



# Payola: As American as Pizza Pie

Along with the revival of late Fifties rock and roll goes a peculiar nostalgia for the payola scandals that brought that cultural epoch precipitously to a close. At the same time that the pop music industry is cranking up the strains of shoo-be-doo, it seems to be preparing for a distant replay of the coeval congressional hearings and criminal prosecutions that made villains of the most popular disc jockeys and turned the funky sound fatuous.

The flurry or worry started last spring when CBS fired Clive Davis, the president of its Records Group, which controls Columbia Records. Although the nature of Davis' high crime or misdemeanor has never been clearly established, it was widely believed that the expense account infractions he was accused of were lame excuses for deeper problems of payola and payoff. The Davis affair was assumed to be the harbinger of a new round of attacks on Columbia and other big record companies.

The target is big enough:

Davis was the undoubted tycoon of the record business—a \$2 billion business,

all told, that accounts for more income than movies and sports events combined, and constitutes the vanguard sector of the American entertainment industry.

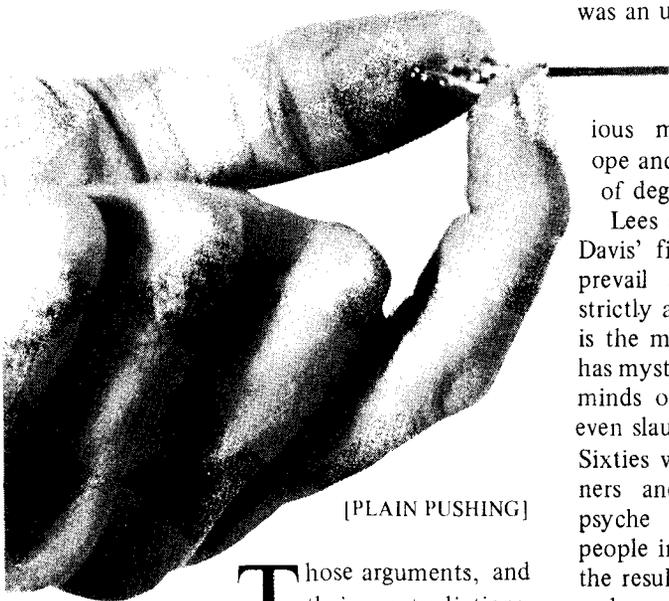
Now, six months after Davis toppled, the full fury of the scandals has yet to break. For reasons that both industry officials and critics are at a loss to explain, Federal and local grand juries, Senate committees, and prosecutors have brought no indictments, made no arrests of anyone on the long roster of suspicious characters under investigation.

What's more, the clear-cut issues of bribery and cultural independence, extortion and free expression, have become decidedly murky. Opportunistic politicians, uptight lawyers and reactionary officials have unfocused the original payola issue for their own needs and ends, so that it's now almost impossible to tell the apes from the angels—if, indeed, there was ever any real difference in the record world.

What's payola? Seen one way, it's the honored American custom of entertaining, intoxicating and enriching one's business associates and clients. The Internal Revenue Service long ago enshrined the four-Martini lunch, the country club membership, and the Las Vegas convention as tax-deductible items with the understanding that business would fail without them. Payola is part of the American way of life; indeed, it *is* the American way of life. Manufacturers pay off wholesalers and retailers to push their wares; publishers pay off distributors and newsstands to peddle their papers; why can't record companies pay off music stores and dee jays to emphasize their albums?

