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In the matter of: :
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COMPULSORY LICENSE FOR MAKING :
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AND DISTRIBUTING PHONORECORDS; : CRT Docket No. 80-2
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ROYALTY ADJUSTMENT PROCEEDING :
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(MECHANICAL) :
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2100 K Street, N.W.
Room 610
Washington, D.C.

Thursday, July 3, 1980

The hearing in the above-entitled matter commenced
at 10:05 a.m., pursuant to notice.

BEFORE:

MARY LOU BURG, Chairman
THOMAS C. BRENNAN, Commissioner
DOUGLAS E. COULTER, Commissioner
CLARENCE L. JAMES, JR., Commissioner
FRANCES GARCIA, Commissioner

1
2 APPEARANCES:

3 ALVIN DEUTSCH, Attorney-at-Law
4 FREDERICK GREENMAN, Attorney-at-Law
5 Counsel for AGAC

6 MORRIS B. ABRAM, Attorney-at-Law
7 RICHARD M. ZUCKERMAN, Attorney-at-Law
8 Counsel for NMPA

9 JAMES F. FITZPATRICK, Attorney-at-Law
10 CARY H. SHERMAN, Attorney-at-Law
11 STEPHANIE M. PHILLIPPS, Attorney-at-Law
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C O N T E N T S

WITNESS: Direct Cross Redirect Recross

RUSSELL SOLOMON

By Ms. Phillipps 6

By Mr. Zuckerman 55

By Ms. Phillipps 80

P R O C E E D I N G S

JWL-1
CHAIRMAN BURG: All right. Remember, we are going to try to handle this with dispatch today but I do understand we have another housekeeping problem. Mr. Greenman?

MR. DEUTSCH: It's not a problem, Madam Chairman.

CHAIRMAN BURG: Thank you.

MR. GREENMAN: In part of the discussion about our request for documents underlying the CRI study and artist contracts, the statement was made by somebody among counsel for the record industry that we had not made available the underlying documents of the Rinfret study, the questionnaires themselves.

And I said at the time -- yes, the questionnaire is filled out. And I said at the time we hadn't had a request up until that time. We'd be glad, however, if there were -- if there had been, to supply the questionnaires with the identifying names or data, if any, marked off.

In order to eliminate any question on this subject, we had a set of copies made and they are right here. And we make them available to all counsel and we offer them to the Tribunal at this point. We could not afford to make more than one set, I'm afraid, and as the Tribunal can see the one set is fairly bulky.

They are, for reference, divided into two boxes one of which is the responses from the AGAC regular members and is

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1 so indicated on the box. The other box is simply marked "others."
2 That's the associate members, the states, and the Nashville
3 group. They are here for counsel, for Doctor Kiser, for any-
4 body else who wants to see them. And we'll abide by the Tri-
5 bunal's wish as to whether they should -- we'll take them over
6 to your office over the weekend if the Tribunal wishes or leave
7 them here. I understand we're meeting again here next week.

8 Anyway, we'll take care of the freight on them.

9 CHAIRMAN BURG: How are you feeling today, Commission-
10 er Coulter?

11 (Laughter.)

12 CHAIRMAN BURG: We'll figure out something. Thank
13 you very much.

14 MR. DEUTSCH: Thank you.

15 MR. GREENMAN: Might I make one inquiry and ask if
16 we have a response to my last request for the aggregate
17 data? Mr. Fitzpatrick said he expected to have something today.

18 MS. PHILLIPPS: I believe Mr. Fitzpatrick will be
19 prepared to respond to you later on this morning, Mr. Greenman.

20 MR. DEUTSCH: Thank you.

21 CHAIRMAN BURG: Ms. Phillipps, you are ready with
22 your witness? Mr. Solomon, would you stand to be sworn, please?
23 Whereupon,

24 RUSSELL SOLOMON

25 was called as a witness, and after being first duly sworn, was

1 examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MS. PHILLIPPS:

4 Q Mr. Solomon, would you please state your name and
5 address for the record?

6 A My name is Russ Solomon and I am from Sacramento,
7 California. The official office is 900 Enterprise Drive,
8 Sacramento.

9 Q What is your occupation, Mr. Solomon?

10 A I'm the president of MTS, Incorporated, the operator
11 of Tower Records chain of retail record stores in the western
12 states: California, Washington, Nevada, Arizona, and Hawaii.

13 Q Can you tell us how many retail stores you have?

14 A Twenty-eight retail stores and then we also have a
15 one stop and we also have an export department.

16 Q Can you tell the Tribunal what a "one-stop" is?

17 A Well, a one-stop is a sub-distributor of phonograph
18 records where dealers and particularly juke box operators which
19 is our specialty can come to one place and buy all the various
20 lables rather than go to the many sources of lables, hence,
21 the name "one-stop."

22 Q Mr. Solomon, can you tell us how you first got into
23 the retail record business?

24 A Well, I've been in the record business since 1941
25 when my father and I decided to put a record department in our

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1 drug store -- excuse me, his drug store I should say more
2 properly--and went through a whole bunch of experiences through
3 the years. And I've operated essentially this present company,
4 MTS, Tower, since 1960.

5 CHAIRMAN BURG: Can you hear the witness back there?

6 (No response.)

7 BY MISS PHILLIPPS:

8 Q. Mr. Solomon, have you received any recognition for
9 your achievements as a retail businessman?

10 A. Well, I have received two awards from the National
11 Association of Record Merchandisers. That's the retail and mar-
12 keting organization of the record industry called "Merchandiser
13 of the Year Award" and I also received very recently to my
14 great pleasure an award called "The Spirit of Life" award but it
15 was really given by the Southern California Music Industry
16 Association.

17 MS. PHILLIPPS: Just for the record, Madam Chairman,
18 I would like to read a list of the criteria for the Narm Mer-
19 chandiser of the Year award. The following criteria determines
20 the award, recipient award: artist development and support of
21 new product, cooperation with manufacturers and distributors on
22 merchandising programs, communication with all levels of manu-
23 facturers and distributors, fiscal responsibility, merchandising
24 tie-ins with national TV shows, creative merchandising, train-
25 ing and quality of personnel, retail advertising, and in-store

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tie-ins and tour awareness and support.

BY MS. PHILLIPPS:

Q. Mr. Solomon, can you tell the Tribunal whether there are any special marketing techniques that Tower has employed to sell records successfully?

A. Well, we were in the forefront of mass merchandising and mass displays and self-service type of things way back. We were and are very active in the whole concept of developing large super stores, just giant stores with giant in-depth inventories and things of that nature along with a lot of displays and a lot of razzle-dazzle and the whole sort of a total ambience in a record store which has proved to be successful and quite interesting and quite a bit imitated recently.

Q. Is this different from the way records used to be sold?

A. Oh, yeah. Records used to be sold from behind the counter. They were actually stuck up in shelves behind the counter and the customer would come up to the counter and he would tell you what he wanted or she wanted and you'd pick it out and play it for them or let him see it and so on. So that the first breakthrough was self-service merchandising and then the second major breakthrough later on was the idea of really spreading it out like a big department store; and actually to create a store which was many stores within one.

Like you would have a classical store which we are

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1 doing now, incidentally. Our classical rooms are separate so
2 we have a separate sound environment. We have a jazz store, a
3 rock store, a country store and so on all under one roof. And
4 that's the development direction we take.

5 Q. Tower is obviously a very large retailer and it has
6 a number of stores and you are a very respected businessman in
7 this area. I wonder if you would comment on the health of the
8 retail record business today?

9 A. Well, right now I think the record business has a
10 temperature and should be lying down. It's really flat. The
11 super store is like us. We're doing okay. We're maintaining
12 volume. We may even be a tiny bit ahead although I'm convinced
13 that our unit sales are down.

14 But the rest of the industry seems to be really
15 still off from the doldrums of 1979. I guess if you have
16 examined the record industry figures comparing 1978 sales to
17 1979 sales, you will see they are down by a significant amount.
18 And they really haven't come back up dramatically in 1980,
19 rather.

20 The big dip in the overall industry as I perceive it
21 is not with the full line dealers because we have a tendency to
22 hold on to our customers. The serious record buyer gravitates to
23 the full-line store whereas the very casual record buyer, he
24 stops buying entirely, so the suffering seems to be going on
25 and the depression in the record industry seems to be going on

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1 in the thousands, perhaps tens of thousands of rack locations
2 in small dealers around the country. The rack locations, in
3 particular, because they haven't had gigantic hits that we
4 experienced in 1978, Saturday Night Fever and things like that,
5 are particularly depressed because -- well, first of all, they
6 are in areas where the traffic may be down, in the malls -- not
7 so much malls but discount houses, department stores, and
8 things like that; and, second, there isn't anything for them to
9 really get excited about, for the public to get excited about
10 when they look at a rack location.

11 There's not that many records so the serious buyer
12 is turned off and there's nothing for the casual buyer. And an
13 interesting development I just learned about is how deep this
14 space which is devoted by racks in various stores around the
15 country --

16 Q If I may interrupt for just one minute, Mr. Solomon.
17 Could you define for the Tribunal what you mean by "racks,"
18 "rack jobbers" so that we have an idea?

19 A A rack jobber is analagous to a bread company who is
20 assigned a space in a grocery store where the grocery store
21 chain will say, "Okay, this is the space for Blue Seal bread."
22 You can put -- Mr. Bread Company, you can put any bread you
23 want in there, any style of bread you want in there but you can
24 only fill up that much space." And maybe a milk company or a
25 dairy company is assigned so much space in the grocery store's

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1 freezer and the same thing happens. So the decision as to what
2 to put in is on the part of the milk company or the bread com-
3 pany and so on.

4 The rack jobber for the record business and many
5 other businesses is the same thing. They are given a certain
6 amount of floor space in which to put in a record department.
7 And they put the records in, physically in many cases, and take
8 out the records, make all the selection management decisions
9 for the store that they're in.

10 They mostly service people who can't service them-
11 selves in terms of they don't have the kind of talent to buy
12 the records properly and to price them and all the other
13 mechanical things that are necessary to operate a record
14 department within a store.

15 And they exist, their locations exist in department
16 stores, in discount houses, most principally in drug stores,
17 large drug stores, and various other kinds of businesses. Yeah.
18 That's what a rack jobber does.

19 Q. Now, you can continue with your comments about how
20 deep the rack jobber --

21 A. I might say that the rack jobber has to sell at a
22 cost that is -- because it's an additional element of profit
23 that has to be put in there between what the rack jobber buys
24 for and what the rack jobber sells for. So that pushes prices
25 up a little bit, too.

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But anyhow, the thing that I was trying to get to is in the rack jobber industry which has been a large chunk of the total business. In fact, at one time in the '60's it was as high as 80 percent of the total business. It has gone down and there are various questions as to whether it's 40 or 50 percent.

But you can see that when that part of the industry gets slightly depressed, why, you're going to have an effect on the major part of the record industry, the manufacturers, to be quite severe.

The thing that was interesting that has come about in order for these rack jobbers to maintain sales instead of getting the sales from their racks from the full-line merchandise, the new bright full-line merchandise, what they're doing is they're filling their shelves or their bins, if you will, with cut-outs, with budget merchandise and children's merchandise and things like that.

And those are playing a significant part of the volume that these stores are doing. So they don't reflect in the sales particularly of the main part of our industry.

Q. What is the significance of the fact that a large part of the rack jobber's business is done in the budget area, the children's area?

A. The significance is that that's what the public that is visiting these locations is buying.

Q. Mr. Solomon, have you observed any trends in the

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number of retail store openings, say, in the past several years?

A. Well, speaking for myself, we opened eight stores in 1979 and this year we have opened one and we did that only to close another. We decided we had one unsuccessful store in Lynnewood, Washington and decided to move it lock, stock, and barrel to Honolulu to a better possible location.

