

Tab 5

Deposition of J. David Ake

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
CIVIL ACTION NO. 05-145J

----- X
VALENCIA M. McCLATCHEY,
Plaintiff,
vs.
THE ASSOCIATED PRESS,
Defendant.
----- X

DEPOSITION OF: J. DAVID AKE
January 20, 2006, 9:00 a.m.

1 Q. I understand.

2 Your current position as deputy
3 director of photography national, what's your job
4 description?

5 A. I'm the lead manager of the U.S. photo
6 operation.

7 Q. Could you explain to me what that
8 means?

9 A. It means I direct other managers to --
10 I direct other managers to gather and disseminate
11 photographs for coverage of news in the United
12 States.

13 Q. How do you gather and disseminate
14 photos for use?

15 A. Multiple ways.

16 Q. Can you tell me some of those ways?

17 A. We have staff photographers,
18 free-lancers, handout pictures.

19 Q. What's a handout picture?

20 A. A picture someone supplies to us.

21 Q. Is that someone supplies it to you
22 without you asking for it?

23 A. Could be.

24 Q. In your position as senior photo editor

1 A. Based on the story.

2 Q. You mentioned state or country.

3 A. Based on the story.

4 Q. Then when the photograph is routed,
5 what is it? I realize there's like PhotoStream and
6 there are some different --

7 A. PhotoStream is the only --

8 MR. PENCHINA: Let her finish the
9 question.

10 Q. There's PhotoStream. And there are
11 some different ways, I believe, I don't know if I'm
12 correct or not, that the photo can be distributed.

13 A. Yes. I'm only knowledgeable about
14 PhotoStream. That's what I'm responsible for.

15 Q. PhotoStream. Is that United States
16 or --

17 A. PhotoStream is the name of the delivery
18 mechanism.

19 Q. Can you explain to me what PhotoStream
20 is?

21 A. Yes. It's a satellite delivery pushed
22 to members and subscribers of The Associated Press.

23 Q. So through PhotoStream how many members
24 are there in PhotoStream?

1 A. I don't know. I'd have to see the
2 list.

3 Q. Well, actually, what's the difference
4 between a member and a subscriber?

5 A. A member. Associated Press is a
6 not-for-profit co-op. Members are members of that
7 co-op. It was formed 160-some years ago. They all,
8 newspapers got together, find an economical way to
9 gather news. Associated Press was formed as that
10 economical way to gather news in the United States.
11 Broadcast entities in the United States, many of
12 them are members of that co-op. A subscriber would
13 be someone who receives the service but is not a
14 member of the co-op.

15 Q. So PhotoStream is one service that
16 subscribers and members can --

17 A. Yes.

18 Q. What other services are there?

19 A. I don't know. I mean, outside of
20 photography, I don't know.

21 Q. Is PhotoStream the only thing that's
22 used for photography?

23 A. It's how we deliver it to members and
24 subscribers, yes.

1 somebody in the editorial department saying that AP
2 had the right to distribute the photograph according
3 to how procedure normally works?

4 A. He would have asked the supplier of the
5 photograph if we may use it.

6 Q. Are you aware if there were any
7 restrictions on that use?

8 A. I am not.

9 Q. I'm going to show you what was marked
10 yesterday as Plaintiff's Exhibit 4.

11 Can you tell me what this document is?

12 A. It looks to be a printout from a Web
13 browser.

14 Q. Does this look like something you've
15 seen at The Associated Press?

16 A. The information on the Web browser
17 looks familiar, yes.

18 Q. Are you familiar with the various
19 fields that are listed on this exhibit?

20 A. Yes.

21 Q. Can you tell me based on looking at
22 this whether there were any restrictions on "The End
23 of Serenity" photograph as far as distribution?

24 A. Yes.

1 Q. What are those?

2 A. No sales.

3 Q. Can you tell me what that means?

4 A. It would mean that we as an entity
5 would not sell the picture, license the picture is a
6 better term, to people who are not members and
7 subscribers of the AP.

