

Lyle Rosbotham

July 24, 1998

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CONDENSED TRANSCRIPT AND CONCORDANCE

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(1) UNITED STATES DISTRICT COURT
 (2) SOUTHERN DISTRICT OF FLORIDA
 (3) -----X
 (4) JERRY GREENBERG, individually, :
 (5) and IDAZ GREENBERG, individually :
 (6) Plaintiffs,
 (7) v. : Case No.
 (8) NATIONAL GEOGRAPHIC SOCIETY, a : 97-3924
 (9) District of Columbia corporation, : CIV-LENARD
 (10) NATIONAL GEOGRAPHIC ENTERPRISES, : Magistrate
 (11) INC., a corporation, and MINDSCAPE, : Judge Tumoff
 (12) INC., a California corporation, :
 (13) Defendants.
 (14) -----X
 (15) Washington, D.C.
 (16) Friday, July 24, 1998
 (17) Deposition of LYLE ROSBOTHAM, a witness
 (18) herein, called for examination by counsel for
 (19) Plaintiff in the above-entitled matter, pursuant
 (20) to notice, the witness being duly sworn by DONNA
 (21) A. McCALLEY, a Notary Public in and for the
 (22) District of Columbia, taken at the offices of
 (23) Kirkland & Ellis, 655 15th Street, N.W.,
 (24) Washington, D.C. 20005, at 9:20 a.m., Friday,
 (25) July 24, 1998, and the proceedings being taken

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(1) down by Stenotype by DONNA A. McCALLEY, and
 (2) transcribed under her direction.
 (3)
 (4) APPEARANCES:
 (5)
 (6) On behalf of the Plaintiffs:
 (7) NORMAN DAVIS, ESQ.
 (8) Steel Hector & Davis LLP
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 (11) (305) 577-2988
 (12)
 (13) On behalf of the Defendants:
 (14) NAOMI JANE GRAY, ESQ.
 (15) Weil, Gotshal & Manges LLP
 (16) 767 Fifth Avenue
 (17) New York, New York 10153
 (18) (212) 310-8078
 (19)
 (20) ALSO PRESENT:
 (21) IDAZ GREENBERG
 (22)
 (23)
 (24)
 (25)

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(1) PROCEEDINGS
 (2) Whereupon,
 (3) LYLE ROSBOTHAM,
 (4) business address at National Geographic Society,
 (5) 1145 17th Street, N.W., Washington, D.C. 20036,
 (6) was called as a witness by counsel for
 (7) Plaintiffs, and having been duly sworn by the
 (8) Notary Public, was examined and testified as
 (9) follows:
 (10) EXAMINATION BY COUNSEL FOR PLAINTIFFS
 (11) BY MR. DAVIS:
 (12) Q. Would you state your name, please.
 (13) A. Lyle Rosbotham.
 (14) Q. And may we have your business address?
 (15) A. That's National Geographic Society,
 (16) 1145 17th Street, Northwest, Washington, D.C.
 (17) 20036.
 (18) Q. Could we have your home address?
 (19) A. It's 1001 Elm Avenue, Takoma Park,
 (20) Maryland 20912.
 (21) Q. Where are you employed?
 (22) A. At the National Geographic Society.
 (23) Q. How long have you been employed there?
 (24) A. 13 years.
 (25) Q. And what position do you hold now?

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(1) A. I'm called senior art director in the
 (2) book division.
 (3) Q. Does that mean that there are other art
 (4) directors in the book division?
 (5) A. Yes, other senior art directors, as
 (6) well.
 (7) Q. How many art directors are there in
 (8) fact in the book division?
 (9) A. Five.
 (10) Q. What does the book division do beyond
 (11) what the name implies?
 (12) A. Well, in addition to books, we do
 (13) calendars. We've done some games. That's about
 (14) it.
 (15) Q. And have you been in the book division
 (16) during the 13 years of your employment?
 (17) A. No, I've been in the book division
 (18) about the last four or five years.
 (19) Q. What did you do prior to that?
 (20) A. Just prior to that, I spent a year and
 (21) a half as the art director of National Geographic
 (22) Traveler, their travel magazine, and all the time
 (23) prior to that was spent as the art director of a
 (24) scientific journal called National Geographic
 (25) Research. It's no longer published.

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(1) Q. To whom do you report?
 (2) A. My immediate supervisor is David
 (3) Griffin. He's the design director of the book
 (4) division.
 (5) Q. And when I say to whom do you report,
 (6) what does reporting mean? On what kinds of
 (7) things are you held accountable? In other words,
 (8) what kinds of decisions can you make on your own
 (9) and what kinds of decisions do you have to get
 (10) approval on?
 (11) MS. GRAY: Objection to form.
 (12) THE WITNESS: I'm not sure what you're
 (13) asking.
 (14) BY MR. DAVIS:
 (15) Q. Well, let me try it again. Can you
 (16) tell me about your relationship with the design
 (17) director.
 (18) A. Well, we all -- all the art directors
 (19) work relatively independently on assigned
 (20) projects. There's a review process that includes
 (21) David Griffin and usually other people, as well.
 (22) Q. Can you tell me some more about the
 (23) review process?
 (24) A. If it's a book, which it normally is,
 (25) then the -- a style chapter is -- an art director

Page 7

112 creates a style chapter and puts it -- prints it
 113 out, puts it on a wall and then there's a review
 114 meeting with people involved with the project and
 115 they look at what's on the wall.
 116 Q. As that particular project goes
 117 forward, does that review committee pass on
 118 what's happening?
 119 A. There's a final review with the whole
 120 layout on the wall where the whole book is seen
 121 at one time and usually the same people will
 122 reconvene and look at it then.
 123 Q. Does any one person have ultimate
 124 responsibility for making decisions about a
 125 project like that?
 126 A. I'm not sure --
 127 Q. Do you have ultimate --
 128 A. No --
 129 Q. -- responsibility?
 130 A. I'm not sure what ultimate means in
 131 that situation.
 132 Q. Okay, we'll --
 133 A. It goes right on up.
 134 Q. We'll come back to that a little bit
 135 later. What is your education after high
 136 school?

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137 A. I've got an undergraduate degree in
 138 psychology.
 139 Q. And what year was that?
 140 A. '71.
 141 Q. Did you have any studies other than
 142 that?
 143 A. No.
 144 Q. Did you have any training or schooling
 145 of any kind in terms of art?
 146 A. No.
 147 Q. Art work?
 148 A. I've taken short workshops from time to
 149 time.
 150 Q. How did you become an art director?
 151 A. Let's see, I started out doing paste-up
 152 jobs -- let's see, it's kind of a convoluted
 153 scenario. My wife actually learned graphic arts
 154 on the job as an intern, so then she began
 155 taking, accepting freelance jobs. I started
 156 sharing those jobs with her at home, learned the
 157 basics that way, and then myself started taking
 158 in freelance work. And it just evolved from
 159 there.
 160 Q. This was before you were employed at
 161 The Geographic or --

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162 A. Yeah, quite a bit before.
 163 Q. Is your wife employed there?
 164 A. No.
 165 Q. How often do you work with artists as
 166 freelance contractors?
 167 A. Not very often.
 168 Q. In a given year, would that be -- would
 169 you work with more than five?
 170 A. No.
 171 Q. Would you work with more than two?
 172 A. No, in a given year, no.
 173 Q. Would you work with at least one
 174 freelance artist in every year?
 175 A. No, I couldn't even say that for sure.
 176 There might be a year in there where I did not.
 177 Q. How many -- just approximately in a
 178 given year, how many different projects do you
 179 work on as an art director?
 180 A. Maybe a dozen.
 181 Q. Is it fair for me then to say that --
 182 that on most, if not all, of those projects, you
 183 use staff artists as required, rather than
 184 freelance artists?
 185 MS. GRAY: Objection.
 186 MR. DAVIS: You can answer.