Sophisticated arguments fly back and forth in the legal industry and the entertainment world on the subject of music payola, but after all is said, it does seem rather peculiar that the moralistic attacks center on the record sector of American businesses. It leads some people in and around the industry—both the corporate executives and the hip critics—to fear that the attacks are really meant to threaten rock culture and Woodstock politics, to defang the bite and bitterness of the music, to sterilize free-form radio, and generally to mellow out boogie consciousness into a fox-trot beat.

by Andrew Kopkind



[PLAIN PUSHING]

Those arguments, and their contradictions, are all present in the chronicle of the decline and fall of Clive Davis and his coterie at Columbia. Davis is a Brooklyn-born Harvard lawyer who was so square—he once said—that he thought Simon and Garfunkel was a New York law firm when he became head of Columbia Records in 1967 (he took over the CBS Records Group in 1971, at the age of 38). Once known as “Mr. Super Straight and Mr. Integrity” at Columbia, he soon became associated with the hip avant garde. The rock record industry has grown enormously in the past several years (28 million folk, rock and teen records in 1965, 79 million in '71) and Davis got Columbia more than its share of that pie: 22 percent of the U.S. rock record market with \$340 million in sales in 1972. Davis' salary was \$350,000 that year.

Super Straight or Super Hype, Clive Davis was always impossible to categorize. Jon Landau, the rock critic who writes in Boston's *Real Paper*, reports (among other opinions) that Davis “made an enormous contribution to the growth of rock music by putting Columbia Records right in the middle of the field, not by merely legitimizing it, but helping to build it up to its current prominence. In the process he always championed the artistic freedom of all concerned, and was unafraid to experiment with any form of popular music—or, for that matter, jazz.”

On the other hand, critic Gene Lees

of “High Fidelity” thinks that Davis was an unalloyed disaster at Columbia and for music all around. He helped force jazz and serious music out of America to Europe and generally aided the process of degeneration of rock and pop.

Lees asked bitterly, in the wake of Davis' firing, “Which philosophy will prevail at Columbia—that music is strictly a business and all that matters is the money it makes; or that music has mysterious powers to soothe men's minds or to excite them to idiocies, even slaughters? . . . We saw during the Sixties what music could do to manners and mores and the collective psyche of a whole generation of people in their malleable years. We see the results in those living in their crash pads, passing their dope like their mentors and idols, staying out of it, and occasionally dying while they listen to the music Clive Davis gave them.

Taken either way, the rock industry's success was built on a foundation of extraordinary money-mongering. Musicians get multi-million-dollar contracts on the basis of real or imagined stardom: Davis signed Neil Diamond for \$4 million, and Laura Nyro to a \$5 million contract under which she has not produced one album. Advertising and promotion budgets are enormous; the record companies virtually subsidize the underground press in American with full-page ads for albums and concerts. Last spring, Warner Brothers spent \$10,000 for a Procul Harem party in Los Angeles; Atlantic flew a planeload of guests to Paris for a company anniversary party; and RCA flew another jetful of critics to London for a David Bowie concert—in preparation for his superstar buildup in the United States. The amount of marijuana and cocaine (and God knows what other immoral or illegal confections) consumed at those affairs boggles the brain.

The record business has always insisted that it could not do its thing without big promo budgets. “Successful groups don't just happen,” a Warner Brothers executive was quoted as saying in June, “they are made.” They are made by wining and dining and otherwise softening up radio disc jockeys, by big display ads in the right

publications, by throwing extravagant parties, and—occasionally—by more or less direct payoffs to those in a position to help record sales in a big way.

For instance, record companies give dee jays stacks of free albums, which sometimes turn up on the sales counters of music stores. Promo men give dee jays (or others similarly well-placed) airline tickets that they can use or cash in as they please. Artists have been pressured to sign away their song-writing copyrights with a publishing house that some record exec owns, in order to get a fat contract from the exec's record company. More simply, some artists are expected to kick back a percentage of a contract to the company man who signs them up.

Some of it is big potatoes and a lot of it is pretty small fries. A promo man might come around to a radio station with a joint or a couple of lines of cocaine, but in both cost and intoxicating effect that's lighter than a double scotch in the bar downstairs. A free record (with the label changed or the cover marked so as to prevent resale) for a dee jay's home collection could hardly influence a decision to push a new musician over the air.

So the mechanisms of payola—and its direct relation to record sales—is not always easy to understand. Company executives probably can cadge as much “payola” by ripping off their corporations with phoney expenses or kickbacks as they pay out in their cash, drug, record or travel bribes to dee jays, rock critics, tipsheet publishers, or store owners.