And our plans, at least, are not to open any for quite some time. I don't see any real active opening activities on the part of my competitors either. I just don't see it.

There's a little of the same thing going on with some of them, at least people I know about and that's, "We'll close one and open one, you know, shuffle around and end up with about the same number of stores."

Q. I would like to turn to a somewhat different subject right now. We have heard a lot of testimony in this proceeding about list price and actual price and wholesale price.

Mr. Solomon, can you tell us what is the purpose of list price?

A. Well, list price, first of all, is a fictitious price because no one sells at list price. But it serves two important purposes: one, it is the price from which you discount to arrive at a final selling price and then everyone discounts from that price and the prices that all of us sell to the public vary a little bit.

And, two, it is the price from which the wholesale

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cost price to us is determined.

Q. You mentioned discounting. Can you tell me when discounting really became widespread?

A. Well, discounting in records like in many other things started up in the '50's essentially. It was experimented with. The whole idea of discounting sort of is an outgrowth of the PX's, believe it or not, which grew into what we now know as discount houses. And certain types of businesses, notably the record business, started out seeing that if they did discount from what the published prices were and the traditional prices were, they could increase sales.

It really came into its own during the '60's and it is still that way today. And it is totally a way of life in the record industry.

Q. Do you believe that discounting has been instrumental in the growth of the record industry?

A. Well, absolutely, because it's -- again, you have to compare with other kinds of products. There is a charisma, if you will, or a something that will generate interest when people think they're getting a bargain and, in fact, they are getting a bargain is really the truth of it. It helps competition, it generally has spurred sales. We have grown dramatically in this period I'm talking about.

Q. Mr. Solomon, I would like to show you a chart which lists actual prices at which records are sold in various stores

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in the Washington, D.C. area.

This chart shows retail prices at ten different stores --

MR. ZUCKERMAN: Madam Chairman, before we proceed with this chart I object to its introduction and use. The footnote at the bottom of the page says, "Survey conducted April 12 and 15, 1980" if this was conducted in conjunction with the submission of economic studies that should have been submitted at that time.

MS. PHILLIPPS: Mr. Zuckerman, this was not submitted as a formal economic study. It is submitted as a chart to show actual retail selling prices and I believe that it has validity as that and the Tribunal can weigh it and determine its probative value as the Tribunal sees fit.

MR. DEUTSCH: Madam Chairman, one additional comment. It is my assumption that Miss Phillipps will tell us how the survey was conducted, by whom and the other relevant information that would normally attest to a survey, whether it was an independent examining organization or whether it was done by the law firm that she represents, is representing, or by the RIAA.

MS. PHILLIPPS: The survey was conducted by a paralegal employed by Arnold and Porter. It was a very simple survey in which we called these ten different retail stores which are indicated in the chart. We asked the stores for the

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actual selling prices of three different albums, listing at three different list prices.

One album is "Lazy Afternoon" by Barbara Streisand listing at \$5.98 and the second album is "The Long Run" by the Eagles listing at \$7.98 and the third album is "Tusk" by Fleetwood Mac listing at \$15.98.

And we determined the actual selling prices for each of these different albums by calling the record stores and recording the price that was told to us. And I have an affidavit by the paralegal attesting to the methodology by which she conducted this survey. And I would be glad to submit the affidavit as an exhibit and I would also like to mark the chart as an RIAA exhibit.

MR. DEUTSCH: May I ask who selected the albums for which the prices were secured?

MS. PHILLIPPS: The albums were selected at random. They were just selected for --

MR. DEUTSCH: By? By your paralegal?

MS. PHILLIPPS: No. The attorneys consulted with the paralegal and we just picked the albums at different list prices. There was no devious intention in picking them, just to show different list prices and actual selling prices at various list prices.

MR. SHERMAN: Mr. Deutsch, I was the one who selected them. I chose the three most famous ones that I could think of

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to make sure that the stores would be likely to have them in stock. I asked for one \$5.98, one \$7.98, and one double album.

CHAIRMAN BURG: Mr. Zuckerman, we'll overrule that objection. Please continue, Miss Phillipps.

MS. PHILLIPPS: I would like to mark the chart as RIAA Exhibit K.

(RIAA Exhibit K was marked for identification.)

BY MS. PHILLIPPS:

Q. Now, Mr. Solomon, I would like you to look down the first column of the chart for the "Lazy Afternoon" album by Barbara Streisand and can you tell me whether you see any actual selling prices at the level of the suggested list price of that album which is \$5.98?

A. No. They are all selling at a discounted price.

Q. I would like to direct your attention now to the next column which reflects the actual selling prices at the ten different stores for the Eagles album, "The Long Run," listing at \$7.98. Do you see any prices, actual selling prices at the level of the suggested list price?

A. Same thing. They're all selling at discounted prices.

Q. And similarly, would you look at the third column for the "Tusk" album and tell me whether you see any actual selling prices at the level of the suggested list price?

A. Same answer as before.

Q. Mr. Solomon, would you agree that this chart shows

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how widespread discounting is based on list price?

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A. Yes, it is. The only thing it shows me is that record prices are slightly higher around here than they are out in California.

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Q. Now, we have talked about list price and actual prices and the differences between those two. Mr. Solomon, can you now give us a definition of wholesale price?

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A. Well, there are a couple of major wholesale prices. There's the wholesale price that the manufacturer as far as the labels sell to their distributors whether the distributor is an independent distributor or a house-owned distributor. And then there's the wholesale price that the distributors or the distributing companies owned by the manufacturers will sell to their dealers.

And then there are variations within both of those. The ones that I'm most familiar with are the type of prices that they sell to the dealers.

MR. GREENMAN: Can we have the last word?

CHAIRMAN BURG: "Dealer."

THE WITNESS: Dealers which encompass rack jobbers, one stops, in other words, any customer of the distributing company.

BY MS. PHILLIPPS:

Q. Do wholesale prices within these two major levels differ according to the type of dealer?

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1 A. I'm not familiar with the wholesale price that the
2 lables or manufacturers sell to distributors. But I do believe
3 they differ at that level. But at the level that we are at,
4 the dealer level, the lowest official price to the rack jobbers --
5 chain retailers like ourselves pay a slightly higher price,
6 and the single location stores pay a higher price yet.

7 Then the single location stores or even chain stores
8 in some cases who buy from one-stops will pay possibly an even
9 higher price yet. There's a penny's difference but they are
10 higher.

11 Q. So there is really no one wholesale price?

12 A. No.

13 Q. Mr. Solomon, while we're on the subject of wholesale
14 prices, can you give us some idea of how wholesale prices have
15 changed since 1977 and I'm referring to the wholesale prices
16 which you buy at.

17 A. Well, we started paying \$3.84 in 1977 -- take a
18 \$7.98 record as a constant suggested list price by a manu-
19 facturer of \$7.98. Our cost in 1977 was about \$3.84. Now, bear
20 in mind that all these prices will vary in pennies from company
21 to company.

22 We might sell at \$3.84, if I recall right, and ABC
23 might have sold at \$3.79 and CBS might have sold at something
24 else. But \$3.84 is being a good norm. By 1978 the price had
25 raised to \$3.97 and by the last part of 1978 it was \$4.10

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during that year.

By 1979 it had gone up again to \$4.21 bearing in mind these variations of pennies that are always going to exist.

And just recently, in fact, in the case of a couple of companies literally yesterday or the day before, they went to \$4.33.

Q. Mr. Solomon, can you now give us some idea of what consumer prices were that your stores charged during this same time period from 1977 to 1980?

A. Well, I should explain first that Tower has a three-price concept of merchandising which is another merchandising innovation which has become pretty standard around.

We have what we call, first of all, is a bin price which is all the catalogue items that are in the stocking bins throughout the store and in our case that could be 1000 bins actually or more.

The next is what we call the stack price which is just our name for two things: one, just records that we have on tables or palettes that are stacked up, you know, piles of them. And also what we really are talking about are those particular records we sell at a price that is an unadvertised special lower than the bin price.

And our third price is called the media price which is the price that we use for advertising on radio or television

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or newspapers.

So the same \$7.98 record is going to sell for three different prices at various times.

COMMISSIONER GARCIA: Your stack records, are those current hits?

THE WITNESS: Oh, yes, current hits and records that are -- anything you'd carry in quantity actually. So they would be maybe an item that is a few months old or even in the case of a Beatles item that may be real old, Rolling Stones, Beatles, all those super star acts, you carry them for years but you carry them in large quantities and they are still stacked.

But I want to be very clear that just because it's a stack -- it is stacked in the store, that doesn't mean that they are all sold at the lowest possible price. It's a limited amount of these items which we sell at an unadvertised lower price.

COMMISSIONER GARCIA: By "limited amount," do you mean that if you have 1000 of them you might sell 500 at a stacked price?

THE WITNESS: Well, more like if we have 200 or 300 stacks we may sell 50 at stack price, something like that.

BY MS. PHILLIPPS:

Q. Could you now tell us what the prices were?

A. Okay. All right. Go to 1977. The bin price, that is,

1 the standard stock price, was \$5.66. These are all again deal-
2 ing with or comparing \$7.98 records. The stack price was
3 \$4.99 and the media price was \$4.44. In 1978, because of the
4 price rise at cost, the bin price became \$5.77, the stack
5 price \$4.99 again, and the media price \$4.66. In 1979 the bin
6 price became \$5.99; the stack price was \$4.99 again, and the
7 media price had risen to \$4.88. Just now, July of 1980, our
8 bin price has been increased to \$6.66; our stack price \$5.99,
9 this time a whole dollar increase, and the media price is the
10 same at \$5.99.

11 COMMISSIONER COULTER: What is the purpose of the
12 stack? Why do you sell it?

13 THE WITNESS: The idea is that you have developed
14 store traffic with media with advertising. You have taken
15 specialty items or good-selling items, such as these particular
16 titles, at least in the case of the Eagles and the Fleetwood
17 Mac there, and you advertise them at as low a price as you
18 possibly can.

19 I hate to use the word "lost leader" but the
20 concept is that. You settle for a much lower profit to
21 induce people to come in the store.

22 Now, having brought them in the store, you also want
23 to sell them a lot more records and you also want to put over
24 the idea that generally records are inexpensive in the stores.
25 So, you have a lot of extra unadvertised items that you
sell at a lower price which is a surprise to the customer

1 and he buys them in response to that impulse, and these are
2 always the best titles, I might say. One of the best items
3 are the items that are going to be featured at the
4 unadvertised or stacked price.

5 MISS PHILLIPPS: I would like to mark this chart as
6 RIAA Exhibit L.

7 (RIAA Exhibit L was marked for identification.)

8 CHAIRMAN BURG: Mr. Solomon, what is the distinction
9 then in terms of the bin? I understand stack and media.

10 THE WITNESS: Well, the bin is the highest price
11 we're going to charge, and it is the price we have to
12 charge for -- and it's also the longest profit we are capable
13 of making too.

14 CHAIRMAN BURG: That is being displayed as
15 merchandise at the same time that the stack and media records
16 are?

17 THE WITNESS: Yes, but they are just almost -- it's
18 self-service library style. The bins are -- if you can imagine
19 a bin with records standing on end and the dividers with cards
20 that say that these are records by Barbara Striesand and Frank
21 Sinatra and other great stars.

22 CHAIRMAN BURG: Got you.

23 THE WITNESS: Sometimes you will take in the stack
24 price -- it might be used as an end rack display or especially
25 large displays of one title. You'll pull that out and call
attention to that and that will go out at the stack price.

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1 CHAIRMAN BURG: You also break those down in categories?

2 THE WITNESS: In the bins are categories, in the
3 stars sort of.

4 CHAIRMAN BURG: But bin is what I was referring to.

5 THE WITNESS: Yes. Classical, pop, by artists, all
6 that stuff.

7 BY MISS PHILLIPPS:

8 Q. I know in 1980 your prices for stack product and
9 media product jumped almost a dollar. Can you give the Tribunal
10 any insight as to the reasons behind that jump?

