking back on things—

Mr. MOSS. Only looking back, Mr. Clark?

Mr. CLARK. No, sir.

Mr. MOSS. At the time, did it ever enter your head?

Mr. CLARK. Of course, I have already admitted that there is conceivably a possible reason that a person should bring me a copyright rather than take it to Shapiro or Bernten.

Mr. MOSS. Let's look at it.

A man comes to you and says, "Here is a copyright." "Now that is mighty generous of you, and thanks a lot." Is that all the conversation that ever took place on those occasions?

Mr. CLARK. Most of the time, yes.

Mr. MOSS. That is all. Well, do we have any exceptions to it?

Mr. CLARK. Yes. Countless thousands of times people said, "Here is a song in which you may be interested," and I said, "I am sorry, I don't care to put it in the publishing company."

Mr. MOSS. At no point did you ever inquire, why are you giving this to me?

Mr. CLARK. No.

Mr. MOSS. Even at the very beginning. But the thought entered your head that it was probably because they hoped or expected that there would be a benefit growing from the gift?

Mr. CLARK. May we repeat it?

I am sorry, I am lost.

Mr. MOSS. Repeat it again.

(The last question was read by the reporter.)

Mr. CLARK. It is conceivable that that might have gone through my mind at that time, on occasion, certainly not in every case. Many times a man would say, "Here is a copyright for your firm to help you get in the business. Do you have any more material? Do you need material? Can I send songwriters to you? How is it going?"

Mr. Moss. The copyright assignments you received usually included performance and benefits?

Mr. CLARK. I don't know what you mean?

Mr. Moss. Performance rights, in getting the assignment of the copyright you also get full performance rights?

Mr. CLARK. In some cases, yes.

Mr. Moss. So each time it is played on your program you received a royalty as a result of playing accruing to your credit with BMI?

Mr. CLARK. That is true.

Mr. Moss. I was interested, on page 8 of your statement, in how you learned that the subcommittee commented on the size of the office that you and Mr. Mammarella shared?

Mr. CLARK. Yes.

Mr. Moss. The last paragraph.

Mr. CLARK. Yes, I see it.

Mr. Moss. How did you learn that?

Mr. CLARK. How did I learn the subcommittee commented on the size of my office?

It was a subject of conversation with the investigators two or three times; as a matter of fact, I think they measured it.

Mr. Moss. You think what?

Mr. CLARK. I think they measured it.

Mr. Moss. Did they measure it?

That is fine. They are very thorough, I am pleased to learn.

Now you say you were surprised to learn that some people regard or were shocked to hear that you made thirty-some thousand dollars from \$125 investment. I just want the record to show that I am not one of those who were shocked. I have been in this committee all along.

Mr. CLARK. Excuse me, the other way around, I received thirty-some thousand dollars from \$125 investment. I thought you said that I had spent \$30,000 on a \$125 investment.

Mr. Moss. That would be a difficult thing to do.

Mr. CLARK. I have done that, unfortunately.

Mr. Moss. That is an experience that some of us can enjoy together. You state on page 10:

No record is accepted by Swan which has not been approved by myself or Mr. Mammarella, and no decision of any importance was made by the company without our approval and advice.

Mr. CLARK. Yes.

Mr. Moss. Then the assignment or the leasing from S & G Recording Corp., of a master originally titled "Have Gun, Will Travel," and retitled by you to "Here He Comes, There He Goes," was a transaction of which you had full and complete knowledge?

Mr. CLARK. No, sir.

Mr. Moss. Did Mr. Mammarella?

Mr. CLARK. I don't know.

Mr. Moss. Well, I would imagine when you say that no record was accepted which had not been approved by "myself or Mr. Mammarella, and no decision of any importance was made by the company without our approval or advice," that you must know whether the handling of the leasing of the master for "Here He Comes and There He Goes," you must have known about that?

Mr. CLARK. May I explain?

Mr. MOSS. Well, do you have knowledge of it?

Mr. CLARK. I had knowledge of it, yes.

Mr. MOSS. Did you arrange it?

Mr. CLARK. No, sir.

Mr. MOSS. Did Mr. Mammarella?

Mr. CLARK. No.

Mr. MOSS. Neither one of you arranged it?

Mr. CLARK. We did have knowledge and gave approval of it.

Mr. MOSS. This is a different type of interest in a label?

Mr. CLARK. Yes, sir—again quite common.

Mr. MOSS. You played it—you did not play it at all?

Mr. CLARK. No, sir; I played it a great deal—

Mr. MOSS. You let me finish now, until I put the question to you, you are not supposed to make any comment on that at all.

You did not play it until after you leased the master, and then you played it for a total of 19 times in a period of 1 month, starting on April 27, and playing it the last time on May 27. And this is another one of those that did not get off the ground. Now I would be very happy to hear your explanation.

Mr. CLARK. Fine. This is a record that did not get off the ground nationally. There was every indication it would be a hit. It sold—I don't know exactly how many copies, as a rough guess around 30,000, a record that got started in one area, Baltimore.

Mr. Binnick, our associate there, discovered the record, and called us to say, "Do you think we should distribute this record?"

We said, "What is your candid opinion?"

He said, "It looks like a hit in Baltimore."

Subsequently it was released all over the country by our organization and it made progress in Cleveland and Baltimore, enough progress I think to warrant the play. Again, it was a bad guess. It did not become a national hit.

Mr. MOSS. You said it enjoyed a limited, regional success?

Mr. CLARK. That is right.

Mr. MOSS. And it was reported to you that in Washington and Baltimore, there was something in that area that made people respond to it. But you played it quite a number of times, you watched it so closely—

Mr. CLARK. I kept an eye to it, yes.

Mr. MOSS. Well, then, let's say, do you keep an eye on all of those which you owned or in which you had an interest?

Mr. CLARK. Mr. MOSS, I watched all records as best I can. I can't see them all, but that is part of the business of being in my end of playing.

Mr. MOSS. That was not my question. I said, "Do you watch those in which you have an interest?"

Mr. CLARK. Yes—

Mr. MOSS. The other day in response to a question, you mentioned the payment of some \$7,000 by American Airlines. Would you like to describe the circumstances of that payment to me?

Mr. CLARK. For a period of weeks on the "Saturday Night Show," as is rather ordinary, at the end of the program I would say, transportation for our guests was provided by American Airlines—and probably four or five more words which I don't remember. It is called an airplane plug.

Mr. Moss. That is an airplane plug for which they paid you \$7,000?

Mr. CLARK. Over the course of many weeks; yes.

Mr. Moss. Did they pay the station the \$7,000?

Mr. CLARK. The station?

Mr. Moss. Yes.

Mr. CLARK. No.

Mr. Moss. They paid it to whom?

Mr. CLARK. Drexel Television Productions.

Mr. Moss. And that is owned by——

Mr. CLARK. Me.

Mr. Moss. One hundred percent?

Mr. CLARK. Yes, sir.

Mr. Moss. Was the payment determined from some sort of a rate card?

Mr. CLARK. No, sir; it's a casually accepted practice in the business as to how big the program is as to how much the airline pays for the plug.

Mr. Moss. How is the figure arrived at?

Mr. CLARK. I don't honestly know—how large your audience is, I presume.

Mr. Moss. Who sets the figure?

Mr. CLARK. I don't know.

Mr. Moss. You received \$7,000 from American Airlines in return for giving them a plug on your program——

Mr. CLARK. Yes, sir.

Mr. Moss. Were the guests flown by American?

Mr. CLARK. On occasion.

Mr. Moss. Were they flown by American? I can take any group of people flying and on occasion some of them are going to fly Eastern and some United and some American and some TWA. Was the statement that guests on this program were flown by American Airlines a correct statement?

Mr. CLARK. Mr. Moss, we would have to check the copy to find out whether it said guests flown here or transportation arrangements were made by.

Mr. Moss. Well, was the arrangement made by——

Mr. CLARK. American Airlines?

Mr. Moss. Yes.

Mr. CLARK. I don't know.

Mr. Moss. Did your program actually know how the arrangements were made?

Mr. CLARK. No.

Mr. Moss. It did not actually know. So what you were actually doing was giving a plug just to get American Airlines name on the program?

Mr. CLARK. Yes, sir.

Mr. Moss. You were accepting a commercial on the program for American Airlines?

Mr. CLARK. I don't think it is known in the television industry as a commercial.

Mr. Moss. I do not care what it is known as. I can call it Clarkola if I want to, I can give it any name I want to give it. But this, Mr.

Clark, is illegal. You are not a licensee, what right have you to sell an ad on the program?

Did American give you the right, American Broadcasting Co. give you the right.

Mr. CLARK. I think we had their approval.

Mr. MOSS. How was that conveyed to you?

I am interested in how these broadcast networks operate, indirectly they are licensees of the Commission, and this practice I think is frowned at under section 317 of the Communications Act. I want to know all about it.

Mr. CLARK. I don't know how it was arranged.

Mr. MOSS. Did they by writing or endorsement of the existing agreements tell you that you had a right to sell commercial time on your program?

Mr. CLARK. I don't know the details, Mr. MOSS. We will have to take a moment to find out.

Mr. MOSS. Let's take a moment and find out. This is important.

(Pause.)

Mr. CLARK. Mr. MOSS, I am told that there is a letter of agreement. I didn't negotiate the agreement, I know a few of the intimate details and will be happy to provide you with them.

Mr. MOSS. Where is the letter of agreement?

Mr. CLARK. I would imagine in New York.

Mr. MOSS. And this is an agreement by American Broadcasting Co. with Drexel Productions—this is what I call your Drexel complex, I think you had four titles, so I find it difficult to always correct the compartmentalized quartet of Drexel companies.

But the agreement assigns to the Drexel Co. a right to sell commercial time on the Dick Clark show?

Mr. CLARK. No, sir; I don't know that that is true.

Mr. MOSS. It specifically assigns the right for you to enter into an agreement, then, with American Airlines Co. to—and I think I can quote correctly:

During each telecast for the duration of this agreement, American Airlines will receive at least one audio and one video credit consisting of the simultaneous telecasting of (a) not less than 8 seconds of copy favorably mentioning American Airlines, and (b) the American Airlines name and logo in such manner as to be readily identified by the viewing audience.

Now, Mr. Porter, I am going to object if you sit there and do what you know is not permitted under the rules of the House. You respond when you are requested to give advice on constitutional questions. I want Mr. Clark's answers, and not yours.

Mr. PORTER. Very well, sir.

Mr. MOSS. You know what the rules are. Let's live up to it.

Mr. MACK. I think we have an understanding that the witnesses answer the questions according to the rules of the House, and I am sure that the counsel understands his rights and his purpose here, and I believe that the witness understands that his counsel is here for the purpose of advising him on constitutional questions.

Mr. CLARK. I understand that, sir.

Mr. MACK. And I believe with that understanding you can answer the questions yourself.

Mr. CLARK. I am not clear, Mr. Moss, which agreement that is, whether that is between Drexel and American or ABC and American.

Mr. Moss. This is a letter dated February 27, 1959, addressed to Drexel Productions, Inc., 680 Fifth Avenue, New York, N.Y., attention of Mr. Marvin Josephson.

DEAR MR. JOSEPHSON: This letter will confirm our verbal agreement regarding the furnishing of the promotional and/or advertising services for use during the Dick Clark Show television program. It is our understanding, one, the Dick Clark Show, a live television program, originating in New York, N.Y., will be—
It is stricken there, and there are appropriate initials that the strike-out was agreed.

Scheduled to be presented through the facilities of the American Broadcasting Co.'s television network from 7:30 to 8 p.m. eastern standard time—

And then it goes on to the other portions I read to you. It runs three pages, and is signed by Mr. Willis Player, vice president of public relations of American Airlines, and apparently it is accepted for Drexel Productions by a Mr. Josephson.

Mr. Chairman, I ask that this letter of agreement be made a part of the record at this point.

Mr. MACK. It will be placed in the record.

(Agreement of February 27, 1959, follows:)

AMERICAN AIRLINES,
New York, N.Y., February 27, 1959.

DREXEL PRODUCTIONS, INC.
New York, N.Y.

(Attention: Mr. Marvin Josephson).

DEAR MR. JOSEPHSON: This letter will confirm our verbal agreement regarding the furnishing of promotional and/or advertising services for us during the "Dick Clark Show" television program.

It is our understanding:

1. The "Dick Clark Show," a live television program originating in New York, N.Y., is scheduled to be televised, during the term of this agreement, every Saturday evening over the facilities of the American Broadcasting Co.'s television network from 7:30 to 8 p.m., e.s.t.

2. During each program telecast for the duration of this agreement, American Airlines will receive at least one audio and one video credit consisting of the simultaneous telecasting of:

(a) not less than 10 seconds of copy favorably mentioning American Airlines, and

(b) the American Airlines' name and logo in such manner as to be readily identified by the viewing audience.

3. Throughout the term of this agreement or any renewal or extension thereof, no other commercial and/or scheduled airline shall be referred to during any telecast of the program; however, it shall not be considered a breach of the agreement if any such reference is made as part of any ad lib remarks by a guest making a one-time appearance on the program. You hereby indemnify and hold us harmless from and against all judgments, decrees, claims, liabilities, or expenses of any kind whatsoever asserted against or incurred by us arising out of or in connection with the program, its production, or the broadcast or publication of the whole or any part thereof by any means whatsoever.

4. Any and all references to American Airlines during telecasts of the program shall be subject to our prior approval.

5. The term of this agreement shall be for a period of 13 consecutive weeks starting Saturday, February 28, 1959. In the event any public controversy should evolve around the program and/or any subject matter be telecast as part of the program that, in the opinion of American Airlines, would be detrimental to American Airlines' interests, then American Airlines, at its election, can terminate this agreement upon the giving of 24 hours' notice by Western Union telegram of such decision.

6. Upon the completion of the conditions of this agreement, American Airlines agrees to pay you upon receipt of respective invoices the following schedule of payments based on current semimonthly rating reports by the A. C. Nielsen Co., and known in the television/radio industry as Nielsen ratings, program station basis, Nielsen average audience, percent of TV homes reached, and hereinafter referred to as "Nielsen rating."

(a) During such period that the television program covered by this agreement has a Nielsen rating of 15 or lower, then the amount to be paid by American Airlines shall be at the rate of \$250 per program.

(b) During such period that the television program covered by this agreement has a Nielsen rating of anywhere between 15.1 and 20, inclusive, then the amount to be paid by American Airlines shall be at the rate of \$300 per program.

(c) During such period that the television program covered by this agreement has a Nielsen rating of anywhere between 20.1 and 25, inclusive, then the amount to be paid by American Airlines shall be at the rate of \$350 per program.

(d) During such a period that the television program covered by this agreement has a Nielsen rating of 25.1 or over, then the amount to be paid by American Airlines shall be at the rate of \$500 per program.

(e) In the event either the audio credit or the video credit, but not both, is omitted during any one program, then the amount to be paid by American Airlines for such program shall be half the amount that would be payable in accordance with the preceding schedule where both audio and video credits had been received.

(f) In the event both the audio and video credits are omitted during any one program, then American Airlines shall not be obligated to pay you any amount with regard to such program, but all the terms and provisions of this agreement shall continue in full force and effect.

(g) Your failure for any reason to telecast any audio and/or video credit shall not be deemed a breach by you of this agreement.

If the foregoing correctly sets forth your understanding of our agreement, will you kindly so indicate your acceptance thereof by signing the enclosed counterpart of this letter and return it to us at your earliest convenience.

Very truly yours,

AMERICAN AIRLINES, INC.,
WILLIS PLAYER,
Vice President, Public Relations.

Accepted:

DREXEL PRODUCTIONS, INC.,
By MARVIN JOSEPHSON,
Vice President.

April 1, 1959.

Mr. Moss. If you, in having announced or causing to be announced, in conformance with the requirement of the law—section 317 announced that this was an advertisement for American Airlines.

Mr. CLARK. Mr. Moss, I did not personally make the announcement.

Mr. Moss. Well, your firm, which had responsibility for production, and which entered into the agreement with American Airlines, and which you, as the sole owner, must take some responsibility for. You certainly have cognizance of its activities. Did it agree to let the public in on the fact that rather than representing the fact that the people had actually been transported, this was but a device for a commercial?

Mr. CLARK. That is a very difficult question to answer yes or no.

Mr. Moss. You either had an announcement that it was an ad and regarded it as an ad and it was treated as an ad all the way through, or it was treated as a statement representing an inaccuracy.

Mr. CLARK. Mr. Moss, I would presume that it was treated as most of these announcements are, the credits at the end of the show. It didn't occur to me to ask whether or not it was a commercial.

Mr. Moss. This was a false credit; this was a credit which had not in fact been done, and it was nothing but a subterfuge to get an ad for American Airlines on the program. How many other plugs or credit lines were given for a fee?

Mr. CLARK. There is a list of them that is available to the committee.

Mr. Moss. Well, that is not what I asked; I asked how many.

Mr. CLARK. I don't know.

Mr. Moss. Well, where is the material for the committee?

Mr. PORTER. May I confer with my client?

Mr. Moss. If your client wishes to confer on a constitutional question, I have no objection.

Mr. PORTER. Then I will withdraw the request.

Mr. Moss. Sinclair apparently paid \$400.

Mr. CLARK. Yes, sir.

Mr. Moss. What is a "fashion promotion"? Did somebody get credit for giving a dress or something that he did not give?

Mr. CLARK. No; we showed spring fashions.

Mr. Moss. You showed spring fashions. And this was at a cost to whoever showed it?

Mr. CLARK. Yes, sir.

Mr. Moss. And all of these items were covered under a supplemental agreement from American Broadcasting Co.?

Mr. CLARK. No, sir.

Mr. Moss. They were done without the knowledge of American Broadcasting Co.?

Mr. CLARK. No, sir.

Mr. Moss. They were done without the knowledge of American Broadcasting?

Mr. CLARK. Not in every case; no.

Mr. Moss. American Airlines, the \$7,150 one, was done with the knowledge and consent of American Broadcasting?

Mr. CLARK. Yes, sir.

Mr. Moss. You have this documented and will supply the documentation for the record?

Mr. CLARK. Yes, sir.

(Document referred to follows:)

AMERICAN BROADCASTING Co.,
New York, N.Y., June 13, 1960.

MR. ARTHUR ZEIGER,
Drexel Television Productions,
New York, N.Y.

DEAR ART: This is to confirm that in 1959 I approved of the use of a series of credits for American Airlines to be broadcast on the "Dick Clark Show," such credits to be in form consistent with ABC continuity policy in this area.

Sincerely yours,

THEODORE H. FETTER.

Mr. Moss. All right. Did you keep the \$7,000?

Mr. CLARK. I don't know what happened to it.

Mr. Moss. Well, did your company get it?

Mr. CLARK. Yes.

Mr. Moss. You are the owner of the company?

Mr. CLARK. Yes.

Mr. Moss. Did you keep the \$7,000?

Mr. CLARK. As I say, I don't know what happened to it, whether it was spent or whether I eventually got it.

Mr. MOSS. Well, if there was a profit on it, it went to you? Or did you divide it with American Broadcasting?

Mr. CLARK. No.

Mr. MOSS. American Broadcasting did not receive anything at all from it?

Mr. CLARK. No, sir; as far as I know.

Mr. MOSS. That is very interesting.

This is such a widespread practice I suggest that we need a little more diligence on the part of the Communications Commission.

Now, you swear on page—you discuss on page 25 the practice of requiring reimbursement for moneys paid to artists making a personal appearance on your program, and you indicate that a very commendable change took place, I believe, in June or July of 1958, but prior to that time, when these artists appeared, you expected reimbursement for their appearance; is that correct?

Mr. CLARK. Not expected reimbursement in every case, in some cases.

Mr. MOSS. Well, in the majority of cases?

Mr. CLARK. I don't really know.

Mr. MOSS. Who does?

Mr. CLARK. With a small amount of research, I guess we could find out.

Mr. MOSS. I have done some of that. And the staff has done a lot.

In 1958, in the first 6 months, you were reimbursed to the tune of \$6,440.

Mr. CLARK. Mr. MOSS, do you understand the operation—of how that operates?

Mr. MOSS. Yes. I was horrified at how it operates. We had a young man who was somewhat a victim of it who gave us some testimony.

Mr. CLARK. What was his name?

Mr. MOSS. And then we had a couple of record manufacturers who in subsequent testimony supported his telling of how the practice operates. And in this instance I notice that you swear that neither Click Corp. nor Drexel Productions was reimbursed by Mr. Parsons or by anyone else for his appearance on these two programs.

Mr. CLARK. That is true.

Mr. MOSS. Well, we have a very interesting conflict of testimony.

Mr. CLARK. May I submit his canceled check?

Mr. MOSS. Oh, now Mr. Clark, you and I know that these canceled checks in the way this thing operates are absolutely meaningless.

Let's review it. The artist appears on your program he receives a check in payment for the appearance. Your company then, during the time that this was active, receives a check reimbursing them from someone—a distributor or a manufacturer.

Mr. CLARK. Excuse me, sir.

Mr. Parsons alleges that he reimbursed Click Corp. and Drexel Corp. during the period. First of all, the practice didn't take place with Drexel: it did take place admittedly with Drexel in the early days, but his testimony deals with the period long after the practice was stopped. He is talking about in 1959; it was stopped in 1958.

Mr. Moss. Mr. Goldner testified as to the operation of the reimbursement, and our discussion was as to the operation of the system, and the operation of the system as related by Mr. Goldner was that you would be reimbursed after having written checks or made payments to the artist.

Mr. CLARK. Yes, sir; that is quite correct.

Mr. Moss. And that appears to be an accurate statement, and that final reimbursement, which was usually on a third-party basis, you would be reimbursed and then the person reimbursing you would be reimbursed, and then it got back to the manufacturer, and he charged the item as an expense against a royalty account of the artist.

Mr. CLARK. That, sir, I know nothing about.

Mr. Moss. Well, I do not know whether you do or not, but I do know that that is the practice, as has been attested to by personnel qualified to give us such testimony. And that is why I regard it as a particularly vicious practice.

In your stopping of this practice, did you receive any protest from the American Federation of Television & Radio Artists?

Mr. CLARK. The reason this was stopped is that it became apparent, or it came to my attention, that on occasion it was charged against an artist's royalties. Initially, when it started, it was charged off his promotion expense. I hope you understand that neither I nor the corporations I owned made a profit from this transaction. The reason it happened is that, as happened for years, there were many people who wished to appear, some of whom we wanted to use and some of whom we didn't want to use for ordinary programing reasons. And that is much to their liking—they wanted to appear. And if we were unable to put them on, very often the record company would say, "We would be very happy to pay the artist's fee, so we can live by the union rules."

Mr. Moss. The union rules required the payment?

Mr. CLARK. Yes, sir.

Mr. Moss. Did you receive protests from AFTRA?

Mr. CLARK. Regarding what, sir?

Mr. Moss. Regarding the practice on your program of paying these people and then having reimbursement which ultimately came out of their royalties?

Mr. CLARK. That I don't vividly recall. We have had many, many conversations with AFTRA.

Mr. Moss. They did protest?

Mr. CLARK. It is quite possible.

Mr. Moss. Well, do you deny that they protested?

Mr. CLARK. No, sir; I don't.

Mr. Moss. All right. We do not want to have an equivocal record here.

Now, you say neither you nor your companies profited on this. It can be described as a somewhat self-serving operation, because it would be difficult to say that this was precisely a profit. However, it did make it unnecessary for you to incur certain expenses in connection with the production of your show, and therefore, inferentially at least, I think we can conclude that there was a measure of profit now.

Mr. SPRINGER. Would you yield for just a moment, Mr. Moss. I have another engagement, and I wonder if you could advise me as to how long you plan to go on?

Mr. MOSS. I do not want to foreclose the gentleman's opportunity to ask any questions. This was such a lengthy statement that was presented to us that it is difficult to deal with.

I have just one more point that I want to discuss, and that is this question, whether or not the music was played according to its popularity, and then I will be through. I will try to wrap it up as quickly as possible.

Page 28 (reading) :

Finally, gentlemen, let me say that I felt the results of the Computech survey verified my own brief that—

this is the significant portion—

that I played records according to their popularity.

Now, a rather detailed study, but a very accurate study, I think, raises a real question as to whether you played according to popularity or, rather, whether you picked records which you hoped might be developed into popular pieces and proceeded to spin them to give them the opportunity to succeed if they had that magic ingredient.

Now, if you are responding to a popular demand for a recording, that is readily determinable, because you are acting in response to requests, or you are acting in accordance with readily determinable knowledge of which records are selling. But you were not doing that, you were picking records and starting to play them in most instances, a great majority of the instances, before they had any popularity; is that correct?

Mr. CLARK. That is very true.

Mr. MOSS. And then you played them, and this, Mr. Clark—I hand this to you as sort of a summary of their large study here, it is so you can see the patterns—you would play a recording until it reached a plateau of popularity—up in one corner I have marked "Tops"—and then you would drop it off and pick up another one and start it off on the climb to popularity?

Mr. CLARK. Yes, sir.

Mr. MOSS. Was that a conscious pattern?

Mr. CLARK. Yes, sir.

Mr. MOSS. That was a conscious pattern. And you usually had about three or four of your recordings in the rated records each week?

Mr. CLARK. That I don't know. It is possible.

Mr. MOSS. Again, we can determine that from this chart. And I know that you are able to determine it.

Mr. CLARK. That is quite true, I would imagine.

Mr. MOSS. Your records.

Now, as you study this it would appear from the number which developed, one of two things, that you are an excellent picker of this rather peculiar music or the playing on your program had a tremendous impact in stimulating a desire to buy.

Which was it, in your opinion?

Mr. CLARK. I am a good picker.

Mr. MOSS. You are a good picker?

Mr. CLARK. I am not always right.

Mr. MOSS. Oh, no. You could not always be right even if we took it my way and said that you had a real impact, being the only nationally televised diskjockey. Even then there would be the exception where your impact could not make it a hit.

Mr. CLARK. That is true.

Mr. MOSS. Now, these patterns, strangely enough, you project them on regional diskjockeys, you find that they are playing them counter to a national trend.

Mr. CLARK. I don't understand.

Mr. MOSS. Well, you say you are a good picker. You are the single one nationally. But we can take a diskjockey in one of the regions, such as Boston, Washington, New York, around my way, out in San Francisco, or Los Angeles, and you can find that a local diskjockey, spinning something which you might regard as not being a good choice, can pick a popular one just for his area. And having studied that in recent months, it appears to me that there is far more legitimacy in my assuming that the playing creates the demand, rather than the selection responding to the demand.

Mr. CLARK. May I comment?

Mr. MOSS. Well, it is a matter of opinion; is it not?

Mr. CLARK. Yes.

Mr. MOSS. I merely point out that in supporting mine I have looked at the regional operations and each of these diskjockeys seems able to create hits in his area of listening.

Mr. CLARK. Would you assume that I could do the same thing?

Mr. MOSS. No; I would assume that you do the same thing and I say that the way I analyze this, these facts related to each other would tend to support the conclusion that the playing of the record creates the demand, rather than meets the demand.

You say that it is because you have a fine sense of which record to pick, you see.

Mr. CLARK. Yes, sir; that is what I say.

Mr. MOSS. And, of course, that is quite proper, you could almost support that conclusion by some studies, but not by the type of material which I have analyzed in looking at this in order to come to the conclusion. I think this in itself supports my position [referring to chart].

Mr. CLARK. May I without—

Mr. MOSS. It breaks it down for the country, and it holds fairly solid.

Mr. CLARK. Inasmuch as we are dealing with opinions, may I have about 2 minutes to give you mine very quickly?

Mr. MOSS. On this point?

Mr. CLARK. Yes.

Mr. MOSS. Yes; certainly.

Mr. CLARK. Mr. MOSS, you and the other gentlemen of the committee here, I think, have made no secret about the fact that you think I have been successful. There have been probably several reasons for this, not the least of which—and I don't discount it as a great deal of luck—but as you go along you gather a great knowledge of whatever you do—you know, I am sure, a great deal about what you do, and I feel the same way about what I do.

The reason I stop playing a record, when it gets to a peak, it is then being played on practically every radio station in the country, and let somebody else take it. I don't care, if possible, to be a follower. I would like to know what is going to happen ahead of time. This is what makes it a matter of judgment and very difficult to predict.

I have maintained that you can't make a hit of anything. It was pointed out that the theme song was played many times, but never became a hit. I think my choice of music is probably one of the cornerstones of why what I do is successful. There are many other ingredients.

I assume that you think—and you are certainly entitled to your opinion, as we all are—that it is possible to make a record, a hit out of anything normally acceptable, as long as it isn't completely ridiculous, it would be possible through continuous air play to make it a hit.

Is that a reasonable assumption on my part?

Mr. Moss. Well, I would not want to start pooling just to keep off the stream.

I have a couple of teenage members, one preteen and one teenager, in my family, so I am not completely out of touch with rock and roll as it goes along today. They have a very strong enthusiasm for very brief periods. That is just about the pattern of some of these recordings you play. And they love to watch "Bandstand," and they want the record that is played there, and maybe they will not play it next week, but they want it. And I think you have been very successful in stimulating the desire. My evaluation of you is perhaps a little less modest than your own evaluation of yourself.

You see, if we had another national diskjockey on one of the other airwaves we might be able to do a little comparing, but you are the only one.

Now, you say that that is because you are the best.

Mr. CLARK. No.

Mr. Moss. But—

Mr. CLARK. Excuse me—

Mr. Moss. But I think we would get some darn good competition if we started another one, and I will bet the two of you could not come up with the same hits.

Mr. CLARK. Mr. Moss, I never said I was the best; I said I was very fortunate and lucky.

Mr. Moss. No; but you feel that I might have some resentment or the committee might because you have been successful.

I might point out that each of the gentlemen on the committee has been successful, and we have learned as we go along that rather than knowing more and more about more things, that we have developed a certain amount of humbleness about how very little we know about some, many things.

Mr. CLARK. I don't dispute that.

Mr. Moss. We would just love to know more about some of these things—you have helped us in some of that—but we are not experts, we can sit here every day of the week and learn a tremendous amount. I have learned all about this world of entertainment, and the generosity of the record companies. This has been an amazing revelation to me.

Mr. Chairman, that is all the questions I have.

Mr. MACK. The Chair recognizes the gentleman from Illinois, Mr. Springer.

Mr. SPRINGER. Mr. Clark, let me see if I can bring a few ends together and see if we can come up with two or three things that we are generally interested in.

Could you define what you believe is payola in your own words?

Mr. CLARK. Yes, Mr. Springer, I have done that in my statement, if I may refer back to it.

Mr. SPRINGER. Would you refer back and read it to me?

Mr. CLARK. Yes.

It is the third paragraph.

Mr. SPRINGER. Would you just read that?

Mr. CLARK (reading):

I want to make it clear immediately that I have never taken payola, in brief, I have never agreed to play a record or have any parties perform on a radio or television show in return for a payment in cash or any other consideration.

Mr. SPRINGER. Now, would you say that Mr. Ackerman, who heads up Billboard, is a fairminded man and would have knowledge of what payola is?

Mr. CLARK. I can only assume that he would be, I do not know him.

Mr. SPRINGER. You say you do not know him?

Mr. CLARK. No.

Mr. SPRINGER. You know who he is?

Mr. CLARK. Yes.

Mr. SPRINGER. And you realize that he probably has at least one of the two major methods of testing the popularity of records on the air?

Mr. CLARK. I am sorry, Mr. Springer, I didn't understand that.

Mr. SPRINGER. All right, I will rephrase it.

Billboard does have one of the two generally acceptable methods of testing the popularity of records, does it not?

Mr. CLARK. Yes, I think that is correct.

Mr. SPRINGER. Let me read this to you and you listen.

Payola is the giving of or receiving of any consideration for the purpose of inducing any station personnel to play a record over the public air waves.

Do you believe that is a fair definition of payola?

Mr. CLARK. May I read it?

Mr. SPRINGER. Would you like for me to read it to you again?

Mr. CLARK. Yes.

Mr. SPRINGER (reading):

Payola is the giving of or the receiving of any consideration for the purpose of inducing any station personnel to play a record over the public air waves.

Mr. CLARK. I think that is a pretty accurate appraisal.

Mr. SPRINGER. In your statement, you said that you did not accept any money or any consideration for either playing a record yourself or inducing any station personnel to play a record over the public air waves.

Mr. CLARK. No one has ever paid me to play a record.

Mr. SPRINGER. Did you or did you not, either directly or indirectly, pay any station personnel to play any record in which you were interested over the public air waves?

Mr. CLARK. Indirectly, yes.

Mr. SPRINGER. Would you state how you did it indirectly?

Mr. CLARK. I think that is also mentioned in the opening statement. I am sorry it takes so much time.

Mr. SPRINGER. Without referring to the statement, Mr. Clark, would you state how you did it indirectly?

Mr. CLARK. I had an investment in two companies, I think, that were cited by the FTC for making payola payments.

Mr. SPRINGER. Now, the Click Corp. was one of those, was it not?

Mr. CLARK. No, sir; it was not.

Mr. SPRINGER. Chips?

Mr. CLARK. Chips was one.

Mr. SPRINGER. Chips and Jamie?

Mr. CLARK. Yes.

Mr. SPRINGER. You had knowledge of that, did you not?

Mr. CLARK. I had late knowledge of one, and no knowledge of the other.

Mr. SPRINGER. You say you had late knowledge?

Mr. CLARK. Yes, sir.

Mr. SPRINGER. Do you remember a conversation with Mr. Kelly when he asked you if you did give any money for the playing of a record over the public air waves?

Mr. CLARK. I recall the conversation in which he asked me, was I aware that the Chips Distributing Co. had made payola payments, and I said yes, I was aware of that.

Mr. SPRINGER. And did you not in substance say to him that you did not see anything wrong with that?

Mr. CLARK. Mr. Springer, I have never in my life condoned or praised the practice of payola; I said I was aware of it, I had knowledge of it. He asked me, why didn't you stop it, and I told him it would be unusual for me to tell that particular man how to run his business. I have an investment in it.

Mr. SPRINGER. You did not say this in substance to him then; "What is wrong with that, that is what we are all doing," or "That is the realities of life," or "That is a part of this business?"

Mr. CLARK. I would have said that was common in the business.

Mr. SPRINGER. In that conversation with Mr. Kelly, did you volunteer the statement to him that money was given by your company to the Chips Corp. for the purpose of having records played over the air waves?

Mr. CLARK. Did I volunteer the information?

Mr. SPRINGER. Yes.

Mr. CLARK. I don't recall.

Mr. SPRINGER. Did you do anything to stop it after it came to your knowledge?

Mr. CLARK. No, sir; I did not.

Mr. SPRINGER. In view of the definitions I have given you of payola, would it still be your opinion at this time, Mr. Clark, that you are not guilty of payola?

Mr. CLARK. We are dealing with semantics again, Mr. Springer. I have said continuously over and over again under oath and out from under oath, I have never taken payola.

Mr. SPRINGER. Now, in essence, Mr. Clark, what you are limiting yourself to is that you did not accept any consideration for the purpose of playing anybody's record on the air waves?

Mr. CLARK. That is true, yes.

Mr. SPRINGER. You are not saying that you did not in effect pay someone to broadcast over the air waves?

Mr. CLARK. I think that it should be made clear, Mr. Springer, I have not denied that I have owned an interest in corporations that have been cited by the FTC for making payola.

Mr. SPRINGER. And you have consented to that order, your corporations have?

Mr. CLARK. I no longer have any connection with them.

Mr. SPRINGER. At the time they were cited, and at the time the consent order was made by the FTC, did you have an interest in them?

Mr. CLARK. I don't know.

Mr. SPRINGER. Now, I am not trying to harass you, Mr. Clark, but if this definition I have given you of payola is a true definition of payola, which I have tried to work out and believe is a fair definition of payola, you have taken part in payola through corporations which you have owned?

Mr. CLARK. Excuse me, Mr. Springer, that is a terribly dangerous thing from my standpoint. If you own any stock in RCA Victor, Mercury, or Decca, or United, you are as guilty of payola as I am.

Mr. SPRINGER. I am not asking if there are others, I am going to get to that in a moment, I am just asking you yourself.

Mr. CLARK. I know. But the important, and very, very important definition here is, I have not taken payola, I have denied any knowledge of its going on in the field. I have not denied interest in corporations that paid it or allegedly paid it.

Mr. SPRINGER. What you are saying in effect is that you have never handed out any money for playing records?

Mr. CLARK. I never have.

Mr. SPRINGER. The only thing that you have admitted today is that a corporation in which you are interested may have been guilty of payola?

Mr. CLARK. Yes, sir.

Mr. SPRINGER. I want to touch on a broader question that you have mentioned.

Do you know of your own knowledge that other companies have engaged in payola to pay someone to play their records?

Mr. CLARK. Of direct, first-hand knowledge?

Mr. SPRINGER. Yes, sir.

Mr. CLARK. I have only read about it in the paper.

Mr. SPRINGER. Was it broadly known in the business that everyone was doing it?

Mr. CLARK. It was well rumored that payola was a common practice in the music business.

Mr. SPRINGER. And you knew, as a matter of reality of life, we will put it, using your own words, that you had to engage in this practice in order to get your records put on the air?

Mr. CLARK. Please repeat the question.

Mr. SPRINGER. Will you read that back, Mr. Reporter?

(The last question was read by the reporter.)

Mr. CLARK. No, I would not agree to that, Mr. Springer, it is not a necessity, payola.

Mr. SPRINGER. May I put it in a different way.

But is was actually engaged in by other corporations than those in which you have an interest?

Mr. CLARK. I am very sorry if I seem to be picking at words, but unfortunately, sometimes they are very important.

You have asked me, I think, did I have knowledge that other companies—companies other than those in which I had an interest—engaged in what is known as payola; is that correct?

I had no firsthand knowledge, no, but I was aware of rumors in the industry.

Mr. SPRINGER. Was it not commonly talked over in the whole profession or business?

Mr. CLARK. Yes, sir.

Mr. SPRINGER. In fact, it was known by everybody in the business that everyone else was doing it, was it not?

Mr. CLARK. Everybody talked about it, Mr. Springer, I don't know how much firsthand knowledge everybody had.

Mr. SPRINGER. You knew on the 24th day of March, 1960, did you not, that that was taking place in your own outfit?

Mr. CLARK. I am sorry—

Mr. SPRINGER. Page 8 of your statement, the third paragraph:

I learned for the first time yesterday that Jamie Records has paid Tony Mammarella, the former producer of "American Bandstand", or his wife, amounts which Mr. Finfer stated were charged to promotion.

Mr. CLARK. Yes.

Mr. SPRINGER. Did you tell the investigator that in substance?

Mr. CLARK. I didn't find it out until the 28th, 2 or 3 days ago.

Mr. SPRINGER. Did you admit that on the 24th day of March, 1960, to our investigators?

Mr. CLARK. No, sir. I admitted to your investigator that Mr. Mammarella had told me of Jamie payments which he had received, and I said, "Will you outline them for me in detail?" I said, "Please get me the complete information from Mr. Mammarella," and he agreed.

Mr. SPRINGER. To turn to just one other thing, Mr. Clark, you had how many separate corporations?

Mr. CLARK. Solely owned or participations?

Mr. SPRINGER. Both.

Mr. CLARK. Around 30.

Mr. SPRINGER. Could you give me the reasons why you formed so many corporations?

Mr. CLARK. Yes, sir.

Mr. SPRINGER. You do not have to refer to your statement, you can state it in substance.

Mr. CLARK. I think it is best quoted here, because I put some time and a great deal of thought into it. Simply and very basically, there was a very good business reason for each one of these corporations.

Mr. SPRINGER. What was the basic reason?

Mr. CLARK. It depended on each individual corporation, sometimes they were different business partners, sometimes it was the motion picture business, sometimes it was the record business, and sometimes

it was the pressing business, sometime I owned it all by myself, sometimes I had a partner and sometimes I had different partners.

Mr. SPRINGER. What was the basic reason for forming the corporations, all of them?

Mr. CLARK. The normal business reason of having a corporate entity to conduct the business.

Mr. SPRINGER. Were there tax advantages to forming these corporations?

Mr. CLARK. In some, yes, in others, not particularly.

Mr. SPRINGER. In one corporation, I do not remember which one it was, you invested \$125.

Mr. CLARK. That is right.

Mr. SPRINGER. And you later sold some of the stock in that company for \$15,000?

Mr. CLARK. I think that is correct.

Mr. SPRINGER. Now, do you have what you consider an excellent tax attorney?

Mr. CLARK. I have a good tax attorney, yes.

Mr. SPRINGER. Has he told you what the tax advantage would be of having this kind of a corporation and selling your stock, where you are a minority stockholder?

Mr. CLARK. No, sir, I—I don't know what you—

Mr. SPRINGER. If you are a minority stockholder, and you bought into the corporation for \$125, and you held your stock for 6 months and sold it, you would pay what kind of a tax?

Mr. CLARK. A capital gains tax.

Mr. SPRINGER. And how much is the capital gains tax?

Mr. CLARK. Twenty-five percent, I think.

Mr. SPRINGER. I think your lawyer has done very well with you.

Now, suppose you had that \$15,000 paid to you in dividends, you are in what tax bracket?

Mr. CLARK. I don't really know.

Mr. SPRINGER. You are in about the 70 percent bracket were you not?

Mr. CLARK. As I say, I don't know.

Mr. SPRINGER. In other words, you are not well enough acquainted to know what your tax bracket was in the year 1959?

Mr. CLARK. No.

Mr. SPRINGER. It is true, is it not, that your withholding in some instances was as high as 75 percent?

Mr. CLARK. We always took out as much as possible so that if anything we would be overpaid.

Mr. SPRINGER. The advantage of forming a corporation—and I think many people have been interested in this—is that in one instance where you hold your stock for 6 months and then sell it, on that \$15,000 you would pay roughly a little less than \$4,000 is that about right?

Mr. CLARK. Excuse me.

Do I understand, or am I misinterpreting—I held the stock for 3 years.

Mr. SPRINGER. All right. But the law is, as your lawyer can advise you, if you are a minority stockholder and hold your stock for 6 months and then sell it, you pay a 25 percent capital gains tax.

But if you were paid that amount in dividends, you would pay about \$12,000 on the \$15,000; is that not right?

Mr. CLARK. I was required to divest myself of my interests in the music business, I had to sell it outright, and there was nothing else I could do but sell it.

Mr. SPRINGER. You sold some of these before you were forced to divest yourself, did you not?

Mr. CLARK. No, sir.

Mr. SPRINGER. Mr. Clark, this chart that was put up here by Computech last week was of much interest to me. It showed that on your programs, roughly speaking, over the 2 years and 4 months, you played on your program about 24 percent of the records in which you either had a direct or an indirect interest.

Mr. CLARK. Yes.

Mr. SPRINGER. And you played records in which you did not have a financial interest about 76 percent of the time. But the analysis which the committee has made—and this rather intrigues me—

Clark played 50.4 percent of the records available through his manufacturing firm. Of these plays, 65.4 were prior to any rating of the Billboard popularity charts.

And this is the interesting part.

Of these plays, 91.4 percent were prior to the peak rating in Billboard, and only 8.6 percent of the plays came after the records achieved their highest rating.

Mr. CLARK. That is true; yes, sir.

Mr. SPRINGER. Would you comment on that?

Mr. CLARK. I would be delighted.

Mr. Moss and I were discussing this earlier. I think you will find that same pattern of play for MGM records, Capital, and RCA records, or anybody's records. That is my modus operandi, to play the records earlier than most people played them. When they made the chart, my guess was either proven right or wrong, and again I reiterate it is an impossible thing to make a hit out of just any old record. The strange thing is, statistically, it is extremely difficult to dig in and show anything other than the bare bones. There is a certain amount of judgment and musical background—feel, if you will—that says you are right most of the time.

Mr. SPRINGER. In that 2 years and 4 months, Mr. Clark, you played approximately 200 of your own records, did you not?

Between 200 and 300; I can cite that for you from the chart. Now, if you were to be successful in as many as 30 of these records by exposing them, and they turned out to be hits, you would make a rather sizable amount of money, would you not?

Mr. CLARK. Excuse me, Mr. Springer. I think you will find that the vast majority of those 200 or 300 were very successful.

Mr. SPRINGER. Were very successful?

Largely due to the fact that you exposed them?

Mr. CLARK. No, sir; they were played by everybody else in the country, not without exception; but, generally speaking, what I am playing now will be played on radio stations, some radio stations, a month from now. Again, this is a terribly important radio program factor in being the earliest with the potential hits.

Mr. SPRINGER. On your program earlier, Mammarella selected roughly 50 percent and you 50 percent, did he not?

Mr. CLARK. Yes, sir.

Mr. SPRINGER. Did Mr. Mammarella suggest a considerable number of those in which he knew you were interested and he was interested?

Mr. CLARK. We used to—I would program records one day and he would program them the next day, and I had as much confidence in his knowledge of the music business as I did in my own, and I think he probably knew what was going on.

Mr. SPRINGER. How many new records do you suppose were exposed all over the country in that 2-year period?

Mr. CLARK. I have no way of knowing.

Mr. SPRINGER. Several thousand?

Mr. CLARK. I would guess so.

Mr. SPRINGER. That is all, Mr. Chairman.

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

Mr. ROGERS. I will wait.

The CHAIRMAN. Mr. Derounian?

Mr. DEROUNIAN. Mr. Clark, do you know a Bob Marcucci?

Mr. CLARK. Yes, sir.

Mr. DEROUNIAN. And what connection did you have with him?

Mr. CLARK. Excuse me, Mr. Derounian, I don't want to waste your time. I have known the man for years and years.

Mr. DEROUNIAN. Is he a talent scout, a record distributor, a record manufacturer?

Mr. CLARK. He is in the main a record manufacturer.

Mr. DEROUNIAN. Now, you testified Friday, I think, that you tried to find talented young singers, and then promote them on your program, is that right?

Mr. CLARK. I don't know as I phrased it exactly that way, Mr. Derounian.

Mr. DEROUNIAN. You didn't look for someone who was not also talented; you didn't waste your time with him, isn't that so?

Mr. CLARK. I looked for people who had acceptance, yes, sir.

Mr. DEROUNIAN. Is that a little different than talent, public acceptance?

Mr. CLARK. "Talent" is a very good word to define it, Mr. Derounian, but nobody yet has been able to come up with what is a real talent.

Mr. DEROUNIAN. Do you feel that a person you promote on your program should know how to sing? I think we had a lot of colloquy last Friday on this.

Mr. CLARK. Mr. Derounian, I think the person is worthy of an appearance if the public likes him.

Mr. DEROUNIAN. Was Mr. Marcucci a part of Binlark?

Mr. CLARK. At one time he made an investment in Binlark, yes.

Mr. DEROUNIAN. Did he ever bring to you an artist who subsequently appeared on your program?

Mr. CLARK. Many times, two in the main.

Mr. DEROUNIAN. Now, do you recall a high school boy named Fabian Forte?

Mr. CLARK. Yes, indeed.

Mr. DEROUNIAN. Who goes under the title of Fabian, because, I understand, it is Frenchy and very continental?

Mr. CLARK. He is very successful.

Mr. DEROUNIAN. Now, he has been described as "Apollo-like in stature, curly haired with a seductive eye." Is that a pretty fair description of him?

Mr. CLARK. I think if I described him that way he would have a few sharp words for me, but I know him too well.

Mr. DEROUNIAN. Do you know how this boy was discovered by Mr. Marcucci?

Mr. CLARK. Yes, I do.

Mr. DEROUNIAN. Let me read and you tell me whether it is close to the facts:

One day this Apollo-like individual was sitting on his porch in Philadelphia, in fact it was his front porch, and a Mr. Marcucci took a look at him and said, "I'm going to make a big time singer out of you."

Mr. CLARK. Me a singer, said Fabian? I never sang a note in my life.

That doesn't matter, said Marcucci, you look like a singer and that is all that counts.

Within a few months Fabian had made several personal appearances on Clark's television programs. Clark played his records incessantly, and before long the youngster had become a national teenage celebrity with a half dozen smash hit records.

In a recent frank interview, Fabian explained how he makes a record. First they put me in front of a mike, he said, and tell me to sing my number. I sing it maybe 20 times, and then the engineers take over. They listen to the tape for hours before deciding what to do. If my voice sounds too weak, they pipe the music through an echo chamber to soup it up. If it sounds drab, they speed up the tape to make it sound happier. If I hit a wrong note, they snip it out and replace it by one taken from another part of the tape. And if they think the record needs more jazzing, they emphasize the accompaniment. By the time they get done with their acrobatics, I can hardly recognize my own voice.

This comes from an article written by no fly-by-night. It appears in Red Book of March 1960, by Bill Davidson.

Mr. CLARK. I could have almost told you that before you told me.

Mr. DEROUNIAN. Well, is that an incorrect description of one of your talented proteges?

Mr. CLARK. Yes, I think that is an incorrect description.

Mr. DEROUNIAN. Now, has Mr. Forte ever sung on one of your programs?

Mr. CLARK. Many times.

Mr. DEROUNIAN. Actually, not the recording?

Mr. CLARK. Yes—not many times, he has appeared.

Mr. DEROUNIAN. I quote further from the article,

To avoid embarrassment, Clark's proteges rarely sing in public. Instead they silently mouth their words in a technique called lip sync as one of their records plays offstage. A near disaster resulted last June when Clark produced a live television spectacular and included Fabian among such seasoned performers as the McGuire Sisters, Fats Domino, and Les Paul and Mary Ford. Each of the stars was required to sing a few bars of "Mary Had a Little Lamb." Fabian had to rehearse the nursery rhyme dozens of times.

Mr. CLARK. That, incidentally, is a lie.

Mr. DEROUNIAN. Do you mean to say that none of these records are jazzed up?

Mr. CLARK. Excuse me, the last statement, Mr. Derounian, was written for effect, it is an inaccuracy.

Mr. DEROUNIAN. Was it true about the engineers jazzing up the records of Fabian?

Mr. CLARK. I have no idea, I was never there.

Mr. DEROUNIAN. I thought you said you heard him sing?

Mr. CLARK. Yes.

Mr. DEROUNIAN. Why hasn't he sung more frequently in his own flesh instead of getting these hormone treatments on the record?

You see, Mr. Clark, this may seem funny to some, but to me it is quite serious. The children of the Nation idolize you, as they did Van Doren, and they feel that when you bring a singer up on the program he has real talent. This fellow Bill Davidson, who I am sure knows more about entertainment than I do, seems to think this fellow Fabian had no talent.

Maybe there is a difference of opinion between you and him, but it is something to bring out and get the facts on the record, because if you are promoting fellows who do not have talent, I will give you my 8-year-old daughter, who can't even carry a tune, and you might even make some money on her. But that is not the purpose of your program, as you stated it, which is to encourage good music and with it the advancement of youth who have talent.

Mr. CLARK. May I comment on this?

Mr. DEROUNIAN. Surely.

Mr. CLARK. The main purpose of my television show was to entertain and amuse people. Fabian came to me—first of all, despite the tremendous pressures they put on this 16-year-old young man—he is good looking, he is an attractive boy, and is probably one of the nicest human beings I have ever met in my own life. He has been subjected to some of the most foul, vicious attacks I have ever seen. That is pretty hard to take. He recognizes his own deficiencies. He is taking steps to correct them. There is no doubt that he is successful.

I don't want to have the impression given that I have foisted him off on anybody. He was first sent to me as a young boy by his manager, his mentor, as they call them in show business, and he appeared in public without a hit record, nobody had ever heard of this boy before, and there was the most fantastic response you had ever seen, the kids took one look at him and said, "Oh," it was fantastic, the response.

Mr. DEROUNIAN. Was this before the show?

Mr. CLARK. It was before he had a record. Nobody had ever seen him or heard of him, I didn't have a hit record, and I doubt if his records had been heard on the air.

This also happened with a young man named Elvis Presley. It also happened to a man named Frankie Avalon. It is currently happening with a boy named Bobbie Rydel. If I may take just a half a second, you have quoted a well-known record, I would like to quote one for 15 seconds that I think may summarize, and it would not be my word, I hope it will be an unprejudiced appraisal, and it is interesting.

You may be interested to know Mr. Davidson wrote an article on me.

Mr. DEROUNIAN. I don't want to take the time of the committee.

Mr. CLARK. This is an article written by John W. Wilson, in the New York Times magazine section, at the first rise of parental indignation about what is going on in popular music.

First of all, let me say that I don't feel that there is anything basically wrong with any kind of music. I don't think it is morally bad or causes the problems that we are sometimes prone to foist upon it. Popular music has always through the years been popular because of the young people. They made it popular, and somehow or other they seem to be the most fanatical followers.

After a four-page article Mr. Wilson says here—

One can be reasonably sure that next year, the year after, or 5 years from now the adult audience which by then will include some of today's adolescents will be contentedly basking in uncomplicated presentations of the same stars they enjoyed today. But only two things may be said with certainty about whatever musical banter the adolescents will be following then: One, it will be pursued with passion, and two, it will be utterly incomprehensible to adults.

Mr. DEROUNIAN. What do you think of John Crosby of the Herald Tribune as a critic? Does he call his shots impartially, or did I say a bad word to you?

Mr. CLARK. I don't know.

Mr. DEROUNIAN. Here is what he said about your Fabian:

Reeling like a top, snapping his fingers and jerking his eyeballs, with hair like something Medusa had sent back, and a voice that was enormously improved by total unintelligibility.

And Mitch Miller—

Mr. CLARK. Wishes he had him.

Mr. DEROUNIAN. No.

Mr. CLARK. Excuse me; I'm sorry.

Mr. DEROUNIAN. He said:

You would not invite those unwashed kids into your living room to meet your family, why thrust them into the living rooms of your audience?

Mr. Clark, I think what you are saying is this: The singer appears on your program physically—and apparently that is your format, you get a big hunk of young man who has got a lot of cheesecake to him and the kids are thrilled by this on the television program—and then you play his records, but you don't have him sing too often. That is the way you sell records and that is a pretty cute way to do it.

And all I want you to do, if that is the case, is to admit that the singing part of his talent is not the all-important part, but his physical appearance plays a great part in whether or not you are going to let him appear on your show.

Mr. CLARK. No, that is an unkind thing to say, Mr. Derounian.

Mr. DEROUNIAN. It is not unkind—is it factual or isn't it?

Mr. CLARK. No, it is not factual.

Mr. DEROUNIAN. You would then have an ugly person appear on your show?

Mr. CLARK. Mr. Derounian, do you want me to say I have had a lot of ugly people appear on my program?

Mr. DEROUNIAN. Attractive to the teenagers?

Mr. CLARK. Mr. Derounian, all things and all different kinds of people are attracted to different types of people. Beauty—

Mr. DEROUNIAN. Beauty is relative. I know that.

Mr. CLARK. I think that is a very difficult thing, but we have had all sizes and shapes.

Mr. DEROUNIAN. How much did Mr. Marcucci make on Fabian?

Mr. CLARK. I have no idea.

Mr. DEROUNIAN. And how many records did he print?

Mr. CLARK. I don't know.

Mr. DEROUNIAN. Is it true that he had five smash hits after he appeared on your show?

Mr. CLARK. It is quite possible.

Mr. SPRINGER. Mr. Clark, what Mr. Derounian says is in fact true, isn't it, that on your particular program, for some peculiar reason which nobody can analyze, you don't have necessarily the best singers?

Mr. CLARK. By whose standards?

Mr. SPRINGER. I am talking about good music standards—any kind.

Mr. CLARK. By the people who follow what I do, we have the best people on it.

Mr. SPRINGER. I have only heard your show once. The thing that struck me when I heard Frankie Avalon on that particular program was that I thought he was singing offkey. I will admit that he was a striking personality, and I could see why there would be a tremendous appeal to young girls, and I will say that he is a perfect gentleman. That is all that I am willing to concede. But I was amazed when he started to sing. When I heard this song it was something that I couldn't understand, because I had thought he was not a good singer. I think he made a striking appearance on your program, and I can see where he has appeal. But I can see also where he is not an accomplished musician. I realize he is only 18 or 19 years old.

Mr. CLARK. Mr. Springer, there is one other interesting thing, the fact that both of those gentlemen record, their records are popular all over the world, in some places where they have never even been seen.

Mr. SPRINGER. Then in that instance I must be wrong.

I will yield back to the gentleman.

Mr. DEROUNIAN. How many performers who appeared on your show have reached the gold record goal?

Mr. CLARK. I have no idea.

Mr. DEROUNIAN. Do you really mean that?

Mr. CLARK. No.

Mr. DEROUNIAN. You don't know whether there are 1 or 10 in the last 2 years?

Mr. CLARK. How many of them sold a million copies? I really don't know.

Mr. DEROUNIAN. Do you know of anyone who has appeared on your program who sold a million copies?

Mr. CLARK. Yes.

Mr. DEROUNIAN. Can you name them?

Mr. CLARK. Bobby Darin, Connie Francis, Frankie Avalon, Fabian—there are others, I am sure.

Mr. DEROUNIAN. Are they still selling big?

Mr. CLARK. Yes, a good many of them.

Mr. DEROUNIAN. And have some of them dropped out?

Mr. CLARK. Yes, many of them.

Mr. DEROUNIAN. Thank you very much, Mr. Chairman. You have been very patient, Mr. Clark, it has been a hard afternoon, and I want to commend you for being a very willing witness.

The CHAIRMAN. Mr. Rogers?

Mr. ROGERS. Mr. Clark, Mr. Fabian is not here, is he?

Mr. CLARK. No, he is in California making a picture.

Mr. ROGERS. I thought we could shorten this by letting him sing for us here.

I just have one or two questions. Now, when you got in this business, of course you didn't realize the many byproducts that might be available in connection with an operation of this kind, did you?

Mr. CLARK. I didn't realize it, Mr. Rogers.

Mr. ROGERS. When you first got in the business, when you first started.

Mr. CLARK. Obviously, I didn't.

Mr. ROGERS. Did you think up these matters yourself, or did you have them suggested to you by someone else?

Mr. CLARK. There are so many different enterprises, I don't know, some of which I have dreamed up and others I have read about that other people were doing, and sometimes somebody would come to me with a good idea.

Mr. ROGERS. That is the point. Did people come to you with suggestions and say, "Now, Dick, here is a good chance to make some money," getting into another business, or a related or associated operation?

Mr. CLARK. Yes, that is a fair statement.

Mr. ROGERS. Now, who were some of those people?

Mr. CLARK. Let me see. I start out with, Tony came to me once and said "Do you want to make a stuffed doll? Put your name on it."

Mr. ROGERS. I am not talking about that—you know what I am talking about now, Mr. Clark—I mean the big operation, getting hold of the copyrights, and getting into, what do you call it, the record pressing business—

Mr. CLARK. Yes, sir.

Mr. ROGERS. The publishing business, and things of that kind. Now, you didn't think those up yourself, did you? Didn't someone suggest those to you?

Mr. CLARK. Those were very normal, Mr. Rogers, I think the only discussion I have had regarding the pressing business was with my partner, Mr. Lowe, when we both—and I am not sure who got the idea first—as I recall, it was his idea—I don't know whether to give him full credit for it or not.

Mr. ROGERS. You said those were normal operations. Now, do you mean by that that other people in your same business were doing the same thing?

Mr. CLARK. Yes, sir.

Mr. ROGERS. And are they still doing that, Mr. Clark?

Mr. CLARK. Yes, sir.

Mr. ROGERS. Now, Mr. Clark, you have told the committee that you divested yourself of all of these other and conflicting interests?

Mr. CLARK. Yes, sir.

Mr. ROGERS. And I believe you said in your statement that you sold those at bargain basement prices, or words to that effect. And it is very painful to go in to whether or not the divestiture was real or not. But I do want to ask you a question about the nature of the divestiture, that is, whether or not you retained any interest in those associated businesses and businesses that you felt were in conflict?

Mr. CLARK. Did I retain any interest?

Mr. ROGERS. Did you retain any interest at all?

Mr. CLARK. No, sir.

Mr. ROGERS. Did you dispose of any of them in the nature of trusts?

Mr. CLARK. No, sir.

Mr. ROGERS. Did you retain any reversionary interest in any of them so that if you do go off the air the business comes back to you?

Mr. CLARK. No, sir.

Mr. ROGERS. Were any of them disposed of to your close relatives or close friends with an understanding that they might be given back to you, or some proceeds given back to you?

Mr. CLARK. No, sir.

Mr. ROGERS. What you mean, then, Mr. Clark, is this, that you have truly and absolutely divested yourself of these?

Mr. CLARK. I swear this under oath, yes.

Mr. ROGERS. Why did you do that?

Mr. CLARK. Because, in order to continue as a television performer, I had to make the choice of going full time into the music industry or full time and solely into the television and broadcasting business.

Mr. ROGERS. Why did you have to make that decision?

Mr. CLARK. This was a decision, as I pointed out in my statement, after long and lengthy discussions with my ABC friends, that perhaps in the peculiar position that I hold, it would be best to do it, make the choice.

Mr. ROGERS. Did ABC tell you to either get rid of those other businesses or you would be taken off the network?

Mr. CLARK. I had a choice.

Mr. ROGERS. Well, that was the choice, wasn't it?

Mr. CLARK. Yes, sir.

Mr. ROGERS. And your decision—

Mr. CLARK. Excuse me.

Mr. ROGERS. Go right ahead.

Mr. CLARK. I don't want to imply that we sat down and discussed this in all honesty and they said, "Do you think now that you see the sense in dividing yourself in these companies? It could make more sense." So there was not any threat or do it or get off routine, it was obvious, though, I am sure that if I were to continue that I had to divest myself, sir.

Mr. ROGERS. I did not mean to imply that any threat was made. What I mean, it was a clear-cut business situation, wasn't it? Your activities were creating a cloud insofar as the entire operation was concerned, and your choice was whether or not to continue as you were, going under a cloud, or to divest yourself from one or the other, was it not?

Mr. CLARK. Yes, sir.

Mr. ROGERS. And you decided to divest yourself of everything except your continued appearance on the network.

Mr. CLARK. Not everything, only music—the music industry in general, anything to do with music.

Mr. ROGERS. Now, Mr. Clark, you said it was normal for these other people to have these businesses, and that there were other people presently doing that. Do you know of any of them now that have extensive holdings in other businesses that would be similar to the operation you were engaged in?

Mr. CLARK. Mr. Rogers, there are many show business personalities who have been actively engaged in the music business and all facets, and in show business and all facets. There is no one right now who holds a similar position on television that I do, or on radio, so I would know of no one in that comparable position.

Mr. ROGERS. I am not going to ask you to name those. You were asked, though, by some of these companies from which you received money to buy into the company or become a part of the company, whether you bought it or not, and to sit in a position of advice on what records to play and what records not to play; were you not?

Mr. CLARK. No, excuse me, sir, there is a rather important distinction there.

Mr. ROGERS. There is what?

Mr. CLARK. There is an important distinction there. The company services that I performed for my own record companies, I acted—Mr. Derounian mentioned a man named Mitch Miller. I acted in a similar capacity as this man acted. I selected material, grouped artists, selected songs—

Mr. ROGERS. That would be your own company?

Mr. CLARK. Yes; that is the only place I ever received any income.

Mr. ROGERS. Were you ever offered an opportunity to serve in that same capacity by a company which you were not interested in or you do not own?

Mr. CLARK. Yes; as a matter of fact I was.

Mr. ROGERS. What companies made those offers?

Mr. CLARK. RCA Victor.

Mr. ROGERS. What did they offer you, Mr. Clark?

Mr. CLARK. They had what we called in our business a “stableful” of artists, many of whom had backlog material that they wanted to be packaged into albums. Their desire was to have these albums released as “Dick Clark Presents”—whatever it is, the Joe Jim Dandy Six, or whatever it was—they wanted some of the songs rearranged or repackaged to recapture what they thought was the market I knew, they wanted me to send to them master recordings in the new acetates that I ran across, tip them as to regional best sellers.

Mr. ROGERS. What were they going to pay you for that?

Mr. CLARK. We never had a specific discussion that got down to dollars and cents, but they intimated it would be considerable. It would be conceivable to make \$50,000 a year.

Mr. ROGERS. They intimated to you that would be. Is that the only company that did make this offer to you?

Mr. CLARK. It was indirect offer from another, but I never had any direct conversation with an official of the company, so I don't think we have to talk about it.

Mr. ROGERS. Any other company?

Mr. CLARK. No.

Mr. ROGERS. I noticed in reading your statement that you indicated that there was nothing legally wrong with what you were doing.

Now, is it your position now, and in view of having divested yourself of it, that there was some tinge of immorality?

Mr. CLARK. None whatsoever.

Mr. ROGERS. Or immoralness about this?

Mr. CLARK. None whatsoever.

Mr. ROGERS. In other words, you still feel that was absolutely all right?

Mr. CLARK. Under the ground rules of the game at that time, yes.

Mr. ROGERS. I am not talking about the ground rules of the game, because the ground rules of the game are the legality. What I am talking about is this: Do you feel that there was no tinge of immorality about it at all, that it was all right to do that?

Mr. CLARK. Yes, sir; I do.

Mr. ROGERS. Whether it was against the law or not?

Mr. CLARK. Would you say that again, please?

Mr. ROGERS. Well, let's confine it to one thing, and it will hurry it up.

What you are doing with these other businesses in connection with pushing the records on your shoulder—now, that was the main thing that caused the ABC, do you not think, to ask you to divest yourself of one or the other?

Mr. CLARK. I don't agree with the way the question is phrased. I will try to answer it, but it will take me a little longer than "yes" or "no."

Mr. ROGERS. Why did ABC ask you to divest yourself of these other interests? Let's put it that way.

Mr. CLARK. That, I think, is in this statement, Mr. Rogers. There was a conceivable conflict of interest—it could be an implied conflict, it could be a direct conflict, or it could be no conflict, but as long as there was a question, they said, "Don't you think it would be best if we removed any possible conflict?" and I thoroughly agreed.

Mr. ROGERS. The point is that there was a question or a cloud over the activities; is that not correct, Mr. Clark?

Mr. CLARK. Only at that particular moment. Up to that time there had never been a question.

Mr. ROGERS. Now, the matters that were brought out with regard to the plugs that you were engaged in, I believe you stated that you did not know of anything bad about that?

Mr. CLARK. Well, sir, I think if you will—and I am not being facetious—if you will go home tonight and watch television, you will see "airplane transportation provided by"——

Mr. ROGERS. Yes, I have seen all that; that is the point.

Is it your point that it is all right to do that, and you collect the money for it, not the network or the station?

Mr. CLARK. There was at the time we had this arrangement, Mr. Rogers, nothing wrong with it as far as I knew.

Mr. ROGERS. You mean nothing illegal about it on a Federal basis?

Mr. CLARK. I am not a lawyer. It was such a common practice that I never gave it a moment's thought.

The CHAIRMAN. Would the gentleman yield?

Mr. ROGERS. I would be happy to yield to the chairman.

The CHAIRMAN. You have just touched on something that is one of the major objectives of this committee and a most important phase of it.

Section 317 of the Federal Communications Act is in very plain language. There is a lot of difference of opinion as to the background and the legislative history of what it was intended to do. But I cannot see that there is any real difference between, if I understand it,

between you and American Airlines and what occurred between Mr. Hess of the Hess Department Store in Pennsylvania. He made his move in order to get one of his employees on one of the quiz show programs by negotiating with some other employees, not the network producers.

It does, then, come in sharp conflict apparently with the spirit of the law. Evidently it has grown up as a practice in that most everybody thought, "Well, what difference does it make; nobody pays any attention to it anyway."

Now, we have under consideration right at this moment—I have got some very fine lawyers in here today working with me and my staff on revisions of section 317, which comes out of precisely what you are talking about now, you and Mr. Rogers, about this kind of, what do you call it, plugging, or whatever it is. It is one thing to have a law, and it is another thing to pay no attention to it.

I do know that it creates a lot of confusion in the minds of a lot of people just like it was in the case of the Federal Communications Commission in connection with some of these competitive television applications where people would come and testify, and yet, in direct conflict with the law, they followed up later by talking to the members of the Commission. But nobody paid any attention to the law.

When I say "nobody," that is everybody who was responsible for upholding the law.

And I take this opportunity, and I have not had much chance during these entire hearings to say this, that there runs through a large section of the industry an attitude, "Don't do anything, leave it like it is." I know, because I have been having a hard time in trying to provide language and proposed legislation that would be needed, but yet it would not become punitive. And I want to say that in this proceeding right now it would very well behoove all of you, whether you are producers or talent or the industry, to recognize these facts and come to grips with it and help us out. It is only in the last few days that we have been receiving that degree of cooperation.

As I say, we have had some good lawyers in here today representing various and sundry groups and interested parties in connection with such legislation, and I am glad to say we are making some progress. But this is precisely the very thing—you are entitled to know whether you are complying with the law or not.

Since 1934 we have had the same lack in the law. Apparently it has been interpreted different ways by different people, because we get a regulation that comes out of it every few years, and I got notice the other day that if that is strictly construed and followed through, then I should say anybody in your position or any broadcasting facility would be in strict violation of the law in doing what they are doing.

So I say to you, Mr. Clark, there is no better way that you can help yourself and help your business and your enterprises and the broadcasting industry, as well as the public, than by taking an attitude of trying to clear up some of these things so we can avoid such experiences that you have been going through with for 2 days—and a lot of other people have. And that is a very serious problem here.

Mr. Rogers.

Mr. ROGERS. Just one question.

Thank you, Mr. Chairman.

I believe you testified that the Drexel Corp.—is that correct—received the money for these plugs?

Mr. CLARK. Yes.

Mr. ROGERS. And I believe you said you were the owner of the entire stock issued by the Drexel Corp.?

Mr. CLARK. Yes.

Mr. ROGERS. Did you discuss with any lawyers, Mr. Clark, as to whether you were getting in a danger zone as far as the commercial bribery statute in New York is concerned?

Mr. CLARK. No, sir.

Mr. ROGERS. Do you not think it is getting dangerously near the commercial bribery statute in the State of New York?

Mr. CLARK. Mr. Rogers, I can only repeat; I am not a lawyer, though I have been in the business many years. This was not at all an unusual practice, and I would not stop for a moment to wonder about it, because the very largest of television shows did exactly this and the very smallest did it, locally and nationally. It appeared to be a standard practice.

The CHAIRMAN. Would the gentleman yield at that moment?

Mr. ROGERS. Yes.

The CHAIRMAN. I think this is a very important point that is raised here, and I think the record should not be left wide open. I do not believe that there is any implication of any possible conflict with the laws of New York.

By the way, I understood there was a good deal of discussion about this. Here is a letter that I was going to put in the record which does show that he got clearance from his employer. And I think this letter ought to go into the record.

(Letter referred to follows:)

LAW OFFICES, ROSEN, SETON & SARBIN,
New York, N.Y., April 1, 1959.

Re Drexel Productions, Inc.—American Airlines.

Mr. MARVIN JOSEPHSON,
Broadcast Management, Inc.,
New York, N.Y.

DEAR MARVIN: I return the duplicate and the original of the proposed agreement of February 27, which look legally OK to me, since you have informed me that you have cleared this with ABC. I particularly commend you on obtaining item 6(g).

Will you please send me a conformed copy for my files, after this has been signed.

Cordially yours,

(Signed) Chuck
(Typed) CHARLES B. SETON.

Enclosures: Original/Duplicate-Original Agreement dated February 27, 1959.

Mr. ROGERS. He got clearance from his employers, and, therefore, would not be in violation?

The CHAIRMAN. Yes.

Mr. ROGERS. That is all I have.

Just one other thing, though.

The man that handled this for you, Mr. Clark, was a lawyer, was he not?

Mr. CLARK. What is that, sir?

Mr. ROGERS. I mean the man who handled this business for you was an attorney, was he not?

Mr. CLARK. My personal manager?

Mr. ROGERS. Yes.

Mr. CLARK. He was an attorney.

Mr. ROGERS. What was his name.

Mr. CLARK. Marvin Josephson.

Mr. ROGERS. Thank you very much.

That is all, Mr. Chairman.

The CHAIRMAN. Mr. Clark, I do not intend to detain you further with any questions, except I thought I did have one question I wanted to ask you. I think everything has been pretty fairly covered in these 2 days. I imagine they have been long days for you.

What do you do, or how do you bring about the situation that causes all these fine young people in attendance in these shows to squeal so loud at a particular time? Do you have some kind of a cue that you give them to do it? Or is that one of your trade secrets that you do not want to give away?

Mr. CLARK. Mr. Harris, this is a very basic law of nature. Most of the young people who squeal are girls who are young ladies—again I see you are smiling, so—when you and I can explain women, we can explain why these girls squeal. There is no cue; we don't cue them.

The CHAIRMAN. I think I remember when Frank Sinatra was way up they used to have this all the time. There were always reports about how it was brought about, and I just wondered if you did actually bring this on as part of the show?

Mr. CLARK. No, this is a young version of applause, and it is a little more vocal, and a little more exciting.

Mr. SPRINGER. Mr. Chairman, some months ago I saw this program in New York, and it was the greatest psychological phenomenon I have even seen in my life. And I can assure you that there were no cues. I was much interested in the whole thing. I would say 9 out of 10 in the audience were young people, mainly girls. With the appearance of a boy like Frankie Avalon, who is quite a masculine looking young fellow, and these others that appeared—it just seemed that the minute they appeared, everybody went into this psychological squealing.

I am a little more educated as a result of that experience as to what these shows are like. But what brought them such popularity is impossible to decipher.

The CHAIRMAN. Perhaps, Mr. Springer, it has been too long since you and I were at that age.

Mr. Clark, we know of your importance to the broadcast industry, and particularly to the young people of the country. You are obviously a fine young man, you started in this business young, and you are attractive to young people; therefore, your responsibilities with your influence can be great. I am sure you have realized that for a long time.

Mr. CLARK. I have.

The CHAIRMAN. It is not my purpose to conclude this with any type of lecture. It is not my job; it is not my duty. You have made from your own viewpoint, I think, a very good witness. You have stated very frankly in your statement that you could not speak more truthfully than to say that it was not a great pleasure for you to be here. And I can very well understand that. It does not give me any pleas-

ure to have to inquire into matters where questionable public interest and policies are involved.

It is our duty and responsibility to determine whether or not certain practices that have been exposed are in the public interest, and I do not think that there is any question in your mind or anybody else's mind, from your actions that took place after these things began to develop and unfold, since last summer. I do not think you are the inventor of the system; I do not think you are even the architect of it, apparently. I think you are the product that has taken advantage of a unique opportunity in exposing to the public, to the teenagers, the young people, the television productions of this country—and I say that in all sincerity, because our mail indicates concern about the children, and television productions.

Now, you have told us how you have yourself recognized this situation and have voluntarily endeavored to remove any question so that it would not be facing you, the question which you can answer.

I realize your situation. I did not envy you. I am not envious of you, I will put it that way, because you have been successful. I like to see successful people, and especially young people. I like to see you be successful in a way that you can keep going and make your mark in life as you have an opportunity to do.

Now, apparently, it was decided between you and your employer that there was something to this. The Supreme Court has said, as you perhaps know, that in the movie industry they could not control all elements, and they struck down that practice.

I think that is the very serious problem here, and the real issue to us in our responsibility here, and one which you recognize with your employer, is this business of controlling all the elements, because anyone who gets control of all the elements of production and broadcasting in our communications media of this country becomes a rather powerful individual.

So you yourself, at the suggestion of ABC, have undertaken to divest yourself of all this. You have been very helpful to the committee in the consideration of its responsibility. And I want to compliment you for that.

There are some questions, of course, raised in the minds of the members, as you know. We have tried to be objective in developing all the facts, because we did not bring you here to expose you, but just to expose your purposes. If we cannot be helpful in the way of legislative purpose, then we cannot accomplish anything. But I think we have. You have given us a different light on the use of the broadcast media that has been presented to us by the admitted payola people, but in a different light—the use of these facilities and the questions of policy.

If we have inconvenienced you today in your contractual obligation, and in your responsibility to your audience and the public, we are very sorry for that. But nevertheless, it becomes a duty and obligation to do the best we can.

So with the thanks of the committee, and in the hope that you will not feel this is the kind of a situation that we just deliberately tried to bring up, but simply tried to be purely objective, we hope in the long run it will be helpful to you and the public.

So, if you like, you may be excused.

Mr. CLARK. I would like to be excused.

The CHAIRMAN. Before you go, it looks like these American Airlines letters, since they have been referred to so much should be included in the record, at the proper place should there be any question about them.

(Letters referred to follow:)

AMERICAN AIRLINES,
New York, N.Y., April 7, 1959.

Mr. MARVIN JOSEPHSON,
Drexel Productions, Inc.,
New York, N.Y.

DEAR MARVIN: Enclosed are two signed and initialed copies of our agreement for the "Dick Clark Show." I think that everything now meets with your approval. If not, please let me know.

If you have the opportunity next week, give me a call and let's get together for lunch.

Many thanks and best regards.

Sincerely,

AMERICAN AIRLINES, INC.

(Signed) Ted

(Typed) TED M. HOWELL, *Public Relations.*

AMERICAN AIRLINES,
New York, N.Y., May 23, 1959.

DREXEL PRODUCTIONS, INC.,
New York, N.Y.
(Attention of Mr. Marvin Josephson.)

DEAR MR. JOSEPHSON: Please refer to our letter of agreement, dated February 27, 1959, covering the furnishing of promotional and/or advertising services for us during the "Dick Clark Show" television program, a live television program originating in New York and scheduled to be telecast every Saturday evening over the facilities of the American Broadcasting Co.'s television network from 7:30 to 8 p.m., e.s.t./e.d.t.

With the understanding that the provisions and stipulations of the aforementioned agreement remain unchanged and in effect, such agreement is hereby extended for 13 consecutive weeks, with such 13-week period to become effective with the telecast scheduled for Saturday, May 30, 1959.

If the foregoing correctly sets forth your understanding of our agreement, will you kindly so indicate your acceptance by signing the enclosed counterpart of this letter and returning it to us at your earliest convenience.

Very truly yours,

AMERICAN AIRLINES, INC.,
WILLIS PLAYER,
Vice President, Public Relations.

Accepted:

DREXEL PRODUCTIONS, INC.,
MARVIN JOSEPHSON,
Vice President.

JUNE 17, 1959.

AMERICAN AIRLINES,
New York, N.Y., August 21, 1959.

DREXEL PRODUCTIONS, INC.,
New York, N.Y.
(Attention of Mr. Marvin Josephson.)

DEAR MR. JOSEPHSON: Please refer to our letter of agreement, dated February 27, 1959, and subsequent letter of renewal dated May 23, 1959, covering the furnishing of promotional and/or advertising services for us during the "Dick Clark Show" television program, a live television program originating in New York and scheduled to be telecast every Saturday evening over the facilities of the American Broadcasting Co.'s television network from 7:30 to 8 p.m., e.s.t./e.d.t.

With the understanding that the provisions and stipulations of the aforementioned agreement remain unchanged and in effect, such agreement is hereby extended for 1 week to include the telecast of the program on Saturday, August 29, 1959.

If the foregoing correctly sets forth your understanding of our agreement, will you kindly so indicate your acceptance by signing the enclosed counterpart of this letter and returning it to us at your earliest convenience.

Very truly yours,

AMERICAN AIRLINES, INC.,
WILLIS PLAYER,
Vice President-Public Relations.

Accepted:

DREXEL TELEVISION PRODUCTIONS, INC.,
MARVIN JOSEPHSON,
Vice President.

September 10, 1969.

JANUARY 4, 1960.

From: Mr. Dick Clark.
To: Marvin Josephson.

Our profit on the American Airlines deal of last year, after taking into account airline expenses by us, not only for Drexel Television Productions, Inc., but also for Drexel Pictures Corp., Drexel Films Corp., and March Productions Corp., amounted to \$3,049.60.

We have now drawn a check in the amount of \$304.96 from Drexel Television Productions, Inc., to Broadcast Management, Inc., for commissions due on this income item.

APPENDIXES TO STATEMENT OF DICK CLARK

APPENDIX A

CLICK CORP.

1. Type of business: Primarily packages television shows.
2. Address: 47-6 Revere Road, Drexel Hill, Pa.
3. Date of incorporation: March 8, 1957.
4. State of incorporation: Pennsylvania.
5. Stockholders: Richard W. Clark (250 shares class A); Barbara M. Clark (3 shares class A); Margaret W. Mallery (1 share class B).
6. Directors: Richard W. Clark, Barbara M. Clark, and Marvin Josephson.
7. Officers: President, Richard W. Clark; vice president, Marvin Josephson; secretary-treasurer, Barbara M. Clark.

JAMIE RECORD CO.

1. Type of business: Phonograph record manufacturing.
2. Withdrawal by Richard W. Clark: Mr. Clark sold his 25-percent interest in Jamie back to the corporation in December 1959. The facts set out below describe the corporation prior to his withdrawal.
3. Address: Philadelphia, Pa.
4. Date of incorporation: May 21, 1956.
5. State of incorporation: Pennsylvania.
6. Stockholders: Richard W. Clark (25 percent); Harry Finfer (25 percent); Harold B. Lipsius (25 percent); Samuel D. Hodge (25 percent).
7. Directors: Harry Finfer, Harold Lipsius, and Samuel D. Hodge.
8. Officers: President, Harry Finfer; secretary-treasurer, Harold Lipsius.

BINLARK CO.

(Limited partnership)

1. Type of business: Financing theatrical film.
2. Place of business: New York, care of Rosen, Seton & Sarbin, Esqs., 15 West 46th Street.

3. Date of filing of partnership certificate : July 19, 1957.
4. General partner : Bernard Binnick.
5. Limited partners : Bernard Binnick, Simon Singer, Philip Katz, Ruth Liebo-witz, Herman Binnick, Solis S. Cantor, Richard W. Clark, Robert Marcucci, and David Rosen.
6. Date of dissolution : February 1960.

SEA-LARK ENTERPRISES, INC.

(Recently renamed : The Charill Corp.)

