

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= TUESDAY, APRIL 10, 2001

12= TRANSCRIPT OF COURT TRIAL - VOL. 2

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 H. MERCADO, CSR 8258 RMR, CRR  
24= OFFICIAL REPORTERS

25=APPEARANCES: (CONTINUED)FOR PLAINTIFFS: JENNER & BLOCK WASHINGTON, D.C. 20005  
26= 601 13TH STREET N.W. BRUCE V. SPIVA  
27= BY: DAVID W. DEBRUIN DANIEL MACH JANIS KESTENBAUM  
28= DANIEL MACH JANIS KESTENBAUM  
29= WILLIAM HOHENGARTEN KEVIN STACK  
30= SHILPA SATOSKARFOR DEFENDANTS: O'MELVENY & MYERS LLP  
31=(BARNES & NOBLE) 1999 AVENUE OF THE STARS, 7TH FLOOR LOS ANGELES,  
CALIFORNIA 90067-6035  
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 PREOVOLOS  
48= JUDSON LOBDELL  
49= (APPEARANCES CONTINUED ON FOLLOWING PAGE.)

50= THE COURT: MORNING, COUNSEL.  
51= COUNSEL: MORNING, YOUR HONOR.  
52= THE COURT: BEFORE WE GET STARTED, I WANT TO MAKE A  
53=VERY IMPORTANT REMARK ABOUT A DOCUMENT CALLED STIPULATION  
54=REIDENTIFICATION AND ADMISSIBILITY AND EXHIBITS AT TRIAL. AND I  
55=HAVE NO OBJECTION WHATSOEVER WITH IT, EXCEPT IT'S NOT A  
56=STIPULATION. NOBODY SIGNED IT. AND I THINK IT'S A SPLendid WAY  
57=TO HANDLE THE IDENTIFICATION, AND IF COUNSEL WILL SIGN IT AT  
58=SOME TIME, I --  
59= MR. YOUNG: WE'LL BE HAPPY TO SIGN IT RIGHT NOW, IF  
60=IT PLEASE THE COURT.  
61= THE COURT: I'LL BE HAPPY TO GIVE IT TO YOU AFTER THE  
62=SESSION.  
63= MR. YOUNG: THANK YOU.  
64= THE COURT: CALL YOUR NEXT WITNESS.  
65= MR. DAWSON: MORNING, YOUR HONOR. ADAM DAWSON. I'D  
66=LIKE TO CALL ANDY ROSS TO THE STAND, PLEASE.  
67= THE CLERK: PLEASE RAISE YOUR RIGHT HAND.  
68= ANDREW HARWOOD ROSS,  
69=CALLED AS A WITNESS FOR THE PLAINTIFFS, HAVING BEEN DULY SWORN,

70=TESTIFIED AS FOLLOWS:

71= THE CLERK: THANK YOU. PLEASE BE SEATED.

72= THE WITNESS: THANK YOU.

73=

74=

75= THE CLERK: PLEASE STATE YOUR FULL NAME AND SPELL

76=YOUR LAST NAME FOR THE RECORD.

77= THE WITNESS: MY NAME IS ANDREW HARWOOD ROSS. MY

78=LAST NAME IS SPELLED R-O-S-S.

79= DIRECT EXAMINATION

80=BY MR. DAWSON:

81=Q. GOOD MORNING, MR. ROSS.

82=A. GOOD MORNING, MR. DAWSON.

83=Q. COULD YOU TELL ME WHAT YOUR CURRENT OCCUPATION IS, PLEASE.

84=A. I OWN A BOOKSTORE.

85=Q. AND WHICH BOOKSTORE IS IT?

86=A. CODY'S BOOKS IN BERKELEY, CALIFORNIA.

87=Q. AND DOES CODY'S BOOKSTORE IN BERKELEY, CALIFORNIA, HAVE MORE

88=THAN ONE STORE?

89=A. YES. WE HAVE TWO STORES, BOTH IN BERKELEY.

90=Q. WHERE ARE THOSE LOCATED?

91=A. THE FIRST STORE IS ON TELEGRAPH AVENUE ABOUT THREE BLOCKS

92=FROM THE UNIVERSITY OF CALIFORNIA, AND THE SECOND STORE IS ON

93=FOURTH STREET, WHICH IS NEAR THE BAY.

94=Q. AS THE OWNER OF CODY'S BOOKSTORE, ARE YOU FAMILIAR WITH THE

95=GENERAL OPERATION OF THOSE STORES?

96=A. YES, I AM.

97=Q. AND ARE YOU FAMILIAR WITH TERMS OF SALE AND DISCOUNTS WHICH

98=YOU'VE BEEN ABLE TO OBTAIN SINCE THE STORE WAS OPENED?

99=A. YES.

100=Q. AND WHEN DID CODY'S ON TELEGRAPH OPEN?

101=A. IT WAS OPENED -- THE BUSINESS BEGAN IN 1956. I WAS NOT THE

102=OWNER THEN. THEY MOVED TO TELEGRAPH AVENUE, THE CURRENT

103=LOCATION, AROUND 1963.

104=Q. AND WHEN DID YOU BECOME THE OWNER OF CODY'S?

105=A. I PURCHASED THE BUSINESS IN 1977.

106=Q. AND WHEN WAS YOUR FOURTH STREET STORE OPENED?

107=A. WE OPENED THE SECOND STORE ON FOURTH STREET IN 1997.

108=Q. HOW MANY SQUARE FEET OF RETAIL SPACE DO YOU HAVE AT YOUR

109=TELEGRAPH STORE?

110=A. TELEGRAPH STORES HAS ABOUT 13- OR 14,000 SQUARE FEET OF

111=RETAIL, ABOUT 20,000 SQUARE FEET TOTAL.

112=Q. AND HAS THAT REMAINED CONSTANT SINCE 1994 TO THE PRESENT?

113=A. YES.

114=Q. AND SIMILARLY, HOW MANY SQUARE FEET OF RETAIL SPACE DOES

115=YOUR FOURTH STREET STORE HAVE?

116=A. ABOUT 9,000 SQUARE FEET RETAIL, ABOUT 12,700 SQUARE FEET

117=TOTAL.

118=Q. AND HAS THAT MAINTAINED CONSTANT SINCE 1997?

119=A. YES.

120=Q. DOES EITHER OF YOUR STORES HAVE A LOADING DOCK?

121=A. YES. WE HAVE A LOADING DOCK ON FOURTH STREET.

122=Q. DO YOU NOT HAVE A LOADING DOCK AT THE TELEGRAPH AVENUE

123=STORE?

124=A. NO.

125=Q. OKAY. DOES THAT LACK OF A LOADING DOCK AT THE TELEGRAPH

126=STORE PRECLUDE FROM YOU RECEIVING ANY TYPES OF DELIVERY?

127=A. NO, WE CAN PRETTY MUCH RECEIVE WHATEVER COMES TO US.

128=Q. AND HOW MANY EMPLOYEES DO YOU HAVE IN TOTAL TO COMBINE OF

129=THE TWO STORES CURRENTLY?

130=A. I THINK RIGHT NOW WE HAVE ABOUT A HUNDRED EMPLOYEES.

131=Q. AND HAS THAT NUMBER FLUCTUATED SINCE THE OPENING OF THE

132=FOURTH STREET STORE?

133=A. WELL, IT INCREASED WHEN WE OPENED THE FOURTH STREET STORE.

134=BUT AFTER THAT IT'S BEEN RELATIVELY STABLE.

135=Q. PREVIOUS TO OPENING THE FOURTH STREET STORE, HAD THE NUMBER

136=FLUCTUATED IN THE TELEGRAPH STORE?

137=A. IT -- IT DECLINED AFTER 1992, BUT IT -- YOU KNOW, BETWEEN

138=1993 OR -4 AND THE OPENING OF THE NEW STORE, IT WAS PRETTY

139=STABLE.

140=Q. AND WHAT PERCENTAGE OF EMPLOYEES THAT YOU'VE MENTIONED WERE  
141=WORKING AT THE TELEGRAPH STORE?  
142=A. I THINK ABOUT 75 PERCENT WORK AT THE TELEGRAPH STORE, BUT  
143=THAT INCLUDES OUR CENTRAL OFFICES AND THAT SORT OF THING.  
144=Q. CAN YOU TELL THE COURT WHAT TYPES OF BOOKS, WHAT CATEGORIES  
145=OF BOOKS YOU'VE BEEN SELLING AT THE TELEGRAPH STORE FROM 1994 TO  
146=THE PRESENT?  
147=A. WE SELL ALL TYPES OF BOOKS. SPECIFICALLY WE SELL HARDBACKS,  
148=TRADE PAPERBACKS, MASS MARKET BOOKS, BOOKS ON TAPE, TECHNICAL  
149=BOOKS, THAT SORT OF THING.

150=Q. DO THOSE INCLUDE BOTH FRONT LIST AND BACK LIST?  
151=A. YES.  
152=Q. AND HOW ABOUT AT YOUR FOURTH STREET STORE, WHAT TYPES OF  
153=BOOKS DO YOU SELL THERE?  
154=A. SAME KINDS OF BOOKS, HARDBACKS, TRADE PAPERBACKS, MASS  
155=MARKET BOOKS, BOOKS ON TAPE, TECHNICAL BOOKS.  
156=Q. HAVE THE CATEGORIES OF BOOKS THAT YOU SELL AT YOUR TELEGRAPH  
157=STORE CHANGED SINCE 1994?  
158=A. NO.  
159=Q. HAVE THE CATEGORIES OF BOOKS THAT YOU SELL AT YOUR FOURTH  
160=STREET STORE CHANGED SINCE 1997?  
161=A. NO.  
162=Q. AND CAN YOU GIVE ME A ROUGH ESTIMATE OF THE NUMBER OF TITLES  
163=THAT YOU CURRENTLY HAVE AT THE TELEGRAPH STORE?  
164=A. ABOUT 150,000. THAT'S ROUGH ESTIMATE.  
165=Q. AND SINCE 1994, HAS THAT NUMBER RISEN, FALLEN OR REMAINED  
166=CONSTANT?  
167=A. IT TENDS TO CREEP UP A LITTLE BIT EVERY YEAR, SO IT'S GROWN.  
168=Q. AND HOW MANY TITLES DO YOU HAVE AT YOUR FOURTH STREET STORE?  
169=A. PROBABLY NINETY TO A HUNDRED THOUSAND TITLES.  
170=Q. AND HAS THAT NUMBER CHANGED SINCE THE OPENING OF THAT STORE?  
171=A. IT ALSO HAS CREEPED UP A LITTLE BIT. IT'S GROWN A BIT.  
172=Q. ARE THERE ANY BARNES & NOBLE STORES CLOSE TO YOUR TELEGRAPH  
173=STORE?  
174=A. THE CLOSEST BARNES & NOBLE IS ON SHATTUCK. IT'S ABOUT FIVE  
175=BLOCKS AWAY FROM OUR TELEGRAPH STORE.  
176=Q. AND ARE THERE ANY BORDERS STORES CLOSE TO YOUR STORE ON  
177=TELEGRAPH?  
178=A. THE CLOSEST ONE WOULD BE IN EMERYVILLE, WHICH IS ABOUT  
179=THREE MILES AWAY.  
180=Q. WHEN DID THE BARNES & NOBLE ON SHATTUCK OPEN?  
181=A. I BELIEVE IT OPENED IN 1992.  
182=Q. AND WHEN DID THE BORDERS STORE OPEN?  
183=A. I THINK IT WAS IN 1995.  
184=Q. AND, AGAIN, THE BORDERS STORE IS THREE MILES AWAY FROM YOUR  
185=TELEGRAPH AVENUE STORE?  
186=A. YES.  
187=Q. HOW FAR AWAY ARE THE TWO STORES THAT YOU HAVE FROM EACH  
188=OTHER?  
189=A. ABOUT THREE AND A HALF MILES FROM EACH OTHER.  
190=Q. OKAY.  
191= YOUR HONOR, IF I COULD APPROACH THE WITNESS WITH HIS  
192=WITNESS BINDER.  
193= THE COURT: YES.  
194= MR. DAWSON: I'VE PREVIOUSLY GIVEN ONE FOR THE  
195=COURT'S -- THINK IT'S SITTING RIGHT BEHIND YOU. NO, IT'S --  
196=EXCUSE ME. IT'S TO YOUR RIGHT. RIGHT ON THE -- SITTING RIGHT  
197=THERE.  
198= THE CLERK: OKAY.  
199= MR. PETROCELLI: IS THERE A BINDER FOR US, COUNSEL?

200=MAY WE HAVE A BINDER ALSO?  
201= MR. DAWSON: YOU WERE GIVEN THEM YESTERDAY.  
202= MR. PETROCELLI: DO YOU HAVE AN EXTRA ONE?  
203= MR. DAWSON: I DON'T.  
204= MR. STEER: I HAVE ONE. MR. PETROCELLI, SINCE YOU'RE  
205=GOING TO PROCEED FIRST, I'LL --  
206= MR. PETROCELLI: THANK YOU.  
207=BY MR. DAWSON:  
208=Q. I'D LIKE TO SHOW YOU, MR. ROSS, WHAT'S BEEN PREVIOUSLY  
209=MARKED AS DEMONSTRATIVE EXHIBIT 2490, WHICH IS IN THE FIRST TAB

210=OF YOUR BINDER AND ASK YOU TO REVIEW THAT.  
211=A. YES.  
212=Q. DOES THIS MAP ACCURATELY REPRESENT THE AREA WHERE YOUR STORE  
213=IS LOCATED?  
214=A. YES, IT DOES.  
215=Q. AND DOES THE -- DOES IT ACCURATELY REPRESENT THE LOCATION OF  
216=THE BARNES & NOBLE AND BORDERS STORES THAT YOU'VE JUST REFERRED  
217=TO?  
218=A. YES.  
219=Q. NOW, THIS OBVIOUSLY DOES NOT SHOW ALL STORES IN YOUR AREA  
220=THAT SELL BOOKS; IS THAT CORRECT?  
221=A. THAT'S CORRECT.  
222=Q. OKAY. IN FACT, THERE ARE OTHER BOOKSTORES IN YOUR AREA  
223=THAT -- THAT YOU COMPETE WITH, WOULDN'T YOU SAY?  
224=A. YES, THERE ARE.  
  
225=Q. ARE THERE ANY WALDENBOOKS THAT ARE CLOSE TO YOU?  
226=A. THERE WERE BACK IN '95, I BELIEVE. THERE WERE TWO WALDENS  
227=IN BERKELEY. THERE'S ONE ON TELEGRAPH, WHICH IS NO LONGER  
228=THERE, AND I -- I THINK THE ONE ON SHATTUCK IS ALSO NO LONGER  
229=THERE.  
230=Q. ARE THERE ANY B. DALTONS THAT ARE ANYWHERE NEAR TO YOU?  
231=A. THEY'RE NOT IN BERKELEY, BUT THEY ARE IN THE EAST BAY.  
232=Q. DO YOU HAVE A GENERAL SENSE ABOUT THE LOCATION OF ANY  
233=EXISTING WALDENBOOKS?  
234=A. THERE'S A LOT OF THEM IN SHOPPING CENTERS IN THE BAY AREA,  
235=BUT I DON'T KNOW EXACTLY WHERE THEY'RE LOCATED NOW.  
236=Q. RETURNING NOW TO THE BARNES & NOBLE THAT YOU'VE DISCUSSED  
237=THAT IS LOCATED ON SHATTUCK, HAVE YOU EVER BEEN TO THAT STORE?  
238=A. YES, I HAVE.  
239=Q. AND HAVE YOU BEEN TO THE BORDERS IN EMERYVILLE THAT YOU  
240=MENTIONED?  
241=A. YES.  
242=Q. WHEN HAVE YOU VISITED THOSE TWO STORES?  
243=A. BOTH OF THEM I VISITED WITHIN THE LAST MONTH.  
244=Q. PRIOR TO VISITING THEM WITHIN THE LAST MONTH, HAVE YOU  
245=VISITED THEM PREVIOUS TO THAT POINT?  
246=A. YES, I TRY TO GO IN THERE ONCE EVERY SIX MONTHS TO A YEAR TO  
247=SEE WHAT'S GOING ON.  
248=Q. HAVE YOU HAD AN OPPORTUNITY TO REVIEW OR TO SEE WHAT KIND OF  
249=BOOKS THOSE STORES ARE SELLING?  
  
250=A. YES, I HAVE.  
251=Q. AND IN COMPARISON TO THE TYPES OF BOOKS THAT YOU'VE TOLD US  
252=YOU SELL AT THE CODY'S STORES, WHAT KIND OF BOOKS DOES THE  
253=BARNES & NOBLE ON SHATTUCK SELL?  
254=A. THE SAME KINDS OF BOOKS THAT WE SELL. THEY SELL HARDBACKS,  
255=TRADE PAPERBACKS, MASS MARKET BOOKS, AUDIO. THEY SELL SOME  
256=TECHNICAL BOOKS.  
257=Q. AND IN COMPARISON TO THE BOOKS THAT YOU SELL AT CODY'S, WHAT  
258=KIND OF BOOKS DOES THE BORDERS STORE IN EMERYVILLE SELL?  
259=A. VERY SIMILAR TO THE BOOKS AT CODY'S, HARDBACKS, TRADE  
260=PAPERBACKS, MASS MARKET BOOKS.  
261=Q. AND HAS THE -- HAS THE TYPES OF BOOKS THAT EITHER OF THOSE  
262=BARNES & NOBLE OR BORDERS STORES SELLS CHANGED SINCE YOU FIRST  
263=VISITED THEM?  
264=A. NOT THAT I'M AWARE OF.  
265=Q. DO YOU HAVE A SENSE ABOUT WHAT MAKES A STORE COMPETITIVE, A  
266=COMPETITOR WITH CODY'S?  
267=A. WELL, THERE'S A FEW DIFFERENT INGREDIENTS THAT AFFECT  
268=COMPETITION. THE FIRST WOULD BE PROXIMITY. AND I WOULD SAY  
269=THAT THE CLOSER IT IS, THE MORE COMPETITIVE IT IS.  
270= SECOND AND EQUALLY IMPORTANT WOULD BE IF THEY'RE  
271=CARRYING THE SAME KINDS OF BOOKS THAT WE ARE. AND IF THEY  
272=PROMOTE THEMSELVES HEAVILY IN THE AREA AND IF THEY HAVE THE SAME  
273=CUSTOMER BASE. THAT'S COMPETITION.  
274=Q. DO YOU CONSIDER THE BARNES & NOBLE STORES THAT YOU'VE  
  
275=IDENTIFIED -- THE STORE THAT YOU'VE IDENTIFIED AS A COMPETITOR  
276=TO CODY'S?  
277=A. YES, PRIMARY COMPETITOR.  
278=Q. AND DO YOU CONSIDER IT -- ARE THERE ANY OTHER BARNES & NOBLE  
279=STORES IN THE AREA IN WHICH YOU BELIEVE COMPETITORS EXIST?

280=A. YES, THERE ARE BARNES & NOBLE ALL OVER THE EAST BAY AND ALL  
281=OVER THE BAY AREA, AND THEY -- THEY DO COMPETE WITH US BECAUSE  
282=THAT'S WHERE OUR CUSTOMER BASE IS, BUT I THINK THE FURTHER AWAY  
283=THEY ARE, THE LESS A FACTOR THEY ARE TO COMPETITION.  
284=Q. AND, SIMILARLY, DO YOU BELIEVE THAT THE STORE THAT YOU'VE  
285=OUTLINED AS BEING IN EMERYVILLE, THE BORDERS STORE IS A  
286=COMPETITOR TO THE CODY'S STORE?  
287=A. YES, I DO FOR THE SAME REASONS.  
288=Q. AND DO YOU BELIEVE THAT BOTH THAT TELEGRAPH -- EXCUSE ME --  
289=THE SHATTUCK STORE OF BARNES & NOBLE AND THE BORDERS STORE AT  
290=EMERYVILLE COMPETE WITH BOTH OF CODY'S TELEGRAPH STORE AND  
291=FOURTH STREET STORE?  
292=A. YES, THEY DO.  
293=Q. ARE THERE ANY OTHER STORES THAT YOU COMPETE -- THAT YOU  
294=CONSIDER COMPETITORS TO CODY'S?  
295=A. YES, THERE ARE NUMEROUS BOOK STORES IN THE EAST BAY ASK AND  
296=THE BAY AREA AND TO SOME EXTENT THEY ALL COMPETE WITH CODY'S.  
297=Q. YOU'VE MENTIONED THE BAY AREA, WHAT IS THE REGION THAT YOU  
298=BELIEVE IS YOUR COMPETITIVE REGION?  
299=A. WELL, WE DRAW CUSTOMERS FROM ALL OVER THE BAY AREA BUT MOST  
  
300=OF OUR CUSTOMERS COME FROM THE EAST BAY. PARTICULARLY THE  
301=TELEGRAPH STORE. FOURTH STREET STORE DRAWS -- DRAWS MORE  
302=REGIONAL CUSTOMERS, I BELIEVE.  
303=Q. PREVIOUSLY, YOU IDENTIFIED BARNES & NOBLE AND BORDERS AS  
304=BEING NOT JUST COMPETITORS BUT PRIMARY COMPETITORS?  
305=A. YES.  
306=Q. AND I WONDER WHY THAT IS.  
307=A. WELL, SOME -- IT'S SIMPLY THAT SOME STORES COMPETE MORE THAN  
308=OTHER STORES. SOME STORES ARE MORE A FACTOR OF COMPETITION.  
309=THE BARNES & NOBLE AND BORDERS ARE HUGE STORES. THEY ONLY SELL  
310=NEW BOOKS AND THEY SELL MANY OF THE SAME BOOKS THAT WE DO. THEY  
311=PROMOTE THEMSELVES HEAVILY IN ALL SORTS OF MEDIA AND THEY DRAW  
312=UPON OUR CUSTOMER BASE, SO THEY ARE A VERY SIGNIFICANT  
313=COMPETITORS.  
314=Q. ARE THERE ANY DOCUMENTS OR OTHER INDICATIONS THAT YOU HAVE  
315=REVIEWED THAT WOULD BOLSTER YOUR POINT OF VIEW THAT BARNES &  
316=NOBLE IS A PRIMARY COMPETITOR OF CODY'S?  
317=A. WELL, MY FINANCIAL STATEMENTS WOULD INDICATE THAT WHEN  
318=BARNES & NOBLE ON SHATTUCK OPENED UP, ACTUALLY THERE WERE A  
319=NUMBER OF BARNES & NOBLES THAT OPENED UP IN '92. OUR BUSINESS  
320=IN '93 DECLINED SIGNIFICANTLY.  
321=Q. I'D LIKE YOU TO LOOK AT WHAT'S BEEN PREVIOUSLY MARKED AS  
322=PLAINTIFF'S 121, WHICH IS THE SECOND TAB IN YOUR BINDER.  
323=A. YES.  
324=Q. COULD YOU TELL THE -- COULD YOU IDENTIFY THIS DOCUMENT?  
  
325=A. THIS IS AN INCOME STATEMENT FROM CODY'S BOOKS DATED  
326=DECEMBER 1993, AND IT'S COMPARING VARIOUS INDICES FROM THE  
327=PREVIOUS YEAR.  
328=Q. AND HOW IS IT THAT YOU'RE FAMILIAR WITH THIS DOCUMENT?  
329=A. I'M GENERALLY FAMILIAR WITH ALL OF OUR FINANCIAL DOCUMENTS.  
330=Q. HAVE YOU HAD AN OPPORTUNITY TO REVIEW THESE AT ANY TIME  
331=RECENTLY?  
332=A. YES, I'VE BEEN REVIEWING FINANCIAL DOCUMENTS IN PREPARATION  
333=FOR THIS TRIAL.  
334=Q. DOES THIS DOCUMENT, AS FAR AS YOU KNOW, FAIRLY REPRESENT --  
335=FAIRLY AND ACCURATELY REPRESENT THE FINANCIAL HISTORY DURING THE  
336=TIME PERIOD THAT'S COVERED?  
337=A. YES.  
338=Q. CAN YOU TELL THE COURT BASED ON THIS DOCUMENT WHETHER THERE  
339=WAS AN INCREASE OR DECREASE IN SALES FROM THE 1992 TO 1993 TIME  
340=PERIOD.  
341=A. YES, THERE WAS A SIGNIFICANT DECREASE BETWEEN THE TWO YEARS.  
342=OUR BUSINESS WENT FROM SLIGHTLY OVER \$8 MILLION IN 1992 TO  
343=\$7,298,000 IN 1993.  
344=Q. AND FOR OUR BENEFIT, COULD YOU POINT OUT WHERE ON THIS  
345=DOCUMENT YOU GET THAT INFORMATION FROM?  
346=A. THE -- I'M USING THE NET SALES FIGURE, WHICH IS ABOUT FIVE  
347=LINES DOWN FROM THE TOP OF THE PAGE.  
348=Q. AND IS IT TRUE THAT FROM YOUR MEMORY, THIS COVERS THE TIME  
349=WHEN THE SHATTUCK BARNES & NOBLE OPENED UP?

350=A. YES.  
351=Q. DID YOU EVER -- WHEN THIS OCCURRED, DID YOU EVER ATTEMPT TO  
352=DETERMINE WHAT WAS LEADING TO THE DECLINE IN SALES?  
353=A. MY FEELING IS THAT THE OPENING OF THE BARNES & NOBLE STORES  
354=WAS THE -- WAS THE FACTOR THAT EXPLAINED IT. THERE WAS NO OTHER  
355=FACTOR THAT I CAN COME UP WITH THAT WOULD HAVE CREATED THAT  
356=DIAGRAM A CHANGE IN SALES.  
357=Q. IT'S TRUE, ISN'T IT, THAT OTHER FACTORS EXIST THAT COULD AT  
358=LEAST HAVE AFFECTED YOUR SALES?  
359=A. WELL, THERE ARE OTHER FACTORS THAT ALWAYS AFFECT SALES, BUT  
360=THERE'S NO FACTOR THAT -- THERE WAS NO CHANGE -- ANY KIND OF  
361=DRAMATIC CHANGE FROM ONE YEAR TO THE OTHER THAT WOULD HAVE  
362=AFFECTED SALES.  
363=Q. DO YOU RECALL WHETHER IN 1993 YOUR EMPLOYEES UNIONIZED?  
364=A. YES, THEY DID.  
365=Q. DO YOU BELIEVE THAT THAT HAD AN AFFECT ON YOUR SALES?  
366=A. NO, I DO NOT.  
367=Q. AND WHY IS THAT?  
368=A. THE -- WE NEVER GOT TO A POINT OF HAVING A STRIKE OR EVEN A  
369=PICKET LINE. THE -- THE UNION ORGANIZERS WERE EMPHATIC ABOUT  
370=TELLING OUR CUSTOMERS -- THANKING THEM FOR SHOPPING AT CODY'S,  
371=URGING THEM TO CONTINUE TO SHOP AT CODY'S.  
372=Q. HAS THERE BEEN CRIME ON TELEGRAPH AVENUE FROM TIME TO TIME?  
373=A. THERE IS CRIME FROM TIME TO TIME.  
374=Q. WAS THERE A PARTICULAR AMOUNT OF CRIME IN 1993 OR 1992 THAT  
  
375=YOU BELIEVE WOULD HAVE AFFECTED SALES?  
376=A. I DON'T BELIEVE SO. THERE'S -- IT'S -- CRIME ON TELEGRAPH,  
377=KIND OF THESE SORT OF SOCIAL UPHEAVALS OCCUR FROM TIME TO TIME.  
378=SOMETIMES IT'S BETTER, SOMETIMES IT'S WORSE. I DON'T BELIEVE  
379=ANY OF THEM WOULD HAVE AFFECTED SALES SIGNIFICANTLY.  
380=Q. DO YOU BELIEVE THAT YOU HAVE ADEQUATE PARKING AT YOUR -- AT  
381=BOTH OF YOUR STORES, YOUR TELEGRAPH STORE AND AT YOUR FOURTH  
382=STREET STORE?  
383=A. OH, I DON'T THINK ANY BUSINESSMAN THINKS HE HAS ADEQUATE  
384=PARKING, BUT PARTICULARLY AT TELEGRAPH, WE CERTAINLY HAVE  
385=INADEQUATE PARKING.  
386=Q. AND HAS THAT CHANGED SINCE THE 1993 TIME PERIOD?  
387=A. NO, IT'S THE SAME.  
388=Q. AT SOME POINT, DID YOU HAVE A CAFE IN OPERATION AT YOUR  
389=TELEGRAPH STORE?  
390=A. YES.  
391=Q. DO YOU REMEMBER WHEN THAT WAS?  
392=A. IT WAS IN THE -- IN THE LATE '80S, I BELIEVE WE CLOSED IT  
393=DOWN IN 1990.  
394=Q. SO, AGAIN, AT THE TIME THAT WE'RE SPEAKING ABOUT NOW, THE  
395=1992 TO 1993 TIME PERIOD WHEN THE BARNES & NOBLE OPENED UP ON  
396=SHATTUCK, YOU DID NOT HAVE A CAFE AND YOU HAD NOT HAD ONE FOR  
397=SEVERAL YEARS?  
398=A. THAT'S RIGHT.  
399=Q. ISN'T THAT TRUE?  
  
400=A. YES.  
401=Q. GIVEN ALL THESE OTHER -- THESE OTHER FACTORS WE'VE JUST BEEN  
402=DISCUSSING, WHAT IS IT THAT MAKES YOU BELIEVE THAT IT WAS THE  
403=OPENING OF THE BARNES & NOBLE THAT LED TO YOUR DECLINE OF SALES?  
404=A. WELL, THE -- OUR WALK-IN TRAFFIC DECLINED IN 1993 AND STAYED  
405=AT A LOW LEVEL. IT NEVER REALLY CAME BACK. AND THAT'S THE ONLY  
406=THING I CAN ACCOUNT FOR THAT WOULD HAVE KEPT IT AT THAT LEVEL.  
407=OUR BUSINESS REALLY PEAKED IN 1992, PARTICULARLY OUR WALK-IN  
408=TRAFFIC. AND ACTUALLY OUR BUSINESS WENT UP LATER ON, BUT IT WAS  
409=NOT AS A RESULT OF WALK-IN TRAFFIC.  
410= OUR WALK-IN TRAFFIC NEVER CAME BACK, AND SOME OF  
411=THESE OTHER THINGS, CRIME ON TELEGRAPH, THEY -- THERE WERE  
412=JUST -- THERE WERE NO CHANGES REALLY. THERE WERE -- THERE WERE  
413=JUST KIND OF FLUCTUATIONS.  
414=Q. WHEN THE BARNES & NOBLE MOVED IN ON SHATTUCK, DID YOU TAKE  
415=ANY BUSINESS STEPS IN REACTION TO THEM MOVING IN?  
416=A. WELL, WE THOUGHT VERY CAREFULLY ABOUT THIS. WE WERE  
417=CONCERNED ABOUT IT. IT WAS OBVIOUSLY SIGNIFICANT COMPETITION,  
418=THREAT TO OUR BUSINESS. WE LOOKED AT OUR DISCOUNT POLICY. WE  
419=HAD BEEN DISCOUNTING BESTSELLERS FOR SOME TIME, AND WE FELT THAT  
420=WE COULD NOT AFFORD TO INCREASE OUR DISCOUNTING OR TO MATCH

421=THEIR DISCOUNT. THAT WAS JUST -- WOULD BE RUINOUS TO OUR  
422=BUSINESS. SO WE COULDN'T DO THAT.  
423= WHAT WE DID DO IS WE TALKED TO OUR EMPLOYEES. WE  
424=TRIED TO MAKE SURE THEY WERE GIVING THE BEST POSSIBLE CUSTOMER  
425=SERVICE. WE TRIED TO MAKE SURE THAT WE WERE SPECIAL ORDERING  
426=EVERY BOOK IN PRINT. HAD THEM AVAILABLE -- THE BOOKS THAT WE  
427=DIDN'T HAVE, AND WE ALSO MADE SURE THAT WE WERE METICULOUS ABOUT  
428=REORDERING BOOKS SO THAT WE WEREN'T OUT OF STOCK AND JUST IN  
429=GENERAL KIND OF TIGHTENING UP ON OUR BUSINESS PROCEDURES. THAT  
430=WAS ALL WE COULD DO.  
431=Q. WAS THE EVENTUAL OPENING OF THE FOURTH STREET STORE  
432=SOMETHING THAT YOU DID IN RELATION TO THE COMPETITION THAT YOU  
433=FELT FROM BARNES & NOBLE AND BORDERS?  
434=A. YES.  
435=Q. DID YOU EVER CONSIDER WHETHER YOU OUGHT TO SPEND THE MONEY  
436=THAT YOU SPENT OPENING THE FOURTH STREET STORE ON DOING  
437=SOMETHING ELSE FOR THE -- FOR YOUR EXISTING TELEGRAPH STORE?  
438=A. WE THOUGHT ABOUT EVERYTHING THAT WE COULD DO THAT WE THOUGHT  
439=WOULD WORK. BUT WE -- YOU KNOW, WE GOT -- YOU KNOW, IT JUST --  
440=NUMBERS DIDN'T WORK. WE THOUGHT OF BUILDING A PARKING LOT. WE  
441=THOUGHT OF EXPANDING THE STORE, AND WE RAN THE NUMBERS, AND IT  
442=JUST DIDN'T MAKE SENSE.  
443= THE FOURTH STREET STORE, ON THE OTHER HAND, WE -- YOU  
444=KNOW, WE WERE CONCERNED ABOUT LOSING SOME OF OUR MIDDLE CLASS  
445=CUSTOMERS, AND WE REALLY FELT THAT WOULD HELP, AND IT HAS.  
446=Q. DO YOU CONSIDER YOUR -- THAT YOUR TELEGRAPH STORE ACTUALLY  
447=COMPETES WITH YOUR FOURTH STREET STORE?  
448=A. YES. IT CERTAINLY DOES.  
449=Q. I'D LIKE TO MOVE ON TO HOW YOUR STORE ACTUALLY BUYS THE  
450=BOOKS THAT IT PURCHASES.  
451=A. YES.  
452=Q. IN YOUR ROLE AS THE OWNER OF CODY'S, WHAT IS YOUR ROLE WITH  
453=RESPECT TO PURCHASING BOOKS?  
454=A. I AM ONE OF THE TWO PRIMARY BUYERS IN THE STORE.  
455=Q. I'D LIKE TO SHOW YOU WHAT'S BEEN PREVIOUSLY MARKED AS  
456=PLAINTIFF'S EXHIBIT 2591. IT'S ON THE THIRD TAB OF YOUR BINDER  
457=AND IS A LIST OF VENDORS.  
458=A. YES.  
459=Q. TELL ME WHEN YOU'VE HAD AN OPPORTUNITY TO LOOK AT THAT.  
460=A. YES.  
461=Q. WHICH OF THOSE VENDORS ON THE LIST DOES YOUR CODY'S STORES  
462=BUY FROM?  
463=A. WE BUY FROM ALL OF THESE VENDORS.  
464=Q. IS THAT TRUE FOR BOTH OF YOUR STORES?  
465=A. YES.  
466=Q. AND HAVE YOU PURCHASED FROM ALL OF THESE VENDORS SINCE 1994  
467=TO THE PRESENT?  
468=A. YES. SOME OF THESE PEOPLE HAVE BEEN MERGED WITH OTHER  
469=PUBLISHERS BUT THEY -- THE LINES STILL EXIST, AND WE DO PURCHASE  
470=FROM THESE PUBLISHERS AND THESE LINES.  
471=Q. AND DOES YOUR STORE -- WHEN I SAY "STORE," I'M GOING TO MEAN  
472=FOR THE NEXT FOUR QUESTIONS BOTH OF YOUR STORES. IF IT'S  
473=DIFFERENT FOR EITHER ONE, COULD YOU EXPLAIN THAT --  
474=A. YES.  
475=Q. -- AND HOW IT'S DIFFERENT.  
476=A. YES.  
477=Q. DOES YOUR STORE PURCHASE HARDCOVER BOOKS FROM THESE VENDORS?  
478=A. THERE'S -- THERE MAY BE ONE OR TWO VENDORS THAT DON'T SELL  
479=HARDCOVER BOOKS, BUT IF THEY DO, WE PURCHASE THEM.  
480=Q. DO YOU HAVE ONE IN MIND THAT YOU DON'T BELIEVE SELLS  
481=HARDCOVER?  
482=A. I DON'T BELIEVE AVON SELLS HARDCOVER BOOKS. BERKELEY IS A  
483=MASS MARKET LINE, SO IT -- IT MAY HAVE SOME SCIENCE FICTION  
484=HARDCOVER. HEALTH COMMUNICATIONS MAY NOT HAVE HARDCOVER BOOKS.  
485=Q. DOES YOUR STORE PURCHASE TRADE PAPERBACKS FROM THESE  
486=VENDORS?  
487=A. YES.  
488=Q. FROM ALL OF THEM?  
489=A. I BELIEVE WE DO, YES.  
490=Q. AND DOES YOUR STORE PURCHASE MASS MARKET BOOKS FROM THESE

491=VENDORS?  
492=A. YES.  
493=Q. AND HAS YOUR PURCHASING OF THE VARIOUS CATEGORIES WE'VE JUST  
494=GONE THROUGH CHANGED FROM 1994 TO THE PRESENT?  
495=A. NO, IT HAS NOT.  
496=Q. DO YOU PURCHASE ANY AUDIO BOOKS FROM ANY OF THESE VENDORS?  
497=A. YES, WE DO FROM THE VENDORS THAT SELL AUDIO BOOKS.  
498=Q. AND DO YOU PURCHASE BOTH FRONT LIST AND BACK LIST FROM --  
499=FROM THIS LIST OF VENDORS?  
  
500=A. YES, WE DO.  
501=Q. IN LOOKING AT THE LIST, CAN YOU GIVE ME A ROUGH  
502=APPROXIMATION OF THE PERCENTAGE OF BOOKS YOU'VE PURCHASED SINCE  
503=1994 FROM ALL OF THESE VENDORS.  
504=A. WELL, I CAN'T GIVE YOU A -- ANYTHING MORE THAN A BALLPARK  
505=FIGURE HERE, BUT THESE ARE OUR MAJOR PUBLISHERS, AND I WOULD SAY  
506=75 PERCENT OF OUR BOOKS ARE PURCHASED FROM THESE VENDORS.  
507=Q. AND HOW OFTEN DO YOU ORDER BOOKS FOR YOUR STORES?  
508=A. WE ORDER -- WE PLACE ORDERS EVERY DAY.  
509=Q. AND, SIMILARLY, HOW OFTEN DOES YOUR -- DO YOUR STORES ORDER  
510=BOOKS FROM THE PEOPLE THAT ARE ON THIS LIST, FROM THE PUBLISHERS  
511=AND -- AND WHOLESALERS THAT ARE ON THIS LIST?  
512=A. PROBABLY ALMOST EVERY DAY.  
513=Q. HOW DO YOU, IN GENERAL, PLACE YOUR ORDERS WITH RESPECT TO  
514=THE LISTED VENDORS?  
515=A. MOST OF THEM, WE -- THE NEW TITLES, WE GENERALLY PLACE  
516=THROUGH SALES REPS WHO CALL ON US PERIODICALLY. BACK LIST BOOKS  
517=ARE MOST OF THEM ARE PLACED ELECTRONICALLY. EITHER THROUGH EDI  
518=OR PUBNET.  
519=Q. ON THIS LIST, THE VENDOR INGRAM IS LISTED.  
520=A. YES.  
521=Q. YOU SEE THAT? IS THERE ANY DIFFERENCE BETWEEN THE TERMS OF  
522=SALE WHICH YOU RECEIVE FROM INGRAM AND THE TERMS OF SALE WHICH  
523=YOU TYPICALLY RECEIVE FROM THE PUBLISHER VENDORS ON THIS LIST?  
524=A. WELL, FOR MOST OF THESE PUBLISHERS, WE HAVE MUCH MORE  
  
525=DESIRABLE TERMS FROM THE PUBLISHERS THAN FROM INGRAM.  
526=Q. IN WHAT WAY ARE THEY MORE DESIRABLE?  
527=A. BETTER DISCOUNTS. WE GENERALLY CAN TAKE A LITTLE BIT LONGER  
528=TO PAY. THAT'S MOSTLY IT.  
529=Q. DO YOU HAVE ANY -- ANY SENSE OF HOW OFTEN YOU ORDER FROM  
530=INGRAM?  
531=A. THREE OR FOUR TIMES A WEEK.  
532=Q. HOW IMPORTANT IS PURCHASING FROM INGRAM TO YOUR STORE'S  
533=OPERATION?  
534=A. VERY IMPORTANT. INGRAM IS A VERY IMPORTANT VENDOR FOR US.  
535=Q. AND HOW DO YOU PLACE YOUR ORDERS TYPICALLY WITH INGRAM?  
536=A. WE GIVE THEM ELECTRONIC ORDERS.  
537=Q. DO YOU HAVE AN OPPORTUNITY TO COMBINE THE ORDERS FROM YOUR  
538=FOURTH STREET STORE AND YOUR TELEGRAPH STORE IN ORDER TO GET  
539=ADDITIONAL DISCOUNTS FROM INGRAM FOR A COMBINED ORDER?  
540=A. NO, WE DO NOT COMBINE THOSE ORDERS.  
541=Q. AND WHY IS THAT?  
542=A. THERE'S NO ADVANTAGE IN DOING SO. AND THERE'S A LOT OF WORK  
543=SORTING THE ORDERS OUT WHEN THEY COME IN AND THEN SHIPPING THEM  
544=DOWN BETWEEN THE TWO STORES, SO IT'S A -- IT'S MORE DESIRABLE  
545=FOR US TO PLACE SEPARATE ORDERS.  
546=Q. HAVE YOU HEARD OF A PROGRAM CALLED INGRAM'S VOR PROGRAM?  
547=A. VENDOR OF RECORD, YES, I HAVE HEARD OF THAT.  
548=Q. NOW, DO YOU PARTICIPATE IN THAT? HAVE YOU PARTICIPATED IN  
549=THAT PROGRAM?  
  
550=A. YES, WE PARTICIPATE IN IT NOW, VERY LIMITED DEGREE. MOSTLY  
551=FOR VERY SMALL PUBLISHERS.  
552=Q. WHY IS IT THAT YOU PARTICIPATE ONLY IN A LIMITED DEGREE?  
553=A. BECAUSE WE GET A MUCH -- FROM THE LARGE PUBLISHERS, WE GET  
554=MUCH MORE DESIRABLE DISCOUNTS. THEY'RE IN-STOCK CONDITION IS  
555=GENERALLY BETTER THAN INGRAM'S IS. IT -- IT JUST DOESN'T  
556=MAKE -- THE NUMBERS DON'T MAKE SENSE. THE ONLY TIME THEY MAKE  
557=SENSE IS FROM VERY SMALL PUBLISHERS.  
558=Q. DO YOU EVER USE INGRAM AS THE EXCLUSIVE SOURCE OF  
559=REPLENISHMENT OF BOOKS AT EITHER OF YOUR STORES?  
560=A. WELL, WHEN WE PARTICIPATE IN VENDOR OF RECORDS, THEY REQUIRE



561=THAT THEY BE THE EXCLUSIVE SOURCE. AND -- AND SO FOR THESE VERY  
562=SMALL PUBLISHERS, WHICH WE MAY BE WOULD ONLY ORDER ONCE A YEAR,  
563=WE'LL PARTICIPATE IN VENDOR OF RECORD, AND THEY ARE PRETTY MUCH  
564=THE EXCLUSIVE SOURCE.

565=Q. AND, AGAIN, WHAT IS -- IS THERE A PRIMARY ADVANTAGE TO USING  
566=INGRAM VERSUS OTHER PUBLISHERS?

567=A. THERE IS AN ADVANTAGE TO USING INGRAM, WHICH IS THAT YOU CAN  
568=GET BOOKS SHIPPED IN 24 HOURS OR 48 HOURS, AS OPPOSED TO  
569=PUBLISHERS, WHICH TEND TO SHIP IN 2 TO 5 WEEKS. SO THERE WE USE  
570=INGRAM QUITE A BIT.

571=Q. CAN YOU GIVE ME A ROUGH APPROXIMATION OF THE PERCENTAGE OF  
572=BOOKS THAT YOU'VE PURCHASED FROM INGRAM SINCE 1994 TO THE  
573=PRESENT, PERCENTAGE VERSUS THE TOTAL NUMBER OF BOOKS THAT YOU'VE  
574=PURCHASED?

575=A. INGRAM IS PROBABLY OUR LARGEST -- MAYBE OUR SECOND LARGEST  
576=VENDOR NOW, BUT IT -- I WOULD SAY MORE THAN 5, LESS THAN  
577=10 PERCENT OF OUR PURCHASES ARE FROM INGRAM.

578=Q. AND ARE THERE STANDARD DISCOUNT TERMS WHICH HAVE GOVERNED  
579=YOUR PURCHASES FROM INGRAM?

580=A. YES, THERE ARE.

581=Q. AND WHAT ARE THOSE?

582=A. THEY -- IT'S DONE BASED ON THE NUMBER OF COPIES ORDERED PER  
583=TITLE ON AN INVOICE. AND IF IT'S ONE TO FOUR, WE GET  
584=40 PERCENT. FIVE TO NINE, WE GET 41 PERCENT. AND TEN OR MORE  
585=COPIES, WE GET 42 PERCENT DISCOUNT.

586=Q. AND HAS THIS DISCOUNT SCHEDULE THAT YOU JUST OUTLINED  
587=REMAINED CONSISTENT SINCE 1994?

588=A. YES.

589=Q. DOES INGRAM, AS FAR AS YOU'RE AWARE, ENFORCE THESE QUANTITY  
590=REQUIREMENTS?

591=A. YES, THEY DO.

592=Q. LIKE TO SHOW YOU WHAT'S BEEN PREVIOUSLY MARKED AS DEFENSE  
593=EXHIBIT 6495, WHICH IS BEHIND TAB NUMBER 4 IN YOUR BINDER.

594=A. YES.

595=Q. CAN YOU TELL ME WHAT THIS IS?

596=A. THIS IS A CHECK FROM CODY'S BOOKS TO INGRAM FROM 1994, ALONG  
597=WITH A LIST OF INVOICES -- INGRAM INVOICES THAT ARE BEING PAID,  
598=AND THEN THERE'S A NUMBER OF INGRAM INVOICES FROM THE SAME  
599=PERIOD TO CODY'S.

600=Q. DOES THIS DOCUMENT AND ITS VARIOUS PAGES INDICATE THE TERMS  
601=OF THE DISCOUNTS YOU RECEIVED?

602=A. YES.

603=Q. COULD YOU EXPLAIN TO US HOW THIS DOCUMENT CAN BE READ OR THE  
604=DOCUMENTS CONTAINED IN HERE CAN BE READ TO INDICATE THE DISCOUNT  
605=TERMS WHICH YOU RECEIVED FROM INGRAM DURING THIS PERIOD?

606=A. WELL, ON THE FIRST -- THE FIRST INVOICE, I GUESS IT'S 0003,  
607=YOU SEE SOME QUANTITY ORDERS. ON THE VERY FAR LEFT, IT SHOWS  
608=THAT WE ORDERED 15 COPIES OF A TITLE AND THEN 15 AND THEN 18.

609=AND ON THE THIRD TO THE RIGHT COLUMN, WE SEE THE PERCENTAGE  
610=DISCOUNT, WHICH IN THE CASES OF THESE THREE BOOKS, ARE ALL  
611=42 PERCENT, WHICH IS CONSISTENT WITH THE INGRAM PUBLISHED TERMS.

612= LET'S SEE WHAT ELSE WE HAVE HERE. OKAY. LET'S LOOK  
613=AT PAGE 0005. AGAIN, WE SEE SOME QUANTITY BOOKS FOR 42 PERCENT,  
614=BUT WE ALSO SEE A TITLE FOR 41 PERCENT, WHICH HAS 6 BOOKS, WHICH  
615=IS, AGAIN, CONSISTENT WITH INGRAM'S POLICY.

616= AND THEN ON PAGE 0009, WE HAVE A LONG LIST OF TITLES  
617=IN SMALL QUANTITIES, 2, 3, 1, ET CETERA, WHICH WE ARE RECEIVING  
618=40 PERCENT DISCOUNT.

619=Q. IN REVIEWING WHAT I'VE PUT IN FRONT OF YOU, IS THIS  
620=CONSISTENT WITH YOUR UNDERSTANDING IN YOUR EXPERIENCE WITH  
621=RESPECT TO THE TERMS THAT HAVE GOVERNED THE PURCHASES FROM  
622=INGRAM FROM 1994 TO THE PRESENT?

623=A. YES.

624=Q. LIKE TO GO THROUGH WHAT HAPPENS AFTER YOU RECEIVE BOOKS AT

625=YOUR STORE. FIRST OF ALL, DO YOU KNOW WHERE THE BOOKS ARE  
626=SHIPPED FROM FROM THE -- FROM THE VENDORS THAT ARE ON THE LIST  
627=WHICH I'VE PREVIOUSLY SHOWN YOU?

628=A. BOOKS ARE SHIPPED FROM ALL OVER THE COUNTRY FOR PUBLISHERS'  
629=WAREHOUSES, EVERYWHERE.

630=Q. AND WHEN YOU ORDER BOOKS FROM INGRAM, DO YOU KNOW WHERE THEY

631=COME FROM?  
632=A. OUR PRIMARY WAREHOUSE WITH INGRAM IS IN OREGON. AND  
633=SECONDARILY, IF WE DON'T -- IF WE CAN'T GET THEM FROM THE  
634=PRIMARY WAREHOUSE, WE WILL GET THEM FROM SOUTHERN CALIFORNIA.  
635=Q. AND HOW DO THE BOOKS THAT ARE SHIPPED FROM ANY OF THESE  
636=VENDORS ARRIVE AT YOUR STORES?  
637=A. THEY ARRIVE IN USUALLY IN BOXES --  
638=Q. ARE THERE --  
639=A. HOPEFULLY IN GOOD CONDITION.  
640=Q. I'M SORRY.  
641= ARE THE BOOKS DELIVERED TO ONE OF YOUR STORES, AND  
642=THEN YOU DELIVER A SECTION OF THOSE BOOKS TO YOUR OTHER STORE,  
643=OR DO THEY GO TO EACH -- EACH STORE SEPARATELY?  
644=A. WE DO IT BOTH WAYS. SOMETIMES WE HAVE THEM SHIPPED  
645=SEPARATELY TO THE TWO DIFFERENT STORES, AND SOMETIMES THEY'RE  
646=CONSOLIDATED AT ONE STORE AND THEN SPLIT UP AND SHIPPED DOWN TO  
647=THE OTHER.  
648=Q. AND WHAT DO YOU DO AFTER THE BOOKS ARRIVE IN THE BOXES?  
649=WHAT'S THE NEXT STEP?

