Warren Cutler July 24, 1998

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CONDENSED TRANSCRIPT AND CONCORDANCE
PREPARED BY:

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
----------X
JERRY GREENBERG, individually, :
and IDAZ GREENBERG, individually :
Plaintiffs, :
v. : Case No.
NATIONAL GEOGRAPHIC SOCIETY, a : 97-3924
District of Columbia corporation, : CIV-LENARD
NATIONAL GEOGRAPHIC ENTERPRISES, : Magistrate
INC., a corporation, and MINDSCAPE,: Judge Turnoff
INC., a California corporation, :
Defendants. :
----------X
Washington, D.C.
Friday, July 24, 1998
Deposition of WARREN CUTLER, a witness herein, called for examination by counsel for Plaintiff in the above-entitled matter, pursuant to notice, the witness being duly sworn by DONNA A. McCALLEY, a Notary Public in and for the District of Columbia, taken at the offices of Kirkland & Ellis, 655 15th Street, N.W., Washington, D.C. 20005, at 1:06 p.m., Friday, July 24, 1998, and the proceedings being taken

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down by Stenotype by DONNA A. McCALLEY, and transcribed under her direction.

APPEARANCES:

On behalf of the Plaintiffs:
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On behalf of the Defendants:
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ALSO PRESENT:
IDAZ GREENBERG

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PROCEEDINGS

Whereupon,
WARREN CUTLER,
business address at 7900 Curtis Street, Chevy Chase, Maryland, was called as a witness by counsel for Plaintiffs, and having been duly sworn by the Notary Public, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR PLAINTIFFS
BY MR. DAVIS:

Q. Well, would you state your name, please?
A. Warren Cutler.
Q. Your business address?
A. 7900 Curtis Street, Chevy Chase, Maryland.
Q. Is that your home address, as well?
A. Yes.
Q. You were served with a subpoena that required you to bring certain documents. Are you familiar with the subpoena?
A. Yes.
Q. And you've -- before we began the deposition, you showed me documents that you brought.

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A. Uh-huh.
Q. These are all the documents in your position or control that respond to that subpoena --
A. Yes.
Q. Is that correct?
A. You have you have.
Q. Are you represented by an attorney today?
A. No. Oh, yes. I'm not paying, though. I am being represented, yes.
Q. All right. By Ms. Gray's law firm?
A. Yes.
Q. Okay. Have you met with your attorney or attorneys before today?
A. Yes.
Q. How many times have you met?
A. Twice.
Q. When was that? For each one. Just approximately.
A. Monday and I don't know another -- there was another time a few weeks.
Q. Some time previously?
A. Uh-huh.
Q. How many attorneys were present at the

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Monday meeting?
A. Two.
Q. How many attorneys were present in the previous meeting?
A. Two.
Q. Was anyone else present at either meeting?
A. No.
Q. Have you discussed this deposition testimony with anyone at the National Geographic Society?
A. What do you mean?
Q. Have you had -- have you simply --
A. Have I said to people yes, I -- you know, yes, there is a deposition?
Q. Yes.
A. And I've been served?
Q. Yes.
A. Yes.
Q. Who did you talk to about that?
A. A person called Patty Frakes.
Q. Patty Frate?
A. Frakes.
Q. Frake. F-r-a-k-e?
A. S.

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Q. S. And what does Ms. Frakes do if you know at The Geographic?
A. She's a product researcher/developer.
Q. Had you worked with Ms. Frakes on the project?
A. No.
Q. Was there some reason why you called her? Or did she call you?
A. She -- no, I called her to have lunch.
Q. Did you discuss with her the lawsuit that we're here about today?
A. Yeah.
MS. GRAY: I'm going to object and caution the witness --
THE WITNESS: Okay.
MS. GRAY: -- not to reveal any communications which may be privileged in nature.
THE WITNESS: Okay.
MS. GRAY: Other than that, you can answer the question.
BY MR. DAVIS:
Q. Was Ms. Frakes an attorney --
A. No.
Q. Who represents the Society?

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A. No.
Q. Then what -- did you talk about this lawsuit with Ms. Frakes when you met with her?
A. I -- I don't remember all of the conversation that I had with Patty Frakes.
Q. Do you --
A. I would --
Q. I'm sorry.
A. All I can say is that yes, this was mentioned. We talked about many things that had nothing to do with this.
Q. Did you talk with her about the -- the project that we're here to discuss today for Educational Insights?
MS. GRAY: I'm just going to object and caution the witness not to reveal the substance of any communications that might be privileged. Other than that, you may answer the question.
THE WITNESS: The -- Patty knew about this project, and I told her that this -- there was a suit and that I got this deposition -- I mean this, you know, the whatever you call it.
BY MR. DAVIS:
Q. Did you -- do you understand what the word privileged means that Ms. Gray just used a

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moment ago?
A. Not really.
Q. Privileged discussions?
A. No.
MS. GRAY: Maybe we should take a break for a minute and let me explain the nature of my concern.
MR. DAVIS: Okay, let's go off the record.
(Discussion off the record.)
MS. GRAY: I just want to clarify the nature of my objection and that is I had a concern that the conversation in question may have been part of The Geographic's investigation into how to address this suit and therefore would be covered by the work product privilege. But I think we've resolved my concern on that score, so you can proceed for the moment with your questioning.
MR. DAVIS: Okay. Let the record reflect that while we were off the record, Ms. Gray and Mr. Cutler stepped outside to confer for several minutes.
MR. DAVIS: Now, do I understand you have no -- you've withdrawn your objection as to

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privilege or work doctrine on the question that I just asked?
MS. GRAY: The question that you just asked being about --
MR. DAVIS: Would you read back my last question then we'll know.
THE REPORTER: "Question: Did you talk with her about the -- the project that we're here to discuss today for Educational Insights?"
MR. DAVIS: Is there an objection to that?
MS. GRAY: No, you may answer the question.
THE WITNESS: The answer is yes. That was the day that I was to come in and see the two, Naomi and --
BY MR. DAVIS:
Q. The other attorney.
A. The other attorney. I called up her, Ms. Frakes, Patty Frakes, to have lunch before I saw them. Then we had lunch and I told her what an inconvenience all this was, then we talked about personal things.
Q. Did you discuss the -- your upcoming deposition with her?