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187 THE WITNESS: I'll let you rephrase
 188 it.
 189 MR. DAVIS: Would you read the question
 190 back.
 191 THE REPORTER: "Question: Is it fair for
 192 me then to say that -- that on most, if not all,
 193 of those projects, you use staff artists as
 194 required, rather than freelance artists?"
 195 THE WITNESS: Well, what are you asking
 196 here, what do you want to know?
 197 BY MR. DAVIS:
 198 Q. All right. We were talking a moment
 199 ago about -- about your involvement with
 200 freelance artists --
 201 A. (Witness nods.)
 202 Q. When you're working on projects that
 203 don't involve a freelance artist, do you work
 204 with artists of some other kind who are not
 205 freelance?
 206 A. No.
 207 Q. All right, then is it fair for me to
 208 say that the only time you work with artists is
 209 when you work with freelance artists?
 210 A. Yes.
 211 Q. Does The Geographic have staff

Page 11

212 artists?
 213 A. They do, yeah.
 214 Q. But in your particular activities, you
 215 don't work with those people?
 216 A. No. That's right.
 217 Q. You have said that you work in a
 218 typical year -- and I'm just using approximate
 219 numbers here, I'm not trying to be specific about
 220 this. In a given year, you'll work on perhaps a
 221 dozen projects any given year. But on only once
 222 or twice on those projects are you involved with
 223 freelance artists. What then do you do with
 224 those projects, those dozen or so projects? What
 225 is your role?
 226 A. It varies greatly. When I say a dozen,
 227 my involvement can range from very slight to
 228 being the art director for the actual project.
 229 Q. What would very slight involvement
 230 consist of?
 231 A. It might be an hour spent fixing a
 232 problem file for someone else that can't -- that
 233 won't print for some reason.
 234 Q. And at the other end you would be art
 235 director, is that right?
 236 A. Right.

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237 Q. And what does that involve?
 238 A. Actually designing the product from
 239 scratch.
 240 Q. When you design a product from scratch,
 241 do you follow that product all the way through to
 242 some conclusion?
 243 A. Yes.
 244 MR. DAVIS: Would you please mark that
 245 as Rosbotham Exhibit 1.
 246 (Rosbotham Exhibit No. 1 was
 247 marked for identification.)
 248 MR. DAVIS: Would you like to look at
 249 that?
 250 BY MR. DAVIS:
 251 Q. Mr. Rosbotham, let me show you what has
 252 now been marked as Exhibit 1.
 253 A. Uh-huh.
 254 Q. Ask you if you've seen that before?
 255 A. Yes.
 256 Q. Did you have a role in the preparation
 257 of that item?
 258 A. Yes.
 259 Q. What was your role?
 260 A. At some point in the middle of the
 261 process, I became the art director for this set

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- (1) of cards.
 (2) Q. Who was the art director -- or was
 (3) there one prior to that?
 (4) A. There was. It was Beth Molloy.
 (5) Q. Is she employed at the Society?
 (6) A. Not now, if you're asking now.
 (7) Q. How did you happen to become the art
 (8) director?
 (9) A. It was assigned to me.
 (10) Q. How far along was the project when it
 (11) was assigned to you?
 (12) A. Let's see. As best I can recall,
 (13) the -- the cards here that are non 3-D cards that
 (14) are not printed on the clear plastic sheets were
 (15) essentially designed, and the plastic -- the
 (16) transparent cards were in a process that was
 (17) partly designed.
 (18) Q. Okay. May I borrow that back?
 (19) A. Sure.
 (20) MR. DAVIS: I'm going to take an item
 (21) out of this packet which is Exhibit 1 and ask the
 (22) reporter to mark that as Exhibit 1A.
 (23) (Rosbotham Exhibit No. 1A was
 (24) marked for identification.)
 (25) BY MR. DAVIS:

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- (1) some way with an artist?
 (2) A. Yes.
 (3) Q. And what was the artist's name?
 (4) A. Warren Cutler.
 (5) Q. And how did you first become involved
 (6) with him?
 (7) A. I don't know how he first became
 (8) involved in the sense that I don't know how
 (9) the -- how the process began. I mean, what --
 (10) and what happened was I remember having meetings
 (11) with Warren about these cards.
 (12) Q. When you became involved with the
 (13) project, had Mr. Cutler submitted any kinds of
 (14) materials to the Society for consideration or
 (15) review?
 (16) A. No, I don't think so.
 (17) Q. The Society has identified a person
 (18) named Megan Ullman as a researcher on this
 (19) project. Do you know what her role was?
 (20) A. No, I'd even forgotten her name,
 (21) forgotten that she was involved, in fact. So no,
 (22) I can't say.
 (23) Q. Did you ever have any dealings with her
 (24) yourself?
 (25) A. As regards this project? I don't know

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- (1) Q. Now, if you would look at Exhibit 1 for
 (2) me again, please.
 (3) A. Uh-huh.
 (4) Q. I want to try to get a description of
 (5) what the exhibit consists of. Now I have just
 (6) had taken out one of the components of Exhibit 1
 (7) and had it marked 1A. Can you tell me what that
 (8) is?
 (9) A. This --
 (10) Q. First of all --
 (11) A. Yeah.
 (12) Q. Forgive me, let me start at the
 (13) beginning. Can you tell me what the whole
 (14) package is? Is there a way that you conveniently
 (15) identify what Exhibit 1 is?
 (16) A. It's a set of Geosafari cards.
 (17) Q. All right. Do you know who they were
 (18) prepared for?
 (19) A. For Educational Insights.
 (20) Q. Now, can you tell me then with
 (21) reference to Exhibit 1A what that is?
 (22) A. This is what I was calling the
 (23) transparent cards, it's actually three
 (24) transparent pages on a -- bound to a cardboard
 (25) back with a spiral binding.

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- (1) because I hadn't even remembered her.
 (2) Q. Did you work with a Barbara Brownell on
 (3) this project?
 (4) A. Yes.
 (5) Q. What was her capacity or her role?
 (6) A. As best I remember, she was the
 (7) editor.
 (8) Q. And what does -- an editor for the
 (9) project or an editor in some other sense?
 (10) A. No -- well, she is an editor on our
 (11) staff and she was the editor on this project as
 (12) far as I remember.
 (13) Q. Did you report to her?
 (14) A. No, I can't say that.
 (15) Q. Do you know what role she played in the
 (16) development of this project?
 (17) MS. GRAY: I object to the extent that
 (18) it calls for speculation.
 (19) MR. DAVIS: I'm asking for his
 (20) knowledge.
 (21) THE WITNESS: Well, say that again.
 (22) BY MR. DAVIS:
 (23) Q. Do you know what role she played on the
 (24) project?
 (25) A. No, I really don't.

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- (1) Q. And apart from Exhibit 1A, the other
 (2) components in Exhibit 1 are cards only?
 (3) A. Right.
 (4) Q. Is that a way to put it?
 (5) A. Right.
 (6) Q. With reference to Exhibit 1A, would you
 (7) now tell me at what stage in the development of
 (8) 1A you became involved with that?
 (9) A. Okay, first of all, I should say that
 (10) my memory on this is not real clear, things are
 (11) pretty hazy. But to my best recollection, this
 (12) was in what I'd call the early stages of design
 (13) and also I think the early stages of
 (14) conceptualizing what it would be physically.
 (15) Q. Had an artist been retained at the time
 (16) you came on board on the project to work on item
 (17) 1A or Exhibit 1A?
 (18) A. I honestly don't remember if an artist
 (19) had already been hired or not.
 (20) Q. Did you play any role in hiring an
 (21) artist?
 (22) A. No.
 (23) Q. Do you know who did?
 (24) A. No.
 (25) Q. Did you eventually become involved in

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- (1) Q. Did you ever discuss the project with
 (2) her?
 (3) A. Oh, yes.
 (4) Q. What kinds of things did you discuss?
 (5) A. I honestly don't remember specifics. I
 (6) mean, I remember, you know, her presence at
 (7) meetings that we had, but it's too long ago to
 (8) remember, you know, what we discussed.
 (9) Q. Did she ever direct you to do one thing
 (10) or the other with respect to that project? Or
 (11) anything at all, did she ever direct you to do
 (12) anything with respect to that project?
 (13) A. I honestly don't remember.
 (14) Q. You've mentioned Warren Cutler. With
 (15) reference to the entire Exhibit 1, the GeoPack,
 (16) can you tell me what role he had with that entire
 (17) package? In other words, did he work on all of
 (18) the components in that package?
 (19) A. As far as I remember, he only worked on
 (20) Exhibit 1A here, transparent overlays.
 (21) MR. DAVIS: Would you mark this,
 (22) please, as Exhibit 2 to this deposition.
 (23) (Rosbotham Exhibit No. 2 was
 (24) marked for identification.)
 (25) BY MR. DAVIS:

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Q. Would you take a moment, please, and look at what's now been marked as Exhibit 2.