650=A. WE SORT THE BOXES. WE -- THEN WE OPEN THEM. WE CHECK TO  
651=SEE IF THERE'S AN INVOICE INSIDE. WE PUT THE BOOKS OUT. WE  
652=RECEIVE THEM AGAINST A -- AGAINST OUR COMPUTER. WE CHECK TO SEE  
653=IF THERE ARE ANY BOOKS THAT WE WERE BILLED FOR THAT WE DIDN'T  
654=RECEIVE, IF WE HAD ANY SHORT SHIPMENTS.  
655= WE CHECK IF THE BOOKS ARE PRICED. IF THEY AREN'T, WE  
656=HAVE TO PRICE THEM. WE CHECK TO SEE IF THERE'S ANY TITLES THAT  
657=ARE -- THAT ARE SHOP-WORN OR DEFECTIVE. IF THEY'RE SHORT-SHIPS  
658=OR DEFECTIVE BOOKS, WE HAVE TO WRITE UP A LITTLE FORMS  
659=REQUESTING CREDIT FROM THE PUBLISHER. WE ATTACH THEM TO THE  
660=INVOICES AND SEND THEM UPSTAIRS. SEND THE INVOICES UPSTAIRS TO  
661=OUR BUSINESS OFFICE.  
662=Q. DO YOU HAVE A GENERAL SENSE ABOUT HOW LONG IT TAKES TO GO  
663=THROUGH THIS PROCESS WITH RESPECT TO A SINGLE BOX OF BOOKS?  
664=A. IT CAN BE PRETTY SLOW. I WOULD SAY IT COULD TAKE A HALF AN  
665=HOUR TO AN HOUR PER BOX TO RECEIVE THEM.  
666=Q. HOW DO YOU KNOW WHAT THE TRADE TERMS ARE THAT ARE GOING TO  
667=BE APPLYING TO THE BOOKS THAT YOU'RE PURCHASING?  
668=A. THE PRIMARY WAY WE KNOW IS FROM THE RED BOOK. WE ALSO  
669=RECEIVE INFORMATION FROM TIME TO TIME FROM PUBLISHERS. USUALLY  
670=IT'S PRINTED OUT.  
671=Q. DO YOU UNDERSTAND THE RED BOOK TO BE A PUBLISHED COMPILATION  
672=OF TERMS THAT ARE GENERALLY RELIED ON IN THE BOOKSELLING  
673=INDUSTRY?  
674=A. YES.

675=Q. AND HOW DO YOU USE IT?  
676=A. WELL, IF WE DON'T KNOW WHAT THE TERMS ARE, WE LOOK IT UP IN  
677=THE RED BOOK.  
678=Q. HOW OFTEN DO THE TERMS CHANGE IN THE RED BOOK?  
679=A. WELL, THEY PUBLISH -- THEY CHANGE THE RED BOOK EVERY YEAR.  
680=AND SO -- SO THEY VARY FROM YEAR TO YEAR.  
681=Q. ARE THERE INTERIM CHANGES BETWEEN ONE YEAR'S RED BOOK AND  
682=ANOTHER YEAR'S RED BOOK?  
683=A. PUBLISHER'S INTERIM CHANGES?  
684=Q. YES.  
685=A. YES. I DON'T KNOW IF THEY -- IF THEY UPDATE THE RED BOOK IN  
686=THE INTERIM, BUT PUBLISHERS DO MAKE CHANGES BETWEEN RED BOOKS  
687=FOR SURE.  
688=Q. WELL, HAVE YOU EVER RECEIVED SOMETHING THAT YOU BELIEVE WAS  
689=A CHANGE FROM THE RED BOOK TERM FROM A PUBLISHER?  
690=A. OH, YES, THAT HAPPENS.  
691=Q. AND HOW DO YOU RECEIVE THEM?  
692=A. THE SALES REP -- SOMETIMES THE SALES REP CALLS US UP.  
693=USUALLY THEY GIVE US SOME SORT OF PRINTED FORM ANNOUNCING THE  
694=CHANGES, THAT SORT OF THING.  
695=Q. HAVE YOU EVER ASKED ANY VENDOR FOR TRADE TERMS THAT YOU  
696=WOULD -- THAT YOU UNDERSTOOD OR WERE SEEKING THAT WOULD APPLY  
697=SOLELY TO CODY'S?  
698=A. JUST AN AD HOC FOR CODY'S, NO.  
699=Q. WHY NOT?

700=A. 'CAUSE THAT ISN'T THE WAY THIS BUSINESS WORKS.

701=Q. WHAT DO YOU MEAN BY THAT?  
702=A. IT'S -- IT'S NOT LIKE KIND OF A BIZARRE WHERE YOU BARGAIN  
703=ENDLESSLY. THEY ARE PRETTY CLEAR ABOUT WHAT THEIR TERMS ARE. I  
704=SOMETIMES KIND OF PRESS THEM TO TRY TO FIND OUT WHAT THEIR TERMS  
705=ARE BECAUSE THAT'S NOT ALWAYS CLEAR TO ME. BUT THEY -- YOU  
706=KNOW, THEY HAVE TERMS, AND THEY TELL YOU WHAT YOU CAN GET.  
707=Q. IN PRESSING THEM TO DETERMINE WHAT TERMS WERE, WERE YOU  
708=TRYING TO NEGOTIATE TERMS THAT YOU UNDERSTOOD WOULD APPLY ONLY  
709=TO CODY'S, OR WERE YOU SIMPLY TRYING TO DETERMINE WHAT TERMS  
710=WERE AVAILABLE TO BOOKSELLERS?  
711=A. THE LATTER. I'VE NEVER GOTTEN ANYTHING THAT'S JUST FOR  
712=CODY'S.  
713=Q. TO WHICH VENDOR DO THE -- DO THE RED BOOK TERMS APPLY? TO  
714=WHICH VENDORS ON THE LIST DO THE RED BOOK TERMS APPLY?  
715=A. I BELIEVE THAT ALL OF THESE PUBLISHERS ON THE LIST HAVE A  
716=SECTION IN THE RED BOOK.  
717=Q. NOW, IT'S TRUE, IS IT NOT, THAT WITH RESPECT TO ANY GIVEN  
718=PURCHASE, YOU WOULD ACTUALLY HAVE TO LOOK AT THE INVOICES FROM A  
719=PARTICULAR VENDOR TO DETERMINE THE TERMS THAT APPLY TO THAT  
720=PURCHASE?  
721=A. WELL, NOT IF I KNOW THE TERMS, BECAUSE IT'S -- IT'S USUAL  
722=IT'S SAME.  
723=Q. I'M SAYING, IN --  
724=A. YEAH.

725=Q. -- PARTICULAR SITUATION FROM 1994, YOU WOULD NOT, AS YOU SIT  
726=HERE TODAY, HAVE A MEMORY TO DETERMINE WHAT THE TERMS WERE WITH  
727=RESPECT TO A PARTICULAR PURCHASE OF A PARTICULAR BOOK FROM A  
728=PARTICULAR VENDOR?  
729=A. NO, THAT, I COULDN'T DO.  
730=Q. AND THE SOLE SOURCE, IS IT NOT, FOR DETERMINING THE  
731=PARTICULAR TERMS FOR THE PARTICULAR PURCHASE FROM A PARTICULAR  
732=VENDOR, IN YOUR DOCUMENTS, WOULD BE INVOICES?  
733=A. THAT'S CORRECT.  
734= THE COURT: WHY DON'T YOU EVER ASK FOR A SPECIAL DEAL  
735=FOR CODY'S?  
736= THE WITNESS: WELL, I ASK -- I HAVE ASKED. I'M  
737=PRETTY AGGRESSIVE ABOUT IT. BUT I ASK FOR WHAT DEALS ARE  
738=AVAILABLE, WHAT'S THE BEST DEAL I CAN GET. I DON'T ASSUME THAT  
739=EVERYTHING'S IN THE RED BOOK.  
740= IN FACT, I KNOW THAT PUBLISHERS HAVE BEEN GIVING  
741=DEALS TO CHAIN STORES THAT I HAVEN'T BEEN GETTING, SO I'M KIND  
742=OF AGGRESSIVE ABOUT THAT. BUT THEY JUST -- THEY JUST DON'T DO  
743=THAT. THEY SAY THAT -- THEY GENERALLY SAY, "THESE ARE OUR  
744=TERMS." AND SOMETIMES, I SAY, "HEY, WAIT A MINUTE. I KNOW THAT  
745=YOU'RE GIVING THE CHAINS THIS. I KNOW YOU'RE GIVING THE CHAINS  
746=THAT."  
747= BUT USUALLY THEY -- THE SALES REPS SAID, WOULD SAY,  
748="WELL, I DON'T KNOW ABOUT THAT." THEY TEND NOT TO KNOW THAT.  
749=BUT I TRY TO GET THE BEST DEAL I CAN GET.

750=BY MR. DAWSON:  
751=Q. WITH REFERENCE TO THE INVOICES WE WERE JUST SPEAKING  
752=ABOUT --  
753=A. YES.  
754=Q. -- HAVE YOU GIVEN THE DEFENDANTS COPIES OF ALL THE STORE'S  
755=INVOICES?  
756=A. YES, I HAVE.  
757=Q. DID YOU HOLD ANY BACK?  
758=A. NO.  
759=Q. ARE THERE EVER TIMES WHEN CODY'S HAS RECEIVED TRADE TERMS  
760=THAT ARE MORE FAVORABLE THAN THE STANDARD RED BOOK TERMS?  
761=A. YES, I HAVE.  
762= (CONTINUED NEXT PAGE; NOTHING OMITTED)  
763=  
764=  
765=  
766=  
767=  
768=  
769=  
770=  
771=

772=  
773=  
774=

775=BY MR. DAWSON:

776=Q. AND UNDER WHAT CIRCUMSTANCES, FROM 1997 TO THE PRESENT, HAS  
777=CODY'S RECEIVED TRADE TERMS THAT ARE MORE FAVORABLE THAN WAS  
778=PUBLISHED IN THE RED BOOK AT THAT TIME?

779=A. THE MOST FREQUENT EXAMPLES WOULD HAVE TO BE SEASONAL  
780=OFFERS.

781=Q. AGAIN, ARE THESE THINGS, THE STOCK OFFERS, ARE THEY THINGS  
782=THAT YOU HAVE AN UNDERSTANDING WERE ONLY AVAILABLE TO CODY'S?

783=A. NO, MY UNDERSTANDING IS THEY WERE -- IN ALL THOSE

784=SITUATIONS THEY WERE AVAILABLE TO EVERYBODY.

785=Q. DID YOU -- NORMALLY, HOW WERE STOCK OFFERS COMMUNICATED TO  
786=YOU?

787=A. ALMOST INVARIABLY THEY'VE BEEN ON SOME SORT OF PRINTED  
788=FORM.

789=Q. DID YOU EVER BECOME AWARE OF THE AVAILABILITY OF SOMETHING  
790=CALLED THE RDC DISCOUNT?

791=A. YES, I'VE KNOWN ABOUT THAT.

792=Q. AND HOW LONG HAVE YOU KNOWN ABOUT THAT?

793=A. A LONG TIME, SINCE THE 80'S.

794=Q. DID YOU EVER RECEIVE AN RDC DISCOUNT?

795=A. YES, I HAVE, WHEN I OPENED THE NEW STORE I STARTED GETTING  
796=SOME RDC DISCOUNTS.

797=Q. DID YOU EVER RECEIVE AN RDC DISCOUNT BEFORE THEN?

798=A. I DON'T BELIEVE I DID, NO.

799=Q. DID YOU EVER ASK FOR ONE?

800=A. YOU KNOW, I WAS CONCERNED ABOUT RDC DISCOUNTS AND WHY THEY  
801=WEREN'T BEING MADE AVAILABLE TO ME, AND I MAY VERY WELL HAVE  
802=ASKED FOR THEM.

803=Q. DO YOU HAVE AN UNDERSTANDING AS YOU SIT HERE TODAY WHY YOU  
804=DID NOT RECEIVE AN RDC DISCOUNT PRIOR TO 1997 WHEN YOU OPENED  
805=YOUR FOURTH STREET STORE?

806=A. PROBABLY BECAUSE I COULDN'T -- YOU KNOW, I DIDN'T COME UP  
807=TO THEIR TERMS.

808=Q. WHAT WERE THE TERMS THAT YOU UNDERSTOOD WERE APPLICABLE TO  
809=RDC'S?

810=A. THERE WERE USUALLY THINGS LIKE, YOU HAD TO HAVE A LOADING  
811=DOCK, YOU HAD TO HAVE MULTIPLE STORES, YOU HAD TO HAVE A

812=WAREHOUSE THAT WAS SEPARATE FROM THE BOOKSTORE, YOU HAD TO  
813=ORDER IN CARTON QUANTITIES, THINGS LIKE THAT; OFTEN MANY OF

814=THOSE CONDITIONS, AND I COULDN'T MEET THOSE CONDITIONS.

815=Q. WHEN YOU STARTED RECEIVING RDC DISCOUNTS, DID YOU RECEIVE  
816=THEM FROM ALL OF THE VENDORS ON YOUR LIST?

817=A. NO. I STILL DON'T RECEIVE THEM FROM ALL OF THE VENDORS.

818=Q. DO YOU KNOW WHETHER THE VENDORS, ANY OF THE VENDORS ON THAT

819=LIST THAT YOU DON'T RECEIVE THEM FROM, DO HAVE RDC DISCOUNTS?

820=A. CAN I LOOK AT THE LIST?

821=Q. PLEASE DO. AGAIN, IT'S UNDER TAB 3 OF YOUR BINDER.

822=A. THANK YOU. WELL, I DON'T HAVE AN ENCYCLOPEDIA MEMORY, SO I  
823=DON'T KNOW -- I KNOW THAT NORTON HAS AN RDC DISCOUNT AND THAT I

824=CAN'T GET IT. I'VE ASKED FOR IT.

825=Q. DO YOU KNOW WHY YOU CAN'T GET IT?

826=A. I BELIEVE THEY SAY THAT YOU HAVE TO HAVE FIVE OR MORE  
827=STORES, BUT I'M NOT TOTALLY SURE OF THAT. I KNOW THEY HAVE  
828=SOME CONDITIONS THAT I CAN'T MEET.

829=Q. ARE THERE ANY CATEGORIES OF BOOKS WHICH YOU TYPICALLY ORDER  
830=THAT ARE SUBJECT TO THE RDC DISCOUNT?

831=A. WELL, I HAVE AN RDC ACCOUNT, AND IF I CAN MEET THE  
832=CONDITIONS, I COULD THEORETICALLY GET EVERYTHING, BUT IN

833=GENERAL, AS A PRACTICAL MATTER, IT USUALLY ONLY WORKS ON NEW  
834=TITLE ORDERS.

835=Q. WHICH IS WHAT PERCENTAGE OF -- LET ME STRIKE THAT. WHAT  
836=PERCENTAGE OF THE BOOKS THAT YOU PURCHASE CURRENTLY DO YOU  
837=RECEIVE AN RDC DISCOUNT ON, FOR BOTH STORES COMBINED?

838=A. WELL, AGAIN, THIS IS A VERY BALLPARK FIGURE, BUT PROBABLY  
839=10 PERCENT.

840=Q. AND YOU MENTIONED PREVIOUSLY CARTON QUANTITIES. WHAT IS  
841=THAT?

842=A. CARTON QUANTITIES MEANS THAT THE PUBLISHER SHIPS YOU BOOKS  
843=FROM THE CARTONS THAT THEY HAVE THEM PACKED IN COMING FROM THE  
844=PRINTER, OR THE BINDER.  
845=Q. AND AS FAR AS YOU'RE AWARE, ARE THE VARIOUS REQUIREMENTS OF  
846=THE VENDORS RELATING TO CARTON QUANTITIES ENFORCED BY THOSE  
847=VENDORS?  
848=A. YES.  
849=Q. EVER HAD ANYONE WAIVE THAT CARTON QUANTITY REQUIREMENT?  
  
850=A. NO.  
851=Q. WE WERE TALKING ABOUT THE WAYS IN WHICH YOU RECEIVED TERMS  
852=THAT WERE DIFFERENT FROM THE BASIC RED BOOK TERMS, AND YOU  
853=MENTIONED STOCK OFFERS.  
854=A. YES.  
855=Q. HAS CODY'S EVER RECEIVED STOCK OFFERS?  
856=A. OH, YEAH. WE'RE AGGRESSIVE ABOUT STOCK OFFERS.  
857=Q. AND WHAT ARE TYPICALLY THE BENEFITS THAT ARE OFFERED  
858=THROUGH A STOCK OFFER?  
859=A. THEY VARY FROM OFFER TO OFFER, BUT USUALLY THEY GIVE YOU A  
860=BETTER DISCOUNT. SOMETIMES THEY GIVE YOU EXTENDED DAYS. THEY  
861=LET YOU PAY IN 90 TO 120 DAYS. THAT'S PRETTY TYPICAL OF STOCK  
862=OFFERS.  
863=Q. SINCE 1994 TO THE PRESENT, CAN YOU ESTIMATE FOR ME THE  
864=PERCENTAGE OF BOOKS PURCHASED BY CODY'S THAT WERE SUBJECT TO  
865=STOCK OFFERS?  
866=A. LESS THAN 10 PERCENT.  
867=Q. AND HOW DO YOU DECIDE.... WELL, LET ME ASK YOU THIS: DO  
868=YOU TAKE ADVANTAGE OF EVERY SINGLE STOCK OFFER THAT'S PROVIDED  
869=TO CODY'S?  
870=A. WELL, NOT EVERY SINGLE ONE, BUT MOST OF THEM. WE, AS I  
871=SAID, WE'RE QUITE AGGRESSIVE ABOUT THESE STOCK OFFERS.  
872=Q. AND ARE -- IN SITUATIONS WHERE YOU DECIDE NOT TO TAKE  
873=ADVANTAGE OF A STOCK OFFER, WHAT TYPICALLY ARE YOUR REASONS?  
874=A. PROBABLY IT'S A PUBLISHER THAT -- WITH BOOKS THAT WE DON'T  
  
875=CARRY. SOMETIMES STOCK OFFERS ARE LIMITED TO CERTAIN LINES OF  
876=BOOKS, AND WE MAY NOT BE SELLING THOSE LINES VERY WELL. SO  
877=IT'S JUST A PRACTICAL MATTER. WE'RE NOT GOING TO ORDER BOOKS  
878=THAT WE CAN'T SELL, REGARDLESS OF THE DISCOUNT.  
879=Q. HOW ARE THE STOCK OFFERS THAT YOU RECEIVE INVOICED TO  
880=CODY'S BOOKS?  
881=A. JUST LIKE EVERYTHING ELSE, ON A REGULAR INVOICE.  
882=Q. THE INVOICES INDICATE THAT THEY ARE THE SUBJECT OF A STOCK  
883=OFFER?  
884=A. NO, THEY JUST HAVE -- IF THERE'S AN ADDITIONAL DISCOUNT, IT  
885=WOULD BE REFLECTED ON THE INVOICE, BUT THEY DON'T USUALLY SAY  
886="STOCK OFFER" ON IT.  
887=Q. I'D LIKE TO SHOW YOU WHAT'S BEEN PREVIOUSLY MARKED AS  
888=PLAINTIFF'S EXHIBITS 2339, 2340 AND 2341, WHICH ARE THE LAST  
889=THREE TABS OF THE BINDER, 6, 7 AND 8.  
890=A. YES.  
891=Q. WITH RESPECT TO THE FIRST INVOICE IN THAT LIST, IT APPEARS  
892=TO ME.... WELL, FIRST OF ALL, DO THESE APPEAR TO BE TRUE AND  
893=ACCURATE COPIES OF INVOICES TO CODY'S BOOKS FROM THE RECORDS  
894=PUBLISHERS?  
895=A. YES.  
896=Q. AND ARE YOU FAMILIAR ENOUGH THROUGH YOUR OPERATION OF THE  
897=STORES WITH INVOICES TO MAKE THAT STATEMENT?  
898=A. YES.  
899=Q. LOOKING AT THE FIRST DOCUMENT, 2339, WHICH IS BEHIND TAB 6,  
  
900=IT APPEARS, BASED ON THIS, THAT YOU WERE RECEIVING A DISCOUNT  
901=OF 50 PERCENT ON A VARIETY OF BOOKS. DO YOU SEE THAT?  
902=A. YES, I SEE THAT.  
903=Q. HOW WOULD YOU EXPLAIN THE 50 PERCENT?  
904=A. WELL, THIS IS FROM SIMON & SCHUSTER, AND IT IS AT VARIANCE  
905=WITH OUR NORMAL TERMS FROM THEM, SO I WOULD ASSUME THAT THIS IS  
906=A STOCK OFFER.  
907=Q. ANY OTHER REASON THAT IT COULD BE AT VARIANCE, AS FAR AS  
908=YOU'RE AWARE?  
909=A. NOT THAT I CAN THINK OF.  
910=Q. SIMILARLY WITH RESPECT TO EXHIBIT 2340, WHERE IT AGAIN  
911=APPEARS AS THOUGH YOU'VE RECEIVED A 50 PERCENT DISCOUNT, IS

912=THIS REPRESENTATIVE OF A STOCK OFFER?  
913=A. NOT NECESSARILY.  
914=Q. AND WHAT WOULD BE THE EXPLANATION WITH RESPECT TO THIS  
915=PARTICULAR INVOICE?  
916=A. THESE ARE ALL COMPUTER BOOKS, AND FREQUENTLY COMPUTER  
917=BOOKS -- CERTAIN LINES OF BOOKS HAVE BETTER DISCOUNTS.  
918=COMPUTER BOOKS FREQUENTLY GIVE YOU 50 PERCENT DISCOUNT, BUT I  
919=CAN'T SAY FOR SURE. IT MIGHT ALSO BE A STOCK OFFER.  
920=Q. IT'S EITHER A SPECIAL RELATING TO THAT LINE OF BOOKS OR A  
921=STOCK OFFER; IS THAT YOUR TESTIMONY?  
922=A. YES, IN ALL PROBABILITY. YOU KNOW, I DON'T REMEMBER THIS  
923=INVOICE, THOUGH. I DON'T REMEMBER THE DETAILS OF -- FROM BACK  
924=THEN, BUT I CAN'T THINK OF ANOTHER REASON -- ANOTHER -- I CAN'T  
  
925=THINK OF ANYTHING ELSE IT WOULD BE.  
926=Q. AGAIN, YOU NEVER, IN YOUR MEMORY, RECEIVED A DISCOUNT WHICH  
927=WAS AT VARIANCE WITH TERMS THAT YOU UNDERSTOOD WERE GENERALLY  
928=AVAILABLE TO OTHER BOOKSELLERS, IS THAT ACCURATE?  
929=A. THAT'S ACCURATE.  
930=Q. ON THE FINAL INVOICE, AGAIN, AND THIS IS UNDER TAB 8, IT  
931=APPEARS THAT YOU RECEIVED 52 PERCENT DISCOUNT WITH RESPECT TO  
932=SOME OF THE LISTED BOOKS. DO YOU SEE THAT?  
933=A. I SEE IT.  
934=Q. AND DOES THAT, AGAIN, REPRESENT, TO THE BEST OF YOUR  
935=UNDERSTANDING, A STOCK OFFER DISCOUNT?  
936=A. IT LOOKS TO ME LIKE IT WOULD BE A STOCK OFFER, YES. I JUST  
937=CAN'T THINK OF ANOTHER EXPLANATION FOR IT.  
938=Q. DO YOU UNDERSTAND THE TERM "INCENTIVE PROGRAM"?  
939=A. YES.  
940=Q. WHAT DOES THAT MEAN?  
941=A. IT GENERALLY MEANS, IF YOU INCREASE YOUR SALES BY A CERTAIN  
942=SPECIFIED PERCENTAGE OR YOU REDUCE YOUR RETURNS IN A CERTAIN  
943=WAY, YOU WILL BE ENTITLED TO SOME KIND OF REBATE AT THE END OF  
944=THE YEAR.  
945=Q. HAVE YOU EVER RECEIVED ANY INCENTIVE PAYMENTS FROM ANY OF  
946=THE VENDORS THAT ARE LISTED ON EXHIBIT 2591, TAB 3 OF YOUR  
947=BINDER?  
948=A. WELL, YES, I HAVE.  
949=Q. WHICH PARTICULAR VENDOR?  
  
950=A. I MAY HAVE RECEIVED THEM FROM A COUPLE OF VENDORS. I  
951=REMEMBER AT ONE TIME GETTING THEM FROM SIMON & SCHUSTER, AND  
952=FROM BANTAM, I THINK FROM PENGUIN MASS MARKET. I MIGHT HAVE  
953=BEEN GETTING THEM A LONG TIME AGO, BUT I REALLY DON'T REMEMBER  
954=THE DETAILS.  
955=Q. CAN YOU BALLPARK FOR ME THE PERCENTAGE OF BOOKS THAT THE  
956=INCENTIVES HAVE APPLIED TO IN THE LAST SIX YEARS?  
957=A. LIKE, ALL INCENTIVES?  
958=Q. INCENTIVES THAT WE'VE JUST BEEN DISCUSSING.  
959=A. I DON'T EVEN KNOW IF THEY'RE GOING ON NOW. IT WOULD BE  
960=VERY HARD TO DO THAT. IT WOULD HAVE TO BE LESS THAN 5 PERCENT.  
961=BUT ACTUALLY, I COULDN'T SAY. I JUST DON'T KNOW.  
962=Q. HAVE YOU EVER RECEIVED ANY PERCENTAGE INCENTIVE FROM  
963=INGRAM?  
964=A. NO, I HAVE NOT.  
965=Q. ARE YOU FAMILIAR WITH THE TERM "CASH DISCOUNT"?  
966=A. YES, I AM.  
967=Q. OKAY. CAN YOU GIVE ME AN EXAMPLE OF WHAT A CASH DISCOUNT  
968=WOULD CONSIST OF?  
969=A. A CASH DISCOUNTS USUALLY CONSISTS OF 1 OR 2 PERCENT, WHICH  
970=YOU CAN TAKE OFF YOUR PAYMENT, IF YOU PAY YOUR BILLS QUICKLY,  
971=USUALLY 10 DAYS AFTER YOU RECEIVE THE STATEMENT.  
972=Q. AND HAS YOUR STORE EVER RECEIVED CASH DISCOUNT PAYMENTS  
973=FROM ANY PUBLISHERS OR WHOLESALERS?  
974=A. RIGHT NOW I KNOW THAT INGRAM IS THE ONLY PUBLISHER WE'RE  
  
975=TAKING CASH DISCOUNTS FROM.  
976=Q. ARE THERE PARTICULAR TERMS FROM INGRAM THAT APPLY TO THE  
977=CASH DISCOUNTS THAT YOU'RE RECEIVING?  
978=A. WE GET 2 PERCENT 10 E.O.M., WHICH MEANS 10 PERCENT IF WE  
979=PAY 10 DAYS AFTER WE RECEIVE A STATEMENT AT THE END OF THE  
980=MONTH.  
981=Q. AND IS IT YOUR UNDERSTANDING THAT THIS DISCOUNT IS

982=SOMETHING THAT IS UNIQUE TO CODY'S, OR IS IT GENERALLY  
983=AVAILABLE TO ALL BOOKSELLERS?  
984=A. IT'S AVAILABLE TO ALL BOOKSELLERS. IT'S IN THE RED BOOK.  
985=Q. DO YOU EVER RECEIVE ANY CASH DISCOUNTS FROM PENGUIN?  
986=A. I DON'T REMEMBER. I DON'T THINK SO.  
987=Q. HOW ABOUT MACMILLAN?  
988=A. I DON'T THINK SO.  
989=Q. HOW DO YOU KNOW, AT ANY GIVEN TIME, WHETHER A VENDOR HAS A  
990=CASH DISCOUNT AVAILABLE TO YOU?  
991=A. I LOOK IT UP IN THE RED BOOK.  
992=Q. WE'VE BEEN DISCUSSING TERMS WHICH AFFECT THE EVENTUAL COST  
993=OR BENEFITS TO CODY'S, AND ARE THERE ANY OTHER TERMS WHICH  
994=AFFECT THOSE COSTS OR BENEFITS?  
995=A. SHIPPING HAS A PRETTY BIG IMPACT ON OUR COSTS, YES.  
996=Q. ARE YOU TALKING SHIPPING, THE FREIGHT?  
997=A. FREIGHT, YES.  
998=Q. WHO PAYS FOR FREIGHT?  
999=A. SOME PUBLISHERS PAY FOR FREIGHT AND SOME PUBLISHERS SHIP  
  
1000=FREIGHT FREE.  
1001=Q. AND HOW, AGAIN --  
1002=A. EXCUSE ME. SOME PUBLISHERS PAY FOR FREIGHT AND SOMETIMES  
1003=WE PAY FOR FREIGHT.  
1004=Q. HOW DO YOU KNOW AT ANY GIVEN TIME WHICH VENDOR IS FREIGHT  
1005=FREE AND WHICH ONE CHARGES FREIGHT?  
1006=A. IT WOULD BE IN THE RED BOOK.  
1007=Q. AND TO YOUR KNOWLEDGE, HAVE YOU EVER RECEIVED FREE FREIGHT  
1008=TERMS FROM ANY VENDORS THAT WERE NOT AVAILABLE TO OTHER  
1009=BOOKSELLERS?  
1010=A. NO, WE HAVE RECEIVED FREE FREIGHT TERMS ON SEASONAL  
1011=SPECIALS AND STOCK OFFERS, BUT NOT THAT THEY WEREN'T AVAILABLE  
1012=TO OTHER BOOKSELLERS, NO.  
1013=Q. AND HAS ANY VENDOR EVER PAID YOU TO SHIP YOUR BOOKS FROM  
1014=ONE OF YOUR STORES TO THE OTHER STORE?  
1015=A. NEVER.  
1016=Q. NOW, ONCE YOU RECEIVE THE BOOKS AT EITHER OF YOUR STORES,  
1017=DOES SOMEONE CHECK THE BOOKS TO DETERMINE WHETHER ALL OF THE  
1018=BOOKS THAT YOU PURCHASED ARE ACTUALLY CONTAINED WITHIN THE  
1019=BOXES YOU'VE RECEIVED?  
1020=A. YES.  
1021=Q. AND ARE THEIR SHIPMENTS ALWAYS ACCURATE?  
1022=A. NO, SHIPMENTS ARE NOT ALWAYS ACCURATE AT ALL.  
1023=Q. WHAT PROBLEMS HAVE YOU ENCOUNTERED TYPICALLY WITH RESPECT  
1024=TO SHIPMENTS THAT YOU'VE RECEIVED FROM VENDORS?  
  
1025=A. SOMETIMES THEY'RE -- THE PRICE IS DIFFERENT ON THE BOOK  
1026=THAN ON THE INVOICE. MOST FREQUENT PROBLEM WOULD PROBABLY BE  
1027=SHORTAGES. THEY BILL US FOR A BOOK THAT ISN'T IN THE SHIPMENT.  
1028=SOMETIMES THE BOOKS ARE SHOPWORN OR DEFECTIVE. THAT SORT OF  
1029=THING IS TYPICAL.  
1030=Q. WHEN YOU HAVE RECEIVED WHAT I UNDERSTAND ARE CALLED SHORT  
1031=SHIPMENTS, DO YOU UNDERSTAND THAT TO MEAN WHEN BOOKS ARE NOT  
1032=INCLUDED THAT YOU'VE ORDERED THAT SHOULD BE INCLUDED?  
1033=A. UM, WELL, AND THAT GET BILLED TO US, YES, THAT'S A SHORT  
1034=SHIPMENT.  
1035=Q. AND HAVE THERE BEEN SITUATIONS IN WHICH YOU'VE RECEIVED  
1036=SHORT SHIPMENTS?  
1037=A. YES.  
1038=Q. WHAT DO YOU DO WHEN YOU RECEIVE SHORT SHIPMENTS?  
1039=A. WE FILL OUT A SHORT SHIPMENT PERFORM, WE ATTACH IT TO THE  
1040=INVOICE, THEY SEND IT UP TO THE BUSINESS OFFICE, THE BUSINESS  
1041=OFFICE ENTERS IT IN, THEY DATA ENTER IT IN AND THEY TRY TO  
1042=COLLECT FROM THE PUBLISHER.  
1043=Q. HAS YOUR STORE EVER RECEIVED A SHORTAGE ALLOWANCE FROM ANY  
1044=VENDOR BASED ON AN ESTIMATE OF SHORTAGE RATHER THAN  
1045=DOCUMENTATION OF THE ACTUAL SHORTAGES RECEIVED?  
1046=A. NO.  
1047=Q. ARE ALL OF THE BOOKS THAT YOU PURCHASE RETURNABLE BOOKS?  
1048=A. NO, BUT ALMOST ALL OF THEM ARE.  
1049=Q. WHAT ARE THE ONES THAT AREN'T?  
  
1050=A. I BELIEVE THERE IS -- TRYING TO THINK OF ONE PUBLISHER WE  
1051=MAY PURCHASE FROM NON-RETURNABLE, BECAUSE IT'S -- THEY GIVE A

1052=VERY DESIRABLE DISCOUNT. I BELIEVE IT'S O'REILLY. AND ALSO  
1053=PUBLISHERS SELL NEW TITLES FROM TIME TO TIME, VERY RARELY,  
1054=USUALLY VERY EXPENSIVE ART BOOKS, ON A NON-RETURNABLE BASIS.  
1055=OTHER THAN THAT, WE MOSTLY BUY RETURNABLE.  
1056=Q. WHEN YOU'RE PURCHASING THEM, YOU KNOW AT THAT TIME WHETHER  
1057=THEY ARE RETURNABLE OR NON-RETURNABLE, IS THAT CORRECT?  
1058=A. YES.  
1059=Q. WHAT IS TYPICALLY THE DIFFERENCE, IF THERE IS ONE, IN THE  
1060=PRICING TO CODY'S FROM A RETURNABLE VERSUS A NON-RETURNABLE  
1061=BOOK?  
1062=A. WELL, I KNOW THAT MANY PUBLISHERS HAVE NON-RETURNABLE  
1063=DISCOUNTS, AND USUALLY THERE'S A 2 OR 3 PERCENT DISCOUNT  
1064=ADVANTAGE PURCHASING NON-RETURNABLE.  
1065=Q. WITH RESPECT TO RETURNABLE BOOKS THAT YOU'VE PURCHASED,  
1066=HAVE YOU EVER RECEIVED CREDIT FROM ANY VENDOR FOR RETURNING THE  
1067=BOOKS?  
1068=A. FOR RETURNABLE BOOKS?  
1069=Q. YES.  
1070=A. YES.  
1071=Q. HAS YOUR STORE -- EITHER OF YOUR STORES EVER DEDUCTED FOR  
1072=RETURNED BOOKS OFF AN INVOICE BEFORE YOU'D ACTUALLY SHIPPED  
1073=THOSE BOOKS BACK TO THE VENDOR?  
1074=A. NO.  
  
1075=Q. HAVE YOU EVER RECEIVED ANY INCENTIVE OR ALLOWANCE FOR  
1076=COMBINING THE BOOKS THAT YOU'RE GOING TO BE RETURNING FROM YOUR  
1077=TWO STORES?  
1078=A. NO.  
1079=Q. NOW, WITH RESPECT TO OUT-OF-PRINT BOOKS, DO YOU HAVE AN  
1080=UNDERSTANDING WITH RESPECT TO WHETHER OUT-OF-PRINT BOOKS ARE  
1081=TYPICALLY RETURNABLE OR NOT?  
1082=A. FROM ONE OR TWO PUBLISHERS, YOU MAY BE ABLE TO RETURN  
1083=OUT-OF-PRINT BOOKS. FOR MOST PUBLISHERS THEY ARE NOT  
1084=RETURNABLE.  
1085=Q. AT ANY GIVEN TIME, ARE YOU ALWAYS AWARE OF WHETHER AN  
1086=OUT-OF-PRINT -- WHETHER A BOOK IS OUT OF PRINT?  
1087=A. IT'S SOMETIMES DIFFICULT TO DETERMINE. IT'S PRINTED ON A  
1088=FOOTNOTE IN PUBLISHERS WEEKLY WHEN THEY PUT A BOOK OUT OF  
1089=PRINT.  
1090=Q. HAVE YOU EVER ATTEMPTED TO RETURN WHAT YOU LEARNED TO BE AN  
1091=OUT-OF-PRINT BOOK?  
1092=A. YOU MEAN --  
1093=Q. BEFORE OR AFTER UNDERSTANDING THAT IT WAS OUT OF PRINT.  
1094=A. FREQUENTLY, WE JUST DON'T KNOW. WE JUST RETURN BOOKS AND  
1095=WE FIND OUT LATER IF THEY'RE OUT OF PRINT.  
1096=Q. HOW DO YOU FIND OUT LATER?  
1097=A. THEY DON'T GIVE US CREDIT.  
1098=Q. HAVE YOU EVER RECEIVED CREDIT FROM A VENDOR FOR THE RETURN  
1099=OF AN OUT-OF-PRINT BOOK?  
  
1100=A. IF THE VENDOR PERMITS THE RETURN OF AN OUT-OF-PRINT BOOK,  
1101=WE GET CREDIT, BUT MORE OFTEN THAN NOT, THEY JUST EITHER OFFER  
1102=TO SHIP THE BOOK BACK TO US AT OUR EXPENSE OR THEY JUST DON'T  
1103=CREDIT IT, THROW IT AWAY.  
1104=Q. IS IT YOUR UNDERSTANDING THAT YOU'VE NEVER RECEIVED CREDIT  
1105=FOR THE RETURN OF AN OUT-OF-PRINT BOOK FROM A VENDOR WHOSE  
1106=POLICY IT WAS TO NOT ALLOW THE RETURN OF OUT-OF-PRINT BOOKS?  
1107=A. NO, WE HAVE NOT.  
1108=Q. ANY VENDORS THAT, ON THE LIST THAT I'M REFERRING TO, TAB 3,  
1109=THAT IMPOSE RETURN PENALTIES ON CODY'S?  
1110=A. WELL, INGRAM, AND I BELIEVE ALL THE WHOLESALERS HAVE RETURN  
1111=PENALTIES.  
1112=Q. WHAT DO THESE PENALTIES CONSIST OF, TYPICALLY?  
1113=A. INGRAM IS -- I BELIEVE THEY ALLOW YOU TO RETURN BOOKS  
1114=PURCHASED AT INGRAM AT 50 PERCENT. SO IF WE PURCHASE THE BOOK  
1115=AT 41 PERCENT, THEY WOULD CREDIT US AT 50 PERCENT. THAT'S A  
1116=PRETTY STIFF PENALTY. PLUS THEY ONLY PERMIT RETURNS UP TO A  
1117=CERTAIN PERCENTAGE OF ALL PURCHASES DURING THE YEAR. AFTER  
1118=THAT, THEY WON'T ACCEPT THEM.  
1119=Q. HAS INGRAM EVER WAIVED THAT RETURN PENALTY FOR YOU?  
1120=A. NO.  
1121=Q. HAVE ANY OF THE VENDORS THAT YOU'RE FAMILIAR WITH FROM TAB  
1122=3 WHO HAVE RETURN POLICIES EVER WAIVED THEIR REQUIREMENTS?



1123=A. CAN I GO BACK TO YOUR PREVIOUS QUESTION?

1124=Q. YES.

1125=A. I BELIEVE THAT IN THE VENDOR OF RECORD PROGRAM, THEY WAIVE

1126=THE RETURN PENALTIES, INGRAM DOES.

1127=Q. AND AGAIN, THE VENDOR OF RECORD PROGRAM IS ONE THAT YOU

1128=UNDERSTAND IS NOT UNIQUE TO CODY'S BUT IS AVAILABLE TO OTHER

1129=BOOKSELLERS AS WELL, IS THAT CORRECT?

1130=A. THAT'S CORRECT, YES.

1131=Q. SO WITH RESPECT TO THE WAIVER OF ANY PENALTIES FROM ANY OF

1132=THE VENDORS, HAVE YOU EVER RECEIVED ANY WAIVER THAT YOU

1133=UNDERSTOOD WAS UNIQUE TO CODY'S AND NOT AVAILABLE TO OTHER

1134=PEOPLE UNDER, FOR INSTANCE, THE VENDOR OF RECORD PROGRAM?

1135=A. NO.

1136=Q. DO YOU HAVE A PREFERENCE WITH RESPECT TO HOW BOOKS ARE

1137=SHIPPED TO YOUR STORES?

1138=A. YOU MEAN SHIPPING COMPANIES OR CONDITION?

1139=Q. PACKAGING?

1140=A. PACKAGING? WELL, WE LIKE THEM PACKAGED IN STURDY CARTONS.

1141=WE LIKE THEM TO USE CERTAIN TYPES OF -- WHAT DO THEY CALL

1142=THEM -- STUFFING THAT'S EASY TO DEAL WITH. WE LIKE INVOICES TO

1143=BE IN THE BOXES; WE LIKE THEM TO BE READABLE. WE LIKE THE

1144=BOOKS THAT HAVE PRICES PRE-PRINTED ON THEM, YES.

1145=Q. HAVE VENDORS ALWAYS FOLLOWED YOUR PREFERENCES?

1146=A. NO, THEY NEVER FOLLOW OUR PREFERENCES.

1147=Q. HAVE YOU EVER CHARGED A PUBLISHER OR RECEIVED A CREDIT FROM

1148=A PUBLISHER OR ANY OTHER VENDOR BECAUSE THAT VENDOR DID NOT

1149=COMPLY WITH YOUR SHIPPING PREFERENCES?

1150=A. NO, WE HAVE NOT.

1151=Q. FROM TIME TO TIME I ASSUME THAT CODY'S HAS HAD DISPUTES

1152=WITH VENDORS RELATING TO A VARIETY OF THINGS HAVING TO DO WITH

1153=THE BOOKS THAT HAVE BEEN SOLD TO CODY'S. IS THAT ACCURATE?

1154=A. YES.

1155=Q. TYPICALLY WHEN YOU HAVE A DISPUTE WITH THE VENDORS RELATING

1156=TO THE AMOUNT OF MONEY THAT CODY'S OWES TO THAT VENDOR, WHAT

1157=PROCESS DO YOU GO THROUGH TO REACH A CONCLUSION WITH RESPECT TO

1158=THAT DISPUTE?

1159=A. IT'S USUALLY BASED ON AN INVOICE THAT WE THINK -- OUR

1160=RECORDS SHOW WE NEVER RECEIVED AND THEIR RECORDS SHOW THEY

1161=SHIPPED. SO THE FIRST THING WE DO IS ASK THEM TO SEND US A

1162=COPY OF THE INVOICE ALONG WITH PROOF OF DELIVERY, AND IF THEY

1163=DO THAT, AND THIS HAPPENS IN MOST OF THE SITUATIONS, WE WILL

1164=PAY THE BILL. IF THEY DON'T, WE WILL CLAIM WE NEVER RECEIVED

1165=IT AND WE WILL TELL THEM WE DON'T THINK WE SHOULD PAY IT.

1166=Q. HAVE THERE EVER BEEN SITUATIONS IN WHICH A PUBLISHER,

1167=ABSENT THAT KIND OF DOCUMENTATION, HAS SIMPLY SAID, IN EFFECT,

1168=WE'LL FORGIVE YOU FOR THIS DISPUTED AMOUNT?

1169=A. YOU KNOW, THERE'S REALLY ONLY TWO SITUATIONS, THOSE WHICH

1170=WE -- WHERE THEY CAN'T PROVIDE PROOF OF DELIVERY AND THOSE

1171=WHERE THEY CAN. COULD YOU REPEAT THE QUESTION? I DON'T THINK

1172=I --

1173=Q. I'M SIMPLY WONDERING, WHERE YOU HAVE A DISPUTE WITH A

1174=PUBLISHER OR VENDOR --

1175=A. YES.

1176=Q. -- RELATING TO THE AMOUNT OF MONEY THAT YOU OWE THEM,

1177=WHETHER THEY'VE EVER JUST SAID TO YOU, DON'T WORRY ABOUT IT,

1178=WE'LL JUST FORGIVE THIS AMOUNT?

1179=A. NO, THAT ISN'T WHAT HAPPENS.

1180=Q. ARE YOU FAMILIAR WITH THE TERM "COOPERATIVE ADVERTISING"?

1181=A. YES, I AM.

1182=Q. AND DO YOU PLACE ADVERTISEMENTS FOR YOUR STORE IN PRINT

1183=MEDIA?

1184=A. YES, WE DO.

1185=Q. DID YOU AT SOME POINT COME TO AN UNDERSTANDING THAT CERTAIN

1186=VENDORS WERE OFFERING COOPERATIVE ADVERTISING MONEY?

1187=A. YES, I'M PRETTY MUCH AWARE OF CO-OP ADVERTISING.

1188=Q. AND HAVE YOU EVER, INDEED, RECEIVED ANY COOPERATIVE

1189=ADVERTISING MONEY FROM ANY VENDORS?

1190=A. YES, I HAVE.

1191=Q. DO YOU HAVE A MEMORY, AS YOU SIT HERE TODAY, OF WHEN YOU

1192=FIRST RECEIVED COOPERATIVE ADVERTISING?

1193=A. I'VE BEEN TRYING TO GET CO-OP, AND SUCCEEDING, PROBABLY AS  
1194=LONG AS I'VE BEEN IN BUSINESS, SINCE THE EARLY 70'S.  
1195=Q. WAS THERE A PERIOD OF TIME WHEN YOU BEGAN TO RECEIVE IT  
1196=FROM MORE OF THE VENDORS ON THE TAB ON TAB 3?  
1197=A. WELL, I THINK AS, YOU KNOW -- I THINK CO-OP HAS KIND OF  
1198=LOOSENEED UP A LOT IN THE LAST 10 OR 15 YEARS.  
1199=Q. WHY IS THAT?

1200=A. THE TERMS HAVE BECOME MORE GENEROUS. THEY TEND TO BE A  
1201=LITTLE EASIER TO TAKE ADVANTAGE OF. PUBLISHERS TEND TO BE MORE  
1202=FORTHCOMING WITH EXACTLY WHAT THE TERMS ARE AND HOW MUCH MONEY  
1203=IS AVAILABLE.  
1204=Q. WAS THERE A PERIOD OF TIME DURING WHICH YOU WERE ASKING  
1205=PARTICULAR VENDORS WHETHER THEY HAD CO-OP AVAILABLE AND YOU  
1206=WERE NOT RECEIVING IT?  
1207=A. YEAH, IN THE 80'S, IT WAS SOMETIMES DIFFICULT TO GET  
1208=INFORMATION OUT OF PUBLISHERS.  
1209=Q. WITH RESPECT TO PRINT MEDIA ADVERTISING, HAVE YOU EVER  
1210=GOTTEN REIMBURSEMENT FROM CO-OP FOR ABOVE YOUR OUT-OF-POCKET  
1211=EXPENSES RELATING TO THAT PARTICULAR ADVERTISEMENT?  
1212=A. NO, I HAVE NOT.  
1213=Q. HAVE YOU EVER RECEIVED CO-OP FUNDS FOR ADVERTISEMENTS THAT  
1214=DIDN'T FEATURE A PARTICULAR PUBLISHER'S TITLES?  
1215=A. NO, I DIDN'T.  
1216=Q. IS THERE A GENERAL REQUIREMENT FROM PUBLISHERS WITH RESPECT  
1217=TO THE DOCUMENTATION BEFORE YOU'LL BE COMPENSATED FOR PRINT  
1218=ADS?  
1219=A. THEY USUALLY REQUIRE A TEAR SHEET, AN INVOICE FROM THE  
1220=MEDIUM THAT WE PLACE THE AD, AND MORE OFTEN THAN NOT, A COPY OF  
1221=THE CONTRACT WITH THE PUBLISHER WHERE WE AGREED TO PLACE THE  
1222=AD.  
1223=Q. AND HAVE YOU EVER BEEN DENIED A CLAIM FOR CO-OP MONEY FROM  
1224=ANY PUBLISHER AS A RESULT OF NOT HAVING THAT DOCUMENTATION?

1225=A. YES, FREQUENTLY.  
1226=Q. FINALLY, MR. ROSS, I'D LIKE TO RETURN JUST FOR A SECOND TO  
1227=INGRAM.  
1228=A. YES.  
1229=Q. HAS INGRAM EVER PROVIDED YOU WITH INFORMATION RELATING TO  
1230=WHAT IT CALLS A SCHEDULED DELIVERY PROGRAM?  
1231=A. YES, I'M GENERALLY AWARE OF THAT PROGRAM.  
1232=Q. WHAT IS THAT PROGRAM?  
1233=A. I BELIEVE IT HAD TO DO WITH -- IT'S A PROGRAM IN INGRAM  
1234=WHERE IF YOU AGREE TO HAVE INGRAM DELIVERIES SHIPPED ON CERTAIN  
1235=DAYS AND AT CERTAIN TIMES, THEY WILL GIVE YOU SOME EXTRA ADDED  
1236=BENEFIT.  
1237=Q. AND DO YOU TAKE ADVANTAGE OF THAT PROGRAM?  
1238=A. NO, WE THOUGHT ABOUT IT CAREFULLY, BUT IT DIDN'T SEEM TO  
1239=WORK FOR US.  
1240=Q. AND WHY IS THAT? WHEN YOU SAY IT DOESN'T WORK FOR YOU,  
1241=WHAT ASPECT OF IT DOESN'T WORK?  
1242=A. BECAUSE THE IMPORTANT THING ABOUT INGRAM IS THAT THEY HAVE  
1243=QUICK DELIVERY, AND WE NEED THE BOOKS WHEN WE WANT THE BOOKS,  
1244=NOT WHEN THEY WEREN'T TO SHIP THE BOOKS. SO IT JUST -- IT SORT  
1245=OF DEFEATS THE PURPOSE OF INGRAM.  
1246=Q. HAS INGRAM EVER PROVIDED YOU WITH INFORMATION REGARDING A  
1247=SUMMARY BILLING PROGRAM?  
1248=A. I AM NOT AWARE OF THE SUMMARY BILLING PROGRAM.  
1249=Q. SIMILARLY, HAS INGRAM EVER PROVIDED YOU WITH INFORMATION

1250=REGARDING A PROGRAM CALLED BACK LIST PLUS?  
1251=A. I'VE HEARD OF BACK LIST PLUS.  
1252=Q. DO YOU HAVE AN UNDERSTANDING ABOUT WHAT IT INVOLVES?  
1253=A. I THINK THEY GIVE YOU A PRINTOUT OF BEST-SELLING BOOKS FROM  
1254=INGRAM BY CATEGORY, AND IF YOU ORDER THEM, THERE'S SOME ADDED  
1255=ADVANTAGE. I DON'T REMEMBER WHAT IT IS.  
1256=Q. AND DO YOU KNOW, AS YOU SIT HERE TODAY, WHETHER YOU'RE  
1257=TAKING ADVANTAGE OF THE BACK LIST PLUS PROGRAM?  
1258=A. WE ONCE ORDERED A -- ONE OF THEIR PRINTOUTS AND LOOKED AT  
1259=IT. THE BOOKS -- EITHER WE HAD THE BOOKS OR THE BOOKS WEREN'T  
1260=ATTRACTIVE TO US. SO IT WASN'T USEFUL FOR US.  
1261=Q. HAS INGRAM EVER PROVIDED YOU WITH INFORMATION REGARDING A  
1262=COMPUTER BOOKS RECOMMENDED INVENTORY PROGRAM?

1263=A. I'M NOT AWARE OF THAT.  
1264=Q. HAVE YOU EVER RECEIVED INFORMATION FROM INGRAM RELATING TO  
1265=A VISITING AUTHORS PROGRAM?  
1266=A. I'VE HEARD OF IT. I DON'T REALLY REMEMBER VERY MUCH ABOUT  
1267=IT. I THINK I HEARD OF IT IN THE 80'S OR EARLY 90'S. IT  
1268=DIDN'T SEEM TO WORK VERY WELL FOR US.  
1269=MR. DAWSON: THANK YOU. NO FURTHER QUESTIONS.  
1270=THE COURT: ALL RIGHT, CROSS-EXAMINATION.  
1271=MR. PETROCELLI: I'M GOING TO BE HANDING THE  
1272=WITNESS, YOUR HONOR, A NOTEBOOK SIMILAR TO YOURS.  
1273=THE COURT: ALL RIGHT.  
1274=MR. PETROCELLI: YOUR HONOR, I'M ALSO HANDING UP THE  
  
1275=THREE-VOLUME DEPOSITION IN THE EVENT THAT I NEED TO REFER TO  
1276=IT.  
1277= CROSS-EXAMINATION  
1278=BY MR. PETROCELLI:  
1279=Q. GOOD MORNING, MR. ROSS.  
1280=A. GOOD MORNING, MR. PETROCELLI.  
1281=MR. DAWSON: YOUR HONOR, BEFORE WE GET STARTED, I'D  
1282=LIKE TO GET THE BINDER THEY'RE GOING TO BE USING WITH MR. ROSS.  
1283=THE COURT: YES.  
1284=MR. PETROCELLI: OKAY, WE'RE SET.  
1285=THE COURT: ALL RIGHT, YOU MAY PROCEED.  
1286=BY MR. PETROCELLI:  
1287=Q. NOW, MR. ROSS, YOU DO NEGOTIATE FOR THE BEST TERMS YOU CAN  
1288=GET, CORRECT?  
1289=A. I TRY TO GET THE BEST TERMS I CAN GET, YES, SIR.  
1290=Q. AND SO YOU HAVE NO PROBLEM AS A MEMBER OF THE ABA  
1291=NEGOTIATING FOR TERMS, CORRECT?  
1292=A. NO.  
1293=Q. AND THERE IS NO ABA RULE OR RESTRICTION AGAINST MEMBERS  
1294=NEGOTIATING FOR TERMS, CORRECT?  
1295=A. NO.  
1296=Q. AND AS A MEMBER OF THE -- WELL, WITHDRAW. NOW, YOU  
1297=INDICATED THAT YOU WILL NEGOTIATE FOR THE BEST TERMS, BUT THAT  
1298=WHERE YOU DRAW THE LINE IS, YOU WON'T NEGOTIATE FOR ANY  
1299=EXCLUSIVE CODY'S-ONLY TERMS, CORRECT?  
  