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A. No.
Q. Did you discuss the Educational Insights project with her at all?
A. No.
Q. Nothing at all.
A. Just the -- the fact that this -- I had to come in and see the lawyers and that I'm in the middle of a -- trying to get a book done.
Q. Is Ms. Frakes a friend of yours?
A. Yes. A casual friend, but I've seen her a number of times for lunch, called her up, and she has called me.
Q. I forget whether I asked you just a few moments ago, but have you spoken with anyone other than Ms. Frakes, anyone else at The Geographic about --
A. No.
Q. This deposition or --
A. No.
Q. All right. What is your occupation?
A. Illustrator.
Q. Are you employed or self-employed?
A. I am self-employed now.
Q. I'm sorry?
A. Now I'm self-employed.

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Q. How long have you been an illustrator?
A. Over 30 years.
Q. Just because I don't know, is there a difference between an illustrator and an artist?
A. An illustrator is an artist.
Q. But not all artists are illustrators?
A. I guess could you say that.
Q. I'm just learning. Did you have training or education to become an illustrator?
A. No more than just workshops. Later on. I was fully employed by the time I took workshops.
Q. How long have you been self-employed?
A. Four or --
Q. Approximately.
A. Four or five years.
Q. And before that time, how were you employed?
A. I was the illustrator at The National Zoo.
Q. And how long were you employed in that capacity?
A. 29 years.
Q. How long have you done work for the National Geographic Society?

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A. Gosh, I don't remember when the first one was. It was -- I was working at the zoo when the first book that I did.
Q. The first book that you did?
A. Uh-huh.
Q. When you say the first --
A. Would be '70s, probably -- would be in the '80s, something like that, late '80s.
Q. Have you worked, ever worked steadily for the Society or only on particular projects?
A. Only on a work-for-hire basis.
Q. And roughly how many different projects have you worked on with the Society, for the Society?
A. Maybe a dozen.
Q. Did those dozen, starting back in the '70s, you'd say?
A. I'd say -- I can't remember. Probably the '80s. Don't know.
Q. With the Education Insights project as a reference, have you done any work for the Society since that project?
A. Yes.
Q. What have you done?
A. While I was doing the Educational

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Insights project, I was doing samples for a pop-up book which I -- as soon as I finished that, I went right to a pop-up book. And then there was a few years' break, I guess, and then I started -- I did a set of six books, children's books, and a few minor illustrations here.
Q. When you say you did a book, does that mean you did illustrations for a book?
A. I did -- for the pop-up book, I was the only illustrator. Because the last -- the last six books that I did, there was other illustrators besides myself on each book.
Q. Did each book have text as well as illustrations?
A. Uh-huh.
Q. Did any of those books have to do with -- with fish as a subject matter?
A. Uh-huh. Yes.
Q. Which books were they?
A. The book on fish.
Q. Is that what it's called?
A. I think that's all. It's fish.
Q. And that was within the last year or two?
A. Yeah.

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Q. On these various projects, the 12 or so that you have been involved with, did you have liaison at The Geographic society with one person or more than one person for each of those projects?
A. A book usually has an art director, which you have to please. The art director is your major go-between. No matter how many other people there are involved in the project, you only -- it's the art director that tells you what to do.
Q. Was that true on the Educational Insights project as well?
A. Uh-huh.
Q. And who was the art director you worked with on that project?
A. Lyle Rosbotham.
Q. Did you work with any other art director on that project?
A. No.
MR. DAVIS: Okay. Ask the operator to -- operator. The reporter to please mark this as Exhibit 1 for this deposition. While you're at it, why don't you take that other one out and mark it 1A.

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(Cutler Exhibits No. 1 & 1A were marked for identification.)
BY MR. DAVIS:
Q. Okay, would you look, Mr. Cutler, at that whole collection there, which when they're inside the big plastic envelope, the reporter has identified all of that as Exhibit 1.
A. Uh-huh.
Q. Is that familiar to you?
A. The whole package? Yeah.
Q. The whole package.
A. I was given a number of them.
Q. Okay. Did you perform -- and the package of course includes the one that's just in front of you --
A. Uh-huh.
Q. That's been marked 1A. Did you perform some work on that package?
A. This package, yes.
Q. You're holding up Exhibit 1A.
A. 1A, yes.
Q. Is that the only component of Exhibit 1 that you did any work on?
A. Yes. I didn't do this, anything here.
Q. Okay. And let's --

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A. None of these. Just these.
Q. Okay. I just want to set these out of the way then for the time being and let you hold onto that.
A. I have a copy of that, my own.
MS. GRAY: We should use the one that's been marked.
THE WITNESS: Okay.
BY MR. DAVIS:
Q. Okay, now let's talk about Exhibit 1A. Did you have some involvement in the creation of that item?
A. Yes.
Q. Can you tell me what that was?
A. My involvement?
Q. Yes, sir.
A. I did the illustrations.
Q. There are -- correct me on this, by looking at the exhibit, there are four different pages, if you will --
A. Uh-huh.
Q. That are bound together by some kind of a ring binder at the top?
A. Four pages, yes.
Q. And you did --

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A. All four pages.
Q. And when I say you did something, you contributed artwork for those four pages?
A. Yes.
Q. How did you come to be involved with that project? Did someone contact you?
A. Uh-huh.
Q. Who contacted you?
A. I would only -- it would be an assumption. I can't remember exactly.
Q. That's right.
A. It was not Lyle Rosbotham.
Q. And what were you asked --
A. It was --
Q. I'm sorry, you want to finish?
A. Could have been one or two people, I guess.
Q. That's right. What were you asked to do?
A. I was asked to come in and look at this project, that I would be working with Lyle Rosbotham and he could explain to me this project. And that they -- they had already hired an artist to do the illustrations and her work was not realistic enough and they wanted -- they

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needed a different artist. Her work was rejected.
Q. Do you know who that was, that artist?
A. I've never met her. But her name is on the -- the copies that I was given. First name is Barbara.
Q. When you say the name on copies you were given, copies of what?
A. Copies of her work so I could see that, you know --
Q. What they found unacceptable.
A. Here's what we have and this is not good enough, you have to do better than this.
Q. Do you still have those copies?
A. I have a portion, one little piece of it.
Q. Okay.
A. The rest of the stuff's thrown out. I only keep my things until the actual thing is printed, and then I go through, and normally I don't even have as much as is in that folder. Sometimes the -- normally I keep the contracts. They go into a file.
Q. Okay. What, if you can remember, what was it about her work that the Society didn't

