

ROUND TWO: BOSTON PAYOLA PARTY

Harris group hears Hub witnesses, releases secret testimony

The House Legislative Oversight Subcommittee's payola hunt continued last week with testimony from a station operator, disc jockeys and record makers and distributors.

Most of it concerned the Boston area. The Subcommittee announced hearings will be recessed in about three weeks.

Highlights last week included:

- Release of the secret testimony of a former WBZ disc jockey, given Feb. 8, that he accepted money to play records on the air, the first such admission up to last week.
- Testimony by a station operator and record distributors on agreements between station and distributors to air records for pay—the station owner holding the money was to defray "handling" expenses for what was called a promotion.
- Testimony by a record company president and his former associate that they used a record distribution firm to make short-term loans for which they received returns of up to 25%.

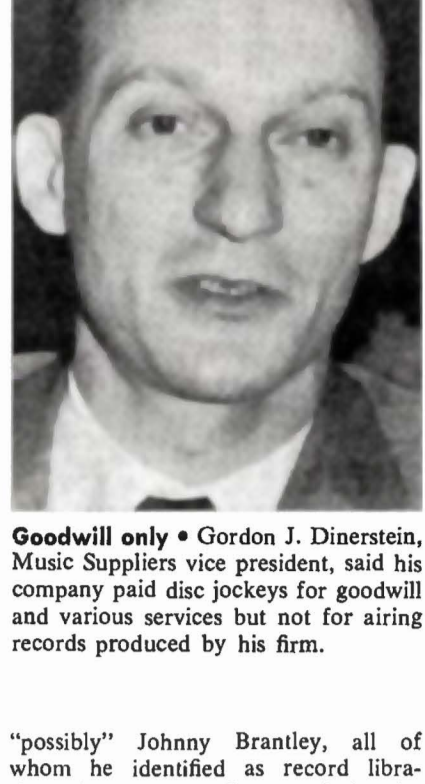
Three witnesses testified last week behind closed doors. Harry Carter, president of Music Suppliers, Boston, pleaded that public testimony might cause him to suffer a mental breakdown. Samuel H. Clark, president of AB-PT subsidiary of Am-Par Records, said public testimony might injure his health because of a coronary thrombosis he suffered last fall. Their Wednesday testimony was made public Thursday morning.

The third secret witness, Don Masters, disc jockey-librarian at WHAL Boston, asked closed-door testimony because he felt his testimony might tend to defame someone. It was not released.

The FCC last week had no announcements on any action it might

take concerning several station licenses involved in testimony.

The sessions were enlivened Wednesday afternoon when Mr. Carter, who had just come out of a closed-door session with the subcommittee in a backroom, objected to photographs by AP and UPI photographers. Mr. Carter's promotion man, Harry Weiss, who testified Thursday, came to the aid of the slight and harried-looking Mr. Carter when the cameramen insisted on shooting pictures anyway. Sheltering Mr. Carter, Mr. Weiss threw a bound transcript of previous testimony at one photographer (see picture page 41).



Goodwill only • Gordon J. Dinerstein, Music Suppliers vice president, said his company paid disc jockeys for goodwill and various services but not for airing records produced by his firm.

"possibly" Johnny Brantley, all of whom he identified as record librarians, but said he didn't feel this influenced their choice of records for airing on stations. Am-Par, he said, sometimes supplied its recording artists to disc jockey Bob Clayton of WHDH Boston for interviews, at the latter's request.

He said Music Suppliers and six other distributors receive promotion money from Am-Par, but doubted it was used to pay disc jockeys. He acknowledged Am-Par always asks for the copyright on records by unknown artists. He denied "coercing" a copyright from Sam Lembo, but said the copyright for a record made by Mr. Lembo was "assigned" to Pamco (an Am-Par label). He called Mr. Lembo a "disgruntled artist" who took \$5,000 from a record on which Am-Par lost \$5,000.

Discussing the loans to Verve, Mr. Clark said he was not told the exact amount of return he would receive.

Near The Top • He acknowledged that Am-Par has paid to get "preferential treatment" in that the company likes to get its records "up near the top" of packages of 150-200 records disc jockeys receive weekly, but that payments are to assure they will be heard, not aired.

