

1 UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA
2 BEFORE THE HONORABLE WILLIAM H. ORRICK, JUDGE
3 AMERICAN BOOKSELLERS)
4 ASSOCIATION, INC., ET AL.,)
5)
6 PLAINTIFFS,)
7)
8 VS.) NO. C 98-1059 WHO
9)
10 BARNES & NOBLE, INC.,)
11 ET AL.,)
12)
13 DEFENDANTS.)
14)

14 SAN FRANCISCO, CALIFORNIA
15 MONDAY, APRIL 16, 2001
16 TRANSCRIPT OF COURT TRIAL - VOL. 5

17 APPEARANCES:
18 FOR PLAINTIFFS: FARELLA, BRAUN & MARTEL LLP
19 235 MONTGOMERY STREET, 30TH FLOOR
20 SAN FRANCISCO, CALIFORNIA 94104
21 BY: DOUGLAS R. YOUNG
22 (APPEARANCES CONTINUED ON FOLLOWING PAGE.)
23 REPORTED BY: LEO T. MANKIEWICZ, CSR 5297 RMR, CRR
24 RAYNEE MERCADO, CSR 8258 RMR, CRR
25 OFFICIAL REPORTERS

1 APPEARANCES: (CONTINUED)
2 FOR PLAINTIFFS: JENNER & BLOCK
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4 WASHINGTON, D.C. 20005
5 BY: DAVID W. DEBRUIN
6 BRUCE V. SPIVA
7 DANIEL MACH
8 JANIS KESTENBAUM
9 SHILPA SATOSKAR
10 FOR DEFENDANTS: O'MELVENY & MYERS LLP
11 (BARNES & NOBLE) 1999 AVENUE OF THE STARS, 7TH FLOOR
12 LOS ANGELES, CALIFORNIA 90067-6035
13 BY: DANIEL M. PETROCELLI
14 DAVID R. GARCIA
15 JAMES BO PEARL
16 JANE LIPPMAN
17 SUSAN SALMON
18 FOR DEFENDANTS: SKJERVEN, MORRILL, MAC PHERSON
19 (BORDERS GROUP) FRANKLIN & FRIEL
20 THREE EMBARCADERO CENTER, 28TH FLOOR
21 SAN FRANCISCO, CALIFORNIA 94111
22 BY: REGINALD D. STEER
23 ANDREW D. MASTIN
24 JAMES HEIDEMAN
25 DIANE SWEENEY

1 THE COURT: GOOD MORNING, COUNSEL.
2 MR. PETROCELLI: GOOD MORNING, YOUR HONOR.
3 MR. DEBRUIN: GOOD MORNING, JUDGE.
4 THE COURT: MR. YOUNG.
5 MR. YOUNG: GOOD MORNING, YOUR HONOR. COUPLE OF
6 VERY BRIEF HOUSEKEEPING MATTERS, IF IT PLEASE THE COURT.
7 THE COURT: YES.
8 MR. YOUNG: FIRST OF ALL, WE WILL BE THIS WEEK
9 MOVING INTO EVIDENCE THE EXHIBITS THAT WERE REFERRED TO IN THE
10 FIRST WEEK OF TRIAL, AND WHAT WE HAVE DONE -- AND I DISCUSSED
11 THIS WITH MR. PETROCELLI AND MR. STEER -- IS WE HAVE PREPARED
12 THREE BINDERS FOR THE COURT, AND A MEMORANDUM.
13 THE MEMORANDUM HAS TWO PARTS. IT HAS REFERENCE TO
14 THE EXHIBITS AS TO WHICH NO OBJECTION WHICH WAS NOTED, AND THEN
15 IT HAS A SEPARATE SECTION WHERE IT SETS OUT A CHART, AND IT HAS
16

17 THE EXHIBIT NUMBER, THE OBJECTION, AND THE PLAINTIFFS' RESPONSE
18 TO THE OBJECTION; AND WE WOULD HAND ALL OF THIS TO THE CLERK
19 AND UP TO THE COURT, WITH COPIES FOR THE LAW CLERK, AS WELL.
20 WE'RE NOT ASKING YOU TO RULE ON ANY OF THIS TODAY.
21 WE SIMPLY WANT TO HAVE IT IN FRONT OF YOU, SO THAT YOU CAN
22 HANDLE IT AS YOU WISH LATER IN THE WEEK. SO THAT WILL BE
23 MATTER NUMBER ONE.

24 THE COURT: I AM A PERPETUAL OPTIMIST, MR. YOUNG,
25

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1 AND PERHAPS I DON'T READ CORRECTLY, BUT I THOUGHT THAT WITH THE
2 STIPULATION, WE WERE OVER THAT. EXHIBITS THAT WERE BEING USED
3 IN THE COURSE OF THE TRIAL WERE DEEMED ADMITTED.

4 MR. YOUNG: I BELIEVE THAT THAT IS CORRECT AS TO
5 VIRTUALLY EVERY SINGLE EXHIBIT, AND THAT THERE WERE A FEW AS TO
6 WHICH THE OBJECTION WAS THAT THEY COULD BE ADMITTED, BUT ONLY
7 FOR LIMITED PURPOSES. AND SO THE RESPONSE IS TO ADDRESS THE
8 LIMITED PURPOSES OBJECTION.

9 SO YOU'RE CORRECT THAT WE'VE GONE A LONG WAY IN THE
10 STIPULATION, BUT THERE ARE A HANDFUL OF EXHIBITS, AND IT REALLY
11 IS ONLY A HANDFUL, THAT I THINK THE COURT WILL WANT TO LOOK AT,
12 AND WE'VE KEYED THIS UP IN, I THINK, A VERY CONVENIENT WAY FOR
13 YOU.

14 MR. PETROCELLI: MAY I BRIEFLY RESPOND?

15 THE COURT: YES.

16 MR. PETROCELLI: YOU ARE ABSOLUTELY RIGHT THAT THE
17 PURPOSE WAS, BY VIRTUE OF THE STIPULATION, THAT EVERYTHING
18 WOULD BE COMING INTO EVIDENCE, AND THAT WITH RESPECT TO
19 DOCUMENTS FROM TIME TO TIME THAT WE THOUGHT WERE HEARSAY AND
20 OUGHT NOT TO BE ADMITTED FOR THE TRUTH BUT MAY BE RELEVANT FOR
21 SOME NON-TRUTH PURPOSE, THAT THAT WOULD BE UP TO YOUR HONOR TO
22 DECIDE, WHENEVER YOU THOUGHT IT WAS APPROPRIATE, FOR WHICH
23 PURPOSE IT WOULD COME IN, AND WE DID NOT ENVISION THAT THERE
24 WOULD BE ANY ARGUMENTATION OR EVEN A CHART TO THIS EFFECT THAT
25 WOULD BE SUBMITTED. THIS WAS DONE WITHOUT OUR KNOWLEDGE.

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1 WE DON'T OBJECT TO IT, BUT WE DON'T THINK THAT IT'S
2 NECESSARY FOR YOUR HONOR TO HAVE TO RULE ON THESE LIMITED
3 ADMISSIBILITES. YOUR HONOR HAS, YOUR HONOR, VAST DISCRETION IN
4 DECIDING, WHENEVER YOU THINK IT'S APPROPRIATE, FOR WHATEVER
5 REASON, A PARTICULAR PIECE OF EVIDENCE COMES IN, AND WHETHER OR
6 NOT IT'S EVEN NECESSARY TO ARTICULATE THAT.

7 THE COURT: MR. STEER?

8 MR. STEER: YOUR HONOR, JUST FROM WHAT I'VE LOOKED
9 AT IN THIS CHART, I DON'T THINK THAT THERE'S A REAL ISSUE,
10 SUBSTANTIVE ISSUE FOR THE COURT WITH WHICH YOU SHOULD TROUBLE
11 YOURSELF AT THE MOMENT WITH RESPECT TO THESE DOCUMENTS, BUT
12 INSOFAR AS THERE ARE ANY OBJECTIONS FROM OUR PART WITH RESPECT
13 TO THE SCOPE OF ADMISSION, FOR LACK OF A BETTER TERM, WE'LL
14 REVIEW THEM AND SEE WHETHER WE EVEN WANT TO CONTINUE TO PURSUE
15 THOSE.

16 MR. YOUNG: WHICH SOUNDS LIKE WE'RE MOVING EVEN
17 CLOSER, YOUR HONOR. I THINK YOU'RE RIGHT TO BE AN OPTIMIST AND
18 WE ALL APPRECIATE THAT. ALL WE WISH IS THAT AS TO THOSE
19 EXHIBITS AS TO WHICH THERE IS A HEARSAY OBJECTION -- AND THERE
20 ARE A HANDFUL OF THOSE -- WE WISH TO BE HEARD ON THOSE, BECAUSE
21 WE THINK THAT YOUR HONOR SHOULD ACCEPT THEM FOR EVEN A HEARSAY
22 PURPOSE.

23 SO WE COULD EITHER WITHDRAW THIS AT THIS TIME, AND
24 SEE IF, IN WORKING WITH MR. STEER AND MR. PETROCELLI, WE CAN
25 NARROW THIS DOWN EVEN FURTHER, OR WE CAN LEAVE IT WITH THE

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1 COURT. WHATEVER YOU WOULD PREFER.

2 THE COURT: WELL, I SUGGEST THAT YOU WITHDRAW IT.

3 MR. YOUNG: WE WILL.

4 THE COURT: AND I, AS I SAY, I'VE LABORED UNDER THE
5 IMPRESSION, AND THE VERY PROFESSIONAL WAY IN WHICH THIS CASE
6 HAS BEEN PRESENTED BY BOTH SIDES, THAT THESE OBJECTIONS FOR THE
7 RECORD, MOST OF WHICH WERE MADE BY MR. STEER, INADMISSIBLE,
8 HEARSAY AND SO ON, HAD BEEN DEALT WITH BY YOUR STIPULATION.

9 SO --
10 MR. YOUNG: THANK YOU, YOUR HONOR. I APPRECIATE
11 THAT. I AGREE WITH YOU, AND I THINK WE MAY BE ABLE TO MAKE
12 SOME PROGRESS IN THAT REGARD, AND --
13 THE COURT: GOOD.
14 MR. YOUNG: -- AND IF WE'RE NOT ALL THE WAY THERE,
15 WE'LL PRESENT THE CHART, IN SOME REDUCED FORM, HOPEFULLY, AT
16 THE APPROPRIATE TIME.
17 THE COURT: VERY GOOD --
18 MR. YOUNG: SECOND --
19 THE COURT: YES.
20 MR. YOUNG: I'M SORRY, YOUR HONOR. I INTERRUPTED.
21 I DIDN'T MEAN TO.
22 THE COURT: I'LL HEAR FROM YOU, AND THEN I HAVE
23 SOMETHING TO SAY.
24 MR. YOUNG: OKAY. WELL, WITH REGARD TO DEPOSITION
25 TRANSCRIPTS, WE INTEND TO BEGIN TO INTRODUCE OR SUBMIT SOME OF

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1 THOSE TO THE COURT IN THE DESIGNATION AND THE
2 COUNTER-DESIGNATION.
3 THE COURT: YES.
4 MR. YOUNG: I THINK I SPEAK FOR ALL OF THE
5 PARTIES -- IT WAS OUR IDEA, BUT I'VE SPOKEN WITH COUNSEL FOR
6 THE DEFENDANTS, AND WE WOULD LIKE TO PROPOSE A MODIFICATION TO
7 WHAT YOUR HONOR HAD DIRECTED US TO DO.
8 AND THE MODIFICATION IS THIS, AND IT'S SIMPLY
9 BECAUSE IT'S LESS LABOR-INTENSIVE, FRANKLY, FOR US, AND THAT IS
10 THAT RATHER THAN PUTTING STICKY'S AND STAPLES ON THE PIECES OF
11 PAPER THAT REFLECT THE TRANSCRIPT, WE WOULD LIKE TO SUBMIT A
12 CHART THAT HAS THE OBJECTION -- HAS THE LINE NUMBERS, THE
13 OBJECTION AND THE RESPONSE IN CHART FORM, SO THAT YOUR HONOR
14 AND THE LAW CLERK CAN REVIEW IT THAT WAY.
15 IT WILL BE EASIER, FRANKLY, FOR US TO PRESENT IT TO
16 YOU, RATHER THAN HAVING YOU GO THROUGH LINE, PAGE BY PAGE AND
17 SEE STICKY'S ON THE PAGES, IF YOU WILL ACCEPT THAT.
18 THE COURT: WELL, I AGREE WITH YOUR CONCLUSION THAT
19 IT WILL BE EASIER FOR YOU TO DO THAT. WHAT I HAVE AN OIL
20 PAINTING OF IS LOOKING AT THE -- GOING THROUGH THE DEPOSITION
21 AND UNDERSTANDING WHAT'S GOING ON, AND THEN LOOK UP AT THE
22 CHART, OOP, I BETTER GO BACK TO PAGE 582 AND LINE -- WHAT WERE
23 THE LINES AGAIN? 4 TO 15. 4 TO 15. AND THEN I GO BACK AND
24 LOOK -- WHAT'S THE MATTER WITH THOSE GUYS? WHAT'S WRONG WITH
25 THIS? THAT'S WHAT I DON'T WANT TO BE DOING.

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1 MR. YOUNG: VERY WELL.
2 THE COURT: THEREFORE, I SUGGESTED AN EASIER WAY, AS
3 FAR AS I WAS CONCERNED.
4 MR. YOUNG: WE'LL DO IT YOUR WAY.
5 THE COURT: WELL, MAYBE -- I'M HAPPY TO WORK OUT A
6 MODIFICATION, AND SO LET ME THINK ABOUT IT AND SEE IF I CAN DO
7 IT, OR IF YOU COULD COME UP WITH AN IDEA. BUT I DON'T -- I'M
8 BOUND, OF COURSE, TO REVIEW THE OBJECTIONS, BUT IF THEY'RE
9 THERE AS I'M READING THEM, AND SEE, NO, THAT'S RIDICULOUS, OR,
10 OH, HEY, HE'S GOT SOMETHING HERE, I BETTER MARK THAT --
11 MR. YOUNG: OKAY. WE'LL WORK ON IT AND SEE IF WE
12 CAN FIND A WAY, YOUR HONOR. ALL RIGHT, THANK YOU.
13 YOU HAD SOMETHING ELSE THAT YOU WANTED TO --
14 THE COURT: I DID INDEED, MR. YOUNG, AND I AM --
15 I'VE SAID BEFORE, BUT I AM IMPRESSED BY REMARKABLE WAY IN WHICH
16 THE CASE HAS BEEN PRESENTED AND DEALT WITH BY BOTH SIDES. IT'S
17 REALLY A GREAT TREAT FOR A JUDGE, AND I HAVE DISCUSSED WITH MY
18 COLLEAGUES HOW GREAT IT IS, AND SO I'M HAPPY AS A CLAM DOING
19 THIS.
20 HOWEVER, I DO NOTE THAT JUST FOR TODAY WE HAVE A
21 NUMBER OF ADDITIONAL BOOKSELLERS, AND WE'VE HAD A VERY GOOD
22 EXPLANATION FROM VERY COMPETENT, ABLE, BRIGHT WITNESSES, BING,
23 BING, BING, THEY KNEW WHAT THEY WERE TALKING ABOUT, AND THEIR
24 CROSS-EXAMINATION WAS EXCELLENT, AND SO WE GET A VERY GOOD IDEA
25 OF WHAT THE PROBLEM IS, AND I'M JUST MAKING A BARE SUGGESTION,

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1 BECAUSE I DON'T KNOW ENOUGH ABOUT THE CASE YET, TO SUGGEST THAT
2 POSSIBLY WE'VE HAD ENOUGH BOOKSELLERS AFTER WE'VE FINISHED THE
3 LIST TODAY, BUT IF IT'S IMPORTANT TO YOUR CASE TO PUT ON MORE,
4 YOU PUT ON ALL YOU WANT. I'M ANXIOUS TO NOT HAVE ANY
5 DUPLICATIVE TESTIMONY.

6 I MUST SAY, EACH WITNESS HAS BEEN VERY INTERESTING,
7 AND I ENJOY TALKING TO PEOPLE WHO KNOW WHAT THEY'RE TALKING
8 ABOUT, BUT WE'VE DONE A LOT OF TALKING LIKE THAT, SO FAR.

9 MR. YOUNG: THANK YOU, YOUR HONOR. THOSE ARE VERY
10 WELL TAKEN. WE ARE WORKING IN THAT VERY DIRECTION. NOT ALL OF
11 THE WITNESSES TODAY WILL BE BOOKSELLERS. TOMORROW WILL BE AN
12 EXPERT WITNESS, THURSDAY WILL BE AN EXPERT WITNESS, AND WE WILL
13 BE PROFFERING SOME TESTIMONY IN WRITING, WHICH OF COURSE THE
14 DEFENDANTS WILL HAVE A RIGHT TO CROSS-EXAMINE IF THEY CHOOSE.
15 SO WE'RE WORKING ON THAT DIRECTION, JUDGE. THANK YOU.

16 THE COURT: APROPOS THE EXPERT WITNESSES, I'D LIKE
17 TO KNOW A COUPLE OF DAYS IN ADVANCE WHO THE EXPERT WITNESS IS
18 GOING TO BE, SO I CAN REVIEW THE REPORT AHEAD OF HIS OR HER
19 TESTIMONY.

20 MR. YOUNG: THANK YOU. IN THAT REGARD, YOUR HONOR,
21 TOMORROW'S EXPERT WITNESS WILL BE DR. GARY FRAZIER FROM U.S.C.,
22 AND HE'LL BE TALKING ABOUT THE INTERNAL DISTRIBUTION SYSTEMS
23 ISSUES.

24 THE COURT: IT WILL TAKE ABOUT A MONTH TO REVIEW HIS
25 REPORT.

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1 MR. YOUNG: THANK YOU.

2 THE COURT: YES, MR. DEBRUIN?

3 MR. DEBRUIN: YOUR HONOR, JUST BRIEFLY, SINCE WE'RE
4 TALKING ABOUT HOUSEKEEPING, I THOUGHT I MIGHT RAISE AN ISSUE.
5 WE'VE DISCLOSED TO MR. PETROCELLI AND MR. STEER, DR. FRAZIER IS
6 A PROFESSOR AT THE UNIVERSITY OF SOUTHERN CALIFORNIA. HE MUST
7 TEACH ON WEDNESDAY. SO IT IS OUR HOPE THAT WE COULD CALL HIM
8 TOMORROW. I DON'T KNOW IF WE WILL FINISH. WE'VE DISCUSSED
9 THIS WITH THE DEFENDANTS. WE WOULD PROPOSE THAT, IF NECESSARY,
10 WE WOULD CONTINUE HIM ON THURSDAY AND TAKE UP OTHER MATTERS ON
11 WEDNESDAY, BUT WE MAY HAVE TO RECESS HIS TESTIMONY BECAUSE OF
12 HIS TEACHING SCHEDULE.

13 THE COURT: YES, WELL, HOWEVER....

14 MR. PETROCELLI: YOUR HONOR, ON THE ISSUE OF THE
15 NUMBER OF PLAINTIFFS WHO SEEK TO TESTIFY, THE PROPOSED
16 INJUNCTION SUBMITTED BY THE PLAINTIFFS SEEKS AN INJUNCTION IN
17 FAVOR OF EACH AND EVERY ONE OF THE PLAINTIFFS, AND FOR THAT
18 REASON THEY INTEND TO PUT ON EACH AND EVERY ONE OF THE
19 PLAINTIFFS IN ONE FORM OR ANOTHER.

20 FOR OUR SIDE, WE HAVE BEEN TRYING IN EARNEST TO
21 LIMIT OUR CROSS-EXAMINATION TO THE -- YOU KNOW, TO THE BARE
22 ESSENTIALS, AND WE ARE GOING TO BE MINDFUL OF THAT, AND MINDFUL
23 THAT WE DO NOT WANT TO BE REPEATING BASIC PROPOSITIONS THAT
24 YOUR HONOR HAS NOW HEARD THREE OR FOUR TIMES.

25 AS YOU KNOW, THOUGH, IN EACH ONE OF THESE PLAINTIFFS

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1 WHO DOES SEEK AN INJUNCTION, THEY EACH PRESENT A DIFFERENT
2 FINANCIAL ISSUE, COMPETITION ISSUE, BREAKING THE CHAIN OF
3 CAUSATION ISSUE, AND FOR THAT REASON WE HAVE TO GO INTO THOSE
4 ISSUES ON A SOMEWHAT SUI GENERIS BASIS, BUT WITH RESPECT TO THE
5 SOME OF THE GENERAL ISSUES, IT IS OUR HOPE TO TRY TO MOVE
6 THROUGH THAT MUCH MORE QUICKLY.

7 THE COURT: ALL RIGHT, THANK YOU.

8 ALL RIGHT, MR. DEBRUIN, WHO HAVE WE GOT THIS
9 MORNING? WE HAD MS. CHRISTOPHERSEN, DIDN'T WE, ON THE STAND?

10 MR. DEBRUIN: YES.

11 ANN CHRISTOPHERSEN,
12 CALLED AS A WITNESS FOR THE PLAINTIFFS, HAVING BEEN PREVIOUSLY
13 DULY SWORN, TESTIFIED AS FOLLOWS:

14 THE COURT: YOU'RE STILL UNDER OATH,
15 MS. CHRISTOPHERSEN.

16 YOU MAY PROCEED, MR. MACH.

17 MR. MACH: THANK YOU, YOUR HONOR.

18 DIRECT EXAMINATION

19 Q. GOOD MORNING, MS. CHRISTOPHERSEN.

20 A. GOOD MORNING.
21 Q. NOW I WANT TO SHIFT OUR FOCUS TO HOW YOUR STORE, WOMEN &
22 CHILDREN FIRST, PURCHASES BOOKS. WHAT ROLE DO YOU PLAY WITH
23 RESPECT TO THE PURCHASE OF BOOKS FOR WOMEN & CHILDREN FIRST?
24 A. I'M ONE OF TWO PRIMARY BUYERS.
25 Q. AND THAT HAS THAT BEEN THE CASE SINCE YOUR STORE OPENED?
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1 A. IT HAS.
2 Q. FROM WHOM DOES WOMEN & CHILDREN FIRST PURCHASE BOOKS?
3 A. WE PURCHASE BOOKS FROM HUNDREDS OF VENDORS.
4 Q. DOES THAT INCLUDE PUBLISHERS?
5 A. PUBLISHERS, DISTRIBUTORS, WHOLESALERS.
6 Q. WHAT TYPES OF LINES OF BOOKS DOES WOMEN & CHILDREN FIRST
7 BUY?
8 A. WE BUY HARDCOVER BOOKS, TRADE PAPERBACK BOOKS, MASS MARKET
9 BOOKS AND AUDIO BOOKS.
10 Q. DO YOU BUY FRONT LIST AS WELL AS BACK LIST?
11 A. WE DO.
12 Q. AND HOW OFTEN DO YOU ORDER BOOKS?
13 A. WE ORDER BOOKS ON A DAILY BASIS.
14 Q. HOW DO YOU PLACE THOSE ORDERS?
15 A. WE PLACE THEM ELECTRONICALLY, WE PLACE THEM THROUGH
16 PUBLISHERS' REPS. SOMETIMES WE FAX ORDERS TO VENDORS.
17 OCCASIONALLY WE PLACE ORDERS BY TELEPHONE.
18 Q. OKAY, I'D LIKE TO FOCUS ON WHAT BOOKS YOU BOUGHT FROM
19 CERTAIN PARTICULAR VENDORS DURING THE PERIOD FROM 1994 TO THE
20 PRESENT.
21 YOUR HONOR, MAY I APPROACH?
22 THE COURT: YES.
23 MR. MACH: THANKS.
24 Q. AND LET ME ASK YOU TO TURN TO EXHIBIT 2591 IN YOUR BINDER.
25 A. OKAY.
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1 Q. WHICH MAY BE A FAMILIAR EXHIBIT TO THE COURT. CAN YOU
2 IDENTIFY THE VENDORS ON THIS LIST FROM WHOM YOU'VE PURCHASED
3 BOOKS FROM THE PERIOD 1994 TO THE PRESENT?
4 A. YES.
5 Q. CAN YOU EXPLAIN TO THE COURT WHO THEY ARE?
6 A. WE HAVE PURCHASED BOOKS FROM EVERYBODY ON -- ON THIS LIST
7 WITH THE EXCEPTION OF MACMILLAN COMPUTER AND WESTERN.
8 Q. AND HAS THAT BEEN TRUE FROM 1994 TO THE PRESENT?
9 A. YES.
10 Q. AND WITH RESPECT TO ALL THE VENDORS OTHER THAN MCMILLAN
11 COMPUTER AND WESTERN, HOW OFTEN DURING THE YEAR DO YOU MAKE
12 PURCHASES?
13 A. IT VARIES, DEPENDING ON THE PARTICULAR PUBLISHERS, BUT
14 ANYTIME -- THE RANGE, I WOULD SAY, IS FOUR TIMES TO YEAR TO
15 TWENTY TIMES A YEAR. OH, ACTUALLY, WITH THE WHOLESALER, BAKER
16 & TAYLOR AND INGRAM, WE ORDER THEM MUCH MORE FREQUENTLY THAN
17 THAT.
18 Q. HOW FREQUENTLY?
19 A. FOR BOTH OF THOSE WHOLESALERS, TWICE A WEEK, SOMETIMES MORE
20 OFTEN.
21 Q. WITH RESPECT TO THE VENDORS YOU'VE PURCHASED FROM EACH
22 YEAR, DO YOU PURCHASE BOTH BACK LIST AND FRONT LIST?
23 A. YES, WE DO.
24 Q. AND WITH RESPECT TO THOSE SAME VENDORS, WHICH SELL TRADE
25 BOOKS?
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1 A. ALL THESE PUBLISHERS SELL TRADE BOOKS.
2 Q. AND DO THEY EACH SELL BOTH TRADE HARDCOVER AND TRADE
3 PAPERWORK?
4 A. WITH A COUPLE OF EXCEPTIONS. I'M NOT SURE IF HEALTH
5 COMMUNICATIONS SELLS HARDCOVER BOOKS, BUT I THINK EVERYBODY
6 ELSE -- YEAH, I THINK EVERYBODY ELSE ON THIS LIST DOES.
7 Q. AND DOES YOUR STORE PURCHASE TRADE BOOKS FROM EACH OF THOSE
8 VENDORS?
9 A. YES.
10 Q. HAS THAT BEEN TRUE FROM '94 TO THE PRESENT?
11 A. YES.

12 Q. WITH RESPECT TO THE VENDORS YOU HAVE PURCHASED FROM EACH
13 YEAR, WHICH OF THOSE VENDORS SELL MASS MARKET BOOKS ON THIS
14 LIST?

15 A. YOU WANT ME TO NAME WHICH ONES?

16 Q. IF YOU COULD.

17 A. AVON, BALLANTINE, BANTAM, DOUBLEDAY, DELL, BERKELEY,
18 HARPER-COLLINS, LITTLE BROWN, PENGUIN USA, POCKET BOOKS.
19 PUBLISHERS GROUP WEST ACTUALLY DISTRIBUTES SOME, SELLS SOME
20 MASS MARKET. RANDOM HOUSE, SCHOLASTIC, SIMON & SCHUSTER,
21 WARNER, I THINK THAT'S COMPLETE.

22 Q. AND FOR THOSE VENDORS THAT YOU JUST MENTIONED, DOES YOUR
23 STORE PURCHASE MASS MARKET BOOKS FROM EACH OF THEM?

24 A. YES, WE DO.

25 Q. AND HAS THAT BEEN TRUE FROM '94 TO THE PRESENT?

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1 A. YES.

2 Q. WHICH VENDORS ON THIS LIST DO YOU PURCHASE AUDIO BOOKS
3 FROM?

4 A. WE PURCHASE AUDIO BOOKS FROM AVON, BALLANTINE, BANTAM
5 DOUBLEDAY, DELL, BERKELEY I THINK, HARPER-COLLINS, LITTLE
6 BROWN, PENGUIN USA, PUTNAM, RANDOM HOUSE, SCHOLASTIC, AND OF
7 COURSE, BAKER & TAYLOR AND INGRAM.

8 Q. APPROXIMATELY WHAT PERCENTAGE OF ALL OF YOUR BOOK PURCHASES
9 DO YOU MAKE FROM THE VENDORS THAT APPEAR ON THE LIST?

10 A. I WOULD SAY 75 TO 80 PERCENT.

11 Q. OF THE VENDORS THAT ARE LISTED HERE, DO ANY OF THEM SHIP
12 BOOKS TO YOU FROM WITHIN THE STATE OF ILLINOIS?

13 A. LPC GROUP DOES, AND BAKER & TAYLOR HAS A WAREHOUSE IN
14 ILLINOIS THAT WE BUY FROM.

15 Q. AND LEAVING THOSE ASIDE, DO ALL OTHER VENDORS SHIP BOOKS TO
16 YOUR STORE FROM OUTSIDE ILLINOIS?

17 A. YES.

18 Q. OKAY, NOW I WANT TO TALK ABOUT PURCHASE TERMS. ARE YOU
19 FAMILIAR WITH THE TERMS AND DISCOUNTS UNDER WHICH YOUR STORE
20 PURCHASES BOOKS?

21 A. YES, VERY FAMILIAR.

22 Q. AND HOW ARE YOU FAMILIAR WITH IT?

23 A. I'M FAMILIAR WITH IT BECAUSE WE MAKE FREQUENT USE OF THE
24 ABA BOOK BUYER'S HANDBOOK, WHICH SETS FORTH THOSE TERMS.

25 Q. AND HOW ARE THE TERMS UNDER WHICH YOUR STORE PURCHASES

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1 THOSE BOOKS ESTABLISHED?

2 A. WELL, THE TERMS FOR THE MOST PART ARE IN THE ABA HANDBOOK.

3 Q. DO THEY APPEAR ANYWHERE ELSE?

4 A. WELL, THEY'RE AVAILABLE OTHER PLACES. YOU COULD CALL THE
5 PUBLISHER AND ASK WHAT THEIR TERMS ARE. ESSENTIALLY THAT'S IT.
6 I MEAN, IT'S AVAILABLE FROM THE SOURCE, OR OUR SOURCE IS --
7 GENERATED FROM THE SOURCE, THE PUBLISHERS. THE RED BOOK IS
8 JUST A COMPILATION OF THE SAME INFORMATION YOU GET IF YOU CALL
9 THE PUBLISHER.

10 Q. IN YOUR EXPERIENCE, DO BOOKSELLERS REGULARLY RELY ON THE
11 RED BOOK, OR HANDBOOK?

12 A. YES, WE USE IT MANY TIMES IN THE COURSE OF A DAY.

13 Q. IS IT A COMPILATION OF DATA OR FACTS REGULARLY USED BY
14 PERSONS IN THE BOOKSELLING BUSINESS?

15 A. YES.

16 Q. DO YOU NEED THE RED BOOK?

17 A. WELL, I NEED IT IN THE SENSE THAT I HAVE TO HAVE SOME
18 SOURCE OF INFORMATION FOR THE TERMS, AND IT'S A CERTAINLY A
19 MUCH LESS CUMBERSOME WAY TO COME BY THOSE TERMS, COME BY THAT
20 INFORMATION THAN, YOU KNOW, CALLING THE PUBLISHER EACH TIME I
21 PLACE AN ORDER, WHICH I CAN DO MANY TIMES IN THE COURSE OF THE
22 DAY.

23 Q. HAVE YOU EVER CALLED A PUBLISHER TO FIND OUT WHAT TERMS
24 WERE AVAILABLE TO YOUR STORE?

25 A. YES, I HAVE.

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1 Q. HAVE YOU EVER LEARNED FROM COMMUNICATIONS WITH A PUBLISHER
2 THAT ITS DISCOUNT TERMS WERE DIFFERENT FROM THE PUBLISHER'S
3 TERMS AS CONTAINED IN THE RED BOOK?

4 A. NO.
5 Q. BASED ON YOUR KNOWLEDGE AS ONE OF THE TWO PRIMARY BUYERS OF
6 THE STORE, APPROXIMATELY WHAT PERCENTAGE OF YOUR STORE'S
7 PURCHASES ARE MADE PURSUANT TO PUBLISHER'S DISCOUNT TERMS AS
8 CONTAINED IN THE RED BOOK?
9 A. I WOULD SAY --
10 MR. GARCIA: YOUR HONOR, OBJECTION. IF HE'S ASKING
11 FOR A SPECIFIC PERCENTAGE, THERE'S NOT BEEN ANY FOUNDATION HERE
12 WITHOUT THE INVOICES AND THE REST OF THE FINANCIAL RECORDS
13 BEFORE THE COURT. BEST EVIDENCE RULE.
14 THE COURT: LAY A FOUNDATION, MR. MACH.
15 BY MR. MACH:
16 Q. OKAY, AND AGAIN, I'M SEEKING AN APPROXIMATE PERCENTAGE
17 HERE.
18 A. YES.
19 Q. ARE YOU FAMILIAR WITH THE TERMS UNDER WHICH YOUR STORE
20 PURCHASES BOOKS?
21 A. YES.
22 Q. AND HOW OFTEN DO YOU REVIEW THOSE TERMS?
23 A. WELL, VERY OFTEN. I DON'T -- THERE ARE A FEW SUPPLIERS IN
24 I ORDER FROM FREQUENTLY ENOUGH THAT I CAN REMEMBER THEIR TERMS,
25 INGRAM FOR INSTANCE, BUT I DON'T TRUST MY MEMORY TO BE

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1 ACCURATE, AND I WANT TO MAKE SURE I'M PLACING ORDERS ACCORDING
2 TO THE BEST POSSIBLE TERMS. SO ALMOST ALWAYS, WHEN I PLACE AN
3 ORDER, I REFER TO THE PUBLISHED SCHEDULE.
4 Q. AND CAN YOU DESCRIBE THE ORDERING PROCESS FOR BOOKS?
5 A. YEAH. I MEAN, IT'S ESSENTIALLY, WHEN I NEED TO PLACE AN
6 ORDER, I GENERATE THAT ORDER ONE WAY OR ANOTHER, USUALLY BASED
7 ON PAST SALES, AND CREATE A PURCHASE ORDER, AND I ALWAYS WANT
8 TO MAKE SURE I'M GETTING THE BEST TERMS THE PUBLISHER OFFERS,
9 SO I CHECK THE RED BOOK AGAINST, YOU KNOW -- I CONSULT THE RED
10 BOOK IN THE PROCESS OF DETERMINING THAT FINAL ORDER, SO THAT I
11 KNOW I'M MEETING THEIR DISCOUNT RATE PLANS.
12 Q. AND HOW IS THE ORDER THEN ACTUALLY PLACED?
13 A. WELL, IT'S EITHER ELECTRONICALLY OR HANDED TO A SALES REP
14 OR FAXED TO THE SALES REP OR TO THE PUBLISHER.
15 Q. AND HOW IS THE DISCOUNT INDICATED ON THE ORDER?
16 A. WELL, IF -- THERE'S A FEATURE OF OUR SYSTEM AT LEAST WHERE
17 YOU CAN PLUG IN THE DISCOUNT, BASED ON THE INFORMATION FROM THE
18 RED BOOK, AND THEN THAT CALCULATES THE COST OF EACH BOOK.
19 Q. AND IS THERE A PURCHASE ORDER THAT'S INVOLVED IN THIS
20 PROCESS?
21 A. YES.
22 Q. CAN YOU DESCRIBE THAT?
23 A. WELL, IT'S VIRTUALLY -- ALL OUR ORDERS WE CREATE IN OUR
24 COMPUTER INVENTORY SYSTEM. SO WHEN I, YOU KNOW, WHEN I
25 GENERATE AN ORDER BASED ON PAST SALES, I THEN EDIT THAT ORDER

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1 AND FINALIZE THE ORDER, AND THAT'S IT. THAT'S THE ORDER.
2 Q. AND YOU SAID YOU DO THIS DAILY.
3 A. OH, YES.
4 Q. AND YOU SAID YOU'VE BEEN DOING THIS FOR APPROXIMATELY HOW
5 LONG?
6 A. WELL, WE DIDN'T --
7 Q. FOR THE STORE.
8 A. I THINK WE COMPUTERIZED -- IT WAS ESSENTIALLY THE SAME
9 PROCESS EXCEPT WITH A COMPUTER COMPONENT. I THINK WE
10 COMPUTERIZED IT IN ABOUT 1983, SO ESSENTIALLY SINCE THEN.
11 Q. OKAY. AND BASED ON YOUR KNOWLEDGE AND THE PROCESS THAT
12 YOU'VE JUST DESCRIBED, APPROXIMATELY WHAT PERCENT OF YOUR
13 STORE'S PURCHASES ARE MADE PURSUANT TO PUBLISHER'S DISCOUNT
14 TERMS AS CONTAINED IN THE RED BOOK?
15 MR. GARCIA: YOUR HONOR, SAME OBJECTION, AND I WOULD
16 SUBMIT THAT ON THE BASIS OF THE FOUNDATION QUESTION --
17 THE COURT: OVERRULED. SHE BUYS IT EVERY DAY AND
18 SHE GOES THROUGH THAT, WHATEVER, PROCESS, AND I THINK SHE CAN
19 ESTIMATE THE PERCENTAGE OF PURCHASES THAT SHE MAKES, WHICH SHE
20 CONFIRMS WITH THE RED BOOK. I DON'T UNDERSTAND THE OBJECTION.
21 IT'S OVERRULED.
22 THE WITNESS: 80 TO 90 PERCENT. PROBABLY CLOSER TO

23 90 PERCENT, BUT SOMEWHERE IN THAT RANGE, CERTAINLY.
24 BY MR. MACH:
25 Q. AND OUT OF THE OTHER 10 TO 20 PERCENT OF YOUR PURCHASES,
page 20

1 WHAT TERMS DO YOU RECEIVE ON THOSE TERMS?
2 A. WELL, WE MAKE -- THE OTHER 10 TO 20 PERCENT WE MAKE
3 PURSUANT TO STOCK OFFERS THE PUBLISHERS MAKE FROM TIME TO TIME.
4 Q. AND HOW DO YOU KNOW WHAT THE TERMS OF A GIVEN STOCK OFFER
5 ARE?
6 A. WELL, THAT INFORMATION IS PRESENTED TO US USUALLY IN
7 WRITTEN FORM, ALTHOUGH NOT ALWAYS, AND THEN I KNOW THE TERMS
8 THAT ARE -- OF THE -- THE TERMS OF THAT OFFER.
9 Q. WHEN YOU DO PURCHASE BOOKS PURSUANT TO A STOCK OFFER, DOES
10 THE ASSOCIATED INVOICE SAY THAT IT'S A STOCK OFFER?
11 A. NOT REGULARLY. SOMETIMES THAT INFORMATION IS APPARENT FROM
12 THE INVOICE, BUT MORE OFTEN THAN NOT, IT'S NOT.
13 Q. HAVE YOU EVER RECEIVED A STOCK OFFER THAT WAS NOT GENERALLY
14 AVAILABLE?
15 A. NO, I'M QUITE SURE WE HAVE NOT.
16 Q. HOW DO YOU KNOW THAT?
17 A. WELL, BECAUSE THE STOCK OFFERS WE RECEIVE OFTEN -- WELL, AS
18 I SAID, THEY'RE MOST OFTEN IN FORMAL FORM. WE HAVE A FLYER
19 THAT SAYS -- THAT OUTLINES THE TERMS, AND I CAN'T IMAGINE THAT
20 ANYBODY'S GENERATING THAT FLYER FOR ME ONLY. OFTEN IT BEGINS
21 WITH A HEADING THAT SAYS SOMETHING LIKE, "DEAR BOOKSELLER," AND
22 THEN PROCEEDS TO OUTLINE THE PARTICULAR TERMS OF THAT
23 PARTICULAR STOCK OFFER.
24 Q. ARE THERE OCCASIONS WHEN YOU DON'T SEE THE STOCK OFFER IN
25 WRITTEN FORM?
page 21

1 A. YES, THERE ARE.
2 Q. AND HOW FREQUENTLY DOES THAT HAPPEN?
3 A. INFREQUENTLY, BUT THERE ARE OCCASIONS WHERE PUBLISHER'S REP
4 WILL BE IN THE STORE, AND SAY, "OH, WE HAVE A STOCK OFFER FROM
5 JANUARY 1ST TILL APRIL 15TH, AND I DON'T HAVE A COPY OF IT, BUT
6 HERE ARE THE TERMS," AND I'LL WRITE IT DOWN AND FILE IT IN MY
7 APPROPRIATE FILE, SO I KNOW WHAT THE TERMS ARE.
8 Q. AND ARE THERE ANY OF THOSE CIRCUMSTANCES THAT YOU JUST
9 DESCRIBED WHERE YOU ACTUALLY ASKED FOR A STOCK OFFER, FOR A
10 PARTICULAR OFFER?
11 A. NO.
12 Q. NOW, IF YOU WANTED TO KNOW WHETHER A PARTICULAR PURCHASE ON
13 A PARTICULAR DATE WAS A STOCK OFFER, WHAT DOCUMENTS WOULD YOU
14 CONSULT?
15 A. I'M SORRY, COULD YOU ASK THAT AGAIN?
16 Q. SURE. IF YOU WANTED TO KNOW WHETHER A PARTICULAR PURCHASE
17 ON A PARTICULAR DATE WAS A STOCK OFFER, WHAT DOCUMENTS WOULD
18 YOU CONSULT, IF ANY?
19 A. WELL, IN GENERATING AN ORDER I WOULD REFER TO A FILE THAT I
20 KEEP THAT CONTAINS ALL THE STOCK OFFERS FOR -- WE KEEP THEM
21 QUARTERLY. SO, YOU KNOW, I'D KNOW IN CREATING THE ORDER
22 WHETHER IT WAS A STOCK OFFER, STANDARD OFFER, JUST BY REFERRING
23 TO THAT, THAT FOLDER. IF I WERE LOOKING AT AN INVOICE FOR A
24 PARTICULAR ORDER, I WOULD KNOW WHETHER THAT WAS A STOCK OFFER
25 OR NOT BASED ON THE TERMS -- THE TERMS, PRIMARILY DISCOUNT
page 22

1 TERMS.
2 Q. NOW, IF YOU WANTED TO KNOW WHAT TERMS YOU GET DAY-IN AND
3 DAY-OUT FOR THE 80 TO 90 PERCENT OF YOUR PURCHASES THAT ARE NOT
4 STOCK OFFERS, WHERE WOULD YOU LOOK?
5 A. I WOULD LOOK IN THE RED BOOK.
6 Q. OKAY. YOU'VE TESTIFIED THAT OTHER THAN STOCK OFFERS, YOU
7 ALWAYS BUY BOOKS PURSUANT TO RED BOOK TERMS, IS THAT CORRECT?
8 A. THAT'S CORRECT.
9 Q. DOES YOUR STORE ARE ANY POLICIES OR PROCEDURES RELATING TO
10 THE USE OF THE RED BOOK?
11 A. YES, WE DO.
12 Q. CAN YOU DESCRIBE THOSE FOR THE COURT?
13 A. WELL, I MEAN, ESSENTIALLY THE PROCEDURE IS, YOU LOOK AT THE
14 RED BOOK. YOU CONSULT THE RED BOOK IN ORDER TO KNOW -- I MEAN,

15 HERE'S THE CASE. IF I'M ORDERING FROM A PUBLISHER THAT
16 REQUIRES FIVE BOOKS IN ORDER TO GET 40 PERCENT DISCOUNT, THE
17 ONLY WAY I KNOW THAT IS BY LOOKING AT THE RED BOOK, BECAUSE
18 THERE ARE PUBLISHERS WHO ONLY REQUIRE ONE BOOK IN ORDER TO GET
19 THE AVAILABLE -- YOU KNOW, THE BEST AVAILABLE DISCOUNT, OR TWO
20 COPIES. SO AGAIN, THAT'S NOT A MATTER OF MEMORY.
21 SO THIS IS A FUNDAMENTAL TOOL IN OUR BUSINESS. IT'S
22 ESSENTIALLY THE SAME AS HAVING BOOKS IN PRINT OR ANOTHER
23 DATABASE THAT YOU CAN SEE WHAT BOOKS ARE IN PRINT, WHAT THEY
24 COST. THIS IS JUST OUR REFERENCE FOR TELLING US WHAT
25 PUBLISHERS CHARGE.