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like?
A. It wasn't the Society that didn't like it, it was Educational Insights.
Q. And what was it they didn't like?
A. It's too childish. They wanted it to be more realistic.
Q. Now, you said that you were first approached by somebody, you're not sure who, and were you invited down to the Society to talk about the project?
A. To go to meet Lyle.
Q. And you went to the Society?
A. Uh-huh.
Q. And you met Lyle?
A. Yeah.
Q. And did you meet with anybody else?
A. The -- only the -- only the person that asked me to come in. The -- the two people that I worked with before on other projects that had --
Q. What was mister -- I'm sorry, I don't mean to step on your words. Did you finish your answer?
A. The person, I believe, that hires -- or doesn't hire the artists but tells, keeps a list

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of artists and gives it to the other art directors, I guess is Maryann Kasoras. She just -- I guess she gave it to Lyle, the Barbara person, and then she came up with my name.
Q. Was she the one who met with you and Lyle when you went in to discuss the project?
A. Most likely. She was not there for the discussions. Lyle and I went into his office and sat down.
Q. How many meetings with Lyle did you have at the Society's offices for this project?
A. I'm sure it was more than five.
Q. Okay.
A. We had phone conversations.
Q. When you met with him on those -- at the Society on five or more occasions, did you ever meet with someone else at the same time?
A. Not meetings. Casual, you know, seeing people in the hall, I guess. It -- what you do is you just -- you bring your artwork in and it takes them a while to figure out what to do. You bring in your artwork and they say yeah, I'll see you later. And I normally -- other people mail it in. I, living close, rather than lose the artwork in the mail, I just hand deliver it and

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leave.
Q. In the full course of working on the project that is represented by Exhibit 1A, did anyone other than Lyle give you any comment or direction or instructions regarding that project?
A. Not that -- not that I remember, no one. Lyle was the only person that I had contact with for instruction.
Q. Did you have any -- strike that. Have you ever done underwater photography?
A. No.
Q. Do you consider yourself to be an expert on undersea life?
A. No.
Q. Do you consider yourself to be an expert on fishes?
A. No.
Q. Do you have your own reference works or reference library at home?
A. Uh-huh.
Q. About how many items do you have in your reference library, just roughly? One hundred, thousand?
A. Less than a thousand, over a hundred.

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Q. Do you have any books on fishes?
A. Yes.
Q. How many? Roughly.
A. 20.
MR. DAVIS: Would the reporter please mark this as Exhibit 2.
(Cutler Exhibit No. 2 was marked for identification.)
BY MR. DAVIS:
Q. Would you take a look at what's now been marked as Exhibit 2 -- I'm sorry.
MS. GRAY: I'll just take a look.
MR. DAVIS: I'm sorry, Naomi, please.
MS. GRAY: Okay.
BY MR. DAVIS:
Q. Will you tell me if you have seen that book before?
A. Yes.
Q. Do you have a copy of your own?
A. I did have.
Q. When did you have it?
A. When I was doing this project.
Q. Was it your own --
A. Yes.
Q. -- copy?

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A. Uh-huh.
Q. You -- does that mean you don't have it now?
A. That's right.
Q. What did you do with it?
A. (Witness indicates.)
Q. Since the project was done?
A. Oh. It was -- I gave it to The National Geographic after -- when -- when this suit came.
Q. Who asked you to give it to them?
A. No one asked me. I said if this is going to cause this much trouble, I'm not going to use it.
Q. Who did you give it to at the Society?
A. A lawyer, or the lawyer's secretary. I handed it to the National Geographic's lawyer's secretary.
Q. Is that at the Society office here in Washington?
A. Uh-huh.
Q. Did you have discussions with the Society's lawyer about this matter?
MS. GRAY: I'm going to object to the question to the extent that it seeks to reveal

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the content of those discussions.
MR. DAVIS: The question had nothing to do with content.
BY MR. DAVIS:
Q. Did you have any discussions with a lawyer at the Society's offices about that book or about the project?
A. No, not about the project. About the -- the --
Q. I'm not asking to you tell me what was said.
A. I'm telling you that this -- I handed over the book to the secretary, the lawyer's secretary. In fact, I probably asked do you want it.
Q. And somebody accepted it.
A. Yeah.
Q. And that person was at the National Geographic Society.
A. Yeah.
Q. It was a secretary to -- to an attorney?
A. It was -- yes. I believe that's who it was. Don't ask me her name, I haven't the slightest idea.

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Q. Did you possess that book while you were working on this project?
A. Uh-huh. Yes.
Q. Let's look at Exhibit 1A, if we might, which is right there in front of you.
A. Uh-huh.
Q. What instructions were you given initially about that project? You said -- you said you got instructions only from Lyle.
A. (Witness nods.)
Q. What instructions did he -- or what did he outline for you or tell you or instruct you to do with -- with respect to that project?
A. It was described that the total -- they wanted a beautiful picture on all, no matter how -- no matter what -- how you looked at it, whether it was page 1 or page 4, they wanted a beautiful picture. It had to cover the information from the previous page, and each page had a different subject matter, and I was given a list of the different subject matter for each page. And they wanted to see all four pages when it was all closed up like this.
Q. Okay.
A. I was given dimensions, the list of the

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critters. I was given a stack of books. That was -- go home and work.
Q. What books were you given?
A. I haven't the slightest idea which ones they were.
Q. Was The Living Reef one of those books?
A. No. That was one that I had in my library.
Q. When you were given that stack of books, what were you told to do with them, if anything?
A. Like all projects, you are given a list of animals, and it's their responsibility to give you photographic references for each one of the animals or multiple images of the animal. And that was done by the researcher and it was given to the first artist, and then I never met that researcher. That pile of research was handed over to me.
Q. So is it your understanding that the same pile of research that was given to the first artist was given to you?
A. Uh-huh.
Q. The answer's yes?

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A. Yes.
MR. DAVIS: We've never gotten any documents from that first researcher. Does that mean they don't exist, from the first artist?
MS. GRAY: Hold on. Are you directing that question to me?
MR. DAVIS: Yeah.
MS. GRAY: Can we go off the record?
MR. DAVIS: Sure.
(Discussion off the record.)
BY MR. DAVIS:
Q. When you do your work at home, what kind of equipment do you have that you use in your artwork?
A. Pencil and paintbrush.
Q. Anything else?
A. Books, drawing table.
Q. Okay.
A. Do I use a luciter? (Witness shakes head.)
Q. Do you use a computer?
A. No I wish --
Q. Scanner?
A. No, I wish I did.
Q. Computer drawing tablet?

