The contract provision here cited (Paragraph 4, which was waived by the parties in February 1960) is one which is not found in any other outside label contract. It obviously originated in the circumstances peculiar to the Verve contract. It was feared that Verve might be compelled to dump its repertoire in such a manner as to depreciate the value of the Verve name (CX 82). In effect it provided that if Verve were to convert itself into a budget line label, thus depreciating the value of the Verve name, Columbia could offer the records on the Columbia label. The paragraph was carefully limited in its application to records from 12 specific Verve masters originally listed on Schedules A and B of the 1959 contract (CXs 23g–h, 24, 25). It merely reflected the concern of Club officials in 1958 about Verve's financial condition.

Verve was absolved from "responsibility" for pricing at the retail or dealer level (CX 23c), and thus the contract did not, in terms, prohibit dealers from selling Verve records at, below, or above the Club's retail price. However, if Verve chose to sell the records at "distress prices," *or* if the Verve label had depreciated at retail to the status of a "low price label," such as the Columbia "Harmony" and the RCA "Camden" budget lines, Columbia, under Paragraph 5 (CX 23i), could elect to release phonograph records manufactured from the Verve masters on the "Columbia" label after giving Verve "written notice." (Camden, for example, then had suggested list prices of $1.98 and $2.98 (CX 316, p. 256).)

The contract makes clear that the purpose of this clause was not to prevent competitive retail price reductions by Verve. Thus, sales which were "casual" or "inadvertent" were not to be considered "distress" sales (CX 23h–i). Nor were sales by Verve during sales programs, in accordance with practices "customary" in the record industry, to be deemed "distress" sales. Finally, Verve's limited agreement was with respect only to its prices to its distributors, and not with respect to retail selling prices (CX 23c).

The limited intent of the parties was further made clear in a contract clause which specified that the "distress selling" provision was not to be used to "frustrate the basic intent of the parties hereunder to utilize the 'Verve' label" (CX 23i–j). It was to be invoked only if the Verve name had become "depreciated" (CX 82b).

Despite its limited effect with respect to a handful of records, Paragraph 4 of the Verve contract was waived by a contract amendment dated February 17, 1960 (CX 32).

There is no evidence in the record as to what price those records were in fact sold by Verve to its distributors.

But Columbia failed to waive either Paragraph 1(f), defining

"distress price," or Paragraph 5, which was designed to discourage not only "distress selling" by Verve, but also

> the consistent offering of records on the "Verve" label at retail prices comparable to the prices at which the present Columbia "Harmony" and RCA "Camden" records are being sold.

If Columbia determined that as a result, the Verve label had depreciated to the status of a low price label, Columbia could "release phonograph records manufactured from the Licensed Masters under the 'Columbia' label" after giving Verve written notice (CX 23i).

Respondents take the position that Paragraph 5 of the Verve contract was described by Paragraph 4 as being the "sole remedy" available to Columbia in case Verve breached the "distress price" provisions of Paragraph 4.

"Obviously," say respondents, "when Paragraph Four dealing with 'distress prices' was waived by the parties in February 1960, it was not also necessary to waive the 'definition' of 'distress prices' which is contained earlier in the contract (CX 23b–c), or the 'sole remedy' for the breach of waived Paragraph Four which appears in Paragraph Five."

The trouble with respondents' argument is that Paragraph 5 not only was the sole remedy for breach of Paragraph 4; it also stood on its own feet in providing a remedy for selling at budget line prices, as well as at distress prices.

Despite all the explanations and qualifications, the contract obviously had the capacity and tendency to influence and control Verve's prices.

The contract provision was in effect for eleven months. The record does not disclose Verve's actual selling prices to distributors before the February 1960 waiver.

It does not appear that any other contract had comparable provisions.

In CPF 120, Government counsel refer to an "extension" of the Verve agreement on March 14, 1962. Because the extension retained the terms and conditions of the 1959 agreement "except as herein expressly modified" (CX 287), Government counsel think it strange that Paragraph 5 was not rescinded at that time. Respondents' answer is that Paragraph 5 already was ineffective because of the 1960 waiver.

Regarding the extension, respondents explain that the Verve contract was about to expire in March 1962 unless Columbia exercised its option. But the parties had agreed in February 1962 that the contract was to be terminated (Maxim 1729), and re-

spondents say that some provision had to be made to permit a carrying on of operations pending agreement on the details of termination. The contract was in fact terminated as of June 1962 (CX 288).