1. Type of business : Primarily music publishing.
2. Divestment of record interests : Music catalogs sold in January 1960.
3. Address : 47-6 Revere Road, Drexel Hill, Pa.
4. Date of incorporation : July 29, 1957.
5. State of incorporation : Pennsylvania.
6. Stockholders : Wholly owned by Richard W. Clark and members of his family.
7. Directors : Richard W. Clark, Barbara M. Clark, and Margaret W. Mallery.
8. Officers : President, Richard W. Clark ; vice president, Margaret W. Mal- lery ; secretary and treasurer, Barbara M. Clark.

CHIPS DISTRIBUTING CORP.

1. Type of business : Phonograph record distributing.
2. Withdrawal by Richard W. Clark : Mr. Clark sold his one-third interest in Chips back to the corporation in December 1959. The facts set out below describe the corporation prior to his withdrawal.
3. Address : Philadelphia, Pa.
4. Date of incorporation : December 23, 1957.
5. State of incorporation : Pennsylvania.
6. Stockholders : Nominee of Richard W. Clark, Bernard Lowe, and Harry Chipetz.
7. Directors : Harry Chipetz, Allan Cohen, and Thomas B. Thomas.
8. Officers : President and treasurer, Harry Chipetz ; secretary, Allan Cohen.

SWAN RECORD CORP.

1. Type of business : Phonograph record manufacturing.
2. Withdrawal by Richard W. Clark : Mr. Clark sold his 50-percent interest in Swan back to the corporation in December 1959. The facts set out below describe the corporation prior to his withdrawal.
3. Address : 1405 Locust Street, Philadelphia, Pa.
4. Date of incorporation : December 1957.
5. State of incorporation : Delaware.
6. Stockholders : Nominee of Richard W. Clark (50 percent) ; nominee of Mammarella (25 percent) ; Bernard Binnick (25 percent).
7. Directors : Harry Chipetz, A. P. Stagliano, and Bernard Binnick.
8. Officers : President, Harry Chipetz ; vice president, A. P. Stagliano ; secre- tary-treasurer, Bernard Binnick.

GLOBE RECORD CORP.

1. Type of business : Phonograph record manufacturing.
2. Divestment of record interests : Matrices disposed of and company to be dissolved.
3. Address : In care of Rosen, Seton & Sarbin, 15 West 46th Street, New York, N.Y.
4. Date of incorporation : March 10, 1958.
5. State of incorporation : New York.
6. Stockholders : Wholly owned by Richard W. Clark through nominee.
7. Directors : Richard W. Clark, Barbara M. Clark, and Marvin Josephson.
8. Officers : President and treasurer, Richard W. Clark ; vice president and secretary, Barbara M. Clark.

KINCORD MUSIC CORP.

1. Type of business: Music publishing.
2. Divestment of record interests: Catalogs disposed of and company being dissolved.
3. Address: In care of Rosen, Seton & Sarbin, 15 West 46th Street, New York, N.Y.
4. Date of incorporation: March 10, 1958.
5. State of incorporation: New York.
6. Stockholders: Wholly owned by Globe Record Corp.
7. Directors: Richard W. Clark, Barbara M. Clark, and Marvin Josephson.
8. Officers: President and treasurer, Richard W. Clark; vice president and secretary, Barbara M. Clark.

ROSHO CORP.

1. Type of business: Show business and entertainment business.
2. Address: 15 West 46th Street, New York, N.Y.
3. Date of incorporation: March 27, 1958.
4. State of incorporation: New York.
5. Stockholders: Wholly owned by Richard W. Clark.
6. Directors: Richard W. Clark, Barbara M. Clark, and Charles B. Seton.
7. Officers: President and treasurer, Richard W. Clark; vice president, Charles D. Reeves; vice president, Marvin Josephson; secretary Charles B. Seton.

MALLARD PRESSING CORP.

1. Type of business: phonograph record pressing.
2. Withdrawal by Richard W. Clark: Mr. Clark sold his 50 percent stock interest and resigned as an officer and director and his wife, Barbara Clark, resigned as a director, in December 1959. The facts set out below describe the corporation prior to his withdrawal.
3. Address: 1626 Federal Street, Philadelphia, Pa.
4. Date of incorporation: May 26, 1958.
5. State of incorporation: Pennsylvania.
6. Stockholders: Richard W. Clark, 50 percent; Bernard Lowe, 50 percent.
7. Directors: Richard W. Clark, Bernard Lowe, Barbara Clark, and Charles B. Seton.
8. Officers: President, Richard W. Clark; vice president and treasurer, Bernard Lowe; secretary, Charles B. Seton.

SRO ARTISTS, INC.

1. Type of business: Artist management.
2. Withdrawal by Dick Clark: Mr. Clark relinquished his stock subscription interest in SRO in October 1959. The facts set out below describe the corporation prior to his withdrawal.
3. Address: 200 West 57th Street, New York, N.Y.
4. Date of incorporation: Spring 1958.
5. State of incorporation: New York.
6. Stockholders: Richard W. Clark (25 percent stock subscription interest), Al Wilde (75 percent).
7. Directors: [Blank].
8. Officers: [Blank].

THE JANUARY MUSIC CORP.

(Recently renamed the Montego Corp.)

1. Type of business: Primarily music publishing.
2. Divestment of record interests: Music catalogs sold in January 1960.
3. Address: Care of Charles Smith, Esq., 12 South State Street, Philadelphia, Pa.
4. Date of incorporation: June 1958.
5. State of incorporation: Pennsylvania.
6. Stockholders: Wholly owned by Richard W. Clark and members of his family.
7. Directors: Richard W. Clark, Barbara M. Clark, and Margaret W. Mallery.
8. Officers: President, Richard W. Clark; vice president, Margaret W. Mallery; secretary, Barbara M. Clark; treasurer, Barbara M. Clark.

MARCH PRODUCTIONS CORP.

1. Type of business: Show business and entertainment business.
2. Address: Care of U.S. Corporation Co., 129 South State Street, Dover, Del.
3. Date of incorporation: July 13, 1958.
4. State of incorporation: Delaware.
5. Stockholders: Wholly owned by Richard W. Clark.
6. Directors: Richard W. Clark, Richard A. Clark, and Julia B. Clark.
7. Officers: President-treasurer, Richard W. Clark; vice president-secretary, Richard A. Clark; vice president, Marvin Josephson.

DREXEL TELEVISION PRODUCTIONS, INC.

1. Type of business: TV show packaging and production.
2. Address: 680 Fifth Avenue, New York, N.Y.
3. Date of incorporation: July 21, 1958.
4. State of incorporation: New York.
5. Stockholders: Wholly owned by Richard W. Clark.
6. Directors: Richard W. Clark, Barbara M. Clark, Richard A. Clark, Charles Reeves, Marvin Josephson.
7. Officers: President and treasurer, Richard W. Clark; executive vice president, Charles Reeves; vice president, Marvin Josephson; secretary, Charles B. Seton.

FEBRUARY CORP.

1. Type of business: Weekly magazine article.
2. Address: Care of U.S. Corporation Co., 129 South State Street, Dover, Del.
3. Date of incorporation: July 29, 1958.
4. State of incorporation: Delaware.
5. Stockholders: 10 shares, Richard W. Clark as trustee for Barbara M. Clark.
6. Directors: Richard W. Clark, Richard A. Clark, Julia B. Clark.
7. Officers: President and treasurer, Richard W. Clark; vice president and secretary, Richard A. Clark; vice president, Marvin Josephson.

ARCH MUSIC CO., INC. (RECENTLY RENAMED TERMINUS CORP.)

1. Type of business: Primarily music publishing.
2. Divestment of record interests: Music catalogs sold in January 1960.
3. Address: 1650 Broadway, New York, N.Y.
4. Date of incorporation: December 14, 1948.
5. State of incorporation: New York.
6. Stockholders: Wholly owned by Richard W. Clark.
7. Directors: Richard W. Clark, Barbara M. Clark, Charles B. Seton.
8. Officers: President, Richard W. Clark; secretary-treasurer, Barbara M. Clark; vice president, Marvin Josephson.

RAYE PRODUCTS, INC.

1. Type of business: Manufacturer of phonograph record carrying cases.
2. Withdrawal of Richard W. Clark: The stock held by Mr. Clark as nominee for Sea-Lark Enterprises was sold back to Raye, and Mr. Clark resigned as director in January 1960. The facts set out below describe the corporation prior to this withdrawal.
3. Address: Care of Leon Meltzer, Esq., 1529 Walnut Street, Philadelphia, Pa.
4. Date of incorporation: December 1958.
5. State of incorporation: Pennsylvania.
6. Stockholders: Richard W. Clark, as nominee for Sea-Lark Enterprises (460 shares, class B, nonvoting); Anthony Mammarella (210 shares, class B, nonvoting); Edward Barsky (330 shares, class B, nonvoting); Richard W. Clark, as nominee for Sea-Lark Enterprises (5 shares, class A, voting); Edward Barsky (5 shares, class A, voting).
7. Directors: Edward Barsky, Anthony Mammarella, Richard W. Clark.
8. Officers: President and treasurer, Edward Barsky; secretary, Anthony Mammarella.

POST-GRAD PRODUCTS, INC.

1. Type of business: Formerly cosmetics, now television performances.
2. Address: Care of Broadcast Management, Inc., 680 Fifth Avenue, New York, N.Y.

3. Date of incorporation: January 12, 1959.
4. State of incorporation: New Jersey.
5. Stockholders: Richard W. Clark (10 shares class A, common (voting)); Richard W. Clark (204 shares class B common); Richard W. Clark (25 shares preferred); Marvin Josephson (6 shares class B common); Fred Griffith and Vincent Shedler (20 shares class B common; 5 shares preferred).
6. Directors: Richard W. Clark, Barbara M. Clark, Marvin Josephson.
7. Officers: President, Marvin Josephson; vice president, Arthur Zieger; secretary, Charles B. Seton; treasurer, Barbara M. Clark.

DREXEL SHOWS, INC.

1. Type of business: TV show packaging and production.
2. Address: 680 Fifth Avenue, New York, N.Y.
3. Date of incorporation: January 1959.
4. State of incorporation: New York.
5. Stockholders: Wholly owned subsidiary of Drexel Television Productions, Inc.
6. Directors: Richard W. Clark, Charles B. Seton, Barbara M. Clark, Charles D. Reeves, Marvin Josephson.
7. Officers: President-treasurer, Richard W. Clark; executive vice president, Charles D. Reeves; secretary, Charles B. Seton; vice president, Marvin Josephson.

DREXEL FILMS CORP.

1. Type of business: Primarily motion-picture production and exploitation.
2. Address: Care of the Prentice-Hall Corp. System, Inc., 229 South State Street, Dover, Del.
3. Date of incorporation: January 2, 1959.
4. State of incorporation: Delaware.
5. Stockholders: Wholly owned by Richard W. Clark.
6. Directors: Richard W. Clark, Barbara M. Clark, Charles B. Seton, Marvin Josephson, Charles D. Reeves.
7. Officers: President-treasurer, Richard W. Clark; executive vice president, Charles D. Reeves; vice president, Marvin Josephson; secretary, Charles B. Seton.

CLABAN PUBLISHING CORP.

1. Type of business: Publishing.
2. Address: Care of Charles B. Seton, 15 West 46th Street, New York, N.Y.
3. Date of incorporation: February 19, 1959.
4. State of incorporation: New York.
5. Stockholders: Richard W. Clark (25 percent), Barbara M. Clark (25 percent), Banner Magazines, Inc. (50 percent).
6. Directors: Monroe Froehlich, Jr., Doris Froehlich, Richard W. Clark, Charles B. Seton.
7. Officers: President, Monroe Froehlich, Jr.; vice president, Doris Froehlich; secretary, Charles B. Seton; treasurer, Richard W. Clark.

DREXEL PICTURES CORP.

1. Type of business: Motion-pictures production.
2. Address: 680 Fifth Avenue, New York, N.Y.
3. Date of incorporation: March 5, 1959.
4. State of incorporation: Delaware.
5. Stockholders: Wholly owned by Richard W. Clark.
6. Directors: Richard W. Clark, Barbara M. Clark, Charles Reeves, Marvin Josephson, Charles B. Seton.
7. Officers: President-treasurer, Richard W. Clark; vice president, Marvin Josephson; secretary, Charles B. Seton; executive vice president, Charles D. Reeves.

STARTIME INDUSTRIES CORP.

1. Type of business: Manufacture and sale of stuffed toy animals.
2. Withdrawal of Richard W. Clark: The 40-percent interest held by Mr. Clark as nominee for February Corp. was sold back to Startime, and Mr. Clark resigned as vice president and director in January 1960. The facts set out below describe the corporation prior to this withdrawal.

3. Address: Second Street at Trainer, Chester, Pa.
4. Date of incorporation: May 4, 1959.
5. State of incorporation: Delaware.
6. Stockholders: Richard W. Clark as nominee for February Corp. (40 percent); Anthony Mammarella (20 percent); A. N. Albertini (20 percent); J. R. McCausland, Jr. (20 percent).
7. Directors: Richard W. Clark, Anthony Mammarella, J. R. McCausland, Jr., A. N. Albertini.
8. Officers: President, A. N. Albertini; executive vice president, Richard W. Clark; secretary, Anthony Mammarella; treasurer-assistant secretary, J. R. McCausland, Jr.

ANITA PRESSING CORP.

1. Type of business: Phonograph record pressing.
2. Withdrawal by Richard W. Clark: Mr. Clark assigned his stock subscription rights to Messrs. Mammarella and Binnick and resigned as an officer and director in December 1959. The facts set out below describe the corporation prior to his withdrawal.
3. Address: 1405 Locust Street, Philadelphia, Pa.
4. Date of incorporation: August 13, 1959.
5. State of incorporation: Pennsylvania.
6. Stock subscribers: Richard W. Clark (50 percent), A. Mammarella (25 percent), B. Binnick (25 percent).
7. Directors: Richard W. Clark, A. Mammarella, B. Binnick.
8. Officers: President, Richard W. Clark; vice president, A. Mammarella; secretary-treasurer, B. Binnick.

SALUTEM CORP.

1. Type of business: Real estate.
2. Address: 1508 First National Bank Building, Baltimore, Md.
3. Date of incorporation: August 25, 1959.
4. State of incorporation: Maryland.
5. Stockholders: To be owned by Richard W. Clark and/or Barbara Clark.
6. Directors: Richard A. Clark, Richard W. Clark, Barbara M. Clark.
7. Officers: President and treasurer, Richard W. Clark; vice president and secretary, Barbara M. Clark.

BAE MUSIC, INC

1. Type of business: Music publishing—ASCAP subsidiary of Swan.
2. Withdrawal by Richard W. Clark: Mr. Clark's sale of his interest in Swan in December 1959 terminated his indirect interest in this company. The facts set out below describe the corporation prior to his withdrawal.
3. Address: 1405 Locust Street, Philadelphia, Pa.
4. Date of incorporation: August 26, 1959.
5. State of incorporation: Pennsylvania.
6. Stockholders: Swan Record Corp.
7. Directors: Harry Chipetz, Albert P. Stagliano, Bernard Binnick.
8. Officers: President, Harry Chipetz; vice president, Albert P. Stagliano; secretary-treasurer, Bernard Binnick.

REQUEST MUSIC, INC.

1. Type of business: Music publishing—BMI subsidiary of Swan Record Corp.
2. Withdrawal by Richard W. Clark: Mr. Clark's sale of his interests in Swan in December 1959 terminated his indirect interest in this company. The facts set out below describe the corporation prior to his withdrawal.
3. Address: 1405 Locust Street, Philadelphia, Pa.
4. Date of incorporation: August 26, 1959.
5. State of incorporation: Pennsylvania.
6. Stockholders: Swan Record Corp.
7. Directors: Harry Chipetz, Albert P. Stagliano, Bernard Binnick.
8. Officers: President, Harry Chipetz; vice president, Albert P. Stagliano; secretary-treasurer, Bernard Binnick.

WALLINGFORD REALTY CORP.

1. Type of business : Real estate.
2. Address : Prentice Hall Corp. System, Inc., 229 South State Street, Dover, Del.
3. Date of incorporation : September 29, 1959.
4. State of incorporation : Delaware.
5. Stockholders : To be owned by Richard W. Clark and/or Barbara Clark.
6. Directors : Richard W. Clark, Barbara M. Clark.
7. Officers : President-treasurer, Richard W. Clark ; vice president-secretary, Barbara M. Clark.

LAWN RECORD CORP.

1. Type of business : Record manufacturing—A new sister corporation and label to Swan.
2. Withdrawal by Richard W. Clark : This company had not begun business as yet when Mr. Clark relinquished his interest in December 1959. The facts set out below describe the corporation prior to his withdrawal.
3. Address : 1405 Locust Street, Philadelphia, Pa.
4. Date of incorporation : October 28, 1959.
5. State of incorporation : Pennsylvania.
6. Proposed stockholdings : Nominee of Richard W. Clark (50 percent), nominee of A. Manmarella (25 percent), Bernard Binnick (25 percent).
7. Directors : Harry Chipetz, Albert P. Stagliano, Bernard Binnick.
8. Officers : President, Harry Chipetz ; vice president, A. P. Stagliano ; secretary-treasurer, Bernard Binnick.

TEEN-POST, INC., SEA-LARK MUSIC, LTD., JOLIE MUSIKVERLAG,
CHARACTER LICENSES, INC.

Fact sheets have not been appended for these four corporations, which are referred to in the main statement, because of a lack of information as to Teen-Post, Sea-Lark, and Jolie Musikverlag, and because Character Licenses, Inc., was never activated.

APPENDIX B

COMMONWEALTH OF PENNSYLVANIA,
County of Philadelphia, ss:

Richard W. Clark, being duly sworn, deposes and says :

1. I am over 21 and reside in Wallingford, Pa. I am known principally as a performer on television programs which consist mostly of the performance of phonograph records containing music of the day. I am the only person who has had a daily program of such records performed on a national television network for more than 2 years, and I am, therefore, probably the best publicly known diskjockey. In itself, this gives to me an unusual degree of responsibility to the public.

2. The current interest by the Government and by the public in various parts of radio and television programing, particularly programs using popular music, naturally includes my activities. I have been requested by American Broadcasting Co., which is the only network over which my programs (other than local) are broadcast, to sign an affidavit which I understand to be a new policy which ABC is adopting and is requiring of all diskjockeys with whom they deal, most of whom perform on local stations owned by ABC. This affidavit is to state that I have never engaged in any practices which are generally described in the music business as 'payola' which in most general terms may be described as an agreement to perform a record, or a song, or to have an artist perform on a radio or television program, in return for some kind of payment, whether in cash or otherwise, to the person making the agreement, or to some person or corporation designated by him, with the understanding that if such payment is not made, the record or song or vocalist will not be heard on the program.

I immediately informed ABC that I have never made any such agreement, verbal or written, and that I was entirely willing to swear under oath to this. I do this right now.

3. (a) I swear that I have never promised or agreed with any person, firm, or corporation, that in return for any money, property, or any other consideration

to be paid to me, or to any relative or other person, firm, or corporation on my behalf that—

(1) I would employ or otherwise allow any vocalist, musician, other performer, or group, to perform on any radio or television program; or

(2) that I would perform any musical composition or phonograph record on any radio or television program.

(b) Since I swear that I never made any such promise or agreement, I likewise swear that neither I nor any other party mentioned above has ever received any money, property, or any other consideration, based on any such promise or agreement.

4. (a) I swear that I have never solicited money, property, or other consideration to be paid to me, or to any relative or other person, firm, or corporation on my behalf, in connection with any personal appearance or performance of a record or song above referred to, and likewise, I have never refused to schedule on any radio or television program any personal appearance or performance of a record or song above referred to, because I was refused payment of any money, property, or any consideration to be paid to me, or to any relative or other person, firm, or corporation on my behalf.

(b) I also swear that at no time was any relative of mine, or any person employed by me or by any firm or corporation in which I was or am interested, authorized by me to make any such promise or agreement.

5. Paragraphs 3 and 4 are subject to the following qualification: The daily "American Bandstand" program has been produced, since August of 1957, by Click Corp., which has always been and is owned entirely by me. During the early months of Click's production of the show (January 1958 to about October 1958), Click was faced with the problem of operating under certain budget limitations which severely limited the number of entertainers it could have on the show. Frequently Click was approached by artists' managers, record manufacturers, or record distributors who sought to have Click utilize a certain entertainer. The record manufacturers and distributors were interested in promoting the careers of entertainers who were performing on records manufactured or distributed by them since they had a direct interest in the sale of such records. However, in view of Click's budget limitations, it could not afford to hire such performers and to pay them the applicable union scale. Click pointed out that if the manager, distributor, or manufacturer was willing to reimburse Click for the amount Click was obliged to pay the performer as minimum union scale, that Click would utilize such performer, assuming that Click thought the performer should be on the program in the first place as a matter of good programming.

In the instances where such agreement was made and the performer appeared, Click would mail its check to the performer to the address given by the performer in the amount of the appropriate union scale, and the manager, distributor, or manufacturer would reimburse Click for the amount paid to the performer. Later, the checks, instead of being mailed by Click directly to the performers, were mailed by Click to AFTRA (American Federation of Television and Radio Artists), which was given the performer's address as shown on Click's files. Although most of the managers, distributors, or manufacturers who undertook to reimburse Click did so, occasionally some defaulted in this obligation. In no instance were checks to performers held up pending reimbursement. Once the performers had appeared, the obligation to pay them was fixed and under union rules had to be paid within a fixed period. This payment was made wholly independent of the reimbursement received or to be received from the manager, distributor, or manufacturer, and there was no obligation on the part of the performer to reimburse Click or myself. About October 1958, the combination of a change in policy as to the number of performers appearing on the show, some relaxation as to the amount of available budget, and my own preference resulted in the elimination of the practice described in this paragraph. Since that time, such practice has never been utilized.

6. If at some time I am requested to testify under oath concerning all of my business activities, I shall testify willingly and answer all proper questions and tell only the truth. The above paragraphs 3 and 4 requested by ABC state clearly, as they requested, what I did not do.

In making such a statement, I feel that it is only proper for me at the same time and place to say what I did do in the fields of music publishing and records, which, particularly in the climate of the times, might be considered subject to misinterpretation or difference of opinion.

7. As is a custom with many performers, in addition to my television appearances and activities, I have been and am the owner, in whole or part, of various

business operations, a number of which are directly connected to the record and music world. This includes ownership of record production companies, a share in companies conducting a record pressing operation, and a share in a record distributing company. I also own full or partial interests in miscellaneous music publishing companies.

Among the thousands of records that I have played on the "American Bandstand" program and Saturday night program are, of course, included records which have been pressed, produced, or distributed by the companies in which I have an interest. Also, a number of the songs on the records have been published by companies in which I have an interest. Obviously, some of the copyrights published by my firms, or from which my firms profited, or records owned, distributed, or pressed by companies in which I had an interest were given to my firms or companies because of the position I held, but again I swear that I made no agreement, or understanding, express or implied, verbal or in writing, to play any record or use any artist because of any direct or indirect benefit to me. Also, at one time I personally was assigned a portion of the publishing income from a song, and again I swear that I made no such agreement or understanding. Needless to say, the number of these records is only a small proportion of the overall numbers which have been played by me or which have been given exposure by me on television.

8. The relationship between me and the music publishing and record companies in which I have interests, particularly at this time when questions of possible conflict of interest are being so minutely examined by the American public, may be subject to criticism. In view of the public interest questions which have been raised, I sat down and discussed this with officials of the American Broadcasting Co., and we have mutually agreed that it would be in the public interest for me, or for anyone in my position, to dispose of all my music publishing and record interests. Despite the fact that these activities are common practices by many performers, I have decided to dispose of all such interests. I am taking steps to do this without delay.

9. The interests which I plan to dispose of are as follows:

Music publishing: Arch Music Co., Inc. (100 percent ownership), January Music Corp. (100 percent), Sea-Lark Enterprises, Inc. (100 percent), and its associated foreign corporations;

Record manufacturing: Globe Record Corp. (100 percent), releasing on the Hunt label, with its wholly owned music publishing subsidiary Kincord Music Corp., Swan Record Corp. (50 percent), with its wholly owned music publishing subsidiaries, BAE Music and Request Music; Jamie Records (25 percent);

Record pressing: Mallard Pressing Corp. (50 percent) and Anita Pressing (50 percent), a sister company to Swan Record Corp., which presses exclusively for Swan Record Corp.; and

Record distributing: Chips Distributing Corp. (33 $\frac{1}{3}$ percent).

10. At one time I had a 25-percent interest in a personal management and promotional firm called SRO Artists, Inc. I have no interest now in this company either direct or indirect, and received no payment or other consideration when I disposed of my interest. I also intend to withdraw from any future interest in any activity similar to the recent touring unit called "Dick Clark's Caravan of Stars," with which I did not appear and in which I had a financial interest.

11. In addition to the above activities, I want to comment on certain gifts received by me, my wife, and child during these years. I believe that except for gifts from one person, there are no gifts which were received worthy of discussion here. The Christmas presents or birthday gifts received from fans, from business acquaintances, and from friends are in general just that. I have also received such industry and office items as a color television set, record players, tape recorders, etc.

12. The one exception referred to above is a record manufacturer, Mr. Lou Bedell, of Era and Dore Records. During 1958, he gave me three presents of more than nominal value. The first was a fur stole, which he gave to my wife. I insisted on paying for it, and despite his reluctance, he finally took a check from me for \$300. I have since asked him and learned from him that he paid \$1,000 for this fur piece and that it was charged as a promotion expense to one of his record companies. At about the time of my birthday at the end of 1958, while we were out for a social evening with him and his wife, he presented to my wife a necklace and to me a ring. My wife and I were most reluctant to accept these. However, we kept them because it was embar-

rassing to do otherwise. Although my wife has worn the necklace, I have never worn the ring. I have since asked and been informed by Mr. Bedell that the ring and necklace together cost \$3,400 and were charged to one of his companies as a business promotion expense.

I emphasize that these were given to us as presents, and I swear that there was no agreement or understanding as to anything in the past or in the future with which they were connected.

13. As in the case of many established television performers, I also have earned money from various items that were sold by various manufacturers and distributors, which items bore my name or likeness, including "Dance With Dick Clark" record albums. I also have earned money from the manufacture or distribution of premiums for sponsors of my programs.

14. My wife is listed as the coauthor of a song called "Dickie Doo" which she named and I coauthored. She has received royalties for same. I once received \$100 from Capitol Records for writing for the cover of a record album.

15. I invested approximately \$10,000 in a limited partnership which partially financed a small-budget motion picture called "Jamboree." The limited partnership was entitled not only to a share of the film profits but also to a share of the two small publishing companies organized to publish some of the songs performed in the motion picture. The limited partnership has sold all of its rights in the picture and for some months has been attempting to negotiate the sale of its rights in the two publishing companies.

16. There were also a few records in the past few years in which I had an interest, not through any of the companies listed above, all of which were unprofitable.

17. To the best of my knowledge and recollection there is no interest in the field of music publishing, record production, pressing, or distribution in which I am directly or indirectly interested other than those listed above, except some publicly listed stocks.

18. Early yesterday morning one of my programming associates revealed to me certain information which he had concealed from me. I had no previous knowledge or suspicion of these facts. His resignation has been accepted.

RICHARD W. CLARK.

Sworn to and subscribed before me this 16th day of November 1959.

Notary Public.

APPENDIX C

STATE OF NEW YORK,
County of New York, ss:

Vera Hodes, being duly sworn, deposes and says:

1. I am over 21 years of age and reside in New York City.
2. I swear that I have never promised or agreed with any person, firm, or corporation, that in return for any money, property, or any other consideration to be paid to me, or to any relative or other person, firm, or corporation on my behalf that—

(a) I would employ or otherwise allow any vocalist, musician, other performer, or group to perform on any radio or television program, or

(b) that I would perform any musical composition or phonograph record on any radio or television program.

3. Since I swear that I never made any such promise or agreement, I likewise swear that neither I, nor any other party mentioned above, has ever received any money, property, or any other consideration based on any such promise or agreement.

4. I swear that I have never solicited money, property, or other consideration to be paid to me, to any relative or other person, firm, or corporation on my behalf, in connection with any personal appearance or performance of a record or song above referred to, and likewise I have never refused to schedule on any radio or television program any personal appearance or performance of a record or song above referred to, because I was refused payment of any money, property, or any consideration to be paid to me, any relative or other person, firm, or corporation on my behalf.

Sworn to before me this 18th day of November 1959.

[SEAL]

VERA HODES.

CHARLES B. SETON,
Notary Public, State of New York.

Commission expires March 30, 1961.

STATE OF NEW YORK,
County of New York, ss:

Vera Hodes, being duly sworn, deposes and says:

1. I am over 21 years of age and reside in New York City.
2. I am the professional manager of the January Corp., Sea-Lark Enterprises, Inc., and Arch Music Co., Inc., all of which have offices at 1650 Broadway, New York City. I have known that Dick Clark was the owner of these three corporations, and I have always considered that these were business investments by him.
3. I swear that I never, verbally or in writing, said to any person either (a) that giving a song, or an interest in a song, to any of these three corporations would in any way assist in getting Dick Clark to play records of this song on any television program, or (b) that not giving a song or an interest in a song to any of these three corporations would lessen the chances that Dick Clark would play a record of that song on any television program.

VERA HODES.

Sworn to before me this 30th day of November 1959.

[SEAL]

CHARLES B. SETON,
Notary Public, State of New York.

Commission expires March 30, 1961.

STATE OF PENNSYLVANIA,
County of Philadelphia, ss:

Bernard Binnick, being duly sworn, deposes and says:

1. I am over 21 years of age and reside in Upper Darby, Pa.
2. I have been the manager of Swan Record Corp., of 1405 Lucust Street, Philadelphia, Pa., since it started business. I have known that Dick Clark was an owner of Swan, and I have always considered that this was a business investment by him.
3. Request Music, which is a publisher affiliate of Broadcast Music, Inc. (BMI) is a small music publisher division of Swan, and Bae Music, which is a publisher affiliate of American Society of Composers & Publishers (ASCAP), is also a small music publisher division of Swan. Recently, upon the advice of Swan's general counsel, Pennsylvania corporations known as Request Music, Inc., and Bae Music, Inc., have been organized so that each of these music publishing companies will be subsidiary corporations owned by Swan rather than divisions of Swan.
4. I swear that to the best of my remembrance I never, verbally or in writing, said to any person either (a) that performing for Swan, or selling or leasing a recording to Swan, or giving all or part of the copyright in a song to Request Music or to Bae Music, would in any way assist in getting Dick Clark to play this record or song on a television program, or (b) not giving, performing, selling, or leasing a recording to Swan, or not giving all or part of the copyright in a song to Request Music or to Bae Music, would lessen the chances that Dick Clark would play the recording or the song on any television program.

BERNARD BINNICK.

Sworn to before me this 30th day of November 1959.

[SEAL]

JANE L. GAUL,
Notary Public, Philadelphia, Philadelphia County.

My commission expires March 5, 1962.

STATE OF PENNSYLVANIA,
County of Philadelphia, ss:

Edward L. McAdam, being duly sworn, deposes and says:

1. I am over 21 years of age and reside in Philadelphia, Pa.
2. I have been the production manager of Mallard Pressing Corp., of 1626 Federal Street, in Philadelphia, Pa., since I was employed by Mallard about June 1958. I have known that Dick Clark was an owner of Mallard, and I have always considered that this was a business investment by him.
3. I swear that I never, verbally or in writing, said to any person either (a) that having a record pressed at Mallard would in any way assist in getting Dick Clark to play that record, or other records of that manufacturer, on any televi-

sion program, or (b) that not having a record pressed at Mallard would lessen the chances that Dick Clark would play that record, or any other record of that manufacturer, on a television program.

Sworn to before me this 23d day of November 1959.
[SEAL]

EDWARD L. McADAM.

GEORGE W. BROWN,
Notary Public, Philadelphia, Philadelphia County.

My commission expires March 9, 1963.

STATE OF PENNSYLVANIA,
County of Philadelphia, ss:

Henry G Haslam, being duly sworn, deposes and says:

1. I am over 21 years of age and reside in Willow Grove, Pa.

2. I have been the general manager of Mallard Pressing Corp., of 1626 Federal Street, in Philadelphia, Pa., since I was employed by Mallard about June 1958. I have known that Dick Clark was an owner of Mallard, and I have always considered that this was a business investment by him.

3. I swear that I never, verbally or in writing, said to any person either (a) that having a record pressed at Mallard would in any way assist in getting Dick Clark to play that record, or other records of that manufacturer, on any television program, or (b) that not having a record pressed at Mallard would lessen the chances that Dick Clark would play that record, or any other record of that manufacturer, on a television program.

Sworn to before me this 23d day of November 1959.
[SEAL]

HENRY G. HASLAM.

CHARLES A. REIFFUSS.

Commission expires February 1, 1961.

STATE OF NEW YORK,
County of New York, ss:

Louis M. Heyward, being duly sworn, deposes and says:

1. I am over 21 years of age and reside in New York City.

2. I swear that I have never promised or agreed with any person, firm, or corporation, that in return for any money, property, or any other consideration to be paid to me, or to any relative or other person, firm, or corporation on my behalf that—

(a) I would employ or otherwise allow any vocalist, musician, other performer, or group to perform on any radio or television program, or

(b) that I would perform any musical composition or phonograph record on any radio or television program.

3. Since I swear that I never made any such promise or agreement, I likewise swear that neither I, nor any other party mentioned above, has ever received any money, property, or any other consideration based on any such promise or agreement.

4. I swear that I have never solicited money, property, or other consideration to be paid to me, to any relative or other person, firm, or corporation on my behalf, in connection with any personal appearance or performance of a record or song above referred to, and likewise I have never refused to schedule on any radio or television program any personal appearance or performance of a record or song above referred to, because I was refused payment of any money, property, or any consideration to be paid to me, any relative or other person, firm, or corporation on my behalf.

Sworn to before me this 16th day of November 1959.
[SEAL]

LOUIS M. HEYWARD.

CHARLES B. SEATON,
Notary Public, State of New York.

Commission expires March 30, 1961.

STATE OF NEW YORK,
County of New York, ss:

Charles D. Reeves, being duly sworn, deposes and says:

1. I am over 21 years of age and reside in New York City.

2. I swear that I have never promised or agreed with any person, firm, or corporation that in return for any money, property, or any other consideration

to be paid to me, or to any relative or other person, firm, or corporation on my behalf that:

- (a) I would employ or otherwise allow any vocalist, musician, other performer or group to perform on any radio or television program, or
- (b) That I would perform any musical composition or phonograph record on any radio or television program.

3. Since I swear that I never made any such promise or agreement, I likewise swear that neither I, nor any other party mentioned above, has ever received any money, property, or any other consideration based on any such promise or agreement.

4. I swear that I have never solicited money, property, or other consideration to be paid to me, to any relative or other person, firm, or corporation on my behalf, in connection with any personal appearance or performance of a record or song above referred to, and likewise I have never refused to schedule on any radio or television program any personal appearance or performance of a record or song above referred to, because I was refused payment of any money, property, or any consideration to be paid to me, any relative or other person, firm, or corporation on my behalf.

CHARLES D. REEVES.

Sworn to before me this 16th day of November 1959.

[SEAL.]

CHARLES B. SETON,
Notary Public, State of New York.

Commission expires March 30, 1961.

STATE OF NEW YORK,
County of Nassau, ss:

Garth Dietrick, being duly sworn, deposes and says:

- 1. I am over 21 years of age and reside in Nassau County, N.Y.
- 2. I swear that I have never promised or agreed with any person, firm, or corporation, that in return for any money, property, or any other consideration to be paid to me, or to any relative or other person, firm, or corporation on my behalf that:

- (a) I would employ or otherwise allow any vocalist, musician, other performer or group to perform on any radio or television program, or
- (b) That I would perform any musical composition or phonograph record on any radio or television program.

3. Since I swear that I never made any such promise or agreement, I likewise swear that neither I, nor any other party mentioned above, has ever received any money, property, or any other consideration based on any such promise or agreement.

4. I swear that I have never solicited money, property, or other consideration to be paid to me, to any relative or other person, firm, or corporation on my behalf, in connection with any personal appearance or performance of a record or song above referred to, and likewise I have never refused to schedule on any radio or television program any personal appearance or performance of a record or song above referred to, because I was refused payment of any money, property, or any consideration to be paid to me, any relative or other person, firm, or corporation on my behalf.

GARTH DIETRICK.

Sworn to before me this 16th day of November 1959.

WILLIAM SALTZMAN,
Notary Public, State of New York.

Term expires March 30, 1961.

Date: JANUARY 18, 1960.

Name: Drexel Television Productions, Inc.
Address: 608 Fifth Avenue, New York, N.Y.
Supplier to: ABC Television Network
(name of station or network)

1. Excepting only compensation paid by the station or network or paid by you or your company to its or your agents or employees, have you or has any such agent or employee since November 1, 1958 ever solicited or received, or are you or any of them now soliciting or receiving, payment or gifts of, or credit for, anything of value, directly or indirectly (such as through a relative, or through any business entity in which you, your company, or such agents or employees, have or had a financial interest), in connection with the acceptance, selection or production for, or supply to, any ABC network or owned and operated

station, or for favorably influencing such acceptance, selection or production by another, of any musical, dramatic, literary, documentary or other programming property, or for the acceptance or selection of the services of any performer on such programming?

Yes X No -----

2. Have you, your company or any of its or your agents or employees, since November 1, 1958, rejected, influenced the rejection of, or failed to select for production or supply to any ABC network or owned and operated station, any musical, dramatic, literary, documentary or other programming property, or the services of any performer on such programming, or threatened to do any of the foregoing, unless you, your company, or such agents or employees received payment or gifts of, or credit for, anything of value directly or indirectly, excepting only compensation paid by the station or network, or compensation paid by you or your company to such agents or employees since said date?

Yes ----- No X

3. Excepting only compensation paid by the station or network or paid by you or your company to agents or employees, have you or your company or has any such agent or employee since November 1, 1958 ever solicited or received, or are you or any of them now soliciting or receiving payment or gifts of, or credit for, anything of value, directly or indirectly, in connection with the spoken or visual reference during a network or local program produced for or supplied to any ABC network or owned and operated station, to names of persons, products, services, companies or institutions other than those of sponsors identified during the broadcasts of such programming.

Yes X No -----

4. Have you, your company or any agent or employee of yours or your company, since November 1, 1958, ever offered, or been solicited to offer to pay or give, or provide credit for, anything of value, directly or indirectly to any agent or employee of any ABC network or owned and operated station, in connection with the acceptance, selection or production for, or supply to, such networks or stations, of any musical, dramatic, literary, documentary or other programming property, or has any such ABC agent or employee ever rejected, failed to select, or threatened the same unless such payment or gift was provided?

Yes ----- No X

If any answer is "Yes," please explain in detail on additional pages you are requested to attach for that purpose.

(Signed) R. W. CLARK.

STATE OF -----

County of ----- ss:

(For Individuals)

-----, being duly sworn, deposes and says that he (she) has read the foregoing questions and has answered the same; that the answers set forth are true, and that he (she) has subscribed his (her) name thereto.

(For Corporations)

Richard W. Clark, being duly sworn, deposes and says that he is the president of the Drexel Television Productions, Inc., and that on behalf of said Drexel Television Productions, Inc., he has read the foregoing and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as those matters he believes it to be true.

Deponent further says that the reason this verification is made by deponent and not by the corporation is that the said corporation is a domestic corporation and deponent is an officer thereof, to wit, its president.

(Signed) R. W. CLARK.

Sworn to before me this ----- day of ----- 19-----.

-----, Notary Public.

SUPPLEMENTAL MATERIAL TO QUESTIONS 1 AND 3

1. To the date hereof, I know of no situation covered by paragraph 1 of this questionnaire which is not covered by my affidavit to you of November 16, 1959.

3. Supplementing the answer "yes" to question 3, there were a nominal amount of logo credits, voice credits or voice over credits given in normal course to suppliers of materials or services which were utilized in fulfillment of script requirements, and which were obtained on this credit basis rather than by purchase or rental. These items consisted of:

American Airlines.

Hotels: Shelburne, Atlantic City; Sheraton Inn., Binghamton; Carillon, Miami Beach; Miramar, Beverly Hills.

Gertrude Ederle Pools.

American Trucking Association (trucks).

Yale & Towne (forklifts).

John Deere Co. (farm machinery).

Steiff Toy Co. (stuffed toys).

Aquarium Stock Co. (aquarium).

Silvray Lighting Co.

There was no money or other consideration received by Drexel Television Productions, Inc., with respect to any of the foregoing items other than American Airlines with which Drexel had a contract for \$250-\$300 a program, and the ownership of the items at all times remained in the supplier.

There were, during the period of more than 1 year to which this questionnaire applies, a few instances in which items were used on the programs, and subsequently the items (mostly small) were distributed by Drexel Television Productions, Inc., to the audience, to the program crew, or to production personnel. These items consisted of:

Various toy companies: Toys given to hospitals.

Johnson outboard motor: Received by Garth Dietrick.

Polaroid cameras: Used as a Christmas giveaway to the audience. One each received by Charles D. Reeves, executive producer, Louis Heyward, producer, and Garth Dietrick, director.

Wurlitzer electronic piano: Received by Don Eaton (designer).

Hardman-Peck Duart player piano and bench: Received by Dick Clark as birthday gift from Young & Rubicam. In addition Louis Heyward, the producer, received a refrigerator from Hardman-Peck.

World Book encyclopedia: Books given to hospital, Tony Mammarella, Garth Dietrick, and Louis Heyward.

Revere projectors: One received by Dick Clark, one received by Dick Clark's secretary and one received by Drexel TV.

Organ: One received by Dick Clark.

Schwinn bicycles: One each received by Dick Clark, Tony Mammarella, Louis Heyward, and Garth Dietrick.

Fashion show (Men's Wear Institute and Witty Bros.): Two suits and sports outfit supplied to Dick Clark.

Emanee Toys (?): Given to children in audience.

In addition to the foregoing, the following items were utilized on isolated programs, and payment was made to Drexel Television Productions, Inc. as follows:

Polaroid camera: \$250 received.

Hess Bros.: \$100 received.

Arpege (Lanvin) \$350 received.

Walking doll: \$350 received.

World Book encyclopedia \$300 received.

Simca: \$400 received.

Millinery Institute: \$100 received.

Wet Shave (Waldo Mayo Associates): \$100 received.

Tabasco (Waldo Mayo Associates): \$100 received.

There is no instance known to me in which payment was made to any individual in connection with any of the foregoing items, and I have no remembrance of any item, other than as specified above, which is within the scope of

question 3, except those covered by my affidavit to you of September 16, 1959, and except the following: In November 1958 one of my corporations made an agreement on a royalty basis for the exploiting of a small toy. I exposed this toy only once on the Saturday night "Dick Clark Show." Neither my corporation nor I had any further dealings with the toy manufacturer, no statement or royalty payment was ever received, and the contract was terminated by my corporation on March 18, 1959.

The CHAIRMAN. Thank you very much on behalf of the subcommittee for your appearance.

Mr. CLARK. Thank you very much.

The CHAIRMAN. The subcommittee will adjourn until 10 o'clock tomorrow.

(Whereupon, at 6:20 p.m., the subcommittee adjourned, to reconvene at 10 a.m., Tuesday, May 3, 1960.)

RESPONSIBILITIES OF BROADCASTING LICENSEES AND STATION PERSONNEL

TUESDAY, MAY 3, 1960

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

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

Present: Representatives Harris (presiding), Mack, Moss, and Bennett.

Staff members present: Robert W. Lishman, chief counsel; Beverly M. Coleman, principal attorney; James P. Kelly, investigator; Charles P. Howze, Jr., attorney; Herman Clay Beasley, chief clerk; and Jack Marshall Stark, minority counsel.

The CHAIRMAN. The subcommittee will come to order.

Mr. Goldenson.

Will you be sworn, Mr. Goldenson?

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

Mr. GOLDENSON. I do.

TESTIMONY OF LEONARD H. GOLDENSON, PRESIDENT, AMERICAN BROADCASTING-PARAMOUNT THEATERS, INC.

The CHAIRMAN. State your name for the record, please.

Mr. GOLDENSON. Leonard H. Goldenson.

The CHAIRMAN. What is your address?

Mr. GOLDENSON. 803 The Parkway, Shore Acres, Mamaroneck, N.Y.

The CHAIRMAN. You are president of the American Broadcasting System?

Mr. GOLDENSON. Yes, American Broadcasting-Paramount Theaters, Inc., that is the top company, and also the American Broadcasting Co. Division.

The CHAIRMAN. The American Broadcasting-Paramount Theaters?

Mr. GOLDENSON. That is the top company.

The CHAIRMAN. And the American Broadcasting Co. Division?

Mr. GOLDENSON. Yes.

The CHAIRMAN. Is ABC a subsidiary of—

Mr. GOLDENSON. No, it is a division of our top company.

The CHAIRMAN. It is a division?

Mr. GOLDENSON. Yes, sir.

The CHAIRMAN. You do have a statement and you wish to present your statement, do you not?

Mr. GOLDENSON. Yes, sir.

The CHAIRMAN. I notice, Mr. Goldenson, that along with your statement you have a copy of communications and other exhibits and so forth. Do you wish those to be included and made a part of your statement?

Mr. GOLDENSON. I would like them to be, yes.

The CHAIRMAN. They will be included in the record along with your statement.

Mr. GOLDENSON. Thank you very much.

The CHAIRMAN. You may proceed if you like.

Mr. GOLDENSON. Mr. Chairman and members of the committee, my name is Leonard H. Goldenson. I am president of American Broadcasting-Paramount Theatres, Inc., and I welcome the opportunity to appear before your committee today in response to the invitation extended to me by Chairman Harris.

I wish to compliment your committee for its outstanding role in bringing to the attention of the broadcasting industry the payola practices and related receptive methods occurring in broadcasting. It is to those problems and what our company is doing about them that I wish to devote my attention.

At the outset, I think it will be useful if I explain the nature of our company and its operations.

Prior to February 1953, our company held interests in various subsidiaries engaged principally in the exhibition of motion pictures in theaters. On February 9, 1953, American Broadcasting Co., Inc., was merged into our company and our name was changed from United Paramount Theatres, Inc. to American Broadcasting-Paramount Theatres, Inc. This merger was approved by the Federal Communications Commission after extensive hearings in order to encourage the growth and development of a third fully competitive national network.

The theaters are operated by our subsidiaries in 36 States. Our company also owns and operates television stations in New York, Los Angeles, Chicago, San Francisco, and Detroit; radio stations in New York, Chicago, Los Angeles, San Francisco, Detroit, and Pittsburgh, and the ABC radio and television networks. We also own Am-Par Record Corp.

Let me make clear that in conformity to a basic management principle adhered to in many other major American business corporations and enunciated by myself and our other executives in the FCC hearings to which I have referred, subject to parent company policies, our operating divisions and major units and subsidiaries are independently managed by their own executives and staff charged with the responsibility of making the best possible business decisions for their own companies or divisions. Each of these companies and divisions is not only a complicated business structure requiring skillful staffing and independent management, but each functions separately and autonomously in its own highly competitive portion of the entertainment industry.

In order properly to supervise and manage so complex a business, strong local management and on-the-spot direction are essential. Therefore, the ABC management has consistently followed a pattern of operation which emphasizes a high degree of local autonomy in the operation of its television and radio stations. This is merely enlightened self-interest since a locally oriented management which emphasizes community service is the best guarantee for the fulfillment of the station's responsibilities as a licensee and its financial success.

I am sure you will recognize that my appearance today is as chief executive officer of the parent corporation and, accordingly, the views I will express are those of the company from an overall policy standpoint.

In statements which we have submitted to the Federal Communications Commission, we have made clear that we are unqualifiedly opposed to payola and any other deceptive practices and have instituted procedures, which I will describe later in this statement, designed to preclude their occurrence in the operation of our networks and stations.

Unquestionably, such practices deceive the public and can ultimately undermine public confidence in broadcasting.

Station licensees have an affirmative duty to program in the public interest. If a licensee or one of its employees selects programing, including music, based not on intrinsic merit but on the fact that some form of hidden consideration is received, a deception is involved. The public may be deprived of superior programing which would have been broadcast were it not for the payola, or at the very least, the licensee's choice of programing is predicated upon considerations of which the public is unaware.

Open and avowed persuasion or advertising is proper. Clandestine persuasion or advertising is not. For these reasons, we are in complete agreement that there is need for the reappraisal and overhaul that the disclosures by your committee have brought about.

In light of these disclosures, ABC undertook immediate inquiry into its operations and has formulated certain new controls in an effort to insure improved compliance with our programing policies and the standards established for this purpose pursuant to the Communications Act.

I propose now to outline exactly what our company has done in this regard.

Our first inquiry was triggered initially by news reports of testimony before your committee on Friday, November 6, 1959, which testimony referred to payola practices. During the ensuing weekend, investigation was promptly commenced by us into our music selection policies and practices.

Since various employees participated in some degree or other in the selection of music, we deemed it advisable to draft a form of questionnaire and affidavit to be submitted to all such persons. Thus station managers, program managers, directors of programs, diskjockeys, music librarians, and other persons responsible in the area of music selection were requested to supply pertinent information with respect to, first, whether they had ever received anything of value for the promotion of music; second, whether they had ever either threatened to reject or rejected music for broadcast unless they were paid; and

third, whether they had any direct or indirect interests in the music publishing and recording industries.

Sworn responses to our questionnaires were required, and in these responses no instance of payola was reported. In a few instances respondents indicated some ownership of business interests which in our opinion represented potential conflict with the proper exercise of impartial judgment in connection with music selection, and in each such case the respondent was required to divest himself of such interests. Such divestitures are either completed or scheduled for completion within a time period acceptable to us.

In this connection, I shall have occasion to discuss the situation regarding Mr. Dick Clark later in this statement.

From what I have read and what has been reported to me, there has been considerable discussion concerning the affidavit Dick Clark signed and the form of affidavit we asked Mr. Freed and our other employees to sign. I assure you that there is no significance to the difference in the wording of the affidavits. Both elicit the same information and the form affidavit which appears as exhibit No. 1 to my statement was intended to serve the same purpose as the Clark affidavit.

We terminated the employment of Mr. Freed not because of any disclosures he made to us, but because he refused to provide us any information at all under oath upon which any judgment could be exercised. He was asked to complete the affidavit which we asked all employees involved in any degree in music selection in any of our owned and operated stations to sign. In total, some 110 persons responded under oath to the questionnaire. Mr. Freed was the single exception in this respect.

If I may digress for a minute, when I came in last night our lawyers reported certain testimony had come up during the day, and I would like to say that since preparing my statement, it has come to my attention that Mr. Freed advised this committee in executive session that Mr. Mortimer Weinbach, vice president and general counsel of the American Broadcasting Division, stated to Mr. Freed at the time—Mr. Freed was about to sign his contract with ABC dated May 20, 1958—that:

I trust you will be sure to play heavily on ABC-Paramount records now that you are in the family, and I also trust that you would play nothing but Paramount Theaters with your station show.

I have inquired of Mr. Weinbach as to this occurrence, and Mr. Weinbach has assured me that Mr. Freed's statement is completely untrue, in fact Mr. Weinbach tells me that as far as he knows—

Mr. Moss. Mr. Chairman, I think the witness should go ahead and make his statement. If we are interested in Mr. Weinbach's reaction to the statement of Mr. Freed, the committee can then make appropriate inquiries. It is not necessary to have Mr. Goldenson detail here that he contacted Mr. Weinbach.

I might point out to you, sir, that in my judgment Mr. Freed was one of the very few completely truthful men we had before us in either open or executive session.

The CHAIRMAN. The Chair would say to my distinguished colleague that since the testimony referred to was made public yesterday, I think Mr. Goldenson should have the right to respond to it.

Mr. Moss. I point out that he is not responding to anything said about him; he is responding to something said about Mr. Weinbach. If the committee is interested in having a response from Mr. Weinbach, I submit we should call him to the stand and have him testify. But I do not think it is appropriate for Mr. Goldenson to undertake the role of defender of Mr. Weinbach.

The CHAIRMAN. Of course, Mr. Weinbach is a part of the ABC organization, and Mr. Goldenson has just stated at the outset of his statement that he is the spokesman for the ABC-Paramount Co.

Mr. Moss. I would submit that that is in the form of a disclaimer of complete knowledge rather than any affirmation that he possesses it.

The CHAIRMAN. Perhaps. But in all fairness, since Mr. Freed's testimony was made public, I think the witness has the right to give us the benefit of any information he has and we can decide about the other gentleman as we go along.

Mr. GOLDENSON. In fact, Mr. Weinbach tells me that, as far as he knows, he has never seen or talked to Mr. Freed in his entire life. There is no basis to the charge of a double standard with respect to Mr. Freed. We were very patient with him, and tried for more than a week to get him to give us an affidavit. We met on several occasions with his attorney.

Finally, his attorney handed us a letter from Mr. Freed dated November 21, 1959, which denied our right to insist upon an affidavit despite the fact that he was a direct employee of ABC.

After receiving this letter we decided to exercise our termination rights under our employment contract.

I believe that this committee should have a copy of this letter which I have with me here this morning. May I hand it—this is a copy, and I have copies available.

Do you want me to read it?

Mr. BENNETT. I think it might as well be read into the record.

The CHAIRMAN. You have presented a copy of the letter you received from Mr. Allen Freed, dated November 21, 1959?

Mr. GOLDENSON. Yes.

The CHAIRMAN. Did you receive this letter?

Mr. GOLDENSON. I didn't, but our attorneys who handled this matter did. I personally did not.

The CHAIRMAN. You have seen the letter yourself?

Mr. GOLDENSON. The letter was brought to my attention in the last several days.

The CHAIRMAN. All right. Let it be received.

(Letter referred to, dated November 21, 1959, follows:)

NEW YORK, N.Y., November 21, 1959.

AMERICAN BROADCASTING Co.
New York, N.Y.

GENTLEMEN: I consider your request for the affidavit enclosed in your letter of November 13, 1959, to evince a lack of faith and understanding on your part and to be improper and uncalled for.

It is ridiculous in the extreme to inquire as to whether I had ever refused to accept or select or failed to select or accepted for broadcast, any musical recording, unless payment was made to or for me.

You well know that I am and always have been extremely zealous in protecting the high quality of my program and that I would not compromise this quality for money or any other consideration. You do know that I have and shall continue to program records for my show solely and completely on the

basis of my evaluation of the recordings and their appeal to my listening audience. It was because of this that you hired me and it is because of this careful programing that I have been successful in building the popularity of my show and myself from complete obscurity to my present position. This was not, as you know, a spectacular rise but a slow building, step by step, and completely dependent upon the correct and proper choice of material (records) for my shows.

As to my ownership or beneficial interest in musical copyrights, performers, recording companies and the like, it has all been a matter of public record and common knowledge. I am a songwriter and the writer of "Sincerely" and "Most of All." From time to time, I had some interests in various publishing and recording businesses which I do not now own. The only interest I now have is about \$500 worth of stock in Hanover Signature Records, Inc.

It seems to me that your request for this affidavit is the result of malicious, unfounded accusations which are currently leveled at the broadcasting industry. If such an affidavit was deemed by you as a necessary prerequisite of my association with you, such request should have been made prior to my employment. I therefore find it impossible to accede to your request, for to do so would violate my self-respect.

Very truly yours,

ALAN FREED.

Mr. GOLDENSON. Do you want me to read it or just proceed with my statement?

The CHAIRMAN. That is up to you, Mr. Goldenson.

Mr. GOLDENSON. I will proceed with my statement, if I may.

Following the Federal Communications Commission notice of December 2, 1959, to all broadcast licensees regarding undesirable programing practices and their future prevention, we extended our inquiry to independent suppliers of ABC programing as well. At the same time, we took steps to clarify for our employees, performers and independent programing suppliers, our policies on selection of programing and program content.

Briefly, these policies make clear that our company requires thoroughly impartial judgment on the part of its employees and performers who are influential upon or responsible for the selection, creation or production of programing. The solicitation or acceptance by any ABC employee or performer of any unauthorized consideration in order to influence the selection of programing or the selection of a performer, or to obtain spoken or visual reference to persons or products other than those of identified sponsors, is now clearly understood to be prohibited upon penalty of dismissal.

Similarly, employees and performers engaged by ABC who are influential in the programing area may not, without prior disclosure to and consent by us, acquire interests in firms engaged in music publishing, in broadcasting, or in any form of exploitation of recorded music.

We believe that we have thus established clear and unmistakable standards to which our employees and performers are expected to conform. To insure continued compliance, annual affidavits are now required from executive, administrative, creative, and production employees and performers who are influential in the programing area and more often, at our request, if the occasion requires.

Copies of the recent memorandums describing our policies, and showing the measures we have taken to implement them, are contained in the exhibits attached to this statement.

These new controls augment in a much needed way the process of scrutiny we have always employed over matter broadcast on our facilities.

A continuity acceptance department staffed by trained editors operates in New York, Detroit, Chicago, San Francisco, and Los Angeles. The function of this department is to insure compliance with our published programming and advertising policies which are binding on our radio and television networks and our owned and operated stations.

The primary responsibility for the application and administration of these standards rests with our continuity acceptance department in cooperation with our legal department. Continuity acceptance editors are required to pass upon the acceptability of products sought to be advertised over our facilities as well as the advertising copy used and the reliability of the advertiser. In doing so, the department consults with better business bureaus, the Proprietary Association, the Food, Drug, and Cosmetics Association, the American Medical Association, and many other authoritative sources.

Every script broadcast over our facilities is read in its entirety by our continuity acceptance department. Filmed programs are monitored before telecast. In addition, to assist in carrying out these policies, ABC production personnel and associate directors are assigned to work closely with the producers of programs prepared for us.

We earnestly believe that all of these methods of self-regulation will provide a reliable means of conducting our business in the public interest on the ethical basis contemplated by the Communications Act and the Federal Trade Commission Act, as well as by this committee.

Although we believe that our improved controls will be effective, there is one area, however, in which legislation will be helpful in closing a possible gap. As presently worded, neither the Communications Act nor the Criminal Code purports to cover "commercial bribery" where an announcer, talent, or other participant on a show, or an independent program supplier, as distinguished from the station itself, receives remuneration for playing a particular record, mentioning a given product, and so forth.

A broadcast licensee should not be responsible for payola of which he has no knowledge and could not reasonably be expected to have knowledge. We agree, therefore, that there is merit in a broad criminal statute which would outlaw payola.

We note that H.R. 11397 deals with one facet of this problem, as does section 3 of H.R. 11341. Hearings on these bills were held earlier this month and we have submitted our comments on them, favoring the adoption of legislation in these areas.

In his invitation to me, Chairman Harris indicated this committee's special interest in two areas of the entertainment industry and their functional relationship with each other, namely, popular music recording and broadcasting.

Our company conducts business, as I explained before, in these two areas through the autonomous operations of the American Broadcasting Co. division with respect to broadcasting, and of Am-Par Record Corp. with respect to music recording.

Am-Par was organized in 1955. Earlier this year your committee received testimony with respect to some payments made by Am-Par to diskjockeys, commencing in 1957. I feel very deeply that this practice must be stopped, no matter how small the amount involved.

I have instructed Am-Par that no payments are to be made to diskjockeys or any other persons influential in the selection of music, other than customary social amenities of nominal value such as Christmas gifts and business luncheons.

Our broadcasting division is charged with the management of our broadcasting business in compliance with our obligation as FCC licensees. As such, it competes with other networks and stations as well as with other forms of entertainment. Its programming practices are formulated without any consideration whatsoever of the business interests or welfare of any other part of our company, including Am-Par Records. Am-Par records selected for broadcast over ABC facilities are chosen strictly for their own merit.

You have heard extensive testimony from a prominent ABC television personality, Mr. Dick Clark. Mr. Clark has been active not only in broadcasting but also in the popular music field.

As he has testified, Am-Par Record Corp. distributed the Hunt label for a recording company formerly owned by Mr. Clark. Arrangements for this distribution were concluded by Am-Par in the ordinary course of business without any consultation with or advice of anyone connected with any other division of the company.

The principal area of Mr. Clark's association with us, however, has been in television broadcasting. There can be no doubt as to his development and popularity as a national television personality. Nevertheless, when Mr. Clark's music selection practices were questioned in the press early in November 1959, we at once confronted him in order to obtain complete disclosure of any facts and circumstances which would cause his objectivity to be challenged. For this purpose we conducted an inquiry through the series of meetings to which Mr. Clark has already referred.

This inquiry disclosed to us for the first time the extended investments and interests that he has described to you, and the result of our inquiry was embodied in an affidavit that he gave us.

Mr. Clark also submitted to us at a later date a further affidavit on behalf of his company, Drexel Television Productions, Inc., in connection with the FCC inquiry to which I have referred. Both of these affidavits have been submitted to your committee.

In response to the fresh outlook in the industry fostered by your committee's disclosures, and in response to our own firm insistence that his objectivity must never be challenged, let alone impaired, he has assured us, as he has you, that he has withdrawn from every business area which might place him in an untenable position. We are confident as a result that his objectivity in the selection of music on his shows is insured.

We earnestly feel that our augmented policies which I have described will, in the same vein, insure against the occurrence of deceptive practices with which we are all understandably concerned. Should any situation arise requiring us further to augment or add to these policies, we will promptly do so.

I want to assure this committee that the path will be that of vigilance and appropriate action.

I appreciate the opportunity you have afforded me to present our company's views and policies on these subjects.

(Attachments to statement of Mr. Goldenson follow:)

LIST OF EXHIBITS

Exhibit No. 1: ABC sample diskjockey questionnaire with instructions, to determine the practices followed in the selection of music for broadcast.

Exhibit No. 2: ABC instructions to station managers and network heads in connection with the FCC's December 2, 1959 inquiry into undesirable program practices.

Exhibit No. 3: ABC sample questionnaire with instructions for employees and performers in connection with the FCC's December 2, 1959 inquiry into undesirable programing practices.

Exhibit No. 4: ABC sample questionnaire with instructions for independent producers, packagers, and suppliers, in connection with the FCC's December 2, 1959 inquiry into undesirable programing practices.

Exhibit No. 5: ABC policy statement on program selection and content, to station managers, network and department heads.

Exhibit No. 6: ABC sponsor identification policy and implementation thereof by ABC television network, radio network and owned and operated stations.

Exhibit No. 7: Annual questionnaire with instructions, to be answered by ABC employees and performers.

EXHIBIT No. 1

AMERICAN BROADCASTING Co.,
New York, N.Y., November 13, 1959.

In light of recent public allegations regarding undesirable practices in the selection of music for broadcast, it has become essential to determine precisely the practices followed in the execution of the respective music selection policies of each ABC owned and operated radio and television station.

Each station manager, each person rendering services as a diskjockey and each person who participates in the selection of music for broadcast over the facilities of any of such ABC stations has been requested to supply pertinent information in this regard. You will note from the attached that the company is specifically interested in instances of (1) acceptance of gratuities by employees and/or performers in connection with the promotion of music and music recordings (payola), and (2) financial interests of such persons, which interests may be directly affected by the broadcast of music.

Accordingly you are requested to read carefully and answer all of the questions attached hereto. If any answer is "Yes," you are further requested to explain your answer in detail in the space provided therefor.

Please sign your answers and the accompanying affidavit at the places indicated, (note that the affidavit must be notarized) and return the attached thereafter to our legal department forthwith in the self-addressed envelope enclosed for that purpose.

Name _____ Station _____

1. Do you now receive, or have you ever received payment of, or credit for, anything of value, directly or indirectly (such as through a relative or business entity in which you or such relative has or has had a financial interest) for the promotion by broadcast of any music, musical composition or musical recording?

Yes..... No.....

2. Have you ever refused to accept or failed to select for broadcast any music, musical composition or musical recording unless payment of, or credit for, anything of value, directly or indirectly (as explained in Question 1 above) was made to or for you?

Yes..... No.....

3. Do you now have, or have you, or any relative of yours, ever had any ownership of or beneficial interest in a musical copyright or performance right or in any music publishing, recording, pressing or merchandising concern?

Yes _____ No _____

If any answer is "Yes," explain in detail. Use additional page if necessary.

Signed _____

STATE OF _____ }
County of _____ } ss :

_____, being duly sworn, deposes and says that he (she) has read the foregoing questions and has answered the same; that the answers set forth are true, and that he (she) has subscribed his (her) name thereto.

Signed _____

Sworn to before me this _____ day of _____ 1959.

EXHIBIT No. 2

AMERICAN BROADCASTING Co.

Interdepartment Correspondence

Date: December 17, 1959.

Subject: FCC notice, December 2, 1959.

To: All station managers and network heads.

From: Mortimer Weinbach.

All broadcast licensees have been requested by the Federal Communications Commission to file with the Commission verified answers, in triplicate, to two questions set forth in the attached notice from the Commission dated December 2, 1959. Time for response to question 1 has been extended by the Commission to February 5, 1960. Time for response to question 2 remains January 4, 1960.

The Commission's questions are confusing and ambiguous and, to avoid consequent inquiries anticipated in this regard, it should be understood that these questions are directed at practices which have been the subject of recent investigation in Washington and elsewhere: The receiving of undisclosed consideration in any form by a broadcaster or any of its employees or independent packagers in order (a) to influence the selection, creation, or production of programming (payola), or (b) to obtain spoken or visual reference during a broadcast to names of persons, products, services, companies, or institutions other than those of sponsors identified during such broadcast (hidden "plugs").

We are advised that acceptable response to question 1 must set forth all instances of such practices uncovered in connection with any programming, from every source whatever, broadcast over all TV, AM, and FM broadcast stations licensed to American Broadcasting-Paramount Theatres, Inc., or a subsidiary thereof, at any time since November 1, 1958.

Accordingly, verified answers to the applicable accompanying questionnaires must be sought by each ABC station manager from—

(1) all present and former station executive, administrative, and production personnel, and performers who participated in or were influential upon the selection, creation, or production of programming broadcast over his station at any time during the period specified; and from

(2) all present and former independent producers, packagers, and other suppliers of local programming broadcast over his station at any time during such period.

In addition, similar information regarding programming supplied to ABC owned and operated stations by their respective networks must be included, and accordingly verified answers to the applicable questionnaires transmitted herewith to network heads, must be sought from all present and former network executive, administrative, and production personnel, and performers responsible for the selection, creation, or production of network programming, and from all present and former independent producers, packagers, and other suppliers of network programming, which programming was transmitted to ABC owned and operated stations at any time during the period specified.

Completed and verified questionnaires should be returned through station managers and network heads to the undersigned as soon as is possible, but by not later than December 30, 1959, with regard to ABC employees and individual

performers, and by not later than January 15, 1960, with regard to outside suppliers. Persons who have hitherto submitted verified questionnaires in the limited area of music selection must respond again to these more comprehensive questions. It is suggested that each person who is requested by you to complete a questionnaire be furnished with a separate copy thereof for their own records.

In the event that any such present or former ABC employee, individual performer, or outside supplier of local or network programing refuses to execute the verifying affidavit at the foot of his questionnaire, then an unverified answer, or statement in lieu of answer, should be accepted with written explanation for any such refusal, and any instance of outright refusal to accept a questionnaire or to provide answers thereto, should be reported at once to this office. In addition, station managers and network heads are requested to furnish the undersigned with the names and last known addresses of persons or firms with which they are unable to communicate to obtain the foregoing information, together with the reason for such inability.

Completed questionnaires—including those hitherto submitted in connection with music programing—are subject to subpoena, and they may be filed by the company with the Federal Communications Commission and with other governmental and regulatory bodies.

With regard to question 2 of the Commission's notice, it is our intention to establish the "internal controls and procedures" referred to therein, for use at each ABC owned and operated station and throughout the company, and to respond thereafter to the Commission's question accordingly. Station managers who have recently or traditionally maintained such controls are invited to furnish same by memo to the undersigned by not later than December 30, 1959.

MORTIMER WEINBACH.

EXHIBIT No. 3

AMERICAN BROADCASTING Co.,
New York, N.Y., December 17, 1959.

To All ABC Network and Owned and Operated Station Employees and Performers Concerned:

In connection with the Federal Communications Commission's inquiry into undesirable programing practices, the American Broadcasting Co. must file verified statements of the practices followed in the preparation of all programing broadcast over each ABC owned and operated radio and television station at any time since November 1, 1958.

Specifically, we are required to report every instance of undisclosed consideration received in any form by ABC employees or individual performers, whether staff or freelance or independent contractors, in order (a) to influence the selection, creation or production of programing (payola), or (b) to obtain spoken or visual reference during a broadcast to names of persons, products, services, companies or institutions other than those of sponsors identified during such broadcast (hidden plugs). In this connection, all present and former ABC network and local station employees, and all present and former independent performers under contract to ABC networks or owned and operated stations, who have participated in or were influential upon the selection, creation or production of programing transmitted to or broadcast over any ABC owned and operated stations at any time during such period have been requested to supply verified answers to the attached questionnaires.

Accordingly, you are requested to read carefully and answer all of the questions attached hereto. If any answer is "Yes," please explain your answer in detail on additional pages you are requested to attach for that purpose.

Please sign your answers and the accompanying affidavit at the two places indicated (note that the affidavit must be notarized), and return the attached thereafter, through the station manager or network executive by whom you have been contacted in this regard, to Mortimer Weinbach, vice president and general counsel of the American Broadcasting Co., as soon as is possible in the self-addressed envelope enclosed for that purpose.

Your cooperation in this regard will be appreciated. Please note that in connection with this and related programing inquiries, completed questionnaires are

subject to subpoena, and they may be filed by the company with the Federal Communications Commission and other governmental and regulatory bodies.

Name _____ Date _____
Station or network _____
Address _____
Date of employment or of performance contract _____
Position _____

1. Excepting only your compensation from the station or network, have you ever since November 1, 1958, solicited or received, or are you now soliciting or receiving payment or gifts of, or credit for, anything of value, directly or indirectly (such as through a relative or business entity in which you or such relative has or had a financial interest), in connection with the acceptance or selection for network or local transmission to, or broadcast over, any ABC owned and operated station, or for favorably influencing such acceptance or selection by another, or any musical, dramatic, literary, documentary or other programming property, or for the acceptance or selection of the services of any performer on any network or local program?
Yes _____ No _____

2. Have you ever since November 1, 1958, rejected, influenced the rejection of, or failed to select for network or local transmission to, or broadcast over, any ABC owned and operated station, any musical, dramatic, literary, documentary or other programming, or the services of any performer on any network or local program, or threatened to do any of the foregoing, unless you received payment or gifts of, or credit for, anything of value, directly or indirectly, excepting only your compensation from the station or network since said date?
Yes _____ No _____

3. Excepting only your compensation from the station or network, have you ever since November 1, 1958, solicited or received, or are you now soliciting or receiving, payment or gifts of, or credit for, anything of value, directly or indirectly, in connection with the spoken or visual reference, during a network or local program transmitted to, or broadcast over, any ABC owned and operated station, to names of persons, products, services, companies or institutions other than those of sponsors identified during such broadcasts?
Yes _____ No _____

4. Do you or any relative, associate, or nominee of yours now have, and since November 1, 1958, have you or such relative, associate, or nominee of yours ever had any ownership of or beneficial interest from or in any musical, dramatic, literary, or related copyright or performance right or recording thereof, or in any concern which deals in the production, development, publishing, recording, performance, broadcasting, syndication, or merchandising of such properties?
Yes _____ No _____

If any answer is "Yes," please explain in detail on additional pages you are requested to attach for that purpose.

Signed _____

STATE OF _____,
County of _____, ss:

_____, being duly sworn, deposes and says that he (she) has read the foregoing questions and has answered the same; that the answers set forth are true, and that he (she) has subscribed his (her) name thereto.

Signed _____

Sworn to before me this _____ day of _____ 19____.

Notary Public.

EXHIBIT No. 4

AMERICAN BROADCASTING Co.,
New York, N.Y., December 17, 1959.

To All Independent Producers, Packages, and Suppliers of ABC Programming:

As you may know, each licensee of the Federal Communications Commission is in receipt of a notice dated December 2, 1959, from the FCC in connection with the FCC's inquiry into undesirable programming practices. Under that notice, the American Broadcasting Co. must file verified statements of the practices followed in the production of all programming broadcast over each ABC owned

and operated radio and television station at any time since November 1, 1958, including programing furnished by independent producers directly to these stations or through their respective networks.

Specifically, we are required to report every instance of undisclosed consideration received in any form by persons and firms who have furnished network or local programing transmitted to, or broadcast over, any ABC owned and operated station at any time since said date, in order (a) to influence the selection, creation, or production of such programing (payola) or (b) to obtain spoken or visual reference during a broadcast to names of persons, products, services, companies or institutions other than those of sponsors identified during such broadcast (hidden "plugs").

Obviously, your cooperation in this matter is essential for us to comply with the notice and meet our responsibility as licensees of the FCC. Accordingly, we have prepared the attached questionnaire, and insofar as it applies to programing offered or furnished by you to us, you are requested to read carefully and answer all of the questions. If any answer is "Yes," please explain your answer in detail on additional pages you are requested to attach for that purpose.

Please have your answers properly executed at the two places indicated (note that the affidavit must be notarized) and return the attached thereafter, through the station manager or network executive by whom you have been contacted in this regard, to Mortimer Weinbach, vice president and general counsel of the American Broadcasting Co., as soon as is possible in the self-addressed envelope enclosed for that purpose.

We are most grateful for your assistance in this regard. Please note that in connection with this and related programing inquiries, completed questionnaires are subject to subpoena and they may be filed by the company with the Federal Communications Commission and other governmental and regulatory bodies.

Name ----- Date -----
 Address ----- Supplier to -----
 (name of station of network)

1. Excepting only compensation paid by the station or network or paid by you or your company to its or your agents or employees, have you or has any such agent or employee since November 1, 1958, ever solicited or received, or are you or any of them now soliciting or receiving, payment or gifts of, or credit for, anything of value, directly or indirectly (such as through a relative, or through any business entity in which you, your company, or such agents or employees have or had a financial interest), in connection with the acceptance, selection or production for, or supply to, any ABC network or owned and operated station, or for favorably influencing such acceptance, selection, or production by another, of any musical, dramatic, literary, documentary or other programing property, or for the acceptance or selection of the services of any performer on such programing?

Yes ----- No -----

2. Have you, your company, or any of its or your agents or employees, since November 1, 1958, rejected, influenced the rejection of, or failed to select for production or supply to any ABC network or owned and operated station, any musical, dramatic, literary, documentary or other programing property, or the services of any performer on such programing, or threatened to do any of the foregoing, unless you, your company, or such agents or employees received payment or gifts of, or credit for, anything of value directly or indirectly, excepting only compensation paid by the station or network, or compensation paid by you or your company to such agents or employees since said date?

Yes ----- No -----

3. Excepting only compensation paid by the station or network or paid by you or your company to agents or employees, have you or your company or has any such agent or employee since November 1, 1958, ever solicited or received, or are you or any of them now soliciting or receiving payment or gifts of, or credit for, anything of value, directly or indirectly, in connection with the spoken or visual reference during a network or local program produced for or supplied to any ABC network or owned and operated station, to names of persons, products, services, companies, or institutions other than those of sponsors identified during the broadcasts of such programing?

Yes ----- No -----

4. Have you, your company, or any agent or employee of yours or your company, since November 1, 1958, ever offered, or been solicited to offer, to pay or

give, or provide credit for, anything of value, directly or indirectly to any agent or employee of any ABC network or owned and operated station, in connection with the acceptance, selection, or production for, or supply to, such networks or stations, of any musical, dramatic, literary, documentary or other programing property, or has any such ABC agent or employee ever rejected, failed to select, or threatened the same unless such payment or gift was provided?

Yes ----- No -----

If any answer is "Yes," please explain in detail on additional pages you are requested to attach for that purpose.

Signed -----

STATE OF -----
County of -----, ss

(For Individuals)

-----, being duly sworn, deposes and says that he (she) has read the foregoing questions and has answered the same; that the answers set forth are true, and that he (she) has subscribed his (her) name thereto.

(For Corporations)

-----, being duly sworn, deposes and says that he (she) is the ----- of the -----, and that on behalf of said ----- he (she) has read the foregoing and knows the contents thereof, and that the same is true to his (her) own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as those matters he (she) believes it to be true.

Deponent further says that the reason this verification is made by deponent and not by the corporation is that the said corporation is a domestic corporation and deponent is an officer thereof, to wit, its -----

Signed -----

Sworn to before me this ----- day of -----, 19 -----

Notary Public.

EXHIBIT No. 5

AMERICAN BROADCASTING Co.

Interdepartment Correspondence

Date: January 4, 1960
Subject: Program selection and content
To: All ABC station managers, network and department heads
From: Mortimer Weinbach

It has been the company's policy to require thoroughly impartial judgment and adherence to all applicable laws and regulations on the part of its executive, administrative, creative, and production personnel and individual performers engaged by ABC who are influential upon or responsible for the selection, creation, or production of programing or program material.

In this connection it appears useful to restate certain elements of this policy for the benefit of all concerned:

(1) The solicitation or acceptance by any ABC employee or individual performer engaged by ABC, or by any member of his immediate family or any person on his behalf, of any undisclosed consideration directly or indirectly in any form in order to influence the selection, rejection, creation, or production of any programing or program material or to influence the selection or rejection of the services of any performer is prohibited.

(2) The solicitation or acceptance by any ABC employee or individual performer engaged by ABC, or by any member of his immediate family or any person on his behalf, of any undisclosed consideration directly or indirectly in any form in order to obtain spoken or visual reference during a broadcast to names of persons, products, services, companies or institutions other than those of sponsors identified during such broadcast is prohibited.

(3) The acquisition or acceptance by any ABC employee or individual performer engaged by ABC, who is influential upon or responsible for the selection, creation, or production of programing or program material, or by any member

of his immediate family or any person on his behalf, of any beneficial interest, directly or indirectly, in any person, firm, corporation, or organization (other than a corporation whose stock is publicly traded or publicly listed on a recognized exchange) engaged directly or indirectly in—

- (a) music publishing; or
- (b) the creation, production, distribution, manufacture, or exploitation of music, films, tapes, recordings, electrical transcriptions, or any live or recorded programing; or
- (c) radio or television broadcasting (including closed circuit, theater, or pay television),

without first disclosing the same and obtaining prior written consent thereto by the general counsel, American Broadcasting Co. is prohibited.

Employees and individual performers engaged by ABC are advised that violations of the foregoing specific policies on their part may place them or the company in violation of existing laws and regulations, and accordingly, failure to comply therewith will be handled on the same drastic basis as willful disobedience of any other major fundamental company policy.

In this connection, executive, administrative, creative, and production personnel and individual performers engaged by ABC who are influential in the programming area will file, on the anniversary of the date of their most recent employment with the company or from time to time as the company may require, affidavits in the form obtainable from the personnel department for that purpose affirming their compliance with the foregoing policy.

Station managers, network, and department heads are expected to inform all such employees and individual performers engaged by ABC regarding the above.

MORTIMER WEINBACH.

EXHIBIT No. 6

AMERICAN BROADCASTING CO.

Interdepartment Correspondence

Date: February 15, 1960.

Subject: Company policy—product identification.

To: All ABC station managers, network and department heads.

From: Mr. Leonard H. Goldenson.

I am attaching herewith a statement of the operating policy of the company concerning product identification in connection with the broadcast of all programs over the facilities of the American Broadcasting Co. This policy is designed to preclude the possibility of "hidden plugs."

The contents of this memorandum and the policy statement should be disseminated to all employees concerned, independent contractors, and program producers and suppliers.

Any questions you may have relating to the operation of this policy should be referred to Mort Weinbach.

LEONARD H. GOLDENSON.

IDENTIFICATION POLICY

The aural or visual use or identification in a program of any product or service, or of any brand, trade, or other identifying name of any product, service, manufacturer, supplier or other organization (other than the name of the sponsor or its product or service) will be permitted by the company only:

(a) when the company has determined that such use or identification will contribute to the overall program content;

In applying this standard, the company will determine whether such proposed use or identification in the program contributes to the entertainment value and program content from the viewpoint of reality, suitability, and interest of the program.

(b) upon prior disclosure to and determination by the company of the propriety of any consideration, directly or indirectly given to anyone in connection with any such use or identification;

Each program producer and each program supplier (in the case of a program package furnished by a supplier other than the program producer) of a program package for the network and/or company-owned and -operated station shall hereafter submit to the company an affidavit at least 48 hours prior to broadcast of each program setting

forth any money, services, or other consideration, directly or indirectly, paid or promised to or charged or received by the producer or any of its employees, and by the supplier or any of its employees, in connection with any such use or identification set forth above (other than payments from the network and/or station). The company will consider the propriety of the consideration, if any, disclosed in such affidavit, in arriving at its determination whether to permit such use or identification.

(c) upon the making of any appropriate announcement on the air, if any such use or identification is permitted.

In all cases where any such use or identification is permitted by the company by reason of having met the standards set forth above, appropriate credit, if any is required, will be given, as determined by the company, on the program. The above policy shall be applicable to gifts and prizes used on audience participation programs, in which event appropriate credit will be given. The number of any such credits and the content thereof shall be subject to prior approval of the company's continuity acceptance department.

AMERICAN BROADCASTING CO.

Interdepartment Correspondence

Date: February 19, 1960.

To: All ABC television network department heads.

From: Oliver Treyz.

In accordance with my memorandum of February 15, following are the implementation procedures concerning the company policy on product identification:

1. The ABC television network legal department will furnish each program producer or supplier of a program with an affidavit to be returned in triplicate.

2. Affidavits will be returned to the ABC television network legal department, who will then furnish continuity acceptance and the program department with copies.

3. The continuity acceptance department, in consultation with the program department, will administer the day-to-day operation of the policy, applying the standards of the policy. The continuity acceptance department will have the primary responsibility of effectuating the policy.

4. Continuity acceptance will advise the financial vice president, the vice president in charge of administration of the ABC television network, and the vice president and general counsel of ABC of any instance in which there is any question as to the propriety of the consideration. The continuity acceptance department will be advised whether or not to permit the use or identification involved after a joint decision has been arrived at.