The witness said Am-Par has paid only about \$5,000 in four years to disc jockeys and agreed to furnish a list of payments. Authorization for payments, he said, is up to him in each case.

Mr. Clark said when he first went to Am-Par as a salesman, he opposed what he felt was a policy on ABC's part of "leaning over backward" to keep from favoring play on the network and owned stations of records made by its subsidiary companies. He said he tried to create the impression CBS and NBC played records by their own subsidiary companies more than did ABC.

Rep. Harris had a list read showing that Dick Clark on his ABC-TV program in October 1959 played nine Am-Par records 30 times, eight Columbia records 28 times, eight Victor records 22 times, eight MGM records 21 times and 7 Capitol records 36 times.

Up The Lists • The witness said he didn't believe Dick Clark "or any other disc jockey" of Dick Clark's stature would play Am-Par or ABC-Paramount records unless they were established hits. But he said some ABC company records using "creative" talent have made their own way up the lists without much help.

Harry Weiss, promotion man, Music Suppliers, Boston—Mr. Weiss acknowledged part of his salary is paid by Am-

Last week's testimony:

Harry Carter, president, Music Suppliers Inc., Boston. Mr. Carter acknowledged he, Mr. Clark and Mr. Dinerstein used MS as a "conduit" to make personal loans to Verve Records, repayment of which was made in records with discounts ranging from 10% to 25% below regular prices to distributors as a form of interest on the loans. He denied MS made any special effort to push Verve records.

Record manufacturers, he said, gave MS promotional allowances for promotion of records.

The witness said he put up \$2,000 in 1946 to buy 50% of MS from Mr. Clark and when the latter moved to Am-Par in 1955 under a five-year contract as president, he signed a contract with Mr. Clark to buy his 50% for \$50,000 which was to be paid over a 20-year period with no interest. To assure payment, the shares were held in escrow by Edward F. Smith, an attorney. As a further guarantee, Mr. Carter's 90% of the shares in Music Distributors also was held in escrow, under a contract dated Aug. 7, 1956, he explained. Both Mr. Carter and Mr. Clark took out \$25,000 life insurance policies, each naming the other as beneficiaries.

The subcommittee's primary interest in the Carter-Clark transaction was a further contract, agreed to Aug. 10, 1955, which gave Mr. Clark an option to repurchase his 50% of MS if his contract with Am-Par were terminated in any way during the five years. The Carter-Clark contract did not specify the price Mr. Clark would pay to reacquire his 50% and the subcommittee held this and other provisions gave him effective control over Mr. Carter and MS and that he could



Publicity shy • Harry Carter (seated), president of Music Suppliers, didn't want his picture taken when he emerged from closed session with Harris subcommittee. When photographers tried anyway, MS promotion man Harry Weiss, also a witness, tried to shield him and later threw a bound transcript of testimony at a photographer.

Par, but said he shows no more favoritism to that label than others in talking to disc jockeys. He denied having any policy position at MS and called himself a "messenger boy." He admitted, under prompting, that he had made reports to Mr. Clark at Am-Par on the "listening" situation among Boston disc jockeys for that label.

Mr. Weiss admitted, to questioning, that he had obtained blank letterheads from people at WBOS Brookline, WHIL and WBZ Boston, with signatures of people at these stations. He identified only Norman Prescott, former WBZ disc jockey.

He said he used the letterheads to make up Top 50 lists to send to *Cash-box* magazine, favoring MS-distributed tunes. He did this, he said, after being told competitors were doing the same and thus implying the station named on the letterhead had made up the lists itself.

Helped Sell • He said he once helped sell a record to Am-Par for \$5,000, was paid \$500 by the seller and gave this to Mr. Carter, who returned \$200 of it to him.

Mr. Weiss said he helped Ray Lewis market a record through MS for which

exercise the option at any time, paying nothing. The subcommittee also noted MS itself had paid the premiums on both the policies since Mr. Clark left MS.

Option to Buy • Mr. Carter told the group that Donald DuMont has an option to buy back this June the 50% of DuMont Record Distributing Corp. Mr. Carter holds, for \$25,000 to \$30,000.