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A. No.
Q. Photocopy machines?
A. I have a photocopy machine that I use to -- for the faxes, you know, I have to -- for the pencil drawings have to be photocopied so they'll go through the fax machine.
Q. And who do you send faxes of artwork to?
A. To the art directors.
Q. You do that customarily rather than sending the sketches themselves or the drawings?
A. I think -- I did not -- I probably, at the time, did not have a copy machine. I have one now. And contracts and drawings are sent with my copier. That's since I've moved. So I believe this was done before I had a copy machine.
Q. Okay. Referring to Exhibit 1A again.
MS. GRAY: Can we take a break or are you in the middle of a question?
MR. DAVIS: Let's just take a break.
MS. GRAY: Okay.
(Recess.)
BY MR. DAVIS:
Q. While we have been off the record, I've

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been sorting through copies of some documents that you brought with you today.
A. Okay.
Q. Would you take a look at the folder of the documents you brought and pull out for me those that -- any documents that were given to you at the outset of the project to help you work on the project.
A. On the onset, the first meeting, you're saying?
Q. Well, okay, let's start with the first meeting.
A. I'd be guessing.
Q. All right. And let me enlarge the question. Could you identify from those documents you brought with you documents you were given at any time by the Society to help you in working on the project?
A. I believe all of this was given to me from the National -- I got it from the National Geographic during the initiation of the project except for the -- the one saying I'm being paid.
MR. DAVIS: Okay, why don't we go off the record and let you go ahead and mark up all these.

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(Discussion off the record.)
(Cutler Exhibits Nos. 3-14 were marked for identification.)
BY MR. DAVIS:
Q. What I'm going to do, Mr. Cutler, is show you the exhibit and tell you what the number is.
A. Uh-huh.
Q. I'll give Ms. Gray a copy of it and just get you to identify that for me just very briefly. And we'll just do these one at a time until we have them all accounted for. I'll show you now what has been marked as Exhibit 14. Was that document among those that you brought with you today?
A. Yes.
Q. I'm going to do it a little differently because I'll ask the same question each time. Exhibit 14 which you just had a look at --
A. Uh-huh.
Q. Was that among the documents that you say The Geographic gave to you --
A. Yes.
Q. -- at the outset of the project? All right. I'm going to show you Exhibit Number 12.

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A. Uh-huh.
Q. And ask if that was one of the documents provided to you by the Society --
A. Yes.
Q. -- at the beginning of the project. I'll show you Exhibit Number 11. Was that one of the documents provided to you by the Society for the project?
A. Yes.
Q. Exhibit Number 10 --
A. Yes.
Q. Okay, I'll just sort of have a standing question as to --
A. Uh-huh.
Q. -- what these are. And your yes answer will indicate that these were among documents provided to you by the Society at the outset of the project. Exhibit Number 9, which has two pages to it --
A. Uh-huh.
Q. Here's where we need that extra. I don't have one. What is that number, number 9?
THE WITNESS: Uh-huh.
MS. GRAY: Number 9.
BY MR. DAVIS:

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Q. Number 13?
A. Yes.
Q. Number 8?
A. Yes.
Q. Number 6?
A. Yes.
Q. Number 7?
A. Yes.
Q. Number 5?
A. Yes.
Q. Number 3?
A. Yes.
Q. Number 4?
A. Yes.
Q. Let's put these in some order that will help you when we get to them.
MS. GRAY: I'll put them in numerical order.
BY MR. DAVIS:
Q. Would you take a look at Exhibit Number 3, please.
A. Yes.
Q. There's a name and phone number at the bottom of that page. Is that your handwriting?
A. I don't -- I wouldn't know. Could be.

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Don't know.
Q. There's a reference on this exhibit in the middle of the page where it says in-house designer completes project. Do you know what the in-house designer's role was?
A. In-house designer. I would have to be -- let me -- let me read this.
Q. Sure.
A. In-house designer is a -- the art director.
Q. I notice on Exhibit 3 that this schedule pertains to set one, oceans and reefs. Did you work on that part of the project, oceans and reefs?
A. Oceans and reefs --
Q. I was wondering whether this schedule pertained to you or to someone else.
A. I don't really remember.
Q. You can see it says set two, wildlife wonders. Did you have anything to do with set two, the wildlife wonders?
MS. GRAY: Objection.
THE WITNESS: Don't know. I don't know what that means.
MR. DAVIS: Ground?

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MS. GRAY: I mean, I think it's a misleading question because we haven't even established what this document is or, you know --
MR. DAVIS: Well, he said they were given to him by the National Geographic Society for use in his project. I think that establishes pretty well what it is.
MS. GRAY: You're asking him what wildlife wonders means. We have --
BY MR. DAVIS:
Q. My larger question was, does this schedule pertain to the work that you did? And it may or may not.
A. I'd be guessing.
Q. Then I don't want you to guess.
A. It's so long ago. I haven't even looked at this file.
Q. Okay, fair enough. Have you take a look at Exhibit 4, please.
A. Okay.
Q. Did you make use of this document in your project?
A. Let me see. It looks like the list of critters that I would then have been given this as probably the list.

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Q. So on Exhibit 4, you're referring to the list is on the second page of that exhibit?
A. Uh-huh.
Q. And this list has to do with different forms of -- well, it speaks for itself. I mean the items listed there were things to be included, is that correct?
A. Yes.
Q. Did you include those items in the project?
A. I'd have to look. I would assume they're all here.
Q. Let me try to save some time.
A. Okay.
Q. Because this was -- this list was given to you by the Society, this was what they -- this was their objective to have these things included, if you could do it, right?
MS. GRAY: Objection to the extent it calls for speculation.
BY MR. DAVIS:
Q. Is that the purpose for the document?
MS. GRAY: Same objection.
THE WITNESS: If I could remember when I was given this, it would make more sense to

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me. This -- these -- these things could have come after it was done.
BY MR. DAVIS:
Q. The documents could have come after it was done, is that what you're saying?
A. I'm saying you get -- you get reams of this stuff, double checking, triple checking. I couldn't tell you is this the one that I used? I couldn't tell you. I couldn't say. This might have been done, this list, done after pencil sketches.
Q. Who told you --
A. I might have --
Q. I'm sorry, go ahead.
A. -- been given this. For example, look at card three, the document Number 5 and document Number 7.
Q. Okay. What should I look at?
A. It's the same card. It is completely different information.
Q. Let's do this a little differently.
THE WITNESS: Am I confused?
MS. GRAY: If you want to consult with me, we should step out of the room. Do you want to take a break to consult with me? Yeah?