These procedures are effective February 20, 1960.

OLIVER TREYZ.

AMERICAN BROADCASTING Co.,
New York, N.Y.

Re ———.

GENTLEMEN: Attached hereto is a statement of the operating policy of the company concerning product identification as announced by Mr. Leonard Golden-son. Mr. Oliver Treyz has directed that this policy is to apply in connection with all programs broadcast over the ABC television network. It is designed to preclude the possibility of "hidden plugs."

It is therefore requested that each program producer and supplier of a program package for the television network submit to the company an affidavit at least 48 hours prior to the broadcast of each program setting forth the requested information. If the answer is "none," the affidavit should so state.

The affidavit should be completed and returned, in triplicate, for all programs scheduled to be broadcast on or after Monday, March 7, 1960. An affidavit should be submitted for each individual program. However, in the case of a program series broadcast more than once a week, one affidavit may be completed for the entire week's programming provided it separately specifies the information with respect to each individual day's program.

A supply of the affidavit and acknowledgment forms is attached. They should be returned to the office of Omar F. Elder, Jr., vice president and general counsel of the ABC television network.

ALFRED R. SCHNEIDER.

PROGRAM AFFIDAVIT

The undersigned supplier (producer) of the program entitled _____ scheduled for broadcast on _____ over the facilities of American Broadcasting Co. television (radio) (network) (station _____) hereby certifies that in connection with said program no consideration has been, directly or indirectly, paid or promised to or charged or received by said supplier (producer), any of its employees, any independent contractor supplying materials or services in connection with said program, or its employees, for making aural or visual reference and/or use of any product or service or of any brand, trade or other identifying name of any product, service, manufacturer, supplier or other organization (other than the name, product or services of a sponsor) on the above program, except as stated below :

- Product, service or organization promoted :
- Intended use or identification :
- Consideration :
- Recipient :
- Furnished by :

Remarks :

Supplier (Producer)

 (Name)

 (Address)

 (Title)

STATE OF _____ }
 County of _____ } ss

(For Individuals)

_____, being duly sworn, deposes and says that he (she) has read the foregoing questions and has answered the same; that the answers set forth are true, and that he (she) has subscribed his (her) name thereto.

(For Corporations)

_____, being duly sworn, deposes and says that he (she) is the _____ of the _____, and that on behalf of said _____ he (she) has read the foregoing and knows the contents thereof, and that the same is true to his (her) own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he (she) believes it to be true.

Deponent further says that the reason this verification is made by deponent and not by the corporation is that the said corporation is a domestic corporation and deponent is an officer thereof, to wit, its _____.

Signed _____
 Sworn to before me this _____
 _____ day of _____ 19____

Notary Public.

AMERICAN BROADCASTING Co.

Interdepartment Correspondence

Date : February 24, 1960.
 Subject : Company policy—product identification.
 To all radio network department heads
 From E. J. DeGray.

Each of you is in receipt of Mr. Goldenson's memo dated February 15, 1960, together with a statement of the operating policy of the company concerning product identification in connection with the broadcast of all programs over the facilities of the American Broadcasting Co.

The implementation of this policy, insofar as each of you may be concerned, is as follows:

1. The radio network legal department will furnish each program producer or supplier of a program on the network with an affidavit to be returned in triplicate.

2. Affidavits will be returned to the radio network legal department, who will then furnish continuity acceptance and the program department with copies.

3. The continuity acceptance department, in consultation with the program department, will administer the day-to-day operation of the policy, applying the standards of the policy. The continuity acceptance department will have the primary responsibility of effectuating the policy.

4. Continuity acceptance will advise the financial vice president, the president of the radio network, and the vice president and general counsel of ABC of any instance in which there is any question as to the propriety of the consideration. The continuity acceptance department will be advised whether or not to permit the use or identification involved after a joint decision has been reached.

E. J. DeGRAY.

AMERICAN BROADCASTING CO.

Interdepartment correspondence

Date: February 24, 1960.

Subject: Company policy—product identification.

To: All ABC station managers, radio and television.

From: Stephen C. Riddleberger.

Each of you is in receipt of Mr. Leonard H. Goldenson's memo dated February 15, 1960, together with a statement of the operating policy of the company concerning product identification in connection with the broadcast of all programs over the facilities of the American Broadcasting Co.

The implementation of this policy insofar as each of the stations may be concerned is as follows:

1. Each station manager will furnish each program producer or supplier of a program on the station with an affidavit to be returned in triplicate.

2. The affidavits will be returned to the station manager who will then furnish his continuity acceptance and program departments with copies.

3. The station manager, in consultation with his continuity acceptance and program departments, will administer the day-to-day operation of the policy, applying the standards of the policy. Each station manager will have the primary responsibility of effectuating the policy.

4. The station manager will notify the vice president for the owned and operated stations (or in his absence the general counsel for the owned and operated stations of any instance in which there is any question as to the propriety of the consideration. The vice president for the owned and operated stations, in consultation with the financial vice president and the vice president and general counsel of ABC, will advise the station manager whether or not to permit the use or identification involved.

STEPHEN C. RIDDLEBERGER.

EXHIBIT No. 7

AMERICAN BROADCASTING CO.

Interdepartment Correspondence

Date: April 21, 1960.

Subject: Program selection and content.

To: All ABC station managers, network and department heads.

From: Mortimer Weinbach.

In connection with my memorandum dated January 4, 1960, you will find attached hereto the form of affidavit required of all executive, administrative, creative, and production personnel, and individual performers engaged by ABC who are influential in the programming area, to be filed on the anniversary of the date of their most recent employment with the company or from time to time as the company may require.

The bank dates in each of the items will, of course, be the date of the previous affidavit.

When executed, these affidavits will be retained at those locations where the personnel or contract files of each employee or performer are maintained.

MORTIMER WEINBACH.

Name _____ Date _____
 Station or Network _____
 Address _____
 Date of Employment or of Performance Contract _____
 Position _____

1. Excepting only your compensation from the station or network, have you ever since _____ solicited or received, or are you now soliciting or receiving payment or gifts of, or credit for, anything of value, directly or indirectly (such as through a relative or business entity in which you or such relative has or had a financial interest), in connection with the acceptance or selection for network or local transmission to, or broadcast over, any ABC owned and operated station, or for favorably influencing such acceptance or selection by another, of any musical, dramatic, literary, documentary, or other programming property, or for the acceptance or selection of the services of any performer on any network or local program?

Yes _____ No _____

2. Have you ever since _____ rejected, influenced the rejection of, or failed to select for network or local transmission to, or broadcast over, any ABC owned and operated station, any musical, dramatic, literary, documentary, or other programming, or the services of any performer on any network or local program, or threatened to do any of the foregoing, unless you received payment or gifts of, or credit for, anything of value, directly or indirectly, excepting only your compensation from the station or network since said date?

Yes _____ No _____

3. Excepting only your compensation from the station or network, have you ever since _____ solicited or received, or are you now soliciting or receiving, payment or gifts of, or credit for, anything of value, directly or indirectly, in connection with the spoken or visual reference, during a network or local program transmitted to, or broadcast over, any ABC owned and operated station, to names of persons, products, services, companies, or institutions other than those of sponsors identified during such broadcasts?

Yes _____ No _____

4. Do you or any relative, associate, or nominee of yours now have, and since _____ have you or such relative, associate or nominee of yourself ever had any ownership of or beneficial interest from or in any person, firm, corporation or organization (other than a corporation whose stock is publicly traded or publicly listed on a recognized exchange) engaged directly or indirectly in

- (a) music publishing; or
- (b) the creation, production, distribution, manufacture or exploitation of music, films, tapes, recordings, electrical transcriptions, or any live or recorded programming; or
- (c) radio or television broadcasting (including closed circuit, theater or pay television).

Yes _____ No _____

If any answer is "Yes", please explain in detail on additional pages you are requested to attach for that purpose. Also describe any payments or gifts or anything of value that you have received, directly or indirectly (such as through a relative or business entity in which you or such relative has or had financial interests) since _____ from any person, firm, corporation or organization engaged directly or indirectly in music publishing or the creation, production, performance, distribution, manufacture or exploitation of music, films, tapes, recordings, electrical transcriptions, or any live or recorded programming; or from any performer on any network or local program; or from the composer of or anyone associated with any musical, dramatic, literary,

documentary or other programming broadcast or offered for broadcast on any network or local program.

Signed -----

STATE of -----

County of -----, ss:

-----, being duly sworn, deposes and says that he (she) has read the foregoing questions and has answered the same; that the answers set forth are true, and that he (she) has subscribed his (her) name thereto.

Signed -----

Sworn to before me this ____ day of -----, 19-----.

Notary Public.

The CHAIRMAN. Does that conclude your statement, Mr. Goldenson?

Mr. GOLDENSON. That does, Mr. Harris.

The CHAIRMAN. Do you want to explain further the many exhibits that you have here?

Mr. GOLDENSON. No, I don't believe so. I think they speak for themselves.

The CHAIRMAN. All right.

Mr. LISHMAN.

Mr. LISHMAN. Mr. Goldenson, are you familiar with the press release that was issued by ABC on November 18, 1959?

Mr. GOLDENSON. I wasn't until your investigators asked to see it and showed it to me. I think I was out of New York at the time this took place. I believe I was in California, and I didn't see it as such, no.

Mr. LISHMAN. The last paragraph states, the last two paragraphs:

Dick Clark has volunteered to divest himself of such interests. We are satisfied that the American Broadcasting Co. has been apprised of all pertinent details relating to the various Dick Clark programs and his related activities. We have concluded our investigation with renewed faith and confidence in Dick Clark's integrity.

Now, just what investigation did ABC conclude which would lead them to this statement?

Mr. GOLDENSON. I believe it was on November 11 Mr. Treyz had called Mr. Clark to come to his office—

Mr. LISHMAN. Will you identify Mr. Treyz?

Mr. GOLDENSON. He is the head of our television network. And there was Mr. Omar Elder, Mr. Siegel, myself, together with Mr. Clark's attorney. And we said it had come to our attention that the Harris Oversight Committee was going to look into the matter of payola, and I wanted to know every bit about his operations, and I wanted to have the truth on every item that I would ask.

I asked him if he had ever taken payola. He said no, he had not. I said, "Have you ever made an agreement to play a record for a sum of money?"

He said, "No, I have not."

I said, "Have you ever refused to play a record because you had not received any money?"

He said, "No, I have not."

I said, "As payola is known in the industry, have you ever taken payola in any form?"

He said, "I have not."

I said, "Now, I want to get to the question of whether you have any interest in music publishing, recordings, or any other information that would relate to our analysis of this problem."

Mr. LISHMAN. About what date was this?

Mr. GOLDENSON. This was November 11, this was within 5 days after, I think, the committee had mentioned the question of payola on November 6, which was a Friday.

On Saturday I called the heads of every one of our divisions and told them that I wanted a complete analysis made of every person that had anything to do with music in our company.

Mr. Treyz apparently called Mr. Clark to his office, and he advised me that he was calling him, and I said I would like to be present. This was November 11, as I said.

Mr. Clark recited that he did have an interest in music publishing, music recording companies and other interests, and I said, "I would like to have the details of them. And in my opinion, if you do have these interests, insofar as our company is concerned, if we are going to consider keeping you on the air, in my opinion you must divest yourself of these as a matter of company policy." I said, "They should have been brought to my attention by you."

He said he never had considered it necessary, it was common in the industry.

I said, "If that is so, I am not aware of it," and I felt that this was something that should have been brought to our attention. I said, "You can make up your mind one way or another which way you want to proceed, but you let us know whether you want to divest yourself of all these things, and if so, I would like to know almost immediately."

He said, "Can I think about it overnight?", and we said "Yes." And we met again the next day, and he said he had come to the conclusion that he would divest himself immediately of all of his holdings.

I said, "if you are prepared to do that, I would like to have a complete affidavit from you embodying the questions that we have been asking you. I would like to have a complete statement of all of your holdings and all of your activities in this music field." I said, "I want to know any gifts of any nature that you have received. I want to know everything about this field, and I want you to put this under oath."

He said, "My attorney and myself will get going immediately on an affidavit embodying all the questions you have been asking me." And he said, "When would you like to meet again?"

And I said, "I would like to meet as soon as possible."

And he said he had a show on Saturday.

I said, "Do you want to meet on Sunday? If so, I would like to meet on Sunday at my home, and we can start any time you wish, because I don't know anything more important than to get to the very depths of everything you are doing in this field."

On Sunday he came with his attorneys, and I had a number of our top officials of our company present, in the early afternoon, and we interviewed him in depth. He presented a form of an affidavit, and we interviewed him on every item that was in that affidavit, until

perhaps late that night, I don't know what time it was. It was certainly around maybe 11 or 12 o'clock.

When we finished this man indicated to me that he was frank in his approach to the problem, he had revealed everything he had done, and we said that insofar as we were concerned we wanted to have all the facts under oath and then we would consider how we would approach the problem. And basically that is what we did, Mr. Lishman.

Mr. LISHMAN. Did you conduct any investigation of Mr. Mammarella?

Mr. GOLDENSON. No, he was not an employee of ours, he was employed by WFIL and wasn't our own employee.

Mr. LISHMAN. He selected 50 percent of the records played, didn't he?

Mr. GOLDENSON. I have no idea. When we met at my home, or before that, I had asked that we have affidavits from everybody that had anything to do with the selection of music, and Dick Clark said that he had affidavits or would have affidavits for us from everybody, but there was one person he could not give us an affidavit from. And we asked him who this was, and he said a Mr. Mammarella who worked with him in the programing. And I said, "If that is the case, I want to know why, why can't you give us an affidavit?"

He said, "In the first place, he will not divest himself of his music holdings, and the second thing, after much discussion he said he has been doing some things wrong, and I would rather not disclose the nature of what those are, I don't think it will serve any purpose, since he has already quit."

And I said, "Insofar as we are concerned, we want to have all the facts, and I would like you to put down on the affidavit that which you are prepared to tell us about Mr. Mammarella."

He asked if he could refrain from putting his name down, and he said, "You can refrain from doing anything you want, I can't tell you what to put in your affidavit. I merely want to have all the facts to the extent that we can arrive at a judgment as to what to do in this situation."

Mr. MACK (presiding). Did he tell you that Mr. Mammarella was a partner in some of his corporations?

Mr. GOLDENSON. He didn't say a partner, he said associated with him.

Mr. MACK. I thought he told you all about his operations?

Mr. GOLDENSON. I only wanted to know what his holdings were. I wasn't trying to find out about anybody else.

Mr. MACK. It seems to me you were not very vigorous in your investigation if you did not even find out that Mammarella was a stockholder in some of these so-called corporations that Dick Clark had.

Mr. GOLDENSON. My answer to that is very simple.

We were trying to find out the facts about Dick Clark, and his relationship to us. Mr. Mammarella had already quit, was no longer an employee—never was an employee of ours anyway. We had no contract with Mr. Mammarella.

Mr. MACK. He worked for—

Mr. GOLDENSON. He worked for WFIL, and I believe Dick Clark's company, Click, or whatever the company was that originated this program in Philadelphia.

Mr. MACK. As a matter of fact, they were the producers of the show?

Mr. GOLDENSON. The corporation was the producer of the show with WFIL, that is right.

I understand in that connection, we checked with Mr. Roger Clipp who was present at my home, he was the manager at WFIL, and he had interviewed Mr. Mammarella, but we never did, because of the fact that we had no contact with him as such. I had never met the gentleman in my life.

Mr. MACK. This certainly impresses me as being most unusual, and similar to another irregularity in television, and that was the television quiz shows. In that instance you had producers, such as the Barry & Enright group, that produced a show that was played on the networks, and the networks seemed very reluctant to enter into this area and conduct their investigations, or perhaps they felt that they didn't have authority to investigate the producers for producing shows on their network.

Now, is not this similar?

Mr. GOLDENSON. I don't believe so at all, because of the fact that we had all of the facts, as we understood them, presented to us by Dick Clark, as related to Dick Clark. He told us that Mammarella had done something wrong, that he had resigned, and that he would so state in the affidavit, and that he would have no further association with the show.

I would like you to understand that what we were trying to do was to get at the facts as respects Dick Clark under oath, so that we could then come to some conclusion as to how we would handle the Dick Clark matter.

Mr. MACK. I would think that the facts relating to the irregularities, and especially relating to Mammarella, would be of interest to you in your investigation of Dick Clark.

Mr. GOLDENSON. Well, as I said, all we knew—

Mr. MACK. Here was his partner or fellow stockholder in some of the corporations—he was a producer of the show, producer of the program, and he had a very close tie with Dick Clark, so it would seem to me you would be interested in Mammarella.

Mr. GOLDENSON. We were very interested in every one of them. We asked for an affidavit from every man that had anything to do with the determination of music on the "Dick Clark Show." We had affidavits from the men around him. And actually, as to Mammarella, there was nothing originally in his affidavit on Mammarella or anybody about it, and we insisted that the fact that he had resigned, and that he had done something wrong be incorporated in an affidavit so that we would have all the facts before us in attempting to arrive at a conclusion.

Mr. MACK. Then he did not give you the complete story if he had failed to tell you about Mammarella?

Mr. GOLDENSON. Only in the sense that he felt that he had done something wrong but he didn't tell us the nature of what it was. He inferred that probably it was payola, but he said it would serve no purpose insofar as he was concerned, that he didn't want to hurt the fellow or prevent him from getting any position.

And we said, "Nevertheless, we want to have a statement in his affidavit concerning Mr. Mammarella, together with the affidavits of everybody else that had anything to do with this show."

Mr. MACK. Have you ever found what it was that Mammarella did?

Mr. GOLDENSON. We never have, except that I understand—

Mr. MACK. That is the thing that amazes me the most, that you conducted this thorough investigation, and even today, at this late hour—

Mr. GOLDENSON. Now I do; not at that time. I have since read the testimony of Mr. Mammarella.

Mr. MACK. So the subcommittee got the information that you desired?

Mr. GOLDENSON. That is right. We don't have subpoena powers in our company, and as such we couldn't go to a person who was not an employee of ours and ask for anything, and as such had to rely—

Mr. MACK. Now, let's be realistic about this thing.

He was a producer on a show which was on ABC?

Mr. GOLDENSON. But he no longer was employed by the company that produced that show.

Mr. MACK. So you had authority to take off the show completely?

Mr. GOLDENSON. We did.

Mr. MACK. And do you not think that if you had indicated that you would take the show off the air unless Dick Clark told you about his connection with Mammarella that you would have been able to secure the facts concerning his association with Mammarella?

Mr. GOLDENSON. I do not know that. I can't answer that—all I know is—

Mr. MACK. In the case of Allan Freed, I understood he was to sign the affidavit or be discharged.

Mr. GOLDENSON. He was a direct employee of our company.

Mr. MACK. And he was discharged?

Mr. GOLDENSON. He was.

Mr. MACK. And I imagine that ABC would have the same authority with regard to the "Dick Clark Show."

Mr. GOLDENSON. That is not—it was an independently packaged show; we had no authority over this man as such.

Mr. MACK. Well, if I understand this situation correctly, ABC could take the "Dick Clark Show" off the air at any hour that they wanted.

Mr. GOLDENSON. Exactly, except Mr. Mammarella no longer was employed, so there was nothing we could do.

Mr. MACK. It seems to me you did have that same authority to remove the show, and for some reason you did not seem to be too excited or interested in securing the information.

Mr. GOLDENSON. We were very definitely interested and we wanted to know every fact we could obtain.

Mr. MACK. Mr. Moss.

Mr. Moss. This seems to be one of those informal arrangements where we cannot get to Mr. Mammarella because, as a result of a request for an affidavit, he decided he would leave the show rather than sign it. But I point out that here was a man who had the closest of associations with Mr. Clark for quite a number of years, as a producer

of "Bandstand," as a package purchased by American Broadcasting Co.

Now, you say that you were interested in developing all facts. It seems inconceivable to me, if that was the objective, why you would learn from Mr. Clark that this very close associate had done something wrong—and apparently the way it goes, it was just something he would prefer not to discuss—and yet you did not want to know what it was.

Mr. GOLDENSON. Mr. Moss, what we were attempting to do was to have the facts before us; we were aware that he had done something wrong. He no longer was employed. And we were finding a way to set up machinery that nothing of this nature could happen, and therefore, as a result of all the facts that were divulged to us under oath—

Mr. Moss. Now, what good was the statement under oath to you?

This is an oath not required by any law that I am aware of. What was the value?

If these were honorable men and you could trust their statements under oath, could you not have trusted it just as well without this window-dressing effect of putting them under oath?

Mr. GOLDENSON. I suppose that is true—

Mr. Moss. It added nothing to the strength of the statement, did it?

Mr. GOLDENSON. Except every witness who appears under our democratic process takes an oath—

Mr. Moss. That is an oath required by law, Mr. Goldenson; you are a very able attorney and you know that.

Mr. GOLDENSON. So far as we were concerned, we preferred to have everything under oath, so that if they had lied—and we told Dick Clark this—that if any lie had been told to us, or if any inconsistency developed as a result of what he told, in our judgment this was tantamount to dismissal, since he had cooperated and told us all the information that we felt we were required to know as to how to set up the machinery to correct this thing—because he was cooperative in every way possible in telling us everything that we had to know to set up proper machinery.

Mr. Moss. You are aware of the fact that he inferred to this subcommittee—I think we could have the staff check and get the exact testimony of the day before yesterday—that he could not sign the general affidavit at the time requested of him, although he could now sign such affidavit?

Mr. GOLDENSON. I think if you will look at the testimony yesterday, Mr. Moss, that I read last night when we came in—

Mr. Moss. I said the testimony before.

Mr. GOLDENSON. He said, after he had a chance to look at the affidavit, he could have signed.

Mr. Moss. You think he could have given a "Yes" answer to the third section?

Mr. GOLDENSON. Yes. He said yesterday—

Mr. Moss. Are you satisfied, having read all of yesterday's testimony, that Mr. Clark did not take payola?

Mr. GOLDENSON. As his interpretation of payola—

Mr. Moss. By your interpretation.

Mr. GOLDENSON. Mr. Moss, payola, as I see it, had many interpretations in this music business.

Mr. MOSS. Most convenient ones, most flexible.

Mr. GOLDENSON. And that is why, in my judgment, Mr. Moss, this subcommittee can do a great service, and is doing a great service, in trying to clarify this picture, because I think a great deal of confusion does exist in this whole area. There are different interpretations by different people, and it was for that reason that we decided that we would set up the machinery and that no gifts or no payments could be made to anybody under any conditions in our set of rules—which is virtually the same conclusion that you have come to—if we are going to lick this problem.

And in that connection, we have asked here today, as we have been asking, that a law be passed to outlaw this and make it illegal so that it will help us in our job of trying to police this type of thing.

Mr. MOSS. Now, if we are going to outlaw the ownership of a recording company or of a copyright by a diskjockey, why, to be consistent and fair, ought not we to outlaw the ownership of such facilities by a broadcaster?

Mr. GOLDENSON. I think it is quite different.

Mr. MOSS. I do not see the difference, except that one is bigger and better organized.

Mr. GOLDENSON. Not at all. One is an individual as such, and has the ability to not only be before the public and present records, but also the ability to select those records; it is one and the same person.

A corporation operating as our company, or as RCA, or as CBS, or any large corporation operates, each of these companies are divided into autonomous units, and as such, one unit has no relationship to the other.

We started our record company in 1955; we made a complete survey and a complete analysis of this problem before we went into the record business.

Mr. MOSS. Now, if you did, why did you wait until November of 1959 to ask for affidavits as to whether or not your personnel was engaged in payola? Because, if you made a complete survey, you undoubtedly encountered payola, so it did not come to you in November as a great surprise.

Mr. GOLDENSON. Payola as such was not a great surprise to me. I have been aware that the problem of payola has existed for many years.

Mr. MOSS. Then why did you in November 1958 request affidavits?

Mr. GOLDENSON. Actually, we had 110 affidavits signed that no payola was taken; and one, Allan Freed, resigned because he refused to sign the affidavit.

Actually, as far as we were concerned—and I think you have got to relate the problem to network operations—

Mr. MOSS. I look at the licensees of these stations as being responsible parties. We heard all through the quiz investigation a pattern which so insulates the responsible executive from responsibility that he never is in a position to know what actually goes on; therefore, I think we must look to the licensee; we must hold him responsible.

Mr. Chairman, I will yield back to you and wait my turn to complete my questions.

Mr. MACK. Mr. Goldenson, if you want to reply, you may.

Mr. GOLDENSON. I agree with you that everything should relate itself back to the licensee. I don't quarrel with that. I am simply saying that insofar as our company is concerned—and it is true of other network-operated stations—basically your payola was developed in your independent type of stations where they had these rock-and-roll type of programs, or your top 40 or 50.

Mr. MOSS. So you decided to make it a network deal?

Mr. GOLDENSON. I beg your pardon, that is not true.

Mr. MOSS. You have the only network rock and roll diskjockey that I know of.

Mr. GOLDENSON. I said—we were talking about the licensees at the station level.

Mr. MACK. Mr. Goldenson, I think you have made a very good argument in favor of the regulation of networks. But you disclaim any responsibility for the shows—

Mr. GOLDENSON. I don't disclaim any responsibility at all, I simply claim—we are responsible for the show, but Mr. Mammarella, who worked for this package, had quit, and there was nothing we could do to get at him because we had nothing to contact him with. There was no way we could get at him because we had no contract with him, and he had already quit before the investigation started.

Mr. MACK. I am sure if the network were regulated and they were responsible to a Federal agency that they would be a little more anxious to investigate and pursue it with a little more vigor than they have in the past.

And I think that your statement here this morning indicates a reluctance or disinterest in the package programs which come in over your network.

Mr. GOLDENSON. Not a bit.

Mr. MACK. Now, as a matter of fact, you disclaim any responsibility because of the fact that this was an affiliate in Philadelphia rather than owned by ABC; is that right?

Mr. GOLDENSON. We don't disclaim responsibility at all. You are misinterpreting what I said. Actually, WFIL did originate this program in Philadelphia. We assume responsibility.

Mr. MACK. Is that Triangle Publications, Inc.?

Mr. GOLDENSON. Yes, it is.

Mr. MACK. I notice that you had an agreement with them, and under 13, page 7, of this agreement, which I have before me, you say, you agree:

And all persons having any connection with the said program will act at all times with due regard to the public morals and conventions.

Now that seems to me that you were interested.

Mr. GOLDENSON. I said we were very definitely interested, and I also said that we do not disclaim any responsibility. We do assume responsibility, but we could not get at an employee who had already left.

Mr. MACK. But you were not even interested enough to ask Dick Clark to give you the information concerning the activities of his very close personal friend, associate, and fellow stockholder in the corporation?

Mr. GOLDENSON. We had enough facts before us in my judgment to be able to set down a set of rules under which we could effectively

operate our broadcasting field and insure that payola, as such, would no longer be able to be carried on.

Mr. MACK. As a matter of fact, you had enough facts before you to justify your actions, and that is all you are interested in?

Mr. GOLDENSON. Not a bit. That is not so.

We wanted to have all the facts, and I think we did obtain all the facts.

Mr. MACK. Do you not think it is a little unusual that ABC had 111 diskjockeys working for them?

Mr. GOLDENSON. No, we had 111 people who had anything to do with music—there were music librarians and program people—there may have been only 25 diskjockeys out of that 111—but it was anybody who had anything to do with the selection of music.

Mr. MACK. That would include Mr. Mammarella?

Mr. GOLDENSON. No, that would not. These are employees of American Broadcasting Co.

Mr. MACK. Notwithstanding the fact that Mr. Mammarella selected the records to be played every other day, he is not included in this list of 110?

Mr. GOLDENSON. We couldn't send out affidavits to a packager to do it. We had Dick Clark and WFIL who were the people that directly had the contract with them, and we asked affidavits from the people who were handling this show.

Mr. MACK. Do you not think someone is going to have to do something—either the stations, the networks, or the Government—if we are going to control the trash that comes out over the airwaves?

Mr. GOLDENSON. I personally think—and I disagree with the statement that you are making as to trash coming out over the airwaves—I think when you consider that in 10 years a television industry has been built as it has been built, and bringing probably some of the greatest shows that have ever been seen by the American people—there can always be and will always be a bad apple or two bad apples or five bad apples in a bushel basket. Nature can never avoid that. But that couldn't condemn the fact that the rest of the basket is good. And that is equally true of shows. There can be bad shows; basically they are good ones.

Mr. MACK. I did not say all the programs on all the networks and all the television stations were trash. I just said that someone would have to do something to control the trash which comes out over the airwaves, if I remember my statement. I certainly stand on that statement and in that category I will put in the rated TV shows, some of these rock-and-roll songs that were promoted by diskjockeys, and several other types of entertainment now coming over the air.

Mr. GOLDENSON. I think you have the control over the licensees and can regulate that. And I think that the public interest is protected in that respect.

Mr. MACK. I think that probably the Federal Communications Commission will ultimately have control over the networks as well.

I want to ask this question again: You had 111 people, not counting the employees of packagers and affiliates which were not employed by you—you had 111 people who were responsible for the records being played on the diskjockey shows; that is correct?

Mr. GOLDENSON. 111, yes, approximately.

Mr. MACK. Do you not think it was unusual—Mr. Clark was even talking about the number.

Mr. GOLDENSON. He was not under the 111, because with respect to packages we had to treat that differently, and we do now—and we have affidavits and will exact affidavits from independent packages all the time—but with direct employees we have handled it one way. With packagers we handle it a little different way, because we don't have the direct control over the packagers. But we do insist on affidavits from the packagers with relation to the people in those different companies.

Mr. MACK. Then Dick Clark was one of the 111?

Mr. GOLDENSON. No, he is not.

Mr. MACK. Then why did you get an affidavit from him?

Mr. GOLDENSON. Because we wanted—as I said, he had something—as a packager he had something to do with music on the air, and we wanted to know everything that we could from our employees.

Mr. MACK. That is the best argument I have ever heard as to why you should have gotten an affidavit from Mr. Mammarella.

Mr. GOLDENSON. The man had already left, as I said. We had no control over him.

Mr. MACK. It has been called to my attention that he left on the 13th. Could you not have questioned him on the 11th?

Mr. GOLDENSON. Actually, we didn't find out until Sunday the 15th about Mammarella at my home, and he had already left 2 days before. I think the testimony in this record indicates that.

Mr. MACK. I do not intend to pursue the point, but it indicates to me that your investigation was not very vigorous and that you were not particularly interested in getting an affidavit.

Mr. Moss. Would you very briefly yield?

Mr. MACK. I will yield briefly.

Mr. Moss. Very briefly. You said you could not get at him because he had resigned, but I point out that you were not very vigorous in making Mr. Clark, who had not resigned, tell you the nature of the charges or of the conduct alleged to have characterized Mr. Mammarella's activities; you appeared to be not interested.

Mr. GOLDENSON. Not so.

I inferred from what Mr. Clark had said, although he didn't say so, that Mr. Mammarella had been guilty of payola in some form—whatever the nature of it was, I inferred that. And in coming to a determination of how to set up the machinery, based upon the information we received, we devised ways and means of protecting our company and the public interest in the future from this ever happening; and that is why we put out the rules and regulations we did which are attached in these exhibits that I have presented here today.

Mr. MACK. Mr. Goldson, I would like to say that it seems very unusual to me that you would have 111 people in your organization, not counting the packagers, Mr. Clark, and Mr. Mammarella, the people in that category, but counting the ones who were directly employed by ABC you had 111; and out of that entire number only 1 might be guilty of payola?

Mr. GOLDENSON. If I may, Mr. Mack, say this; as we got into this, an interpretation of what payola was seemed to have different interpretations in this industry. And we came to the conclusion, as you

gentlemen have, that the only way to correct it is that everything is payola, and we have so set down in our regulations—any gifts of any kind are payola, and that we will not permit anybody to take them, other than a nominal gift at Christmastime or a business luncheon, and vice versa, or to give it. And that is why we came to that conclusion, after a thorough analysis, which is apparently the same conclusion you gentlemen have come to. And we so stated in regulations that we issued many months ago.

Mr. MACK. Well, I want to commend you on your definition of payola, because I agree with you. But I must say that this is an entirely new definition than the one I heard from Mr. Clark a couple of days ago.

Mr. GOLDENSON. I think he was perfectly honest, actually, Mr. Mack, in his own appraisal as to what payola was in his mind, and I think when we called to his attention that what he was doing could affect his objectivity—we didn't say it did, but it could—and that he could not put himself or allow himself to be in that position as far as our company was concerned, he was very readily agreeable to divesting himself of these things, which he did, and I think thereby insured objectivity in the selection of music.

Mr. MACK. Do you think Mr. Clark is in a better position to define payola than any of the rest of us? Would he be an authority on payola?

Mr. GOLDENSON. Actually, my own judgment is—and as I say again, it appeared as we got into this investigation ourselves that there seemed to be different interpretations by different people as to what payola actually is, and so, in order to avoid any possibility of loopholes, we decided that everything had to be payola in the rules and regulations we set down, and that we have done.

Mr. MACK. Well, Mr. Clark was very definite in his replies to the questions by members of this subcommittee in stating certain things were not payola. He has a very precise definition of payola, saying that you have to have a written contract implying that, that you have to promise someone to play a certain song at 10 o'clock in the morning, a definite agreement. And it is my impression that the general term "payola" is a little broader.

Mr. GOLDENSON. Actually his interpretation, I must confess, when I first, originally, started to look into this thing, I thought payola was—I understood payola to be what he said it was, and has contended that it is. This business—and a lot of things have changed, maybe taxes have brought about changes, where these fellows are setting up corporations in order to try to save money on taxes and whatnot—and I finally came to the conclusion, as I said before, that the only way to solve this problem as far as our company was concerned is, everything is payola, any gift or anything, and that is why we set down the regulations in our company which are in existence now, and anybody that takes any money or gifts other than a very nominal thing, in my opinion will in the future be subject to dismissal.

And we didn't want to have any loopholes, just as you gentlemen, I am sure, don't want to have any loopholes, and that is the reason we approached it from that standpoint. And that is the conclusion we came to because of the many interpretations that are apparently given this subject.

Mr. MACK. I agree with your definition.

And of course you agree that if the record distributor decided that he would like to furnish wall-to-wall carpeting in the home of one of the diskjockeys, that that could be payola, and if the record manufacturer decided that he would make car payments for a diskjockey, that that probably would be payola as well, would you not think so?

Mr. GOLDENSON. It could very well be.

Mr. MACK. According to your definition?

Mr. GOLDENSON. According to our definition, now. I think that everything that could influence the judgment, in whatever form it is given or taken, would be considered payola, except, as I say, a nominal gift at Christmastime, and business lunches. With that exception, everything under our set of rules now is payola, and is prohibited.

Mr. MACK. I think that at least the two of us are in agreement on the definition of payola.

Mr. GOLDENSON. Yes.

Mr. MACK. But I would call to your attention the fact that the diskjockeys who received the gifts I mentioned did not look upon them as being—

Mr. GOLDENSON. I don't think they did, because during this period there were some interpretations and conflicting opinions as to what it was—they perhaps had certain rules in their own minds as to what they regarded it—I think Dick Clark is perfectly honest, I think he is a fine young fellow, and I think he has very definite, honest intentions, and if we didn't think so we wouldn't have come to the conclusion that we did and permitted him to stay on the air.

Mr. MACK. Of course, the Federal Trade Commission thought that these gifts were payola, and have cited certain companies for paying payola. So I think that reasonable people would accept your definition of payola.

Mr. GOLDENSON. Right.

Mr. MACK. Mr. Bennett.

Mr. BENNETT. Mr. Goldenson, when did payola, the payola practice as such, first come to your attention?

Mr. GOLDENSON. I have been aware that payola, as such, has existed from the early music days. I remember very definitely hearing of payola in the sheet music days, and what not.

Mr. BENNETT. Were you aware of the fact that it was becoming more widespread and more intense within the last 5 or 6 years than it had been previously in respect to diskjockeys?

Mr. GOLDENSON. Mr. Bennett, actually I thought that it was more widespread, but I thought it was basically in the area of independent stations that went in for rock and roll and your top 40 and top 50, which our owned and operated stations had not done, because they take our network feed programs like a number of soap operas, your Don McNeil program from Chicago, and a lot of public affairs programs, so that doesn't lend itself to the top 40 or top 50 or your rock and roll type of operation in your local station operations. So as a consequence, your so-called popular type of music recorders don't go after our type of stations.

And I think that is true of the other network-owned stations too.

And so, therefore, I probably was not alert to it as much as I perhaps should have been, because of that fact.

Mr. BENNETT. One of your subsidiaries is a record and music company?

Mr. GOLDENSON. Yes.

Mr. BENNETT. When did you first become aware that they were making payments to diskjockeys?

Mr. GOLDENSON. Not until about January or February of this year, at the time these hearings came up.

Mr. BENNETT. Did you ever get financial statements as the head of this company?

Mr. GOLDENSON. I get a weekly statement of profit and loss.

Mr. BENNETT. Were you ever interested in checking this promotional expense?

Mr. GOLDENSON. There is no statement on our weekly P and L's of the weekly expense, it just has the growth, and I get that from all the companies on a weekly basis.

Mr. BENNETT. Did you ever look into expenses?

Mr. GOLDENSON. That is usually handled by our financial people that ride herd on that type of thing, I don't ordinarily get into that.

Mr. BENNETT. Even when our subcommittee brought this matter out in November and investigated with respect to your diskjockeys, it did not occur to you that the company would probably be involved? You made no investigation?

Mr. GOLDENSON. Actually, I didn't think it was involved.

Mr. BENNETT. But you did not take the trouble to try to find out?

Mr. GOLDENSON. Actually, I asked our financial people, I asked our financial people was anything ever done by Am-Par, and they said to their knowledge there hadn't been.

Mr. BENNETT. Who told you that?

Mr. GOLDENSON. Whoever is the financial man on Am-Par books. I asked Mr. Siegel to check and find out if there was any of that, in his judgment, on our books. Actually, it had been apparently small sums, and apparently nobody had known about it. Actually, when our company was started, our attorneys had set down rules and regulations that there was to be no payment. And actually Mr. Clark, as he so testified, didn't regard that his payments were payola. That is why I came to the conclusion fast that everybody seemed to have a different interpretation of payola, insofar as I was concerned, of what was payola, from this point on, and I was going to set up these rules for the record companies, for our broadcasting company—which I know is the same conclusion you gentlemen have come to—and we set those rules down in December and January of this year.

Mr. BENNETT. If my recollection is correct, some 3 or 4 percent of the gross cost—or gross sales, I don't know which—of Am-Par's doing business went into payola.

Mr. GOLDENSON. No.

As I understand it, in Am-Par—and this is true of other companies—they allow 2 percent of their gross sales for promotion.

Mr. BENNETT. Promotion is described as payola?

Mr. GOLDENSON. No. Actually, it is for advertising and promotion, whatever these men apparently do to promote records.

Mr. BENNETT. But all of these record companies included payola in promotional expense, and I assume Am-Par did the same thing.

Mr. GOLDENSON. Well, I think Mr. Clark has so testified here. Yes, that is the way they treated it.

Mr. BENNETT. When did you first become aware that Clark was interested in record companies, either as a sole owner or a part owner, on a pretty wide scale?

Mr. GOLDENSON. Not until November 11, when Mr. Treyz—after the mention of payola was made in this subcommittee on November 6, which was a Friday, the following Monday Mr. Treyz called Mr. Clark and said he wanted to see him on Friday of that week, and it was at that meeting that I accosted him with the questions as I had stated them before, and I said, “Do you hold any interest in any music companies, any record companies, or any other companies related to the music field?”

And he at that time said that he did, and he recited so.

Am I said, “Why have you never come to us and told us of this?”

He said, “I didn’t think it was necessary, because many people do it in the field, and in my opinion it is perfectly all right; it doesn’t affect my judgment in what I do.”

And I said, “I disagree with you.” I said, “Insofar as we are concerned it could affect your judgment, and we will not find ourselves in that position. And if you are going to stay on the air, as far as we are concerned you are going to have to divest yourself immediately.”

Mr. BENNETT. But you have had information for a long time, a matter of years, that the diskjockeys were accepting or were reported to be accepting under-the-table payments for plugging certain records?

Mr. GOLDENSON. Yes.

Mr. BENNETT. But you never made any investigation of your own diskjockeys until after this matter was brought to light in November?

Mr. GOLDENSON. That is true.

Mr. BENNETT. Why did you not do it; because you did not consider it serious?

Mr. GOLDENSON. No.

As I said before, I didn’t think our diskjockeys or the people connected with us were the type that would be considered important as far as popular records were concerned, because we didn’t have that type of policy in our station.

Mr. BENNETT. Do your diskjockeys not play records?

Mr. GOLDENSON. Yes, but not the rock and roll type. Our stations don’t have the top ratings in the market, because they have to carry our network feed.

Mr. BENNETT. Now, when this thing was brought to light by the subcommittee here, you thought it important enough to immediately go out and get some affidavits?

Mr. GOLDENSON. And find out the facts, yes.

Mr. BENNETT. And as a result of this, you ultimately got to Dick Clark?

Mr. GOLDENSON. As a matter of fact, we went after Dick Clark first.

Mr. BENNETT. Did you ever go after any other diskjockeys?

Mr. GOLDENSON. Personally?

Mr. BENNETT. Yes.

Mr. GOLDENSON. No. The only one that came to my attention was Freed, and our people said that he refused to sign an affidavit. And

I said, "If that is the case, I think we had better find that whatever is operative under his contract, we should terminate his contract."

Mr. BENNETT. Did Freed play any rock and roll?

Mr. GOLDENSON. He played rock and roll of the type—actually, the program was not a high-rated program, and actually it had not done so well on our station, so I did not think it was the kind of thing that was in demand, because in February of last year our station wanted to terminate his program because it wasn't doing any business, there didn't seem to be any interest in the program. So therefore, I just didn't think—and probably there I was wrong—in having this checked.

Mr. BENNETT. You did not take any personal interest in Freed's case?

Mr. GOLDENSON. Only in this case, when they said that he had refused to sign an affidavit, I said, "If that is the case, I think it ought to be terminated."

Mr. BENNETT. But you did not call him in?

Mr. GOLDENSON. No.

Mr. BENNETT. And you did not discuss it with him—

Mr. GOLDENSON. No, because I think—based on this letter it shows he was not a cooperative person, and the reason we wanted to deal with these people—

Mr. BENNETT. But you did not see him?

Mr. GOLDENSON. No. The people told me that he was uncooperative—

Mr. BENNETT. But you did not regard him as important, in the first place, as you did Clark?

Mr. GOLDENSON. No, sir; probably not.

Mr. BENNETT. Now, did Freed actually do anything that Clark had not done in his relations—

Mr. GOLDENSON. I don't know, we never got an affidavit from him.

Mr. BENNETT. Let me ask the specific question.

Do you see any difference in a diskjockey being paid by a company in which he has no interest for screening music and appraising the value of records, and a diskjockey being paid a salary from a company in which he has a stock interest for doing essentially the same thing?

Mr. GOLDENSON. Mr. Bennett, I personally think it is only a question of degree, and that is why we came to the conclusion immediately that we weren't going to get into the ramifications of degrees, we felt it all should be stopped, and therefore we said that nobody could take anything under any circumstances, and that is why we set up the policy, just as you gentlemen, I think, have come to that same conclusion, and I think it is the only way you can stop this thing and prevent loopholes.

Mr. BENNETT. Well, Mr. Goldenson, I do not know Mr. Freed, I never saw him in my life until he came before our subcommittee; I never talked to him. But it seems to me that you took a very casual interest in what his payola situation was, and a very intense interest in what Mr. Clark's involvement might have been, for reasons which I think are obvious. On the other hand, it seems to me that if you were so greatly concerned about this situation, you would have talked

to Freed and found out in what respect and to what extent he was involved.

He testified before our subcommittee that he grossed about a quarter of a million dollars for ABC. That is not a lot of money in your business, I guess, but how does that compare to what, say, Dick Clark grosses?

Mr. GOLDENSON. I would think that Dick Clark on the "American Broadcasting Bandstand Show" grosses about somewhere around \$1,800,000 to \$5 million; I think somewhere in that range.

Mr. BENNETT. What is the total gross?

Mr. GOLDENSON. And I think for the other gross—

Mr. BENNETT. We had a figure from someone of \$12 or \$13 million.

Mr. GOLDENSON. I would think overall if it were about \$6 million or thereabouts, that would probably be about right. And that gross, that is not net, after it is netted it would come way down.

Mr. BENNETT. Freed grossed about \$300,000. Would that be approximately correct?

Mr. GOLDENSON. I don't know what Freed did.

Mr. BENNETT. Did you let any other dickjockey write up his own special affidavit like you did Clark?

Mr. GOLDENSON. No.

Mr. BENNETT. Why did you do it in Clark's case? Because he was more important?

Mr. GOLDENSON. Clark was the first one we met, and we set up the machinery, we first met with—

Mr. BENNETT. The first one you personally met?

Mr. GOLDENSON. Yes; I met with Clark on the 11th.

Mr. BENNETT. You had sent this three-question affidavit out first?

Mr. GOLDENSON. Yes; and I will tell you what happened.

We met with Clark on the 11th, and when he came back I asked him for an affidavit, and the questions that I had asked him I felt should be in it, and I then immediately called in Mr. Debare, Chuck Debare, who is the attorney for all our stations, and I asked him to get up an affidavit embodying the points that I had covered in the Dick Clark situation, and the language may have been different, but the principals were exactly the same.

Mr. BENNETT. Well, there must have been some difference in writing a different affidavit in this case.

Mr. GOLDENSON. Exactly the same things are set forth in both, exactly.

Mr. BENNETT. Why did you not have him sign the three-question affidavit?

Mr. GOLDENSON. Because we had already started with—if anybody happened to have an interest, a music interest, they would have had to explain them under paragraph 3 of the affidavit that we sent out, so therefore they would have had an elaboration. Actually, we insisted that with Dick Clark—we were extremely rough with him, we wanted to know any gift that he had received of an extraordinary nature, we wanted to know every conceivable thing that could be misconstrued, because he was the top diskjockey in the United States, and I wanted to have every conceivable fact before me in trying to arrive at a policy for our company.

Mr. BENNETT. But again I must say that you applied these special service answers only to Clark, and perhaps others of your jockeys in the same area, except on a smaller scale.

Mr. GOLDENSON. Except that the same principles were in both the form affidavit and in the Clark affidavit, they were both one and the same.

Mr. BENNETT. But you never did have Clark sign the three-question affidavit?

Mr. GOLDENSON. Form affidavit?

Mr. BENNETT. Yes.

Mr. GOLDENSON. No, I don't think so, because it embodied everything that was in the form.

Mr. BENNETT. What was your connection with this Dick Clark carrying case? What was the association of ABC with that?

Is it true that you got a royalty?

Mr. GOLDENSON. Actually I don't think our company got anything out of that, but this was a merchandising thing under which the Dick Clark name and face as a subsidiary right had been made by WFIL with whatever the company is that had this carrying case. And this is common in the business, to have licensing of subsidiary rights of a personality, which helps to merchandise that personality and get him known in different areas.

Mr. BENNETT. Did you or did you not get a royalty or a fee through the sale of Clark's cases?

Mr. GOLDENSON. I don't think we have ever gotten anything to my knowledge.

Mr. BENNETT. Did you ever have an agreement to get it?

Mr. GOLDENSON. No.

Mr. BENNETT. What was the agreement?

Mr. GOLDENSON. I think we would have gotten one-third of any royalties that would have been paid, WFIL would have gotten one-third, and I think Dick Clark would have gotten one-third.

Mr. BENNETT. Where is the agreement? Do you have a copy of it?

Mr. GOLDENSON. No; but we will certainly furnish it.

Mr. BENNETT. That was the sale of a product which was being advertised over your station?

Mr. GOLDENSON. Actually, I don't know to what extent, if any, this ever appeared on the program as such. The practice of the identification of Dick Clark's face on there is an indication that he is receiving something from that, and there you get into your 317 question, which in my opinion again is where this committee can do a great service, because it involves many great areas.

And I want to compliment your committee at this time. I think 317 started really in the radio days, when you didn't have anything but audio. Today we have video. And I think 317 actually has not kept pace with the fact that you require video to be included in 317, and to take care of the very many ramifications that arise as a result of video. And we have many serious problems in this area, as to how to answer them, and I will tell you, our people would like to have ground rules set up so they know exactly what to do.

Mr. BENNETT. If one of your entertainers is selling something on the air, do you not think the public ought to know about it, or if he has an interest in something that is being sold?

Mr. GOLDENSON. Actually, Mr. Bennett, here is a problem that you have in this area. We are shooting a show right now in Miami, "Surfside Six."

Mr. BENNETT. Can you not answer the question?

Mr. GOLDENSON. Well, the point I was going to make is the fact that if you have the background of the Fontainebleu Hotel, and there happened to be a Chris-Craft boat in the water, and a number of things, and say that you get those for nothing, do you then have to give a list of credits at the end of a program that can last 15 minutes?

Now, the question is, you then can't take the natural setting.

Mr. BENNETT. That is quite a different situation than one, however, where you have a one-third interest in all royalties that might be gained.

Mr. GOLDENSON. Yes; that is different.

Mr. BENNETT. In the instance you give of the Chris-Craft, you did not have royalties coming?

Mr. GOLDENSON. None whatsoever.

Mr. BENNETT. I am speaking of a situation where you have, by virtue of an agreement, a financial interest in the product that is being sold; should not that, in your opinion, be revealed to the public?

Mr. GOLDENSON. I think that that is one of the areas again where I said, whether the identification of the fact that Dick Clark's name and his face appears on the thing, as to whether that is identification in itself, or whether that is sufficient, is one of the gray areas that I think has got to be clarified.

We are in an area that in my opinion is a very doubtful area under an interpretation of 317. And I think the ground rules—and that is where this committee, as I said before, can do a great service, in clarifying a lot of these areas.

Mr. BENNETT. You have never asked for clarification?

Mr. GOLDENSON. We certainly have Mr. Wilkinson with us, and he is working with Mr. Harris and his group in trying to formulate some way to arrive at a clarification of section 317. And once again I want to thank you for that, because we definitely appreciate anything that can be done in this area, and I think the whole industry does.

Mr. BENNETT. But I cannot agree with you that it is a gray area. In the instance of this record-carrying case or any other item that is put on one of your stations in which you have a financial interest, obviously for the purpose of selling it, are you not actually advertising something in which you as a station owner have a direct financial interest?

Mr. GOLDENSON. Yes.

Mr. BENNETT. Is that not true?

Mr. GOLDENSON. That is true.

Mr. BENNETT. And the same thing applies to whatever product Mr. Tainer might be trying to plug.

Mr. GOLDENSON. That is true. May I ask a question?

Mr. BENNETT. Is that a gray area?

Mr. GOLDENSON. Well, it is the same gray area. When the "Disneyland" program appears on the air, Walt Disney presents "Disneyland" and a program emanates out of Disneyland, should we say on

the air we own 35 percent of Disneyland? I mean these are areas that you get into in 317 that you just don't know the ground rules.

Mr. BENNETT. Are you trying to sell Disneyland?

Mr. GOLDENSON. It is not being done. The program is emanating from it, but actually Disneyland is in a sense being sold when the program is emanating from there.

Mr. BENNETT. That is the show, is it not?

Mr. GOLDENSON. That is the show.

Mr. BENNETT. Well, the record is not a show; it is just a sideline item.

Mr. GOLDENSON. That is right; it is a subsidiary right.

Mr. BENNETT. I think you should be frank about this. I will concede to you that there are gray areas, and I think some of those you describe might be gray areas, but won't you at least concede that what I am talking about and similar things are not gray areas?

Mr. GOLDENSON. I will concede that definitely that it perhaps should be announced; and I am not questioning anything about that, but I am just saying this whole field has got to receive clarification.

Mr. BENNETT. Yes. That comes within what I am talking about. It comes specifically within one of your own statements on page 4.

Mr. GOLDENSON. Yes; that is right.

Mr. BENNETT. Open and avowed persuasion of advertising is proper: clandestine persuasion or advertising is not.

Mr. GOLDENSON. That's right.

Mr. BENNETT. And that is what I call a record-carrying case and some things of that type.

Mr. GOLDENSON. But some people disagree with that. The fact they say that Dick Clark's face and name is on there, that is identification in itself. That is the point I am making. I agree with you, but I also say some people claim it the other way.

Mr. BENNETT. Yes, sir; my colleague from California, Mr. Moss, brought out in questioning Mr. Clark that he was receiving money for advertising or plugging American Airlines and I believe he said that you people were aware of this.

Mr. GOLDENSON. Yes; we were.

Mr. BENNETT. What kind of a gray situation would you call that?

Mr. GOLDENSON. Actually, in that area, I don't believe that is a gray area. Mr. Dick Clark, we wanted Mr. Dick Clark to travel his show. We told him that if he would bring a contract to us so that we could look at it and approve it, we would approve a certain number of spots to the airline up to a given figure, which is our budget department—he estimated would take, say, approximately \$7,000 to travel Dick Clark's show to two or three different areas around the country. That is entered on our log. Credit is put on the air to the effect of the airlines. Dick Clark receives cash from the airline and then he, in turn, uses the cash to buy airline travel.

Now that is in conformity with FCC rules.

Mr. BENNETT. Is that part of his compensation?

Mr. GOLDENSON. No; that money is to be used—it is budgeted to be used for airline travel, ultimately.

Mr. BENNETT. Did he use his money in this instance for airline travel?

Mr. GOLDENSON. No, no; that money is then used that he is paid by the American Airlines—you see you have the choice of budgeting.

Mr. BENNETT. Describe how it operates. I would like to know.

Mr. GOLDENSON. All right.

Our company says to Dick Clark, "We want you to travel your show to different sections in the United States."

We estimate by a budget that that will cost \$7,000, or he estimates for us that it will cost us \$7,000 to travel that show to different sections in the United States.

We then tell him to get a contract; that contract is not good until we first authorize it. We have to see what the contract is. It says that for every plug that is put on the air—and we put in our own log that goes to the FCC—that we—he collects and puts into a fund, until \$7,000 is accumulated for the purpose of traveling his show to different sections of the United States.

Mr. BENNETT. What is the plug? As I understand it, the plug is that the travel arrangements for people who have appeared on this show were arranged by American Airlines.

Mr. GOLDENSON. No. I don't know how it reads, I can't answer that. But it merely says that—something about the "Dick Clark Show" travels on such and such an airline probably. I don't exactly know. I can get the copy. I am sure our people have it.

Mr. BENNETT. American Airlines paid you for these plugs, did they not?

Mr. GOLDENSON. Yes; they pay Dick Clark under our authorization.

Mr. BENNETT. Under your authorization. But that information was not given to the public; was it?

Mr. GOLDENSON. Oh, yes; it is registered on the air that American Airlines, just the same as sponsorship. A sponsor doesn't come out and say, "I am sponsoring this show," necessarily in a commercial of 1 minute. Yet they are paying for it. The public knows that they are paying for it.

Mr. BENNETT. Do you think the public knew that Mr. Clark was being paid, with your approval, for this plug?

Mr. GOLDENSON. I don't know whether they know Mr. Clark is being paid. They know a sum of money is being paid, and we then identify it as our log.

Mr. BENNETT. How did you, ABC, benefit by this transaction?

Mr. GOLDENSON. Because we want them to have the show travel.

Mr. BENNETT. How do you benefit financially from this?

Mr. GOLDENSON. Otherwise we would have to pay in his budget for traveling the show. We would have to pay for the travel of his show to Miami or to, say, Binghamton or to Atlantic City, wherever his show originated from on a given night.

Mr. MACK. Will the gentleman yield to me on that point?

Mr. BENNETT. Yes.

Mr. MACK. It was my understanding yesterday that Dick Clark admitted these people did not travel on the airlines referred to and in some instances that the airline did not make travel arrangements.

Mr. GOLDENSON. That is true.

Mr. MACK. There is a definite case of deception.

Mr. GOLDENSON. Not a bit.

Mr. MACK. Gross deception.

Mr. GOLDENSON. Not a bit, because of this fact: The particular airline that is mentioned, they have to pay cash under CAB regulations. They cannot pay in the form of credit. So they pay cash to the "Dick Clark Show." Then that cash is used to buy space on an airline.

Mr. MACK. This was deceptive advertising.

Mr. GOLDENSON. Not necessarily. If I have an American Airlines ticket and I buy a ticket on United, they just transfer that over to Eastern or United if I ask them to. It is a credit arrangement between all the airlines.

Mr. MACK. My understanding, as I recall the testimony, was that Mr. Clark's commercial was to the effect that American Airlines made the travel arrangements.

Mr. GOLDENSON. American Airlines is the one that paid the cash. They are the ones who paid the cash, and then that money is used to buy space on any airlines that they wished.

Mr. MACK. I will have to refresh my memory by looking at the testimony.

Mr. GOLDENSON. I don't know what Dick Clark testified in that respect. I know how it operates.

Mr. MOSS. Will Mr. Bennett yield to me for a moment?

Mr. BENNETT. Yes.

Mr. MOSS. I think it proper we get it tied down.

Mr. GOLDENSON. Right.

Mr. MOSS. And I want to tell you that what you have just told us is in sharp conflict to what Mr. Clark told us, and I am going to read from the official transcript now. I asked him the question:

The other day in response to a question you mentioned the payment of some \$7,000 by American Airlines. Would you like to describe the circumstances of that payment to me?

Mr. CLARK. For a period of weeks on the Saturday night show, as is rather ordinary, at the end of the program I would say, "Transportation for our guests was provided by American Airlines" and probably four or five more words which I don't remember. It is called an airplane plug.

Mr. MOSS. That is an airplane plug for which they paid you \$7,000?

Mr. CLARK. Over the course of many weeks; yes.

Then we went into the matter of who received the money and he admitted he received it. Then I said:

Was the payment determined from some sort of rate card?

Mr. CLARK. No, sir; it is a casually accepted practice in the business as to how big the program is, as to how much the airline pays for the plug.

Then he could not tell us how the figure was arrived at. So I asked him then if the guests were flown by American Airlines and remember you said his show was flown.

Mr. GOLDENSON. That's right.

Mr. MOSS. And he said they didn't. He said guests were flown; that is a difference.

Mr. GOLDENSON. That is quite a difference.

Mr. MOSS. And I said, "Were the guests flown by American?" and he said, "On occasion," and I pressed him a little because on occasion any guest on a program would be flown by some airline. Well, he said he would have to check the company to find out whether it actually said they were flown.

Mr. GOLDENSON. That's right.

Mr. Moss. Then he said that he didn't know who made the arrangements to fly guests. I said then :

You didn't actually know, so what you were actually doing was giving a plug just to get American Airlines name on the program—

this was one of the few completely unequivocal answers.

Mr. GOLDENSON. All right, Mr. Moss.

Mr. Moss. "Mr. Clark. Yes, sir."

Mr. GOLDENSON. Mr. Moss, may I try to answer that ?

I had our people last night find out what the nature of the announcement is that was on the air and here is the exact language that is on the air and that is not the language as Dick has said. He was paraphrasing. "Travel for the 'Dick Clark Show' arranged through American Airlines."

Now this is the language that was used on the show. This is what appears in the log, and this is the identification to the American public that this travel has been arranged through this, so that therefore a payment is made—

Mr. Moss. That was not the fact.

Mr. GOLDENSON. What is it ?

Mr. Moss. That it was arranged for by American Airlines ?

Mr. GOLDENSON. Travel on the "Dick Clark Show."

Mr. Moss. Yes.

Mr. GOLDENSON. Because they give the cash to Dick Clark because he in turn—

Mr. Moss. That is not what he said. That is not what he said. You say this is documented.

Mr. GOLDENSON. Yes, sir.

Mr. Moss. Where is that documentation ?

Mr. GOLDENSON. In our logs.

Mr. Moss. Let's have it produced before the committee.

Mr. GOLDENSON. All right.

(Document referred to above follows:)

The attached master copy represents as accurately as possibly the program as broadcast.

Title of program : Dick Clark Beechnut Show.

Type : Variety.

Point of origination : New York.

VTR 7/9/59. For Air 7/11/59.

Scheduled time on : X X X X X Off : X X X.

Actual time on : X X X Off : X X X.

TIME OF ANNOUNCEMENTS

Station call letters at [blank]. As sponsored [blank].

Films : Recorded/electrical.

TIMINGS ON SPOT AND COMMERCIAL ANNOUNCEMENTS

Billboard.....	23	00:00-00:23
Spearmint gum.....	1:25	04:08-05:34
Spearmint gum.....	1:35	19:44-21:18
Closing commercial.....	17	27:42-27:59
American Airlines plug.....	09	28:27-28:36
Billboard.....	14	28:42-28:56
Clothing plug.....	04	28:42-28:46
Snowflake plug.....	08	28:56-29:02
Foley stay tuned.....	05	29:03-29:08
Total Billboard.....	37	Total plug..... 21
Total commercial.....	3:17	Total promo..... 05

CAST

Dick Clark
The Virtues
The Famingos
Anita Bryant
Dick Caruso
Connie Francis
Nick Dana

Jack Timmers
Rona Fern (commercial)
June Carter (commercial)
Toni Campbell (commercial)
Bill Townsend (commercial)
Gil Hodges (announcer)

NOTE.—FCC regulations require that this report be retained on file. The information which it contains must be used in connection with applications to the FCC for renewal of our licenses and for other purposes. The report represents the only permanent record whereby we can prove that we have complied with FCC regulations governing station identification, identification of film transcribed or recorded programs, etc. It also constitutes the record on which payment of artists' fees is based. The report should be filled out carefully and completely and turned in promptly with the master script.

(Signed) DICK SCHEUBEL.
(Associate Director's signature)

Dick says goodbyes.

Audio.

Theme up and under.

Super closing credits.

'Travel for the "Dick Clark Show" is arranged through American Airlines, first with jets across the U.S.A.

ANNOUNCER (voice). Dick Clark and the Beech-Nut Show have been brought to you by Beech-Nut Spearmint, the gum that's flavorific. Reach for Beech-Nut and join us again next week, same time, same place when we'll be swingin' your way with Dick Clark, and the Beech-Nut Show.

Stay tuned for Red Foley starring in Jubilee U.S.A. next over most of these stations.

This has been a Drexel Television Production in association with the American Broadcasting Television Network.

Mr. Moss. And let's have the agreement produced which says that is the basis for the reimbursement.

Mr. GOLDENSON. Fine.

Mr. Moss. As an offset for transportation costs because quite candidly I don't believe you.

(Agreement referred to, dated February 27, 1959, included in Clark testimony of May 2, 1960.)

Mr. GOLDENSON. That is your prerogative, Mr. Moss. This has been given by our people in the ordinary course of business.

Mr. BENNETT. The statement you have given is not completely factual and would not be completely factual unless you said arrangements were paid for. You leave the impression with the audience you are doing a favor to American Airlines or they are doing a favor to you. Merely to say arrangements are to be made is only telling half the story if you don't say, "arrangements have been made and paid for by American Airlines."

Mr. GOLDENSON. Well, Mr. Bennett, as I said before, on 317 there are many gray areas that I think require clarification, and it is a thing where I think the industry requires help. I stated this before, and I state it again now. I think this is one area where this committee has done and is doing and can do a great service, to help clarify this whole field, because I think it does require clarification.

Mr. BENNETT. Are there any other gray areas such as the Clark record carrying cases?

Mr. GOLDENSON. Well—

Mr. BENNETT. Just a minute, Mr. Goldenson. In which ABC has a financial interest in the matter?

Mr. GOLDENSON. Other than what—

Mr. BENNETT. I mean by way of royalties.

Mr. GOLDENSON. Other than what has appeared in the Dick Clark affidavit, I don't—

Mr. BENNETT. I don't mean in respect only to Dick Clark but in respect to any gray area.

Mr. GOLDENSON. Well, I think all the companies have licensing arrangements on certain of the personalities. Now these things may never appear on the air.

Mr. BENNETT. Tell us about some that you know of.

Mr. GOLDENSON. Well, as an example, say Mickey Mouse, we have no interest in Mickey Mouse Club let us say, but Mickey Mouse appears on the air. Walt Disney has merchandising rights for Mickey Mouse dolls and Mickey Mouse characters that are sold in stores. Now Mickey Mouse itself appears on the program.

Now it is sponsored by various sponsors, let us say.

Mr. BENNETT. Have you gotten a royalty contract out of it?

Mr. GOLDENSON. We get nothing out of it but Walt Disney does who is the producer of the show. Now the question is, Must there be an identification on the show that he receives royalty rights from Mickey Mouse dolls as a result of this. Now Mickey Mouse appears in other forms.

Mr. BENNETT. I know that is a question but that is not the information I am seeking at this point. Does ABC have contracts with others, royalty contracts, if you will, similar to the one that you had with Clark in the record carrying cases?

Mr. GOLDENSON. Yes, we have contracts with others.

Mr. BENNETT. What are they?

Mr. GOLDENSON. Well, there would be a contract, let us say Rifleman, a program. It may be the sponsors have, as a result of the show, they have plastic guns made up in the form of a rifle. Now those are given out in, say, stores as premiums throughout the United States.

We, together with the talent and the producer of the show may get a royalty for licensing that gun that was created out of that show.

Mr. BENNETT. That is a situation similar to the Clark record carrying case.

Mr. GOLDENSON. Similar to what? Except that it very well may be and I don't know that it is true, the plastic gun may not have appeared on the show. It may have but I doubt if it did. If so, that is seen on the show, in stores around the country, these guns can be obtained with so many box tops or something like that.

Mr. BENNETT. Don't you think that any kind of interpretation of the word "advertising" would include as advertising, attempting to sell something and and deriving some financial gain from something that is being presented to the public over the airways in the course of an entertainment program?

Mr. GOLDENSON. Well again, as I say, Mr. Bennett, here again you get into so many gray areas. We are prepared to do anything that is required and should be required. What I am fearful of is that you can end up sometimes with 15 minutes of these things at the end of a program of various things that may appear in a program.

Mr. BENNETT. I am only speaking about things where you have a specific royalty contract, where it has enough sales value—

Mr. GOLDENSON. I don't quarrel with that. I think perhaps—

Mr. BENNETT. When you do this sort of thing, you are putting yourself in the position of selling something to the American people without telling them that you are selling it to them. You make a profit on every part of that product you sell. So you are in effect a seller or have a seller's interest in the sale of the product, is that true?

Mr. GOLDENSON. Well, as I say, this is basically done to merchandise the show. The amount of money that is obtained on that is relatively very small. Basically what is done is to try to merchandise the show, to get that into stores so that there is a wider acceptance of the show itself through stores of the country and through the housewives' taking these things home to the children and whatnot and these are merchandising tieups that are obtained in order to better get the American public acquainted with the show.

Actually the amount we get out of it, I would think is nominal really, but basically it is done for the merchandising value.

Now, I have no quarrel that mention should be made on the show, if that should be done and it may be that in some instances, it is.

Mr. BENNETT. That is all I have, Mr. Chairman.

The CHAIRMAN. Mr. Flynt?

Mr. FLYNT. Mr. Chairman, I would like to inquire if it is the purpose of the Chair to conclude these hearings following the witnesses who are now scheduled to appear.

The CHAIRMAN. It is the expectation of the Chair to conclude with this witness and one other who is here, and very briefly, we will include some things in the record from two members of the staff, and that should conclude this series of hearings.

At the moment we do not contemplate having any other witnesses on this particular subject matter. It is my purpose and intent to go into executive session as soon as it can be scheduled, in the hope that we can get out some needed legislation on these vital matters during the closing weeks of this Congress.

Mr. FLYNT. I thank the chairman, and I would like to ask for unanimous consent, upon the adjournment of the hearings now in progress, that the record on this subject be held open for a period of 2 weeks to be concluded at 5 o'clock Tuesday afternoon on Tuesday the 17th of May. During that time persons or parties may submit for the files of the subcommittee, either statements or affidavits, reserving to the subcommittee the right to include, or not to include, any portion thereof, in the record of these hearings.

Mr. MOSS. I wonder if I could request the gentleman to elaborate on the reason for that request?

Mr. FLYNT. The reason for the request is to set a definite time for the final closing of the record on this subject matter. So that the record may be printed and available for subcommittee discussion, if possible, and certainly for use in the event such legislation reaches the floor of the House.

Mr. MOSS. Is it your intention that persons not involved in the hearings be permitted to file or is it merely that you want to set a closing date for the receiving of items required for the record?

Mr. FLYNT. To set a closing date, and also out of an abundance of fairness, to permit anyone who feels that he may have been mentioned either fairly or unfairly to submit for the files, not for the record, but for the files, any rebuttal that he may desire to, reserving to the subcommittee the exclusive right to determine what goes into the record.

I don't think there is any purpose to open that up completely, but out of an abundance of fairness, to permit any person who feels he might have been maligned or defamed to submit an answer for the files. I want to put a cutoff date on it.

Mr. MOSS. I have no objection.

The CHAIRMAN. Does the gentleman feel it necessary for this to be held open for such purpose until the 17th of this month?

Mr. FLYNT. That was just an arbitrary date, Mr. Chairman. I would certainly agree to any other, but I just wanted to put a definite date so we won't be confronted with the possibility or—with the Chair's permission and with the permission of the subcommittee, I would suggest one week and we close it on the 10th.

The CHAIRMAN. Personally, I would like it that way because in the consideration of legislation I would be hopeful that the hearings could be printed and available for the membership of the House and the members of the committee.

Mr. FLYNT. I might say that is my purpose in making this unanimous-consent request.

Mr. BENNETT. Mr. Chairman, reserving the right to object and I shall not object, in my judgment by the conclusion of these specific hearings we will have pursued this subject at sufficient length to enable us to know what the problem is from a legislative standpoint. But do I understand that the gentleman wants to close the hearings so that the committee would be foreclosed from dealing in any area of importance that might come to light.

Mr. FLYNT. Of course not, only for the purpose of setting a date on which we can begin setting a date, for the printing of this record on this particular subject matter.

Mr. BENNETT. I have no objection.

The CHAIRMAN. I would also like to suggest, so that this record will be made clear, that we will be extremely careful, and we have been extremely careful, about permitting statements to be filed for the record, that would be more or less self-serving declarations without an opportunity to cross-examine.

The committee would have to be very careful about that.

Mr. MOSS. Mr. Chairman, the gentlemen's request was that the statement be received for the files, not for the record.

If it had been for the record I would have objected.

The CHAIRMAN. Yes, but also the request carries with it the fact that the committee will then determine whether or not any of such material will be included in the record, and I merely caution the committee that we are very careful about including just merely statements from somebody in the record.

We had a question before, and I have discussed it with the gentleman from Georgia and he understands it. Without objection, the request is ordered.

Do you have anything else?

Mr. FLYNT. I have no questions.

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

Mr. SPRINGER. Yes, I do, Mr. Chairman.

The CHAIRMAN. Do you have something you want to ask before we adjourn?

I think probably in view of the hour that we should adjourn and recess for the noon hour and come back at 2 o'clock at which time, Mr. Springer, you will be recognized.

(Whereupon, at 12:15 p.m., the hearing was recessed, to reconvene at 2 p.m. of the same day.)

AFTERNOON SESSION

The CHAIRMAN. The subcommittee will come to order.

Mr. Springer, you had been recognized. You may proceed.

TESTIMONY OF LEONARD H. GOLDENSON—Resumed

Mr. SPRINGER. Mr. Goldenson, you are the president of American Broadcasting-Paramount Theaters, Inc.?

Mr. GOLDENSON. Yes.

Mr. SPRINGER. Would you tell me what that corporation includes?

Mr. GOLDENSON. We own approximately 500 theaters in 36 States in the United States. We, through the American Broadcasting Division, have a television station in New York, Chicago, Detroit, Los Angeles, and San Francisco. We have a radio station in New York, Chicago, Detroit, San Francisco, Los Angeles, and Pittsburgh. We operate a radio network, and a television network. We own Am-Par Records. We have a 35 percent interest in Disneyland Park. We have approximately 25 percent interest in a company called Microwave Associates, and Electronic Co. in Boston. We have approximately a 21 percent interest in Technical Operations, a research organization, in the field of nuclear physics and whatnot in Boston, and we own a 33⅓ percent interest in Dynametrics, a mechanical electronics company in Cambridge, Mass.

Mr. SPRINGER. Is the theater operation called Paramount Theaters?

Mr. GOLDENSON. United Paramount Theaters, yes. It was called—

Mr. SPRINGER. How much do you own of that?

Mr. GOLDENSON. We own 100 percent of those theaters except with respect to, approximately, 10 theaters which are owned in conjunction with investors, whereby we may have 50 percent.

Mr. SPRINGER. Do you own any portion of Paramount Pictures?

Mr. GOLDENSON. None whatsoever.

Mr. SPRINGER. Are any of your large stockholders in Paramount and American Broadcasting also large stockholders in Paramount Pictures?

Mr. GOLDENSON. No longer. Under a Government decree that separated the theaters from Paramount Pictures on January 1, 1950, our stock was put in trust, and our stockholders received certificates. They could not take that stock down out of the trust until such time, by an affidavit they could show they no longer held stock in Paramount Pictures, Inc.

After a period of approximately 5 years, that stock was reduced to a very nominal amount, and the court discharged the trust, and to our knowledge, you have today diverse stockholders in our company as compared with Paramount Pictures.

Mr. SPRINGER. Who is the president of Paramount Pictures?

Mr. GOLDENSON. Mr. Barney Balaban.

Mr. SPRINGER. Who was the president in 1953?

Mr. GOLDENSON. Mr. Barney Balaban.

Mr. SPRINGER. Who is their general manager?

Mr. GOLDENSON. The studio. Y. Frank Freeman was in charge of their studio.

Mr. SPRINGER. Is he still in charge?

Mr. GOLDENSON. No, he retired just a few months ago. And a fellow by the name of Jack Karp is now the general manager of their studio.

Mr. SPRINGER. Prior to becoming manager of Paramount Studios, what position did Y. Frank Freeman hold?

Mr. GOLDENSON. I think he was associated with Mr. S. A. Lynch in Tanlac and in some real estate enterprises. I think Mr. Lynch owned the Columbus Hotel in Miami, and some real estate in and around Miami and through the South.

Mr. SPRINGER. Was Mr. Y. Frank Freeman also the head of Paramount Theaters?

Mr. GOLDENSON. Oh, yes. He was in charge of their theaters first. I thought you meant when he came to Paramount Pictures.

Mr. SPRINGER. There is a very close association between Paramount Theaters and American Broadcasting Paramount Theaters?

Mr. GOLDENSON. Paramount Theaters and American Broadcasting are one and the same company, but we had not acquired American Broadcasting Co. until 3 years after we were separated from Paramount Pictures.

Mr. SPRINGER. About what year?

Mr. GOLDENSON. 1953. It was approved by the FCC February 1953.

Mr. SPRINGER. Are you showing any Paramount Pictures on your programs?

Mr. GOLDENSON. In television?

Mr. SPRINGER. Yes.

Mr. GOLDENSON. No.

Mr. SPRINGER. What are you showing?

Mr. GOLDENSON. We—you are talking about our network now.

Mr. SPRINGER. Yes.

Mr. GOLDENSON. We have a number of programs, I think we have 8 hours a week that we have contracted with Warner Bros. I think we have 1 hour a week we have contracted with Twentieth Century for example. I think we have about 2 hours we have contracted with Four Star Theater—Four Star. I think we have several hours with Screen Gems.

We have certain live programs that we originate, some—one out of Chicago or Springfield, Ill., called "Jubilee, USA." Lawrence Welk, we originate live out of Los Angeles, an hour's show. We originate live, the "Pat Boone Show" out of New York. We—I think we deal with most of the producers that are available, we don't happen to

be buying from Paramount Pictures, but I think, generally speaking, we deal with most all producers that have television programs available.

Mr. SPRINGER. When you start a program, we will say a new program, how do you go about it?

Mr. GOLDENSON. What we do is we try to—it depends on what our competition has.

When we came into broadcasting in 1953, on the other networks we found that basically what they had was variety types of programs and comedy programs. And our philosophy is to try to have contrasting type of programs.

So what we went out to try to do was to acquire adventure type of programs and adventure programs in order to give the public an additional chance to view the things they wanted to view.

Our experience had been in the motion picture business that every time you had a "Going My Way" which was a comedy and was seen by 65 million people, at that same time there were 65 million people who wanted to see action and adventure, and going on that philosophy we put Walt Disney as an example, which was a cartoon and adventure on Friday when he was the No. 1 show and I think NBC also had a variety show and we took the majority of the audience because the other two networks were catering only to a variety audience.

On Tuesday night we put a program like "Cheyenne" which was an adventure western opposite Milton Berle when he was No. 1, and I think CBS also had a comedy show, and we took pretty close to 40 percent of the audience, because about 40 percent of the audience wanted to see action and adventure and did not want to see comedy.

On Sunday night we—

Mr. SPRINGER. How do you determine, Mr. Goldenson, what people want to see?

Mr. GOLDENSON. You don't, but you try to give them as wide a palate to choose from as you possibly can.

Mr. SPRINGER. Let me ask you now, what cultural music programs do you have on your network?

Mr. GOLDENSON. Right now we have "Music for a Summer Night" that is 7:30 to 8:30, that is operatic, and some of symphonic type of music with ballet. We have the "Lawrence Welk Show" on Saturday night, an hour out of the coast, we have "Jubilee USA," an hour's show on Saturday night, an hour's show out of Illinois with an hour's music.

We have the "Pat Boone Show" a half hour on Thursday night that emanates out of New York.

Mr. SPRINGER. Do you figure all those to be American cultural music shows?

Mr. GOLDENSON. Various types of music, yes.

Mr. SPRINGER. Did you have one on your network called the "Voice of Firestone"?

Mr. GOLDENSON. Yes, we did.

Mr. SPRINGER. Did you feel that was a good program?

Mr. GOLDENSON. Very good program.

Mr. SPRINGER. How long did you have them on your network?

Mr. GOLDENSON. We had the program on for approximately 4 years.

Mr. SPRINGER. Did you discontinue it?

Mr. GOLDENSON. We discontinued it in the time period in which it was.

It was at 9 o'clock on Monday, and we offered the Firestones to put it at 10 o'clock Monday. I spoke to Mr. Harvey Firestone myself.

Mr. SPRINGER. Are you sure it was 10 o'clock?

Mr. GOLDENSON. Ten o'clock, yes.

Mr. SPRINGER. You are sure?

Mr. GOLDENSON. I am positive.

Mr. SPRINGER. Not 10:30?

Mr. GOLDENSON. No. What happened—

Mr. SPRINGER. What other time did you offer them?

Mr. GOLDENSON. We first offered them 10 o'clock and Mr. Harvey Firestone said he thought it was too late, and so when they turned it down we went out and sold the time at 10 o'clock, and about 2 weeks later Mr. Firestone got in touch with me or his people did, and they said that: "We think that 10 o'clock now might be all right," and we said "Now it's been sold," you can have 10:30 available on Monday night or 10 o'clock on Saturday following Lawrence Welk.

Mr. SPRINGER. What hour were they on your network before you offered them 10:30?

Mr. GOLDENSON. I believe it was 9 o'clock on Monday.

Mr. SPRINGER. What did you replace them with?

Mr. GOLDENSON. Replaced it with an hour show, adventures—I mean "Bourbon Street Beat" from Warner Brothers 8:30 to 9:30.

Mr. SPRINGER. Do you figure that "Bourbon Street Beat" was a cultural program replacing Firestone?

Mr. GOLDENSON. Well, it is a different type of program. It is an adventure program, and whereas Firestone was a cultural program, our problem was, and we so explained it to Mr. Firestone, that in the heart of the evening at 9 o'clock, that it received a rating or a share of the audience of only about 14 percent share of the audience. The program, it was almost impossible, therefore, to sell the program before it, and the program after it, because of the dip, tremendous dip in the audience, so no one would buy it.

So that actually in competing with the other two networks then it became impossible for us to attempt to compete.

It was for that reason that we offered 10 o'clock Monday night.

Mr. SPRINGER. Do you think "Bourbon Street Beat" has more than 14 percent of the audience?

Mr. GOLDENSON. It has about a—I would think about a third of the audience or maybe close to it. About a 30 percent share of the audience.

Mr. SPRINGER. I am going to express my opinion, Mr. Goldenson, I think it is one of the worst programs I ever saw.

Mr. GOLDENSON. For your own information, it is being replaced next year by another program.

Mr. SPRINGER. Well, the thing that surprises me, I represent a small community, mostly rural people, one large town of 100,000 people and a university town of 60,000 people, to which this is the most popular program that you can have.

Here is an opportunity for people who can't go to the opera, don't have opera, haven't seen opera or semiopera, whatever you want to call it. In my estimation it is the finest musical and cultural program that has been given to TV in my time.

Now I just want to make the record on this. NBC did the same thing you did, and replaced it with Sid Caesar. Now, I don't know what Sid Caesar draws but if this is the type of programing that the networks are going to give us, then if this subcommittee stays in session another year after this, I am going to do everything I can, personally, with this subcommittee to get a hearing as complete as possible on programing.

I am not going to pass judgment generally on programing because I think they have been trying to make some improvements, but this, in my estimation, is the worst mistake that has ever been made on any network in discontinuing this program, which, in my estimation, was the best cultural musical program since TV has been introduced.

Mr. GOLDENSON. Have you seen the "Music for a Summer Night" at all?

Mr. SPRINGER. Yes, I have.

Mr. GOLDENSON. That is produced by exactly the same people who produced "Voice of Firestone." Fred Heider, who is the director on the show directs this. We have had calls from people all over the United States stating, and this we put on a sustaining basis and have been running it on a sustaining basis. We did that last year and I think starting in May, through the summer, and we are doing it this year starting—

Mr. SPRINGER. One thing, what hour have you been giving the show?

Mr. GOLDENSON. 7:30 to 8:30.

Mr. SPRINGER. They are the only program I know that has been producing the stars, the singing stars at the level they are for good music. I am speaking about other than jazz, or whatever else you want to call it: Different from Ernie Ford and some of the others such as Ernest Welk, or whatever his name is.

