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UNITED STATES DISTRICT COURT

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SOUTHERN DISTRICT OF NEW YORK

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RANDOM HOUSE, INC.,)

5

)
Plaintiff,)

6

)
vs.)

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)
ROSETTA BOOKS, LLC and)

8

ARTHUR M. KLEBANOFF, in his)
individual capacity and as)

9

principal of ROSETTA BOOKS,)

10

LLC,)

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)
Defendants.)

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DEPOSITION OF ASHBEL GREEN

15

New York, New York

16

Thursday, March 29, 2001

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24 Reported by:

JOAN WARNOCK

25 JOB NO. 119764

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March 29, 2001

9:40 a.m.

Deposition of ASHBEL GREEN, held at
the offices of Weil, Gotshal & Manges, LLP,
767 Fifth Avenue, New York, New York,
pursuant to Notice, before Joan Warnock, a
Notary Public of the State of New York.

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2 APPEARANCES:

3

4 WEIL GOTSHAL & MANGES, LLP

5 Attorneys for Plaintiff

6 767 Fifth Avenue

7 New York, New York 10153-0119

8 BY: R. BRUCE RICH, ESQ.

9

10 KOHN, SWIFT & GRAF, P.C.

11 Attorneys for Defendants

12 One South Broad Street, Suite 2100

13 Philadelphia, Pennsylvania 19107-3389

14 BY: JOANNE ZACK, ESQ.

15

16 ALSO PRESENT:

17 LINDA STEINMAN

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IT IS HEREBY STIPULATED AND AGREED,

by and between counsel for the respective parties hereto, that the filing, sealing and certification of the within deposition shall be and the same are hereby waived;

IT IS FURTHER STIPULATED AND AGREED

that all objections, except as to the form of the question, shall be reserved to the time of the trial;

IT IS FURTHER STIPULATED AND AGREED

that the within deposition may be signed before any Notary Public with the same force and effect as if signed and sworn to before the Court.

1 Green

2 A S H B E L G R E E N, having been duly

3 sworn by the Notary Public, was examined

4 and testified as follows:

5 EXAMINATION BY

6 MS. ZACK:

7 Q. Please state your name and address for

8 the record.

9 A. Ashbel Green, 70 East 96th Street,

10 New York, New York 10128.

11 Q. Mr. Green, could you just state your

12 full name for the record again.

13 A. Ashbel Green.

14 Q. You're currently employed by Random

15 House?

16 A. Yes.

17 Q. And you've been employed there since --

18 A. 1964.

19 Q. And from your affidavit it appears that

20 from 1964 through 1973 you were managing editor at

21 Knopf; is that correct?

22 A. Knopf. Yes.

23 Q. And was Knopf then owned by Random

24 House?

25 A. Yes.

1 Green

2 Q. What were your responsibilities as
3 managing editor?

4 A. Mainly to manage the flow of manuscripts
5 from the editorial department to the production
6 department.

7 Q. And you say "mainly." Did you have any
8 other --

9 A. Yes. I was also involved in the
10 acquisition and publication of individual books.

11 Q. And you did that during that entire time
12 period from 1964 through 1973?

13 A. Yes.

14 Q. And then in 1973 or '74 you became vice
15 president and senior editor?

16 A. Yes.

17 Q. And that was at Knopf?

18 A. Yes.

19 Q. And have your responsibilities been
20 pretty much the same since 1974?

21 A. No. I am no longer involved in the
22 process of supervising the flow of manuscripts from
23 editorial to production.

24 Q. What do you do as vice president and
25 senior editor for Knopf?

1 Green

2 A. I'm involved in the acquisition and
3 publication of books, in the supervision of the
4 royalties given out by Knopf, and in various other
5 functions such as the remaindering of books, and in
6 overseeing the back list. There are other minor
7 responsibilities, but those are the main ones.

8 Q. And those have been your
9 responsibilities continuously since 1974?

10 A. Well, pretty much, yes. They are now,
11 and I gradually evolved into more and more things.

12 Q. Do you report to someone within Knopf?

13 A. The president of Knopf.

14 Q. Have you always reported to the
15 president --

16 A. Yes.

17 Q. -- whoever that may have been?

18 A. Yes.

19 Q. Who is currently the president?

20 A. Sonny Mehta.

21 Q. How long has he held that position?

22 A. Since 1987.

23 Q. Who was the prior president?

24 A. Robert Gottlieb. He was president from
25 1968 to 1987.

1 Green

2 Q. So you reported to Mr. Gottlieb until

3 you switched to Mr. Mehta?

4 A. Yes.

5 Q. And the during the period 1964 through

6 1973 when you were the managing editor, who did you

7 report to then?

8 A. Well, I first reported to -- well, it's

9 hard to say. I guess I reported to Mr. Knopf until

10 Mr. Gottlieb came.

11 Q. Were there any other people you reported

12 to?

13 A. Yes. A man named Harding Lemay who was

14 there from 1964 through 1967.

15 Q. So was it was Mr. Lemay and then

16 Mr. Knopf and Gottlieb?

17 A. Yes.

18 Q. In your position as managing editor from

19 1964 to 1973, did you have people reporting to you?

20 A. Yes.

21 Q. And did they have a title, the types of

22 people that reported to you?

23 A. They were secretaries, editorial

24 assistants.

25 Q. Anyone else?

1 Green

2 A. No.

3 Q. Any other titles?

4 A. No.

5 Q. What did the editorial assistants do?

6 A. They assist -- they assisted me in my
7 functions, but it was only one or two people at a
8 time.

9 Q. Did the editorial assistants during the
10 period 1964 to 1973 deal directly with authors?

11 A. Yes.

12 Q. And agents?

13 A. Yes.

14 Q. And did you also do that at that time?

15 A. Yes. I forgot to mention one other
16 function that I've gradually assumed over the past
17 twenty years, and that is the signing of contracts.

18 Q. I see.

19 A. Contracts, amendments, various legal
20 documents which I do, which I share with Mr. Mehta.

21 Q. And you started to do that sometime
22 within the last twenty years?

23 A. Yes, during the last twenty years.

24 Q. And how is it determined who signs what
25 contract?

1 Green

2 A. Most of the time when he is in the
3 office, he signs them, although sometimes I will
4 sign them. There are certainly agreements that --
5 I think I sign all the reversions of rights to
6 authors. When he's away, I sign all contracts and
7 all -- in other words, I'm his backup in that
8 respect.

9 Q. Since you've been vice president and
10 senior editor for Knopf, have you had people
11 reporting to you?

12 A. The only person who really reports to me
13 is my editorial assistant.

14 Q. That's been true during that entire
15 period?

16 A. Um-hmm.

17 Q. Have you always had an editorial
18 assistant?

19 A. Yes.

20 Q. Does that person have the same basic
21 duties as the editorial assistants that have
22 reported to you --

23 A. To you.

24 Q. -- when you were managing editor?

25 A. Yes.

1 Green

2 Q. Was Knopf at some time separate from
3 Random House?

4 MR. RICH: By "separate" you mean --

5 Q. Separate, not part of the Random
6 House --

7 A. Before I --

8 Q. -- corporate family.

9 A. Before I got there, yes, it was a
10 separate company. It was acquired I think in 1959,
11 1960 by Random House.

12 Q. Have your offices when you've been with
13 Knopf always been in the same location?

14 A. No.

15 Q. Where are they now?

16 A. 299 Park Avenue.

17 Q. Where were they previous to that?

18 A. 201 East 50th and 501 Madison Avenue.

19 Q. Are your current offices in the same
20 place as Random House's offices?

21 A. There is some Random House offices at
22 299 Park. There are some at 280 Park. There are
23 some at 1540 Broadway.

24 Q. Does Knopf have a general counsel?

25 A. Yes.

1 Green

2 Q. Who is that?

3 A. John Fine.

4 Q. How do you spell his last name?

5 A. F-i-n-e.

6 Q. How long has he been general counsel

7 there?

8 A. A few months.

9 Q. Who was the prior general counsel?

10 A. Cathy Traeger.

11 Q. How long was she general counsel at

12 Knopf?

13 THE WITNESS: How long would you say,

14 Linda? About two years?

15 MS. STEINMAN: I'm not allowed to

16 talk.

17 MR. RICH: Give your best estimate.

18 Q. Approximately two years?

19 A. Yes.

20 Q. And before her, do you recall?

21 A. Ellis Levine was Random House counsel.

22 Knopf did not have a separate counsel at that time.

23 Q. So in the period --

24 A. Well, actually, I'm sorry. There was

25 Elise Solomon was Knopf's counsel for five or ten

1 Green

2 years.

3 Q. In the 19 --

4 MS. STEINMAN: Can we go off the record

5 for one second.

6 (Discussion off the record.)

7 Q. In the 1960's when you were at Knopf,

8 did you sometimes have legal questions that you

9 needed answered?

10 A. Well --

11 MR. RICH: This witness personally?

12 MS. ZACK: Yes.

13 A. Any time an editor has a manuscript that

14 he or she thinks may have legal questions, he

15 submits it to the counsel.

16 Q. And in the 60's, which counsel did you

17 submit it to? Not a name, but was it the Random

18 House counsel or the Knopf counsel or --

19 A. It was a very small office in those

20 days. I think it was just Random House counsel.

21 Q. What about in the 1970's?

22 A. The 70's it was probably still Random

23 House, but in the 80's it was Knopf.

24 Q. Does Random House have other book

25 divisions other than Knopf?

1 Green

2 A. Many book divisions, yes.

3 Q. Have they been acquired, some of them,
4 through acquisition like Knopf was?

5 A. Yes.

6 Q. Can you tell me the other divisions that
7 Random House currently has?

8 MR. RICH: Whether or not acquired?

9 MS. ZACK: Whether or not acquired.

10 Q. To the best of your ability.

11 A. The Bertelsmann Company, which owned
12 Bantam, Doubleday, and Dell, acquired Random House,
13 which included Random House, Knopf, Crown, and
14 Ballantine. There are other smaller imprints, but
15 those are the main ones.

16 Q. And do you recall the year that
17 Bertelsmann made the acquisition?

18 A. I think it was '98.

19 Q. And do you recall the approximate time
20 period when Random House acquired Crown?

21 A. In the 1980's.

22 Q. How about Ballantine?

23 A. 1970's.

24 Q. Does Bantam use the same general counsel
25 as Random House now?

1 Green

2 MR. RICH: When you say "use the same"

3 --

4 MS. ZACK: Let me ask another

5 question. That wasn't a good question.

6 I'll start a different way.

7 Q. Does Bantam have offices in the same

8 place where Random House --

9 A. No.

10 Q. Where are Bantam's offices?

11 A. 1540 Broadway.

12 Q. Does Bantam have its own officers and

13 directors and counsel, to your knowledge?

14 A. Well, I'm not fully conversive with

15 their management setup.

16 Q. Do you know whether Bantam has its own

17 general counsel or not?

18 A. I don't know.

19 Q. What about Doubleday?

20 A. I assume so, but I don't know.

21 Q. And Dell, same answer?

22 A. Same.

23 Q. Have you ever had any responsibility for

24 reviewing Bantam book contracts?

25 A. No.

1 Green

2 Q. For Doubleday book contracts?

3 A. No.

4 Q. Dell?

5 A. No. Only Knopf and Pantheon and Vintage
6 paperback imprints.

7 Q. So Vintage is a paperback imprint?

8 A. Of the Knopf Publishing Group. Vintage
9 and Anchor.

10 Q. What is Pantheon?

11 A. Pantheon is another hardcover imprint in
12 the Knopf Publishing Group.

13 Q. Have you ever had any responsibility
14 with respect to Random House book contracts?

15 A. No.

16 Q. Among the papers I've seen a label
17 Delacorte. Are you familiar with that?

18 A. Yes.

19 Q. How does that fit into --

20 A. That's part of Dell.

21 Q. Have you ever had any responsibility
22 with respect to Delacorte book contracts?

23 A. No.

24 Q. Does Pantheon have its own book contract
25 forms?

1 Green

2 A. It's the same form as is used by all of
3 the Random House imprints. It just says "Pantheon
4 Books" on the top.

5 Q. Does Knopf have its own form?

6 A. Same way. It's the same form as all of
7 the Random House hardcover imprints, but the --

8 Q. Has it always been the same as the
9 Random House imprints?

10 MR. RICH: "Always" meaning even before
11 they were acquired by Random House?

12 MS. ZACK: Well, no.

13 Q. Back to the 60'S.

14 A. Yes.

15 Q. The reason I ask that is I've seen
16 Random House and Knopf contracts that don't appear
17 to be exactly identical in form produced in this
18 litigation.

19 A. Well, I have never signed Random House
20 contracts, so I really haven't studied them.

21 Q. So when you say that the Pantheon is
22 just like the Random House, are you absolutely sure
23 that's true?

24 A. No. I said like the Knopf.

25 Q. Well, you said Random House, but I just

1 Green

2 want to make sure that --

3 A. I meant the Random House contract today,
4 not back in the 60'S.

5 Q. Did Pantheon exist in the 60'S?

6 A. Pantheon existed, but not as part of the
7 Knopf Publishing Group, so I had no involvement
8 with them at that time.

