

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= THURSDAY, APRIL 12, 2001

12= TRANSCRIPT OF COURT TRIAL - VOL. 4

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

26= 601 13TH STREET N.W.

WASHINGTON, D.C. 20005

27= BY: DAVID W. DEBRUIN

BRUCE V. SPIVA

28= DANIEL MACH

JANIS KESTENBAUM

29= WILLIAM HOHENGARTEN

KEVIN STACK

30= SHILPA SATOSKARFOR DEFENDANTS:

O'MELVENY & MYERS LLP

31=(BARNES & NOBLE)  
CALIFORNIA 90067-6035

LOS ANGELES,

32= BY: DANIEL M. PETROCELLI

DAVID R. GARCIA

33= ALAN RADER

PILLSBURY WINTHROP LLP

34= 50 FREMONT STREET

POST OFFICE BOX 7880

35= SAN FRANCISCO, CALIFORNIA 94120-7880

BY: PAUL R. GRIFFIN

36= SUSAN WHITECOTTON

37=FOR DEFENDANTS: SKJERVEN, MORRILL, MAC PHERSON

38=(BORDERS GROUP) FRANKLIN & FRIEL

39= THREE EMBARCADERO CENTER, 28TH FLOOR

40= SAN FRANCISCO, CALIFORNIA 94111

41= BY: REGINALD D. STEER

42= ANDREW D. MASTIN

43= RICHARD J. NELSON

44= MORRISON & FOERSTER

45= 425 MARKET STREET

46= SAN FRANCISCO, CALIFORNIA 94105-2482

47= BY: PENELOPE PREOVOLOS

48= JUDSON LOBDELL

49= (APPEARANCES CONTINUED ON FOLLOWING PAGE.)

50= THE COURT: GOOD MORNING, COUNSEL.

51= MR. YOUNG: GOOD MORNING, YOUR HONOR.

52= THE COURT: JUST BEFORE YOU --

53= MR. YOUNG: YES.

54= THE COURT: I'VE GOT A LAW AND MOTION CALENDAR TODAY

55=AT 2:00 O'CLOCK, SO I'LL BE STOPPING AT 1:00 O'CLOCK. AND NEXT

56=WEEK, WE'LL GO FROM 9:00 TO 2:00 INSTEAD OF 8:30 TO 1:30.

57= NOW, MR. YOUNG.

58= MR. YOUNG: THANK YOU, YOUR HONOR. THAT WAS THE

59=SUBJECT I WANTED TO RAISE WITH THE COURT. WE HAVE TWO WITNESSES

60=SCHEDULED FOR TODAY. AT OUR CURRENT PACE, WE ARE ACTUALLY A

61=LITTLE AHEAD OF THE ESTIMATE WHICH WE GAVE TO THE COURT.

62= THE COURT: GOOD.

63= MR. YOUNG: WHICH I THINK IS GOOD NEWS. AND

64=DEPENDING UPON HOW LONG THE CROSSES GO, IT'S CONCEIVABLE THAT WE

65=WOULD FINISH BEFORE 1:00 O'CLOCK, BUT I WANTED AN OPPORTUNITY,

66=IF IT WOULD PLEASE THE COURT, AT THE END OF THE DAY PERHAPS TO

67=GIVE YOU SOME SENSE OF WHERE WE ARE FOR NEXT WEEK.

68= THE COURT: THAT WOULD BE MUCH APPRECIATED.

69= MR. YOUNG: THANK YOU.

70= THE COURT: AND I HATE TO USE THAT PHRASE "LIGHT AT  
71=THE END OF THE TUNNEL," BUT I GUESS IT'S TOO SOON TO SEE ANY  
72=LIGHT.

73=  
74=

75= MR. YOUNG: THANK YOU.

76= THE COURT: IF YOU SEE ANY, LET ME KNOW.

77= MR. YOUNG: WE WILL, YOUR HONOR.

78= THE COURT: ALL RIGHT. MR. BARRINGER, WILL YOU  
79=PLEASE TAKE THE STAND.

80= DIRECT EXAMINATION (RESUMED)

81= MR. HOHENGARTEN: GOOD MORNING, YOUR HONOR.

82=Q. GOOD MORNING, MR. BARRINGER.

83=A. GOOD MORNING.

84=Q. YESTERDAY, YOU TESTIFIED THAT YOUR PRIMARY COMPETITORS AT  
85=THIS TIME -- OR LITTLE PROFESSOR'S PRIMARY COMPETITORS AT THIS  
86=TIME ARE BARNES & NOBLE, BORDERS AND MEDIA PLAY. WHAT MAKES YOU  
87=BELIEVE THAT BARNES & NOBLE IS -- IS A COMPETITOR OF LITTLE  
88=PROFESSOR?

89=A. WELL, THEY CARRY CERTAINLY THE SAME PRODUCT THAT WE DO, AND  
90=WHEN I MAKE THAT REFERENCE, I'M TALKING ABOUT THE STORE CLOSEST  
91=TO US. SAME PRODUCT. THEY'RE CLOSE TO US. I GO IN THERE, I  
92=SEE MANY OF THE SAME PEOPLE THAT I SEE IN MY STORE. AND  
93=BASICALLY THE BIGGEST THING IS THE DAY THAT THEY ARRIVED, I SAW  
94=MY SALES START TO PLUMMET.

95=Q. OKAY. YOU MENTIONED PROXIMITY. COULD YOU REMIND THE COURT  
96=HOW FAR AWAY THE CLOSEST BARNES & NOBLE IS TO YOU?

97=A. 1.8 MILES.

98=Q. FOR THE COURT REPORTER, PLEASE LET ME FINISH MY QUESTION.

99=SORRY.

100= AND YOU MENTIONED SIMILAR PRODUCT. HAVE YOU EVER  
101=VISITED THE BARNES & NOBLE STORE CLOSEST TO LITTLE PROFESSOR?

102=A. ON A REGULAR BASIS.

103=Q. WHEN WAS THE LAST TIME YOU WERE THERE?

104=A. ABOUT TWO MONTHS AGO.

105=Q. DID YOU HAVE AN OPPORTUNITY TO OBSERVE THE PRODUCTS, THE  
106=BOOKS THAT THEY SELL?

107=A. YES, I DID.

108=Q. AND HOW WOULD THAT INVENTORY COMPARE TO THE BOOKS THAT  
109=LITTLE PROFESSOR SELLS?

110=A. VERY SIMILAR.

111=Q. ARE THEY ALL THE SAME, OR ARE THERE DIFFERENCES?

112=A. THERE ARE DIFFERENCES. SOMETIMES THEY HAVE TITLES THAT WE  
113=DON'T. AND, INDEED, SOMETIMES WE HAVE TITLES THAT THEY DON'T.

114=Q. DID YOU HAVE AN OPPORTUNITY TO OBSERVE THE CUSTOMERS WHO  
115=WERE IN THE BARNES & NOBLE STORE WHEN YOU WERE THERE?

116=A. YES, I DID.

117=Q. DID YOU RECOGNIZE ANYBODY?

118=A. NOT THE LAST TIME, I DON'T BELIEVE, BUT FREQUENTLY, I DO.

119=Q. YOU MENTIONED THAT YOU HAD SEEN CUSTOMERS IN THE BARNES &  
120=NOBLE STORE. IS THAT ON VISITS TO THE STORE?

121=A. ON MY VISITS TO THEIR STORE, I HAVE SEEN SOME OF MY

122=CUSTOMERS BUY --

123=Q. CAN YOU DESCRIBE ANY PARTICULAR TIMES THAT THAT OCCURRED?

124=A. ONE WAS EXTREMELY HUMOROUS. SHE'D BEEN IN OUR STORE EARLIER

125=THAT MORNING AND COMMENTED HOW GLAD SHE WAS THAT WE WERE STILL  
126=THERE AND DOING SO WELL. AND THEN MY WIFE AND SOME FRIENDS OF  
127=OURS WENT THERE THAT EVENING, AND SHE WAS IN THE CHECKOUT LINE  
128=WITH HER ARMS LOADED WITH BOOKS.

129=Q. AND YOU ALSO MENTIONED IMPACT ON YOUR SALES. COULD YOU  
130=TURN -- SORRY. LET ME ASK FIRST, DOES THE LITTLE PROFESSOR

131=REGULARLY MAINTAIN RECORDS OF ITS SALES?

132=A. YES, WE DO.

133=Q. WHAT FORM DO THOSE RECORDS TAKE?

134=A. OUR BASIC ITEM IS A DAILY SUMMARY SHEET IN WHICH WE RECORD  
135=THE PREVIOUS DAY'S SALES BY CATEGORY AND TRY TO DO A COMPARISON  
136=TO THE SAME DAY A YEAR AGO.

137= WE USE THAT THEN TO MAKE IT INTO A WEEKLY SALES

138=SUMMARY SHEET THEN WE TAKE IT THROUGH THE MONTH BEFORE WE TURN

139=IT OVER TO OUR ACCOUNTANT.

140=Q. OKAY. AND WHERE DOES THE DATA FOR THE DAILY SALES SUMMARY  
141=SHEET COME FROM?  
142=A. FROM THE CASH REGISTER TAPE CLOSING.  
143=Q. AND YOU SAID YOU ULTIMATELY TURN THAT INFORMATION OVER TO  
144=YOUR ACCOUNTANT. WHAT DOES THE ACCOUNTANT DO WITH IT?  
145=A. HE USES THAT AS HIS BASIS FOR PROFIT AND LOSS STATEMENT.  
146=Q. AND HAVE YOU REGULARLY REVIEWED THE SALES REPORTS AND PROFIT  
147=AND LOSS STATEMENTS FOR LITTLE PROFESSOR?  
148=A. ON A MONTHLY BASIS.  
149=Q. PLEASE OPEN THE BINDER IN FRONT OF YOU TO TAB 13, WHICH IS  
  
150=PLAINTIFF'S EXHIBIT 276.  
151=A. I HAVE IT.  
152=Q. DO YOU RECOGNIZE THIS DOCUMENT?  
153=A. I DO.  
154=Q. CAN YOU TELL ME WHAT IT IS?  
155=A. THIS IS A DAILY SUMMARY SHEET FROM JANUARY OF '96.  
156=Q. AND IS THIS THE RECORD YOU WERE DESCRIBING THAT IS CREATED  
157=FROM YOUR POINT OF PURCHASE SALES INFORMATION?  
158=A. THAT'S CORRECT.  
159=Q. IF YOU'D BRIEFLY GLANCE AT TABS 14 THROUGH 18, JUST TO  
160=IDENTIFY, ARE THOSE SIMILAR RECORDS FOR OTHER YEARS?  
161=A. (REVIEWING DOCUMENTS.)  
162= YES, THEY ARE.  
163=Q. AND WOULD YOU TURN TO TAB 7, PLEASE.  
164=A. I HAVE IT.  
165=Q. WHICH IS PLAINTIFF'S EXHIBIT 261. DO YOU RECOGNIZE THIS  
166=DOCUMENT?  
167=A. YES. THIS IS MY PROFIT AND LOSS STATEMENT THE YEAR ENDED  
168=AUGUST 31ST, 1996.  
169=Q. AND THIS IS AS DOCUMENT CREATED BY LITTLE PROFESSOR'S  
170=ACCOUNTANT?  
171=A. THAT'S CORRECT.  
172=Q. AND YOU SUPPLY THE ACCOUNTANT WITH SALES INFORMATION TO  
173=COMPILE -- IN PART TO COMPILE THE DOCUMENT?  
174=A. WE GIVE HIM SALES INFORMATION, OUR CHECK STUBS, OUR ACCOUNTS  
  
175=PAYABLE, ACCOUNTS RECEIVABLE.  
176=Q. AND TAB 8, PLAINTIFF'S EXHIBIT 262, IS THAT ALSO A LITTLE  
177=PROFESSOR FINANCIAL STATEMENT?  
178=A. IT IS.  
179=Q. LOOK AT TAB 9, EXHIBIT 264. CAN YOU IDENTIFY WHAT THIS IS?  
180=A. (REVIEWING DOCUMENT.)  
181= THIS IS A COPY OF OUR CORPORATE INCOME TAX RETURN FOR  
182=THE YEAR 1993-'94, FISCAL YEAR.  
183=Q. DID LITTLE PROFESSOR -- WAS A FINANCIAL STATEMENT FOR THAT  
184=YEAR CREATED FOR LITTLE PROFESSOR?  
185=A. I -- YES.  
186=Q. DO YOU KNOW WHERE THAT FINANCIAL STATEMENT IS? WERE YOU  
187=ABLE TO FIND IT FOR THIS CASE?  
188=A. IF IT'S NOT HERE, NO, I DON'T. WE SEARCHED FOR IT. DID NOT  
189=FOUND IT.  
190=Q. IS THE INFORMATION IN THE TAX -- WHERE DOES THE SALES  
191=INFORMATION OR THE GROSS RECEIPTS SALES INFORMATION AND THE TAX  
192=RETURN COME FROM?  
193=A. AGAIN, I BELIEVE, MY ACCOUNTANT USES THE SAME INFORMATION  
194=THAT WE'VE GIVEN HIM ON A MONTHLY BASIS. IT COMES RIGHT OUT OF  
195=HIS COMPUTER TO FILE THE TAXES.  
196=Q. OKAY. AND ARE THE DOCUMENTS AT TABS 10 THROUGH 13 SIMILARLY  
197=LITTLE PROFESSOR'S TAX RETURNS AND FINANCIAL STATEMENTS?  
198=A. (REVIEWING DOCUMENTS.)  
199= YES, THEY ARE.  
  
200=Q. OKAY. I'D LIKE YOU NOW TO LOOK AT TAB 5, WHICH IS  
201=PLAINTIFF'S EXHIBIT 2610.  
202=A. (REVIEWING DOCUMENT.)  
203= I HAVE IT.  
204=Q. DO YOU RECOGNIZE THIS DOCUMENT?  
205=A. YES, I DO.  
206=Q. CAN YOU DESCRIBE IT, PLEASE?  
207=A. IT IS A SUMMARY OF THE GROSS SALES FOR OUR STORE IN  
208=CHARLOTTE FOR THE FISCAL YEARS 1990 THROUGH '95-'96 -- I'M  
209=SORRY -- 1990-'91 THROUGH FISCAL YEAR 1995-'96.

210=Q. AND DOES THE FISCAL YEAR OF LITTLE PROFESSOR BEGIN ON  
211=SEPTEMBER 1ST AND END ON AUGUST 31ST?  
212=A. YES, IT DOES.  
213=Q. AND DO YOU KNOW WHERE THE INFORMATION IN THE GROSS SALES  
214=COLUMN COMES FROM FOR THIS EXHIBIT?  
215=A. AGAIN, FROM OUR PROFIT AND LOSS SHEET.  
216=Q. AND HAVE YOU CHECKED THIS FOR ACCURACY?  
217=A. YES, I HAVE.  
218=Q. YOU SAID THAT THE BARNES & NOBLE ON SHARON ROAD OPENED IN  
219=SEPTEMBER OF 1993; IS THAT CORRECT?  
220=A. THAT'S CORRECT.  
221=Q. LOOKING AT EXHIBIT 5, WHAT WERE LITTLE PROFESSOR'S SALES IN  
222=THE PRIOR FISCAL YEAR ENDING AUGUST 31ST, 1993?  
223=A. \$1,325,293.  
224=Q. AND HAD THERE BEEN A TREND IN SALES LEADING UP TO THAT  
225=POINT?  
226=A. WE HAD INCREASED EVERY YEAR FOR 17 YEARS.  
227=Q. AND THEN IN THE FISCAL YEAR SEPTEMBER 1ST, 1993, TO  
228=AUGUST 31ST, 1994, WHAT WERE LITTLE PROFESSOR'S SALES?  
229=A. WE HAD FALLEN TO \$1,103,146.  
230=Q. AND FOR THE FOLLOWING YEARS, WAS THERE A TREND IN SALES?  
231=A. IT CONTINUED TO GO DOWN EACH YEAR.  
232=Q. DO YOU HAVE AN UNDERSTANDING OF WHAT THE CAUSE OF THAT  
233=DECLINE WAS?  
234=A. THE ONLY THING THAT WAS DIFFERENT WAS NEW COMPETITION.  
235=Q. AND BY NEW COMPETITION, YOU'RE REFERRING TO ...?  
236=A. THE BARNES & NOBLE AND THEN LATER THE BORDERS AND THEN LATER  
237=THE MEDIA PLAY.  
238=Q. OKAY. COME BACK TO THAT IN A SECOND. YOU JUST MENTIONED  
239=THE BORDERS, AND YOU SAID BEFORE THAT YOU BELIEVE LITTLE  
240=PROFESSOR COMPETES WITH BORDERS. WHY DO YOU BELIEVE THAT?  
241=A. WELL, THE SAME ITEMS THAT I MENTIONED BEFORE, THE PROXIMITY  
242=TO OUR STORE, THE FACT THAT WE'RE SHARING THE SAME CUSTOMER BASE  
243=THAT WE HAVE VERY SIMILAR PRODUCT LINES, AND THE SALES DROP.  
244=Q. HAVE YOU ALSO VISITED BORDERS STORES?  
245=A. YES, I HAVE.  
246=Q. HOW FREQUENTLY HAVE YOU DONE THAT?  
247=A. AGAIN, BASICALLY ON A MONTHLY TO QUARTERLY BASIS, SOMETIMES  
248=MORE FREQUENTLY IN THE CHRISTMAS SEASON.  
249=Q. AND DID YOU HAVE AN OPPORTUNITY TO OBSERVE THE BOOKS BEING  
250=SOLD IN THE BORDERS STORE?  
251=A. YES, I DID.  
252=Q. IS THAT THE BORDERS STORE ON -- YOU SAID IT WAS SHARON ROAD  
253=AND -- WHAT WAS THE --  
254=A. SHARON AND COLONY. THERE'S ONLY ONE BORDERS.  
255=Q. OKAY.  
256=A. SO FAR.  
257=Q. AND HOW DID THE PRODUCT OR BOOKS IN THE SHARON ROAD BORDERS  
258=COMPARE WITH WHAT LITTLE PROFESSOR OFFERS?  
259=A. VERY, VERY SIMILAR.  
260=Q. DID YOU ALSO HAVE AN OPPORTUNITY TO OBSERVE THE CUSTOMERS IN  
261=THIS STORE?  
262=A. YES, I DID.  
263=Q. DID YOU RECOGNIZE ANY CUSTOMERS WHO SHOP AT LITTLE  
264=PROFESSOR?  
265=A. YES, I DID.  
266=Q. AND REFERRING BACK AGAIN TO THE CHART BEHIND TAB 5, WHICH  
267=FISCAL YEAR DID THE BORDERS OPEN?  
268=A. THEY OPENED IN FISCAL YEAR '93 TO '94.  
269=Q. AND COULD YOU REMIND US OF THE MONTH?  
270=A. IT WAS JUST THE -- THE SATURDAY AFTER THANKSGIVING, SO THE  
271=END OF NOVEMBER '93.  
272=Q. TWO MONTHS AFTER THE BARNES & NOBLE OPENED ON --  
273=A. APPROXIMATELY. APPROXIMATELY.  
274=Q. DO YOU BELIEVE THAT THE MEDIA PLAY STORE THAT OPENED  
275=CONTRIBUTED TO YOUR DECLINE IN SALES IN THE -- I'M SORRY.  
276=THAT'S WITHDRAWN.  
277= LET'S TURN TO TAB -- I'M SORRY.  
278= WE WERE JUST LOOKING AT TAB 5 BEFORE. LET'S TURN TO  
279=TAB 6, WHICH IS EXHIBIT 2611.

280=A. I HAVE IT.  
281=Q. CAN YOU IDENTIFY THIS DOCUMENT? DO YOU RECOGNIZE IT?  
282=A. YES, I DO.  
283=Q. CAN YOU DESCRIBE IT, PLEASE?  
284=A. THIS IS A COMPARISON OF MONTHLY GROSS SALES FOR LITTLE  
285=PROFESSOR BOOK CENTER IN CHARLOTTE FOR THE PERIOD OF OCTOBER '92  
286=THROUGH APRIL '93 AND OCTOBER '93 THROUGH APRIL '94.  
287=Q. AND DO YOU KNOW WHERE THE DATA IN THE GROSS SALES COLUMNS  
288=COMES FROM?  
289=A. AGAIN, FROM OUR PROFIT AND LOSS STATEMENT. ACTUALLY FROM  
290=THE MATERIAL THAT WE FURNISHED OUR ACCOUNTANT, OUR DAILY  
291=SUMMARIES -- SHEETS.  
292=Q. OKAY. ARE THOSE THE EXHIBITS WE'VE PREVIOUSLY LOOKED AT AT  
293=TABS 13 THROUGH 18?  
294=A. YES, THEY ARE.  
295=Q. AND HAVE YOU CHECKED THIS -- THE INFORMATION HERE FOR  
296=ACCURACY?  
297=A. YES, I HAVE.  
298=Q. AND THE BARNES & NOBLE ON SHARON ROAD OPENED IN  
299=SEPTEMBER 1993; CORRECT?  
  
300=A. THAT IS CORRECT.  
301=Q. HOW DID THE SALES FOR OCTOBER 1993 AT LITTLE PROFESSOR  
302=COMPARE WITH THE SALES FOR THE SAME MONTH THE PRIOR YEAR?  
303=A. THEY DROPPED FROM 109,934, ALMOST 110,000, DOWN TO 90,895.  
304=Q. NOW, THE NEXT MONTH DOES NOT APPEAR TO HAVE -- SHOW ANY  
305=SIGNIFICANT DECLINE. DO YOU HAVE AN EXPLANATION OF THAT?  
306=A. IT WOULD HAVE GONE DOWN DRASTICALLY, EXCEPT WE HAD PAT  
307=CONROY, AND JUST THE ONE TITLE AMOUNTED TO OVER \$30,000 IN SALES  
308=IN THAT MONTH.  
309=Q. AND WAS THERE A TREND IN SALES AFTER THE NOVEMBER 1993 TIME?  
310=A. YES, IT WAS CONTINUALLY DOWNHILL.  
311=Q. NOW, YOU MENTIONED BEFORE THAT THE MEDIA PLAY ALSO OPENED IN  
312=THIS FISCAL YEAR '93-94. COULD THAT BE THE CAUSE OF THIS  
313=DECLINE IN SALES?  
314=A. I DON'T KNOW THAT IT'S THE CAUSE, BUT IT CERTAINLY  
315=CONTRIBUTED.  
316=Q. WHEN EXACTLY DID THE MEDIA PLAY OPEN?  
317=A. IT WAS LATE SPRING OR EARLY SUMMER OF '94.  
318=Q. OKAY. AND SO THAT WAS AFTER THE PERIOD SHOWN ON THE EXHIBIT  
319=2611 BEHIND TAB 6; IS THAT RIGHT?  
320=A. YES, THAT'S CORRECT.  
321=Q. SO THE DECLINE IN SALES ON THIS CHART OCCURRED BEFORE THE  
322=MEDIA PLAY OPENED?  
323=A. THAT'S CORRECT.  
324=Q. BUT AFTER THE BARNES & NOBLE OPENED.  
  
325=A. YES.  
326=Q. AND TO SOME EXTENT AFTER THE BORDERS OPENED?  
327=A. YES.  
328=Q. DO YOU HAVE ANY DOUBT THAT LITTLE PROFESSOR COMPETES WITH  
329=THE BARNES & NOBLE STORE ON SHARON ROAD?  
330=A. NONE WHATSOEVER.  
331=Q. DO YOU HAVE ANY DOUBT THAT THE LITTLE PROFESSOR COMPETES  
332=WITH THE BORDERS STORE ON SHARON AND COLONY?  
333=A. AGAIN, NONE WHATSOEVER.  
334=Q. HAS LITTLE PROFESSOR EVER DISCOUNTED TO CONSUMERS ANY  
335=BESTSELLERS OR OTHER BOOKS OFF OF LIST PRICE?  
336=A. YES, WE STILL DO.  
337=Q. WHAT IS THE CURRENT POLICY?  
338=A. OUR CURRENT POLICY IS TO TAKE THE TOP TEN NEW YORK TIMES  
339=BESTSELLERS, BOTH FICTION AND NON-FICTION, AND WE DISCOUNT THEM  
340=25 PERCENT.  
341=Q. AND HAS THAT BEEN YOUR POLICY FROM 1992 TO THE PRESENT?  
342=A. NO, WE STARTED IN I BELIEVE IT WAS '94 TO DISCOUNT. WE  
343=DISCOUNTED MUCH MORE AGGRESSIVELY. I THINK IT WAS 40 PERCENT --  
344=SURE IT WAS 40 PERCENT IN THE BEGINNING.  
345=Q. AND AT WHAT POINT DID YOU CHANGE -- WERE THERE CHANGES  
346=BETWEEN THAT POLICY AND THE 25 PERCENT POLICY, OR WAS IT JUST  
347=ONE SWITCH?  
348=A. NO, THERE HAVE BEEN A NUMBER OF CHANGES WHERE WE'VE --  
349=Q. WHY DID YOU MAKE THOSE CHANGES?

350=A. WE FELT WE HAD TO COMPETE. WE FELT CUSTOMERS WERE DEMANDING  
351=DISCOUNTING.  
352=Q. WHY DIDN'T YOU KEEP -- STICK WITH THE 40 PERCENT DISCOUNT?  
353=A. COULDN'T AFFORD TO.  
354=Q. WAS IT POSSIBLE TO MAKE A PROFIT ON THOSE BOOKS DISCOUNTED  
355=AT 40 PERCENT?  
356=A. NO, WE ACTUALLY LOST ON THOSE.  
357=Q. WHEN YOU ADOPTED THE 40 PERCENT DISCOUNT POLICY, DID IT HAVE  
358=ANY IMPACT ON YOUR SALES OF THE DISCOUNTED BOOKS?  
359=A. YES, IT DID. THE DISCOUNTED BOOKS STARTED GOING BACK UP.  
360=THIS WAS THE NEW YORK TIMES LIST. IT IMMEDIATELY STARTED DOING  
361=A TURNAROUND.  
362=Q. OKAY. YOU SAY "GOING BACK UP," DO YOU MEAN --  
363=A. DAILY SALES.  
364=Q. DO YOU KNOW WHAT THE TREND IN LITTLE PROFESSOR'S PROFITS --  
365=NET PROFITS HAS BEEN IN THE PERIOD SINCE THE BARNES & NOBLE AND  
366=BORDERS OPENED ON SHARON ROAD?  
367=A. THEY SUFFERED EVEN MORE THAN SALES DID.  
368=Q. DOES LITTLE PROFESSOR PAY SALARIES TO YOURSELF?  
369=A. YES.  
370=Q. AND HAS THERE BEEN A TREND IN THOSE SALARIES?  
371=A. YES, I'VE REDUCED MY SALARY MANY OF THOSE YEARS.  
372=Q. WHY DID YOU DO THAT?  
373=A. I HAD TO TO GIVE SOME STAFF SOME LONG OVERDUE INCREASES, AND  
374=WE JUST SIMPLY HAD TO MAKE ENDS MEET.

375=Q. ARE THERE PRESENTLY ANY WALDEN STORES IN THE CHARLOTTE AREA?  
376=A. I BELIEVE THERE IS ONE IN PLACE KNOWN AS CAROLINA MALL.  
377=Q. WOULD YOU TURN BACK TO TAB 3 PLEASE, PLAINTIFF'S EXHIBIT  
378=2522.  
379=A. I HAVE IT.  
380=Q. AND THIS IS YOU PREVIOUSLY IDENTIFIED AS A MAP OF THE  
381=CHARLOTTE AREA. THERE'S A WALDENBOOKS IDENTIFIED ON THE UPPER  
382=RIGHT OF THE MAP, AND ALSO I BELIEVE THE LABEL'S CUT OFF, BUT ON  
383=THE LEFT. ARE EITHER OF THOSE THE STORES YOU'RE REFERRING TO?  
384=A. NO, THEY BOTH CLOSED.  
385=Q. WHERE IS THE WALDENBOOKS THAT'S STILL OPEN?  
386=A. AT THE INTERSECTION -- IT WOULD BE THE SOUTHWEST QUADRANT  
387=WHERE IT'S MARKED "PINEVILLE" AT THE INTERSECTION OF INTERSTATE  
388=485 AND NORTH CAROLINA ROUTE 51.  
389=Q. THANK YOU.  
390= NOW, WANT TO TURN TO THE PERIOD 1994 TO THE PRESENT,  
391=FOCUS ON THAT. SINCE 1994, WHAT ROLE HAVE YOU PERSONALLY PLAYED  
392=IN PURCHASING BOOKS FOR THE LITTLE PROFESSOR?  
393=A. FROM '94 UNTIL JULY OF '99 -- IN FACT, EVEN A LITTLE BIT  
394=AFTER THAT, LET'S SAY THROUGH FALL OF '99, I WAS THE PRIMARY  
395=PURCHASER.  
396=Q. DID YOU MEET WITH PUBLISHERS' REPRESENTATIVES?  
397=A. ALL THE TIME.  
398=Q. SINCE JULY 1999, HAVE YOU HAD ANY ROLE IN THE PURCHASING OF  
399=THE BOOKS?

400=A. ONLY THROUGH THE FALL OF '99.  
401=Q. HAVE YOU PLAYED ANY ROLE IN THE RECEIVING OF BOOKS AT YOUR  
402=STORE?  
403=A. YES.  
404=Q. CAN YOU DESCRIBE THE RECEIVING PROCESS BRIEFLY AND THE PAPER  
405=WORK INVOLVED?  
406=A. WELL, WHEN A BOX OF BOOKS COMES IN, THEY'RE BROUGHT INTO THE  
407=BACK ROOM. BOX IS UNPACKED. WE TAKE THEM BOOK BY BOOK AND  
408=MATCH IT AGAINST THE PACKING LIST, MAKE SURE THAT THE BOOK IS  
409=NOT DAMAGED. WE THEN ENTER ALL OF THIS INTO THE COMPUTER TO PUT  
410=IT INTO OUR DATABASE.  
411=Q. NOW, YOU MENTIONED A PACKING LIST. COULD YOU DESCRIBE FOR  
412=THE COURT WHAT A PACKING LIST IS.  
413=A. A PACKING LIST IS A PIECE OF PAPER OR NUMBER OF PIECES OF  
414=PAPER ACCOMPANYING THE SHIPMENT THAT SHOWS WHAT IS SUPPOSED TO  
415=BE INSIDE THE CARTONS THAT WE RECEIVED.  
416=Q. IS THE DISCOUNT PERCENTAGE RECEIVED FROM THE SUPPLIER SHOWN  
417=ON THE PACKING LIST?  
418=A. ALMOST ALWAYS.  
419=Q. AND WHEN YOU RECEIVED BOOKS, WOULD YOU OBSERVE WHAT THOSE  
420=DISCOUNTS WERE?

421=A. YES. WE -- WE USUALLY GO THROUGH IT TO MAKE SURE THAT WE  
422=WERE NOT SHORTED IN TERMS OF DISCOUNTING, THAT WE BOUGHT AT THE  
423=TERMS THAT WE WERE SUPPOSED TO GET THE BOOKS AT.  
424=Q. AND SINCE JULY 1999, HAVE YOU CONTINUED TO PLAY ANY ROLE IN  
425=THE RECEIVING PROCESS OR THE REVIEW PACKING LISTS?  
426=A. ONLY AT CHRISTMASTIME. I WAS IN HELPING.  
427=Q. SINCE JULY OF 1999, DO YOU STILL HAVE OCCASION TO LEARN THE  
428=TERMS UNDER WHICH LITTLE PROFESSOR PURCHASES BOOKS?  
429=A. OH, ABSOLUTELY. I'M IN THE STORE AT LEAST ONCE A WEEK, AND  
430=I MEET WITH THE STAFF, AND THEY SHARE WITH ME ANY OF THE CHANGES  
431=THAT ARE GOING ON.  
432=Q. IN CONNECTION WITH THIS LITIGATION, DID YOU TAKE ANY STEPS  
433=TO VERIFY YOUR DISCOUNTS FROM SUPPLIERS?  
434=A. YES, I DID.  
435=Q. COULD YOU DESCRIBE WHAT THOSE STEPS WERE.  
436=A. LOOK AT INVOICES TO GO THROUGH THEM TO SEE TO COMPARE THEM  
437=TO THE RED BOOK TO SEE IF WE WERE GETTING WHAT WE WERE SUPPOSED  
438=TO BE GETTING.  
439=Q. THOSE ARE INVOICES IN LITTLE PROFESSOR'S RECORDS?  
440=A. THAT IS CORRECT.  
441=Q. HOW ARE THOSE INVOICES ORGANIZED?  
442=A. ORGANIZED BY PUBLISHER.  
443=Q. AND ARE THEY MAINTAINED BY LITTLE PROFESSOR IN THE ORDINARY  
444=COURSE OF ITS BUSINESS?  
445=A. YES.  
446=Q. AS A RECORD OF TERMS WITH WHICH YOU DEAL WITH PUBLISHERS?  
447=A. YES.  
448=Q. IF YOU TURN TO THE VERY BACK OF THE BINDER, TAB 26,  
449=PLAINTIFF'S EXHIBIT 2591.  
450=A. YES, I HAVE IT.  
451=Q. AND THIS IS A LIST OF BOOK PUBLISHERS AND WHOLESALERS,  
452=CORRECT?  
453=A. THAT IS CORRECT.  
454=Q. FROM WHICH OF THE COMPANIES ON THIS LIST DOES LITTLE  
455=PROFESSOR PRESENTLY PURCHASE BOOKS?  
456=A. (REVIEWING DOCUMENT.)  
457= JUST A POINT OF CLARIFICATION. WHEN YOU SAY  
458="PRESENTLY," DO YOU MEAN THIS VERY DAY, OR YEAR --  
459=Q. IN THE YEAR 2001?  
460=A. ALL OF THEM.  
461=Q. ALL OF THEM?  
462=A. ALL OF THEM.  
463=Q. HAS THAT BEEN TRUE FOR THE ENTIRE PERIOD EACH YEAR FROM 1994  
464=TO THE PRESENT?  
465=A. I BELIEVE IT DOES. THERE MAY HAVE BEEN A PUBLISHER OR TWO  
466=THAT WE DIDN'T BUY FROM ONE YEAR ALONG THE LINE, BUT GENERALLY,  
467=I'D SAY YES.  
468=Q. DID YOU PURCHASE FROM EACH OF THESE VENDORS -- HOW -- LET ME  
469=WITHDRAW THAT.  
470= WHAT PROPORTION OF LITTLE PROFESSOR'S PURCHASES ARE  
471=FROM THESE VENDORS?  
472=A. THESE ARE MY MAJOR SUPPLIERS. I WOULD THINK 70, 80 PERCENT.  
473=Q. DOES LITTLE PROFESSOR PURCHASE HARDCOVER BOOKS FROM EACH OF  
474=THE VENDORS LISTED HERE?  
475=A. I'M NOT SURE THAT EACH OF THESE VENDORS DO -- THAT ALL OF  
476=THESE VENDORS DO HARDCOVERS, IF THEY DO, WE PURCHASE THEM.  
477=Q. OKAY. DOES LITTLE PROFESSOR PURCHASE TRADE PAPER BOOKS FROM  
478=ALL OF THE VENDORS LISTED HERE?  
479=A. YES, WE DO.  
480=Q. DOES LITTLE PROFESSOR PURCHASE MASS MARKET BOOKS FROM ALL OF  
481=THE VENDORS?  
482=A. YES, WE DO.  
483=Q. DO THEY ALL SELL MASS MARKET BOOKS?  
484=A. THAT, I'M NOT SURE OF. I SHOULD SAY THAT IF THEY PRODUCE  
485=THEM, WE BUY FROM THEM.  
486=Q. AND DOES LITTLE PROFESSOR PURCHASE AUDIO BOOKS FROM EACH OF  
487=THE VENDORS?  
488=A. AGAIN, IF THEY PRODUCE THEM, YES, WE DO.  
489=Q. DOES LITTLE PROFESSOR ALSO PURCHASE FRONT LIST AND BACKLIST  
490=BOOKS?

491=A. YES.  
492=Q. HOW FREQUENTLY DOES LITTLE PROFESSOR ORDER BOOKS FROM THESE  
493=VENDORS?  
494=A. IT WOULD VARY FROM VENDOR TO VENDOR.  
495=Q. WHAT IS THE MOST FREQUENT PURCHASE SCHEDULE?  
496=A. WHEN I LOOK AT INGRAM AND BAKER & TAYLOR, FROM THEM, WE  
497=WOULD ORDER FREQUENTLY FOUR TO FIVE TIMES A WEEK.  
498=Q. AND THOSE ARE BOOK WHOLESALERS, RIGHT?  
499=A. THAT'S CORRECT.

500=Q. FROM THE PUBLISHERS, WHAT WOULD BE THE MOST FREQUENT  
501=PURCHASE SCHEDULE?  
502=A. RANDOM HOUSE, WHICH WE WOULD ORDER PROBABLY THREE TIMES A  
503=WEEK. SIMON & SCHUSTER WOULD BE TWO OR THREE TIMES A WEEK.  
504=PUTNAM, ONCE A WEEK. HARPERCOLLINS, TWICE A WEEK. THOSE WOULD  
505=BE THE --  
506= I'D LIKE TO CORRECT MY TESTIMONY, THOUGH. I'M SORRY.  
507=I DIDN'T SEE THE BREAKDOWN. MACMILLAN COMPUTER. WE DO NOT  
508=ORDER FROM MACMILLAN COMPUTER.  
509=Q. OKAY.  
510=A. SORRY.  
511=Q. THANK YOU.  
512= WHAT WOULD BE THE LEAST FREQUENTLY YOU WOULD  
513=PURCHASE -- LITTLE PROFESSOR WOULD PURCHASE FROM ANY OF THE --  
514=THE PUBLISHERS LISTED HERE?  
515=A. PROBABLY ONCE A YEAR.  
516=Q. WHICH PUBLISHERS WOULD THAT BE TRUE FOR?  
517=A. WESTERN.  
518=Q. ANY OTHERS?  
519=A. POSSIBLY LPC, LOGAN PUBLISHERS CONSORTIUM.  
520=Q. NOW, COULD YOU DESCRIBE BRIEFLY HOW LITTLE PROFESSOR  
521=PURCHASES FRONT LIST BOOKS.  
522=A. FRONT LIST IS ALMOST UNIVERSALLY DONE BY SITTING DOWN WITH  
523=THE PUBLISHERS' REP AS HE OR SHE MAKES THEIR VISIT.  
524=Q. AND HOW FREQUENTLY DOES THAT OCCUR?

525=A. AGAIN, IT WOULD VARY FROM PUBLISHER TO PUBLISHER. SOME WE  
526=SEE TWICE A YEAR. SOME WE SEE AS MANY AS FOUR TIMES A YEAR.  
527=Q. DO YOU ORDER BOOKS FOR A SEVERAL-MONTH PERIOD AT THAT POINT?  
528=A. YES.  
529=Q. COULD YOU EXPLAIN THAT PROCESS?  
530=A. AGAIN, THE PUBLISHERS HAVE THEIR OWN PUBLISHING SEASONS.  
531=AND WE WOULD BE BUYING -- FOR EXAMPLE, OUR CHRISTMAS BOOKS, THE  
532=REASON I SAID SOME WE SEE FOUR TIMES A YEAR, RANDOM HOUSE IS AN  
533=IMMEDIATE ONE THAT COMES TO MIND WHERE THE REP WOULD COME IN  
534=PROBABLY IN LATE JULY OR EARLY AUGUST, AND HE WOULD THEN BEGIN  
535=SELLING THE LIST FOR THE CHRISTMAS SEASON -- HOLIDAY SEASON.  
536=BECAUSE THEIR LIST IS SO LARGE, HE MAY COME BACK A SECOND TIME  
537=AND MAKE TWO VISITS TO SELL THAT ONE LIST. THEN HE'D BE BACK  
538=AGAIN IN THE SPRING, SELLING THE BOOKS -- OR ACTUALLY RIGHT  
539=AFTER CHRISTMAS, HE'D BE BACK SELLING THE SPRING LIST AND THE  
540=SUMMER LIST.  
541=Q. AND WHEN YOU PLACE THE FRONT LIST ORDER WITH THE PUBLISHER'S  
542=REPRESENTATIVE, ARE THOSE BOOKS IMMEDIATELY SHIPPED TO YOU?  
543=A. NO, BECAUSE MOST OF THE BOOKS HADN'T BEEN PRINTED YET.  
544=Q. WHEN DOES LITTLE PROFESSOR RECEIVE THE BOOKS ORDERED THEN  
545=FROM THE REPRESENTATIVE?  
546=A. AS THE BOOKS ARE PRINTED AND DISTRIBUTED BY THE PUBLISHER.  
547=Q. WHEN THEY ARE RELEASED?  
548=A. YES.  
549=Q. HOW DOES LITTLE PROFESSOR PLACE ITS ORDERS WITH SUPPLIERS?

550=AND BY THAT I MEAN, IS IT ELECTRONIC OR ON THE PHONE OR BY FAX  
551=OR LETTER?  
552=A. FRONT LIST OR BACKLIST?  
553=Q. IS THERE A DISTINCTION?  
554=A. YES.  
555=Q. FRONT --  
556=A. FRONT LIST IS DONE INVARIABLY WITH THE REP. HE OR SHE SITS  
557=WITH THEIR ORDER FORM. SOMETIMES IT IS ELECTRONIC BECAUSE  
558=THEY HAVE COMPUTERS, SOME OF THEM. THEY TAKE THE ORDER, PUT IT  
559=IN THE COMPUTER, AND THEN THEY TRANSMIT IT TO THE PUBLISHER.  
560= OTHER PUBLISHERS HAVE JUST A PAPER ORDER FORM, AND WE



561=GO THROUGH AND DECIDE HOW MANY COPIES WE WANT. HE OR SHE THEN  
562=NOTATES THAT ON THE ORDER FORM AND SENDS IT IN, I THINK, ON A  
563=WEEKLY BASIS AS THEY MAKE THEIR TRIPS AND GIVES ME A COPY OF IT.  
564=Q. AND THAT'S FOR FRONT LIST BOOKS?  
565=A. THAT'S FOR FRONT LIST.  
566=Q. AND BACKLIST BOOKS?  
567=A. BACKLIST, AS I SAY, WE DO THAT THREE, FOUR TIMES A WEEK. WE  
568=DO THAT ELECTRONICALLY.  
569=Q. NOW, DO YOU HAVE AN UNDERSTANDING OF WHERE PUBLISHERS AND  
570=WHOLESALEERS SHIP BOOKS FROM TO THE LITTLE PROFESSOR?  
571=A. YES, I DO.  
572=Q. LOOKING AT THE LIST IN FRONT OF YOU, ARE THOSE -- DO ANY OF  
573=THOSE SHIPMENTS COME FROM WITHIN NORTH CAROLINA?  
574=A. NO, THEY DO NOT.