The witness denied he had anything to do with putting the letters "BMI" on a record distributed in January, 1959 by MS in which Mr. Carter acquired 50% interest for distribution and promotion work. Ray Lewis, deputy sheriff of Manchester, N.H., had told the subcommittee MS had "BMI" placed on the label. (It was brought out that stations will not air a record unless it is known to be licensed.) The subcommittee said BMI has denied licensing the record. Mr. Lewis is manager of "The Downbeats," a group which made the record.

Mr. Carter said MS had no "set pattern" in paying disc jockeys, but that payments were made only for "advice" and for promotion of tunes at record hops.

Rep. Moss said the loans to Verve involved "fantastic interest" and thought this might be a way of dodging taxes on corporate profits. He expressed disbelief in Mr. Carter's testimony and proposed that he be required to testify in public.

Samuel Clark, president, Am-Par Records, New York and AB-PT subsidiary—Mr. Clark said he became "alarmed" at finding Am-Par was capitalized at only \$10,000 and was advised by his lawyer against taking the Am-Par job unless he had "someplace to go back to." The result, he said, was the option agreement with Mr. Carter.

Same Price • He said he was under the impression that if he repurchased his MS stock he would pay the same price for it as Mr. Carter paid him. He admitted, however, that the option did not require this.

The witness noted his contract with Am-Par has been renewed and the option with Mr. Carter is thus now void, but expressed apprehension at what ABC might do, since his agreement with ABC was that he should have no interest in other music publishing, recording or allied companies. "I was imprudent," he said. He said the Am-Par presidency job was too good to turn down and that he would have been willing to sell his MS stock for \$10-\$15,000, except for Mr. Carter's offer.

He said Am-Par bought suits of clothes at Shaw-Ross, New York, for Ronnie Granger, Rick Willard and

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Paid for play • Cecil Steen, Records Inc., said he paid WMEX \$1,400 for picking one of his records weekly for multiple plays on the station's "golden platter" promotion.

he received \$100 from Mr. Lewis for promotion. Under questioning, he acknowledged receiving \$650 more from Mr. Lewis, but called it expenses. Questioning by the subcommittee tended to indicate Mr. Weiss actually charged off part of the \$650, also for promotion. Subcommittee questioning hinted he had concealed the \$650 charges from Mr. Carter. Mr. Weiss denied he caused the BMI label to be put on the record.

Subcommittee evidence indicated one of the tunes on the record was on best seller lists before it was released.

Mr. Weiss denied making payments to disc jockeys named specifically in subcommittee questions to him and said he did not know payola existed until the subcommittee investigation started.

Jack Gold, Paris Records, New York • Mr. Gold said he was told by two KYW Cleveland employees (Joseph Finan and Charles Young, who testified the week before) that he was with the "wrong" distributor in Cleveland. He said he went to KYW Cleveland Program Director Mark Olds and Station Manager Gordon Davis with his complaint of discrimination, threatening to go to the FCC.

Mr. Gold said Mr. Young told KYW officials that he was lying and that Mr. Gold had offered payola to Mr. Finan. Afterward, KYW played his record "at least twice," he said.

Mr. Gold denied giving payola to disc jockeys, saying that he had paid only about \$400 over 3½ years for Christmas gifts and for savings bonds presented to children of disc jockeys.

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with programming. All station policy involving disc jockeys, he said, was handled by his brother.

Rep. John E. Moss (D-Calif.) said he felt it would have been "more ethical" for WMEX to put the "golden platter" promotion on its rate card and "send salesmen out" to sell it to record distributors. "As near as I can figure, that's what you were doing," he said.

Mel Miller, disc jockey and program director, WMEX • Mr. Miller said he selects the "golden platter" every week as well as all other records. He acknowledged receiving a total of \$450 from five record companies, but said he felt the money was for "good will." He said he didn't feel the payments influenced him in airing records, though he wasn't sure about the record companies' intentions.

Arnold Ginsberg, disc jockey, WMEX • Mr. Ginsberg said he received record company payments of \$4,400 over 2½ years while at WBOS Brookline and WMEX. The payments,

Meeting expenses • Maxwell Richmond, WMEX Boston president, admitted he made deal with distributors, but said the money was charged for "handling" accompanying promotion.