9 Q. Was Vintage part of Knopf in the 60'S?

10 A. It was part of Random House. Just to
11 give you a little history, Vintage was established
12 by Knopf in about 1955. With the acquisition of
13 Knopf by Random House, the responsibility for
14 Vintage was turned over to Random House, and it was
15 only in about 1988 or '89 that Vintage became part
16 of the Knopf Publishing Group again.

17 Q. So from the period from 1964 -- I'm
18 talking about your relevant period -- from 1964
19 until about the late 80's, Vintage was under Random
20 House, not Knopf?

21 A. That's correct.

22 Q. So during that period you had no
23 responsibility --

24 A. That's correct.

25 Q. You have to wait until I finish the

1 Green

2 question for the court reporter's sake. -- you had

3 no responsibility for Vintage?

4 A. That's correct.

5 Q. Thank you. You said that your current

6 responsibilities include matters relating to

7 remaindering?

8 A. Yes.

9 Q. Can you just describe what remaindering

10 is in the book industry, generally?

11 A. When a publisher a year after

12 publication has overstock, it may sell off

13 quantities of the overstock at a remainder price,

14 which is a much lower price than the book is

15 retailed for.

16 Q. And would you actually negotiate those

17 sales?

18 A. No. No. My involvement is to decide

19 whether or not to remainder a title.

20 Q. What are the criteria that you use in

21 making that decision, generally?

22 A. The rate of sale, the current rate of

23 sale, the future prospects for the title.

24 Q. You also said one of your

25 responsibilities currently is to oversee the back

1 Green

2 list?

3 A. Yes.

4 Q. Can you again describe generally what
5 the back list is?

6 A. The back list is titles that have been
7 in print for more than a year, and what I do is
8 review the back list once a month, see what titles
9 are low in inventory, and get estimates on what it
10 would cost to reprint them, and decide whether the
11 rate of sale is sufficient to keep them in print.

12 Q. Have you ever had any responsibility
13 with respect to marketing or publicity at Knopf?

14 A. Not at Knopf. I was publicity director
15 at Prentice-Hall.

16 Q. But since you've been at Knopf, you
17 haven't been doing that?

18 A. No, except as far as individual titles
19 that I'm publishing, I work with the marketing and
20 publicity people on discussing what should be done
21 for each book. But I have no managerial
22 responsibility.

23 Q. I see. Is there any marketing and
24 publicity done for books on the back list at Knopf?

25 A. Yes.

1 Green

2 Q. Who is in charge of that?

3 A. The marketing department.

4 Q. Do you have any responsibilities with
5 respect to that?

6 A. No.

7 Q. Have you during your tenure had access
8 to sales and revenue figures for various books at
9 Knopf?

10 A. Yes.

11 Q. You're familiar with the books at issue
12 in this case?

13 A. Yes.

14 Q. Are any of those books Knopf books?

15 A. No.

16 Q. Have you personally ever had any
17 responsibility for any of the books by Mr. Vonnegut
18 at issue in this case?

19 A. No.

20 Q. For the books by Mr. Styron at issue in
21 this case?

22 A. No.

23 Q. For the book by Mr. Parker at issue in
24 this case?

25 A. No.

1 Green

2 Q. Do you know who negotiated for Random

3 House the contracts with Mr. Styron?

4 A. No. Well, excuse me. I know who

5 Mr. Styron's editor is, but I'm not -- I wasn't

6 privy to the negotiations.

7 MR. RICH: Let's separate those out,

8 because the question, as I heard it, was, do

9 you know, do you personally know, who

10 negotiated the contracts involving I take it

11 the titles in the suit?

12 MS. ZACK: Yes.

13 A. Well, I know -- I know Mr. Styron's

14 editor is Robert Loomis.

15 Q. Editor at Random House?

16 A. Yes.

17 Q. How long has Mr. Loomis been the Random

18 House editor assigned to Mr. Styron?

19 A. I couldn't tell you that, but they were

20 roommates at college.

21 Q. Did you say Robert Loomis?

22 A. Yes.

23 Q. L-o-o-m-i-s?

24 A. L-o-o-m-i-s.

25 Q. And Mr. Loomis is still at Random House

1 Green

2 today?

3 A. Yes.

4 Q. What is his title, if you know?

5 A. I think his title is vice president and

6 executive editor, I think, but I'm not sure.

7 Q. It appears that Mr. Vonnegut's contracts

8 are with Delacorte Press. Do you know who the

9 editor was at Delacorte Press assigned to

10 Mr. Vonnegut?

11 A. Seymour Lawrence.

12 Q. Is that what it means when it says a

13 Seymour Lawrence book?

14 A. Yes.

15 Q. And was Mr. Lawrence also the editor at

16 Delacorte Press assigned to Mr. Parker?

17 A. Yes.

18 Q. Have you ever had any discussions with

19 Mr. Loomis concerning his negotiations with

20 Mr. Styron?

21 A. No.

22 Q. Have you ever had any discussions with

23 Mr. Lawrence concerning his negotiations with

24 Mr. Vonnegut?

25 A. He's deceased, but no.

1 Green

2 Q. Prior to his being deceased?

3 A. No.

4 Q. Did you ever have any discussions with

5 Mr. Lawrence concerning any negotiations with

6 Mr. Parker?

7 A. No.

8 Q. Do you know whether Mr. Styron

9 negotiated for himself or if he had an agent or

10 attorney representing him?

11 A. I believe he had an agent, but I have no

12 specific knowledge.

13 Q. How about Mr. Vonnegut?

14 A. I don't know.

15 Q. Mr. Parker?

16 A. I believe he has an agent.

17 Q. Have you ever talked to his agent?

18 A. About Mr. Parker?

19 Q. Yes.

20 A. No. I mean I know his agent, but I

21 haven't talked to her about Mr. Parker.

22 Q. Would it be fair to say that you

23 personally have no knowledge concerning the intent

24 of Mr. Styron and Mr. Loomis in connection with the

25 negotiations of Mr. Styron's books?

1 Green

2 A. I don't. I have no knowledge of the
3 negotiations.

4 Q. And you have no knowledge of the
5 negotiations or the intent of Mr. Vonnegut and
6 Mr. Lawrence with respect to negotiations for his
7 books?

8 A. I have no knowledge.

9 Q. And you have no knowledge of the
10 negotiations or the intent of Mr. Parker and
11 Mr. Lawrence in connection with negotiations for
12 Mr. Parker's book?

13 A. I have no knowledge.

14 Q. Have you ever had any responsibility for
15 drafting form contracts used by Knopf?

16 A. Yes.

17 Q. When did you do that?

18 A. You mean the actual revisions of
19 contract forms?

20 Q. Yes.

21 A. Yes. In 1993, 1994.

22 Q. Any time prior to that?

23 A. There was a previous -- I was previously
24 on a committee revising the contract, but we ended
25 up not revising it.

1 Green

2 Q. When was that?

3 A. In the 1980's. Early 80's. But I was
4 on the committee that revised the Random House
5 contract in 1994, and we worked on it for a good
6 eighteen months before that.

7 Q. Is it currently the case that the
8 various Random House divisions still maintain
9 different contracts, different forms?

10 A. I can't answer that because I'm not
11 aware of it.

12 Q. Going back to the 1980's, you said there
13 was a committee and you considered revising the
14 contract, but you did not do it?

15 A. That's right.

16 Q. Who else was on the committee, to the
17 best of your recollection?

18 A. The two people I can remember on the
19 committee were Anthony Schulte and Ellis Levine.

20 Q. And Ellis Levine was an attorney?

21 A. Yes.

22 Q. And who was Mr. Schulte?

23 A. He was the Random House executive vice
24 president.

25 Q. And at the time you were looking at the

1 Green

2 form contract in the 80's, do you know how far back

3 that form went, when --

4 A. No.

5 Q. -- it had been created?

6 A. No, I don't.

7 Q. In the 1993, 1994 period, you were on a

8 committee and a change was made in the form

9 contract?

10 A. Yes.

11 Q. Who else was on that committee?

12 A. Ellis Levine, Michele Sidrane, Joni

13 Evans, and Harold Evans.

14 Q. You said Mr. Levine was associated with

15 Knopf; right?

16 A. No. He was the Random House general

17 counsel.

18 Q. He was Random House general counsel.

19 And Michele Sidrane?

20 A. Was the head of Crown.

21 Q. And Joni Evans?

22 A. Was the head of Turtle Bay.

23 Q. Which is what?

24 A. Which was then a Random House imprint.

25 No longer exists. And Harold Evans was head of

1 Green

2 Random House, not -- the Random House editorial
3 group. The head of Random House was Alberto
4 Vitale, but Harold Evans was head of the Random
5 House group at that time.

6 Q. On the editorial side?

7 A. Yes, on the editorial side.

8 Q. And what did you discuss in 1993 and
9 1994 about changing the contract?

10 MR. RICH: I take it at a general level
11 you want an answer.

12 MS. ZACK: As opposed to what? I'm
13 sorry.

14 MR. RICH: The witness has testified
15 this occurred over eighteen months, so --

16 MS. ZACK: Okay. I understand.

17 A. We discussed every clause in the
18 contract.

19 Q. Back in the 1980's did you discuss every
20 clause in the contract?

21 A. Yes.

22 Q. Did you have a form contract that you
23 were looking at in 1993, 1994 when you were
24 discussing every clause in it?

25 A. Well, we were discussing the clauses in

1 Green

2 the older --

3 Q. That's what I mean.

4 A. -- contract and how it might be changed,

5 how each clause might be changed.

6 Q. But did you physically have a contract

7 in front of you that you were looking at and

8 discussing?

9 A. Yes.

10 Q. Was it a contract in blank?

11 A. It was a blank form. It was not a

12 filled out contract.

13 Q. That's what I mean.

14 A. Yes.

15 Q. So it was what you considered to be a

16 blank form contract?

17 A. Yes.

18 Q. And did it have the Random House imprint

19 on the top?

20 A. I don't really recall.

21 Q. Did you look at blank form contracts for

22 more than one imprint, or can you recall that, or

23 was it only for Random House?

24 A. We were dealing with the Random House

25 hardcover contract, which was different from the

1 Green

2 Ballantine contract, which is the paperback.

3 Q. Well, let me just show you a couple of
4 contracts and ask if this is what you considered to
5 be a Random House hardcover contract. I'll hand
6 you what was previously marked as Defendant's
7 Exhibit 3.

8 I'm going to hand you what was
9 previously marked as Miller Exhibit 3. You can see
10 at the top it's dated 1961.

11 A. Um-hmm.

12 Q. Is that a Random House hardcover
13 contract?

14 A. Well, it's a contract that was before I
15 arrived at Knopf.

16 Q. Well, it's a form contract --

17 A. Yes.

18 Q. -- filled in; correct?

19 A. Yes.

20 Q. And was that the form that existed in
21 the 60'S at Random House, or do you know?

22 A. I can't be sure.

23 Q. And can you tell by looking at it
24 whether that's the form that you were looking at in
25 1993 and 1994?

1 Green

2 A. I can't tell.

3 Q. You can't tell?

4 A. No. No. Well, it wouldn't have been
5 the exact form, because over the years occasional
6 changes, small changes, were made in the contract.

7 Q. Let me hand you a different -- a later
8 contract that has a Random House --

9 MS. ZACK: This one has to be marked now
10 as well. Before I mark it, let me just go
11 back and mark as Exhibit 1 Mr. Green's
12 affidavit in this case so we'll have that
13 taken care of.

14 (Mr. Green's affidavit marked
15 Defendant's Green Exhibit 1 for
16 identification, as of this date.)

17 Q. Mr. Green, is that an affidavit that you
18 signed in this case?

19 A. Yes.

20 Q. And if you look at the last page, it has
21 a date which the notary public put in of
22 February 26th, 2001.

23 A. Yes.

24 Q. Is that the date you signed this?

25 A. Yes.

1 Green

2 Q. Thank you.

3 MS. ZACK: Now I would like to mark as
4 Defendant's Green Exhibit 2 a contract dated
5 May 30, 1977. Unfortunately, I can't read
6 the Bates number they're cut off Monday my
7 stop but it's William Styron various works
8 including Sophie's Choice.

9 (Contract dated May 30, 1977, marked
10 Defendant's Green Exhibit 2 for
11 identification, as of this date.)

12 Q. Now, this is another form contract
13 filled in for Mr. Styron that has a Random House,
14 Inc. imprint at the top.

15 A. Um-hmm.

16 MR. RICH: Is that a question or
17 statement?

18 MS. ZACK: Statement.

19 Q. Can you tell by looking at this whether
20 this is the type of form that you were reviewing in
21 1993, 1994?

22 A. I think it probably was.

23 Q. Did you also review this form, then, in
24 the 1980's?

25 A. Yes.

1 Green

2 Q. I don't think I have anything later than
3 '77 to show you. In the 1993, 1994 committee that
4 you were on, what did you decide to change in the
5 form contract? What clauses?

6 A. I can't remember everything, but there
7 were a great many changes made.

8 Q. Can you remember any of the changes?

9 A. Well, we changed royalty rates in
10 certain areas. We changed the clause involving
11 small reprints. We added provisions on electronic
12 books and electronic versions.