11 A. Well, we had been, if you see, in the bin price
12 area and the stack price area, we had been absorbing these
13 increments, you know, very little, just by adding on the
14 amount of a few pennies each time.

15 Let me tell you that in this period of time, some-
16 thing else happened. There's a hidden price increase that takes
17 place here that's really important. For all these years, the
18 record companies were very active in what is known as sales
19 programs that involve if you would buy so many of this title
20 or this group of titles, you get an additional ten free on 100,
21 five percent extra discount off of your cost price, ten percent
22 extra discount, eight free on 100, the whole variety of these
23 things.

24 These programs, of course, increased your gross
25 profit a little bit. That's all gone and so therefore when we
get down here to \$4.33, we are not expecting any extra five's

1-22

1 or ten free on 100 or any of that stuff now. It's just very,
2 very rare. So that's another price in there but I can't define
3 it precisely because it was sort of random but an awful lot of
4 it.
5

6 Okay. Along with that and the dramatic increase in
7 the cost of space rentals that we've endured, increased
8 pressure on salaries that we've endured and the most surprising
9 increase, the cost of electricity where we used to not even
10 think about it in terms, you know -- it cost a couple hundred
11 bucks a month to light a store, now we get a bill for \$1100
12 or \$1200 or something like that. It's pretty scary.

13 Those costs have just caught up with us and we
14 decided we'd have to go ahead and raise our price significantly.
15 Then we had another plot to protect ourselves in the market-
16 place. We raised the bin price with the idea that we would
17 keep the media price and stack price down as low as possible.

18 Now, this doesn't show as significantly down in the
19 stuff
20 area of \$7.98/as it does in the area of \$8.98 stuff which is
21 the main price of all the best-selling superstar albums out
22 today. If you look at the Billboard charts or anybody else's
23 charts or even anybody's records of what's really selling,
24 it's all going to be in the \$8.98 level.

25 So what we wanted to do is to be able to sell our
\$8.98's at media and stack at \$5.99 also which really cuts the
profit margin and then have enough room in there at the bin

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1 level to average out and come out all right. So that was the
2 principal reasons why we did it.

3 Q So you're telling us that your \$8.98 LP is at the
4 same stack and media price as the \$7.98 LP?

5 A Right.

6 Q \$5.99.

7 A And sad but true, most of the stack items, that 50 or
8 so that we tried to hold it to, are in the \$8.98 level. The
9 cost on the \$8.98 level instead of being \$4.33 at this moment
10 in time is \$4.91.

11 Q Mr. Solomon, what do you expect will be the impact
12 on volume of this latest round of consumer price indexes?

13 A Well, I am worried because we know there is a price
14 resistance to -- by customers. You know, a customer, if he
15 really needs and wants a particular record -- we'll refer back
16 to that superstar record, a new Dylan, a new Rolling Stones,
17 something like that -- well, maybe he'll go ahead and buy it.
18 Well, in order for us to exist -- first of all, we're going to
19 be selling the new Dylan and the new Rolling Stones or the new
20 Eagles or something like that at the stack price with a very
21 low margin.

22 We've got to get a second sale somewhere. So we are
23 really worried about what's going to happen to that catalogue
24 sale to the things that people would just like to have.

25 You know, there's a whole mentality in the way

1-24 JW

1 people buy records. There's that stuff that because they've
2 heard it on the radio or because their friends all like it or
3 because they're passionately in love with the artist or some-
4 thing like that, but they'll buy it. But then there's a lot of
5 things that they'd like -- most people like music and there's
6 other things they'd like to buy but they're not going to buy it
7 if the price is too high. It's just that simple.

8 The dyed-in-the-wool collector might but he's in the
9 rarity part of the thing. We're dealing with a mass market and
10 they're not -- we're very concerned as a matter of fact about
11 that thing. We don't have the -- at the highest level we are
12 now we haven't got enough experience but we see a down-tailing
13 and have for the last year or so since the advent of \$8.98
14 records which were we'll say selling at bin price of \$6.99
15 which now I should explain are selling -- our new bin price
16 for \$8.98's is \$7.66. There has been a resistance to that
17 stuff. And so, I'm concerned about that.

18 Q Mr. Solomon, if record companies have to increase
19 the wholesale price to distributors and distributors then have
20 to pass on that increase to you because of increasing costs,
21 do you think that would have any impact on the prices that you
22 have to charge and the volume of records that you can sell?

23 A Absolutely. The higher prices are going to mean more
24 resistance to buying. And, you know, we have a major problem in
25 this thing. We are going to chase people away from buying

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2 entirely. I don't want to sound too grim about this but look at
3 it this way: The individual cost of a record is pretty cheap
4 in one sense. You're only asking somebody to pay, let's say,
5 seven or eight dollars at this moment. But you can't get along
6 on an occasional seven or eight dollar sale. That is, we can't
7 as a merchandiser.

8 You've got to have continuous buying by these
9 customers. They've got to come in frequently. A couple of
10 records a month, perhaps, by somebody who's active. If they
11 find that every time they -- then go one step further. They
12 take the record home, they play it, they get sick of it after
13 a few plays and they want something else but if they figure
14 that every time they go into a record store, it's going to
15 cost them that eight dollars or maybe \$16 or if they want to
16 buy three records, \$24, something like that, why, they're going
17 to sort of stop buying and maybe start listening to the radio
18 a lot more. Now, that would be a terrible thing to happen.

19 I can give you an analogy, too, in the book business
20 which we are also in. There would be no book business if there
21 wasn't a paperback business. The sales of hardback books have
22 risen now to \$11.95, \$12.95, \$13.95 and God knows what in the
23 popular selling books.

24 ARound here, there's heavy duty discounting but not
25 out in the provinces. So the numbers of books that are sold in
the hardback issues are really very small for a country as large

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1 as this. If there wasn't a segue of those same titles meaning
2 the same material, the quality of the words doesn't change.
3 If you reprint into a paperback and the paperback book comes
4 out at 2 1/2 or \$2.95 or something like that, there would be a
5 disaster.

6 So the book industry has a safety valve to create
7 multi-million unit sales out of books because they can reduce
8 the price significantly from the original price that comes out.

9 Well, outside of a very small amount of titles that
10 the record industry is now beginning to get involved in, which
11 I can talk about, is we don't have that luxury in the record
12 business. The thing comes out at \$8.98 and it's going to be a
13 long, long, long, long, long, long time before that's going to
14 be any less. It's not going to be a matter of months like it is
15 in the books industry. It's going to be years, if ever.

16 Q Mr. Solomon, on what do you base your assessment,
17 that consumers are really not willing to pay higher prices for
18 records?

19 A Two things. When we lower the price of an item and
20 at the expense of our gross profit, we see significantly
21 larger sales, I mean, really doubles, triples, amounts, more
22 than that in many cases.

23 The other thing is that recently at somewhat at the
24 more progressive dealers around the countries urging, the record
25 companies are now dipping back into their older catalogue and

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1
2 they're bringing out a new mid-line series which has a
3 suggested list of \$5.98 which is an -- an example of which is
4 that Barbara Streisand record that Stephanie showed.

5 There are only maybe 400 titles on Columbia and
6 another 120 or so titles on WEA and coming on on a couple of
7 other companies 80 titles here, 80 titles there, not very many
8 when you compare the fact that we have -- Tower has 30,000
9 titles in stock.

10 But still the sales on those records have been just
11 incredible where we carried all those things at stock. They
12 were standard items. And we'd sell a couple a month, five a
13 month on one of the best ones or some of the best ones, the
14 Carol King's and stuff of that nature.

15 When they came out at \$5.98 and we were able because
16 of the cost price to us of around \$2.90 to \$3, just risen out
17 of \$3.01, I believe, we sell them at \$3.99. The sales activity
18 in that stuff is dynamic and remarkable. You're not selling
19 double what we sold before, we're selling ten times. We're
20 selling like 25, 50, and 100 a month of a title that we sold
21 four or five of. And in the case of the WEA stuff which just
22 came out recently, I had one store in San Jose, California
23 sold 1000 of these records over the weekend out of just the
24 WEA titles, out of that 128 titles.

25 Now, that's pretty significant which means to me
very clearly that there is an extremely strong audience support,

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2 customer support for fair and low prices on records. They will
3 buy more records, significantly more records.

4 Q If the cost to you on these albums goes up, would
5 you still be able to sell these albums?

6 A Well, in the case of the \$5.98 stuff if it goes up,
7 if it goes up, you know, say, even if it goes up 20 cents, it's
8 going to push our gross profit position too low and we may have
9 to raise prices above the \$3.99 that we're selling them for.

10 Now, that's a dangerous thing because what happens
11 in the public's mind? And I'm sure you've had this experience
12 yourself at various times. You raise a price from \$3.99 to
13 \$4.20. That's a dollar raise. It's not a 21 cent raise. It's a
14 dollar raise in your mind.

15 So you break the good out of it. Take the example of
16 the RIAA exhibit that you talked about earlier. These records
17 I'm talking about, that I'm selling at \$3.99 and a lot of other
18 progressive dealers are selling at \$3.99, some of these
19 people are asking \$4.99 and \$4.49 for one outfit, \$4.69 for
20 another outfit. They're not selling as many as we are. I know
21 they're not.

22 If they could push them down and they will from time
23 to time, they'll have special sales or something like that, it
24 would be good.

25 So any kinds of increases -- sometimes a small in-
crease is dangerous if it tends to push your retail selling

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1 price over a dollar level when you have hammered that retail
2 selling price right down to the last penny. If you'll notice,
3 it wasn't that much difficulty to move in the media price in
4 the exhibit from \$4.44 to \$4.66 to \$4.88 and for awhile earlier
5 this year that was -- in 1980 it was \$4.99. But the minute it
6 hit \$4.99 where are we going to go?

7
8 So that's the kind -- if that's the kind of increase
9 you're talking about, that's a serious thing even though it's
10 a small increase. And the same thing applies to front-line
11 merchandise. Again, the danger is pushing it over to an extra
12 dollar or what seems like an extra dollar to the public.

13 I worry about breaking the habit of the record-
14 buying mass out there. Once they get out of the habit, they
15 are going to stop buying records and worse, yet, they're going
16 to do more home-taping. They may get the source of their home-
17 taping, instead of from their friends' records which at least
18 were bought from somebody, they may tape off the radio.

19 COMMISSIONER GARCIA: Are you finding that in those
20 cases that volume will make up for the difference in the
21 prices?

22 THE WITNESS: Well, yes and no. It's not a cold
23 statement. Volume -- if you cut your gross margins so low that
24 your -- and just maintain volume, there's a lower limit that
25 you can't go below. That's the point. Because you have your
costs and they stay pretty much level.

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2 And sometimes if you're tied in -- and many, many
3 retailers are tied in to percentage rents, that is a constant
4 cost and so the more volume they do the more rent they pay
5 so they haven't got any saving out of it.

6 You have to have as broad or as high at retailing a
7 higher gross profit as you can get away with and still maintain
8 volume. That's what the secret is.

9 COMMISSIONER COULTER: Excuse me. What's the whole-
10 sale price of a \$5.98 album?

11 THE WITNESS: \$3.01. At this point \$3.01. It's just
12 up about a dime. And they were very careful not to go up any
13 higher than that because they could see this whole market
14 developing, "they" meaning the manufacturers who are now just
15 beginning to do this.

16 BY MISS PHILLIPPS:

17 Q Mr. Solomon, you testified that you thought that
18 home-taping would become more prevalent if prices were to
19 increase. Can you tell us what you think increased prices of
20 records would do to blank tape sales?