Mr. GOLDENSON. Lawrence Welk.

Mr. SPRINGER. Lawrence Welk—and I am not criticizing those programs.

All I am saying is you are taking a terrific drop in my estimation. This subcommittee has been interested in the last year and a half in improving the quality of programing, and it doesn't seem to me that the networks ought to be taking off, or failing to put on where you have not had them, the cultural programs which I think the discriminating audience that we have in America is entitled to.

Mr. GOLDENSON. Right.

Well, Mr. Springer, may I say this: That as the network that came into existence where we took over in 1953, competitively speaking, we have had one of the toughest competitions in going up against NBC and CBS. They have—right now, even today, we do not get into 22 out of the top 100 markets because there are only 2 facilities in each of these markets.

Therefore, we have been fighting a battle with one hand tied behind our backs. We, despite that and because of the congressional agitation to establish a third competitive network, I think have established a third competitive network but against the odds are the facts that we do not have three facilities in every one of these markets.

Now the other two networks, as the result of the fact that they do have, can afford, and properly so, to spend a lot more money on pro-

graming than we do, and therefore, when it came to the "Voice of Firestone," because we could not sell before or after it, it was costing us pretty close to \$10 million, in possible revenue, in a company that does not get into 22 out of the top 100 markets and we could ill afford to do it and I so stated that to Mr. Firestone as to why we wanted to do it.

Mr. SPRINGER. Let me ask you this, Mr. Goldenson, in line with our remarks about Mr. Firestone. When did you notify them that their contract was going to cease?

Mr. GOLDENSON. They knew it in advance.

Mr. SPRINGER. Would you tell me when?

Mr. GOLDENSON. What is that?

Mr. SPRINGER. Could you tell me when?

Mr. GOLDENSON. I don't recall the date. That was done by our television department. I just don't know the date now. I could not answer that.

Mr. SPRINGER. Mr. Goldenson, I state this for the record which happens to be the truth because I verified it, so there is no question about it. No notification was ever given to them. The first time that the Firestone people knew about this was when they saw, printed in the newspaper, the 1959 fall schedule for the spring of 1960 and that is when they came and asked about what was going to happen about their program.

Those are the facts.

Mr. GOLDENSON. That would not be unusual because the fact that their notice date may not have been up until a period of time following that.

Mr. SPRINGER. Mr. Goldenson, I am merely reciting the fact you told me you gave them notice.

Mr. GOLDENSON. We did, but the notice was probably not given until after that newspaper article, that is all I am saying.

Mr. SPRINGER. The impression that you gave to me was not that.

The impression was that you notified them in time. That is what I understood you to say.

When the Firestone people went to ABC I understand there was a mutual arrangement with Mr. Robert Kintner, who is now the president of NBC, that nothing would ever happen on ABC like what happened to those people on NBC.

Mr. GOLDENSON. As long as they sponsored the program, 52 weeks a year and I think if you will ask Mr. Firestone, he will tell you, because he is a very close friend of mine, his brother Roger Firestone is the head of United Cerebral Palsy that I happen to be chairman of the board of, I know him quite well.

He will tell you that as long as he sponsored the program 52 weeks of the year, he never would be moved out of that time spot. He had 8:30 on Monday night. They decided to cut back to 39 weeks and when that happened, we got in touch with the Firestones and said "Now you understand our agreement was that you never would be moved as long as you sponsored this 52 weeks. Do you want to change your mind and continue to sponsor the program for 52 weeks because of the fact we can't afford to carry this sustaining over the summer," and they said they understood perfectly, as long as they cut back to 39 weeks they could be moved thereafter, and then, in

keeping with that, we offered to move them to 10 o'clock on Monday night.

Mr. SPRINGER. Mr. Goldenson, I am not going to say you are wrong. There may be a misunderstanding. I am saying that my facts, which I think are pretty clear, are not the same facts that you are reciting to this subcommittee.

I am not saying that you may not be acquainted with the facts, but I am sure my facts are substantially correct. But the point I am making is this: Out of all these investigations that we had last year and this year the people of this country are not too much interested in payola. True, they don't want it to happen. They want to get rid of it. They want to get rid of rigged TV. But that is not what the people all over this country are really disturbed about. They are disturbed about a programing problem and we haven't even touched that yet. Programing is what the people out in the country are interested in and they feel they are not getting what they should be getting from those supposedly using the airwaves in the public interest. I just want to say this. If this is what is going to happen, I think we ought to have a real investigation of programing and go into that very thoroughly.

Mr. GOLDENSON. I think, Mr. Springer, you will find if an evaluation is made of programing you will find competitively, because of competition, the program quality has been improving all the time.

I visited places all over the world in television, and I can tell you that the quality of the programing in the United States is improving all the time. The programs of the United States are sought in every country of the world, and I quite agree we would always like to do it better.

Creative manpower is extremely difficult to get in a highly competitive situation.

Mr. SPRINGER. Mr. Goldenson, actually ABC is the one that has more westerns and detectives than the other two. I am not criticizing you for it. Let me say this: The only reason that programing improved, in my opinion, is because of the investigations of this subcommittee and the publicity which they have received.

I don't think it is due to the fact of competition on networks.

It came due to the fact that people, as a result of the magazine articles and newspapers and everything else that was printed, simply said that programing was terrible and that something had to be done about it. But I do think there are still considerable improvements that could be made in programing.

Mr. GOLDENSON. I cannot quarrel. I think we are all trying to achieve, at all times, improvement all the time in programing. And I can't quarrel with that.

Mr. SPRINGER. I just want to make this one further statement, and I am going to yield back, Mr. Chairman. I am going to follow this thing between now and January 1 to determine what I think is happening in programing. I am watching television every day to determine what I think ought to be done in the public interest, when we get around to January 1 of this next year. I am saying that not only to you, but I am saying that for the record to CBS and NBC, too.

Mr. GOLDENSON. Well, Mr. Springer, I would say the nature of the programing is improving all the time. I think that the programing

that will become available this fall will be a great improvement over what has happened, and I think that more and more creative people are coming into the field of television and I think you will find the quality improving all the time.

This fall, we have reached out from an intellectual standpoint to buy the volumes of Churchill—the six volumes of Churchill—and to bring the history of Churchill from the First World War through the Second World War to the American people, dramatizing it and having Richard Rodgers write the accompanying music to it. This will be done by a tieup with the schools, then it will be released to the schools of America eventually.

We have just worked out with the Dalton Co. a program called "Expeditions." Expeditions into science, expeditions into all fields of the future of America. This is being done by a tieup with over 132,000 teachers in the country and over 9 million schoolchildren and this program will become a subject that will be discussed in the schools.

I think you will find in the Walt Disney program, Beethoven was done I believe this last year. Each year he does one or two great subjects, very expensive, in this field, and as I said before, "Music for a Summer Night" is done by the same people that do the "Voice of Firestone." It is an hour program as compared with a half hour.

It will be on the air pretty close to 6 months this year, and I think it does bring cultural music to the people of America, and I think that upon looking at the program you will agree that it is as good as the "Firestone Hour," and it brings as many top people.

Mr. SPRINGER. I won't dispute it with you, Mr. Goldenson; I don't think it is anywhere near as good.

It is true; it is an hour's program. But I think we have a right to differ.

Mr. GOLDENSON. Sure, that is right.

Mr. SPRINGER. Mr. Chairman, I yield back.

The CHAIRMAN. Mr. Moss?

Mr. MOSS. Mr. Goldenson, I think it is quite obvious that the concern of the subcommittee goes beyond just the matter of what payola has been stopped. We are interested in a defining of the practice of payola, and I note in your statement that you undertake to define, on page 5, where you say that station managers, program managers, directors of programs, diskjockeys, music librarians and other persons responsible in the area of music, music selection are requested to supply pertinent information with respect to, first, whether they had ever received anything of value for the promotion of music?

In that generally your definition of payola?

Mr. GOLDENSON. My definition of payola, as I originally looked into it, I was always under the impression that payola was understood to mean a quid pro quo, an agreement—in consideration of an agreement by a diskjockey to play a record for a sum of money, or he refused to play a record for a quid pro quo, a sum of money was known to be payola, as I understood it, and actually, as I—

Mr. MOSS. Is that still your impression of what payola is?

Mr. GOLDENSON. That was my impression at the time we started this investigation last November.

Mr. MOSS. Well, what is your impression today?

Mr. GOLDENSON. My impression is that it has many interpretations, and as a result of so many interpretations, in order to avoid the possibility of any loopholes or misunderstandings, we decided to prohibit anything that would be given or taken, whether it is in the form of a gift or any other way, except a nominal gift at Christmas time or a business luncheon, so as to avoid any conceivable possibility of misinterpretation.

Mr. MOSS. How have you changed your affidavits?

Mr. GOLDENSON. If you will look at exhibit 5, and the affidavits that we have recently sent out that are going to have to be signed every year, they include everything, including gifts, exhibit 7.

Mr. MOSS. Well, now, that gets me right back to a very narrow definition that you have imposed here. Let's look at it.

The solicitation or acceptance by any ABC employee or individual performer engaged by ABC, or by any member of his immediate family or any person on his behalf, of any undisclosed consideration, directly or indirectly, in any form in order to influence the selection, rejection, creation, or production of any program.

Did you ever find anyone who admitted that he took that because it was designed to influence him?

Mr. GOLDENSON. Because—no, we did not. But because of the fact that there were so many interpretations, as I said before, I wanted to remove any doubt as to this possibility, and so we have added gifts or any other things. If you will see in exhibit—

Mr. MOSS. Yes, but you have added a whole lot of the things, the kinds of things that could be given. But the qualification, the acceptance of it designed to influence, and these people don't admit that they were influenced, or that there was an effort to influence.

Witness after witness has told us that that certainly was not the intent of music distributors, record companies have told us, "Why, we never paid these people to influence them. All we wanted was to have them listen." Now listening is not influencing. It isn't designed to influence.

Wouldn't you be actually attacking the problem if you dealt with the acceptance from a promoter or a beneficiary of music or any other thing? You do not deal with it. If you only say that instead of a payment now you can't even take a gift, the only thing you can take, not designed to influence you is a lunch, or a customary Christmas gift, you still have not dealt with the basic element here, which is the acceptance of that which is not designed to influence you.

Mr. GOLDENSON. Well, wouldn't a gift be done—wouldn't that fall in under gift?

Mr. MOSS. Let's take a look at this very valuable property of yours, and he is very valuable to you, Mr. Richard Clark. He received 162 copyrights, 148 of them as gifts. Certainly he was shocked, he was horrified, to think that anyone had offered them to influence him.

He said it was the custom for them to be brought to music publishers. Now, Mr. Goldenson, you know as well as I do that Mr. Clark, becoming a publisher coincidentally with going on your network nationally was not recognized as a music publisher, and that people did not rush to him because he was so recognized.

But they did hope, quite desperately, that the exposure they needed would be obtained as a result of the gift they gave him.

Now Mr. Clark could sign this new affidavit—he did not take any of these things, ever, for the purpose of influencing him. It is a matter of intent, is it not?

Mr. GOLDENSON. As a matter of fact, today under our prohibition he could not take any gift of any kind for any purpose.

Mr. Moss. Why not?

Mr. GOLDENSON. Because of the fact that we prohibit that under our latest affidavit that they must sign.

If you will look on page 7, I mean exhibit 7, page 3:

Also describe any payments or gifts of anything of value that you have received, directly or indirectly, such as through a relative or business entity in which you or such relative has or had financial interest, since—
whatever the day—

from any person, firm, corporation, or organization engaged directly or indirectly in music publishing or the creation, production, performance, distribution, manufacture, or exploitation of music, films, tapes, recordings, electric transcriptions, or any live or recorded programing; or from any performer on any network or local program; or from the composer of, or anyone associated with, any musical, dramatic, literary, documentary, or other programing broadcast on any network or local program.

Actually, Mr. Moss—

Mr. Moss. You say, describe it—where do you say it shall not be taken?

Mr. GOLDENSON. Actually, if this is so we will then have to immediately—it will be immediately flagged. They have got to do it under our—we then would refer back to clause 1 in the program selection—

Mr. Moss. What do you refer back to? The same thing I object to in connection with the acceptance or selection for network or local transmission to or broadcast over any ABC owned and operated station or for favorably influencing such acceptance or selection by another, and none of them do this.

So you can take and make 15 long and detailed sections to this and they are meaningless as long as you tie it to whether or not they accepted it for favorably influencing or selecting or accepting material for broadcast.

Mr. GOLDENSON. Yes, but—

Mr. Moss. You just don't do that, none of them.

Mr. GOLDENSON. May I ask, Mr. Moss, if any gift is flagged, as we are asking it to be flagged, then won't we have—won't they be alerted as we, immediately, as to what is happening?

Mr. Moss. Well, for instance, how can we determine whether 25 or 50 percent interest in a company for the investment of \$125 is a gift or whether that is a legitimate purchase? How do you get at that sort of thing?

Mr. GOLDENSON. That is why, Mr. Moss, in that respect, in my main address, and main presentation, I said this is one area where I think your subcommittee can do a great service to the music industry, and the broadcasting industry, if you can set forth the various areas involved, so that the prohibitions can be set up by law that they do not dare violate it, and I think you could be very helpful to this entire industry to help clean this matter up and in that respect—

Mr. Moss. We are most anxious to be helpful and maybe this might be helpful to us. Under date of December 7, 1959, from the legal

department of the American Broadcasting Co., 7 West 66th Street, New York, is a transmittal to Mr. Marvin Josephson, Broadcast Management, Inc., 680 Fifth Avenue, New York.

Under letter signed by Robert J. Coffman I enclose herewith the original and three signed copies of two agreements, each dated July 31, 1959, among Triangle Publications, Inc., Richard W. Clark, Drexel Television Productions, Inc., a corporation, and ABC relating to merchandise.

I find on page, I guess it is—the pages don't appear to be numbered on this—page 5, paragraph 4:

Anything to the contrary herein contained notwithstanding it is agreed that nothing herein contained shall in any way restrict Clark's exclusive right to use and license others to use his name, voice, biographical material, representation, and likeness in the media listed below and by any and all means now or hereafter known or devised for the advertising, publicizing, and exploitation—and there is a tremendously big door—

of such media which are hereby expressly excluded from the scope of the term "merchandising right" as it is used in paragraph 1 hereof—

you will recall paragraph 1 is where four of you cut up the cake.

(a) Legitimate stage, variety nightclubs, and all other personal appearances, guests, or otherwise in any and all media outside of radio and television;

(b) Books, hard and soft cover, newspapers, magazines, periodicals, and one-shots written by or contributions to which are made by Clark;

(c) Music publishing;

(d) Record and tape industry; and

(e) Motion pictures.

So by the terms of your contract you really agree that he can do any of the things which he has been doing.

Mr. GOLDENSON. Except under our policy statement he cannot. This is an old contract; is it not?

Mr. Moss. Well, you transmitted it to him under the date of December 7, 1959.

Mr. GOLDENSON. Yes, sir.

Mr. Moss. And it was signed July 31 of 1959.

Mr. GOLDENSON. I think our policy statement went out after that. I think under date of December 17.

Mr. Moss. Do you amend contracts by policy statements?

Mr. GOLDENSON. Well, because if they do not comply with the policy statement, and do not comply in our opinion, this would prevail because at any time we can take a man off there if he does not comply with our policy.

Mr. Moss. What does your policy statement say?

Mr. GOLDENSON. Our policy statement, if you will read on page—

Mr. Moss. Where is your policy statement? I don't know that I have a copy of it.

Mr. GOLDENSON. On program selection and content, exhibit No. 5, attached to my statement this morning.

Mr. Moss. What page?

Mr. GOLDENSON. Exhibit No. 5.

Mr. Moss. Exhibit No. 5.

Mr. GOLDENSON. Program selection and content that goes to—I beg your pardon, exhibit No. 4.

Mr. Moss. You mean this is from your own testimony.

Mr. GOLDENSON. Yes.

Mr. Moss. When was this policy statement circulated among the personnel of American Broadcasting?

Mr. GOLDENSON. December 17, 1959.

Mr. Moss. December when?

Mr. GOLDENSON. December 17, 1959.

Mr. Moss. Ten days after this contract was transmitted. Exhibit No. 4, well, see what that says: It looks like a questionnaire.

Mr. GOLDENSON. No; if you will see they have to sign and give the answers to each of these things under one, two, three, and four.

Mr. Moss. Do I understand that this is the policy statement?

It is a micro—

Mr. GOLDENSON. This is to all independent producers, packagers, suppliers of ABC programming and that includes Drexel, and includes Click, and then, under—we enlarged this, then, each year or as often, more than that, that we require that.

Exhibit No. 7, on April 21—

Mr. Moss. Mr. Goldenson, let's deal with No. 4 first.

Mr. GOLDENSON. Right.

Mr. Moss. I looked at it and I was puzzled when you said policy statement and I read this as an instruction to independent producers, packagers and suppliers of ABC programming, on how to fill out a questionnaire, which you are sending them because of a requirement of the Federal Trade Commission and the Federal Communications Commission—in connection with a questionnaire they had sent to you as a broadcaster.

Mr. GOLDENSON. Right. Then—

Mr. Moss. Where are the instructions, the policy statements contained in No. 4.

Mr. GOLDENSON. Then you have asked about the merchandising rights, as you read, about the merchandising rights. It would be flagged here as to any contracts that they have with, under one, two, three, or four, and then our people would, knowing the facts, would say the way this has to operate.

Mr. Moss. Where is the policy statement? Is this the one, No. 5? To, all ABC station managers, network and department heads; Subject, program selection and content, January 4, 1960; From, Mortimer Weinbach?

Is that the policy statement?

Mr. GOLDENSON. No; actually what is being set forth here is that each of them must sign an affidavit to the effect, as we have set forth here in one, two, three, and four, to the effect that they have not done it since a certain date, and then we keep this up from year to year, or as often more as we wish, so that they have not done any of these things that we do not permit them to do, and so state under one, two, three, and four.

Mr. Moss. Let's take this solicitation or acceptance by any ABC employee or individual, or employee engaged by ABC.

Mr. GOLDENSON. Where are you reading from?

Mr. Moss. This is program selection and content. Let's take that and relate it back to the situation where you indicated you had given Mr. Clark permission to plug American Airlines.

Mr. GOLDENSON. Right.

Mr. Moss. Can such plugs now be made?

Mr. GOLDENSON. That has to—anything of that nature has to be submitted to our program people in 48 hours before anything of that nature is done, or has to be authorized by our people to have it done.

Mr. MOSS. You are the licensee of a series of stations?

Mr. GOLDENSON. Yes.

Mr. MOSS. Then as a network you undertake to sell to affiliates certain services, programing, and otherwise, is that correct?

Mr. GOLDENSON. Yes.

Mr. MOSS. Now, where do you have an authority to delegate to a performer the right to sell commercial space on your show?

Mr. GOLDENSON. No place.

Mr. MOSS. Isn't that what you did with Mr. Clark?

Mr. GOLDENSON. Not a bit.

Mr. MOSS. Mr. Clark characterized in his response to me, which I read you this morning, as nothing in the world but the sale of a commercial.

Mr. GOLDENSON. But he actually was not—did not—was not permitted to do that without our authorization.

Mr. MOSS. Yes. But my point is this: What gives you the authority to delegate to a performer the right to sell commercial sponsorship not so identified in connection with his programs?

Mr. GOLDENSON. Actually, what is done in a sense, he cannot do that. He has to bring any such contract to us.

Mr. MOSS. I know but—

Mr. GOLDENSON. And therefore we will empower the putting of the plug on the air. This money will be put into Drexel, goes into Drexel, is accumulated for the purpose of permitting them then to take their crew and their people to various places to travel their show.

Mr. MOSS. Is all of that money, money which goes for that purpose?

Mr. GOLDENSON. That is what it was supposed to go for.

Mr. MOSS. Does that money go for that purpose?

Mr. GOLDENSON. That is what I understand.

Mr. MOSS. Well, I have done a little more research and I have here a letter dated January 4, 1960, Mr. Dick Clark, Mr. Marvin Josephson. Down at the bottom then it says a carbon copy to Messrs. Rosenthal and Seton.

Our profit on the American Airlines deal of last year, after taking into account airline expenses by us, not only for Drexel Television Productions, Inc., but also for Drexel Pictures Corp., Drexel Films Corp., and March Production Corp., amounted to \$3,049.60.

We have now drawn a check in the amount of \$304.96 from Drexel Television Productions, Inc., to Broadcast Management, Inc. for commissions due on this income item.

It seems as though this was a rather profitable gimmick. I am going to ask that these companies be required, and I think I will make the request now, Mr. Chairman. I would like to ask that the staff contact Drexel Television, Drexel Pictures, Drexel Films, and March Productions Corp. for a detail of the names of those who traveled and charged their travel expense to the \$7,000 paid by American Airlines.

I think this is very important. It seems to me like we ought to have a back tax case on the two.

The CHAIRMAN. You do not have anything to do with that, do you, Mr. Goldenson?

Mr. GOLDENSON. We don't have it—

Mr. MOSS. I am asking it for the staff. I raise that now, Mr. Goldenson hasn't got a thing to do with it.

The CHAIRMAN. Yes, that is right. We will endeavor to get the information.

(Information referred to follows:)

DREXEL TELEVISION PRODUCTIONS, INC.,
New York, N.Y., June 14, 1960.

BEVERLY M. COLEMAN, Esq.,
Principal Attorney, Special Subcommittee on Legislative Oversight,
House Office Building, Washington, D.C.

DEAR MR. COLEMAN: In reply to your letter of May 31, 1960, addressed to Drexel Television Productions, Inc., please be advised that transportation in the amount of \$4,321.95 was taken into account in connection with my memorandum to Mr. Clark of January 4 insofar as Drexel Television Productions, Inc. is concerned.

This covered the transportation of the members of the production staff of the Dick Clark Saturday night show in connection with the origination of broadcasts last summer from Los Angeles, trips by Mr. Clark to Syracuse, N.Y., and Binghamton, N.Y., in connection with an award in Syracuse and an origination in Binghamton, and staff members as well as Mr. Clark going to Miami, Fla., for a proposed origination of the Saturday night show from there, and a personal appearance in Miami and flying Mr. Stan Freberg, a guest on a program entitled "The Record Years" produced by this company on June 28, 1959, from Los Angeles to New York.

I hope this is the information you require.

Very truly yours,

MARVIN JOSEPHSON, *Vice President.*

DREXEL PICTURES CORP.,
New York, N.Y., June 14, 1960.

BEVERLY M. COLEMAN, Esq.,
Principal Attorney, Special Subcommittee on Legislative Oversight,
House Office Building, Washington, D.C.

DEAR MR. COLEMAN: In reply to your letter of May 31, 1960, addressed to Drexel Pictures Corp., please be advised that transportation in the amount of \$517.81 was taken into account in connection with my memorandum to Mr. Clark of January 4, insofar as Drexel Pictures Corp. was concerned.

This covered the transportation of Mr. and Mrs. Clark to Los Angeles, certain excess baggage charges, and some transportation involving Paton Price, Mr. Clark's dramatic coach, to Los Angeles from Philadelphia in connection with the filming of "Because They're Young."

I hope this is the information you require.

Very truly yours,

MARVIN JOSEPHSON,
Vice President.

DREXEL FILMS CORP.,
New York, N.Y., June 14, 1960.

BEVERLY M. COLEMAN, Esq.,
Principal Attorney, Special Subcommittee on Legislative Oversight,
House Office Building, Washington, D.C.

DEAR MR. COLEMAN: In reply to your letter of May 31, 1960, addressed to Drexel Films Corp., please be advised that transportation in the amount of \$777.02 was taken into account in connection with my memorandum to Mr. Clark of January 4 insofar as Drexel Films Corp. was concerned.

This covered transportation for myself and Charles Reeves from New York to Los Angeles in connection with future motion picture projects to be made in cooperation with United Artists.

I hope this is the information you require.

Very truly yours,

MARVIN JOSEPHSON,
Vice President.

MARCH PRODUCTIONS CORP.,
BROADCAST MANAGEMENT, INC.,
New York, N.Y. June 14, 1960.

BEVERLY M. COLEMAN, Esq.,
Principal Attorney,
Special Subcommittee on Legislative Oversight,
House Office Building, Washington, D.C.

DEAR MR. COLEMAN: In reply to your letter of May 31, 1960, addressed to March Productions Corp., please be advised that transportation in the amount of \$254.10 was taken into account in connection with my memorandum to Mr. Clark of January 4 insofar as March Productions Corp. was concerned.

This covered the transportation for Miss Marilyn Mark to Los Angeles in connection with the Hollywood Bowl appearance of Dick Clark last August.

I hope this is the information you require.

Very truly yours,

MARVIN JOSEPHSON
Vice President.

Mr. Moss. However, I have a request now, that Mr. Goldenson does have something to do with. I want to know how many other agreements you have made either with talent employed by you or under contractual relations with you, either through independent packagers or otherwise to sell plugs on their programs.

Mr. GOLDENSON. When you say all contracts, for what period of time, sir, so I can have the information obtained for you?

Mr. Moss. Well, I would say for the last 3 years.

Mr. GOLDENSON. We will get any and all information. We will have our staff get it for you.

(Information referred to above follows:)

PROGRAMS, OTHER THAN THE DICK CLARK SHOW, PRODUCED BY OTHER THAN ABC,
IN WHICH TALENT OR INDEPENDENT PACKAGERS WERE AUTHORIZED BY ABC TO
SELL AIRLINE CREDITS MAY 3, 1957-MAY 3, 1960

NETWORK TELEVISION

About Faces
Adventures in Paradise
All-Star Golf
American Bandstand
Beat the Clock
Bold Journey
Pat Boone Show
Bourbon Street Beat
Do You Trust Your Wife?
Hawaiian Eye
High Road
Original Amateur Hour
Donna Reed Show
77 Sunset Strip
Stars of Jazz
Take a Good Look
Voice of Firestone
Walt Disney Presents

Charley Weaver Show
Wednesday Night Fights
Lawrence Welk
Welk's Top Tunes and New Talent
You Asked For It

NETWORK RADIO

Breakfast Club
Wonderful World

LOCAL RADIO

The Martin Block Show

LOCAL TELEVISION

Music Is My Best

Mr. Moss. I want to tell you what I have in mind, the reason I want it. I want to find out why the Federal Communications Commission has not required that sponsorship be identified.

Mr. GOLDENSON. In this respect, Mr. Moss, I think it was what we were talking about this morning with Mr. Bennett, the identification on a number of these things are done on the air as it was in the case of the airlines here, and there are a lot of areas that, under 317 which your committee is considering amplifying, that I think has got to be

without any question, as I know you do, has got to be implemented so that the ground rules are well known as to exactly how to handle them. There are many gray areas in this whole field that our staff and the people have been working on and trying to resolve.

I know that they have mentioned to me that they have got to find ways to get clarification, and anything that your committee can help in this respect we would certainly appreciate, and I know the entire industry would.

Mr. Moss. Mr. Goldenson, I have no illusions as to the broad areas of failure attributable to the lack of action of the Federal Communications Commission, not only the one now sitting, but previous ones.

Mr. GOLDENSON. I am not blaming anybody.

Mr. Moss. I blame them, and you, because their failure certainly gives you an excuse.

But when this very important medium becomes so highly commercialized that you could look under any corner and find some new gimmick to pull it off, then I think we have almost approached the point where this most important means of communication has been completely subverted.

This is a bad thing, a very bad thing. It was never intended. You can take the word of Herbert Hoover who had a very important role in the early days of broadcasting. You can even take the word of Mr. Sarnoff who had some very important contributions to make. They didn't see it.

In fact, the commercialization of the medium was feared by a great many people.

The excessive overcommercialization is your responsibility as a broadcaster, unless you want us finally to take some specific account of it, that doesn't leave you any latitude and I know that isn't what you want. But that is inherent in the course of conduct of the industry at the moment.

So, as I say, you can blame the Communications Commission. It has not laid down precise lines, that is readily discernible.

But there are certain precise ethical standards which have been isolated by the industry itself.

Mr. GOLDENSON. I am not attempting to blame anybody. I do think that section 317 as such, started, as I said this morning in the radio days, and television is quite different, because you have video as well as audio.

I can give you many examples where this does change the rules, and, therefore, I think 317 has got to be implemented to take care of the changed conditions that have grown up as a result of television.

Mr. Moss. Well, as I read 317 it seemed rather clear on the face of it. Congress intended:

All matter broadcast by any radio station for which service money, or any other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person.

Now certainly in the case of the plug for American Airlines the listener was led to believe that they were furnished the transportation, arranged the transportation, I think is the term you used, and that was not the case.

Mr. Clark said that they didn't. Occasionally maybe, but—

Mr. GOLDENSON. Well, I think Mr. Clark, of course, this is handled by his production people and Drexel and he may not be as well aware of it nor am I with the details, I must confess. But, actually, as I understand it from our people, what is done is that the money is accumulated in the fund, and then as the show is traveled it is credited against that fund.

The CHAIRMAN. Well, the letter transmitting the check or indicating a check had been drawn for some \$3,000 of it, which obviously was not so used.

Getting back again to this policy. You feel that a continuation of the practice of the American Airlines would be consistent with the policy statement, item 2, exhibit 5, the first page. Really all this policy statement does, is to say to each of the employees and those engaged in any kind of service on behalf of ABC, that they must make a disclosure to the company, is it not?

Mr. GOLDENSON. That is exactly—you see under exhibit situation you will find that—each of the divisions then ask for affidavits from each of the individuals covering these things.

Mr. Moss. But you see that affidavit principle really is not very good. All it does is put you in a position, if something subsequently develops of disclaiming responsibility. The affidavit, you can't get an employee under an affidavit, you can't do anything forevermore with him, if he does sign a false affidavit, if he does anything—

Mr. GOLDENSON. That is why I said this morning, Mr. Moss, to your committee as to yourself that we would welcome legislation in this whole field of payola, whereby then it can be corrected and made illegal to do it in any form so as to fill the plug—plug that hole, and because in my opinion, this is a thing that has been a scourge of the entire industry for many years, and it is a question of how to get at that and how to correct it, and if it is an illegal act, it is going to help us in accomplishing that purpose.

Mr. Moss. Well, of course, we have had great difficulty.

Mr. GOLDENSON. What is that?

Mr. Moss. We, with great difficulty have been trying to learn enough about the practice and how it operates so that we could legislate to help you.

Mr. GOLDENSON. I know that.

Mr. Moss. But I have never seen a more reluctant group of people when it comes to laying the cards on the table, so that we could be helpful. We have had to drag every bit of knowledge out in the most tortuous fashion and there are enough conflicts in the testimony to confuse a saint.

Mr. GOLDENSON. I think that I found the same thing to be true, Mr. Moss. When I got into this there seemed to be different interpretations as to different definitions as to what is meant by terms and therefore, I think it is necessary to clear up this confusion.

Mr. Moss. Well now, let's take a look though at this contract where you, as I say, recognized that Mr. Clark had engaged in all these activities.

I point out again that your policy statement merely is a policy of disclosure to the employee, nothing else. It is not a prohibition against anything. It would be my judgment that the contract right

here is still a valid one. As long as Mr. Clark tells you, he can take anything.

Mr. GOLDENSON. In my judgment, and Mr. Clark knows that, this can be terminated at—in our judgment, if it is a violation—

Mr. Moss. I am not talking about what can happen. I am talking about what you have put down in writing.

Your policy statement is a statement requiring disclosure to the company.

Mr. GOLDENSON. Exactly.

Mr. Moss. That is all.

Mr. GOLDENSON. That is right.

Mr. Moss. It has no "thou shalt nots."

Mr. GOLDENSON. Well, actually—

Mr. Moss. It says you can do anything, really, if we approve it. You have approved it then here. This is the contract.

Mr. GOLDENSON. I don't agree with that, Mr. Moss, at all.

Mr. Moss. Will you tell me where I am in error? Where is there—

Mr. GOLDENSON. I think the policy statement that we require, that no payola in any form be taken or any gift as would be indicated by an affidavit, would be over and above any contract because of the matter of policy as far as our company is concerned.

Mr. Moss. You have outlawed it in the policy statement.

In this same contract, merchandise rights are divided one-third to Triangle, one-third to ABC, and collectively at least, one-third to Mr. Clark. It is one-sixth to Click and one-sixth to Drexel.

Is this proper?

Mr. GOLDENSON. I believe merchandising, as such, is a practice that has existed in the entire industry and I think is proper.

Mr. Moss. Let me make this point. You know I hear each time we mention a practice, I hear someone grab a crutch, and the crutch is that this has existed in the industry.

Now when we want to be critical of the industry, we are told "But this is such a young industry, give us a little time."

My question is, How can it be so young and have so many bad habits? [Laughter.]

The excuse can't go both ways. If they are old customs it doesn't mean they are proper customs. I ask you if it is a proper, not a customary arrangement.

Mr. GOLDENSON. I say it is proper.

Mr. Moss. You say it is proper?

Mr. GOLDENSON. Yes, sir.

Mr. Moss. As a broadcaster you should be able to go out in any other field of activity and exploit to the fullest the names you create through the use of the broadcast facility, merchandise them in any fashion you determine would most successfully exploit them.

Mr. GOLDENSON. These are subsidiary rights connected with the person or personality and are means of merchandising the program so that the program can become better known to the American public, and I say that is proper.

Mr. Moss. Would that be the controlling policy in the contract that you had with Mr. Alan Freed, the third contract with Mr. Freed? On page 4 of that contract, item 20—

It is our understanding, based on your representation, that during each calendar year of the term of this agreement you will promote three theater presentations. It is mutually agreed that in connection with such presentation you, or a company owned by you, or a corporation of which you are the major stockholder, shall purchase air time for the programs to be broadcast hereunder.

And such purchases shall equal at least \$10,000 each—

that is?

Mr. GOLDENSON. Yes.

Mr. Moss (reading):

In connection with each such theater presentation and shall be for air time spread out over a period of 5 weeks immediately preceding each such theater presentation.

I understand that when there was a protest on this in connection with one Easter program that the manager pointed out that the term was "shall purchase" and not "may" and therefore Mr. Freed was bound, but they reduced it to 7,000 which was most generous of them.

But this is a contract where you pay him \$40,000 and take back 30. Is that a proper practice?

Mr. GOLDENSON. This, in my opinion, was proper. Mr. Freed was plugging shows that he had in certain theaters—as I understand, in New York—and using the air time for the purpose to plug shows in which he would receive a profit. Therefore, by utilizing the air time, he was to pay for that air time. That was put in the log of the theater as to so many—he would have so many plugs for so many dollars; and that report as such, and that practice, I think, is proper.

I see nothing—any reason why that is not so.

He actually is a sponsor of that program for that period of time.

Mr. Moss. Well, if we adopt that principle, then, of making him pay, we had a different standard again. If we took the plugging or the pushing of records, for instance, in which there was ownership, we find that it would have cost Mr. Clark about—let's see, I have that figure here, just a moment—it would work out this way for the number of plays, time consumed, figuring only 2 minutes, which is actually less than playing time for records—it would have cost \$5,459,580 to have covered the recordings which he owned through publishing companies. It would cost another \$9,861,000 to cover the cost of such exposure recordings by manufacturers in which he had an interest in manufacturing companies. And if you covered those pressed at Mallard, it would run up to \$25 million.

In fact, you permitted Mr. Clark to charge others for plugs on his program but you charged Mr. Freed for the plugs on your station.

Mr. GOLDENSON. Mr. Moss, we were not aware of this, as I think I have indicated to you before.

We are now aware of that, and when we became aware of it, we caused him to divest his holdings so that that practice could not continue; so, therefore, I don't see where the point involved can have any particular merit here.

Mr. Moss. Well, of course, whether or not you do, it appears it must not have been any great surprise to the people who packaged the show for you.

Mr. GOLDENSON. I don't know how far you go in seeking—

Mr. MACK (presiding). The Chair was wondering if it would be an appropriate time to interrupt the questioning at this point.

We have had a call for a vote, and I assume this is an appropriate stopping point, and I will recognize the gentleman again after a short recess.

The subcommittee will stand in recess for 20 minutes.

(Short recess.)

The CHAIRMAN. The subcommittee will come to order.

Mr. MOSS, you may resume.

Mr. MOSS. I believe when we had the recess I was dealing with the contract between Triangle and Click, which was the package, I believe, the program purchased by American Broadcasting. Does American Broadcasting make any inquiry as to the conditions of contracts with talent who might be controlled by its packages?

Mr. GOLDENSON. I don't quite understand the question, sir.

Mr. MOSS. Well, we have a case in point here. We have the contract between Clark, the Click Corp., and the "American Bandstand" division of WFIL-TV, Triangle Publications. This was a contract for the services of Clark on "American Bandstand."

Are you familiar with any of the terms of that contract?

Mr. GOLDENSON. I offhand don't know the specific terms, no.

Mr. MOSS. Would your firm normally have knowledge of the conditions or the terms of this contract? They would normally review it, would they not?

Mr. GOLDENSON. They would review it probably very thoroughly.

Mr. MOSS. Then on this one, dated March 10 of 1958, which provides, of course, for the dividing of the proceeds from merchandising we find that Click Corp. takes a 10 percent cut on—I will read it—

Regarding profits from other enterprises involving Dick Clark and/or Click Corp., such as motion pictures, music publishing, recordmaking, and the like, these are to be divided 90 percent to Click, 10 percent to Triangle, after reasonable expenses—

would that not seem to be a recognition of the other activities held by Mr. Clark of which he divested himself last December?

Mr. GOLDENSON. I don't think so, because we have required that he divest himself of all his holdings, which he has done, and he is prohibited from doing so—we have told him so—if he is going to stay on our air—

Mr. MOSS. The thing there that comes to my mind as interesting, on page 31 of the agreement, the contract with Mr. Clark, the contract between Drexel Productions, Inc., and American Broadcasting Co., section 31 of that contract:

This agreement contains the entire understanding of the parties hereto relating to the subject matter herein contained, and shall substitute and replace any and all prior negotiations and agreements which may have existed between contractor and ABC television, and this agreement cannot be changed or terminated orally.

Now, you tell me that you have told him these things. This is the agreement here.

Mr. GOLDENSON. Well, that agreement, if I recall, can be terminated in 30 days, and we can take him off the air.

Mr. Moss. You are saying in effect—I remember when I served in the State legislature, that occasionally when we might question the speaker on his rule, he informed us that it was the rule of 41—he had the 41 votes to sustain it. You are saying here that you have the economic power to enforce any provision you want—you can pull them off the air, regardless of the conditions of the contract.

Mr. GOLDENSON. If he violates the conditions we have set down as a matter of policy of our company, we can and will do that as a licensee, yes.

Mr. Moss. ABC television, this agreement between ABC television—“and this agreement cannot be changed or terminated orally.”

Now, you are saying that, notwithstanding this provision, you can change it orally?

Mr. GOLDENSON. We are not changing it at all. I think in the public interest we can, on 30 days' notice, cancel that contract; we can take him off the air—

Mr. Moss. I have no question but what you can. And I also notice that you have a provision in there and that permits you to have the right to terminate on a 30-day notice basis. In fact, that raises another interesting point.

Originally the language said—I will read it—dealing with this notice:

Upon notice to contractor given at any time prior to the 30 days prior to the commission of such an act and the doing of such shall become known to ABC Television—

In other words, after you found it out you could give notice in 30 days—that is how the contract used to be—and on the 21st of January, this year, you changed that by a written amendment to read as follows:

Following the date after January 20, 1960, on which the commission of such act or the doing of such thing shall have become generally known to the public—

In other words, if the fact is committed and it does not become public knowledge, why then ABC is not disturbed; but if it becomes public, then the notice will be given, and 30 days after the public knowledge of the act, the contract will be terminated.

Now, you said a minute ago that in the public interest—do you mean that this section, for example, is more in the public interest than the previous one?

Mr. GOLDENSON. I can't answer the question as a legal matter, Mr. Moss. I haven't undertaken to answer the amendment or the clause that preceded it. I can only say that I have been advised by our counsel—

Mr. Moss. But you are an attorney, are you not?

Mr. GOLDENSON. Yes, but I haven't concerned myself with the study of that contract. I rely on our attorneys to advise us. I have been advised by counsel that in the public interest, at any time and at all times, if there is a violation of a policy of our company, we can terminate automatically.

Mr. Moss. That helps to clarify it.

I would like only to find out what the policy of the company is.

Mr. GOLDENSON. Well, this is a policy that we have set down with everybody, that we will not permit them to hold any interest in any music company—

Mr. Moss. Where is the document which contains that statement of policy? You have referred me now to three, and we have agreed, you and I, that the policy stated there is a policy of disclosure, and with approval of the company you can do anything. That does not become a definitive policy or statement of company position.

Now, where is that policy stated?

Mr. GOLDENSON. What you are saying may be true. All I know is, we have told our various heads of our departments, and they in turn have told any person in connection with the determination of programming or music, that as a policy in this company this is so, and that policy is being followed.

Now, whether is it in writing or not I can't answer. I don't see anything here in these exhibits, so it may not be in writing. If not, it should be corrected.

Mr. Moss. Is that not a very serious omission?

You tell these people that they have to disclose everything under the sun, and if you give them your blessing they can do whatever they want. But you give them no guidelines as to what they can do, although your contract does say that these things can and cannot be done, and it goes on to say that you cannot amend it except in writing; it cannot be amended orally. And now you tell me you can, because you have a policy. But the policy is not definitive; it has not been reduced to writing.

Mr. GOLDENSON. What you say may be so. I don't question that.

But I do know that insofar as we, as a top company, are concerned, we have told each of the heads of each of the departments, and they in turn were required to tell all talent that have anything to do with music and programming—as a matter of policy, we will not permit this to happen; and that was done last November.

Mr. Moss. Perhaps you and I could explore another little intriguing thought that crops up here. And I may be unduly suspicious. But if we have this policy of disclosure, and we have a policy which is not reduced to writing—therefore, it is not a very definitive policy—is it not true that the company then enjoys an unusually flexible position to adopt a policy of expedience?

Mr. GOLDENSON. If I were to say that insofar as I am concerned, on behalf of our company, I do not think that is true. We laid down the law dogmatically as to what—

Mr. Moss. Mr. Goldenson, my question was not in reference with what you do. I said it was an intriguing possibility, was it not? Was that not my statement?

And let's explore together this intriguing possibility; that the failure to have the definitive policy makes it easier because of the flexible nature of the policy to adopt a policy of expedience.

Mr. GOLDENSON. Well, insofar as I can speak on behalf of our company, I shall explore with our counsel why there is not a policy statement in writing. I think there should be. I don't see any here. And if there is any reason for it, I am not aware of it, because this is a policy that is in effect in our company.

There is no desire to use any methods of expediency, because insofar as our top company is concerned, we have set down a policy that we intend to live by, and everybody in our company knows that to be the fact, and will continue to be bound by that fact.

Mr. Moss. Well, I would be interested in seeing the results of those conferences. If we can get an agreement to inform the committee, I would ask the chairman at this point to hold the record open to receive it.

I would like, Mr. Chairman, to ask that Mr. Goldenson seek an opinion from his counsel as to whether the language in section 31 of the contract with Mr. Clark's Drexel Corp. means what it says, or whether it is meaningless. That language says

This agreement cannot be changed or terminated orally.

Mr. GOLDENSON. We shall be delighted to get that.

The CHAIRMAN. You may supply the information, Mr. Goldenson. (Information referred to follows:)

AMERICAN BROADCASTING CO.

Interdepartment Correspondence

Date: May 9, 1960.

Subject: Dick Clark.

To: Mr. Leonard H. Goldenson.

From: Omar F. Elder, Jr.

An opinion of counsel has been requested as to the meaning of the language in section 31 of ABC's contract with Drexel Productions, Inc., dated July 9, 1958, which reads: "This agreement cannot be changed or terminated orally."

It is the obvious intent of this language to require that any modification of this contract be in writing. However, in the opinion of counsel, the language in section 31 is not applicable to the instant situation concerning the ABC policy statement inasmuch as the programs would be subject to ABC policy pursuant to the express provisions of its written agreement with Drexel, without resorting to an oral modification, under section 10(c) thereof granting ABC direction and control and rights of approval over the programs and the elements thereof, since such rights would be exercised by ABC in accordance with its policy.

OMAR F. ELDER, JR.

Mr. Moss. Mr. Chairman, I think that is all the questions I have.

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

Mr. MACK. I have a few very short questions.

Mr. Goldenson, I was inquiring this morning about the type of investigation that ABC made into payola. At that time I indicated that I thought it was incidental to the investigation made by some of the other networks with respect to the rigged TV quiz shows. During the course of the hearings I indicated that I thought one of the networks was more interested in having affidavits from the employees in their files than they were in actually investigating the irregularities, or the deception involved, in the quiz shows.

It seems to me that ABC was more interested in obtaining the affidavits than vigorously pursuing the facts in the case.

Mr. GOLDENSON. Mr. Mack, I would disagree with you.

Our desire was to get the facts and get them under oath so that we, with the facts before us, could arrive at a decision as to how to handle this problem. And as a result of getting the facts in, and analyzing the facts, we tried to arrive at a solution as to how it could be handled.

As I indicated this morning, there are certain areas where your committee could be very helpful, in the area of payola and whatnot, whereby legislation could be passed that I think could be helpful.

Mr. MACK. I wanted to call your attention to a syndicated column in the Daily News which appeared on Monday of this week. And I

would like to qualify this by stating that sometimes items printed in newspapers are not entirely accurate. But it did interest me, and I wanted to call it to your attention and just ask for your comments concerning it.

It was a column by Ed Sullivan, and it states:

In their fight to convince Washington that the TV networks rather than a government czar can police the airways, NBC promptly rid itself of Charles Van Doren. CBS instantly canceled the "\$64,000 Question." But ABC, yielding to the earnest statements, flings morals to the four winds and goes out to protect diskjockey Dick Clark, allowing him to sign a special questionnaire and engaging as counsel for him Paul Porter, who knows his way around Capitol Hill.

Does that relate the facts concerning the engagement of counsel?

Mr. GOLDENSON. Insofar as I am concerned, I don't see where the two have any relationship to each other as far as the quiz situation and this situation are concerned. In the case of the quiz situations, I think the participants there were guilty of perjury, and that was brought out by your subcommittee, I believe, and as a result these people were forced off the air.

This is not true in this case. It is a question of interpretation of a practice that exists that is not illegal. This boy is a fine boy. I think he is a young fellow, and needed directions, and I hope that the rules and regulations we set up will provide that direction. For that reason I don't think the two are comparable.

I happen to know Ed Sullivan well, he is a very close and dear friend of mine, and I happen to know that there is quite a rivalry between himself and Dick Clark on talent between the Sunday night show and the Saturday night show, and this is a little dig, I think, because of that rivalry that exists.

Mr. MACK. I was interested to know whether or not ABC did engage counsel.

Mr. GOLDENSON. No, Paul Porter is not our counsel. We never engaged him, had nothing to do with his selection, and we have at no time had anything to do with Paul Porter in this area.

I missed your point, I didn't realize you asked us if we had engaged him.

Mr. MACK. There were several things that aroused my interest.

Mr. GOLDENSON. I missed your point.

No, we had nothing to do with Paul Porter. We didn't know that Dick Clark had retained counsel, or who he had retained, or anything about it.

Mr. MACK. It is of no great consequence, but it aroused my interest, and I did want to inquire.

Mr. GOLDENSON. No; he has no connection with us at all in this matter.

Mr. MACK. And I have noticed that Freed was discharged and Mammarella disappeared from the immediate picture about the time of the investigation, but that Dick Clark has been permitted to continue in your employ.

And I want to state quite frankly that I have no desire to injure Dick Clark. But I think our record should reflect the facts. And I think you mentioned in the case of Charles Van Doren that he was fired.

Mr. GOLDENSON. Yes.

Mr. MACK. That was not in this?

Mr. GOLDENSON. This was before the New York grand jury.

Mr. MACK. My personal opinion is that some people who are more responsible for the deception than Charles Van Doren retained their jobs as well as their reputations. And so I have no interest at all in seeing that some kind of reprimand is taken in the case of Dick Clark. But I do think that the record should reflect the facts. And that is my interest in this investigation. And I did feel that the network in both instances did not make a vigorous investigation. And that is why I have indicated that I thought perhaps regulation of the networks would be justified.

But I would like to ask just one short question, about the affidavit itself, the affidavit that Dick Clark signed.

You required all of your employees to submit an affidavit, and then you had Dick Clark submit this affidavit, because he was part of a package show on your network; is that correct?

Mr. GOLDENSON. No.

Actually, as a procedural matter we sat down with Dick Clark first on November 11, before we had seen anybody. Mr. Treyz, who is the head of the TV network, had called him to come in, and I said I would like to be present because I would like to pursue the questioning myself to find out what the facts were. And on November 12 he came back and said he would divest, and he told us everything at that time. And at that time I told him to put it in the form of an affidavit, and I said, "I would like to have every question that I have asked you answered in that affidavit—"

Mr. MACK. I just want to have that one point clarified.

Was that on November 12?

Mr. GOLDENSON. Yes.

Mr. MACK. Had you met Dick Clark prior to that time and discussed the matter with him?

Mr. GOLDENSON. Yes; I had met Dick Clark on several occasions prior to that time.

Mr. MACK. On several occasions, like the 1st of November?

Mr. GOLDENSON. I think the first time he appeared on the air they had a party for him after his first show, and I met him there for the first time, and I think possibly on one or two other occasions, social occasions, never anything in business, because that is handled through our TV network.

On November 12, when we saw him for the second time, after we had seen him, and I had the idea of the nature of this problem, I called in Mr. Debare, and the head of all our owned and operated television and radio stations, and I said, "I would like to have an affidavit from everybody who has anything to do with the program selection or music selection, and I would like to embody areas that involve, did they take payola, or have they as a condition to playing a record exacted money, or do they own any interest in music, publishing, or recording companies and whatnot?"

Now, the nature of that language—I don't know how our lawyers were going to frame it, I just told them the principles under which I felt it should be set up.

Mr. MACK. Which affidavit is that?

Mr. GOLDENSON. That is the form affidavit which went out to everybody, including Mr. Freed, except Dick Clark. In the Dick Clark

affidavit the points that I had raised were in the Dick Clark affidavit and are answered specifically in it as they are in the form affidavit. But Dick Clark had all these holdings.

In addition, we insisted on Dick Clark telling us of any gifts he had ever received of any size or nature so that we could identify them, as to what the nature of them was and how he happened to receive them, so that we could study and analyze the situation.

Mr. MACK. But on November 12 you asked him to divest himself of the interests prior to the time you received the affidavit?

Mr. GOLDENSON. Yes; on November 11 I told him he would have to do that or go off the air. And on November 12 he came back and said he was prepared to divest, and it was at that time that I asked him to put it in the form of an affidavit.

Mr. MACK. On November 11 you must have felt that it was wrong for Dick Clark to be taking profits for his stock and accepting copyrights, et cetera.

Mr. GOLDENSON. What I said to him was, "Dick, you say that you have never taken payola, and I assume that I will agree with you. But I do not think, in order to achieve objectivity, that you should ever have your judgment challenged, and the only way to insure that is to divest yourself of any interest that would put you in an inconsistent position. And unless you are prepared to do that, we will have to give consideration to taking you off the air."

Mr. MACK. I did not have the benefit of attending the session on Friday and hearing Mr. Clark's presentation. But I have the distinct feeling that not only is he the top diskjockey in the country, but he seems to have been the "top dog" in the payola field as well. And I think even his affidavit, with all the careful recording, strongly indicates that he has accepted payola to the extent, certainly to the extent that other diskjockeys have, who have been before this subcommittee.

And I would just like to—I do not know if this has been covered in the course of these hearings—in his affidavit, under item 11, he admits that he has taken Christmas presents, birthday gifts from business acquaintances, from friends in general, in addition to fans, and that he has received such industry and office items as a color television set, record players, tape recorders. And in my opinion those would be rather substantial gifts.

A color television set, by the standards of most of us, is more than a souvenir ashtray.

Mr. GOLDENSON. Well, it is because of this fact, and in order to remove all doubt, that we have required, as a prohibition, that no people associated with us in this capacity or any capacity in the selection of music do this in the future. And it is for that reason that we just wanted to remove all doubt, so that no one in that position could be challenged in the future.

Mr. MACK. Item No. 12, his wife received a fur stole, and he was very reluctant to accept it, so he insisted on paying for it, and he finally gave a check for \$300 for the stole. I do not know what kind of a stole it was. But I know that my wife has never displayed any interest in a \$300 stole. And he has indicated that he learned later that the cost of the stole was a thousand dollars. And that is more in line with the price of a stole such as my wife is interested in. I know

nothing about them, but I think I can judge whether they are \$300 or a thousand dollars.

And then also under item 12, we come to a necklace and a ring. His wife received a ring which she never wore, and he received a ring which he never wore. But I think that the important thing is not whether either of them have worn the gifts; it is the value. And he has indicated that the value of the gifts was \$3,400, and it was charged to one of the donor's companies as a business promotion expense. And I just wanted to observe at this point that some of the diskjockeys who received less than \$300 a month, or even \$200 a month, have been discharged, because their employers thought they were accepting payola.

So I certainly have not been convinced at all that Dick Clark was in any other category than the majority of the diskjockeys that have paraded before this subcommittee.

So I have no further questions, Mr. Chairman.

Mr. Moss. I have one more.

Mr. MACK. Before I yield the floor, I wanted to thank the witness for his forthright answers. He has made a great contribution to the work of this committee.

Mr. Moss. Mr. Goldenson, on page 6 of your statement, at the end of the first full paragraph in the middle of the page you say:

In total some 110 persons responded under oath to the questionnaire. Mr. Freed was the single exception in this respect.

Was there not another?

Mr. GOLDENSON. That refused?

Mr. Moss. What was the case of Mickey Shorr, former diskjockey at station WXYZ in Detroit, an ABC-owned station?

Mr. GOLDENSON. As I understand, we did receive an affidavit from him, and he held, as I recall, certain holdings that he was required to divest himself of, and in the course of that I think they decided whether—I don't recall whether he refused to do it or what the cause was, but as a result of the holdings he had, they asked him to resign also.

Mr. Moss. Well, we interviewed him on the 21st of April, and I read from the contemporaneous memorandum:

Shorr said he was employed as a DJ by station WXYZ from the fall of 1956, until he was fired in November of 1959. He said he was fired because of his refusal to answer certain questions contained in a questionnaire which had been prepared by ABC officials and sent to the network's DJ's to be filled out. Shorr said he thought the questionnaire was unfair. He refused to discuss it, but he said one of the questions related to whether or not the station manager of WXYZ had knowledge of the practice of payola. He answered affirmatively and when questioned by the ABC attorney concerning his answer, refused to elaborate.

Shorr said that the ABC attorney, whose name he couldn't recall, suggested that he withdraw his answer to this particular question, since he did not wish to discuss it. And Shorr said he refused, and believes this was the main reason he was fired.

Do you recall whether or not you received an affidavit from him?

Mr. GOLDENSON. As I understand it—and this was reported to me by the people who handled it—that he had signed an affidavit, and insofar as I know, for some reason or other after they received the affidavit, they decided to let him go.

Now, I can get the exact facts on that from the person that handled that. I can't answer it specifically.

Mr. Moss. I would like to have the record at this point, Mr. Chairman, receive that material. A copy of the affidavit is what I would like.

The CHAIRMAN. He may supply it for the record.
(Affidavit referred to above follows:)

NOVEMBER 13, 1959.

Name: Mickey Shorr.
Station: WXYZ Detroit.

1. Do you now receive, or have you ever received payment of, or credit for, anything of value, directly or indirectly (such as through a relative or business entity in which you or such relative has or had a financial interest) for the promotion by broadcast of any music, musical composition or musical recording?

Yes ----- No X

2. Have you ever refused to accept or failed to select for broadcast any music, musical composition or musical recording unless payment of, or credit for, anything of value, directly or indirectly (as explained in question 1 above) was made to or for you?

Yes ----- No. X

3. Do you now have, or have you, or any relative of yours, ever had any ownership of or beneficial interest in a musical copyright or performance right or in any music publishing, recording, pressing or merchandising concern?

Yes X No -----

In 1959 I cowrote, coproduced and acted as talent on a record, the title of which was "Stagger Lawrence." This was a satire on a hit song, "Stagger Lee." Also in 1959, acted in the same capacity on a recording titled "Russian Bandstand". My associate on these recordings was Richard S. Goodman.

I held stock in "Aussie Records, Inc.". This is an organization which acts as American representative for Leedon Records Pty., Ltd., of Sydney, Australia. Our function is to purchase and or lease Australian rights for release of American Recorded Masters in Australia. Aussie pays prevailing royalties to these American companies.

Aussie also acts for Leedon as contact with agents or managers of American talent for bookings in Australia. Leedon enters into conventional contractual arrangements with this talent and pays salaries to this talent for their Australian appearance.

I hold stock in American Broadcasting Co.-Paramount Theatres. This corporation operates Ampar Records.

MICKEY SHORR.

STATE OF MICHIGAN,
County of Wayne, ss:

Mickey Shorr, being duly sworn, deposes and says that he (she) has read the foregoing questions and has answered the same; that the answers set forth are true and that he (she) has subscribed his (her) name thereto.

MICKEY SHORR.

Sworn to before me this 16th day of November, 1959.

ANN SCHOEEN,
Notary Public, Wayne County, Mich.

My commission expires August 28, 1963.

Mr. GOLDENSON. Right. We will take care of that.

Counsel has just handed me a copy of the affidavit he signed. Do you wish me to read that?

Mr. Moss. Does the copy contain any handwritten material dealing with the activities of the station manager?

Mr. GOLDENSON. Let me see.

This is dated November 13. In response to question 1 he said "No."

In response to question 2 he said "No"——

Mr. Moss. That is not my question.

Mr. GOLDENSON. I know.

And in response to question 3 he said "Yes."

Mr. Moss. I can read it later, Mr. Goldenson. I asked you if it was handwritten.

Mr. GOLDENSON. I don't see anything handwritten here.

Mr. Moss. Of course, that is a Thermo-Fax, so it may or may not have produced the copy of the original.

Mr. GOLDENSON. If I could inquire of the attorney that handled this matter, I could find out.

Mr. Moss. I would prefer, when you submit it for the record, that it be a photostat, so that we have the handwriting, whether it is in pencil or pen or whatever it might be, so that we are certain that we have a proper copy.

That is all I have, Mr. Chairman.

The CHAIRMAN. Mr. Howze, do you have some questions?

Mr. HOWZE. Only a few, Mr. Chairman.

Mr. Goldenson, when did you say that it first came to your attention that Mr. Clark and Mr. Mammarella split up the programing duties?

Mr. GOLDENSON. On Sunday at my home.

Mr. HOWZE. That was the 15th?

Mr. GOLDENSON. Yes, sir.

Mr. HOWZE. That was not disclosed to you on the 11th, which is the date of the—

Mr. GOLDENSON. No, I knew nothing about it until Sunday at my home, when Dick Clark came in in the early afternoon, and after we had gone through—we had questioned them in many areas, we asked about the affidavits of the various people that he had surrounding him, and I said I would like to see the affidavits and what these men have said, and he then said that he could not get one, because Mr. Mammarella had quit.

And I said, "Well, under what conditions did he quit?" And that is when we pursued that, as I indicated here this morning.

Mr. HOWZE. That was when it first came to your attention that Mr. Mammarella had been engaging in some activity that Mr. Clark did not want to talk about?

Mr. GOLDENSON. Right.

Mr. HOWZE. Did Mr. Mammarella resign on the 13th?

Mr. GOLDENSON. As I later found out, he resigned on Friday, which would be the 13th—yes; that would be the 13th.

Mr. HOWZE. That was to be effective 2 weeks later?

Mr. GOLDENSON. That I don't know.

Mr. HOWZE. When you asked Mr. Clark to furnish you with the affidavit which he ultimately did furnish you, what instructions did you give him as to what kind of outside interests should be disclosed?

Mr. GOLDENSON. I told him any holdings that he had with respect to music, music publishing, pressing plants, anything that could possibly directly or indirectly affect his judgment in the playing of music or the areas that would be subject to challenge on the part of anybody, I wanted to have a complete record of any and all of his holdings in that respect.

Mr. HOWZE. You used the language this morning, I think, that you wanted to disclose every conceivable thing that could be misconstrued.

Mr. GOLDENSON. Right.

Mr. HOWZE. That dealt only with the music programing aspects of his broadcast activity—or would that have to do also with the merchandising aspects?

Mr. GOLDENSON. No.

Actually, we weren't concerned with the plugola phase of it in our first affidavit. I was looking more for the payola in our first—in hitting this thing I wanted to hit the payola phase to find out to what extent, if any, he was involved, and what properties or what corporations he had an interest in, and what those corporations did, and how that could possibly affect the objective of his judgment in the selection of music.

Mr. HOWZE. And you were aware—or perhaps it had not occurred to you—that there were a number of corporations which Mr. Clark may have been interested in which would not affect the affidavit?

Mr. GOLDENSON. Yes.

Actually, at a little later time we asked him on behalf of Drexel to submit anything in the other areas that I have indicated.

Mr. HOWZE. Do you feel that Mr. Clark was in any way remiss in not mentioning in his affidavit, as I think he denied, this division of programing responsibility between Mr. Mammarella and himself?

Mr. GOLDENSON. I don't think so, because in a sense he told us that Mammarella had aided him in the programing, and unbeknownst to himself, he had done something wrong, he had been dismissed, and that he couldn't under any circumstances interfere in anything in the future or do anything wrong in the future, and for that reason we were trying to get the facts, and how they would relate to a sound operation of the Dick Clark shows.

Mr. HOWZE. Mr. Goldenson, it has been called to my attention that you testified this morning that you did not know until today that Mr. Mammarella and Mr. Clark divided up the programing responsibilities.

Am I in error about that?

Mr. GOLDENSON. I said I didn't know what he had done wrong until yesterday, when I read the testimony that was released by this committee.

Mr. HOWZE. Did you say this morning that you did not know that Mr. Mammarella selected half the records?

Mr. GOLDENSON. I said I didn't know the amount. I said he aided them in this programing, I didn't know how much.

Mr. HOWZE. Do you feel—I assume you do feel—that Mr. Clark's disclosure as set forth in his affidavit were adequate and met your requirements?

Mr. GOLDENSON. We grilled him on every phase of that affidavit, and we felt that the information we obtained would give us the facts from which we could try to set up and arrive at standards under which we could operate in this field of music under perfect proprietary conditions without affecting the music selected, not only for him, but for everybody, and that is what we were trying to elicit.

Mr. HOWZE. You said, I think, that 111 affidavits were circulated and signed by employees of ABC, employees connected with the selection of music. Did ABC ever undertake any further investigations involving any of those individuals?

Mr. GOLDENSON. After these affidavits were obtained, I think that our staff questioned a number of the people about a number of things—I think that was pursued—with respect to Dick Clark, any time any rumors would come to our attention they would be run down by counsel, or any time anything appeared in the newspapers, that was run down, so as to try to determine if there was any variance with the affidavit that had been submitted to us by each of these people.

Mr. HOWZE. When you learned that Mr. Mammarella had resigned—and you had learned that by the time of the meeting at your home—you concluded that you would not question Mr. Mammarella. Would you give the reason for that?

Mr. GOLDENSON. He was not an employee of ours, he had already quit. We had no jurisdiction over him, and there was no way we could.

Mr. HOWZE. Conceding that you do not have subpoena powers as you mentioned this morning, might you not have made an effort to interrogate Mr. Mammarella?

Perhaps he would have volunteered the information.

Mr. GOLDENSON. Insofar as we were concerned, we saw no way that we could properly get at him. We know that Mr. Clipp, who was at the meeting at my home, had interviewed him.

Mr. HOWZE. Roger Clipp—and Mr. Koehler, do you know whether he was present?

Mr. GOLDENSON. I don't know.

Mr. HOWZE. Did Mr. Clark suggest at the meeting at your home that one way or the other Mr. Mammarella might be willing to talk to you?

Mr. GOLDENSON. No. As a matter of fact, he gave no such indication to my knowledge.

Mr. HOWZE. Did he not indicate in any way that he would prefer that no one talk to Mr. Mammarella?

Mr. GOLDENSON. No. He may have said this to Mr. Clipp, but not to us.

Mr. HOWZE. Had Mr. Mammarella still been in WFIL's employ on the day of your meeting, would you have undertaken to talk to him?

Mr. GOLDENSON. If he had continued in the employ and had not resigned?

Mr. HOWZE. Yes, if he had continued in the employ.

Mr. GOLDENSON. I am sure that we would have wanted to know the facts, as we required of anybody that had anything to do with the programing. And that was one of the definite conditions that we had given to Dick Clark, that anybody who had anything to do with the programing would have to give us an affidavit as to what was involved.

As a matter of fact, as I understand it, he refused to sign the affidavit in connection with divesting himself of his interest.

Mr. HOWZE. He did refuse?

Mr. GOLDENSON. That is what I understand.

Mr. HOWZE. And in connection with that refusal, did he resign?

Mr. GOLDENSON. As I understood it, when we met with Dick Clark, his resignation occurred on Friday because he had refused to divest himself. But on Sunday when we met, the additional factors, after

interviewing Mr. Clark about it, he indicated in addition that there had been something wrong, and that he had to terminate the relation irrespective of the other factors.

Mr. HOWZE. And you saw no way in which you could properly pursue that with Mr. Mammarella?

Mr. GOLDENSON. We did not; no.

Mr. HOWZE. Had Mr. Mammarella not resigned on Friday, you said you would have gone into it.

Mr. GOLDENSON. I think we would have insisted that we have an affidavit.

Mr. HOWZE. You would not have regarded his conversation with Mr. Clipp as decisive?

Mr. GOLDENSON. We insisted that Mr. Clipp get us an affidavit from him.

Mr. HOWZE. I see.

The CHAIRMAN. Mr. Goldenson, you have in your testimony and response to questions, covered the field pretty well. So I do not believe it is necessary for me to extend this interrogation any further.

So, with the thanks of the subcommittee for your appearance here today, and your willingness and cooperation in readily providing us with the information requested of you, you may be excused.

Mr. GOLDENSON. Thank you very much. And I do want to thank the committee for their indulgence.

As I say, I think this committee can do a great public service in the two areas of payola and in 317, and can help an industry that, I think, does require help in these two areas.

The CHAIRMAN. Thank you very much. We appreciate your cooperation and that of your organization, and of your counsel, who participated in the discussions, and so forth, yesterday. And he will be back tomorrow.

Mr. GOLDENSON. Thank you.

The CHAIRMAN. Mr. Hoberman.

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

Mr. HOBERMAN. I do.

TESTIMONY OF BEN HOBERMAN

The CHAIRMAN. State your name for the record, please, sir.

Mr. HOBERMAN. My name is Ben Hoberman.

The CHAIRMAN. What is your residence, Mr. Hoberman?

Mr. HOBERMAN. I live in Lake Success at No. 4 Oldfield Lane.

The CHAIRMAN. What is your business or profession?

Mr. HOBERMAN. I am general manager of WABC radio in New York.

The CHAIRMAN. WABC radio in New York is a radio facility owned by ABC?

Mr. HOBERMAN. Yes, sir.

The CHAIRMAN. American Broadcasting-Paramount?

Mr. HOBERMAN. Yes, sir.

The CHAIRMAN. And you are the manager of that station?

Mr. HOBERMAN. Yes, sir.

The CHAIRMAN. This is the station where Mr. Allan Freed was employed; is that true?

Mr. HOBERMAN. Yes, sir.

The CHAIRMAN. And Mr. Allan Freed was a diskjockey?

Mr. HOBERMAN. Yes, sir.

The CHAIRMAN. Employed by your station?

Mr. HOBERMAN. Right.

The CHAIRMAN. How long was he employed by your station?

Mr. HOBERMAN. Approximately 18 months.

The CHAIRMAN. Will you describe what his work was?

Mr. HOBERMAN. He conducted a nightly musical program for us that ran from 7:15 to anywhere from 10:30 to 11 o'clock Monday through Saturday. And he played what is commonly referred to as rock and roll music.

The CHAIRMAN. Was his contract negotiated by you or by the company itself?

Mr. HOBERMAN. His contract was negotiated before I was appointed to the management of WABC in New York, by my predecessor.

The CHAIRMAN. By your predecessor?

Mr. HOBERMAN. Yes, sir.

The CHAIRMAN. It was not negotiated by ABC?

Mr. HOBERMAN. Well, I assume it was negotiated by my predecessor with an attorney from ABC.

The CHAIRMAN. Now, Mr. Hoberman, it was brought to my attention that you had some statement that you wanted to make in further explanation regarding Mr. Freed's employment with you.

Mr. HOBERMAN. I have no prepared statement to make, sir.

The CHAIRMAN. I am just giving you the opportunity, it was brought to my attention that you wanted to reply to what Mr. Freed told the subcommittee.

Mr. HOBERMAN. Some of the things that Mr. Freed told the subcommittee I believe were untrue. One of the things that I was shown had to do with the fact that I presumably knew of his, of all of his outside activities, and I believe at one point something was said about my having knowledge of the fact that he had been on the payroll of several record companies.

I said to Mr. Eastland when he showed me the document that this was absolutely not true, I had no knowledge of his outside activities in, with the exception of a television program he conducted on a station in New York, with his stage show appearances, and with the movie that he made.

The CHAIRMAN. Was it his responsibility to select music for the programs?

Mr. HOBERMAN. Yes, sir.

The CHAIRMAN. Was that responsibility included in the contract, or was it just understood that that was part of his work?

Mr. HOBERMAN. I am not sure that it was spelled out in the contract, it was understood that it would be part of his work.

The CHAIRMAN. But he had the exclusive authority then to select the material for his programs each day?

Mr. HOBERMAN. I will say, sir, that the director he was assigned to the program by the station and who was the representative of the program department was primarily responsible on Mr. Freed's show

for production, music clearance, and matters of good taste. As far as the individual selection of records was concerned, this was Mr. Freed's bailiwick.

The CHAIRMAN. And, therefore, Mr. Freed had the authority, then, to select whatever records he himself thought should be played on that program?

Mr. HOBERMAN. Yes, sir; within the limits of good taste.

The CHAIRMAN. Now did you know that he had this relationship with several record companies?

Mr. HOBERMAN. No, sir.

The CHAIRMAN. Was there ever any indication whatsoever that he was associated with any of them?

Mr. HOBERMAN. I knew of nothing, sir.

The CHAIRMAN. Was there ever anything that developed that caused you to suspect or make an inquiry as to whether or not there were such contacts?

Mr. HOBERMAN. No, sir.

The CHAIRMAN. When did you first find out about it?

Mr. HOBERMAN. To this day I have not actually found out, sir.

The CHAIRMAN. You had nothing to do with the discussions that led to his termination?

Mr. HOBERMAN. No, sir. As a matter of fact, I gave him the affidavit, the questionnaire that we were giving to all employees connected in any way with our programming of music, at the same time that everybody else was given it. And with the exception of a phone call, or perhaps maybe two, at which time he inquired as to whether or not all the other diskjockeys were asked to fill out the same questionnaire, when I referred him to his attorney and suggested that if he had any questions that he discuss them with Mr. Debare, who was the ABC attorney representing the local radio station—now, these instructions I gave to each person to whom we issued the questionnaire.

The CHAIRMAN. Did you have anything further to do with it after that?

Mr. HOBERMAN. No, sir. I believe he was given the affidavit on Friday. There was a conversation on Saturday morning. I am not sure whether there was one Friday night. And after that I had nothing further to do with it, because it was in the hands of Mr. Freed's attorney, and Mr. Debare, the ABC attorney.

The CHAIRMAN. Did the letter from Mr. Freed to American Broadcasting Co. dated November 21, 1959, come to you?

Mr. HOBERMAN. I saw that letter last night for the first time.

The CHAIRMAN. Last night?

Mr. HOBERMAN. Yes, sir.

The CHAIRMAN. Mr. Moss, do you have anything to ask of this witness?

Mr. MOSS. How long have you been in the broadcasting business?

Mr. HOBERMAN. Approximately 20 years, sir.

Mr. MOSS. And where were you before you joined ABC in New York?

Mr. HOBERMAN. I was at the ABC station in Detroit, employed for 8 years as a local television advertising salesman.

Mr. MOSS. Had you ever heard of payola?

Mr. HOBERMAN. Yes, I believe I had heard of it, I was in no way—

Mr. MOSS. What was your impression of payola? Did it exist, and if so, in what form?

Mr. HOBERMAN. I had given it no thought. I was not involved in it in any way, I had nothing to do with the programing.

Mr. MOSS. How long were you a station manager?

Mr. HOBERMAN. I joined ABC in June of 1958.

Mr. MOSS. And that is when you became a station manager?

Mr. HOBERMAN. I had been a station manager prior to my association with ABC at an FM station in Detroit.

Mr. MOSS. Advertising?

Mr. HOBERMAN. Television advertising salesman.

Mr. MOSS. For 8 years?

Mr. HOBERMAN. Yes, sir; from 1950 to 1958.

Mr. MOSS. And what were you before you started selling advertising?

Mr. HOBERMAN. Prior to that I had managed this FM station in Detroit.

Mr. MOSS. You had managed an FM station. Was there a substantial amount of recorded music played on that station?

Mr. HOBERMAN. Yes, there was a considerable amount of music—

Mr. MOSS. Was it rock and roll or—

Mr. HOBERMAN. No, sir; it was all classical music.

Mr. MOSS. Fine. We haven't heard that it required payola to get good music played. So when you were in Detroit, did you ever, yourself, accept any form of payola?

Mr. HOBERMAN. No, sir; I had no connection with programing in any way, I was employed as an advertising salesman.

Mr. MOSS. How about New York?

Mr. HOBERMAN. No, sir.

Mr. MOSS. You weren't there long enough really to come into knowledge of it, I suppose.

That is all the questions I have of this witness, Mr. Chairman.

The CHAIRMAN. Mr. Howze, do you have anything else?

Mr. HOWZE. Yes, sir.

Mr. HOBERMAN. did Mr. Freed resign or was he fired from his job with WABC?

Mr. HOBERMAN. Mr. Freed's contract was terminated under the provisions that we had in the contract. I understand that he was given an opportunity to resign but did not do so.

Mr. HOWZE. Was that matter handled by you or by the legal people?

Mr. HOBERMAN. No, sir; it was handled by the ABC legal people.

Mr. HOWZE. Are you familiar with a contract between American Broadcasting Co. and Barrienda Music, Inc., dated September 3, 1958?

Mr. HOBERMAN. I believe so. Is that the contract for the sale of time?

Mr. MOSS. That is right, sir.

Mr. HOBERMAN. Yes, sir.

Mr. MOSS. What kind of company is Barrienda Music, Inc.?

Mr. HOBERMAN. It was my understanding that it was a corporation that Mr. Freed had organized for the promotion of his stage show.

Mr. HOWZE. And this contract requires, does it not, that in exchange for advertising on the station he will pay to the station a percentage of the earnings of certain stage performances?

Mr. HOBERMAN. Of a certain stage performance, yes.

Mr. HOWZE. It is a regular time contract, isn't it?

Mr. HOBERMAN. It is a regular time facility contract.

Mr. HOWZE. Is it customary for the station to have agreements with employees that they will buy time to advertise outside activities on ABC's stations?

Mr. HOBERMAN. This was the only instance that we had on the local radio station.

Mr. HOWZE. This was unique in the experience of WABC?

Mr. HOBERMAN. It was unique as far as I was concerned; yes.

Mr. HOWZE. Are you familiar, sir, with the contract dated February 13, 1959, a letter contract on American Broadcasting Co. stationery between ABC and Mr. Freed?

Mr. HOBERMAN. May I see it?

Yes, I am familiar with it.

Mr. HOWZE. I call your attention to paragraph 5 on the front page.

Mr. HOBERMAN. Yes.

Mr. HOWZE. In which one Bonaire Music, Inc., is mentioned?

Mr. HOBERMAN. Yes.

Mr. HOWZE. What is Bonaire Music, Inc.?

Mr. HOBERMAN. It is my understanding that it was a corporation that Mr. Freed had formed for the promotion of his stage shows.

Mr. HOWZE. A corporation which did roughly the same kind of things as Barricuda?

Mr. HOBERMAN. To my knowledge; yes.

Mr. HOWZE. So far as you know. I am going to read this provision:

The terms of this agreement shall be for a period commencing with the scheduled broadcast of March 2, 1959, and running through the scheduled broadcast of April 4, 1959, a total of 5 weeks. In the event that for any reason Bonaire Music, Inc., shall not be one of the sponsors of the program hereunder at any time during the term of this agreement, we

meaning ABC

shall have the right to terminate this agreement effective as of such time or thereafter.

Doesn't this provision in effect make sponsorship a condition of employment for the period?

Mr. HOBERMAN. Mr. Howze, this particular contract was drawn as an accommodation to Mr. Freed, and I think perhaps it might be wise if we can backstep a few months so that I can give you the background on what happened.

Mr. HOWZE. Go ahead.

Mr. HOBERMAN. As I mentioned before, Mr. Freed's contract was negotiated prior to my having been appointed as general manager of WABC, and the first stage show that he was involved in during my tenure was Labor Day of 1958. Now, while monitoring his program one night I heard him do commercials unauthorized by me for this particular stage show. And the next day I either called him or his representative and told him that under no circumstances would he be

allowed to read or do commercials ad lib for his stage show unless he purchased time to do so like any other advertiser.

I said, "If you are unwilling to purchase time, then there is no need for you to mention anything about this stage show on your radio program."

And it was after this conversation—and I believe there were several days, or perhaps maybe even a week or more that passed before he came back and discussed the possibility of purchasing time to advertise his show, because apparently the same people who were listeners to his radio program were the best customers or potential customers for his stage show.

So it was at that time that we negotiated a time sales contract with one of his companies for the purchase of time to advertise his stage show.

The second time this occurred was in December of 1958, when a similar occurrence took place with reference to a Christmas show that he was putting on at one of the theaters. And at that time a sales contract for advertising time was negotiated with one of Mr. Freed's companies for the purpose of advertising the stage show that was taking place over Christmas and New Years.

It was after this program, after this stage show, rather, due to several incidents, none of them relating to the stage show, that we terminated Mr. Freed's contract effective the end of February of 1959. And it was during the notice period that was involved, which was 4 weeks, that Mr. Freed and one of his business associates came to me and asked if there wasn't some way that we could extend his contract for an additional 5-week period to cover the Easter stage show for which he had already made commitments at one of the theaters.

So as an accommodation to him, we wrote a new contract for his services, and we also wrote a time sales contract to advertise that program at the theater.

Mr. Moss. Will you yield for just a moment there?

You write a time sales contract?

Mr. HOBERTMAN. Yes, sir.

Mr. Moss. For how many plugs at how much per plug?

Mr. HOBERTMAN. I don't have the information available, sir. I believe you will find it in the contract.

Mr. Moss. Mr. Chairman, I would like to have the station supply us with the schedule of the broadcast plugs and the rate per plug and the standard rate cards of the station which were operative at the time this contract was executed.

Mr. HOBERTMAN. We would be very happy to get that for you.

Mr. Moss. And you can get it from your log whether or not you broadcast them and for how long you broadcast them?

Mr. HOBERTMAN. Yes, sir; they were on the log.

Mr. Moss. And I would like to see your rate card along with that.

Mr. HOBERTMAN. Fine, sir.

The CHAIRMAN. I think, Mr. Moss, this information is already in the record in the contract.

Mr. Moss. I have looked at the material that was in the record, and it is not the material I have requested of Mr. Hoberman at this time. There is no rate card. The rate card is the card setting forth the standard advertising fees charged by the radio station.

The CHAIRMAN. Do you understand what he wants?

Mr. HOBERMAN. Yes, sir.

The CHAIRMAN. Can you supply the information?

Mr. HOBERMAN. Yes, sir.

The CHAIRMAN. Very well, you may do so.

Anything else, Mr. Howze?

Mr. HOWZE. Yes, sir.

Mr. Hoberman, did you have any participation in the negotiation of the contract with Mr. Freed dated March 26—

Mr. MOSS. I ask unanimous consent that we hold the record open at this point to receive that.

The CHAIRMAN. Well, we want the material submitted right away, because there was unanimous consent this morning that the record be closed at a certain time.

Mr. MOSS. This material could be handled very quickly by the station management, it is not difficult to develop.

Mr. HOBERMAN. I shall send you the rate card as soon as I return to New York.

(Rate card referred to follows:)

WACC RADIO, NEW YORK, AMERICAN BROADCASTING Co.'s KEY STATION IN AMERICA'S FIRST MARKET RATE CARD No. 19. EFFECTIVE AUGUST 1, 1958

[General manager: Ben Hoberman. Station owned by the American Broadcasting Co.]

Announcements

Minutes	Flat	
	Each	Weekly
6 to 9 a.m. and 4 to 7 p.m., Monday through Saturday:		
Specified position	\$80	-----
Less than 6 weekly	65	-----
6 weekly, 1 per day	60	\$360
12 announcements weekly	58	696
24 announcements weekly	56	1,344
48 announcements weekly	64	2,592
96 announcements weekly	50	4,800
9 a.m. to 4 p.m. and 7 to 11 p.m., Monday through Saturday:		
Specified position	70	-----
Less than 6 weekly	65	-----
5 weekly, 1 per day	50	300
12 announcements weekly	42	504
24 announcements weekly	40	960
48 announcements weekly	38	1,794
96 announcements weekly	34	3,264
After 11 p.m., Monday through Saturday:		
Less than 6 weekly	27	-----
6 weekly, 1 per day	25	150
12 announcements weekly	21	252
24 announcements weekly	20	480
48 announcements weekly	19	912
96 announcements weekly	17	1,632

SATURDAY PLANS

Scheduled throughout the broadcast day:

18 minutes weekly, \$710.10.

36 minutes weekly, \$1,285.20.

72 minutes weekly, \$1,971.

STATIONBREAKS

Seventy-five percent applicable minute rate.

ID's, one-third applicable minute rate.