1300=A. I WOULDN'T SAY I WOULDN'T DO IT. I JUST SAY THAT IT'S  
1301=JUST -- IT'S NEVER HAPPENED. YEAH.  
1302=Q. WELL, IN ANSWER TO THE JUDGE'S QUESTION ABOUT, WHY DON'T  
1303=YOU NEGOTIATE CODY'S-ONLY DEALS, YOU'RE SAYING, IT'S NOT THAT  
1304=YOU WOULDN'T DO IT, IT'S JUST THAT THE OCCASION HASN'T ARISEN.  
1305=IS THAT YOUR TESTIMONY?  
1306=A. YES.  
1307=Q. WHEN YOU ARE NEGOTIATING, SIR, FOR THE BEST TERM AVAILABLE,  
1308=AND YOU GET WHAT YOU THINK IS THE BEST TERM AVAILABLE, DO YOU  
1309=DO ANYTHING TO VERIFY WHETHER EVERY OTHER BOOKSELLER IS GETTING  
1310=THE SAME DEAL YOU'RE GETTING?  
1311=A. NO.  
1312=Q. AND I TAKE IT BY YOUR ANSWER, THEN, THAT YOU ASK FOR NO  
1313=PROOF, NO VERIFICATION FROM THE PUBLISHER OR THE VENDOR WHETHER  
1314=YOUR DEAL IS BEING MADE AVAILABLE TO ANYBODY ELSE, CORRECT?  
1315=A. IN MOST SITUATIONS I KNOW THAT THESE DEALS ARE GENERALLY  
1316=AVAILABLE.  
1317=Q. MY QUESTION IS WHETHER YOU ASK FOR ANY VERIFICATION --  
1318=A. NO.  
1319=Q. -- FROM THE PUBLISHER.  
1320=A. NO.  
1321=Q. AND AS YOU INDICATED AND AS WE -- WE'LL GET INTO, YOU'RE  
1322=VERY AGGRESSIVE ABOUT GETTING TERMS, CORRECT?  
1323=A. WELL, YES, I THINK I AM.  
1324=Q. OKAY. NOW, LET'S TALK ABOUT HOW YOU DO GET THOSE TERMS.  
  
1325=A. YEAH.  
1326=Q. BEFORE I DO GO THERE, LET ME ASK YOU SOMETHING ELSE ON THIS  
1327=ISSUE OF NEGOTIATION. YOU HAVE EVEN ASKED PUBLISHERS, IN  
1328=CONDUCTING NEGOTIATIONS, TO MEET COMPETITION FROM OTHER  
1329=PUBLISHERS, CORRECT?  
1330=A. I'VE DONE IT RARELY, BUT I'VE DONE IT, YES.  
1331=Q. OKAY, AND SO WHEN YOU DO SO, YOU REALIZE WHEN YOU'RE  
1332=GETTING THE PRICE FROM THE PUBLISHER WITH WHOM YOU'RE

1333=NEGOTIATING THAT YOU'RE GETTING A PRICE THAT'S, FOR EXAMPLE,  
1334=NOT IN THE RED BOOK.  
1335=A. THAT'S POSSIBLE, YES.  
1336=Q. AND YOU THINK IT'S APPROPRIATE, IN CONDUCTING YOUR  
1337=BUSINESS, TO NEGOTIATE ON A MEETING-COMPETITION BASIS. YOU  
1338=DON'T SEE ANYTHING WRONG WITH THAT, CORRECT?  
1339=A. NO, NOT REALLY.  
1340=Q. OKAY. SO I TAKE IT, THEN, THAT YOU DO NOT AGREE WITH THE  
1341=VIEW THAT A PUBLISHER SHOULD NOT DEVIATE FROM ITS PUBLISHED  
1342=TERMS, EVEN IF THE PUBLISHER IS TOLD BY ITS CUSTOMERS THAT ITS  
1343=TERMS ARE NOT COMPETITIVE WITH THE TERMS OF OTHER PUBLISHERS.  
1344=I TAKE IT YOU DON'T AGREE WITH THAT.  
1345=A. WELL, I THINK PUBLISHERS SHOULD BE FAIR AND CONSISTENT WITH  
1346=THE LAW, BUT, YOU KNOW, I TRY TO FOLLOW THE LAW.  
1347=Q. LISTEN TO MY QUESTION.  
1348=A. I DIDN'T UNDERSTAND IT. GO AHEAD.  
1349=Q. OKAY, FAIR ENOUGH. MY QUESTION WAS, YOU DO NOT AGREE WITH  
  
1350=THE VIEW THAT A PUBLISHER SHOULD NOT DEVIATE FROM ITS PUBLISHED  
1351=TERMS, EVEN IF THE PUBLISHER IS TOLD BY ITS CUSTOMERS THAT  
1352=THOSE TERMS ARE NOT COMPETITIVE WITH OTHER PUBLISHERS' TERMS.  
1353=A. WELL, IF THEY'RE NOT -- I BELIEVE, IN MEETING THE  
1354=COMPETITION, IF THAT'S APPROPRIATE, SURE.  
1355=Q. AND WOULD YOUR ANSWER BE THE SAME IF I TOLD YOU THAT THE  
1356=VIEW THAT I JUST READ TO YOU WAS THE VIEW OF YOUR OWN INDUSTRY  
1357=EXPERT, GAIL SEE?  
1358=A. WOULD I BE --  
1359=Q. WOULD YOUR OPINION CHANGE IF I TOLD YOU THAT WAS HER VIEW?  
1360=A. WELL, I ALWAYS ADMIRE AND RESPECT GAIL SEE. I DON'T KNOW.  
1361=Q. YOU DON'T KNOW?  
1362=A. OH --  
1363=Q. DO YOU REALIZE THAT THAT IS THE VIEW OF YOUR EXPERT  
1364=WITNESS, YOUR INDUSTRY EXPERT WITNESS, THAT IT IS NOT  
1365=APPROPRIATE --  
1366=A. I DO NOT KNOW HER OPINIONS, NO. I HAVEN'T HEARD HER  
1367=TESTIMONY.  
1368=Q. OKAY. AND IF SHE GIVES THAT TESTIMONY LATER ON TODAY, YOU  
1369=CERTAINLY WOULD DISAGREE WITH IT, CORRECT?  
1370=A. I'M GETTING KIND OF CONFUSED.  
1371=Q. WELL, LET'S TURN TO ANOTHER SUBJECT.  
1372=A. OKAY.  
1373=Q. RED BOOK TERMS. YOU AGREE THAT THE RED BOOK DOES NOT  
1374=CONTAIN ALL THE OPERATIVE PURCHASE TERMS THAT GOVERN  
  
1375=BOOKSELLERS' PURCHASES FROM PUBLISHERS AND VENDORS, CORRECT?  
1376=A. CORRECT.  
1377=Q. AND YOU'VE INDICATED THERE ARE A VARIETY OF OTHER MEANS AND  
1378=WAYS IN WHICH TERMS GET COMMUNICATED, CORRECT?  
1379=A. YES.  
1380=Q. AND THEY INCLUDE STOCK OFFERS, CORRECT?  
1381=A. THAT'S RIGHT.  
1382=Q. AND BY THE WAY, WHEN WE TALK ABOUT STOCK OFFERS, STOCK  
1383=OFFERS COME THEMSELVES IN A VARIETY OF WAYS, AREN'T THEY?  
1384=A. YES.  
1385=Q. THERE ARE SEASONAL STOCK OFFERS, RIGHT?  
1386=A. YES.  
1387=Q. THERE'S HOLIDAY STOCK OFFERS, RIGHT?  
1388=A. YES.  
1389=Q. BACK TO SCHOOL?  
1390=A. YES.  
1391=Q. OKAY, AND A STOCK OFFER IS WHEN A PUBLISHER WANTS TO PUSH A  
1392=PARTICULAR LINE OR TYPE OF BOOKS, RIGHT?  
1393=A. USUALLY, YES.  
1394=Q. MOVE SOME INVENTORY, RIGHT?  
1395=A. YES.  
1396=Q. AND THEY OFFER PRICES THAT ARE NOT IN THE RED BOOK IN THOSE  
1397=OCCASIONS, CORRECT?  
1398=A. YES.  
1399=Q. THEY OFFER PRICES THAT ARE DIFFERENT FROM THEIR PRICE  
  
1400=SCHEDULES, RIGHT?  
1401=A. YES.  
1402=Q. WHEN YOU GET STOCK OFFERS, DO YOU KEEP THE STOCK OFFER

1403=DOCUMENTS IN ORDER TO PROVE THAT SOME PRICE THAT YOU PAID THAT  
1404=WAS NOT ACCORDING TO THE RED BOOK CAN BE DOCUMENTED?  
1405=A. NO.  
1406=Q. AND INDEED, NOT ALL STOCK OFFERS EVEN COME IN WRITING, DO  
1407=THEY?  
1408=A. MOST OF THEM DO. THERE MAY BE AN EXCEPTION TO THAT,  
1409=THOUGH, I DON'T KNOW.  
1410=Q. I WAS LISTENING CAREFULLY TO YOUR DIRECT EXAMINATION, AND  
1411=YOU KEPT USING WORDS LIKE "USUALLY" AND "TYPICALLY" THEY'RE  
1412=COMMUNICATED IN WRITING, AND I TOOK FROM YOUR ANSWER THAT THAT  
1413=MEANT THAT SOMETIMES THEY'RE NOT IN WRITING, THEY'RE VERBALLY  
1414=COMMUNICATED. CORRECT?  
1415=A. THEY COULD BE. I DON'T REALLY KNOW.  
1416=Q. AND INDEED, WHEN THEY ARE VERBALLY COMMUNICATED, THE ONLY  
1417=EVIDENCE THAT ONE WOULD HAVE ABOUT THE TERMS OF THAT PARTICULAR  
1418=STOCK OFFER WOULD BE CONTAINED IN THE INVOICE ITSELF, CORRECT?  
1419=A. WELL, YOU'RE -- HYPOTHETICALLY, YES. BUT SIR, I DON'T  
1420=REMEMBER ANY THAT WERE JUST VERBALLY COMMUNICATED. I JUST  
1421=DON'T KNOW.  
1422=Q. NOW, STOCK OFFERINGS AND OTHER PUBLISHER OFFERINGS OUTSIDE  
1423=OF THEIR ORDINARY PRICE SCHEDULES ARE ALSO COMMUNICATED, FOR  
1424=EXAMPLE, IN TRADE SHOWS, CORRECT?  
1425=A. YES.  
1426=Q. AND YOU ATTEND THE NORTHERN CALIFORNIA INDEPENDENT  
1427=BOOKSELLERS ASSOCIATION, NCIBA, TRADE SHOW FROM TIME TO TIME?  
1428=A. YES.  
1429=Q. OR REPRESENTATIVES OF YOUR COMPANY? BY THE WAY, YOUR  
1430=COMPANY IS A CORPORATION, RIGHT?  
1431=A. CORRECT.  
1432=Q. AND YOU ARE THE SOLE STOCKHOLDER, CORRECT?  
1433=A. THAT IS TRUE.  
1434=Q. AND AT THE NCIBA TRADE ASSOCIATION SHOW, STOCK OFFERS ARE  
1435=OFFERED THERE BY NUMEROUS VENDORS, CORRECT?  
1436=A. RIGHT.  
1437=Q. AND YOU HAVE PARTICIPATED FROM TIME TO TIME IN VOLUME  
1438=DISCOUNT PROGRAMS, AS WELL, CORRECT?  
1439=A. WHAT DO YOU MEAN BY VOLUME DISCOUNT PROGRAMS? ALL  
1440=PUBLISHERS HAVE VOLUME DISCOUNTS, YES.  
1441=Q. BEYOND WHAT'S IN THE PUBLISHED TERMS?  
1442=A. HOW IS THAT DIFFERENT THAN A STOCK OFFER? I'M SORRY, I'M  
1443=NOT SUPPOSED TO ASK YOU QUESTIONS, BUT --  
1444=Q. YOU'VE RECEIVED OFFERINGS FROM TIME TO TIME THAT THE MORE  
1445=YOU BUY, THE LESS YOU PAY, CORRECT?  
1446=A. YES, THAT'S TRUE, WE HAVE.  
1447=Q. AND YOU'VE ALSO RECEIVED NEW STORE OPENING TERMS NOT  
1448=CONTAINED IN PUBLISHERS' PRICE SCHEDULES, CORRECT?  
1449=A. WHEN WE OPENED OUR NEW STORE, WE MAY HAVE GOTTEN A FEW -- A  
1450=FEW EXTENDED DAY PROGRAMS, I THINK.  
1451=Q. AN EXTENDED DAY PROGRAMS MEANS WHAT?  
1452=A. YOU CAN PAY IN LONGER THAN 30 DAYS.  
1453=Q. AND THAT'S WHEN YOU OPENED THE FOURTH STREET STORE?  
1454=A. FOURTH STREET STORE.  
1455=Q. IN 1997.  
1456=A. YES.  
1457=Q. IN NOVEMBER, RIGHT?  
1458=A. THAT'S CORRECT.  
1459=Q. OKAY. AND THERE ARE NUMEROUS OCCASIONS WHEN YOU, CODY'S,  
1460=DOES NOT PAY FOR BOOKS ON THE TERMS THAT ARE IN THE RED BOOK,  
1461=CORRECT?  
1462=A. WELL, I'D STILL SAY THAT THE VAST MAJORITY OF TERMS ARE  
1463=CONSISTENT WITH THE RED BOOK, BUT THERE ARE EXAMPLES AND  
1464=PROBABLY NUMEROUS EXAMPLES, WHICH ARE DIFFERENT THAN THE BOOK,  
1465=YES.  
1466=Q. I THINK YOU SAID AT LEAST 10 PERCENT ARE STOCK OFFERS  
1467=ALONE, CORRECT?  
1468=A. WELL, NO MORE THAN 10 PERCENT.  
1469=Q. WELL, LET ME ASK YOU ABOUT A FEW OTHER INVOICES.  
1470=AND I'M GOING TO NOW TURN TO THE BOOK THAT YOU HAVE  
1471=IN FRONT OF YOU, YOUR HONOR. THE FIRST ONE WOULD BE EXHIBIT  
1472=6503. TO TRY TO SPEED THIS UP, YOUR HONOR, WHAT WE HAVE DONE  
1473=FOR BOTH YOU AND THE WITNESS IS HIGHLIGHTED THE -- SOME OF THE

1474=MATERIAL, AND THEN ALSO WE PUT A COPY OF THE APPLICABLE RED  
1475=BOOK PAGE THAT PERTAINS TO THE INVOICE PERIOD OF TIME, AND WE  
1476=HAVE TABBED THAT, SO THAT YOU CAN EASILY TURN TO IT. THAT'S  
1477=WHAT THAT TAB IS, YOUR HONOR.  
1478=THE COURT: ALL RIGHT.  
1479=BY MR. PETROCELLI:  
1480=Q. OKAY, SO LOOKING AT EXHIBIT 6503, DO YOU HAVE THAT?  
1481=A. YES, I DO.  
1482=Q. OKAY, NOW, THERE'S A SITUATION WHERE YOU'RE GETTING  
1483=50 PERCENT DISCOUNT IN 1996 IN OCTOBER FOR TRADE BOOKS,  
1484=CORRECT?  
1485=A. THAT IS CORRECT.  
1486=Q. OKAY, AND IF YOU LOOK TO THE APPLICABLE RED BOOK PAGE,  
1487=WHICH IS IN THE SAME TAB, SIR, IN THE SAME TAB --  
1488=A. RIGHT.  
1489=Q. -- YOU'LL SEE IT'S RIGHT BEHIND THERE.  
1490=A. UM-HUM.  
1491=Q. AND YOU'LL SEE THAT THE APPLICABLE RATE THERE IS, WHAT,  
1492=47 PERCENT, CORRECT?  
1493=A. CORRECT.  
1494=Q. OKAY. AND THERE'S NOTHING -- BY LOOKING AT THIS RED BOOK  
1495=PAGE, YOU CAN'T DETERMINE THAT YOU PAID -- YOU GOT A 50 PERCENT  
1496=DISCOUNT AS OPPOSED TO A 47 PERCENT DISCOUNT, CORRECT?  
1497=A. NOT FROM THE RED BOOK, NO.  
1498=Q. YOU COULD TELL FROM THE INVOICE, THOUGH.  
1499=A. THAT IS TRUE.  
  
1500=Q. AND BY THE WAY, I THINK YOU ANSWERED THIS, BUT, YOU DON'T  
1501=SAVE THE STOCK OFFERS THAT SUPPORT THE HIGHER DISCOUNT AND FILE  
1502=THEM WITH YOUR INVOICES, DO YOU?  
1503=A. NO.  
1504=Q. OKAY, LET'S TURN TO THE NEXT ONE, WHICH IS -- AND THEY  
1505=SHOULD BE IN ORDER, THERE -- EXHIBIT 6504.  
1506=A. YES, SIR.  
1507=Q. OKAY, THAT'S A OCTOBER 20 -- AN OCTOBER, 1997 -- OCTOBER,  
1508=1997 INVOICE. DO YOU SEE THAT? AND THERE'S 52 PERCENT  
1509=DISCOUNTS THERE.  
1510=A. YES.  
1511=Q. AND IF YOU GO TO THE RED BOOK PAGE, YOU'LL SEE THE  
1512=APPLICABLE RATES.  
1513=AND BY THE WAY, WE ACTUALLY COUNTED UP THE NUMBER OF  
1514=UNITS ORDERED, AND IT COMES TO 432 TITLES -- 432 UNITS, I  
1515=SHOULD SAY. SO ASSUMING THAT IT'S 432, THE APPLICABLE RATE  
1516=WOULD HAVE BEEN WHAT, SIR, BETWEEN --  
1517=A. YOU KNOW, I'M SORRY, BUT, YOU KNOW, THIS IS -- MACMILLAN  
1518=HAD BECOME AT THAT TIME A VERY COMPLICATED PUBLISHER, AND THEY  
1519=MAY HAVE HAD SEPARATE DISCOUNTS FOR COMPUTER BOOKS. IT MAY  
1520=HAVE EVEN BEEN A SEPARATE COMPUTER --  
1521=Q. THIS IS THE COMPUTER.  
1522=A. THIS IS COMPUTER.  
1523=Q. YES, I HAVE PUT IN FRONT OF YOU THE RED BOOK PAGE FOR THE  
1524=COMPUTER PUBLISHING IMPRINT, AND YOU'LL SEE THAT FOR ORDERS  
  
1525=UNDER 500 IT'S 46 PERCENT, AND FOR ORDERS OF 500 OR MORE IT'S  
1526=48 PERCENT.  
1527=A. I SEE THAT, YES, SIR.  
1528=Q. OKAY. AND YOU GOT 52 PERCENT.  
1529=A. AND I SEE THAT, TOO, YES.  
1530=Q. AND AGAIN, YOU CANNOT TELL WHAT PRICE YOU WOULD HAVE PAID,  
1531=OR DID PAY, I SHOULD SAY, FOR THE ORDER BY JUST LOOKING AT THE  
1532=RED BOOK TERMS, CORRECT?  
1533=A. THAT'S CORRECT.  
1534=Q. LET'S TURN TO THE NEXT ONE, EXHIBIT 6505. THERE YOU SEE AN  
1535=APRIL '95 INVOICE, AND I BELIEVE YOUR COUNSEL SHOWED YOU THIS  
1536=ONE ON DIRECT EXAMINATION.  
1537=A. YES.  
1538=Q. AND HE ASKED YOU ABOUT THE 50 PERCENT DISCOUNT, AND I THINK  
1539=YOU SAID THAT COMPUTER BOOKS ARE TYPICALLY PRICED AT  
1540=50 PERCENT. DO YOU SEE THAT?  
1541=A. SOMETIMES THEY'RE PRICED THAT WAY, YES.  
1542=Q. AND GO TO THE APPLICABLE RED BOOK PAGE FOR MACMILLAN  
1543=COMPUTER PUBLISHING.

1544=A. YES.  
1545=Q. AND YOU'LL SEE THAT THE DISCOUNT RATE IS NOT 50 PERCENT FOR  
1546=COMPUTER BOOKS, BUT 45 PERCENT. DO YOU SEE THAT?  
1547=A. I SEE THAT.  
1548=Q. OKAY. AND AGAIN, BY LOOKING AT THE RED BOOK, YOU COULD NOT  
1549=TELL WHAT YOU ACTUALLY PAID FOR THE BOOKS.

1550=A. THAT'S CORRECT.  
1551=Q. TURN TO EXHIBIT 6506, NEXT ONE, AND THAT'S A MCGRAW-HILL  
1552=INVOICE, CORRECT?  
1553=A. RIGHT, THAT'S CORRECT.  
1554=Q. AND THERE YOU ORDERED A TOTAL OF 64 BOOKS, AT A 52 PERCENT  
1555=DISCOUNT, AND THE CORRESPONDING RED BOOK ENTRY IS 46 PERCENT,  
1556=CORRECT?  
1557=A. THAT IS CORRECT.  
1558=Q. AND WITHOUT LOOKING AT THE INVOICES OR SOME BUSINESS RECORD  
1559=THAT SUMMARIZES THE INVOICES, THERE WOULD SIMPLY BE NO WAY TO  
1560=KNOW WHAT YOU ACTUALLY PAID FOR THE BOOKS, CORRECT?  
1561=A. YOU'D HAVE TO LOOK AT THE INVOICE, YES.  
1562=Q. DOES YOUR COMPANY HAVE SOME KIND OF BUSINESS RECORD THAT  
1563=SUMMARIZES INVOICE DATA?  
1564=A. WELL, WE HAVE A COMPUTER SYSTEM THAT YOU COULD GET SOME  
1565=SUMMARIES, YES.  
1566=Q. I'LL SHOW YOU ONE MORE, SIR, THAT'S EXHIBIT 6509, AND THEN  
1567=I'LL STOP ON THE INVOICES.  
1568=A. OKAY.  
1569=Q. THAT'S HARPER-COLLINS, NOVEMBER 21, 1996, SHOWING A  
1570=50 PERCENT DISCOUNT. IF YOU TURN TO THE APPLICABLE RED BOOK  
1571=PAGE THERE, YOU'LL SEE IT'S 45 PERCENT, AND IF YOU ORDERED  
1572=ELECTRONICALLY, ANOTHER 1 PERCENT, SO THE MOST YOU COULD DERIVE  
1573=WOULD BE 46 PERCENT, CORRECT?  
1574=A. ACCORDING TO YOUR RED BOOK, BUT I SEEM TO REMEMBER THAT --

1575=WELL, YES, I THINK THAT'S --  
1576=Q. WELL, IT'S NOT MY RED BOOK, SIR, TRUST ME.  
1577= (LAUGHTER.)  
1578=A. IT'S MY RED BOOK, I ACCEPT. I WILL ANSWER THE QUESTION.  
1579=Q. LET'S GET THAT CLEAR.  
1580=A. I'LL ANSWER YOUR QUESTION. THAT IS CORRECT, SIR.  
1581=Q. OKAY, NO MORE WITH THOSE INVOICES.  
1582=THE COURT: ALL RIGHT, I THINK WE'LL TAKE THE  
1583=MORNING RECESS.  
1584=MR. PETROCELLI: OKAY, YOUR HONOR.  
1585=THE COURT: TILL 10:15.  
1586=THE CLERK: ALL RISE.  
1587=(RECESS TAKEN FROM 9:58 A.M. TO 10:20 A.M.)  
1588=(CONTINUED ON FOLLOWING PAGE. NOTHING OMITTED.)

1589=  
1590=  
1591=  
1592=  
1593=  
1594=  
1595=  
1596=  
1597=  
1598=  
1599=

1600= THE COURT: ALL RIGHT. FURTHER CROSS-EXAMINATION.  
1601=BY MR. PETROCELLI:  
1602=Q. MR. ROSS, WHEN WE WERE TALKING ABOUT HOW PUBLISHERS  
1603=COMMUNICATE TERMS TO BOOKSELLERS, ONE OF THE THINGS THAT HAPPENS  
1604=IS THAT PUBLISHERS HAVE SALES REPS, AND SALES REPS PICK UP THE  
1605=PHONE AND CALL YOU OR YOU CALL THEM, CORRECT?  
1606=A. YES.  
1607=Q. AND SOMETIMES YOU VISIT WITH SALES REPS, RIGHT?  
1608=A. YES.  
1609=Q. AND IT'S WHEN YOU'RE IN THAT INTERACTION WITH SALES REPS  
1610=WHEN YOU DISCUSS TERMS, NEGOTIATE TERMS, ET CETERA, CORRECT?  
1611=A. YES.  
1612=Q. AND THAT'S, FOR EXAMPLE, WHEN STOCK OFFER OPPORTUNITIES MAY  
1613=BE DISCUSSED, CORRECT?

1614=A. YES.  
1615=Q. NOW, A STOCK OFFER IS TYPICALLY 1 TO 2 PERCENT ADDITIONAL  
1616=PRICE DISCOUNT, IN THAT RANGE, CORRECT?  
1617=A. YES, THERE ARE DIFFERENT KINDS OF STOCK OFFERS, BUT THAT'S  
1618=ONE OF THEM, YEAH, SURE.  
1619=Q. WOULD YOU SAY THAT 1 TO 2 PERCENT IS A SOMEWHAT TYPICAL  
1620=RANGE?  
1621=A. YES.  
1622=Q. OKAY. NOW, ON THE LAST EXHIBIT I SHOWED YOU, THE  
1623=HARPERCOLLINS EXHIBIT, WHICH WAS 6509, THE INVOICE THERE --  
1624=A. UM-HMM.  
  
1625=Q. -- NOT DEALING WITH COMPUTER BOOKS, WE SAW A -- A GAP OF  
1626=5 PERCENT BETWEEN WHAT THE RED BOOK SAID, 45 PERCENT, AND WHAT  
1627=WAS STATED ON THIS INVOICE, WHICH WAS 50 PERCENT?  
1628=A. RIGHT.  
1629=Q. AND YOU SPECULATED THAT THAT MIGHT BE A STOCK OFFER  
1630=PURCHASE?  
1631=A. YES.  
1632=Q. THAT'D BE KIND OF HIGH FOR JUST A STRAIGHT-OUT STOCK OFFER,  
1633=WOULDN'T IT?  
1634=A. THERE HAVE BEEN STOCK OFFERS FOR 50 PERCENT DISCOUNT.  
1635=Q. ONE OTHER EXPLANATION IS THAT THE SALES REP OFFERED A 1 TO 2  
1636=PERCENT PRICE DISCOUNT ON THE STOCK OFFER, AND YOU NEGOTIATED  
1637=HIM UP TO 5 PERCENT?  
1638=A. NO.  
1639=Q. THAT'S CERTAINLY A --  
1640=A. NO, I WOULD NOT.  
1641=Q. -- SOMETHING THAT -- YOU WOULD NOT HAVE DONE THAT?  
1642=A. NO. IT JUST DOESN'T HAPPEN IN OUR BUSINESS.  
1643=Q. BUT YOU HAVE NO EXPLANATION LOOKING AT THE -- AT THE INVOICE  
1644=WHAT THAT ADDITIONAL -- OR WHAT THAT ENTIRE DISCOUNT IS REALLY  
1645=ATTRIBUTABLE TO, DO YOU?  
1646=A. NO.  
1647=Q. WOULD YOU NOT AGREE WITH ME THAT THE ONLY REALLY WAY TO FIND  
1648=OUT WHAT YOUR ACTUAL PURCHASES ARE, YOUR ACTUAL PURCHASES PRICES  
1649=ARE AND YOUR ACTUAL DISCOUNTS ARE, IS TO LOOK AT THE INVOICES,  
  
1650=CORRECT?  
1651=A. CORRECT.  
1652=Q. AND THAT USING THE INVOICES WOULD BE THE MOST ACCURATE WAY  
1653=TO COMPARE WHAT CODY'S PURCHASES AND THE PRICES THEY PAY AND THE  
1654=DISCOUNTS THEY RECEIVE WITH THOSE OF BARNES & NOBLE OR BORDERS,  
1655=CORRECT?  
1656=A. YES.  
1657=Q. HAVE YOU PREPARED A SUMMARY OF THAT INVOICE DATA TO BE  
1658=PRESENTED IN COURT?  
1659=A. HERE TODAY?  
1660=Q. YES.  
1661=A. NO.  
1662=Q. YOU RECEIVE, I BELIEVE, AS WAS ELICITED ON DIRECT  
1663=EXAMINATION DISCOUNTS APPLICABLE TO RETAIL DISTRIBUTION CENTERS  
1664=OR RDC'S, CORRECT?  
1665=A. YES.  
1666=Q. AND YOU HAVE A SOMEWHAT SMALL FACILITY, CORRECT?  
1667=A. YOU MEAN MY BUSINESS?  
1668=Q. NO, YOUR -- YOUR RDC.  
1669=A. UM, WHAT DO YOU MEAN -- I GUESS, YEAH, SURE.  
1670=Q. BUT YOU RECEIVE THE SAME PERCENTAGE DISCOUNT THAT THE  
1671=RETAILERS WITH -- WITH EXTREMELY LARGE FACILITIES RECEIVE,  
1672=CORRECT?  
1673=A. I DON'T KNOW WHAT THEY RECEIVE.  
1674=Q. IF -- ASSUME IT'S RED BOOK. THE RED BOOK HAS THE SAME  
  
1675=PERCENTAGE WHETHER IT'S A SMALL FACILITY OR A VERY, VERY LARGE  
1676=FACILITY, CORRECT?  
1677=A. YES.  
1678=Q. AND THE ONLY FACILITY THAT HAS ANY SORT OF RDC CAPABILITY,  
1679=AS YOU TESTIFIED, IS TELEGRAPH -- IS FOURTH STREET, CORRECT?  
1680=A. NO, NOT NECESSARILY BECAUSE ALL RDC'S DON'T REQUIRE A  
1681=LOADING DOCK.  
1682=Q. WELL, YOU'RE AHEAD OF ME NOW.  
1683=A. OKAY.



1684=Q. MY QUESTION WAS THE ONLY RDC-TYPE FACILITY THAT YOU HAVE IS  
1685=AT WHAT STORE?  
1686=A. I DON'T KNOW WHAT AN RDC-TYPE FACILITY --  
1687=Q. LOADING DOCK WAREHOUSE.  
1688=A. LOCATED DOCK IS AT FOURTH STREET.  
1689=Q. WAREHOUSE?  
1690=A. WE DON'T HAVE A SEPARATE WAREHOUSE.  
1691=Q. OKAY. SO YOU HAVE THE LOADING DOCK AT FOURTH STREET, RIGHT?  
1692=A. YES.  
1693=Q. AND UNDER THE TERMS OF MOST OF THE PUBLISHERS, THAT'S THE  
1694=ONLY LOCATION THAT'S ELIGIBLE TO RECEIVE THE RDC DISCOUNTED  
1695=SHIPMENTS, CORRECT?  
1696=A. I DON'T BELIEVE THAT'S TRUE.  
1697=Q. YOU GET THEM AT THE OTHER STORE AS WELL, CORRECT?  
1698=A. YES.  
1699=Q. EVEN THOUGH THERE'S NO LOADING DOCK THERE, CORRECT?  
  
1700=A. YES.  
1701=Q. AND YOU'VE BEEN ABLE TO TAKE ADVANTAGE OF PUBLISHER TERMS  
1702=THAT PERMIT YOU TO RECEIVE THEM AT THE OTHER FACILITY, CORRECT?  
1703=A. WHEN THE TERMS WARRANT IT, I CAN DO THAT, YES.  
1704=Q. NOW, BANTAM DOUBLEDAY, FOR EXAMPLE, REQUIRES YOUR  
1705=DISTRIBUTION CENTER TO BE A FREE-STANDING OPERATION, WHOSE  
1706=PRIMARY FUNCTION IS WAREHOUSING AND DISTRIBUTION OF BOOKS,  
1707=CORRECT?  
1708=A. I DON'T REMEMBER THEIR SPECIFIC TERMS. I DON'T KNOW.  
1709=Q. BUT WE KNOW THIS: YOUR FOURTH STREET FACILITY WHERE THE  
1710=LOADING DOCK IS IS NOT A FREE-STANDING DISTRIBUTION CENTER,  
1711=CORRECT?  
1712=A. THAT'S CORRECT.  
1713=Q. AND EVEN THOUGH IT'S NOT A FREE -- AND FURTHERMORE, THE  
1714=FOURTH STREET STORE'S MAIN FUNCTION IS TO SELL BOOKS. IT'S A  
1715=BOOKSTORE, CORRECT?  
1716=A. YES.  
1717=Q. YET YOU DO RECEIVE RDC SHIPMENTS THERE FROM THE BANTAM  
1718=DOUBLEDAY, CORRECT?  
1719=A. I DON'T KNOW IF I RECEIVE THEM ON FOURTH STREET OR ON  
1720=TELEGRAPH. I JUST DON'T KNOW RIGHT NOW.  
1721=Q. WELL, LET'S TURN TO EXHIBIT 6 IN THE BINDER IN FRONT OF YOU.  
1722= 'CAUSE I'M HAVING TROUBLE SEEING THESE, I'VE HANDED  
1723=OUT SOME MAGNIFYING GLASSES, YOUR HONOR.  
1724= THE COURT: THANK YOU.  
  
1725= (PAUSE IN THE PROCEEDINGS.)  
1726=BY MR. PETROCELLI:  
1727=Q. AND I PUT THE -- I PUT THE BANTAM DOUBLEDAY -- I PUT THE  
1728=BANTAM DOUBLEDAY RED BOOK IN FOR THE YEAR 1999 SINCE THAT'S  
1729=FAIRLY CURRENT, AND YOU INDICATED ON YOUR DIRECT EXAMINATION  
1730=THAT THAT IS ONE OF THE VENDORS FROM WHOM YOU BUY BOOKS,  
1731=CORRECT?  
1732=A. YES.  
1733=Q. AND YOU WILL SEE HERE ON EXHIBIT 6 UNDER THE TERMS  
1734=APPLICABLE TO RETAIL DISTRIBUTION CENTER, THAT THE REQUIREMENTS  
1735=INCLUDE A FREE-STANDING OPERATION WHOSE PRIMARY FUNCTION IS  
1736=WAREHOUSING AND DISTRIBUTION OF BOOKS, CORRECT? DO YOU SEE  
1737=THAT?  
1738=A. YES, I SEE THAT.  
1739=Q. OKAY. AND YOU DON'T HAVE ANY RDC FACILITY THAT MEETS THOSE  
1740=REQUIREMENTS, CORRECT? IS THAT CORRECT?  
1741=A. I'D HAVE TO READ THIS CAREFULLY. WE DON'T --  
1742=Q. NO.  
1743=A. WE --  
1744=Q. WELL, DO YOU HAVE ANY RDC FACILITY THAT WHOSE PRIMARY  
1745=FUNCTION IS TO WAREHOUSE BOOKS, AND THAT'S FREE-STANDING?  
1746=A. WE DON'T HAVE A FREE-STANDING FACILITY.  
1747=Q. OKAY.  
1748=A. THAT'S CORRECT.  
1749=Q. SO TO THE EXTENT THAT YOU RECEIVE ANY RDC DISCOUNTS FROM  
  
1750=BANTAM DOUBLEDAY DELL, YOU ARE DOING SO IN VIOLATION OF THEIR  
1751=POLICY, CORRECT?  
1752=A. I WOULD NOT ADMIT TO THAT, SIR, BECAUSE WE HAVE READ THEIR  
1753=POLICIES --

1754=Q. OKAY?  
1755=A. -- VERY CAREFULLY AND WE ARE IN COMPLIANCE. I DO NOT KNOW  
1756=IF THIS IS --  
1757=Q. YOU WON'T --  
1758=A. -- OR NOT.  
1759=Q. YOU HAVE NO EXPLANATION AS YOU SIT HERE ON THE STAND HOW IT  
1760=IS YOU CAN RECEIVE RDC-DISCOUNTED SHIPMENTS AT YOUR FACILITY IN  
1761=VIEW OF THIS STATED POLICY, CORRECT?  
1762=A. THAT IS CORRECT.  
1763=Q. I'M GOING TO TURN TO THE SUBJECT OF VOLUME DISCOUNTS FOR A  
1764=SECOND. I ASKED YOU ABOUT VOLUME DISCOUNTS THAT YOU MAY RECEIVE  
1765=FROM TIME TO TIME. YOU ALSO GIVE AS A BOOKSELLER VOLUME  
1766=DISCOUNTS, CORRECT?  
1767=A. WE HAVE FROM TIME TO TIME, YES.  
1768=Q. AND YOU GIVE VOLUME DISCOUNTS TO CUSTOMERS BECAUSE SELLING  
1769=IN VOLUME IS LESS LABOR INTENSIVE AND THUS SAVES YOU MONEY,  
1770=CORRECT?  
1771=A. THAT WOULD -- YES.  
1772=Q. LET'S TALK ABOUT A BIT ABOUT CO-OP ALLOWANCES. YOU HAVE  
1773=BEEN QUITE AGGRESSIVE IN NEGOTIATING FOR CO-OP FUNDS, CORRECT?  
1774=A. YES.  
  
1775=Q. AND YOU ALSO NEGOTIATE FOR CO-OP FUNDS FOR IN-STORE DISPLAY  
1776=OR PLACEMENT OF BOOKS, CORRECT?  
1777=A. YES.  
1778=Q. LET'S LOOK AT EXHIBIT 6520, IF YOU WOULD, PLEASE, MR. ROSS.  
1779=A. 6520.  
1780=Q. YES.  
1781=A. THAT IT?  
1782=Q. THAT WAS A MULTI- PAGE DOCUMENT. IF YOU LOOK AT THE VERY  
1783=END, AFTER THE PAPER CLIP, YOU WILL SEE A LETTER FROM YOU TO  
1784=AVON BOOKS DATED JANUARY 26, 1996. DO YOU SEE THAT, MR. ROSS?  
1785=A. YES, I DO.  
1786=Q. AND THERE YOU ARE SEEKING CO-OP ALLOWANCE FOR IN-STORE  
1787=PLACEMENT FROM AVON BOOKS, CORRECT?  
1788=A. IS -- THE LETTER IS THIS -- I'M SORRY. (REVIEWING  
1789=DOCUMENT.)  
1790= THAT'S WHAT IT LOOKS LIKE, YES, SIR.  
1791=Q. AND AT THE TIME THAT YOU'RE ASKING FOR THIS -- WELL, LET ME  
1792=ASK YOU THIS: WHY DIDN'T YOU JUST GO TO THE RED BOOK AND LOOK  
1793=IT UP? WHY DID YOU WRITE THIS LETTER?  
1794=A. AT THE TIME IN 1996, I'M NOT AWARE THAT PLACEMENT ALLOWANCES  
1795=WERE PUBLISHED IN THE RED BOOK.  
1796=Q. OKAY. BUT EVEN THOUGH THEY WERE NOT PUBLISHED, YOU DID NOT  
1797=BELIEVE THAT WAS AN IMPEDIMENT TO YOUR ASKING FOR CO-OP,  
1798=CORRECT?  
1799=A. WELL, I KNEW THAT CHAINS WERE GETTING PLACEMENT ALLOWANCE.  
  
1800=Q. SO -- AND YOU DIDN'T THINK THERE WAS ANYTHING WRONG WITH  
1801=YOUR GETTING CO-OP, EVEN THOUGH IT WAS NOT A PUBLICLY STATED  
1802=TERMS?  
1803=A. I BELIEVE THAT IT WAS RIGHT FOR THE US TO GET WHAT WAS  
1804=AVAILABLE TO THE CHAINS.  
1805=Q. AND YOU KNEW OF NO REASON WHY YOU SHOULDN'T ASK FOR IT  
1806=EITHER, CORRECT?  
1807=A. CORRECT.  
1808=Q. SO THE IDEA THAT SOMETHING IS NOT PUBLISHED ISN'T A STOP  
1809=SIGN FOR YOU, IS IT?  
1810=A. NO. OKAY.  
1811=Q. NOW, IF YOU LOOK AT THE RED BOOK, BY THE WAY, WHICH IS THE  
1812=NEXT DOCUMENT WITH THE YELLOW TAB THAT FOLLOWS THIS LETTER UNDER  
1813=CO-OP ADVERTISING POLICY, IT SAYS "CONTACT THE SALES REP FOR  
1814=DETAILS." DO YOU SEE THAT?  
1815=A. YES.  
1816=Q. AND YOU WROTE THIS LETTER, AND YOU TOLD THEM WHAT KIND OF  
1817=DOCUMENTATION YOU WOULD PROVIDE IN ORDER TO SUPPORT THE CO-OP  
1818=ALLOWANCE, CORRECT?  
1819=A. YES.  
1820=Q. AND YOU ALSO SAID THAT NO OTHER DOCUMENTATION THAN THE TYPE  
1821=THAT YOU WANTED TO PROVIDE WOULD BE REQUIRED, CORRECT?  
1822=A. YES.  
1823=Q. SO, IN EFFECT, YOU WERE DICTATING A TERM TO AVON?  
1824=A. NOT EXACTLY.

1825=Q. OKAY.  
1826=A. IT HAD BEEN MY UNDERSTANDING THAT THE CHAINS DID NOT PROVIDE  
1827=DOCUMENTATION IN THE FORM OF, YOU KNOW, PICTURES, THINGS LIKE  
1828=THAT. SO I FELT THAT WE WERE -- IT WAS REASONABLE FOR US TO  
1829=REQUEST THE SAME -- THE SAME KINDS OF TERMS.  
1830=Q. ISN'T IT TRUE THAT THE REASON WAS NOT JUST BECAUSE THE  
1831=CHAINS DID IT, BECAUSE YOU DIDN'T WANT TO BE BURDENED WITH  
1832=BURDENSOME DOCUMENTATION REQUIREMENTS, CORRECT?  
1833=A. IT WOULD HAVE BEEN A BURDENSOME DOCUMENTATION REQUIREMENT.  
1834=Q. AND THAT WAS ONE OF THE REASONS YOU WROTE THAT IN YOUR  
1835=LETTER, CORRECT?  
1836=A. I WOULD NOT HAVE ASKED FOR IT IF I HAD NOT HAVE KNOWN THAT  
1837=OTHER PEOPLE WEREN'T BEING BURDENED BY IT AS WELL.  
1838=Q. DID YOU NOT TESTIFY AT YOUR DEPOSITION THAT WHAT YOU WERE  
1839=THINKING ABOUT WAS THAT YOU DIDN'T WANT TO BE BURDENED WITH  
1840=BURDENSOME DOCUMENTATION EVEN IF THE PUBLISHER REQUIRED  
1841=BURDENSOME DOCUMENTATION?  
1842=A. THAT'S TRUE.  
1843=Q. OKAY. LET'S TURN TO THE SUBJECT OF CO-OP FOR PLACEMENT WITH  
1844=REGARD TO BANTAM DOUBLEDAY.  
1845=A. WHERE IS THAT? IS THAT THE NEXT PAGE?  
1846=Q. YEAH. LOOK AT EXHIBIT 6521.  
1847=A. (REVIEWING DOCUMENTS.)  
1848=Q. NOW, THERE, SIR, YOU HAVE A SIMILAR LETTER, THIS TIME TO  
1849=BANTAM DOUBLEDAY, CORRECT?  
  
1850=A. YES.  
1851=Q. AND, AGAIN, YOU COULDN'T GO TO THE RED BOOK FOR THE CO-OP  
1852=PLAN, CORRECT?  
1853=A. I DON'T REMEMBER.  
1854=Q. WASN'T IN THE RED BOOK, WAS IT?  
1855=A. I DON'T REMEMBER. BUT --  
1856=Q. WELL, IF IT WAS, YOU WOULD HAVE JUST FOLLOWED WHAT THE RED  
1857=BOOK SAID, RIGHT?  
1858=A. YES.  
1859=Q. 'CAUSE YOU DON'T DEVIATE FROM THE RED BOOK, RIGHT?  
1860=A. PARDON ME.  
1861=Q. YOU DON'T DEVIATE FROM THE RED BOOK, DO YOU?  
1862=A. WELL, I HAVE.  
1863=Q. NOW, LOOK AT THE LAST -- LOOK AT THE LAST PARAGRAPH OF THIS  
1864=LETTER DATED JANUARY 29, 1996. IT SAYS "THIS PLAN IS COMPARABLE  
1865=TO ARRANGEMENTS CURRENTLY IN PLACE WITH OTHER MAJOR PUBLISHERS  
1866=INCLUDING PENGUIN U.S.A., HARPERCOLLINS AND SIMON & SCHUSTER."  
1867=DO YOU SEE THAT?  
1868=A. YES.  
1869=Q. NOW, IN FACT, THAT WAS NOT A TRUE STATEMENT, CORRECT?  
1870=A. I BELIEVE IT WAS A TRUE STATEMENT.  
1871=Q. IN FACT, THOSE CO-OP ARRANGEMENTS WITH THOSE OTHER  
1872=PUBLISHERS HAD NOT TAKEN PLACE AT THE TIME YOU WROTE THIS  
1873=LETTER. YOU WERE TRYING TO CREATE THE IDEA THAT THERE WAS A  
1874=COMPETITIVE OFFER THAT THE PUBLISHER HAD TO MATCH, WHEN, IN  
  
1875=FACT, YOU DID NOT HAVE SUCH AN OFFER, CORRECT?  
1876=A. I DON'T BELIEVE THAT'S TRUE, SIR.  
1877=Q. IT IS TRUE THAT THE ARRANGEMENTS THAT YOU SAID WERE  
1878=CURRENTLY IN PLACE, IN FACT, HAD NOT BEGUN UNTIL A POINT LATER  
1879=IN TIME, CORRECT?  
1880=A. I WOULD -- I DON'T KNOW, BUT I KNOW I WOULD NOT HAVE -- I  
1881=WOULD NOT HAVE LIED.  
1882=Q. WELL, CAN WE TURN TO PAGE 330 OF YOUR DEPOSITION. THAT'S --  
1883=THAT'S RIGHT THERE. YOU HAVE TO GO TO THE VOLUME THAT HAS PAGE  
1884=330 IN IT, MR. ROSS, AND LET'S GO TO PAGES (SIC) 8 AND 9, THE  
1885=BEGINNING.  
1886=A. (REVIEWING DOCUMENT.)  
1887= THE COURT: HE SAID TO GO TO PAGES (SIC) 8 AND 9.  
1888= MR. PETROCELLI: PAGE 330, YOUR HONOR.  
1889= THE COURT: OH, I SEE.  
1890= MR. PETROCELLI: AND LINE -- LINE 8 AND 9.  
1891= THE COURT: YEAH.  
1892= MR. PETROCELLI: THE QUESTION IS:  
1893= "DOES THIS REFRESH YOUR RECOLLECTION THAT AS OF  
1894= JANUARY 29TH, 1996, CODY WAS RECEIVING CO-OP FOR

1895= PLACEMENT FROM PENGUIN U.S.A., HARPERCOLLINS AND  
1896= SIMON SCHUSTER?  
1897= "ANSWER: WELL, MY RECOLLECTION IS THAT IT DIDN'T  
1898= BEGIN UNTIL LATER, BUT I DON'T REMEMBER THE EXACT  
1899= DATES."  
  
1900= YOU SEE THAT?  
1901=A. YES.  
1902=Q. OKAY. NOW, ISN'T IT -- ISN'T IT TRUE THAT YOU SORT OF  
1903=STRETCHED THE TRUTH IN YOUR DEALINGS WITH YOUR PUBLISHERS?  
1904=A. NO. NO, SIR.  
1905=Q. OKAY. CAN YOU TURN TO PAGE 331, LINES 3 TO 9?  
1906=A. YES.  
1907=Q.  
1908= "Q. WOULD YOU HAVE MISREPRESENTED TO  
1909= MR. SHAOUP AT BDD THAT YOU WERE, IN FACT,  
1910= RECEIVING CO-OP FOR PLACEMENT FROM PENGUIN,  
1911= HARPERCOLLINS AND SIMON & SCHUSTER?  
1912= "A. NOT -- NO. NO. ALTHOUGH I MIGHT  
1913= HAVE -- I WOULD NOT HAVE MISREPRESENTED IT --  
1914= MISREPRESENTED IT. I MIGHT HAVE -- I MIGHT HAVE  
1915= STRETCHED IT. BUT I JUST CAN'T REMEMBER."  
1916=A. SIR, I CAN --  
1917=Q. TURN TO EXHIBIT --  
1918=A. YES.  
1919=Q. -- 6525, PLEASE.  
1920= THIS IS RANDOM HOUSE. OUT OF YOUR DEPOSITION, SIR.  
1921=WE'RE NOW BACK INTO THE EXHIBIT BINDER.  
1922=A. YES, SIR.  
1923=Q. NOW, THIS IS AN EXAMPLE OF A LETTER YOU RECEIVED FROM RANDOM  
1924=HOUSE, AND I'VE HIGHLIGHTED THE PORTIONS THAT I WANT TO DIRECT  
  
1925=YOUR ATTENTION TO IN THE MIDDLE, WHERE IT SAYS THAT "THIS CLAIM  
1926=IS BEING REIMBURSED ON A ONE TIME ONLY BASIS. IN THE FUTURE  
1927=PLEASE PROVIDE THE FOLLOWING INFORMATION." AND THEY ASK FOR AN  
1928=ACTUAL PHOTOGRAPH OF THE IN-STORE PLACEMENT.  
1929= DO YOU SEE THAT?  
1930=A. YES.  
1931=Q. AND THEN YOU SUBMITTED ANOTHER CLAIM WITHOUT PROVIDING  
1932=THE -- THE REQUISITE DOCUMENTATION, AND THEY THEN SENT YOU  
1933=ANOTHER A LETTER, CORRECT?  
1934=A. YES.  
1935=Q. AND IF YOU TURN TO THE NEXT EXHIBIT, YOU'LL SEE THAT LETTER.  
1936=A. (REVIEWING DOCUMENT.)  
1937=Q. YOU SEE THAT, SIR?  
1938=A. YES.  
1939= THE COURT: 6527?  
1940= MR. PETROCELLI: FOR THE RECORD, THAT IS  
1941=EXHIBIT 6527.  
1942= THE WITNESS: RIGHT. YES.  
1943=BY MR. PETROCELLI:  
1944=Q. AND EVEN THOUGH YOU DIDN'T PROVIDE THE DOCUMENTATION, THEY  
1945=NONETHELESS PAID YOUR CLAIM BUT TOLD YOU THAT THEY'RE NOT GOING  
1946=TO DO IT AGAIN UNLESS YOU PAY THE --UNLESS YOU PROVIDE THE --  
1947=A. RIGHT.  
1948=Q. -- THE PHOTOS, CORRECT?  
1949=A. THAT'S CORRECT.  
  