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1 Q. AND IS THIS A POLICY OF YOUR STORE TO DO THIS?
2 A. YES, WELL -- YOU KNOW, IT'S FUNDAMENTAL PROCEDURE, BECAUSE
3 OTHERWISE WE'D BE BUYING BOOKS AT -- YOU KNOW, CHAOTICALLY, AND
4 AT DISADVANTAGEOUS TERMS.
5 Q. OKAY, I'D LIKE TO TURN YOUR ATTENTION TO EXHIBIT 5535 IN
6 YOUR BINDER. ARE YOU FAMILIAR WITH THIS DOCUMENT?
7 A. I AM.
8 Q. CAN YOU TELL THE COURT WHAT IT IS?
9 A. YEAH, THIS IS A PROCEDURE SHEET THAT I WROTE IN ORDER TO
10 ENABLE STAFF TO MAKE SMALL PURCHASE ORDERS. SO IT'S
11 DIRECTIONS, ESSENTIALLY -- SORT OF, YOU KNOW, POLICY ABOUT HOW
12 WE WANT TO CREATE THOSE ORDERS, WHAT THE GOAL IS IN EACH ORDER,
13 AND PROCEDURES, THEN, FOR ACCOMPLISHING IT.
14 Q. AND AGAIN, THIS IS EXHIBIT 5535. DOES THIS DOCUMENT
15 REFLECT THE RED BOOK POLICY TO WHICH YOU JUST REFERRED?
16 A. YES.
17 Q. WHERE ON THE DOCUMENT IS THAT INDICATED?
18 A. WELL, THERE'S AN INTRODUCTORY PARAGRAPH IN THIS DOCUMENT
19 THAT JUST KIND OF OUTLINES THE PURPOSE OF THIS PROCEDURE SHEET,
20 AND THEN IN THE FIRST PARAGRAPH FIRST SENTENCE, IT SAYS,
21 "USE THE BOOKSELLER'S HANDBOOK (THE RED BOOK WITH
22 ALL THE PUBLISHERS TERMS) TO SEE WHAT THE TERMS ARE
23 FOR DISCOUNT, SO YOU KNOW WHAT THE GOAL IS."
24 Q. IS THAT CONSISTENT WITH THE POLICY YOU OUTLINED?
25 A. YES.

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1 Q. CAN YOU TURN YOUR ATTENTION TO THE SECOND PAGE OF THIS
2 DOCUMENT. AND THERE'S A -- LAST PARAGRAPH BEGINS, "ONE LAST
3 NOTE ON THIS."
4 A. RIGHT.
5 Q. CAN YOU READ WHAT IT SAYS THERE?
6 A. SURE. IT SAYS,
7 "ONE LAST NOTE ON THIS. DON'T ORDER BOOKS FROM
8 MAJOR PUBLISHERS OR DISTRIBUTORS (HARPER, MORROW,
9 LITTLE BROWN, HARCOURT, SIMON & SCHUSTER, RANDOM
10 HOUSE, CNS, VIKING/PENGUIN, BANTAM, ET CETERA.)
11 THERE ARE SPECIAL OFFERS OR SPECIAL TERMS FOR THOSE
12 THAT REQUIRE MORE INFORMATION THAN PROVIDED IN THE
13 RED BOOK. TURN THOSE OVER TO ANN."
14 Q. CAN YOU EXPLAIN WHAT IS MEANT BY "SPECIAL OFFERS AND
15 SPECIAL TERMS"?
16 A. SURE. I USE THOSE HERE SYNONYMOUSLY WITH STOCK OFFERS, AND
17 THESE ARE LARGE ORDERS. LARGER ORDERS ARE ONES THAT I WANT TO
18 OF CONTROL OF, BECAUSE THEY'RE MORE COMPLEX ORDERS. I NEED TO
19 CHECK AND MAKE SURE THAT IF THERE'S A STOCK OFFER, THAT, IN
20 FACT, WE TAKE FULL ADVANTAGE OF THAT.
21 Q. DO YOU TRY TO GET THE BEST TERMS AVAILABLE?
22 A. YES.
23 Q. HOW DO YOU DO THAT?
24 A. WELL, I DO THAT BY, AGAIN, ONE OF TWO WAYS, ESSENTIALLY. I
25 REFER TO THE RED BOOK TO MAKE SURE THAT THE ORDER THAT I'M

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1 PLACING CONFORMS TO THE BEST AVAILABLE TERMS. IT'S THE
2 SITUATION SOMETIMES WHERE YOU'LL GENERATE AN ORDER FOR 45
3 BOOKS, AND THEN WHEN I CHECK THE RED BOOK I SEE THAT 50 BOOKS
4 IS A BREAK POINT, AND I MIGHT GET ONE POINT BETTER DISCOUNT.
5 SO I'LL MODIFY MY ORDER IN ORDER TO TAKE ADVANTAGE OF THAT.
6 AND WE TAKE ADVANTAGE OF VIRTUALLY EVERY STOCK OFFER.

7 Q. THAT YOU'RE ABLE TO?
8 A. THAT WE'RE ABLE TO, YES.
9 Q. HAVE YOU EVER ASKED PUBLISHERS TO IMPROVE THEIR TERMS?
10 A. I CAN REMEMBER A COUPLE OF OCCASIONS WHERE I WAS FRUSTRATED
11 WITH TRYING TO PROMOTE AN AUTHOR EVENT, WHICH IS A FREQUENT --
12 WE DO TWO TO THREE READINGS A WEEK AT MY STORE, AND HAVING RUN
13 OUT OF OUR CO-OP POOL, FOR INSTANCE, AND NOT HAVING ENOUGH
14 MONEY, OR NOT HAVING ANY PUBLISHER SUPPORT, THEREBY, IN ORDER
15 TO PROMOTE EFFECTIVELY AN AUTHOR WHO WAS COMING TO THE STORE.
16 SO I REMEMBER, FOR INSTANCE, A SPECIFIC EXAMPLE
17 ABOUT A YEAR AGO WHERE WE WERE HOSTING A RANDOM HOUSE AUTHOR
18 AND WE WERE OUT OF CO-OP -- OUR CO-OP POOL FOR THE YEAR, AND I
19 SAID TO OUR REP, "GOSH, ISN'T THERE ANY OTHER MONEY AVAILABLE
20 TO HELP US, YOU KNOW, PROMOTE THIS EVENT ARE, IN THE WAY THAT
21 WE SHOULD?" YOU KNOW, HOPING THAT SHE'D SAY, "OH, YES, THERE'S
22 THIS ADDITIONAL POOL YOU CAN DRAW ON," OR SOMETHING LIKE THAT.
23 Q. JUST TO CLARIFY FOR THE RECORD, WERE YOU SEEKING MONEY IN
24 EXCESS OF YOUR ACTUAL EXPENSES FOR THAT EVENT?
25 A. NO, I WAS HOPING THERE WERE ADDITIONAL FUNDS AVAILABLE THAT

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1 WEREN'T, YOU KNOW -- THAT WERE SEPARATE FROM THE CO-OP POOL
2 THAT WE HAD GENERALLY ALREADY EXHAUSTED AT THAT POINT.
3 Q. AND WHAT WAS THE RESULT OF THAT CONVERSATION?
4 A. THE RESULT OF THE CONVERSATION WAS, "BOY, YOU'RE RIGHT,
5 IT'S TOO BAD YOU DON'T HAVE ANY MORE MONEY TO PROMOTE THIS
6 EVENT, BUT YOU DON'T."
7 Q. SO YOU WERE UNABLE TO GET ANYTHING ELSE?
8 A. RIGHT.
9 Q. IN YOUR EXPERIENCE, ARE PUBLISHERS' DISCOUNT TERMS
10 NEGOTIABLE?
11 A. NO, IN MY EXPERIENCE, PUBLISHERS' DISCOUNT TERMS ARE
12 ABSOLUTELY NON-NEGOTIABLE.
13 Q. DO PUBLISHERS' TERMS EVER CHANGE?
14 A. SURE.
15 Q. HOW FREQUENTLY?
16 A. INFREQUENTLY, BUT CERTAINLY FROM TIME TO TIME THEY DO
17 CHANGE.
18 Q. AND HOW DO YOU LEARN ABOUT SUCH CHANGES?
19 A. PRIMARILY SUCH CHANGES ARE REPRESENTED IN THE RED BOOK, YOU
20 KNOW. MY RED BOOK FROM 2000 IS DIFFERENT, AND REPRESENTS MOST
21 OF THE CHANGES THAT HAVE BEEN MADE FROM THE RED BOOK, SAY, IN
22 1999. OCCASIONALLY A PUBLISHER WILL CHANGE TERMS AND USUALLY
23 YOU FIND OUT DIRECTLY FROM THE PUBLISHER WHEN THAT'S THE CASE.
24 SOMETIMES THEY BACK THAT UP WITH ALSO NOTIFYING US BY PUTTING
25 IT IN PRINT SOMEWHERE LIKE "PUBLISHERS WEEKLY" OR "BOOKSELLING

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1 THIS WEEK."
2 THE COURT: WHEN YOU'RE VERY EMPHATIC THAT THE
3 PUBLISHERS' TERMS ARE -- OR DISCOUNT TERMS ARE DEFINITELY NOT
4 NEGOTIABLE, DOES THAT APPLY TO ALL PUBLISHERS?
5 THE WITNESS: THAT APPLIES TO ALL PUBLISHERS, IN MY
6 EXPERIENCE.
7 THE COURT: AND IS THIS SOME KIND OF AN
8 UNDERSTANDING, IF YOU KNOW, AMONG PUBLISHERS?
9 THE WITNESS: YES.
10 THE COURT: YOU KNOW THAT OF YOUR EXPERIENCE?
11 THE WITNESS: I'M SORRY?
12 THE COURT: DO YOU KNOW THAT OF YOUR OWN EXPERIENCE?
13 THE WITNESS: YES. YES, I KNOW THAT OF MY OWN
14 EXPERIENCE.
15 BY MR. MACH:
16 Q. NOW, WHEN YOU DO RECEIVE CHANGES OVER THE COURSE OF A YEAR
17 BEFORE THE NEW RED BOOK COMES OUT, WHAT DO YOU DO WITH THEM?
18 A. IF A CHANGE WAS MADE IN THE COURSE OF A YEAR, I WOULD NOTE
19 THAT CHANGE IN THE RED BOOK.
20 Q. APPROXIMATELY HOW MANY INVOICES DO YOU RECEIVE IN A GIVEN
21 YEAR?
22 A. WE RECEIVE THOUSANDS OF INVOICES IN THE COURSE OF A YEAR.
23 Q. AND DO YOU SAVE THEM?
24 A. YES.
25 Q. GOING HOW FAR BACK?

1 A. WELL, WE HAVE SAVE THEM FOR EIGHT YEARS, AND I KNOW WE HAVE
2 SOME, YOU KNOW, SOME BOXES, RECORDS THAT GO BACK FARTHER THAN
3 THAT.
4 Q. CAN YOU DESCRIBE FOR THE COURT WHAT, IF ANYTHING, YOU DID
5 WITH RESPECT TO THOSE INVOICES IN CONNECTION WITH THIS
6 LITIGATION?
7 A. WELL, WE MADE ALL THOSE INVOICES AVAILABLE TO ATTORNEYS ON
8 BOTH SIDES OF THIS CASE.
9 Q. NOW, ON THE SUBJECT OF INVOICES, YOU WERE SHOWN SEVERAL
10 INVOICES IN YOUR DEPOSITION, IS THAT CORRECT?
11 A. THAT'S CORRECT.
12 Q. AND I BELIEVE SEVERAL OTHER INVOICES WERE SHOWN IN
13 DEPOSITION OF PEOPLE FROM YOUR STORE?
14 A. THAT'S CORRECT.
15 Q. DID ANY OF THOSE INVOICES, TO YOUR UNDERSTANDING, SHOW
16 HIGHER THAN RED BOOK TERMS?
17 A. YES, SOME OF THEM SHOWED HIGHER THAN RED BOOK TERMS, BUT
18 THERE WERE STOCK OFFER INVOICES INCLUDED IN THOSE.
19 Q. I'D JUST LIKE TO REVIEW A COUPLE OF THOSE THAT ARE IN YOUR
20 BINDER, IF YOU COULD FIRST TURN TO TAB 5526.
21 FIRST, FOR THE COURT, THERE'S A RECTANGLE THAT SAYS,
22 "EXHIBITS," AND THERE'S A NAME, WHICH IS NOT YOUR NAME. COULD
23 YOU EXPLAIN THAT?
24 A. THAT'S RIGHT. THAT'S LINDA BUBON'S NAME. LINDA BUBON'S MY
25 BUSINESS PARTNER.

1 Q. NOW, CAN YOU DESCRIBE FOR THE COURT WHAT THIS IS?
2 A. YES. THIS IS AN INVOICE FROM PENGUIN USA DATED 10/3/97.
3 Q. DOES THIS INVOICE REFLECT YOUR STANDARD EVERYDAY TERMS WITH
4 PENGUIN AS OF THIS YEAR?
5 A. NO.
6 Q. HOW DO YOU KNOW THAT?
7 A. WELL, I KNOW THAT BECAUSE I KNOW STANDARD TERMS FROM
8 PENGUIN AREN'T AS HIGH AS 48 PERCENT, AND THE DISCOUNT
9 REFLECTED ON THIS IS 48 PERCENT.
10 Q. AND SO WHAT DO THESE PURCHASES REFLECT, OR THIS INVOICE?
11 A. THESE REFLECT A STOCK OFFER PURCHASE.
12 Q. DO YOU HAVE ANY DOUBT ABOUT THAT?
13 A. NO, NO DOUBT.
14 Q. OKAY. COULD YOU TURN TO EXHIBIT 5560 IN YOUR BINDER.
15 A. OKAY.
16 Q. CAN YOU TELL THE COURT WHAT THIS IS?
17 A. YES. THIS IS AN INVOICE FROM HARPER-COLLINS, DATED
18 3/21/96.
19 Q. AND DOES THIS INVOICE REFLECT YOUR STANDARD EVERYDAY TERMS
20 WITH HARPER AS OF THAT TIME?
21 A. NO, THIS DOES NOT.
22 Q. HOW DO YOU KNOW THAT?
23 A. WELL, HARPER'S TERMS ACTUALLY HAVEN'T CHANGED FOR SEVERAL
24 YEARS, AND HARPER IS ONE PUBLISHER THAT I ORDER FROM FREQUENTLY
25 ENOUGH THAT I KNOW FROM MEMORY WHAT THEIR TERMS ARE, WHICH IS

1 46 PERCENT FOR ORDERING ELECTRONICALLY. THIS INVOICE REFLECTS
2 A DISCOUNT OF 47.5 PERCENT ON THIS ORDER.
3 Q. IS THERE ANYTHING ELSE ON THE INVOICE THAT LEADS YOU TO
4 YOUR CONCLUSION THAT THESE ARE NOT YOUR EVERYDAY TERMS?
5 A. OH, YEAH. ACTUALLY, ON THIS INVOICE, IF YOU LOOK AT THE
6 TOP OF THE INVOICE AFTER THE PUBLISHER INFORMATION, THERE'S A
7 QUANTITY, TITLE, AUTHOR, ET CETERA, ROW. RIGHT UNDER THE TITLE
8 PORTION OF THAT, THERE'S THE SECOND LINE REFERS TO A PROMO, AND
9 GIVES A NUMBER, A05111. THAT WAS A HARPER STOCK OFFER
10 PROMOTION CODE USED.
11 Q. DO ALL INVOICES FROM HARPER THAT REFLECT STOCK OFFER
12 PURCHASES HAVE THIS CODE?
13 A. NO, THEY DO NOT.
14 Q. DO MOST OF THEM?
15 A. NO, I THINK MOST OF THEM DO NOT.
16 Q. OKAY. IN THAT REGARD, I'D LIKE TO TURN YOUR ATTENTION
17 TO --

18 THE COURT: EXCUSE ME, I'D LIKE TO GO BACK TO WHERE
19 IT WAS -- THE CODE WAS IN THE SECOND LINE?
20 THE WITNESS: DO YOU SEE, KIND OF IN THE MIDDLE OF
21 THIS PAGE, THERE'S A ROW THAT SAYS "QUANTITY" AT THE FAR LEFT?
22 THE COURT: YES.
23 THE WITNESS: JUST TO THE RIGHT OF THAT IT SAYS,
24 "TITLE."
25 THE COURT: YES.

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1 THE WITNESS: IF YOU LOOK AT THE TITLE PORTION OF
2 THAT, THE FIRST LINE SAYS, "PRICE/DISCOUNT, DEBIT." UNDER
3 THAT, THERE'S SOME LANGUAGE THAT REFERS TO THE PROMOTION, "DISC
4 CORR PROMO," AND RIGHT UNDER THAT, THERE'S A CODE NUMBER, WHICH
5 I SPECIFICALLY RECOLLECT WAS A CODE NUMBER, A CODE --
6 THE COURT: WHAT IS THE NUMBER?
7 THE WITNESS: IT'S, WELL, IT BEGINS WITH A LETTER.
8 IT'S LETTER A, AND THEN THE NUMBERS FOLLOWING IT ARE 05111.
9 THE COURT: OKAY. THANK YOU.
10 BY MR. MACH:
11 Q. OKAY. THE NEXT FULL TAB IN YOUR BINDER, 5561, CAN YOU
12 DESCRIBE THIS FOR THE COURT?
13 A. YES, THIS IS ANOTHER INVOICE FROM HARPER COLLINS. THIS ONE
14 DATED 11/14/97.
15 Q. AND DOES THIS INVOICE REFLECT YOUR EVERYDAY TERMS WITH
16 HARPER-COLLINS AS OF THIS TIME PERIOD?
17 A. NO, WE DON'T. WE DON'T GET THOSE.
18 Q. HOW DO YOU KNOW THAT?
19 A. WELL, BECAUSE THE DISCOUNT REFLECTED ON THIS INVOICE IS
20 48 PERCENT, AND AGAIN, I KNOW OUR HARPER TERMS ARE 46 PERCENT
21 FOR STANDARD ORDERS.
22 Q. DOES THAT PROMOTIONAL CODE TO WHICH YOU JUST REFERRED ON
23 THE LAST EXHIBIT APPEAR ON THIS ONE?
24 A. NO, IT DOES NOT.
25 Q. DOES THAT SURPRISE YOU?

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1 A. NO.
2 Q. AND SO WHAT DO THESE PURCHASES REFLECT?
3 A. THESE PURCHASES REFLECT A STOCK OFFER PURCHASE.
4 Q. OKAY, I JUST HAVE ONE MORE INVOICE TO REVIEW HERE, ALSO IN
5 YOUR BINDER, TAB 5569. AND CAN YOU DESCRIBE THIS ONE?
6 A. YES, THIS IS AN INVOICE FROM RANDOM HOUSE, DATED 7/23/98.
7 Q. AND DOES THIS INVOICE REFLECT YOUR STANDARD TERMS FROM
8 RANDOM HOUSE?
9 A. YES, IT DOES.
10 Q. AND CAN YOU EXPLAIN?
11 A. YEAH, I MEAN, IT'S AN INVOICE THAT REFLECTS A 60 PERCENT
12 DISCOUNT ON THE TITLES LISTED HERE, BUT THESE TITLES ARE ALL
13 RANDOM HOUSE VALUE BOOKS, REMAINDER BOOKS, AND THE RED BOOK
14 TERMS FOR IN-HOUSE VALUE BOOKS IS A 60 PERCENT DISCOUNT.
15 Q. AND CAN YOU DESCRIBE WHAT THE COURT WHAT YOU MEAN? YOU
16 SAID, RANDOM HOUSE VALUE BOOKS. WHAT IS THAT?
17 A. WELL, RANDOM HOUSE VALUE BOOKS ARE A DIVISION OF RANDOM
18 HOUSE SEPARATE FROM MOST OF THE BOOKS WE BUY FROM RANDOM HOUSE,
19 WHICH ARE FRONT LIST OR BACK LIST, TRADE BOOKS. REMAINDER
20 BOOKS ARE -- RANDOM HOUSE VALUE HAS A DIVISION THAT SELLS
21 ESSENTIALLY REMAINDER BOOKS, THAT IS, BOOKS THAT ARE BEING
22 REDUCED DRAMATICALLY FOR QUICK SALE REASONS, AND THAT JUST HAS
23 A SEPARATE DISCOUNT CODE.

(CONTINUED ON FOLLOWING PAGE. NOTHING OMITTED.)

25
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1 BY MR. MACH:
2 Q. OKAY. THANK YOU. I WANT TO TURN YOUR ATTENTION NOW TO
3 INGRAM. BELIEVE YOU REFERRED -- YOU TESTIFIED EARLIER THAT YOU
4 PURCHASED FROM INGRAM; IS THAT RIGHT?
5 A. THAT'S RIGHT.
6 Q. AND HOW REGULARLY?
7 A. WE PURCHASE AT LEAST TWICE -- WE PURCHASE ROUTINELY TWICE A
8 WEEK AND SOMETIMES ADDITIONALLY.
9 Q. HAS THAT BEEN TRUE FROM 1994 TO THE PRESENT?

10 A. NO. IN THE EARLIER PART OF THAT TIME RANGE, WE PURCHASED
11 MORE OFTEN ONCE A WEEK. IT'S BEEN IN THE LAST FEW YEARS THAT
12 WE'VE ADDED -- ADDED A -- A TIME A WEEK MORE ROUTINE.
13 Q. WHEN YOU SAY "LAST FEW YEARS" --
14 A. PROBABLY -- WE PROBABLY STARTED DOING THAT IN '99.
15 Q. OKAY. HOW IMPORTANT IS INGRAM TO YOUR BUSINESS?
16 A. INGRAM'S IMPORTANT TO OUR BUSINESS.
17 Q. WHY IS THAT?
18 A. WELL, BECAUSE INGRAM -- WE CAN CONSOLIDATE ORDERS WITH
19 INGRAM IF THEY'RE -- WE ARE OUT OF A BOOK THAT WE DON'T WANT TO
20 BE OUT OF STOCK ON, BECAUSE IT'S EITHER AN IMPORTANT BOOK IN OUR
21 STOCK OR IMPORTANT BECAUSE IT'S SELLING QUICKLY AT THE TIME AND
22 DON'T WANT TO WAIT TO GET IT BACK FROM THE PUBLISHER, I'LL ORDER
23 FROM INGRAM. ALSO WE DO A LOT OF SPECIAL ORDERS FOR CUSTOMERS
24 AND SPEED IS OF THE ESSENCE IN THOSE ORDERS.
25 Q. HOW DO YOUR INGRAM DISCOUNTS COMPARE WITH DISCOUNTS FROM

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1 MAJOR PUBLISHERS?
2 A. GENERALLY THEY'RE LOWER.
3 Q. ARE YOU FAMILIAR WITH WHAT YOUR PURCHASE TERMS WITH INGRAM
4 ACTUALLY ARE?
5 A. YES.
6 Q. CAN YOU TELL THE COURT?
7 A. YEAH, INGRAM REQUIRES A UNIT MINIMUM. IT'S DIFFERENT IF
8 YOU'RE ORDERING ELECTRONICALLY THAN IF YOU'RE ORDERING BY
9 TELEPHONE. BUT THERE'S A UNIT MINIMUM, AND THEN YOU GET A
10 DIFFERENT DISCOUNT ONCE YOU'VE MET THAT MINIMUM BASED ON HOW
11 MANY COPIES OF THE TITLE YOU ORDER.
12 SO IF YOU ORDER ONE -- IF YOU ORDER ONE COPY OF A
13 TITLE YOU GET 40 PERCENT. IF YOU ORDER FIVE TO NINE, YOU GET
14 41 PERCENT, AND IF YOU ORDER TEN PLUS, YOU GET 42 PERCENT.
15 Q. NOW, IN YOUR ANSWER, YOU SAID "YOU GET." DOES YOUR STORE
16 ACTUALLY RECEIVE THOSE TERMS --
17 A. WE GET.
18 Q. -- THAT YOU JUST EXPLAINED?
19 A. YES. YES.
20 Q. HAS THAT BEEN TRUE FROM 1994 TO THE PRESENT?
21 A. YES.
22 Q. DURING THE PERIOD FROM '94 TO THE PRESENT, HAVE YOU EVER
23 RECEIVED ANY INCENTIVE PAYMENTS OR REBATES FROM INGRAM?
24 A. NO, WE HAVE NOT.
25 Q. DOES INGRAM IMPOSE A RETURNS PENALTY ON RETURNS FROM YOUR

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1 STORE?
2 A. YES, THEY DO.
3 Q. CAN YOU DESCRIBE THE PENALTY?
4 A. WELL, THERE ARE TWO. I THINK, AS HAS BEEN EXPLAINED BEFORE,
5 THERE ARE SORT OF THE TWO RETURNS PROCEDURES. THERE'S SOMETHING
6 INGRAM CALLS HASSLE FREE. THAT'S WHEN YOU GET A DAMAGED BOOK IN
7 ON AN ORDER, YOU CAN FILL OUT PAPERWORK THAT THEY SUPPLY AND
8 SEND IT BACK AND NOT BE PENALIZED.
9 HOWEVER, IF YOU'RE SIMPLY RETURNING STOCK -- YOU
10 KNOW, IF YOU HAVE BOOKS IN YOUR INVENTORY YOU WANT TO GET OUT OF
11 THERE AND RETURN TO INGRAM, YOU ONLY GET 50 PERCENT CREDIT ON
12 THOSE BOOKS. SO THERE'S A EIGHT TO -- LET'S SEE -- A SEVEN TO
13 NINE PERCENTAGE POINT PENALTY.
14 Q. AND YOU'VE DESCRIBED TWO RETURNS PROCEDURES. WHICH ONE
15 OCCURS MORE REGULARLY?
16 A. WELL, IT DEPENDS ON IF YOU RETURN TO INGRAM OR NOT. WE
17 DON'T RETURN VERY OFTEN TO INGRAM, SO FOR US, YOU KNOW, THE ONE
18 COPY OF THE DAMAGED BOOK HAPPENS MORE OFTEN. BUT, YOU KNOW, I
19 KNOW THAT IF YOU RETURN OVERSTOCK TO INGRAM, THAT IT -- YOU
20 KNOW, IT WOULD VARY.
21 Q. HAS INGRAM EVER WAIVED THE RETURNS PENALTY FOR WOMEN AND
22 CHILDREN FIRST?
23 A. NO.
24 Q. ARE YOU FAMILIAR WITH INGRAM'S VOR PROGRAM?
25 A. I AM.

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1 Q. HOW DOES IT WORK?

2 A. WELL, IF YOU WANT TO PURCHASE ALL YOUR BOOKS FROM THE
3 PARTICULAR PUBLISHER THROUGH INGRAM, YOU CAN SIGN UP FOR THE
4 VENDOR OF RECORD PROGRAM WITH INGRAM. AND, FOR INSTANCE, IF YOU
5 WANTED TO ORDER ALL YOUR INDIANA UNIVERSITY PRESS TITLES FROM
6 INGRAM, YOU COULD SIGN UP TO DO SO. AND -- AND DOING SO WOULD
7 EARN A BETTER DISCOUNT FROM INGRAM ON THOSE BOOKS THAN THEIR
8 STANDARD TERMS IF YOU'RE ORDERING ANY OTHER PRESS.

9 Q. DOES YOUR STORE PARTICIPATE IN THE VOR PROGRAM?

10 A. WE DO NOT.

11 Q. WHY NOT?

12 A. BECAUSE WE -- FOR THE MOST PART, YOU GET BETTER TERMS
13 DIRECTLY FROM THE PUBLISHER. IT'S ALSO REALLY IMPORTANT FOR US
14 TO ESTABLISH RELATIONSHIPS WITH EACH OF THE PRESSES THAT WE DEAL
15 WITH. SO FOR THOSE REASONS.

16 Q. AND WHY WOULDN'T YOU HAVE THOSE RELATIONSHIPS UNDER THE VOR
17 PROGRAM?

18 A. WELL, BECAUSE WHEN YOU'RE BUYING BOOKS UNDER THE VOR
19 PROGRAM, THOSE BOOKS MORE OFTEN THAN NOT AREN'T REPRESENTED TO
20 YOU BY PUBLISHERS' REPRESENTATIVES. AND MEETING WITH
21 PUBLISHERS' REPS IS A, WE THINK, A REALLY IMPORTANT PART OF
22 KNOWING ABOUT THE BOOKS WE'RE BUYING, AS WELL AS GETTING THE
23 BEST POSSIBLE TERMS ON MOST BOOKS.

24 Q. I'M GOING TO LIST A NUMBER OF OTHER PROGRAMS AND JUST SEE IF
25 YOU'RE FAMILIAR WITH THEM. FIRST IS INGRAM'S SCHEDULED DELIVERY

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1 PROGRAM. ARE YOU FAMILIAR WITH THAT?

2 A. I AM NOT FAMILIAR WITH THAT.

3 Q. HAS INGRAM EVER ADVISED YOU OF THAT PROGRAM?

4 A. NO, THEY HAVE NOT.

5 Q. ARE YOU FAMILIAR WITH INGRAM'S SUMMARY BILLING PROGRAM?

6 A. I AM NOT FAMILIAR WITH THAT.

7 Q. HAS INGRAM EVER ADVISED YOU OF THAT PROGRAM?

8 A. NO, IT HAS NOT.

9 Q. HOW ABOUT BACKLIST PLUS, ARE YOU FAMILIAR WITH THAT?

10 A. I AM NOT.

11 Q. HAS INGRAM EVER ADVISED YOU OF THAT PROGRAM?

12 A. NO, IT HASN'T.

13 Q. ARE YOU FAMILIAR WITH AN INGRAM PROGRAM CALLED THE VISITING
14 AUTHOR PROGRAM?

15 A. I AM FAMILIAR WITH THAT PROGRAM.

16 Q. HOW'D YOU LEARN OF IT?

17 A. I HEARD ABOUT IT FROM ANOTHER BOOKSELLER.

18 Q. DID INGRAM ADVISE YOU OF IT?

19 A. NO.

20 Q. HAVE YOU EVER TAKEN ADVANTAGE OF THE PROGRAM?

21 A. I HAVE.

22 Q. HOW OFTEN?

23 A. A HANDFUL OF TIMES. TWO OR THREE.

24 Q. WHEN WAS THAT?

25 A. IN THE LAST FEW YEARS.

page 38

1 Q. CAN YOU ESTIMATE HOW MANY BOOKS YOU'VE PURCHASED UNDER THIS
2 VISITING AUTHOR PROGRAM?

3 A. SO FEW THAT IT -- IT WOULD BE HARD TO MENTION.

4 Q. AS A PERCENTAGE OF YOUR TOTAL ANNUAL PURCHASES FROM INGRAM?

5 A. AGAIN, I -- I DON'T -- IT'D BE A FIGURE SO SMALL I DON'T
6 THINK YOU COULD CALCULATE IT.

7 Q. ARE YOU FAMILIAR WITH AN INGRAM PROGRAM CALLED COMPUTER
8 BOOKS RECOMMENDED INVENTORY?

9 A. NO, I AM NOT.

10 Q. DOES YOUR STORE PURCHASE COMPUTER BOOKS?

11 A. NO, ONLY ON THE OCCASIONAL BASIS IF A CUSTOMER SPECIAL
12 ORDERS A COMPUTER BOOK, BUT WE DON'T CARRY COMPUTER BOOKS.

13 Q. HOW ABOUT AN INGRAM PROGRAM CALLED RECOMMENDED OPENING STORE
14 INVENTORY PROGRAM?

15 A. I AM NOT FAMILIAR WITH THAT PROGRAM.

16 Q. AND THEN I'LL JUST ASK YOU ONE LAST ONE. INGRAM'S
17 RECOMMENDED INVENTORY EXPANSION PROGRAM. DO YOU KNOW ABOUT THAT
18 ONE?

19 A. NO, I DON'T.

20 Q. WHAT PERCENTAGE OF YOUR INGRAM PURCHASES ARE MADE PURSUANT

21 TO THE RED BOOK DISCOUNTS THAT YOU OUTLINED EARLIER?
22 A. A HUNDRED PERCENT.
23 Q. DOES INGRAM OFFER CO-OP TO STORES?
24 A. NO.
25 Q. HAVE YOU EVER RECEIVED CO-OP DIRECTLY FROM INGRAM?

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1 A. NO.
2 Q. ARE YOU FAMILIAR WITH THE TERM CASH DISCOUNT?
3 A. I AM.
4 Q. CAN YOU DESCRIBE THAT?
5 A. YEAH, CASH DISCOUNT IS SOMETHING THAT A VENDOR -- SOME
6 VENDORS MAKE AVAILABLE IF YOU PAY INVOICES FROM A STATEMENT
7 ACCORDING TO CERTAIN TERMS -- OR CERTAIN CONDITIONS.
8 Q. DOES INGRAM OFFER A CASH DISCOUNT?
9 A. YES, IT DOES.
10 Q. IS THAT CASH DISCOUNT CONTAINED IN INGRAM'S RED BOOK TERMS?
11 A. YES.
12 Q. DO YOU KNOW THE TERMS OF THAT CASH DISCOUNT?
13 A. I DO. INGRAM -- INGRAM'S CASH DISCOUNT IS 2 PERCENT 10, END
14 OF MONTH.
15 Q. WHAT DOES THAT MEAN?
16 A. THAT MEANS IF YOU -- WHEN YOU RECEIVE A STATEMENT TOWARD THE
17 END OF THE MONTH, IF YOU PAY ALL THE INVOICES REFLECTED ON THAT
18 STATEMENT BY THE TENTH DAY OF THE NEXT MONTH, YOU'RE ENTITLED TO
19 TAKE A 2 PERCENT CASH DISCOUNT ON THOSE INVOICES.
20 Q. HAS WOMEN & CHILDREN FIRST EVER KNOWINGLY TRIED TO GET A
21 CASH DISCOUNT FROM INGRAM OUTSIDE OF THOSE PUBLISHED TERMS?
22 A. NO, I'M SURE WE HAVE NOT.
23 Q. OKAY. I'D LIKE TO TURN YOUR ATTENTION TO EXHIBIT 5606 IN
24 YOUR BINDER.
25 A. (REVIEWING DOCUMENT.)

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1 Q. CAN YOU DESCRIBE WHAT THIS DOCUMENT IS?
2 A. THIS DOCUMENT IS A NOTICE TO US THAT -- THAT SAYS AT THE
3 TOP, "UNEARNED DISCOUNT CLAIM." IT'S DATED 7/15/97. AND WHAT
4 IT SAYS IS "THIS CHARGEBACK REPRESENTS DISCOUNT DEDUCTED PAST
5 ELIGIBILITY. PLEASE INCLUDE THIS AMOUNT WITH YOUR NEXT
6 PAYMENT."
7 SO IN OTHER WORDS, THIS -- WHAT THIS IS IS
8 INFORMATION BACK TO US FROM INGRAM SAYING, OOPS, "YOU DIDN'T
9 MAKE -- YOU DIDN'T MAKE THE DEADLINE FOR TAKING DISCOUNTS, SO
10 WE'RE CHARGING THAT BACK TO YOU, PAY IT UP NEXT TIME."
11 Q. FOR TAKING THE CASH DISCOUNT?
12 A. RIGHT. APPARENTLY THE -- IT SAYS CASH DISCOUNT IS AVAILABLE
13 IF POSTMARKED BY THE 10TH. AND APPARENTLY, OUR CHECK, YOU KNOW,
14 GOT DEPOSITED TOO LATE IN THE MAILBOX OR SOMETHING AND DIDN'T
15 GET POSTMARKED BY THE 10TH SO THE DISCOUNTED WAS DISALLOWED.
16 Q. TO YOUR KNOWLEDGE, DOES INGRAM ALSO ENFORCE ITS CASH
17 DISCOUNT TERMS WITH YOUR STORE?
18 A. YES.
19 Q. HAS WOMEN & CHILDREN FIRST EVER RECEIVED THE 2 PERCENT CASH
20 DISCOUNT FROM INGRAM FOR PAYING 25 DAYS AT THE END OF THE MONTH
21 AFTER A STATEMENT?
22 A. OH, I'M SURE WE HAVE NOT.
23 Q. HAVE YOU EVER RECEIVED A CASH DISCOUNT FROM PENGUIN?
24 A. NO.
25 Q. DOES PENGUIN PROVIDE A CASH DISCOUNT FOR EARLY PAYMENT?

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1 A. I DON'T KNOW FOR SURE. NOT AS FAR AS I KNOW.
2 Q. I'LL BRIEFLY TALK ABOUT RETURNS. ARE YOU FAMILIAR WITH YOUR
3 STORE'S RETURNS RATE?
4 A. YES.
5 Q. AND APPROXIMATELY WHAT IS YOUR STORE'S RETURNS RATE?
6 A. WELL, IT RANGES -- FOR ANY GIVEN YEAR, IT RANGES BETWEEN 8
7 AND 15 PERCENT.
8 Q. OKAY. JUST WANT TO TOUCH ON FREIGHT FOR A MOMENT. DO
9 PUBLISHERS' FREIGHT TERMS VARY?
10 A. THEY DO.
11 Q. CAN YOU DESCRIBE HOW?
12 A. WELL, SOME PUBLISHERS PAY FREIGHT ON BOOKS THAT THEY'RE

13 SHIPPING TO US. SOME PUBLISHERS CHARGE US FOR FREIGHT, AND SOME
14 PUBLISHERS HAVE A PROGRAM CALLED -- THAT THEY CALL FREIGHT
15 PASS-THROUGH WHERE ESSENTIALLY SOME OF THE FREIGHT IS PASSED ON
16 TO THE CUSTOMER, THE CUSTOMER BUYING THE BOOK.
17 Q. HOW DO YOU LEARN OF A VENDOR'S FREIGHT TERMS?
18 A. THROUGH THE RED BOOK.
19 Q. HAS WOMEN & CHILDREN FIRST EVER RECEIVED FREE FREIGHT FROM A
20 NON-FREE FREIGHT PUBLISHER?
21 A. NO, I'M SURE WE HAVE NOT.
22 Q. IS THAT TRUE FOR ALL THE VENDORS ON THE LIST, EXHIBIT 2591?
23 A. (REVIEWING DOCUMENT.)
24 YES, IT'D BE TRUE FOR ALL THE VENDORS ON THIS LIST.
25 Q. DO STOCK OFFERS SOMETIMES CONTAIN --

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1 A. YES.
2 Q. -- FREIGHT TERMS?
3 A. SOMETIMES THE TERMS OF A STOCK OFFER ARE THAT YOU GET FREE
4 FREIGHT ON THAT OFFER.
5 Q. SO IN THOSE CIRCUMSTANCES --
6 A. YES. IN THOSE CIRCUMSTANCES, IF WE EXERCISE THAT OPTION,
7 SURE, THE -- THEN WE WOULD GET FREE FREIGHT.
8 Q. DOES YOUR STORE EVER RECEIVE SHIPMENTS THAT ARE MISSING
9 BOOKS OR CONTAIN DAMAGED BOOKS?
10 A. OH, SURE.
11 Q. GENERALLY, WHAT MUST YOU DO TO OBTAIN CREDIT FOR THOSE
12 DAMAGED BOOKS OR MISSING BOOKS?
13 A. WELL, YOU HAVE TO -- YOU HAVE TO DOCUMENT THE SHORTAGE OR
14 DAMAGED BOOKS IN SOME WAYS. THERE ARE ONE OF TWO WAYS REALLY.
15 WE HAVE TO WRITE IT UP AND MAKE A CLAIM TO THE CLAIMS DEPARTMENT
16 FOR THE PUBLISHER. SOME PUBLISHERS ALLOW YOU TO DO IT BY
17 TELEPHONE. SOME -- SO INSTEAD OF WRITING IT, YOU CAN CALL THE
18 CLAIMS DEPARTMENT AND SAY THERE WERE THESE DISCREPANCIES ON MY
19 INVOICE, WE'D LIKE CREDIT OR FOR YOU TO RESHIP THOSE BOOKS IF
20 THEY WERE MISSING BOOKS.
21 Q. DOES THAT TAKE ANY TIME TO DO?
22 A. SURE.
23 Q. ABOUT HOW MUCH?
24 A. WELL, IT DEPENDS ON -- YOU KNOW, IT DEPENDS ON THE
25 CIRCUMSTANCES. IF IT'S -- SOMETIMES SHIPMENT COME IN VERY

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1 CONFUSED. AND THERE ARE A NUMBER OF THINGS THAT NEED TO BE
2 DOCUMENTED. THESE TAKE LONGER, OBVIOUSLY, THAN IF IT'S A SIMPLE
3 MATTER. BUT IN EITHER CASE, YOU HAVE TO TAKE OUT TIME FROM, YOU
4 KNOW, THE ROUTINE BUSINESS OF RECEIVING THE BOOKS AND PUTTING
5 THEM ON THE SHELVES AND EITHER WRITE A LETTER OR MAKE A PHONE
6 CALL.
7 AND, OF COURSE, ANOTHER THING THAT TAKES TIME IS
8 OFTEN CREDIT CLAIMS DON'T GO SMOOTHLY. YOU KNOW, YOU DON'T GET
9 YOUR CREDIT, IN WHICH CASE YOU HAVE TO CALL BACK AGAIN OR RESEND
10 THE MEMO. SO YES, IT'S A VERY TIME-CONSUMING PART OF OUR
11 BUSINESS.
12 Q. NOW, LEAVING ASIDE ANY OF THE LINES UNDER VHPS OR THE
13 VON HOLTZBRINCK GROUP, FROM 1994 TO THE PRESENT, HAVE YOU EVER
14 TAKEN AN AUTOMATIC DEDUCTION FOR DAMAGED OR MISSING BOOKS FROM
15 ANY VENDOR ON YOUR LIST?
16 A. NO.
17 Q. OKAY. I WANT TO TALK BRIEFLY ABOUT CO-OP. WE'VE TOUCHED ON
18 IT ALREADY. DO YOU ADVERTISE BOOKS IN THE NEWSPAPERS OR OTHER
19 MEDIA?
20 A. REGULARLY.
21 Q. IS IT POSSIBLE TO GET MONEY FROM PUBLISHERS TO PAY FOR THE
22 COST OF THOSE ADS?
23 A. FROM SOME PUBLISHERS, IT IS.
24 Q. AND ARE THERE SOME PUBLISHERS ON THE LIST THAT IS CONTAINED
25 IN EXHIBIT 2591 THAT PROVIDE CO-OP?

page 44

1 A. OH, YES.
2 Q. IN CONNECTION WITH THE MEDIA ADVERTISEMENT, IS THERE A
3 MAXIMUM AMOUNT YOU CAN GET FROM A PUBLISHER IN THE FORM OF
4 COOPERATIVE ADVERTISING ALLOWANCE?

5 A. YES.
6 Q. AND WHAT IS THE MAXIMUM?
7 A. WELL, IT VARIES FROM PUBLISHER TO PUBLISHER, BUT THERE
8 ALWAYS IS A MAXIMUM.
9 Q. DOES THAT MAXIMUM RELATE IN ANY WAY TO THE COSTS THAT YOU
10 EXPEND IN RUNNING THE AD?
11 A. WELL, IT RELATES TO THE EXTENT THAT YOU CAN'T GET MORE MONEY
12 THAN YOU SPEND ON AN AD THAN YOU HAVE SPENT ON THE AD.
13 Q. IS THAT TRUE FROM ALL THE PUBLISHERS FROM WHOM YOU RECEIVE
14 CO-OP?
15 A. YES.
16 Q. DO ANY OF THE PUBLISHERS FROM WHOM YOU RECEIVE CO-OP ALLOW
17 YOU TO RECEIVE CO-OP ADVERTISING ALLOWANCE GREATER THAN THE COST
18 OF A MEDIA AD?
19 A. NO, NONE OF THESE PUBLISHERS DO THAT.
20 Q. HAVE ANY OF THE PUBLISHERS THAT PROVIDE YOUR STORE WITH
21 CO-OP REIMBURSED YOU CO-OP MONEY FOR UNDOCUMENTED COSTS SUCH AS
22 LABOR COSTS?
23 A. NO.
24 Q. ARE YOU ALWAYS REQUIRED TO SUBMIT DOCUMENTATION WITH YOUR
25 CO-OP CLAIM?

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1 A. YES, WE ARE.
2 Q. AND HAS THAT BEEN TRUE THROUGHOUT THE PERIOD FROM '94 TO THE
3 PRESENT?
4 A. YES.
5 Q. AND NOW I'M REFERRING TO MEDIA ADS HERE AND REIMBURSEMENT
6 FOR --
7 A. CORRECT. THAT'S WHAT YOU SAID.
8 Q. OKAY. AND WHAT IS THE DOCUMENTATION THAT YOU HAVE TO SUBMIT
9 FOR MEDIA ADS?
10 A. THE ROUTINE DOCUMENTATION YOU HAVE TO SUBMIT IS A TEAR SHEET
11 THAT PICTURES IN THE NEWSPAPER YOU'VE ADVERTISED IN THAT SHOWS
12 THE AD. AND THE OTHER PIECE OF DOCUMENTATION REQUIRED IS AN
13 INVOICE TO, FOR EXAMPLE, THE CHICAGO TRIBUNE FOR THE COST OF
14 THAT AD.
15 Q. HAVE YOU EVER RECEIVED CO-OP FROM ANY PUBLISHERS FOR ADS
16 THAT DID NOT FEATURE ANY OF THEIR TITLES?
17 A. I'M SORRY. COULD YOU REPEAT THAT QUESTION.
18 Q. SURE.
19 HAVE YOU EVER RECEIVED CO-OP FROM ANY PUBLISHER FOR
20 ADVERTISEMENTS THAT DID NOT FEATURE ANY OF THE PUBLISHER'S
21 TITLES?
22 A. AD -- CO-OP FOR -- FROM A PUBLISHER FOR AN AD THAT DIDN'T
23 FEATURE THAT PUBLISHER'S TITLES?
24 Q. CORRECT?
25 A. NO. NO.