Minutes, stationbreaks, and ID's may be combined for maximum frequency.

Newscasts

Five minutes	Flat	
	Each	Weekly
6 to 9 a.m. and 4 to 7 p.m., Monday through Saturday:		
Less than 6 weekly.....	\$100	-----
6 weekly, 1 per day.....	90	\$540
9 a.m. to 4 p.m. and 7 to 11 p.m., Monday through Saturday:		
Less than 6 weekly.....	80	-----
6 weekly, 1 per day.....	75	450

Newsicast discounts: 13 weeks, 10 percent; 26 weeks, 15 percent; 52 weeks, 20 percent.

Newscasters: Charles F. McCarthy, Don Gardiner, Joel Cramer, and Don Dowd.

SPECIAL FEATURES

Participating programs

The "Ross Mulholland Show": 6 to 9 a.m., Monday through Friday; 6 to 10 a.m., Saturday.

Martin Block's "Make Believe Ballroom": 10 a.m. to 2 p.m., Monday through Saturday.

The "Tony Marvin Show": 2 to 4 p.m., Monday through Saturday.

(Photographs of Mulholland, Block, Marvin.)

The "Dell Sharbutt Show": 4 to 6:30 p.m., Monday through Friday; 4 to 7 p.m., Saturday.

The "Alan Freed Show": 7:15 to 11 p.m., Monday through Friday; 7 to 11 p.m., Saturday.

"Big Joe" Rosenfield's "Happiness Exchange": 12 midnight to 6 a.m., Sunday through Saturday.

(Photographs of Sharbutt, Freed, Rosenfield.)

PROGRAMS

Net frequency rates per program

[Rates for periods longer than 1-hour are in exact proportion to the corresponding 1-hour rate]

	Number of times per year					
	1 to 25	26 to 51	52 to 103	104 to 155	154 to 259	268 or more
Class A, 6 a.m. to 8 p.m., Monday through Sunday:						
1 hour.....	\$720.00	\$684.00	\$648.00	\$612.00	\$576.00	\$540
½ hour.....	432.00	410.40	388.80	367.20	345.60	324
¼ hour.....	288.00	273.00	259.20	244.80	230.40	216
10 minutes.....	240.00	228.00	216.00	204.00	192.00	180
5 minutes.....	144.00	136.80	126.60	122.40	115.20	108
Class B, 8 p.m. to 12 midnight, Monday through Sunday:						
1 hour.....	400.00	380.00	360.00	340.00	320.00	300
½ hour.....	240.00	228.00	216.00	204.00	192.00	180
¼ hour.....	160.00	152.00	144.00	136.00	128.00	120
10 minutes.....	133.35	126.65	120.00	113.35	108.65	100
5 minutes.....	86.00	76.00	72.00	68.60	64.00	60

NOTE.—Class C, 12 midnight to 8 a.m., Monday through Sunday.

RATES ON REQUEST

Net frequency rates are based on the total number of programs in all rate brackets used within 1 year for the same advertiser. If a contract is renewed for the same uninterrupted schedule beyond a 52-week period, the same earned time rate will be allowed. If a contract is continued without interruption beyond a 52-week period, but the schedule reduced in frequency, the time rate will be that which would have been earned during the preceding 52-week period had the reduced schedule prevailed throughout.

Two or more program units of 15 minutes or more broadcast on the same day for the same advertiser, within the same rate classifications, may be combined to earn the half-hour, three-quarter hour, or 1-hour rate, whichever applies.

Interruption of a series necessitated by broadcasting of special events of importance will not affect the advertiser's right to the frequency rate.

All package contracts for nonguaranteed positions will be subject to short rate and may preempted for guaranteed fixed position announcements at card rates, in which case station will give advertiser 24 hours prior notice.

Mr. HOWZE. Mr. Hoberman, did you participate in the negotiation of the contract, another letter contract dated March 26, 1959, with Mr. Freed?

I will hand it to you for your inspection.

Mr. HOBERMAN. Yes, sir.

Mr. HOWZE. This is the contract in which Mr. Freed agreed to buy advertising for three stage presentations at a cost of \$10,000 each. Are you familiar with this?

Mr. HOBERMAN. Yes, sir.

Mr. HOWZE. Is this a customary kind of arrangement to enter into with your employees—I should say that ABC enters into typically with its employees?

Mr. HOBERMAN. I would say that it is not a usual type of an arrangement, Mr. Howze.

Mr. HOWZE. As I understand it, it was felt that the substantial reduction that this would affect in Mr. Freed's compensation under the contract would be compensated for by Mr. Freed's earnings in his stage shows?

Mr. HOBERMAN. This was a small part of it, sir. You must remember that we had already terminated his services, and we had an additional contract with him as an accommodation to him only for a 5-week period. As a matter of fact, during this time we had already begun to audition replacements for Mr. Freed, and we had several of them whom we were seriously considering.

It was during this 5-week period that Mr. Freed came to us and asked if there wasn't some way that he could continue his program on the air. And I believe I told him that as far as I was concerned his services had been terminated as of the end of this 5-week period, and we really weren't interested any more.

Mr. HOWZE. These contracts are in 1959?

Mr. HOBERMAN. I understand. His contract was originally to be terminated at the end of February 1959, and then as an accommodation to him we wrote a new contract for a 5-week period to cover his Easter stage show in 1959. And it was during that time that this other contract was drawn up that you are now referring to.

Mr. HOWZE. And this contract was terminated by ABC—

Mr. HOBERMAN. This was the contract that was terminated in November of 1959.

Mr. HOWZE. How is your compensation worked out at the station? Are you on salary?

Mr. HOBERMAN. My personal compensation?

Mr. HOWZE. Yes, sir.

Mr. HOBERMAN. Yes; I have a salary, and I have a percentage participation arrangement based on the net profits of the station.

Mr. HOWZE. That gives you, then, an incentive to increase the time sales of the station, does it not?

Mr. HOBERMAN. Yes. I believe that is a fairly common arrangement with most managers.

Mr. HOWZE. That is all.

The CHAIRMAN. Thank you very much.

Mr. HOBERMAN. Thank you, sir.

The CHAIRMAN. Mr. Martin, will you and Mr. Sparger come around, please?

Will you be sworn?

Do you and each of you solemnly swear that the testimony you give to this committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MARTIN. I do.

Mr. SPARGER. I do.

TESTIMONY OF RAYMOND WILLIAM MARTIN AND REX SPARGER

The CHAIRMAN. Have a seat.

Let the record show that Mr. Bill Martin and Mr. Rex Sparger are the witnesses, that they are staff members of the subcommittee, and they, working together, jointly analyzed the information which was submitted to the subcommittee by Mr. Dick Clark, and that they have prepared and are ready to submit for the record the results of their report.

Now, Mr. Martin, is that substantially correct?

Mr. MARTIN. That is correct, Mr. Chairman.

The CHAIRMAN. Mr. Sparger, is that correct?

Mr. SPARGER. That is correct.

Mr. MARTIN. We have a very short report or statement which would summarize the material or information.

The CHAIRMAN. Mr. Martin, you may brief your statement.

Mr. MARTIN. Thank you, sir.

Mr. Dick Clark furnished us with more than 15,000 3-by-5 cards which represented record plays on "American Bandstand" from August 5, 1957, through November 30, 1959. Each card represented one play of a particular title and contained the date of play, title, and artist. All cards for a particular title were grouped together in an alphabetical series.

We were also furnished by Mr. Clark or his representatives with catalogs of publishing companies and record manufacturing companies in which he had an interest. A list of titles pressed by Mallard Pressing Co. was furnished by Mr. Clark's representatives. This list included release number and one corresponding title. The labels distributed by Chips Distributing Co. were also furnished.

However, no information concerning titles or artists was supplied. The staff also received a catalog from ABC-Paramount Records showing titles and recording artists.

Using the data supplied by Mr. Clark or his representatives, we compiled a list of titles and their corresponding plays by date as reflected in the play cards. We then made a listing of the plays and the corresponding popularity rating from the Billboard "Top 100" charts.

The catalogs of Mr. Clark's publishing companies reflected those songs which had been recorded and were available for play.

We were further advised by individual recording companies that some titles which had been recorded were not available for play during the period between August 5, 1957, and November 30, 1960. Obviously these titles could not be included in the analysis.

Our attached analysis and exhibits, 95 pages, show the following:

1. Clark played 51.8 percent of the titles available through his publishing companies.
2. Of these plays 68.7 percent were prior to any rating in the Billboard popularity charts.
3. Of these plays, 95.3 percent were prior to the peak rating in Billboard and only 4.7 percent of the plays came after the titles achieved their highest rating.
4. Of the 41 titles in the publishing company group, Mr. Clark played each title an average of 15.3 times.

In some instances the catalogs of Mr. Clark's publishing companies furnished to us by his representatives did not include all titles in which Mr. Clark held an interest and in some instances songs in which Mr. Clark held an interest were on the flip side of records which he played extensively.

On analysis of Clark's record manufacturing companies shows the following:

1. Clark played 50.4 percent of the records available through his manufacturing companies.
2. Of these plays, 65.4 percent were prior to any rating in the Billboard popularity charts.
3. Of these plays, 91.4 percent were prior to the peak rating in Billboard and only 8.6 percent of the plays came after the records achieved their highest rating.
4. Of the 57 records in the manufacturing group, Mr. Clark played each record an average of 19.9 times.

In some instances the catalogs of Mr. Clark's companies did not include titles in which Mr. Clark had an interest. Mr. Clark or his

representatives did not provide the subcommittee with information relative to master records leased by Mr. Clark's record manufacturing companies.

Mr. Clark devoted 2,898 plays to titles pressed by Mallard Pressing Co. for an average of 16.9 plays per title. In some instances he played the flip sides of these records, but data provided us was not complete enough to make a detailed analysis of these plays.

We made a listing of the artists recording for ABC-Paramount Records from data furnished by ABC Paramount. A survey of the record plays shows that ABC-Paramount recordings received at least 805 plays on the "American Bandstand" show for an average of 8.9 plays per title of records played.

We made a further analysis of Mr. Clark's holdings and their standings by week in the Billboard "Top 100" charts.

During the period between October 7, 1957, and August 31, 1959, Mr. Clark had at least one of his publishing company's titles in the Billboard charts in all but 10 weeks during 116-week period. During the period beginning January 1, 1958, and ending November 30, 1959, Mr. Clark managed to keep at least one of his records owned by his manufacturing companies in the charts every week.

During the period beginning June 30, 1958, and ending November 30, 1959, Mr. Clark managed to keep at least one of the records by one of his artists in the charts every week.

Mr. Clark managed to keep an average of 4.1 records owned by the publishing, manufacturing, or artist management firms in the charts every week between October 7, 1957, and November 30, 1959. Mr. Clark was able to get 41.4 percent of the titles, which he played and which were owned by his publishing companies into the charts. He was able to get 45.6 percent of the records he played which were owned by his manufacturing companies into the charts. All duplications were eliminated in this study, songs that were published and recorded were counted only as a single song.

The high percentage of plays prior to peak in the Billboard ratings establishes that Mr. Clark pushed songs in which he had an interest. The comparative analysis of plays with Billboard ratings indicates that Mr. Clark manipulated these plays to the fullest advantage. At this point, Mr. Chairman, I would like to offer this analysis for the record as the subcommittee may see fit.

The CHAIRMAN. These are exhibits which your statement explains, is that correct?

Mr. MARTIN. That is correct, sir.

The CHAIRMAN. Let them be received.

(Comparative analysis referred to follows:)

EXHIBIT CONTENTS**PART #1 PUBLISHING COMPANIES**

- (A) Arch
- (B) January
- (C) Sealark
- (D) Bae
- (E) Request
- (F) Kincord

PART #2 PRESSING COMPANY (MALLARD)**PART #3 RECORD MANUFACTURING**

- (A) Leased Masters
- (B) Hunt
- (C) Swan
- (D) Jamie

PART #4 ARTIST MANAGEMENT**PART #5 DISTRIBUTING CO. (CHIPS)****PART #6 ABC-PARAMOUNT****PART #7 FABIAN, AVALON, RYDELL**

PUBLISHING COMPANIES

<u>No. Titles Recorded & Available</u>		<u>Titles Played</u>	
79		41	
<u>Total Plays</u>	<u>Prior to Rating</u>	<u>Prior to Peak</u>	<u>After Peak</u>
630	433	600	30
Percentage of Records Played			51.8%
Average Plays Per Record Played			15.3
Percentage of Plays Prior to Rating			68.7%
Percentage of Plays Prior to Peak			95.3%
Percentage of Plays After Peak			4.7%

Six titles listed by Computech under item 1 (Publishing Companies) not included. Computech failed to include three Publishing Companies owned by Clark; Bae, Request and Kincord. Data not available on two Publishing Companies owned by Bin-Lark.

UNKNOWN PUBLISHING COMPANIES

<u>TITLE</u>	<u>ARTIST</u>	<u>PLAYS</u>
BACK TO SCHOOL AGAIN	Timmy Rogers	40
BOBBY SOX TO STOCKINGS	F. Avalon	2
DIANA	P. Anka	24
I BELIEVE IN YOU	Robert & Johnny	24
I'M A MAN	Fabian	31
UNSPOKEN LOVE	Malcomb Dodds	18

Note: The above listed by Computech as "A" Titles under publishing companies, but not reflected in any data supplied the Subcommittee staff.

UNKNOWN PUBLISHERS

BACK TO SCHOOL AGAIN		Cameo label	Timmie Rogers	
Plays	Play Dates	Survey Week Ending	Rating	BILLBOARD Issue
0		8-24-57	0	9-2-57
0		8-31-57	0	9-9-57
4	9-2, 4, 5, 6	9-7-57	0	9-16-57
4	9-10, 11, 12, 13	9-14-57	0	9-23-57
5	9-16, 17, 18, 19,	9-21-57	0	9-30-57
	20			
	9-24-25, __, 27	9-28-57	89	10-7-57
3	10-1, 3, 4	10-5-57	57	10-14-57
5	10-7, 8, 9, 10, 11	10-12-57	53	10-21-57
5	10-14, 15, 16, 17, 18	10-19-57	43	10-28-57
4	10-21, 22, 24, 25	10-26-57	37	11-4-57
2	10-28; 11-1	11-2-57	37	11-11-57
2	11-4, 6	11-9-57	36	11-18-57
2	11-12, 15	11-16-57	41	11-25-57
0		11-23-57	38	12-2-57
0		11-30-57	47	12-9-57
0		12-7-57	45	12-16-57
0		12-14-57	61	12-23-57
0		12-21-57	97	12-30-57
0		12-28-57	79	1-6-58
0		1-4-58	72	1-13-58
0		1-11-58	0	1-20-58
BOBBY SOX TO STOCKINGS			F. Avalon	
0		5-31-59	60	5-25-59
0		6-7-59	35	6-1-59
0		6-14-59	25	6-8-59
0		6-21-59	20	6-15-59
1	6-22	6-28-59	13	6-22-59
0		7-5-59	13	6-29-59
1	7-6	7-12-59	8	7-6-59
0		7-19-59	12	7-13-59
0		7-26-59	11	7-20-59
0		8-2-59	16	7-27-59
0		8-9-59	23	8-3-59
0		8-16-59	44	8-10-59
0		8-23-59	62	8-17-59
0		8-30-59	0	8-24-59

Flip Side of A BOY WITHOUT A GIRL owned by Arch.

RESPONSIBILITIES OF BROADCASTING LICENSEES

1461

DIANA	ABC-Paramount	Paul Anka		
	Cards do not reflect plays prior to August 5, 1957	7-6-57	78	7-15-57
		7-13-57	46	7-22-57
		7-20-57	50	7-29-57
		7-27-57	33	8-5-57
		8-3-57	17	8-12-57
4	8-6, 7, 8, 9	8-10-57	13	8-19-57
6	8-12, 13, 14, 15, 16, 16	8-17-57	6	8-26-57
5	8-19, 20, 21, 22, 23	8-24-57	2	9-2-57
5	8-26, 27, 28, 29, 30	8-31-57	2	9-9-57
1	9-5	9-7-57	2	9-16-57
2	9-11, 12	9-14-57	2	9-23-57
0		9-21-57	2	9-30-57
0		9-28-57	4	10-7-57
0		10-5-57	5	10-14-57
0		10-12-57	5	10-21-57
0		10-19-57	12	10-28-57
0		10-26-57	9	11-4-57
0		11-2-57	11	11-11-57
0		11-9-57	14	11-18-57
0		11-16-57	20	11-25-57
0		11-23-57	29	12-2-57
0		11-30-57	51	12-9-57
0		12-7-57	57	12-16-57
0		12-14-57	73	12-23-57
0		12-21-57	85	12-30-57
0		12-28-57	73	1-6-58
1	12-31	1-4-58	84	1-13-58
0		1-11-58	92	1-20-58
0		1-18-58	97	1-27-58
I BELIEVE IN YOU		Old Town label		Robert & Johnny
0		6-14-58	0	6-23-58
1	6-20	6-21-58	0	6-30-58
2	6-24, 27	6-28-58	0	7-7-58
2	7-1, 3	7-5-58	0	7-14-58
2	7-9, 10	7-12-58	0	7-21-58
2	7-16, 17	7-19-58	0	7-28-58
12	7-16, 17, 21, 23, 24, 25, 29, 30;	8-10-58	97	8-4-58*
	8-4, 5, 6, 8	*BILLBOARD Format Change		

Plays	Play Dates	Survey Week Ending	Rating	BILLBOARD Issue
I BELIEVE IN YOU (continued)				
4	8-11, 12, 14, 15	8-17-58	93	8-11-58
1	8-19	8-24-58	0	8-18-58
0		8-31-58	0	8-25-58
I'M A MAN Fabian				
0		9-14-58	0	9-8-58
3	9-15, 16, ___	9-21-58	0	9-15-58
0		9-28-58	0	9-22-58
0		10-5-58	0	9-29-58
0		10-12-58	0	10-6-58
0		10-19-58	0	10-13-58
0		10-26-58	0	10-20-58
0		11-2-58	0	10-27-58
0		11-9-58	0	11-3-58
0		11-16-58	0	11-10-58
1	11-20	11-23-58	0	11-17-58
3	11-25, 26, 27	11-30-58	0	11-24-58
4	12-2, 3, 4, 5	12-7-58	0	12-1-58
2	12-8, 12	12-14-58	0	12-8-58
0		12-21-58	0	12-15-58
0		12-28-58	0	12-22-58
3	12-29, 31; 1-2	1-4-59	0	12-29-58
4	1-5, 6, 7, 9	1-11-59	0	1-5-59
3	1-12, 13	1-18-59	79	1-12-59
5	1-19, 20, 21, 22, 23	1-25-59	56	1-19-59
4	1-26, 27, 28, 29	2-1-59	45	1-26-59
1	2-4	2-8-59	38	2-2-59
0		2-15-59	31	2-9-59
0		2-22-59	31	2-16-59
0		3-1-59	41	2-23-59
0		3-8-59	48	3-2-59
0		3-15-59	62	3-9-59
0		3-22-59	72	3-16-59
0		3-29-59	0	3-23-59
Flip Side of HYPNOTIZED owned by January.				
UNSPOKEN LOVE Malcom Dodds				
0		12-7-57	0	12-16-57
0		12-14-57	0	12-23-57
2	12-19, 20	12-21-57	0	12-30-57
5	12-23, 24, 25, 26, 27	12-28-57	0	1-6-58
3	12-30; 1-2, 3	1-4-58	0	1-13-58
5	1-6, 7, 8, 9, 10	1-11-58	0	1-20-58
2	1-14, 15	1-18-58	0	1-27-58
0		1-25-58	0	2-3-58
1	1-28	2-1-58	0	2-10-58
0		2-8-58	0	2-17-58

ARCH

TITLES RECORDED
AND AVAILABLE

9

TITLES PLAYED

5

TOTAL PLAYS

63

PRIOR TO RATING

47

PRIOR TO PEAK

63

AFTER PEAK

0

Percentage of available titles played
Average plays per title
Percentage of plays prior to rating
Percentage of plays prior to peak
Percentage of plays after peak

55.5%
12.6
74.6%
100%
0%

ARCH MUSIC

A BOY WITHOUT A GIRL - Chancellor Frankie Avalon
 Red Frankie Avalon
 Decca-London Terry Dene

<u>Plays</u>	<u>Play Dates</u>	<u>Survey Week Ending</u>	<u>Rating</u>	<u>Billboard Issue</u>
3	5-6, 7, 8	5-10-59	0	5-4-59
5	5-11, 12, 13, 14, 15	5-17-59	0	5-11-59
3	5-18, 20, 21	5-24-59	0	5-18-59
5	5-25, 26, 27, 28, 29	5-31-59	63	5-26-59
3	6-1, 4, 5	6-7-59	53	6-1-59
3	6-9, 10, 12	6-14-59	69	6-8-59
3	6-16, 18, 19	6-21-59	28	6-15-59
2	6-23, 24	6-28-59	21	6-22-59
0		7-5-59	16	6-29-59
0		7-12-59	12	7-6-59
0		7-19-59	10	7-13-59
0		7-26-59	14	7-20-59
0		8-2-59	17	7-27-59
0		8-9-59	24	8-3-59
0		8-16-59	33	8-10-59
0		8-23-59	70	8-17-59
0		8-30-59	97	8-24-59
0		9-6-59	0	8-31-59

AN INVITATION TO A PARTY - Dore Dimples
 (No plays)

A STEP IN THE RIGHT DIRECTION - Chancellor LP F. Avalon
 (No plays)

CHA CHA MARCHA CONGA-ABC PAR - The Keymen
 Spartan The Keymen

1	9-24-59	9-27-59	0	9-21-59
0		10-4-59	0	9-28-59

GIVE - Chancellor LP - Fabian
 (No plays)

HAVE LOVE WILL TRAVEL - Roulette - Dean Douglas
 (No plays)

I'D LIKE HER TO BE - Top Rank - Dennis Bell
 RCA Victor - Bill Courtney
 (No plays)

IT'S KIND OF A PARTY - Roulette - Dean Douglass
 (No plays)

JUDY IS - RCA Victor - Bill Courtney
 (No plays)

NANCY LEE - ABC PAR - The Keymen

1	3-30-59	4-5-59	0	3-30-59
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OUR LOVE - Warner Bros. - TAB Hunter

1	8-21-59	8-23-59	0	8-17-59
1	8-24-59	8-30-59	0	8-24-59
1	9-1	9-6-59	0	8-31-59
1	9-11	9-13-59	0	9-7-59
1	9-17	9-20-59	0	9-14-59
1	9-21	9-27-59	0	9-21-59
0		10-4-59	0	9-28-59

SINCE I'M OUT OF YOUR ARMS - VA - Bob Carroll

(No plays)

SOUTHLAND - ABC PAR - The Keymen

Sparton The Keymen

(No plays)

THO OF A KIND - Mercury - Rusty Hamer

(No plays)

WALK LITTLE WILLIE - ABC PAR - The Keymen

Sparton - The Keymen

(No plays)

WITHOUT HER LOVE - RCA Victor - Bill Courtney

(No plays)

YOUNG IN YEARS - Mercury - The Diamonds

4	8-25, 26, 27, 28	8-30-59	0	8-24-59
3	9-1, 3, 4	9-6-59	0	8-31-59
5	9-7, 8, 9, 10, 11	9-13-59	0	9-7-59
4	9-14, 15, 16, 18	9-20-59	0	9-14-59
3	9-21, 22, 23	9-27-59	0	9-21-59
1	9-28	10-4-59	0	9-28-59
4	10-6, 7, 8, 9	10-11-59	0	10-5-59
3	10-12, 15, 16	10-18-59	0	10-12-59
1	10-23	10-25-59	0	10-19-59
0		11-1-59	0	10-26-59

JANUARYTITLES RECORDED
AND AVAILABLE

10

TITLES PLAYED

7

TOTAL PLAYS

79

PRIOR TO RATING

66

PRIOR TO PEAK

77

AFTER PEAK

2

Percentage of available titles played	70%
Average plays per title played	11.2
Percentage of plays prior to rating	83.5%
Percentage of plays prior to peak	97.5%
Percentage of plays after peak	2.5%

Following discrepancy in Computech data:

Song "HYPNOTIZED" listed as B title.

JANUARY

ALL WINTER LONG - Andie - Linda Laurie
(No plays)

FOOT JIVE - ABC Par - Keymen
Sparton - Keymen
(No plays)

CROC A DOLL - RCA Victor - The Impacts
(No plays).

FURRY MURRY - RCA Victor - Tradewinds

Plays	Play Dates	Survey Week Ending	Rating	Billboard Issue
5	6-26, 29, 30; 7-2, 1	7-5-59	0	6-29-59
5	7-6, 7, 8, 9, 10	7-12-59	0	7-6-59
0		7-19-59	0	7-13-59
2	7-22, 23	7-26-59	0	7-20-59
2	7-27, 29	8-2-59	0	7-27-59
1	8-7	8-9-59	0	8-3-59
0		8-16-59	96	8-10-59
0		8-23-59	91	8-17-59
0		8-30-59	0	8-24-59
0		9-6-59	0	8-31-59

HYPNOTIZED - Chancellor - Fabian
Reg Fabian
(?) Buddy Sheppard

10-19-59 - One play on unknown label with Sheppard - Not listed as recording -
(Same on January list)

SEESAW - Jubilee - The Royal Tones
Quality The Royal Tones

1	2-11-59	2-15-59	0	2-9-59
1	2-27-59	2-22-59	0	2-16-59

SIXTEEN CANDLES - Coed - Crests
Synthetic - The Glitters
Keel - Tops in Pops
Remington - Don Raleigh
Martin Gilbert - Joe Hudson
RCA LP - Ray Martin
Puccio - Vic Corwin
Bell - Danny Lanham

3	9-15, 16, __	9-21-58	0	9-15-58
		9-28-58	0	9-22-58
J		10-5-58	0	9-29-58
0		10-12-58	0	10-6-58
0		10-19-58	0	10-13-58
1	10-19-58	10-26-58	0	10-20-58
0		11-2-58	0	10-27-58
0		11-9-58	0	11-3-58
0		11-16-58	0	11-10-58

(cont'd)

SIXTEEN CANDLES (cont'd)

0		11-23-58	0	11-17-58
2	11-25, 24	11-30-58	91	11-24-58
	12-2, 3, 4, 5	12-7-58	81	12-1-58
2	12-8, 11	12-14-58	68	12-8-58
3	12-17, 18, 19	12-21-58	48	12-15-58
3	12-22, 24, 26	12-28-58	32	12-22-58
3	12-29, 30, 31	1-4-59	25	12-29-58
3	1-6, 7, 8	1-11-59	18	1-5-59
3	1-12, 14, 16	1-18-59	12	1-12-59
1	1-19	1-25-59	5	1-19-59
2	1-27, 30	2-1-59	4	1-26-59
1	2-3	2-8-59	4	2-2-59
2	2-10, 12	2-15-59	2	2-9-59
1	2-16	2-22-59	2	2-16-59
1	2-23	3-1-59	3	2-23-59
0		3-8-59	4	3-2-59
0		3-15-59	10	3-9-59
0		3-22-59	15	3-16-59
0		3-29-59	21	3-23-59
0		4-5-59	44	3-30-59
0		4-12-59	51	4-6-59
0		4-19-59	64	4-13-59
		4-26-59	0	4-20-59

SO MUCH - End - Little Anthony - Imperial
 Quality - Little Anthony - Imperial

0		10-26-58	0	10-20-58
5	10-27, 28, 29, 30, 31	11-2-58	0	10-27-58
5	11-3, 4, 5, 6, 7	11-9-58	0	11-3-58
3	11-10, 13, 11	11-16-58	0	11-10-58
5	11-17, 18, 19, 20, 21	11-23-58	0	11-17-58
4	11-24, 25, 27, 28	11-30-58	0	11-24-58
3	12-1, 3, 5	12-7-58	0	12-1-58
2	12-8, 10	12-14-58	0	12-8-58
0		12-21-58	0	12-15-58

TEENAGE NEIGHBOR - Chancellor - The Four Dates
 (No plays)

YOU DON'T KNOW GIRLS - Felsted - Kathy Linden
 London - Kathy Linden

0	7-13, 14, 15	7-19-59	0	7-13-59
0		7-26-59	0	7-20-59
1	7-27	8-2-59	99	7-27-59
	(Guest on show)			
0		8-9-59	93	8-3-59
0		8-16-59	92	8-10-59
0		8-23-59	0	8-17-59

YOUNG IDEAS - RCA Victor - Chico Holiday
Decca-London - Tommy Steele

<u>Plays</u>	<u>Play Dates</u>	<u>Survey Week Ending</u>	<u>Rating</u>	<u>Billboard Issue</u>
0		4-19-59	0	4-13-59
1	4-20	4-26-59	0	4-20-59
1	4-28	5-3-59	0	4-27-59
1	5-7	5-10-59	89	5-4-59
2	5-11, 14	5-17-59	78	5-11-59
0		5-24-59	78	5-18-59
0		5-31-59	74	5-25-59
0		6-7-59	88	6-1-59
0		6-14-59	83	6-8-59
0		6-21-59	0	6-15-59

YOU'RE A BIG GIRL NOW - Time - The Bellnotes
(No plays)

SEA-LARK

TITLES RECORDED

AND

AVAILABLE FOR PLAY

TITLES PLAYED

13

11

TOTAL PLAYS

PRIOR TO RATING

PRIOR TO PEAK

AFTER PEAK

198

116

182

16

Percentage of available titles played

84.6%

Average plays per title

18

Percentage of plays prior to rating

58.5%

Percentage of plays prior to peak

91.9%

Percentage of plays after peak

8.1%

Following discrepancies noted in Computech data:

Song "CAMILIA" listed as "A" title but not listed under #1 publisher.

SEALARK

A HUNDRED THOUSAND TIMES -- Swan -- Ron Hoffman

<u>Plays</u>	<u>Play Dates</u>	<u>Survey Week Ending</u>	<u>Rating</u>	<u>Billboard Issue</u>
2	8-4, 8	8-10-58	0	8-4-58
3	8-11, 12, 14	8-17-58	0	8-11-58
0		8-24-58	0	8-18-58

BELIEVE IN ME -- Unknown - Marge Hage

1	2-11	2-15-59	0	2-9-59
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BESIDE MY LOVE - Gone -- The Dubs
(no plays)

CAMILIA - ABC-PAR -- Keymen

1	9-25-59	9-27-59	0	9-21-59
1	10-2-59	10-4-59	0	9-28-59
2	10-5, 6	10-11-59	0	10-5-59

COULD THIS BE MAGIC -- Gone -- The Dubs
London- The Dubs
DeLuxe-Otis Williams

2	8-28, 00	8-31-57	0	9-9-57
2	9-3, 6	9-7-57	0	9-16-57
5	9-9, 10, 11, 12, 13	9-14-57	0	9-23-57
1	9-18	9-21-57	0	9-30-57
3	9-23, 25, 26	9-28-57	0	10-7-57
2	10-3, 4	10-5-57	0	10-14-57
3	10-7, 9, 11	10-12-57	0	10-21-57
2	10-16, 17	10-19-57	0	10-28-57
5	10-21, 22, 23, 24, 25	10-26-57	0	11-4-57
0		11-2-57	96	11-11-57
3	11-5, 6, 8	11-9-57	41	11-18-57
0		11-16-57	30	11-25-57
4	11-19, 20, 21, 22	11-23-57	25	12-2-57
4	11-25, 27, 28, 29	11-30-57	24	12-9-57
4	12-2, 4, 5, 6	12-7-57	27	12-16-57
3	12-9, 10, 11	12-14-57	28	12-23-57
2	12-16, 19	12-21-57	34	12-30-57
0		12-28-57	40	1-6-58
0		1-4-58	44	1-13-58
0		1-11-58	58	1-20-58
0		1-18-58	59	1-27-58
0		1-25-58	62	2-3-58
0		2-1-58	68	2-10-58
0		2-8-58	66	2-17-58
0		2-15-58	81	2-24-58
0		2-22-58	0	3-3-58

DON'T GAMBLE WITH LOVE - Paul Anka

1	8-7	8-10-57	0	8-19-57
0		8-17-57	0	8-25-57
0		8-24-57	0	9-2-57
0		8-31-57	0	9-9-57
2	9-2, 3	9-7-57	0	9-16-57
1	9-13	9-14-57	0	9-23-57

DUANE'S STROLL - ABC-Par -- The Keymen
(no plays)

EVERY NIGHT -- End -- The Chantels
Quality- The Chantels

2	2-27, 28	3-1-58	0	3-10-58
4	3-3, 4, 5, 6	3-8-58	0	3-17-58
2	3-12, 13	3-15-58	0	3-24-58
2	3-17, 19	3-22-58	0	3-31-58
4	3-24, 25, 26, 28	3-29-58	67	4-7-58
2	3-31; 4-3	4-5-58	40	4-14-58
1	4-8	4-12-58	40	4-21-58
0		4-19-58	44	4-28-58
0		4-26-58	42	5-5-58
0		5-3-58	49	5-12-58
0		5-10-58	65	5-19-58
0		5-17-58	67	5-26-58
0		5-24-58	63	6-2-58
0		5-31-58	73	6-9-58
0		6-7-58	87	6-16-58
0		6-14-58	80	6-23-58
0		6-21-58	90	6-30-58
0		6-28-58	0	7-7-58

GAZACH STAHAGEN - VA -- The Wildcats
ABC-PAR -- Keymen

1	9-16-58			
1	12-12	12-14-58	0	12-8-58
3	12-15, 17, 19	12-21-58	0	12-15-58
4	12-23, 25, 26, 30	12-28-58	0	12-22-58
2	12-29, 30	1-4-59	0	12-29-58
4	1-6, 7, 00, 9	1-11-59	100	1-5-59
3	1-12, 13, 16	1-18-59	89	1-12-59
5	1-19, 20, 21, 22, 23	1-25-59	78	1-19-59
3	1-26, 28, 30	2-1-59	73	1-26-59
1	2-4	2-8-59	63	2-2-59
0		2-15-59	57	2-9-59
0		2-22-59	69	2-16-59
0		3-1-59	75	2-23-59
0		3-8-59	0	3-2-59

GERALDINE -- ABC-PAR -- Swingtones
(no plays)

GOGGLES -- ABC-PAR -- The Keymen
(no plays)

HIGH SIGN -- Mercury -- The Diamonds
Columbia -- The Harmony Blazers

1	3-12	3-15-58	0	3-24-58
3	3-19, 20, 21	3-22-58	0	3-31-58
4	3-25, 26, 27, 28	3-29-58	0	4-7-58
4	3-31; 4-1, 2, 3	4-5-58	0	4-14-58
4	4-7, 8, 10, 11	4-12-58	86	4-21-58
4	4-14, 15, 17, 18	4-19-58	60	4-28-58
4	4-21, 22, 23, 25	4-26-58	60	5-5-58
4	4-28, 29, 30; 5-2	5-3-58	56	5-12-58
4	5-6, 7, 8, 9	5-10-58	55	5-19-58
5	5-12, 13, 14, 15, 16	5-17-58	38	5-26-58
4	5-19, 20, 22, 23	5-24-58	45	6-2-58
1	5-26	5-31-58	67	6-9-58
0		6-7-58	76	6-16-58
0		6-14-58	86	6-23-58
0		6-21-58	90	6-30-58
0		6-28-58	96	7-7-58
0		7-5-58	0	7-14-58

HOLD ME -- Glow-Hill -- Bobby Long

1	2-12	2-15-59	0	2-9-59
2	2-17, 20	2-22-59	0	2-16-59
1	2-24	2-29-59	0	2-23-59

HOLDING YOUR HAND -- Mercury -- The Diamonds
(no plays)

LIKE HELP, MAN -- ABC-PAR -- The Keymen
Sparton -- The Keymen
(no plays)

SEALARK SPECIAL

AT THE HOP -- Danny & Junior --- ABC-PAR

4	11-6, 7, 8, 00	11-9-57	0	11-18-57
5	11-11, 12, 13, 14, 15	11-16-57	0	11-25-57
4	11-19, 20, 21, 22	11-23-57	0	12-2-57
5	11-25, 26, 27, 28, 29	11-30-57	23	12-9-57
4	12-2, 3, 4, 5	12-7-57	16	12-16-57
4	12-10, 11, 12, 13	12-14-57	6	12-23-57
5	12-16, 17, 18, 19, 20	12-21-57	2	12-30-57
4	12-24, 25, 26, 27	12-28-58	1	1-6-58
3	12-30; 1-2, 3	1-4-58	1	1-13-58
4	1-6, 7, 8, 10	1-11-58	1	1-20-58
1	1-16	1-18-58	1	1-27-58
1	1-24	1-25-58	1	2-3-58
0		2-1-58	1	2-10-58
0		2-8-58	1	2-17-58
0		2-15-58	2	2-24-58
0		2-22-58	7	3-3-58
0		3-1-58	11	3-10-58
0		3-8-58	19	3-17-58
0		3-15-58	20	3-24-58
0		3-22-58	34	3-31-58
0		3-29-58	38	4-7-58
0		4-5-58	53	4-14-58
0		4-12-58	84	4-21-58
0		4-19-58	0	4-28-58
(Clark started playing again)				
1	6-20	6-21-58	0	6-30-58
1	6-26	6-28-58	0	7-7-58
1	7-2	7-5-58	0	7-14-58
1	7-8	7-12-58	0	7-21-58
1	7-14	7-19-58	0	7-28-58
0		8-10-58	0	8-4-58*

(* Billboard Format Change)
Clark also played song on 1-1-59 and 10-13-59

BAE

TITLES RECORDED

TITLES PLAYED

15

6

TOTAL PLAYS

BEFORE RATING

PRIOR TO PEAK

AFTER PEAK

79

66

11

2

Percentage of recorded titles played	40%
Average plays per title	13.1
Percentage of plays prior to rating	83.5%
Percentage of plays prior to peak	97.4%
Percentage of plays after peak	2.6%

The following discrepancies were noted relative to BAE in the Computech Report:

- (1) "HEAD AND SHOULDER BABY" listed as "B" title.
- (2) All other titles played were listed as "A" titles. However, none were listed as published by Clark-owned companies.

BAE MUSIC

BABY BLUE EYES (100%) - Swan - Bobby Baker
(No plays)

HUGH OUR SECRET (100%) - Swan - Bobby Baker

<u>Plays</u>	<u>Play Dates</u>	<u>Survey Week Ending</u>	<u>Rating</u>	<u>Billboard Issue</u>
1	8-31-59		0	

I FOUND YOU (100%) - Felsted - Carroll Bros.

1	1-28-59		0	
1	3-16-59		0	

JUST LIKE IN THE MOVIES (100%) - Swan - Upbeats

5	6-9, 10, 11, 12, 13	6-14-58	0	6-23-58
5	6-16, 17, 18, 19, 20	6-21-58	0	6-30-58
4	6-23, 24, 25, 27	6-28-58	0	7-7-58
4	7-1, 2, 3, 4	7-5-58	0	7-14-58
5	7-7, 8, 9, 10, 11	7-12-58	0	7-21-58
5	7-14, 15, 16, 17, 18	7-19-58	0	7-28-58
15*	7-21, 22, 23, 24, 25, 28, 29, 30, 31; 8-1, 4, 5, 6, 8, 9	8-10-58*	88	8-4-58*
(*Denotes change in Billboard Rating Policy from actual sales basis for period ending 9 days prior to predicted period 6 days subsequent.)				
4	8-11, 12, 13, 14	8-17-58	0	8-11-58
2	8-18, 22	8-24-58	75	8-18-58
0		8-31-58	92	8-25-58
0		9-7-58	0	9-1-58

MOVIE DAY (100%) - Felsted - Carroll Bros.
(No plays)

HEAD & SHOULDER BABY (75%) - Swan - Teen Tones

1	9-30-59			
1	10-14-59			

MY LITTLE BABY (75%) - Swan - Teen Tones
(No plays)

RESPONSIBILITIES OF BROADCASTING LICENSEES

1475

BALLAD OF A TRAIN (50%) - Swan - Dickie Doo
(No plays)

DEAR HEARTS DON'T CRY (50%) - Swan - Dickie Doo
(No plays)

EASY (50%) - Paris - Arien Fontana
(No plays)

KOOKIE HAT (50%) - Swan - Freddie Cannon

1 7-29-59

LITTLE BOY, LITTLE BOY (50%) - Swan - Keefer Sisters
(No plays)

LOVE ME TONIGHT (50%) - Swan - Quaker City Boys
(No plays)

NEE NEE NA NA NA NA NU NU (50%) - Swan - Dickie Doo

4	4-1, 2, 3, 4,	4-5-58	0	4-14-58
6	4-5, 7, 8, 9, 10, 11	4-12-58	0	4-21-58
5	4-14, 15, 16, 17, 18	4-19-58	0	4-28-58
4	4-21, 22, 23, 25	4-26-58	48	5-5-58
3	4-28, 29, 30	5-3-58	40	5-12-58
2	5-7, 9	5-10-58	41	5-19-58
0		5-17-58	42	5-26-58
0		5-24-58	64	6-2-58
0		5-31-58	67	6-9-58
0		6-7-58	70	6-16-58
0		6-14-58	84	6-23-58
0		6-21-58	0	6-30-58

SUMMER SOUVENIERS (50%) - Swan - Keefer Sisters
(No plays)

REQUEST

TITLES RECORDED

23

TITLES PLAYED

9

TOTAL PLAYS

160

PRIOR TO RATING

110

PRIOR TO PEAK

152

AFTER PEAK

8

Percentage of recorded titles played	39.1%
Average plays per title	17.7
Percentage of plays prior to rating	68.7%
Percentage of plays prior to peak	95%
Percentage of plays after peak	5%

The following discrepancies in Computech data were noted:

- (1) SLOW MOTION listed as "B" title.
- (2) No titles listed as under Clark's publishing interest.

REQUEST

LONESOME FOR YOU (100%) - Swan - The Signatures
(No plays)

OH GLORIA (100%) - Swan - The Signatures
(No plays)

SCRATCH MY BACK (100%) - Swan - The Echoes

<u>Plays</u>	<u>Play Dates</u>	<u>Survey Week Ending</u>	<u>Rating</u>	<u>Billboard Issue</u>
2	8-8, 9	8-10-58	0	8-4-58
5	8-11, 12, 13, 14, 15	8-17-58	0	8-11-58
5	8-18, 19, 20, 21, 22	8-24-58	0	8-18-58
5	8-25, 26, 27, 28, 29	8-31-58	0	8-25-58
0		9-7-58	0	9-1-58
3	9-9, 10, 12	9-14-58	0	9-8-58
2	9-17, 18	9-21-58	0	9-15-58
2	9-22, 26	9-28-58	0	9-22-58
3	9-30; 10-1, 3	10-5-58	0	9-29-58
3	10-6, 7, 9	10-12-58	0	10-6-58
0		10-19-58	0	10-13-58

SLOW MOTION (100%) - Swan - Patti Saturday
? - Wade Flemmons

1	8-14-59	Not Listed as such on Request list.		
1	8-20-59			
1	8-21-59			
1	8-25-59			

THE LITTLE GREEN MAN (100%) - Swan - The Echoes
(No plays)

WALKING IN THE SAND (100%) - Swan - Patti Saturday
(No plays)

A HUNDRED THOUSAND TIMES (50%) - Swan - Ron Hoffman

1	8-4	8-10-58	0	8-4-58
4	8-8, 11, 12, 14	8-17-58	0	8-11-58
0		8-24-58	0	8-18-58

RESPONSIBILITIES OF BROADCASTING LICENSEES

1477

CLICK CLACK (50%) - Swan - Dickie Doo

1	12-26	12-28-57	0	1-6-58
3	12-30; 1-1, 3	1-4-58	0	1-13-58
5	1-6, 7, 9, 10, 8	1-11-58	0	1-20-58
4	1-13, 15, 16, 17	1-18-58	0	1-27-58
3	1-21, 23, 24	1-25-58	0	2-3-58
5	1-27, 28, 29, 30, 31	2-1-58	58	2-10-58
2	2-4, 7	2-8-58	29	2-17-58
5	2-10, 11, 12, 13, 14	2-15-58	32	2-24-58
4	2-17, 17, 18, 20	2-22-58	39	3-3-58
2	2-25, 26	3-1-58	28	3-10-58
0		3-8-58	31	3-17-58
0		3-15-58	36	3-24-58
0		3-22-58	43	3-31-58
0		3-29-58	59	4-7-58
0		4-5-58	56	4-14-58
0		4-12-58	59	4-21-58
0		4-19-58	65	4-28-58
0		4-26-58	76	5-5-58
0		5-3-58	93	5-12-58
0		5-10-58	0	5-19-58

DID YOU CRY (50%) - Swan - Dickie Doo

1	11-19	11-23-57	0	12-2-57
0		11-30-57	0	12-9-57
1	12-6	12-7-57	0	12-16-57
4	12-9, 10, 11, 13	12-14-57	0	12-23-57
0		12-21-57	0	12-30-57
	One more play on 1-13-58			

FLIP TOP BOX (50%) - Swan - Dickie Doo & Don'ts

0		5-10-58	0	5-19-58
2	5-13, 15	5-17-58	0	5-26-58
4	5-19, 20, 21, 22	5-24-58	0	6-2-58
2	5-29, 30	5-31-58	97	6-9-58
0		6-7-58	66	6-16-58
0		6-14-58	68	6-23-58
0		6-21-58	61	6-30-58
0		6-28-58	63	7-7-58
0		7-5-58	61	7-14-58
0		7-12-58	84	7-21-58
0		7-19-58	90	7-28-58
0		7-10-58*	0	7-4-58*

(*Billboard Format Change)

GET IN AND SHUT THE DOOR (50%) - Swan - Gay Charmers
(No plays)

I DIG ROCK AND ROLL (50%) - Swan - Earl Wade
(No plays)

I'LL WAIT FOR YOU - Swan - Mary Swan
Chancellor - Frankie Avalon

<u>Plays</u>	<u>Play Dates</u>	<u>Survey Week Ending</u>	<u>Rating</u>	<u>Billboard Issue</u>
1*	8-15 (*Lone Play by Mary Swan)	8-17-58	0	8-11-58
0		8-24-58	0	8-18-58
0		8-31-58	0	8-25-58
0		9-7-58	0	9-1-58
0		9-14-58	0	9-8-58
0		9-21-58	0	9-15-58
2	9-26, 27	9-28-58	0	9-22-58
5	9-29, 30; 10-1, 1, 3	10-5-58	0	9-29-58
2	10-6, 9	10-12-58	0	10-6-58
2	10-13, 15	10-19-58	100	10-13-58
5	10-20, 21, 22, 23, 24	10-26-58	0	10-20-58
3	10-27, 29, 30	11-2-58	69	10-27-58
3	11-3, 4, 6	11-9-58	41	11-3-58
3	11-11, 12, 13	11-16-58	47	11-10-58
3	11-18, 19, 20	11-23-58	20	11-17-58
4	11-24, 25, 26, 24	11-30-58	27	11-24-58
2	12-1, 5	12-7-58	15	12-1-58
	12-9	12-14-58	21	12-8-58
0		12-21-58	23	12-15-58
2	12-24, 25	12-28-58	21	12-22-58
3	12-29, 30; 1-2	1-4-58	23	12-29-58
1	1-5	1-11-59	25	1-5-59
0		1-18-59	32	1-12-59
0		1-25-58	38	1-19-59
0		2-1-58	42	1-26-59
0		2-8-58	61	2-2-58
0		2-15-58	91	2-9-58
0		2-22-58	0	2-16-58

LEAVE ME ALONE (LET ME CRY) (50%) - Swan - Dickie Doo & Don'ts

4	8-26, 27, 28, 29	8-31-58	0	8-25-58
3	9-3, 4, 5	9-7-58	0	9-1-58
3	9-8, 9, 11	9-14-58	0	9-8-58
0		9-21-58		9-15-58

RESPONSIBILITIES OF BROADCASTING LICENSEES

1479

LET ME MISS YOU - Swan - Earl Wade
(No plays)

MAN WHO MADE AN ANGEL CRY - Swan - Loy Clingman
(No plays)

SHOW DOWN - Swan - Loy Clingman
(No plays)

SLEEP BABY SLEEP - Swan - Ron Hoffman
(No plays)

TEARDROPS WILL FALL - Swan - Dickie Doo

3	12-29, --; 1-2	1-4-59	0	12-29-58
2	1-5, 7	1-11-59	0	1-5-59
2	1-12, 16	1-18-59	0	1-12-59
2	1-19, 21	1-25-59	0	1-19-59
4	1-26, 28, 29, 30	2-1-59	0	1-26-59
1	2-3	2-8-59	97	2-2-59
3	2-11, 12, 13	2-15-59	86	2-9-59
2	2-16, 17	2-22-59	74	2-16-59
0		3-1-59	61	2-23-59
0		3-8-59	61	3-2-59
0		3-15-59	75	3-9-59
0		3-22-59	0	3-16-59

TOUCHDOWN - Swan - Young Ideas
(No plays)

WABASH CANNONBALL - Swan - Dickie Doo
(No plays)

WHAT CAN I DO - Swan - Gay Charmers
(No plays)

WILD PARTY - Swan - Dickie Doo
(No plays)

KINCORD

Titles Recorded
9

Titles Played
3

<u>Total Plays</u>	<u>Prior to Rating</u>	<u>Prior to Peak</u>	<u>After Peak</u>
51	28	49	2

Percentage of Titles Played	33.3%
Average Plays Per Title	17
Percentage of Plays Prior to Rating	54.9%
Percentage of Plays Prior to Peak	96.1%
Percentage of Plays After Peak	3.9%

Note: Titles "Don't You Just Know It"; "I Think You're Jiving Me"; "Little Chickawah-wah" and "High Blood Pressure" were gifts to Kincord from Ace Records. Mr. Charles B. Seton's statement attached. Mr. Vincent advises, contrary to Mr. Seton's statement, that Kincord was paid \$2,000 royalties on the song "Don't You Just Know It". A payment of \$2,000 is also reflected in Kincord Records. Clark played song 31 times before it got into rating.

"Love is a Beautiful Thing" was on the flip side of "Ladies Choice". "That's My Story" was on the flip side of "Slow Motion" which received 4 plays.

KINCORD

LADIES CHOICE - Swan - Patti Saturday

<u>Plays</u>	<u>Play Dates</u>	<u>Survey Week Ending</u>	<u>Rating</u>	<u>Billboard Issue</u>
1	12-31	1-4-59	0	12-28-58
2	1-7,8	1-11-59	0	1-5-59
1	1-13	1-18-59	0	1-12-59
4	1-20, 21, 22, 23	1-25-59	0	1-19-59
4	1-26, 27, 29, 30	2-1-59	0	1-26-59
4	2-2, 4, 5, 6	2-8-59	0	2-2-59
0	-----	2-15-59	0	2-9-59

THAT'S MY STORY - Unk - Tom & Jerry

<u>Plays</u>	<u>Play Dates</u>	<u>Survey Week Ending</u>	<u>Rating</u>	<u>Billboard Issue</u>
0	-----	6-7-58	0	6-16-58
0	-----	6-14-58	0	6-23-58
2	6-17, 19	6-21-58	0	6-30-58
0	-----	6-28-58	0	7-7-58

DON'T YOU JUST KNOW IT - Ace - Ruey Smith & Clowns

<u>Plays</u>	<u>Play Dates</u>	<u>Survey Week Ending</u>	<u>Rating</u>	<u>Billboard Issue</u>
0	-----	2-15-58	0	2-24-58
1	2-21	2-22-58	0	3-3-58
5	2-24, 25, 26, 27, 28	3-1-58	0	3-10-58
4	3-3, 5, 6, 7	3-8-58	0	3-17-58
6	3-10, 11, 12, 13, 13, 14	3-15-58	76	3-24-58
5	3-17, 18, 19, 20, 21	3-22-58	27	3-31-58
5	3-24, 25, 26, 27, 28	3-29-58	12	4-7-58
4	3-31; 4-1, 2, 3	4-5-58	9	4-14-58
1	4-9	4-12-58	13	4-21-58
0	-----	4-19-58	14	4-28-58
0	-----	4-26-58	17	5-5-58
1	4-30	5-3-58	17	5-12-58
1	5-8	5-10-58	18	5-19-58
0	-----	5-17-58	22	5-26-58
0	-----	5-24-58	43	6-2-58
0	-----	5-31-58	61	6-9-58
0	-----	6-7-58	86	6-16-58
0	-----	6-14-58	0	6-23-58

MALLARD PRESSING

"A" side titles 410	A side titles played 172	Total plays 2898
Percentage of known A titles played		41.9%
Average plays per title played		16.9

No list of "flip side" titles was made available to the Subcommittee staff. The 410 titles represent a combination of titles listed in data supplied by Mr. Eddie McAdams of Mallard Pressing Company, records microfilmed in Mr. Marvin Josephson's office, attorney for Mallard, and 14 additional titles gleaned from the available Computech data

The 14 titles taken from Computech data and not reflected in other listings are as follows:

<u>Title</u>	<u>Artist</u>	<u>Plays</u>
Bad	Cozy Cole	2
Down The Aisle of Love	Quintones	57
Here He Comes, There He Goes	Cris Keven	19
Hushabye	Mystics	14
I'm Coming Home	Chancellors	2
I've Had It	Bellnotes	19
Just Keep It Up	Dee Clark	17
Kookie Hat	Freddie Cannon	1
Lucky Lady Bug	Billie & Lillie	52
Purple People Eater Meets Dracula	Joe Smith	7
Roly Poly	Four Dates	1
Straighten Up & Fly Right	De John Sisters	19
The Greasy Spoon	Billie & Lillie	1
Wabash Blues	Al Smith	2

Computech listed the following songs that were pressed by Mallard as "B" titles and did not include them in their analysis of "A" titles.

<u>Title</u>	<u>Plays</u>
Children's Marching Song	8
Chauson D'Amour	19
Dodie	21
I Miss You So	12
I Love You So	11
Little Blond Girl	1
Philadelphia USA	21
The Hunch	26
Bonnepart's Retreat	1

Come Softly To Me	25
Dream	12
I'm In Love	3
Smokie	12
That's Right	2
Turvey	21
Walkin' Alone	23
You Were Mine	36
To Know Him Is To Love Him	36

Computech listed the following songs as "A" titles but did not class them in item #2 (Mallard Pressing)

Early in the Morning	23
Every Little Thing	3
Lone Ranger	3
Morgan	4
No Chemise Please	16
Rag Mop	1
That's Right	2
The Secret	36
You Were Mine	36
I Found You	2

Computech listed 800 plus titles pressed by Mallard. It is logical to assume that this includes both the "A" and "B" record sides, which should be taken into consideration in analysis. As noted above, Clark played 172 titles and as near as we have been able to determine from available data, these represent that many "A" sides.

It is common practice to push one side of a record, since the "flip side" would automatically be sold at the same time. In the companies in which Clark had an interest we were able to make the following sample of "A" Titles and "B" Titles, representing both record sides. In some instances he would play both sides, however, in a definite majority of the instances he played only one side. If the "flip side" titles had been available the analysis could show a higher percentage of records played. Lacking this information, the staff considered it only fair to consider "A" sides.

Examples of this situation are reflected in those songs pressed by Mallard, which are owned by one of Clark's other companies and for which we had the record listing of both the "A" and "B" sides as follows.

	<u>Mallard Listing "A"</u>	<u>Flip Side</u>	<u>"A" Plays : "B" Plays</u>	
HUNT	How Strange	Blue Moon	2	0
JAMIE	Ciao, Ciao Bambina	De Serait Dommage	24	0
	Forty Miles of Bad Road	The Quiet Three	33	3

RESPONSIBILITIES OF BROADCASTING LICENSEES

1483

SWAN

Just Like In the Movies	My Foolish Heart	49	1
Greasy Spoon	Hangin On To You	1	0
^ Hundred Thousand Times	Sleep Baby Sleep	5	0
Scratch My Back	The Little Green Man	30	0
Leave Me Alone and Let Me Cry (Not listed on Swan list provided by Mr. Anthony Mammarella)			
Summer Souveniers	Little Boy, Little Boy	0	0
My Heart Belongs to Only You	I'll Wait for You	40	1
Breaker of Dreams	Chick-A-Lo	3	0
Everywhere You Go	Love Me Tonight	20	0
House on Main Street	House on Main Street	0	0
Bluebird of Happiness	Leaf In The Wind	3	0
Prisoner of Love	My Girl Friend Betty	11	0
Smoky Gray Eyes	I'll Never Be Free	27	0
Aloysius Horatio	Tumbled Down	0	0
Tallahassee Lassie	You Know	45	0
Ballad of ^ Train	Dear Heart Don't Cry	0	0
Head Over Heels in Love	Plaything	0	0
Teardrops Will Fall	Come With Us	19	0
Happy Vacation	The Hucklebuck	12	0
Walkin' In The Sand	As I Love You	0	0
Hush Our Secret	Baby Blue Eyes	1	0
Okefenokee	Kookie Hat	28	1
Rancho	Like Sunset	0	0
Terrific Together	Swampy	0	0
Way Down Yonder	None	23	0
Dream	Touchdown	0	0

RECORD PLAYS ON AMERICAN BANDSTAND

WHICH WERE PRESSED BY MALLARD PRESSING CO.

A HUNDRED THOUSAND TIMES

Ron Hoffman

Swan (label) (Request owns 50% of
copyright)

August 4, 8, 11, 12, 14, 1958 (5 plays)

A PART OF ME

Jimmy Clanton

Ace (label)

September 16, 29, 30, 1958

October 1, 3, 6, 7, 8, 9, 16, 20, 21,
22, 23, 27, 28, 29, 30, 31, 1958November 3, 4, 5, 6, 10, 13, 17, 21,
26, 1958

December 12, 15, 17, 18, 19, 1958

(33 plays)

ALL AMERICAN BOY

Billy Parsons

Fraternity (label)

December 30, 31, 1958

January 2, 5, 6, 7, 8, 9, 12, 14, 16,
20, 21, 22, 26, 28, 29, 1959

February 3, 1959

(18 plays)

ALMOST GROWN

Chuck Berry

Chess (label)

March 18, 19, 23, 25, 26, 27, 30,
31, 1959

April 9, 13, 20, 1959

October 3, 1959

November 3, 1959

(13 plays)

ARE YOU REALLY MINE?

Jimmy Rogers

Roulette (label)

August 4, 8 (twice) 11, 12, 13, 14, 15,
18, 22, 26, 27, 28, 30, 1958

September 2, 1958

(15 plays)

AU REVOIR AMOUR

Art & Dorothy Todd

Era (Laurel) (label)

June 24, 25, 26, 1958

July 1, 3, 7, 8, 9, 11, 1958 (9 plays)

BABY TALK

Jan & Dean

Dove (label)

July 10, 13, 15, 17, 18, 20, 21, 23, 24,
27, 28, 29, 30, 31, 1959August 6, 10, 11, 12, 13, 14, 17,
21, 1959

September 2, 4, 1959 (24 plays)

BE SURE MY LOVE

The Dubs

Gone Records

ABC-Paramount (label)

June 18, 27, 1958

July 22, 1958

August 4, 6, 7, 1958 (6 plays)

BIM BOM BAY

Jimmy Rogers

September __, 15, 16, 1958

October 31, 1958

November 3, 5, 6, 10, 11, 12, 13, 14,
17, 18, 19, 20, 24, 25, 1958December 2, 3, 4, 5, 8, 10, 11, 12, 19,
22, 25, 26, 29, 30, 1958

(32 plays)

BLUEBIRD OF HAPPINESS

Richard Rome

Swan (label)

March 13, 16, 18, 1959 (3 plays)

BONEPART'S RETREAT

Billy Grammar

(Bernie Lowe name on card)

Cameo (label)

April 3, 27, 30, 1959 (3 plays)

BREAKER OF DREAMS

Johnny Mann
Swan (label)

October 9 (twice), 16, 1958 (3 plays)

BUNNY HOP

Dave Appel
Cameo (label)

February 3, 5, 6, 10, 11, 12, 18, 19,
20, 23, 1959

March 3

May 3

June 3

September 3 (15 plays)

CAROL

Chuck Berry
Chess (label)

August 4, 6, 9, 12, 13, 14, 18, 19, 20,
21, 25, 26, 27, 28, 30, 1958

September 2, 3, 5, 8, 9, 12, 16, 17, 18,
19, 25, 29, 30, 1958

October 2, 3, 9, 1958 (31 plays)

CHARLIE BROWN

Coasters
Atco (label)

January 28, 29, 30, 1959

February 3, 5, 6, 9, 10, 11, 12, 13,
16, 17, 19, 20, 23, 25, 26,
27, 1959 (19 plays)

CHILDREN'S MARCHING SONG

Cyril Stapleton
London (label)
Mitch Miller-Columbia

January 9, 16, 20, 21, 24, 30, 1959

February 11, 18, 1959 (8 plays)

CHAUSON D'AMOUR

Art & Dorothy Todd
Era (label)

January 1, 1959

April 1, 2, 3, 4, 7, 8, 9, 10, 11, 14,
21, 22, 23, 24, 29, 1958

May 7, 16, 29, 1958 (19 plays)

CIAO, CIAO BAMBINA

Jacky Nogues
Jamie (label)

May 28, 1959

June 4, 5, 8, 9, 11, 12, 15, 16, 17,
18, 19, 23, 24, 25, 26, 29, 30, 1959

July 1, 7, 10, 14, 15, 22, 1959
(24 plays)

COME BACK MY LOVE

Jerry Butler

August 13, 18, 19, 21, 22, 25, 26,
27, 1958

September 4, 12, 26, 1958
October 1, 1958 (12 plays)

DODIE

Danny & The Juniors
Sunbeam (label)

May 23, 27, 28, 29, 30, 1958

June 2, 3, 4, 5, 6, 9, 10, 11, 12, 13,
16, 17, 18, 19, 23, 30, 1958

July 1, 1958 (21 plays)

DON'T PITY ME

Dion & the Belmonts
Laurie

December 8, 22, 25, 26, 29, 30, 1958

January 9, 12, 13 (twice), 16, 20,
30, 1959

February 6, 10, 1959 (16 plays)

DON'T YOU JUST KNOW IT

Huey Smith & Clavns
Ace (label)

February 21, 24, 25, 26, 27, 28, 1958

March 3, 5, 6, 7, 10, 11, 12, 13, (twice)
14, 17, 18, 19, 20, 21, 24, 25, 26,

28 (twice), 31, 1958

April 1, 2, 3, 9, 1958

May 8, 1959

April 30, 1959 (33 plays)

DON'T YOU KNOW, YOKOMO

Huey Smith
Ace (label)

October 31, 1958
November 4, 6, 12, 13, 14, 17, 18, 19,
20, 21, 1958
December 2, 8, 9, 10, 12, 17, 22, 29,
30, 1958
January 2, 6, 14, 19, 23, 1959
(25 plays)

DREAM LOVER

Bobby Darin
Atco (label)

March 30, 1959
April 2, 3, 7, 9, 10, 13, 15, 16, 17,
21, 22, 23, 27, 29, 1959
May 1, 4, 5 (twice), 8, 11, 13, 18,
25, 1959
June 1, 1959 (25 plays)

EARLY IN THE MORNING

Bobby Darin & the Rinky Dinks
Atco (Label)

June 26, 1958
July 15, 18, 21, 22, 23, 24, 25,
28, 29, 31, 1958
August 1, 4, 8, 9, 11, 12, 13, 14, 18,
19, 20, 1958
(23 plays)

EVERY LITTLE THING

Danny & the Juniors
? (label)

September 2, 14, 24, 1959 (3 plays)

EVERYWHERE YOU GO

Quaker City Boys
Swan (label)

February 3, 5, 6, 9, 10, 12, 13, 16,
17, 18, 19, 20, 23, 24,
26 (twice), 1959
March 5, 6, 17
April 3 (20 plays)

FIRST ANNIVERSARY

Cathy Care
_____ (label)

December 30, 31, 1958
January 2, 16, 20, 21, 22, 23, 29,
30, 1959
February 2, 9, 10, 16, 1959 (14 plays)

FOR YOU, FOR YOU

Bobby Rydell
Cameo (label)

One play May 21, 1959

FOR YOUR PRECIOUS LOVE

Jerry Butler
Abner (label)

May 29, 30, 1958
June 2, 3, 5, 6, 9, 10, 11, 13, 18, 19,
20, 23, 25, 27, 30,
July 1, 4, 11, 14, 17 (22 plays)

FORTY MILES OF BAD ROAD

Duane Eddy - SRO
Jamie (label)

May 25, 29, 1959
June 5, 8, 10, 12, 15, 16, 17, 18, 19,
23, 24 (twice), 25, 26, 29, 30
July 1, 2, 7, 14, 15, 16, 17, 21, 23,
24, 28
August 5, 6, 7, 18 (33 plays)

GATES OF HEAVEN

Ronnie Baxter

June 13, 1958 - one play

GAZACHSTAHAGEN

Wildcats
United Artists (label)
Sea-Lark Music

December 12, 15, 16, 17, 19, 23, 25, 26,
29, 30, 1958
January 6, 7, 9, 12, 13, 16, 19, 20,
21, 22, 23, 26, 28, 30, 1959
February 4
(26 plays)

GOODBYE, JIMMY, GOODBYE

Kathy Linden
Felsted (label)

March 17, 24 (twice), 26, 27, 30, 31, '59
April 2, 3, 6, 9, 13, 14, 15, 16, 17,
20, 21, 22, 23, 24, 27, 28,
30, 1959

May 1, 4, 5, 8, 12, 18, 1959 (30 plays)

GUITAR BOOGIE SHUFFLE

The Virtues
Hunt-Sure (label)

January 22, 29, 1959

February 2, 3, 4, 5, 9, 10, 11, 12, 13,
16, 17, 18, 19, 20, 23, 24,
26, 27, 1959

March 2, 3, 4, 5, 6, 9, 10 (twice),
11 (twice), 12, 13, 20, 23, 24,
25, 26, 27, 31, 1949

April 3, 6, 13, 17, 1959 (43 plays)

HAPPY VACATION

Jackie Lee
Swan (label)

June 4, 9, 12, 15, 16, 17, 20, 1959

July 1, 2, 3, 7, 9
(12 plays)

HERE I STAND

Wade Flamons
Vee Jay (label)

September 25, 1958

October 9, 23, 24, 27, 29, 30
November 3, 4, 10, 11, 12, 21, 27, 28
December 4, 5, 8

(18 plays)

HEY LITTLE GIRL

Dee Clark
Abner (label)

September __, 3, 8, 22, 1959

November 9, 26, 29

December 4, 5, 6, 9, 10
(12 plays)

HIDE A WAY

Four Esquirea
Gnoa (label)

September 22, 23, 24, 26, 29, 30, 1958

October 1, 3, 9,

December 4, 5 (11 plays)

HOUSE OF LOVE

Scott Garrett
(label)

January 2, 6, 9, 12, 13, 14, 16, 19, 20

22, 26, 28, 29, 30, 1959

February 2, 3 (twice) 4, 5, 6, 9, 10,

11, 12, 13, 16, 17, 18, 19, 20,

23, 24, 25, 26, 27

March 3, April 3, May 3, June 3,

September 3, November 3 (41 plays)

I DIG GIRLS

Bobby Rydell
Cameo (label)

September 17, 22, 23, 30, 1959 (4 plays)

I LOVE YOU SO

Chantels
Ducky (label) (?)

May 22, 26, 27, 28, 29, 30, 1958

June 4, 9, 11, 12, 13 (11 plays)

I MISS YOU SO

Rose (label)

March 2, 3, 5, 6, 9, 10, 12, 13, 16,

18, 23, 1959

April 8, 1959 (12 plays)

IN THE MOOD

Ernie Fields
Rendezvous (label)

September __, 11, 14, 15, 16, 17, 18,

21, 22, 23, 1959

October 16, 19, 20, 21, 29, 30

November 2, 4 (18 plays)

IT WAS I
Skip & Flip
Brent (label)

June __, 24, 25, 29, 30, 1959
July 3, 6, 7, 8, 9, 10, 13, 14, 15, 16,
21, 24, 28,
August 5, 6, 10, 11, 12, 17, (24 plays)

ITCHY TWITCHY FEELING
Bobby Hindrix
Sure (label)

July 9, 10, 14, 15, 16, 17, 18, 21, 22,
23, 24, 25, 28, 29, 30, 31, 1958
August 1, 4, 5, 8 (twice) 11, 12, 13,
14, 15, 18, 19, 20, 21, 22, 25,
27, 30
September 9 (twice) (36 plays)

I WAITED TOO LONG
Lavern Baker-SRO
Atlantic (label)

April 20, 21, 22, 23, 27, 28, 29, 1959
May 1, 4, 6, 11, 14
June 1 (13 plays)

JUST A DREAM
Jimmy Clanton
Ace (label)

May 14, 1958
June __, 11, 12, 27, 30, 1958
July 2, 7, 8, 9, 10, 11, 14, 15, 16,
20, 21, 29, 30, 31, 1958
August 1, 4, 5, 6, 7, 9, 11, 12, 13,
14, 15, 18, 19, 20, 21, 27, 1958
January 1, 1959
(37 plays)

JUST LIKE IN THE MOVIES
The Upbeats
Swan (label)
(copyright owned by BAE)

June 9, 10, 11, 12, 13, 16, 17, 18, 19,
20, 23, 24, 25, 27, 1958
July 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15,
16, 17, 18, 21, 22, 23, 24, 25, 28,
29, 30, 31
August 1, 4, 5, 6, 8, 9, 11, 12, 13, 14,
18, 22 (49 plays)

JUST OUTSIDE OF LOVE
Ricki Pal
Arwin (label)

September 10, 15, 1958
November 26
December 4, 30 (5 plays)

KANSAS CITY
Wilbur Harrison
Fury (label)

April 10, 13, 14, 16, 17, 20, 21, 22,
24, 27, 28, 30, 1959
May 1, 4, 8, 12 (16 plays)

KISSIN' TIME
Bobby Rydell
Cameo (label)

June 22, 24, 26, 29, 30, 1959
July 2, 7, 9, 10, 13, 14, 15 (twice),
16, 17, 18, 20, 21, 23, 24, 27,
28, 29, 30, 31
August 5, 7, 10, 11, 12, 14, 17 (twice)
18, 20, 21, 24, 25, 26, 27, 28
September 4, 7
(43 plays)

KISSIN' TREE
Billy Grammar
(label)

March 27, 30, 1959
April 14, 15, 16, 23, 24, 29
May 5
November 3 (10 plays)

LA DE DADA

Dale Hawkins SRO
Checker (label)

July 21, 28, 29, 30, 31, 1958
August 4, 5, 6, 7, 18, 19, 21, 22, 25,
27, 29
September 2, 3, 4, 5, 8, 10, 15, 23,
24, 26, 29, 30
October 1, 3, 7, 8, 15 (33 plays)

LADIES' CHOICE

Patti Saturday
Swan (label)

December 31, 1958
January 7, 8, 13, 20, 21, 22, 23, 26,
27, 29, 30, 1959
February 2, 4, 5, 6 (16 plays)

LEAVE ME ALONE & LET ME CRY

Dickie Doo & the Don'ts
Swan (label) (Request owns copyright)

August 26, 27, 28, 29, 1958
September 3, 4, 5, 8, 9, 11 (10 plays)

LIGHT HOUSE ROCK

Cruisers
Dove (label)

September 16, 1958
December 12, 19, 25 (4 plays)

LITTLE BLONDE GIRL

Don French
Abner (label)

One play on November 11, 1959

LITTLE SPACE GIRL

Jesse Lee Turner
(label)

One play on December 11, 1958

LOCA CHICKA

Welder Bros.
(label)

October 9, 10, 29, 30, 1958
(4 plays)

LOLITA

Don Palmer
Abner (label)

October __, 21, 24, 27, 29 (twice) 30, 1958
November 4, 6, 10, 11, 14
(12 plays)

LONE RANGER

Juni Johnson
Class (label)

October 9, 16, 21, 1959 (3 plays)

LOST

Jerry Butler
Abner (label)

February 3, 11, 12, 13, 22, 23, 24, 1959
(7 plays)

MARINA

Rocco Granata
Laurie (label)

November 6, 10, 18, 25, 26, 30, 1959
(6 plays)

MAYBE YOU'LL BE MINE

Carrimie & Lee
Gene (label)

July 3, 1958 (one play)

MEXICAN HAT ROCK

Appel Jacks (Dave Appel)
Cameo (label)

August 22, 25, 26, 27, 28, 30, 1958
September 2, 3, 4, 5, 8, 9, 11, 12, 15,
16, 17, 18, 19 (twice) 22, 23,
24, 25, 26, 30
October 1, 2, 3, 6, 7, 8, 9 (twice) 10,
13, 14, 15, 16, 17, 20, 21, 23,
24, 28, 29, 30, 31
November 4
(49 plays)

MIAMI

Eugene Church
Class (label)

July 9, 10, 14, 15, 18, 21, 23, 30,
31, 1959
August 5, 6, 7, 14, 1959 (13 plays)

MIDNIGHT STROLL

Revels

Norgolde (label)

September 7, 9, 11, 15, 16, 17, 18, 21,
22, 23, 25, 28, 30, 1959October 1, 2, 5, 6, 7, 8, 19, 12, 13,
15, 20, 21, 27, 29 (twice) 30

(30 plays)

MISERLOU

Earl Washington

Checker (label) SRO

October 5, 7, 13, 14, 17, 20, 21, 1958

November 7 (8 plays)

MOON SHOT

Dynatones

Bomarc (label)

October 14, 19, 26, 28, 29, 1959

November 2 (6 plays)

MORGAN

Iva Robic

Laurie (label)

August 17, 18, 19, 24, 1959 (4 plays)

MUSCLE TOUGH

Doc Bagby

Red Top (label)

October 29, 30, 1958

November 24, 25, 27

December 2, 4, 5, 8, 24, 30, 31

(12 plays)

MY HEART BELONGS TO ONLY YOU

Mary Swan

Swan (label)

August 19, 21, 22, 25, 26, 27, 28,
29, 1958September 2, 3, 4, 5, 8, 9, 10, 11, 12,
15, 16, 17, 18, 19, 22, 23,

(cont'd)

MY HEART BELONGS TO ONLY YOU (cont'd)

September 24, 25, 26, 29, 30,

October 1, 3, 6, 7, 8, 9, 10, 13, 14,
7, 17

(40 plays)

NINE MORE MILES

Georgie Young

Cameo (label)

August 27, 28, 30, 1958

September 2, 3, 4, 5, 8, 9, 10, 11, 12,

15, 16, 17, 18, 19, 22, 24,

25, 26, 29, 30, 1958

October 1, 3, 6, 8, 10, 13, 14, 17, 20,
21, 1958

(33 plays)

NO CHEMISE PLEASE

Jerry Granahan

Sunbeam (label)

May 15, 19, 20, 21, 22, 27, 28, 1958

June 3, 5, 6, 9, 10, 12, 14, 16, 17

(16 plays)

NOBODY BUT YOU

Dee Clark

Abner (label)

September 9, 1958

November 27

December 3, 4, 8, 17, 18, 19, 26, 29, 31

January 1, 2, 6, 8, 9, 13, 14, 16 (twice)

22, 23, 26, 27, 29, 1959

February 4, 9 (27 plays)

NO ONE KNOWS

Dion & the Belmonts

Laurie (label)

August 8, 9, 20, 21, 22, 25, 26, 28,
30, 1958September 3, 4, 8, 9, 10, 12, 15, 17,
18, 23, 24, 25, 29, 30

October 1, 2

(25 plays)

OKEFENOKEE

Freddy Cannon
Swan (label)

July 30, 1959
August 14, 17, 18, 19, 20, 21, 24, 25,
26, 27, 28, 31, 1959
September 1, 2 (twice) 4, 7, 8, 9, 14,
15, 16, 17, 18, 21, 1959
October 9, 1959
November 9, 1959 (28 plays)

OLDE-MO-WILLIAM

Paul Peck
N.R.C. (label)

September 4, 17, 24, 1958
October 2, 3, 6, 7, 8, 10 (9 plays)

ONLY SIXTEEN

Sam Cook
Keen (label)

May __, 26, 1959
June 8, 15, 17, 18, 29 (7 plays)

OVER THE WEEKEND

Play Boys
Cameo (label)

April 28, 30, 1958
May 2, 5, 7, 12
June 14
July 18, 21, 22, 23, 24, 25, 28, 29,
30, 31, 1958
August 1, 4, 5, 6, 8, 9, 11, 15, 1958
(25 plays)

PETITE FLEUR

Chris Barber
Laurie (label)

January __, 14, 19, 20, 21, 22, 26,
28, 29, 30, 1959
April 3
February 2, 3, 5, 6, 9, 10, 16
(18 plays)

PHILADELPHIA U. S. A.

Nu-Tornadoes
Carlton (label)

September 16, 1958
November 10, 11, 12, 13, 14, 17, 18,
19, 20, 21, 24, 26
December 1, 2, 3, 5, 9, 15, 18, 24
(21 plays)

PLEASE DON'T BE MAD

Bobby Rydell
Cameo (label)

March 20, 1959 - one play

PRISONER OF LOVE

Mary Swan
Swan (label)

March 9, 10, 11, 12, 16, 18, 23, 24,
25, 27, 30, 1959
(11 plays)

QUEEN OF THE HOP

Bobby Darin
Atco (label)

September 11, 15, 22, 23, 24, 25,
26, 1958
October 2, 3, 6, 7 (twice) 10, 13, 14,
15, 16, 17, 20, 21, 23, 24, 25,
27, 28, 29, 30, 31
November 5, 6, 7, 10, 11, 12, 13, 14,
16, 17, 18, 21, 24, 26, 27
December 1, 8, 22
(49 plays)

RAG MOP

Jaye Bros.
Wynne (label)

One play on August 27, 1959

ROCKIN' MARCH

Chic Keeney
Felsted (label)

July 15, 17, 18, 20, 23, 1959
August 5, 6, 10, 12
(9 plays)

ROCKIN' ROBIN

Bobby Day
Class (label)

August 5, 6, 7, 8, 11, 15, 19, 20, 21,
22, 25, 26, 1958
September 9, 15, 1958
October 22, 23, 29, 30, 1958
January 1, 1959
(19 plays)

ROBIN' THE CRADLE

Tony Bellus
NRC (label)

April 20, 1959, May 14 and June 22
(3 plays)

ROCKSVILLE, PA.

Admiral Tones
Felsted (label)

February 13, 19, 20, 23, 25, 26,
27, 1959
March 3, 19, 20, 23, 24, 27, 30, 31
April 2, 6, 10, 14, 15, 16, 21, 23, 27
May 3
June 6
September 3 (27 plays)

RUN RUDOLPH RUN

Chuck Berry
Chess (label)

September 15, 16, 1958
December 1, 8, 9, 10, 12, 16, 17,
19, 22, 23
(11 plays)

SCRATCH MY BACK

Echos
Swan (label)
Owned by Request

August 7, 8, 11, 12, 13, 14, 15, 18,
19, 20, 21, 22, 25, 26, 27, 28,
29, 1958
September 9, 10, 12, 17, 18, 22, 26,
30, 1
October 1, 3, 6, 7, 9, 1958
(30 plays)

SEA CRUISE

Frankie Ford
Ace (label)

February 3, 16, 17, 27, 29, 1959
March 6, 10, 11, 17, 20, 23, 24, 26,
27, 30, 1959
(15 plays)

SHUFFLIN' JIVE

Joe Lyons & Arrows
Hit-Maker (label)

August 21, 25, 31, 1959 (3 plays)

SIXTEEN CANDLES

The Crests
Coed (label)
January Corp

September 15, 16, __, 1958
November 24, 25
December 2, 3, 4, 5, 8, 11, 17, 18, 19,
22, 24, 26, 29, 30, 31
January 6, 7, 8, 12, 14, 16, 19, 27,
30, 1959
February 3, 10, 12, 16, 23
October 19 (35 plays)

SLEEP WALK

Santo & Johnny
Canadian - American (label)

July 15, 16, 17, 18, 20, 21, 23, 24,
27, 28, 29, 30, 31, 1959
August 5, 6, 7, 10, 11, 12, 13, 14,
17, 18, 19, 20, 21, 24, 25
September 2, 4
(30 plays)

SMOKY GRAY EYES

Lily Bryant
Swan (label)

February 3, 25, 26, 27, 1959
March 6, 9, 10, 11, 16, 17, 18, 19, 20,
23, 24, 25, 26, 27, 30 (twice) 31,
April 2, 6, 8, 9, 10, 13
(27 plays)

30 FINE

Fiestas
Old Town (label)

March 25, 26, 27, 30 (twice) 31, 1959
April 2, 3, 6, 7, 8, 10, 14, 15, 16, 28
(16 plays)

SPLISH SPLASH

Bobby Darin
Atco (label)

May 27, 29, 30, 1958
June 2, 4, 5, 6, 9, 10, 11, 12, 13, 16,
17, 18, 19, 20, 24, 25, 27
July 1, 2, 3, 4, 7, 8, 9, 11, 14, 15,
16, 17
October 13
January 1, 1959 (34 plays)

STRING OF TRUMPETS

The Trumpeteers
Splash (label)

March 20, 25, 30, 1959
April 6, 9, 13, 17, 20, 24, 28, 30
May 8, 13, 14
(14 plays)

SECRETLY

Jimmy Rogers
Roulette (label)

April 23, 24, 25, 28, 29, 30, 1958
May 1, 2, 5, 7, 8, 9, 12, 13, 14, 15,
16, 19, 20, 21, 22, 26, 30
June 2, 3, 4, 6
(27 plays)

SWEET LITTLE ROCK & ROLL

Chuck Berry
Chess (label)

October 27, 28, 31, 1958
November 3, 4, 6, 7, 10, 18, 19, 24,
25, 26, 28, 1958
(14 plays)

STEEL GUITAR RAG

Dynatones
Bomarc (label) ?