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THE WITNESS: I guess -- not really because this -- I don't understand. I don't know when I got these.
BY MR. DAVIS:
Q. That's right. If you don't know, then that's all I want you to say. I'm not --
THE WITNESS: Okay.
BY MR. DAVIS:
Q. If you don't know, you don't know. The rules frown on discussions out in the hallway. In the Southern District of Florida, they're very specific about that. You can do as you prefer. But let's try this a different way. I'm not trying -- we can spend two or three days on this list. I'm not trying to do that. Let's have these marked up and maybe this will help us do something. Would you please mark this as Exhibit 15, Composite Exhibit 15.
(Cutler Composite Exhibit No. 15 was marked for identification.)
BY MR. DAVIS:
Q. Would you take a look at what's been marked as Composite Exhibit 15, which consists of two pages. When you've had a chance to look at it --

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A. Uh-huh.
Q. Please tell me what they are, if you can.
A. They are preliminary drawings.
Q. Do you know who drew them?
A. Yes, I did.
Q. How many preliminary drawings did you do?
A. Quite a few. Probably more than if -- more than three and on the three, many changes.
Q. Were all of the more than three submitted to Lyle or to the Society?
A. Yes.
Q. So he received more than three sketches.
A. He received several versions, let's put it that way.
Q. Let's take a look at Exhibit 1A, which is the product right in front of you.
A. Uh-huh.
Q. The first page of Composite Exhibit 15 --
A. Uh-huh.
Q. Represents the work shown on which page of Exhibit 1A?

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A. The second page.
Q. Okay. And the bottom sheet on Composite Exhibit 15 represents --
A. The top sheet.
Q. The top sheet. Now, let's take the top sheet of the product, transparency. Did you do three or more sketches, pencil sketches, on that one top sheet?
A. Yes.
Q. Can you tell by looking at the -- at Composite Exhibit 15 whether this was your final sketch?
A. I can tell it's not the final.
Q. How can you tell that?
A. Because of the placement of stuff.
Q. By the placement of stuff, you mean the placement of stuff in the final product?
A. Uh-huh.
Q. All right. Could you tell me by reference to Exhibit 1A and Composite Exhibit 15 --
A. Uh-huh.
Q. -- what's different between the two?
A. You want the top sheet or the bottom sheet -- I mean the second sheet?

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Q. Let's do the top sheet first.
A. The top sheet is -- coral was added. The fish at the top was added. The stuff was added to the sides.
Q. By stuff on the sides, what do you mean?
A. Coral, painting, added more painting to the sides of the picture. But in general, this was getting towards the end.
Q. By this, you mean --
A. This was --
Q. The pencil sketch that you have in front of you.
A. The pencil sketch was getting towards the final aspect.
Q. Let's stay with the top sheet of Exhibit 1A for a moment.
A. Okay.
Q. Were you told what to include in that top sheet?
A. Uh-huh.
Q. How were you told?
A. By the list.
Q. Is the list among those exhibits that we have just placed in front of you?

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A. I'd have to look. It's right here. (Indicating.)
Q. What is the exhibit you're referring to?
A. 5. Says on, this was --
Q. And --
A. Whether this is the final one, I guess it is.
Q. It was at least one of the lists you were given --
A. One of the lists.
Q. In terms of what to include.
A. Uh-huh. Here's another one.
Q. What Exhibit Number is that?
A. 10.
Q. You have referred us to Exhibits 5 and 10. Would you look at Exhibit 5 with me.
A. Uh-huh.
Q. In the lower left-hand corner are of that exhibit is a list of fish.
A. Uh-huh.
Q. Were those -- were you told to include those particular fish in the presentation?
A. I'm sorry, say that again.
Q. With respect to Exhibit 5 --

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A. Yes.
Q. Down in the lower left-hand corner of Exhibit 5, there is a list of fish.
A. Yes.
Q. Were you told to include those specific fish in the final -- in the product that you were making?
A. In the final, no.
Q. Can you elaborate on that?
MS. GRAY: Objection to form.
THE WITNESS: I mean, as you can see, start right off -- oh, I'm sorry. I read anemone. Didn't finish anemone fish. And there it is, okay. Buttertly fish, longnose filefish, parrot fish, lyre -- yes. I was given this list to put in.
Q. The thrust of my question is, in other words, did you decide which fish to place in there or did someone else? That's what my question's all about.
A. I had to put in the fish they wanted.
Q. Did you put in any fish that the Society or Lyle did not request?
A. Well, on the final product?
Q. At any time.

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A. At any time? I believe I put in fish that they didn't want.
Q. Okay, and what caused you to decide to add fish that they had not asked for?
A. Composition.
Q. Let's take a look at Exhibit 5, if we may.
A. Uh-huh.
Q. Down on the lower left-hand corner where the fish are listed.
A. Uh-huh.
Q. There is a longnose filefish --
A. Uh-huh.
Q. -- listed and a parrot fish listed.
A. Okay, uh-huh.
Q. How did you go about putting those two fish -- how did you go about sketching those two fish?
A. A longnose filefish and parrot fish. Probably went through all of the information that was given to me and cut out all of the information that I -- I had. The normal way would be to research every single aspect of the -- of the list of things and then you go -- go through every book looking for it.

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Q. Okay. Let's look now at Composite Exhibit 15, which are the sketches.
A. Uh-huh.
Q. On the first page of that exhibit up in the left-hand corner, there are some -- in fact there's handwriting on this -- on this sketch. Is that your handwriting?
A. On this -- on this -- you're referring to now?
Q. Yes.
A. That's my handwriting.
Q. Okay. Let's take a look at the upper left-hand where it says cover realms of the sea. Do you see where I'm referring?
A. Uh-huh.
Q. What does that mean?
A. This list of things was to inform whoever where to find information to make sure what I had done was accurate. This was done after the painting was finished. I just grabbed one of the old drawings and wrote on it. So that you could see if you had -- you didn't know anything, you could look it up and make -- and say yes, this is what he said he was supposed to be doing.