1950=Q. NOW, TURN TO EXHIBIT 6528. AND ONCE AGAIN, YOU MAKE A CLAIM  
1951=WITHOUT PROVIDING THE DOCUMENTATION, AND THEY ONCE AGAIN PAY,  
1952=CORRECT?  
1953=A. YES.  
1954=Q. AND FINALLY ON CO-OP, YOU ASKED FOR AND RECEIVED  
1955=REIMBURSEMENT BECAUSE YOU PLACED ADS ON THE INTERNET, CORRECT?  
1956=A. YES.  
1957=Q. AND IN COMING UP WITH SOME DOLLAR FIGURE, YOU SIMPLY PICKED  
1958=AN ARBITRARY FIGURE, CORRECT?  
1959=A. PRETTY MUCH, YES.  
1960=Q. AS YOU SAID, CO-OP IS VERY LOOSE, ISN'T IT?  
1961=A. IT'S COMPLICATED.  
1962=Q. IT'S LOOSE, I THINK WAS THE WORD YOU USED, RIGHT?  
1963=A. I MAY HAVE USED THAT WORD, THAT'S POSSIBLE, YES, SIR.  
1964=Q. YOU ALSO SAID THAT IN YOUR DIRECT EXAMINATION THAT YOU

1965=SOMETIMES PAY YOUR BILLS A LITTLE LATE. RECALL THAT?  
1966=A. YES.  
1967=Q. IN FACT, YOU PAY YOUR BILLS QUITE A BIT LATE, DON'T YOU?  
1968=A. IN SOME CASES.  
1969= STPHAOP: I'M SORRY, YOUR HONOR, I THINK I'M GOING TO  
1970=HAVE TO INTERPOSE THE FIRST OBJECTION. THIS WAS A MOTION IN  
1971=LIMINE IN WHICH THE TERMS OF SALES WERE EXCLUDED AS BEING PART  
1972=OF WHAT WE'RE HEARING TODAY. SO THIS SEEMS TO GO DIRECTLY TO  
1973=THAT POINT.  
1974= MR. PETROCELLI: MAY I RESPOND?  
  
1975= THE COURT: YES.  
1976= MR. PETROCELLI: FIRST OF ALL, I'M NOT OFFERING THIS  
1977=TO CALCULATE OR PROVE UP ANY DIFFERENTIAL BUT TO SHOW HIS  
1978=DEPARTURE FROM RED BOOK TERMS. AND SECONDLY, HE TESTIFIED IN  
1979=HIS DIRECT EXAM, RESPONSE TO THE QUESTIONING OF HIS LAWYERS,  
1980=THAT HE PAID JUST A LITTLE LATE OR WORDS TO THAT EFFECT.  
1981= THE COURT: THE OBJECTION'S OVERRULED.  
1982=BY MR. PETROCELLI:  
1983=Q. IN FACT, SIR, YOUR AVERAGE TIME TO PAY A 30-DAY INVOICE IS  
1984=75 DAYS, CORRECT?  
1985=A. I DON'T HAVE THE EXACT FIGURE, BUT THAT SEEMS REASONABLE,  
1986=YES, SIR.  
1987=Q. THAT'S WHAT YOU TESTIFIED AT YOUR DEPOSITION?  
1988=A. RIGHT.  
1989=Q. SEVENTY-FIVE DAYS?  
1990=A. YES.  
1991=Q. AND YOU ALSO SEEK OUT -- AS OFTEN AS YOU CAN EXTENDED DATING  
1992=TERMS, CORRECT?  
1993=A. YES, SIR. IF THEY'RE AVAILABLE.  
1994=Q. THAT ALLOW TO YOU PAY ONE -- NINETY TO A HUNDRED TWENTY DAYS  
1995=OR BEYOND, CORRECT?  
1996=A. YES.  
1997=Q. I'M NOT GOING TO TAKE THE TIME UP TO GO THROUGH THE INGRAM  
1998=PROGRAMS BECAUSE YOU'VE TESTIFIED TO THOSE, AND SO I WILL THEN  
1999=TURN TO ONE OF THE LAST TOPICS HERE, AND THAT'S COMPETITION.  
  
2000= YOU WERE SHOWN THE MAP THAT HAS THE BARNES & NOBLE,  
2001=BORDERS AND CODY'S STORES ON IT. I'D NOW LIKE TO SHOW YOU THE  
2002=MAP WITH ALL THE BOOKSELLERS IN THE AREA, AND THAT WOULD BE  
2003=EXHIBIT 7842.  
2004=A. YES, SIR.  
2005= THE COURT: I'M SORRY. WHAT WAS THE NUMBER?  
2006= MR. PETROCELLI: 7842, YOUR HONOR.  
2007= THE COURT: OKAY.  
2008=BY MR. PETROCELLI:  
2009=Q. INCIDENTALLY, WHAT STORE IS CLOSER TO THE BARNES & NOBLE ON  
2010=SHATTUCK?  
2011=A. TELEGRAPH IS CLOSER.  
2012=Q. TELEGRAPH?  
2013=A. (NODS HEAD.)  
2014=Q. WHAT'S THE DISTANCE BETWEEN THE TELEGRAPH STORE AND THE  
2015=BARNES & NOBLE STORE?  
2016=A. I THINK ABOUT FIVE BLOCKS.  
2017=Q. AND THEN BETWEEN THE FOURTH STREET STORE AND BARNES & NOBLE?  
2018=A. ON SHATTUCK? PROBABLY THREE MILES.  
2019=Q. THREE MILES?  
2020=A. YES.  
2021=Q. THE MAP SHOWS A NUMBER OF BOOKSELLERS WITH WHOM YOU COMPETE  
2022=TO ONE DEGREE OR ANOTHER, CORRECT?  
2023=A. SOME OF THEM I DON'T RECOGNIZE. BUT MOST OF THEM THAT WOULD  
2024=BE TRUE.  
  
2025=Q. AND -- AND YOU ALSO COMPETE, OF COURSE, WITH AMAZON, RIGHT?  
2026=A. YES.  
2027=Q. AND, IN FACT, YOU SAY THEY DOMINATE THE INTERNET FOR BOOK  
2028=SALES, RIGHT?  
2029=A. YES, BUT THAT REALLY DIDN'T START UNTIL 1998 OR SO.  
2030=Q. NOT ONLY DO YOU COMPETE WITH SIGNIFICANT NUMBER OF THESE  
2031=BOOKSELLERS BUT YOU ALSO HAVE LOST SALES TO THEM, HAVEN'T YOU?  
2032=A. PROBABLY.  
2033=Q. YOU -- YOU LOST SALES TO COSTCO IN RICHMOND, CORRECT?  
2034=A. PROBABLY.

2035=Q. YOU'VE LOST SALES TO MOE'S BOOKS, CORRECT?  
2036=A. YES.  
2037=Q. YOU'VE LOST SALES TO GAIA, THAT'S G-A-I-A, BOOKS, CORRECT?  
2038=A. YES, THEY'RE NO LONGER IN BUSINESS.  
2039=Q. YOU'VE LOST SALES TO SHAMBHALA, S-H-A-M-B-H-A-L-A, BOOKS?  
2040=A. YES.  
2041=Q. AND YOU'VE LOST SALES TO BLACK OAK BOOKS, CORRECT?  
2042=A. YES.  
2043=Q. AND YOU'VE LOST SALES TO ASUC, HAVEN'T YOU?  
2044=A. YES.  
2045=Q. AND ALSO TO SOME OF THESE OTHERS, SUCH AS UNIVERSITY PRESS  
2046=AND PEGASUS, CORRECT?  
2047=A. YES.  
2048=Q. AND YOU ALSO COMPETE WITH AND HAVE LOST SALES TO HALF PRICE  
2049=BOOKS AND RECORDS, CORRECT?  
  
2050=A. PROBABLY, BUT THEY'RE MOSTLY A USED BOOK STORE. THEY'RE A  
2051=LITTLE BIT DIFFERENT.  
2052=Q. BEFORE CROWN WENT OUT OF BUSINESS, YOU COMPETED WITH AND  
2053=LOST SALES TO THEM, RIGHT?  
2054=A. YES.  
2055=Q. AND YOUR FOURTH STREET STORE COMPETES WITH AND LOSES SALES  
2056=TO BUILDERS BOOKSOURCE, CORRECT?  
2057=A. YES. AGAIN, THAT'S A SPECIALTY BOOK STORE, IT'S VERY  
2058=LIMITED COMPETITION.  
2059=Q. NOW, THE SEQUENCE OF EVENTS HERE IS THAT BARNES & NOBLE --  
2060=FIRST YOUR STORE IS THERE ON TELEGRAPH, RIGHT?  
2061=A. YES.  
2062=Q. AND YOU'RE NOT WITHOUT ANY REAL ROBUST COMPETITION FOR A  
2063=LONG TIME.  
2064=A. WELL, THERE WERE OTHER STORES IN THE AREA, FOR SURE.  
2065=Q. NONE OF WHAT YOU CALLED, THOUGH, YOUR PRIMARY COMPETITORS  
2066=UNTIL BARNES & NOBLE COMES ALONG IN 1992, CORRECT?  
2067=A. RIGHT.  
2068=Q. THEN FOR THE FIRST TIME IN A LONG TIME, YOU HAVE A PRIMARY  
2069=COMPETITOR, AND THAT'S BARNES & NOBLE, AND NOW IT'S 1992?  
2070=A. NO, THAT ISN'T WHAT I TESTIFIED TO, SIR.  
2071=Q. YOUR SALES WENT DOWN AFTER BARNES & NOBLE OPENED UP IN 1992?  
2072=A. YES.  
2073=Q. AND IT WENT DOWN, I THINK FROM ABOUT 8 MILLION, YOU SAID, TO  
2074=ACCORDING TO YOUR RECORDS, ABOUT 7.2 MILLION FOR YEAR-END '93?  
  
2075=A. YES.  
2076=Q. OKAY.  
2077= TO MAKE THIS A LITTLE EASIER, YOUR HONOR, UNDER  
2078=THE -- UNDER EXHIBIT 7764 -- AND YOU CAN TURN TO IT ALSO -- WE  
2079=HAVE, BASED ON YOUR OWN FINANCIAL RECORDS, PREPARED A CHART OR A  
2080=GRAPH, I SHOULD SAY, OF YOUR NET SALES FROM '92 -- ACTUALLY FROM  
2081='93 TO '99. YOU SEE THAT?  
2082=A. YES.  
2083=Q. OKAY.  
2084= AND, YOUR HONOR, THE -- THIS WAS BASED ON HIS  
2085=FINANCIAL DOCUMENTS, ALL OF WHICH ARE INCLUDED UNDER THE VERY  
2086=LAST TAB IN THAT NOTEBOOK, WHICH BEARS THE HEADING "FINANCIAL  
2087=STATEMENTS."  
2088= THESE NUMBERS WERE SIMPLY TAKEN OFF YOUR FINANCIAL  
2089=STATEMENTS. OKAY?  
2090=A. YES.  
2091=Q. NOW, YOU WILL SEE THAT BEFORE BARNES & NOBLE -- WELL, LET ME  
2092=ASK YOU THIS BEFORE I GET TO THE GRAPH: YOU WERE REAPING  
2093=WINDFALL PROFITS IN THE LATE '80S, CORRECT?  
2094=A. I WAS DOING QUITE WELL, YES, SIR.  
2095=Q. THE WORD YOU USED IN YOUR DEPOSITION WAS "WINDFALL PROFITS,"  
2096=CORRECT?  
2097=A. I BELIEVE IT WAS, YES, SIR.  
2098=Q. AND THEN YOU SAW A DECLINE, WHICH YOU ATTRIBUTED TO THE  
2099=APPEARANCE OF BARNES & NOBLE, CORRECT?  
  
2100=A. YES.  
2101=Q. AND AS YOU ACKNOWLEDGE IN YOUR DEPOSITION, AND I WON'T GO  
2102=THROUGH THE DETAILS, THERE WERE SIGNIFICANT PROBLEMS ON  
2103=TELEGRAPH AVENUE AT THE TIME, INCLUDING RIOTS, AND SO FORTH,  
2104=RIGHT?

2105=A. YES.  
2106=Q. AND YOU BELIEVE THAT THOSE HAD AN ADVERSE EFFECT ON YOUR  
2107=SALES, CORRECT?  
2108=A. YES.  
2109=Q. NOW, AFTER BARNES & NOBLE SETTLES IN, STARTING IN 1993, YOUR  
2110=SALES BEGIN TO RISE, AND THEY GO FROM 7.2 MILLION TO 7.3 MILLION  
2111=IN 1994, DO YOU SEE THAT?  
2112=A. YES.  
2113=Q. AND THEY GO UP TO 7.9 MILLION IN 1995. DO YOU SEE THAT?  
2114=A. I SEE THAT, YES, SIR.  
2115=Q. AND THEN BORDERS OPENS UP IN EMERYVILLE IN 1995, CORRECT?  
2116=A. YES.  
2117=Q. AND YOU THEN GO FROM 7.9 MILLION TO 8.5 MILLION?  
2118=A. WELL, THERE'S AN OUTSIDE EXPLANATION FOR THAT.  
2119=Q. WE'LL GET TO THAT?  
2120=A. YES.  
2121=Q. YOU HAVE IN ADDITION TO BOOK SALES, YOU HAVE COOPERATE  
2122=SALES?  
2123=A. RIGHT.  
2124=Q. AND YOU HAD A BIG GOVERNMENT CONTRACT CALLED BRIDGE OF ASIA,  
  
2125=WHICH BROUGHT IN COUPLE OF MILLION DOLLARS OF BUSINESS, RIGHT?  
2126=A. 1.3 MILLION.  
2127=Q. 1.3 MILLION AND THAT HELPED EXPLAIN THIS INCREASE FROM 7.9  
2128=TO 8.5, CORRECT?  
2129=A. YES.  
2130=Q. AND THEN THE CONTRACT WAS OVER, AND YOU DIDN'T HAVE THAT  
2131=INSTITUTIONAL REVENUE, AND YOU WERE BASICALLY DOWN TO YOUR BOOK  
2132=STORE REVENUE AND YOUR SALES DROPPED A LITTLE BIT, CORRECT?  
2133=A. RIGHT.  
2134=Q. AND IT DROPPED FROM 8.5 OR 8.6 MILLION DOWN TO 8.0?  
2135=A. MAY I ASK YOU A QUESTION NOW 'CAUSE I CAN'T --  
2136=Q. NO, I ASK THE QUESTIONS.  
2137=A. OH, OKAY.  
2138=Q. NOW, FOURTH STREET STORE OPENS UP IN LATE -- LATE 1997,  
2139=CORRECT?  
2140=A. YES.  
2141=Q. AND WE'VE CLIMBED UP TO 9.1 MILLION. DO YOU SEE THAT?  
2142=1998, AROUND THEREABOUTS?  
2143=A. YES.  
2144=Q. AND THEN IN 1999, YOUR BIGGEST YEAR EVER -- I DON'T KNOW  
2145=WHAT 2000 IS, SIR, BUT AS OF YEAR END 1999, YOU WERE UP TO  
2146=9.6 MILLION. DO YOU SEE THAT?  
2147=A. YES.  
2148=Q. I NOTICE THAT YOUR LAWYER DID NOT ASK YOU ANY QUESTIONS  
2149=ABOUT YOUR PROFIT MARGIN. YOUR PROFIT MARGIN DID NOT DECREASE  
  
2150=AT ALL THROUGHOUT THIS ENTIRE PERIOD OF TIME FROM 1992 THROUGH  
2151=1999, CORRECT?  
2152=A. THAT'S NOT MY RECOLLECTION, SIR. NO.  
2153=Q. YOU TESTIFIED ON DIRECT THAT YOU WERE ALREADY DISCOUNTING  
2154=AND SO WHEN BARNES & NOBLE CAME ALONG, YOU MADE THE STRATEGIC  
2155=BUSINESS CHOICE NOT TO DO ANY FURTHER DISCOUNTING, DO YOU RECALL  
2156=THAT?  
2157=A. THAT'S RIGHT, YES.  
2158=Q. SO YOU DIDN'T LOSE ANY SALES TO -- YOU DIDN'T LOSE PROFITS  
2159=TO BARNES & NOBLE BECAUSE YOU DECIDED TO FURTHER DISCOUNT. DID  
2160=YOU RECALL THAT?  
2161=A. OUR PROFIT DECLINED BECAUSE OUR SALES DECLINED.  
2162=Q. WELL, WE'RE GOING TO TALK ABOUT THAT. YOU KNOW WHAT GROSS  
2163=PROFIT MARGIN IS, SIR?  
2164=A. YES, I DO.  
2165=Q. OKAY. I'M NOT AN ACCOUNTANT, BUT WHAT I THINK IT MEANS, AND  
2166=CORRECT ME IF I'M WRONG, IS NET SALES -- HERE "NET SALES"  
2167=MEANING NET OF RETURNS?  
2168=A. UH-HUH.  
2169=Q. LESS COSTS OF BOOKS SOLD?  
2170=A. YES.  
2171=Q. OKAY. LET'S CALL THAT GROSS PROFIT.  
2172= NOW, ALL OF THE GROSS PROFIT FIGURES ARE PROVIDED IN  
2173=YOUR FINANCIAL STATEMENTS WHICH ARE LOCATED IN THE NEXT TAB.  
2174=AND IF YOU WANT TO TURN TO THEM, I CAN GO OVER THE NUMBERS WITH

2175=YOU.  
2176=A. UM --  
2177=Q. DO YOU HAVE THAT LAST TAB THERE, SIR?  
2178=A. FINANCIAL STATEMENTS. OKAY. GO AHEAD. YES.  
2179=Q. OKAY. AND IF WE LOOK AT THE FIRST PAGE, WHICH BEARS  
2180=EXHIBIT 120 AT THE BOTTOM, DO YOU SEE THAT?  
2181=A. UM-HMM.  
2182=Q. AT THE TOP, THE 1993 GROSS PROFIT MARGIN WAS 2.63 MILLION.  
2183=DO YOU SEE THAT?  
2184=A. UM --  
2185=Q. MAKE SURE WE'RE LOOKING AT THE SAME LINE. OKAY?  
2186= MAY I APPROACH, YOUR HONOR?  
2187= THE COURT: YES.  
2188=BY MR. PETROCELLI:  
2189=Q. RIGHT HERE, THIS IS 1993, 2.63, AND THIS IS '94, AND THEN  
2190=WE'RE GOING TO LOOK AT THE ENSUING YEARS.  
2191=A. YES.  
2192=Q. OKAY?  
2193=A. YES.  
2194=Q. SO IN 1993, YOU'RE AT 2.6. 1994, YOU'RE JURY AT 2.6 AGAIN.  
2195=A. THAT'S CORRECT.  
2196=Q. LET'S TURN TO THE NEXT EXHIBIT IN HERE, WHICH IS THE NEXT  
2197=PAGE, WHICH IS EXHIBIT 119.  
2198=A. UM-HMM.  
2199=Q. AND WHAT I'VE DONE -- AND I HOPE THEY'RE ON YOUR COPIES AS  
  
2200=WELL -- DO YOU HAVE ANY YELLOW HIGHLIGHTED FIGURES?  
2201=A. YES, I HAVE YELLOW HIGHLIGHTING.  
2202=Q. OKAY. I TRIED TO HIGHLIGHT THE NUMBERS. WE'RE ON THE  
2203=SECOND PAGE UNDER THE LAST TAB, YOUR HONOR.  
2204= OKAY. THE GROSS PROFIT THERE FOR YEAR-END 1994 IS --  
2205=1995 -- EXCUSE ME -- IS 2.97 MILLION. DO YOU SEE THAT?  
2206=A. YES.  
2207=Q. OKAY. SO LET'S TURN THE PAGE.  
2208= FOR YEAR-END 1996, WHICH IS REFLECTED ON YOUR EXHIBIT  
2209=118, THE GROSS PROFIT IS 3.15 MILLION. DO YOU SEE THAT?  
2210=A. YES.  
2211=Q. TURN THE PAGE, EXHIBIT 117, AND THE GROSS PROFIT MARGIN  
2212=THERE IS 3.02 MILLION. SEE THAT?  
2213=A. YES.  
2214=Q. AND YOU TURN THE PAGE FOR YEAR ENDING 1998, WHICH IS ON YOUR  
2215=EXHIBIT 116, AND IT'S UP TO 3.45 MILLION IN GROSS PROFIT.  
2216=A. (REVIEWING DOCUMENTS.)  
2217=Q. AND THEN FINALLY ON EXHIBIT 115, YOU'RE UP TO \$3.64 MILLION.  
2218=DO YOU SEE THAT?  
2219=A. YES.  
2220=Q. AND IF YOU RUN THE PERCENTAGES, MOST OF WHICH ARE ON YOUR --  
2221=YOUR OWN FINANCIAL STATEMENTS, SIR, YOU'LL SEE THAT FROM 1993  
2222=THROUGH 1999, YOUR GROSS PROFIT MARGIN RANGED FROM 36.1 PERCENT  
2223=TO 37.9 PERCENT. FAIRLY CONSISTENT?  
2224=A. YES.  
  
2225=Q. DURING THAT PERIOD OF TIME, AS RECENTLY AS 1998, YOU BLAMED  
2226=CRIME AND HOMELESSNESS ON TELEGRAPH AVENUE FOR ANY DECLINE IN  
2227=YOUR PROFITS IN BUSINESS, CORRECT?  
2228=A. I BELIEVE IN 1998, I BLAMED THE CRIME SITUATION AS BEING A  
2229=PROBLEM, YES, IT WAS FOR SURE.  
2230=Q. AND, IN FACT, YOU WERE QUOTED IN A NOVEMBER 3, 1998,  
2231=NEW YORK TIMES ARTICLE SAYING THAT YOUR BUSINESS HAD DROPPED  
2232=15 PERCENT IN THE DAY AND 75 PERCENT AT NIGHT BECAUSE OF CRIME  
2233=AND HOPELESSNESS (SIC) ON TELEGRAPH AVENUE, CORRECT?  
2234=A. WE WERE HAVING A VERY DIFFICULT TIME WITH THE SOCIAL  
2235=SITUATION OUTSIDE THAT YEAR; THAT'S TRUE.  
2236=Q. AND YOU WERE URGING ACTION TO BE TAKEN TO CLEAN UP THE  
2237=PROBLEM, RIGHT?  
2238=A. YES.  
2239=Q. BECAUSE IT WAS HAVING AN ADVERSE EFFECT ON YOUR BUSINESS,  
2240=CORRECT?  
2241=A. WELL, THERE WERE A NUMBER OF REASONS FOR CLEANING UP THE  
2242=PROBLEM, YES.  
2243=Q. BUT THAT WAS ONE OF THEM, CORRECT?  
2244=A. CERTAINLY WAS, YES.  
2245=Q. THAT IT WAS HAVING AN ADVERSE EFFECT ON YOUR BUSINESS,



2246=CORRECT?  
2247=A. THAT'S CORRECT.  
2248= MR. PETROCELLI: NOTHING FURTHER, YOUR HONOR.  
2249= THE COURT: MR. STEER?

2250= (PAUSE IN THE PROCEEDINGS.)  
2251= MR. STEER: YOUR HONOR, I'M PASSING OUT COPIES OF A  
2252=THREE-RING BINDER CONTAINING THE EXHIBITS THAT I BELIEVE I WOULD  
2253=USE. IT'S THIN TO BEGIN WITH. WHAT I'M GOING TO REFER TO IS  
2254=EVEN THINNER.  
2255= IN LIGHT OF THE TESTIMONY UNDER DIRECT AND  
2256=CROSS-EXAMINATION DONE BY MR. PETROCELLI, I WON'T NEED TO USE  
2257=MOST OF THESE EXHIBITS.  
2258= CROSS-EXAMINATION  
2259=BY MR. STEER:  
2260=Q. MR. ROSS, WE'VE MET. I'M REG STEER, COUNSEL FOR BORDERS  
2261=BOOKS.  
2262=A. GOOD MORNING, MR. STEER.  
2263=Q. THANK YOU.  
2264= I JUST HAVE A FEW QUESTIONS FOR YOU. LITTLE BIT MORE  
2265=ABOUT THE HISTORY OF YOUR OWNERSHIP AND OPERATION OF CODY'S  
2266=BOOKS. YOU BOUGHT THE BOOK STORE IN 1978; ISN'T THAT CORRECT?  
2267=A. 1977.  
2268=Q. 1977 FROM MRS. CODY?  
2269=A. FROM THE CODY FAMILY, YES, MR. AND MRS.  
2270=Q. AND I THINK YOU TESTIFIED THAT THERE WERE A COUPLE OF  
2271=WALDENBOOKS WITHIN -- WALDEN BOOK STORES WITHIN RELATIVELY SHORT  
2272=DISTANCES OF CODY'S BACK IN THE 1980'S; IS THAT CORRECT?  
2273=A. AND INTO THE '90'S.  
2274=Q. AND INTO THE '90'S. BOTH OF THOSE STORES CLOSED IN 1995,  
2275=RIGHT?  
2276=A. I BELIEVE SO.  
2277= (CONTINUED NEXT PAGE; NOTHING OMITTED.)  
2278=  
2279=  
2280=  
2281=  
2282=  
2283=  
2284=  
2285=  
2286=  
2287=  
2288=  
2289=  
2290=  
2291=  
2292=  
2293=  
2294=  
2295=  
2296=  
2297=  
2298=  
2299=

2300=BY MR. STEER:  
2301=Q. BUT THEY WERE BOTH IN OPERATION -- WELL, LET ME ASK YOU,  
2302=HOW FAR AWAY WAS THE CLOSING OF THE STORES TO CODY'S?  
2303=A. THERE WAS ONE ON TELEGRAPH, WHICH WAS TWO BLOCKS AWAY.  
2304=Q. AND THE OTHER STORE WAS HOW FAR AWAY?  
2305=A. IT WAS ON SHATTUCK, PROBABLY 10 BLOCKS AWAY.  
2306=Q. DID YOU CONSIDER THEM TO BE COMPETITORS?  
2307=A. YES.  
2308=Q. JUST LIKE ALL THE OTHER BOOKSELLERS IN THE AREA?  
2309=A. WELL, AS I SAID EARLIER, SOME COMPETITORS ARE MORE  
2310=FORMIDABLE THAN OTHERS.  
2311=Q. YOU DIDN'T CONSIDER THE WALDENBOOKS TO BE PARTICULARLY  
2312=FORMIDABLE COMPETITORS, DID YOU?  
2313=A. NOT THE MOST FORMIDABLE, NO.  
2314=Q. WELL, THEIR COMPETITION DIDN'T PREVENT YOU FROM MAKING THE  
2315=WINDFALL PROFITS THAT YOU JUST TESTIFIED ABOUT, IN THE LATE

2316=1980'S, IS THAT CORRECT?  
2317=A. I WOULD HAVE TO SAY THAT'S CORRECT.  
2318=Q. NOW, I WANT TO TALK TO YOU A LITTLE BIT ABOUT CODY'S  
2319=REQUEST FOR AND RECEIPT OF RETAIL DISTRIBUTION CENTER OR RDC  
2320=DISCOUNTS. AND TO DO THAT, I WANT TO CALL YOUR ATTENTION TO  
2321=SOME OF THE EXHIBITS THAT I HAVE IN THIS BINDER.  
2322=MAY I APPROACH THE WITNESS, YOUR HONOR?  
2323=THE COURT: YES.  
2324=MR. STEER: THANK YOU.

2325=Q. IF YOU WOULD PLEASE TURN TO THE TAB FOR EXHIBIT 11063, THE  
2326=DOCUMENT IS A PHOTOGRAPH. YOU SEE IT?  
2327=A. YES.  
2328=Q. AND YOU RECOGNIZE IT?  
2329=A. IT LOOKS LIKE CODY'S BOOKS ON TELEGRAPH TO ME.  
2330=Q. IT'S, IN FACT, THE FRONT ENTRANCE TO CODY'S BOOKS, IS IT  
2331=NOT, ON TELEGRAPH?  
2332=A. YES, IT IS.  
2333=Q. OKAY. AND NOW IF YOU'D LOOK AT THE PHOTOGRAPH THAT HAS TAB  
2334=NUMBER 11744, CAN YOU IDENTIFY THAT?  
2335=A. I'M SORRY, 11744?  
2336=Q. THAT'S RIGHT.  
2337=A. I'M LOST, SORRY. OH, HERE IT IS, OKAY. THIS IS THE CODY'S  
2338=BOOKSTORE ALLEY ON TELEGRAPH.  
2339=Q. AND IS THAT WHERE YOU RECEIVE BOOKS?  
2340=A. THAT IS WHERE THE BOOKS -- YES, THAT'S WHERE THE BOOKS COME  
2341=IN.  
2342=Q. THAT'S WHERE THEY'RE DELIVERED, RIGHT?  
2343=A. THAT'S WHERE THEY'RE DELIVERED, THAT'S CORRECT.  
2344=Q. LET'S LOOK AT 11745, WHICH IS THE NEXT PHOTOGRAPH. CAN YOU  
2345=IDENTIFY THAT?  
2346=A. YES, THAT IS A FREIGHT ELEVATOR. WE PUT -- THE SHIPMENTS  
2347=GO INTO THE FREIGHT ELEVATOR AND THEN GO UPSTAIRS.  
2348=Q. OKAY. NOW, THESE PHOTOGRAPHS, 11744 AND -745, DO THEY  
2349=DEPICT THE ONLY BOOK LOADING AREA FOR THE TELEGRAPH AVENUE

2350=STORE?  
2351=A. WELL, IT'S THE PRIMARY AREA WHERE THE BOOKS GET -- GET  
2352=DELIVERED IN, YES.  
2353=Q. OKAY.  
2354=A. WE ALSO HAVE A REGULAR ELEVATOR, AND SOMETIMES THEY GO IN  
2355=THAT WAY.  
2356=Q. BUT THAT'S IN THE STORE, RIGHT?  
2357=A. IT'S IN ONE OF THE BUILDINGS, IT'S NOT IN THE RETAIL AREA.  
2358=Q. BUT IF A TRUCK COMES TO THAT STORE LOADED WITH BOOKS, THE  
2359=BOOKS WOULD COME OFF THE TRUCK AND THEY WOULD GO IN THROUGH THE  
2360=ALLEYWAY THAT'S SHOWN IN EXHIBIT 11744, AND THEN ON THE  
2361=ELEVATOR SHOWN AT 11745, CORRECT?  
2362=A. YES, YES.  
2363=Q. OKAY. NOW, IN 1997, WHEN YOU FIRST RECEIVED RDC DISCOUNTS,  
2364=ACCORDING TO YOUR TESTIMONY, DID YOU MAKE ANY INVESTMENT IN  
2365=THIS AREA, IN IMPROVING IT, SO THAT YOU WOULD MAKE IT EASIER TO  
2366=RECEIVE BOOK SHIPMENTS?  
2367=A. NO.  
2368=Q. NOW I'D LIKE TO DRAW YOUR ATTENTION TO ANOTHER EXHIBIT IN  
2369=THAT BINDER. IT'S EXHIBIT 10919.  
2370=A. YES.  
2371=Q. AND THIS APPEARS TO BE A COMPILATION OF DOCUMENTS PRODUCED  
2372=BY CODY'S, AND THE FIRST DOCUMENT IS ENTITLED, "RANDOM HOUSE,  
2373=INC. DISTRIBUTION CENTER APPLICATION AND PROFILE." IT SEEMS TO  
2374=HAVE THE DATE OF 8/2/99 ON IT, AND THERE IS A SIGNATURE BLOCK

2375=IN THE LOWER RIGHT-HAND CORNER, WHERE IT SAYS, "STORE OWNER."  
2376=IS THAT YOUR SIGNATURE?  
2377=A. THAT IS, YES.  
2378=Q. TELL ME, IS THIS A DOCUMENT THAT YOU FILLED OUT?  
2379=A. NO, IT LOOKS LIKE A DOCUMENT THAT THE SALES REP FILLED OUT,  
2380=OR THAT SOMEONE OTHER THAN ME FILLED OUT. I DON'T SEE THE --  
2381=IT'S NOT MY HANDWRITING.  
2382=Q. BUT YOU DID SIGN IT AFTER IT WAS FILLED OUT, CORRECT?  
2383=A. YES.  
2384=Q. NOW, ATTACHED TO THIS DOCUMENT ARE SOME OTHER DOCUMENTS,  
2385=CORRESPONDENCE AND COPIES OF INVOICES, IS THAT RIGHT?

2386=A. YES.  
2387=Q. WHEN YOU SIGNED THIS DOCUMENT, YOU UNDERSTOOD, DIDN'T YOU,  
2388=THAT YOU WERE REPRESENTING THAT THE FACTUAL STATEMENTS  
2389=CONTAINED ON THE DOCUMENT ARE TRUE AND CORRECT, ISN'T THAT  
2390=RIGHT?  
2391=A. RIGHT, YES.  
2392=Q. LET'S GO THROUGH THE DOCUMENT. IT REFERS, FIRST OF ALL, TO  
2393=DISTRIBUTION, SHIP TO ADDRESS. DO YOU SEE THAT UP IN THE FIRST  
2394=BLOCK NEAR THE TOP OF THE PAGE? AND IT HAS AN ADDRESS FOR  
2395=CODY'S BOOKS, INC., AT 2454 TELEGRAPH AVENUE.  
2396=A. YES.  
2397=Q. THAT'S THE ADDRESS OF YOUR TELEGRAPH AVENUE STORE THAT  
2398=WE'VE JUST SEEN IN PHOTOGRAPHS, CORRECT?  
2399=A. YES.

2400=Q. AND GOING ON, FARTHER DOWN, AT THE MIDDLE OF THE PAGE,  
2401=THERE IS A QUESTION, AND THE QUESTION IS, "HOW LONG HAS THIS  
2402=WAREHOUSE FACILITY BEEN IN EXISTENCE?" TO WHICH THE ANSWER IS,  
2403="THREE YEARS."  
2404=THERE IS NO WAREHOUSE FACILITY AT 2454 TELEGRAPH  
2405=AVENUE, IS THERE?  
2406=A. WELL, WE HAVE A WAREHOUSE FACILITY, BUT NOT A FREE-STANDING  
2407=FACILITY. WE WAREHOUSE BOOKS.  
2408=Q. HOW LONG HAS THAT FACILITY BEEN IN EXISTENCE?  
2409=A. AS LONG AS THE STORE.  
2410=Q. SO THERE IS NO WAREHOUSE FACILITY THAT'S BEEN IN EXISTENCE  
2411=AT THAT SITE FOR THREE YEARS, ISN'T THAT CORRECT?  
2412=A. YES, THAT'S CORRECT.  
2413=Q. IN THE NEXT QUESTION IT ASKS,  
2414= "IS THIS LOCATION A FREE-STANDING DISTRIBUTION  
2415=OPERATION WITH DOCK LOADING FACILITIES CAPABLE OF  
2416=RECEIVING FULL SKIDS OF MERCHANDISE?"  
2417=TO WHICH THE QUESTION IS, "YES."  
2418=NOW, MY QUESTION TO YOU IS, WHEN YOU ATTESTED THAT  
2419=THIS -- THE ANSWER TO THAT QUESTION IS "YES," YOU WERE  
2420=REFERRING TO THE FACILITY THAT WE'VE JUST SEEN PHOTOGRAPHED IN  
2421=THE TWO EXHIBITS I'VE SHOWN YOU, 11744 AND -745, ISN'T THAT  
2422=RIGHT?  
2423=A. YES.  
2424=Q. THE NEXT SENTENCE ASKS, "DOES THE DISTRIBUTION CENTER  
2425=PERFORM ANY FUNCTION OTHER THAN THE WAREHOUSING AND  
2426=DISTRIBUTION OF BOOKS?" TO WHICH THE ANSWER IS "NO." ISN'T  
2427=THAT CORRECT?  
2428=A. RIGHT.  
2429=Q. THOSE WERE NOT TRUTHFUL ANSWERS, WERE THEY?  
2430=A. I WOULD HAVE TO SAY HERE THAT THEY ARE NOT TRUTHFUL. I  
2431=DON'T REMEMBER FILLING THIS OUT, SO I DON'T KNOW THE  
2432=CIRCUMSTANCES. I JUST DON'T REMEMBER.  
2433=Q. YOU DID SIGN IT.  
2434=A. I DID SIGN IT, THOUGH. YES, SIR, I DID.  
2435=Q. AND THIS WAS IN 1999?  
2436=A. YES, IT APPEARS TO BE, YES.  
2437=Q. LESS THAN TWO YEARS AGO?  
2438=A. YES.  
2439=Q. AND THE NEXT DOCUMENT HERE ATTACHED APPEARS TO BE AN  
2440=AUGUST 2, 1999 LETTER FROM YOURSELF TO MR. DON WEISBERG AT  
2441=RANDOM HOUSE. DOES THAT BEAR YOUR SIGNATURE?  
2442=A. YES, IT DOES.  
2443=Q. THAT'S A COPY OF A LETTER THAT YOU SENT TO MR. WEISBERG, IS  
2444=THAT CORRECT?  
2445=A. YES, IT IS.  
2446=Q. AND THE LETTER SAYS,  
2447= "WE ARE IN RECEIPT OF YOUR LETTER DATED  
2448=JULY 28TH, 1999 INFORMING US THAT WE NO LONGER  
2449=QUALIFY FOR YOUR RDC TERMS."

2450= YOU GO ON TO STATE,  
2451= "WE CURRENTLY HAVE RDC ACCOUNTS WITH A NUMBER OF  
2452=YOUR COMPETITORS, INCLUDING VON HOLTZBRINCK,  
2453=PENGUIN-PUTNAM AND SIMON & SCHUSTER. WE WISH TO  
2454=REQUEST THAT YOU MEET YOUR COMPETITION BY EXTENDING  
2455=TO US YOUR RDC DISCOUNT."

2456= AND YOU GO ON AND SAY,  
2457= "I AM ENCLOSING INVOICES FROM PENGUIN-PUTNAM AND  
2458=FROM SIMON & SCHUSTER SHOWING THAT WE RECEIVE  
2459=48 PERCENT DISCOUNT FREIGHT FREE ON RDC ORDERS."  
2460=THERE THEN ARE TWO ATTACHED -- NO, I'M SORRY --  
2461=THREE ATTACHED DOCUMENTS, BUT THE TWO INVOICES THAT ARE  
2462=ATTACHED YOU UNDERSTOOD YOU WERE PROVIDING IN ORDER TO PROVE  
2463=THAT THE COMPETITORS, OR AT LEAST SOME OF THEM, WERE ALLOWING  
2464=YOU THE RDC DISCOUNT, ISN'T THAT CORRECT?  
2465=A. YES, SIR.  
2466=Q. NOW, I NOTICE HERE THAT THE FIRST OF THESE SHOWS THAT THE  
2467=RDC WAS EXTENDED BY -- WELL, LET'S SEE. WHO IS THE FIRST  
2468=VENDOR? SIMON & SCHUSTER. ON A SHIPMENT TO CODY'S BOOKS AT  
2469=1730 FOURTH STREET, BERKELEY, DIFFERENT LOCATION, RIGHT?  
2470=A. THAT'S CORRECT.  
2471=Q. AND THE SECOND ONE INDICATES THAT PENGUIN PUTNAM WAS  
2472=SHIPPING TO 2460 TELEGRAPH. 2460 TELEGRAPH IS SIMPLY THE BACK  
2473=DOOR, THE BACK ENTRANCE, IS THAT NOT CORRECT, OF THE BUILDING?  
2474=A. NO, THAT IS INCORRECT. CODY'S ON TELEGRAPH HAS TWO  
  
2475=DIFFERENT BUILDINGS, AND TWO DIFFERENT ADDRESSES.  
2476=Q. NOW, IF YOU LOOK AT THE NEXT PAGE, IT IS A ST. MARTIN'S  
2477=PRESS RETAIL DISTRIBUTION CENTER DOCUMENT. NOW, IS THIS  
2478=SOMETHING THAT WAS EXECUTED ON BEHALF OF CODY'S?  
2479=A. WELL, IT'S NOT MY HANDWRITING, BUT IT IS ON BEHALF OF  
2480=CODY'S, THAT'S FOR SURE.  
2481=Q. SURE, AND IT'S SOMETHING THAT YOU SENT ON TO RANDOM HOUSE  
2482=AS PROOF THAT ITS COMPETITORS WERE GRANTING YOU RETAIL  
2483=DISTRIBUTION CENTER TERMS, CORRECT?  
2484=A. YES.  
2485=Q. YOU CONSIDERED SIMON & SCHUSTER, PENGUIN PUTNAM AND  
2486=ST. MARTIN'S PRESS TO BE COMPETITORS OF RANDOM HOUSE, IS THAT  
2487=CORRECT?  
2488=A. YES.  
2489=Q. AND YOU DO, AS YOU SIT HERE TODAY, CONSIDER THEM TO BE  
2490=COMPETITORS.  
2491=A. YES.  
2492=Q. HOW MUCH MONEY HAVE YOU INVESTED IN A RETAIL DISTRIBUTION  
2493=CENTER?  
2494=A. NOTHING.  
2495=Q. DID YOU INQUIRE OF RANDOM HOUSE WHETHER IT WOULD BE  
2496=COST-JUSTIFIED FOR RANDOM HOUSE TO EXTEND TO YOU A RETAIL  
2497=DISTRIBUTION CENTER DISCOUNT?  
2498=A. NO, I JUST ASKED IF IT WAS AVAILABLE TO ME.  
2499=Q. SAME QUESTION WITH RESPECT TO EACH OF THESE OTHER  
  
2500=PUBLISHERS. DID YOU ASK SIMON & SCHUSTER WHETHER IT WOULD BE  
2501=COST-JUSTIFIED?  
2502=A. NO, I DID NOT.  
2503=Q. NOR DID YOU ASK ANY OTHER PUBLISHER FROM WHOM YOU REQUESTED  
2504=THE RDC DISCOUNT, ISN'T THAT CORRECT?  
2505=A. THAT'S CORRECT.  
2506=MR. STEER: I HAVE NO FURTHER QUESTIONS. THANK YOU.  
2507=THE WITNESS: THANK YOU.  
2508=THE COURT: REDIRECT.  
2509= REDIRECT EXAMINATION  
2510=BY MR. DAWSON:  
2511=Q. MR. ROSS, AS A RESULT OF YOUR YEARS OF EXPERIENCE IN THE  
2512=BOOKSELLING INDUSTRY, DO YOU BELIEVE THAT YOU HAVE A GENERAL  
2513=AWARENESS OF THE TERMS THAT ARE AVAILABLE TO OTHER RETAILERS  
2514=FROM PUBLISHERS?  
2515=A. IN GENERAL I DO, YES.  
2516=Q. AND HOW DO YOU FIND OUT WHAT'S AVAILABLE TO OTHER  
2517=RETAILERS?  
2518=A. I LOOK IT UP IN THE RED BOOK, I TALK TO PUBLISHERS' SALES  
2519=REPS. IN THE CASE OF THE CHAINS, I JUST HEAR ABOUT IT FROM  
2520=TALKING TO PUBLISHERS.  
2521=Q. BASED ON THIS GENERAL AWARENESS, HAVE YOU EVER SOLICITED  
2522=ANY DEALS FROM PUBLISHERS WHICH YOU BELIEVE WERE NOT AVAILABLE  
2523=TO OTHER PEOPLE -- TO OTHER BOOKSELLERS?  
2524=A. NO, I HAVE NOT.  
  
2525=Q. AND BASED ON YOUR AWARENESS OF WHAT WAS AVAILABLE TO OTHER

2526=BOOKSELLERS, HAVE YOU EVER RECEIVED ANY DEALS THAT WERE NOT  
2527=AVAILABLE TO OTHER BOOKSELLERS?  
2528=A. NO.  
2529=Q. YOU TESTIFIED THAT YOU'VE BEEN VERY AGGRESSIVE WITH RESPECT  
2530=TO SPEAKING TO PUBLISHERS ABOUT THEIR AVAILABLE TERMS. DO YOU  
2531=MEAN BY THAT THAT YOU HAVE ATTEMPTED TO GET THEM TO DEVIATE  
2532=FROM WHAT THEIR TERMS ARE THAT ARE AVAILABLE TO OTHER  
2533=BOOKSELLERS?  
2534=A. NO, I HAVE NOT.  
2535=MR. PETROCELLI: THE QUESTION IS LEADING, YOUR  
2536=HONOR.  
2537=THE COURT: YES.  
2538=MR. DAWSON: EXCUSE ME, I'LL REPHRASE THE QUESTION.  
2539=Q. IN YOUR NEGOTIATIONS WITH VENDORS, HAVE YOU ATTEMPTED TO  
2540=DEVIATE FROM WHAT YOU UNDERSTOOD WAS GENERALLY AVAILABLE TO  
2541=OTHER BOOKSELLERS?  
2542=A. NO.  
2543=Q. IS THIS TRUE WITH RESPECT TO.... YOU'VE TESTIFIED THAT IN  
2544=CERTAIN INSTANCES, AND YOU'VE SEEN SOME DOCUMENTS TODAY, WHERE  
2545=YOU'VE GIVEN INDICATIONS THAT YOU WERE ATTEMPTING TO HAVE A  
2546=PUBLISHER MEET COMPETITION. AS YOU UNDERSTAND, DID YOU EVER  
2547=RECEIVE, AS A RESULT OF ANY OF THOSE SOLICITATIONS, ANY TERMS  
2548=THAT WERE NOT AVAILABLE TO OTHER BOOKSELLERS?  
2549=A. NO, I DID NOT.  
  
2550=Q. WERE YOU ATTEMPTING, IN TELLING THEM WHAT YOU WERE  
2551=RECEIVING FROM OTHER PUBLISHERS OR VENDORS, TO RECEIVE DEALS  
2552=THAT WERE NOT AVAILABLE TO OTHER BOOK SELLERS?  
2553=A. NO.  
2554=Q. YOU WERE SHOWN A SERIES OF INVOICES BY MR. PETROCELLI, AND  
2555=THEY INCLUDED INVOICES FROM SIMON & SCHUSTER, MACMILLAN,  
2556=MCGRAW-HILL AND HARPER COLLINS. DO YOU RECALL THAT?  
2557=A. YES.  
2558=Q. AND HAS CODY'S EVER RECEIVED STOCK OFFERS FROM SIMON &  
2559=SCHUSTER, MACMILLAN, MCGRAW-HILL, AND HARPER COLLINS?  
2560=A. YES.  
2561=Q. IS THERE A TIME OF THE YEAR DURING WHICH YOU TEND TO  
2562=RECEIVE MORE STOCK OFFERS THAN OTHERS?  
2563=A. THE FALL WOULD BE THE MOST COMMON.  
2564=Q. I THINK -- IS IT YOUR TESTIMONY -- WELL, THE STOCK OFFERS  
2565=THAT YOU RECEIVED, TO YOUR KNOWLEDGE, HAVE THEY BEEN STOCK  
2566=OFFERS THAT HAVE EVER BEEN UNIQUELY OFFERED SOLELY TO CODY'S?  
2567=A. NO.  
2568=Q. AND IN ORDER TO DETERMINE WHETHER AN INVOICE HAS A STOCK  
2569=OFFER VERSUS A NON-STOCK OFFER, THE INVOICE ITSELF, WILL IT  
2570=TELL YOU?  
2571=A. NO, THE INVOICE WILL USUALLY NOT TELL YOU. IT MAY NEVER  
2572=TELL YOU.  
2573=Q. HOW MANY INVOICES IN THE LAST 10 YEARS DO YOU BELIEVE THAT  
2574=YOUR STORE HAS GONE THROUGH?  
  
2575=A. TENS OF THOUSANDS.  
2576=Q. SO THE FIVE INVOICES THAT YOU WERE SHOWN TODAY, THE  
2577=PERCENTAGE OF THOSE WOULD BE WHAT?  
2578=A. MINIMAL.  
2579=Q. WE SPOKE A LITTLE BIT ABOUT RDC DISCOUNTS. DO ALL RDC  
2580=POLICIES FROM ALL PUBLISHERS REQUIRE THAT YOU HAVE A LOADING  
2581=DOCK IN ORDER TO BE ABLE TO OBTAIN THE RDC BENEFITS?  
2582=A. NO, THEY DO NOT.  
2583=Q. DO DIFFERENT PUBLISHERS, IN FACT, HAVE DIFFERENT  
2584=REQUIREMENTS FOR RDC BENEFITS?  
2585=A. YES.  
2586=Q. AND DO THOSE INCLUDE WHETHER OR NOT YOU HAVE A LOADING  
2587=DOCK?  
2588=A. SOME INCLUDE A LOADING DOCK, SOME DO NOT.  
2589=Q. YOU WERE ASKED A QUESTION ABOUT WHETHER YOU HAVE A  
2590=WAREHOUSE. DO YOU HAVE A WAREHOUSE AT YOUR TELEGRAPH AVENUE  
2591=STORE?  
2592=A. NO, BUT WE DO HAVE WAREHOUSING FACILITIES THERE.  
2593=Q. DO YOU KNOW WHETHER PUBLISHERS, IN SPEAKING TO YOU OR IN  
2594=THEIR PUBLISHED TERMS, EVER DIFFERENTIATE IN THE WAY THEY SPEAK  
2595=ABOUT WAREHOUSING, I.E., SOME MIGHT EXIST -- SOME MIGHT ACCEPT  
2596=WAREHOUSE FACILITIES, SOME MIGHT REQUIRE A DIFFERENT BUILDING?

2597=A. SOMETIMES THEY DO REQUIRE A FREE-STANDING WAREHOUSE.  
2598=Q. SOMETIMES THEY DON'T?  
2599=A. AND SOMETIMES THEY DON'T, YES.

2600=Q. WE SPOKE A LITTLE WHILE AGO ABOUT CO-OP ADVERTISING, AND  
2601=WITH RESPECT TO THE AMOUNT OF CO-OP REIMBURSEMENT FOR MEDIA  
2602=ADVERTISEMENTS, IS CO-OP A LOOSE POLICY WITH RESPECT TO THE  
2603=PUBLISHERS WE'VE DISCUSSED?  
2604=A. THEY TEND TO BE PRETTY RIGOROUS IN THEIR ENFORCEMENT.  
2605=Q. AND HAVE PUBLISHERS, IN FACT, EVER PAID FOR -- PAID YOU  
2606=CO-OP FOR MEDIA ADS THAT HAVE EXCEEDED YOUR OUT-OF-POCKET  
2607=EXPENSES?  
2608=A. NO, I DON'T REMEMBER EVER RECEIVING ANY.  
2609=Q. FOR MEDIA ADS, HAVE PUBLISHERS EVER REIMBURSED YOU FOR  
2610=UNDOCUMENTED COSTS?  
2611=A. NO, THEY DON'T DO THAT.  
2612=Q. THANK YOU. YOU WERE SHOWN SOME FINANCIAL STATEMENTS BY  
2613=MR. PETROCELLI. DO YOU STILL HAVE THE BINDER THAT I ORIGINALLY  
2614=PUT IN FRONT OF YOU?  
2615=A. YES.  
2616=Q. AND I BELIEVE THAT THE INCOME STATEMENTS THAT YOU WERE  
2617=SHOWN AND WERE CONTRASTED IN THE CROSS-EXAMINATION BY  
2618=MR. PETROCELLI STARTED IN '93 AND WENT FORWARD, IS THAT  
2619=CORRECT? IS THAT HOW YOU REMEMBER IT?  
2620=A. THAT'S HOW I REMEMBER IT, YES.  
2621=Q. DO YOU REMEMBER TESTIFYING WHEN YOU BELIEVED THAT THE  
2622=BARNES & NOBLE STORE OPENED ON SHATTUCK?  
2623=A. 1992.  
2624=Q. COULD I DIRECT YOU TO THE SECOND TAB OF THE BINDER, WHICH  
2625=IS THE 1993 INCOME STATEMENT.  
2626=A. YES.  
2627=Q. AND ABOUT HALFWAY DOWN THIS, THERE IS A LINE WHICH IS  
2628=ENTITLED, "GROSS PROFIT," IS THERE NOT?  
2629=A. YES.  
2630=Q. CAN YOU TELL ME WHAT THIS INDICATES THE CHANGE, IF ANY,  
2631=THERE WAS BETWEEN THE 1992 AND 1993 PERIOD WITH RESPECT TO  
2632=CODY'S GROSS PROFIT?  
2633=A. IN 1993 OUR GROSS PROFIT WAS \$2,635,659. IN 1992, THE  
2634=PREVIOUS YEAR, OUR GROSS PROFIT WAS \$2,808,943.  
2635=Q. DOES THIS INDICATE TO YOU THAT BETWEEN 1992 AND 1993 THERE  
2636=WAS A RISE OR A DECLINE WITH RESPECT TO YOUR GROSS PROFITS?  
2637=A. A DECLINE.  
2638=MR. DAWSON: THANK YOU, I HAVE NOTHING FURTHER.  
2639=THE COURT: CROSS?  
2640=MR. PETROCELLI: NO, YOUR HONOR.  
2641=MR. STEER: NO CROSS, YOUR HONOR.  
2642=THE COURT: YOU MAY STEP DOWN.  
2643=CALL YOUR NEXT WITNESS.  
2644=MR. SPIVA: GOOD MORNING, YOUR HONOR. YOUR HONOR,  
2645=WHEN WE GET TO THE DOCUMENTS FOR THIS WITNESS, WE'RE GOING TO  
2646=TURN TO A DIFFERENT NOTEBOOK, BIGGER NOTEBOOK, BUT IT'S GAIL  
2647=SEE, PLAINTIFFS' EXHIBITS FOR APRIL 10.  
2648=AT THIS TIME, YOUR HONOR, PLAINTIFFS CALL GAIL S.  
2649=SEE.