575=Q. HOW DOES LITTLE PROFESSOR DECIDE WHETHER IT WOULD CHOOSE --  
576=WHETHER IT WOULD PURCHASE FROM A WHOLESALEER VERSUS A PUBLISHER?  
577=A. IT'S THE SAME THING THAT YOU'VE ALREADY HEARD, BUT I'LL  
578=REPEAT IT AGAIN, THAT IT'S A MATTER OF ECONOMY OF TRYING TO GET  
579=A BOOK IN IN A HURRY, KNOWING THAT WE NEED IT, WE DON'T WANT IT  
580=MISSING FROM OUR SHELVES, OR IT'S A SPECIAL ORDER AND SO WE GIVE  
581=UP DISCOUNT POINTS IN ORDER TO GET IT FROM THE WHOLESALEER.  
582= CONVERSELY, IF WE CAN WAIT, THEN WE'LL ORDER DIRECT  
583=FROM THE PUBLISHER.  
584=Q. OKAY. JUST TO BE CLEAR ON THIS, WHAT ARE THE ADVANTAGES OF  
585=PUBLISHING FROM A WHOLESALEER AND WHAT ARE THE DISADVANTAGES OF  
586=PURCHASING FROM A WHOLESALEER?  
587=A. WELL, THE ADVANTAGES, RAPIDITY OF DELIVERY AND RESTOCKING.  
588=THE DISADVANTAGE, THAT WE HAVE TO GIVE UP A LITTLE DISCOUNT  
589=POINTS.  
590=Q. AND YOU'RE GIVING UP DISCOUNT POINTS COMPARED TO WHAT?  
591=A. TO WHAT WE WOULD GET IT REORDERING FROM THE PUBLISHER  
592=DIRECT.  
593=Q. WHAT TYPICALLY WOULD BE THE AMOUNT OF DISCOUNT THAT YOU  
594=WOULD GIVE UP BY ORDERING FROM A WHOLESALEER VERSUS ORDERING  
595=DIRECT?  
596=A. AGAIN, IT WILL VARY FROM PUBLISHER TO PUBLISHER, BUT I WOULD  
597=THINK GENERALLY TWO TO FIVE POINTS.  
598=Q. IN THE COURSE OF YOUR WORK AT LITTLE PROFESSOR, HAVE YOU  
599=EVER CONSULTED THE ABA BOOK BUYER'S HANDBOOK?

600=A. ON A REGULAR BASIS.  
601=Q. FOR WHAT PURPOSES?  
602=A. TO CHECK DISCOUNTS, SOMETIMES TO FIND OUT WHO I NEED TO  
603=CONTACT FOR PUBLICITY, WHAT THEIR SHIPPING AND RETURN POLICIES  
604=WERE, MYRIAD OF ITEMS.  
605=Q. IS THE ABA BOOK BUYERS HANDBOOK A COMPILATION OF DATA OR  
606=FACTS USED BY PERSONS IN THE BOOKSELLING BUSINESS?  
607=A. YES, IT IS.  
608=Q. AND IS IT RELIED ON BY PERSONS SUCH AS YOURSELF IN THE  
609=BOOKSELLING BUSINESS FOR THE PURPOSE OF CARRYING OUT THEIR DAILY  
610=BUSINESS?  
611=A. YES.  
612=Q. NOW, YOU SAID THAT -- EARLIER THAT YOU REVIEWED INVOICES TO  
613=VERIFY YOUR DISCOUNTS WITH CERTAIN VENDORS; IS THAT RIGHT?  
614=A. I THINK I SAID THAT I LOOKED AT PACKING LISTS RATHER THAN  
615=INVOICES. THE ONLY TIME I ACTUALLY SEE THE INVOICE ITSELF WAS  
616=IF THE BOOKKEEPER HAD A QUESTION ON IT.  
617=Q. IN CONNECTION WITH THIS LITIGATION, DID YOU REVIEW ANY?  
618=A. YES, I DID. I'M SORRY, YES.  
619=Q. HAD THOSE INVOICES BEEN MADE AVAILABLE TO THE PARTIES IN  
620=THIS CASE PREVIOUSLY?  
621=A. WE MADE EVERYTHING AVAILABLE.  
622=Q. AND WHICH VENDOR INVOICE -- WHICH VENDORS DID YOU REVIEW  
623=INVOICES FOR?  
624=A. AVON; BALLANTINE, WHICH, OF COURSE, IS PART OF RANDOM HOUSE;

625=BANTAM DOUBLEDAY DELL; BERKELEY, WHICH IS A PART OF PENGUIN,  
626=PUTNAM PENGUIN; HARPERCOLLINS; LITTLE BROWN; PENGUIN; POCKET  
627=BOOKS, PART OF SIMON & SCHUSTER; PUTNAM; RANDOM HOUSE; SIMON &  
628=SCHUSTER; WILLIAM MORROW, WHICH IS NOW A PART OF HARPERCOLLINS  
629=AND INGRAM.  
630=Q. AND WHAT DID YOU FIND IN REVIEWING THOSE INVOICES?

631=A. I FOUND THAT OUR INVOICES WERE RIGHT ON THE MONEY AS FAR AS  
632=THE DISCOUNT THAT WE WERE SUPPOSED TO GET COMPARED TO THE RED  
633=BOOK.  
634=Q. OKAY. MAYBE -- PARDON ME -- IT WOULD HELP TO TAKE AN  
635=EXAMPLE. TURN TO TAB 25.  
636=A. (REVIEWING DOCUMENTS.)  
637=Q. WHICH IS A PORTION OF PLAINTIFF'S EXHIBIT NO. 7, PAGES 2 AND  
638=482 OF THAT EXHIBIT.  
639=A. I HAVE IT, YES.  
640=Q. DO YOU RECOGNIZE THIS?  
641=A. YES, THIS IS A PAGE FROM THE RED BOOK, AND IT SPECIFICALLY  
642=DEALS WITH THE TERMS OF INGRAM BOOK COMPANY.  
643=Q. AND IS THERE A DISCOUNT SCHEDULE HERE?  
644=A. YES, THERE IS.  
645=Q. DO YOU HAVE AN UNDERSTANDING OF THAT DISCOUNT SCHEDULE?  
646=A. YES. IT'S ON THE LEFT-HAND COLUMN. AND IT IS BASICALLY THE  
647=FACT THAT IF I ORDER ONE TO FOUR COPIES OF THE TITLE, I GET  
648=40 PERCENT DISCOUNT; FIVE TO NINE, I GET 41 PERCENT DISCOUNT;  
649=AND TEN OR MORE, I GET 42. I'M SORRY -- YEAH, 42 PERCENT  
  
650=DISCOUNT.  
651=Q. AND IN REVIEWING LITTLE PROFESSOR'S INVOICES, WERE THERE  
652=INSTANCES IN WHICH LITTLE PROFESSOR HAD ORDERED ONE TO FOUR  
653=COPIES OF A TITLE FROM INGRAM?  
654=A. YES.  
655=Q. AND WHAT DISCOUNT DID LITTLE PROFESSOR, IN FACT, RECEIVE AS  
656=SHOWN ON THE INVOICE?  
657=A. 40 PERCENT.  
658=Q. HOW FREQUENTLY WERE LITTLE PROFESSOR'S ORDERS IN THAT  
659=QUANTITY, ONE TO FOUR TITLES?  
660=A. MOST OFTEN, THIS WAS THE QUANTITY.  
661=Q. DID LITTLE PROFESSOR ALSO AT TIMES ORDER FIVE TO NINE COPIES  
662=OF A TITLE?  
663=A. YES, WE DID.  
664=Q. AND WHAT WAS THE ACTUAL DISCOUNT AS SHOWN ON THE INVOICES OF  
665=THOSE ORDERS?  
666=A. 41 PERCENT.  
667= MR. PETROCELLI: YOUR HONOR, I JUST HAVE A MILD  
668=OBJECTION HERE, BECAUSE RIGHT NOW THE WITNESS IS TESTIFYING  
669=ABOUT THE CONTENTS OF INVOICES THAT ARE NOT HERE AND THE  
670=INVOICES THEMSELVES ARE THE BEST EVIDENCE OF WHAT THEY SAY.  
671= HE'S ASKING WHAT, IN FACT, DO THE INVOICES STATE, AND  
672=UNDER THE BEST EVIDENCE RULE, WHEN YOU'RE TRYING TO PROVE THE  
673=CONTENTS OF DOCUMENT, YOU HAVE TO HAVE THE DOCUMENT, AND THE  
674=DOCUMENT IS UNDER HIS CONTROL, AND SO THERE'S NO REASON WHY IT  
  
675=COULD NOT HAVE BEEN FURNISHED.  
676= MR. HOHENGARTEN: I DO NOT BELIEVE THE BEST EVIDENCE  
677=RULE APPLIES HERE, BUT I COULD FURNISH INVOICES. THE  
678=DEFENDANTS, OF COURSE, HAVE SEEN THE INVOICES. I DO HAVE COPIES  
679=WHICH I COULD DISTRIBUTE TO THE COURT AND TO DEFENDANTS,  
680=EXAMPLES, IF THAT WOULD BE OF ASSISTANCE.  
681= THE COURT: WELL, I THINK THE BEST EVIDENCE RULE DOES  
682=APPLY, AND I SUSTAIN THE OBJECTION.  
683= MR. HOHENGARTEN: YOUR HONOR, MAY I USE A  
684=SUPPLEMENTAL BINDER WITH INVOICES?  
685= THE COURT: YOU DO WHATEVER YOU WANT.  
686= MR. HOHENGARTEN: WITH YOUR PERMISSION, MAY I HAND IT  
687=UP TO YOU AND THE WITNESS?  
688= THE COURT: YOU DO WHATEVER -- YOU'RE THE LAWYER.  
689=YOU PUT ON THE BEST CASE YOU CAN, AND I'M HERE TO RULE.  
690= MR. HOHENGARTEN: THANK YOU VERY MUCH, YOUR HONOR.  
691= (PAUSE IN THE PROCEEDINGS.)  
692= MR. HOHENGARTEN: HAS DEFENDANTS' COUNSEL RECEIVED  
693=COPIES?  
694= UNIDENTIFIED SPEAKER: YES.  
695= (PAUSE IN THE PROCEEDINGS.)  
696= MR. HOHENGARTEN: SORRY. ONE MOMENT, JUST WHILE I  
697=ORGANIZE.  
698= MR. PETROCELLI: YOUR HONOR, JUST ONE OTHER POINT.  
699=THESE EXHIBITS THAT HE'S NOW SHOWING THE WITNESS ARE NOT PART OF  
  
700=THE DAILY MEMO.

701= MR. HOHENGARTEN: I'D INTENDED TO USE THEM ON  
702=REDIRECT IF NECESSARY.  
703= THE COURT: ALL RIGHT. YOU MAY USE THEM.  
704= MR. HOHENGARTEN: THANK YOU, YOUR HONOR.  
705= (PAUSE IN THE PROCEEDINGS.)  
706= MR. HOHENGARTEN: JUST TRYING TO GET TO THE FIRST  
707=INGRAM INVOICE HERE.  
708=Q. PLEASE TURN TO TAB 21, WHICH IS PLAINTIFF'S EXHIBIT 2631.  
709=A. (REVIEWING DOCUMENTS.)  
710= I HAVE IT.  
711=Q. CAN YOU IDENTIFY THIS DOCUMENT?  
712=A. THIS IS A COPY OF AN INVOICE FROM INGRAM BOOK COMPANY DATED  
713=30TH OF OCTOBER, 1997.  
714=Q. AND ON THIS DOCUMENT, DOES IT SHOW ANYWHERE THE NUMBER  
715=THAT -- THE NUMBER OF COPIES OF A TITLE THAT LITTLE PROFESSOR  
716=ORDERED AND RECEIVED?  
717=A. IN THE FAR LEFT-HAND, IT SHOWS BOTH THE QUANTITY ORDERED AND  
718=THE QUANTITY SHIPPED.  
719=Q. AND DOES THIS DOCUMENT -- DOES THIS INVOICE ALSO SHOW THE  
720=DISCOUNT RECEIVED BY LITTLE PROFESSOR?  
721=A. YES, IT DOES, IN THE THIRD FROM THE RIGHT-HAND COLUMN.  
722= (CONTINUED NEXT PAGE; NOTHING OMITTED.)  
723=  
724=  
  
725=BY MR. HOHENGARTEN:  
726=Q. THERE'S ONE PURCHASE HERE FOR 20 -- 20 COPIES OF A BOOK.  
727=DO YOU SEE THAT?  
728=A. YES, I DO.  
729=Q. AND WHAT PURCHASE DISCOUNT DID LITTLE PROFESSOR RECEIVE FOR  
730=THAT?  
731=A. 42 PERCENT.  
732=Q. THEN THE OTHER PURCHASES ARE ALL FOR QUANTITIES OF ONE,  
733=CORRECT?  
734=A. THAT IS CORRECT.  
735=Q. AND AS YOU TESTIFIED EARLIER, MOST OF THOSE DISCOUNTS ARE  
736=40 PERCENT, CORRECT?  
737=A. THAT IS CORRECT.  
738=Q. NOW, THERE'S SOME VARIATIONS FROM THAT. THE VERY FIRST  
739=LINE SHOWS A 36 PERCENT DISCOUNT, RIGHT?  
740=A. YES, THAT'S WHAT'S KNOWN AS A SHORT DISCOUNT.  
741=Q. I THINK THERE'S BEEN TESTIMONY ON THAT BEFORE, BUT COULD  
742=YOU BRIEFLY EXPLAIN WHAT A SHORT DISCOUNT IS?  
743=A. YES. IT'S BASICALLY THAT INGRAM RECEIVES LESS THAN THEIR  
744=NORMAL DISCOUNT FROM THE PUBLISHER, AND HENCE, WHEN THEY PASS  
745=IT THROUGH, THEY GET LESS THAN THEIR STANDARD TERM.  
746=Q. AND THERE'S ALSO ONE PURCHASE AT 41 PERCENT. DO YOU SEE  
747=THAT, THE VERY NEXT LINE?  
748=A. YES, I DO.  
749=Q. DO YOU KNOW WHY LITTLE PROFESSOR RECEIVED A 41 PERCENT  
  
750=DISCOUNT WHEN ORDERING ONLY ONE COPY OF THAT BOOK?  
751=A. I'M SORRY, I DON'T HAVE AN EXPLANATION FOR THAT. I DON'T  
752=KNOW.  
753=Q. DOES LITTLE PROFESSOR PARTICIPATE IN THE VENDOR OF RECORD  
754=PROGRAM?  
755=A. THAT IS -- YES, SCHOLASTIC PRESS, THAT'S VENDOR OF RECORD,  
756=OR IT WAS AT THAT TIME.  
757=Q. AND THERE'S ONE PURCHASE ALMOST AT THE BOTTOM SHOWING A  
758=45 PERCENT DISCOUNT?  
759=A. THAT IS CORRECT.  
760=Q. CAN YOU EXPLAIN WHY LITTLE PROFESSOR RECEIVED A 45 PERCENT  
761=DISCOUNT?  
762=A. THAT'S AN AUDIO. IT'S A TAPE.  
763=Q. IF YOU WOULD TURN TO TAB 22, PLEASE, WHICH IS, AGAIN, A  
764=PORTION OF PLAINTIFF'S EXHIBIT NUMBER 4, PAGES 1, 427 AND 428?  
765=A. I HAVE IT.  
766=Q. AND THIS IS THE ABA RED BOOK BUYERS HANDBOOK FOR INGRAM FOR  
767=1997, CORRECT?  
768=A. YES.  
769= THE COURT: I'M SORRY, WHICH BINDER ARE WE IN?  
770= MR. HOHENGARTEN: WE'RE STILL IN THE SAME BINDER,  
771=YOUR HONOR, AND IT'S THE VERY NEXT EXHIBIT AFTER THE ONE --

772= THE COURT: ALL RIGHT.  
773=BY MR. HOHENGARTEN:  
774=Q. IS THE 45 PERCENT DISCOUNT FOR AUDIO BOOKS SHOWN ON THIS  
775=RED BOOK ENTRY?  
776=A. YES, IT IS, BUT IT'S IN THE FINE PRINT UNDERNEATH THE  
777=REGULAR SCHEDULE.  
778= MR. HOHENGARTEN: I THINK DEFENSE COUNSEL WAS SO  
779=GOOD AS TO PROVIDE MAGNIFYING GLASSES BEFORE. I DON'T KNOW IF  
780=THE -- DOES THE COURT STILL HAVE ONE?  
781= THE COURT: YES.  
782= MR. HOHENGARTEN: I'M SORRY, I'M NOT AS WELL  
783=EQUIPPED, AND I APPRECIATE IT.  
784= THE COURT: YES, VERY GOOD.  
785=BY MR. HOHENGARTEN:  
786=Q. AND YOU SAID IT'S IN THE FINE PRINT?  
787=A. YES, IT READS, "SPOKEN, AUDIO AND MULTI-MEDIA TITLES  
788=RECEIVE A 45 PERCENT DISCOUNT."  
789=Q. OKAY. AND JUST FOR IDENTIFICATION, THE NEXT TAB, TAB 23,  
790=WHICH IS PLAINTIFF'S EXHIBIT 2632, IS THAT ALSO AN INVOICE FROM  
791=INGRAM BOOK COMPANY?  
792=A. YES, IT IS.  
793=Q. AND WHAT YEAR IS THAT INVOICE FROM?  
794=A. THIS IS FROM JULY, 1998.  
795=Q. AND FOR PURCHASES OF ONE TO FOUR COPIES, WHAT IS THE  
796=DISCOUNT THAT LITTLE PROFESSOR RECEIVED?  
797=A. ONE TO FOUR, 40 PERCENT.  
798=Q. AND FOR PURCHASES OF FIVE TO NINE COPIES?  
799=A. 41 PERCENT.  
800=Q. AND FOR PURCHASES OF 10 OR MORE COPIES?  
801=A. 42 PERCENT.  
802=Q. WOULD YOU TURN TO TAB 25, PLEASE.  
803=A. I HAVE IT.  
804=Q. PLAINTIFF'S EXHIBIT 2633. THIS IS AN INVOICE TO LITTLE  
805=PROFESSOR FROM INGRAM, FROM THE YEAR 1999, CORRECT?  
806=A. THAT IS CORRECT.  
807=Q. AND DOES IT SHOW THE SAME DISCOUNTS FOR THE SAME QUANTITY  
808=ORDERS AS THE PREVIOUS INVOICES?  
809=A. YES, IT DOES.  
810=Q. AND IF YOU TURN TO TAB 27, PLAINTIFF'S EXHIBIT 2634.  
811=A. I HAVE IT.  
812=Q. THIS IS AN INVOICE RECEIVED BY LITTLE PROFESSOR FROM INGRAM  
813=IN THE YEAR 2000.  
814=A. IT IS.  
815=Q. AND DOES IT SHOW THE SAME DISCOUNTS FOR THE SAME QUANTITY  
816=PURCHASES AS WE'VE PREVIOUSLY SEEN?  
817=A. YES, IT DOES.  
818=Q. I SEE ON THE FIRST PAGE, ABOUT A FOURTH OF THE WAY DOWN, A  
819=42 PERCENT DISCOUNT FOR AN ORDER OF ONE COPY, TITLED, "BALLOON  
820=ANIMALS." DO YOU SEE THAT?  
821=A. I DO.  
822=Q. DO YOU HAVE AN UNDERSTANDING OF WHY LITTLE PROFESSOR  
823=RECEIVED A 42 PERCENT DISCOUNTS ON THAT PURCHASE?  
824=A. YES, THAT IS A VENDOR OF RECORD PURCHASE.  
825=Q. AND FURTHER DOWN, "FIBBLESTAX" SHOWS ONE COPY, 42 PERCENT  
826=DISCOUNT?  
827=A. THAT IS ALSO A VENDOR OF RECORD PURCHASE.  
828= MR. HOHENGARTEN: PARDON ME, YOUR HONOR. I THINK IT  
829=MAY BE OF ASSISTANCE TO SEE PUBLISHER INVOICES, WHICH LOOK A  
830=LITTLE BIT DIFFERENT.  
831=Q. PLEASE TURN TO TAB 45, WHICH IS PLAINTIFF'S EXHIBIT 2635.  
832=CAN YOU IDENTIFY THIS DOCUMENT?  
833=A. THIS IS A PACKING LIST AND INVOICE FROM RANDOM HOUSE. THIS  
834=IS ONE OF THREE PAGES THAT IS DATED MARCH 6TH, 1997.  
835=Q. FIRST OF ALL, YOU SAID IT'S A PACKING LIST INVOICE. IS IT  
836=BOTH KINDS OF DOCUMENTS? COULD YOU EXPLAIN HOW THIS  
837=DOCUMENT -- WHEN IT'S RECEIVED BY LITTLE PROFESSOR?  
838=A. IN RANDOM HOUSE'S CASE, THEY PUT THEM TOGETHER IN THE  
839=CARTON, USUALLY GET THREE OR FOUR PAGES OUT THAT ARE IDENTICAL,  
840=SO THEY LET THIS SAME PIECE OF PAPER SERVE AS BOTH ITS PACKING  
841=LIST AND INVOICE.

842=Q. AND SO IN RECEIVING BOOKS, YOU WOULD SEE THE PACKING LIST  
843=AND INVOICE SIMULTANEOUSLY?  
844=A. IT'S CORRECT.  
845=Q. IN THE COLUMN LABELED "PURCHASE ORDER NUMBER," THERE'S A  
846=NUMBER OF DIFFERENT ENTRIES. ARE THOSE PURCHASE ORDERS  
847=SELECTED BY LITTLE PROFESSOR, THOUGH NUMBERS?  
848=A. NO, THE REP DOES THAT.  
849=Q. THE PUBLISHER'S REPRESENTATIVE?  
  
850=A. THE PUBLISHER'S REPRESENTATIVE.  
851=Q. DO YOU HAVE ANY UNDERSTANDING THAT -- IS THERE ANY MEANING  
852=TO THOSE PURCHASE ORDER NUMBERS, OR ARE THEY RANDOM? OR DO YOU  
853=UNDERSTAND THEM?  
854=A. I DON'T UNDERSTAND THESE AT ALL, NO. THE BOTTOM ONE,  
855=SEPTEMBER OR JANUARY THROUGH FEBRUARY LOOKS LIKE THAT THIS IS A  
856=QUARTERLY PURCHASE ORDER. PAGE ONE, THE LAST THREE ITEMS.  
857=Q. AND BY QUARTERLY PURCHASE ORDER, WHAT'S THAT MEAN?  
858=A. THAT THIS WAS PROBABLY GENERATED BY THE PUBLISHER'S  
859=REPRESENTATIVE WHEN I SAT DOWN WITH HIM, AND THEY ARE NOW  
860=SHIPPING THESE. JUST ABOVE THOSE THREE ITEMS YOU WILL SEE "RH  
861=011097." THAT IS AN ITEM THAT CAME FROM AN ELECTRONICALLY  
862=GENERATED ORDER THAT WE PLACED. THAT WAS A KEY THAT WE USED,  
863=RANDOM HOUSE. THAT ORDER WAS DONE ON THE FIRST -- ON THE 10TH  
864=OF JANUARY, 1997. SO THIS APPARENTLY IS A COMBINATION FROM  
865=NUMEROUS PURCHASE ORDERS.  
866=Q. I SEE, AND JUST TURNING TO THE NEXT PAGE, PAGE 3 OF THE  
867=EXHIBIT, SEVERAL OF THE PURCHASE ORDER NUMBERS -- IT'S THE SAME  
868=NUMBER, HAS "FL" AT THE END. DO YOU KNOW, DOES THAT MEAN  
869=ANYTHING?  
870=A. THAT IS FRONT LIST.  
871=Q. AND ON THE NEXT PAGE, PAGE 4, THE PURCHASE ORDER NUMBER  
872=ENDING "BE," DOES THAT MEAN ANYTHING?  
873=A. NOT TO ME, NO.  
874=Q. THERE IS ALSO IN THE "KEY" COLUMN, INITIALS "FP" NEXT TO A  
  
875=FEW TITLES.  
876=A. I BELIEVE THAT IN '97 RANDOM HOUSE RANDOM HOUSE WAS STILL  
877=DOING THE FREIGHT PASS-THROUGH, AND THAT MAY BE -- ALTHOUGH I  
878=CAN'T TESTIFY FOR SURE, THAT MAY BE WHAT THAT MEANS.  
879=Q. OKAY, IF YOU TURN TO PAGE 4, RIGHT UNDER THE LAST TITLE  
880=LISTED, DO YOU SEE WHERE IT SAYS "FP INDICATES A FREIGHT  
881=PASS-THROUGH TITLE THAT IS INVOICED"?  
882=A. I DO.  
883=Q. DOES THAT REFRESH YOUR RECOLLECTION?  
884=A. YES, IT DOES.  
885=Q. COULD YOU EXPLAIN FOR THE COURT WHAT FREIGHT PASS-THROUGH  
886=IS? ACTUALLY, I'VE FOUND IT A COMPLICATED TOPIC.  
887=A. SO DO WE ALL. THERE WAS A TIME WHEN -- RANDOM HOUSE IS A  
888=CLASSIC EXAMPLE. IT WAS BEFORE THEY WERE WILLING TO GO FREE  
889=FREIGHT, AND WE WERE ASKING -- SAYING THAT FREIGHT WAS EATING  
890=US ALIVE, THAT THEY AGREED THAT FOR HARDBACK BOOKS, THEY WOULD  
891=GRANT A 50 CENTS PER BOOK SHARED, BASICALLY, WAS WHAT THEY WERE  
892=DOING, IS THAT THEY WERE TAKING THAT OFF OF THE LIST PRICE OF  
893=THE BOOK. SO THEY WERE DISCOUNTING FROM LESS THAN LIST PRICE,  
894=IN ORDER TO SHARE THE FREIGHT COSTS.  
895=Q. PERHAPS IT WOULD BE HELPFUL TO TAKE AN EXAMPLE ON THAT SAME  
896=LAST PAGE. THE TITLE EYEWITNESS TO AMERICA, TOWARDS THE  
897=BOTTOM, IS THAT ONE THAT'S MARKED AS FREIGHT PASS-THROUGH?  
898=A. YES, IT IS.  
899=Q. AND HOW WOULD LITTLE PROFESSOR'S PRICE BE CALCULATED --  
  
900=LITTLE PROFESSOR'S COST BE CALCULATED?  
901=A. IT WOULD BE DISCOUNTED FROM THE 29.50, INSTEAD OF, THE  
902=PRICE ON THAT BOOK WAS MORE LIKELY \$30. THE MANUFACTURER'S  
903=SUGGESTED RETAIL WAS \$30.  
904=Q. SO THE LIST PRICE WAS \$30.  
905=A. YES.  
906=Q. RANDOM HOUSE SUBTRACTED 50 CENTS TO OBTAIN 29.50.  
907=A. THAT IS CORRECT.  
908=Q. AND THEN LITTLE PROFESSOR'S PURCHASE DISCOUNT, WHICH IS  
909=SHOWN HERE AS 47 PERCENT, APPLIED TO THAT 29.50?  
910=A. THAT IS CORRECT.  
911=Q. SHIFTING TOPICS FOR A SECOND, DO YOU KNOW WHETHER INGRAM

912=EVER, IN ITS SALES TO LITTLE PROFESSOR, EVER BASES THE SALE  
913=PRICE TO LITTLE PROFESSOR ON THE FREIGHT PASS-THROUGH AMOUNT  
914=RATHER THAN THE LIST PRICE?  
915=A. I DON'T THINK THEY DO.  
916=Q. NOW, IT MAY BE HELPFUL TO COMPARE THIS INVOICE TO THE BOOK  
917=BUYER'S HANDBOOK, WHICH IS BEHIND THE NEXT TAB, 46. IT IS A  
918=PORTION OF PLAINTIFF'S EXHIBIT 4, A PORTION, PAGES 1, 650, 651,  
919=2, 3, 4.  
920= THE COURT: WHICH BINDER?  
921= MR. HOHENGARTEN: IT'S STILL THE SAME WHITE BINDER.  
922= THE COURT: THE SUPPLEMENTAL?  
923= MR. HOHENGARTEN: I'M SORRY, THE SUPPLEMENTAL. I'M  
924=STICKING WITH THAT FOR AWHILE, IN LIGHT OF THE BEST EVIDENCE  
  
925=OBJECTION AND RULING.  
926= THE COURT: ALL RIGHT.  
927= MR. HOHENGARTEN: CONVENIENCE, WE PLACED THE RED  
928=BOOK PAGES IN HERE, RIGHT BEHIND.  
929= THE COURT: ALL RIGHT.  
930= THE WITNESS: YES, I HAVE IT.  
931=BY MR. HOHENGARTEN:  
932=Q. AND THAT IS RANDOM HOUSE'S ENTRY IN THE 1997 BOOK BUYER'S  
933=HANDBOOK?  
934=A. YES, IT IS.  
935=Q. I'M SORRY, THIS MAY TAKE A LITTLE BIT OF FLIPPING BACK AND  
936=FORTH BETWEEN TABS 45 AND 46, BUT I'M WONDERING IF YOU CAN  
937=EXPLAIN HOW -- JUST TAKING THE VERY FIRST ITEM ON THE RANDOM  
938=HOUSE PACKING LIST INVOICE OF 47 PERCENT DISCOUNT, WHERE THAT  
939=WOULD BE REFLECTED, IF ANYWHERE, IN THE RED BOOK ENTRY THAT'S  
940=BEHIND TAB 46.  
941= THE COURT: RUN THAT BY AGAIN, PLEASE.  
942= MR. HOHENGARTEN: OKAY. I WANTED THE WITNESS TO  
943=EXPLAIN, IF HE COULD, ON TAB 45 THERE'S A 47 PERCENT DISCOUNT  
944=SHOWN FOR THE VERY FIRST TITLE, OF DIABETES.  
945= THE COURT: YES.  
946= MR. HOHENGARTEN: AND I WANTED HIM TO REFERENCE HIM  
947=BEHIND TAB 46, THE RED BOOK ENTRY, IF THERE WERE ANY PLACE  
948=WHERE THAT DISCOUNT PERCENTAGE IS, IN FACT, SHOWN. IN OTHER  
949=WORDS, THE ACTUAL DISCOUNT RECEIVED DOESN'T MATCH THE RED BOOK  
  
950=ENTRY.  
951= THE WITNESS: YES, ON PAGE 651, THE LEFT-HAND  
952=COLUMN, THE DISCOUNT SCHEDULE IS PRINTED THERE, AND IT SAYS 25  
953=COPIES, 47 PERCENT. THAT MEANS, IF YOU ORDER 25 COPIES FROM  
954=TRADE BOOK ON THAT PURCHASE ORDER, YOU WOULD GET 47 PERCENT  
955=DISCOUNTS.  
956=BY MR. HOHENGARTEN:  
957=Q. OKAY, NOW, THE WORD "COPY" HERE, DO YOU HAVE AN  
958=UNDERSTANDING THAT THAT MEANS THE SAME TITLE, DIFFERENT TITLES?  
959=A. NO, THAT'S A UNIT.  
960=Q. AND ABOVE THAT DISCOUNT SCHEDULE YOU WERE JUST REFERENCING,  
961=WHICH WE REALLY DO NEED THE MAGNIFYING GLASS FOR, IT STATES,  
962="SELECTIVE DISTRIBUTION, PRE-PUBLICATION, NEW AND BACK LIST,  
963=ASSORTED TITLES." FIRST OF ALL, DOES "ASSORTED TITLES," DOES  
964=THAT MEAN WHAT YOU JUST TOLD ME?  
965=A. YES, IT DOES.  
966=Q. WHAT DOES "SELECTIVE DISTRIBUTION" MEAN?  
967=A. THAT'S A RANDOM HOUSE TERM. I'M NOT SURE WHAT IT MEANS  
968=SPECIFICALLY.  
969=Q. IT APPEARS -- ARE THERE DIFFERENT DISCOUNT SCHEDULES IN THE  
970=RED BOOK ENTRY FOR SELECTIVE DISTRIBUTION AND NON-SELECTIVE  
971=DISTRIBUTION?  
972=A. YES, THERE ARE.  
973=Q. LOOKING BACK AT YOUR INVOICE, BEHIND TAB 45, DO YOU RECALL  
974=WHETHER LITTLE PROFESSOR WAS A SELECTIVE DISTRIBUTION OR --  
  
975=A. YES, I KNOW WE WERE. I JUST DON'T KNOW WHAT THE TERM  
976=MEANS. AND IF YOU LOOK AT THE VERY TOP, IT SAYS, "BACK ORDER  
977=BILLING, SELECTIVE DISTRIBUTION."  
978=Q. IF YOU TURN TO -- ON TAB 45, WHICH IS THE INVOICE, PAGE 3.  
979=A. YES.  
980=Q. THIRD FROM THE BOTTOM, THE TICK-TOCK, DO YOU SEE THAT,  
981=THERE?

982=A. I DO.  
983=Q. AND THERE'S A 50 PERCENT DISCOUNT SHOWN?  
984=A. YES, IT IS.  
985=Q. DO YOU HAVE AN UNDERSTANDING OF WHY LITTLE PROFESSOR  
986=RECEIVED A 50 PERCENT DISCOUNT THERE?  
987=A. YEAH, IN THE DESCRIPTION OF THE TITLE IT DOES SAY,  
988="TICK-TOCK, AUDIO."  
989=Q. AND IS --  
990=A. AUDIO EARNS 50 PERCENT.  
991=Q. I SEE. THAT'S A BOOK ON TAPE?  
992=A. THAT'S CORRECT.  
993=Q. AND NOW TURNING TO TAB 46, THE RED BOOK ENTRY, IS THAT  
994=REFLECTED SOMEWHERE THERE?  
995= THE COURT: WELL, IT IS, SO TELL US WHERE.  
996= MR. HOHENGARTEN: I'M SORRY, YOUR HONOR, I WAS  
997=HOPING -- DIDN'T WANT TO --  
998= THE WITNESS: NO, I HAVEN'T FOUND IT YET, I'M SORRY.  
999= MR. HOHENGARTEN: -- DIRECT THE WITNESS, SO I TOOK A  
  
1000=MOMENT. I BELIEVE IT IS, BUT.... I'LL WITHDRAW THE QUESTION,  
1001=AND IF WE TAKE A BREAK BEFORE I'M DONE, PERHAPS I'LL GO BACK TO  
1002=IT.  
1003= THE COURT: ALL RIGHT.  
1004=BY MR. HOHENGARTEN:  
1005=Q. I DON'T KNOW IF WE WANT TO SPEND THE TIME GOING THROUGH  
1006=EACH OF THE INVOICES HERE INDIVIDUALLY, BUT YOU HAD AN  
1007=OPPORTUNITY TO EXAMINE THIS BINDER BEFORE, CORRECT?  
1008=A. YES, I DID.  
1009=Q. AND IS EACH OF THE INVOICES COLLECTED HERE AN INVOICE THAT  
1010=WAS MAINTAINED BY LITTLE PROFESSOR IN THE ORDINARY COURSE OF  
1011=ITS BUSINESS?  
1012=A. YES.  
1013=Q. ABOUT HOW MANY INVOICES DOES LITTLE PROFESSOR MAINTAIN --  
1014=RECEIVE IN A YEAR FROM ALL OF ITS SUPPLIERS?  
1015=A. FROM ALL OF ITS SUPPLIERS, IN THE THOUSANDS.  
1016=Q. JUST TAKE EXAMPLES WE'VE LOOKED AT FROM THOSE VENDORS.  
1017=INGRAM BOOK COMPANY, DO YOU HAVE AN ESTIMATE OF HOW MANY  
1018=INVOICES YOU WOULD RECEIVE FROM THEM?  
1019=A. PROBABLY ABOUT 300 A YEAR.  
1020=Q. DID YOU LOOK AT MORE INVOICES THAN JUST THOSE THAT WE HAVE  
1021=HERE IN THE BINDER TODAY?  
1022=A. AGAIN, I LOOK AT THE PACKING LIST MORE THAN THE VOICES.  
1023=Q. I'M SORRY, IN CONNECTION WITH THE LITIGATION, DID YOU --  
1024=A. YES, YES.  
  
1025=Q. ARE THESE INVOICES TYPICAL?  
1026=A. YES, THEY ARE.  
1027= MR. HOHENGARTEN: SET ASIDE THE SUPPLEMENTAL BINDER.  
1028= MR. PETROCELLI: YOUR HONOR, I NEED TO OBJECT TO ALL  
1029=OF THE TESTIMONY REGARDING THE INVOICES OF THAT BINDER, AND  
1030=MOVE TO STRIKE THE TESTIMONY.  
1031= NONE OF THESE INVOICES WAS INCLUDED ON THE TRIAL  
1032=EXHIBIT LIST. THE TRIAL EXHIBIT LIST OF THE PLAINTIFFS STOPPED  
1033=AT 2,611. ALL OF THESE ARE NEW EXHIBITS THAT HAVE NEVER BEEN  
1034=IDENTIFIED, NOT ONLY ON THE TRIAL EXHIBIT LIST PURSUANT TO YOUR  
1035=HONOR'S ORDERS, BUT ALSO NOT ON THE DAILY MEMO, AS WELL.  
1036= WHAT'S HAPPENING HERE IS, BECAUSE OF ALL THE  
1037=TESTIMONY REGARDING THE NEED FOR INVOICES, THE PLAINTIFFS NOW  
1038=ARE SEEKING TO PUT INVOICES IN ON A SELECTIVE BASIS, AND THEY  
1039=DID NOT PREVIOUSLY PLAN TO PUT IN AND THAT THEY DID NOT  
1040=PREVIOUSLY IDENTIFY. WE'VE HAD NO OPPORTUNITY TO REVIEW THIS.  
1041=WE'VE HAD NO ABILITY TO PREPARE TO CROSS-EXAMINE THE WITNESS ON  
1042=THESE INVOICES, WE'VE HAD NO OPPORTUNITY TO LOOK FOR ADDITIONAL  
1043=ONES THAT BEAR ON THESE, AND THE WHOLE PROCESS STARTS TO BREAK  
1044=DOWN.  
1045= ALL THEY NEEDED TO DO WAS TO INCLUDE THEM FROM DAY  
1046=ONE ON THEIR TRIAL EXHIBIT LIST. WE WOULD NOT HAVE BEEN IN  
1047=THIS POSITION.  
1048= MR. HOHENGARTEN: YOUR HONOR, AS I SAID BEFORE, WE  
1049=HAD INTENDED TO USE THESE ON REDIRECT, IN LIGHT OF THE CROSS  
  
1050=THAT WAS EXPECTED, THAT THEY HAD NOT RECEIVED -- THAT THE  
1051=WITNESS HAD ONLY REFERENCED THE RED BOOK. IT WAS MY

1052=UNDERSTANDING OF THE COURT'S PRETRIAL PROCEDURES THAT REBUTTAL  
1053=MATERIALS DID NOT NEED TO BE INCLUDED IN THE TRIAL LIST. THESE  
1054=WERE CERTAINLY PRODUCED.

1055= THE COURT: THAT'S RIGHT, BUT YOU'RE USING IT IN  
1056=YOUR CASE IN CHIEF, AND THAT'S NOT ONLY NOT FAIR, IT'S OUT OF  
1057=BOUNDS. THE OTHER SIDE IS ENTITLED TO HAVE AN OPPORTUNITY TO  
1058=REVIEW EACH INVOICE, DETERMINE IF IT'S USED, HOW TO  
1059=CROSS-EXAMINE, AND YOU ARE BLINDSIDING THEM USING AN EXCUSE  
1060=THAT YOU'RE GOING TO PUT THESE IN ON REDIRECT, AND IN TRUTH AND  
1061=IN FACT, THEY'RE COMING IN IN YOUR CASE IN CHIEF.

1062= SO I SUSTAIN THE OBJECTION.

1063= MR. HOHENGARTEN: VERY GOOD, YOUR HONOR.

1064=Q. BASED ON YOUR EXPERIENCE AT THE LITTLE PROFESSOR, DO YOU  
1065=BELIEVE THAT LITTLE PROFESSOR HAS EVER RECEIVED DISCOUNTS OTHER  
1066=THAN THOSE IN THE RED BOOK?

1067=A. ONLY INsofar AS WE'RE TALKING ABOUT DATED ORDERS AND THAT  
1068=sort OF THING.

1069=Q. WHAT DO YOU MEAN BY "DATED ORDERS"?

1070=A. SEASONAL, SPECIAL ORDERS.

1071=Q. IS THAT THE SAME THING AS A STOCK OFFER?

1072=A. YES, YES.

1073=Q. HOW ARE STOCK OFFERS COMMUNICATED TO LITTLE PROFESSOR?

1074=A. USUALLY DIRECT MAIL FROM THE PUBLISHER, OR THE PUBLISHER'S

1075=REPRESENTATIVE COMES, HE OR SHE BRINGS IT, IN PRINT. IN PRINT.

1076=Q. AND WHAT PORTION OF LITTLE PROFESSOR'S PURCHASES ARE UNDER  
1077=STOCK OFFERS?

1078=A. VERY, VERY FEW.

1079=Q. DO YOU HAVE AN EXPLANATION OF WHY THAT IS?

1080=A. IT'S JUST NOT SOMETHING THAT WORKS WELL FOR US. WE DON'T

1081=DO THAT MUCH OF IT.

1082=Q. BUT YOU COULD OBTAIN AN EXTRA DISCOUNT BY ORDERING UNDER A

1083=STOCK OFFER, IS THAT CORRECT?

