

## Tab 8

### Deposition of Valencia M. McClatchey

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IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF PENNSYLVANIA

|                         |   |              |
|-------------------------|---|--------------|
| VALENCIA M. McCLATCHEY, | ) |              |
|                         | ) |              |
| Plaintiff,              | ) |              |
|                         | ) |              |
| vs.                     | ) |              |
|                         | ) |              |
| THE ASSOCIATED PRESS,   | ) | Civil Action |
|                         | ) | No. 05-145J  |
| Defendant.              | ) |              |

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DEPOSITION OF: VALENCIA M. McCLATCHEY  
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DATE: March 14, 2006  
Tuesday, 9:30

LOCATION: Eckert Seamans Cherin &  
Mellott  
44th Floor - US Steel Tower  
Pittsburgh, PA 15219

TAKEN BY: Defendant

REPORTED BY: Keith G. Shreckengast, RPR  
Notary Public  
AKF Reference No. KS93222

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VALENCIA M. McCLATCHEY,  
having been duly sworn,  
was examined and testified as follows:

- - - -

EXAMINATION

- - - -

BY MR. PENCHINA:

Q. Good morning, Ms. McClatchey.

A. Good morning.

Q. Would you please state your full name for the record?

A. Valencia M. McClatchey.

Q. And would you also please give your address?

A. 107 Osage Path, Stoystown, 15634.

Q. Have you ever had your deposition taken before?

A. No.

Q. Just some preliminaries, my name is Robert Penchina, and I am one of the attorneys representing the Associated Press in the lawsuit that you initiated. I'm going to be asking you a series of questions today. And I would ask that if you don't understand my question, would you please let me know?

A. I understand.

Q. Are you currently employed?

1           years or so?

2    A.    No.

3    Q.    Have you used any others in the last five  
4           years?

5    A.    I may have had a stooges -- à stooge@yahoo.com,  
6           which may have been seven years ago.

7    Q.    Have you used any E mail addresses for yourself  
8           personally that had the words Keystone Camaro  
9           Club in them?

10   A.    That would be Keystone Camaro Club through  
11          Yahoo. I am involved -- had been involved with  
12          the Camaro Club.

13   Q.    Are you the photographer who took the  
14          photograph entitled The End of Serenity?

15   A.    Yes, I am.

16   Q.    Can you describe that photo me?

17   A.    It's a red barn featuring a large plume of  
18          smoke rising over the hill. There is also the  
19          gutter up in my right-hand corner, a smaller  
20          barn which is now red, but it was a pale yellow  
21          in the foreground. There's also you could see  
22          part of my front yard, the road, and the field.

23   Q.    What is the significance of that photo?

24   A.    That was the first photo related to Flight 93.  
25          I took it just seconds after the impact.

1 Q. Have you ever sold or licensed that photo for  
2 publication to anyone?

3 A. Yes, I have.

4 Q. When was the last time?

5 A. The last time I licensed the photograph was  
6 last week.

7 Q. Who did you license the photograph to last  
8 week?

9 A. It would be to the Flight 93 Memorial. It is  
10 going solely for their fundraising brochure.

11 Q. Was there a fee involved with this license?

12 A. No, there was not.

13 Q. Other than the license to the Flight 93  
14 Memorial, are there any other sales or  
15 licensing for publication of this photo in  
16 2006?

17 A. 2006, I believe everything had been completed  
18 in 2005, prior to.

19 Q. Can you tell me to whom you licensed or sold  
20 the photo for publication in 2005?

21 A. It would be to Towers Production, Discovery, I  
22 believe there would be Brooklappung for the  
23 Discovery Channel. Also 2005 I believe I  
24 licensed out to the New York Museum. And  
25 without my records, those are just off the top

1 Q. Did WTAE also run it on TV?

2 A. Not since the first week of September 11th,  
3 they had with my permission.

4 Q. And when they ran it on the internet, that was  
5 subsequent to the first week?

6 A. Yes, it would be subsequent.

7 Q. Was there a fee involved with WTAE?

8 A. No, there was not.

9 Q. How do you determine, or how did you determine  
10 when to charge a fee and when not to?

11 A. On the use of the photo. Basically if it was  
12 just for an educational purposes, or a story  
13 that I felt that -- basically if they weren't  
14 really going to make money from it, if it was  
15 educational, then I did not charge a fee.

16 Q. Was WTAE's use on the internet educational?

17 A. They told a story that I had agreed with.

18 Q. So when you use the word educational, you're  
19 not using it in the formal sense that it's  
20 being used in a school or an educational  
21 setting; is that correct?

22 A. If it tells the story as we know the facts, and  
23 if it has been approved by me, it is my right  
24 to say who does and who does not get the photo.

25 Q. Absolutely. And just to be clear, the reason

1 why I'm asking about educational is not to trip  
2 you up or catch you in anything, but just to  
3 understand how you're using the word.

