ESTTA Tracking number: **ESTTA461999**
Filing date: **03/15/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92046185
Party	Plaintiff Amanda Blackhorse, Marcus Briggs, Phillip Gover, Shquanebin Lone-Bentley, Jillian Pappan, and Courtney Tsotigh
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Date	03/15/2012
Attachments	Part 38 of 60 BLA-TTAB-03117 - 03370.pdf (256 pages)(7767492 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Registration No. 1,606,810 (REDSKINETTES)
Registered July 17, 1990,

Registration No. 1,085,092 (REDSKINS)
Registered February 7, 1978,

Registration No. 987,127 (THE REDSKINS & DESIGN)
Registered June 25, 1974,

Registration No. 986,668 (WASHINGTON REDSKINS & DESIGN)
Registered June 18, 1974,

Registration No. 978,824 (WASHINGTON REDSKINS)
Registered February 12, 1974,

and Registration No. 836,122 (THE REDSKINS—STYLIZED LETTERS)
Registered September 26, 1967

Amanda Blackhorse, Marcus Briggs, Phillip Gover, Jillian Papan, and Courtney Tsotigh,	)	
Petitioners,	)	
v.	)	Cancellation No. 92/046,185
Pro-Football, Inc.,	)	
Registrant.	)	

ATTACHMENT TO PETITIONERS' FIRST NOTICE OF RELIANCE

PART 38 OF 60

BLA-TTAB-03117 – BLA-TTAB-03370

Respectfully Submitted,

_/s/Jesse A. Witten_____

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Counsel for Petitioners

BLA-TTAB-03117

COPY

1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
2

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3 Suzan Shown Harjo,
4 Raymond D. Apodaca,
Vine Deloria, Jr.,
5 Norbert S. Hill, Jr.,
Mateo Romero, Cancellation No. 21,069
6 William A. Means, and
Manley A. Begay, Jr.,
7
Petitioners,
8
vs.
9
Pro-Football, Inc.,
10
Respondent.
11

12
13
14
15 * * * *
16 DEPOSITION OF
17 IVAN ROSS, Ph.D.
18 * * * *
19
20 Taken before SANDRA D. KELLNER, a Notary
21 Public in and for the County of Washington, State
22 of Minnesota, on the 12th day of December, 1996,
23 at Minneapolis, Minnesota, commencing at
24 approximately 9:00 a.m.
25

1 APPEARANCES

2

3 MR. MICHAEL LINDSEY, Attorney at Law, 220
4 South Sixth Street, Minneapolis, Minnesota 55402,
5 appeared on behalf of Petitioners.

6

7 MR. JOHN P. REINER and MS. NADINE P. FLYNN,
8 Attorneys at Law, 1155 Avenue of the Americas, New
9 York, New York 10036, appeared on behalf of
10 Respondent.

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25

1 * * * *

2 I N D E X

3 EXAMINATION

4 Page

5 By Mr. Reiner..... 5

6

7

8

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10

11

12 * * * *

13 INSTRUCTIONS NOT TO ANSWER

14 Page

15 (N-O-N-E)

16

17

18

19

20 * * * *

21 REQUEST FOR PRODUCTION OF DOCUMENTS

22 Page

23 By Mr. Reiner..... 9

24

25

1 * * * *

2 DEPOSITION EXHIBITS

3 Exhibits Page

4 No. 1 Subpoena..... 5

5 No. 2 UNUSED EXHIBIT NUMBER.

6 No. 3 Report Prepared by Ivan Ross..... 34

7 No. 4 Subpoena (From Ross' Documents).....173

8 No. 5 Text Component of Exhibit 3.....173

9 No. 6 File Materials Not in Exhibit 3.....173

10 No. 7 Petition, Answer and Motion.....174

11 No. 8 Transmittal Letter to Ross from Baird
with Attachments.....175

12 No. 9 Appendix Materials Contained in Ex. 3.....175

13

14 THE ABOVE MARKED EXHIBITS WERE RETAINED
ORIGINALS BY COUNSEL, JOHN P. REINER

15 COPIES BY COUNSEL, MICHAEL LINDSEY

16

17

18

19

20

21

22

23

24

25

1 P R O C E E D I N G S
2
3 IVAN ROSS, Ph.D.
4
5 a Witness in the above-entitled action,
6 after having been first duly sworn, deposes
7 and says as follows:
8
9 EXAMINATION
10
11 (Deposition Exhibit No. 1 Marked For
12 Identification)
13
14 BY MR. REINER:
15 Q Would you state your name for the record, please?
16 A Ivan Ross.
17 Q What's your address, please?
18 A 7315 West Franklin Avenue, St. Louis Park,
19 Minnesota 55426.
20 Q Are you here pursuant to a subpoena that was
21 served upon you, Mr. Ross?
22 A Yes.
23 Q Is this a copy of the subpoena that was served
24 upon you?
25 MR. LINDSEY: You're showing him

1 Exhibit 1.
2 THE WITNESS: It was actually
3 transmitted to me through counsel, it wasn't
4 actually technically served on me.
5 BY MR. REINER:
6 Q Counsel accepted service?
7 A Yes.
8 Q But is that what was ultimately delivered to you,
9 Mr. Ross?
10 A Yes.
11 MR. REINER: This is Exhibit 1 for
12 identification purposes, please.
13 BY MR. REINER:
14 Q Now, you're here pursuant to a subpoena. You are
15 entitled to certain fees. I have delivered to you
16 $40 in cash because I couldn't get a firm check in
17 time. So here's $40 in cash as your fee for
18 showing up. And you're entitled to travel
19 expenses. Will $10 take care of it?
20 A Well, that's more than what it cost to get here.
21 MR. LINDSEY: Including parking,
22 though. And so we're clear, I understand,
23 counsel, that you are taking the position that no
24 expert witness on either side will receive any
25 funds in excess of the statutory fees?

1 MR. REINER: Correct.
2 THE WITNESS: Fine.
3 MR. LINDSEY: Take his money.
4 MR. REINER: And here's another $10.
5 Is that enough?
6 THE WITNESS: Thank you. Yes,
7 that's fine.
8 MR. REINER: Off the record.
9
10 (A discussion was had off the record)
11
12 BY MR. REINER:
13 Q Mr. Ross, were you retained as an expert for the
14 petitioners in this proceeding?
15 A Yes.
16 Q When were you retained?
17 A In December of 1995.
18 Q Who was the first person who contacted you about
19 being retained as an expert in these proceedings?
20 A I believe it was Mr. Lindsey.
21 Q Did you communicate with anybody else at this firm
22 besides Mr. Lindsey about this report?
23 A Yes.
24 Q Who was that?
25 A Mr. Baird.

1 Q Did you speak with anybody else?
2 A I don't believe so.
3 Q Now, with respect to the subpoena that was served
4 upon you, there are a number of documents that we
5 asked to have produced today, is that correct?
6 A Yes.
7 Q Have you produced all the documents that we
8 requested, to the best of your knowledge?
9 MR. LINDSEY: So we're clear,
10 counsel, when you say produced, there is a stack
11 of documents in front of the witness. We had a
12 colloquy off the record concerning communications
13 between the witness and counsel and I understood
14 that you wanted to not address the issue in the
15 abstract but wanted to find out more before you
16 addressed that issue. And so when you say
17 produced, as long as you're saying are here in
18 this room, that's fine.
19 BY MR. REINER:
20 Q You produced in this room certain documents, is
21 that correct?
22 A That's correct.
23 Q Are those documents before you now?
24 A Yes.
25 Q In addition to those documents, did you review any

1 other documents prior to coming to this deposition
2 in preparation for this deposition?
3 MR. LINDSEY: Objection, compound
4 and foundation. You may answer.
5 THE WITNESS: I believe I did look
6 at one other document.
7 BY MR. REINER:
8 Q What is that, sir?
9 A It was a survey I had conducted in a false
10 advertising matter in which you were involved.
11 Q In which I was personally involved?
12 A Yes.
13 Q What was that, please?
14 A It had to do with Fruit of the Loom v Hanes.
15 Q That was a number of years ago, is that correct?
16 A Yes.
17 Q Where is that document located now?
18 A The document is, actually the report that was
19 filed in that matter, I believe, which is at home,
20 which is at my office at home.
21 Q Was there anything else that you looked at besides
22 the report itself?
23 A I don't believe so.
24 Q Would you produce that report for me, please?
25 MR. LINDSEY: Counsel, before he

1 does so, I should make it clear that you obviously
2 know something about that litigation, or did know
3 it at one time. I know nothing about that
4 litigation. I have no idea whether there is any
5 protective order in place. But before I'm going
6 to permit this witness to produce that document, I
7 want your representation on the record that his
8 doing so would not be a violation of any
9 protective order that was entered in that case.
10 MR. REINER: I haven't the foggiest
11 idea of whether there is or there is not a
12 protective order in that case. Does Mr. Ross know?
13 MR. LINDSEY: If you know, you
14 certainly may tell him.
15 THE WITNESS: I'm not aware of any.
16 MR. REINER: I just call for the
17 production of documents. You can do what you
18 wish, counsel, but I call for the production of
19 the document.
20 MR. LINDSEY: Counsel, if you --
21 MR. REINER: I make no
22 representations because I have no recollection and
23 I have no basis to make a representation on the
24 record to you, counsel. That's all I can say.
25 MR. LINDSEY: I understand that.

1 But given that you are the only lawyer in this
2 room who was involved in the case, I believe that
3 I owe it to this witness to make sure that he does
4 not inadvertently violate any protective orders.
5 In any event, I don't believe he has -- well, why
6 don't you establish whether he has the document
7 with him or not.
8 BY MR. REINER:
9 Q I believe you said it was at home, is that
10 correct?
11 A Right. That's correct.
12 Q I just asked for the production of the document.
13 A Right.
14 MR. LINDSEY: I understand you are
15 asking --
16 MR. REINER: Take it under
17 advisement if you wish, counsel, but I'm asking
18 for the document.
19 MR. LINDSEY: Well, nothing is
20 going to happen this morning unless you're calling
21 for a break in the deposition.
22 MR. REINER: No. No.
23 MR. LINDSEY: So I think we can talk
24 about this off the record at a later point in
25 time.

1 MR. REINER: Fine. That's perfectly
2 fine.
3 BY MR. REINER:
4 Q Did you make any notes on that document in this
5 other Hanes case concerning this particular
6 deposition?
7 A No.
8 Q Did you make any notes anywhere prior to coming
9 here concerning this deposition?
10 A No.
11 Q Do you have any written notes that were prepared
12 concerning any discussions on the report which are
13 not before you now?
14 A No.
15 Q Did you make any written notes?
16 A There were additional materials prepared that were
17 replaced as the matter progressed but there are no
18 -- I have no notes.
19 Q When you say replaced, did you write anything on
20 paper?
21 A I may have.
22 Q Where is that paper?
23 A It doesn't exist any more if it was written. If
24 it was written on a piece of paper.
25 Q These notes were taken after you were retained in

1 this proceeding?
2 A Yes.
3 Q You have testified in court proceedings as an
4 expert witness before, is that correct?
5 A Yes.
6 Q Have you ever been asked to have drafts of any
7 documents produced before in any deposition
8 concerning expert testimony?
9 A Drafts of documents?
10 Q Yes.
11 A Yes.
12 Q You threw out any drafts of documents that you
13 had prior to coming here, is that correct?
14 A No. I didn't throw them out, they were replaced.
15 Q When you took notes on paper, what did you do with
16 the paper?
17 A I don't know. If they would not ordinarily have
18 been kept by me in the course of my business, I
19 would not have retained them.
20 Q Do you ordinarily keep, in the course of your
21 business, notes that you take concerning matters
22 in which you are engaged as an expert?
23 A Not unless I think they're necessary to keep, in
24 which case I would have them in my file which I
25 have.

1 Q And you have produced notes here, is that correct?
2 A Yes.
3 Q What is the nature of the notes which you have not
4 produced? What were they?
5 MR. LINDSEY: Objection, foundation.
6 I believe the witness has testified that he may or
7 may not have created such notes.
8 BY MR. REINER:
9 Q So it's absolutely clear, did you create notes
10 which are not before you today?
11 A It would depend upon what you mean by notes. But
12 for example, prices, dates, locations, that would
13 have been part of what I would have recorded as a
14 result of telephone conversations with the field
15 house and so forth. But I would not ordinarily
16 retain those. They were created at the time but
17 they would have been disposed of or otherwise
18 there would have been a lot of junk.
19 Q Did you make any notes concerning the questions
20 that you intended to ask in the survey?
21 A Not separate from -- any drafts of questions were
22 replaced as the final questionnaire was prepared
23 and transmitted to the field service. So there
24 were incomplete versions that were replaced as
25 they were enhanced for the final purpose of

1 preparation of a survey instrument.
2 Q Are they, would you say, incomplete versions?
3 A Yes.
4 Q And you're talking about something on a piece of
5 paper?
6 A No. It would have been probably in a computer.
7 Q What happened to the pieces of paper that you had
8 in relation to the questions that were put into
9 the computer?
10 A I don't think there were any pieces of paper with
11 questions on them before I put them in the
12 computer.
13 Q I understand that there weren't maybe any
14 questions written out. But you had notes on
15 pieces of paper that you used to prepare
16 questions, is that correct?
17 A No, I don't think I said that. No, I didn't have
18 notes about questions on a piece of paper. I do
19 all my composing on computer.
20 Q Did you make any notes concerning thoughts that
21 you had about questions to be asked?
22 A I don't think so but I don't know that for sure.
23 I don't think so, if you mean on a piece of paper.
24 Q Did you have conversations with the attorneys
25 that retained you? Just answer that yes or no.

1 A Yes.
2 Q Did you make notes of those conversations? Please
3 answer that yes or no.
4 A There probably would have been at least something
5 written down at one point in time on one of those
6 meetings but that's all I can recall.
7 Q Was it written down on a piece of paper?
8 A Probably.
9 Q Where is the paper?
10 A I don't have it unless it's in here.
11 Q I believe that you stated that you, in your
12 report, which we will get to in a moment, that you
13 stated that you consulted with another service
14 organization called Robinson & Muenster,
15 R-O-B-I-N-S-O-N & M-U-E-N-S-T-E-R, is that
16 correct?
17 A I hired them.
18 Q Whom did you contact at that firm?
19 A Well, initially Mr. Robinson who is one of the
20 principals of the company.
21 Q Did you discuss with him the nature of the survey
22 which you wished to conduct?
23 A The nature?
24 Q Yes.
25 A Generally, yes.

1 Q Did you discuss with him any questions that were
2 to be asked?
3 A I transmitted to him the questions that were to be
4 asked.
5 Q Did you discuss with him the substance of the
6 questions that were to be asked?
7 A No. I transmitted them to him.
8 Q Did you have any discussions with him about the
9 questions?
10 A Only as it relates to their administration, to
11 their proper administration. Rotation of certain
12 aspects and order and so forth.
13 Q Did you discuss with him the purpose of the
14 survey?
15 A Yes.
16 Q Did you discuss with him anything in relationship
17 to the universe that was to be tested?
18 A Yes.
19 Q What were your discussions with him concerning the
20 universe to be tested?
21 A I told him what the universes were and told him
22 what I wanted to do with respect to the
23 methodology for selecting a probability sample
24 from the general population universe. And I
25 sought his advice as to the most logical and

1 optimum method for selecting the Native American
2 sample which was subsequently used. But I defined
3 that population for him as well.
4 Q When you say you defined the population, what did
5 you define to him?
6 A I defined the population primary interest as
7 individuals who identified themselves as being
8 members of one or another tribe, Native American
9 tribe. However I said that we would include, as a
10 supplementary sample, individuals who identified
11 themselves as Native Americans but who said that
12 they were not officially or formally members of a
13 tribe. And there were a few of those in the
14 survey as well.
15 Q Did you discuss with him the different criteria
16 used by tribes for purposes of membership?
17 A The criteria?
18 Q Yes. Did you discuss with him what a person, what
19 criteria a person would give to be a member of the
20 tribe?
21 MR. LINDSEY: Objection, vague.
22 THE WITNESS: I instructed him that
23 the respondent would self-designate himself or
24 herself as being a member of a tribe or not. And
25 that was the operational definition. If you mean

1 something beyond that, the answer is no.
2 BY MR. REINER:
3 Q Did you have any discussions with him about the
4 different criteria used by tribes to permit
5 persons to be members?
6 A No.
7 Q Did you have any discussions with him as to the
8 manner in which the respondents to be identified
9 as Native Americans were to be selected?
10 A I think I've already answered that question. Yes,
11 I did.
12 Q What were your discussions?
13 A Discussed with him alternative ways in which a
14 sample from the defined universe could be obtained
15 and executed in a telephone administration
16 format. The comments of the discussion that we
17 had is essentially embodied within a couple of the
18 documents that I brought along with me today.
19 Q Who made the determination on the methodology to
20 be used?
21 A I did.
22 Q You did that on what basis?
23 A On the basis of my training and experience in
24 survey methodology over the last 30 years.
25 Q Did you rely in any manner upon the statements or

1 views of the representative of Robinson &
2 Muenster?
3 MR. LINDSEY: Objection, vague.
4 THE WITNESS: I didn't rely on
5 anything. I listened to what his experience had
6 been with sample execution on similar kinds of
7 issues where there's a small incidence in the
8 population. But I don't think I would say that I
9 relied on it.
10 BY MR. REINER:
11 Q Now, let's identify the documents, if you would,
12 that you have before you. Would you give me the
13 first document that you've produced today so we
14 can have it marked for identification?
15 MR. LINDSEY: Counsel, as I
16 mentioned before we went on the record, my
17 witness, my expert witness is going first. I
18 believe that all of my expert witnesses will be
19 deposed before any of your witnesses are. I asked
20 you off the record to find out what your position
21 was going to be with respect to documents provided
22 to the expert witness, by counsel or otherwise,
23 communications between the expert witness and
24 counsel. And you informed me that you want to
25 deal with this somehow in the concrete rather than

1 in the abstract. I think it would be appropriate
2 for you to tell me at this point how you propose
3 to deal with it so we can try to make this as
4 efficient as possible.
5 MR. REINER: I don't know what
6 documents are before the witness or before you
7 now. How can I answer that until I at least see
8 what the documents are and then I can tell you
9 what my position will be.
10 MR. LINDSEY: That is precisely
11 part of the problem because you are asking for the
12 substantive communications between this witness
13 and my firm. And for him to identify the
14 documents is to disclose some part of the
15 substance. All I want to know, counsel, is what
16 positions you are going to be taking with respect
17 to documents exchanged between your firm and the
18 expert witnesses, none of whom I will get to
19 depose until after you have deposed all of mine.
20 MR. REINER: I can't answer a
21 question like that, counsel. I don't think it's
22 fair for you to ask me to answer a question in the
23 abstract. I would like to know what you are
24 producing. If you are claiming privilege in any
25 of this, we'll have the document marked as a

1 privileged communication, that's all, and let the
2 court decide whether or not it is in fact
3 privileged or not privileged or appropriate to be
4 produced or not appropriate to be produced during
5 the testimony of an expert witness. That's all.
6 Why don't you do what you wish. Let's just have
7 the documents marked. I don't have to look at
8 them at this moment. Mark the documents for
9 identification and you state whatever position you
10 have with respect to those documents.
11 MR. LINDSEY: To be perfectly
12 plain, counsel, I am simply asking whether you
13 propose to loot my witnesses of all their
14 documents if I produce them and then stiff me at
15 the end. You are refusing to tell me whether you
16 are attempting to spring a trap. And that in
17 itself makes me suspicious. Now, counsel, we've
18 had relatively amicable dealings in these
19 proceedings up until now and I don't want to make
20 any kind of unnecessary issue here. I'm just
21 trying to get the ground rules straight.
22 MR. REINER: Counsel, first of all,
23 you used two verbs. One of them was loot which is
24 a very interesting verb for one attorney to use to
25 another. All I am asking is for the production of

1 documents which is subpoenaed. And if you don't
2 want to produce them because you believe that they
3 are privileged, fine, we'll just have them marked
4 for identification. You take whatever position
5 you want. I will similarly do that. I am making
6 no commitments one way or the other until I see
7 what I'm dealing with. If there is similar
8 situations, I assume I will accommodate counsel.
9 But I am not going to make any agreements in the
10 abstract. That's all. I am not going to do it.
11 If you don't want to produce the documents, fine,
12 let's just have them identified for the record.
13 MR. LINDSEY: Let's go off the
14 record for a moment, take a short break.
15
16 (A discussion was had off the record)
17
18 MR. LINDSEY: Counsel, to make our
19 position clear, and then it's up to you, we are
20 prepared to provide to you Mr. Ross' work papers,
21 which are here in this room, in connection with
22 his rendering of an opinion in this matter if you
23 are prepared to agree that all such papers from
24 your witnesses will be produced.
25 MR. REINER: I'm not prepared to

1 make any stipulations at this time until I see
2 what we are talking about specifically. I am not
3 doing anything in the abstract. I think that's
4 fair and reasonable. All I ask is that at this
5 point in time, that each one of the documents be
6 marked for identification. I'm asking for the
7 production. I want to review them. If you
8 decline, we'll have to get a ruling on it. That's
9 all. All I ask is that they be marked at the
10 present time and I'll look at them and see what
11 the nature is because I may have a lot of
12 questions, I may have none.
13 MR. LINDSEY: And unless and until
14 you are prepared to tell me what ground rules we
15 are playing with, I think it is unfair for you to
16 ask me to produce all documents from my witnesses
17 before I have seen any documents for your
18 witnesses or even know, even in general terms,
19 what your position will be. I've made my offer,
20 you have declined it. In order to preserve the
21 record as it currently exists, however, I am
22 prepared to place the documents at issue in a
23 sealed envelope and represent to you that they
24 will not be disturbed until such time as the board
25 makes whatever ruling is required.

1 MR. REINER: May we have them
2 marked for identification before you put them in a
3 sealed envelope?
4 MR. LINDSEY: I will not mark
5 individual documents if by that you mean telling
6 you what the titles of the documents are or any of
7 the parties. If you really prefer, however, I
8 will place them in an envelope and have it sealed
9 and marked by the court reporter.
10 MR. REINER: I'm afraid that's not
11 satisfactory, counsel. I don't think it complies
12 with the Federal Rules which require at least that
13 they be marked for identification. If you decline
14 to do it, that is your position to take and I will
15 reserve all rights to make whatever motions to
16 deal with it.
17 MR. LINDSEY: That's fine. I've
18 made my position clear. I think any relief that
19 you would be entitled to get I have already
20 offered and you have declined it.
21 MR. REINER: I have not declined
22 anything other than to stipulate in the abstract
23 that I will produce certain documents. And I
24 don't know what I will produce because I don't
25 know what you're producing. I cannot stipulate to

1 anything until I know what you are producing. I
2 have no way of doing that. I have no point of
3 reference.
4 MR. LINDSEY: Well, counsel, I
5 disagree. And I have greater respect for your
6 abilities as an attorney than that. But in any
7 event, I think we have both made our positions
8 clear and that if we can take a few moments now, I
9 will do the marking and sealing that I have
10 undertaken to do and then we can move on from
11 there.
12 MR. REINER: I believe you are
13 interfering with this deposition, counselor. I
14 believe I am going to be unable to complete this
15 deposition. I reserve all rights. I reserve
16 rights to preclude. I reserve all rights which I
17 may have because I believe that you are preventing
18 me from having the discovery ordered by the board.
19 But you may do what you wish but I am just making
20 it absolutely clear on the record that I will
21 probably make a motion to preclude Mr. Ross'
22 testimony on this basis alone as well as any other
23 basis which may or may not arise.
24 MR. LINDSEY: I understand that
25 that is the position that you are taking. I'm

1 making it perfectly clear that if you were to
2 enter into the agreement that I have proposed, or
3 if you have an alternative proposal that you wish
4 me to consider, I'm delighted to consider it. And
5 so far I am not hearing you make any such proposal
6 other than the ones you've made on the record.
7 MR. REINER: I have no proposal. I
8 have no proposal to make other than to say that I
9 will take under advisement what you request when I
10 look and see what the documents are. That's all.
11 I am not making any other commitment on this
12 record.
13 MR. LINDSEY: Fine. I think we've
14 both made our positions clear. I believe your
15 position is not well taken, you believe my
16 position is not well taken. Let's take care of
17 the documents and then get on with whatever you
18 wish to do for the rest of today.
19 MR. REINER: Would you do that,
20 please?
21 MR. LINDSEY: Sure.
22
23 (A discussion was had off the record)
24
25 MR. LINDSEY: This is what I intend

1 to put on the record. That all of the documents
2 Mr. Ross has produced today are being placed into
3 this envelope which will be sealed in your
4 presence. The envelope will be delivered to the
5 court reporter and kept by the court reporter
6 until such time as either you and I make an
7 agreement to the contrary or there is a board
8 ruling that we can give her notice of. I don't
9 believe that Mr. Ross needs copies of these
10 documents. But in the event that we should find
11 that he does need copies of the documents, I will
12 have the right to obtain from the reporter a copy
13 of these documents, at my expense, and she will
14 continue to maintain the original and will not
15 transmit the originals back unless and until --
16 MR. REINER: I hear what you're
17 saying, counsel. I take no position one way or
18 the other. I reserve all my rights. Do what you
19 want.
20 MR. LINDSEY: Well, the only part of
21 that that I want your agreement to is the part
22 that I can get a copy from her as long as she
23 agrees that she's maintaining all the originals.
24 Because if you can't give me that agreement, then
25 I need to go get them copied right now in case I

1 need a copy.
2 MR. REINER: Do whatever you wish,
3 counselor. I cannot agree to anything.
4
5 (A break was had in the proceedings)
6
7 MR. LINDSEY: The documents that the
8 witness has produced have been treated as
9 follows. I offered to place the documents into an
10 envelope to be sealed by the court reporter and
11 kept in the court reporter's custody until such
12 time as Mr. Reiner and I should agree to the
13 contrary or the board should issue an order. The
14 only condition I placed on that offer was that Mr.
15 Reiner would agree that in the event that I wished
16 to obtain a copy of those documents, that I could
17 ask the court reporter to open the envelope, cause
18 a copy to be made, provide the copy to me and to
19 keep the original. Mr. Reiner has declined to
20 take a position on that. That being the case, I
21 have been forced to have the documents copied
22 right now. They are being copied here at my firm.
23 When they are returned to this room, I will ask
24 Mr. Ross to review them to ascertain that they are
25 in fact what he has produced today. I will then

1 place them into an envelope to be sealed by the
2 court reporter and kept by the court reporter
3 until such time as either Mr. Reiner and I reach
4 an agreement or the TTAB issues a ruling.
5 MR. REINER: I just have a very
6 brief statement. I subpoenaed certain documents
7 to be produced here. Those documents, or certain
8 documents, I don't know what they are, were
9 produced. Counsel is making copies for himself.
10 I asked them to be marked for identification. I
11 have not been provided with any type of a log
12 claiming privilege. I don't know the nature of
13 the documents. If a log were produced, it would
14 provide me with certain information identifying
15 the documents. That's all I asked. If I am not
16 going to be getting it, I reserve all my rights.
17 The documents were subpoenaed, I have not been
18 given a log saying that they're privileged and
19 identifying the documents. That's what I object
20 to.
21 MR. LINDSEY: I understand that
22 that's the position counsel takes. I have made it
23 perfectly clear that I have made a proposal and
24 would be prepared to entertain other proposals and
25 Mr. Reiner has made it clear that he's making no

1 proposal. And therefore I don't believe there's
2 anything else I can do at this time.
3 MR. REINER: No. My proposal was
4 identify the documents and I'll tell you what I'm
5 going to do in the future but I'm not going to do
6 it in the abstract. That's my proposal.
7 Meanwhile I note that they have not been produced
8 pursuant to a subpoena duces tecum.
9 All right, let us go forward now.
10 BY MR. REINER:
11 Q Now, would you describe to me the documents you
12 looked at in preparation for coming to this
13 deposition?
14 A In addition to those things that I've already
15 mentioned that I looked at --
16 Q Would you mention them again so we can have a
17 clear record? What did you look at?
18 A I looked at a file copy of a Fruit of the Loom-
19 Hanes report which was one of among a series of
20 such studies that I think I did, but I only had
21 one left in file, in which in that series you and
22 I were involved in one, at least one of those
23 matters.
24 And I looked at what I believe to be the
25 constituent components of the report document that

1 was transmitted, that was transmitted to Mr.
2 Lindsey sometime during June, May or June, which I
3 took to be the results of the survey that I
4 conducted along with the associated documents to
5 that report that were appendix material or
6 identified in some way as attachments.
7 Q Are there any documents that you looked at that
8 were not attachments to the report other than this
9 Hanes report? Anything that was an associated
10 document or a component of the report that is not
11 physically attached to the report which you have
12 prepared.
13 A That I looked at?
14 Q Yes, sir.
15 A In preparation for this deposition?
16 Q Within the last week.
17 A I didn't look at any others.
18 Q For the record, would you state what the
19 constituent components of the documents produced
20 in June were?
21 A Well, there was the interpretive report. There
22 was a table which set forth the summary of answers
23 provided by respondents in the survey. There were
24 -- well, I'll characterize them as sample design,
25 execution and result of administration documents

1 that were hard copies of materials initially in
2 the computer that were produced through Robinson &
3 Muenster and which I included as appendix
4 materials to the report. There were verbatim
5 transcriptions of answers provided by respondents,
6 a section for the general population result and a
7 section for the Native American result. I believe
8 there was a resume, my resume as one of
9 appendices. That's all I can recollect at the
10 moment.
11 Q Do you have a copy of your report?
12 A No.
13 MR. REINER: Do you have a copy of
14 the report that he can look at?
15 MR. LINDSEY: Sure, I can get one.
16 MR. REINER: If you would, please.
17
18 (A break was had in the proceedings)
19
20 MR. LINDSEY: I'm placing before the
21 witness a copy of the report as produced to
22 respondent's counsel in this matter. The only
23 difference between the report that the witness
24 will be reviewing and the report as produced is
25 that this one bears, in the upper right-hand

1 corner, the lettering MAL-Copy, indicating that it
2 is a copy from my office rather than an actual
3 production copy.
4 MR. REINER: May we have that marked
5 for identification, please.
6
7 (Deposition Exhibit No. 3 Marked For
8 Identification)
9
10 BY MR. REINER:
11 Q The first page of this document says expert
12 disclosure of Ivan Ross, is that correct?
13 A Yes.
14 Q Did you personally write the documents, the first
15 10 of 10 pages?
16 MR. LINDSEY: Objection, ambiguous.
17 You may answer.
18 THE WITNESS: I didn't write the
19 words. I spoke them in a meeting that occurred
20 but I didn't actually write the words in terms of
21 the way it appears in this document.
22 BY MR. REINER:
23 Q Who wrote the words?
24 MR. LINDSEY: Objection, ambiguous.
25 You may answer.