1084=A. WELL, SOMETIMES IT'S EXTRA DISCOUNT. MORE OFTEN IT'S EXTRA

1085=DATING. IT'S JUST THAT WE HAVE A VERY SMALL STORAGE SPACE AND

1086=WE HAVE TO FIND ROOM IN THE BACK ROOM FOR THEM IF WE ORDER LOTS

1087=OF THEM, AND WE ALSO HAVE FOUND THAT FREQUENTLY WE HAVE TO

1088=RETURN WHAT WE HAVEN'T SOLD.

1089=Q. WOULDN'T IT BE POSSIBLE FOR LITTLE PROFESSOR TO ORDER ALL

1090=OF BOOKS THAT IT NEEDS FOR THE YEAR UNDER A STOCK OFFER?

1091=A. NO. GENERALLY A STOCK OFFER IS LIMITED IN THAT IT MAY BE A

1092=COOKBOOK STOCK OFFER OR IT MAY BE A MASS MARKET STOCK OFFER,

1093=FROM A PARTICULAR PUBLISHER.

1094=Q. YOU ALSO MENTIONED BEFORE THAT LITTLE PROFESSOR PURCHASES

1095=SOME BOOKS FROM INGRAM UNDER THE VENDOR OF RECORD OR V.O.R.

1096=PROGRAM, IS THAT RIGHT?

1097=A. THAT'S CORRECT.

1098=Q. WHAT PROPORTION OF BOOKS THAT THE LITTLE PROFESSOR

1099=PURCHASES FROM INGRAM ARE UNDER THE V.O.R. PROGRAM?

1100=A. AGAIN, IT'S A VERY, VERY SMALL AMOUNT.

1101=Q. IS THERE ANY REASON LITTLE PROFESSOR COULDN'T PURCHASE ALL

1102=OF ITS BOOKS FROM INGRAM UNDER THE V.O.R. PROGRAM?

1103=A. IT WOULD NOT MAKE SENSE TO DO SO BECAUSE OF THE DISCOUNT

1104=DIFFERENTIAL.

1105=Q. COULD YOU EXPLAIN WHAT YOU MEAN BY "DISCOUNT DIFFERENTIAL"

1106=HERE? LET ME ASK, UNDER THE V.O.R. PROGRAM, LITTLE PROFESSOR

1107=COULD RECEIVE A HIGHER DISCOUNT FROM INGRAM THAN IT WOULD

1108=OTHERWISE RECEIVE FROM INGRAM, CORRECT?

1109=A. YES, BUT YOUR QUESTION WAS WHETHER WE WOULD PURCHASE ALL OF

1110=OUR BOOKS. WE GET A HIGHER DISCOUNT FROM SMALLER PUBLISHERS

1111=THAN WE WOULD NORMALLY EARN FROM THEM. WE GET A MUCH LOWER

1112=DISCOUNT THAN WE GET FROM MAJOR PUBLISHERS SUCH AS RANDOM AND

1113=HARPER AND SIMON & SCHUSTER. THERE WE'RE TALKING 47 PERCENT

1114=VERSUS 42 PERCENT.

1115=Q. IF ALL OF YOUR PURCHASES FROM INGRAM WERE UNDER THE V.O.R.

1116=PROGRAM, WOULD YOU HAVE TO GIVE UP PURCHASING AT THAT EXTRA

1117=DISCOUNT FROM THE PUBLISHERS?

1118=A. YES.

1119=Q. WHY IS THAT?

1120=A. THERE, AGAIN, BECAUSE RANDOM HOUSE'S TERMS ARE 47 PERCENT

1121=IF YOU ORDER 25 OR MORE BOOKS. INGRAM'S, EVEN UNDER THE V.O.R.

1122=PROGRAM, IS 42 PERCENT.



1123=Q. COULD YOU ORDER SOME BOOKS DIRECT FROM THE PUBLISHER, AND  
1124=THEN JUST THOSE YOU WANT FROM INGRAM, FROM INGRAM, IF YOU WERE

1125=USING THE V.O.R. PROGRAM?

1126=A. NO, YOU MUST BUY ALL YOUR BOOKS OUT OF THE V.O.R. PROGRAM,

1127=BY DEFINITION. THEY ARE THE VENDOR OF RECORD.

1128=Q. WHEN YOU SAY ALL YOUR BOOKS, YOU MEAN ALL THE BOOKS FROM --

1129=A. FROM THAT PARTICULAR PUBLISHER.

1130=Q. SO IF YOU WANT TO ORDER -- PLACE SOME ORDERS DIRECT FROM A

1131=PUBLISHER, AND RECEIVE THAT PURCHASE DISCOUNT, YOU CANNOT

1132=RECEIVE THE V.O.R. DISCOUNT FROM INGRAM, IS THAT RIGHT?

1133=A. THAT IS CORRECT.

1134=Q. ASIDE FROM STOCK OFFERS AND THE INGRAM V.O.R. PROGRAM, IS

1135=THE RED BOOK DISCOUNT, WITH -- OR THE BOOK BUYERS HANDBOOK

1136=DISCOUNT, THE ACTUAL DISCOUNT LITTLE PROFESSOR RECEIVES FROM

1137=VENDORS?

1138=A. YES. YES.

1139=Q. DO YOU KNOW HOW OFTEN THE BOOK BUYER'S HANDBOOK COMES OUT?

1140=A. ONCE A YEAR.

1141=Q. DO PUBLISHER TERMS EVER CHANGE DURING THAT TIME?

1142=A. YES, THEY DO. NOT OFTEN, BUT THEY DO CHANGE.

1143=Q. YOU SAID, NOT OFTEN. FOR AN EXAMPLE, HOW OFTEN, TO YOUR

1144=KNOWLEDGE, HAS INGRAM'S TERMS CHANGED FROM 1994 TO THE PRESENT?

1145=A. NOT AT ALL.

1146=Q. HOW DO YOU LEARN ABOUT CHANGES IN PUBLISHERS' OR

1147=WHOLESALERS' TERMS?

1148=A. AGAIN, THE PUBLISHER'S REP WILL USUALLY SHARE THAT WITH US.

1149=WE ALSO GET NOTIFICATION DIRECTLY FROM THE PUBLISHER. YOU CAN

1150=READ ABOUT IT IN PUBLISHERS WEEKLY, BOOKSELLING THIS WEEK.

1151=Q. AND WHAT DO YOU DO WHEN YOU RECEIVE NOTICE OF A CHANGE IN

1152=THE PUBLISHER'S TERMS?

1153=A. WE USUALLY WRITE IT RIGHT INTO THE RED BOOK.

1154=Q. ON BEHALF OF LITTLE PROFESSOR, DO YOU TRY TO GET THE BEST

1155=TERMS POSSIBLE FROM EACH VENDOR?

1156=A. SURE.

1157=Q. HOW DO YOU DO THAT?

1158=A. WELL, WE SIT DOWN, AGAIN, WITH THE PUBLISHER'S REP AND THEN

1159=TRY TO FIGURE OUT WHAT WE CAN DO TOGETHER, SO THAT WE CAN BOTH

1160=COME OUT AHEAD.

1161=Q. CAN YOU GIVE A CONCRETE EXAMPLE WHERE THAT'S OCCURRED?

1162=A. YES. IF YOU'RE ASKING THE QUESTION ABOUT DISCOUNT TERMS, I

1163=WOULD PROBABLY CHANGE THAT TO SAY, IT DOESN'T WORK, THEY DON'T

1164=NEGOTIATE ON IT, BUT WE SIT DOWN VIRTUALLY EVERY TIME THE REP

1165=COMES IN, WE'LL SIT DOWN AND SAY, "OKAY, WHAT CAN WE DO

1166=TOGETHER?" THE CLASSIC EXAMPLE, GETTING AUTHOR APPEARANCES.

1167=WE JUST WON A MAJOR ONE BY DOING SOME ARM TWISTING.

1168=Q. WHAT DO YOU MEAN BY "ARM TWISTING"?

1169=A. I REMINDED THAT PARTICULAR PUBLISHER THAT THEY OWED ME SOME

1170=FAVORS FOR ALL OF THE UNKNOWN AUTHORS THAT WE HAD HOSTED, THERE

1171=WAS VERY LITTLE SUPPORT, AND IT WAS TIME THAT WE WERE DUE FOR

1172=ONE OF HIS BIG ONES.

1173=Q. HAVE YOU EVER ASKED FOR PURCHASE TERMS FROM A VENDOR JUST

1174=FOR LITTLE PROFESSOR BUT NOT FOR OTHER BOOKSTORES?

1175=A. NO.

1176=Q. AND WHY NOT?

1177=A. IT'S NOT LEGAL.

1178=Q. YOU'RE NOT A LAWYER, RIGHT?

1179=A. NO, NO, BUT --

1180=Q. IS THAT YOUR --

1181=A. MY UNDERSTANDING IS, THAT IS NOT DONE.

1182=Q. IT'S YOUR UNDERSTANDING AS A BUSINESS PERSON?

1183=A. YES.

1184=Q. AND THAT'S THE REASON THAT YOU DON'T MAKE AN ATTEMPT TO DO

1185=THAT?

1186=A. YES.

1187=Q. IS THERE ANY ON OTHER REASON?

1188=A. AGAIN, THAT'S -- THAT KIND OF NEGOTIATION IS NOT SUPPOSED

1189=TO HAPPEN.

1190=Q. HAVE YOU EVER TOLD A SUPPLIER YOU WOULD GIVE IT MORE

1191=BUSINESS IF IT OFFERED BETTER TERMS OR IMPROVED SERVICE?

1192=A. YES.

1193=Q. CAN YOU GIVE AN EXAMPLE OF THAT?  
1194=A. WE HAD A PARTICULAR WHOLESALER WHO ACTUALLY CAME TO US AND  
1195=SAID, "I WOULD LIKE MORE OF YOUR BUSINESS," AND THEIR TERMS --  
1196=CAN WE USE THE NAMES?  
1197=Q. PLEASE. YES.  
1198=A. IT HAPPENED TO BE BAKER & TAYLOR, AND THEIR REPRESENTATIVE  
1199=CAME TO US AND SAID, YOU KNOW, "WE'D LIKE TO HAVE MORE OF YOUR  
  
1200=BUSINESS." AND I TOLD THEM THAT UNTIL THEY WERE EQUAL WITH  
1201=INGRAM, THEY WEREN'T GOING TO GET MORE OF OUR BUSINESS, AND IT  
1202=WASN'T THAT THE DISCOUNT WAS EXACTLY THE SAME, BUT THE FACILITY  
1203=OF LOADING THEIR INFORMATION INTO OUR COMPUTER, THERE WAS A  
1204=QUANTUM DIFFERENCE BETWEEN THE TWO. INGRAM, YOU CAN LOAD IT  
1205=ELECTRONICALLY. OUR COMPUTER SPEAKS TO THEIR COMPUTER. YOU  
1206=PUSH ONE BUTTON, AND IT'S IN OUR COMPUTER, AND WHEN WE RECEIVE,  
1207=WE RECEIVE ELECTRONICALLY. WE SCAN WITH A WAND. VERY, VERY  
1208=QUICK.  
1209= WITH BAKER & TAYLOR, ON THE OTHER HAND, WE HAVE TO  
1210=GO THROUGH THE WHOLE PROCESS. PULL THE BOOK OUT, TYPE IN THE  
1211=INTERNATIONAL STANDARD BOOK NUMBER, SO THAT WE BUILD A  
1212=RECEIVING LIST. CHECK IT, MANUALLY, AND THEN DUMP THE  
1213=INFORMATION IN.  
1214= INGRAM FOR, LET'S SAY, A FOUR-CARTON SHIPMENT,  
1215=INGRAM WOULD TAKE US A HALF A HOUR, BAKER & TAYLOR WOULD TAKE  
1216=US TWO HOURS.  
1217=Q. AND WHEN YOU SAY, TAKE YOU, YOU MEAN TAKE TO RECEIVE --  
1218=A. WHOEVER IS RECEIVING. THAT'S -- TIME IS MONEY.  
1219=Q. AND WHAT WAS BAKER & TAYLOR'S RESPONSE?  
1220=A. "YES, WE'RE THINKING ABOUT IT." THAT WAS TWO YEARS AGO.  
1221=Q. NOW, BAKER & TAYLOR AND INGRAM ARE BOTH WHOLESALERS, RIGHT?  
1222=A. YES.  
1223=Q. WOULD IT BE POSSIBLE TO SHIFT BUSINESS FROM ONE WHOLESALER  
1224=TO ANOTHER?  
  
1225=A. OH, YES.  
1226=Q. CAN YOU GET THE SAME TITLES FROM BOTH, ON THE WHOLE?  
1227=A. YES.  
1228=Q. DO YOU BELIEVE IT WOULD BE SIMILARLY POSSIBLE TO SHIFT  
1229=BUSINESS BETWEEN TWO PUBLISHERS, SAY, RANDOM HOUSE AND SIMON &  
1230=SCHUSTER?  
1231=A. IT WOULD ONLY BE DIFFICULT TO GET THE SAME TITLES.  
1232=Q. COULD YOU STOP PURCHASING FROM ONE PUBLISHER AND START  
1233=PURCHASING ALL YOUR BOOKS FROM ONE OR A COUPLE THAT GIVE YOU  
1234=THE MOST ADVANTAGEOUS TERMS?  
1235=A. NOT TO GET THE SAME BOOKS, NO.  
1236=Q. IS IT IMPORTANT TO LITTLE PROFESSOR TO HAVE A WIDE  
1237=SELECTION OF BOOKS IN THE STORE?  
1238=A. YES, IT IS.  
1239=Q. DO YOU UNDERSTAND THE TERM "RETAIL DISTRIBUTION CENTER" OR  
1240=RDC?  
1241=A. I KNOW THE TERM. I'M ACQUAINTED WITH THE TERM.  
1242=Q. DOES LITTLE PROFESSOR HAVE AN RDC?  
1243=A. NO, WE DO NOT.  
1244=Q. HAS THE LITTLE PROFESSOR EVER RECEIVED AN RDC DISCOUNT FROM  
1245=ANY SUPPLIER?  
1246=A. NO, WE HAVE NOT.  
1247=Q. ARE YOU FAMILIAR WITH THE REQUIREMENTS THAT GENERALLY MUST  
1248=BE MET TO QUALIFY FOR AN RDC DISCOUNT?  
1249=A. I BELIEVE SO.  
  
1250=Q. COULD YOU EXPLAIN WHAT YOUR UNDERSTANDING IS OF WHAT THEY  
1251=ARE?  
1252=A. YOU NEED TO ORDER IN CASE QUANTITIES, YOU NEED TO HAVE A  
1253=SELF -- FREE-STANDING BUILDING, YOU NEED TO HAVE A LOADING  
1254=DOCK. I THINK THAT'S -- YOU NEED TO DISTRIBUTE THAT.  
1255=Q. AND BY "DISTRIBUTE," YOU MEAN --  
1256=A. YOU HAVE TO THEN PASS THOSE ON TO SOMEONE ELSE OTHER THAN  
1257=THE END USER.  
1258=Q. SO A SINGLE -- YOU CAN'T JUST BE A SINGLE STORE RECEIVING  
1259=BOOKS?  
1260=A. NO, NO.  
1261=Q. NOW, YOU MENTIONED -- I CAN'T RECALL THE EXACT PHRASE YOU  
1262=USED, CARTON QUANTITY, OR --

1263=A. YOU MUST ORDER IN CARTON QUANTITIES.  
1264=Q. CAN YOU EXPLAIN WHAT THAT MEANS?  
1265=A. CARTON IS A BOX THAT CONTAINS A CERTAIN NUMBER OF THE SAME  
1266=TITLE. IN HARDBACKS, IT COULD BE 10 OR 20, DEPENDING ON HOW  
1267=THE PUBLISHER PACKS THEM. PAPERBACKS, IT COULD BE A HUNDRED  
1268=COPIES OR MORE. ALL THE SAME TITLE, IN EACH BOX.  
1269=Q. IS IT POSSIBLE, OR IS IT RATIONAL BUSINESS OPERATION FOR  
1270=LITTLE PROFESSOR TO ORDER MANY OF ITS BOOKS IN CARTON QUANTITY?  
1271=A. NOT FOR A STORE OUR SIZE.  
1272=Q. WHY IS THAT?  
1273=A. WE JUST DON'T SELL THAT MANY. WE DON'T NEED THAT MANY.  
1274=Q. WHAT PROPORTION OF BOOKS THAT YOU SELL, THE TITLES THAT ARE

1275=SOLD IN YOUR STORE, WOULD YOU ESTIMATE YOU'RE ABLE TO ORDER  
1276=WHOLE CARTONS?  
1277=A. WHAT PROPORTION? IT WOULD BE SO TINY, I CAN'T EVEN GIVE AN  
1278=ESTIMATE.  
1279=Q. YOU SAID BEFORE THAT RDC AND -- LITTLE PROFESSOR HAS NOT  
1280=RECEIVED ANY RDC DISCOUNTS. TO YOUR KNOWLEDGE, HAS THE LITTLE  
1281=PROFESSOR EVER QUALIFIED FOR AN RDC DISCOUNT FROM A PUBLISHER  
1282=OR SUPPLIER?  
1283=A. NO, WE HAVE NOT.  
1284=Q. TURNING BACK TO THE FIRST BINDER, TAB 24, WHICH IS  
1285=PLAINTIFF'S EXHIBIT NUMBER 7, PAGES 2 AND 781 THROUGH 784, IS  
1286=THIS THE BOOK BUYER'S HANDBOOK ENTRY FOR SIMON & SCHUSTER FOR  
1287=THE YEAR 2000?  
1288=A. YES, IT IS.  
1289=Q. DO YOU SEE A RETAIL DISTRIBUTION CENTER DISCOUNT SCHEDULE  
1290=HERE, IN THE -- DIRECT YOUR ATTENTION TO PAGE 782, LEFT COLUMN.  
1291=A. YES, I DO.  
1292=Q. WHERE IS THAT?  
1293=A. IT'S AT THE LEFT-HAND COLUMN. IT BEGINS, "RETAIL  
1294=DISTRIBUTION CENTER PLAN."  
1295=Q. AND THERE'S A 48 PERCENT DISCOUNT SHOWN THERE?  
1296=A. YES, IT IS.  
1297=Q. DOES LITTLE PROFESSOR RECEIVE THAT DISCOUNT?  
1298=A. NO, WE DO NOT.  
1299=Q. DOES LITTLE PROFESSOR INSTEAD RECEIVE THE DISCOUNTS ABOVE

1300=THAT POINT, AND ON PAGE 781, DISCOUNT SCHEDULE?  
1301=A. YES, WE DO.  
1302=Q. AND IS THAT TRUE FOR ALL PUBLISHERS FROM WHICH LITTLE  
1303=PROFESSOR PURCHASES, IT DOES NOT RECEIVE THE RED BOOK ENTRY  
1304=SHOWN FOR RDC DISCOUNTS?  
1305=A. THAT IS CORRECT.  
1306=Q. THE ACTUAL DISCOUNT RECEIVED BY LITTLE PROFESSOR, IS THAT  
1307=SHOWN FOR THE DROP SHIPMENTS OR THE NON-RDC ORDERS?  
1308=A. THAT'S RIGHT, YES.  
1309=Q. HAVE YOU EVER HEARD OF ANY PROGRAM CALLED A HOLIDAY  
1310=FEATURED TITLE PROGRAM?  
1311=A. NO.  
1312=Q. HAS LITTLE PROFESSOR EVER --  
1313=A. LET ME ASK A QUESTION, JUST FOR CLARIFICATION. YOU SAY,  
1314=HOLIDAY FEATURED TITLE PROGRAM? I VAGUELY RECOLLECT SOMETHING  
1315=THAT'S DONE THROUGH THE REGIONAL BOOKSELLERS ASSOCIATIONS THAT  
1316=MAY USE THAT PHRASE.  
1317=Q. WHAT IS YOUR UNDERSTANDING OF THAT PROGRAM?  
1318=A. THAT THESE ARE BOOKS THAT ARE IN THE REGIONAL CATALOGS PUT  
1319=OUT BY SOUTHEASTERN BOOKSELLERS, AND SO ON.  
1320=Q. YOU SAY, SOUTHEASTERN BOOKSELLERS, AND SO ON?  
1321=A. THAT HAPPENS TO BE OUR REGION, YES.  
1322=Q. IS THAT A WHOLESALE OR A PUBLISHER?  
1323=A. NO, THAT'S A REGIONAL ASSOCIATION.  
1324=Q. A REGIONAL ASSOCIATION. ARE THERE EXTRA DISCOUNTS ON THOSE

1325=BOOKS?  
1326=A. I'M VAGUE ON IT. I THINK FROM TIME TO TIME INGRAM OFFERS A  
1327=RETURNABILITY OR SOMETHING LIKE THIS. WE HAVE NOT TAKEN  
1328=ADVANTAGE OF IT, SO THAT'S WHY I'M FUZZY ON IT.  
1329=Q. IS THE INGRAM EXTRA RETURNABILITY YOU JUST MENTIONED  
1330=ASSOCIATED WITH THE SOUTHEASTERN BOOKSELLERS CATALOGS? SORRY,  
1331=I'M CONFUSED.  
1332=A. I'M CONFUSED ON IT, TOO.

1333=Q. LET ME ASK YOU, DOES LITTLE PROFESSOR EVER RECEIVE  
1334=NON-RETURNABLE DISCOUNTS ON SELECT BEST-SELLING HOLIDAY BACK  
1335=LIST TITLES?  
1336=A. NO. AGAIN, I'M SORRY, I HAVE TO QUALIFY, ONLY BECAUSE IF  
1337=THAT IS WHAT IT REFERS TO.... NO, MY ANSWER WOULD STILL BE NO,  
1338=SINCE WE DON'T USE THAT PROGRAM, SO NO, WE DO NOT RECEIVE IT.  
1339=Q. LET'S TURN BACK TO THE TAB 25 -- I'M SORRY -- 26 IN THE  
1340=BLACK BINDER, LIST OF VENDORS. FROM THE VENDORS THAT LITTLE  
1341=PROFESSOR PURCHASES FROM, WHICH YOU TESTIFIED WAS ALL BUT  
1342=MACMILLAN COMPUTER, HAS LITTLE PROFESSOR EVER RECEIVED FREIGHT  
1343=TERMS THAT ARE DIFFERENT FROM THE VENDORS' PUBLISHED TERMS?  
1344=A. NO.  
1345=Q. HAS LITTLE PROFESSOR EVER RECEIVED RETURNS TERMS THAT ARE  
1346=DIFFERENT FROM THE RETURNS TERMS OF THESE VENDORS THAT ARE  
1347=PUBLISHED IN THE RED BOOK?  
1348=A. NO.  
1349=Q. IS IT SOMETIMES POSSIBLE TO PURCHASE BOOKS ON A  
1350=NON-RETURNABLE BASIS?  
1351=A. YES.  
1352=Q. UNDER WHAT CIRCUMSTANCES IS THAT POSSIBLE?  
1353=A. A FEW PUBLISHERS HAVE WHAT IS CALLED A BUSINESS PLAN, IN  
1354=WHICH THE BOOKS ARE SHIPPED DIRECTLY TO THE CONSUMER, AND THEN  
1355=BILLED BACK TO US, AND THOSE ARE SHIPPED OUT NON-RETURNABLE.  
1356=Q. ARE THERE -- HAS LITTLE PROFESSOR BEEN ABLE TO TAKE  
1357=ADVANTAGE OF THAT PLAN?  
1358=A. ON VERY RARE OCCASIONS, BECAUSE THE NUMBER IS SO HIGH.  
1359=Q. THE NUMBER OF...?  
1360=A. THE NUMBER REQUIRED, AND ALSO, IT'S HANDLED QUITE  
1361=DIFFERENTLY. IT HAS TO GO -- THE ORDER HAS TO GO DIRECTLY TO  
1362=THE PUBLISHER'S REP. HE OR SHE THEN VERIFIES THAT THIS IS FOR  
1363=A BUSINESS USE, AND SO IT'S -- IT'S SEPARATED COMPLETELY FROM  
1364=THE OTHERS.  
1365= IT IS THEN SENT -- FOR EXAMPLE, IF YOU WERE BANK OF  
1366=AMERICA, IT WOULD BE SENT DIRECTLY TO YOU. IT WOULD NEVER COME  
1367=THROUGH THE STORE AT ALL. THE BILLING WOULD COME TO US, BUT  
1368=THESE BOOKS ARE GONE ONCE AND FOR ALL. THEY ARE  
1369=NON-RETURNABLE. EVERYBODY CAN TAKE ADVANTAGE OF IT. IT'S  
1370=OFFERED TO EVERYONE.  
1371=Q. THE BOOKS PURCHASED UNDER THAT KIND OF PLAN ARE NEVER  
1372=STOCKED AT LITTLE PROFESSOR'S STORE, IS THAT RIGHT?  
1373=A. NOT THOSE PARTICULAR BOOKS. THE TITLE MIGHT BE.  
1374=Q. THE TITLE STOCK IS PURCHASED ON A RETURNABLE OR A  
1375=NON-RETURNABLE --  
1376=A. ON A RETURNABLE BASIS.  
1377=Q. ARE THERE ANY OTHER CIRCUMSTANCES UNDER WHICH LITTLE  
1378=PROFESSOR IS ABLE TO BUY, ON A NON-RETURNABLE BASIS, WHAT  
1379=PUBLISHERS OFFER AS NON-RETURNABLE TERMS?  
1380=A. THEY DO THAT AGAIN ON REMAINDER TITLES, BUT THEY GIVE A  
1381=HIGHER DISCOUNT, AND THAT'S IT, BUT AGAIN, EVERYBODY CAN DO  
1382=THAT.  
1383= THE COURT: I'M SORRY, WHAT ARE REMAINDER TITLES?  
1384= THE WITNESS: REMAINDER TITLES, SIR, ARE BOOKS THAT  
1385=ARE EITHER OFFICIALLY OUT OF PRINT AND NOW -- RANDOM HOUSE  
1386=VALUE LINE WOULD BE A GOOD EXAMPLE, OR THEY ARE BOOKS THAT ARE  
1387=PRINTED SOLELY FOR THAT PURPOSE, THAT -- IT'S WHAT YOU SEE IN A  
1388=PUBLISHER'S WAREHOUSE. IT'S A WAREHOUSE SALE, IS A SIMPLE WAY  
1389=TO PUT IT.  
1390=BY MR. HOHENGARTEN:  
1391=Q. ARE REMAINDERS USUALLY SOLD AT A DIFFERENT DISCOUNT THAN  
1392=YOUR TRADE DISCOUNT?  
1393=A. ABSOLUTELY.  
1394=Q. COULD YOU JUST BRIEFLY DESCRIBE WHAT THE DISCOUNT WOULD  
1395=HAVE BEEN?  
1396=A. IT COULD BE AS HIGH AS 60 PERCENT. GENERALLY IT'S  
1397=50 PERCENT OR BETTER.  
1398=Q. OTHER THAN THE PLAN FOR DIRECT SALES TO BUSINESSES THAT YOU  
1399=JUST MENTIONED, HAS ANY VENDOR EVER ALLOWED LITTLE PROFESSOR TO  
1400=PURCHASE SOME BOOKS ON A RETURNABLE BASIS AND OTHER BOOKS ON A  
1401=NON-RETURNABLE BASIS?  
1402=A. NO.

1403=Q. IS THAT TRUE FOR EVERY YEAR FROM 1994 TO THE PRESENT?  
1404=A. IT IS.  
1405=Q. HAS LITTLE PROFESSOR EVER TAKEN A CREDIT FOR BOOKS THAT IT  
1406=INTENDS TO RETURN WITHOUT ACTUALLY RETURNING THOSE BOOKS?  
1407=A. NO.  
1408=Q. WHEN DOES LITTLE PROFESSOR TAKE CREDITS FOR THE RETURNS  
1409=THAT IT MAKES TO SUPPLIERS?  
1410=A. WHEN WE'VE PULLED THE BOOKS, PACKED THE BOOKS, AND CREATED  
1411=THE PACKING LIST, THE RETURN PACKING LIST, IS GENERALLY WHEN WE  
1412=FEEL THEY ARE OUT OF OUR INVENTORY. WE TAKE CREDIT AT THAT  
1413=POINT.  
1414=Q. DO YOU KNOW WHETHER SUPPLIERS' TERMS, PUBLISHED TERMS,  
1415=ALLOW THE LITTLE PROFESSOR TO DO THAT?  
1416=A. I THINK THE TERMS ARE NOT WHAT -- THEY DO ALLOW IT, BECAUSE  
1417=WE'VE DONE IT FOR YEARS AND YEARS AND YEARS. I THINK THEY  
1418=WOULD PREFER IT WHEN THEY HAVE ALREADY GENERATED THE CREDITED  
1419=IT MEMO. THE REALITY IS THAT THEY ARE SO INCREDIBLY SLOW IN  
1420=GENERATING THE CREDIT MEMO, THAT WE ARE FORCED TO DO THAT.  
1421=Q. SO YOU DON'T ALWAYS WAIT FOR THE CREDIT MEMO FROM --  
1422=A. NO.  
1423= THE COURT: HOW MUCH MORE HAVE YOU GOT?  
1424= MR. HOHENGARTEN: A BIT MORE. FIFTEEN MINUTES,  
  
1425=MAYBE, YOUR HONOR.  
1426= THE COURT: ALL RIGHT. THAT WILL BE THE LENGTH OF  
1427=OUR FIRST MORNING RECESS. COURT WILL BE IN RECESS UNTIL 10:15.  
1428= (RECESS FROM 10:00 A.M. TO 10:15 A.M.)  
1429= (CONTINUED ON FOLLOWING PAGE. NOTHING OMITTED.)  
1430=  
1431=  
1432=  
1433=  
1434=  
1435=  
1436=  
1437=  
1438=  
1439=  
1440=  
1441=  
1442=  
1443=  
1444=  
1445=  
1446=  
1447=  
1448=  
1449=  
  
1450= THE COURT: I'VE JUST BEEN CONCERNED WITH THE --  
1451= SINCE OUR LITTLE WHAT YOU MIGHT CALL DUST-UP OF THE EXHIBIT LIST  
1452= AND SEE THAT WE HAD EXHIBIT LISTS FROM EVERYBODY, AND I DON'T  
1453= HAVE AN EXHIBIT LIST FROM BARNES & NOBLE.  
1454= HAVE THE DEFENDANTS RECEIVED AN EXHIBIT LIST FROM  
1455= BARNES & NOBLE?  
1456= MR. HOHENGARTEN: THE PLAINTIFFS HAVE, YOUR HONOR,  
1457= YES.  
1458= THE COURT: PLAINTIFFS. EXCUSE ME.  
1459= MR. HOHENGARTEN: YES.  
1460= THE COURT: YOU HAVE?  
1461= MR. HOHENGARTEN: WE HAVE, YES.  
1462= THE COURT: ALL RIGHT. WELL, WOULD YOU, PLEASE,  
1463= FURNISH ME WITH A COPY. WE PERHAPS MISLAID OURS.  
1464= MR. PETROCELLI: WE WILL DO SO, YOUR HONOR.  
1465= THE COURT: AND MAYBE BY NEXT RECESS OR THE END OF  
1466= THE DAY, SOMETHING LIKE THAT, I COULD GET A COPY.  
1467= MR. PETROCELLI: WE'RE WORKING ON IT RIGHT NOW.  
1468= THANK YOU.  
1469= THE COURT: ALL RIGHT.  
1470= MR. HOHENGARTEN: SHALL I PROCEED?  
1471= THE COURT: YOU MAY PROCEED, YEAH.  
1472= BY MR. HOHENGARTEN:  
1473= Q. I WANT TO ASK YOU A FEW MORE QUESTIONS ABOUT INGRAM BOOK

1474=COMPANY, MR. BARRINGER. HOW IMPORTANT IS INGRAM TO LITTLE

1475=PROFESSOR'S BUSINESS?

1476=A. VERY, VERY IMPORTANT.

1477=Q. AND WHY IS THAT?

1478=A. THEY ARE A PRIMARY WHOLESALER. THEY DELIVER BOOKS VERY

1479=EXPEDITIOUSLY. WE PUT AN ORDER IN, WE GET IT THE NEXT DAY. AND

1480=MUCH OF OUR BUSINESS IS PREDICATED OP SPECIAL ORDER SERVICE.

1481=Q. DO YOU HAVE ANY IDEA HOW MANY UNITS OR THE ACTUAL BOOKS THAT

1482=LITTLE PROFESSOR ORDERS FROM INGRAM DURING AN AVERAGE WEEK?

1483=A. WELL, OF COURSE, THAT WOULD VARY DEPENDING ON HOW MANY

1484=SPECIAL ORDERS WE GOT IN QUANTITY. BUT I WOULD SAY JUST IN THE

1485=NORMAL COURSE, IT WOULD BE 6-, 700 IN A WEEK, 6- OR 700.

1486=Q. AND DURING THE PERIOD FROM 1994 TO THE PRESENT, WHAT IS THE

1487=DISCOUNT SCHEDULE THAT LITTLE PROFESSOR HAS OPERATED UNDER WITH

1488=INGRAM?

1489=A. IT HAS REMAINED THE SAME, 40 FOR ONE TO FOUR; 41 FOR FIVE TO

1490=NINE; 42 FOR TEN OR MORE.

1491=Q. AND DURING THE PERIOD FROM 1994 TO THE PRESENT, HAS LITTLE

1492=PROFESSOR EVER RECEIVED ANY INCENTIVE PAYMENTS OR INCENTIVE

1493=REBATES FROM INGRAM?

1494=A. NO.

1495=Q. CAN YOU EXPLAIN THE TERMS THAT APPLY WHEN LITTLE PROFESSOR

1496=RETURNS BOOKS TO INGRAM?

1497=A. WE RETURN THEM, WE RECEIVE A PENALTY ON RETURNS.

1498=Q. WHAT RETURNS CREDIT DO YOU RECEIVE?

1499=A. FIFTY PERCENT.

1500=Q. IS IT -- IT'S THE OPPOSITE OF A PURCHASE DISCOUNT; THE

1501=HIGHER THE RETURNS DISCOUNT, THE WORSE IT IS FOR THE RETAILER?

1502=A. EXACTLY.

1503=Q. AND HAS THAT BEEN TRUE, NAMELY THAT YOU'RE CREDITED AT

1504=50 PERCENT THROUGHOUT THE PERIOD FROM 1994 TO THE PRESENT?

1505=A. YES.

1506=Q. HAS INGRAM EVER WAIVED A PENALTY ON RETURNS FOR LITTLE

1507=PROFESSOR?

1508=A. NOT ON NORMAL PURCHASES, NO.

1509=Q. CAN YOU EXPLAIN WHAT YOU MEAN?

1510=A. THEY DO HAVE A PROGRAM THAT THEY USE PERIODICALLY FOR AUTHOR

1511=EVENTS. AND ONE OF THE STIPULATIONS THERE IS THAT WE MAY RETURN

1512=THE BOOKS FOLLOWING THE EVENT WITHOUT PENALTY.

1513=Q. OKAY. AND DO YOU KNOW WHAT PURCHASE DISCOUNT LITTLE

1514=PROFESSOR RECEIVES FOR THOSE AUTHOR EVENT PURCHASES?

1515=A. I BELIEVE IT'S 42 PERCENT, BUT IN THIS CASE, WE PAY THE --

1516=WE PAY THE FREIGHT IN. THERE IS NO FREE FREIGHT.

1517=Q. COULD LITTLE PROFESSOR PURCHASE MOST OR ALL OF ITS BOOKS

1518=FROM INGRAM UNDER THAT AUTHOR EVENT PROGRAM?

1519=A. NO.

1520=Q. WHY NOT?

1521=A. BECAUSE IT'S ONLY WHEN WE HAVE AN AUTHOR OR SPECIAL EVENT.

1522=THOSE ARE THE ONLY TIME IT APPLIES.

1523=Q. DO YOU HAVE AN IDEA OF WHAT PERCENTAGE OF YOUR PURCHASES

1524=FROM INGRAM WOULD BE UNDER THAT PROGRAM?

1525=A. VERY, VERY, VERY MINUSCULE.

1526=Q. DID INGRAM PROVIDE A CASH DISCOUNT OR OFFER A CASH DISCOUNT

1527=TO LITTLE PROFESSOR?

1528=A. YES, IT DOES.

1529=Q. ON WHAT TERMS?

1530=A. 2 PERCENT TEN DAYS END OF THE MONTH.

1531=Q. SO TO RECEIVE THE CASH DISCOUNT, YOU HAVE TO PAY YOUR BILL

1532=TEN DAYS AFTER THE END OF THE MONTH?

1533=A. THAT IS CORRECT.

1534=Q. AND HAS THAT BEEN THE CASE THROUGHOUT THE PERIOD FROM '94 TO

1535=THE PRESENT?

1536=A. YES, IT HAS.

1537=Q. HAS LITTLE PROFESSOR EVER BEEN OFFERED A 2 PERCENT CASH

1538=DISCOUNT FOR PAYING 25 DAYS AFTER THE END OF THE MONTH?

1539=A. NEVER.

1540=Q. LITTLE PROFESSOR BEEN OFFERED A 2 PERCENT CASH DISCOUNT FOR

1541=PAYING ANY POINT AFTER TEN DAYS AFTER THE END OF THE MONTH?

1542=A. NO, THERE IS NO DISCOUNT AFTER THAT.

1543=Q. DO YOU PAY YOUR BILLS TO INGRAM ON TIME?

1544=A. YES, WE DO.  
1545=Q. AND ARE YOU CAPABLE OF RECEIVING BUSINESS INFORMATION  
1546=ELECTRONICALLY THROUGH EDI WITH INGRAM?  
1547=A. BUSINESS INFORMATION? CLARIFY, PLEASE.  
1548=Q. I THINK YOU TESTIFIED BEFORE THAT YOU RECEIVE PACKING LISTS  
1549=FROM INGRAM ELECTRONICALLY.

1550=A. THAT'S CORRECT.  
1551=Q. AND YOU PLACE ORDERS TO INGRAM ELECTRONICALLY?  
1552=A. THAT'S CORRECT.  
1553=Q. SO YOU HAVE EDI COMMUNICATIONS WITH INGRAM?  
1554=A. YES, WE DO.  
1555=Q. YOU MENTIONED BEFORE THAT LITTLE PROFESSOR PURCHASES SOME  
1556=BOOKS FROM INGRAM UNDER THE VENDOR OF RECORD PROGRAM, RIGHT?  
1557=A. YES, WE DO.  
1558=Q. I'M SORRY. I CAN'T RECALL IF YOU SAID WHAT PROPORTION OF  
1559=BOOKS PURCHASED FROM INGRAM WERE UNDER THAT PROGRAM?  
1560=A. AGAIN, IT'S A VERY SMALL AMOUNT.  
1561=Q. AND --  
1562=A. I CAN'T QUANTIFY IT.  
1563=Q. AND DO YOU KNOW WHAT DISCOUNT LITTLE PROFESSOR RECEIVES ON  
1564=THOSE PURCHASES?  
1565=A. 42 PERCENT.  
1566=Q. HAS THAT BEEN THE SAME SINCE 1994 TO THE PRESENT, DO YOU  
1567=KNOW?  
1568=A. I DO NOT KNOW.  
1569=Q. ARE YOU FAMILIAR WITH AN INGRAM PROGRAM CALLED THE SCHEDULED  
1570=DELIVERY PROGRAM?  
1571=A. I'VE HEARD OF IT.I DON'T USE IT.  
1572=Q. HOW DID YOU HEAR OF IT?  
1573=A. WHEN INGRAM -- INGRAM'S REP CAME TO TOWN, SHE MENTIONED THE  
1574=POSSIBILITY OF DOING IT.

1575=Q. UH --  
1576=A. IT WAS PHRASED "WOULD YOU BE INTERESTED." WHEN SHE TOLD ME  
1577=THE TERMS, I SAID NO.  
1578=Q. WHAT TERMS DID SHE TELL YOU ABOUT?  
1579=A. THE TERMS WOULD BE THAT THERE WOULD BE ONE SHIPMENT A WEEK  
1580=AND WE WOULD RECEIVE 1 PERCENT ADDITIONAL DISCOUNT.  
1581=Q. DO YOU KNOW, WAS THERE ANY WRITTEN BROCHURE THAT YOU SAW?  
1582=A. I DID NOT.  
1583=Q. AND WHY DID YOU DECIDE NOT TO TAKE ADVANTAGE OF THIS  
1584=PROGRAM?  
1585=A. WELL, IT JUST NEGATES THE WHOLE JUST-IN-TIME, GET A BOOK IN  
1586=IN A HURRY, GET A SPECIAL ORDER FOR THE CUSTOMER TODAY  
1587=PHILOSOPHY THAT WE OPERATE WITH. THAT, PLUS THE FACT THAT I  
1588=WOULD MUCH RATHER HAVE TO INPUT 4 CARTONS 4 DAYS A WEEK THAN 25  
1589=CARTONS AT ONE TIME.  
1590=Q. ARE YOU FAMILIAR WITH ANY INGRAM PROGRAM CALLED THE SUMMARY  
1591=BILLING PROGRAM?  
1592=A. NO, I'M NOT.  
1593=Q. HAVE YOU EVER HEARD OF AN INGRAM PROGRAM CALLED BACKLIST  
1594=PLUS?  
1595=A. NO.  
1596=Q. HAVE YOU EVER RECEIVED STOCK OFFERS OR SOMETHING LIKE A  
1597=STOCK OFFER FROM INGRAM?  
1598=A. NO.  
1599=Q. I JUST WANT TO CLARIFY SOMETHING. WE TALKED BEFORE ABOUT

1600=COMMUNICATIONS YOU HAD WITH BAKER & TAYLOR, ASKING IT TO PROVIDE  
1601=THE SAME SERVICE LEVEL AS INGRAM. DO YOU RECALL THAT?  
1602=A. YES, I DO.  
1603=Q. DID -- I THINK YOUR -- WASN'T ENTIRELY CLEAR FROM YOUR  
1604=ANSWER. DID BAKER & TAYLOR EVER MEET YOUR REQUIREMENTS?  
1605=A. NO.  
1606=Q. NOW, YOU TESTIFIED THAT INGRAM PROVIDES A CASH DISCOUNT.  
1607=LOOKING AT TAB 26, THE LIST OF VENDORS, FROM '94 TO THE PRESENT,  
1608=HAS LITTLE PROFESSOR RECEIVED A CASH DISCOUNT FROM ANY OF THE  
1609=OTHER VENDORS THERE?  
1610=A. RANDOM HOUSE AND HARPERCOLLINS OFFER CASH DISCOUNTS, BUT I  
1611=DON'T REMEMBER WHAT YEARS THEY DID IT. AND WHATEVER YEARS THEY  
1612=DID IT, YES, WE DID. I'M SORRY FOR THE VAGUENESS, BUT I DON'T  
1613=KNOW WHAT THOSE YEARS WERE. I THINK IT WAS PRIOR TO '94.