2650=THE COURT: THIS IS IT, MR. SPIVA?  
2651=MR. SPIVA: YES, SIR.  
2652=THE COURT: VERY HELPFUL.  
2653= GAIL S. SEE,  
2654=CALLED AS A WITNESS FOR THE PLAINTIFFS, HAVING BEEN DULY SWORN,  
2655=TESTIFIED AS FOLLOWS:  
2656=THE CLERK: PLEASE STATE YOUR NAME AND SPELL YOUR  
2657=LAST NAME FOR THE RECORD.  
2658=THE WITNESS: GAIL SEE, S-E-E.  
2659= DIRECT EXAMINATION  
2660=BY MR. SPIVA:  
2661=Q. GOOD MORNING, MS. SEE.  
2662=A. GOOD MORNING, MR. SPIVA.  
2663=Q. COULD YOU STATE YOUR ADDRESS FOR THE RECORD?  
2664=A. 1389 ORONO LANE, WAYZATA, MINNESOTA.  
2665=Q. MS. SEE, WOULD YOU DESCRIBE YOUR EDUCATIONAL BACKGROUND FOR  
2666=THE COURT?

2667=A. YES. I GRADUATED IN 1949 FROM MOUNT HOLYOKE COLLEGE IN  
2668=SOUTH HADLEY, MASSACHUSETTS, WITH AN HONORS DEGREE IN  
2669=PHILOSOPHY.  
2670=Q. AND HOW DID YOU FIRST BECOME INVOLVED IN THE BOOK  
2671=PROFESSION?  
2672=A. WELL, I'VE BEEN A BOOK PERSON MOST OF MY LIFE, AND WHEN OUR  
2673=CHILDREN WERE IN SCHOOL, MY VOLUNTEER ACTIVITIES WERE IN  
2674=LIBRARIES. I WORKED IN AN ACADEMIC LIBRARY, AND I'VE JUST  
  
2675=ALWAYS BEEN VERY INTERESTED IN BOOKS.  
2676=Q. WHAT TIME PERIOD WAS THAT WHEN YOU WERE INVOLVED IN THE  
2677=LIBRARIES?  
2678=A. IN THE 50'S AND 60'S.  
2679=Q. NOW, I TAKE IT THERE CAME A TIME WHEN YOU OPENED YOUR OWN  
2680=BOOKSTORE, IS THAT RIGHT?  
2681=A. YES. I, AS WITH MANY PEOPLE, I ALWAYS HAD A DREAM OF  
2682=OPENING A BOOKSTORE, AND SO IN 1972 I BOUGHT AN EXISTENT  
2683=BOOKSTORE IN WAYZATA, MINNESOTA.  
2684=Q. WHAT WAS THE NAME OF THAT BOOKSTORE?  
2685=A. "THE BOOKCASE."  
2686=Q. NOW, WAYZATA IS A SUBURB OF MINNEAPOLIS?  
2687=A. YES, IT'S JUST A FEW MILES WEST OF MINNEAPOLIS.  
2688=Q. WHAT TYPE OF BOOKSTORE IS THE BOOKCASE?  
2689=A. IT'S A GENERAL -- GENERAL INTEREST TRADE BOOKSTORE. IT'S  
2690=NOT A SPECIALTY STORE.  
2691=Q. AND HOW BIG WAS THE BOOKSTORE WHEN YOU FIRST PURCHASED IT  
2692=IN 1972?  
2693=A. THE ORIGINAL STORE THAT I PURCHASED WAS ABOUT 1400 SQUARE  
2694=FEET.  
2695=Q. DID THE BOOKSTORE GROW OVER THE PERIOD THAT YOU OWNED IT?  
2696=A. YES, IT CERTAINLY DID.  
2697=Q. AND HOW BIG DID IT BECOME?  
2698=A. WELL, I MOVED AFTER A FEW YEARS TO A STORE AT ABOUT  
2699=4500 SQUARE FEET.  
  
2700=Q. HOW LONG DID YOU OWN THE BOOKCASE?  
2701=A. I OWNED THE BOOKCASE FOR 18 YEARS, FROM 1972 TO 1990.  
2702=Q. WHAT WERE YOUR RESPONSIBILITIES AS THE OWNER OF THE  
2703=BOOKCASE?  
2704=A. MY RESPONSIBILITIES WERE -- COVERED ABOUT EVERYTHING;  
2705=CERTAINLY THE BUYING OF THE BOOKS, THE MANAGEMENT OF THE STORE,  
2706=THE FINANCIAL MANAGEMENT, AND JUST ALL OF THE TASKS THAT GO  
2707=WITH OWNING A SMALL BUSINESS.  
2708=Q. DID YOU DO ANY MARKETING, AS THE OWNER?  
2709=A. I CERTAINLY DID, THE MARKETING, THE ADVERTISING.  
2710=Q. AND YOU SPOKE ABOUT BUYING, BOOK BUYING. WHAT DID THE  
2711=BUYING RESPONSIBILITY ENTAIL?  
2712=A. WELL, THE BUYING RESPONSIBILITY ENTAILED DECIDING WHAT  
2713=BOOKS WE WOULD CARRY IN THE STORE, AND SO I WOULD MEET WITH  
2714=PUBLISHERS' REPS, AND I HAD TO MAKE THOSE DECISIONS ON THEM, ON  
2715=BOTH A DAILY AND SEASONAL BASIS.  
2716=Q. HOW DID YOU FIND OUT, DURING THE TIME THAT YOU OWNED THE  
2717=BOOKCASE, HOW DID YOU FIND OUT THE TERMS AT WHICH YOU WOULD BUY  
2718=THE BOOKS?  
2719=A. WELL, I HAD THE AMERICAN BOOKSELLERS ASSOCIATION RED BOOK,  
2720=WHICH WAS THE MANUAL FOR LEARNING THE TERMS.  
2721=Q. DID YOU HAVE TO BE FAMILIAR WITH THOSE TERMS?  
2722=A. CERTAINLY.  
2723=Q. AND HOW DID YOU BECOME FAMILIAR WITH THOSE TERMS?  
2724=A. WELL, I WOULD OPEN THE BOOK UP AND LOOK AT IT, AND SEE WHAT  
  
2725=THE DISCOUNT SCHEDULES WERE, WHAT THE NUMBERS WERE, QUANTITIES.  
2726=Q. I GUESS WHAT I'M ASKING IS, WHAT ABOUT YOUR  
2727=RESPONSIBILITIES REQUIRED YOU TO USE THE RED BOOK?  
2728=A. WELL, YOU HAVE TO DECIDE WHEN YOU'RE BUYING BOOKS HOW  
2729=YOU'RE GOING TO BUY THEM AND HOW MANY YOU'RE GOING TO BUY, AND  
2730=FREQUENTLY YOUR DECISIONS ARE BASED ON WHAT YOUR DISCOUNT IS  
2731=GOING TO BE, AND SO I WOULD USE THE RED BOOK TO SEE, IF I WAS  
2732=PLACING AN ORDER, HOW MANY BOOKS I NEEDED TO, AND IF I ORDERED  
2733=ONE MORE BOOK, I MIGHT GO UP ONE DISCOUNT POINT.  
2734=Q. OKAY, AND SO YOU CONSULTED THE RED BOOK FREQUENTLY, I TAKE  
2735=IT?  
2736=A. OH, VERY FREQUENTLY.

2737=Q. NOW, YOU MENTIONED THAT YOU DID SOME MARKETING AS AN OWNER.  
2738=WHAT DID MARKETING ENTAIL?  
2739=A. IT ENTAILED A NUMBER OF DIFFERENT THINGS. I PLACED SOME  
2740=NEWSPAPER ADS, AND WE HAD AN IN-STORE NEWSLETTER, AND WE DID  
2741=QUIT A FEW OUT-OF-STORE EVENTS.  
2742=Q. AND DID YOU HAVE AN UNDERSTANDING, IN DOING THAT MARKETING,  
2743=OF THE PUBLISHERS' COOPERATIVE ADVERTISING POLICIES?  
2744=A. YES, I DID.  
2745=Q. NOW, WHILE YOU OWNED YOUR BOOKSTORE, DID YOU BECOME  
2746=INVOLVED IN ANY BOOK INDUSTRY ORGANIZATIONS OR ACTIVITIES?  
2747=A. YES, I DID. I BECAME INVOLVED WITH THE AMERICAN  
2748=BOOKSELLERS ASSOCIATION.  
2749=Q. ANY OTHERS?  
  
2750=A. WELL, I WAS INVOLVED WITH THE INTERNATIONAL BOOKSELLERS  
2751=FEDERATION. I APPEARED ON A PANEL WITH A.A.P., THE  
2752=PUBLISHERS --  
2753=Q. WOULD IT ASSIST YOU, MS. SEE, TO SEE A COPY OF YOUR RESUME?  
2754=A. YES, AND I HAVE ONE RIGHT HERE.  
2755=MR. SPIVA: AND JUST FOR EVERYBODY ELSE'S BENEFIT,  
2756=MS. SEE'S RESUME IS ATTACHED TO TODAY'S BOOKLET AT 2281.  
2757=I THINK IT'S THE VERY LAST EXHIBIT IN THE BOOKLET,  
2758=YOUR HONOR.  
2759=THE WITNESS: AND DURING THAT TIME I WAS INVOLVED --  
2760=MR. SPIVA: ONE MOMENT, MS. SEE, WHILE EVERYBODY  
2761=GETS TO THE SAME PLACE.  
2762=I'M SORRY, I MISSTOKE. IT'S NOT 2281, IT'S 2609,  
2763=YOUR HONOR, AND IT IS THE LAST EXHIBIT IN THE BOOK. SORRY,  
2764=THIS BOOKLET, IF YOURS IS AS DIFFICULT TO TURN THE PAGES AS  
2765=MINE.  
2766=Q. ALL RIGHT, IF YOU COULD PLEASE CONTINUE, MS. SEE.  
2767=A. FINE. DURING THAT TIME I WAS A MEMBER OF -- ON THE BOARD  
2768=OF GRAYWOLF PRESS, WHICH WAS A SMALL NONPROFIT PRESS IN  
2769=MINNESOTA.  
2770=Q. NOW, YOU SPOKE ABOUT YOUR INVOLVEMENT IN THE AMERICAN  
2771=BOOKSELLERS ASSOCIATION. WHAT WAS YOUR INVOLVEMENT IN THE ABA?  
2772=A. I WAS PRESIDENT OF THE AMERICAN BOOKSELLERS ASSOCIATION  
2773=FROM 1984 TO 1986, AND I WAS ON THE BOARD FROM 1983 TO 1989.  
2774=Q. WERE YOU INVOLVED IN THE ABA'S BOOKSELLERS' SCHOOLS?  
  
2775=A. AND I WAS -- CERTAINLY, I WAS ON THE FACULTY OF THE  
2776=AMERICAN BOOKSELLERS SCHOOL DURING MOST OF -- MOST OF MY  
2777=BOOKSELLING CAREER.  
2778=Q. I WANT TO ASK YOU A COUPLE QUESTIONS ABOUT YOUR PRESIDENCY  
2779=AND YOUR TIME ON THE BOARD AT ABA. WHAT WERE ABA'S MAJOR  
2780=INITIATIVES DURING THE TIME THAT YOU WERE PRESIDENT, AND ON THE  
2781=BOARD?  
2782=A. WELL, WE STARTED A COMMITTEE CALLED THE PUBLISHER PLANNING  
2783=COMMITTEE AND WE WOULD MEET WITH PUBLISHERS TO DISCUSS WAYS  
2784=THAT THE INDUSTRY COULD IMPROVE.  
2785=Q. WHAT TYPES OF THINGS DID YOU DISCUSS WITH THE PUBLISHERS?  
2786=A. WE DISCUSSED -- WE DISCUSSED FREIGHT POLICIES. WE  
2787=DISCUSSED WAYS WE COULD HELP ALL OF US WITH OUR PAPERWORK,  
2788=HAVING SOME KINDS OF PROCEDURES THAT WERE UNIFORM AND THINGS --  
2789=FOR EVERYBODY.  
2790=Q. DID THAT RESULT IN ANY TYPES OF CHANGES IN THE INDUSTRY?  
2791=A. PARDON?  
2792=Q. DID THOSE DISCUSSIONS RESULT IN ANY CHANGES IN THE  
2793=INDUSTRY?  
2794=A. YES, BECAUSE THE FREIGHT PASS-THROUGH PROGRAM CAME DURING  
2795=THAT TIME. WE ALSO DID SOMETHING TO HELP WITH SPECIAL ORDERS.  
2796=WE CREATED SOMETHING CALLED THE SINGLE TITLE ORDER PLAN.  
2797=Q. WOULD IT BE FAIR TO SAY THAT AS YOUR TIME -- DURING YOUR  
2798=TIME AS PRESIDENT OF THE ABA, ESSENTIALLY, YOU DISCUSSED  
2799=SEVERAL ISSUES OF INDUSTRY STANDARDS AND PRACTICES WITH THE  
  
2800=PUBLISHERS?  
2801=A. YES, YES.  
2802=Q. OKAY. NOW, YOU SPOKE OF THE BOOKSELLER SCHOOLS, THAT YOU  
2803=WERE ON THE FACULTY OF THE BOOKSELLERS' SCHOOLS. WHAT ARE THE  
2804=BOOKSELLERS' SCHOOLS?  
2805=A. WELL, ABA HAD BOOKSELLERS' SCHOOLS AT DIFFERENT LEVELS.  
2806=THEY WOULD HAVE A PROSPECTIVE BOOKSELLERS' SCHOOL FOR THOSE



2807=THAT WERE INTERESTED IN THE GOING INTO THE BOOK BUSINESS, AND  
2808=THEN THEY'D HAVE A PROFESSIONAL SCHOOL FOR THOSE THAT HAD BEEN  
2809=IN THE BOOK BUSINESS, AND THEN AN ADVANCED, THAT WAS A LITTLE  
2810=HIGHER LEVEL.  
2811=Q. AND WHAT TYPES OF THINGS WERE TAUGHT AT THOSE SCHOOLS?  
2812=A. WELL, WE TAUGHT EVERYTHING ABOUT HOW TO RUN AN EFFECTIVE  
2813=BOOKSTORE, FROM BOOK BUYING, MARKETING, FINANCIAL PLANNING IS A  
2814=KEY PART OF IT, AND WE HAD -- WE WOULD OCCASIONALLY HAVE PEOPLE  
2815=FROM THE PUBLISHING INDUSTRY COME AND TALK TO -- AND TALK ABOUT  
2816=THE PUBLISHING INDUSTRY AND HOW EVERYTHING WORKS.  
2817=Q. WHAT TYPES OF CLASSES DID YOU TEACH AT THE BOOKSELLER  
2818=SCHOOLS?  
2819=A. I TAUGHT SOMETHING CALLED "TOOLS OF THE TRADE," WHICH WAS  
2820=THE CLASS WHERE WE EXPLAINED HOW WE USED THE VARIOUS REFERENCE  
2821=MATERIALS, PARTICULARLY THE RED BOOK, IN TERMS OF ORDERING. I  
2822=TAUGHT MARKETING AND ADVERTISING. I ALSO HELPED OCCASIONALLY  
2823=IN THE FINANCIAL SEMINARS. IT WAS REALLY ACROSS THE BOARD. IT  
2824=WAS -- WE ALL KIND OF CONTRIBUTED.

2825=Q. WHAT TYPES OF THINGS DID YOU TEACH IN THE FINANCIAL  
2826=SEMINARS?  
2827=A. WELL, WE TAUGHT INVENTORY MANAGEMENT, WE TAUGHT P&L  
2828=STATEMENTS, ALL OF THAT KIND OF THING.  
2829=Q. AND WHEN YOU SAY, "INVENTORY MANAGEMENT," CAN YOU DESCRIBE  
2830=A LITTLE BIT FOR THE COURT WHAT YOU MEAN BY THAT?  
2831=A. WELL, ONE OF THE KEYS OF RUNNING A SUCCESSFUL BOOKSTORE IS  
2832=TO KEEP YOUR INVENTORY UNDER CONTROL, AND LEARNING HOW TO BUY  
2833=IN A TIMELY MANNER BOOKS, AND SO YOU DON'T GET OVERLOADED WITH  
2834=INVENTORY, AND THEREFORE, HAVE A CASH PROBLEM.  
2835=Q. WAS ONE OF THE ISSUES WHEN TO BUY FROM A WHOLESALER VERSUS  
2836=WHEN TO BUY FROM A PUBLISHER?  
2837=A. YES, DEFINITELY, BECAUSE AGAIN, YOU HAVE TRADEOFFS, AND SO  
2838=IT WAS A QUESTION OF HOW TO USE THE WHOLESALER FOR  
2839=REPLENISHMENT OF SUPPLIES, BECAUSE THE WHOLESALER ORDERS WOULD  
2840=COME IN VERY QUICKLY, AND WHEN TO HAVE YOUR ORDERS GO TO THE  
2841=PUBLISHER, WHERE YOU GET THE HIGHER DISCOUNT.  
2842=Q. NOW, CAN YOU DESCRIBE THE MEMBERSHIP OF THE ABA DURING YOUR  
2843=TENURE THERE AS PRESIDENT AND ON THE BOARD?  
2844=A. WELL, THE MEMBERSHIP WERE BOOKSELLERS ALL ACROSS THE  
2845=COUNTRY OF ALL KINDS, GENERAL INTEREST, SMALL STORES, AND  
2846=LARGER STORES. THERE WERE SPECIALTY STORES, MUSEUM STORES AND  
2847=AT THAT TIME WE HAD WALDEN AND B. DALTON.  
2848=Q. WHAT ABOUT BARNES & NOBLE, WERE THEY A MEMBER AT THE TIME?  
2849=A. WELL, B. DALTON -- BARNES & NOBLE BOUGHT B. DALTON IN THE  
2850=LATE 80'S, AND I BELIEVE FOR A TIME THEY WERE STILL A MEMBER.  
2851=Q. NOW, WHAT TYPES OF INDUSTRY PANELS HAVE YOU SERVED ON  
2852=DURING YOUR 30 YEARS IN THE BOOK BUSINESS?  
2853=A. WELL, AT THE AMERICAN BOOKSELLERS ASSOCIATION CONVENTION  
2854=EVERY YEAR, THE ABA, I SERVED ON MANY PANELS, IN MANY DIFFERENT  
2855=AREAS.  
2856=Q. HAVE YOU EVER SERVED ON AN ANY PANELS FOR PUBLISHER  
2857=ORGANIZATIONS?  
2858=A. I WENT TO THE A.A.P., THE AMERICAN ASSOCIATION OF  
2859=PUBLISHERS, AND THEY INVITED THREE OF US TO COME, YES. WE HAD  
2860=A VERY INTERESTING PANEL.  
2861=Q. WHAT WAS THAT PANEL?  
2862=A. WELL, IT WAS A PANEL -- THEY REALLY WANTED TO UNDERSTAND  
2863=SOME OF THE ISSUES THAT INDEPENDENT BOOKSELLERS FACED, AND ED  
2864=MORROW AND JOYCE MESKIS AND MYSELF CAME, REPRESENTING DIFFERENT  
2865=KINDS OF STORES, AND THEY JUST -- IT WAS JUST, I THINK, AN  
2866=INFORMATIONAL PANEL.  
2867=Q. AND YOU SOLD YOUR BOOKSTORE IN 1990, IS THAT RIGHT?  
2868=A. CORRECT.  
2869=Q. WHY DID YOU SELL IT?  
2870=A. WELL, FOR A VARIETY OF REASONS. I THINK THERE COMES A TIME  
2871=IN LIFE WHEN IT'S GOOD TO DO SOMETHING NEW. I HAD BEEN IN THE  
2872=BOOKSTORE FOR 18 YEARS AND SO IT WAS JUST TIME TO MAKE A  
2873=CHANGE.  
2874=Q. AND WHAT DID YOU DO AFTER YOU SOLD IT?  
2875=A. WELL, AFTER I SOLD IT, I HAVE -- I HAD BEEN TALKING TO A --  
2876=ANOTHER BOOKSELLER, DAVID UNOWSKY IN ST. PAUL, AND WE HAD

2877=TALKED OVER THE YEARS ABOUT THE POSSIBILITY OF FORMING A  
2878=PUBLISHING COMPANY IN THE TWIN CITIES AREA. AND SO THAT'S THE  
2879=DIRECTION I WENT IN.  
2880=Q. WERE YOU LOOKING AT -- STARTING A FOR-PROFIT OR NONPROFIT  
2881=PUBLISHER?  
2882=A. WE HAD DECIDED WE WOULD TAKE THE CHALLENGE OF STARTING A  
2883=FOR-PROFIT PUBLISHING HOUSE. WE HAVE IN MINNEAPOLIS, THE TWIN  
2884=CITIES AREA, FOUR VERY STRONG NON-PROFITS.  
2885=Q. AND I TAKE IT FROM WHAT YOU SAID EARLIER, ONE OF THOSE IS  
2886=GRAYWOLF PRESS?  
2887=A. GRAYWOLF, YES.  
2888=Q. OKAY. NOW, WHAT DID YOU DO TO IMPLEMENT THIS PLAN THAT YOU  
2889=SPOKE OF, OF STARTING A FOR-PROFIT PUBLISHING HOUSE?  
2890=A. WELL, IN THE BEGINNING WE FORMED A FAIRLY LARGE INVESTOR  
2891=GROUP TO LOOK AT BUYING AN EXISTENT PUBLISHER AND BRINGING IT  
2892=TO THE TWIN CITIES, AND WE SPENT ABOUT TWO YEARS DOING -- WELL,  
2893=WE LOOKED AT FIVE GENERALLY AND THREE VERY SPECIFICALLY, AND  
2894=DID, YOU KNOW, THE DUE DILIGENCE AND WENT OUT AND LOOKED AT  
2895=THEM, AND THEN FINALLY, MADE THE DECISION THAT WE WOULD GO THE  
2896=MORE CHALLENGING ROUTE AND START OUR OWN PUBLISHING HOUSE.  
2897=THE COURT: MR. SPIVA, ARE YOU QUALIFYING THE  
2898=WITNESS?  
2899=MR. SPIVA: YES, SIR. YES, YOUR HONOR.  
  
2900=THE COURT: AS AN EXPERT SPECIFICALLY IN WHAT?  
2901=MR. SPIVA: WE ARE GOING TO QUALIFY HER AS AN EXPERT  
2902=IN THE BOOK INDUSTRY FOR THE PURPOSE OF DESCRIBING INDUSTRY  
2903=PRACTICES AND THE SALE OF BOOKS FROM PUBLISHERS AND WHOLESALERS  
2904=TO BOOKSTORES, AND FOR THE PURPOSES, YOUR HONOR, OF COMPARING  
2905=PUBLISHERS' AND WHOLESALERS' STANDARD TERMS AND CONDITIONS OF  
2906=SALE WITH THOSE RECEIVED BY THE DEFENDANTS.  
2907=AND I THINK I UNDERSTAND THE THRUST OF YOUR HONOR'S  
2908=QUESTION. WE WON'T BE SPENDING TOO MUCH MORE TIME ON THIS, BUT  
2909=I THINK IT WILL BECOME APPARENT FROM THE BACKGROUND WE'RE GOING  
2910=THROUGH NOW, THE RELEVANCE OF MS. SEE'S EXPERIENCE IN DOING DUE  
2911=DILIGENCE IN LOOKING TO PURCHASE A PUBLISHER.  
2912=THE COURT: YES, WELL, I THINK THAT YOU'VE QUALIFIED  
2913=HER AMPLY, AND I HAVE REVIEWED THE RESUME BRIEFLY. SO AFTER  
2914=THE RECESS WHICH WE'RE ABOUT TO TAKE, I THINK WE CAN GET DOWN  
2915=TO WHAT I CALL BRASS TACKS.  
2916=MR. SPIVA: YES, YOUR HONOR, WE'LL GO TO THE HEART  
2917=OF THE COCONUT.  
2918=THE COURT: COURT WILL BE IN RECESS TILL 11:45 --  
2919=11:50.  
2920=CONTINUED ON FOLLOWING PAGE. NOTHING OMITTED.  
2921= (RECESS TAKEN AT 11:34 A.M.)  
2922=  
2923=  
2924=  
  
2925= THE COURT: ALL RIGHT. MR. SPIVA, YOU MAY PROCEED.  
2926= MR. SPIVA: THANK YOU, YOUR HONOR.  
2927=Q. NOW, MS. SEE, I'M GOING TO TRY TO KEEP THESE QUESTIONS BRIEF  
2928='CAUSE THERE HAS BEEN TESTIMONY ON THIS PREVIOUSLY.  
2929=A. RIGHT.  
2930=Q. BUT I DO -- JUST TO SET THE STAGE FOR YOUR TESTIMONY, WHAT  
2931=KINDS OF TERMS ARE INCLUDED IN THE RED BOOK, WHICH HAS BEEN  
2932=PREVIOUSLY IDENTIFIED?  
2933=A. WELL, DISCOUNT SCHEDULES. IT HAS CERTAINLY ALL PUBLISHERS.  
2934=FREQUENTLY THEY PUT THE CO-OP POLICIES, ALTHOUGH IT'S BEEN KNOWN  
2935=THAT SOME PUBLISHERS DON'T PUT THE CO-OP POLICY, THE RETURN  
2936=POLICIES, FREIGHT POLICIES MOST OF THE TIME.  
2937=Q. ARE THERE TYPES OF TERMS OF SALE WHICH ARE NOT IN THE RED  
2938=BOOK?  
2939=A. YES. AS WE'VE ALREADY HEARD, STOCK OFFERS BECAUSE THEY'RE  
2940=SEASONAL AND TIME LIMITED, THEY'RE NOT IN THE RED BOOK. AND, AS  
2941=I SAID, SOME CO-OP POLICIES.  
2942=Q. NOW, IN YOUR EXPERIENCE, HOW DO PUBLISHERS COMMUNICATE THOSE  
2943=TERMS SUCH AS STOCK OFFERS THAT ARE NOT IN THE RED BOOK? HOW DO  
2944=THEY COMMUNICATE THOSE TO BOOKSELLERS?  
2945=A. WELL, ONE WAY IS, OF COURSE, THE REP HAS THEM WHEN HE COMES  
2946=IN AND CALLS ON YOU OR HE WILL CALL AND LET YOU KNOW AND THEN  
2947=SEND IT TO YOU BY MAIL. THEY FAX IT. AND SOMETIMES, THEY'RE

2948=PUBLISHED IN THE PUBLISHERS WEEKLY.

2949=Q. IN YOUR EXPERIENCE, ARE THEY USUALLY OR ALMOST ALWAYS IN

2950=WRITING? THE STOCK OFFERS?

2951=A. YES. YES.

2952=Q. NOW, DO YOU FIND OUT ABOUT CO-OP, COOPERATIVE ADVERTISING,

2953=IF IT'S NOT PUBLISHED?

2954=A. IF IT'S NOT PUBLISHED. WELL, AGAIN, YOU CAN CALL THE

2955=PUBLISHER AND FIND OUT THERE. AND OCCASIONALLY, THERE'LL BE A

2956=SINGLE BOOK THAT WILL BE ADVERTISED IN PUBLISHERS WEEKLY AND

2957=THEY'LL HAVE A NOTE ON THE BOTTOM OF THE CO-OP AVAILABLE FOR A

2958=SINGLE TITLE.

2959=Q. IN YOUR EXPERIENCE, IS THERE ANYTHING IN PUBLISHERS'

2960=CATALOGS ABOUT CO-OP --

2961=A. YES, SOMETIMES IN PUBLISHERS' CATALOGS, THEY WILL DELINEATE

2962=THE CO-OP POLICIES.

2963=Q. NOW, I WANT TO TURN TO THE TOPIC SPECIFICALLY OF STOCK

2964=OFFERS. AND, AGAIN, WE'VE HAD TESTIMONY ABOUT STOCK OFFERS

2965=WHICH I'M NOT ASKING YOU TO REPEAT. BUT WHAT I WOULD LIKE TO

2966=ASK YOU IS WHAT ARE THE CRITICAL ELEMENTS OF A STOCK OFFER?

2967=A. WELL, OBVIOUSLY THE -- THE FIRST ELEMENT IS EXTRA DISCOUNT.

2968=AND THEN, DATING, WHICH IS AN EXTENDED TIME TO PAY. FREQUENTLY,

2969=THERE'S FREE FREIGHT, BUT DIFFERENT PUBLISHERS FORMAT THEIR

2970=STOCK OFFERS IN DIFFERENT WAYS, BUT IT'S ALMOST ALWAYS LIMITED

2971=IN TIME AND LIMITED -- MOST OFTEN LIMITED IN TO THE NUMBER OF

2972=ORDERS YOU CAN PLACE WITHIN THAT TIME PERIOD.

2973=Q. AND ARE THERE SOMETIMES OTHER RESTRICTIONS ON STOCK OFFERS?

2974=A. OTHER RESTRICTIONS ON STOCK OFFERS?

2975=Q. SUCH AS IN TERMS OF QUANTITIES YOU HAVE TO PURCHASE?

2976=A. OH, YES, OF COURSE. BECAUSE YOU USUALLY HAVE TO HAVE A

2977=CERTAIN QUANTITY TO QUALIFY FOR THE STOCK OFFER BECAUSE

2978=OBVIOUSLY THE VERY NAME OF IT, STOCK OFFERS, THE PUBLISHERS WANT

2979=TO YOU STOCK UP ON THEIR BOOKS.

2980=Q. NOW, WHAT IS THE PURPOSE FROM THE PUBLISHERS' PERSPECTIVE OF

2981=A STOCK OFFER?

2982=A. WELL, THE -- THE PURPOSE, AS I SAID, IS TO HAVE YOU STOCK UP

2983=ON THEIR BOOKS. AND THEY DO FREQUENTLY OFFER THEM ON A SEASONAL

2984=BASIS. THEY'LL OFFER THEM IN THE FALL FOR THE MOST -- THE

2985=BUSIEST SELLING SEASON, WHICH IS, OF COURSE, THE HOLIDAY TIME.

2986=THEY MIGHT DO A SUMMER STOCK OFFER OR SOMETHING LIKE THAT.

2987=Q. AND SO IS IT YOUR TESTIMONY BASICALLY THAT THEY'RE TRYING TO

2988=GET THE STORE TO PURCHASE MORE BOOKS?

2989=A. RIGHT.

2990=Q. AT A CERTAIN TIME IN THE YEAR?

2991=A. CORRECT. WHEN -- MOST OFTEN, THEY WANT IT WHEN THE STORE --

2992=THE SPRING -- THEY WILL OFFER IT WHEN THE STORE PROBABLY ISN'T

2993=GOING TO BUY AS MANY BOOKS BECAUSE THAT'S A SLOWER SELLING

2994=SEASON.

2995=Q. WHAT ARE THE ADVANTAGES TO THE BOOKSTORE FROM THE

2996=BOOKSELLERS' PERSPECTIVE OF PARTICIPATING IN A STOCK OFFER?

2997=A. WELL, WHEN YOU HAVE A STOCK OFFER, YOU HAVE TO CONSIDER

2998=COUPLE OF TRADE-OFFS. OBVIOUSLY, WHEN YOU'RE BUYING MORE BOOKS

2999=UNDER THE STOCK OFFER, YOU'RE GETTING -- EXCUSE ME -- AN

3000=ADDITIONAL DISCOUNT, BUT YOU HAVE TO BALANCE THAT AGAINST YOUR

3001=TURN, AND YOUR TURN IS, OF COURSE, THE SALES DIVIDED BY THE

3002=AVERAGE INVENTORY, SO --

3003=Q. CAN I STOP YOU THERE FOR JUST A SECOND?

3004=A. CERTAINLY.

3005=Q. YOU'VE DEFINED THE WORD "TURN" IN A -- IN THE TECHNICAL --

3006=TECHNICAL MANNER. CAN YOU EXPLAIN THAT TO THE LAYPERSON, WHAT

3007=IT REALLY MEANS, WHAT THE CONCEPT IS?

3008=A. IT MEANS HAVING AS LEAN A STOCK AS YOU CAN AND NOT LOSING

3009=SALES.

3010=Q. NOW, SORRY I INTERRUPTED YOU. YOU WERE SAYING -- YOU WERE

3011=TESTIFYING REGARDING THE TRADEOFF INVOLVED.

3012=A. WELL, THERE'S A TRADEOFF IN THAT OBVIOUSLY IF YOU'RE GOING

3013=TO BRING THESE BOOKS IN AND GET A HIGHER DISCOUNT. THAT'S AN

3014=ADVANTAGE. BUT YOU BALANCE THAT AGAINST, AS I SAY, THIS

3015=JUST-IN-TIME INVENTORY, TRYING TO GET KEEP YOUR INVENTORY AS

3016=LEAN AS POSSIBLE WITHOUT LOSING SALES. AND, OF COURSE, STORES

3017=TODAY HAVE DEVELOPED BECAUSE OF THE TECHNOLOGY VERY

3018=SOPHISTICATED JUST-IN-TIME INVENTORY SYSTEMS.  
3019= BUT IF THE STORE DECIDES THAT THEY'RE GOING TO USE  
3020=THE STOCK OFFER, THEY HAVE TO TAKE -- TO MAKE THIS DECISION  
3021=BETWEEN TURN AND DISCOUNT. BUT THERE'S ONE OTHER THING, AND  
3022=THAT IS YOU BRING THOSE BOOKS IN, YOU MAY NOT NECESSARILY HAVE A  
3023=SELL-THROUGH ON ALL THOSE BOOKS. THEY MAY NOT ALL SELL, AND YOU  
3024=MAY HAVE THEN THE ADDED EXPENSE OF RETURNING THE BOOKS.

3025=Q. OKAY. WELL, NOW, IF THE BOOKS ARE RETURNABLE, WHAT'S THE  
3026=COST TO THE BOOKSTORE REALLY OF HAVING TO RETURN THEM?  
3027=A. WELL, THERE'S THE COST IN JUST THE LABOR OF RETURNING THEM,  
3028=PACKING THEM UP AND OFTENTIMES, YOU KNOW, MAKING -- MAKING YOUR  
3029=LISTS AND THEN SENDING THEM BACK AND THEN WAITING FOR YOUR  
3030=CREDIT.  
3031=Q. NOW, HAVE YOU REVIEWED ANY OF THE DEFENDANTS' DOCUMENTS  
3032=RELATING TO STOCK OFFERS?  
3033=A. I HAVE.  
3034=Q. AND WHAT DID YOU FIND?  
3035=A. WELL, I FOUND THAT THE DEFENDANTS PURCHASED -- FREQUENTLY  
3036=USED STOCK OFFERS TO PURCHASE BOOKS OUTSIDE THE TIME FRAME THAT  
3037=THE STOCK OFFERS DEFINED, AND OFTEN THEY PLACED MORE ORDERS WERE  
3038=ALLOWED UNDER THE STOCK OFFER.  
3039= MR. PETROCELLI: YOUR HONOR, I DON'T WISH TO  
3040=INTERRUPT, BUT I JUST WANT TO MAKE AN OBJECTION THAT ON -- SHE  
3041=WAS PERMITTED TO TESTIFY AS AN EXPERT, BUT AS WE POINTED OUT, A  
3042=GREAT DEAL OF HER TESTIMONY MAY RELATE TO HER SIMPLY LOOKING AT  
3043=DEFENDANTS' DOCUMENTS AND INTERPRETING THEM.  
3044= AND I BELIEVE THAT EXPERT TESTIMONY IS NOT REQUIRED  
3045=TO TELL THE COURT WHAT A DOCUMENT SAYS AND THAT THE DOCUMENTS  
3046=THEMSELVES, AS WELL AS THE DEPOSITION TESTIMONY, IS THE BEST  
3047=EVIDENCE OF WHAT THEY SAY.  
3048= I'D LIKE TO ALSO ADD THAT THEY DID NOT PURPORT TO  
3049=JUSTIFY HER TESTIMONY AS A SUMMARY WITNESS UNDER RULE 1006. WE

3050=POINTED THAT OUT IN OUR MOTION IN LIMINE. THEY DIDN'T RESPOND  
3051=INDICATING THAT THAT WAS AN ADDITIONAL BASIS. SO I -- MY  
3052=OBJECTION IS TO THE EXTENT THAT SHE IS TESTIFYING ABOUT THE  
3053=CONTENTS OF DOCUMENTS AS SHE DID IN THE PRIOR ANSWER, AS WELL AS  
3054=ANY DEPOSITION TESTIMONY, ON THE GROUND OF THE BEST EVIDENCE  
3055=RULE, THERE'S NO FOUNDATION, AND IT DOESN'T RELATE TO HER EXPERT  
3056=OPINION.  
3057= MR. SPIVA: MAY I RESPOND, YOUR HONOR?  
3058= THE COURT: YES.  
3059= MR. STEER: YOUR HONOR, BEFORE -- I WANT TO JOIN IN  
3060=MR. PETROCELLI'S OBJECTION.  
3061= THE COURT: YES.  
3062= YES, MR. SPIVA.  
3063= MR. SPIVA: YES, YOUR HONOR. THIS WAS THE SUBJECT OF  
3064=A MOTION IN LIMINE WHICH YOUR HONOR DECIDED. AS WE EXPRESSED IN  
3065=OUR PAPERS, MS. SEE IS DOING MUCH MORE THAN SIMPLY READING WHAT  
3066=IS IN DEFENDANTS' DOCUMENTS. HER INDUSTRY EXPERTISE IS  
3067=NECESSARY TO UNDERSTAND WHAT'S IN THOSE DOCUMENTS AND TO EXPLAIN  
3068=HOW THEY COMPARE TO THE INDUSTRY STANDARDS AND PRACTICES AS  
3069=MISS SEE KNOWS IT. AND THIS IS SOMETHING THAT HAS BEEN  
3070=PERMITTED BY MANY COURTS IN SIMILAR CONTEXT.  
3071= WE CITE SEVERAL CASES INVOLVING PUBLISHING AND  
3072=BOOKSELLING INDUSTRY EXPERTS IN OUR PAPERS AND ALSO EVEN OUTSIDE  
3073=OF THAT CONTEXT, I BELIEVE IT WAS THE IACOBELLI CASE WHERE  
3074=SIMILARLY AN EXPERT WAS PERMITTED TO OPINE ON INDUSTRY

3075=STANDARDS, AS COMPARED TO THE -- THE TERMS AND CONDITIONS OF THE  
3076=DEFENDANTS.  
3077= THE COURT: WELL, IN THIS COURT, SHE'S BEEN QUALIFIED  
3078=AS AN INDUSTRY EXPERT. AND I WANT HER TO TESTIFY AS AN EXPERT.  
3079=AND SHE'S NOT A SUMMARY WITNESS. AND SO I'M -- THE TESTIMONY  
3080=SHOULD BE LIMITED TO HER EXPERIENCE AS AN EXPERT AND NOT IN  
3081=EFFECT, AS SHE JUST STARTED, AS A SUMMARY WITNESS.  
3082= MR. SPIVA: YES, YOUR HONOR. WE WILL DO THAT NOW.  
3083= WILL YOU ALLOW ME SOME LATITUDE TO SHOW HER SOME  
3084=DOCUMENTS AND IF YOUR HONOR FEELS THAT I'M GOING BEYOND THE  
3085=BOUNDS OF YOUR ORDER, I CAN -- CERTAINLY WOULD BRING IT WITHIN  
3086=THE BOUNDS.  
3087= I THINK IT WILL BECOME APPARENT WHEN SHE IS SPEAKING

3088=OF CERTAIN DEFENDANTS' DOCUMENTS THAT SHE IS DOING MUCH MORE  
3089=THAN JUST SUMMARIZING, YOUR HONOR. SHE IS ACTUALLY EXPLAINING  
3090=IT BASED ON HER INDUSTRY EXPERIENCE.  
3091= THE COURT: WELL, THAT HASN'T BEEN TRUE IN THE  
3092=TESTIMONY TO DATE. AND I WANT -- AND I REALIZE THAT SHE'S HAD  
3093=EXPERIENCE, WHICH WOULD QUALIFY HER BOTH UNDER SECTION 702 AND I  
3094=THINK 704, BUT I WANT HER -- WITNESS TO TESTIFY AS TO WHAT SHE  
3095=IS QUALIFIED TO TESTIFY AS.  
3096= AND YOU COULD MAKE -- AFTER YOU'VE GONE THROUGH HER  
3097=TESTIFYING AS AN EXPERT WITHOUT LOOKING AT THE DOCUMENTS, YOU  
3098=MAY THEN MAKE AN OFFER OF PROOF, BUT I THINK THAT WOULD COME  
3099=PREFERABLY AFTER HER TESTIMONY AS AN EXPERT. I'D LISTEN TO THE  
  
3100=OFFER OF PROOF AND LOOK AT THE DOCUMENTS, BUT I HAVEN'T HAD AN  
3101=OPPORTUNITY TO DO THAT.  
3102= MR. SPIVA: YES, YOUR HONOR.  
3103= THE COURT: -- LISTENING TO HER SAY WHAT THE DOCUMENT  
3104=SAYS, AND THAT'S NOT SATISFACTORY.  
3105= MR. SPIVA: YES, YOUR HONOR. WE WILL PROCEED IN THAT  
3106=WAY.  
3107= THE COURT: ALL RIGHT.  
3108=BY MR. SPIVA:  
3109=Q. NOW, MISS SEE, YOU TESTIFIED A MOMENT AGO THAT YOU FOUND  
3110=THAT THE DEFENDANTS HAD OFTEN PURCHASED OUTSIDE OF THE TIME  
3111=WINDOWS PERMITTED BY CERTAIN PUBLISHED STOCK OFFERS. WHAT AS AN  
3112=INDUSTRY EXPERT IS THE SIGNIFICANCE OF THAT? WHY DOES THAT  
3113=MATTER?  
3114=A. WELL, THEN THEY ARE ABLE TO CONTINUE TO GET THE BENEFITS OF  
3115=THE STOCK OFFER BEYOND THE -- BEYOND THE TIME FRAME. FIRST OF  
3116=ALL, IT'S A CONTRADICTION IN TERMS BECAUSE THE STOCK OFFER IS  
3117=TIME RELATED.  
3118=Q. WHAT TYPE OF ADVANTAGE WOULD THAT GIVE A BOOK STORE, TO BE  
3119=ABLE TO PURCHASE UNDER THE TERMS OF THE STOCK OFFER OUTSIDE OF  
3120=THE TIME FRAME PERMITTED BY THE STOCK OFFER?  
3121=A. IT EXTENDS THE TIME THEY GET THE ADDITIONAL DISCOUNT. AND  
3122=THAT'S VERY ADVANTAGEOUS.  
3123=Q. DOES THAT MAKE ANY DIFFERENCE TO THE INVENTORY MANAGEMENT  
3124=THAT YOU SPOKE OF IN YOUR -- BEGINNING OF YOUR TESTIMONY?  
  
3125=A. WELL, YES. YOU'D HAVE TO BALANCE THAT OFF AGAINST THE --  
3126=THE -- BUT -- BUT I'VE SEEN EVIDENCE THAT ALSO THE DEFENDANTS  
3127=WERE ABLE TO BUY THE -- TO EXTEND NOT ONLY THE TIME OF THE STOCK  
3128=OFFERS, BUT TO TAKE MORE -- PLACE MORE ORDERS THAN WERE ALLOWED  
3129=UNDER THE STOCK OFFER.  
3130= MR. PETROCELLI: YOUR HONOR, I MOVE TO STRIKE.  
3131= THE COURT: MOTION TO STRIKE IS GRANTED.  
3132= NOW, GET BACK TO WHAT I SUGGESTED SHE DO, MR. SPIVA.  
3133= MR. SPIVA: YES, YOUR HONOR.  
3134=Q. MISS SEE, IN YOUR EXPERIENCE, ARE INDIVIDUAL BOOKSTORES  
3135=PERMITTED TO NEGOTIATE THE TERMS OF STOCK OFFERS INDIVIDUALLY  
3136=WITH PUBLISHERS?  
3137=A. NO.  
3138= THE COURT: WHY NOT?  
3139= THE WITNESS: WHY AREN'T THEY? YOU MEAN, WHY --  
3140=BECAUSE THE STOCK OFFER HAS -- IS A PUBLISHED DOCUMENT, AND IT  
3141=HAS A TIME FRAME, AND IT HAS THE CONDITIONS. AND IN OUR  
3142=INDUSTRY, WE HAVE STANDARDS THAT THE INDUSTRY GOES BY. AS YOU  
3143=SAW IN MY --  
3144= THE COURT: THIS SOUNDS LIKE THE OLD NRA.  
3145= THE WITNESS: WELL, I DON'T KNOW ABOUT THAT. BUT AS  
3146=YOU NOTED IN MY -- IN MY REPORT, I TALKED ABOUT THE FACT THAT  
3147=ONE OF THE THINGS THAT'S DIFFERENT ABOUT THE BOOK -- TO ME ABOUT  
3148=THE BOOKSELLING INDUSTRY IS THAT WE DO HAVE THESE -- THE RED  
3149=BOOK TERMS, WHICH EVERYBODY LIVES BY. AND NEGOTIATING FOR TERMS  
  
3150=IS JUST NOT PART OF WHAT IS DONE, ALTHOUGH I'VE HEARD THIS  
3151=MORNING THAT IT IS DONE.  
3152=BY MR. SPIVA:  
3153=Q. MISS SEE --  
3154= MAYBE I SHOULD FOLLOW UP ON YOUR HONOR'S QUESTION.  
3155= ARE YOU SAYING THAT IT'S WRONG TO NEGOTIATE IN ALL  
3156=CIRCUMSTANCES?  
3157=A. WELL, AS YOU -- AS WAS READ OUT FROM MY REPORT THIS MORNING,

3158=I -- WHAT I'M SAYING IS I THINK THAT EVERYBODY SHOULD HAVE THE  
3159=SAME TERMS, EVERYBODY SHOULD PLAY BY THE SAME RULES.  
3160= THE COURT: WHY SHOULDN'T THEY --  
3161= THE WITNESS: NEGOTIATE --  
3162= THE COURT: WHY ISN'T PART OF IT THE AMERICAN  
3163=ENTREPRENEURIAL SYSTEM?  
3164= THE WITNESS: BUT THEN --  
3165= THE COURT: THEY GET IN AND GET A BETTER PRICE?  
3166= THE WITNESS: THE BOOK BUSINESS HAS BEEN DIFFERENT ON  
3167=THAT, YOUR HONOR. AND WE HAVE REALLY HAD A TRADITION WHERE  
3168=EVERYBODY WAS -- THE DISCOUNTS DID ALLOW YOU TO GET GREATER --  
3169=BETTER TERMS FOR HIGHER VOLUME, BUT IT WAS ALSO THE TRADITION  
3170=THAT EVERYBODY HAD THE SAME TERMS OF SALE. NOW, YOU SAY --  
3171= THE COURT: TRADITION DOESN'T HAVE MUCH LEGAL  
3172=UNDERPINNING WHEN WE'RE TALKING ABOUT THE AMERICAN CAPITALISTIC  
3173=SYSTEM OF MAKING A -- GETTING THE BEST PRICE YOU COULD POSSIBLY  
3174=GET WITHIN THE PARAMETERS OF THE LAW. IT'S THE LAW THAT  
  
3175=GOVERNS, IT'S NOT TRADITION.  
3176= THE WITNESS: IT'S NOT TRADITION? WELL, I'M NOT A  
3177=LAWYER; HOWEVER MY POINT ABOUT THIS IS THAT IF EVERYBODY IS  
3178=PAYING BY THE SAME RULES, THAT'S ALSO PART OF THE AMERICAN  
3179=TRADITION.  
3180=BY MR. SPIVA:  
3181=Q. OKAY.  
3182=A. NO?  
3183=Q. MISS SEE, YOU CAN'T ASK THE JUDGE QUESTIONS.  
3184=A. SORRY. SORRY.  
3185=Q. LET ME CONTINUE ALONG THIS LINE. YOU -- WHAT TYPE OF  
3186=ADVANTAGE WOULD IT GIVE A -- A BOOKSTORE, FOR INSTANCE, TO PLACE  
3187=MORE ORDERS THAN ARE PERMITTED UNDER A STOCK OFFER, TO PLACE  
3188=THEM OVER A LONGER PERIOD OF TIME?  
3189=A. BECAUSE THEN WE GET BACK TO YOUR INVENTORY MANAGEMENT. THEN  
3190=YOU'D BE ABLE TO BRING YOUR BOOKS IN ON A -- ON A TIMELY BASIS  
3191=AND NOT HAVE TO BRING THEM ALL IN AT ONCE AND PAY FOR THEM ALL  
3192=AT ONCE.  
3193=Q. WHAT'S -- WHAT TYPE OF EFFECT DOES THAT HAVE ON A  
3194=BOOKSTORE'S PROFITABILITY?  
3195=A. IT HAS A -- IT HAS AN ENORMOUS EFFECT UNDER PROFITABILITY.  
3196=IT GOES BACK TO WHAT I WAS TALKING ABOUT WITH TURN. THE GREATER  
3197=TURN YOU HAVE, THE GREATER PROFITABILITY.  
3198=Q. SO IF I UNDERSTAND YOU CORRECTLY, THEN, IF YOU HAD A  
3199=SITUATION WHERE YOU HAD A PUBLISHED STOCK OFFER WHICH REQUIRED  
  
3200=THAT PURCHASES BE MADE AT ONE POINT IN TIME OR WITHIN A  
3201=SPECIFIED POINT IN TIME BUT THE BOOKSTORE WERE PERMITTED TO MAKE  
3202=PURCHASES OVER A MUCH -- OVER A LONGER PERIOD OF TIME THAN  
3203=PERMITTED, THAT WOULD GIVE THE BOOKSTORE AN ADVANTAGE IN TERMS  
3204=OF INVENTORY MANAGEMENT?  
3205=A. CORRECT.  
3206=Q. MS. SEE, IN YOUR EXPERIENCE, ARE STOCK OFFERS, ARE THERE ANY  
3207=PERMANENT STOCK OFFERS?  
3208=A. NO. AS I SAID, THAT'S ALMOST A CONTRADICTION IN TERMS,  
3209=BECAUSE THEY ARE TIME -- MOST GENERALLY WITHIN A CERTAIN TIME  
3210=FRAME.  
3211=Q. ARE STOCK OFFERS INTENDED TO INCREASE A BOOKSELLER'S  
3212=DISCOUNT ON ALL PURCHASES THAT THE BOOKSTORE MAKES FROM A GIVEN  
3213=PUBLISHER?  
3214=A. NO, IT'S ONLY ON -- DISCOUNT IS ONLY INCREASED ON PURCHASES  
3215=UNDER THE STOCK OFFER.  
3216=Q. NOW -- I WANT TO FOCUS ON THAT FOR A MINUTE. ISN'T IT THE  
3217=CASE THAT IN RECENT YEARS SOME PUBLISHERS HAVE OFFERED STOCK  
3218=OFFERS OVER A LONGER PERIODS OF TIME THAN TRADITIONALLY THEY HAD  
3219=IN PRIOR YEARS?  
3220=A. YES, I BELIEVE IT WAS BANTAM DOUBLEDAY DELL HAD SOMETHING  
3221=CALLED A FLEX OFFER --  
3222=Q. OKAY.  
3223=A. -- WHICH --  
3224=Q. HOW THE --  
  
3225=A. -- BASICALLY RAN FOR A YEAR.  
3226=Q. CAN YOU DESCRIBE GENERALLY HOW BANTAM DOUBLEDAY DELL'S  
3227=FLEXIBLE STOCK OFFER OPERATED?