4 A. Okay.

5 Q. So to make the record clear, when you said  
6 educational, if I understand your testimony,  
7 you're talking about uses that generally  
8 educate the public and comport with your view  
9 of an appropriate story, but not necessarily  
10 limited to an educational setting such as a  
11 school?

12 A. Correct.

13 Q. Can you think of other examples of uses that  
14 you permitted, publication uses that you  
15 permitted where you did not charge a fee?

16 A. I permitted Robert Morris University, St.  
17 Francis University, fema.gov, I believe it's  
18 Pennsylvania Township publication. There was  
19 one I believe that was of a medical type. I  
20 think that was it. The Library of Congress,  
21 the Smithsonian.

22 Q. Any others?

23 A. Other than high school students who asked  
24 permission to use the photo for their reports.

25 Q. In addition to WTAE, were there other news

1 outlets that you permitted to use the photo  
2 without a fee?

3 A. I had done interviews with other TV media. I  
4 do not believe they used the photo. It was all  
5 just a person-to-person interview.

6 Q. Do you recall which those were?

7 A. With KDKA-TV Pittsburgh, WJAC-TV Johnstown,  
8 Channel 10 Altoona, Fox News. I believe that  
9 was it.

10 Q. The ones that you named I think were KDKA-TV?

11 A. Yes.

12 Q. WJAC, Channel 10 Altoona, Fox News. Are there  
13 any others?

14 A. Not that I recall.

15 Q. And those were instances where the news  
16 organization interviewed you?

17 A. Yes.

18 Q. How did those news organizations come to  
19 interview you?

20 A. They came to my house after calling to set up  
21 an appointment.

22 Q. Did, in each of these instances for those four  
23 stations that you've named, did they make the  
24 first contact to you?

25 A. Yes, they did.



1 Q. And did you provide the photograph to any of  
2 those stations?

3 A. I did as a souvenir. I have done that with  
4 everyone that has come to my house, provided an  
5 8 x 10 photo, copy.

6 Q. Did any of those stations show the photo when  
7 they did the story?

8 A. No, they did not.

9 Q. Did any of them do the story?

10 A. Yes, they did.

11 Q. Did all of them do the story?

12 A. Yes, they did.

13 Q. In addition to television stations, were you  
14 interviewed by any other news organizations?

15 A. Yes, I was, ABC News, and Fox News from New  
16 York.

17 Q. Any others?

18 A. No, not that I recall.

19 Q. Any print publications, any newspapers?

20 A. I had the Philadelphia news, Tribune Democrat,  
21 Tribune Review, Post-Gazette, Washington Post.

22 Q. And each of those interviewed you in connection  
23 with some news story they were doing?

24 A. Yes, they did, either by phone or in person.

25 Q. Did the Associated Press interview you?

1 permission to use the photo?

2 A. Yes, I did.

3 Q. Did you charge a fee to ABC and Fox News in  
4 connection with that use?

5 A. Yes, there was.

6 Q. What was the fee that you charged to ABC?

7 A. It was \$500.

8 Q. And what was the fee that you charged to Fox  
9 News New York?

10 A. I'm not sure that I charged a fee for them.

11 Q. Why is it that you're unsure? By that I  
12 mean --

13 A. I do not recall. I don't have a record of  
14 charging them.

15 Q. Is it possible that you didn't charge them?

16 A. It's possible that I did not charge them.

17 Q. If you had deemed that the particular use that  
18 they were making to be a good story, one that  
19 you wanted told, would that be a circumstance  
20 in which you would allow them to use it without  
21 a fee?

22 A. If I had judged it to be a story I wanted to be  
23 told, yes.

24 Q. In addition to licensing for use, have you also  
25 sold copies of the photograph?

1 A. Yes, I have.

2 Q. Tell me about how you sell copies of the  
3 photograph.

4 A. On the Shanksville Memorial news website, we  
5 have set up that individuals can make a check  
6 out to the Todd Beamer Foundation, they mail it  
7 to me and I forward those checks, and I send  
8 out an 8 x 10 copy of the photo to those  
9 individuals.

10 Q. In addition to the Shanksville site, are there  
11 other ways through which copies of the photo  
12 have been sold?

13 A. I had made it available through Duppsstadt's  
14 Country Store, and Ida's store in Shanksville.

15 Q. Anywhere else where the photo was available?

16 A. Can still mail to me directly and I will sell.  
17 And I will also, upon request, if people stop  
18 in my office and ask, I most likely will not  
19 charge them, as a good will.

20 Q. Do you have a sense, a rough estimate of how  
21 many copies you have sold over the years?

22 A. An estimate, no. Quite a few. In excess of a  
23 couple of hundred.

24 Q. And are you -- are they still selling?

25 A. Not very much. They trickle in, maybe two or

1 three in a couple month period.

2 Q. Over the last five years since the photo has  
3 been created, have you noticed any sort of  
4 trend in when they sell, when they don't sell?