8 Q. Is that a standard restriction for a
9 handout photo?

10 A. Yes.

11 Q. Any other restrictions?

12 A. It also says wide world photos out.
13 That's an old term for exactly the same thing.

14 Q. So wide world photos out means the same
15 thing as no sales?

16 A. It does. It's an older term for it.

17 Q. Any other restrictions that you can
18 see?

19 A. That's it.

20 Q. If there were any other restrictions,
21 would they be located on --

22 A. In the same field, yes.

23 Q. Special instructions field?

24 A. Yes.

1 Q. Can you tell me what the creation date
2 means?

3 A. Creation date is the date that the
4 original digital file was made.

5 Q. Okay.

6 A. The date we made the original digital
7 file.

8 Q. And the submit date?

9 A. The date it landed in the electronic
10 picture desk in New York.

11 Q. How long generally from the time a
12 photograph lands at the electronic picture desk does
13 it take until it gets distributed?

14 A. Depends.

15 Q. What does it depend on?

16 A. The story, the news value. If the
17 picture matches a story we wait for the story to
18 move.

19 Q. Does a photograph ever go straight to
20 the PhotoArchive?

21 A. Yes.

22 Q. In what situations?

23 A. PhotoArchive is a live feed from
24 PhotoStream.

1 Q. So photographs go straight into the
2 archive?

3 A. Once they are transmitted, correct.

4 Q. Then the archive members and
5 subscribers can download photos; is that correct?

6 A. The archive is not my business. I'm
7 not -- I can't -- I can only give you the direct
8 feed to members.

9 Q. Understood.

10 Under the caption writer field it says
11 HMB.

12 A. Hmm-hmm.

13 Q. Do you know who that is?

14 A. Harris MacBeth.

15 Q. Who is that?

16 A. One of the editors on the desk.

17 Q. The transreference number --

18 A. Yes.

19 Q. -- GJP 101.

20 A. Hmm-hmm.

21 Q. Do you know what that means?

22 A. Transreference number is the number we
23 attach to the photograph so we can easily identify
24 it internally. And also let members know in a story

1 this particular photo goes with this story.

2 Q. Can you tell from this whether this
3 photograph was associated with a story?

4 A. I can tell from the story.

5 Q. What do you mean by that?

6 A. The story will have a slug on it. Says
7 use picture GJP 101 with this story.

8 Q. What is under the photographer? It
9 says Val McClatchey, stringer.

10 What does "stringer" mean?

11 A. Let me make sure I see that. Stringer
12 is a term for freelancers.

13 Q. Under credit it says Associated just to
14 the left of that?

15 A. Hmm-hmm.

16 Q. Associated Press HO?

17 A. Hmm-hmm.

18 Q. What does the HO mean?

19 A. Handout.

20 Q. So if stringer is a term for
21 freelancers and credits is handout, can you explain?

22 A. Stringer is incorrect.

23 Q. Stringer is incorrect?

24 A. Stringer is incorrect.

1 Can you tell me what that means?

2 A. Just the name of the database the
3 photograph is stored in.

4 Q. Is the Intl, international?

5 A. Yes.

6 Q. Did PhotoStream allow photos to get
7 distributed to people or to all over the world?

8 A. Yes, they could.

9 Q. Is there any way of knowing when this
10 photo was transmitted who it was transmitted to?

11 A. It went to everyone in the United
12 States; outside of the United States is more
13 difficult.

14 Q. So you don't know if it went to people
15 outside of the United States --

16 A. That's not my purview.

17 Q. -- or any entities?

18 Do you know who would be able to tell
19 us?

20 A. International deputy director
21 photography international.

22 Q. Is there any way of knowing once a
23 photograph has been distributed which members or
24 subscribers actually use that photograph?