1 THE WITNESS: I actually don't know
2 for a fact who did but I know that there were only
3 two attorneys present at the meeting so I assume
4 that one of them did.
5 BY MR. REINER:
6 Q Who was at this meeting?
7 A Mr. Baird and Mr. Lindsey to the best of my
8 recollection.
9 Q When was the first time that you saw these first
10 ten pages in the form in which they appear in this
11 report which has been marked as Exhibit 3?
12 A I couldn't be more precise than to say I think it
13 was during the summer of 1995.
14 Q Did you receive any drafts of these first ten
15 pages, which have been included in the report,
16 prior to having it incorporated into your report?
17 A I don't believe so, no.
18 Q Did you have any discussions with anyone
19 concerning editorial changes to be made in these
20 first ten pages of document Exhibit 3?
21 A Well, it's hard to answer the way you put it
22 exactly. I had discussions about the way things
23 should be phrased with Mr. Lindsey that appear,
24 that in fact appear here. But if by editorial
25 changes you mean on a document, on a written

1 document that I had in my possession, the answer
2 is no.
3 Q Now, with respect to some phraseologies that are
4 in here, could you tell me whether or not you
5 examined any part of the Federal Trademark Act in
6 reference to the terminology used in the Act?
7 MR. LINDSEY: Objection, ambiguous.
8 You may answer.
9 THE WITNESS: I have reviewed the
10 Act for other matters in years past.
11 BY MR. REINER:
12 Q Did you review it for this purpose?
13 A I don't think as a separate document. Only as
14 part of what might have been included within a Law
15 Review or two Law Review articles that I looked
16 at.
17 Q When did you look at them?
18 A In December of 1995.
19 Q I would like to draw your attention to page 2 of
20 the report. Under Section B, if you would please,
21 1-A. Would you read that, please, into the
22 record?
23 A Yes. The words "offended" and "offensive" and
24 their variance come within the meaning of the word
25 "scandalous" as of the date of the statute's

1 amendment.
2 Q Do you know when the statute was amended?
3 A Prior, I was advised that it was amended prior to
4 the time that this document was written but I
5 don't have any recollection beyond that.
6 Q Are you aware of what the amendment was?
7 A No, I'm not.
8 Q If you look at page 8 of the first ten pages of
9 this report. I would like to draw your attention,
10 if you would, to paragraph E-2-C. Would you read
11 into the record what that says there, please?
12 A It is appropriate to combine the responses to
13 question 12, offensive to self, and question 13,
14 offensive to others, from the survey in order to
15 arrive at an accurate measurement of offensiveness
16 from the perspective of the statute.
17 Q First of all, would you tell me what you mean by
18 the words perspective of the statute?
19 A My understanding of the statute as I had recalled
20 it and as I had discussed it with Mr. Lindsey and
21 Mr. Baird.
22 Q What section of the statute are you referring to?
23 A Well, it's the section, whatever 2C of the Lanim
24 Act. I'm not sure which one it was, what the
25 exact letters are. But the language that deals

1 with the definition of scandalous and the
2 definition of disparaging and phrasing about the
3 majority of the general population finding or
4 perceiving offensiveness in a mark. I can't tell
5 you what particular parts of the statute that
6 language came from nor the language in which the
7 word disparaging is technically, literally
8 mentioned and the discussion about that word in
9 that statute.
10 Q In the section within the statute where the word
11 disparaging appears, are there any other words
12 that appear to your knowledge?
13 A Yes, there are.
14 Q What are they?
15 A I don't remember. There are other words.
16 Q Does the word offensive appear anywhere in the
17 statute?
18 A I don't know that for certain. I know that I have
19 in my mind the concept of majority, the public
20 perceiving or viewing a mark as offensive. But
21 whether that language comes from the statute
22 itself, or from narratives I read discussing the
23 statute, I can't remember.
24 Q What narratives did you read?
25 A Mr. Baird of this firm had authored I will call a

1 Law Review article. Then there was a second
2 article that I read that was supplied to me by the
3 law firm. I frankly don't remember the author's
4 name.
5 Q And you read those articles?
6 A Yes.
7 Q Did you use them in preparation of this report?
8 MR. LINDSEY: Objection, vague and
9 ambiguous. You may answer.
10 BY MR. REINER:
11 Q Did you use the article written by Mr. Baird in
12 preparation of this report?
13 MR. LINDSEY: Same objection. You
14 may answer.
15 THE WITNESS: Well, I read it and I
16 certainly discussed my understanding of it with
17 counsel in order to be able to make
18 recommendations about the survey that I thought
19 would be appropriate.
20 BY MR. REINER:
21 Q Did you discuss with him at any time the use of
22 the word offensive in the statute?
23 A Does that presume that the word offensive is in
24 the statute?
25 Q I'm asking you whether you had any discussions

1 with him on that subject?
2 A On the subject of whether the word offensive was
3 appropriate?
4 Q No. Whether the word offensive was used in the
5 statute.
6 A I don't recall whether or not we've specifically
7 discussed whether the word offensive was in the
8 statute. We may have.
9 Q Is the word offensive the same in meaning as the
10 word disparage?
11 A You're not asking me for a legal opinion about the
12 meaning of the word disparage as it may be used in
13 a statute?
14 Q I'm asking you a question first --
15 A You're asking me as a layman?
16 Q Yes. I'm asking you as a layman.
17 MR. LINDSEY: I object to the
18 question as being ambiguous and vague and failing
19 to specify the purpose for which the definition is
20 sought. But you may answer the question to the
21 best of your ability.
22 THE WITNESS: I believe that there
23 is a connection between the concept of whether
24 something is offensive and whether it is
25 disparaging. So I believe that the words would be

1 linked in the sense of a thesaurus linkage of
2 them. As to the extent to which they are exact
3 synonyms, I have no basis for an expert opinion.
4 BY MR. REINER:
5 Q If one smells garbage, the reaction could be
6 offensive, is that correct, to the smell of
7 garbage?
8 A I would think so.
9 Q Is that disparaging?
10 A In the right context, someone who thought
11 something were offensive, I believe, would think
12 that that would be disparaging to them when they
13 heard it. The garbage example wouldn't apply
14 because garbage doesn't presumably hear things or
15 feel things.
16 Q Is it necessary, then, to have a word in context
17 in order to get a meaning?
18 MR. LINDSEY: Objection, vague,
19 ambiguous and lacking in foundation. But you may
20 answer the questions as a layman to the best of
21 your ability.
22 THE WITNESS: I'm sorry, I don't
23 know what you mean by in context.
24 BY MR. REINER:
25 Q Do words have to be used in context to get their

1 full meaning?
2 MR. LINDSEY: Objection to the
3 extent that this question is calling for the
4 witness to provide an expert opinion in a field
5 other than that in which he has been designated.
6 But if you are asking for this witness' layman's
7 understanding on that topic, you certainly may
8 answer.
9 BY MR. REINER:
10 Q Excuse me, are you a psychologist?
11 A Yes.
12 Q Do you use interpretation of words in your work as
13 a psychologist?
14 A To some degree, yes.
15 Q Is it necessary to have words in context in order
16 for the words to be fully understood?
17 MR. LINDSEY: Objection, vague and
18 ambiguous. You may answer.
19 THE WITNESS: Not necessarily if
20 the word is something that could be spoken or
21 encountered without a context. I think that's
22 obvious but I don't know whether that's what you
23 meant by your question.
24 BY MR. REINER:
25 Q Can the word offensive be used in a manner which

1 does not mean disparaging?
2 A I really don't have a basis for that. I mean, I
3 can think of some examples where it would be to me
4 and some where it might not be.
5 Q Does the word offensive, when used in conjunction
6 with a person smelling garbage, mean
7 disparagement?
8 MR. LINDSEY: Objection, incomplete
9 hypothetical.
10 THE WITNESS: To the garbage?
11 BY MR. REINER:
12 Q To the garbage, yes.
13 A I would think that's a nonsensical question.
14 Q I know. What about to the person?
15 MR. LINDSEY: Objection, vague and
16 incomplete hypothetical.
17 THE WITNESS: Do you mean if the
18 person were asked are you disparaging the garbage
19 by calling it offensive?
20 BY MR. REINER:
21 Q Yes, sir.
22 A I think the person would say no in that context.
23 Q So the words have to be used in context, is that
24 correct?
25 A In the example that you gave. But in the example

1 I gave, they're not necessarily used in context.
2 Q What about, for example, the word ball? That can
3 have different meanings, is that correct?
4 A I believe so, yes.
5 Q And you have to put it in context in order to
6 understand the meaning, isn't that correct?
7 A Not necessarily. A person could ascribe meaning
8 to it hearing only that word.
9 Q If one says the word ball, does one know whether
10 or not reference is being made to a social event
11 where there's dancing or an instrument or
12 something used in the playing of a game by a
13 child?
14 A One might not know but one might assume. And if
15 one assumed what the meaning was, then one would
16 answer a question or react to the word.
17 Q Again, the word has to be put in context, does it
18 not?
19 MR. LINDSEY: Objection, asked and
20 answered.
21 THE WITNESS: I think I just said
22 yes and no depending.
23 BY MR. REINER:
24 Q Depending upon?
25 A What the person inferred.

1 Q If you just said the word ball to someone, does
2 that in any manner define how the word is to be
3 use in and of itself?
4 MR. LINDSEY: Objection, incomplete
5 hypothetical.
6 THE WITNESS: No, it doesn't by
7 definition. But a person might respond to it as
8 though they had ascribed meaning to it.
9 BY MR. REINER:
10 Q In the context of the work in which you did in
11 this survey, does the word offensive refer to a
12 reaction of a person to a particular stimuli?
13 A In the context of the survey in part it does and
14 in part it doesn't.
15 Q Does the word disparage have any connotation about
16 the intent of the person using the word?
17 MR. LINDSEY: Sorry, could I hear
18 the question back, please?
19
20 (The pending question was read back)
21
22 MR. LINDSEY: Objection, vague,
23 ambiguous and legal conclusion. You may answer.
24 THE WITNESS: I wouldn't need to
25 know the intent of a person speaking a word to

1 feel that I had been disparaged if they called me
2 a certain word. So if you're requiring that I
3 know the motivation of the speaker, then I have to
4 say no. That would be my opinion, it would not be
5 necessary for me to know.
6 BY MR. REINER:
7 Q As a psychologist, the use of the word disparage
8 relates to the person uttering a word, does it
9 not?
10 MR. LINDSEY: Objection, vague.
11 THE WITNESS: It has nothing to do
12 with my being a psychologist. My reaction to a
13 word as being disparaging may have nothing to do
14 with what I believe to be or take to be the
15 motivation of the speaker.
16 BY MR. REINER:
17 Q Can a word be offensive without being disparaging?
18 MR. LINDSEY: Objection, vague and
19 ambiguous.
20 THE WITNESS: Offensive to me?
21 BY MR. REINER:
22 Q Yes, sir.
23 A I mean, the survey intentionally separated the
24 issues which is why I have a problem with your
25 question.

1 Q I'm asking for the use of the word offensive as
2 being synonymous with the word disparaging in
3 relation to the expression used by the person
4 uttering the word.
5 A That's a very compound premise to a question. I
6 would say that --
7 MR. LINDSEY: And I object to the
8 question on that basis.
9 THE WITNESS: -- the perception of a
10 person as to whether a word is disparaging and the
11 perception of a person as to whether a word is
12 offensive are related concepts but they're not
13 necessarily tautological or equivalent in every
14 sense.
15 BY MR. REINER:
16 Q The word disparaging is used in the statute to
17 your knowledge, is that correct?
18 A I think so, yes.
19 Q And in using the word disparaging in the statute,
20 do you draw any distinction between the word
21 disparaging and scandalous?
22 A Yes.
23 MR. LINDSEY: Objection to the
24 extent that it mischaracterizes the statutory
25 language. You may answer.

1 THE WITNESS: I believe so, yes.
2 BY MR. REINER:
3 Q There is a distinction between scandalous and
4 disparaging, is that correct?
5 A In the context of the statute?
6 Q Yes, sir.
7 A That's my understanding.
8 Q Is that based upon any psychological study or
9 knowledge on your part?
10 A No.
11 MR. LINDSEY: Objection --
12 BY MR. REINER:
13 Q What is it based on?
14 MR. REINER: Excuse me, counsel.
15 You had an objection?
16 MR. LINDSEY: Yes. I object to the
17 last question to the extent that you were asking
18 the witness to speculate about the legislative
19 intent of the statute. It's not clear to me
20 whether you were asking about this witness' views
21 or the legislative intent of the statute. To the
22 extent it was the later, I object to the question.
23 MR. REINER: I believe he used
24 language on page 8 of 10 in this report speaking
25 in terms of from the perspective of the statute.

1 I am now exploring what he means by the
2 perspective of the statute and what the words in
3 the statute mean from his own perspective.
4 MR. LINDSEY: That's fine.
5 MR. REINER: He's your expert.
6 THE WITNESS: In response to the
7 question that I think is on the table --
8 MR. REINER: Why don't we have it
9 read back, please.
10
11 (The requested portion of testimony was read
12 back)
13
14 THE WITNESS: Yes. That is my
15 understanding, yes.
16 BY MR. REINER:
17 Q And what distinction do you draw between the words
18 scandalous and disparaging?
19 A It's my understanding that the sense of the
20 statute, or at least as I understand it through my
21 discussion with counsel, is that the concept of
22 disparaging has to do with whether an individual
23 who is a member of a segment, a group, or in this
24 case a class, an ethnic class, who hears a term or
25 expression is offended by or reacts in an offended

1 way to the utterance or to the appearance of a
2 word or mark, whatever it might happen to be.
3 Whereas the concept of scandalous has more to do
4 with what the general population's reaction to a
5 term or mark might be with respect to whether they
6 would think it is or is not offensive.
7 Q Is the word scandalous equivalent to the word
8 offensive?
9 A I believe you've asked that twice and I think I've
10 answered it and I'll answer it in the same way.
11 Which is I think that there is a connection
12 between the two but I do not believe that the two
13 would be exact synonyms.
14 Q Do you know whether or not the statute uses the
15 word immoral in the section which uses the word
16 disparaging?
17 A I believe it uses the word immoral. I couldn't
18 tell you what section it comes in.
19 Q Does the word immoral mean the same thing as
20 offensive?
21 A I believe immoral comes after the word scandalous
22 in the statute where the word, the phrasing is
23 scandalous, immoral, or scandalous or immoral, as
24 though the statute were attempting to create a
25 domain of meaning which was inclusive of both of

1 those concepts. I don't know how else to answer
2 your question.
3 Q In your work as a psychologist, is the word
4 offensive equivalent to the word immoral?
5 A I don't think that that's a question which has a
6 base in the science of psychology except insofar
7 as psycholinguistics may be a subfield. And I am
8 not a psycholinguist. I do not believe that the
9 two are synonyms.
10 Q You said you're not a psycholinguist?
11 A That's correct.
12 Q Yet you testified that the word offensive is the
13 same as the word disparaging, is that correct?
14 MR. LINDSEY: Objection,
15 mischaracterizes the witness' testimony. You may
16 answer.
17 THE WITNESS: I think that they're
18 related concepts. I said I didn't think they were
19 exact synonyms. I gave you that opinion as a
20 layman and as a person who does surveys and has
21 some understanding of the meaning of words, to the
22 extent that that's an expert opinion.
23 BY MR. REINER:
24 Q Now, going back, if you would please, to the
25 documents which you say you delivered in I believe

1 June of 1995.
2 A Yes. Well, it was in the summer. It was May or
3 June.
4 Q Did you deliver a written document summarizing
5 your views?
6 A No.
7 Q Did you deliver anything other than tables of
8 survey answers and a sample design?
9 A I delivered everything that would appear in
10 Exhibit 3 except what appears under Tab 1. Well,
11 I'm sorry, Tab 1 was already a document that I had
12 delivered. I don't think it came over in the same
13 set. The text of the report which doesn't have a
14 tab, it's up front, was also not delivered.
15 Q Everything else was delivered at that time that
16 appears in this report, is that correct?
17 A Yes.
18 Q Was anything else delivered at that time in
19 addition to what's under Tabs 2 through 10?
20 A I don't believe so, no.
21 Q When did you have a discussion with Mr. Baird
22 concerning the first ten pages of this report,
23 Exhibit 3?
24 MR. LINDSEY: Objection, vague.
25 THE WITNESS: I think it was mostly

1 with Mr. Lindsey in terms of who I think I
2 directed my remarks to. I think Mr. Baird was
3 also at the meeting. But this meeting would have
4 occurred in, I believe in April or May.
5 BY MR. REINER:
6 Q Prior to the submission of the documents which
7 appear in 2 through 10 as tabs to this report,
8 Exhibit No. 3?
9 A Yes, prior.
10 Q We have been talking about writings on pieces of
11 paper. Is there anything in a computer which you
12 have under your supervision and control which has
13 documents other than those that appear in section
14 2 through 10 concerning the works that you did?
15 A No.
16 Q Do you have any documents in your computer
17 concerning any of the matters set forth in the
18 first ten pages here other than appears in
19 documents 1 through 10 of Exhibit No. 3?
20 A The only documents that I have that aren't here
21 would be those few that are within the set that
22 have been marked and sealed as Exhibit 2.
23 Q Nothing else?
24 A No.
25 Q Now, with respect to the verbatims to the

1 questions, do you have copies of those?
2 A They're in, yes, they're in Exhibit 2.
3 Q Do you have the questionnaires?
4 A There were no paper and pencil questionnaires ever
5 produced as a part of this. The survey was
6 telephone administered in a computer, through a
7 computer, CATI, C-A-T-I, method of administration.
8 Q Where are those computer CATIs?
9 A Well, the Robinson & Muenster Company has had, has
10 and I guess had a file, a computer file that
11 included those materials that were dumped, i.e. a
12 hard copy was made and that's what this material
13 is. The tables, sampling data and the verbatim
14 transcription. The questionnaire had rotated and
15 randomized the presentation of words and of the
16 structure of certain questions. And that was
17 un-rotated for the purposes of the creation of
18 this document from the underlying computer file.
19 What the status of that file is, as it exists
20 today, if it exists today, I have no idea.
21 Q Did you ever look at that computer file?
22 A It passed through my hands I think.
23 Q Did you keep a copy of it?
24 A No.
25 Q Do you have any way of knowing whether or not the

1 tabulations that appear in your report are
2 identical to the tabulations appearing in that
3 computer file?
4 A The file doesn't have tabulations. It just has
5 the raw data, the underlying data. I prepared the
6 table which sets forth the summary percentages
7 myself from the underlying data. The file doesn't
8 have anything.
9 Q Does the computer file have the exact verbatim
10 responses given by the respondents?
11 A Yes. But in a different order.
12 Q Did you ever see them yourself?
13 A Yes.
14 Q And did you review them?
15 A I reviewed a sample of them. I didn't review all
16 of them, no.
17 Q Did you do any tabulations of the actual responses
18 in the computer file that was generated?
19 A No. From the hard copy of the file which I caused
20 to be produced so I know it had to come from the
21 file.
22 Q Was there any editing done by the persons at the
23 Robinson & Muenster firm?
24 A I believe so, yes.
25 Q Did the persons at the Robinson & Muenster firm,

1 who were actually making the telephone calls,
2 record the precise words used by the respondents?
3 A They recorded what they heard. In some cases I
4 caused to be -- there was an editing change made
5 where there was a misspelling of a tribal name or
6 of some word that was originally in the file and
7 that was edited.
8 Q Was any effort made to transcribe, by some type of
9 tape, the response given by the respondent?
10 A I'm not sure that we're understanding what was
11 done. The respondent's answer that was literally
12 given on the phone was typed by the interviewer
13 into the computer, into that file, into that
14 record for that respondent. And that verbatim was
15 what the interviewer heard that person say. And
16 that became part of the quote, file. And that
17 component of the file that I then received was
18 transmitted to the individual who created the
19 un-rotated version of the verbatim transcript.
20 But no changes were made to that file beyond that
21 rotation except for the correction of spelling
22 which I've already pointed out.
23 Q Was any effort made to record, with some type of
24 device, the actual responses given as opposed to
25 what the person wrote down who was doing the

1 questioning?
2 MR. LINDSEY: Objection, vague,
3 ambiguous and argumentative. You may answer.
4 THE WITNESS: I don't understand.
5 The question implies that there was something
6 other.
7 BY MR. REINER:
8 Q I'm asking, was there any other effort made to
9 record the actual responses given on the telephone
10 as opposed to the questioner writing down that
11 person's response?
12 MR. LINDSEY: Same objection.
13 THE WITNESS: The word effort. I
14 just want to make sure that we're not confusing.
15 There was no effort made to do anything other than
16 what the interviewers were instructed to do which
17 was to record everything they heard verbatim.
18 They did so to the best of my knowledge. So by
19 definition, there would not have been an effort
20 requested or given to the creation of any other
21 way of faithfully writing down what they heard the
22 respondent having said.
23 BY MR. REINER:
24 Q I'm not inquiring as to what was written down.
25 I'm inquiring as to whether or not there was any

1 recording of the actual responses given by the
2 respondent.
3 MR. LINDSEY: Counsel, perhaps you
4 could use a word other than recording because I
5 think you're asking for exactly the answer the
6 witness is giving. I believe your question is
7 ambiguous in the use of the word recording.
8 BY MR. REINER:
9 Q There are devices that are used to take down what
10 people say on the telephone, is that correct?
11 A Typing, yes, is one. And that is what was used
12 here.
13 Q Was there other devices that recorded the actual
14 sound of the words?
15 A Like a tape recording?
16 Q Like a tape. Was any tape recording made of these
17 respondent's responses?
18 A No.
19 Q If you'd please take a look at Exhibit No. 10 in
20 your report, Exhibit 3.
21 A Yes.
22 Q If you look at page 1.
23 A Yes.
24 Q And if you look down on the left-hand column where
25 it says Q-12, do you see that?

1 A Yes.
2 Q Now, Q-12 would refer to a question, is that
3 right?
4 A Q-12 refers to a question.
5 Q What appears next to it are what words?
6 A If he knew it was used as an insult.
7 Q Is that the response to the question?
8 A Yes.
9 Q Is that a verbatim response of the person on the
10 phone?
11 A Yes.
12 Q Is it an interpretation given by the questioner?
13 A No. Except if you mean by the substitution of the
14 word he for I.
15 Q Yes.
16 A That may have occurred but beyond that, no, it's
17 not an interpretation.
18 Q Do you have any basis for saying it was not an
19 interpretation?
20 A They were instructed not to interpret.
21 Q You don't know whether he did or not, is that
22 correct?
23 A You never know in any study, even the ones we've
24 done together. You do your best.
25 Q You don't know if the questionnaire does not

1 record the word precisely, is that correct?
2 MR. LINDSEY: Questioner or
3 questionnaire?
4 BY MR. REINER:
5 Q Questioner, not questionnaire. The questioner,
6 the person proposing the question.
7 A You assume that it does. There's no way to know
8 beyond that.
9 Q Did you review personally all of the responses set
10 forth under Tab 9 on your report, Exhibit No. 3?
11 A Yes.
12 Q Did you review personally all the responses under
13 Tab 10 of Exhibit 3?
14 A Yes.
15 Q Did you do any tabulations as a result of the
16 responses given under question 9?
17 MR. LINDSEY: You mean Tab 9.
18 THE WITNESS: Tab 9, yes.
19 BY MR. REINER:
20 Q Excuse me. Tab 9 of Exhibit 3, you did that
21 personally?
22 A Yes.
23 Q Similarly with Exhibit No. 10, did you do any
24 tabulations as a result of the responses given in
25 Exhibit 10?

1 A Yes.
2 Q You did that personally?
3 A Yes. The machine did, too, but I did, too. I
4 mean, I did, yes.
5 Q When you say the machine, what are you talking
6 about?
7 A Well, I mean the machine generates, the computer
8 generated frequency distributions, that is counts
9 of answers to the closed-end questions, and those
10 were provided to me through Robinson & Muenster.
11 But before I prepared the final report, I went
12 through and verified by hand because I wanted to
13 make sure that there wasn't a difference between
14 what I tabulated and what the machine tabulated on
15 the closed-end questions.
16 Q And what you tabulated was what personally is what
17 appears in the report as percentages of
18 population, is that correct?
19 A Yes. The table that appears in Tab 2, at Tab 2.
20 Q Did any of the respondents that were interviewed
21 indicate that the use of the word redskin had to
22 be used or understood in context?
23 A I think that kind of a response was given but it's
24 been six months since I've read them. I couldn't
25 recreate that for you.

1 Q If you look, please, under Tab No. 10 in your
2 report, Exhibit No. 3, on page 1. It's question
3 12 again. The ID number is 1100000. You see that
4 at the top, it's question No. 12?
5 A Yes.
6 Q Now, does the response to question No. 12 indicate
7 to you that the respondents thought that the word
8 had to be used in a context?
9 MR. LINDSEY: Objection, vague and
10 ambiguous.
11 THE WITNESS: He is ascribing
12 further assumptions to his answer.
13 BY MR. REINER:
14 Q What did he ascribe?
15 A That it was the motivation of the speaker. That's
16 the way I would interpret it. If he knew it was
17 used as an insult, i.e. intended as an insult.
18 That's how I understand this response.
19 Q And if the person did not intend it as an insult,
20 would this respondent think that it was offensive?
21 MR. LINDSEY: Objection, foundation.
22 THE WITNESS: I infer not. But
23 obviously that's a question we didn't ask the
24 respondent. But the logical inference would be
25 that that's a precondition for their answer.