21 A Well, they are just going to increase them even more
22 than they already have. Blank tape sales are tremendous right
23 now and we're going to sell more. That will kill off the goose
24 that laid the golden egg for sure if we don't have -- you know,
25 even though we sell blank tape, Tower sells blank tape and we
sell quite a lot of it, we know that our business is the music

1-31

1 business. If we don't have a constant flow of new records and
2 a constant availability of old catalogue which is our main
3 specialty in the record business -- and I'm talking about
4 a really deep catalogue like classics and jazz and country
5 and things of that nature. There's over fifteen -- between
6 fifteen and twenty thousand classical records alone. They've
7 got to maintain a sales regularity in order to keep these
8 things in print and if blank taping begins to significantly
9 dip into the sale of records, why, those records are going to
10 become unavailable. And that's very frightening.

11 The thing we already know is that the sales of pre-
12 recorded blank tape, cassettes and eight-tracks, have been
13 static in terms of the percentage of sales to total for the
14 last few years. They do not move up. At our level it's between
15 29 and 30 percent, 31 percent, something like that, and it
16 hasn't changed not a darn bit.

17 And I don't know why. But I suspect that an awful
18 lot of people instead of buying the pre-recorded blank tape
19 are simply making one for their car, off of, again, their
20 friend's record or off a record that they have themselves and
21 so on.

22 So it's already having its effect and if there is
23 more resistance to higher prices in general in records, why,
24 there's going to be just more blank-taping, for sure.

25 Q Mr. Solomon, I would like to now turn to a different

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1 subject.

2 We have heard testimony from Mr. Gortikov, Mr.
3 Yetnikoff, and Mr. Cornyn about the cut-backs that the record
4 companies have instituted in order to deal with the severe
5 economic circumstances affecting the record companies in 1979.

6 Can you tell us whether you have felt the impact of
7 any recording company cut-backs?

8 A. Yes. The worse of which is they're tightening up in
9 their credit policies and they're not loose. Along with those
10 problems I told you about, the discount programs that were
11 frequent in the past years, why, there also were extra dating
12 programs where the normal terms might be 60 days or 90 days,
13 why, they would extend an additional 30 days or an additional
14 60 days to pay for that merchandise to induce you to buy it
15 and stock it and keep it. So the dating terms have gotten very,
16 very tight and in some cases they are downright hysterical
17 about wanting their money quicker.

18 The next thing is they've cut down on merchandising
19 personnel. A lot of this thing which we so hard work to
20 develop in in-store merchandising is helped along by the
21 personnel that the record companies have hired to go out there
22 and help us build displays, help us and other dealers build
23 displays, feature merchandising things that make the stores
24 more colorful, spend money on the cost of this material, the
25 point of purchase material, display material, and all of that.

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2 They've cut back on the staffs of those people. They've cut
3 back on the availability of a lot of those merchandising aids
4 which could go all the way from large four-by-four poster
5 blow-ups of the album covers to mobiles of one sort and
6 another to T-shirts that promote the albums that are free, the
7 satin -- all kinds of that stuff. It's all pretty well cut
8 back significantly. They've cut back on their sales staffs and
9 they have less frequent calls on their dealers.

10 Now, to be sure, an outfit like Tower in a key
11 location in Los Angeles on Sunset Strip or in San Francisco in
12 a key location like that, we're going to get most of the
13 attention that's available.

14 But our neighborhood stores, Fresno, or Stockton,
15 or Sacramento or El Torro or something like that, they don't
16 see the salesman or the merchandising people very often. And
17 the little stores around the country -- I was surprised to find
18 out because I'm a perennial panel guy in the NARM organization
19 and I talk with small dealers a lot. They were complaining
20 rather bitterly about never seeing a salesman which really
21 shocks me which means that the record companies just don't have
22 enough salesmen to send around. They have cut back a little on
23 their promotion activities where the promotion people's funda-
24 mental job, obviously, is to go out and get the records played
25 on radio stations but the secondary purpose of a promotion man
or woman is to call on key accounts and, you know, keep them

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1 informed as to -- this is a fast-changing, a fast-moving
2 business -- keep those key accounts informed of what's
3 happening and guide them in such a way that they'll get the
4 right things on prominent display and all that sort of thing.
5

6 So they've cut back in that area, too. So these are
7 some of the things that are definite cut-backs. And they are a
8 worrisome thing, too, because that's a way that they can, I
9 suspect, at least--I'm putting my thinking into what they may
10 be thinking--they are being more austere in order to try to
11 keep their prices down, the record company's prices down to us
12 a little bit. Otherwise, I don't know where it comes from.

13 Q Mr. Solomon, you testified that/ ⁱⁿ key locations
14 recording company personnel will come to visit Tower Stores.
15 Can you tell us whether any of your Tower Stores have ever
16 been visited by a publisher to promote the sale of a recording?

17 A Not that I know of. I can't imagine it happening.

18 Q When a customer comes into your store, Mr. Solomon,
19 or one of your stores, Mr. Solomon, does that customer ever ask
20 for an album by the name of the composer of songs on that
21 album?

22 A No. They ask for albums by the name of the group
23 doing a particular song. And it's that group's or that singer's
24 or musician's performance of that song that does it.

25 Q That does it?

A That does it. That's what they ask for and that's

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what they -- that's what you display for, you know, that's what you're selling.

Q One last question, Mr. Solomon. Can you tell us and tell the Tribunal why you felt it was important to be a witness here at this proceeding today?

A Well, because of my experience and success at merchandising records and my knowledge essentially of the effect of low prices on developing high sales. That's what we're all about. Anything that I could do to contribute to the holding of lines at some place along the line for prices. It seemed worthwhile in my mind. The thing that bothers me a little in the case of a change of a royalty situation, a mechanical royalty situation, is it's a locked-in cost, it's a thing that can't be fooled around with.

Now perhaps as time goes on, the actual fabricating part of the manufacturing process might improve, materials might develop where they can literally figure out ways to cross these things a little cheaper.

There are other ways that maybe the prices that we have to buy records and tapes at can be reduced down. But everything that they have to contend with, the manufacturers have to contend with which are locked-in numbers that can't be tampered with, are more difficult, totally impossible to deal with as far as keeping or causing those proces to come down. If we can just hold the line, I'd be happy. I'm worried about

1-36
1 that.

2
3 But I also see this -- I want to reiterate the
4 importance of this whole mid-line \$5.98, we'll say, concept of
5 things. That's what I would like to see really expand. Where
6 we're dealing with, as I said, four or five hundred titles
7 now I want to see that five or ten thousand titles available
8 in the next few years.

9 And this is a terribly important thing. If we really
10 want to maintain catalogue sales which is multiple sales -- I
11 didn't touch on that -- it's not just catalogue sales that are
12 important to us, it's the multiple sale. The customer has taken
13 the trouble and the time to come to a record store. We don't
14 want to let them get out of there with buying only one item,
15 one record. We'd like to sell them three or four, if possible.

16 So to get that multiple sale you've got to induce
17 him with high-quality product at a really attractive price.
18 And it is the development of those low mid-priced items in the
19 deep catalogue that I want to see happen.

20 So essentially I think that is why I offered my
21 presence, whatever that means.

22 Q One last question: Can you tell us who gets hurt by
23 a lower volume of sales of records?

24 A Well, everybody gets hurt but the guy selling blank
25 tape or manufacturing blank tape, I suspect. Certainly the
artist gets hurt, the manufacturer gets hurt, the songwriters

1-37

1
2 get hurt, the musicians, everyone, you know, less units, less
3 royalties, less everything.

4 MISS PHILLIPPS: Thank you, Mr. Solomon.

5 CHAIRMAN BURG: We'll take a short five-minute break.

6 (A short recess was taken.)

7 CHAIRMAN BURG: Mr. Brennan?

8 COMMISSIONER BRENNAN: I pass.

9 CHAIRMAN BURG: Mr. Coulter?

10 COMMISSIONER COULTER: Mr. Solomon, is the wholesale
11 price for the same list price product generally the same?

12 THE WITNESS: Well, it varies as I stated earlier, a
13 few pennies. Like two that come to my immediate mind is the
14 WEA price on \$8.98 product today is \$4.87 to us. There is a
15 little bit of variation between dealers, you have to understand
16 too, in various companies' sales plans.

17 The Polygram price is \$4.91 and the price of an
18 \$8.98 record from an independent distributor, that is, a non-
19 company owned distributor like for Arista records or something
20 like that, might be \$4.95.

21 And in the very small labels, it could be higher
22 yet, the really small labels.

23 COMMISSIONER COULTER: What is the range?

24 THE WITNESS: I think the low end at this moment in
25 \$8.98 is probably \$4.87. Unless classics in some cases might
be a dime or so cheaper. I Just haven't got them registered in

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tape 2

1 my mind that clearly. In pop records, staying to pop records,
2 it seems that today's price, July, there are a couple of com-
3 panies, I should say, that have not yet gone up but will go up
4 this week. But it's \$4.87 being the low and about \$4.95 or
5 \$4.97 being the high, that's the range.

6 COMMISSIONER COULTER: Um --

7
8 THE WITNESS: I think maybe I should amplify that a
9 little more and that is that WEA as a particular company has a
10 sliding scale plan depending upon where the records are
11 shipped. If you take on so many dollars worth of records in one
12 year, your cost will go down from the highest to the lowest
13 with lowest being the \$4.87 which requires that you buy, I
14 think, \$280,000 in one location from them, one shipping point
15 location.

16 And if you don't reach that, if you say the dealer
17 only bought \$20,000, why, his price is going to be a lot
18 higher. It might be, based on the \$4.87 price I talked about,
19 it could be \$5.02, \$5.05, something like that.

20 COMMISSIONER COULTER: Just to clarify one point.
21 There are no more "freebies" now?

22 THE WITNESS: Well, not significantly. If you speak
23 of freebie as being program freebie's meaning the kind of
24 thing that one ten free in 100, something like that, one free
25 on ten, not much. I haven't seen much hardly at all.

There is always going to be a little but not --

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2 there was a lot of it before, I mean really a lot of it.

3

4 COMMISSIONER COULTER: Now, on this chart here,
5 you've gotten between -- when you had a wholesale price jump
6 between '77 and '78, you went up wholesale about 13 cents or
7 in another instance about -- it depends on what you're talking
8 about -- 26 cents, I guess. And your bin price went up about
9 11 cents. And the next year it's a jump of either I guess 24
10 cents or 11 cents in the wholesale price and your bin price
11 went up 20 cents.

12

13 And then between '79 and '80 you've got a 12 cent
14 wholesale price increase and then you've got a -- what's that
15 now?

16

17 THE WITNESS: Sixty-seven.

18

19 COMMISSIONER COULTER: Sixty cents?

20

21 THE WITNESS: Sixty-seven cents, really.

22

23 COMMISSIONER COULTER: What's the reason for those
24 jumps?

25

26 THE WITNESS: Well, the reason is that we had been
27 absorbing these increases and bear in mind that hidden thing
28 we talked about, that program discount --

29

30 COMMISSIONER COULTER: So that ended in '79?

31

32 THE WITNESS: Well, yeah, just about. We have been
33 taking it on the chin and absorbing all these internal price
34 raises and finally they're damn broke and we had to

35

1-40
1 accommodate it along with all of our other costs.
2

3 But we balanced it by forcing our media and stack
4 price down. It doesn't show as well on that chart as it shows
5 if we explain the \$8.98 position which is the same price. In
6 other words, the median stack price on \$8.98 is also \$5.99.
7 See? So we came up a little. We make a little better profit
8 if we sell a \$7.98 item and we make a lot less profit if we
9 sell an \$8.98 album. But think about it. Most of the good stuff
10 is \$8.98 so what we are really going to be selling in the stack
11 and media area are going to be \$8.98 items.

12 COMMISSIONER COULTER: What is the bin price for the
13 \$8.98?

14 THE WITNESS: \$7.66.

15 COMMISSIONER COULTER: Now, the \$5.98 product -- if
16 I understand correctly -- is simply a re-pressing of recordings
17 that already exist?