1614=Q. OKAY. WHAT ABOUT THE OTHER WHOLESALERS ON THE LIST, BAKER &  
1615=TAYLOR AND KOEN? \*\*\*CHKSP\*\*\*  
1616=A. THEY BOTH OFFER A SIMILAR DISCOUNT, CASH DISCOUNT.  
1617=Q. ON WHICH TERMS?  
1618=A. TWO PERCENT TEN DAYS, EOM.  
1619=Q. AND HAVE YOU EVER -- HAS LITTLE PROFESSOR EVER RECEIVED A  
1620=CASH DISCOUNT FROM PENGUIN?  
1621=A. IT'S POSSIBLE, BUT I DON'T KNOW.  
1622=Q. YOU DON'T RECALL EVER HAVING RECEIVED ONE?  
1623=A. NO.  
1624=Q. AND DO YOU EVER RECEIVE SHIPMENTS FROM VENDORS THAT ARE  
  
1625=MISSING BOOKS OR CONTAIN DAMAGED BOOKS?  
1626=A. UNFORTUNATELY, FREQUENTLY.  
1627=Q. AND YOU OBTAIN CREDIT FOR THOSE BOOKS, SHORT SHIPMENTS OR  
1628=DAMAGES?  
1629=A. MOST OF THE TIME.  
1630=Q. HOW DO YOU DO THAT?  
1631=A. WE MARK ON THE PACKING LIST AS WE ARE UNPACKING THE BOOKS IF  
1632=THEY ARE -- THERE IS A SHORT OR IF THERE IS DAMAGE. THAT  
1633=PACKING LIST THEN GOES TO OUR BOOKKEEPER WHO WILL DO ONE OF TWO  
1634=THINGS. EITHER SHE WILL REORDER THE BOOK. SHE GETS ON THE  
1635=PHONE AND CALLS INGRAM, IS USUALLY THE ONE.  
1636= SHE WILL CALL INGRAM, SAY "WE'RE SHORT A COPY OF  
1637=XYZ," OR -- AND SHE WILL EITHER ASK FOR CREDIT OR SHE WILL ASK  
1638=THEM TO RESHIP THE BOOK.  
1639=Q. IS THAT DONE ITEM BY ITEM?  
1640=A. ITEM BY ITEM.  
1641=Q. IS THAT A COST TO YOUR STORE?  
1642=A. SURE. IT'S TIME.  
1643=Q. HAVE YOU -- HAVE YOU EVER RECEIVED AN AUTOMATIC DISCOUNT OR  
1644=DEDUCTION FROM A SUPPLIER FOR SHORTAGES OF DAMAGED BOOKS?  
1645=A. NO, I HAVE NOT.  
1646=Q. DOES LITTLE PROFESSOR ADVERTISE IN NEWSPAPERS OR OTHER MEDIA  
1647=ADVERTISEMENTS?  
1648=A. YES, WE DO.  
1649=Q. AND DO YOU RECEIVE CO-OP -- COOPERATIVE ADVERTISING FUNDS ON  
  
1650=OCCASION FROM PUBLISHERS?  
1651=A. ON OCCASION.  
1652=Q. IN CONNECTION WITH A MEDIA AD, IS THERE A MAXIMUM AMOUNT  
1653=THAT LITTLE PROFESSOR CAN GET FROM A PUBLISHER IN CO-OP FUNDS?  
1654=A. THE MAXIMUM WOULD BE WHATEVER WE SPENT.  
1655=Q. YOU SPENT ON THE AD?  
1656=A. ON THE AD, YES.  
1657=Q. IS THAT TRUE FOR ALL OF THE SUPPLIERS LISTED ON THIS EXHIBIT  
1658=2591, TAB 26?  
1659=A. (REVIEWING DOCUMENT.)  
1660= IN REALITY, THE ONLY ONES THAT WE'VE REALLY GOTTEN  
1661=CO-OP FROM ARE FROM THE MAJOR SUPPLIERS, HARPER, RANDOM, SIMON  
1662=AND SO ON. AND IN THAT CASE, IT'S TRUE. I'VE NEVER USED CO-OP  
1663=FOR MOST OF THESE.  
1664=Q. LITTLE PROFESSOR'S NEVER RECEIVED AN AMOUNT IN EXCESS OF ITS  
1665=COST OF PLACING AN AD FROM ANY OF THOSE PUBLISHERS?  
1666=A. NO.  
1667=Q. HAVE YOU EVER RECEIVED MORE CO-OP FROM A PUBLISHER IN A  
1668=GIVEN YEAR THAN THE AMOUNT ALLOWED BY ITS PUBLISHED POLICY?  
1669=A. NO.  
1670=Q. HAS LITTLE PROFESSOR EVER RECEIVED COOPERATIVE ADVERTISING  
1671=FUNDS FOR ADVERTISEMENTS WHICH DO NOT CONTAIN -- DO NOT PERTAIN  
1672=TO THE SPECIFIC BOOKS OF THE PUBLISHER WHO'S SUPPLYING THE  
1673=CO-OP?  
1674=A. NO.  
  
1675=Q. FROM 1994 TO THE PRESENT, HAS LITTLE PROFESSOR RECEIVED ANY  
1676=INCENTIVE OR REBATE FOR INCREASING ITS PURCHASES FROM SUPPLIERS?  
1677=A. NO.  
1678=Q. HAVE YOU RECEIVED ANY INCENTIVE OR REBATE FOR INCREASING  
1679=PURCHASES FROM AVON?  
1680=A. PARDON ME FOR A MOMENT. LET ME JUST REVISIT THAT.  
1681= AGAIN, I AM NOT SURE OF THE YEAR, BUT AS I LOOK DOWN,  
1682=SOME OF THE -- PUTNAM, BERKELEY, FOR EXAMPLE. THERE WAS A TIME  
1683=WHEN WE DID GET A REBATE FOR INCREASING OUR PURCHASES THERE.



1684=BUT WHETHER THAT WAS IN THIS TIME FRAME, I -- I CANNOT TESTIFY  
1685=TO THAT.  
1686=Q. AND THAT WAS A REBATE RELATED TO INCREASING PURCHASES AS  
1687=OPPOSED TO ELIMINATING OR LIMITING RETURNS?  
1688=A. I'M NOT SURE.  
1689=Q. DO YOU EVER HAVE DISPUTES WITH PUBLISHERS OR WHOLESALERS  
1690=REGARDING THE AMOUNTS THAT YOU OWE?  
1691=A. FREQUENTLY.  
1692=Q. WHAT KIND OF DISPUTES HAVE ARISEN?  
1693=A. WELL, THE MOST COMMON IS THAT WE ARE BILLED FOR BOOKS THAT  
1694=WE DON'T RECEIVE OR WE ARE NOT CREDITED FOR RETURNS THAT WE HAVE  
1695=SHIPPED BACK.  
1696=Q. ARE THERE EVER ANY DISPUTES ABOUT WHETHER A BOOK WAS  
1697=RETURNABLE, SAY BECAUSE IT MIGHT HAVE BEEN OUT OF PRINT?  
1698=A. NO.  
1699=Q. DO YOU EVER RETURN BOOKS AFTER THEY'RE DECLARED OUT OF PRINT  
  
1700=AND NO LONGER RETURNABLE?  
1701=A. ONLY BY MISTAKE.  
1702=Q. AND WHAT HAPPENS IN THAT CASE?  
1703=A. THEY EITHER BOUNCE THE BOOK BACK TO US OR THEY DESTROY IT.  
1704=THEY DON'T GIVE US ANY CREDIT FOR IT.  
1705=Q. NOW, WHEN YOU HAVE A DISPUTE WITH A PUBLISHER ABOUT WHETHER  
1706=YOU'VE RECEIVED BOOKS OR THEY'VE RECEIVED RETURNS, HOW ARE THOSE  
1707=DISPUTES RESOLVED?  
1708=A. WELL, WE USUALLY WALK IT THROUGH AND TALK IT THROUGH, AND  
1709=THIS IS BASICALLY THE BOOKKEEPER'S RESPONSIBILITY, THAT IF  
1710=IT'S -- IF WE ARE SAYING THAT NO, WE NEVER RECEIVED ONE CARTON  
1711=OUT OF THAT SHIPMENT, THEY WILL PRODUCE SOME PROOF OF DELIVERY.  
1712=IN WHICH CASE WE SAY, "OKAY, I GUESS WE DID."  
1713= CONVERSELY, IF THEY DON'T GIVE US CREDIT FOR  
1714=SOMETHING AND WE SAY WE SHIPPED IT OUT, THE BURDEN IS ON US TO  
1715=PROVE THAT BY PROOF OF DELIVERY. AND IF SOMEBODY AT THEIR  
1716=WAREHOUSE HAS SIGNED FOR IT, THEY GIVE US CREDIT.  
1717=Q. SO EACH SIDE PROVIDES PROOF OF DELIVERY ON AN ITEM-BY-ITEM  
1718=BASIS OR A CARTON-BY-CARTON BASIS?  
1719=A. YES.  
1720=Q. HAS ANY VENDOR EVER FORGIVEN A SUM THAT YOU DISPUTED?  
1721=A. NO.  
1722=Q. HAVE YOU EVER FORGIVEN A SUM THAT ANY VENDOR HAS DISPUTED?  
1723=A. UNFORTUNATELY, YES.  
1724=Q. UNDER WHAT CIRCUMSTANCES HAVE YOU HAD TO DO THAT?  
  
1725=A. THIS HAD TO DO BASICALLY WITH CO-OP. SOMETIMES THE  
1726=RUNAROUND IS SO LONG AND SO DRAWN OUT THAT YOU JUST TOSS IN THE  
1727=TOWEL AND SAY IT'S NOT WORTH FIGHTING OVER.  
1728= MR. HOHENGARTEN: I'VE NO FURTHER QUESTIONS.  
1729= THE COURT: CROSS-EXAMINATION.  
1730= MR. NELSON: YOUR HONOR, I HAVE AN EXHIBIT BINDER FOR  
1731=THE COURT.  
1732= THE COURT: THANK YOU.  
1733= MR. NELSON: IF I MAY APPROACH THE WITNESS.  
1734= THE COURT: YEAH.  
1735= CROSS-EXAMINATION  
1736=BY MR. NELSON:  
1737=Q. MR. BARRINGER, MY NAME IS RICHARD NELSON, AND I REPRESENT  
1738=THE BORDERS GROUP, INC. AND WALDENBOOKS.  
1739=A. MR. NELSON.  
1740=Q. NOW, MR. BARRINGER, YOU OPENED YOUR STORE IN CHARLOTTE IN  
1741=1977?  
1742=A. THAT'S CORRECT.  
1743=Q. AND HAVE YOU BEEN ACTIVE IN ANY BUSINESS GROUPS IN  
1744=CHARLOTTE?  
1745=A. YES, I HAVE.  
1746=Q. WHICH GROUPS ARE THOSE?  
1747=A. FOR A SHORT TIME, THE CHAMBER OF COMMERCE.  
1748=Q. DO YOU FOLLOW LOCAL BUSINESS TRENDS IN CHARLOTTE?  
1749=A. YES, I DO.  
  
1750=Q. AND, IN FACT, THE 1990S HAVE BEEN A VERY GOOD DECADE FOR  
1751=CHARLOTTE, HAVEN'T THEY?  
1752=A. YES, THEY HAVE.  
1753=Q. NATION'S BANK IS HEADQUARTERED IN CHARLOTTE?

1754=A. YES.  
1755=Q. AND IN 1990'S, NATION BANK ACQUIRED BANK OF AMERICA HERE IN  
1756=SAN FRANCISCO; CORRECT?  
1757=A. THAT'S TRUE.  
1758=Q. AND THEY MOVED THE HEADQUARTERS BACK TO CHARLOTTE?  
1759=A. YES.  
1760=Q. INDEED, THERE IS A MAJOR UNIVERSITY IN CHARLOTTE, THE  
1761=UNIVERSITY OF NORTH CAROLINA AT CHARLOTTE?  
1762=A. THAT'S TRUE.  
1763=Q. CHARLOTTE HAS ALMOST A HALF MILLION PEOPLE -- LITTLE OVER A  
1764=HALF MILLION PEOPLE, CORRECT?  
1765=A. THAT IS TRUE.  
1766=Q. AND IN THE URBAN AREA OF CHARLOTTE, YOU MIGHT HAVE FIND  
1767=ABOUT A 1.3 MILLION PEOPLE?  
1768=A. THAT'S A REASONABLE COUNT, YES.  
1769=Q. IT'S FAIR TO SAY THAT CHARLOTTE IS A GOOD PLACE TO HAVE A  
1770=BUSINESS?  
1771=A. YES.  
1772=Q. NOW, PRIOR TO 1992, YOU MENTIONED THAT THERE WERE TWO  
1773=INTIMATE BOOK SHOPS IN TOWN?  
1774=A. YES.  
  
1775=Q. WERE THERE ANY BOOK SUPERSTORES IN CHARLOTTE?  
1776=A. NO.  
1777=Q. SO IT WAS NO SURPRISE THAT BOOKSTORES VIEWED CHARLOTTE AS AN  
1778=ATTRACTIVE PLACE TO GO, CORRECT?  
1779=A. THAT'S CORRECT.  
1780=Q. NOW, YOUR BOOK STORE HAS BEEN IN THE SAME SHOPPING MALL  
1781= SINCE 1977, CORRECT?  
1782=A. THAT'S CORRECT.  
1783=Q. NOW, YOU'VE MOVED SEVERAL TIMES WITHIN THE MALL AND EXPANDED  
1784=BUT IT'S BEEN WITHIN THAT SAME AREA; IS THAT RIGHT?  
1785=A. TECHNICALLY WE MOVED ONE TIME.  
1786=Q. OKAY. AND THAT WAS BACK IN 1990?  
1787=A. THAT'S RIGHT.  
1788=Q. NOW, WHEN YOU FIRST MOVED INTO YOUR SHOPPING MALL, YOU WERE  
1789=IN THE MIDDLE OF A VERY AFFLUENT AREA, CORRECT?  
1790=A. YES.  
1791=Q. BUT TRENDS IN CHARLOTTE BEING WHAT THEY WERE, THE AFFLUENCE  
1792=IN CHARLOTTE HAS MOVED SOUTH OF YOUR MALL, CORRECT?  
1793=A. NO, IT'S NOT REALLY TRUE. IT'S JUST EXPANDED.  
1794=Q. YOUR AREA HAS GOTTEN A LITTLE BIT OLDER OVER THE YEARS?  
1795=A. NO, ACTUALLY IT'S GETTING YOUNGER.  
1796=Q. OKAY. WHO IS FRANK BURLESON?  
1797=A. FRANK BURLESON IS MY MANAGER.  
1798=Q. HOW LONG HAS HE BEEN YOUR MANAGER?  
1799=A. EIGHTEEN YEARS.  
  
1800=Q. DOES HE LIVE IN CHARLOTTE?  
1801=A. YES, HE DOES.  
1802=Q. OKAY. IS HE FAMILIAR WITH THE AREA OF STORE?  
1803=A. YES, HE IS.  
1804=Q. AND HE'S YOUR MANAGER AT THE STORE EVERY DAY?  
1805=A. NOT EVERY DAY.  
1806=Q. IS HE THERE FREQUENTLY DURING THE WEEK, THOUGH?  
1807=A. YES.  
1808=Q. ARE YOU AWARE THAT HE TESTIFIED THAT THE CENTER OF AFFLUENCE  
1809=IN CHARLOTTE HAS MOVED SOUTH OF YOUR STORE?  
1810=A. NO, I HAVE NO IDEA WHAT HE TESTIFIED.  
1811=Q. DO YOU KNOW THE SOUTH PARK AREA?  
1812=A. YES, I DO.  
1813=Q. IT'S A VERY NICE RETAIL ENVIRONMENT, CORRECT?  
1814=A. CORRECT.  
1815=Q. THERE'S A INSIDE RETAIL MALL, THE -- ACTUALLY THE SOUTH PARK  
1816=MALL, RIGHT?  
1817=A. YES.  
1818=Q. AND IT HAS ANCHOR TENANTS?  
1819=A. YES.  
1820=Q. DILLARDS, WHICH IS A MAJOR SOUTHERN SORT OF EQUIVALENT OF  
1821=MACY'S WOULD YOU SAY?  
1822=A. YES.  
1823=Q. THE GAP IS IN THE SOUTH PARK MALL?  
1824=A. YES.

1825=Q. VARIETY OF OTHERS, OF HIGH-END RETAIL STORES?  
1826=A. YES.  
1827=Q. THERE ARE RESTAURANTS IN THAT AREA?  
1828=A. YES.  
1829=Q. AND MOVIE THEATERS?  
1830=A. YES. WHICH WE ALSO HAVE IN OUR SHOPPING CENTER.  
1831=Q. OKAY. AND ALSO IN THAT SOUTH PARK AREA, THAT'S A -- WOULD  
1832=YOU TERM THAT A POSH RESIDENTIAL AREA?  
1833=A. I DON'T KNOW THAT I'D USE THE WORD "POSH." I LIVE THERE.  
1834=Q. WOULD YOU CONSIDER IT --  
1835= (LAUGHTER)  
1836=BY MR. NELSON:  
1837=Q. WOULD YOU CONSIDER IT A NICE RESIDENTIAL AREA?  
1838=A. YES.  
1839=Q. THAT'S FINE. AND ACTUALLY THAT'S -- SOUTH PARK AREA IS  
1840=WHERE THE BORDERS STORE IS LOCATED; IS THAT CORRECT?  
1841=A. THAT IS CORRECT.  
1842=Q. AND IT'S ALSO WHERE ONE OF BARNES & NOBLE STORES IS LOCATED?  
1843=A. YES.  
1844=Q. AND IT'S ACTUALLY THE FIRST BARNES & NOBLE STORE THAT CAME  
1845=TO CHARLOTTE, THEY WENT TO THE SOUTH PARK AREA, TRUE?  
1846=A. TRUE.  
1847=Q. AND IS IT FAIR TO SAY THAT THE AREA WHERE -- THE LOCATIONS  
1848=THAT BORDERS AND BARNES & NOBLE SELECTED IN SOUTH PARK WERE THE  
1849=VERY BEST COMMERCIAL AREAS IN CHARLOTTE?  
  
1850=A. UH, I DON'T KNOW WHETHER IT'S RIGHT FOR ME TO ASK YOU TO  
1851=QUALIFY WHAT YOU MEAN BY "COMMERCIAL."  
1852=Q. WELL, LET ME JUST ASK IT A LITTLE DIFFERENT WAY. WOULD YOU  
1853=AGREE THAT THE ORIGINAL BARNES & NOBLE AND THE ORIGINAL BORDERS  
1854=PICKED THE BEST LOCATION IN TOWN TO PUT THEIR STORES?  
1855=A. NO.  
1856=Q. AND WHY NOT?  
1857=A. I THINK THE ONE THAT BARNES & NOBLE WENT TO MOST RECENTLY  
1858=OUT AT THE ARBORETUM IS A FAR SUPERIOR ONE TO DO BUSINESS. ON A  
1859=DAY-TO-DAY BOOK STORE BUSINESS, I PREFER MY LOCATION TO THE  
1860=SOUTH PARK JUST BECAUSE OF THE DIFFERENTIAL OF COST PER SQUARE  
1861=FOOT.  
1862=Q. ARE YOU AWARE THAT YOUR MANAGER FRANK BURLISON ACTUALLY  
1863=PREFERS THE AREA THAT BARNES & NOBLE AND BORDERS ARE LOCATED?  
1864=A. NO, I'M NOT.  
1865=Q. NOW, I'D LIKE TO TURN TO YOUR -- THE MAP THAT THEY USED ON  
1866=MR. HOHENGARTEN USED IN HIS DIRECT EXAMINATION. AND IT'S THE  
1867=BLACK BINDER IN FRONT OF YOU.  
1868= AND IT'S EXHIBIT 3 IN THE PLAINTIFF'S BINDER, YOUR  
1869=HONOR.  
1870=A. I HAVE IT.  
1871=Q. OKAY.  
1872= NOW, ON THIS MAP, THE WALDENBOOK STORE, WHICH IS  
1873=LOCATED AT THE TOP RIGHT WHERE IT SAYS 5643 CENTRAL AVENUE?  
1874=A. YES.  
  
1875=Q. OKAY. THAT ONE IS NO LONGER THERE, CORRECT?  
1876=A. THAT'S CORRECT.  
1877=Q. AND THE WALDENBOOKS STORE -- I THINK IT'S A WALDENBOOKS,  
1878=IT'S ACTUALLY A BLUE DOT ON SORT OF THE MIDDLE TO THE LEFT, BUT  
1879=IT'S CUT OFF -- THE DESCRIPTION IS CUT OFF -- BUT THAT WAS ALSO  
1880=A WALDENBOOKS STORE, CORRECT?  
1881=A. YES, IT WAS.  
1882=Q. AND THAT IS ALSO CLOSED DOWN; IS THAT CORRECT?  
1883=A. THAT'S CORRECT.  
1884=Q. AND SO NEITHER OF THOSE STORES COMPETE WITH YOU; IS THAT  
1885=CORRECT?  
1886=A. THAT'S CORRECT.  
1887=Q. AND, IN FACT, SINCE 1977, YOU'VE NEVER VIEWED WALDENBOOKS AS  
1888=A COMPETITOR, CORRECT?  
1889=A. THAT'S TRUE.  
1890=Q. THEY'RE A VERY DIFFERENT KIND OF BOOKSTORE THAN WHAT YOU  
1891=ARE?  
1892=A. I DON'T KNOW THAT THEY'RE THAT DIFFERENT, BUT THEY DIDN'T --  
1893=THEY WEREN'T A COMPETITOR.  
1894=Q. OKAY. NOW, YOU MENTIONED MEDIA PLAY DURING YOUR DIRECT

1895=EXAMINATION. DO YOU REMEMBER THAT?  
1896=A. YES, I DO.  
1897=Q. OKAY. NOW, THE MEDIA PLAY THAT OPENED IN 1995, IS THAT ON  
1898=THIS MAP?  
1899=A. NO, IT'S NOT.

1900=Q. OKAY. BUT I MEAN, CAN YOU -- CAN YOU LOCATE IT ON THIS MAP?  
1901=A. YES.  
1902=Q. AND, IN FACT, IF YOU LOOK AT THE RED DOT FOR BORDERS -- I'M  
1903=SORRY -- THE BLUE DOT FOR BORDERS AND THE RED DOT FOR BARNES &  
1904=NOBLE ON SHARON ROAD.  
1905=A. I SEE THOSE.  
1906=Q. OKAY. WHERE WOULD YOU PUT THE MEDIA PLAY -- THE FIRST MEDIA  
1907=PLAY THAT CAME IN CLOSE TO YOUR STORE, WHERE WOULD YOU PUT THAT  
1908=IN RELATION TO THOSE -- THOSE PARTICULAR STORES?  
1909=A. IF YOU LOOK AT OUR LOCATION AND GO DUE WEST, WHERE IT SAYS  
1910=SOUTH BOULEVARD.  
1911=Q. I'M WITH YOU.  
1912=A. RIGHT AT THE CORNER OF SOUTH BOULEVARD AND -- IT'S NOT  
1913=MARKED, BUT THE ROAD THAT LEADS FROM PARK ROAD OVER THERE IS  
1914=WOODLAWN ROAD. AT THE CORNER OF SOUTH BOULEVARD AND WOODLAWN.  
1915=Q. OKAY. AND THAT MEDIA PLAY WAS ABOUT ONE AND A QUARTER MILES  
1916=AWAY FROM YOUR STORE?  
1917=A. THAT'S CORRECT.  
1918=Q. NOW, THERE IS ANOTHER MEDIA PLAY IN CHARLOTTE, TRUE?  
1919=A. THERE IS ONE ON THE NORTH SIDE, YES.  
1920=Q. IS THAT --  
1921=A. OUTSIDE THIS MAP AREA.  
1922=Q. OKAY. NOW, IS THAT THE ONE ON UNIVERSITY CITY BOULEVARD?  
1923=A. THAT'S CORRECT.  
1924=Q. OKAY. THERE'S ANOTHER MEDIA PLAY ON INDEPENDENCE BOULEVARD,

1925=TRUE?  
1926=A. I DON'T KNOW.  
1927=Q. THERE WERE --  
1928=A. DO YOU HAVE AN ADDRESS ON INDEPENDENCE?  
1929=Q. IN FACT, I DO. DOES 10011 EAST INDEPENDENCE BOULEVARD --  
1930=IT'S DOWN NEAR MATTHEWS?  
1931=A. AH. OKAY. THAT'S -- THAT'S FAR FROM US. THAT'S IN THE  
1932=CHARLOTTE AREA.  
1933=Q. AND, IN FACT, IT WOULD BE ON THIS MAP, WHICH IS PLAINTIFF'S  
1934=EXHIBIT -- BEHIND TAB NUMBER 3, WHICH IS THEIR EXHIBIT 2522.  
1935=A. THAT WOULD BE IN THE VERY, VERY FAR RIGHT-HAND QUADRANT,  
1936=RIGHT AT THE -- RIGHT AT THE BORDER OF 51 AND INDEPENDENCE.  
1937=Q. OKAY. BUT, I MEAN, WE'VE INCLUDED THE BARNES & NOBLE DOWN  
1938=ON PINEVILLE MATTHEWS ROAD. DO YOU SEE THAT WAY AT THE VERY FAR  
1939=QUADRANT DOWN IN THE CENTER DOWN WAY BELOW?  
1940=A. YES.  
1941=Q. WOULD IT BE FAIR TO SAY THAT THE MEDIA PLAY THAT'S NOT ON  
1942=THIS MAP WOULD BE APPROXIMATELY THE SAME DISTANCE FROM YOUR  
1943=STORE AS THIS BARNES & NOBLE WHICH -- WHICH IS ON THE MAP?  
1944=A. PROBABLY NOT IN ACTUAL DRIVING DISTANCE. JUST FOR THE  
1945=ABILITY TO GET TO IT, IF YOU'RE TRYING TO COMPARE MY STORE WITH  
1946=THEIRS AND COMPETITION, IT WOULD BE MUCH EASIER TO GO FROM  
1947=BARNES & NOBLE TO MY STORE THAN IT WOULD BE FROM THIS OTHER  
1948=MEDIA PLAY AND MY STORE.  
1949=Q. WELL, THIS INDEPENDENCE AVENUE -- OR INDEPENDENCE BOULEVARD,

1950=EXCUSE ME, THAT'S JUST AN EXTENSION OF ROUTE 74, CORRECT?  
1951=A. THAT IS CORRECT.  
1952=Q. IT'S A MAJOR ROAD?  
1953=A. IT'S A MAJOR MESSY ROAD TO TRY TO GET THROUGH.  
1954=Q. IN FACT, THE BARNES & NOBLE THAT'S LOCATED ON INDEPENDENCE  
1955=BOULEVARD, THAT'S IN A VERY BAD RETAIL LOCATION BECAUSE OF THAT,  
1956=CORRECT?  
1957=A. I AGREE.  
1958=Q. NOW, YOU ALSO COMPETE WITH A BOOK STORE CALLED BOOKMARK; IS  
1959=THAT RIGHT?  
1960=A. THAT'S TRUE.  
1961=Q. AND THAT'S -- THAT OPENED IN 1995 IN DOWNTOWN, DIDN'T IT?  
1962=A. YES, IT DID.  
1963=Q. AND THE LOCATION WHERE BOOKMARK IS AT THAT COULD BE FOUND ON  
1964=THIS MAP, TRUE?

1965=A. TRUE.  
1966=Q. BUT IT'S -- BUT IT'S NOT ON THIS PARTICULAR MAP, THOUGH,  
1967=RIGHT?  
1968=A. NO, IT IS NOT.  
1969=Q. NOW, THEY HAVE THE SAME TYPE OF BOOKS THAT YOU HAVE, DON'T  
1970=THEY, AT BOOKMARK?  
1971=A. YES, THEY DO.  
1972=Q. NOW, YOU ALSO COMPETE WITH A STORE CALLED NEWSSTAND  
1973=INTERNATIONAL, IS THAT CORRECT?  
1974=A. TO SOME DEGREE.  
  
1975=Q. WELL, THEY'RE A VERY WELL-RUN STORE, TRUE?  
1976=A. YES, THEY ARE.  
1977=Q. AND THEY'RE LOCATED ALSO ON EAST INDEPENDENCE BOULEVARD  
1978=WHERE WE JUST TALKED ABOUT THAT BARNES & NOBLE AND THE MEDIA  
1979=PLAY, TRUE?  
1980=A. THAT'S TRUE.  
1981=Q. AND THEY'RE, IN FACT, FAIRLY CLOSE TO THAT BARNES & NOBLE;  
1982=ISN'T THAT FAIR TO SAY?  
1983=A. YES, IT IS.  
1984=Q. COUPLE BLOCKS AWAY?  
1985=A. YES.  
1986=Q. AND THEY MOVED INTO -- INTO TOWN IN THE 1990S AS WELL,  
1987=DIDN'T THEY?  
1988=A. YES, THEY HAVE TWO LOCATIONS.  
1989=Q. THEY HAVE TWO LOCATIONS IN CHARLOTTE?  
1990=A. THEY HAD HAVE TWO LOCATIONS.  
1991=Q. NOW, THIS LOCATION ON INTERNATIONAL -- I'M SORRY --  
1992=INDEPENDENCE BOULEVARD, THAT'S STILL IN OPERATION, ISN'T IT?  
1993=A. YES, IT IS.  
1994=Q. AND THEY COMPETE WITH YOU?  
1995=A. YES.  
1996=Q. NOW, THERE'S ALSO A SAM'S CLUB IN TOWN?  
1997=A. YES.  
1998=Q. AND THEY HAVE BESTSELLERS.  
1999=A. YES.  
  
2000=Q. INDEED, THEY DISCOUNT THEIR BESTSELLERS?  
2001=A. YES, THEY DO.  
2002=Q. AND SAM'S CLUB COMPETES WITH YOU?  
2003=A. YES.  
2004=Q. NOW, ALSO I GUESS EVERY SINGLE ONE OF THESE HOUSEHOLDS IN  
2005=CHARLOTTE THAT HAS A COMPUTER TERMINAL. THEY HAVE ACCESS TO  
2006=AMAZON.COM, DON'T THEY?  
2007=A. YES, THEY DO.  
2008=Q. AND AMAZON.COM BECAME A PHENOMENON IN THE 1990S?  
2009=A. IT DID.  
2010=Q. AND AMAZON.COM COMPETES WITH YOU AS WELL?  
2011=A. TO A DEGREE.  
2012=Q. NOW, THE REASONS THAT YOU DON'T COMPETE WITH THE BARNES &  
2013=NOBLE ON INDEPENDENCE BOULEVARD INCLUDE ITS LOCATION; IS THAT  
2014=RIGHT?  
2015=A. YES.  
2016=Q. AND THE AMBIENCE. THE AMBIENCE IS BETTER AT YOUR STORE THAN  
2017=IT IS AT THAT PARTICULAR BARNES & NOBLE, CORRECT?  
2018=A. THINK THAT'S A PERSONAL PREFERENCE.  
2019=Q. BUT THAT'S YOUR OPINION, TRUE?  
2020=A. YES.  
2021=Q. AND ALSO THE TITLE SELECTION IS BETTER AT YOUR STORE THAN  
2022=THAT PARTICULAR BARNES & NOBLE, CORRECT?  
2023=A. I CAN'T -- I CAN'T ANSWER THAT. I DON'T KNOW.  
2024= MR. NELSON: ONE MOMENT, YOUR HONOR.  
  
2025= THE COURT: ALL RIGHT.  
2026= (PAUSE IN THE PROCEEDINGS.)  
2027=BY MR. NELSON:  
2028=Q. WE'LL COME BACK TO THAT IN A LITTLE BIT.  
2029= NOW, WOULD YOU SAY THAT THE PARKING AT YOUR STORE IS  
2030=THE BETTER THAN THE PARKING AT THAT PARTICULAR BARNES & NOBLE?  
2031=A. YOU'RE REFERRING TO THE ONE ON INDEPENDENCE?  
2032=Q. I AM, SIR.  
2033=A. I'M NOT SURE THAT THE PARKING IS BETTER. THE ACCESSIBILITY  
2034=INTO THE LOT -- IN AND OUT OF THE LOTS IS BETTER.

2035=Q. AND THAT'S BECAUSE INDEPENDENCE BOULEVARD IS A BUSIER, MORE  
2036=CONGESTED ROAD THAN PARK ROAD?  
2037=A. ABSOLUTELY.  
2038=Q. AND THESE ARE ALL FACTORS THAT PLAY INTO WHAT MAKES A -- A  
2039=GOOD STORE, A MORE DESIRABLE STORE; IS THAT RIGHT?  
2040=A. YES.  
2041=Q. NOW, YOUR STORE, I THINK YOU TESTIFIED ON DIRECT  
2042=EXAMINATION, HAS A APPROXIMATELY 3600 SQUARE FEET OF RETAIL  
2043=SPACE?  
2044=A. OF SELLING SPACE OF RETAIL SPACE.  
2045=Q. AND THE BORDERS IN TOWN, WHICH IS -- I GUESS THE ONLY  
2046=BORDERS IN TOWN HAS -- IT'S ABOUT 27,000 SQUARE FEET; IS THAT  
2047=RIGHT?  
2048=A. THAT'S CORRECT.  
2049=Q. IT'S MORE THAN SEVEN TIMES BIGGER THAN YOUR STORE?  
  
2050=A. WELL, WE HAVE 4,000-PLUS SQUARE FEET TOTAL STORE. I DON'T  
2051=KNOW WHETHER THEY HAVE 27,000 FEET OF SELLING SPACE. I DON'T  
2052=KNOW.  
2053=Q. FAIR TO SAY, IT'S SIGNIFICANTLY LARGER THAN YOUR STORE?  
2054=A. YES.  
2055=Q. OKAY. NOW, YOU TESTIFIED YESTERDAY THAT YOU HAVE BETWEEN  
2056=20- AND 25,000 TITLES IN STOCK?  
2057=A. THAT'S CORRECT.  
2058=Q. AND IT WOULD BE FAIR TO SAY THAT YOU HAVE FEWER TITLES IN  
2059=STOCK THAN THE BORDERS STORE IN CHARLOTTE?  
2060=A. YES.  
2061=Q. AND YOU HAVE FEWER TITLES THAN THE BARNES & NOBLE STORES IN  
2062=CHARLOTTE?  
2063=A. YES.  
2064=Q. AND, IN FACT, I THINK YOU TESTIFIED THAT THE MEDIA PLAY HAS  
2065=BETWEEN 10- AND 15,000 SQUARE FEET OF BOOK RETAIL SPACE; IS THAT  
2066=RIGHT?  
2067=A. YES. YES.  
2068=Q. SO PRESUMABLY, THEY HAVE MORE TITLES THAN YOU HAVE AVAILABLE  
2069=IN YOUR STORE, TRUE?  
2070=A. I'M NOT SURE OF THAT, NO.  
2071=Q. BUT YOU ARE SURE OF THE FACT THAT BARNES & NOBLE AND BORDERS  
2072=HAVE MORE TITLES THAN YOU HAVE IN YOUR STORE?  
2073=A. YES. ACTUALLY FOR THE RECORD, I WOULD SAY THAT MEDIA PLAY  
2074=HAS FEWER TITLES THAN WE DO.  
  
2075=Q. DESPITE THE FACT THAT THEY HAVE, WHAT, THREE TIMES THE SPACE  
2076=FOR BOOK RETAILING?  
2077=A. YES.  
2078=Q. OKAY. NOW, YOU'RE A PART OF A FRANCHISE, THE LITTLE  
2079=PROFESSOR FRANCHISE?  
2080=A. YES.  
2081=Q. AND IT'S TRUE THAT THE LITTLE PROFESSOR FRANCHISE AT LEAST  
2082=OVER THE '90S HAVE BEEN PROVIDING FEWER SERVICES TO THE  
2083=FRANCHISEES? ACTUALLY LET ME ASK IT A DIFFERENT WAY.  
2084= YOUR PARTICULAR STORE, YOU HAVE EXPERIENCED IN THE  
2085='90S A DISAGREEMENT WITH LITTLE PROFESSOR WITH REGARD TO THE  
2086=SERVICES THEY WERE PROVIDING YOU; IS THAT TRUE?  
2087=A. REALLY ONLY THE LAST THREE YEARS.  
2088=Q. AND, IN FACT, THE SERVICES THAT THEY PROVIDED HAVE  
2089=DETERIORATED DRASTICALLY; IS THAT CORRECT?  
2090=A. THAT IS CORRECT.  
2091=Q. AND CURRENTLY THOSE SERVICES ARE VIRTUALLY NONEXISTENT?  
2092=A. I COULD NOT TESTIFY TO BEING NONEXISTENT, BUT NO.  
2093=Q. ARE THE SERVICES ANY BETTER TODAY THAN THEY WERE BACK IN THE  
2094=YEAR 2000?  
2095=A. NO.  
2096=Q. SO THEY HAVEN'T IMPROVED SINCE FEBRUARY 1ST OF 2000, HAVE  
2097=THEY?  
2098=A. NO, THEY HAVE NOT.  
2099=Q. OKAY. NOW, YOU WOULD SAY THAT THE BENEFITS THAT YOU RECEIVE  
  
2100=FOR THE MONEY THAT YOU PAY -- WELL, LET ME BACK UP. YOU HAVE TO  
2101=PAY A FRANCHISE FEE TO LITTLE PROFESSOR, TRUE?  
2102=A. TRUE.  
2103=Q. AND THAT VARIES OVER YEARS, BUT IT'S FAIR TO SAY IT'S  
2104=FREQUENTLY IN THE 5 DIGITS, \$10,000 OR MORE?

2105=A. WELL, THE FEE DOESN'T VARY. THE PERCENTAGE DOESN'T VARY.  
2106=YES, IT'S PREDICATED UPON GROSS SALES.  
2107=Q. AND -- BUT THE AMOUNT OF MONEY THAT YOU PAY AS PART OF YOUR  
2108=FRANCHISE FEE IS FREQUENTLY OVER \$10,000?  
2109=A. YES.  
2110=Q. SO -- AND YOU WOULD CHARACTERIZE IT THAT THE MONEY THAT YOU  
2111=PAY AS PART OF YOUR FRANCHISE FEE DOESN'T COMPENSATE YOU FOR THE  
2112=SERVICES THAT YOU RECEIVE FROM -- FROM YOUR FRANCHISE, TRUE?  
2113=A. NOT ANY LONGER. TRUE.  
2114=Q. AT ONE POINT, IT DID, BUT AT SOME POINT IN THE '90S,  
2115=YOU'RE -- THE AMOUNT OF MONEY THAT YOU'RE PAYING WAS OUTWEIGHED  
2116=BY THE SMALL NUMBER OF SERVICES THAT YOU WERE RECEIVING?  
2117=A. THAT'S TRUE.  
2118=Q. OKAY. NOW, ON DIRECT EXAMINATION, YOU WENT THROUGH SOME OF  
2119=YOUR FINANCIAL RECORDS FROM, I BELIEVE, SORT OF THE 1990 TIME  
2120=FRAME UP THROUGH 1996. REMEMBER DOING THAT WITH  
2121=MR. HOHENGARTEN?  
2122=A. YES, I DO.  
2123=Q. AND IN 1996 -- ACTUALLY 1997, YOU REMAINED IN BUSINESS,  
2124=TRUE?  
  
2125=A. YES.  
2126=Q. AND IN 1998, 1999, YOU REMAINED IN BUSINESS?  
2127=A. YES.  
2128=Q. AND YOU'RE IN BUSINESS UP TO THIS VERY MOMENT?  
2129=A. YES.  
2130=Q. THE STORE IS OPEN BACK IN CHARLOTTE?  
2131=A. SO FAR AS I KNOW.  
2132=Q. OKAY. BUT WE HAVEN'T SEEN YET ANY OF THOSE FINANCIAL  
2133=RECORDS PAST AUGUST 31ST OF 1996 SO FAR IN THIS -- IN YOUR  
2134=TESTIMONY TODAY; IS THAT TRUE?  
2135=A. YES. YES.  
2136=Q. LET'S TURN TO TAB 1 OF THE DEFENDANT BORDERS BINDER, WHICH  
2137=IS THE WHITE BINDER IN FRONT OF YOU, SIR.  
2138=A. (REVIEWING DOCUMENTS.)  
2139= I HAVE IT.  
2140=Q. OKAY. AND JUST FOR THE RECORD, THIS IS PLAINTIFF'S EXHIBIT  
2141=NUMBER 260. YOU SEE THAT?  
2142=A. YES.  
2143=Q. OKAY. AND THIS IS ANOTHER ONE OF YOUR PROFIT AND LOSS  
2144=STATEMENTS THAT WE LOOKED AT THIS MORNING?  
2145=A. YES, IT IS.  
2146=Q. BUT THIS ONE IS FOR THE CALENDAR OR -- SORRY -- THE FISCAL  
2147=YEAR SEPTEMBER '96 THROUGH AUGUST OF '97?  
2148=A. THAT'S CORRECT.  
2149=Q. OKAY. AND HAVE YOU HAD A CHANCE -- I MEAN, THIS IS ONE OF  
  
2150=THE PLAINTIFF'S EXHIBIT, SO PRESUMABLY, YOU HAVE SEEN THIS  
2151=DOCUMENT BEFORE?  
2152=A. YES, I HAVE.  
2153=Q. AND THIS IS -- THIS IS AN ACCURATE COPY OF YOUR PROFIT AND  
2154=LOSS STATEMENT FOR THAT CALENDAR YEAR?  
2155=A. CERTAINLY, BEST OF MY KNOWLEDGE.  
2156=Q. OKAY. WELL, WE'LL COME BACK TO THAT, BUT LET'S GO TO --  
2157=LET'S GO TO TAB 2. AND FOR THE RECORD, THIS IS PLAINTIFF'S  
2158=EXHIBIT NO. 259. DO YOU SEE THAT?  
2159=A. YES, I DO.  
2160=Q. OKAY. AND THIS IS YOUR PROFIT AND LOSS STATEMENT FOR THE  
2161=FISCAL YEAR ENDING AUGUST 1998; IS THAT RIGHT?  
2162=A. YES, IT IS.  
2163=Q. AND ONCE AGAIN, YOU'VE HAD AN OPPORTUNITY PRIOR TO TODAY TO  
2164=CONFIRM THAT THIS IS AN ACCURATE COPY OF YOUR PROFIT AND LOSS  
2165=STATEMENT, RIGHT?  
2166=A. YES.  
2167=Q. AND IT IS AN ACCURATE COPY?  
2168=A. I TRUST THAT IT IS.  
2169=Q. OKAY. AND THEN JUST TO COMPLETE THIS PORTION, LET'S GO TO  
2170=TAB 3.  
2171=A. (REVIEWING DOCUMENTS.)  
2172=Q. AND THIS IS JUST FOR THE RECORD, PLAINTIFF'S EXHIBIT NO.  
2173=258; IS THAT RIGHT?  
2174=A. YES, IT IS.