1 BY MR. REINER:
2 Q That the word had to be used in context in order
3 to be used as an insult, is that correct?
4 A In the same context. I said that he ascribed to
5 the speaker the intent to insult.
6 Q With respect to that particular question, was the
7 response to that question tabulated at all in your
8 computations?
9 A To that part of the question or to question 12?
10 Q To that question.
11 A Question 12, would be offended, was included as
12 would be offended. It was included.
13 Q As being offended?
14 A Yeah. The verbatim was not tabulated.
15 Q But that question was included as being offended
16 despite the manner in which the language was used
17 in response to question No. 12, is that correct?
18 MR. LINDSEY: Objection, ambiguous.
19 When you refer to that question, there are three
20 lines that are marked Q-12. The first occurrence
21 are you talking about?
22 BY MR. REINER:
23 Q Yes. In question Q-12, if he knew it was used as
24 an insult, was that person included in those
25 people which you tabulated as being included

1 within the group that would find the word
2 offensive?
3 A Yes.
4 Q Even though this particular person would not
5 necessarily think it was offensive if it wasn't
6 intended to be an insult?
7 MR. LINDSEY: Objection, foundation.
8 THE WITNESS: There was never any
9 further consideration given one way or the other
10 to the verbatim answer with respect to the
11 classification of the closed-end response as to
12 whether they did or didn't think it was offensive.
13 BY MR. REINER:
14 Q As a psychologist, is it your view that words
15 should not be used in the context of the
16 respondent's answer?
17 A I don't understand your question.
18 Q This answer was given in a certain context, was it
19 not?
20 A Of the questionnaire?
21 Q Yes.
22 A Yes.
23 Q The respondent answered in a certain manner?
24 A Correct.
25 Q And the respondent qualified his answer as to

1 whether or not something would be offensive, is
2 that correct?
3 MR. LINDSEY: Objection, ambiguous.
4 THE WITNESS: He elaborated or gave
5 further ideas about it, yes.
6 BY MR. REINER:
7 Q And you did not consider that the further ideas
8 might include the possibility that the word
9 redskins was not offensive if it wasn't insulting?
10 A I did not consider it with respect to whether or
11 not that respondent would have been classified as
12 having said that the word was offensive. And
13 equivalently, nor would I have reclassified
14 someone who said that it would not be offensive
15 but then in the follow-up open-end said but it
16 would be offensive if it were used as an insult.
17 In other words, I didn't change that tabulation.
18 Q If you would look at page 10 of the report.
19 MR. LINDSEY: Of the report?
20 BY MR. REINER:
21 Q It's Exhibit No. 3. And I'd like to draw your
22 attention, if you would, to the Section F in
23 Exhibit No. 3 on page 10 of your report. And
24 would you read that into the record?
25 A Yes. In addition to frequency, e.g. a statement

1 that a respondent is offended by a word, the
2 survey results may be used as one tool in
3 determining intensity of use. This intensity is
4 revealed by even a casual review of the verbatim
5 responses to the quote, why do you say that,
6 questions.
7 Q Is the intensity of the response of this
8 particular person, as appears on page 1 under
9 tabulation 10, question 12, revealed in any
10 manner?
11 A This person, as I understand the person, is saying
12 that the use of the word redskin would be
13 offensive if it was assumed to have been intended
14 as an insult.
15 Q And if it was not intended to be an insult?
16 A Then presumably it would not be offensive.
17 Q Do you know whether or not this particular
18 respondent would think that the word redskins as
19 used for a name of a professional football team
20 would be offensive?
21 A No.
22 Q You don't have any information on that, is that
23 correct?
24 A They weren't asked anything about the name of a
25 football team.

1 Q So you have no information at this point in time
2 whether that particular person would think that
3 the use of the word redskins as a name of a
4 football team is offensive?
5 MR. LINDSEY: Objection, vague and
6 ambiguous. You may answer.
7 THE WITNESS: I would have no basis
8 for an opinion.
9 BY MR. REINER:
10 Q If the person using the word redskins did not
11 intend it as an insult, would that have any affect
12 upon the view of this particular respondent we've
13 been talking about?
14 MR. LINDSEY: Same objections.
15 THE WITNESS: If the respondent
16 knew that the person -- in other words, had the
17 question been assume that the person speaking this
18 word didn't intend it as an insult, would you be
19 offended by it?
20 BY MR. REINER:
21 Q Yes.
22 A And the person might say no. Would someone else
23 be offended, would others be offended by it?
24 Well, they might because they might not know the
25 intention of the speaker. That might have been

1 the answer. There's really no way to know.
2 Q And you did not try to probe that state of mind?
3 A No.
4 Q Do you have any basis in any of these questions to
5 know what the state of mind would be about the use
6 of the word redskins in a football context for the
7 name of a team in Washington D.C.?
8 MR. LINDSEY: Objection, ambiguous
9 and vague. You may answer.
10 THE WITNESS: I'm not -- someone
11 hearing the word redskins may have an impression
12 about what that might mean without the context.
13 If you're asking me if the word Washington
14 Redskins the football team were spoken, if that's
15 your question, the survey that I conducted does
16 not address what a person's response would have
17 been to that question.
18 BY MR. REINER:
19 Q Do you have any scientific basis to express any
20 views concerning what a person would think if the
21 word Washington Redskins were used only in the
22 context of a football team playing for the
23 National Football League?
24 MR. LINDSEY: Same objection and
25 incomplete hypothetical.

1 THE WITNESS: There's no empirical
2 basis that I have from this study or any other
3 source.
4 BY MR. REINER:
5 Q I would like you to take a look, if you would
6 please, under Tab --
7 MR. LINDSEY: Before you move on,
8 as I had announced before we began this morning, I
9 do need to take a break for my client to call and
10 I don't want you to be telling him what your next
11 line of inquiry is before we take that break. Is
12 this a convenient time?
13 MR. REINER: It's all right. You
14 can take it now.
15 MR. LINDSEY: If you don't mind, I'd
16 appreciate that. Thank you.
17
18 (A break was had in the proceedings)
19
20 BY MR. REINER:
21 Q Let's go back to the questionnaire if you would,
22 please. If you go again to under Tab 10, page 1
23 of Exhibit No. 3, this particular respondent is
24 included in the edited verbatim responses for
25 Native American population, Native American study,

1 is that correct?
2 MR. LINDSEY: I'm sorry, you said
3 this particular respondent. Are you referring to
4 the same one we've been discussing?
5 BY MR. REINER:
6 Q The same one we've been discussing, of course. I
7 just wanted the record to be clear what we're
8 talking about.
9 A In the total sample, yes.
10 Q This was a Native American male, is that correct?
11 A Yes. In the sub-quota.
12 Q Do you know how old this person was?
13 A No.
14 Q Do you know if this person --
15 A Except that I know the person was at least 16.
16 Beyond that, I don't know the age.
17 Q So you don't know if this person was even alive in
18 1967, is that correct?
19 A That's correct.
20 Q QED, you have no idea what his state of mind was
21 in 1967, is that correct, if he wasn't even alive?
22 A Is this an existential question?
23 Q It's existential, yes.
24 A The answer is I don't.
25 Q Even if the person was 60, does this question

1 probe what his state of mind would have been in
2 1967?
3 A No.
4 Q Can you ask questions in 1996 that probes the
5 state of mind of people 30 years earlier?
6 MR. LINDSEY: Objection, ambiguous.
7 You may answer.
8 THE WITNESS: I think it depends on
9 the nature of the question that you're asking.
10 BY MR. REINER:
11 Q Do any of the questions that you asked probe the
12 state of mind of people alive in 1967?
13 MR. LINDSEY: Objection, ambiguous.
14 THE WITNESS: Well, if they were
15 alive in 1967, I think that there would very
16 likely be a positive correlation between the
17 answers that they would have given then and the
18 answers that they would give now.
19 BY MR. REINER:
20 Q Do people's views change over a 30-year period?
21 A It depends on the issue.
22 Q Do you have any empirical data that would reflect
23 in this study what people's views were, on the
24 particular subject matter of this study, prior to
25 the year 1995?

1 A There's no empirical data. That's correct.
2 Q Any time prior to the year 1995, is that correct?
3 A That's correct.
4 Q Is there anything in the literature of psychology
5 that would give empirical data which would
6 indicate that you can ask questions in the year
7 1996 that would probe the state of mind in people
8 30 years earlier?
9 A It would depend upon what the state of mind is.
10 Some beliefs and attitudes have a much longer
11 duration and more, say, central housing in the
12 psyche of the respondent than do others.
13 Advertising perception, for example, would be a
14 very ephemeral notion. One's view today might be
15 very different than one's view ten years ago. But
16 there are beliefs that are quite central so it
17 varies. There is literature.
18 Q There is literature on that?
19 A Uh-huh.
20 Q With respect to your knowledge of other person's
21 state of mind, is there anything in the literature
22 that would indicate that one person can express
23 the state of mind of another person?
24 A I guess --
25 MR. LINDSEY: Objection, ambiguous.

1 You may answer.
2 THE WITNESS: I don't understand the
3 question.
4 BY MR. REINER:
5 Q Can one person say what they believe another
6 person's state of mind is?
7 A Well, they certainly can. Are you asking me
8 whether they're accurate?
9 Q Yes.
10 A I guess that would depend upon the circumstance.
11 Again, some things would be fairly face evident
12 and some less. I guess it would depend.
13 Q Isn't there something in the literature of
14 psychology that would indicate that even people
15 that have close relationships like husbands and
16 wives do not necessarily know the state of mind of
17 the spouse on a particular issue?
18 A There is literature that there would not be
19 agreement, 100 percent agreement on any issue,
20 even within a person's mind, with respect to what
21 he or she did yesterday. So, yes, the answer is
22 yes by definition.
23 Q With respect to the questions which you asked in
24 this survey, did you ask what the state of mind is
25 of the respondent as to what they thought the

1 state of mind was of a third-party?
2 MR. LINDSEY: Objection, ambiguous.
3 THE WITNESS: Except not making it
4 into a legal question, I did ask them whether they
5 thought others would be offended. Whatever legal
6 trappings you might want to give to that. But I
7 did ask that question.
8 BY MR. REINER:
9 Q In the context of psychology, does that ask a
10 respondent to express a view upon what another
11 person is thinking?
12 MR. LINDSEY: Objection, ambiguous.
13 THE WITNESS: I believe that what
14 another person would feel, to the extent that that
15 connects to thinking, yes. Broadly, yes,
16 thinking.
17 BY MR. REINER:
18 Q Is there anything in the literature of psychology
19 that provides a basis to say that one can be asked
20 what another person's thinking is on a subject?
21 MR. LINDSEY: Objection, vague and
22 ambiguous.
23 THE WITNESS: The reason I'm having
24 a problem with your question is that it sounds
25 like you're asking me a question as to whether or

1 not a person's view would be truthful with respect
2 to what in fact the other person's view would have
3 been. As distinct from the concept of whether one
4 can express a view of what he thinks or she thinks
5 another person's view would be, not for the truth
6 of it but for what they think their reaction would
7 be. That has its own meaning or realty as
8 separate from the truth of the matter. And so I'm
9 not clear on that distinction if you intend that
10 distinction in your question.
11 BY MR. REINER:
12 Q Do you have anything in any of the literature of
13 psychology that supports the proposition that one
14 can express a view on the state of mind of another
15 person?
16 MR. LINDSEY: Objection, ambiguous,
17 vague and relevance.
18 THE WITNESS: Had I never had a
19 course in psychology, but I have, I could tell you
20 that it's obviously true that a person can express
21 a view on what he or she thinks another view would
22 be on something. It's got nothing to do with
23 psychological literature.
24 BY MR. REINER:
25 Q With respect to your expertise as a

1 psychologist --
2 A Yes.
3 Q -- do you have a view?
4 A Yes.
5 Q Is it the same view that you've just expressed?
6 A Yes. In the context of the prior qualification
7 that I gave you as to the distinction between two
8 ways of viewing the notion of quote, the view, and
9 its accuracy.
10 Q In terms of a person's view of what another person
11 may think, does that view have any aspect of the
12 context in which the person's view is being
13 sought? Think of the question, please.
14 MR. LINDSEY: Read it again.
15 MR. REINER: Yes, please.
16
17 (The pending question was read back)
18
19 MR. LINDSEY: Objection, vague,
20 ambiguous and relevance.
21 THE WITNESS: It may or may not. It
22 may or may not.
23 BY MR. REINER:
24 Q In this particular questionnaire, you asked a
25 question, would the term redskin be offensive to

1 others, is that correct?
2 A Are you characterizing the question?
3 Q What is the question specifically? Take a look if
4 you will, for purposes of the record, just so
5 we're precise, under Tab 4, page 6, question 7-A
6 in the middle of the page.
7 A Okay.
8 Q Would you read that into the record so that it's
9 clear what we're talking about?
10 A Yes. Whether or not you would be offended, do you
11 think that the term Native American, being used to
12 describe an American Indian person, would be
13 offensive to others or do you think it would not
14 be offensive to others or don't you have an
15 opinion one way or the other about that.
16 Q Would you tell me if this question is being used
17 to elicit the views of third parties other than
18 the respondent?
19 MR. LINDSEY: So that we're clear,
20 are you asking about the question as it was just
21 recited?
22 MR. REINER: Correct.
23 MR. LINDSEY: And I think the
24 witness has testified that the question's terms
25 were rotated.

1 BY MR. REINER:
2 Q Apart from the rotation.
3 A As I'm understanding your question, when you say
4 third party to mean, to me, whether I intended
5 this question to measure what that third party
6 would have said. And the answer is no. The
7 question was whether the respondent, to the
8 question, thinks that another would have been
9 offended.
10 Q On what basis do you put a question to a person
11 asking what they think another person would think?
12 MR. LINDSEY: Objection, vague,
13 ambiguous and mischaracterizes the question. But
14 you may answer.
15 THE WITNESS: Depending on the
16 situation, we frequently use that kind of
17 mechanism. For example, in a study I did for the
18 government many, many years ago on fallout
19 shelters, we asked people to respond to a question
20 as to what they think their neighbor might do if
21 there were an attack and one were trying to get
22 into the neighbor's fallout shelter, what would
23 the neighbor likely do, as a probably more
24 accurate way of getting at the issue than asking
25 the person directly what they would do given the

1 social desirability of not saying that you would
2 shoot your neighbor. So the concept of putting a
3 question from that point of view is a common one
4 in social psychological research. In this case,
5 or in any case where one is measuring a concept
6 having to do with offensive or embarrassing or
7 any concept of something which might evoke the
8 concept of social desirability, it's very common
9 that one would use a question format that would
10 solicit the person's perception from the
11 perspective of another in addition to or instead
12 of just the perception that they would have about
13 that thing themselves.
14 BY MR. REINER:
15 Q In the context of the government survey, was that
16 question directed to ascertain what people would
17 do in the context of what they thought other
18 people would do?
19 A That's correct. Effectively, yes. We were really
20 interested in what they thought but approaching
21 it, in what we characterize in the psychological
22 literature, as an indirect way.
23 Q That would affect the respondent's conduct, is
24 that correct?
25 A That's correct.

1 Q And in that context, the views of the others would
2 affect a respondent's conduct, is that correct?
3 A No.
4 Q That was the purpose of that survey?
5 A No. The purpose was to defeat the shield or guard
6 that someone might bring to bear on the question
7 as to whether they themselves would be willing to
8 admit, in effect, that they would or wouldn't
9 shoot their neighbor. They're more likely to be
10 honest about what their neighbor might do to them
11 than what they might do to their neighbor if it
12 were an undesireable act. It's in that sense.
13 Q Does this question on page 6 that we've just been
14 reviewing under Tab 4, does that question probe --
15 MR. LINDSEY: Page 5, counsel.
16 MR. REINER: On page 6.
17 MR. LINDSEY: I'm sorry, we must
18 have flipped a page.
19 BY MR. REINER:
20 Q On page 6, that question which you just read into
21 the record --
22 A I read it from page 5.
23 MR. LINDSEY: No, it was from
24 page 5.
25 THE WITNESS: I'm sorry if it's not

1 the same question.
2 MR. REINER: I'm sorry, I'm looking
3 at page 6.
4 THE WITNESS: The difference is
5 you're on the Native American sample and I'm in
6 the general population.
7 BY MR. REINER:
8 Q Under Tab 4, Native American.
9 A Page 6?
10 Q Please, if you would. Is the question the same on
11 page 6 as it was as you just read into the record?
12 A That's correct.
13 Q Now, does this question elicit what the respondent
14 would do in the context of what he thought other
15 people's reaction would be?
16 MR. LINDSEY: Objection, vague and
17 ambiguous.
18 THE WITNESS: Well, it doesn't ask
19 what they would do, it has to do with what they
20 would think or how they would react or whether
21 they would be offended. We're asking it in the
22 context of -- we're asking it through the
23 mechanism of asking it about another person so as
24 to make sure that we're not hearing a different
25 thing than we would be if we just asked somebody

1 the question directly as to what they would
2 themselves think.
3 BY MR. REINER:
4 Q Doesn't this question follow another question
5 directed to exactly what the respondent himself or
6 herself felt?
7 A Yes.
8 Q Is this question then asking for an additional
9 state of mind on their part as to what they think?
10 A It's another variant on the state of mind. It's
11 to cover all bases is how I would characterize the
12 question.
13 Q This question is asked after you had already asked
14 a question of a respondent about their own state
15 of mind, is that correct?
16 A That's correct.
17 Q It is not asked to a different respondent, is
18 that correct?
19 A That's correct.
20 Q Is this question, in any manner, biased by the
21 question asked directly to the respondent of what
22 do you think?
23 A No. I don't see what the direction of the bias
24 would be.
25 Q You've already asked a respondent what they think,

1 is that correct?
2 A That's correct.
3 Q And then you're asking the same respondent the
4 question of what they think other people would
5 think on the same subject matter?
6 A Right. And most gave the same answer. That would
7 be the most direct effect of the cast of the
8 question.
9 Q Does that introduce a bias in the question?
10 A Not systematic to one verses another answer, no.
11 Q Did you ask question No. 7-A about what other
12 persons think before you asked the question of
13 what an individual respondent thinks?
14 A I believe the sequence -- I better check. I think
15 that the sequence was always first self and
16 second.
17 Q You did not rotate the sequence?
18 A Not that sequence.
19 Q So that you have no way of knowing whether the
20 answer to the first question had any affect upon
21 the answer to the second question, is that
22 correct?
23 A Only except insofar as one can look at the answers
24 to the two questions to see whether they're
25 different or not and how often or what the

1 direction is. In other words, people who said no
2 to the first are more likely to say no or yes to
3 the second or vice-versa. One could look at that.
4 But beyond that, one can't look. I did look and
5 incidentally you find that there is a strong
6 positive correlation between what they said the
7 first time and what they said the second, self
8 versus others.
9 Q Does a correlation exist because the person has
10 been asked the first question and given a
11 response?
12 A It may. But it's just as reasonable to think that
13 it's because in their mind the question is
14 essentially the same. That is they wouldn't be
15 offended, they wouldn't think another would be
16 offended. And that's for quite the same reason as
17 I suggested we would ask that indirect question.
18 It's an attempt to measure the same thing.
19 Q Could that same question, that second question
20 about others be asked of a separate respondent?
21 A Oh, sure, it could be.
22 Q Would that eliminate any possibility that the
23 response to the first question influenced the
24 response to the second question?
25 A If one thought that they were all relevant. I

1 didn't and I don't now.
2 Q But if you thought it were relevant, would that
3 remove that possibility?
4 A If you thought it were relevant, you could ask it
5 separately. You could separate all the questions
6 in any survey and ask them all separately if you
7 wanted to.
8 Q Would the methodology be better if you avoided
9 asking one question that may have a relationship
10 to a response to an earlier question?
11 A Not in the context of this. Because, as I said, I
12 think it's the same question. It's just in effect
13 two versions of the same question. So the answer
14 is treated as though they were effectively one
15 question. Although they're reported together,
16 they're also reported separately in the results.
17 Q And do you think that the respondent answering
18 this question No. 7-A would be influenced in any
19 manner in their response to the earlier question
20 relating to what they think?
21 A It could be. But that's a necessary component of
22 any questionnaire, even one I've done for you on
23 false advertising. What did the ad say, anything
24 else, anything else. The anything else answers
25 are certainly influenced by what the person said

1 first. It's essentially, though, the same
2 question. So the answers are aggregated. You can
3 choose to disaggregate them. You can have five
4 different groups, each asked a different version
5 of the question. But I would suggest that that's
6 not good survey technique and I would not ever
7 sponsor it or recommend it.
8 Q Is there a difference between asking a person a
9 question of anything else, or asking a question
10 that refers only to the possibility of the word
11 being offensive or not?
12 A Sure. Every question is different. There is not
13 much of a difference between what I did and the
14 question of asking somebody what did an ad say
15 versus whether or not there was anything you found
16 hard to believe, which is a different kind of a
17 thought but still related to the objective of
18 soliciting from the consumer a perception of what
19 they took from the advertisement. It's a
20 different question indeed but it seeks the same
21 conceptual issue which is what did a person react
22 to or get from the ad in that case. In this case,
23 the response to the term of the word.
24 Q Could a question have been asked what do you
25 think others would think?

1 A Could a question have been asked?
2 Q Yes.
3 A Well, you could have. I asked the question that I
4 thought was the best way to ask the question.
5 Q Does the question which you asked use the word
6 offensive?
7 A I'm sorry, repeat the question.
8 Q Does the question 7-A use only the word offensive
9 as an option of either it is or it isn't?
10 A It either is offensive or it isn't or they don't
11 have an opinion one way or the other.
12 Q Is that what it does?
13 A Yes.
14 Q You're not asking just a direct question what do
15 you think about the use of the word redskin, is
16 that correct?
17 MR. LINDSEY: You're asking
18 specifically whether question 7-A does?
19 BY MR. REINER:
20 Q Yes.
21 A I'm sorry, it doesn't ask what the person himself
22 thinks?
23 Q Right.
24 A That's correct. It doesn't ask him what he thinks
25 about the word himself but what he thinks another

1 person's reaction would be to the word.
2 Q But the only reference in here is whether or not
3 it is offensive, is that correct?
4 A The only reference, the only operative word that's
5 a state of mind word is quote, offensive.
6 Q Could the question have been asked without having
7 the operative word offensive in it?
8 MR. LINDSEY: Objection, vague.
9 THE WITNESS: I'm not sure what you
10 mean.
11 BY MR. REINER:
12 Q Could the question have been asked by merely
13 asking what people think other people would think
14 about the use of the word redskins as opposed to
15 using the word offensive?
16 MR. LINDSEY: Just so we're clear,
17 counsel, you're now saying redskins. This
18 question refers to Native Americans. You may
19 answer the question that's being put.
20 BY MR. REINER:
21 Q This particular question. Do you think that a
22 question could have been posed to an individual,
23 what do you think the word redskins means?
24 A To you as well as to others?
25 Q To you.

1 A Sure. You can ask, I mean, any question is
2 possible.
3 Q Would that elicit a spontaneous state of mind?
4 A Well, it would manifest a state of mind. I don't
5 know about its spontaneity. I don't think there's
6 any difference in the spontaneity of that
7 question's evocation of a state of mind than the
8 one that was asked. So I'm not sure what you mean
9 by spontaneous but you could have asked that
10 question.
11 Q Would that provide you with information whether a
12 person thought that word were offensive if asked
13 in the context of what they thought of the word?
14 MR. LINDSEY: Objection, vague,
15 ambiguous and incomplete hypothetical. You may
16 answer.
17 THE WITNESS: It would be an
18 example of a question that might be asked that
19 would get at that same general approach or issue,
20 yes.
21 BY MR. REINER:
22 Q Does the use of the word offensive, in any manner,
23 indicate to the respondent that the word could be
24 offensive?
25 MR. LINDSEY: Could I get the

1 question back?
2
3 (The pending question was read back)
4
5 THE WITNESS: Yes. I think it
6 does. That's why we ask other questions in
7 context.
8 BY MR. REINER:
9 Q Does the use of the word offensive, in any manner,
10 as a psychologist, indicate to you that a state of
11 mind is created that a word could be offensive
12 when a person might not think of it otherwise as
13 being offensive?
14 MR. LINDSEY: Objection, vague and
15 ambiguous.
16 THE WITNESS: I think I intended to
17 answer that question. I testified extensively in
18 the past that the use of any word in a question,
19 especially in a structured question, may suggest
20 to somebody that that's an option, that's an
21 answer possibility that might never have been in
22 their mind before. And therefore, as I have
23 testified extensively, one must ask the same
24 question structure about other terms or must build
25 into the survey other mechanisms for assessing the

1 extent to which that potentiality for suggesting a
2 kind of response is indeed an explanation of the
3 level of answer that one gets. And I did do that
4 in this study, did include other words so as to
5 specifically address that issue.
6 BY MR. REINER:
7 Q The other words that you used addressed only
8 persons that would be in the context of Native
9 Americans and words used in relationship to them?
10 A Only words used in the context of Native
11 Americans. We talked to both non Native Americans
12 and Native Americans.
13 Q The questions, though, only used the words Injun,
14 Native American, et cetera, in the context of
15 Native American Indians?
16 MR. LINDSEY: I object to that
17 question. Objection, form.
18 THE WITNESS: If by context you mean
19 that they had been previously informed in the
20 survey that the terms that they would hear would
21 be -- that they would be hearing in the survey,
22 might be heard when someone were referring to an
23 American Indian person, the answer is yes, they
24 were told that.
25 BY MR. REINER:

1 Q So that provides, then, a point of reference of
2 questions concerning of which they were going to
3 be asked for a response, is that correct?
4 A All of the terms would have had that same frame of
5 reference, yes.
6 Q And no other frame of reference was used for the
7 word redskins, is that correct?
8 A None provided in questionnaire, no.
9 Q And if a question were asked just for the state of
10 mind concerning the use of the words redskins,
11 would it necessarily have evoked a question
12 relating to Native American Indians?
13 MR. LINDSEY: Read the question
14 back, please.
15
16 (The pending question was read back)
17
18 MR. LINDSEY: Objection, form. You
19 may answer.
20 THE WITNESS: It wouldn't
21 necessarily if a person might not connect to a
22 Native American. It would be whatever they would
23 think the reference would be.
24 BY MR. REINER:
25 Q So you have placed all of the questions, then, in

1 the reference of Native American Indians, is that
2 correct?
3 A That's correct.
4 Q And you have placed the reference to redskins only
5 in the context of Native American Indians, is that
6 correct?
7 A Yes. In the context of what the question speaks
8 for itself, yes.
9 Q And it wasn't necessary to do that in order to
10 elicit the state of mind of a respondent
11 concerning the use of the word redskins, was it?
12 MR. LINDSEY: Objection, vague and
13 ambiguous.
14 THE WITNESS: I think that the
15 question was what it had to be in order to address
16 the issue that I understood was relevant to be
17 addressed in the survey, not your question.
18 BY MR. REINER:
19 Q For purposes of the record, I would like to refer
20 you to your report under tab 2, page 1. There are
21 some terms that are listed in the first column on
22 the page. And would you read into the record the
23 words that were used in this report so that I can
24 ask you some questions about them? Just for
25 purposes of the record.

1 MR. LINDSEY: For clarity --
2 MR. REINER: Just read the words.
3 MR. LINDSEY: You're talking about
4 the words that appear under term and then under
5 the phrases offensive to you, et cetera?
6 MR. REINER: Yes.
7 THE WITNESS: The words under the
8 bold word term are offensive to you and/or
9 offensive to others.
10 BY MR. REINER:
11 Q Now, there are seven words that are listed under
12 that, correct?
13 A That's correct. Well, seven groupings. One has
14 two words.
15 Q You're right. Designation. The first designation
16 is what?
17 A The first is Injun.
18 Q Second?
19 A Redskin.
20 Q Third?
21 A Squaw.
22 Q Fourth?
23 A Buck.
24 Q Fifth?
25 A Brave.