5 A. Anytime there is any news about the memorial,  
6 or Flight 93, it generates more interest.

7 Q. What is the format, or the form of the picture  
8 itself, that you sell?

9 A. It is on photo paper that I pick up at Staples  
10 or Wal-Mart, I believe it's an 8 1/2 x 11 size,  
11 it is as large as I can get it on as an 8 x 10.  
12 Prior to printing the actual photo from my  
13 copier, from my computer, I put my End of  
14 Serenity on the top left corner, and my name  
15 and copyright notice on the bottom right.

16 Q. When you say prior to printing it you put that  
17 on, can you describe that for me?

18 A. I have a program on my computer that I print  
19 out the -- on the photo paper, the title, and  
20 my copyright notice, and then running it  
21 through again and putting the photo.

22 Q. So if I understand your testimony, it's a two  
23 step process, the title and the copyright  
24 notice go on first, and then you have at that  
25 point a blank photo paper with the name and the

1 copyright notice; is that correct?

2 A. That is correct.

3 Q. And then you run that through the printer again  
4 and the photo will be printed?

5 A. Yes.

6 Q. And the name and copyright notice show through  
7 the printing of the photo?

8 A. Yes, they do.

9 Q. You said you had a program that adds that; is  
10 that correct?

11 A. I use My Advanced Brochures software.

12 Q. How long have you had My Advanced Brochures  
13 software?

14 A. Since 2000.

15 Q. Do you add the name and copyright notice to  
16 every print?

17 A. Yes, I do.

18 Q. Every single print?

19 A. The only one that does not have it is my  
20 personal, that is in my home.

21 Q. Was the name and copyright notice on all of the  
22 copies that you provided to news organizations?

23 A. When I have a news organization that has my  
24 permission to use, we set up, if they -- if we  
25 have an agreement of how it is to be used, it

1 is sent via E mail JPG high resolution that  
2 provides a record for me and them as well, that  
3 permission has been granted for them to print.  
4 If I am giving it as just a souvenir or a  
5 memento of their trip, it is standard copy, the  
6 End of Serenity, and my copyright notice is on.  
7 There are no exceptions.

8 Q. Is the same program that applies the title the  
9 program that applies the copyright notice?

10 A. Yes, I write in copyright on the bottom.

11 Q. Do you ever print the photo with just the  
12 copyright notice and without the title?

13 A. No, I do not.

14 Q. Do you ever print the photo with the title and  
15 not the copyright notice?

16 A. No, I do not.

17 Q. The photo that is in your -- the JPG, does that  
18 have any title or copyright notice on it?

19 A. No, it does not.

20 Q. And I think you mentioned your personal copy  
21 does not have any copyright notice or title; is  
22 that correct?

23 A. Correct.

24 Q. What is your personal copy?

25 A. Same, 8 x 10 that I print out from my computer.

1 And I have it in a small frame in my office.

2 Q. Do you have any personal copies at home?

3 A. That is at my office at home. And I have  
4 copies at my office at Mtn. Lakes, and that  
5 does have the copyright on it.

6 Q. So the personal copy at home or in your home  
7 office does not have a title or copyright  
8 notice?

9 A. No, it does not.

10 Q. Do you have multiple copies at home?

11 A. No, I do not.

12 Q. And just to clarify, do you currently have  
13 multiple copies at home?

14 A. No, I do not.

15 Q. Have you ever had multiple personal copies at  
16 home?

17 A. No, I do not.

18 Q. Going back to licensing fees, how do you decide  
19 how much to charge for a particular use?

20 A. In the first year I did not know what a  
21 freelance photographer would be paid. I  
22 basically went with what they offered. Most of  
23 the time that was 150 to possibly \$300.

24 Q. When you said in the first year, when did that  
25 change?

1 A. Yes, I did.

2 Q. Do you recall who that reporter was?

3 A. His name was Charles Sheehan.

4 Q. How did you come to talk to Mr. Sheehan?

5 A. It was the morning of the first anniversary,  
6 which would have been September 11th, 2002 at  
7 the memorial site. It was a very cold morning,  
8 and Salvation Army was having hot beverages  
9 served in trailers. And I went up and had a  
10 cup of coffee, and that's where I met Charles  
11 Sheehan.

12 Q. Did you introduce yourself to Mr. Sheehan?

13 A. Yes, I did.

14 Q. Did he approach you first, or did you approach  
15 him?

16 A. We had both been standing, and I said good  
17 morning and introduced myself.

18 Q. Do you remember what you discussed with  
19 Mr. Sheehan?

20 A. I did inform him that I had taken that photo.  
21 And we talked about how things have changed in  
22 the past year, what a difference a year made  
23 basically, conversation. He asked if he could  
24 contact me later, and I gave him my  
25 information.



1 Q. Did Mr. Sheehan identify himself as a reporter  
2 for the Associated Press?

3 A. He had a press badge on, yes.

4 Q. Did you discuss the photo with Mr. Sheehan?

5 A. Yes, I had.

6 Q. What was it that Mr. Sheehan indicated he would  
7 contact you about in the future?

8 A. He asked if he could do an article regarding  
9 how things had been in the past year in the  
10 area, and with us personally, since I had taken  
11 the photo.