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Q. Did anyone ask you to provide that list of sources or references?
A. Yes.
Q. Who asked you to do that?
A. Don't know.
Q. You've told us previously that you really only got instructions from Lyle, so can we conclude that Lyle asked to you do that?
MS. GRAY: Object to the extent it calls for speculation.
THE WITNESS: I would assume that if I --
BY MR. DAVIS:
Q. Did you get instructions -- you testified that you got instructions from no one else so --
A. This wasn't instruction. This was asking for information on work that I've done.
Q. After the fact?
A. Uh-huh.
Q. So in any event, your testimony is you don't know who asked you to do that.
A. Lyle might have.
Q. All right.
A. But I don't know.

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Q. What is this -- back to Composite Exhibit 15, your sketch --
A. Uh-huh.
Q. On that top sheet, we were looking where you wrote cover realms of the sea, there's a little square there. Does that have any significance?
A. Yes.
Q. What does that mean?
A. National Geographic.
Q. What is that? When you say geographic, does that mean -- is Realms of the Sea the title of a book?
A. Yes.
Q. So was that a book owned by --
A. National -- no, it was published --
Q. -- by The Geographic?
A. Yeah. I guess I didn't bring that. That was probably given to me as one of the sources.
Q. All right, so then all of the handwritten notations on Composite Exhibit 15, I gather, are references for the particular items that you included in these sketches, do I have that right?

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A. This is a -- a reference for a person to authenticate what I had done for the -- for the final picture.
Q. Let's look again at Composite Exhibit 15. There's a handwritten notation across the top that says page 223, Audubon Nature Guide. Do you see --
A. Yes.
Q. Where I'm reading from?
A. Uh-huh.
Q. And below it, it says moon jellyfish.
A. Uh-huh.
Q. Now, does that mean that the moon jellyfish has something to do with page 223 of that nature guide?
A. Yes. If you look in that nature guide, you would see a picture of a moon jellyfish.
Q. Let's take a look at the second page of Composite Exhibit 15. In the left-hand column, it says -- there's a handwritten notation that says page 5, L Reef.
A. Yep.
Q. What does that tell us?
A. The Living Reef.
Q. And what does that tell us about page

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5?
A. You'll find a picture of this fish on page 5 of The Living Reef.
Q. When you referred to page 5 of The Living Reef, how did you use The Living Reef, if at all?
A. How did I use it?
Q. Let's take a look at page 5. We have Exhibit Number 2 --
A. It was one of the sources used --
Q. Let me take a different tack. Let's take a look at -- well, let's clear that up. The sketch which is on the second sheet of Composite Exhibit 15 we were just discussing a moment ago makes reference to The Living Reef, page 5. Let me show you The Living Reef, which is our Exhibit 2 for this deposition.
A. Uh-huh.
Q. And would you take a look at page 5 and tell me whether that has relevance to the sketch?
A. No.
Q. Would you take a look at page 50 of that book, The Living Reef.
A. Yes.

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Q. And the yes means what?
A. Yes, this has relevance.
Q. So that the page 5 that is penciled in on this sketch simply left a zero off inadvertently, is that right?
A. Must be.
Q. Okay. Now, would you take a look at page 50 for me in The Living Reef. You used that photograph as a reference, is that correct?
A. Uh-huh.
Q. How did you use it?
A. Sitting in front of me with other books away.
MR. DAVIS: Off the record for just a moment.
(Discussion off the record.)
MR. DAVIS: Would you mind reading the answer back to the last question.
THE REPORTER: "Answer: Sitting in front of me with other books away."
BY MR. DAVIS:
Q. How did that photograph serve as a reference for you?
A. I had a -- this fish in profile and I had to change it because I was asked to -- all

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the fish were going in one direction, or in profile, and Lyle felt that it needed something else. So I saw this and changed the low -- the position of the fish that I had drawn to -- to be in this position.
Q. The fish that you had drawn originally was what kind of fish, was that a parrot fish that you had drawn originally?
A. Uh-huh, it was the same fish.
Q. All right. Would you take a look in the book that you're holding, The Living Reef, at page 120, please.
A. Uh-huh.
Q. Did you use that page for reference as you prepared your sketches?
A. I don't remember. I do remember the fairy basslet was in numerous books.
Q. All right. Would you take a look at the second sheet of Composite Exhibit 15, which are your sketches.
A. Uh-huh.
Q. In the right-hand column there's a notation by you of The Living Reef, page 120.
A. Okay.
Q. Does that mean that you used that page

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for reference?
A. Not necessarily.
Q. Would you look at the -- at Composite Exhibit 15 on the first sheet, in the lower left-hand corner of the sketch --
A. Uh-huh.
Q. Is a slate pencil urchin. Do you see the one I'm referring to?
A. Uh-huh.
Q. And there's a line alongside it that says Audubon plate 194.
A. Uh-huh.
Q. Does that mean you used the Audubon plate as a reference for drawing that urchin?
A. Could have. Don't know.
Q. You don't know.
A. But you would find a pencil -- I'm guessing. Since I wrote it down there, this is where you would find it. I'm assuming that's what I did this for. I mean, if I wrote that down there, this was for the person to look it up and verify that it was accurately done. So --
Q. When you say accurately done, what does that mean?
A. I'm a scientific illustrator. When I

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was working at the zoo, that was my title. Accurate means to draw the -- the animal and make it as scientifically accurate as I possibly can. That's what I'm hired most of the time to do.
Q. Is that what you were hired in this case to do?
A. Most of the people that hire me hire me to do accurate, realistic drawings, paintings.
Q. When you were hired, were you asked to do original artwork in terms of these creatures?
A. Don't think so. Don't remember. It's not in my contract. They want me to do original work.
Q. I'm sorry?
A. Never-before-seen paintings is what they want.
Q. When you say never --
A. That's what I want.
Q. When you say never-before-seen --
A. Sometimes they don't care.
MS. GRAY: Wait for a question.
BY MR. DAVIS:
Q. When you say never-before-seen, what does that mean?
A. Never before seen.