1 Q Sixth?
2 A Indian.
3 Q Seventh?
4 A Native American.
5 Q Now, with respect to the response for the word
6 buck, if you look over to the Native American
7 sample, you have a 44.4 response, is that correct,
8 as a percentage of the sample that said they
9 thought the word was offensive, is that correct?
10 A Either to themselves or to others, yes.
11 Q Does that, in any manner, reflect a noise level
12 within the respondents that should be deducted
13 from the response from redskin?
14 MR. LINDSEY: Objection, ambiguous.
15 THE WITNESS: I don't see why or
16 how. Of course, I'm not sure of what your use of
17 the word noise means. Certainly not in the
18 context of noise as you and I have used it
19 together.
20 BY MR. REINER:
21 Q What is the concept of a noise for control
22 purposes in surveys?
23 A Well, it depends on the survey. If one is doing a
24 survey where one is doing an experiment
25 effectively, as in a false advertising case, and

1 is subtracting the potential guess level or just
2 knee-jerk reaction level from a substantive answer
3 in order to try to make sure that one has a fair
4 view of what that substantive answer is, then one
5 would subtract the level obtained in response to a
6 quote, control question, from the level obtained
7 for the word, or for the question that was a
8 particular interest or for the ad that was of
9 particular interest or the attribute that was of
10 particular interest.
11 That concept of control is a little
12 different in the case of this issue as I
13 understand the state of mind that we're trying to
14 get at than it would be in a false advertising
15 situation. But I still felt it was relevant to
16 have what I would characterize as a frame of
17 reference that one could look at for both what I
18 will characterize as words or terms which would be
19 facially offensive and words which should not be
20 or which would, if people thought that they were
21 offensive, should be considered as some kind of a
22 noise level or guessing level. Something that
23 might be produced simply as an artifact of the way
24 the questions were asked. So I included both of
25 those kinds of words.

1 Q Is the word buck, to you, at all a term that
2 would indicate a noise level?
3 MR. LINDSEY: Objection, ambiguous.
4 THE WITNESS: No. There was no one
5 of these terms is really a noise level. If one
6 were to look at which term might be closest to the
7 concept of control as used in let's say false
8 advertising studies, I would say it would be
9 Native American.
10 BY MR. REINER:
11 Q What does the word buck mean?
12 A In the context of Native American?
13 Q Yes.
14 A By mean, you mean its denotative meaning?
15 Q I'm asking you what you think it means.
16 A Well, I would think that the word has a
17 denigrating kind of a conception to an American
18 Indian. It would be to me at least to the extent
19 that I could project myself into that situation
20 with analogous terms referring to minority groups
21 that I might belong to. Denotatively I think it
22 might refer to a young Native American, a young
23 male or perhaps one who has attained a certain
24 tribal status. But I think primarily to a male
25 who I would characterize as relatively young.

1 Q What is denigrating about the use of the word?
2 A Again, it's just my own opinion personally. I
3 would think it's a term that I would find I would
4 be very sensitive to if I were a Native American.
5 In my mind, again personally, as if I were a black
6 person and someone said boy to me. The word
7 itself, on its face, might not be denigrating.
8 But in the context of my reaction, I might think
9 it would be.
10 Q Do you have any scientific basis for you to
11 express a view that the word buck has a
12 denigrating basis?
13 A Not beyond the general example that I've given. I
14 mean, I've done a lot of work in stereotyping and
15 prejudice. My masters thesis was in that area and
16 I'm familiar with the literature. I could look
17 for it. I have not in my hand a cite but I betcha
18 that I could find examples of boy being taken as
19 denigrating or offensive to a black person. And
20 my extension, again from my own personal
21 experience, would think that that would be a very
22 similar reaction that a Native American person
23 might have to buck. Indeed some of them said that
24 in the survey.
25 Q Before you used the word in the questionnaire, did

1 you, in any manner, do any research as to the
2 meaning of the word buck to Native Americans?
3 A I looked up all of these words in the dictionary.
4 And I know that I discussed these words with
5 counsel.
6 Q Does the word buck appear in the dictionary as
7 referring to Native Americans?
8 A It did in the dictionary that I looked at as one
9 of its meanings.
10 Q What dictionary?
11 A I don't know which one I looked at. I mean, it
12 might have been on the computer, it might have
13 been a hard backed dictionary. I really don't
14 know.
15 Q Did you consider the use of the word buck in this
16 context a control --
17 A No.
18 Q -- that should be deducted from the totality of
19 the response concerning redskins?
20 A Oh, absolutely not.
21 Q What about the use of the word Native American.
22 Do you consider the use of the word Native
23 American as disparaging to persons who belong to
24 tribes?
25 A Do I think it is?

1 Q No. Do you have any data that would indicate that
2 the word Native American is considered
3 disparaging?
4 A Well again, the survey indicates that some small
5 percentage react in a way that would indicate that
6 they think it is disparaging.
7 Q That 6.7 percent of Native Americans themselves?
8 A Say that that word is either offensive to
9 themselves or that it would be to others, yes.
10 Q Do you consider that a control?
11 A Well, I think it's an important part of the frame
12 of reference. I didn't subtract a percentage from
13 anything because a person --
14 Q If you'll take --
15 A Let me finish.
16 Q Excuse me.
17 A A person might well react to that term in a way
18 that would indicate that they were offended in the
19 way that it was used. One person might have the
20 same reaction to being called a black or a Jew or
21 -- I mean, it depends. Is the word itself
22 offensive? Well, whatever I bring to bear in my
23 answer to the question in the survey. So that's
24 why I say it's not really the same thing as a
25 noise level that we would ordinarily subtract in a

1 false advertising study because it's not really a
2 number that's devoid potentially of elements that
3 someone might find offensive. For the purposes of
4 this survey, I regard that as sort of a diminimous
5 number.
6 Q 6.7 is diminimous, okay.
7 A In the context of what the purpose of the question
8 was.
9 Q What about the use of the word Indian. That has
10 17.6 percent of Native Americans thinking that
11 that is an offensive term according to this
12 tabulation that you did, is that correct?
13 A That's what the percentage was, yes.
14 Q Do you consider that a control?
15 A No. I mean, I never intended it to serve that
16 purpose.
17 Q Is that a control?
18 A No. I believe it's on a continuum of words. I
19 intended it to represent another entry on a
20 continuum of potential offensiveness running from
21 what is unlikely to be offensive, Native American,
22 to what might be reasonably expected to be
23 offensive.
24 Q When you have done work in trademark cases, have
25 you used controls to ascertain the accurate

1 response of confusion?
2 A Yes.
3 Q In false advertising cases, have you used controls
4 as a way of ascertaining the response levels?
5 A Yes. Again, when you say trademark, I'm saying
6 that there have been cases in which I have. It
7 depends on the issue. For example, in genericism
8 studies which deal with trademark, one does not
9 ordinarily subtract anything so there is no
10 control percentage. There's a frame of reference
11 percentage, i.e. how many people might think this
12 is a brand name, how many people might think that
13 is. And it's a frame of reference. But it's not
14 a control in the sense of subtracting. So it may
15 be used is the answer to your question. I have
16 used them.
17 Q Did you think of using a control in this
18 particular survey?
19 A Not beyond what I did and what I've discussed as
20 this is a kind of control concept built in where
21 we have Native American on one end. But it is no
22 more than that. I mean, I didn't really give
23 thought beyond that given the nature of the issue.
24 My reaction was what we want is a range of words
25 or terms running from things that ought reasonably

1 not be offensive to things that would reasonably
2 be offensive. And we want to see where redskin
3 falls on that continuum.
4 Q Would a control have been use of the word redskins
5 not in reference to members of a tribal group?
6 A I can't conceive of how that would have been. You
7 mean to subtract, if you will, or what? I don't
8 know what you mean.
9 Q Would it have been a control for you to ask what
10 people think Washington Redskins means, whether or
11 not it's offensive?
12 A No. No. I mean, even conceptually that would be
13 silly because you can't very well expunge
14 something of its potential noise level, if you
15 will, by including a term which has the same term
16 that you're trying to expunge. I mean, it would
17 be like creating a false advertisement to correct
18 for the effect of another false advertisement. It
19 doesn't make sense.
20 Q In false advertising cases isn't the context
21 crucial for you to be able to express an opinion?
22 A On what?
23 Q On any false advertising claims isn't the context
24 always crucial?
25 A It depends on the issue. I've expressed opinions

1 for attorneys in false advertising cases about
2 aspects of consumer's perception that have nothing
3 to do with context. So it depends upon the
4 question that you'd ask me.
5 Q And there are no controls that you can think of
6 that would have ascertained whether or not
7 redskins has a different connotation than the one
8 that you have placed on it in this particular
9 survey?
10 MR. LINDSEY: Objection --
11 THE WITNESS: I think now you've
12 converted to an entirely different question and a
13 different purpose. The survey would not -- the
14 concept of having a control to assess the extent
15 to which the survey's responses were valid or not
16 as to one's perception of the word redskin was
17 accomplished in this survey. I did have that
18 frame of reference built into the survey. I do
19 have a mechanism for addressing the extent to
20 which the percentage obtained for redskin is
21 meaningful. I do not know how one would have
22 subtracted something that included the use of the
23 word redskin in it.
24 BY MR. REINER:
25 Q What about the word brave here. Brave on this

1 particular page had a response of 20.7 people
2 thought the use of the word brave --
3 A Percentage.
4 Q Percentage. Thought the use of the word was
5 offensive, is that correct?
6 MR. LINDSEY: And so we're clear,
7 you are referring specifically to the Native
8 American sample and to the tabulation that
9 summarizes the first set of tabulations on the
10 page?
11 MR. REINER: Correct.
12 THE WITNESS: That's correct.
13 BY MR. REINER:
14 Q Now, would it have been conceivable, as a control,
15 for you to ask persons the meaning of the word
16 brave when used in context to someone who is
17 valiant in battle in defending the United States
18 and received a medal?
19 A For what purpose?
20 Q For the purposes of finding out what people think
21 of the word brave.
22 A If that were the interest in your survey, you
23 could certainly ask them the question. I wouldn't
24 throw in the stuff about medals because I don't
25 know that that would be a fair context. But you

1 could ask people what do you think brave means.
2 Q And if they gave that response, would that be a
3 meaningful response to you?
4 A It could be depending upon the purpose of the
5 survey.
6 Q And you never asked that, did you?
7 A No.
8 Q Have you ever done a likelihood of confusion
9 survey in a trademark case where you didn't have a
10 control?
11 A I might have in the very early days but I couldn't
12 tell you for sure. I certainly haven't in the
13 last 20 years. Or quote, the concept of control
14 sometimes, not a control group.
15 Q And on page 6 of 10 on your report in the first
16 section there, under --
17 MR. LINDSEY: So we're referring to
18 the material before Tab 1?
19 BY MR. REINER:
20 Q Oh, yes. That's why I'm saying page 6 of 10 of
21 this report itself. If you'll take a look at
22 paragraph 3-A-1. Would you read the first
23 sentence?
24 A The analogous issues of likelihood of confusion
25 and actual deception in trademark litigation

1 frequently draw upon survey evidence.
2 Q Is this an analogous study or a study in a
3 trademark litigation utilizing survey evidence?
4 MR. LINDSEY: Objection, vague and
5 ambiguous.
6 THE WITNESS: It's analogous for
7 the purposes of what the sentence means in the
8 context of paragraph 3, sub A. That is to say as
9 to the magnitude of the percentages, that was the
10 purpose of the comparison. It does not go any
11 further than that.
12 BY MR. REINER:
13 Q If you look at that same person we've been talking
14 about before, ID number --
15 MR. LINDSEY: Tab 10?
16 BY MR. REINER:
17 Q Yes. It's Tab 10, page 1, ID No. 1100000. Do you
18 see that?
19 A Right.
20 Q If you'll take a look at question No. 13, which
21 says would be offensive to others. And the next
22 question is why. And the response is if it came
23 from a bad attitude.
24 What is the state of mind of that respondent
25 in your view as a psychologist?

1 MR. LINDSEY: Objection, vague and
2 ambiguous. You may answer.
3 THE WITNESS: What state of mind
4 does it evidence of the respondent?
5 BY MR. REINER:
6 Q In your view as a psychologist.
7 A I think this person is saying that the term would
8 be offensive to others if it was connected to a
9 quote, a bad attitude, whatever that consumer
10 respondent might mean by bad attitude. They're
11 attributing some kind of intent or motivation on
12 the part of the person who might be speaking that
13 word.
14 Q Does that response indicate, in any manner to you,
15 that if the person using the word did not have a
16 bad attitude, that it would not be offensive?
17 A That would be the implication because the
18 operative word there is if. So if it did not, I
19 would assume it reasonable to infer that it would
20 not be, they would have given a different answer.
21 Q And this person was tabulated, though, as being a
22 person who thought that the use of the word
23 redskin was offensive or thought that others would
24 think that the use of the word redskins was
25 offensive?

1 A Yes, this person was. No change was made as a
2 result of her answer there. To any of the
3 respondents.
4 Q If you turn to page 3 of this same tab of Exhibit
5 3 under Section 10. And if you would again take a
6 look at the reference 1100006.
7 A Right.
8 Q This person is a male, is that correct?
9 A Correct.
10 Q And if you look at the answer to question No. 8,
11 what is the answer to question No. 8?
12 MR. LINDSEY: In the first
13 occurrence of Q-8?
14 BY MR. REINER:
15 Q Correct. It's the first occurrence of Q-8.
16 A The person said that he would be offended.
17 Q And then the next question that's Q-8 is why, is
18 that correct?
19 A That's correct.
20 Q What is the response?
21 A The way that it is said.
22 Q What does that connote to you?
23 A The respondent's interpretation of the word by its
24 sound is that it would be offensive to him. I
25 mean, it's what it says. It's what he says.

1 Q How do you interpret that as a psychologist?
2 MR. LINDSEY: Objection, foundation,
3 vague and ambiguous.
4 THE WITNESS: Well, beyond what it
5 says, I mean, the person is saying if they would
6 hear that word spoken to them, that they would be
7 offended because of the way that it's said. They
8 may mean the way it sounds, they may mean the word
9 itself alone. It's really beyond that. I don't
10 have any other basis for opining. It's just what
11 the person says.
12 BY MR. REINER:
13 Q Does it also have a meaning to you as a
14 psychologist that if it was said in another
15 manner, that it would not be offensive?
16 A It might or it might not. The person might mean
17 that the word is always offensive because of the
18 way that it is. The way that it is, the word
19 itself. If that's what the person means, then the
20 context wouldn't be important. I just don't know.
21 Q You don't know but yet you classified this person
22 as being one who was offended by the use of the
23 word?
24 A I classified the person as having said that they
25 were offended, yes.

1 Q Similarly in the response to question No. 12 --
2 MR. LINDSEY: For the same
3 individual.
4 BY MR. REINER:
5 Q Where it was said, where the individual gave the
6 same response, would be offended and, that the way
7 that it is said, is that correct?
8 A For self and then a slightly different answer for
9 others.
10 Q And question No. 12 related to what he thought
11 other people would think, is that correct?
12 MR. LINDSEY: Objection,
13 mischaracterizes the question.
14 THE WITNESS: No. Question 12 has
15 to do with what the person would be himself and
16 question 13 had to do with whether it would be
17 offensive to others.
18 BY MR. REINER:
19 Q What about question 12, then. What is different
20 about the response to question 8 than to question
21 12, if any?
22 A Eight?
23 Q Yes.
24 A Question 8?
25 Q Yes.

1 MR. LINDSEY: Versus Question 12?
2 BY MR. REINER:
3 Q If any.
4 A Question 8 has to do with buck and 12 with
5 redskin. Again, this is just an example because
6 the actual execution order was randomized. It has
7 to do with a different term.
8 Q Again, it would have to be in the manner in which
9 it was said, is that correct?
10 MR. LINDSEY: Objection to form.
11 THE WITNESS: I did not offer an
12 interpretation really beyond what the words were
13 and what the respondent said. It's what they
14 said.
15 BY MR. REINER:
16 Q As an expert and psychologist, is it your job to
17 evaluate the meaning of responses given by
18 respondents in surveys?
19 A It depends to some degree depending upon the
20 purpose for which the survey is being conducted.
21 As I've said in this case, I didn't change one way
22 or the other responses to the closed-end question
23 as a function of the open-end. Although it could
24 have gone in the other direction. That is to say
25 it could have resulted in the classification of

1 people that were classified as not having been
2 offended to being offended, looking at a response,
3 as well the other way. The purpose in asking the
4 open-end question was to get what I would
5 characterize as depth or intensity or the
6 elaboration of their reason for their answer to
7 the question. But there was no further
8 classification made.
9 Q This person could have been classified as not
10 being offended, though, if you thought that the
11 person wasn't offended because the manner in which
12 the word was used was different?
13 MR. LINDSEY: Objection, incomplete
14 hypothetical.
15 THE WITNESS: The manner in which
16 the word was used?
17 BY MR. REINER:
18 Q Yeah.
19 A As I think I said, I'm not really sure whether the
20 person is saying that the word itself has a
21 necessary sound or a necessary structure that
22 makes it offensive no matter how it would be said
23 or whether the person is saying that the way you
24 said it makes it sound offensive.
25 Q So you don't have any point of reference where you

1 could express an opinion, is that correct?
2 A No. And that's why it would not be reasonable to
3 change the answer.
4 Q But you classified the person as being offended?
5 A Absolutely.
6 Q Now, if you'll go to page 4, please, of this same
7 series for respondent No. 1110002. And that
8 person is a female, is that correct?
9 MR. LINDSEY: This is the first
10 complete entry on that page?
11 BY MR. REINER:
12 Q Oh, no, excuse me. It's about what, say maybe
13 one-quarter down the page and it starts the entry.
14 A Yes.
15 Q Was this person classified as being offended?
16 A By the use of the word --
17 Q By the use of the word redskins in response to
18 question No. 13?
19 A Yes.
20 Q And the response to question No. 13, why, says it
21 depends on in what term they say it, is that
22 correct?
23 A That's correct.
24 Q Does that infer that the context is important to
25 this person?

1 MR. LINDSEY: Objection, vague and
2 ambiguous.
3 THE WITNESS: It means that it
4 depends on what term. I don't know what they mean
5 by what term they say it. I assume they're
6 referring to some kind of contextual aspect in
7 saying that.
8 BY MR. REINER:
9 Q So the person may not think a term is offensive in
10 certain context?
11 A This person is qualifying the response by saying
12 it depends in what term they say it.
13 Q And yet that person was classified as being
14 offended, is that correct?
15 A Because of their answer to the first part of the
16 question, yes. Incidentally, conversely, if a
17 person, the same person had said I would not be
18 offended but then said it depends on what term
19 they say it or something, I mean, had that been
20 asked and answered, their answer would not have
21 been changed even though it would be clear that
22 under certain circumstances that person would be
23 offended. It just wasn't changed one way or the
24 other.
25 Q At any time did you ever change the designation

1 of a person being offended or not being offended
2 as a result of any qualification given to question
3 No. 13, why?
4 A No. To any of the why questions, the answer would
5 be no, I didn't.
6 Q Refer to page 6, please.
7 MR. LINDSEY: Same tab?
8 BY MR. REINER:
9 Q Same Exhibit, same Tab, please. The ID of the
10 person begins on the bottom left-hand corner. The
11 ID is 1110009. I believe the person is a male, is
12 that correct?
13 A Right.
14 Q This person is 18 to 29, is that correct?
15 A Oh, yes, question 20.
16 Q So this person wasn't alive in 1967, is that
17 correct?
18 A That's correct.
19 Q Now, response to question No. 12, if you look in
20 the upper right-hand corner of the page. The
21 response is would be offended, is that correct?
22 A That's correct.
23 Q And that person was classified as being offended,
24 is that correct?
25 A That's correct.

1 Q And the answer to the next question is why. And
2 what is the response?
3 A Depending on the context possibly.
4 Q So this person may not be offended if the word was
5 used in the context of the Washington Redskins
6 football team?
7 MR. LINDSEY: Objection, vague,
8 ambiguous and speculation.
9 THE WITNESS: There would be no way
10 to know what their answer would have been to the
11 question if asked about the Washington Redskins.
12 BY MR. REINER:
13 Q This person, this respondent was still classified
14 as being offended?
15 A That's correct.
16 Q Similarly, if you look to question No. 13,
17 redskins. And the person said that it would be
18 offensive to others, is that correct?
19 A That's correct.
20 Q What's the response to question No. 13, why?
21 A Depends again on context it's being used in.
22 Q That person was nevertheless classified as
23 thinking other people would be offended, is that
24 correct, or could be offended?
25 A That's correct.

1 Q Or would be offended?
2 A That's correct.
3 Q Not could but would be?
4 A That's correct.
5 Q Go to page 22, please. Look at the person
6 identified as 1140003, please.
7 A Right.
8 Q Now, that person is a female, is that correct?
9 A Right.
10 Q If you look at response to question No. 12, the
11 first part of that, redskin. Would be offended,
12 is that correct?
13 A Right.
14 Q What is the response to question 12 for the why?
15 A I would be offended if they were cussing or
16 cursing me out.
17 Q Does that imply that the person would not be
18 offended if they were not cussing or cursing her
19 out?
20 MR. LINDSEY: Objection, foundation.
21 THE WITNESS: It could mean that.
22 It's a little less clear than the other because
23 this person may simply be saying I would be as
24 offended as if they were cussing or cursing me
25 out. I just don't know whether or not what's

1 written there is to be taken quite literally as
2 your question would have it. But it's possible.
3 BY MR. REINER:
4 Q That person was classified, though, in the
5 tabulations as being offended, is that correct?
6 A That's correct.
7 Q If you look at No. 13. Question would be
8 offensive to others, the word redskin, is that
9 correct?
10 A Right.
11 Q What is the why response?
12 A I know some wouldn't like it but I don't have a
13 problem with it.
14 Q What does that mean to you as a psychologist?
15 A Well, I think this comes close to the conceptual
16 basis for asking the question which is the term
17 does have an offensive character but the person is
18 saying it wouldn't be to me, it might be to
19 somebody else. In other words, if a person didn't
20 want to make it seem like they were super
21 sensitive, they might allow that someone else
22 would be offended by it even though they wouldn't
23 be. It's kind of a crowd response if you will.
24 Q Does that response there, but I don't have a
25 problem with it, have any relationship to the

1 response to question No. 12?
2 MR. LINDSEY: Objection, vague and
3 ambiguous.
4 THE WITNESS: It didn't in the
5 tabulation. The person in response to question 12
6 said that they would be offended.
7 BY MR. REINER:
8 Q But he also said but I don't have a problem with
9 it, correct?
10 A In another question, yes.
11 Q So that person was nevertheless classified as
12 being offended, is that correct?
13 A Right. But again, for the same reason, I didn't
14 change anybody the other way either.
15 MR. REINER: Can we take a two
16 minute break?
17
18 (A break was used in the proceedings)
19
20 BY MR. REINER:
21 Q Before going on to any more of these
22 questionnaires, I believe you just stated that you
23 classified persons as being offended when they
24 answered question No. 8 as being offended or 12 as
25 being offended, right? And then --

1 MR. LINDSEY: Objection -- finish
2 your question.
3 MR. REINER: I just want to make
4 sure I understand the testimony.
5 BY MR. REINER:
6 Q I believe that's what you said. Now, let me just
7 ask the question. That's not a question. Now the
8 question is were there any instances where
9 somebody said that they were not offended to
10 question No. 8 and the why question was answered
11 indicating that there were context where they
12 could be offended?
13 A There weren't any why questions asked to that part
14 of the question. In other words, they were only
15 asked the follow-up question if they were, if they
16 said they were. But there would be if a person
17 might have said that they wouldn't have been
18 offended by redskin but that someone else might
19 be, they would have been asked the why question
20 for that. And the answer to that question might
21 suggest that they shouldn't have been considered
22 offended either. Or vice-versa.
23 Q Were there any instances where someone said, no,
24 that nobody else would be offended where there was
25 a why question asked?

1 A No. Only to the parallel. And there were cases
2 where a person did say that they wouldn't be but
3 another would be and vice-versa.
4 Q You asked question No. 12, isn't that right?
5 MR. LINDSEY: You're specifically
6 referring to question 12?
7 MR. REINER:
8 Q Just that question No. 12.
9 A Everybody got asked equivalent.
10 Q What do you think about other people being
11 offended, is that right?
12 A Right.
13 Q If they answered that they didn't think other
14 people would be offended, was the why question
15 asked to them?
16 A No. Only if they would have said that they
17 themselves would be offended would the why
18 question have been asked about that same term.
19 Q If someone in response to question 12 were asked a
20 question about what other people think, didn't
21 think that they would be offended, was there a why
22 question asked?
23 A No. Not if they said no.
24 MR. LINDSEY: Just so we're clear,
25 counsel, at least in the example that I'm looking

1 at, 12 refers to would that person himself, him or
2 herself be offended. And you made that sound as
3 if it were the parallel question. And 12 was
4 would that individual be offended and 13 was the
5 other term.
6 MR. REINER: Right. That's my
7 question to you.
8 BY MR. REINER:
9 Q If the answer to No. 12 was a person would not be
10 offended, they were not asked why, is that
11 correct?
12 A That's correct.
13 Q If in the response to question No. 13 the person
14 responded they didn't think others would be
15 offended, was a why question asked?
16 A No.
17 Q That's all I was trying to get, the methodology.
18 There was no why questions asked?
19 A No.
20 Q So that the only time a why question was asked was
21 when a person said either they would be offended
22 or they thought others would be offended?
23 A That's correct.
24 MR. LINDSEY: Counsel, just for
25 clarity, you referred to questions 12 and 13.

1 That is as they appear in No. 03 and I believe
2 it's similar or the same throughout.
3 BY MR. REINER:
4 Q They're the same throughout, right?
5 A Yes.
6 Q These were general.
7 A In the way that the report responses are
8 presented, not in the way the question was asked.
9 Q All right. Now, I just want to get it straight.
10 What was the purpose of eliciting why if the
11 person said that they were going to be offended?
12 A Because I was interested in determining the
13 intensity, what I characterize in the report as
14 intensity but which I've already described as
15 being the depth or the extensiveness and the
16 character really of their answer so that the
17 degree of their response might be assessed if
18 counsel thought that that were relevant for some
19 purpose.
20 Q On the other hand, was that assessed for purposes
21 of removing people from being offended if the
22 context were in any manner not derogatory in their
23 view?
24 A Their answer to the closed-end question wasn't
25 changed as a function of their subsequent probed

1 open-end why do you say that question.
2 Q As a psychologist, do you think it is appropriate
3 to classify someone as being offended with respect
4 to the use of the word redskin where there are
5 circumstances where they might not be offended?
6 MR. LINDSEY: Objection, vague,
7 ambiguous and incomplete hypothetical.
8 THE WITNESS: I don't know what
9 that has to do with being a psychologist.
10 Conceivably there are people out there who
11 wouldn't be offended by anything that one would
12 call them. The question is not that. The
13 question is whether or not an aggregation of
14 people do or don't respond in aggregate to a term
15 as being offensive as compared with a continuum of
16 other referent terms. And in that context, I
17 think it is fair to classify them that way.
18 Analogously, if a person were offended by Native
19 American, rather than to say that's really zero,
20 the numbers are what they are. They speak for
21 themselves.
22 BY MR. REINER:
23 Q Maybe I didn't make my question clear. You're
24 here testifying as an expert witness as a
25 psychologist, is that correct?

1 A I suppose that that's a necessary part of my
2 credentials.
3 Q As a psychologist, you are called upon to draw
4 conclusions as to the nature of responses given by
5 persons used in a survey sample, is that correct?
6 A Yes.
7 Q Is it not correct that when looking at a response
8 such as a person being offended, considering the
9 word offensive, redskin being offensive, if that
10 person clarifies it or modifies it in any manner,
11 that that should not be considered in evaluating
12 what the response is?
13 A I never asked the question for that purpose. Nor
14 do I believe it should have been used for that
15 purpose. One need not have asked the follow-up
16 question at all and just had the closed-end
17 question. I've already given you the reason for
18 asking the follow-up question.
19 Q I know that was one reason. But is it appropriate
20 for a psychologist to consider any clarification
21 or modification given by a respondent in a sample
22 for purposes of classifying that response?
23 A It depends.
24 Q And you didn't think it was appropriate here, is
25 that right?