A. Uh-huh.

Q. And then tell me if you've seen that before?

A. I don't have any memory of it, but I believe that this is my signature on here.

Q. There are at least three signatures on the bottom of the page, yours would be --

A. The art director signature.

Q. All right. Does that tell us that you would have negotiated this agreement?

A. I'm sure that I would have been the one to have Warren sign this. But as to actual negotiation of the price, I don't remember.

Q. At the top of the document, it is identified as book division artwork contract.

A. (Witness nods.)

Q. Was this a more or less standard form in use in the book division or were there some variations on this form?

A. There may have been variations. But as far as this -- this contract wasn't made up specifically for this.

Q. So in your experience with the book

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division, you have seen this contract used with other situations?

A. Yes.

Q. At least in this format?

A. Yes.

Q. Exhibit 2 makes reference to four pieces of artwork. Do you see the place I'm referring to?

A. Uh-huh, yes.

Q. Would those be the four pieces in Exhibit 1A?

A. Yes.

Q. And on the contract just below that is reference to tight pencil due date.

A. Uh-huh.

Q. What does tight pencil mean?

A. A tight pencil rendering. In other words, the -- sort of the artwork in outline.

Q. Would that be synonymous with the word sketch or is that not -- does that word not fit here?

A. No, that's -- that's fairly accurate.

Q. How many of these tight pencil renderings would you expect to receive from Mr. Cutler on a project like this?

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A. I don't think there's any way I could generalize.

Q. Do you know how many in fact you did receive?

A. No.

Q. Also in the contract, it says final paintings due and a date is shown.

A. Uh-huh.

Q. Final paintings would be what?

A. The final painted art.

Q. All right. Then is it correct for me to understand that there would first be a tight pencil sketching done, one or more --

A. Right.

Q. And then final paintings?

A. Right.

Q. Is a final painting translated into what we see there in Exhibit 1A? In other words, is anything done to the final painting between the time you receive a final painting from the artist and the time it appears in the product to change the content?

A. To change the content. Well --

Q. I understand there are a lot of technical and reproductive processes --

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A. Yeah.

Q. -- that go on.

A. Right.

Q. But in terms of the content of the work, is there anything done between the time you receive a final painting and the time we see it in the final product?

A. Well, the final painting itself isn't altered but the final painting does not include the type and other elements on this card.

Q. Okay. But except for those kinds of additions, is there any other change that's made in the final painting before it goes into the product?

A. No.

Q. By referring to Exhibit 2, does this document refresh your recollection at all in terms of where Mr. Cutler stood in producing or doing his work on this project at the time when you became involved?

MS. GRAY: Objection to form.

MR. DAVIS: Would you tell me what is the problem with it?

MS. GRAY: I think it's confusing the way it's worded. You can answer if you

Page 23

understand.

MR. DAVIS: Do you understand the question?

THE WITNESS: No, I was going to ask you anyway to explain.

BY MR. DAVIS:

Q. All right. You testified a few minutes ago that you didn't recall just how far along Mr. Cutler was --

A. Yeah.

Q. -- in the project --

A. Right.

Q. -- when you came on board.

A. Right.

Q. And I'm asking whether Exhibit 2 refreshes your recollection as to just how far along Mr. Cutler was in working on the project at the time you became art director for the project.

A. I have to say no.

Q. In your experience, would an artist have begun work before a contract was executed?

MS. GRAY: Object to the extent that it calls for speculation.

THE WITNESS: In my experience, it has

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happened.

BY MR. DAVIS:

Q. Do you know whether it happened in this case?

A. No, I don't.

Q. When you became involved with the project as art director, did anyone other than yourself have contact with Mr. Cutler?

A. I don't have any specific memory of that, but I'm sure that they did. I would expect that they did.

Q. How would that -- if you expected they did, how would that work? I mean for what purpose would there be contact with persons other than yourself?

MS. GRAY: Object to the extent it calls for speculation. You can answer.

THE WITNESS: Ask me again.

MR. DAVIS: Sure. Would you please read the question back.

THE REPORTER: "Question: If you expected they did, how would that work? I mean for what purpose would there be contact with persons other than yourself?"

THE WITNESS: Okay. Again, I am

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- (1) speculating because I don't remember, but he
 (2) would certainly --
 (3) MS. GRAY: Don't guess, if you're
 (4) guessing. I mean you can answer the question but
 (5) don't guess.
 (6) THE WITNESS: Okay.
 (7) BY MR. DAVIS:
 (8) Q. Well, let's back up now. You testified
 (9) previously -- I'm not -- this is not a game of
 (10) tricks here.
 (11) A. Right.
 (12) Q. You testified that you expected, you
 (13) expect that others would have had contact with
 (14) him.
 (15) A. (Witness nods.) Right.
 (16) Q. So based on your expectation --
 (17) A. Yeah.
 (18) Q. -- that others would have had contact
 (19) with him, what kind or kinds of contact would
 (20) that have been?
 (21) A. I'm thinking that it would have been
 (22) contact with a researcher on the project, and you
 (23) know, I remember that we had meetings with
 (24) Warren, myself and at least Barbara Brownell. I
 (25) don't remember all the people at the time, so --

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- (1) Q. What was the role of a researcher on
 (2) this project?
 (3) A. Again, I don't remember specifically,
 (4) you know, what -- what happened, but -- my
 (5) problem is I don't -- I don't remember, I don't
 (6) have any idea how these cards were
 (7) conceptualized, so I don't know the roles people
 (8) played in terms of, you know, deciding what was
 (9) going to be researched. So I can't -- I don't
 (10) have -- I can't tell you anything specific.
 (11) Q. Did the Society furnish Mr. Cutler with
 (12) any materials to be used on the project?
 (13) A. I don't know.
 (14) Q. Do you know who would have knowledge of
 (15) that?
 (16) A. Not with any certainty, no.
 (17) Q. Did you provide Mr. Cutler with any
 (18) materials with which to work on this project?
 (19) A. I may have provided him with templates
 (20) with the physical dimensions of the windows of
 (21) these cards, and that's -- I'm not sure of that,
 (22) but that would be -- that's all that I could
 (23) think of.
 (24) MR. DAVIS: Please mark this as
 (25) Exhibit 3 for the deposition.

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- (1) (Rosbotham Exhibit No. 3 was
 (2) marked for identification.)
 (3) BY MR. DAVIS:
 (4) Q. Mr. Rosbotham, would you look at what's
 (5) now been marked as Exhibit 3 --
 (6) A. Uh-huh.
 (7) Q. Tell me if you've seen that before.
 (8) A. No.
 (9) Q. Until today, you've never seen that
 (10) book?
 (11) A. Right.
 (12) Q. Would you look with me at Exhibit 2 for
 (13) a moment, which is the contract with Mr. Cutler.
 (14) In the second paragraph, it says: NGS book
 (15) division will furnish whatever research aid is
 (16) necessary.
 (17) Do you have any knowledge as to whether
 (18) the book division furnished Mr. Cutler with
 (19) research aid?
 (20) A. No, I don't.
 (21) Q. The sentence I just read goes on to
 (22) say: It becomes the artist's responsibility to
 (23) notify the art director should the research
 (24) material not be adequate.
 (25) Did Mr. Cutler ever notify you in that

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- (1) respect?
 (2) A. No.
 (3) Q. Referring again to Exhibit 2 in that
 (4) same paragraph in the middle of the paragraph, it
 (5) says: It should be understood that the artist
 (6) will be required to make corrections or rework
 (7) finished art at his/her own expense if the errors
 (8) are made by the artist by choosing inaccurate
 (9) research materials.
 (10) Did Mr. Cutler make any errors during
 (11) the time when you were involved with the project
 (12) in choosing research materials?
 (13) A. Not that I know of.
 (14) Q. Did you take any steps in the course of
 (15) your role in the project to determine whether or
 (16) not he had chosen inaccurate research materials?
 (17) A. Did I take any steps to --
 (18) Q. Take a look at Exhibit 2.
 (19) A. Yeah.
 (20) Q. I'm reading from --
 (21) A. Yeah.
 (22) Q. -- the middle of that same paragraph.
 (23) A. Yeah.
 (24) Q. And I'm paraphrasing on the language in
 (25) there in the middle, which refers to errors made