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Q. What does that mean?
A. Original painting.
Q. Now, if you draw a sketch of a slate pencil urchin --
A. Uh-huh.
Q. Have you seen sketches elsewhere of slate pencil urchins or paintings of such urchins?
A. I don't know. I -- how do you want me -- what are you --
Q. Either --
A. I don't know what you're trying to say there. I -- have I seen paintings of these things?
Q. No.
A. Most likely.
Q. What is an original painting of a -- of an urchin, of a slate pencil urchin to you? What does that mean? You've used the word original several times here. What does that mean to you?
A. Paint something that -- that I have not seen in the context before. That's --
MR. DAVIS: Could you mark this whatever the next number is, please.
(Cutler Exhibit No. 16 was marked for identification.)

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THE WITNESS: This calls for glasses. Okay.
BY MR. DAVIS:
Q. Can you identify that document?
A. It's my contract.
Q. Would you look at the second paragraph in the text of the contract.
A. Okay.
Q. Where it says NGS book division will furnish whatever research aid is necessary. It becomes the artist's responsibility to notify the art director should the research material not be adequate.
A. Uh-huh.
Q. You have told us previously that you were given a stack of books.
A. Uh-huh.
Q. Did there come a time when you told the art director that the research material was not adequate?
A. No.
Q. Did you return the books that were given to you for the project to the Society?
A. Yes.
Q. In the first paragraph of your

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contract, it says acceptance for the art is subject to the editor's approval of artistic and editorial merits and factual accuracy.
A. Uh-huh.
Q. As you understood it, who would pass on that? Would it be Lyle who would tell you whether the art --
A. Yes.
Q. Was approved?
A. Yes.
Q. Did art -- excuse me, did Lyle give you any criticism or comment about the artistic and editorial merits of your sketches?
A. Lots of changes.
Q. Did he give you any comment or critique or suggestions regarding the factual accuracy of any of the materials you submitted?
A. No, he did not. I -- all of my stuff was accurate, as far as I can remember. It had to do with composition more than accuracy.
Q. Do you know whether Lyle made or attempted to make any determination as to the accuracy of your material?
MS. GRAY: Objection to the extent it calls for speculation.

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THE WITNESS: Wouldn't know.
BY MR. DAVIS:
Q. That's all I ask.
A. Okay. Wouldn't know.
Q. Did anyone, Lyle or otherwise, caution you about copying materials for this project?
A. Not that I can remember.
Q. Now, let's take a look, if we may, at Exhibit Number 13. Would you have a look at that, please.
A. Okay.
Q. You said earlier that this exhibit, among the others here, was given to you at the outset for use in preparing the project. How did you use this list that is Exhibit 13?
A. Don't know. I don't know whether this was given to me on the onset or what.
Q. Well I'm simply --
A. It might --
Q. Relying on your earlier testimony.
A. Well, I gave you the answer that I was -- I received information more than just one time. Now, I have -- I haven't any idea what this is for.
Q. To the best of your knowledge, did you

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make use of this annotation list that is Exhibit 13 in preparing this project?
A. I don't know.
Q. Would you look with me, please, at Exhibit 11 and 12.
A. Okay.
Q. Can you tell me what they are, what they represent?
A. It's a poor representation of the gadget that this thing goes into.
Q. Well, you just -- when you just said this thing, I want to identify this thing --
A. The drawings.
Q. Is Exhibit 1A.
A. The drawing 11 shows a -- an electronic gadget that Exhibit 1A fits into.
Q. The gadget is --
A. It's the toy.
Q. Is provided by Educational Insights or --
A. Yes.
Q. Did you make use of these -- of these documents in any way in your project?
A. Probably not. Probably was just when I was trying to figure out how -- how the thing

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worked, expanding understanding of the whole project.
Q. Would you look with me at Composite Exhibit 15, which are sketches, at the second sheet of that exhibit.
A. Uh-huh.
Q. And also look at Exhibit 1A, which is the product, at the first page of that product.
A. Uh-huh.
Q. You mentioned a while ago that there's a fish up there in the top center of the product that does not appear on the sketch. Do you know why that fish was added?
A. To cover the information underneath it.
Q. And who -- did someone tell you to do that or you just simply did that on your own?
A. It was discussed. Lyle and I discussed it as a problem here.
Q. Had that particular fish already been in the -- in the artwork somewhere else or did you simply go find it and add it?
A. It was added.
Q. How did you happen to select that particular fish?

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A. Pretty.
Q. Would you take a look at the book The Living Reef.
A. Uh-huh.
Q. On the cover, is there a similar fish on the cover of that book?
A. Yes.
Q. Did that have any bearing on your selection of the fish to use to place in that spot?
A. I'm sure it did.
MS. GRAY: Objection to form.
MR. DAVIS: You can answer.
THE WITNESS: What -- what was the question?
MR. DAVIS: Would you read the question? She'll read it back.
THE REPORTER: "Question: Did that have any bearing on your selection of the fish to use to place in that spot?"
THE WITNESS: Did it have any bearing on putting it into that spot.
BY MR. DAVIS:
Q. On your selection of a fish to use to place in that spot.

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A. I probably saw that fish. Why I picked that fish, I won -- I wouldn't know.
Q. Would you take a look at Exhibit 1A, please, at the fourth sheet.
A. Bottom sheet?
Q. Uh-huh. That bottom sheet shows two divers underwater.
A. Uh-huh.
Q. Did you use anything as reference material in preparing that illustration --
A. Yes.
Q. -- of those divers?
A. Uh-huh.
Q. What did you use?
A. A number of sources, including this book, The Living Reef.
MR. DAVIS: Ask the reporter to mark this as the next exhibit.
(Cutler Exhibit No. 17 was marked for identification.)
BY MR. DAVIS:
Q. Okay, the exhibit that I've just placed in front of you --
A. Uh-huh.
Q. Was made by us, and on the left-hand

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side is a copy of that portion of Exhibit 1A that we were discussing a moment ago --
A. Uh-huh.
Q. -- which shows two divers.
A. Right.
Q. The right-hand portion of Exhibit 16 is taken from page 74 of The Living Reef.
A. Uh-huh.
Q. The book.
A. That's right.
Q. Could you, by looking at those two, tell me those things in your -- I don't have a copy of that. May I come around and look over your shoulder?
A. Sure.
Q. I don't mean to look at anything that you have.
With reference to the left side of Exhibit -- I said 16, but it was 17, of Exhibit 17, with the diver on the left, would you look at your illustration of the diver on the left and by comparing it with the photograph of the diver on the right of that exhibit tell me what there is in your illustration that differs from the photograph on the right.