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1 Q. YOU FAMILIAR WITH THE TERM "RDC"?
2 A. YES.
3 Q. AND DOES WOMEN & CHILDREN FIRST HAVE AN RDC?
4 A. NO, WE DON'T.
5 Q. HAS WOMEN & CHILDREN FIRST EVER RECEIVED AN RDC DISCOUNT, AN
6 ADDITIONAL DISCOUNT, CALLED AN RDC DISCOUNT?
7 A. NO, WE HAVE NOT.
8 Q. ARE YOU FAMILIAR WITH THE REQUIREMENTS THAT GENERALLY MUST
9 BE MET TO QUALIFY FOR AN RDC DISCOUNT?
10 A. YES.
11 Q. TO YOUR KNOWLEDGE, HAS WOMEN & CHILDREN FIRST EVER QUALIFIED
12 FOR AN RDC DISCOUNT?
13 A. NO, WE'RE A SINGLE STORE.
14 Q. WHAT PROPORTION OF YOUR BOOKS DO YOU ORDER IN FULL-CARTON
15 QUANTITIES?
16 A. A SMALL PORTION.
17 Q. CAN YOU GIVE AN ESTIMATE?
18 A. HMM, I WOULD SAY TWO TO THREE PERCENT, SOMETHING LIKE THAT.
19 Q. WHY DON'T YOU ORDER MORE BOOKS IN CARTON QUANTITIES?
20 A. WELL, BECAUSE -- BECAUSE THE NUMBER OF BOOKS CONTAINED --
21 WE'RE TALKING ABOUT SINGLE TITLE CONTAINED IN ONE CARTON --
22 EXCEEDS OUR NEED FOR THE PERIOD -- A PERIOD OF TIME. I MEAN, WE
23 ORDER CAREFULLY SO I WANT TO ORDER AS MANY BOOKS AS I THINK I'M

24 GOING TO SELL IN A MONTH OR TWO-MONTH TIME PERIOD, SO USUALLY
25 CARTON QUANTITIES ARE IMPRACTICAL FOR THAT.

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1 Q. OKAY. DO YOU HAVE ANY PREFERENCES FOR HOW BOOKS ARE
2 PACKAGED WHEN THEY'RE SHIPPED TO YOUR STORE?
3 A. WELL, YOU KNOW, I LIKE THEM TO BE PACKAGED WITH ADEQUATE
4 PACKING MATERIAL. THEY ARRIVE TO US UNDAMAGED, WHICH IS USUALLY
5 THE CASE. AND -- AND I ALSO CERTAINLY PREFER THE PUBLISHERS OR
6 VENDORS INCLUDE A PACKING LIST OR INVOICE THAT CONTAINS PRICE
7 INFORMATION SO THAT I KNOW IF A BOOK IS UNPRICED SO I HAVE THAT
8 INFORMATION AT THE READY TO PRICE IT.
9 Q. DO PUBLISHERS ALWAYS MEET YOUR PREFERENCES OR REQUIREMENTS?
10 A. NO.
11 Q. HAVE YOU EVER RECEIVED ANY PAYMENTS FROM A PUBLISHER FOR
12 VIOLATING YOUR PREFERENCES OR REQUIREMENTS?
13 A. NO.
14 Q. DO YOU EVER MEET WITH PUBLISHER REPRESENTATIVES?
15 A. OFTEN.
16 Q. HOW OFTEN?
17 A. OH, DURING -- DURING SOME SEASONS WE CAN MEET WITH TWO OR
18 THREE REPS IN A DAY.
19 Q. HAVE YOU EVER RECEIVED ANY PAYMENTS FROM PUBLISHERS FOR
20 MEETING WITH THEM?
21 A. NO.
22 Q. DO YOU EVER PROVIDE SALES DATA TO PUBLISHERS?
23 A. YES, WE DO.
24 Q. AND HAVE YOU EVER RECEIVED ANY PAYMENTS FROM PUBLISHERS FOR
25 PROVIDING SALES DATA TO THEM?

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1 A. NO.
2 Q. OKAY. WE'RE -- WE'RE ALMOST FINISHED HERE, AND I THANK YOU
3 FOR YOUR TIME.
4 I JUST WANT TO RETURN TO SOME THINGS THAT YOU
5 TESTIFIED ABOUT ON THURSDAY. ON THURSDAY, YOU REFERRED TO A
6 NUMBER OF COMPETITORS INCLUDING THE 20 OR SO BARNES & NOBLE AND
7 BORDERS STORES IN YOUR COMPETITIVE AREA; IS THAT CORRECT?
8 A. THAT'S CORRECT.
9 Q. AND THINK YOU TESTIFIED THAT THERE ARE OTHER BOOKSTORES WITH
10 WHOM YOU COMPETE OTHER THAN BARNES & NOBLE AND BORDERS?
11 A. YES, THAT'S RIGHT.
12 Q. WERE THERE ANY OTHER FEMINIST BOOKSTORES IN YOUR AREA WHEN
13 YOU FIRST OPENED?
14 A. YES, THERE WAS ANOTHER FEMINIST BOOKSTORE IN CHICAGO.
15 Q. WHAT WAS THAT BOOK STORE?
16 A. IT WAS CALLED THE JANE ADAMS BOOK SHOP.
17 Q. WHERE WERE THEY LOCATED?
18 A. THEY WERE LOCATED IN DOWNTOWN CHICAGO, WHAT'S KNOWN AS THE
19 LOOP.
20 Q. AND CAN YOU DESCRIBE THEIR LOCATION RELATIVE TO YOURS?
21 A. YEAH, WE THOUGHT OF THEIR LOCATION SORT OF AS A DIFFERENT
22 WORLD FROM OURS. IT WAS -- THEY WERE LOCATED IN A -- DOWNTOWN.
23 THEY WERE LOCATED ON THE FIFTEENTH FLOOR OF AN OFFICE BUILDING.
24 THEY WERE OPEN BUSINESS HOURS. I MEAN, DOWNTOWN BUSINESS HOURS.
25 Q. OKAY. AND ALSO LAST WEEK, I BELIEVE YOU DESCRIBED YOUR

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1 COMPETITIVE AREA, THE GEOGRAPHIC DEFINITION OF YOUR COMPETITIVE
2 AREA.
3 A. THAT'S CORRECT.
4 Q. AND WHAT WAS THAT?
5 A. I SAID 25 TO 30 MILES, GREATER METROPOLITAN CHICAGO AREA.
6 Q. HAVE YOU EVER REFERRED TO CHICAGO AS BEING PAROCHIAL?
7 A. I REMEMBER WHEN MY PARTNER AND I WERE TALKING ABOUT MOVING
8 THE BOOKSTORE OUT OF THE NEIGHBORHOOD THAT WE'VE BEEN DOING
9 BUSINESS IN FOR 11 YEARS, I REMEMBER THINKING AND SAYING
10 SOMETHING LIKE, WHOA, WHAT ABOUT -- WHAT ABOUT THE QUESTION OF
11 WHETHER CUSTOMERS WILL FOLLOW US UP INTO THIS NEW NEIGHBORHOOD?
12 CHICAGO, LIKE ANY URBAN NEIGHBORHOOD, IS NEIGHBORHOOD
13 IDENTIFIED. YOU KNOW, PEOPLE CAN WALK PLACES, UNLIKE IN THE
14 SUBURBS FOR THE MOST PART WHERE YOU HAVE TO GET IN YOUR CAR TO
15 GET ANYWHERE.

16 PEOPLE LIKE TO USE THEIR NEIGHBORHOODS AND -- IN
17 CHICAGO. BUT THEN IN THE COURSE OF THE DISCUSSION, WE REMINDED
18 EACH OTHER THAT, YOU KNOW, ALTHOUGH IT'S TRUE THAT PEOPLE LIKE
19 THEIR NEIGHBORHOOD AND SHOP CONVENIENTLY WHEN THEY CAN, PEOPLE
20 MOVE ALL OVER THE CITY. I MEAN, PEOPLE -- I'M IN FOUR OR FIVE
21 NEIGHBORHOODS IN THE COURSE OF A DAY, SO THERE'S A LOT OF
22 MOVEMENT AND THAT PROVED TO BE A -- MY CONCERN PROVED TO BE AN
23 UNREALIZED ONE.

24 Q. AND WHAT DID YOU ULTIMATELY DETERMINE ABOUT YOUR CUSTOMER
25 BASE?

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1 A. THAT THEY INDEED CONTINUED AND, YOU KNOW, HAVE ALWAYS AND
2 CONTINUE TO COME TO US FROM -- FROM ALL OVER THE GREATER
3 METROPOLITAN AREA.

4 MR. MACH: THANK YOU. I HAVE NOTHING FURTHER.

5 THE COURT: CROSS-EXAMINATION?

6 MR. GARCIA: YOUR HONOR, GOOD MORNING. DAVID GARCIA.

7 THE COURT: SPEAK UP A LITTLE BIT, PLEASE.

8 MR. GARCIA: FORGIVE ME YOUR HONOR. DAVID GARCIA ON
9 BEHALF OF BARNES & NOBLE.

10 THE COURT: MR. GARCIA.

11 MR. GARCIA: WITH THE COURT'S PERMISSION, I'M GOING
12 TO HAND UP VARIOUS BINDERS. MY APOLOGIES FOR THE PAPER FLOW.

13 THE COURT: DON'T APOLOGIZE. IT'S BECOME QUITE

14 COMMON.

15 MR. GARCIA: AND WITH THE COURT'S PERMISSION, I WOULD
16 PLACE IN FRONT OF THE WITNESS COPIES OF HER DEPOSITION AS WELL
17 AS THE DOCUMENTS THAT WE WOULD USE IN OUR CROSS-EXAMINATION.

18 THE COURT: YES, OF COURSE.

19 MR. GARCIA: THANK YOU, YOUR HONOR.

20 (PAUSE IN THE PROCEEDINGS.)

21 MR. GARCIA: MAY I APPROACH, YOUR HONOR?

22 THE COURT: YEAH.

23 (PAUSE IN THE PROCEEDINGS.)

24 MR. GARCIA: WE'RE WAITING FOR DEPOSITION
25 TRANSCRIPTS, YOUR HONOR.

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1 THE COURT: ALL RIGHT.

2 MR. GARCIA: PERMISSION TO APPROACH, YOUR HONOR.

3 THE COURT: YES.

4 MR. GARCIA: AND YOUR DEPOSITION TRANSCRIPT (HANDING
5 DOCUMENTS).

6 I'M SURE THERE WAS MORE PREPARATION FOR NORMAN DEE
7 CONVENTION, BUT IT DOESN'T FEEL LIKE IT.

8 THE COURT: NOBODY ASKS PERMISSION TO APPROACH. JUST
9 APPROACH.

10 MR. GARCIA: THANK YOU VERY MUCH, YOUR HONOR.

11 CROSS-EXAMINATION

12 BY MR. GARCIA:

13 Q. GOOD MORNING, MISS CHRISTOPHERSEN.

14 A. GOOD MORNING.

15 Q. MY NAME'S DAVID GARCIA. I'M HERE ON BEHALF OF BARNES &
16 NOBLE. IN YOUR DIRECT TESTIMONY ON THURSDAY LAST, YOU DESCRIBED
17 WOMEN & CHILDREN FIRST AS A SPECIALTY BOOKSTORE.

18 A. THAT'S CORRECT.

19 Q. WHAT DID YOU MEAN BY THAT TERM?

20 A. WELL, WE SPECIALIZE IN THE TWO CATEGORIES OF BOOKS SUGGESTED
21 BY OUR NAME. WE SPECIALIZE IN BOOKS BY AND ABOUT WOMEN AND
22 CHILDREN'S BOOKS FOR ALL AGES.

23 Q. AND YOU TESTIFIED AT THE TIME THAT YOU HAVE APPROXIMATELY
24 35,000 TITLES IN YOUR STORE?

25 A. THAT'S CORRECT.

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1 Q. ALL RIGHT. AND YOU HAVE VISITED BARNES & NOBLES AND BORDERS
2 STORES; IS THAT CORRECT?

3 A. THAT IS CORRECT.

4 Q. DO YOU HAVE A GENERAL SENSE OF HOW MANY TITLES THEY HAVE?

5 A. WELL, I THINK IN SUPERSTORES, I THINK A HUNDRED THOUSAND
6 TITLES.

7 Q. AT LEAST?

8 A. SOMETHING LIKE THAT.

9 Q. SORRY.

10 SO BY DEFINITION, A SUPERSTORE, BARNES & NOBLE OR
11 BORDERS, IS GOING TO HAVE A GREAT MANY MORE TITLES THAN THE ONES
12 THAT YOU CARRY?

13 A. THAT'S CORRECT.

14 Q. AND CONVERSELY, BECAUSE YOU ARE A SPECIALTY STORE AND HAVE
15 SPECIALIZED COLLECTIONS, IN THE AREAS IN WHICH YOU SPECIALIZE,
16 YOU WILL HAVE TITLES THAT BARNES & NOBLE AND BORDERS DON'T HAVE;
17 THAT CORRECT?

18 A. THAT'S CORRECT. I WOULD SAY SOMETHING IN THE VICINITY OF
19 20 PERCENT.

20 Q. AND NEVERTHELESS, IT'S YOUR BELIEF THAT ONE OF THE REASONS
21 YOU ACTUALLY COMPETE -- BY "YOU," I MEAN WOMEN AND CHILDREN'S
22 BOOKSTORE -- ACTUALLY COMPETES WITH BARNES & NOBLE AND BORDERS
23 IS THAT THERE IS, TO SOME EXTENT, A TITLE OVERLAP; IS THAT
24 CORRECT?

25 A. TO MORE THAN SOME EXTENT. TO A SIGNIFICANT EXTENT.

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1 Q. RIGHT. YOU HAVEN'T MADE ANY KIND OF AN ATTEMPT TO DETERMINE
2 WHAT ACTUAL PERCENTAGE OF OVERLAP THERE IS, HAVE YOU?

3 A. NO, I'VE ESTIMATED THAT.

4 Q. I BELIEVE YOU TESTIFIED IN YOUR DEPOSITION THAT YOU HAVE
5 VISITED THREE BARNES & NOBLE STORES AND ACTUALLY PAID ATTENTION
6 TO THEIR FEMINIST COLLECTIONS?

7 A. THAT'S CORRECT.

8 Q. AND YOUR PERCEPTION OF THOSE THREE STORES WAS THAT THEIR
9 FEMINIST COLLECTIONS WERE SMALL. WAS THAT SMALL RELATIVE TO
10 YOUR COLLECTION?

11 A. WELL, THEIR -- AS YOU'RE REFERRING TO THEIR FEMINIST
12 COLLECTION, WHAT I MEAN IS THEIR WOMEN'S STUDIES SECTION. BUT
13 THERE ARE MANY BOOKS IN BARNES & NOBLE THAT AREN'T CONTAINED IN
14 A WOMEN'S STUDY SECTION THAT OVERLAP WITH THE SAME TITLES WE
15 CARRY.

16 I MEAN, AMY TAN'S NEW NOVEL WOULDN'T BE IN THE
17 WOMEN'S STUDY SECTION OF BARNES & NOBLE, BUT THAT'S A KEY BOOK
18 FOR US RIGHT NOW, AS IT IS FOR BARNES & NOBLE.

19 Q. BUT YOU ALSO TESTIFIED THAT THEY'RE PRINCIPALLY NEWER BOOKS
20 AND THAT THEY -- THAT BARNES & NOBLE DOESN'T CARRY THE OLDER
21 BACKLIST TITLES?

22 A. AGAIN, I'M SIMPLY -- I REFERRED TO IN THEIR WOMEN STUDIES
23 SECTION. THEY CARRY A LOT OF BACKLIST TITLES THAT WOULD BE THE
24 SAME BACKLIST TITLES I CARRY.

25 Q. NOW, IN YOUR TESTIMONY ON THURSDAY, IT IS YOUR POSITION

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1 THAT -- AND I DON'T WANT TO CHARACTERIZE TOO MUCH -- BUT THAT
2 YOU HAVE A COMPETITIVE AREA OF 25 TO 30 MILES SO THAT YOU
3 COMPETE WITH ALL THE BARNES & NOBLES AND BORDERS STORES
4 THROUGHOUT THE GREATER METROPOLITAN AREA IN CHICAGO?

5 A. THAT'S CORRECT. SOME MORE KEENLY THAN OTHERS. BUT BECAUSE
6 WE'RE A DESTINATION STORE, WE DRAW CUSTOMERS FROM A LARGER
7 REGION THAN A LOCAL STORE WOULD.

8 Q. THAT'S RIGHT.

9 AND IN YOUR TRIAL TESTIMONY, YOU SAID THAT WHEN YOU
10 WERE ASKED WHY YOU COMPETE WITH -- WITH ALL THE BARNES & NOBLE
11 STORES, YOU SAID BECAUSE THEY EXIST WITHIN A REGION THAT WE DRAW
12 CUSTOMERS FROM. THE "WE" BEING WOMEN & CHILDREN FIRST; IS THAT
13 CORRECT?

14 A. THAT'S CORRECT.

15 Q. BUT THE PEOPLE WHO COME TO WOMEN & CHILDREN FIRST FROM ANY
16 DISTANCE AT ALL AREN'T LOOKING FOR A GENERAL BOOKSTORE, ARE
17 THEY?

18 A. OH, THEY MAY NOT BE LOOKING FOR A GENERAL BOOKSTORE, BUT
19 THEY BUY PLENTY OF GENERAL INTEREST TITLES WHEN THEY COME TO MY
20 BOOKSTORE PERHAPS LOOKING FOR A MORE OBSCURE BOOK THAT BARNES &
21 NOBLE WOULDN'T CARRY.

22 Q. BUT, IN FACT, IT'S YOUR SPECIALTY BOOKS THAT CAUSE PEOPLE TO
23 TRAVEL TO YOUR STORE. YOUR TESTIMONY IN YOUR DEPOSITION WAS
24 THAT PEOPLE WHO COME FROM GREATER DISTANCES COME FOR YOUR
25 WOMEN'S STUDIES BOOKS AND OTHER SPECIALIZED BOOKS; ISN'T THAT

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1 CORRECT?
2 A. I DON'T KNOW -- NO, I WOULDN'T CHARACTERIZE IT THAT WAY. IF
3 YOU'RE REFERRING TO MY DEPOSITION, I'D LIKE TO HEAR THAT PART
4 'CAUSE THAT ISN'T HOW I WOULD CHARACTERIZE IT.
5 Q. ALL RIGHT. LET'S REFER TO YOUR DEPOSITION TRANSCRIPT AT
6 PAGE 133, LINE 24.
7 AND YOU STATE:
8 "WELL, BECAUSE OF OUR SPECIALTY, THE PEOPLE WHO COME,
9 THE PEOPLE WHO COME FROM GREATER DISTANCES COME FOR
10 LESBIAN BOOKS, WOMEN'S STUDIES BOOKS."
11 IS THAT CORRECT?
12 MR. MACH: EXCUSE ME, YOUR HONOR.
13 THE WITNESS: WELL --
14 MR. MACH: EXCUSE ME, YOUR HONOR. I'D JUST LIKE TO
15 ASK THAT THE REST OF THE ANSWER BE READ. THAT WOULD BE --
16 THE COURT: YES.
17 MR. GARCIA: THAT'S FINE.
18 THE COURT: READ THE WHOLE ANSWER AGAIN, PLEASE.
19 MR. GARCIA:
20 "IN PARTICULAR, ALTHOUGH THERE'S NO KIND OF NEAT
21 CATEGORY AND CUSTOMER -- THE SAME CUSTOMER WHO WANTS
22 TO BUY LESBIAN FICTION ALSO MAY WELL WANT TO BUY THE
23 NEW AMY TAN NOVEL OR ANY NUMBER OF OTHER THINGS, SO
24 THERE'S NO KIND OF NEAT CUSTOMER PROFILE BECAUSE
25 WE'RE COMPREHENSIVE IN A COUPLE OF AREAS. THOSE

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1 AREAS ARE WHAT PEOPLE WOULD CERTAINLY TRAVEL SOME
2 DISTANCE FOR, BUT BECAUSE WE'RE GENERAL IN OTHER
3 AREAS, THOSE SAME CUSTOMERS AND OTHER CUSTOMERS WOULD
4 BUY THOSE BOOKS.
5 "AS I MENTIONED EARLIER, A LOT OF PEOPLE TRAVEL TO
6 OUR STORE TO ATTEND AUTHOR EVENTS."
7 BUT IT'S THE CASE, ISN'T IT, THAT THE TRAVEL IS
8 ACTUALLY FOR THE SPECIALTY BOOKS?
9 THE WITNESS: WELL, THAT -- THAT'S WHAT DRAWS SOME
10 CUSTOMERS TO OUR STORE, BUT I THINK THE SALIENT POINT IS THAT
11 THOSE SAME CUSTOMERS BUY ALL KINDS OF BOOKS FROM US.
12 BY MR. GARCIA:
13 Q. IN FACT, YOU AND YOUR PARTNER OPENED A -- A SPECIALTY
14 BOOKSTORE PRECISELY TO AVOID COMPETING WITH GENERAL BOOKSTORES;
15 ISN'T THAT CORRECT?
16 A. I WOULDN'T CHARACTERIZE IT THAT WAY, NO.
17 Q. WELL, LET'S REFER BACK TO YOUR DEPOSITION AT PAGE 27.
18 "QUESTION: WHY DO YOU THINK YOU DECIDED TO FOCUS ON
19 FEMINIST AND CHILDREN'S LITERATURE, THAT IS, BE A
20 SPECIALTY STORE AS OPPOSED TO A GENERAL BOOKSELLER?"
21 A. I'M SORRY. COULD YOU GIVE ME A LINE?
22 Q. LINE 10 FOR THE QUESTION.
23 THE COURT: ON PAGE 27?
24 MR. GARCIA: YES.
25 THE COURT: LINE 10 BEGINS WITH AN ANSWER IN MY BOOK.

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1 MR. GARCIA: OH. SHALL I BEGIN WITH THE ANSWER, YOUR
2 HONOR?
3 THE COURT: NO.
4 MR. GARCIA: NO? QUESTION IS AT LINE 6.
5 THE COURT: YES.
6 MR. GARCIA:
7 "WHY DO YOU THINK YOU DECIDED TO FOCUS ON A
8 FEMINIST -- ON FEMINIST AND CHILDREN'S LITERATURE
9 THAT IS, VIA A SPECIALTY STORE AS OPPOSED FOR THE
10 GENERAL BOOKSTORE?"
11 AND YOU SAY.
12 "THAT'S A LONG AND COMPLICATED ANSWER, BUT I CAN GIVE
13 A SHORTER VERSION OF IT," AND THEN YOU SAY, "THERE
14 ARE TWO REASONS AND THE 1ST REASON ONE IS BECAUSE" --
15 THE COURT: JUST READ IT. DON'T --
16 MR. GARCIA: SORRY. I'LL BEGIN AT LINE 10.
17 WELL, THIS IS PROBABLY A LONG COMPLICATED ANSWER, BUT
18 I'LL GIVE YOU THE KIND OF SHORTER VERSION OF IT. I

19 THINK PRIMARILY TWO REASONS. ONE IS BECAUSE AT THE
20 TIME WE OPENED OUR STORE, AT THE TIME WE DECIDED THAT
21 A BOOKSTORE IS REALLY WHAT WE WANTED TO INVEST OUR
22 TIME AND THINKING AND ENERGY IN, WE LOOKED AROUND THE
23 CITY OF CHICAGO AND THOUGHT THERE ARE A LOT OF GOOD
24 INDEPENDENT BOOKSTORES IN THIS CITY, GENERAL
25 BOOKSTORES. SO DO WE REALLY WANT TO GO INTO THAT

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1 MARKET AND COMPETE WITH THOSE STORES?"
2 THE COURT: AND FINISH THE ANSWER.
3 MR. GARCIA:
4 "IN FACT, THERE WAS A VERY GOOD GENERAL BOOKSTORE
5 JUST DOWN THE STREET FROM US ON ARMITAGE, SO WE
6 THOUGHT THAT'S PROBABLY NOT THE SMARTEST THING TO DO.
7 SO WE STARTED THINKING ABOUT WHAT SPECIALTY STORE
8 WOULD SERVE A MARKET THAT WAS UNDERSERVED. THAT WAS
9 ONE PIECE OF IT. IT SEEMED LIKE A SMART BUSINESS
10 MOVE TO US."
11 AND I -- I'D SUBMIT, YOUR HONOR, THAT THE REST OF
12 ANSWER IS --
13 THE COURT: LOOK, IF YOU'RE GOING TO USE A DEPOSITION
14 TO IMPEACH A WITNESS, YOU READ THE WHOLE QUESTION AND THE WHOLE
15 ANSWER THAT YOU'RE READING THE -- THERE MAY BE SOMETHING IN THE
16 REST OF IT, AND PARTICULARLY, IF WE HAD A JURY HERE, BUT ALSO
17 FOR THE COURT.
18 SO TO MAKE THE RECORD COMPLETE, READ THE QUESTION AND
19 ANSWER COMPLETELY. SO I SUGGEST YOU FINISH THE ANSWER WHICH
20 BEGINS AT LINE 6.

21 MR. GARCIA: THANK YOU, YOUR HONOR.
22 "THE OTHER PART OF IT WAS THAT WE WERE FEMINISTS AND
23 INCREASINGLY INVOLVED IN FEMINIST ISSUES. I HAD BEEN
24 A TEACHER, AS I TOLD YOU, AND LIKED CHILDREN'S BOOKS.
25 HAVING CHILDREN'S BOOKS IN COMBINATION WITH BOOKS BY

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1 AND ABOUT WOMEN SEEMED LIKE A REASONABLE GROUPING AND
2 ALSO A MARKET THAT WAS UNDERSERVED.
3 "THE CHILDREN'S -- THERE WERE NO CHILDREN'S SPECIALTY
4 STORES AT THE TIME AND NOT VERY SIGNIFICANT
5 CHILDREN'S DEPARTMENTS IN A LOT OF GENERAL STORES.
6 SO FOR THOSE TWO REASONS."

7 Q. SO, IN FACT, YOU DECIDED TO OPEN THE STORE AND SPECIALIZE
8 PRECISELY TO AVOID COMPETING WITH GENERAL BOOKSTORES IN THAT
9 MARKET, THE MARKET FOR GENERAL BOOKSTORES.
10 A. THERE IS NO AVOIDING COMPETITION WITH GENERAL BOOKSTORES.
11 AS I THINK I'VE MADE PRETTY CLEAR FROM MY TESTIMONY, THERE'S A
12 GREAT DEAL OF OVERLAP BETWEEN OUR STORE -- STORE'S TITLES AND A
13 GENERAL BOOKSTORE. DOESN'T MATTER THE DEGREE.

14 I MEAN, IT -- IT SEEMED -- IT WAS BOTH OUR INTEREST
15 TO SPECIALIZE IN THESE TWO AREAS AND, IN A SENSE, REDUCE A
16 CERTAIN LEVEL OF COMPETITION BY DOING THAT, ESPECIALLY WITH THE
17 GENERAL BOOKSTORE RIGHT DOWN THE STREET FROM US.

18 SO THE ANSWER IS MORE COMPLEX THAN NOT COMPETING
19 WITH. WE CERTAINLY COMPETE WITH ALL GENERAL BOOKSTORES, BUT BY
20 SPECIALIZING, WE HAVE A CERTAIN ADVANTAGE OF BEING ABLE TO BE
21 COMPREHENSIVE IN OUR SPECIALTY.

22 Q. YOU TESTIFIED ON THURSDAY THAT YOUR COMPETITIVE AREA IS 25
23 TO 30 MILES --

24 A. THAT'S CORRECT.

25 Q. -- FOR THE STORE.

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1 SO THAT IS A COMPETITIVE AREA THAT INCLUDES THE
2 ENTIRETY OF DOWNTOWN CHICAGO AND MOST OF COOK COUNTY, CORRECT?
3 A. WELL, IT DOESN'T INCLUDE MOST OF COOK COUNTY, BUT IT -- IT
4 INCLUDES, YOU KNOW -- IT'S -- 25 TO 30 MILES IS A SIGNIFICANT
5 RADIUS.

6 Q. AND YOU TESTIFIED ON THURSDAY IN RESPONSE TO A QUESTION FROM
7 YOUR COUNSEL THAT YOU DETERMINED THAT AREA BY EXAMINING THE ZIP
8 CODES AND ADDRESSES OF SOME OF YOUR CUSTOMERS?

9 A. THAT'S ONE WAY WE DETERMINED THAT.

10 Q. AND YOU COMPILED THOSE ZIP CODES BECAUSE YOU HAVE -- DO YOU

11 GATHER ADDRESSES FROM EVERYONE WHO PURCHASES --
12 A. NO.
13 Q. -- AT THE STORE?
14 A. NO, WE DON'T.
15 Q. SORRY. WHO DO YOU GET ADDRESSES FROM?
16 A. WE GET ADDRESSES FROM PEOPLE WHO SUBSCRIBE -- EITHER
17 SUBSCRIBE TO OUR MAILING LIST OR WHO BECOME MEMBERS OF THE
18 BOOKSTORE AND ARE, BY VIRTUE OF MEMBERSHIP, PUT ON OUR MAILING
19 LIST.
20 Q. ALL RIGHT. SO YOU'VE NEVER ACTUALLY ATTEMPTED TO DETERMINE
21 WHAT AREA TAKES IN THE CUSTOMERS WHO PROVIDE ANY SPECIFIC LEVEL
22 OF YOUR REVENUE, HAVE YOU?
23 A. I'M SORRY. COULD YOU --
24 Q. IN OTHER WORDS, YOU'VE NEVER SAT DOWN TO ANALYZE WHETHER, IF
25 YOU DREW A CIRCLE TWO MILES OR THREE MILES AWAY, WHAT -- AND PUT
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1 THE CUSTOMERS IN IT THAT WERE THAT FAR AWAY FROM THE STORE, WHAT
2 PERCENTAGE OF YOUR ANNUAL -- THE STORE'S ANNUAL REVENUE WOULD
3 COME FROM THOSE CUSTOMERS?
4 A. NO, WE HAVEN'T DONE THAT ANALYSIS.
5 Q. RIGHT. SO YOU HAVE NO REAL IDEA OF WHERE THE CUSTOMERS
6 RESIDE WHO MAKE UP THE MAJORITY OF YOUR SALES?
7 A. I HAVE NO ANALYTICAL BASIS FOR THAT. I DON'T HAVE
8 STATISTICS FOR THAT. I DO HAVE AN IDEA OF WHERE OUR CUSTOMERS
9 COME FROM.
10 Q. NOW, IN RESPONSE TO ANOTHER QUESTION BY YOUR COUNSEL ON
11 THURSDAY, HE ASKED YOU WHETHER OR NOT 25 TO 30 MILES SEEMED LIKE
12 A LOT TO DEFINE YOUR COMPETITIVE AREA. AND COULD YOU -- COULD
13 YOU -- WELL, I NEED A COPY OF THE TRANSCRIPT.
14 (PAUSE IN THE PROCEEDINGS.)
15 BY MR. GARCIA:
16 Q. LET ME REFER YOU TO 698.
17 A. I'M SORRY, 698?
18 Q. YES. COULD YOU READ YOUR ANSWER.
19 A. SURE.
20 Q. BEGINNING AT PAGE 20.
21 A. I'M SORRY.
22 Q. DOWN AT -- PARDON ME. LINE 20.
23 A. YOU WANT --
24 Q. THIS IS PAGE 698.
25 A. DID YOU FIND --
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1 THE COURT: YES. READ THE QUESTION AND THEN READ THE
2 ANSWER.
3 BY MR. GARCIA:
4 Q. READ THE QUESTION AND THE ANSWER.
5 A. THE QUESTION IS:
6 "NOW, DOES 25 TO 30 MILES SEEM LIKE A LOT TO DEFINE
7 YOUR COMPETITIVE AREA?
8 "ANSWER: I DON'T THINK SO IN AN AREA LIKE CHICAGO
9 BECAUSE THERE'S A LOT OF MOVEMENT. PEOPLE WHO LIVE
10 IN THE SUBURBS WORK IN THE CITY. CHICAGO IS A
11 DYNAMIC, INTERESTING CITY AND PEOPLE MOVE AROUND.
12 YOU KNOW, THEY COME TO EVENTS AT THE STORE. THEY
13 VISIT INTERESTING NEIGHBORHOODS. THERE ARE A LOT OF
14 ETHNIC NEIGHBORHOODS IN CHICAGO, OF WHICH OURS IS
15 ONE. AND THERE'S JUST A LOT OF MOVEMENT."
16 Q. BUT IN YOUR DEPOSITION LAST JUNE, YOU DID DESCRIBE A VERY
17 DIFFERENT CHICAGO AT THE TIME, DIDN'T YOU?
18 A. NO, I BELIEVE I DESCRIBED BOTH FEATURES OF CHICAGO, WHICH IS
19 THAT, LIKE ANY OTHER URBAN AREA, THERE'S A NEIGHBORHOOD FACTOR
20 UNLIKE IN SUBURBAN AREAS. AND THAT'S ALSO THIS SAME FEATURE
21 THAT I'M DESCRIBING IN THIS TESTIMONY.
22 Q. LET ME REFER YOU TO YOUR DEPOSITION TRANSCRIPT AT PAGE 51.
23 A. (REVIEWING DOCUMENT.)
24 Q. I'LL READ THE QUESTION AND THE ANSWER BEGINNING AT LINE 8.
25 ACTUALLY THE QUESTION BEGINS AT LINE 1.
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1 "YOU'VE MENTIONED THAT YOU WANTED TO MOVE TO A PLACE
2 WHERE AN IMPORTANT PERCENTAGE OF YOUR CUSTOMERS, I

3 BELIEVE WAS THE LANGUAGE YOU USED -- A PERCENTAGE OF
4 YOUR CUSTOMERS LIVED.
5 "APPROXIMATELY WHAT PERCENTAGE OF YOUR CUSTOMERS WERE
6 FROM THIS NEW LOCATION?
7 "ANSWER: I CAN'T REALLY ANSWER THAT. LET ME
8 REPHRASE THAT A LITTLE BIT. IT WAS -- I THINK MORE
9 OUR CONCERN WAS CHICAGO IS PAROCHIAL ENOUGH THAT
10 PEOPLE KIND OF STAY IN THEIR NEIGHBORHOODS IS EVEN IF
11 YOU'RE TWO MILES AWAY, ALL OF A SUDDEN, IT SEEMS LIKE
12 YOU -- YOU'RE, YOU KNOW, KIND OF ACROSS THE COUNTRY.
13 SO WE WANTED TO MAKE SURE THAT WE WEREN'T GOING TO
14 MOVE SOMEWHERE THAT WAS THE OPPOSITE OF WHERE OUR
15 CUSTOMERS LIVED. SO IT WAS, YOU KNOW, THAT WE
16 LEARNED THAT, YOU KNOW, A KIND OF A REASONABLE NUMBER
17 OF PEOPLE OR PERCENTAGE OF WHO, YOU KNOW, AS I SAID,
18 IT WAS HARDLY SCIENTIFIC BUT GAVE US A READING THAT
19 WE NEEDN'T WORRY THAT ALL OF OUR CUSTOMERS WERE.
20 SOMEHOW WE KNEW THAT ALREADY, BUT IT GAVE US A MORE
21 SUBSTANTIAL FEELING ON THE FACT THAT A LOT OF OUR
22 CUSTOMER LIVED FARTHER NORTH, SO IT WASN'T THAT THEY
23 LIVED IN THE ANDERSONVILLE NEIGHBORHOOD NECESSARILY,
24 BUT THEY LIVED A LITTLE SOUTH, SOME NORTH, YOU KNOW.
25 THEY WERE DISTRIBUTED UP IN OUR END OF THINGS, SO IT

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1 ADDED TO OUR SENSE OF SECURITY ABOUT THIS MOVE."
2 THE COURT: I THINK -- ARE YOU THROUGH WITH THAT?
3 MR. GARCIA: YEAH.
4 THE COURT: BEFORE WE TAKE THE FIRST RECESS OF THE
5 MORNING, I WANTED TO ASK ANYBODY -- ANY COUNSEL HERE FAMILIAR--
6 YOU MAY SIT DOWN, MR. GARCIA -- FAMILIAR WITH THE -- I SAID YOU
7 MAY SIT DOWN.
8 MR. GARCIA: THANK YOU.
9 THE COURT: -- A SIMILAR CASE, MAY BE THE SAME TITLE,
10 ABOUT 20 YEARS AGO THAT WAS IN OUR COURT, SOMETHING -- DRAW MY
11 ATTENTION. I CAN'T FIND IT. AND IF ANYBODY KNOWS ABOUT IT, I'D
12 APPRECIATE IT -- I ASSUME YOU DON'T 'CAUSE YOU'D HAVE BROUGHT IT
13 TO MY ATTENTION. BUT IF YOU DO, I'D LIKE TO KNOW WHAT THE CASE
14 NUMBER IS AND -- AND TAKE A LOOK AT IT.
15 AND THE OTHER THING THAT I WANTED TO MENTION, OUR
16 VERY ALERT CROSS-EXAMINER THURSDAY USED THE DAILY TRANSCRIPT AS
17 WE WENT ALONG TO IMPEACH THE WITNESS. AND I WAS GREATLY
18 IMPRESSED BY THAT, AND I -- HOWEVER, WE WON'T DO THAT AGAIN.
19 AND IF THERE'S ANY IMPEACHMENT OF A WITNESS, IT CAN
20 BE BY DEPOSITION OR ANY OTHER PAPER AND THE TRANSCRIPT AS -- THE
21 DAILY TRANSCRIPT AS ITS COMPLETED, NOT THE ONE THAT GOES ALONG.
22 THE TRANSCRIPT SHOULD BE EDITED.
23 ALL RIGHT. THE COURT WILL BE IN RECESS UNTIL 10:45.
24 THE CLERK: ALL RISE.
25 (RECESS TAKEN AT 10:30 A.M.)

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1 (PROCEEDINGS RESUME AT 10:52 A.M.)
2 THE COURT: PLEASE BE SEATED. I RECEIVED THE
3 PLAINTIFFS' MOTION TO CALL CERTAIN WITNESSES FROM BARNES &
4 NOBLE, AND OF COURSE, BARNES & NOBLE CAN REPLY TO THAT MOTION,
5 AND HOW MUCH TIME DO YOU WANT AND WHEN DO YOU WANT TO BE HEARD?
6 MR. PETROCELLI: YOUR HONOR, WE WILL HAVE A RESPONSE
7 IN TOMORROW MORNING.
8 THE COURT: ALL RIGHT. AND THEN WE'LL HAVE A
9 HEARING WHEN I'M A LITTLE MORE SURE OF MY CALENDAR.
10 MR. PETROCELLI: THIS WAS A MATTER THAT WAS RULED ON
11 BY THE COURT ON THE MARCH 29 PRETRIAL CONFERENCE HEARING. THIS
12 IS, IN EFFECT, A MOTION FOR RECONSIDERATION, AND SO YOU WILL BE
13 ABLE TO RESPOND QUICKLY, AND WE'LL HAVE SHORT PAPERS TO YOU
14 TOMORROW MORNING.
15 THE COURT: ALL RIGHT.
16 MR. PETROCELLI: THANK YOU.
17 MR. STEER: YOUR HONOR, BEFORE MR. GARCIA RESUMES
18 HIS EXAMINATION OF THE WITNESS, I WANTED TO RESPOND TO THE
19 COURT'S INQUIRY ABOUT THE TWO CASES THAT WERE MENTIONED --
20 THE COURT: YES.
21 MR. STEER: -- SIMPLY TO SAY THIS. THERE WAS A

22 CASE -- WE HEARD THAT THERE WAS A NORTHERN CALIFORNIA
23 INDEPENDENT BOOKSELLERS ASSOCIATION CASE AGAINST AVON BOOKS IN
24 THE EARLY 1980'S. WE LATER ALSO HEARD ABOUT A HEARST CASE IN
25 THE LATER 1980'S. FRANKLY, YOUR NAME WASN'T ASSOCIATED WITH
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1 IT, IN MY MIND. WHEN THIS CASE -- THIS LITIGATION BEGAN, WE
2 SENT PEOPLE OVER TO THE CLERK'S OFFICE IN AN EFFORT TO FIND
3 RECORDS OF THOSE CASES. WE WEREN'T ABLE TO DO SO. THAT'S WHY
4 WE HAVEN'T CALLED THEM TO THE COURT'S ATTENTION, YOUR HONOR.
5 THERE'S SIMPLY NOTHING TO SAY, AS FAR AS WE KNOW.
6 THE COURT: WELL, THAT'S REALLY STRANGE, BECAUSE, WE
7 LOOKED FOR THEM, I SAID IF THERE'S SUCH A CASE, COUNSEL, OF
8 COURSE, WOULD CALL IT TO OUR ATTENTION, AND I CAN'T FIND ANY
9 RECORD OF IT.

10 MR. STEER: IT IS STRANGE, AND IF THERE WERE
11 SOMETHING IN OUR POSSESSION TO CALL TO THE COURT'S ATTENTION,
12 WE WOULD HAVE DONE SO.

13 THE COURT: WHAT WAS THE HEARST CASE? WAS THAT A
14 NORTHERN CALIFORNIA BOOKSELLERS?

15 MR. STEER: I DON'T RECALL WHO THE PLAINTIFFS WERE.

16 THE COURT: WELL, THANK YOU FOR THE INFORMATION.

17 MR. STEER: SORRY IT ISN'T MORE FULL, BUT....

18 THE COURT: YES, MR. DEBRUIN?

19 MR. DEBRUIN: YOUR HONOR, LET ME TELL YOU WHAT I
20 KNOW, AND WE'RE ENDEAVORING TO GET MORE INFORMATION.

21 I BELIEVE THERE WERE TWO CASES. THERE WAS ONE CASE
22 THAT WAS BROUGHT BY THE NORTHERN CALIFORNIA INDEPENDENT
23 BOOKSELLERS ASSOCIATION. IT MAY HAVE BEEN AGAINST AVON. IT
24 WAS BEFORE JUDGE HENDERSON OF THIS COURT. I DON'T KNOW THE
25 EXACT DATE OR THE DOCKET NUMBER. I'M ENDEAVORING TO GET THAT
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1 INFORMATION.

2 THE COURT: WERE YOU IN THE CASE WITH YOUR FIRM?

3 MR. DEBRUIN: NO, YOUR HONOR, I WAS NOT. I BELIEVE
4 THAT CASE ULTIMATELY SETTLED. IT WAS BROUGHT AGAINST THE
5 PUBLISHERS. THE ALLEGATIONS WERE VERY SIMILAR. THE PUBLISHERS
6 WERE PROVIDING DIFFERENT DISCOUNTS TO CERTAIN INDEPENDENT
7 BOOKSELLERS, AND ULTIMATELY AVON AGREED TO PROVIDE THE SAME
8 DISCOUNTS TO THE INDEPENDENTS, AND THAT CASE SETTLED.

9 THEN I BELIEVE, YOUR HONOR, THERE WAS A SECOND CASE
10 THAT CERTAIN PLAINTIFFS FILED AGAINST CROWN BOOKS FOR RECEIVING
11 DISCOUNTS, AND YOUR HONOR, I BELIEVE THAT CASE MAY ACTUALLY
12 HAVE BEEN AT ONE TIME ON YOUR CALENDAR.

13 THE COURT: OOH.

14 MR. DEBRUIN: BUT I THINK VERY BRIEFLY, BECAUSE
15 THERE WERE -- CROWN FILED PERHAPS A COUNTER-SUIT AND ULTIMATELY
16 I BELIEVE THAT CASE WAS DISMISSED. I DON'T THINK THE COURT
17 EVER ISSUED ANY RULINGS OR TOOK UP THE MATTER.

18 THE COURT: THAT I DISMISSED?

19 MR. DEBRUIN: NO, I BELIEVE THE PLAINTIFFS
20 DISMISSED. I THINK --

21 THE COURT: AND IT WAS ON MY DOCKET?

22 MR. DEBRUIN: PERHAPS VERY BRIEFLY. I'M TRYING TO
23 GET THE DOCKET NUMBERS AND THE DATES. I WAS NOT INVOLVED. I
24 WAS AWARE OF THE CASES. I'M NOT AWARE THAT THERE WERE ANY
25 DECISIONS THAT WERE EVER RENDERED THAT WOULD BE PRECEDENTIAL OR
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1 RELEVANT TO THE COURT, AND THE LAWYER WHO I BELIEVE WAS
2 INVOLVED IN THOSE CASES IS UNFORTUNATELY RIGHT NOW IN ITALY,
3 BUT I'M TRYING TO GET THE INFORMATION WITH THE DOCKET NUMBERS
4 AND THE DATES.