13 Q. Anything else that you can remember?

14 A. I would have to go through the whole
15 thing.

16 Q. When you say you changed the royalty
17 rates, did you change them for economic reasons?

18 A. We made them more beneficial for
19 authors.

20 Q. And did that change apply retroactively
21 to contracts --

22 A. No.

23 Q. -- previously signed?

24 A. No. I would also -- we also changed
25 trade paperback royalties, which here were five

1 Green

2 percent, and we raised them to seven and a half

3 percent.

4 Q. And you said you changed the clause re

5 small reprints. How did you change that?

6 A. Well, in that we raised the threshold of

7 the -- we have the right to reduce royalties when a

8 back list book sales fall below a certain quantity

9 every six months.

10 Q. And did you previously have that right

11 in your contract?

12 A. Yes. We previously had the right. We

13 just changed the numbers.

14 Q. And did you change them in a way that

15 was more favorable to Random House or to the

16 author?

17 A. More favorable to Random House.

18 Q. And does that change apply

19 retroactively --

20 A. No.

21 Q. -- to contracts -- you have to let me

22 finish the question. -- to contracts previously

23 signed?

24 A. No.

25 Q. Now, you say you added provisions re

1 Green

2 electronic books and electronic versions. What
3 clauses did you add?

4 A. Well, the clauses are in our present
5 contract. Excuse me. We added clauses covering
6 those areas that -- the contract has since been
7 revised since our acquisition by Bertelsmann.

8 Q. So it's been revised again --

9 A. Yes.

10 Q. -- since 1993, '94?

11 A. That's right.

12 Q. Has that revision specifically been for
13 electronic books and electronic versions or other
14 things, too?

15 A. Other things, too.

16 Q. Just let's focus on the change in 1993,
17 1994. I have a Dell Original Editions Agreement
18 that has a '95 date. Would this be --

19 A. That's before the acquisition --

20 Q. By Bertelsmann?

21 A. -- of Random House by Bertelsmann.

22 Q. So this would not have been subject to
23 your -- okay.

24 MS. STEINMAN: Can we go off for a
25 second.

1 Green

2 (Discussion off the record.)

3 (Recess)

4 Q. Without looking at the contract, I'll
5 just ask you a few more general questions about
6 that 1993 to 1994 committee. You say you added
7 certain provisions regarding electronic books and
8 electronic versions; is that correct?

9 A. Yes.

10 Q. Are those clauses retroactive for
11 previously signed contracts?

12 A. Well, we always assume we had the rights
13 to publish in those forms.

14 Q. My question is, are the clauses you
15 added retroactive to previously signed contracts?

16 A. Are they retroactive?

17 Q. Yes.

18 A. None of the clauses in the new contract
19 are retroactive in specific language, but we always
20 felt that we had the right to publish electronic
21 books.

22 Q. And has Random House ever published
23 electronic books?

24 A. Yes.

25 Q. When did Random House first do that?

1 Green

2 A. Sometime in the 1990's.

3 Q. Do you recall when it was?

4 A. No, I don't.

5 Q. Have you had any responsibility with

6 respect to that?

7 A. No.

8 Q. How about Knopf? Has Knopf --

9 A. No.

10 Q. -- published electronic books? Crown?

11 A. I'm not aware of Crown.

12 Q. Ballantine?

13 A. I believe that all of the books

14 published -- all of the electronic books published

15 by Random House are under the Random House imprint,

16 not any of the other imprints.

17 Q. Has Random House ever electronically

18 published a book that was under the Knopf imprint?

19 MR. RICH: Can I hear the question,

20 please.

21 (Record read)

22 MR. RICH: Electronically published?

23 Can you just clarify what you mean by that.

24 Q. Did you use that -- I thought you said

25 that, but --

1 Green

2 MR. RICH: Possibly. Possibly. There
3 has been a lot of quick back and forth.

4 MS. STEINMAN: Let me ask you to
5 clarify there. Are you asking whether there
6 are books originally published under the
7 Knopf imprint that have now been published
8 in electronic book form under the Random
9 House imprint?

10 MS. ZACK: Correct. I'll ask that
11 question.

12 MR. RICH: Okay.

13 A. I don't have specific knowledge.

14 Q. Do you know if Bantam has published
15 electronic books?

16 A. I don't have the knowledge.

17 Q. Doubleday?

18 A. I don't have the knowledge.

19 Q. Dell?

20 A. No.

21 Q. Is Delacorte part of Dell?

22 A. Yes.

23 Q. Do you know if Bantam, Doubleday, and
24 Dell, which came in with Bertelsmann, have any
25 intentions to publish any of their imprints

1 Green

2 electronically?

3 A. I don't have any knowledge of that.

4 Q. You said also in 1993, 1994, you changed

5 trade paperback royalties; is that correct?

6 A. That is correct.

7 Q. You increased them?

8 A. Yes.

9 Q. I think you said you increased them;

10 right?

11 A. Yes.

12 Q. Was that a change that's retroactive to

13 previously signed contracts?

14 A. We had been giving seven and a half

15 percent royalty routinely in contracts previous to

16 1993, '94. This was the first time it had been in

17 the boiler plate.

18 Q. So when you gave it routinely, was that

19 a change made to the contract, an actual physical

20 change to the contract?

21 MR. RICH: There is an implication that

22 there was a preceding number in the form

23 contract that was altered. Maybe we need a

24 foundation for that.

25 MS. ZACK: Sure.

1 Green

2 Q. The contract prior to the revision in
3 1993, 1994, I assume had a boiler plate percentage
4 for trade paperback royalties; is that correct?

5 A. Yes.

6 Q. And that was five percent?

7 A. That's correct.

8 Q. And sometimes prior to 1993, 1994, you
9 would cross that out and put seven and a half
10 percent? Is that your testimony?

11 A. Most times.

12 Q. Most times. And that would actually be
13 physically written on the contract?

14 A. That's correct, yes.

15 Q. So with respect to any contracts signed
16 prior to 1993 to 1994 which actually said five
17 percent and hadn't been changed, was there a
18 retroactive change when the '93, '94 revision was
19 made?

20 A. I'm not sure I understand that.

21 Q. Well, did you retroactively apply the
22 seven and a half percent royalty to contracts
23 signed before 1993, 1994, that actually said five
24 percent?

25 MR. RICH: Assuming there existed such

1 Green

2 contracts is the question.

3 Q. Yes. Assuming.

4 A. Only by writing an amendment to the
5 original contract.

6 Q. So you would only do it if there was a
7 signed amendment to the contract?

8 A. That's right.

9 Q. And that would be signed by both the
10 publisher and the author?

11 A. By the publisher and the author.

12 MR. RICH: Can we take one minute?

13 MS. ZACK: Yes.

14 (Recess)

15 Q. Let me hand you two exhibits, both of
16 which were marked yesterday at Mr. Miller's
17 deposition. These are Miller 4 and Miller 5. One
18 is a contract with the Knopf imprint that's dated
19 November 23rd, 1998. That's Exhibit 4. And then
20 Miller 5 is a contract with a Random House imprint,
21 and it's dated November 10th, 2000.

22 MR. RICH: Off the record.

23 (Discussion off the record.)

24 Q. Now, referring you to Exhibit 4, which
25 is the Knopf, do you recognize this as the form

1 Green

2 that came out of the '93, '94 committee?

3 A. I do.

4 Q. Now referring you to the other one,

5 which is Exhibit 5, Miller Exhibit 5, the Random

6 House imprint, do you recognize that as a form that

7 came out of the 1993, 1994 committee?

8 A. No.

9 Q. Do you have any explanation for why in

10 2000 Random House was using a contract that was

11 different from the form that was used by 1998 in

12 Knopf?

13 A. Because after the acquisition by

14 Bertelsmann, it was decided to revise the contract

15 so that all of the Bertelsmann imprints would have

16 a similar agreement.

17 Q. So do you recognize, then, the Miller 5,

18 the Random House imprint form, as being the form

19 that was revised again, as it was revised again

20 after the Bertelsmann acquisition?

21 A. Actually, no.

22 Q. Okay.

23 A. Because this is not the form that I sign

24 for Knopf contracts.

25 Q. I see.

1 Green

2 A. I'm sorry.

3 Q. Can you give me any insight into what
4 type of form that is for Random House in 2000 --

5 A. I'm not saying the provisions are any
6 different. I'm just saying that the form itself
7 looks different.

8 Q. I see.

9 MS. ZACK: Let me mark another document
10 that hasn't been previously marked as Green
11 Exhibit 3. I think I might only have one
12 copy. This is one of the ones you gave me
13 yesterday. This one says "Random House
14 Children's Books" on the top, and it has a
15 February 14th, 2001, date. And, again, the
16 Bates numbers appear to be -- I can't read
17 the first page. It must be 31050 through
18 31060.

19 (Random House Children's Books
20 contract dated February 14, 2001, marked
21 Defendant's Green Exhibit 3 for
22 identification, as of this date.)

23 Q. This is a 2001 contract that has the
24 heading "Random House Children's Books." Do you
25 recognize that form contract?

1 Green

2 A. No.

3 Q. Is it fair to say that the various
4 divisions of Random House still have different
5 forms that they use today?

6 MR. RICH: Objection to the form of the
7 question. You can answer.

8 Could I ask for a clarification,
9 Joanne. By "forms," the witness indicated
10 there may be a distinction as between
11 content and manner of presentation. What do
12 you have in mind by "forms"?

13 MS. ZACK: A form can only be manner of
14 presentation.

15 Q. I'm not talking about the paragraph.
16 I'm not talking about how wide the margins are.

17 A. I don't see children's books or
18 paperback publication agreements, so I do not know
19 whether they are different from hardcover
20 agreements.

21 Q. Let me back up. Vintage is still the
22 paperback arm of Knopf?

23 A. Of Knopf Publishing Group.

24 Q. And does Vintage have its own form?

25 A. Vintage has its own form.

1 Green

2 Q. And are they the same forms that Knopf

3 uses?

4 A. No, not quite.

5 Q. What is the paperback arm of Random

6 House, if it has one?

7 A. Modern Library.

8 Q. Have you seen Modern Library forms?

9 A. I have not.

10 Q. So you can't say whether they match or

11 don't match any other forms?

12 A. I can't. I can't.

13 Q. During the 1960's you said you did deal

14 directly with some authors?

15 A. Yes.

16 Q. Did you personally edit any books?

17 A. Yes.

18 Q. Were you assigned to particular authors?

19 A. In some cases I was assigned authors.

20 In most cases they were authors I acquired.

21 Q. What do you mean by "acquired"?

22 A. Meaning that I -- their manuscript or

23 their ideas were offered to me, or I went out and

24 solicited them.

25 Q. And can you tell me some of the names of

1 Green

2 the authors that you did deal with and negotiated

3 contracts with in the 1960's?

4 A. Richard Hofstadter. 1960's. I'm more

5 familiar with the 1970's, than the 60'S.

6 Q. Was Mr. Hofstadter in the 60'S?

7 A. Yes.

8 Q. How about in the 1970's?

9 A. In the 1970's Ross Macdonald, George V.

10 Higgins. I don't know why I'm drawing blanks, but

11 I'm trying to think of names that would -- whom you

12 would recognize.

13 Q. How about the 1980's?

14 A. James McGregor Burns, Gabriel Garcia

15 Marquez, Gertrude Himmelfarb, Walter Conkrite,

16 David Brinkley.

17 Q. How about in the 1990's?

18 A. Ken Burns. Joseph Ellis is a current

19 best-seller. Ernest J. Gains.

20 Q. I don't mean to cut you off. If any

21 others come to you, you can add later.

22 A. Um-hmm.

23 Q. You've already said that Knopf itself

24 has not electronically published books, or am I

25 wrong about that? I'm confused at this point.

1 Green

2 MR. RICH: I have a problem as a matter
3 of form with "electronically published" as
4 opposed to publishing in eBook form, or
5 something similar to that. I think they may
6 be quite different, quite frankly.

7 MS. ZACK: What's the difference?

8 MR. RICH: One implies a method of
9 manufacturing as much as anything.

10 MS. ZACK: I'm not quite sure what the
11 difference is.

12 MR. RICH: I'm not testifying. I'll
13 object to the form. You can ask the
14 question however you want.

15 MS. ZACK: Thank you.

16 Q. Has Knopf ever sold eBooks?

17 A. Not to my knowledge.

18 Q. And in the 1960's did you ever discuss
19 eBooks with Mr. Hofstadter?

20 A. The term was not used in those days.

21 Q. In the 1970's did you ever discuss
22 eBooks with Mr. Macdonald?

23 A. I was not aware of the term in those
24 days.

25 Q. "In those days" meaning 1970's?

1 Green

2 A. 1970's.

3 Q. How about in the 1980's, did you discuss
4 eBooks with Mr. Burns, McGregor Burns?

5 A. I was not aware of the term.

6 Q. So you were not aware of the term
7 "eBooks" through the 1960's, 70's, and 80's; is
8 that correct?

9 A. That's correct.

10 Q. When did you first become aware of that
11 term?

12 A. Sometime in the 90's.

13 Q. How did you become aware of it?

14 A. Just general knowledge, reading about
15 new developments in publishing.

16 Q. So you became aware of it through the
17 trade press?

18 A. I don't recall.

19 Q. Well, did you become aware --

20 A. I don't recall whether I became aware of
21 it in conversation or from reading.

22 Q. Do you have a personal understanding of
23 what an eBook is? What is your definition of an
24 eBook?

25 A. My definition of an electronic book is

1 Green

2 reading a text off a screen.