18 THE WITNESS: That's correct -- well, it is mostly
19 correct. There is some experimentation going on mainly with
20 Columbia Records to take their baby artists, their newly-
21 developing artists or the ones that they are trying to get
22 off the ground, and put them out for a limited amount of time
23 at \$5.98. And other companies have fooled around with it with
24 varying successes.

25 It's an attempt, at least, to try to create some
early sales on something but the plan obviously is if the

1-41

1 thing does break out and begin to sell, it's going to be
2 raised to \$7.98.
3

4 COMMISSIONER COULTER: The price increases, that
5 figure in that chart, I assume can't be attributed to any
6 mechanical -- increase in the mechanical rate?

7 THE WITNESS: I don't think so. Well, one of them
8 was a couple of years ago when --

9 COMMISSIONER COULTER: But the other is not?

10 THE WITNESS: No. The others are just their internal
11 costs of manufacturing, their costs of, you know, every one of
12 those operational cost pressures which every business has to
13 live with today.

14 COMMISSIONER COULTER: Now, there is certainly a
15 trend of increasing prices that you have acknowledged?

16 THE WITNESS: uh-huh.

17 COMMISSIONER COULTER: Do you see that trend
18 continuing?

19 THE WITNESS: I don't have a crystal ball. I think
20 all of us in the United States have been battered by this
21 problem in the ever increasing cost of everything that we buy.
22 I hope it doesn't. Deep down in my heart I think it will
23 probably continue to increase a little. It's a matter of trying
24 to stem the tide a little bit of all this on prices of
25 everything, have got to slow up a little bit.

COMMISSIONER COULTER: Do you see any technological

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2 breakthrough that can prevent this just given the unavoidable
3 costs like vinyl?

4 THE WITNESS: I am not privy to what is happening in
5 R&D development at the manufacturing level particularly. But
6 they have significantly -- through the time that they developed
7 pre-recorded tape manufacturing to now, they significantly
8 improve the methods of manufacture and the speed of manufacturing
9 and as a result we are able to bring the price down. If you
10 recall, when prerecorded tape was first introduced it sold for
11 a dollar higher than the same music on record.

12 Now, it has been equalized. In fact, it was equal-
13 ized about in 1978 when that price raised from \$3.84 to \$3.97
14 and the tape price did not go up or it only went up a few
15 cents actually from -- it was selling probably at \$3.84 then.

16 In records there is a new plant coming on line down
17 in Atlanta that is a major manufacturing plant that Columbia is
18 developing. And I know of some developing for raw material
19 manufacturing that a combination of various manufacturers have
20 gotten together. Whether or not that will significantly or even
21 a little bit cause the cost of materials to go down or at least
22 be held in check, I can't say with any certainty. But the
23 efforts on the part of the major fabricators -- I like that
24 word "fabricators" because we use the word "manufacturers"
25 sometimes as a misnomer because the manufacturer doesn't manu-
facture anything.

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But the fabricator's is to try to hold the line.
It's a very, very important thing.

COMMISSIONER COULTER: Would you say that a technological change would have to occur in order to keep the prices down?

THE WITNESS: I don't think a dramatic technological change. If one came along, fine. But I don't think it's necessary. It's a matter of just becoming more and more efficient, more automated machinery. There are a lot of ways that you can save. They might save money in the development of cover printing and that sort of thing. So it depends.

I think that the focus, the feeling I get from talking to the officials in record manufacturing is that the focus is to try to either -- I don't personally know of any dramatic thing on the horizon, that's for sure. But they are all trying, "What can we do to see if we can't at least hold the line in what it costs us to build these records and tapes?"

COMMISSIONER COULTER: You mentioned a percentage rental. Could you explain that?

THE WITNESS: Well, in probably the majority of retail store locations in the country, every store location in a mall pays a percentage rent to his landlord and that percentage rent can vary quite a bit, from 3 and 4 percent to as high as possibly 10 percent in some really classy or expensive --

COMMISSIONER COULTER: Percent of what?

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2 THE WITNESS: Percent of gross sales. And it's very
3 rigid. It's a significant cost of operation.

4 COMMISSIONER COULTER: And that's why you said an
5 increase in volume at some point --

6 THE WITNESS: Yeah. An increase of volume doesn't cure
7 everything as Mrs. Garcia perhaps asked earlier. Sure. Volume
8 will help but if you're stuck, if you're a retail dealer and
9 you're stuck with a percentage rent, why, the more volume it's
10 just going to be the more rent. Your levels are not going to
11 change that much.

12 COMMISSIONER COULTER: You say that that exists in
13 the majority of cases?

14 THE WITNESS: I think it exists, yes, in the majority
15 of the retail stores around the country.

16 COMMISSIONER COULTER: Thank you very much.

17 CHAIRMAN BURG: Commissioner James?

18 COMMISSIONER JAMES: No questions.

19 CHAIRMAN BURG: Commissioner Garcia?

20 COMMISSIONER GARCIA: No questions.

21 CROSS EXAMINATION

22 BY MR. DEUTSCH:

23 Q Mr. Solomon, I have just a few questions for you.
24 Do record stores such as your own or even the rack jobbers and
25 one-stops, do they feature a particular artist as part of
their advertising promotion in the store windows in advertising?

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A. Oh, yes.

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Q. They do.

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A. Inside the store, outside the store, everywhere.

4

Q. And is there hopefully a fall-off effect that you draw the customer in and once in, in addition to the particular feature there is going to be an overflow into sales of other records.

5

A. That's the plan.

6

Q. That's the plan.

7

A. Right.

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Q. Well, you mentioned earlier on in your testimony that there have been no big hits from the record companies since 1979. Perhaps this is part of the fall-off in sales or the problem you are facing is that there are none of those big hits that are drawing the people into the record stores.

9

A. I think I should clarify that. There have been hits. There haven't been giant hits. The giant hits of 1978, notably, "Saturday Night Fever" and "Grease" and stuff like that, were so outstanding, there's nothing that ever hit the record business before that and it looks like nothing ever will again. But there have been hits. They haven't reached the levels of 1973 and they really haven't even reached the levels that they should be reaching.

10

Again, I am not privy to record manufacturers' figures but, you know, having a four-million seller was a

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1 fairly regular thing, you know, but now you get dealing with
2 stuff that is barely getting to a million or eight or nine hun-
3 dred thousand, that kind of stuff.

4
5 Q Could you explain to us the process of your putting
6 records in the bin versus the stock and the stack and the media
7 type? I couldn't follow the progression.

8 A Well, the thing that really controls it is the
9 quantity which an individual store buys. If the store bought
10 500 of it or 300 or 150 even, why, it's going to end up in a
11 stack someplace because we have that ~~many~~ in stock and they
12 don't keep in the back room. If you only bought five of it or
13 two of it or something like that, why, it's going to go in the
14 bin. And in the case of replacement catalogue standard items
15 that you carry forever, the classical repertoire, the jazz
16 repertoire and things like that, you buy it in short quanti-
17 ties and they're going to end up in the bin. That's really it.

18 And the media thing is that which we on our own or
19 with the cooperative help of the companies are going to
20 advertise. That's something I didn't touch on earlier on when
21 she asked me the effect of some of the company cut-backs. The
22 cut-back in availability of cooperative advertising funds has
23 been somewhat significant; and that is one of the things that
24 fuels the interest on the part of the public to go in and buy
25 records. That's another significant cut-back.

Q I would assume and you have testified that the

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2 inflationary factors in your business have been no different
3 and perhaps worse than any other business. I assume you've had
4 to give regular increases in salaries to your employees?

5 A. Yes.

6 Q. You say that your rental or a good portion of your
7 business rental is based on a percentage of sales?

8 A. No. I didn't say that our business was based on
9 percentages. We don't have that many percentage rents in the
10 case of the Tower chain. However, I said a majority of retail
11 stores and along with that obviously the majority of retail
12 record stores and record departments, they are faced with that
13 problem. Tower, per se, is not.

14 Q. All right, fine. And I assume --

15 A. But the salary inflations from the other costs are.

16 Q. Correct, correct. And I assume, therefore, that you
17 have attempted to meet this inflationary spiral in the economy
18 as best you can without doing violence to your own business?

19 A. Yes.

20 Q. Did it therefore shock you when you found out for the
21 first time that the songwriter who writes the songs has no
22 built-in inflationary protection against this, that he's been
23 frozen to a two-cent rate for over 60 years and then only
24 received a minimal increase which is now frozen again unless
25 this Tribunal decides otherwise?

A. Well, it doesn't shock me if I think about the

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2 development of selling more records and therefore increasing
3 the real dollars that songwriters and so on are going to get.
4 That's where the money is going to come from, not the rate, but
5 it's going to come from the numbers of units that are going to
6 be sold.

7 And since I've seen in my own experience in the
8 record business which is a long time, I have to tell you, the
9 record business go from a couple of hundred million or something
10 like that annually in the United States to something close to
11 4 billion even though it went over a bump there this year, 1979,
12 down from '78, I see an expanding, tremendously expanding
13 amount of money that's being paid out in royalties by virtue of
14 the number of items that are sold.

15 And I see that continuing on if we can maintain a
16 very healthy business and expand the business and get in deeper
17 by selling people more and more and more and more records, why,
18 then the creators of the original music are going to get more
19 money out of it.

20 Q Well, that presupposes that this expanded line of
21 business is equally distributed among all the people who write
22 songs. We've had testimony here that the spread varies tremen-
23 dously according to songwriters. Now, you have testified that in
24 your bins and in your stacks or what have you, you have all kinds
25 of recordings, some which are older than others, some of which
are big current hits and some which are lesser current hits.

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1 And it's the job of this Tribunal to establish a mechanical rate,
2 that is, an individual rate per record. It's not their responsi-
3 bility to determine that the rick will become richer or that
4 the poor earn less.

5 So that in fact what we are trying to do here is to
6 create an equity --

7 MISS PHILLIPPS: Mr. Deutsch, are you testifying?

8 MR. DEUTSCH: No. I'm just **giving** a little background
9 to the hearing -- so I want to give him a little flavor of some
10 of the testimony.

11 BY MR. DEUTSCH:

12 Q What we are trying to do and I think you would en-
13 courage it is to encourage more entry into the business by in-
14 creasing what every songwriter can possibly make, not just
15 those who today are the big hits because they will not be the
16 big hit performers tomorrow but they will still have to live
17 off their mechanical income.

18 A Well, you touch it rather well. One thing, you seem
19 to have the sense that we all do, that the big winners in
20 today's royalty income situation are the singer-songwriters who
21 are not only getting the royalty from the performance of the
22 music but they're also getting the royalty because they wrote
23 the music on the record. And that's a big hunk of business

24 But what we want now as a full deep line super record
25 type store, we want to maintain the availability and the increased

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1 sales of that vast catalogue of hundreds of thousands, literally,
2 of songs.
3

4 Now, we know those things are not going to sell at
5 the price of that stuff gets too high. And I dwelled on this
6 whole area, \$5.98 records, the emergence of that stuff, a lower
7 mid-line price. Each one of those \$5.98 records has got ten
8 songs on it and each one of those things are picking up
9 royalties.

10 Now, if those are forced up to a \$7.98 level like they
11 were before, why, the significantly less of those records are
12 going to be sold if they are even going to be sold at all. And
13 nobody gets paid anything if it is not an economically sensible
14 for a record company to keep records in print.

15 Q Mr. Solomon, that is my argument, that we are living
16 in an inflationary spiral about which none of us in this room
17 can do anything. You have testified to that fact in terms of
18 your own pricing of merchandise and the increases you have
19 given. Isn't it true that there is nothing that we in this room
20 can do about what we see on the economic horizon at least for
21 the next year or two?