5 THE COURT: WELL, THANK YOU. JUST AS A MATTER OF
6 HISTORY, IT'S INTERESTING.

7 MR. DEBRUIN: THERE IS SOME HISTORY.

8 THE COURT: ALL RIGHT, MR. GARCIA.

9 MR. GARCIA: THANK YOU, YOUR HONOR.

10 Q. LET'S GO BACK BRIEFLY TO HOW WOMEN & CHILDREN FIRST GETS
11 PUBLISHER TERMS. IN ADDITION TO THE RED BOOK, RED BOOK TERMS
12 ARE ALSO UPDATED BY YOUR CONVERSATIONS WITH PUBLISHERS
13 REPRESENTATIVES, CORRECT?

14 A. RARELY, BUT ON OCCASION.
15 Q. AND THERE ARE WRITTEN MATERIALS THAT ARE DISTRIBUTED TO
16 YOU, BY MAIL AND THROUGH PUBLISHERS REPRESENTATIVES?
17 A. CORRECT.
18 Q. AND YOU FILE THOSE.
19 A. MOST OFTEN I WOULD MAKE AN ACTUAL CHANGE IN THE RED BOOK TO
20 REFLECT THOSE TERMS.
21 Q. AND YOU ALSO TESTIFIED IN YOUR DEPOSITION THAT CO-OP TERMS
22 APPEAR OCCASIONALLY IN CATALOGS LISTING UPCOMING BOOKS?
23 A. CO-OP TERMS ARE -- CO-OP TERMS ARE MORE OFTEN PUBLISHED IN
24 A SEPARATE SCHEDULE. THERE WILL BE AN OUTLINE OF THEM IN THE
25 RED BOOK, BUT SOME OF THEM ARE FAIRLY DETAILED, SO THOSE ARE

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1 USUALLY PUBLISHED BY PUBLISHERS IN A SEPARATE DOCUMENT
2 SPECIFICALLY ON CO-OP TERMS.
3 Q. RIGHT, AND OFTEN THE RED BOOK ENTRIES INVITE THE BOOKSELLER
4 TO CONTACT THE PUBLISHER ABOUT CO-OP TERMS.
5 A. CORRECT, PRECISELY FOR THAT REASON.
6 Q. ALL RIGHT. PRIOR TO '97, THE RED BOOK WASN'T PUBLISHED
7 EVERY, YEAR, WAS IT?
8 A. I THINK THAT'S CORRECT. I THINK THERE WERE SOME YEARS THAT
9 IT SERVED FOR TWO YEARS.
10 Q. AND IN THOSE YEARS WHERE THERE WERE -- THERE WAS MORE THAN
11 ONE YEAR INTERVENING, HOW DID YOU UPDATE TERMS?
12 A. THE SAME WAY.
13 Q. DID YOU ALSO REFER TO VARIOUS TRADE MAGAZINES THAT
14 UPDATE -- THAT CONTAIN PUBLISHERS' UPDATES?
15 A. YES.
16 Q. THE RED BOOK, IN FACT, SUGGESTS THAT BOOKSELLERS SHOULD
17 READ PUBLISHERS WEEKLY OR BOOKSELLING THIS WEEK IN ORDER TO
18 RECEIVE UPDATED PUBLISHERS' TERMS, IS THAT CORRECT?
19 A. I'M SORRY, SAY THAT AGAIN?
20 Q. THE RED BOOK ITSELF, IN ITS PREFACE, TELLS ABA MEMBERS THAT
21 THEY SHOULD REFER TO THE TRADE PUBLICATIONS FOR UPDATES ON
22 PUBLISHER TERMS, CORRECT?
23 A. I DON'T KNOW IF THE RED BOOK DOES THAT OR NOT.
24 Q. BUT RED BOOK TERMS ARE UPDATED BY PUBLISHERS IN PUBLISHERS
25 WEEKLY?

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1 A. YES. AGAIN, RARELY, BUT ON OCCASION.
2 Q. AND ALSO IN BOOKSELLING THIS WEEK?
3 A. CORRECT.
4 Q. LET ME DIRECT YOUR ATTENTION, AND THE COURT'S, AS WELL,
5 YOUR HONOR, TO TRIAL EXHIBIT 5576, WHICH IS IN THE BINDER THAT
6 I HANDED UP.
7 THE COURT: 556?
8 MR. GARCIA: 5576, YOUR HONOR.
9 Q. AND I WANT TO DIRECT YOUR ATTENTION TO A -- THESE ARE
10 HANDWRITTEN NOTES OF YOURS?
11 A. THAT'S CORRECT.
12 Q. ...TO THE BOTTOM OF THE PAGE --
13 A. EXCUSE ME, BUT THE JUDGE DOESN'T HAVE THE RIGHT PAGE,
14 THERE.
15 THE COURT: WHAT HAPPENED TO OUR SYSTEM WHERE THE
16 JUDGE WAS GOING TO GET A NICE FOLDER WITH EACH EXHIBIT THAT WAS
17 GOING TO BE USED FOR THE DAY, AND....
18 THE WITNESS: THAT'S IT.
19 THE COURT: WELL, THANK YOU VERY MUCH.
20 MR. GARCIA: THANK YOU.
21 Q. LET ME DIRECT YOUR ATTENTION TO THE HANDWRITTEN LINE AT THE
22 BOTTOM OF THAT PAGE, WHERE IT STATES, "OUR CATEGORY," QUOTE,
23 "WS," CLOSE QUOTE? THIS EXHIBIT REFERS TO A CONVERSATION YOU
24 HAD WITH ONE OF YOUR RANDOM HOUSE REPRESENTATIVES, IS THAT
25 CORRECT?

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1 A. THAT'S CORRECT.
2 Q. AND IT INDICATES, AS I CAN YOU'VE PREVIOUSLY TESTIFIED,
3 THAT YOU OCCASIONALLY RECEIVE TERMS BY PHONE, FROM PUBLISHER'S
4 REPS, IS THAT CORRECT?
5 A. THAT'S CORRECT, OR SOMETIMES WHEN THEY WERE SITTING RIGHT

6 THERE BUT DIDN'T HAVE A COPY OF THE TERMS.
7 Q. RIGHT, AND THE "WS" REFERS TO WOMEN'S STUDIES, IS THAT
8 RIGHT?
9 A. THAT'S CORRECT.
10 Q. AND NEXT TO IT IT SAYS, "LOOSELY INTERPRETED." IS THAT
11 CORRECT?
12 A. THAT'S RIGHT.
13 Q. AND THIS REFLECTED RANDOM HOUSE ALLOWING YOU TO DETERMINE
14 WHAT FELL INTO THE WOMEN'S STUDIES CATEGORY FOR PURPOSES OF A
15 STOCK OFFER, IS THAT CORRECT?
16 A. NO, THAT'S INCORRECT. I COULD EXPLAIN THIS, IF YOU WOULD
17 LIKE.
18 Q. BY ALL MEANS.
19 A. RANDOM HOUSE OFTEN MADE CATEGORY -- WOULD MAKE STOCK OFFERS
20 BY CATEGORY. FOR INSTANCE, I REMEMBER A SPECIAL OFFER OR STOCK
21 OFFER FOR GARDENING BOOKS. THAT WAS ONE THAT WE COULDN'T
22 REALLY TAKE ADVANTAGE OF BECAUSE WE DON'T HAVE -- WE HAVE A
23 GARDENING SECTION, BUT IT'S A SMALL SECTION. SOME CATEGORIES
24 CLEARLY ARE MORE DISTINCT CATEGORIES THAN OTHERS. GARDENING
25 BOOKS CATEGORY IS QUITE, QUITE DISTINCT. WOMEN'S STUDIES IS A
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1 MUCH LOOSER AREA. WHAT WE DEFINE AS WOMEN'S STUDIES IN OUR
2 STORE IS DIFFERENT FROM WHAT A GENERAL BOOKSTORE WOULD DEFINE
3 OR CARRY AS WOMEN'S STUDIES. SO IN FACT, THIS GAVE LATITUDE TO
4 EVERYBODY TO DEFINE A CATEGORY THAT IS NOT SO NEATLY DEFINED,
5 AGAIN, AS ONE SUCH AS GARDENING.
6 Q. AND YOU INTERPRETED, AS YOU TESTIFIED AT YOUR DEPOSITION,
7 THAT WOMEN'S STUDIES WOULD RELATE MUCH MORE BROADLY THAN BOOKS
8 JUST LABELED AS WOMEN'S STUDIES, IS THAT CORRECT?
9 A. SAY THAT AGAIN.
10 Q. YOU INTERPRETED "WOMEN'S STUDIES" TO RELATE TO BOOKS MUCH
11 MORE BROADLY THAN BOOKS SIMPLY LABELED WOMEN'S STUDIES BY THE
12 PUBLISHER, IS THAT CORRECT?
13 A. I'M SAYING THAT ALL BOOKSTORES WOULD DEFINE WOMEN'S STUDIES
14 DIFFERENTLY FROM EACH OTHER.
15 Q. RIGHT, AND YOU HAD THE OPPORTUNITY, AFTER SPEAKING WITH THE
16 REPRESENTATIVE, TO BASICALLY INTERPRET IT AS YOU SAW FIT.
17 A. OH, I THINK EVERY BOOKSTORE HAD THE OPPORTUNITY TO
18 INTERPRET IT AS IT SAW FIT.
19 Q. WELL --
20 A. THIS ACKNOWLEDGES THAT OUR DEFINITION OF WOMEN'S STUDIES
21 WOULD VARY, FROM, SAY, BARNES & NOBLE'S.
22 Q. RIGHT. DID YOU CONFIRM WITH THE CUSTOMER REP THAT THERE
23 WAS A SIMILAR INTERPRETIVE FREEDOM BEING GIVEN BY ALL OF THE
24 OTHER CUSTOMER REPS FROM THAT PUBLISHER?
25 A. I ASSUMED THAT, AND I BELIEVE THAT TO BE TRUE.
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1 Q. NOW, YOU TESTIFIED PREVIOUSLY THAT SOME 10 TO 20 PERCENT OF
2 THE TIME YOU RECEIVED TERMS THAT DIFFER FROM THE RED BOOK.
3 A. THAT'S CORRECT.
4 Q. AND YOU REFER TO THOSE DIFFERING TERMS AS STOCK OFFERS.
5 A. THAT'S CORRECT.
6 Q. WE HAVE A NUMBER OF THEM IN THE EXHIBIT BOOK.
7 AND YOUR HONOR, I WONDER IF, TO EXPEDITE THINGS, AND
8 PERHAPS SAVE A LITTLE TIME FOR THE COURT, I'D JUST LIKE TO
9 DIRECT YOUR ATTENTION TO THEM, CONFIRM THAT THEY'RE STOCK
10 OFFERS, CONFIRM THAT THEY'RE NOT IN THE RED BOOK, AND WE CAN
11 MOVE ON, AND YOUR HONOR DOESN'T HAVE TO FIGHT WITH OUR BINDER
12 FOR EACH ONE OF THOSE DOCUMENTS, BECAUSE IT'S REALLY GOING TO
13 BE PRETTY SIMILAR TESTIMONY.
14 LET ME DIRECT YOUR ATTENTION, FIRST OF ALL, TO 5542.
15 THESE ARE -- THIS IS A PURCHASE ORDER GENERATED FOR CONSORTIUM
16 BOOKS?
17 A. THAT'S CORRECT.
18 Q. AND YOU TESTIFIED PREVIOUSLY THAT THE 46 PERCENT DISCOUNT
19 IS NOT STANDARD CONSORTIUM TERMS?
20 A. THAT'S CORRECT.
21 Q. AND YOU HAD NO SPECIFIC RECOLLECTION OF HOW THE LOWER TERMS
22 WERE PROVIDED, BUT YOU SPECULATED THAT THERE WAS A 46 PERCENT
23 STOCK OFFER GOING ON AT THE TIME. DO YOU HAVE ANY SPECIFIC
24 RECOLLECTION TO ACCOUNT FOR THE DEVIATION OF THE REGULAR TERMS?

25 A. FOR THIS PARTICULAR ORDER?

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1 Q. YES.
2 A. NO.
3 Q. I REFER YOU TO 5561. IT'S A HARPER-COLLINS INVOICE AND
4 REFLECTS 48 PERCENT DISCOUNT.
5 A. THIS IS ACTUALLY ONE I TESTIFIED TO EARLIER.
6 Q. OKAY, AND IT'S A STOCK OFFER.
7 A. IT IS A STOCK OFFER, YES.
8 Q. ALL RIGHT, LET'S SKIP A FEW OF THESE AND MOVE ON. LET ME
9 DIRECT YOU TO 5572. THIS IS A RANDOM HOUSE INVOICE?
10 A. THAT'S CORRECT.
11 Q. THAT INDICATES 50 PERCENT DISCOUNT, AND 90-DAY TERMS.
12 THESE ARE NOT YOUR STANDARD TERMS FROM RANDOM HOUSE, IS THAT
13 CORRECT?
14 A. THAT'S CORRECT, ALTHOUGH I DO REMEMBER THIS SPECIFIC STOCK
15 OFFER. THIS IS A STOCK OFFER, I CAN TELL BY THE TERMS, BUT I
16 ALSO REMEMBER THIS PARTICULAR OFFER.
17 Q. RIGHT, AND THE DATE OF THIS INVOICE IS 7/17/96?
18 A. THAT'S CORRECT.
19 Q. RIGHT. SO THIS IS NOT A FALL STOCK OFFER.
20 A. NO, THIS IS -- WOULD YOU LIKE TO KNOW WHAT STOCK OFFER THIS
21 IS?
22 Q. WELL, I JUST WANTED TO MAKE CLEAR THAT STOCK OFFERS DON'T
23 NECESSARILY TAKE PLACE IN THE FALL, DO THEY?
24 A. OH, NO, THEY TAKE PLACE ALL SEASON.
25 Q. RIGHT. LET'S GO TO TRIAL EXHIBIT 5565. NOW, THIS IS A
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1 HARPER-COLLINS INVOICE THAT INDICATES A 149-DAY PAYMENT TERMS,
2 IS THAT CORRECT?
3 A. THAT'S CORRECT.
4 Q. AND THAT'S NOT YOUR TYPICAL PAYMENT TERMS, SIT?
5 A. NO, THAT IS NOT.
6 Q. AND THE INVOICE SAYS, "SSO PLAN B DATING."
7 A. I'M SORRY, COULD YOU REFER ME TO...?
8 Q. WELL, THE -- SITTING HERE TODAY, DO YOU HAVE ANY
9 EXPLANATION FOR THE DELAYED PAYMENT TERMS?
10 A. YES. THIS WAS A STOCK OFFER. DO YOU REMEMBER THAT CODE I
11 REFERRED TO EARLIER, "A" FOLLOWED BY SOME NUMBERS?
12 Q. RIGHT.
13 A. THERE'S A SIMILAR CODE THAT APPEARS TO THIS INVOICE, UNDER
14 THE TITLE, ONCE AGAIN, UNDER THE TITLE SEGMENT, AS WAS THE CASE
15 WITH ONE OTHER HARPER-COLLINS INVOICE THAT WE LOOKED AT THAT
16 HAD A SPECIAL DATING CODE. SO THOSE AREN'T OUR REGULAR TERMS.
17 THE ONLY TIME WE GET OTHER THAN REGULAR TERMS IS ON DATING, OR
18 IS ON A STOCK OFFER BASIS, AND THIS IS CLEARLY A STOCK OFFER.
19 Q. RIGHT, AND IF YOU LOOK AT THE HARPER-COLLINS EXCERPT FROM
20 THE RED BOOK, WHICH IS IMMEDIATELY BEHIND THE FIRST PAGE ON
21 THAT EXHIBIT TAB --
22 A. RIGHT.
23 Q. -- YOU WILL NOTE THAT IT SAYS, "DELAYED DATING PLAN,
24 SUBJECT TO PUBLISHER'S ANNOUNCEMENT"?
25 A. I'M SORRY, COULD YOU REFER ME MORE PARTICULARLY? WE'RE
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1 LOOKING NOW AT THE EXCERPT FROM THE RED BOOK?
2 Q. YOU'RE LOOKING AT THE HARPER-COLLINS PUBLISHER -- RIGHT
3 BEHIND THERE.
4 A. RIGHT, OKAY.
5 Q. IF YOU GO INTO THE SECOND COLUMN?
6 A. RIGHT.
7 Q. ABOUT TWO-THIRDS OF THE WAY DOWN --
8 A. RIGHT.
9 Q. -- YOU'LL SEE "DELAYED DATING PLAN"?
10 A. RIGHT.
11 Q. IT SAYS, "SUBJECT TO PUBLISHER'S ANNOUNCEMENTS."
12 A. RIGHT.
13 Q. THIS WOULD HAVE BEEN SUCH AN ANNOUNCEMENT?
14 A. THIS WOULD HAVE BEEN A STOCK OFFER. I DON'T KNOW WHETHER
15 THERE IS A DELAYED DATING PLAN, BUT IT'S CLEARLY A STOCK OFFER.
16 I MEAN, ON THE FACE OF THE INVOICE, IT'S A STOCK OFFER.

17 Q. BUT, I MEAN, THE HARPER-COLLINS PAGE WE JUST LOOKED AT IS
18 ANOTHER EXAMPLE OF A RED BOOK LISTING WHERE, IN FACT, THE RED
19 BOOK LISTING ALERTS THE BOOKSELLER THAT THERE'S SOMETHING TO BE
20 UPDATED, IS THAT CORRECT?
21 A. WELL, THE BOOKSELLER ALREADY KNOWS THAT. THE BOOKSELLER
22 KNOWS THERE ARE STOCK OFFERS GIVEN FROM TIME TO TIME. SO I --
23 YOU KNOW, IT REPLICATES THAT INFORMATION THAT I ALREADY HAVE.
24 Q. LET'S GO TO TRIAL EXHIBIT 5582. NOW, THIS IS AN
25 ANNOUNCEMENT OF A STOCK OFFER, CORRECT?
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1 A. THAT'S CORRECT.
2 Q. AND THE HANDWRITING ON THE STOCK OFFER, AS YOU PREVIOUSLY
3 IDENTIFIED, REFLECTS CHANGES MADE TO THE OFFER ORALLY IN YOUR
4 CONVERSATIONS WITH THE PUBLISHER, CORRECT?
5 A. OH, IN MY CONVERSATION WITH THE EMPLOYER'S REP, YES.
6 Q. RIGHT. AND THE STOCK OFFER IS EXTENDED FROM A ONE-TIME
7 OFFER TO A TWO-TIME OFFER, PURSUANT TO THE TELEPHONE CALL.
8 A. THAT'S CORRECT. CAN I ADD SOMETHING?
9 Q. SURE.
10 A. IT ALSO -- I THINK THE ORIGINAL STOCK OFFER LACKED THE TIME
11 PARAMETERS THAT STOCK OFFERS ALWAYS HAVE. SO THAT WAS AN
12 ADDITIONAL CORRECTION TO THIS STOCK OFFER.
13 Q. SITTING HERE TODAY, WAS IT EXPLAINED TO YOU THAT THAT WAS
14 ONE OF THE REASONS IT WAS BEING CORRECTED? DO YOU HAVE A
15 DIRECT -- A RECOLLECTION THAT THAT WAS THE REASON FOR THE
16 CHANGE?
17 A. NO, I DON'T HAVE A DIRECT RECOLLECTION OF THAT.
18 Q. WHEN THE STOCK OFFER WAS EXTENDED FROM ONE TIME TO TWO
19 TIMES, IN YOUR CONVERSATION WITH THE PUBLISHER'S
20 REPRESENTATIVE, YOU DIDN'T ASK WHETHER OR NOT IT WAS BEING
21 SIMILARLY EXTENDED FOR OTHER BOOKSELLERS, DID YOU?
22 A. NO, BUT I'M AS CERTAIN AS I CAN BE THAT IT WAS.
23 Q. YOU ASSUMED IT.
24 A. YEAH. WE AREN'T EXTENDED STOCK OFFERS THAT AREN'T EXTENDED
25 TO OTHER BOOKSELLERS.
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1 Q. NOW, IN ORDER TO ACCURATELY DETERMINE THE PRICE THAT YOUR
2 BOOKSTORE ACTUALLY PAID A PARTICULAR PUBLISHER FOR PARTICULAR
3 BOOKS IN A PARTICULAR YEAR, WE'RE GOING TO HAVE TO LOOK AT YOUR
4 INVOICES, CORRECT?
5 A. NO, I DON'T THINK THAT'S CORRECT.
6 Q. YOU DON'T THINK THAT'S CORRECT.
7 A. NO.
8 Q. AND WHY NOT?
9 A. WELL, IF I -- BECAUSE I KNOW ON WHAT TERMS I'M PURCHASING
10 BOOKS. SO AT LEAST FOR 80 TO 90 PERCENT OF THE PURCHASES I
11 MAKE, I KNOW WHAT PRICE I'M PAYING FOR THOSE BOOKS BECAUSE I
12 KNOW WHAT THE TERMS ARE FOR PAYING FOR THOSE BOOKS.
13 Q. BUT EVEN IF WE CONFINE OURSELVES TO RED BOOK TERMS, THERE
14 ARE A NUMBER OF ASPECTS OF RED BOOK TERMS THAT CAN CHANGE THE
15 PRICE OF BOOKS AT ANY PARTICULAR TIME, CORRECT?
16 A. I --
17 Q. WELL, FOR EXAMPLE, VIRTUALLY ALL PUBLISHERS HAVE DIFFERENT
18 DISCOUNTS DEPENDING UPON HOW MANY BOOKS YOU PURCHASED. I
19 BELIEVE YOU ALREADY SO TESTIFIED, ISN'T THAT CORRECT?
20 A. THAT'S CORRECT.
21 Q. AND THE PRICES COULD CHANGE DEPENDING UPON WHETHER OR NOT A
22 BOOK WAS BOUGHT RETURNABLE OR NON-RETURNABLE, CORRECT?
23 A. WELL, YES, BUT IT'S NOT QUITE AS SIMPLE AS THAT, BECAUSE --
24 I'M SORRY.
25 Q. AND THERE ARE DISCOUNTS GIVEN FOR WHETHER OR NOT YOU
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1 ORDERED ELECTRONICALLY, IN RED BOOK TERMS, CORRECT?
2 A. RIGHT, BUT I KNOW --
3 Q. AND THERE ARE DIFFERENT FREIGHT TERMS.
4 A. BUT I KNOW ALL THOSE THINGS. I KNOW WHETHER WE BUY
5 RETURNABLE OR NON-RETURNABLE. I KNOW WHETHER I'M GETTING EDI
6 DISCOUNTS, BECAUSE I KNOW WHAT THOSE DISCOUNTS ARE, AND THOSE
7 DISCOUNTS ARE IN THE RED BOOK. SO AT LEAST 80 TO 90 PERCENT OF
8 MY ORDERS, I KNOW EXACTLY WHAT I'M ORDERING WHEN I'M ORDERING

9 AND I'M PAYING FOR THOSE BOOKS.
10 Q. BUT SITTING HERE TODAY, TO TAKE AN EXAMPLE, YOU CAN'T TELL
11 ME WHAT YOU PAID FROM RANDOM HOUSE FOR TRADE BOOKS IN OCTOBER
12 OF 1996, CAN YOU?
13 A. CAN I REMEMBER NOW WHAT I PAID FOR TRADE BOOKS...?
14 Q. RIGHT.
15 A. NO.
16 Q. OF COURSE NOT. SO IN ORDER TO DETERMINE WHAT YOU PAID TO
17 RANDOM HOUSE IN OCTOBER OF 1996 FOR TRADE BOOKS, WE'RE GOING TO
18 HAVE TO LOOK AT YOUR INVOICES, CORRECT?
19 A. YES, I WOULD HAVE TO LOOK AT THOSE INVOICES.
20 Q. AND IN ORDER TO DETERMINE THE AVERAGE DISCOUNTS FROM ANY
21 PUBLISHER IN ANY PARTICULAR YEAR FOR ANY PARTICULAR TYPE OF
22 BOOK, WE'RE GOING TO HAVE TO LOOK AT YOUR INVOICES, AS WELL,
23 AREN'T WE, FOR THE SAME REASONS?
24 A. I'M SORRY, BUT COULD YOU ASK ME THAT QUESTION AGAIN?
25 Q. YOU SAID THAT 10 TO 20 PERCENT OF THE TIME YOU GET NON-RED

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1 BOOK TERMS THROUGH STOCK OFFERS. YOU SO TESTIFIED.
2 A. YES, 10 TO 20.
3 Q. IF WE WANTED TO DETERMINE WHAT YOUR AVERAGE DISCOUNT WAS
4 FROM A PARTICULAR PUBLISHER FOR TRADE BOOKS IN A PARTICULAR
5 YEAR, WE'D HAVE TO LOOK AT YOUR INVOICES FROM THAT PUBLISHER
6 FOR THAT YEAR, WOULDN'T WE?
7 A. ACTUALLY, I DON'T THINK WE WOULD, BECAUSE, I MEAN, MY
8 PERCENTAGE OF STOCK OFFER -- THE AVERAGE PERCENTAGE OF BOOKS I
9 PAID FOR THE YEAR WOULD BE RED BOOK TERMS, BECAUSE THE
10 10 PERCENT OR SO THAT I GET UNDER SPECIAL TERMS I DON'T THINK
11 WOULD CHANGE THAT AVERAGE.
12 SO I DO KNOW THAT FOR TRADE BOOKS THINK GET FROM
13 RANDOM HOUSE, I GOT THOSE ACCORDING TO THE AVERAGE PRICE I PAID
14 FOR THOSE FOR A YEAR, IS DERIVABLE FROM THE INFORMATION ON
15 WHICH I ORDER THOSE BOOKS, AND MASS MARKET TERMS ARE DIFFERENT
16 FROM TRADE TERMS. BUT I CAN COMPARE THOSE.
17 Q. THEY'RE DERIVABLE.
18 A. RIGHT.
19 Q. BUT YOU STILL HAVE TO KNOW HOW MANY YOU PURCHASED AT ANY
20 PARTICULAR TIME, CORRECT, TO KNOW WHICH ONE OF THE PARTICULAR
21 DISCOUNT CATEGORIES YOU FELL INTO FOR A PARTICULAR PUBLISHER?
22 A. I'M SORRY, COULD YOU REPEAT THAT ONE MORE TIME? I JUST
23 WANT TO MAKE SURE I'M ANSWERING YOUR QUESTION.
24 Q. YOU'VE ALREADY TESTIFIED THAT DEPENDING UPON HOW MANY BOOKS
25 YOU PURCHASED FROM A PUBLISHER AT A PARTICULAR TIME, YOU GET

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1 DIFFERENT DISCOUNTS, CORRECT?
2 A. THAT'S CORRECT.
3 Q. AND WHETHER OR NOT YOU BUY THE BOOK RETURNABLE OR
4 NON-RETURNABLE, YOU GET A DIFFERENT DISCOUNT?
5 A. WELL, WE BUY THE BOOKS RETURNABLE.
6 Q. AND WHETHER OR NOT YOU BUY THROUGH ELECTRONIC ORDERING.
7 A. I'M SORRY, SIR, BUT ALL THOSE THINGS ARE CONSISTENT OVER
8 TIME. IF I BUY ELECTRONICALLY FROM HARPER ONE TIME, I
9 ALWAYS -- YOU KNOW, I ALWAYS BUY THE SAME -- I BUY
10 ELECTRONICALLY FROM HARPER ALL YEAR LONG. SO I ALWAYS GET
11 46 PERCENT DISCOUNT ON BOOKS I ORDERED FROM HARPER.
12 Q. BUT IN ORDER TO DETERMINE WHAT YOU ACTUALLY PAID TO HARPER
13 AT ANY PARTICULAR TIME, WE'RE GOING TO HAVE TO LOOK AT YOUR
14 INVOICES, CORRECT?
15 A. ULTIMATELY, WE HAVE TO LOOK AT THOSE INVOICES.
16 Q. CO-OP IS A TIME-CONSUMING PROCESS, ISN'T IT?
17 A. IT IS.
18 Q. AND IT REQUIRES A LOT OF LABOR AND COMMUNICATION WITH THE
19 PUBLISHER, AND PAPERWORK, CORRECT?
20 A. YES, IT REQUIRES SOME.
21 Q. AND THE TERMS OF CO-OP CHANGE FREQUENTLY, AND THEY'RE
22 COMPLICATED, AS YOU PREVIOUSLY TESTIFIED?
23 A. THE TERMS DON'T CHANGE FREQUENTLY. THEY CHANGE, BUT NOT
24 MANY THINGS CHANGE MORE OFTEN THAN ONCE A YEAR.
25 Q. IN TERMS OF RECEIVING CO-OP, YOU RECEIVE CO-OP WHEN YOU

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1 APPROACH STORES, TYPICALLY -- PUBLISHERS?
2 A. YES, TYPICALLY.
3 Q. SO THIS IS SOMETHING THAT YOU HAVE TO INITIATE.
4 A. WE DON'T HAVE TO. SOMETIMES PUBLISHER'S REPS INITIATE IT
5 AND CALL ME AND SAY, "YOU HAVE \$900 IN YOUR POOL WITH US, SO,
6 JUST WANTED YOU TO KNOW THAT," BUT WHEN WE'RE ADVERTISING A
7 PARTICULAR BOOK OR AUTHOR, YOU KNOW, IN THOSE OCCASIONS WE
8 CERTAINLY APPROACH THE PUBLISHER'S REP TO GET THE APPROPRIATE
9 INFORMATION.
10 MR. GARCIA: YOUR HONOR, MAY I GET SOME WATER?
11 THE COURT: YES.
12 MR. GARCIA: THANK YOU, YOUR HONOR.
13 Q. NOW, WOMEN & CHILDREN FIRST HAS RECEIVED OFFERS FOR CO-OP
14 FOR TABLE DISPLAYS SINCE APPROXIMATELY 1996, IS THAT CORRECT?
15 A. THERE ARE A COUPLE OF PUBLISHERS THAT DO OFFER WHAT'S
16 CALLED PLACEMENT ALLOWANCES, YES, FOR DISPLAY.
17 Q. AND YOU RECEIVED THOSE ALLOWANCES?
18 A. WE HAVE.
19 Q. AND YOU'VE RECEIVED CO-OP FOR END CAP DISPLAYS, AS WELL?
20 A. WELL, PLACEMENT DISPLAYS ARE EITHER END CAP OR TABLE
21 DISPLAYS. IT'S USUALLY DEFINED AS PROMINENT PLACEMENT IN THE
22 STORE.
23 Q. AND FOR PENGUIN PUTNAM YOU RECEIVED JUST A SET DOLLAR
24 ALLOWANCE FOR IN-STORE DISPLAY, CORRECT?
25 A. WE'RE TALKING ABOUT DISPLAY ALLOWANCE NOW.

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1 Q. YES, DISPLAY ALLOWANCE.
2 A. WE -- AND THE QUESTION WAS...?
3 Q. AND FROM PENGUIN PUTNAM, YOU RECEIVE JUST A SET DOLLAR
4 AMOUNTS -- A SET AMOUNT.
5 A. WELL, YES, UNDER PARTICULAR CONDITIONS. THEY'RE VERY
6 STRICT CONDITIONS.
7 Q. RIGHT, BUT AT LEAST WITH RESPECT TO PENGUIN PUTNAM, YOU
8 DON'T HAVE TO DEMONSTRATE THAT THERE'S ANY PARTICULAR KIND OF
9 DISPLAY, DO YOU?
10 A. YES. I MEAN, WE HAVE TO SIGN AN AFFIDAVIT THAT SWEARS, YOU
11 KNOW, THAT TESTIFIES TO THE FACT THAT WE HAVE GIVEN THE BOOK
12 THAT WE ARE GETTING PLACEMENT ALLOWANCE FOR PROMINENT DISPLAY,
13 END CAP OR TABLE.
14 Q. BUT YOU DON'T HAVE TO DEMONSTRATE ANY PARTICULAR KIND OF
15 DISPLAY, DO YOU, WITH PENGUIN PUTNAM?
16 A. I DON'T REMEMBER THE EXACT LANGUAGE OF THE AFFIDAVIT, BUT
17 YOU ARE SIGNING -- YOU ARE SIGNING AN AFFIDAVIT THAT SAYS YOU
18 HAVE GIVEN THAT BOOK THAT YOU'RE GETTING PLACEMENT ALLOWANCE
19 FOR PROMINENT DISPLAY. I DON'T REMEMBER IF THE LANGUAGE IS
20 "PROMINENT" OR NOT, BUT THAT'S THE PURPOSE OF THE AFFIDAVIT, TO
21 GET YOUR WORD THAT YOU'RE DOING WITH THIS MONEY WHAT YOU SAY
22 YOU'RE DOING.
23 Q. AND YOU DON'T HAVE TO CALCULATE, AT LEAST WITH RESPECT TO
24 PENGUIN PUTNAM, THE ACTUAL COST THAT ANY OF THE IN-STORE
25 DISPLAYS MIGHT HAVE REQUIRED, DO YOU?

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1 A. AGAIN, WITH PENGUIN PUTNAM, YOU HAVE TO SIGN AN AFFIDAVIT
2 THAT SAYS YOU HAVE GIVEN THAT BOOK FOR WHICH YOU'RE GETTING
3 PLACEMENT ALLOWANCE PROMINENT DISPLAY.
4 Q. YOUR STORE HAS ALSO RECEIVED CO-OP FROM FARRAR, STRAUSS
5 RELATING TO THE QUANTITY OF PURCHASES THAT YOU PURCHASE, AT
6 LEAST WITH RESPECT TO AUTHORS' APPEARANCES?
7 A. WELL, WE'VE GOTTEN -- I CAN'T REMEMBER IF FARRAR,
8 STRAUSS -- IT'S MANY PUBLISHERS HAVE OVER THE COURSE OF TIME
9 OFFERED ALLOWANCE FOR AUTHOR EVENTS OVER AND BEYOND THE AMOUNT
10 IN YOUR COPY POOL. SO IF THAT'S -- I NEED TO KNOW A LITTLE
11 MORE ABOUT WHAT YOU'RE REFERRING TO.
12 Q. WHO IS ELLEN LARRIMORE?
13 A. ELLEN LARRIMORE WAS OUR OFFICE MANAGER FOR ABOUT SIX YEARS.
14 Q. ARE YOU AWARE THAT ELLEN LARRIMORE NEGOTIATED PAYMENT
15 TERMS, OR EXTENSIONS OF TIME TO PAY WITH PUBLISHERS?
16 MR. MACH: OBJECTION, YOUR HONOR, THIS AGAIN HAS
17 BEEN THE SUBJECT OF A MOTION IN LIMINE, WHICH YOU HAVE RULED
18 ON, WITHOUT CONDITIONS, SAYING THAT EVIDENCE OF PLAINTIFFS'
19 PAYMENT TERMS SHOULD NOT BE INTRODUCED IN THIS CASE.

20 MR. GARCIA: YOUR HONOR, I'M INTRODUCING IT TO
21 DEMONSTRATE THE PROCESS OF NEGOTIATION WITH THE PUBLISHER.
22 THE COURT: I DON'T RECALL MY RULINGS, SO I'M GOING
23 TO ASK YOU TO PASS IT AND YOU CAN COME BACK TO IT.
24 MR. GARCIA: THANK YOU, YOUR HONOR.
25 Q. ALL RIGHT, LET ME DIRECT YOUR ATTENTION TO EXHIBIT 7783.

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1 THE COURT: I DON'T HAVE IT. WAIT A MINUTE, YES, I
2 DO.

3 MR. GARCIA: IT'S AT THE BACK. IT'S THE
4 NEXT-TO-THE-LAST EXHIBIT, YOUR HONOR.

5 THE COURT: OKAY.

6 BY MR. GARCIA:

7 Q. I THINK YOU WENT PAST IT, MS. CHRISTOPHERSEN. THAT'S IT,
8 RIGHT THERE.

9 A. RIGHT THERE.

10 Q. WE GRAPHED, IN THAT EXHIBIT, A GRAPH OF YOUR STORE'S ANNUAL
11 NET SALES, TAKEN FROM THE FINANCIAL RECORDS WHICH YOU PROVIDED,
12 AND I WILL REPRESENT TO YOU -- WELL, ACTUALLY, CAN I REPRESENT
13 TO YOU THAT IN 1997 YOUR SALES WERE \$823,237, AND THAT IN 1998
14 THEY WERE \$856,621, AND THAT IN 1999 THEY WERE \$939,962, AND
15 THAT IN 1999 WAS, IN FACT, YOUR BEST YEAR BETWEEN 1999 AND
16 1992. ARE YOU PREPARED TO ACCEPT THOSE NUMBERS? WE CAN WALK
17 THROUGH THE EXHIBITS?

18 A. NO, NO, I THINK -- YOU'RE SAYING THAT 1999 WAS OUR BEST
19 YEAR SINCE 1992?

20 Q. CORRECT.

21 A. CORRECT.

22 Q. AND I BELIEVE YOU'VE TESTIFIED PREVIOUSLY THAT BY -- THAT
23 YOUR -- THAT BY 1998, THERE WERE 20 TO 22 BARNES & NOBLE
24 SUPERSTORES WITH WHICH YOU COMPETE?

25 A. THAT'S CORRECT.

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1 Q. AND THAT DURING THE ENTIRE COURSE OF THE 1990'S, MORE AND
2 MORE OF THOSE SUPERSTORES OPENED?

3 A. UP TILL 1998.

4 Q. SO THAT, IN FACT, YOU HAVE MANAGED TO EXPAND YOUR BUSINESS
5 IN THE FACE OF THE EXISTENCE OF ALL OF THOSE STORES, IS THAT
6 CORRECT?

7 A. WELL, OUR BUSINESS, AS I THINK I TESTIFIED TO, DROPPED
8 SIGNIFICANTLY IN THOSE YEARS, AND STAYED AT THAT NEW LOW LEVEL
9 UNTIL WE ADDED A THIRD TO OUR STORE BY VIRTUE OF ANNEXING
10 ANOTHER WHOLE STOREFRONT, AND IT WAS AT THAT POINT THAT THE --
11 WE STARTED SHOWING INCREASED SALES.

12 Q. RIGHT, AND THAT THE EXPANSION TOOK PLACE IN THE FACE OF THE
13 COMPETITION, IS THAT CORRECT?

14 A. THAT'S CORRECT.

15 Q. NOW, LET'S TURN BRIEFLY TO INGRAM. APPROXIMATELY HOW MANY
16 BOOKS A WEEK DO YOU PURCHASE FROM INGRAM?

17 A. HOW MANY BOOKS A WEEK?

18 Q. YES.

19 A. WELL, THAT WOULD VARY FROM WEEK TO WEEK BECAUSE OF HOW WE
20 USE THE SUPPLIER. I DON'T KNOW. A HUNDRED TO TWO HUNDRED, I
21 GUESS.

22 Q. AND IS IT YOUR TESTIMONY THAT YOU'VE NEVER DISCUSSED THE
23 SCHEDULED DELIVERY PROGRAM WITH YOUR INGRAM REPRESENTATIVE?

24 A. THAT'S CORRECT.

25 Q. WITH RESPECT TO THE TERMS THAT I BELIEVE YOU TESTIFIED,

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1 WHAT WERE THEY, AGAIN, THE PAYMENT TERMS FROM INGRAM?

2 A. PAYMENT TERMS FROM INGRAM? WELL, THE PAYMENT INVOICES ARE
3 DUE -- WE TALKED ABOUT THE 2 PERCENT DISCOUNT, ARE THE PAYMENT
4 TERMS WE'VE TALKED ABOUT, IF YOU PAY YOUR INVOICES ON A CERTAIN
5 STATEMENT BY THE 10TH DAY OF THE MONTH FOLLOWING THAT
6 STATEMENT.

7 Q. ARE YOU FAMILIAR WITH INGRAM'S SUMMARY BILLING PROGRAM?

8 A. NO, I'M NOT.

9 Q. AND YOUR INGRAM REPRESENTATIVE HAS NEVER DISCUSSED SUMMARY
10 BILLING WITH YOU.

11 A. THAT'S CORRECT.

12 Q. AND IF I WERE TO TELL THAT YOU THERE WAS A SUMMARY BILLING
13 PROGRAM THAT ALLOWED YOU TO HAVE A 2 PERCENT DISCOUNT 25 DAYS
14 E.O.M., YOU'D GO AND ASK YOUR INGRAM REPRESENTATIVE ABOUT THAT
15 PROGRAM, WOULDN'T YOU?
16 A. CERTAINLY.
17 Q. ALL RIGHT. AND WITH RESPECT TO THE SCHEDULED DELIVERY
18 PROGRAM, IF THERE WAS A PROGRAM THAT ENABLED YOU TO GET AN
19 EXTRA 1 OR 2 PERCENT DISCOUNT FROM INGRAM IF YOU AGREED TO HAVE
20 INGRAM BOOKS DELIVERED ONCE A WEEK, WOULD YOU INQUIRE ABOUT
21 THAT PROGRAM?
22 A. I CERTAINLY WOULD.
23 Q. DO YOU HAVE THE SENSE THAT INGRAM'S TERMS HAVE IMPROVED
24 OVER THE YEARS?
25 A. WELL, THE -- NOT IN RECENT YEARS. INGRAM'S TERMS HAVE

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1 BEEN -- THE TERMS THAT I KNOW ABOUT FROM INGRAM'S HAVE BEEN
2 ESSENTIALLY STABLE, OR THE SAME, FOR THE LAST NUMBER OF YEARS.
3 Q. AND I BELIEVE YOU TESTIFIED THAT THE VENDOR OF RECORD
4 PROGRAM YOU ARE FAMILIAR WITH.
5 A. THAT'S RIGHT. THAT'S CORRECT.
6 Q. BUT YOU CHOSE AS A BUSINESS DECISION NOT TO USE THE VENDOR
7 OF RECORD PROGRAM.
8 A. THAT'S CORRECT.
9 Q. IS THAT CORRECT? BECAUSE YOU DECIDED IT DIDN'T WORK FOR
10 YOUR STORE?
11 A. WELL, WE DECIDED THAT IT WAS BETTER TO ORDER DIRECTLY FROM
12 PUBLISHERS, YES, FOR OUR STORE.
13 Q. AND THAT'S BECAUSE OF THE LOWER DISCOUNTS AVAILABLE FROM
14 INGRAM VERSUS BUYING DIRECT.
15 A. YES. I WOULD PHRASE IT, YEAH, HIGHER INCOME -- DISCOUNT WE
16 CAN GET DIRECTLY FROM PUBLISHERS, AND OTHER REASONS, AS WELL.
17 MR. GARCIA: YOUR HONOR, I HAVE NO FURTHER QUESTIONS
18 AT THIS TIME, EXCEPT WITH RESPECT TO MS. LARRIMORE.
19 THE COURT: I RULE THAT THE EVIDENCE OF THE
20 PLAINTIFFS' PAYMENT TERMS CANNOT BE INTRODUCED, AND I'LL LOOK
21 AT MY RULING.
22 MR. MACH: YOUR HONOR, I HAVE A COPY OF YOUR ORDER,
23 IF YOU'D LIKE TO LOOK AT IT.
24 THE COURT: THANK YOU.
25 (CONTINUED ON FOLLOWING PAGE. NOTHING OMITTED.)

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1 MR. MACH: IT'S IN PARAGRAPH SEVEN, YOUR HONOR.
2 THE COURT: ALL RIGHT. THAT FINISHES YOUR
3 CROSS-EXAMINATION?
4 MR. GARCIA: WOULD YOUR HONOR ACCEPT THAT WE ARE NOT
5 OFFERING ANY OF THE EVIDENCE WITH RESPECT TO MR. LARRIMORE TO
6 PROVE ANY KIND OF A DIFFERENTIAL. WE ARE OFFERING IT TO SHOW
7 DEVIATION FROM RED BOOK TERMS AND NEGOTIATION ABOUT PAYMENT
8 TERMS.
9 THE COURT: MY QUESTION WAS, WERE YOU THROUGH WITH
10 YOUR CROSS-EXAMINATION?
11 MR. GARCIA: YES, YOUR HONOR.
12 THE COURT: ALL RIGHT. MR. STEER?
13 MR. RADER: JAMES HEIDEMAN, WHO IS WORKING WITH ME ON
14 THIS CASE, IS GOING TO CONDUCT THE CROSS-EXAMINATION.
15 CROSS-EXAMINATION
16 MR. HEIDEMAN: GOOD MORNING, YOUR HONOR. MY NAME IS
17 JAMES HEIDEMAN. I WORK WITH MR. STEER WHO REPRESENTS BORDERS
18 GROUP.
19 THE GOOD NEWS IS I HAVE NO ADDITIONAL BINDERS OR
20 THINGS TO HANDLE.
21 Q. WOMEN & CHILDREN FIRST HAS BEEN IN THE ANDERSONVILLE
22 LOCATION SINCE 1990, CORRECT?
23 A. THAT'S CORRECT.
24 Q. NOW, DURING THE FIRST FEW YEARS THAT YOU WERE AT THAT
25 LOCATION, THE BOOKSTORE'S SALES INCREASED EVERY YEAR, CORRECT?