Cecil Steen, Records Inc., Boston • Distributor Steen said he paid WMEX Boston \$1,400 over 13 weeks for having one of his records selected by the station as its "golden platter of the week." The station played the record about eight times a day, making no announcements of payments by Records Inc., he said. For one other week he paid WMEX \$150 for the golden platter selection, he said. Overtures were made by Maxwell Richmond, president of WMEX, he said.

Mr. Steen said he paid a total of \$2,050 to Boston disc jockeys and felt he received some favoritism in airing records, but thought also he had wasted money making payments.

He said a "top 40" or other top list of records might be put together by anybody, a distributor, a disc jockey or based on information from the public.

Rep. Harris said he felt deception enters the picture because the lists often are falsely ascribed to public choice and that stations are used to further this deception.

Maxwell Richmond, president-general manager, WMEX, Boston • Mr. Richmond said WMEX made charges to record distributors for selecting their records for the "golden platter" promotion and that the charges were for expenses incurred to the station in handling and mailing out 50 to 75 records furnished by the distributor and mailed out free to listeners.

The station made no charge for this service until it began to become "bur-



Cleveland call • Jack Gold of Paris Records went to KYW Cleveland manager, he says, after KYW disc jockeys told him he was using the "wrong distributor."

densome" to WMEX financially, he said. The WMEX charges dropped from a high of \$150 weekly to \$10 weekly, he said, because the handling and mailing procedures later were streamlined. He denied charges were based on "negotiations" with distributors. WMEX received payments totaling \$2,225 over 13 months from distributors for its "golden platter" and "Mr. X" promotions, he said.

The WMEX president said he ordered affidavit forms made after learning in December 1959 that two employees, Program Director Mel Miller and disc jockey Arnold Ginsberg, had received payments from record companies and distributors. The affidavits were circulated among employees and returned last month, he said, and the station decided not to discharge the two because they were "essentially honest" and promised they would accept no further payments. He said no instances of payments were uncovered at his other two stations, WPGC Morningside, Md., and KBMI Henderson, Nev.

The WMEX president was criticized for what subcommittee members felt were laxity in keeping in touch with day-to-day operation of WMEX, failure to move faster with his own probe of payola and failure to fire the two disc jockeys.

Robert S. Richmond, commercial manager, WMEX • A brother of 85% WMEX owner Maxwell Richmond, the witness said his primary duties were in time sales and he had nothing to do

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he said, were Christmas gifts or for "good will, because of my position as a disc jockey." He said he considered all the money as gifts, but counted it as income in making tax returns.

Mr. Ginsberg said several checks made to him with notations such as "through July" had no meaning to him, but he assumed the record company making the checks had "some sort of chronological sequence" for record promotion payments. Asked if the payments were not for a "service" over these periods, Mr. Ginsberg said if he performed any service, it was "listening" to the firms' records.

Chief Counsel Robert W. Lishman retorted, "It's obvious to me you were listening to their records over the air."

Mr. Ginsberg told the subcommittee he owns one-third of WSManford, Me.

Pete Simpson, recently of WPGC Morningside, Md. • When Mr. Simpson broke a fitting on the dental bridge Feb. 16 he phoned the station to say he couldn't handle his disc jockey assignment that day. "You're fired," he said he was told, so he appeared at the committee Feb. 17 with an offer to testify.

He'd planned to quit anyway, Mr. Simpson said, because he didn't like reading two-minute commercials "for Sun Vacuum Cleaner Co. and Sun Sewing Machine Co., Washington, featuring new appliances and attachments for \$12.95." He called them "pitch announcements" and said they drew harsh audience criticism.

The committee focused on his description of the WPGC program format in which, he said, the station regularly repeated the previous week's music of WMEX Boston, headed by Maxwell Richmond who owns WPGC. On questioning, he said WPGC did not play recordings requested in phone calls or fan mail, but stuck to the WMEX program sheet.

"I suggest you get your denture fixed," Chairman Harris said in discharging the witness.