3 Q. Off a computer screen or electronic
4 screen?

5 A. Off a screen.

6 Q. Television screen? Any screen?

7 A. Any screen. I'm not computer-wise, so.

8 Q. So eBook to you is reading text off a
9 screen as opposed to reading text off a printed
10 page; is that accurate?

11 A. Off a book page, yes. Printed.

12 Q. And have you, in fact, discussed eBooks
13 with any authors in the 1990's?

14 A. I don't recall any such discussion.

15 Q. Has the subject of eBooks ever come up
16 in a negotiation that you personally have had with
17 an author?

18 A. It's come up in a discussion with an
19 agent.

20 Q. And was that just one time or more than
21 one time?

22 A. I don't recall. I don't recall specific
23 discussions with specific agents. But when one is
24 negotiating a contract, one goes over all the
25 clauses.

1 Green

2 Q. And has that been a discussion in the
3 1990's?

4 A. Yes.

5 Q. Has that been a discussion since your
6 contract was changed to include electronic books in
7 it?

8 A. I think it was discussed before that.

9 Q. There was discussion before that. And
10 do you recall who you had a discussion with?

11 A. No.

12 Q. Do you recall what year?

13 A. No.

14 Q. Do you recall the substance of the
15 discussion?

16 A. No.

17 Q. Prior to 1990, did Knopf ever license to
18 another entity the right to publish an eBook for
19 one of Knopf's authors?

20 MR. RICH: Can I hear the question,
21 please, before the witness answers.

22 (Record read)

23 MR. RICH: Obviously to your
24 knowledge.

25 A. I do not know.

1 Green

2 Q. Prior to 1990 did you on behalf of Knopf
3 ever go to an author or an author's agent and tell
4 that author or author's agent that Knopf wanted to
5 license to another entity the right to publish the
6 work in eBook form?

7 A. I don't recall doing so.

8 Q. Do you know if anyone else at Knopf ever
9 did that?

10 A. I don't know.

11 Q. Do you know if anyone at Random House
12 ever did that prior to 1990?

13 A. I don't know.

14 Q. Prior to 1990, did any author or agent
15 that had a contract with Knopf ever come to Knopf,
16 to your knowledge, and say, I, the author, want to
17 license the right to publish my work in eBook form
18 to another entity?

19 A. I have no knowledge.

20 Q. You never heard of that happening?

21 A. I don't remember it happening.

22 Q. Do you know if that ever happened at
23 Random House?

24 A. I don't know.

25 Q. Prior to 1990, did it ever come to your

1 Green

2 attention that any work published by Knopf in book
3 form had been published as an eBook by someone
4 else?

5 MR. RICH: I would like to hear that
6 question back.

7 (Record read)

8 A. I don't know.

9 Q. Well, when you say --

10 A. I don't remember anything.

11 Q. You don't remember that coming to your
12 attention?

13 A. No.

14 Q. This contract that was marked as Miller
15 Exhibit 4, which is the Knopf imprint contract
16 dated November 23rd, 1998, includes on the first
17 page Paragraph 1(a)(i), then there is number 1 in
18 parentheses, and it says, "Print, publish,
19 distribute, and sell the work in book form." Do
20 you see that?

21 A. Um-hmm.

22 Q. Then, "and 2" is added, "Publish and
23 distribute the work," etc., through the end where
24 there is the word "electronic books." Do you see
25 that?

1 Green

2 A. Um-hmm.

3 Q. Is the language in 1(a)(i)(2) language
4 that was added as a result of your 1993, 1994
5 committee, added to the Knopf form contract?

6 A. I would assume so, but I can't
7 specifically -- since the words "electronic books"
8 were not in the contract. It was in the 1970's and
9 80's. I don't know exactly when that was added,
10 because we did add phraseology occasionally in the
11 1970's and 80's to our contracts.

12 Q. But did you add the words "electronic
13 books" to any contracts in the 70's and 80's?

14 A. I don't recall.

15 MS. STEINMAN: Let me also make sure our
16 record is clear here. This contract that
17 we're looking at has some typed text that is
18 not part of the form that was only added as
19 this --

20 A. This is not typed, though.

21 MS. STEINMAN: Clause 1(a)(i)(2) there
22 is typewritten material which is --

23 MS. ZACK: Yes.

24 Q. There is typewritten material in amongst
25 the boiler plate, correct, Mr. Green?

1 Green

2 A. Yes.

3 Q. But the word or the definition at the
4 bottom referred to as electronic books is part of
5 the boiler plate; correct?

6 A. That is correct.

7 Q. And is it your best recollection that on
8 a boiler plate an addition to the contract
9 referring to electronic books was added as a result
10 of the 1993, 1994 committee?

11 A. Probably.

12 Q. Have you had any responsibility for
13 determining what royalty rate any of Random House's
14 divisions should offer for any eBooks?

15 A. No.

16 Q. Do you know who had that responsibility?

17 A. No.

18 Q. When you negotiate contracts currently
19 that have the reference to electronic books -- have
20 you done that, sir?

21 A. Yes.

22 Q. Do you ever negotiate a royalty rate for
23 electronic books?

24 A. The royalty rate that Random House
25 offers, as far as I know, is standard.

1 Green

2 Q. Well, that's true of all the royalty
3 rates, isn't it? There is a standard rate in all
4 the contract; is that correct?

5 A. Yes.

6 Q. And are those royalty rates that are in
7 the form contract as standard ever subject to
8 negotiation?

9 A. Occasionally.

10 Q. Have you ever negotiated the royalty
11 rate for electronic books away from the standard?

12 A. No.

13 Q. Has anyone ever asked you to do that?

14 A. No.

15 Q. Now, when you have negotiated on other
16 royalty rates, has it generally been the author
17 asking for a higher rate?

18 A. Yes.

19 Q. I assume you don't suggest that they get
20 a higher royalty rate?

21 A. We propose royalty rates. They may be
22 higher than they were in the author's previous
23 contract. If an author is a best -- becomes a
24 best-selling author, he may get a fifteen percent
25 straight royalty rate instead of the standard rate.

1 Green

2 Q. Is it fair to say that the author's
3 ability to negotiate a better royalty rate is
4 dependent on the strength of the author's sales?

5 MR. RICH: Object to the form.

6 Q. Or potential sales?

7 MR. RICH: Objection to the form.

8 Q. In your view?

9 MR. RICH: You can answer.

10 A. Yes.

11 Q. So authors who are perceived to have
12 stronger past sales or future sales potential have
13 better bargaining power; correct?

14 A. Yes. But not in every royalty.

15 Q. What do you mean? Are there certain
16 royalties that you will not deviate on?

17 A. That is correct.

18 Q. Which royalties are those?

19 A. I would have to look at the current
20 contract, royalties that are not changed.

21 Q. Before I do that, I want to just ask
22 you, you're talking about a policy that you
23 currently have about not deviating on certain
24 royalties; correct?

25 A. Yes.

1 Green

2 Q. Has your policy always been the same
3 throughout period 1964 through the present about
4 which royalties you will or won't deviate on?

5 A. Yes. For example, we never go beyond a
6 fifteen percent hardcover royalty, although some
7 publishers have.

8 Q. And that's been true since 1964?

9 A. Yes.

10 Q. Any other policies that have remained
11 the same throughout that period?

12 A. There are certain royalties like export
13 royalties that are not changed.

14 Q. Anything else?

15 A. Mail order royalties.

16 Q. Mail order?

17 A. That are not subject to negotiation.

18 Q. Anything else?

19 A. Well, I would have to look. I don't
20 remember.

21 Q. Are there other royalty rates that you
22 do or don't negotiate depending on the time period,
23 the economics of a given point in time?

24 MR. RICH: Can I hear that question,
25 please.

1 Green

2 MS. ZACK: Yes. It's kind of general,

3 but if the witness understands it.

4 (Record read)

5 MR. RICH: Object to the form.

6 MS. ZACK: Let me restate it.

7 Q. What I meant to say was, are there some

8 times during a five-year period you may have a firm

9 policy not to negotiate a given royalty rate, but

10 then at another time you would negotiate that

11 royalty rate depending on economic conditions? Has

12 that been true over the last forty years or not?

13 A. Well, I don't think -- I don't know how

14 to answer that exactly. We have changed the

15 royalty rates on Vintage paperbacks gradually over

16 a period of time, for example, but we have not

17 changed our hardcover royalty rates.

18 Q. The Modern Library is part of Knopf; is

19 that right?

20 A. Random House.

21 Q. Random House. And --

22 A. Or as we call it, Little Random.

23 MS. ZACK: Let me, just to be complete

24 here, mark this next document as Green

25 Exhibit 4. Is a Dell Original Editions

1 Green

2 agreement. It's Bates RH31094-31105.

3 (Dell Original Editions agreement

4 Bates numbered RH31094-31105 marked

5 Defendant's Green Exhibit 4 for

6 identification, as of this date.)

7 Q. Just to be clear so the record is

8 complete, this is a 1995 contract that has the

9 "Dell Original Editions Agreement" written on the

10 top. And my understanding from your prior

11 testimony is that Dell is a division or subsidiary

12 of Bertelsmann and that in 1995 Dell and

13 Bertelsmann were separate from Random House and

14 Knopf; is that correct?

15 A. That's correct.

16 Q. So do you have any familiarity at all

17 with this form contract?

18 A. No.

19 Q. Thank you. Do you have any information

20 about whether or not Random House has earned back

21 its advance or advances to Mr. Styron for his

22 various books?

23 A. I have no information on that.

24 Q. You're not suggesting in your affidavit

25 that Random House has lost money on Mr. Styron, are

1 Green

2 you?

3 A. I make no suggestion because I have no
4 knowledge.

5 Q. And do you have any information about
6 whether Random House or Dell or Delacorte has made
7 back its advances to Mr. Vonnegut on his books?

8 A. I have no knowledge.

9 Q. So you don't mean to suggest in your
10 affidavit that Dell or Delacorte, Bertelsmann,
11 Random House, whoever currently has those rights,
12 has lost money on Mr. Vonnegut's books?

13 A. I have no knowledge.

14 MR. RICH: Is there a portion of the
15 affidavit to which you would like to cite
16 him which implies otherwise?

17 MS. ZACK: Well, his affidavit talks on
18 Page 3, Paragraph 9, about publishers paying
19 an advance against royalty and often authors
20 do not earn out their advances is the last
21 sentence of that paragraph.

22 A. In our case it's about 75 percent.

23 Q. 75 percent of authors do not earn out
24 their advances. My question, then, did Mr. Styron
25 earn out his advance on his books?

1 Green

2 A. I have no knowledge.

3 Q. And you're not suggesting in your
4 affidavit that he didn't; right?

5 A. I'm not suggesting that.

6 Q. And did Mr. Vonnegut earn out his
7 advances or advance on his books?

8 A. I have no knowledge.

9 Q. And you're not suggesting in your
10 affidavit that he didn't earn out his advance?

11 A. I have no knowledge.

12 Q. And same question with Mr. Parker. Do
13 you know if he earned out his advance?

14 A. I have no knowledge.

15 Q. And you're not suggesting in your
16 affidavit that he didn't earn out his advance, are
17 you?

18 A. No.

19 Q. Is Knopf a profitable business?

20 A. Yes.

21 Q. It runs at a profit?

22 A. Yes.

23 Q. What about Random House?

24 MR. RICH: If you know.

25 Q. If you know.

1 Green

2 MS. STEINMAN: Little Random House, or

3 Random House, Inc.?

4 Q. Well, how many Random Houses are there?

5 A. Big Random or Little Random? Maybe

6 that's the way to do it.

7 Q. Little Random is part of big Random, I

8 take it?

9 A. That's right.

10 Q. So let me ask about Big Random. Does

11 Random House, Inc., the overarching entity that

12 includes all the other parts of Random House,

13 operate at a profit?

14 A. So far as I know, but I have no specific

15 knowledge.

16 Q. How much did Bertelsmann pay to acquire

17 Random House?

18 A. I don't know.

19 Q. Could you please look at your affidavit

20 which is been mark as --

21 A. Which page?

22 Q. Page 2, please. Your affidavit has been

23 marked as Defendant's Green Exhibit 1. On Page 2,

24 Paragraph 3, you say that book publishing contracts

25 have generally included certain key elements in

1 Green

2 remarkably similar language. And then you go on to

3 list four elements. Do you see that?

4 A. Yes.

5 Q. And is it your testimony that those four

6 elements are key elements?

7 A. Yes.

8 Q. And the first is "The book that the

9 author will write"?

10 A. Yes.

11 Q. And that's specified in the contract?

12 A. Yes.

13 Q. And, two, you say, "The rights that the

14 publisher is acquiring from the author." That's

15 specified in the contract?

16 A. Yes.

17 Q. Three, "The financial arrangements

18 between publisher and author." That's specified in

19 the contract?

20 A. Yes.

21 Q. Does that include advances and

22 royalties?

23 A. Yes.

24 Q. Anything else?

25 A. Anything else financial?

1 Green

2 Q. Are there any other typical financial
3 arrangements besides advances and royalties?

4 A. I don't think so.

5 Q. And, four, you say, "Legal provisions
6 governing the timing of publication, which party is
7 responsible for legal claims, whether the publisher
8 acquires an option for the author's next work."