Where promotion, payola, or just plain pushing does the companies noticeable good is in certain specialized categories: for example, with rhythm and blues record sales, and in publicizing new artists. It's been taken for granted for years that payola is a way of life with black-oriented record companies and radio stations. How much of that assumption is a white fantasy is impossible to tell.

Lucky Cordell, of Chicago's R&B station WVON, said recently that “whenever there's talk about payola, the finger's always pointed at the black man.” Cordell noted that the big money is still in white-oriented records, which are “worth four or five times as much as R&B hits.” New York's black-programmed WWRL

broadcast an editorial in June condemning "vague insinuations with racial overtones" about payola in the black record world. And Metromedia, which has some record sales as well as broadcast outlets, reported that it decided against going into the R&B field two years ago because of the widespread payola and extortion atmosphere.

#### [THE CASE BREAKS]

Clive Davis's rumored association with payola problems (there are no official charges) is said to date from Columbia's entry into the R&B market almost three years ago, when it acquired distribution rights to the Philadelphia International Stax soul empires. Last year, Columbia dominated the black music market. Whether Columbia also took over the drug and payola business that allegedly goes along with soul music will have to be finally determined in a more judicial forum. But everyone in the record game believes it's so.

The fatal phase of Davis' struggle with the CBS directors began with the arrest of a middle-echelon mafioso from New Jersey named Pasquale Falcone. The feds picked up Falcone—a member of Vito Genovese's Mafia *meshpucha*—on a heroin dealing charge, and in going through his belongings found the name of David Wynshaw, Clive Davis' vice president for artist relations at the CBS Records Group. There was never any evidence of Wynshaw's involvement with the drug end of Falcone's operations, but in looking over Wynshaw's books, investigators found anomalous records and receipts pointing to some funny money business. CBS fired Wynshaw and Columbia Records accountant Anthony Rubino, and later Davis himself. Davis was charged by CBS with misusing some \$94,000 in company money for such unaccountable expenses as his son's bar mitzvah party, interior decoration of his New York apartment, and rental of a summer home in Beverly Hills. CBS claims in a civil suit that Davis, Wynshaw and Rubino falsified invoices and fiddled the books in such ways as to make the expenses look respectable.

Wynshaw was later called before a Federal grand jury in New Jersey

investigating "organized crime."

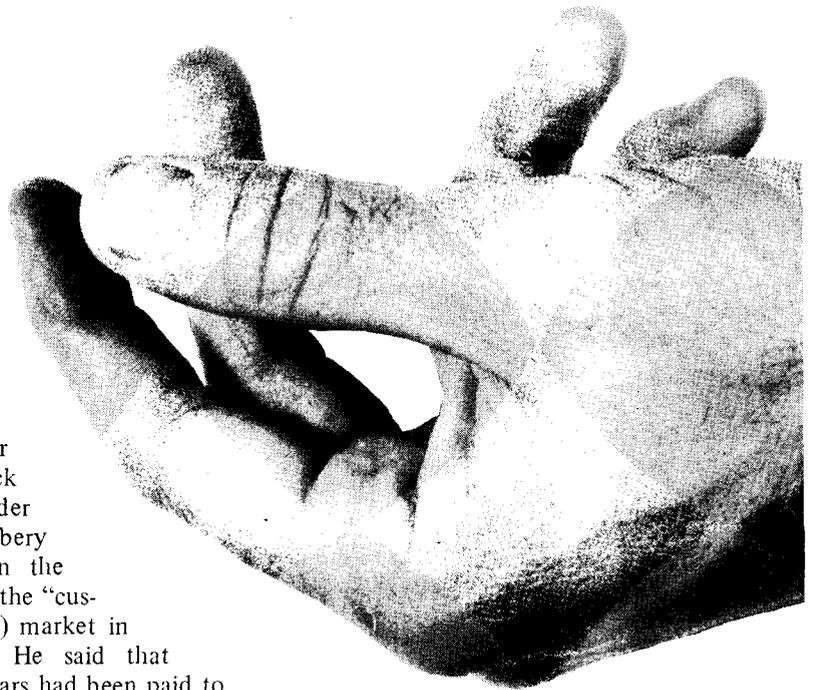
According to press reports at that time, he told the Newark Federal Strike Force that Columbia spent more than \$250,000 a year on payola to black radio stations, under a program of bribery that began when the company entered the "custom label" (R&B) market in February 1971. He said that thousands of dollars had been paid to a tipsheet publisher in hopes that the right records would find their way to the top of the charts.