2175=Q. AND THIS IS YOUR PROFIT AND LOSS STATEMENT FOR THE PERIOD OF  
2176=1998 THROUGH AUGUST OF 1999, TRUE?  
2177=A. THAT'S TRUE.  
2178=Q. AND ONCE AGAIN, YOU HAD AN OPPORTUNITY PRESUMABLY TO ENSURE  
2179=PRIOR TO TODAY THAT THIS IS AN ACCURATE COPY OF YOUR PROFIT AND  
2180=LOSS STATEMENT?  
2181=A. YES.  
2182=Q. ALL RIGHT.  
2183= WELL, LET'S GO BACK, THEN, TO TAB ONE. AND LOOKING  
2184=AT PAGE 6 OF TAB 1, THIS TELLS US THAT IN THE FISCAL YEAR ENDING  
2185=AUGUST 31ST, 1997, THE SALES OF YOUR STORE WERE 1,022,438.94,  
2186=RIGHT?  
2187=A. YES, SIR.  
2188=Q. AND THAT'S MORE THAN IT WAS BACK IN THE FISCAL YEAR ENDING  
2189=1996, CORRECT?  
2190=A. I WOULD HAVE TO LOOK AT THAT.  
2191=Q. WE WILL DO THAT.  
2192=A. YOU HAVE MY TESTIMONY, SO --  
2193=Q. WE WILL DO THAT.  
2194= SO I'D LIKE TO -- TO ASK YOU WHETHER YOU WOULD LIKE  
2195=TO AMEND PART OF YOUR TESTIMONY THIS MORNING. LET ME JUST SEE  
2196=IF THIS IS ACCURATE.  
2197= THIS MORNING, AND FOR THE RECORD AND FOR COUNSEL, ON  
2198=PAGE 8 OF THIS MORNING'S TRANSCRIPT, LINES 6 TO 11, IF I COULD  
2199=JUST READ THAT TO YOU AND I'LL ASK YOU A QUESTION AFTER.

2200=A. SURE.  
2201=Q. THE QUESTION BY MR. HOHENGARTEN WAS AND THEN IN THE FISCAL  
2202=YEAR SEPTEMBER 1, 1993 TO AUGUST 31ST, 1994, WHAT WERE LITTLE  
2203=PROFESSOR'S SALES? ANSWER, WE HAD FALLEN TO 1,133,146.  
2204=QUESTION, AND FOR THE FOLLOWING YEARS, WAS THERE A TREND IN  
2205=SALES? ANSWER, IT CONTINUED TO GO DOWN EACH YEAR.  
2206= NOW, SIR, DID YOU INTEND TO IMPLY BY THAT THAT IT  
2207=CONTINUED TO GO DOWN EACH YEAR UP TO THE CURRENT DATE OR JUST  
2208=EACH YEAR THAT HE WAS FOCUSING ON UP THROUGH 1996?  
2209=A. THE YEARS HE WAS FOCUSING ON, BECAUSE I KNOW THAT WE DID  
2210=TURN AROUND.  
2211=Q. INDEED, YOU -- I MEAN, YOU MADE A LITTLE MOTION. I DON'T  
2212=KNOW IF THE REPORTER WILL CATCH IT, BUT --  
2213=A. SORRY.  
2214=Q. BUT THAT'S FINE. YOU MADE A LITTLE MOTION OF KIND OF A  
2215=WAVE -- A WAVE UP WITH YOUR FINGER.  
2216=A. YES.  
2217=Q. AND THAT'S BECAUSE YOUR SALES DID INCREASE AFTER 1996?  
2218=A. THAT'S TRUE.  
2219=Q. AND SO ON PAGE 11 OF TODAY'S TRANSCRIPT, LINE 16 TO 18,  
2220=QUESTION, AND WAS THERE A TREND IN SALES AFTER THE NOVEMBER 1993  
2221=TIME. ANSWER, YES, IT WAS CONTINUALLY DOWNHILL. YOU DIDN'T --  
2222=YOU DIDN'T MEAN TO IMPLY BY THAT THAT IT CONTINUED DOWNHILL PAST  
2223=THE PERIOD THAT MR. HOHENGARTEN WAS FOCUSING ON, TRUE?  
2224=A. NO, I DID NOT MEAN TO IMPLY THAT.

2225=Q. BECAUSE, IN FACT, IF YOU WERE TO DESCRIBE A TREND, IT WOULD  
2226=ACTUALLY BE FROM 1996, YOU WOULD ACTUALLY DESCRIBE THAT TREND AS  
2227=BEING AN UPHILL TREND, TRUE?  
2228=A. YES.  
2229=Q. NOW, LET'S TURN TO TAB 2 OF MY BINDER, THE WHITE BORDERS  
2230=BINDER. AND THIS IS THE AUGUST 1998 PROFIT AND LOSS STATEMENT.  
2231=A. YES.  
2232=Q. AND I'D LIKE TO DRAW YOUR ATTENTION TO WHAT THE PLAINTIFFS  
2233=HAVE LABELED DOWN AT THE VERY BOTTOM PAGE 5. DO YOU SEE THAT?  
2234=A. I DO.  
2235=Q. THAT WOULD INDICATE THAT THE PROFITS -- I'M SORRY -- THE  
2236=INCOME BY YOUR STORE FOR THAT FISCAL YEAR WAS \$1,045,600.68,  
2237=RIGHT?  
2238= THE COURT: WAIT.  
2239= THE WITNESS: THAT'S CORRECT.  
2240= THE COURT: WAIT A MINUTE. I DON'T --  
2241= MR. NELSON: IT'S ON TAB 2. IT'S ON PAGE 5, YOUR  
2242=HONOR?  
2243= THE COURT: YEAH.  
2244=BY MR. NELSON:  
2245=Q. AND AT THE VERY TOP, MR. BARRINGER --



2246= THE COURT: YES.  
2247= MR. NELSON: -- WHERE IT SAYS "INCOME"?  
2248= THE COURT: ALL RIGHT.  
2249=  
2250=BY MR. NELSON:  
2251=Q. AND THAT'S \$1,045,600?  
2252= THE COURT: YES.  
2253= THE WITNESS: YES.  
2254=BY MR. NELSON:  
2255=Q. AND IF YOU COMPARE THAT TO YOUR INCOME FROM THE PREVIOUS  
2256=YEAR, THE INCOME WENT UP, DIDN'T IT?  
2257=A. YES, IT DID.  
2258=Q. OKAY. AND WE HEARD -- WE HEARD TESTIMONY EARLIER, NOT BY  
2259=YOU, SIR, BUT BY A DIFFERENT INDIVIDUAL, ABOUT GROSS PROFIT  
2260=MARGIN. ARE YOU FAMILIAR WITH THAT TERM?  
2261=A. YES, I AM.  
2262=Q. OKAY. WHAT WAS YOUR GROSS PROFIT MARGIN IN -- IN FISCAL  
2263=YEAR ENDING 1998?  
2264=A. 38.7 PERCENT.  
2265=Q. AND WAS THE STORE PROFITABLE IN THAT FISCAL YEAR?  
2266=A. BARELY.  
2267=Q. AND BY THAT, YOU WOULD MEAN IT WAS PROFITABLE BY THE MARGIN  
2268=OF \$11,749?  
2269=A. THAT'S CORRECT.  
2270=Q. AND THAT YEAR, YOU RECEIVED A SALARY FROM THE BUSINESS OF  
2271=\$77,100?  
2272=A. YES, SIR.  
2273=Q. CORRECT?  
2274= SO YOUR TAKE -- AND YOU OWNED A HUNDRED PERCENT STOCK  
2275=OF THE COMPANY; IS THAT RIGHT?  
2276=A. THAT'S RIGHT.  
2277=Q. SO YOUR TAKE FROM THE COMPANY WAS -- IN ADDITION TO YOUR  
2278=SALARY, WOULD HAVE BEEN THE PROFITS FROM THE COMPANY?  
2279=A. NO, SIR.  
2280=Q. OKAY. BUT NEVERTHELESS --  
2281=A. -- GONE BACK INTO THE INVENTORY.  
2282=Q. YOU PUT IT BACK INTO THE BUSINESS?  
2283=A. THAT'S CORRECT.  
2284=Q. AND THAT ENABLES YOU TO GROW YOUR BUSINESS?  
2285=A. YES.  
2286=Q. LET'S TURN TO FISCAL YEAR 1999, WHICH IS TAB 3.  
2287=A. SIR, BEFORE WE DO THAT, COULD I POINT OUT ONE THING, BOTH  
2288=(SIC) FOR THE YEAR THAT WE WERE TALKING ABOUT?  
2289=Q. I'D BE HAPPY TO GIVE YOU THAT OPPORTUNITY. WHAT WOULD YOU  
2290=LIKE --  
2291=A. THERE IS. I'M SORRY.  
2292=Q. WHAT WOULD YOU LIKE TO TELL US?  
2293=A. THERE IS AN ITEM CALLED EXTRAORDINARY INCOME OF \$22,567,  
2294=WHICH WAS THE SETTLEMENT OF A LAWSUIT.  
2295=Q. YEAH.  
2296=A. AND WITHOUT THAT, OUR PROFITABILITY WOULD HAVE BEEN  
2297=CONSIDERABLY LOWER.  
2298=Q. OKAY. FAIR ENOUGH. LET'S GO --  
2299=A. INDEED, WE WOULD HAVE HAD A LOSS.  
2300=Q. BUT YOUR -- YOUR RECEIPTS WOULD HAVE BEEN OVER A MILLION  
2301=DOLLARS, TRUE?  
2302=A. YEAH, THAT'S TRUE.  
2303=Q. OKAY. WHICH IS THE -- WHICH IS -- WHICH IS ABOVE WHERE YOU  
2304=HAD BEEN AFTER THE TIME PERIOD YOU'RE TALKING ABOUT WITH  
2305=MR. HOHENGARTEN?  
2306=A. YES.  
2307=Q. LET'S TURN TO TAB 3, IF YOU WILL, FISCAL YEAR ENDING AUGUST  
2308=1999.  
2309=A. GOT IT.  
2310=Q. NOW, TURNING TO WHAT THE PLAINTIFFS HAVE LABELED AS PAGE 6  
2311=OF THIS, WHICH IS IN TAB 3, WHICH IS OUR EXHIBIT 258.  
2312=A. YES, SIR. I HAVE IT.  
2313=Q. NOW, WE HAVE -- WE HAVE SALES OF THE STORE OF \$1,030,000 --  
2314=\$1,030,427?  
2315=A. THAT IS CORRECT.

2316=Q. AGAIN, IT'S ABOVE THE PERIOD OF TIME THAT MR. HOHENGARTEN  
2317=WAS FOCUSING ON WITH YOU THIS MORNING?  
2318=A. THAT'S RIGHT.  
2319=Q. AND I'D LIKE TO DRAW YOUR ATTENTION TO THE GROSS PROFIT  
2320=MARGIN FOR THAT YEAR. NOW, THAT WAS 42.9 PERCENT, WASN'T IT?  
2321=A. YES, IT WAS.  
2322=Q. WOULD YOU CONSIDER THAT A FAVORABLE GROSS PROFIT MARGIN?  
2323=A. YES.  
2324=Q. IN FACT, IT'S A VERY FAVORABLE GROSS PROFIT MARGIN?  
2325=A. YES.  
2326=Q. NOW, MR. HOHENGARTEN HAD A CHART WHICH HE TALKED WITH YOU  
2327=WHICH SHOWED THE PERIOD OF 1990 THROUGH 1996 AND THE PERCENTAGE  
2328=CHANGE IN GROSS SALES.  
2329= DO YOU REMEMBER -- DO YOU REMEMBER THAT CHART?  
2330=A. I REMEMBER THE CHART.  
2331=Q. AND THAT -- WHAT I'D LIKE TO DO IS LET'S FILL OUT THE REST  
2332=OF THE PICTURE. TURN TO -- TURN TO TAB 4 ON THE BORDERS BINDER.  
2333=A. I HAVE, SIR.  
2334=Q. OKAY. AND THAT'S BEEN IDENTIFIED AS 11749, YOUR HONOR.  
2335= THE COURT: YES.  
2336= MR. NELSON: THIS IS A DEMONSTRATIVE THAT WE'RE  
2337=ADDING TODAY.  
2338=Q. NOW, THIS PARTICULAR EXHIBIT, 11749, AND TAB 4, WHAT WE HAVE  
2339=IS THE FISCAL YEAR, THAT'S THE FIRST CATEGORY, TRUE?  
2340=A. YES.  
2341=Q. AND THEN THE GROSS SALES IS THE SECOND CATEGORY?  
2342=A. YES.  
2343=Q. AND, FINALLY, THE PERCENTAGE CHANGE IN GROSS SALES FROM  
2344=PREVIOUS YEAR?  
2345=A. YES.  
2346=Q. NOW, THE GROSS SALES ARE WHAT WE'VE JUST BEEN TALKING ABOUT  
2347=AT LEAST FOR THE PERIODS OF '96 THROUGH '99. ARE THOSE THE  
2348=NUMBERS THAT WE'VE JUST BEEN TALKING ABOUT?  
2349=A. YES.  
2350=Q. AND THEN I INCLUDED, THOUGH, IN THIS PARTICULAR  
2351=DEMONSTRATIVE, JUST FOR OUR -- SORT OF OUR REFERENCE, THE PERIOD  
2352=THAT YOU ENDED WITH MR. HOHENGARTEN FROM 1995 THROUGH '96 OF  
2353=\$961,454. YOU SEE THAT?  
2354=A. I DO.  
2355=Q. NOW, WE ASK A LOT OF THE WITNESSES. WE DON'T NECESSARILY  
2356=ASK YOU TO BE A COMPUTER UP THERE. YOU SEE ON THE PERCENTAGE  
2357=CHANGE THAT I'VE INDICATED ON THIS DEMONSTRATIVE A PLUS 6.3  
2358=PERCENT OF FISCAL YEAR '96-'97 AS COMPARED TO '95-'96?  
2359=A. I WILL TRUST YOUR CALCULATOR.  
2360=Q. WELL, FACT IS I'VE GOT A CALCULATOR HERE IF YOU WANT TO  
2361=CHECK IT, BUT -- AND I'D BE HAPPY TO PROVIDE THE CALCULATOR TO  
2362=COUNSEL IF THEY WANT TO CHECK IT.  
2363= AND, INDEED, THE NEXT FISCAL YEAR WAS EVEN BETTER  
2364=THAN -- THAN '96-'97 YEAR. IT INCREASED BY 2.2 PERCENT IN THE  
2365='97-'98 FISCAL YEAR, DIDN'T IT?  
2366=A. WHICH IS LESS THAN INFLATION.  
2367=Q. INCREASED, THOUGH, DIDN'T IT, SIR?  
2368=A. YES.  
2369=Q. AND THEN IN '98-'99, IT WENT DOWN. SO I'M BEING FAIR HERE.  
2370=A. YOU ARE.  
2371=Q. IT WENT DOWN 1.4 PERCENT; IS THAT RIGHT?  
2372=A. YES.  
2373=Q. OKAY. BUT IT WAS STILL AT \$1,030,427, TRUE?  
2374=A. TRUE.  
2375=Q. AND THE MEDIA PLAY -- THE MEDIA PLAY THAT'S LOCATED ONE AND  
2376=A QUARTER MILES FROM YOUR STORE BACK IN THE '94-'95 TIME PERIOD,  
2377=THAT'S STILL THERE?  
2378=A. YES, IT IS.  
2379=Q. SO YOU'RE STILL COMPETING WITH ALL THOSE STORES THAT WE  
2380=TALKED ABOUT?  
2381=A. YES.  
2382=Q. NOW, IN FACT, IN THAT PERIOD, '94-'94 -- I'M SORRY --  
2383='94-'95, YOU DID SOME REMODELING TO YOUR STORE, DIDN'T YOU?  
2384=A. I THINK IT MAY HAVE BEEN '93-'94, BUT IT'S -- IT'S -- THAT'S  
2385=FINE. IN THAT TIME FRAME, YES.

2386=Q. YOU ADDED A FIREPLACE?  
2387=A. YES.  
2388=Q. AND I THINK WE SAW THE FIREPLACE IN ONE OF THE PHOTOGRAPHS  
2389=THAT MR. HOHENGARTEN SHOWED YOU YESTERDAY?  
2390=A. YOU DID.  
2391=Q. YOU ADDED A COUCH?  
2392=A. TRUE.  
2393=Q. SOME CHAIRS?  
2394=A. YES.  
2395=Q. YOU MADE IT MORE COMFORTABLE FOR CUSTOMERS TO COME AND ENJOY  
2396=YOUR STORE, TRUE?  
2397=A. WE DID.  
2398=Q. AND YOU DID THAT IN RESPONSE TO WHAT YOU SAW IN THE BORDERS  
2399=AND BARNES & NOBLE STORES; ISN'T THAT RIGHT?  
  
2400=A. YES.  
2401=Q. AND IT WAS IN RESPONSE TO SOMETHING THAT YOU PERCEIVED YOUR  
2402=CUSTOMERS WANTED.  
2403=A. THAT'S CORRECT.  
2404=Q. AND BEFORE THAT, THERE WAS NO PLACE IN YOUR STORE FOR  
2405=CUSTOMERS TO SIT DOWN?  
2406=A. NO, THAT'S NOT TRUE, BUT THERE WERE SOME HARD BENCHES.  
2407=Q. EASY TO SAY THAT THE COUCH AND THE CHAIRS WERE MORE  
2408=COMFORTABLE THAN THE HARD BENCHES?  
2409=A. TO BE PREFERRED.  
2410=Q. OKAY. NOW, ARE YOU FAMILIAR WITH A EFFORT IN THE 1990S BY  
2411=THE LITTLE PROFESSOR GROUP TO BAND TOGETHER INDIVIDUAL STORES IN  
2412=ORDER TO GET VOLUME DISCOUNTS FROM PUBLISHERS?  
2413=A. THERE WAS DISCUSSION. IT NEVER EVER HAPPENED.  
2414=Q. BUT YOU WERE AWARE OF THAT IDEA BY THE LITTLE PROFESSOR  
2415=STORES TO BAND TOGETHER TO NEGOTIATE WITH PUBLISHERS?  
2416=A. YES.  
2417=Q. AND YOU THOUGHT THAT WAS A GOOD IDEA?  
2418=A. NO.  
2419=Q. YOU DID NOT THINK IT WAS A GOOD IDEA?  
2420=A. I DID NOT THINK IT WAS A GOOD IDEA.  
2421= (PAUSE IN THE PROCEEDINGS.)  
2422= MR. PETROCELLI: YOUR HONOR, MAY I TAKE THIS MOMENT  
2423=TO HAND UP TO THE BARNES & NOBLE TRIAL EXHIBIT LIST?  
2424= MR. NELSON: WITH THE COURT'S PERMISSION.  
  
2425= IF I MAY YOUR HONOR, I'M PASSING A -- DEPOSITION.  
2426=Q. MR. BARRINGER, DO YOU RECALL BEING DEPOSED IN THIS CASE BACK  
2427=ON FEBRUARY 1ST, 2000?  
2428=A. YES.  
2429=Q. AND YOU TESTIFIED UNDER OATH IN THAT DEPOSITION?  
2430=A. I DID.  
2431=Q. YOU AGREED TO TELL THE TRUTH?  
2432=A. I DID.  
2433=Q. AND YOU DID TELL THE TRUTH IN THE DEPOSITION TO THE BEST OF  
2434=YOUR ABILITY?  
2435=A. I DID.  
2436=Q. WHAT I'D LIKE TO DO IS CALL YOUR ATTENTION TO PAGE 112 OF  
2437=THE TRANSCRIPT I PUT IN FRONT OF YOU.  
2438= THE COURT: VOLUME 1 OR VOLUME 2?  
2439= MR. NELSON: AND IT'S IN VOLUME ONE, YOUR HONOR.  
2440= THE WITNESS: PAGE AGAIN, SIR?  
2441=BY MR. NELSON:  
2442=Q. PAGE 112.  
2443= NOW, DO YOU -- I'M SORRY. WHY DON'T YOU GET THERE.  
2444=DO YOU --  
2445=A. I'M THERE.  
2446=Q. DO YOU REMEMBER BEING SHOWN DURING YOUR DEPOSITION AN  
2447=ARTICLE THAT DESCRIBED THIS EFFORT BY THE LITTLE PROFESSOR  
2448=FRANCHISE GROUP TO ATTEMPT TO BAND TOGETHER TO GET VOLUME  
2449=DISCOUNTS?  
  
2450=A. I DON'T KNOW. I WAS SHOWN A -- WOULD YOU SAY IT AGAIN,  
2451=PLEASE.  
2452=Q. RIGHT. DO YOU REMEMBER BEING SHOWN AN ARTICLE THAT  
2453=DESCRIBED WHAT WE'VE JUST BEEN TALKING ABOUT, THE EFFORT BY  
2454=LITTLE PROFESSOR IN THE 1990S TO BAND TOGETHER TO NEGOTIATE WITH  
2455=PUBLISHERS FOR VOLUME DISCOUNTS?

2456=A. I DON'T REMEMBER BEING SHOWN AN ARTICLE NOW. I DON'T  
2457=REMEMBER THAT.

2458= (CONTINUED NEXT PAGE; NOTHING OMITTED.)

2459=  
2460=  
2461=  
2462=  
2463=  
2464=  
2465=  
2466=  
2467=  
2468=  
2469=  
2470=  
2471=  
2472=  
2473=  
2474=

2475=BY MR. NELSON:

2476=Q. WELL, WHAT I'D LIKE TO DO IS READ FOR YOU THE QUESTIONS AND  
2477=ANSWERS AT THE DEPOSITION, AND I WOULD JUST LIKE YOU TO JUST  
2478=TRACK WHAT I'M READING AND JUST TO MAKE SURE THAT I'M READING  
2479=IT CORRECTLY, AND I'M GOING TO READ -- ACTUALLY, WE'VE GOT TO  
2480=GO BACK TO PAGE 111, SIR. BEGINNING ON LINE 17, WHICH IS  
2481=ACTUALLY PART -- THERE'S A DESCRIPTION INITIALLY BY THE  
2482=ATTORNEY QUESTIONING YOU, BUT BEGINNING ON LINE 17, THAT  
2483=ATTORNEY SAID,

2484= "Q. DO YOU KNOW WHAT THE ALLIANCE OF  
2485= INDEPENDENT BOOKSELLERS IS?

2486= "A. I KNOW WHAT THE CONCEPT WAS.

2487= "Q. SO IS IT SOMETHING THAT DIDN'T COME INTO  
2488= EFFECT?

2489= "A. IT NEVER HAPPENED.

2490= "Q. BUT DO YOU RECALL DISCUSSIONS ABOUT IT?

2491= "A. VAGUELY."

2492=THIS IS NOW ON PAGE 112.

2493= "Q. ABOUT WHAT TIME WAS IT? WHEN WAS THAT, I  
2494= SHOULD SAY?

2495= "A. THIS WOULD HAVE BEEN ABOUT THE TIME OF THIS  
2496= ONE. I DON'T REMEMBER WHICH YEAR. PROBABLY FOUR  
2497= YEARS AGO, FIVE YEARS AGO.

2498= "Q. 1995 SOUNDS ABOUT RIGHT?

2499= "A. CLOSE.

2500= "Q. DO YOU AGREE WITH THE STATEMENT, AMONGST  
2501= THE SENTENCES THAT I QUOTED, THAT IF  
2502= INDEPENDENT'S -- THAT THIS ALLIANCE WORKS, QUOTE,  
2503= 'EMPOWERS INDEPENDENTS BY ALLOWING THEM TO BAND  
2504= TOGETHER AND BUY IN GREATER VOLUME --'?

2505= "A. I THINK IT WAS A DREAM.

2506= "Q. BUT DO YOU AGREE THAT -- I'M SORRY, LET ME  
2507= FINISH. '...BUY IN GREATER VOLUME AND PRESUMABLY  
2508= RECEIVE VOLUME DISCOUNTS FROM PUBLISHERS.' IS THAT  
2509= A GOOD IDEA?

2510= "A. YES."

2511= DO YOU REMEMBER THAT QUESTIONING AND ANSWERING?

2512=A. YES, I DO.

2513=Q. OKAY. NOW, DID THAT EVER HAPPEN?

2514=A. MY TESTIMONY?

2515=Q. NO -- WELL, NO. ACTUALLY, DID THE ALLIANCE EVER COME TO  
2516=PASS?

2517=A. NO.

2518=Q. AND DID IT NOT COME TO PASS BECAUSE THERE WAS NO  
2519=FOLLOW-THROUGH ON THE PART OF LITTLE PROFESSOR TO MAKE IT  
2520=HAPPEN?

2521=A. YES.

2522=Q. THANK YOU. YOU COULD PUT THAT ASIDE, SIR. NOW,

2523=MR. HOHENGARTEN TALKED TO YOU ON DIRECT ABOUT COOPERATIVE

2524=ADVERTISING FUNDS. DO YOU REMEMBER HIM ASKING YOU ABOUT THAT?

2525=A. YES.

2526=Q. DO YOU KEEP TRACK OF COOPERATIVE ADVERTISING FUNDS THAT ARE  
2527=AVAILABLE FROM THE PUBLISHERS?  
2528=A. YES, WE DO. I'M SORRY, THAT ARE AVAILABLE FROM THE  
2529=PUBLISHERS?  
2530=Q. THAT'S RIGHT.  
2531=A. AVAILABLE TO US FROM THE PUBLISHERS.  
2532=Q. AVAILABLE TO YOU.  
2533=A. NO.  
2534=Q. AND THAT'S BECAUSE YOU FIND IT TOO LABOR-INTENSIVE --  
2535=A. I JUST WANT TO MAKE SURE WE'RE BOTH SAYING THE SAME THINGS.  
2536=Q. THAT'S VERY IMPORTANT. LET ME GO BACK, THEN. YOU  
2537=UNDERSTAND THAT MANY, IF NOT MOST, PUBLISHERS OFFER COOPERATIVE  
2538=ADVERTISING POOLS.  
2539=A. YES.  
2540=Q. AND FREQUENTLY, THE POOLS ARE BASED ON THE PRIOR YEAR'S  
2541=PURCHASES BY A PARTICULAR RETAILER, TRUE?  
2542=A. TRUE.  
2543=Q. OKAY. SO IN ANY PARTICULAR YEAR, THE LITTLE PROFESSOR  
2544=STORE, THAT YOU OWN, WOULD HAVE AVAILABLE TO IT AN AMOUNT OF  
2545=MONEY THAT IT COULD USE FOR ADVERTISING TO DRAW INTO THAT POOL,  
2546=CORRECT?  
2547=A. TRUE.  
2548=Q. OKAY. AND IT'S A FACT THAT YOU DON'T KEEP TRACK OF THE  
2549=AMOUNT OF MONEY THAT LITTLE PROFESSOR HAS AVAILABLE TO IT IN  
  
2550=THESE COOPERATIVE POOLS, TRUE?  
2551=A. YES, I'D SAY THAT'S TRUE.  
2552=Q. AND THAT'S BECAUSE, AS YOU'VE DESCRIBED EARLIER, IT'S TOO  
2553=LABOR-INTENSIVE FOR YOU TO DO THAT.  
2554=A. YES.  
2555=Q. NOW, SIMILARLY, NO ONE AT LITTLE PROFESSOR KEEPS TRACK OF  
2556=THE SPECIAL OFFERS THAT ARE AVAILABLE, ISN'T THAT TRUE?  
2557=A. THAT'S TRUE.  
2558=Q. AND YOU RELY ON PUBLISHERS' REPRESENTATIVES TO TELL YOU  
2559=WHAT OFFERS MAY BE AVAILABLE, IS THAT RIGHT?  
2560=A. YES.  
2561=Q. BUT INDEPENDENT FROM A PUBLISHER REPRESENTATIVE TELLING YOU  
2562=THAT AN OFFER IS AVAILABLE, YOU DON'T KEEP TRACK OF THE ONES  
2563=THAT YOU RECEIVE VIA FACSIMILE OR WHAT YOU RECEIVE IN THE MAIL  
2564=OR WHAT YOU SEE IN PUBLISHERS WEEKLY, TRUE?  
2565=A. THAT'S TRUE.  
2566=Q. NOW, MARTHA CARMICHAEL IS AN EMPLOYEE OF YOURS?  
2567=A. TRUE. IT SHOULD BE ACTUALLY MARTHA LASSITER.  
2568=Q. MARTHA LASSITER?  
2569=A. SAME PERSON.  
2570=Q. AND SHE WORKS IN -- WAS SHE YOUR BOOKKEEPER?  
2571=A. SHE IS OUR BOOKKEEPER.  
2572=Q. IS SHE ALSO DESCRIBES HERSELF AS BEING YOUR ACCOUNTS  
2573=PAYABLE DEPARTMENT?  
2574=A. THAT'S TRUE.  
  
2575=Q. DO YOU RECALL AN INCIDENT IN WHICH YOU HAD A DISPUTE WITH  
2576=MCGRAW-HILL REGARDING -- YOU'RE SMILING NOW, SO YOU KNOW WHERE  
2577=I'M GOING -- REGARDING THE AMOUNT OF FREIGHT THAT MCGRAW-HILL  
2578=WAS CHARGING YOU?  
2579=A. YES, SIR, I DO.  
2580=Q. AND YOU BELIEVE THAT THEY WERE OVERCHARGING YOU FOR THE  
2581=AMOUNT OF FREIGHT.  
2582=A. YES.  
2583=Q. AND IN FACT, I THINK THE AMOUNT OF FREIGHT WAS IN THE  
2584=NEIGHBORHOOD OF \$56, IS THAT TRUE?  
2585=A. THAT'S TRUE.  
2586=Q. MARTHA LASSITER --  
2587=A. LET ME CORRECT YOU. IT WAS NOT THE AMOUNT OF FREIGHT THAT  
2588=WAS AT DISPUTE. IT WAS THE FACT THAT WE WERE BEING CHARGED  
2589=FREIGHT ON SO MANY INDIVIDUAL ORDERS WHEN WE HAD ASKED THEM TO  
2590=PUT THEM AND SHIP ONLY THREE AT A TIME OR SHIP ONCE A MONTH, I  
2591=THINK THE TERMS WERE. SO COLLECTIVELY, WE'RE IN AGREEMENT  
2592=THAT, YES, IT HAD TO DO WITH THE AMOUNT WE WERE OVERCHARGED  
2593=FREIGHT, IN OUR JUDGMENT.  
2594=Q. AND BY YOUR VIEW, MCGRAW-HILL HAD OVERCHARGED YOU IN THE  
2595=NEIGHBORHOOD OF \$56.  
2596=A. AGAIN, I DON'T WANT TO ENGAGE IN SEMANTICS. THAT'S NOT

2597=REALLY WHAT WE WERE SAYING. WE WERE SAYING THAT THE TOTAL  
2598=FREIGHT THAT THESE ORDERS HAD ACCUMULATED WAS WAY TOO HIGH. IF  
2599=THEY HAD FOLLOWED OUR DIRECTIONS, WE WOULD HAVE PAID MUCH LESS

2600=FREIGHT. SO I THINK IT'S IMPORTANT THAT WE MAKE THAT  
2601=DISTINCTION.

2602=Q. IT IS IMPORTANT, AND SO IN YOUR VIEW, AT LEAST, MCGRAW-HILL

2603=WAS CLAIMING THAT YOU OWED THEM MONEY, THAT YOU DISPUTED.

2604=TRUE?

2605=A. YES.

2606=Q. AND YOU NEGOTIATED -- YOU RECALL -- YOU OBVIOUSLY RECALL

2607=THIS PARTICULAR INCIDENT, AND YOU KNOW THAT YOUR STORE

2608=NEGOTIATED WITH MCGRAW-HILL ABOUT HOW MUCH THEY WOULD

2609=ULTIMATELY HAVE TO PAY.

2610=A. YES.

2611=Q. AND YOU VIEW IT, I THINK AS YOU DESCRIBED TO

2612=MR. HOHENGARTEN, THAT IT'S OKAY FOR THE RETAILER TO NEGOTIATE

2613=WITH ITS VENDOR WHEN THERE ARE THESE LEGITIMATE DISPUTES.

2614=A. THAT'S CORRECT.

2615=Q. AND YOU WOULD EXPECT THAT THE PUBLISHER, OR THE WHOLESALER

2616=WOULD NEGOTIATE WITH YOU AND PROVIDE YOU WHATEVER INFORMATION

2617=THEY THOUGHT IN ORDER TO CONVINCE YOU THAT YOU WERE WRONG.

2618=A. YES.

2619=Q. AND YOU WOULD DO THE SAME THING TO THEM.

2620=A. YES.

2621=Q. AND THERE'S NOTHING NEFARIOUS OR SECRET ABOUT THAT.

2622=A. NO.

2623=Q. NOW, YOU MENTIONED YOUR PURCHASES FROM INGRAM EARLIER

2624=TODAY, AND THAT INGRAM WAS A MAJOR SUPPLIER FOR YOU, IS THAT

2625=RIGHT?

2626=A. THAT'S RIGHT.

2627=Q. AND THAT YOU SEEK TO PURCHASE ONLY ON THE TERMS THAT ARE

2628=PUBLISHED IN THE ABA'S RED BOOK. I THINK THAT'S ESSENTIALLY

2629=WHAT YOU SAID THIS MORNING, WASN'T IT?

2630=A. TRUE.

2631=Q. NOW, YOU UNDERSTAND THAT INGRAM OFFERS A SET RATE AS A

2632=DISCOUNT OF 40 PERCENT UP TO -- PURCHASES UP TO FIVE BOOKS,

2633=41 PERCENT FROM FIVE TO NINE BOOKS, AND THEN 42 PERCENT BEYOND

2634=THAT. AND THAT'S WITHIN THE RED BOOK.

2635=A. YES.

2636=Q. AND YOU'VE KNOWN THAT BECAUSE THAT'S BASICALLY BEEN IN THE

2637=RED BOOK THROUGHOUT THE 90'S.

2638=A. YES.

2639=Q. BUT IN FACT, YOU HAVE PURCHASED BOOKS AT OVER 42 PERCENT

2640=DISCOUNT, HAVEN'T YOU?

2641=A. NOT TO MY KNOWLEDGE. FROM INGRAM?

2642=Q. THAT'S RIGHT.

2643=A. BOOKS --

2644=Q. BOOKS FROM INGRAM, OVER 42 PERCENT.

2645=A. NOT THAT I'M AWARE OF.

2646=Q. AND BECAUSE -- AND YOU SAY THAT BECAUSE YOU KNOW THAT --

2647=A. I'M --

2648=Q. -- YOU KNOW THAT INGRAM'S, THE TOP DISCOUNT REALLY FOR

2649=BOOKS, PUTTING ASIDE AUDIO, THE TOP DISCOUNT FOR BOOKS IN THE

2650=INGRAM, AT LEAST IN THE ABA RED BOOK, IS 42 PERCENT. RIGHT?

2651=A. YES. YES, OKAY.

2652=Q. SO THAT'S WHY YOU CAN SAY WITH SOME ASSURANCE THAT YOU

2653=DIDN'T BUY ANYTHING FROM INGRAM OVER 42 PERCENT, BECAUSE YOU

2654=KNOW THE RED BOOK SAYS 42 PERCENT FOR BOOKS.

2655=A. NO, THERE IS AN EXCEPTION TO THIS, IN THAT THEY HAVE AT

2656=CHRISTMASTIME A 1 PERCENT KICKER, THAT IF YOU ORDER ON A

2657=SUNDAY, I BELIEVE IT IS, THAT YOU GET AN ADDITIONAL 1 PERCENT

2658=DISCOUNT. SO IF I ORDER 10 BOOKS ON A SUNDAY AT THE CHRISTMAS

2659=SEASON, I WOULD GET 43.

2660=Q. OKAY. AND SIMILARLY, IF YOU ORDERED ONE BOOK --

2661=A. I WOULD GET 41.

2662=Q. -- YOU WOULD GET 41.

2663=A. YES.

2664=Q. AND THAT'S SOMETHING THAT THEY SEND OUT AND MAKE AVAILABLE

2665=TO ALL RETAILERS, RIGHT?

2666=A. YES.

2667=Q. BUT OTHER THAN THAT, CAN YOU THINK OF ANY OTHER EXAMPLES  
2668=WHERE YOU PAID, OR -- YOU RECEIVED A DISCOUNT GREATER THAN  
2669=42 PERCENT?  
2670=A. NO.  
2671=Q. OKAY. I'D LIKE TO DRAW YOUR ATTENTION TO TAB 7 OF THE  
2672=BOOK.  
2673= AND YOUR HONOR, WE'RE ABOUT READY TO LOOK AT SOME  
2674=INGRAM INVOICES. I'D LIKE TO JUST ALERT THE COURT AT THE  
  
2675=BEGINNING THAT, AS HAS BEEN THE PRACTICE OF DEFENDANTS FROM THE  
2676=VERY BEGINNING OF THIS CASE, ALL THE INVOICES THAT WE WILL BE  
2677=USING ARE ON OUR TRIAL EXHIBIT LIST AND HAVE BEEN MADE  
2678=AVAILABLE TO THE PLAINTIFFS. SO TAB 7 IS EXHIBIT NUMBER 11286.  
2679=Q. DO YOU SEE THAT?  
2680=A. I DO.  
2681=Q. AND ON PAGE 2 OF THAT EXHIBIT, I'D LIKE TO DRAW YOUR  
2682=ATTENTION TO THE BOOK WINDOWS 95 FOR DUMMIES. YOU SEE THAT?  
2683=A. I DO.  
2684=Q. AND YOU RECEIVED A 43 PERCENT DISCOUNT ON THAT BOOK,  
2685=CORRECT?  
2686=A. THAT'S WHAT IT SAYS HERE, YES.  
2687=Q. DO YOU HAVE ANY REASON TO DOUBT THAT YOU RECEIVED THE 43  
2688=DISCOUNT?  
2689=A. NO.  
2690=Q. AND THAT DISCOUNT IS NOT IN THE ABA'S RED BOOK, TRUE?  
2691=A. TRUE.  
2692=Q. NOW, YOU'RE ALSO FAMILIAR WITH THE FREIGHT POLICIES OF  
2693=INGRAM?  
2694=A. YES.  
2695=Q. AND THAT THEY PROVIDE FREE FREIGHT FOR ORDERS OVER A  
2696=HUNDRED BOOKS THAT ARE SHIPPED FROM YOUR PRIMARY WAREHOUSE.  
2697=A. THAT'S TRUE.  
2698=Q. NOW, THIS PARTICULAR EXHIBIT, WHICH IS TAB 7, EXHIBIT  
2699=11286, IT SHOWS ON THE INVOICE THAT YOU RECEIVED 79 BOOKS,  
  
2700=CORRECT?  
2701=A. THAT'S CORRECT.  
2702=Q. OKAY. NOW, THE FREIGHT FOR THIS SHIPMENT WAS \$15.60, IS  
2703=THAT RIGHT?  
2704=A. THAT'S TRUE.  
2705=Q. NOW, YOU HAVE A FREIGHT CREDIT HERE OF \$15.60.  
2706=A. THAT'S TRUE.  
2707=Q. OKAY. AND SO YOU RECEIVED FREE FREIGHT FOR THIS SHIPMENT  
2708=OF 79 BOOKS, ISN'T THAT TRUE?  
2709=A. YES.  
2710=Q. AND THAT'S SOMETHING THAT'S NOT -- THAT WOULD NOT BE  
2711=AVAILABLE UNDER THE ABA'S RED BOOK, FREE FREIGHT FOR SHIPMENT  
2712=UNDER A HUNDRED BOOKS, CORRECT?  
2713=A. THAT'S TRUE.  
2714=Q. I'D LIKE TO HAVE YOU TURN TO TAB 8, WHICH IS EXHIBIT 11287.  
2715=A. YES.  
2716=Q. AND THIS IS AN INVOICE FROM INGRAM TO THE LITTLE PROFESSOR  
2717=BOOK CENTER, RIGHT?  
2718=A. YES.  
2719=Q. AND IN FACT, IT WAS -- IF YOU LOOK AT THE VERY BOTTOM  
2720=RIGHT-HAND OF THE DOCUMENT, IT'S GOT A PRODUCTION NUMBER, WHAT  
2721=LAWYERS CALL A BATES STAMP. DO YOU SEE THAT?  
2722=A. YES, I DO.  
2723=Q. AND THAT'S BECAUSE THESE WERE PRODUCED FROM YOUR FILES,  
2724=CORRECT?  
  
2725=A. YES.  
2726=Q. NOW, ON THE VERY FIRST PAGE OF THIS PARTICULAR EXHIBIT,  
2727=GOING DOWN ABOUT TWO-THIRDS OF THE WAY, YOU SEE, "COMPUTERS  
2728=SIMPLIFIED, 3/E"?  
2729=A. YES, I DO.  
2730=Q. WHAT WAS YOUR DISCOUNT THAT YOU RECEIVED FROM INGRAM ON  
2731=THAT BOOK?  
2732=A. FORTY-THREE.  
2733=Q. AND WHAT WAS YOUR DISCOUNT FOR THE NEXT BOOK, CREATING  
2734=KILLER WEBSITES?  
2735=A. FORTY-THREE.  
2736=Q. HOW MANY BOOKS DID YOU BUY OF CREATING KILLER WEB SITES?