22 A We can do a little, all of us. We can all try to
23 restrict the amount of profit that we have to make and we can
24 operate as efficiently as we possible can. In other words, if
25 everybody does a little along the line we can try in our very
tiny way to hold the line against this ever-marching upward of

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2 inflation. And so, you know, I think that even a small business-
3 man like myself, we have that responsibility and we do it.

4 Q Have you done price studies to determine whether
5 when you reduce prices at certain levels that you are able to
6 increase your volume to such an extent that it's not necessary
7 for you to maintain prices? In other words, to stimulate sales
8 by increased price reduction by a determined study of the
9 market.

10 A I don't think we've done it as a study as more as
11 we've done it by experience. Our entire experience is based on
12 that very thing. In other words, by lowering prices we sell
13 more goods. I pointed out a particularly good example in the
14 case of the \$5.98 stuff but all through the years when we reduce
15 the price that we were supposed to sell the record at in the
16 beginning of discounting, we were selling so many records at
17 that particular moment in time. When we started to discount,
18 our sales went up. I mean, that happens continuously and
19 there's nothing new at all about it.

20 Q You say that other than the Tower stores a great many
21 of the retailers receive a percentage based upon gross sales of
22 record stores; is that correct?

23 A No --

24 Q The rental is based upon a percentage of the sales
25 made by the record stores?

A I didn't understand the first part of the question.

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Q. I'm sorry. You said Tower Stores was not involved but that other record retailers received their rent via a percentage of the sales made by the record stores, the landlords?

A. The landlord. The record stores don't receive anything, believe me.

Q. They get a percentage; is that correct?

A. They get a percentage. However, don't mistake that Tower is not involved in increasing housing costs, so to speak. Because we're stuck in another devious increase called a CPI.

Q. But you're not on a percentage basis; is that right?

A. No, except in -- I think in one place, one or possibly two places of all we have but most of them or almost all of them, though, are tied in to CPI which are sometimes more devastating than the percentage --

Q. I agree. And these landlords are not doing anything to promote the success of the BeeGee's or "Grease" or any of the other rock and roll albums, are they, other than giving you that physical location? They don't get involved in the promotion of records and they don't get involved in the success of the records and they don't select the artists, do they?

A. I would have to agree with that, yes.

Q. Right. But they're getting a percentage of those successful artists?

A. That's right. And they're also getting a percentage of the hosiery store down next door to them --

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Q I quite agree with you.

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MR. DEUTSCH: I have no further questions.

4

CHAIRMAN BURG: Mr. Zuckerman, let me tell you how happy we are to see you today.

5

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(Laughter.)

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MR. ZUCKERMAN: Madam Chairman, I'm happy to be here and I'll also tell you that when I appeared before Judge Horton Cable in New York yesterday, I kept stopping myself from calling her Madam Chairman.

11

(Laughter.)

12

CROSS EXAMINATION

13

BY MR. ZUCKERMAN:

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Q Mr. Solomon, I'm somewhat puzzled by this chart because you list various wholesale prices there and if I may add a column on the chart, the RIAA submitted a study of wholesale prices and I'll read to you the description of the wholesale price study that was done by CRI which appears on Page 13 of their study.

20

"In its 1979 survey, CRI obtained extensive data on the wholesale price of recordings --

21

A Can I interrupt just a half minute?

22

Q Yes.

23

A What does "CRI" mean?

24

25

Q The Cambridge Research Institute which is an economic consulting firm retained by RIAA.

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2 "In its 1979 survey, CRI obtained extensive data on
3 the wholesale prices of recordings by configuration to distri-
4 butors, sub-distributors, and retailers at various list prices
5 over the period from December 1977 through June 1979. The
6 wholesale prices of the respondent companies vary depending on
7 the distribution channel through which the recordings are sold.
8 That is, recording companies charge different prices to
9 distributors, sub-distributors (rack-jobbers , one-stops and
10 specialty distributors), chain retailers, and single-store
11 retail outlets.

12 Respondents supplied a weighted average of their
13 wholesale prices by configuration based on their particular
14 sales across the various distribution channels. CRI then
15 developed a weighted average of the wholesale prices of the
16 respondents based on their sales data as shown in Exhibit 6.

17 The \$7.98 list album according to the CRI study, the
18 weighted average in December of 1977 was \$3.87 which matches
19 pretty closely to what you listed as your \$3.84 wholesale price.

20 In June 1978 was \$4.00 and in December 1978 it was
21 \$3.93 which is also within a relatively close range. And then in
22 June 1979 it's \$3.99 which shows no increase over 1978 where you
23 have testified that your wholesale price went up by nearly a
24 quarter, 25 cents. Can you explain that discrepancy?

25 A . . . Yes, I think because if I understand what you're
talking about in the case of weighted averages and the

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1 description of the people that they've got the weighted
2 averages from, you call out distributors, that would mean to me
3 the price that a manufacturer sells to his geographically
4 franchised distributor.

5
6 Two, it would mean the price that that distributor
7 sells to his classification of customers which would mean single-
8 location dealers, chain operators, rack-jobbers, and one-stops;
9 and it could mean what a one-stop would be selling or a rack-
10 jobber would be selling to his customers which could be -- well,
11 either juke box operators wouldn't buy LP's but would be selling
12 through their dealer organization.

13 Now, that's a big hodge-podge. First of all, the
14 cost price that the manufacturer sells to his distributor,
15 whether it's a company-owned distributor such as WEA or
16 Columbia or MCA or whether it's an independent distributor such
17 as a company like Arista Records or Cristless Records sells to
18 an independent house would throw those figures all cock-eyed.

19 So depending on how they got the figures, they
20 wouldn't make any sense. The figures that I quoted were the
21 actual prices which the primary distributor to the retail trade
22 sells me as a chain operator.

23 Q Mr. Solomon, you testified that the amount of
24 mechanical royalties paid to songwriters and music publishers
25 had gone up because of the increase in the volume of record
sales. Do you happen to know what the gross mechanical royalties

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1 were paid in 1979 to all songwriters and all music publishers
2 with respect to recordings in the United States?
3

4 A. I have no idea. All I said, however, to the response
5 to this gentleman's question was that in the years of growth
6 in the last 20 or 30 years, the amount of records that have been
7 sold in the United States has dramatically gone up. And as a
8 result of that incredible increase in unit sales, it has
9 obviously created greater income to the songwriters. I mean,
10 that's just commonsense.

11 Q. I understand that. But you have some idea of the
12 size of the recording industry in the United States?

13 A. Yes.

14 Q. Based on that, could you give me your estimate of
15 what you think the gross mechanical royalties were in the
16 United States and as round a number as you want to choose?

17 A. No. I don't think -- it's just beyond my area of
18 expertise.

19 Q. Do you think it would be 50 million or 100 million
20 or 200 million --

21 MISS PHILLIPPS: Mr. Zuckerman, I believe the witness
22 has testified that he cannot answer your question, that it is
23 not within his knowledge and is beyond his expertise. And I
24 think you should move on to the next area of questioning.

25 MR. ZUCKERMAN: I would like an answer to the
question. If that is an objection, the Chair may rule on it.

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2 MISS PHILLIPPS: The witness has answered your
3 question, that is what I'm saying.

4 CHAIRMAN DURG: Mr. Solomon, can you answer the
5 question?

6 THE WITNESS: I really would hate like the dickens to
7 go on record with an off-the-top-of-my-head number that I just
8 don't know anything about.

9 BY MR. ZUCKERMAN:

10 Q Well, let me tell you that it's in the record intro-
11 duced by RIAA and also by the -- based on the RIAA figures -- by
12 the NMPA that the aggregate retail sales at list price in the
13 United States in 1979 were \$3,676,000,000. Based on that figure,
14 can you give some approximation of what amount of that might go
15 to mechanical royalties? Now, of course, that was the retail
16 list price figure. That's not the wholesale figure.

17 A No, because I have to know approximately how many
18 units and I haven't got that figure implanted clearly in my
19 mind. And then I'd have to do some mathematical figuring to
20 figure up something. I simply don't know. And I think -- to
21 press me for an answer to something that I don't know anything
22 about is not a good thing for me to respond to unless I'm
23 directed to. I don't know what the protocol is.

24 Q Okay. I won't press you on that. I will tell you that
25 the RIAA has put in data showing that the aggregate mechanical
royalties in the United States in 1979 were \$122 million.

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1 Mr. Solomon, what were your gross retail sales in
2 1979?
3

4 A. Something in the neighborhood -- '79, in records,
5 around 60 million.

6 Q \$60 million?

7 A. Uh-huh.

8 Q So in other words, your gross retail sales were equal
9 to about half the total mechanical royalties paid to all song-
10 writers and music publishers in the United States?

11 A. Well, if that figure that you gave me is right,
12 that's about right. These are gross sales now, don't forget.

13 Q I understand that. That's your gross income?

14 A. Right.

15 Q And the mechanical royalties are the gross receipts
16 of the songwriters and music publishers from this source?

17 A. Uh-huh. I wish I could spend my gross income.

18 Q Well, so do the songwriters and music publishers..
19 Now, was that up or down from 1978, your \$60 million gross sales
20 in records?

21 A. As Tower, we have had growth. A lot of that has been
22 the growth in additional stores.

23 Q What were your sales in 1978?

24 A. I am not sure. Let's see. High 40's million.

25 Q So from 40 million to -- high 40, say, --

A. I think.

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Q Say if it was 50 million.

A Give or take 10 million.

Q Well, I understand --

A I'm not trying to be flippant; I don't remember directly.

Q If it went from even 50 million to 60 million, you went up in 1979 at least 16 percent, very substantial growth from 1978 to 1979.

A That's right. We opened up eight new stores.

Q Excuse me?

A We opened up eight new stores. That's where the growth came from.

And expanded the market and sold more records and created hopefully more mechanical royalties.

Q Where did you get the capital to open up the eight new stores?

A Out of retained earnings and credit and bank loans, a combination of all those things.

Q The retained earnings were -- you mentioned that first so I assume that that was a significant part of the expansion.

A I think the significant part is probably credit.

Q You mentioned during your direct testimony that the price, the wholesale price that record companies charge varies according to whether it goes to a rack jobber, to a chain or to

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1 a retail store; is that correct?

2 A. That's correct. A single location retail store.

3 Q. I'm sorry. I meant to say a single location retail
4 store as the third category. To your knowledge, does the
5 record company vary the wholesale price according to what the
6 actual retail selling price is?

7 A. Would you restate that again?

8 Q. Does the record company, any record company, vary
9 its wholesale price according to what the actual retail selling
10 price will be at the purchasing store?

11 A. No, no, not that I know of, no.

12 Q. So whatever discounts are given at the retail level
13 have no effect on the record company's wholesale price income?

14 A. Not really. Only to the extent that the powerful
15 rack jobbers and I suspect the larger dealers because of
16 their volume buying or their capacity to buy a lot and
17 pressuring in a good way, not overt pressuring but in saying,
18 "Okay, if you can keep your prices down we can buy more," that
19 sort of thing. There's a need on the part of the rack jobbers
20 to get a little better price because they've got to build a
21 profit in-between what they pay their wholesale sources for and
22 what they sell their rack location dealers for, that sort of
23 thing.

24 Q. But I guess the real question comes down to, "Does
25 the discount that Tower Records gives come out of your margin

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or is it something that the record company absorbs?

A. It comes out of our margin.

Q. There was an article in Billboard on February 2, 1980 which was headlined "CBS Warns Dealers on Promo Record Sales." Did you happen to see that article?

A. I don't recall it but you can refresh me. What are you referring to? The illegal practice of selling white labels, that sort of thing?

Q. That's correct. Are you aware of that practice in the industry?

COMMISSIONER GARCIA: What does that mean?

COMMISSIONER JAMES: Selling what?