Wynshaw's world had been a glamorous whirl of celebrity-hopping and table-skipping until the Man looked at the accounts. "I loved it," Wynshaw once said in an interview, "I took all the artists around town when they came in. I'm known at the Copa and the Waldorf. There isn't a maitre d' in the city who doesn't know me. I liked the action."

Patsy Falcone was sent up on the heroin charge. Nothing has yet come of the Wynshaw testimony, and Davis' appearance before the Newark grand jury was mysteriously canceled. Grand jury and prosecutorial investigations in Los Angeles have not yet turned up indictments. CBS hired the heavy law firm of Cravath, Swaine and Moore (partner Roswell Gilpatrick also sits on CBS' Board of Directors) to investigate the Davis affair and the payola charges at Columbia, but so far there has been no word of their findings. There the matter rests: uneasily, to be sure, but conveniently for the industry.

#### [A GREAT TEMPEST]

The first shots in what has become the political battle around the payola issue were fired by William Safire, the former Nixon speechwriter who is Administration apologist-by-appointment to the Op-Ed page of *The New York Times*. A few weeks after Clive Davis was axed



and while payola rumors were flying, Safire held forth on the subject of "drugola" and the CBS "cover-up" of the Davis affair: "the second most massive cover-up of the past 12 months," he said, with his tongue inside Walter Cronkite's cheek. CBS News, he charged, would never investigate payola the way it was digging into Watergate.

Four days later, New York's Conservative Senator James L. Buckley (brother of William F.), picked up on Safire's column, with particular emphasis on the clincher line: "the cancer in the music business is not in padded expense accounts, [but] is what killed singers Janis Joplin and Jimi Hendrix—the new currency of the record industry, hard drugs."

Buckley called for an investigation of CBS, which was considered the principal antagonist of the White House on Watergate. "We must demonstrate that we will pursue and prosecute corruption and fraud in business with the same determination that we pursue crimes committed in other areas of life." Was he attacking CBS because of its Watergate news? "I don't think so," Buckley mildly answered a question at his press conference.

Beyond that, the payola rumors and Davis' troubles provide a good excuse for the anti-permissive Right to inveigh against the youth culture. A little Agnewism goes a long way, even without Agnew, and Buckley pre-

sumably was hatcheting hippies for the Pat Boone crowd. The record industry used that line in counter-attacking the Buckley charges: "payola" charges were a way of getting Nixon's licks at Woodstock Nation.

But it doesn't quite wash. The CBS/Columbia hierarchy—even the middle-echelon hip-hype artists and managers who swarm over the "black box" headquarters on Sixth Avenue in Manhattan—is as much a part of the radical rock culture as Spanish moss is part of a weeping willow. Columbia has been successful because early on it learned how to exploit the energies of the new movements and culture of the Sixties; when other companies still had dress codes that required coats and ties—or at least neat turtlenecks—Columbia was bringing in Yippies and Diggers and freaks and radicals to spread the word about the \$2 billion-a-year rock "revolution." It was always a rip-off.

[AN EARLY DEATH]

The industry's line of defense continues to the effect that the attacks are meant to sanitize pop music and, if the "payola" charges are pursued, will undermine the genius of rock and roll and return the business to the schlock purveyors of the early Sixties.