12 Q. Did you consent to that?

13 A. Yes, I did.

14 Q. When you met Mr. Sheehan the first time when  
15 you were both having coffee, did you have the  
16 scrapbook with you?

17 A. No, I did not.

18 Q. Did you have any materials with you?

19 A. No, I did not.

20 Q. Did Mr. Sheehan subsequently contact you?

21 A. Yes, he did later that day.

22 Q. Was that in person, by phone, or some other  
23 way?

24 A. It was by telephone.

25 Q. And do you remember what you discussed then?

1           losing, being in bankruptcy at the time. And  
2           how the area in general has changed. How we're  
3           all reacting to being thrown into the  
4           spotlight.

5       Q.    Did you understand that Mr. Sheehan would be  
6           writing something for publication by the AP  
7           based on your conversations with him?

8       A.    Yes, I did understand that.

9       Q.    Did you have any further conversations with  
10          Mr. Sheehan beyond those that we already  
11          discussed?

12      A.    No.

13      Q.    Did you have any conversations with any other  
14          representative of the Associated Press?

15      A.    The only other representative of the Associated  
16          Press would have been the photographer who was  
17          present and took a photo of me holding the  
18          photo in my living room.

19      Q.    Where you say the photographer was present, the  
20          photographer was present when Mr. Sheehan came  
21          to your house?

22      A.    Yes, he was.

23      Q.    Do you have an absolute recollection of  
24          Mr. Sheehan and the photographer being present  
25          together at your house?

1 MR. PENCHINA: This is the complaint,  
2 counsel. I'm not going to mark this as an  
3 exhibit. I'm just going to show it to her for  
4 references.

5 BY MR. PENCHINA:

6 Q. Do you, Ms. McClatchey, recognize the complaint  
7 that was filed?

8 A. May I take a look?

9 Q. Sure. And for the record, I'm not going to be  
10 asking you any questions about the pleadings, I  
11 just wanted to know if this is familiar, and in  
12 particular if you can turn to the attachments,  
13 one of the attachments to this is a newspaper  
14 article. Do you recall that newspaper article  
15 being attached to the complaint?

16 A. Yes, this is the photo, the article that I had  
17 agreed to.

18 Q. So attached to the complaint is an article, and  
19 I think you said that this is the article that  
20 you agreed to?

21 A. This is the article that I had agreed to. This  
22 particular --

23 Q. And by agreed to meaning this is what Charles  
24 Sheehan had interviewed you for?

25 A. Yes, this is the one.

1 Q. And do you remember when that was?

2 A. August 8th, 2003.

3 Q. And did you have someone contact AOL on your  
4 behalf at that time?

5 A. Yes, I did.

6 - - - -

7 (There was a brief pause in the proceedings.)

8 - - - -

9 BY MR. PENCHINA:

10 Q. Now that we've had a little bit of a break, is  
11 there any of your prior testimony that you  
12 would like to correct?

13 A. No.

14 Q. Earlier today I was asking you about selling  
15 copies of the photo. Do you remember that?

16 A. Yes, I do.

17 Q. I'm not sure if I asked this question, so  
18 forgive me if I'm going over the same ground,  
19 how much, or what was the sale price, or what  
20 is the sale price when you sell copies of the  
21 photo?

22 A. \$20 each, 8 x 10.

23 Q. So the 8 x 10 copies of the photo that either  
24 you sell or that are distributed through the  
25 couple of stores that you mentioned would all

1 Q. Published by different companies to your  
2 knowledge?

3 A. To my knowledge, I don't know.

4 Q. Do they carry the same content do you know?

5 A. Pretty much.

6 Q. Do you know whether the article that AP wrote  
7 about you appeared in all of those papers?

8 A. It did not appear in the Daily American, I know  
9 that for sure. I do not believe it appeared in  
10 the Tribune Review either. I have no knowledge  
11 of it.

12 Q. Why are you suing AP?

13 A. I became aware that my photo had been dispersed  
14 without my knowledge or consent, and I'm trying  
15 to protect the integrity of the photo, of where  
16 it goes and what articles it is associated  
17 with.

18 Q. What do you mean by it had been dispersed?

19 A. Well, AOL had used it without my knowledge or  
20 consent in an article that I found to be  
21 uncomfortable with. And it was associated with  
22 an article stating New Theory on Flight 93,  
23 which that is an article that I would not have  
24 granted permission to.

25 Q. The article that stated a New Theory of Flight

1 93?