The investigation in this matter commenced in 1960, and changes in the Caedmon contract were adopted after that time. A letter dated December 7, 1960, from counsel for respondents indicates on its face that the investigation had been in progress for a considerable period of time (CX 1a).

On April 15, 1961, the Caedmon contract of 1958 was rescinded and the explicit agreement about price (CPF 111) was removed. The new contract included a provision tying the royalty payment to "* * * our [Columbia's] retail selling price * * *" (CXs 22a, 22e). This was similar to the provision in the 1959 Verve contract (CX 236).

As indicated previously, an attempt had been made to replace the Caedmon contract considerably before the investigation began in this matter. (See p. 89, *supra.*) For reasons similar to those stated concerning the Verve agreement, Club officials, on advise of counsel, decided in 1960 to enter into an entirely new contract with Caedmon. It does not appear to be disputed that this was before the Commission's investigation started.

The new agreement was prepared, but was not immediately executed because of a pending lawsuit. A new contract was entered into (CX 22) by Columbia with Caedmon as of April 1961. (Keating 5172–84; RPF 192 (footnote).)

The new Caedmon contract eliminated the principal contractual provisions challenged by the complaint.

Government counsel have not disputed respondents' claim that the facts surrounding the revision of the Caedmon and Verve contracts were fully disclosed during the precomplaint investigation.

Respondents complain that "The early abandoned contracts are used here as a tactic to invalidate the later contracts although no connection was ever shown between them. * * * The fact that complaint counsel rely so heavily on the two obsolete contracts merely highlights the sophistry and weaknesses of the attack on the later agreements" (Exceptions, page 15).

Of course, respondents claim too much when they deny any "connection" between the contracts. But there is enough truth in respondents' contention to provide a troublesome problem for the examiner. It is certainly true that the terms of the new Caedmon contract were substantially different from the terms of the

old contract, and that despite the efforts of Government counsel to view the Caedmon and Verve contracts as "precedents," the later contracts do not contain the challenged provisions.

Under the new Caedmon contract, as well as under the Verve, Mercury, Kapp and Warner Bros. contracts, royalties were to be paid by Columbia by applying the royalty formula in the contract to a base price—which was the Club's selling price. Except as the Government undertakes to color that arrangement by reference to the abandoned price-fixing provisions, the use of Columbia's selling price as the measure of royalty payments is legally unobjectionable.

Columbia sold Caedmon records through the Club at a price of $4.98, and Caedmon maintained a suggested list price of $5.95. In 1961, the Club offered many Caedmon records and consistently made the following representation:

> . . . $4.98 (regular list price $5.95) (CX 564, pp. 4–7, 10–13; see also RX 134f, RX 135a–i).

As recently as Christmas of 1962, Columbia was representing that the Caedmon regular list price was $5.95 and the Columbia price through the Club was $4.98 (CX 593, pp. 16 and 17). The *Schwann* LP catalog for December 1962 shows that Caedmon has maintained its $5.95 suggested list price (CX 319, page 282).

The "Royalty Price" Provisions

In CPF 124, Government counsel get carried away by their theory that "royalty price" is the key to a price-fixing agreement between Columbia and each of its licensors. Government counsel state:

> Following the precedent of the Verve-CBS Agreement, CBS and Mercury agreed that payments to the Licensor shall be made on the basis of a "Royalty Price." This "Royalty Price" was defined by and related to the Club selling price and the Licensor's suggested list price.

Actually, the Mercury contract of 1960 did not follow any Verve precedent, and it is misleading to state that the royalty price was "defined by and related to the Club selling price and the Licensor's suggested list price."

Paragraph 1(d) does define royalty price as Columbia's "retail selling price" less certain deductions. Those deductions are described as follows:

(1) Any excise or other similar tax.

(2) The charge made by Columbia for any record container.

(3) The charge made by Columbia for any "extraordinary librettos or program notes included with such records."

(4) The additional charge made by Columbia to the retail purchaser for postage and handling, provided any such additional charge is deemed to be included in the retail selling price.

The contract further provides that the charges for items (1) through (4) "shall be no greater than the same amount as we [Columbia] deduct in determining artist royalties for the leading Columbia recording artist whose records are sold by the Columbia Record Club."