1 A No. Absolutely not.
2 Q If you'll turn to page 29, please. Respondent No.
3 1150011. That person is also a female. And if
4 you'll take a look at the response to question No.
5 12, respondent there said that she would be
6 offended, is that correct?
7 A Right.
8 Q What was the why question?
9 A The answer or the question?
10 Q What is the answer given by the respondent?
11 A Depends on how it was used. If talked down to,
12 would be offensive.
13 Q Does that imply in any manner that if a person
14 wasn't talked down to, that this respondent would
15 not think that the term was offensive?
16 A They might not. Depends what they mean by talked
17 down to.
18 Q Was this person classified as being offended?
19 A Yes.
20 Q And that was used in the tabulations?
21 A Yes.
22 Q Turn to page 30, same series. The ID person No.
23 1150016. It has a sub-quota. What does that
24 mean, sub-quota?
25 A Yes. Those are the additional 50-some respondents

1 who were not themselves members of a tribe in
2 response to that question but did identify
3 themselves nevertheless as being an American
4 Indian. So they were part of the sub-quota that
5 ended up being included in the survey. But one
6 could separate if one wished.
7 Q Would 50 respondents be sufficient for you to use
8 the data for purposes of expressing an opinion?
9 A Within a sampling error that that sample size
10 would carry with it, yes. But I did not express
11 such an opinion. They were part of 350-some that
12 were in the total sample for the Native American
13 sample.
14 Q And do you have any separate data that's been
15 tabulated as to what this particular group of 50
16 think independently of the totality of the sample?
17 A No, I don't have any.
18 Q Did you do any such tabulations?
19 A No, I didn't. But you could.
20 Q Yes. But it's your report, though.
21 A Yes. But I'm not required to do all the analyses
22 that you want because many of them may be
23 irrelevant to the issue.
24 Q I'm glad you think that way. Let's go on. Would
25 you look on page 30, this 1150016 sub-quota male.

1 The response to question No. 13 was would be
2 offensive to others, isn't that correct?
3 A Correct.
4 Q What is the reason given, the answer to why?
5 A It's a borderline word depending on how it's
6 used. If someone is trying to pick a fight and
7 uses it, some may take offense.
8 Q Does that imply that there are other circumstances
9 in which it would not be offensive?
10 A I think so.
11 Q Is this person classified in any of the
12 tabulations as responding that the word is
13 offensive?
14 A Yes. They are so classified in the tabulation, in
15 the combined tabulation.
16 Q On page 31, respondent 1150018. This is a female
17 that wasn't alive in 1967 as I see it, is that
18 correct?
19 A She would have been quite young if she were.
20 Q Well, 29 and '67 is '96 so maybe she was just
21 born. You're right, she could have been a baby.
22 A Yeah. I don't know.
23 Q If you take a look at the response to question
24 No. 12.
25 A Yes.

1 Q Question No. 12, this person said would be
2 offended. What was the why?
3 A If used in a derogatory manner, I would be
4 offended.
5 Q Is there anything in your mind as a psychologist
6 that this person would not be offended if it were
7 not used in a derogatory manner?
8 MR. LINDSEY: Objection, form.
9 THE WITNESS: I would think this
10 person would not think it were offensive if it
11 were not used in a derogatory manner.
12 BY MR. REINER:
13 Q Was this person classified as being offended?
14 A Yes.
15 Q And similarly, in response to question No. 13,
16 said it would be offensive to others. But what
17 was the why that she gave?
18 A Possible if used in a derogatory manner toward
19 others.
20 Q This person's state of mind would be that it is
21 possible that others would not think it was
22 derogatory if it were not used in a derogatory
23 manner, is that correct?
24 A I think that's a reasonable implication, yes.
25 Q This person was classified as being offended?

1 A Yes.
2 Q It would also be classified as others would be
3 offended?
4 A Yes.
5 Q Page 32, please. And take a look starting at the
6 bottom of the page on the left. The ID is for
7 respondent 1150020 and it is a male 16 to 17 years
8 of age, is that correct?
9 A Correct.
10 Q Take a look at the response to question No. 12.
11 This person said he would be offended, right?
12 A Right.
13 Q What is the why given in that same response to
14 that question also?
15 A I don't know. Sometimes it is used in the wrong
16 way. If it were meant in a wrong way, I would be.
17 If not, I would not be.
18 MR. LINDSEY: I think you inserted
19 the word it. You said if it were meant and the
20 text is if were meant.
21 THE WITNESS: If were meant in a
22 wrong way, I would be. If not, I would not be.
23 BY MR. REINER:
24 Q Was this person classified as being offended?
25 A Yes.

1 Q And in question No. 13, it would be offensive to
2 others. And the why is what?
3 A The why is it's different all over. Depending
4 where they are raised, some would or would not be
5 offended.
6 Q This person was classified as having other people
7 being offended, is that correct?
8 A Thinking the term would be offensive to others,
9 yes.
10 Q Under all circumstances, then, is that correct?
11 Is that the implication that you're trying to
12 give?
13 A No. Not under all circumstances. I might not
14 object to being called a Jew if it were in
15 Synagogue. But I might really resent it if an
16 attorney said that out in the street someplace or
17 whatever. It depends. But would that word be
18 appropriate for the name of a candy? I mean,
19 that's a separate issue I would think, whether
20 everybody would be.
21 Q Take a look at page 36. Respondent on the top of
22 the left-hand corner is respondent 1150030, is
23 that correct?
24 A Right.
25 Q And this person is a male, is that correct?

1 A Right.
2 Q And the response to question No. 12 is what?
3 A When the redskin question was asked they said that
4 they would be offended.
5 Q And the question was why?
6 A And they said depends on how it's used.
7 Q Does that have any implication to you as a
8 psychologist that this person would think it is
9 not offensive as used under certain circumstances?
10 A I think that they think it would not be offensive
11 under certain circumstances. But I don't know
12 that one needs to be a psychologist for that but
13 that would be my opinion.
14 Q And similarly to question No. 13. That person
15 said that it would be offensive to others and what
16 is the why?
17 A Well, the word would be offensive to others
18 because quote, it just the way a person is. The
19 way it's used.
20 Q The way it's used refers to, what, the use of the
21 word?
22 MR. LINDSEY: Objection, form,
23 foundation.
24 THE WITNESS: I assume so. I
25 assume so, yes.

1 BY MR. REINER:
2 Q Was this still classified as being offensive to
3 others?
4 A Yes.
5 Q The word is offensive to others?
6 A Yes.
7 Q Look at page 36 on the lower right-hand side, the
8 ID 1160001 who is a female. And this person
9 responded that she would be offended by the use of
10 the word redskins, is that correct?
11 A That's correct.
12 Q And then the why says what?
13 A If you are from another country and don't
14 understand what the word means.
15 Q What does that mean to you?
16 A I don't know.
17 Q This person was still classified, though, as being
18 offended, finding the word offensive, is that
19 correct?
20 A Yes.
21 Q What about now, look at question No. 13. Again,
22 this person thought it would be offensive to
23 others. But what is the why response?
24 A It depends if the comment comes from a racist or
25 not.

1 Q So that qualifies the reasoning of this
2 respondent, is that correct?
3 MR. LINDSEY: Objection, form.
4 THE WITNESS: It elaborates on the
5 meaning of that, yes.
6 BY MR. REINER:
7 Q And does that have any affect on the manner in
8 which you classified that response?
9 A None. And for all of these that you're reading
10 into the record, which is I'm sure your privilege,
11 the answer is the same. Which is that it did not
12 affect any of the ways that these persons were
13 classified.
14 Q Let's go on to page 39 if you will.
15 MR. LINDSEY: Actually, just quickly
16 following up on Mr. Ross' point, counsel, it's
17 entirely up to you how you wish to use your time.
18 I made it clear off the record what our own time
19 constraints are. And if you wish to follow this
20 line, that's fine. But bear in mind that there
21 are time limitations for this deposition.
22 MR. REINER: All right. I'll try to
23 shorten --
24 THE WITNESS: I mean, 50 bucks only
25 gets you so far.

1 MR. REINER: All right. I will try
2 to cut this short. I'll ask one more.
3 MR. LINDSEY: The last comment was a
4 humerus comment.
5 BY MR. REINER:
6 Q The last one I'll ask, then, is 1160009 as appears
7 on page 39.
8 A Okay.
9 Q That is a male, is that not correct?
10 A Correct.
11 Q And the person's age is between 18 and 29?
12 A Right.
13 Q Now, response to question No. 12 was a person
14 would be offended, is that correct?
15 A Correct.
16 Q And the why response was?
17 A Depending in on how they say it.
18 Q That person was still classified as being
19 offended, is that correct?
20 A I would say the person was classified. I wouldn't
21 use the word still as though to suggest that I
22 somehow shouldn't have.
23 Q Question No. 13, the respondent said that the use
24 of the word redskin would be offensive to others.
25 Is that what it says?

1 A Correct.
2 Q What is the response to the why?
3 A If it were said in a bad way.
4 Q Does that imply that the word can be said in a
5 good way in your thinking as a psychologist?
6 MR. LINDSEY: Objection, form.
7 THE WITNESS: I don't know that it
8 depends much on psychology but if a person thought
9 there were a way to say it in a good way,
10 presumably it would change their answer.
11 BY MR. REINER:
12 Q Would that also be in a good context?
13 MR. LINDSEY: Objection, form.
14 THE WITNESS: Well, it would be in
15 a context in which they would perceive it as
16 having not been said in a bad way, whatever that
17 might be.
18 BY MR. REINER:
19 Q Now, I believe you said that there was a subgroup
20 of 50 persons that were included in the sample, is
21 that right?
22 A Approximately, yes.
23 Q And these were persons who identified themselves
24 or consider themselves as American Indians, is
25 that correct?

1 A Yes. Well, it's Native Americans.
2 Q Native Americans, okay.
3 A But were not members --
4 Q But they were not members of a tribal group?
5 A But they said that they were not members of a
6 tribal group.
7 Q Do you have any information as to what the persons
8 perceived Native American to mean?
9 A As to what they perceive it to mean?
10 Q Yes.
11 A No.
12 Q You're an American, right?
13 A Yes.
14 Q You were born here, right?
15 A Yes.
16 Q Are you a Native American?
17 A I think in the context of the way the question is
18 put, I would answer the question no.
19 MR. LINDSEY: Objection to the line
20 of inquiry in that it's based on a misreading of
21 the questionnaire.
22 BY MR. REINER:
23 Q So the person was asked to identify themselves as
24 whether they were an American Indian person, is
25 that correct?

1 A That's not the question.
2 Q Were they asked to identify themselves?
3 A First are you an American Indian person.
4 Q And they had to identify themselves as being an
5 American Indian person, is that correct?
6 A Right.
7 Q And these persons were not members of tribal
8 groups?
9 A They said they weren't, right.
10 Q Do you have any knowledge as to what criteria they
11 used to classify themselves as an American Indian?
12 A No.
13 Q Those persons could have 1/64 of American Indian
14 heritage and still classify themselves as an
15 American Indian, is that correct?
16 A As an American Indian person. It's a
17 self-designation, yes.
18 Q And you have no information of what criteria they
19 used to classify themselves as an American Indian?
20 A I don't have any. They could have been a full
21 Indian but just don't belong to a tribe. I have
22 no way of knowing.
23 Q Were any guidelines given to any of the
24 questioners that were on the telephone asking the
25 questions, the questioners, as to what criteria

1 should be used for a person to determine whether
2 or not they were an American Indian?
3 A No. It would be self designation. And if the
4 person would have responded by saying what do you
5 mean by that or I don't know what you mean by
6 that, the interviewer was instructed to simply
7 repeat the question verbatim.
8 Q No guidelines were given, then, to the respondent
9 as to what criteria they should use to classify
10 themselves?
11 A That's correct.
12 Q So you have no way of knowing whether or not they
13 properly classified themselves as a Native
14 American Indian?
15 MR. LINDSEY: Objection, form.
16 THE WITNESS: They perceived
17 themselves to be a Native American person. I have
18 no knowledge of what they are or are not beyond
19 that.
20 BY MR. REINER:
21 Q Is a self designation an acceptable criteria to be
22 used in survey techniques?
23 A Oh, I think it's quite precise and appropriate.
24 In this case especially. It always is, even in
25 the studies that we've done together. We don't

1 dispute a person's age by checking their birth
2 certificate or whether they've actually seen the
3 commercial or were asleep when they were showing
4 it. We simply hope that they were telling the
5 truth. That's the purpose.
6 Q These individuals specifically stated they were
7 not members of a tribe, is that correct?
8 A That's correct.
9 Q And that raised no questions or inferences that
10 perhaps that questionnaire should not be used as a
11 person in the sample, is that correct?
12 A No. To the contrary, anticipating the fact that
13 there are people that may or may not be members of
14 a tribe who nevertheless would consider themselves
15 to be Native American, I know some, probably you
16 do, it was intended that the question elicit that
17 distinction so that if one were interested in
18 separating them, one could do so. Or if one were
19 interested in taking out the so-called adjunct
20 sample, one could do so. I was aware of it.
21 That's why it was asked.
22 Q Do you consider this a separate cell within the
23 survey that was taken?
24 MR. LINDSEY: Objection, form.
25 THE WITNESS: What?

1 BY MR. REINER:
2 Q A separate cell, these persons who classified
3 themselves as American Indian persons who are not
4 members of a tribal group?
5 A No, I don't. Nor did I come to that understanding
6 after a discussion of what the issues were.
7 Q In terms of devising the sample plan --
8 A I'm sorry, did you say advising?
9 Q No. In terms of formulating the sample plan that
10 was to be used in the survey, did you consider it
11 appropriate to use only 12 states to reflect the
12 views of Native American Indians nationwide?
13 A No. That's a little backwards. The sampling plan
14 didn't specify states. It started out by
15 selecting counties and then census tracks that had
16 certain characteristics. And it could have ended
17 up being three states, 50 states or something in
18 between. In this case it was something in
19 between. The methodology leads to a conclusion
20 which allows one to generalize to Native Americans
21 throughout the country.
22 Q Is it accurate to say that approximately 2 percent
23 of the counties in the United States were used in
24 this sampling?
25 MR. LINDSEY: Objection, form and

1 foundation.
2 THE WITNESS: I don't really have
3 the percentage in my mind. If I made the
4 calculation, I've long since forgotten it.
5 BY MR. REINER:
6 Q Isn't it reflected in the report of how many
7 counties were actually used?
8 A Yes. It should be in the report someplace.
9 Q And isn't it reflected that only 12 states of 50
10 were used?
11 A As it ended up satisfying the selection criteria,
12 yes.
13 Q And isn't it true that of the 12 states, two of
14 the states had the majority of the respondents?
15 A Let me just take that back here because there were
16 two separate sampling plans executed for the
17 Native Americans, one for the rural and one for
18 the urban, and I want to make sure that the 12
19 states applies to both. It may. I know that it
20 applied to one. I have to check to make sure. I
21 don't know that that document is here to tell you
22 the truth.
23 Q Where is it?
24 A I believe it's in, it may be with what is sealed.
25 Q Did you bring it with you today?

1 A Yes.
2 Q That document reveals what the sampling plan was?
3 A No, I think as to the number of different states,
4 there is a memorandum that would describe that 12
5 states were used in one case and I believe a
6 different number in the other just by chance.
7 That is to say the application of the decision
8 rule as to where the highest percentage of Native
9 Americans were, according to the Census Bureau,
10 resulted in the selection of 12 states for either
11 the urban or the rural sample and I think a
12 different number of states for the other sample.
13 I just don't have a memory of what that would be.
14 MR. LINDSEY: Counsel, if you would
15 specify the page for arriving at the 12, that may
16 help us to quickly find the reference.
17 THE WITNESS: Yes, it's -- oh, I
18 didn't know that was in the report. I'm sorry,
19 you're right.
20 BY MR. REINER:
21 Q Where is it for the record?
22 A It's Tab 3 and it isn't in the documents that I
23 brought, it's in the final report. And you have
24 13 states for the first cut, which would have been
25 the base for the sampling of the rural. And on

1 the next page for the urban, the top 50 census
2 tracks fell into 12 states. Yes, that's correct,
3 it was the same 12 states.
4 Q Approximately 50 counties were included in the
5 sampling plan, is that correct?
6 A That's correct. Well, I mean, that's correct
7 approximately.
8 Q Is that approximately 2 percent of the counties in
9 the United States?
10 A I really don't know what the total is so I can't
11 make the calculation. I assume that you've made
12 it correctly.
13 MR. LINDSEY: I'll object to the
14 question on the basis of form since it doesn't
15 specify the measurement that he's using.
16 BY MR. REINER:
17 Q The number of counties, you have no idea of the
18 number of counties in the United States?
19 MR. LINDSEY: You're talking just
20 about the absolute number of counties not by
21 geographic territory?
22 THE WITNESS: I really don't.
23 BY MR. REINER:
24 Q You sampled only 50?
25 A That's not a correct characterization of the

1 sample. There ended up being the number of
2 counties in the sample that there were based upon
3 the application of the sampling plan which was to
4 select counties where the respondents were. Had
5 they all lived in one county, we would have picked
6 one county. They happened to be concentrated in a
7 relatively small number of counties.
8 Q In terms of the sampling plan, why was Alaska
9 eliminated with the view of the large number of
10 Native Americans living in that state?
11 A My recollection is that there were a couple of
12 reasons. One was the timing. We wanted to make
13 sure -- there are big differences in the ability
14 to get respondents out of what are essentially
15 primarily rural locations in Alaska. Based upon
16 my discussions with Mr. Robinson and Robinson &
17 Muenster, the fact that it was his, he was told,
18 as I recollect the discussion, in his discussion
19 with the census experts at the University of South
20 Dakota Bureau of Research, that a substantial
21 number of those Native Americans were not likely
22 to have telephones and therefore would not have
23 ended up in the sample. And that that percentage
24 was probably going to be in excess of 50 percent
25 which would not be surprising based upon my own

1 survey experience with other hard to reach
2 populations. Let's say Spanish speaking or
3 whatever the criteria might have been. And
4 because that would have also involved an extra and
5 I thought unnecessary cost consideration, I
6 recommended that they not be included.
7 And I think a final factor that went into
8 that discussion had something to do with the
9 question of whether or not the tribal membership
10 of certain peoples in Alaska were clearly or not
11 clearly Native American. It had something to do
12 with a person not identifying themselves perhaps
13 as an Anglo, or whatever the term might be for the
14 greater population, but potentially identifying
15 themselves as a Native American but not really
16 being a Native American in the context of the
17 class of the petitioners in this action.
18 Q So that's a self-defining class of who is a Native
19 American by being how they're classified by the
20 petitioners? Is that your testimony?
21 MR. LINDSEY: Objection, form and
22 mischaracterization. You may answer.
23 THE WITNESS: Well, your question
24 -- I mean, I'm aware that the petitioners were
25 members of Native American tribes. But I'm aware

1 that the issue of whether something is or isn't
2 offensive might be relevantly asked in the context
3 of those who may not be members but who are also
4 of that class with respect to their way of
5 perceiving themselves. I've provided data which
6 allow one to separate those two if one would wish
7 to but didn't want to be suffering the alternate
8 criticism which would be isn't it true that people
9 might not be members of tribes but are still
10 perceiving themselves to be Indians since I know
11 that there are Indians, Native Americans who are
12 100 percent Native American but don't belong to
13 tribes. We have a very high density count here in
14 the Twin Cities area. Which, incidentally, turned
15 out to be in the sample or the study.
16 BY MR. REINER:
17 Q By excluding those persons in Canada that would
18 in fact have been --
19 A In Alaska.
20 Q Pardon me, in Alaska. I withdraw the question.
21 By excluding the potential of telephoning
22 persons in Alaska, does that not preclude you from
23 an understanding of what that group of Native
24 Americans think in terms of the use of the word
25 redskin?

1 A By definition they were not part of the geographic
2 sample. But I would say that the inference about
3 what their answers would have been is reasonably
4 made on the basis of the answers for the 48
5 particular state Native American population
6 sample.
7 Q And if the answers were in the negative, if they
8 didn't consider the word redskin, that would lower
9 the percentage in the universe as projected from
10 the sample, is that correct?
11 MR. LINDSEY: Objection, form.
12 THE WITNESS: By whatever percentage
13 their numbers would constitute in the Native
14 American population. Again, I meant to point out
15 the Census Bureau discussions that were had. I
16 had some myself but most were done by Mr.
17 Robinson. There was some ambiguity about whether
18 certain tribal names would or wouldn't be
19 technically Eskimo, I'm just using that as a
20 generalization, as distinct from Native American.
21 And that would leave some ambiguity to the issue.
22 That was one of the factors considered.
23 BY MR. REINER:
24 Q You identified this institute at the University of
25 Kansas, is that correct?

1 A No, South Dakota.
2 Q Is that funded by the federal government?
3 A It's a research bureau at the University and I'm
4 not sure how the monies flow from the feds to the
5 state to the University to the research bureau.
6 Q Is there a Bureau of Indian Affairs in Washington
7 D.C.?
8 A Yes, I believe so.
9 Q Do they classify persons by membership in tribal
10 groups?
11 MR. LINDSEY: Objection, form and
12 foundation.
13 THE WITNESS: I believe so because
14 I looked at a list of their tribal designations.
15 BY MR. REINER:
16 Q Was any effort made to ascertain how the Bureau of
17 Indian Affairs would classify various tribal
18 groups?
19 MR. LINDSEY: Objection, form.
20 BY MR. REINER:
21 Q Was any effort made to contact them?
22 A No. I did not contact the Bureau of Indian
23 Affairs.
24 Q From your knowledge of the Bureau of Indian
25 Affairs and what you've seen of their literature,

1 would they be in a position to tell you whether or
2 not tribes in Alaska were to be classified as
3 Native Americans?
4 MR. LINDSEY: Objection, form and
5 foundation.
6 THE WITNESS: I'm sure that they
7 would have information about that but --
8 BY MR. REINER:
9 Q You never asked?
10 A I didn't have to ask them.
11 Q Who did you speak with at the University of South
12 Dakota?
13 A It was somebody in the research bureau and I
14 couldn't tell you. I don't remember his or her
15 name. I think it was a him but I'm not sure.
16 Q Did they give you data?
17 A No. We had a general discussion and, yes, there
18 were percentages that were mentioned. The impact
19 of the exclusion of Alaska would not have had a
20 very substantial impact upon the total universe
21 base for the study in general or in the case of
22 Native Americans. There was this discussion about
23 whether or not Eskimo and other -- there was a
24 discussion about whether certain non-caucasian,
25 quote/end-quote, identifications would or wouldn't

1 constitute Native American in the minds of
2 respondents. And which I remember reading that
3 that discussion was part of the reason, as I said,
4 that lead me to recommend against including Alaska
5 in the sample.
6 Q Did you have a telephone conference with this
7 individual?
8 A Yes.
9 Q Did you make any notes of that conference?
10 A No.
11 Q You just did this all on memory?
12 A Yes because Mr. Robinson was on the line and it
13 was for the purpose of finding that out.
14 Q Did he make any notes?
15 A I don't think other than -- well, I don't know.
16 All I have is what I got from him which I put in
17 the report.
18 Q Have you ever asked him whether or not he made any
19 notes?
20 A No, I don't think so.
21 Q Have you received any information from him
22 concerning any efforts he made that are not
23 reflected in the exhibit to your report?
24 A Did you say have I received documents?
25 Q Did you ever receive any information? Not

1 documents, information.
2 A We had discussions about various ways about
3 getting to the sample on the phone. Several. So
4 we had an exchange of information. I have no
5 notes on that. I can characterize the nature of
6 the conversations.
7 Q Did you put any notes into your computer at that
8 point in time?
9 A No.
10 Q Now, with respect to this sample, only 12 states
11 were used. Were any of those states located in
12 the eastern part of the United States?
13 MR. LINDSEY: Objection, form,
14 mischaracterizes the testimony. You may answer.
15 THE WITNESS: My memory is not as
16 good as it used to be. I honestly don't remember.
17 I don't think so but I don't know for sure.
18 BY MR. REINER:
19 Q Is there anything in your report that tells you
20 what states actually were included in the sample?
21 A I don't know. I have documents in the sealed
22 envelope which list the specific. Here they are,
23 they're in here. It's the same document.
24 Q What page are you looking at, please?
25 A Let's see, in Exhibit --

1 MR. LINDSEY: Tab 8.
2 THE WITNESS: Tab 8.
3 MR. LINDSEY: In Exhibit 3.
4 THE WITNESS: In Exhibit 3 has a
5 page. To count the states, you'd have to look at
6 the part starting at page 7 of that Exhibit. But
7 just let me check to make sure.
8 MR. LINDSEY: I also object to the
9 term eastern and western.
10 BY MR. REINER:
11 Q Let's say east of the Mississippi for accuracy.
12 How many states have counties in it that were east
13 of the Mississippi that were included in the
14 sample plan?
15 A I don't know. I can't tell you from this
16 document. I can't find it yet. If it is in here,
17 I can't find it yet. I'm not putting my finger on
18 it. If you have that page, I'd be happy to look
19 at it.
20 Q Let's just pass on to another question, then.
21 Would it be accurate to say that approximately
22 half of the counties included in the sample were
23 in the states of Oklahoma and South Dakota?
24 A I'm not able to put my fingers on that. I know
25 that those two states were very important in terms

1 of producing response based upon the percentage of
2 Native Americans located within them, within
3 counties within those states.
4 Q Are you aware of any Indian reservations that are
5 in the State of New York for the Iroquois Nation?
6 A Am I aware of any?
7 Q Yeah. That there are Indian reservations in the
8 State of New York?
9 A I have no specific awareness of the location of
10 Indian Nations except for the ones that I've been
11 on myself. I don't think I've ever been in one,
12 that I knew of, in New York.
13 Q Was any effort made to interview any persons on
14 Indian reservations in the State of New York?
15 A Only if their population percentage would have
16 justified their ending up in the draw. In other
17 words, they were potentially in the pool to start
18 with, they just didn't satisfy the criteria by
19 which ultimately sampling was achieved.
20 Q Was that a percentage of the total population of
21 the state?
22 A No, of the county. At that level. Are you asking
23 me in general or for New York or what?
24 Q For the State of New York, was any effort made to
25 ascertain the counties in New York and what

1 percentage of that county had an Indian
2 population?
3 MR. LINDSEY: Objection, form and
4 foundation.
5 THE WITNESS: The first strata in
6 the sampling plan was to select states with the
7 highest number of Native Americans, excluding
8 Alaska and Hawaii. The second strata was to
9 select counties from within those states from
10 which the final sample was drawn. However there
11 was a further stratification which was rural urban
12 so as to have approximately equal numbers of
13 respondents in each of those two categories.
14 Q Now, in the first strata the population of New
15 York State is very high, is that not correct?
16 A That's correct.
17 Q You have a general knowledge of the population of
18 the State of New York as being one of the most
19 populous in the country, is that correct?
20 A That's correct.
21 Q And there are Indian reservations in the State of
22 New York. I represent that to you. There are
23 Indian reservations in the State of New York.
24 By eliminating the State of New York, does
25 that eliminate any opportunity for the sample to

1 include respondents who are on those Indian
2 reservations?
3 A Oh, by definition, sure. As a matter of their
4 physical actual --
5 Q So this sample does not necessarily reflect the
6 views of any member of the Iroquois Nation, is
7 that correct?
8 MR. LINDSEY: Objection, form.
9 THE WITNESS: I don't know where
10 the Iroquois Nation is located.
11 BY MR. REINER:
12 Q In the State of New York.
13 A Well, I don't know how you -- not to want to
14 mislead you, I've testified on surveys that I've
15 conducted on your behalf --
16 Q One.
17 A -- where the sample did not represent very many
18 cities in the United States but which the purpose
19 of the study was to represent the opinions of
20 consumers throughout the United States. If people
21 were not sampled from the State of Oklahoma, they
22 physically could not possibly have been
23 represented in the result. And yet I never
24 qualified the report to say, oh, except for people
25 living in Oklahoma, Arizona and New Mexico. So I

1 would say by definition, physically no one from
2 New York was in this survey. But as to whether or
3 not the conclusions of this survey would be
4 applied generally to the population at issue, I
5 would say it would be reasonable to do so.
6 Q In a survey for trademarks, a random selection of
7 sites are frequently used, is that correct?
8 A I'm sorry.
9 Q When you're doing a survey, nationwide survey in a
10 trademark case --
11 A Right.
12 Q -- is it standard practice and procedure to try to
13 ascertain the place where questions should be
14 asked by an random selection of locations in the
15 United States by the four census zones?
16 MR. LINDSEY: Objection, form,
17 foundation.
18 THE WITNESS: Sometimes. It
19 depends upon whether you're trying to represent
20 the opinions of Americans or the opinions of
21 sub-samples, doctors, Spanish speaking people. In
22 each of those cases, the answer would be -- in the
23 second two cases, the answer would be no. Your
24 sampling frame would start out being something
25 other than a random selection of the total United

1 States.
2 BY MR. REINER:
3 Q Is it not a basic proposition of survey technique
4 that you use a random selection of sites to ask
5 questions for purposes of ascertaining the sample?
6 A Not usually. Because if you did that, you would
7 end up drawing sites, i.e. malls, where there was
8 interviewing capability that would be unacceptable
9 because the facility had produced bad work for
10 you. So I would say no.
11 Q As a starting proposition in the use of a sampling
12 plan, is it not standard practice and procedure in
13 surveys to select locations throughout the United
14 States by a random selection of sites and then
15 attempting to locate a precise mall within the
16 sites that would be satisfactory?
17 A If one is generalizing to the general American
18 population rather than to a sub-set, then one
19 might draw a diverse, i.e. representative sample,
20 by going to 4, 8 or 11 census regions, depending
21 upon your definition of region, and trying to find
22 a mall facility within each of those regions to
23 constitute your sample. But that would not be
24 random.
25 Q This is not a mall survey?