2 A. Yes..

3 Q. Was that associated with AP?

4 A. I'm not sure. I know that is what AOL had it.  
5 And that's -- I don't know where else it may  
6 have been.

7 Q. Did you read the story that the AP did about  
8 you?

9 A. The one that has appeared, yes, I did.

10 Q. What do you think about the story?

11 A. They had been there, they asked the questions  
12 and I approved them.

13 Q. Was it an accurate story?

14 A. For the most part. Some of my health issues  
15 were a little exaggerated, but it was -- it  
16 held true.

17 Q. And is it the type of article or type of story  
18 which you approve in connection with using your  
19 photo?

20 A. On the human interest side of me being the  
21 photographer, yes. It told an accurate story.

22 Q. Is your problem with the Associated Press that  
23 they use the photo with that story?

24 A. No. My problem is, as I had found out, that it  
25 had been distributed to other entities that I

1 had no control over where it went.

2 Q. So your problem are the uses like AOL?

3 A. Correct.

4 Q. Is your problem with newspapers that ran the  
5 article as written by the Associated Press with  
6 the photograph?

7 A. Which photograph, the one with me holding, I  
8 have no problem with.

9 Q. No, the reproduction of your photograph in  
10 connection with the AP story, is that something  
11 that you have a problem with?

12 A. If they would have had my permission, I would  
13 not have a problem with it.

14 Q. And it's your testimony that they did not have  
15 your permission?

16 A. It is my testimony that that photo was not to  
17 be reproduced.

18 Q. Do you know anyone named Keith Hodan?

19 A. No, I do not.

20 Q. Have you enjoyed the attention that your photo  
21 has generated for you?

22 A. I enjoy sharing the photo, yes. It's a very  
23 integral part of our community.

24 Q. Ms. McClatchey, I'm going to hand you, or the  
25 reporter has handed you a document that has

1 picture, and I agreed.

2 Q. Do you remember the first contact with the  
3 folks who took this picture?

4 A. Most of the contacts were received probably the  
5 week before the anniversary, because of my  
6 photo being part of the Bearing Witness down at  
7 the Smithsonian.

8 Q. And just for the record, can you tell us what  
9 the Bearing Witness at the Smithsonian is?

10 A. It was -- I had donated the photo to the  
11 Smithsonian to be part of their tribute to  
12 9/11. It was called Bearing Witness to  
13 September 11th. They had asked permission to  
14 use the photo. I granted and E mailed a JPG to  
15 the Smithsonian, in which case they had  
16 enlarged the photo, and it became part of the  
17 permanent display for the Smithsonian regarding  
18 9/11.

19 Q. Ms. McClatchey, would you please look at the  
20 document the reporter has marked as Exhibit 4,  
21 which is a single page with production number  
22 MC 0010, and tell me whether Exhibit 4 is  
23 familiar to you?

24 A. That is it. I remember that.

25 Q. I'm sorry, I didn't hear, did you say this is



1 familiar to you?

2 A. Yes, this is an E mail that I would have  
3 written.

4 Q. And this E mail represents your permission to  
5 Newsweek to utilize your photograph on their  
6 website?

7 A. Yes.

8 Q. Was there any other documentation of that, or  
9 is this all of the paperwork, and this I mean  
10 Exhibit 4?

11 A. This was all I would have, that I know of.

12 Q. And in the first line of your E mail, towards  
13 the top, it says, among other things: It's an  
14 honor to be able to share it with others. Do  
15 you recall writing that?

16 A. Yes, I do.

17 Q. What did you mean by that?

18 A. When people ask and feel that my photo is  
19 worthy of -- to be part of something like that,  
20 it is an honor that they would ask that my  
21 photo be part of their articles or sharing it  
22 with the public.

23 Q. Ms. McClatchey, the reporter has handed you a  
24 document marked as Exhibit 5, which is a 2 page  
25 document with production numbers MC 16 and MC

1 17. Would you please look at it and tell me  
2 whether Exhibit 5 is familiar to you?

3 A. May I have a minute to read?

4 Q. Please do.

5 A. Yes, that is one of my E mails.

6 Q. In the address line on the top page of Exhibit  
7 5 it says From, To, Sent, Attach. Do you see  
8 that?

9 A. Yes, I do.

10 Q. Where it says attach, it says September 11,  
11 looks like a comma, .JPG do you see that?

12 A. Yes, I do.

13 Q. Do you know what that means?

14 A. Yes, that is I attached the JPG to Helen for  
15 the use in her newspaper article.

16 Q. And so you sent --

17 A. With my permission, yes, I sent the photo.

18 Q. And the photo that you sent was in electronic  
19 form, and did not have the title or copyright  
20 notice?

21 A. Correct.

22 Q. Do you have on your computer the file from  
23 which Exhibit 5 was printed?

24 A. Exhibit 5 meaning my photo?

25 Q. Exhibit 5 meaning this document that is in

1 discussing which outgrew the binder and is now  
2 in the box?

3 A. Correct.

4 Q. Ms. McClatchey, would you kindly look at the  
5 document the reporter has marked as Exhibit 6,  
6 which is a single page with the production  
7 number MC 19, and tell me whether Exhibit 6 is  
8 familiar to you?

