

## Tab 7

### Deposition of James R. Gerberich

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA  
Civil Action No. 05-145J

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VALENCIA M. McCLATCHEY,

Plaintiff,

vs.

THE ASSOCIATED PRESS,

Defendant.

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DEPOSITION OF: JAMES R. GERBERICH

January 19, 2006, 9:10 a.m.

1 archive?

2 A. No, we don't. We track internal  
3 access, but as part of the work flow, we do not.

4 Q. Is there a standard policy in place  
5 regarding a time period that has to go by prior to  
6 an image being placed in the photo archive?

7 A. Images are placed in in real time to or  
8 near real time to the archive.

9 Q. How long has that been in place where  
10 images are placed in real time into the photo  
11 archive?

12 A. Ten years.

13 Q. What is the system download report that  
14 you reviewed?

15 A. It's a report indicating the download  
16 access to, or it's a report, it's a query to the  
17 system on access, download access for any image.  
18 You specify the image and generates a report.

19 Q. What is the specific system download  
20 you reviewed in conjunction with topic 12?

21 A. This image, but not in this rendition,  
22 carries a unique identifier. We queried the system  
23 for the unique identifier. And reviewed the  
24 download report which I believe there were four or

1 get to the database. How we obtained a specific  
2 image, I don't know.

3 Q. So as you sit here today, either in  
4 your individual capacity or as 30(b)(6) witness on  
5 behalf of The Associated Press, you have no  
6 knowledge on how the specific McClatchey photograph  
7 got into The Associated Press database; is that  
8 correct?

9 A. I understand how it technically got to  
10 the database. But prior to that I don't have any  
11 knowledge of the image.

12 Q. Can you explain to me how the  
13 McClatchey photograph technically got into The  
14 Associated Press database?

15 A. But to clarify, I'd be speaking of the  
16 PhotoArchive database. And that is a technical  
17 hand-off from editorial. Editorial team has  
18 reviewed an image. It passes to the PhotoArchive  
19 database. That is an automatic process.

20 Q. That's your answer on how the  
21 McClatchey photograph technically gets into The  
22 Associated Press database?

23 A. No different than any other image into  
24 the PhotoArchive database.

1 Q. Explain to me the steps by which any  
2 photograph gets into The Associated Press  
3 PhotoArchive database.

4 A. Any image, all images -- not any, all  
5 images pass through our editorial teams. And once  
6 they have passed through the editorial team, it is  
7 systemically or systematically entered into the  
8 PhotoArchive database.

9 Q. Where is the photograph located when it  
10 first arrives at the editorial team?

11 A. It's in a computer. Part of a  
12 production system.

13 Q. Does the photograph then get sent or  
14 transferred to a separate server to become part of  
15 the PhotoArchive?

16 A. Yes.

17 Q. And the editorial team, what is their  
18 duty with respect to the photograph when it comes  
19 in?

20 A. They review what we refer to as  
21 metadata that is depicted underneath this image.

22 Q. So in Plaintiff's Exhibit 4 beginning  
23 with the caption, and there's a number of columns  
24 and rows with information, the editorial team

1 Q. And the next, next to that it says,  
2 submit date, which is 9/11/2002, 23:30:07.

3 What does that represent?

4 A. It represents the time that the image  
5 was stamped in the system. And 8:00 p.m., 8:30 p.m.  
6 in the evening.

7 Q. How is the submit date different from  
8 the creation date; specifically the times on it?

9 A. I don't have knowledge of this specific  
10 image. In this specific image, I don't know why  
11 these times -- why the time on the left is what it  
12 is. I don't know this particular picture and how it  
13 was sourced.

14 Q. The next row down says, special  
15 instructions. It says, no sales, September 11, 2001  
16 file photo, worldwide photos out.

17 MR. PENCHINA: Objection. You  
18 just misread it.

19 MR. PENCHINA: It's wide world  
20 photos, not worldwide.

21 MR. HALL: Thank you.

22 Q. Let's start with no sales.

23 Does that refer to the fact that it was  
24 a handout image, and that automatically means it's

1 no sales within The Associated Press system?

2 A. The syntax "no sales" serves two  
3 purposes in this particular field. It serves a  
4 notice to anybody reading the metadata. It's also  
5 part -- that syntax is part of a thesaurus that  
6 significantly limits the availability of this image  
7 inside the AP system.