1 A That's correct. Telephone.
2 Q This is a telephone survey, is that correct?
3 A It's a random digit dial telephone survey.
4 Q Was any effort made to find counties in the State
5 of New York where there were a substantial number
6 of Native Americans living?
7 MR. LINDSEY: Objection, form.
8 THE WITNESS: No. Not by virtue of
9 the sampling plan.
10 BY MR. REINER:
11 Q And according to the sampling plan here, was any
12 effort made to ascertain what percentage of
13 populations in the State of New York, by county,
14 had a substantial number of Native Americans?
15 A No. No, not by county in the State of New York.
16 Q Does this sampling plan reflect a sample taken at
17 random from all persons who would classify
18 themselves as Native Americans?
19 MR. LINDSEY: Objection, form.
20 THE WITNESS: It's a random sample
21 of people who are Native Americans. And by
22 extrapolation it is reasonable to infer that the
23 answers of other randomly selected Native
24 Americans, who could not participate because they
25 were excluded by geographic design from the

1 sample, would have been the same.
2 BY MR. REINER:
3 Q And 50 percent of all of the counties sampled were
4 in two states in the United States, is that
5 correct?
6 A Well, I can't get you the page now but there were
7 many counties that ended up in the sample that
8 came from two or three of the 12 states involved.
9 Q And by concentrating in two or three of the
10 states, does that necessarily reflect the state of
11 mind of persons of tribal groups not located in
12 that state?
13 MR. LINDSEY: Objection, form,
14 foundation.
15 THE WITNESS: Necessarily?
16 BY MR. REINER:
17 Q Yes.
18 A It would be reasonable to infer that the answers
19 from a larger group were represented from the
20 sampling technique employed.
21 Q Do you have any basis, scientific basis to say
22 that the response given by a Navajo living in
23 Arizona would be the same as a response given by a
24 person of the Iroquois tribe in New York?
25 A Only in the aggregate, that the sample that was

1 executed is a reasonable representation of Native
2 Americans in the United States. And by extension,
3 one would expect that the answers would be the
4 same among Native American persons that might be
5 in any state in the United States that was not
6 itself in the sampling population.
7 Q And it is not limited to the 50 counties in which
8 the sample was taken?
9 A That's correct.
10 Q And you say that with a degree of scientific
11 certainty as an expert in taking surveys?
12 A That as to say the generalization of the result to
13 the larger population from the stratification that
14 I have described is quite commonly done in survey
15 research.
16 Q That's your opinion.
17 A Well, I share it with the textbooks from which I
18 teach.
19 Q What text books are you referring to?
20 A The market and research textbooks.
21 Q Which ones?
22 A Well, let's see, I've taught from Zickman, a
23 chapter on stratified sampling. I've taught from
24 Gilson. I've taught from probably most of them by
25 now over 30 years. But certainly the ones in my

1 library would. Stratification starts out with all
2 respondents being in the population available for
3 the pull, available for the draw in strata. Which
4 is what was done here. That's to say New York was
5 not excluded. The method by which the final
6 sample was achieved would be called a stratified
7 probability sample with a random digit dial draw
8 from the final strata level. And that would be
9 how you'd find it in any marketing research
10 textbook that I'm familiar with.
11 Q I believe in your report you said that
12 approximately .76 percent of the population of the
13 United States are to be classified as Native
14 Americans, is that correct?
15 A That's correct. That was my information.
16 Q Of that .76 was any effort made to find out from
17 the group classifiable as Native American by
18 county, where they live, for purposes of making a
19 sampling plan by stratification?
20 MR. LINDSEY: Objection, form,
21 foundation.
22 THE WITNESS: I don't understand
23 the question.
24 BY MR. REINER:
25 Q Let's break it up. There are certain groups of

1 persons in the United States called Native
2 Americans that constitute approximately .76 of the
3 population?
4 A That's correct.
5 Q And the counties in which these persons live on
6 reservations is ascertainable, is that correct?
7 A That's correct. They would be within the census
8 data, which is what we looked at.
9 Q And no effort was made to stratify the counties by
10 looking to see where most of the Native Americans
11 lived --
12 A Not as a starting point.
13 Q Now, wait a minute. As opposed to a percentage of
14 the total population of the United States?
15 A Not as a starting point. No more so than --
16 Q Would it not have been reasonable for you, in
17 designing a sample, to ascertain where Native
18 Americans lived by county and then taking the most
19 populous counties for purposes of stratification?
20 MR. LINDSEY: Before you answer that
21 question, if you were not finished with your prior
22 answer, you certainly may complete your answer to
23 the prior question.
24 THE WITNESS: The answer is that
25 all sampling plans that involve strata involve

1 making decisions about what the order in which the
2 sample will be taken will fall. One could start
3 out with block enumeration districts, to the
4 extent that the census department would provide
5 information, which they don't, as to the
6 percentage or number, absolute number of Native
7 Americans that live on block enumeration or on
8 census tracks or in zip codes. One could start a
9 sample that way. One could start it in other ways
10 I could describe besides states. I felt that the
11 method that was used in what the stratification
12 was that was executed was a very good one, in fact
13 a very elaborate one, to do a fair representation
14 of the Native American population. I don't deny
15 that there are other ways it could have been done.
16 I didn't.
17 Q The universe is Native American population for
18 purposes of part of this survey, is that correct?
19 A That's correct.
20 Q And in terms of the percentage of persons living
21 in a county compared to the percentage of persons
22 living in other counties who classify themselves
23 as Native Americans, no effort was made to
24 stratify that group, is that correct?
25 MR. LINDSEY: Objection, form.

1 THE WITNESS: No, that's not true.
2 It was done within states.
3 BY MR. REINER:
4 Q By percentage of the total population?
5 A That's correct.
6 Q Not by percentage of the Indian population?
7 A No. No. The total, the percentage of the Native
8 American population in states and then the
9 percentage of Native American population in
10 counties within those states with a rural/urban
11 condition as well.
12 Q If 10 percent of all Native Americans lived in the
13 State of New York, would that be an appropriate
14 stratification to take 100 percent of all Native
15 Americans and have 1/10 of them being interviewed
16 in the State of New York?
17 A It really depends upon how elaborate and how
18 extensive you want your sampling plan to be. For
19 example, one could call all households in the
20 United States and ask the person who responded if
21 they were a Native American if one were to have
22 executed a simple random digit dial sample. And
23 one might argue that that would have been the best
24 and I would agree. But that would have been
25 extremely costly and I think very unnecessary for

1 the purposes of testing the proposition of what in
2 fact were the attitudes of Native Americans. So I
3 employed what I felt was a fair plan for that
4 purpose.
5 Q If 10 percent of the population of Native
6 Americans live on reservations in New York State,
7 would it have certain counties that can be
8 ascertained by looking to see where the
9 reservations are, would it not have been feasible
10 to create a sampling plan by digit dialing those
11 counties in which those reservations where?
12 MR. LINDSEY: Objection, form,
13 incomplete hypothetical.
14 THE WITNESS: It would have been
15 possible to have selected a sample from any
16 starting point where Native American households
17 could be identified.
18 BY MR. REINER:
19 Q And that would have provided you with some data in
20 a sample for Native Americans in New York State
21 living on reservations in the state?
22 A If you thought that were a critical part of your
23 sampling plan.
24 Q And you didn't think it was critical to ascertain
25 nationwide what various Native Americans felt who

1 were residents in the State of Massachusetts or
2 New York?
3 A No.
4 MR. LINDSEY: Objection, form.
5 THE WITNESS: They reside in all 48
6 states, I assume, that are in the United States.
7 By definition the stratification plan did not end
8 up with a mechanism by which each and every one of
9 those states would be represented. That's what a
10 stratification means with respect to a sampling
11 plan.
12 MR. REINER: Well, why don't we take
13 a break.
14
15 (A break was had in the proceedings)
16
17 MR. LINDSEY: I am going to make
18 another comment for the record.
19 MR. REINER: Sure.
20 MR. LINDSEY: In the hopes of trying
21 to resolve differences. Over the lunch hour I
22 have taken the opportunity again to examine the
23 documents that Mr. Ross produced. And so our
24 record is clear, I believe he referred this
25 morning to the documents that have been sealed in

1 an envelope and marked as Exhibit 2. Because of
2 the copying issue, that actual sealing hadn't been
3 done. So I simply offer that clarification for
4 the record.
5 Proceeding, however, to the issue between
6 us. Counsel, you have asked me if I would either
7 identify the documents involved for the record or
8 would log them. And I want to understand, are you
9 telling me that if there are any documents in the
10 possession of either of your experts, who are to
11 be deposed next week, which are responsive to the
12 subpoena, that you will either produce those
13 documents or you will identify them for the record
14 or provide me a log of those documents?
15 MR. REINER: I will comply with the
16 Federal Rules which require that either documents
17 are produced when subpoenaed or they are not
18 produced because privilege of some type is
19 asserted. Under those circumstances you give a
20 log of the document and the reason why it is not
21 being produced. That's all I expect you to do and
22 that's all I expect that I will do. That is, I
23 will either produce documents that have been
24 subpoenaed or, if I'm claiming a privilege of some
25 type, I will have a log prepared as I believe is

1 required by the Federal Rules, and let the court
2 decide whether or not the privilege is appropriate
3 or not appropriate. And that's all I've asked you
4 to do.
5 MR. LINDSEY: Counsel, your
6 colleague, Ms. Flynn, has also advised me that she
7 will accept service of subpoenas for your
8 witnesses and I'll be preparing to tender the
9 actual subpoenas to you at the end of the day
10 today. And those subpoenas will be essentially
11 the same subpoenas as you've served on me or
12 directly on the experts in two instances. And I
13 want to make certain that the statement that you
14 have just made will apply to those subpoenas as
15 well. Is that correct?
16 MR. REINER: The statement I made is
17 a statement of the general obligations that anyone
18 has in litigation. It applies to documents that
19 are being asked to be produced, it applies to
20 documents that are being subpoenaed. I'm telling
21 you now that if you serve me with a subpoena, and
22 you ask for documents, if the documents are
23 available they will either be produced or they
24 will be put on a log for identification purposes
25 and let the court decide whether they have to be

1 produced.
2 MR. LINDSEY: And my only concern
3 about that statement is that you said if the
4 documents are available. Do you mean if the
5 documents exist in the possession of the witness.
6 MR. REINER: Of course. Of course.
7 And in response to your earlier question, yes, we
8 will accept service of the subpoenas in this
9 litigation.
10 MR. LINDSEY: You also said, sir, I
11 believe the phrase was privilege or other basis,
12 and I'm not quite sure what your exact phrasing
13 was. Without asking you to tell me what grounds
14 would apply to a specific document, can you tell
15 me just in general the types of grounds we're
16 talking about so I understand where we are?
17 MR. REINER: The only grounds I know
18 of, which are those permitted by law, which are
19 things such as attorney-client privilege, unless
20 that privilege has been waived in some manner, or
21 unless there is a privileged work product that has
22 not been waived by the proffering of an expert
23 witness. Whatever is the obligation under the law
24 will be honored.
25 MR. LINDSEY: At present are you

1 aware of whether privilege will be claimed as to
2 any documents in the possession of the experts
3 that you have retained, excuse me, the two that
4 you've disclosed?
5 MR. REINER: I cannot recall of
6 anything in particular right now, no. And if
7 there is, I would advise you and give you a log.
8 I can't recall any though. I don't think in the
9 nature of litigation, that the type of privileges
10 we're talking about apply.
11 MR. LINDSEY: Based on that
12 statement that we have finally elicited, I will
13 state that we will now produce the entirety of the
14 documents which were to have been sealed and
15 marked as Exhibit 2 this morning. The documents
16 are there.
17 MR. REINER: Okay, let the witness
18 identify the documents, not me.
19
20 (A discussion was had off the record)
21
22 MR. REINER: Let's put on the
23 record that Exhibit 2 will not be used and is not
24 to be considered in these proceedings and that the
25 witness now has before him a series of documents

1 which he will identify commencing with the next
2 number sequentially.
3 MR. LINDSEY: Which would be No. 4.
4 BY MR. REINER:
5 Q Would you identify the first document on top?
6 A Yes. This is the --
7 MR. LINDSEY: I will represent that
8 that is the subpoena as it was transmitted to me
9 by Ms. Flynn. At least the first document within
10 it.
11 THE WITNESS: That's the subpoena.
12
13 (Deposition Exhibit Nos. 4 and 5 Marked For
14 Identification)
15
16 THE WITNESS: The next one is
17 the --
18 MR. LINDSEY: Exhibit 5.
19 THE WITNESS: Exhibit 5 is the text
20 component of what's been marked as Exhibit 3.
21
22 (Deposition Exhibit No. 6 Marked For
23 Identification)
24
25 THE WITNESS: The next actually was

1 clipped but they're now unclipped. They consist
2 of my file that would have materials that are not
3 in fact part of Exhibit 3.
4 MR. LINDSEY: And for the record,
5 the materials that the witness referred to as
6 having been clipped have now been re-clipped and
7 consist of a variety of materials as just
8 described by the witness, the first page of which
9 is a memorandum dated December 23, 1995.
10
11 (Deposition Exhibit No. 6 Marked For
12 Identification)
13
14 THE WITNESS: This is a set of
15 documents that include the petition for
16 cancellation, the answer and the petitioners'
17 motion for partial summary judgment that I
18 received from Mr. Lindsey in December.
19 MR. LINDSEY: And the witness has
20 just referred to what has been marked as Exhibit
21 No. 7.
22
23 (Deposition Exhibit No. 8 Marked For
24 Identification)
25

1 MR. LINDSEY: The witness is now
2 referring to what has been marked as Exhibit 8.
3 THE WITNESS: Exhibit 8 is a
4 transmittal letter and associated materials dated
5 December 18 from Mr. Baird that requires me to
6 sign my having read and agreed to the transmittal
7 letter's terms and conditions and has attached to
8 it some articles that I've referenced this morning
9 and some other materials that are relevant to this
10 case that I received from him.
11
12 (Deposition Exhibit No. 9 Marked For
13 Identification)
14
15 THE WITNESS: The rest of the other
16 documents, Exhibit 9, are almost all of the
17 appendix materials. Everything that's in Exhibit
18 9 is contained within the report that we've been
19 discussing as Exhibit 3.
20 BY MR. REINER:
21 Q Is there anything else in addition to what's in
22 the report?
23 A No. Not in Exhibit 9.
24
25 (A discussion was had off the record)

1
2 BY MR. REINER:
3 Q Let me just ask you a few questions about the
4 documents you've produced. One of the documents,
5 No. 7, is under a clip. And it is documents, the
6 petition for cancellation and an answer to the
7 petition and petitioners' motion for partial
8 summary judgment. That's correct, isn't it?
9 A That's correct.
10 Q Did you receive this prior to your design of a
11 questionnaire used in this?
12 A Yes.
13 Q At that point in time you knew that the issue was
14 the use of the word redskins and the name
15 Washington Redskins football team, isn't that
16 correct?
17 MR. LINDSEY: Objection, form and
18 mischaracterization. You may answer.
19 THE WITNESS: I was aware of the
20 petition. I understood the issue.
21 BY MR. REINER:
22 Q What did you understand the issue to be?
23 MR. LINDSEY: Same objection.
24 THE WITNESS: The issue that I took
25 to be the guide for what the survey would address

1 came from my discussion with counsel after I had
2 read this and the other documents. So I had read
3 it but it was with all of that background that I
4 had the discussion that lead to my decisions as to
5 what the questionnaire should focus on.
6 BY MR. REINER:
7 Q Do you understand that the purpose of the petition
8 was for the cancellation of the marks of the
9 Redskins and Washington Redskins mark of the
10 respondent?
11 A Yes.
12 Q And you knew that the issue related to the use of
13 the word redskins and the name of the team
14 Washington Redskins, is that correct?
15 MR. LINDSEY: Objection, form.
16 THE WITNESS: It relates to the
17 cancellation. The legal means by which
18 connections are made for that purpose is not my
19 purview. I was only responsible for designing and
20 conducting a survey that counsel felt was a
21 relevant component of their case in which I felt
22 was accurately and fairly produced. But beyond
23 that, I don't want to make a characterization of
24 this role as it relates to the complaint.
25 BY MR. REINER:

1 Q Do you think an element of the use of the word
2 redskins by the team is the context in which the
3 word is used by the team?
4 MR. LINDSEY: Objection, form, vague
5 and ambiguous.
6 THE WITNESS: You mean as a legal
7 opinion?
8 BY MR. REINER:
9 Q No. As a psychologist. You're here as a
10 psychologist as an expert. In your view.
11 A I know but you asked me a legal question.
12 Q No, I'm asking you a very simple question. Do you
13 think it is relevant to ascertain what people
14 think about the use of the words redskins for the
15 name of the NFL team that plays in Washington
16 D.C.?
17 MR. LINDSEY: I object. You are
18 specifically asking the witness to comment on
19 relevance and I think that's very clearly a legal
20 question.
21 MR. REINER: I'm asking him as a
22 psychologist whether he considers the state of
23 mind of a respondent, as a psychologist, now. I'm
24 not asking you a legal opinion, I'm just asking
25 you as a psychologist. Their views and their

1 views only.
2 Read the question back please.
3
4 (The pending question was read back)
5
6 MR. LINDSEY: Objection, form,
7 vague, ambiguous and legal conclusion.
8 MR. REINER: You may answer.
9 MR. LINDSEY: If you understand the
10 question.
11 THE WITNESS: My main problem with
12 the question is that it's sort of compound. But
13 my understanding is that what I proposed to do, as
14 I understood the complaint and the discussions
15 that I had with counsel, was viewed by counsel as
16 relevant, as a relevant state of mind to measure
17 with respect to their view of the case. And
18 therefore they approved of what I had recommended
19 as a research design.
20 BY MR. REINER:
21 Q Did you ever consider asking any respondent what
22 they thought of the use of the word redskins for
23 the name of the Washington Redskins football team?
24 MR. LINDSEY: Objection, form. You
25 may answer.

1 THE WITNESS: I think that in the
2 initial meeting that I had on that, and many other
3 kinds of questions were discussed, all of which of
4 course are ultimately for legal judgment and my
5 role would be, once that decision is made, is to
6 design and execute a study which is an accurate
7 one with respect to the state of mind that I
8 understand is to be measured. But, yes, that was
9 on the table and other matters as well.
10 BY MR. REINER:
11 Q What were the other matters?
12 A Well, other kinds of names or words that might be
13 measured in context to determine whether or not,
14 as I said earlier, the continuum of the degree of
15 potential offensiveness that might obtain in the
16 real world would be incrementally or additionally
17 or better measured by the use of terms describing
18 other ethnic or minority groups. And so that
19 issue was discussed as to what the relevance or
20 lack of relevance of those might be to this
21 issue. There were other kinds of, you know,
22 design issues that were discussed.
23 Q Were you instructed not to ask the question what
24 perceptions of respondents would be concerning the
25 use of the word Washington Redskins by the

1 football team?
2 MR. LINDSEY: Objection, form.
3 THE WITNESS: That was never a
4 specific instruction. It was my recommendation,
5 after the discussion with counsel as to what could
6 be measured, that what I did end up measuring was
7 viewed by them to be a relevant thing to measure.
8 And that's all I was concerned with.
9 BY MR. REINER:
10 Q Could you have measured what the respondents
11 thought of the use of the word Washington Redskins
12 for a team in the NFL?
13 MR. LINDSEY: Objection, form,
14 incomplete hypothetical and speculative.
15 THE WITNESS: Do you mean to have
16 substituted the words Washington Redskin into this
17 questionnaire? One could have done that.
18 BY MR. REINER:
19 Q You could have?
20 A Anything is possible.
21 Q Could you have asked additional questions
22 concerning people's perceptions of the use of the
23 word redskins in the context of the name of the
24 Washington Redskins football team?
25 MR. LINDSEY: Objection, vague,

1 ambiguous and speculation.
2 THE WITNESS: Assuming it were
3 relevant? Anything is conceivable to be asked. I
4 asked what I asked.
5 BY MR. REINER:
6 Q You asked what you asked after consultation with
7 counsel, is that correct?
8 A That's correct. As to the legal issues that were
9 to be addressed which has to be the attorney's
10 judgment.
11 Q Now, there are certain tabulations that you did
12 where you added the reaction of the people with
13 respect to themselves perceiving the word redskin
14 to be offensive and the reactions of what they
15 thought other people might think, is that correct?
16 MR. LINDSEY: Objection particularly
17 to the use of the word added insofar it's implying
18 that this witness did anything like that.
19 MR. REINER: Let me ask that
20 question in the direct. Withdraw that question.
21 BY MR. REINER:
22 Q Did you add together the percentages derived from
23 people who thought themselves that the word
24 redskins was offensive to those who thought that
25 the word redskins may be offensive to others?

1 A No. Unless there's a semantic issue that you
2 haven't casted quite right.
3 Q What did you do?
4 A To consider a person as having reflected a state
5 of mind that the one or another of the terms they
6 were presented with was offensive, either to
7 themselves or to others, if they answered either
8 of those two questions in the affirmative. And I
9 aggregated that percentage. I aggregated that
10 number across the respondents and calculated and
11 showed their percentages. I did not separately
12 add the percentages of those who either said
13 offensive to self or offensive to others as two
14 separate percentages. I didn't do that.
15 Q Did you find that there were respondents who
16 thought that the word redskins would be offensive
17 to others who did not consider it offensive
18 themselves?
19 A I think so, yes.
20 Q And did you find that there were people who
21 thought that the word redskins was offensive to
22 them but might not be responsive to third parties?
23 MR. LINDSEY: I think you mean
24 offensive.
25 MR. REINER: What did I say?

1 MR. LINDSEY: Responsive.
2 MR. REINER: Withdraw the question.
3 BY MR. REINER:
4 Q Did you find anyone who themselves believed that
5 the word was offensive but who did not believe
6 others would think it was offensive?
7 A I think so.
8 Q That group of respondents was included as being
9 offended, finding the word offensive, is that
10 correct?
11 MR. LINDSEY: Foundation.
12 THE WITNESS: Whichever leg, either
13 or both, they would have been included.
14 BY MR. REINER:
15 Q Did you do any tabulations which would have
16 excluded the persons that considered the word
17 offensive to others from those that considered
18 them offensive to themselves?
19 A Yes. They're reported in the same table that
20 we've been referring to.
21 Q You have a different table for those who thought
22 that the word was offensive to themselves as
23 opposed to those who thought it was offensive to
24 others?
25 A No. It's the same table. It's the different part

1 of the same page. The middle and the bottom part.
2 Q And you are referring to?
3 A Tab 2.
4 MR. LINDSEY: Of Exhibit 3.
5 THE WITNESS: Of Exhibit 3.
6 BY MR. REINER:
7 Q And you're referring, then, to the tabulation at
8 the bottom of the page?
9 A In the middle and on the bottom.
10 Q In the middle and on the bottom, okay.
11 A Two component parts of what's on top. But I want
12 to make it clear so there's no confusion, I did
13 not add together, for example, the 49.5 percent
14 for Injun offensive to you to the 57.5 percent
15 Injun offensive to others. Those percentages were
16 not added in coming up with what the top third of
17 the table presents.
18 Q Now, with respect to the sampling that we've been
19 talking about, there is a letter in here dated
20 3/11/96 to you from Jim Robinson, is that correct,
21 and I'd like to draw your attention to the third
22 paragraph thereof.
23 A Okay.
24 Q Did you read it?
25 A Yes.

1 Q That indicates that there are a number of Indians
2 who are members of a tribe residing in Erie
3 County, New York, is that correct?
4 MR. LINDSEY: You're referring to
5 the parenthetical, note the one in Erie, New York
6 with only ten persons?
7 THE WITNESS: Are you asking me
8 about the county or the census track?
9 BY MR. REINER:
10 Q I'm asking you about in that letter that reference
11 is made to Erie County, New York?
12 A Yes. To a census track, note the one in Erie, New
13 York with only ten persons.
14 Q It would have been possible to randomly call one
15 of those ten persons, would it have not?
16 A Technically, yes. Yes, you could call.
17 Q And you could have done that in other counties
18 throughout the United States once you ascertained
19 that there were some members who were members of
20 tribes residing in that county?
21 A Yes. I would suspect that that would --
22 Q And no effort was made to do that?
23 MR. LINDSEY: Objection, form.
24 THE WITNESS: Not as a separate
25 strategy, no. Because there would be, I think the

1 great majority of counties in the United States
2 that would have one or more. It wasn't the issue
3 to enumerate each and every Native American and to
4 put them in a pool because that is impossible with
5 respect to the sampling plan. One has to throw in
6 others that are not Native Americans by
7 definition.
8 BY MR. REINER:
9 Q Did you discuss with Mr. Robinson, or anybody else
10 at his company, the use of counties in New York
11 State that had several thousand members of a tribe
12 residing in a county?
13 MR. LINDSEY: Objection, form.
14 THE WITNESS: We discussed other
15 sampling plans, one of which would have been the
16 potential for drawing counties or other census
17 enumeration designations, zip codes, et cetera.
18 BY MR. REINER:
19 Q And that was not done, though?
20 A No, it was not done.
21 Q Now, in terms of attempting to get a universe of
22 Native Americans and devising a sampling plan, you
23 had available to you through the Census Bureau the
24 population of Native Americans in counties, did
25 you not?