2737=A. ONE.  
2738=Q. AND THEN YOU LOOK DOWN, DISCOVER HT USE, OFFICE 97? HOW  
2739=MANY OF THOSE BOOKS DID YOU BUY?  
2740=A. ONE.  
2741=Q. AND WHAT WAS YOUR DISCOUNT?  
2742=A. FORTY-THREE. I CAN ONLY ASSUME THAT THIS WAS A SPECIAL  
2743=DEAL THAT THEY WERE GIVING OUT ON COMPUTER BOOKS. THESE ARE  
2744=ALL COMPUTER BOOKS.  
2745=Q. THAT'S, IN FACT, TRUE, ISN'T IT? THEY'RE ALL COMPUTER  
2746=BOOKS THAT WE JUST TALKED ABOUT, AND IN FACT, THE ONE WE LOOKED  
2747=AT IN THE PREVIOUS EXHIBIT, THAT WAS A COMPUTER BOOK AS WELL.  
2748=IT WAS A "WINDOWS FOR DUMMIES" BOOK, RIGHT?  
2749=A. YEAH.

2750=Q. AND TAKE A LOOK AT THE VERY NEXT PAGE. IT SAYS PAGE 2 OF  
2751=THIS EXHIBIT, UNDER TAB 8. IF YOU SCAN DOWN, YOU'LL SEE THE  
2752=TITLE, HTML FOR WWW VISUAL QUICK. IT'S AT 43 PERCENT, IS THAT  
2753=RIGHT?  
2754=A. I SEE I, YES.  
2755=Q. LEARN VISUAL C++, AND THAT'S 43 PERCENT?  
2756=A. TRUE.  
2757=Q. LOTUS NOTES, 4.5 ADMINISTRATORS, 43 PERCENT.  
2758=A. TRUE.  
2759=Q. THESE ARE ALL COMPUTER BOOKS.  
2760=A. YES.  
2761=Q. AND SO FOR COMPUTER BOOKS, YOU WERE RECEIVING 43 PERCENT  
2762=DISCOUNTS FROM INGRAM.  
2763=A. YES.  
2764=Q. OKAY. AND THAT'S NOT SOMETHING THAT YOU FIND IN THE RED  
2765=BOOK, TRUE?  
2766=A. TRUE.  
2767=Q. SO WHEN YOU TESTIFIED EARLIER TODAY THAT WHEN YOU LOOKED  
2768=BACK THROUGH ALL YOUR INVOICES AND THAT ALL YOUR INVOICES  
2769=MATCHED WHAT WAS IN THE RED BOOK, THAT'S NOT ENTIRELY ACCURATE,  
2770=IS IT?  
2771=A. NO, IT IS NOT.  
2772= MR. NELSON: JUST ONE MOMENT, YOUR HONOR. THANK  
2773=YOU, SIR.  
2774= MR. RADER: GOOD MORNING, YOUR HONOR.

2775= THE COURT: GOOD MORNING.  
2776= MR. RADER: YOUR HONOR, MAY I APPROACH THE WITNESS?  
2777= THE COURT: YES, AND WILL YOU STATE YOUR NAME FOR  
2778=THE RECORD?  
2779= MR. RADER: YES. ALAN RADER, YOUR HONOR.  
2780= THE COURT: MR. RADER.  
2781= CROSS-EXAMINATION  
2782=BY MR. RADER:  
2783=Q. GOOD MORNING, MR. BARRINGER.  
2784=A. GOOD MORNING, MR. RADER.  
2785=Q. MY NAME IS ALAN RADER, I REPRESENT BARNES & NOBLE HERE  
2786=TODAY.  
2787= MR. BARRINGER, I WAS INTRIGUED LISTENING TO YOUR  
2788=DIRECT TESTIMONY WHEN YOU MENTIONED THAT YOU FREQUENTLY CONSULT  
2789=THE RED BOOK. ISN'T IT THE CASE THAT AT YOUR DEPOSITION YOU  
2790=TESTIFIED THAT THE NUMBER ONE SOURCE OF INFORMATION THAT YOU  
2791=LOOKED TO FOR PUBLISHERS' TERMS OF SALE IS VISITS FROM  
2792=PUBLISHERS' REPRESENTATIVES?  
2793= MR. HOHENGARTEN: OBJECTION, YOUR HONOR. PLAINTIFFS  
2794=WOULD LIKE TO KNOW THE LINES AND PAGES --  
2795= THE COURT: WELL, JUST LET HIM FINISH HIS QUESTION,  
2796=AND HE NO DOUBT WILL CALL ATTENTION TO IT.  
2797= MR. HOHENGARTEN: AS LONG AS HE DOES.  
2798= THE COURT: OF COURSE HE WILL.  
2799= MR. HOHENGARTEN: I'M SORRY.

2800=BY MR. RADER:  
2801=Q. IS THAT CORRECT, MR. BARRINGER?  
2802=A. I DON'T KNOW.  
2803=Q. WELL, LET ME ASK YOU TO TAKE A LOOK AT THE DEPOSITION THAT  
2804=YOU HAVE THERE, AND IF YOU WOULD, TAKE A LOOK AT PAGE 86.  
2805=A. THE DEPOSITION? WHAT IS THE TAB I'M AT?  
2806=Q. NO, IT'S A DIFFERENT SET.



2807=A. I'M SORRY.  
2808= MR. RADER: MAY I APPROACH, YOUR HONOR, TO HELP?  
2809= THE COURT: YES.  
2810= THE WITNESS: THIS IS WHAT YOU'RE REFERRING TO?  
2811=BY MR. RADER:  
2812=Q. YES. PAGE 86, PLEASE.  
2813=A. OF WHICH VOLUME?  
2814=Q. OF THE FIRST VOLUME.  
2815=A. OKAY, SIR. I HAVE IT, SIR.  
2816=Q. ONE MOMENT, PLEASE. I'M SORRY, PAGE 87. I MISSPOKE.  
2817=A. OKAY.  
2818=Q. AND IF YOU LOOK AT LINE 6, YOU ARE ASKED, "HOW ELSE DO YOU  
2819=GET PUBLISHERS TERMS COMMUNICATED TO YOU?" AND YOU SAID, "BY  
2820=FAX DIRECTLY FROM THE PUBLISHER," AND THEN YOU SAID, "CERTAINLY  
2821=WITH PUBLISHERS' REPS WHEN THEY CALL, THAT WOULD BE MY NUMBER  
2822=ONE SOURCE." CORRECT?  
2823=A. CORRECT.  
2824=Q. SO IS IT, IN FACT, THE CASE THAT PUBLISHERS ARE YOUR --  
  
2825=PUBLISHERS' REPS, WHEN THEY VISIT, COME TO YOUR STORE, ARE YOUR  
2826=NUMBER ONE SOURCE OF INFORMATION?  
2827=A. THIS IS WHAT I TESTIFIED.  
2828=Q. AND YOU TESTIFIED ACCURATELY, DIDN'T YOU, AT THE TIME?  
2829=A. I TESTIFIED HONESTLY.  
2830=Q. HONESTLY, CORRECT. AND WHEN YOU WERE ASKED AT THE  
2831=DEPOSITION ABOUT HOW YOU LEARN ABOUT TERMS OF SALES FOR  
2832=PUBLISHERS AND ASKED TO LIST ALL THE DIFFERENT WAY THAT YOU  
2833=LEARN, ISN'T IT CORRECT THAT YOU DIDN'T EVEN MENTION THE RED  
2834=BOOK? THAT YOU TALKED ABOUT FAXES FROM PUBLISHERS WEEKLY AND  
2835=FAXES FROM PUBLISHERS AND VISITS FROM PUBLISHERS'  
2836=REPRESENTATIVES, BUT THE RED BOOK DIDN'T EVEN COME TO MIND FOR  
2837=YOU, ISN'T THAT RIGHT?  
2838=A. I DON'T KNOW.  
2839=Q. LET'S TAKE A LOOK AT THE SAME PAGE, THERE, PAGE 86, AND AT  
2840=THE BOTTOM OF PAGE 86, YOU WERE ASKED.  
2841= "IS THAT WHERE YOU GET ALL OF YOUR TERMS OF SALE  
2842= INFORMATION?"  
2843= AND YOU ANSWERED, "NO." AND THEN YOU WERE ASKED  
2844= ABOUT PUBLISHERS, AND IF YOU CONTINUE, YOU WERE  
2845= ASKED,  
2846= "HOW ELSE DO YOU GET PUBLISHERS TERMS  
2847= COMMUNICATED TO YOU?"  
2848= AND YOU SAID, "BY FAX, DIRECTLY, AND CERTAINLY  
2849= PUBLISHERS' REPS." THE SAME TESTIMONY WE LOOKED AT.  
  
2850= SO THE ONLY THREE THINGS YOU MENTIONED AT THE  
2851=DEPOSITION WERE FAXES, WHAT YOU GOT FROM PUBLISHERS' REPS, AND  
2852=PUBLISHERS WEEKLY, RIGHT?  
2853=A. THAT'S TRUE.  
2854=Q. SO THE RED BOOK IS SOMETHING YOU KEEP BACK IN THE OFFICE AS  
2855=A REFERENCE SOMEPLACE TO LOOK UP PHONE NUMBERS, BUT ISN'T THE  
2856=PRIMARY SOURCE FOR YOU. THAT'S RIGHT, ISN'T IT?  
2857=A. I THINK THE FACT THAT I FORGOT TO MENTION IT HERE DOES NOT  
2858=MEAN THAT'S THE SAME CONCLUSION. UNDER THE PRESSURE OF GIVING  
2859=TESTIMONY, SOMETIMES YOU FORGET.  
2860=Q. OKAY. NOW, THE RED BOOK ISN'T THE PLACE YOU GO TO TO LEARN  
2861=ABOUT STOCK OFFERS, IS IT?  
2862=A. NO.  
2863=Q. HOW DO YOU LEARN ABOUT THEM?  
2864=A. FROM PUBLISHERS' REPS.  
2865=Q. WHEN THEY COME AND VISIT YOU?  
2866=A. YES.  
2867=Q. SIT DOWN AND TALK ABOUT THE TERMS, POSSIBILITIES FOR STOCK  
2868=OFFERS?  
2869=A. YES.  
2870=Q. OKAY. AND YOU MENTIONED THAT YOU TRY AND UPDATE THE RED  
2871=BOOK THAT YOU KEEP, THE REFERENCE BOOK THAT YOU KEEP, BY  
2872=PUTTING STOCK OFFER INFORMATION INTO IT?  
2873=A. NO, I DON'T THINK THAT WAS MY TESTIMONY. WHEN THERE WERE  
2874=CHANGES IN PUBLISHERS' TERMS IS WHEN WE CORRECT THE RED BOOK.  
  
2875=Q. DID YOU DO THAT EVERY TIME YOU LEARNED ABOUT A CHANGE IN  
2876=TERMS?

2877=A. I WOULDN'T SWEAR THAT EVERY TIME, BUT MOST TIMES.  
2878=Q. SO OVER THE COURSE OF A YEAR, AS MORE AND MORE CHANGES CAME  
2879=IN, YOUR RED BOOK WOULD CHANGE AS YOU MARK IT UP, IS THAT  
2880=RIGHT?  
2881=A. TRUE.  
2882=Q. OKAY. SO BY -- COME THE END OF THE YEAR, IF YOU HAD -- IF  
2883=YOU COMPARED THE RED BOOK THAT YOU HAD MARKED UP, IT WOULD BE  
2884=DIFFERENT THAN A BOOK THAT SOMEONE HAD NOT MARKED UP, RIGHT?  
2885=A. YES.  
2886=Q. AND THAT'S WHAT YOU NEED TO DO TO KEEP CURRENT WITH TERMS  
2887=OF SALE, RIGHT?  
2888=A. YES.  
2889=Q. OKAY. NOW, WHEN PUBLISHERS' REPRESENTATIVES CAME TO VISIT  
2890=YOU AND TOLD YOU ABOUT SOME NEW OFFERS, SOME SPECIAL DEAL, DID  
2891=YOU KEEP SOME RECORDS OF WHAT THEY HAD TOLD YOU ABOUT THAT?  
2892=A. NO.  
2893=Q. THAT WASN'T YOUR PRACTICE?  
2894=A. NO.  
2895=Q. AND WHEN THEY -- WHEN PUBLISHERS' REPS CAME AND TOLD YOU  
2896=ABOUT SPECIAL DEALS THEY WERE OFFERING, DID YOU ASK THEM IF  
2897=THEY WERE OFFERING THE SAME DEAL TO EVERYONE ELSE IN THE  
2898=COUNTRY?  
2899=A. NO.  
  
2900=Q. SO YOU HAD NO WAY OF KNOWING WHETHER THAT WAS THE CASE OR  
2901=NOT, RIGHT?  
2902=A. NO.  
2903=Q. AND WHEN YOU GET PUBLISHERS WEEKLY'S AND FLYERS AND FAXES,  
2904=YOU KEEP ALL THOSE, AS A MATTER OF COURSE?  
2905=A. NO.  
2906=Q. AND WHEN PUBLISHERS' REPS COME AND TALK TO YOU, DO YOU KEEP  
2907=NOTES OF WHAT THEY TELL YOU?  
2908=A. NO.  
2909=Q. SO AS -- OVER THE COURSE OF A YEAR, YOU REALLY WOULD HAVE  
2910=NO WAY OF LOOKING BACK AND KNOWING WHAT THE TERMS OF SALE WERE  
2911=AS THEY EVOLVED OVER THE COURSE OF THE YEAR, OTHER THAN LOOKING  
2912=AT YOUR INVOICES, RIGHT?  
2913=A. THAT'S CORRECT.  
2914=Q. AND I KNOW YOU WERE HERE IN THE COURTROOM YESTERDAY, AND  
2915=YOU HEARD MS. SEE PROBABLY SAY, AND I QUOTE, IN ANSWER TO THE  
2916=QUESTION, "IF YOU WANTED TO KNOW WHAT A BOOKSELLER REALLY PAID  
2917=FOR BOOKS, YOU SHOULD LOOK TO THE INVOICES," AND SHE ANSWERED,  
2918="CORRECT." ARE YOU FAMILIAR WITH THAT? REMEMBER THAT?  
2919=A. I REMEMBER --  
2920=Q. IN SOME SENSE?  
2921=A. I CAN'T SWEAR THAT THAT WAS HER TESTIMONY, BUT YES.  
2922=Q. YOU REMEMBER, IN SUBSTANCE, SHE TALKED TO THAT EFFECT, IS  
2923=THAT RIGHT?  
2924=A. YES.  
  
2925=Q. AND IN THAT OPINION OF MS. SEE'S, THAT WOULD APPLY TO YOUR  
2926=BOOKSTORE, AS WELL, THAT IF YOU WANTED TO KNOW WHAT THE TERMS  
2927=OF SALE WERE OVER A COURSE OF A YEAR, YOU WOULD NEED TO LOOK AT  
2928=YOUR INVOICES.  
2929=A. YES.  
2930=Q. AND THERE'S REALLY NO OTHER WAY TO DO IT, RIGHT? OTHER  
2931=THAN LOOKING AT THE INVOICES.  
2932=A. NO.  
2933=Q. AND IF YOU WANT TO DETERMINE WHAT YOUR EFFECTIVE DISCOUNT  
2934=RATE WAS FOR ALL THE BOOKS YOU PURCHASED FROM A PARTICULAR  
2935=PUBLISHER, TO DO IT YOU'D HAVE TO GO LOOK AT THE INVOICES,  
2936=RIGHT?  
2937=A. YOU'D HAVE TO LOOK AT EVERY SINGLE INVOICE.  
2938=Q. RIGHT. NOW, YESTERDAY WHEN YOU STARTED TO TESTIFY EARLY --  
2939=TOWARD THE END OF THE DAY, YOU MENTIONED THAT YOUR STOCK WAS  
2940=SIMILAR TO BARNES & NOBLE, WITH ONE EXCEPTION. YOU DON'T CARRY  
2941=TEXTBOOKS.  
2942=A. YES.  
2943=Q. TEXTBOOKS ARE SOLD AT A SHORT DISCOUNT, IS THAT CORRECT?  
2944=A. YES, THAT'S CORRECT.  
2945=Q. AND AS YOU MENTIONED, THAT'S A RATE SIGNIFICANTLY LOWER  
2946=THAN ON TRADE BOOKS, RIGHT?  
2947=A. YES.

2948=Q. SO FOR EXAMPLE, IF A TRADE BOOK TYPICALLY SELLS IN THE  
2949=45 PERCENT DISCOUNT RANGE, SHORT DISCOUNT BOOKS ARE OFTEN IN

2950=THE 30 PERCENT RANGE, IS THAT RIGHT?

2951=A. OR LOWER.

2952=Q. OR LOWER. SO IF YOU WANTED TO DO A COMPARISON OF THE

2953=PRICES PAID BY TWO DIFFERENT BOOKSELLERS, ONE WHICH BOUGHT

2954=BOOKS AT SHORT DISCOUNT AND ONE WHICH DIDN'T, YOU'D NEED TO

2955=KNOW HOW MUCH OF EACH THEY BOUGHT TO DO AN ACCURATE COMPARISON,

2956=WOULDN'T YOU?

2957=A. WOULD YOU REPHRASE THE QUESTION?

2958=Q. SURE, SURE. LET ME -- MAYBE I CAN DO IT BY REFERENCE TO

2959=SOMETHING ELSE THAT MS. SEE SAID YESTERDAY.

2960=A. OKAY.

2961=Q. I DON'T KNOW IF YOU REMEMBER, PERHAPS YOU REMEMBER THAT SHE

2962=WAS ASKED TO COMMENT ON THE COMPARISON BETWEEN TATTERED COVERS

2963=AND BORDERS, IN TERMS OF THEIR EFFECTIVE DISCOUNT RATE. AND

2964=MR. SPIVA ASKED,

2965= "WOULD YOU NEED TO KNOW THE PURCHASE MIX OF THOSE

2966= TWO COMPANIES IN ORDER TO HAVE AN OPINION ON THAT?"

2967= AND SHE ANSWERED,

2968= "YES, BECAUSE THERE ARE CERTAIN CATEGORIES THAT A

2969= BOOKSTORE CARRIES THAT CARRY A HIGHER DISCOUNT. FOR

2970= INSTANCE, COMPUTER BOOKS FREQUENTLY CARRY MUCH

2971= HIGHER DISCOUNTS. SO IT WOULD BE IMPORTANT TO LOOK

2972= AT THAT, WHAT THE MIX IS."

2973= REMEMBER THAT?

2974=A. YES, I DO.

2975=Q. AND THE SAME WOULD BE TRUE, I SUPPOSE, ABOUT BOOKS THAT

2976=CARRY A LOWER DISCOUNT, LIKE SHORT DISCOUNT BOOKS, RIGHT?

2977=A. YES.

2978=Q. SO IF YOU WANTED TO DO A COMPARISON BETWEEN, SAY, LITTLE

2979=PROFESSOR AND BARNES & NOBLE OR BORDERS, YOU'D HAVE TO LOOK AT

2980=THE PURCHASE MIX OF THE LITTLE BOOKSTORE (SIC) AND YOU'D HAVE

2981=TO LOOK ON THE OTHER HAND AT THE PURCHASE MIX OF BARNES &

2982=NOBLE, IS THAT RIGHT?

2983=A. THAT'S CORRECT.

2984=Q. AND THE ONLY WAY YOU COULD DO THAT WOULD BE TO LOOK AT THE

2985=INVOICES OF EACH OF THOSE STORES, RIGHT?

2986=A. WELL, OTHER THAN THE FACT THAT IF YOU SEE A STORE THAT'S

2987=LOADED WITH TEXTBOOKS, YOU HAVE THE RIGHT TO ASSUME, I THINK,

2988=IN THAT CASE, THAT THEY GOT LESS DISCOUNT.

2989=Q. RIGHT, BUT IF YOU WANT TO GO FROM THAT GENERAL OBSERVATION

2990=TO FIGURE WHAT THE EFFECTIVE DISCOUNT RATE WAS FOR LITTLE

2991=PROFESSOR ON THE ONE HAND, BARNES & NOBLE ON THE OTHER, YOU'D

2992=NEED TO LOOK AT THE INVOICES AND SEE WHAT THE ACTUAL RATE WAS,

2993=AND MULTIPLY IT BY THE NUMBER OF BOOKS, RIGHT?

2994=A. I THINK THAT'S FAIR.

2995=Q. I PUT UP THERE THAT LITTLE BINDER, AND LET ME ASK IF YOU

2996=COULD PLEASE TURN TO TAB 4. AND TAB 4 IS AN INVOICE TO LITTLE

2997=PROFESSOR THAT WAS PREVIOUSLY MARKED AS BORDERS EXHIBIT 10016,

2998=AND THAT'S ON BORDERS EXHIBIT LIST. YOU SEE THAT THERE?

2999=A. NO. I SEE THE INVOICE YOU --

3000=Q. WHAT'S THE COMPANY?

3001=A. BRIMAX.

3002=Q. RIGHT. AND THIS IS ONE OF YOUR INVOICES, RIGHT?

3003=A. THAT'S CORRECT.

3004=Q. AND WHAT DISCOUNT RATE DOES IT SHOW?

3005=A. 60 PERCENT.

3006=Q. AND THAT'S A PRETTY GOOD DISCOUNT RATE, RIGHT?

3007=A. NOT FOR THIS -- THIS IS A REMAINDER LINE.

3008=Q. OKAY. NOW, IF WE WANTED TO -- YOU MENTIONED EARLIER THAT

3009=SOMETIMES YOU CHECK THE RED BOOK TO SEE IF AN INVOICE HAS THE

3010=RIGHT DISCOUNT RATE ON IT. YOU REMEMBER THAT?

3011=A. I DID.

3012=Q. NOW, IF YOU WANTED TO CHECK THE INVOICE RATE ON BRIMAX, THE

3013=RED BOOK WOULDN'T DO YOU MUCH GOOD.

3014=A. NOT THIS ONE. IT'S A BRITISH COMPANY.

3015=Q. IT'S NOT LISTED IN THE RED BOOK, IS IT?

3016=A. NO.

3017=Q. HOW WOULD YOU HAVE TO FIND OUT WHAT THE RIGHT PRICE WAS

3018=FROM BRIMAX?  
3019=A. YOU WOULD HAVE TO CALL BRIMAX OR DEAL WITH THEIR  
3020=PUBLISHERS' REP.  
3021=Q. AND THERE ARE OTHER PUBLISHERS THAT FIT IN THAT CATEGORY,  
3022=TOO, THAT YOU BUY FROM, AREN'T THERE?  
3023=A. POSSIBLY.  
3024=Q. UM-HUM. WE TALKED -- OR YOU TALKED, RATHER, WITH  
  
3025=MR. HOHENGARTEN A BIT ABOUT INGRAM AND WHAT -- LET ME TURN TO  
3026=THAT NOW.  
3027= YOU SAID THAT IT'S VERY IMPORTANT FOR YOU TO GET  
3028=NEXT-DAY SERVICE FROM INGRAM, RIGHT?  
3029=A. YES.  
3030=Q. AND THAT'S BECAUSE YOUR BUSINESS MODEL DEPENDS ON MEETING  
3031=SPECIAL ORDERS PROMPTLY.  
3032=A. YES.  
3033=Q. SO IF INGRAM OFFERED TO SEND YOU BOOKS ONCE A WEEK RATHER  
3034=THAN THE NEXT DAY, IT WOULDN'T BE AS VALUABLE TO YOU, IS THAT  
3035=RIGHT?  
3036=A. THAT'S CORRECT.  
3037=Q. AND YOU WOULDN'T PAY AS MUCH TO INGRAM IF THEY SAID, WE'RE  
3038=GOING FROM A ONE-DAY DELIVERY TO A ONE-WEEK DELIVERY, IS THAT  
3039=RIGHT?  
3040=A. THAT IS CORRECT.  
3041=Q. BUT THERE MIGHT BE SOMEBODY ELSE WHO HAD A DIFFERENT  
3042=BUSINESS MODEL, RIGHT, ANOTHER LITTLE PROFESSOR BOOKSTORE?  
3043=A. YES.  
3044=Q. AND THAT OTHER LITTLE PROFESSOR BOOKSTORE MIGHT HAVE A  
3045=DIFFERENT BUSINESS MODEL AND MIGHT BE HAPPY TO HAVE BOOKS FROM  
3046=INGRAM ONCE A WEEK IN RETURN FOR A BETTER DISCOUNT RATE, RIGHT?  
3047=A. CERTAINLY.  
3048=Q. AND THEN IF WE WENT TO COMPARE YOUR EFFECTIVE DISCOUNT RATE  
3049=TO THAT OTHER LITTLE PROFESSOR BOOKSTORE'S DISCOUNT RATE FROM  
  
3050=INGRAM, WE WOULD SEE A DIFFERENCE IN THE EFFECTIVE DISCOUNT  
3051=RATE. THAT IS, THEY'D HAVE A BETTER'S DISCOUNT RATE THAN YOU,  
3052=RIGHT?  
3053=A. YES.  
3054=Q. BUT THAT WOULD MASK THE FACT THAT YOU WERE GETTING BETTER  
3055=SERVICE, WOULDN'T IT?  
3056=A. IT WOULD.  
3057=Q. SO TO DO THE COMPARISON, WE HAVE TO LOOK AT THE WHOLE  
3058=PACKAGE, DON'T WE?  
3059=A. YES.  
3060=Q. THAT THE KIND OF SERVICE AND PRICE THAT A BOOKSTORE  
3061=OPERATES ON REFLECTS A BUSINESS MODEL, AND THERE ARE MANY  
3062=BUSINESS MODELS THAT ARE EFFECTIVE IN RUNNING BOOKSTORES,  
3063=RIGHT?  
3064=A. YES.  
3065=Q. AND YOU SAID THAT THE INGRAM REPRESENTATIVE WHO CAME TO SEE  
3066=YOU OFFERED YOU PARTICIPATION IN THE SCHEDULED DELIVERY  
3067=PROGRAM, RIGHT?  
3068=A. I DID.  
3069=Q. AND YOU DECIDED AGAINST IT BECAUSE IT DIDN'T FIT YOUR  
3070=BUSINESS MODEL?  
3071=A. YES.  
3072=Q. BUT GOING TO THIS OTHER LITTLE PROFESSOR BOOKSTORE THAT I  
3073=WAS TALKING ABOUT A MOMENT AGO, IT SOUNDS LIKE IT WOULD FIT  
3074=THAT LITTLE PROFESSOR BOOKSTORE'S BUSINESS MODEL PRETTY WELL,  
  
3075=WOULDN'T IT?  
3076= MR. HOHENGARTEN: OBJECTION, YOUR HONOR. MR. RADER  
3077=IS ASKING HYPOTHETICAL QUESTIONS ABOUT ANOTHER LITTLE PROFESSOR  
3078=THAT THERE'S NO EVIDENCE IN THE RECORD ABOUT.  
3079= THE COURT: HE'S ASKING QUESTIONS ABOUT A FRANCHISE  
3080=OF WHICH THIS GENTLEMAN IS A FRANCHISEE, AND I THINK IT'S  
3081=PERFECTLY PROPER FOR HIM TO MAKE THAT INQUIRY, AND THE  
3082=OBJECTION IS OVERRULED.  
3083=BY MR. RADER:  
3084=Q. MR. BARRINGER?  
3085=A. WELL, IN RESPONSE TO THAT, QUITE HONESTLY, THE ENTIRE  
3086=BUSINESS MODEL OF LITTLE PROFESSOR AS A CHAIN OF FRANCHISEES IS  
3087=PREDICATED ON A SIMILAR QUICK DELIVERY.

3088=Q. I WANT TO COMPARE TO IT SOMETHING ELSE, THEN.  
3089=A. OKAY.  
3090=Q. THERE MIGHT BE ANOTHER BOOKSTORE IN CHARLOTTE THAT HAD A  
3091=DIFFERENT BUSINESS MODEL WITH IT, THAT WOULD BE HAPPY WITH  
3092=DELIVERY ONCE A WEEK FROM INGRAM, IS THAT RIGHT?  
3093= MR. HOHENGARTEN: OBJECTION, ASSUMES FACTS NOT IN  
3094=EVIDENCE.  
3095= THE COURT: OBJECTION'S OVERRULED.  
3096=BY MR. RADER:  
3097=Q. MR. BARRINGER?  
3098=A. YES, THERE MIGHT BE.  
3099=Q. AND IF THAT OTHER BOOKSTORE IN CHARLOTTE WAS HAPPY WITH  
  
3100=THAT ONE-WEEK DELIVERY AND GOT A BETTER PRICE FOR IT, AGAIN,  
3101=WHEN WE COMPARED YOUR EFFECTIVE DISCOUNT RATE TO THE OTHER  
3102=BOOKSTORE'S EFFECTIVE DISCOUNT RATE, THE DIFFERENCE WOULD BE  
3103=EXPLAINED BY THE DIFFERENCE IN BUSINESS MODEL, RIGHT?  
3104=A. YES.  
3105=Q. OKAY. NOW, WHEN YOU WERE VISITED BY THE INGRAM  
3106=REPRESENTATIVE, DID THAT PERSON TELL YOU YOU QUALIFIED FOR THE  
3107=SCHEDULED DELIVERY PROGRAM BECAUSE OF THE VOLUME OF SALES?  
3108=A. I THINK THE FACT THAT SHE OFFERED IT TO ME -- I DON'T  
3109=KNOW -- I DIDN'T KNOW OF ANY QUALIFICATION REQUIREMENTS. SHE  
3110=OFFERED IT.  
3111=Q. NOW, THIS SCHEDULED DELIVERY PROGRAM THAT WAS OFFERED TO  
3112=YOU, THAT'S NOT IN THE RED BOOK, IS IT?  
3113=A. NO.  
3114=Q. IN FACT, THE TERMS, AT LEAST THE PRICE TERMS ARE BETTER  
3115=THAN WHAT'S IN THE RED BOOK, AREN'T THEY?  
3116=A. I BELIEVE THEY ARE. I'M NOT SURE. I THINK SO.  
3117=Q. WELL, ISN'T YOUR UNDERSTANDING THAT THE PRICE TERM ON  
3118=SCHEDULED DELIVERY IS 41 PERCENT FROM THE FIRST BOOK, WHILE IN  
3119=THE RED BOOK IT'S 40 PERCENT FROM THE FIRST BOOK?  
3120=A. WE DID NOT GET THAT INVOLVED, SO I DON'T HONESTLY KNOW.  
3121=Q. OKAY. NOW, STICKING WITH INGRAM FOR A BIT, YOU HAD  
3122=MENTIONED THAT YOU HAD NOT HEARD ABOUT THE SUMMARY BILLING  
3123=PROGRAM FROM INGRAM, RIGHT?  
3124=A. THAT'S CORRECT.  
  
3125=Q. BUT YOU HEARD ABOUT IT FROM COURT HERE YESTERDAY, RIGHT?  
3126=A. YES.  
3127=Q. AND ISN'T IT CORRECT THAT YOU HEARD THAT THAT PROGRAM WOULD  
3128=ALLOW BOOKSELLERS TO IMPROVE THEIR CASH DISCOUNT OPPORTUNITIES  
3129=WITH INGRAM BY HAVING A 2, 25 TERMS RATHER THAN 2, 10 TERMS?  
3130=A. YES.  
3131=Q. HAVING LEARNED ABOUT IT, ARE YOU NOW GOING TO CONTACT YOUR  
3132=INGRAM REPRESENTATIVE AND SEE ABOUT SIGNING UP FOR SUMMARY  
3133=BILLING?  
3134=A. NO, BECAUSE I UNDERSTAND BY THE TESTIMONY THAT YOU MUST  
3135=TAKE THE FIRST IN ORDER TO GET THE SECOND, THAT YOU HAVE TO  
3136=TAKE THE COMBINED DELIVERY IN ORDER TO GET THE SUMMARY  
3137=DISCOUNT.  
3138=Q. IF IT WERE THE CASE THAT THAT WERE NOT REQUIRED, IF IT WERE  
3139=POSSIBLE TO SIGN UP FOR SUMMARY BILLING ALONE, WOULD YOU THEN  
3140=BE INTERESTED IN SIGNING UP?  
3141=A. PROBABLY.  
3142=Q. BECAUSE IT'S A BETTER TERMS?  
3143=A. YES.  
3144=Q. SO ARE YOU PLANNING TO CONTACT THE INGRAM REPRESENTATIVE  
3145=ABOUT THAT?  
3146=A. I DON'T KNOW.  
3147=Q. OKAY. NOW, YOU ALSO SPOKE ABOUT THE FACT THAT YOU FROM  
3148=TIME TO TIME TAKE ADVANTAGE OF THE V.O.R. PROGRAM.  
3149=A. YES.  
  
3150=Q. AND THAT'S NOT IN THE RED BOOK, RIGHT?  
3151=A. NO.  
3152=Q. AND THOSE TERMS ARE BETTER THAN THE RED BOOK, AREN'T THEY?  
3153=A. YES. LET ME JUST QUALIFY THAT, JUST A SMALL AMOUNT? THEY  
3154=ARE SOMETIMES BETTER THAN THE RED BOOK.  
3155=Q. DEPENDING ON HOW MANY TITLES YOU BOUGHT FROM THE RED BOOK;  
3156=IS THAT WHAT YOU MEAN?  
3157=A. WELL, DEPENDING ON WHICH PUBLISHER IS USED AS VENDOR OF

3158=RECORD.  
3159=Q. NOW, YOUR BOOKSTORE IS A MEMBER OF THE ABA?  
3160=A. YES, IT IS.  
3161=Q. AND THE ABA PROVIDES CERTAIN SERVICES TO ITS MEMBERS,  
3162=RIGHT?  
3163=A. YES.  
3164=Q. FOR EXAMPLE, IT OFFERS A PROGRAM TO GET BETTER FREIGHT  
3165=PRICES, ISN'T THAT RIGHT?  
3166=A. YES, IT DOES.  
3167=Q. IT'S CALLED THE SMALL PACKAGE SHIPPING PROGRAM?  
3168=A. YES.  
3169=Q. AND YOU GET A BETTER RATE FROM UPS BY PARTICIPATING IN  
3170=THAT?  
3171=A. NO, WE GET A BETTER RATE FROM RPS.  
3172=Q. RPS, BUT YOU GET A BETTER RATE THAN IS AVAILABLE TO NON-ABA  
3173=MEMBERS, CORRECT?  
3174=A. YES.  
  
3175=Q. NOW, WE TALKED A LITTLE WHILE AGO ABOUT VISITS THAT YOU  
3176=GOT -- YOU HAVE FROM PUBLISHERS' REPRESENTATIVES. DO YOU ALSO  
3177=HAVE VISITS FROM INDEPENDENT REPS WHO REPRESENT A NUMBER OF  
3178=PUBLISHERS?  
3179=A. WHAT WE NORMALLY CALL COMMISSION REPS?  
3180=Q. UM-HUM.  
3181=A. YES.  
3182=Q. OKAY. COULD YOU LOOK AT TAB 1 IN THE BOOKLET THAT YOU  
3183=HAVE, WHICH WE NOTE IS BORDERS TRIAL EXHIBIT 10007. SEE WHERE  
3184=I AM, MR. BARRINGER?  
3185=A. I SEE. AGAIN, I DON'T HAVE THE EXHIBIT NUMBER, THAT I KNOW  
3186=OF, BUT --  
3187=Q. YOU SEE THE DOCUMENT THAT SAYS, "SPRING, 1998."  
3188=A. I DO.  
3189=Q. FROM THE HOPKINS GROUP?  
3190=A. YES, SIR.  
3191=Q. THAT'S A GROUP YOU DO BUSINESS WITH?  
3192=A. YES, SIR.  
3193=Q. AND THEY'RE A COMMISSION GROUP?  
3194=A. THEY'RE A COMMISSION GROUP.  
3195=Q. UM-HUM, AND THIS WAS A BROCHURE THEY GAVE YOU IN THIS FORM  
3196=IN 1998 WITH THEIR VARIOUS OFFERINGS?  
3197=A. YES.  
3198=Q. DO YOU SOMETIMES BUY BOOKS FROM THEM?  
3199=A. YES. WHEN YOU SAY, "FROM THEM," YOU MEAN THROUGH THE  
  
3200=HOPKINS GROUP OR FROM THESE PUBLISHERS?  
3201=Q. FROM THE HOPKINS GROUP.  
3202=A. YES.  
3203=Q. COULD YOU TURN TO THE NEXT-TO-LAST -- WELL, I MISSPOKE.  
3204=TURN TO THE THIRD PAGE, AND YOU'LL SEE IN THE MIDDLE THERE'S A  
3205=PUBLISHER IDENTIFIED AS HIPPOCRENE. YOU SEE THAT?  
3206=A. I SEE THAT.  
3207=Q. AND I NOTE IN THE RIGHT-HAND COLUMN WHERE IT'S TITLED,  
3208="RETAIL DISCOUNT," IT SAYS, "SALES REP DISCOUNT," RIGHT?  
3209=A. YES.  
3210=Q. NOW, IS THAT -- IS IT YOUR UNDERSTANDING THAT THAT  
3211=NOTATION, "SALES REP DISCOUNT," REFERS TO A SPECIAL DEAL THAT'S  
3212=BEING OFFERED BY THE HOPKINS GROUP?  
3213=A. YES.  
3214=Q. AND DOES IT HAPPEN FROM TIME TO TIME THAT THE HOPKINS GROUP  
3215=OR OTHER SALESPeOPLE OFFER YOU SPECIAL DEALS LIKE THIS?  
3216=A. YES.  
3217=Q. AND PRESUMABLY THOSE ARE AVAILABLE ONLY TO THE CUSTOMERS OF  
3218=THE HOPKINS GROUP, CORRECT?  
3219=A. NO. THERE WOULD BE -- HOW TO EXPLAIN THIS WITHOUT MAKING  
3220=IT COMPLICATED? THERE PROBABLY ARE FIVE DIFFERENT COMMISSION  
3221=REP GROUPS THAT REPRESENT THIS PARTICULAR PUBLISHER THROUGHOUT  
3222=THE UNITED STATES. ALL OF THOSE COMMISSION GROUPS WOULD OFFER  
3223=THIS. SO HOPKINS GROUP IS COVERING OUR GEOGRAPHICAL AREA, AND  
3224=SOMEBODY ELSE IS COVERING HERE IN SAN FRANCISCO. BUT THE -- I  
  
3225=ASSUME THE DEAL WOULD BE EXACTLY THE SAME FOR PEOPLE IN SAN  
3226=FRANCISCO AS IT WOULD BE IN CHARLOTTE.  
3227=Q. YOU SAY YOU ASSUME THAT. YOU DON'T KNOW.

3228=A. NO, I DON'T.  
3229=Q. NOW, WHEN IT SAYS, "SALES REP DISCOUNT," THAT'S SOMETHING  
3230=THAT'S A SPECIAL OFFER, SPECIAL DEAL?  
3231=A. YES.  
3232=Q. AND THAT WOULDN'T BE IN THE RED BOOK, WOULD IT?  
3233=A. NO.  
3234=Q. SO THESE TERMS HERE ARE BETTER THAN THE RED BOOK TERMS FOR  
3235=HIPPOCRENE PUBLISHING, RIGHT?  
3236=A. I HAVE TO CHECK THE RED BOOK TO FIND OUT.  
3237=Q. WHY DON'T YOU LOOK AT TAB 2, SAVE YOU THE TROUBLE, AND LET  
3238=YOU KNOW FOR THE RECORD THAT TAB 2 IS A EXCERPT FROM  
3239=PLAINTIFF'S EXHIBIT 5, THE ABA BOOK BUYERS HANDBOOK FOR 1998.  
3240=A. I FOUND IT.  
3241=Q. OKAY, NOW, THAT SHOWS A -- IT SHOWS THAT THE SALES REP  
3242=DISCOUNT IS BETTER THAN THE RED BOOK, DOESN'T IT? THAT IS, THE  
3243=SALES REP DISCOUNT FOR FIVE FOR 24 COPIES IS 44 PERCENT WHILE  
3244=IN THE RED BOOK IT'S 40 PERCENT.  
3245=A. THAT'S CORRECT.  
3246=Q. OKAY, SO IT'S A PRETTY GOOD DEAL.  
3247=A. YES.  
3248= THE COURT: I'M SORRY, I DON'T SEE IT IN THE RED  
3249=BOOK.  
3250= MR. RADER: YOUR HONOR, IT'S IN THE SECOND PAGE --  
3251=WELL, PAGE 334 OF THE RED BOOK, AND UNDER DISCOUNT SCHEDULES,  
3252=IN THE RIGHT-HAND COLUMN, UNDER HIPPOCRENE BOOKS, IT SAYS, 5  
3253=COPIES, 40 PERCENT. IT'S THE -- THE PRINT IS BARELY READABLE.  
3254= THE COURT: WHERE IS HIPPOCRENE BOOKS?  
3255= MR. RADER: EXCUSE ME, YOUR HONOR?  
3256= THE COURT: HIPPOCRENE BOOKS IS A NEW PLAYER.  
3257= MR. RADER: IT'S A NEW ONE FOR ME, AS WELL.  
3258= THE WITNESS: AND FOR ME, AS WELL.  
3259=BY MR. RADER:  
3260=Q. MR. BARRINGER, LET ME ASK YOU TO TURN TO TAB 3 OF THE SAME  
3261=BOOKLET THAT YOU HAVE THERE.  
3262=A. I HAVE IT.  
3263=Q. AND LET ME NOTE THAT'S BORDERS TRIAL EXHIBIT 10008. AND  
3264=THIS IS A COPY, APPEARS TO ME, OF A STOCK OFFER THAT YOU  
3265=RECEIVED, RIGHT?  
3266=A. I DON'T KNOW. YOU MEAN THE OFFER THAT I RECEIVED?  
3267=Q. THAT YOU RECEIVED THIS DOCUMENT, THE OFFER.  
3268=A. YES, I'LL -- I DON'T KNOW, BUT IF YOU GOT THIS FROM MY  
3269=RECORDS, I RECEIVED IT.  
3270=Q. WELL, LET ME REPRESENT TO YOU THAT IT WAS PRODUCED BY YOU,  
3271=AND YOU IDENTIFIED IT AT YOUR DEPOSITION.  
3272=A. THAT'S FINE.  
3273=Q. OKAY. AND THIS -- YOU RECEIVED STOCK OFFERS LIKE THIS IN  
3274=THE MAIL FROM TIME TO TIME, OR BY FAX, IS THAT RIGHT?  
3275=A. THAT'S CORRECT.  
3276=Q. AND THIS IS FROM SIMON & SCHUSTER?  
3277=A. IT IS.  
3278=Q. AND THAT'S ONE OF THE BIGGEST PUBLISHING COMPANIES, RIGHT?  
3279=A. YES.  
3280=Q. AND IT INDICATES THAT THERE'S AN EXTRA 2 PERCENT DISCOUNT?  
3281=A. YES.  
3282=Q. AND IN THE BIG BOOK BUSINESS THAT'S A PRETTY DECENT  
3283=INCREASE IN THE DISCOUNT PRICE, ISN'T IT?  
3284=A. YES.  
3285=Q. AND IT INDICATES THAT IT'S EFFECTIVE FROM JANUARY 1ST, 1998  
3286=THROUGH APRIL 15TH, 1998. DO YOU SEE THAT?  
3287=A. YES.  
3288=Q. SO IT'S, WHAT, TWO AND-A-HALF MONTHS, THREE MONTHS?  
3289=ACTUALLY, THREE AND-A-HALF MONTHS LONG.  
3290=A. YES.  
3291=Q. AND IT ALSO INDICATES, DOESN'T IT, THAT THIS APPLIES TO ALL  
3292=BACK LIST BOOKS OF SIMON & SCHUSTER?  
3293=A. YES.  
3294=Q. AND GIVEN THAT SIMON & SCHUSTER IS ONE OF THE COUNTRY'S  
3295=LARGEST PUBLISHING COMPANIES AND HAS BEEN IN EXISTENCE FOR A  
3296=LONG TIME, THE BACK LIST IS QUITE EXTENSIVE, ISN'T IT?  
3297=A. YES.  
3298=Q. SO THIS WAS AN OPPORTUNITY FOR YOU TO STOCK UP AT A VERY

3299=FAVORABLE PRICE ON A NUMBER OF BOOKS. CORRECT?