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- (1) by the artist in choosing inaccurate research
 (2) materials.
 (3) A. Okay.
 (4) Q. Did you ever become aware that
 (5) Mr. Cutler had chosen inaccurate research
 (6) materials?
 (7) A. No.
 (8) Q. Did you take any steps to discern
 (9) whether or not he had used inaccurate research
 (10) materials?
 (11) A. No.
 (12) Q. To your knowledge, did anyone else at
 (13) the Society take that step?
 (14) A. To my knowledge, no.
 (15) Q. Then is it the case that Mr. Cutler was
 (16) free to do whatever he wanted to do in terms of
 (17) the materials that he put into this -- these
 (18) sketches and the final artwork?
 (19) A. I can't say that. I don't know. You
 (20) see, I'm not the only one he dealt with, so I --
 (21) you know, I can't tell you that, I don't know.
 (22) Q. But you don't know who else he dealt
 (23) with, is that right?
 (24) A. I didn't remember until I saw this that
 (25) Megan Ullman was involved in this project. I

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- (1) remember Megan, and she's on Exhibit 2 here as
 (2) the researcher. So my best guess -- and that's
 (3) all it is, would be that Megan Ullman also had.
 (4) you know, worked with Warren.
 (5) Q. Did you ever ask anyone at the Society
 (6) to review the accuracy of what Mr. Cutler had
 (7) done?
 (8) A. No.
 (9) Q. Do you have knowledge that Mr. Cutler
 (10) used research materials of his own in preparing
 (11) the sketches and the final artwork?
 (12) A. No.
 (13) Q. Did Mr. Cutler ever discuss with you at
 (14) all materials he was using in the preparation of
 (15) those items?
 (16) A. Not that I remember.
 (17) MR. DAVIS: Please mark this as Exhibit 4,
 (18) Composite Exhibit 4.
 (19) (Rosbotham Composite Exhibit No. 4
 (20) was marked for identification.)
 (21) BY MR. DAVIS:
 (22) Q. When you have a moment, would you look
 (23) at Composite Exhibit 4 and tell me if you've seen
 (24) that before.
 (25) A. I saw one or both of these at a meeting

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with Naomi Gray, was it Tuesday?
 Q. Had you seen either of those pages prior to last Tuesday?
 A. I don't have any specific memory, but I expect that I did at the time that Warren was drawing them.
 Q. Would you look with me at Exhibit 1A for a moment.
 A. Uh-huh.
 Q. There are four pages that comprise Exhibit 1A. We have been furnished with sketches for only -- that appear to deal with only two of those pages.
 A. Uh-huh.
 Q. Were sketches prepared for the other two pages?
 A. I'm sure that they were.
 Q. Do you know if they exist today?
 A. No, I don't know.
 Q. The contract with Mr. Cutler, which is Exhibit -- a copy of which is Exhibit 2, makes reference to tight pencil. Is that what these documents that comprise Exhibit 4 consist of?
 Are these tight pencil sketches?
 A. Xeroxes of them.

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Q. Yes?
 A. Yes, as far as I can tell.
 Q. This is what would have been contemplated on this contract when it refers to tight pencil, is that right?
 A. Yes. There may have been -- this may have been a loose early one, there may have been a tighter later one, but I don't remember. But I would say looking at these that that would be -- that's -- this is what's meant by tight pencil.
 Q. On other unrelated projects involving artwork, do you also anticipate receiving tight pencil sketches for use in the development of such products?
 A. Not in all cases. It would depend on the nature of the -- the art being developed.
 Q. So that I'm clear in terms of what your testimony was a moment ago, are you saying that you had not seen these sketches before or you don't recall having seen them before?
 A. I don't remember seeing them specifically but I'm sure that I did, that I would have, you know, in the process.
 Q. There is writing on these sketches. Do you know who put that writing there?

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A. No, I don't. I don't see anything here that is my handwriting.
 Q. Do you know whether Mr. Cutler put that writing on there?
 A. No, I don't know.
 Q. If you look at the first page of Composite Exhibit 4, at the handwriting across the top of the page, it says: Cover realms of the sea. Do you see the place I'm referring to?
 A. Yes.
 Q. Do you have any idea what that means or refers to?
 A. No.
 Q. Alongside it, it says: Page 223, Audubon Nature Guide. Do you know what that would refer to?
 A. Well, I'm assuming --
 MS. GRAY: Don't --
 THE WITNESS: There's a book by that title. Well, I don't know what it refers to.
 BY MR. DAVIS:
 Q. Just to the right of that is writing which says: Living Reef, page 33. Do you have any idea what that refers to?
 A. Well, I have an idea now sitting here,

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(1) yes.
 (2) Q. And what is that idea?
 (3) A. That it refers to the book that's
 (4) exhibit whatever.
 (5) Q. Exhibit 3. Do you know whether the
 (6) book that is Exhibit 3 was used in the creation
 (7) of this pencil sketch?
 (8) A. I don't know.
 (9) Q. Do you have knowledge that it was not
 (10) used in the creation of this pencil sketch?
 (11) A. No, I don't have that knowledge.
 (12) Q. Would you look at Composite Exhibit 4
 (13) at the second page.
 (14) A. Uh-huh.
 (15) Q. In the upper left-hand corner, there's
 (16) a date. Below it, it says: Warren's art and
 (17) annotations.
 (18) A. (Witness nods.)
 (19) Q. Do you see that?
 (20) A. Yes.
 (21) Q. Is that your writing?
 (22) A. No.
 (23) Q. Do you know who put that there?
 (24) A. No.
 (25) Q. Do you have any idea what that means?

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(1) A. No.
 (2) Q. As an art director, does that indicate
 (3) that Warren provided annotations for these
 (4) sketches?
 (5) MS. GRAY: Objection to the extent that
 (6) it calls for speculation.
 (7) THE WITNESS: I don't know.
 (8) BY MR. DAVIS:
 (9) Q. In sketches that you've worked with,
 (10) with other artists on other projects, did the
 (11) artist provide annotations to the sketches they
 (12) provided you?
 (13) A. No, I can't recall a project where I
 (14) got annotated pencil sketches.
 (15) Q. Were the sketches that are shown in
 (16) Composite Exhibit 4 translated into the final
 (17) product that is marked as Exhibit 1A?
 (18) A. Yes.
 (19) Q. Were any changes made in the sketches
 (20) before that happened?
 (21) A. Yes.
 (22) Q. Can you tell me what changes were
 (23) made?
 (24) A. Well, actually -- the changes that I
 (25) remember being made -- let's see. I remember

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(1) having Warren make changes in the final art work
 (2) in two places here to improve the readability of
 (3) the type that appeared above the art. And one of
 (4) those changes was in the anemone, which is in --
 (5) what's that, 4A, the top, top page, the one that
 (6) says realms of the sea on the left.
 (7) Q. Yes.
 (8) A. The anemone in the lower center of
 (9) the -- what I'm telling you is that in -- in the
 (10) final artwork, I had Warren lighten up some of
 (11) that anemone in order that the type above it on
 (12) the page above it in these transparent overlays
 (13) could be read more clearly. The other change
 (14) that I remember again having Warren make in the
 (15) final art actually shows up on the other Xerox of
 (16) Exhibit 4, and that is sort of the -- the lower
 (17) right center. I don't know what that growth is
 (18) there, but I had him lighten up an area there,
 (19) again so that that type would show up.
 (20) Those are the changes that I recall.
 (21) Q. When you say you had him make it
 (22) lighter --
 (23) A. Uh-huh.
 (24) Q. Help me as a nonartist understand what
 (25) that means.

