

0= UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA  
1= BEFORE THE HONORABLE WILLIAM H. ORRICK, JUDGE AMERICAN BOOKSELLERS )  
2=ASSOCIATION, INC., ET AL., )  
3= PLAINTIFFS, )  
4= VS. ) NO. C 98-1059 WHO )  
5=BARNES & NOBLE, INC., )  
6=ET AL., )  
7= )  
8= DEFENDANTS. )  
9= )

10= SAN FRANCISCO, CALIFORNIA  
11= MONDAY, APRIL 9, 2001

12= TRANSCRIPT OF COURT TRIAL - VOL. 1

13=APPEARANCES:

14=FOR PLAINTIFFS: FARELLA, BRAUN & MARTEL LLP  
15= 235 MONTGOMERY STREET, 30TH FLOOR  
16= SAN FRANCISCO, CALIFORNIA 94104

17= BY: DOUGLAS R. YOUNG  
18= ADAM DAWSON  
19= CLAUDIA LEWIS  
20= HOLLY SUTTON

21= (APPEARANCES CONTINUED ON FOLLOWING PAGE.)

22=REPORTED BY: LEO T. MANKIEWICZ, CSR 5297 RMR, CRR  
23= RAYNEE MERCADO, CSR 8258 RMR, CRR  
24= OFFICIAL REPORTERS

25=APPEARANCES: (CONTINUED)FOR PLAINTIFFS: JENNER & BLOCK

26= 601 13TH STREET N.W.

WASHINGTON, D.C. 20005

27= BY: DAVID W. DEBRUIN

BRUCE V. SPIVA

28= DANIEL MACH

JANIS KESTENBAUM

29= WILLIAM HOHENGARTEN

KEVIN STACK

30= SHILPA SATOSKARFOR DEFENDANTS:

O'MELVENY & MYERS LLP

31=(BARNES & NOBLE)  
CALIFORNIA 90067-6035

LOS ANGELES,

32= BY: DANIEL M. PETROCELLI

DAVID R. GARCIA

33= ALAN RADER

PILLSBURY WINTHROP LLP

34= 50 FREMONT STREET

POST OFFICE BOX 7880

35= SAN FRANCISCO, CALIFORNIA 94120-7880

BY: PAUL R. GRIFFIN

36= SUSAN WHITECOTTON

37=FOR DEFENDANTS: SKJERVEN, MORRILL, MAC PHERSON

38=(BORDERS GROUP) FRANKLIN & FRIEL

39= THREE EMBARCADERO CENTER, 28TH FLOOR

40= SAN FRANCISCO, CALIFORNIA 94111

41= BY: REGINALD D. STEER

42= ANDREW D. MASTIN

43= RICHARD J. NELSON

44= MORRISON & FOERSTER

45= 425 MARKET STREET

46= SAN FRANCISCO, CALIFORNIA 94105-2482

47= BY: PENELOPE PEOVOLOS

48= JUDSON LOBDELL

49= (APPEARANCES CONTINUED ON FOLLOWING PAGE.)

50=

51= THE COURT: PLEASE BE SEATED.

52= THE CLERK: CALLING CIVIL-98-1059, AMERICAN

53=BOOKSELLERS ASSOCIATION, INCORPORATED, ET AL., VERSUS BARNES &

54=NOBLE, INCORPORATED, ET AL. COUNSEL, PLEASE STATE YOUR

55=APPEARANCE FOR THE RECORD.

56= MR. YOUNG: GOOD MORNING, YOUR HONOR. DOUGLAS YOUNG

57=FROM FARELLA, BRAUN & MARTEL FOR THE PLAINTIFFS, AND IF IT MAY

58=PLEASE THE COURT, I HAVE SOME INTRODUCTIONS TO MAKE.

59= THE COURT: WOULD YOU PLEASE.

60= MR. YOUNG: WITH ME FROM MY FIRM, YOUR HONOR, ARE MY

61=PARTNERS CLAUDIA LEWIS AND ADAM DAWSON.

62= MR. DAWSON: GOOD MORNING, YOUR HONOR.

63= MR. YOUNG: AND ALSO IN THE COURTROOM IS OUR

64=COLLEAGUE HOLLY SUTTON.

65= THE COURT: MS. SUTTON.

66= MR. YOUNG: WE WILL EXPECT, YOUR HONOR, THAT

67=THROUGHOUT THE COURSE OF THE TRIAL AT LEAST ONE PERSON FROM OUR

68=FIRM WILL BE PRESENT, BUT THAT NOT ALL OF US WILL BE PRESENT ON

69=EVERY DAY.

70= THE COURT: OKAY.  
71= MR. YOUNG: MAY I ALSO INTRODUCE OUR LEAD TRIAL  
72=COUNSEL, MR. DAVID DEBRUIN FROM THE LAW FIRM OF JENNER & BLOCK.  
73= MR. DEBRUIN: GOOD MORNING, YOUR HONOR.  
74=

75= MR. YOUNG: AND I'LL ASK MR. DEBRUIN TO INTRODUCE  
76=THE MEMBERS OF HIS TRIAL TEAM. I SUSPECT THAT ALL OR MOST OF  
77=THEM WILL BE PRESENT IN THE COURTROOM EACH DAY, YOUR HONOR.

78= THE COURT: ALL RIGHT.

79= MR. DEBRUIN: GOOD MORNING, YOUR HONOR. I BELIEVE  
80=YOU'VE MET MANY OF THESE INDIVIDUALS BEFORE. WITH ME TODAY IS  
81=MR. BRUCE SPIVA.

82= THE COURT: MR. SPIVA.

83= MR. DEBRUIN: MR. DANIEL MACH ALSO AT COUNSEL TABLE  
84=AND MS. JANIS KESTENBAUM ALSO AT COUNSEL TABLE. ALSO IN THE  
85=COURTROOM, MR. WILLIAM HOHENGARTEN; AND ATTORNEY KEVIN STACK IS  
86=ALSO WITH US TODAY, YOUR HONOR, AND MS. SHILPA SATOSKAR FROM  
87=JENNER & BLOCK.

88= THE COURT: YOU SURE ALL OF THOSE OTHER PEOPLE IN  
89=THE COURTROOM AREN'T MEMBERS OF YOUR FIRM?

90= MR. DEBRUIN: WE HAVE SEVERAL PARALEGALS WHO HAVE  
91=BEEN WORKING VERY HARD FROM BOTH FIRMS AND FROM ALL SIDES, AND  
92=VARIOUS OTHER INDIVIDUALS, THANK YOU.

93= THE COURT: OKAY, MR. PETROCELLI.

94= MR. PETROCELLI: GOOD MORNING, YOUR HONOR. DANIEL  
95=PETROCELLI FOR BARNES & NOBLE. WITH ME ARE MY COLLEAGUES ALAN  
96=RADER, ROBERT WELSH, DAVID GARCIA.

97= MR. GARCIA: GOOD MORNING.

98= MR. PETROCELLI: ALSO WITH US FROM MORRISON &  
99=FOERSTER, PENELOPE PREVOLOS.

100= MS. PREVOLOS: GOOD MORNING, YOUR HONOR.

101= MR. PETROCELLI: AND JUDSON LOBDELL, AND BELIEVE OR  
102=OR NOT, THOSE ARE ALL LAWYERS FROM OUR FIRM, YOUR HONOR, IN THE  
103=FIRST ROW.

104= THE COURT: I BELIEVE IT.

105= MR. PETROCELLI: THANK YOU.

106= MR. STEER: GOOD MORNING. I'M REG STEER FROM  
107=SKJERVEN, MORRILL, MACPHERSON, FRANKLIN & FRIEL, ON BEHALF OF  
108=THE BORDERS GROUP OF COMPANIES. WE HAVE A MORE MODEST PRESENCE  
109=THAN SOME OF THE OTHER PARTIES HERE, BUT I'D LIKE TO INTRODUCE  
110=THE PEOPLE WHO ARE HERE WITH ME.

111= YOU'VE MET MR. PAUL GRIFFIN FROM PILLSBURY WINTHROP,  
112=AND I SHOULD STATE THAT SUSAN WHITECOTTON FROM THE SAME FIRM IS  
113=AN ATTORNEY WHO WILL BE HERE FROM TIME TO TIME. MY COLLEAGUE  
114=ANDREW MASTIN IS, OF COURSE, WITH ME, AS IS RICHARD NELSON,  
115=ANOTHER OF MY COLLEAGUES.

116= THE COURT: MR. NELSON.

117= MR. STEER: WE ALSO HAVE A NUMBER OF PARALEGALS  
118=PRESENT IN THE COURT, BUT MORE IMPORTANTLY, OUR CLIENT IS  
119=REPRESENTED HERE BY THOMAS CARNEY, THE GENERAL COUNSEL OF  
120=BORDERS GROUP.

121= THE COURT: OKAY, THANK YOU.

122= ALL RIGHT, MR. YOUNG.

123= OPENING STATEMENT BY MR. YOUNG

124= MR. YOUNG: THANK YOU, YOUR HONOR. MAY IT PLEASE

125=THE COURT, AND COUNSEL, I SPEAK FOR ALL OF THE LAWYERS HERE  
126=WHEN I SAY THAT IT IS A HONOR AND PRIVILEGE TO APPEAR IN YOUR  
127=COURTROOM TO TRY WHAT IS A SIGNIFICANT CASE; SIGNIFICANT NOT  
128=ONLY BECAUSE WE DON'T ALWAYS TRY ROBINSON-PATMAN ACT CASES  
129=THESE DAYS, BUT SIGNIFICANT ALSO BECAUSE THIS PARTICULAR  
130=INDUSTRY, THE BOOKSELLING INDUSTRY, IS ONE IN WHICH THE  
131=ROBINSON-PATMAN ACT MAY BE OF PARTICULAR USE, AN INDUSTRY IN  
132=WHICH THE EVIDENCE WILL SHOW THAT IT IS IMPORTANT THAT THE  
133=PURPOSES OF THE ACT, THAT IS, TO PROTECT SMALLER PLAYERS IN THE  
134=INDUSTRY, WHO DO NOT HAVE THE POWER THAT THE LARGER PLAYERS  
135=HAVE, TO PROTECT THE SMALLER PLAYERS AND TO HAVE THEM HAVE THE  
136=SAME ACCESS TO THE SAME TERMS AND THE SAME CONDITIONS THAT ALL  
137=PLAYERS IN THE INDUSTRY HAVE.

138= THE EVIDENCE WILL SHOW THAT THIS IS A COMPETITIVE  
139=INDUSTRY, THAT DIVERSITY IS IMPORTANT, DIVERSITY IN THE

140=BOOKSELLING OUTLETS, AND ULTIMATELY, YOUR HONOR, THROUGH THESE  
141=DIFFERS BOOKSELLING OUTLETS, THE KINDS OF INTELLECTUAL PROPERTY  
142=THAT IS MADE AVAILABLE TO THE PEOPLE OF THE UNITED STATES AND  
143=THROUGHOUT THE WORLD, AND IT'S TO THAT END THAT WE ARE PLEASED  
144=TO PRESENT OUR CASE TO THIS COURT IN AN EFFORT TO OBTAIN THE  
145=INJUNCTIVE RELIEF THAT IS POTENTIALLY AVAILABLE TO US.  
146= YOUR HONOR ASKED AT OUR LAST PRETRIAL CONFERENCE  
147=THAT AT THE BEGINNING OF THE CASE WE HAND UP A PROPOSED FORM OF  
148=INJUNCTION.  
149= THE COURT: YES.

150= MR. YOUNG: AND I'M PLEASED AT THIS POINT TO HAND UP  
151=TWO COPIES OF THE PROPOSED FORM OF INJUNCTION FOR THE COURT'S  
152=CONSIDERATION.  
153= THE COURT: THANK YOU. NO DOUBT COUNSEL HAS SEEN  
154=IT.  
155= MR. YOUNG: YES, COUNSEL HAS SEEN THESE ALREADY,  
156=YOUR HONOR, AND OF COURSE, WE AGREED THAT THIS WOULD BE OF  
157=POSSIBLE USE TO THE COURT AS WE WENT THROUGH THE REMAINDER OF  
158=THE TRIAL.

159= THERE IS A FORM OF ORDER AS TO DEFENDANT BARNES &  
160=NOBLE, AND THERE'S A FORM OF ORDER AS TO THE DEFENDANT BORDERS  
161=GROUP.  
162= IN THINKING ABOUT HOW AN OPENING STATEMENT IN THIS  
163=CASE COULD BE OF ASSISTANCE TO THE COURT, AND RECOGNIZING THAT  
164=THIS IS A COURT TRIAL, I WENT BACK AND REVIEWED THE TRIAL  
165=BRIEFS AND YOUR HONOR'S SCHOLARLY AND COMPLETE OPINION ON THE  
166=MOTION FOR SUMMARY JUDGMENT, AND IT WAS THE EVIDENT TO ME, AS  
167=I'M SURE IT HAS BEEN EVIDENT TO ALL OF THE LAWYERS IN THE  
168=COURTROOM, THAT A DISCUSSION OF THE LAW AND A DISCUSSION OF ALL  
169=THE VARIOUS PARTIES HERE IS PROBABLY NOT GOING TO BE OF MUCH  
170=ASSISTANCE TO THIS COURT.  
171= MY EFFORT THIS MORNING, THEREFORE, IS TO BE BRIEF,  
172=AND TO GIVE YOU A SHORT, AND INCOMPLETE, TO BE TRUE, BUT  
173=PERHAPS USEFUL OVERVIEW OF WHAT WE EXPECT YOU WILL HEAR IN THE  
174=DAYS TO COME.

175= YOUR HONOR HAS SPOKEN OF THIS CASE AS A BATTLE OF  
176=THE EXPERTS, ON MORE THAN ONE OCCASION. IN THE RULING ON THE  
177=MOTION FOR SUMMARY JUDGMENT AND IN THE RULING ON THE MOTIONS IN  
178=LIMINE, YOUR HONOR IDENTIFIED THIS AS A BATTLE OF THE EXPERTS  
179=CASE.

180= AND THE PLAINTIFFS SEE IT IN THAT WAY, AS WELL, AND  
181=THAT IS WHY VERY EARLY IN THIS CASE YOU WILL SEE AN OVERVIEW  
182=INDUSTRY EXPERT. SHE WILL BE THE THIRD WITNESS THAT THE  
183=PLAINTIFFS PRESENT, AND SHE WILL DISCUSS FOR THE COURT SOME OF  
184=THE TERMS AND CONDITIONS THAT ARE AT ISSUE IN THIS CASE.

185= IF I MAY HAND UP TO THE COURT WHAT HAS BEEN MARKED  
186=AND WHICH COUNSEL HAVE ALREADY SEEN, AS WELL, A DEMONSTRATIVE  
187=EXHIBIT THAT OUTLINES SOME OF THE EXAMPLES OF DISCRIMINATION  
188=THAT THE PLAINTIFFS CLAIM WILL BE AT ISSUE IN THIS CASE.

189= I DON'T NEED TO BELABOR THESE THINGS THAT ARE ON  
190=THIS LIST, YOUR HONOR, BECAUSE THEY ARE OUTLINED IN THE FIRST  
191=THREE PAGES OF OUR TRIAL BRIEF, AND YOU HAVE ALREADY ADDRESSED  
192=THEM TO SOME EXTENT IN MOTIONS THAT YOU HAVE HEARD, BUT YOU  
193=WILL SEE THAT THE KINDS OF DISCRIMINATION THAT WE ARE ALLEGING  
194=ARE AT ISSUE HERE FALL INTO VARIOUS CATEGORIES.

195= THEY INCLUDE SECRET DEALS WITH A WHOLESALER CALLED  
196=INGRAM, WHICH, AS YOUR HONOR NOW KNOWS, IS THE LARGEST BOOK  
197=WHOLESALER IN THE COMPANY; VARIOUS KINDS OF DISCOUNTS, MAXIMUM  
198=DISCOUNTS, DISCOUNTS FROM RETAIL DISTRIBUTION CENTERS,  
199=DISCOUNTS BASED UPON CARTON QUANTITY, AND OTHER KINDS OF

200=DISCOUNTS THAT WE CONTEND THE DEFENDANTS OBTAIN AND WE DO NOT,  
201=AND OTHER KINDS OF SPECIAL DEALS THAT THE DEFENDANTS GET,  
202=SPECIAL RETURNS, SHORTAGES ALLOWANCES THAT THE PLAINTIFFS ARE  
203=NOT ABLE TO OBTAIN, AND COOPERATIVE ADVERTISING ALLOWANCES THAT  
204=EXCEED COST INCURRED, AND OTHER THINGS.

205= THESE ARE THE CATEGORIES OF DISCRIMINATION THAT YOU  
206=WILL HEAR ABOUT FROM THE EXPERTS THAT WE WILL PRESENT IN THE  
207=DAYS TO COME.

208= NOW, PRECEDING OUR THIRD WITNESS WILL BE TWO  
209=PLAINTIFF BOOKSELLERS THEMSELVES. THE FIRST WILL BE A

210=GENTLEMAN NAMED RHETT JACKSON. MR. JACKSON IS THE OWNER OF A  
211=CLASSIC, SINGLE-LOCATION SMALL BOOKSTORE IN SOUTH CAROLINA.  
212=THE SECOND IS A GENTLEMAN NAMED ANDREW ROSS. MR. ROSS IS THE  
213=OWNER OF CODY'S BOOKS, WHICH IS A LARGER INDEPENDENT BOOKSTORE  
214=WITH TWO LOCATIONS IN BERKELEY, CALIFORNIA.  
215= OUR REASONS FOR PRESENTING THESE TWO GENTLEMEN TO  
216=YOU BEFORE YOU HEAR AN EXPERT WITNESS, YOUR HONOR, IS TWOFOLD:  
217=ONE, TO PUT A FACE ON SOME OF THESE PLAINTIFFS, AND TO GIVE THE  
218=COURT A SENSE OF WHO THEY ARE, AND WHAT THEY'RE MADE OF; AND  
219=SECONDLY, BECAUSE EACH OF THESE GENTLEMEN WILL, IN SOME FORM OR  
220=ANOTHER, SUMMARIZE THE OTHER TESTIMONY THAT YOU WILL HEAR  
221=SANDWICHED IN BETWEEN THE EXPERT TESTIMONY THAT WILL, IN  
222=ESSENCE, BEGIN AND END OUR CASE.  
223= MR. JACKSON AND MR. ROSS, WHO WILL REPRESENT SOME OF  
224=THE DIVERSITY AMONG THE INDEPENDENT BOOKSELLERS THAT WE

225=REPRESENT, WILL ESTABLISH THROUGH THEIR TESTIMONY THE FOLLOWING  
226=PRIMARY THINGS:

227= FIRST, THAT EACH OF THE PLAINTIFFS COMPETES WITH THE  
228=DEFENDANTS. THEY WILL DO THIS IN PART BY TALKING ABOUT THE  
229=GEOGRAPHIC PROXIMITY OF THEIR STORES TO THE DEFENDANTS' STORES.  
230=THEY WILL TALK ABOUT THE EFFECT ON THEIR SALES WHEN THE  
231=DEFENDANT STORES OPENED UP NEARBY TO THEM, AND THEY WILL TALK  
232=ABOUT THE EFFECT ON THEIR SALES AS THEY OBSERVE IT, AS THEY  
233=EXPERIENCE IT, BASED UPON THEIR YEARS OF EXPERIENCE IN THE  
234=BOOKSELLING INDUSTRY.

235= THESE PLAINTIFFS WILL ALSO ESTABLISH THAT THEY BUY  
236=THE SAME BOOKS AS THE DEFENDANTS BUY, THAT THEY BUY THEM AT THE  
237=SAME TIME AS THE DEFENDANTS BUY THEM, ON AN ONGOING BASIS  
238=THROUGHOUT THE YEAR, AS NEW TITLES ARE ISSUED AND OLD STOCK IS  
239=REPLACED; AND THEY WILL ESTABLISH THAT THEY PURCHASE THEIR  
240=BOOKS ACCORDING TO ESTABLISHED INDUSTRY TERMS IN A BOOK  
241=COMMONLY CALLED, AS YOUR HONOR KNOWS, "THE RED BOOK," AND YOU  
242=WILL HEAR MUCH ABOUT THE RED BOOK IN THIS CASE.

243= NOW, THIS IS NOT TO STATE THAT EVERY PLAINTIFF  
244=RECEIVES ONLY RED BOOK TERMS AND IT'S NOT TO SAY THAT EVERY  
245=INVOICE WILL BE THE SAME AS EVERY PUBLISHED PRICE. YOU WILL  
246=SEE EVIDENCE THAT THERE ARE SUCH THINGS AS SPECIAL SALES OR  
247=STOCK OFFERS THAT ARE OFFERED TO THE PLAINTIFFS, BUT YOU WILL  
248=HEAR THAT THESE SPECIAL DEALS AND STOCK OFFERS THAT ARE OUTSIDE  
249=OF THE RED BOOK THAT THE PLAINTIFFS RECEIVE ARE DEALS THAT ARE

250=ALSO OFFERED TO OTHER PEOPLE.

251= WHAT YOU WILL ALSO HEAR FROM THESE PEOPLE, HOWEVER,  
252=IS THAT THE PLAINTIFFS, EXCEPT IN VERY RARE INSTANCES SUCH AS  
253=THE UNIVERSALLY OFFERED STOCK OFFERS AND SPECIAL DEALS, ONLY  
254=RECEIVE PURCHASES THROUGH WHAT IS AVAILABLE IN THE RED BOOK AND  
255=NOT IN ANY OTHER WAY.

256= NOW, THIS TESTIMONY WILL BE CORROBORATED IN AT LEAST  
257=FOUR OTHERS WAYS, YOUR HONOR. AT SOME POINT IN THIS CASE WE  
258=EXPECT TO OFFER APPROXIMATELY FOUR OTHER PLAINTIFF WITNESSES  
259=LIVE. THEY WILL TESTIFY AS MR. JACKSON AND MR. ROSS WILL  
260=TESTIFY. WE WILL ALSO PROFFER THE WRITTEN TESTIMONY OF OTHER  
261=PLAINTIFFS AND WILL MAKE THEM AVAILABLE HERE IN COURT AT THE  
262=DEFENDANTS' REQUEST FOR CROSS-EXAMINATION AND REDIRECT  
263=EXAMINATION, IF APPROPRIATE.

264= YOU WILL ALSO HEAR FROM A WITNESS NAMED LINDA  
265=MILLER. LINDA MILLER IS A FORMER EMPLOYEE OF THE AMERICAN  
266=BOOKSELLERS ASSOCIATION. SHE IS FAMILIAR WITH THE MANNER IN  
267=WHICH PUBLISHERS PROVIDE INFORMATION REGARDING TERMS FOR  
268=PUBLICATION IN THE ABA BUYERS HANDBOOK, AND SHE WILL BE THE ONE  
269=WHO WILL EXPLAIN THAT PROCESS TO YOUR HONOR IN SOME DETAIL.

270= AND FINALLY, AND PERHAPS MOST IMPORTANTLY, DURING  
271=THE CASE IS THAT YOU WILL HEAR FROM THE DEFENDANTS THEMSELVES,  
272=AND THE PLAINTIFFS WILL EMPLOY THE TESTIMONY OF THE DEFENDANTS  
273=THEMSELVES TO ESTABLISH OUR CASE.

274= NOW, IN OUR CASE IN CHIEF, MUCH OF THIS TESTIMONY

275=WILL COME IN BY WAY OF DEPOSITION, BECAUSE, AS YOUR HONOR HAS  
276=RECALLED, COUNSEL FOR THE DEFENDANTS HAS REPRESENTED THAT THEY  
277=WILL BE BRINGING EACH OF THEIR REPRESENTATIVES THAT WE HAVE  
278=DEPOSED TO THE COURT IN THEIR CASE, AND WE WILL HAVE AN  
279=OPPORTUNITY TO EXAMINE THEM LIVE THEN. BUT IN OUR CASE IN

280=CHIEF, WE WILL PRESENT DEPOSITION TESTIMONY THAT WILL HELP TO  
281=ESTABLISH THE FOLLOWING THINGS, AND WHICH WILL CORROBORATE BY  
282=WHAT THE PLAINTIFFS WITNESSES WILL ALREADY HAVE SAID:

283= FIRST, THAT BOOKS ARE SOLD BY PUBLISHERS AND  
284=WHOLESALEERS ACCORDING TO ESTABLISHED SCHEDULES, AGAIN, THROUGH  
285=THE RED BOOK, AND AS AN EXAMPLE, YOU WILL HEAR FROM MR. LEONARD  
286=RIGGIO, WHO IS ONE OF THE PRINCIPALS AT BARNES & NOBLE, AND HE  
287=WILL TESTIFY, AS HE TESTIFIED IN HIS DEPOSITION, THAT, QUOTE,

288= "SUBSTANTIALLY ALL OF THE BUYING, TO MY  
289= KNOWLEDGE, IS DONE ACCORDING TO SCHEDULES THAT ARE  
290= WIDELY PUBLICIZED."

291=AND FURTHER QUOTING, HE WILL SAY THAT,

292= "OVER THE LIFETIME IN WHICH I'VE BEEN IN THE  
293= BUSINESS, THERE IS ALMOST NO DISCUSSION WITH  
294= PUBLISHERS ABOUT ANYTHING, BECAUSE THE PUBLISHERS  
295= BASICALLY SAY, THERE'S NOTHING TO DISCUSS, IT'S IN  
296= THE BOOK."

297= THE DEFENDANTS WILL ALSO ESTABLISH, THROUGH THEIR  
298=OWN WORDS, THAT THEY OBTAINED CERTAIN TERMS THAT ARE DIFFERENT  
299=FROM AND BETTER THAN THOSE THAT ARE OFFERED TO THE PLAINTIFFS,

300=AND PERHAPS MOST SIGNIFICANT OF ALL, THE DEFENDANTS WILL  
301=ESTABLISH THAT THEY ARE AWARE OF THE DIFFERENCES, AND THEY ARE  
302=AWARE OF THEM SUCH THAT IN SOME INSTANCES THEY HAVE ACTUALLY  
303=TAKEN PRECAUTIONS TO ENSURE THAT THE WORLD AT LARGE, AND  
304=PARTICULARLY THESE PLAINTIFFS THAT WE REPRESENT, ARE NOT AWARE  
305=OF THEM.

306= WE NOTED SOME OF THESE AT PAGES 2 AND 3 OF OUR TRIAL  
307=BRIEF, BUT BY WAY OF EXAMPLE, IN THE CASE OF BARNES & NOBLE,  
308=YOUR HONOR WILL SEE INTERNAL E-MAILS THAT DISCUSS NON-PUBLIC  
309=INCENTIVE PAYMENTS, SPECIAL ADD-ONS, AND OTHER NON-PUBLIC TERMS  
310=THAT BARNES & NOBLE EXECUTIVES RECOGNIZE COULD NOT AND SHOULD  
311=NOT BE DOCUMENTED. YOU WILL SEE THAT THEY WENT SO FAR AS TO  
312=INSTRUCT THAT THE TERMS NOT BE PUT IN WRITING, AND THAT IN AT  
313=LEAST ONE INSTANCE, IT WAS NOTED THAT THE TERMS, QUOTE, "CANNOT  
314=BE PUT IN WRITING FOR LEGAL REASONS."

315= IN THE CASE OF BORDERS, YOUR HONOR WILL SEE AN  
316=INTERNAL E-MAIL NOTING THAT A DEAL OFFERED BY INGRAM WAS BETTER  
317=AS IT WAS OFFERED TO BORDERS THAN WHAT WAS OFFERED TO EVERYONE  
318=ELSE, AND YOU WILL SEE AN E-MAIL IN WHICH A SENIOR BORDERS  
319=OFFICIAL WARNED, WITH REFERENCE TO A CHANGE IN POLICY BY ONE OF  
320=THE BOOK PUBLISHERS THAT WAS OTHERWISE GOING TO CHANGE THE  
321=PLAYING FIELD AND MAKE IT MORE COMPETITIVE, THAT, QUOTE,  
322= "WHAT THEY DON'T REALIZE IS THAT IN A COUPLE OF  
323= YEARS THERE MAY ONLY BE A COUPLE OF PLAYERS WHO WILL  
324= DICTATE THE GAME ON THEIR TERMS." END OF QUOTE.

325= THIS EVIDENCE OF AWARENESS, THIS EVIDENCE OF A  
326=POSSIBILITY THAT THIS INDUSTRY WILL BECOME SO CONSOLIDATED IS,  
327=WE WILL SUBMIT, AT THE END OF THE DAY, A PERFECT EXAMPLE OF WHY  
328=THIS CASE IS SO IMPORTANT, AND WHY THE ROBINSON-PATMAN ACT IS  
329=SO APPLICABLE HERE.

330= NOW, I SAID A FEW MOMENTS AGO THAT THIS WOULD BE A  
331=BATTLE OF THE EXPERTS, AND IT WILL BE. THE THIRD WITNESS YOU  
332=WILL SEE IS AN INDUSTRY EXPERT NAMED GAIL SEE. MS. SEE HAS  
333=OVER 30 YEARS OF EXPERIENCE AS A BOOKSELLER AND SOME 10 YEARS  
334=OF EXPERIENCE AS A PUBLISHER. SHE WILL PROVIDE YOUR HONOR WITH  
335=AN OVERVIEW OF THE BOOKSELLING INDUSTRY, HOW IT WORKS, BOTH  
336=UNDER THE ORDINARY RULES THAT ARE IMPOSED UPON THESE PLAINTIFFS  
337=AND UNDER THE VERY DIFFERENT RULES THAT ARE APPLIED TO THE  
338=DEFENDANTS.

339= YOU WILL ALSO HEAR FROM DR. GARY FRAZIER.  
340=DR. FRAZIER, AS YOU KNOW, IS A PROFESSOR AT THE UNIVERSITY OF  
341=SOUTHERN CALIFORNIA, AND HE WILL BE TENDERED AS AN EXPERT IN  
342=RETAIL DISTRIBUTION SYSTEMS. DR. FRAZIER WILL PROVIDE  
343=TESTIMONY ABOUT THE COSTS THAT ARE ASSOCIATED WITH THE  
344=DEFENDANTS' INTERNAL DISTRIBUTION SYSTEMS. WE SOMETIMES REFER  
345=TO THEM, AND IT'S ON THE EXHIBIT THAT I HANDED UP A MOMENT AGO,  
346=AS A RETAIL DISTRIBUTION CENTER. AND HE WILL TESTIFY ABOUT THE  
347=COSTS THAT ARE ASSOCIATED WITH THAT, AND WILL ALSO OFFER  
348=TESTIMONY ABOUT THE DEFENDANTS' NEGOTIATING POWER AS COMPARED  
349=TO OTHER PLAYERS IN THIS INDUSTRY.

350= AND YOU'LL FINALLY HEAR, AND OUR FINAL WITNESS WILL  
351=BE, DR. FRANKLIN FISHER, A DISTINGUISHED PROFESSOR AND AN  
352=ECONOMIST AT M.I.T., WHO, AS THE COURT NOTES, HAS PERFORMED AN  
353=ANALYSIS OF THE EFFECTIVE PRICES THAT WERE PAID BY THE  
354=DEFENDANTS. DR. FISHER HAS ALSO QUANTIFIED THE DIFFERENCES  
355=BETWEEN THE PRICES THAT THE DEFENDANTS HAVE PAID AND THE  
356=INDUSTRY STANDARD PUBLISHED TERMS THAT ARE IMPOSED UPON THE  
357=PLAINTIFFS, AND HE WILL BE THE SUMMARY WITNESS THAT WILL  
358=DESCRIBE, ONCE AND FOR ALL, THE LEVEL OF DISCRIMINATION THAT'S  
359=AT ISSUE IN THIS CASE.

360= NOW, YOUR HONOR, WITH REFERENCE TO EXHIBIT 2590,  
361=WHICH IS THE GRAPHIC I HANDED UP JUST A MOMENT AGO, WHICH  
362=SUMMARIZES THE EXAMPLES OF DISCRIMINATION CLAIMED, I HANDED  
363=THAT UP IN THIS FORM BECAUSE I THINK IT IS, IN A COURT TRIAL,  
364=EASIER TO READ IF THE COURT HAS ITS OWN COPY TO FOLLOW, AND I  
365=SUMMARIZED A MOMENT AGO THE KINDS OF DISCRIMINATION THAT WE'LL  
366=BE LOOKING AT, AND I WILL NOT BELABOR THAT ANY MORE, GIVEN THAT  
367=IT'S ALSO DESCRIBED IN OUR BRIEF, BUT I DO WANT TO FOCUS ON TWO  
368=AREAS IN GENERAL.

369= AT THE TOP OF THAT LIST IS A DESIGNATION, "SECRET  
370=VOLUME-BASED DEALS WITH INGRAM." INGRAM, AS YOU KNOW, IS ONE  
371=OF THE LARGEST AND MOST IMPORTANT BOOK WHOLESALERS IN THE  
372=COUNTRY, AND IT, LIKE THE OTHER VENDORS IN THIS INDUSTRY, HAS  
373=PUBLISHED STANDARD RED BOOK TERMS. BUT THE EVIDENCE WILL SHOW  
374=THAT WITH REGARD TO THE DEFENDANTS, INGRAM OFFERS SPECIAL

375=CONTRACTS THAT PROVIDE MORE FAVORABLE TERMS IN VARIOUS  
376=SPECIFIED WAYS. LET ME LIST FOUR OF THEM.

377= FIRST, THE EVIDENCE WILL SHOW THAT THE DEFENDANTS  
378=GENERALLY RECEIVE OR HAVE RECEIVED 42 OR 43 PERCENT DISCOUNTS  
379=IN CIRCUMSTANCES IN WHICH THE PLAINTIFFS HAVE RECEIVED ONLY A  
380=40 PERCENT DISCOUNT.

381= SECOND, IT WILL BE ESTABLISHED THAT THE DEFENDANTS  
382=RECEIVED INCENTIVE PAYMENTS WORTH AN ADDITIONAL 1 PERCENT ON  
383=MOST PURCHASES, AND UP TO AN ADDITIONAL 5 PERCENT ON CERTAIN  
384=PURCHASES THAT THE PLAINTIFFS DO NOT RECEIVE.

385= THIRD, IT WILL BE SHOWN THAT THE DEFENDANTS RECEIVE  
386=AN ADDITIONAL 2 PERCENT CASH DISCOUNT FOR PAYING INGRAM 25 DAYS  
387=AFTER THE END OF THE MONTH, WHEREAS THE PLAINTIFFS RECEIVE NO  
388=DISCOUNT FOR PAYMENTS THAT THEY MAKE BETWEEN 11 AND 30 DAYS  
389=AFTER THE END OF THE MONTH.

390= AND FOURTH, IT WILL BE SHOWN THAT THE DEFENDANTS  
391=GENERALLY ARE ABLE TO RETURN THEIR BOOKS TO INGRAM AT FULL  
392=PRICE, BUT WHEN THE PLAINTIFFS ATTEMPT TO DO SO, THEY RECEIVE 8  
393=TO 10 PERCENT LESS, AND IN MANY INSTANCES ARE NOT PERMITTED TO  
394=RETURN THE BOOKS AT ALL.

395= AND WE EXPECT THAT THE DEFENDANTS WILL CONTEND THAT  
396=THERE ARE SOME SPECIAL PROGRAMS THAT INGRAM OFFERS THAT ARE  
397=AVAILABLE ONLY TO THE PLAINTIFFS, AND THAT IF THE PLAINTIFFS  
398=WOULD TAKE ADVANTAGE OF THESE SPECIAL DEALS, THAT THEY COULD  
399=SOMEHOW BRING THEMSELVES COMPETITIVELY CLOSER TO THE DEFENDANTS

400=IN TERMS OF DEALING WITH INGRAM.

401= THE EVIDENCE WILL SHOW THAT'S NOT QUITE THE CASE.  
402=MR. JAMES CHANDLER, THE PRESIDENT OF INGRAM, WAS DEPOSED LAST  
403=WEEK, AND HE ADMITTED THAT THESE SO-CALLED SPECIAL PROGRAMS  
404=THAT WE BELIEVE YOU'LL HEAR ABOUT ARE EITHER NOT AVAILABLE TO  
405=MOST OF THE PLAINTIFFS, OR IF THEY ARE AVAILABLE, THEY'RE  
406=AVAILABLE ONLY ON A LIMITED NUMBER OF BOOK TITLES AND UNDER  
407=SIGNIFICANT RESTRICTIONS THAT ARE NOT APPLIED TO THE  
408=DEFENDANTS.

409= EQUALLY SIGNIFICANTLY, YOUR HONOR, YOU WILL HEAR,  
410=THROUGH THE TESTIMONY OF MR. CHANDLER, THAT, FIRST OF ALL,  
411=INGRAM NEVER PERFORMED A COST JUSTIFICATION STUDY TO DETERMINE  
412=THAT THE SPECIAL DISCOUNTS IT OFFERS THE DEFENDANTS ARE  
413=COST-JUSTIFIED;

414= SECONDLY, THAT INGRAM DID NOT PROVIDE THE DEFENDANTS  
415=WITH THE SPECIAL DISCOUNTS IT OFFERS THEM FOR ANY MEETING  
416=COMPETITION REASON;

417= AND THIRDLY, WITH THE EXCEPTION OF SOME VERY LIMITED  
418=SPECIAL PROGRAMS, YOU WILL HEAR THAT THE PLAINTIFFS' STORES  
419=PURCHASE FROM INGRAM, JUST AS THEY PURCHASE FROM EVERYONE ELSE,  
420=AT RED BOOK PRICES AND AT RED BOOK TERMS.

421= IN SHORT, THE EVIDENCE WILL SHOW, AND WILL SHOW IT  
422=THROUGH MR. CHANDLER AND OTHERS, THAT THE DEFENDANTS RECEIVED  
423=FAVORABLE AND DISCRIMINATORY TERMS FROM INGRAM THAT ARE  
424=DIFFERENT THAN THOSE THAT ARE OFFERED TO THE PLAINTIFFS AND FOR

425=WHICH THERE IS NO JUSTIFICATION AND NO DEFENSE.

426= THE LAST THING I WANT TO REFERENCE ON EXHIBIT 2590,  
427=THE EXAMPLES OF DISCRIMINATION, THAT YOU HAVE IN FRONT OF YOU,  
428=IS THE RDC DISCOUNTS, THE FOURTH BULLET POINT DOWN ON THAT  
429=EXHIBIT, YOUR HONOR. YOU WILL HEAR THAT EACH OF THE DEFENDANTS  
430=HAS MADE A SECRET ARRANGEMENT WITH THE PUBLISHERS, OR SOME OF  
431=THEM, AT LEAST, TO OBTAIN EXCESSIVE AND UNJUSTIFIED DISCOUNTS  
432=ASSOCIATED WITH PURCHASES MADE THROUGH THESE RDC CENTERS.

433= FIRST, YOU WILL HEAR THAT THE DEFENDANTS HAVE  
434=OBTAINED PREFERENTIAL DISCOUNTS OF 2 PERCENT ON TRADE BOOKS AND  
435=4 PERCENT ON WHAT ARE CALLED MASS MARKET BOOKS; AND WE WILL  
436=CONTEND, AND THE EVIDENCE WILL SHOW, THAT THESE INITIAL  
437=DISCOUNTS, 2 PERCENT AND 4 PERCENT, ARE NOT COST-JUSTIFIED.

438= BUT IN ADDITION TO THAT, THE EVIDENCE WILL SHOW THAT  
439=THE COST SAVINGS AND DISCOUNTS THAT ARE MADE AVAILABLE TO THE  
440=DEFENDANTS ARE MAGNIFIED BY ADDITIONAL SECRET DISCOUNTS THAT  
441=ARE ACTUALLY IN EXCESS OF THE PREFERENTIAL 2 PERCENT AND  
442=4 PERCENT; AND YOU WILL FIND DIFFERENT EVIDENCE AS TO EACH OF  
443=THE DEFENDANTS ON THIS ISSUE, BUT THESE ADDITIONAL DISCOUNTS  
444=WILL BE SHOWN TO MAGNIFY AND EXACERBATE THE PREFERENTIAL  
445=TREATMENT THAT IS NOT OFFERED TO THE PLAINTIFFS.

446= SO THAT AT THE END OF THE DAY, THE EVIDENCE WILL  
447=SHOW THAT WHAT IS REALLY UNDISPUTED DIFFERENTIAL AT THE RETAIL  
448=CENTER LEVEL IS AVAILABLE TO THE DEFENDANTS AS OPPOSED TO THE  
449=PLAINTIFFS, AND THAT THESE DISCOUNTS DO NOT AND CANNOT FALL

450=WITHIN THE RIGOROUS COST JUSTIFICATION OR FUNCTIONALITY  
451=DEFENSES THAT SOMETIMES ARE AVAILABLE UNDER THE ROBINSON-PATMAN  
452=ACT.

453= AT THE END, YOUR HONOR, THE PLAINTIFFS WILL HAVE  
454=ESTABLISHED ALL OF THE ELEMENTS FOR THEIR CLAIMS UNDER THE  
455=ROBINSON-PATMAN ACT AND ALSO UNDER THE CALIFORNIA UNFAIR  
456=PRACTICES ACT, AND THEY WILL HAVE SHOWN THAT THERE IS AT LEAST  
457=A REASONABLE POSSIBILITY THAT THE PRICE DISCRIMINATION AT ISSUE  
458=MAY HARM COMPETITION. THAT IS THE STANDARD AGAINST WHICH WE  
459=ARE WORKING IN THIS COURTROOM AT THIS TIME.

460= THE EVIDENCE WILL SHOW THAT THIS SHOULD NOT BE AN  
461=INDUSTRY WHERE ONLY A COUPLE OF PLAYERS ULTIMATELY ARE ALLOWED  
462=TO DICTATE THE GAME ON THEIR TERMS. IT SHOULD NOT BE AN  
463=INDUSTRY WHERE SECRET DEALS HAVE BECOME THE LAW OF COMMERCE,  
464=AND IT'S FOR THAT REASON THAT WE WILL ASK, AT THE END OF THE  
465=DAY, THAT YOUR HONOR ENTER A FORM OF INJUNCTIVE RELIEF SUCH AS  
466=WHAT WE'VE HANDED UP THIS MORNING, AND THAT THAT INJUNCTIVE  
467=RELIEF COME INTO PLAY ALONG WITH ANY OTHER APPROPRIATE RELIEF  
468=THAT YOU MAY CHOOSE TO OFFER, IN ORDER TO ENSURE THAT THIS IS  
469=AND REMAINS A LEVEL, COMPETITIVE PLAYING FIELD IN THIS MOST  
470=VITAL AMERICAN INDUSTRY.

471= THANK YOU.

472= THE COURT: HOW LONG DO YOU ESTIMATE IT WILL TAKE  
473=YOU TO PUT IN YOUR CASE?

474= MR. YOUNG: I BELIEVE WE ESTIMATED EARLIER THREE

475=WEEKS, YOUR HONOR. WE HOPE TO DO IT IN LESS THAN THAT.

476= THE COURT: ALL RIGHT, THANK YOU.

477= MR. PETROCELLI?

478= OPENING STATEMENT BY MR. PETROCELLI:

479= MR. PETROCELLI: YOUR HONOR, THE BOOK BUSINESS HAS  
480=UNDERGONE A REVOLUTION IN THE PAST DECADE AND IT'S STILL GOING  
481=ON. COMPANIES LIKE BARNES & NOBLE AND BORDERS HAVE ROLLED OUT  
482=THEIR SUPERSTORES ACROSS THE COUNTRY. I DON'T WANT TO PRESUME  
483=ONE WAY OR THE OTHER WHETHER YOUR HONOR HAS BEEN IN ANY OF THEM  
484=OR WHOSE YOU'VE BEEN INTO, BUT AS YOU'LL HEAR, THEY HOUSE  
485=HUNDREDS OF THOUSANDS OF BOOKS. THEY WERE DESIGNED TO RESEMBLE  
486=OLD WORLD LIBRARIES. THEY HAVE CAFES, LARGE CHILDREN'S  
487=SECTIONS. THEY'RE OPEN LONG HOURS. PEOPLE CAN COME IN, SIT  
488=AND BROWSE, READ ALL DAY WITHOUT EVEN BUYING A BOOK.

489= THE SHORT OF IT IS, YOUR HONOR, PEOPLE ARE FLOCKING  
490=TO THESE STORES. NATURALLY, THE PLAINTIFFS ARE NOT HAPPY ABOUT

491=THIS. ALTHOUGH SURPRISINGLY, YOUR HONOR, SOME WHO HAVE  
492=EMULATED THE SUPERSTORE CONCEPT ARE ACTUALLY DOING WELL.  
493=RATHER THAN ADAPT TO CHANGE, THE PLAINTIFFS HAVE ELECTED TO  
494=FILE THIS LAWSUIT.  
495= NOW, IN ITS INITIAL INCARNATION, THE PLAINTIFFS'  
496=THEORY WAS THAT THE SUPERSTORE PHENOMENON WAS FUELED BY ILLEGAL  
497=DEALS WITH THE PUBLISHERS, CLAIMING THAT THE PUBLISHERS GAVE  
498=AWAY THE BOOKS TO BARNES & NOBLE AND BORDERS AT LOW  
499=DISCRIMINATORY PRICES, SO THAT THE DEFENDANTS COULD BUILD THEIR

500=SUPERSTORES. BUT THE FACTS DID NOT FIT THAT THEORY, AND  
501=CERTAINLY THE NUMBERS DID NOT WORK.  
502= EVEN USING UNSUPPORTABLE ASSUMPTIONS THAT YIELDED  
503=INFLATED BEST CASE FIGURES, PLAINTIFFS CAME UP WITH  
504=INCONSEQUENTIAL PRICE DIFFERENCES THAT COULD NOT CONCEIVABLY  
505=ACCOUNT FOR THE VAST SUMS OF MONEY THAT BARNES & NOBLE AND  
506=BORDERS SPENT TO DEVELOP, FINANCE, BUILD OUT, AND OPERATE THESE  
507=SUPERSTORES, INCLUDING NATIONAL RETAIL DISTRIBUTION CENTERS AND  
508=A SUPPORTING INFRASTRUCTURE. AND SO THE SUPERSTORE THEORY WAS  
509=ABANDONED, AND FOR GOOD REASON.

510= THEN THE PLAINTIFFS PRESSED AHEAD WITH THEIR DAMAGE  
511=CLAIM, BUT AS YOUR HONOR HAS SEEN, AND HAS EXPLAINED, THEY  
512=COULD NOT MAKE THAT STICK, EITHER. AND SO NOW THE PLAINTIFFS  
513=ARE DOWN TO THEIR LAST STAND. THEY NOW WANT INJUNCTIONS, 22 OF  
514=THEM BY MY COUNT, INJUNCTIONS THAT ARE NOT ONLY COMPLETELY  
515=UNJUSTIFIED BASED ON THE FACTS AND LAW, BUT THAT WOULD HAVE  
516=ENTIRELY ANTI-COMPETITIVE EFFECTS.

517= IF I COULD BRIEFLY QUOTE FROM FREDERICK ROWE'S  
518=TREATISE, YOUR HONOR,

519= "ALTHOUGH INJUNCTIVE RELIEF FOR ROBINSON-PATMAN  
520= VIOLATIONS IS ALSO AUTHORIZED BY THE CLAYTON ACT,  
521= COURTS ARE LOATH TO CONSTRAIN A DEFENDANT'S PRICING  
522= FREEDOM FOR THE FUTURE AS AN OUTGROWTH OF A PRIVATE  
523= ANTITRUST CONTROVERSY."  
524= NOW, IN TRYING TO CRAFT A BASIS FOR THEIR

525=INJUNCTIONS, PLAINTIFFS HAVE ASSEMBLED A LAUNDRY LIST OF  
526=ALLEGED DISCOUNTS. MR. YOUNG HANDED YOU UP A SUMMARY OF THAT.  
527=THAT LIST, YOUR HONOR, IS INFLATED, IT'S INACCURATE, AND IT'S  
528=OUTMODED. IT ATTEMPTS TO DISTORT WHAT IS REALLY AT ISSUE IN  
529=THIS CASE.

530= AS YOU WILL SEE, THE PLAINTIFFS' CASE BOILS DOWN,  
531=AND ULTIMATELY HINGES ON TWO ISSUES: THE DEFENDANTS' RETAIL  
532=DISTRIBUTION CENTERS AND THE RELATIONSHIPS WITH THE INGRAM BOOK  
533=COMPANY. AND AS YOU WILL SEE, THE PLAINTIFFS CANNOT POSSIBLY  
534=PREVAIL ON EITHER ISSUE.