9 A. Yes, it is from Paul, a person I had met.

10 Q. Please remind me who Paul is.

11 A. Paul is from another TV station, and he was out  
12 and asked if he could use the photo.

13 Q. And I take it Exhibit 6 is the means by which  
14 you provided the photo to Paul?

15 A. Yes, it is.

16 Q. And Paul is affiliated with WQED-TV?

17 A. Correct.

18 Q. Are you aware whether WQED-TV actually used the  
19 photo?

20 A. I do not get WQED-TV, so I would not know.

21 Q. But you did authorize them to use it?

22 A. Yes, I did.

23 Q. Did you charge WQED-TV a fee?

24 A. I don't believe I did.

25 Q. And again Exhibit 6 shows that Sept11, .JPG

1 attachment. Does that mean that you conveyed  
2 that same JPG file to Paul?

3 A. Yes, it is.

4 Q. Ms. McClatchey, would you please look at the  
5 document the reporter has marked as Exhibit 7,  
6 which is a single page with a production number  
7 MC 37. And when you've had a chance to look at  
8 it, tell me if Exhibit 7 is familiar to you.

9 A. Yes, it is my authorization working with the  
10 Washington Post.

11 Q. Do you remember writing Exhibit 7?

12 A. Yes, I do.

13 Q. What were you trying to convey in terms of the  
14 thoughts that you were sharing in the body of  
15 the E mail?

16 A. After speaking with them on the phone, I  
17 thought it was -- we had discussed the photo,  
18 its content. The way it's represented, and it  
19 was kind of a strange way to -- I don't know  
20 how to explain, it's beauty -- it's a beautiful  
21 photo, but it's got such powerful implications.  
22 And we were sharing those thoughts.

23 Q. Ms. McClatchey, would you kindly look at the  
24 document the reporter has marked as Exhibit 8,  
25 which is a single page with the production

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(Luncheon recess at 11:55 a.m. At 12:45 p.m., the deposition was reconvened as follows):

BY MR. PENCHINA:

Q. Ms. McClatchey, the reporter has handed you a document marked Exhibit 14, which is a single page with the production number MC 68. Is Exhibit 14 familiar to you?

A. Yes, it is.

Q. What is Exhibit 14?

A. This is a confirmation of me sending a JPG of the September 11 photo to WTAJ-TV. Allison Sweeney I believe would be the person.

Q. When you say it's a confirmation, do you know whether this is a copy of the document or the E mail that actually transmitted the JPG to her?

A. Yes, it is.

Q. Who is Allison?

A. Allison Sweeney is from the Altoona media, that I had previously identified as someone who had my permission.

Q. Is Altoona media a television station?

1 A. WTAJ-TV, yes, it is.

2 Q. Do you know whether they used the photo?

3 A. Yes, they had it on the screen.

4 Q. Did you see how they used it?

5 A. No, I did not. I do not get that.

6 Q. Do you know whether you charged them a fee in  
7 connection with their use?

8 A. I did not charge them a fee.

9 Q. And why did you determine not to charge them a  
10 fee?

11 A. It was my choice. I did not -- it was just a  
12 brief story, it was not being publicated as in  
13 print.

14 Q. You did charge some TV uses; is that correct?

15 A. ABC News, yes, I did.

16 Q. I understand that it is your choice. My  
17 question is what was it that went into your  
18 choice to decide not to charge this particular  
19 entity for this particular use?

20 A. This was just a news report on local stations,  
21 and I had not charged.

22 Q. Ms. McClatchey, the reporter has handed you a  
23 document marked Exhibit 15, which is a multi  
24 page document with the production numbers MC 78  
25 through 80. Can you please take a look at it

1 and tell me whether Exhibit 15 is familiar to  
2 you?

3 A. This was my conversation with Dave LaBelle from  
4 the Post-Gazette who also had my permission to  
5 use the photo.

6 Q. And can you tell me what the Post-Gazette is?

7 A. The Pittsburgh Post-Gazette, it's a newspaper  
8 here in Pittsburgh.

9 Q. Is it one that you read on a regular basis?

10 A. No, it is not.

11 Q. Is the copy of the photo that you provided to  
12 the Pittsburgh Post-Gazette, was that in JPG or  
13 was that a hard copy?

14 A. That would be JPG.

15 Q. Can you please turn to the second page of  
16 Exhibit 15, which is the page with MC 79 on the  
17 bottom?

18 A. Yes.

19 Q. And on the top half of the page appears to be a  
20 message from you to Dave LaBelle, do you see  
21 that?

22 A. Yes, I do.

23 Q. Is that an accurate description, is that what  
24 it is?

25 A. Yes, it is.

1 Q. About four lines up from your name in that  
2 message it says: It's exciting to have the  
3 photo published in Newsweek magazine. What  
4 were you trying to convey with that statement?

5 A. We had discussed that the photo had been picked  
6 up by Newsweek magazine, which would have been  
7 the first American Newsweek magazine in  
8 December of 2002 -- or 2001, I'm sorry.