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1 A. THAT'S CORRECT.
2 Q. THE BOOKSTORE -- AS BACKGROUND, THE BOOKSTORE'S FISCAL YEAR
3 ENDS ON JULY 31ST, CORRECT?

4 A. THAT'S CORRECT.
5 Q. NOW, IS IT CONSISTENT WITH YOUR RECOLLECTION THAT THE
6 BOOKSTORE EXPERIENCED A SALES DECLINE OF ABOUT 11 PERCENT FROM
7 THE FISCAL YEAR ENDING IN 1993 TO THE FISCAL YEAR ENDING IN
8 1995?
9 A. YES. I'M -- I'M SORRY. ENDING IN FISCAL '93 TO '95. UM,
10 IT'S ACTUALLY -- I THINK THE DROP WAS IN FISCAL YEAR THAT ENDED
11 IN '94.
12 Q. SO THERE WAS A DROP, AS YOU RECALL, FROM THE FISCAL YEAR
13 ENDING IN 1993 TO THE FISCAL YEAR ENDING IN 1994?
14 A. YES, THAT'S CORRECT.
15 Q. AND THAT 11 PERCENT FIGURE IS CONSISTENT WITH YOUR
16 RECOLLECTION OF THE SALES DECLINE?
17 A. YOU KNOW, IT WAS -- I REMEMBER 11 PERCENT DROP, BUT I THINK
18 THAT WAS OVER TWO YEARS, SO I THINK IT WAS 8 PERCENT AND THEN
19 3 PERCENT, SO I THINK THAT REPRESENTS A TWO-YEAR PERIOD.
20 Q. SO THE MAJORITY OF THE 11 PERCENT DROP, OR 8 PERCENT, CAME
21 IN THE FIRST FISCAL YEAR PERIOD AFTER THE CONCLUSION OF FISCAL
22 YEAR 1993?
23 A. THAT'S CORRECT.
24 Q. NOW, OVER THE NEXT COUPLE YEARS AFTER THAT 11 PERCENT
25 DECLINE, YOUR SALES WERE RELATIVELY FLAT. WOULD THAT BE

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1 CONSISTENT WITH YOUR RECOLLECTION?
2 A. YES, THAT IS.
3 Q. AND MR. GARCIA WENT OVER THIS WITH YOU. BASICALLY SINCE THE
4 FISCAL YEAR ENDING ON JULY 31ST OF '97, ISN'T IT THE CASE THAT
5 YOUR BOOKSTORE'S SALES HAVE ACTUALLY INCREASED YEAR AFTER YEAR?
6 A. OUR BOOKSTORE SALES STARTED INCREASING IN THE FOURTH QUARTER
7 OF '98, WHICH CORRESPONDS EXACTLY WITH WHEN WE ADDED A THIRD
8 MORE SELLING SPACE TO OUR STORE.
9 Q. SO FOR THE YEAR THAT ENDED JULY 31ST, 1998, YOUR TOTAL SALES
10 FOR THAT YEAR DID EXCEED YOUR TOTAL SALES FOR THE FISCAL YEAR
11 ENDING FISCAL YEAR -- I'M SORRY -- JULY 31ST, 1997, CORRECT?
12 A. THAT'S CORRECT, YES.
13 Q. NOW, YOU'VE ATTRIBUTED THE BOOKSTORE'S SALES DECLINE IN THE
14 '93 TO '95 PERIOD, ROUGHLY, TO THE INFLUX OF SUPERSTORES IN THE
15 CHICAGO AREA; IS THAT A FAIR STATEMENT?
16 A. YES.
17 Q. IN FACT, IF YOU RECALL IN YOUR DEPOSITION, WOULD IT BE FAIR
18 TO SAY THAT THE BOOKSTORE KEENLY FELT COMPETITION FROM
19 SUPERSTORES BY 1994?
20 A. UM, YES.
21 Q. ARE YOU AWARE OF WHETHER ANY BORDERS BOOKS AND MUSIC STORES
22 EXISTED WITHIN 10 MILES OF YOUR BOOKSTORE LOCATION AS OF 1994?
23 A. UM, I -- I DON'T THINK SO.
24 Q. IN FACT, DIDN'T YOU TESTIFY AT YOUR DEPOSITION IT'S YOUR
25 RECOLLECTION THAT THE FIRST BORDERS WITHIN 10 MILES OF YOUR

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1 BOOKSTORE OPENED IN ABOUT '96 OR '97?
2 A. YES.
3 Q. YOU MENTIONED A STORE ON NORTH MICHIGAN AVENUE IN CHICAGO, A
4 BORDERS STORE, CORRECT?
5 A. THAT'S CORRECT.
6 Q. IS IT CONSISTENT WITH YOUR RECOLLECTION THAT THAT OPENED
7 SOMETIME IN 1995?
8 A. I DON'T REMEMBER THE EXACT YEAR. BUT YES, I -- THAT SOUNDS
9 APPROXIMATELY RIGHT.
10 Q. YOU MENTIONED A BORDERS BOOKSTORE IN, I BELIEVE, EVANSTON,
11 ILLINOIS?
12 A. THAT'S CORRECT.
13 Q. DO YOU RECALL WHEN THAT OPENED?
14 A. BELIEVE THAT OPENED IN '96.
15 Q. AND I BELIEVE YOU MENTIONED A BORDERS BOOKSTORE ON NORTH
16 CLARK AVENUE (SIC); IS THAT CORRECT?
17 A. THAT'S CORRECT.
18 Q. DO YOU RECALL WHEN THAT BOOKSTORE OPENED?
19 A. RIGHT AROUND THAT TIME.
20 Q. 1995, '96?
21 A. YEAH. MAYBE '97, BUT YES, RIGHT IN THAT RANGE.
22 Q. SO THE 11 PERCENT SALES DECLINE THAT YOU ATTRIBUTE TO

23 SUPERSTORE COMPETITION, IN FACT, OCCURRED BEFORE YOU FACED ANY
24 COMPETITION FROM A BORDERS WITHIN ROUGHLY 10 MILES OF WOMEN &
25 CHILDREN FIRST, CORRECT?

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1 A. THAT'S CORRECT. BUT THERE WERE BORDERS THAT HAD OPENED IN
2 THE AREA I DESCRIBED AS OUR COMPETITIVE --
3 Q. THE 30-MILE RADIUS?
4 A. 25, 30-MILE, YES. AND I --
5 Q. THERE IS NO BORDERS IN THE ANDERSONVILLE NEIGHBORHOOD, IS
6 THERE?
7 A. THERE IS NOT YET.
8 Q. WOULD YOU AGREE THAT WALDENBOOKS STORES HAVE EXISTED IN AND
9 AROUND THE CHICAGO AREA SINCE AT LEAST THE 1980S?
10 A. YES.
11 Q. NOW, YOU DON'T ATTRIBUTE DECLINING SALES IN THE EARLY 1990S
12 TO WALDENBOOKS, WOULD YOU?
13 A. I WOULD ATTRIBUTE VERY LITTLE TO WALDENBOOKS, YES.
14 Q. IN FACT, DO YOU RECALL IN YOUR DEPOSITION SAYING THAT THE
15 IMPACT FROM WALDENBOOKS ON YOUR BOOKSTORE WAS ESSENTIALLY
16 UNFELT?
17 A. I DON'T RECALL SAYING THAT IN MY DEPOSITION, BUT AS I SAY, I
18 DON'T THINK -- I DON'T THINK OUR SALES HAVE BEEN MUCH AFFECTED
19 BY WALDENBOOKS.
20 Q. SO WOULD YOU CONSIDER WALDENBOOKS A COMPETITOR OF WOMEN &
21 CHILDREN FIRST?
22 A. I CONSIDER EVERY BOOKSTORE A COMPETITOR OF WOMEN & CHILDREN
23 FIRST, BUT THERE ARE DEGREES OF COMPETITION.
24 Q. SO YOU WOULD SAY THAT ANY VENDOR THAT SELLS BOOKS THAT HAVE
25 SOME OVERLAP WITH YOUR BOOKSTORE IS IN SOME SENSE A COMPETITOR?

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1 A. THAT'S CORRECT.
2 Q. DO YOU FEEL THAT YOU'VE EVER LOST SALES TO WALDENBOOKS?
3 A. UM, I SUSPECT WE HAVE LOST SOME SALES TO WALDENBOOKS, YES.
4 Q. SIGNIFICANT SALES?
5 A. PROBABLY NOT SIGNIFICANT SALES, EXCEPT, YOU KNOW, PERCENTAGE
6 BY PERCENTAGE, EACH SALE IS SIGNIFICANT, SO --
7 Q. EARLIER YOU MENTIONED THAT WHEN YOU OPENED YOUR BOOKSTORE,
8 THERE WAS A FEMINIST OR WOMEN STUDIES BOOKSTORE IN THE LOOP AREA
9 OF CHICAGO CALLED JANE ADAMS; IS THAT CORRECT?
10 A. THAT'S CORRECT.
11 Q. NOW, IF I RECALL CORRECTLY, YOU SAID THAT THEY AREN'T MUCH A
12 COMPETITOR OF YOURS BECAUSE THEY WERE IN, QUOTE, A DIFFERENT
13 WORLD, UNQUOTE?
14 A. I DIDN'T SAY THEY WEREN'T MUCH OF A COMPETITOR. I DID SAY
15 THAT WE THOUGHT OF THEM AS EXISTING IN THE DIFFERENT WORLD, AND
16 I HOPE I EXPLAINED EARLIER WHAT I MEANT BY THAT. THEY WERE
17 CERTAINLY A COMPETITOR.
18 Q. WELL, WHAT DID YOU MEAN BY "A DIFFERENT WORLD"?
19 A. AS I -- AS I ALREADY DESCRIBED, I MEANT THAT THEY WERE
20 LOCATED DOWNTOWN, THEY WERE IN AN OFFICE BUILDING ON THE 15TH
21 FLOOR. THEY WERE OPEN DOWNTOWN BUSINESS HOURS. I THOUGHT OF IT
22 AS A DIFFERENT WORLD, DIFFERENT FROM OUR NORTH SIDE CHICAGO
23 NEIGHBORHOOD. BUT THERE'S NO QUESTION WE WERE COMPETITORS.
24 Q. NOW, DURING THE COURSE OF YOUR TESTIMONY, YOU'VE TALKED
25 ABOUT THE BORDERS BOOKS AND MUSIC STORE ON MICHIGAN AVENUE,

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1 CORRECT?
2 A. IN MY -- I DON'T --
3 Q. -- TESTIMONY TODAY?
4 A. I DON'T -- I DON'T -- I HAVEN'T TALKED MUCH ABOUT THAT
5 PARTICULAR STORE, I DON'T THINK. BUT WHAT -- PERHAPS IF YOU ASK
6 YOUR QUESTION --
7 Q. WELL, YESTERDAY, YOU TALKED ABOUT THE FACT THAT YOU
8 CERTAINLY DO COMPETE -- I'M SORRY.
9 ON THURSDAY YOU SAID YOU CERTAINLY DO COMPETE WITH
10 THE TEN BORDERS STORES IN THE CHICAGO AREA, CORRECT?
11 A. THAT'S CORRECT.
12 Q. THAT INCLUDES THE CHICAGO BORDERS BOOKS AND MUSIC ON
13 MICHIGAN AVENUE, CORRECT?
14 A. THAT'S CORRECT.

15 Q. YOU'RE FAMILIAR WITH THE TERM "MIRACLE MILE"?
16 A. SURE.
17 Q. THAT'S A POSH SHOPPING AREA, DOWNTOWN CHICAGO?
18 A. CORRECT.
19 Q. NEAR THE LOOP?
20 A. NORTH OF THE LOOP. IT'S --
21 Q. BUT DO YOU CONSIDER THAT IN THE SAME WORLD AS WOMEN &
22 CHILDREN FIRST IN TERMS OF COMPETITIVE MARKETPLACE?
23 A. IT'S ACTUALLY MORE IN THE SAME WORLD THAN I WOULD HAVE
24 THOUGHT JANE ADAMS WAS. IT'S A STORE FRONT. YOU KNOW,
25 PROMINENT STORE FRONT LOCATION. IT'S IN AN AREA THAT ALL OF US
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1 SHOP. IT MAY BE POSH, BUT I, FOR INSTANCE, SHOP, BUT --
2 MICHIGAN AVENUE.
3 SO I MEAN, THERE ARE MANY -- YOU KNOW, MANY OF THE
4 SAME CUSTOMERS THAT COME TO OUR STORE WOULD GO TO THAT STORE,
5 TOO.
6 Q. NOW, JANE ADAMS, UNLIKE BORDERS, WAS A SPECIALTY BOOKSTORE
7 FOCUSING ON WHAT KIND OF BOOKS THAT YOUR BOOKSTORE SELLS,
8 WOMEN'S -- SOME FEMINIST-TYPE BOOKS?
9 A. THAT'S RIGHT.
10 Q. YET YOU THINK THAT BORDERS ON MICHIGAN AVENUE IN MIRACLE
11 MILE IS MORE OF A COMPETITOR THAN WAS JANE ADAMS?
12 A. WELL, THERE'S A COUPLE TIME FEATURES THAT I THINK NEED TO BE
13 BUILT INTO THIS. JANE ADAMS CLOSED A NUMBER OF YEARS AGO.
14 BORDERS OPENED MORE RECENTLY. THE -- THE OVERLAPPING -- OVERLAP
15 IN STOCK HAS GROWN CONSIDERABLY, SO IT'S A LITTLE -- IT'S SORT
16 OF LIKE COMPARING APPLES AND ORANGES TO THINK OF, YOU KNOW, WHAT
17 THINGS WERE LIKE 21 YEARS AGO AND WHAT THEY'RE LIKE IN THE LAST
18 7 OR 8 YEARS.
19 Q. ALL RIGHT. DO YOU KNOW WHAT THE CUSTOMER BASE IS FOR THE
20 MICHIGAN AVENUE BORDERS?
21 A. DO I KNOW WHAT THEIR CUSTOMER BASE IS?
22 Q. RIGHT.
23 A. OH, I ASSUME IT'S -- I ASSUME IT'S FAIRLY COMPLEX. I DON'T
24 KNOW ANY MORE THAN THAT, BUT I'M SURE, YOU KNOW, IT'S AN AREA
25 THAT TOURISTS COME TO. IT'S AN AREA WHERE WORKERS -- YOU KNOW,
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1 DAILY WORKERS ARE. IT'S VISITED BY PEOPLE -- IT'S A REGION
2 VISITED BY PEOPLE ALL OVER THE CHICAGO AREA. SO I WOULD IMAGINE
3 IT'S A PRETTY COMPLEX CUSTOMER BASE.
4 Q. DO YOU SUSPECT THAT THAT'S A DIFFERENT CUSTOMER BASE THAN
5 YOU HAVE AT WOMEN & CHILDREN FIRST IN ANDERSONVILLE?
6 A. WELL, TO THE EXTENT THAT WE HAVE MANY OF THOSE SAME
7 FEATURES -- YOU KNOW, MANY PEOPLE FROM, YOU KNOW, FAR REGIONS
8 COME TO MY NEIGHBORHOOD, NOT NECESSARILY FOR THE SAME REASONS.
9 BUT WE HAVE A LOT OF VISITORS TO OUR AREA, TOO. SO I THINK MOST
10 OF THE SAME FEATURES I DESCRIBED, YES, I WOULD APPLY TO WOMEN &
11 CHILDREN FIRST.
12 Q. IS ANDERSONVILLE CONSIDERED A MAJOR DESTINATION SHOPPING
13 AREA FOR PEOPLE IN THE CHICAGO AREA?
14 A. WELL, IF YOU MEAN BY THAT DO WE HAVE AS MUCH STREET TRAFFIC
15 IN THE COURSE OF DAY AS THE MAGNIFICENT MILE, THE ANSWER WOULD
16 BE NO. BUT THERE ARE A LOT OF PEOPLE WHO TRAVEL TO
17 ANDERSONVILLE. IT IS QUITE A WELL-KNOWN NEIGHBORHOOD.
18 Q. NOW, YOU'D MENTIONED THIS REGION OF 25 TO 30 MILES AS YOUR
19 COMPETITIVE AREA. DO YOU KNOW WHAT THE POPULATION IS OF THAT
20 COMPETITIVE AREA?
21 A. OF THE ENTIRE COMPETITIVE AREA?
22 Q. YES.
23 A. EIGHT MILLION PEOPLE, MAYBE.
24 Q. SO YOU DRAW FROM A CUSTOMER BASE OF 8 MILLION PEOPLE?
25 A. YES.
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1 Q. AND ONE OF THE REASONS YOU SAID THAT YOU COMPETED WITH
2 BORDERS IS THAT YOU COMPETE FOR CUSTOMERS IN THIS SAME REGION
3 THAT YOU SAY HAS 8 MILLION PEOPLE IN IT, CORRECT?
4 A. YES.
5 Q. YOU ALSO SAID THAT THERE'S AN OVERLAP OF TITLES. I BELIEVE
6 THAT YOU SPECIFICALLY MENTIONED ON SEVERAL OCCASIONS AN AMY TAN

7 NOVEL?
8 A. I WAS JUST PULLING THAT UP FOR A CONSISTENT EXAMPLE, YES.
9 Q. DO YOU THINK THAT THAT'S SOLD AT K-MART?
10 A. UM, I DON'T -- ACTUALLY I DON'T -- I DON'T KNOW WHAT K-MART
11 CARRIES. I REALLY DON'T KNOW THE ANSWER TO THAT.
12 Q. DO YOU KNOW IF THEY CARRY BOOKS?
13 A. I KNOW THAT THEY CARRY BOOKS. I DON'T --
14 Q. DO THEY --
15 A. I DON'T THINK I'VE EVER BEEN IN A K-MART, SO I DON'T KNOW
16 WHAT KINDS OF BOOKS.
17 Q. SO YOU DON'T KNOW WHETHER THEY MIGHT BE FRONT LIST OR
18 BACKLIST?
19 A. MY -- YOU KNOW, CERTAINLY I HAVE -- I HAVE A NOTION IN MY
20 HEAD, BUT SINCE I CAN'T CONFIRM THAT BY MY OWN EXPERIENCE, I
21 WOULDN'T TESTIFY TO IT.
22 Q. EARLIER TODAY, YOU SPOKE ABOUT KNOWING WHAT TERMS YOU'RE
23 GETTING AND CONFIRMING THAT WITH THE RED BOOK TERMS BY FILLING
24 OUT PURCHASE ORDERS AND PLUGGING IN THE DISCOUNT, CORRECT?
25 A. YEAH. COMPUTER-GENERATED PURCHASE ORDERS.

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1 Q. SO WHEN THERE'S A COMPUTER-GENERATED PURCHASE ORDER, YOU
2 WOULD CONFIRM THAT THE DISCOUNT CORRESPONDS TO THE RED BOOK,
3 CORRECT?
4 A. I COULD CON -- WAIT. SAY THAT AGAIN.
5 Q. WHAT I'M TRYING TO GET AT IS YOU SAID THAT YOU KNOW THAT YOU
6 PURCHASE ON THE RED BOOK TERMS IN UP TO 90 PERCENT OF CASES
7 BECAUSE WHEN YOU COMPLETE A PURCHASE ORDER, YOU'RE VERIFYING
8 THAT THE TERMS ON THE PURCHASE ORDER CORRESPOND TO THE RED BOOK?
9 A. I -- YES, I COULD DO THAT. I DON'T DO THAT ON EVERY -- I
10 ALWAYS -- I ALWAYS CHECK THE RED BOOK TO MAKE SURE THAT I'M
11 GETTING THE BEST POSSIBLE TERMS FOR THE PURPOSES OF THAT ORDER.
12 IN OTHER WORDS, I NEED TO MAKE SURE I'VE GOT THE
13 MINIMUM NUMBER OF BOOKS TO GET THEIR, YOU KNOW, 40 PERCENT OR 42
14 OR 44, WHATEVER IT IS, DISCOUNT. AND THAT -- YES, I ALWAYS DO
15 THAT. I'M NOT SURE WHAT ELSE YOU'RE ASKING.
16 Q. WELL, EARLIER TODAY, YOU'D SAID THAT THE COMPUTER CALCULATES
17 THE AMOUNT DUE IN A PURCHASE ORDER, THAT YOU JUST PLUG IN THE
18 DISCOUNT?
19 A. YES, I -- YOU KNOW, OUR COMPUTER SYSTEM DOES THAT. I DON'T
20 DO THAT ROUTINELY -- I MEAN -- I CHECK THE RED BOOK FOR TERMS.
21 I'M NOT INTERESTED ON EACH GIVEN ORDER TO KNOW SPECIFICALLY WHAT
22 THE TOTAL OF THAT ORDER IS. I MEAN --
23 Q. SO -- SO, IN FACT, YOU DON'T PLUG IN THE DISCOUNT TERMS?
24 A. WE DO --
25 Q. ON A --

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1 A. WE DON'T -- I DON'T PAY A LOT OF ATTENTION TO IT. IT'S NOT
2 IMPORTANT TO ME TO KNOW, SO IT'S NOT A PROCEDURE THAT'S FOLLOWED
3 REGULARLY. IT'S A PROCEDURE WE COULD DO.
4 Q. OKAY. THAT'S WHAT I WANTED TO CONFIRM, THAT, IN FACT, YOU
5 DON'T CONFIRM RED BOOK TERMS EVERY TIME BY PLUGGING THEM --
6 A. OH, NO.
7 Q. -- INTO A PURCHASE ORDER?
8 A. NO, I DO CONFIRM RED BOOK TERMS. I LOOK AT THE RED BOOK,
9 CONFIRM THOSE TERMS. I DON'T NECESSARILY TRANSFER THE DISCOUNT
10 CODE INTO THE COMPUTER, 'CAUSE THAT'S IMMATERIAL TO ME. I WANT
11 TO MAKE SURE I'M GETTING THOSE TERMS, BUT IT DOESN'T -- IT'S AN
12 IMMATERIAL PART OF THE COMPUTER SYSTEM. I COULD USE IT OR NOT.
13 YOU KNOW, IF I WANTED TO, I COULD, BUT IT'S NOT -- I'M STILL
14 CONFIRMING THE TERMS.
15 Q. WELL, IF YOU'RE GOING THROUGH THE PROCESS OF CONFIRMING THE
16 TERMS IN THE RED BOOK EVERY TIME, WHY DON'T YOU JUST PLUG THE
17 NUMBER INTO THE PURCHASE ORDER?
18 A. IT'S AN EXTRA STROKE, YOU KNOW, AND I DON'T NEED THAT
19 INFORMATION FOR ANYTHING. THE INFORMATION THAT IS CRITICAL TO
20 ME IS THAT I'M MEETING RED BOOK TERMS WHEN I'M GENERATING THAT
21 ORDER SO THAT I'M GETTING THE BEST POSSIBLE TERMS ON THAT ORDER.
22 Q. SO IF I LOOKED AT YOUR PURCHASE ORDERS, THEY WOULD TELL ME
23 NOTHING ABOUT THE TERMS THAT YOU'RE PAYING?
24 A. YOU COULDN'T RELY ON WHAT MY PURCHASE ORDER SAID BECAUSE WE
25 DON'T -- YOU KNOW, AS OFTEN AS NOT DON'T PLUG IN THE DISCOUNT

1 FOR EACH ORDER.
2 Q. DOES THE BOOKSTORE MAINTAIN ANY KINDS OF RECORDS SUCH AS ON
3 A SPREADSHEET ON WHICH YOU TRACK STOCK OFFERS?
4 A. NO, NOT ON A -- I MAINTAIN RECORDS, BUT I DON'T DO IT ON A
5 SPREADSHEET.
6 Q. WHAT KIND OF RECORDS?
7 A. A FILE. IT'S -- I HAVE A FILE THAT HAD -- THAT I KEEP BY
8 QUARTERS THAT HAVE STOCK -- OPERATIVE STOCK OFFERS IN IT, AND I
9 REFER TO THOSE WHEN I'M PLACING ORDERS.
10 Q. SO THESE WOULD ACTUALLY BE THE PHYSICAL STOCK OFFERS THAT
11 YOU WOULD HAVE IN A FILE?
12 A. THAT'S CORRECT.
13 Q. AND YOU SAID YOU KEEP THEM FOR EACH QUARTER FOR WHICH THEY
14 APPLY?
15 A. RIGHT.
16 Q. BUT YOU DON'T HAVE ANY KIND OF HISTORICAL RECORDS THAT WOULD
17 SHOW WHETHER YOU WERE TAKING ADVANTAGE OF A STOCK OFFER, OR ONE
18 WAS MADE AVAILABLE TO YOU RATHER, FOUR YEARS AGO?
19 A. NO.
20 Q. AND WE SAW SOME EXAMPLES OF STOCK OFFERS IN MR. GARCIA'S
21 EXAMINATION, 5576, EXHIBIT, AND 5582, ONE OF WHICH WAS
22 HANDWRITTEN, ONE OF WHICH WAS A FAXED ORDER WITH HANDWRITTEN
23 CHANGES ON IT.
24 THOSE WOULD BE THE EXAMPLES OF THE KINDS OF THINGS
25 THAT YOU WOULD HAVE IN THIS LOOSE FOLDER?

1 A. NO, THOSE ARE LESS OFTEN EXAMPLES BECAUSE MOSTLY THEY
2 AREN'T -- YOU KNOW, MOSTLY THERE AREN'T MODIFICATIONS, AND
3 MOSTLY I RECEIVE THOSE IN PRINTED FORM.
4 BUT AS I'VE ALREADY TESTIFIED, OCCASIONALLY THEY'RE
5 TAKEN, YOU KNOW -- THEY'RE TAKEN IN THAT FORM WHERE I WRITE THEM
6 DOWN ACCORDING TO THE DIRECTIVES OF A SALES REP.
7 Q. SO THERE ARE CASES, IN FACT, WHERE YOU DON'T HAVE A
8 PREWRITTEN STOCK OFFER. IT WILL, RATHER, BE THE CASE THAT A
9 PUBLISHER REPRESENTATIVE CALLS YOU AND YOU -- AND DICTATES TO
10 YOU THE TERMS OF STOCK OFFER?
11 A. YES.
12 Q. AND YOU DON'T KNOW IN THOSE CASES WHETHER THOSE DEALS ARE
13 MADE AVAILABLE TO OTHER RETAILERS, DO YOU?
14 A. I AM CONFIDENT THAT NEVER IN 21 YEARS HAS A PUBLISHER'S REP
15 CALLED ME AND SAID, "HERE'S A STOCK OFFER THAT I'M NOT OFFERING
16 TO ANYBODY ELSE. I JUST THOUGHT, HEY, I'LL CALL ANN AT WOMEN &
17 CHILDREN FIRST AND GIVE HER A SPECIAL STOCK OFFER. I'M -- IT
18 WOULD BE -- IT'S JUST OUT OF THE QUESTION THAT THOSE WEREN'T
19 OFFERED TO EVERYBODY ELSE.
20 Q. WELL, THAT REALLY WASN'T MY QUESTION.
21 MY QUESTION WAS, YOU HAVE NO DIRECT KNOWLEDGE THAT
22 STOCK OFFERS THAT YOU RECEIVE ARE MADE AVAILABLE TO OTHER
23 RETAILERS?
24 A. I HAVE NO DIRECT KNOWLEDGE OF THAT, BUT --
25 Q. AND WE LOOKED AT THAT HANDWRITTEN PAGE STOCK OFFER. WE

1 LOOKED AT A PREPRINTED STOCK OFFER THAT HAD HANDWRITTEN CHANGES
2 ON IT. YOU DON'T KNOW, IN FACT, WHETHER OTHER RETAILERS HAVE
3 RECEIVED FROM PUBLISHERS' REPRESENTATIVES THOSE SAME CHANGES, DO
4 YOU?
5 A. I AM ABSOLUTELY CONFIDENT THAT EVERYBODY RECEIVED THOSE SAME
6 STOCK OFFERS, YES.
7 Q. YOU'RE ABSOLUTELY CONFIDENT THAT EVERYBODY RECEIVED A WOMEN
8 STUDIES RETAIL STOCK OFFER?
9 A. OH, YES. I KNOW THAT. I KNOW THAT.
10 Q. AND HOW DO YOU KNOW THAT?
11 A. I KNOW THAT BECAUSE I KNOW WE HAVE NEVER BEEN OFFERED -- IT
12 WAS ABSOLUTELY ROUTINE IN THE ORDER OF BUSINESS WITH RANDOM
13 HOUSE -- I EXPLAINED TO YOU BEFORE. THEY OFFERED CATEGORY STOCK
14 OFFERS IN MANY CATEGORIES. GARDENING, AFRICAN AMERICAN STUDIES,
15 NATURE -- I CAN REMEMBER A NUMBER OF SUBJECTS. WOMEN'S STUDIES
16 WAS JUST AN EXAMPLE OF THAT.
17 Q. AND, AGAIN, YOU'RE MAKING THE ASSUMPTION BECAUSE THIS IS

18 OFFERED TO YOU, IT'S OFFERED TO EVERYBODY?
19 A. THAT'S CORRECT.
20 Q. NOW, YOU TALKED ABOUT CO-OP EARLIER TODAY AND, IN
21 PARTICULAR, CO-OP FOR DISPLAY OF BOOKS, CORRECT?
22 A. YES.
23 Q. NOW, ISN'T IT THE BOOKSTORE'S PRACTICE TO APPROACH THE
24 PUBLISHER TO SEE IF CO-OP FUNDS ARE AVAILABLE FOR SOMETHING THAT
25 YOU WANT TO DO?

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1 A. THAT'S CORRECT.
2 Q. IN OTHER WORDS, YOU INITIATE THE REQUEST FOR CO-OP BASED ON
3 WHAT YOU -- THE BOOKSTORE WANTS TO PROMOTE, CORRECT?
4 A. WELL, THAT'S CORRECT TO SOME EXTENT. IF WE'RE -- THE TIME
5 WE MOST OFTEN USE CO-OP IS WHEN WE'RE HAVING AN AUTHOR AT THE
6 STORE, AND ABSOLUTELY ROUTINELY WHEN WE'RE HAVING AN AUTHOR AT
7 THE STORE, I APPROACH THE PUBLISHER'S REP ABOUT WHAT AVAILABLE
8 CO-OP WE HAVE.
9 Q. NOW, IS THE SAME TRUE WITH RESPECT TO DISPLAYS, THAT WHEN
10 YOU WANT TO DISPLAY A BOOK PERHAPS IN CONNECTION WITH AN AUTHOR
11 EVENT THAT YOU WILL CONTACT THE PUBLISHER, SEEK TO GET CO-OP FOR
12 THAT DISPLAY?
13 A. NO, ACTUALLY THAT'S NOT TRUE. THOSE WOULD BE WHEN -- I
14 COULD GIVE YOU AN EXAMPLE TO CLARIFY, BUT IF YOU'RE CONTENT WITH
15 A SIMPLE "NO," I'LL LEAVE IT AT THAT.
16 Q. WELL, ISN'T IT THE CASE THAT YOU CONSIDER YOURSELF AN
17 INDEPENDENT BOOKSELLER AND YOU DON'T WANT THE BOOKSTORE -- I'M
18 SORRY -- THE PUBLISHER DICTATING TO YOU WHAT BOOKS TO DISPLAY
19 PROMINENTLY IN YOUR BOOKSTORE?
20 A. OH, THAT'S CERTAINLY TRUE.
21 Q. SO YOU WOULD SAY -- OR WOULD YOU AGREE WITH THE STATEMENT
22 THAT YOU DON'T DISPLAY BOOKS IN YOUR STORE BECAUSE YOU GET
23 COOPERATIVE ADVERTISEMENT CREDIT?
24 A. THAT'S CORRECT.
25 Q. IN FACT, YOU'D PREFER NOT TO DISPLAY BOOKS IN YOUR WINDOW OR

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1 ON AN ENDCAP DISPLAY, FOR EXAMPLE, SIMPLY BECAUSE COOPERATIVE
2 ADVERTISING MONEY IS AVAILABLE FOR DISPLAYING PARTICULAR BOOK?
3 A. I WOULDN'T DISPLAY A BOOK THAT I DIDN'T WANT TO DISPLAY
4 PROMINENTLY SIMPLY BECAUSE THERE WAS CO-OP MONEY AVAILABLE FOR
5 THAT. IT --
6 YOU KNOW, IT'S -- LUCKILY, IT'S OFTEN ENOUGH THE CASE
7 THAT THERE IS CO-OP MONEY AVAILABLE -- DISPLAY ALLOWANCE MONEY
8 AVAILABLE FOR BOOKS THAT I WOULD -- YOU KNOW, I WANT TO DISPLAY
9 THAT I CAN TAKE ADVANTAGE OF THAT SOMETIMES.
10 BUT THAT'S THE DIRECTION IT WORKS. I NEVER DISPLAY A
11 BOOK BECAUSE THERE'S CO-OP AVAILABLE.
12 Q. SO THERE ARE SITUATIONS WHERE CO-OP IS AVAILABLE FOR THE
13 DISPLAY OF A BOOK AND YOU'LL DECLINE THAT OFFER BECAUSE YOU
14 DON'T WANT TO DISPLAY THE BOOK?
15 A. WELL, IT MAY NOT FIT IN OUR --
16 Q. RIGHT.
17 A. YES. VARIETY OF REASONS, YES.
18 Q. SO ESSENTIALLY, YOU WOULD PREFER TO HAVE CONTROL OVER WHAT
19 YOU DISPLAY IN YOUR BOOKSTORE?
20 A. I WOULD PREFER TO HAVE CONTROL OVER WHAT I -- I DO --
21 Q. AS OPPOSED TO HAVING THE PUBLISHER DICTATE TO YOU BECAUSE
22 THERE'S SOME CO-OP MONEY AVAILABLE?
23 A. WELL, THE PUBLISHER CANNOT DICTATE TO ME WHAT I'M GOING TO
24 DO IN MY STORE, SO --
25 Q. SURE. BUT IT MAY MEAN THAT YOU DECLINE SOME CO-OP CREDIT

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1 BECAUSE YOU DON'T WANT TO DISPLAY A PARTICULAR BOOK, CORRECT?
2 A. YES.
3 Q. SO IS IT CORRECT TO SAY THAT YOU PLACE A VALUE ON THE SPACE
4 THAT YOU HAVE AVAILABLE FOR DISPLAY IN YOUR STORE?
5 A. OF COURSE.
6 Q. AND IF A BOOK IS SOMETHING THAT YOU PREFER NOT TO DISPLAY,
7 THEN THE CO-OP MONEY OFFERED BY A PUBLISHER FOR A BOOK THAT YOU
8 DO NOT WANT TO DISPLAY IS NOT ENOUGH TO COMPENSATE YOU FOR THE
9 VALUE OF THAT SPACE; IS THAT CORRECT?

10 A. COULD YOU JUST SAY THAT ONCE MORE? I JUST WANT TO MAKE SURE
11 I'M --
12 Q. IF THE PUBLISHER IS OFFERING YOU MONEY, CO-OP CREDIT TO
13 DISPLAY A BOOK THAT YOU DON'T WANT TO DISPLAY, THAT MEANS THAT
14 THE MONEY OR THE CO-OP CREDIT THAT THEY'RE OFFERING ISN'T ENOUGH
15 TO COMPENSATE YOU FOR PUTTING THAT BOOK ON AN END CAP OR ON A
16 TABLE DISPLAY, CORRECT?
17 A. THAT'S CORRECT.
18 Q. EARLIER, YOU HAD SAID THAT YOU'VE NEVER TAKEN -- THE
19 BOOKSTORE, RATHER, HAS NEVER TAKEN AN AUTOMATIC DEDUCTION FOR
20 DEFECTIVE OR DAMAGED BOOKS THAT MAY BE SENT BY A PUBLISHER,
21 CORRECT?
22 A. THAT'S CORRECT.
23 Q. HAVE YOU EVER ASKED FOR SUCH AN AUTOMATIC STATISTICAL
24 DEDUCTION?
25 A. NO, WE HAVE NOT.
page 107

1 Q. NOW, YOU WERE HERE IN THE COURTROOM LAST WEEK, WERE YOU NOT?
2 A. I WAS -- I WAS HERE OFF AND ON, YES.
3 Q. WERE YOU HERE FOR THE TESTIMONY OF MS. GAIL SEE?
4 A. I WAS HERE FOR A GOOD PART OF IT.
5 Q. DO YOU RECALL WHERE MS. SEE ADMITTED THAT ST. MARTINS PRESS,
6 FOR EXAMPLE, HAS A STATISTICAL RESERVE AVAILABLE TO BOOKSELLERS
7 WHO WANT TO TAKE ADVANTAGE OF THAT TERM?
8 A. I DID HEAR THAT.
9 Q. HAVE YOU EVER SOUGHT TO TAKE ADVANTAGE OF THAT TERM?
10 A. NO.
11 MR. HEIDEMAN: THAT'S ALL THE QUESTIONS THAT I HAVE
12 FOR NOW, YOUR HONOR.
13 THE COURT: REDIRECT.
14 MR. MACH: THANK YOU, YOUR HONOR. I JUST HAVE A
15 COUPLE OF QUESTIONS FOR YOU HERE TODAY.
16 REDIRECT EXAMINATION
17 BY MR. MACH:
18 Q. FIRST, YOU WERE JUST ASKED QUESTIONS ABOUT LOCATIONS OF
19 BORDERS STORES AND HOW THEY RELATED TO THE DECLINE IN SALES THAT
20 YOU EXPERIENCED.
21 I BELIEVE YOU WERE ASKED ABOUT THE '93 TO '95 PERIOD
22 WHERE YOU TESTIFIED THAT THERE WAS A DECLINE; IS THAT CORRECT?
23 A. THAT'S CORRECT.
24 Q. AND YOU WERE ASKED WHETHER DURING THAT PERIOD ANY BORDERS
25 STORES WERE LOCATED WITHIN 10 MILES OF YOUR STORE; IS THAT
page 108

1 CORRECT?
2 A. THAT'S CORRECT.
3 Q. YOU WERE ALSO ASKED ABOUT A NORTH -- A STORE ON NORTH
4 MICHIGAN. DO YOU KNOW HOW FAR THAT STORE IS FROM YOUR STORE?
5 A. THE BORDERS STORE ON NORTH MICHIGAN AVENUE?
6 Q. YES.
7 A. YEAH, IT'S PROBABLY FOUR, FIVE MILES -- OH, NO, I'M SORRY.
8 IT'S PROBABLY SIX MILES FROM OUR CURRENT STORE.
9 Q. OKAY. AND WAS THAT STORE OPENED IN 1995?
10 A. I THINK SO.
11 Q. AND YOUR FISCAL YEAR ENDS IN JULY; IS THAT RIGHT?
12 A. END OF JULY, YES.
13 Q. OKAY. SO WAS THAT STORE WITHIN 10 MILES OF YOUR STORE
14 OPENED DURING THE '93 TO '95 PERIOD THAT YOU WERE REFERRING TO?
15 A. YES.
16 Q. OKAY. YOU WERE ASKED ABOUT MORE BORDERS STORES, IS THAT
17 CORRECT, IN YOUR CROSS-EXAMINATION?
18 A. YES.
19 Q. AND, AGAIN, YOU -- YOU HAVE DEFINED YOUR COMPETITIVE REGION
20 AS YOU UNDERSTAND IT TO BE WHAT, IN THIS CASE?
21 A. TWENTY-FIVE TO THIRTY MILES.
22 Q. AND ARE YOU AWARE OF WHETHER ANY OTHER BORDERS STORES OTHER
23 THAN THE ONE ON NORTH MICHIGAN WERE LOCATED WITHIN YOUR
24 COMPETITIVE REGION DURING THE '93 TO '95 PERIOD OF SALES
25 DECLINE?
page 109

1 A. UM, YES.

2 Q. WERE THERE MORE THAN FIVE?
3 A. UH, WITHIN THE 10-MILE?
4 Q. NO, SORRY. WITHIN YOUR COMPETITIVE REGION --
5 A. OH.
6 Q. -- AS YOU'VE DEFINED IT, THE GREATER CHICAGO --
7 A. MORE THAN FIVE BORDERS STORES BY 1995? YES.
8 Q. YOU WERE ASKED ABOUT YOUR TERMS OF SALE, AND YOU WERE ASKED
9 ON CROSS-EXAMINATION ABOUT YOUR AVERAGE DISCOUNTS. AND YOU WERE
10 ASKED WHERE YOU WOULD HAVE TO LOOK AND WHAT DOCUMENTS YOU WOULD
11 HAVE TO RELY ON TO DETERMINE YOUR AVERAGE DISCOUNTS; IS THAT
12 CORRECT?
13 A. RIGHT. THAT'S CORRECT.
14 Q. OKAY. MY QUESTION IS SLIGHTLY DIFFERENT. FOR THE 80 TO
15 90 PERCENT OF BOOKS THAT YOU PURCHASED ACCORDING TO THE RED BOOK
16 TERMS, IF YOU WANTED TO COMPARE, FOR EXAMPLE, YOUR TRADE TERMS
17 WITH A GIVEN PUBLISHER WITH ANOTHER STORE'S TRADE TERMS OF A
18 GIVEN PUBLISHER, WHERE WOULD YOU HAVE TO LOOK TO DETERMINE YOUR
19 TRADE TERMS?
20 A. THE RED BOOK.
21 Q. AND IF YOU WENT LOOKING AT OTHER LINES, FOR EXAMPLE, MASS
22 MARKET, SAME QUESTION. WHERE WOULD YOU HAVE TO LOOK FOR THE 80
23 TO 90 PERCENT OF YOUR PURCHASES THAT ARE NOT ACCORDING TO STOCK
24 OFFERS?
25 A. THE RED BOOK.

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1 Q. OKAY. NOW, ON THE SUBJECT OF STOCK OFFERS, AND THIS IS
2 GOING TO BE MY FINAL COUPLE OF QUESTIONS HERE, YOU'VE -- YOU'VE
3 BEEN SHOWN SEVERAL STOCK OFFERS, BOTH ON DIRECT EXAMINATION AND
4 ON CROSS-EXAMINATION; IS THAT RIGHT?
5 A. THAT'S RIGHT.
6 Q. I SHOWED YOU A FEW AND I BELIEVE THE DEFENDANTS MAYBE SHOWED
7 YOU FIVE; IS THAT ABOUT RIGHT?
8 A. THAT SOUNDS RIGHT.
9 Q. AND HOW MANY INVOICES DID YOU SAY YOU RECEIVED IN A GIVEN
10 YEAR?
11 A. THOUSANDS AND THOUSANDS.
12 Q. AND SO IS THAT TRUE FROM 1994 TO THE PRESENT?
13 A. YES.
14 Q. OKAY.
15 MR. MACH: I HAVE NOTHING FURTHER.
16 THE COURT: ANY RE-CROSS?
17 YOU MAY STEP DOWN.
18 CALL YOUR NEXT -- OH, YOU HAVE SOME? EXCUSE ME.
19 MR. GARCIA: VERY BRIEF, YOUR HONOR.
20 RE-CROSS-EXAMINATION
21 BY MR. GARCIA:
22 Q. PRIOR TO TESTIFYING HERE TODAY, HAVE YOU PREPARED ANY
23 ANALYSIS OR SUMMARY OF YOUR ACTUAL PURCHASE TRANSACTIONS TO
24 DETERMINE FOR ANY GIVEN YEAR OR FOR ANY GIVEN PUBLISHER THE
25 ACTUAL PRICES THAT YOU'VE PAID FOR BOOKS?

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1 A. HAVE I -- FOR ANY GIVEN YEAR --
2 Q. RIGHT.
3 A. -- MADE AN ANALYSIS OF THE ACTUAL PRICES I'VE PAID FOR
4 BOOKS?
5 Q. RIGHT.
6 A. NO.
7 MR. GARCIA: I HAVE NO FURTHER QUESTIONS, YOUR HONOR.
8 MR. HEIDEMAN: I HAVE NOTHING FURTHER.
9 THE COURT: ALL RIGHT. YOU MAY STEP DOWN.
10 CALL YOUR NEXT WITNESS.
11 MR. YOUNG: PLAINTIFFS CALL LINDA MILLER.
12 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.
13 LINDA MILLER,
14 CALLED AS A WITNESS FOR THE PLAINTIFFS, HAVING BEEN DULY SWORN,
15 TESTIFIED AS FOLLOWS:
16 THE CLERK: THANK YOU. PLEASE BE SEATED. PLEASE
17 STATE YOUR FULL NAME AND SPELL YOUR LAST NAME FOR THE RECORD.
18 THE WITNESS: LINDA MILLER, M-I-L-L-E-R.
19 DIRECT EXAMINATION
20 BY MR. YOUNG:

21 Q. MORNING, MS. MILLER.
22 A. MORNING.
23 Q. HAVE YOU EVER WORKED FOR THE AMERICAN BOOKSELLERS
24 ASSOCIATION?
25 A. YES, I HAVE.