535= THE RDC, YOUR HONOR, AND INGRAM, GO HAND-IN-HAND  
536=WITH THE CREATION AND OPERATION OF A NATIONAL VERTICALLY  
537=INTEGRATED SUPERSTORE BOOKSELLING BUSINESS. THEY ARE PART OF  
538=THE PROCESS THAT HAS BROUGHT TO THE BOOK BUSINESS THE SAME  
539=ECONOMIES, EFFICIENCIES AND SUCCESSES THAT WE HAVE SEEN IN  
540=NUMEROUS OTHER RETAIL BUSINESSES IN THE PAST DECADE, COSTCO,  
541=PETCO, HOME DEPOT, PRICE CLUB, CIRCUIT CITY, AND SO ON.

542= LET ME BRIEFLY OUTLINE WHY THE PLAINTIFFS CANNOT  
543=POSSIBLY MEET THEIR BURDEN OF PROOF IN THIS CASE, WHICH, AS  
544=YOUR HONOR KNOWS, IN A 2(F) CASE, IS A HEAVY ONE.

545= THE CORE OF A ROBINSON-PATMAN ACTION IS THE  
546=DIFFERENCE IN THE PRICE ACTUALLY PAID FOR GOODS BY TWO  
547=COMPETING BUYERS. THE PRICE DIFFERENCE MUST BE IDENTIFIABLE  
548=AND QUANTIFIABLE. THIS IS REQUIRED FOR A NUMBER OF REASONS.  
549=WITHOUT THE PLAINTIFFS, YOUR HONOR, HAVING IDENTIFIED AND

550=QUANTIFIED A DIFFERENTIAL, THE COURT CANNOT APPLY THE  
551=SUBSTANTIAL PRICE DIFFERENCE TEST UNDERLYING THE MORTON SALT  
552=PRESUMPTION. WITHOUT A DIFFERENTIAL, THE COURT CANNOT MEASURE  
553=WHETHER THE DIFFERENTIAL REFLECTS A LEGITIMATE FUNCTIONAL  
554=DISCOUNT. THE COURT CANNOT DETERMINE WHETHER IT IS  
555=COST-JUSTIFIED. THE COURT CANNOT KNOW WHETHER IT IS OF SUCH A  
556=MAGNITUDE TO DEMONSTRATE THAT A DEFENDANT KNEW OR MUST HAVE  
557=KNOWN THAT THE DISCOUNTS IT WAS RECEIVING WERE UNLAWFUL.  
558= THAT'S WHY THE CASE LAW MAKES CLEAR THAT, AND IF I  
559=MAY QUOTE FROM A CENTRAL DISTRICT CASE, YOUR HONOR,  
560= "SECTION 2(A) CAN BE TESTED ONLY AGAINST SPECIFIC



561= SALES, AND NOT A SHOWING OF A GENERAL PRICING  
562= SYSTEM."  
563= NOW, PLAINTIFFS KNOW THIS FULL WELL. THE CITE TO  
564=THAT, YOUR HONOR, WAS RUTLEDGE V. ELECTRIC HOSE.  
565= PLAINTIFFS KNOW THIS PROPOSITION, YOUR HONOR. IN  
566=THEIR TRIAL BRIEF, WHEN TALKING ABOUT OUR AFFIRMATIVE DEFENSE  
567=OF COST JUSTIFICATION, HERE IS WHAT THEY SAID, AT PAGE 17:  
568="COSTS MUST BE JUSTIFIED BASED ON ACTUAL TRANSACTIONS," AND  
569=THEY EMPHASIZED THE WORD "ACTUAL." BUT NOW, IN SEEKING TO PUT  
570=ON THEIR CASE, AS YOU HEARD, THE PLAINTIFFS WILL COMPLETELY  
571=DEPART FROM THIS STANDARD. THEY WANT TO TRY A TERMS CASE, NOT  
572=A TRANSACTIONAL CASE.  
573= THEY WANT TO TAKE SOME OF OUR TERMS PROFILES AND  
574=COMPARE THEM TO THEIR RED BOOK. BUT YOU CAN'T MAKE OUT A  
  
575=VIOLATION OF THE ROBINSON-PATMAN ACT, I SUBMIT, BY COMPARING  
576=TWO PIECES OF PAPER. THE LAW REQUIRES ACTUAL TRANSACTIONS, NOT  
577=PROPOSED TERMS. OTHERWISE YOU'RE GIVING AN ADVISORY OPINION.  
578= LOOKING AT TERMS PROFILES OR THEIR RED BOOK, YOUR  
579=HONOR, TELLS YOU NOTHING. AS YOU WILL SEE, NONE OF THESE  
580=DOCUMENTS IS AN ACCURATE OR COMPLETE STATEMENT OF THE ACTUAL  
581=TERMS UNDER WHICH THE PLAINTIFFS AND DEFENDANTS BUY THEIR  
582=BOOKS. ON THE FACE OF THESE DOCUMENTS THERE ARE SO MANY  
583=VARIABLES THAT THERE IS NO MEANINGFUL WAY TO COMPARE THE TERMS  
584=WITHOUT KNOWING THE ACTUAL TRANSACTIONS, IN ORDER TO SHOW THE  
585=RESULTING PRICE DIFFERENCE.  
586= FOR EXAMPLE, WHEN WE SEE THE RED BOOK SHORTLY,  
587=YOU'LL SEE, FOR INGRAM, THEY OFFER A 40 PERCENT DISCOUNT ON  
588=ORDERS UP TO FOUR COPIES OF A SINGLE TITLE, 41 PERCENT UP TO  
589=10, AND 42 ON ORDERS BEYOND. THEY OFFER AN ADDITIONAL  
590=2 PERCENT FOR TIMELY PAYMENT, THEY PROVIDE FREE FREIGHT FOR  
591=LARGE ORDERS, AND SO ON.  
592= SO EVEN IF YOU LOOK AT THESE BARE TERMS, HOW DO YOU  
593=CALCULATE A PRICE DIFFERENCE FROM THIS? LOOKING AT THE BARE  
594=TERMS DOES NOT TELL YOU WHAT WAS PURCHASED, IT DOES NOT TELL  
595=YOU HOW MUCH WAS PURCHASED, IT DOES NOT TELL YOU THE DISCOUNT  
596=APPLIED TO THE PURCHASE, AND INDEED, IT DOES NOT TELL YOU IF  
597=THERE EVEN WAS A PURCHASE. WITHOUT EVIDENCE OF WHAT THE  
598=PLAINTIFFS ACTUALLY PURCHASED AND WHAT DEFENDANTS ACTUALLY  
599=PURCHASED, YOU CANNOT TELL THAT THERE WAS AN ACTUAL PRICE  
  
600=DIFFERENCE, AND EVEN IF YOU COULD, YOU COULD NOT TELL WHAT THAT  
601=PRICE DIFFERENCE ACTUALLY WAS.  
602= THAT'S WHY THE LAW REQUIRES PLAINTIFFS TO, QUOTE,  
603="PRESENT EVIDENCE OF THE AMOUNT AND PERCENTAGE OF THE  
604=DISCRIMINATION," END OF QUOTE, AND THAT'S THE RICHARD SHORT OIL  
605=V. TEXACO CASE.  
606= THE COURT: NOW, MR. PETROCELLI, THE ARGUMENT COMES  
607=AT THE END OF THE CASE.  
608= MR. PETROCELLI: FAIR ENOUGH.  
609= THE COURT: AND THE OPENING STATEMENT IS TO GIVE THE  
610=COURT SOME IDEA OF WHAT YOUR CASE IS GOING TO CONSIST OF, HOW  
611=MANY WITNESSES YOU'RE GOING TO HAVE, WHAT THEY'RE GOING TO  
612=TESTIFY TO, THAT KIND OF THING. ARGUMENT WE HAVE HAD AMPLY AT  
613=THE SUMMARY JUDGMENT HEARING AND YOUR BRIEFS, AND NOW WE HAVE  
614=AN OPENING STATEMENT AT A TRIAL.  
615= MR. PETROCELLI: WHAT WE INTEND TO SHOW, YOUR HONOR,  
616=THROUGH CROSS-EXAMINING THE WITNESSES, IS THAT THE PLAINTIFFS  
617=WILL HAVE NO EVIDENCE OF ANY ACTUAL TRANSACTIONS. THEY WILL BE  
618=ABLE TO SHOW NO ACTUAL PRICE DIFFERENCES. WE WILL NOT SEE ANY  
619=INVOICES, WE WILL NOT SEE ANY PURCHASE ORDERS, WE WILL NOT SEE  
620=ANY SUMMARIES OF THOSE DOCUMENTS.  
621= IF I MAY ILLUSTRATE, YOUR HONOR -- I HOPE YOU CAN  
622=SEE THIS, BUT THIS IS A CHART OF THE PLAINTIFFS' THAT INDICATES  
623=FOR 1998 WHAT THE RED BOOK SAID FOR INGRAM, AND THIS IS WHAT  
624=THE PLAINTIFFS SAY OUR ARRANGEMENT WITH INGRAM WAS IN OUR  
  
625=MEMORANDUM OF UNDERSTANDING, AND THE IDEA HERE IS TO SHOW THE  
626=BIG DIFFERENCES BETWEEN THE SO-CALLED PUBLISHED TERMS AND THE  
627=TERMS THAT WE ACTUALLY GOT. AND THIS IS TAKEN STRICTLY FROM  
628=THE RED BOOK, YOUR HONOR.  
629= NOW, WHAT WE WILL SHOW, YOUR HONOR, IS, FIRST OF  
630=ALL, THE PLAINTIFFS USE THE 1998 DOCUMENT. SINCE WE'RE TALKING

631=ABOUT TODAY, THEY'RE SEEKING AN INJUNCTION TODAY, WE UPDATED IT  
632=TO 1999 AND 2000. WE USE OUR MEMORANDUM OF AGREEMENT FOR THE  
633=YEAR 1999, AND AS YOU SEE, YOUR HONOR, THE TERMS ARE DIFFERENT.  
634=THIS IS WHAT'S HAPPENING TODAY.

635= AND HERE, YOUR HONOR, WE PUT OUT NOT WHAT THE RED  
636=BOOK SAID, WHICH IS JUST LOOKING IN THE BOOK, BUT WE PUT OUT  
637=WHAT THE EVIDENCE WILL SHOW IS AVAILABLE TO THE BOOKSELLING  
638=COMMUNITY AT LARGE FROM INGRAM, NOT CONTAINED IN THE RED BOOK,  
639=BUT ESTABLISHED BY CALLING THEM UP AND FINDING OUT WHAT  
640=PROGRAMS THEY HAVE AVAILABLE.

641= AND THIS UNDERSCORES, YOUR HONOR, WHY IT IS  
642=ESSENTIAL THAT WE SEE EVIDENCE OF ACTUAL TRANSACTIONS AND NOT  
643=MERELY LOOKING IN THE RED BOOK AND COMPARING TERMS TO OUR  
644=TERMS.

645= WE WILL DEMONSTRATE, YOUR HONOR, THAT THE RED BOOK  
646=IS A DOCUMENT THAT'S NOT AN INDUSTRY BENCHMARK PUT OUT BY  
647=PUBLISHERS, IT'S NOT A DEFINITIVE REPOSITORY OF THEIR TERMS.  
648=THE RED BOOK, AS WE WILL SHOW, IS A DOCUMENT THAT THE PLAINTIFF  
649=ASSEMBLED. THEY PUT THIS DOCUMENT TOGETHER, AND THEY ONLY MAKE

650=IT AVAILABLE TO THEIR MEMBERSHIP. IT'S NOT AVAILABLE TO  
651=PUBLISHERS, IT'S NOT AVAILABLE TO BARNES & NOBLE OR BORDERS.  
652=SURE, THEY GET THEM. THEY'RE NOT SUPPOSED TO HAVE THEM. AND  
653=IN FACT, IN THE VERY BEGINNING OF THE RED BOOK PAGE, IT SAYS,  
654= "FOR ABA MEMBERS ONLY. THE ABA BUYERS HANDBOOK  
655= IS FOR ABA MEMBERS ONLY. WE DO NOT SELL, LEND OR  
656= GIVE IT TO NON-MEMBERS UNDER ANY CIRCUMSTANCES, NOR  
657= MAY ANYONE ELSE DO SO."

658= SO IT IS NOT A DOCUMENT FROM -- THAT IS -- THAT  
659=ESTABLISHES PUBLISHED PRICES OF ALL THE PUBLISHERS. WE WILL  
660=SHOW THAT IT IS INCOMPLETE AND THAT IT IS INACCURATE.

661= THE POINT IS, IT IS A MULTIPLE HEARSAY DOCUMENT,  
662=YOUR HONOR, COBBLED TOGETHER BY THE ABA, THAT CAN'T POSSIBLY  
663=REPRESENT IN A COURT OF LAW PROOF OF WHAT PLAINTIFFS ACTUALLY  
664=PAID FOR THEIR BOOKS.

665= NOW, MOVING BEYOND THE INITIAL BURDEN, WHETHER  
666=PLAINTIFFS CAN EVEN SHOW A PRICE DIFFERENCE, YOUR HONOR, THE  
667=NEXT THING THAT PLAINTIFFS HAVE TO DO IS, THEY HAVE TO SHOW  
668=THAT ANY ACTUAL PRICE DIFFERENCE IS NOT THE PRODUCT OF A  
669=LEGITIMATE FUNCTIONAL DISCOUNT.

670= THEY CANNOT MEET THAT BURDEN OF PERSUASION, WHICH  
671=YOUR HONOR HAS INDICATED THEY BEAR. YOUR HONOR SAID WE HAD THE  
672=INITIAL BURDEN OF PRODUCING EVIDENCE ON OUR FUNCTIONAL DISCOUNT  
673=DEFENSE, AND THAT EVIDENCE IS ALREADY CONTAINED IN THE RECORD,  
674=YOUR HONOR, THROUGH THE DEPOSITION TESTIMONY THAT HAS BEEN

675=DESIGNATED, AND IN ADDITIONALLY, WHEN WE CALL OUR WITNESSES, IF  
676=WE GET THAT FAR IN THE CASE, YOUR HONOR, YOU'LL HEAR THE EXPERT  
677=TESTIMONY OF BILL O'CONNELL OF DELOITTE & TOUCHE, AND HE WILL  
678=SHOW THAT THE RDC DISCOUNTS ARE FULLY LEGITIMATE AND FUNCTIONAL  
679=DISCOUNTS, AND THE PLAINTIFFS WILL HAVE NO EVIDENCE, YOUR  
680=HONOR, NONE WHATSOEVER, TO REBUT THAT.

681= (CONTINUED ON FOLLOWING PAGE. NOTHING OMITTED.)

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700= OPENING STATEMENT \ PETROCELLI 1 MR. PETROCELLI: THE  
ONLY EXPERT THAT THEY HAVE 3  
701= 2 ARGUABLY QUALIFIED TO RENDER AN OPINION ON THIS SUBJECT, THEIR 3  
DISTRIBUTION EXPERT, GARY FRA  
702= 4 THAT HE HAS NO OPINION AT ALL REGARDING BILL O'CONNELL'S --  
703= 5 THAT'S OUR EXPERT -- FUNCTIONAL DISCOUNT ANALYSIS.  
704= 6 THAT BRINGS ME TO THE THIRD AREA WHERE PLAINTIFF'S  
705= 7 CASE WILL FAIL, AND THAT IS THE MORTON SALT PRESUMPTION, WHICH  
706= 8 THEY RELY ENTIRELY ON TO PROVE COMPETITIVE HARM. THEY WILL NOT  
707= 9 INTRODUCE ANY EVIDENCE OF ACTUAL LOSS SALES. THEY WILL NOT HAVE  
708= 10 EXPERT TESTIMONY ABOUT HARM TO THE MARKET OR HARM TO CONSUMERS.  
709= 11 THEY WILL RELY ENTIRELY ON THE MORTON SALT PRESUMPTION.  
710= 12 AND TO TRIGGER THE MORTON SALT PRESUMPTION, YOUR  
711= 13 HONOR, THEY WILL HAVE TO PROVE A SUBSTANTIAL PRICE DIFFERENCE  
712= 14 OVER TIME. BUT AS EVIDENCE WILL MAKE CLEAR, WHEN YOU GET RIGHT  
713= 15 DOWN TO IT, THE PLAINTIFFS ARE TALKING ABOUT DISCOUNTS MEASURED  
714= 16 IN PENNIES PER BOOK SOLD.  
715= 17 IF YOU SUBTRACT OUT INGRAM AND THE RDC FROM THE  
716= 18 PLAINTIFFS' CASE, YOUR HONOR, WE'RE THEN TALKING ABOUT FRACTIONS  
717= 19 OF PENNIES. AND AS YOUR HONOR KNOWS UNDER ROBINSON-PACTMAN ACT  
718= 20 CASES, YOU CANNOT SUSTAIN A CLAIM WHERE THE PRICE DIFFERENTIALS  
719= 21 ARE MORE THAN DE MINIMIS.  
720= 22 AND EVEN IF THE PLAINTIFFS CAN TRIGGER THE MORTON  
721= 23 SALT PRESUMPTION, YOUR HONOR, YOU WILL HEAR EXTENSIVE EVIDENCE  
722= 24 DURING OUR CROSS-EXAMINATION OF THE PLAINTIFFS BREAKING THE  
723= 25 CAUSAL CONNECTION BETWEEN THE PRICE DIFFERENTIALS AND ANY LOST  
724= RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR (415) 626-8404  
  
725= OPENING STATEMENT \ PETROCELLI 1 SALES OR PROFITS.  
726= 2 YOU WILL SEE, FOR EXAMPLE, THAT ANY DECLINE IN THE 3 PLAINTIFFS'  
BUSINESSES RESULTED FROM COMPETI  
727= 4 PARTICIPANTS IN WHAT IS A HEATED AND HEALTHY MARKET.  
728= 5 THESE COMPETITORS INCLUDE ON-LINE RETAILERS SUCH AS  
729= 6 AMAZON, DISCOUNT BOOKSELLERS SUCH AS WAL-MART AND COSTCO. THEY  
730= 7 INCLUDE CHAIN AND MALL STORES, AND THEY ALSO INCLUDE OTHER  
731= 8 INDEPENDENT STORES. AND YOU WILL SEE THAT SOME OF THE  
732= 9 PLAINTIFFS HAVE SUFFERED NO DECLINE AT ALL.  
733= 10 AND FINALLY, AND PERHAPS THE MOST DIFFICULT BURDEN  
734= 11 PLAINTIFFS WILL HAVE TO BEAR, IS TO ESTABLISH THAT THE  
735= 12 DEFENDANTS HAD SOME TYPE OF GUILTY KNOWLEDGE.  
736= 13 AS WE POINTED OUT IN OUR TRIAL BRIEF YOUR HONOR, A  
737= 14 GREAT NUMBER OF SECTION 2F CASES GET RESOLVED IN DEFENDANTS'  
738= 15 FAVOR BECAUSE PLAINTIFFS CAN'T MEET THE 2F KNOWLEDGE CASE. AND  
739= 16 THIS CASE IS NO EXCEPTION. THEY WILL NOT BE ABLE TO MEET THE  
740= 17 NINTH CIRCUIT'S TEST IN THE SIMPLOT CASE. YOU WILL HEAR NO  
741= 18 EVIDENCE AND THERE IS NO EVIDENCE, FOR EXAMPLE, THAT DEFENDANTS  
742= 19 MADE DISCOUNT ARRANGEMENTS OR OBTAINED DEALS ON THE CONDITION  
743= 20 THAT THESE ARRANGEMENTS NOT BE MADE AVAILABLE TO ANYONE ELSE OR  
744= 21 THAT THEY WERE EXCLUSIVE TO EITHER ONE OF THE DEFENDANTS. YOU  
745= 22 WILL HEAR NONE OF THAT EVIDENCE.  
746= 23 AND, INDEED, WHAT THE PLAINTIFFS ARE ESSENTIALLY  
747= 24 ACCUSING THE DEFENDANTS OF RECEIVING UNLAWFULLY ARE DISCOUNTS  
748= 25 AND PRICING PRACTICES THAT HAVE BEEN AROUND THE BOOK BUSINESS  
749= RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR (415) 626-8404  
  
750= OPENING STATEMENT \ PETROCELLI 1 AND BUSINESS IN GENERAL, YOUR  
HONOR, FOR QUITE A LONG TIME.  
751= 2 BUT WHAT THE PLAINTIFFS ARE REALLY COMPLAINING ABOUT 3 IS NOT A  
QUALITATIVE DIFFERENCE IN THE WAY  
752= 4 TREATED BUT SMALL QUANTITATIVE DIFFERENCES AT THE MARGIN.  
753= 5 IN SUMMARY, YOUR HONOR, THE PLAINTIFFS CANNOT CARRY  
754= 6 THEIR BURDEN OF MEETING THEIR PRIMA FASCIA CASE, PARTICULARLY  
755= 7 GIVEN THAT THEY INTEND TO TRY THIS ON A TERMS BASIS AND NOT A  
756= 8 TRANSACTION BASIS.  
757= 9 THE COURT: ALL RIGHT. WELL, THAT'S ALL ARGUMENT,  
758= 10 AND AS I'VE SUGGESTED TO YOU QUITE CLEARLY, WE'VE HAD THAT, AND  
759= 11 IT WILL COME AT THE END OF THE TRIAL.  
760= 12 I WANT TO KNOW IF YOU HAVE A CASE. I EXPECT YOU TO  
761= 13 CONDUCT VIGOROUS CROSS-EXAMINATION AND NOT TOO LENGTHY OF THE  
762= 14 PLAINTIFF'S CASE, AND I'LL LEARN ALL ABOUT THAT -- YOUR  
763= 15 OPPOSITION.  
764= 16 ALL I WANT TO KNOW IN OPENING STATEMENT IS DO YOU  
765= 17 HAVE A CASE; WHAT ARE YOU GOING TO PUT ON.

766= 18 MR. PETROCELLI: WELL, YOUR HONOR, WE'RE GOING TO  
767= 19 CROSS-EXAMINE THE PLAINTIFFS. WE'RE GOING TO PUT ON OUR  
768= 20 EXPERTS. WE'RE GOING TO PUT ON OUR CLIENTS. YOU'RE GOING TO  
769= 21 HEAR FROM MR. CHANDLER'S DEPOSITION TESTIMONY.  
770= 22 YOU'RE GOING TO HEAR THAT ANY OF THESE DIFFERENCES,  
771= 23 TO THE EXTENT THAT THEY CAN ESTABLISH THEM, ARE PROTECTED BY THE  
772= 24 FUNCTIONAL DISCOUNT DEFENSE. YOU'RE GOING TO HEAR THAT THEY'RE  
773= 25 COST JUSTIFIED.

774= RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR (415) 626-8404

775= OPENING STATEMENT \ PETROCELLI 1 YOU'RE GOING TO HEAR  
THAT MANY OF THE TERMS AND  
776= 2 CONDITIONS THAT THEY'RE COMPLAINING ABOUT OR THE DISCOUNT 3 ACTIVITIES ARE  
GENERALLY AVAILABLE, JUST LIKE IN  
777= 4 I SHOWED.

778= 5 YOU'LL HEAR MR. CHANDLER SAY THAT THE RED BOOK IS  
779= 6 ESSENTIALLY THE YELLOW PAGES. IT'S A DIRECTORY. PEOPLE CALL UP  
780= 7 ALL THE TIME AND GET ALL KIND OF ARRANGEMENTS. YOU DON'T JUST  
781= 8 PICK UP THE PHONE AND ORDER OFF THE RED BOOK. YOU'RE GOING TO  
782= 9 HEAR THAT PLAINTIFFS ARE TAKING ADVANTAGE OF THESE PROGRAMS.  
783= 10 YOU ARE GOING TO HEAR THAT PLAINTIFFS CAN TAKE ADVANTAGE OF MANY  
784= 11 OTHER PROGRAMS, AND THEY SIMPLY DO NOT.

785= 12 YOU'RE GOING TO HEAR ABOUT PROGRAMS THAT THE  
786= 13 PLAINTIFFS GET THAT THE DEFENDANTS DON'T GET. AND WE WILL BE  
787= 14 ABLE TO ESTABLISH THAT THE VAST MAJORITY OF WHAT PLAINTIFFS ARE  
788= 15 COMPLAINING ABOUT IS GENERALLY AVAILABLE TO THE TRADE AT LARGE,  
789= 16 YOUR HONOR.

790= 17 AND FINALLY, YOU'RE GOING TO HEAR ABOUT THE FACT THAT  
791= 18 A NUMBER OF THESE ISSUES THAT THEY WANT YOUR HONOR TO ENJOIN THE  
792= 19 DEFENDANTS FROM DOING ARE OUTMODDED, OUTDATED PRACTICES THAT HAD  
793= 20 TO DO WITH THE RAMP-UP OF THE RETAIL DISTRIBUTION CENTER  
794= 21 FACILITIES AND THAT THEY'RE NOT CURRENTLY GOING ON AND THAT  
795= 22 THERE IS NO BASIS WHATSOEVER FOR AN INJUNCTION.

796= 23 THANK YOU, YOUR HONOR.

797= 24 THE COURT: ALL RIGHT. AND YOUR CASE WILL TAKE ABOUT  
798= 25 THREE WEEKS, TOO, I TAKE IT.

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800= OPENING STATEMENT \ PETROCELLI 1 MR. PETROCELLI: ON  
THE BARNES & NOBLE SIDE,  
801= 2 HOPEFULLY A LITTLE LESS THAN THAT, YOUR HONOR. 3 THE COURT: ALL RIGHT.  
MR. STEER?

802= 4 MR. STEER: THANK YOU, YOUR HONOR. IF I MAY HAVE ONE  
803= 5 MOMENT, PLEASE. GET A LITTLE BIT OF WATER ALSO.

804= 6 (PAUSE IN THE PROCEEDINGS.)

805= 7 OPENING STATEMENT

806= 8 MR. STEER: GOOD MORNING, YOUR HONOR.

807= 9 I WON'T REPEAT WHAT MR. PETROCELLI HAD TO SAY EXCEPT  
808= 10 TO AGREE THAT OUR CLIENT, MY CLIENT, THE BORDERS GROUP, WHICH  
809= 11 INCLUDES BORDERS BOOKS AND MUSIC AND WALDENBOOKS, TWO COMPANIES  
810= 12 THAT HAVE OPERATED SEPARATELY AND HAVE SOMEWHAT DIFFERENTLY  
811= 13 HISTORIES -- I'LL EXPLAIN WHAT THE EVIDENCE WILL SHOW ABOUT  
812= 14 THOSE HISTORIES IN A MOMENT -- AGREE THAT THE RED BOOK IS NOT A  
813= 15 RELIABLE REFLECTION OF THE PLAINTIFFS' ACTUAL PAYMENTS FOR  
814= 16 BOOKS.

815= 17 WE WILL PRESENT SPECIFIC EVIDENCE ON THAT, IN  
816= 18 ADDITION TO THE CROSS-EXAMINATION OF A NUMBER OF THE PLAINTIFFS  
817= 19 WHO HAD MADE ADMISSIONS TO THAT IN EFFECT THEIR DEPOSITIONS.

818= 20 WE'LL PRESENT THE TESTIMONY OF DR. ALAN COX, AN  
819= 21 ECONOMIST WITH MIRA (PHONETIC), WHO HAS DONE SOME STUDIES ON THE  
820= 22 ACTUAL PRICES PAID BY PLAINTIFFS.

821= 23 WE'LL PRESENT THE TESTIMONY OF PHILIP PFEFFER.

822= 24 MR. PFEFFER HAS UNIQUELY BROAD VIEW OF THE BOOK INDUSTRY. HE  
823= 25 WAS WITH INGRAM, THE BOOK WHOLESALE ABOUT WHICH YOU'VE HEARD SO

824= RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR (415) 626-8404

825= OPENING STATEMENT \ STEER 1 MUCH, STARTING BACK IN THE 1960S,  
AND I'LL EXPLAIN A LITTLE M  
826= 2 ABOUT HIS ROLE IN A FEW MINUTES. 3 HE THEN LATER WAS PRESIDENT OF  
RANDOM HOUSE AND FOR A  
827= 4 SHORT TIME THE C.E.O. OF THE BORDERS GROUP. HE WILL TESTIFY  
828= 5 EITHER LIVE OR THROUGH HIS DEPOSITION ABOUT THE INADEQUACY OF  
829= 6 THE ABA'S RED BOOK WHICH LED RANDOM HOUSE TO PUBLISH ITS OWN

830= 7 BROCHURES SETTING FORTH TERMS EXPLICITLY.  
831= 8 AND ALSO AS MR. PETROCELLI AND OTHERS HAVE SAID,  
832= 9 YOU'LL HEAR THE TESTIMONY OF MR. CHANDLER OF INGRAM BOOK COMPANY  
833= 10 ON THIS POINT.  
834= 11 NOW, BEFORE I GET INTO WHAT I BELIEVE THE EVIDENCE  
835= 12 WILL SHOW ON BEHALF OF OUR CLIENTS, I WANT TO RESPOND TO  
836= 13 MR. YOUNG'S STATEMENT OR CHARACTERIZATION OF THIS CASE OF A  
837= 14 BATTLE -- AS A BATTLE OF THE EXPERTS. WE DO NOT AGREE WITH THAT  
838= 15 CHARACTERIZATION, YOUR HONOR.  
839= 16 WE BELIEVE THAT THE FACTS FROM THE PERCIPIENT  
840= 17 WITNESSES WILL SPEAK FOR THEMSELVES AND THAT NO MATTER HOW BIG A  
841= 18 PARADE OF EXPERTS THE PLAINTIFFS PRESENT, THAT WILL NOT ELEVATE  
842= 19 THE LACK OF SUBSTANCE OF THE PLAINTIFFS' OWN TESTIMONY AND THE  
843= 20 TESTIMONY OF THE DEFENDANTS TO PROVE PLAINTIFFS' CLAIMS INTO  
844= 21 SOMETHING THAT IT IS NOT. WE THINK THAT THE COURT WILL CONCLUDE  
845= 22 THAT IT NEEDS LIMITED EXPERT ASSISTANCE.  
846= 23 NOW, WE ANTICIPATE THAT IF IT IS NECESSARY TO DO SO,  
847= 24 WE'LL HAVE APPROXIMATELY TEN WITNESSES FROM THE BORDERS  
848= 25 COMPANIES, YOUR HONOR, IN ADDITION TO TWO OR THREE EXPERTS,  
849= RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR (415) 626-8404

850= OPENING STATEMENT \ STEER 1 WHOSE TESTIMONY WILL BE BRIEF.  
851= 2 YOU'LL HEAR FROM BORDERS CHAIRMAN, MR. ROBERT 3 DIROMUALDO, AT LEAST  
ONE OF ITS VICE CHAIRMAN, AN  
852= 4 TOP EXECUTIVES, AS WELL AS THE KEY EMPLOYEES WHO HAVE DEALT  
853= 5 FIRSTHAND WITH PUBLISHERS AND DISTRIBUTORS. I DON'T EXPECT THAT  
854= 6 ANY OF THE EXAMINATIONS WILL BE UNDULY LENGTHY, HOWEVER, AND, OF  
855= 7 COURSE, WE HAVE NO DESIRE TO PROLONG THIS TRIAL.  
856= 8 FROM OUR PERSPECTIVE, THIS IS CASE IS ABOUT WHETHER  
857= 9 THE ROBINSON-PATMAN ACT PROHIBITS BUYERS FROM NEGOTIATING WITH  
858= 10 THEIR SUPPLIERS. WE NEGOTIATE WITH OUR SUPPLIERS, NO QUESTION  
859= 11 ABOUT THAT. THE BORDERS PEOPLE DO TRY TO IMPROVE THE TERMS ON  
860= 12 WHICH BOOKS ARE PURCHASED.  
861= 13 THERE WILL, HOWEVER, BE NO EVIDENCE, THAT BORDERS HAS  
862= 14 EVER REQUESTED THAT OTHER SIMILARLY SITUATED BUYERS NOT HAVE THE  
863= 15 ADVANTAGE OR BENEFIT OF THE SAME TERMS THAT BORDERS IS ABLE TO  
864= 16 NEGOTIATE.  
865= 17 NOR WILL THERE BE PROOF, AS PLAINTIFFS SUGGEST, THAT  
866= 18 THE PEOPLE AT BORDERS HAD KNOWLEDGE THAT OTHERS WERE NOT ABLE TO  
867= 19 GET PROPORTIONATELY SIMILAR TERMS.  
868= 20 THE EVIDENCE WILL SHOW THAT WHERE THE BORDERS  
869= 21 COMPANIES GET TERMS THAT ARE DIFFERENT FROM WHAT SOME OF THE  
870= 22 PLAINTIFFS OBTAINED, THEY DO SO BY VIRTUE OF THE FACT THAT THE  
871= 23 WAY THEY DO BUSINESS IS DIFFERENT THAN THE PLAINTIFFS' WAYS OF  
872= 24 DOING BUSINESS. THEY ARE FUNDAMENTALLY DIFFERENT BUSINESSES.  
873= 25 YOU'VE HEARD A LOT OF TALK ABOUT THE RETAIL  
874= RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR (415) 626-8404

875= OPENING STATEMENT \ STEER 1 DISTRIBUTION CENTERS. LET'S  
CONSIDER WHAT -- WHAT THEY ARE,  
876= 2 WHAT THE EVIDENCE WILL SHOW THAT THEY ARE. 3 WE WILL PRESENT A VIDEO OF  
ONE OF OUR RETAIL  
877= 4 DISTRIBUTION CENTERS, YOUR HONOR, SO THAT THE COURT CAN  
878= 5 UNDERSTAND BETTER THE DIFFERENT CLASS OF TRADE THAT WE REPRESENT  
879= 6 THAT WE PARTICIPATE IN AS OPERATORS OF RETAIL DISTRIBUTION  
880= 7 CENTERS AND CAN FULLY UNDERSTAND WHY THOSE RETAIL DISTRIBUTION  
881= 8 CENTERS WE BELIEVE SAVE PUBLISHERS GREAT DEALS OF EXPENSE IN  
882= 9 DEALING WITH US, GREAT DEAL OF COST, INCLUDING SAVING THEM  
883= 10 INVESTMENT AND OTHER OVERHEAD.  
884= 11 THE RETAIL DISTRIBUTION CENTERS, AS YOU KNOW, ARE  
885= 12 LARGE WAREHOUSES. THEY RECEIVE NUMEROUS SHIPMENTS EVERY DAY  
886= 13 FROM ABOUT A THOUSAND PUBLISHERS. THEY BREAK DOWN THE  
887= 14 SHIPMENTS, PACK THEM IN INDIVIDUAL SUBSHIPMENTS, AND THEN SEND  
888= 15 THEM DOWN OUT TO THE BORDERS AND WALDEN STORES, OF WHICH THERE  
889= 16 ARE ABOUT 1200.  
890= 17 BECAUSE THEY DO THAT, THE PUBLISHERS DO NOT HAVE TO  
891= 18 HAVE THE INFRASTRUCTURE AND THE PERSONNEL THAT THEY WOULD  
892= 19 OTHERWISE NEED TO MAKE THOSE SHIPMENTS TO 1200 STORES EACH DAY.  
893= 20 INSTEAD, THE PUBLISHERS CAN SHIP CONSOLIDATED SHIPMENTS TO A  
894= 21 SMALL NUMBER OF DISTRIBUTION CENTERS OPERATED BY BORDERS, FIVE  
895= 22 OF THEM AT THE MOMENT, THAT DEAL WITH BOOKS.  
896= 23 BUT THEY DON'T JUST SAVE ON THE SHIPPING, YOUR HONOR.  
897= 24 THERE ARE CONCOMITANT WITH THIS EFFICIENT DISTRIBUTION SYSTEM

898= 25 SAVINGS THAT EXIST BECAUSE OF THE SIMPLIFICATION OF THE  
899= RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR (415) 626-8404

900= OPENING STATEMENT \ STEER 1 PAPERWORK, THE REDUCTION IN THE  
NUMBER OF DOCUMENTS THAT THE  
901= 2 PUBLISHERS NEED TO DEAL WITH EACH DAY. AND THE FACT THAT 3 BECAUSE THERE ARE  
FEWER INVOICES, FEWER PURCHASE  
902= 4 PEOPLE INVOLVED IN THE -- IN THE TRANSACTIONS BETWEEN BORDERS  
903= 5 GROUP AND PUBLISHERS, IT IS ACTUALLY EASIER TO TRACE ANY  
904= 6 SHORTAGES OR DAMAGES OR OTHER PROBLEMS THAT ARISE DAY IN AND DAY  
905= 7 OUT AMONG THE PARTIES.  
906= 8 MUCH OF WHAT IS ON THE EXAMPLES OF DISCRIMINATION,  
907= 9 THE GRAPH -- THE DEMONSTRATIVE THAT MR. YOUNG HANDED YOU EARLIER  
908= 10 HAS TO DO WITH PRACTICAL SOLUTIONS TO SERIOUS DAY-TO-DAY  
909= 11 LOGISTICAL PROBLEMS, YOUR HONOR, NOT WITH DIFFERENCES IN TERMS.  
910= 12 IT HAS TO DO WITH INNOVATION AND EFFORT BY THE  
911= 13 BORDERS PEOPLE TO FIND EFFICIENT WAYS FOR BORDERS AND THE  
912= 14 PUBLISHERS TO RESOLVE THOSE PROBLEMS.  
913= 15 ONE EXAMPLE OF THIS IS THE SHORTAGE ALLOWANCES. AND  
914= 16 THE TESTIMONY FROM THE BORDERS PEOPLE WILL BE THAT THE SHORTAGE  
915= 17 ALLOWANCES -- THAT THE STATISTICAL SHORTAGE ALLOWANCES ARE NOT  
916= 18 INTENDED TO GAIN ANY ADVANTAGE IN ACTUAL AMOUNTS RECEIVED FOR  
917= 19 SHORTAGES BUT MERELY TO SIMPLIFY THE PROCESS WHILE ASSURING BOTH  
918= 20 THE PUBLISHERS WHO PARTICIPATE AND THE WALDEN BOOK COMPANY THAT  
919= 21 THERE IS A FAIR CALCULATION OF THE AMOUNTS. AND THAT'S JUST ONE  
920= 22 EXAMPLE OF WHAT I'M SAYING THE EVIDENCE WILL SHOW. AS I SAY,  
921= 23 THE EVIDENCE WILL SHOW EFFORTS AT EFFICIENCY.  
922= 24 RETURNING TO THE DISTRIBUTION CENTERS. THOSE CENTERS  
923= 25 RECEIVE A 2 PERCENT MORE FAVORABLE DISCOUNT FOR TRADE BOOKS,  
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925= OPENING STATEMENT \ STEER 1 THAT IS, HARDCOVER AND QUALITY  
PAPERBACK BOOKS. ON A 20-DOLL  
926= 2 BOOK, THAT MEANS THAT THE BORDERS GROUP RECEIVES AN ADDITIONAL 3 DISCOUNT OF 40  
CENTS.  
927= 4 YOUR HONOR, THE EVIDENCE WILL SHOW THAT THAT 40 CENTS  
928= 5 IS NOT ENOUGH TO EVEN COME CLOSE TO PAYING FOR THE OPERATION OF  
929= 6 THE DISTRIBUTION CENTERS. THE BORDERS PEOPLE BELIEVED THAT  
930= 7 THEIR -- THAT COST JUSTIFICATION SUPPORTED THE DISCOUNT IN ANY  
931= 8 EVENT.  
932= 9 LET ME TELL YOU THE FOUR PROBLEMS THAT WE BELIEVE THE  
933= 10 EVIDENCE SHOW -- WILL SHOW WITH RESPECT TO THE PLAINTIFFS'  
934= 11 ARGUMENTS ABOUT THE RDC DISCOUNTS.  
935= 12 FIRST, PLAINTIFFS ALLEGE THAT THE PEOPLE AT BORDERS  
936= 13 SHOULD HAVE KNOWN THAT THE PRICES AND TERMS THEY WERE GETTING  
937= 14 WERE NOT GENERALLY AVAILABLE AND WERE UNLAWFUL. THE EVIDENCE  
938= 15 WILL BE TO THE CONTRARY.  
939= 16 THE HISTORY OF THE RETAIL DISTRIBUTION CENTERS IS AS  
940= 17 FOLLOWS: WAY BACK IN THE 1960S, WHEN A BOOK STORE WANTED TO GET  
941= 18 A SPECIAL ORDER, A BOOK, FOR A CUSTOMER, AN ORDER FROM -- THE  
942= 19 BOOK STORE WOULD HAVE TO GO TO THE PUBLISHER DIRECTLY TO GET  
943= 20 THAT BOOK. THAT PROCESS COULD TAKE MANY WEEKS.  
944= 21 TESTIMONY FROM THE PLAINTIFFS -- SOME OF THE  
945= 22 PLAINTIFFS THEMSELVES WILL CONFIRM THAT. THE PEOPLE AT INGRAM  
946= 23 BOOK COMPANY SAW AN OPPORTUNITY. THEY DEVELOPED A SYSTEM FOR  
947= 24 WAREHOUSING BOOKS THAT THEY PURCHASED FROM THE PUBLISHERS AND  
948= 25 PROVIDING MUCH MORE RAPID REPLENISHMENT TO BOOK STORE CUSTOMERS.  
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950= OPENING STATEMENT \ STEER 1 INGRAM WAS ABLE TO  
REDUCE THE TIME BETWEEN A BOOK  
951= 2 STORE'S ORDER OF A BOOK AND ITS ACTUAL RECEIPT OF IT FOR ITS 3 CUSTOMER DOWN TO  
ABOUT A WEEK OR SO INITIALLY  
952= 4 THAT TIME EVEN FURTHER.  
953= 5 BY 1980, THE WALDEN BOOK COMPANY, ONE OF MY CLIENTS  
954= 6 HERE, HAD GROWN TO A CHAIN OF HUNDREDS OF STORES, AND IT WAS  
955= 7 NATIONWIDE. AND AT THAT TIME, ONE OF THE EXECUTIVES OF INGRAM  
956= 8 MOVED OVER TO WALDEN AND CONCLUDED THAT THE WAY TO MAKE THAT  
957= 9 OPERATION EFFICIENT AND TO FACILITATE FURTHER GROWTH WOULD BE  
958= 10 FOR WALDEN TO HAVE ITS OWN RETAIL DISTRIBUTION CENTER.  
959= 11 THE FOLKS AT WALDEN DID A COST STUDY. THEY DID COST  
960= 12 STUDIES. WE'LL PRESENT THE TESTIMONY OF MR. CHARLES CUMELLO, AN  
961= 13 EXECUTIVE AT WALDEN, C.F.O. AT THE TIME, WHO PARTICIPATED IN

962= 14 THOSE STUDIES. HE IS NOW THE HEAD OF CROWN BOOKS AND MAY NOT BE  
963= 15 AVAILABLE TO TESTIFY LIVE, SO WE MAY HAVE TO PRESENT HIS  
964= 16 TESTIMONY BY A DEPOSITION.  
965= 17 WALDEN PRESENTED ITS COST STUDIES TO PUBLISHERS BACK  
966= 18 IN 1981 OR SO AND SAID TO THEM, "WE BELIEVE THAT IF WE BUILD  
967= 19 THIS RETAIL DISTRIBUTION CENTER, WE WILL SAVE YOU MONEY, BUT YOU  
968= 20 PUBLISHERS GO AND DO YOUR OWN CONFIRMATION, DO YOUR OWN COST  
969= 21 STUDIES AND TELL US IF YOU AGREE WITH US. WE THINK IT'S WORTH A  
970= 22 2 PERCENT EXTRA DISCOUNT IF YOU WANT TO SHIP INTO THE  
971= 23 DISTRIBUTION CENTER."  
972= 24 THE GREAT MAJORITY OF PUBLISHERS CAME BACK TO  
973= 25 WALDENBOOKS AND SAID, "WE AGREE WITH YOU. WE THINK THIS IS COST  
974= RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR (415) 626-8404

975= OPENING STATEMENT \ STEER 1 JUSTIFIED SO WE ARE GOING TO GIVE  
YOU A 2 PERCENT EXTRA DISCO  
976= 2 ON TRADE BOOKS SHIPPED INTO THE DISTRIBUTION CENTER." 3 THE COURT: I  
HATE TO HARP ON THIS, BUT W  
977= 4 BACK IN THE ARGUMENT PHASE. AND I UNDERSTAND YOU'VE GOT A  
978= 5 WITNESS WHO CAN TESTIFY TO THAT.  
979= 6 WHAT OTHERS WITNESSES DO YOU HAVE?  
980= 7 MR. STEER: WELL, YOUR HONOR, WE'LL HAVE PEOPLE WHO  
981= 8 WILL ADDRESS EACH OF THE ISSUES THAT THE PLAINTIFFS HAVE  
982= 9 IDENTIFIED. AND I DON'T MEAN TO ARGUE. I -- I REALLY THOUGHT  
983= 10 THAT I WAS STATING FACTS.  
984= 11 THE COURT: I APPRECIATE THAT.  
985= 12 MR. STEER: I UNDERSTAND. BUT I UNDERSTAND THE  
986= 13 COURT'S CONCERN ABOUT TIME AS WELL, AND I WON'T DWELL FOR LONG.  
987= 14 THE ABA'S RED BOOK, WE'LL PRESENT EVIDENCE THAT THE  
988= 15 ABA'S RED BOOK HAS INCLUDED TERMS FOR PUBLISHERS GOING BACK TO  
989= 16 AT LEAST TO 1992, AND THAT THERE WAS OTHER PUBLIC INFORMATION IN  
990= 17 PUBLISHERS' WEEKLY AT LEAST IN 1990. THEREFORE, WE'LL PRESENT  
991= 18 EVIDENCE THAT'S CONTRADICTORY TO WHAT MR. YOUNG SAID EARLIER  
992= 19 ABOUT SUPPOSEDLY SECRET RDC TERMS.  
993= 20 I THINK A KEY POINT, YOUR HONOR, IS THE EVIDENCE WILL  
994= 21 SHOW THAT NOBODY EVER AT BORDERS HAS EVER ASKED FOR ANY  
995= 22 EXCLUSIVE TERM. EACH PRICE DIFFERENCE THAT THE PLAINTIFFS WILL  
996= 23 ATTEMPT TO IDENTIFY -- AND, AGAIN, THE DIFFERENCES ARE MERELY TO  
997= 24 THE RED BOOK -- WILL BE EXPLAINED ON THE BASIS OF EITHER MEETING  
998= 25 COMPETITION OR COST JUSTIFICATION.  
999= RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR (415) 626-8404

1000= OPENING STATEMENT \ STEER 1 THERE WILL BE EVIDENCE  
THAT THE PEOPLE AT BORDERS  
1001= 2 WERE AWARE OF THEIR OBLIGATIONS UNDER THE ROBINSON-PATMAN ACT 3 AND THAT, IN  
FACT, IN MOST INSTANCES, AND --  
1002= 4 IS DOCUMENTATION OF MEETING COMPETITION.  
1003= 5 WITH RESPECT TO INGRAM, YOUR HONOR, WE'LL PRESENT THE  
1004= 6 TESTIMONY OF THE EXECUTIVES WHO HAVE NEGOTIATED WITH INGRAM, WHO  
1005= 7 WILL TESTIFY TO THEIR BELIEF AND UNDERSTANDING THAT, IN FACT,  
1006= 8 INGRAM HAD OFFERED TERMS TO BORDERS IN ORDER TO MEET COMPETITION  
1007= 9 FROM PUBLISHERS.  
1008= 10 BECAUSE AS BORDERS AND WALDEN GREW THEIR RETAIL  
1009= 11 DISTRIBUTION CENTERS, THOSE CENTERS COULD PERFORM THE SAME  
1010= 12 FUNCTIONS FOR THE BORDERS STORES AND WALDEN STORES AS INGRAM HAD  
1011= 13 PREVIOUSLY BEEN PERFORMING AND AS INGRAM PERFORMS FOR OTHER  
1012= 14 BOOKSELLERS. AND AS A CONSEQUENCE, YOUR HONOR, INGRAM IS FORCED  
1013= 15 TO MEET THE PRICING OF PUBLISHERS IN ORDER TO OBTAIN BUSINESS  
1014= 16 FROM BORDERS OR TO GROW THAT BUSINESS. SO WE'LL PRESENT THE  
1015= 17 TESTIMONY OF PEOPLE DIRECTLY INVOLVED IN THE NEGOTIATIONS.  
1016= 18 THE FUNDAMENTAL POINT OF THE TESTIMONY WILL BE THAT  
1017= 19 BORDERS AND WALDEN, YOUR HONOR, ARE A DIFFERENT CLASS OF TRADE  
1018= 20 THAN MOST OF THE PLAINTIFFS. SOME OF THE PLAINTIFFS HAVE  
1019= 21 DEVELOPED OR DO CLAIM -- I'M SORRY -- HAVE DEVELOPED RETAIL  
1020= 22 DISTRIBUTION CENTERS AND ARE ABLE TO OBTAIN THE RETAIL  
1021= 23 DISTRIBUTION CENTER DISCOUNT. OTHERS ARE NOT.  
1022= 24 TO CARRY FORWARD ON THE TESTIMONY WITH RESPECT TO THE  
1023= 25 DEVELOPMENT OF THE BUSINESS, I'D LIKE TO PROVIDE YOU WITH A  
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1025= OPENING STATEMENT \ STEER 1 DEMONSTRATIVE TIME LINE, YOUR  
HONOR, AND I'LL PROVIDE TWO