1 MR. LINDSEY: Objection, form.
2 THE WITNESS: Yes. Among other
3 designations.
4 BY MR. REINER:
5 Q So that it was feasible for you to ascertain
6 counties in every state that had more than ten
7 persons that would be members of a tribal group?
8 A I'm not sure whether or not there were, exactly
9 how the numbers were reported. But certainly
10 conceptually it would have been possible to
11 evaluate each county with respect to the
12 approximate number of Native Americans.
13 Q And those counties could have been identified by
14 use of a telephone area code, is that correct?
15 MR. LINDSEY: Objection, form.
16 THE WITNESS: No. Telephone area
17 code is not coincident with either counties or
18 census tracks and so would not have been a
19 possible sampling frame component for a stratified
20 sample.
21 BY MR. REINER:
22 Q Is it that more than one county could be included
23 in an area code?
24 A Yes. And vice-versa.
25 Q Is it also conceivable that calls could have been

1 made to a county in upstate New York that has a
2 heavy population of Native Americans, within the
3 county, and ascertain the views of a sample of
4 that group?
5 MR. LINDSEY: Objection, form.
6 THE WITNESS: Probably.
7 BY MR. REINER:
8 Q Now, was the response rate approximately 14
9 percent of the those persons that were interviewed
10 for the sample?
11 A I didn't go through the actual calculation for a
12 response rate. I did look at the component to
13 that calculation and they looked to be about the
14 same as what we get in random digit dial surveys.
15 But I didn't make a calculation.
16 Q Would that be of approximately 14 percent?
17 A I couldn't tell you.
18 Q Was it substantially less than one-third?
19 MR. LINDSEY: Objection, foundation.
20 THE WITNESS: I couldn't tell you.
21 I know that it seemed of the same magnitude in
22 terms of its component parts. And in typical
23 telephone radom digit dial samples we end up with
24 someplace between 10, depending on the incidence
25 issues, but someplace between 10 and 25 percent

1 typically with three call backs.
2 BY MR. REINER:
3 Q Is that done in a plan that is stratified so that
4 you get counties that have more persons of a
5 particular group of which you are directing the
6 questions?
7 A No. Whether stratified or not, you end up with
8 that kind of range. It could be a pure random
9 digit dial national sample, which I've executed
10 dozens of times, and the completion rate as
11 expressed in the equation would be between 10 and
12 20 percent. Typically 10 and 25 percent is the
13 highest I've ever seen.
14 Q Is that after you have used a stratified sampling
15 plan to identify a concentration of people with a
16 characteristic in certain counties?
17 A Doesn't make any difference. The stratification
18 occurs before the telephone numbers are selected.
19 In other words, stratification is not part of what
20 goes on after a contact has been made. Whether
21 it's pure random or a stratified sample, the
22 question is how many you're going to start out
23 with to interview, what are the incidents of
24 people within that sample and then what do you end
25 up with in terms of call backs and so forth. One

1 can reduce, for example, the -- one can increase
2 the response rate by increasing the number of call
3 backs. I mean, there are, in the typical case,
4 three call backs is the standard.
5 Q Now, in this particular sample that was stratified
6 by counties, you only used 50 counties, is that
7 correct?
8 MR. LINDSEY: Objection, form.
9 THE WITNESS: It was stratified by
10 states and then counties. It was a multi-stage
11 probability sample.
12 BY MR. REINER:
13 Q It was stratified, then, to 50 counties throughout
14 certain states of the United States?
15 A County was an initial stratification and had its
16 requirement for a county being in. State was an
17 initial consideration, counties drawn within
18 states, then a rural and urban quota effectively
19 was established so as not to over or under
20 represent rural versus urban residents.
21 Q So within that sampling plan, approximately 50
22 counties were utilized, correct?
23 A Yes.
24 Q And those 50 counties are about 2 percent of the
25 3,000 counties in the United States, is that

1 correct?
2 MR. LINDSEY: Objection, asked and
3 answered, foundation.
4 THE WITNESS: If your numbers are
5 correct, I assume so. I don't have in mind an
6 actual number of counties.
7 BY MR. REINER:
8 Q Of the 50 counties, you had a response rate of
9 between 10 and 25 percent is what you're saying,
10 is that correct?
11 A No. The percentage figure has nothing to do with
12 the number of counties.
13 Q No, within the sample.
14 A Within the sample.
15 Q Of 50 counties.
16 A Within the sample, whether there's 1,000 counties
17 or 2,000 counties.
18 Q Whatever it is.
19 A Whatever.
20 Q You had a sample of 50 counties, is that correct?
21 A The start was for 50 counties.
22 Q And you took a response rate of somewhere between
23 10 and 25 percent within those counties?
24 A We didn't take that rate, that's the rate that
25 would be calculated to have obtained after the

1 disposition of each call was calculated as shown
2 in the appendix.
3 Q And assuming it was as low as 10 percent, would
4 that mean that 10 percent of the sample within 50
5 counties was used for purposes of projecting to
6 the entire United States?
7 A No.
8 Q What does it mean?
9 A Percentage has to do with of the 100 percent of
10 individuals who were included in the initial draw,
11 what percentage of interviews were quote,
12 completed. And I say quote because the formula
13 for the calculation of the response rate modifies
14 the denominator to exclude those that would not
15 reasonably have been in the population. So it's a
16 rather complicated equation but it only relates to
17 the percentage of the initially designated
18 telephone numbers having been completed.
19 Q Approximately 10 to 25 percent of the telephone
20 numbers were completed, is that correct?
21 A Of the original, approximately 10 to 25 -- well, I
22 don't know what the actual percentage was. But
23 whatever it was, that percentage would be referred
24 to as the response rate meaning of all of those
25 participants in the survey, how many in fact

1 turned out to be participants in the survey making
2 some adjustments for what the evidence of the
3 survey indicated with respect to, in the case of
4 Native American samples, people who were called
5 and claimed not to be Native American. Because by
6 definition, you automatically picked up people
7 from some of those counties, many people, who were
8 not Native Americans and who were not interviewed.
9 And so that shouldn't count against you in the
10 response rate because they weren't part of the
11 population anyway. The formula takes that into
12 consideration.
13 Q If the response rate was 10 percent --
14 A Okay.
15 Q If the response rate was 10 percent for the
16 creation of the sample, would that --
17 A Creation of the sample?
18 Q Yeah.
19 A You're already into a nonsensical statement.
20 Q You had a sample?
21 A Right.
22 Q That sample was made up of persons who were
23 contacted by telephone?
24 A A random sample of individuals selected from those
25 counties, that's correct. Not all of the people

1 in the counties were attempted to be contacted.
2 Q And if that were 10 percent of that sample --
3 A The ones that were completed of the original
4 sample.
5 Q That would reflect 10 percent of the attempts to
6 contact people within those counties, is that
7 correct?
8 A Roughly. Because the equation isn't one for one.
9 We don't put completed interviews in the numerator
10 and total listings in the denominator. It's a
11 more complex equation.
12 Q And the result of that is that you had a response
13 rate of anywhere between 10 and 25 percent of
14 persons within 50 counties in the United States,
15 is that correct?
16 A I didn't calculate the actual response rate. I
17 would think it would be in the neighborhood of 15
18 to 20 percent based upon the nature of the numbers
19 that I was looking at.
20 Q Can that figure be ascertained by the data that
21 you have?
22 A Yes. With the application of the formula for
23 response rate which I have in my files but not
24 with me today.
25 Q Where are they?

1 A I didn't calculate it.
2 Q You say within your files but they're not with
3 you. Where are your files?
4 A Well, I mean the textbook in which the formula for
5 the calculation of a response rate is found in
6 every marketing research textbook that's
7 published. I was not subpoenaed to bring that.
8 Q Not the data, then?
9 A No, not the data. The formula.
10 Q Just the formula, all right. Assuming that the
11 formula, for purposes of your discussion here,
12 were 15 percent. Would that be something that
13 would be within the range of what you've been
14 saying would be a normal expectation for a
15 response rate?
16 A Yes. It has been in all the studies that I've
17 been involved with.
18 Q So when you have a stratification that results in
19 50 counties only in the United States, and half of
20 those are within two states, there is a further
21 modification of that data by the response rate,
22 isn't that correct?
23 A No. You're conceptually misunderstanding the
24 sample.
25 Q Would you please, for the record, tell us again

1 what the relevance of the response rate is to the
2 gathering of the data.
3 A The response rate is a calculation of the
4 percentage of individuals who could have been
5 interviewed, who in fact were interviewed taking
6 into account considerations related to how many
7 people were in the original sample that were not
8 really qualified to be interviewed at all. They
9 were out of the age range, they were out of the
10 Native American range, whatever, taking those
11 factors into consideration. That percentage has
12 nothing to do with whether or not one sample
13 initially represented one state, one city, all
14 states. It's a statement that describes what
15 happened with the resultant sample.
16 Now, as an independent matter, if you wanted
17 to characterize the sample as in fact coming from
18 this number of states or as in fact coming from
19 this number of counties, you can do so. But you
20 can't join that discussion with the concept of
21 response rate and come up with anything except
22 statistical junk.
23 Q Now, I believe that the qualifying word was that
24 people consider themselves American Indians, is
25 that correct?

1 A For the Native American sample.
2 Q For the Native American sample, is that correct?
3 A Well, yes. That had to be the precondition.
4 Q In the State of Arizona are there a number of
5 people of Mexican descent?
6 A Yes.
7 Q And would they consider themselves American
8 Indians?
9 A They might if they believed themselves to also be
10 a Native American person which was the framing of
11 the question.
12 Q If they did not think that they were a Native
13 American person belonging to tribal group
14 recognized by the Bureau of Indian Affairs but
15 they considered themselves an American Indian
16 because they're of Mexican extraction --
17 A Oh, because they were of Mexican extraction?
18 Q Yes.
19 A Well, I don't know. That's their designation. I
20 can't imagine why they would. If they thought
21 that Mexican were a Native American tribe, they
22 might say that.
23 Q It doesn't say Native American tribe, it says
24 American Indian person, does it not?
25 MR. LINDSEY: Yes, let's get that

1 straight.
2 THE WITNESS: American Indian
3 person.
4 BY MR. REINER:
5 Q So that someone answering the phone could say yes,
6 I am an American Indian person and that that
7 person not have one ounce of tribal blood in them?
8 A Could be.
9 MR. LINDSEY: Objection to the term
10 tribal in that question.
11 THE WITNESS: They were
12 subsequently asked the question of tribal and gave
13 a response which was recorded. Had they thought
14 that Mexican were a tribe, then the word Mexican
15 would appear, presumably, as a tribal designation.
16 And I don't believe it does in any of the cases
17 that I looked at.
18 BY MR. REINER:
19 Q Was every respondent asked for a tribal group they
20 belonged to?
21 A They were asked --
22 MR. LINDSEY: In the Native
23 American sample.
24 THE WITNESS: -- if they did.
25 BY MR. REINER:

1 Q In the Native American sample.
2 A If they belonged to a tribe. And if they said
3 they did, they were asked to designate, to
4 identify the tribe, yes.
5 Q And if they said they did not belong to a tribe,
6 of course, there was no such designation?
7 A That's correct.
8 Q In the procedure that was followed asking for
9 persons whose birthday comes next within the
10 household.
11 A Yes.
12 Q Was there any instruction given to the persons
13 conducting the interview to call back if that
14 person wasn't present at the specific time that
15 the call was made?
16 A Yes.
17 Q Where is it?
18 A It may not be in the document, but it was part of
19 an oral instruction, at least, that was conveyed
20 by me to Mr. Robinson that was to be intended to
21 be communicated to the interviewers.
22 Q Do you have any document that shows that in fact
23 that was communicated to the interviewers?
24 MR. LINDSEY: Objection, form and
25 legal conclusion.

1 THE WITNESS: I don't know until I
2 check whether there's a call back position located
3 within the computer administered questionnaire or
4 not. Let me just check. I don't see anything in
5 the computer screen that related to call back
6 times having been designated. And I don't know
7 whether or not there were any other notes kept at
8 the time the actual interview was administered by
9 the interviewer as to call back. Let me just
10 finish reading this one thing.
11 BY MR. REINER:
12 Q Sure.
13 A There must have been some mechanism because if you
14 turn to Tab 8 on page 1, you see a status field on
15 the questionnaire where the word call back
16 appears. This particular page for the general
17 population indicates that as of the time the
18 actual quota was filled of the completed
19 interviews, 300 interviews, there were 68
20 individuals who were in a call back mode. That is
21 to say who were in the process of being called
22 back at the time that the study was halted. So
23 that means that there was a call back procedure
24 but it doesn't appear as a computer screen, at
25 least not one that's printed in this document.

1 Q Now, the instructions to the person doing the
2 interviewing were, I need to speak with someone in
3 the household 16 years old and whose birthday
4 comes next. Is that the wording that was used?
5 A Not exactly.
6 Q What was the wording, please?
7 A It appears on page 2, Tab 7.
8 Q Would you read it into the record?
9 A Hello, my name is blank and I'm calling from RMA
10 Research, a national public opinion research
11 company. We're doing a survey today among people
12 throughout the United States. I have just a few
13 questions taking no more than about ten minutes.
14 I can assure you that I'm not selling anything and
15 that answers will be kept strictly confidential.
16 According to our research procedures, I need to
17 speak with someone in the household 16 years old
18 and whose birthday comes next. May I please speak
19 to the person whose birthday would be next.
20 Q Does that imply that the person has to be present
21 in the household at that point in time, in
22 specific presence in the household at that point
23 in time?
24 MR. LINDSEY: Objection, form.
25 THE WITNESS: Does the question --

1 MR. REINER: Let me withdraw it.
2 BY MR. REINER:
3 Q Does that mean that the person has to be present
4 there at that moment in time when the call is
5 made?
6 A No. It's not intended to mean that. It's
7 intended to mean may I speak with the person whose
8 birthday would be next. And it's only if the
9 person says that person isn't here that a call
10 back would be arranged.
11 Q What happens if the person says, well, Jane isn't
12 here but Joe is and he'll be 16 after Jane and he
13 gets put on the phone?
14 A That person is not supposed to be interviewed.
15 Q Do you have any information of whether or not that
16 person was in fact interviewed?
17 A The interviewer would not have been following
18 instructions. The questionnaire specifically
19 provides for the interviewer to make a notation
20 only if the person is not home, if a designated
21 respondent is not home. If that person is not
22 available for an interview because that person is
23 not home, an interview was not conducted.
24 Q But if the interviewer were not informed that the
25 person was not home --

1 A I'm sorry, wait a minute. Maybe I'm not
2 understanding what you're saying. You're asking
3 me how do I know if the person who is not home?
4 Q No. My question to you is a telephone call comes
5 in from an interviewer and is answered by somebody
6 who's 50 years old.
7 A Right.
8 Q And the person is asked, I would like to speak to
9 someone in the household who is over 16 and whose
10 birthday comes next.
11 A Right.
12 Q And he says, well, that's me.
13 A That's me.
14 Q Because there's somebody else who's not there at
15 that point in time whose birthday may be the next
16 day but they're not there?
17 A Then that would be okay because that would capture
18 the sense of the directions if that person's
19 birthday would be next.
20 Q No. The person's birthday that would be next
21 isn't there, it's the one who answered the phone
22 who is two weeks from now. But he says, no, I'm
23 the next one because I'm the only one here.
24 A Right. But if you look at the example I just
25 read, it says if not home: May I please speak to

1 the person whose birthday would be next. Which is
2 what I read. So if that person who you're talking
3 to says, well, the person that's really next isn't
4 at home but I am, then the interviewer would
5 continue because that's the next person, that's
6 the person in the household whose birthday is
7 next.
8 I thought your question was whether you
9 could count the number of people who were
10 interviewed who in fact had the next birthday in
11 the household as distinct from those who might
12 have been interviewed who themselves were not the
13 next birthday in the household because the first
14 person wasn't at home. There would be no way to
15 make that calculation.
16 Q That was the point of my question and you've
17 answered.
18 A That's what I thought. Okay.
19 Q Was there a refusal rate among the persons
20 identified as Native Americans who answered the
21 phone but who refused to participate?
22 A Yes.
23 Q What was that?
24 A Well, I mean, there's a count portrayed in the
25 document as to the number who refused, who were

1 tabulated as having refused. There is a section,
2 Tab 5 for urban Native Americans and Tab 6 for
3 rural Native Americans. So looking at the urban
4 Tab 5, if they refused, they would have been coded
5 as category 6, refused, and their numbers are
6 shown to the right. So if you looked at that
7 page, you would see that 372 individuals refused
8 in the interviewing process to start the interview
9 or didn't get beyond the first question of, well,
10 I'm too busy to be interviewed, goodbye. If they
11 terminated later in the interview, they'd show up
12 as terminate.
13 Q And that affects the response rate, is that
14 correct?
15 A To some degree. They're in the rather convoluted
16 denominator to the equation. Obviously the
17 greater the number of refusals, the lower the
18 response rate, everything else being equal in the
19 formula. But it's not a one-to-one relationship.
20 Q So of the Native American population, you
21 completed 358 completed questionnaires, completed
22 interviews?
23 A Yes. Consisting of urban and rural and tribal
24 members and self-designated not tribal.
25 Q But 358 was the total amount of the sample, is

1 that correct?
2 A Yes.
3 Q And the total number that were attempted was
4 2,541, is that correct?
5 A 47.
6 Q 2,547?
7 A In the urban native American population sub-
8 sample of which almost all but not all were
9 available, 2,494.
10 Q So the numerator would have been 358 completed
11 over 2,547 attempted, is that correct?
12 A That's not the equation, no.
13 Q Isn't that --
14 A I can't tell you from memory.
15 Q I'm not asking you from memory. Do you know how
16 many attempts were made from the data before you?
17 A How many attempts were made?
18 Q To contact Native Americans.
19 A Urban Native Americans?
20 Q Uh-huh.
21 A Disregarding call backs and what their disposition
22 was, there would have been 2,494 in the base
23 sample of which 1,690 were used. That is where a
24 person or a household were contacted and some
25 disposition of that was made, 1,690 under status

1 in this table we're looking at.
2 Q And how many were completed?
3 A 169 of the urban Native American population.
4 Q That would be approximately what percentage were
5 completed of those that were contacted?
6 A 10 percent if that were all that went into the
7 calculation of response rate, which it isn't. In
8 other words, those that have say answering
9 machines and so forth are not entirely held
10 against you with respect to a response rate
11 calculation. And incidentally, 222 of the people
12 contacted were not Native Americans. So that
13 shouldn't count in the denominator. And there's
14 lots of factors that go into the calculation of
15 response rate.
16 Q Now, in terms of the manner in which the counties
17 were ascertained, can you tell me what criteria
18 was used to include persons within the
19 classification of Native American Indians?
20 A The operational definition for including a person
21 by which the counties were selected or the
22 respondents ended up being in the survey?
23 Q No, the counties.
24 A The counties were the official census designation
25 count tabulation of Native American Indians and

1 was from census records, 1990.
2 Q Now, is there a difference between the census
3 records of those persons who consider themselves
4 Native American Indians and those who are actually
5 enrolled in a tribal group?
6 MR. LINDSEY: Objection, form and
7 foundation.
8 THE WITNESS: I don't know.
9 BY MR. REINER:
10 Q Did you make any effort to ascertain that?
11 MR. LINDSEY: Objection, form.
12 THE WITNESS: I honestly don't
13 remember whether there was or wasn't any
14 discussion with the survey research bureau person
15 on that question. I honestly don't remember. I
16 may have, I don't know.
17 BY MR. REINER:
18 Q So as far as you know now, the persons that were
19 classified as Native American Indians, or as you
20 phrased it American Indian persons, were not
21 necessarily members of a tribal group?
22 A No. No. I thought you meant in the selection of
23 the counties, what was the operational definition
24 of American Indian that went into the selection of
25 whether one county as opposed to another would be

1 in the sample. And I said that for that, we used
2 the Census Department's definition as of the 1990
3 census, whatever that definition was. That's
4 different than the question of whether a person
5 did or didn't designate themselves as being a
6 Native American, American Indian or a member of a
7 tribe in the survey. That was what we asked
8 people in the sampling procedure.
9 Q In the sampling procedure?
10 A Right.
11 Q Do you have any information that there are more
12 people included in the census as being American
13 Indian persons than those people that are members
14 of a tribe?
15 A I do not have knowledge of that fact.
16 Q Was any effort made to determine that when you
17 consulted with the institute in South Dakota?
18 MR. LINDSEY: Objection, foundation.
19 THE WITNESS: I don't recall it
20 specifically but I know that the general question
21 of definition of Native American or American
22 Indian was discussed because I wanted to make sure
23 we were on the same wavelength. You know, in the
24 State of Minnesota, a 1/16 member of a particular
25 tribe is entitled to share in the casino's income;

1 and if you're less than 1/16, you're not. And
2 those kinds of issues I was aware of and so I had
3 the discussion, I remember, about definitional
4 issues. But I can't report to you now whether I
5 asked or was told that there was or wasn't a
6 difference between the census definition and any
7 other definition of say tribal BIA or other
8 entity's counts or tabulations. I don't remember.
9 BY MR. REINER:
10 Q Now, in the questions that were asked, that series
11 13 was directed towards what the respondent
12 thought others would think about the word
13 offensive, is that correct?
14 MR. LINDSEY: Just so our numbering
15 stays straight, are you referring to --
16 BY MR. REINER:
17 Q Yeah, if you want to look at a specific question,
18 we were looking at this before. Look under Tab 4,
19 page 6.
20 A Okay. Page 4, Tab 6?
21 Q Look at page 10 under Tab 4 as an example of the
22 question.
23 A Question 13?
24 Q Under question 13-A.
25 A Right.

1 Q Whether or not you would be offended, do you think
2 that the term redskin being used to describe an
3 American Indian person would be offensive to
4 others or do you think it would not be offensive
5 to others or don't you have an opinion one way or
6 the other about that. Do you see that question?
7 A Right.
8 Q Who are the others being referred to?
9 A Whoever the respondent conjured in his or her mind
10 as composing the word others.
11 Q It could be anybody, then?
12 A It was meant to be a generalized others.
13 Q It could have been a Native American?
14 A Could have been.
15 Q It could have been someone of Oriental derivation?
16 MR. LINDSEY: I object to form for
17 this series of questions. You may answer.
18 THE WITNESS: It could have been
19 anyone. Whatever the generalized other meant to
20 the respondent.
21 BY MR. REINER:
22 Q So you don't have any information now as to what
23 the respondent thought of when the word others
24 were used?
25 MR. LINDSEY: Objection, form.

1 THE WITNESS: No. There was never
2 any information down about that.
3 BY MR. REINER:
4 Q Was any drafts prepared by you that would have
5 indicated what the respondent would think of other
6 American Indian persons would have thought?
7 A That question wasn't asked.
8 Q No. Did you contemplate asking that question at
9 any time?
10 MR. LINDSEY: Objection, form.
11 THE WITNESS: You mean asking an
12 American Indian whether they thought that another
13 American Indian would be offended?
14 BY MR. REINER:
15 Q Yes.
16 A I don't believe that that conversation -- I don't
17 remember that conversation.
18 Q There is no basis for you to know what others
19 means in response to this question, is that right?
20 MR. LINDSEY: Objection, form and
21 foundation.
22 THE WITNESS: It means whatever the
23 -- it was intended to mean whatever the respondent
24 took it to mean.
25 BY MR. REINER:

1 Q And you have no informational data which would
2 indicate to you what the respondent meant?
3 MR. LINDSEY: Same objections.
4 THE WITNESS: That's correct.
5 BY MR. REINER:
6 Q There was no follow-up questions?
7 A That's correct.
8 MR. LINDSEY: Same objections.
9 BY MR. REINER:
10 Q With respect to the survey procedures, was there
11 any post survey validations attempted at all?
12 A Post survey?
13 Q Yes.
14 A No. Just the on-line 15 percent.
15 Q Have you ever done any post survey validation in
16 trademark cases?
17 A Yes.
18 Q Don't you usually do them in trademark cases?
19 A Not if it's a telephone survey. There's what we
20 call on-line validation.
21 Q And the on-line validation is done by whom?
22 A By usually the shift supervisor at the research
23 company and we get a separate report from that
24 person as to whether or not there were any
25 interviewers whose work was not being executed

1 correctly and if so what was done about it. And I
2 did talk to the shift supervisor about that.
3 Q How many shift supervisors were there?
4 A There were two shift supervisors, to my knowledge,
5 that were used in total on the survey.
6 Q Did you receive any report from them at all?
7 MR. LINDSEY: Objection.
8 THE WITNESS: Oral.
9 BY MR. REINER:
10 Q Any written report?
11 A No.
12 Q And in a survey that is to be used in court, do
13 you usually rely upon a 15 percent validation?
14 MR. LINDSEY: Objection, form.
15 THE WITNESS: If it's a telephone
16 survey, that would be customary.
17 BY MR. REINER:
18 Q You have done that in the past in surveys that are
19 to be used in a court proceeding?
20 A Yes.
21 Q And you've relied on 15 percent?
22 MR. LINDSEY: Objection, form.
23 THE WITNESS: In telephone surveys,
24 yes.
25 BY MR. REINER:

1 Q Is that your normal practice and procedure?
2 MR. LINDSEY: Objection, form.
3 THE WITNESS: For this kind of a
4 survey, it would be. It would be for a random
5 digit dial telephone sample.
6 BY MR. REINER:
7 Q For use in a court proceeding?
8 MR. LINDSEY: Same objection.
9 THE WITNESS: Yes.
10 BY MR. REINER:
11 Q Have you ever attempted a hundred percent
12 validation?
13 A Oh, yes. In mall intercepts frequently. Not
14 always.
15 Q Did you ever try to do it in a telephone survey?
16 A I may have but I don't think so.
17 Q Have you ever tried a post survey validation in a
18 television survey, in any survey, which you were
19 preparing for a court proceeding?
20 A Telephone, yes, I have. I have at least once.
21 Q That was not done here?
22 A No.
23 Q Now, in terms of what was explained to Robinson &
24 Muenster, did you discuss with them the legal
25 issues involved as explained to you?

1 MR. LINDSEY: Objection, form.
2 THE WITNESS: No. The issues, no.
3 BY MR. REINER:
4 Q What did you discuss with Mr. Robinson or anybody
5 else working with him?
6 A The fact that it was for litigation purposes,
7 where the principal of the research firm has to
8 know. Because sometimes that's a problem with
9 their work in the sense that they might have some
10 conflict. And in this particular case, since I
11 was asking him to volunteer his time, or at least
12 as much of it as he could, I wanted him to know
13 that the subject matter of the research was to
14 address the proposition of a question, test the
15 hypothesis that different words that respondents
16 would be exposed to might be perceived
17 differently. And he was aware, I'm sure, of the
18 redskin matter because that was the only one of
19 these, to my knowledge, that was being contested
20 or at issue in the press at and before that time.
21 Q Would the persons doing the interviewing be also
22 aware of what the issue was?
23 A No. Absolutely not.
24 Q How do you know that?
25 A I believe they were not informed because I told

1 Mr. Robinson that under no circumstances were even
2 the shift supervisors to be aware. Now, they may
3 draw their own inferences, obviously. But they
4 were not instructed as to what the -- they were
5 not intended to be told. They were not told to my
6 knowledge.
7 Q This was in the press, in the newspaper. Is that
8 what you're saying?
9 MR. LINDSEY: Objection to this
10 line --
11 THE WITNESS: Well, I think that
12 the concept, once one looks -- interviewers do a
13 lot of interviews and they are familiar with
14 reasonable inferences. The copy, there had been
15 press about the policies of certain newspapers
16 concerning the use of nicknames for sports teams
17 printed in the Minneapolis papers and it's
18 reasonable to assume that that was not uncommon
19 knowledge to a reasonably bright interviewer in
20 South Dakota. There are also obviously a
21 substantial number of American Indian persons in
22 South Dakota so it would not be surprising to me
23 if some inferred. But then they wouldn't know, I
24 wouldn't think, even if they guessed that it were
25 for litigation purposes, whether the subject

1 matter were necessarily just redskins or also
2 braves or Injun or others since I think almost all
3 of these nicknames have been, if not currently
4 still are being used by one or another team.
5 BY MR. REINER:
6 Q In terms of the instructions given to the
7 supervisors, did you participate in giving those
8 instructions?
9 A Not personally, no. I never do.
10 Q Who did?
11 A Mr. Robinson.
12 Q Did he have anything in writing that he used for
13 purposes of instructions?
14 A I didn't give him anything. I don't think so. I
15 mean, I didn't give him anything. I just
16 discussed with him the flow of the questionnaire
17 and, you know, what to do or not do. Repeating
18 the question as stated without elaborating or
19 reinterpretation. But I created no instrument of
20 training, if you will, that went to him.
21 Q And you don't know whether he did?
22 A I have no knowledge of whether he did or not.
23 Q Did you participate with any instructions given to
24 interviewers?
25 A No.

1 Q Do you know whether Mr. Robinson did?
2 A It is my understanding that Mr. Robinson did the
3 training or briefing, if you will, of the
4 interviewers. The shift supervisor was also to be
5 present. That's the only understanding I have
6 about what was to be done.
7 Q Do you know how many interviewers there were?
8 A There were several. I don't know the exact number
9 but I know that there were at least three or four.
10 There may have been more.
11 Q And these interviewers were located where?
12 A In Sioux Falls, South Dakota.
13 Q And do you know if any of those interviewers were
14 members of any tribal group?
15 A I don't know.
16 Q Do you know if any of the supervisors were members
17 of a tribal group?
18 A I don't know except for having said that I visited
19 the facility on several occasions and that would
20 not be my visual impression. But I don't know for
21 a fact how they might have identified themselves.
22 Q Do you know any of these petitioners?
23 A No.
24 Q Did you ever meet any of them?
25 A I don't believe so, no.