May __, 22, 25, 26, 27, 28, 29, 1959
June 1, 3, 4, 5, 8, 9, 10, 12, 15, 16,
22, 23, 24, 25, 26
July 6 (23 plays)

TALLAHASSEE LASSIE

Freddy Cannon
Swan (label)

April 14, 15, 16, 21, 22, 23, 24, 27,
28 (twice) 30, 1959
May 1, 4, 5, 6, 13, 14, 18, 19, 20,
21, 26, 27, 28, 29
June 1, 2, 3, 8 (three) 9 (four),
10 (three) 11 (three) 12 (three)
July 6 (46 plays)

TEARDROPS WILL FALL

Dicky Doo & the Don'ts
Swan (label)
Request Publishing Co.

December 29, __, 1958
January 2, 5, 7, 12, 16, 19, 21, 26,
28, 29, 30, 1959
February 3, 11, 12, 13, 16, 17, 1959
(19 plays)

TEARS ON MY PILLOW

Little Anthony & the Imperials
End (label)

July 18, 21, 22, 23, 24, 25, 28, 29,
30, 1958
August 1, 4, 5, 6, 7, 9, 12, 13, 14,
15, 18, 19, 20, 21, 22, 25, 26,
27, 28, 29
September 2, 3, 4, 5, 8, 9, 10, 12, 16,
17, 18, 19, 23, 24, 25, 26,
29, 30
October 1, 3, 6, 9, 10 (52 plays)

TEARDROP

Santo & Johnny
 Can-American (label)

October 28, 29, 30, 1959
 November 3, 5, 6, 10, 11, 13, 16, 18,
 20, 23, 24, 25, 26, 27, 30

(18 plays)

TEENAGER IN LOVE

Dion & The Belmonts
 Laurie (label)

One play on April 24, 1959

TELL HIM NO

Travis & Bab
 Sandy or Bullseye (label)

March 9, 10, 11, 12, 13, 16, 18, 20, 23,
 24, 25, 26, 30 (twice) 31, 1959
 April 2, 3, 6, 7, 10, 16, 17

(22 plays)

THAT'S RIGHT

Carol Perkins
 Time (label)

October 21, 23, 1957 (2 plays)

THE CLASS

The Chubby Checkers
 Parkway (label)

April 22, 23, 24, 27, 28 (twice) 30, 1959
 May 1, 4, 5, 6, 7, 8, 12, 13, 14, 15,
 18, 19, 20, 21, 22, 25, 26, 27, 28
 June 3, 9, 10

(29 plays)

THE CLOUDS

The Spacemen
 Alton (label)

September 17, 18, 21, 22, 23, 24, 25,
 28, 29, 30, 1959
 October 1, 2, 6, 7, 8, 9, 12, 14, 15,
 16, 19, 20, 21, 22, 23, 27, 28,
 29 (twice) 30
 November 2, 3, 5, 6, 10, 17, 19, 20

(38 plays)

THE FREEZE

Tony & Joe
 Era (label)

June 13, 16, 17, 23, 24, 25, 30, 1958
 July 1, 2, 7, 8, 9, 11, 14, 15, 16, 17,
 21, 22, 23, 24, 25

(22 plays)

THE GREAT DUANE

Ritchie Hart
 Felsted (label)

October 8, 12, 14, 15, 16, 22, 1959

(6 plays)

THE HUNCH

Bobby Peterson
 V-Tone (label)

October __, 5, 6, 7, 9, 12, 14, 15, 16,
 19, 20, 22, 23, 26, 27, 28,
 29 (twice) 30

November 2, 3, 4, 6, 9, 13, 18
 (26 plays)

THE REASON

The Chanela
 Deb (label)

November 17, 1958 - one play

THE SECRET

Gordon McRae
 (label)

September 19, 21, 22, 25, 26, 29, 1958
 October 2, 8, 10, 16, 20, 21, 22, 23,
 24, 28, 29, 30
 November 4, 5, 7 (20 plays)

THE SHAG

Billy Gravea
 Monument (label)

December 3, 10, 11, 1958
 February 9, 11, 1959 (5 plays)

THERE I'VE SAID IT AGAIN

Sam Cooke
Wynne (label)

October 2, 26, 28, 29, 30, 1959
November 4, 5, 9, 10, 13, 16

(11 plays)

THERE'S A GIRL

Jan & Dean
Dove (label)

September __, 23, 30, 1959
October 9, 16, 19, 20, 21, 22, 23, 26,
27, 28
November 2, 3 (twice) 4, 6, 10

(19 plays)

THIS SHOULD GO ON FOREVER

Rod Bernard "
Arco (label)

February 3, 16, 27, 1959
March 3, 5, 6, 9, 10, 11, 12, 16, 17,
18, 20, 23, 24, 26, 30 (twice) 31
April 2, 3, 6, 7, 9, 10, 13

(27 plays)

TO A SOLDIER BOY

The Tassels
Madison (label)

June 12, 15, 17, 16, 22, 23, 26,
30, 1959
July 2, 6, 9, 17
August 7

(13 plays)

TO KNOW HIM IS TO LOVE HIM

Teddy Bears
Dove (label)

September 22, 1958
October 6, 7, 8, 10, 13, 14 (twice)
15, 17, 20, 21, 22, 24 (twice)
27, 28, 29, 30, 31
November 3 (twice) 5, 6, 7, 10, 11, 13,
14, 17, 18, 19, 21, 24, 25
January 1, 1959

(36 plays)

TOPSY Part 2

Cosy Cole
Love (label)

September 17, 18, 19, 22, 23, 24, 25,
26, 29, 30, 1958
October 1, 2, 3, 6, 7, 8 (twice) 9,
13 (twice) 14, 15, 16, 17, 20,
22, 23, 24, 27, 28, 29, 30
November 3, 4, 5, 8

(36 plays)

TRAGEDY

Thomas Wayne
Fernwood (label)

January 20, 22, 26, 28, 1959
February 2, 3 (twice) 4, 5, 6, 9, 12,
13, 18, 19, 20, 23, 24
April 3

(19 plays)

TRY A LITTLE TENDERNESS

Tab Smith
Argo (label)

August 6, 7, 8, 11, 1958 (4 plays)

WAY DOWN YONDER IN NEW ORLEANS

Freddy Cannon
Swan (label)

November 2, 3, 4, 5, 6, 9, 10, 11, 14,
16, 17, 18, 23, 25, 26, 27,
30, 1959
October 27, 28, 29 (twice) 30
December 11, 1959

(24 plays)

WE GOT LOVE

Bobby Rydell
Cameo (label)

September 15, 16, 23, 28, 29 (twice) 1959
October 1, 2, 5, 6, 7, 9, 12, 14, 15,
16, 19, 20, 21, 22, 23, 26, 27,
28, 29 (twice) 30, 1959
November 2, 3, 4, 6, 9, 10, 11, 12, 13,
17, 19, 1959

(38 plays)

WILL YOU EVER BE MINE?
Donnie Elbert
Red Top (label)

November 10, 1959 - one play

WONDERFUL LOVABLE YOU
The Teddy Bears
Dove (label)

May 20, 21, 22, 25, 27, 28, 1959

(6 plays)

YEA, YEA
Dale Hawkins (SRO)
Checker (label)

February 6, 10, 12, 16, 17, 19, 20,
23, 25, 1959

March 17

April 8

(11 plays)

YOU WERE MINE
The Fireflies
Ribbon (label)

August 19, 20, 21, 25, 26, 27, 28,
31, 1959

September 1, 7, 9, 15, 16, 17, 18,
23 (twice) 28, 30

October 5, 6, 7, 8, 12, 14, 21, 22,
26, 27, 28, 29 (twice) 30

November 2, 4, 5

(36 plays)

YOU'RE SO FINE
The Falcons
United Artists (label)

June 2, 7, 16, 19, 22, 1959

July 2, 3, 7

(8 plays)

RECORD MANUFACTURING COMPANIES

<u>No. Records</u>	<u>Records Played</u>	<u>Titles Played</u>	
113	57	65	
<u>Total Plays</u>	<u>Prior to Rating</u>	<u>Prior to Peak</u>	<u>After Peak</u>
1138	745	1041	97

Percentage of Records Played	50.4%
Average Plays per Record Played	19.9
Average Plays per Title Played	17.5
Percentage of Plays Prior to Rating	65.4%
Percentage of Plays Prior to Peak	91.4%
Percentage of Plays After Peak	8.6%

LEASED MASTERS

<u>Plays</u>	<u>Play Dates</u>	<u>Survey Week Ending</u>	<u>Rating</u>	<u>Billboard Issue</u>
	Here He Comes, There He Goes	Colt label	Cris Kevin	
0	--	4-19-59	0	4-13-59
0	--	4-26-59	0	4-20-59
Swan leased Colt Master Record of "Have Gun Will Travel", title of which was changed at the time to "Here He Comes, There He Goes", on <u>April 21, 1959</u> .				
5	4-27; 28; 28; 29; 30	5-3-59	0	4-27-59
4	5-4; 5; 6; 8	5-10-59	0	5-4-59
4	5-11; ;2' 14; 15	5-17-59	0	5-11-59
5	5-18; 19; 20; 21; 22	5-24-59	0	5-18-59
1	5-27	5-31-59	0	5-25-59
0	--	6-7-59	0	6-1-59

Contract between Swan Records and S&G Recording Corporation, also known as Colt Records, attached.

Under the contract with Colt, Swan assumed responsibility for national distribution, pressing and promotion. Colt was paid 8% of the retail price on 90% of the records sold, while Swan received all other net profits. It is possible that the retained 10% of sales would cover all expenses involved in distribution, pressing and promotion, leaving 92% of the record price on 90% of the records sold as the Swan profit.

The following records were listed by Computech as manufactured by Clark Companies.

It is possible that these records were under a lease agreement similar to the above. The staff was never apprised by officers of Clark Companies that the practice of leasing Masters existed. Therefore we are unable to determine definitely what other records may fall under this category or to what extent records of this type were aired by Clark.

<u>Title</u>	<u>Label</u>	<u>Artist</u>	<u>Plays</u>
I Found You	Felsted	Carroll Bros.	2
Midnight Stroll	Norgolde	The Revels	30
Moonshot	Bomarc	Dynatones	6
San Antonio Rose	Unknown	Steve Gibson	2
Shufflin Jive	Hitmaker	J. Lyons	3
Steel Guitar Ray	Bomarc	Dynatones	23
The Clouds	Alton	The Spacemen	38
We're Old Enough	Unknown	J. Angel's	1

COLT RECORDS

April 21, 1959

Swan Record Corp.,
1405 Locust Street,
Philadelphia 2, Pennsylvania

Gentlemen:

Reference is made to a recording entitled "Here He Comes - There They Go" c/w "Haunted House" recorded by Cris Kevin on the Colt label (#345-103).

It is mutually agreed as follows:

1. S&G Recording Corp. warrants and represents that it is the sole owner of the above named master recording and represents that it was produced in accordance with all regulations of applicable unions, and that it has the right to make this agreement.
2. S&G Recording Corp. hereby grants to Swan Record Corp. permission to copy the Colt label and remove mechanical parts of this record from the possession of Capitol Records Custom Services Department.
3. S&G Recording Corp. hereby authorizes Swan Record Corp. to distribute, publicize, advertise, promote, and without limiting the above, exploit this record on the Colt label nationally and to the best of its ability.
4. Swan Record Corp. agrees that it will release the above-named recording to its distributors and begin national exploitation of same no later than April 27, 1959.
5. Swan Record Corp. hereby agrees to pay any and all costs incurred in the activities outlined in section three (3) including the required contributions to the Music performance Trust Funds and a royalty of four (4) cents to Potomac Publishing Co., Inc., but not including any royalties paid the artist.
6. Swan Record Corp. hereby agrees to pay S&G Recording Corp. a royalty of eight (8%) per cent of the retail price as applied to ninety (90%) percent of all records sold. Such payments will be made quarterly although monthly statements will be submitted. Swan Record Corp. will pay S&G Recording Corp. advances against accrued royalties if and when the latter requests same in writing.

7. With regard to records sold outside of this country and its possessions, Swan Record Corp. will pay S&G Recording Corp. fifty (50%) per cent of all such foreign receipts.
8. It is mutually understood that this agreement covers only this recording in the form of a forty-five (45) r.p.m. phonograph record. S&G Recording Corp. may at any time request a copy of the master for use in another form and Swan Record Corp. will promptly honor such request with delivery of specified parts. When both parties are satisfied that the record has been exploited to its fullest extent, all parts of the physical property will be returned to S&G Recording Corp.
9. S&G Recording Corp. may appoint a certified public accountant who shall, upon written request therefore, have access to all records of Swan Record Corp. during business hours relating to this record for the purpose of verifying royalty statements hereunder.
10. No royalties are payable hereunder on either bonus or promotional records.

Very truly yours,

S & G Recording Corp. (Colt Records)

By Theodore Pedas
President

Accepted:
Swan Record Corp.

By Bernard Binnick

HUNTNo. Records
12Records Played
11*Titles Played
11*

*Other record featured title "A Certain Smile". Song with Johnny Mathis is played 17 times. Also includes two records titled "Virtue's Boogie Woogie".

Total Plays
176Prior to Rating
120Prior to Peak
162After Peak
14

Percentage of Records Played	91.6%
Average Plays Per Record Played	16
Percentage of Plays Prior to Rating	68.1%
Percentage of Plays Prior to Peak	92%
Percentage of Plays After Peak	8%

No discrepancies in comparative listing with Computech.

HUNT

#318 PICKIN' ON THE WRONG CHICKEN - Five Stars

Plays	Play Dates	Survey Week Ending	Rating	Billboard Issue
4	3-31; 4-1, 2, 3	4-5-58	0	4-14-58
1	4-10	4-12-58	0	4-21-58
1	4-14	4-19-58	0	4-28-58
0		4-26-58	0	5-5-58
3	4-28; 5-1, 2	5-3-58	0	5-12-58
2	5-7, 9	5-10-58	0	5-19-58
1	5-12	5-17-58	0	5-26-58

Flip DREAMING - No Plays

#319 THAT'S MY STORY - Tom & Jerry

2	6-17, 19	6-21-58	0	6-30-58
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Flip DON'T SAY GOODBYE - No Plays

#320 A CERTAIN SMILE - Milton Sparks

No Plays (Note - Same song with Johnny Mathis on Columbia label was played 17 times in June, July and August, 1958)

Flip THE VOICE OF LOVE - No Plays

#321 DOWN THE AISLE OF LOVE - The Quintones

3	7-16, 17, 18	7-19-58	0	7-28-58
12	7-21, 22, 23, 28, 30, 31; 8-1, 4, 5, 8, 6	8-10-58*	0	8-4-58
		(*Billboard Format Change)		
5	8-11, 12, 13, 14, 15	8-17-58	0	8-11-58
5	8-18, 19, 20, 21, 22	8-24-58	91	8-18-58
5	8-25, 26, 27, 28, 30	8-31-58	87	8-25-58
4	9-2, 3, 4, 5	9-7-58	43	9-1-58
5	9-8, 9, 10, 11, 12	9-14-58	23	9-8-58
4	9-15, 16, 17, 19	9-21-58	20	9-15-58
4	9-22, 23, 24, 26	9-28-58	22	9-22-58
5	9-30, 29; 10-1, 2, 3	10-5-58	27	9-29-58
5	10-6, 7, 8, 9, 10	10-12-58	31	10-6-58
0		10-19-58	35	10-13-58
0		10-26-58	41	10-20-58
0		11-2-58	64	10-27-58
0		11-9-58	73	11-3-58
0		11-16-58	0	11-10-58

Flip PLEASE DEAR - No Plays

#322 WHAT AM I TO DO - Quintones
No Plays

Flip THERE'LL BE NO SORROW - Quintones

1	9-16	9-21-58	0	9-15-58
0		9-28-58	0	9-22-58
0		10-5-58	0	9-29-58
0		10-12-58	0	10-6-58
0		10-19-58	0	10-13-58
0		10-26-58	0	10-20-58
0		11-2-58	0	10-27-58
0		11-9-58	0	11-3-58
0		11-16-58	0	11-10-58
1	11-19	11-23-58	0	11-17-58
1	11-28	11-30-58	0	11-24-58
1	12-1	12-7-58	0	12-1-58
4	12-8, 9, 10, 12	12-14-58	0	12-8-58
3	12-15, 17, 19	12-21-58	0	12-15-58
2	12-22, 23	12-28-58	0	12-22-58
1	12-30	1-4-59	0	12-29-58

#323 MUSCLE TOUGH - Doc Bagby

2	10-29, 30	11-2-58	0	10-27-58
0		11-9-58	0	11-3-58
0		11-16-58	0	11-10-58
0		11-23-58	0	11-17-58
4	11-24, 24, 25, 27	11-30-58	0	11-24-58
3	12-4, 2, 5	12-7-58	0	12-1-58
1	12-8	12-14-58	0	12-8-58
0		12-21-58	0	12-15-58
1	12-24	12-28-58	0	12-22-58
2	12-30, 31	1-4-59	0	12-29-58

Flip ANYTHING - No Plays

#324 GUITAR BOOGIE SHUFFLE - The Virtues

1	1-22	1-25-59	0	1-19-59
1	1-29	2-1-59	0	1-26-59
4	2-2, 3, 4, 5	2-8-59	0	2-2-59
5	2-9, 10, 11, 12, 13	2-15-59	0	2-9-59
5	2-16, ,7 18, 19, 20	2-22-59	0	2-16-59
4	2-23, 24, 26, 27	3-1-59	0	2-23-59
5	3-2, 3, 4, 5, 6	3-8-59	0	3-2-59
6	3-9, 10, 11, 11, 12, 13	3-15-59	81	3-9-59
2	3-18, 20	3-22-59	52	3-16-59
5	3-23, 24, 25, 26, 27	3-29-59	33	3-23-59
2	3-31; 4-3	4-5-59	14	3-30-59

(Continued)

GUITAR BOOGIE SHUFFLE (Cont'd)

<u>Plays</u>	<u>Play Dates</u>	<u>Survey Week Ending</u>	<u>Rating</u>	<u>Billboard Issue</u>
1	4-6	4-12-59	10	4-6-59
2	4-13, 17	4-19-59	9	4-13-59
0		4-26-59	7	4-20-59
0		5-3-59	5	4-27-59
0		5-10-59	5	5-4-59
0		5-17-59	7	5-11-59
0		5-24-59	12	5-18-59
0		5-31-59	15	5-25-59
0		6-7-59	21	6-1-59
0		6-14-59	29	6-8-59
0		6-21-59	45	6-15-59
0		6-28-59	66	6-22-59
0		7-5-59	0	6-29-59
Flip	GUITAR IN ORBIT - No Plays			
#325	HOW STRANGE - The Naturals			
2	3-30; 4-3	4-5-59	0	3-30-59
0		4-12-59	0	4-6-59
Flip	BLUE MOON - No Plays			
#326	BLESS YOU (FOR BEING AN ANGEL) - Steve Gibson			
0		3-29-59	0	3-23-59
2	3-30; 4-2	4-5-59	0	3-30-59
5	4-6, 7, 8, 9, 10	4-12-59	0	4-6-59
4	4-13, 14, 15, 16	4-19-59	0	4-13-59
3	4-20, 23, 24	4-26-59	0	4-20-59
2	4-27, 29	5-3-59	0	4-27-59
0		5-8-59	0	5-4-59
Flip	CHERYL LEE - No Plays			
#327	FLIPPIN' IN - The Virtues - No Plays			
Flip	SHUFFLIN' ALONG			
0		5-22-59	0	5-18-59
2	5-25, 27	5-29-59	0	5-25-59
4	5-29; 6-1, 2, 4	6-5-59	0	6-1-59
0		6-12-59	0	6-8-59
1	6-17	6-19-59	0	6-15-59
2	6-22, 24	6-26-59	0	6-22-59
0		7-3-59	0	6-29-59

#328 VIRTUES BOOGIE WOOGIE - The Virtues

2	7-15, --	7-12-59	0	7-6-59
0		7-19-59	0	7-13-59
0		7-26-59	0	7-20-59
0		8-2-59	0	7-27-59
0		8-9-59	0	8-3-59
0		8-16-59	0	8-10-59
0		8-23-59	0	8-17-59
0		8-30-59	0	8-24-59
3	8-28, 31; 4-1	9-6-59	0	8-31-59
2	9-7, 9	9-13-59	0	9-7-59
1	9-14	9-20-59	0	9-14-59
0		9-27-59	0	9-21-59
0		10-4-59	0	9-28-59
1	10-9	10-11-59	0	10-5-59
0		10-18-59	0	10-12-59

Flip PICKIN' THE STROLL - No Plays

#329 VIRTUE'S BOOGIE WOOGIE - The Virtues
See #330

Flip PONY WALK - No Plays

SWAN

<u>No. Records</u>	<u>Records Played</u>	<u>Titles Played</u>	
50	30	35	
<u>Total Plays</u>	<u>Prior to Rating</u>	<u>Prior to Peak</u>	<u>After Peak</u>
650	467	601	49
Percentage of Records Played			60%
Average Plays Per Record Played			21.6
Average Plays Per Title Played			18.5
Percentage of Plays Prior to Rating			71.8%
Percentage of Plays Prior to Peak			92.4%
Percentage of Plays After Peak			7.6%

Discrepancies noted in Computech report as follows:

- (a) "Head and Shoulder Baby" listed as B title
- (b) "Just Like in the Movies" listed as B title

Discrepancy in material provided for staff by Anthony Mammarella.

- (a) Listed #4014 as "Mexican Hat Rock" was actually "Leave Me Alone".
Supplemental material attached to detailed analysis of each play.

SWAN

#4001 CLICK CLACK - Dickie Doo

<u>Plays</u>	<u>Play Dates</u>	<u>Survey Week Ending</u>	<u>Rating</u>	<u>Billboard Issue</u>
1	12-26	12-28-57	0	1-6-58
3	12-30; 1-1, 3	1-4-58	0	1-13-58
5	1-6, 7, 8, 9, 10	1-11-58	0	1-20-58
4	1-13, 15, 16, 17	1-18-58	0	1-27-58
3	1-21, 23, 24	1-25-58	0	2-3-58
5	1-27, 28, 29, 30, 31	2-1-58	58	2-10-58
2	2-4, 7	2-8-58	29	2-17-58
5	2-10, 11, 12, 13, 14	2-15-58	32	2-24-58
4	2-17, 17, 18, 20	2-22-58	39	3-3-58
2	2-25, 26	3-1-58	28	3-10-58
0		3-8-58	31	3-17-58
0		3-15-58	36	3-24-58
0		3-22-58	43	3-31-58
0		3-29-58	59	4-7-58
0		4-5-58	56	4-14-58
0		4-12-58	59	4-21-58
0		4-19-58	65	4-28-58
0		4-26-58	76	5-5-58
0		5-3-58	93	5-12-58
0		5-10-58	0	5-19-58

Flip DID YOU CRY

1	11-19	11-23-57	0	12-2-57
0		11-30-57	0	12-9-57
1	12-6	12-7-57	0	12-16-57
4	12-9, 10, 11, 13	12-14-57	0	12-23-57
0		12-21-57	0	12-30-57
1	one more play	1-13-58		

#4002 LA DEE DA - Billie & Lillie

1	11-22	11-23-57	0	12-2-57
5	11-25, 26, 27, 28, 29	11-30-57	0	12-9-57
4	12-2, 3, 4, 6	12-7-57	0	12-16-57
5	12-9, 10, 11, 12, 13	12-14-57	0	12-23-57
5	12-16, 17, 18, 19, 20	12-21-57	0	12-30-57
5	12-26, 23, 24, 25, 27	12-28-57	75	1-6-58
3	12-30; 1-2, 3	1-4-58	32	1-13-58
3	1-8, 9, 10	1-11-58	13	1-20-58
5	1-13, 14, 15, 16, 17	1-18-58	9	1-27-58
4	1-21, 22, 23, 24	1-25-58	11	2-3-58
5	1-27, 28, 29, 30, 31	2-1-58	13	2-10-58
3	2-3, 5, 6	2-8-58	17	2-17-58

#4002 LA DEE DA - Billie & Lillie (cont'd)

1	2-14	2-15-58	16	2-24-58
4	2-17, 17, 19, 21	2-22-58	14	3-3-58
0		3-1-58	28	3-10-58
0		3-8-58	36	3-17-58
0		3-15-58	46	3-24-58
0		3-22-58	69	3-31-58
0		3-29-58	0	4-7-58

Played song again 6-25; 7-1, 7

Flip THE MONSTER
(No plays)

#4003 APPLE CIDER - Doc Starks

0		3-1-58	0	3-10-58
3	3-3, 6, 7	3-8-58	0	3-17-58
2	3-10, 11	3-15-58	0	3-24-58
0		3-22-58	0	3-31-58

Flip SIX BUTTON BENNY
(No plays)

#4004 No Release

#4005 CREEPIN' CRAWLIN' CRYIN' - Billie & Lillie
(No plays)

Flip HAPPINESS - Billie & Lillie

0		3-8-58	0	3-17-58
3	3-12, 13, 14	3-15-58	0	3-24-58
4	3-17, 18, 19, 21	3-22-58	0	3-31-58
5	3-24, 25, 26, 27, 28	3-29-58	0	4-7-58
5	3-31; 4-1, 2, 3, 4	4-5-58	0	4-14-58
5	4-7, 8, 9, 10, 11	4-12-58	0	4-21-58
5	4-14, 15, 16, 17, 18	4-19-58	0	4-28-58
5	4-21, 22, 23, 24, 25	4-26-58	56	5-5-58
5	4-28, 29, 30; 5-1, 2	5-3-58	68	5-12-58
9	5-5, 6, 6, 7, 7, 8, 8, 9, 9	5-10-58	90	5-19-58
0		5-17-58	97	5-26-58
0		5-24-58	0	6-2-58

#4006 FLIP TOP BOX - Swan - Dickie Doo & Don'ts

<u>Plays</u>	<u>Play Dates</u>	<u>Survey Week Ending</u>	<u>Rating</u>	<u>Billboard Issue</u>
0		5-10-58	0	5-19-58
2	5-13, 15	5-17-58	0	5-26-58
4	5-19, 20, 21, 22	5-24-58	0	6-2-58
2	5-29, 30	5-31-58	97	6-9-58
0		6-7-58	66	6-16-58
0		6-14-58	68	6-23-58
0		6-21-58	61	6-30-58
0		6-28-58	63	7-7-58
0		7-5-58	61	7-14-58
0		7-12-58	84	7-21-58
0		7-19-58	90	7-28-58
0		7-10-58*	0	7-4-58*

(*Billboard Format Change)

#4006 Flip NEE NEE NA NA NA NA NU NU (50%) - Swan - Dickie Doo

4	4-1, 2, 3, 4	4-5-58	0	4-14-58
0	4-5, 7, 8, 9, 10, 11	4-12-58	0	4-21-58
5	4-14, 15, 16, 17, 18	4-19-58	0	4-28-58
4	4-21, 22, 23, 25	4-26-58	48	5-5-58
3	4-28, 29, 30	5-3-58	40	5-12-58
2	5-7, 9	5-10-58	41	5-19-58
0		5-17-58	42	5-26-58
0		5-24-58	64	6-2-58
0		5-31-58	67	6-9-58
0		6-7-58	70	6-16-58
0		6-14-58	84	6-23-58
0		6-21-58	0	6-30-58

#4007 MY HEART UNDERSTOOD - Larry Ellis

1	5-2	5-3-58	0	5-12-58
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Flip TENNESSEE VALLEY
(No plays)

#4008 I DIG ROCK'N ROLL - Earl Wade
(No plays)
No Flip Side

1508

RESPONSIBILITIES OF BROADCASTING LICENSEES

#4009 I'M SEARCHING FOR A BLUEBIRD - Mary Swan
(No plays)

Flip LOVE COULD BE LIKE THIS

0		6-7-58	0	6-16-58
1	6-13	6-14-58	0	6-23-58
0		6-21-58	0	6-30-58

#4010 JUST LIKE IN THE MOVIES (100%) - Swan - Upbeats

5	6-9, 10, 11, 12, 13	6-14-58	0	6-23-58
5	6-16, 17, 18, 19, 20	6-21-58	0	6-30-58
4	6-23, 24, 25, 27	6-28-58	0	7-7-58
4	7-1, 2, 3, 4	7-5-58	0	7-14-58
5	7-7, 8, 9, 10, 11	7-12-58	0	7-21-58
5	7-14, 15, 16, 17, 18	7-19-58	0	7-28-58
15*	7-21, 22, 23, 24, 25, 28, 29, 30, 31; 8-1, 4, 5, 6, 8, 9	8-10-58*	88	8-4-58*
(*Denotes change in Billboard Rating policy from actual sales basis for period ending 9 days prior to predicted period 6 days subsequent.)				
4	8-11, 12, 13, 14	8-17-58	0	8-11-58
2	8-18, 22	8-24-58	75	8-18-58
0		8-31-58	92	8-25-58
0		9-7-58	0	9-1-58

4010 Flip MY FOOLISH HEART - Upbeats

0		6-14-58	0	6-23-58
1	6-20	6-21-58	0	6-30-58
0		6-28-58	0	7-7-58

#4111 THE GREASY SPOON - Billie & Lillie

0		6-14-58	0	6-23-58
1	6-20	6-21-58	0	6-30-58
0		6-28-58	0	7-7-58

Flip HANGIN ON TO YOU - Billie & Lillie
(No plays)

#4012 A HUNDRED THOUSAND TIMES - Ron Hoffman

1	8-4	8-10-58	0	8-4-58
4	8-8, 11, 12, 14	8-17-58	0	8-11-58
0		8-24-58	0	8-18-58

Flip SLEEP BABY SLEEP - Ron Hoffman
(No plays)

#4013 SCRATCH MY BACK - Swan - The Echoes

<u>Plays</u>	<u>Play Dates</u>	<u>Survey Week Ending</u>	<u>Rating</u>	<u>Billboard Issue</u>
2	8-8, 9	8-10-58	0	8-4-58
5	8-11, 12, 13, 14, 15	8-17-58	0	8-11-58
5	8-18, 19, 20, 21, 22	8-24-58	0	8-18-58
5	8-25, 26, 27, 28, 29	8-31-58	0	8-25-58
0		9-7-58	0	9-1-58
3	9-9, 10, 12	9-14-58	0	9-8-58
2	9-17, 18	9-21-58	0	9-15-58
2	9-22, 26	9-28-58	0	9-22-58
3	9-30; 10-1, 3	10-5-58	0	9-29-58
3	10-6, 7, 9	10-12-58	0	10-6-58
0		10-19-58	0	10-13-58

#4013 Flip THE LITTLE GREEN MAN
(No plays)

#4014 MEXICAN HAT ROCK - Dickie Doo
No plays by Swan but Cameo - same song with Dave Appel & The
Apple Jacks was played 50 times Aug., Sept., Oct. 1958.

Flip WILD PARTY
(No plays)

#4015 SUMMER SOUVENIER - Keefer Sisters
(No plays)

Flip LITTLE BOY, LITTLE BOY
(No plays)

#4016 I'LL WAIT FOR YOU - Mary Swan

0		8-10-58	0	8-4-58
1	8-15	8-17-58	0	8-11-58
0		8-24-58	0	8-18-58

Beginning 9-26-58 song was played intensively by Clark on
Chancellor Label with Frankie Avalon. Request owned 50% of
copyright. See Request analysis for breakdown.

Flip #4016 MY HEART BELONGS TO ONLY YOU - Mary Swan

0		8-17-58	0	8-11-58
3	8-19, 21, 22	8-24-58	0	8-18-58
5	8-25, 26, 27, 28, 29	8-31-58	0	8-25-58
4	9-2, 3, 4, 5	9-7-58	0	9-1-58
5	9-8, 9, 10, 11, 12	9-14-58	0	9-8-58
5	9-15, 16, 17, 18, 19	9-21-58	0	9-15-58
5	9-22, 23, 24, 25, 26	9-28-58	0	9-22-58
4	9-29, 30; 10-1, 3	10-5-58	0	9-29-58
6	10-6, 7, 8, 9, 10, 7	10-12-58	0	10-6-58
3	10-13, 14, 17	10-19-58	0	10-13-58
0		10-26-58	0	10-20-58

#4017 MAN WHO MADE AN ANGEL CRY - Loy Clingman
(No plays)Flip SHOWDOWN
(No plays)

#4018 BREAKER OF DREAMS - Johnny Mann

0		10-5-58	0	9-29-58
2	10-9, 9-	10-12-58	0	10-6-58
1	10-16	10-19-58	0	10-13-58
0		10-26-58	0	10-20-58

Flip CHICK-A-LO
(No plays)#4019 OH GLORIA - The Signatures
(No plays)Flip LONESOME FOR YOU
(No plays)

#4020 LUCKY LADY BUG - Billie & Lillie

0		9-14-58	0	9-8-58
2	9-16, --	9-21-58	0	9-15-58
0		9-28-58	0	9-22-58
0		10-5-58	0	9-29-58
0		10-12-58	0	10-6-58

#4020 LUCKY LADY BUG - Billie & Lillie (cont'd)

<u>Plays</u>	<u>Play Dates</u>	<u>Survey Week Ending</u>	<u>Rating</u>	<u>Billboard Issue</u>
0		10-19-58	J	10-13-58
0		10-26-58	0	10-20-58
1	10-31	11-2-58	0	10-27-58
5	11-3, 4, 5, 6, 7	11-9-58	0	11-3-58
4	11-10, 11, 13, 14	11-16-58	0	11-10-58
5	11-17, 18, 19, 20, 21	11-23-58	0	11-17-58
4	11-24, 25, 26, 28	11-30-58	0	11-24-58
4	12-1, 3, 4, 5	12-7-58	0	12-1-58
3	12-9, 10, 12	12-14-58	0	12-8-58
3	12-15, 17, 18	12-21-58	0	12-15-58
4	12-23, 24, 25, 26	12-28-58	77	12-22-58
4	12-29, 30, 31; 1-2	1-4-59	56	12-29-58
2	1-8, 9	1-11-59	27	1-5-59
3	1-12, 13, 14	1-18-59	24	1-12-59
2	1-20, 22	1-25-59	25	1-19-59
1	1-27	2-1-59	14	1-26-59
0		2-8-59	25	2-2-59
0		2-15-59	24	2-9-59
0		2-22-59	26	2-16-59
0		3-1-59	35	2-23-59
0		3-8-59	44	3-2-59
0		3-15-59	72	3-9-59
0		3-22-59	75	3-16-59
0		3-29-59	0	3-23-59

Flip I PROMISE YOU
(No plays)

#4021 LEAF IN THE WIND - Richard Rome
(No plays)

Flip BLUEBIRD OF HAPPINESS

0		3-8-59	0	3-2-59
1	3-13	3-15-59	0	3-9-59
2	3-16, 18	3-22-59	0	3-16-59
0		3-29-59	0	3-23-59

#4022 LIFE IS A BEAUTIFUL THING - Patti Saturday
(No plays)

Flip LADIES CHOICE

1	12-31	1-4-59	0	12-28-58
2	1-7, 8	1-11-59	0	1-5-59
1	1-13	1-18-59	0	1-12-59
4	1-20, 21, 22, 23	1-25-59	0	1-19-59
4	1-26, 27, 29, 30	2-1-59	0	1-26-59
4	2-2, 4, 5, 6	2-8-59	0	2-2-59
0		2-15-59		2-9-59

#4023 TEASIN' (Kelleem holds copyright)- Quaker City Boys

0		9-14-58	0	9-8-58
1	9-16	9-21-58	0	9-15-58
0		9-28-58	0	9-22-58
0		10-5-58	0	9-29-58
0		10-12-58	0	10-6-58
0		10-19-58	0	10-13-58
0		10-26-58	0	10-20-58
0		11-2-58	0	10-27-58
0		11-9-58	0	11-3-58
0		11-16-58	0	11-10-58
0		11-23-58	0	11-17-58
5	11-24, 25, 26, 27, 28	11-30-58	0	11-24-58
5	12-1, 2, 3, 4, 5	12-7-58	0	12-1-58
5	12-8, 9, 10, 11, 12	12-14-58	0	12-8-58
4	12-15, 17, 18, 19	12-21-58	0	12-15-58
5	12-22, 23, 24, 25, 26	12-28-58	81	12-22-58
3	12-29, 30, 31	1-4-59	68	12-29-58
5	1-5, 6, 7, 8, 9	1-11-59	58	1-5-59
4	1-12, 13, 14, 16	1-18-59	50	1-12-59
1	1-19	1-25-59	45	1-19-59
2	1-26, 27	2-1-59	39	1-26-59
1	2-5	2-8-59	42	2-2-59
0		2-15-59	42	2-9-59
0		2-22-59	56	2-16-59
0		3-1-59	0	2-23-59

Flip WON'T YOU COME OUT MARY ANN
(No plays)#4024 HEAD OVER HEELS IN LOVE - Don Wayne
(No plays)

Flip PLAYTHING (No plays)

Played song by Ted Newman on unknown label as follows:
8-16, 16, 28; 9-12, 16, 10, 4, 3, 2 - 1957.

#4025 TEARDROPS WILL FALL - Swan - Dickie Doo

<u>Plays</u>	<u>Play Dates</u>	<u>Survey Week Ending</u>	<u>Rating</u>	<u>Billboard Issue</u>
3	12-29, --, 1-2	1-4-59	0	12-29-58
2	1-5, 7	1-11-59	0	1-5-59
2	1-12, 16	1-18-59	0	1-12-59
2	1-19, 21	1-25-59	0	1-19-59
4	1-26, 28, 29, 30	2-1-59	0	1-26-59
1	2-3	2-8-59	97	2-2-59
3	2-11, 12, 13	2-15-59	86	2-9-59
2	2-16, 17	2-22-59	74	2-16-59
0		3-1-59	61	2-23-59
0		3-8-59	61	3-2-59
0		3-15-59	75	3-9-59
0		3-22-59	0	3-16-59

Flip COME WITH US - Dickie Doo
(No plays)

#4026 EVERYWHERE YOU GO - Quaker City Boys

0		2-1-59	0	1-26-59
3	2-3, 5, 6	2-8-59	0	2-2-59
4	2-9, 10, 12, 13	2-15-59	0	2-9-59
5	2-16, 17, 18, 19, 20	2-22-59	0	2-16-59
4	2-23, 24, 26, 26	3-1-59	0	2-23-59
2	3-5, 6	3-8-59	0	3-2-59
0		3-15-59	0	3-9-59
1	3-17	3-22-59	0	3-16-59
0		3-29-59	0	3-23-59
1	4-3	4-5-59	0	3-30-59
0		4-12-59	0	4-6-59

Flip LOVE ME TONIGHT
(No plays)

#4027 HOUSE ON MAIN STREET (Rock) - The King Pins
(No plays)

Flip HOUSE ON MAIN STREET (Jazz) - The King Pins
(No plays)

#4028 MY GIRLFRIEND BETTY - Mary Swan
(No plays)

#4028 PRISONER OF LOVE - Mary Swan

Flip	0			
0		3-8-59	0	3-2-59
4	3-9, 10, 11, 12	3-15-59	0	3-9-59
2	3-16, 18	3-22-59	0	3-16-59
4	3-23, 24, 25, 27	3-29-59	0	3-23-59
1	3-30	4-5-59	0	3-30-59
0		4-12-59	0	4-6-59

#4029 SMOKY GREY EYES - Billie & Lillie

0		2-22-59	0	2-16-59
3	2-25, 26, 27	3-1-59	0	2-23-59
2	3-2, 6	3-8-59	0	3-2-59
3	3-9, 10, 11	3-15-59	0	3-9-59
5	3-16, 17, 18, 19, 20	3-22-59	0	3-16-59
5	3-23, 24, 25, 26, 27	3-29-59	0	3-23-59
4	3-30, 30, 31; 4-2	4-5-59	0	3-30-59
4	4-6, 8, 9, 10	4-12-59	0	4-6-59
1	4-13	4-19-59	0	4-13-59
0		4-26-59	0	4-20-59
0		5-3-59	0	4-27-59

Flip I'LL NEVER BE FREE
(No plays)

#4029 ALOYSIUS HORATIO THOMAS THE CAT - Billie & Lillie
(No plays)

Flip TUMBLED DOWN
(No plays)

#4031 TALLAHASSEE LASSIE - Freddie Cannon

3	4-14, 15, 16	4-19-59	0	4-13-59
4	4-21, 22, 23, 24	4-26-59	0	4-20-59
5	4-27, 28, 28, 30; 5-1	5-3-59	0	4-27-59
3	5-4, 5, 6	5-10-59	0	5-4-59
2	5-13, 14	5-17-59	96	5-11-59

#4031 TALLAHASSEE LASSIE - Freddie Cannon (cont'd)

<u>Plays</u>	<u>Play Dates</u>	<u>Survey Week Ending</u>	<u>Rating</u>	<u>Billboard Issue</u>
4	5-18, 19, 20, 21	5-24-59	53	5-18-59
4	5-26, 27, 28, 29	5-31-59	30	5-25-59
3	6-1, 2, 3	6-7-59	15	6-1-59
16	6-8, 8, 8, 9, 9, 9, 9, 10, 10, 10, 11, 11, 11, 12, 12, 12	6-14-59	11	6-8-59
0		6-21-59	7	6-15-59
0		6-28-59	7	6-22-59
0		7-5-59	6	6-29-59
1	7-6	7-12-59	7	7-6-59
0		7-19-59	8	7-13-59
0		7-26-59	7	7-20-59
0		8-2-59	27	7-27-59
0		8-9-59	41	8-3-59
0		8-16-59	77	8-10-59
0		8-23-59	83	8-17-59
0		8-30-59	0	8-24-59

Flip YOU KNOW
(No plays)

#4032 GET IN AND SHUT THE DOOR - The Gay Charmers
(No play)

Flip WHAT CAN I DO
(No plays)

#4033 DEAR HEART DON'T CRY - Dickie Doo
(No plays)

Flip BALLAD OF A TRAIN
(No plays)

#4034 HAPPY VACATION - Jackie Lee

0		5-31-59	0	5-25-59
1	6-4	6-7-59	0	6-1-59
2	6-9, 12	6-14-59	0	6-8-59
4	6-15, 16, 17, 20	6-21-59	0	6-15-59

#4034 HAPPY VACATION - Jackie Lee (cont'd)

0		6-28-59	0	6-22-59
3	7-1, 2, 3	7-5-59	99	6-29-59
2	7-7, 9	7-12-59	95	7-6-59
0		7-19-59	0	7-13-59

Flip THE HUCKIE BUCK
(No plays)

#4035 WALKING IN THE SAND - Patti Saturday
(No plays)

Flip AS I LOVE YOU
(No plays)

#4036 BELLS, BELLS, BELLS - Billie & Lillie

0		6-21-59	0	6-15-59
1	6-26	6-28-59	0	6-22-59
4	6-29, 30; 7-1, 3	7-5-59	0	6-29-59
4	7-6, 8, 9, 10	7-12-59	0	7-6-59
5	7-13, 15, 15, 17, 18	7-19-59	98	7-13-59
5	7-20, 21, 22, 23, 24	7-26-59	94	7-20-59
4	7-28, 29, 30, 31	8-2-59	91	7-27-59
3	8-5, 6, 7	8-9-59	88	8-3-59
5	8-10, 11, 12, 13, 14	8-16-59	0	8-10-59
2	8-17, 18	8-23-59	96	8-17-59
0		8-30-59	99	8-24-59
0		9-6-59	0	8-31-59

Flip HONEYMOONIN'
(No plays)

#4037 HUSH OUR SECRET - Bobby Baker

0		8-30-59	0	8-24-59
1	8-31	9-6-59	0	8-31-59
0		9-13-59	0	9-7-59

Flip #4037 BABY BLUE EYES
(No play)

RESPONSIBILITIES OF BROADCASTING LICENSEES

1517

#4038 OKEFENOKEE - Freddy Cannon

<u>Plays</u>	<u>Play Dates</u>	<u>Survey Week Ending</u>	<u>Rating</u>	<u>Billboard Issue</u>
1	7-31	8-2-59	0	7-27-59
0		8-9-59	0	8-3-59
1	8-14	8-16-59	0	8-10-59
5	8-17, 18, 19, 20, 21	8-23-59	0	8-17-59
5	8-24, 25, 26, 27, 28	8-30-59	90	8-24-59
5	8-31; 9-1, 2, 2, 4	9-6-59	83	8-31-59
3	9-7, 8, 9	9-13-59	66	9-7-59
5	9-14, 15, 16, 17, 18	9-20-59	56	9-14-59
1	9-21	9-27-59	46	9-21-59
0		10-4-59	43	9-28-59
1	10-9	10-11-59	56	10-5-59
0		10-18-59	71	10-12-59
0		10-25-59	75	10-19-59
0		11-1-59	0	10-26-59
0		11-8-59	0	11-2-59
1	11-9	11-15-59	0	11-9-59
0		11-22-59	0	11-16-59

Flip KOOKIE HAT

0		7-26-59	0	7-20-59
1	7-29	8-2-59	0	7-27-59
0		8-9-59	0	8-3-59

#4039 LIKE SUNSET - Jackie Lee
(No plays)

Flip RANCHO
(No plays)

#4040 HEAD SHOULDER BABY - Teen Tones

0		9-27-59	0	9-21-59
1	9-30	10-4-59	0	9-28-59
0		10-11-59	0	10-5-59
1	10-14	10-18-59	0	10-12-59
0		10-25-59	0	10-19-59

Flip MY LITTLE BABY
(No plays)

#4041 SLOW MOTION - Patti Saturday

Cards show song played with Wade Flemmons on unknown label as follows: 8-14, 20, 21, 25 - 1959.

Flip THAT'S MY STORY

Cards show song played with Tom & Jerry on unknown label as follows: 6-17, 19 - 1958.

#4042 SWAMPY - Billie & Lillie
(No plays)Flip TERRIFFIC TOGETHER
(No plays)

#4043 WAY DOWN YONDER IN NEW ORLEANS - Freddie Cannon

5	10-27, 28, 29, 29, 30	11-1-59	0	10-26-59
5	11-2, 3, 4, 5, 6	11-8-59	0	11-2-59
5	11-9, 10, 11, 12, 14	11-15-59	0	11-9-59
3	11-16, 17, 18	11-22-59	0	11-16-59*
	(*Cards do not cover after 11-30-59)			
4	11-23, 25, 26, 27	11-29-59	72	11-23-59
1	11-30	12-6-59	60	11-30-59
		12-13-59	31	12-7-59
		12-20-59	13	12-14-59
		12-27-59	5	12-21-59
		1-3-60	5	12-28-59

Flip No flip side on list

#4044 TOUCHDOWN - Young Ideas
(No plays)

Flip DREAM

Cards reflect song recorded by Betty Johnson and also by The Keymen.

#4045 GOODBYE 50'S, HELLO 60'S - Quaker City Boys
(No plays)Flip YOU CALL EVERYBODY DARLING
(No plays)

#4046 WABASH CANNONBALL - Dickie Doo
(No plays)

Flip THE DRUMS OF RICHARD A. DOO
(No plays)

#4047 HAZEL - Ronnie Dawson
No plays

Flip AIN'T THAT A KICK IN THE HEAD
(No plays)

#4048 THE VISION - Twin Tones
(No plays)

Flip STARLIGHT AND YOU
(No plays)

#4049 MIDNIGHT CRYIN TIME - Scotty McKay
(No plays)

Flip LITTLE LUMP OF SUGAR - Scotty McKay
(No plays)

#4050 CHATTANOOGA SHOESHINE BOY - Freddie Cannon
(No plays)

Flip BOSTON
(No plays)

#4051 FREE FOR ALL - Billie & Lillie
(No plays)

Flip IN'S AND OUT'S OF LOVE
(Not recorded by Nov. 1959.)

JAMIE

<u>No. Records</u>	<u>Records Played</u>	<u>Titles Played</u>	
51	16	19	
<u>Total Plays</u>	<u>Prior to Rating</u>	<u>Prior to Peak</u>	<u>After Peak</u>
312	158	278	34
Percentage of Records Played			31.3%
Average Plays Per Record Played			19.5
Average Plays Per Title Played			16.4
Percentage of Plays Prior to Rating			50.6%
Percentage of Plays Prior to Peak			89.1%
Percentage of Plays After Peak			10.9%

Discrepancies noted in Computech Report as follows:

- (a) "The Quiet Three" listed as B Title
- (b) "Treschic" listed as B Title

Clark devoted 245 of 312 total plays to songs by Duane Eddy in which he held a dual interest.

#1033	IT'S GREAT TO FALL IN LOVE (no plays)	Marian Cruso
Flip	TRUELY (no plays)	
#1034	GOODBY (no plays)	The Inspirations
Flip	DRY YOUR EYES (no plays)	
#1035	BLUES IN THE CLOSET (no plays)	The Tritones
Flip	SWEET & LOVELY (no plays)	
#1036	SOMEONE ELSE (no plays)	Rita Raines
Flip	SILENCE IS GOLDEN (no plays)	
#1037	EACH TIME (no plays)	Waldrow Sisters
Flip	RICKITY TICKETY MELODY (no plays)	
#1038	HEY BIG MAN (no plays)	Don Blyer & Tuesday Neters
Flip	MORNIN' LIGHT (no plays)	
#1039	STRAWBERRY STOMP (no plays)	Robert Byrd
Flip	BIPPIN' AN' BOPPIN' (no plays)	
#1040	SWEET SWEETHEART (no plays)	The Sharps
Flip	COME ON (no plays)	
#1041	I TOLD A STRANGER (no plays)	Rita Raines
Flip	SLEEPY SUNDAY AFTERNOON (no plays)	
#1042	TWO LONELY BLUE EYES (no plays)	Norman Brooks
Flip	I'M NEVER SATISFIED (no plays)	

#1043	IT'S A CRYING SHAME (no plays)			Chuck Crayne
Flip	SUPPRESSED DESIRE (no plays)			
#1101	MOOVIN' N' GROOVIN'			Duane Eddy (SRO)
		Survey		
<u>Plays</u>	<u>Play Dates</u>	<u>Week Ending</u>	<u>Rating</u>	<u>Billboard Issue</u>
0		1-4-58	0	1-13-58
1	1-10	1-11-58	0	1-20-58
5	1-13, 14, 15, 16, 17	1-18-58	0	1-27-58
2	1-23, 24	1-25-58	0	2-3-58
4	1-27, 28, 29, 31	2-1-58	0	2-10-58
1	2-3	2-8-58	0	2-17-58
2	2-11, 12	2-15-58	0	2-24-58
2	2-19, 21	2-22-58	0	3-3-58
2	2-25, 28	3-1-58	0	3-10-58
1	3-3	3-8-58	0	3-17-58
0		3-15-58	0	3-24-58
Flip	UP AND DOWN (no plays)			
#1102	STROLLING AFTER SCHOOL (no plays)			Ernie Fields Orchestra
Flip	ANNIE'S ROCK (no plays)			
#1103	WANT ME (no plays)			Mark Robinson
Flip	PRETTY JANE			
#1104	STALKIN' - Duane Eddy (SRO) (no plays)			
Flip	REBEL ROUSER			
0		5-10-58	0	5-19-58
0		5-17-58	0	5-26-58
1	5-22	5-24-58	0	6-2-58
3	5-26, 28, 30	5-31-58	0	6-9-58
3	6-4, 5, 6	6-7-58	0	6-16-58
4	6-9, 10, 11, 13	6-14-58	0	6-23-58
4	6-17, 18, 19, 20	6-21-58	50	6-30-58
4	6-23, 24, 25, 27	6-28-58	20	7-7-58
5	6-30; 7-1, 2, 3, 4	7-5-58	10	7-14-58
5	7-7, 8, 9, 10, 11	7-12-58	7	7-21-58
4	7-15, 16, 17, 18	7-19-58	6	7-28-58
7	7-21, 22, 24, 25, 28, 31, 8-5	8-10-58*	6	8-4-58*
				(Billboard Format Change)

(continued)		Survey		
<u>Plays</u>	<u>Play Dates</u>	<u>Week Ending</u>	<u>Rating</u>	<u>Billboard Issue</u>
0		8-17-58	8	8-11-58
0		8-24-58	8	8-18-58
0		8-31-58	11	8-25-58
0		9-7-58	13	9-1-58
0		9-14-58	19	9-8-58
0		9-21-58	41	9-15-58
0		9-28-58	52	9-22-58
0		10-5-58	0	9-29-58
2	Played again by Clark on 10-12-58 & 1-1-59			
#1107	SING EM' SOME BLUES -- Sanforo Clark (no plays)			
Flip	STILL AS THE NIGHT			
1	8-29	8-30-59	0	8-24-59
0		9-6-59	0	8-30-59
#1108	HAVE LOVE WILL TRAVEL -- The Sharps (no plays)			
Flip	LOOK AT ME (no plays)			
#1109	THE WALKER -- Duane Eddy (SRO) (no plays)			
Flip	RAMROD			
4	8-1, 4, 6, 8	8-10-58	0	8-4-58
4	8-11, 12, 13, 14	8-17-58	0	8-11-58
3	8-18, 19, 20	8-24-58	0	8-18-58
4	8-26, 27, 28, 30	8-31-58	91	8-25-58
0		9-7-58	53	9-1-58
2	9-11, 12	9-14-58	51	9-8-58
4	9-15, 16, 17 and 18	9-21-58	28	9-15-58
2	9-22, 26	9-28-58	37	9-22-58
4	9-29; 10-1, 2, 3	10-5-58	38	9-29-58
0		10-12-58	49	10-6-58
0		10-19-58	64	10-13-58
0		10-26-58	0	10-20-58
#1110	DON'T JUST STAND THERE -- The Five Chords (no plays)			
Flip	LOVE IS LIKE MUSIC (no plays)			

#1111 CANNON BALL -- Duane Eddy (SRO)

<u>Plays</u>	<u>Play Dates</u>	<u>Survey</u>		<u>Rating</u>	<u>Billboard Issue</u>
		<u>Week Ending</u>			
2	10-8, 10	10-12-58		0	10-6-58
4	10-14, 15, 16, 17	10-19-58		0	10-13-58
5	10-20, 21, 22, 23, 24	10-26-58		0	10-20-58
4	10-28, 29, 30, 31	11-2-58		0	10-27-58
1	11-4	11-9-58		88	11-3-58
5	11-10-, 11, 12, 13, 14	11-16-58		71	11-10-58
4	11-17, 18, 20, 21	11-23-58		25	11-17-58
3	11-24-25-28	11-30-58		15	11-24-58
4	12-1, 2, 3, 5	12-7-58		19	12-1-58
3	12-8, 9, 10	12-14-58		17	12-8-58
0		12-21-58		19	12-15-58
0		12-28-58		18	12-22-58
0		1-4-59		31	12-29-58
0		1-11-59		26	1-5-59
0		1-18-59		35	1-12-59
0		1-25-59		67	1-19-59
0		2-1-59		0	1-26-59

Flip MASON DIXON LION
(no plays)

#1112 OH LOLLY -- The Jordan Bros.
(no plays)

<u>Plays</u>	<u>Play Dates</u>	<u>Week Ending</u>	<u>Rating</u>	<u>Billboard Issue</u>
0		11-23-58	0	11-17-58
1	11-27	11-30-58	0	11-24-58
0		12-7-58	0	12-1-58

#1113 CAN IT BE? -- Connie Connay
(no plays)

Flip NOTHING IS FOREVER
(no plays)

#1114 HERE'S MY HEART -- The Sharps
(no plays)

Flip GIG-A-LINE
(no plays)

#1116 COME PRIMA -- Pierre Cavalli Orchestra
(Played Polly Bergen's Recording of Come Prima 8 times -- 6 prior to her appearance as a guest on 12-5-58 and 2 afterwards.)

Flip WHEN -- Kalin Twins
(no plays)

#	Plays	Play Dates	Survey		Billboard Issue
			Week Ending	Rating	
#1117	DETOUR -- Duane Eddy (SRO)				
	1	1-13	1-18-59	0	1-12-59
	0		1-25-59	0	1-19-59
	Flip	THE LONELY ONE -- Duane Eddy			
	0		12-14-58	0	12-8-58
	2	12-15, 19	12-21-58	0	12-15-58
	2	12-22, 23	12-28-58	0	12-22-58
	3	12-29; 1-2;00	1-4-59	0	12-29-58
	2	1-5, 7	1-11-59	0	1-5-59
	1	1-16	1-18-59	0	1-12-59
	4	1-19, 20, 21, 22	1-25-59	89	1-19-59
	5	1-26, 27, 28, 29, 30	2-1-59	62	1-26-59
	4	2-2, 4, 5, 6	2-8-59	34	2-2-59
	5	2-9, 10, 11, 12, 13	2-15-59	26	2-9-59
	2	2-16, 18	2-22-59	23	2-16-59
	3	2-23, 24, 25	3-1-59	26	2-23-59
	0		3-8-59	30	3-2-59
	0		3-15-59	32	3-9-59
	0		3-22-59	35	3-16-59
	0		3-29-59	35	3-23-59
	0		4-5-59	52	3-30-59
	0		4-12-59	57	4-6-59
	0		4-19-59	71	4-13-59
	0		4-26-59	0	4-20-59
#1118	THE MONSTER -- Bobby Pleasure & The Pleasures (no plays)				
	Flip	THE SWITCH (no plays)			
#1119	LOOKING FOR MY BABY -- Tony Allen & The Wonders (no plays)				
	Flip	LOVING YOU (no plays)'			
#1120	MY JEALOUSY -- Sanford Clark (no plays)				
	Flip	BAD LUCK (no plays)			
#1121	TENNESSEE WALTZ -- Curley Hammer & The Cooper Bros. (no plays)				
	Flip	SMOOCHIN' (no plays)			

RESPONSIBILITIES OF BROADCASTING LICENSEES

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#1122 YEP -- Duane Eddy

<u>Plays</u>	<u>Play Dates</u>	<u>Survey</u>		<u>Billboard Issue</u>
		<u>Week Ending</u>	<u>Rating</u>	
2	3-5, 6	3-8-59	0	3-2-59
6	3-9, 9, 10, 11, 12, 13	3-15-59	0	3-9-59
3	3-16-, 17, 18	3-22-59	0	3-16-59
3	3-23, 24, 25	3-29-59	0	3-23-59
1	3-31	4-5-59	99	3-30-59
5	4-6, 7, 8, 9, 10	4-12-59	61	4-6-59
0		4-19-59	46	4-13-59
2	4-20, 23	4-26-59	30	4-20-59
1	4-27	5-3-59	40	4-27-59
2	5-6, 8	5-10-59	46	5-4-59
0		5-17-59	52	5-11-59
0		5-24-59	55	5-18-59
0		5-31-59	78	5-25-59
0		6-7-59	0	6-1-59

Flip THREE-30-BLUES
(no plays)

#1123 IM IN HEAVEN -- Don Costa
(no plays)

Flip THE MAIN ONE
(no plays)

#1124 BEYOND THE BLUE HORIZON -- Connie Conway
(no plays)

Flip CALL IT A STORMY MONDAY
(no plays)

#1125 PLEASE TELL ME NOW -- Jordon Bros.
(no plays)

Flip NEVER, NEVER
(no plays) Played on Dot Label

#1126 FORTY MILES OF BAD ROAD -- Duane Eddy

2	5-25, 29	5-31-59	0	5-24-59
1	6-5	6-7-59	0	6-1-59
3	6-8, 10, 12	6-14-59	0	6-8-59
5	6-15, 16, 17, 18, 19	6-21-59	96	6-15-59
5	6-23, 24, 24, 25, 26	6-28-59	50	6-22-59
4	6-29, 30; 7-1, 2	7-5-59	31	6-29-59
1	7-7	7-12-59	23	7-6-59
4	7-14, 15, 16, 17	7-19-59	13	7-13-59
3	7-21, 23, 24	7-26-59	12	7-20-59

(continued)		Survey		
<u>Plays</u>	<u>Play Dates</u>	<u>Week Ending</u>	<u>Rating</u>	<u>Billboard Issue</u>
1	7-28	8-2-59	9	7-27-59
3	8-5, 6, 7	8-9-59	10	8-3-59
0		8-16-59	11	8-10-59
1	8-18	8-23-59	10	8-17-59
0		8-30-59	14	8-24-59
0		9-6-59	23	8-31-59
0		9-13-59	32	9-7-59
0		9-20-59	46	9-14-59
0		9-27-59	66	9-21-59
0		10-4-59	0	9-28-59
Flip	THE QUIET THREE -- Duane Eddy			
0		5-24-59	0	5-18-59
2	5-26, 28	5-31-59	0	5-25-59
1	6-2	6-7-59	0	6-1-59
0		6-14-59	0	6-8-59
#1127	DE SERAIT DOMMAGE -- Jacky Nogues (no plays)			
Flip	CIAO, CIAO, BAMBINA			
0		5-24-59	0	5-18-59
1	5-28	5-31-59	0	5-25-59
2	6-4, 5	6-7-59	0	6-1-59
4	6-8, 9, 11, 12	6-14-59	0	6-8-59
5	6-15, 16, 17, 18, 19	6-21-59	0	6-15-59
4	6-23, 24, 25, 26	6-28-59	97	6-22-59
3	6-29, 30; 7-1	7-5-59	76	6-29-59
2	7-7, 10	7-12-59	72	7-6-59
2	7-14, 15	7-19-59	49	7-13-59
1	7-22	7-26-59	48	7-20-59
0		8-2-59	32	7-27-59
0		8-9-59	34	8-3-59
0		8-16-59	24	8-10-59
0		8-23-59	32	8-17-59
0		8-30-59	40	8-24-59
0		9-6-59	50	8-31-59
0		9-13-59	95	9-7-59
0		9-20-59	0	9-14-59

#1128 LINDA LU -- Ray Sharpe

<u>Plays</u>	<u>Play Dates</u>	Survey	<u>Rating</u>	<u>Billboard Issue</u>
		<u>Week Ending</u>		
0		7-5-59	0	6-30-59
1	7-8	7-12-59	0	7-6-59
6	7-13, 14, 15, 16, 17, 18	7-19-59	0	7-13-59
4	7-20, 21, 23, 24	7-26-59	95	7-20-59
3	7-27, 28, 29	8-2-59	90	7-27-59
2	8-5, 7	8-9-59	86	8-3-59
1	8-12	8-16-59	81	8-10-59
0		8-23-59	58	8-17-59
0		8-30-59	46	8-24-59
0		9-6-59	49	8-31-59
0		9-13-59	67	9-7-59
0		9-20-59	63	9-14-59
0		9-27-59	72	9-21-59
0		10-4-59	88	9-28-59
0		10-11-59	82	10-5-59
0		10-18-59	89	10-12-59
0		10-25-59	0	10-19-59

Flip MONKEY'S UNCLE
(no plays)

#1129 RUN BOY RUN -- Sanford Clark
(no play)

Flip NEW KIND OF FOOL
(no plays)

#1130 SOME KIND A EARTHQUAKE -- Duane Eddy

0		10-4-59	0	9-28-59
1	10-9	10-11-59	77	10-5-59
2	10-15, 16	10-18-59	57	10-12-59
4	10-20, 21, 22, 23	10-25-59	46	10-19-59
1	10-26	11-1-59	37	10-26-59
0		11-8-59	37	11-2-59
0		11-15-59	40	11-9-59
0		11-22-59	58	11-16-59
0		11-29-59	59	11-23-59
0		12-6-59	0	11-30-59

(continued)

Flip		FIRST LOVE FIRST TEARS -- Duane Eddy		
		Survey		
<u>Plays</u>	<u>Play dates</u>	<u>Week Ending</u>	<u>Rating</u>	<u>Billboard Issue</u>
0		9-6-59	0	8-31-59
2	9-10, 11	9-13-59	0	9-7-59
5	9-14, 15, 16, 17, 18	9-20-59	0	9-14-59
3	9-21, 23, 25	9-27-59	0	9-21-59
2	9-28; 10-2	10-4-59	96	9-28-59
2	10-6, 7	10-11-59	99	10-5-59
0		10-18-59	76	10-12-59
0		10-25-59	59	10-19-59
0		11-1-59	66	10-26-59
0		11-8-59	60	11-2-59
0		11-15-59	65	11-9-59
0		11-22-59	50	11-16-59
0		11-29-59	88	11-23-59
0		12-6-59	0	11-30-59

Note: Clark pushed this side extensively and the flip side, "Some Kind a Earthquake" became a hit at the same time.

#1131 SOME DAY IM COMING HOME -- Anita Ray
(no plays)
Flip YOU ALWAYS HURT THE ONE YOU LOVE
(no plays)

#1132 TRES CHICK (vocal) -- The Shieks
0 9-6-59 0 8-31-59
5 9-7, 8, 9, 10, 11 9-13-59 0 9-7-59
1 9-14 9-20-59 0 9-14-59
0 9-27-59 0 9-21-59

Flip TRES CHIC (instrumental)
(no plays)

#1133 BE MINE -- Jordan Bros.
(no plays)

Flip DREAM ROMANCE
(no plays)

#1134 WHERE'S MY LOVE -- Johnny Angel & Creations
(no play)

Flip WE'RE OLD ENOUGH
(no play)

#1135 CAN'T GO ON -- Dallas Frazier
(no play)

Flip WHEN YOU GOT LOVE
(no play)

#1136 GONNA GO ROUND -- Darrell Howe
 (no play)
 Flip I MAKE A WISH
 (no play)

#1137 MARINA -- Jackey Noguez
 (no play)
 Note: Played song by Rocco Granata 6 times.
 Flip ADONIS
 (no play)
 Note: Played song by Terry Stevens 2 times.

#1138 T. A. BLUES -- Ray Sharpe
 (no plays)
 Flip LONG JOHN

<u>Plays</u>	<u>Play date</u>	<u>Survey Week Ending</u>	<u>Rating</u>	<u>Billboard Issue</u>
0		11-1-59	0	10--26-59
3	11-3, 5, 6	11-8-59	0	11-2-59
1	11-9	11-15-59	0	11-9-59
0		11-22-59	0	11-16-59

#1139 I CAN'T HELP IT - Sanford Clark
 (no play - played song by Burt Taylor 1 time)

Flip SON-OF-A-GUN - No Play

#1140 LOVE IN PORTOFINO - Johnny Dorell
 (no play)

Flip THE WORLD OUTSIDE
 (no play)
 Note: Played song by 4 Coins 13 times.

#1141 YOU ARE FREE, I'M ALONE -- The Blackwells
 (no plays)

Flip	DEPOT			
0		11-1-59	0	10-26-59
4	11-3, 3, 5, 6	11-8-59	0	11-2-59
1	11-9	11-15-59	0	11-9-59
0		11-22-59	0	11-16-59

#1142 STOP -- Wayne Rooks
 (no plays)
 Note: Played song by Teacher & Students 8 times.

Flip WILL YOU STAY IN LOVE
 (no plays)

#1143 TRAIN OF LOVE -- Tony Allen
 (no plays)

Flip GOD GAVE ME YOU
 (no plays)

SRO
Duane Eddy

Titles Played
11

<u>Total Plays</u>	<u>Prior to Rating</u>	<u>Prior to Peak</u>	<u>After Peak</u>
240	109	200	40
Average Plays per title played			21.8%
Percentage of Plays Prior to Rating			53.4%
Percentage of Plays Prior to Peak			83.3%
Percentage of Plays After Peak			16.7%

Note: Except for the period between 3-3-58 and 5-22-58 Clark played songs by Duane Eddy almost every week through 10-26-59.

Dale Hawkins

Titles Played
10

<u>Total Plays</u>	<u>Prior to Rating</u>	<u>Prior to Peak</u>	<u>After Peak</u>
78	54	75	3
Average Plays Per title			7.8
Percentage of Plays Prior to Rating			69.2%
Percentage of plays prior to Peak			96.1%
Percentage of plays after peak			3.9%

Laverne Baker

Titles Played
5

<u>Total Plays</u>	<u>Prior to Rating</u>	<u>Prior to Peak</u>	<u>After Peak</u>
50	7	49	1
Average Plays Per Title			10
Percentage of Plays Prior to Rating			14%
Percentage of Plays Prior to Peak			98%
Percentage of Plays After Peak			2%

Leslie Uggams

Titles Played
1

<u>Total Plays</u>	<u>Prior to Rating</u>	<u>Prior to Peak</u>	<u>After Peak</u>
1	1	1	
Average Plays Per Title Played			1
Percentage Prior to Rating			100%
Percentage Prior to Peak			100%
Percentage After Peak			0%

SRO

Duane Eddy

MOOVIN' N' GROOVIN'

<u>Plays</u>	<u>Play Dates</u>	<u>Survey Week Ending</u>	<u>Rating</u>	<u>Billboard Issue</u>
0		1-4-58	0	1-13-58
1	1-10	1-11-58	0	1-20-58
5	1-13, 14, 15, 16, 17	1-18-58	0	1-27-58
2	1-23, 24	1-25-58	0	2-3-58
4	1-27, 28, 29, 31	2-1-58	0	2-10-58
1	2-3	2-8-58	0	2-17-58
2	2-11, 12	2-15-58	0	2-24-58
2	2-19, 21	2-22-58	0	3-3-58
2	2-25, 28	3-1-58	0	3-10-58
1	3-3	3-8-58	0	3-17-58
0		3-15-58	0	3-24-58

REBEL ROUSER

0		5-10-58	0	5-19-58
0		5-17-58	0	5-26-58
1	5-22	5-24-58	0	6-2-58
3	5-26, 28, 30	5-31-58	0	6-9-58
3	6-4, 5, 6	6-7-58	0	6-16-58
4	6-9, 10, 11, 13	6-14-58	0	6-23-58
4	6-17, 18, 19, 20	6-21-58	50	6-30-58
4	6-23, 24, 25, 27	6-28-58	20	7-7-58
5	6-30; 7-1, 2, 3, 4	7-5-58	10	7-14-58
5	7-7, 8, 9, 10, 11	7-12-58	7	7-21-58
4	7-15, 16, 17, 18	7-19-58	6	7-28-58
7	7-21, 22, 24, 25, 28, 31; 8-5	8-10-58*	6	8-4-58*
		(*Billboard Format Change)		
0		8-17-58	8	8-11-58
0		8-24-58	8	8-18-58
0		8-31-58	11	8-25-58
0		9-7-58	13	9-1-58
0		9-14-58	19	9-8-58
0		9-21-58	41	9-15-58
0		9-28-58	52	9-22-58
0		10-5-58	0	9-29-58
2	Played again by Clark on 10-12-58 and 1-1-59			

RAMROD

4	8-1, 4, 6, 8	8-10-58	0	8-4-58
4	8-11, 12, 13, 14	8-17-58	0	8-11-58
3	8-18, 19, 20	8-24-58	0	8-18-58
4	8-26, 27, 28, 30	8-31-58	91	8-25-58
0		9-7-58	53	9-1-58
2	9-11, 12	9-14-58	51	9-8-58
4	9-15, 16, 17, 18	9-21-58	28	9-15-58
2	9-22, 26	9-28-58	37	9-22-58
4	9-29; 10-1, 2, 3	10-5-58	38	9-29-58
0		10-12-58	49	10-6-58
0		10-19-58	64	10-13-58
0		10-26-58	0	10-20-58

CANNON BALL

2	10-8, 10	10-12-58	0	10-6-58
4	10-14, 15, 16, 17	10-19-58	0	10-13-58
5	10-20, 21, 22, 23, 24	10-26-58	0	10-20-58
4	10-28, 29, 30, 31	11-2-58	0	10-27-58
1	11-4	11-9-58	88	11-3-58
5	11-10, 11, 12, 13, 14	11-16-58	71	11-10-58
4	11-17, 18, 20, 21	11-23-58	25	11-17-58
3	11-24, 25, 28	11-30-58	15	11-24-58
4	12-1, 2, 3, 5	12-7-58	19	12-1-58
3	12-8, 9, 10	12-14-58	17	12-8-58
0		12-21-58	19	12-15-58
0		12-28-58	18	12-22-58
0		1-4-59	31	12-29-58
0		1-11-59	26	1-5-59
0		1-18-59	35	1-12-59
0		1-25-59	67	1-19-59
0		2-1-59	0	1-26-59

DETOUR

1	1-13	1-18-59	0	1-12-59
0		1-25-59	0	1-19-59

THE LONELY ONE

0		12-14-58	0	12-8-58
2	12-15, 19	12-21-58	0	12-15-58
2	12-22, 23	12-28-58	0	12-22-58
3	12-29; 1-2, 00	1-4-59	0	12-29-58
2	1-5, 7	1-11-59	0	1-5-59
1	1-16	1-18-59	0	1-12-59
4	1-19, 20, 21, 22	1-25-59	89	1-19-59
5	1-26, 27, 28, 29, 30	2-1-59	62	1-26-59
4	2-2, 4, 5, 6	2-8-59	34	2-2-59
5	2-9, 10, 11, 12, 13	2-15-59	26	2-9-59
2	2-16, 18	2-22-59	23	2-15-59
3	2-23, 24, 25	3-1-59	26	2-23-59
0		3-8-59	30	3-2-59
0		3-15-59	32	3-9-59
0		3-22-59	35	3-16-59
0		3-29-59	35	3-23-59
0		4-5-59	52	3-30-59
0		4-12-59	57	4-6-59
0		4-19-59	71	4-13-59
0		4-26-59	0	4-20-59

THE QUIET THREE

0		5-24-59	0	5-18-59
2	5-26, 28	5-31-59	0	5-25-59
1	6-2	6-7-59	0	5-1-59
0		6-14-59	0	6-8-59

YEP

2	3-5, 6	3-8-59	0	3-2-59
6	3-9, 9, 10, 11, 12, 13	3-15-59	0	3-9-59
3	3-16, 17, 18	3-22-59	0	3-16-59
3	3-23, 24, 25	3-29-59	0	3-23-59
1	3-31	4-5-59	99	3-30-59
5	4-6, 7, 8, 9, 10	4-12-59	61	4-6-59
0		4-19-59	46	4-13-59
2	4-20, 23	4-26-59	30	4-20-59
1	4-27	5-3-59	40	4-27-59
2	5-6, 8	5-10-59	46	5-4-59
0		5-17-59	52	5-11-59
0		5-24-59	55	5-18-59
0		5-31-59	78	5-25-59
0		6-7-59	0	6-1-59

FORTY MILES OF BAD ROAD

2	5-25, 29	5-31-59	0	5-24-59
1	6-5	6-7-59	0	6-1-59
3	6-8, 10, 12	6-14-59	0	6-8-59
5	6-15, 16, 17, 18, 19	6-21-59	96	6-15-59
5	6-23, 24, 24, 25, 26	6-28-59	50	6-22-59
4	6-29, 30; 7-1, 2	7-5-59	31	6-29-59
1	7-7	7-12-59	23	7-6-59
4	7-14, 15, 16, 17	7-19-59	13	7-13-59
3	7-21, 23, 24	7-26-59	12	7-20-59
1	7-28	8-2-59	9	7-27-59
3	8-5, 6, 7	8-9-59	10	8-3-59
0		8-16-59	11	8-10-59
1	8-18	8-23-59	10	8-17-59
0		8-30-59	14	8-24-59
0		9-6-59	23	8-31-59
0		9-13-59	32	9-7-59
0		9-20-59	46	9-14-59
0		9-27-59	66	9-21-59
0		10-4-59	0	9-28-59

FIRST LOVE FIRST TEARS

0		9-6-59	0	8-31-59
2	9-10, 11	9-13-59	0	9-7-59
5	9-14, 15, 16, 17, 18	9-20-59	0	9-14-59
3	9-21, 23, 25	9-27-59	0	9-21-59
2	9-28; 10-2	10-4-59	96	9-28-59
2	10-6, 7	10-11-59	99	10-5-59
0		10-18-59	76	10-12-59
0		10-25-59	59	10-19-59
0		11-1-59	66	10-26-59
0		11-8-59	60	11-2-59
0		11-15-59	65	11-9-59
0		11-22-59	60	11-16-59
0		11-29-59	88	11-23-59
0		12-6-59	0	11-20-59

NOTE: Clark pushed this side extensively and flip side "Some Kind A Earthquake" became a hit at the same time.

SOME KIND A EARTHQUAKE

0		10-4-59	0	9-28-59
1	10-9	10-11-59	77	10-5-59
2	10-15, 16	10-18-59	57	10-12-59
4	10-20, 21, 22, 23	10-25-59	46	10-19-59
1	10-26	11-1-59	37	10-26-59
0		11-8-59	37	11-2-59
0		11-15-59	40	11-9-59
0		11-22-59	58	11-16-59
0		11-29-59	59	11-23-59
0		12-6-59	0	11-30-59

SRO

DALE HAWKINS

SUSIE Q		Checker (label)	Survey	Rating	Billboard
Plays	Play Dates		Week Ending		Issue
		?	6-15-57	42	6-23-57*
		?	6-22-57	30	7-1-57
		?	6-29-57	29	7-8-57
		?	7-6-57	29	7-15-57
		?	7-13-57	35	7-22-57
		?	7-20-57	37	7-29-57
		?	7-27-57	42	8-5-57**
0			8-3-57	43	8-12-57
3	8-6, 7, 9		8-10-57	46	8-19-57
0			8-17-57	51	8-26-57
0			8-24-57	47	9-2-57
0			8-31-57	44	9-9-57
0			9-7-57	43	9-16-57
0			9-14-57	53	9-23-57
0			9-21-57	65	9-30-57
0			9-28-57	80	10-7-57
0			10-5-57	88	10-14-57
0			10-12-57	0	10-21-57

(* First Billboard issue available)

(** Date Clark show went on network and first cards available)

DON'T TREAT ME THIS WAY

0			7-27-57	0	8-5-57
0			8-3-57	0	8-12-57
1	8-6		8-10-57	0	8-19-57
0			8-17-57	0	8-26-57

LA DO DADA

Checker (Label)

0		7-19-58	0	7-28-58
5	7-21, 28, 29, 30, 31	8-10-58	0	8-4-58*
		(*Billboard Format Change)		
4	8-4, 5, 6, 7	8-17-58	0	8-11-58
4	8-18, 19, 21, 22	8-24-58	0	8-18-58
3	8-25, 27, 29	8-31-58	0	8-25-58
4	9-2, 3, 4, 5	9-7-58	98	9-1-58
2	9-8, 10	9-14-58	70	9-8-58
1	9-15	9-21-58	63	9-15-58
3	9-23, 24, 26	9-28-58	62	9-22-58
4	9-29, 30; 10-1, 3	10-5-58	45	9-29-58
2	10-7, 8	10-12-58	44	10-6-58
1	10-15	10-19-58	32	10-13-58
0		10-26-58	40	10-20-58
0		11-2-58	39	10-27-58
0		11-9-58	48	11-3-58
0		11-16-58	87	11-10-58
0		11-23-58	98	11-17-58
0		11-30-58	0	11-24-58

A HOUSE A CAR AND A WEDDING RING

Checker (Label)

1	10-15	10-19-58	0	10-13-58
1	10-21	10-26-58	0	10-20-58
1	10-31	11-2-58	0	10-27-58
4	11-3, 4, 5, 7	11-9-58	0	11-3-58
3	11-11, 12, 13	11-16-58	97	11-10-58
2	11-18, 19	11-23-58	99	11-17-58
1	11-26	11-30-58	0	11-24-58
0		12-7-58	88	12-1-58
0		12-14-58	89	12-8-58
0		12-21-58	94	12-15-58
0		12-28-58	0	12-22-58

SOMEONE SOMEDAY

Checker (Label)

0		1-25-59	0	1-19-59
1	1-26	2-1-59	0	1-26-59
0		2-8-59	0	2-2-59

TAKE MY HEART

Checker (Label)

0		1-18-59	0	1-12-59
1	1-19	1-25-59	0	1-19-59
0		2-1-59	0	1-26-59

YEAH, YEAH		Checker (Label)		
1	2-6	2-8-59	0	2-2-59
2	2-10, 12	2-15-59	0	2-9-59
4	2-16, 17, 19, 20	2-22-59	0	2-16-59
2	2-23, 25	3-1-59	0	2-23-59
0		3-8-59	0	3-2-59
0		3-15-59	0	3-9-59
1	3-17	3-22-59	100	3-16-59
0		3-29-59	65	3-23-59
0		4-5-59	57	3-30-59
1	4-8	4-12-59	53	4-6-59
0		4-19-59	52	4-13-59
0		4-26-59	53	4-20-59
0		5-3-59	0	4-27-59
0		5-10-59	0	5-4-59

MY DREAMS		Checker (Label)		
1	5-12	5-17-59	0	5-11-59
1	5-21	5-24-59	0	5-18-59
2	5-26, 29	5-31-59	0	5-25-59
2	6-1, 4	6-7-59	0	6-1-59
0		6-14-59	0	6-8-59

OUR TURN		Checker (Label)		
1	7-1	7-5-59	0	6-29-59
0		7-12-50	0	7-6-59
1	7-16	7-19-59	0	7-13-59
0		7-26-59	0	7-20-59
0		8-2-59	0	7-27-59
1	8-6	8-9-59	0	8-3-59
0		8-16-59	0	8-10-59

LITTLE LISA JANE				
3	9-16, 17, 18	9-20-59	0	9-14-59
0		9-27-59	0	9-21-59
3	9-29, 30; 10-2	10-4-59	0	9-28-59
2	10-7, 8	10-11-59	0	10-5-59
0		10-18-59	0	10-12-59
2	10-19, 22	10-25-59	0	10-19-59
0		11-1-59	0	10-26-59

SROLaverne Baker

HUMPTY DUMPTY HEART

Atlantic (Label)

<u>Plays</u>	<u>Play Dates</u>	<u>Survey Week Ending</u>	<u>Rating</u>	<u>Billboard Issue</u>
0		8-3-57	0	8-12-57
0		8-10-57	0	8-19-57
3	8-12, 14, 15	8-17-57	0	8-26-57
0		8-24-57	0	9-2-57
1	8-29	8-31-57	0	9-9-57
1	9-5	9-7-57	0	9-16-57
0		9-14-57	0	9-23-57

JIM DANDY

Atlantic

0		8-10-57	0	8-19-57
1	8-15	8-17-57	0	8-26-57
0		8-24-57	0	9-2-57

T CRTED A TRAR

0		12-14-58	93	12-8-58
0		12-21-58	75	12-15-58
2	12-22, 24	12-28-58	45	12-22-58
3	12-30, 31; 1-2-59	1-4-59	34	12-29-58
4	1-5, 6, 8, 9	1-11-59	38	1-5-59
4	1-12, 13, 14, 16	1-18-59	28	1-12-59
	1-20, 21, 23	1-25-59	35	1-19-59
4	1-27, 28, 29, 30	2-1-59	27	1-26-59
2	2-5, 6	2-8-59	19	2-2-59
0		2-15-59	12	2-9-59
1	2-16	2-22-59	14	2-16-59
0		3-1-59	6	2-23-59
0		3-8-59	6	3-2-59
0		3-15-59	9	3-9-59
0		3-22-59	12	3-16-59
0		3-29-59	14	3-23-59
0		4-5-59	20	3-30-59
0		4-12-59	30	4-6-59
0		4-19-59	42	4-13-59
0		4-26-59	58	4-20-59
0		5-3-59	70	4-27-59
0		5-10-59	0	5-4-59

I WAITED TOO LONG

4	4-20, 21, 22, 23	4-26-59	95	4-20-59
4	4-27, 28, 29; 5-1	5-3-59	94	4-27-59
2	5-4, 6	5-10-59	69	5-4-59
2	5-11, 14	5-17-59	54	5-11-59
0		5-24-59	48	5-18-59
0		5-31-59	44	5-25-59
1	6-1	6-7-59	33	6-1-59
0		6-14-59	50	6-8-59
0		6-21-59	40	6-15-59
0		6-28-59	42	6-22-59
0		7-5-59	65	6-29-59
0		7-12-59	0	7-6-59

SO HIGH, SO LOW

Atlantic

1	8-10	7-12-59	0	7-6-59
0		7-19-59	0	7-13-59
0		7-26-59	0	7-20-59
4	7-27, 28, 29, 30	8-2-59	96	7-27-59
0		8-9-59	72	8-3-59
3	8-12, 13, 14	8-16-59	67	8-10-59
0		8-23-59	61	8-17-59
0		8-30-59	54	8-24-59
0		9-6-59	52	8-31-59
0		9-13-59	62	9-7-59
0		9-20-59	57	9-14-59
0		9-27-59	55	9-21-59
0		10-4-59	65	9-28-59
0		10-11-59	0	10-5-59

CHIPS DISTRIBUTING COMPANY

Data provided the Subcommittee staff by Chips Distributing Company was limited to a list of labels distributed by Chips. It was impossible to ascertain all of the artists who record for each of these labels. This was necessary since the cards reflect only title, artist and play date.