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- (1) A. You mean the -- how he did it or --
 (2) Q. Well, it was simply too dark and you
 (3) wanted him to -- what would you ask him to do to
 (4) make it lighter?
 (5) A. Basically lighten it up, yeah. There
 (6) were parts that were too dark and I just wanted
 (7) him to go in -- I don't know how he did it, to
 (8) tell you the truth, but lighten the color in that
 (9) area so that black type would show, would be
 (10) readable on top of it.
 (11) Q. And those are the only changes that you
 (12) recall having him accomplish, is that right?
 (13) A. No. I remember a change that doesn't
 (14) appear in these overlays on Exhibit 4 that there
 (15) was a change that involved altering the two
 (16) divers so that they would be more -- look more
 (17) like adolescents rather than adults.
 (18) Q. Had he submitted a sketch that showed
 (19) them looking like adults?
 (20) A. Yes, he would have.
 (21) MR. DAVIS: Can you go off the record
 (22) just a moment?
 (23) (Discussion off the record.)
 (24) BY MR. DAVIS:
 (25) Q. Would you look again at Exhibit 1A.

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- (1) A. Uh-huh.
 (2) Q. And turn to the panel that shows the
 (3) divers that you were referring to.
 (4) A. Okay.
 (5) Q. Did you send the preliminary sketch
 (6) back to Mr. Cutler to have him change those
 (7) divers, is that what you've just said?
 (8) A. No, that's not what I said. I don't
 (9) remember anything in that specific detail. I
 (10) remember that that change was made. I'm not sure
 (11) why that change was called for. I think it was
 (12) at the request of Educational Insights but I
 (13) can't say that for sure. And as far as I
 (14) remember, all the changes that we asked Warren to
 (15) make were done when we sat down together and
 (16) looked at his sketches.
 (17) Q. Did he make the change as you sat there
 (18) with him or did he go back home and do that?
 (19) A. No, he went home and did what needed to
 (20) be changed.
 (21) Q. Did he thereafter submit a different
 (22) sketch that would show the changes?
 (23) A. I think -- I don't remember with the
 (24) divers whether he submitted another sketch or
 (25) whether he made the change and went directly to

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- (1) the final art. The other changes I'm talking
 (2) about were changes I asked him to make after we
 (3) had already received the final art. So I would
 (4) have given him back his -- his art and had him
 (5) correct it and bring it back to me.
 (6) Q. In what form did you receive final art,
 (7) as you put it?
 (8) A. I don't remember specifically, but I'm
 (9) assuming that it was on some kind of an art
 (10) board, heavy board.
 (11) Q. Was it done with oil or water colors
 (12) or -- I mean, I'm asking these things out of
 (13) ignorance.
 (14) A. I think -- I think he painted these
 (15) with acrylic and in some cases used air brush on
 (16) top of it.
 (17) Q. So is it -- is it relatively easy to
 (18) make changes on artwork of that kind where
 (19) necessary? Or does one have to go back and do
 (20) the whole artwork again?
 (21) A. Oh, No, whatever -- the changes that
 (22) I've described that we're talking about -- well,
 (23) these, these two changes of lightning up areas,
 (24) he would have been able to do that and I'm sure
 (25) he did, on the original artwork. The divers, as

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- (1) I recall, were changed from a sketch. So he
 (2) didn't repaint those, you know.
 (3) Q. Would you look at Exhibit 1A, please.
 (4) A. Uh-huh.
 (5) Q. And on the first panel in the top
 (6) center is a fish.
 (7) A. Uh-huh.
 (8) Q. It does not have a number alongside of
 (9) it. Do you see the one I'm referring to?
 (10) A. Yes.
 (11) Q. It seems to be from where I'm sitting
 (12) to be primarily of a yellow or gold color. That
 (13) fish, would you look at Composite Exhibit 4 and
 (14) tell me if that fish appears on that Exhibit?
 (15) A. No. I don't see it.
 (16) Q. Do you know who called for that to be
 (17) added?
 (18) A. No.
 (19) Q. In other words, you were not involved
 (20) with that change or that addition?
 (21) MS. GRAY: Objection to form.
 (22) THE WITNESS: I don't remember.
 (23) BY MR. DAVIS:
 (24) Q. I'm sorry?
 (25) A. I don't remember.

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- (1) Q. I'm still puzzled at what your role
 (2) was, and I say this with complete sincerity. I'm
 (3) curious as to what an art director's role is on a
 (4) project like this. In other words, if -- if you
 (5) didn't -- weren't involved with making that
 (6) change, who else would make such decisions?
 (7) MS. GRAY: Objection to form.
 (8) BY MR. DAVIS:
 (9) Q. Maybe you can sort of tell me how the
 (10) process works a little bit more fully.
 (11) MS. GRAY: Objection to form.
 (12) THE WITNESS: I think what I want to
 (13) tell you in general is that I'm not trying to
 (14) hide anything from you at all. I don't remember
 (15) very much of this process at all, and all I can
 (16) tell you is I was not responsible for figuring
 (17) out what elements went onto these cards. So you
 (18) know, I just -- I don't have the knowledge or the
 (19) memory to answer a lot of what you're asking.
 (20) BY MR. DAVIS:
 (21) Q. Fair enough. And I gather from your
 (22) testimony so far that in terms of your role, you
 (23) also had nothing to do with any reference
 (24) materials the artist would have used in preparing
 (25) the product, is that right?

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- (1) A. That's true.
 (2) MR. DAVIS: Why don't we take a short
 (3) rest break at this point.
 (4) (Recess.)
 (5) BY MR. DAVIS:
 (6) Q. With respect to Exhibit 1A, when
 (7) Mr. Cutler -- did Mr. Cutler give his final
 (8) artwork to you?
 (9) A. I'm -- I don't specifically remember it
 (10) but I'm sure that he did.
 (11) Q. Did you approve it?
 (12) A. Yeah, we accepted it, yes. Yes --
 (13) Q. When you say we, does that mean someone
 (14) other than you or in addition to you?
 (15) A. It would have been the group of us that
 (16) was involved with the project looking at it
 (17) together.
 (18) Q. Was the decision to accept it a group
 (19) decision or was there someone in the group who
 (20) had more authority on that score than others?
 (21) MS. GRAY: Objection to form. You can
 (22) answer.
 (23) BY MR. DAVIS:
 (24) Q. Was a vote taken in this group?
 (25) A. No, there was no vote. It's basically

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11 it's usually consensus. If everyone's happy with
 12 it --
 13 Q. So therefore, there was a consensus at
 14 the Society that the artwork that he submitted in
 15 its final form was acceptable, is that right?
 16 MS. GRAY: Objection to form.
 17 MR. DAVIS: Would you tell me what the
 18 objection is?
 19 MS. GRAY: You're characterizing the
 20 witness's testimony.
 21 MR. DAVIS: I just asked him if that's
 22 correct.
 23 THE WITNESS: So let's hear the again?
 24 MR. DAVIS: Yes, would you --
 25 THE REPORTER: "Question: So therefore,
 26 there was a consensus at the Society that the
 27 artwork that he submitted in its final form was
 28 acceptable, is that right?"
 29 THE WITNESS: What I'm saying is there
 30 was a consensus among the folks who worked on
 31 this project that we accept the artwork.
 32 BY MR. DAVIS:
 33 Q. To your knowledge, did anyone at the
 34 Society inquire into whether any inappropriate
 35 copying by the artist had been done?"