1026= 2 COPIES. THIS HAS BEEN PROVIDED TO COUNSEL. 3 AS IS REFLECTED ON THE  
TIME LINE, YOUR HONOR, WHAT

1027= 4 WILL SHOW IS THAT THE BORDERS GROUP STARTED OFF AS A SINGLE  
1028= 5 BOOKSTORE IN THE EARLY 1970S. THERE WILL BE TESTIMONY FROM ONE  
1029= 6 OF THE ORIGINAL EMPLOYEES ABOUT THE HISTORY OF BORDERS.  
1030= 7 BORDERS CREATED A SOPHISTICATED COMPUTERIZED  
1031= 8 INVENTORY MANAGEMENT SYSTEM FOR ITS OWN STORE, AND WHICH IT ALSO  
1032= 9 USED AS A WHOLESALER FOR OTHER SO-CALLED INDEPENDENT STORES, FOR  
1033= 10 CUSTOMER STORES. IN FACT, THE NAME OF MY CLIENT, BORDERS BOOKS,  
1034= 11 ORIGINALLY WAS BOOK INVENTORY SYSTEMS.  
1035= 12 BORDERS DEVELOPED A WHOLESALE BUSINESS IN THE 1970S  
1036= 13 AND 1980S, AND AS A WHOLESALER, IT RECEIVED WHOLESALER  
1037= 14 DISCOUNTS. IN THE MID-1980S, THE PEOPLE FROM BORDERS WILL  
1038= 15 TESTIFY THEY REALIZED THAT THEY COULD APPLY THE COMPUTER SKILLS  
1039= 16 THEY HAD AND THE MANAGEMENT SKILLS THEY HAD TO DEVELOPING MORE  
1040= 17 STORES OF THEIR OWN, AND SO THEY DID THAT. THEY SET IT OUT TO  
1041= 18 CREATE MORE BORDERS STORES.  
1042= 19 AS THEY -- AS THE NUMBER OF BORDERS STORES WHO THEY  
1043= 20 SUPPLIED GREW, THE PUBLISHERS BEGAN TO TAKE THE POSITION THAT  
1044= 21 BORDERS WAS NO LONGER A WHOLESALER AND WANTED TO REDUCE THE  
1045= 22 DISCOUNTS AVAILABLE TO BORDERS. THIS WAS SOMETHING THAT THE  
1046= 23 PEOPLE AT BORDERS NEGOTIATED ABOUT.  
1047= 24 THEY WILL TESTIFY THAT IN THEIR VIEW, THE FUNCTION  
1048= 25 THEY FULFILLED FOR PUBLISHERS REMAINED THE SAME, EVEN THOUGH  
1049= RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR (415) 626-8404

1050= OPENING STATEMENT \ STEER 1 THEY WERE NOT SUPPLYING THEIR OWN  
STORES IN ADDITION TO CUSTO

1051= 2 STORES. THE EVIDENCE WILL BE THAT TODAY, BORDERS STILL ACTS AS 3 A WHOLESALER  
FOR THREE CUSTOMER STORES.  
1052= 4 THE EVIDENCE ALSO WILL SHOW, YOUR HONOR, THAT WITH  
1053= 5 RESPECT TO THE VARIOUS INNOVATIONS HAVING TO DO WITH RETURN  
1054= 6 CENTER, DISTRIBUTION CENTER, SHORTAGE ALLOWANCES BASED ON  
1055= 7 STATISTICS AND SO ON AND SO FORTH, THE WALDEN BOOK COMPANY  
1056= 8 PARTICIPATED IN THOSE INNOVATIONS EARLY ON. MANY OF THEM WERE  
1057= 9 LATER ADOPTED BY BORDERS BOOKS AND MUSIC. AND TODAY, THEY'RE  
1058= 10 USED BY THE ENTIRE ORGANIZATION.  
1059= 11 BUT AS SUPERSTORES DEVELOPED, AND THE TESTIMONY WILL  
1060= 12 BE THAT SUPERSTORES, WHICH WE REFER TO AS -- BY WHICH WE MEAN  
1061= 13 STORES THAT HAVE LARGE AMOUNTS OF SPACE, MANY VOLUMES OF BOOKS,  
1062= 14 ASSOCIATED COFFEE SHOPS, AND IN THE CASE OF BORDERS, ALSO OFFER  
1063= 15 MUSIC AND VIDEO, WHICH WE BELIEVE DRAWS CUSTOMERS INTO THE  
1064= 16 STORES, THOSE STORES DID HAVE AN IMPACT ON THE WALDEN BUSINESS.  
1065= 17 SOME OF THE WALDEN BOOK STORES DID LOSE SALES AT  
1066= 18 LEAST FOR A TIME WHEN SUPERSTORES OPENED NEAR THEM. AND THIS,  
1067= 19 YOUR HONOR, UNDERSCORES THE FUNDAMENTAL PROBLEM THAT WE'LL POINT  
1068= 20 OUT WITH THE PLAINTIFF'S CASE.  
1069= 21 YOU'VE HEARD MR. YOUNG SAY THAT PLAINTIFFS WILL SHOW  
1070= 22 THAT THEY LOST SALES TO SUPERSTORE COMPETITION.  
1071= 23 MY POINT HERE IS THAT THE EVIDENCE WILL SHOW THAT IN  
1072= 24 FACT, WALDEN BOOK COMPANY, WHICH BENEFITED, IF YOU BELIEVE THE  
1073= 25 PLAINTIFFS THEORY, FROM ALL OF THE DIFFERENCES THAT THEY ATTACK  
1074= RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR (415) 626-8404

1075= OPENING STATEMENT \ STEER 1 AS UNLAWFUL, ALSO LOST SALES TO  
SUPERSTORE COMPETITION. THOS

1076= 2 SALES USUALLY REBOUNDED AFTER A TIME BUT NOT ALWAYS. 3 THE POINT IS  
SIMPLY THAT WE WILL SHOW THAT

1077= 4 IT IS THAT THE PLAINTIFFS ARE COMPLAINING OF, IT IS A MARKET  
1078= 5 CHANGE, IT IS THE RESULT OF CONSUMERS' PREFERENCE FOR  
1079= 6 SUPERSTORES FOR LARGE SELECTION, FOR COMFORTABLE SURROUNDINGS  
1080= 7 AND SO ON AND SO FORTH, RATHER THAN THE DIFFERENCES, IF ANY, IN  
1081= 8 TERMS THAT OUR CLIENTS HAVE RECEIVED.  
1082= 9 AND WE'LL PRESENT THE TESTIMONY OF A MAN NAMED  
1083= 10 PHILLIP JOHNSON, WHO'S AN EXPERT ON THAT PARTICULAR POINT.  
1084= 11 SO TO SUMMARIZE, YOUR HONOR, AND CONCLUDE, IT IS OUR  
1085= 12 VIEW, AND WE BELIEVE THAT THE TESTIMONY WILL SHOW THAT THERE IS  
1086= 13 NO ADVERSE EFFECT ON COMPETITION FROM THE CONDUCT OF THE BORDERS  
1087= 14 GROUP COMPANIES; THAT, IN FACT, WHAT THEY HAVE DONE IS  
1088= 15 INNOVATIVE AND PRO-COMPETITIVE AND HAS BROUGHT THE CONSUMERS THE  
1089= 16 KINDS OF SELECTION AND SURROUNDINGS THAT THEY WANT AND THAT THAT  
1090= 17 IS THE REASON FOR BORDERS' SUCCESS AND THAT STRATEGY HAS BEEN  
1091= 18 USED SUCCESSFULLY BY A NUMBER OF THE PLAINTIFFS THEMSELVES.



1092= 19 OTHERS HAVE CHOSEN NOT TO PURSUE IT.  
1093= 20 THANK YOU VERY MUCH.  
1094= 21 THE COURT: ALL RIGHT.  
1095= 22 MR. YOUNG, JUST TO REFRESH MY RECOLLECTION, DIDN'T --  
1096= 23 MY UNDERSTANDING AND THIS -- THE PLAINTIFFS' DAILY MEMO WOULD BE  
1097= 24 ACCOMPANIED BY THE EXHIBITS, AND I PRESUME YOU HAVE THOSE  
1098= 25 AVAILABLE. I JUST DON'T WANT TO HOLD UP --  
1099= RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR (415) 626-8404

1100= OPENING STATEMENT \ STEER 1 MR. YOUNG: WE DO HAVE  
THE EXHIBITS, YOUR HONOR.

1101= 2 THEY ARE IN BINDERS AS YOUR HONOR REQUESTED BY DAY BY WITNESS, 3 AND THEY HAVE  
BEEN SUPPLIED TO THE DEFENDAN

1102= 4 THE COURT: THANK YOU.

1103= 5 MR. YOUNG: THANK YOU.

1104= 6 THE CLERK: YES, YOUR HONOR. THEY'RE RIGHT BEHIND

1105= 7 YOU IN YOUR BOOK.

1106= 8 THE COURT: I THOUGHT WE WERE GOING TO HAVE THE ONES

1107= 9 FOR EACH DAY.

1108= 10 THE CLERK: THEY ARE, YOUR HONOR. THOSE ARE FOR EACH

1109= 11 DAY. THIS IS FOR TODAY. THOSE ARE ALL FOR TODAY, YOUR HONOR.

1110= 12 MR. DE BRUIN: YOUR HONOR, IF I MAY ADDRESS --

1111= 13 THE COURT: THERE ARE ONLY THREE LISTED ON THE MEMO

1112= 14 FOR TODAY.

1113= 15 MR. DE BRUIN: YOUR HONOR, IF I COULD, THE PROBLEM,

1114= 16 YOUR HONOR, IS THE FIRST SEVEN EXHIBITS ARE COPIES OF THE RED

1115= 17 BOOK THAT THE COURT HAS HEARD TESTIMONY ABOUT FOR 1994 TO THE

1116= 18 PRESENT. EACH RED BOOK -- THIS -- THIS IS THE ACTUAL BOOK, YOUR

1117= 19 HONOR (INDICATING).

1118= 20 THE COURT: YES.

1119= 21 MR. DE BRUIN: IT'S QUITE THICK, AND THAT'S WHY --

1120= 22 THERE ARE MANY VOLUMES FOR TODAY. THE ACTUAL EXHIBITS OTHER

1121= 23 THAN THE RED BOOK ARE VERY FEW, AND THEY ALSO SHOULD BE BEHIND

1122= 24 YOU.

1123= 25 THE COURT: THE COURT WILL BE IN RECESS UNTIL FIVE

1124= RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR (415) 626-8404

1125= OPENING STATEMENT \ STEER 1 MINUTES PAST 10:00.

1126= 2 THE CLERK: ALL RISE. 3 (RECESS TAKEN AT 9:47 A.M.)

1127= 4 (CONTINUED NEXT PAGE; NOTHING OMITTED.)

1128= 5

1129= 6

1130= 7

1131= 8

1132= 9

1133= 10

1134= 11

1135= 12

1136= 13

1137= 14

1138= 15

1139= 16

1140= 17

1141= 18

1142= 19

1143= 20

1144= 21

1145= 22

1146= 23

1147= 24

1148= 25

1149= RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR (415) 626-8404

1150= (PROCEEDINGS RESUME AT 10:07 A.M.)

1151= THE COURT: PLEASE BE SEATED. CALL YOUR FIRST

1152=WITNESS, MR. YOUNG.

1153= MR. DEBRUIN: THANK YOU, YOUR HONOR.

1154= THE COURT: MR. DEBRUIN.

1155= MR. DEBRUIN: MR. RHETT JACKSON.

1156= THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

1157= JAMES RHETT JACKSON,

1158= CALLED AS A WITNESS FOR THE PLAINTIFFS, HAVING BEEN DULY SWORN,

1159= TESTIFIED AS FOLLOWS:

1160= THE CLERK: THANK YOU. PLEASE BE SEATED.  
1161= THE WITNESS: THANK YOU.  
1162= THE CLERK: PLEASE STATE YOUR FULL NAME AND SPELL  
1163=YOUR LAST NAME FOR THE RECORD.  
1164= THE WITNESS: MY FULL NAME IS JAMES RHETT JACKSON,  
1165=SENIOR. LAST NAME IS SPELLED J-A-C-K-S-O-N.  
1166= DIRECT EXAMINATION  
1167=BY MR. DEBRUIN:  
1168=Q. MR. JACKSON, WHAT IS YOUR ADDRESS?  
1169=A. MY HOME ADDRESS IS 4848 LANDROM DRIVE, COLUMBIA, SOUTH  
1170=CAROLINA, 29206.  
1171=Q. WHAT IS YOUR CURRENT OCCUPATION, SIR?  
1172=A. I'M NOW EMPLOYED BY THE HAPPY BOOKSELLER, IN COLUMBIA.  
1173=Q. HOW LONG HAVE YOU BEEN ASSOCIATED WITH THE HAPPY BOOKSELLER  
1174=IN COLUMBIA, SOUTH CAROLINA?  
  
1175=A. ALMOST 30 YEARS.  
1176=Q. BRIEFLY, WHAT ARE YOUR RESPONSIBILITIES WITH THE HAPPY  
1177=BOOKSELLER?  
1178=A. AT THIS TIME MY RESPONSIBILITIES ARE MOSTLY FINANCIAL  
1179=MATTERS. I HANDLE ALL THE FINANCIAL MATTERS OF ACCOUNTS  
1180=PAYABLE, ACCOUNTS RECEIVABLE, PAY ALL THE INVOICES, PROJECT  
1181=CASH FLOW. I THINK THAT ABOUT COVERS IT. BUT I ALSO SELL  
1182=BOOKS. LOVE TO SELL BOOKS.  
1183=Q. HAVE YOU HAD OTHER RESPONSIBILITIES WITH THE STORE DURING  
1184=THE 30 YEARS YOU'VE BEEN ASSOCIATED WITH IT?  
1185=A. WELL, I FOUNDED THE BOOKSTORE IN 1974, AND I HAD ALL  
1186=RESPONSIBILITIES UP UNTIL I SOLD THE PARTNERSHIP TO THE PRESENT  
1187=OWNER ABOUT THREE YEARS AGO, AND HE BOUGHT IT ON JANUARY THE  
1188=1ST, 1999.  
1189=Q. THANK YOU. MR. JACKSON, VERY BRIEFLY, I'D LIKE TO REVIEW  
1190=AND ASK YOU A FEW QUESTIONS ABOUT YOUR BACKGROUND. WHERE DID  
1191=YOU GO TO SCHOOL?  
1192=A. I STARTED OUT AT CLEMSON COLLEGE. AT THAT TIME IT WAS  
1193=CLEMSON COLLEGE, NOT CLEMSON UNIVERSITY. IT WAS DURING WORLD  
1194=WAR II. I GOT DRAFTED, WENT INTO THE NAVY, AND THEN I WAS SENT  
1195=TO THE UNIVERSITY OF SOUTH CAROLINA AND THE NAVAL OFFICERS  
1196=TRAINING PROGRAM, CALLED NAVAL V12, AND I GOT AN ACCELERATED  
1197=COURSE AND GOT A DEGREE IN ELECTRICAL ENGINEERING BEFORE I WENT  
1198=TO MIDSHIPMAN SCHOOL.  
1199=Q. AND THEN DID YOU SERVE IN THE WAR?  
  
1200=A. WELL, I SERVED IN THE PACIFIC. NOBODY EVER SHOT AT ME, BUT  
1201=I WAS OUT THERE, YES.  
1202=Q. WHAT DID YOU DO, SIR, AFTER YOU FINISHED YOUR MILITARY  
1203=SERVICE?  
1204=A. I OPENED A FURNITURE BUSINESS.  
1205=Q. AND HOW LONG WERE YOU IN THE FURNITURE BUSINESS?  
1206=A. ABOUT 25 YEARS.  
1207=Q. HAVE YOU BEEN INVOLVED, SIR, IN ANY COMMUNITY  
1208=ORGANIZATIONS, IN COLUMBIA, SOUTH CAROLINA, OR IN SOUTH  
1209=CAROLINA?  
1210=A. YES, QUITE A FEW. I DID A LOT OF CIVIL RIGHTS WORK. I WAS  
1211=A MEMBER OF THE STATE PROBATION, PARDON AND PAROLE BOARD FOR 20  
1212=YEARS. I'M ACTIVE IN MY CHURCH. I'M ACTIVE IN AN ORGANIZATION  
1213=CALLED THE COMMUNITY RELATIONS COUNCIL, WHICH WAS FORMED IN THE  
1214=60'S TO BRING THE RACES TOGETHER IN AN INCLUSIVE COMMUNITY.  
1215=Q. APART FROM YOUR DEGREE IN ELECTRICAL ENGINEERING FROM THE  
1216=UNIVERSITY OF SOUTH CAROLINA, DO YOU HAVE ANY OTHER FORMAL  
1217=EDUCATION OR TRAINING?  
1218=A. NO, I DO NOT.  
1219=Q. HAVE YOU RECEIVED ANY HONORARY DEGREES?  
1220=A. I HAVE RECEIVED THREE DOCTORS OF HUMANITIES FROM -- TWO  
1221=FROM BLACK COLLEGES AND ONE FROM A METHODIST COLLEGE IN SOUTH  
1222=CAROLINA; AND THEY WERE MOSTLY BECAUSE OF MY WORK IN RACE  
1223=RELATIONS.  
1224=Q. ALL RIGHT. MR. JACKSON, YOU STATED THAT YOU OPENED THE  
  
1225=HAPPY BOOKSELLER IN 1974. WHY DID YOU GO INTO THE BOOKSELLING  
1226=BUSINESS?  
1227=A. BECAUSE I LOVE BOOKS AND I DREAMED OF OPENING A BOOKSTORE  
1228=FOR YEARS. I HAVE A TWIN BROTHER, AND WE DREAMED FOR YEARS OF  
1229=OPENING A BOOKSTORE, AND HE BECAME PRESIDENT OF ONE OF OUR

1230=STATE COLLEGES. THAT ELIMINATED HIM, SO MY WIFE AND I WORKED  
1231=HARD ON IT, TO FIND A WAY TO DO IT.  
1232=Q. DID YOU BUY AN EXISTING STORE OR DID YOU OPEN A NEW STORE?  
1233=A. NO, I OPENED A NEW STORE.  
1234=Q. WHO CHOSE THE NAME THE HAPPY BOOKSELLER?  
1235=A. MY WIFE AND I WERE SITTING DOWN IN THE DEN ONE NIGHT AND WE  
1236=WERE JUST WRITING DOWN NAMES, AND SHE SAID, "WELL, YOU KNOW,  
1237=YOU'LL BE VERY HAPPY WITH THE BOOKSTORE," AND I SAID, "THAT  
1238=MIGHT BE A GOOD NAME. LET'S NAME IT THE HAPPY BOOKSELLER."  
1239=AND I FIGURED THERE WOULD BE A LOT OF BOOKSTORES IN THE COUNTRY  
1240=CALLED HAPPY BOOKSELLER. I CALLED THE AMERICAN BOOKSELLERS  
1241=ASSOCIATION AND THERE WAS NONE OTHER, SO WE NAMED IT THE HAPPY  
1242=BOOKSELLER.  
1243=Q. WHERE WAS THE STORE ORIGINALLY LOCATED?  
1244=A. WE HAD A DIFFICULT TIME FINDING A PLACE FOR A STORE. I HAD  
1245=A FRIEND WITH A HICKORY FARMS STORE, AND HE HAD A LITTLE MORE  
1246=ROOM THAN HE NEEDED, AND HE LEASED ME 1100 SQUARE FEET, AND HIS  
1247=STORE WAS LOCATED IN A NEIGHBORHOOD MALL, AND THAT'S WHERE WE  
1248=STARTED.  
1249=Q. AND AGAIN, WAS THIS IN COLUMBIA, SOUTH CAROLINA?  
  
1250=A. IN COLUMBIA, SOUTH CAROLINA, OFF FOREST DRIVE.  
1251=Q. WHAT KIND OF A BOOKSTORE DID YOU OPEN? CAN YOU DESCRIBE  
1252=THE STORE?  
1253=A. I DREAMED OF OPENING A GENERAL BOOKSTORE, IN ALL  
1254=CATEGORIES, A BROAD STORE, AND I KNEW YOU COULDN'T DO THAT WITH  
1255=1100 FEET, BUT THAT WAS THE STARTING PLACE, AND I WAS LOOKING  
1256=FOR SOME LARGER QUARTERS ALMOST AS SOON AS WE OPENED, BECAUSE A  
1257=GENERAL BOOKSTORE.  
1258=Q. WHAT CATEGORIES OF BOOKS DID YOU CARRY AT THAT TIME?  
1259=A. WE CARRIED ALL CATEGORIES, FROM RELIGION AND PHILOSOPHY,  
1260=FICTION, NONFICTION, COOKBOOKS, CHILDREN'S BOOKS, TEST BOOKS,  
1261=TEST PREP BOOKS, JUST ABOUT EVERYTHING THAT A GOOD BOOKSTORE  
1262=SHOULD CARRY.  
1263=Q. DO YOU STILL CARRY ALL OF THOSE CATEGORIES TODAY?  
1264=A. YES, WE DO.  
1265=Q. NOW, YOU SAID THAT WHEN YOU OPENED YOU HAD 1100 SQUARE  
1266=FEET. ABOUT HOW MANY TITLES DID YOU CARRY WHEN YOU OPENED THE  
1267=STORE?  
1268=A. AT THAT TIME, I WOULD SAY WE -- YOU COULD HARDLY MOVE IN  
1269=THE STORE, BUT IT WAS JAMMED. I WOULD SAY WE HAD SEVERAL  
1270=THOUSAND TITLES.  
1271=Q. AND HOW MANY EMPLOYEES WHEN YOU OPENED THE STORE?  
1272=A. WHEN I OPENED THE STORE WITH ONE FULL-TIME PERSON, TWO  
1273=PART-TIME COLLEGE STUDENTS, AND BETTY, MY WIFE, AND RHETT,  
1274=MYSELF.  
  
1275=Q. SO YOUR WIFE ALSO WORKED IN THE STORE?  
1276=A. YES, SHE DID.  
1277=Q. DO YOU RECALL APPROXIMATELY WHAT YOUR SALES WERE IN YOUR  
1278=FIRST FULL YEAR OF BUSINESS?  
1279=A. JUST A LITTLE OVER A HUNDRED THOUSAND.  
1280=Q. ALL RIGHT, MR. JACKSON, LET ME MOVE FORWARD TO 1993. WHERE  
1281=WAS YOUR STORE LOCATED AT THAT TIME?  
1282=A. 1993, IT WAS LOCATED ON FOREST DRIVE, ABOUT 1 MILE FROM  
1283=WHERE THE ORIGINAL STORE WERE.  
1284=Q. AND IS THAT WHERE THE STORE STILL IS TODAY?  
1285=A. YES.  
1286=Q. WHAT IS THE ADDRESS OF THE STORE?  
1287=A. 4525 FOREST DRIVE.  
1288=Q. IN 1993, FOCUSING INITIALLY AT THAT PERIOD, ABOUT HOW LARGE  
1289=HAD THE STORE BECOME IN TERMS OF SQUARE FOOTAGE?  
1290=A. IN 1993?  
1291=Q. YES, SIR.  
1292=A. 6,000 SQUARE FEET.  
1293=Q. AND ABOUT HOW MANY TITLES DID YOU HAVE AT THAT TIME?  
1294=A. 55,000, APPROXIMATELY, UP AND DOWN, FROM 60 TO 50, YES.  
1295=Q. IS THE STORE TODAY APPROXIMATELY THE SAME SIZE AS IT WAS IN  
1296=1993?  
1297=A. YES.  
1298=Q. ABOUT HOW MANY EMPLOYEES DID YOU HAVE IN 1993?  
1299=A. I THINK 15, 16.

1300=Q. NOW, HOW DID THE SIZE OF THE HAPPY BOOKSELLER AT THAT TIME,  
1301=1993, COMPARE TO OTHER BOOKSTORES IN THE STATE OF SOUTH  
1302=CAROLINA?  
1303=A. IN 1993, WE WERE THE LARGEST BOOKSTORE IN SOUTH CAROLINA.  
1304=Q. DO YOU RECALL WHAT YOUR SALES WERE FOR THAT YEAR, 1993?  
1305=A. 1993, THEY WERE ABOUT 1,600,000.  
1306=Q. AND AT THAT TIME, AGAIN FOCUSED ON 1993, WHO WERE YOUR  
1307=PRINCIPAL COMPETITORS FOR THE SALE OF BOOKS?  
1308=A. AT THAT TIME THERE WERE THREE OTHER INDEPENDENT BOOKSTORES,  
1309=AND I THINK THERE WERE FOUR, MAYBE FIVE WALDENBOOKS, TWO B.  
1310=DALTON. THE UNIVERSITY OF SOUTH CAROLINA, WHICH IS A LARGE  
1311=UNIVERSITY, HAD A LARGE TRADE BOOKSTORE, AND I THINK THAT WOULD  
1312=ABOUT COVER.  
1313=Q. NOW, AT THAT TIME, SIR, WHAT WOULD YOU DESCRIBE TO BE THE  
1314=BREADTH OF YOUR TRADING AREA? FROM WHERE DID YOUR CUSTOMERS  
1315=COME?  
1316=A. WELL, WE HAD BUILT A REPUTATION OF HAVING THE BEST  
1317=BOOKSTORE IN SOUTH CAROLINA. WE ALWAYS HAD PEOPLE WHO KNEW HOW  
1318=TO SELL BOOKS AND LOVED BOOKS, AND WE HAD PEOPLE COMING EASILY  
1319=FROM A 20-MILE RADIUS, AND WE HAD OCCASIONALLY CUSTOMERS COME  
1320=IN FROM A HUNDRED MILES.  
1321=Q. DURING THE PERIOD BETWEEN 1974, WHEN YOU OPENED THE STORE,  
1322=AND 1993, WERE YOU INVOLVED AT ALL WITH THE AMERICAN  
1323=BOOKSELLERS ASSOCIATION?  
1324=A. STARTING AT WHAT DATES?  
  
1325=Q. WELL, JUST DURING THIS TIME WE'VE COVERED, FROM 1974 WHEN  
1326=YOU OPENED YOUR BOOKSTORE --  
1327=A. YES.  
1328=Q. -- TO 1993.  
1329=A. I WAS ELECTED TO THE BOARD IN 1982, AND 23 YEARS LATER I  
1330=BECAME VICE PRESIDENT FOR TWO YEARS, AND THEN I WAS PRESIDENT  
1331=OF THE AMERICAN BOOKSELLERS ASSOCIATION, FROM '86 TO '87,  
1332='87-'88.  
1333=Q. ALL RIGHT. MOVING FORWARD, SIR, SINCE 1993, HAVE YOU FACED  
1334=ANY ADDITIONAL COMPETITORS FOR THE SALE OF BOOKS IN COLUMBIA,  
1335=SOUTH CAROLINA?  
1336=A. MOVING FORWARD FROM '93?  
1337=Q. YES, SIR.  
1338=A. YES, WE HAD A BOOKS-A-MILLION OPEN UP IN '93, AND WE HAD A  
1339=BARNES & NOBLE OPEN UP IN '95, AND THEN WE HAD ANOTHER  
1340=BOOKS-A-MILLION OPEN UP IN '96, I BELIEVE, AND ANOTHER BARNES &  
1341=NOBLE IN '97.  
1342=Q. DO YOU RECALL WHEN THE FIRST BARNES & NOBLE STORE OPENED?  
1343=A. 1995, IN THE FALL.  
1344=Q. WHERE IS THAT STORE LOCATED?  
1345=A. THAT IS LOCATED ON HARBISON BOULEVARD, IN COLUMBIA.  
1346=Q. ABOUT HOW FAR AWAY IS THAT FIRST BARNES & NOBLE STORE FROM  
1347=YOUR STORE?  
1348=A. EIGHT TO TEN MILES.  
1349=Q. LET ME ASK YOU TO LOOK AT AN EXHIBIT WHICH SHOULD BE IN A  
  
1350=BINDER RIGHT IN FRONT OF YOU. IT'S EXHIBIT 2519. IT SHOULD BE  
1351=TOWARD THE BACK. 2519.  
1352=A. WOULD IT BE -- OKAY, I SEE A 2591 -- OKAY, I SEE IT, I'M  
1353=SORRY. OKAY.  
1354=Q. DO YOU HAVE THAT EXHIBIT IN FRONT OF YOU, SIR, 2519?  
1355=A. YES, I DO.  
1356=Q. CAN YOU IDENTIFY WHAT THAT IS?  
1357=A. THAT'S A MAP OF COLUMBIA AND SURROUNDING AREAS.  
1358=Q. ALL RIGHT. CAN YOU IDENTIFY ON THAT MAP, SIR, WHERE YOUR  
1359=STORE IS LOCATED?  
1360=A. YES. MY STORE IS LOCATED -- IT'S A GREEN DOT WITH A YELLOW  
1361=CIRCLE AROUND IT, ON FOREST DRIVE.  
1362=Q. AND IS THERE A BOX INDICATING "HAPPY BOOKSELLER, 4525  
1363=FOREST DRIVE," POINTING TO THAT DOT?  
1364=A. NO, IT IS NOT ON THIS MAP.  
1365=Q. ARE YOU LOOKING AT 2519?  
1366=A. NO, I'M NOT. I'M LOOKING AT ONE, IT'S A MAP, BUT IT'S -- I  
1367=PULLED THE WRONG PAGE. YES, THERE'S A BLOCK THAT SAYS, "THE  
1368=HAPPY BOOKSELLER."  
1369=Q. OKAY, AND JUST FOR THE RECORD, YOUR STORE IS THE STORE WITH  
1370=THE GREEN DOT AND THE YELLOW CIRCLE AROUND IT?

1371=A. YES.  
1372=Q. NOW, ON THIS MAP, SIR, CAN YOU IDENTIFY, WHERE IS THE FIRST  
1373=BARNES & NOBLE THAT OPENED?  
1374=A. THE FIRST BARNES & NOBLE IS OVER ON THE LEFT, AND IT'S A  
1375=RED DOT, AND IT SAYS "BARNES & NOBLE, 278A HARBISON BOULEVARD."  
1376=Q. ALL RIGHT, NOW, WHEN THAT STORE OPENED IN THE FALL OF 1995,  
1377=WAS THERE ANY IMPACT YOUR BUSINESS WHEN THAT STORE OPENED?  
1378=A. YES.  
1379=Q. CAN YOU DESCRIBE THAT IMPACT, SIR?  
1380=A. WELL, TWO IMPACTS, REALLY. OF COURSE, OUR SALES DECREASED  
1381=SOME, BUT THE BIGGEST IMPACT WE HAD WAS ON OUR GROSS PROFITS.  
1382=THAT STORE OPENED WITH A DISCOUNT PROGRAM OF 10 PERCENT ON ALL  
1383=HARDBACKS, 40 PERCENT ON NEW YORK TIMES TOP TEN FICTION AND  
1384=NON-FICTION, AND 25 PERCENT ON NEW YORK TIMES PAPERBACKS,  
1385=FICTION AND NON-FICTION, AND AS I SAID, 10 PERCENT ON ALL  
1386=HARDBACKS IN THE STORE, AND WE FELT THAT WE WOULD LOSE A LOT OF  
1387=CUSTOMERS IF WE DIDN'T MATCH THAT DISCOUNT, SO WE MATCHED IT  
1388=IMMEDIATELY, AND IT REDUCED OUR GROSS PROFIT CONSIDERABLY.  
1389=Q. NOW, WHEN YOU REFER TO NEW YORK TIMES HARDBACK AND  
1390=TRADEBACK, ARE YOU REFERRING TO THE NEW YORK TIMES BEST-SELLER  
1391=LISTS?  
1392=A. YES, YES, CORRECT.  
1393=Q. YOU TESTIFIED THAT THERE WAS AN IMPACT ON YOUR SALES. LET  
1394=ME ASK YOU TO LOOK AT EXHIBIT 192.  
1395=A. I WANT TO GET THIS RIGHT, NOW. 192, IT WOULD BE BEHIND THE  
1396=NUMBER, INSTEAD OF IN FRONT OF THE NUMBER.  
1397=Q. YES, THAT'S CORRECT, RIGHT BEHIND THE TAB.  
1398=A. OKAY.  
1399=Q. NOW, MR. JACKSON, ARE YOU FAMILIAR WITH THIS DOCUMENT,  
1400=EXHIBIT 192?  
1401=A. YES.  
1402=Q. CAN YOU IDENTIFY FOR THE COURT -- WELL, FIRST OF ALL, LET  
1403=ME ASK YOU, WHO PREPARED THIS EXHIBIT?  
1404=A. I DID.  
1405=Q. ALL RIGHT. CAN YOU IDENTIFY FOR THE COURT WHAT THIS  
1406=EXHIBIT IS?  
1407=A. WELL, I WAS WORKING ON -- TO TRAIN ANDY GRAVES, THE NEW  
1408=OWNER OF THE BOOKSTORE, I WAS WORKING ON A PROJECTION TO SHOW  
1409=HIM HOW THE SALES HISTORY HAD BEEN OVER THE YEARS, AND I WENT  
1410=BACK AS FAR AS I COULD FIND, AND ON THAT PARTICULAR DATE, AND  
1411=THIS LIST IS SALES PER MONTH BY EACH MONTH, PER YEAR, STARTING  
1412=WITH '92 FOR THE FIRST FULL YEAR, BUT OUR FISCAL YEAR AT THAT  
1413=TIME RAN FROM OCTOBER 1 TO SEPTEMBER 30, SO YOU WILL SEE UNDER  
1414='91, IT STARTS WITH OCTOBER 1.  
1415=Q. ALL RIGHT. NOW, HOW DID YOU PHYSICALLY PREPARE THIS CHART?  
1416=WHAT DID YOU DO?  
1417=A. WE KEEP A BOOK EVERY DAY OF DAILY SALES, AND THEN WE  
1418=ACCUMULATE THAT TO MONTHLY SALES, AND WE STORE THESE BOOKS, AND  
1419=I SEARCHED ALL THOSE BOOKS FOR THESE RECORDS.  
1420=Q. SO YOU COMPILED THIS DOCUMENT FROM YOUR LEDGERS OF DAILY  
1421=AND MONTHLY SALES?  
1422=A. YES.  
1423=Q. DOES THIS DOCUMENT SHOW, MR. JACKSON, THE IMPACT ON YOUR  
1424=SALES AFTER THE FIRST BARNES & NOBLE STORE OPENED IN 1995?  
1425=A. YES, IT DOES. IF YOU -- WELL, YOU COULD TAKE, FOR  
1426=INSTANCE, IF YOU LOOK AT DECEMBER, IT SHOWS A DROP FROM 207 TO  
1427=188.  
1428=Q. I'M SORRY, SO IF WE'RE LOOKING AT -- WHEN DID THE BARNES &  
1429=NOBLE STORE OPEN, SIR? YOU SAID WAS IN THE FALL OF 1995?  
1430=A. YES.  
1431=Q. SO IF I COMPARE YOUR SALES IN DECEMBER OF 1995 TO YOUR  
1432=SALES IN DECEMBER OF 1994 --  
1433=A. RIGHT.  
1434=Q. -- WHAT DOES THAT SHOW, SIR?  
1435=A. IT SHOWS A \$30,000 DROP, YES.  
1436=Q. ALL RIGHT. WHAT ABOUT IF I --  
1437=A. IT ALSO SHOWS A NOVEMBER DROP OF ABOUT 20,000.  
1438=Q. AND THAT'S COMPARING YOUR SALES IN NOVEMBER OF 1995 TO YOUR  
1439=SALES IN NOVEMBER OF 1994?  
1440=A. CORRECT.

1441=Q. LET ME JUST ESTABLISH THIS IN THE RECORD, SIR. WHAT WERE  
1442=YOUR SALES IN NOVEMBER OF 1994?  
1443=A. NOVEMBER OF 1994 WERE \$104,800.  
1444=Q. WHAT WERE YOUR SALES IN NOVEMBER OF 1995?  
1445=A. \$86,100.  
1446=Q. ALL RIGHT. WHAT WERE YOUR SALES IN DECEMBER OF 1994?  
1447=A. \$199,200.  
1448=Q. WHAT WERE YOUR SALES IN DECEMBER OF 1995?  
1449=A. 172,000.

1450=Q. OKAY. DID THAT PATTERN OF A DECLINE IN SALES OVER THE  
1451=PRECEDING YEAR CONTINUE FOR SEVERAL MORE MONTHS?  
1452=A. INTO --  
1453=Q. INTO 1996.  
1454=A. ACTUALLY, YES, IT DID.  
1455=Q. NOW, APART FROM THIS IMPACT ON YOUR SALES, WERE THERE ANY  
1456=OTHER REASONS WHY YOU BELIEVE THAT YOU COMPETE WITH THAT STORE,  
1457=THE BARNES & NOBLE STORE ON HARBISON BOULEVARD?  
1458=A. WELL, YES. WE HAD A GOOD CUSTOMER BASE IN THAT AREA PRIOR  
1459=TO THEIR OPENING. I WENT TO THEIR GRAND OPENING, AND I WAS  
1460=INVITED TO COME TO THE GRAND OPENING, AND AS I GOT IN THERE,  
1461=THEY HAD A PRETTY PACKED HOUSE AND THE PLACE WAS FULL OF MY  
1462=CUSTOMERS. IT WAS KIND OF INTERESTING. IN FACT, TWO OR THREE  
1463=OF THEM CAME UP TO ME AND SAID, "RHETT, I DON'T WANT YOU TO SEE  
1464=ME IN HERE," BUT YES, THAT WAS A GOOD CUSTOMER BASE FOR US.  
1465=Q. AND --  
1466=A. AND EVEN BEYOND IT, INTO THE LITTLE TOWNS BEYOND THAT,  
1467=IRMO, NEWBERRY, PROSPERITY, THAT WAS ALL A GOOD CUSTOMER BASE  
1468=FOR US.  
1469=Q. YOU TESTIFIED EARLIER THAT YOUR TRADING AREA BEFORE 1993  
1470=WAS AT LEAST 20 MILES AROUND YOUR STORE, AND PERHAPS EVEN  
1471=BEYOND THAT TO OTHER AREAS OF THE STATE.  
1472=A. YES.  
1473=Q. IS THAT BARNES & NOBLE STORE ON HARBISON BOULEVARD LOCATED  
1474=WITHIN THAT 20-MILE TRADING AREA?

1475=A. YES, IT'S WELL WITHIN IT, YES.  
1476=Q. DO YOU HAVE ANY DOUBT, SIR, WHETHER YOU COMPETE WITH THAT  
1477=BARNES & NOBLE STORE?  
1478=A. I HAVE NO DOUBT AT ALL.  
1479=Q. WHEN YOU WERE IN THE STORE FOR THE OPENING, DID YOU HAPPEN  
1480=TO NOTICE THE KINDS OF BOOKS THAT WERE BEING SOLD BY BARNES &  
1481=NOBLE?  
1482=A. YES. THEY WERE HANDLING MUCH THE SAME BOOKS THAT WE WERE  
1483=HANDLING, FROM THE SAME PUBLISHERS. I RECOGNIZED MANY OF THE  
1484=TITLES THAT THEY CARRIED. I SAW SOME OF THEIRS THAT WE CARRIED  
1485=TITLES IN THAT PARTICULAR CATEGORY THAT THEY DIDN'T CARRY THAT  
1486=WE DID CARRY, BUT -- AS A MATTER OF FACT, WE HAD SOME FUN, I  
1487=WAS WITH A FRIEND, AND SEVERAL BOOKS THAT WE SELL REGULARLY, I  
1488=WOULD CHECK TO SEE IF THEY WERE ON THE SHELVES, SOME WERE AND  
1489=SOME WEREN'T.  
1490=Q. MANY OF THE BOOKS YOU SAW IN THAT STORE WERE THE SAME BOOKS  
1491=YOU WERE SELLING IN YOUR STORE?  
1492=A. YES, YES.  
1493=Q. NOW, YOU TESTIFIED THAT A SECOND BARNES & NOBLE STORE  
1494=OPENED, I BELIEVE, IN 1997?  
1495=A. 1997, YES.  
1496=Q. LET ME GO BACK TO THAT MAP, WHICH IS 2519, THE EXHIBIT  
1497=BEHIND TAB 2519.  
1498=A. I GOT IT.  
1499=Q. WHERE IS THE SECOND BARNES & NOBLE LOCATED?

1500=A. IT'S LOCATED WHERE THE RED DOT IS.  
1501=Q. WHICH RED DOT IS THAT, SIR?  
1502=A. I'M SORRY, THERE'S AN ARROW THAT SAYS, "BARNES & NOBLE,  
1503=3400 FOREST DRIVE," AND THERE'S AN ARROW TO A RED DOT ON FOREST  
1504=DRIVE.  
1505=Q. ALL RIGHT, SO IS THAT THE RED DOT THAT'S JUST PRETTY CLOSE,  
1506=RIGHT NEXT TO THE GREEN DOT THAT'S YOUR STORE?  
1507=A. YES. THAT'S LESS THAN A MILE AWAY.  
1508=Q. LESS THAN A MILE AWAY?  
1509=A. YES.  
1510=Q. DO YOU HAVE ANY DOUBT, SIR, THAT YOU COMPETE WITH THAT

1511=STORE?  
1512=A. I HAVE NO DOUBT WHATSOEVER.  
1513=Q. HAVE YOU BEEN IN THAT STORE, SIR?  
1514=A. YES, I HAVE.  
1515=Q. HAVE YOU NOTICED THE BOOKS THAT ARE SOLD IN THAT STORE?  
1516=A. YES, VERY SIMILAR TO WHAT WE SELL.  
1517=Q. NOW, YOU ALSO TESTIFIED THAT IN ADDITION TO AN IMPACT ON  
1518=YOUR SALES, THAT THESE BARNES & NOBLE STORES HAVE AN IMPACT  
1519=YOUR GROSS PROFIT MARGIN. FIRST OF ALL, CAN YOU DEFINE FOR THE  
1520=RECORD, WHAT IS A GROSS PROFIT MARGIN?  
1521=A. WELL, I'VE ALWAYS WORKED HARD TO KEEP A GROSS PROFIT OF  
1522=ABOUT 38.5, WHICH MEANS THAT FOR EVERY HUNDRED DOLLARS' WORTH  
1523=OF SALES, YOU MAKE GROSS 38 AND-A-HALF DOLLARS. AND OUR GROSS  
1524=PROFITS WENT DOWN TO 32, 33, 34, AFTER WE HAD TO MATCH THAT  
  
1525=DISCOUNTS.  
1526=Q. LET ME JUST MAKE SURE IT'S CLEAR. WHEN -- WHAT IS INCLUDED  
1527=IN GROSS PROFITS?  
1528=A. THAT IS THE PROFIT THAT YOU MADE BEFORE ANY EXPENSES. IN  
1529=OTHER WORDS, IF YOU SELL -- IF YOU BUY SOMETHING FOR A HUNDRED  
1530=DOLLARS, IT COSTS YOU \$60, AND YOU HAVE NO DISCOUNTS, YOU HAVE  
1531=A 40 PERCENT GROSS PROFIT.  
1532=Q. SO IT'S JUST YOUR SALES REVENUE LESS THE COST OF GOODS THAT  
1533=YOU SOLD.  
1534=A. EXACTLY, YES.  
1535=Q. ALL RIGHT. AND YOU SAID THAT YOU TRIED, HISTORICALLY, TO  
1536=KEEP YOUR GROSS PROFIT MARGIN AT ABOUT 38 AND-A-HALF PERCENT?  
1537=A. CORRECT.  
1538=Q. DURING THAT TIME WHEN YOUR GROSS PROFIT WAS APPROXIMATELY  
1539=38.5 PERCENT -- YOU SAID THAT WAS BEFORE EXPENSES. WHAT WAS  
1540=YOUR PROFIT MARGIN AFTER YOU HAD DEDUCTED ALL OF YOUR EXPENSES?  
1541=A. IN, SAY, WHAT YEAR?  
1542=Q. ABOUT 1993.  
1543=A. NINETY-THREE? SEVEN, EIGHT PERCENT.  
1544=Q. AND JUST FOR THE RECORD, CAN YOU DEFINE, WHAT IS THAT  
1545=MEASURE CALLED, AFTER YOU'VE DEDUCTED YOUR EXPENSES?  
1546=A. THAT'S CALLED THE NET PROFIT.  
1547=Q. ALL RIGHT, AND SO WHAT IS NET PROFIT, FOR THE RECORD?  
1548=A. THAT'S WHAT YOU MAKE AFTER YOU'VE PAID ALL EXPENSES, AND TO  
1549=EXPLAIN IT A LITTLE FURTHER, IF I HAD BEEN INCORPORATED AND I  
  
1550=HAD DRAWN A SALARY, IT WOULD BE THE PROFIT INCLUDING MY SALARY,  
1551=BUT I WAS A PROPRIETOR, SO I DREW OUT OF THE PROFITS THAT WERE  
1552=LEFT IN THE BUSINESS. I HAD A DRAWING ACCOUNT.  
1553=Q. OKAY, SO WHEN YOUR PROFIT MARGIN WAS SEVEN OR  
1554=EIGHT PERCENT, NET PROFIT MARGIN, OF SEVEN OR EIGHT PERCENT,  
1555=THEN YOU HAD TO TAKE YOUR INCOME, YOUR DRAW, OUT OF THAT SEVEN  
1556=OR EIGHT PERCENT.  
1557=A. YES.  
1558=Q. ALL RIGHT. NOW, YOU TESTIFIED THAT WHEN -- AFTER THE  
1559=BARNES & NOBLE STORES ENTERED COLUMBIA, THAT YOU MADE SOME  
1560=CHANGES IN YOUR PRICING POLICIES TO RESPOND TO THOSE STORES.  
1561=A. YES.  
1562=Q. AND YOU'VE DESCRIBED THE DISCOUNT SYSTEM THAT YOU ADOPTED.  
1563=DID THAT DISCOUNT SYSTEM HAVE AN IMPACT ON YOUR GROSS PROFIT  
1564=MARGIN?  
1565=A. IT HAD A SEVERE IMPACT. IT WENT FROM 38 AND-A-HALF TO --  
1566=DEPENDING ON THE YEAR, BUT IT WENT TO 33, 32, 34.  
1567=Q. LET ME ASK YOU TO LOOK AT EXHIBIT NUMBER 185. AND AGAIN,  
1568=THIS IS THE DOCUMENT AFTER THE TAB.  
1569=A. OKAY.  
1570=Q. GIVE YOU A MINUTE TO LOOK AT EXHIBIT 185, AND THEN I'LL ASK  
1571=YOU WHETHER YOU RECOGNIZE WHAT THIS EXHIBIT IS.  
1572=A. YES, I DO.  
1573=Q. CAN YOU IDENTIFY THIS RECORD, PLEASE?  
1574=A. THIS IS THE BALANCE SHEET AT THE END OF THE YEAR 1997.  
  