9 Are those key provisions?

10 A. Yes.

11 Q. And then you say, "and other issues not
12 relevant here." What would be the other issues,
13 even if they're not relevant here?

14 A. Oh, delivery dates of manuscript.

15 Q. Anything else?

16 A. Permissions, whether an author submits
17 illustrations, whether the author is going to
18 provide an index.

19 Q. Paragraph 5 you say, "Most contracts,
20 such as the contracts at issue in this action,
21 contain language stating that the publisher
22 acquires the right to 'publish and sell the work in
23 book form.'"

24 Now, is that language that you took from
25 the contracts when you wrote this affidavit?

1 Green

2 A. Yes. Not completely. I left out the

3 word "print."

4 Q. You personally left it out?

5 A. Yes.

6 Q. That was your personal decision?

7 A. It was just inadvertent.

8 Q. Oh, okay. Did you type this yourself?

9 A. No.

10 Q. Who typed this for you?

11 A. It was typed in the legal department.

12 Q. And you would agree with me that the

13 contracts in issue, in fact, state, "Print, publish

14 and sell the work in book form"; correct?

15 A. Yes.

16 Q. And you would agree with me that the

17 word "print" is important in the contract?

18 A. Yes.

19 Q. And is that a key term?

20 A. Yes.

21 Q. And you understand that the term "print"

22 means applying ink to cloth or paper; correct?

23 A. It means -- it means creating a visual

24 -- you know, it means creating a text on whatever

25 form the text would appear.

1 Green

2 Q. In Paragraph 6 you say, "When the
3 parties use the standard language in these
4 contracts as identified above, they clearly
5 contemplated that the publisher was being granted a
6 broad grant of rights to distribute the full
7 content of the work in the linear text fashion --
8 as opposed to an audio recording, motion picture,
9 or multimedia presentation."

10 Now, sir, do you know what any of the
11 authors who signed the books in issue in this case
12 were contemplating when they signed their
13 contracts?

14 A. I don't know what they were
15 contemplating.

16 Q. Do you know what any of the editors were
17 contemplating when they signed the contracts at
18 issue in this case?

19 A. I don't not.

20 Q. Prior to 1990, did you personally ever
21 use the term "eBook" in any writing that you wrote?

22 A. I don't remember doing so.

23 Q. That's because you weren't familiar with
24 the term; right?

25 A. I would assume that I was not familiar

1 Green

2 with the term.

3 Q. Did you prior to 1990 ever put anything
4 in writing concerning selling books over computers?

5 A. I don't remember doing so.

6 Q. Did you personally ever see anything
7 within Knopf prior to 1990 about Knopf selling
8 books over computers?

9 A. I don't recall.

10 Q. This affidavit talks about the full
11 content of the work in a linear text fashion. Do
12 you see that?

13 A. Yes. I'm looking at it.

14 Q. In any form contract have you ever seen
15 the words "linear text fashion"?

16 A. In a contract?

17 Q. Yes.

18 A. I don't think so, no.

19 Q. Have you ever seen the words "linear
20 text fashion" in any written document other than
21 your own affidavit?

22 A. Not that I can recall.

23 Q. Is that a phrase you're familiar with,
24 linear text fashion?

25 A. Linear text fashion is not a phrase that

1 Green

2 rolls off my tongue every day.

3 Q. Has it ever rolled off your tongue
4 before today?

5 A. Yes.

6 Q. When did it first roll off your tongue?

7 A. I don't know.

8 Q. Was it prior to a year ago?

9 A. I don't know.

10 Q. And your affidavit goes on to say "audio
11 recording." What is an audio recording?

12 A. Audio recording is a rendition of a book
13 either in abridged or full form with voice
14 presentation read by an actor or by the author.

15 Q. When I listen to National Public Radio
16 and I have the actors reading the books or the
17 stories, that would be an audio recording of a
18 work; right?

19 A. No. That's a performance.

20 Q. Okay. If I buy a tape and put it in my
21 car and listen --

22 A. Yes.

23 Q. -- to an audiotape of a work --

24 A. That's right.

25 Q. -- that would be an audio book?

1 Green

2 A. Yes.

3 Q. Is it your understanding that some of
4 those audio books are full text readings?

5 A. It is my understanding that some of them
6 are not abridged.

7 Q. And that would be a full text; correct?

8 A. Um-hmm.

9 MR. RICH: A full text --

10 Q. In other words, the full text is read
11 and put on tape; correct?

12 A. Yes.

13 Q. And is the text read linearly?

14 A. Linearly?

15 Q. Yes.

16 MR. RICH: You mean by the performer?

17 Q. Does the performer read the text

18 linearly and speak it linearly?

19 A. Yes.

20 Q. And is that audio book considered by
21 Knopf to be within the primary grant of rights?

22 MR. RICH: Can we get a foundation for
23 what we mean by primary grant of rights?

24 Q. Well, has Knopf taken the position over
25 the last forty years that audio books are included

1 Green

2 within the phrase "print, publish and sell the work

3 in book form"?

4 A. There is a separate clause involving

5 audio books, just as there are separate clauses for

6 rights that are not in book form.

7 Q. So audio books were not considered

8 rights in book form by Knopf; correct?

9 A. Correct.

10 Q. And that's been true since when? As

11 long as you've been there?

12 A. Audio books are a relatively new

13 phenomenon. They were covered in Knopf clauses in

14 the past by phrases like "mechanical reproduction."

15 Q. So you consider an audio book to be a

16 mechanical reproduction?

17 A. I do.

18 Q. And is --

19 A. Audio books are in the current Knopf

20 form.

21 Q. Right. Is there anything other than an

22 audio book that you consider to be a mechanical

23 reproduction?

24 A. Records.

25 Q. Anything else?

1 Green

2 A. I can't remember. I think the phrase
3 was originally construed to mean recordings, but
4 then it covered audio books as well.

5 Q. Did Knopf, since you have been there, at
6 any time have a written explanation of its form
7 contract that it provided to authors or authors'
8 agents?

9 A. A written explanation?

10 Q. Yes.

11 A. No.

12 Q. Like a handbook or something to go along
13 with the form contract?

14 A. No.

15 MR. RICH: When you have two minutes, I
16 just want to take a break.

17 MS. ZACK: That's fine.

18 (Recess)

19 Q. Let me just mark and show you as
20 Defendant's Green Exhibit 5 a document with the
21 Bates stamps RH31075 through 31078. It's dated
22 June 20th, 1957. It says Random House, Inc., the
23 Modern Library on front of the top.

24 (Document Bates stamped RH31075-31078
25 dated June 20, 1957, marked Defendant's

1 Green

2 Green Exhibit 5 for identification, as of

3 this date.)

4 Q. Correct me if I'm wrong, but I think you

5 said previously that the Modern Library --- is that

6 the paperback division of Random House?

7 A. Well, in 1957 it was a hardcover reprint

8 imprint. It still is to a certain extent, but it

9 now is the paperback imprint of Little Random.

10 Q. I see. And the Modern Library, did it

11 ever publish the first printing of books, or was it

12 always reprints?

13 A. It was always -- I think it was always

14 -- well, no. They may have done some originals,

15 but basically it was a hardcover reprint of

16 classics.

17 Q. I asked you before, and I don't mean to

18 be repetitive, but just because there are so many

19 terms flying around, I just want to clarify, would

20 it be fair to say that before 1990, that you were

21 not familiar with the term "electronic books"?

22 MR. RICH: Object to the form. You can

23 answer.

24 A. I don't believe I was -- I don't believe

25 I was familiar with the term at that time.

1 Green

2 Q. So you don't have any recollection of
3 using the phrase "electronic books" in conversation
4 with anyone before 1990. Is that accurate?

5 A. I don't recall it.

6 Q. Do you have any current understanding
7 about a difference between electronic book and an
8 electronic version?

9 A. Yes.

10 Q. What is your understanding of the
11 difference?

12 A. Electronic version is an entity to which
13 much has been added to the original text of a book.
14 That might be illustrations. It might be sound
15 voice recordings. It's a kind of a multimedia
16 entity.

17 Q. And what is an electronic book as
18 opposed to an electronic version?

19 A. Electronic book is an entity in which
20 text is printed on a screen.

21 Q. And are you familiar with the phrase
22 "hyperlinks" or "hypertext"?

23 A. Yes.

24 Q. Do you have any understanding if an
25 electronic book has hyperlinks to other material,

1 Green

2 does that make an electronic version?

3 A. Probably not, but it depends on how much
4 is added to it, but I would say not.

5 Q. Is there a clear dividing line --

6 A. For example, if it was an author's
7 biography added to a printed text, that would not
8 make an electronic version.

9 Q. Is there some clear dividing line
10 between an electronic book and an electronic
11 version?

12 A. I would not know it.

13 Q. Do you think there is one?

14 A. Yes.

15 Q. And who would know?

16 A. Somebody who publishes them.

17 Q. Does Knopf --

18 A. I mean it's more or less in my mind what
19 the difference is, but I'm not going to say legally
20 I could draw the line between the two.

21 Q. Have any of the Bertelsmann, Random
22 House, Knopf entities ever published an electronic
23 version of a book?

24 A. I can't specifically recall any such
25 things, but I believe so.

1 Green

2 Q. And which group or division has done

3 that?

4 A. Probably the reference division.

5 Q. Of whom?

6 A. Of Random House. Big Random.

7 Q. Are you thinking of books, reference

8 books, that are on CD ROM?

9 A. Well, I'm just not familiar with it.

10 I'm giving you an educated guess.

11 Q. Did you personally use a computer at

12 work in the 70's and 80's?

13 A. I've never used a computer at work.

14 Q. So you still don't?

15 A. No.

16 Q. Do you use a computer at home?

17 A. No. I have one, but I don't use it.

18 Q. So would you call yourself computer

19 literate?

20 A. No.

21 Q. Have you ever read a book on a computer

22 screen?

23 A. No. I mean I've seen a book, I've

24 looked at pages, but I have not, you know -- I have

25 not read through a whole book.

1 Green

2 Q. So you haven't read through a whole book
3 on a computer?

4 A. No.

5 Q. On Page 3 of your affidavit, which is
6 Green Exhibit 1, you refer to reading a book on a
7 printed paper, on a computer screen, or on a
8 hand-held eBook reading device. I take it you've
9 read books on printed paper; correct?

10 A. Yes.

11 Q. But you have not read a book on a
12 computer screen; correct?

13 A. Not a whole book, no.

14 Q. Have you read a book on a hand-held
15 eBook reading device?

16 A. I have looked -- I have seen them, but I
17 have not read through a whole --

18 Q. Well, have you read a 2 or 300-page book
19 on a hand-held eBook reading device?

20 A. No.

21 Q. And have you read a 2 or 300-page book
22 on a computer screen?

23 A. No.

24 Q. So you can't say from your own
25 experience whether reading a book on a printed

1 Green

2 page, on a computer screen, and on a hand-held

3 eBook reading device are the same reading

4 experience, can you?

5 MR. RICH: Object to the form.

6 THE WITNESS: Can I answer?

7 MR. RICH: You may answer.

8 A. I can't from my own experience.

9 Q. In Paragraph 7 you talk about a
10 non-compete provision.

11 A. Yes.

12 Q. And is that a provision that has changed
13 over time, or has that remained the same?

14 A. It's remained.

15 Q. Excuse me?

16 A. That has always been in our contracts.

17 Q. Has Knopf, to your knowledge, ever sued
18 an author for violation of a non-compete provision?

19 A. I can't recall a specific case.

20 Q. Can you recall any case, that you are
21 aware of, in which any Random House-related entity
22 sued an author for violating a non-compete
23 provision?

24 A. I believe that there were one or two
25 cases in the past, but I can't recall them

1 Green

2 specifically.

3 Q. Do you recall which authors?

4 A. No.

5 Q. Or what the author did?

6 A. No.

7 Q. Have you personally, without suing, ever

8 either in writing or verbally told an author or an

9 author's agent that the author was violating a

10 non-compete provision?

11 A. It seems to me that a good many years

12 ago, and I can't remember the specific case, that I

13 did tell an author's agent that a book that an

14 author was planning to write would violate the

15 non-compete clause.

16 Q. Do you recall which author that was?

17 A. I do not recall. I do recall a case

18 where the reverse things -- where we lost a German

19 sale of a book that I published because the author

20 published a similar book in Germany in German.

21 Q. What do you mean you lost the sale?

22 A. Well, we had made a sale of the author's

23 English -- we had published the book in English and

24 placed it with a German publisher and then

25 discovered that the author had just published a

1 Green

2 very similar book with another German publisher.

3 Q. And were those reference books?

4 A. No.

5 Q. Novels?

6 A. Non-fiction.

7 Q. Non-fiction books. Have you ever --

8 A. This is an issue that comes up in

9 non-fiction rather than fiction.

10 Q. I was going to ask if you've ever had

11 the issue of a non-compete provision come up with a

12 fiction author?

13 A. No.

14 Q. Does the issue come up with non-fiction

15 because the author could cover the same subject

16 matter in another work?