Data provided by Computech listed 128 titles distributed by Chips. The staff listed the artists on the Computech "A" title data and cross checked these against the "E" titles listed by Computech. This comparison showed 54 additional titles by these same artists, which were listed as "B" titles.

The staff was able to determine from Billboard ads, ratings and other available data, a list of additional artists who recorded for labels distributed by Chips. The staff made a further search of "B" titles, listed by Computech, and determined that 55 additional titles were listed that were on labels distributed by Chips.

It proved impossible to make this comparison further, since artist lists with the label for which they record were not readily available to the staff.

Known titles played	237
Number of plays reflected	2665
"A" title listings	128
"B" title plays	924
"B" title listings	109
"A" title plays	1741
Average plays per known title	11.2

This data shows a discrepancy in the Computech report of 128 titles and 924 plays, not listed as "A" titles and plays by Computech.

ABC - Paramount

ABC-Paramount provided the Subcommittee Staff with a list of record releases and artists. The staff made a listing of all artists and made the following analysis of ABC-Paramount titles played by Dick Clark.

Total titles played	90
Total plays	805
Average plays per title	8.9

TOTAL PLAYS ON AMERICAN BANDSTAND FOR
FABIAN, AVALON AND RYDELL

Fabian (Chancellor label)	Frankie Avalon (Chancellor label)	Bobby Rydell (Cameo label)
156 plays	342 plays	87 plays

TOTAL PLAYS FOR THREE ARTISTS - 585

Mr. MARTIN. The attached exhibit also points out over 270 errors in the data listed in the IBM cards provided the subcommittee by Computech.

The exhibit also points out instances where Mr. Clark pushed the flip sides of records in which he had a publishing interest.

It is important to note that Mr. Clark, according to the testimony before the subcommittee, did not exercise 100 percent control over the selection of records aired on "American Bandstand." His producer, Tony Mammarella, selected one-half of these records. Mr. Mammarella in turn took payola from Chess, Universal, and other record distributors. He denied any agreement that such payments were to select their records. However, he admitted that such records were played.

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

Mr. HOWZE. Mr. Martin or Mr. Sparger, you mention on the fourth page of your report that the exhibit also points out instances where Mr. Clark pushed the flip sides of records in which he had a publishing interest. This means that on a given phonograph record, on one side the X publishing company might have a publisher's copyright, and on the second side one of Mr. Clark's publishing companies might have a copyright; is that right?

Mr. SPARGER. That is correct.

In about the third page of the exhibit under "Unknown Publishers," these were listed in the Computech data as published by one of Mr. Clark's companies. We were able to determine that as to the first song, "Back to School Again," he did own 50 percent of the copyright. We discovered this during the testimony of Mr. Lowe.

An example of the flip side in this matter, your best example is on page 3, the song "I Am a Man" by Fabian. The flip side of this song was "Hypnotized," which was owned by the January Corp. The song "Hypnotized" was played only one time, and this other side was played extensively, the side "I Am a Man" was played extensively prior to getting in the ratings, and all plays were prior to its reaching its peak in the Billboard charts.

In this instance Mr. Clark pushed the flip side of the record in which he had an interest. And directly from record sales his publishing company would benefit. We did not include those plays in the analysis that Mr. Martin has just presented.

Mr. HOWZE. If a record had large sales because side "A" was given extended exposure over a diskjockey program, the sales of the record would benefit the diskjockey if he were a publisher or had a publisher's interest in side "B", even though he played side "B" not at all; is that correct?

Mr. SPARGER. That is correct.

Mr. HOWZE. And would that be reflected in the Computech analysis?

Mr. SPARGER. No, sir; that would not be reflected in the Computech analysis, as far as we have been able to determine.

Mr. HOWZE. If he did not play the side in which he had an interest but pushed the other side?

Mr. SPARGER. That is correct, because in the Computech data furnished the subcommittee, there was no statement as to what the flip side might be of these records; we would be unable to determine.

Mr. HOWZE. So you haven't had an opportunity to analyze the extent to which the "B" titles listed by Computech have had the effect of advancing Mr. Clark's publishing interest, because Mr. Clark was the publisher on the flip side?

Mr. SPARGER. We did not have the data to do this. Of the instances we were able to find, some were noted quite by accident. Mr. Clark never advised us on some of those companies and what the flip sides of those records might be.

For example, in the matter of Mallard Pressing Co., we were advised as to record release numbers and one title. Obviously a record must have a title on the flip side. We were unable to determine what these titles might be. It is very possible—we feel that we should give Mr. Clark the benefit of the doubt in this particular instance, and we just considered it a side or the side provided by Mallard Pressing.

We did point this out in the big exhibit under Mallard Pressing by listing the ones we did know under the Swan label, where the flip side or the "B" side was pushed or played. This was not included, this was something we left out for complete fairness, or at least to be uniform.

Mr. HOWZE. I have nothing further, Mr. Chairman.

The CHAIRMAN. Mr. Lishman.

Mr. LISHMAN. Mr. Sparger, will you turn to page 4, the last paragraph of your report, on the analysis of records made on the "American Bandstand." Did the fact that Mr. Mammarella apparently selected one-half of the records introduce some new difficulties into your task of ascertaining what records were played in which either Mr. Mammarella or Mr. Clark had an interest?

Mr. SPARGER. Because of this, our analysis dealt with only the interests of Mr. Clark. In an analysis of the "American Bandstand" plays which of course would have to include the interest of Mr. Mammarella and Mr. Clark, I think, sir, that it would be easier to determine what records they did not have an interest in rather than what records they did have an interest in.

Mr. LISHMAN. I have no other questions.

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

Mr. MOSS. No. But I want to compliment the staff for what I regard as a very thorough and objective study of this, attempting to bring some order out of chaos as a result of the very interesting and highly unorthodox study undertaken by Computech.

You made it possible to use some statistics in connection with this to arrive at an objective finding.

I point out, Mr. Chairman, the very important element overlooked by Computech in its failure to give any weight at all to the interests of the one man who was doing 50 percent of the selections for the broadcast, nor did it reflect into the completely individual interests of Mr. Mammarella in those that were played. It is a very fine study.

Mr. SPARGER. Thank you, sir.

The CHAIRMAN. Does that conclude your presentation?

Mr. MARTIN. Yes, sir.

Mr. SPARGER. Yes, sir.

The CHAIRMAN. On behalf of the subcommittee, I want to compliment the staff, too, for the work that you have done, the staff mem-

bers, and as a matter of fact, all of the staff for the tremendous work that you have accomplished on this important and very complicated problem. I know it was a tremendous task to go through all of the records that were presented. But I think this does help the record—I do not know whether it is more confused or cleared up—but it does show that the subcommittee is endeavoring to present all the facts with reference to the information that has come to our attention.

Thank you very much. And you may stand aside.

Earlier in the subcommittee hearings there came to the attention of the subcommittee from the Federal Communications Commission and others the extent of the so-called payola and other types of irregular practices. We received a report from the Federal Communications Commission as a result of the request that we made on their last appearance. That report is included in the record at that point, in order to complete the information which the Federal Communications Commission had as a result of their inquiry to the various broadcasting stations throughout the country. That has also been made public.

On February 25 of this year the subcommittee sent a questionnaire to record distributors in which we asked for certain information. Now, the purpose of this was an effort to expedite the obtaining of information to show to what degree this practice is being permitted, or is experienced in the industry. This questionnaire went to 230 record distributors in 23 cities in the United States.

I have a report from that questionnaire which, in order to present all the information we have thus received as to the extent of this practice, I think should go in the record at this time. At the time this procedure was decided upon, there was a question in the minds of some that we were limiting our investigation into this practice only to the Boston and Cleveland areas. I think everybody realizes now that it has not been limited to those areas.

We have tried to develop a pattern as to this practice. This information will add to that which will show the extent and the number of the large markets in the United States.

Without objection, it will be included in the record at this point.
(Analysis of questionnaires follows:)

**ANALYSIS OF RECORD DISTRIBUTORS' REPLIES RECEIVED THROUGH APRIL 27, 1960,
TO QUESTIONNAIRE OF FEBRUARY 25, 1960**

On February 25, 1960, the House Special Subcommittee on Legislative Oversight mailed a questionnaire to 230 record distributors in 23 cities in the United States requesting, among other things, information of the following:

"List each payment made during the calendar years 1958 and 1959 to radio and television diskjockeys, librarians, program directors, or other station personnel by your company or by any other officer or employee thereof, and indicate to what account such disbursements were charged, i.e.: Promotion, advertising, entertainment, selling expense, gifts, or to any other account.

"The list should include the name of the person to whom payment was made, station letters of his place of employment, date and number of your check, and date and amount of each cash payment."

To effect geographical distribution the 23 cities selected were situated in 15 States and the District of Columbia. Because of the subcommittee's recent investigations in Boston and Philadelphia questionnaires were not sent to those cities. However, replies of certain record distributors addressed showed payments to persons in the broadcasting field in Boston and Philadelphia and such information is included herein.

Of the 230 record distributors to whom questionnaires were mailed, responses to our request for information have been received from 130. It is to be borne in mind that the summarizations herein are only of information submitted in the 130 replies received and do not include other data in the subcommittee's files derived from investigations and other sources of information.

Payments reported related to 122 radio and television stations in 42 cities in 21 States. The total number of 219 recipients was comprised of 207 individuals and 12 licensees. And the sum of the reported amounts paid was \$263,244.67.

Replies from the four cities showing the largest total payments in their respective areas are summarized in the following:

Cities	Replies	Recipients	Number of stations involved	Total of payments
West coast: Los Angeles, Calif.	16	23 individuals; 2 licensees....	13	\$86,954.30
Central United States:				
St. Louis, Mo.	6	23 individuals; no licensees..	6	51,850.00
Chicago, Ill.	11	64 individuals; 1 licensee....	(1)	50,395.24
East coast: Baltimore, Md.	4	10 individuals; 8 licensees....	11	17,237.50

¹ Information incomplete.

The CHAIRMAN. This will conclude the hearings on this series. And insofar as I know at this point, it will conclude the hearings on the subject matter that has been under inquiry now for some time.

It is the hope of the Chair—and I know the other subcommittee members join me—that we can, with the fine assistance that is being given to us, our staff and others, our legislative counsel, that we will have legislation on these various matters within the next day or two, and if I can arrange to have an executive session of the full committee on Thursday of this week, I intend to do so for that purpose. Otherwise, we will meet as soon as we can following an already scheduled meeting of the subcommittee in the next few days.

With that explanation, and the thanks of the chairman to everyone who has cooperated and assisted in connection with these hearings, the subcommittee will now stand adjourned.

(Whereupon, at 5:15 p.m., the committee adjourned, subject to call.)

RESPONSIBILITIES OF BROADCASTING LICENSEES AND STATION PERSONNEL

TUESDAY, AUGUST 30, 1960

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

The special subcommittee met, pursuant to recess, at 3 p.m., in room P-15, U.S. Capitol Building, Washington, D.C., Hon. Oren Harris (chairman of the special subcommittee) presiding.

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

Also present: Mr. Lishman, Mr. Stark, Mr. Beasley, Mr. Kelly, and Mr. Eastland of the committee staff.

The CHAIRMAN. Mr. Paul G. O'Friel.

Will you be sworn, please?

Do you solemnly swear the testimony you give to the committee to be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. O'FRIEL. I do.

The CHAIRMAN. Have a seat.

TESTIMONY OF PAUL G. O'FRIEL, ACCOMPANIED BY JOHN D. LANE, COUNSEL

Mr. O'FRIEL. Mr. Chairman, I have a statement.

The CHAIRMAN. Mr. O'Friel, you were before the committee in February of this year, and you testified in a public hearing to certain facts.

Prior to your testimony, Mr. Norman Prescott had testified to the committee in executive session for reasons that were given at that time falling within the rules of the House.

Subsequent thereto the committee felt at a certain stage that all of the information that was included in the record, public record, should have been released, and one of those statements or testimony was that of Norman Prescott and that was some time after you had testified in February. Then at a later date you submitted to the committee a statement which you requested to go into the record.

There were conflicts between your testimony, as you said in your statement that you asked to include in the record, and what Mr. Prescott had said. The question then developed whether or not your request could be complied with. There were reservations made. We felt under the rules of the House and under proper procedure we

should not permit your statement just to be included in the record as it was, and then Mr. Prescott's additional statement to be included in the record as it was, without any opportunity for the committee to ask questions for clarification.

Because of that situation and the importance of it and certainly due to the fact that it is all sworn testimony, and your proposed statement was verified, the committee thought the only proper thing to do was to give you an opportunity to come back to the committee and make such additional comments as you desire and at the same time Mr. Prescott to be brought back for any further questions or clarification or statement regarding the matters already testified to in connection with your station. You understand the background as I have explained it?

Mr. O'FRIEL. Yes, I do, Mr. Chairman, and I appreciate the opportunity to be here.

The CHAIRMAN. I understand you have a statement which you wish to present.

Mr. O'FRIEL. Yes, sir.

My name is Paul O'Friel. I am general manager of radio station WBZ in Boston, Mass.

On the morning of February 8, 1960, your subcommittee, in closed session, heard testimony from Mr. Norman Prescott, a former disk-jockey and employee of station WBZ.

Later the same day I was called to testify in open session. At the time of my appearance before the committee I was entirely unaware of the nature or content of Mr. Prescott's remarks.

However, after publication of the Prescott testimony on February 17, 1960, I learned for the first time that it contained many false charges and allegations reflecting on my personal integrity and that of the station and employees under my supervision.

Had I been aware of Mr. Prescott's charges at the time of my own appearance I would, of course, have answered and refuted them. Mr. Prescott has tried to leave the impression that I was aware payola existed at WBZ and did nothing to stop it.

This is absolutely untrue.

Mr. MACK. Could I interrupt you. Did you say aware or unaware?

Mr. O'FRIEL. I was unaware.

Mr. MACK. Thank you.

Mr. O'FRIEL. I have always been deeply committed to the responsibilities vested in those who serve the public through radio, yet I recognize that, in the final analysis the honesty and integrity of the people directly involved determines whether payola can exist.

I would like to discuss now each of the matters raised by Mr. Prescott and show that he gave you false and inaccurate information about me and my station.

Early in his testimony, Mr. Prescott stated that his employment by WBZ had terminated in July 1959, a fact about which there is no dispute.

However, Mr. Prescott went on to explain that this termination with WBZ resulted from his shame, self-disgust, and his decision to leave the broadcasting industry.

While Mr. Prescott may have been ashamed and disgusted, the contention that his separation from WBZ was voluntary is simply not true.

Time and time again in the months prior to July 1959 he was cautioned by his superiors, including me, that his disinterested attitude and patronizing manner both on and off the air were not conducive to good broadcasting and to the achievement of the standards maintained by WBZ.

It was called to his attention that his acceptance by the listening public and his program ratings in the Boston area had dropped.

Advice and counsel to Mr. Prescott failed to effect a change in his attitude toward his work, superiors, and fellow employees, and on May 19, 1959 the station management decided not to renew his talent agreement even though it contained an option to do so.

Mr. Prescott had been hired under a special talent agreement which was subject to, but at a substantially higher rate than, the basic union contract covering all announcers and talent.

The decision relative to Mr. Prescott was communicated to his attorney, Mr. Robert Segal, on July 13, and a lump-sum payment of \$3,000 was then negotiated in lieu of working out the unexpired term of the talent agreement.

As late as last Friday I conferred with Mr. Robert Segal as counsel and he confirmed five things:

(1) That the decision to terminate Prescott was a company decision.

(2) That the \$3,000 settlement was for the balance of the contract which ordinarily would have expired September 4.

(3) That no discussion of Prescott's status as a staff announcer ever came up, and (4) no reference or mention was ever made of disgust or dissatisfaction.

Now, while I have been certain of the circumstances surrounding Mr. Prescott's removal, I want to emphasize it was not voluntary on his part but rather the station WBZ.

If Mr. Prescott had attempted to stay on under the basic union contract his salary would have dropped from an average of \$550 per week to \$137.50. At no time did we even discuss Mr. Prescott remaining as an ordinary staff announcer but if he had elected to so remain I would have discharged him from that capacity.

Incidentally, Mr. Prescott was the only WBZ employee, past or present, who refused to answer our written inquiry on payola.

Furthermore, he fraudulently, and without premission, delivered our official stationery to a record distributor for the unauthorized preparation of so-called hit tune lists.

To the best of my knowledge he is the only station employee who ever misused our trust in such a manner.

Earlier in my statement I noted that one reason for WBZ's decision to terminate Mr. Prescott's diskjockey contract was the fact that his acceptance by the listening public and his program ratings had dropped. In this regard I would like to discuss briefly the means by which this fact was determined.

We have always relied exclusively on the Boston metropolitan five-county pulse survey for program analysis purposes. Comparing the ratings for September-October 1958 and subsequent months with the

corresponding months in 1957 and 1958, Mr. Prescott's program showed an average rating drop of 22.3 percent during each rating period.

Over the period of approximately 2 years preceding the date of Mr. Prescott's discharge, his program showed a general, substantial decline in ratings.

The ratings of the time period in which Prescott was scheduled at the time of his employment, were relatively low. The purpose in hiring him was to effect a substantial increase, which he did during the first 2 years of his contract. Thereafter, his share of audience and ratings progressively declined.

Another false charge made by Mr. Prescott was that he had been instructed by the station's management to "plug" certain records in connection with movies then being legitimately advertised by the station.

This allegation is absolutely untrue and is categorically denied. When questioned further by subcommittee counsel in this regard, Mr. Prescott stated specifically that he was told by Mr. Fitzpatrick, an account executive of WBZ, to emphasize a record taken from the then current motion picture "Hole in the Head."

When Mr. Prescott's testimony was made public and WBZ learned of this charge, I immediately took steps to determine its basis. Through my investigation it was learned that Mr. Fitzpatrick did not handle the account for the picture in question.

Rather, it was the responsibility of a Mr. Thomas Dunn.

The United Artists representative who purchased the advertising for the motion picture was Mr. Joseph Mansfield. I found there was no basis to Mr. Prescott's charge. In the course of my investigation, I obtained a signed statement from Mr. Mansfield and affidavits from Messrs. Dunn, Fitzpatrick, and 11 other employees from the program manager on down, anyone who conceivably could have had any part in such arrangements. Copies of this statement and the affidavits have been delivered to subcommittee counsel, and it is requested that they be made a part of the record.

Contrary to Mr. Prescott's testimony, the evidence shows that no request has ever been made nor any promise given to play records in connection with the advertisement of motion pictures over WBZ.

It is WBZ practice and policy to procure all merchandise, including records to be used as contest prizes, on either a cash or reciprocal basis. In a reciprocal arrangement the parties execute a standard WBZ contract form exchanging station time for merchandise.

In another method, under the then generally accepted industry practice, merchandise, including records, is reciprocated by on-the-air description given to the audience in advance of or at the time of the award.

The allegation by Prescott that while at WBZ he was requested by Mr. Jack Williams to obtain records or albums to be used as prizes, and that Mr. Williams instructed him to give favorable treatment to the records of the donating distributor is flatly denied. The affidavit from Mr. Williams states that he has never made such a request of any WBZ radio personality.

Following the charge discussed above, Mr. Prescott alleged in his testimony to the subcommittee that I had personally ordered him,

while he was employed by WBZ, to plug records made by the Lester Lanin Orchestra.

According to Mr. Prescott, my alleged order was for the purpose of compensating Mr. Lanin for a performance in connection with a block party sponsored by WBZ as part of a charitable fund raising campaign.

Mr. Prescott's statement is entirely false, for I never gave, nor had reason to give, such an order. WBZ, as a matter of operating practice, engages in efforts to promote listenership and public attention.

The Brockton block party was designed to benefit a local charity and at the same time promote station good will. As the result of a contest, the Old Colony Mental Health Association was successful in becoming the beneficiary of the party.

Dumont Record Distributors agreed to furnish the Lester Lanin Orchestra as its contribution to the project.

Mr. Lanin testified that his orchestra appeared at its minimum fee as was his custom for charitable affairs. WBZ had no connection with this part of the arrangements, and it was my understanding that, whatever the arrangement between Dumont and Lanin, the benefit accruing to the Lanin Orchestra from WBZ would be that which resulted from publicity surrounding the contest and party.

A crowd over 35,000 including the Lieutenant Governor of Massachusetts and many local officials attended the Brockton party. The primary purpose of the party was to create enthusiasm and public interest rather than raise money.

This was clearly demonstrated by the fact that the \$100,000 goal was subsequently oversubscribed. The clinic was established and during the past year has treated over 700 cases. WBZ's investment of time, money, and talent proved most worthwhile and truly in the public interest.

Another facet of the "Block Party" matter developed in my testimony bears further explanation. Subsequent to the party an article appeared in a broadcasting trade periodical entitled "Sponsor."

The general subject of this article was WBZ's role in promoting the "Block Party," but the article did not indicate that the event had also been advertised through several newspapers and a local radio station in Brockton.

This information was given to Sponsor magazine by WBZ, and we regret that full credit was not given to all who had any part in making the affair a success.

Mr. Prescott's testimony concerning the replenishment of the WBZ record library in mid-1958 is misleading and requires comment.

Upon my appointment as general manager of WBZ, I undertook a complete review of the station's operating and programing practices. In the course of this review, I concluded that our record library was insufficiently supplied with albums of so-called standards and popular hits of other years.

Prior to 1960, it had always been standard practice in the record industry for manufacturers to distribute new releases to stations free of charge.

In this way, by a selective process, good libraries of standard tunes were gradually built up. In light of this longstanding practice, I

authorized Mr. Givens, our record librarian, to visit the manufacturers in order to obtain albums of past releases.

Mr. Prescott was permitted to accompany him on these visits. They were never authorized to make any promises of special or preferential treatment for any records to manufacturers whom they visited.

Mr. Givens, who was employed by a competitive radio station at the time he testified, stated that they did not meet with any reluctance on the part of the record manufacturers.

Mr. LISHMAN. Mr. Chairman, may I interrupt at this time. We have here a very self-serving document, and I just believe that the record should show that what Mr. Givens testified to is in the record.

Where in the record—give us the reference where Mr. Givens so testified?

Mr. O'FRIEL. We will look it up and supply it to you later.

Mr. LISHMAN. I think it should be supplied at the proper place.

This statement is full of similar statements, with no reference whatsoever in the record to where the testimony occurred. There is no quotation of testimony, it is all a paraphrase and who wrote this statement, I don't know. Did you write it yourself?

Mr. O'FRIEL. Yes, I did.

Mr. LISHMAN. Every word?

Mr. O'FRIEL. Yes.

Mr. LISHMAN. Who helped you?

Mr. LANE. I helped him, Mr. Lishman. My name for the record, my appearance has not been tendered.

The CHAIRMAN. Yes.

Mr. LANE. My name is John D. Lane, with law offices at 1001 Connecticut Avenue NW., Washington, D.C.

Mr. LISHMAN. Just at this point in the record, to make it clear I call attention to the testimony in galley-88 and this is what Mr. Givens actually testified, not what somebody said he did.

Mr. GIVENS. We indicated that the records we came for would be used. I honestly have no recollection of having indicated that we would give further extension to laying on records.

We made it very clear that any records we took we took because we needed and they would get definite exposure on the air.

Mr. O'FRIEL. I don't agree with your conclusions and interpretations.

Mr. LISHMAN. Here you say as Mr. Givens testified there were no tie-in promises or commitments made in connection with the album. Here he told them they were going to get definite exposure on the air.

Mr. O'FRIEL. Well, you know the very purpose of obtaining these records, as, you know, we discussed at the time, was for the purpose of using them on the air. This was our programing and this is the reason we obtained it. There were no tie-ins, there were no commitments, no promises authorized in any way, shape, or form.

Mr. LANE. I think, Mr. Lishman misconstrues the testimony here, he merely said—

The CHAIRMAN. Well, we will stop the argument then. You go ahead and I think you had better proceed and finish your statement and then we will have an opportunity to examine it.

Mr. O'FRIEL. And WBZ was given approximately 1,000 albums of previously released recordings.

It is important to note that prior to the trips, WBZ representatives examined the catalogs of the various manufacturers and decided which records were desired for permanent retention in its library and general station use.

Although WBZ intended to make use of these records, as Mr. Givens testified, there were no tie-ins, promises, or commitments made in connection with the albums and, furthermore, the manufacturers did not require us to accept or use any particular records.

I want to emphasize that the records here involved were not new records being pushed by the distributors in order to increase their sales, but were standards and old hits generally collected and maintained by radio stations as staple items in their record libraries for periodic and occasional use.

Since my last appearance here, my investigations of this matter substantiates the testimony of Mr. Givens that if the station had purchased the records (as opposed to the then current industry practices of accepting free records) the amount involved would have been less than \$1,000.

I am also happy to note in the report of the committee on page 21, section 3, you covered the same situation where you said:

Where distributors supply a new station or a station which has changed its program format with a substantial number of different releases no announcement is required under section 317 where the records are for broadcast purposes only nor should the public interest require an announcement in these circumstances.

The station would have received the same material over a period of time had it previously been on the air or followed this program format.

Mr. LISHMAN. This is all argument, Mr. Chairman, this is not testimony.

The CHAIRMAN. Well, you are referring to a recent report.

Mr. O'FRIEL. Recent report of your committee, Mr. Chairman.

The CHAIRMAN. Yes, but the fact is, Mr. O'Friel, you are reading a report that accompanied a bill which has been reported on the House and finally passed as of today which changed the law from when it was at the time and the committee felt there was a need and we did bring about that change which we thought was needed in the law.

Mr. D'FRIEL. Mr. Prescott's testimony implies that I did not take proper control of station procedures and as a result I was not in a position to prevent payola.

Upon my arrival at WBZ radio in July 1958, I reviewed current proceedings and further implemented and strengthened practices in the selection of records to be played on the air.

As illustrative of action taken, I established the full-time job of music director to supervise the selection, review, and control of music. Preplanning of programs was emphasized. A regular analysis of the records played was made. Record promotion men were barred from the studios. Regular meetings were held to discuss monitoring results, program rules, and policy matters.

I deny Mr. Prescott's conclusion that neither I nor the management of WBZ took proper interest in programing. I feel strongly that it was because of our interest in obtaining better programs through

the procedures such as those outlined above, and our close supervision, that Prescott was eventually dismissed.

In the fall of 1959, I began a thorough check of my employees. Before the committee actually began its investigation, we made known to the committee our desire to cooperate fully in its work. In consequence of this, the results of my investigation were turned over to the committee.

The information furnished showed that two employees, Mr. Alan Dary and Mr. David Maynard, had been the recipients of certain gifts and money.

Investigation of Mr. Dary indicated that he had received cash in nominal amounts and other gifts as Christmas presents. In light of his past record and all the evidence available to us, we concluded that these gifts did not constitute payola. However, such conduct did represent poor judgment and Mr. Dary was, therefore, placed on probation.

David Maynard told me that during the period of his employment at WBZ (April 1958 to December 1959) he had received a total of approximately \$3,000 from two record distributors. Mr. Maynard was suspended from his on-the-air activities pending further investigation.

Both company officials and subcommittee investigators questioned David Maynard and the record distributors involved regarding these payments. Mr. Maynard constantly maintained that the payments had no relation to his on-the-air activities, but instead were compensation for reactions that he could and did transmit to these two distributors concerning live audience response to records at record hops.

The distributors verified Mr. Maynard's position and he furnished further substantial support by exhibiting to us his income tax return for the year 1958.

We are advised that on the advice of an agent of the Internal Revenue Service, these payments were reported as a principal business activity.

Record hops: Sales promotion for major record companies. These statements were supported by the subsequent testimony of Mr. Maynard and that of the record distributors involved. The filing of the tax return preceded any indication of any investigation in this area.

During his employment, Mr. Maynard with the knowledge of WBZ, actively conducted a total of 135 record hops throughout the New England area, most for the benefit of charity. The company has encouraged employee participation in these activities because they benefit many worthwhile public services and bring about public contact for the artist.

As a final step of my investigation we tried to ascertain from the subcommittee counsel the existence of any additional facts that would assist us in making a decision as to the reinstatement of Mr. Maynard.

This was based on a feeling that perhaps the investigating staff of the Oversight Committee, through its power of subpoena, might have secured information not known to us from other sources. We were informed that no information could be made available to us.

Although I felt that it indicated extremely poor judgment on Mr. Maynard's part in entering into outside activity which could involve a conflict of interest, I concluded he had not accepted payola. Ac-

cordingly, I decided, on the basis of the facts available, to reinstate him. This was accompanied by a warning, probation, and close surveillance of all his radio activities.

The letter of reinstatement contained the following language:

Because of the pending proceedings before the House Legislative Committee on this subject and the obvious need of the industry to rid itself of such practice, it is urged that you cooperate with this committee as fully as possible in order to accomplish an expeditious and effective result of their proceeding.

The decision to reinstate or to discharge Mr. Maynard was an extremely difficult one. We were committed to a policy forbidding payola.

On the other hand, we were unable to uncover any conclusive facts or evidence that we could fairly use as the basis for terminating his services.

For this reason, Mr. Maynard was placed on probation and returned to the air. I believe this decision was fair and I can readily assure you that it would have, from a company point of view, been a great deal easier to have fired him, thereby avoiding potential criticism.

In conclusion, let me state these facts:

1. We had a policy prohibiting payola which we made every effort to enforce.

2. The management of WBZ at no time was ever aware of the existence of payola at the station.

3. The handling of the Maynard and Dary matters was based upon objective investigation and the considered conclusion that their activities could not in fairness be established as constituting payola.

4. The procurement or use of records or albums by WBZ was never predicated upon a promise of favorable or preferential treatment, but followed what was the rather well-established industry practice in relation to record distributing companies.

5. WBZ is one of the oldest stations in New England, and follows the pattern of our company's establishment of the first station in the country: KDKA. During this long period of broadcasting our entire objective has been based on service to the public. This has been manifested in a multitude of activities and the expenditure of substantial sums of money. Recognition of our efforts is evidenced by the receipt of innumerable citations and awards.

I would like to comment on the work this committee and its chairman have done. As I have said before my station and my company has cooperated from the very start with this committee and turned over all the material its investigations had unearthed well in advance of the hearings.

However, even with a most stringent management safeguard and checking it will always be very difficult to detect payola. If an employee is determined to be dishonest, and disloyal to his employer, he will take all sorts of measures to escape exposure, and on the other side of the coin is the selfish and greedy individual who will go to all lengths to corrupt.

The committee investigation has produced many examples where such people have corrupted many fine young talents in our industry. Such people should be bearing at least an equal share of the criticism and censure.

Above and beyond our cooperation to this committee, we believe that the long-range enforcement of our policy requires statutory support. Therefore, we recommended to the FCC and to the Congress as early as January of this year that a Federal bribery law be passed. Such an act will be a powerful deterrent not only to those within the industry but to those who are outside seeking to further their selfish interests by corrupting employees within the licensed industry.

At this point, I wish to thank the subcommittee for this opportunity to appear and present the truth in these matters.

The CHAIRMAN. That concludes your statement, does it?

Mr. O'FRIEL. Yes, sir.

The CHAIRMAN. May I state that the bill you referred to was finally consummated, the final amendment was adopted by the House today, and there are penalties provided in the bill for such activity which I think probably will take care of the things which have been referred to.

Mr. O'FRIEL. Thank you; I am glad to hear it was passed.

The CHAIRMAN. Mr. Lishman, you have questions now you want to ask?

Mr. LISHMAN. I would like to, if I may, Mr. Chairman, ask one or two questions of a preliminary nature of Mr. O'Friel and then ask the Chair to have Mr. Prescott go on and then recall Mr. O'Friel to find out what the truth really is here, and whether the statements in this obviously self-serving statement are entirely correct.

The first question I would like to ask, Mr. O'Friel, you state that the procurement or use of albums by WBZ was never predicated on any promise, of preferential or favored treatment and your procedure in getting these albums was standard practice, is that correct?

Mr. O'FRIEL. Sir, this question of the record library was this.

Mr. LISHMAN. I am asking you the question, was that—is it your testimony here in this statement that, you followed the standard practice in getting these free albums, was that your testimony or not, correct me if I am wrong.

Mr. O'FRIEL. I am trying to answer your question this way, and I have to almost start from the beginning. As you can appreciate over the period of years—

Mr. LISHMAN. I didn't say it is a very difficult question, Mr. O'Friel, is it a standard practice or not, to get free records the way you got them in this instance; that is a simple question, yes or no; is it a standard practice?

Mr. O'FRIEL. I cannot answer your question yes or no, sir. I would like to ask, to answer it this way. Over a period of years stations—

Mr. Moss. Mr. Chairman, this has been explained by Mr. O'Friel as the standard practice. But as I recall the testimony of Mr. Givens, it was characterized as an unusual incident and he related the response of executives of record companies which indicated, if he correctly reported their statements, that they also regarded this as an unusual and not a usual procedure. I don't see why it is not possible without going back in telling us it was a change in management or change in policy, it was intended to build up a record library. We have heard that and it has been repeated, and it should be possible to get a responsive answer to a very simple question.

The CHAIRMAN. You understand what the question is, Mr. O'Friel.
Mr. O'FRIEL. Yes, and I was trying to explain my answer.

The CHAIRMAN. All right.

Mr. O'FRIEL. And my answer was this: That on a regular basis, stations received records from record companies, and the stations retained those records they find and use those records, and they find that over the long run it will help and build their station library.

Now, you can get these on a regular basis and they can be built up. In our case, with this change in programing where we wanted to improve it, we had an unusual situation I must admit, and this was one where we didn't have these other records, and they were not available through the regular distribution procedures, and we went to the manufacturers and explained our problem to them, and said "We are trying to improve and build up our library and obtain records where possible to fill this out and program our station with hits of yester-years and old standards and music such as this."

The CHAIRMAN. Then the answer to Mr. Lishman's question is it was an unusual procedure. Because it was an unusual case.

Mr. O'FRIEL. I don't think I can say it is an unusual procedure because you know the procedure in the record industry at that time, and our industry was that they furnished records to the stations.

The CHAIRMAN. That has already been stated. There is no need to go over and over that. It is a matter of fact that this has not been the customary practice to get a whole library at one time.

Mr. O'FRIEL. Well, I can't, you know, answer whether it is a customary practice, because I am not familiar with, you know, the general situations that can arise.

The CHAIRMAN. Well, had your company been doing that?

Mr. O'FRIEL. No.

The CHAIRMAN. Well, all right.

Mr. MOSS. Mr. Chairman, after all we have here a statement which has been designed to refute not only factual statements or assertedly factual statements but inferences which might be drawn from previous testimony. And I point out that in Mr. O'Friel's statement today, item 4 on page 14, we have these words:

The procurement or use of records or albums by WBZ was never predicated upon a promise of favorable or preferential treatment but followed what was the rather well-established industry practice in relation to record distributing companies.

Over on the testimony of Mr. Givens in, I think it is folio 88 on page 57 of that, we find Mr. Givens saying regarding his visit to the Decca:

As I recall Mr. Goldberg sat back in his chair, looked us both right in the eye and said, "I have never done this before. I will do it this once. I will not do it again"—

which would seem to indicate that rather than being a well-established practice, that this was, in fact as it has been characterized, an unusual or exceptional instance. There is other testimony in here I can pull out. But I mention that because of the emphasis placed in the testimony we do have from others than Mr. Prescott a statement or testimony on this same point.

Mr. O'FRIEL. You see, we would have received this same material over a period of time had we previously, you know, followed this type of format or programing.

Mr. Moss. But you didn't.

Mr. LISHMAN. Mr. O'Friel, on this point, could you have had the choice of the albums under the methods if you had got them either on subscription or club plan? Would the station have had to take what was sent to them on their club description?

Mr. O'FRIEL. Well, there are two different ways we receive records. One way is on the club subscription plan as you suggest or put forward here, and the other way is the regular way where the record distributors and manufacturers supply you records and new releases on a running basis, and you cull through this and retain in the long run that which you think will give you the kind of program material that you want with the format you have on the air at that particular time.

Mr. LISHMAN. Now, you state on page 14 that—

the handling of the Maynard and Dary matters was based upon objective investigation and the considered conclusion that their activities could not in fairness be established as constituting payola.

Are you familiar with the fact that the Westinghouse station in Cleveland discharged discjockey Finan for payola?

Mr. O'FRIEL. Yes; I am familiar with the fact.

Mr. LISHMAN. What is the difference between what Mr. Finan did in taking money from record distributors and what Mr. Maynard did?

Mr. O'FRIEL. First of all, I can't conclusively answer between the two because Cleveland is not necessarily my responsibility. It is my understanding that, you know, and I have to look to my own situation in the area for which I am responsible and that is—

Mr. LISHMAN. If I may interrupt, Mr. O'Friel, you have repeatedly through this statement acted as though you were a spokesman for Westinghouse policy and that is why I asked you the question. If you are a spokesman for Westinghouse policy the same policy ought to apply in Cleveland as in Boston.

Mr. O'FRIEL. I speak for, I am Paul O'Friel, general manager of WBZ in Boston.

Mr. LISHMAN. You have been speaking of a company policy repeatedly here.

Mr. O'FRIEL. That is owned and operated by Westinghouse and I am aware and familiar with Westinghouse policy, and Westinghouse policy is in the case of payola this results in dismissal, and I think you have to look at each case involved and see that you have the clear-cut facts to move in and make such a decision, and I tried to point out here in my statement that in the case of Maynard or in the case of Dary, we didn't consider this payola, and in the case of Maynard we had no conclusive evidence that this ever influenced his on-the-air judgment. You have to remember these are human beings, these are employees; these are men who have families and children and reputations and you can't move without conclusive evidence. You can't move on the basis of what you feel or what you're suspicious of. If the evidence is clear cut there is no question about it. Payola results in dismissal and that is our policy and it always has been.

Mr. Moss. Mr. Chairman?

The CHAIRMAN. Mr. Moss?

Mr. Moss. Mr. O'Friel, as you know, this committee has had a rather long and trying series of hearings on payola.

I don't recall anyone, with one exception, who has admitted to taking payola. I recall no one who admitted that it influenced him. I recall no single distributor who acknowledged the giving of it, even though it was regularly scheduled just like a salary check, that it was ever designed to do anything to remotely influence programing.

What is the difference between what Mr. Maynard did in taking in a period of some 16 months \$3,000 from these people; what was the difference in that and what we in the committee have characterized as payola?

Mr. O'FRIEL. Mr. Moss, I think this is different. In the case of Maynard he engaged in an outside activity. Here he put on the 135 record hops over this period of time. This was for charities and for public service purposes and exposures in the area. He traveled throughout this entire area.

Mr. Moss. They all did.

Mr. O'FRIEL. He tested the records at these various record hops. He got immediate reaction at these places for, you know, the popularity of records. It was put on for churches of all denominations, parents, teachers associations.

Mr. Moss. We have had all that testimony from Mr. Maynard and from most of the other diskjockeys. They all seemed to follow a pattern in their conduct, and for myself if I were to conclude that this did not constitute payola, I would find it most difficult to conclude that any other instance constituted payola.

Mr. O'FRIEL. Well, in the case of payola, I think you have to look to see whether or not it influences his on-the-air judgment.

Mr. Moss. We have desperately tried to.

Mr. O'FRIEL. And his programing ability, and I can, you know, sympathize with you, Mr. Moss, the difficulty of this. You know, despite all the rules and regulations and policies and deterrents we set up, you know, we are getting down to the basic honesty and integrity of individuals and you know it is much like embezzlement for example, it is very hard to detect. If people are bent to doing this and taking action such as this, it is awfully hard in a relationship to detect this, and believe me, I have taken, you know, every step I possibly can to control it, and still, you know, here is a case in the case of Mr. Prescott, you know, he deceived me and I readily admit this. Despite everything else, I was unable to ascertain and determine that, you know, his programing judgment was validated.

Mr. LISIMAN. In that connection didn't you in your previous testimony before this subcommittee testify that you had informed our investigators Eastland and Kelly that you had not been in touch with Smith, the lawyer for Maynard when you in fact had been in touch with him?

Mr. O'FRIEL. I would like to answer that and if you pointed out specifically—

Mr. LISIMAN. I can give you the dates.

Mr. O'FRIEL. May I see the testimony to refresh my recollection, because I want to say I think we tried to cooperate in every way

possible with this committee to help them in what they were trying to do, because we are as concerned as you were about this problem.

Mr. LISHMAN. Would it refresh your recollection if I had Mr. Kelly and Mr. Eastland testify?

Mr. O'FRIEL. No, you can remind me, I think there is, I am looking back to my notes.

Mr. LISHMAN. I am asking you to look at your own testimony before the subcommittee, I handed you an extract of it.

Mr. O'FRIEL. What part do you question, because I certainly would like to get it cleared up.

Mr. LISHMAN. I will read the questions to you.

Mr. O'FRIEL. If you could point out what part that is giving you trouble?

Mr. LISHMAN. I will read this.

Is it a fact that Mr. Maynard had agreed to furnish an affidavit to Station WBZ regarding this matter on December 14, 1959?

Mr. O'FRIEL. Yes, sir.

Do you remember that on December 14, Mr. Maynard telephoned you and said that he would be in on the following day with his attorney?

I do not recall—

is your answer.

The next question:

There is not any question but that Mr. Maynard attended a meeting at 9:30 a.m., on December 15, 1959?

Your answer:

Yes, sir.

Do you recall receiving a telephone call at WBZ at about 4:30 p.m. on December 15, 1959, from Mr. Kelly an investigator on the staff of this subcommittee.

Mr. O'FRIEL. Yes, sir. The 15th.

Then we go on:

Do you recall at that time in the afternoon you informed Mr. Kelly that neither Mr. Maynard nor his lawyer had contacted you or WBZ in spite of the fact that he was supposed to turn into you affidavit on that day?

You answered:

I do not recall the conversation.

The next question:

Do you recall on December 17, 1959, you received a telephone call from Mr. Oliver Eastland, investigator for this subcommittee, and you told him at that time you had not heard from either Mr. Maynard or his lawyer Mr. Smith.

Your answer:

Yes, sir; I do.

Then is this question:

Is it not a fact that you had been in conference with both Mr. Maynard and Mr. Smith during the morning of December 15, 1959?

Your answer:

Yes, sir.

Now is it correct or not that you had misinformed Mr. Eastland as to your meeting with Mr. Maynard and Mr. Smith?

Mr. O'FRIEL. I am very happy for the opportunity to clear this up and refresh my recollection in the situation.

Mr. LISHMAN. I am going to the question of how much you really cooperated with our investigators.

They reported you had not cooperated.

Mr. O'FRIEL. I would like to clear that up for the committee. I think we cooperated with the investigator. We met with Mr. Eastland and Mr. Kelly according to my notes on December 14, 1959, which was a Monday, and we should check that date because I see the record says December 15. If we have a 1959 calendar we should check, but we met December 14, 1959, with Mr. Eastland and Mr. Kelly and we reviewed with them the current status of our investigation and we reported at that time that we were meeting the following day with Mr. Maynard and Mr. Smith and we were going to discuss our requests for a sworn statement.

Now, on December 16, according to my notes, which is a Wednesday at 4:48 p.m., Mr. Kelly telephoned me at my office, and according to my notes of my diary it was whether or not we had obtained the sworn statement from Mr. Maynard. We had not obtained the sworn statement from Mr. Maynard at that particular time.

Now on December 17, Thursday at 12 o'clock noon, I received a telephone call from Mr. Eastland and according again to my notes, this was in regard as to whether or not we had received a sworn statement from Mr. Maynard.

At that particular time we had not received a sworn statement from Mr. Maynard and my files show a letter of December 19, 1959, to Mr. Ed Smith, attorney for Mr. Maynard, where he attached a copy of Mr. Maynard's statement, and this was a sworn statement.

But at that particular time he put a qualifying clause on it. He said we could use this only for company purposes and we could not disclose it to any outside source.

We had told Attorney Smith in our conference prior to that time and long before that that any information in our files would be made available to this committee as well as to the FCC or any other Government investigating body, and, therefore, we moved at once to get this exclusion clause dropped so that we would be in a position as quickly as possible to deliver a copy of Maynard's sworn statement to the committee, and I think this was, as soon as this was cleared up Maynard's sworn statement was voluntarily turned over to the committee.

Mr. LISHMAN. I call your attention to your own testimony. The question was "and you told Mr. Eastland that at that time on December 17, 1959, you had not heard from either Mr. Maynard or his lawyer, Mr. Smith," in fact you had heard from him. You had seen them, hadn't you?

Mr. O'FRIEL. You know, I wasn't trying to deceive Mr. Eastland at that time at all. I had told Mr. Eastland on Monday the 14th when they were there that we were having this subsequent meeting the next day with Maynard and his attorney. They knew at that time we were meeting with Maynard and also attorney for the purpose of obtaining a sworn statement and I think one of the investigators' comment at that time was, "You know if you get it, frame it."

Mr. LISHMAN. Now, Mr. Chairman, I think that inasmuch as this witness has raised questions as to the veracity of our witness, Prescott, who came down here and against the advice of his counsel testified and

voluntarily told about payola, the only witness we have had before the committee who has done so and the question of veracity was not raised by Mr. Prescott but by Mr. O'Friel, I think in fairness to all concerned and in order to clarify the record we should have Mr. Kelly and Mr. Eastland take the stand and testify to exactly what they were told by Mr. O'Friel in this telephone conversation, because the explanation that he is now giving is diametrically opposed to what each of these gentlemen have repeatedly told me.

Mr. O'FRIEL. Mr. Chairman, you know, I don't lie, I honestly don't, and I never have nor will I here or now, you know for this job or any other job. I am, you know, I have a moral code of my own and that is one thing I think if you check my record, that I don't lie.

Now, in this situation when they asked me certain questions I didn't have my notes or I didn't refer to my notes and I have just given you the chronological rundown of this. This, you know, to my mind is what took place at the time, and my records so indicate.

This is what it indicates at the time.

Mr. LISHMAN. Did you have those notes with you when you testified before us on February 8, 1960?

Mr. O'FRIEL. I didn't refer to them at that particular time and I didn't discover until later on what the situation was. I just think I was confused at that time, at least this one point there which I hope I cleared up in the testimony I gave just now.

Mr. LISHMAN. You say that you handled the Maynard and Dary matters. It was based upon objective investigation?

Is that correct?

Mr. O'FRIEL. Yes, it was an objective investigation.

Mr. LISHMAN. Who made the payments of money to Maynard, what record distributors?

Mr. O'FRIEL. I would have to refresh my memory on this.

Mr. LISHMAN. Dumont was one.

Mr. O'FRIEL. Dumont was one.

Mr. LISHMAN. Music Suppliers was the other?

Mr. O'FRIEL. Music Suppliers was the other; these two.

Mr. LISHMAN. And you knew that?

Mr. O'FRIEL. I didn't know that until Maynard came in and confessed and told us that this was the case and this came, you know, only about, I think, once we announced that we were conducting our own investigation, we urged our people to come forward and in light of what subsequently might be developed, "Don't surprise us, you know, tell us, let's get it out on the table here and now," and this took a while to get out because this is a hard thing for people to come forward and admit.

Mr. LISHMAN. Did you instruct Mr. Maynard to go and call on Dumont and arrange for a conference with them and representatives of Westinghouse?

Mr. O'FRIEL. No, it happened like this: Mr. Maynard, you know, sincerely was convinced what he was telling us was the truth. As far as he was concerned he felt these two people could collaborate and confirm what he himself believed to be the situation.

Now, we did meet with these people—

Mr. LISHMAN. How was that meeting arranged? That is what I asked you.

Mr. O'FRIEL. Maynard confirmed the arrangements with these people.

Mr. LISHMAN. Is this the correct chronology: Mr. Maynard went and called on the Dumont people and Music Suppliers people and made—talked the whole situation over with them; after he had talked the situation over with them he made arrangements for a meeting with them and representatives of Westinghouse at the Somerset Hotel; is that a correct summary?

Mr. O'FRIEL. I can't give you and can't confirm whether or not it is a correct summary because I don't know, you know, of Maynard's action and what happened. What happened was Maynard told us what—and he said, "I can get two people and these people who I said got the money from, they will confirm what I said," so we sat down with these people and I think this is what is important, not the procedure as to how this came about, it is the procedure of sitting down and talking to these people and getting their story, and going about the effort to try and get as much information as we possibly could on this matter in order to make our decision, and, you know—

Mr. LISHMAN. Would you consider it an objective investigation to send around a man who took the money from the people to arrange to set up an appointment so they could ease you into seeing them, to talk the situation over with them?

Do you consider that objective?

Mr. O'FRIEL. I think you have to look at various types of investigations you conduct and various people who conduct the investigations.

And I think this is important to keep in mind. Now certain types of investigations in criminal matters, you know kidnapers, bank robbers, you wouldn't do this necessarily, but we are talking now to our own people, to our own employees, to those who, you know, we have a certain amount of confidence and trust in, and you know the method as to how we go about it, I don't think that is important, I think it is the results that we try to obtain, and the balanced judgment that we maintain and try to maintain in arriving at the conclusion that we are trying to arrive at in fairness to all the people involved, and we are concerned about those people out there that we serve and what we do to serve those people, and we wouldn't compromise that in any way, shape, or form because we realized the public responsibility and trust we have as a licensee of a radio station like WBZ in Boston.

Mr. LISHMAN. Didn't you feel and haven't you somewhere stated that Maynard was a valuable investment to this station?

Mr. O'FRIEL. Mr. Lishman, I don't think there is any argument about this; Maynard is a valuable investment.

Mr. LISHMAN. And weren't you attempting to protect your valuable investment by having Mr. Maynard call on these people and cook up a story was the reason he got paid was for record hops and not for airing records over the station?

Mr. O'FRIEL. I think getting back to the valuable investment this is a question we have to look into. In Prescott's case he was making almost twice as much as Maynard.

Mr. LISHMAN. How much was he making?

Mr. O'FRIEL. Prescott?

Mr. LISHMAN. How much was Maynard getting?

Mr. O'FRIEL. I don't have his exact figures here.

Mr. LISIMAN. Was it \$30,000 a year?

Mr. O'FRIEL. No; I would say a little more than half of what Prescott was getting. We will make his contracts and earnings available to you if you want.

Mr. LISIMAN. No.

Mr. O'FRIEL. But the investment, I don't think enters into it. Sure he was a valuable investment but he was an employee also. Prescott was a valuable investment but we moved in that area and eliminated him when the circumstances dictated, so, you know, the value of the investments, I don't think necessarily enters into any elements of our decision. I think what we are looking for is, are we serving the public interest and to keep this employee on, will this be a disservice to the public whom we are licensed to serve?

Mr. LISIMAN. Isn't it a fact that you suspended David Maynard December 1, 1959?

Mr. O'FRIEL. Yes, sir, and I think we delivered to the committee a copy of, you know, our letter of suspension, of that same date.

Mr. LISIMAN. Just a minute. I will ask you a question; you said "Yes," that's true. Wasn't it on December 2 that Westinghouse representatives first met with the Dumont and Music Suppliers people?

Mr. O'FRIEL. Yes; this is correct, and the reason—

Mr. LISIMAN. So you had already suspended him and then you went around to find out a way on which you could get him back on; is that correct?

Mr. O'FRIEL. Sir, immediately when this came to our attention and got the facts on it we moved and the first thing we did was to suspend him and pending an investigation and we told this to him in the letter of suspension, and we said, "We were going to investigate this, we were going to check out the facts." We were going to do everything possible to test his story and we did. We proceeded to test this story.

Mr. LISIMAN. What did you do?

How did you proceed to test it?

Mr. O'FRIEL. We did it by talking to these people. We did it by, you know, talking to other internal people, we reviewed his music lists.

Mr. LISIMAN. What other people?

Mr. O'FRIEL. We tried to test this against the records he played on the air to arrive at something in this area. We went through this procedure of obtaining the various signed statements, the sworn statements, the statements from his accountant. You know we came down and asked the committee if you could help in any way in helping us to arrive at a decision and then we reached the point, we reached the point where, you know, this man's livelihood was at stake, this human being, you know, under great family strain at this point, we had to make a decision and we weighed all the facts and I think we weighed them objectively, I think we weighed them judiciously, and we reinstated him on a proper basis and we said, "You know, cooperate with the committee, go down and tell them your story, and he did, and he told the same story under oath, and apparently in our reading of the record, nothing further came out under oath, with the power of subpoena, and the other vast resources that a committee of Congress has, to change necessarily, you know, the story or the defense or the state-

ments that Maynard had made to us in the course of our investigations and studies of this matter.

Mr. LISHMAN. Mr. Chairman, I have no further questions of this witness at this time, but I think again, in fairness to all concerned we should ascertain the amount of cooperation that was extended to us by Mr. O'Friel.

He has posed a serious question here; we are informed by our investigators that he did not cooperate then with them on the really essential things. It was a surface cooperation that didn't extend into the realities of the situation.

Mr. O'FRIEL. Mr. Chairman, I think we investigated every possible way. We turned over the various statements we obtained, we voluntarily came down and did this to the committee even before we, long before, long before, you know, the hearings were held.

We turned all this information over to the committee; we turned Maynard's statement over just as soon as we got it.

Mr. Moss. Mr. Chairman, I would point out some time before we went into hearings it was fairly generally known that the subcommittee planned to check into matters of this type, but I am puzzled more by your reasoning as it applies to the *Maynard* case than anything else because I notice that in your previous testimony you said that in your discussions with Mr. Carter and Mr. Dinerstein, they stated that checks and cash payments were made on the basis of appreciation for Dave Maynard pushing new records at record hops.

As I recall the testimony of the various diskjockeys before our committee, one of the requirements for a diskjockey to have an opportunity to successfully promote record hops is that he have air time where he could play records and develop some sort of an audience.

Do you seriously believe that for the limited playing occurring at record hops that there was gratitude to the extent of payments amounting to almost \$200 a month for some 16 months?

Mr. O'FRIEL. Mr. Moss, these record hops—

Mr. Moss. I know all about them.

Mr. O'FRIEL. Accomplish a couple of things.

Mr. Moss. I know all about them. I merely ask for your opinion, I don't want any more lectures.

Mr. O'FRIEL. I am trying to, you know, give my position.

Mr. Moss. If you have no opinion, say you have no opinion, that is all.

Mr. O'FRIEL. I am trying to give my opinion.

Mr. Moss. Don't give me the history of record hops, I have heard it from many witnesses.

Mr. O'FRIEL. I think we have to look at record hops for what they are and what they accomplish.

Mr. Moss. I withdraw the question, Mr. Chairman. I don't want any further lectures on record hops. I conclude there is no opinion.

The CHAIRMAN. Mr. O'Friel, you said, speaking of your company that you had a policy prohibiting payola. When was that policy put into effect?

Mr. O'FRIEL. Mr. Chairman, I think from as long as I have been with the company, you know, payola has been forbidden, payola has always been looked upon as dishonesty and something that interfered in the relationship between the employer and the employee. I hastily

add and conclude that since the hearings of this committee, and since the spotlight has been thrown on it, we have been able to adopt additional steps and additional controls which we hope will deter the people from—the employees—from participating in this outside activity.

The CHAIRMAN. Yes, and I think this legislation which has just gone through when the President signs it will have a terrific bearing on it because if they engage in that again, why there are not going to be any excuses from anybody, now that payola is a criminal offense.

I had the impression when we got into this, and it almost developed overnight, that this was sort of a new thing. There had not been much about payola. A lot of people thought it was a new word coined. Of course, we found out 25, 30 years ago the issue came up. It seems to me from what you said here that there is a continuing policy on the term "payola." Had you heard the term "payola" before last year when this thing came up?

Mr. O'FRIEL. I think as long as I have been in show business or broadcasting business, I heard of the term "payola," and you know we always looked upon this as something, you know, pretty hard to detect or determine, because the very nature of it, it is under the table, it is backhanded, it is nefarious, it violates all laws of decency and honesty, and like in any relationship such as this, it is extremely hard to detect, and I think, you know the legislation you passed is going to be helpful to us in enforcing—

The CHAIRMAN. I thought any action taken by the industry in trying to take steps that would prevent such practices, I am inclined to think and I think it is the general feeling of the committee as a whole from what has been going on that in some instances the industry has been too careless, turned their backs and closed their eyes on a lot of these things, and I just hope that what has been done and what has resulted will help improve that situation.

I don't see any fun or getting any particular kind of pleasure out of developing these kinds of things where people are involved, particularly people with good reputations and acknowledged good citizens. I just hope, and this is sort of an anticlimax here in going to try to give you an opportunity to express your own feelings about the record which has been developed here, I concede there are differences of opinion in several matters. Nevertheless, that is the purpose of calling this committee together.

Mr. Mack, do you have any questions of this witness?

Mr. MACK. Yes. I have been interested in the definition of payola for quite some time, and you indicated that then it included under-the-table transactions, if I remember your statement correctly.

Mr. O'FRIEL. Yes, sir. You know, devious, under the table, backhand.

They don't engage in the lottery or some place where you can see them, it is done in a very surreptitious manner. There is nothing open and aboveboard about it.

Mr. MACK. Do you have any employees in your station that you pay by making car payments for them?

Mr. O'FRIEL. No, sir; we certainly don't.

Mr. MACK. Well, how, in what category would you put an arrangement whereby someone pays the car payments for another person?

Mr. O'FRIEL. Well, I think I would have to look at the fact situation involved as to why this was being done, and what the circumstances surrounding it are at the moment.

Let me emphasize we are paying no car payments as far as our station is concerned in any way, shape, or form.

Mr. MACK. Then did you ever think of some justification for the record companies' paying Mr. Maynard, I believe, in the form of car payments?

Mr. O'FRIEL. Well, Mr. Maynard, when he came in and told us about this, and you know we worked out all this story from him, and told us the whole situation, of course, we were suspicious and you know on the face of it, I thought this is it, and we immediately at that moment suspended him from the air, and then proceeded along with our investigation.

Now it proved from his tax returns and statement from the people and further verified by what the people said here under oath that this was for an outside activity, an outside activity that I think, you know, bears on a conflict of interest. But you know it didn't compromise his programing judgment.

Mr. MACK. Did you have anything in your contract with Mr. Maynard that precluded him from lecturing at some university or some civic group?

Mr. O'FRIEL. I don't recall the terms and conditions, you know, in our private talent contracts, they run for many payments but I think in the case of lecturing at a private university or a university or a school, unless this constituted a conflict of his interest in his regular on-the-air duties, we may or may not object.

Mr. MACK. I am not interested in the details anyway. If he did have such outside employment and it was permitted under the contract, wouldn't you expect them to give him a check rather than making a car payment or sending him a record player or something of that kind?

Mr. O'FRIEL. Well, if this is a regular employer-employee arrangement on the outside, and is done, you know, with our knowledge and with our consent as far as, you know, the relationship is concerned, I don't think we would enter into, officially how the payment was from his employer at that time to, you know, the employee in that particular instance unless we felt it compromised his on-the-air judgment or generally his employment contract.

Mr. MACK. Didn't you think this was rather unusual and might even fall in the category of being underhanded?

Mr. O'FRIEL. Well, you know, I felt the same way when I first heard about it. It was unusual.

Mr. MACK. I am inclined to agree with you.

Mr. O'FRIEL. When I saw the tax return which was made up fully a year, several months before, I don't know whether it was April of that year or the year before, and we were told by the accountant that he had gone over this with the Internal Revenue Service and the Internal Revenue man said "Set it up as a separate business" and it was so set up and I think we furnished the committee with copies of that tax return, which sets this up always an outside business activity and he carried on this outside business activity as such as an independent business.

Mr. MACK. Well, he wouldn't normally report it to the Internal Revenue Service as a bribe, would he?

Mr. O'FRIEL. Well, I couldn't act as his counselor in regard to tax matters.

Mr. MACK. You say you conducted a very thorough investigation, and you have also said that you did not feel that Mr. Maynard was taking payola. And yet it seems that the means of paying Mr. Maynard strongly indicates that it was an under-the-table or backhanded manner of making some money available to him.

Mr. O'FRIEL. Well, I think we have to get down to, you know, what is payola in this particular case and that is did the payola influence or interfere with his programing judgments and responsibilities in any manner, shape or form, and in this case, you know, the 135 record hops he conducted, this averages out, I think, to \$26 a hop, and this is understandable that, you know, this would have some value or some worth to the record distributor or supplier in order to immediately get reaction from the teenagers who will give you, as you know teenagers, immediate reaction to records and help them plan their potential sales quotas.

Mr. MACK. Did you advertise the record hops on the air over your station?

Mr. O'FRIEL. Yes, from time to time we did advertise record hops over the air.

Mr. MACK. Then you almost promoted record hops over your station?

Mr. O'FRIEL. Yes, at that particular time before we had this new interpretation of 317, we felt that, you know, as part of our public service activity we could promote this on the air because it was doing two things. One, because it was promoting the individual charity or public service involved such as churches and schools and PTA's and secondly, it was further promoting and exposing our talent and getting them additional exposure so you know it would build up his position on the air.

Mr. MACK. You have promoted the block affair over your station?

Mr. O'FRIEL. Yes, we certainly did promote the block party.

Mr. MACK. Did you ever feel any obligation to pay Lester Lanin money that he testified—

Mr. O'FRIEL. Well, you know in the case of this block party situation and I would like to get this cleared up. I think here was a genuine public service. Here was an organization about to embark on a fundraising drive, the Old Colony Mental Health Association for Youth, where they are trying to build a center to aid the youth and in this case they won the price of the block party and this called attention to their drive and I think it is noteworthy to see how successful this was, you know. They not only reached their \$100,000 goal but they were oversubscribed and they had many cases, over 700 cases last year that they treated, and you know this is what, you know, resulted from advertising the block party on WBZ radio and I think, you know it contributes to our public image, and the service that we are trying to do for the people in our area, and I think the block party was a very valuable one.

Mr. MACK. Of course, there is some question about this payment, as to whether or not there was some payola involved there for promoting the block party and promoting Lester Lanin.

Mr. O'FRIEL. Well, I don't think there was any payola here for the simple reason that the way, you know, this was set up. There was set up the case where they came to us with the Lester Lanin orchestra and it fitted in with our plans we were having at that time to have a block party and there was part of our regular promotion to get out to the various areas.

In this case they said, for the publicity we get on the air and for the exposure we get out there and the people well, we will furnish you Lester Lanin and his orchestra and we so advertised this on the air and picked this charity and as I say, I think that they benefited very well from it.

The station, you know, got none of these funds whatsoever and I would like to clear that up. I think somewhere in the testimony it is said that, you know, only a certain small sum of money was collected. This wasn't a fundraising event. It was merely to call attention to the drive and they took up collections at the time. And our people, our station people did not touch this money in any manner, shape or form. This was handled entirely by the association.

Mr. MACK. I just wanted to ask one other question without going into great detail, and that is, Isn't it true that your station also promoted this block party through advertisement in the Boston newspapers?

Mr. O'FRIEL. Yes, I think I admitted the last time.

Mr. MACK. You had a substantial interest in the promotion of the party?

Mr. O'FRIEL. Well, you know this party was designed to do, the two things: One, to you know, build our public image and if you look upon this, if your intentions were other than honorable I think we could have taken this orchestra and run a dance for our own benefit or something, but we didn't.

Our station invested substantial sums of money, tied up our whole staff to go down and help organize and develop this affair, and you know we end up with a letter from the city manager there which I would like to read and it says:

Station WBZ is identified as WBZ-Boston, but considering the tremendous attendance in Brockton last Friday it should be WBZ-Massachusetts and your public service enterprises are not confined to the limits of Boston, but rather a vital and encouraging force for good throughout New England.

WILLIAM A. GILDEA,
City Manager.

This is dated April 2, 1958; this was the reaction that a community leader such as this had to this affair. I think it speaks well for what was accomplished here.

Mr. MACK. It isn't pertinent but I did wonder why so much money was spent—\$100,000 raised and Lester Lanin evidently was never paid the full fee for his orchestra. You had no obligation to pay that?

Mr. O'FRIEL. I want to clearly have you understand no obligation to Lester Lanin.

Epic Records and Dumont Distributors came to us and said "We are going to furnish you Lester Lanin and his band for a WBZ promotion."

We had the idea we were going to do a block party to go out and initiate ourselves with the community and get our personalities and our people better known, and so these two plans meshed and fitted together and we made no commitment to Lanin or to his people that we were going to play his records or favor his records, but, you know, I must explain he did get the promotion and publicity on our air, and he did get 40,000 people or 35,000 whatever the number.

Mr. MACK. Which he probably appreciated.

Mr. O'FRIEL. Which did help Lester Lanin, and you know, in this connection I would like to point out—

Mr. MACK. I don't want to prolong this because it is not pertinent in the first place, and I don't know whether Mr. Lanin has ever gotten the balance of his payment or not but I presume he will get by all right.

Mr. O'FRIEL. All right, you know, again I want to emphasize we had no part in that arrangement.

Mr. MACK. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Derounian?

Mr. DEROUNIAN. Mr. O'Friel, I would like to ask a few questions involving you. What was your background prior to your coming to station WBZ?

Mr. O'FRIEL. I was originally born in Altoona, Pa. I went to the University of Pittsburgh where I received my bachelor of arts degree in 1946. I went to the University of Pittsburgh Law School where I received my law degree in 1949. That is roughly my educational background. As far as employment, I started to work for the FBI in 1942, continued through—

Mr. DEROUNIAN. What capacity?

Mr. O'FRIEL. I started out as a clerk in the Pittsburgh field office. In 1944 I left the FBI and went to service in the U.S. Navy where I served for 2 years. Part of the time as enlisted man and finally as an ensign. Following my graduation from law school I worked for the FBI again from 1946 to 1949. From 1949 to 1950, I was engaged in the general practice of law in Pennsylvania where I am admitted to the Allegheny County courts, the superior and the supreme courts of Pennsylvania.

Mr. DEROUNIAN. In other words, you have had some experience in making investigations?

Mr. O'FRIEL. I rejoined the FBI in September 1950, where I continued until 1953, served as a special agent in the Detroit and New York offices.

Following that I went to work for the Dumont Broadcasting Corp. where I was assistant director of labor relations and personnel and later director of labor relations and personnel and then joined Westinghouse where for a time I was general manager of KDKA in Pittsburgh and then to the New York office and then back up to our Boston office and general manager of WBZ radio.

Mr. DEROUNIAN. Did you receive any citations during any of these periods of employment with the FBI?

Mr. O'FRIEL. Well, no, my FBI record, I don't know whether it is available but I certainly recommend that you check it if you have the facilities of my service there.

Mr. DEROUNIAN. Is it true you had an outstanding record of employment with the FBI? Don't be modest.

Mr. O'FRIEL. Modestly I would like to think so.

Mr. DEROUNIAN. I will continue in the morning.

The CHAIRMAN. It will be necessary for the committee to adjourn now since the chairman of the Ways and Means Committee is ready. The committee will adjourn until 10 o'clock in the morning at the regular committee room, at which time you will be back, Mr. O'Friel.

(Whereupon, at 4:30 p.m. the committee recessed, to reconvene at 10 a.m. Wednesday, August 31, 1960.)

RESPONSIBILITIES OF BROADCASTING LICENSEES AND STATION PERSONNEL

WEDNESDAY, AUGUST 31, 1960

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

The special subcommittee met, pursuant to recess, at 10 a.m., in room 1334, New House Office Building, Washington, D.C., Hon. Oren Harris (chairman of the special subcommittee) presiding.

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

Also present: Mr. Lishman, Mr. Stark, Mr. Beasley, and Mr. Eastland of the committee staff.

The CHAIRMAN. The committee will come to order.

At the conclusion of the hearing yesterday afternoon the witness had completed his statement and was being interrogated by members of the committee.

We had to adjourn for the evening, and I believe, Mr. Derounian, you were questioning the witness at the time we adjourned and so you may be recognized.

TESTIMONY OF PAUL G. O'FRIEL, ACCOMPANIED BY JOHN D. LANE, COUNSEL—Resumed

Mr. O'FRIEL. Mr. Chairman, before we proceed, may I try to clear up just one point.

On seeing the transcript of the testimony yesterday, I recognize the confusion here in the point that Mr. Lishman was trying to make, and that is in regard to the telephone calls of Mr. Eastland and Mr. Kelly to me.

When they were in to see me on Monday the 14th, we told them we were going to have this meeting on Tuesday with Maynard and his attorney and we were going to try to get this signed statement.

When they called me on Wednesday and on Thursday, I gather from what they have said they have—they asked me, "Did you have such a meeting?"

I thought they asked me, and I answered in return to this whether or not I had received the affidavit, and in this case, I answered no, I have not received the affidavit, which, you know, I have not. I think this is where the confusion has come and I didn't recognize it until I went over my testimony yesterday and then my prior testimony, that this is a lack of communications between the two.

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I was answering a different question than they were asking, and I want to take this opportunity to try to clear up if we could, because, you know, I am not quarreling with them or what they say or what they said.

I am trying to point out that I was answering my question which was, you know, "Did you get the affidavit," and which everybody was concerned with at that time, and which we were trying to get.

The CHAIRMAN. Mr. O'Friel, all we are after, and this is our objective and responsibility, is to get the facts. It isn't our purpose and neither is it the purpose of the staff, to try to make an issue of the thing, but we do insist that we should try to clear up any misunderstandings and obtain all the facts regarding these matters even though, as I said yesterday, this is somewhat of an anticlimax proposition we are going into anyway. The legislation dealing with the subject has already been completed and I can understand how it is under the circumstances that the committee felt compelled to give you an opportunity to come and be heard as well as the other party involved here, Mr. Prescott.

I do want you to know that our purpose is to obtain the facts and that is what we want.

Mr. O'FRIEL. Mr. Chairman, that is the reason I want to thank you once again for the opportunity and that is the reason I brought it up because, you know, I want to get the fact straightened out if we possibly can.

The CHAIRMAN. All right, Mr. Derounian.

Mr. DEROUNIAN. Mr. O'Friel, when you read from those notes yesterday, were those notes made at the time of the telephone calls and conversations?

Mr. O'FRIEL. Yes, sir, this was a chronological rundown made at the time.

Mr. DEROUNIAN. Mr. O'Friel, who had charge of the public service department for your station?

Mr. O'FRIEL. That comes under the program manager, Mr. Mel Bailey. But I personally also get into this area because of our concern and interest.

Mr. DEROUNIAN. I see here that Mr. Crosby, who is not known for his reticence, has said the following:

One of the few objects with a genuine sense of public responsibility, public service responsibility in the feeling that television is not just a lovely gadget with which to make money is the Westinghouse Broadcasting Co.

I know there has been a lot of discussion before this subcommittee about what a network can do about public service and from the information I see here I certainly want to commend your network for putting on such programs as "Pornography, the Business of Evil." This was a very courageous and very necessary thing to introduce this program on pornography and how it operates and what people can do with it. I know back home mothers are worried. You had one program on alcoholism, et cetera, and I want to commend your network publicly, whatever your other deficiencies may be, for at least living up to the public service provisions of the FCC. I have nothing else.

Mr. O'FRIEL. Thank you very much, sir. I assure you we are going to try to continue it if at all possible. If I may interject, I

would like to say so far this year our station has gotten two awards. The only radio entity in the United States so recognized. The networks of all the other radio stations, this was picked by an independent group, in one case the Thomas Alva Edison organization honored WBZ radio as the radio station that best served youth in 1959, and if I may read the citation, they said :

For general excellence of programing for youth and for special features created to entertain and encourage the interest of young people and ideas and ideals worthy of their attention, with special commendation for the series that challenge Soviet science.

And just recently our station again was picked to represent the United States and the radio entity and radio documentary of Anne Frank, the memory and meaning and this has been entered in competition with 25 other countries for the Prix Italia prize which will be determined finally in Trieste, Italy, this coming September. I go into this, you know, because, you know, I would like you to get the impression of the totality of our station and we are proud of what we are trying to do in this area.

The CHAIRMAN. Mr. Rogers?

Mr. ROGERS. Mr. O'Friel, one question: What prompted you to want to reopen this matter?

Mr. O'FRIEL. Well, Mr. Rogers, my problem was I couldn't leave the record the way it was. We have to continue, you know, to do business as a licensee, and the record, I felt, was extremely confused at this point, and—

Mr. ROGERS. When did you make this decision that it was confused?

Mr. O'FRIEL. Well, as soon as I read Mr. Prescott's testimony, I think I made the decision at that point.

Mr. ROGERS. How much time transpired between that and your request to be heard?

Mr. O'FRIEL. I think we tried to file a statement some time in May or, if I recall the date correctly—May 11, we filed a statement.

We filed a statement with the staff of the committee.

Mr. ROGERS. How long was that in relation timewise, how much time had transpired between the time that you discovered or thought that Mr. Prescott had made some misrepresentations and the time you requested to be heard on the subject?

Mr. O'FRIEL. Well, I think we filed the statement May 11. We may have—

Mr. ROGERS. I know, but the point I am talking about was time, was it 2 weeks or 3 weeks or 6 weeks?

Mr. O'FRIEL. I think informally we talked with the staff prior to filing our statement almost, you know, as soon as that stage of the hearings was over, sometimes, the dates—March, I think.

Mr. ROGERS. Are you saying that there was no delay in between the time that you read Mr. Prescott's testimony and the time you requested to be heard and offer your explanation of it?

Mr. O'FRIEL. Mr. Rogers, I don't think there is any unnecessary delay. I think we had to look when the total hearings were done, at that period of time, which, as I recall they went over maybe a 2-week span involving the whole Boston area, and some of the distributors involved.

Mr. ROGERS. Did any other situations develop that caused you to want to come back before this subcommittee and be heard further on it, that is did you lose some business or were you being criticized—

Mr. O'FRIEL. I think our whole reputation was at stake. I think we are considered a very honorable institution in New England and people, you know, depend upon us for knowledge, you know, of news and our whole integrity, I think was at stake here.

Mr. ROGERS. Weren't you more interested in your license than you were your reputation, sir?

Mr. O'FRIEL. Sir, I was interested.

My personal reputation first, I think, and we are all somewhat a bit selfish.

Mr. ROGERS. I know, but weren't you a little bit afraid, Mr. O'Friel, that your license might be in jeopardy on account of this?

Mr. O'FRIEL. Mr. Rogers, I am always concerned about my license, you know, on a daily basis we do everything possible to satisfy the rules and regulations and commitments we have made to the Federal Communications Commission.

Mr. ROGERS. You think your fear of losing your license was about equal with your fear of losing your reputation?

Mr. O'FRIEL. Well, you are trying to separate, you know, my corporate from personal. I think personally I was more anxious to get this cleared up, but my corporate responsibility was also as trustee of this license and I took them both very seriously.

Mr. ROGERS. Well, if you are successful in getting cleared up favorably to your position it will shore up your license situation too, won't it, as well as your reputation?

Mr. O'FRIEL. I certainly hope it does because I do want our license to renew and do some of the things, you know, and do some of the things we are trying to do in the New England area.

Mr. ROGERS. Well, if you had your license granted as a matter of right, do you think you would have been back down here making this presentation?

Mr. O'FRIEL. I certainly would have, sir, for my personal integrity and that of the station and of the men and women who make up WBZ radio.

Mr. ROGERS. That is all.

The CHAIRMAN. Mr. Flynt?

Mr. FLYNT. When, Mr. O'Friel, did you learn the contents of Mr. Prescott's testimony in executive session?

Mr. O'FRIEL. If I recall, I think it was released February 17, and I learned parts of it orally that day and I think read it within 4 or 5 days after that time.

Mr. FLYNT. When did you first contact the staff of this subcommittee for an opportunity to be heard?

Mr. O'FRIEL. My attorneys made the actual contact, and I wouldn't be able to supply that exact date to you at this time.

Mr. FLYNT. When did you request them to ask that you be heard?

Mr. O'FRIEL. I think we requested them immediately upon the release of the Prescott testimony, and some of the facts that were raised at that particular time.

Mr. FLYNT. That is all, Mr. Chairman.

The CHAIRMAN. Well, let's clear this up now, just a minute on this now. As a matter of fact, you never did ask to be heard, did you, Mr. O'Friel?

Didn't you send a statement down here and ask that it be put in the record in response to what you had learned had been said by Mr. Prescott?

Mr. O'FRIEL. Yes, sir; I think I filed this statement of May 11 with the committee after having some informal, my attorneys having some informal discussion with them.

Mr. LANE. Mr. Chairman, perhaps I can be helpful on this point. Mr. O'Friel, I don't believe is familiar with our conversations with Mr. Lishman and his staff, and if I may with your permission I would be glad to give you what information I have on that point.

Immediately after the publication of this testimony, Mr. Hedrick, my partner, and myself called upon Mr. Lishman in his office, and advised him that we were retained in this matter and we were beginning to review the entire testimony of the hearings, and that it was our intention to either supply something to this committee for the record. Now, I was proceeding under your rules of this committee, Mr. Chairman, and in particular, rule 19.

The CHAIRMAN. I am not questioning anything about that.

Mr. O'FRIEL. I am just asking you did you request this committee to hear you at any time after this matter had come out, after your appearance here and after Prescott's testimony had been made public?

Mr. O'FRIEL. I would have to rely—may I consult counsel on that to answer?

No, I guess I never requested to be heard in answer to your question.

The CHAIRMAN. That's right.

Mr. O'FRIEL. I think we filed a statement.

The CHAIRMAN. As you said, your attorneys did talk to Mr. Lishman and each one of us got a copy of a statement, verified statement, following that, which you requested be put in the record. Now, that is the thing that brought this meeting together, because as a matter of policy the committee does not take statements to be included in the record as such without an opportunity to cross-examine upon it, and that is the reason why we called this special hearing to give you an opportunity to be heard, to consider putting it in the record. I think that is actually what happened.

Mr. O'FRIEL. I would abide by those facts, sir.

The CHAIRMAN. Mr. Moss?

Mr. Moss. Well, as I recall we acted rather quickly to release the testimony on the 17th which was approximately 9 days after it had been taken in February, and there was no statement filed with this committee and there was no request to receive a statement or to make an appearance prior to the 10th of May.

There may have been contacts with the committee staff, review of the testimony and so on, but there was no request. The request came approximately 3 months after the testimony was made public at a time when the committee was either winding up or had wound up its hearings.

Mr. LISHMAN. Mr. Chairman.

Mr. Moss. Mr. Lishman?

Mr. LISHMAN. I would like to clarify this a little.

Mr. Moss. We received a statement on the 10th or 11th, didn't we?

Mr. LISHMAN. That is correct. But prior to that time it is a fact that counsel for the station called on me and discussed the effects of the Prescott testimony and were exploring whether or not they could file, have put in the record a supplemental statement to clarify what they said were discrepancies or inaccuracies in Prescott's testimony, and as I recall my discussion with the attorneys, I said we wanted to be perfectly fair about this matter, that the committee would probably require live testimony on this, that they could try putting in a request to put in a written statement but I was pretty sure the committee, following its past views in this matter, would not take it.

Does that approximately state what I told you when you were there, Mr. Lane?

Mr. LANE. I think it does, Mr. Chairman, and I don't want to burden the record further but—

Mr. Moss. On the point of rule I point out that is at the discretion of the committee. The committee, if it approves, may receive a statement. It is not mandatory that the committee receive the statement or that it place it in its records for its files.

Mr. LANE. No, we never contended it was mandatory but the rule does provide specifically for a person who has appeared before this committee and someone has appeared—

Mr. Moss. That is perfectly all right. The rule is quite clear on its face and it merely says the committee may if it desires receive the statement and we did not so desire. We didn't have the request before us as a committee until the, I believe, 11th day of May. So there was no great rush to get in here and put the record straight.