3300=A. YES.

3301=Q. DID YOU TAKE ADVANTAGE OF THAT OPPORTUNITY?

3302=A. I HAVE NO IDEA.

3303=Q. DO YOU OFTEN TAKE ADVANTAGE OF STOCK OFFER OPPORTUNITIES

3304=LIKE THIS?

3305=A. SOMETIMES WE DO. NOT OFTEN.

3306=Q. AND IS THAT BECAUSE IT DOESN'T FIT YOUR BUSINESS MODEL TO

3307=TAKE ADVANTAGE OF STOCK OFFERS?

3308=A. THAT'S CORRECT.

3309=Q. BUT THERE MIGHT BE SOMEBODY ELSE FOR WHOM IT DID, RIGHT?

3310=A. YES.

3311=Q. WHY IS IT IT DOESN'T FIT YOUR BUSINESS MODEL?

3312=A. WE HAVE A PROBLEM WITH STORAGE, FOR ONE THING. WE JUST

3313=CAN'T HAVE ALL THESE BOOKS IN OUR BACK ROOM. IT'S TOO SMALL.

3314=Q. BUT ANOTHER BOOKSTORE THAT HAD MORE STORAGE SPACE COULD

3315=TAKE ADVANTAGE OF THESE STOCK OFFERS MORE THAN YOU COULD,

3316=CORRECT?

3317=A. THAT'S CORRECT.

3318=Q. AND IF THAT OTHER BOOKSTORE DID TAKE ADVANTAGE OF THESE

3319=STOCK OFFERS MORE THANK YOU, THEN THEIR EFFECTIVE DISCOUNT

3320=RATER WOULD BE BETTER THAN YOURS, JUST BY VIRTUE OF HAVING MORE

3321=STORAGE SPACE, RIGHT?

3322=A. CORRECT.

3323=Q. NOW, IF YOU LOOK FURTHER IN THIS SAME DOCUMENT, YOU'LL SEE

3324=THAT THERE'S ALSO MATERIALS ABOUT SHARED MARKDOWNS. YOU'RE

3325=FAMILIAR WITH SHARED MARKDOWNS?

3326=A. YES.

3327=Q. AND THAT'S AN OPPORTUNITY THAT PUBLISHERS OFFER TO REDUCE

3328=THE PRICE ON BOOKS YOU HAVE IN STOCK?

3329=A. YES.

3330=Q. DO YOU TAKE ADVANTAGE OF THAT OPPORTUNITY?

3331=A. NOT ANYMORE.

3332=Q. UM-HUM. BUT OTHERS MIGHT, CORRECT?

3333=A. THEY COULD.

3334=Q. AND THAT WOULD REDUCE THEIR COSTS, CORRECT?

3335=A. IT COULD.

3336=Q. OKAY. NOW, YOU TALKED A LITTLE BIT, WHEN MR. HOHENGARTEN

3337=WAS ASKING YOU QUESTIONS, ABOUT RETURNS, AND HOW YOU TAKE

3338=CREDIT FOR RETURNS. ISN'T IT CORRECT THAT STANDARD POLICY, OR

3339=TO USE MS. SEE'S TERMS, TRADITIONAL PRACTICE IN THE BOOK

3340=BUSINESS IS NOT TO TAKE CREDIT FOR RETURN UNTIL YOU RECEIVE A

3341=CREDIT MEMO?

3342=A. YES.

3343=Q. BUT THAT'S NOT THE PRACTICE YOU FOLLOW, CORRECT?

3344=A. THAT IS CORRECT.

3345=Q. AND IS IT CORRECT THAT THE REASON YOU ARE ABLE TO DO THAT

3346=IS BECAUSE PUBLISHERS ARE AWARE THAT YOU -- YOUR BOOKSTORE IS

3347=CREDITWORTHY AND THEY ALLOW YOU TO DO IT EARLIER THAN YOU WOULD

3348=OTHERWISE BE ALLOWED?

3349=A. I CAN'T ANSWER WHY THE PUBLISHER ALLOWS IT.

3350=Q. BUT THEY DO ALLOW IT, DON'T THEY?

3351=A. YES.

3352=Q. YOU MENTIONED, WHEN YOU WERE TESTIFYING EARLIER, THAT

3353=SOMETIMES PUBLISHERS OWE YOU SOMETHING, WHEN YOU WERE TALKING

3354=ABOUT THE VISITING AUTHOR SITUATION. YOU REMEMBER?

3355=A. YES.

3356=Q. DOES THAT NORMAL BUSINESS PRACTICE OF TRADING BACK AND

3357=FORTH ALSO APPLY TO HOW YOU TAKE CREDIT FOR RETURNS? THAT IS,

3358=DO PUBLISHERS ALLOW YOU TO TAKE EARLY CREDIT FOR RETURNS

3359=BECAUSE THEY HAVE A RELATIONSHIP WITH YOU? IS THAT RIGHT?

3360=A. I DON'T KNOW IF I'D CHARACTERIZE IT THAT WAY. LET ME SAY,

3361=ON THIS RETURN THING, THEY EVEN SELL BOOKS WITH THIS

3362=UNDERSTANDING. FOR EXAMPLE, RANDOM HOUSE OFFERS YOU BOOKS THAT

3363=ARE DATED UNTIL JANUARY 15TH WITH THEIR PREMISE, NOT MINE, THAT

3364=YOU PUT THEM ON YOUR SHELF, IF THEY DON'T SELL, YOU PULL THEM

3365=ON DECEMBER 26 AND SHIP THEM BACK. THERE'S NO WAY THAT THOSE

3366=RETURNS CAN GET BACK THERE AND A CREDIT MEMO BE GENERATED TO

3367=REACH ME BY THE PAYMENT DATE.

3368=Q. SO THERE'S A LOT OF DIFFERENT MOVING PARTS IN THE BOOK



3369=BUSINESS, DIFFERENT PUBLISHERS HAVE DIFFERENT ARRANGEMENTS, AND  
3370=YOU HAVE TO BE AWARE OF THEM TO FIGURE OUT WHAT'S GOING ON,  
3371=RIGHT?

3372=A. THAT'S TRUE.

3373=Q. AND A CERTAIN AMOUNT OF IT DEPENDS ON YOUR RELATIONSHIP

3374=WITH YOUR VENDORS, ISN'T THAT RIGHT?

3375=A. YES.

3376=Q. AND THAT'S WHY YOU LIKE TO WORK WITH THE PUBLISHERS' REPS?

3377=A. THAT'S TRUE.

3378=Q. LET ME ASK YOU TO TAKE A LOOK, IF YOU WOULD, AT TAB 5 IN

3379=THE BOOKLET, WHICH IS MARKED AS BARNES & NOBLE EXHIBIT 7854.

3380=A. I HAVE, SIR.

3381=Q. AND AS YOU'LL SEE, THIS IS A MAP OF YOUR AREA, AND WHAT WE

3382=DID, JUST LET ME REPRESENT TO YOU, IS CREATE A MAP THAT LISTED

3383=NOT JUST LITTLE PROFESSOR AND BARNES & NOBLE AND BORDERS BUT

3384=ALSO ALL THE OTHER BOOKSTORES THAT YOU IDENTIFIED IN YOUR

3385=DEPOSITION AS BEING IN YOUR AREA.

3386= AND THESE ARE BOOKSTORES THAT ARE IN YOUR AREA,

3387=AREN'T THEY?

3388=A. WELL, MANY OF THESE ARE GONE.

3389=Q. BUT THEY WERE AT ONE TIME.

3390=A. YES.

3391= (CONTINUED ON FOLLOWING PAGE. NOTHING OMITTED.)

3392=

3393=

3394=

3395=

3396=

3397=

3398=

3399=

3400=BY MR. RADER:

3401=Q. AND UNTIL THE EARLY '90S WHEN BARNES & NOBLE AND BORDERS

3402=AND MEDIA PLAY AND SAM'S CLUB CAME INTO YOUR PART OF CHARLOTTE,

3403=LITTLE PROFESSOR WAS -- WAS IN SOME SENSE THE ONLY GAME IN TOWN

3404=IN TERMS OF A BIG FULL SERVICE BOOK STORE, RIGHT?

3405=A. NO.

3406=Q. WHO ELSE WAS THERE?

3407=A. WE HAD THE TWO INTIMATES. WE HAD STORES CALLED BOOKENDS.

3408=WE HAD HORIZON BOOKS. WE HAD -- WHAT ABOUT -- BUT THERE WERE

3409=OTHERS. THERE WERE ABOUT 11 INDEPENDENT BOOKSTORES.

3410=Q. BUT THERE'S A LOT MORE NOW?

3411=A. INDEPENDENT BOOKSTORES?

3412=Q. NO, BOOKSTORES. BOOKSTORES.

3413=A. YEAH. A LOT MORE SQUARE FOOTAGE.

3414=Q. A LOT MORE SQUARE FOOTAGE.

3415= ISN'T IT CORRECT THAT IN CHARLOTTE NOW COMPARED TO

3416=THE EARLY '90S THAT THERE ARE MANY, MANY MORE TIMES AS MANY

3417=BOOKS BEING SOLD AS THERE WERE IN THE EARLY '90S?

3418=A. I THINK THAT WOULD BE PROBABLY FAIR.

3419=Q. SEVERAL TIMES, WOULDN'T YOU SAY?

3420=A. YEAH.

3421=Q. AND NOTWITHSTANDING THAT, LITTLE PROFESSOR'S SALES HAVE

3422=REMAINED OVER THE LAST TEN YEARS RELATIVELY CONSTANT; ISN'T THAT

3423=RIGHT?

3424=A. NO, I WOULDN'T AGREE THAT THEY'VE BEEN CONSTANT. THERE WAS

3425=A SIGNIFICANT DIP.

3426=Q. YOU'RE HIGHER NOW THAN YOU WERE IN THE EARLY '90S, CORRECT,

3427=IN SALES? ISN'T THAT WHAT YOU JUST WENT THROUGH WITH

3428=MR. NELSON?

3429=A. YES.

3430=Q. SO YOUR SALES -- NOTWITHSTANDING THE EXISTENCE IN THE AREA

3431=OF BORDERS AND THE SEVERAL BARNES & NOBLE STORES AND SAM'S CLUB

3432=AND MEDIA PLAY, YOUR SALES NOW ARE HIGHER THAN THEY WERE

3433=EARLIER?

3434=A. YES.

3435=Q. SO YOU'VE BEEN A PRETTY GOOD COMPETITOR, ALL THINGS

3436=CONSIDERED, RIGHT?

3437=A. YES.

3438=Q. AT ONE POINT, YOU OWNED AN INTEREST IN ANOTHER LITTLE

3439=PROFESSOR BOOKSTORE; ISN'T THAT RIGHT?  
3440=A. THAT'S CORRECT.  
3441=Q. ALSO IN CHARLOTTE?  
3442=A. NO, IN DURHAM, NORTH CAROLINA.  
3443=Q. DID I EVER CONSIDER THE POSSIBILITY OF THE ESTABLISHING A  
3444=WAREHOUSE FACILITY SO YOU COULD BUY BOOKS FOR BOTH OF STORES?  
3445=A. NO.  
3446=Q. BUT THAT WAS SOMETHING THAT YOU MIGHT HAVE DONE, CORRECT?  
3447=A. IT WOULD HAVE BEEN POSSIBLE.  
3448=Q. WOULD IT HAVE BEEN POSSIBLE?  
3449=A. YEAH.  
  
3450=Q. RIGHT.  
3451= AND IF YOU HAD DONE THAT, YOU POTENTIALLY COULD  
3452=QUALIFY FOR A RDC DISCOUNT, COULDN'T YOU?  
3453=A. NO, BECAUSE THE DURHAM STORE CLOSED LONG BEFORE RDC CAME  
3454=ALONG.  
3455=Q. NOW, YOU'RE PART OF THE GROUP OF FRANCHISEES, THE LITTLE  
3456=PROFESSOR GROUP, RIGHT?  
3457=A. YES.  
3458=Q. HAS THE LITTLE PROFESSOR GROUP EVER CONSIDERED SETTING UP A  
3459=RETAIL DISTRIBUTION CENTER SO THAT YOU COULD BUY BOOKS CENTRALLY  
3460=AND DISTRIBUTE THEM?  
3461=A. YES, THEY DID IN THE BEGINNING. IT WAS CHAOTIC.  
3462=Q. COULDN'T MAKE IT WORK?  
3463=A. NO.  
3464=Q. BUT THE IDEA'S A GOOD ONE, CORRECT?  
3465=A. NOT IF IT DIDN'T WORK.  
3466=Q. IF IT DOES WORK. IF IT DOES WORK.  
3467=A. YES.  
3468=Q. BECAUSE THAT WOULD ALLOW YOU TO BUY BOOKS AT A BETTER PRICE,  
3469=RIGHT?  
3470=A. YES.  
3471=Q. AND YOU THINK THE IDEA OF BUYING IN GREATER VOLUME TO GET  
3472=VOLUME DISCOUNTS IS A GOOD IDEA, DON'T YOU?  
3473=A. YES.  
3474=Q. AND IT'S FAIR, ISN'T IT?  
  
3475=A. YES.  
3476= MR. RADER: OKAY. NOTHING FURTHER, YOUR HONOR.  
3477= THE COURT: ALL RIGHT. REDIRECT.  
3478= MR. HOHENGARTEN: JUST TAKE ME A MOMENT TO GET ALL OF  
3479=THESE BINDERS UP HERE, YOUR HONOR.  
3480= THE COURT: ALL RIGHT. WELL, WE MIGHT TAKE A  
3481=TEN-MINUTE RECESS.  
3482= (RECESS TAKEN AT 12:05 P.M.)  
3483= (CONTINUED NEXT PAGE; NOTHING OMITTED)  
3484=  
3485=  
3486=  
3487=  
3488=  
3489=  
3490=  
3491=  
3492=  
3493=  
3494=  
3495=  
3496=  
3497=  
3498=  
3499=  
  
3500= (PROCEEDINGS RESUME AT 12:15 P.M.)  
3501= THE COURT: BE SEATED. REDIRECT EXAMINATION.  
3502=PROCEED.  
3503= REDIRECT EXAMINATION  
3504=BY MR. HOHENGARTEN:  
3505=Q. MR. BARRINGER, IT MAY BE HELPFUL TO PUT TOGETHER TWO  
3506=DIFFERENT EXHIBITS WE LOOKED AT TODAY. FIRST, FROM THE  
3507=PLAINTIFFS' BINDER, TAB 5.  
3508=A. PLAINTIFFS EXHIBITS?

3509=Q. THAT'S RIGHT. I'M SORRY, NOT THAT ONE, THE BLACK  
3510=PLAINTIFFS' BINDER.  
3511=A. TAB 5?  
3512=Q. THAT'S RIGHT. AND THEN FROM THE WHITE BINDERS, WHICH WAS  
3513=BORDERS COUNSEL'S BINDER, TAB 4.  
3514= SORRY FOR THE PROLIFERATION OF BINDERS.  
3515= THE COURT: THAT'S FINE.  
3516= THE WITNESS: I HAVE IT.  
3517= MR. HOHENGARTEN: SHALL I PROCEED, YOUR HONOR?  
3518= THE COURT: YES, PLEASE.  
3519=BY MR. HOHENGARTEN:  
3520=Q. AND YOU IDENTIFIED THESE TWO EXHIBITS AS SUMMARIES OF YOUR  
3521=SALES FROM LITTLE PROFESSOR. TOGETHER THEY GO FROM FISCAL YEAR  
3522=90-91 THROUGH FISCAL YEAR 98-99, CORRECT?  
3523=A. I'M SORRY --  
3524= MR. HOHENGARTEN: MAY I APPROACH THE WITNESS, YOUR  
  
3525=HONOR, JUST TO MAKE SURE HE HAS THE CORRECT...?  
3526= THE COURT: YES.  
3527=BY MR. HOHENGARTEN:  
3528=Q. FIRST OF ALL, LOOKING AT THIS NOW OVERVIEW OF ALL OF THESE  
3529=YEARS, WHAT WERE YOUR SALES IN THE LAST YEAR BEFORE BARNES &  
3530=NOBLE BORDERS MOVED INTO YOUR -- TO CHARLOTTE?  
3531=A. 1,325,293.  
3532=Q. AND LOOKING ALL THE WAY THROUGH THE YEARS THAT MR. NELSON  
3533=NOW HAS SHOWN US IN THE SECOND CHART, HAVE YOUR SALES EVERY  
3534=REBOUNDED TO THAT LEVEL?  
3535=A. NO, THEY HAVE NOT.  
3536=Q. MR. NELSON ASKED YOU SOME QUESTIONS ABOUT THE SERVICES FROM  
3537=THE LITTLE PROFESSOR FRANCHISE COMPANY TO YOU, THAT THEY  
3538=WERE -- AND YOU ANSWERED THAT THERE HAD BEEN DIMINISHMENT IN  
3539=SERVICES FROM THEM IN RECENT YEARS.  
3540=A. YES.  
3541=Q. WHEN DID THAT FALL-OFF OCCUR?  
3542=A. IT BEGAN PROBABLY ABOUT FIVE OR SIX YEARS AGO, AND  
3543=GRADUALLY DETERIORATED.  
3544=Q. SO COULD YOU PLACE A YEAR ON WHEN YOU THINK THE DROP-OFF  
3545=BEGAN?  
3546=A. IN '88 IT WAS STILL VERY STRONG. THIS BASICALLY FALLS TO A  
3547=MANAGEMENT PROBLEM IN THE HOME OFFICE.  
3548=Q. DO YOU THINK THOSE PROBLEMS HAVE AFFECTED YOUR SALES IN ANY  
3549=WAY?  
  
3550=A. NOT -- NOT REALLY.  
3551=Q. AND JUST FOR CLARIFICATION, YOU WERE ASKED SOME QUESTIONS  
3552=ABOUT YOUR FINANCIALS WHERE YOU READ A LINE OF GROSS INCOME.  
3553=IN YOUR FINANCIALS, WHAT DOES GROSS INCOME MEAN?  
3554=A. GROSS INCOME IS COAST OF GOODS SOLD. PROBABLY THERE ARE A  
3555=FEW OTHER THINGS IN THERE BESIDES THAT, BUT BASICALLY IT'S COST  
3556=OF THE GOODS SOLD.  
3557=Q. I'M SORRY, THE COST OF GOODS SOLD, OR INCOME RECEIVED FROM  
3558=THE --  
3559=A. SORRY, THE COST OF GOODS -- RECEIVED.  
3560=Q. IT'S NOT YOUR PROFITS.  
3561=A. NO, NO, NO.  
3562=Q. NOW, YOU WERE ALSO ASKED BY MR. NELSON WHETHER YOU THOUGHT  
3563=IT WAS A GOOD IDEA FOR LITTLE PROFESSOR STORES TO BAND TOGETHER  
3564=FOR PURCHASING PURPOSES, AND YOU SAID IT WASN'T, AND THEN YOU  
3565=WERE SHOWN A PORTION OF YOUR DEPOSITION, PAGES 111 THROUGH 112.  
3566=CAN YOU PULL THAT OUT, PLEASE? I SUGGEST WE FOCUS ON PAGE 112.  
3567=A. YES, I HAVE IT.  
3568=Q. FROM LINES 8 THROUGH 17. THIS WAS READ IN THE RECORD  
3569=BEFORE. FIRST OF ALL, DO YOU BELIEVE THAT YOUR STATEMENT IN  
3570=YOUR DEPOSITION WAS INCONSISTENT WITH YOUR TESTIMONY TODAY?  
3571=A. NOT -- NOT REALLY, BECAUSE -- AND AGAIN, I'M HAVING TO GO  
3572=BACK TO WHEN I WAS BEING DEPOSED. I THINK THE QUESTION, WELL,  
3573=WE HAVE IT RIGHT IN FRONT OF ME, "YOU AGREE -- BUY IN GREATER  
3574=VOLUME AND PRESUMABLY RECEIVE VOLUME DISCOUNTS FROM PUBLISHERS,  
  
3575=IS THAT A GOOD IDEA," "YES," I THINK THE QUESTION I WAS ASKED  
3576=TODAY WAS, DO YOU THINK THE ALLIANCE WAS A GOOD IDEA, AND MY  
3577=REPLY WAS NO. I NEVER THOUGHT IT WAS A GOOD IDEA. INDEED, I  
3578=WAS OPPOSED TO IT, BASICALLY, BECAUSE OF THE WHOLE LITIGATION

3579=PROBLEM. AND THAT, I THINK, IS WHY IT NEVER GOT OFF THE GROUND  
3580=WITH THE LITTLE PROFESSOR. THEY DIDN'T WANT TO GET INTO THAT  
3581=CAN OF WORMS.  
3582=Q. IF YOU WOULD TURN TO MR. NELSON'S BINDER, THE WHITE BINDER.  
3583=A. YES.  
3584=Q. HE ASKED YOU SOME QUESTIONS ABOUT INGRAM INVOICES,  
3585=BEGINNING ON TAB 7. DO THESE INVOICES SHOW THAT LITTLE  
3586=PROFESSOR MADE MANY PURCHASES OF ONE TO FOUR COPIES OF A TITLE  
3587=FROM INGRAM?  
3588=A. YES, THEY DO.  
3589=Q. AND FOR THE VAST MAJORITY OF THOSE PURCHASES, WHAT DISCOUNT  
3590=DID LITTLE PROFESSOR ACTUALLY RECEIVE?  
3591=A. 40 PERCENT.  
3592=Q. IS THAT ALSO TRUE FOR THE INVOICE AT TAB 8?  
3593=A. IT IS.  
3594=Q. AND THE INVOICE AT TAB 9?  
3595=A. IT'S ALSO TRUE.  
3596=Q. AND THE INVOICE AT TAB 10?  
3597=A. YES.  
3598=Q. AND IF I'M NOT MISTAKEN, EACH OF THESE INVOICES IS FROM  
3599=1997, IS THAT CORRECT? I THINK THAT THE DATE MAY BE HIDDEN  
  
3600=UNDER THE EXHIBIT TAB.  
3601=A. THEY APPEAR TO ALL BE '97.  
3602=Q. AND DURING YOUR CROSS-EXAMINATION, YOU NOTED THAT THERE  
3603=WERE SEVERAL COMPUTER BOOKS ON WHICH YOU RECEIVED A 43 PERCENT  
3604=DISCOUNT FROM INGRAM, EVEN FOR SMALLISH ORDERS, IS THAT RIGHT?  
3605=A. YES.  
3606=Q. ARE YOU AWARE OF ANY COMPUTER BOOKS, SPECIAL OR PROGRAM  
3607=WITH INGRAM, THAT LITTLE PROFESSOR PARTICIPATED IN AT THAT  
3608=TIME?  
3609=A. I HONESTLY DON'T KNOW, ONLY BECAUSE MR. BURLESON HANDLED  
3610=THE COMPUTER PROFILE.  
3611=Q. BUT TO YOUR KNOWLEDGE, OUTSIDE OF COMPUTER BOOKS, THE  
3612=43 PERCENT DISCOUNT IS NOT RECEIVED FROM -- BY LITTLE  
3613=PROFESSOR.  
3614=A. NO.  
3615=Q. AND IN FACT, THE ACTUAL DISCOUNT RECEIVED WAS THAT SHOWN IN  
3616=THE RED BOOK, IS THAT CORRECT?  
3617=A. THAT IS CORRECT.  
3618=Q. DO YOU EVER PLACE AN ORDER WITH INGRAM, AND INGRAM THEN  
3619=SHIPS FEWER BOOKS THAN ARE IN THAT ORDER, PERHAPS BECAUSE  
3620=THEY'RE OUT OF STOCK ON SOME BOOKS?  
3621=A. YES, FREQUENTLY.  
3622=Q. AND MR. NELSON ASKED YOU WITH RESPECT TO THIS INVOICE  
3623=THAT'S AT TAB 7 ON EXHIBIT 11286, HE NOTED THAT THERE ARE ONLY  
3624=79 COPIES OF BOOKS HAD BEEN SHIPPED TO YOU, CORRECT?  
  
3625=A. THAT'S CORRECT.  
3626=Q. I'D LIKE YOU TO REFERENCE THE PREVIOUS TAB, TAB 6, FROM  
3627=MR. NELSON'S BINDER, WHICH IS THE ABA BOOK BUYERS HANDBOOK FOR  
3628=1997. HERE IT'S DESIGNATED AS DEFENDANTS EXHIBIT 11750.  
3629=A. I HAVE IT.  
3630=Q. AND DO YOU SEE IN THE UPPER RIGHT-HAND CORNER OF THE ENTRY  
3631=FOR INGRAM, IT SAYS, "FREIGHT POLICY, FREE FREIGHT ELIGIBILITY  
3632=APPLIES TO ORDERS SHIPPED FROM PRIMARY WAREHOUSE FOR ORDERS 100  
3633=OR MORE UNITS." CORRECT?  
3634=A. THAT'S CORRECT.  
3635=Q. NOW, FROM LOOKING AT THE INVOICE, CAN YOU TELL HOW THE  
3636=INVOICE BEHIND TAB 7, CAN YOU TELL HOW LARGE YOUR ORDER TO  
3637=INGRAM WAS AS OPPOSED TO THE NUMBER OF BOOKS THAT WERE SHIPPED  
3638=TO YOU?  
3639=A. NO.  
3640=Q. IN YOUR EXPERIENCE, IS IT POSSIBLE THAT YOUR ORDER WAS MORE  
3641=THAN A HUNDRED UNITS AND THAT ONLY 79 UNITS WERE IN STOCK?  
3642=A. I COULD ALMOST GUARANTEE IT WAS.  
3643=Q. DO YOU, IN FACT, CONSULT THE RED BOOK ON A REGULAR BASIS OR  
3644=HAVE YOU, IN FACT, DONE SO IN CONNECTION WITH THE LITTLE  
3645=PROFESSOR BUSINESS?  
3646=A. YES.  
3647=Q. WE SAW IN YOUR DEPOSITION TESTIMONY YOU DIDN'T MENTION THE  
3648=RED BOOK AS AN IMPORTANT SOURCE YOU CONSULTED, IS THAT RIGHT?  
3649=A. THAT'S TRUE.

3650=Q. CAN YOU EXPLAIN WHY THAT'S THE CASE?  
3651=A. I WAS SIMPLY UNDER THE PRESSURE OF GIVING TESTIMONY AS  
3652=YOU'RE TRYING TO THINK OF ALL OF THESE THINGS, I JUST BLANKED  
3653=OUT THERE. I THINK THE RED BOOK IS IN A CERTAIN LOCATION IN  
3654=OUR STORE SO THAT WE ALL HAVE ACCESS TO IT AND IT NEVER GETS  
3655=MOVED FROM THERE. IT'S THAT IMPORTANT.  
3656=Q. YOU WERE ALSO ASKED ABOUT -- IN YOUR CROSS-EXAMINATION,  
3657=WHETHER YOU MARK UP THE RED BOOK WITH NEW TERMS.  
3658=A. YES, YES.  
3659=Q. SO AT THE END OF THE YEAR, THE RED BOOK, YOUR COPY MARKED  
3660=UP, WOULD BE SOMEWHAT DIFFERENT THAN AT THE BEGINNING OF THE  
3661=YEAR, RIGHT?  
3662=A. TRUE.  
3663=Q. HOW FREQUENTLY DO YOU MARK IT UP? HOW MANY ENTRIES HAVE TO  
3664=BE CHANGED IN THE COURSE OF A YEAR?  
3665=A. I HAVE NO IDEA.  
3666=Q. DO PUBLISHERS CHANGE THEIR TERMS FREQUENTLY IN THE MIDDLE  
3667=OF THE YEAR?  
3668=A. NO. THEY DO SOMETIMES, BUT FREQUENTLY, NO.  
3669=Q. YOU WERE ALSO ASKED ABOUT THE ABA SMALL PACKAGE SHIPPING  
3670=SERVICE, WITH RPS.  
3671=A. YES.  
3672=Q. AND THROUGH THAT PROGRAM, YOU CAN RECEIVE REDUCED FREIGHT  
3673=RATES, IS THAT RIGHT?  
3674=A. THAT'S CORRECT.  
  
3675=Q. WHO IS PAYING THE FREIGHT UNDER THOSE CIRCUMSTANCES?  
3676=A. WE ARE.  
3677=Q. "WE" MEANING THE LITTLE PROFESSOR?  
3678=A. LITTLE PROFESSOR.  
3679=Q. DOES LITTLE PROFESSOR RECEIVE ANY REBATES ON FREIGHT THAT'S  
3680=ACTUALLY PAID FOR BY THE PUBLISHER?  
3681=A. NO.  
3682=Q. SO THOSE REDUCED FREIGHT AMOUNTS ARE JUST FOR THE SERVICE  
3683=FROM A TRANSPORTATION COMPANY, IS THAT RIGHT?  
3684=A. THAT'S CORRECT.  
3685=Q. THEN MR. RADER ASKED YOU SOME QUESTIONS ABOUT COMMISSION  
3686=REPS. DO YOU RECALL THAT?  
3687=A. YES.  
3688=Q. AND IN FACT, IT MAY BE HELPFUL JUST TO PULL OUT HIS BINDER,  
3689=WHICH IS THE THIN BLACK BINDER, TAB 1, AND ON THE PAGE WITH THE  
3690=BATES NUMBER ENDING IN 506 OF THAT EXHIBIT -- SORRY, THERE'S NO  
3691=EXHIBIT NUMBERS HERE --  
3692=A. NO, I HAVE IT.  
3693= MR. HOHENGARTEN: SHALL I PROCEED, YOUR HONOR?  
3694= THE COURT: YES, PLEASE.  
3695=BY MR. HOHENGARTEN:  
3696=Q. MR. RADER ASKED QUESTIONS ABOUT SALES REP DISCOUNTS FROM  
3697=HIPPOCRENE. DO YOU SEE THAT THERE? YOU CAN ANSWER THE  
3698=QUESTION.  
3699=A. YES, I SEE IT.  
  
3700=Q. FIRST OF ALL, HAVE YOU PURCHASED BOOKS FROM HIPPOCRENE?  
3701=A. NOT THAT I KNOW. I COULD HAVE, ON A SPECIAL ORDER TO  
3702=INGRAM.  
3703=Q. SECOND OF ALL, TO YOUR KNOWLEDGE, CAN ANY BOOKSELLER BUY  
3704=THROUGH A COMMISSION REPRESENTATIVE AND RECEIVE THE TERMS  
3705=LISTED HERE?  
3706=A. YES, BUT THE COMMISSION REP WOULD ONLY COVER A CERTAIN  
3707=GEOGRAPHICAL PART OF THE COUNTRY.  
3708=Q. CAN ANY BOOKSELLER IN THE CHARLOTTE AREA WITH WHOM YOU  
3709=COMPETE PURCHASE THROUGH A COMMISSION REP?  
3710=A. YES.  
3711=Q. ARE ANY OF THE MAJOR VENDORS -- DO YOU MAKE ANY OF YOUR  
3712=PURCHASES FROM MAJOR PUBLISHERS THROUGH A COMMISSION  
3713=REPRESENTATIVE? MAY IT HELP YOU TO CONSULT THE --  
3714=A. THE LIST.  
3715=Q. -- THE LIST?  
3716=A. NO.  
3717=Q. NONE ON THE LIST, TAB 26?  
3718=A. LET ME LOOK AT IT, RATHER THAN JUST GIVE THAT....  
3719=Q. THAT'S IN THE PLAINTIFFS' BINDER, EXHIBIT 2591.

3720=A. AND YOUR QUESTION IS, ARE ANY OF THESE...?  
3721=Q. DOES LITTLE PROFESSOR PURCHASE --  
3722=A. ANY OF THESE THROUGH A COMMISSION REP?  
3723=Q. THAT'S RIGHT.  
3724=A. YES, YES. CHRONICLE, CONSORTIUM, HARCOURT, HEALTH

3725=COMMUNICATIONS, IPG, LPC, OXFORD. THAT WOULD BE IT.  
3726=Q. DO YOU KNOW WHETHER YOU OBTAINED A DIFFERENT DISCOUNT FOR  
3727=ANY OF THOSE VENDORS FROM YOUR COMMISSION REP THAN IS OFFERED  
3728=IN THE RED BOOK?  
3729=A. I DO NOT KNOW.  
3730=Q. WOULD YOU TURN TO TAB 3 OF MR. RADER'S BINDER, THE SIMON &  
3731=SCHUSTER STOCK OFFER, CORRECT?  
3732=A. YES.  
3733=Q. YOU TESTIFIED ON CROSS-EXAMINATION THAT PURCHASES COULD BE  
3734=MADE UNDER THAT STOCK OFFER FROM JANUARY 1ST THROUGH  
3735=APRIL 15TH, CORRECT?  
3736=A. YES.  
3737=Q. HOW MANY ORDERS CAN YOU PLACE DURING THAT WINDOW UNDER THAT  
3738=STOCK OFFER?  
3739=A. ONE.  
3740=Q. WOULD IT BE POSSIBLE FOR LITTLE PROFESSOR TO STOCK UP FOR  
3741=THE WHOLE YEAR, OR NUMBER OF MONTHS, WITH ONE ORDER TO A  
3742=PUBLISHER?  
3743=A. SINCE THIS IS BACK LIST, WOULD IT BE POSSIBLE? IT WOULD  
3744=NOT BE PRACTICAL.  
3745=Q. WHY WOULDN'T IT BE PRACTICAL?  
3746=A. STORAGE PROBLEM. YOU WOULDN'T WANT TO DO THAT, BECAUSE  
3747=EVEN WITH BACK LIST BOOKS, UNLESS YOU PICK PRECISELY THE RIGHT  
3748=NUMBER, YOU COULD END UP HAVING FAR MORE THAN YOU NEEDED.  
3749=INDEED, THAT'S HAPPENED TO US. A BOOK -- I'M SORRY -- A BOOK

3750=THAT IS SELLING LIKE CRAZY TODAY MAY DROP DEAD NEXT WEEK.  
3751=BECAUSE I BROUGHT A HUNDRED IN NOW, I HAVE TO EAT 95 AND SHIP  
3752=THEM BACK.  
3753=Q. SO EVEN IF YOU DIDN'T HAVE STORAGE SPACE, WOULD IT MAKE  
3754=BUSINESS SENSE TO PURCHASE BOOKS FOR MONTHS AHEAD AT ONE TIME?  
3755=A. NO.  
3756=Q. IF YOU WERE ABLE TO TAKE THE STOCK OFFER AND PLACE AN ORDER  
3757=EACH WEEK UNDER THE STOCK OFFER, WOULD YOU BE ABLE TO MORE  
3758=EFFICIENTLY USE THE STOCK OFFER?  
3759=A. OF COURSE.  
3760=Q. I THINK YOU ALSO SAID THAT A RETAILER TAKES ADVANTAGE OF  
3761=SHARED MARKDOWNS THAT THAT COULD REDUCE THAT RETAILER'S COST OF  
3762=GOODS, IN CROSS-EXAMINATION.  
3763=A. I DID, YES.  
3764=Q. WHAT DID YOU MEAN BY "COULD"?  
3765=A. I WAS THINKING TO MYSELF HOW LUDICROUS IT IS, BECAUSE FOR  
3766=US, EVERY TIME WE'VE TAKEN ADVANTAGE OF IT, I CANNOT THINK OF  
3767=ONE TIME THAT WE WERE EVER PAID FOR IT.  
3768=Q. SO YOU RECEIVED SHARED MARKDOWNS OFFERS?  
3769=A. WE DID EXACTLY WHAT THE STOCK OFFER WAS. WE PROVIDED  
3770=COMPUTER PROOF THAT WE HAD MADE THE SALES FOR THOSE PARTICULAR  
3771=TITLES WITHIN THE TIME LIMIT THAT THE PUBLISHER DESIGNATED, AND  
3772=IT GETS LOST IN THE PAPER SHUFFLE, AND IT NEVER, EVER GETS  
3773=CREDITED.  
3774=Q. SO LITTLE PROFESSOR DID NOT -- DID NOT RECEIVE CREDIT FOR  
3775=THOSE.  
3776=A. THAT'S CORRECT.  
3777=Q. YOU WERE ASKED SOME QUESTIONS ON CROSS-EXAMINATION ABOUT  
3778=WHEN YOU TAKE CREDIT FOR YOUR RETURNS. DO YOU RECALL THAT?  
3779=A. I DO.  
3780=Q. DO YOU KNOW WHEN BARNES & NOBLE TAKES CREDIT FOR ITS  
3781=RETURNS?  
3782=A. NO.  
3783=Q. DO YOU KNOW WHEN BORDERS DOES?  
3784=A. NO.  
3785=Q. NOW, IF WE COULD TURN TO TAB 5 OF MR. RADER'S BINDER, WHICH  
3786=IS DEFENDANTS EXHIBIT 7854, YOU'VE TESTIFIED ON  
3787=CROSS-EXAMINATION THAT SOME OF THESE -- THE STORES SHOWN HERE  
3788=HAD CLOSED. CAN YOU IDENTIFY WHICH ONES?  
3789=A. OMNIBUS IS GONE. BIZ BOOKS WAS NEVER A BOOKSTORE, SO FAR

3790=AS I KNOW. IT WAS AN OFFICE THAT JUST SPECIAL-ORDERED FROM  
3791=BUSINESSES. WHITE RABBIT BOOKS & THINGS IS GONE. LIVING WORD  
3792=IS A BOOKSTORE THAT IS IN A CHURCH BUILDING. IT IS A RELIGIOUS  
3793=BOOKSTORE. THE PUBLISHERS WAREHOUSE IS GONE. CAROLINA  
3794=CATHOLIC BOOKSHELF IS ALSO A VERY SMALL. IT'S IN A REMODELED  
3795=HOME. I THINK THE REST ARE STILL THERE.  
3796=Q. OKAY, YOU ALSO TESTIFIED, I BELIEVE, THAT -- BEFORE BARNES  
3797=& NOBLE AND BORDERS OPENED IN CHARLOTTE, THERE WERE ABOUT 11  
3798=INDEPENDENT BOOKSTORES?  
3799=A. THAT'S CORRECT.

3800=Q. SOME OF THOSE WERE THE INTIMATE BOOKSTORE, IS THAT RIGHT?  
3801=A. THERE WERE TWO INTIMATE BOOKSHOPS IN CHARLOTTE.  
3802=Q. AND INTIMATE BOOKSTORE IS A GENERAL BOOKSTORE, IS THAT  
3803=RIGHT?  
3804=A. TRUE.  
3805=Q. ARE THOSE STORES STILL IN EXISTENCE?  
3806=A. NO.  
3807=Q. ARE THERE OTHER INDEPENDENTS THAT WERE OPEN AT THAT TIME  
3808=THAT ARE CLOSED?  
3809=A. YES.  
3810=Q. CAN YOU LIST THEM?  
3811=A. HORIZON BOOKS, BOOKENDS, THERE WERE TWO INTIMATES,  
3812=BOOKENDS, HORIZON BOOKS, BRANDYWINE BOOKS, ONE OF THE  
3813=INTERNATIONAL NEWSSTANDS. THEY USED TO HAVE TWO. THEY'RE DOWN  
3814=TO ONE NOW.  
3815=Q. ARE THERE ANY SIGNIFICANT INDEPENDENT BOOKSTORES OTHER THAN  
3816=THE LITTLE PROFESSOR STILL IN CHARLOTTE?  
3817=A. YES, BOOKMARK.  
3818=Q. IS THAT THE ONLY ONE?  
3819=A. THAT IS A FULL BOOKSTORE. I NEED TO GIVE CREDIT TO  
3820=NEWSSTAND INTERNATIONAL, BUT THEY ARE PRIMARILY A MAGAZINE AND  
3821=NEWSPAPER STORE.  
3822=Q. OKAY. NOW, ONE FINAL QUESTION, FOR THE RECORD: WHAT  
3823=PERCENTAGE OF THE PURCHASES THAT YOU MAKE FROM PUBLISHERS WOULD  
3824=YOU ESTIMATE ARE, IN FACT, PURCHASED AT THE RED BOOK TERMS?