17 A. Yes.

18 Q. And if the work is too closely related,

19 then you deem it to be in competition?

20 A. Yes.

21 Q. Have you personally ever done or seen a

22 study concerning market demand for print books as

23 opposed to electronic books?

24 MR. RICH: The question is a study doing

25 a comparative analysis?

1 Green

2 MS. ZACK: Yes.

3 MR. RICH: Object to the form. I'm
4 not sure what the term "print books" means.
5 If the witness understands it, he can
6 answer.

7 THE WITNESS: I do.

8 A. I believe I've read articles about that
9 in Publishers Weekly.

10 Q. Has Random House, to your knowledge,
11 done an internal study?

12 A. I'm not aware of one.

13 Q. Or any of the Random House entities?

14 A. I'm not aware.

15 Q. Have you discussed that issue with
16 anyone at Random House?

17 A. What issue?

18 Q. The issue of whether electronic books
19 help or hurt the sale of print books.

20 MR. RICH: Object to the form again.

21 A. Well, I imagine I've had casual
22 conversations with people about whether electronic
23 books would -- how they would impinge on the sale
24 of hardcover or paperback books.

25 Q. When you say "casual conversations,"

1 Green

2 you're talking about just in passing?

3 A. Yes.

4 Q. Have you participated in any discussion
5 of that issue at any meeting?

6 A. No.

7 Q. It's correct, isn't it, that the Modern
8 Library division or group of Random House is
9 publishing certain classics in eBook form?

10 A. I'm not aware.

11 Q. You're not aware of that?

12 A. No.

13 Q. Are you aware that Random House is
14 publishing in eBook form classics that are also
15 being sold in print form?

16 MR. RICH: Objection to the form.

17 MS. ZACK: What's the objection?

18 A. I'm just not privy to their publishing
19 program.

20 MS. ZACK: What is the form objection?

21 MR. RICH: To the use of the term

22 "print form."

23 Q. Have you ever heard the phrase "print
24 book"?

25 A. Print book? It's not a phrase I would

1 Green

2 use.

3 Q. You never heard that word used, that
4 phrase used, at Random House or Knopf?

5 A. No. No.

6 Q. Do you know what it means?

7 A. Well, I assume it just means a book.

8 MS. ZACK: Let's mark as the next -- I
9 can show him this; right?

10 MR. RICH: Yes.

11 MS. ZACK: Unfortunately, when I
12 copied this, the "attorneys eyes only" thing
13 didn't print, but we all know what it is.
14 It's Random House eBook Discussion Executive
15 Update dated October 24th, 2000. And,
16 unfortunately, the Bates numbers do not
17 appear on this copy.

18 (Random House eBook Discussion
19 Executive Update dated October 24th, 2000,
20 marked Defendant's Green Exhibit 6 for
21 identification, as of this date.)

22 MR. RICH: Please note that this
23 document was produced pursuant to a still to
24 be concluded protective order, but it's been
25 designated for attorneys eyes only. And

1 Green

2 pending what this witness does or doesn't
3 know about it, we may want to designate a
4 portion of this transcript in a confidential
5 way.

6 Q. Have you seen this document before --

7 A. No.

8 Q. -- Mr. Green?

9 A. No.

10 Q. Do you have any idea what it is?

11 A. Only from the title.

12 Q. Referring you to Page 3, which three is
13 written on the bottom of the page. It says
14 "Technology Infrastructure" at the top. Do you see
15 that?

16 A. Um-hmm.

17 Q. Then it says in the first sentence under
18 that, "The current Random House business systems
19 support print books." Do you see that?

20 A. Yes.

21 Q. Then it says, "Enhancements are underway
22 to start preparing for eBooks." Do you see that?

23 A. Yes.

24 Q. Does that refresh your recollection that
25 you've heard the term "print books" before?

1 Green

2 MR. RICH: How would it if he's never
3 seen this document before? Objection.

4 Q. Does it?

5 A. The answer is no.

6 Q. Have you ever heard the term "print
7 title"?

8 A. I may have. It's not a phrase I would
9 use.

10 Q. Have you heard any discussions about
11 digitizing Random House's back list?

12 A. Yes.

13 Q. And who have you participated in those
14 discussions with?

15 A. Well, they were, again, casual
16 discussions, not in a meeting or conference.

17 Q. But who did you have those casual
18 discussions with?

19 A. Patricia Johnson, our associate
20 publisher.

21 Q. Anyone else?

22 A. Anthony Chirico, our executive vice
23 president.

24 Q. And anyone else?

25 A. Not that I can recall.

1 Green

2 Q. What does it mean to digitize a

3 back list, as far as you know?

4 A. Well, it's a -- what we were talking

5 about in terms of was not the -- it was kind of a

6 print on demand, titles that were out of print or

7 were going out of print and putting them in a form

8 so that they could be reproduced easily.

9 Q. So you were talking about titles that

10 were going out of print?

11 A. Were either out of print already or were

12 going out of print, titles where we still retained

13 the rights.

14 Q. Did you have any discussions about

15 digitizing back lists, the back list of any books

16 that were still in print?

17 MR. RICH: This witness personally?

18 MS. ZACK: Yes.

19 A. Well, as I say, we were talking about

20 books that were -- that might be going out of print

21 that were still in print, but that were still in

22 print. They were in a transition stage.

23 Q. Well, did you have discussions about

24 digitizing books that were still in print that you

25 didn't anticipate --

1 Green

2 A. No.

3 Q. -- were going to go out of print?

4 A. No.

5 Q. Does the back list include, as you

6 define it, include books that are in the public

7 domain?

8 A. I think some of our titles are in the

9 public domain, yes.

10 Q. And you would still consider that a back

11 list book?

12 A. Oh, yes. As long as we print and sell

13 them. They're on the back list.

14 Q. So the difference between back list and

15 -- is it a front list?

16 A. Yes.

17 Q. The difference between back list and

18 front list is whether it's a first printing or not?

19 A. A book is on the back list a year after

20 publication.

21 Q. So it's strictly a matter of time?

22 A. Yes.

23 Q. In your discussions with either

24 Ms. Johnson or Mr. Chirico concerning possibly

25 digitizing a back list, did you discuss royalty

1 Green

2 issues?

3 A. No. They were just casual discussions.

4 They were not a...

5 MR. RICH: You want to finish the

6 thought?

7 Q. Yes.

8 A. They were just casual discussions, not

9 really substantive.

10 Q. Have any books on the back list been

11 digitized, to your knowledge?

12 A. I can't recall.

13 Q. Have you paid any royalties for

14 digitizing any books on the back list?

15 A. I'm not aware that we have.

16 Q. Have you ever taken a position that

17 Knopf should not sell any of its books in

18 electronic book form?

19 MR. RICH: For any reason?

20 MS. ZACK: For any reason.

21 A. No.

22 Q. Has anyone asked you whether or not

23 Knopf should sell any books in electronic book form

24 internally at Knopf?

25 MR. RICH: Object to the form. You can

1 Green

2 answer.

3 A. I can't recall anyone doing so.

4 Q. When you negotiate over the years, when

5 you've negotiated book contracts, have you always

6 included paperback rights?

7 MR. RICH: "You" meaning who?

8 MS. ZACK: "You" meaning Mr. Green

9 while at Knopf.

10 A. Paperback rights are included in all our

11 contracts. That isn't to say that every book that

12 we publish eventually ends up in paperback.

13 Q. How do you make the decision to publish

14 in paperback?

15 A. Well, there are three different ways you

16 might publish in paperback. You might do your own.

17 You might place it in Vintage or Anchor, or you

18 might license it to another paperback imprint.

19 Sometimes we attempt to do so, attempt to license

20 it to another house, but nobody agrees to do it, so

21 the book just doesn't go in paperback. Often big

22 illustrated books do not go into paperback. They

23 just remain hardcover titles.

24 Q. And take a work of fiction that's not

25 illustrated. What are the criteria that you use to

1 Green

2 decide whether to print the book in paperback after
3 it's been printed in hardback?

4 A. Well, contractually we may agree that
5 the book is going to be published in Vintage or
6 Anchor, and in some cases we make joint contracts
7 with Ballantine or Fawcett for mass market. For
8 example, John Updike's books always go into
9 Fawcett, but other authors always go into Vintage.
10 And then there are contracts we make in which no
11 such paperback guarantee is made.

12 Q. And when the contract doesn't have a
13 paperback guarantee, you sometimes do reprints in
14 paperback; correct?

15 A. Well, sometimes Vintage will decide to
16 do it, but most times we'll try to offer it to
17 another paperback publisher.

18 Q. What are the criteria, when you have
19 decided to reprint as a Vintage paperback a book
20 that you didn't have to reprint in paperback, what
21 makes you put it out in paperback?

22 A. Well, there are certain kinds of books
23 that Vintage will not publish. There are --

24 Q. I'm talking about the ones they do
25 publish. I'm talking about the discretionary

1 Green

2 decision when you do decide to reprint as a Vintage
3 paperback a book that you weren't contractually
4 obligated to reprint as a Vintage paperback.

5 A. Well, sometimes Vintage changes its
6 mind, depending on how the hardcover is doing. Or
7 when the hardcover comes in -- very often you make
8 a contract on a partial manuscript or a book
9 proposal. Vintage may feel a year or two or three
10 years later when the book is delivered that they do
11 want to do it.

12 Q. And is the paperback published
13 simultaneously with the hardback?

14 A. No. Well, very occasionally Knopf will
15 publish it simultaneously, but we don't publish
16 simultaneously with Vintage. Vintage publishes
17 about a year after hardcover publication.

18 Q. And is the hardcover book still
19 available for sale when you publish the paperback?

20 MR. RICH: Available at any outlet or --

21 MS. ZACK: Yes.

22 MR. RICH: -- through the publisher?

23 MS. ZACK: Right.

24 A. Most times, but not always.

25 Q. And if the hardcover is still available

1 Green

2 for sale, you still sometimes print and sell

3 paperbacks; correct?

4 A. Yes.

5 Q. And do you sometimes even print more

6 hardbacks?

7 A. Yes.

8 Q. And is that because there is a different

9 market for buyers of hardcover and paperback books?

10 A. Occasionally there is an author who has

11 a continuing hardcover market even though there is

12 a paperback available. Good example is Anne Rice.

13 Anne Rice has -- every one of her hardcovers is in

14 print. There is a continuing -- she has a

15 continuing readership.

16 Q. Her books are also available in

17 paperback; correct?

18 A. They're all in Ballantine paperback, and

19 they're in Knopf hardcover. You can't really make

20 generalizations in this area.

21 Q. That varies from author to author?

22 A. Yes. And subject to subject.

23 Q. Does it also vary depending upon the

24 economic conditions in the country?

25 A. It certainly depends on how the books

1 Green

2 are selling.

3 Q. In other words, are there certain times
4 when people are more willing to buy hardcover books
5 than other economic times? Has that been your
6 experience or not?

7 A. I think so, yes. But it's more
8 conditioned by authors and subjects.

9 Q. Would you say that people are more
10 willing to buy classic fiction in hardcover than
11 some other books?

12 A. How would you define "classic fiction"?

13 Q. Do you have a definition for it? I
14 don't want to define it. I'm not an expert.

15 A. No, but there are -- for example, one
16 classic novel that we still have in print after
17 forty years is Walker Percy's *The Moviegoer* even
18 though it's been in paperback all this time.

19 Q. Do you have others like that?

20 A. Yes. For example, we have all of Toni
21 Morrison's novels in print in hardcover.

22 Q. And these are all Knopf authors?

23 A. Yes.

24 Q. Do you know of any Random House authors
25 that are still in print in both hardcover and

1 Green

2 paperback?

3 A. I'm not familiar with Random House.

4 Q. So you couldn't say about Random House?

5 A. No.

6 Q. How about Delacorte? Could you say

7 about Delacorte?

8 A. No.

9 MS. ZACK: Why don't we take a

10 five-minute break.

11 (Recess)

12 Q. Mr. Green, have you ever heard the terms

13 "primary rights" and "subsidiary rights" in the

14 book publishing industry?

15 A. I'm certainly familiar with the term

16 subsidiary rights.

17 Q. Not the term "primary rights"?

18 A. It's not a phrase I use.

19 Q. Okay. What does the term "subsidiary

20 rights" mean to you?

21 A. Subsidiary rights refers to paperbacks,

22 book clubs, first serial rights, second serial

23 rights, foreign translation rights, electronic

24 rights.

25 Q. And why are those things that you've

1 Green

2 listed considered subsidiary rights?

3 A. They're considered subsidiary to the
4 original book publication in hardcover.

5 Q. Is that what subsidiary rights means,
6 that it's just subsidiary to the hardcover
7 publication?

8 A. Well --

9 Q. Different than the hardcover? I'm just
10 trying to see if subsidiary has a meaning to you
11 other than just being different from hardcover.

12 A. It's just a phrase that's grown up over
13 the years. I don't know who originated it.

14 Q. But what it means to you is all the
15 rights other than hardcover rights?

16 A. Other than the original hardcover
17 publication.

18 Q. Is it fair to say that there are
19 different royalty structures for each of the
20 different subsidiary rights?

21 A. Yes.

22 MR. RICH: Object to the form.

23 Q. Yes?

24 A. Yes.

25 Q. And those different royalties are

1 Green

2 intended to be set out in the form contract;

3 correct?