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(1) about that, then I would, you know, I would act
 (2) on my concern. It's something that I'm conscious
 (3) of and definitely, you know, aware of copyright
 (4) issues.
 (5) BY MR. DAVIS:
 (6) Q. What kinds of steps would you take in
 (7) dealing with a freelance artist to assure
 (8) yourself that no improper use of copyrighted
 (9) materials was taking place?
 (10) MS. GRAY: Objection to the extent it
 (11) calls for speculation.
 (12) THE WITNESS: I don't know how to
 (13) answer it. I mean that's real speculative.
 (14) BY MR. DAVIS:
 (15) Q. All right, that's your answer. Did you
 (16) ask Mr. Cutler to show you the reference
 (17) materials, if any, that he was using in preparing
 (18) this product?
 (19) A. No.
 (20) MR. DAVIS: Would you please mark this
 (21) as Exhibit 5, I think it is. CS, I guess that's
 (22) a composite exhibit, it's several pages.
 (23) (Rosbotham Composite Exhibit No. 5
 (24) was marked for identification.)
 (25) BY MR. DAVIS:

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11 A. To my knowledge, no.
 12 Q. In your experience at the Society in
 13 dealing with freelance artists, has the Society
 14 ever concerned itself with that question in terms
 15 of product produced by freelance artists?
 16 A. I'm not sure what you're asking.
 17 MR. DAVIS: Would you please read it
 18 back.
 19 THE REPORTER: "Question: In your
 20 experience at the Society in dealing with
 21 freelance artists, has the Society ever concerned
 22 itself with that question in terms of product
 23 produced by freelance artists?"
 24 MS. GRAY: I'm going to object to the
 25 question.
 26 THE WITNESS: Yeah, I still -- I'm not
 27 clear what you're asking anyway.
 28 BY MR. DAVIS:
 29 Q. My previous question had to do with
 30 inappropriate copying of materials by a freelance
 31 artist.
 32 A. Uh-huh.
 33 Q. In your experience at the Society in
 34 dealing with freelance artists over the years,
 35 has the Society ever inquired or concerned itself

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(1) Q. When you've had a chance to look
 (2) through Composite Exhibit 5, would you tell me if
 (3) you have seen the original from which this copy
 (4) was made?
 (5) A. No, I haven't.
 (6) Q. These pages, which were numbered by the
 (7) Society from 261 through 265 were produced to us
 (8) by the Society. The first page in composite
 (9) Exhibit 5 appears to be the cover of a book which
 (10) I showed you previously and that was marked as
 (11) Exhibit 3, The Living Reef.
 (12) A. (Witness nods.)
 (13) Q. Do you know of your own knowledge that
 (14) the Society possesses a copy of The Living Reef
 (15) in its archives?
 (16) MS. GRAY: Objection.
 (17) THE WITNESS: I don't know.
 (18) MR. DAVIS: What is it, I'll try and
 (19) fix it?
 (20) MS. GRAY: I was objecting because he's
 (21) testified that he has never seen the book which
 (22) is marked as Exhibit 3, nor has he ever seen the
 (23) copy which is marked as Exhibit 5, and so it
 (24) seems to call for information beyond his
 (25) knowledge.

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(1) with whether a freelance artist was inappropriately
 (2) copying material?
 (3) MS. GRAY: Objection.
 (4) THE WITNESS: I don't know how to
 (5) answer, I guess because I'm not -- I don't know
 (6) what constitutes the Society concerning itself
 (7) with.
 (8) BY MR. DAVIS:
 (9) Q. We're here on a copyright case.
 (10) A. Yeah.
 (11) Q. Our clients have alleged infringement
 (12) of their copyrights. At your level and in your
 (13) role as an art director, do you have concern for
 (14) the sanctity of copyrights when you assign work
 (15) to freelance -- or supervise work by freelance
 (16) artists?
 (17) A. Yes.
 (18) Q. And how, if at all, do you act on that
 (19) concern? Is there anything you do to safeguard
 (20) against the inappropriate use of copyrighted
 (21) material?
 (22) MS. GRAY: Objection to form.
 (23) THE WITNESS: What to say. If -- if in
 (24) the course of me art directing an outside artist
 (25) I thought there was any reason to be concerned

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(1) BY MR. DAVIS:
 (2) Q. The pages that comprise Composite
 (3) Exhibit 5 came to you or were produced to us in
 (4) this form. They were clipped or stapled
 (5) together. You've testified that you have not
 (6) seen the book The Living Reef previously. Have
 (7) you seen any collection of the specific pages
 (8) that comprise Composite Exhibit 5?
 (9) A. No.
 (10) MR. DAVIS: Would you please mark this
 (11) as Composite Exhibit 6.
 (12) (Rosbotham Composite Exhibit No. 6
 (13) was marked for identification.)
 (14) BY MR. DAVIS:
 (15) Q. Have you had a chance to inspect
 (16) Composite Exhibit 6?
 (17) A. Uh-huh.
 (18) Q. Have you seen any of the component
 (19) pages of that exhibit before?
 (20) A. I haven't seen them in this form, but
 (21) I've seen -- I mean, these are representations of
 (22) the cards of the set we're talking about.
 (23) Q. So that we're clear on what you're
 (24) talking about, tell us the number --
 (25) THE WITNESS: Yeah.

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(1) MS. GRAY: The identifying number.
 (2) MR. DAVIS: In the lower right-hand
 (3) corner of that page.
 (4) THE WITNESS: 81 and 82, those pages
 (5) are representations of Exhibit -- cards in
 (6) Exhibit 1. I'm just saying I haven't seen them,
 (7) you know, duplicated like this.
 (8) BY MR. DAVIS:
 (9) Q. Take a look at page -- at the page
 (10) marked NGS 83.
 (11) A. Uh-huh.
 (12) Q. Have you seen that page before and page
 (13) 84?
 (14) A. Right. I don't have any specific
 (15) recollection, but I expect that I did, would have
 (16) seen it.
 (17) Q. Do you know whether page in this format
 (18) would have been used for?
 (19) A. Again, I'm just -- from looking at it,
 (20) it's the -- we call them the clues on the cards,
 (21) or the questions on the -- on the cards in --
 (22) Q. In the product.
 (23) A. Yeah, in the product, and the answers.
 (24) And again, I'm assuming, only assuming that
 (25) they -- it's also showing the source from which

(1) any specific recollection of --
 (2) Q. Do you know whether photos were used by
 (3) the artist in preparing the product that's marked
 (4) Exhibit 1A?
 (5) A. I don't have any direct knowledge of
 (6) what Warren used to paint these cards.
 (7) Q. So you cannot say, I gather, that he
 (8) did not use photographs in the preparation of his
 (9) artwork, is that correct?
 (10) A. It's true that I can't say that he did
 (11) not use photos.
 (12) MR. DAVIS: Would you please mark this
 (13) as Exhibit 8.
 (14) (Rosbotham Exhibit No. 8 was
 (15) marked for identification.)
 (16) BY MR. DAVIS:
 (17) Q. When you've had a chance to review
 (18) Exhibit 8, would you please tell me if you've
 (19) seen that previously?
 (20) A. I don't have any recollection of ever
 (21) seeing this.
 (22) Q. Across the top of the document, it
 (23) says: Received by Lyle Rosbotham.
 (24) A. Uh-huh.
 (25) Q. Does that help your recollection at

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(1) the question came, question and answer came.
 (2) Q. And when you say the source, are you
 (3) referring to what portions of pages 83 and 84?
 (4) A. The underlined items which as far as I
 (5) can tell --
 (6) Q. In the right-hand corner?
 (7) A. In the right, yeah, that look to be
 (8) book titles, page numbers.
 (9) Q. Would you look at page 86 of that
 (10) exhibit, please.
 (11) A. Uh-huh.
 (12) Q. On page 86, there is some handwritten
 (13) notations. Do you know whose handwriting that
 (14) is?
 (15) A. No.
 (16) Q. They appear to have been added after
 (17) the typewritten portion of the page was
 (18) prepared. Do you have any knowledge as to why it
 (19) would be added later?
 (20) A. No.
 (21) MR. DAVIS: Would you mark this,
 (22) please, as Exhibit 7.
 (23) (Rosbotham Exhibit No. 7 was
 (24) marked for identification.)
 (25) BY MR. DAVIS:

(1) all?
 (2) A. No.
 (3) Q. Across the very top of the page, it
 (4) says: Preliminary recording sheet for use with
 (5) art only. Does that have any meaning to you as
 (6) an art director, that kind of title or label?
 (7) A. Yeah. This, as far as I remember, this
 (8) sheet or this form would have been completed by
 (9) Karen Edwards. And this is just -- I don't have
 (10) any -- you know, I don't remember that, but I'm
 (11) assuming since her name is on here as record to
 (12) that she would have filled out this form. And
 (13) it's basically a logging in of artwork we've
 (14) received.
 (15) Q. Received from where?
 (16) A. From the artist. In this case,
 (17) according to this form, the submitter is Warren
 (18) Cutler. So -- I'm, you know -- what this form
 (19) represents is, you know, a record that six pieces
 (20) came from Warren Cutler as are described on the
 (21) form.
 (22) Q. Toward the middle of the page is the
 (23) word comments: Artwork at the engraver. Artwork
 (24) will be returned.
 (25) Does that mean that the engraver will