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A. The photograph on the right is an adult. And it -- the colors of the suit and -- can't quite see whether this diver has a yellow vest or not or a vest that is different. The -- the legs are slightly farther apart, the arms are slightly different, the head is tilted slightly different. The proportions are different to the -- the child than to the adult. And the -- it has a lot to do with the colors, are quite different.
Q. Okay. Anything else?
A. I guess the overall -- the size of the arms and the legs are -- are different because it's a child. If you look in that, you'll probably see similar.
Q. I beg your pardon? I didn't hear what you just said.
A. There's other references that I was looking at in this -- in the National Geographic books there below.
Q. Can you identify which book you're referring to?
A. That -- that --
Q. The big one on the bottom?
A. No.

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Q. This one --
A. Yeah. You'll see children.
Q. You identified a book that you brought with you today --
A. Yes.
Q. -- at my request.
A. Uh-huh.
Q. It's titled The Mysterious Undersea World.
A. There's quite a few children in there.
Q. It was published by the National Geographic Society. Could you look through that book and show me a photograph of an underwater diver that you're referring to.
A. This is one that was used (indicating.)
Q. May I have a look at that before we turn the page?
A. Uh-huh.
Q. I have to recover the exhibit I took back from you. Naomi, I'm not going to look at your machine. I'm sorry I have to do that. I thought I had a third copy with me. Let's take a look, while you're looking at that page in that book, at Exhibit 17 for this deposition.
A. Uh-huh.

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Q. You just identified a photograph in the book on pages 26 and 27.
A. Uh-huh.
Q. Can you tell me what aspects of that photograph appear in your illustration on Exhibit 17.
A. The vest and the color of the bathing suit.
Q. Okay.
A. Here -- let's see if there's any more. That's one but it's not a child. These children here.
Q. All right, now we're at pages 50 and 51 --
A. 51.
Q. -- of this book, The Geographic book. Excuse me, what was there on -- those photographs that have relevance to your illustration on Exhibit 17?
A. I can't tell you exactly what I was looking at when I was drawing those pictures. I do know that this book was what I was thumbing through and taking aspects. Probably had to do -- I would be guessing. I don't know.
Q. Okay. Don't want you to guess.

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A. I'd be guessing. These -- okay.
MR. DAVIS: Would the reporter please mark this as Exhibit 18.
(Cutler Exhibit No. 18 was marked for identification.)
BY MR. DAVIS:
Q. Now, what I've handed you is a document marked -- is it 18?
A. 18.
Q. Is an exhibit we prepared. On the left is a copy of that same illustration of the two divers that appears in the Educational Insights product. Exhibit 1A. And on the right is a portion of a photograph taken from page 17 of The Living Reef, the book, which is Exhibit 2. By looking at the two, would you tell me those things about your illustration of the diver on the right that you drew that is different from the photograph from The Living Reef.
A. The proportions of the individual in the painting is different from the photograph. The costume or the bathing suit is different.
Q. How is it different?
A. It's a red bathing suit, and the other person had -- looks like it's got a diving outfit

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on covered up except for the hand. The hair is different, the bubbles are different, the angle of the tanks, the fins have more curve to them, flow, more action.
Q. Is there anything else?
A. The angle of the face mask, location.
Q. Location?
A. Yeah.
Q. We're only -- okay. Anything else?
A. That's all I can think of right now.
Q. All right. Do you recall a telephone conversation you had several weeks ago with Mrs. Greenberg regarding --
A. I remember her calling me, yes.
Q. Do you recall telling her in that conversation that you had prepared some overlays concerning this -- the illustrations that are in this project for Educational Insights?
A. They are overlays.
Q. Well, do you recall telling Mrs. Greenberg wait until you see the overlays that I have made. Do you recall telling her that?
A. No, I don't remember saying that exact --

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Q. All right. Beyond the overlays that appear in Exhibit 1A, have you prepared any other overlays having to do with that product?
A. I saw the -- I saw the overlays that she prepared. Or somebody prepared from you or her and I made a copy.
Q. For yourself?
A. I don't think this is -- this would be something to say.
Q. Are they in your possession?
A. No.
MS. GRAY: I'm going to object to this line of questioning to the extent that it may cover work that Mr. Cutler did with The Geographic's lawyers. Or --
THE WITNESS: Yes.
MS. GRAY: Or other work product.
MR. DAVIS: All right, why don't we take a break.
MS. GRAY: Okay.
(Recess.)
BY MR. DAVIS:
Q. As I understand it from your testimony, at some point after all the sketching and the conferring, you gave final art to Lyle, is that

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right?
A. (Witness nods.) Uh-huh.
Q. You have to say yes or no.
A. Yes. Sorry.
Q. Okay. Do you know where that final artwork is today?
A. No.
Q. Was it returned to you?
A. No. I never saw it again.
Q. You told us some little while ago that in the last couple of years, you had done a book on fishes or illustrated a book on fishes --
A. Uh-huh.
Q. -- for the Society. Do you recall the name of that book?
A. Fish.
Q. The one word?
A. I believe that's what it's called, Fish. Did one on Birds, Fish, Insects, Sky; that's the titles.
Q. Did the -- were these separate books or --
A. Yes.
Q. -- they were all in one book? Separate books?

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A. Separate books.
Q. Do you recall who the author of the Fish book was?
A. No.
Q. Did you submit original artwork for that book?
A. Uh-huh.
Q. Did you recover that original artwork?
A. Not yet.
Q. Does that mean that you expect to recover it?
A. Uh-huh. Certain -- certain contracts say will return artwork one year after publication. It's in the contract. That's -- I don't always get the same contracts.
MR. DAVIS: No further questions.
MS. GRAY: Can we go off the record.
(Recess.)

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MS. GRAY: I have no questions at this time.
(Whereupon, at 3:34 p.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:_____

Concordance Report

Unique Words: **884**
Total Occurrences: **3,246**
Total Words In File: **10,280**

Single File Concordance
Case Insensitive
Cover Pages = **0**
Includes **ALL** Text Occurrences
Dates **ON**
Includes Pure Numbers
Possesive Forms **ON**

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