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1 Q. WOULD YOU TELL THE COURT DURING WHAT PERIODS OF TIME YOU
2 WORKED FOR THE AMERICAN BOOKSELLERS ASSOCIATION?
3 A. FROM JULY 1990 TO JANUARY 2000, I WORKED WITH THEM
4 FULL-TIME.
5 Q. AND HAVE YOU WORKED AT THE -- CAN I CALL IT THE ABA?
6 A. SURE.
7 Q. HAVE YOU WORKED AT THE ABA SINCE THEN?
8 A. I -- FROM JANUARY 2001 TO MID-MARCH, I WORKED THERE ON A
9 TEMPORARY BASIS ON THE ABA BOOK BUYERS HANDBOOK, THE RED BOOK.
10 Q. THAT WAS THIS YEAR?
11 A. YES.
12 Q. WHAT WERE YOUR DUTIES DURING THE TIMES THAT YOU WORKED FOR
13 THE ABA?
14 A. FROM 1990 TO 1998, I WAS BOOK PUBLISHING DIRECTOR. FROM
15 1998 TO 2000, I WAS BOOKWEB CONTENT EDITOR.
16 Q. AND IN THOSE POSITIONS THAT YOU HELD, WHAT SPECIFIC DUTIES
17 DID YOU PERFORM?
18 A. AS BOOK PUBLISHING DIRECTOR, I SUPERVISED THE EDITING,
19 PROOFREADING, AND PRODUCTION ASPECTS OF THE ABA BOOK PUBLISHING
20 PROGRAM. AS BOOKWEB CONTENT EDITOR, I CONTINUED TO DO BOOK
21 PUBLISHING, AND I ALSO WORKED ON GATHERING AND EDITING MATERIAL
22 FOR ABA'S TRADE WEBSITE.
23 Q. YOU MENTIONED THE TRADE WEBSITE. IS THAT CALLED BOOKWEB?
24 A. BOOKWEB.
25 Q. AND IS THAT CREATED AS AN E-COMMERCE INTERNET SERVICE?

page 113

1 A. NO, ABSOLUTELY NOT. IT'S AN INFORMATION RESOURCE FOR THE
2 BOOK TRADE.
3 Q. AND BEFORE YOU JOINED THE ABA, WHAT JOB RESPONSIBILITIES HAD
4 YOU HAD IN THE WORKING WORLD?
5 A. I WORKED IN EDITORIAL, PROOFREADING AND PRODUCTION AREAS FOR
6 A NUMBER OF OTHER COMPANIES.
7 Q. SO YOUR ENTIRE CAREER HAS BEEN OF A PROOFREADING, EDITORIAL,
8 PRODUCTION NATURE; IS THAT RIGHT?
9 A. YES.
10 Q. YOU'RE NOT RESPONSIBLE FOR THE CONTENT OF ANY OF THE ABA
11 PUBLICATIONS PER SE?
12 A. JUST THE EDITORIAL ASPECTS.
13 Q. HAVE YOU EVER BEEN A BOOKSELLER?
14 A. NO, I HAVE NOT.
15 Q. ARE YOU FAMILIAR WITH SOMETHING CALLED THE ABA HANDBOOK?
16 A. YES, I AM.
17 Q. WE'VE CALLED IT THE RED BOOK?
18 A. RED BOOK.
19 Q. AND IT'S EXHIBITS 1 THROUGH 7 --
20 A. UM-HMM.
21 Q. -- IN THIS CASE.
22 HOW ARE YOU FAMILIAR WITH THAT DOCUMENT, THE ABA
23 HANDBOOK?
24 A. I WAS PRIMARILY RESPONSIBLE FOR COMPILING AND EDITING THE
25 MATERIALS THAT WERE SUBMITTED TO US FOR THAT BOOK.

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1 Q. AND HOW DID YOU DETERMINE WHAT INFORMATION WOULD GO IN THE
2 BOOK?
3 A. THAT WAS NOT MY DECISION.
4 Q. IT --
5 A. WE USED WHAT MATERIALS WERE GIVEN TO US BY THE PUBLISHERS,
6 VENDORS.
7 Q. SO YOU DID NOT MAKE A DETERMINATION; YOU SIMPLY RECEIVED IT
8 AND MADE SURE IT WAS IN THE BOOK?
9 A. YES.
10 Q. DID YOU PROVIDE ANY ORIGINAL DATA FOR THE RED BOOK?
11 A. NO, I DID NOT.
12 Q. HOW OFTEN IS THE RED BOOK PUBLISHED?

13 A. IT'S AN ANNUAL PUBLICATION.
14 Q. ALL RIGHT. AND HAS THAT ALWAYS BEEN ITS PUBLICATION CYCLE?
15 A. IT'S ALWAYS BEEN ANNUAL. BY DESIGN, THERE WAS NO BOOK
16 COPYRIGHT IN 1996, BUT THE BOOK THAT WOULD HAVE BEEN PUBLISHED
17 IN NOVEMBER OF 1996 WAS PUBLISHED IN THE FIRST QUARTER OF 1997.
18 Q. SO WAS THERE A YEAR GAP OR --
19 A. NO, IT WAS JUST A MOVING BACK OF THE PRODUCTION SCHEDULE BY
20 A FEW MONTHS.
21 Q. WHAT IS YOUR -- DO YOU HAVE AN UNDERSTANDING OF THE PURPOSE
22 OF THE RED BOOK?
23 A. YES.
24 Q. WHAT IS YOUR UNDERSTANDING OF IT?
25 A. IT'S TO PROVIDE A RESOURCE TOOL FOR BOOKSELLERS TO GIVE THEM

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1 INFORMATION FROM THE PUBLISHERS, WHOLESALERS AND DISTRIBUTORS
2 THAT WOULD FACILITATE THEIR ORDERING, RETURNS, AND OTHER DAILY
3 OPERATIONS.
4 Q. ALL RIGHT. YOU MENTIONED THE ABA MEMBERS JUST NOW?
5 A. RIGHT.
6 Q. I HAVE IN FRONT OF YOU A THIN FOLDER.
7 AND, YOUR HONOR, I BELIEVE YOU HAVE IT AS WELL.
8 THE COURT: YES.
9 MR. YOUNG: COUNSEL HAS IT AS WELL. THIS, YOUR
10 HONOR, HAS BEEN DESIGNATED --
11 (PAUSE IN THE PROCEEDINGS.)
12 THE CLERK: OH, I HAVE IT.
13 THE COURT: OKAY.
14 MR. YOUNG: WE'VE MARKED THIS AS EXHIBIT 6A, YOUR
15 HONOR. AND IT IS, FOR THE RECORD, THE FIRST NINE PAGES OF WHAT
16 IS EXHIBIT 6. AND WE'VE DONE IT THIS WAY SIMPLY BECAUSE IT'S
17 EASIER TO HANDLE AND THESE WERE THE ONLY PAGES THAT WILL BE
18 REFERRED TO SO THE COURT DOESN'T HAVE TO USE THE LARGE BOOK.
19 THE COURT: ALL RIGHT.
20 BY MR. YOUNG:
21 Q. I'D LIKE TO ASK YOU TO LOOK TURN YOUR ATTENTION TO PAGE 8.
22 (PAUSE IN THE PROCEEDINGS.)
23 BY MR. YOUNG:
24 Q. AND IF YOU LOOK AT THE TOP OF PAGE 8, DO YOU SEE WHERE IT
25 SAYS "FOR ABA MEMBERS ONLY"?

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1 A. YES.
2 Q. AND DO YOU SEE ON THE SECOND PARAGRAPH WHERE IT SAYS "THE
3 ABA BOOK BUYERS'S HANDBOOK IS FOR ABA MEMBERS ONLY. WE DO NOT
4 SELL, LEND OR GIVE IT TO NON-MEMBERS UNDER ANY CIRCUMSTANCES,
5 NOR MAY ANYONE ELSE DO SO. THE HANDBOOK IS NOT FOR RESALE.
6 ADDITIONAL COPIES ARE AVAILABLE TO ABA MEMBERS FOR \$75 EACH."
7 DO YOU SEE THAT?
8 A. YES, I DO.
9 Q. DO YOU HAVE AN UNDERSTANDING OF WHY THAT STATEMENT OF POLICY
10 IS CONTAINED IN THE HANDBOOK?
11 A. YES, I DO.
12 Q. WHAT IS THAT?
13 A. THE HANDBOOK WAS CONSIDERED TO BE SUCH A VALUABLE RESOURCE
14 THAT IT WAS THOUGHT THAT GIVING IT ONLY TO MEMBERS PROVIDED A
15 VERY STRONG INCENTIVE FOR BOOKSTORES TO JOIN AND ALSO TO
16 MAINTAIN THEIR MEMBERSHIP.
17 Q. SO TO MAKE PEOPLE WANT TO JOIN THE ABA?
18 A. YES.
19 Q. LET'S TALK ABOUT THE STEPS THAT YOU AND YOUR STAFF TAKE TO
20 USE THE INFORMATION THAT YOU RECEIVE AND PUT IT IN THE -- IN THE
21 HANDBOOK.
22 SPECIFICALLY, WHAT STEPS DO YOU TAKE TO ENSURE THAT
23 INFORMATION THAT YOU HAVE RECEIVED IS -- IS PLACED IN THE
24 HANDBOOK?
25 A. FOR COMPANIES THAT APPEARED IN THE PRIOR YEAR'S HANDBOOK, WE

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1 SENT THEM COPIES OF THEIR PREVIOUS LISTING FROM OUR DATABASE
2 TOGETHER WITH A SUPPLEMENTAL APPROVAL FORM THAT GIVES THEM THE
3 OPPORTUNITY TO ADD ADDITIONAL INFORMATION. AND IF THEY DON'T
4 RETURN THAT THE FIRST TIME AFTER THE DEADLINE, WE DO A SECOND

5 MAILING TO BOOKSTORES -- TO -- I'M SORRY -- TO VENDORS OF THE
6 SAME MATERIALS. IF THEY STILL DON'T RETURN IT, WE DO FOLLOW-UP
7 PHONE CALLS AND SEND FAXES UP UNTIL THE DEADLINE FOR
8 PUBLICATION. FOR NEW COMPANIES THAT ARE GOING TO BE INCLUDED,
9 THEY'RE SENT A TOTALLY BLANK QUESTIONNAIRE TO FILL OUT THE
10 INFORMATION.

11 Q. IS THIS -- IS THIS PROCESS THAT YOU'VE JUST DESCRIBED
12 DESCRIBED ANYWHERE GENERALLY IN THE HANDBOOK ITSELF?

13 A. YES, IT IS.

14 Q. WOULD YOU TELL JUDGE ORRICK WHERE HE MIGHT FIND THAT
15 REFERENCE IN EXHIBIT 6A?

16 A. CERTAINLY.

17 (REVIEWING DOCUMENT.)

18 ON PAGE 7, IT'S THE FIRST PARAGRAPH OF THE PREFACE.

19 Q. LET'S JUST WAIT FOR A SECOND TILL WE'VE ALL FOUND PAGE 7.

20 A. CERTAINLY.

21 Q. ALL RIGHT. AND WOULD YOU READ THE SECTION THAT YOU'RE
22 REFERRING TO?

23 A. "THIS IS THE NEW COMPLETELY REVISED ABA BOOK BUYER'S
24 HANDBOOK. 1999. ALL INFORMATION CONTAINED HERE IN WAS SUPPLIED
25 BY THE PUBLISHERS, WHOLESALERS, DISTRIBUTORS, ET CETERA, THAT

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1 ARE LISTED. TO KEEP THE HANDBOOK UP TO DATE UNTIL THE NEXT
2 EDITION, BOOKSELLERS ARE ENCOURAGED TO ROUTINELY UPDATE THE
3 LISTINGS BY INCORPORATING THE CHANGE IN TERMS COLUMN THAT APPEAR
4 REGULARLY IN BOOKSELLING THIS WEEK AND PUBLISHERS WEEKLY."

5 Q. IN COLLECTING THE INFORMATION THAT GOES INTO THE RED BOOK,
6 HOW DO YOU KNOW WHAT PUBLISHERS TO CONTACT?

7 A. WELL, WE CONTACT THE ONES THAT WERE IN THERE FROM PREVIOUS
8 YEARS. IN ADDITION, WE READ TRADE PUBLICATIONS AND NOTE
9 PUBLISHERS OR VENDORS THAT ARE MENTIONED THAT ARE NOT CURRENTLY
10 IN THE HANDBOOK.

11 WE ALSO HAVE A POSTCARD THAT IS PUT IN THE HANDBOOK,
12 AND BOOKSELLERS ARE ENCOURAGED TO RETURN THESE POSTCARDS TO US
13 INDICATING PUBLISHERS THAT THEY DO BUSINESS WITH FREQUENTLY THAT
14 MAY NOT BE INCLUDED.

15 AND ALSO WE'RE CONTACTED THROUGHOUT THE YEAR BY
16 PUBLISHERS OR VENDORS WISHING TO BE INCLUDED IN IT, AND WE SEND
17 THEM APPLICATIONS.

18 Q. IS THE POSTCARD THAT YOU REFERRED TO ALSO A PART OF
19 EXHIBIT 6A?

20 A. YES, IT IS.

21 Q. CAN YOU SHOW THAT TO THE COURT AS WELL?

22 A. IT'S POSTAGE PAID REPLY POSTCARD THAT APPEARS ON PAGES 3 AND
23 4.

24 Q. NOW, DOES THE RED BOOK CONTAIN ALL INFORMATION ABOUT ALL
25 PUBLISHERS EVERYWHERE?

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1 A. NO, IT -- IT DOES NOT. THERE ARE CRITERIA FOR INCLUSION IN
2 THE HANDBOOK.

3 Q. WHAT ARE THE CRITERIA FOR BEING INCLUDED IN THE RED BOOK?

4 A. FOR A PUBLISHER TO BE INCLUDED, FOR A COMPLETE LISTING, THEY
5 HAVE TO HAVE AT LEAST SEVEN BOOKS IN PRINT AND BE IN BUSINESS
6 FOR TWO YEARS.

7 Q. AND IS THERE IS A LESSOR LISTING THAT ALSO CAN BE HAD?

8 A. YES.

9 I'M SORRY.

10 CONTACT LISTINGS REQUIRE AT LEAST THREE BOOKS IN
11 PRINT.

12 Q. SIMILARLY, IS EVERY SALE TERM FOR EVERY BOOK CONTAINED IN
13 THE RED BOOK?

14 A. NO.

15 Q. WHAT KIND -- WHAT KINDS OF TERMS, TO YOUR KNOWLEDGE, ARE NOT
16 CONTAINED IN THE RED BOOK?

17 A. STOCK OFFERS GENERALLY WOULDN'T BE THERE. TRADE SHOW
18 SPECIALS, THAT SORT OF THING.

19 Q. DO YOU EVER HAVE OCCASIONS WHERE PUBLISHERS FAIL TO RESPOND
20 TO REQUESTS FOR INFORMATION?

21 A. YES, EVEN AFTER ALL THE FOLLOW-UP, SOME PEOPLE DON'T
22 RESPOND.

23 Q. WHAT DO YOU DO THEN?

24 A. WE PUT A LINE IN THE BOOK ITSELF THAT INDICATES THAT
25 PUBLISHER DID NOT RESPOND FOR THIS EDITION SO BOOKSELLERS ARE
page 120

1 AWARE THAT THE INFORMATION FOR THAT PARTICULAR LISTING MAY NOT
2 BE UP TO DATE AND CURRENT.
3 Q. DO YOU HAVE AN ESTIMATE OF -- OVER THE YEARS THAT YOU WERE
4 INVOLVED IN THE RED BOOK OF HOW MANY REQUESTS WENT UNFULFILLED?
5 A. ON AVERAGE, I WOULD SAY IT WAS BETWEEN 3 AND 6 PERCENT.
6 Q. ONCE YOU'VE COLLECTED THE INFORMATION FROM THE PUBLISHERS,
7 WHAT DO YOU DO NEXT?
8 A. THE INFORMATION IS ENTERED INTO THE DATABASE. IT'S
9 PROOFREAD FOR QUALITY CONTROL. AND THEN IT'S SENT TO A
10 TYPEWRITER, TYPESETTER, AND THEN A PRINTER.
11 Q. IF THE RED BOOK IS PUBLISHED ONLY ANNUALLY, HOW CAN ONE BE
12 SURE THAT THE INFORMATION AT -- THAT IS IN IT IS UP TO DATE,
13 PARTICULARLY AT THE END OF A YEARLY CYCLE?
14 A. WELL, IN MY EXPERIENCE, VENDORS DON'T REALLY CHANGE THEIR
15 TERMS OF SALE THAT OFTEN. MOST OF OUR CORRECTIONS ARE ACTUALLY
16 CONTACT INFORMATION, PERSONNEL, THAT SORT OF THING.
17 ALSO BOOKSELLERS WOULD BE AWARE OF THE CHANGE IN
18 TERMS BECAUSE THE PUBLISHERS DISSEMINATE THAT INFORMATION TO
19 THEIR ACCOUNTS INDIVIDUALLY AND ALSO PUBLISH THOSE IN TRADE
20 PUBLICATIONS.
21 Q. SO IN TERMS OF THE INFORMATION YOU RECEIVE YEARLY FROM THE
22 PUBLISHERS IN MOST INSTANCES, WHAT YOU'RE SAYING, YEAR TO YEAR
23 IS SIMILAR TO OR IDENTICAL TO WHAT YOU SAW THE YEAR BEFORE?
24 A. VERY OFTEN, YES.
25 MR. YOUNG: THANK YOU.

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1 NOTHING FURTHER.
2 THE COURT: I THINK WE'LL TAKE THE SECOND RECESS NOW
3 UNTIL 12:30.
4 THE CLERK: ALL RISE.
5 (RECESS TAKEN AT 12:15 P.M.)
6 (CONTINUED NEXT PAGE; NOTHING OMITTED.)
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1 (PROCEEDINGS RESUME AT 12:30 P.M.)
2 THE COURT: PLEASE BE SEATED.
3 MS. MILLER, WILL YOU TAKE THE STAND, PLEASE.
4 I'VE REVIEWED MY NOTES -- OR REASON WHY I RULED AS I
5 DID WITH RESPECT TO THE MOTION IN LIMINE NUMBER 7, WHICH IS THE
6 PLAINTIFFS' MOTION IN LIMINE TO BAR EVIDENCE RELATING TO THE
7 PLAINTIFFS' CREDIT TERMS, AND THE REASON THAT I DID WAS BECAUSE
8 THE PLAINTIFFS HAD CONCEDED THAT THEY NO LONGER INTENDED TO
9 RAISE THE ISSUE AT TRIAL, AND AS A RESULT OF THE SUMMARY
10 JUDGMENT ORDER, THE DEFENDANTS' CREDIT TERMS WERE NO LONGER AT
11 ISSUE, AND HERE THE QUESTION WAS WHETHER THEY COULD BE USED IN
12 CONNECTION WITH DEVELOPING WHAT THE NEGOTIATION PROCESS WAS,
13 AND I THINK THAT'S PERFECTLY PROPER, AND SO I REVOKE MY RULING
14 ON NUMBER 7, AND WE CAN PROCEED WITH THE QUESTIONS THAT
15 MR. GARCIA HAD.

16 MR. PETROCELLI: WOULD YOU LIKE TO DO THIS AT THIS
17 POINT, YOUR HONOR?
18 THE COURT: I THINK SO, TO FINISH IT UP.
19 MR. YOUNG?
20 MR. YOUNG: I THINK THE QUESTION MR. PETROCELLI IS
21 ASKING IS, SHALL WE FINISH WITH MS. MILLER FIRST AND THEN WE
22 RECALL MS. CHRISTOPHERSEN, OR DO YOU WANT TO FINISH THE CROSS
23 ON MS. CHRISTOPHERSEN?
24 THE COURT: I GUESS WE BETTER FINISH THE CROSS HERE,
25 AND THEN WE'LL GET MS. CHRISTOPHERSEN.

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1 MR. PETROCELLI: THANKS FOR YOUR ASSISTANCE,
2 MR. YOUNG.
3 HE'S A LITTLE MORE CLEAR THAN I AM, YOUR HONOR. I'M
4 GOING TO HAND UP TO YOUR HONOR A NOTEBOOK, AND I MAY HAVE SET
5 THE RECORD BECAUSE I ONLY HAVE TWO EXHIBITS IN THIS NOTEBOOK,
6 YOUR HONOR, SO WE'RE GETTING CLOSE. AND HERE IS A DEPOSITION,
7 AS WELL, OF THE WITNESS, AND EVERYBODY ELSE HAS THEIR COPIES.

8 CROSS-EXAMINATION

9 BY MR. PETROCELLI:

10 Q. HI, MS. MILLER.

11 A. HI.

12 Q. TO REFER TO YOUR DEPOSITION, IF I DO SO, IT WILL BE THE
13 TRANSCRIPT IN THIS RED WELL.

14 A. OKAY.

15 Q. I'M A LAWYER FOR BARNES & NOBLE.

16 IT IS TRUE THAT WHEN USING THE RED BOOK, THE
17 BOOKSELLER CANNOT KNOW WHETHER THE INFORMATION IN IT IS
18 ACCURATE AT ANY GIVEN TIME FOR ANY GIVEN PUBLISHER, CORRECT?

19 A. WELL, AS IN ANY WRITTEN PUBLICATION, OR ONE THAT WOULD BE
20 ON THE WEB OR CONSTANTLY CHANGING, THINGS CAN CHANGE AT ANY
21 GIVEN MOMENT, BUT I THINK IT'S REASONABLY RELIABLE BECAUSE OF
22 THE INFREQUENCY OF TERM CHANGES.

23 Q. OKAY, CAN YOU TURN TO PAGE 131 OF YOUR DEPOSITION, LINES 5
24 THROUGH 8. THE QUESTION WAS BY MY COLLEAGUE MEL GOLDMAN.

25 A. YES.

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1 Q. YOU HAVE THAT?

2 A. UM-HUM.

3 Q. QUESTION,

4 "Q. HOW DO I KNOW, USING YOUR HANDBOOK, WHETHER
5 THE INFORMATION GIVEN IN IT IS ACCURATE AT ANY GIVEN
6 TIME FOR A PUBLISHER?"

7 "A. YOU DON'T KNOW."

8 MR. YOUNG: YOUR HONOR, BY THE RULE OF COMPLETENESS,
9 MIGHT THE WITNESS ALSO ANSWER THE QUESTIONS AND THE ANSWER AT
10 LINES 9 THROUGH 10?

11 THE COURT: YES.

12 MR. PETROCELLI: WANT ME TO READ IT, YOUR HONOR?

13 THE COURT: YES.

14 MR. PETROCELLI: ALL RIGHT, I'D BE HAPPY TO.

15 "Q. DOES THAT MEAN THAT THE PUBLISHERS HANDBOOK
16 IS NOT USEFUL FOR 1995?"

17 "A. NO, I WOULDN'T SAY THAT."

18 DID YOU WANT ME TO READ MORE?

19 MR. YOUNG: THAT'S FINE. THANK YOU, MR. PETROCELLI.

20 BY MR. PETROCELLI:

21 Q. IT IS ALSO THE CASE, MS. MILLER, THAT THE RED BOOK, OR THE
22 HANDBOOK AS YOU CALL IT, DOES NOT CONTAIN ALL TERMS OF SALE FOR
23 A GIVEN PUBLISHER, CORRECT?

24 A. IT CONTAINS THE TERMS THAT THE PUBLISHERS GIVE US.

25 Q. SO, SO FAR AS YOU KNOW, YOU DON'T KNOW IF IT CONTAINS ALL

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1 OF THEM OR SOME OF THEM, CORRECT?

2 A. CORRECT.

3 Q. AND THAT'S ONE OF THE REASONS WHY YOU INCLUDE IN THE
4 PREFACE TO THE RED BOOK THE LANGUAGE THAT MR. YOUNG READ, HOW
5 THE BOOKSELLERS ARE ENCOURAGED TO ROUTINELY UPDATE THE
6 LISTINGS, CORRECT?

7 A. CORRECT, AND THAT WE ALSO APPLY TO INFORMATION ABOUT

8 ADDRESS CHANGES, PERSONNEL CHANGES, THAT SORT OF THING.
9 Q. NOT JUST CHANGING TERMS OF SALE.
10 A. RIGHT.
11 Q. NOW, YOU ARE AWARE THAT THERE ARE A VARIETY OF WAYS IN
12 WHICH PUBLISHERS COMMUNICATE TERMS TO BOOKSELLERS OTHER THAN
13 THROUGH THE RED BOOK, CORRECT?
14 A. NOT FROM DIRECT KNOWLEDGE.
15 Q. BUT IN THE COURSE OF YOUR WORKING ON THE RED BOOK, YOU HAVE
16 COME TO LEARN, FOR EXAMPLE, THAT THERE ARE CONVERSATIONS THAT
17 TAKE PLACE BETWEEN SALES REPS AND BOOKSELLERS ABOUT TERMS OF
18 SALE, CORRECT?
19 A. YES.
20 Q. AND YOU TESTIFIED IN YOUR DIRECT ABOUT, FOR EXAMPLE, STOCK
21 OFFERS THAT OCCUR, CORRECT?
22 A. RIGHT.
23 Q. AND THERE ARE OTHER METHODS, AS WELL, FLYERS AND FAXES, AND
24 MAILINGS, CORRECT?
25 A. I, AS I SAID, I HAVE NO DIRECT KNOWLEDGE. I KNOW ABOUT

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1 SOME WAYS, NOT OTHERS, I'M SURE.
2 Q. AND SOMETIMES WHEN YOU FIND OUT ABOUT THIS INFORMATION, YOU
3 INCLUDE IT IN AN ABA PUBLICATION CALLED BOOKSELLING THIS WEEK
4 AND YOU HAVE A COLUMN IN THAT PUBLICATION CALLED "CHANGING
5 TERMS"? CORRECT?
6 A. I DON'T WORK ON THAT ASPECT OF BOOKSELLING THIS WEEK. I
7 KNOW THERE IS A COLUMN "CHANGING TERMS."
8 Q. AND BASED ON WHAT YOU DO KNOW, IS THE PURPOSE OF THE COLUMN
9 "CHANGING TERMS" IN THE ABA PUBLICATION BOOKSELLING THIS WEEK
10 TO CONVEY ADDITIONAL INFORMATION ABOUT PUBLISHERS' TERMS THAT
11 ARE, MAYBE, HELPFUL TO BOOKSELLERS?
12 A. IN GENERAL, I THINK "CHANGING TERMS" IS EXACTLY WHAT IT
13 SAYS, AND AGAIN, IT COULD BE A CHANGE OF ADDRESS FOR A
14 PUBLISHER, IT COULD BE ANY INFORMATION. I DON'T THINK IT'S
15 NECESSARILY ADDITIONAL INFORMATION, ALTHOUGH I GUESS IT MAY BE.
16 Q. IN COMPILING THE RED BOOK, NOW ONCE A YEAR AND BEFORE ONCE
17 EVERY TWO YEARS, IN THE TIME THAT YOU'VE BEEN THERE, HAS THERE
18 EVER BEEN A PROCEDURE --
19 A. I DISAGREE WITH THE "EVERY TWO YEARS." IT WAS NOT EVERY
20 TWO YEARS.
21 Q. WELL, BEFORE -- LET'S GET THAT CLEAR, THEN, FOR THE RECORD
22 RIGHT NOW, OKAY, BECAUSE I CERTAINLY DON'T WANT TO HAVE ANY
23 MISINFORMATION ABOUT THIS.
24 SINCE 1997, THERE HAS BEEN AN ANNUAL RED BOOK,
25 CORRECT?

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1 A. YES.
2 Q. OKAY. AND IT COMES OUT, SINCE 1997, APPROXIMATELY WHAT
3 TIME OF YEAR? LET'S START WITH 1997. WHEN DID THE RED BOOK
4 GET PUBLISHED AND DISSEMINATED FOR THE YEAR, OR IN THE YEAR
5 1997?
6 A. THAT WOULD HAVE BEEN THE FIRST QUARTER OF 1997.
7 Q. OKAY, WHAT ABOUT 1998?
8 A. 1998 WOULD HAVE BEEN MOST LIKELY IN MAY, BECAUSE THAT WAS
9 MOVING TOWARDS OUR ULTIMATE GOAL, WHICH WAS MAY, ALTHOUGH IT
10 MIGHT HAVE BEEN 1997 OR 1998. ONE YEAR WE SWITCHED TO A NEW
11 DATABASE. THERE WERE TECHNICAL PROBLEMS, AND IT WAS A LITTLE
12 LATE.
13 Q. NOW, IF I CAN REFRESH YOUR MEMORY ON THAT, IN YOUR
14 DEPOSITION YOU INDICATED THAT IN 1999 --
15 A. RIGHT.
16 Q. -- YOU MOVED TO A COMPUTER DATABASE, THERE WAS A DELAY IN
17 GETTING OUT THE RED BOOK, AND IT CAME OUT IN OR ABOUT JULY.
18 A. YES, THAT WAS WHAT I WAS JUST REFERRING TO.
19 Q. OKAY, SO JUST TO RECAP, THEN, IN 1997, APPROXIMATELY, OR --
20 FIRST QUARTER 1998 MAY, IN 1999 JULY.
21 A. YES.
22 Q. OKAY.
23 A. BUT JULY WAS NOT THE ULTIMATE GOAL FOR THE SCHEDULE. THAT
24 WAS A FREAK OCCURRENCE.
25 Q. AND JUST TO COMPLETE IT, NOW, IN 2000, WHEN DID THE RED

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1 BOOK COME OUT?
2 A. I DID NOT WORK ON THE RED BOOK IN 2000.
3 Q. THE LAST RED BOOK YOU WORKED ON IS 1999?
4 A. YES.
5 Q. OKAY. SOMEBODY ELSE DOES IT NOW?
6 A. YES.
7 Q. WE'RE IN 2001. HAS THAT RED BOOK COME OUT YET?
8 A. NO, IT HAS NOT.
9 Q. DO YOU KNOW WHEN THE 2000 RED BOOK CAME OUT?
10 A. I BELIEVE IT WAS MAY.
11 Q. MAY, OKAY. NOW, PRIOR TO THE FIRST QUARTER OF 1997, WHEN
12 WAS THE LAST RED BOOK THAT CAME OUT?
13 A. I BELIEVE IT WAS NOVEMBER, 1995.
14 Q. NOVEMBER, 1995, AND THE NEXT ONE THAT CAME OUT AFTER THAT
15 WAS MAY OF '97?
16 A. NO, IT WAS THE FIRST QUARTER. IT WAS EARLIER THAN MAY OF
17 '97.
18 Q. YOU'RE RIGHT. FORGIVE ME. NOVEMBER '95, NEXT ONE WAS
19 FIRST QUARTER '97.
20 A. YES.
21 Q. NOW, THE TITLE OF THE RED BOOK THAT CAME OUT IN NOVEMBER OF
22 1995 WAS 1994-1995 RED BOOK, CORRECT?
23 A. NO, IF IT WAS NOVEMBER OF 1995, IT WOULD HAVE BEEN
24 1995-1996 RED BOOK.
25 Q. 1995-1996.

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1 A. YES.
2 Q. OKAY, SO JUST SO WE'RE CLEAR ON THAT, IN NOVEMBER OF 1995,
3 THE 95-96 RED BOOK COMES OUT.
4 A. YES.
5 Q. OKAY. AND IT'S COMING OUT AT THE VERY END OF 1995, BUT IT
6 STILL BEARS THE 1995 YEAR IN THE TITLE, AND THAT'S TO MAKE IT
7 APPEAR MORE CURRENT, CORRECT?
8 A. WELL, THE 1996 YEAR WOULD BE TO MAKE IT APPEAR MORE
9 CURRENT.
10 Q. OKAY.
11 A. AND ALSO BECAUSE THAT WAS THE YEAR OF ITS PRIMARY USAGE.
12 Q. AND WHEN WAS THE LAST RED BOOK PRIOR TO THE NOVEMBER '95
13 RED BOOK?
14 A. IT WOULD HAVE BEEN NOVEMBER '94. NOVEMBER WAS THE
15 TRADITIONAL PUBLICATION DATE, UP UNTIL THEN.
16 Q. NOW, ONE YEAR EARLIER OR TWO YEARS EARLIER? IF A TWO-YEAR
17 RED BOOK CAME OUT IN NOVEMBER OF '95, WOULD THE PRIOR EDITION
18 OF THE RED BOOK HAVE COME OUT TWO YEARS EARLIER OR ONE YEAR
19 EARLIER?
20 A. ONE YEAR EARLIER. IT'S AN ANNUAL.
21 Q. AND IT'S ALWAYS BEEN AN ANNUAL?
22 A. SINCE I START WORKING ON IT IN 1990, IT'S ALWAYS BEEN AN
23 ANNUAL, AND I BELIEVE IT WAS BEFORE THAT.
24 Q. NOW, IT HAD TWO YEARS ON IT, BUT IT CAME OUT ANNUALLY. IS
25 THAT WHAT YOU'RE SAYING?

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1 A. THAT'S RIGHT. IT DID NOT COVER TWO YEARS OF TERMS. IT WAS
2 STRICTLY A WAY OF REFERRING TO IT THAT ACKNOWLEDGED THE FACT
3 THAT IT WAS PUBLISHED IN ONE YEAR AND IT WAS GOING TO BE USED
4 IN THE NEXT.
5 Q. NOW, GETTING BACK TO THE QUESTION, NOW -- WE'VE SORT OF
6 CLARIFIED THIS, AND I THANK YOU FOR THAT CLARIFICATION -- THERE
7 IS NO PROCEDURE IN PLACE AT THE ABA TO AFFIRMATIVELY TRACK ALL
8 METHOD, MODE AND TYPE OF DISCOUNTS NOT IN THE RED BOOK,
9 CORRECT?
10 A. CORRECT.
11 Q. SO FOR EXAMPLE, BESIDES STOCK OFFERS THAT ARE NOT IN THE
12 RED BOOK, THERE ARE A VARIETY OF OTHER DISCOUNT OFFERINGS AND
13 PROGRAMS BETWEEN PUBLISHERS AND BOOKSELLERS THAT NEVER MAKE
14 THEIR WAY INTO THE RED BOOK, CORRECT?
15 A. AS I SAID, I'M NOT A BOOKSELLER. I REALLY CAN'T SAY WITH
16 ANY DIRECT KNOWLEDGE WHAT OTHER KINDS OF OFFERINGS, ALTHOUGH
17 CLEARLY THERE ARE.
18 Q. CLEARLY THERE ARE, AND CLEARLY IT WAS NOT YOUR JOB IN

19 PUTTING OUT THE RED BOOK OR THE JOB OF THE RED BOOK TO KEEP
20 TRACK OF ALL OF THAT AND PUBLISH ALL OF THAT, CORRECT?
21 A. CORRECT. THE PUBLISHERS GAVE US THE INFORMATION THEY
22 WANTED PUBLISHED.
23 Q. WHEN YOU SAY THE PUBLISHERS GAVE YOU THE INFORMATION THEY
24 WANTED PUBLISHED, DO YOU MEAN AT THE TIME WHEN YOU SENT OUT THE
25 FORMS FOR UPDATING THE PRIOR YEAR RED BOOK?

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1 A. CORRECT.
2 Q. DO YOU HAVE A SYSTEM IN PLACE WITH THE PUBLISHERS WHERE YOU
3 SEND THEM, IN BETWEEN RED BOOK EDITIONS, FORMS, PROTOCOLS,
4 QUESTIONNAIRES, DOCUMENTS THAT REQUIRE THEM TO TELL YOU WHAT
5 CHANGING TERMS HAVE OCCURRED OR WHAT STOCK OFFERS OR WHAT
6 DISCOUNT PROGRAMS OR ANY OF THAT?
7 A. NO.
8 Q. SO IT IS NOT THE PURPOSE OF THE RED BOOK TO CONTAIN A
9 DEFINITIVE LISTING OF ALL OF A PUBLISHER'S OFFERINGS IN TERMS
10 OF SALE IN A GIVEN YEAR, CORRECT?
11 A. I THINK IT IS INTENDED TO CONTAIN THE GENERALLY ACCEPTED
12 TERMS OF SALE.
13 Q. WELL, ARE YOU SUGGESTING THAT ANY TERM OF SALE NOT
14 CONTAINED IN THE RED BOOK IS NOT GENERALLY ACCEPTED?
15 A. NO.
16 Q. YOU'RE NOT SAYING THAT, RIGHT?
17 A. NO.
18 Q. OKAY, STOCK OFFERS ARE GENERALLY ACCEPTED, CORRECT?
19 A. WELL, AGAIN, WE'RE GETTING OUTSIDE OF MY AREA OF KNOWLEDGE.
20 Q. WELL, BUT YOU JUST GAVE AN ANSWER THAT SAID THAT IT'S
21 INTENDED TO INCLUDE ALL GENERALLY ACCEPTED TERMS OF SALE, AND I
22 DON'T REALLY KNOW WHAT YOU MEAN BY THAT.
23 A. YES, I MIGHT HAVE -- I MEAN, I MIGHT HAVE NOT MISSPOKEN,
24 BUT I THINK YOU MAY BE INTERPRETING THAT IN A WAY I DIDN'T
25 MEAN, WHICH IS BASICALLY, THE STANDARD TERMS OF SALE.

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1 Q. IT'S STANDARD, BUT NOT ALL TERMS.
2 A. NO, NOT ALL TERMS.
3 Q. AND DO YOU HAVE ANY KIND OF SYSTEM IN PLACE, FOR EXAMPLE,
4 TO TRACK RETAIL INCENTIVE PLANS OR SHARED MARKDOWNS THAT OCCUR
5 DURING THE COURSE OF THE YEAR?
6 A. NO.
7 Q. WHAT ABOUT NEW STORE OPENING DISCOUNTS, DO YOU HAVE
8 ANYTHING IN PLACE TO TRACK THAT?
9 A. NO.
10 Q. WHAT ABOUT ANY EXTENDED PAYMENT TERMS?
11 A. NO.
12 Q. WHAT ABOUT SITUATIONS WHERE BOOKSELLERS RECEIVE TERMS ON
13 THE BASIS OF MEETING COMPETITION, SITUATIONS LIKE THAT, DO YOU
14 HAVE ANY SYSTEM IN PLACE TO TRACK THAT INFORMATION AND PUBLISH
15 THAT?
16 A. NOT UNLESS THE PUBLISHER PROVIDES IT TO US WITH HIS UPDATE,
17 HIS OR HER.
18 Q. INGRAM, FOR EXAMPLE, I DON'T KNOW HOW LONG YOU'VE BEEN
19 SITTING HERE IN THIS TRIAL, BUT THERE HAS BEEN A LOT OF
20 TESTIMONY ABOUT NUMEROUS PROGRAMS OF THE INGRAM BOOK COMPANY,
21 VENDOR OF RECORD IS ONE OF THEM. SCHEDULED DELIVERY IS ANOTHER
22 OF THEM.
23 TAKE SCHEDULED DELIVERY, FOR EXAMPLE. IS THAT
24 SOMETHING THAT YOU REQUEST INGRAM TO INFORM YOU ABOUT?
25 A. IF THEY DO NOT GIVE IT TO US, WE DO NOT PUBLISH IT.

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1 Q. WELL, UNLESS YOU GET IT, IT DOESN'T MAKE ITS WAY INTO THE
2 RED BOOK, CORRECT?
3 A. CORRECT.
4 Q. AND YOU DON'T HAVE A PROACTIVE SYSTEM IN PLACE TO INQUIRE
5 ABOUT ALL KINDS OF WRITTEN PUBLISHED TERMS OTHER THAN THE
6 STANDARD ONES THAT COME OUT IN YOUR ANNUAL UPDATE, CORRECT?
7 A. WELL, WE ENCOURAGE PUBLISHERS TO PROVIDE NEW INFORMATION,
8 AND THEY GET TO CHOOSE IN MANY CASES WHAT INFORMATION THAT
9 MIGHT BE. THE SUPPLEMENTAL APPROVAL FORM ASKS FOR NEW
10 INFORMATION.

11 Q. FOR EXAMPLE, WHEN YOU HEAR ABOUT AN INGRAM PROGRAM LIKE THE
12 SCHEDULED DELIVERY PROGRAM, WOULD YOU THEN CONTACT INGRAM TO
13 ASK YOU -- TO ASK THEM TO SEND YOU A WRITTEN COPY OF IT SO YOU
14 CAN INCLUDE IT IN THEIR DOCUMENTATION?
15 A. I WOULD HAVE NO REASON TO HEAR ABOUT THAT PROGRAM.
16 Q. SO IT'S NOT PART OF YOUR PRACTICE AND PROCEDURE, WHEN YOU
17 DO HEAR ABOUT THINGS OR SOMEHOW THEY MAKE THEIR WAY INTO THE
18 "CHANGING TERMS" COLUMN, FOR EXAMPLE, TO THEN CONTACT THE
19 PUBLISHER AND ASK FOR WRITTEN DOCUMENTS?
20 MR. YOUNG: I'LL OBJECT TO THE QUESTION AS COMPOUND.
21 THE WITNESS JUST SAID SHE WOULD HAVE NO REASON TO HEAR OF THESE
22 THINGS. THEREFORE, THE QUESTION ALSO MISSTATES THE TESTIMONY.
23 THE COURT: I SUSTAIN THE OBJECTION.
24 BY MR. PETROCELLI:
25 Q. IN THE CASE, FOR EXAMPLE, THE "CHANGING TERMS" COLUMN, DO

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1 YOU HAVE ANY KNOWLEDGE, FOR EXAMPLE, OF WHO PREPARES THAT
2 COLUMN AND HOW THAT INFORMATION IS RECEIVED?
3 A. I BELIEVE THAT THE INFORMATION -- ACTUALLY, NO, I'M SORRY,
4 I DON'T.
5 Q. WELL, THEN, WE DON'T HAVE TO ASK YOU ABOUT THAT.
6 IN DOING THE EDITORIAL WORK ON THE RED BOOK, HAS
7 THERE EVER BEEN ANY DISCUSSION ABOUT WHETHER TO TAKE A POSITION
8 IN THE RED BOOK ABOUT THE RIGHT AND ABILITY OF BOOKSELLERS TO
9 NEGOTIATE TERMS OTHER THAN THE STANDARD ONES CONTAINED IN THE
10 RED BOOK?
11 A. NO.
12 Q. ARE YOU AWARE OF ANY -- AS A MEMBER OF THE ABA, ARE YOU
13 AWARE OF ANY POLICY OR RULES REGARDING BOOKSELLERS' RIGHTS AND
14 ABILITY TO NEGOTIATE?
15 MR. YOUNG: OBJECT TO THE QUESTION AS LACKING
16 FOUNDATION. THIS WITNESS IS NOT A MEMBER OF THE ABA.
17 MR. PETROCELLI: LET ME WITHDRAW -- LET ME REPHRASE
18 IT.
19 Q. AS A MEMBER OF THE ABA STAFF -- YOU ARE EMPLOYED BY THE
20 ABA, CORRECT?
21 A. NO, I'M NO LONGER EMPLOYED BY THE ABA.
22 Q. WHEN DID YOU CEASE TO BE EMPLOYED?
23 A. FULL-TIME, JANUARY 2000.
24 Q. OKAY. PRIOR TO JANUARY 2000 YOU WERE A FULL-TIME EMPLOYEE?
25 A. YES.

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1 Q. OKAY, OF THE ABA.
2 A. YES.
3 Q. AND ONE OF YOUR PRINCIPAL DUTIES WAS THE EDITING AND
4 COMPILATION OF THE RED BOOK?
5 A. YES.
6 Q. AND IN CONNECTION WITH YOUR WORK, DID YOU EVER PARTICIPATE
7 IN ANY MEETINGS, DISCUSSIONS, STAFF WORK HAVING TO DO WITH
8 BOOKSELLERS' RIGHT AND ABILITY TO NEGOTIATE TERMS?
9 A. NO, THAT WOULD NOT HAVE BEEN PART OF MY JOB.
10 Q. NOW, MR. YOUNG SHOWED YOU A RESTRICTION IN THE FRONT OF THE
11 ABA BOOK. I THINK HE SHOWED YOU EXHIBIT 6 OR 7, THE 1999 ONE,
12 AND I ALSO HAVE THEM IN THE BINDERS IF YOU NEED TO LOOK AT
13 THEM. I HAVE EXHIBIT 6, WHICH IS THE '99 RED BOOK, AND EXHIBIT
14 7, WHICH IS THE 2000, AND I'VE INCLUDED THE INTRODUCTORY PAGES.
15 AND I WANT TO ASK YOU A QUESTION ABOUT THE PREFATORY
16 LANGUAGE THAT SAYS, "FOR ABA MEMBERS ONLY."
17 A. UM-HUM.
18 Q. MR. YOUNG ASKED YOU ABOUT THE PURPOSE OF THAT PREFATORY
19 LANGUAGE.
20 A. YES.
21 Q. DO YOU HAVE IT IN FRONT OF YOU?
22 A. YES, I DO.
23 Q. OKAY, YOU'RE LOOKING AT WHICH ONE, THE 1991?
24 A. THE 1999 ONE. AS I SAY, I DID NOT WORK ON THE 2000
25 EDITION.