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(1) Q. When you've had a chance to inspect
 (2) Exhibit 7, would you tell me if you have seen
 (3) that before today?
 (4) A. I don't have any memory of this one but
 (5) I may have seen it at the time.
 (6) Q. Toward the middle of the page, along
 (7) side item number ten, there's some handwriting
 (8) that says artwork from photos. Do you see what
 (9) I'm referring to?
 (10) A. Uh-huh, yes.
 (11) Q. Do you know whose handwriting that is?
 (12) A. No.
 (13) Q. Do you have any idea what that notation
 (14) refers to?
 (15) MS. GRAY: Objection to the extent it
 (16) calls for speculation.
 (17) THE WITNESS: In any event, I don't
 (18) know what it refers to.
 (19) BY MR. DAVIS:
 (20) Q. In your experience as an art director,
 (21) are photos used ever in the preparation of art
 (22) work for the Society?
 (23) A. I'm sure that they are in general. I
 (24) can't -- I have to -- I don't know if I can
 (25) remember specific jobs I've done. I don't have

(1) return the artwork or does that mean --
 (2) MS. GRAY: Objection.
 (3) MR. DAVIS: -- something else?
 (4) MS. GRAY: Objection.
 (5) MR. DAVIS: Which is?
 (6) MS. GRAY: Both to form and to the
 (7) extent it calls for speculation.
 (8) MR. DAVIS: What is the form?
 (9) MS. GRAY: It's compound and it's
 (10) confusing.
 (11) BY MR. DAVIS:
 (12) Q. All right. What does artwork at the
 (13) engraver mean to you?
 (14) A. To me, that means that these pieces of
 (15) art were sent to an engraver, an outside
 (16) contractor that makes separations from the
 (17) artwork.
 (18) Q. And those separations would have been
 (19) used to make the product --
 (20) A. Right.
 (21) Q. -- which is Exhibit 1A?
 (22) A. Right.
 (23) Q. With reference to Exhibit 8 again, the
 (24) phrase, artwork will be returned, what does that
 (25) mean to you?

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1. A. That's a little -- I'm unsure what that
 2. means. One of two things. It will be returned
 3. from the engraver or it will be returned to the
 4. artist.
 5. Q. Do you know whether the artwork was
 6. indeed returned to the artist?
 7. A. No, I don't know.
 8. Q. In your experience in dealing with
 9. freelance artists over a period of time, is
 10. original artwork retained by the Society as a
 11. rule or returned to the artist as a rule?
 12. A. As a rule -- actually the rules are
 13. changing. At -- at this -- back in 1994, as a
 14. rule, the art was returned to the artist a year
 15. after publication.
 16. Q. But I gather you don't know whether
 17. that in fact was done in this case.
 18. A. That's right, I don't know.
 19. Q. On Exhibit 8 in that same line we've
 20. been discussing is the statement: Dupes in
 21. illustration library.
 22. What does that mean?
 23. A. That would mean that the artwork was
 24. duped, meaning that we made sheet film
 25. transparencies of it. Could have been 4 by 5, 4

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1. by 7 or 8 by 10, but large-format color
 2. transparencies. That's what a dupe is in our
 3. lingo.
 4. And at this time, that was normal
 5. procedure, was to make dupes of all artwork
 6. before it was sent out. Didn't always happen,
 7. but that was the standard procedure. And the
 8. illustration library is the division in The
 9. Geographic that holds original transparencies and
 10. also these dupes of artwork and other stuff.
 11. So they -- the idea is that the dupes
 12. would be on file permanently even though the
 13. artwork was returned to the artist.
 14. Q. Why would such a file be maintained?
 15. A. Again, the rules are -- things -- the
 16. rules are changing as far as usage rights and so
 17. forth, the contracts that we make with people.
 18. But at this time, most -- I believe the contracts
 19. that we were using in '94 allowed us to reuse,
 20. reproduce in other ways original artwork that we
 21. commissioned. And if the original art were
 22. returned to the artist, we would still have the
 23. dupe from which to work.
 24. Q. And when you say a dupe from which to
 25. work, what does that mean?

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1. A. Meaning that we have that -- that large
 2. format transparency that we could send to the
 3. engraver in place of the original art for
 4. separations to use in another project at a later
 5. date.
 6. Q. You may have indicated this a minute
 7. ago, and if you did, it went by me because I'm
 8. not an expert in your field. But tell me how the
 9. dupes are made.
 10. A. Well, literally just put them up on a
 11. copy stand with lights and -- and take a picture
 12. of them with a large-format camera and
 13. transparency film.
 14. Q. So they aren't made electronically, I
 15. gather?
 16. A. No.
 17. MR. DAVIS: Let's take a little break
 18. here.
 19. MS. GRAY: Sure.
 20. MR. DAVIS: We may be close to a
 21. conclusion.
 22. (Recess.)
 23. BY MR. DAVIS:
 24. Q. Mr. Rosbotham, before we took a short
 25. break, you were explaining to me the dupes that

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1. were prepared for the illustration library.
 2. A. Uh-huh.
 3. Q. When those dupes are made for those
 4. purposes, are they positives or negatives?
 5. A. Positives.
 6. MR. DAVIS: Were we produced copies of
 7. those dupes? To my knowledge, we were not.
 8. MS. GRAY: If you're telling me you
 9. were not, then I mean --
 10. MR. DAVIS: I mean, I don't know
 11. whether some of the material, you would indicate
 12. to me that some of the materials that were
 13. produced were in fact copies of those dupes. But
 14. to my knowledge, they weren't, so I guess I'm
 15. asking, and asking if you would look into that
 16. for me and let me know.
 17. MS. GRAY: What exactly is your
 18. question, I'm sorry?
 19. MR. DAVIS: Were copies of those dupes
 20. that were in the illustration library --
 21. MS. GRAY: Illustration library
 22. produced.
 23. MR. DAVIS: Yes.
 24. MS. GRAY: I can check into that for
 25. you. I'll take it under advisement.

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1. BY MR. DAVIS:
 2. Q. You said a few moments ago that at
 3. least sometimes film artwork is returned to the
 4. artist. Have you done that yourself with
 5. artists?
 6. A. Yes.
 7. Q. These being freelance artists?
 8. A. Yes.
 9. Q. As you understood it, was the artist
 10. then free to use that artwork for anything the
 11. artist wanted to do?
 12. A. No, the contract terms were that they
 13. were allowed to resell the original art but they
 14. were not allowed to allow its reproduction
 15. without prior permission from The Geographic.
 16. Q. As I come to the end of this
 17. deposition, I'm still not clear on what you do.
 18. A. Uh-huh.
 19. Q. With reference to Exhibit 1A, would you
 20. mind telling me again, because I don't
 21. understand, what you did with respect to that
 22. project, to that part of the product.
 23. A. Uh-huh. My recollection, you know,
 24. what I remember from '94 is -- well, let me give
 25. you the -- my overall work on this project was to

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1. get to a complete electronic files that could be
 2. then, you know, printed.
 3. So I dealt with the placement of type
 4. on here. I dealt with the header, this band that
 5. runs across the top of the cards, what it looked
 6. like, you know, the type faces, the sizes. I
 7. dealt with positioning of all the type on here
 8. that, you know, the names of the fish, the
 9. numbers and the labels, their placement. I
 10. recall in our -- the meetings I had with Warren
 11. dealing with issues of the transparency of how to
 12. make these multiple layers work, you know, so
 13. that you could see through the top layer to the
 14. next layer, to the layer below that, you know,
 15. how to make that work in an appealing way.
 16. That was -- sort of the art direction
 17. process of it was working out with Warren, really
 18. giving him guidance, because he's the one who
 19. really worked out most of it, this layering
 20. system. But explaining to him, you know, how we
 21. wanted it to work, you know, giving him
 22. direction, and then he worked out these -- the
 23. sketches that we've looked at for how these
 24. layers would work.
 25. Then I did all of the electronic

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DUPES

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- (1) production end of it that I was describing where
 (2) I would basically do low resolution scans of his
 (3) artwork, and I probably did them of his sketches
 (4) to begin with, and placed them in the electronic
 (5) documents so that I would know how they would
 (6) fit, how the type would fit down the sides here.
 (7) That's what I remember doing on this project, on
 (8) these particular cards.
 (9) Q. Does the word composition fit in there
 (10) somewhere? Is that what art --
 (11) MS. GRAY: Objection.
 (12) BY MR. DAVIS:
 (13) Q. -- directors do?
 (14) MS. GRAY: Objection to form.
 (15) THE WITNESS: I don't know.
 (16) BY MR. DAVIS:
 (17) Q. I don't know either. I just think
 (18) about art directors being concerned about
 (19) composition of a product.
 (20) A. I mean composing --
 (21) MS. GRAY: Objection. Objection to
 (22) form. Go ahead, you can answer.
 (23) THE WITNESS: Okay.
 (24) MS. GRAY: I mean --
 (25) MR. DAVIS: Yes, answer.