9 Q. When you say the first American Newsweek, what  
10 do you mean?

11 A. The first major American newsprint publication.

12 Q. Prior to being picked up in Newsweek, it had  
13 been published elsewhere, outside of the U.S.?

14 A. Yes, it has been.

15 Q. What was exciting about having it published in  
16 Newsweek?

17 A. To see it actually in print for other people to  
18 see.

19 Q. Ms. McClatchey, the reporter has handed you a  
20 document marked Exhibit 16, which is a single  
21 page with production number MC 56. Is Exhibit  
22 16 familiar to you?

23 A. Yes, it's from Lim Vannary, she is from LePoint  
24 publication in Paris, France.

25 Q. And again, you provided to this publication a



1 copy of the photo in electronic JPG format?

2 A. Correct.

3 Q. And this was the E mail that conveyed that  
4 file?

5 A. This was the -- yes, it is, it's the one that  
6 conveyed the file.

7 Q. Would you kindly take a look at the document  
8 that the reporter has marked as Exhibit 17,  
9 which is a multi page document with production  
10 numbers MC 270 through 273. After you've had a  
11 moment to look at it, can you tell me whether  
12 Exhibit 17 is familiar to you?

13 A. Yes, it is a copy of the article that I cannot  
14 understand, it's in French. But it does have  
15 my name as being the author of the photo, with  
16 my permission.

17 Q. And the photo as it appears on the last page of  
18 Exhibit 17, is that the format in which you  
19 sent it to Le Point?

20 A. It had been cropped, the gutter had been, but  
21 since they had my permission, they can do that.

22 Q. Since they had your permission --

23 A. To use the photo, to zone in on the -- they can  
24 use -- I have no problem, if they have my  
25 permission.

1 document marked Exhibit 21, which is another  
2 document that I have printed out from the  
3 internet and I ask you to take a moment and  
4 review Exhibit 21 and tell me if that's  
5 something familiar to you?

6 A. Yes, it is.

7 Q. What is Exhibit 21?

8 A. It is a post on our Camaro Club website that  
9 the Learning Channel is going to be doing a  
10 documentary about Flight 93, and I wanted to  
11 let them know that it was going to be on so  
12 they could watch it. I would let them know  
13 when it was to be aired. And the FBI said it  
14 was the first one, it was documented as being  
15 the first photo related to Flight 93, and I had  
16 given close friends of mine and associates with  
17 the Camaro Club a copy of the Flight 93 photo.

18 Q. When you say to those who have a copy of it in  
19 Exhibit 21, that you're referring to members of  
20 the club and other friends to whom you --

21 A. Yes.

22 Q. -- shared copies?

23 A. Yes, that is correct.

24 Q. And you sent the message, that is Exhibit 21,  
25 because you were rightly proud of the use that

1 was being made of your photo; is that correct?

2 A. Yes.

3 MS. SZPONDOWSKI: Objection.

4 Q. Is that correct?

5 A. It is correct, I was proud of my photo.

6 Q. Ms. McClatchey, the reporter has handed you a  
7 document marked Exhibit 22, which is a multi  
8 page document bearing production numbers AP 2-A  
9 through AP 2-D. Can you please take a look at  
10 Exhibit 22 and tell me whether it's familiar to  
11 you?

12 A. This is the letter from my previous attorney  
13 that was instigated by -- started the whole  
14 process on our inquiry on AOL to find out what  
15 had happened, how they had obtained the photo.  
16 Discussing, you know, that I did not give them  
17 authorization.

18 Q. Is Exhibit 22 the first time that you or a  
19 representative of yours sent a letter to  
20 someone to complain about the usage of the  
21 photo?

22 A. Yes.

23 Q. Or to complain about a usage of the photo?

24 A. Yes.

25 Q. What motivated you to take action at the point

1 Q. Were all of the printouts that you created  
2 prior to 2004 or '5, whenever you started the  
3 new program, did all of those printouts have  
4 this notation?

5 A. Yes, they did.

6 Q. In the top left-hand corner of the picture that  
7 is Exhibit 22 is the notation End of Serenity,  
8 September 11, 2001. Do you see that?

9 A. Yes, I do.

10 Q. Is that the title of the photograph?

11 A. End of Serenity, yes, it is.

12 Q. And how, while using the old system prior to  
13 2004, or whenever you got the new system, how  
14 was that title affixed to the picture?

15 A. The title affixed to the picture in the same  
16 way, I printed it out on the photo paper prior  
17 to sending it back through the printer with the  
18 photo.

19 Q. There does not appear to be a copyright notice  
20 on this last page of Exhibit 22. Is there?

21 A. The copyright has been cut off at the bottom.

22 Q. Where would the copyright notice have appeared?

23 A. It would have been -- there should be a road  
24 and a piece of grass, which is the front  
25 portion of my yard. That is where I attach the

1 Q. On the top message, and by that I mean  
2 appearing on the top of Exhibit 25, it appears  
3 to be an E mail from you to Mr. Morlacci dated  
4 November 28, 2001. Do you see that?