1 A. No.

2 Q. So the AP doesn't track that at all?

3 A. No.

4 Q. Where it says "routing all," what does
5 that mean?

6 A. That means it went to everyone in the
7 United States.

8 Q. And "Import folder incoming/L4
9 conversion."

10 A. Just the folder it landed in.

11 Q. The folder it landed in?

12 A. Internally. So we know it's just a
13 marking of what folder it landed in when it came
14 into the system.

15 Q. Okay.

16 A. You got to call it something.

17 Q. I understand.

18 Are you aware if "The End of Serenity"
19 photograph was altered or cropped in any way before
20 it was sent to the electronic desk?

21 A. I am not.

22 Q. The editor responsible for this
23 photograph is Harris MacBeth?

24 A. Hmm-hmm.

1 Q. Correct?

2 MR. PENCHINA: I'm not sure the
3 prior testimony was that he's responsible.
4 You may want to explore that more. He was
5 just identifying who it was.

6 Q. The caption writer?

7 A. Not the caption writer. It's the
8 initials of the person who handled the photograph on
9 the desk and transmitted it to all.

10 Q. But it's listed under the filed caption
11 writer?

12 A. So is JGP --

13 Q. So HMB really isn't the caption writer;
14 just the editor?

15 A. It would be the editor who handled it
16 on the desk. Right.

17 Q. So who is the caption writer?

18 A. Gene Puskar.

19 Q. So the editor is listed first?

20 A. The last person to touch the photograph
21 is always listed first.

22 Q. Did you supply any information to the
23 interrogatory answers by The Associated Press?

24 A. I don't know what that means.

1 Q. I'll take that as a no.

2 Are you aware if The Associated Press
3 has anything in writing from Val McClatchey
4 regarding the use of her photograph?

5 A. I am not.

6 Q. Are you aware if there was any type of
7 verbal agreement between The Associated Press and
8 Val McClatchey regarding the use of her photograph?

9 A. In my conversations with Gene he said
10 he had permission.

11 Q. He said that Val gave him permission?

12 A. Hmm-hmm.

13 Q. Permission to do what?

14 A. Distribute the photograph to accompany
15 the story.

16 Q. To accompany the story?

17 A. Yes.

18 Q. Going back to, which number is this
19 one, 4? 4.

20 It doesn't say anywhere on here that
21 this use of this photograph is limited to being used
22 with the story, correct?

23 A. It does not.

24 Q. Well, if that was what the permission

1 A. Correct.

2 Q. Did Gene tell you anything else that
3 happened when he was at Val McClatchey's house for
4 the interview and the photo?

5 A. No, no.

6 Q. He just said that she gave him
7 permission to use the photograph in relation to the
8 story?

9 A. Correct.

10 MR. PENCHINA: Just going to
11 remind you to wait for her to finish. And
12 say yes/no.

13 MS. SZPONDOWSKI: It's hard.

14 Q. Did he mention anything to you about
15 her giving him the photo just for his own personal
16 benefit?

17 A. No.

18 Q. What would you say the customer base
19 would be for "The End of Serenity" photograph?

20 A. I couldn't.

21 Q. You couldn't?

22 A. I couldn't.

23 Q. Are you a photographer?

24 A. Yes. Used to be.

1 photograph, the photograph was received by Gene
2 Puskar.

3 A. Hmm-hmm.

4 Q. So should the editorial department have
5 contacted Val McClatchey?

6 A. By "editorial," Gene Puskar is a member
7 of the editorial department.

8 Q. So by him speaking with Ms. McClatchey
9 that was --

10 A. Hmm-hmm.

11 Q. -- so he doesn't have anyone above him
12 or anything who would have verified?

13 A. No.

14 Q. Again, he stated that Ms. McClatchey
15 had given him permission to use the photograph in
16 connection with the article?

17 A. He told me he got permission from Val
18 McClatchey to use the photograph. Yes.

19 Q. In connection with the article?

20 A. Yes.

21 (Associated Press license
22 agreement marked Plaintiff's Exhibit 20 for
23 identification as of this date.)

24 Q. I'm going to mark Plaintiff's Exhibit