The definition of royalty price concludes:

For purposes of calculating the royalties payable to you [Mercury] during the term of this agreement under the formula set forth in paragraph 11 hereof it is agreed that the royalty price on records with a suggested retail price in the United States of $3.98, $4.98 and $5.98 shall be $3.46, $4.42, and $5.26 respectively. The royalty price on records with a different suggested list price shall be determined by the general criteria outlined above (CX 34b).

In the Verve agreement, the royalty was to be paid on the base of the defined "royalty price" (CX 23L). In the Mercury agreement, however, the actual royalty payment provision (Paragraph 11(a), CX 34d) contains no reference at all to the term "royalty price." Subject to specified qualifications, a base royalty of 5% is payable on 95% of Columbia's "net sales" of phonograph recordings manufactured from Mercury's master recordings. Net sales are defined as gross shipment less returns.

Paragraph 11(b) contains the usual provision specifying that no royalty shall be payable with respect to "free" or "bonus" records.

The only references to "royalty price" in the Mercury contract appear in connection with paragraph 11(c), which involves a complicated procedure in case the amount of free and bonus records exceeded certain amounts, and in connection with paragraph 11(d), which provides for certain adjustments if records on which royalties were paid totaled less than one million (CX 34d–e).

The new language was apparently inserted in this contract for use in calculating the payments to be made under those provisions.

The contract language quoted in CPF 124 becomes the focal point of many of the Government's subsequent proposed findings. Government counsel argue that the "royalty price" means the licensor's suggested list price. Respondents deny this and say that the record shows that it refers to the Club's selling price.

Although the dispute involves a crucial legal issue, the difference is essentially one of semantics rather than actualities. This is be-

cause, as respondents themselves concede (Exceptions, page 91), the Club's selling price "is normally suggested list price."

But whether it refers to Club selling price or licensor's suggested list price, the question is whether the royalty clause amounts to an agreement between the parties as to the prices which the Club will charge.

Analysis of the contracts and the testimony shows that the "royalty price" is not necessarily related to the suggested list prices of the outside labels. There was no testimony to support such a construction of the contracts, and Government counsel cite none.

In their brief (page 343), Government counsel themselves seem dubious:

"It is the position of complaint counsel," they say, "that the Licensing Agreements have a specific formula requiring list price selling. But irrespective of the actual words used, the understandings of the parties and their actions show an unlawful combination. * * *"

One gets the impression that their "position" is a shaky one and that they virtually concede that "the actual words used" are at least ambiguous. If so, the burden was on them to clarify them or otherwise prove the intent and meaning they have ascribed to them.

As a matter of fact, the contract clause emphasized in CPF 124 follows immediately after the generalized definition of "royalty price," and the reference is obviously to the Club's selling price less specified deductions. Again we note that the Club's selling price is normally suggested list price.

In the Liberty contract, then, the formula is applied in the contract itself, so that giving effect to the specified deductions, the royalty price is $3.46 for a $3.98 record, $4.42 for a $4.98 record and $5.26 for a $5.98 record.

Just how this contractual arrangement amounts to a price-fixing device is not made clear by the Government.

We are inclined to agree with the respondents that the diversity of the contractual provisions suggests that undisclosed business considerations, rather than any uniform pricing policy, are apparently involved. Thus, the Kapp contract, which was executed subsequent to the Mercury contract, does not contain the new clause quoted in CPF 124. Neither does it appear in the subsequent Caedmon, United Artists or Cameo contracts (CXs 22, 44 and 453), or in the first Warner Bros. contract (CX 39).

There is additional internal evidence from the contracts themselves that the language relied on by Government counsel was not

necessarily intended to refer to the suggested list prices of the outside labels. In their exceptions (page 92), respondents note the inclusion of suggested list prices inapplicable to specific licensors.

Although this may have been the result of careless draftsmanship, it is at least suggestive that the Government's interpretation is not well founded.

The fact that the complaint makes no reference at all to that contract clause, now claimed to be so important, also raises a question as to the validity of the Government's interpretation. Other specific contract clauses deemed restrictive were referred to or summarized in the complaint.

One wonders also why no attempt was made by Government counsel to develop, either through respondents or through the licensors or otherwise, why the contractual provisions demonstrated such substantial differences.

The important thing, however, is that even if the royalty price language could be construed as a reference to the list price of the outside label, it still did not establish an agreement by Columbia to sell at list price. The Club may lawfully use as the base for royalty payments to outside labels the selling price, the suggested list price, actual sales or the number of pages in the telephone book.