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1 Q. WELL, THEN, WE WON'T LOOK AT THE 2000 ONE. I'LL REPRESENT
2 TO YOU IT'S THE SAME LANGUAGE, BUT YOU CAN JUST LOOK AT THE

3 1999.
4 A. ALL RIGHT.
5 Q. OKAY. AND IN THERE IT SAYS, "THE ABA BOOK BUYER'S HANDBOOK
6 IS FOR ABA MEMBERS ONLY!" EXCLAMATION POINT.
7 A. YES.
8 Q. WHAT'S THE REASON FOR THE EXCLAMATION POINT? TO EMPHASIZE
9 THAT IT'S ONLY FOR ABA MEMBERS, CORRECT?
10 A. YES.
11 Q. (READING):
12 "WE DO NOT SELL, LEND OR GIVE IT TO NON-MEMBERS
13 UNDER ANY CIRCUMSTANCES NOR MAY ANYONE ELSE DO SO.
14 THE HANDBOOK IS NOT FOR RESALE. ADDITIONAL COPIES
15 ARE AVAILABLE TO ABA MEMBERS FOR \$75 EACH."
16 FIRST OF ALL, DO YOU KNOW HOW THIS LANGUAGE WAS
17 CREATED?
18 A. NO, NOT THIS SPECIFIC LANGUAGE.
19 Q. OKAY, AND DID YOU EVER PARTICIPATE IN ANY INTERNAL STAFF
20 MEETINGS IN WHICH THE DECISION WAS MADE TO TAKE THIS POSITION
21 ABOUT THE ABA HANDBOOK?
22 A. THAT POSITION EXISTED WHEN I WAS -- WHEN I WENT TO ABA.
23 Q. SO FROM THE TIME THAT YOU TOOK OVER YOUR WORK ON THE
24 HANDBOOK, YOU NEVER PARTICIPATED IN ANY KIND OF DISCUSSION OR
25 ANALYSIS OF THE REASONS FOR MAINTAINING THIS POSITION IN THE
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1 ABA HANDBOOK, IS THAT CORRECT?
2 A. YES -- NO, IT WAS DISCUSSED.
3 Q. IT WAS DISCUSSED INTERNALLY.
4 A. YES.
5 Q. AND THE DISCUSSION WAS, EACH YEAR, TO TAKE A POSITION THAT
6 THIS SHOULD ONLY BE MADE AVAILABLE TO ABA MEMBERS, CORRECT?
7 A. WELL, IT WAS NOT REVISITED EACH YEAR, BUT AT SOME POINT IT
8 WAS DISCUSSED AND THE DECISION WAS MADE TO TAKE THIS DECISION.
9 Q. AND THE DECISION WAS MADE IN ORDER TO INCENTIVIZE
10 BOOKSELLERS TO JOIN THE ABA, CORRECT?
11 A. YES.
12 Q. AND THE INCENTIVE IS THAT IF YOU JOIN THE ABA, YOU GET THIS
13 VERY VALUABLE RESOURCE TOOL, CORRECT?
14 A. YES.
15 Q. BUT IF YOU DON'T JOIN THE ABA, YOU DON'T GET IT, CORRECT?
16 A. THAT'S RIGHT.
17 Q. AND THERE ARE NUMEROUS BOOKSELLERS ACROSS THE COUNTRY WHO
18 ARE NOT MEMBERS OF THE ABA, CORRECT?
19 MR. YOUNG: OBJECT TO THE QUESTION AS VAGUE AND
20 LACKING FOUNDATION WITH REGARD TO THIS WITNESS.
21 THE COURT: LAY THE FOUNDATION.
22 BY MR. PETROCELLI:
23 Q. DO YOU KNOW WHETHER THERE ARE BOOKSELLERS IN THE COUNTRY
24 WHO ARE NOT MEMBERS OF THE ABA?
25 A. I WOULD ASSUME THAT THERE ARE SOME BOOKSELLERS THAT ARE
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1 NOT.
2 Q. YOU CAN ONLY GIVE THE TESTIMONY BY ASSUMING THAT?
3 A. WELL, I MEAN, I THINK THAT THAT'S A FAIRLY CLEAR STATEMENT,
4 YES.
5 Q. OKAY. DO YOU HAVE ANY ESTIMATE OF THE NUMBER OF
6 BOOKSELLERS WHO ARE NOT MEMBERS OF THE ABA? INDEPENDENT
7 BOOKSELLERS.
8 A. NO.
9 Q. DOES THE ABA, TO YOUR KNOWLEDGE, KEEP TRACK OF WHICH
10 BOOKSELLERS ARE MEMBERS?
11 A. WE HAVE A MEMBERSHIP DIRECTORY, YES.
12 Q. AND HAVE YOU WORKED ON THAT MEMBERSHIP DIRECTORY FROM TIME
13 TO TIME?
14 A. YES.
15 Q. AND IN CONNECTION WITH THAT WORK, HAVE YOU THEN ALSO KEPT
16 LISTS OR KEPT TRACK OF THE BOOKSELLERS ACROSS THE COUNTRY WHO
17 ARE NOT MEMBERS OF THE ABA?
18 A. NO, THAT WOULD HAVE BEEN A TOTALLY DIFFERENT FUNCTION.
19 Q. THAT WASN'T SOMETHING YOU HAD ANYTHING TO DO WITH.
20 A. NO.
21 Q. ARE YOU GENERALLY AWARE THAT LARGE BOOKSELLING COMPANIES

22 LIKE BARNES & NOBLE AND BORDERS AND BOOKS-A-MILLION ARE NOT
23 MEMBERS OF THE ABA?
24 A. I'M AWARE THAT THEY WERE QUITE AWHILE, AND THAT THEY'RE NOT
25 NOW.
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1 Q. AND ALSO THAT OTHER BOOKSELLERS LIKE COSTCO AND WALMART ARE
2 NOT MEMBERS OF THE ABA?
3 A. I COULDN'T SAY THAT FOR SURE.
4 Q. DO YOU HAVE ANYTHING TO DO WITH WHO GETS COPIES OF THIS RED
5 BOOK?
6 A. NO.
7 Q. SO YOUR MAIN JOB WAS IN PUTTING IT TOGETHER. SO LET'S TALK
8 A LITTLE BIT ABOUT THAT.
9 FROM TIME TO TIME IN THE COURSE OF YOUR WORK, I
10 THINK YOU TESTIFIED THAT YOU MAY LEARN OF THE EXISTENCE OF NEW
11 PUBLISHERS WHO ARE NOT IN LAST YEAR'S EDITION OF THE RED BOOK,
12 CORRECT?
13 A. CORRECT.
14 Q. AND YOU COMPILE OR KEEP TRACK OF THOSE NAMES OF NEW
15 PUBLISHERS, AND THEN WHEN IT COMES TIME TO UPDATE THE RED BOOK,
16 YOU SEND OUT A QUESTIONNAIRE TO THOSE NEW PUBLISHERS, CORRECT?
17 A. YES.
18 Q. AND THE QUESTIONNAIRE ASKS FOR BASIC INFORMATION LIKE NAMES
19 OF CONTACT PEOPLE, PHONE NUMBERS, ADDRESSES AND STANDARD TERMS
20 OF SALE, CORRECT?
21 A. YES.
22 Q. AND THEN THE QUESTIONNAIRE COMES BACK AND THEN YOU PROCESS
23 IT, CORRECT?
24 A. YES.
25 Q. NOW, IN THE CASE OF AN EXISTING PUBLISHER WHO'S ALREADY IN
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1 THE RED BOOK, YOU HAVE A SLIGHTLY DIFFERENT PROCEDURE, CORRECT?
2 A. CORRECT.
3 Q. IN THAT SITUATION WHAT YOU DO IS YOU TAKE OUT THE LISTING
4 FROM LAST YEAR'S EDITION OF THE RED BOOK?
5 A. CORRECT.
6 Q. AND YOU SEND IT OFF TO THE PUBLISHER, AND ASK THEM TO -- TO
7 DO WHAT, UPDATE IT?
8 A. WE ASK THEM TO UPDATE IT. WE ALSO HE KNOW ENCLOSE A
9 SUPPLEMENTAL APPROVAL FORM THAT ASKS FOR SOME ADDITIONAL
10 INFORMATION.
11 Q. IN THE SUPPLEMENTAL APPROVAL FORM, WHAT KIND OF INFORMATION
12 ARE YOU REQUESTING?
13 A. WELL, FOR EXAMPLE, THERE WOULD BE A QUESTION ON THERE THAT
14 SAYS IF A CO-OP ADVERTISING POLICY IS NOT LISTED FOR YOUR
15 COMPANY, PLEASE SUPPLY ONE, AND IT SAYS, "ATTACH ADDITIONAL
16 SHEETS, IF NECESSARY."
17 Q. AND WHEN YOU GET BACK THE -- DO THE PUBLISHERS BY AND LARGE
18 RESPOND TO THE -- TO EITHER THE QUESTIONNAIRE -- I CAN DO IT
19 SEPARATELY IF YOU WANT, SO IT'S NOT COMPOUND, BUT IN THE CASE,
20 FOR EXAMPLE, OF IT'S NEW PUBLISHERS WHO RECEIVE THE
21 QUESTIONNAIRE, YOU GET A GOOD TURNOUT, A GOOD RESPONSE RATE?
22 A. FAIRLY GOOD.
23 Q. OKAY. AND WHEN -- THE SAME THING WHEN YOU GET THE EXISTING
24 PUBLISHERS WHO THEN SEND BACK THE TEAR SHEET, WHAT, DO THEY
25 LITERALLY MARK IT UP AND RETURN IT TO YOU?
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1 A. YES, IT'S ATTACHED TO THE LISTING THAT THEY RETURN.
2 Q. OKAY. YOU DON'T ASK THEM TO SEND YOU AS PART OF THIS
3 PROCESS, EITHER THE NEW PUBLISHERS OR THE EXISTING PUBLISHERS,
4 XEROXED COPIES OF ALL WRITTEN PUBLISHED TERMS, DO YOU?
5 A. NO.
6 Q. WHEN THE INFORMATION COMES BACK FROM THE PUBLISHERS, NOW,
7 IN EITHER CATEGORY, THE NEW OR THE EXISTING, YOU THEN TAKE THAT
8 INFORMATION AND FEED IT INTO A COMPUTER, INTO A WORD PROCESSOR,
9 CORRECT?
10 A. YES, THE DATABASE.
11 Q. I ASSUME, THEN, THAT THERE'S NO VERIFICATION THAT IS
12 PERFORMED WITH REGARD TO THE CONTENT OF THE INFORMATION, IS
13 THAT CORRECT?

14 A. IF THERE'S AN INCONSISTENCY, WE WOULD VERIFY INFORMATION,
15 BUT IN GENERAL, THE VENDORS ARE RESPONSIBLE FOR THE ACCURACY OF
16 THEIR OWN INFORMATION.

17 Q. RIGHT. I THINK IN RESPONSE TO MR. YOUNG'S QUESTION YOU
18 SAID THAT YOUR JOB IS NOT CONTENT, IT'S COMPILING THE
19 INFORMATION.

20 A. CORRECT.

21 Q. OKAY. AND PUBLISHERS HAVE DIFFERENT CYCLES WHEN THEY MAY
22 CHANGE THEIR TERMS, CORRECT?

23 A. CORRECT.

24 Q. AND THE RED BOOK PICKS UP THEIR TERMS AS OF A GIVEN POINT
25 IN TIME, CORRECT?

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1 A. CORRECT.

2 Q. AND IF THE PUBLISHER CHANGES THEIR TERMS OR IS ON A
3 DIFFERENT CYCLE WHERE, RIGHT AFTER THE RED BOOK COMES OUT, THEY
4 MAY CHANGE THEIR TERMS, THAT'S NOT GOING TO SHOW UP UNTIL THE
5 NEXT YEAR'S EDITION OF THE RED BOOK, CORRECT?

6 A. WELL, AS I SAID BEFORE, I MEAN, BOOKSELLERS ARE USUALLY
7 INFORMED IN OTHER WAYS AND --

8 Q. YES, I'M ONLY REFERRING TO THE RED BOOK, THOUGH. THAT'S
9 NOT GOING TO SHOW UP UNTIL THE NEXT EDITION OF THE RED BOOK.

10 A. CORRECT.

11 Q. AND YOU WERE SAYING THAT BOOKSELLERS DO FIND OUT ABOUT
12 THESE THINGS IN OTHER WAYS, CORRECT?

13 A. CORRECT.

14 Q. AND YOU CAN'T OBVIOUSLY ACCOMMODATE ALL PUBLISHERS' CYCLES
15 IN ONE RED BOOK THAT COMES OUT AT ONE POINT IN TIME, CORRECT?

16 A. CORRECT.

17 Q. ONE OF THE REASONS THAT IN RECENT YEARS YOU DECIDED TO
18 CHANGE THE PUBLICATION OR ISSUE DATE OF THE RED BOOK FROM LATE
19 IN THE YEAR TO EARLY IN THE FOLLOWING YEAR WAS BECAUSE MANY
20 PUBLISHERS TEND TO CHANGE TERMS OR CYCLE NEW TERMS IN EFFECTIVE
21 THE BEGINNING OF A YEAR, CORRECT?

22 A. THAT'S TRUE, YES, BUT AS I SAID BEFORE, TERMS REALLY DO NOT
23 CHANGE VERY OFTEN.

24 Q. OKAY. DID THE -- DO YOU RECEIVE MANY XEROXED COPIES OF
25 ACTUAL WRITTEN TERMS FROM PUBLISHERS IN RESPONSE TO YOUR

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1 MAILINGS WHEN YOU'RE PUTTING TOGETHER THE RED BOOK?

2 A. SOMETIMES.

3 Q. AND WHAT DO YOU DO WITH THOSE?

4 A. IF THEY GIVE US THE WRITTEN TERMS, THEN THAT'S WHAT WE
5 PUBLISH.

6 Q. IN YOUR QUESTIONNAIRE, OR IN THE REQUEST FOR SUPPLEMENTAL
7 INFORMATION, DO YOU ASK PUBLISHERS FOR TERMS THAT MAY NOT BE
8 STANDARD TERMS, SUCH AS STOCK OFFERS OR NEW STORE OPENINGS OR
9 SHARED MARKDOWNS? DO YOU SPECIFICALLY ASK FOR THAT KIND OF
10 INFORMATION?

11 A. NO, WE DO NOT.

12 Q. WHOSE JOB IS IT AT THE ABA TO KEEP TRACK OF TERMS OF
13 PUBLISHERS THAT CHANGE IN THE COURSE OF THE YEAR? AND LET ME
14 SHARPEN MY QUESTION, SINCE YOU'RE NOT THERE ANYMORE.

15 AS OF THE TIME THAT YOU LEFT, WAS THERE ANOTHER
16 PERSON OR DEPARTMENT RESPONSIBLE FOR PUTTING OUT THE "CHANGING
17 TERMS" COLUMN IN BOOKS THIS WEEK OR PUTTING OUT CHANGES IN
18 PUBLISHERS TERMS?

19 A. NO, IT'S NOT, TO MY KNOWLEDGE, ANYONE RESPONSIBLE FOR THAT.

20 Q. BUT IT WASN'T YOUR JOB TO DO THAT, RIGHT?

21 A. NO, IT WAS NOT.

22 Q. DO YOU KNOW WHOSE JOB IT WAS?

23 A. WELL, I'M SAYING THAT I DON'T THINK IT WAS ANYONE'S
24 RESPONSIBILITY.

25 Q. I SEE. SO THE INFORMATION THAT APPEARED IN "CHANGING

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1 TERMS" IN BOOKSELLING THIS WEEK WASN'T A RESULT OF A CONCERTED
2 EFFORT TO GET CHANGES IN PUBLISHERS' TERMS, IT JUST REPORTED ON
3 CHANGES THAT MAY HAVE COME TO THE ABA'S ATTENTION, CORRECT?

4 A. AS I SAID, I CAN'T REALLY COMMENT ON THAT PROCEDURE.

5 Q. YOU HAVE NO KNOWLEDGE ABOUT IT.

6 A. RIGHT.
7 Q. WAS THERE A TIME BACK IN, LET'S SAY, THE MID-90'S, WHEN THE
8 ABA WAS CONTEMPLATING ISSUING A SUPPLEMENT TO THE RED BOOK IN
9 ORDER TO ADVISE BOOKSELLERS OF CHANGES OR VARIATIONS FROM THE
10 STANDARD TERMS?
11 A. NOT TO MY KNOWLEDGE.
12 Q. YOU'RE NOT AWARE OF ANY PUBLICATION OF A SUPPLEMENT AT ALL?
13 A. I BELIEVE THAT THERE WAS CONSIDERATION OF A SUPPLEMENT. I
14 DON'T KNOW IF IT WAS FOR THE REASONS THAT YOU JUST STATED.
15 Q. A SUPPLEMENT TO THE RED BOOK?
16 A. I DON'T KNOW WHETHER IT WAS INTERNAL OR -- I MEAN, AS I
17 SAID, YOU SPECIFICALLY GAVE A REASON WHY THAT SUPPLEMENT WOULD
18 BE PUBLISHED.
19 Q. OKAY, SO YOU ARE AWARE THAT THE ABA HAD AT ONE POINT
20 CONTEMPLATED PUTTING OUT A SUPPLEMENT TO THE RED BOOK.
21 MR. YOUNG: OBJECTION, YOUR HONOR. I THINK THAT
22 MISSTATES THE TESTIMONY. THE WITNESS DID NOT TESTIFY AS A
23 SUPPLEMENT TO THE RED BOOK PER SE.
24 THE COURT: THE OBJECTION'S OVERRULED. SHE CAN
25 ANSWER THE QUESTION.

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1 THE WITNESS: I THINK THAT THERE WAS A SUPPLEMENT
2 THAT MAY HAVE BEEN PUT TOGETHER, BUT I THINK THAT THE REASONS
3 FOR IT MAY HAVE BEEN INTERNAL, AND I DON'T KNOW THAT IT WAS A
4 SUPPLEMENT TO THE RED BOOK. THE REASONS FOR ITS COMPILATION
5 MAY HAVE BEEN ENTIRELY DIFFERENT.
6 BY MR. PETROCELLI:
7 Q. WELL, WHAT WERE, TO YOUR KNOWLEDGE, THE REASONS FOR THE
8 COMPILATION OF THE SUPPLEMENT?
9 A. I HAVE NO ACTUALLY KNOWLEDGE OF THE REASONS FOR IT. I KNOW
10 IT CAME THROUGH A DIFFERENT DEPARTMENT THAN THE RED BOOK OR THE
11 PUBLICATIONS DEPARTMENT. THEREFORE, I WOULD ASSUME IT'S NOT
12 FOR THE SAME REASONS AS THE RED BOOK.
13 Q. YOU ASSUMED THAT WHOEVER WAS DISCUSSING PUTTING TOGETHER A
14 SUPPLEMENT WAS DOING SO FOR REASONS OTHER THAN WHAT I DESCRIBED
15 TO YOU, WHICH WAS TO INFORM BOOKSELLERS ABOUT CHANGES TO TERMS
16 IN BETWEEN EDITIONS OF THE RED BOOK?
17 A. I REALLY HAVE NO KNOWLEDGE OF WHAT THE REASON WOULD HAVE
18 BEEN.
19 Q. SO AS YOU SIT HERE ON THE STAND NOW, YOU KNOW NOTHING ABOUT
20 THE REASONS WHY THIS SUPPLEMENT MAY HAVE BEEN CONSIDERED, IS
21 THAT CORRECT?
22 A. THE ONLY THING THAT I KNOW ABOUT IT WAS THAT IT WOULD HAVE
23 BEEN SOMETHING THAT WOULD HAVE BEEN DISCUSSED BY THE PUBLISHER
24 RELATIONS COMMITTEE, WHICH WAS SOMETHING THAT I HAD NO
25 KNOWLEDGE OF OR CONNECTION TO.

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1 Q. I'M HOLDING A DOCUMENT THAT WAS MARKED AS EXHIBIT -- WHAT'S
2 THE EXHIBIT NUMBER ON THIS?
3 MR. PEARL: 6407.
4 BY MR. PETROCELLI:
5 Q. -- EXHIBIT 6407, AND IT'S ENTITLED, "THE ABA BOOK BUYER'S
6 HANDBOOK SUPPLEMENT." HAVE YOU EVER SEEN THIS PIECE OF PAPER
7 BEFORE? IT'S A THICK DOCUMENT, AND FOR THAT REASON I'M NOT
8 PUTTING IT IN FRONT OF YOU, BUT --
9 MR. YOUNG: I'M SORRY, YOUR HONOR, BUT THIS WAS NOT
10 PROVIDED TO US AS A PART OF THE CROSS-EXAMINATION MATERIALS,
11 AND I'VE NOT BEEN FAVORED WITH A COPY MYSELF.
12 MR. PETROCELLI: I HAVE THE COPIES HERE, YOUR HONOR,
13 AND IT'S SUGGESTED SIMPLY BECAUSE OF HER ANSWERS TO THE
14 QUESTION. I'M SHOWING IT TO HER TO SEE IF IT REFRESHES HER
15 RECOLLECTION, AND I CAN DISSEMINATE COPIES RIGHT NOW.
16 THE COURT: I HAVEN'T GOT IT. I DON'T KNOW WHERE IT
17 IS, IN ONE OF THE BINDERS --
18 MR. PETROCELLI: IT'S RIGHT HERE. I HAVE IT RIGHT
19 HERE. I CAN GIVE YOU A COPY AND GIVE HER A COPY.
20 THE COURT: YES, WELL, I DON'T KNOW WHAT YOU'RE
21 TALKING ABOUT.
22 MR. PETROCELLI: ALL RIGHT, LET ME HAND IT UP TO THE
23 COURT. FOR THE RECORD, IT'S EXHIBIT 6407.
24 Q. HERE IS TRIAL EXHIBIT 6407.

1 BY MR. PETROCELLI:
2 Q. THE QUESTION IS, PUTTING IN FRONT OF YOU TRIAL EXHIBIT
3 6407, HAVE YOU EVER SEEN IT BEFORE?
4 A. YES.
5 Q. DID YOU HAVE ANYTHING TO DO WITH ITS PREPARATION?
6 A. I ASSUME THAT YOU'RE REFERRING TO THE FACT THAT MY NAME IS
7 ON IT. THAT WOULD HAVE BEEN A PROFESSIONAL COURTESY, BECAUSE
8 WE ALLOWED THE PUBLISHER RELATIONS COMMITTEE TO USE OUR
9 DATABASE MATERIAL AND WE TURNED THAT OVER TO THEM, SO THEY WERE
10 STARTING WITH OUR BASIC HANDBOOK TERMS. I WOULD NOT HAVE
11 WORKED WITH THIS SPECIFIC MATERIAL.
12 Q. AND YOU'RE REFERRING TO THE FACT THAT IT SAYS, "EDITED BY
13 LINDA MILLER" ON THE SIDE.
14 A. RIGHT.
15 Q. SO YOU KNEW THERE WAS A PROJECT ABOUT PUTTING TOGETHER AN
16 ABA BOOK BUYER'S HANDBOOK SUPPLEMENT WITHIN THE ABA, AND YOU
17 KNEW THAT THEY TOOK YOUR RED BOOK DATABASE, SO TO SPEAK --
18 A. CERTAIN INFORMATION FROM IT.
19 Q. AND BEYOND THAT, DID YOU HAVE ANY FURTHER ROLE OR
20 PARTICIPATION OR INVOLVEMENT IN THE CREATION OF THE DOCUMENT OR
21 THE REASONS FOR THE CREATION OF THE DOCUMENT?
22 A. NO, I DID NOT.
23 Q. IS THE ABA CONSIDERING PUTTING -- MAKING PUBLISHERS' TERMS
24 AVAILABLE TO MEMBERS ELECTRONICALLY, AND KEEPING THE TERMS
25 UPDATED ELECTRONICALLY THROUGHOUT THE YEAR, AS PUBLISHERS
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1 CHANGES THEIR TERMS?
2 MR. YOUNG: OBJECTION, THE QUESTION LACKS FOUNDATION
3 AS THE WITNESS IS NOT EMPLOYED BY THE ABA AT THIS TIME.
4 THE COURT: REPHRASE THE QUESTION.
5 MR. PETROCELLI: YES.
6 Q. AS OF THE TIME THAT YOU WERE WITH THE ABA, WAS THE ABA
7 CONSIDERING MAKING PUBLISHERS' TERMS AVAILABLE TO MEMBERS
8 ELECTRONICALLY IN KEEPING THE TERMS UPDATED ELECTRONICALLY
9 THROUGHOUT THE YEAR AS PUBLISHERS CHANGE THEIR TERMS?
10 A. YES.
11 Q. DO YOU KNOW WHETHER... WHAT WAS THE STATE OF THAT PROJECT
12 AS OF THE TIME YOU LEFT THE ABA?
13 A. THEY HAD BEGUN WORK ON IT. I DON'T KNOW WHAT HAS HAPPENED
14 TO IT SINCE.
15 Q. AND THE PURPOSE OF THE WORK ON THAT PROJECT WAS TO GET OUT
16 MORE ACCURATE, COMPLETE AND CURRENT INFORMATION?
17 A. IT WAS TO BASICALLY UPDATE INFORMATION AS IT BECAME
18 AVAILABLE AND IN REAL TIME.
19 Q. SO THAT IT WOULD BE MORE CURRENT.
20 A. YES, ESPECIALLY AS TO ADDRESSES AND PERSONNEL AND THE OTHER
21 INFORMATION THAT CHANGED MOST FREQUENTLY.
22 MR. PETROCELLI: THANK YOU, YOUR HONOR.
23 THE COURT: MR. STEER?
24 MR. STEER: I HAVE NO QUESTIONS, YOUR HONOR. THANK
25 YOU.
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1 THE COURT: ALL RIGHT, REDIRECT?
2 MR. YOUNG: WE HAVE NO REDIRECT, YOUR HONOR.
3 THE COURT: ALL RIGHT, STEP DOWN, MS. MILLER.
4 NOW, LET'S GET MS. CHRISTOPHERSEN TO FINISH THAT
5 CROSS-EXAMINATION.
6 ANN CHRISTOPHERSEN,
7 CALLED AS A WITNESS FOR THE PLAINTIFFS, HAVING BEEN PREVIOUSLY
8 DULY SWORN, TESTIFIED AS FOLLOWS:
9 CROSS-EXAMINATION
10 BY MR. GARCIA:
11 Q. DO YOU HAVE UP THERE MS. ELLEN LARRIMORE'S DEPOSITION
12 TRANSCRIPT, MS. CHRISTOPHERSEN?
13 A. I DON'T THINK SO. I THINK THIS IS ALL LINDA MILLER'S.
14 MR. GARCIA: DOES YOUR HONOR HAVE THE LARRIMORE
15 TRANSCRIPT?
16 THE WITNESS: PARDON ME?

17 MR. GARCIA: DOES YOUR HONOR HAVE THE LARRIMORE
18 TRANSCRIPT.
19 THE COURT: I DO.
20 MR. GARCIA: THANK YOU, YOUR HONOR.
21 MR. MACH: EXCUSE ME, YOUR HONOR, IS IT POSSIBLE TO
22 GET A COPY OF THAT?
23 THE COURT: ABSOLUTELY.
24 MR. GARCIA: I'M INFORMED BY PLAINTIFFS' COUNSEL
25 THAT THEY'VE LOCATED A COPY, YOUR HONOR.

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1 THE COURT: ALL RIGHT.
2 BY MR. GARCIA:
3 Q. COULD YOU TELL US AGAIN, MS. CHRISTOPHER, WHO ELLEN
4 LARRIMORE WAS?
5 A. YES, ELLEN LARRIMORE, SHE'S NO LONGER EMPLOYED BY US, BUT
6 SHE WAS FOR FIVE OR SIX YEARS OUR OFFICE MANAGER.
7 Q. AND SHE WAS IN CHARGE OF PAYING INVOICES, IS THAT CORRECT?
8 A. YES, THAT'S CORRECT.
9 Q. AND SHE WAS IN A CHARGE OF COMMUNICATING WITH PUBLISHERS
10 ABOUT THE PAYMENT OF INVOICES?
11 A. CORRECT.
12 Q. AND ARE YOU AWARE THAT ON OCCASION WHEN CASH FLOW WAS
13 TIGHT, SHE WOULD WORK OUT PAYMENT PLANS WITH PUBLISHERS THAT
14 WOULD ENABLE YOU TO TAKE MORE TIME THAN PUBLISHED TERMS TO PAY?
15 A. YES, WELL, I'M NOT AWARE OF ANY SPECIFICS OF HOW SHE
16 CONDUCTED HER JOB, BUT YES, I KNOW FROM TIME TO TIME SHE TALKED
17 TO PUBLISHERS ABOUT PAYMENT TERMS.
18 Q. AND ARE YOU ALSO AWARE THAT SHE HAD ARRANGEMENTS WITH AT
19 LEAST SOME PUBLISHERS BY WHICH THERE WAS A PROCESS THAT YOU
20 COULD PAY -- THAT YOUR STORE COULD PAY OUTSIDE THE DATE LISTED
21 ON AN INVOICE OR STATEMENT AND NOT GET PUT ON CREDIT HOLD?
22 A. WELL, I KNOW BOTH THINGS HAPPENED, THAT OFTEN WE WERE --
23 FROM TIME TO TIME WE WERE PUT ON CREDIT HOLD IF WE DIDN'T PAY,
24 AND SOMETIMES, I THINK THAT'S RIGHT, THAT SHE MADE ARRANGEMENTS
25 THAT ALLOWED US TO NOT BE PUT ON TOLD.

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1 MR. GARCIA: I HAVE NO FURTHER QUESTIONS, YOUR
2 HONOR. THANK YOU.
3 THE COURT: ANY FURTHER CROSS?
4 MR. HEIDEMAN: NO, YOUR HONOR.
5 THE COURT: ANY REDIRECT?
6 MR. MACH: NOTHING, YOUR HONOR.
7 THE COURT: ALL RIGHT, YOU MAY STEP DOWN.
8 (CONTINUED ON FOLLOWING PAGE. NOTHING OMITTED.)

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1 THE COURT: OKAY. CALL YOUR NEXT WITNESS.
2 MS. KESTENBAUM: YOUR HONOR, PLAINTIFFS CALL JOHN
3 EVANS.
4 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.
5 JOHN EVANS,
6 CALLED AS A WITNESS FOR THE PLAINTIFFS, HAVING BEEN DULY SWORN,
7 TESTIFIED AS FOLLOWS:
8 THE CLERK: THANK YOU. PLEASE BE SEATED. PLEASE

9 STATE YOUR FULL NAME AND SPELL YOUR LAST NAME FOR THE RECORD.
10 THE WITNESS: MY NAME IS JOHN A. EVANS, E-V-A-N-S.
11 DIRECT EXAMINATION
12 BY MS. KESTENBAUM:
13 Q. GOOD AFTERNOON, MR. EVANS.
14 AND GOOD AFTERNOON, JUDGE ORRICK. MY NAME IS JANIS
15 KESTENBAUM FOR PLAINTIFFS.
16 MR. EVANS, COULD I GET YOU TO FOR THE RECORD STATE
17 YOUR ADDRESS.
18 A. MY STORE ADDRESS?
19 Q. WHY DON'T WE FIRST START OFF WITH YOUR HOME ADDRESS.
20 A. 212 FOX HOLLOW, RIDGELAND, MISSISSIPPI 39157.
21 Q. AND WHAT IS YOUR CURRENT OCCUPATION?
22 A. I'M A BOOKSELLER.
23 Q. OKAY. AND WHAT STORE DO YOU -- DO YOU OWN A BOOKSTORE?
24 A. YES, I DO.
25 Q. AND CAN YOU --

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1 A. THAT STORE IS LEMURIA, L-E-M-U-R-I-A.
2 Q. AND WHERE IS THAT LOCATED?
3 A. IN BANNER HALL JACKSON, MISSISSIPPI.
4 Q. AND HOW LONG HAVE YOU BEEN ASSOCIATED WITH LEMURIA?
5 A. TWENTY-FIVE YEARS.
6 Q. OKAY. AND ARE YOU -- ARE YOU THE OWNER OF LEMURIA?
7 A. YES, I AM.
8 Q. AND ARE YOU ALSO ITS FOUNDER?
9 A. YES, I AM.
10 Q. OKAY. CAN YOU PLEASE TELL THE COURT WHEN YOU OPENED
11 LEMURIA?
12 A. I FOUNDED LEMURIA, INCORPORATED, IN SEPTEMBER OF 1975 AND
13 OPENED THE BOOKSTORE IN OCTOBER.
14 Q. OKAY. MR. EVANS, I'D LIKE TO JUST ASK YOU A COUPLE OF BRIEF
15 QUESTIONS ABOUT YOUR BACKGROUND. FIRST OF ALL, WHERE DID YOU
16 GROW UP?
17 A. GREW UP IN JACKSON, MISSISSIPPI.
18 Q. OKAY. AND WHERE DID YOU GO TO COLLEGE?
19 A. WENT TO COLLEGE, UNIVERSITY OF MISSISSIPPI.
20 Q. OKAY. AND DID YOU OBTAIN A DEGREE?
21 A. YES, I DID.
22 Q. AND --
23 A. IN BUSINESS.
24 Q. IT WAS A BACHELOR'S DEGREE IN BUSINESS?
25 A. YES, IT WAS.

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1 Q. OKAY. AND HAVE YOU HAD ANY FORMAL POST-COLLEGE EDUCATION?
2 A. TOOK SOME COURSES AFTER SCHOOL, MOSTLY UNDERGRADUATE,
3 BUSINESS MANAGEMENT COURSES AND SOME SCIENCE COURSES.
4 Q. OKAY. NOW, YOU STATED -- GOING BACK TO LEMURIA, YOU STATED
5 THAT YOU OPENED THE STORE IN 1975, WHY DID YOU DECIDE TO OPEN UP
6 A BOOKSTORE IN JACKSON?
7 A. WELL, I HAD GROWN UP IN JACKSON AND DECIDED TO GO IN
8 BUSINESS FOR MYSELF, AND I CONTEMPLATED WHETHER TO OPEN A MUSIC
9 STORE OR A BOOKSTORE BECAUSE USUALLY WHEN I TRAVELED TO OTHER
10 MARKETS, THAT'S WHAT I DID. I WENT TO MUSIC STORES AND
11 BOOKSTORES.
12 AND I DECIDED TO OPEN A BOOKSTORE BECAUSE A MUSIC
13 STORE WAS OPENED PREVIOUSLY THE YEAR THAT I OPENED -- YEAR
14 BEFORE, SO I KIND OF DECIDED I WOULD GO INTO THE BOOK BUSINESS.
15 Q. AND HOW DID YOU CHOOSE THE NAME LEMURIA?
16 A. BASICALLY IT WAS THE ONLY NAME THAT CAME TO MY MIND. WE --
17 MY WIFE AND I WERE FORMING OUR COMPANY, AND WE WERE ROLLING
18 AROUND NAMES, AND THAT WAS WHAT WE CAME UP WITH.
19 Q. AND WHAT DOES LEMURIA REFER TO?
20 A. IT'S A MYTHIC CIVILIZATION THAT EXISTED BEFORE RECORDED
21 DATA. AND IN MYTH, IT WAS THE USE OF -- TRANSFER OF SYMBOLS
22 THROUGH HIEROGLYPHS, EARLIEST REFERENCE I COULD FIND TO THAT,
23 AND FOUND A SYMBOL FOR THE FIRST BOOK EVER WRITTEN. AND I
24 THOUGHT THAT THAT WOULD BE A WAY TO LABEL OURSELVES, IF WE WERE
25 TRANSFER THOUGHTS TO WORDS.

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1 THE COURT: WHAT'S THE TITLE OF THE FIRST BOOK OF --
2 THE WITNESS: IT WAS JUST A SYMBOL. IT WAS A
3 HIEROGLYPH.
4 BY MS. KESTENBAUM:
5 Q. LET'S SEE. AND WHERE WAS THE STORE, WHERE WAS LEMURIA
6 ORIGINALLY LOCATED?
7 A. IN A SHOPPING CENTER CALLED THE QUARTER.
8 Q. AND THAT WAS IN JACKSON; IS THAT RIGHT?
9 A. YES, IT WAS.
10 Q. AND HOW MANY SQUARE FEET APPROXIMATELY WAS THE STORE WHEN
11 YOU OPENED IT IN 1975?
12 A. APPROXIMATELY 900. IT WAS ON TWO LEVELS.
13 Q. OKAY. AND CAN YOU TELL THE COURT APPROXIMATELY HOW MANY
14 TITLES THE STORE ORIGINALLY CARRIED?
15 A. IN 1975?
16 Q. YES.
17 A. NO, I REALLY COULDN'T, BUT I WOULD SAY WE HAD ABOUT \$8,000
18 WORTH OF BOOKS WHOLESALE.
19 Q. AND CAN YOU DESCRIBE FOR THE COURT WHAT KIND OF BOOKSTORE OR
20 WHAT TYPE OF BOOKSTORE LEMURIA IS?
21 A. IS TODAY?
22 Q. WELL, WHY DON'T WE START BACK WHEN YOU FIRST OPENED IT.
23 A. WHEN WE FIRST OPENED THE BOOKSTORE, WE WERE VERY INTERESTED
24 IN PROVIDING ALTERNATIVE SELECTION TO WHAT WAS NORMALLY BEING
25 FOUND IN JACKSON. THE PROCESS THAT I WAS TRAVELING AROUND AND
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1 BUYING BOOKS, I THOUGHT THERE MIGHT BE OTHER PEOPLE, SO
2 BASICALLY TRIED TO CREATE AN INVENTORY THAT WOULD BE KIND OF AN
3 ALTERNATIVE SUCH AS OFFERING MORE BOOKS ON ART, MORE BOOKS ON
4 LITERATURE, MORE BOOKS ON LIFESTYLE, ALTERNATIVE LIFESTYLES,
5 COOKING.
6 Q. WOULD YOU DESCRIBE LEMURIA WHEN YOU OPENED IT AS A GENERAL
7 BOOKSTORE?
8 A. YES, I WOULD.
9 Q. OKAY. AND WHEN YOU OPENED THE BOOKSTORE, DID IT HAVE, FOR
10 EXAMPLE, A CHILDREN'S SECTION?
11 A. YES, IT DID.
12 Q. AND A COOKING SECTION?
13 A. YES, IT DID.
14 Q. AND A BIOGRAPHY SECTION?
15 A. BIOGRAPHY WAS PROBABLY MIXED IN WITH OTHER SECTIONS.
16 Q. OKAY. A HISTORY SECTION?
17 A. HAD A NON-FICTION SECTION.
18 Q. OKAY. OKAY. AND TODAY WOULD YOU STILL DESCRIBE LEMURIA AS
19 A GENERAL BOOKSTORE?
20 A. PROBABLY MORE GENERAL TODAY.
21 Q. SO DO YOU CARRY MORE CATEGORIES OF BOOKS TODAY THAN YOU DID
22 WHEN YOU FIRST OPENED THE STORE?
23 A. YES. AND THE CATEGORIES THEMSELVES ARE MORE EXTENSIVELY
24 STOCKED.
25 Q. DURING YOUR FIRST YEAR IN BUSINESS, DO YOU RECALL
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1 APPROXIMATELY WHAT YOUR ANNUAL SALES WERE?
2 A. \$25,000 RETAIL.
3 Q. OKAY. I'D LIKE TO MOVE FORWARD TO THE PRESENT. WHERE IS
4 YOUR STORE LOCATED TODAY?
5 A. BANNER HALL. BANNER HALL.
6 Q. AND THAT'S IN JACKSON?
7 A. THAT'S IN JACKSON, MISSISSIPPI.
8 Q. AND WHEN DID YOU FIRST MOVE TO BANNER HALL?
9 A. AROUND 1988.
10 Q. WHEN YOU FIRST MOVED INTO THE BANNER HALL LOCATION,
11 APPROXIMATELY HOW MANY SQUARE FEET WAS LEMURIA?
12 A. 3500.
13 Q. AND APPROXIMATELY HOW LARGE IS IT TODAY?
14 A. IT'S PROBABLY ABOUT 4800, 4900.
15 Q. AND APPROXIMATELY HOW MANY TITLES DOES LEMURIA CARRY TODAY?
16 A. WE HAVE APPROXIMATELY 150,000 IN OUR INVENTORY DATABASE, AND
17 THEN WE MOVE IN AND OUT OF OUR SYSTEM WITH PROBABLY 75- TO
18 80,000 IN STOCK.
19 Q. OKAY. MR. EVANS, I AM GOING TO GIVE YOU A BINDER WITH OUR

20 EXHIBITS IN IT. AND --
21 YOUR HONOR, I BELIEVE THAT YOU HAVE THIS BINDER AS
22 WELL FOR MR. EVANS. AND IN PARTICULAR, IF I COULD DIRECT
23 MR. EVANS' AND THE COURT'S DIRECTION (SIC) TO EXHIBIT 2413,
24 WHICH SHOULD BE BEHIND THE TAB WITH THE SAME NUMBER.
25 MR. EVANS, IF I COULD GET YOU TO -- ASK YOU TO LOOK
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1 THROUGH EXHIBIT 2413?
2 A. (REVIEWING DOCUMENT.)
3 OKAY.
4 Q. DO YOU RECOGNIZE THIS?
5 A. THESE LOOK LIKE PHOTOGRAPHS TAKEN AROUND AND INSIDE MY
6 BOOKSTORE AND FRONT PHOTO OF BANNER HALL --
7 Q. AND DO THESE PICTURES FAIRLY AND ACCURATELY DEPICT YOUR
8 STORE?
9 A. BEST I CAN TELL.
10 Q. MR. -- MR. EVANS, ARE YOU THE SOLE OWNER OF LEMURIA?
11 A. NO, I'M NOT. LEMURIA IS A CORPORATION, INCORPORATED, AND
12 IT'S MY WIFE AND I, WE'RE EQUAL PARTNERS.
13 Q. AND THE CORPORATION OWNS LEMURIA BOOKSTORE; IS THAT CORRECT?
14 A. THAT IS CORRECT.
15 Q. DOES LEMURIA, INCORPORATED, DRAW INCOME FROM SOURCES OTHER
16 THAN THE BOOKSTORE?
17 A. YES, IT DOES. IT HAS OTHER INVESTMENTS.
18 Q. MR. EVANS, I'D LIKE TO DIRECT YOUR ATTENTION TO EXHIBIT 2516
19 IN THE BINDER.
20 A. (REVIEWING DOCUMENT.)
21 THE COURT: 2515?
22 MS. KESTENBAUM: EXCUSE ME?
23 THE WITNESS: 2516?
24 MS. KESTENBAUM: UNLESS I HAVE THE -- LET ME MAKE
25 SURE I HAVE THE CORRECT NUMBER.
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1 LET'S SEE. YEAH, 2516. IN MINE, IT COMES --
2 ACTUALLY THERE'S A TAB THAT SAYS "694," AND THEN THERE'S A 2515.
3 AND THEN 2516.
4 THE WITNESS: 2516? OKAY. 2516.
5 MS. KESTENBAUM: DO YOU HAVE IT, YOUR HONOR?
6 THE COURT: NO.
7 MS. KESTENBAUM: OKAY. IT'S A COLORED MAP AND --
8 THE COURT: I HAVE 2416.
9 MS. KESTENBAUM: IT ACTUALLY --
10 THE COURT: FOLLOWED BY 2612.
11 MS. KESTENBAUM: YEAH, I'M LOOKING AT IT. IT
12 ACTUALLY APPEARS THAT IT MAY BE OUT OF NUMERIC ORDER SINCE 2516
13 MAY COME BEFORE SOME NUMBERS THAT ARE ACTUALLY LOWER THAN IT,
14 AND I APOLOGIZE ABOUT THE CONFUSION.
15 THE COURT: OH, ALL RIGHT. IT WAS JUST -- CAN YOU
16 TELL ME, IF IT'S OUT OF ORDER, WHAT CAN I LOOK FOR TO FIND IT?
17 MS. KESTENBAUM: YOUR HONOR, WHY DON'T I GIVE YOU --
18 IF I MAY, GIVE YOU A COPY OF THE EXHIBIT JUST FROM MY BINDER.
19 IF I MIGHT HAND IT UP TO YOU, THINK IT MIGHT MAKE THINGS EASIER.
20 THE COURT: THANK YOU.
21 BY MS. KESTENBAUM:
22 Q. OKAY. MR. EVANS, DO YOU RECOGNIZE THIS DOCUMENT?
23 A. THIS IS A MAP OF JACKSON.
24 Q. OKAY. AND CAN YOU PLEASE TELL THE COURT WHERE LEMURIA IS
25 LOCATED ON THE MAP.
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1 A. YES. IT'S LOCATED IN A YELLOW CIRCLE WITH A BLUE DOT. IT
2 LOOKS LIKE ON I-55. INTERSTATE 55 AT THE CORNER OF NORTHSIDE
3 DRIVE AND INTERSTATE I-55.
4 Q. AND THAT'S THE BANNER HALL LOCATION; IS THAT RIGHT?
5 A. THAT IS CORRECT.
6 Q. IS THERE A BARNES & NOBLE LOCATED ON THIS MAP?
7 A. YES, THERE IS. IT'S ON COUNTY LINE ROAD RIGHT OFF OF I-55,
8 INTERSTATE 55, AND IT HAS A RED DOT.
9 Q. AND DOES THIS MAP INDICATE A WALDENBOOKS IN JACKSON?
10 A. YES, IT DOES. IT'S ON -- OFF OF THAT 220 LOOP ON HIGHWAY 80
11 AND METRO CENTER, AND IT IS ALSO A BLUE SQUARE, I BELIEVE.