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- (1) THE WITNESS: You mean composing the --
 (2) BY MR. DAVIS:
 (3) Q. What does the word composition mean to
 (4) you as an art director?
 (5) A. It's got a couple of separate
 (6) meanings. Composition's an old term for
 (7) typesetting and also arranging elements in a
 (8) piece of art.
 (9) Q. Were those two things part of your role
 (10) in helping to prepare this product?
 (11) A. Yes.
 (12) Q. You mentioned electronic scanning and
 (13) electronic files.
 (14) A. Yes.
 (15) Q. Can you tell me what that means?
 (16) A. Well, let's see. The files from which
 (17) these things were printed, both the transparent
 (18) ones and the opaque cards here, were layouts
 (19) created in Work Express, is the software program
 (20) for doing layout. And those files can be output
 (21) as film, separated film, to print from. And
 (22) those files would have been complete in the sense
 (23) that they would have had all the type in them and
 (24) a scan of the artwork in them. All the colors
 (25) would have been specified within that file.

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- (1) Q. Were the colors applied electronically?
 (2) A. Not -- not in the artwork, no. I'm
 (3) talking about the -- in this case we're talking
 (4) about the colors on the header here.
 (5) Q. Okay.
 (6) A. And the white, for instance, in these
 (7) circles, that's all.
 (8) Q. Then was the artwork itself altered in
 (9) any way electronically?
 (10) A. Not to my knowledge.
 (11) Q. Were colors on the artwork altered in
 (12) any way electronically?
 (13) A. Not to my knowledge. In the normal
 (14) process of things, there is a stage called --
 (15) that's called color correction where you're
 (16) generally just trying to get the -- a proof of
 (17) what's going to print to match the colors of the
 (18) original art or transparency, whatever.
 (19) Q. Now, you helped me with your
 (20) description --
 (21) A. Okay.
 (22) Q. Of what that role was. Among the team
 (23) as you call it that worked on this project, who
 (24) selected the fish to be used in this product?
 (25) A. I don't know.

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- (1) Q. Who would know that?
 (2) A. I would think that Megan Ullman might
 (3) know it, assuming she was the researcher which I
 (4) saw on one of your exhibits. I hadn't remembered
 (5) her involvement. That was on Exhibit 2. She --
 (6) she might know, might very well know.
 (7) Patty Frakes also might know. I remember her
 (8) being involved in this project.
 (9) Q. What kind of position did she have?
 (10) A. I was thinking that she was the
 (11) researcher. That must be faulty memory on my
 (12) part. But I think that she was involved in it,
 (13) so --
 (14) Q. You told us Beth Molloy had been the
 (15) art director on this project before you were.
 (16) A. Yes.
 (17) Q. Does the discussion we've had today
 (18) refresh your recollection at all as to whether
 (19) these sketches in Composite Exhibit 4 were
 (20) prepared before you became art director or
 (21) after?
 (22) A. None. I'm just not sure.
 (23) Q. You've told us a little while ago about
 (24) some changes that you required to be made.
 (25) A. Uh-huh.

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- (1) Q. Or requested be made --
 (2) A. Uh-huh, yeah.
 (3) Q. -- on these sketches.
 (4) A. Yeah.
 (5) Q. In terms of -- strike that. Would you
 (6) look at Exhibit 1A, please.
 (7) A. Uh-huh.
 (8) Q. On the first panel.
 (9) A. Uh-huh.
 (10) Q. We discussed earlier this morning that
 (11) fish in the top center.
 (12) A. Uh-huh.
 (13) Q. There appears to be no name or number
 (14) for that fish.
 (15) A. (Witness nods.)
 (16) Q. The naming and numbering of the fish in
 (17) this particular part of the product, would that
 (18) be part of your responsibility?
 (19) A. I placed these names and numbers, is
 (20) that --
 (21) Q. Is there some reason why that fish that
 (22) we're discussing now has neither a name nor a
 (23) number?
 (24) A. I don't know why it doesn't have a name
 (25) and a number, but I believe the reason it's there

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- (1) in that specific place on this page is to hide
 (2) the -- the name moon jelly fish number nine
 (3) that's on the layer beneath it.
 (4) And that -- I don't remember
 (5) specifically but that would have been something
 (6) that I would have been making sure of, you know.
 (7) making -- I know I spent a lot of time on these
 (8) things hiding type on lower layers with elements
 (9) on the upper layers and moving things around,
 (10) so --
 (11) Q. All right, if you saw a need in doing
 (12) what you've just said, a need to cover the type
 (13) on the underlying page, how would you have gone
 (14) about accomplishing that? Who would you talk to,
 (15) the artist?
 (16) A. Yeah.
 (17) Q. What would you -- you said just give me
 (18) a fish, Mr. Cutler, or Warren, that I can put in
 (19) here? How would you have done that?
 (20) A. I don't remember the specifics. I
 (21) mean, I would have been -- I would have told
 (22) Warren that -- that -- well, no, I can't even --
 (23) I don't remember that I -- that that's the way it
 (24) worked, that I asked for anything to be placed
 (25) there for it to hide that type. I don't remember

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any more about how that came about.
 Q. I'm a little unclear now --
 A. Yeah.
 Q. -- as to your recollection and that's
 all I want is your recollection.
 A. Yeah.
 Q. Do I understand your testimony to be
 that you don't know why the fish was put there?
 A. No, what I'm -- what I'm trying to tell
 you is that -- that the fish is there hiding the
 type and number underneath it.
 Now, what I can't remember is whether I
 asked Warren to put a fish there because that was
 a problem we needed to solve or move that fish
 over from somewhere else to help me with the type
 underneath. That, the process, I don't
 remember. So --
 Q. But in any event, it was your decision
 to add something in that space to cover the type,
 is that right?
 A. No, I'm not --
 MS. GRAY: Objection.
 THE WITNESS: Even sure it was a matter
 of adding. It may have been a matter of moving.
 BY MR. DAVIS:

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Q. Either way, whether it was added or
 moved, that would have been -- do I understand it
 correctly that that would have been your decision
 to make to say I need to have a fish added or a
 fish moved to cover this type?
 A. Yes.
 Q. Do you have that right?
 A. Uh-huh.
 Q. Okay. And do I also understand
 correctly that in accomplishing that, you would
 have dealt directly with the artist about that?
 A. Yes.
 Q. Before today's deposition, you met with
 your attorneys?
 A. (Witness nods.) Yes.
 Q. With whom did you meet?
 A. With Naomi Gray and Bob Sugarman.
 Q. And where was the meeting?
 A. The offices of Weil, Gotshal.
 Q. Was it in Washington?
 A. Yeah, yes.
 Q. Was anyone else from The Geographic
 present at that meeting?
 A. No.
 Q. Did you have more than one meeting?

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A. No.
 MR. DAVIS: I have no further
 questions. Thank you.
 (Whereupon, at 11:25 a.m. the taking of
 the instant deposition ceased.)

Signature of the Witness
 SUBSCRIBED AND SWORN to before me this _____
 day of _____, 19____.

Notary Public
 My Commission Expires: _____

XMAX(1/13)

BSA

Lyle Rosbotham

July 24, 1998

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