1575=IT'S DATED DECEMBER THE 31ST, 1997, AND THERE'S A BALANCE SHEET  
1576=THERE, AND BEHIND IT IS THE P&L STATEMENT, PROFIT AND LOSS  
1577=STATEMENT, AND IT SHOWS THE PROFIT AND LOSS FOR THE LAST  
1578=QUARTER OF 1997, AND FOR THE COMPLETE YEAR OF 1997.  
1579=Q. ALL RIGHT, SIR. NOW, WHEN YOU REFER TO A BALANCE SHEET AND  
1580=A PROFIT AND LOSS STATEMENT, WHERE DO THESE RECORDS RELATE TO?

1581=A. WELL, THE BALANCE SHEET SHOWS ALL OF MY ASSETS, AND ALL OF  
1582=MY LIABILITIES.  
1583=Q. OF WHAT BUSINESS, SIR? I JUST WANT, FOR THE RECORD.  
1584=A. OH, THE HAPPY BOOKSELLER.  
1585=Q. ALL RIGHT, THANK YOU. LET ME ASK YOU, YOU SAID THIS  
1586=IDENTIFIES SOME INFORMATION FOR BOTH THE LAST QUARTER OF 1997  
1587=AND THE CALENDAR YEAR. FIRST OF ALL, YOU SAID THAT BOTH BARNES  
1588=& NOBLE STORES HAD ENTERED BY --  
1589=A. YES.  
1590=Q. -- THE END OF 1997.  
1591=A. CORRECT. IN FACT, THEY ENTERED DURING THAT LAST QUARTER.  
1592=Q. ALL RIGHT. WHAT WAS YOUR GROSS PROFIT MARGIN, SIR, FOR THE  
1593=LAST QUARTER OF 1997? CAN YOU IDENTIFY THAT ON THIS DOCUMENT?  
1594=A. YES.  
1595=Q. WHAT PAGE, SIR?  
1596=A. PAGE TWO.  
1597=Q. OKAY, AND WHAT WAS YOUR GROSS PROFIT MARGIN FOR THE LAST  
1598=QUARTER OF 1997?  
1599=A. WELL, THE DOLLARS EARNED WAS \$286.96, AND THE GROSS PROFIT  
  
1600=IN PERCENTAGES WAS .07.  
1601=Q. I'M SORRY, GROSS PROFIT MARGIN OR NET PROFIT MARGIN?  
1602=A. OH, PARDON ME.  
1603=Q. LET'S START WITH THE GROSS PROFIT.  
1604=A. THE GROSS PROFIT WAS 28.55.  
1605=Q. SO INSTEAD OF A TRADITIONAL 38 PERCENT GROSS PROFIT MARGIN,  
1606=YOUR PROFIT MARGIN --  
1607=A. IT WAS 28.55.  
1608=Q. IT CAME DOWN TO 28 PERCENT?  
1609=A. YES.  
1610=Q. WHAT WAS YOUR NET PROFIT MARGIN FOR THAT QUARTER?  
1611=A. NET PROFIT WAS .07, FOR THAT QUARTER.  
1612=Q. POSITIVE OR NEGATIVE, SIR?  
1613=A. NEGATIVE.  
1614=Q. OKAY, AND HOW ABOUT FOR THE ENTIRE YEAR 1997? NOW, AT THAT  
1615=POINT IN TIME WAS YOUR FISCAL YEAR A CALENDAR FISCAL YEAR OR  
1616=WAS IT STILL A NON-CALENDAR FISCAL YEAR?  
1617=A. AT THIS TIME IT WAS A CALENDAR YEAR.  
1618=Q. ALL RIGHT.  
1619=A. YES.  
1620=Q. SO WHAT WAS YOUR GROSS PROFIT MARGIN FOR CALENDAR AND  
1621=FISCAL YEAR 1997?  
1622=A. 34.8.  
1623=Q. AND WHAT WAS YOUR NET PROFIT MARGIN?  
1624=A. 3.42.  
  
1625=Q. NOW, WITH RESPECT TO THAT NET PROFIT MARGIN OF  
1626=3.42 PERCENT, AGAIN, DOES YOUR INCOME OR DRAW HAVE TO COME OUT  
1627=OF THAT NET PROFIT MARGIN OF 3 PERCENT?  
1628=A. YES, IT DOES.  
1629=Q. MR. JACKSON, TAKING INTO ACCOUNT YOUR OWN DRAW, WERE YOU  
1630=ABLE TO OPERATE YOUR BUSINESS AT A PROFIT, DISCOUNTING BOOKS  
1631=THE SAME WAY IN BARNES & NOBLE WAS DISCOUNTING BOOKS?  
1632=A. NO.  
1633=Q. AND AGAIN, YOU CHOSE TO ADOPT A DISCOUNT POLICY. WAS IT  
1634=THE SAME AS BARNES & NOBLE, OR DIFFERENT?  
1635=A. AT THAT TIME IT WAS EXACTLY THE SAME, YES, 40, 25 AND 10.  
1636=Q. AND WHAT, SIR, ARE --  
1637= THE COURT: WHAT ARE THOSE FIGURES, 40, 35 AND 10?  
1638= THE WITNESS: 40 PERCENT ON HARDBACK FICTION,  
1639=NONFICTION ON THE NEW YORK TIMES BEST-SELLER, AND 25 ON PAPER,  
1640=10 PERCENT ON ALL HARD BOOKS.  
1641= THE COURT: THANK YOU.  
1642= THE WITNESS: YES, SIR.  
1643=BY MR. DEBRUIN:  
1644=Q. LET ME JUST MAKE SURE THE RECORD IS CLEAR ON THAT. HOW  
1645=MANY NEW YORK TIMES BEST SELLERS ARE THERE?  
1646=A. WELL, WE USED THE TOP 10, BUT THEY HAVE ABOUT 20 THAT THEY  
1647=LIST ON THE WHOLE LIST.  
1648=Q. AND IS THERE BOTH A HARDCOVER LIST AND A --  
1649=A. THERE'S --  
  
1650=Q. -- PAPERBACK LIST?



1651=A. THERE'S A HARDCOVER LIST AND A PAPERBACK LIST, YES.  
1652=Q. SO JUST, IF I UNDERSTAND IT, SO FOR THE HARDCOVER BOOKS  
1653=THAT WERE NEW YORK TIMES BEST-SELLER, HOW MUCH DID YOU DISCOUNT  
1654=THOSE BOOKS AFTER THE BARNES & NOBLE STORES CAME IN?  
1655=A. 40 PERCENT.  
1656=Q. AND HOW MUCH DID BARNES & NOBLE DISCOUNT THOSE?  
1657=A. 40. 40.  
1658=Q. FOR THE NEW YORK TIMES BEST-SELLERS THAT WERE PAPERBACKS,  
1659=HOW MUCH DID YOU DISCOUNT THOSE BOOKS?  
1660=A. 25 PERCENT.  
1661=Q. AND HOW MUCH DID BARNES & NOBLE DISCOUNT THOSE BOOKS?  
1662=A. 25 PERCENT.  
1663=Q. AND FINALLY, FOR ALL HARDCOVER BOOKS, DID YOU HAVE A  
1664=DISCOUNT ON ALL HARDCOVER BOOKS?  
1665=A. ALL HARDCOVER BOOKS, 10 PERCENT.  
1666=Q. AND WHAT WAS BARNES & NOBLE'S DISCOUNT?  
1667=A. 10 PERCENT.  
1668=Q. NOW, HAD YOU USED THAT PRICING SYSTEM BEFORE THE BARNES &  
1669=NOBLE STORES CAME INTO YOUR MARKET?  
1670=A. NO, WE HAD NOT.  
1671=Q. AND WHY DID YOU ADOPT THAT PRICING SYSTEM ONCE THEY CAME  
1672=INTO TOWN?  
1673=A. WELL, OF COURSE, THEY'RE QUITE VISIBLE, AND PEOPLE HAVE A  
1674=LOT OF CURIOSITY, AND OF COURSE, MANY OF OUR CUSTOMERS WENT TO  
  
1675=THAT STORE, AS THEY HAD GRAND OPENINGS, AND WE FELT IT WOULD  
1676=BE -- IT WOULD HURT US A GREAT DEAL IF WE DIDN'T MATCH THEM IN  
1677=THE BEGINNING, AND WE MATCHED THEM FOR SEVERAL YEARS.  
1678=Q. ALL RIGHT. MR. JACKSON, ARE THERE ANY BORDERS STORES IN  
1679=COLUMBIA?  
1680=A. NO.  
1681=Q. HOW ABOUT WALDEN STORES?  
1682=A. YES. THERE ARE SOME WALDEN STORES. I THINK PRESENTLY  
1683=THERE ARE THREE.  
1684=Q. THREE STORES?  
1685=A. YES.  
1686=Q. LET ME ASK YOU TO TURN AGAIN TO THE MAP, TAB 2519, AND I'D  
1687=ASK WHETHER YOU CAN IDENTIFY IN THIS MAP THE WALDEN STORES.  
1688=A. YES. NOW, IF I'M CORRECT, IT'S ONLY SHOWING ONE WALDEN  
1689=STORE ON THIS MAP.  
1690=Q. 2519 --  
1691=A. 2519, YES.  
1692=Q. YOU KNOW, YOU TELL ME WHERE THE WALDEN STORES ARE LOCATED.  
1693=A. WELL, ONE OF THEM IS LOCATED IN THE COLUMBIANA MALL, WHICH  
1694=IS VERY CLOSE TO HARBISON BOULEVARD. ONE OF THEM IS OPENED IN  
1695=A MALL CALLED THE COLUMBIA MALL, AND THEN THERE'S A MALL CALLED  
1696=THE DUTCH SQUARE MALL, AND THAT'S WHERE THEY'RE LOCATED.  
1697=Q. ALL RIGHT. MR. JACKSON, IF YOU LOOK AT THIS EXHIBIT 2519,  
1698=DO YOU SEE ANY BLUE BOXES?  
1699=A. YES. I DO.  
  
1700=Q. DO THOSE BLUE BOXES CORRELATE TO THE LOCATIONS OF THE  
1701=WALDEN STORES YOU'VE JUST DESCRIBED IN THE RECORD?  
1702=A. YES.  
1703=Q. HOW MANY BLUE BOXES DO YOU SEE IN THE MAP?  
1704=A. I SEE THREE.  
1705=Q. LET ME ASK YOU, THERE'S A BLUE BOX THAT'S VERY CLOSE TO  
1706=YOUR STORE, SIR.  
1707=A. YES.  
1708=Q. IS THAT WALDEN STILL OPEN?  
1709=A. THERE'S ONE PRETTY CLOSE THAT'S STILL OPEN, BUT THERE WAS  
1710=ONE EVEN CLOSER THAT RECENTLY CLOSED, BUT I DON'T SEE A BLUE  
1711=BOX FOR THAT ONE.  
1712=Q. ALL RIGHT. THE BLUE BOX THAT'S CLOSE TO YOU, SIR, IT'S,  
1713=ACCORDING TO THE BOX, THE WALDENBOOKS IN THE RICHLAND FASHION  
1714=MALL?  
1715=A. NOW, THAT ONE IS CLOSED.  
1716=Q. THAT'S THE ONE THAT'S CLOSED.  
1717=A. YES, BUT THE LOCATION ON THIS MAP IS -- IS -- THAT'S REALLY  
1718=COLUMBIA MALL WHERE THAT ONE IS, WHERE IT SAYS RICHLAND MALL,  
1719=THAT'S COLUMBIA MALL, BECAUSE THE BARNES & NOBLE IN THE RED  
1720=DOT, THAT WAS WHERE THE OTHER WALDEN WAS, AND THEY CLOSED THAT  
1721=ONE.

1722=Q. I SEE. CAN YOU GIVE ME THE ADDRESS OF THE WALDEN STORE  
1723=THAT'S LOCATED CLOSEST TO YOUR STORE?  
1724=A. IT WOULD BE IN THE COLUMBIA MALL, AND I DON'T KNOW WHAT  
1725=THAT STREET ADDRESS WOULD BE.  
1726=Q. BUT HOW FAR AWAY IS THAT FROM YOUR STORE?  
1727=A. THREE, FOUR MILES.  
1728=Q. OKAY. ARE THE WALDEN STORES THAT ARE STILL OPERATING IN  
1729=COLUMBIA, SOUTH CAROLINA WITHIN THE TRADING AREA THAT YOU  
1730=DESCRIBED FROM WHICH YOU DRAW YOUR CUSTOMERS?  
1731=A. YES.  
1732=Q. ALL RIGHT, MR. JACKSON, I'D LIKE TO SWITCH NOW AND ASK YOU  
1733=SOME QUESTIONS ABOUT PURCHASING BOOKS AND HOW YOU PURCHASE  
1734=BOOKS FOR SALE.  
1735= WHAT ROLE HAVE YOU PLAYED WITH RESPECT TO BUYING  
1736=BOOKS FOR THE HAPPY BOOKSELLER?  
1737=A. WELL, FOR MANY YEARS I DID ALL THE BUYING, AND WHEN ANDY  
1738=GRAVES CAME INTO THE BUSINESS I TRAINED HIM TO DO THE BUYING,  
1739=AND HE DOES MUCH OF THE BUYING NOW, BUT OUR DESKS JOIN EACH  
1740=OTHER AND I USUALLY SIT, EVEN TODAY, THROUGH ALL THE BUYING  
1741=SESSIONS, BECAUSE I LIKE TO SEE WHAT'S COMING OUT, AND LOVE  
1742=BOOKS.  
1743=Q. SO FOR ABOUT HOW MANY YEARS HAVE YOU BEEN BUYING BOOKS?  
1744=A. ALMOST 30.  
1745=Q. NOW, WHO DOES THE HAPPY BOOKSELLER PURCHASE BOOKS FROM?  
1746=A. WE PURCHASE BOOKS FROM ALL OF THE MAJOR PUBLISHERS, AND WE  
1747=PURCHASE BOOKS FROM THREE WHOLESALERS, INGRAM, BAKER & TAYLOR,  
1748=KOEN, AND OCCASIONALLY SOUTHERN BOOKS; AND FROM MAYBE A HUNDRED  
1749=SMALL PUBLISHERS.  
1750=Q. ALL RIGHT. HOW MANY PUBLISHERS WOULD YOU SAY YOU PURCHASE  
1751=BOOKS FROM ON A REGULAR BASIS?  
1752=A. REGULAR BASIS, 130.  
1753=Q. NOW, WHEN I SAY, "A REGULAR BASIS," HOW WOULD YOU DEFINE  
1754=THAT? WHAT DID YOU UNDERSTAND THAT TO MEAN?  
1755=A. INCLUDING IN THAT 130 WOULD BE SOME SMALL PUBLISHERS THAT  
1756=WE WOULD BUY FROM FOUR OR FIVE TIMES A YEAR, AND SOME MAJOR  
1757=PUBLISHERS THAT WE BUY FROM ALMOST EVERY DAY, AND MEDIUM-SIZE  
1758=PUBLISHERS IN BETWEEN.  
1759=Q. I'M GOING TO GO THROUGH A LIST WITH YOU IN A MINUTE.  
1760=BEFORE I DO THAT, YOU IDENTIFIED THE THREE WHOLESALERS THAT YOU  
1761=PRIMARILY PURCHASE FROM.  
1762=A. YES.  
1763=Q. JUST FOR THE RECORD, CAN YOU IDENTIFY WHAT A WHOLESALER IS  
1764=AND HOW IT DIFFERS FROM A PUBLISHER?  
1765=A. A WHOLESALER, OF COURSE BUYS BOOKS FROM THE PUBLISHERS, AND  
1766=THE BIG ADVANTAGE FROM BUYING FROM WHOLESALERS IS SPEED. THEY  
1767=CAN GET THEM TO YOU -- WELL, ONE OF THE WHOLESALERS WE CAN GET  
1768=THEM THE NEXT DAY AND THE OTHER WHOLESALER WE GET THEM IN TWO  
1769=DAYS, WHICH IS A CONVENIENT THING FOR SPECIAL ORDERS AND WHEN  
1770=YOU NEED SOMETHING IN A HURRY.  
1771=Q. WHICH WHOLESALER DO YOU GET BOOKS FROM THE VERY NEXT DAY?  
1772=A. BAKER & TAYLOR.  
1773=Q. AND WHICH WHOLESALER DO YOU GET THEM FROM TWO DAYS LATER?  
1774=A. INGRAM. AND KOEN, THE THIRD ONE, ALSO TAKES TWO DAYS.  
1775=Q. HOW DO THE TERMS OF WHOLESALERS TEND TO COMPARE -- STRIKE  
1776=THAT. LET ME REPHRASE THAT, AND ASK IT AGAIN. DO WHOLESALERS  
1777=VERY OFTEN SELL THE VERY SAME BOOKS IN PUBLISHERS SELL?  
1778=A. YES, YES.  
1779=Q. AND HOW DO THE TERMS OF A WHOLESALER COMPARE, FOR A  
1780=PARTICULAR BOOK, TO THE TERMS YOU CAN GET FROM THE PUBLISHER  
1781=WHO SELLS THAT SAME BOOK?  
1782=A. WELL, YOU WOULD GET 40, 41 OR 42 FROM BOTH OF THOSE MAJOR  
1783=WHOLESALERS, AND YOU WOULD BE GIVING UP SEVERAL POINTS, BECAUSE  
1784=YOU WOULD GET 45, 44 FROM THE PUBLISHER.  
1785=Q. ALL RIGHT. IN GENERAL, WHAT TYPES OR LINES OF BOOKS DOES  
1786=THE HAPPY BOOKSELLER BUY?  
1787=A. WE BUY IN ALL CATEGORIES, AND WE BUY HARDBACK BOOKS AND  
1788=TRADE PAPER, AND MASS MARKET.  
1789=Q. ALL RIGHT, NOW, I THINK WE ALL KNOW WHAT A HARDCOVER BOOK  
1790=IS. WHAT IS A TRADE PAPERBACK BOOK?  
1791=A. A TRADE PAPERBACK BOOK IS A BETTER QUALITY PAPERBACK BOOK

1792=THAN A MASS MARKET. IT'S USUALLY ABOUT THE SIZE OF THE  
1793=HARDBACK BOOK, AND IT HAS A -- HAS BETTER QUALITY OF PAPER, AND  
1794=MOST OF THE TIME IT HAS A BETTER COVER ON IT. IT'S EASY TO  
1795=READ, AND IT FEELS MORE LIKE A BOOK THAN A MASS MARKET.  
1796=Q. AND WHAT IS A MASS MARKET BOOK?  
1797=A. A MASS MARKET ARE THE BOOKS THAT YOU SEE IN DRUGSTORES.  
1798=THEY FIT A POCKET, AND THEY'RE ABOUT SO BIG (WITNESS  
1799=INDICATING), AND AT ONE TIME -- TRADE PAPERS IS RELATIVELY NEW

1800=IN THE INDUSTRY, AND THERE SEEMS TO BE A TENDENCY TO MOVE ALL  
1801=THE MASS MARKETS TO TRADE PAPERS NOW, BUT NOT ALL.  
1802=Q. ALL RIGHT, LET ME SHOW YOU THREE BOOKS, AND JUST FOR THE  
1803=RECORD, PERHAPS YOU CAN DISTINGUISH BETWEEN THE MASS MARKET  
1804=PAPERBACKS AND THE TRADE PAPERBACKS.  
1805= YOUR HONOR, CAN I HAND THESE TO THE WITNESS?  
1806= THE COURT: YES. HAVE THEY BEEN MARKED AS EXHIBITS?  
1807= MR. DEBRUIN: THEY HAVE BEEN MARKED, YOUR HONOR,  
1808=YES.  
1809= THE WITNESS: THIS IS A MASS MARKET BOOK.  
1810=BY MR. DEBRUIN:  
1811=Q. MR. JACKSON, STOP JUST FOR A MINUTE. IF YOU LOOK ON THE  
1812=COVER, BECAUSE THIS IS WHAT THE JUDGE IS REFERRING TO, THERE IS  
1813=AN EXHIBIT REFERENCE ON EACH ONE OF THOSE BOOKS. ONE IS  
1814=2572-A, ONE IS 2572-B, AND ONE IS 2572-C. NOW, WHICH ONE HAVE  
1815=YOU GOT IN YOUR HAND?  
1816=A. I HAVE 2572-A.  
1817=Q. ALL RIGHT, AND WHAT TYPE OF BOOK IS THAT?  
1818=A. THAT IS A MASS MARKET BOOK.  
1819=Q. THAT'S WHAT'S REFERRED TO AS A MASS MARKET PAPERBACK?  
1820=A. YES, THAT'S REFERRED TO IN THE INDUSTRY AS A MASS MARKET  
1821=PAPERBACK.  
1822=Q. JUST FOR THE RECORD, WHAT'S THE PARTICULAR TITLE AND AUTHOR  
1823=THAT YOU HAVE THERE?  
1824=A. THIS IS THE BRETHREN, BY JOHN GRISHAM.

1825=Q. ALL RIGHT. TAKE A LOOK AT EXHIBIT 2572-B.  
1826=A. B?  
1827=Q. YES.  
1828=A. THIS IS 2272-B.  
1829=Q. I'M SORRY, 2572-B.  
1830=A. 2572-B, YES.  
1831=Q. ALL RIGHT, AND WHAT KIND OF BOOK IS THAT?  
1832=A. THIS IS A TRADE PAPERBACK. AS YOU CAN SEE, IT'S A LITTLE  
1833=LARGER, HAS A BETTER QUALITY COVER ON IT, AND THE PAPER IS  
1834=REALLY A BETTER QUALITY.  
1835=Q. AND FOR THE RECORD, WHAT'S THE AUTHOR AND TITLE OF THAT  
1836=BOOK?  
1837=A. THIS IS THE JOY LUCK CLUB BY AMY TAN.  
1838=Q. ALL RIGHT. AND FOR THE RECORD, WHAT IS EXHIBIT 2572-C?  
1839=A. 2572-C IS A HARDBACK BOOK. IT'S THE PAINTED HOUSE BY JOHN  
1840=GRISHAM.  
1841=Q. OKAY, AND WE CAN LEAVE THOSE FOR THE COURT, IF THE COURT  
1842=WANTS TO....  
1843= NOW, APART FROM THESE CLASSIFICATIONS OF MASS  
1844=MARKET, TRADE PAPER AND HARDCOVER, ARE BOOKS ALSO CLASSIFIED  
1845=ACCORDING TO HOW LONG IT HAS BEEN SINCE THE BOOK WAS FIRST  
1846=RELEASED?  
1847=A. WELL, WE REFER TO THE BACK LIST AS ONE CATEGORY, AND THE  
1848=FRONT LIST, WHICH IS NEW BOOKS.  
1849=Q. ALL RIGHT, SO DEFINE, FOR THE RECORD, WHAT IS WHAT WE CALL

1850=A FRONT LIST BOOK.  
1851=A. A FRONT LIST BOOK -- MOST ALL PUBLISHERS HAVE TWO OR THREE  
1852=SEASONS, THEY WILL HAVE A SPRING SEASON, A SUMMER SEASON, A  
1853=FALL SEASON, SOME ONLY HAVE TWO SEASONS, AND THEY WILL HAVE THE  
1854=BOOKS THAT WILL BE PUBLISHED DURING THOSE MONTHS, AND THAT IS  
1855=WHAT WE CALL THE FRONT LIST, THE NEW BOOKS.  
1856=Q. SO IN GENERAL TERMS, THE FRONT LIST BOOKS ARE THE NEW  
1857=RELEASES, THE NEW --  
1858=A. YES, THEY ARE THE NEW RELEASES.  
1859=Q. AND ABOUT HOW LONG WILL A BOOK STAY AS A FRONT LIST BOOK?  
1860=A. A FRONT LIST BOOK, IT COULD VARY. SOMETIMES A BOOK WILL  
1861=ONLY GO THROUGH ONE PRINTING AND IT DIES AWAY AND THAT BOOK IS

1862=GONE. IT MIGHT GO THROUGH SEVERAL PRINTINGS. AT SOME POINT,  
1863=AS A NEW BOOK, AND IF IT CONTINUES TO GO THROUGH PRINTINGS, A  
1864=PUBLISHER MIGHT DECIDE TO MAKE THAT A BACK LIST BOOK, AND PUT  
1865=IT IN HIS BACK LIST, WHICH MEANS THAT HE'S GOING TO KEEP THAT  
1866=BOOK FOR A GOOD, LONG TIME, MAYBE FOR YEARS.  
1867=Q. ALL RIGHT. I DIDN'T IDENTIFY IT YET FOR THE RECORD. WHAT  
1868=IS A BACK LIST BOOK?  
1869=A. A BACK LIST BOOK IS A BOOK THAT HAS PROVEN TO SELL YEAR-IN  
1870=AND YEAR-OUT, AND MANY PUBLISHERS HAVE BOOKS THAT THEY'VE HAD  
1871=AVAILABLE FOR MANY YEARS, AND THAT'S CALLED A BACK LIST BOOK.  
1872=Q. SO WOULD IT BE CORRECT TO SAY THAT A BACK LIST BOOK IS A  
1873=BOOK THAT IS STILL IN PRINT, BUT IT IS NOT A NEW RELEASE?  
1874=A. YES. I'LL GIVE YOU AN ILLUSTRATION. THE GLORY AND THE

1875=DREAM, BY WILLIAM MANCHESTER. WE'VE BEEN SELLING THAT BOOK  
1876=SINCE I OPENED THE BOOKSTORE.  
1877=Q. AND IS THAT BOOK STILL BEING PRINTED BY THE PUBLISHER?  
1878=A. YES.  
1879=Q. SO YOU CAN STILL BUY IT IN NEW COPIES?  
1880=A. YES.  
1881=Q. BUT THAT WOULD BE CONSIDERED A BACK LIST BOOK. IT'S  
1882=OBVIOUSLY NOT A NEW RELEASE.  
1883=A. CORRECT.  
1884=Q. ALL RIGHT. NOW, DOES THE HAPPY BOOKSELLER SELL BOTH FRONT  
1885=LIST AND BACK LIST BOOKS?  
1886=A. YES, WE DO.  
1887=Q. LET ME, BEFORE I TURN TO SOME PARTICULAR PUBLISHERS AND  
1888=WHOLESALE AND ASK ABOUT YOUR PURCHASES FROM THOSE PARTICULAR  
1889=PUBLISHERS, IF YOU COULD DESCRIBE FOR THE COURT YOUR GENERAL  
1890=ORDERING PROCESS; HOW OFTEN DO YOU BUY BOOKS OR ORDER BOOKS.  
1891=A. FROM WHOLESALE, WE SEND THEM AN ELECTRONIC ORDER EVERY  
1892=DAY. FROM PUBLISHERS, MOST OF THE LARGER PUBLISHERS, WE WOULD  
1893=SEND AN ORDER AT LEAST ONCE A WEEK. SMALLER PUBLISHERS, WE  
1894=MIGHT BUY THEM ONCE OR TWICE A YEAR.  
1895=Q. SO THE RANGE GOES FROM EVERY DAY TO, FOR THE BIGGER  
1896=PUBLISHERS, EVERY WEEK, SMALLER PUBLISHERS, LESS FREQUENTLY?  
1897=A. YES, AND THAT WOULD NOT INCLUDE SPECIAL ORDERS. WE GET  
1898=SPECIAL ORDERS EVERY DAY, AND THAT USUALLY GOES TO THE  
1899=WHOLESALE, ALTHOUGH IT MIGHT BE A MAJOR PUBLISHER BOOK. BUT

1900=SPEED IS THE REASON FOR THAT.  
1901=Q. NOW, HOW DO YOU PLACE YOUR ORDERS?  
1902=A. WE PLACE MOST OF THE DAILY ORDERS ELECTRONICALLY. WE PLACE  
1903=THE PUBLISHERS' ORDERS ELECTRONICALLY. WE USUALLY ORDER SMALL  
1904=PUBLISHERS' BOOKS BY TELEPHONE.  
1905=Q. ALL RIGHT, NOW, FOR WHOLESALE AND FOR THE LARGE  
1906=PUBLISHERS, WHAT DO YOU MEAN WHEN YOU SAY YOU PLACE THE ORDERS  
1907=ELECTRONICALLY?  
1908=A. YOU USE A DISK AND ORDER THEM THROUGH A COMPUTER.  
1909=Q. ALL RIGHT. I'D LIKE TO FOCUS NOW ON SOME PARTICULAR  
1910=PUBLISHERS, AND ALSO FOCUS ON THE PERIOD FROM 1994 TO THE  
1911=PRESENT. I'D ASK YOU TO LOOK AT EXHIBIT 2591.  
1912=A. OKAY.  
1913=Q. MR. JACKSON, FOR THE RECORD, 2591, THE SECOND PAGE ON THE  
1914=EXHIBIT LABEL, IS A LIST OF -- IT'S JUST GOT A LIST OF NAMES ON  
1915=THERE. CAN YOU IDENTIFY WHAT THIS LIST IS, OR WHO'S ON THIS  
1916=LIST?  
1917=A. THIS IS A LIST OF PUBLISHERS, AND MOST -- IT SEEMS TO ME  
1918=THAT MOST OF THEM ARE MAJOR PUBLISHERS.  
1919=Q. ALL RIGHT. SO ALL THE NAMES ON THE LEFT-HAND COLUMN AND  
1920=ALL THE NAMES ON THE RIGHT-HAND COLUMN, AT LEAST UP TO W. W.  
1921=NORTON, ARE THOSE ALL PUBLISHERS?  
1922=A. YES.  
1923=Q. AND YOU DESCRIBE, THESE ARE ESSENTIALLY ALL THE MAJOR  
1924=PUBLISHERS?

1925=A. YES.  
1926=Q. NOW, AT THE LOWER RIGHT-HAND CORNER ON THE EXHIBIT, THERE  
1927=IS, I BELIEVE, THE THREE WHOLESALE YOU IDENTIFIED, BAKER &  
1928=TAYLOR, INGRAM AND KOEN?  
1929=A. YES.  
1930=Q. ALL RIGHT. I'D LIKE YOU TO TAKE A MINUTE AND LOOK AT THIS  
1931=LIST, AND I'D LIKE YOU TO IDENTIFY THE VENDORS ON THIS LIST

1932=FROM WHOM YOU HAVE PURCHASED BOOKS DURING THE PERIOD 1994 TO  
1933=THE PRESENT.  
1934=A. WELL, WE HAVE BOUGHT FROM MOST OF THEM.  
1935=Q. OKAY, NOW, JUST TALKING ABOUT THE ENTIRE PERIOD FROM '94 TO  
1936=2000 --  
1937=A. YES.  
1938=Q. -- HAVE YOU BOUGHT, YOU SAY FROM MOST OF THESE PUBLISHERS?  
1939=A. YES, THERE'S A FEW HERE THAT WE HAVEN'T BOUGHT, LIKE IPG.  
1940=I'M NOT SURE WE BOUGHT ANYTHING FROM THEM IN THAT PERIOD.  
1941=Q. OKAY.  
1942=A. BUT IF WE BOUGHT IT, IT WOULD BE JUST VERY RARE, AND LOGAN,  
1943=VERY RARE, AND THE TWO MACMILLANS ON THERE WE HAVE NOT  
1944=PURCHASED, EXCEPT IF IT WAS A SPECIAL ORDER, WE WENT THROUGH  
1945=THE WHOLESALERS.  
1946=Q. OKAY. SO THE PUBLISHERS ON THIS LIST, AND THE WHOLESALERS,  
1947=FROM WHOM YOU HAVE NOT BOUGHT BOOKS ON A REGULAR BASIS WOULD BE  
1948=THE INDEPENDENT PUBLISHERS GROUP, THE LPC GROUP, LOGAN  
1949=PUBLISHERS CONSORTIUM, MACMILLAN COMPUTER AND MACMILLAN GENERAL

1950=REFERENCE?

1951=A. AND WESTERN.  
1952=Q. OKAY, AND WESTERN. NOW, WITH THE EXCEPTION OF THOSE  
1953=VENDORS THAT WE'VE LISTED, THOSE FIVE VENDORS, HAVE YOU  
1954=PURCHASED BOOKS FROM EACH OF THE OTHER PUBLISHERS AND  
1955=WHOLESALERS EVERY YEAR BETWEEN 1994 TO THE PRESENT?  
1956=A. YES.  
1957=Q. NOW, DURING THAT PERIOD FROM 1994 TO THE PRESENT, HAVE SOME  
1958=OF THE PUBLISHERS ON THIS LIST MERGED?  
1959=A. YES, QUITE A FEW OF THEM.  
1960=Q. CAN YOU IDENTIFY ANY FOR THE COURT?  
1961=A. WELL, AVON IS MERGED WITH BERKELEY, POCKET BOOKS IS MERGED  
1962=IN, OF COURSE, VHPS. THEY'RE SEVERAL OF THE MAJOR PURCHASES  
1963=THAT WE BOUGHT FROM QUITE A BIT, ALL IN ONE GROUP, FARRAR,  
1964=STRAUSS, ST., MARTIN'S AND W.H. FREEMAN.  
1965=Q. LET ME SLOW DOWN A LITTLE BIT, SIR. YOU SAID THAT AVON  
1966=BOOKS, UP ON THE LIST, HAS NOW BECOME PART OF ANOTHER  
1967=PUBLISHER?  
1968=A. YES.  
1969=Q. AND WHO IS THAT?  
1970=A. AVON IS NOW IN -- GOSH, WHERE IS AVON NOW?  
1971=Q. IS THAT PART OF HARPER COLLINS?  
1972=A. IT IS HARPER COLLINS, YES, RIGHT.  
1973=Q. AND YOU MENTIONED BERKELEY, I BELIEVE. IS BERKELEY NOW  
1974=OWNED BY SOMEBODY ELSE?

1975=A. YES, THEY'RE IN PUTNAM.  
1976=Q. THEY'RE OWNED BY PUTNAM, AND HOW ABOUT PUTNAM? IS PUTNAM  
1977=OWNED BY SOMEBODY ELSE?  
1978=A. PUTNAM IS IN A GROUP THAT'S BERKELEY. PUTNAM IS THE WAY WE  
1979=WRITE THE CHECKS TO.  
1980=Q. IS THAT OWNED BY PENGUIN TODAY?  
1981=A. IS IT OWNED BY PENGUIN? YES, I THINK IT IS.  
1982=Q. SO THERE'S BEEN A LOT OF MOVEMENT AS TO WHO'S OWNING THESE  
1983=VARIOUS HOUSES.  
1984=A. YES, POCKETBOOKS COMES FROM SIMON & SCHUSTER. SCARLET,  
1985=SCHOLASTIC COMES FROM PENGUIN.  
1986=Q. BUT LAYING ASIDE WHO HAPPENS TO OWN THESE DIFFERENT  
1987=PUBLISHING HOUSES AT DIFFERENT TIMES, APART FROM THE FIVE THAT  
1988=YOU'VE MENTIONED, YOU'VE PURCHASED BOOKS FROM ALL OF THE OTHER  
1989=VENDORS ON A REGULAR BASIS EVERY YEAR BETWEEN 1994 AND 2000.  
1990=IS THAT AN ACCURATE STATEMENT?  
1991=A. YES. AND PART OF THAT TIME THESE, LIKE AVON, WE GOT  
1992=INVOICES STRAIGHT FROM AVON UP UNTIL '99, AND SOME OF THE REST,  
1993=IT'S TRUE FOR SOME OF THE REST OF THEM, TOO, BUT WE HAD  
1994=PURCHASED FROM ALL OF THEM.  
1995= (CONTINUED ON FOLLOWING PAGE. NOTHING OMITTED.)  
1996=  
1997=  
1998=  
1999=

2001= 2 Q. SO IN OTHER WORDS, EVEN THOUGH AVON MAY BE OWNED BY SOMEBODY 3 ELSE, YOU  
STILL PURCHASE BOOKS FROM AVON

2002= 4 FROM AVON?

2003= 5 A. IT'S NOT UNDER THE AVON NAME ANYMORE, BUT --

2004= 6 Q. SO OFTENTIMES --

2005= 7 A. COMES FROM -- YEAH.

2006= 8 Q. OKAY. NOW, WITH RESPECT TO THE VENDORS ON THIS LIST, OTHER  
2007= 9 THAN THE FIVE THAT YOU HAVE IDENTIFIED, DO YOU PURCHASE BOTH  
2008= 10 FRONT LIST AND BACK LIST BOOKS?  
2009= 11 A. YES.

2010= 12 Q. AND THE VENDORS ON THIS LIST, OTHER THAN THE ONES YOU HAVE  
2011= 13 IDENTIFIED, CAN YOU DESCRIBE JUST GENERALLY HOW FREQUENTLY YOU  
2012= 14 TYPICALLY WOULD PURCHASE BOOKS FROM THOSE VENDORS?  
2013= 15 A. MOST ALL OF THOSE PUBLISHERS WE WOULD BUY VERY REGULARLY.  
2014= 16 Q. AND WHAT DO YOU MEAN BY "VERY REGULARLY"?  
2015= 17 A. MOSTLY WEEKLY. IN SOME CASES, TWO, THREE TIMES A WEEK, SOME  
2016= 18 CASES TWO, THREE TIMES A MONTH, DEPENDING ON OUR INVENTORY.  
2017= 19 Q. DO ALL OF THE PUBLISHERS ON THIS LIST OTHER THAN THE FIVE  
2018= 20 YOU'VE MENTIONED HAVE FRONT LIST BOOKS?  
2019= 21 A. YES.  
2020= 22 Q. AND DID YOU ALWAYS BUY SOME OF THE FRONT LIST BOOKS OF EACH  
2021= 23 OF THESE PUBLISHERS EVERY SEASON?  
2022= 24 A. YES.  
2023= 25 Q. AND DO THESE PUBLISHERS ALSO HAVE BACK LIST BOOKS?  
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2025= JACKSON - DIRECT / DE BRUIN 1 A. YEAH, SOME OF THEM HAVE A  
MUCH BETTER BACK LIST THAN OTH

2026= 2 BUT THEY ALL HAVE A BACK LIST, YES. 3 Q. ALL RIGHT. WHICH OF THE PUBLISHERS ON  
THIS LIST OTHER THAN

2027= 4 THE FIVE THAT WE'VE EXCLUDED SELL TRADE BOOKS, EITHER TRADE  
2028= 5 HARDBACK OR TRADE PAPERBACK BOOKS?  
2029= 6 A. I THINK ALL OF THEM.  
2030= 7 Q. AND DID THE HAPPY BOOKSELLER PURCHASE TRADE HARDCOVER AND  
2031= 8 TRADE PAPERBACK BOOKS FROM ALL THE PUBLISHERS ON THIS OTHER THAN  
2032= 9 THE FIVE YOU'VE MENTIONED?  
2033= 10 A. YES.  
2034= 11 Q. HOW ABOUT MASS MARKET BOOKS? WHICH OF THE VENDORS ON THIS  
2035= 12 LIST OTHER THAN THE FIVE THAT YOU'VE EXCLUDED SELL MASS MARKET  
2036= 13 BOOKS?  
2037= 14 A. I THINK I CAN LIST THEM. AVON, BALLANTINE, BANTAM,  
2038= 15 HARPERCOLLINS. LITTLE BROWN HAS A FEW MASS MARKET. PENGUIN,  
2039= 16 POCKET BOOKS. OF COURSE, RANDOM HAS -- UNDER THE SOME OF THE --  
2040= 17 THAT MERGED WITH THEM, LIKE DELL AND BANTAM. SIMON & SCHUSTER  
2041= 18 HAS SOME POCKETBOOKS. WARNER, POCKET BOOK. AND I BELIEVE THAT  
2042= 19 COVERS IT.  
2043= 20 Q. NOW, FOR ALL THOSE VENDORS THAT YOU'VE IDENTIFIED THAT SELL  
2044= 21 MASS MARKET BOOKS, DOES THE HAPPY BOOKSELLER PURCHASE MASS  
2045= 22 MARKET BOOKS FROM THOSE VENDORS?  
2046= 23 A. YES.  
2047= 24 Q. AND HAS THE HAPPY BOOKSELLER PURCHASED MASS MARKET BOOKS  
2048= 25 FROM THOSE VENDORS FOR EVERY YEARS FROM 1994 TO THE PRESENT?  
2049= RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR (415) 626-8404

2050= JACKSON - DIRECT / DE BRUIN 1 A. YES.

2051= 2 Q. WITH RESPECT TO THE TRADE BOOKS THAT I ASKED A MINUTE AGO 3 ABOUT, HAVE YOU  
PURCHASED TRADE BOOKS FROM E

2052= 4 VENDORS OTHER THAN THE FIVE THAT YOU'VE CIRCLED EVERY YEAR FROM  
2053= 5 1994 TO THE PRESENT?  
2054= 6 A. YES.  
2055= 7 Q. HOW ABOUT AUDIO BOOKS? DO ANY OF THE VENDORS ON THIS LIST  
2056= 8 AGAIN, EXCLUDING THE FIVE THAT YOU'VE MENTIONED, SELL AUDIO  
2057= 9 BOOKS? WHAT IS AN AUDIO BOOK FIRST OF ALL?  
2058= 10 A. AN AUDIO BOOK IS A BOOK YOU PLAY IN A TAPE RECORDER, AND  
2059= 11 THEY MAKE THEM TWO, THREE WAYS. THEY MAKE THEM UNABRIDGED,  
2060= 12 ABRIDGED. AND THEY'RE VERY POPULAR FOR PEOPLE WHO TRAVEL A LOT  
2061= 13 WHERE THEY CAN LISTEN TO THE BOOK AS THEY TRAVEL.  
2062= 14 Q. SO IT'S BASICALLY A BOOK ON TAPE?  
2063= 15 A. BOOK ON TAPE.  
2064= 16 Q. AND DO YOU SELL BOOKS ON TAPE?  
2065= 17 A. YES, WE DO.  
2066= 18 Q. WHICH OF THE PUBLISHERS ON THIS LIST AGAIN, APART FROM THE  
2067= 19 FIVE WE'VE EXCLUDED, SELL AUDIO BOOKS?

2068= 20 A. I THINK I CAN PICK MOST OF THEM OUT. BANTAM DOUBLEDAY DELL  
2069= 21 HAS AUDIO BOOKS. HARPERCOLLINS HAS AUDIO BOOKS. PENGUIN HAS  
2070= 22 AUDIO BOOKS. PUBLISHERS GROUP WEST, WHICH IS -- THEY HAVE SOME  
2071= 23 AUDIO BOOKS FROM SOME OF THEIR PUBLISHERS. RANDOM HOUSE HAS  
2072= 24 AUDIO BOOKS. SIMON & SCHUSTER. UM, AND I BELIEVE THAT'S ALL OF  
2073= 25 THEM.  
2074=

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2075= JACKSON - DIRECT / DE BRUIN 1 Q. DOES THE HAPPY BOOKSELLER  
PURCHASE AUDIO BOOKS FROM ALL

2076= 2 THOSE VENDORS YOU'VE JUST LISTED? 3 A. YES, WE DO.  
2077= 4 Q. DID YOU PURCHASE AUDIO BOOKS FROM ALL OF THOSE VENDORS FOR  
2078= 5 EACH OF THE YEARS FROM 1994 TO THE PRESENT?  
2079= 6 A. I WOULD THINK SO. I MEAN, WE MIGHT HAVE MISSED A YEAR, BUT  
2080= 7 I DOUBT IT. I THINK WE PROBABLY PURCHASED EVERY YEAR.  
2081= 8 Q. MR. JACKSON, LOOKING AT THE PUBLISHERS ON THIS LIST AND THE  
2082= 9 THREE WHOLESALERS AND EXCLUDING THE FIVE THAT WE'VE EXCLUDED,  
2083= 10 APPROXIMATELY WHAT PERCENTAGE OF ALL OF YOUR BOOK PURCHASES DO  
2084= 11 YOU MAKE FROM THE VENDORS ON THIS LIST?  
2085= 12 A. AND YOU SAID EXCLUDING THE WHOLESALERS?  
2086= 13 Q. NO, INCLUDING THE WHOLESALERS, BAKER & TAYLOR, INGRAM AND  
2087= 14 KOEN AND INCLUDING THE PUBLISHERS HERE, ABOUT WHAT PERCENTAGE OF  
2088= 15 ALL YOUR BOOKS DO YOU BUY FROM THESE -- THESE VENDORS?  
2089= 16 A. THIS IS KIND OF INTELLIGENT GUESS, I HOPE. BUT I WOULD  
2090= 17 PROBABLY SAY 80 PERCENT.  
2091= 18 Q. OKAY. NOW, DO YOU KNOW WHERE THE BOOKS THAT COME FROM THESE  
2092= 19 VENDORS ARE SHIPPED FROM?  
2093= 20 A. THEY SHIP FROM SEVERAL PLACES, MOST FROM THE EAST COAST.  
2094= 21 NONE OF THEM -- NONE OF THESE PUBLISHERS ARE LOCATED IN MY  
2095= 22 STATE, SOUTH CAROLINA.  
2096= 23 Q. SO ALL OF THE BOOKS YOU RECEIVE FROM THESE PUBLISHERS COME  
2097= 24 OUTSIDE THE STATE OF SOUTH CAROLINA?  
2098= 25 A. YES.  
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2100= JACKSON - DIRECT / DE BRUIN 1 Q. HOW ABOUT THE BOOKS FROM THE  
WHOLESALERS, BAKER & TAYLOR

2101= 2 INGRAM AND KOEN, WHERE DO THEY COME FROM? 3 A. BAKER & TAYLOR COMES FROM  
GEORGIA. INGRAM HAS TWO  
2102= 4 WAREHOUSES, ONE IN NASHVILLE, AND -- WE GET MOST OF OUR BOOKS  
2103= 5 FROM EITHER NASHVILLE. I THINK THE OTHER WAREHOUSE IS IN  
2104= 6 VIRGINIA. KOEN COMES FROM NEW JERSEY.  
2105= 7 Q. ALL RIGHT. SO ALL THE BOOKS THAT YOU BUY FROM WHOLESALERS  
2106= 8 DO THEY ALSO COME FROM OUTSIDE THE STATE?  
2107= 9 A. YES.  
2108= 10 Q. LET ME ASK YOU SOME QUESTIONS REGARDING THE PRICES THAT THE  
2109= 11 HAPPY BOOKSELLER PAYS FOR BOOKS. ARE YOU FAMILIAR WITH THE  
2110= 12 PRICES THAT THE HAPPY BOOKSELLER PAYS TO PUBLISHERS AND  
2111= 13 WHOLESALERS ON THE BOOKS THAT THEY BUY?  
2112= 14 A. YES, I'M VERY FAMILIAR BECAUSE MY JOB IS TO PAY ALL THE  
2113= 15 INVOICES, AND I'M -- I CHECK EVERY INVOICE. I CHECK EVERY  
2114= 16 SHORTAGE THAT THE PEOPLE IN THE RECEIVING ROOM HAVE MARKED, AND  
2115= 17 I CHECK THE DISCOUNTS TO MAKE SURE THEY FIT THE RED BOOK.  
2116= 18 Q. ALL RIGHT. LET ME FIRST ASK YOU, HOW ARE THE PRICES THAT  
2117= 19 THE HAPPY BOOKSELLER PAYS FOR BOOKS ESTABLISHED?  
2118= 20 A. UM, WHAT WE DO IS WE GET -- WELL, WE USE THE RED BOOK TO  
2119= 21 MAKE SURE THAT THE PUBLISHERS IS PRICING US ACCORDING TO THE RED  
2120= 22 BOOK. AND THOSE PRICES IN THE RED BOOK COME FROM THE  
2121= 23 PUBLISHERS. THEY SEND THEM TO THE ABA, AND THEY PUT THEM IN THE  
2122= 24 BOOK.  
2123= 25 SO THOSE PRICES COME FROM THE RED BOOK, WHICH COMES  
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2125= JACKSON - DIRECT / DE BRUIN 1 FROM THE PUBLISHERS. THAT IS  
SUPPOSED TO BE THEIR POLICIES

2126= 2 THEIR DISCOUNT SCHEDULES, AND THAT'S WHERE WE GET OUR PRICES, 3 OUR DISCOUNTS.  
2127= 4 Q. LET ME GO BACK A LITTLE BIT. YOU'VE REFERRED TO THE RED  
2128= 5 BOOK. CAN YOU IDENTIFY FOR THE RECORD WHAT THE RED BOOK IS?  
2129= 6 A. THE RED BOOK IS THE ABA BUYERS HANDBOOK. OFTEN REFERRED TO  
2130= 7 AS THE "RED BOOK." IT'S PUT TOGETHER BY THE AMERICAN  
2131= 8 BOOKSELLERS ASSOCIATION FROM INFORMATION SENT TO THEM BY THE  
2132= 9 PUBLISHER, AND THAT IS SUPPOSED TO BE THE PUBLISHER'S PRINTED  
2133= 10 SCHEDULE. THAT'S WHAT WE GO BY.