4 A. Yes.

5 Q. And you consider electronic rights to be

6 subsidiary rights currently?

7 A. Yes.

8 Q. Did you have any participation in

9 devising this phrase, which is included in

10 Miller 4, the Alfred Knopf 1998 contract that we've

11 looked at, Miller 5, the Random House 2000 contract

12 that we've looked at, and Green 3, the Random House

13 Children's Books 2001 contract that we've looked

14 at, "available in visual form for reading"?

15 MR. RICH: Let's let the witness take a

16 look at this, please.

17 MS. ZACK: Sure.

18 Q. It's found in Knopf 1(a)(i)(2), which is

19 Miller 4. And Miller 5, that language appears on

20 Page 7 in this subparagraph R, electronic.

21 A. I was not involved in these two. I was

22 involved in this.

23 Q. Well, that same language also appears in

24 the Random House.

25 MR. RICH: And the question again is?

1 Green

2 MS. ZACK: Did he participate in

3 devising that language.

4 A. Yes.

5 Q. So the language "visual" --

6 A. It's 1(a)(i) first page.

7 Q. It defines electronic book --

8 A. You're on a different page from me.

9 Q. Yes, but I'm looking at the same

10 language in a different contract. And it talks

11 about works in complete, condensed, adapted, or

12 abridged versions; is that right? "By any means of

13 distribution or transmission, whether now or

14 hereafter known or developed, intended to make the

15 text and any illustrations or photographs contained

16 in the work available in visual form for reading."

17 Is that what yours says?

18 A. Yes.

19 Q. That's defined to be electronic book;

20 correct?

21 MR. RICH: Well, including some

22 additional language you haven't quoted.

23 MS. ZACK: What's that?

24 MR. RICH: The parenthetical,

25 "(including, but not limited to, electronic

1 Green

2 or machine-readable media or on-line

3 electronic or satellite-based data

4 transmission)." Collectively they're

5 referred to as electronic books.

6 MS. ZACK: Okay. That language is not

7 in this contract.

8 MR. RICH: Well, you showed him this

9 one.

10 MS. ZACK: I understand. I appreciate

11 the clarification.

12 Q. Did you participate in devising any

13 portion or all of that language?

14 A. This language in this contract, yes.

15 Q. That you're looking at, the Alfred

16 Knopf.

17 A. 1998 contract.

18 Q. Yes.

19 A. Yes.

20 Q. And does that language set forth your

21 understanding of what an electronic book is?

22 A. Yes.

23 Q. Mr. Green, have you reviewed documents

24 or did you review documents in connection with

25 preparing your affidavit in this case?

1 Green

2 A. I may have looked at our contract, but
3 that's the only document that I would have referred
4 to.

5 Q. When you say "our contract" --

6 A. The Knopf contract.

7 Q. And that would be the current contract?

8 A. The current contract.

9 Q. Did you review any older contracts?

10 A. No.

11 Q. And would the contract that I just had
12 in front of you, the 1998, be the type of form
13 contract that you reviewed in connection with
14 preparing your affidavit?

15 A. No. I would have reviewed the current
16 contract.

17 Q. And the current Knopf contract is
18 different than the 1998 one?

19 A. Yes.

20 MS. ZACK: Do we have a copy of a
21 current Knopf contract?

22 A. Well, it's more or less the same as the
23 -- don't you have the Random House?

24 MS. ZACK: If I can just have one in
25 blank --

1 Green

2 A. You have one because I've seen one here
3 today.

4 Q. Okay.

5 A. Somewhere. Is this it here? No.

6 That's Children's Books.

7 MS. STEINMAN: The children's division
8 one should be a -- you know what, I think we
9 better -- actually, that's contrary to the
10 witness's testimony. We'll produce one.

11 MS. ZACK: Actually, it's probably

12 this one that I have right here.

13 Q. Miller 5?

14 A. Yes. This is the one that is, in

15 content, the same as our contract.

16 Q. So you looked at Miller 5?

17 A. Yes.

18 Q. Or a form contract --

19 A. Yes.

20 Q. -- in the form of Miller 5 in connection

21 with your affidavit; correct?

22 A. Correct.

23 Q. And it's correct that you looked at no

24 other contracts or form contracts?

25 A. Correct.

1 Green

2 Q. And you would agree with me that
3 Miller 5 on Page 7 in this clause "r. Electronic"
4 contains a definition of electronic book?

5 MR. RICH: Can I hear the question back,
6 please.

7 (Record read)

8 MR. RICH: You can answer.

9 A. Yes.

10 Q. And that definition is substantially the
11 same as the one from the Random House contract?

12 MR. RICH: You want to compare them?

13 Q. I mean the Knopf contract.

14 A. Well, there are boiler plate changes in
15 this contract, in this clause. It may not be in
16 our basic contract.

17 Q. Well, it's not that critical, so I'll
18 just say, you would agree that the contract
19 Miller 5 contains a definition of electronic book;
20 correct?

21 A. Yes.

22 Q. Did you discuss your affidavit with
23 anyone other than counsel?

24 A. No.

25 Q. Have you discussed this case with anyone

1 Green

2 other than counsel?

3 A. I have mentioned the fact that I am
4 involved in this case to Mr. Mehta and Mr. Chirico,
5 but that's it.

6 Q. And have you had any substantive
7 discussions concerning issues involved in this case
8 with those gentlemen?

9 A. No.

10 Q. Have you discussed the issues involved
11 in this case with any non-lawyer at Knopf or Random
12 House or Bertelsmann?

13 A. No.

14 Q. You mentioned in your affidavit that
15 Knopf makes investments in its books; is that
16 correct?

17 A. We provide advances to authors. We also
18 make investments in the publication of the book,
19 production of the publication.

20 Q. And what is your view as to what the
21 author does with respect to the book?

22 MR. RICH: Object to the form. I don't
23 understand that question.

24 Q. Does the author have a substantial
25 investment in his or her own book?

1 Green

2 A. The author has -- the author spends one
3 or two or three or four years writing the book, so
4 the author invests his or her time and mind in the
5 production of a manuscript.

6 Q. And do you consider that to be
7 important?

8 A. Yes.

9 MS. ZACK: I don't have any other
10 questions. Thank you.

11 MR. RICH: We're going to have a few
12 cross-examination questions. I just want to
13 consult with my colleague for a moment.

14 (Recess)

15 EXAMINATION BY

16 MR. RICH:

17 Q. Mr. Green, I have very few questions for
18 you. I ask you to turn to Paragraph 6 of your
19 affidavit, please. The second sentence of the
20 affidavit reads, "When the parties used the
21 standard language in these contracts as identified
22 above, they clearly contemplated that the publisher
23 was being granted a broad grant of rights to
24 distribute the full content of the work in a linear
25 text fashion -- as opposed to as an audio

1 Green

2 recording, motion picture, or multimedia

3 presentation." Do you see that language?

4 A. I do.

5 Q. And do you recall being asked several

6 questions on your direct examination about the

7 degree to which you were or were not familiar with

8 what the parties to the negotiations of those

9 agreements may have, quote, contemplated?

10 A. I do.

11 Q. What did you mean when you wrote this

12 sentence and indicated that the parties "clearly

13 contemplated" that the publisher was being granted

14 a broad grant of rights?

15 A. Well, I meant that based on my

16 experience in negotiations with authors, that

17 although I didn't have any personal knowledge of

18 what was in their minds at the time, that it seemed

19 to me that this was what, you know -- this is what

20 they were giving Random House in exchange for what

21 -- for the publication rights.

22 Q. When you say the "this," what is it you

23 have in mind?

24 A. The manuscript, the book, the rights to

25 print, publish, and sell -- sell that book.

1 Green

2 Q. And looking at Paragraph 5 of this
3 document, you state in the second sentence, "The
4 words 'in book form,' which appear in virtually
5 every contract, necessarily imply the right of the
6 publisher to transmit the author's words to the
7 reader in a linear text fashion." Do you see that?

8 A. Yes.

9 Q. Now, in writing what you wrote in
10 Paragraph 6 about the parties' contemplation, to
11 what degree was the concept I just quoted from
12 Paragraph 5 of relevance to you?

13 MS. ZACK: Objection to the form.

14 A. Do you want to say that again.

15 Q. Yes. Let me rephrase it. In
16 Paragraph 6 when you described your understanding
17 of what would have been contemplated by the
18 parties, to what degree did that contemplation
19 embrace the concept that you described in the
20 second sentence of Paragraph 5 of this affidavit?

21 MS. ZACK: Object to the form.

22 A. Completely.

23 Q. Later in Paragraph 6 in the last
24 sentence you state the following in your affidavit:
25 "Whether a work is read on printed paper, on a

1 Green

2 computer screen, or on a hand-held eBook reading
3 device, it is the same book with the same linear
4 text delivered to the reader and provides the same
5 reading experience." Do you see that?

6 A. Yes.

7 Q. You were asked several questions on
8 direct examination about the degree to which you
9 had physically read a 200 or 300-page work in eBook
10 format. Do you recall that?

11 A. Yes.

12 Q. When you wrote and concluded that the
13 eBook experience provides the same reading
14 experience as whether a book is read on printed
15 paper, what did you mean?

16 A. Well, I felt that based on my brief
17 reading of various eBooks, that they do provide the
18 same reading experience as a book, as a hardcover
19 book or a paperback book.

20 Q. And by "same reading experience," you
21 had what in mind?

22 A. The same enjoyment or acquisition of
23 information, whatever one gets from the reading
24 experience. In other words, a reader can acquire
25 the same experience from a book, a hardcover book,

1 Green

2 a paperback book, or an electronic book.

3 Q. Now, at the front of Paragraph 6 in that
4 same paragraph, you state, "Based on my review of
5 the contracts at issue, it is clear that" -- do you
6 see the opening there?

7 A. Yes.

8 Q. Could you clarify for the record the
9 nature of the review of the contracts in issue
10 which you undertook?

11 A. I based that on my general knowledge of
12 the contracts that Random House offers.

13 Q. Did one or more individuals in
14 conversation with you describe to you the material
15 terms of those contracts, at least in terms of what
16 you believe was material for the purposes of
17 writing your affidavit?

18 A. Yes.

19 Q. Who was that?

20 A. Harriet Dorsan.

21 Q. Can you identify her, please?

22 A. General counsel at Random House.

23 Q. Finally, I would like to show you by way
24 of illustration a couple of the contracts which
25 appear both as exhibits to Mr. Sarnoff's affidavit

1 Green

2 and which I think collectively have been now marked
3 as Miller Exhibit 2 at yesterday's deposition, and
4 specifically these are the two William Styron
5 agreements involved in this lawsuit.

6 MS. ZACK: Which one are you showing
7 him, please?

8 MR. RICH: I'm showing him the 1961
9 document, and then I will ask a similar
10 question respecting the May of 1977
11 agreement.

12 Q. You were asked on direct examination a
13 number of questions relating to the royalty
14 structure of agreements such as this. Do you
15 recall those questions?

16 A. I do.

17 Q. And my sole question for you is whether,
18 looking strictly within the four corners of -- let
19 us start with the 1961 document, there are any
20 royalty provisions that would set forth the royalty
21 rate applicable to the publication by Random House
22 of the works covered by these agreements, by this
23 agreement in eBook form?

24 A. I would say that the royalty provided to
25 the author in Paragraph 10 would cover electronic

1 Green

2 books.

3 Q. Can you be more specific about which
4 section or subsection would do so?

5 A. Section 10(a), which provides for a
6 royalty of fifteen percent of the retail price of
7 all copies sold.

8 Q. And why, in your judgment, would that
9 language in that provision cover the sale of
10 eBooks?

11 A. I believe that it covers the sale of all
12 books that are not specifically indicated in the --
13 in other words, there is no -- where there is a
14 specific royalty for Vintage books, that that
15 royalty would be relevant. But I think that the
16 royalty provisions in 10(a) covers books that are
17 not specifically listed here, covers books that are
18 not specifically listed in this section.

19 Q. I should have clarified in my question
20 that the question I asked you presupposed that
21 there had not been any superseding determination by
22 Random House to offer a different eBook royalty
23 rate, which we --

24 MS. ZACK: I object to the form.

25 Q. -- which we know has, in fact, occurred;

1 Green

2 correct?

3 A. Right.

4 Q. Now, same question with respect to the

5 1977 Styron agreement. Is there a royalty

6 provision which, in the absence of any superseding

7 royalty with respect to eBooks, would have

8 permitted Random House to publish and sell the

9 listed works in eBook form?

10 MS. ZACK: I object to the form.

11 A. Can I answer?

12 MS. ZACK: Yes.

13 Q. Let me withdraw that question. Let me

14 rephrase the question. Is there a royalty

15 provision --

16 MS. ZACK: Which one are we looking at

17 now?

18 Q. -- under the '77 agreement that governs

19 any publication by Random House of these works in

20 eBook form?

21 A. Yes.

22 Q. Can you identify that, please?

23 A. Section 10(a). Clause -- Paragraph

24 10(a).

25 Q. Is that for essentially the same reason

1 Green

2 you testified to with respect to the earlier Styron

3 agreement?

4 A. Yes.

5 MR. RICH: Thank you. We have no

6 further questions.