Donald R. Keelan and Vincent Grimaudo, auditors on loan to the Subcommittee from the General Accounting Office • Mr. Keelan said subpoenaed records of Music Suppliers Inc., Boston, indicate at least \$27,121 was paid from 1957-59 to or in behalf of about 20 disc jockeys and stations librarians in the Boston area. DuMont Record Distributing Co. paid disc jockeys \$8,380, Mutual Distributors Inc. paid \$2,120 and Records Inc. \$2,850, making a total of \$40,472 paid by all four companies, he said.

Mr. Keelan said examination of Music Suppliers' books showed "irregularities" in listing insurance premiums, loans and interest payments

But Music Suppliers did not get any of the discount benefits since the loans were personal, he said.

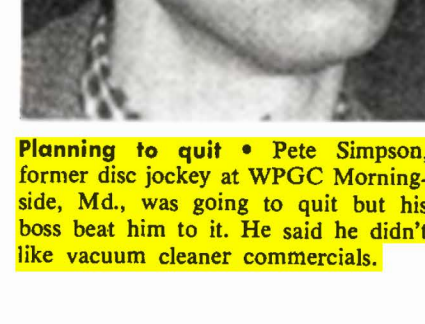
Mr. Dinerstein said he and Mr. Carter made subsequent loans of \$18,750 (at 25% discount-interest) and \$15,000 (at 20% discount-interest) of the same nature to Verve, making a total of \$73,750 for the four loans, with some 40-45,000 albums required for repayment (about \$90-\$100,000 worth at distributor prices). All the loan agreements were oral and were for only a few months, he added.

Norman Prescott, former WBZ Boston disc jockey, now with Embassy Pictures, New York • Mr. Prescott, whose Feb. 8 testimony to the subcommittee was released last week, admitted accepting \$9,955 in payola for which he aired records of four record distributing companies.

Mr. Prescott's testimony largely consisted of assenting to leading questions put by counsel Lishman, who in notifying subcommittee members this would be the form of questioning, said the subcommittee already had confronted the witness with "documentary proof" against him to elicit the answers sought. Mr. Prescott's testimony also was in conflict in some places.

He said he left WBZ in July, 1959 because of disgust with payola conditions and with himself. He said he had accepted payola only 2½ years but had known about it since he entered radio in 1947.

He called payola "almost a big business", but he said he feels most station managers have not been aware it exists.



Planning to quit • Pete Simpson, former disc jockey at WPGC Morningside, Md., was going to quit but his boss beat him to it. He said he didn't like vacuum cleaner commercials.

Payola is fair

Payola is not an unfair trade practice, a Chicago music distributor told the Federal Trade Commission last week.

Not only that, said James H. Martin (owner of James H. Martin Inc. and Music Distributors Inc.), but the number of "exposures" by a disc jockey is no guarantee the public will buy the record.

The public's acceptance of a phonograph record, the Martin reply to a Jan. 8 FTC complaint stated, is dependent on the merit of the record and is "separate and in dependent from, and unaffected by, the number of exposures. . . ."

There would be deception, the Martin response said, if the public was inveigled into buying an inferior rather than a superior product. But there is no objective standard, it stated, to determine the superiority of one record over another. Therefore, no deception. It asked that the complaint be dismissed.

Meanwhile the FTC issued its 43rd payola complaint; against two affiliated Milwaukee record distributors — Garmisa Distributing Co. and Garmisa Inc. The firms were charged with paying radio and tv disc jockeys to play records on the air without acknowledging that they were paid to do so.

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Mr. Dinerstein said he, Mr. Carter and Mr. Clark had made personal short-term high-interest loans of \$15,000 in October 1956 and \$25,000 in January 1958 to Verve Records, but that the loans were carried on the books of Music Suppliers for the purpose of recouping principal and interest (10% in 1956 and 25% in 1958) in the form of records from Verve at 10% and 25% respectively below the usual price to distributors. Mr. Clark was reimbursed, with 10% and 25% interest, by Music Suppliers, he said, and the checks charged to "accounts payable."

Mr. Dinerstein admitted he and Mr. Carter acquired 50% of DuMont Record Distributing Corp., also Boston, in June 1958 (same 75%-25% proportion) for \$5,600 plus their work in adding new record lines to DuMont's label list, including Epic Records.

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