Yesterday, Mr. O'Friel, I tried to get you to tell me what the difference was between the type of payments received by Maynard and the type of payments received by other diskjockeys which have been characterized as payola. And because of the inclination to deliver a lecture on the general problems of diskjockeys I withdrew the question.

Now, I point out that we had other witnesses before this committee. One of the witnesses was a Mr. Steen of Records, Inc., in Boston, and I have there checked the transcript because I wanted to make certain my memory was correct and that this matter had come up, and Mr. Steen on page 523 of our transcript testified that he paid \$200 to Dave Maynard on March 22, 1957, when he was an employee of another station in the area. This was prior to coming to work for your station. When asked the purpose of the payment Mr. Steen made this statement, "I suppose it would cover record hops and records to be played on the air, sir."

So it would appear that prior to coming to work for you, Mr. Maynard had, in fact, accepted payola, according to the general and rather hazy interpretation or connotation of the word.

Now—I think it was on February 15 so it was approximately a week after Mr. O'Friel's testimony—this was taken in public session, so this was not a matter which was not generally known at the time the testimony was given.

You have told us that Mr. Maynard received payment for record hops. For hops and for playing on the air. I don't think anyone is ever going to get absolute proof on this payola practice. We are only

going to get general information and when a man pops up with \$3,000 in 16 months as outside income from record distributors you can say it is always for the purpose of record hops, but I don't know a successful record hop man who did not have a successful diskjockey show.

It has never been developed before this committee. In fact when they lost their job as diskjockeys they lost their appeal in the community for running record hops. So apparently the exposure on the air is the more significant exposure.

Do you have the ability to distinguish between the type of payments received by Mr. Maynard and the type which were testified to before this committee on numerous occasions by other diskjockeys?

Mr. O'FRIEL. Mr. Moss, I would like to explain to you this way, and I am not familiar necessarily with the other ones but I am familiar with the fact situation in the Maynard case.

Now, like you, I was very suspicious of this story and very circum-spect of this story that Mr. Maynard told us in the original instance and that is the reason I moved at that time to suspend Mr. Maynard and take him immediately off the air as far as compromising or attempting to compromise at that time his on-the-air judgment and programming judgment while employed by WBZ.

We tested this, and worked back and forth on this story and finally, you know, we had to make a judgment or a decision.

Now, as I said in my original statement, the easiest decision would have been, you know, fire the man, get rid of him. But here is an employee who has, as far as we are concerned, a very good record, he has a family situation, and in this case, you know, this was a Christmas season also, you know, we had to look over all this.

We came to a judgment based upon what we had and the facts we had and the statement from his accountant and from the other people involved, and our judgment at that moment was that we would restore him to the air on a probationary basis, during which time these various inquiries, you know, would develop and would grow.

Mr. Moss. You haven't told me the difference at all. If you can't tell me the difference just tell me you can't tell me the difference.

Mr. O'FRIEL. Our judgment at this point, and this is—you know you have one judgment we should have made at that point and I have another now perhaps.

Mr. Moss. I have no judgment.

Mr. O'FRIEL. Perhaps my judgment was wrong.

Mr. Moss. I want the record to show clearly that I haven't urged the firing of a single one of these diskjockeys. I don't know them, I haven't a thing against them or anyone else.

I am interested only in facts, that is all, but I can't understand why, if it is payola for one, and the same circumstances exist, it is not for the other.

Now, you say that you made an investigation. I understand you have a background that should well qualify you to make an investigation. That is, according to my information, you were at one time employed by the Federal Bureau of Investigation, so I assume, but didn't you send Mr. Maynard to talk with the officials of the two record distributing companies and to arrange a meeting where this matter might be discussed? Did you, Mr. O'Friel?

Mr. O'FRIEL. I didn't send Mr. Maynard.

Mr. Moss. Did you suggest it, did you know he was going?

Mr. O'FRIEL. Mr. Maynard volunteered to arrange such a meeting.

Mr. Moss. He volunteered to go to the very men who had been paying him and arrange for them to meet with you to convince you that he had not received payola but rather had been paid for the services rendered at record hops, a perfect opportunity for the three of them to get together and to agree upon a story.

Mr. O'FRIEL. I don't think we can narrow it to that particular moment or that particular opportunity that they had. They had many opportunities.

Mr. Moss. They probably had others.

Mr. O'FRIEL. They had many opportunities to go.

Mr. Moss. This one you had knowledge of.

Mr. O'FRIEL. Because of their long relationship between these various parties.

Mr. Moss. I merely want to make it clear that that is the way it developed and that the arrangement for the meeting was undertaken by Mr. Maynard?

Mr. O'FRIEL. There is no question about this.

Mr. Moss. And that, in my judgment, is not an objective investigation. I want to make very clear that as I see the issue here before the committee, it is whether Mr. Prescott perjured himself in the testimony he gave us, and you have challenged his testimony. I don't see where Westinghouse Broadcasting or its record of public service is even remotely connected with that. It is a matter of the veracity of you as an individual and of Mr. Prescott as an individual, and nothing else. Westinghouse could have had 100 years of the highest type of public service and I don't question but they have high type public service. Or that they received awards for other programs, and I don't think you would claim the authorship of the programs, necessarily. But the issue here is not that, it is not the character of Westinghouse. It is the fact that the testimony received from you and the testimony from Mr. Prescott conflicts, and I think any of these other issues being injected intend to obfuscate rather than clarify the record. That is all I have, Mr. Chairman.

The CHAIRMAN. Mr. Devine?

Mr. DEVINE. I have nothing, Mr. Chairman.

The CHAIRMAN. Mr. Lishman, do you have anything else?

Mr. LISHMAN. Well, not at this time, Mr. Chairman. It may be after Mr. Prescott testifies Mr. O'Friel may want to come back.

The CHAIRMAN. Mr. O'Friel, thank you very much. You may stand aside.

Mr. O'FRIEL. Yesterday, I think I offered some affidavits that I would like to put in the record before I leave.

Mr. LISHMAN. I would have to object to that, too.

Mr. MACK. I don't know which affidavits he has reference to, but I don't think that it is entirely proper to be submitting affidavits from other people, and I would certainly request that they be received—

The CHAIRMAN. What affidavits do you have in mind, Mr. O'Friel?

Mr. O'FRIEL. They're the ones attached to my statement of May 11.

Mr. MACK. Mr. Chairman, I would like to have an opportunity to see the affidavits before they are received.

Mr. LISHMAN. They were affidavits taken on the 18th of February, the day after the release of Mr. Prescott's testimony and it is very

interesting to know why they were not filed before May 10 and they are not properly attested to, incidentally.

Mr. Moss. I would enter an objection to receiving them for the record.

Mr. LISHMAN. They are all from employees of the station over whom they have power of dismissal.

The CHAIRMAN. Let them be received for the files and the committee will have an opportunity to go over them.

Mr. O'FRIEL. Thank you, Mr. Chairman.

(The documents will be found in the files of the committee.)

Mr. Moss. I think they are already in the files because they were submitted on May 10.

Mr. LISHMAN. They are in the files.

The CHAIRMAN. But they have never been received for the record.

Mr. Moss. I object to their being received for the record. I am perfectly willing for them to be received for the files but not for the record.

The CHAIRMAN. Thank you very much.

Mr. O'FRIEL. Thank you very much.

The CHAIRMAN. Mr. Prescott.

Will you be sworn, Mr. Prescott?

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

Mr. PRESCOTT. I do.

The CHAIRMAN. Have a seat.

TESTIMONY OF NORMAN PRESCOTT, ACCOMPANIED BY S. MYRON KLARFELD, COUNSEL

Mr. PRESCOTT. Yes, sir.

The CHAIRMAN. You are Mr. Gordon Prescott?

Mr. PRESCOTT. Norman Prescott.

The CHAIRMAN. And you are the same Norman Prescott who testified also before this committee February 8, was it?

Mr. PRESCOTT. I don't remember the exact date.

The CHAIRMAN. But in February of this year?

Mr. PRESCOTT. Yes, sir.

Mr. LISHMAN. February 17—February 8; yes.

The CHAIRMAN. Mr. Prescott, you were present yesterday when I made a preliminary statement, were you not, and you heard the purposes of this meeting?

Mr. PRESCOTT. Yes, sir.

The CHAIRMAN. You were advised by the committee of the meeting and were given an opportunity to appear if you so desired. You are appearing at the invitation of the committee on your own and you have additional statements you would like to make?

Mr. PRESCOTT. Yes, sir.

The CHAIRMAN. In the first place, I observe you have counsel with you which you are permitted under the rules of the House, and I think he should be identified for the record.

Mr. KLARFELD. Myron Klarfeld, 20 Pemberton Square Boston, Mass.

The CHAIRMAN. You are familiar with the rules as to your responsibility in accompanying the witness?

Mr. KLARFELD. I am, Mr. Chairman.

The CHAIRMAN. Very well, you may proceed, Mr. Prescott.

Mr. PRESCOTT. Mr. Chairman, and gentlemen of the committee, I do not have any prepared statements in written form, I was present yesterday when Mr. O'Friel testified, and I went over his statement completely, and I would like to, with the permission of the committee, go through them point by point and try to explain that in my opinion, Mr. O'Friel has slanted his entire statement by the constant omission of very pertinent facts that I would like to add today.

No. 1, turning to page 2—

The CHAIRMAN. I want to interject here for your information, Mr. Prescott, and for Mr. Klarfeld's information now, we announced the purpose of this hearing to give you the opportunity to clarify the record and obtain the facts.

Now, Mr. O'Friel has given his statement, and we have tried to stay within matters that were developed at the previous hearing. The committee does not intend to be receiving new material and new testimony, evidence or new matters, and neither do we want to be in position of giving rebuttal and re-rebuttal and re-rebuttal. I think we ought to develop the facts and have each one state matters of his own knowledge and opinion and then let the record show accordingly. So I want it clear we don't want to be having you two people back here time after time trying to inject certain new matter into this record.

Mr. PRESCOTT. Well, I will assure the committee that I will not deviate in any way from the basic statement that Mr. O'Friel made yesterday and I promise not to bring in any extraneous matters.

Also I would like to assure the committee that I will go through this rather quickly and try to expedite it as fast as possible.

With reference to page 2 of Mr. O'Friel's statement in which he said that time and time again there in the months prior to July 1959 I was cautioned by my superiors and that I had a disinterested attitude and patronizing manner, I can only respect Mr. O'Friel's opinion, I do not believe this is fact. I honestly feel that in my association with WBZ I perhaps in my program content had more creative contests; I think that I did obviously more special features than any other diskjockey on the station.

I might add that I was the only diskjockey at WBZ who received special dispensation from Westinghouse to hire my own personal secretary who worked for me 5 days a week for a period of 4 years in which she answered every single letter that I received for me personally. No other diskjockey did that.

I also, through the creative contests that I ran on the station, was able to procure a very nice piece in Life magazine on my own which attracted attention to the station and I might add, too, that of all the diskjockeys in the entire Westinghouse chain I was the only one selected by Westinghouse to go to Brussels for the Benny Goodman presentation at the American Theater in the American pavilion to represent Westinghouse. I consider that a signal honor and I would like to feel that the reason they chose me is because they had a very high regard for my ability and for the fact that I was more than interested than any other diskjockey that works for them.

I am not going to build up a series of accolades for myself, but these are just a few of the things that I feel will wipe off this sentence that:

He was disinterested and had a patronizing manner.

I think that some of the things on the record and in fact that happened in my 4 years there more than offset that.

Another very important point that I would like to bring out is that on page 4 of Mr. O'Friel's testimony he says:

We have always relied exclusively on the Boston metropolitan five-county pulse survey.

This is not a fact. The reason for that is this: WBZ on many occasions have quoted the Nielsen ratings, both in advertising matter in the Boston area and in national publications, and because they are a subscriber to the Nielsen rating service the word "exclusively" is a blatant and erroneous remark.

Now, when I said that Mr. O'Friel left out very pertinent facts I would like to call this to the attention of the committee. That for the month of May 1959 as an example, and as factual evidence in the Nielsen rating for that period the Norm Prescott Show was the No. 1 show in the entire area all four quarters for a period of 4 hours.

Now this is very important to me. It is important to me——

Mr. LISHMAN. May I interrupt you?

Mr. PRESCOTT. Yes.

Mr. LISHMAN. May I have that specifically identified?

Mr. PRESCOTT. May I submit this to you?

I might also add it was not only No. 1 but the wide margin between Nos. 1 and 2 is very significant on that rating service. I don't know why Mr. O'Friel admitted this. He gave only half a picture. If he prefers the pulse survey to the Nielsen survey, that is fine, I respect his opinion, but the point is they do subscribe to two surveys and they did not make mention of the one that obviously showed that I had very high ratings.

Now, I don't know at this point whether or not WBZ subscribes to the Hooper service, and this is the third, and there are generally three that are used by many radio stations throughout the country, but in this example of June and July, 2 months that I was employed in 1959 close to my terminating with WBZ, you might be interested in knowing that the Norm Prescott Show between the period of 12 and 6 p.m. in the afternoon, the overall station rating was second, No. 2, according to Hooper, in a market that has 12 or more stations.

I would like to submit this for the committee also. Here is a case where only one survey was quoted, two were omitted. There are only three that are generally used, and if you want to take an average, you will find that the Norm Prescott Show was a generally very popular show, and very well accepted by the New England audience in contradiction to Mr. O'Friel's remarks in his statement yesterday when he said that my acceptance by the listening public and my program ratings in Boston had dropped. That was predicated only on one survey and I would like to add too, on that survey he quoted from, I was generally 3 or 4 in a 12-station market.

Well, they say that the horse that comes in first is a winner in a way, and if I was third, I still feel that it was a highly acceptable rating.

So much for the rating picture.

(The ratings referred to are as follows:)



HOOPER RADIO AUDIENCE INDEX

*see'd
6/1/59*

CITY: BOSTON, MASS.

MONTHS: APRIL-MAY, 1959

SHARE OF RADIO AUDIENCE

TIME	RADIO SETS-IN-USE	WBZ • WBZA	WCOP • WCOP-FM	WCRB • WCRB-FM	WEEL • WEEL-FM (CBS)	WEZE (NBC)	WHDH	WIL0	WMEX	WNAC (NBS)	WORL	WTAD (ABC)	OTHER AM & FM	SAMPLE SIZE
MONDAY THRU FRIDAY 7:00 A.M. -12:00 NOON	14.0	22.5	7.7	4.2	15.2	1.3	18.1	2.9	11.7	7.2	3.4	1.3	4.5	5,790
MONDAY THRU FRIDAY 12:00 NOON- 6:00 P.M.	10.8	12.4	9.6	7.7	10.4	2.1	22.3	1.4	17.0	6.9	3.5	††	6.6	7,396

†† Less than 0.1

t #3

"Radio Sets-in-Use" is the percentage of Total Homes which are listening to the radio. Where listening to a second program over a second radio set is reported in a home, that fact is reflected in both the "Radio Sets-in-Use" and in the individual station "Shares." "Share of Radio Audience" represents the proportion of the total radio audience listening to a particular station.

Where an FM station duplicates its corresponding AM station's program schedule in its entirety, the FM station mentions are combined with the AM station's mentions.

The Code of Practice governing the use of "RADIO HOOPERINGS" applies to this "RADIO AUDIENCE INDEX."



HOOPER *RADIO* AUDIENCE INDEX

CITY: BOSTON, MASS

MONTHS: JUNE-JULY, 1959

SHARE OF *RADIO* AUDIENCE

TIME	RADIO SETS-IN-USE	WBZ • WBZA	WCOP • WOP-FM	WCRB • WCRB-FM	WEEL • WEEL-FM (CBS)	WEZE (NBC)	WHDH	WILD	WMEX	WNAC (CBS)	WORL	WTAO (ABC)	OTHER AM & FM	SAMPLE SIZE
MONDAY THRU FRIDAY 7:00 A. M. -12:00 NOON	13.3	26.0	6.1	3.7	11.9	2.9	15.1	2.9	10.1	8.2	3.9	1.6	7.7	6,056
MONDAY THRU FRIDAY 12:00 NOON- 5:00 P. M.	8.9	17.8	7.2	3.3	11.9	2.0	13.5	1.6	20.7	9.4	4.1	2.3	6.2	7,211

"Radio Sets-in-Use" is the percentage of Total Homes which are listening to the radio. Where listening to a second program over a second radio set is reported in a home, that fact is reflected in both the "Radio Sets-in-Use" and in the individual station "Shares." "Share of Radio Audience" represents the proportion of the total radio audience listening to a particular station.

Where an FM station duplicates its corresponding AM station's program schedule in its entirety, the FM station mentions are combined with the AM station's mentions.

The Code of Practice governing the use of "RADIO HOOPERATINGS" applies to this "RADIO AUDIENCE INDEX."



HOOPER RADIO AUDIENCE INDEX

CITY: BOSTON, MASS

MONTHS: JUL - AUGUST 1959

WIMEX FASTEST GROWING STATION IN NEW ENGLAND

SHARE OF RADIO AUDIENCE

TIME	RADIO SETS-IN-USE	WBZ • WZLZ	WCOB • WCOB-FM	WCRB • WCRB-FM	WEE • WEE-FM (CBS)	WJZE (NBC)	WHOM	WILD	WIMEX	WVAC (WGS)	WURL	WVAC (ABC)	OTHER AM & FM	SAMPLE SIZE
MONDAY THRU FRIDAY 7:00 A.M. - 12:00 NOON	11.9	23.3	5.4	3.1	15.5	1.4	14.2	1.4	13.8	9.5	3.2	1.0	3.5	5,105
MONDAY THRU FRIDAY 12:00 NOON - 6:00 P.M.	8.8	17.5	4.9	5.3	12.0	1.4	15.9	2.4	18.5	7.3	4.5	1.5	8.6	7,005

Almost # 1

"Radio Sets-in Use" is the percentage of Total Homes which are listening to the radio. Where listening to a second radio set is reported in a home, that fact is reflected in both the "Radio Sets-in-Use" and in the individual station "Shares." "Share of Radio Audience" represents the proportion of the total radio audience listening to a particular station.

Where an FM station duplicates its corresponding AM station's program schedule in its entirety, the FM station mentions are combined with the AM station's mentions.

The Code of Practice governing the use of "RADIO HOOPERINGS" applies to this "RADIO AUDIENCE INDEX."

NEILSEN RATINGS

MONDAY-FRIDAY

1:30 P.M. - 3:00 P.M.

Base Cases 3630

Boston - May, 1959

TIME	STATION	PROGRAM	METRO AREA CUMULATIVE			STATION TOTAL CUMULATIVE		AUDIENCE COMPOSITION PER % HOUR				
			Weeks 1-7	4 weeks 8-11	4 weeks 12-14	Weeks 1-7	4 weeks 8-11	List per home	Distribution by age and sex			
			Rating	Rating	# of homes	Homes (00)	Homes (00)		M	F	18	18
1130	WBZ	ALAN DARY SHOW	7.3	16.3	3	1117	2556	1.5	18	65	2	18
	WCOP	TOM EVANS SHOW	3.4	7.1	4	241	607	1.4	31	55	LT	13
	WEEI	YOUNG DR MALONE	4.2	7.3	5	471	808	1.7	16	58	3	23
	WEZE	ITS NETWORK TIME	#					1.1	LT	92	LT	7
	WHDH	NEWS/HANK FORBES	2.9	7.4	2	279	719	1.3				
	WHEX	DONN PARKER SHOW	2.2	5.1	3	301	696	1.3				
	WNAC	RADIANT RADIO	2.2	6.4	2	200	578					
1145	WBZ	ALAN DARY SHOW	7.0	16.0	3	1065	2517	1.5	19	65	2	14
	WCOP	TOM EVANS/NEWS	3.4	7.5	3	291	641	1.5	33	54	LT	12
	WEEI	2ND MRS BURTON	3.8	6.6	5	439	747	1.8	17	53	3	23
	WEZE	ITS NETWORK TIME	#					1.1	LT	93	LT	0
	WHDH	HANK FORBES SHOW	2.7	6.6	3	261	645	1.2				
	WHEX	DONN PARKER/NEWS	1.8	4.1	3	266	602	1.4				
	WNAC	RADIANT RADIO	2.2	6.4	2	200	578					
2100	WBZ	MINORM PRESCOTT	6.6	15.1	3	996	2465	1.5	17	63	7	13
	WCOP	TOM EVANS SHOW	4.1	9.3	3	354	796	1.3	33	61	LT	3
	WEEI	NIRIGHT-HAPPINESS	3.7	6.2	6	516	806	1.7	16	48	13	22
	WEZE	NEWS/MEMORY LANE	#					1.1	LT	96	LT	3
	WHDH	HANK FORBES SHOW	3.5	8.4	3	328	811	1.5	23	62	LT	14
	WHEX	GOLD PLATTERS	2.6	6.2	2	336	801	1.4				
	WNAC	RADIANT RADIO	2.6	7.4	2	233	669					
2115	WBZ	NORM PRESCOTT SH	6.7	15.1	3	1020	2465	1.5	17	61	9	13
	WCOP	TOM EVANS SHOW	4.1	9.3	3	354	796	1.3	28	66	LT	3
	WEEI	JUST ENTERTAINMENT	3.4	5.8	6	442	773	1.9	23	43	13	19
	WEZE	DONN MEMORY LANE	#					1.1				
	WHDH	HANK FORBES SHOW	3.8	9.3	3	362	893	2.1	13	45	13	23
	WHEX	GOLD PLATTERS	2.9	7.6	2	370	934	1.4				
	WNAC	RADIANT RADIO	2.3	6.7	1	208	606					
2130	WBZ	NORM PRESCOTT SH	7.3	18.0	2	1099	2819	1.6	14	62	11	13
	WCOP	TOM EVANS SHOW	4.5	9.6	3	396	860	1.2	29	67	LT	3
	WEEI	FORBESQUE SHOW/CE	1.8	3.7	4	261	440	1.4	7	34	16	23
	WEZE	DONN MEMORY LANE	#									
	WHDH	NEWS/HANK FORBES	4.2	8.8	4	396	846	1.6	18	51	13	16
	WHEX	GOLD PLATTERS	2.2	3.1	3	312	741	1.5				
	WNAC	RADIANT RADIO	1.3	3.9	2	116	333					
2145	WBZ	NORM PRESCOTT SH	6.7	15.3	3	1020	2456	1.5	14	60	12	14
	WCOP	TOM EVANS/NEWS	4.0	8.4	4	347	718	1.2	29	62	LT	8
	WEEI	FORBESQUE SHOW/CE	1.7	3.7	3	193	440	1.4	7	33	17	21
	WEZE	DONN MEMORY LANE	#									
	WHDH	HANK FORBES SHOW	4.2	8.8	3	396	846	1.6	18	51	13	16
	WHEX	GOLD PLATTERS/NEWS	2.6	6.2	2	336	801	1.4				
	WNAC	RADIANT RADIO	1.0	3.2	1	91	288					

For Metro Audience Projection, see page 42.

LT. Less than 1.0%.

MONDAY-FRIDAY
 7:00 P.M. - 4:30 P.M.
 Base Case: 3630

NSI RADIO Bi-Monthly Report

TIME	STATION	PROGRAM	METRO AREA CUMULATIVE			STATION TOTAL CUMULATIVE		AUDIENCE COMPOSITION PER 1/2 HOUR				
			Weekly (7 days)		4 weeks (28 days)	Weekly (7 days)		Aud. per hour	Distribution by age and sex			
			Rating	Share	No. hrs. heard	Spots	Spots		M	F	18	18
%	%	No.	(SP)	(SP)	No.	%	%	%	%			
3:00	WBZ	N: NORM PRESCOTT	8.0	19.4	3	1187	2931	1.3	16	58	13	13
	WCOP	BUD KELLY SHOW	4.0	8.9	3	347	760	1.3	28	59	6	7
	WEEI	N: HOUSEWIFE LEAGUE	2.0	5.2	2	218	571	1.3	10	92	13	23
	WEZE	NEWS: MEMORY LANE	1.1	2.0	4	260	375	1.0				
	WHDH	BOSTON BALLROOM	4.2	8.8	5	396	846	1.6	20	52	12	16
	WMEX	GOLD PLATTERS	2.9	7.1	2	462	1145	1.3	3	24	61	10
	WNAC	RADIANT RADIO	#									
3:15	WBZ	NORM PRESCOTT SM	6.9	15.8	3	1056	2456	1.5	14	57	16	15
	WCOP	BUD KELLY SHOW	4.5	10.7	3	386	915	1.3	13	69	13	23
	WEEI	HOUSEWIFE LEAGUE	1.9	5.3	2	210	580					
	WEZE	DOWN MEMORY LANE	1.1	2.2	4	260	392	1.0				
	WHDH	BOSTON BALLROOM	4.3	9.6	4	444	920	1.3	19	62	12	7
	WMEX	GOLD PLATTERS	3.3	8.4	2	508	1312	1.3	4	27	59	10
	WNAC	RADIANT RADIO	#									
3:30	WBZ	NORM PRESCOTT SM	7.1	15.9	3	1030	2293	1.4	11	62	13	14
	WCOP	BUD KELLY SHOW	4.6	11.3	3	393	940	1.3	23	68	4	3
	WEEI	BEANTOWN MATINEE	1.5	4.2	1	230	648	1.6	12	56	16	16
	WEZE	DOWN MEMORY LANE	1.2	2.6	4	268	415	1.0				
	WHDH	NEWS: WEAT/BALLROOM	6.8	9.5	4	429	911	1.3	13	68	12	7
	WMEX	GOLD PLATTERS	4.0	10.3	2	521	1528	1.3	3	30	56	9
	WNAC	RADIANT RADIO	.9	2.8	1	83	253					
3:45	WBZ	NORM PRESCOTT SM	7.2	16.1	3	1159	2628	1.4	11	61	13	13
	WCOP	BUD KELLY SHOW	4.7	11.3	2	401	965	1.3	22	67	6	5
	WEEI	BEANTOWN MATINEE	1.3	3.9	2	190	499	1.3	6	63	16	13
	WEZE	DOWN MEMORY LANE	1.2	2.6	4	268	415	1.0				
	WHDH	BOSTON BALLROOM	3.8	8.4	4	362	811	1.4	10	68	14	8
	WMEX	GOLD PLATTERING	4.4	11.4	2	555	1432	1.3	4	29	58	9
	WNAC	RADIANT RADIO	#									
4:00	WBZ	N: NORM PRESCOTT	6.7	16.1	3	974	2414	1.3	10	68	13	13
	WCOP	BUD KELLY SHOW	3.9	9.1	3	338	777	1.3	4	69	13	14
	WEEI	N: BEANTOWN MATINEE	1.7	4.9	2	213	567					
	WEZE	N: GEORGE CARLIN	1.1	3.7	2	219	526	1.6	17	62	17	4
	WHDH	BOSTON BALLROOM	3.9	9.5	4	371	819	1.2	3	25	69	17
	WMEX	GOLD PLATTERS	3.4	7.5	3	414	925					
	WNAC	RADIANT RADIO	#									
4:15	WBZ	NORM PRESCOTT SM	6.8	16.5	3	996	2463	1.3	11	59	13	13
	WCOP	BUD KELLY SHOW	3.8	8.2	4	330	700	1.4	7	67	14	12
	WEEI	BEANTOWN MATINEE	2.1	6.0	2	257	682					
	WEZE	GEORGE CARLIN SM	.8	2.5	2	71	213					
	WHDH	BOSTON BALLROOM	3.9	8.6	4	371	829	1.3	16	69	11	4
	WMEX	GOLD PLATTERS	3.3	7.1	3	405	887	1.3	8	31	60	17
	WNAC	RADIANT RADIO	#									

* Below minimum Reporting Standards (minimum for Metro Area, .8%), or not regularly scheduled. For a guide to Statistical Accuracy see page 42.

Boston-May, 1959

MONDAY-FRIDAY

4:30 P.M. - 6:00 P.M.

Brief Cases 3630

TIME	STATION	PROGRAM	METRO AREA CUMULATIVE			STATION TOTAL CUMULATIVE		AUDIENCE COMPOSITION PER 1/2 HOUR				
			Weekly (5 days)		4 weeks (20 days)	Weekly (5 days)	4 weeks (20 days)	Line per home	Distribution by age and sex			
			Evening	Evening	1/2 hrs heard	Home	Stores		M	F	S	C
%	%	No.	(No.)	(No.)	No.	%	%	%	%			
4:30	WBZ	NORM PRESCOTT SH	7.9	19.6	2	1116	2784	1.6	14	57	15	14
	WCOP	BUD KELLY SHOW	4.3	9.3	4	369	794	1.4	23	70	2	5
	WEEI	BEANTOWN MATINEE	2.5	7.1	1	300	819	1.5	12	63	15	10
	WEZE	GEORGE CARLIN SH	.8	2.5	2	71	219	#	#	#	#	#
	WHDH	NEWSWEAIBALLROOM	3.8	8.5	3	362	819	1.4	17	70	#	5
	WNEK	GOLD PLATTERS	3.4	7.1	4	414	887	1.4	12	32	55	LT
	WUAC	RADIANT RADIO	.8	2.5	2	75	225	#	#	#	#	#
4:45	WBZ	NORM PRESCOTT SH	4.1	14.8	2	892	2178	1.4	14	58	15	13
	WCOP	BUD KELLYNEWS	4.2	8.8	4	362	752	1.5	12	62	17	7
	WEEI	BEANTOWN MATINEE	2.1	5.6	2	267	656	#	#	#	#	#
	WEZE	GEORGE CARLIN SH	#	#	#	#	#	#	#	#	#	#
	WHDH	BOSTON BALLROOM	2.8	6.0	4	270	590	1.3	10	75	10	5
	WNEK	GOLD PLATTERS	3.4	7.5	3	414	925	1.4	12	36	51	LT
	WUAC	RADIANT RADIO	1.2	3.5	2	168	378	#	#	#	#	#
5:00	WBZ	NORM PRESCOTT	6.2	13.1	4	1022	2204	1.7	15	58	17	14
	WCOP	BUD KELLY SHOW	3.8	7.8	4	330	666	1.6	26	57	13	4
	WEEI	NICOSTELLO:SCOTT	2.0	4.7	3	259	577	1.7	8	57	17	18
	WEZE	NIGORGE CARLIN	#	#	#	#	#	#	#	#	#	#
	WHDH	BOSTON BALLROOM	2.6	5.1	4	245	505	1.6	#	#	#	#
	WNEK	DOWN PARKER SHOW	3.0	8.0	2	379	972	1.6	#	#	#	#
	WUAC	RADIANT RADIO	#	#	#	#	#	#	#	#	#	#
5:15	WBZ	NORM PRESCOTT SH	6.6	13.8	4	1126	2466	1.7	17	57	12	14
	WCOP	BUD KELLY SHOW	3.2	5.9	5	275	501	1.6	27	56	13	4
	WEEI	NICKEY SCOTT SHW	2.1	4.4	4	246	509	2.0	11	47	19	23
	WEZE	GEORGE CARLIN SH	#	#	#	#	#	1.3	#	#	#	#
	WHDH	BOSTON BALLROOM	2.9	6.3	3	268	575	1.6	#	#	#	#
	WNEK	DOWN PARKER SHOW	1.8	4.0	4	277	610	1.8	#	#	#	#
	WUAC	RADIANT RADIO	#	#	#	#	#	#	#	#	#	#
5:30	WBZ	NORM PRESCOTT	6.9	14.5	4	1171	2553	1.8	15	53	15	17
	WCOP	BUD KELLY SHOW	3.6	7.0	4	306	597	1.6	29	54	14	3
	WEEI	NICKEY SCOTT SHW	2.3	4.9	4	278	554	1.0	7	48	23	22
	WEZE	GEORGE CARLIN SH	#	#	#	#	#	3.1	#	#	#	#
	WHDH	NEWSWEAIBALLROOM	3.5	7.0	4	325	639	1.1	#	#	#	#
	WNEK	DOWN PARKER	1.5	2.6	5	253	455	1.8	23	32	44	LT
	WUAC	RADIANT RADIO	1.1	3.2	2	100	288	#	#	#	#	#
5:45	WBZ	NORM PRESCOTT SH	8.6	17.9	4	1448	3202	1.9	18	50	14	18
	WCOP	BUD KELLYNEWS	3.7	7.5	4	322	641	1.8	35	51	10	4
	WEEI	NICKEY SCOTT SHW	2.8	5.8	4	300	632	2.2	10	46	20	24
	WEZE	GEORGE CARLIN SH	#	#	#	#	#	1.2	9	94	LT	LT
	WHDH	BALLROOMSCROBRO	3.6	7.0	4	333	639	1.9	#	#	#	#
	WNEK	DOWN PARKER	2.2	4.6	3	312	645	1.8	28	48	31	LT
	WUAC	RADIANT RADIO	#	#	#	#	#	#	#	#	#	#

For Metro Audience Projection, see page 42.

LT. Less than 1.0%.

Mr. PRESCOTT. I would like to talk about the termination of my contract at WBZ which I think is a very important point. Mr. O'Friel, again, in his letter, because of the omission of pertinent facts through implication, has only told you half a story. He seems to imply that I was fired or let go by WBZ. This is not true. It is true that he refused to renew the talent portion of my contract, the talent portion, but under the basic AFTRA contract and according to the rules of the basic AFTRA contract I could have remained at WBZ in the capacity of a staff announcer.

Point 1.

Point 2, the payment of \$3,000 which was granted me for the last 7 weeks of my contract was not paid to me, period.

It was requested by me, requested because I had been offered a job as vice president of Embassy Pictures in New York; they wanted me to join them as soon as possible, and although I had the right to fulfill my contractual commitment and stay through the first week in September, I requested through my AFTRA attorney that he negotiate with WBZ and ask them if I could leave immediately and if they granted that, would they accept a \$3,000 settlement, which they did.

So to clear up the record, point 1, under the AFTRA contract I could have remained at WBZ subject to the provisions of the AFTRA contract. Therefore, I was not fired. I quote I was not fired, under any circumstances and, point 2, it was I who chose to leave WBZ because of a new position, and it was I who asked for the settlement. They did not get rid of me, they did not pay me off in the extent of Mr. O'Friel's letter, because again he omitted those pertinent facts.

Turning to page 3 he says that Mr. Prescott, past or present as an employee refused to answer a written inquiry on payola.

Gentlemen, I received that letter many months after I had severed my relations with WBZ. I turned the letter over to my attorney, he said that there was no reason for me to reply to it because I was no longer employed by WBZ, period.

Mr. O'Friel says that I delivered official stationery to a record distributor for the unauthorized reproduction of so-called hit tune lists. I would like to bring out this fact. That the WBZ library is always open and has always been open to record promoters and record distributors. In fact the library was quite a problem because we took many precautions to bolt up the records and put all kinds of bars and locks because they were disappearing at a great rate.

The library was not only wide open but anyone could have walked in, anyone could have taken WBZ stationery off the desk, anyone, because there was no policing of the library to any great extent.

I never used WBZ stationery in any of my correspondence with any of my listeners. I used my own stationery which I printed myself and paid for myself. I assume no responsibility for any WBZ stationery that was taken illegally or otherwise from WBZ because it certainly did not come under my jurisdiction.

Turning to page 5, the subject of plugs on the air of motion picture accounts. I think it is pretty obvious to the committee and anyone in the radio and television business that salesmen are constantly coming into the studio and talking to the talent with reference to working a little harder on a commercial, to try to get better results, in

terms of making a personal appearance on behalf of an account, and many other matters related to keeping the account happy.

Now what is true in my testimony, I said I believe it was Mr. Fitzpatrick who told me to play a record from the score of the motion picture "Hole in the Head" and when Mr. Rogers said "Is it or isn't it?" I said yes to the best of my recollection at that time I thought it was Mr. Fitzpatrick. But because the salesmen are constantly talking to the talent about many accounts and my show was one of the most heavily sold out shows in the area, it is impossible to remember every communication with the specific individual. But I can assure the committee that in the 4 years I was at WBZ on many occasions I have been asked to play records from the score of the motion picture to keep the account happy and I can cite one more motion picture, I do not have the logs, I do not have the contracts but if WBZ would be nice enough to check back through I will name the picture and I remember the incidents. It was a Bing Crosby picture called "Say One for Me," with two songs from the score and again I was asked to play those when I could as often as I could for the benefit of the account.

No. 6, page 6, "WBZ practice and policy to procure all merchandise including records," it seems that my allegation that I was requested to obtain albums to be used as prizes by Mr. Jack Williams has been flatly denied.

Mr. Williams is an employee of WBZ. We have had many contests on WBZ over a period of 4 years, and we have secured albums for these contests to make the listeners happy. On many occasions I have been asked to get 4 or 5 albums or 10 albums or 15 or what have you. I remember specifically one contest that we had. I think it was the first day of spring contest, where we gave away a series of albums to the first person who came up in a bathing suit or in a beach umbrella or something to that effect and I remember securing albums for that purpose to give away.

Mr. LISHMAN. From whom did you get those albums?

Mr. PRESCOTT. I don't recall the exact distributor but I can tell you it was one of three because they were the most cooperative, but they were Music Suppliers, Records Inc., or Dumont Record Distributors.

So to flatly deny that we ever secured albums to give away as prizes in a contest at WBZ, I must object to that statement because that is not a matter of fact.

Mr. LISHMAN. Was it on a reciprocal basis. do you know?

Mr. PRESCOTT. When you talk about a reciprocal basis, Mr. Lishman, in the 4 years that I was at WBZ, I was never once asked to identify the source of the albums, and I can assure you for the four or five albums that were given the station as a contest prize there was no reciprocal contract issued to the distributor. I would like to discuss just—

Mr. LISHMAN. Was any cash paid or money or valuable considerations paid for these albums?

Mr. PRESCOTT. Absolutely not because I secured the albums.

Mr. LISHMAN. Was there any announcement to that effect made on the station?

Mr. PRESCOTT. No, sir; not by me. I would like to also discuss for a moment and quickly, on page 6—

Mr. LISHMAN. Do you believe the station management knew you were getting these free albums for contest purposes?

Mr. PRESCOTT. I think you will notice in my original testimony that I was requested to get it by Mr. Jack Williams of the promotion department and I so did.

In reference to the Lester Lanin situation which I think has become terribly obscured, I would like to explain that as a diskjockey, I had a very close relationship with many distributors in Boston. I think that Don Dumont was perhaps one of my closest friends. I was with him from the time he worked for Records, Inc., through the time that I arranged for him to meet certain people so that he could become a distributor on his own.

He came to me during the early part of his business establishment and he said to me, "I have just acquired the Epic line. I have got to do something for Lester Lanin. He was very hot. His first album sold well, his second and third albums are not doing as well. I must impress Epic. What can I do?"

If you will notice in my original testimony I suggested that he work out a promotion with WBZ to the Lester Lanin orchestra offered for the station.

From then on it was up to him and the station, I could not get involved. I did suggest personally that he might offer the band in some way and he tell the station that as a free prize to a young couple married in June. After all Lester Lanin has been the sophisticated society band leader for society for 25 years and a wonderful man. And I thought it was a wonderful idea, and later on somebody suggested the block party and I bowed to that, it was a better idea.

But the point is that his original reason for going to WBZ and offering the Lester Lanin orchestra was to get air play so that he could sell the second and third album which were not selling as well as the first, that is the premise and I think that is the moment of truth and the moment that should be remembered in this entire story.

From that point on, many things happened, but I can assure you of this: That after the many staff meetings that I attended in working out the block party arrangement charitable angle was an afterthought, it came much later, it came at the time that we began selecting the city where we would present it. But a lot of work had gone on before that, and I was instructed and it was made clear and Dumont knew this, that for the Lester Lanin orchestra WBZ would give Lester Lanin an overall free promotion to help raise the sales of those albums.

Never once did I say that the Lester Lanin orchestra was furnished by the Dumont Distributing Co., that the free albums we gave away, I believe there were a hundred of them were furnished by the Dumont Distributing Co. and to the best of my knowledge there has never been a reciprocal contract for exchange of time between Westinghouse and Dumont so no matter how this is colored by the charity angle the moment of truth was the premise to get Lanin played on WBZ to be heard throughout New England and I feel badly about one thing, that Lester Lanin who knew nothing about what was going on, was terribly implicated in this whole thing.

I don't believe to this day he even understands what happened. I know he would like to forget about it, and also to the best of my knowledge he has never been paid and it was a terrible blow to him because he has a wonderful reputation, he is a high society orchestra,

he has played for the biggest and finest people in the country, and I can still see him scratching his head.

Let's talk about the New York trip. This, too, has become a very important part of the entire proceedings. I would like to point out to the committee that under the basic AFTRA contract there was nothing in the contract that said that I had to procure albums for WBZ. This was not part of my duty.

I was not responsible for the library. When Mr. O'Friel came to WBZ, the first thing he said was, "We have got to fill up that library, it is awful. There is nothing here."

When we did an assessment of the library's needs it came to a considerable amount of money if we were to go out and purchase those albums, a considerable amount of money.

And so Mr. O'Friel, who told me very frankly that because I was the afternoon diskjockey and the so-called popular teenage diskjockey and wielded a great deal of influence with the record companies in New York because of my 13-year association with them, should find it quite easy to go to New York and ask them to donate a great many albums for our library.

You must remember, gentlemen, when you work for a radio station you don't disagree with the boss, because to do this might reflect somewhere later on. When you have a family and children you just don't disagree with the boss, because your responsibilities to them are quite important. I was not allowed to go on that trip. I was ordered to go on that trip, and I repeat that. The Westinghouse Broadcasting Co. paid for my plane ticket, they paid for my hotels, they paid for my food, my 2 days' subsistence, and I visited every major recording company in New York. Now when I sat down and I spoke to these people I told them that I needed approximately 3,000 albums per company which had been worked out by Mr. Givens, and everyone of them said the same thing, "That's a hell of a lot of albums to give away for nothing, what do we get for it?"

The CHAIRMAN. Who said that?

Mr. PRESCOTT. The record companies.

Mr. LISIMAN. Could I ask you to identify this list as being the list of record companies that you visited in New York?

Mr. PRESCOTT. I would be very happy to. I visited the Roulette Record Co., I visited Pick Records, MGM, Decca, Capital, Atlantic, Mercury, RCA Victor, London, Columbia and I believe that Ampar is missing in this list.

Mr. LISIMAN. And you visited Ampar as well?

Mr. PRESCOTT. Yes; I did.

You must remember that albums—

Mr. LISIMAN. Did you make the same request at each of these places?

Mr. PRESCOTT. Everyone of these places. Albums are very expensive. They cost a lot of money and no record company can afford to service every radio station in the country with free albums. They cannot do it. They would go broke.

So, consequently, they set up a library service in which they invited the radio stations to participate on the following basis:

For approximately \$50 a year we will send you so many albums, we will pick and choose them for you, you will be on our service. We do not give away albums free, en masse.

Now, the important thing to remember is this: That you could not purchase those records under a library service, because under that \$50 rate they could not afford to give you what you wanted at 75 cents. This was a special-purpose full service that was started within the last 2 or 3 years and has grown to most companies. If they sold the records to you they would have to sell them to you at their manufacturer's cost. Now all these companies agreed to give us in the area of 3,000 albums. There are over 10 companies we are talking about 3,000 albums, retail evaluation close to \$12,000, OK.

Mr. O'Friel has brought out the fact that he could have bought the record. Well, if he could have bought approximately a thousand albums as he says, and it was a great deal more at 75 cents, what was the sense in sending me to New York?

It would have cost him a little more than the expense of the trip.

Now, Mr. Givens' testimony about Sid Goldberg at Decca records is absolutely 100 percent correct. Decca records told us openly that they have never given away records in that quantity to any radio station, and there is no question in my mind that they were fearful of some kind of reprisal, if any opinion, as to getting Decca records played in that area and that is why they broke the precedents and that is always the thing that hangs over every record company's head, because if a 250-watt station or a 5,000-watt station walks in and says give me albums they don't get them, neither will they get Lester Lanin or any of the other favors but when you shake 51,000 watts in front of them with large New England coverage, the result was the records came in. So again I say if he could have bought them why didn't he buy them?

It would have cost him \$750 and I am quite sure that Westinghouse can afford \$750, but when you are talking about many thousands of dollars perhaps it was easier for Mr. O'Friel to send me and to embarrass me in front of these people which he did because I did not want to go, and these were friends that I had built up over many, many years and when I have to, through innuendo, imply they will get favors because this was the intention, it puts me in a terrible spot and I was humiliated and Givens and I even talked about this on the plane.

Mr. LISHMAN. Did you give assurances to any of these record distributors that the albums they furnished would receive time on the air of that station?

Mr. PRESCOTT. Very definitely, very definitely. And I gave those assurances because, gentlemen, that was the reason I was sent and I was asked to give those assurances.

Mr. LISHMAN. Who asked you to give those assurances?

Mr. PRESCOTT. Mr. O'Friel who originated the idea for the trip and ordered me to go to New York.

I want to say one other thing: It is a very comfortable feeling not to work for Westinghouse at this moment because for the first time in my life I can stand up to this giant corporation that I feared for 4 years and tell the truth and have no fear of telling the truth because I can't be fired.

Well, we could get into other areas in terms of other diskjockeys and payola. Gentlemen, I would rather answer your questions on that than make any personal comments of my own because I have no intention of in any way pointing my finger at anybody specifically to embarrass them or to hurt their reputation or to deprive them of work.

That was the reason that I asked for executive session the first time I came here. I had been out of the business for almost, well, almost a year, and as I said in my original testimony I was disgusted with the industry or the practices of many stations that I had witnessed. I was ashamed of myself. The payola represented something to me, it represented the fact that in 7 years of broadcasting I accepted nothing and in the last 2½ years of my career I did accept something and I made a mistake, but that money represented one thing to me, I could get out of radio and I could stand on my own two feet in my own business. I had no idea what I was going to do, but that was my means to my end and, if I was wrong, I admitted it openly to this committee the last time I appeared here.

Mr. LISHMAN. Did you accept this money, Mr. Prescott, for the purpose of airing records over the station?

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

Mr. LISHMAN. Did you ever receive any money for conducting record hops?

Mr. PRESCOTT. I think I explained, Mr. Lishman, I did little or no record hops in my career, but it was positively ludicrous to me that anyone could say as a hook I got paid for receiving money for sampling them at record hops because this is so insignificant and meaningless to a distributor, an artist, a publisher, or a music company. All they cared about was air play.

Mr. LISHMAN. Is it correct—did Mr. Givens testify correctly that he stated that you had received the award as being 1 of the Nation's 10 top diskjockeys?

Mr. PRESCOTT. Mr. Lishman, I received the award from Billboard magazine at their annual poll as one of the 20 top diskjockeys. I ranked with Arthur Godfrey, Dave Garroway, and Martin Block, and when I worked for WNEW, WHDH, WORL, and WBZ my rating picture was either one or two, generally speaking. I was never fired from a job in radio, and also considered to be not as a matter of ego that I say this, that I worked harder than any diskjockey I know because I loved diskjockeying at that time and the fact is at WNEW the first 12 weeks I was there in New York I was voted one of the top 10 diskjockeys in the city which, to me, was the highest commendation I ever received. I was never fired from any job in radio. I always left to go to a better job to make more money.

Mr. LISHMAN. Now, Mr. Prescott, how many years were you in the broadcasting business?

Mr. PRESCOTT. Approximately 13 years, Mr. Lishman.

Mr. LISHMAN. And have you ever heard of a person conducting record hops and receiving payments from the record distributor who was not a diskjockey?

Mr. PRESCOTT. Nobody was closer to distributors than I was. I have never heard of it.

Mr. LISHMAN. Do you know a Ruth Clenotte?

Mr. PRESCOTT. Yes; I do.

Mr. LISHMAN. Was she a Boston record promoter?

Mr. PRESCOTT. She was a Boston record promoter and she was also Dave Maynard's personal secretary after I left WBZ.

Mr. LISHMAN. During the time she was Mr. Maynard's secretary, she was also promoting records for record distributors including Dumont and Music Suppliers?

Mr. PRESCOTT. Well, Mr. Lishman, I don't know what she was doing after I left WBZ but she was a record promoter for many years prior to my leaving WBZ.

Mr. LISHMAN. And as secretary to Mr. Maynard, she had free access to WBZ offices; is that correct?

Mr. PRESCOTT. Well, while I was there she had free access to WBZ offices.

Mr. LISHMAN. And she is well known throughout the city as a record promoter.

Mr. PRESCOTT. Very definitely.

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

The CHAIRMAN. Mr. Flynt?

Mr. FLYNT. No questions.

The CHAIRMAN. Mr. Derounian?

Mr. DEROUNIAN. Mr. Prescott, in your original testimony you stated that you were ashamed of everybody and for that reason you walked away. Earlier today you said that the reason you left WBZ was because you had an offer of a job from Embassy Pictures. For what reason did you leave WBZ?

Mr. PRESCOTT. I think that I made that clear in my original testimony that I said my reason for leaving WBZ was predicated on a personal philosophy that I didn't want to get into at that time. Embassy Pictures was my means to and end of getting out of radio. I wanted to get out desperately for almost a year and a half while I was at WBZ, I don't know what to do, I couldn't shine shoes or serve hamburgers, I was not equipped to do anything.

When I got this offer this was my out, this was my opportunity to get out and start fresh in a new business which is what I wanted.

Mr. DEROUNIAN. Why should WBZ pay you \$3,000 if you were walking out?

Mr. PRESCOTT. Why should they?

Mr. DEROUNIAN. Yes.

Mr. PRESCOTT. They didn't have to pay me.

Mr. DEROUNIAN. Why did they?

Mr. PRESCOTT. Well, I guess they felt that because they knew that I was going to leave, that they didn't want an unhappy announcer on the air, and——

Mr. DEROUNIAN. Well, you weren't an announcer, were you?

Mr. PRESCOTT. Well, an announcer or diskjockey.

Mr. DEROUNIAN. After you left you were not going to announce at WBZ; were you?

Mr. PRESCOTT. No.

Mr. DEROUNIAN. Why should they worry about an unhappy announcer that didn't exist?

Mr. PRESCOTT. I don't follow your questions, sir.

Mr. DEROUNIAN. I don't follow your answer.

Mr. PRESCOTT. Why should they worry about an unhappy announcer?

Mr. DEROUNIAN. You said they paid you \$3,000 because they didn't want an unhappy announcer on the air?

Mr. PRESCOTT. That's right.

Mr. DEROUNIAN. Well, you weren't going to be on the air. You were going to be in motion pictures.

Mr. PRESCOTT. But I had according to my contract the right to stay there until September 5, to fulfill my contractual commitment.

Mr. DEROUNIAN. But you had already made your decision to go to Embassy before you were paid the \$3,000?

Mr. PRESCOTT. That is correct.

Mr. DEROUNIAN. All right.

Mr. PRESCOTT. But I could have stayed and gone later, sir.

Mr. DEROUNIAN. I see.

Mr. PRESCOTT. Secondly, WBZ also insisted that I not work in any other radio station as a condition of the contract in the Boston market for a period of 10 weeks. If they were so unhappy with me why do they care whether I went to a competitor or not?

Mr. DEROUNIAN. When did you work for WORL?

Mr. PRESCOTT. October 1950 through December 1955.

Mr. DEROUNIAN. When you testified before our committee did you testify to all the payola you had ever received?

Mr. PRESCOTT. Generally speaking, yes.

Mr. DEROUNIAN. I want it specifically speaking.

Mr. PRESCOTT. Well, specifically speaking, I can tell you also as I told the committee originally that for the first 7 or 8 years of my career there was no payola.

Mr. DEROUNIAN. When you were at WORL, did you promote a show called "Jazz at the Philharmonic"?

Mr. PRESCOTT. "Jazz at the Philharmonic"?

Mr. DEROUNIAN. Yes.

Mr. PRESCOTT. Did I promote it?

Mr. DEROUNIAN. Yes. Did you talk about it?

Mr. PRESCOTT. Well, you are going back a good many years.

Mr. DEROUNIAN. Did you plug it?

Mr. PRESCOTT. To the best of my knowledge, no. I did emcee "Jazz at the Philharmonic" at Symphony Hall in Boston for Norman Granz.

Mr. DEROUNIAN. But you never talked about that on your program?

Mr. PRESCOTT. I may have said I was appearing there, yes.

Mr. DEROUNIAN. Did you ever get any payola?

Mr. PRESCOTT. I got paid for services rendered for appearing for Mr. Norman Granz for "Jazz at the Philharmonic."

Mr. DEROUNIAN. Did you ever get a Buick automobile?

Mr. PRESCOTT. I beg your pardon.

Mr. DEROUNIAN. Did you ever get a Buick?

Mr. PRESCOTT. Yes, I did.

Mr. DEROUNIAN. Did you pay for that?

Mr. PRESCOTT. No, I didn't.

Mr. DEROUNIAN. Who paid for it?

Mr. PRESCOTT. My partner.

Mr. DEROUNIAN. What was his connection?

Mr. PRESCOTT. He and I were partners in a company called Fenway Records. We produced three records at that time which we subsequently sold to MGM Records, I believe.

Mr. DEROUNIAN. Why did he buy you a Buick?

Mr. PRESCOTT. That was a portion of my royalty income from the records.

Mr. DEROUNIAN. Now, did you promote a record called "TV Rhumba"?

Mr. PRESCOTT. I did.

Mr. DEROUNIAN. Did you receive any money for that?

Mr. PRESCOTT. To the best of my knowledge, no.

Mr. DEROUNIAN. Do you remember Bob Bachelder?

Mr. PRESCOTT. A very good friend of mine, a young band leader in Boston.

Mr. DEROUNIAN. He recorded the song, didn't he?

Mr. PRESCOTT. Yes, he did.

Mr. DEROUNIAN. Did he get any money from it?

Mr. PRESCOTT. Did he?

Mr. DEROUNIAN. Yes.

Mr. PRESCOTT. I don't know.

Mr. DEROUNIAN. You didn't?

Mr. PRESCOTT. To the best of my knowledge, no, sir. I remember Bob as a friend of mine. He was going to college, he was struggling in those days. This record attracted my attention and I made it to help popularize him. Today he is probably the most popular band leader in New England.

Mr. DEROUNIAN. Did you operate a record store in New England?

Mr. PRESCOTT. Yes, I did.

Mr. DEROUNIAN. When was that?

Mr. PRESCOTT. In the early 1950's, prior to 1955.

Mr. DEROUNIAN. Was it under the name of Musicland, Inc.?

Mr. PRESCOTT. Yes, sir.

Mr. DEROUNIAN. Was that registered in the Massachusetts Department of Corporations?

Mr. PRESCOTT. Yes, sir.

Mr. DEROUNIAN. Now, did you obtain supplies of free records from the various distributors and record companies and in turn sell them at retail in the record store?

Mr. PRESCOTT. No, sir.

Mr. DEROUNIAN. You didn't do that?

Mr. PRESCOTT. No, sir. First of all you can't sell records that have diskjockey copies on them. The only thing I did get from the distributors was their full cooperation and display material and the fact that they felt this could be the first self-service record store in Boston which was my basic idea and they gave me a tremendous amount of encouragement.

Mr. DEROUNIAN. Did other stores in the area complain because you were selling these records at much lower prices than theirs?

Mr. PRESCOTT. I never sold records for lower prices than anybody else sold them for.

Mr. DEROUNIAN. You talked about your New York trip where you said you were told to get these records, Mr. Prescott, and you said that they could have practically saved your trip money by buying those records because there wasn't much difference. How much does a 2-day New York trip from Boston cost you?

Mr. PRESCOTT. I don't know. I would estimate that we probably spent, estimate, in the area of \$200, \$250.

Mr. LISHMAN. May I interrupt there? Is it correct that you were in New York 3 or 4 days according to the testimony of Mr. Givens?

Mr. PRESCOTT. I don't remember, Mr. Lishman.

Mr. DEROUNIAN. He said 2 days.

Mr. PRESCOTT. All I know is the difference between \$200 and \$300 and \$750 is certainly not a big difference. I don't think it justifies a trip.

Mr. DEROUNIAN. You have a swimming pool at your house, don't you?

Mr. PRESCOTT. Yes, I do.

Mr. DEROUNIAN. Was any part of that swimming pool cost paid for by anyone other than yourself?

Mr. PRESCOTT. Sir, I will be most happy to supply this committee with every check personally made out by me.

Mr. DEROUNIAN. I asked you the question, "Yes" or "No."

Mr. PRESCOTT. No, absolutely not.

Mr. DEROUNIAN. You paid for all of it yourself?

Mr. PRESCOTT. Yes, sir.

Mr. DEROUNIAN. You worked at WIIDII at Boston, is that correct?

Mr. PRESCOTT. Yes, I did.

Mr. DEROUNIAN. What was the reason for your leaving that station?

Mr. PRESCOTT. I was offered the program directorship at WORL which I felt was a good enough reason to leave because it was a higher position, a better challenge, and an increase in salary.

Mr. DEROUNIAN. You were not fired from WIIDII?

Mr. PRESCOTT. No, I was never fired from any radio station, sir.

Mr. DEROUNIAN. What was your reason for leaving WNEW in New York?

Mr. PRESCOTT. I was offered a better job at WBZ, so I thought.

Mr. DEROUNIAN. That was the sole reason?

Mr. PRESCOTT. Yes, sir.

Mr. DEROUNIAN. No further questions.

The CHAIRMAN. Mr. Moss?

Mr. Moss. In the negotiations for the termination of your contract 7 weeks ahead of time I think you indicated you were represented by the attorney for what, the American Federation of Television & Radio Artists?

Mr. PRESCOTT. Yes, sir.

Mr. Moss. Is this the usual procedure on those matters?

Mr. PRESCOTT. He represents all members of AFTRA, but I also hired him as my personal lawyer to represent me on this particular situation because he is most familiar with the AFTRA rules and regulations and station negotiations.

Mr. Moss. Did you contact him and have him initiate discussions with WBZ?

Mr. PRESCOTT. Yes. I told him that I wanted to leave ahead of time, and could he work out an arrangement where I could leave earlier and get a contract settlement.

I felt that morally as long as they had signed me for a period of a year I was entitled to that year's pay.

If they didn't want me to leave I would have been happy to remain there. It was their decision to make after I had requested it.

Mr. Moss. You indicated that as a part of the settlement agreement you were not to accept employment as a disjockey for 10 weeks.

Mr. PRESCOTT. I believe it was 10 weeks, sir; yes.

Mr. Moss. Was that a written agreement or—

Mr. PRESCOTT. That was a part of the condition of the contract and was in the original termination contract.

Mr. MOSS. It was a choice that you could elect in the original contract.

Mr. PRESCOTT. No; they insisted on it.

Mr. MOSS. They insisted on it.

Mr. PRESCOTT. That is right.

Mr. MOSS. What was the date of your leaving, approximately?

Mr. PRESCOTT. Approximately July 17 or 18.

Mr. MOSS. In what year?

Mr. PRESCOTT. Sorry, 1959.

Mr. MOSS. When did you receive the letter from WBZ asking questions and as to whether or not you had accepted payola?

Mr. PRESCOTT. I am only guessing now but it was—I can't give you the exact date, we have the record on file, it was sometime, I believe in the wintertime, sir.

Mr. MOSS. You say you have the record.

Mr. PRESCOTT. It was after the Oren Harris subcommittee hearings on payola were starting to either make the newspapers or in process.

Mr. MOSS. But you have the letter?

Mr. PRESCOTT. Yes, we have the letter on file, somewhere.

Mr. MOSS. I think it would be very well, Mr. Chairman, to request a copy of this letter for the record at this point.

The CHAIRMAN. Do you have a copy of the letter referred to?

Mr. KLARFELD. Mr. Chairman, I did not bring that with me but when I return to Boston I will locate the letter and forward it to your committee.

The CHAIRMAN. What is the nature of it?

Mr. LANE. Mr. Chairman, we will be happy to supply a copy if you desire.

The CHAIRMAN. Do you have a copy of the letter?

Mr. LANE. I am informed we have a copy of it in our file.

The CHAIRMAN. Do you have the date on it?

Mr. LANE. We are getting it now registered mail, January 7, 1960.

Mr. KLARFELD. Mr. Kelly, may I see the letter?

Mr. MOSS. Mr. Prescott, will you look at this letter and see if this is the same letter you received, or a copy of it, I should say?

Mr. PRESCOTT. Yes, sir, this is a copy of the letter I received.

Mr. MOSS. May I have it? Mr. Prescott, you have consulted with your counsel and he advised you there was no purpose in your responding?

Mr. PRESCOTT. Yes.

Mr. MOSS. I point out to you, to the chairman, that the letter of January 7, 1960, says "The Federal Communications Commission has ordered all broadcasting stations to reply to the following question," and then the question or the text of the question directed by the FCC is embodied in the letter.

The CHAIRMAN. Let it be received for the record.

Mr. MOSS. That was an inquiry directed by the FCC and not undertaken voluntarily by WBZ. It would appear on the face of it embodying as it does at the direction of the FCC or the FCC has ordered such and such, it would appear as a result of FCC action and not an investigation initiated by WBZ.

(The document referred to follows:)

WBZ BOSTON,
Boston, Mass., January 7, 1960.

Mr. NORMAN PRESCOTT,
Newton Centre, Mass.

DEAR NORM: The Federal Communications Commission has ordered all broadcasting stations to reply to the following question:

"Since November 1, 1958, what matter, if any, has been broadcast by any of your stations for which service, money, or any other valuable consideration has been directly or indirectly paid, or promised to, or charged, or accepted by your station, or stations, or anyone in your employ, or independent contractor engaged by you in furnishing programs, from any person which matter at the same time so broadcast has not been announced or otherwise indicated as paid for or furnished by such person?"

Since you were employed by us between the dates of August 29, 1955, and July 18, 1959, we need information from you by no later than January 10, as a basis for our reply.

Excluding compensation paid by the Westinghouse Broadcasting Co., have you, directly or indirectly, been paid by, promised by, or accepted from any person any money, services, or any other valuable consideration for any matter broadcast since November 1, 1958, over WBZ, WBZA, WBZ-FM, or WBZ-TV?

If the answer is "No" please indicate that fact in the space provided on the reverse side of the duplicate letter enclosed, sign and date same, and return it in the stamped, addressed envelope provided.

If the answer is "Yes" we would appreciate full details returned to us in similar manner.

Thank you for your assistance.

Cordially,

PAUL G. O'FRIEL, *General Manager.*

Mr. PRESCOTT. Very definitely, sir.

Mr. MOSS. You have stated that you used in all of your correspondence your own stationery?

Mr. PRESCOTT. Yes, for the most part. I have all the printing bills of the cards that I sent out for almost 13 years and I ordered them for the same period of 13 years, the same printer and always with my own name and own personal identification.

Mr. MOSS. As I recall your arrangement with WBZ provided for you a private secretary?

Mr. PRESCOTT. I paid—I'm sorry.

Mr. MOSS. Well, you paid her or at least you had one working for you at the station; is that correct?

Mr. PRESCOTT. Yes, and they gave me a special dispensation because at the time unless an employee was working directly for Westinghouse I think there was an insurance problem, they could not be covered or something and I had to sign a waiver letter saying that anything, if anything happened to her Westinghouse would not be responsible.

Mr. MOSS. In replying to the listeners who had written you, did you use WBZ stationery or Norman Prescott stationery?

Mr. PRESCOTT. Norman Prescott stationery.

Mr. MOSS. This was with the approval or at least without the objection of WBZ management?

Mr. PRESCOTT. Yes, sir.

Mr. MOSS. You apparently felt it was better business for you to answer on personal rather than company stationery.

Mr. PRESCOTT. Well, we, I did. I always treated myself as what I called a free agent, you know, whatever I did I bore my own expenses, and I wanted to have a personal rapport you know, with the, with—rapport with the listeners.

Mr. MOSS. If the record distributor was comparing the list of the hit tunes would the name Prescott have meant more to him than WBZ?

Mr. PRESCOTT. I am afraid he would have to answer that, sir.

Mr. MOSS. Do you have any opinion?

Mr. PRESCOTT. Do I have an opinion? I think the name Prescott in some cases would mean more than WBZ. In other cases perhaps it would not, depending upon the publications.

Mr. MOSS. Now this Boston Metropolitan Five County Pulse Survey, did it during the period for September-October 1958 and up until the time that you left WBZ show a consistent decline in your ratings?

Mr. PRESCOTT. I will say this, sir, I will stake Westinghouse's word for it. I am not a statistician.

Mr. MOSS. You had no access to it—

Mr. PRESCOTT. No, technically, I don't compile the figures for that nor do I have any idea. I only know what my standing was.

Mr. MOSS. Have you ever been called in for a heart-to-heart talk on what you could do to lift your sagging ratings?

Mr. PRESCOTT. Yes, I have based on the Pulse ratings but then of courses I would say, Well, I am No. 1 in Nielsen.

Mr. MOSS. And then the discussion of other ratings did or did not enter the picture in the discussion of the Pulse ratings?

Mr. PRESCOTT. No, I will say that Mr. O'Friel favored the Pulse ratings, I believe that he did, but by the same token my argument has always been, if there are three ratings who is to say which is better than the other?

Mr. MOSS. Of course, my argument is always, who is to say whether any of them is important?

Mr. PRESCOTT. I agree with you.

Mr. MOSS. But in the discussion was there any reference to other ratings?

Mr. PRESCOTT. I made reference to them.

Mr. MOSS. You knew for certain that the station did subscribe to Nielsen?

Mr. PRESCOTT. Yes, they did subscribe to Nielsen and they advertised the Nielsen ratings in the Boston area and in national publications. The fact that WBZ was No. 1 in Boston, I might add—

Mr. MOSS. You indicated that you estimated your costs for the trip to New York as approximately \$200 or \$250?

Mr. PRESCOTT. Yes, normal plane fare for two people, lodging, and food.

Mr. MOSS. That covered the two of you.

Mr. PRESCOTT. That is right.

Mr. MOSS. Did you have any difficulty getting Westinghouse to reimburse you for the expenses of the trip?

Mr. PRESCOTT. No, because I think that Mr. Givens handled that, if I remember correctly. I think he was given—

Mr. MOSS. You heard of no difficulty?

Mr. PRESCOTT. Oh, no; none at all.

Mr. MOSS. Those are all the questions I have, Mr. Chairman.

The CHAIRMAN. Mr. Devine.

Mr. DEVINE. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Lishman, do you have any further questions?

Mr. LISHMAN. No, sir.

The CHAIRMAN. Mr. Prescott, thank you very much. You may be excused.

Mr. PRESCOTT. Thank you, sir.

Mr. MOSS. I am not very satisfied with the statement of Mr. O'Friel that there was confusion. He has been asked whether or not a meeting had been arranged and he responded to the premise they were inquiring about an affidavit.

I find it difficult in a conversation discussing a meeting to have it conceived that they were discussing an affidavit and I would like to hear from the staff.

The CHAIRMAN. Mr. Kelly, you take the witness stand. Do you solemnly swear the testimony you give to the committee to be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. KELLY. I do.

The CHAIRMAN. Mr. Lishman, you may inquire.

As I understand what you expect—first I think you had better identify yourself for the record.

TESTIMONY OF JAMES P. KELLY

Mr. KELLY. I identify myself for the record as James P. Kelly, formerly a staff investigator with the House Legislative Oversight Committee, and now an investigator with the Blatnik committee.

The CHAIRMAN. And as such an employee of this committee, staff member, you participated in the investigation matter under discussion this morning; is that true?

Mr. KELLY. That is true.

The CHAIRMAN. As I understand it from this witness you want him to clarify certain facts in connection with the investigation?

Mr. LISHMAN. Yes, sir.

The CHAIRMAN. It is all right so far as I am concerned to clear up anything that the record needs in order to obtain the facts, but I don't care to get involved with staff members in a lot of argument as to what had gone on with reference to policies of the station.

Mr. LISHMAN. No; it is not.

The CHAIRMAN. And that related thereto. I want that to be understood.

Mr. LISHMAN. Mr. Kelly, in December or January of 1960, in accordance with your assigned duties, did you participate in an investigation into the payola situation in the Boston area?

Mr. KELLY. Yes, sir, I did.

Mr. LISHMAN. What are your qualifications as an investigator?

Mr. KELLY. From 1950 to 1957 I was a detective assigned to the Narcotics Bureau of the New York City Police Department. In 1957 until September of 1959 I was a staff investigator for the Senate Labor Rackets Committee, commonly known as the McClellan committee. In September of 1959 I came with the Legislative Oversight Committee where I remained until April 15, 1960. At present I am a staff investigator for the Blatnik committee.

Mr. LISHMAN. Mr. Kelly, on Monday December 14, 1959, did you and Mr. Oliver Eastland, who is also on the staff of the subcommittee, have a conversation with Mr. Paul O'Friel of WBZ of Boston?

Mr. KELLY. Yes, sir; we did.

Mr. LISHMAN. Did this discussion you had concern itself with the conduct of certain employees of the station including those commonly known as diskjockeys?

Mr. KELLY. Yes, sir; it did.

Mr. LISHMAN. Was Dave Maynard one of the employees?

Mr. KELLY. He was one of the persons that we questioned Mr. O'Friel about, yes, sir.

Mr. LISHMAN. During the course of this discussion did you or Mr. Eastland ask Mr. O'Friel to request from Mr. Maynard or his attorney, Mr. Smith, an affidavit concerning alleged payola payments which Maynard had taken?

Mr. KELLY. That is correct, sir.

Mr. LISHMAN. Will you please identify Mr. Smith who was Mr. Maynard's attorney?

Mr. KELLY. Mr. Smith was Edward Smith who was also the attorney for Music Suppliers, Inc., the principals of which were Carter Dinerstein who had been paying the money, alleged payments to Maynard. He was also a director of Dumont Distributors and Dumont Distributors was the other one from whom we had ascertained that payments had gone to Maynard.

Mr. LISHMAN. So we have a situation where the attorney for Dumont which was one of the companies making payments to Mr. Maynard?

Mr. KELLY. He was not the attorney, he was a director of Dumont.

Mr. LISHMAN. He was a director of Dumont.

Mr. KELLY. He was the attorney for Music Suppliers, Inc.

Mr. LISHMAN. Just a minute, in the course of your investigation did you ascertain that Music Suppliers, Inc., was also paying money to Mr. Maynard?

They were the two companies at that time that were paying money to Dave Maynard?

Mr. KELLY. They were the two companies at that time that were paying money to Dave Maynard.

Mr. LISHMAN. So the two principal record distributing companies who were making payments to Mr. Maynard had either as director or counsel the same lawyer who represented Mr. Maynard?

Mr. KELLY. Yes, sir; as a matter of fact we pointed out the possible conflict of interest to Mr. O'Friel, and to Mr. Swartley and Mr. Steen.

Mr. LISHMAN. Who are they?

Mr. KELLY. Mr. Swartley was Mr. O'Friel's superior in Westinghouse and Mr. Steen was the Westinghouse attorney who had come up from New York on that date.

Mr. LISHMAN. Did they make any comment about this conflict of interest that Mr. Maynard's lawyer also was attorney or director of the people who had made money payment to him?

Mr. KELLY. They did express surprise and I believe Mr. O'Friel mentioned to us that he was not aware of this connection.

Mr. LISHMAN. Now, on December 14 did Mr. O'Friel inform you and Mr. Eastland that he had expected to hear from Mr. Smith and his client, Mr. Maynard on the following day?

Mr. KELLY. That is correct.

Mr. LISHMAN. And on the afternoon of December 15, 1959, did you call Mr. O'Friel at WBZ and inquire as to whether or not he had seen or heard from Dave Maynard or his attorney, Mr. Smith?

Mr. KELLY. That is correct.

Mr. LISHMAN. Just what was the question that you asked Mr. O'Friel?

Mr. KELLY. I asked him if he had heard from Maynard or his attorney, Mr. Smith, and he said, no, that he had not heard from them. I said—first I refreshed his recollection of the fact we were interested in whether or not they had been in contact with Mr. O'Friel and whether he had inquired about the affidavit. In our conversation on December 14, I remember making the remark that if they got an affidavit from him they should frame it in view of the obvious conflict of interest that existed and the obvious nature of the investigation which Mr. O'Friel had conducted on December 1 and 2 in relation to this same matter where he sent Maynard who was accused or alleged to have taken the money to the people who were alleged to have given to him to bring them together at a hotel in Boston to find out whether or not this was so. It made about as much sense as sending a boll weevil to a cotton convention and when I knew about Mr. O'Friel's background, I couldn't possibly conceive how, as an investigator, he would have done this. It was not until after January 4, Mr. Lishman, I might add that we came across a confidential memorandum that was furnished to us by Westinghouse in which Mr. O'Friel in relating and I might add in somewhat detail to another of his superiors, Mr. Tooke in New York with Westinghouse, that on the morning—about 9:30 a.m.—on the morning of December 15 the same day that I had called him up to ask him if he had heard from these people that he had had a conference with Mr. Maynard and Mr. Smith in his office. Now 2 days later Mr. Eastland called in my presence from the Somerset Hotel, I believe from a phone booth in the lobby and he inquired in my hearing whether or not they had heard from him, he reported that—

Mr. LISHMAN. Heard from whom?

Mr. KELLY. Heard from Mr. Maynard and his attorney, Mr. Smith. This was on the 17th. He informed me that Mr. O'Friel had told him that they had not heard from them and I think they added the remark that "I think you people were right." Because we had suggested and I think Mr. Eastland had suggested at the meeting that he might not hear from them again.

Mr. LISHMAN. Did you have occasion in the course of your investigation to confer with Harry Carter of Music Suppliers, New England?

Mr. KELLY. Yes, I did.

Mr. LISHMAN. What was the subject of your interview with Mr. Carter?

Mr. KELLY. The subject of the interview with Carter, who was a principal of Music Suppliers, Inc., was to determine from Mr. Carter and also from his partner, Gordon Dinerstein, whether or not any payment had been made to any diskjockeys, the nature of these payments and how they were entered on the books of Music Suppliers, Inc. We not only had several interviews with these individuals but we had an accountant from the General Accounting Office in the Bos-

ton area, Donald Keegan, who went through the books also and substantiated that payments were made to Mr. Maynard by Music Suppliers, Inc. Some of these payments were for an automobile and some cash payments.

Mr. LISHMAN. Did Mr. Carter tell you that this money was paid by Music Suppliers to Mr. Maynard for air exposures as well as record hops?

Mr. KELLY. In one conversation he did. He indicated that they had in their books they had made certain payments and they had distinguished between whether it was a record hop or whether it was for air exposure.

Mr. LISHMAN. And did their books substantiate that statement?

Mr. KELLY. It substantiated the payments to him which were charged to one of two items, advertising or promotion. Now I might add that Mr. Carter and Mr. Dinerstein were at times a little less than candid with us, too, and that we had to literally pull some of this information out of them, that they first denied making any payments until we inspected their books, and we also inspected the books of Dumont who was the other chief contributor to Mr. Maynard's support.

Mr. LISHMAN. Who is Mr. Dumont?

Mr. KELLY. Dumont is the principal of Dumont Distributors, Inc. He told us in the presence of his attorney, as a matter of fact. It was at this point that his attorney shut him off and concluded his discussion, this was either the 16th or 17th of December and he told us it was for both air exposure and record hops. These payments to Maynard.

I understand they have both come down here, three of them, as a matter of fact have come down here and denied it under oath.

Mr. LISHMAN. Now, Mr. Kelly, during the course of your investigations of the payola situation in Boston, did you interview a diskjockey who, in order to get himself off the hook, had concocted a story with Mr. Donald Dumont that the payments that were made to him were not for obtaining exposure of records on the air?

Mr. KELLY. That is correct.

Mr. LISHMAN. But were for another purpose?

Mr. KELLY. That is right. They had devised a cover story.

Mr. LISHMAN. Were you ultimately successful in getting a confession from that man that this was a story concocted between him and Dumont in order that this particular diskjockey would not lose his job?

Mr. KELLY. That is correct, sir.

Mr. LISHMAN. And is it not a fact that that confession was corroborated by that witness subsequently in executive testimony before this subcommittee?

Mr. KELLY. Under oath, that is correct, sir.

Mr. LISHMAN. I have no other questions.

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

Mr. MACK. Only one. This concern about Dave Maynard because of testimony yesterday that he was not involved in payola. Now during the course of your investigation did you determine that Maynard was participating in similar programs to other diskjockeys?

Mr. KELLY. That he was what, sir?

Mr. MACK. Participating in similar arrangements that other disk-jockeys were participating in?

Mr. KELLY. Well, I didn't see any difference in the arrangement, particularly since the common denominator was the fact that Maynard was taking the money not only from Carter and Dinerstein but under prior employment had taken it from Cecil Stein of Records, Inc., who came down here under oath and admitted that he had paid this money to him for air exposure and I think the committee established fairly well in the hearing that no one who was not a diskjockey was ever given any money for record hops.

Mr. MACK. Under the accepted definition of payola, as a result of your investigation, you would think that Maynard was participating in payola?

Mr. KELLY. I have no doubt that he was.

Mr. MACK. Thank you.

The CHAIRMAN. Mr. Derounian?

Mr. Moss?

Thank you very much, Mr. Kelly.

The CHAIRMAN. Be sworn, Mr. Eastland.

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

Mr. EASTLAND. Yes, sir.

The CHAIRMAN. State your name for the record, please, sir, and your position.

TESTIMONY OF OLIVER EASTLAND

Mr. EASTLAND. I am an attorney on the staff of the subcommittee.

The CHAIRMAN. Mr. Eastland, you were one of the staff members who worked on the matter which has been under consideration and discussion here, were you not?

Mr. EASTLAND. Yes, sir.

The CHAIRMAN. You worked with Mr. Kelly?

Mr. EASTLAND. Yes, sir.

The CHAIRMAN. Mr. Lishman, you may proceed.

Mr. LISHMAN. Mr. Eastland, you have been here during the testimony of Mr. Kelly?

Mr. EASTLAND. Yes, sir.

Mr. LISHMAN. Is his testimony correct insofar as it relates to the conversations and interviews that have been described?

Mr. EASTLAND. Yes, sir.

Mr. LISHMAN. Do you recall you had a conversation on the 17th of December with Mr. O'Friel?

Mr. EASTLAND. Yes, sir.

Mr. LISHMAN. And you made notes of it at or about that time?

Mr. EASTLAND. I did, sir.

Mr. LISHMAN. Can you tell us the substance of that telephone conversation you had on the 17th with Mr. O'Friel?

Mr. EASTLAND. Yes, sir; I called Mr. O'Friel from a telephone booth in the lower lobby or the basement of the Somerset Hotel, and I asked him if he had heard from Mr. Maynard or his attorney, and he said he had not. And I said "Well, it looks like you are not going

to hear from him." He says, "Well, it looks like you were right about that."

Mr. LISIIMAN. I didn't hear you, Mr. Eastland.

Mr. EASTLAND. Well, it looks like you were right about that. He was referring to a remark I had made on December 14 when we were in his office when we had brought certain things to his attention, for instance, that Mr. Smith was representing both Mr. Maynard and Music Suppliers, the ones alleged to have paid him the money. I told him then "I don't think you are going to hear from him again." So on the 17th when I called him he said it looked like I was right, they were not going to hear from him any more.

Mr. LISIIMAN. Did you subsequently ascertain, in fact that Mr. O'Friel had heard from Mr. Maynard or his attorney?

Mr. EASTLAND. Yes, sir, some time later.

Mr. LISIIMAN. How did you ascertain that?

Mr. EASTLAND. From a document that they turned over to us in response to a subpoena which was served on them.

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

The CHAIRMAN. Mr. Derounian, any questions?

Mr. Flynt?

Mr. FLYNT. I have no questions.

The CHAIRMAN. Mr. Moss?

Mr. MOSS. No questions.

The CHAIRMAN. Mr. Lishman, have you anything else?

Mr. LISIIMAN. No, sir.

The CHAIRMAN. Thank you very much. You may stand aside. This concludes the hearings and the committee will adjourn.

(The following letter was inserted in the record at the request of Hon. Gerald R. Ford, Jr., of Michigan:)

UNIVERSAL ARTISTS,
Grand Rapids, Mich., May 24, 1960.

HON. GERALD FORD,
Grand Rapids, Mich.

DEAR MR. FORD: Since giving up the Grand Rapids Stadium and hockey, I've been promoting my shows at the civic auditorium as I did for many years before the stadium was built. I have worked hard to promote these various attractions in Grand Rapids and other Michigan cities for over 20 years and have lost a great deal of money in the process. Now that the business has become fairly lucrative, some of the local diskjockeys have also gone into the promoting business. I have no objection to their becoming promoters, but I do object to their working as diskjockeys at the same time. In my opinion this is another form of payola. In one instance a diskjockey from station WMAX and myself both bid on a very popular attraction starring many recording artists. (Dick Clark Show). Because of this diskjockey's connection with the radio station, he was awarded the contract for promoting this show.

I had a similar experience with a diskjockey from radio station WKNX, Saginaw, on a "Grand Ole Opry" show. However, in this case the diskjockey was not successful in obtaining the show. I have been bringing "Opry's" to Michigan for the past 8 years and have lost a great deal of money while building this group up.

My livelihood depends on promoting shows and if diskjockeys are permitted to compete with me, I may as well go out of business. Any agent in his right mind would much rather award an attraction to a radio diskjockey than to a promoter without such connections. The reasons are obvious. In my opinion the promoter diskjockey is using the air waves for his own personal gain. It is true that he must buy advertising time, the same as I do. However, he can build up the particular artist in whom he has an interest, by playing his or her records very frequently, thereby creating a demand for that particular artist.

In my opinion it is unethical and wrong for diskjockeys to be promoters for the reasons mentioned above and because they are in direct competition with an advertiser. If diskjockeys are going to be permitted to be promoters, then in self-defense I will have to apply for a radio station license of the same frequency and same wattage since I believe I am entitled to the same privileges they are.

Thank you.

Sincerely yours,

UNIVERSAL ARTISTS,
PHIL SIMON.

(Whereupon, at 12 : 55 p.m. the hearing was adjourned.)

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