2134= 11 Q. ALL RIGHT. I'M GOING TO ASK YOU TO TAKE A LOOK AT A COPY OF  
2135= 12 WHAT WE'VE MARKED AS EXHIBIT 7.  
2136= 13 AND, JUDGE, YOU HAVE BEHIND YOU A COPY OF EXHIBIT 7.  
2137= 14 IT MAY BE ON THE SECOND SHELF, JUDGE, I --  
2138= 15 THE COURT: THIS IS --  
2139= 16 (PAUSE IN THE PROCEEDINGS.)  
2140= 17 THE COURT: ALL RIGHT.  
2141= 18 BY MR. DE BRUIN:  
2142= 19 Q. NOW, MR. JACKSON, I'VE ACTUALLY HANDED YOU AN ACTUAL BOOK,  
2143= 20 BUT IT'S MARKED EXHIBIT 7. IT'S THE SAME EXHIBIT 7 AS THE JUDGE  
2144= 21 HAS IN HIS BINDER, WHICH IS JUST A PHOTOCOPY OF THE BOOK. WE'LL  
2145= 22 SUBMIT THE ORIGINAL BOOK FOR THE RECORD.  
2146= 23 THE COURT: YEAH.  
2147= 24 BY MR. DE BRUIN:  
2148= 25 Q. CAN YOU FORMALLY FOR THE RECORD, SIR, PLEASE IDENTIFY  
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2150= JACKSON - DIRECT / DE BRUIN 1 EXACTLY WHAT EXHIBIT 7 IS.  
2151= 2 A. EXHIBIT 7 IS THE ABA BOOK BUYERS HANDBOOK, AND THIS IS FOR 3 THE YEAR 2000.  
2152= 4 Q. HOW FREQUENTLY DOES THE ABA BOOK BUYERS HANDBOOK COME OUT?  
2153= 5 A. ONCE A YEAR.  
2154= 6 Q. IS THE ABA BOOK BUYER'S HANDBOOK THAT YOU REFERRED TO, IS  
2155= 7 THAT A COMPILATION OF DATA OR FACTS THAT IS USED BY PERSONS IN  
2156= 8 THE BOOK-SELLING BUSINESS?  
2157= 9 A. YES. I WAS ACTUALLY ON THE COMMITTEE ONE TIME, WORKED WITH  
2158= 10 THE PUBLISHERS TO SEND THIS INFORMATION. THEY SEND -- WHAT THEY  
2159= 11 SEND TO US IS THEIR ESTABLISHED PRICES AND DISCOUNTS.  
2160= 12 Q. AND DO YOU RELY UPON THIS BOOK, SIR, FOR THE PURPOSE OF  
2161= 13 CARRYING OUT YOUR BUSINESS?  
2162= 14 A. I DO.  
2163= 15 Q. ALL RIGHT. NOW, BEFORE WE TALK A LITTLE BIT MORE ABOUT  
2164= 16 PURCHASE TERMS, I WONDER IF WE CAN IDENTIFY FOR THE RECORD  
2165= 17 EXACTLY HOW BOOKS ARE PRICED AND SOLD BY PUBLISHERS.  
2166= 18 CAN YOU DESCRIBE HOW IT IS THAT BOOKS ARE PRICED BY  
2167= 19 PUBLISHERS?  
2168= 20 A. A PUBLISHER WILL DECIDE ON THE RETAIL PRICE OF THE BOOK.  
2169= 21 AND AFTER THEY HAVE ESTABLISHED THE RETAIL PRICE, THEN THEY  
2170= 22 ESTABLISH DISCOUNTS FROM THOSE RETAIL PRICES. AND THOSE  
2171= 23 DISCOUNTS ARE THE ONES THAT ARE PUBLISHED IN THE ABA BUYERS  
2172= 24 HANDBOOK.  
2173= 25 Q. ALL RIGHT. IS THERE A WORD THAT IS USED TO OR A PHRASE  
2174= RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR (415) 626-8404

2175= JACKSON - DIRECT / DE BRUIN 1 THAT'S USED TO REFER TO THE  
RETAIL PRICE THAT THE PUBLISHER  
2176= 2 ON A BOOK? 3 A. WELL, RETAIL PRICE, LIST PRICE.  
2177= 4 Q. ALL RIGHT. AND YOU REFERRED TO A DISCOUNT. WHAT DO YOU  
2178= 5 MEAN BY A DISCOUNT?  
2179= 6 A. THAT WOULD BE A DISCOUNT FROM THAT LIST PRICE.  
2180= 7 Q. ALL RIGHT. SO CAN YOU GIVE ME A TYPICAL DISCOUNT THAT A  
2181= 8 PUBLISHER MIGHT SELL A BOOK?  
2182= 9 A. FORTY-FOUR PERCENT. FORTY-THREE.  
2183= 10 Q. ALL RIGHT. AND WHAT DOES IT MEAN TO YOU AS A BOOKSELLER IF  
2184= 11 A PUBLISHER IS SELLING A BOOK AT A 44 PERCENT DISCOUNT?  
2185= 12 A. I'M NOT SURE I UNDERSTAND THE QUESTION.  
2186= 13 Q. HOW MUCH -- LET'S SAY 10-DOLLAR BOOK --  
2187= 14 A. 10-DOLLAR BOOK, THE GROSS PROFIT ON THAT WOULD BE \$4.40.  
2188= 15 Q. IF IT'S --  
2189= 16 A. WHICH IS THE DISCOUNT.  
2190= 17 Q. ALL RIGHT. LET ME -- LET ME TAKE THIS SLOWLY. IF IT'S A  
2191= 18 10-DOLLAR BOOK AND YOU'VE GOT A 44 PERCENT DISCOUNT --  
2192= 19 A. YES.  
2193= 20 Q. -- WHAT DO YOU PAY THE PUBLISHER FOR THAT BOOK?  
2194= 21 A. UM, \$5.60 CENTS, I BELIEVE.  
2195= 22 Q. ALL RIGHT.  
2196= 23 A. YES.  
2197= 24 Q. SO IN OTHER WORDS, THE --  
2198= 25 A. 44 PERCENT OFF THAT -- 40 WOULD BE \$6, SO IT WOULD BE \$5.60.  
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2200= JACKSON - DIRECT / DE BRUIN 1 Q. THE DISCOUNT IS THE AMOUNT  
OFF THE BOOK, AND THEN YOU'RE  
2201= 2 PAYING -- 3 A. YES.



2202= 4 Q. -- WHAT'S LEFT? IN THIS CASE, 56 PERCENT IS WHAT YOU PAY?  
2203= 5 A. RIGHT.  
2204= 6 Q. NOW, YOU TESTIFIED EARLIER HOW A PUBLISHER'S TERMS TYPICALLY  
2205= 7 COMPARE TO A WHOLESALER'S TERMS; IS THAT RIGHT?  
2206= 8 A. YES.  
2207= 9 Q. AND I BELIEVE YOU SAID THAT A PUBLISHER'S TERMS ARE --  
2208= 10 TYPICALLY THEY OFFER A GREATER DISCOUNT THAN A WHOLESALER WILL  
2209= 11 OFFER?  
2210= 12 A. IN MOST CASES. MOST OF THE SMALL PUBLISHERS BUY IT THE SAME  
2211= 13 AS THE WHOLESALERS, BUT MOST OF THE LARGER PUBLISHERS YOU GET A  
2212= 14 LARGER DISCOUNT, YES.  
2213= 15 Q. AND IF THAT'S TRUE IF YOU GET A LARGER DISCOUNT FROM MOST  
2214= 16 PUBLISHERS, WHY THEN DO YOU BUY FROM WHOLESALER?  
2215= 17 A. WE BUY WHOLESALER BECAUSE OF SPEED. WE HAVE A LOT OF  
2216= 18 SPECIAL ORDERS DAILY, AND WE NEED THOSE BOOKS AS SOON AS  
2217= 19 POSSIBLE, AND THE NEXT DAY IS WONDERFUL FOR CUSTOMERS, AND WE  
2218= 20 FILL IN BACK STOCK OFTEN. IF WE HAVE A BOOK, LET'S -- LET'S SAY  
2219= 21 A BOOK WE SELL REGULAR TO, PEOPLE'S HISTORY OF THE UNITED STATES  
2220= 22 BY HOWARD ZENN -- IF SOMEBODY -- IF ONE OF OUR BOOKSELLERS SELLS  
2221= 23 THE LAST COPY, THEY WILL WRITE IT DOWN, AND HE KNOWS OR SHE  
2222= 24 KNOWS THAT WE NEED THAT SOONER THAN WE CAN GET IT FROM THE  
2223= 25 PUBLISHER, SO WE'LL ORDER THAT FROM THE WHOLESALER.  
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2225= JACKSON - DIRECT / DE BRUIN 1 Q. ALL RIGHT. WHILE WE'RE --  
WHILE WE'VE GOT THE RED BOOK  
2226= 2 FRONT OF US, WHY DON'T YOU LOOK TO THE ENTRY FOR HOUGHTON 3 MIFFLIN AND EXPLAIN  
WHAT THAT WOULD TELL YOU IN  
2227= 4 THAT HOUGHTON MIFFLIN CHARGES FOR THE BOOKS IT SELLS TO BOOK  
2228= 5 STORES.  
2229= 6 AND I BELIEVE, YOUR HONOR, THERE MAY BE A BLUE TAB AT  
2230= 7 THE END.  
2231= 8 A. THERE IS A BLUE TAB -- OKAY. YOU WANT TO KNOW THE  
2232= 9 INFORMATION I CAN FIND FROM HERE?  
2233= 10 Q. I'M JUST TRYING TO GET AN UNDERSTANDING OF HOW THE BOOK  
2234= 11 WORKS?  
2235= 12 A. YES.  
2236= 13 Q. WHAT IS THE BOOK BUYERS HANDBOOK -- WHAT KIND OF INFORMATION  
2237= 14 DOES IT PROVIDE FOR HOUGHTON MIFFLIN?  
2238= 15 A. WELL, IT GIVES US ORDERS, TELEPHONE NUMBERS FOR ORDERS, IT  
2239= 16 GIVES THE TELEPHONE NUMBER OF THE MAIN OFFICE AND SOME OF THE  
2240= 17 EXECUTIVES AT THE HOUGHTON MIFFLIN, IT TELLS YOU WHAT THE ISBN  
2241= 18 PREFIXES ARE FOR THEIR DIFFERENT IN PRINTS.  
2242= 19 Q. LET'S STOP THERE AND GO A LITTLE SLOWER. WHEN YOU SAY, IT  
2243= 20 TELLS YOU WHAT THE ISBN, WHAT DOES THAT MEAN?  
2244= 21 A. THAT IS AN INTERNATIONAL STANDARD BOOK NUMBER, AND EVERY  
2245= 22 BOOK HAS HAD A NUMBER, AND NO BOOK HAS THE SAME NUMBER, SO YOU  
2246= 23 CAN IDENTIFY -- YOU CAN ORDER BOOKS BY THAT NUMBER.  
2247= 24 Q. AND DOES EVERY PUBLISHER HAVE A DIFFERENT PREFIX WITHIN THIS  
2248= 25 ISBN SYSTEM?  
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2250= JACKSON - DIRECT / DE BRUIN 1 A. YES, THEY DO.  
2251= 2 Q. AND SO THESE ARE THE -- ARE THE PREFIXES LINKED TO 3 PARTICULAR LINES OF  
BOOKS?  
2252= 4 A. WELL, YOU CAN -- YOU CAN FIGURE OUT THE DIFFERENT LINES BY  
2253= 5 THE PREFIX, YES.  
2254= 6 Q. OKAY. AND WHAT OTHER INFORMATION IS THE PROVIDED HERE IN  
2255= 7 THE RED BOOK?  
2256= 8 A. UM, IT HAS AN ADDRESS FOR ORDERS, BOTH MANUAL AND MAIL AND  
2257= 9 ELECTRONIC, AND THEN IT HAS THEIR DISCOUNT SCHEDULE.  
2258= 10 Q. OKAY. AND CAN YOU DESCRIBE HOW -- WHAT THIS PARTICULAR  
2259= 11 DISCOUNT SCHEDULE IS FOR HOUGHTON MIFFLIN IN THE YEAR 2000?  
2260= 12 A. IF YOU'RE BUYING RETAIL AND RETURNABLE, ONE COPY IS  
2261= 13 20 PERCENT, AND THEN 10 COPIES OR MORE, FLAT DISCOUNT OF  
2262= 14 47 PERCENT.  
2263= 15 AND THEN THEY HAVE A RETAIL NON-RETURNABLE. THEN  
2264= 16 THEY HAVE A RETAIL WAREHOUSE RETURNABLE AND NON-RETURNABLE. AND  
2265= 17 THEN THEY HAVE ALL -- THEY HAVE DISCOUNTS, DIFFERENT FOR COLLEGE  
2266= 18 TITLES, AND SOME DIFFERENT OTHER KIND OF SPECIALTY BOOKS.  
2267= 19 Q. NOW, WHAT DOES IT MEAN THAT THERE'S A DISCOUNT FOR  
2268= 20 RETURNABLE? CAN YOU EXPLAIN WHAT THAT MEANS?  
2269= 21 A. WELL, BOOKS MOSTLY IN THIS INDUSTRY ARE RETURNABLE. IF YOU

2270= 22 RETURN THEM IN GOOD CONDITION AND IF YOU RETURN THEM BEFORE  
2271= 23 THEY'RE OUT OF PRINT. IN SOME -- IN SOME CASES, THERE'S A TIME  
2272= 24 LIMIT ON IT. AND YOU CAN RETURN IT FOR CREDIT, AND THE  
2273= 25 DIFFERENT PUBLISHERS HAVE DIFFERENT KIND OF WAYS TO -- TO FIGURE  
2274= RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR (415) 626-8404

2275= JACKSON - DIRECT / DE BRUIN 1 THAT CREDIT. SOME OF THEM CREDIT  
ON AVERAGE DISCOUNT THAT

2276= 2 YOU'VE BOUGHT OVER THE PREVIOUS YEAR. AND SOME OF THEM HAVE 3 A -- SOMEWHAT OF A  
PENALTY. BUT THAT'S WHAT

2277= 4 CAN RETURN THEM FOR CREDIT.

2278= 5 Q. ALL RIGHT. IS THERE AN OPTION TO BUY BOOKS ON A

2279= 6 NON-RETURNABLE BASIS?

2280= 7 A. IN NOT EVERY CASE, BUT IN SOME CASES, YOU CAN BUY

2281= 8 NON-RETURNABLE OR RETURNABLE. BUT YOU -- IF YOU -- IF YOU OPT

2282= 9 FOR ONE OR THE OTHER, YOU HAVE TO STAY ON IT AT LEAST 12 MONTHS.

2283= 10 YOU CAN'T BUY BOTH WAYS.

2284= 11 Q. AND WHAT DO YOU MEAN WHEN YOU SAY YOU CAN'T BUY THEM BOTH

2285= 12 WAYS?

2286= 13 A. YOU CAN'T BUY ONE MONTH RETURNABLE AND ONE MONTH

2287= 14 NON-RETURNABLE. YOU HAVE TO -- YOU HAVE TO AGREE WHICH WAY

2288= 15 YOU'RE GOING TO BUY THEM IN MOST CASES.

2289= 16 Q. SO YOU HAVE TO MAKE AN ELECTION AS TO EITHER BUY ALL OF YOUR

2290= 17 BOOKS FROM THE PUBLISHERS ON A RETURNABLE BASIS OR BUY ALL OF

2291= 18 YOUR BOOKS ON A NON-RETURNABLE BASIS?

2292= 19 A. I THINK THAT'S TRUE FOR MOST OF THEM, YES. THERE ARE A FEW

2293= 20 EXCEPTIONS.

2294= 21 Q. LOOKING AT THE PUBLISHERS ON THE LIST AGAIN, DOCUMENT NUMBER

2295= 22 2591, IS YOUR NOTEBOOK STILL OPEN TO THE LIST OF PUBLISHERS?

2296= 23 A. YES.

2297= 24 Q. DO YOU KNOW WHETHER THE PUBLISHERS ON THIS LIST THAT YOU BUY

2298= 25 FROM, DO THEY REQUIRE YOU TO MAKE A -- AN ELECTION AS TO WHETHER

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2300= JACKSON - DIRECT / DE BRUIN 1 YOU BUY ALL OF YOUR BOOKS ON A  
RETURNABLE BASIS OR ALL OF YO

2301= 2 BOOKS ON A NON-RETURNABLE BASIS? 3 A. I THINK THEY DO. ACTUALLY WE BUY THEM ALL  
RETURNABLE. SO

2302= 4 WE'VE NEVER HAD TO MAKE THAT ELECTION, BUT I THINK THEY DO

2303= 5 GIVE -- MOST OF THEM GIVE YOU THAT OPTION.

2304= 6 Q. NOW, WHEN YOU HAVE TO MAKE AN ELECTION, HOW LONG -- DO YOU

2305= 7 KNOW HOW LONG YOU ARE REQUIRED TO DESIGNATE?

2306= 8 A. WELL, I'VE LOOKED THROUGH THIS BOOK BEFORE, AND MOST OF THEM

2307= 9 SAY THAT YOU CAN DO IT ON AN ANNUAL BASIS, BUT YOU HAVE TO STICK

2308= 10 WITH WHAT YOU DECIDED TO DO FOR 12 MONTHS.

2309= 11 Q. HAS THE HAPPY BOOKSELLER EVER BEEN ABLE TO PURCHASE BOOKS

2310= 12 FROM ANY OF THE PUBLISHERS ON THE LIST, EXHIBIT 2591, WHERE

2311= 13 DURING THE COURSE OF A YEAR, YOU WERE ABLE TO BUY BOTH ON A

2312= 14 RETURNABLE BASIS AND ON A NON-RETURNABLE BASIS?

2313= 15 A. NO.

2314= 16 Q. AND IS THAT TRUE FOR ALL OF THESE PUBLISHERS FOR ALL OF THE

2315= 17 YEARS FROM 1994 TO THE PRESENT?

2316= 18 A. YES.

2317= 19 Q. NOW, MR. JACKSON, YOU MAY HAVE DESCRIBED THIS ALREADY, BUT I

2318= 20 WANT TO MAKE SURE THAT IT IS CLEAR. YOU'VE DESCRIBED THE ABA

2319= 21 RED BOOK. HOW DO YOU KNOW WHAT PUBLISHERS PRICES ARE? HOW ARE

2320= 22 THEY COMMUNICATED TO YOU?

2321= 23 A. WELL, OF COURSE -- THEY'RE COMMUNICATED BY THIS RED BOOK,

2322= 24 AND I WANT TO EMPHASIZE THE INFORMATION IN THIS BOOK COMES FROM

2323= 25 THE PUBLISHER. IT'S NOT SOMETHING THE ABA MAKES UP FOR THE

2324= RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR (415) 626-8404

2325= JACKSON - DIRECT / DE BRUIN 1 YELLOW PAGES. THIS IS SUPPOSED  
TO BE THEIR TERMS. AND I

2326= 2 CHECKED MY INVOICES, 'CAUSE MOST OF THEM I KNOW BY HEART, BUT 3 I -- IF I'M IN  
DOUBT, I CHECK. AND I DON'T

2327= 4 I ALMOST KNOW WE'VE NEVER BOUGHT ANY BOOKS THAT DIDN'T FIT THE

2328= 5 SCHEDULES IN THE BOOK.

2329= 6 Q. NOW, DO PUBLISHER TERMS EVER CHANGE?

2330= 7 A. YES, THEY DO CHANGE.

2331= 8 Q. HOW FREQUENTLY DO THEY CHANGE, SIR?

2332= 9 A. WELL, NOT THAT FREQUENTLY, BUT THEY DO CHANGE. SOMETIMES IN

2333= 10 THE MIDDLE OF A YEAR, IN THE MIDDLE OF THE PUBLICATION OF THIS

2334= 11 BOOK.  
2335= 12 Q. AND HOW DO YOU KNOW WHETHER A PUBLISHER'S TERMS HAVE  
2336= 13 CHANGED?  
2337= 14 A. WE CAN -- WE USUALLY GET A LETTER STATING THAT THEY'VE  
2338= 15 CHANGED THE TERMS. SOMETIMES WE GET A FAX OR -- OFTENTIMES, THE  
2339= 16 REP WILL COME IN WITH THE LETTER AND SAY, "I'VE GOT A NEW  
2340= 17 DISCOUNT SCHEDULE FOR YOU." AND WE WILL TAKE THAT LETTER OR  
2341= 18 THAT COMMUNICATION AND PUT IT IN THIS BOOK ON THE PAGES THAT  
2342= 19 FITS THAT PUBLISHER.  
2343= 20 Q. SO YOU KEEP YOUR COPY OF THE RED BOOK IN ESSENCE UP TO DATE  
2344= 21 IF THERE'S ANY CHANGES IN TERMS?  
2345= 22 A. YES, WE DO.  
2346= 23 Q. MR. JACKSON, HOW DO YOU KNOW PERSONALLY WHAT THE HAPPY  
2347= 24 BOOKSELLER PAYS FOR THE BOOKS IT PURCHASES?  
2348= 25 A. BECAUSE I PAY EVERY INVOICE AND CHECK EVERY INVOICE, AND I  
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2350= JACKSON - DIRECT / DE BRUIN 1 DO ALL THIS BY HAND. I'M NOT A  
COMPUTER PERSON. DON'T PAY  
2351= 2 COMPUTER. AND AFTER I CHECK IT, THEN I MATCH THAT INVOICE WITH 3 THE STATEMENT.  
AND THEN WHEN I'VE GOT THE  
2352= 4 INVOICES ALL MATCHED UP, THEN I PAY IT.  
2353= 5 Q. NOW, YOU SAY THAT YOU CHECK EVERY INVOICE. CAN YOU DESCRIBE  
2354= 6 TO THE COURT WHAT YOU MEAN WHEN YOU SAY YOU CHECK EVERY INVOICE?  
2355= 7 A. WELL, I FIRST LOOK TO SEE THE PEOPLE WHO CHECKED IT IN HAVE  
2356= 8 MARKED ANY SHORTAGES, AND THEN IF THEY MARK SHORTAGES, I SEE  
2357= 9 IF -- ACTUALLY MY WIFE EITHER WRITES OR CALLS ABOUT SHORTAGES.  
2358= 10 SEE IF THAT'S BEEN DONE, THEN I CHECK THE DISCOUNT, THEN I PAY  
2359= 11 IT.  
2360= 12 Q. AND HOW DO YOU CHECK THE DISCOUNT?  
2361= 13 A. WELL, YOU KNOW, AFTER -- IT ONLY TAKES ABOUT A MONTH AFTER A  
2362= 14 NEW DISCOUNT SCHEDULE FOR ME TO KNOW IN MY HEAD, AND I CAN JUST  
2363= 15 LOOK AT IT AND SEE, AND I'LL KNOW WHETHER IT'S CORRECT DISCOUNT.  
2364= 16 Q. DO YOU SOMETIMES LOOK BACK TO THE BOOK TO VERIFY DISCOUNTS?  
2365= 17 A. WELL, ESPECIALLY WITH SMALL PUBLISHERS, I DO. LARGE  
2366= 18 PUBLISHERS, I USUALLY KNOW WHAT THE DISCOUNT SHOULD BE.  
2367= 19 Q. WHAT RECORDS EXIST OF THE PRICE THAT THE HAPPY BOOKSELLER  
2368= 20 PAYS FOR BOOKS?  
2369= 21 A. WELL, WITH PAID INVOICES.  
2370= 22 Q. ALL RIGHT. APPROXIMATELY HOW MANY INVOICES DO YOU RECEIVE  
2371= 23 IN A MONTH?  
2372= 24 A. WE WRITE ABOUT 130 CHECKS A MONTH AND GOES -- LIKE A  
2373= 25 STATEMENT FROM RANDOM HOUSE, IT MIGHT BE 30 OR 40 INVOICES  
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2375= JACKSON - DIRECT / DE BRUIN 1 ATTACHED TO THAT STATEMENT. SO  
WE MIGHT PAY 2- OR 300 AS A  
2376= 2 GUESS. SOME MONTHS WOULD BE MORE THAN OTHERS. THAT WOULDN'T 3 MEAN WE'D HAVE TO  
WRITE THAT MANY CHECKS BEC  
2377= 4 INVOICES BE ATTACHED TO STATEMENTS, BE MULTIPLE INVOICES.  
2378= 5 Q. SO FROM SEVERAL OF THESE LARGER PUBLISHERS YOU'LL ACTUALLY  
2379= 6 RECEIVE MULTIPLE INVOICES EVEN WITHIN A PARTICULAR MONTH?  
2380= 7 A. OH, YES.  
2381= 8 Q. BUT THEN YOU PAY ALL THOSE TOGETHER IN ONE CHECK?  
2382= 9 A. AND MATCH IT WITH A STATEMENT, YES.  
2383= 10 Q. SO JUST ROUGHLY OVER THE COURSE OFFICE A YEAR HOW MANY  
2384= 11 INVOICES IN TOTAL MIGHT YOUR BOOK STORE RECEIVE?  
2385= 12 A. WELL, BE SEVERAL THOUSAND.  
2386= 13 Q. DO YOU KEEP THOSE INVOICES, SIR?  
2387= 14 A. WE DO.  
2388= 15 Q. HOW FAR BACK DO THEY GO?  
2389= 16 A. WELL, I THINK THE TAX PEOPLE REQUIRE YOU TO KEEP IT NOW FIVE  
2390= 17 YEARS, BUT WE PROBABLY GOT THEM FOR SEVEN OR EIGHT, NINE YEARS.  
2391= 18 WHEN THEY'RE THAT OLD, THEN WE CLEAN OUT THE WAREHOUSE AND THROW  
2392= 19 SOME OF THEM AWAY.  
2393= 20 Q. ALL RIGHT. CAN YOU DESCRIBE FOR THE COURT WHAT, IF  
2394= 21 ANYTHING, YOU DID WITH RESPECT TO THOSE INVOICE RECORDS IN  
2395= 22 CONNECTION WITH THIS LITIGATION?  
2396= 23 A. YES, I MADE ALL THOSE INVOICES AVAILABLE TO BOTH SIDES OF  
2397= 24 THIS LITIGATION.  
2398= 25 Q. DID LAWYERS COME TO YOUR BOOK STORE, SIR, TO LOOK AT THOSE  
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2400= JACKSON - DIRECT / DE BRUIN 1 RECORDS?  
2401= 2 A. YES, THEY DID. 3 Q. DID LAWYERS FOR BOTH SIDES COME TO YOUR BOOK STORE TO  
LOOK  
2402= 4 AT THOSE RECORDS?  
2403= 5 A. YES, THEY DID.  
2404= 6 Q. TO YOUR KNOWLEDGE, SIR, DID ANYONE MAKE ANY COPIES OF ANY OF  
2405= 7 THOSE INVOICES?  
2406= 8 A. YES. I THINK BOTH SIDES MADE COPIES.  
2407= 9 Q. WERE THERE ANY INVOICES, SIR, THAT YOU HELD BACK THAT YOU  
2408= 10 DID NOT MAKE AVAILABLE FOR INSPECTION?  
2409= 11 A. NO, I GAVE THEM THE KEY, TOLD THEM WHERE THEY WERE. AND WE  
2410= 12 HAD THEM IN TWO, THREE LOCATIONS. IF THEY WERE IN THE  
2411= 13 WAREHOUSE, WE HAD A STORAGE SPACE BEHIND THE STORE. I JUST LET  
2412= 14 THEM GO.  
2413= 15 Q. MR. JACKSON, HAVE YOU EVER NEGOTIATED PRICES WITH ANY  
2414= 16 PUBLISHER?  
2415= 17 A. NO.  
2416= 18 Q. WHY NOT?  
2417= 19 A. BECAUSE I ASSUMED THAT THE PUBLISHERS HAVE INTEGRITY AND I  
2418= 20 THINK I HAVE INTEGRITY, AND I'VE BEEN TOLD THAT THIS IS THE WAY  
2419= 21 YOU BOUGHT BOOKS AND THAT WAS THE LAW. AND SO I NEVER  
2420= 22 NEGOTIATED.  
2421= 23 Q. HAVE YOU EVER NEGOTIATED PRICE WITH ANY WHOLESALER?  
2422= 24 A. NO.  
2423= 25 Q. MR. JACKSON, HAVE YOU EVER RECEIVED A PRICE FROM A PUBLISHER  
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2425= JACKSON - DIRECT / DE BRUIN 1 OTHER THAN THE PRICE THAT IS IN  
THEIR ESTABLISHED DISCOUNT  
2426= 2 SCHEDULE? 3 A. NO.  
2427= 4 Q. DO PUBLISHERS EVER OFFER SPECIALS?  
2428= 5 A. THERE ARE STOCK OFFERS --  
2429= 6 THE REPORTER: I'M SORRY, SIR. THERE ARE...?  
2430= 7 THE WITNESS: STOCK OFFERS. YOU DIDN'T UNDERSTAND  
2431= 8 THAT? THIS OLD SOUTHERN ACCENT. YOU DIDN'T HEAR THAT? STOCK  
2432= 9 OFFERS.  
2433= 10 AND ALSO THEY HAVE CONVENTION SPECIALS. AND THE  
2434= 11 CONVENTION SPECIALS OCCURRED DURING -- DURING THE BIG CONVENTION  
2435= 12 ONCE A YEAR, AND THE STOCK OFFERS USUALLY OCCUR IN THE FALL.  
2436= 13 OCCASIONALLY, I THINK THERE MIGHT BE A SPRING STOCK OFFER.  
2437= 14 BY MR. DE BRUIN:  
2438= 15 Q. NOW, LET ME JUST START WITH THE CONVENTION SPECIAL. CAN YOU  
2439= 16 IDENTIFY EXACTLY WHAT THIS CONVENTION IS?  
2440= 17 A. THE CONVENTION IS WHAT WE USED TO REFER TO AS THE ABA  
2441= 18 CONVENTION. NOW IT'S THE BEA CONVENTION. AND PUBLISHERS FROM  
2442= 19 ALL OVER THE WORLD, REALLY, HAVE A DISPLAY THERE, AND THEY HAVE  
2443= 20 MOST OF THEIR NEW TITLES COMING OUT FOR THE FALL DISPLAYED, AND  
2444= 21 THEY HAVE CATALOGS AVAILABLE FOR YOU TO TAKE HOME. AND THEY  
2445= 22 USUALLY HAVE A DISCOUNT SCHEDULE INSERTED IN THE CATALOG, WHICH,  
2446= 23 IN MOST CASES, MATCHES THE RED BOOK UNLESS THEY'VE CHANGED THE  
2447= 24 DISCOUNT SCHEDULE.  
2448= 25 AND THEY WILL -- MOST OF THE TIME, THEY PUBLISH THE  
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2450= JACKSON - DIRECT / DE BRUIN 1 CONVENTION SPECIALS IN PUBLISHERS  
WEEKLY. THEY WILL USUALLY  
2451= 2 WRITE YOU BEFORE THE CONVENTION AND SAY, "WE WANT TO TELL YOU 3 THAT WE HAVE THE  
FOLLOWING CONVENTION SPECIA  
2452= 4 THEY'RE JUST ON PART OF THEIR LINE, AND SOMETIME IT'S -- THEY  
2453= 5 HAVE A CONVENTION -- THEY HAVE A FLAT EXTRA DISCOUNT ON THE  
2454= 6 WHOLE LINE. IT VARIES WITH THE PUBLISHER.  
2455= 7 Q. DO THE CONVENTION SPECIALS PERTAIN TO THE BOOKS THAT ARE  
2456= 8 DISPLAYED AT THE CONVENTION?  
2457= 9 A. NOT NECESSARILY. MIGHT CONTAIN -- SOMETIME HAS TO DO WITH  
2458= 10 PART OF THEIR BACK LIST OR ALL OF THE BACK LIST OR MAYBE  
2459= 11 SOMETIMES COOKBOOKS. EACH PUBLISHER DECIDES WHAT KIND OF  
2460= 12 CONVENTION OFFER THEY WILL MAKE.  
2461= 13 Q. NOW, ARE THESE CONVENTION SPECIALS, SIR, ARE THESE OFFERS  
2462= 14 THAT ARE MADE JUST TO THE HAPPY BOOKSELLERS, OR ARE THESE OFFERS  
2463= 15 THAT ARE AVAILABLE TO ANY RETAIL BOOK STORE?  
2464= 16 A. THEY'RE AVAILABLE TO THE ENTIRE TRADE.  
2465= 17 Q. NOW, WHEN YOU SAY THAT THEY'RE PUBLISHED IN PUBLISHERS  
2466= 18 WEEKLY, WHAT IS PUBLISHERS WEEKLY?

2467= 19 A. PUBLISHERS WEEKLY IS A WEEKLY MAGAZINE THAT HAS NEWS  
2468= 20 ARTICLES ABOUT PUBLICATIONS. IT HAS NEWS ARTICLES SOMETIMES  
2469= 21 ABOUT AUTHORS AND HAS ADVERTISEMENTS FROM PUBLISHERS. VARIOUS  
2470= 22 ARTICLES OF INTEREST.  
2471= 23 Q. WOULD IT BE FAIR TO DESCRIBE PUBLISHERS WEEKLY AS A TRADE  
2472= 24 MAGAZINE?  
2473= 25 A. YES.  
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2475= JACKSON - DIRECT / DE BRUIN 1 Q. NOW, YOU'VE ALSO TESTIFIED  
THAT SOME PUBLISHERS HAVE STO  
2476= 2 OFFERS. WHAT EXACTLY IS A STOCK OFFER? 3 A. A STOCK OFFER IS USUALLY OFFERED --  
I'M SORRY. THAT WENT  
2477= 4 DOWN THE WRONG THROAT.  
2478= 5 A STOCK OFFER IS USUALLY OFFERED IN THE FALL, AND IT  
2479= 6 VARIES WITH THE PUBLISHER. IT MIGHT BE AN EXTRA 2 PERCENT ON  
2480= 7 EVERYTHING PUBLISHED -- EVERYTHING PURCHASED AT THAT -- ON THAT  
2481= 8 PARTICULAR OFFER. THEY USUALLY WILL OFFER YOU A CHOICE OF  
2482= 9 EITHER AN EXTRA DISCOUNT OR A LONGER TERMS OR FREE FREIGHT IF  
2483= 10 IT'S NOT A FREE FREIGHT PUBLISHER. BUT YOU, IN MOST CASES, HAVE  
2484= 11 A CHOICE OF THOSE THREE THINGS.  
2485= 12 Q. HAVE YOU EVER PURCHASED BOOKS PURSUANT TO A PUBLISHER'S  
2486= 13 STOCK OFFER?  
2487= 14 A. YES, OFTEN.  
2488= 15 Q. HOW DO YOU KNOW THE TERMS OF A STOCK OFFER?  
2489= 16 A. IT'S PRESENTED TO YOU BY THE -- BY THE REP IN MOST CASES,  
2490= 17 BUT HE ALWAYS HAS IT IN PRINT.  
2491= 18 Q. NOW, YOU SAY IT'S PRESENTED BY THE REP, WHAT DO YOU MEAN BY  
2492= 19 "THE REP"?  
2493= 20 A. THE SALES REP THAT CALLS ON US FROM MAJOR PUBLISHERS. IT'S  
2494= 21 ALSO -- IN MOST CASES, WE GET -- I THINK IN EVERY CASE, WE ALSO  
2495= 22 GET SOME NOTIFICATION IN THE MAIL OR EITHER BY FAX THAT THE  
2496= 23 STOCK OFFER'S COMING UP. YOU CAN SEE IT IN PRINT IN EVERY CASE.  
2497= 24 SUPPOSED TO BE THE SAME THING FOR EVERYONE.  
2498= 25 Q. SO ARE THE TERMS OF A STOCK OFFER ALWAYS SET FORTH ON SOME  
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2500= JACKSON - DIRECT / DE BRUIN 1 KIND OF WRITING?  
2501= 2 A. YES. 3 Q. AND HAVE YOU EVER RECEIVED A STOCK OFFER THAT WAS JUST  
2502= 4 PROVIDED TO THE HAPPY BOOKSELLER?  
2503= 5 A. NO.  
2504= 6 Q. APPROXIMATELY WHAT PERCENTAGES OF YOUR PURCHASES ARE MADE  
2505= 7 PURSUANT TO STOCK OFFERS?  
2506= 8 A. IN TERMS OF ENTIRE YEAR'S PURCHASES, THEY WOULDN'T BE THAT  
2507= 9 LARGE. WE MIGHT HAVE ONE PUBLISHER -- LARGE PUBLISHER LIKE  
2508= 10 RANDOM HOUSE, IT MIGHT BE A 2,000-DOLLAR ORDER, OR OTHER CASES,  
2509= 11 BE LESS. I DON'T KNOW HOW TO GUESS WHAT THE PERCENTAGE WOULD  
2510= 12 BE, BUT BE SMALL.  
2511= 13 Q. NOW, WHEN YOU PURCHASE BOOKS PURSUANT TO A STOCK OFFER AND  
2512= 14 YOU THEN RECEIVE AN INVOICE FOR THOSE BOOKS, WOULD THE INVOICE  
2513= 15 IDENTIFY THE FACT THAT THAT WAS A PURCHASE MADE PURSUANT TO A  
2514= 16 STOCK OFFER?  
2515= 17 A. I DON'T THINK SO. WELL, I USUALLY RECOGNIZE IT BY THE  
2516= 18 TITLES ON IT AND BY THE NUMBER OF TITLES WE BOUGHT AND WHAT  
2517= 19 THOSE TITLES ARE. I USUALLY RECOGNIZE IT AS A STOCK OFFER, BUT  
2518= 20 I DON'T THINK INVOICE DESIGNATES IT -- AND SOMETIMES, IT -- THE  
2519= 21 STOCK OFFERS ARE NOT SHIPPED ON ONE INVOICE. IT MIGHT BE MIXED  
2520= 22 WITH OTHER INVOICES.  
2521= 23 Q. LET ME ASK YOU TO LOOK BACK ON THE LIST OF PUBLISHERS ON  
2522= 24 EXHIBIT 2591.  
2523= 25 THE COURT: BEFORE WE GO BACK TO THAT, WE'LL TAKE THE  
2524= RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR (415) 626-8404

2525= JACKSON - DIRECT / DE BRUIN 1 SECOND RECESS.  
2526= 2 MR. DE BRUIN: THANK YOU, YOUR HONOR. I THINK WE'RE 3 NEARING --  
2527= 4 THE COURT: BE IN RECESS TILL 11:45.  
2528= 5 THE CLERK: ALL RISE.  
2529= 6 (RECESS TAKEN AT 11:29 A.M.)  
2530= 7 (CONTINUED NEXT PAGE; NOTHING OMITTED.)  
2531= 8  
2532= 9  
2533= 10  
2534= 11

2535= 12  
2536= 13  
2537= 14  
2538= 15  
2539= 16  
2540= 17  
2541= 18  
2542= 19  
2543= 20  
2544= 21  
2545= 22  
2546= 23  
2547= 24  
2548= 25  
2549=

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2550= (PROCEEDINGS RESUME AT 11:47 A.M.)  
2551= THE COURT: PLEASE BE SEATED. FURTHER EXAMINATION,  
2552=MR. DEBRUIN.  
2553= MR. DEBRUIN: I THINK I'LL BE ABLE TO FINISH  
2554=RELATIVELY QUICKLY, YOUR HONOR.  
2555=Q. MR. JACKSON, RIGHT BEFORE THE SHORT RECESS, I ASKED YOU TO  
2556=TAKE A LOOK AT THE LIST OF PUBLISHERS AGAIN, EXHIBIT 2591.  
2557=SIR, HAVE YOU EVER RECEIVED FROM ANY OF THE VENDORS ON THIS  
2558=LIST A STOCK OFFER THAT WAS OFFERED JUST TO THE HAPPY  
2559=BOOKSELLER?  
2560=A. NO.  
2561=Q. SIR, HAVE YOU EVER HAD RECEIVED A STOCK OFFER THAT, ON ITS  
2562=FACE, WAS NOT AVAILABLE TO ALL OTHER RETAIL BOOKSTORES?  
2563=A. NOT TO MY KNOWLEDGE.  
2564=Q. LOOKING AGAIN AT THE PUBLISHERS ON THIS LIST, SIR, HAVE YOU  
2565=EVER NEGOTIATED ANY SPECIAL TERMS WITH ANY OF THE PUBLISHERS OR  
2566=WHOLESALEERS ON THIS LIST?  
2567=A. NO.  
2568=Q. WITH RESPECT TO THE VENDORS ON THIS LIST, SIR, HAVE YOU  
2569=EVER RECEIVED DISCOUNTS DIFFERENT FROM THESE VENDORS PUBLISHED  
2570=GENERALLY AVAILABLE DISCOUNTS?  
2571=A. NO.  
2572=Q. AND I INCLUDE IN THAT, SIR, BOTH THEIR PUBLISHED REGULAR  
2573=DISCOUNTS AND THEIR PUBLISHED STOCK OFFERS.  
2574=A. NO.  
  
2575=Q. AND IS THAT TRUE, SIR, FOR EVERY YEAR BETWEEN 1994 AND THE  
2576=PRESENT?  
2577=A. YES.  
2578=Q. LET ME ASK YOU A FEW QUESTIONS ABOUT THE FREIGHT. I  
2579=BELIEVE YOU'VE MADE REFERENCE TO FREIGHT TERMS. DO PUBLISHERS'  
2580=FREIGHT TERMS VARY?  
2581=A. YES.  
2582=Q. CAN YOU DESCRIBE HOW?  
2583=A. SOME PUBLISHERS OFFER FREE FREIGHT. SOME PUBLISHERS, AND  
2584=THIS IS MOSTLY SMALL PUBLISHERS, HAVE A CAP ON FREIGHT, LIKE  
2585=THEY WON'T CHARGE YOU MORE THAN 3 PERCENT, THEY WON'T CHARGE  
2586=YOU MORE THAN 4 PERCENT, AND THEN MANY PUBLISHERS IS F.O.B.  
2587=THEIR SHIPPING DESTINATION, I MEAN, THEIR SHIPPING POINT, WHICH  
2588=WOULD BE, THE BOOKSELLER PAYS THE FREIGHT.  
2589=Q. SO PUBLISHER'S F.O.B. AND BOOKSTORE PAYS THE FREIGHT?  
2590=A. YES. AN ILLUSTRATION OF THAT IS HOUGHTON MIFFLIN, THEY'RE  
2591=NOT FREE FREIGHT.  
2592=Q. HOW DID YOU LEARN WHAT A PUBLISHER'S FREIGHT TERMS ARE?  
2593=A. FROM THE RED BOOK.  
2594=Q. SO PUBLISHERS' FREIGHT TERMS ARE INCLUDED IN THE RED BOOK?  
2595=A. YES.  
2596=Q. MR. JACKSON, HAVE YOU EVER RECEIVED FROM ANY OF THE VENDORS  
2597=ON THIS LIST, EXHIBIT 2591, FREIGHT TERMS THAT WERE DIFFERENT  
2598=FROM THAT PUBLISHERS' PUBLISHED GENERALLY AVAILABLE FREIGHT  
2599=TERMS?  
  