In the final analysis, the Mercury 7½% royalty for a $3.98 LP is computed on a base of $3.46—which amounts to 26¢ per record.

There is no evidence in this record to show that the agreement to pay Mercury 26¢ per record in any way fixes the Club selling price on $3.98 LPs—either at $3.98 or at any other figure.

Despite Government claims to the contrary (CPF 125), none of the provisions in the Mercury contract required Mercury to keep Columbia "informed about any prospective price changes," and there is no evidence that Mercury did so. The lone exhibit cited in support of this finding (CX 380) is hardly proof of any price fixing arrangement.

Subsequent Warner Bros. licensing agreements (CXs 514, 517, 519, 537) defined "Royalty Price" as Columbia's "retail selling price" less certain deductions, and further specifying the "present" royalty price as a stated amount applicable to records with a "suggested list price" of a designated amount. For example:

At present the royalty price of an album with a suggested list price of $3.98 is $3.46, and the royalty price of the stereo counterpart of such album with a suggested list price of $4.98 is $4.42 (CX 514a).

At present the royalty price of an album with a suggested list price of $4.98 is $4.42, and the royalty price of the stereo counterpart of such album with a suggested list price of $5.98 is $5.26 (CX 537b).

The fact that the contracts specify a royalty price in relationship to designated suggested list prices is hardly justification for the Government's statement (CPF 126) describing them as "further defining the royalty price as the Licensor's suggested list price less certain deductions."

That addition to the royalty provision merely mathematically defined the price base to which the royalty percentage set forth in Paragraph 8 of the contract was to be applied (CX 514c).

Without more, the examiner attaches no special or sinister significance to the fact that before Columbia and Warner Bros. entered into the agreement (CX 514) covering Club distribution of the album "Gone With the Wind," a Columbia official wrote that he understood that the suggested retail price of the album was \$3.98 mono and \$4.98 stereo (CX 183a).

It is a fact that the Club prices charged for the Warner Bros. album "Gone With the Wind" (CX 514) were the Warner Bros. suggested list prices: \$3.98 for mono (CX 405, Christmas Catalog, page 15); \$4.98 for stereo (CX 584, page 13).

A similar provision was also contained in the Liberty contract (CX 45) and the Vanguard contract (CX 43). It was not in the original Cameo-Parkway agreement (CX 453) but was added by amendment a month later (CX 452).

Thus, in some of the contracts, the specific figure is given as a statement of fact as to what the royalty price was at the time (*e.g.*, CX 43). In other instances (*e.g.*, CX 45), "it is agreed" that the royalty price on records bearing specified suggested retail prices shall be designated amounts.

According to the Government's analysis, the contracts thus relate the royalty price alternatively to the Club selling price and the licensors' suggested list price. Applying the mathematical theorem that things equal to the same thing are equal to each other, Government counsel propose this "formula":

Royalty Price = CBS retail selling price [less certain deductions].

Royalty Price = suggested list price [less certain deductions].

Therefore, CBS retail selling price = Licensors' suggested list price [less certain deductions] (CPF 128).

The formula as stated contradicts the very conclusion contended for. The Government is saying *not* that the "CBS retail selling price"is the licensors' suggested list price, but that the CBS price is that suggested list price *reduced by certain deductions*. Do they mean that CBS' selling price of \$3.98 is equal to the royalty price of \$3.46 (Mercury's list after deductions) (CPF 124)?

Even if this turns out to be the result of a misplaced footnote reference, it still points up the fallacious approach of Government counsel.

At any rate, assuming the "formula" to have been inadvertently misstated, there are at least two other flaws in the Government's theory.

Even if all the agreements had incorporated the identical language—and it is clear that such is not the case—the mechanical arithmetic formula advanced by Government counsel (CPF 128 and 129) is not established by the contracts. The royalties were to be based on the Club's selling price. That selling price was subject to the deduction of various charges such as taxes, packaging charges, extraordinary libretto charges and postage and handling charges. This, then, was the royalty price—the Club's retail selling price less certain deductions.

To illustrate how the formula would apply, several of the contracts , for reasons not developed at the trial by either party, specified that "at present" the royalty price is $3.46 for an album with a suggested list price of $3.98, and $4.42 for an album with a suggested list price of $4.98 (CX 43a). In other contracts, specific amounts are agreed on as the royalty price.