3825= MR. PETROCELLI: YOUR HONOR, AS PHRASED, I WOULD  
3826=OBJECT THAT IT LACKS FOUNDATION, BEST EVIDENCE RULE, WHEN HE  
3827=SAID, "IN FACT."  
3828= THE COURT: SUSTAINED.  
3829= MR. HOHENGARTEN: YOUR HONOR, I HAVE NO FURTHER  
3830=QUESTIONS.  
3831= THE COURT: RECALL?  
3832= MR. NELSON: NO RECALL, YOUR HONOR.  
3833= MR. PETROCELLI: NO, YOUR HONOR.  
3834= MR. RADER: NOTHING, YOUR HONOR. THANKS.  
3835= THE COURT: ALL RIGHT, CALL YOUR NEXT WITNESS.  
3836= MR. MACH: YOUR HONOR, DANIEL MACH FOR THE  
3837=PLAINTIFFS, M-A-C-H. CALL ANN CHRISTOPHERSEN.  
3838= THE CLERK: PLEASE RISE AND RAISE YOUR RIGHT HAND.  
3839= ANN CHRISTOPHERSEN,  
3840=CALLED AS A WITNESS FOR THE PLAINTIFFS, HAVING BEEN DULY SWORN,  
3841=TESTIFIED AS FOLLOWS:  
3842= THE CLERK: THANK YOU. PLEASE BE SEATED. PLEASE  
3843=STATE YOUR FULL NAME AND SPELL YOUR LAST NAME FOR THE RECORD.  
3844= THE WITNESS: MY FULL NAME IS ANN CHRISTOPHERSEN.  
3845=CHRISTOPHERSEN IS C-H-R-I-S-T-O-P-H-E-R-S-E-N.  
3846= DIRECT EXAMINATION  
3847=BY MR. MACH:  
3848=Q. MS. CHRISTOPHERSEN, BRIEFLY CAN YOU EXPLAIN YOUR  
3849=EDUCATIONAL BACKGROUND TO THE COURT?

3850=A. I HAVE A BACHELOR OF ARTS DEGREE AND A MASTER OF ARTS  
3851=DEGREE BOTH IN ENGLISH AND AMERICAN LITERATURE.  
3852=Q. WHEN DID YOU EARN THOSE DEGREES?  
3853=A. I EARNED A B.A. IN 1970 AND AN M.A. IN 1976.  
3854= THE COURT: FROM WHAT INSTITUTION?  
3855= THE WITNESS: UNDERGRADUATE, INDIANA UNIVERSITY, AND  
3856=GRADUATE FROM UNIVERSITY OF ILLINOIS IN CHICAGO.  
3857=BY MR. MACH:  
3858=Q. WHAT IS YOUR CURRENT OCCUPATION?  
3859=A. I'M A BOOKSELLER AND CO-OWNER OF A BOOKSTORE.

3860=Q. AND WHICH BOOKSTORE?  
3861=A. WOMEN & CHILDREN FIRST IN CHICAGO.  
3862=Q. AND TODAY WHERE IS THAT BOOKSTORE LOCATED WITHIN CHICAGO?  
3863=A. IT'S, THE ADDRESS IS 5233 NORTH CLARK STREET. IT'S IN A  
3864=NEIGHBORHOOD IN CHICAGO KNOWN AS ANDERSONVILLE.  
3865=Q. IS THE BOOKSTORE -- IS THE BUSINESS A CORPORATION?  
3866=A. IT IS.  
3867=Q. AND ARE YOU ONE OF THE OWNERS?  
3868=A. I AM.  
3869=Q. HOW MANY ARE THERE?  
3870=A. TWO OWNERS, TWO SHAREHOLDERS.  
3871=Q. HOW LONG HAVE YOU OWNED THE STORE?  
3872=A. SINCE 1979.  
3873=Q. AT THAT TIME DID YOU BUY AN EXISTING STORE?  
3874=A. NO, WE OPENED A NEW STORE.  
  
3875=Q. BRIEFLY, CAN YOU EXPLAIN WHY YOU WENT INTO BOOKSELLING?  
3876=A. WELL, MY BUSINESS PARTNER AND I, WHO MET IN GRADUATE  
3877=SCHOOL, I GUESS YOU CAN TELL FROM OUR BACKGROUND, HAVE BEEN  
3878=SERIOUS STUDENTS OF LITERATURE, READERS ALL OUR LIVES, AND ALSO  
3879=WE WERE INTERESTED IN EXERCISING AN ENTREPRENEURIAL SPIRIT, AND  
3880=THE COMBINATION OF DOING THAT IN THE CONTEXT OF SELLING BOOKS  
3881=SEEMED PERFECT.  
3882=Q. TODAY WHAT ARE YOUR RESPONSIBILITIES AT THE STORE?  
3883=A. MY RESPONSIBILITIES INCLUDE ALL THE GENERAL MANAGEMENT  
3884=RESPONSIBILITIES OF A SMALL BUSINESS. I HIRE EMPLOYEES, I  
3885=OVERSEE FINANCIALS, I BUY BOOKS, I ARRANGE AND OVERSEE  
3886=MARKETING AND ADVERTISING.  
3887=Q. NOW, WHERE WAS THE STORE ORIGINALLY LOCATED, IN THE CURRENT  
3888=LOCATION?  
3889=A. NO, WE OPENED THE STORE IN A NEIGHBORHOOD IN CHICAGO CALLED  
3890=LINCOLN PARK, WHICH IS NEAR THE NORTH SIDE NEIGHBORHOOD. IT  
3891=WAS A NEIGHBORHOOD I LIVED IN AT THE TIME, A NEIGHBORHOOD WE  
3892=WERE -- AND MY BUSINESS PARTNER ALSO, NEIGHBORHOOD THAT WE WERE  
3893=VERY FAMILIAR WITH, AND THOUGHT IT WOULD BE A GOOD SPOT FOR A  
3894=STORE.  
3895=Q. WHEN YOU FIRST OPENED THE STORE, HOW BIG WAS THE IT?  
3896=A. IT WAS 800 SQUARE FEET.  
3897=Q. AND APPROXIMATELY HOW MANY TITLES DID YOU CARRY?  
3898=A. I WOULD ESTIMATE WE CARRIED ABOUT 7,000 TITLES.  
3899=Q. AT THE TIME, HOW MANY EMPLOYEES WERE THERE AT THE STORE?  
  
3900=A. THERE WERE TWO FULL-TIME EMPLOYEES, LINDA BUBEN, MY  
3901=BUSINESS PARTNER, AND ME, AND WE HAD ANOTHER PART-TIME PERSON.  
3902=Q. AND IS LINDA BUBEN THE OTHER PERSON WHO CO-OWNS THE STORE  
3903=WITH YOU?  
3904=A. THAT'S RIGHT.  
3905=Q. NOW, YOU MENTIONED ONE -- HOW MANY TOTAL MOVES HAVE THERE  
3906=BEEN?  
3907=A. WE'VE HAD TWO MOVES.  
3908=Q. CAN YOU DESCRIBE THEM, WITH DATES?  
3909=A. YES, WE MOVED THE FIRST TIME IN 1985. WE'D OUTGROWN OUR  
3910=SPACE AND MOVED TO A LOCATION ABOUT THREE BLOCKS FROM THE  
3911=ORIGINAL ONE. IT WAS IN A MORE MAJOR COMMERCIAL STREET, AND WE  
3912=DOUBLED THE SELLING SPACE OF THE STORE. AND THEN WE MOVED  
3913=AGAIN IN 1990 TO OUR CURRENT LOCATION IN THE ANDERSONVILLE.  
3914=Q. AND TODAY, APPROXIMATELY HOW BIG IS THE STORE?  
3915=A. THE STORE IS 3500 SQUARE FEET.  
3916=Q. WHEN YOU MOVED IN 1990, WAS IT THAT SIZE?  
3917=A. NO, WHEN WE MOVED IN 1990, IT WAS 2400 -- WE MOVED TO A  
3918=2400 SQUARE FOOT SPACE.  
3919=Q. WHEN DID YOU EXPAND?  
3920=A. WE EXPANDED IN THE SPRING OF 1990.  
3921=Q. AND TODAY, APPROXIMATELY HOW MANY TITLES DO YOU CARRY?  
3922=A. TODAY, I WOULD ESTIMATE WE CARRY 35,000 TITLES.  
3923=Q. AND HOW MANY EMPLOYEES DO YOU HAVE?  
3924=A. WE HAVE SIX FULL-TIME EMPLOYEES AND THAT INCLUDES LINDA AND  
  
3925=ME, AND THREE PART-TIME EMPLOYEES.  
3926=Q. MS. CHRISTOPHERSEN, HAS YOUR STORE EVER WON ANY AWARDS OF  
3927=ANY KIND?  
3928=A. WE'VE BEEN -- WE HAD A COUPLE YEARS AGO A FEATURE SPREAD ON  
3929=US IN PUBLISHERS WEEKLY. WE WERE NAMED THE BEST BOOKSTORE IN



3930=CHICAGO IN, I THINK, 1997 BY NEW CITY, WHICH IS AN ARTS AND  
3931=CULTURE PUBLICATION IN CHICAGO, AND A RECENTLY PUBLISHED BOOK  
3932=CALLED THE LITERARY GUIDE TO CHICAGO, WE WERE CALLED ONE OF THE  
3933=BEST BOOKSTORES IN THE COUNTRY.  
3934=Q. IN GENERAL TERMS, HOW WOULD YOU DESCRIBE YOUR STORE?  
3935=A. WELL, WE'RE A SPECIALTY STORE. WE FOCUS ON BOOKS BY AND  
3936=ABOUT WOMEN, AND CHILDREN'S BOOKS FOR ALL AGES. THAT INCLUDES  
3937=A GREAT BREADTH OF STOCK.  
3938=Q. WHAT CATEGORIES OF BOOKS DO YOU SELL?  
3939=A. WE SELL FICTION, GENRE FICTION, LIKE MYSTERIES, SCIENCE  
3940=FICTION. WE HAVE A LARGE POETRY SECTION, PSYCHOLOGY, ART,  
3941=RELIGION AND SPIRITUALITY, LESBIAN AND GAY STUDIES, HEALTH, IF  
3942=I DIDN'T MENTION THAT, LITERARY CRITICISM, ESSAYS, TRAVEL, TO  
3943=NAME SOME OF THEM. I THINK WE HAVE 25 OR 30 CATEGORIES.  
3944=Q. CAN YOU DESCRIBE YOUR CUSTOMER BASE?  
3945=A. WELL, OUR CUSTOMARY BASE IS LARGE. WE DRAW FROM --  
3946=CUSTOMERS FROM THE GREATER CHICAGO METROPOLITAN AREA, REALLY  
3947=THE REGION OF THE MIDWEST, AND TO A LESSER EXTENT OBVIOUSLY WE  
3948=ALSO DRAW NATIONALLY AND EVEN INTERNATIONALLY.  
3949=Q. YOU MENTIONED THE GREATER CHICAGO METROPOLITAN AREA. HOW  
  
3950=WOULD YOU DEFINE THAT?  
3951=A. I WOULD DEFINE THAT AS BOTH CHICAGO PROPER AND THE  
3952=SURROUNDING SUBURBS OF CHICAGO, OF WHICH THERE ARE MANY.  
3953=Q. AND APPROXIMATELY HOW MANY MILES AWAY FROM YOUR STORE WOULD  
3954=YOU SAY YOUR PRIMARY COMPETITIVE AREA IS?  
3955=A. I WOULD SAY 25, 30 MILES.  
3956=Q. AND HOW DO YOU KNOW WHERE YOUR CUSTOMERS COME FROM?  
3957=A. WELL, ONE OF THE WAYS WE KNOW IS THAT WE HAVE A MEMBERSHIP  
3958=PROGRAM AND A MAILING SUBSCRIPTION PROGRAM AT THE STORE. SO WE  
3959=HAVE LOTS OF ADDRESSES, AND I KNOW BY VIRTUE OF THE ZIP CODES  
3960=IN THOSE ADDRESSES WHERE PEOPLE COME FROM.  
3961=Q. HOW DO YOU COMPILE THAT MAILING LIST?  
3962=A. PEOPLE EITHER, AS I SAID, JOIN OUR MEMBERSHIP PROGRAM,  
3963=WHICH IS A PROGRAM WE'VE HAD IN EFFECT FOR ABOUT 15 YEARS, 16  
3964=YEARS, OR THEY SUBSCRIBE TO, AS A SEPARATE MATTER, SUBSCRIBE TO  
3965=OUR MAILING LIST, SO THAT THEY CAN KEEP UP WITH THINGS THAT ARE  
3966=GOING ON AT THE STORE.  
3967=Q. NOW, DOES 25 TO 30 MILES SEEM LIKE A LOT TO DEFINE YOUR  
3968=COMPETITIVE AREA?  
3969=A. I DON'T THINK SO, IN AN AREA LIKE CHICAGO, BECAUSE THERE'S  
3970=A LOT OF MOVEMENT. PEOPLE WHO LIVE IN THE SUBURBS WORK IN THE  
3971=CITY. CHICAGO IS A VERY DYNAMIC, INTERESTING CITY, AND PEOPLE  
3972=MOVE AROUND. YOU KNOW, THEY COME TO EVENTS AT THE STORE, THEY  
3973=VISIT INTERESTING NEIGHBORHOODS. THERE ARE A LOT OF ETHNIC  
3974=NEIGHBORHOODS IN CHICAGO, OF WHICH OURS IS ONE, AND THERE'S  
  
3975=JUST A LOT OF MOVEMENT.  
3976=Q. YOU MENTIONED YOU MOVED TO THE CURRENT LOCATION IN 1990.  
3977=IS THAT CORRECT?  
3978=A. THAT'S CORRECT.  
3979=Q. IN 1990, WERE THERE ANY BORDERS OR BARNES & NOBLE  
3980=UPERSTORES WITHIN YOUR COMPETITIVE AREA, TO YOUR KNOWLEDGE?  
3981=A. JUST ONE.  
3982=Q. WHERE WAS THAT?  
3983=A. THAT WAS ON THE WEST SIDE OF CHICAGO. WESTERN SIDE. IT  
3984=WAS OUTSIDE THE CITY.  
3985=Q. WHAT WAS THE NAME OF THE SUBURB?  
3986=A. I THINK IT WAS OAK BROOK, OR -- YEAH.  
3987=Q. I KNOW I JUST ASKED YOU ABOUT BARNES & NOBLE AND BORDERS.  
3988=OTHER THAN THOSE STORES, WERE THERE ANY OTHER BOOKSTORES WITHIN  
3989=YOUR COMPETITIVE AREA IN 1990?  
3990=A. OH, YES, MANY.  
3991=Q. APPROXIMATELY HOW MANY?  
3992=A. IN OUR COMPETITIVE AREA, IT WOULD BE HARD TO EVEN ESTIMATE.  
3993=I WOULD SAY 25, MAYBE MORE.  
3994=Q. AND DID YOU COMPETE WITH SOME OF THOSE STORES?  
3995=A. SURE.  
3996=Q. ARE YOU AWARE OF WHETHER, SINCE 1990, ANY ADDITIONAL BARNES  
3997=& NOBLE OR BORDERS STORES MOVED INTO YOUR COMPETITIVE AREA?  
3998=A. SINCE 1990?  
3999=Q. YES?

4000=A. YES.  
4001=Q. AS OF TODAY, APPROXIMATELY HOW MANY BARNES & NOBLE STORES  
4002=ARE LOCATED WITHIN YOUR COMPETITIVE AREA?  
4003=A. THERE ARE 10 TO 12.  
4004=Q. AS OF TODAY, APPROXIMATELY HOW MANY BORDERS STORES ARE  
4005=LOCATED WITHIN YOUR COMPETITIVE AREA?  
4006=A. THERE ARE 10.  
4007=Q. IF WE NARROWED OUR AREA OF FOCUS TO WITHIN ABOUT 5 OR  
4008=6 MILES OF YOUR STORE, HOW MANY BARNES & NOBLE STORES ARE  
4009=LOCATED THERE TODAY?  
4010=A. FOUR.  
4011=Q. AND DO YOU KNOW WHERE THEY ARE?  
4012=A. YES.  
4013=Q. CAN YOU TELL THE COURT, PLEASE?  
4014=A. THERE'S ONE IN EVANSTON, ILLINOIS, WHICH IS THE SUBURB  
4015=IMMEDIATELY NORTH OF THE CITY LIMITS. THERE'S ONE ON WEBSTER  
4016=STREET IN CHICAGO, THERE'S ONE ON NORTH STATE STREET, AND  
4017=THERE'S ONE ON DIVERSEY.  
4018=Q. AND AGAIN, THESE ARE STORES THAT ARE WITHIN 6 MILES OF YOUR  
4019=STORE?  
4020=A. RIGHT.  
4021=Q. WITHIN THAT SAME AREA, APPROXIMATELY HOW MANY BORDERS  
4022=STORES?  
4023=A. THERE ARE THREE.  
4024=Q. AND DO YOU KNOW WHERE THEY ARE?  
  
4025=A. YES. ONE'S IN EVANSTON, ON SHERMAN AVENUE. ONE'S IN -- ON  
4026=NORTH MICHIGAN AVENUE, JUST NORTH OF THE LOOP, THE CENTRAL  
4027=BUSINESS DISTRICT IN CHICAGO, AND THERE'S ONE ON NORTH CLARK  
4028=STREET.  
4029=Q. YOU'VE TESTIFIED THAT APPROXIMATELY 10 BARNES & NOBLE  
4030=STORES ARE LOCATED WITHIN YOUR COMPETITIVE AREA, IS THAT  
4031=CORRECT?  
4032=A. RIGHT.  
4033=Q. IN YOUR VIEW, DO YOU COMPETE WITH THOSE STORES?  
4034=A. OH, WE MOST CERTAINLY COMPETE WITH THOSE STORES.  
4035=Q. HOW DO YOU KNOW THAT?  
4036=A. WELL, I KNOW THAT BECAUSE WE CARRY A SUBSTANTIAL NUMBER OF  
4037=THE SAME TITLES THOSE STORES CARRY. AS I'VE ALREADY DESCRIBED,  
4038=THEY EXIST WITHIN A REGION THAT WE DRAW CUSTOMERS FROM, AND  
4039=CUSTOMERS ON OCCASION COME INTO OUR STORE CARRYING BORDERS AND  
4040=BARNES & NOBLE BAGS.  
4041=Q. YOU TESTIFIED THAT YOU'RE A SPECIALTY STORE, IS THAT  
4042=CORRECT?  
4043=A. THAT'S CORRECT.  
4044=Q. THEN CAN YOU EXPLAIN TO THE COURT HOW YOU -- HOW YOU  
4045=COMPETE WITH THESE GENERAL BOOKSTORES?  
4046=A. WELL, WE'RE A SPECIALTY STORE, WHICH MEANS WE'RE  
4047=COMPREHENSIVE IN OUR SPECIALTY, AS I DESCRIBED, BUT  
4048=PARTICULARLY THESE DAYS THERE'S A GREAT DEAL OF OVERLAP BETWEEN  
4049=THE BOOKS THAT CONSTITUTE OUR SPECIALTY AND THE BOOKS A GENERAL  
  
4050=BOOKSTORE CARRIES, PARTICULARLY IF THAT BOOKSTORE IS LARGE,  
4051=CARRIES A HUNDRED THOUSAND TITLES.  
4052= IT'S THE CASE THAT MANY OF MY BEST SELLING BOOKS,  
4053=I'M SURE, ARE ALSO THE BEST SELLING TITLES IN ANY GENERAL BOOK  
4054=STORE. FOR EXAMPLE, AMY TAN, WHO JUST PUBLISHED A NOVEL CALLED  
4055=BONESETTER, IS ONE OF MY TOP SELLING NEW FICTION TITLES. I AM  
4056=CONFIDENT -- IT'S NUMBER 6 ON THE NEW YORK TIMES BEST-SELLER  
4057=LIST -- I'M CONFIDENT IT'S THERE BECAUSE IT'S ALSO A  
4058=BEST-SELLING TITLE IN A GENERAL BOOKSTORE.  
4059=Q. HAVE YOU EVER BEEN TO ANY OF THE BARNES & NOBLE STORES THAT  
4060=YOU'VE IDENTIFIED AS BEING IN YOUR COMPETITIVE AREA?  
4061=A. YES.  
4062=Q. OF THE 10 OR SO THAT YOU REFER TO, HOW MANY HAVE YOU BEEN  
4063=TO?  
4064=A. THREE OR FOUR.  
4065=Q. HOW OFTEN HAVE YOU VISITED THOSE STORES?  
4066=A. PERIODICALLY OVER THE YEARS SINCE THEY'VE OPENED.  
4067=Q. DID YOU GET A SENSE OF THE SELECTION THAT THEY OFFERED?  
4068=A. YES.  
4069=Q. CAN YOU DESCRIBE IT, BRIEFLY?  
4070=A. THOSE STORES HAVE PSYCHOLOGY SECTIONS THAT CONTAIN BOOKS BY

4071=AND ABOUT WOMEN, THEY CONTAIN ART SECTIONS THAT HAVE BOOKS BY  
4072=AND ABOUT WOMEN, THEY CONTAIN FICTION SECTIONS THAT -- SOME OF  
4073=THE MOST PROMINENT NOVELISTS TODAY ARE WOMEN. THEY CARRY MANY  
4074=OF THE SAME BOOKS WE DO.

4075=Q. DID THE STORES HAVE A CHILDREN'S SECTION?

4076=A. OH, SURE.

4077=Q. AND DOES YOUR STORE HAVE A CHILDREN'S SECTION?

4078=A. YES, OUR CHILDREN'S SECTION IS A SIGNIFICANT PART OF OUR  
4079=BUSINESS.

4080=Q. DOES THE BARNES & NOBLE STORES THAT YOU VISITED HAVE A  
4081=WOMEN'S STUDIES SECTION?

4082=A. YES.

4083=Q. AND GAY AND LESBIAN SECTION?

4084=A. YES.

4085=Q. OKAY, NOW, I'M GOING TO ASK SIMILAR QUESTIONS FOR BORDERS.

4086=WE'VE JUST BEEN TALKING ABOUT BARNES & NOBLE.

4087= NOW, YOU'VE TESTIFIED THAT APPROXIMATELY 10 BORDERS  
4088=STORES ARE LOCATED WITHIN YOUR COMPETITIVE AREA, IS THAT RIGHT?

4089=A. THAT'S CORRECT.

4090=Q. AND IN YOUR VIEW, DO YOU COMPETE WITH THOSE STORES?

4091=A. WE MOST CERTAINLY COMPETE WITH THOSE STORES.

4092=Q. AND AGAIN, HOW DO YOU KNOW THAT?

4093=A. I KNOW THAT FOR ESSENTIALLY THE SAME REASONS, THAT THEY  
4094=EXIST IN A GEOGRAPHIC REGION THAT WE DRAW FROM, THAT THEY CARRY  
4095=SUBSTANTIALLY THE SAME TITLES WE CARRY, AND AS I THINK I  
4096=MENTIONED BEFORE, CUSTOMERS COME INTO MY STORE BEARING BAGS  
4097=WITH BORDERS IMPRINT ON THEM.

4098=Q. HAVE YOU EVER BEEN TO ANY OF THE BORDERS STORES THAT YOU'VE  
4099=IDENTIFIED AS BEING WITHIN YOUR COMPETITIVE AREA?

4100=A. YES, I HAVE.

4101=Q. OF THE 10 OR SO THAT YOU'VE REFERRED TO, APPROXIMATELY HOW  
4102=MANY HAVE YOU BEEN TO?

4103=A. I'VE BEEN TO THREE.

4104=Q. AND AGAIN, HOW OFTEN HAVE YOU VISITED THOSE STORES?

4105=A. PERIODICALLY OVER THE YEARS THEY'VE BEEN IN BUSINESS.

4106=Q. DID YOU GET A SENSE OF THE SELECTION THAT THEY OFFERED?

4107=A. YES.

4108=Q. CAN YOU DESCRIBE IT?

4109=A. YES. THEY CARRY MANY OF THE SAME BOOKS WE CARRY AT WOMEN &  
4110=CHILDREN FIRST.

4111=Q. AND AGAIN, DID THE BORDERS STORES HAVE CHILDREN'S SECTIONS?

4112=A. SIGNIFICANT CHILDREN'S SECTIONS; OF COURSE FICTION

4113=SECTIONS, NEW RELEASE, HARD COVER SECTIONS THAT, AGAIN,

4114=REPLICATE MANY OF THE SAME BOOKS.

4115=Q. WAS THERE ANY POINT DURING THE 1990'S THAT YOU NOTICED A

4116=STEADY INFLUX OF BARNES & NOBLE AND BORDERS STORES IN YOUR

4117=COMPETITIVE AREA?

4118=A. WELL, IT STARTED HEAVILY IN 1992, AND THAT FIGURE OF 10 AND  
4119=12 STORES CONTINUED THROUGH, I THINK, 1998. SO YES, THOSE

4120=YEAR RANGING FROM '92 TO '98.

4121=Q. DID YOU TAKE ANY ACTION AT YOUR STORE IN RESPONSE TO THE

4122=INFLUX OF BORDERS AND BARNES & NOBLE STORES IN YOUR COMPETITIVE  
4123=AREA?

4124=A. YES. WHEN BARNES & NOBLE AND BORDERS STARTED, YOU KNOW,

4125=ARRIVING IN CHICAGO IN SIGNIFICANT NUMBERS, WE SAT DOWN AND DID

4126=A CONSIDERABLE ANALYSIS OVER THOSE EARLY YEARS IN PARTICULAR,

4127=STARTED TO SEE A DECLINE IN OUR SALES AFTER HAVING CONSISTENTLY

4128=RISEN IN SALES OVER THE COURSE OF OUR HISTORY, AND WE

4129=CONSIDERED DISCOUNTING, BUT FAIRLY QUICKLY CAME TO THE -- WE

4130=HAVE HAD VARIOUS DISCOUNT PROGRAMS AT OUR STORE OVER THE YEARS

4131=BUT CONSIDERED, YOU KNOW, REPLICATING THE KINDS OF DISCOUNT

4132=PROGRAMS WE SAW THOSE BIG NEW COMPETITORS ENACTING.

4133= WE DECIDED IT WAS JUST ECONOMICALLY NOT FEASIBLE TO

4134=DO THAT; THAT IT WOULD BE MORE DAMAGING TO OUR BUSINESS THAN

4135=HELPFUL, BECAUSE ESSENTIALLY WE COULDN'T DISCOUNT BOOKS AT

4136=40 PERCENT, FOR EXAMPLE, WHEN WE WERE MOSTLY BUYING BOOKS AT

4137=40 PERCENT. IT GIVES YOU NO OPERATING MARGIN TO WORK WITH.

4138= SO INSTEAD OF THAT, WHAT WE DECIDED TO DO WAS TO

4139=DEVELOP SOME NEW PROGRAMS TO REPLACE THE LOSS OF SALES TO

4140=IN-STORE CUSTOMERS. SO WE DEVELOPED THREE OUTSIDE SALES

4141=PROGRAMS, THAT IS TO SAY, SALES THAT WE COULD TAKE OUTSIDE OF  
4142=THE STORE, ESSENTIALLY TO REPLACE SOME OF THAT LOST IN-STORE  
4143=BUSINESS.  
4144=Q. CAN YOU DESCRIBE THOSE PROGRAMS?  
4145=A. YES. ONE THING WE DID WAS START SELLING TEXTBOOKS. THERE  
4146=ARE A LOT OF -- WE AREN'T IN IMMEDIATE PROXIMITY TO ANY  
4147=UNIVERSITIES, BUT WE, YOU KNOW, WE HAVE A NUMBER OF  
4148=UNIVERSITIES IN THE CITY, WITHIN A REASONABLE DISTANCE, YOU  
4149=KNOW, FIVE, SIX MILES FROM THE STORE.

4150= SO WE STARTED SELLING, CULTIVATING OUR RELATIONSHIPS  
4151=WITH PARTICULARLY ENGLISH PROFESSORS AND WOMEN'S STUDIES  
4152=PROFESSORS, AND SELLING TEXTBOOKS, ESSENTIALLY. WE TAKE THEM  
4153=TO STUDENTS' CLASSES AND MAKE IT CONVENIENT FOR BOTH PROFESSOR  
4154=AND STUDENTS THAT WAY.  
4155= WE ALSO -- CHICAGO PUBLIC SCHOOLS IS A SOURCE OF  
4156=BUSINESS, AND WE'VE HAD ALWAYS HAD SOME OF THAT BUSINESS, BUT  
4157=WE WORKED TO DEVELOP THAT AND DO MORE SCHOOL SALES.  
4158= WE ALSO WORKED, ALTHOUGH LESS SUCCESSFULLY, ON  
4159=DEVELOPING A PROGRAM OF CORPORATE SALES TO BUSINESS --  
4160=BUSINESSES IN CHICAGO.  
4161=Q. YOU REFERRED TO DISCOUNTING. DOES YOUR STORE DISCOUNT IN  
4162=ANY WAY?  
4163=A. WE DO. WE HAVE, AS I MENTIONED EARLIER, WE HAVE A  
4164=MEMBERSHIP PROGRAM, AND WHAT COMPRISES THAT PROGRAM IS PEOPLE  
4165=ESSENTIALLY BUY A MEMBERSHIP, CURRENTLY IT'S \$25 FOR A YEAR,  
4166=THAT ENTITLES THEM TO A 10 PERCENT DISCOUNT ON BOOKS FOR A  
4167=YEAR, AND PUTS THEM ON OUR MAILING LIST AT NO CHARGE, AND GETS  
4168=THEM A FEW OTHER BENEFITS.  
4169= WE ALSO DISCOUNT -- WE HAVE A TEACHER'S DISCOUNT  
4170=PROGRAM. WE GIVE TEACHERS WHO ARE SPENDING OUT-OF-POCKET MONEY  
4171=FOR BOOKS FOR THEIR CLASSROOM A DISCOUNT. WE DISCOUNT TO BOOK  
4172=GROUPS WHO ARE PURCHASING THEIR BOOK GROUP BOOKS THROUGH US.  
4173=WE DISCOUNT OUR OWN -- WE HAVE A BOOK GROUP THAT MEETS AT OUR  
4174=STORE, WE DISCOUNT THE BOOK FOR THAT GROUP. AND WE HAVE  
  
4175=SPECIAL SALES IN THE COURSE OF THE YEAR THAT ARE, IN ESSENCE, A  
4176=DISCOUNT.  
4177=Q. HAVE THOSE DISCOUNTS CHANGED OVER TIME?  
4178=A. NO, ACTUALLY, THOSE HAVE REMAINED PRETTY STEADY AS A  
4179=PERCENTAGE.  
4180=Q. NOW, YOU'VE LISTED A NUMBER OF FACTORS CONTRIBUTING TO YOUR  
4181=CONCLUSION THAT YOU COMPETE WITH THE 20 OR SO BARNES & NOBLE  
4182=AND BORDERS STORES WITHIN YOUR COMPETITIVE AREA.  
4183=A. RIGHT.  
4184=Q. I BELIEVE YOU REFERRED TO YOUR SALES TRENDS. CAN YOU JUST  
4185=DESCRIBE BRIEFLY WHAT THOSE SALES TRENDS HAVE BEEN?  
4186=A. WELL, WE OPENED, AS I MENTIONED, IN 1979 IN A MODEST-SIZE  
4187=SPACE, BUT WE STILL HAD, WE THOUGHT, A PRETTY GOOD FIRST YEAR  
4188=SALES, AND OUR TRENDS HAVE BEEN, SINCE WE OPENED THE STORE, A  
4189=GROWTH IN GROSS SALES VIRTUALLY EVERY YEAR SINCE WE OPENED,  
4190=UNTIL FISCAL YEAR 1993-94.  
4191=Q. WHAT HAPPENED THEN?  
4192=A. THEN OUR SALES TOOK A SIGNIFICANT DIP, AND REMAINED AT  
4193=THAT -- ESSENTIALLY AT THAT REDUCED LEVEL FOR THE NEXT FOUR  
4194=YEARS.  
4195=Q. AND DID THERE COME A TIME WHEN SALES BEGAN TO PICK UP?  
4196=A. YES. IN THE LAST QUARTER OF '98, I THINK I MENTIONED WE  
4197=EXPANDED THE STORE INTO THE STORE NEXT TO US IN THE SPRING OF  
4198='98, SO OUR LAST QUARTER -- OUR LAST QUARTER OF '98, YES,  
4199=REFLECTED SOME IMPROVEMENT, AND THEN THE END OF FISCAL YEAR '99  
  
4200=WAS BETTER STILL.  
4201=Q. DO YOU ATTRIBUTE THE INCREASE IN SALES TO THE STORE  
4202=EXPANSION?  
4203=A. YES. YOU KNOW, THAT, AND ALSO OUR OUTSIDE SALES PROGRAMS  
4204=HAVE CONTINUED TO GAIN, SO THAT, TOO.  
4205=Q. AND GIVEN THAT YOUR SALES STARTED TO INCREASE AT THE VERY  
4206=END OF THE 90'S, WOULD YOU SAY THAT AT THAT TIME GOING FORWARD,  
4207=THAT YOU NO LONGER COMPETED WITH THE BARNES & NOBLE OR BORDERS  
4208=UPERSTORES IN YOUR AREA?  
4209=A. OH, NO, WE STILL CERTAINLY CONTINUE TO COMPETE WITH THOSE  
4210=SAME STORES.

4211=Q. AND HOW DO YOU KNOW THAT?  
4212=A. FOR THE SAME REASONS. I MEAN, WE STILL DRAW CUSTOMERS FROM  
4213=THE REGIONS THAT I DESCRIBED. WE STILL -- PROBABLY MORE SO  
4214=OVER TIME, THERE'S MORE OVERLAP IN THE TITLES WE CARRY, AND SO  
4215=THAT HASN'T CHANGED.  
4216=Q. NOW, OTHER THAN BARNES & NOBLE AND BORDERS, THERE ARE OTHER  
4217=BOOKSTORES IN YOUR COMPETITIVE AREA, IN THE GREATER CHICAGO  
4218=AREA, IS THAT RIGHT?  
4219=A. YES, YES.  
4220=Q. DO YOU COMPETE WITH THOSE STORES?  
4221=A. YES.  
4222=Q. OR ANY OF THEM?  
4223=A. SOME MORE THAN LESS, BUT WE COMPETE WITH ANY OF THOSE  
4224=STORES -- BUT WE COMPETE WITH ANYONE WHO CARRIES THE SAME  
  
4225=MERCHANDISE THAT WE DO.  
4226=Q. AND THE DECLINE IN SALES AND THE FLATTENING DURING THE  
4227=90'S, DO YOU ATTRIBUTE THAT TO THOSE OTHER STORES, AS WELL?  
4228=A. I DON'T ATTRIBUTE THE CHANGE TO THOSE OTHER STORES BECAUSE  
4229=ESSENTIALLY THERE WAS NO CHANGE. I MEAN, THE STORES THAT WE  
4230=COMPETED WITH IN OUR COMPETITIVE REGION WERE ESSENTIALLY, YOU  
4231=KNOW, THERE FOR YEARS. SO THERE WEREN'T ANY NEW INDEPENDENT  
4232=STORES OR ANY OTHER KIND OF STORES THAT CAME IN THAT SUDDENLY  
4233=PROVIDED A NEW COMPETITOR.  
4234=Q. NOW, TWO OF THE BARNES & NOBLE STORES THAT OPENED WITHIN  
4235=6 MILES OF YOUR STORE OPENED IN 1992, IS THAT CORRECT?  
4236=A. TWO OF THE STORES DID, YES.  
4237=Q. NOW, THE SALES DROP THAT YOU SAID YOU EXPERIENCED, DID THAT  
4238=HAPPEN IMMEDIATELY AFTER?  
4239=A. NO, IT WASN'T -- WE DIDN'T REALLY FEEL THAT IN A BIG WAY  
4240=UNTIL FISCAL '93, OUR FISCAL YEAR 93-94. OUR YEAR ENDS IN  
4241=JULY.  
4242=Q. WHY IS THAT?  
4243=A. WELL, YOU KNOW, WE LOOKED AT THAT, AND I THINK THAT -- I  
4244=THINK THE REASON IS BECAUSE -- I MENTIONED THAT WE MOVED TO A  
4245=NEW NEIGHBORHOOD IN 1990, AND OUR NEIGHBORHOOD, THOUGH IT WAS A  
4246=GOOD ONE WHEN WE MOVED THERE, THE FACT IS, IT'S DEVELOPED  
4247=ENORMOUSLY, AND PARTICULARLY IN THE YEARS -- THE FIRST FEW  
4248=YEARS FOLLOWING OUR MOVE THERE WERE NEW BUSINESSES THAT CAME IN  
4249=AND THE NEIGHBORHOOD, YOU KNOW, STARTED PRETTY QUICKLY  
  
4250=DEVELOPING A REPUTATION AS BEING KIND OF AN INTERESTING, YOU  
4251=KNOW, REVITALIZED NEIGHBORHOOD IN CHICAGO. SO WE HAD A REAL  
4252=BURST OF, JUST, ACTIVITY ON THE STREET IN 92-93 THAT I THINK  
4253=PROVIDED US WITH NEW EXPOSURE, NEW CUSTOMERS, YOU KNOW, JUST  
4254=TRAFFIC THAT SUSTAINED US, YOU KNOW, IN PART, THAT YEAR.  
4255=Q. NOW, YOU MENTIONED THAT THERE ARE APPROXIMATELY 10, I THINK  
4256=YOU MAY HAVE SAID APPROXIMATELY 10 TO 12 BARNES & NOBLE STORES  
4257=WITHIN YOUR COMPETITIVE AREA, IS THAT CORRECT?  
4258=A. YES.  
4259=Q. DO YOU HAVE ANY DOUBT THAT YOU COMPETE WITH THEM, TO THIS  
4260=DAY?  
4261=A. ABSOLUTELY NO DOUBT.  
4262=Q. DO YOU HAVE ANY DOUBT THAT YOU COMPETE WITH THE 10 OR SO  
4263=BORDERS STORES WITHIN YOUR COMPETITIVE AREA?  
4264=A. NO DOUBT.  
4265=Q. AND JUST TO SUM UP, CAN YOU EXPLAIN WHY THAT IS?  
4266=A. WELL, AT THE RISK OF BEING REPETITIVE, BECAUSE --  
4267=Q. MY FAULT, IF YOU ARE.  
4268=A. -- WE DRAW ON THE SAME GEOGRAPHIC REGION, WE SELL  
4269=SUBSTANTIALLY THE SAME TITLES, AND CUSTOMERS COME INTO MY STORE  
4270=THAT ARE BARNES & NOBLE AND BORDERS CUSTOMERS AS WELL.  
4271= THE COURT: I THINK WE'VE REACHED A STOPPING POINT,  
4272=AND MR. YOUNG --  
4273= MR. YOUNG: IF I MAY, YOUR HONOR. WE HAD SAID WE  
4274=WOULD TALK A LITTLE BIT ABOUT THE SCHEDULE, BUT I THINK WE'RE  
  
4275=OKAY, AND I CAN BRING YOU UP TO SPEED ON THAT, IF YOU LIKE,  
4276=NEXT WEEK.  
4277= THE COURT: YES.  
4278= MR. YOUNG: MR. HOHENGARTEN WANTED AN OPPORTUNITY TO  
4279=ADDRESS THE COURT.  
4280= MR. HOHENGARTEN: YOUR HONOR, I WANTED TO APOLOGIZE

4281=TO THE COURT AND TO COUNSEL FOR USING DOCUMENTS IN THE DIRECT  
4282=EXAMINATION THAT HAD NOT BEEN MARKED AS TRIAL EXHIBITS. THE  
4283=OBJECTION TO THEIR USE WAS APPROPRIATE, AND AS THE COURT MAY  
4284=HAVE PERCEIVED, THIS IS MY FIRST TRIAL, MY FIRST DIRECT  
4285=EXAMINATION.  
4286= THE COURT: I THINK YOU'RE DOING FINE. JUST DON'T  
4287=DO THAT AGAIN.  
4288= MR. HOHENGARTEN: THANK YOU VERY MUCH, YOUR HONOR.  
4289= MR. YOUNG: THANK YOU, YOUR HONOR, AND I HAVE ONE  
4290=OTHER REQUEST OF THE COURT. WE'VE HAD A COUPLE OF MOMENTS  
4291=TODAY WHERE WE HAD TWO LAWYERS FOR ONE PARTY THAT WERE INVOLVED  
4292=IN QUESTIONING AND OBJECTING, AND I WOULD LIKE TO ASK FOR A  
4293=RULE THAT ONE LAWYER PER PARTY BE ASSIGNED TO A WITNESS, AND  
4294=THAT THAT LAWYER ASK THE QUESTIONS AND MAKE THE OBJECTIONS.  
4295= THE COURT: YES. THAT'S PROPER PROCEDURE, AS WE ALL  
4296=KNOW, AND --  
4297= MR. YOUNG: THANK YOU.  
4298= THE COURT: -- AND IF THAT HASN'T BEEN A RULE, IT  
4299=NOW IS A RULE.

4300= ALL RIGHT, THE COURT IS IN RECESS UNTIL MONDAY  
4301=MORNING, AT 9:00 O'CLOCK.  
4302= (PROCEEDINGS RECESSED AT 1:00 O'CLOCK P.M.)

4303=  
4304=  
4305=  
4306=  
4307=  
4308=  
4309=  
4310=  
4311=  
4312=  
4313=  
4314=  
4315=  
4316=  
4317=  
4318=  
4319=  
4320=  
4321=  
4322=  
4323=  
4324=

4325=  
4326=APPEARANCES: (CONTINUED)  
4327=FOR DEFENDANTS: BORDERS GROUP, INC.  
4328=(BORDERS GROUP) 100 PHOENIX DRIVE  
4329= ANN ARBOR, MICHIGAN 48108-2202  
4330= BY: THOMAS D. CARNEY, GENERAL COUNSEL

4331=  
4332=  
4333=  
4334=  
4335=  
4336=  
4337=  
4338=  
4339=  
4340=  
4341=  
4342=  
4343=  
4344=  
4345=  
4346=  
4347=  
4348=  
4349=

end=Text