"If Joni Mitchell were just starting out today, she'd have trouble getting radio air play in this climate [of payola charges]," Asylum Record's David Geffen said not long ago. "Radio stations are afraid to take a chance on new artists unless they have huge hits because they're afraid they'll be questioned about whether they were paid off to play them. The net effect is that the investigations are encouraging the kind of music that proliferated in the 1950s and 1960s—nonessential, non-message schlock rock."

It's true enough that radio stations are worried, but the cause is not entirely the fault of the payola investigations. "Free form" rock radio—where dee jays get to choose the content of their shows without a play list dictated by a program director—is alive in only a few stations in a very few cities. Nor are play lists a perfect defense against payola charges: WLIB in New York, a soul music station, has suffered attacks

even though its program director insists that he has "full music controls . . . there isn't that kind of freedom for the disc jockeys. Everything is under the control of the program director."

Free form radio is dying because of a climate of owner and advertiser control, not because of attacks from the government or the anti-long hair vigilantes. The payola scandals (if they break in a big way) will speed that process, but there's not very far to go. The form is almost dead. It hardly makes sense anymore to speak of a rock music culture, or to treat "our music" as some sort of radical expression. Rock music has been almost devoid of innovation and movement for a long time; Senator Buckley and William Safire haven't been responsible for the cultural decline. But in a way, Columbia Records and the other industry giants have: it's easier to sell big-volume quantities of formularized products than to encourage new and unfamiliar music. For instance, the companies seized on certain contemporary glimmerings of sexual liberation and produced "glitter" rock, which now has an ever-narrowing spectrum of variations from David Bowie to the New York Dolls. What happens is that the glitter formula eventually eliminates every vestige of political insurgency and artistic innovation from the music, and substitutes instead an inert package of "entertainment." In the same way, movie makers are turning out formula "black exploitation" films on the *Shaft* model, based on the whiff of black power politics and nationalism. Bowie bears the same relationship to gay liberation now as Superfly does to Third World revolution.

Maybe the record industry is getting the fuzzy end of the lollypop stick on the payola and drugola charges. But there should be a way of criticizing their egregious rip-offs without worrying about the dangers to innocent long-hair fans and a deserving music culture. Buckley and Safire are half-right for wholly wrong reasons. The record industry is no worse than other industry, Columbia is no better than any other purveyor of vinyl. That's some kind of defense, but it hardly warrants a tear for Clive Davis. ■

# The Way We Weren't

*"Can it be it was all so simple then  
Or has time rewritten every line . . .  
If we had a chance to do it all again  
Tell me,  
Would we, could we?  
What's too painful to remember  
We simply choose to forget. . . ."*

From the theme song of  
*The Way We Were*

It's not that it wasn't that way. But that's not the way it was, either. It's the way *The Way We Were* keeps slipping slightly out of focus that bothers me. It's that great glossy Hollywood valentine wrapped snugly around Barbra Streisand's Communist-red heart, matching her red earrings, red lips, red-painted kitchen and Mandarin-length red fingernails that somebody out there would have us believe were busy at the mimeograph machine grinding out leaflets to save Loyalist Spain.

Look, except that I was a few years too young to save Loyalist Spain, I could be Katie Morosky, more heart than head, falling in love with handsome unsuitable *goyim*; knowing from knishes about dialectical materialism, but I *cared*. At the end of the movie, Katie still cares, enough to man, or ms., the ban-the-bomb barricades. Once-blacklisted Arthur Laurents, who wrote the embarrassingly *Ladies Home Journal*-ish novel and screenplay, still cares. Given the changes wrought by time and tides, I still care.

Given the changes wrought by time and tides, Hollywood still cares—for gross profits, and we'll get to the grossness in due course. Now it's kosher to have a Communist New York Jewish heroine who marries her *goyishe*, uncommitted but *sensitive* boy friend, in a slight case of confusion of identities. She thinks he is Hemingway or at least F. Scott Fitzgerald, and she keeps

by Judy Stone