5 A. Uh-huh.

6 Q. Is this an E mail from you to Mr. Morlacci?

7 A. Yes, it is.

8 Q. What did you mean when you said the more it is  
9 seen the better?

10 A. We had discussed that they see 5 million  
11 people, monthly page views, and that I was  
12 trying to get the message out, especially about  
13 the Todd Beamer Foundation, that people can  
14 access it.

15 Q. Do you know someone named or that uses an  
16 E mail address rgkozel?

17 A. Yes, I do, Gary Kozel.

18 Q. Who is Gary Kozel?

19 A. He is a friend of mine. I had met through the  
20 September 11th events.

21 Q. Would you kindly look at Exhibit 26, which is a  
22 document bearing the production number MC 194,  
23 and tell me whether that's familiar to you?

24 A. Yes, it is.

25 Q. What is Exhibit 26?

1 Q. Ms. McClatchey, would you please take a look  
2 at the documents the reporter has marked as  
3 Exhibit 27, and these are a multi page exhibit  
4 which are screen captures from a video Liberty  
5 Bound. And will you tell me whether Exhibit 27  
6 is familiar to you?

7 A. I know the title Liberty Bound, but I had not  
8 seen the video.

9 Q. What is Liberty Bound?

10 A. Liberty Bound was to be a documentary that I  
11 had given permission for.

12 Q. Do you know who it was produced by?

13 A. It was a strange name, Blue Goose or Blue  
14 something, Blue Moose Productions.

15 Q. Do you know whether it has aired?

16 A. I believe it had -- they were just selling  
17 copies, DVDs or so.

18 Q. Did you say you did not view it?

19 A. No, I had not viewed it.

20 Q. Did you provide copies of your photo for use in  
21 the Liberty Bound?

22 A. Yes, I did.

23 Q. Would you please turn to the second page of  
24 Exhibit 27, and is that your photograph?

25 A. Yes, it is my photograph.

1 Q. And there is copyright notice or title on that;  
2 is that correct?

3 A. It was sent by JPG, electronic.

4 Q. Are you familiar with a production The Flight  
5 That Fought Back?

6 A. Yes, I am.

7 Q. What is The Flight That Fought Back?

8 A. That came from Brooklapping associated with the  
9 Discovery Channel.

10 Q. Have you seen The Flight That Fought Back?

11 A. Yes, I did.

12 Q. Would you please take a look at the documents  
13 the reporter has marked as Exhibit 28, which  
14 are two pages, which again are screen captures  
15 from a video that you all produced in  
16 discovery. Is Exhibit 28 familiar to you?

17 A. Yes, it is.

18 Q. Is the photograph on the second page a  
19 reproduction of your photograph?

20 A. Yes, it is.

21 Q. And just to clarify, by second page I'm  
22 referring to the second page of Exhibit 28.

23 Did you again provide a copy of this photo in  
24 JPG format?

25 A. Yes, I did.

1 Q. So again like the other JPG format, it would  
2 not have copyright notices or the title?

3 A. Correct.

4 Q. Are you familiar with something called The  
5 Shanksville Episodes?

6 A. The Windsor Park?

7 Q. Are you familiar with something called Windsor  
8 Park Stories?

9 A. Yes, I am.

10 Q. What is Windsor Park Stories?

11 A. It's a series of documents, interviews, done by  
12 Tony Mussari and his wife, Kitch. They came  
13 out and spoke to me, interviewed.

14 Q. Who is Tony Mussari?

15 A. He is the producer and owner of Windsor Park  
16 Stories.

17 Q. In addition to being the owner of Windsor Park  
18 Stories, do you know anything else about Tony  
19 Mussari?

20 A. Other than he's a very nice gentleman and we've  
21 gotten along very well.

22 Q. Is Windsor Park Stories to your knowledge  
23 affiliated with any other media project or  
24 media entities?

25 A. No, they are not.



1 have a problem if they cropped the photo; is  
2 that correct?

3 A. If they gave -- if I gave them permission to  
4 use, I gave them a JPG, I don't want them  
5 cropping my copyright notices.

6 Q. And why did you send those individuals who had  
7 written permission a JPG of your photograph?

8 A. So that they would have a clear copy for  
9 publication.

10 Q. And the JPG file had no copyright notice or End  
11 of Serenity title; is that correct?

12 A. That is correct.

13 Q. Did you ever give permission to anyone to crop  
14 off the copyright notice on your photograph?

15 A. Crop the copyright, no.

16 Q. Do you recall, did anyone from any news  
17 organization other than the Associated Press  
18 interview you on September 11th, 2002?

19 A. I spoke to someone up at the crash site. I was  
20 at the crash site, I spoke with Hilda Marcine's  
21 grandchildren, and I just spoke to a few people  
22 there, not on record, that I had met through  
23 previous interviews.

24 Q. Who is Hilda Marcine?

25 A. Hilda Marcine was one of the victims of Flight