THE WITNESS: Well, the record companies will put out a limited number of sample records which are used to service radio stations and given out to stores for in-store demo and given to review copies in a sense to newspapers, that sort of thing.

There have been -- and it's a very deplorable situation -- a certain amount of those that will get into unscrupulous hands of retailers who will in turn sell them.

I don't believe that the record companies press up a significant number of these things on a given title anyhow so it isn't really that serious. We, of course, deplore it.

BY MR. ZUCKERMAN:

Q. When did you first enter the record business, Mr.

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Solomon?

A. 1941.

Q. So you would remember the business during the 1950's then?

A. Pretty well.

Q. Was there discounting in the 1950's?

A. It began in the 1950's.

Q. When in the 1950's?

A. Well, that's hard to remember. It sort of started -- see, the LP was announced or developed and marketed about 1950. Both the LP and the 45. The first successful marketing of LP's was in New York with the Sam Goody firm who damn near made the market in LP's, created a lot of customers in a very short time by giving away a lot of flare adaptors and stuff like that.

Just after that, as that market began to develop, he discounted quite a bit or somewhat, at least. The thing that we were dealing with in California in those early years, in the '40's and '50's, is that we were still under fair trade laws that had not been abolished and the record companies at that time had registered their product under what I considered very onerous fair trade regulations, a non-signer clause, if you know anything about that.

And they tried to maintain that retail price but a few people began to break it.

Q. When did the first people begin to break it?

1-63

1 A. Well, as I say, I can't pinpoint the specific year
2 but I'm thinking that it has to be in the early '50's, '53, '54,
3 something around there. That is also the beginning of rack
4 jobbing. It is also the beginning of the real emergence of
5 public discount houses as opposed to PX's that I mentioned
6 earlier. So discounting became a way of life.

7 I don't know what year Discount Records, per se,
8 which was an independent firm when it was first started went
9 into business and that became kind of a national firm even
10 though they didn't have that many locations.

11 Q. Mr. Solomon, you mentioned that in the book business
12 in the United States, if there wasn't a paperback business
13 that the book business couldn't survive. Could you expand on
14 that a little?

15 A. Well, the real dollars sales in popular books comes
16 from paperbacks. It's the case of a book coming out and selling --
17 becoming a bestseller on the New York Times bestseller list and
18 on the other criteria, standard bestseller list, and maybe sell
19 500 copies a week and maybe reach a total unit sale of 60,000
20 or 70,000 or occasionally 125,000 and then the miracle of all
21 miracles a million copies. There have only been a few books in
22 the whole recent 20 or 30 year history that have gotten those
23 kinds of numbers in hardbacks.

24 But when that same book is transferred to a paper-
25 back and has dynamic distribution throughout the country in

1 thousands of additional locations and so on, that book will
2 suddenly sell a million, two million, three million.

3 Q How does the hardback publisher make money on the
4 paperback books?

5 A He sells the rights.

6 Q In other words, he licenses --

7 A He licenses --

8 Q -- the paperback rights to that particular book?

9 A Right.

10 Q And gets a license fee for that?

11 A That's correct.

12 Q If you were --

13 A He also sells the movie rights as well.

14 Q I understand that.

15 MR. DEUTSCH: That's not always true, Mr. Solomon.

16 THE WITNESS: He doesn't sell the movie rights?

17 MR. DEUTSCH: Not a publisher.

18 THE WITNESS: Oh, I'm sorry.

19 BY MR. ZUCKERMAN:

20 Q If you were looking at the income of a hardback book
21 publisher, would you just look at the income he made from sell-
22 ing the hardback books or would you also look at the income he
23 got from licensing the paperback rights?

24 A Well, obviously it would have to be both.

25 Q Now, let me ask you, switching to the recording

1-65

1 industry. Are you aware of whether when, for example, CBS
2 Records or Warner or any of the record companies in the United
3 States puts out a record in the United States, do they usually
4 also sell the record abroad?

5 A. Yes.

6 Q. Do they always do that directly through their own
7 company or do you know whether they sometimes license it
8 abroad?

9 A. Both ways.

10 Q. When it's licensed, that's similar to the way a
11 hardback book publisher licenses the paperback rights?

12 A. Well, yes, in the mechanical way it's done it's
13 similar. But there's a big difference in the fact that the
14 record when it's licensed for sale overseas is going to be sold
15 at the same price or more to the public in the other country
16 as opposed to paperback books that are going to be sold to the
17 public in this country for tremendously less, significantly
18 less. Put it that way.

19 Q. I understand that. But the transaction is analagous
20 in a different sense in that the income from licensing the
21 record master abroad is an additional income for the record
22 company just the same way that the income from licensing the
23 paperback rights is an additional income to the book publisher?

24 A. That's correct.

25 Q. So since you said in looking at the income of a book

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publisher that you would look at both the income from licensing the paperback rights and the income from the hardbacks.

Presumably, if you were looking at the income of the record company, you would look at both the income from licensing the masters abroad and also the income from domestic sales?

A. That's correct. How does that relate to mechanical royalties?

Q. Well, you can ask Miss Phillipps that after we conclude today.

When someone comes into your store, you said that they ask for albums by the name of the performer and not by the composer. Is that a correct characterization of your testimony?

A. The performer of --

Q. I mean the recording artist rather than the songwriter.

A. Right.

Q. If someone comes in and asks for a Barbra Streisand album, for example, do they usually ask for a particular album or do they say, "Well, just give me any Barbara Streisand album"?

A. Oh, no. It depends. If the customer is a Barbara Streisand freak, they might just take any Barbara Streisand record that's new or they don't know about it. But they're looking for a Barbara Streisand -- if we use that example -- album with a particular song on it more than likely.

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Q. So the difference between -- even though they may ask for Barbara Streisand album -- the reason why they might ask for a particular Barbara Streisand album is because that contains a particular song that they would be interested in?

A. Sure.

Q. You a tremendous volume of record sales, you testified to that fact, I think?

A. Well, your characterization of "tremendous," okay.

Q. I'm sure you would like to do more than it is.

A. Yes.

Q. Maybe you could give us some idea. How many albums and tapes did you sell last year?

A. It would have to be in excess of 10 million, wouldn't it.

Q. Presumably if you had --

A. Yeah. I'd have to get my calculator out --

Q. If you had -- you said a 60 million --

A. If I had a \$60 million gross year and they sold for less basically than \$6.00 on an overall average in singles and that stuff, if you added it in, yeah, okay, let's take 10 million as a nice figure.

Q. Now, how would you feel about it if a record company were to come to you and say, "Well, Mr. Solomon, you do a tremendous volume of record sales -- their characterization now, not mine -- 10 million albums a year, a very significant

1-68

1 retailer. And we think therefore that you should be limited in
2 the amounts that you charge for your records and what we think
3 we should do is since we sell you a \$7.98 album for \$4.33,
4 that you should sell it for \$4.60 adding 27¢ to the wholesale
5 price because after all, you're going to make it up in the
6 volume."

7 Would that be a fair way of doing business?

8 A. No.

9 Q. Mr. Solomon, do you sell any records in Japan?

10 A. Yes.

11 Q. Do you know what the mechanical royalty rate is in
12 Japan?

13 A. No, I don't. The records we sell in Japan are pur-
14 chased in the United States and the mechanical royalties are
15 paid here.

16 Q. Have you ever heard of an organization called
17 "Jasric" which stands for the Japanese Society for the Rights
18 of Authors, Composers, and Publishers?

19 A. Yes, I have.

20 Q. You don't know what the mechanical royalty rate is
21 under the Jasric agreement?

22 A. No, I don't.

23 Q. Let me state to you that the mechanical royalty rate
24 for albums under the Jasric agreement is 5.4 percent. On what
25 basis if you distribute the records in Japan do you pay at the

1-69

1 lower mechanical royalty rate in the United States?

2 A. Let me tell you a little bit about the Japanese
3 record market. First of all, you talk about the record company
4 coming to me and saying, "You can make so much money on your
5 record," and I would say that would be wrong.

6 In Japan, they do precisely that. There are only
7 three product lines that I know of in Japan that are price
8 controlled. One of them is records. The other is books and the
9 other is cosmetics. Whether that has been changed in very
10 recent weeks, I don't know.

11 The Japanese record market is rigidly controlled as
12 to the retail price. One of the reasons that the imports, the
13 import business in Japan is pretty good is because American
14 and European records can be imported-exported from these coun-
15 tries and imported into Japan and sold to the public for less --
16 the same music can be sold to the public for less money than
17 the Japanese manufactured product of the same music which gives
18 good reason for Japanese record dealers to import records.

19 Also, there is no price control on imported records.
20 Thirdly, because that artificially high price in Japan -- and
21 it's a horrendous price by the way -- it's 2500 yen which depend-
22 ing upon the exchange rate is, let's see, about \$11 or something
23 like that at this moment and it has just gone up in new re-
24 leases to 2800 yen which makes it that much higher.

25 They sell to their total population a lot less

1-70

1 records, considerably less records than we sell to our total
2 population in the United States.

3
4 I feel very strongly that the inhibiting factor of
5 the growth rather of the Japanese record industry is based
6 directly on the price that they sell records for over there.

7 Q Has the Jasric organization taken a different
8 position, if you know, on what mechanical royalty rate is
9 payable on the records that you sell in Japan?

10 A I have no, you know, communication with Jasric at
11 all. We are an importer, an importer over there and an exporter
12 over here.

13 Q You haven't heard either directly or indirectly that
14 Jasric may be contesting your view that the mechanical royalty
15 rate --

16 A Yes, I have. And I don't know what the outcome of
17 that will be. We've had the same problem in Tahiti where their
18 local licensing company have suggested that and, of course, our
19 argument which we haven't delved into very deeply. But let's
20 say superficially our argument would be that we have legiti-
21 mately paid or the companies we have purchased the records
22 from have legitimately paid the royalties here and an
23 additional royalty charge in a foreign country would be a dupli-
24 cate charge and therefore would be unfair.

25 Q What about a substitute charge where you would pay
only the Jasric 5.4 percent rate in Japan and you pay only the

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BIEM 8 percent rate in Tahiti and the other countries where that applies, would that be fair?

MISS PHILLIPPS: Could I interrupt you for a minute? When you say what about a substitute rate, is that a proposal of Jasric or is that just something that you developed out of your own head as a hypothetical possibility or are we talking about something concrete or what? You said "What about a substitute royalty?" What do you mean?

MR. ZUCKERMAN: I will clarify that if the Chair thinks that it's necessary.

COMMISSONER JAMES: Does the witness understand the question?

THE WITNESS: Yeah, I understand the question. I think I'll counter the question this way, though. We have a situation where -- one of the reasons that we decided to go into business in Japan -- believe me, we are not a significant success over there yet by any means -- is to establish a place where we could buy Japanese manufactured records and bring them over here and sell them because of their quality and because of the unique availability of certain titles and things like that.

So I think that there should be -- I don't really believe in the philosophy of what you suggested. I believe that the thing equals itself out. If American importers will import records from other countries and sell them here and the rights are paid there, the money one way or the other gets back to the

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original creator of the songs.

BY MR. ZUCKERMAN:

Q. When a record is made in one of the BIEM countries and imported into the United States, do you know at what rate the mechanical royalties are paid?

A. I have no idea.

Q. When a record is made in Japan and imported into the United States, what rate do you expect the mechanical royalties would be paid?

A. I don't know for certain at all, just what you said. I mean, we don't have --

Q. I mean, would it be paid on the Japanese rate or would it be paid --

A. It would be paid on the Japanese rate obviously. We don't get any relief.

COMMISSIONER JAMES: Counsel, while you're looking up your next question could I interrupt? Do I understand you import records from Japan?

THE WITNESS: Yes.

COMMISSIONER JAMES: Would that be Pony also?

THE WITNESS: I'm sorry.

COMMISSIONER JAMES: Pony, P-o-n-y.