It is significant also that some of the contracts (*e.g.*, CX 45b) after specifying the royalty price for records with suggested retail prices of $3.98, $4.98 and $5.98, provide further that "The royalty price on records with a different suggested list price shall be determined by the criteria outlined above."

Government counsel seek to bolster their price-fixing interpretation by cryptic references to an "exchange" of list price information (CPFs 125, 128 (footnote 72), 129). Not only is the proof cited insufficient; there is substance also in the suggestion of respondents that list price information is a matter of common knowledge in the industry and is regularly published in the *Schwann* catalog.

In CPF 129, the Government demonstrates the logic of its position that references in the licensing agreements to "suggested retail price" or "suggested list price" *must mean* the licensors' suggested prices for the licensors' records.

But that still proves nothing as to price fixing by agreement. The Government's position is weakened, rather than strengthened, by counsel's reference to the alleged exchange of information about the licensors' suggested list prices (CPF 129).

In the examiner's opinion, Government counsel have failed to carry their burden of proving that the royalty price provisions of

these contracts establish an agreement by Columbia to sell either at its own suggested list price or at the suggested list price of the outside label.

Despite the contention of Government counsel that both respondents' officials and licensors' officials were "hostile," it does appear that some effort might have been made to develop by testimony at the trial the purpose and intent of the parties in connection with this contractual language. The Government may argue that respondents also had an opportunity to explain these provisions, but the burden of proof is on the Government. The circumstances here are not such as to shift to respondents even the burden of going forward with evidence on this point.

Government counsel propose a finding (CPF 130) that

> Mr. Keating testified that the Club prices are the suggested list prices of the ". . . record companies that may be offering them" (Keating 684, 686).

This is a classic example of misrepresentation of the record by tearing a statement out of context. This is not a fair representation of Keating's statement.

Keating was being asked to explain the meaning of the phraseology "$3.98 to $6.98 records" in the Club's advertisements. His complete answer was that those figures

> refer to the Club price for the record when offered for sale during the period of his membership. They also refer to the suggested list price of these records by Columbia Records, or by any of the other record companies that may be offering them (Keating 684).

A little later, Keating was asked how he acquainted himself with the prices of the outside labels. Again his answer was that the price used in the Club advertising was "the club price or, in many cases, the suggested list price of these [outside] labels" (Keating 685–86).

According to Keating (Tr. 686), the suggested list price of other labels "is a matter of common knowledge in the industry from Schwann's Catalog, from charts, from almost anything you want to see."

The position of Columbia is epitomized in the testimony of Keating when he was recalled as a defense witness. This colloquy ensued (Tr. 5151–52):

> Q. Has the Columbia Record Club always sold at the manufacturer's suggested retail price?
>
> A. We have sold at the manufacturer's suggested list price, with two exceptions.

Q. What were those two exceptions?

A. They were Caedmon and Verve. In each instance we felt that the suggested list price was high and we unilaterally made the decision to offer them at a lower price to club members.

Q. Do you have any agreement with any of your outside labels as to the price at which you will sell their records through the Columbia Record Club?

A. No.

In the course of an extended cross-examination, Keating was asked by Government counsel:

With respect to Caedmon, Verve, Cameo-Parkway, Kapp, Liberty and others, who sets the price for club members?

The answer was:

Columbia Record Club.

The Columbia Record Club "always" sets that price (Keating 5449–50).

Although Keating was called as a Government witness and was subjected to a lengthy cross-examination when he was called by respondents, that appeared to be the extent of his interrogation on the question of price fixing.

Keating was not asked why different royalty provisions were inserted in the different contracts. The burden of proof remaining with the Government, the examiner is inclined to agree with respondents that "Presumably there were valid business considerations" underlying the various royalty arrangements.

Despite the emphasis by Government counsel on the juxtaposition of royalty prices and suggested list prices in some of the contracts as proof of agreement that the Club's selling price would be the licensor's suggested list price, the "exclusion" of the suggested list price reference in a licensing agreement is also alleged to be consistent with an understanding that Columbia will maintain the licensor's suggested list price (CPF 131).

The Government concedes that the first Warner Bros. contract (CX 39) was entered into in September 1960, *after* the royalty price device allegedly had been used for price-fixing purposes. They emphasize that this was after the Mercury contract (CX 34), but the Warner Bros. agreement simply defined "royalty price" as Columbia's "retail selling price" less specified charges.