2600=A. EXCEPT FOR STOCK OFFERS, I NEVER HAVE.  
2601=Q. IN OTHER WORDS, IF A STOCK OFFER MIGHT HAVE A SPECIAL  
2602=FREIGHT PROVISION?  
2603=A. YES, THAT HAPPENS SOMETIMES. SOMETIMES THAT'S YOUR OPTION,  
2604=YOU CAN GET FREE FREIGHT. SOMETIMES YOU CAN GET FREE FREIGHT

2605=AND A DISCOUNT, BUT OTHER THAN THAT, NO, I'VE NEVER RECEIVED  
2606=IT.  
2607=Q. HAVE YOU EVER RECEIVED SPECIAL FREIGHT TERMS FROM A  
2608=PUBLISHER PURSUANT TO A STOCK OFFER THAT WAS NOT GENERALLY  
2609=AVAILABLE TO ALL OTHER RETAIL BOOKSTORES?  
2610=A. NO.  
2611=Q. LET ME ASK YOU A FEW QUESTIONS ABOUT SOMETHING CALLED A  
2612=CASH DISCOUNT. ARE YOU FAMILIAR WITH CASH DISCOUNTS IN THE  
2613=BOOKSELLING BUSINESS?  
2614=A. YES.  
2615=Q. WHAT IS A CASH DISCOUNT?  
2616=A. A CASH DISCOUNT IS SOMETHING FOR PROMPT PAYMENT, OVER AND  
2617=ABOVE THE INVOICE.  
2618=Q. ARE CASH DISCOUNTS SOMETIMES REFERRED TO AS "EARLY PAYMENT  
2619=DISCOUNTS"?  
2620=A. YES.  
2621=Q. JUST IN GENERAL, HOW DID THEY WORK? CAN YOU DESCRIBE FOR  
2622=THE COURT?  
2623=A. MOST OF TIME THEY WORK, IF YOU PAY WITHIN 10 DAYS OF THE  
2624=STATEMENT, YOU GET 2 PERCENT. MOST OF IT IS 2 PERCENT. IF YOU  
  
2625=PAY BEYOND 10 DAYS, THEN YOU HAVE TILL THE END OF THE MONTH TO  
2626=PAY AT THE INVOICE PRICE.  
2627=Q. DOES EVERY VENDOR PROVIDE A CASH DISCOUNT IN THE BOOK  
2628=BUSINESS?  
2629=A. NO.  
2630=Q. WHICH VENDORS, TO YOUR KNOWLEDGE, PROVIDE A CASH DISCOUNT?  
2631=A. WELL, INGRAM PROVIDES A CASH DISCOUNT FOR EARLY PAYMENT.  
2632=BAKER & TAYLOR DOES, KOEN DOES, SOUTHERN BOOK DOES. A FEW  
2633=SMALL PUBLISHERS HAVE AN EARLY PAYMENT IF YOU PAY WITHIN 10  
2634=DAYS. FOR INSTANCE, RANDOM HOUSE YEARS AGO HAD A 1 PERCENT  
2635=DISCOUNT FOR EARLY PAYMENT, BUT THEY DON'T -- THEY NO LONGER  
2636=HAVE THAT. IN FACT, THOSE ARE THE ONLY ONES I'M FAMILIAR WITH  
2637=AT THIS TIME.  
2638=Q. ALL RIGHT, SO THE PRINCIPAL CASH DISCOUNTS ARE AVAILABLE  
2639=FROM THE WHOLESALEERS THAT YOU MENTIONED, INGRAM, BAKER &  
2640=TAYLOR, KOEN?  
2641=A. YES.  
2642=Q. LET'S JUST TAKE INGRAM. DESCRIBE YOUR PAYMENT CYCLE WITH  
2643=INGRAM. WHEN DO INVOICES COME IN? WHEN DO YOU PAY THEM? HOW  
2644=DOES IT WORK WITH INGRAM?  
2645=A. THE INVOICES COME IN, I CHECK THEM, DURING THE MONTH, AND  
2646=AROUND THE FIRST OF THE MONTH YOU GET A STATEMENT FROM THE  
2647=PREVIOUS MONTH'S BILLING, AND YOU MATCH THAT STATEMENT WITH  
2648=THOSE INVOICES, AND THEN IF YOU PAY THAT INVOICE BY THE 10TH OF  
2649=THE MONTH, YOU GET THE EARLY PAYMENT DISCOUNT. IF YOU HAVE A  
  
2650=TIGHT CASH FLOW AND YOU MISS THAT, YOU PAY THE FULL INVOICE  
2651=PRICES AT THE END OF THE MONTH.  
2652=Q. SO THE INVOICES THAT COME IN IN THE PRECEDING MONTH THAT ARE  
2653=INCLUDED ON THIS STATEMENT THAT YOU RECEIVE AT THE BEGINNING OF  
2654=THE MONTH --  
2655=A. YES.  
2656=Q. -- WHEN IS THAT STATEMENT DUE?  
2657=A. IT'S DUE AT THE END OF THAT MONTH, UNLESS YOU CHOOSE EARLY  
2658=PAYMENT.  
2659=Q. ALL RIGHT. SO THE STATEMENT IS DUE 30 DAYS LATER, AND --  
2660=A. YES.  
2661=Q. -- AND HOW DO YOU GET THE CASH DISCOUNT?  
2662=A. BY PAYING IT 10 DAYS LATER, BY THE 10TH OF THE MONTH.  
2663=Q. AND --  
2664=A. IN ANY CASE, IT'S BY THE 10TH OF THE MONTH. SOMETIMES THE  
2665=STATEMENT MIGHT NOT COME TILL THE 2ND OR 3RD.  
2666=Q. BUT YOU STILL HAVE TO PAY BY THE 10TH DAY TO GET THE CASH  
2667=DISCOUNT?  
2668=A. YES.  
2669=Q. AND WHAT IS THE CASH DISCOUNT AMOUNT?  
2670=A. TWO PERCENT.  
2671=Q. SO WHAT DOES THAT MEAN, THAT 2 PERCENT?  
2672=A. THAT MEANS IF YOU OWE \$10,000, YOU GET \$200 OFF, BY EARLY  
2673=PAYMENT.  
2674=Q. DOES THE HAPPY BOOKSELLER ATTEMPT TO TAKE ADVANTAGE OF CASH

2675=DISCOUNT PROVISIONS?  
2676=A. YES, WE TAKE IT MOST OF THE TIME.  
2677=Q. HOW DO YOU KNOW WHETHER A VENDOR OFFERS A CASH DISCOUNT FOR  
2678=EARLY PAYMENT?  
2679=A. IT'S IN THE RED BOOK, EARLY PAYMENT DISCOUNT.  
2680=Q. IS IT ALSO INDICATED AT ALL ON THE INVOICE OR STATEMENT  
2681=THAT YOU RECEIVE?  
2682=A. YES, IT IS. IN FACT, INGRAM EVEN FIGURES IT OUT FOR YOU.  
2683=THEY SAY, THIS STATEMENT IS, YOU'RE ENTITLED TO \$382 DISCOUNT  
2684=IF PAID BY THE 10TH.  
2685=Q. MR. JACKSON, DO YOU KNOW WHETHER PENGUIN BOOKS OFFERS  
2686=RETAIL BOOKSTORES A CASH DISCOUNT FOR EARLY PAYMENT?  
2687=A. UM, I DO NOT.  
2688=Q. HAVE YOU EVER RECEIVED A CASH DISCOUNT FOR EARLY PAYMENT  
2689=FROM PENGUIN BOOKS?  
2690=A. NOT IN THIS PERIOD. IT MIGHT HAVE BEEN BACK IN THE  
2691=SEVENTIES THEY HAD ONE. I CAN'T REMEMBER, BUT IN THE PERIOD  
2692=WE'RE TALKING ABOUT, NO, AND I THINK -- NO, IF IT WASN'T  
2693=PUBLISHED, I DIDN'T GET IT, AND I DIDN'T THINK I REMEMBER THAT  
2694=THEY EVER HAD ONE. I REMEMBER RANDOM HOUSE HAD ONE.  
2695=Q. SO DURING THE PERIOD FROM 1994 TO THE PRESENT, TO YOUR  
2696=KNOWLEDGE, PENGUIN BOOKS DID NOT OFFER CASH DISCOUNTS FOR  
2697=RETAIL BOOKSTORES.  
2698=A. CORRECT.  
2699=Q. HAVE YOU EVER NEGOTIATED CASH DISCOUNT TERMS WITH ANY  
  
2700=VENDOR?  
2701=A. NO.  
2702=Q. HAVE YOU EVER ASKED TO RECEIVE A CASH DISCOUNT BEYOND THE  
2703=STATED TERMS OF ANY VENDOR?  
2704=A. ONE TIME.  
2705=Q. ONE TIME? LET ME ASK YOU -- WELL, DESCRIBE THAT ONE TIME  
2706=FOR ME, SIR.  
2707=A. ONE TIME. WELL, I ALWAYS PAY BAKER & TAYLOR JUST PROMPTLY,  
2708=AND ONE WEEK I GOT REAL BUSY AND I HAD SOME FAMILY PROBLEMS,  
2709=THIS, THAT AND THE OTHER, AND I WAS A FEW DAYS LATE, FOUR OR  
2710=FIVE, I CAN'T REMEMBER EXACTLY WHICH, AND I INCLUDED IN MY  
2711=CHECK WITH A NOTE THAT, BECAUSE I'VE ALWAYS RETAINED THIS  
2712=DISCOUNT, WOULD YOU MIND THIS PARTICULAR INSTANCE, AND I WILL  
2713=NOT TAKE ADVANTAGE OF THIS, AND THEY DID ALLOW IT.  
2714=Q. NOW, WHEN YOU SAY YOU ALWAYS PAY BAKER & TAYLOR PROMPTLY,  
2715=WHAT ARE BAKER & TAYLOR'S STANDARD PAYMENT TERMS?  
2716=A. TWO PERCENT FOR EARLY PAYMENT AND PAYING 30 DAYS THE  
2717=STATEMENT.  
2718=Q. SO THE STATEMENT IS DUE 30 DAYS AT THE END OF THE MONTH.  
2719=A. YES.  
2720=Q. BUT IF YOU PAY IT ONLY 10 DAYS, YOU GET TO DEDUCT  
2721=2 PERCENT?  
2722=A. YES. AND I PAID THAT EARLIER, BUT I MISSED THE 10 DAYS  
2723=THERE, TWO, THREE DAYS, FOUR, I FORGOT WHICH IT WAS, SEVEN,  
2724=FIVE, BUT I MISSED A FEW DAYS.  
  
2725=Q. WHEN DO YOU NORMALLY PAY YOUR INVOICES TO BAKER & TAYLOR?  
2726=A. ON THE 10TH OF EACH MONTH.  
2727=Q. SO YOU ATTEMPT TO TAKE ADVANTAGE OF THE CASH DISCOUNT EVERY  
2728=TIME WITH BAKER & TAYLOR?  
2729=A. YES, I DO.  
2730=Q. IS THAT YOUR NORMAL PRACTICE?  
2731=A. YES.  
2732=Q. LET ME ASK YOU TO TAKE A LOOK THE AT EXHIBIT 5666.  
2733=A. 5666.  
2734=Q. IT SHOULD BE THE LAST -- OR CLOSE TO THE LAST EXHIBIT IN  
2735=YOUR BINDER.  
2736=A. SIXTY-SIX, YOU SAID?  
2737=Q. I'M SORRY, 5666 IS WHAT I HAVE.  
2738= THE COURT: I DON'T HAVE IT.  
2739= THE WITNESS: I DON'T HAVE A 5666.  
2740= MR. DEBRUIN: WELL, YOUR HONOR, WE MAY HAVE OUR  
2741=FIRST BINDER....  
2742=Q. ALL RIGHT, SIR, WELL, WE'LL JUST -- WE'LL MOVE ON.  
2743=A. I'M SORRY, I DON'T HAVE IT, EITHER.  
2744=Q. ALL RIGHT, WELL, LET ME ASK YOU, MR. JACKSON, IN YOUR 27  
2745=YEARS AS A BOOKSELLER, CAN YOU IDENTIFY ANY OTHER INSTANCE,



2746=OTHER THAN THE INSTANCE YOU'VE JUST DESCRIBED INVOLVING BAKER &  
2747=TAYLOR, WHERE YOU ASKED THEM THREE OR FOUR DAYS LATER TO STILL  
2748=GIVE YOU THE 2 PERCENT CASH DISCOUNT, APART FROM THAT ONE  
2749=INSTANCE, HAVE YOU EVER RECEIVED A CASH DISCOUNT OR ANY OTHER

2750=DISCOUNT TERM THAT WAS DIFFERENT FROM THE VENDORS' PUBLISHED  
2751=GENERALLY AVAILABLE DISCOUNT TERMS?

2752=A. NO.

2753=Q. LET ME ASK YOU SOME ADDITIONAL QUESTIONS ABOUT INGRAM BOOK

2754=COMPANY IN PARTICULAR. YOU TESTIFIED THAT YOU PURCHASE BOOKS  
2755=FROM INGRAM?

2756=A. YES.

2757=Q. HOW OFTEN?

2758=A. ALMOST EVERY WEEKDAY.

2759=Q. HAS THAT BEEN TRUE FOR THE ENTIRE PERIOD 1994 TO THE

2760=PRESENT?

2761=A. YES.

2762=Q. HOW IMPORTANT, SIR, IS INGRAM TO YOUR BUSINESS?

2763=A. IT'S VERY IMPORTANT.

2764=Q. AND WHY?

2765=A. WELL, IT'S IMPORTANT BECAUSE IN TODAY'S MARKET, IT'S VERY

2766=IMPORTANT TO BE VERY FAST ON SPECIAL ORDERS. PEOPLE ORDER A

2767=BOOK, THEY LIKE TO GET IT AS SOON AS POSSIBLE, AND IF YOU DO

2768=BUSINESS WITH THOSE TWO MAJOR WHOLESALERS, YOU GET -- MOST OF

2769=THE TIME YOU CAN GET THAT BOOK FOR THEM. IT'S ALSO IMPORTANT

2770=SOMETIMES TO FILL IN BACK STOCK, FILL YOUR SHELVES IN BACK

2771=STOCK QUICKER THAN YOU CAN GET IT IN FROM THE PUBLISHERS. SO

2772=IT'S A VERY IMPORTANT SOURCE OF BOOKS.

2773=Q. CAN YOU TELL ME APPROXIMATELY HOW MUCH BUSINESS YOU DO WITH

2774=INGRAM IN A YEAR?

2775=A. OKAY, BUT LET ME EXPLAIN, WE HAVE A ROTATING SYSTEM ON OUR

2776=ELECTRONIC ORDERING, AND WE SEND ALL OF OUR ORDERS TO INGRAM

2777=FIRST -- I MEAN, EXCUSE ME -- TO BAKER & TAYLOR FIRST, AND THEN

2778=THEY PROCESS THAT ORDER, AND WHAT THEY CAN'T SHIP, IT ROTATES

2779=OVER TO INGRAM, AND THEN WHAT INGRAM CAN'T SHIP, IT ROTATES

2780=OVER TO KOEN. SO I WILL BUY IT FROM -- BAKER & TAYLOR'S MUCH

2781=LARGER THAN INGRAM, BUT I WOULD SAY THIS YEAR WE PROBABLY BUY A

2782=HUNDRED OR MORE, HUNDRED THOUSAND OR MORE FROM INGRAM.

2783=Q. HUNDRED THOUSAND DOLLARS OF BOOKS FROM INGRAM?

2784=A. YES.

2785=Q. AND WHAT WERE YOUR SALES THIS MOST RECENT YEAR?

2786=A. NINETEEN -- 19 -- 2000 -- YOU MEAN MY TOTAL SALES?

2787=Q. YES.

2788=A. MY TOTALS.

2789=Q. APPROXIMATELY.

2790=A. ABOUT ONE, FOUR.

2791=Q. AND DO YOU HAVE ANY IDEA ABOUT HOW MUCH YOU SPENT IN TOTAL

2792=IN BOOK PURCHASES LAST YEAR?

2793=A. WELL, WE BOUGHT -- WE TRY TO DO IT WITH THE JUST-IN-TIME

2794=PURCHASING. WE TRY TO PURCHASE ABOUT THE SAME AMOUNT THAT

2795=60 PERCENT OF THE TOTAL SALES WOULD BE. SO 60 PERCENT OF A

2796=MILLION WOULD BE 600,000, AND SIX AND FOUR IS SIX, SEVEN --

2797=800,000.

2798=Q. SO YOUR TOTAL PURCHASES --

2799=A. APPROXIMATELY.

2800=Q. I'M SORRY -- LAST YEAR WOULD HAVE BEEN ABOUT 800,000?

2801=A. YES, YES.

2802=Q. AND LAST YEAR IN BUSINESS, YOU WOULD HAVE PURCHASED ABOUT A

2803=HUNDRED THOUSAND DOLLARS?

2804=A. FROM INGRAM?

2805=Q. FROM INGRAM.

2806=A. MAYBE NOT QUITE THAT MUCH LAST YEAR, BUT WE'RE BEGINNING TO

2807=DO MORE WITH THEM, BUT PROBABLY. BE CLOSE TO A HUNDRED

2808=THOUSAND.

2809=Q. SO IT'S A VERY MAJOR PORTION OF YOUR TOTAL PURCHASES --

2810=A. YES.

2811=Q. -- ARE COMING FROM INGRAM.

2812=A. IT WOULD BE ALMOST 20 PERCENT, YES.

2813=Q. ARE YOU FAMILIAR WITH YOUR PURCHASE TERMS WITH INGRAM?

2814=A. YES. VERY.

2815=Q. WHAT ARE THEY, SIR?

2816=A. THEY ARE 30 DAYS AFTER THE STATEMENT, IF YOU GO -- IF  
2817=YOU'RE NOT GOING TO TAKE ADVANTAGE OF EARLY PAYMENT, YOU GET  
2818=2 PERCENT ON THE 10TH OF THE MONTH, IF YOU TAKE IT, AND YOU GET  
2819=FREE FREIGHT.  
2820=Q. HOW ABOUT THE DISCOUNT, SIR? WHAT DISCOUNT DO YOU PAY  
2821=NORMALLY WHEN YOU BUY BOOKS?  
2822=A. ONE BOOK, 40 PERCENT. FIVE BOOKS, 41 PERCENT. AND I  
2823=BELIEVE OVER 10 BOOKS, 42.  
2824=Q. LET'S LOOK AT THE RED BOOK THAT WE MARKED AS EXHIBIT 11.

2825=DO YOU STILL ARE HAVE THAT IN FRONT OF YOU?  
2826=A. YES.  
2827=Q. ARE THOSE TERMS FROM INGRAM SET FORTH IN THE RED BOOK?  
2828=A. YES.  
2829=Q. CAN YOU IDENTIFY THE PAGE?  
2830=A. YES, I HAVE IT.  
2831=Q. AND WHAT PAGE DOES THAT APPEAR?  
2832=A. IT APPEARS ON 384.  
2833= MR. DEBRUIN: JUDGE, THAT MAY BE IN THE SECOND....  
2834=WE HAD TO BREAK THESE BOOKS INTO TWO BINDERS. DO YOU HAVE THAT  
2835=PAGE, JUDGE? YOU MAY NOT. IT MAY BE IN THE SECOND BINDER.  
2836=Q. MR. JACKSON, THAT WAS PAGE 384?  
2837=A. YES. THREE, EIGHT, FOUR.  
2838= THE CLERK: JUDGE, WE'LL JUST HAND THIS BINDER UP TO  
2839=YOU, FOR YOUR CONVENIENCE.  
2840= THE COURT: OKAY.  
2841= MR. DEBRUIN: MY APOLOGIES, YOUR HONOR, FOR THE  
2842=UNWIELDY NATURE OF THESE BINDERS. SEE IF WE CAN IMPROVE THAT.  
2843=Q. MR. JACKSON, YOU HAVE FOUND THE PAGE FOR INGRAM ON PAGE 384  
2844=OF THE CURRENT 2000 RED BOOK. WHAT ARE THE TERMS THAT ARE  
2845=IDENTIFIED THERE FOR INGRAM BOOK COMPANY, DISCOUNT TERMS?  
2846=A. ONE COPY, 40 PERCENT, FIVE COPIES 41, 10 COPIES 42.  
2847=Q. AND ARE THOSE THE DISCOUNTS THAT YOU RECEIVE FROM INGRAM?  
2848=A. YES.  
2849=Q. NOW, WHEN YOU SAY ONE COPY, FROM INGRAM, SIR, IS THAT --

2850=WELL, WHEN YOU SAY FIVE COPIES, FOR INGRAM, DOES THAT JUST MEAN  
2851=FIVE BOOKS, OR WHAT DOES IT MEAN, FIVE COPIES FROM INGRAM?  
2852=A. THAT MEANS FIVE TITLES -- I MEAN, FIVE COPIES OF THE SAME  
2853=TITLE.  
2854=Q. SO TO GET A 41 PERCENT -- FOR THE HAPPY BOOKSELLER TO GET A  
2855=40 PERCENT DISCOUNT FROM INGRAM, YOU HAVE TO BUY FIVE COPIES OF  
2856=THE SAME TITLE?  
2857=A. YES.  
2858=Q. WHAT DO YOU HAVE TO DO TO GET THE 42?  
2859=A. TEN COPIES OF THE SAME TITLE, MIXED WITH THE ORDER, YES.  
2860=Q. AND ARE THESE THE TERMS, SIR, THAT HAVE APPLIED TO ALL OF  
2861=YOUR ORDERS FROM INGRAM FROM 1994 TO THE PRESENT?  
2862=A. YES, AND THAT INCLUDES FREE FREIGHT. I THINK -- WELL, LET  
2863=ME SEE WHAT IT SAYS. ORDERS OF A HUNDRED OR MORE UNITS FROM  
2864=PRIMARY SHIPPING SOURCE IS FREE FREIGHT.  
2865=Q. AND ARE THOSE THE TERMS THAT APPLY TO YOUR ORDERS, SIR?  
2866=A. YES.  
2867=Q. SO IF YOU ORDER A HUNDRED OR MORE UNITS, AND I TAKE IT  
2868=THAT'S DIFFERENT THAN TITLES, IS THAT CORRECT?  
2869=A. YEAH, THAT'S JUST TOTAL, HUNDRED BOOKS, YES.  
2870=Q. IF YOU ORDER MORE THAN A HUNDRED BOOKS, OF WHATEVER TITLES,  
2871=THEN YOU GET FREE FREIGHT FROM INGRAM?  
2872=A. YES, YES.  
2873=Q. HAVE YOU EVER GOTTEN FREE FREIGHT FROM INGRAM ON ORDERS  
2874=LESS THAN A HUNDRED --

2875=A. NO.  
2876=Q. -- COPIES?  
2877=A. SOMETIMES WE HAVE BOUGHT A FEW BOOKS BUT WE PAID FREIGHT.  
2878= THE COURT: WHAT IS THE DIFFERENCE IN THE REFERENCE  
2879=TO PRIMARY AND SECONDARY WAREHOUSES?  
2880= THE WITNESS: "FREE FREIGHT APPLIES TO ORDERS  
2881=SHIPPED FROM PRIMARY WAREHOUSE FOR ORDERS OF A  
2882=HUNDRED OR MORE UNITS, FROM PRIMARY AND SECONDARY  
2883=WAREHOUSES COMBINED FOR ORDERS OF 150 MORE UNITS."  
2884= THE COURT: WHAT'S A PRIMARY WAREHOUSE, AS  
2885=DISTINGUISHED FROM A SECONDARY WAREHOUSE?

2886= THE WITNESS: I'M NOT CLEAR ABOUT THAT. IT SAYS,  
2887="100 OR MORE UNITS, FROM PRIMARY AND SECONDARY WAREHOUSES  
2888=COMBINED FOR ORDERS OF 150...."  
2889= YOU KNOW, WE ALWAYS MAKE SURE WE GOT THE MINIMUM,  
2890=BUT I DON'T UNDERSTAND WHAT THAT MEANS MYSELF. YOUR HONOR, I  
2891=DON'T KNOW.  
2892= THE COURT: THAT'S THE ANSWER TO MY QUESTION.  
2893= THE WITNESS: I CAN FIND OUT FOR YOU, THOUGH. THE  
2894=WAY IT'S WRITTEN IS CONFUSING. PAST AUGUST SHIPMENT, PRIMARY  
2895=WAREHOUSE ORDERS FOR A HUNDRED OR MORE UNITS, OR PRIMARY AND  
2896=SECONDARY.... OKAY, I UNDERSTAND WHAT IT MEANS, NOW.  
2897= THEY SHIP US FROM A PRIMARY WAREHOUSE AND OURS IS IN  
2898=VIRGINIA. IF THEY DON'T HAVE QUITE ALL THOSE BOOKS, IT ROLLS  
2899=OVER TO THE SECONDARY WAREHOUSE, AND YOU GOT TO HAVE A  
  
2900=COMBINATION OF 150 OR MORE UNITS IF IT'S GOING TO COME FROM THE  
2901=TWO WAREHOUSES. DOES THAT MAKE SENSE?  
2902= THE COURT: YOU TELL ME.  
2903= MR. DEBRUIN: MR. JACKSON, YOU DON'T GET TO ASK THE  
2904=JUDGE QUESTIONS.  
2905= THE WITNESS: I'M SORRY, JUDGE.  
2906=BY MR. DEBRUIN:  
2907=Q. MR. JACKSON, DO YOU KNOW HOW MANY WAREHOUSES INGRAM HAS  
2908=ACROSS THE COUNTRY?  
2909=A. I'M NOT REALLY SURE. THEY HAVE SEVERAL.  
2910=Q. ALL RIGHT.  
2911=A. YES.  
2912=Q. NOW, THE BASIC DISCOUNT TERMS THAT YOU DESCRIBE, ONE COPY  
2913=40 PERCENT, FIVE COPIES OF THE SAME TITLE 41 PERCENT, 10 COPIES  
2914=OF THE SAME TITLE 42 PERCENT, HAVE THOSE TERMS BEEN THE SAME  
2915=FROM INGRAM FOR YOUR BOOKSTORE FROM 1994 RIGHT UP TO THE  
2916=PRESENT?  
2917=A. I THINK SO.  
2918=Q. HOW OFTEN DO YOU ORDER FIVE COPIES OF THE SAME TITLE FROM  
2919=INGRAM?  
2920=A. FAIRLY OFTEN.  
2921=Q. HOW OFTEN DO YOU ORDER 10 COPIES OF THE SAME TITLE FROM  
2922=INGRAM?  
2923=A. NOT THAT OFTEN, BUT SOMETIMES.  
2924=Q. WHY IS THAT?  
  
2925=A. WELL, WE WOULD BE ORDERING FIVE COPIES IF WE WERE ORDERING,  
2926=SAY, FROM -- WE WOULD GET A LOT OF ORDERS FROM SCHOOL  
2927=DISTRICTS, AND MANY TIMES IT WILL BE 50 COPIES OF THE SAME  
2928=BOOK. MANY TIMES IT WILL BE FIVE, SOMETIMES TEN. BUT WITH  
2929=THOSE KIND OF ORDERS, WE COULD FREQUENTLY COULD MEET THE  
2930=42 PERCENT.  
2931=Q. AND THOSE ARE ORDERS FROM THE SCHOOL DISTRICT. WHAT KIND  
2932=OF ORDERS ARE THOSE? CAN YOU DESCRIBE THOSE?  
2933=A. THEY ARE ORDERS -- A LOT OF CHILDREN'S BOOKS WILL BE MIXED  
2934=IN THERE, A LOT OF MID-AGE READERS, MIDDLE READERS, AND A LOT  
2935=OF THE CLASSICS WILL BE IN THERE.  
2936=Q. AND DO YOU PLACE THOSE ORDERS THROUGH INGRAM?  
2937=A. YES.  
2938=Q. AND WHY DO YOU PLACE THOSE ORDERS THROUGH INGRAM?  
2939=A. INGRAM HAS THE BEST STOCK ON THOSE KIND OF THINGS.  
2940=Q. OKAY. NOW, DURING THE PERIOD FROM 1994 TO THE PRESENT,  
2941=HAVE YOU EVER RECEIVED ANY SPECIAL INCENTIVE PAYMENTS OR  
2942=REBATES FROM INGRAM?  
2943=A. NO.  
2944=Q. CAN YOU DESCRIBE, SIR, THE TERMS THAT APPLY WHEN YOU RETURN  
2945=BOOKS TO INGRAM?  
2946=A. YOU GET A PENALTY, AND THAT PROBABLY SHOULD BE IN THERE,  
2947=BUT MOST OF THE TIME -- MOST OF OUR RETURNS FROM INGRAM, THEY  
2948=CREDIT THEM 50 PERCENT, THE MAJORITY OF THEM.  
2949=Q. SO THEY CREDIT IT 50 PERCENT. SO THAT MEANS IF YOU BOUGHT  
  
2950=A BOOK AT 40 --  
2951=A. TWO.  
2952=Q. -- OR 41 OR 42 PERCENT --  
2953=A. IT LOST 8 PERCENT.  
2954=Q. -- THEY'RE NOT GIVING YOU AS MUCH BACK WHEN YOU RETURN THE  
2955=BOOK AS WHEN YOU PAID FOR IT.

2956=A. CORRECT.  
2957=Q. NOW, HAS THAT -- AND DO YOU KNOW, ARE THERE LIMITS ON HOW  
2958=MANY BOOKS YOU CAN RETURN TO INGRAM OR THE TOTAL AMOUNT OF  
2959=BOOKS?  
2960=A. YES, I THINK IT'S LIMITED -- AND IT'S PROBABLY RIGHT  
2961=HERE -- I THINK IT'S LIMITED TO 10 PERCENT OF YOUR PURCHASES.  
2962=WE ARE VERY CAREFUL ON -- TO NOT BUY BOOKS FROM INGRAM THAT WE  
2963=MIGHT PROBABLY HAVE TO RETURN.  
2964=Q. HAS INGRAM EVER WAIVED THAT RETURNS PENALTY FOR THE HAPPY  
2965=BOOKSELLER --  
2966=A. NO.  
2967=Q. -- AT ANY TIME DURING THE PERIOD 1994 TO THE PRESENT?  
2968=A. NO.  
2969=Q. DOES INGRAM PROVIDE A CASH DISCOUNT, SIR? I BELIEVE YOU  
2970=TESTIFIED EARLIER IT DOES.  
2971=A. YES, THEY DO, AND IT'S IN THE BOOK.  
2972=Q. IT'S IN THE BOOK?  
2973=A. YES.  
2974=Q. AND WHAT'S THE CASH DISCOUNT IN THE BOOK?  
  
2975=A. TWO PERCENT 10 DAYS, NET 30 E.O.M., EVERY OTHER MONTH.  
2976=Q. HAS THE HAPPY BOOKSELLER EVER RECEIVED A CASH DISCOUNT OF  
2977=2 PERCENT FROM INGRAM FOR PAYING 25 DAYS AFTER THE ENTER OF THE  
2978=MONTH?  
2979=A. NO.  
2980=Q. AND IN FACT, EVEN WITHOUT THE CASH DISCOUNT, YOU HAVE TO  
2981=PAY YOUR BILL TO INGRAM 30 DAYS THE END OF THE MONTH, CORRECT?  
2982=A. YES, BUT I MISSPOKE JUST NOW. E.O.M., END OF THE MONTH. I  
2983=THINK I SAID, "EVERY OTHER MONTH." IT'S END OF MONTH.  
2984=Q. SO YOUR BILLS ARE DUE TO INGRAM 30 DAYS, END OF MONTH?  
2985=A. YES. WE USED TO GET FURNITURE TERMS LIKE THAT, BUT WE  
2986=DON'T GET THEM IN THE BOOK BUSINESS.  
2987=Q. DO YOU PAY YOUR INVOICES FROM INGRAM BY THE END OF THE  
2988=MONTH?  
2989=A. YES, WE PAY THEM BY -- WE PAY, IN MOST EVERY CASE, WE PAY  
2990=BY THE 10TH.  
2991=Q. MR. JACKSON, ARE YOU FAMILIAR WITH INGRAM'S VENDOR OF  
2992=RECORD PROGRAM?  
2993=A. YES.  
2994=Q. CAN YOU DESCRIBE FOR THE COURT WHAT THE VENDOR OF RECORD  
2995=PROGRAM IS?  
2996=A. THE VENDOR OF RECORD, SIMPLY PUT, YOU GET A LOT OF SPECIAL  
2997=ORDERS IN THIS BUSINESS FROM SMALL PUBLISHERS, AND IT WOULD BE  
2998=A MATTER OF ORDERING ONE BOOK, AND IF YOU ORDER ONE BOOK,  
2999=YOU'RE GOING TO PAY AN EXCESSIVE AMOUNT OF FREIGHT  
  
3000=PERCENTAGE-WISE, AND INGRAM DEVELOPED THIS VENDOR OF RECORD,  
3001=WHERE THE BOOKSELLER THAT SIGNS UP FOR IT, HE GIVES HIM A  
3002=LITTLE OF THE BOOKS FROM VERY SMALL PUBLISHERS THAT HE MIGHT BE  
3003=ORDERING, AND THEN STOCK THOSE BOOKS, AND THEN IT COMES IN WITH  
3004=YOUR REGULAR INGRAM SHIPMENTS, AND I'M NOT AS FAMILIAR WITH  
3005=WHAT THEY DISCOUNT ON IT. I'M NOT A MEMBER OF THAT, BUT  
3006=BASICALLY, THAT'S WHAT IT IS, IT'S THE WAY TO SAVE FREIGHT AND  
3007=GET FAST SHIPMENTS ON SMALL PUBLISHERS' BOOKS.  
3008=Q. DOES THE VENDOR OF RECORD PROGRAM APPLY TO LARGE  
3009=PUBLISHERS?  
3010=A. I DON'T THINK SO.  
3011=Q. IN ORDER TO QUALIFY FOR VENDOR OF RECORD, DO YOU HAVE TO  
3012=AGREE TO PURCHASE ALL OF YOUR BOOKS FROM THAT PUBLISHER THROUGH  
3013=INGRAM?  
3014=A. I DON'T KNOW. I TELL YOU, WE -- CAN I TELL YOU WHY WE  
3015=DON'T USE IT?  
3016=Q. SURE.  
3017=A. WE DON'T USE IT BECAUSE WE'VE GOT LOYALTY WITH A LOT OF  
3018=REPS, AND COMMISSION REPS, AND THEY HAVE SOMETIMES 30 OR 40  
3019=PUBLISHERS AND THEY WORK HARD TO DESCRIBE THOSE BOOKS TO US, TO  
3020=PRESENT THOSE BOOKS TO US, THEY TRAVEL AND SEE US THREE TIMES A  
3021=YEAR, AND THEY GET A LARGER DISCOUNT FROM THE PUBLISHER BY  
3022=SELLING US THOSE BOOKS THAN THEY WOULD GET IF WE BUY THEM FROM  
3023=INGRAM, ALTHOUGH THEY'VE DONE THE WORK TO PRESENT THAT BOOK AND  
3024=SHOW US THAT BOOK, AND WE FEEL LIKE WE OWE THAT LOYALTY, YOU  
  
3025=KNOW, TO THOSE REPS.

3026=Q. NOW, WHEN THOSE SALES REPS COME TO YOUR STORE, DO THEY  
3027=PROVIDE INFORMATION ABOUT THE BOOKS THAT ARE AVAILABLE FROM  
3028=THOSE SMALL PUBLISHERS?  
3029=A. OH, YES, THEY STAY ALL DAY.  
3030=Q. IF YOU PARTICIPATE IN INGRAM'S VENDOR OF RECORD PROGRAM,  
3031=WOULD YOU STILL HAVE THAT SAME INFORMATION FROM THOSE SALES  
3032=REPS?  
3033=A. WELL, IF THEY GOING TO GET ONE AND-A-HALF PERCENT  
3034=COMMISSION VERSUS A 10 PERCENT COMMISSION, I DOUBT THEY WOULD  
3035=BE THAT ENTHUSIASTIC ABOUT BRINGING THEM TO US.  
3036=Q. MR. JACKSON, ARE YOU FAMILIAR WITH AN INGRAM PROGRAM --  
3037=HAVE YOU EVER HEARD OF A PROGRAM FROM INGRAM CALLED THE  
3038=SCHEDULED DELIVERY PROGRAM?  
3039=A. NEVER HEARD OF IT.  
3040=Q. HAS INGRAM EVER PROVIDED ANY INFORMATION TO YOU ABOUT SUCH  
3041=A PROGRAM, THE SCHEDULED DELIVERY PROGRAM?  
3042=A. NO.  
3043=Q. HOW ABOUT A PROGRAM FROM INGRAM CALLED THE SUMMARY BILLING  
3044=PROGRAM? HAS INGRAM EVER GIVEN YOU ANY INFORMATION ABOUT  
3045=SOMETHING CALLED A SUMMARY BILLING PROGRAM?  
3046=A. NO.  
3047=Q. ARE YOU FAMILIAR WITH A PROGRAM FROM INGRAM CALLED A BACK  
3048=LIST PLUS PROGRAM? HAS ANYONE EVER TOLD YOU ABOUT A BACK LIST  
3049=PLUS PROGRAM?  
  
3050=A. NO.  
3051=Q. HOW ABOUT A PROGRAM FROM INGRAM CALLED A VISITING AUTHOR  
3052=PROGRAM? HAS ANYONE EVER TOLD YOU ABOUT A VISITING AUTHOR  
3053=PROGRAM?  
3054=A. NO.  
3055=Q. LET ME ASK YOU A FEW QUESTIONS ABOUT SHORTAGES. DO YOU  
3056=EVER RECEIVE SHIPMENTS THAT ARE MISSING BOOKS, WHERE THEY -- OR  
3057=THEY CONTAIN DAMAGED BOOKS?  
3058=A. YES, WE DO.  
3059=Q. AND WHAT HAPPENS WHEN YOU RECEIVE A SHIPMENT THAT'S MISSING  
3060=BOOKS OR HAS DAMAGED BOOKS?  
3061=A. WE HAVE SOMEONE IN THE RECEIVING AREA, AND THEY OPEN EVERY  
3062=BOX, AND THEY TAKE OUT THE PACKING LIST OR THE INVOICE,  
3063=WHICHEVER THEY PACK IN THE BOX, AND THEY CHECK THE AMOUNT THAT  
3064=THE PUBLISHER SAID WAS SHIPPED WAS WHAT THE PACKING LIST SHOWS,  
3065=AND IF ONE IS DAMAGED, THEY WILL MARK, DAMAGED BOOK, PAGES  
3066=TORN, JACKET TORN, OR WHATEVER THE PROBLEM IS.  
3067=Q. CAN YOU RECEIVE ANY KIND OF A CREDIT FOR THOSE DAMAGED  
3068=BOOKS OR THE MISSING BOOKS?  
3069=A. YES. IT'S A HASSLE, BECAUSE YOU HAVE TO EITHER WRITE THEM  
3070=OR CALL THEM AND DESCRIBE WHAT THE PROBLEM IS, AND EITHER ASK  
3071=FOR REPLACEMENT FOR THAT BOOK OR THAT WE CAN DEDUCT IT FROM THE  
3072=INVOICE.  
3073=Q. SO WHAT EXACTLY DO YOU HAVE TO DO IN ORDER TO OBTAIN A  
3074=CREDIT FOR A MISSING OR A DAMAGED BOOK?  
  
3075=A. IT VARIES WITH DIFFERENT PUBLISHERS. MOST OF THE TIME YOU  
3076=HAVE TO WRITE THEM AND DESCRIBE IT AND GIVE THEM THE INVOICE  
3077=NUMBER AND GIVE THEM THE PACKING LIST NUMBER, AND ASK FOR A  
3078=REPLACEMENT. A FEW PUBLISHERS HAVE A CUSTOMER SERVICE PERSON.  
3079=IF THE CLAIM IS LESS THAN \$25, YOU CAN CALL THEM UP AND EXPLAIN  
3080=THE DAMAGE AND EXPLAIN WHAT IT IS, AND THEY WILL SAY YOU CAN  
3081=DEDUCT \$11.80 AND PUT ON THERE, FOR MARY JONES, AND THE DATE  
3082=AND THEY WILL ALLOW YOU TO -- THE ONLY THINGS -- I ONLY THINK  
3083=TWO OR THREE PUBLISHERS HAVE THAT SYSTEM.  
3084=Q. YOU DESCRIBE THIS IN YOUR WORDS AS A "HASSLE." DOES THIS  
3085=INVOLVE A COST TO YOUR STORE OF GOING THROUGH THESE STEPS TO  
3086=SUBMIT A CLAIM FOR A CREDIT FOR A MISSING BOOK, OR A DAMAGED  
3087=BOOK?  
3088=A. WELL, IT'S A COST IN TIME, MOSTLY, AND OF COURSE, TIME TO  
3089=CONTACT THEM, TIME TO WRITE THE LETTER, TIME TO RESEARCH IT.  
3090=YES, IT'S COST INVOLVED.  
3091=Q. LOOKING AT THE PUBLISHERS ON THAT LIST AGAIN, EXHIBIT 2591,  
3092=I SHOULD HAVE YOU JUST PULL THAT OUT.  
3093=A. OKAY.  
3094=Q. IS THE PROCESS THAT YOU'VE JUST DESCRIBED FOR THE COURT THE  
3095=PROCESS THAT YOU NEED TO GO THROUGH WITH THESE PUBLISHERS AND  
3096=WHOLESALEERS TO TAKE A --

3097=A. YES.  
3098=Q. -- CREDIT FOR A MISSING OR DAMAGED BOOK?  
3099=A. YES.

3100=Q. DO YOU KNOW, IS THERE ANY PUBLISHER ON THIS LIST THAT  
3101=ALLOWS YOU TO TAKE AN AUTOMATIC DEDUCTION FROM EVERY INVOICE  
3102=FOR MISSING OR DAMAGED BOOKS, OR SUPPOSEDLY MISSING OR DAMAGED  
3103=BOOKS?  
3104=A. NO.  
3105=Q. NOT THAT YOU'RE AWARE OF?  
3106=A. THERE'S -- ST. MARTIN'S AND THAT GROUP HAVE A SMALL  
3107=PERCENTAGE THAT YOU CAN CHOOSE TO AUTOMATICALLY DEDUCT, AND  
3108=ACTUALLY, I DIDN'T KNOW ABOUT THAT UNTIL I WAS READING THE RED  
3109=BOOK THE OTHER DAY, THAT THAT WAS EVEN AVAILABLE. THEY NEVER  
3110=HAD TOLD ME ABOUT THAT, BUT IT IS IN THIS BOOK.  
3111=Q. IT'S IN THE BOOK?  
3112=A. I THINK IT'S .35.  
3113=Q. OKAY. APART FROM ST. MARTIN'S PRESS, APART FROM THAT ONE  
3114=PUBLISHER, DOES ANY OTHER PUBLISHER ON THIS LIST, FROM THE  
3115=PERIOD 1994 TO THE PRESENT, ALLOW YOU JUST TO DEDUCT AN  
3116=AUTOMATIC AMOUNT FROM EVERY INVOICE BECAUSE OF A POSSIBLE  
3117=SHORTAGE OR MISSING OR DAMAGED BOOK IN THAT SHIPMENT?  
3118=A. THE ANSWER IS, NO, EXCEPT THE VHPS GROUP NOW HAS  
3119=ST. MARTIN'S IN IT. I THINK THEY'VE DONE THAT FOR FARRAR,  
3120=STRAUSS, HENRY HOPE AND FREEMAN AS WELL AS ST. MARTIN'S, BUT  
3121=OTHER THAN THAT, NO.  
3122=Q. AND VHPS, DO YOU KNOW WHAT THAT STANDS FOR?  
3123=A. WHAT THOSE INITIALS ARE? YOU KNOW, I NEVER HAVE ASKED. I  
3124=DON'T KNOW WHAT THAT STANDS FOR. IT'S A GROUP, AND WE GET  
  
3125=INVOICES FROM THEM.  
3126=Q. SO IT'S A GROUP OF PUBLISHERS.  
3127=A. YES.  
3128=Q. ALL RIGHT. LET ME ASK YOU A FEW QUESTIONS ABOUT CO-OP.  
3129=I'M NEARING THE END, MR. JACKSON. I APPRECIATE YOUR PATIENCE.  
3130= DO YOU ADVERTISE BOOKS IN NEWSPAPERS OR OTHER FORMS  
3131=OF ADVERTISEMENTS?  
3132=A. YES.  
3133=Q. IS IT POSSIBLE TO GET MONEY FROM PUBLISHERS TO PAY FOR THE  
3134=COST OF THOSE ADVERTISEMENTS?  
3135=A. YES.  
3136=Q. AND --  
3137=A. OR -- EITHER COST OR A PARTIAL COST.  
3138=Q. COST OR PARTIAL COST. AND WHAT DO YOU CALL THAT IN THE  
3139=INDUSTRY?  
3140=A. CO-OP ALLOWANCES.  
3141=Q. COOPERATIVE, OR CO-OP ALLOWANCES?  
3142=A. YES.  
3143=Q. LOOKING AT THE LIST OF PUBLISHERS ON THE LIST, EXCLUDING  
3144=THE FIVE YOU DON'T BUY FROM REGULARLY, DO ALL THOSE PUBLISHERS  
3145=ON THE LIST, 2591, OFFER COOPERATIVE ADVERTISING ALLOWANCES?  
3146=A. AS FAR AS I KNOW, ALL OF THEM DO.  
3147=Q. NOW, IN CONNECTION WITH A MEDIA ADVERTISEMENT, LIKE A  
3148=NEWSPAPER AD, HOW MUCH MONEY GENERALLY CAN THE HAPPY BOOKSELLER  
3149=RECEIVE FROM A PUBLISHER IN THE FORM OF A COOPERATIVE  
  
3150=ADVERTISING ALLOWANCE?  
3151=A. WELL, IT DEPENDS ON THE POOL THAT YOU HAVE EARNED. THEY  
3152=PUT ON YOUR PURCHASES AND THEY PUT A POOL, IT'S CALLED YOUR  
3153=CO-OP POOL, AND YOU MIGHT RUN A \$500 AD, AND YOU CALL AND THEY  
3154=SAY, WELL, YOU GOT \$1,500 LEFT IN YOUR POOL. THEN YOU COULD  
3155=USE ALL OF THAT AGAINST A \$500 AD, BUT SOME OF THESE  
3156=PUBLISHERS' POOL IS VERY SMALL, AND SOMETIMES YOU RUN A \$200 AD  
3157=AND YOU GOT \$150, SO THEY PAY THAT MUCH OF THE AD.  
3158=Q. LET ME FIRST FOCUS ON THE AD ITSELF. YOU SAY YOU MAY RUN A  
3159=\$500 AD.  
3160=A. YES.  
3161=Q. WHAT'S THE MOST MONEY YOU CAN GET, TO YOUR KNOWLEDGE, FROM  
3162=ANY OF THESE PUBLISHERS ON THAT LIST FOR THAT \$500 AD?  
3163=A. YOU COULD GET IT ALL, IF YOUR POOL IS THAT LARGE.  
3164=Q. CAN YOU EVER GET MORE THAN THE \$500?  
3165=A. NO.  
3166=Q. TO YOUR KNOWLEDGE, DO ANY OF THE PUBLISHERS ON THIS LIST

3167=ALLOW THE HAPPY BOOKSELLER TO RECEIVE MORE FOR A MEDIA AD, A  
3168=NEWSPAPER AD, MORE THAN THE COST OF THE AD ITSELF?  
3169=A. NO.  
3170=Q. HAS THAT EVER -- HAVE YOU EVER RECEIVED FROM ANY OF THESE  
3171=PUBLISHERS, AT ANY POINT IN THE PERIOD FROM 1994 TO THE  
3172=PRESENT, MORE MONEY IN A COOPERATIVE ADVERTISING ALLOWANCE THAN  
3173=YOU ACTUALLY PAID FOR A MEDIA AD?  
3174=A. NO.  
  
3175=Q. ALL RIGHT. NOW, YOU ALSO IDENTIFIED FOR THE COURT THIS  
3176=NOTION OF A POOL. WHAT'S THE POOL?  
3177=A. DIFFERENT PUBLISHERS HAVE DIFFERENT WAYS OF DOING IT, BUT  
3178=THEY ACCUMULATE A CERTAIN PERCENTAGE OF YOUR PURCHASES INTO AN  
3179=ADVERTISING POOL FOR CO-OP.  
3180=Q. WHAT DOES THE POOL THEN REPRESENT? IS THAT THE MAXIMUM YOU  
3181=CAN GET FOR A GIVEN PERIOD?  
3182=A. YES.  
3183=Q. AND WHAT IS THAT PERIOD, TYPICALLY?  
3184=A. I THINK IT'S DIFFERENT FOR ALL PUBLISHERS. THAT'S ONE  
3185=THING I DON'T DO AT THE STORE NOW. WE'VE GOT A WOMAN THAT DOES  
3186=THAT, AND THOSE THINGS CHANGE, BUT THAT'S THE BASIC -- THAT'S  
3187=THE BASIC PRINCIPLE OF IT.  
3188=Q. DO PUBLISHERS HAVE DIFFERENT AMOUNTS OF WHAT THEIR  
3189=PERCENTAGE IS THAT DEFINES THEIR POOL?  
3190=A. YES, AND SOME OF US ARE SMALLER THAN OTHERS, SOME OF THEM  
3191=ARE SMALLER THAN OTHERS, AND SOME OF THEM EVEN STARTED GIVING  
3192=YOU CO-OP ON DISPLAYS, PARTICULAR DISPLAYS WHICH WOULDN'T  
3193=COME -- I THINK THAT DOES NOT COME OUT OF YOUR POOL.  
3194=Q. NOW THE QUESTION I WANT TO ASK YOU IS, HAS THE HAPPY  
3195=BOOKSELLER EVER RECEIVED MORE CO-OP FROM A PUBLISHER AT A GIVEN  
3196=TIME THAN WAS AVAILABLE IN YOUR CO-OP POOL?  
3197=A. NO.  
3198=Q. DO YOU KNOW, LOOKING AGAIN AT THE PUBLISHERS ON THIS LIST,  
3199=2591, HAVE YOU EVER RECEIVED FROM ANY OF THESE PUBLISHERS MORE  
  
3200=CO-OP THAN WAS AVAILABLE IN YOUR CO-OP POOL?  
3201=A. NO.  
3202=Q. IS THAT TRUE IN EVERY YEAR FROM 1994 TO THE PRESENT?  
3203=A. YES.  
3204=Q. MR. JACKSON, DOES THE HAPPY BOOKSELLER HAVE AN RDC, OR A  
3205=RETAIL DISTRIBUTION CENTER?  
3206=A. WE DO NOT.  
3207=Q. DO YOU KNOW WHAT A RETAIL DISTRIBUTION CENTER IS?  
3208=A. YES.  
3209=Q. DEFINE IT FOR THE RECORD, PLEASE, AS YOU UNDERSTAND IT TO  
3210=BE.  
3211=A. I UNDERSTAND IT TO BE A CENTRAL WAREHOUSE, AND IT HAS TO  
3212=HAVE A LOADING DOCK. IT HAS CERTAIN RULES ABOUT HOW HIGH THE  
3213=LOADING DOCK'S GOT TO BE, SO AN 18-WHEELER CAN BACK UP THERE  
3214=WITHOUT HAVING TO USE TRUCKS AND GO AROUND, AND BASICALLY  
3215=THAT'S WHAT IT IS, AND THEN WHOEVER HAD THAT WAREHOUSE WOULD  
3216=DISTRIBUTE TO HIS OR HER STORE, OR HIS OR HER GROUP OF STORES,  
3217=FROM THAT WAREHOUSE.  
3218=Q. HAS THE HAPPY BOOKSELLER EVER RECEIVED AN RDC DISCOUNT FROM  
3219=ANY PUBLISHER?  
3220=A. NO.  
3221=Q. TO YOUR KNOWLEDGE, HAS THE HAPPY BOOKSELLER EVER QUALIFIED  
3222=TO RECEIVE AN RDC DISCOUNT FROM ANY PUBLISHER?  
3223=A. WE HAVE NOT EVER QUALIFIED.  
3224=Q. SO TO YOUR KNOWLEDGE, IS THERE ANY WAY YOU COULD RECEIVE AN  
  
3225=RDC DISCOUNT?  
3226=A. NOT LEGALLY.  
3227=Q. ALL RIGHT. LET ME ASK YOU A FEW QUESTIONS ABOUT INCENTIVE  
3228=PAYMENTS GENERALLY. I KNOW WE TALKED ABOUT THIS WITH INGRAM.  
3229= ARE YOU AWARE OF ANY INCENTIVE PROGRAMS OR REBATES  
3230=THAT ARE OFFERED BY ANY OF THE PUBLISHERS OR WHOLESALERS ON  
3231=THIS LIST, EXHIBIT 2591?  
3232=A. WITH THE EXCEPTION THAT I THINK ONE OR TWO OF THEM STILL  
3233=GIVE YOU SOME CREDIT, THE LOWER YOUR RETURNS ARE. I DON'T KNOW  
3234=WHETHER YOU CALL THAT A REBATE OR NOT.  
3235=Q. SO THERE'S SOME INCENTIVES RELATED TO LOWERING YOUR  
3236=RETURNS?