8 Q. How does it limit the availability of  
9 the image within the AP system?

10 A. It's part of the entitlements process,  
11 user entitlements process. An image that is  
12 flagged, an image that carries this syntax "no  
13 sales," the system understands that, reads that  
14 field, and limits this image, restricts this image  
15 from clients that are not able to see this picture,  
16 these types of pictures.

17 Q. But the no sales designation would not  
18 limit the availability of the image to members and  
19 subscribers of The Associated Press; is that  
20 correct?

21 A. It would not limit the image to AP  
22 members. That is correct.

23 Q. The next, special instructions, it says  
24 September 11, 2001 file photo.

1                   What does that mean?

2                   A.       That means that this is after the fact.  
3 We received the image after the fact. In this case  
4 a year after the fact. So it's not a current photo.  
5 It's not as we think of a news photo. It's a file  
6 photo.

7                   Q.       The next, it says wide world photos  
8 out.

9                   What does that mean?

10                  A.       It's the same syntax as no sales. It's  
11 another layer of of protection if you will. That  
12 syntax is also used by the system to restrict the  
13 image.

14                  Q.       So wide world photos out is just a  
15 second layer that restricts access to the McClatchey  
16 photo to members and subscribers of The Associated  
17 Press only; is that correct?

18                  A.       Would you repeat the last part, please?

19                  Q.       Yes. I'll repeat the whole question.

20                         So the syntax associated with wide  
21 world photos out, it means that the photo is once  
22 again restricted to access by members and  
23 subscribers of The Associated Press only; is that  
24 correct?



1 A. That is correct.

2 Q. How many members and subscribers of The  
3 Associated Press are there currently?

4 A. I don't know the number.

5 Q. Do you have a best guess of the number,  
6 the current number of members and subscribers of The  
7 Associated Press?

8 A. I would say somewhere in the  
9 neighborhood of 1,500.

10 Q. 1,500?

11 A. Yes.

12 Q. Is that answer just in the United  
13 States or worldwide?

14 A. I would say the United States.

15 Q. Can you give me the worldwide, how many  
16 members and subscribers of The Associated Press are  
17 there?

18 A. I don't know. I don't know the  
19 subscriber base.

20 Q. Would it would be greater than 1,500;  
21 is that correct?

22 A. A bit greater than 1,500 I would  
23 imagine, yes.

24 Q. The next row down says, credit. And it

1 says Associated Press, HO.

2 What does that mean?

3 A. It means that it's a handout image  
4 which is -- I may draw sort of a triangle for. The  
5 no sales, worldwide Associated Press handout or HO,  
6 are all flags that create, or in this particular  
7 instance, the most severe restrictions we can put on  
8 an image and its capability for access in viewing  
9 it.

10 Q. As of the date of the production or  
11 creation of Plaintiff's Exhibit 4 credit in the  
12 McClatchey photo was The Associated Press; is that  
13 correct?

14 A. In our system in the world of  
15 distribution it's analogous to source. The field  
16 credit and photographer and handout go together.  
17 Looking at this, a member or subscriber would know  
18 that it's not AP's picture. We know that the  
19 photographer is. It's a handout image.

20 Q. Okay.

21 A. A common --

22 MR. PENCHINA: Wait for a  
23 question.

24 Q. How would someone using the system --

1 on what basis do you say that someone would know  
2 that it is not an AP image when it states AP photo  
3 right under the caption?

4 A. The "HO, no sales" to anybody looking  
5 at this picture is an indication that AP does not  
6 own this image.

7 Q. Do you know when the HO designation was  
8 placed in conjunction with the McClatchey image?

9 A. Prior to my system, the system I have  
10 responsibility for receiving it, the syntax was  
11 placed there.

12 Q. Do you have any idea, any specific  
13 knowledge of when HO syntax was placed with respect  
14 to the McClatchey image?

15 A. With respect to the McClatchey image I  
16 do not know. Only that it was prior to entering our  
17 system.

18 Q. How are you aware that the HO syntax  
19 was placed with respect to the photograph prior to  
20 entering your system?

21 A. That's not a field that we would -- we  
22 would not edit an image, let alone even be able to  
23 see that image for the most part.