7 MS. ZACK: Now I have a few.

8 BY MS. ZACK:

9 Q. You mentioned Walker Percy before.

10 A. Yes.

11 Q. I take you've read The Moviegoer. Have

12 you?

13 A. A long time ago.

14 Q. Yes. So did I. Was my reading

15 experience the same as yours?

16 A. Well, I don't know.

17 Q. Do you know whether my reading

18 experience of reading Walker Percy's The Moviegoer

19 was the same as your reading experience of reading

20 Walker Percy's The Moviegoer?

21 A. No, I do not.

22 Q. Now, you previously testified in

23 response to my questions that at no time prior to

24 the 1990's had you heard the phrase "electronic

25 book"; is that right?

1 Green

2 A. I can't remember having heard it.

3 Q. Well, do you think you forgot?

4 MR. RICH: Objection.

5 Q. Do you think you heard it and forgot, or
6 do you think that you never heard it prior to 1990?

7 A. I don't know. I don't know.

8 Q. And you've also said that you don't
9 recall hearing the phrase "eBooks" prior to 1990;
10 right?

11 A. Same.

12 Q. And you've said that you never discussed
13 electronic books or eBooks with authors prior to
14 1990; right?

15 A. I'm sure of that.

16 Q. And you never discussed electronic books
17 or eBooks with agents prior to 1990; is that
18 correct?

19 A. Correct.

20 Q. And you never discussed electronic books
21 or eBooks with anyone internally at Knopf or Random
22 House prior to 1990; correct?

23 A. I can't recall doing so.

24 Q. So any clear contemplation of anything
25 concerning eBooks that you have had has arisen

1 Green

2 since 1990, hasn't it?

3 MR. RICH: Can I hear the question,
4 please.

5 (Record read)

6 MR. RICH: This witness has had?

7 MS. ZACK: Yes.

8 A. Yes.

9 Q. And any clear contemplation of anything
10 concerning electronic books that you have had has
11 arisen since 1990; correct?

12 A. Yes.

13 Q. And any clear contemplation that you can
14 attribute to anyone else has arisen in your mind
15 since 1990; correct?

16 MR. RICH: Object to the form.

17 A. I can't -- I can't say yes on that.

18 Q. Well, you never even contemplated
19 anything concerning eBooks at any time before 1990,
20 did you?

21 MR. RICH: Objection. You can answer.

22 A. That is correct.

23 Q. And you don't have any information that
24 any of the authors, agents, or editors involved
25 with works at issue in this case contemplated

1 Green

2 anything relating to eBooks prior to 1990 either,

3 do you?

4 A. I do not.

5 Q. And you don't have any information that

6 they contemplated anything about eBooks or

7 electronic books prior to 1990; right?

8 A. I do not.

9 Q. Or electronic versions; right?

10 A. Right.

11 Q. Or electronic rights; correct?

12 A. Right.

13 Q. And you don't have any information that

14 any of those people conceived that books could be

15 read on computers at the time they signed their

16 contracts, do you?

17 MR. RICH: The question is whether he

18 has any knowledge whether they did or not?

19 MS. ZACK: Yes.

20 MR. RICH: If you're able to answer.

21 A. I just -- I don't know of any such

22 instance.

23 Q. And you didn't contemplate in 1977, did

24 you, that books were going to be read on computers?

25 A. No.

1 Green

2 Q. And you're fairly senior and were at
3 that time in the publishing industry, weren't you?

4 A. Yes.

5 Q. And would you consider that you were
6 fairly aware of trends in the publishing industry
7 in 1977?

8 A. Yes.

9 Q. Were there people better aware than you?

10 A. Probably. They were more senior than me
11 at that time.

12 Q. Notwithstanding that, you were pretty
13 high up, weren't you?

14 A. I was getting there.

15 Q. And you were pretty in tune with
16 everything; correct?

17 A. Not in the computer world so much.

18 Q. You were in tune with what the average
19 agent, author, and editor knew; correct?

20 A. Correct.

21 Q. And you weren't in tune with eBooks in
22 1977, were you?

23 A. No.

24 Q. And you weren't in tune with electronic
25 rights either, were you?

1 Green

2 A. No.

3 Q. Or computers?

4 A. No.

5 Q. Or books on computers?

6 A. No.

7 Q. Or the internet?

8 A. Well, I don't know when I became aware
9 of the internet, but I became aware of it at some
10 point.

11 Q. You think it was 1977?

12 A. I don't think that early, but before
13 1990.

14 Q. Prior to signing your affidavit -- I'm
15 going to show you -- this is the version that I can
16 read of the Styron 1961 contract. It was marked as
17 Miller Exhibit 3. And you were asked questions
18 about that by Mr. Rich. Did you look at this
19 contract before you signed your affidavit, sir?

20 A. No.

21 Q. Is it fair to say that the first time
22 you looked at the contract was on the break between
23 my questioning of you and Mr. Rich's questioning of
24 you when Mr. Rich and the general counsel of Random
25 House took you out in the hall and showed you the

1 Green

2 contract?

3 A. No.

4 Q. When did you first see it?

5 A. In preparation for this deposition.

6 Q. Okay. So you saw it after you signed
7 your affidavit but with counsel in preparation for
8 this deposition?

9 A. Yes.

10 Q. And when was the first time that they
11 directed you to Paragraph 10?

12 MR. RICH: Instruction not to answer.

13 MS. ZACK: When was the first time.

14 That's not privileged. When.

15 MS. STEINMAN: Yes.

16 MR. RICH: Our work with our client in
17 working with documents and what we show him
18 and when we show him things are totally
19 privileged communications.

20 MS. ZACK: No. I beg to differ.
21 That's not the substance of a communication.

22 That's a question of when. I can show you
23 many cases that say that's fair
24 cross-examination when someone became aware
25 of something. And I'm not asking --

1 Green

2 MR. RICH: He told you when he became
3 aware. In preparation for -- not aware.
4 The question that was properly put and
5 properly answered was when he first examined
6 the document. When he was shown by counsel,
7 what he was pointed to and when, I beg to
8 differ with you, intrude on the preparation
9 process of the witness for deposition.

10 MS. ZACK: Are you directing him not
11 to answer?

12 MR. RICH: I am.

13 MS. ZACK: Okay. Do you have another
14 copy of this so I can look along?

15 MR. RICH: Which one is this? The
16 '77?

17 MS. ZACK: No. This is the '61 Styron
18 contract.

19 MR. RICH: Yes.

20 Q. Referring you to the paragraph that
21 Mr. Rich referred you to, Paragraph 10 on Page 2,
22 do you see that?

23 A. Yes.

24 Q. You referred to Paragraph 10(a), which
25 has a royalty of fifteen percent of the retail

1 Green

2 price for all copies sold. Has Random House ever
3 paid anyone fifteen percent of the retail price for
4 any eBooks sold to any author?

5 A. I'm not aware whether they have or have
6 not.

7 Q. And have you had any discussions with
8 any business people at Random House about whether
9 eBooks would be subject to 10(a)?

10 A. No.

11 Q. Prior to signing your affidavit, have
12 you had any discussions with anybody concerning
13 whether eBooks would be subject to 10(a)?

14 MR. RICH: I would caution the witness
15 not to answer anything that would impinge on
16 any attorney client discussion.

17 MS. ZACK: It's a yes or no question.
18 I can ask whether he had discussed it with
19 an attorney.

20 MR. RICH: You can answer yes or no.

21 A. At what point?

22 Q. At any time prior to the time you signed
23 your affidavit, which was February 26th of this
24 year 2001, did you ever discuss with any person
25 within the Bertelsmann, Knopf, Random House group

1 Green

2 whether or not royalties on eBooks were subject to

3 Paragraph 10(a)?

4 A. Between February 26th and --

5 Q. No. Prior to February 26th.

6 A. No.

7 Q. Any time prior to February 26th?

8 A. No.

9 Q. In the normal course of your business at

10 Knopf, did you ever discuss whether or not this

11 Paragraph 10(a) covered eBooks?

12 A. I don't recall discussing it.

13 Q. Now, this paragraph --

14 A. Because this paragraph is 1961, so I

15 wouldn't be -- I wouldn't have been discussing it

16 on a current contemporary basis.

17 Q. Well, royalties are still being paid

18 under this contract, aren't they?

19 A. Well, this is not our contract.

20 Q. Well, are you competent to testify about

21 what is or isn't included in 10(a) of this

22 contract?

23 A. Yes. But, as I say, it's a contract

24 that was signed before I started to work at Knopf.

25 Q. But royalties have been paid under this

1 Green

2 contract during this 60's, 70's, and 80's, have

3 they not?

4 A. Oh, yes. You mean royalties -- yes.

5 Q. And royalties have been paid under other

6 Knopf and Random House contracts that were signed

7 in the 60's, 70's, and 80's; correct?

8 A. Correct.

9 Q. And with respect to any of those many

10 contracts, did you ever have a discussion with

11 anybody prior to 2001 in which someone said to you,

12 oh, the royalty for eBooks is covered by this

13 paragraph that says a royalty of fifteen percent of

14 the retail price for all copies sold?

15 A. I don't recall any such discussion.

16 Q. And has Knopf ever, in your experience,

17 unilaterally increased or changed royalties that

18 were included in signed written contracts?

19 MR. RICH: Object to the form. You can

20 answer. I think it also calls for a legal

21 conclusion.

22 A. I believe that I said earlier that our

23 Vintage royalties were sometimes increased by

24 amendment.

25 Q. That's by amendment signed by both the

1 Green

2 author and the agent?

3 A. Yes. Author and the publisher.

4 Q. Author and the publisher. I'm sorry.

5 I'm asking you whether Knopf or Random House or any

6 of the related entities have ever, to your

7 knowledge, changed a royalty unilaterally without

8 having amendments signed by the author and the

9 publisher?

10 A. Not to my knowledge.

11 Q. Now, going back to this Paragraph 10, it

12 has various royalties a through k. Do you see

13 that?

14 A. Yes.

15 Q. And a royalty of fifteen percent of the

16 retail price for all copies sold. That covers all

17 copies sold; correct?

18 A. Yes.

19 Q. So what do all these other paragraphs

20 cover?

21 A. Well, they cover other aspects of --

22 they cover certain discount schedules. They cover

23 mail order. They cover Modern Library, Vintage,

24 export sales.

25 Q. Let's just take a look at subparagraph

1 Green

2 c, 10(c). "A royalty of five percent of the retail
3 price on copies sold directly to the consumer
4 through the medium of mail order coupon
5 advertising, direct by mail circulation, or
6 solicitation by radio or television." Do you see
7 that?

8 A. Yes.

9 Q. And also 10(a) says, "A royalty of
10 fifteen percent of the retail price for all copies
11 sold." Do you see that?

12 A. Yes.

13 Q. On copies sold directly to the consumer
14 through the medium of mail order coupon
15 advertising, what royalty does the author get under
16 this agreement?

17 A. Five percent.

18 Q. Not fifteen percent?

19 A. Not fifteen percent.

20 Q. And not twenty percent? It's not
21 cumulative; correct?

22 A. No. That's correct, yes.

23 Q. In your experience, has the fifteen
24 percent royalty of the retail price for all copies
25 sold under Paragraph 10(a) been applied, in your

1 Green

2 experience, to anything other than hardcover?

3 A. No.

4 Q. So, in your experience, 10(a) has been

5 limited to hardcover sales of books; isn't that

6 correct?

7 A. That is correct.

8 MS. ZACK: I don't have any other

9 questions.

10 MR. RICH: We're done. Thank you very

11 much.

12 (Time noted: 1:00 p.m.)

13

14

15

16 _____

17 ASHBEL GREEN

18

19

20 Subscribed and sworn to before me

21 this ____ day of _____, 2001

22

23 _____

24

25

1

2 C E R T I F I C A T E

3 STATE OF NEW YORK)

4 : ss.

5 COUNTY OF NEW YORK)

6 I, JOAN WARNOCK, a Notary Public within

7 and for the State of New York, do hereby

8 certify:

9 That ASHBEL GREEN, the witness whose

10 deposition is hereinbefore set forth, was

11 duly sworn by me and that such deposition is

12 a true record of the testimony given by the

13 witness.

14 I further certify that I am not

15 related to any of the parties to this action

16 by blood or marriage, and that I am in no

17 way interested in the outcome of this

18 matter.

19 IN WITNESS WHEREOF, I have hereunto

20 set my hand this 30th day of March, 2001.

21

22

23

JOAN WARNOCK

24

25

1

2 ----- I N D E X -----

3 WITNESS EXAMINATION BY PAGE

4 Ashbel Green Ms. Zack 5

5 Mr. Rich 102

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8 ----- INFORMATION REQUESTS -----

9 DIRECTIONS: 116

10 RULINGS:

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2 ----- EXHIBITS -----

3 DEFENDANT'S FOR ID.

4 1 Mr. Green's affidavit 31

5 2 Contract dated May 30, 1977 32

6 3 Random House Children's Books 43

7 contract dated February 14, 2001

8 4 Dell Original Editions agreement 59

9 Bates numbered RH31094-31105

10 5 Document Bates stamped RH31075-31078 71

11 dated June 20, 1957

12 6 Random House eBook Discussion 82

13 Executive Update dated

14 October 24th, 2000

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