12 Q. CAN YOU TELL ME APPROXIMATELY HOW FAR THAT WALDENBOOKS IS
13 FROM LEMURIA?
14 A. FIFTEEN OR TWENTY MINUTES.
15 Q. OKAY. AND WHAT ABOUT THE BARNES & NOBLE THAT YOU EARLIER
16 REFERRED TO? ABOUT HOW FAR IS THE BARNES & NOBLE FROM LEMURIA?
17 A. ABOUT FIVE MINUTES.
18 Q. AND WHEN YOU SAY FIVE MINUTES, YOU'RE REFERRING TO A
19 FIVE-MINUTE DRIVE?
20 A. YES.
21 Q. AND THE SAME THING WITH WALDENBOOKS, IT'S ABOUT A 20-MINUTE
22 DRIVE?
23 A. YES.
24 Q. I REALIZE THAT THERE'S NO SPECIFIC INDICATION OF IT, BUT
25 WITHIN THIS MAP, IS THERE A B. DALTON LOCATED ANYWHERE WITHIN
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1 THE CITY OF JACKSON?
2 A. ACTUALLY NOT IN THE CITY, BUT ACROSS THE COUNTY LINE. IT'S
3 A -- RIGHT HERE ABOVE THE COUNTY LINE ROAD. THE COUNTY CHANGES
4 RIGHT THERE AND SO DO THE CITY LIMITS. BUT IT'S ONE MINUTE ON
5 THE OTHER SIDE OF NORTH PARK SHOPPING CENTER.
6 Q. AND APPROXIMATELY HOW FAR IS THAT B. DALTON FROM LEMURIA?
7 A. SIX MINUTES.
8 Q. AND AGAIN A SIX-MINUTE DRIVE.
9 A. (NO AUDIBLE RESPONSE.)
10 Q. WHAT ABOUT A STORE CALLED BOOKS-A-MILLION? I KNOW THERE'S
11 NOT ONE SPECIFICALLY INDICATED ON THE MAP, BUT DOES THE AREA OF
12 THE MAP INCLUDE A LOCATION OF A BOOKS-A-MILLION?
13 A. YES, IT DOES.
14 Q. OKAY. CAN YOU PLEASE EXPLAIN WHERE IT IS?
15 A. THE EDGE OF THE YELLOW CIRCLE FOR LEMURIA ALMOST WOULD TOUCH
16 WHERE THE BOOKS-A-MILLION IS, WHICH WOULD BE ON THE EAST SIDE OF
17 I-55 RIGHT BELOW THE LITTLE SYMBOL THAT SAYS I-55, NORTHSIDE
18 DRIVE.
19 Q. OKAY. SO THEN --
20 A. ONE MINUTE.
21 Q. WHERE -- ARE LEMURIA AND THIS BOOKS-A-MILLION ON OPPOSITE
22 SIDES OF THIS HIGHWAY, I-55?
23 A. YES, THEY'RE RIGHT ACROSS FROM EACH OTHER.
24 Q. MR. EVANS, CAN YOU PLEASE TELL ME WHEN THE BARNES & NOBLE
25 YOU REFERRED TO FIRST OPENED?
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1 A. I BELIEVE APRIL 1997.
2 Q. OKAY. AND THE BOOKS-A-MILLION THAT WE'VE REFERRED TO, DO
3 YOU KNOW WHEN THAT OPENED?
4 A. I BELIEVE NOVEMBER OF '92.
5 Q. OKAY. AND THE WALDENBOOKS THAT YOU REFERRED TO, DO YOU KNOW
6 WHEN THAT OPENED?
7 A. I CAN'T REMEMBER THE MONTH, BUT AROUND 1978.
8 Q. OKAY. AND THE B. DALTON THAT YOU REFERRED TO, DO YOU KNOW
9 WHEN THAT FIRST OPENED?
10 A. AROUND 1983.
11 Q. MR. EVANS, TURNING BACK IN TIME SPECIFICALLY TO, SAY, 1990,
12 WHO AT THAT TIME DID YOU CONSIDER TO BE YOUR PRIMARY
13 COMPETITORS?
14 A. IN 1990?
15 Q. YES.
16 A. I WOULD SAY THAT IN NORTH PARK MALL, WHICH IS NOT SHOWN ON
17 THIS MAP, WHICH IS WHERE THE B. DALTON IS, THERE WAS ALSO A
18 WALDENBOOKS STORE WHICH -- BEEN THERE APPROXIMATELY SEVEN YEARS,
19 AND I WAS VERY COMPETITIVE WITH THEM.
20 IN THE METRO CENTER MALL WHICH IS WHERE THE WALDENS
21 THAT IS STILL HERE IS LOCATED, THERE WAS ALSO A BOOKLAND STORE
22 AND A BOOKSTORE CALLED THE COLES (PHONETIC), I BELIEVE IS STILL
23 THERE.
24 Q. AND LOOKING FORWARD TO TODAY, WHO TODAY DO YOU CONSIDER TO
25 BE LEMURIA'S PRIMARY COMPETITORS?
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1 A. MY PRIMARY COMPETITORS?
2 Q. YES.
3 A. I WOULD SAY BARNES & NOBLE, B. DALTON, BOOKS-A-MILLION,

4 WALDEN.
5 Q. AND, AGAIN, LOOKING BACK TO 1990, AT THAT TIME, WHAT DID YOU
6 CONSIDER TO BE YOUR TRADING AREA?
7 IN OTHER WORDS, FROM APPROXIMATELY WHERE DID YOU DRAW
8 YOUR CUSTOMERS?
9 A. APPROXIMATELY A 25-MINUTE RADIUS FROM THE BOOKSTORE.
10 Q. AND WHAT ABOUT TODAY? WHAT DO YOU CONSIDER TO BE YOUR
11 TRADING AREA TODAY?
12 A. ABOUT THE SAME, EVEN -- EVEN THOUGH IT'S PROBABLY EXPANDED A
13 LITTLE BIT.
14 Q. MR. EVANS, I'D LIKE TO FOCUS A BIT ON LEMURIA'S SALES OVER
15 THE YEARS. AND FIRST OF ALL, LET ME ASK YOU, DOES LEMURIA
16 REGULARLY MAINTAIN RECORDS OF ITS SALES ON AN ANNUAL BASIS?
17 A. YES, WE DO.
18 Q. AND ARE THOSE REFLECTED IN FINANCIAL REPORTS AND TAX
19 RETURNS?
20 A. YES, THEY ARE.
21 Q. AND WHERE DOES THAT SALES DATA COME FROM?
22 A. THE SALES DATA COMES FROM OUR DAILY SALES SHEETS, WHICH ARE
23 FIGURED UP AT THE END OF EACH DAY ACCORDING TO THE NOTEBOOK ON A
24 MONTHLY BASIS, THEN ANALYZED AT THE END OF MONTH BY MY STAFF AND
25 MYSELF, THEN PASSED TO A BOOKKEEPER.

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1 THE BOOKKEEPER THEN ANALYZES IT, DETERMINES IF THE
2 SALES SHEETS AND MY CHECK STUBS (SIC). SHE THEN PREPARES
3 REPORTS FOR MY ACCOUNTANT. MY ACCOUNTANT THEN PUTS IT -- TAKES
4 IT AND THEN PUTS IT BACK INTO A FORM OF WHICH WE CAN FORM OUR
5 INCOME STATEMENTS AND PAY TAXES.
6 Q. OKAY. AND AS THE OWNER OF LEMURIA, DO YOU REGULARLY REVIEW
7 LEMURIA'S FINANCIAL STATEMENTS AND TAX RETURNS?
8 A. YES.
9 Q. I'D LIKE TO JUST BRIEFLY DIRECT YOUR ATTENTION TO A SERIES
10 OF EXHIBITS. THEY'RE NUMBERED 246 TO 254.
11 A. (REVIEWING DOCUMENTS.)
12 Q. AND, MR. EVANS, I'M JUST GOING TO ASK YOU SOME VERY GENERAL
13 QUESTIONS ABOUT THESE EXHIBITS.
14 A. (REVIEWING DOCUMENTS.)
15 OKAY.
16 Q. DO YOU RECOGNIZE THESE DOCUMENTS?
17 A. YES, I DO.
18 Q. OKAY. AND WHAT ARE THEY?
19 A. EXHIBIT 246 IS A COPY OF MY TAX RETURN.
20 Q. OKAY. AND WHAT ABOUT THE OTHER EXHIBITS, WHAT TYPE OF
21 DOCUMENTS ARE THEY?
22 A. (REVIEWING DOCUMENTS.)
23 THESE ARE FINANCIALS PREPARED BY MY ACCOUNTANT.
24 Q. OKAY. RATHER THAN GOING THROUGH THESE NUMEROUS FINANCIAL
25 STATEMENTS, IF I COULD NOW DIRECT YOU, MR. EVANS, AS WELL AS THE

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1 COURT, TO EXHIBIT 2614.
2 AND, ACTUALLY, THIS EXHIBIT, I SHOULD SAY, IS IN THE
3 FRONT FLAP OF THE BINDER. IT'S NOT IN ORDER. SO IT'S RIGHT IN
4 FRONT HERE. I REALIZE WE -- WE INCLUDED IT LATE.
5 OR I COULD PROVIDE A COPY, HAND UP A COPY. THAT'S
6 EASIER.
7 AND, MR. EVANS, YOUR COPY IS ALSO IN THE FRONT
8 BINDER -- FRONT FLAP, AS IS COUNSEL'S.
9 NOW, MR. EVANS, DO YOU RECOGNIZE THIS DOCUMENT,
10 EXHIBIT 2614?
11 A. IT LOOKS LIKE A CHART OF MY END-OF-YEAR SALES.
12 Q. OKAY. AND HAVE YOU HAD AN OPPORTUNITY TO REVIEW THIS CHART
13 AND CHECK ITS ACCURACY?
14 A. YES, I HAVE.
15 Q. OKAY. FROM THE OPENING OF YOUR STORE IN 1975 UNTIL 1990,
16 WAS THERE A GENERAL TREND IN YOUR ANNUAL SALES?
17 A. YES. WE HAD INCREASES EVERY YEAR, BUT ONE.
18 Q. AND IS THIS REFLECTED AT ALL IN EXHIBIT 2416?
19 A. (REVIEWING DOCUMENT.)
20 ASK THAT QUESTION AGAIN, PLEASE.
21 Q. SURE. IS THIS -- IS THAT TREND EXHIBITED AT ALL -- AND I
22 REALIZE IT DOESN'T INCLUDE ALL THE YEARS FROM 1975 THROUGH '90,

23 BUT IS THIS TREND REFLECTED AT ALL IN THIS EXHIBIT?
24 A. YES, 1989 AND 1990.
25 Q. OKAY. SO FROM 1990 -- 1989 TO 1990, YOUR SALES WENT UP FROM
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1 958,000?
2 A. YES.
3 Q. TO 317?
4 A. YES, TO 1,222,000, YES.
5 Q. OKAY. NOW, WHAT HAPPENED IN THE EARLY 1990S?
6 A. IN THE EARLY 1990S, WE WERE EXPERIENCING TREMENDOUS GROWTH.
7 Q. OKAY.
8 A. AND THEN BOOKS-A-MILLION OPENED UP FALL OF '92, AND OUR
9 BUSINESS HELD ITS OWN FOR A LITTLE WHILE AND THEN BEGAN TO GO
10 DOWN, AND WE PROCEEDED DOWN FOR THREE YEARS, FOUR YEARS.
11 Q. OKAY. AND IS THE DECLINE IN SALES THAT YOU'RE REFERRING TO,
12 IS THAT ILLUSTRATED BY THIS EXHIBIT, 2416 (SIC)?
13 A. YES, IT IS.
14 Q. OKAY. AND --
15 THE COURT: 2614, ISN'T IT.
16 MS. KESTENBAUM: 2614, YES, YOUR HONOR. THANK YOU.
17 Q. AND DID THERE COME A TIME WHEN YOUR SALES STARTED TO REBOUND
18 AFTER THIS DECLINE?
19 A. YES, THERE DID. MY SALES IN APPROXIMATELY OCTOBER OF 1996
20 BEGAN TO GROW EXCESSIVELY. I MEAN, JUST -- JUST TAKING OFF AND
21 GREW STEADILY THAT FAST FOR FIVE OR SIX MONTHS.
22 Q. OKAY. SO AFTER THESE YEARS OF DECLINE, TO WHAT DO YOU
23 ATTRIBUTE THIS START OF A -- OF A REBOUND IN I GUESS YOU SAID
24 1996?
25 A. BOOKS-A-MILLION HAD BASICALLY BEEN LOCATED IN MY MARKETPLACE
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1 FOUR YEARS, AND WE HAD A FOUR-YEAR CYCLE, AND WE HAD DONE, I
2 GUESS, SOME INTERNAL IMPROVEMENTS. WE HAD GONE ON COMPUTER. WE
3 HAD TRIED TO CHANGE THE WAY WE WERE DOING BUSINESS TO REACT TO
4 THE MARKETPLACE TO THE COMPETITION THAT WE WERE UNDER.
5 Q. OKAY.
6 A. AND I THINK IT HAD BEGUN TO WORK. SOME OF OUR CHANGES HAD
7 BEGUN TO -- SALES GROWTH.
8 Q. AND THEN WHAT HAPPENED IN APRIL OF 1997? DID THAT TREND
9 CONTINUE?
10 A. NO, BARNES & NOBLE OPENED UP.
11 Q. OKAY. AND WHAT IMPACT DID THE OPENING OF THE BARNES & NOBLE
12 HAVE ON LEMURIA?
13 A. IT HAD A SEVERE LOSS OF SALES.
14 Q. AND CAN YOU EXPLAIN HOW THAT LOSS IN SALES IS REFLECTED IN
15 EXHIBIT 2614?
16 A. YES, I CAN, I BELIEVE.
17 IT LOOKS TO ME THAT IN THE END OF YEAR, AUGUST 31ST
18 1997, SALES, THE FIRST SEVEN MONTHS OF THAT YEAR WE WERE
19 EXPERIENCING GROWTH THAT I JUST DISCUSSED, AND THE LAST FIVE
20 MONTHS OF THAT YEAR WHEN BARNES & NOBLE OPENED, WE WENT
21 BACKWARDS APPROXIMATELY IN ALL OUR GROWTH, AS YOU CAN SEE.
22 Q. OKAY.
23 A. AND THEN IN THE YEAR THAT ENDS IN 1998, WHICH IS MY FIRST
24 FULL YEAR THAT BARNES & NOBLE WAS OPENED AND I WAS GOING AGAINST
25 THEM MONTH-TO-MONTH FIGURES, MY BUSINESS DROPPED DRASTICALLY,
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1 APPROXIMATELY 160,000 IN SALES, 150,000.
2 Q. MR. EVANS, WHAT IS YOUR FISCAL YEAR? HOW DOES IT RUN?
3 A. IT RUNS FROM SEPTEMBER 1ST TO AUGUST 31ST.
4 Q. SO THEN SINCE BARNES & NOBLE OPENED IN APRIL OF 1997, THEN
5 THE FIGURES ASSOCIATED WITH THE FISCAL YEAR ENDED AUGUST 31ST,
6 1997, THEY REFLECT SALES BOTH BEFORE AND AFTER THE BARNES &
7 NOBLE OPENED?
8 A. SEVEN MONTHS BEFORE AND FIVE MONTHS AFTERWARDS.
9 Q. MR. EVANS, DO YOU KEEP TRACK OF ANY SALES DATA ON A MONTHLY
10 BASIS?
11 A. YES, I DO.
12 Q. OKAY. AND CAN YOU EXPLAIN WHAT INFORMATION YOU USE?
13 A. I TAKE -- ON A MONTHLY BASIS, AT THE END OF THE MONTH, I
14 TAKE OUR DAILY SALES SHEETS. I TOTAL UP THE MONTHLY SALES THAT

15 I HAVE. I CHART THAT IN MY OWN LITTLE WORKSHEET THAT I KEEP.
16 I THEN PASS THOSE SALES SHEETS TO MY BOOKKEEPER. MY
17 BOOKKEEPER ANALYZES THOSE, TAKES MY EXPENSES, ANALYZES THOSE,
18 TRANSFERS THEM TO MY ACCOUNTANT, AND MY ACCOUNTANT DOES MY
19 ACCOUNTING FOR ME.
20 Q. OKAY. MR. EVANS, BEFORE I DIRECT YOUR AND THE COURT'S
21 ATTENTION TO ANOTHER SUMMARY EXHIBIT, I'D LIKE TO QUICKLY TURN
22 YOUR ATTENTION TO TWO EXHIBITS, 257 AND 2412.
23 A. (REVIEWING DOCUMENTS.)
24 OKAY.
25 Q. OKAY. AND DO YOU RECOGNIZE THESE DOCUMENTS?
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1 A. YES, I DO.
2 Q. OKAY. AND CAN YOU PLEASE DESCRIBE WHAT THEY ARE?
3 A. THESE ARE MY WORKSHEETS THAT I TAKE FROM MY MONTHLY CHARTS,
4 AND THIS IS WHERE I RECORD MONTHLY SALES DECLINE OR INCREASE AND
5 TRY TO KEEP UP WITH HOW MY BUSINESS IS ACTUALLY DOING ON A DAILY
6 BASIS AND A MONTHLY BASIS.
7 Q. OKAY.
8 A. ANALYZE MY MONTHLY SALES ALSO IN MAKING THIS CHART. I MEAN,
9 MY DAILY SALES. EXCUSE ME.
10 Q. IF I COULD NOW DIRECT YOUR ATTENTION TO EXHIBIT 2613.
11 YOUR HONOR, I APOLOGIZE FOR ALL THE MOVING AROUND
12 WITHIN THE BINDER.
13 THE COURT: THAT'S ALL RIGHT. I'M GOING TO MAKE SOME
14 SUGGESTIONS AT THE END OF THE SESSION. I THOUGHT WE'D GOTTEN
15 RID OF.
16 WHAT'S THE NEXT ONE?
17 MS. KESTENBAUM: THIS IS 2613, AND IT SHOULD BE --
18 THE COURT: I HAVE 2613.
19 MS. KESTENBAUM: DO YOU HAVE IT? OKAY.
20 Q. AND, MR. EVANS, DO YOU RECOGNIZE THIS DOCUMENT?
21 A. YES, I DO.
22 Q. AND COULD YOU PLEASE DESCRIBE TO THE COURT WHAT IT IS.
23 MR. GARCIA: YOUR HONOR, WE INTERPOSED AN
24 OBJECTION -- WAS IT TO THAT ONE? OR -- I'M SORRY. I APOLOGIZE,
25 YOUR HONOR.
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1 THE COURT: ALL RIGHT.
2 MR. GARCIA: APOLOGIZE TO COUNSEL.
3 MS. KESTENBAUM: OKAY. AND, COUNSEL, YOU HAVE A
4 COPY; IS THAT CORRECT?
5 MR. GARCIA: I DO.
6 THE COURT: GO AHEAD.
7 BY MS. KESTENBAUM:
8 Q. MR. EVANS, IF YOU COULD JUST DESCRIBE TO THE COURT WHAT THIS
9 CHART IS.
10 A. THIS IS A MONTHLY CHART TAKEN FROM THE PREVIOUS EXHIBITS
11 THAT YOU JUST HAD FROM MY HANDWRITING AND TRIED TO INTERPRET.
12 BUT THIS IS MATERIAL TAKEN FROM THAT CHART TO --
13 MR. GARCIA: YOUR HONOR, I WOULD LIKE TO NOTE
14 OBJECTION.
15 I HAD WROTE YOU A LETTER IF ABOUT THIS YESTERDAY.
16 WE GOT THIS DOCUMENT FOR THE FIRST TIME ON EASTER
17 SUNDAY. IT'S A DEMONSTRATIVE, BUT IT HAD NOT BEEN PREVIOUSLY
18 EXCHANGED PURSUANT TO THE COURT'S PRETRIAL ORDER AND WAS NOT
19 EXCHANGED ON APRIL 3RD WHEN WE EXCHANGED DEMONSTRATIVES, AND I
20 WROTE COUNSEL A LETTER YESTERDAY OBJECTING TO ITS USE.
21 THE COURT: IS THAT CORRECT, MR. --
22 MS. KESTENBAUM: I HAD NOT ACTUALLY SEEN THE LETTER,
23 THE RESPONSE FROM MR. GARCIA. IT IS TRUE, HOWEVER, THAT THIS IS
24 A DEMONSTRATIVE WHICH WE FIRST PREPARED THIS WEEKEND IN ORDER TO
25 SIMPLIFY THE INFORMATION IN THE HANDWRITTEN EXHIBITS WHICH WE
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1 HAD DESIGNATED.
2 THE COURT: YEAH, THAT'S -- THAT'S PLAIN NOT FAIR. I
3 LOOKED AT THOSE -- AT THE CHARTS, THE OTHER TWO EXHIBITS, 257
4 AND 2412, AND THEY'RE WRITTEN OUT IN SOMEBODY'S HANDWRITING, AND
5 IT'S HARD TO DECIPHER. AND THEN TO HIT THEM RIGHT HERE, THE DAY
6 AFTER YOU GIVE THEM THIS SUMMARY IS NOT ONLY UNFAIR, IT'S

7 IMPROPER AND INAPPROPRIATE. AND THE OBJECTION WAS TO STRIKE
8 THE -- WAS THAT IT?
9 MR. GARCIA: SO MOVED, YOUR HONOR.
10 THE COURT: THE MOTION TO STRIKE IS GRANTED.
11 MS. KESTENBAUM: OKAY. I APOLOGIZE, YOUR HONOR.
12 AGAIN, IF I HAD -- HAD COME TO REALIZE THAT THIS
13 CHART WOULD BE HELPFUL PREVIOUSLY, I WOULD HAVE PROVIDED IT
14 EARLIER TO THE COURT AND TO COUNSEL.
15 THE COURT: KNOWN IN SALINAS-RODEO AS BLINDSIDING.
16 MS. KESTENBAUM: I'LL MOVE ON, YOUR HONOR.
17 Q. JUST TO BE CLEAR, AGAIN, CAN YOU -- CAN YOU TELL ME WHAT --
18 WHAT TREND -- WHAT TREND TOOK PLACE WITH YOUR SALES AFTER THE
19 OPENING OF THE BARNES & NOBLE IN APRIL OF 1997?
20 A. YES, MY SALES WENT DOWN.
21 Q. OKAY.
22 A. AND THEY WENT DOWN CONSISTENTLY.
23 Q. OKAY. AND DID THERE COME A TIME WHEN YOUR SALES -- WHERE
24 THAT TREND DISCONTINUED?
25 A. YES, THEY HAVE.

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1 Q. OKAY. COULD YOU PLEASE EXPLAIN?
2 A. YES, I THINK AFTER A PERIOD OF FOUR YEARS NOW WITH BARNES &
3 NOBLE IN MY MARKETPLACE, THAT I HAVE BEEN ABLE TO ADJUST AND TRY
4 TO COME UP WITH NEW WAYS TO DO BUSINESS, NEW WAYS TO CHANGE MY
5 STORE, MY LEASEHOLD IMPROVEMENTS. I'VE ENLARGED MY STAFF. I'VE
6 ENLARGED MY HOURS. I'VE ENLARGED MY INVENTORY. I ENLARGED MY
7 STORE.
8 I CREATED MUCH MORE ADVERTISING MARKETING PROGRAM.
9 TRADEMARK. TRIED TO DO MANY THINGS TO MAKE MY IMAGE IN THE
10 MARKETING PLACE AND BRING MY BUSINESS BACK.
11 CONSEQUENTLY, I THINK IT'S COMING BACK. IT IS NOT
12 BACK TO WHERE IT WAS.
13 Q. NOW, I BELIEVE YOU MENTIONED FIRST EDITION BOOKS?
14 A. YES, I HAVE ALSO EXPANDED MY FIRST EDITIONS BUSINESS, WHICH
15 IS A -- ANOTHER SECTION IN MY STORE WHICH I HAVE BEEN WORKING
16 REAL HARD ON IN THE LAST FOUR YEARS.
17 IT'S A TYPE OF -- IT'S A LITTLE BIT SEPARATE OF A --
18 IT'S NOT PART OF RETAIL DISTRIBUTION THAT WE BUY FROM
19 PUBLISHERS, BUT IT ALLOWS ME TO EXPAND MY PROFIT MARGIN AND TO
20 INCREASE HIGHER-END SALES. IT'S BEEN BASICALLY ACHIEVED THROUGH
21 THE GROWTH OF THE INTERNET AND BEING ABLE TO SELL FIRST EDITION
22 BOOKS ON LINE.
23 Q. MR. EVANS, I'D LIKE TO MOVE ON TO THE SUBJECT OF LEMURIA'S
24 PURCHASE TERMS FROM PUBLISHERS AND WHOLESALERS. AND ARE YOU
25 FAMILIAR WITH THE TERMS THAT LEMURIA PAYS PUBLISHERS AND

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1 WHOLESALERS FOR BOOKS?
2 A. YES, I AM.
3 Q. OKAY. AND CAN YOU EXPLAIN WHAT YOUR INVOLVEMENT IS WITH --
4 WITH THE PURCHASE OF BOOKS?
5 A. EXCUSE ME?
6 Q. WHAT'S YOUR ROLE WITH RESPECT TO THE PURCHASE OF BOOKS AT
7 LEMURIA?
8 A. I'M HEAD BUYER AND HEAD ACCOUNTS PAYABLE AND BASICALLY WORK
9 WITH ALL THE SALESPEOPLE OR SUPERVISE THEIR WORK. SO I'M --
10 BASICALLY I'M IN CHARGE.
11 Q. HAS THAT BEEN THE CASE THROUGHOUT -- SINCE 1975?
12 A. YES.
13 Q. ABOUT HOW MUCH TIME EACH WEEK DO YOU SPEND ON PLACING ORDERS
14 FOR BOOKS?
15 A. HOW MUCH TIME EACH WEEK? ON A DAILY BASIS, THREE OR FOUR
16 HOURS A DAY PROBABLY.
17 Q. OKAY. AND CAN YOU JUST GENERALLY DESCRIBE THE ORDERING
18 PROCESS.
19 A. WE ANALYZE THE DAILY SALES EVERY MORNING OF WHAT WE SOLD THE
20 DAY BEFORE AND WE DECIDE WHEN AND IF WE'RE GOING TO BUY THAT
21 BOOK AND HOW WE'RE GOING TO BUY IT AND WHICH VENDOR WE'RE GOING
22 TO BUY IT FROM.
23 WE THEN PUT IT IN THE VENDOR FILE TO BE ORDERED. AND
24 WE THEN CONSIDER, WHEN WE ANALYZE THE VENDOR, THE AMOUNTS THAT
25 ARE TO BE ORDERED IN THE VENDOR, WHETHER WE NEED TO DO AN ORDER

1 TO THAT VENDOR OR NOT.
2 Q. IN DECIDING WHAT BOOKS TO ORDER AND WHAT QUANTITIES, DO YOU
3 CONSIDER WHETHER THERE'S, FOR EXAMPLE, A STOCK OFFER CURRENTLY
4 AVAILABLE FROM A PUBLISHER?
5 A. YES. VERY MUCH SO. THAT'S WHY YOU PUT YOUR BOOKS INTO A
6 VENDOR AND YOU CAN EVEN CREATE A BACK ORDER VENDOR THAT STORES
7 YOUR BOOKS.
8 WE -- IN OUR CASE, WE WOULD HAVE A RANDOM HOUSE
9 VENDOR AND A RANDOM HOUSE B, WHICH IS WHAT WE WOULD STORE OUR
10 BACK STOCKS WITH. SO THAT WHEN AN OPPORTUNITY CAME TO US TO
11 HAVE A BACK STOCK OFFER, WE WOULD BE ABLE TO TAKE ADVANTAGE OF
12 THAT IN THE TIME FRAME THAT'S ALLOWED.
13 Q. AND IN THE PROCESS OF ORDERING THE BOOKS, DO YOU HAVE
14 OCCASION TO CHECK THE TERMS OF SALES OF OFFERED BY THE
15 PUBLISHERS?
16 A. WE DO.
17 Q. AND WHERE DO YOU OBTAIN THAT INFORMATION FROM?
18 A. THE RED BOOK, ABA HANDBOOK -- BUYERS HANDBOOK. WE ALSO
19 TRANSFERRED ALL THE INFORMATION FROM THE HANDBOOK INTO OUR
20 VENDOR FILES WHICH WE USE ON A CONSISTENT BASIS SO THAT ON A
21 DAILY BASIS, WE CAN JUST CLICK INTO THE VENDOR FILE AND SEE
22 EXACTLY WHAT THE PUBLISHERS TERMS ARE FOR US TO BUY BOOKS AT.
23 Q. AND THE VENDOR FILES THAT YOU MENTIONED, ARE THOSE PRESENTLY
24 ON YOUR COMPUTER SYSTEM?
25 A. YES, THEY ARE.

1 Q. AND YOU MENTIONED THAT YOU HANDLE THE ACCOUNTS PAYABLE --
2 A. THAT I DO.
3 Q. -- FOR LEMURIA.
4 IN THE COURSE OF PAYING LEMURIA'S BILLS, DO YOU HAVE
5 OCCASION TO CHECK AND MAKE SURE THAT LEMURIA IS BEING CHARGED
6 THE CORRECT DISCOUNT PERCENTAGE?
7 A. YES, I DO THAT CONSTANTLY.
8 Q. OKAY. AND HOW DO YOU DO THAT?
9 A. WHEN THE BOOK -- EXCUSE ME -- WHEN THE BOOK COMES IN THE
10 BACK ROOM OR THE RECEIVING ROOM, IT COMES IN WITH A INVOICE OR A
11 PACKING LIST, HARD COPY OF WHICH WE MATCH THE INVOICE AND THE
12 HARD COPY WITH THE ACTUAL BOOKS THAT ARE IN THE BOX.
13 THE -- IF THERE'S A QUESTION TO THE PO AND THE
14 DISCOUNT, WE HAVE A HARD COPY OF THE PO, AND IT HAS BEEN
15 CHECKED.
16 THE COMPUTER PRINTS OUT THE DISCOUNT THAT IT SHOULD
17 BE ON THE PO BECAUSE IT'S AUTOMATICALLY -- HAS THAT INFORMATION
18 IN THERE WITH THE VENDOR, SO IT WOULD TELL US WHAT OUR DISCOUNT
19 SHOULD BE.
20 THE PERSON CHECKING IN THE BOOKS THEN GOES TO THE
21 COMPUTER AND RECEIVES THE BOOKS FROM THE HARD COPY INTO THE
22 COMPUTER INVENTORY SYSTEM. IF THERE IS A PROBLEM ON THE INVOICE
23 AT THAT POINT, THEY NOTE IT ON THE PAPER COPY AND DEAL WITH IT
24 IN THE -- AT THAT POINT IN TIME.

25 Q. OKAY. HOW ARE LEMURIA'S TERMS OF SALE WITH PUBLISHERS AND
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1 WHOLESALERS SET?
2 A. BY THE PUBLISHER.
3 Q. OKAY. AND ARE THOSE -- ARE THOSE TERMS BY PUBLISHER, ARE
4 THEY -- ARE THEY PRINTED ANYWHERE?
5 A. OH, YES. THE TERMS OF SALE ARE IN THE RED BOOK. AND THAT'S
6 WHAT WE GO TO TO PURCHASE YOUR BOOKS.
7 Q. AND ARE THEY -- ARE THEY PRINTED ANYWHERE ELSE?
8 A. NO, NOT THAT I KNOW OF.
9 Q. DO YOU HAVE OCCASION TO READ TRADE JOURNALS, LIKE PUBLISHERS
10 WEEKLY?
11 A. WELL, THERE ARE CHANGES IN THE TERMS OF SALES THAT APPEAR IN
12 THE TRADE JOURNALS. AND SOMETIMES WHEN THEY DO MAKE CHANGES,
13 THEY WILL NOTIFY ME THERE. THE PUBLISHERS WEEKLY ALSO HAS
14 CHANGES.
15 Q. NOW, WE'VE HEARD A LOT OF TESTIMONY ABOUT THE RED BOOK OR
16 THE ABA BOOK BUYERS HANDBOOK, BUT COULD YOU JUST VERY BRIEFLY
17 DESCRIBE YOUR UNDERSTANDING OF WHAT IT IS.

18 A. THE RED BOOK IS A TOOL THAT I HAVE BEEN USING FOR 25 YEARS
19 TO DICTATE MY TERMS WITH THE PUBLISHER, HOW I GO ABOUT DOING
20 BUSINESS EVERY -- BASICALLY EVERY MANNER OF BUSINESS THAT I HAVE
21 WITH THE PUBLISHER IS -- COME FROM USING THE RECORD AND GOING
22 FORWARD FROM THERE.
23 Q. APPROXIMATELY HOW OFTEN DO YOU HAVE OCCASION TO TURN TO THE
24 RED BOOK?
25 A. ON A DAILY BASIS OR EVEN GO TO MY VENDOR FILE WHICH HAS
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1 INFORMATION IN THERE.
2 Q. HAVE YOU EVER HAD OCCASION TO CALL A PUBLISHER OR IN THE
3 COURSE OF A MEETING WITH A PUBLISHER'S REPRESENTATIVE AND HAD A
4 DISCUSSION ABOUT WHAT TERMS WERE AVAILABLE TO YOUR STORE?
5 A. YES, I THINK IF YOU HAVE ANY QUESTIONS, YOU SHOULD CALL THE
6 PUBLISHER AND ASK THEM. AND I HAVE DONE THAT.
7 Q. AND WHAT ABOUT WHEN YOU HAVE SALES CALLS BY PUBLISHERS'
8 REPRESENTATIVES? ARE THERE OCCASIONS WHEN YOU DISCUSS THE
9 PUBLISHER'S TERMS OF SALE AVAILABLE TO YOU?
10 A. YES, I WILL ASK THEM IF THEY'VE MADE CHANGES, AND I WILL ASK
11 THEM IF THEY HAVE A STOCK OFFER OR ANYTHING THAT I NEED TO KNOW
12 BEFORE I GO INTO MY BUSINESS CALL AS TO WHAT WOULD AFFECT MY
13 BUYING SO I COULD BE THE BEST BUYER I COULD BE.
14 Q. IN THE COURSE OF YOUR COMMUNICATIONS WITH PUBLISHERS AND
15 THEIR REPRESENTATIVES, HAVE YOU EVER LEARNED THAT THE DISCOUNT
16 TERMS THAT WERE BEING MADE AVAILABLE TO LEMURIA VARIED OR
17 DIFFERED FROM THOSE CONTAINED IN THE RED BOOK?
18 A. NO.
19 Q. AND BASED ON YOUR EXPERIENCE AT THE STORE AND AS THE HEAD
20 BUYER SINCE IT OPENED, CAN YOU TELL ME APPROXIMATELY WHAT
21 PERCENTAGE OF LEMURIA'S PURCHASES ARE MADE PURSUANT TO THE
22 PUBLISHERS' STANDARD TERMS CONTAINED IN THE RED BOOK?
23 A. APPROXIMATELY 85 AND 90 PERCENT. THE OTHER 10 PERCENT IN
24 STOCK OFFERS ARE SALESMAN'S SPECIALS THAT ARE RELEASED THROUGH
25 THE COMPANY.
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1 Q. OKAY. FOR THAT OTHER 10 TO 15 PERCENT WHICH YOU SAY CAN BE
2 STOCK OFFERS, HOW DO YOU KNOW -- LEARN ABOUT THE TERMS OF A
3 STOCK OFFER?
4 A. GENERALLY COMES IN THREE DIFFERENT WAYS OR SO. THE FIRST
5 WOULD BE THE -- IT WOULD BE A PRINTED MATERIAL SENT OUT BY THE
6 COMPANY THROUGH A FAX OR LETTER, MAYBE E-MAIL TODAY.
7 THE SECOND WOULD BE A -- A PRINTING OF THE ABA
8 NEWswire OR PUBLISHERS WEEKLY. AND THE THIRD WOULD BE SPENT --
9 COMPANIES STANDARD RELEASE ANNOUNCEMENT THAT THE SALESMAN WOULD
10 WALK IN AND HAND ME AND SAY, THIS IS THE STOCK OFFER, AND THIS
11 PUBLISHER HAS ANNOUNCED THAT YOU HAVE A SPECIFIC PERIOD OF TIME
12 TO FULFILL IT. USUALLY.
13 Q. WHEN YOU DO PURCHASE BOOKS PURSUANT TO A STOCK OFFER, DOES
14 THE INVOICE THAT YOU RECEIVE SPECIFICALLY INDICATE THAT IT'S A
15 STOCK OFFER?
16 A. NO, IT DOES NOT.
17 Q. SO IF YOU'RE LOOKING AT AN INVOICE AS A GENERAL MATTER, HOW,
18 IF AT ALL, CAN YOU TELL WHETHER YOU BOUGHT THE BOOKS UNDER STOCK
19 OFFER OR UNDER THE USUAL TERMS?
20 A. GENERALLY THE -- THE FIRST THING WOULD BE THE DISCOUNT, AND
21 I WOULD GO FROM THERE.
22 NOW, IF I WANTED TO KNOW FOR SURE, I COULD GO BACK TO
23 MY PACKING LIST AND MY PO. NOT THE INVOICE.
24 Q. HAS LEMURIA EVER RECEIVED A STOCK OFFER THAT WAS NOT
25 GENERALLY AVAILABLE TO OTHER BOOKSELLERS?
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1 A. NO. I WOULD THINK THAT IF I'M RECEIVING THEM THROUGH THE
2 COMPANY ON THE COMPANY'S PRINTED MATERIAL, THEN IT WOULD BE
3 AVAILABLE TO ALL BOOKSELLERS. OR IF IT WAS IN A TRADE MAGAZINE
4 AND IT WAS BEING ANNOUNCED, I WOULD HAVE TO THINK IT'S AVAILABLE
5 TO EVERYONE.
6 Q. IF YOU WANTED TO KNOW WHETHER A PARTICULAR PURCHASE OF A
7 BOOK ON A PARTICULAR DATE WAS A STOCK OFFER, WHAT DOCUMENTS
8 WOULD YOU CONSULT? AND YOU JUST MENTIONED THE PACKING LIST, FOR
9 INSTANCE.

10 A. A PARTICULAR BOOK?
11 Q. YES.
12 A. A PARTICULAR BOOK ON A PARTICULAR DAY.
13 Q. YES. SO WE'RE TALKING ABOUT A VERY SPECIFIC PURCHASE.
14 A. WHEN WE DO A STOCK OFFER, WE WILL CREATE THE PO IN OUR
15 COMPUTER. IT WILL THEN PRINT UP THE PURCHASE ORDER OR EITHER
16 SEND IT ELECTRONICALLY. IN EITHER CASE, WE WOULD GET THE HARD
17 COPY TO THE SALESMAN, OR WE WOULD SEND IT ELECTRONICALLY.
18 WE WOULD THEN TAKE OUR COPY OF THE PO, AND WE WOULD
19 STAPLE THE PAGE OUT OF THE PW OR THE NOTICE OUT OF THE NEWSWIRE
20 OR EITHER THE PUBLISHER'S ANNOUNCEMENT TO THE TRADE. AND I
21 WOULD STAPLE THAT TO MY PO SO THAT IF THERE WAS AN ERROR, I
22 WOULD HAVE IT IN HAND WHEN THE INVOICE CAME IN.
23 Q. SO THE DOCUMENTS THAT YOU'RE REFERRING TO, THOSE, THEN, ARE
24 THE DOCUMENTS THAT YOU WOULD PREFER REFER TO IF FOR SOME REASON
25 YOU HAD WANTED TO KNOW WHETHER A PARTICULAR PURCHASE WAS MADE

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1 UNDER A STOCK OFFER?
2 A. THAT'S CORRECT.
3 Q. NOW, WHAT ABOUT FOR THE 85 TO 90 PERCENT OF LEMURIA'S
4 PURCHASES, THE DAY-IN-DAY-OUT PURCHASES THAT ARE NOT PURSUANT TO
5 STOCK OFFERS? IF YOU WANTED TO KNOW THOSE TERMS, WHERE WOULD
6 YOU LOOK?
7 A. I WOULD GO DIRECTLY TO THE TRADE -- THE RED BOOK OR THE
8 TRADE -- BOOK BUYERS HANDBOOK.
9 Q. ANOTHER QUESTION ABOUT INVOICES, AND I'M NOT HERE
10 NECESSARILY REFERRING TO STOCK OFFERS. IT COULD BE FOR STOCK
11 OFFERS OR NON-STOCK OFFERS.
12 DOES THE INVOICE ITSELF ALWAYS REFLECT THE NUMBER OF
13 BOOKS OR UNITS THAT YOU ORDER FROM THE PUBLISHER?
14 A. NO, IT DOES NOT.
15 Q. OKAY. CAN YOU EXPLAIN WHY NOT?
16 A. BECAUSE MANY TIMES BOOKS ARE BACK ORDERED OR MANY TIMES
17 BOOKS ARE CANCELED AND BACK-ORDERED.
18 Q. OKAY.
19 A. CANCELED FROM BEING BACK-ORDERED AND NOT BACK-ORDERED.
20 Q. OKAY.
21 A. AND BOTH OF THOSE BOOKS WOULD QUALIFY AS PART OF YOUR
22 ORDERING QUANTITY.
23 Q. OKAY. SO WHEN YOU PLACE ONE ORDER, THEN, BECAUSE OF
24 BACKORDERS, DOES THAT ORDER END UP BEING REFLECTED SOMETIMES ON
25 MULTIPLE INVOICES?

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1 A. YES, IT DOES. ESPECIALLY NEW TITLE BY -- WHEN THE BOOKS
2 THAT YOU MAYBE ORDER WILL COME OUT OVER A FIVE- OR SIX-MONTH
3 PERIOD.
4 THE COURT: I THINK WE CAN STOP FOR THE DAY.
5 WHEN WE FIRST GOT STARTED, I WAS REALLY PLEASED AND
6 VERY PROUD OF THE PROFESSION, AS I OFTEN AM OR USUALLY AM
7 BECAUSE WE DEVELOPED WHAT, TO ME, WAS A -- THE FIRST SPACESHIP
8 GOING TO THE MOON.
9 WE HAD A GREAT SYSTEM OF DAILY MEMO, AND --
10 ACCOMPANIED BY THAT IS GOING TO BE A BINDER CONTAINING THE
11 EXHIBITS TO BE USED DURING THE SESSION. AND IT WORKED VERY WELL
12 FOR A COUPLE OF DAYS.
13 AND I'M EXTREMELY SYMPATHETIC TO THE DIFFICULTIES
14 THAT COUNSEL HAVE IN MARSHALING AND ORGANIZING THE NUMEROUS
15 EXHIBITS. AND I GREATLY APPRECIATE IT. AND I CAN UNDERSTAND
16 WHY IN A BOOK LIKE THIS, EXHIBIT 26 -- 2516 DOESN'T APPEAR, AND
17 I DON'T UNDERSTAND HOW WELL YOU ALL DO IT. IT'S JUST GREAT,
18 EXCEPT, AS I SAID, FOR HANDLING.
19 AND I'D LIKE TO GO BACK TO THE SYSTEM THAT YOU
20 INVENTED AT THE START, WHICH I HAVE EXPLAINED TO MY COLLEAGUES
21 IS A VERY GOOD SYSTEM. AND THAT'S WHEN YOU GET -- WHEN YOU'VE
22 GOT THE BEST LAWYERS, THEY KNOW HOW TO DO THINGS RIGHT.
23 SO I WANT TO GET BACK TO YOUR SYSTEM, INSTEAD OF US
24 WASTING TIME PAWING THROUGH THE BINDERS. THAT WAS ALL GOING TO
25 BE DONE BY YOU IN YOUR LAW OFFICES. AND MAYBE I'M BEING --

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1 ASKING FOR -- I THINK I WAS ASKING FOR THE IMPOSSIBLE, EXCEPT

2 YOU DID IT. AND YOU THOUGHT ABOUT IT. AND I THINK IT'S GREAT.
3 I TELL MY COLLEAGUES HERE TO CHANGE THEIR SPECIAL
4 ORDERS AND REQUIRE THE -- LIKE ALL THE BOOKSELLERS INVENTION AND
5 GOT RID OF ALL THESE BIG BINDERS.
6 SO MAYBE YOU CAN TAKE ANOTHER CRACK AT IT. AND WITH
7 THAT, WE'LL BE ADJOURNED UNTIL 9:00 O'CLOCK TOMORROW MORNING.
8 THE CLERK: ALL RISE.

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