3237=A. YES, RIGHT.  
3238=Q. DO YOU KNOW WHAT PUBLISHERS?  
3239=A. AS FAR AS I KNOW, PENGUIN IS THE ONLY ONE THAT STILL HAS  
3240=IT, AND I'M NOT EVEN SURE THAT THEY HAVEN'T DROPPED IT, BUT IF  
3241=YOU HAD RETURNS LESS THAN 15 PERCENT, YOU GOT A REBATE, AND  
3242=THEN I THINK IT BROKE AT 28 PERCENT.  
3243=Q. HAVE YOU EVER RECEIVED FROM ANY OF THE PUBLISHERS OR  
3244=WHOLESALERS ON THIS LIST ANY SPECIAL INCENTIVE PAYMENTS OR  
3245=REBATES BASED ON THE AMOUNT OF THE PURCHASES?  
3246=A. NO.  
3247=Q. OR JUST EVEN NOT BASED ON THE AMOUNT OF YOUR PURCHASES,  
3248=JUST AN ADDITIONAL INCENTIVE CHECK OR REBATE CHECK, OR...?  
3249=A. NO.

3250=Q. IS THAT TRUE FOR EVERY YEAR FROM 1994 TO THE PRESENT,  
3251=INVOLVING ALL OF THESE PUBLISHERS AND WHOLESALERS ON THIS LIST?  
3252=A. YES.  
3253=Q. MR. JACKSON, FINAL AREA. DO YOU EVER HAVE DISPUTES WITH  
3254=PUBLISHERS OR WHOLESALERS REGARDING THE AMOUNTS THAT YOU OWE  
3255=THEM?  
3256=A. WE HAVE SOME MINOR DISPUTES. SOMETIMES I HAVE A DEDUCTION  
3257=IF THE RETURN DIFFERS FROM THE WAY THEY COMPUTED IT, AND  
3258=SOMETIMES THEY WILL DISALLOW ONE BOOK OUT OF FIVE BOXES, AND  
3259=DEDUCT THAT -- I MEAN, PUT THAT BACK ON THE INVOICE, AND NOT  
3260=ALLOW THAT DEDUCTION ON OUR RETURNS.  
3261=Q. ARE THERE ANY OTHER ISSUES THAT HAVE COME UP BETWEEN YOU  
3262=AND PUBLISHERS OR WHOLESALERS INVOLVING BILLINGS?  
3263=A. ABOUT BILLINGS? I THINK, AS WELL AS I REMEMBER, THE ONLY  
3264=DIFFERENCES WE WOULD HAVE, ABOUT THE DIFFERENCE IN THE CREDIT  
3265=AND RETURNS.  
3266=Q. AND HOW ARE THOSE DISPUTES THAT YOU'VE DESCRIBED, IN  
3267=GENERAL, HOW DO THEY GET RESOLVED?  
3268=A. USUALLY ON THE TELEPHONE, WITH A CREDIT MANAGER.  
3269=Q. AND WHEN THERE IS A DISPUTE ABOUT A PARTICULAR RETURN, LIKE  
3270=YOU DESCRIBED, HOW DO YOU GO ABOUT DETERMINING WHETHER YOU OWE  
3271=THAT AMOUNT OR NOT OWE THAT AMOUNT?  
3272=A. WE CAN USUALLY TELL THAT -- THEY TELL US WHICH BOOKS THEY  
3273=DIDN'T ALLOW, AND IN SOME CASES THEY RETURN THE BOOK TO YOU AND  
3274=YOU GOT PHYSICAL EVIDENCE OF WHICH ONE THEY DIDN'T ALLOW.

3275=SOMETIMES THEY WRITE YOU AND SAY, WE HAVE DISALLOWED THESE FIVE  
3276=BOOKS, IF YOU WANT THEM BACK, YOU HAVE TO PAY THE FREIGHT. SO  
3277=THERE'S VARIOUS WAYS YOU RESOLVE IT.  
3278=Q. YOU SAY SOMETIMES YOU HAVE TO SUBMIT PHYSICAL EVIDENCE.  
3279=WHAT DO YOU MEAN BY THAT?  
3280=A. WELL, DID I SAY THAT? I MEANT TO SAY THAT PHYSICALLY THEY  
3281=WILL SEND THE BOOKS THAT ARE NOT ALLOWED. IN MOST CASES  
3282=THEY'LL RETURN IT TO YOU: THIS WE DID NOT ALLOW, AND THAT  
3283=WOULD GIVE US PHYSICAL EVIDENCE WHY THEY DIDN'T ACCEPT OUR FULL  
3284=RETURN AMOUNT.  
3285=Q. SIR, WHEN YOU HAVE DISPUTES WITH PUBLISHERS, IS IT FAIR TO  
3286=SAY YOU RESOLVE THEM AND WORK THEM THROUGH SORT OF  
3287=ITEM-BY-ITEM?  
3288=A. YES.  
3289=Q. IS THAT TRUE FOR ALL THE PUBLISHERS ON THAT LIST, 2591?  
3290=A. YES.  
3291=Q. IS THAT THE WAY YOU'VE DONE IT THROUGHOUT THE PERIOD 1994  
3292=TO THE PRESENT?  
3293=A. THAT'S THE WAY WE'VE ALWAYS DONE IT, YES.  
3294= MR. DEBRUIN: YOUR HONOR, I HAVE NO FURTHER  
3295=QUESTIONS AT THIS TIME. BEFORE I SIT DOWN, THOUGH, LET ME JUST  
3296=SAY THAT I THINK, IN TERMS OF THE INTRODUCTION OF EXHIBITS,  
3297=THAT IS GOING TO BE HANDLED THROUGH A STIPULATION, SO I'M NOT  
3298=GOING TO MOVE PARTICULAR EXHIBITS INTO EVIDENCE NOW.  
3299= THE COURT: YES.

3300= MR. DEBRUIN: THAT WILL BE DONE THROUGH STIPULATION.  
3301= THE COURT: YES, YES.  
3302= MR. DEBRUIN: THANK YOU.  
3303= THANK YOU, MR. JACKSON.  
3304= THE COURT: OKAY. CROSS-EXAMINATION,  
3305=MR. PETROCELLI.  
3306= MR. PETROCELLI: YOUR HONOR, TO KIND OF MAKE THINGS



3307=A LITTLE EASIER, WE HAVE A BINDER OF THE EXHIBITS THAT WE MAY  
3308=USE DURING CROSS. SO I WILL JUST BE REFERRING TO THAT BINDER.  
3309= THE COURT: YES.  
3310= MR. PETROCELLI: OKAY, AND HERE IS A COPY OF THE TWO  
3311=VOLUMES OF THE WITNESS' DEPOSITION, IF I NEED TO REFER TO THEM.  
3312= THE COURT: THANK YOU.  
3313= MR. PETROCELLI: AND I HAVE PROVIDED THE SAME TO THE  
3314=OTHER SIDE.  
3315= THE COURT: YOU REMEMBER SELLING FURNITURE? CAN YOU  
3316=PUT SOMETHING IN HERE?  
3317= THE WITNESS: YES, I CAN SHOW YOU A NICE PIECE.  
3318= THE COURT: ALL RIGHT.  
3319= MR. PETROCELLI: THANK YOU, YOUR HONOR.  
3320= CROSS-EXAMINATION  
3321=Q. HELLO, MR. JACKSON.  
3322=A. HELLO.  
3323=Q. MY NAME IS DANIEL PETROCELLI AND I'M ONE OF THE LAWYERS FOR  
3324=BARNES & NOBLE.  
  
3325= MR. ANDREW GRAVES IS THE OWNER OF THE STORE, THE  
3326=HAPPY BOOKSELLER, CORRECT?  
3327=A. YES.  
3328=Q. AND IT'S TRUE THAT SINCE ABOUT 1997, MR. GRAVES HAS HAD THE  
3329=PRINCIPAL RESPONSIBILITY FOR PURCHASING BOOKS, CORRECT?  
3330=A. YES.  
3331=Q. AND YOU'VE HELPED OUT WHEN HE HASN'T BEEN AVAILABLE SINCE  
3332=1997 IN CONNECTION WITH BUYING BOOKS, CORRECT?  
3333=A. YES, AND I USUALLY SIT WITH HIM WHEN HE BUYS THEM, BECAUSE  
3334=I HAVE A -- OUR DESKS RUN INTO EACH OTHER, ADJACENT.  
3335=Q. NOW, NOT ALL PUBLISHERS' TERMS OF SALE ARE IN THE RED BOOK,  
3336=CORRECT?  
3337=A. AS FAR AS I KNOW, THEY'RE ALL IN THE RED BOOK.  
3338=Q. WELL, FOR EXAMPLE, SIR, I BELIEVE YOU EVEN REFERRED TO, IN  
3339=YOUR ANSWER TO MR. DEBRUIN'S QUESTIONS, THAT YOU MAY GET OTHER  
3340=PRINTED MATTERS OR PRINTED MATERIALS SUCH AS LETTERS --  
3341=A. STOCK OFFERS.  
3342=Q. -- STOCK OFFERS AND THINGS LIKE THAT. YOU REMEMBER THAT?  
3343=A. THEY ALL IN THE RED BOOK EXCEPT STOCK OFFERS AND CONVENTION  
3344=OFFERS.  
3345=Q. OKAY, SO STOCK OFFERS, FOR EXAMPLE, THEY MAY COME IN THE  
3346=FORM OF A FAX OR A FLYER OR SOME KIND OF DOCUMENT, CORRECT?  
3347=A. YES.  
3348=Q. AND YOU MIGHT EVEN GET A LETTER FROM A PUBLISHER TO  
3349=BOOKSELLERS ADVISING PUBLISHERS OF DISCOUNT PROGRAMS, CORRECT?  
  
3350=A. ADVISING BOOKSTORES, NOT PUBLISHERS.  
3351=Q. WHERE PUBLISHERS WOULD INFORM BOOKSELLERS OF OPPORTUNITIES  
3352=TO BUY BOOKS AT OTHER THAN STANDARD DISCOUNT TERMS.  
3353=A. YES.  
3354=Q. OKAY. AND OF COURSE, THERE ARE OTHER PUBLICATIONS BESIDES  
3355=THE RED BOOK, LIKE BOOKSELLING THIS WEEK, THAT CONTAIN  
3356=INFORMATION ABOUT PUBLISHER TERMS?  
3357=A. YES.  
3358=Q. AND PUBLISHERS WEEKLY?  
3359=A. YES.  
3360=Q. AND THE RED BOOK ITSELF, I THINK, IN THE FRONT, HAS A  
3361=STATEMENT THAT IT'S UPDATED FROM TIME TO TIME IN THE COURSE OF  
3362=A YEAR, CORRECT?  
3363=A. YES.  
3364=Q. AND THE RED BOOK COMES OUT ONCE A YEAR, AS YOU INDICATED,  
3365=RIGHT?  
3366=A. YES.  
3367=Q. AND THAT'S ONLY TRUE SINCE 1997. BEFORE 1997, IT CAME OUT  
3368=ONCE EVERY TWO YEARS, CORRECT?  
3369=A. I'M NOT SURE ABOUT THAT, BUT THAT MAY BE CORRECT.  
3370=Q. AND IN ADDITION TO SOME OF THESE OTHER MATERIALS THAT  
3371=CONTAIN PUBLISHER TERMS, YOU CAN ALWAYS CALL THE PUBLISHER  
3372=DIRECT AND ASK THEM TO SEND YOU THEIR PRICE SCHEDULES OR  
3373=INFORMATION ABOUT THEIR PRICE TERMS, CORRECT?  
3374=A. YES.  
  
3375=Q. AND YOU KEEP TRACK OF THESE VARIOUS MATERIALS THAT CONTAIN  
3376=VARIOUS PUBLISHER OFFERINGS, DO YOU NOT?

3377=A. YES, WE SLIP THEM IN THE RED BOOK.  
3378=Q. AND SO IF I WANTED TO KNOW ALL OF THE OPERATIVE TERMS OF A  
3379=PUBLISHER IN A GIVEN YEAR, I'D HAVE TO GO BEYOND THE RED BOOK  
3380=AND LOOK AT ALL THESE OTHER MATERIALS IN ADDITION TO THE RED  
3381=BOOK, CORRECT?  
3382=A. YES.  
3383=Q. NOW, I HEARD YOU SAY THAT YOU NEVER NEGOTIATE. YOU MIGHT  
3384=BE THE FIRST PERSON I MET WHO NEVER NEGOTIATES, BUT YOU DO TRY  
3385=TO GET, MR. JACKSON, THE BEST TERMS AVAILABLE IN YOUR DEALINGS  
3386=WITH PUBLISHERS, DO YOU NOT?  
3387=A. WELL, I DO, BUT I ASSUME THAT THE INTEGRITY OF THE  
3388=PUBLISHER IS SUCH THAT WHAT IS PRINTED IS WHAT I GET. I DON'T  
3389=ASK FOR ANY BETTER DEAL.  
3390=Q. YOU'RE NOT ASKING FOR ANY BETTER, BUT YOU TRY TO GET THE  
3391=BEST TERMS THAT ARE AVAILABLE TO YOU, RIGHT?  
3392=A. I DON'T REALLY UNDERSTAND YOUR QUESTION, BECAUSE THE BEST  
3393=TERMS ARE PRINTED ON -- THERE'S NO WAY TO NEGOTIATE.  
3394= (CONTINUED ON FOLLOWING PAGE. NOTHING OMITTED.)  
3395=  
3396=  
3397=  
3398=  
3399=

3400= JACKSON - CROSS / PETROCELLI 1 BY MR. PETROCELLI:  
3401= 2 Q. WELL -- 3 A. SO I DON'T HAVE TO TRY TO GET THE BEST TERMS. I KNOW THE  
3402= 4 BEST TERMS ARE PRINTED IN THIS BOOK.  
3403= 5 Q. SO YOU NEVER ASK THE PUBLISHERS AT ANY TIME FOR ANY TERMS  
3404= 6 THEY MIGHT HAVE TO OFFER YOU OTHER THAN WHAT'S IN THE RED BOOK?  
3405= 7 A. NO, I ACCEPTED THE OFFERS THAT ARE MADE TO EVERYONE.  
3406= 8 Q. DO YOU REMEMBER TESTIFYING AT YOUR DEPOSITION -- SIR, DO YOU  
3407= 9 HAVE A COPY OF YOUR DEPOSITION IN FRONT OF YOU?  
3408= 10 A. I DO.  
3409= 11 Q. CAN YOU TURN TO PAGE 85, LINES 23 TO 25.  
3410= 12 A. (REVIEWING DOCUMENT.)  
3411= 13 Q. YOU REMEMBER GIVING A DEPOSITION OF LAST YEAR, SIR, DO YOU  
3412= 14 NOT?  
3413= 15 A. I DO.  
3414= 16 Q. THE LAWYERS ASKING YOU QUESTIONS AND SO FORTH?  
3415= 17 A. YES.  
3416= 18 Q. AND I JUST WANT TO SEE IF YOUR MEMORY'S REFRESHED BY  
3417= 19 REFERENCE TO PAGE 85, LINES 23 TO 25, WHERE YOU STATED, QUOTE,  
3418= 20 "WE TRY OUR BEST TO GET THE BEST TERMS AVAILABLE AS LONG AS  
3419= 21 THEY'RE" --  
3420= 22 MR. DE BRUIN: I'M SORRY. PAGE 85? WE DON'T HAVE  
3421= 23 THAT.  
3422= 24 THE WITNESS: WE DON'T HAVE AN 85.  
3423= 25 MR. PETROCELLI: DID I MISSTATE THE QUOTE?  
3424= RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR (415) 626-8404  
  
3425= 2 MR. PETROCELLI: PAGE 85, LINES 23 TO 25, YOUR HONOR.  
3426= 3 THE COURT: YES.  
3427= 4 MR. DE BRUIN: WHICH --  
3428= 5 MR. PETROCELLI: DO YOU HAVE THAT, MR. DEBRUIN?  
3429= 6 MR. DE BRUIN: IT'S NOT ON MY PAGE 85.  
3430= 7 THE COURT: VOLUME 1?  
3431= 8 MS. LIPPMAN: YES.  
3432= 9 MR. PETROCELLI: READY.  
3433= 10 MR. DE BRUIN: SORRY, PAGE 85, LINE 23?  
3434= 11 MR. PETROCELLI: TO 25. VOLUME 1 OF MR. JACKSON'S  
3435= 12 DEPOSITION.  
3436= 13 THE WITNESS: I DON'T HAVE A PAGE 85.  
3437= 14 MR. DE BRUIN: I SEE IT.  
3438= 15 THE WITNESS: IT'S WHAT? AT THE BOTTOM?  
3439= 16 BY MR. PETROCELLI:  
3440= 17 Q. YEAH, I JUST WANTED TO -- POINT YOU TO WHERE YOU TESTIFIED  
3441= 18 ON LINE 23, SIR.  
3442= 19 A. ON PAGE 85?  
3443= 20 Q. YEAH.  
3444= 21 A. I DO NOT HAVE A PAGE 85.  
3445= 22 MR. PETROCELLI: YOUR HONOR, MAY I APPROACH?  
3446= 23 Q. SIR, THIS IS NOT YOUR DEPOSITION. THAT'S OKAY. MY  
3447= 24 APOLOGIES FOR NOT PUTTING IT IN FRONT OF YOU. YOU SHOULD HAVE A

3448= 25 COPY THERE. BUT RIGHT HERE, SIR (INDICATING). I WANTED TO JUST  
3449= RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR (415) 626-8404

3450= JACKSON - CROSS / PETROCELLI 1 REFER YOU TO THAT. YOU MIGHT --  
3451= 2 A. (REVIEWING DOCUMENT.) 3 Q. DO YOU SEE THAT?  
3452= 4 A. YEAH.  
3453= 5 Q. OKAY.  
3454= 6 A. YES.  
3455= 7 Q. AND THAT WAS AN ACCURATE STATEMENT WHEN YOU SAID YOU TRY  
3456= 8 YOUR BEST TO GET THE BEST TERMS AVAILABLE AS LONG AS THEY'RE  
3457= 9 OFFERED TO EVERY OTHER BOOKSELLER IN THE COUNTRY, RIGHT?  
3458= 10 A. TRUE.  
3459= 11 Q. AND YOU ASSUME THAT THE PUBLISHER WHEN HE GIVES YOU HIS BEST  
3460= 12 TERMS AVAILABLE WILL BE MAKING THOSE AVAILABLE TO EVERYBODY  
3461= 13 ELSE, CORRECT?  
3462= 14 A. YES, CORRECT.  
3463= 15 Q. NOW, I'D LIKE TO GO OVER A COUPLE OF DISCOUNTS THAT YOU  
3464= 16 TALKED ABOUT IN YOUR DEPOSITION. ONE OF THEM IS A VOLUME  
3465= 17 REDUCTION DISCOUNT. IS IT NOT TRUE THAT HAPPY SELLER (SIC)  
3466= 18 SOMETIMES GETS BACK LIST OFFERS WITH GREATER THAN STANDARD  
3467= 19 DISCOUNTS FROM TIME TO TIME?  
3468= 20 A. YES, WITH STOCK OFFERS, YES.  
3469= 21 Q. OKAY. AND THAT'S AN EXAMPLE OF SOMETHING THAT IS NOT IN THE  
3470= 22 RED BOOK, CORRECT?  
3471= 23 A. NO, BUT IT'S GIVEN TO YOU PRINTED.  
3472= 24 Q. PRINTED IN THE FORM OF ONE OF THOSE OTHER DOCUMENTS WE  
3473= 25 REFERRED TO?  
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3475= JACKSON - CROSS / PETROCELLI 1 A. YEAH. SHEET, YES.  
3476= 2 Q. OKAY. AND IS IT NOT ALSO TRUE, SIR, THAT WHEN YOU OPENED UP 3 YOUR STORE,  
YOU PARTICIPATED IN WHAT WAS  
3477= 4 STORE ALLOWANCE WHERE YOU GOT A DISCOUNT OFF OF THE PRICE OF THE  
3478= 5 INITIAL BOOKS PUT INTO YOUR STORE?  
3479= 6 A. NO, THEY HAD A POCKET ALLOWANCE, BUT THEY GAVE YOU SO MUCH  
3480= 7 OF POCKET. THAT WAS IN THE MASS MARKETS DAYS. AND THEY GAVE  
3481= 8 YOU -- I BELIEVE IT WAS 60 CENTS A POCKET.  
3482= 9 Q. AND YOU TOOK ADVANTAGE OF THAT WHEN YOU OPENED YOUR STORE,  
3483= 10 RIGHT?  
3484= 11 A. AND EVERY STORE THAT OPENED COULD TAKE ADVANTAGE OF THAT.  
3485= 12 Q. AND THAT'S NOT IN THE RED BOOK EITHER AT THE TIME, CORRECT?  
3486= 13 A. IT'S NOT IN THERE -- I DON'T THINK IT EXISTS ANYMORE, BUT IT  
3487= 14 DID IN 1974.  
3488= 15 Q. LET'S GO TO THE SUBJECT OF RETURNS. YOU'VE PARTICIPATED IN  
3489= 16 INCENTIVE PROGRAMS PROVIDING ADDITIONAL DISCOUNTS FROM  
3490= 17 PUBLISHERS FOR LOW RATES OF RETURNS, CORRECT?  
3491= 18 A. YES.  
3492= 19 Q. SOMETHING CALLED A -- FOR EXAMPLE, A RETAIL INCENTIVE PLAN.  
3493= 20 YOU RECALL THAT?  
3494= 21 A. I DID NOT RECALL WHAT IT WAS CALLED, BUT I KNEW THEY HAD A  
3495= 22 PLAN FOR LOWERING YOUR RETURNS.  
3496= 23 Q. BERKELEY PUBLISHING GROUP WAS ONE SUCH --  
3497= 24 A. YES.  
3498= 25 Q. -- PLAN. AND THAT WAS A PLAN WHERE YOU GOT REBATES, AND  
3499= RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR (415) 626-8404

3500= JACKSON - CROSS / PETROCELLI 1 THAT WAS NOT IN THE RED BOOK,  
CORRECT?  
3501= 2 A. WELL, THAT WAS -- HAD TO DEAL WITH RETURNS, AND I'M NOT 3 SURE -- I BELIEVE  
IT WAS IN THE RED BOOK IN TH  
3502= 4 Q. OKAY. WELL, LET'S -- LET'S TAKE A LOOK AT THAT ONE IF  
3503= 5 WOULDN'T MIND, SIR.  
3504= 6 A. I THINK IF YOU GO BACK TO THE -- IT'S BEEN YEARS SINCE THAT  
3505= 7 WAS AVAILABLE, BUT I THINK IT WOULD HAVE BEEN IN THE RED BOOK.  
3506= 8 Q. LET'S LOOK AT EXHIBIT 5652 THAT YOU HAVE IN FRONT OF YOU IN  
3507= 9 THE NOTEBOOK THAT WE --  
3508= 10 MAY I APPROACH, YOUR HONOR?  
3509= 11 THE WITNESS: YES, I GOT --  
3510= 12 THE COURT: YES.  
3511= 13 BY MR. PETROCELLI:  
3512= 14 Q. DO YOU HAVE THAT? LET'S MAKE SURE WE HAVE THE SAME THING.  
3513= 15 A. (REVIEWING DOCUMENT.)  
3514= 16 Q. YOU SEE TRIAL -- OR EXHIBIT NUMBER 5652, THE BERKELEY RETAIL

3515= 17 PUBLISHING INCENTIVE PLAN?  
3516= 18 A. YES.  
3517= 19 Q. AND THE DATE OF THAT IS?  
3518= 20 A. OCTOBER '96.  
3519= 21 Q. OKAY. NOW, IF YOU WOULD LOOK AT EXHIBIT 3, THAT WOULD BE  
3520= 22 THE 1996 EDITION OF THE RED BOOK. YOU ALSO HAVE THAT UP THERE,  
3521= 23 SIR?  
3522= 24 YOUR HONOR, THAT WOULD BE IN EXHIBIT 3 OF THIS SAME  
3523= 25 NOTEBOOK THAT YOU'RE IN. WE HAVE THE PAGE FROM BERKELEY FROM  
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3525= JACKSON - CROSS / PETROCELLI 1 THE RED BOOK.  
3526= 2 A. (REVIEWING DOCUMENTS.) 3 THE COURT: 5653?  
3527= 4 MR. PETROCELLI: 5652 WAS THE BERKELEY PUBLISHING  
3528= 5 RETAIL INCENTIVE PLAN. AND THEN EXHIBIT 3 IS THE RED BOOK FOR  
3529= 6 THE SAME PERIOD OF TIME.  
3530= 7 THE COURT: WELL, NOW, I'M -- AS DELIGHTED TO RECEIVE  
3531= 8 YOUR BINDER, BUT -- YOUR SPLENDID PRESENTATION OF ALL THESE  
3532= 9 EXHIBITS, AND I TURN TO 5652, AND I -- WHICH IS A LETTER TO  
3533= 10 HAPPY BOOKSELLER TITLED "DEAR BOOKSELLER" FROM THE BERKELEY  
3534= 11 PUBLISHING GROUP. IS THAT IT?  
3535= 12 MR. PETROCELLI: YES, YOUR HONOR. THAT'S THE RETAIL  
3536= 13 INCENTIVE PLAN THAT I JUST MENTIONED. AND NOW I'M ASKING THE  
3537= 14 WITNESS TO TURN TO EXHIBIT 3, WHICH WOULD ALSO BE IN YOUR SAME  
3538= 15 NOTEBOOK WHICH CONTAINS THE RELEVANT PAGE FROM THE 1996 RED BOOK  
3539= 16 FOR THE SAME PERIOD OF TIME.  
3540= 17 Q. AND MY QUESTION TO YOU, IF YOU CAN PUT THAT IN FRONT OF YOU,  
3541= 18 IS WHETHER YOU SEE WHETHER THAT INCENTIVE PLAN IS CONTAINED IN  
3542= 19 THE RED BOOK.  
3543= 20 A. (REVIEWING DOCUMENTS.)  
3544= 21 I DON'T -- I DON'T FIND BERKELEY ON HERE. WHERE  
3545= 22 IS -- YOU HAD POINTED OUT?  
3546= 23 MR. PETROCELLI: MAY I APPROACH, YOUR HONOR?  
3547= 24 THE COURT: YEAH.  
3548= 25 THE WITNESS: I FIND THIS PAGE, BUT I DON'T SEE  
3549= RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR (415) 626-8404

3550= JACKSON - CROSS / PETROCELLI 1 BERKELEY LISTED HERE.  
3551= 2 MR. PETROCELLI: (INDICATING.) 3 THE WITNESS: THAT'S A  
DIFFERENT BERKELEY. THAT'S  
3552= 4 SCIENTIFIC PUBLICATION.  
3553= 5 BY MR. PETROCELLI:  
3554= 6 Q. BERKELEY PUBLISHING.  
3555= 7 A. OKAY. I'M WITH YOU.  
3556= 8 Q. YEAH, I'M SIMPLY ASKING YOU TO CONFIRM THAT THAT IS NOT  
3557= 9 CONTAINED IN THE RED BOOK, SIR.  
3558= 10 A. THAT APPEARS TO BE TRUE.  
3559= 11 Q. NOW, YOU REMEMBER RECEIVING AT SOMETIME SOMETHING CALLED THE  
3560= 12 SHARED MARKDOWN FROM SOME OF THE PUBLISHERS OR, I THINK, AS YOU  
3561= 13 PUT IT, A REMAINDERING IN PLACE PROGRAM?  
3562= 14 A. REPEAT YOUR QUESTION.  
3563= 15 Q. YEAH, DO YOU REMEMBER PARTICIPATING IN SOMETHING CALLED THE  
3564= 16 SHARED MARKDOWN FROM THE PUBLISHER?  
3565= 17 A. I REMEMBER SOME OF THEM HAD THAT PROGRAM. I'M NOT SURE WE  
3566= 18 EVER -- WELL, WE MIGHT HAVE -- WE MIGHT HAVE PARTICIPATED ONCE  
3567= 19 OR TWICE, YES.  
3568= 20 Q. I THINK YOU CALLED IT A REMAINDERING IN PLACE --  
3569= 21 A. YES.  
3570= 22 Q. -- PROGRAM. AND THAT'S SOMETHING, FOR EXAMPLE, THAT WOULD  
3571= 23 NOT BE FOUND IN THE RED BOOK, CORRECT?  
3572= 24 A. THAT WOULD NOT BE FOUND, BUT YOU WOULD GET A PRINTED  
3573= 25 EXPLANATION OF IT. IT SHOULD HAVE GONE TO EVERY BOOKSELLER.  
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3575= JACKSON - CROSS / PETROCELLI 1 Q. NOW, REGIONAL TRADE SHOWS OR  
BOOK SHOWS, I THINK YOU  
3576= 2 TESTIFIED THIS -- ABOUT THIS A LITTLE BIT ON DIRECT. THEY -- AT 3 THEIR  
CONVENTIONS OR SHOWS, THEY HAVE PUB  
3577= 4 HIGHER DISCOUNTS THAN NORMAL, CORRECT?  
3578= 5 A. STOCK OFFERS?  
3579= 6 Q. YES. AT TRADE SHOWS FOR ABA MEMBERS ONLY.  
3580= 7 A. WELL, I DON'T THINK IT'S ONLY ABA MEMBERS NOW. IF YOU DON'T  
3581= 8 EVEN GO TO THE TRADE SHOW, YOU CAN TAKE ADVANTAGE OF THOSE.

3582= 9 Q. BUT THOSE TRADE SHOW OFFERINGS WOULD NOT BE FOUND IN THE RED  
3583= 10 BOOK EITHER, CORRECT?  
3584= 11 A. NO, YOU GET THEM IN PRINT, AND EVERY BOOKSELLER WOULD GET  
3585= 12 THEM, BUT IT'S AVAILABLE TO ALL BOOKSELLERS, NOT JUST ABA  
3586= 13 MEMBERS.  
3587= 14 Q. SO IF I WANTED TO KNOW WHAT ALL OF THE PRICE TERMS WERE THAT  
3588= 15 HAPPY BOOKSELLER PARTICIPATED IN, LET'S SAY, FOR A GIVEN YEAR  
3589= 16 AND A GIVEN PUBLISHER, WHAT WOULD YOU SHOW TO ME?  
3590= 17 LET'S TAKE 1996 AND LET'S SAY RANDOM HOUSE OR  
3591= 18 MACMILLAN --  
3592= 19 A. IF YOU WANT --  
3593= 20 Q. -- WHAT IF --  
3594= 21 A. -- WANTED TO SEE THEM TODAY, I COULDN'T SHOW THEM TO YOU.  
3595= 22 BUT IF YOU WANTED TO TAKE 1996, THEY'D BE IN MY RED BOOK.  
3596= 23 Q. AND IN YOUR RED BOOK, YOU'D HAVE ADDITIONAL PAPERS THAT  
3597= 24 WOULD BE FILED, RIGHT?  
3598= 25 A. YES.

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3600= JACKSON - CROSS / PETROCELLI 1 Q. AND THE TOTALITY OF THOSE  
3601= PAPERS WOULD SET FORTH ALL OF 2 TERMS THAT YOU BOUGHT FROM FROM THAT PARTICULAR PUBLISHER, 3 CORRECT?  
3602= 4 A. YES.  
3603= 5 Q. AND YOU ALSO HAVE FILES THAT YOU KEEP WHERE YOU -- PUBLISHER  
3604= 6 BY PUBLISHER?  
3605= 7 A. YES, WE HAVE THAT, TOO.  
3606= 8 Q. WHERE YOU PUT THESE MATERIALS, CORRECT?  
3607= 9 A. RIGHT. YES.  
3608= 10 Q. AND IF YOU WANTED TO KNOW, SIR, THE ACTUAL PURCHASES THAT  
3609= 11 YOU MADE IN A GIVEN YEAR FROM A PARTICULAR PUBLISHER, YOU'D HAVE  
3610= 12 TO TAKE ME TO THE INVOICES, RIGHT?  
3611= 13 A. CORRECT.  
3612= 14 Q. AND THE INVOICES WOULD TELL ME THE ACTUAL PRICES THAT YOU  
3613= 15 PAID, RIGHT?  
3614= 16 A. YES. IT WOULD SHOW --  
3615= 17 Q. NOT --  
3616= 18 A. -- DISCOUNTS, YES.  
3617= 19 Q. NOT JUST THE -- NOT JUST THE DISCOUNTS THAT ARE IN THE RED  
3618= 20 BOOK BUT THE DISCOUNTS THAT ARE IN THESE OTHER OFFERINGS AS  
3619= 21 WELL. THAT WOULD BE REFLECTED ON THE INVOICE, CORRECT?  
3620= 22 A. YES. YES.  
3621= 23 Q. AND THE INVOICES WOULD ALSO TELL US WHAT QUANTITIES YOU  
3622= 24 PURCHASED AT ANY GIVEN DISCOUNT LEVEL, CORRECT?  
3623= 25 A. YES.

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3625= JACKSON - CROSS / PETROCELLI 1 Q. SO FOR EXAMPLE, WHEN YOU WERE  
3626= ANSWERING MR. DEBRUIN'S 2 QUESTIONS AND YOU WERE TALKING ABOUT INGRAM, PURCHASING AT 3 40 PERCENT UP TO 4  
3627= COPIES, 5 TO 9 AT 41, AND 10 4 42 --  
3628= 5 A. YES.  
3629= 6 Q. -- THE ONLY WAY WE WOULD KNOW WHAT YOU ACTUALLY PURCHASED AT  
3630= 7 WHAT LEVEL WOULD BE TO LOOK AT THE INVOICES, RIGHT?  
3631= 8 A. CORRECT.  
3632= 9 Q. BY THE WAY, ON THE SUBJECT OF THE INGRAM, YOU SAID THAT THE  
3633= 10 PROGRAMS MR. DEBRUIN ASKED YOU ABOUT, THE BACK LIST PLUS, THE  
3634= 11 SUMMARY BILLING, SCHEDULED DELIVERING, AND VISITING AUTHOR  
3635= 12 PROGRAMS, YOU'D NEVER HEARD OF, RIGHT?  
3636= 13 A. THAT IS TRUE.  
3637= 14 Q. I TAKE IT, THEN, THAT YOU DON'T KNOW WHETHER OR NOT THOSE  
3638= 15 PROGRAMS ARE IN WRITING.  
3639= 16 A. I DON'T KNOW THAT THEY -- THEY EXIST.  
3640= 17 Q. HAVE YOU EVER HAD ANY INQUIRIES TO INGRAM TO FURNISH YOU  
3641= 18 WITH A LIST OF ALL OF THEIR PRINTED PROGRAMS?  
3642= 19 A. NO, I WOULD ASSUME THAT ANYBODY -- ANY OF THE PUBLISHERS  
3643= 20 WITH INTEGRITY WOULD SEND YOU WHAT'S AVAILABLE IF IT WAS  
3644= 21 AVAILABLE TO YOU.  
3645= 22 Q. JUST SO I'M CLEAR ON THIS, YOU HAVE NOT IN THE TIME THAT  
3646= 23 YOU'VE WORKED FOR HAPPY BOOKSELLER CONTACTED REPRESENTATIVES OF  
3647= 24 INGRAM TO HAVE THEM SUBMIT TO YOU OR EXPLAIN TO YOU ALL THE  
3648= 25 AVAILABLE PROGRAMS THAT EXIST?

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3650= JACKSON - CROSS / PETROCELLI 1 A. NO.  
3651= 2 Q. OKAY. 3 THE VOR PROGRAM YOU DO KNOW ABOUT, CORRECT?  
3652= 4 A. THE VENDOR OF RECORD, YES.  
3653= 5 Q. AND THAT'S -- AND THAT'S A PROGRAM THAT'S IN WRITING, ISN'T  
3654= 6 IT?  
3655= 7 A. YES, THEY WROTE US ALL A LETTER ABOUT IT. THEY WERE VERY  
3656= 8 EXCITED ABOUT IT.  
3657= 9 Q. BUT IT'S NOT IN THE RED BOOK, IS IT?  
3658= 10 A. I DON'T KNOW. I CAN LOOK.  
3659= 11 Q. WELL, TO SAVE THE TIME, I WILL REPRESENT --  
3660= 12 A. IT'S NOT IN THERE?  
3661= 13 Q. -- THAT IT'S NOT IN THE RED BOOK.  
3662= 14 A. THANK YOU.  
3663= 15 Q. AND I THINK AS YOU TESTIFIED, IN FACT, THE WAY -- THE WAY  
3664= 16 YOU DETERMINED THE -- THE -- THE CORRECTNESS OF THE DISCOUNTS  
3665= 17 WHEN THEY COME IN IS YOU ACTUALLY LOOK AT ALL OF THE INVOICES  
3666= 18 WHEN THEY'RE RECEIVED, CORRECT?  
3667= 19 A. YES.  
3668= 20 Q. IF I WANTED TO -- WITHDRAWN.  
3669= 21 I ASSUME THAT WITHOUT THE INVOICES OR SOME SUMMARY OF  
3670= 22 THEM, YOU'RE NOT ABLE TO TELL ME WITH ANY DEGREE OF ACCURACY THE  
3671= 23 AVERAGE PRICE OF BOOKS THAT YOU PAID AND PURCHASED FOR ANY GIVEN  
3672= 24 PUBLISHER IN A GIVEN YEAR.  
3673= 25 A. NO.  
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3675= JACKSON - CROSS / PETROCELLI 1 Q. OKAY. AND WITHOUT THE  
INVOICES, YOU COULDN'T TELL ME WI  
3676= 2 ANY DEGREE OF ACCURACY WHAT THE AVERAGE DISCOUNT EARNED IN ANY 3 GIVEN YEAR IS,  
CORRECT?  
3677= 4 A. NO. I COULD NOT.  
3678= 5 Q. OKAY. AND IF I WANTED TO COMPARE -- IF I WANTED TO COMPARE  
3679= 6 THE ACTUAL PRICES THAT THE HAPPY BOOKSELLER PAID FOR PURCHASES  
3680= 7 THAT IT MADE WITH THE ACTUAL PRICES THAT BARNES & NOBLE PAID FOR  
3681= 8 THE PURCHASES THAT IT MADE, THE BEST WAY OF DOING THAT WOULD BE  
3682= 9 TO COMPARE THE INVOICES, CORRECT?  
3683= 10 A. CORRECT.  
3684= 11 Q. LET ME TURN TO A DIFFERENT SUBJECT. NOW, LET'S GO BACK TO  
3685= 12 1993, OKAY?  
3686= 13 A. '93, OKAY.  
3687= 14 Q. AND WE'RE IN COLUMBIA, SOUTH CAROLINA, AND THE FIRST  
3688= 15 SIGNIFICANT COMPETITOR THAT ARRIVES IS NOT BARNES & NOBLE BUT A  
3689= 16 COMPANY CALLED BOOKS-A-MILLION, CORRECT?  
3690= 17 A. CORRECT.  
3691= 18 Q. AND BOOKS-A-MILLION OPENED UP A STORE AT THE CORNER OF  
3692= 19 FOREST DRIVE AND TRENHOLM ROAD ABOUT A MILE FROM YOUR STORE,  
3693= 20 CORRECT?  
3694= 21 A. THAT IS CORRECT.  
3695= 22 Q. AND THAT IS ON THE SAME SIDE OF THE RIVER THAT SPLITS THE  
3696= 23 TOWN, RIGHT?  
3697= 24 A. YES, THAT'S TRUE.  
3698= 25 Q. BY THE WAY, WHAT IS THE NAME OF THE RIVER?  
3699= RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR (415) 626-8404

3700= JACKSON - CROSS / PETROCELLI 1 A. WELL, IT'S THE --  
3701= 2 THE REPORTER: I'M SORRY, SIR. I DIDN'T UNDERSTAND 3 THAT. "WELL,  
IT'S A..."  
3702= 4 THE WITNESS: I CAN UNDERSTAND WHY 'CAUSE THOSE ARE  
3703= 5 INDIAN NAMES.  
3704= 6 WELL, LET'S JUST MAKE IT SIMPLE. IT'S THE CONGAREE  
3705= 7 RIVER AND, IT'S C-O-N-G-A-R DOUBLE E, I BELIEVE.  
3706= 8 BY MR. PETROCELLI:  
3707= 9 Q. NOW, AFTER THE FIRST BOOKS-A-MILLION STORE OPENED UP IN  
3708= 10 1993, I WANT TO JUST TRACE THE SEQUENCE OF THESE EVENTS FOR A  
3709= 11 MOMENT. A SECOND BOOKS-A-MILLION STORE OPENED UP ACROSS THE  
3710= 12 RIVER ON HARBISON ROAD, CORRECT?  
3711= 13 A. CORRECT.  
3712= 14 Q. AND THAT'S ABOUT 12 OR 13 MILES FROM YOUR STORE, RIGHT?  
3713= 15 A. LITTLE LESS THAN THAT, BUT --  
3714= 16 Q. OKAY.  
3715= 17 A. YES.  
3716= 18 Q. AND AFTER THE TWO BOOKS-A-MILLION STORES OPENED UP, IN 1995,

3717= 19 THE FIRST BARNES & NOBLE STORE ARRIVED?  
3718= 20 A. YES.  
3719= 21 Q. AND THAT WAS ON THE OTHER SIDE OF THE RIVER FROM YOUR STORE?  
3720= 22 A. WELL, WE DO HAVE A BRIDGE.  
3721= 23 Q. I UNDERSTAND. WE HAVEN'T GOTTEN TO THE BRIDGE YET.  
3722= 24 A. OKAY.  
3723= 25 (LAUGHTER)  
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3725= JACKSON - CROSS / PETROCELLI 1 BY MR. PETROCELLI:  
3726= 2 Q. WE'LL GET THERE, THOUGH. 3 A. JUST WANTED YOU TO KNOW WE COULD GET ACROSS  
THE RIVER. YOU  
3727= 4 DON'T HAVE TO SWIM.  
3728= 5 (LAUGHTER.)  
3729= 6 BY MR. PETROCELLI:  
3730= 7 Q. THE BARNES & NOBLE STORE ON THE OTHER SIDE IS ABOUT 12 MILES  
3731= 8 AWAY, CORRECT?  
3732= 9 A. EIGHT TO TEN IS THE WAY I MEASURED.  
3733= 10 Q. EIGHT TO TEN?  
3734= 11 A. BUT THAT'S --  
3735= 12 Q. OKAY. CLOSE ENOUGH.  
3736= 13 A. -- CLOSE ENOUGH. YES.  
3737= 14 Q. AND THEN 1997, TWO YEARS LATER, A SECOND BARNES & NOBLE  
3738= 15 STORE OPENED UP LOCATED ON FOREST DRIVE VERY CLOSE TO YOUR  
3739= 16 STORE, ABOUT A MILE AWAY?  
3740= 17 A. YES.  
3741= 18 Q. OKAY.  
3742= 19 A. YES.  
3743= 20 Q. BY THE WAY, DIDN'T YOU WRITE TO SOMEBODY IN REFERENCE TO THE  
3744= 21 RIVER SAYING THAT "NOT MANY OF THOSE FOLKS ACROSS THE RIVER COME  
3745= 22 OVER HERE"? DO YOU RECALL WRITING THAT?  
3746= 23 A. I DON'T KNOW WHY I WOULD HAVE WRITTEN THAT BECAUSE A LOT OF  
3747= 24 THEM CAME OVER THERE.  
3748= 25 Q. EXCUSE ME?  
3749= RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR (415) 626-8404

3750= JACKSON - CROSS / PETROCELLI 1 A. A LOT OF THOSE FOLKS CAME  
OVER THERE.  
3751= 2 Q. YOU WANT TO TAKE A QUICK LOOK AT 5674, SIR. IT'S ON THE -- 3 A. 5674.  
3752= 4 Q. YEAH, YOU SEE IT'S A LETTER DATED AUGUST 5, 1995. DO YOU  
3753= 5 REMEMBER THAT?  
3754= 6 A. YES.  
3755= 7 Q. AND DO YOU SEE IN THE -- IN THE FIRST PARAGRAPH TALKING  
3756= 8 ABOUT COMMUNITY ACROSS THE RIVER. "IT'S MOSTLY THE NEWCOMERS  
3757= 9 WHO HAVE MOVED INTO THE OLD COLUMBIA AREA WHO GO ACROSS THE  
3758= 10 RIVER. NOT MANY OF THOSE FOLKS ACROSS THE RIVER COME OVER  
3759= 11 HERE."  
3760= 12 DO YOU SEE THAT?  
3761= 13 A. I DO SEE.  
3762= 14 Q. OKAY.  
3763= 15 A. MUST HAVE BEEN IN MY CUPS THAT DAY.  
3764= 16 Q. THAT'S A LETTER THAT YOU WROTE, THOUGH, SIR?  
3765= 17 A. YES, SIR.  
3766= 18 Q. NOW, I'D LIKE TO SHOW YOU A MAP, AND IT'S LOCATED AT  
3767= 19 EXHIBIT 7848 IN THAT SAME NOTEBOOK.  
3768= 20 A. 7848?  
3769= 21 Q. CORRECT. MR. DE BRUIN SHOWED YOU THE MAP WITH THE BARNES &  
3770= 22 NOBLE STORES AND YOUR STORE?  
3771= 23 A. YES.  
3772= 24 Q. THIS MAP INCLUDES OTHER STORES, AS YOU WILL SEE, CORRECT?  
3773= 25 A. (REVIEWING DOCUMENT.)  
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3775= JACKSON - CROSS / PETROCELLI 1 YES.  
3776= 2 Q. NOW, IT IS TRUE THAT YOU DEFINE YOUR COMPETITORS AS ALL 3 PEOPLE WHO SELL  
BOOKS, CORRECT?  
3777= 4 A. THAT'S TRUE.  
3778= 5 Q. OKAY. AND ALL THE COMPANIES LISTED ON THIS MAP AT  
3779= 6 EXHIBIT 7848 ARE COMPANIES WHO SELL BOOKS, CORRECT?  
3780= 7 A. YES, THERE'S ONE THERE I'VE NEVER HEARD OF. I DON'T KNOW  
3781= 8 WHAT THAT IS. N-E-P-H-L-S?  
3782= 9 Q. WELL, THAT MAKES TWO OF US.  
3783= 10 A. BUT THE REST OF THEM SELL BOOKS, BUT THEY DON'T SELL A VERY

3784= 11 LARGE SELECTION OF BOOKS.  
3785= 12 Q. PLUS AMAZON DOT COM, WHO'S NOT ON THE MAP. THEY ALSO ARE A  
3786= 13 COMPETITOR OF YOURS, CORRECT? AMAZON?  
3787= 14 A. YES.  
3788= 15 Q. NOW, I'D LIKE TO HAVE YOU LOOK AT EXHIBIT 7770. WHAT WE DID  
3789= 16 IS WE PREPARED THIS CHART OR THIS GRAPH BASED ON THE FINANCIAL  
3790= 17 STATEMENTS THAT YOU PROVIDED BASED ON THE FIGURES THAT YOU  
3791= 18 TESTIFIED IN THE DIRECT PART OF YOUR EXAMINATION. AND WE'VE  
3792= 19 MAPPED OUT THE SALES OF YOUR COMPANY STARTING IN 1993 THROUGH  
3793= 20 1999. DO YOU SEE THAT, SIR?  
3794= 21 A. YES.  
3795= 22 Q. AND I WILL REPRESENT TO YOU THAT THE CHART WAS BASED ON THE  
3796= 23 FIGURES THAT YOU PROVIDED EARLIER IN YOUR TESTIMONY AND IN THE  
3797= 24 DOCUMENTS.  
3798= 25 A. YES.  
3799= RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR (415) 626-8404

