But I think——

Mr. GROSSMAN. How do you define frequently?

Dr. SCHIFRIN. I would define frequently in that—in this way: have there been found to be enough price-fixing agreements in the industry so that the reasonable observer would examine carefully licensing agreements for instances of price fixing?

Have there been enough violations of the Sherman Act in order to warrant the assumption that there is certainly a definite possibility that price fixing accompanies cross licensing.

Mr. GROSSMAN. You will submit that for the record at a later date?

Dr. SCHIFRIN. Yes.[1]

Mr. GROSSMAN. One other question at this time: I think Mr. Squibb, when he testified, talked about the industry's desire to get into the teaching institutions and therefore to cut their prices to go into these hospitals, to make sure that the young doctors see their product or become familiar with them.

Do you think that the consumer, who I think more frequently buys the "A" products there, is paying for this activity by the industry?

In other words, he is paying a lot more because the industry is cutting these prices in the institutional areas?

Dr. SCHIFRIN. No. I do not believe that the prices to the consumers would be lower than they are if the drug firms did not engage in that activity; no. I believe that the consumer pricing is based, really, on—in fact, I have definite information on what consumer pricing is based on.

I have correspondence from people in drug firms going back quite a number of years and this you mention was never determinant as a factor in setting prices.

Mr. GROSSMAN. Do you think the drug companies make high profits on those sales to institutions at very low levels?

Dr. SCHIFRIN. Yes; I do.

You are familiar with marginal cost pricing. One reason for my belief that the consumer bears the expense of the research and development, bears the expense of the promotion, bears the expense of the large profit. The actual costs of manufacture of most drugs is very, very small. I am sure the price charged to virtually any person covers at least the direct cost of production. The firms are not losing money on those sales to hospitals.

Mr. GROSSMAN. Thank you.

Dr. SCHIFRIN. Careful scrutiny of patentability is a threat to drug firms because there is a sizeable chance that no patent may actually be deserved; without patent protection, many firms can manufacture or obtain the drug, produce preparations containing it, and sell it with subsequent price competition a possibility. In any case, the market will be shared by more sellers than otherwise.

(3) Even where patent protection has not been garnered, trade names accomplish a nominal differentiation largely accepted by phy-

[1] Dr. Schifrin subsequently stated, "In addition to the meprobromate and tetracycline cases, other price fixing cases have been: *U.S.* v. *Eli Lilly and Co.*, USDC (DC) 1941, (insulin); *U.S.* v. *Schering Corp., et al.*, USDC (NJ) Civil Action No. 1919, 1941 (hormone products); *U.S.* v. *Alba Pharmaceutical Co., et al.*, USDC (SDNY) 1941 (imports); *U.S. v. Eli Lilly and Co., et al.*, USDC (NJ) Cr. 173–58, 1959 (Salk pollo vaccine)."