24 Q. All right.

1 A. That's correct. That's correct.

2 Q. Object name, it says, September 11  
3 Flight 93 Image. I believe that's self-explanatory.

4 And next to that it says Trans  
5 Reference Number GJP101. What is a Trans Reference  
6 Number?

7 A. That's a number that's used internally  
8 to -- in the course of a discussion there may be  
9 101, 102, 103, 105 from a story. You need to narrow  
10 it down to an image. This is a transreference.  
11 It's short for Trans Reference Number.

12 Q. All right.

13 And GJP, does that refer to Gene  
14 Puskar?

15 A. It does.

16 Q. And 101, what does that refer to?

17 A. I'm not sure in 2001 what that referred  
18 to. Other than I would infer it's the first picture  
19 or the second picture of the day that Gene  
20 transmitted to AP. He may have -- there may be the  
21 hundredth of the day.

22 Q. And the next row down is caption  
23 writer.

24 Do you know who -- it says HMB GJP. I

1           A.     I did not. Just purely the way any  
2 image with those restrictions would be, would have  
3 some limitation.

4           Q.     Right.

5                     But you testified earlier that there's  
6 no restriction with respect to members and  
7 subscribers based on the fields that were filled out  
8 in the McClatchey photo?

9           A.     That's correct.

10          Q.     So, in fact, all of the members and  
11 subscribers from 2002 in September of 2002 through  
12 November 2004 would have gotten a distribution of  
13 the McClatchey photograph; is that correct?

14          A.     As I understand, there was one  
15 distribution of the image on September 11, 2002. A  
16 single instance of distribution.

17          Q.     And the single instance of distribution  
18 in September of 2002 would have been a distribution  
19 to all the current members and subscribers of The  
20 Associated Press on that date; is that correct?

21          A.     That's correct.

22          Q.     And the Associated Press, as I  
23 understand it from your responses in this case, has  
24 no understanding what, if anything, any of those

1 users or subscribers did with the image; is that  
2 correct?

3 A. I don't believe we know how many  
4 people -- I don't know how many people used, how  
5 many outlets used the image.

6 Q. So all The Associated Press knows is  
7 that in September 2002 its members and subscribers  
8 were provided with a copy of the image; is that  
9 correct?

10 A. That's correct.

11 MR. HALL: I'll just ask on the  
12 record, counsel, I don't know that we need a  
13 witness, but that we find out exactly how  
14 many members and subscribers there were at  
15 The Associated Press in September of 2002.  
16 Probably easier to do it in writing versus  
17 bringing in a witness.

18 MR. PENCHINA: We will endeavor  
19 to find out.

20 MR. HALL: Thank you.

21 Q. If you could turn please to, this is  
22 still in Plaintiff's Exhibit 6, to MC 00420. And  
23 specifically the third heading on the page where it  
24 states, "AP Photo & Graphics Services."

1 distribute photos and graphics electronically in The  
2 Associated Press system?

3 A. That's categorized as regional or  
4 geographically based services, yes.

5 Q. Are you aware of any additional  
6 services at The Associated Press that are used to  
7 distribute photographs digitally?

8 A. I am not.

9 Q. Are you aware which, if any, of these  
10 services were used to distribute the McClatchey  
11 photograph in September of 2002?

12 A. I'm not aware of the specific image and  
13 its distribution in 2002. I'm not aware of exactly  
14 how it was distributed.

15 Q. Who would be aware of that if you know?

16 A. I think that would be David Ake. That  
17 would be David Ake.

18 Q. In this case we have received documents  
19 regarding the AP PhotoStream.

20 Do you have an understanding of what  
21 that service is?

22 A. I do.

23 Q. What is AP PhotoStream?

24 A. It's distribution of AP images or

1 images provided by AP in the United States.

2 Q. How does it work?

3 A. Satellite delivery system.

4 Q. Does it deliver the image to a server  
5 at the member/subscriber's location?

6 A. In some instances that's correct.

7 Q. In other instances, how does the AP  
8 PhotoStream deliver the image?

9 A. It may be -- it would be still a server  
10 based. The only difference, may not be satellite.  
11 That's all.

12 Q. Fair enough.

13 Do all of these services when they  
14 distribute images digitally, distribute them to a  
15 server, a computer at the member/subscriber site?

16 A. Not all of these are satellite-based or  
17 server-based.

18 Q. Do you know which ones are not  
19 satellite-based or server-based?

20 A. It appears that some were even  
21 photo-based, if you will. It seems that part of  
22 these are graphic services. I'm not clear on  
23 meteorological service.

24 Q. That's fair. I think I understand