3228=A. WELL, IT WAS -- I BELIEVE IT WAS TWO DIFFERENT TIME PERIODS,  
3229=AND YOU COULD ORDERS YOUR BOOKS EITHER IN ONE SIX-MONTH PERIOD  
3230=OR ANOTHER SIX-MONTH PERIOD, SO IT BASICALLY BECAME A STOCK  
3231=OFFER THAT WAS EXTENDED OVER THE YEAR.  
3232= BUT, AGAIN, THEY HAD CONDITIONS, BECAUSE I BELIEVE  
3233=YOU COULD PLACE FOUR ORDERS.  
3234=Q. NOW, YOU MEAN -- WHEN YOU SAY THEY COULD -- ONE COULD PLACE  
3235=FOUR ORDERS, A BOOKSTORE COULD PLACE FOUR ORDERS UNDER THE STOCK  
3236=OFFER, DO YOU MEAN THAT WOULD BE FOUR DISCREET POINTS IN TIME?  
3237=A. YES, I BELIEVE THAT'S WHAT IT WAS OR WAS IT -- YES.  
3238=Q. NOW --  
3239= THE COURT: I DON'T UNDERSTAND. I DON'T UNDERSTAND  
3240=THAT AT ALL.  
3241= THE WITNESS: WELL, THIS IS WHY --  
3242= THE COURT: WILL YOU TAKE IT FROM THE BEGINNING?  
3243= THE WITNESS: IT'S VERY COMPLICATED.  
3244=BY MR. SPIVA:  
3245=Q. WAIT, MISS SEE. ACTUALLY LET ME DIRECT YOU A LITTLE BIT  
3246=HERE IN TERMS OF -- WE DON'T WANT TO START A COLLOQUY.  
3247= THE COURT: I ASKED A QUESTION.  
3248= MR. SPIVA: OH, I'M SORRY, YOUR HONOR.  
3249= THE COURT: AND I WANT AN ANSWER FROM THE WITNESS.  
  
3250= THE WITNESS: WELL, THAT'S WHY IF I COULD SHOW YOU  
3251=THE DOCUMENTS -- IT'S VERY COMPLICATED WITH THESE STOCK OFFERS  
3252=BECAUSE SOME OF THEM ARE GIVEN WITH -- ONE OF THE CONDITIONS OF  
3253=THE STOCK OFFERS IS YOU CAN PLACE A CERTAIN NUMBER OF ORDERS IN  
3254=A CERTAIN TIME PERIOD. THE STOCK OFFER WE WERE JUST TALKING  
3255=ABOUT WAS A LITTLE DIFFERENT IN THAT YOU COULD -- IT WAS CALLED  
3256=A FLEX STOCK OFFER, AND IT EXTENDED FOR A YEAR, AND THAT'S VERY  
3257=UNUSUAL FOR A STOCK OFFER. AND SO THEREFORE -- BUT THERE WERE  
3258=CONDITIONS WITHIN THAT STOCK OFFER. YOU COULD PLACE, I THINK,  
3259=FOUR ORDERS.  
3260= DOES THAT HELP? EXCUSE ME. NOT SUPPOSED TO ASK YOU  
3261=QUESTIONS. IT'S VERY COMPLICATED.  
3262= THE COURT: YES.  
3263=BY MR. SPIVA:  
3264=Q. WELL, NOW, MISS SEE, WHEN YOU SAY YOU COULD PLACE ONLY FOUR  
3265=ORDERS, WHAT DO YOU MEAN BY THAT?  
3266=A. WELL, YOU COULD PLACE FOUR PURCHASE ORDERS, AND THAT WOULD  
3267=MEAN THAT YOU WOULD PLACE THOSE ORDERS OVER A PERIOD OF TIME.  
3268=Q. NOW, WHEN YOU SAY OVER A PERIOD OF TIME, DO YOU MEAN YOU  
3269=COULD PLACE THEM WHENEVER YOU WANTED?  
3270=A. YOU KNOW, I'M TRYING TO REMEMBER THE EXACT TERMS OF THAT --  
3271=OF THE DOCUMENT. AND I THINK PROBABLY -- I'M NOT CERTAIN.  
3272=Q. WELL, LET ME MAKE THIS A LITTLE EASIER. LET ME GIVE YOU A  
3273=HYPOTHETICAL --  
3274=A. OKAY.  
  
3275=Q. -- SINCE YOU ARE AN EXPERT HERE.  
3276= IF YOU HAD A STOCK OFFER THAT SAID YOU COULD PLACE  
3277=FOUR OFFERS PER --  
3278=A. ORDERS.  
3279=Q. -- FOUR ORDERS PER -- I'M SORRY -- PER YEAR, WOULD YOUR --  
3280=WHAT WOULD YOUR UNDERSTANDING OF THAT BE AS AN INDUSTRY EXPERT?  
3281=A. WELL, YOU COULD PLACE FOUR ORDERS. THAT WOULD BE ALL YOU  
3282=COULD PLACE.  
3283=Q. AND WHEN YOU SAY FOUR ORDERS, DO YOU MEAN AT FOUR DISCREET  
3284=POINTS IN TIME?  
3285=A. YES, FOUR DISCREET POINTS IN TIME.  
3286=Q. SO WOULD IT BE CONSISTENT WITH SUCH A STOCK OFFER --  
3287=A. YES.  
3288=Q. -- FOR A BOOKSELLER TO BE PERMITTED TO PLACE ORDERS, SAY,  
3289=OVER FOUR MONTHS OF TIME DURING THE YEAR?  
3290=A. FOUR MONTHS?  
3291=Q. YES.  
3292=A. ONE ORDER OVER EACH OF FOUR MONTHS.  
3293=Q. MORE THAN ONE ORDER?  
3294=A. NO.  
3295=Q. LET ME JUST GET A CLEAN QUESTION HERE.  
3296=A. RIGHT.  
3297=Q. WOULD IT BE CONSISTENT WITH THAT STOCK OFFER FOR A  
3298=BOOKSELLER, FIRST OF ALL, TO BE ABLE PLACE MORE THAN FOUR

3299=ORDERS?

3300=A. NO.

3301=Q. AND WHAT IF THE BOOKSELLER WERE TO PLACE A NUMBER OF ORDERS  
3302=OVER FOUR ONE-MONTH PERIODS; IN EACH MONTHLY PERIOD, THEY PLACED  
3303=MANY ORDERS. WOULD THAT BE CONSISTENT?

3304=A. NO.

3305=Q. LET ME GIVE YOU ANOTHER HYPOTHETICAL ON STOCK OFFERS.

3306=A. UH-HUH.

3307=Q. IF THERE WERE A PROGRAM WHICH SAID -- WHERE THE PUBLISHER  
3308=OFFERED A STOCK OFFER FROM MARCH 15TH TO APRIL 15TH, SAID YOU  
3309=CAN PLACE --

3310=A. UM-HMM.

3311=Q. -- A NUMBER -- SET NUMBER OF ORDERS IN THAT TIME PERIOD.

3312=A. UM-HMM.

3313=Q. AND A -- AN INDIVIDUAL BOOKSTORE NEGOTIATED TO PLACE ORDERS

3314=IN A DIFFERENT MONTH, SAY IT WAS JUST THE MONTH BEFORE,  
3315=FEBRUARY 15TH TO MARCH 15TH. WOULD IT GIVE THE BOOKSTORE THAT  
3316=NEGOTIATED THAT DIFFERENT MONTH TIME PERIOD AN ADVANTAGE OVER  
3317=BOOKSTORES THAT HAD TO PLACE THEIR ORDERS DURING THE PERIOD  
3318=OFFERED BY THE PUBLISHER?

3319=A. IT WOULD GIVE THEM A GREAT ADVANTAGE.

3320=Q. WHAT'S THE BIG DEAL ABOUT THAT? I MEAN, IF THEY'RE

3321=PLACING -- UNDER -- BASICALLY UNDER THE TERMS OF THE OFFER,

3322=EXCEPT JUST ONE MONTH EARLIER, WHY DOES THAT MATTER?

3323=A. BECAUSE THE TERMS OF OFFER -- OFFER WOULD READ SPECIFICALLY,

3324=MARCH 15TH TO APRIL 15TH, AND THAT WAS THE TIME FRAME WITHIN

3325=WHICH -- WITHIN WHICH THE PUBLISHED STOCK OFFER ALLOWED YOU TO

3326=PLACE YOUR ORDERS.

3327=Q. OKAY.

3328=A. AND --

3329=Q. OH, GO AHEAD. I'M SORRY.

3330=A. I WAS GOING TO SAY, AND IF YOU COULD EITHER PREDATE WHEN YOU

3331=PLACED YOUR ORDERS OR EXTEND IT, YOU'RE GOING TO BE ABLE TO

3332=CONTINUE TO GET THOSE BENEFICIAL DISCOUNTS BEYOND THE TIME THE

3333=STOCK OFFER DICTATED.

3334=Q. OKAY. BUT BEYOND THE TECHNICAL POINT THAT THEY WOULDN'T BE

3335=TECHNICALLY COMPLYING WITH THE OFFER, JUST DOING IT IN A

3336=DIFFERENT TIME PERIOD, DOES IT MAKE ANY DIFFERENCE, SAY, FOR

3337=INVENTORY MANAGEMENT?

3338=A. OH, IT WOULD DEPEND ON HOW THEIR INVENTORY MANAGEMENT WAS

3339=SET UP. IT COULD.

3340=Q. AND IN WHAT CIRCUMSTANCE COULD IT?

3341=A. WELL, IF THEY -- IF THEY -- THE POINT OF THE STOCK OFFER IS

3342=YOU BUY YOUR BOOKS IN THE SPRINGTIME. IF THEY ARE ABLE TO TAKE

3343=THE STOCK OFFER AND EITHER PREDATE IT, USE IT AHEAD OF TIME,

3344=THEN THEY CAN ORDER BOOKS THEN -- AND THEN IN THE STOCK OFFER

3345=TIME, AND THEN IF THEY'RE ABLE TO EXTEND IT, IT ENDS UP BEING A

3346=PERENNIAL DEAL, AND THAT'S NOT WHAT THE STOCK OFFER IS.

3347=Q. MISS SEE, IN YOUR EXPERIENCE, HAVE YOU HAD EXPERIENCE

3348=UNDERSTANDING PUBLISHERS' RETURNS POLICY, THE RETURNABILITY AND

3349=NON-RETURNABILITY OF BOOKS?

3350=A. YES, I HAVE.

3351=Q. AND WHAT IS YOUR UNDERSTANDING OF MOST PUBLISHERS

3352=NON-RETURNABLE TERMS?

3353=A. THERE ARE TWO TERMS IN THE BOOK BUSINESS, RETURNABLE AND

3354=NON-RETURNABLE. AND MOST PUBLISHERS REQUIRE YOU TO ESTABLISH AT

3355=THE BEGINNING OF THE YEAR WHETHER YOU'RE GOING TO BUY YOUR BOOKS

3356=RETURNABLE OR NON-RETURNABLE. AND NON-RETURNABLE BOOKS, YOU

3357=USUALLY GET A MUCH HIGHER DISCOUNT BECAUSE YOU'RE TAKING THE

3358=RISK OF NOT BEING ABLE TO SELL THOSE BOOKS.

3359=Q. AND WHAT IS THE SIGNIFICANCE OF HAVING TO CHOOSE AT THE

3360=BEGINNING OF THE YEAR -- AT THE BEGINNING OF THE PUBLISHER'S

3361=FISCAL YEAR OR THE CALENDAR YEAR WHETHER YOU'RE GOING TO

3362=PURCHASE ALL OF YOUR BOOKS RETURNABLE OR NON-RETURNABLE FOR THE

3363=WHOLE YEAR?

3364=A. WELL, THAT JUST MEANS -- THE SIGNIFICANCE IS THAT YOU CAN'T

3365=IN THE MIDDLE OF THE YEAR DECIDE THAT YOU WANTED TO CHOOSE SOME

3366=BOOKS THAT YOU KNOW YOU'RE GOING TO SELL AND BUY THEM

3367=NON-RETURNABLE.

3368= EVERY BOOKSTORE -- EVERY BOOKSELLER KNOWS WHAT BOOKS



3369=THEY'RE GOING TO SELL ON A CONTINUING BASIS. IT'D BE A  
3370=TREMENDOUS ADVANTAGE TO BE ABLE TO SAY, "WELL, I'D LIKE TO BUY  
3371=THESE BOOKS NON-RETURNABLE." THERE'D BE NO RISK. YOU KNOW  
3372=YOU'RE GOING TO SELL THEM. AND THEN "I'LL BUY THESE BOOKS" --  
3373=USUALLY THE FRONT LIST, WHICH ARE THE NEW TITLES, AND YOU DON'T  
3374=KNOW WHETHER THEY'RE GOING TO SELL OR NOT, BUY THOSE RETURNABLE.

3375=AND IF YOU COULD DO THAT, IT WOULD BE A TREMENDOUS ADVANTAGE.  
3376=Q. MISS SEE, IS THERE ANY WAY FOR A PUBLISHER -- STRIKE THAT.  
3377= IS THERE AN OPERATIONAL REASON WHY A PUBLISHER WOULD  
3378=REQUIRE A BOOKSTORE TO CHOOSE TO PURCHASE ALL OF THEIR BOOKS ONE  
3379=WAY OR THE OTHER, RETURNABLE OR NON-RETURNABLE IN A GIVEN YEAR?  
3380=A. AN OPERATIONAL -- FROM AN OPERATIONAL FROM THE PUBLISHER'S  
3381=POINT OF VIEW, YOU MEAN?  
3382=Q. YES.  
3383=A. WELL, THE PUBLISHER WOULD THEN KNOW IN TERMS OF PRINTING  
3384=THEIR BOOKS WHAT BOOKS ARE GOING TO BE ORDERED AND SOLD AND NOT  
3385=RETURNED.

3386= ONE OF THE DILEMMA'S IN THE BOOKSELLING BUSINESS IS  
3387=YOU -- IT'S A HIGH-RISK BUSINESS IN TERMS OF EACH ITEM. BOOK IS  
3388=PUBLISHED AND YOU DON'T KNOW -- IF YOU'RE A PUBLISHER, YOU PRINT  
3389=25,000 COPIES. YOU DON'T KNOW WHETHER YOU'RE GOING TO GET 20 OF  
3390=THOSE COPIES BACK. IF YOU HAVE THOSE BOOKS SOLD ON A  
3391=NON-RETURNABLE BASIS, THAT WOULD BE A GREAT ADVANTAGE TO THE  
3392=PUBLISHER.

3393=Q. NOW, YOU SAID THAT THE -- THE -- ONE OF THE TYPICAL  
3394=REQUIREMENTS IS THAT ALL PURCHASES BE MADE EITHER RETURNABLE OR  
3395=NON-RETURNABLE. WHEN YOU SAID THAT, DO YOU MEAN BY -- ON A  
3396=TITLE BASIS OR ACROSS A PUBLISHER'S ENTIRE LINES?  
3397=A. WHAT I MEANT WAS THAT THE BOOKSELLER HAS TO DETERMINE AT THE  
3398=BEGINNING OF THE YEAR WHETHER THAT STORE WILL BUY ALL OF THEIR  
3399=PURCHASES FROM SIMON & SCHUSTER OR -- I'M NOT SURE THEY EVEN

3400=ALLOW THIS -- BUT FROM A PUBLISHER RETURNABLE OR NON-RETURNABLE.  
3401=Q. OKAY. LET ME GIVE YOU ANOTHER HYPOTHETICAL. IF A PUBLISHER  
3402=HAD A NON-RETURNABLE POLICY WHICH WAS CONSISTENT WITH THE TYPES  
3403=OF POLICIES THAT YOU HAVE DESCRIBED, YOU HAD TO CHOOSE EITHER  
3404=RETURNABLE OR ALL NON-RETURNABLE AT THE BEGINNING OF THE YEAR,  
3405=BUT IT PERMITTED BOOKSTORES -- A BOOKSTORE TO PURCHASE  
3406=PARTICULAR TITLES DURING THE CHRISTMAS SEASON FOR A HIGHER  
3407=DISCOUNT ON A NON-RETURNABLE BASIS, WOULD THAT PROVIDE THE  
3408=BOOKSTORE WITH SOME TYPE OF AN ADVANTAGE?

3409= WHAT TYPE OF ADVANTAGE WOULD IT PROVIDE?  
3410=A. IT WOULD PROVIDE THE BOOKSTORE WITH A TREMENDOUS ADVANTAGE  
3411=BECAUSE THERE ARE MANY TITLES THAT YOU CAN COUNT ON SELLING AT  
3412=THE HOLIDAY SEASON, AND SO, THEREFORE, THAT WOULD BE A GREAT  
3413=ADVANTAGE. BUT AGAIN, YOU CAN'T CHERRY-PICK THIS -- IN THIS  
3414=SITUATION.

3415= I REMEMBER HARCOURT BRACE IN THE '80S CHANGED THEIR  
3416=POLICIES, AND THEY DECIDED THEY WOULD TRY SELLING ALL THEIR  
3417=BOOKS NON-RETURNABLE, AND IT JUST DIDN'T WORK. THEY COULD NOT  
3418=GET THEIR BOOKS OUT INTO THE MARKETPLACE.

3419=Q. NOW, WHEN YOU SAY YOU CAN'T JUST CHERRY-PICK, WHY -- WHY  
3420=CAN'T YOU? WHAT IS -- WHAT -- STRIKE THAT.  
3421= WHAT ADVANTAGE WOULD IT GIVE YOU AS A BOOKSELLER TO  
3422=BE ABLE TO CHERRY-PICK THE BEST SELLING TITLES AND CHOOSE TO  
3423=PURCHASE THEM NON-RETURNABLE?

3424=A. OH, I'VE BEEN TRYING TO EXPLAIN THAT IT WOULD BE A

3425=TREMENDOUS ADVANTAGE BECAUSE YOU WOULD KNOW -- THOSE ARE CERTAIN  
3426=SALES. THEY'RE SALES THAT ARE ONGOING AND CONTINUAL, AND SO  
3427=THEREFORE THAT -- YOU WOULD GET THE ADDED DISCOUNT FOR THOSE  
3428=SAFE SALES. THERE'D BE VERY LITTLE RISK, AND YOU'RE GETTING AN  
3429=ADVANTAGE IN A DISCOUNT.

3430=Q. NOW, IN YOUR EXPERIENCE, MISS SEE, DO MOST GENERAL INTEREST  
3431=BOOKSTORES CHOOSE TO PURCHASE ALL OF THEIR TITLES FROM -- FROM  
3432=GIVEN MAJOR PUBLISHERS ON A NON-RETURNABLE BASIS?

3433=A. BOOKSTORES -- MOST BOOKSTORES PURCHASE THEIR BOOKS ON A  
3434=RETURNABLE BASIS.

3435=Q. OKAY. WHY IS THAT? WHY DON'T BOOKSTORES -- GIVEN THAT -- I  
3436=TAKE IT THAT IT'S YOUR TESTIMONY THAT THE NON-RETURNABLE  
3437=SCHEDULES GENERALLY PROVIDE A HIGHER DISCOUNT?

3438=A. CORRECT.

3439=Q. WHY DON'T BOOKSTORES CHOOSE TO PURCHASE ALL OF THEIR TITLES  
3440=NON-RETURNABLE?  
3441=A. BECAUSE I DON'T KNOW WHAT THEY DO WITH ALL THE BOOKS THEY  
3442=DIDN'T SELL. THAT WOULD BE ONE OF THE THINGS, BECAUSE YOU CAN'T  
3443=JUST -- IN MANY RETAIL SITUATIONS, YOU JUST KEEP MARKING THINGS  
3444=DOWN, MARKING THE MERCHANDISE DOWN, BUT IT DOESN'T SEEM TO WORK  
3445=THAT WAY IN THE BOOK BUSINESS.  
3446= IF YOU BUY ALL YOUR BOOKS ON A NON-RETURNABLE BASIS,  
3447=YOU'D END UP WITH A TREMENDOUS STOCK THAT WASN'T MOVING.  
3448= (PAUSE IN THE PROCEEDINGS.)  
3449=  
  
3450=BY MR. SPIVA:  
3451=Q. NOW, MS. SEE, YOU'RE FAMILIAR WITH INGRAM BOOK COMPANY?  
3452=A. YES.  
3453=Q. WHAT IS THE SIGNIFICANCE OF INGRAM BOOK COMPANY WITHIN THE  
3454=BOOK INDUSTRY?  
3455=A. WELL, INGRAM IS THE LARGEST WHOLESALER AND IS VERY  
3456=SIGNIFICANT PLAYER IN THE BOOK INDUSTRY TODAY.  
3457= BOOKSELLERS, AS I SAID AT THE BEGINNING, MAKE THEIR  
3458=DECISIONS ON A -- HAVE TRADE-OFFS WHEN THEY MAKE THEIR  
3459=DECISIONS. AND WITH INGRAM, WHEN YOU BUY FROM INGRAM, YOU BUY  
3460=AT A LOWER DISCOUNT, BUT YOU HAVE A MUCH FASTER REPLENISHMENT  
3461=TIME, AND SO THEY'RE VERY -- THEY'RE VERY IMPORTANT FOR THAT  
3462=REASON. THEY HAVE A WIDE BREADTH OF STOCK AND SO YOU CAN  
3463=SOMETIMES GET YOUR SPECIAL ORDERS VERY QUICKLY FROM INGRAM,  
3464=WHICH IS ALSO IMPORTANT.  
3465= MR. SPIVA: YOUR HONOR, I'D LIKE TO SHOW THE WITNESS  
3466=AN EXHIBIT, BUT I DON'T WANT TO RUN AFOUL OF YOUR ORDER. IT HAS  
3467=A -- IT'S A TERMS COMPARISON OF INGRAM'S RED BOOK TERMS TO THE  
3468=TERMS THE DEFENDANTS WERE RECEIVING. BUT IN KEEPING WITH YOUR  
3469=ORDER, I WILL NOT HAVE THE WITNESS DISCUSS SPECIFICALLY THE  
3470=DEFENDANTS' TERMS. I WOULD JUST HAVE HER DISCUSS THE PUBLISHED  
3471=TERMS, IF THAT -- AND -- IF THAT WOULD BE SUITABLE TO, YOUR  
3472=HONOR.  
3473= THE COURT: IT'S YOUR CASE. YOU PUT ON THE BEST CASE  
3474=YOU CAN, BUT UNDER THE PARAMETERS OF THE STRUCTURE UNDER THE  
  
3475=COURT AND THE LAW.  
3476= MR. SPIVA: THANK YOU, YOUR HONOR.  
3477=Q. MISS SEE, I'M GOING TO HAND YOU THE TRIAL -- THE FULL TRIAL  
3478=EXHIBIT NOTEBOOK FOR TODAY, WHICH EVERYBODY ELSE ALREADY HAS,  
3479=AND I'M GOING TO ASK YOU TO TURN TO DEMONSTRATIVE EXHIBIT 2547.  
3480= (PAUSE IN THE PROCEEDINGS.)  
3481=BY MR. SPIVA:  
3482=Q. TELL ME WHEN YOU'VE HAD A CHANCE TO REVIEW IT, MISS SEE.  
3483=A. YES, I HAVE.  
3484=Q. OKAY. NOW, I WANT TO FOCUS JUST ON THE LEFT-HAND SIDE OF  
3485=THIS CHART THAT SAYS, "PUBLISHED TERMS."  
3486= FIRST OF ALL, HAVE YOU REVIEWED THIS CHART BEFORE?  
3487=A. YES, I HAVE.  
3488=Q. WHERE DID THE TERMS THAT ARE PRINTED IN THE PUBLISHED TERMS  
3489=SECTION OF THIS CHART COME FROM?  
3490=A. THEY CAME FROM THE RED BOOK.  
3491=Q. AND I WANT TO ASK YOU WHAT YEAR OF THE RED BOOK?  
3492=A. 1998.  
3493=Q. WHAT IS YOUR UNDERSTANDING OF THE -- CAN YOU EXPLAIN FOR US  
3494=THE COLUMN AND THE SECTION -- FIRST SECTION THERE THAT SAYS  
3495="TRADE AND MASS MARKET DISCOUNTS"?  
3496=A. THAT IS THE INGRAM PUBLISHED DISCOUNT SCHEDULE. HOWEVER,  
3497=THERE'S ONE OTHER ITEM IN THERE -- IN THE INGRAM DISCOUNT  
3498=SCHEDULES. IN ORDER TO -- TO QUALIFY FOR THE ONE COPY  
3499=40 PERCENT; FIVE COPIES, 41; AND TEN COPIES, 42; YOU HAVE TO  
  
3500=ORDER A MINIMUM NUMBER OF BOOKS -- OF UNITS. THESE REFER TO  
3501=TITLES. SO THERE ARE TWO -- REALLY TWO CRITERIA IN ORDER TO  
3502=MEET THEIR DISCOUNT TERMS.  
3503=Q. NOW, I TAKE IT THAT THE -- FOR INSTANCE, FIVE COPIES OF THE  
3504=SAME TITLE -- STRIKE THAT.  
3505= MS. SEE, WHAT -- WHAT ADVANTAGE WOULD IT PROVIDE TO A  
3506=BOOKSTORE TO BE ABLE TO RECEIVE THE 42 PERCENT DISCOUNT LISTED  
3507=HERE FOR PURCHASING TEN COPIES OF THE SAME TITLE WITHOUT NEEDING  
3508=TO MEET THE MINIMUM QUANTITY REQUIREMENT OF INGRAM?

3509=A. WELL, THAT WOULD MEAN YOU COULD BUY THE TEN COPIES OF THE  
3510=SAME TITLE AND GET YOUR DISCOUNT WITHOUT MEETING THE UNIT. SO  
3511=THAT WOULD BE AN ADVANTAGE IF IT'S 25-UNIT MINIMUM.  
3512=Q. OKAY. STEPPING BACK, HOW DO BOOKSTORES TYPICALLY PURCHASE  
3513=FROM INGRAM?  
3514=A. WELL, DEPENDS ON YOUR SIZE, BUT MOST BOOKSTORES DON'T  
3515=PURCHASE -- THEY DON'T PURCHASE IN TEN QUANTITY -- TEN-COPY  
3516=QUANTITIES OF THE SAME TITLE 'CAUSE THAT WOULD PROBABLY BE THEIR  
3517=INVENTORY FOR A EXTENDED PERIOD OF TIME.  
3518=Q. NOW, I NOTE HERE THAT UNDER "INCENTIVES AND REBATES," IT  
3519=SAYS "NONE." WOULD THERE BE AN ADVANTAGE TO A BOOKSELLER IN  
3520=BEING ABLE TO RECEIVE AN INCENTIVE ON PURCHASES OF BOOKS FROM  
3521=INGRAM?  
3522=A. OF COURSE.  
3523=Q. AND CAN YOU EXPLAIN THE COLUMN THAT READS "CASH DISCOUNT"?  
3524=A. WELL, THIS IS A COLUMN THAT INDICATES IF YOU PAY YOUR INGRAM  
3525=BILL IN 10 DAYS AFTER THE END OF THE MONTH, YOU CAN RECEIVE A  
3526=2 PERCENT DISCOUNT -- 2 PERCENT DISCOUNT.  
3527=Q. AND WHEN YOU SAY "BILL," DO YOU MEAN?  
3528=A. STATEMENT. AND -- AND --  
3529=Q. DIDN'T MEAN --  
3530=A. I MEAN THE STATEMENT. AND ONE OF THE REASONS IT'S DIFFICULT  
3531=FOR MOST BOOKSTORES TO BE ABLE TO TAKE ADVANTAGE OF THIS IS THAT  
3532=MOST BOOKSTORES WORK ON A VERY TIGHT CASH FLOW SCHEDULE, AND IF  
3533=YOU'RE BUYING FROM INGRAM, AS YOU -- MOST BOOKSTORES DO BUY  
3534=QUITE A BIT FROM INGRAM, IT'S DIFFICULT FOR THEM TO PAY THEIR  
3535=BILLS IN TEN DAYS.  
3536=Q. OKAY.  
3537=A. TO TAKE THE CASH COUNT.  
3538= (CONTINUED NEXT PAGE; NOTHING OMITTED)  
3539=  
3540=  
3541=  
3542=  
3543=  
3544=  
3545=  
3546=  
3547=  
3548=  
3549=  
3550=BY MR. SPIVA:  
3551=Q. MS. SEE, WHAT ARE INGRAM'S NORMAL PAYMENT TERMS, WITHOUT  
3552=CASH DISCOUNT?  
3553=A. THIRTY DAYS.  
3554=Q. AND IN YOUR EXPERIENCE, IS INGRAM... STRIKE THAT. HOW  
3555=STRICT OR LENIENT IS INGRAM REGARDING PAYMENT TERMS?  
3556=A. INGRAM HAS A REPUTATION FOR BEING VERY STRICT IN PAYMENT  
3557=TERMS.  
3558=Q. YOU MENTIONED A MINUTE AGO THAT THE CASH DISCOUNT ROW,  
3559=WHICH SAYS, "10 DAYS E.O.M.," REFERS TO 10 DAYS AFTER YOU GET  
3560=YOUR STATEMENT. WHAT IS A STATEMENT?  
3561=A. A STATEMENT IS A COMPILATION OF THE PURCHASES YOU HAVE MADE  
3562=FOR THE PREVIOUS MONTH. IT INCLUDES THE LISTING OF ALL THE  
3563=INVOICES FOR THE SHIPMENTS THAT HAVE BEEN SENT TO YOU, AND YOU  
3564=PAY YOUR STATEMENT BY CHECKING OFF THE INVOICES, MATCHING THE  
3565=INVOICES IF YOU HAVE THEM, AND THAT'S HOW YOU PAY.  
3566=Q. CAN YOU EXPLAIN THE -- WHAT INGRAM'S PUBLISHED RETURNS  
3567=POLICY IS?  
3568=A. YES. THAT'S THE RETURNS CREDIT?  
3569=Q. YES.  
3570=A. AS YOU CAN SEE THERE, THERE IS A PENALTY FOR RETURNS,  
3571=BECAUSE, AS MR. ROSS TESTIFIED, IF YOU BUY, AND YOU'RE GETTING  
3572=41 PERCENT DISCOUNT, YOU'RE RETURNING IT AT 50 PERCENT, SO  
3573=YOU'RE TAKING A -- IT'S A 9 PERCENT LOSS ON THAT BOOK. THE  
3574=OTHER THING IS, AS YOU CAN SEE HERE, THERE IS WHAT WE CALL A  
3575=CAP ON HOW MANY BOOKS YOU CAN RETURN. YOU CAN ONLY RETURN  
3576=10 PERCENT OF YOUR ANNUAL PURCHASES. AND --  
3577=Q. AND A TYPICAL --  
3578=A. EXCUSE ME. AND THEN I MIGHT ADD, ON THE CAP IDEA, RETURNS

3579=RATES TO PUBLISHERS ARE SORT OF ALL OVER THE MAP, BUT YOU  
3580=KNOW --  
3581=Q. LET US FOCUS IN ON INGRAM HERE, SINCE WE'RE THERE. WHAT  
3582=TYPE OF A DIFFERENCE WOULD IT MAKE TO A BOOKSTORE TO NOT BE  
3583=HELD TO THE -- FIRST LET'S FOCUS ON THE RETURNS CAP THAT INGRAM  
3584=HAS.  
3585=A. WELL, THAT WOULD BE A TREMENDOUS ADVANTAGE, BECAUSE THEN IF  
3586=YOU MISJUDGED AND BOUGHT TOO MANY BOOKS, YOU COULD RETURN AS  
3587=MANY AS YOU WANTED.  
3588=Q. NOW, MS. SEE, IN YOUR EXPERIENCE WITH INGRAM BOOK COMPANY,  
3589=IS IT TYPICAL FOR A BOOKSTORE TO BE ABLE TO NEGOTIATE  
3590=INDIVIDUAL TERMS WITH INGRAM?  
3591=A. NO.  
3592=Q. WELL, DOESN'T INGRAM HAVE A LOT OF SPECIAL PROGRAMS THAT  
3593=DON'T COMPORT WITH THESE RED BOOK PROGRAMS?  
3594=A. BUT THOSE ARE AVAILABLE TO EVERYBODY. THEY AREN'T  
3595=NEGOTIATED ON A STORE-BY-STORE BASIS.  
3596=Q. ARE YOU FAMILIAR WITH THE VENDOR OF RECORD PROGRAM?  
3597=A. YES, I AM.  
3598=Q. DOESN'T THAT PROGRAM ACTUALLY PERMIT BOOKSTORES TO RECEIVE  
3599=A HIGHER DISCOUNT THAN THE DISCOUNT STATED IN THE RED BOOK?  
  
3600=A. YES, VENDOR OF RECORD DOES, BUT THAT IS -- THE VENDOR OF  
3601=RECORD PROGRAM STARTED AS A WAY TO FACILITATE BOOKSTORES  
3602=GETTING SMALL PRESS BOOKS AT A HIGHER DISCOUNT, AND THE  
3603=DIFFICULTY -- NOT THE DIFFICULTY, BUT ONE OF THE CONDITIONS OF  
3604=THE VENDOR OF RECORD IS THAT YOU THEN HAVE TO BUY ALL YOUR  
3605=BOOKS FROM THOSE PARTICULAR PUBLISHERS THROUGH THE VENDOR OF  
3606=RECORD PROGRAM, AND SOMETIMES INGRAM MIGHT NOT HAVE THE BOOK  
3607=YOU WANT, BUT YOU ARE NOT ENTITLED TO GO AND BUY IT DIRECTLY  
3608=FROM THE PUBLISHER.  
3609=Q. WELL, IF THE VENDOR OF RECORD PROGRAM PERMITS A BOOKSTORE  
3610=TO GET A HIGHER DISCOUNT THAN THE DISCOUNT IN THE RED BOOK  
3611=TERMS, WHY CAN'T A BOOKSTORE SIMPLY PURCHASE ALL THEIR BOOKS  
3612=UNDER THAT PROGRAM?  
3613=A. WELL, IT WOULDN'T BE FEASIBLE FOR A NUMBER OF REASONS. AS  
3614=I SAID, YOU COULDN'T GET ALL YOUR BOOKS, YOU WOULD GET MANY  
3615=TIMES ONLY ABOUT HALF THE BOOKS, AND ALSO, 43 PERCENT DISCOUNT  
3616=IS NOT GOING TO KEEP YOU VERY FINANCIALLY VIABLE, IF THAT'S ALL  
3617=YOU WERE RECEIVING.  
3618=Q. TURNING TO THE SHORTAGE ALLOWANCE ROW, HAS -- WHAT DOES IT  
3619=INDICATE IN TERMS OF WHAT THE -- IS OFFERED IN -- BY INGRAM IN  
3620=THEIR PUBLISHED TERMS?  
3621=A. WELL, WE WERE DISCUSSING A LITTLE EARLIER IN THE COURTROOM  
3622=THE PROBLEMS WITH SHIPMENTS THAT COME IN AND NEED TO MATCH YOUR  
3623=SHIPMENTS WITH YOUR PURCHASE ORDER AND THE INVOICE AND MAKE  
3624=CERTAIN THAT EVERYTHING THAT YOU'RE BEING BILLED FOR IS IN THAT  
  
3625=CARTON, AND FREQUENTLY THERE ARE MISTAKES, AND THEN IT'S A VERY  
3626=TIME-CONSUMING TASK TO --  
3627=Q. LET ME JUST STOP YOU THERE, BECAUSE I THINK YOU'RE -- THE  
3628=QUESTION HERE IS JUST, WHAT TYPES OF TERMS -- SHORTAGE  
3629=ALLOWANCE TERMS DOES INGRAM PROVIDE?  
3630=A. NONE.  
3631=Q. OKAY. NOW, I THINK THE QUESTION YOU WERE ANSWERING IS,  
3632=WHAT TYPES OF COSTS DO BOOKSTORES FACE IN DEALING WITH  
3633=SHORTAGES AND DAMAGED BOOKS? WHY DON'T WE MOVE AWAY FROM JUST  
3634=INGRAM'S, STRICTLY SPEAKING, BUT WITH ALL VENDORS, WHOLESALERS  
3635=AND PUBLISHERS ALIKE.  
3636=A. WELL, THIS IS A VERY SENSITIVE AND VERY DIFFICULT SITUATION  
3637=BECAUSE, YOU KNOW, THERE ARE ALWAYS -- NOT ALWAYS -- OFTEN  
3638=MISTAKES MADE IN SHIPMENTS, AND SO HOW DO YOU ADJUST WHAT  
3639=YOU'VE RECEIVED WITH WHAT YOU'VE BEEN BILLED FOR? AND WHAT YOU  
3640=HAVE TO DO IS GO THROUGH IT BOOK BY BOOK, AGAINST YOUR INVOICE,  
3641=AND THEN IF THERE IS A SHORTAGE, YOU HAVE TO FILL OUT A FORM  
3642=AND SEND IT BACK AND THEN WAIT FOR THE CREDIT, AND AS MR. ROSS  
3643=EXPLAINED, YOU HAVE TO HAVE PROOF AND ALL OF THAT.  
3644=Q. WOULD THERE BE ANY ADVANTAGE TO A BOOKSTORE IN BEING ABLE  
3645=TO AVOID THE COSTS THAT YOU MENTIONED AND SIMPLY DEDUCT A SET  
3646=AMOUNT FOR DAMAGES AND SHORTAGES?  
3647=A. IT WOULD BE A TREMENDOUS ADVANTAGE, AND IT'S SOMETHING WE  
3648=ALL HAVE DREAMED ABOUT.  
3649=Q. I WANT TO ASK YOU A LITTLE BIT ABOUT RETAIL DISTRIBUTION

3650=CENTER POLICIES, MS. SEE. ARE YOU GENERALLY FAMILIAR WITH  
3651=RETAIL DISTRIBUTION CENTER POLICIES?  
3652=A. YES, I AM.  
3653=Q. AND WHAT ARE THE TYPICAL REQUIREMENTS IN ORDER FOR A  
3654=BOOKSTORE TO QUALIFY FOR A RETAIL DISTRIBUTION CENTER DISCOUNT?  
3655=A. WELL, THEY'RE USUALLY -- THERE ARE FOUR, GENERALLY -- THERE  
3656=ARE FOUR GENERAL REQUIREMENTS: FIRST, THE LOADING DOCK; A  
3657=SEPARATE, STAND ALONE WEAR HOUSING FACILITY; AND THEN YOU HAVE  
3658=TO TAKE THE BOOKS IN CARTON QUANTITIES; AND THEN ANOTHER  
3659=REQUIREMENT IS THAT YOU REDISTRIBUTE THE BOOK TO MULTIPLE  
3660=STORES.  
3661=Q. AND ARE THOSE CONDITIONS THAT MOST BOOKSTORES CAN MEET?  
3662=A. NO, IT WOULD BE VERY DIFFICULT FOR MOST BOOKSTORES TO MEET  
3663=THOSE CONDITIONS.  
3664=Q. AND WHY DO YOU SAY THAT?  
3665=A. WELL, LET'S TAKE THEM ONE BY ONE. MOST BOOKSTORES DON'T  
3666=HAVE A LOADING DOCK, AND MOST BOOKSTORES DON'T HAVE A SEPARATE  
3667=WAREHOUSING FACILITY, AND FOR A BOOKSTORE TO TAKE BOOKS IN  
3668=CARTON QUANTITIES -- NOW, A CARTON IS A BOX OF BOOKS CONTAINING  
3669=ALL THE SAME TITLES.  
3670=Q. ABOUT HOW MANY BOOKS ARE IN A TYPICAL CARTON?  
3671=A. WELL, WITH A HARDCOVER BOOK IT WOULD PROBABLY BE ABOUT 20  
3672=TITLES. SO FOR A BOOKSTORE TO RECEIVE THEIR BOOKS IN CARTON  
3673=QUANTITIES, IT WOULD NOT BE VERY GOOD INVENTORY MANAGEMENT FOR  
3674=MOST BOOKSTORES, BECAUSE 20 COPIES OF A BOOK WOULD BE A --  
  
3675=QUITE A FEW COPIES. AND THEN THE FINAL ONE, THE MULTIPLE  
3676=STORES, OBVIOUSLY, MOST BOOKSTORES ARE SINGLE-LOCATION.  
3677=Q. I WANT TO FOCUS IN ON THE CARTON QUANTITY REQUIREMENT FOR A  
3678=MINUTE. YOU SAID THAT IT WOULDN'T BE VERY GOOD INVENTORY  
3679=MANAGEMENT FOR MOST STORES TO PURCHASE ALL THEIR BOOKS IN  
3680=CARTON QUANTITIES. WHY NOT? WHAT WOULD IT DO TO THEIR  
3681=INVENTORY?  
3682=A. WELL, IT GETS BACK TO THE JUST-IN-TIME INVENTORY THAT WE  
3683=WERE TALKING ABOUT BEFORE. YOU WANT TO CONTROL THE LEVEL OF  
3684=YOUR INVENTORY, AND IF YOU'RE REQUIRED TO BUY 20 COPIES OF A  
3685=BOOK AND YOU KNOW IT'S GOING TO TAKE THREE OR FOUR MONTHS TO  
3686=SELL THOSE 20 COPIES, THAT WOULD NOT BE A VERY GOOD DECISION.  
3687=Q. WHAT WOULD IT DO TO THE BOOKSTORE'S TURN RATE?  
3688=A. WELL, OBVIOUSLY, AS I DEFINE IT, THE TURN RATE WOULD GO  
3689=DOWN.  
3690=Q. AND HOW IS THE TURN RATE RELATED TO PROFITABILITY?  
3691=A. WELL, AS I'VE SAID, THE -- IT'S RELATED IN A COUPLE OF  
3692=WAYS. ONE IS THAT THE FASTER YOUR TURN RATE, THE GREATER YOUR  
3693=PROFITABILITY. ALSO, YOU HAVE -- YOU HAVE A CERTAIN AMOUNT OF  
3694=MONEY TIED UP IN INVENTORY. IF YOU HAVE FEWER COPIES OF THE  
3695=BOOKS YOU'RE SELLING, AND YOU CAN REPLENISH THOSE BOOKS  
3696=QUICKLY, THEN THAT ALLOWS YOU TO TAKE SOME OF THOSE DOLLARS AND  
3697=WIDEN YOUR -- THE BREADTH OF INVENTORY. YOU CAN CARRY MORE  
3698=BOOKS, MORE DIFFERENT TITLES, RATHER THAN HAVING YOUR CASH TIED  
3699=UP IN FEWER TITLES. AND IN ORDER TO -- THE MORE TITLES YOU  
  
3700=HAVE, THE MORE OPPORTUNITY YOU HAVE TO SELL, AND IT'S A BETTER  
3701=BOOKSTORE.  
3702=Q. NOW, MS. SEE, ARE YOU GENERALLY FAMILIAR WITH THE  
3703=DIFFERENCE, IF ANY, BETWEEN PUBLISHERS' POLICIES, WHOLESALER  
3704=POLICIES, AND RETAIL POLICIES?  
3705=A. YES.  
3706=Q. AND WHAT IS THE DIFFERENCE, AS A GENERAL MATTER?  
3707=A. AS A GENERAL MATTER, THE WHOLESALER -- PUBLISHER  
3708=WHOLESALER'S POLICIES ARE MUCH HIGHER DISCOUNT THAN PUBLISHER'S  
3709=RETAILER POLICIES.  
3710=Q. AND IN YOUR EXPERIENCE, IS IT TYPICAL FOR PUBLISHERS TO  
3711=PERMIT RETAILERS TO PURCHASE BOOKS ON THEIR WHOLESALER -- OFF  
3712=OF THEIR WHOLESALER DISCOUNT SCHEDULES?  
3713=A. NO.  
3714=Q. WHAT ABOUT WHOLESALER INCENTIVES? IS IT -- IN YOUR  
3715=EXPERIENCE, HAVE YOU KNOWN PUBLISHERS TO PROVIDE RETAIL  
3716=BOOKSTORES WITH WHOLESALER INCENTIVE PAYMENTS?  
3717=A. NO.  
3718=Q. WHAT IS A JOBBER, MS. SEE?  
3719=A. WELL, THE TERM WHOLESALER, JOBBER, DISTRIBUTOR, ARE USUALLY

3720=USED INTERCHANGEABLY.  
3721=Q. MS. SEE, WHEN A PUBLISHER SELLS TO A WHOLESALER, WHAT IS  
3722=YOUR UNDERSTANDING OF ESSENTIALLY HOW THAT ARRANGEMENT NORMALLY  
3723=WORKS?  
3724=A. WHEN A PUBLISHER SELLS TO THE WHOLESALER, THE WHOLESALER  
  
3725=RECEIVES THE BOOKS, PUTS THOSE BOOKS IN THE INVENTORY, AND THEN  
3726=SELLS THOSE BOOKS TO BOOKSTORES AT THEIR WHOLE- -- THEIR  
3727=WHOLESALER DISCOUNT.  
3728=Q. I JUST WANT TO ASK YOU ABOUT THAT LAST PART. THE  
3729=WHOLESALER SELLS TO BOOKSTORES AT THEIR WHOLESALER DISCOUNT?  
3730=A. EXCUSE ME. THE RETAIL WHOLESALER DISCOUNT. THE DISCOUNT  
3731=THAT THE RETAILER GETS FROM THE WHOLESALER.  
3732=Q. NOW, IS IT TYPICAL IN THE INDUSTRY, WHEN A BOOKSTORE  
3733=PURCHASES FROM A WHOLESALER, THAT THE PUBLISHER WILL SHIP THOSE  
3734=BOOKS DIRECTLY TO THE RETAILER?  
3735=A. NO.  
3736=Q. IS IT TYPICAL IN THE INDUSTRY FOR A WHOLESALER TO SIMPLY  
3737=TRANS- -- TO SIMPLY TRANSFER THE PUBLISHER'S INVOICE FOR BOOKS  
3738=DIRECTLY TO THE RETAILER FOR PAYMENT?  
3739=A. NO. WHOLESALERS SEND YOU THEIR OWN INVOICES.  
3740=Q. AND WHEN YOU PURCHASE FROM A WHOLESALER, DO THE DISCOUNTS  
3741=AT WHICH YOU PURCHASE FROM THAT WHOLESALER NORMALLY VARY BY  
3742=WHICH PUBLISHER'S BOOKS YOU'RE GETTING FROM THAT WHOLESALER?  
3743=A. NO. THE DISCOUNT SCHEDULE IS BASED ON YOUR PURCHASES FROM  
3744=THE WHOLESALER. PART OF THE REASON YOU USE THE WHOLESALER IS  
3745=YOU'RE BUYING BOOKS FROM MANY DIFFERENT PUBLISHERS.  
3746=Q. LET ME GIVE YOU ANOTHER HYPOTHETICAL RELATING TO THIS  
3747=ISSUE. LET'S ASSUME THAT SEVERAL PUBLISHERS SELL BOOKS TO A  
3748=RETAILER, AND THE PUBLISHERS SHIP THE BOOKS DIRECTLY TO THE  
3749=RETAILER'S DISTRIBUTION CENTER, THROUGH THE RETAILER'S FREIGHT  
  
3750=AGENT. THE RETAILER RECEIVES AN INVOICE FROM THE WHOLESALER,  
3751=TRANSMITS PAYMENT FOR THE BOOKS THAT WERE SHIPPED DIRECTLY TO  
3752=IT TO THE WHOLESALER FOR THE WHOLESALER TO TRANSFER TO THE  
3753=PUBLISHER.  
3754=HOW DOES SUCH AN ARRANGEMENT COMPARE TO YOUR  
3755=UNDERSTANDING OF HOW NORMAL PUBLISHER WHOLESALER RETAILER  
3756=ARRANGEMENTS WORK?  
3757=A. THAT'S JUST NOT THE WAY WHOLESALER RETAILER ARRANGEMENTS  
3758=WORK, AS I'VE EXPLAINED. THE RETAILER BUYS FROM THE WHOLESALER  
3759=AND BUYS -- AND ONE OF THE REASONS THEY BUY FROM THE WHOLESALER  
3760=IS THEY CAN BUY THEIR -- FROM MANY DIFFERENT PUBLISHERS, AND  
3761=THEN THE WHOLESALER SENDS THE RETAILER THE BOOK, AND THE  
3762=RETAILER PAYS THE WHOLESALER FROM THE WHOLESALER'S STATEMENT.  
3763=Q. LET ME ADD TO THE HYPOTHETICAL. IF THE WHOLESALER WERE TO  
3764=PROVIDE THE BOOKS AT ITS NORMAL WHOLESALE DISCOUNT MINUS A FEE,  
3765=WOULD THAT MAKE THAT TRANSACTION A PURCHASE FROM THE  
3766=WHOLESALER?  
3767=A. NO.  
3768=Q. IS THAT THE NORMAL WAY THAT BOOKSTORES PURCHASE FROM  
3769=WHOLESALERS?  
3770=A. THE WAY YOU'VE JUST DESCRIBED?  
3771=Q. YES.  
3772=A. NO.  
3773=Q. IN TERMS OF THE WHOLESALER'S DISCOUNT, THE WHOLESALER'S  
3774=DISCOUNT TO A RETAILER, HOW DO THE BOOKSTORES ORDINARILY  
  
3775=DETERMINE THE DISCOUNT AT WHICH THEY ARE GOING TO PURCHASE FROM  
3776=A PARTICULAR WHOLESALER?  
3777=A. FROM THE RED BOOK.  
3778=Q. MS. SEE, WHEN A RETAILER RETURNS BOOKS TO A PUBLISHER, IS  
3779=IT NORMAL WITHIN THE INDUSTRY FOR THE PUBLISHER TO PAY THE  
3780=RETAILER MORE FOR THE BOOKS THAN THE RETAILER ORIGINALLY  
3781=PURCHASED THE BOOKS -- THE PRICE THAT THE RETAILER ORIGINALLY  
3782=PURCHASED THE BOOKS FROM THE PUBLISHER?  
3783=A. NO.  
3784=Q. WHAT'S DIFFERENT ABOUT THAT THAN THE NORMAL INDUSTRY  
3785=PRACTICE?  
3786=A. COULD YOU REPEAT THE QUESTION?  
3787=Q. YES, I'M SORRY, I THINK IT WAS NOT CLEAR.  
3788=WHEN A BOOKSTORE RETURNS BOOKS TO A PUBLISHER,  
3789=TYPICALLY HOW ARE THEY REIMBURSED FROM THE PUBLISHER?