3800= JACKSON - CROSS / PETROCELLI 1 Q. OKAY. NOW, AFTER THE FIRST  
BOOKS-A-MILLION STORE ARRIVE  
3801= 2 OR AROUND 1993, YOUR COMPANY SALES TOOK A CONSIDERABLE DIP, AS 3 YOU CAN SEE FROM  
THE CHART, CORRECT?  
3802= 4 A. YES.  
3803= 5 Q. AND YOU HAVE ACKNOWLEDGED THAT YOUR SALES AND PROFITS WERE  
3804= 6 HIGHER BEFORE THE BOOKS-A-MILLION OPENED IN 1993, CORRECT?  
3805= 7 A. YES.  
3806= 8 Q. IN FACT, HAPPY BOOKSELLER LOST APPROXIMATELY \$200,000 IN  
3807= 9 SALES IN '94, AFTER THE OPENING OF THE BOOKS-A-MILLION STORE?  
3808= 10 A. YES.  
3809= 11 Q. AND YOU BELIEVE THAT THE BOOKS -- BOOKS-A-MILLION NEW STORE  
3810= 12 WAS A MAJOR FACTOR IN CONTRIBUTING TO THE DECREASE IN HAPPY  
3811= 13 BOOKSELLERS' PROFITS IN 1994, CORRECT?  
3812= 14 A. AND THAT'S A GOOD POINT BECAUSE THIS THING ONLY DEALS WITH  
3813= 15 SALES. IT DOESN'T TALK ABOUT GROSS PROFITS.  
3814= 16 Q. BUT YOU ALSO --  
3815= 17 A. THAT'S WHERE WE TOOK A BIG HIT.  
3816= 18 Q. WELL, SIR, FIRST OF ALL, SALES DECLINED CONSIDERABLY,  
3817= 19 CORRECT?  
3818= 20 A. YES.  
3819= 21 Q. AND IT'S ALSO TRUE THAT YOU BELIEVED THAT BOOKS-A-MILLION  
3820= 22 WAS A MAJOR FACTOR IN CONTRIBUTING TO A DECREASE IN HAPPY  
3821= 23 BOOKSELLERS' PROFITS AS WELL, CORRECT?  
3822= 24 A. YES.  
3823= 25 Q. IN FACT, YOU ATTRIBUTED THE PROFIT DECREASE OF ABOUT A THIRD  
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3825= JACKSON - CROSS / PETROCELLI 1 SOLELY TO THE OPENING OF BOOKS-A-  
MILLION IN 1993, CORRECT?  
3826= 2 A. WHEN DID I DO THAT? 3 Q. DO YOU RECALL HAVING THE OPINION THAT THE BOOKS-A-  
MILLION  
3827= 4 OPENING CAUSED YOUR PROFITS TO DECREASE BY ABOUT A THIRD?  
3828= 5 A. WELL, THAT WAS PROBABLY TRUE. I DON'T REMEMBER PUBLICLY  
3829= 6 SAYING THAT, BUT YES.  
3830= 7 Q. OKAY. NOW, BOOKS-A-MILLION THEN OPENED UP THEIR SECOND  
3831= 8 STORE ACROSS THE RIVER IN 1994, CORRECT?  
3832= 9 A. I THINK THAT'S THE YEAR THEY OPENED ACROSS THE RIVER.  
3833= 10 Q. AND YOUR SALES --  
3834= 11 A. I DON'T THINK IT WAS IN '95.  
3835= 12 Q. AND YOUR SALES CONTINUED TO DECLINE, TRUE?  
3836= 13 A. YES.  
3837= 14 Q. AND YOUR SALES BEGAN TO RISE IN ABOUT 1995. DO YOU SEE  
3838= 15 THAT?  
3839= 16 A. WELL, NO, THEY STARTED RISING IN FIRST OF '96.  
3840= 17 Q. OKAY. FIRST OF '96?  
3841= 18 A. YES.  
3842= 19 Q. AND IT WAS AROUND THAT TIME THAT THE BARNES & NOBLE STORE  
3843= 20 HAD OPENED UP, THE FIRST ONE, THE ONE ACROSS THE RIVER?  
3844= 21 A. YES.  
3845= 22 Q. AND YOUR SALES ROSE IN 1996 INTO 1997. DO YOU SEE THAT?  
3846= 23 A. (REVIEWING DOCUMENT.)  
3847= 24 I -- I SEE THAT ON HERE. I'M NOT SURE THAT'S  
3848= 25 ACCURATE. WE HAD LOT OF MONTHS THAT WE WENT WAY DOWN, BUT  
3849= RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR (415) 626-8404



3850= JACKSON - CROSS / PETROCELLI 1 ACCORDING TO THIS DRAFT, IT SHOWS  
THAT.  
3851= 2 Q. OKAY. AND THE SECOND BARNES & NOBLE STORE OPENED IN 1997, 3 THIS TIME NEXT  
TO YOUR STORE ABOUT A MILE A  
3852= 4 A. YES.  
3853= 5 Q. AND YOUR -- YOUR SALES DID NOT DECREASE BUT CONTINUED TO  
3854= 6 INCREASE, CORRECT?  
3855= 7 A. YES. UM, DID YOU ALSO DO A DRAFT ON PROFIT AND GROSS  
3856= 8 PROFIT? THAT TELL YOU --  
3857= 9 Q. SIR, I GET TO ASK THE QUESTIONS.  
3858= 10 A. OH, I JUST WANT TO KNOW IF YOU DID THAT.  
3859= 11 Q. NO, I'M JUST ASKING YOU ABOUT THIS.  
3860= 12 A. OKAY.  
3861= 13 Q. AND I THINK YOUR LAWYER ACTUALLY SHOWED YOU A -- I THINK  
3862= 14 IT'S EXHIBIT 192. THE MONTHLY --  
3863= 15 A. YES.  
3864= 16 Q. -- HANDWRITTEN --  
3865= 17 A. HE DID, YES.  
3866= 18 Q. -- PRINTOUT THAT YOU PREPARED. DO YOU HAVE COPY OF THAT?  
3867= 19 A. YES, BUT I --  
3868= 20 MR. PETROCELLI: MAY I APPROACH, YOUR HONOR?  
3869= 21 THE WITNESS: I DON'T THINK I CAN PUT MY FINGER ON  
3870= 22 IT.  
3871= 23 BY MR. PETROCELLI:  
3872= 24 Q. AND THESE ARE YOUR MONTHLY TABULATIONS OF SALES AGAIN,  
3873= 25 RIGHT?  
3874= 25 RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR (415) 626-8404

3875= JACKSON - CROSS / PETROCELLI 1 A. CORRECT.  
3876= 2 Q. AND THAT IS CONSISTENT WITH THE CHART THAT I JUST SHOWED 3 YOU. YOU DON'T  
SEE ANY DECREASE IN SALES AFT  
3877= 4 OR THE SECOND BARNES & NOBLE OPENING, CORRECT?  
3878= 5 A. (REVIEWING DOCUMENT.)  
3879= 6 WELL, IN DECEMBER, I SEE A PRETTY GOOD DECREASE  
3880= 7 THERE. YOU OPEN IN -- IN -- YOU OPENED IN THE FALL OF '95, AND  
3881= 8 THE SALES WENT DOWN \$30,000. AND THIS WENT DOWN 20.  
3882= 9 Q. AND THEN NEXT YEAR WE'RE UP TO OVER 200?  
3883= 10 A. JUST FOLLOWING YOU.  
3884= 11 Q. BY THE WAY, THE HOLIDAY SEASON IS THE BUSIEST TIME OF THE  
3885= 12 YEAR, CORRECT, FOR BOOKSELLERS?  
3886= 13 A. WHICH HOLIDAY SEASON?  
3887= 14 Q. FALL THROUGH CHRISTMAS.  
3888= 15 A. YES.  
3889= 16 MR. PETROCELLI: YOUR HONOR, I HAVE NOTHING FURTHER  
3890= 17 RIGHT NOW.  
3891= 18 THE COURT: ALL RIGHT. REDIRECT?  
3892= 19 OH, MR. STEER.  
3893= 20 MR. STEER: YES.  
3894= 21 CROSS-EXAMINATION  
3895= 22 BY MR. STEER:  
3896= 23 Q. AFTERNOON, MR. JACKSON. I'M REG STEER.  
3897= 24 A. HELLO.  
3898= 25 Q. WE HAVEN'T MET BEFORE. JUST HAVE A FEW QUESTIONS FOR YOU.  
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3900= JACKSON - CROSS / STEER 1 I REPRESENT BORDERS GROUP,  
INCLUDING WALDEN BOOK. WANTED TO A  
3901= 2 YOU A LITTLE BIT ABOUT HISTORY. 3 YOUR -- YOUR ATTORNEY SHOWED YOU A  
MAP, EXHIBIT 2519,  
3902= 4 I BELIEVE IT WAS?  
3903= 5 A. YES.  
3904= 6 Q. AND DO YOU HAVE THAT IN FRONT OF YOU?  
3905= 7 A. I WILL IN A MOMENT.  
3906= 8 Q. GREAT.  
3907= 9 A. 2591?  
3908= 10 Q. NO, IT'S 2519. IT'S THE COLORED MAP WITH --  
3909= 11 IF I MAY, YOUR HONOR?  
3910= 12 THE COURT: YES.  
3911= 13 THE WITNESS: YEAH, OKAY. I GOT IT.  
3912= 14 MR. STEER: OKAY.  
3913= 15 THE WITNESS: THANK YOU.  
3914= 16 BY MR. STEER:  
3915= 17 Q. AND I HAVE TO SAY I GOT A LITTLE CONFUSED WHEN YOU WERE

3916= 18 TALKING ABOUT WHICH WALDENBOOK STORE THAT'S SHOWN ON THERE HAS  
3917= 19 CLOSED AND WHICH IS STILL IN EXISTENCE. CAN YOU TELL ME --  
3918= 20 THERE'S AN INDICATION OF A BLUE SQUARE --  
3919= 21 A. YES.  
3920= 22 Q. -- WHICH IS SUPPOSED TO STAND FOR WALDENBOOKS?  
3921= 23 A. YES.  
3922= 24 Q. IN RICHLAND FASHION MALL. NOW, IS THAT --  
3923= 25 A. THAT ONE IS CLOSED TO MY UNDERSTANDING.  
3924= RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR (415) 626-8404

3925= JACKSON - CROSS / STEER 1 Q. OKAY. AND WHEN DID IT CLOSE?  
3926= 2 A. IT CLOSED SHORTLY AFTER THAT BARNES & NOBLE -- IT WAS RIGHT 3 UPSTAIRS OVER  
THE BARNES & NOBLE IN THE SA

3927= 4 Q. SO THIS IS WHEN THE SECOND BARNES & NOBLE OPENED, OR WAS IT  
3928= 5 THE FIRST?  
3929= 6 A. YES.  
3930= 7 Q. THE SECOND.  
3931= 8 A. YES.  
3932= 9 Q. SO AROUND 1997, HUH?  
3933= 10 A. COME IN OUT OF -- THAT IS SOMETHING CONFUSING ABOUT THIS.  
3934= 11 CAN I SHOW IT TO YOU?  
3935= 12 Q. I'LL BE HAPPY TO LOOK AT IT. THANKS.  
3936= 13 A. SEE, THIS IS -- THIS RED DOT IS TRENHOLM MALL,  
3937= 14 T-R-E-N-H-O-L-M IN FASHION MALL, AND THAT'S WHERE YOUR BOOKSTORE  
3938= 15 WAS. THIS BLUE DOT HERE IS ACTUALLY IN A PLACE CALLED COLUMBIA  
3939= 16 MALL, AND THAT IS STILL OPEN.  
3940= 17 Q. OKAY. AND LET ME -- LET ME FOLLOW-UP. THANK YOU VERY MUCH.  
3941= 18 BECAUSE WHAT I WANTED TO ASK IS DURING THE TIME THAT  
3942= 19 THE HAPPY BOOKSELLER HAS BEEN IN OPERATION, WERE THERE OTHER  
3943= 20 WALDENBOOK STORES THAT -- THAT AREN'T SHOWN ON THIS MAP THAT  
3944= 21 WERE IN OPERATION FOR SOME PERIOD OF TIME?  
3945= 22 A. I THINK THERE WAS ONE IN A MALL ON THE HIGHWAY WE CALL  
3946= 23 SUMTER HIGHWAY. SO THERE WAS -- THERE WERE PROBABLY ONE, TWO --  
3947= 24 THERE WERE PROBABLY FOUR.  
3948= 25 Q. OKAY. AND NOW WE'RE DOWN TO -- YOU SAY THERE WAS ANOTHER,  
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3950= JACKSON - CROSS / STEER 1 BUT THERE ARE THREE IN EXISTENCE IN  
THE COLUMBIA AREA TODAY?

3951= 2 A. YES. 3 Q. ARE THERE NOT?  
3952= 4 A. YES.  
3953= 5 Q. SO THERE WOULD HAVE BEEN FIVE IN TOTAL OVER THE YEARS?  
3954= 6 A. YES.  
3955= 7 Q. IS THERE NOT?  
3956= 8 A. YES.  
3957= 9 Q. AND TWO OF THEM ARE CLOSED, RIGHT?  
3958= 10 A. YES.  
3959= 11 Q. ALL THOSE STORES ARE LOCATED IN MALLS; IS THAT CORRECT?  
3960= 12 A. YES.  
3961= 13 Q. WERE ANY OF THEM IN EXISTENCE WHEN YOU BEGAN OPERATING THE  
3962= 14 HAPPY BOOKSELLER?  
3963= 15 A. YES.  
3964= 16 Q. HOW MANY?  
3965= 17 A. WHEN I OPENED, THERE WAS ONE, AND SHORTLY THEREAFTER, MAYBE  
3966= 18 A YEAR OR TWO, THERE WAS -- THE ONE THAT WAS AT -- OPEN AT THAT  
3967= 19 TIME WAS IN DUTCH SQUARE. AND TWO YEARS LATER, I THINK,  
3968= 20 COLUMBIA MALL OPENED. AND THERE WAS ONE IN -- VERY CONFUSING.  
3969= 21 THERE'S A COLUMBIA MALL AND A COLUMBIANA MALL.  
3970= 22 Q. AND WHEN DID THE COLUMBIANA MALL STORE OPEN SO FAR AS YOU  
3971= 23 CAN RECALL?  
3972= 24 A. IT OPENED ABOUT THE SAME TIME THAT THE BOOKS-A-MILLION  
3973= 25 OPENED OVER THERE. MUST HAVE BEEN '94.  
3974= RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR (415) 626-8404

3975= JACKSON - CROSS / STEER 1 Q. AND EARLIER THAN THAT, WERE  
THERE -- HOW MANY -- IN THE

3976= 2 1980S, HOW MANY WALDENBOOK STORES WERE THERE IN YOUR VICINITY, 3 THEN?  
3977= 4 A. '80S?  
3978= 5 Q. YES.  
3979= 6 A. I THINK FIVE.  
3980= 7 Q. FIVE?  
3981= 8 A. NO, THAT'S NOT TRUE. COLUMBIANA MALL WASN'T BUILT THEN. IN  
3982= 9 THE EARLY '80S? IN THE EARLY '80S, IT WOULD HAVE BEEN THREE.

3983= 10 Q. AND THEN AN ADDITIONAL ONE WAS ADDED IN THE EARLY '90S AND  
3984= 11 SO ON AND SO FORTH, RIGHT?  
3985= 12 A. YES, RIGHT.  
3986= 13 Q. NOW, WERE THESE WALDENBOOK STORES -- YOU MENTIONED THESE  
3987= 14 MALLS. HOW MANY OF THE MALLS EXISTED WHEN YOU WENT INTO THE  
3988= 15 LOCATION THAT THE HAPPY BOOKSELLER OCCUPIES TODAY?  
3989= 16 A. THERE WAS ONLY ONE MALL AND THAT WAS THE ONE I WAS LOCATED  
3990= 17 IN. THERE WERE -- NONE OF THOSE OTHER MALLS EXISTED.  
3991= 18 Q. SO HOW MANY MALLS HAVE OPENED IN THE VICINITY, THEN, SINCE  
3992= 19 YOU WENT INTO BUSINESS?  
3993= 20 A. ONE, TWO, THREE, FOUR MAJOR MALLS.  
3994= 21 Q. AND WHEN EACH OF THOSE MALLS OPENED, DID YOU CONSIDER  
3995= 22 WHETHER YOU OUGHT TO EITHER BRANCH INTO THE MALL OR PERHAPS MOVE  
3996= 23 YOUR OPERATION YOUR BUSINESS TO THAT MALL?  
3997= 24 A. NO.  
3998= 25 Q. AND THAT'S BECAUSE OF WHAT? WHY?  
3999= RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR (415) 626-8404

4000= JACKSON - CROSS / STEER 1 A. WELL, I WAS OPERATING IN -- IN  
THE ORIGINAL MALL, AND I WA  
4001= 2 IN THE BUSINESS BECAUSE I LOVED IT AND I WANTED TO MAKE A LIVING 3 OUT OF IT, AND  
I WASN'T INTERESTED IN OTH  
4002= 4 Q. NOW, YOU SAY YOU WERE OPERATING IN A MALL. TODAY, YOUR  
4003= 5 STORE -- THE HAPPY BOOKSELLER STORE IS NOT IN A MALL, IS IT?  
4004= 6 A. NO, IT IS NOT.  
4005= 7 Q. WHEN DID IT LEAVE -- WHEN DID IT GO TO ITS PRESENT LOCATION?  
4006= 8 A. IT -- 1988.  
4007= 9 Q. DO YOU CONSIDER YOUR STORE DIFFERENT THAN THE -- THE MALL  
4008= 10 BOOK STORES?  
4009= 11 A. YEAH. I CONSIDER A LOT DIFFERENT.  
4010= 12 Q. IN WHAT RESPECT?  
4011= 13 A. WELL, IT HAS A BETTER SELECTION OF BOOKS. IT HAS A  
4012= 14 SELECTION OF BOOKS MORE GEARED TO THE STATE OF SOUTH CAROLINA  
4013= 15 AND COLUMBIA. WE HAVE PEOPLE WHO LOVE BOOKS AND KNOW BOOKS CAN  
4014= 16 TALK ABOUT BOOKS, ACTUALLY READ BOOKS. AND ALL THOSE COMBINED  
4015= 17 MAKE US THE BEST BOOK STORE IN TOWN EVEN TODAY.  
4016= 18 Q. AND YOU DON'T CONSIDER THE MALL BOOK STORES TO BE COMPETING  
4017= 19 WITH YOU ON THE SAME LEVEL THEN; IS THAT CORRECT?  
4018= 20 A. I THINK WE HAVE A BETTER BOOK STORE. ANY TIME THEY SELL A  
4019= 21 BOOK, THEY SELL ONE THAT WE MIGHT HAVE HAD THE POTENTIAL TO  
4020= 22 SELL.  
4021= 23 Q. AND THAT'S TRUE OF ANYBODY WHO'S SELLING BOOKS; ISN'T THAT  
4022= 24 CORRECT?  
4023= 25 A. ABSOLUTELY, YES.  
4024= RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR (415) 626-8404

4025= JACKSON - CROSS / STEER 1 Q. NOW, YOU TESTIFIED UNDER  
EXAMINATION OF YOUR OWN COUNSEL  
4026= 2 THAT AFTER THE BARNES & NOBLE STORES MOVED IN, YOU INSTITUTED A 3 DISCOUNTING  
PROGRAM AT THE HAPPY BOOKSELLE  
4027= 4 DESCRIBED IT. YOU BASICALLY I BELIEVE YOU SAID MATCHED BARNES &  
4028= 5 NOBLE DISCOUNTS?  
4029= 6 A. YES.  
4030= 7 Q. IS THAT CORRECT?  
4031= 8 A. CORRECT.  
4032= 9 Q. AND I THINK -- LET ME MAKE SURE THAT I HAVE YOUR TESTIMONY  
4033= 10 CORRECT. IS IT ACCURATE THAT YOU DIDN'T HAVE A DISCOUNTING  
4034= 11 STRUCTURE LIKE THAT UNTIL THE BARNES & NOBLE STORES OPENED?  
4035= 12 A. WE DIDN'T HAVE ONE EXACTLY LIKE THAT. WE HAD A DISCOUNT  
4036= 13 SCHEDULE AFTER BOOKS-A-MILLION OPENED, BUT IT WASN'T 40, 25, 10.  
4037= 14 Q. SO AFTER BOOKS-A-MILLION OPENED, YOU IMPLEMENTED A  
4038= 15 DISCOUNTING SCHEDULE?  
4039= 16 A. WHICH WAS OUR FIRST EVER.  
4040= 17 Q. OKAY. THAT'S WHAT I WAS GOING TO ASK YOU. BEFORE  
4041= 18 BOOKS-A-MILLION OPENED, YOU DIDN'T DISCOUNT, RIGHT?  
4042= 19 A. CORRECT.  
4043= 20 Q. AND BACK IN THE 1980S AND EARLY '90S, YOUR STORE'S SALES  
4044= 21 GREW EVERY YEAR; ISN'T THAT TRUE?  
4045= 22 A. WE GREW EVERY YEAR FROM THE DAY WE OPENED UNTIL THE  
4046= 23 SUPERSTORES.  
4047= 24 Q. AND BY THE SUPERSTORES, YOU REFER FIRST TO BOOKS-A-MILLION  
4048= 25 AND THEN LATER TO BARNES & NOBLE, CORRECT?  
4049= RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR (415) 626-8404

4050= JACKSON - CROSS / STEER 1 A. YEAH. ALTHOUGH I THINK BORDERS  
RUNS A BETTER SUPERSTORE  
4051= 2 THAN BOOKS-A-MILLION, SO THE DEFINITION'S VAGUE. BUT YES, I'LL 3 SAY YES.  
4052= 4 Q. YOU'RE REFERRING TO BORDERS. I'LL STIPULATE TO THAT, SIR.  
4053= 5 BUT THERE IS NO BORDERS IN SOUTH CAROLINA, IS THERE?  
4054= 6 A. NO, THERE ISN'T.  
4055= 7 Q. THANKS.  
4056= 8 A. ACTUALLY I THINK THERE IS A BORDERS IN CHARLESTON, SOUTH  
4057= 9 CAROLINA, BUT --  
4058= 10 Q. THAT WOULD BE VERY RECENT, RIGHT?  
4059= 11 A. YES.  
4060= 12 Q. NOW, LOOKING BACK AT THE EXHIBIT THAT MR. PETROCELLI WAS  
4061= 13 JUST TALKING TO YOU ABOUT, EXHIBIT NUMBER 192, THAT'S THE ONE --  
4062= 14 THAT'S YOUR HANDWRITTEN TABULATION --  
4063= 15 A. YES.  
4064= 16 Q. -- OF SALES?  
4065= 17 A. YES.  
4066= 18 Q. COULD YOU FLIP BACK TO THAT, PLEASE. I HAVE ONE QUESTION I  
4067= 19 WANT TO ASK YOU.  
4068= 20 A. I NEED TO KNOW WHAT PAGE IT IS ON.  
4069= 21 Q. OH, NO, IT'S JUST ONE -- IT'S THE ONE-PAGE HANDWRITTEN --  
4070= 22 A. I KNOW WHAT IT IS, BUT I DON'T KNOW WHERE IT IS IN THIS  
4071= 23 BOOK.  
4072= 24 Q. WELL, IT'S GOT A TAB THAT SAYS 192.  
4073= 25 A. OKAY.  
4074= RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR (415) 626-8404

4075= JACKSON - CROSS / STEER 1 Q. I KNOW THE BOOKS ARE  
CUMBERSOME. IT'S ACTUALLY IN THE WHI  
4076= 2 VOLUME. 3 A. OKAY.  
4077= 4 Q. OKAY? THE SMALLER OF THE TWO.  
4078= 5 A. (REVIEWING DOCUMENTS.)  
4079= 6 ALL RIGHT. I'M ON IT. YES, I HAVE IT.  
4080= 7 Q. IF -- IF I LOOK AT THAT -- I WANT TO MAKE SURE I READ IT  
4081= 8 CORRECTLY. IF YOU LOOK AT THE DECEMBER SALES FOR 1998 AND THEN  
4082= 9 FOR 1999 AND COMPARE THEM TO THE DECEMBER SALES FOR THE EARLIER  
4083= 10 YEARS, ISN'T IT ACCURATE THAT YOUR DECEMBER SALES IN 1998 AND  
4084= 11 '99 WERE HIGHER THAN THEY'D BEEN IN ANY YEARS SINCE 1992?  
4085= 12 A. (REVIEWING DOCUMENT.)  
4086= 13 YES.  
4087= 14 Q. AND YOU TESTIFIED, I BELIEVE, UNDER THE QUESTIONING OF YOUR  
4088= 15 OWN COUNSEL THAT YOUR SALES IN THE YEAR 2000 WERE ABOUT \$1.4  
4089= 16 MILLION TOTAL?  
4090= 17 A. YES.  
4091= 18 Q. OKAY. DO YOU RECALL WHAT THEY WERE IN 1999?  
4092= 19 A. I THINK THEY WERE ABOUT ONE TWO AND A HALF, OR THREE.  
4093= 20 Q. I THINK THAT'S ABOUT RIGHT. AND JUST TO HELP YOU REFRESH  
4094= 21 YOUR RECOLLECTION TO REMEMBER THIS, IF YOU LOOK AT EXHIBIT  
4095= 22 NUMBER 183 IN THE SAME NOTEBOOK --  
4096= 23 A. (REVIEWING DOCUMENTS.)  
4097= 24 Q. -- THAT'S THE FINANCIAL STATEMENT FOR THE YEAR 1999.  
4098= 25 A. YES.  
4099= RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR (415) 626-8404

4100= JACKSON - CROSS / STEER 1 Q. AND IF YOU LOOK AT TOTAL SALES  
FOR THAT YEAR, THEY'RE  
4101= 2 APPROXIMATELY 1.2 MILLION. DO YOU WANT TO READ THE EXACT 3 NUMBER?  
4102= 4 A. (REVIEWING DOCUMENT.)  
4103= 5 YES.  
4104= 6 Q. ALL RIGHT. RIGHT ABOUT -- APPROXIMATELY 1.2 MILLION, HUH?  
4105= 7 A. (REVIEWING DOCUMENT.)  
4106= 8 YES.  
4107= 9 Q. SO YOU ENJOYED A SALES INCREASE IN THE YEAR 2000 OVER THE  
4108= 10 YEAR 1999; IS THAT CORRECT?  
4109= 11 A. THAT'S CORRECT.  
4110= 12 Q. NOW, YOU TESTIFIED EARLIER ABOUT THE WAY BOOKS ARE PRICED.  
4111= 13 AND I WANT TO GET INTO THAT A LITTLE BIT WITH YOU. I THINK YOU  
4112= 14 TESTIFIED THAT THE PUBLISHERS SET THE RETAIL PRICES OF THE  
4113= 15 BOOKS?  
4114= 16 A. YES.  
4115= 17 Q. AND -- DO YOU HAVE AN OPINION AS TO WHETHER IT WOULDN'T BE  
4116= 18 BETTER FOR BOOKSELLERS IN GENERAL IF THE PUBLISHERS DID NOT SET

4117= 19 RETAIL PRICES OF THE BOOKS?  
4118= 20 A. WELL, I HAVE TO SAY I'VE BEEN A LONG ADVOCATE OF NET PRICING  
4119= 21 IN THE BOOK INDUSTRY.  
4120= 22 Q. WHAT DO YOU -- WHAT IS NET PRICING? CAN YOU DEFINE THAT  
4121= 23 TERM FOR THE BENEFIT OF EVERYONE PRESENT, PLEASE.  
4122= 24 A. THAT WOULD MEAN THAT A PUBLISHER WOULD GET A BOOK TOGETHER,  
4123= 25 HE SAID, "I'M GOING TO SELL THIS TO BOOKSELLERS FOR \$5."  
4124= RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR (415) 626-8404

4125= JACKSON - CROSS / STEER 1 Q. FLAT PRICE FOR EVERYONE WHO  
BUYS THE SAME PRODUCT; IS THAT

4126= 2 RIGHT? 3 A. YES, RIGHT.  
4127= 4 Q. OKAY. AND THAT WOULD LEAVE YOU, YOU THE BOOKSELLER, THE  
4128= 5 HAPPY BOOKSELLER, FREE TO DECIDE WHAT RETAIL PRICE TO CHARGE?  
4129= 6 A. YES.  
4130= 7 Q. CORRECT? AND THAT WOULD -- WHY WOULD THAT BE A GOOD THING  
4131= 8 FOR YOU?  
4132= 9 A. WELL, I OPERATE A FURNITURE BUSINESS FOR 25 YEARS, AND  
4133= 10 THAT'S THE WAY THE FURNITURE BUSINESS OPERATES, AND YOU -- YOU  
4134= 11 MERCHANDISE WHAT YOU THINK THAT'S WORTH IN YOUR COMMUNITY. AND  
4135= 12 EVERYBODY PAYS THE SAME PRICE, AND EVERYBODY'S OUT THERE TRYING  
4136= 13 TO GET AS MUCH BUSINESS AS POSSIBLE.  
4137= 14 Q. OKAY. SO THAT WOULD YOU LEAVE YOU AS A BOOKSELLER -- IF NET  
4138= 15 PRICING WERE ADOPTED, THAT WOULD LEAVE BOOKSELLERS FREE TO  
4139= 16 COMPETE ON HOW THEY PRICE THEIR BOOKS WHEN THEY SELL THEM TO  
4140= 17 CUSTOMERS, THE ULTIMATE READERS OF THE BOOKS, RIGHT?  
4141= 18 A. YEAH, EXCEPT, YOU KNOW, WHAT WOULD HAPPEN WITH NET PRICING,  
4142= 19 THEN THEY WOULD SAY, "WELL, THIS COST YOU \$5, BUT IF YOU BUY A  
4143= 20 HUNDRED COPIES, YOU CAN GET 10 PERCENT OFF," AND ET CETERA AND  
4144= 21 ET CETERA. THAT WOULD ERODE MUCH OF WHAT WOULD BE BENEFICIAL TO  
4145= 22 NET PRICING. BUT AS -- IF IT WAS A PURE ONE PRICING TO  
4146= 23 EVERYBODY, IT WOULD BE -- WHAT YOU SAID WOULD BE TRUE.  
4147= 24 Q. MY POINT WAS THAT ISN'T -- IT'S TRUE, ISN'T IT, THAT YOUR  
4148= 25 BELIEF IN THE VALUE, THE POSITIVE VALUE OF NET PRICING IS BASED  
4149= RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR (415) 626-8404

4150= JACKSON - CROSS / STEER 1 PARTLY ON THE FACT THAT IT WOULD BE  
GOOD FOR CONSUMERS TO HAVE

4151= 2 BOOK RETAILERS COMPETING ON THE PRICES THAT THEY SELL TO 3 CONSUMERS; ISN'T THAT  
RIGHT?  
4152= 4 A. I SUPPOSE YOU COULD SAY THAT WOULD BE RIGHT.  
4153= 5 MR. STEER: I HAVE NO OTHER QUESTIONS. THANK YOU.  
4154= 6 THE COURT: ALL RIGHT. HAVE WE GOT MORE THAN 15  
4155= 7 MINUTES OF DIRECT -- REDIRECT?  
4156= 8 MR. DE BRUIN: NOT MORE THAN 15 MINUTES, NO.  
4157= 9 THE COURT: ALL RIGHT. REDIRECT.  
4158= 10 REDIRECT EXAMINATION  
4159= 11 BY MR. DE BRUIN:  
4160= 12 Q. MR. JACKSON, YOU TESTIFIED IN RESPONSE TO A QUESTION FROM  
4161= 13 MR. PETROCELLI THAT MR. GRAVES IS NOW THE PRINCIPAL BUYER FOR  
4162= 14 THE HAPPY BOOKSELLER. DO YOU RECALL THAT?  
4163= 15 A. YES.  
4164= 16 Q. NOW, WHO PAYS THE BILLS?  
4165= 17 A. I DO.  
4166= 18 Q. IS THAT STILL TRUE TODAY?  
4167= 19 A. YES.  
4168= 20 Q. AND WHO CHECKS THE INVOICES?  
4169= 21 A. I DO.  
4170= 22 Q. IS THAT STILL TRUE TODAY?  
4171= 23 A. YES.  
4172= 24 Q. NOW, HE ALSO SHOWED YOU SOMETHING FROM YOUR DEPOSITION WHERE  
4173= 25 YOU TESTIFIED THAT YOU ATTEMPT TO GET THE BEST TERMS AVAILABLE.  
4174= RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR (415) 626-8404

4175= JACKSON - REDIRECT / DE BRUIN 1 DO YOU RECALL THAT?  
4176= 2 A. YES. 3 Q. AND WHAT ELSE DID YOU SAY IN CONNECTION WITH YOUR STATEMENT  
4177= 4 THAT YOU ATTEMPT TO GET THE BEST TERMS AVAILABLE? DO YOU  
4178= 5 REMEMBER THAT PART OF IT?  
4179= 6 A. I THINK I SAID THAT I WANTED TO MAKE SURE THAT I WAS BEING  
4180= 7 INVOICED AND -- AND ACCORDING TO THE RED BOOK, WHICH WOULD BE  
4181= 8 THE BEST PRICE AVAILABLE.  
4182= 9 Q. AND DO YOU RECALL SAYING THAT YOU ATTEMPT TO GET THE BEST  
4183= 10 TERMS AVAILABLE, QUOTE, AS LONG AS THEY'RE OFFERED TO EVERY

4184= 11 OTHER BOOKSELLER IN THE COUNTRY?  
4185= 12 A. YES, I DID SAY THAT.  
4186= 13 Q. NOW, MR. PETROCELLI ALSO ASKED YOU SOME QUESTIONS ABOUT  
4187= 14 POCKET ALLOWANCES.  
4188= 15 A. YES.  
4189= 16 Q. LET ME JUST GO BACK AND CLARIFY FOR THE RECORD. CAN YOU  
4190= 17 PLEASE EXPLAIN TO THE COURT EXACTLY WHAT A POCKET ALLOWANCE IS.  
4191= 18 A. I THINK IT'S NOT BEEN IN EXISTENCE FOR YEARS. BUT IN THE  
4192= 19 BEGINNING, FIXTURES IN THIS BUSINESS WERE MOSTLY WIRE, AND THEY  
4193= 20 HAD A POCKET. IT WAS EXACTLY THE SIZE OF MASS MARKET, AND --  
4194= 21 AND TRADE PAPERBACKS DIDN'T EXIST.  
4195= 22 AND IF YOU HAD A PAPERBACK BOOK IN YOUR STORE, MORE  
4196= 23 LIKELY IT WAS THIS SIZE. AND MOST BOOKSTORES HAD HUGE DISPLAYS  
4197= 24 OF MASS MARKETS, MUCH MORE THAN THEY DO TODAY. AND THIS POCKET  
4198= 25 IT WOULD FIT FIVE BOOKS. AND IF YOU WERE OPENING A NEW STORE,  
4199= RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR (415) 626-8404

4200= JACKSON - REDIRECT / DE BRUIN 1 BANTAM DOUBLEDAY DELL, FOR  
INSTANCE, WOULD SAY HOW MANY POC  
4201= 2 ARE YOU GOING TO DEVOTE TO BANTAM DOUBLEDAY BOOKS? AND YOU 3 WOULD CHECK YOUR  
INITIAL ORDERS, AND YOU WOULD  
4202= 4 THEY WOULD GIVE YOU 60 CENTS PER POCKET.  
4203= 5 (CONTINUED NEXT PAGE; NOTHING OMITTED.)  
4204= 6  
4205= 7  
4206= 8  
4207= 9  
4208= 10  
4209= 11  
4210= 12  
4211= 13  
4212= 14  
4213= 15  
4214= 16  
4215= 17  
4216= 18  
4217= 19  
4218= 20  
4219= 21  
4220= 22  
4221= 23  
4222= 24  
4223= 25  
4224= RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR (415) 626-8404

4225=BY MR. DEBRUIN:  
4226=Q. SO THESE, SEE IF I CAN UNDERSTAND CORRECTLY, ARE  
4227=ESSENTIALLY THE RACKS THE PAPERBACKS WOULD SOMETIMES SIT IN?  
4228=A. YES, IT WOULD BE THE RACKS.  
4229=Q. AND ESSENTIALLY THE PUBLISHERS THAT SOLD THESE PAPERBACK  
4230=BOOKS WOULD HELP PAY THE BOOKSTORES TO PUT THOSE RACKS IN THE  
4231=STORE?  
4232=A. YES.  
4233=Q. NOW, WERE THESE TERMS FOR POCKET ALLOWANCES PUBLISHED IN  
4234=THE RED BOOK, SIR?  
4235=A. YOU KNOW, IT'S BEEN ALMOST 30 YEARS SINCE I USED THEM, AND  
4236=I DON'T KNOW.  
4237=Q. ALL RIGHT, WELL, WE CAN LOOK THAT UP.  
4238=A. YES.  
4239=Q. DID YOU EVER RECEIVE A POCKET ALLOWANCE, MR. JACKSON, FROM  
4240=ANY PUBLISHER THAT DID NOT MAKE THOSE POCKET ALLOWANCES  
4241=AVAILABLE TO ANY RETAIL BOOKSELLER?  
4242=A. NO.  
4243=Q. MR. JACKSON, DID YOU EVER RECEIVE A POCKET ALLOWANCE THAT  
4244=WAS GREATER THAN THE AMOUNT OF THE POCKET ALLOWANCE THAT THAT  
4245=PUBLISHER OFFERED TO EVERY OTHER RETAIL BOOKSTORE?  
4246=A. NO.  
4247=Q. NOW, MR. PETROCELLI ALSO ASKED YOU ABOUT SHARED MARKDOWNS,  
4248=AND I DON'T THINK WE'VE DEFINED THAT FOR COURT. COULD YOU  
4249=PLEASE EXPLAIN WHAT A SHARED MARKDOWN IS?

4250=A. A PUBLISHER PUBLISHES A BOOK, AND THE SALES ARE  
4251=DISAPPOINTING, AND THEY WILL CALL YOU UP AND ASK YOU HOW MANY

4252=YOU HAVE LEFT, AND I'D SAY, WE'VE GOT 20 LEFT, AND THEY SAY,  
4253=WELL, WE WANT TO REDUCE THE PRICE OF THAT BOOK, AND WE WILL  
4254=GIVE YOU -- AND IT'S KIND OF A REMAIN-IN-PLACE THING. IF IT'S  
4255=A 20-DOLLAR BOOK, THEY MIGHT SAY, WE'LL GIVE YOU \$3 OFF FOR YOU  
4256=TO RE-MARK THAT BOOK. AND IT DOESN'T HAPPEN OFTEN IN THIS  
4257=INDUSTRY. IN FACT, IT'S BEEN YEARS SINCE I'VE BEEN OFFERED  
4258=THAT, BUT THAT'S BASICALLY WHAT THAT IS.  
4259=Q. ALL RIGHT, SO THE CONCEPT IS THAT A PUBLISHER HAS PUT A LOT  
4260=OF BOOKS OUT THERE, AND THEY'RE NOT SELLING, SO A LOT OF  
4261=BOOKSTORES HAVE EXCESS INVENTORY.  
4262=A. YES.  
4263=Q. AND IF I UNDERSTAND YOUR TESTIMONY, THE PUBLISHER WILL  
4264=OFFER AN INCENTIVE TO HELP YOU SELL THOSE BOOKS BY HELPING YOU  
4265=PAY TO MARK DOWN THE PRICE OF THE BOOK, IS THAT CORRECT?  
4266=A. YES, AND IT, SOMETIME AGO, MAYBE EIGHT OR TEN YEARS AGO, IT  
4267=WAS THOUGHT THAT THAT MIGHT BE A REALLY GOOD IDEA, BUT IT NEVER  
4268=WORKED VERY WELL, AND I HAVEN'T SEEN IT AROUND IN A LONG TIME.  
4269=Q. NOW, MR. JACKSON, HAVE YOU EVER RECEIVED A SHARED MARKDOWN  
4270=FROM A PUBLISHER THAT WAS NOT MADE AVAILABLE TO ALL RETAIL  
4271=BOOKSTORES?  
4272=A. NOT TO MY KNOWLEDGE. I THINK THEY OFFERED IT TO EVERYBODY.  
4273=Q. HOW DO YOU KNOW, WHEN YOU RECEIVE THESE SHARED MARKDOWNS,  
4274=THAT THEY WERE, IN FACT, MADE AVAILABLE TO OTHER RETAIL  
4275=BOOKSTORES?  
4276=A. I DON'T KNOW THAT FOR A FACT, BUT I'M PRETTY CERTAIN THAT  
4277=WAS TRUE.  
4278=Q. WELL, YOU MENTIONED IN YOUR CROSS -- THE CROSS-EXAMINATION  
4279=FROM MR. PETROCELLI THAT YOU'D RECEIVED SOMETHING IN WRITING.  
4280=DO YOU RECALL THAT, SIR?  
4281=A. WE DO GET SOMETHING IN WRITING, YES, AND I ASSUME THEY SEND  
4282=IT TO ALL BOOKSTORES.  
4283=Q. AND DESCRIBE WHAT YOU WOULD RECEIVE IN WRITING, OR HOW YOU  
4284=WOULD LEARN ABOUT THE SHARED MARKDOWN.  
4285=A. WELL, THEY WOULD SEND IT TO YOU AND YOU WOULD -- IT WAS  
4286=USUALLY ON MAYBE ONLY ONE TIME, SOMETIMES IT WAS ON TWO TITLES  
4287=BUT MOSTLY ONE TITLE, AND IT WOULD DESCRIBE WHAT THEY WOULD GET  
4288=YOU OFF, AND YOU HAD SOME PAPERWORK YOU HAD TO SEND BACK HOW  
4289=MANY YOU HAD.  
4290=Q. SO AGAIN, YOU'D RECEIVE A LETTER OR A FLYER OR --  
4291=A. YES, RIGHT.  
4292=Q. -- FROM THE PUBLISHER?  
4293=A. YES.  
4294=Q. ALL RIGHT. NOW, YOU TESTIFIED ON CROSS-EXAMINATION THAT  
4295=THE ONLY WAY TO KNOW WHAT THE HAPPY BOOKSELLER ACTUAL PAYS FOR  
4296=BOOKS IS BY LOOKING AT THE INVOICE, RIGHT?  
4297=A. YES.  
4298=Q. BEFORE YOU PAY, SIR, DO YOU LOOK AT THE INVOICE?  
4299=A. YES, VERY CAREFULLY.  
4300=Q. HAVE YOU EVER COME ACROSS AN INVOICE IN WHICH THE HAPPY  
4301=BOOKSELLER WAS CHARGED A DISCOUNT THAT WAS DIFFERENT THAN  
4302=EITHER THE DISCOUNT IN THE RED BOOK OR THE DISCOUNT IN A  
4303=PRINTED, PUBLISHED STOCK OFFER OR CONVENTION SPECIAL THAT WAS  
4304=OFFERED TO THE ENTIRE BOOK INDUSTRY?  
4305=A. NO.  
4306=Q. DO YOU NEED TO DO ANYTHING ELSE TO DETERMINE WHETHER OR NOT  
4307=THE HAPPY BOOKSELLER HAS EVER RECEIVED ANY EXTRA DISCOUNTS?  
4308=A. I'M SURE WE NEVER RECEIVED ANY EXTRA DISCOUNTS, OTHER THAN  
4309=WHAT'S AVAILABLE TO EVERYONE.  
4310=Q. WHY IS IT YOU'RE SO SURE?  
4311=A. I'VE BEEN PAYING THOSE INVOICES 30 YEARS, AND I CHECK THEM  
4312=THOROUGHLY.  
4313=Q. LAST QUESTION. YOU'VE BEEN ASKED SOME QUESTIONS ABOUT YOUR  
4314=SALES AND WHAT'S HAPPENED TO YOUR SALES. LOOK BACK IN THE  
4315=WHITE BINDER --  
4316=A. YES.  
4317=Q. -- EXHIBIT 192 --  
4318=A. YES.  
4319=Q. -- WHICH IS YOUR RECORDING FROM THE LEDGER, MONTH BY MONTH,  
4320=OF YOUR SALES. I BELIEVE THERE WAS SOME TESTIMONY ABOUT WHAT  
4321=HAPPENED AFTER THE BARNES & NOBLE OPENED IN LATE 1997, ABOUT A  
4322=MILE FROM YOUR STORE. DO YOU RECALL THAT TESTIMONY ON CROSS?

4323=A. YES.  
4324=Q. LET ME ASK YOU TO LOOK AT.... WHAT WAS YOUR SALES IN  
4325=DECEMBER OF 1996?  
4326=A. 207,000.  
4327=Q. AND WHAT WERE YOUR SALES IN DECEMBER OF 1997, AFTER THAT  
4328=SECOND BARNES & NOBLE HAD COME IN?  
4329=A. 188.  
4330=Q. ALL RIGHT. NOW, LET ME LOOK -- IN JANUARY, 1997, BEFORE  
4331=THE BARNES & NOBLE CAME IN, WHAT WERE YOUR SALES?  
4332=A. ROUND FIGURES, 134,000.  
4333=Q. AND IN JANUARY OF 1998, AFTER THE BARNES & NOBLE CAME IN,  
4334=WHAT WERE YOUR SALES?  
4335=A. 118,000, IN ROUGH --  
4336=Q. LASTLY, IN FEBRUARY OF 1997, BEFORE THE BARNES & NOBLE CAME  
4337=IN, WHAT WERE YOUR SALES?  
4338=A. ROUND FIGURES, 85,000.  
4339=Q. AND IN FEBRUARY OF 1998, AFTER THE BARNES & NOBLE CAME IN,  
4340=WHAT WERE YOUR SALES?  
4341=A. 79,000.  
4342=Q. NOW, MR. JACKSON, YOU ALSO TESTIFIED ON CROSS THAT YOU'VE  
4343=BEEN ABLE, AFTER THESE STORES HAVE COME IN, TO HAVE SOME  
4344=INCREASE IN YOUR SALES.  
4345=A. YES.  
4346=Q. HOW HAVE YOU BEEN ABLE TO DO THAT, SIR?  
4347=A. DISCOUNTING, WHICH HAS BEEN VERY COSTLY.  
4348=Q. SO AS A RESULT OF MEETING THE COMPETITIVE PRESSURES, YOU'VE  
4349=BEEN ABLE TO GET YOUR SALES BACK UP?  
4350=A. SALES BACK UP, PROFITS VERY LOW.  
4351=Q. AND DO YOUR PROFITS REMAIN LOW AS A RESULT OF THE  
4352=DISCOUNTING PRACTICES?  
4353=A. THEY DO, YES.  
4354=Q. AND IS THAT TRUE STILL TO TODAY?  
4355=A. YES.  
4356= MR. DEBRUIN: THANK YOU, SIR. I HAVE NO FURTHER  
4357=QUESTIONS.  
4358= THE COURT: YOU MAY RE-CROSS.  
4359= RE-CROSS-EXAMINATION  
4360=BY MR. PETROCELLI:  
4361=Q. JUST VERY QUICKLY. MR. JACKSON, DO YOU KNOW, PRIOR TO THE  
4362=TIME THAT BARNES & NOBLE ARRIVED, IN TIME, WHAT PERCENTAGE OF  
4363=YOUR BOOK SALES WERE NEW YORK TIMES BEST-SELLER BOOKS?  
4364=A. THEY WERE -- THEY'VE ALWAYS BEEN HIGH, BUT I CAN'T GIVE YOU  
4365=A PERCENTAGE.  
4366=Q. CAN YOU BALLPARK IT?  
4367=A. ACTUALLY, I CAN'T.  
4368=Q. IS IT -- HAS THE PERCENTAGE REMAINED CONSTANT OVER TIME TO  
4369=THIS DAY?  
4370=A. I CAN'T ANSWER THAT. I DON'T KNOW.  
4371= MR. PETROCELLI: THANK YOU.  
4372= THE COURT: MR. STEER?  
4373= MR. STEER: NO ADDITIONAL QUESTIONS.  
4374= THE COURT: ALL RIGHT, YOU MAY STEP DOWN, AND WE'LL  
4375=RECESS NOW UNTIL 8:30 TOMORROW MORNING. AND MR. DEBRUIN, IF  
4376=YOU'VE GOT LOTS AND LOTS OF EXHIBITS, JUST STAY UP ALL NIGHT  
4377=AND PUT THEM IN ONE BINDER. COURT'S IN RECESS.  
4378= THE CLERK: ALL RISE.  
4379= (PROCEEDINGS ADJOURNED FOR THE DAY AT 1:23 P.M.)  
4380=  
4381=  
4382=  
4383=  
4384=  
4385=  
4386=  
4387=  
4388=  
4389=  
4390=  
4391=  
4392=



4393=  
4394=  
4395=  
4396=  
4397=  
4398=  
4399=

4400=

4401=APPEARANCES: (CONTINUED)

4402=FOR DEFENDANTS: BORDERS GROUP, INC.

4403=(BORDERS GROUP) 100 PHOENIX DRIVE

4404= ANN ARBOR, MICHIGAN 48108-2202

4405= BY: THOMAS D. CARNEY, GENERAL COUNSEL

4406=

4407=

4408=

4409=

4410=

4411=

4412=

4413=

4414=

4415=

4416=

4417=

4418=

4419=

4420=

4421=

4422=

4423=

4424=

end=Text