1 Q Did you ever talk to them on the telephone?
2 A No.
3 Q Do you recognize any of their names?
4 A Yes.
5 Q Which do you recognize?
6 A I need to have that document.
7 Q The subpoena, here. Showing you Exhibit No. 1.
8 A Oh, no. None of these names. I thought there
9 were other names mentioned in one of the
10 documents. Perhaps there weren't. In my mind I
11 had it that there were names that I recognized
12 from the more extensive documents that were
13 included with the cancellation petition. Like for
14 example Russell Means. But I don't see his name
15 appearing here. Maybe I was just juxtaposing the
16 word Russell for William. But there are certain
17 names which ring a bell. Not on that list.
18 Q Is Russell Means related to William Means?
19 A I don't know.
20 Q Who is Russell Means?
21 A Well, he's a Native American who had received a
22 lot of press notoriety for prior, I would call
23 politically active activities. I think that's how
24 he would characterize it. Some would say criminal
25 activities depending on your point of view. But

1 there are, Minneapolis is a community in which
2 some Native Americans have achieved some degree of
3 notoriety.
4 Q Do you know if any of the supervisor personnel
5 knew any of the petitioners?
6 A No.
7 Q Was any inquiry made by you of whether or not any
8 of the supervisors knew any of the petitioners?
9 A No.
10 Q Was any effort made by you to ascertain if any of
11 the interviewers knew any of the petitioners?
12 A No.
13 Q Was any effort made, to your knowledge, by Mr.
14 Robinson, to ascertain if any of the supervisors
15 knew any of the respondents?
16 MR. LINDSEY: Objection, compound
17 and foundation.
18 THE WITNESS: I don't believe so.
19 BY MR. REINER:
20 Q Did Mr. Robinson make any effort to find out
21 whether any of the interviewers knew any of the
22 respondents?
23 A Not to my knowledge.
24 Q Of petitioners? Pardon me.
25 A Not to my knowledge.

1 Q Did you discuss with Mr. Robinson the
2 ascertaining, whether or not any of the persons
3 involved in the interviewing process knew any of
4 the petitioners?
5 A No. I certainly didn't nor did I ask how much
6 they like pro football. You hire a research
7 facility, you hire them on the basis of their
8 honesty and integrity. And honestly, that never
9 crossed my mind with respect to their ability to
10 execute the questions in a fair manner.
11 Q Do you know if Mr. Robinson is an American Indian
12 person?
13 A I believe he is not. I've never asked him the
14 question but I believe he's not.
15 Q Have you broken down any of the data anywhere, at
16 any time, by age groups 16 to 19, 19 to 35, et
17 cetera?
18 A No. No, except as they appear in the verbatim
19 transcript, they have not been summarized or
20 tabulated.
21 Q You have not personally done so, is that correct?
22 A No one has done so to my knowledge.
23 Q Have you ascertained if any of the responses for
24 persons over the age of 30 were different in the
25 aggregate than the responses for persons under the

1 age of 30?
2 A No.
3 Q Do you think that's relevant?
4 MR. LINDSEY: Objection, legal
5 conclusion, form and foundation.
6 THE WITNESS: I don't think so. The
7 purpose was to get diversity and gender and age
8 which I satisfied myself was the case by reviewing
9 the transcription. There was no further purpose
10 to be achieved.
11
12 (A break was had in the proceedings)
13
14 BY MR. REINER:
15 Q Now, I just have a few general questions first.
16 Why did you pick 18 years of age as the floor
17 level to ask people questions?
18 MR. LINDSEY: Sixteen?
19 THE WITNESS: Sixteen.
20 BY MR. REINER:
21 Q Sorry, 16 years of age?
22 A Ordinarily we don't like to talk to children in
23 surveys generally because they often give
24 gratuitous and silly responses. And yet on the
25 other hand, we didn't want to just talk to legal

1 adults and so I made the judgment that 16 seemed
2 to be a good cut off to get rid of silliness and
3 yet go deeply enough into the general population
4 that the generalization would be appropriate.
5 Q So if a base date of 1967 were used, you would
6 have to add 16 years to that to go to 1983 to get
7 a person's state of mind at that point in time?
8 MR. LINDSEY: Objection, vague,
9 ambiguous.
10 MR. REINER: Withdraw it.
11 BY MR. REINER:
12 Q If a person wasn't born until 1983 --
13 A Right.
14 Q -- would that person be able to express any views
15 concerning the use of the word redskins prior to
16 1983?
17 MR. LINDSEY: Form.
18 THE WITNESS: No. I mean,
19 depending on how you infer whether his answer
20 would reasonably have been different had he been
21 alive. I mean, there is some constancy to certain
22 kinds of attitudes but to others it's very
23 ephemeral. But not as an empirical fact, no.
24 BY MR. REINER:
25 Q Now, if you go to page No. 5 for the Native

1 American population, I think it's Tab 4. If you
2 go to page 5, the question that is asked there in
3 the middle of the page is, I'm going to say some
4 terms which you might hear someone say when
5 referring to an American Indian person.
6 Does that limit the response of the person
7 being interviewed to referring only to an American
8 Indian person as such?
9 MR. LINDSEY: Objection, form.
10 THE WITNESS: Well, it's really a
11 two-part issue. On the one hand they're
12 instructed that what they're going to be hearing
13 are terms which might be used when referring to an
14 American Indian person. Having said that, then
15 the next question is one or more of these terms
16 may be offensive to you, et cetera. But they are,
17 to some degree, disconnected thoughts in the sense
18 that they're instructed as to what the context of
19 the term would be and then they're asked if that
20 term is offensive to them. Their answer to that
21 is intended to be an outgrowth of that frame of
22 reference. But it may not be. I mean, I might
23 object to the term even if it was used for a
24 Mexican American person.
25 BY MR. REINER:

1 Q But the first sentence says that the respondent
2 might hear someone say.
3 A Right.
4 Q When referring to an American Indian person.
5 A Right.
6 Q That puts the context of redskins being referred
7 only to an American Indian person, isn't that
8 correct?
9 MR. LINDSEY: Objection, form,
10 argumentation.
11 THE WITNESS: Insofar as that
12 statement goes, yes. It is intended to be that
13 when referring to an American Indian person.
14 BY MR. REINER:
15 Q So that it has no other reference other than a
16 reference to an American Indian person, is that
17 correct?
18 MR. LINDSEY: Objection, form,
19 argumentation.
20 THE WITNESS: No. As I said, a
21 person in response to the operative end of the
22 question, when asked if it is or isn't offensive
23 to you, might not connect that with the Native
24 American or American Indian premise. But I would
25 think that many would, presumably most would. But

1 I can't say for certain that it would have to be
2 in that context that they would answer the
3 question.
4 BY MR. REINER:
5 Q Can it be in any context other than an American
6 Indian person?
7 MR. LINDSEY: Objection, form.
8 THE WITNESS: I think it could. That
9 so to say a person might have a visceral reaction
10 to the term whether or not it were a part of in
11 the American Indian premise. But obviously the
12 question was intended to give that as a premise.
13 BY MR. REINER:
14 Q And that refers to an American Indian person in
15 the singular, is that correct?
16 A Yes.
17 MR. LINDSEY: You're referring to
18 the same question?
19 BY MR. REINER:
20 Q Yes, the same question.
21 A An American Indian person, yes.
22 Q Now, in the instructions given to the
23 interviewers, I would like you to refer to page 1
24 under Tab 4, please, of Exhibit No. 3. In the
25 middle of the page, there is a notation H:OPN.

1 What does that mean?
2 A OPN is the -- I'm not sure what acronym H stands
3 for except to say that there is always some letter
4 or number that's used to separate the various
5 sections of the screen that would appear. My
6 opinion would be that this is the opening screen.
7 OPN is the opening screen that the interviewer
8 would see.
9 Q And what is the first instruction given?
10 A Type the respondent's answers in complete
11 sentences on your keyboard.
12 Q And the next line?
13 A Please use proper grammar and spelling.
14 Q Does this instruction permit the interviewer not
15 to record the verbatim as used precisely by the
16 respondent but to interpret it in complete
17 sentences and proper grammar and spelling?
18 MR. LINDSEY: Objection, form.
19 THE WITNESS: No. It is intended to
20 mean that assuming the respondent speaks in a
21 complete sentence, that it should be typed that
22 way. In other words, don't summarize or shorthand
23 it, type it that way. That's the intent of that
24 instruction. Remember, as I said, this is what
25 appears on the screen, this is not the totality of

1 the instructions given to the interviewers. There
2 were other things that were transmitted as well.
3 But so far as this is concerned, this is pretty
4 standard. And the intent is that interviewers are
5 to be made aware that they're not to shorthand or
6 keyword in their typing of answers to the
7 question, the answer that they hear.
8 BY MR. REINER:
9 Q Does it also mean that they can paraphrase the
10 answer of a respondent?
11 A They're not supposed to. If in fact the
12 respondent speaks in a complete sentence. If the
13 respondent speaks a paraphrase, I mean in a
14 non-sentence, then the interviewer would
15 presumably -- is instructed to type that. You
16 can't make sentences out of non-sentences.
17 Q That's not the instruction, though. The
18 instruction is type the respondent's answers in
19 complete sentences on your keyboard.
20 A Well, I would say that that would be my reasonable
21 expectation of what a lawyer, as a literalist,
22 would bring to the question. But as a survey
23 person, I can assure you that it doesn't mean and
24 would not mean to an interviewer to create a
25 sentence out of a non-sentence since, as you can

1 see from the verbatims, many of the responses were
2 one or two word responses. You couldn't make them
3 a sentence, there's no verb and there's no noun.
4 Q What's the next line for, then? Please use
5 proper grammar and spelling.
6 A It's intended to remind them that they should try
7 and be careful and write down what they're hearing
8 correctly so that when we read it, we can
9 understand what they meant, what the respondent
10 said.
11 Q Does this give any flexibility to the interviewer
12 to paraphrase the verbatim response?
13 A What, please use proper grammar and spelling? No.
14 They're hearing something and they're typing it.
15 So they're changing the modality of the
16 communication. We want them to type as correctly
17 as they can what they think they've heard.
18 Q In complete sentences?
19 A No. If there was a complete sentence spoken. And
20 if not, then in whatever form it was spoken. And
21 then within that, by using proper grammar, if the
22 person's response was, you know, grammatically
23 expressed, they should create that proper grammar.
24 Q What you just said is not included in the
25 instructions to the interviewers, is that right?

1 MR. LINDSEY: Objection, form and
2 mischaracterizes the witness' prior testimony.
3 THE WITNESS: I think that's the
4 intent of the screen and certainly is the intent
5 of the training that would have been given them.
6 They're not to paraphrase. There is emphasis on
7 verbatim all over the place and what was trained
8 and what Jim Robinson was told.
9 BY MR. REINER:
10 Q Where is this in the instructions to the
11 interviewer?
12 MR. LINDSEY: Objection --
13 THE WITNESS: It's part of the oral
14 instructions that I mentioned to you that I talked
15 to Jim about that was transmitted. You wouldn't
16 have that appearing on the screen because it would
17 clutter. You'd have a whole lot of instructional
18 material on the screen that only need be spoken
19 once.
20 BY MR. REINER:
21 Q But you don't know that those oral instructions
22 were given, do you?
23 A I can only know what I instructed Jim to do and
24 what I believe he did based upon our prior
25 experiences working together.

1 Q Would you take a look at page 2 of your report,
2 the first section, under paragraph 3-A-1.
3 Reference is made in that one section there to the
4 word scandalous. Is there anything in the data
5 which you have that would indicate that the word
6 redskins is scandalous?
7 A As the term is operationally defined subsequently
8 in the report, yes, the report's conclusions go to
9 whether or not the term is or is not scandalous.
10 Q Scandalous in what meaning of the word scandalous?
11 A The report, at some point, in effect sets out that
12 the concept of offensive is equivalent to or is
13 understood to be synonymous with scandalous for
14 the purposes of the statute.
15 Q Was that, for purposes of the statute,
16 instructions given to you by the attorneys?
17 A Yes. And to some degree at least my reading and
18 understanding of the statutes and cases that were
19 referred to in the Law Review articles that I
20 read.
21 Q On the basis of your understanding of the legal
22 meaning of the word scandalous, the word
23 scandalous is used in this report, is that
24 correct?
25 MR. LINDSEY: Can I have that

1 question back?
2
3 (The pending question was read back)
4
5 THE WITNESS: The word scandalous in
6 this report is used in a way to connect my
7 findings and my understanding of the issues in
8 this case together so that it can make sense to
9 somebody who reads it for the purposes of the
10 litigation. Quite like, for example, when I would
11 use the word false advertising, which is a legal
12 term of art, as a conclusion in a survey that I
13 would conduct on consumers' perception of
14 advertising. It's not stating a legal opinion,
15 it's stating an opinion about what I found, what I
16 believe relates to a legal issue which I have been
17 told about and which I have formed opinions about
18 based upon my reading and conversations with
19 counsel.
20 BY MR. REINER:
21 Q Apart from your conversations with counsel, have
22 you done any research at all into the use of the
23 word scandalous in a legal context?
24 A Only as addressed, as I say, in decisions that
25 have been handed down and discussed or not handed

1 down and discussed, I don't know how these things
2 get communicated, by individuals whose Law Review
3 articles that I read have discussed these topics.
4 Q And you accepted them as the legal interpretation
5 for the word scandalous?
6 A No. I accepted them as views on the issue and
7 ultimately it has to be a legal decision as to
8 whether or not what one purports to do in the
9 measurement is or is not relevant to the legal
10 issue involved. And I deferred in this case, as I
11 would in any case, to the attorneys who retained
12 me to approve whether what I proposed to do was or
13 wasn't relevant to the legal issue as they saw it.
14 Q Apart from the use of the word scandalous in a
15 legal context, is the word scandalous a word that
16 is synonymous with offensive?
17 MR. LINDSEY: Objection, asked and
18 answered.
19 THE WITNESS: You mean as a layman?
20 BY MR. REINER:
21 Q As a psychologist.
22 A I think as psychologist the word scandalous, as I
23 would think about the word and the way that people
24 might react to it from my research experience,
25 might have a sexual titillation component to it

1 which is perhaps not the same kind of meaning that
2 the word offensive might have. Although some
3 might be offended by that kind of meaning, I don't
4 thing they're synonyms. I think they're connected
5 or logically related, I think might be a fair way
6 to say it.
7 There's also some error of what I would
8 characterize as humor or silliness in the word
9 scandalous that somebody might think of, well, the
10 scandals of 1938. Probably before my time but
11 thinking of a Broadway production or a movie
12 production. And that's probably a sense of the
13 word scandalous that is not, hopefully, what you
14 want to measure in these sorts of things. In
15 other words, it would be a lousy word to use in a
16 survey.
17 Q Would the word disparaging be a lousy word to use
18 in a survey?
19 A Not necessarily. But the issue has to do with
20 whether or not the legal standard of disparaging
21 can be met through a more simple device.
22 Especially if it's the same device wording that
23 you're using to address the other lake of the
24 statute. Again, through discussion with counsel,
25 and I felt and I believe that my understanding of

1 the cases as they were being discussed, were
2 consistent with the conclusion that that would be
3 a fair way to measure it given what the decisions
4 had been passed down or handed down by the
5 trademark board.
6 Q Could you have used the word disparaging instead
7 of offensive in the survey?
8 MR. LINDSEY: Objection, form.
9 THE WITNESS: I don't think I would
10 have ever recommended that simply because
11 disparaging is not a word that is as common, not
12 as commonly used word as is offensive. And to the
13 extent that people aren't understanding what your
14 word is in the question, it's a bad question. And
15 I urged strongly on counsel that we use a word
16 that met a legal standard as well as meeting a
17 survey standard as being a word likely to be
18 widely understood by consumers and yet not so
19 trivial that it might cause an overstatement of
20 the issue. For example, the word bad or the word
21 nasty or some other word that might have generated
22 a higher negative response or a higher degree of
23 agreement. It had to be kind of taking all those
24 things into consideration.
25 BY MR. REINER:

1 Q Could a respondent have the view that a word might
2 be offensive but not disparaging also?
3 MR. LINDSEY: Objection, form and
4 foundation.
5 THE WITNESS: Assuming that he knew
6 what disparaging meant?
7 BY MR. REINER:
8 Q Yes.
9 A It's possible. Whatever their understanding of
10 the terms would mean.
11 Q You don't know whether or not a respondent would
12 have said no, the word is not disparaging although
13 I find it offensive?
14 A I can't know that for a fact, no.
15 Q You could have if you had asked the question,
16 right?
17 MR. LINDSEY: Objection, form and
18 argumentation.
19 THE WITNESS: Well, I think it's
20 really a conclusion or an inference more than it
21 is a word that necessarily must be in a question.
22 I mean, you don't ask consumers whether an ad is
23 false, you ask them what they understand it to
24 mean, you draw an inference. Here I asked them a
25 question which I think was a direct way to measure

1 their perception of the issue as it relates to my
2 understanding of the legal issue to be tested,
3 disparagement being one of them, and I used that
4 word for that purpose. I did not use and would
5 never have recommended using the word
6 disparagement in the question.
7 BY MR. REINER:
8 Q Could you have interviewed 100 people in order to
9 determine what their responses would be to the
10 word disparaging rather than offensive?
11 A I can't imagine why I would have wanted to.
12 Q For comparison purposes as an expert to say that
13 you're able to ascertain the difference between
14 people's views on offensive and disparaging.
15 Could you do that?
16 A I can't imagine what it's value would have been.
17 Q You see no value in that?
18 A If there would have been a difference between the
19 two, and in any part contributed to by a lack of
20 understanding consumers had of what the word
21 disparage might mean, then which of the two sets
22 of answers are more probative with respect to the
23 conclusion that you're drawing. No. I mean, you
24 would make a decision about which word or words
25 you think make most sense to put before the

1 respondent to evoke that answer that you think is
2 the most relevant to the issue that you're trying
3 to measure. I made that decision. I do not think
4 and did not think that the word disparaging or
5 scandalous were appropriate words to include in
6 the question for the reasons that I've told you.
7 Q Have you ever done any surveys where you had
8 comparison of responses by asking different words
9 in the same context?
10 MR. LINDSEY: Objection, vague.
11 THE WITNESS: You mean as a pretest
12 or as part of the actual study?
13 BY MR. REINER:
14 Q As part of a test.
15 A I can't think of any offhand. Unless I'm not
16 understanding your question.
17 Q All right. You have never had different cells to
18 test different aspects of a question in false
19 advertising?
20 A Different aspects of a question?
21 Q Yes.
22 A Oh, I thought you meant different ways of
23 potentially asking the same question as if you had
24 different cells.
25 Q Yes.

1 A No. No. Only if there is a reason for the
2 separate cells because you're really addressing a
3 separate state of mind that you don't want to
4 contaminate, for whatever reason, by asking them
5 all or both or whatever the same questionnaire.
6 Q It was feasible to have taken 100 people and asked
7 them what the word -- using the word disparaging
8 instead of offensive and comparing the results,
9 right?
10 MR. LINDSEY: Objection, form.
11 THE WITNESS: You could have, for
12 whatever conclusion you might have drawn from
13 that.
14 BY MR. REINER:
15 Q But you didn't do that?
16 A I did not.
17 Q In pretesting, is it ever done that questions are
18 formulated in pretesting, such as using the word
19 disparaging, to find out whether the word was
20 understood?
21 A You sometimes do pretests for the purposes of
22 determining whether a word, how many understand a
23 word and how many are understanding it anyway,
24 which is reasonable or consistent with what it is
25 you want to convey to them and the meaning.

1 Q Was any pretesting done here?
2 A No.
3 Q Did you contemplate doing pretesting?
4 A No.
5 Q You were varying the use of a word of a statute by
6 using the word offensive instead of disparaging.
7 Did you have any discussions with anybody about
8 doing pretesting?
9 MR. LINDSEY: Objection, form and
10 legal conclusion.
11 THE WITNESS: The first part of
12 your statement I think is -- well, I'm not sure
13 that that's accurate.
14 BY MR. REINER:
15 Q I'm not trying to give you a tricky question.
16 A I didn't vary the words of the statute.
17 Q No, no. It's a very direct question. Did you
18 discuss with anybody doing a pretest on the use of
19 words?
20 A No.
21 Q Did you consider it?
22 MR. LINDSEY: Objection, form.
23 THE WITNESS: I always consider the
24 possibility of doing a pretest if it's called
25 for. In this case I stated an opinion to counsel

1 about what I thought would make the most sense if
2 it were legally appropriate. It seemed to me that
3 it might be but I wanted to have their sign off on
4 that. I knew that I would not use the word
5 scandalous at all in the survey and I assumed that
6 any word that were a relatively uncommon word to
7 use would be unacceptable in a survey as well.
8 BY MR. REINER:
9 Q Do you consider the word disparage a word that is
10 not common?
11 MR. LINDSEY: Objection, form.
12 THE WITNESS: It's not common. It
13 would be a word that would be more than a high
14 school graduate's word if you looked in the
15 semantic thesaurus to make that determination. I
16 haven't done so but I'll betcha that it would be
17 the case if you did.
18 BY MR. REINER:
19 Q And you don't know whether or not it is?
20 A I would tell you that based upon my training and
21 experience with the issue of word complexity, and
22 I frequently have to pick words and choose words
23 from lexicons that rate the frequency with which a
24 word appears in the English language, that that
25 word would be a word that would be using a flesh

1 formula or other reading complexity formula at or
2 beyond a senior high school level word for
3 vocabulary complexity. It would not be a good
4 word to use in a mass survey.
5 BY MR. REINER:
6 Q Did you do any checking of that --
7 A No.
8 Q -- that source? No?
9 A No.
10 Q You make reference to a normalization procedure in
11 your report. Are you aware of that?
12 A Yes.
13 Q How many times have you used a normalization
14 procedure in a trademark case when you've
15 testified as an expert?
16 A Where the concept of normalization was employed,
17 as in this report, several times. Usually in the
18 context of genericism studies.
19 Q And apart from genericism studies, what about
20 confusion studies?
21 A I don't think that it would apply in the case of
22 confusion studies. I don't think it conceptually
23 would apply in the case of confusion.
24 Q Does it apply in anything other than generic
25 studies in a trademark context?

1 A Yes. Conceptually it applies in secondary
2 meaning, and I've used it there, too, where the
3 substantiality issue is always important and where
4 it is sometimes meaningful to test a proposition
5 that a mark or name or design might be almost as
6 well known as something else which the courts may
7 already have decided has secondary meaning or --
8 Q Or was generic?
9 A Or was generic or whatever it might be.
10 Q So it all relates to the same generic proposition?
11 A As a frame of reference. The issue is quite the
12 same.
13 Q What about for false advertising?
14 A I don't think it would apply there.
15 Q So it applies in genericness as opposed to
16 secondary meaning context, is that right?
17 A Yes. In the sense that when you use a false
18 advertising survey or a trademark confusion
19 survey, the adjustment procedure of removing the
20 control percentage is the device that one uses to
21 accomplish the same thing, which is can we give
22 some accurate, more accurate meaning, if you will,
23 to this number. How do we do that. And in those
24 studies, the subtraction device is the most common
25 procedure.

1 Q And you're familiar with the whole concept of
2 secondary meaning, is that correct?
3 A Well, I have an understanding of it, yes.
4 Q You have dealt with the issue of secondary
5 meaning in many surveys, is that correct?
6 MR. LINDSEY: Objection, form.
7 THE WITNESS: Quite a few, yes.
8 BY MR. REINER:
9 Q Does the word Washington Redskins have a secondary
10 meaning in your opinion as an expert?
11 MR. LINDSEY: Objection, form and
12 foundation.
13 THE WITNESS: I would think it
14 does. But, I mean, I would assume so, yes.
15 BY MR. REINER:
16 Q And that secondary meaning does not relate to a
17 reference to an American Indian person, is that
18 correct?
19 MR. LINDSEY: Objection, form,
20 foundation, legal conclusion.
21 THE WITNESS: I would not think so.
22 Primarily I don't think that that's what its
23 meaning would be.
24 MR. REINER: I have no further
25 questions, counsel.

1 MR. LINDSEY: We will reserve the
2 right to read and sign.
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6 * * * 3:30 * * *
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1 STATE OF MINNESOTA)
) ss.
2 COUNTY OF WASHINGTON)
3
4 BE IT KNOWN, that I took the deposition of IVAN ROSS, Ph.D. on the 12th day of December,
5 1996, at Minneapolis, Minnesota;
6 That I was then and there a Notary Public in and for the County of Washington, State of
7 Minnesota, and that by virtue thereof, I was duly authorized to administer an oath;
8
9 That the witness before testifying was by me first duly sworn to testify to the whole truth
10 relative to said cause;
11 That the testimony of said witness was recorded in shorthand and transcribed into typewriting, that the deposition is a true record
12 of the testimony given by the witness, to the best of my ability;
13
14 That I am not related to any of the parties hereto nor interested in the outcome of the
15 action;
16 That the reading and signing of the deposition by the witness was not waived;
17 That the original transcript was delivered to the attorney conducting the deposition for
18 filing.
19
20 WITNESS MY HAND AND SEAL THIS 23RD DAY OF DECEMBER, 1996.
21
22 _____
Sandra D. Kellner
23 Notary Public
24
25

1
2 BE IT KNOWN, that I, the undersigned
3 deponent, have this _____ day of _____, 1996,
4 read the transcript of my deposition testimony,
5 noting the following changes (if any):
6
7 _____
8 IVAN ROSS, Ph.D.
9 Page & Line No. Correction Reason
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NR 4: Trial Depos
(7/18/97)

BLA-TTAB-03367

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Registration No. 1,606,810 (REDSKINETTES)
Registered July 17, 1990,
Registration No. 1,343,442 (SKINS)
Registered June 18, 1985,
Registration No. 1,085,092 (REDSKINS)
Registered February 7, 1978,
Registration No. 987,127 (THE REDSKINS & DESIGN)
Registered June 25, 1974,
Registration No. 986,668 (WASHINGTON REDSKINS & DESIGN)
Registered June 18, 1974,
Registration No. 978,824 (WASHINGTON REDSKINS)
Registered February 12, 1974,
and Registration No. 836,122 (THE REDSKINS - STYLIZED LETTERS)
Registered September 26, 1967

Suzan Shown Harjo,	)	
Raymond D. Apodaca,	)	
Vine Deloria, Jr.,	)	
Norbert S. Hill, Jr.,	)	
Mateo Romero,	)	
William A. Means, and	)	
Manley A. Begay, Jr.	)	
	)	
Petitioners,	)	Cancellation No. 21,069
	)	
v.	)	
	)	
Pro-Football, Inc.	)	
	)	
Respondent.	)	

PETITIONERS' NOTICE OF FILING TESTIMONY
UNDER TRADEMARK RULES 2.123 AND 2.125(c)

Petitioners hereby offer into evidence and make of record in the above-captioned proceedings the following trial deposition transcripts pursuant to the Joint Stipulations of the Parties dated June 3, 1997 and July 18, 1997:

1. Transcript of the deposition of Raymond D. Apodaca, taken 2/7/97 (Vol. 2).
2. Transcript of the deposition of Manley A. Begay, Jr., taken 2/5/97 (Vol. 3).
3. Transcript of the deposition of Susan Courtney, taken 2/18/97 (Vol. 1).
4. Transcript of the deposition of Harold M. Gross, taken 6/11/97 (Vol. 1).
5. Transcript of the deposition of Suzan Shown Harjo, taken 2/6/97 (Vol. 3).
6. Transcript of the deposition of Norbert S. Hill, Jr., taken 2/7/97 (Vol. 3).
7. Transcript of the deposition of Arlene B. Hirschfelder, taken 4/10/97 (Vol. 1).
8. Transcript of the deposition of Frederick E. Hoxie, taken 2/12/97 (Vol. 1).
9. Transcript of the deposition of Judith Kahn, taken 1/31/97 (Vol. 1).
10. Transcript of the deposition of Teresa D. LaFromboise, taken 2/17/97 (Vol. 1)
11. Transcript of the deposition of Geoffrey Nunberg, taken 2/18/97 (Vol. 2).
12. Transcript of the deposition of Geoffrey Nunberg, taken 2/19/97 (Vol. 3).
13. Transcript of the deposition of Mateo Romero, taken 2/17/97 (Vol. 2).
14. Transcript of the deposition of Ivan Ross, taken 2/20/97 (Vol. 2).
15. Transcript of the deposition of Ivan Ross, taken 6/11/97 (Vol. 3).
16. Transcript of the deposition of Elliot Stevens, taken 1/30/97 (Vol. 1).
17. Transcript of the deposition of Walterene Swanston, taken 1/31/97 (Vol. 1).

BLA-TTAB-03369

True and correct copies of each of the above-referenced transcripts are attached hereto, per the above stipulations of the Parties.

The stipulations also provide that for the Board's convenience and to eliminate the submission of cumulative evidence, the exhibits to these deposition transcripts will be submitted with the Petitioners' Trial Brief on August 4, 1997.

Respectfully submitted,

DORSEY & WHITNEY LLP

Dated: July 18, 1997

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BLA-TTAB-03370