3790=A. WELL, TYPICALLY THEY ARE REIMBURSED BASED ON WHAT THE  
3791=RETAILER PAID FOR THOSE BOOKS, AND SO SOME PUBLISHERS HAVE  
3792=PENALTIES, BUT MOST OFTEN YOU'RE PAID BASED ON THE -- WHAT YOU  
3793=PAID FOR THE BOOKS COMING INTO YOUR STORE.  
3794=Q. HAVE YOU EVER SEEN PUBLISHED TERMS IN WHICH A PUBLISHER  
3795=OFFERS TO PAY A RETAILER MORE FOR THE BOOKS THAT IT'S RETURNING  
3796=THAN THE BOOKSTORE ORIGINALLY PAID FOR THOSE BOOKS?  
3797=A. NO.  
3798=Q. NOW, MS. SEE, I WANT TO TURN TO THE ISSUE OF HOW DISPUTES  
3799=BETWEEN BOOKSTORES AND PUBLISHERS ARE ORDINARILY RESOLVED IN

3800=THE INDUSTRY. FIRST, I WANT TO GIVE YOU A LITTLE BIT OF A  
3801=DEFINITION OF WHAT I'M TALKING ABOUT; REALLY, ANY DISPUTE OVER  
3802=THE BALANCE THAT A BOOKSTORE OWES TO THE PUBLISHER. FIRST OF  
3803=ALL, ARE THERE DISPUTES LIKE THAT WITHIN THE INDUSTRY?

3804=A. YES, FREQUENTLY.

3805=Q. WHAT ARE SOME OF THE CAUSES OF DISPUTES BETWEEN PUBLISHERS  
3806=AND BOOKSTORES OVER THEIR BILLS?

3807=A. WELL, ONE THING CAN BE SHIPMENTS -- SHORT SHIPMENTS.

3808=THAT'S THE KIND OF THING. ALSO YOU CAN SEND RETURNS BACK TO A  
3809=PUBLISHER, AND THEN, SOMEHOW OR OTHER, YOU ARE CREDITED FOR  
3810=THOSE RETURNS.

3811=AND SO IN ANY OF THOSE INSTANCES, THE BOOKSTORE HAS

3812=THREE OPTIONS. ONE IS, IT'S UP TO THE BOOKSTORE, MOST OFTEN,  
3813=TO PROVE TO THE PUBLISHER THAT THEY SENT THE BOOKS BACK, THAT  
3814=THEY HAVE A SIGNED RECEIPT; OR THEY CAN PAY THE DISPUTE; OR  
3815=THEY'RE PUT ON HOLD, MEANING THEY ARE NOT -- THEY WOULDN'T BUY  
3816=ANY MORE BOOKS FROM THAT PUBLISHER.

3817=Q. AND IN YOUR EXPERIENCE, ARE THERE TIMES WHEN THE PUBLISHER  
3818=SIMPLY AGREES TO EITHER SPLIT THE DIFFERENCE OR FORGIVE A  
3819=BALANCE THAT IS -- THAT IT CLAIMS IS DUE WHEN THERE'S A DISPUTE  
3820=BETWEEN THE PUBLISHER AND THE BOOKSELLER?

3821=A. NO.

3822=Q. WHAT HAPPENS IF THE -- TYPICALLY, WHAT WOULD HAPPEN IF A  
3823=BOOKSTORE WERE TO SIMPLY REFUSE TO PAY A CLAIM BY THE PUBLISHER  
3824=THAT IT DISPUTED?

3825=A. WELL, WITHIN A VERY SHORT TIME THEY WOULD PROBABLY BE PUT  
3826=ON HOLD.

3827=Q. I WANT TO ASK YOU -- JUST WANT TO RETURN BRIEFLY TO THE RDC  
3828=ISSUE, AND THE CARTON QUANTITY ISSUE SPECIFICALLY.

3829=WOULD THERE BE AN ADVANTAGE TO A BOOKSTORE OF BEING

3830=ABLE TO PURCHASE UNDER RDC TERMS IF THEY DIDN'T HAVE TO

3831=PURCHASE IN CARTON QUANTITIES TO DO SO?

3832=A. WELL, YES, BECAUSE THEY'D BE GETTING MUCH HIGHER DISCOUNT,

3833=AND WOULD NOT HAVE TO HAVE ALL THESE -- THEY WOULDN'T HAVE TO

3834=OVERLOAD THEIR INVENTORY WITH PARTICULAR TITLES. THEY COULD

3835=HAVE WHATEVER THEY WANTED TO COME IN, IN THAT SAME CARTON.

3836=INSTEAD OF 20 COPIES OF THE SAME TITLE, THEY MIGHT HAVE 20

3837=DIFFERENT TITLES.

3838=Q. IN YOUR OPINION, DO YOU THINK MORE BOOKSTORES WOULD BE ABLE

3839=TO QUALIFY FOR AN RDC DISCOUNT IF THEY DID NOT HAVE TO MEET THE

3840=CARTON QUANTITY REQUIREMENT?

3841=A. DEPENDING UPON WHAT THE OTHER REQUIREMENTS WOULD BE, BUT

3842=CERTAINLY YES.

3843=MR. SPIVA: YOUR HONOR, WE WILL BE MAKING THE OFFER

3844=OF PROOF THAT YOU SPOKE OF EARLIER. I DO BELIEVE MS. SEE'S

3845=EXPERIENCE WOULD HELP TO UNDERSTAND SOME OF THE DEFENDANTS'

3846=DOCUMENTS, BUT WE WILL MAKE THAT TO YOU TOMORROW. WITH THAT, I

3847=HAVE NO FURTHER QUESTIONS.

3848=THE COURT: CROSS-EXAMINATION?

3849=MR. WELSH: YOUR HONOR, MY NAME IS ROBERT WELSH.

3850=YOUR HONOR, WE WERE ADVISED BY PLAINTIFFS THAT THE DIRECT

3851=EXAMINATION OF MS. SEE WOULD YOU TAKE THE ENTIRE DAY, SO WE DID

3852=NOT BRING OUR BOOKS WITH US FOR CROSS-EXAMINATION. WE ARE

3853=PREPARED, HOWEVER, TO BEGIN THE CROSS-EXAMINATION AND GO AS FAR

3854=AS WE CAN.

3855=THE COURT: DO YOUR BEST. YOU HAVE HALF AN HOUR.

3856=MR. WELSH: THANK YOU.

3857=CROSS-EXAMINATION

3858=BY MR. WELSH:

3859=Q. GOOD AFTERNOON, MS. SEE.

3860=A. GOOD AFTERNOON.  
3861=Q. NOW, I'M GOING TO ASK YOU A SERIES OF QUESTIONS AND I'D  
3862=APPRECIATE IT IF YOU COULD -- I WILL STRUCTURE THE QUESTIONS IN  
3863=A WAY THAT WILL ALLOW YOU TO ANSWER MY QUESTIONS WITH A YES OR  
3864=A NO, AND WHEREVER POSSIBLE, I'D APPRECIATE IT IF YOU WOULD DO  
3865=THAT. DO YOU UNDERSTAND?  
3866=A. YES.  
3867=Q. THANK YOU. NOW, MS. SEE, YOUR BOOKSELLING EXPERIENCE IS  
3868=CONFINED TO THE OPERATION OF A SINGLE BOOKSTORE THAT WAS CALLED  
3869=THE BOOKCASE, IS THAT CORRECT?  
3870=A. YES.  
3871=Q. AND THAT IS A SINGLE STORE, CORRECT?  
3872=A. YES.  
3873=Q. YOU'VE NEVER OPERATED A BOOKSTORE THAT HAS HAD MULTIPLE  
3874=LOCATIONS, CORRECT?  
  
3875=A. NO, I HAVE NOT.  
3876=Q. AND I TAKE IT, MS. SEE, THAT YOU'VE NEVER OPERATED A  
3877=BOOKSTORE THAT HAS PERFORMED SOME OF THE DISTRIBUTION FUNCTIONS  
3878=TRADITIONALLY PERFORMED BY PUBLISHERS AND WHOLESALERS, IS THAT  
3879=CORRECT?  
3880=A. THAT'S CORRECT.  
3881=Q. YOU'VE NEVER HAD A RETAIL DISTRIBUTION CENTER, IS THAT  
3882=CORRECT, NEVER OPERATED ONE?  
3883=A. CORRECT.  
3884=Q. AND YOU'D AGREE, MS. SEE, THAT IF YOU ARE A BOOKSELLER THAT  
3885=OPERATES A THOUSAND STORES, SAY, ACROSS THE NATION, THE  
3886=EXPERIENCE OF THAT KIND OF A BOOKSELLER WILL BE DIFFERENT THAN  
3887=THE EXPERIENCE THAT YOU HAD OPERATING THE BOOKCASE. WOULD YOU  
3888=AGREE WITH THAT?  
3889=A. YES, OBVIOUSLY.  
3890=Q. THAT THERE ARE CERTAIN ATTRIBUTES TO THE FUNCTIONING OF A  
3891=LARGE VERTICALLY-INTEGRATED BOOKSELLER THAT DISTINGUISH IT FROM  
3892=A SINGLE-STORE BOOKSELLER, CORRECT?  
3893=A. YES.  
3894=Q. NOW, MS. SEE, YOU'VE REALLY HAD NO EXPERIENCE WITH REGARD  
3895=TO THE OPERATIONS OF RETAIL DISTRIBUTION CENTERS, ISN'T THAT  
3896=CORRECT?  
3897=A. THAT IS CORRECT.  
3898=Q. AND YOU'VE NEVER RECEIVED AN RDC DISCOUNT DURING THE PERIOD  
3899=THAT YOU OPERATED THE BOOKCASE?  
  
3900=A. I HAVEN'T, THAT'S CORRECT.  
3901=Q. IN FACT, WERE YOU AWARE THAT RDC DISCOUNTS WERE BEING  
3902=OFFERED DURING THE TIME THAT YOU OPERATED THE BOOKCASE?  
3903=A. THE RDC DISCOUNTS CAME IN ACTUALLY -- THE PUBLISHED RDC  
3904=DISCOUNTS CAME IN AFTER -- MOST OF THEM, AFTER I HAD LEFT THE  
3905=BOOKSELLING INDUSTRY.  
3906=Q. OKAY. SO THAT'S AN INNOVATION IN THE INDUSTRY, IF YOU  
3907=WILL, THAT'S OCCURRED SINCE YOU OPERATED THE BOOKCASE, CORRECT?  
3908=A. YES.  
3909=Q. AND YOU WOULD AGREE THAT THIS IS A -- THAT THE BOOKSELLING  
3910=INDUSTRY IS A DYNAMIC INDUSTRY, ISN'T THAT CORRECT?  
3911=A. YES.  
3912=Q. FOR EXAMPLE, INTERNET BOOKSELLING IS SOMETHING THAT YOU DID  
3913=NOT CONFRONT AS A BOOKSELLER.  
3914=A. CORRECT.  
3915=Q. OKAY. AND YOU'RE ALSO AWARE, ARE YOU NOT, MS. SEE, THAT  
3916=PUBLISHERS TODAY COMMONLY PROVIDE FOR ELECTRONIC ORDERING OF  
3917=BOOKS?  
3918=A. YES, AND ACTUALLY, THAT WAS AVAILABLE WHEN I WAS STILL IN  
3919=THE BOOK BUSINESS.  
3920=Q. AND DURING THE TIME THAT YOU WERE A BOOKSELLER, YOU  
3921=PARTICIPATED IN ELECTRONIC ORDERING WITH REGARD TO WHOLESALERS,  
3922=CORRECT, BUT YOU DID NOT ENGAGE IN ANY ELECTRONIC ORDERING WITH  
3923=REGARD TO PUBLISHERS, CORRECT?  
3924=A. CORRECT.  
  
3925=Q. BUT TODAY YOU'RE AWARE THAT MOST PUBLISHERS MAKE AVAILABLE  
3926=ELECTRONIC ORDERING.  
3927=A. CORRECT.  
3928=Q. AND ALSO MANY PUBLISHERS MAKE AVAILABLE DISCOUNTS TO  
3929=BOOKSELLERS WHO PARTICIPATE IN ELECTRONIC ORDERING, CORRECT?



3930=A. CORRECT.  
3931=Q. AND THAT'S SOMETHING, LIKEWISE, THAT WAS NOT AVAILABLE OR  
3932=COMMONPLACE DURING THE TIME THAT YOU OPERATED THE BOOKCASE,  
3933=CORRECT?  
3934=A. CORRECT.  
3935=Q. NOW, MS. SEE, YOU WERE IN THE COURTROOM WHEN MR. ROSS  
3936=TESTIFIED, CORRECT?  
3937=A. YES.  
3938=Q. OKAY. AND YOU HEARD MR. ROSS TESTIFY THAT IN ORDER FOR HIM  
3939=TO BE ABLE TO DETERMINE WHAT HE -- WHAT CODY'S REALLY PAID FOR  
3940=BOOKS, HE WOULD HAVE TO LOOK TO HIS INVOICES. DID YOU HEAR HIM  
3941=SAY THAT?  
3942=A. YES.  
3943=Q. AND YOU DON'T DISAGREE WITH THAT, DO YOU?  
3944=A. NO.  
3945=Q. OKAY. AND LIKEWISE, YOU WOULD AGREE THAT THAT WOULD BE  
3946=TRUE WITH REGARD TO ANY BOOKSELLER; IF YOU WANTED TO KNOW WHAT  
3947=THAT BOOKSELLER REALLY PAID FOR BOOKS, YOU SHOULD LOOK TO THE  
3948=INVOICES, CORRECT?  
3949=A. CORRECT.  
  
3950=Q. AND YOU HAVE NOT LOOKED AT ANY INVOICES IN CONNECTION WITH  
3951=ANY OF THE WORK THAT YOU'VE DONE, CORRECT?  
3952=A. CORRECT.  
3953=Q. IN FACT, MS. SEE, YOU'VE NOT REALLY REVIEWED ANY PLAINTIFF  
3954=DOCUMENTS IN CONNECTION WITH THE WORK THAT YOU PERFORMED IN  
3955=THIS LITIGATION, CORRECT?  
3956=A. THAT IS CORRECT.  
3957=Q. AND FOR EXAMPLE, MS. SEE, YOU DON'T KNOW WHETHER THE  
3958=PLAINTIFFS PAID THE SAME AMOUNT OR A DIFFERENT AMOUNT FOR THE  
3959=SAME BOOK PURCHASED FROM THE SAME PUBLISHER, DO YOU?  
3960=A. CORRECT.  
3961=Q. IN FACT, MS. SEE, YOU DON'T KNOW WHETHER THE PLAINTIFFS MAY  
3962=HAVE PAID LESS FOR A BOOK THAN DID ANY OF THE DEFENDANTS,  
3963=CORRECT?  
3964=A. YES.  
3965=Q. SO IN ORDER FOR ANYONE TO BE ABLE TO DETERMINE WHETHER, IN  
3966=FACT, THE DEFENDANTS PAID LESS FOR THEIR BOOKS THAN DID THE  
3967=PLAINTIFFS, ONE WOULD HAVE TO EXAMINE BOTH THE PLAINTIFFS'  
3968=INVOICES AND THE DEFENDANTS' INVOICES, CORRECT?  
3969=A. YES.  
3970=Q. NOW, MS. SEE, YOU PREPARED A REPORT IN CONNECTION WITH THIS  
3971=LITIGATION, IS THAT CORRECT?  
3972=A. I DID.  
3973=Q. OKAY, AND THE INITIAL DRAFT OF THIS REPORT WAS PREPARED BY  
3974=THE PLAINTIFFS' LAWYERS, IS THAT CORRECT?  
  
3975=A. WELL, ACTUALLY, I WENT DOWN TO WASHINGTON AND REVIEWED  
3976=DOCUMENTS IN THE JENNER & BLOCK OFFICES. I THEN SPENT A GOOD  
3977=DEAL OF TIME GOING OVER THOSE DOCUMENTS AND WORKING OUT A  
3978=GENERAL OUTLINE OF WHAT I FELT WERE THE IMPORTANT POINTS AND  
3979=HOW THEY FIT INTO MY EXPERIENCE IN THE INDUSTRY.  
3980=Q. BUT WHEN IT CAME TIME, SO TO SPEAK, TO PUT PEN TO PAPER AND  
3981=ACTUALLY DRAFT THE REPORT, THAT DRAFT WAS PREPARED BY THE  
3982=ATTORNEYS, CORRECT?  
3983=A. I'M TRYING TO REVIEW MY OWN MEMORY ON THIS, BECAUSE WE WENT  
3984=BACK AND FORTH. WE HAD MANY, MANY CONVERSATIONS, BUT ALSO MANY  
3985=SENDING OF THINGS BACK AND FORTH.  
3986=Q. BUT THE FIRST TIME YOU ACTUALLY SAW A DRAFT OF THE REPORT,  
3987=THAT WAS SOMETHING THAT WAS SENT TO YOU BY THE PLAINTIFFS'  
3988=ATTORNEYS, CORRECT?  
3989=A. I'M NOT SURE WHETHER IT WAS SENT TO ME OR WHETHER WE WENT  
3990=OVER IT IN WASHINGTON.  
3991=Q. BUT EITHER WAY, IT WAS PROVIDED TO YOU BY THE PLAINTIFFS'  
3992=ATTORNEYS, CORRECT?  
3993=A. WITH --  
3994=Q. THE INITIAL DRAFT WE'RE TALKING ABOUT?  
3995=A. WITH A GREAT DEAL OF INPUT ON MY PART.  
3996=Q. AND IN FACT, THE PLAINTIFFS' ATTORNEYS PREPARED MORE THAN  
3997=ONE DRAFT OF YOUR REPORT, CORRECT?  
3998=A. WELL, WE WENT OVER THE DRAFT AND THEN REDRAFTED IT.  
3999=Q. AND THE DOCUMENTS THAT YOU REVIEWED WERE THE DOCUMENTS THAT

4000=WERE PROVIDED TO YOU BY THE PLAINTIFFS' ATTORNEYS, CORRECT?  
4001=A. YES.  
4002=Q. THE PLAINTIFFS' ATTORNEYS DID NOT JUST SAY, "MS. SEE, HERE  
4003=IN THIS ROOM ARE ALL THE DOCUMENTS THAT THE DEFENDANTS HAVE  
4004=PRODUCED IN THIS CASE, PLEASE WALK IN AND READ WHATEVER YOU  
4005=WANT." THEY DIDN'T SAY THAT TO YOU, DID THEY?  
4006=A. NO, THEY DID NOT. IT WOULDN'T HAVE BEEN VERY PRACTICAL.  
4007=Q. INSTEAD THEY WENT THROUGH AND THEY CULLED OUT THE DOCUMENTS  
4008=AND THEN THEY PROVIDED THEM TO YOU, CORRECT?  
4009=A. AND THERE WERE TIMES WHEN I WOULD ASK FOR --  
4010=Q. IS THAT CORRECT, THAT THEY WENT THROUGH THE DOCUMENTS THAT  
4011=WERE PRODUCED BY DEFENDANTS AND THEN THEY CULLED OUT DOCUMENTS  
4012=AND PROVIDED THEM TO YOU? IS THAT CORRECT?  
4013=A. CORRECT.  
4014=Q. AND THOSE ARE THE DOCUMENTS THAT YOU RELIED ON IN  
4015=CONNECTION WITH FORMING THE OPINIONS THAT YOU HAVE, IS THAT  
4016=CORRECT?  
4017=A. NOT TOTALLY CORRECT, BECAUSE NOT ONLY WERE THE DOCUMENTS  
4018=THAT THEY PRESENTED TO ME, BUT I WOULD ASK FOR FURTHER  
4019=DOCUMENTATION ON SOME OF THE DIFFERENT ISSUES.  
4020=Q. AND THEN THEY WOULD PROVIDE YOU ADDITIONAL DOCUMENTATION,  
4021=CORRECT?  
4022=A. YES.  
4023=Q. OKAY. YOU DIDN'T GO BACK AND GO INTO THE FILES YOURSELF,  
4024=CORRECT?  
  
4025=A. NO.  
4026=Q. SO BASICALLY, IN TERMS OF YOUR KNOWLEDGE OF THE DEFENDANTS'  
4027=PRACTICES, THAT KNOWLEDGE HAS COME EXCLUSIVELY THROUGH  
4028=DOCUMENTS THAT YOU RECEIVED FROM PLAINTIFFS' COUNSEL, CORRECT?  
4029=A. YES.  
4030=Q. NOW, MS. SEE, I WANTED TO ASK YOU ABOUT INGRAM FOR JUST A  
4031=MOMENT. YOU TESTIFIED AT YOUR DEPOSITION THAT YOU PRINCIPALLY  
4032=PURCHASED FROM BAKER & TAYLOR AS BEING THE PRINCIPAL WHOLESALER  
4033=THAT YOU USED, CORRECT?  
4034=A. IN THE EARLY DAYS.  
4035=Q. YOU HAVE NOT PURCHASED FROM INGRAM, WHAT, IN THE PAST 11  
4036=YEARS? WOULD THAT BE FAIR TO SAY?  
4037=A. THAT'S FAIR TO SAY, CORRECT.  
4038=Q. AND YOUR PERSONAL KNOWLEDGE ABOUT INGRAM'S PRACTICES AS A  
4039=BOOKSELLER, THEN, WOULD BE DATED BACK TO THE TIME THAT YOU  
4040=OPERATED THE BOOKCASE, CORRECT?  
4041=A. YES.  
4042=Q. NOW, ONE OF THE THINGS YOU MENTIONED IN YOUR DIRECT  
4043=EXAMINATION ABOUT INGRAM WAS, YOU SAID, WITH REGARD TO A  
4044=WHOLESALER LIKE INGRAM, THERE'S A TRADEOFF THAT ONE MAKES, A  
4045=BOOKSELLER MAKES. BASICALLY, INGRAM WILL SELL YOU BOOKS AT A  
4046=LOWER DISCOUNT, BUT THE TRADEOFF IS THAT YOU WILL HAVE THOSE  
4047=BOOKS DELIVERED TO YOU AT A SOONER POINT IN TIME, CORRECT?  
4048=A. CORRECT.  
4049=Q. AND THAT'S THE TRADEOFF. LOWER DISCOUNTS, QUICKER  
  
4050=DELIVERY. CORRECT?  
4051=A. YES, AND ALSO, YOU HAVE THE TRADEOFF OF HAVING ONE  
4052=STATEMENT TO PAY, WITH BOOKS FROM MANY PUBLISHERS.  
4053=Q. OKAY. NOW, IT WOULD BE FAIR TO SAY THAT GIVEN THIS  
4054=TRADEOFF THAT EXISTS BETWEEN LOWER DISCOUNTS AND QUICKER  
4055=DELIVERY, THAT IF EITHER ONE OF THOSE ELEMENTS CHANGE, THEN THE  
4056=OTHER ELEMENT SHOULD CHANGE TO REFLECT IT. FOR EXAMPLE, IF  
4057=INGRAM COULD LITERALLY GIVE YOU THE SAME DAY SERVICE, IF YOU  
4058=COULD PLACE AN ORDER IN THE MORNING AND INGRAM COULD DELIVER  
4059=YOU THAT BOOK BY NOON THAT DAY, IMAGINE THAT SITUATION, IF YOU  
4060=WILL.  
4061=A. HARD TO IMAGINE.  
4062=Q. IT IS HARD TO IMAGINE, BUT AS WE SAY, WHEN YOU'RE MOVING AT  
4063=INTERNET SPEED, ANYTHING IS POSSIBLE. IMAGINE THAT SITUATION.  
4064=IF THAT WERE POSSIBLE FOR INGRAM TO DO, INGRAM  
4065=ARGUABLY COULD BE ABLE TO CHARGE, OR OFFER THEIR BOOKS AT EVEN  
4066=A LOWER DISCOUNT, BECAUSE THEY'RE OFFERING EVEN FASTER DELIVERY  
4067=TIMES THAN THEY ARE CURRENTLY. SO THAT WOULD BE A TRADEOFF  
4068=THAT WAY. YOU SEE MY POINT?  
4069=A. I SEE YOUR POINT. I THINK THERE'S SOME POINT, HOWEVER,  
4070=WHERE IT MAY NOT WORK. PEOPLE MAY RATHER HAVE A HIGHER

4071=DISCOUNT AND LONGER TIME.  
4072=Q. AND SO THAT PEOPLE MIGHT WANT TO HAVE A HIGHER DISCOUNT AND  
4073=A LITTLE LONGER DELIVERY TIME. SOME MAY WANT THAT, CORRECT?  
4074=A. YES.

4075=Q. OKAY. SO IF WE WENT THE OTHER WAY, LET'S SAY THAT INGRAM  
4076=MOVED FROM BEING ABLE TO DELIVER YOUR BOOKS OVERNIGHT, OR  
4077=WITHIN A DAY OR SO, AND MOVED TO A SITUATION OF DELIVERING YOUR  
4078=BOOKS WITHIN A WEEK.  
4079=NOW, IN THAT SITUATION, IT'S A LONGER DELIVERY TIME,  
4080=AND ACCORDINGLY, INGRAM WOULD HAVE TO GIVE YOU, A BOOKSELLER, A  
4081=BETTER DISCOUNT RATE IN ORDER TO MAKE UP FOR THE LONGER  
4082=DELIVERY TIME, BECAUSE, AS YOU JUST SAID, SOME PEOPLE WOULD  
4083=RATHER HAVE A HIGHER DISCOUNT AND WAIT A LITTLE LONGER TO  
4084=RECEIVE THEIR BOOKS, CORRECT?  
4085=A. YES. I SUPPOSE SO.  
4086=Q. NOW, YOU MENTIONED THAT YOU WERE FAMILIAR WITH THE INGRAM  
4087=V.O.R. PROGRAM, IS THAT CORRECT?  
4088=A. YES.  
4089=Q. BY THE WAY, BEFORE WE GET TO THAT, IN YOUR REPORT YOU  
4090=IDENTIFIED THE DOCUMENTS THAT YOU REVIEWED AND THAT THE  
4091=DEPOSITIONS THAT YOU REVIEWED. DO YOU RECALL THAT?  
4092=A. YES, YES.  
4093=Q. HAVE YOU VIEWED ANY ADDITIONAL DOCUMENTS OR REVIEWED ANY  
4094=ADDITIONAL DEPOSITION TESTIMONY BEYOND WHAT WAS STATED IN YOUR  
4095=REPORT?  
4096=A. I'VE SEEN SOME ADDITIONAL DOCUMENTS, I THINK.  
4097=Q. OKAY, AND WHAT ADDITIONAL, DO YOU RECALL THEM?  
4098=A. I CAN'T RECALL THEM.  
4099=Q. HAVE YOU REVIEWED ANY ADDITIONAL DEPOSITION TESTIMONY?

4100=A. I REVIEWED SO MANY DEPOSITIONS IN THE FIRST PLACE.... I  
4101=DON'T REMEMBER.  
4102=Q. NOW, WE WERE TALKING ABOUT THE V.O.R. PROGRAM. YOU'RE  
4103=FAMILIAR WITH THAT PROGRAM?  
4104=A. YES, I AM.  
4105=Q. AND HOW DID YOU BECOME FAMILIAR WITH THE V.O.R. PROGRAM?  
4106=A. WELL, WHEN I WAS STILL A BOOKSELLER, THEY OFFERED THE  
4107=V.O.R. PROGRAM.  
4108=Q. NOW, YOU REVIEWED THE INGRAM RED BOOK ENTRIES, CORRECT?  
4109=A. YES.  
4110=Q. THE V.O.R. PROGRAM IS NOT CONTAINED IN THOSE RED BOOK  
4111=ENTRIES, IS IT?  
4112=A. NO, BUT THE V.O.R. PROGRAM IS IN THE BROCHURES THAT INGRAM  
4113=SENDS TO ALL BOOKSTORES.  
4114=Q. SO IF A BOOKSELLER WERE JUST TO RELY UPON RED BOOK, IF THEY  
4115=WERE TO TREAT THE RED BOOK AS THEIR BIBLE, IF YOU WILL, AND  
4116=SAY, "I'LL ONLY BUY OUT OF RED BOOK," THEY WOULDN'T KNOW ABOUT  
4117=THE V.O.R. PROGRAM, WOULD THEY?  
4118=A. NO, BUT INGRAM MAKES CERTAIN THAT THEIR BROCHURES GO THERE,  
4119=SO I REALIZE THAT --  
4120=Q. THE RED BOOK DOES NOT.  
4121=A. RIGHT, AND THERE ARE OTHER TERMS THAT ARE NOT IN THE RED  
4122=BOOK, AS WE'VE IDENTIFIED.  
4123=Q. FOR EXAMPLE, YOU'VE MENTIONED STOCK OFFERS AREN'T  
4124=AVAILABLE -- AREN'T MENTIONED IN THE RED BOOK.

4125=A. YES.  
4126=Q. SO-CALLED SHARED MARKDOWNS OFFERED BY PUBLISHERS ARE NOT  
4127=TYPICALLY CONTAINED IN THE RED BOOK, CORRECT?  
4128=A. YES.  
4129=Q. YOU'VE ALSO DISCUSSED, IN CONNECTION WITH YOUR DEPOSITION,  
4130=THAT SOMETIMES A PUBLISHER WILL NOT SET FORTH ALL ITS CREDIT  
4131=TERMS --  
4132=A. RIGHT.  
4133=Q. -- IN THE RED BOOK ENTRY. SOMETIMES THE RED BOOK ENTRY  
4134=WILL NOT CONTAIN ALL OF THE FREIGHT TERMS --  
4135=A. CORRECT.  
4136=Q. -- THAT ARE OFFERED BY A PUBLISHER. SOMETIMES THE RED BOOK  
4137=ENTRIES WILL NOT CONTAIN ALL OF THE -- THE AVAILABILITY OF  
4138=HOLIDAY OFFERS, FOR EXAMPLE.  
4139=A. RIGHT.  
4140=Q. WE'VE TALKED ABOUT THE FACT THAT THE RED BOOK DOES NOT

4141=CONTAIN ALL OF THE CO-OP POLICIES.  
4142=A. RIGHT.  
4143=Q. AND IT'S ALSO THE CASE THAT THE RED BOOK DOES NOT CONTAIN  
4144=ALL OF THE VARIOUS DISCOUNTS THAT MAY BE MADE AVAILABLE TO  
4145=PUBLISHERS -- TO BOOKSELLERS, RATHER, WITH REGARD TO ELECTRONIC  
4146=ORDERING, CORRECT?  
4147=A. CORRECT.  
4148=Q. MANY TIMES THE RED BOOK, IN FACT, ADVISES BOOKSELLERS TO  
4149=CONTACT PUBLISHERS TO LEARN ABOUT ALL THE TERMS AND POLICIES --  
  
4150=A. UM-HUM.  
4151=Q. -- THAT ARE AVAILABLE, CORRECT?  
4152=A. CORRECT.  
4153=Q. SO THE RED BOOK IS FAR FROM A COMPLETE RECITATION OF ALL  
4154=THE TERMS AND POLICIES THAT ARE AVAILABLE TO BOOKSELLERS,  
4155=CORRECT?  
4156=A. YES.  
4157=Q. AS THE TITLE OF THE RED BOOK INDICATES, IT IS MERELY A  
4158=HANDBOOK, A GUIDE TO BE USED, CORRECT?  
4159=A. YES.  
4160=(CONTINUED ON FOLLOWING PAGE. NOTHING OMITTED.)  
4161=  
4162=  
4163=  
4164=  
4165=  
4166=  
4167=  
4168=  
4169=  
4170=  
4171=  
4172=  
4173=  
4174=  
  
4175=BY MR. WELSH:  
4176=Q. AND, IN FACT, IN THE RED BOOK -- THE RED BOOK ITSELF ADVISES  
4177=BOOKSELLERS THAT THEY SHOULD CONSULT OTHER SOURCES IN ORDER TO  
4178=GET THE MOST UP-TO-DATE INFORMATION; ISN'T THAT CORRECT?  
4179=A. YES.  
4180=Q. AND SOMETIMES IN THE RED BOOK, THE -- THE PUBLISHERS MAY  
4181=ANNOUNCE THAT THEIR TERMS ARE ONLY -- THAT THE TERMS SET FORTH  
4182=IN THE RED BOOK ARE ONLY AVAILABLE FOR A LIMITED -- ARE ONLY  
4183=EFFECTIVE DURING A LIMITED PERIOD OF TIME, AND THAT PERIOD OF  
4184=TIME MAY NOT EXTEND ALL THE WAY TO THE PUBLICATION OF A NEW RED  
4185=BOOK.  
4186= HAVE YOU EVER OBSERVED THAT IN THE RED BOOK?  
4187=A. I'VE NOT OBSERVED.  
4188=Q. OKAY. WELL, PERHAPS TOMORROW WE CAN GO OVER THAT.  
4189= YOU'VE NEVER OBSERVED A SITUATION WHERE A PUBLISHER  
4190=WILL SAY, "OUR TERMS ARE EFFECTIVE, SAY, THROUGH JUNE OF A  
4191=YEAR"?  
4192=A. I'M NOT REMEMBERING THAT.  
4193=Q. OKAY. NOW, WHEN -- WHEN -- YOU MENTIONED THAT YOU TAUGHT  
4194=SOME COURSES THROUGH THE ABA; IS THAT CORRECT?  
4195=A. YES.  
4196=Q. AND YOU'RE STILL AFFILIATED WITH THE ABA; IS THAT CORRECT?  
4197=A. I'M STILL AFFILIATED BY BEING ON A COMMITTEE OF THE ABA.  
4198=Q. OKAY. AND WHAT IS THE NAME OF THAT COMMITTEE?  
4199=A. AMERICAN BOOKSELLERS FOUNDATION FOR FREE EXPRESSION.  
  
4200=Q. NOW, WHEN YOU -- YOU'VE MENTIONED THAT YOU TAUGHT COURSES TO  
4201=BOOKSELLERS, CORRECT?  
4202=A. YES.  
4203=Q. OKAY. NOW, WHEN YOU TAUGHT THESE COURSES TO BOOKSELLERS,  
4204=DID YOU ADVISE BOOKSELLERS NOT TO NEGOTIATE FOR THE BEST PRICES?  
4205=A. NEVER CAME UP.  
4206=Q. OKAY. DOES THE ABA HAVE ANY RULES OR REQUIREMENTS  
4207=PROHIBITING BOOKSELLERS FROM NEGOTIATION -- NEGOTIATING FOR THE  
4208=BEST PRICES THEY CAN GET FROM PUBLISHERS?  
4209=A. NO. THEY DON'T HAVE ANY PARTICULAR RULES OR REGULATIONS.  
4210=Q. DOES THE ABA FROWN UPON BOOKSELLERS WHO ATTEMPT TO NEGOTIATE

4211=FOR THE BEST PRICES?  
4212=A. NOT IN MY KNOWLEDGE.  
4213=Q. AND YOU'VE HEARD MR. ROSS TESTIFY --  
4214=A. YES.  
4215=Q. -- TODAY THAT, IN FACT, HE AGGRESSIVELY NEGOTIATES FOR THE  
4216=BEST PRICES?  
4217=A. YES.  
4218=Q. OKAY. BUT YOU'VE TESTIFIED THAT IN YOUR VIEW, SUCH  
4219=NEGOTIATION IS IMPROPER.  
4220=A. MY TESTIMONY MEANS THAT I THINK EVERYBODY SHOULD BE PLAYING  
4221=BY THE SAME RULES, AND THAT, THEREFORE, IF A PARTICULAR CHANGE  
4222=IN TERMS IS GIVEN TO ONE BOOKSELLER, IT SHOULD BE AVAILABLE TO  
4223=ALL.  
4224=Q. NOW, IT'S TRUE, IS IT NOT, THAT THE PUBLISHERS OFFER  
  
4225=DIFFERENT TERMS IN THE RED BOOK, CORRECT?  
4226=A. YOU MEAN AMONG THE DIFFERENT PUBLISHERS? YES.  
4227=Q. AMONG THE DIFFERENT PUBLISHERS.  
4228=A. THE TERMS DO VARY.  
4229=Q. THE TERMS DO VARY. SOME PUBLISHERS OFFER BETTER TERMS THAN  
4230=OTHER PUBLISHERS, CORRECT?  
4231=A. CORRECT.  
4232=Q. AND YOU'VE HEARD MR. ROSS TESTIFY THAT WHEN HE'S AWARE OF A  
4233=PUBLISHER OFFERING BETTER TERMS THAN ANOTHER PUBLISHER HE DEALS  
4234=WITH, HE GOES TO THAT PUBLISHER AND HE SAYS, "PLEASE MEET THE  
4235=COMPETITION OF YOUR COMPETITOR AND OFFER ME BETTER TERMS."  
4236=A. I HEARD THAT, YES.  
4237=Q. OKAY. BUT IN YOUR DEPOSITION TESTIMONY, YOU SAID THAT YOU  
4238=DIDN'T AGREE WITH THAT KIND OF APPROACH, CORRECT?  
4239=A. IT'S MY OPINION.  
4240=Q. THAT'S YOUR OPINION. AND THAT'S THE OPINION THAT YOU  
4241=BROUGHT TO THE WORK YOU DID IN CONNECTION WITH THE REPORT THAT  
4242=YOU DRAFTED, CORRECT?  
4243=A. YES.  
4244=Q. NOW, YOU MENTIONED, MISS SEE, THAT -- THAT PUBLISHERS HAVE  
4245=VERY STRICT REQUIREMENTS WITH REGARD TO PAYMENT. RECALL THAT  
4246=TESTIMONY?  
4247=A. YES.  
4248= MR. SPIVA: OBJECTION, YOUR HONOR. I DON'T BELIEVE  
4249=THAT SHE DID TESTIFY TO THAT.  
  
4250= THE COURT: HE CAN ASK -- THE OBJECTION'S OVERRULED.  
4251=YOU CAN ASK HER THE QUESTION.  
4252= MR. WELSH: I BELIEVE WE HAVE AN ANSWER, THAT SHE  
4253=ANSWERED MY QUESTION WITH A "YES," YOUR HONOR.  
4254= THE COURT: YEAH.  
4255=BY MR. WELSH:  
4256=Q. AND YOU MENTIONED, MISS SEE, THAT IF YOU DON'T -- IF  
4257=BOOKSELLERS DON'T PAY TERMS -- DON'T PAY ACCORDING TO THE  
4258=PUBLISHER'S TERMS THAT THEY CAN BE PUT ON CREDIT HOLD. DO YOU  
4259=RECALL THAT?  
4260=A. YES, I MENTIONED THAT IN RELATIONS TO WHEN THEY HAD -- HAD  
4261=DISPUTES.  
4262=Q. NOW, YOU'VE HEARD MR. ROSS TESTIFY TODAY THAT HE TYPICALLY  
4263=DOESN'T PAY HIS BILLS UNTIL 75 DAYS OUT. DID YOU HEAR THAT  
4264=TESTIMONY?  
4265=A. YES, I DID.  
4266=Q. OKAY. AND TYPICALLY, MOST PUBLISHERS REQUIRE THE BILLS TO  
4267=BE PAID 30 DAYS OUT, CORRECT?  
4268=A. THIRTY OR SIXTY.  
4269=Q. IN ANY EVENT, YOU HAVE A SITUATION WHERE MR. ROSS IS ON  
4270=AVERAGE ALWAYS LATE WITH HIS BILLS?  
4271=A. YES.  
4272=Q. SO BASED ON YOUR UNDERSTANDING, WOULD IT BE THAT MR. ROSS IS  
4273=ON PERPETUAL CREDIT HOLD WITH ALL THE PUBLISHERS?  
4274=A. YOU'D HAVE TO ASK MR. ROSS.  
  
4275=Q. OKAY. SO THERE MUST BE MORE FLEXIBILITY WITH REGARD TO  
4276=PUBLISHERS' POLICIES IF SOMEONE LIKE MR. ROSS CAN GO OUT 75 DAYS  
4277=BEYOND ALL OF THE CREDIT TERMS ESTABLISHED BY PUBLISHERS AND  
4278=STILL BE ABLE TO PURCHASE BOOKS AND STILL BE ABLE TO OPERATE A  
4279=BOOK STORE, CORRECT?  
4280=A. YES.

4281=Q. NOW, MISS SEE, DO YOU HAVE AN UNDERSTANDING ABOUT WHY  
4282=PUBLISHERS OFFER RDC DISCOUNTS?  
4283=A. DO I HAVE AN UNDERSTANDING --  
4284=Q. YES.  
4285=A. -- ABOUT WHY?  
4286=Q. WHY -- WHY ARE SUCH DISCOUNTS MADE AVAILABLE TO BOOKSELLERS?  
4287=A. AS I UNDERSTAND IT, BECAUSE IF YOU MEET THESE USUALLY FOUR  
4288=QUALIFICATIONS, THE JUSTIFICATION IS THAT CERTAINLY WITH THE --  
4289=LET'S TAKE CARTON QUANTITIES. IF PUBLISHERS CAN SHIP IN CARTON  
4290=QUANTITIES, THAT'S AN ADVANTAGE TO THE PUBLISHERS.  
4291=Q. IT MAKES IT CHEAPER FOR THEM TO DO THE BUSINESS, THEIR  
4292=BUSINESS, CORRECT, TO DISTRIBUTE THEIR BOOKS?  
4293=A. YES.  
4294=Q. IT'S CHEAPER TO DISTRIBUTE BOOKS IN CARTON QUANTITIES THAN  
4295=IT IS WHEN YOU HAVE TO FILL UP BOXES WITH INDIVIDUAL SEPARATE  
4296=TITLES, CORRECT?  
4297=A. RIGHT. CORRECT.  
4298=Q. OKAY. AND SO BY AFFORDING AN RDC DISCOUNT, PUBLISHERS ARE  
4299=PASSING ON SOME OF THOSE COST SAVINGS TO BOOKSELLERS, CORRECT?

4300=A. CORRECT.  
4301=Q. NOW, YOU MENTIONED THAT ANOTHER REQUIREMENT OF THE RDC IS  
4302=THAT -- THAT MANY PUBLISHERS IMPOSE IS THAT YOU HAVE TO  
4303=DISTRIBUTE TO MULTIPLE STORES. RECALL THAT?  
4304=A. CORRECT.  
4305=Q. OKAY. AND THAT WITH THE RDC DISCOUNT, THEN, PUBLISHERS ARE  
4306=ABLE TO SEND THE BOOKS TO A CENTRALIZED LOCATION, AND THEN IT IS  
4307=UP TO THE BOOKSELLER TO INCUR THE COST OF OPENING THE BOXES, OF  
4308=UNPACKING THE BOOKS, AND THEN DISTRIBUTING THOSE BOOKS OFF TO  
4309=THE INDIVIDUAL BOOK STORES, CORRECT?  
4310=A. CORRECT.  
4311=Q. AND THAT'S ANOTHER COST SAVINGS THAT THE PUBLISHERS ENJOY AS  
4312=A RESULT OF -- OF A BOOKSELLER OPERATING AN RDC, CORRECT?  
4313=A. YES.  
4314=Q. AND THAT IS ANOTHER JUSTIFICATION FOR WHY PUBLISHERS PROVIDE  
4315=BETTER DISCOUNTS TO BOOKSELLERS WHO OPERATE RDC'S?  
4316=A. RIGHT.  
4317=Q. CORRECT? OR RETAIL DISTRIBUTION CENTERS.  
4318= AND, LIKEWISE, IT'S MORE EFFICIENT FOR A -- A  
4319=PUBLISHER TO BE ABLE TO DELIVER BOOKS THROUGH LARGE TRUCKS  
4320=RATHER THAN SMALLER TRUCKS THAT HAVE TO COME TO AN INDIVIDUAL  
4321=STORE, CORRECT?  
4322=A. WELL, THERE ARE PLENTY OF STORES -- IN FACT, EVEN IN MY  
4323=STORES, LARGE TRUCKS CAN COME DELIVER THE BOOKS.  
4324=Q. BUT THAT IS ANOTHER COST SAVINGS, IF YOU DON'T -- IF YOU ARE  
4325=ABLE TO DELIVER IN -- LARGE SEMIS CAN COME UP AND BACK UP TO A  
4326=LOADING DOCK AS OPPOSED TO HAVING TO UNLOAD THE BOXES?  
4327=A. I SUPPOSE SO.  
4328=Q. OKAY.  
4329= (PAUSE IN THE PROCEEDINGS.)  
4330= MR. WELSH: AT THIS TIME, WE HAVE NO FURTHER  
4331=QUESTIONS, YOUR HONOR.  
4332= THE COURT: ALL RIGHT. WELL, IT'S TIME TO EAT.  
4333= MR. SPIVA, IF YOU ARE AVAILABLE AND THE WITNESS IS  
4334=AVAILABLE FOR -- TO COME THIS AFTERNOON AT 3:00 O'CLOCK, WE'LL  
4335=IRON OUT -- SHOULDN'T TAKE VERY LONG -- THIS DIFFICULTY ABOUT  
4336=THE FURTHER DIRECT TESTIMONY.  
4337= MR. SPIVA: THANK YOU, YOUR HONOR.  
4338= MR. YOUNG: YOUR HONOR, IF I CAN JUST ADVISE THE  
4339=COURT THAT TOMORROW MORNING I MUST BE AT AN INJUNCTION HEARING  
4340=IN JUDGE HAMILTON'S COURTROOM.  
4341= THE COURT: INJUNCTION.  
4342= MR. YOUNG: CONSEQUENTLY EITHER MR. DAWSON OR  
4343=MS. LEWIS WILL BE HERE FROM MY OFFICE.  
4344= THE COURT: ALL RIGHT.  
4345= MR. YOUNG: THANK YOU.  
4346= THE COURT: ALL RIGHT. THE COURT'S IN RECESS.  
4347= (RECESS TAKEN AT 1:28 P.M.)  
4348= (PROCEEDINGS RESUMED AT 3:00 P.M.)  
4349=

4350= (PROCEEDINGS RESUME AT 3:00 P.M.)

4351=THE COURT: PLEASE BE SEATED. NOW, THE PURPOSE OF  
4352=OUR HEARING THIS AFTERNOON IS JUST BRIEFLY TO PERMIT THE  
4353=PLAINTIFFS TO MAKE AN OFFER OF PROOF WITH RESPECT TO A FURTHER  
4354=TESTIMONY FROM THEIR EXPERT MS. SEE.  
4355=I HAVE RULED, BASED ON HER RESUME AND THE  
4356=PRELIMINARY QUESTIONS PUT TO HER BY HER COUNSEL, THAT SHE IS  
4357=COMPETENT TO TESTIFY WITH RESPECT TO INDUSTRY STANDARDS IN THE  
4358=BOOKSELLING INDUSTRY AND POINT OUT, AS SHE HAS, SOME OF THE  
4359=PECULIARITIES OF THE INDUSTRY AND THE SO-CALLED TRADITION WITH  
4360=RESPECT TO A NUMBER OF THINGS, PRIMARILY, OF COURSE, GETTING  
4361=THE DISCOUNTS.  
4362=AS AN EXPERT, I THINK THAT SHE IS QUALIFIED TO  
4363=EXAMINE INVOICES AND COMPARE DISCOUNTS, PRICES AND SO ON WITH  
4364=WHAT'S IN THE RED BOOK, AND TO INTERPRET THAT FOR THE COURT,  
4365=AND I DON'T KNOW WHAT OTHER AREAS MR. SPIVA, SHE'S GOING TO  
4366=TESTIFY TO, AND YOU WANT TO EXPLAIN TO ME....  
4367=MR. SPIVA: YES, YOUR HONOR. YOUR HONOR, I THINK  
4368=THAT IS EXACTLY WHAT WE WOULD LIKE MS. SEE TO DO. MS. SEE WILL  
4369=TESTIFY, IF CALLED AGAIN, TO THE FOLLOWING SUBJECTS:  
4370=IF ASKED, THE WITNESS WOULD TESTIFY THAT SHE HAS  
4371=FORMED THE OPINION THAT THE DEFENDANTS HAVE RECEIVED  
4372=SUBSTANTIALLY BETTER TERMS THAN THE BEST AVAILABLE STANDARD  
4373=TERMS AND CONDITIONS OF SALE OFFERED BY PUBLISHERS AND  
4374=WHOLESALEERS, INCLUDING IN THE FOLLOWING AREAS:  
  
4375=ONE, STOCK OFFERS THAT ARE NOT PUBLICLY AVAILABLE  
4376=THAT ARE ONGOING OR ESSENTIALLY PERMANENT INCREASES IN  
4377=DEFENDANTS' DISCOUNTS, AND ESSENTIALLY GIVE THE DEFENDANTS A  
4378=PERMANENT INCREASE IN DISCOUNT, AS WELL AS STOCK OFFERS WHICH  
4379=ARE SIMPLY NOT MADE AVAILABLE TO THE TRADE.  
4380=THE COURT: WELL, THIS OPINION IS BASED ON WHAT, HER  
4381=KNOWLEDGE OF THE DISCOUNTS OFFERED IN THE RED BOOK AS COMPARED  
4382=TO --  
4383=MR. SPIVA: YES, YOUR HONOR, NOT JUST THE DISCOUNTS  
4384=IN THE RED BOOK, BUT SHE HAS REVIEWED OVER 20 OF THE DEFENDANT  
4385=DEPOSITIONS, SHE HAS ALSO REVIEWED HUNDREDS, IF NOT  
4386=THOUSANDS --  
4387=THE COURT: WELL, I KNOW --  
4388=MR. SPIVA: -- OF DOCUMENTS, AND SHE HAS APPLIED HER  
4389=EXPERTISE. SHE WOULD USE HER EXPERTISE TO COMPARE THOSE  
4390=DOCUMENTS, THE PRACTICES THAT THOSE DOCUMENTS EVIDENCE, TO THE  
4391=STANDARD INDUSTRY PRACTICES BASED EITHER ON THE RED BOOK OR  
4392=OTHERWISE STANDARD PRACTICES.  
4393=THE COURT: SHE HAS ADMITTED HERSELF AND THE  
4394=TESTIMONY IS CLEAR THAT IN ORDER TO DETERMINE THE ACTUAL PRICE  
4395=OF A BOOK, THERE ARE A LOT OF OTHER THINGS BESIDES COMPARING IT  
4396=TO THE RED BOOK.  
4397=MR. SPIVA: ABSOLUTELY. SHE'S PREPARED TO --  
4398=THE COURT: AND YOU CAN'T JUST LOOK AT THE RED BOOK  
4399=AND THEN INVOICE AND SAY THAT, ALL OF A SUDDEN, SHE LOOKS UP IN  
  
4400=THE CLOUDS, AND THEY'RE GETTING A BETTER DEAL. SHE'S GOT TO  
4401=HAVE SOME HARD DATA.  
4402=MR. SPIVA: YES, I AGREE, YOUR HONOR, AND IF I  
4403=MIGHT, SHE HAS REVIEWED THE FOLLOWING TYPES OF DOCUMENTS WHICH  
4404=HAVE PROVIDED HER THE BASIS TO COMPARE THE DEFENDANTS' TERMS TO  
4405=THE STANDARD TERMS.  
4406=SHE HAS COMPARED DEFENDANTS' TERMS PROFILES, WHICH  
4407=EVIDENCE THEIR -- THE TERMS THAT THEY ARE RECEIVING. SHE HAS  
4408=REVIEWED CONTRACTS AND AGREEMENTS THAT THE DEFENDANTS HAVE  
4409=ENTERED, CORRESPONDENCE BETWEEN THE DEFENDANTS AND PUBLISHERS  
4410=THAT IDENTIFIED THE DEFENDANTS' STANDARD TERMS AND PRACTICES,  
4411=AND INTERNAL COMPANY REPORTS THAT ALSO DO THAT, YOUR HONOR.  
4412=THE COURT: ALL RIGHT. WELL, NOW, I DON'T WANT HER  
4413=TO SIMPLY SAY WHAT YOU'VE SAID, "I'VE REVIEWED ALL THESE  
4414=DOCUMENTS," AND SO ON. I'M LOOKING AT RULE 703, THE BASES OF  
4415=OPINION TESTIMONY BY EXPERTS, AND THAT READS,  
4416= "THE FACTS OR DATA IN THE PARTICULAR CASE UPON  
4417=WHICH AN EXPERT BASES AN OPINION OR INFERENCE MAY BE  
4418=THOSE PERCEIVED BY OR MADE KNOWN TO THE EXPERT AT OR  
4419=BEFORE THE HEARING, AND IF OF A TYPE REASONABLY  
4420=RELIED UPON BY EXPERTS IN THE PARTICULAR FIELD IN  
4421=FORMING OPINIONS OR INFERENCES UPON THE SUBJECT, THE

4422=FACTS OR DATA NEED NOT BE ADMISSIBLE IN EVIDENCE IN  
4423=ORDER FOR THE OPINION OR INFERENCE TO BE ADMITTED."  
4424=THOSE ARE THE FACTS OR DATA THAT CONCERN ME. DO

4425=THEY GO BEYOND THE INVOICE, AND THEN YOU HAVE THE RED BOOK, AND  
4426=THEN NUMEROUS OTHER CHANGES, MODIFICATIONS TO THE PRICES AS  
4427=THEY APPEAR IN THE RED BOOK.