But, says the Government (CPF 131), "Even the exclusion of suggested list price reference in the Licensing Agreement does not alter the fact that the Agreements are signed by the Licensor and CBS with the understanding that CBS will maintain the Licensor's suggested list price."

To fill the void, Government counsel point to a precontract letter from the president of Warner Bros. commenting on the royalty price provision in the proposed contract. The letter stated in part:

> Reference, paragraph 1(d). The first line refers to "our retail selling price". I would like to be certain that "our" (meaning Columbia Records) pricing of the Newhart album will not be less than our (Warner Bros.) suggested retail selling price. The first album is priced at $3.98 monaural, and $4.98 stereo. We don't know what the price of the second album will be. It will probably be the same, and certainly not less (CX 510b).

Government counsel cite the quotation without further comment except that the agreement was signed on September 15, 1960.

Perhaps Government counsel feel that the inference is inescapable. Or perhaps they are reluctant to point up the evidentiary inadequacy of these two circumstances as showing understanding and agreement.

CX 510b merely contains a statement by Conkling that he wanted assurances that the Club would not sell below Warner's suggested retail selling price, and he apparently wanted a change in the definition of Paragraph 1(d) of the contract.

Whatever Conkling wanted in this connection, there is no evidence that any such assurance was given to him, either in the correspondence or in the subsequent contract (CX 39). We are not cited to any other testimony or other evidence.

In a notable feat of draftsmanship, "the omission of any explicit reference to suggested list prices was also incorporated" into the Kapp contract of October 7, 1960 (CX 41) and the United Artists contract of July 1, 1961 (CX 44). Those contracts define royalty price in terms of Columbia's "retail selling price" and make no reference to anybody's suggested retail or suggested list price.

Undaunted by the omission of even the cryptic reference previously relied on, Government counsel now rely on the bare fact that Columbia "has in fact maintained the Licensors' suggested list prices in those instances where there was no explicit agreement * * *" (CPF 133).

Respondents do not except to the proposed finding that Columbia actually charged the suggested list prices of Warner Bros., United Artists and Kapp.

As a matter of fact, respondents concede (Exceptions, page 96) that "Since 1960, the Club has generally sold outside label records at the regular Club price, which has generally been equivalent to the suggested retail price."

Respondents further cite the fact that the Club has in fact sold below suggested list prices, in the case of Caedmon and Verve, as "further proof that there was no express agreement of the parties to sell at list price."

Respondents justifiably accuse Government counsel of confusion and inconsistency. In footnote 78 to CPF 133, the Government says that the agreements on price "pertain only to records where there is a charge by the Club." There is a charge by the Club for the introductory records and yet Government counsel apparently take the position that the introductory price is unilaterally fixed by Columbia and without any agreement on the part of the outside labels. As a matter of fact, Government counsel chide the licensors as having "abdicated to CBS control over the form of the introductory offer" (see Kapp 1590–91).

At the same time, Government counsel explain that "The Licensor has no interest" in the terms of the introductory offer. Furthermore, Government counsel have taken the position that the outside label records being sold through the Club are completely the property of Columbia (CPF 33–34), and it is not clear what control is being abdicated.

The examiner is not convinced that the Club's price policy for licensors' records is so inconsistent with the "kind or type of music" appearing on such records as to compel an inference that the licensor's suggested list price is "the determinative factor."

Again, in proposing a finding to that effect, Government counsel exhume the Verve and Caedmon contracts as representing "Exceptions * * * by *express agreement of the parties*" (CPF 134, footnote 79).

Without going into any details, it does appear that Club prices conform generally to the broad classifications reflected in this record—that is, "pop" records at $3.98, classical records at $4.98, original cast albums at $5.98 (RPF 529). Within each such classification, however, there are and have been variations depending upon the material employed or other special circumstances.

Government counsel propose a general finding (CPF 134) that "The list price of most stereo pop albums is $4.98," but "the Club has sold a Licensor's stereo records at $3.98 when the Licensor's suggested list price deviated from the pattern." They point to Cameo-Parkway as an "example," but they cite no other instances, and the examiner is aware of none.

As evidence, presumably, of price fixing by agreement, the Government notes that unlike most companies, Cameo-Parkway has a stereo pop suggested list price of $3.98 (Cohen 2634–35),