THE WITNESS: What does that mean, sir?

COMMISSIONER JAMES: As I understand it, it's the record company of Sony, the cassette of Sony. They call it

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Pony, P-o-n-y.

THE WITNESS: No, not to my knowledge. We just buy records on the open market essentially over there and bring them in and do a little --

COMMISSIONER JAMES: You don't import cassettes?

THE WITNESS: No, we haven't so far, just LP's.

COMMISSIONER JAMES: The reason I'm asking, I've been trying to find a U.S. dealer that would stock Pony.

THE WITNESS: Well, tell me what you want. I'll try to get it for you.

COMMISSIONER JAMES: Sam "The Man" Taylor.

THE WITNESS: Sam "The Man" Taylor? It's not that hard, actually. What title?

(Laughter.)

THE WITNESS: I assure you it is not a big deal and if it's available at all in Japan it can be handled with virtually no cost, you know, to have somebody stick it in the mail or something like this. No big deal.

COMMISSIONER GARCIA: Are these records you are importing, are these American artists?

THE WITNESS: Yes, actually. Well, in the case of classical material they might be -- and there's a lot of that because of, again, the quality and availability -- they may be European artists, a little bit of Japanese artists, not so much really. It's really the Japanese pressing of an American

1-74

1 recording which is slightly bizarre. But there is a market here
2 in this country for them because of the quality of the goods.
3 They make a very fine record over there. They are more expensive,
4 to be sure, particularly when they get here with all of the in-
5 coming freight costs and duties and what have you.

6 BY MR. ZUCKERMAN:

7 Q. Mr. Solomon, you were quoted in the Los Angeles
8 Times on June 19, 1980 as saying, "The market is bigger than
9 ever. That's because we're holding onto the average buyer
10 longer than we used to. The critical year for this business was
11 1956. That is when Elvis Presley and the whole rock thing came
12 along."

13 Is that an accurate quote?

14 A. Yeah.

15 MR. ZUCKERMAN: Thank you very much, Mr. Solomon.
16 Thank you, Madam Chairman.

17 CHAIRMAN BURG: Commissioner Brennan?

18 COMMISSIONER BRENNAN: Mr. Solomon, --

19 THE WITNESS: Wait a minute, wait a minute, please,
20 sir. The critical year for -- in the meaning of the quote the
21 critical year was this was the significant year in the turn in
22 music, the foundation of rock and roll that exploded a tremen-
23 dous new interest in the buying of records. That's why it was
24 critical. And from that point on, the people started buying
25 rock and roll because of the intense popularity of Elvis

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2 Presley and then a few years later the intense popularity of
3 the Beatles and the Beach Boys and things like that that have
4 made this expansion of the record business in total possible.

5 MR. ZUCKERMAN: Thank you, Mr. Solomon.

6 COMMISSIONER BRENNAN: Following Mr. Zuckerman's
7 lead, I also have a clipping.

8 COMMISSIONER BRENNAN: A recent issue of Billboard
9 includes an article written by one J. Lasker who is identified
10 as a former president of such record labels as Dunhill and
11 ABC.

12 Mr. Lasker in this article lists his understanding
13 of some of the reasons for the current ills of the record
14 industry. I shall read a few excerpts to you from this article
15 and then ask for your comments.

16 I will pass over home-taping, counterfeiting, and
17 problems with radio stations. We then come to his fourth
18 point.

19 "Abrogation of creative control by record companies.
20 This includes allowing deals that have been a major cost factor
21 in pushing up the price of records in a recession economy. Mr.
22 label president, it's easy to blame the lawyers and the managers
23 but it is you who has turned the tiger loose. Get back the con-
24 trol that historically has been your prerogative."

25 Would you comment on that statement in terms of the
costs which go into the production of a record?

1-76

1 THE WITNESS: Well, I'm an outsider to these kinds of
2 things at that level because I'm a retailer but based on my
3 general knowledge, there was in the last few years but I have a
4 feeling it has abated quite a bit now, intense competition for
5 sure things, super artists, where the record companies would
6 have a tendency to raid each other's roster and would pay some
7 pretty large advances to get a particular artist to transfer
8 from one label to another label.

9 Again, I'm sure that some of the people who made
10 these deals might have made bad deals. Some of them made tre-
11 mendously good deals because when the artist transferred over
12 to that label, why, his sales expanded dramatically.

13 The whole idea behind that was this competition
14 thing to put your label -- if you are Mr. president of whatever
15 label -- into a better competitive position in the marketplace
16 so you go for the sure things.

17 It's the ever competitive quest for talent constantly.

18 COMMISSIONER BRENNAN: Mr. Lasker's next point, No.
19 5, the whole area of cost control. "We are spending too much
20 money for product acquisition because that's what the next guy
21 is spending. We are also spending too much on an armful of
22 promotion people who for the most part can't get locked up, let
23 alone get a record on the radio. The whole syndrome of spending
24 money not so much for what will be accomplished but so that no
25 one can't be heard needs more careful scrutiny."

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THE WITNESS: Well, Mr. Lasher was one of the best examples of record executives who put records into the marketplace that were more than the marketplace could absorb. I think that I should point that out. A lot of record manufacturers have done that too.

But that sort of ties in with what I said before and what was said before and that's that acquisition situation of competitiveness on the part of record companies to get better artists so that they can put themselves into a better position.

I take great contest with his comment about promotion people. We don't have promotion people. The record companies don't employ effective promotion people and after all, they don't know whether these people they employ ~~are~~ going to be effective until they are on the job and on the job for a long time.

If we don't employ effective employment people -- the "we," is a misnomer, "they" is better -- they're not going to get anything played. They've got to get out there and hustle. The life of music, records, is very short. You've got to get your record played on the air. You've got to get your record exposed in public places, in stores and in public print and every other which way. So any cut-back in the cost of utilizing your publicity and promotion people is a disaster and we won't have any sales if we have no promotion people.

COMMISSIONER BRENNAN: One final quote. "And let's

;Q.78

1 expose the lie that the retailer has a God-given right to be
2 financed by the manufacturer or wholesaler."

3 THE WITNESS: "...expose the lie..."? What did he
4 say?

5 COMMISSIONER BRENNAN: "And let's expose the lie that
6 the retailer has a God-given right to be financed by the manu-
7 facturer or wholesaler."

8 THE WITNESS: I don't know what he's talking about.

9 COMMISSIONER BRENNAN: Thank you, sir.

10 MISS PHILLIPPS: I just have a few questions that I
11 think can be disposed of before lunch.

12 MR. ABRAM: May I ask a housekeeping question because
13 I'm going to be leaving and I don't want to -- I want to get
14 this settled. Jim and I have been discussing the schedule for
15 next week and, Jim, maybe you had best --

16 CHAIRMAN BURG: Well, let me ask. Are you going to
17 have any redirect?

18 MS. PHILLIPPS: I have about two questions.

19 MR. ABRAM: I thought she was going to take a little
20 longer.

21 CHAIRMAN BURG: Could we do that first?

22 MR. ABRAM: Certainly. I thought it was going to take
23 some time.

24 REDIRECT EXAMINATION

25 BY MISS PHILLIPPS:

1-79

1 Q Mr. Solomon, Mr. Zuckerman stated that -- strike
2 that. When Mr. Zuckerman was cross examining you, you stated
3 that your gross sales for last year were \$60 million and Mr.
4 Zuckerman contrasted that with the gross mechanical royalties
5 received by copyright owners and left the impression that \$60
6 million was quite a lot of money.

7 Could you tell us what your net profit margins are?

8 A. Well --

9 COMMISSIONER JAMES: Excuse me so that I don't get
10 confused now. I think you indicated that the 60 million are
11 record sales, right?

12 THE WITNESS: Yes.

13 COMMISSIONER JAMES: So the answer would be framed
14 in that same category, I assume, counsellor?

15 MISS PHILLIPPS: Yes.

16 COMMISSIONER JAMES: On just record sales because he
17 indicated he has other businesses.

18 MISS PHILLIPPS: Thank you, Commissioner James.

19 THE WITNESS: Well, we are pretty happy if we can
20 end up with from two to four percent of sales as a net profit.
21 And that's the way it has been going, by the way.

22 BY MISS PHILLIPPS:

23 Q So then last year you would say that on this \$60
24 million gross record sales you made in the neighborhood of
25 two to four percent?

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2 A. That's right. We made about two, I think, so what is
3 that? A million -- what is two percent?

4 MR. ZUCKERMAN: Two percent of 60 million is a
5 million-two.

6 BY MISS PHILLIPPS:

7 Q. Mr. Solomon, you stated that in 1979 you were able
8 to or Tower Records was able to open up eight new stores. Can
9 you give us some idea of how your growth rate compares with
10 that of your competitors?

11 A. That's a tough question to answer. During '78 and
12 '79 there was a lot of growth in what we call free-standing
13 retail locations. I can't give you precise comparisons. We
14 went ahead, I think, probably -- the major difference is that
15 our stores are so much larger. Another chain can maybe open.
16 We opened eight, did I say? Another chain could have opened
17 15 and have not really because they'd be smaller stores. So
18 it's not numbers of stores.

19 Q. Could you give us some idea of the rate of retail
20 openings for smaller retailers?

21 A. Little small ones?

22 Q. Smaller than Tower.

23 A. The chains or independents.

24 Q. Independents.

25 A. I don't know. It's fairly slow, though. It's a
tough business these days.

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Q. One last question: Mr. Zuckerman made the suggestion that a record company might come to you and suggest at what price you should sell your records at. Are you aware that Mr. Zuckerman's example or suggestion is illegal?

A. Yes.

Q. Thank you. NO further questions.

COMMISSIONER JAMES: I have a question, Madam Chairman. I'm a little confused now.

Going back to that 60 million gross. Probably my CPA down at the other end of the table should be asking this question. In your accounting system, do you take a pro rata share of all your business activities to come up with that two to three percent?

THE WITNESS: Well, in our company the record part of it is 95 percent of the company. So we have some bookstores and we have some poster stores which are sort of novelty stores. And they don't represent a significant portion or a particularly large contributor to the profits.

COMMISSIONER JAMES: Also, in that 60 million, are you including blank tapes that are part of the --

THE WITNESS: Yes.

COMMISSIONER JAMES: What would be the percentage of the 60 million that would be blank tapes?

THE WITNESS: Well, it's higher than I want to think about. I can't give you a percentage and I can give you an

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educated guess because I don't have my figures in front of me and I didn't research it.

But it would seem to me that our purchases last year from blank tape manufacturers were at least a million-and-a-half dollars. That would be purchases. Now, how that translates to retail sales, I don't know but I would suspect that it certainly is in excess of \$2 million, at least.

COMMISSIONER JAMES: What do your blank tapes usually sell for?

THE WITNESS: You got me. They're all over the block. They're \$2.99, \$3.99, \$4.99 and \$5.99. There are so many. There must be 20 or 30 varieties that we carry and there might be more than that in the marketplace. But the sales of blank tape have really expanded really dramatically.

For a long time, we resisted even carrying them. We always said, "That's not our business. We're in the pre-recorded music business and we just don't want to carry them." But actually the public pressure for them was so strong that we had to put them in and then just by having them in and because we're pretty good merchants, why, the business expanded.

COMMISSIONER JAMES: What is your average profit margin and percentage on a blank tape?

THE WITNESS: I think it's higher than it is on records and it's, again I have to give you a guess, please. I would suspect that it's in the 30-plus percent range.

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COMMISSIONER JAMES: Thank you.

THE WITNESS: That's margin of profit meaning percent of retail price.

CHAIRMAN BURG: Thank you very much, Mr. Solomon.

MR. FITZPATRICK: I was going to indicate where we will be next week. I have informed counsel --

CHAIRMAN BURG: Off the record.

(Whereupon, the hearing adjourned at 12:30 p.m.)