4428=MR. SPIVA: YOUR HONOR --

4429=THE COURT: AND SO HOW -- I WANT TO KNOW HOW YOU'RE

4430=GOING TO PROCEED, AND HOW THE -- WHAT THE DEFENDANTS ARE GOING

4431=TO REVIEW TO BE ABLE TO CROSS-EXAMINE HER ON.

4432=MR. SPIVA: YES. YOUR HONOR, THE DOCUMENTS THAT SHE

4433=HAS REVIEWED OF THE DEFENDANTS ACTUALLY REVEAL THE PRACTICES

4434=AND TERMS THAT THE DEFENDANTS HAVE RECEIVED. AND SO WHAT SHE'S

4435=DOING IS, BASED ON THAT, SHE IS COMPARING THAT, BASED ON HER

4436=EXPERIENCE, UNDER RULE 702, IN THE INDUSTRY, TO HOW DEFENDANTS'

4437=TERMS AND PRACTICES COMPARE TO STANDARD TERMS AND PRACTICES.

4438=THE COURT: WELL, WHAT SHE'S REVIEWED, IF I

4439=UNDERSTAND THE TESTIMONY THIS MORNING, ARE DOCUMENTS THAT HAVE

4440=BEEN CAREFULLY SELECTED BY PLAINTIFFS' COUNSEL, BY YOU, I

4441=SUPPOSE, AMONG OTHERS, AND SHOWN -- SPECIALLY SHOWN TO HER.

4442=MR. SPIVA: THAT'S ACTUALLY NOT ACCURATE, YOUR

4443=HONOR. I KNOW THE DEFENDANTS HAVE SAID THAT, BUT SHE HAS

4444=REVIEWED, AS I SAID, OVER 20 DEPOSITIONS, SOMETIMES MULTI-DAY

4445=DEPOSITIONS, OF THE DEFENDANTS, AND MANY OF THEM IN THEIR --

4446=THE COURT: MR. SPIVA, I HAVE READ YOUR RECITATIONS

4447=ABOUT WHAT SHE HAS DONE GENERALLY AND LOOKED AT THEM. THAT'S

4448=NOT ENOUGH TO GET -- TO TESTIFY AND GIVE AN OPINION, UNLESS SHE

4449=CAN POINT TO THE -- SHE'S GOT TO POINT TO SUFFICIENT FACTS OR

4450=DATA, AND THAT TESTIMONY HAS GOT TO BE THE PRODUCT OF RELIABLE

4451=PRINCIPLES AND METHODS, AND THEN THE WITNESS SHOWS THAT SHE'S

4452=APPLIED THESE PRINCIPLES AND METHODS TO THE FACTS OF THE CASE.

4453=SHE CAN'T JUST SAY GENERALLY, I'VE REVIEWED ALL THIS, AND

4454=THEREFORE, I FIND THAT THE DEFENDANTS ARE GETTING A BETTER DEAL

4455=THAN THE PLAINTIFFS. SHE'S GOT TO GET DOWN, AS I KEEP SAYING,

4456=FAVORITE EXPRESSION OF MINE, BRASS TACKS.

4457=MR. SPIVA: YES, YOUR HONOR, THIS IS NOT JUST AN

4458=EXERCISE OF COMPARING ONE NUMBER TO THE OTHER. I MEAN,

4459=OFTENTIMES THESE ARE INDUSTRY PRACTICES, SUCH AS THE

4460=NON-RETURNABILITY ISSUE, WHERE THINGS ARE -- THERE'S STANDARD

4461=PRACTICES WITHIN THE INDUSTRY THAT SHE'S GOING TO TESTIFY TO

4462=BASED ON HER EXPERIENCE.

4463=NOW, THE DEFENDANTS WOULD HAVE THE OPPORTUNITY TO

4464=CROSS-EXAMINE HER, AND IF THEY -- A LOT OF THIS WOULD GO TO THE

4465=WEIGHT YOUR HONOR MIGHT GIVE HER TESTIMONY IF YOU'RE NOT

4466=CONVINCED THAT HER EXPERIENCE SUPPORTS HER STATEMENT. BUT I

4467=ASK AT LEAST THAT YOU RECEIVE HER TESTIMONY, AND THEN YOU CAN

4468=GIVE IT WHATEVER WEIGHT YOU THINK IT WARRANTS.

4469=THE COURT: I'LL DO THAT, OF COURSE, IN ANY EVENT.

4470=MR. SPIVA: SURE.

4471=THE COURT: THAT'S WHAT I'M SUPPOSED TO DO. THAT'S

4472=WHY I'M HERE. I UNDERSTAND MY JOB.

4473=MR. SPIVA: OH, SURE.

4474=THE COURT: I'VE GOT TO HAVE SOMETHING TO GO ON. I

4475=WANT TO KNOW HOW YOU'RE GOING TO DO IT.

4476=MR. SPIVA: CAN I TRY ONE MORE THING, YOUR HONOR?

4477=CAN I GIVE YOU AN EXAMPLE? THE DEFENDANTS OR BARNES & NOBLE

4478=HAS A TYPE OF DOCUMENT CALLED A TERMS PROFILE, WHICH MANY OF

4479=THEIR SENIOR EXECUTIVES HAVE TESTIFIED CONTAIN THE TERMS UNDER

4480=WHICH THEY PURCHASE BOOKS. IT'S ALMOST LIKE AN INVOICE. IT'S

4481=BETTER THAN AN INVOICE, BECAUSE IT IS THE STANDARD TERMS THAT

4482=THEY USE FOR MOST OF THEIR PURCHASES, WHEREAS AN INVOICE, AS

4483=YOU HEARD THIS MORNING, OFTEN IS MISLEADING BECAUSE IT MAY

4484=IDENTIFY A ONE-TIME PURCHASE AS OPPOSED TO THE STANDARD ONGOING

4485=TERMS THAT A BOOKSELLER PURCHASES UNDER.

4486=MS. SEE HAS REVIEWED THE DEPOSITION TESTIMONY

4487=REGARDING THOSE TERMS OF PROFILES, HAS REVIEWED THOSE TERMS

4488=PROFILES, AND CAN COMPARE THE TYPES OF TERMS THAT DEFENDANTS

4489=ARE RECEIVING TO THE RED BOOK, IF THAT IS THE APPROPRIATE

4490=COMPARISON, OR OTHER STANDARD INDUSTRY PRACTICES.

4491=THE COURT: WELL, MR. WELSH, DO YOU WANT TO -- OR



4492=MR. --  
4493=MR. WELSH: MR. PETROCELLI.  
4494=THE COURT: MR. PETROCELLI?  
4495=MR. PETROCELLI: THANK YOU, YOUR HONOR. WHEN WE  
4496=MADE THE MOTION IN LIMINE, WE ARGUED THAT SHE SHOULDN'T BE  
4497=PERMITTED TO TALK ABOUT DEFENDANTS' DOCUMENTS UNDER BOTH RULE  
4498=702 AND RULE 1006. 1006 PROVIDES FOR A SUMMARY WITNESS.  
4499=THEY'VE CONCEDED THAT BECAUSE THEY HAVE NOT RESPONDED IN THE  
  
4500=OPPOSITION TO THE MOTION IN LIMINE ON THAT GROUND, AND INDEED,  
4501=SHE WOULD NOT BE A PROPER SUMMARY WITNESS BECAUSE A SUMMARY  
4502=WITNESS REQUIRES A PERSON TO SORT OF NEUTRALLY TAKE --  
4503=THE COURT: YOU'RE TALKING ABOUT 702, AND WHAT'S THE  
4504=OTHER RULE?  
4505=MR. PETROCELLI: RULE 1006 OF THE FEDERAL RULES OF  
4506=EVIDENCE TALKS ABOUT THE REQUIREMENTS FOR A SUMMARY WITNESS,  
4507=WHICH IS, WE SUBMIT, WHAT THEY REALLY WANT MS. SEE TO DO.  
4508=WHEN THEY THOUGHT THERE WAS GOING TO BE A JURY, AND  
4509=THEY EVEN SAID SO IN THEIR OPPOSITION, THEY WANTED HER TO, IN  
4510=EFFECT, TAKE ALL OF THE DEFENDANTS' DEPOSITION TESTIMONY AND  
4511=THE DEFENDANTS' DOCUMENTS AND HAVE HER WALK THROUGH THEM AND  
4512=TELL THE JURY WOULD THOSE DOCUMENTS MEANT.  
4513=THE COURT: ALL RIGHT, NOW, THE RULE 1006 READS  
4514=THAT,  
4515= "THE CONTENTS OF VOLUMINOUS WRITINGS, RECORDINGS  
4516=OR PHOTOGRAPHS WHICH CANNOT CONVENIENTLY BE EXAMINED  
4517=IN COURT MAY BE PRESENTED IN THE FORM OF A CHART,  
4518=SUMMARY OR CALCULATION. THE ORIGINALS OR DUPLICATES  
4519=SHALL BE MADE AVAILABLE FOR EXAMINATION OR COPYING  
4520=OR BOTH BY OTHER PARTIES AT REASONABLE TIME AND  
4521=PLACE. THE COURT MAY ORDER THAT THEY BE PRODUCED IN  
4522=COURT."  
4523=WHAT HAS THAT GOT TO DO WITH A SUMMARY WITNESS?  
4524=MR. PETROCELLI: THE CASES HAVE MADE CLEAR THAT THIS  
  
4525=KIND OF TESTIMONY WOULD NOT QUALIFY AS A SUMMARY WITNESS. SO  
4526=WE WOULD AGREE THAT SHE WOULD NOT QUALIFY AS A COMPILER OF  
4527=VOLUMINOUS DATA TO GET ON THE STAND AND SAY, I TOOK ALL THESE  
4528=INVOICES, FOR EXAMPLE, AND HERE'S A CHART, HERE'S A TABULATION,  
4529=AND BASICALLY, ALMOST BE A FOUNDATIONAL WITNESS.  
4530=THE COURT: YEAH, WELL, WE'RE NOT TALKING ABOUT  
4531=THAT.  
4532=MR. PETROCELLI: OKAY. UNDER RULE 702, SHE DOESN'T  
4533=QUALIFY TO SPEAK ABOUT THESE DOCUMENTS BECAUSE SHE'S NOT  
4534=BRINGING ANY EXPERTISE OR SEEKING TO EXPRESS ANY OPINIONS ABOUT  
4535=THESE DOCUMENTS, YOUR HONOR. SHE JUST WANTS TO SAY WHAT THEY  
4536=SAY. SHE WANTS TO INTERPRET THEM, AND EXPLAIN THE CONTENTS OF  
4537=THEM.  
4538=THE COURT: I JUST GOT THROUGH SAYING THIS MORNING,  
4539=AND I'LL SAY IT AGAIN, THAT I FOUND THAT SHE DOES MEET THE  
4540=REQUIREMENTS OF 702, AND I STATED THAT SHE COULD TESTIFY AS AN  
4541=EXPERT.  
4542=MR. PETROCELLI: YES, AND HE DID WALK HER THROUGH  
4543=ALL OF THOSE SUBJECT MATTERS THIS MORNING IN HER EXPERT  
4544=TESTIMONY. SHE GAVE HER OPINIONS BASED ON ASSUMPTIONS THAT  
4545=WERE GIVEN TO HER, AND SHE WENT THROUGH A WHOLE ARRAY OF  
4546=TOPICS, STOCK OFFERS AND RDC AND INGRAM AND SO FORTH, AND WE  
4547=HAD AN OPPORTUNITY TO CROSS-EXAMINE.  
4548=SO MR. SPIVA DID QUESTION HER EXTENSIVELY ON ALL THE  
4549=ISSUES THAT MAKE UP PART OF THEIR CASE, AND YOUR HONOR HAS  
  
4550=PERMITTED HER TO DO SO, AND HAS CONCLUDED THAT SHE'S QUALIFIED  
4551=TO DO SO.  
4552=THE COURT: WELL, THEN, WHAT ARE YOU FUSSING ABOUT?  
4553=MR. PETROCELLI: NOW WHAT THEY WANT HER TO DO IS  
4554=THEY WANT HER TO PICK UP EACH OF THE DOCUMENTS THAT ARE IN THAT  
4555=NOTEBOOK, THAT ARE DEFENDANTS' DOCUMENTS, AND SAY, "MS. SEE,  
4556=LOOK AT THAT DOCUMENT, WHAT DOES IT SAY? IF YOU LOOK AT THIS  
4557=DOCUMENT, CAN YOU TELL THE DEFENDANTS GOT A BETTER DEAL THAN  
4558=THE PLAINTIFFS?"  
4559=AND ALL SHE WOULD BE DOING, YOUR HONOR, WOULD BE  
4560=TAKING ONE OF OUR DOCUMENTS AND COMPARING IT TO THE RED BOOK,  
4561=WHICH IS NOT SOMETHING THAT AN EXPERT NEEDS TO DO. THE

4562=DOCUMENTS ARE THE BEST EVIDENCE OF WHAT THEY SAY, AND THE  
4563=WITNESSES HAVE SPOKEN ABOUT THE DOCUMENTS.  
4564=THE COURT: MR. PETROCELLI, SKILLED CROSS-EXAMINER  
4565=THAT YOU ARE, ARE YOU INSINUATING EVEN THAT A PERSON -- THAT  
4566=THE ORDINARY LAYMAN, IF WE HAD A JURY HERE -- AND YOU'VE GOT  
4567=PRETTY CLOSE TO THAT SITTING ON THE BENCH -- COULDN'T -- COULD  
4568=DO WITHOUT HELP IN COMPARING THE INVOICE WITH THE RED BOOK AND  
4569=THE SURROUNDING INFORMATION, WHICH YOU SKILLFULLY PRESENTED TO  
4570=THE COURT, TO MAKE A PRICE? YOU NEED AN EXPERT TO DO THAT.  
4571=AND I'VE SAID THAT SHE'S AN EXPERT.  
4572=MR. PETROCELLI: WELL, WHAT SHE CAN'T SAY -- SHE CAN  
4573=SAY, "HERE'S MY OPINION ON THIS SUBJECT, ON STOCK OFFERS. IT  
4574=IS MY OPINION THAT DEFENDANTS GET AN ARRANGEMENT THAT'S NOT  
  
4575=GENERALLY AVAILABLE." "AND WHAT IS THE BASIS OF YOUR OPINION?"  
4576=THEN SHE CAN IDENTIFY THE DOCUMENTS.  
4577=WHAT SHE CAN'T DO IS SAY WHAT THE DOCUMENTS MEAN,  
4578=WHICH IS WHAT SHE WANTS TO DO IN THE TESTIMONY. SHE WANTS TO  
4579=PICK UP EACH DOCUMENT AND START, IN EFFECT, READING FROM IT OR  
4580=SAYING, "I FIND, BASED ON THIS DOCUMENT," SUCH-AND-SUCH AND  
4581=SUCH-AND-SUCH. SHE CAN IDENTIFY THE DOCUMENTS THAT SHE BASED  
4582=HER OPINION ON, BUT SHE CAN'T, IN EFFECT, BE THE SPEAKER FOR  
4583=THE DOCUMENTS.  
4584=THE COURT: ALL RIGHT, WELL, MAYBE THE BEST WAY IS  
4585=TO HAVE HER TAKE THE STAND, AND MR. SPIVA, YOU ASK HER  
4586=APPROPRIATE QUESTIONS.  
4587=MS. SEE, PLEASE COME FORWARD AND TAKE THE STAND.  
4588= GAIL S. SEE,  
4589=CALLED AS A WITNESS FOR THE PLAINTIFFS, HAVING BEEN PREVIOUSLY  
4590=DULY SWORN, TESTIFIED AS FOLLOWS:  
4591=THE COURT: AND YOU'RE STILL UNDER OATH.  
4592=MR. SPIVA: THANK YOU, YOUR HONOR.  
4593=THE COURT: JUST TAKE ONE OR TWO EXAMPLES, AND  
4594=THAT'S....  
4595=BY MR. SPIVA:  
4596=Q. MS. SEE, AS AN EXPERT IN THIS CASE, DID YOU FORM AN OPINION  
4597=AS TO THE DEFENDANTS' PRACTICES COMPARED TO INDUSTRY STANDARD  
4598=PRACTICES YOU HAVE LEARNED BASED ON 30 YEARS IN THE BOOKSELLING  
4599=INDUSTRY?  
  
4600=A. I HAVE.  
4601=Q. AND WHAT IS THAT OPINION?  
4602=A. THAT OPINION IS THAT THE DEFENDANTS WERE RECEIVING MANY  
4603=TERMS THAT WERE -- THAT WERE NOT AT ALL IN ACCORDANCE TO  
4604=TRADITIONAL TERMS.  
4605=Q. WHAT WAS THAT --  
4606=A. EXCUSE ME, THE USUAL TERMS.  
4607=Q. OKAY, AND WHAT WAS THAT OPINION BASED ON?  
4608=A. MY OPINION WAS BASED ON READING THROUGH MANY, MANY  
4609=DEPOSITIONS. I READ THROUGH 10 TOTALLY, AND THEN I ALSO READ  
4610=MANY OF THE DOCUMENTS WE'VE BEEN DISCUSSING.  
4611=Q. YOU SAID YOU READ 10 TOTALLY. DID YOU READ ANY OTHERS,  
4612=APART --  
4613=A. I READ 20, AT LEAST 20. RIGHT.  
4614=Q. NOW, I WANT TO TAKE AN EXAMPLE, MS. SEE, OF THE PRACTICES  
4615=THAT YOU SAID DIFFERED. CAN YOU SPECIFY, WITH REGARD TO STOCK  
4616=OFFERS, HOW YOU FOUND THAT DEFENDANTS' PRACTICES DIFFERED FROM  
4617=STANDARD INDUSTRY PRACTICES?  
4618=A. YES. THE DEFENDANTS' PRACTICES DIFFERED IN THAT THEY WOULD  
4619=TAKE A PUBLISHED STOCK OFFER AND THEY WOULD USE THAT STOCK  
4620=OFFER TO CREATE BASICALLY A PERENNIAL, ONGOING DISCOUNT, AND  
4621=THAT'S NOT THE DEFINITION OF A STOCK OFFER. AND I SAW  
4622=DOCUMENTS TO THAT EFFECT.  
4623=THE COURT: SEE, THAT WON'T DO IT. THAT JUST  
4624=DOESN'T DO IT.  
  
4625=BY MR. SPIVA:  
4626=Q. OKAY, WHAT ABOUT WITH RESPECT TO NON-RETURNABLE TERMS,  
4627=MS. SEE, HOW THE DEFENDANTS' PRACTICES IN THE AREA OF  
4628=NON-RETURNABLE TERMS COMPARE TO STANDARD INDUSTRY PRACTICES?  
4629=FIRST, CAN YOU DESCRIBE THE STANDARD PRACTICE WITH  
4630=RESPECT TO NON-RETURNABLE PURCHASES?  
4631=A. RIGHT. WELL, AS WE DISCUSSED THIS MORNING, RETURNABLE

4632=BOOKS ARE PURCHASED WITH THE ABILITY TO RETURN THEM, AND  
4633=NON-RETURNABLE BOOKS, YOU GET A HIGHER DISCOUNT AND YOU DON'T  
4634=HAVE THE PRIVILEGE OF RETURNING THEM.  
4635=I HAVE SEEN DOCUMENTS THAT INDICATE THAT THE  
4636=DEFENDANTS WERE ABLE TO ARRANGE TO HAVE BOOKS PURCHASED -- THAT  
4637=THEY PURCHASED ON A RETURNABLE BASIS, PURCHASE THOSE SAME BOOKS  
4638=ON A NON-RETURNABLE BASIS.  
4639=THE COURT: NOW, WHERE IS THE DOCUMENT AND WHAT  
4640=DOCUMENTS -- AND WHAT ARE YOU RELYING -- THAT YOU'RE RELYING  
4641=UPON?  
4642=THE WITNESS: IT WAS SOMETHING CALLED THE HOLIDAY  
4643=FEATURED TITLE PLAN.  
4644=BY MR. SPIVA:  
4645=Q. WHAT TYPE OF DOCUMENT DID YOU REVIEW, MS. SEE?  
4646=A. I REVIEWED A DOCUMENT THAT IDENTIFIED WHAT'S CALLED A  
4647=HOLIDAY FEATURED TITLE PLAN, AND -- DO YOU HAVE A CHANCE TO GET  
4648=IT? THERE IS A LISTING THERE OF THE BOOKS THAT THEY RECEIVED,  
4649=AND IT INDICATES WHETHER THEY'RE IN A PARTICULAR COLUMN,  
  
4650=WHETHER THEY WERE RETURNABLE OR NON-RETURNABLE.  
4651=I ALSO REVIEWED E-MAIL CORRESPONDENCE BETWEEN SOME  
4652=OF THE EXECUTIVES AT BARNES & NOBLE, AND IN THAT DOCUMENT, THE  
4653=E-MAIL DOCUMENT, IT'S STATED WHETHER THEY WERE GOING TO BE ABLE  
4654=TO ARRANGE TO HAVE THESE OFFERS JUST FOR BARNES & NOBLE  
4655=EXCLUSIVELY OR WHETHER THEY'D BE SOME OTHER TIMES -- ANOTHER  
4656=PUBLISHER MIGHT OFFER THESE SAME TERMS TO THE INDUSTRY. I'LL  
4657=END IT THERE.  
4658=MR. SPIVA: YOUR HONOR, IF I MIGHT APPROACH THE  
4659=WITNESS, AND I'D LIKE TO HAND YOU WHAT HAS BEEN MARKED AS  
4660=PLAINTIFFS' EXHIBIT 1134, AND I'D LIKE TO ASK MY COLLEAGUES, IF  
4661=WE HAVE ANOTHER NOTEBOOK, IF YOU COULD HAND IT FORWARD, PLEASE.  
4662=(CONTINUED ON FOLLOWING PAGE. NOTHING OMITTED.)  
4663=  
4664=  
4665=  
4666=  
4667=  
4668=  
4669=  
4670=  
4671=  
4672=  
4673=  
4674=  
  
4675= MR. SPIVA: WHY DON'T WE LET THE JUDGE GET A CHANCE  
4676=TO --  
4677= THE COURT: NO, GO AHEAD. YOU CAN GO ON.  
4678=BY MR. SPIVA:  
4679=Q. MS. SEE, IS THAT ONE OF THE DOCUMENTS THAT YOU REVIEWED IN  
4680=CONNECTION WITH FORMING YOUR OPINION ABOUT THE HOLIDAY FEATURED  
4681=TITLE PROGRAM?  
4682=A. IT IS.  
4683=Q. AND WHAT -- WHAT SIGNIFICANCE -- WHAT IS THAT DOCUMENT?  
4684=A. THIS DOCUMENT IS A LISTING OF BOOKS THAT BARNES & NOBLE WAS  
4685=BUYING FOR THEIR HOLIDAY FEATURED TITLE PROGRAM, MEANING THEY  
4686=WOULD PUT THESE BOOKS IN THEIR STORE AT THE HOLIDAY TIME.  
4687=Q. AND WHAT IS -- WHAT IS THE SIGNIFICANCE OF THAT LISTING OF  
4688=BOOKS?  
4689=A. IF YOU LOOK AT -- IF YOU LOOK AT -- CAN YOU SEE THE COLUMN  
4690=JUDGE WHERE IT SAYS HF. THE DISCOUNT.  
4691= THE COURT: YES. YOU JUST --  
4692= THE WITNESS: AND YOU GO DOWN -- EXCUSE ME -- YOU GO  
4693=DOWN AND YOU CAN SEE "NR" AND "R" NEXT TO THE TITLES. AND THE  
4694="NR" MEANS, OBVIOUSLY, NON-RETURNABLE, AND THE "R" MEANS  
4695=RETURNABLE. AND THERE'S -- FOR INSTANCE, THERE IS A BOOK FROM  
4696=HARPER CALLED DIVINE SECRETS OF A YA YA SISTERHOOD. AND THEY  
4697=WERE -- THE NORMAL DISCOUNT IS 48 PERCENT. THEY WERE RECEIVING  
4698=SPECIAL DISCOUNT OF 55 PERCENT. AND IN ADDITION --  
4699= THE COURT: WELL, HOW DO YOU KNOW THE NORMAL  
  
4700=DISCOUNT?  
4701= THE WITNESS: IT'S UP AT THE TOP. YOU SEE THE PRICE

4702=GOING ACROSS THE TOP, IT SAYS "PRICE."  
4703= THE COURT: YES.  
4704= THE WITNESS: AND THEN "DISCOUNT."  
4705= THE COURT: YEAH.  
4706= THE WITNESS: AND THAT'S THE DISCOUNT.  
4707= THE COURT: YES.  
4708= THE WITNESS: AND THEN THE NEXT COLUMN IS THE HFT  
4709=DISCOUNT, MEANING HOLIDAY FEATURE TITLE DISCOUNT, AND IF YOU  
4710=COULD FOLLOW THE COLUMN DOWN TO NUMBER TEN, THAT'S THE BOOK I'M  
4711=DISCUSSING, PARTICULAR BOOK I'M DISCUSSING.  
4712= THE COURT: DIVINE SECRETS --  
4713= THE WITNESS: DIVINE SECRETS OF A YA YA SISTERHOOD.  
4714=THIS WAS A BOOK THAT THEY WERE RECEIVING A 55 PERCENT DISCOUNT  
4715=ON AND ALSO NON-RETURNABLE PRIVILEGES.  
4716= THE COURT: WELL --  
4717= THE WITNESS: NOW, THEY WERE BUYING IT AT  
4718=NON-RETURNABLE. THIS IS A PARTICULAR TITLE, JUDGE, THAT WOULD  
4719=HAVE BEEN IN THEIR STORES AT THAT TIME, AND WOULD HAVE BEEN  
4720=BOUGHT ON A RETURNABLE BASIS.  
4721=BY MR. SPIVA:  
4722=Q. WHAT DO YOU BASE THAT OPINION ON, MISS SEE?  
4723=A. BECAUSE IT WAS A BOOK THAT AT THAT TIME WAS ON, I'M SURE,  
4724=THE BESTSELLER LIST.  
  
4725=Q. HOW DO YOU KNOW THAT?  
4726=A. WELL, I JUST HAPPEN TO KNOW WHAT THAT -- THAT PARTICULAR  
4727=TITLE IN 1998. AND IF YOU GO DOWN THE LIST --  
4728= THE COURT: WHAT MAKES YOU THINK THIS ISN'T AVAILABLE  
4729=TO EVERYBODY?  
4730= THE WITNESS: IT ISN'T AVAILABLE BECAUSE IT'S A  
4731=HOLIDAY FEATURE TITLE THAT WAS A BARNES & NOBLE PROMOTION. AND  
4732=I'VE SEEN DOCUMENTATION FROM E-MAILS THAT TALKED ABOUT THE BOOKS  
4733=THAT WERE GOING TO BE -- TERMS THAT WERE GOING TO BE OFFERED FOR  
4734=SPECIFIC BOOKS THAT WERE EXCLUSIVELY FOR BARNES & NOBLE.  
4735=BY MR. SPIVA:  
4736=Q. MISS SEE --  
4737= THE COURT: AND WHERE IS THAT?  
4738= THE WITNESS: I --  
4739= MR. SPIVA: YOUR HONOR, IF I MIGHT?  
4740= THE COURT: YES.  
4741=BY MR. SPIVA:  
4742=Q. MISS SEE, I'D LIKE TO HAND YOU WHAT HAS BEEN MARKED AS  
4743=PLAINTIFF'S EXHIBIT 1443 AND ASK YOU TO TAKE A LOOK AT IT.  
4744=A. THANK YOU.  
4745=Q. MS. SEE, BEFORE YOU ANSWER FURTHER QUESTIONS ABOUT THIS  
4746=PARTICULAR PROGRAM, I WANT TO ASK YOU WHETHER THESE ARE THE  
4747=TYPES OF DOCUMENTS THAT ARE REASONABLY RELIED UPON BY EXPERTS IN  
4748=THE BOOK SELLING INDUSTRY TO DETERMINE THE TERMS THAT A -- A  
4749=BOOKSTORE IS PURCHASING ON?  
  
4750=A. YES.  
4751=Q. HAVE YOU HAD A CHANCE TO LOOK AT WHAT HAS BEEN MARKED AS --  
4752=I BELIEVE IT'S 1443?  
4753=A. YES, THIS IS A SERIES OF E-MAILS, AS YOU WILL NOTE. AND  
4754=I -- IF YOU WILL LOOK AT THE SECOND E-MAIL FROM BOB WIETRAK TO  
4755=DAVID CULLY, WHO IS PRESIDENT OF THE BARNES & NOBLE DISTRIBUTION  
4756=AND PATRICIA BOSTELMAN AND OTHERS AND -- EXCUSE ME -- AND IF YOU  
4757=LOOK AT NUMBER A, HARPER IS 55 PERCENT NON-RETURNABLE  
4758=EXCLUSIVELY TO BE -- EXCLUSIVITY TO BE DETERMINED AND THEN --  
4759= EXCUSE ME. DO YOU SEE IT? IT'S ABOUT HALFWAY DOWN  
4760=THE PAGE.  
4761= THE COURT: EXCUSE ME. WHERE -- IT'S THE PAGE THAT'S  
4762=HEADED PATRICIA BOSTELMAN?  
4763= THE WITNESS: CORRECT.  
4764= THE COURT: AND THEN --  
4765= THE WITNESS: HALFWAY DOWN THE PAGE.  
4766= THE COURT: YEAH.  
4767= THE WITNESS: AND THERE'S A LISTING ONE, TWO, THREE,  
4768=FOUR, AND IMMEDIATELY UNDER THAT --  
4769= THE COURT: YES, OH, ALL RIGHT.  
4770= THE WITNESS: SEE, HARPER?  
4771= THE COURT: YES.  
4772= THE WITNESS: AND --

4773=BY MR. SPIVA:

4774=Q. MISS SEE, HAVE YOU -- HOW DO YOU KNOW THAT EXCLUSIVITY

4775=REFERS TO A DEAL THAT IS AVAILABLE ONLY TO BARNES & NOBLE?

4776=A. WELL, MY INDUSTRY EXPERIENCE. EXCLUSIVITY MEANS THAT IT'S

4777=ONLY AVAILABLE.

4778=Q. DID YOU REVIEW ANY DEPOSITION TESTIMONY?

4779=A. YES, I DID.

4780=Q. AND WHAT SIGNIFICANCE DID THAT HAVE?

4781=A. THE DEPOSITION TESTIMONY SUPPORTED MY OPINION.

4782=Q. MISS SEE, YOU SEE IN THE DOCUMENT A REFERENCE TO SPECIAL

4783=PRINTS OR SPECIAL EDITIONS?

4784=A. I DO.

4785=Q. DOESN'T THAT INDICATE THAT BARNES & NOBLE WAS GETTING THIS

4786=BECAUSE THEY WERE SPECIAL PRINTS AND NOT BECAUSE IT WAS SOME

4787=TYPE OF A DISCRIMINATORY DEAL?

4788=A. BUT THESE WERE BOOKS THAT WERE TRADEBOOKS THAT WERE

4789=GENERALLY -- THAT ANY BOOKS -- MOST BOOKSTORES WOULD LIKE TO

4790=HAVE IN THEIR INVENTORY. THESE WERE NOT SPECIAL EDITIONS.

4791=Q. OKAY. AND WHAT DO YOU BASE THAT ON?

4792=A. BECAUSE I LOOKED AT THE LIST, THE PREVIOUS DOCUMENT, AND I

4793=KNOW THAT -- WELL, BETTER HOMES AND GARDEN'S NEW COOKBOOK, WHERE

4794=THE WILD THINGS ARE, LION WITCH AND WARDROBE, THOSE ARE BOOKS

4795=THAT ANY BOOKSTORE WOULD HAVE IN STOCK.

4796=Q. AND SO ARE YOU SAYING THAT YOU BASE THAT OPINION --

4797=A. YES.

4798=Q. -- ON YOUR INDUSTRY EXPERIENCE?

4799=A. CORRECT.

4800=Q. HAVE YOU REVIEWED OTHER LISTS IN CONNECTION WITH THE HOLIDAY

4801=FEATURE TITLE PROGRAM?

4802=A. YES.

4803=Q. AND WHERE -- HOW DO THEY COMPARE TO THAT LIST?

4804=A. THEY WERE SIMILAR.

4805= MR. SPIVA: YOUR HONOR, I THINK IF I MIGHT, THIS IS

4806=AN EXAMPLE OF WHERE HER EXPERTISE WOULD BE USEFUL TO THE COURT

4807=BECAUSE SHE CAN EXPLAIN HOW THE DOCUMENT EVIDENCES DEFENDANTS'

4808=PRACTICES AND THEN TALK ABOUT THE STANDARD INDUSTRY PRACTICES

4809=HERE, HOW NON-RETURNABILITY WORKS, YOU KNOW, SPECIAL --

4810= THE COURT: LIMIT THE TESTIMONY THIS AFTERNOON TO

4811=THIS.

4812= YOU WANT TO CROSS-EXAMINE ON THIS, EITHER

4813=MR. PETROCELLI OR MR. WELSH?

4814= MR. PETROCELLI?

4815= MR. PETROCELLI: OH, NOW?

4816= THE COURT: YEAH.

4817= VOIR DIRE EXAMINATION

4818=BY MR. WELSH:

4819=Q. NOW, MISS SEE, BEFORE YOU READ THE DOCUMENT CONCERNING THE

4820=HOLIDAY FEATURED TITLE PROGRAM, YOU WERE NOT AWARE OF SUCH A

4821=PROGRAM; IS THAT CORRECT?

4822=A. WELL, I'VE BEEN IN BARNES & NOBLE STORES, AND RECOGNIZED

4823=THAT THEY HAD A NUMBER OF BOOKS AT THE HOLIDAY TIME THAT THEY

4824=WERE DEEPLY DISCOUNTING.

4825=Q. BUT MY QUESTION WAS NOT ABOUT THE BOOKS THAT YOU OBSERVED IN

4826=THE STORE. MY QUESTION WAS ABOUT THE HOLIDAY FEATURE TITLED

4827=PROGRAM. YOU WERE NOT AWARE OF THAT BEFORE YOU READ A DOCUMENT

4828=THAT WAS PROVIDED TO YOU BY PLAINTIFF'S COUNSEL, CORRECT?

4829=A. CORRECT.

4830=Q. OKAY. AND YOU WERE NOT AWARE OF ANYTHING ABOUT THIS

4831=PROGRAM -- OR RATHER, WHAT YOU LEARNED ABOUT THE PROGRAM IS WHAT

4832=YOU READ ON THE DOCUMENT AS YOU'VE INDICATED. YOU READ THAT

4833=THESE WERE --

4834=A. YES.

4835=Q. -- A PARTICULAR PERCENTAGE, CORRECT? AND YOU READ WHETHER

4836=IT SAID HAD AN "R" NEXT TO IT OR AN "NR," CORRECT? AND THEN YOU

4837=WENT AND YOU READ SOME E-MAIL WHERE -- WHERE BARNES & NOBLE

4838=PEOPLE WERE TALKING ABOUT IT, CORRECT?

4839=A. CORRECT.

4840=Q. AND THEN YOU LOOKED AT SOME DEPOSITION TESTIMONY WHERE

4841=BARNES & NOBLE PEOPLE TALKED ABOUT THE DOCUMENT, CORRECT?

4842=A. YES.

4843=Q. OKAY. AND THAT IS THE -- SUM AND SUBSTANCE OF WHAT YOU ARE  
4844=BASING YOUR TESTIMONY ON, IS WHAT YOU BELIEVE THESE DOCUMENTS  
4845=SAY, CORRECT?  
4846=A. CORRECT. BUT I ALSO --  
4847=Q. THANK YOU. THAT WAS MY QUESTION.  
4848= NOW --  
4849= MR. SPIVA: SHE DIDN'T FINISH HER ANSWER, YOUR HONOR.

4850= THE WITNESS: I THINK THAT I HAVE HAD ENOUGH  
4851=EXPERIENCE IN THE BOOK BUSINESS TO BE ABLE TO SEE WHAT THESE  
4852=DOCUMENTS MEAN.  
4853=BY MR. WELSH:  
4854=Q. NOW, YOU ALSO INDICATED THAT -- THAT THE HOLIDAY FEATURED  
4855=TITLE PROGRAM WAS CREATED AS PART OF A SPECIAL PRINTING THAT  
4856=WAS -- THAT BARNES & NOBLE HAD COMMISSIONED, CORRECT?  
4857= MR. SPIVA: OBJECTION, YOUR HONOR. THAT  
4858=MISCHARACTERIZES HER TESTIMONY.  
4859= THE WITNESS: NO.  
4860= THE COURT: SHE CAN ANSWER.  
4861= THE WITNESS: NO.  
4862= THE COURT: THE OBJECTION'S OVERRULED.  
4863= THE WITNESS: WHAT I SAID WAS THAT ON THIS E-MAIL  
4864=DOWN UNDER "C" AND -- THERE'S A REFERENCE TO SPECIAL EDITIONS.  
4865=AND UNDER "B," RANDOM HOUSE IS DOING SPECIAL PRINTS EXCLUSIVE,  
4866=MEANING, THE WAY I READ THAT DOCUMENT, THAT THEY WERE DOING  
4867=THOSE BOOKS AS SPECIAL PRINTS IN -- AND SELLING THEM TO BARNES &  
4868=NOBLE AS SPECIAL EDITIONS.  
4869=BY MR. WELSH:  
4870=Q. NOW, MISS SEE, THE DOCUMENT -- LET'S GO TO THAT PART 'CAUSE  
4871=IT SAYS HARPER IS 55 PERCENT NON-RETURNABLE, EXCLUSIVITY TO BE  
4872=DETERMINED, CORRECT?  
4873=A. CORRECT.  
4874=Q. IT DOESN'T SAY EXCLUSIVITY HAS BEEN DETERMINED?

4875=A. CORRECT.  
4876=Q. OKAY. SO YOU HAVE NO BASIS ON WHICH TO OFFER ANY OPINION  
4877=THAT, IN FACT, THIS WAS EXCLUSIVE BASED UPON THE LANGUAGE IN THE  
4878=DOCUMENT, CORRECT?  
4879=A. THE PARTICULAR HARPER TITLE, CORRECT.  
4880=Q. THAT'S CORRECT. THANK YOU.  
4881= NOW -- NOW, YOU'RE AWARE, MISS SEE, THAT THERE ARE  
4882=SUCH THINGS AS SPECIAL PRINTING IN THE BOOK INDUSTRY, CORRECT?  
4883=A. CORRECT.  
4884=Q. OKAY. YOU'RE AWARE THAT BOOK CLUBS, FOR EXAMPLE, GET  
4885=SPECIAL PRINTING, CORRECT?  
4886=A. I AM AWARE OF THAT.  
4887=Q. YES, AND THAT A DIFFERENT DISCOUNT SCHEDULE APPLIES WITH  
4888=REGARD TO SPECIAL PRINTING BOOKS, CORRECT?  
4889=A. CORRECT.  
4890= COULD I PLEASE ALSO ADD THAT A BOOK LIKE THE DIVINE  
4891=SECRETS OF A YA YA SISTERHOOD, I FIND IN SEQUENCE (SIC),  
4892=WOULD -- WOULD NOT BE A SPECIAL PRINT BECAUSE IT WAS A BRAND --  
4893=FAIRLY NEW TITLE, AND SO THEREFORE IF -- IF THERE -- THEY WERE  
4894=GOING TO BE -- MY ASSUMPTION AND MY -- BASED ON MY EXPERIENCE IS  
4895=THAT THESE WERE BOOKS THAT THEY WERE SELLING OUT OF THEIR STOCK.  
4896=Q. NOW, MISS SEE, YOU'RE AWARE THAT BOOK CLUBS DURING THIS  
4897=PERIOD OF TIME WERE LIKEWISE SELLING SOME OF THE -- IF NOT ALL  
4898=OF THE SAME TITLES THAT YOU FOUND ON THIS PARTICULAR DOCUMENT,  
4899=CORRECT?

4900=A. CORRECT.  
4901=Q. SO -- AND WE'VE ALREADY ESTABLISHED HERE FROM YOUR TESTIMONY  
4902=THAT BOOK CLUBS ARE ABLE TO DO THIS THROUGH SPECIAL PRINTINGS,  
4903=CORRECT?  
4904=A. THAT'S QUITE DIFFERENT FROM THIS BECAUSE THE BOOK CLUBS ARE  
4905=SELLING THEM TO A DIFFERENT MARKET.  
4906=Q. AND YOUR DETERMINATION -- SO IT'S YOUR PROFESSIONAL OPINION  
4907=THAT BOOK CLUBS DO NOT COMPETE WITH BOOKSTORES BECAUSE THAT'S  
4908=ENTIRELY SEPARATE MARKETS; IS THAT YOUR TESTIMONY?  
4909=A. IT'S A DIFFERENT LEVEL OF COMPETITION. THEY DO COMPETE,  
4910=YES.  
4911=Q. ARE INTERNET BOOKSELLERS A DIFFERENT LEVEL OF COMPETITION?  
4912=A. NO. NO.

4913=Q. BUT IN YOUR VIEW, THERE'S SOMETHING DIFFERENT ABOUT A BOOK  
4914=CLUB VERSUS AN INTERNET BOOKSELLER?  
4915=A. FREQUENTLY, THE BOOK CLUB BOOKS, IN MY EXPERIENCE, THEY DO A  
4916=SPECIAL EDITION AND LITERALLY PRINT A BOOK FOR A BOOK CLUB.  
4917=Q. NOW --  
4918=A. IT'S A SPECIAL -- EXCUSE ME. A SPECIAL PRINTING.  
4919=Q. NOW, THE PROGRAM THAT YOU'VE TALKING ABOUT HERE IS CALLED A  
4920=HOLIDAY FEATURE TITLE.  
4921=A. YES.  
4922=Q. FROM READING THE DOCUMENTS, DID YOU LEARN ANYTHING ABOUT  
4923=WHAT THE SIGNIFICANCE OF THE WORD "FEATURE" MEANT IN "HOLIDAY  
4924=FEATURE TITLE"?

4925=A. NO, BUT IN MY INDUSTRY -- FROM MY INDUSTRY EXPERIENCE, I  
4926=ASSUME THESE ARE BOOKS THAT ARE GOING TO BE FEATURED IN THEIR  
4927=STORES, AGAIN, PROBABLY SPECIAL DISCOUNTS.  
4928=Q. AND, IN FACT, YOU WERE SHOWN DOCUMENTS AT YOUR DEPOSITION,  
4929=WEREN'T YOU, MISS SEE WHICH SHOW THAT, IN FACT, WITH REGARD TO  
4930=THESE PARTICULAR TITLES, THESE DOCUMENTS WERE GOING TO BE  
4931=FEATURED ON ENDCAPS, ON HOLIDAY -- SPECIAL HOLIDAY TABLES, AND  
4932=THEY WERE GOING TO BE PROMOTED IN MUCH THE SAME WAY THAT A  
4933=BOOKSTORE PROMOTES BOOKS PURSUANT TO A CO-OP ADVERTISING  
4934=PROGRAM.  
4935= DO YOU REMEMBER SEEING THOSE DOCUMENTS?  
4936=A. YES, I DO.  
4937=Q. OKAY. SO THAT FEATURE PART OF THE HOLIDAY FEATURE TITLE WAS  
4938=LITERALLY TO TAKE HOLIDAY BOOKS AND GIVE THEM THE KIND OF  
4939=COOPERATIVE PROMOTIONS THAT ARE AVAILABLE FOR OTHER BOOKS DURING  
4940=THE OTHER PARTS OF THE YEAR, CORRECT?  
4941=A. YES.  
4942=Q. AND DO YOU RECALL, TOO, MISS SEE, THAT WITH REGARD TO THE  
4943=HOLIDAY FEATURE TITLE BOOKS THAT THESE WERE NOT ONLY SPECIAL  
4944=PRINTINGS BUT THEY HAD SPECIAL COVERS. DO YOU RECALL LEARNING  
4945=THAT?  
4946=A. NO. RIGHT NOW I DON'T RECALL THAT. BUT --  
4947=Q. BUT IF THEY, IN FACT, HAD SPECIAL COVERS AND WERE SPECIAL  
4948=PRINTINGS, THEN THEY WERE NOT THE SAME BOOK THAT ONE COULD GET  
4949=RIGHT OUT OF THE STOCK FROM A PUBLISHER'S WAREHOUSE -- WOULDN'T  
4950=THAT BE CORRECT?  
4951=A. IF THEY HAD SPECIAL -- IF THEY HAD SPECIAL JACKETS, YES.  
4952=Q. OKAY. AND SO YOUR VIEW -- YOUR VIEW ABOUT WHETHER THIS IS A  
4953=NON FIDE SPECIAL PRINTING OR SOMETHING ELSE WOULD -- WOULD  
4954=DEPEND ON WHAT ADDITIONAL DOCUMENTS YOU MIGHT LOOK AT IN THE  
4955=DEFENDANTS' RECORDS, CORRECT?  
4956=A. YES, BUT --  
4957=Q. OKAY.  
4958=A. TURNING -- EXCUSE ME, BUT TURNING TO THE E-MAIL --  
4959= THE COURT: NO, HE ASKS THE QUESTIONS AND --  
4960= THE WITNESS: SORRY.  
4961= (PAUSE IN THE PROCEEDINGS.)  
4962=BY MR. WELSH:  
4963=Q. NOW, YOU ALSO WERE ASKED SOME QUESTIONS ABOUT A FLEX  
4964=PROGRAM?  
4965=A. THE BANTAM DOUBLEDAY FLEX PROGRAM?  
4966= (SIMULTANEOUS COLLOQUY.)  
4967= THE COURT: THAT'S OFF THE MARK OF WHAT WE'RE DOING  
4968=HERE.  
4969= MR. WELSH: OH, I'M SORRY, YOUR HONOR.  
4970= THE COURT: DO YOU WANT --  
4971= MR. SPIVA: CAN I DO A LITTLE REDIRECT, YOUR HONOR?  
4972= THE COURT: -- REDIRECT?  
4973= THE WITNESS: THANK YOU.  
4974=

4975= FURTHER VOIR DIRE EXAMINATION  
4976=BY MR. SPIVA:  
4977=Q. NOW, MISS SEE, WOULD YOU HAVE KNOWN THAT THESE BOOKS ON THE  
4978=LIST THAT YOU'VE REVIEWED WERE BOOKS THAT ARE STANDARD BOOKS  
4979=THAT ARE CARRIED BY ALL BOOKSTORES IF YOU WEREN'T -- BUT FOR  
4980=YOUR EXPERIENCE IN THE INDUSTRY?  
4981=A. NO.  
4982=Q. AND HOW DID YOU KNOW ABOUT PUBLISHERS' STANDARD

4983=NON-RETURNABILITY POLICIES?  
4984=A. BECAUSE OF MY EXPERIENCE.  
4985=Q. AND HOW DID YOU KNOW THAT "NR" IS FREQUENTLY THE SYMBOL USED  
4986=FOR NON-RETURNABILITY IN THE INDUSTRY?  
4987=A. IT'S PART OF THE LANGUAGE OF THE INDUSTRY.  
4988=Q. USED IN THE RED BOOK?  
4989=A. YES. AND IT'S ONE OF THE TERMS OF THE RED BOOK.  
4990=Q. AND REGARDLESS OF WHETHER ONE OF THESE BOOKS HAD A DIFFERENT  
4991=COVER, IS IT STILL THE SAME BOOK THAT OTHER BOOKSTORES WOULD  
4992=HAVE BEEN CARRYING AT THE SAME TIME --  
4993=A. YES.  
4994=Q. -- AS -- AS THE DEFENDANTS?  
4995=A. YES.  
4996=Q. OKAY. AND HOW DO YOU KNOW THAT?  
4997=A. BECAUSE, AS I SAID BEFORE, THESE ARE BOOKS THAT A BOOKSTORE  
4998=WOULD CARRY IN THEIR INVENTORY.  
4999=Q. OKAY. AND THE BASIS OF YOUR KNOWLEDGE OF THAT IS

5000=ESSENTIALLY YOUR -- YOUR KNOWLEDGE AND EXPERIENCE OF THE  
5001=PUBLISHING AND BOOKSELLING INDUSTRY?

5002=A. YES.

5003= MR. SPIVA: I --

5004= THE COURT: ALL RIGHT. I'M GOING TO TRY AND PUT MY

5005=RULING INTO LANGUAGE FROM 706, AND I'LL ANNOUNCE IT TOMORROW

5006=MORNING.

5007= AND IN THE MEANTIME, MR. SPIVA, WOULD YOU BE KIND

5008=ENOUGH TO SEPARATE THIS INTO TWO BINDERS.

5009= MR. SPIVA: YES, YOUR HONOR, WE WILL.

5010= THE COURT: SO I WON'T BE THROWING THIS AROUND

5011=TOMORROW. THANK YOU.

5012= MR. SPIVA: THANK YOU.

5013= THE COURT: THE COURT WILL BE IN RECESS TILL 8:30.

5014= THE CLERK: ALL RISE.

5015= (PROCEEDINGS WERE ADJOURNED AT 3:40 P.M.)

5016= --000--

5017=

5018=

5019=

5020=

5021=

5022=

5023=

5024=

5025=

5026=APPEARANCES: (CONTINUED)

5027=FOR DEFENDANTS: BORDERS GROUP, INC.

5028=(BORDERS GROUP) 100 PHOENIX DRIVE

5029= ANN ARBOR, MICHIGAN 48108-2202

5030= BY: THOMAS D. CARNEY, GENERAL COUNSEL

5031=

5032=

5033=

5034=

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5051= SEE - FURTHER VOIR DIRE \ SPIVA

5052= CERTIFICATE OF REPORTERS



5053= WE, THE UNDERSIGNED OFFICIAL REPORTERS FOR THE UNITED  
5054=STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA, DO  
5055=HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IN C 98-1059WHO,  
5056=AMERICAN BOOKSELLERS, ET AL. V.BARNES & NOBLE, ET AL., PAGES  
5057=NUMBERED 180 THROUGH 383, INCLUSIVE, WERE REPORTED BY US,  
5058=CERTIFIED SHORTHAND REPORTERS, AND WERE THEREAFTER TRANSCRIBED  
5059=UNDER OUR DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A  
5060=FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS AS BOUND BY  
5061=ME AT THE TIME OF FILING.

5062= THE VALIDITY OF THE REPORTERS' CERTIFICATIONS OF SAID  
5063=TRANSCRIPTS MAY BE VOID UPON DISASSEMBLY AND/OR REMOVAL FROM THE  
5064=COURT FILE.

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RAYNEE H. MERCADO, CSR 8258

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LEO T. MANKIEWICZ, CSR 5297

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TUESDAY, APRIL 10, 2001

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