

Exhibits to Supplemental Declaration of Robert Penchina

EXHIBIT A

The Washington Post

1150 15th STREET, N.W.
WASHINGTON, D.C. 20071
(202) 334-6000

ERIC N. LIEBERMAN
ASSOCIATE COUNSEL

December 15, 2005

BY FIRST CLASS MAIL

Douglas M. Hall, Esq.
Niro, Scavone, Haller & Niro
181 W. Madison/Suite 4600
Chicago, Illinois 60602

Re: ***McClatchey v. The Associated Press***, No. 05-145J
(U.S. District Court for the District of Columbia)

Dear Mr. Hall:

Enclosed please find the responsive records we located after a diligent search pursuant to the subpoena we received in the above-referenced matter.

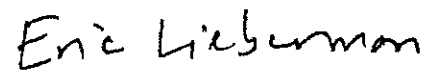
The records show that Valencia McClatchey's "End of Serenity" photo was published on the cover of The Washington Post Magazine on May 12, 2002. On March 11, 2002, Ms. McClatchey signed a freelance agreement that permitted the use and provided other rights as well, and for which she was paid \$300. The freelance agreement provides in pertinent part that we have the "non-exclusive right to reproduce, distribute, adapt or display the Work, for any purpose and in any manner or medium worldwide during the copyright term of the Work, without additional compensation."

We have not discovered any other publication of the photograph in The Washington Post. The photograph in question was downloaded from the AP wire into our internal photo archive on September 13, 2002. While we have no evidence that the photo was subsequently published in the newspaper, we purchased the right to do so in accordance with the terms of the March 11, 2002 freelance agreement.

Douglas M. Hall, Esq.
December 15, 2005
Page 2

Please feel free to call me if you have any questions regarding any of the above.

Very truly yours,

A handwritten signature in black ink that reads "Eric Lieberman". The signature is written in a cursive, slightly slanted style.

Eric Lieberman

Encls.

EXHIBIT B

Val McClatchey

From: "Val McClatchey" [REDACTED]
To: [REDACTED]
Sent: Thursday, October 11, 2001 5:36 PM
Attach: Sept 11,.JPG
Subject: Flight 93 photo

Hi Pam,

This is "End of Serenity" taken less than 5 seconds after Flight 93 impacted. I hope that it can be used in any way possible.

Thank you for your time,
Valencia McClatchey
[REDACTED]

copyright 2001

2/14/2002

CONFIDENTIAL

MC 00045

EXHIBIT C

Val McClatchey

From: "Val McClatchey" [REDACTED]
To: "Derek Mitchell" [REDACTED]
Sent: Tuesday, August 19, 2003 5:57 AM
Subject: Re: copyright for photo: complete 9/11 timeline

Derek,

Thanks so much for the reply. After going thru all of my records & notes of whom I spoke with, Paul was on the list. Sorry if I seem to be jumping before I look, but I've had to become protective of that photo. It has been used without my permission lately.

I have no problems with it being used in the manner in which your site does, it's the one's who clearly take advantage & make \$ from it.

This can be used as record that I fully consent to it's use in the timeline of events.

Again I apologize & best regards,

Valencia

— Original Message —

From: Derek Mitchell

To: [REDACTED]

Sent: Tuesday, August 19, 2003 12:34 AM

Subject: copyright for photo: complete 9/11 timeline

Hi Valencia,

I do not know if Paul requested or was given permission to include your photo in his timeline. He is incommunicado right now and will be for at least another week. As far as I know most of the reprinted material is included in the timeline for public educational purposes. No profit is generated by the website. If you do not recall granting Paul permission to reprint your photo and do not approve of its use, just say so and I will remove it and Paul can contact you when he gets back.

Kind regards,

Derek Mitchell

CONFIDENTIAL

MC 00066

EXHIBIT D

Val McClatchey

From: "Val McClatchey" [REDACTED]
To: [REDACTED]@wtajtv.com>
Sent: Wednesday, November 28, 2001 10:15 AM
Attach: Sept 11,.JPG
Subject: End of Serenity

Hi Allison,
Here is End of Serenity.
Val

CONFIDENTIAL

2/14/2002

MC 00068

EXHIBIT E

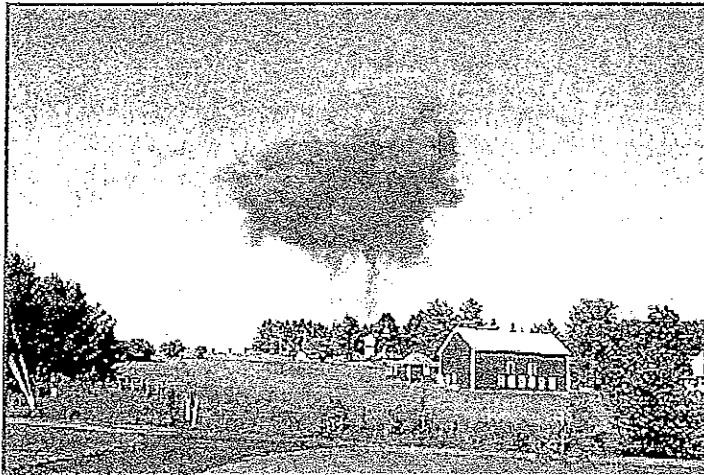
KILLTOWN'S

What really happened to Flight 93

(To link this page, please use the following address: <http://www.geocities.com/killtown>)

Seeing a small white jet: *"But I saw and it was there before the crash and it was 40ft above my head. They did not want my story - nobody here did."*

Observing the crash site: *"There was no plane," Ernie Stull, mayor of Shanksville... Everyone was puzzled, because the call had been that a plane had crashed. But there was no plane."*



(Photo by Val McClatchey.)

"DONALD RUMSFELD, SECRETARY OF DEFENSE: And to change that way of living, would stri
And I think all of us have a sense if we imagine the kind of world we would face if the people who bombed
bombing in Spain, or the people who attacked the United States in New York, shot down the plane over Penns
cut off peoples' heads on television to intimidate, to frighten – indeed the word "terrorized" is just that. Its purpose
something other than that which they want to be." - CNN (12/24/04)

Pentagon: Rumsfeld misspoke on Flight 93 crash; Defense secretary's remark to troops
"A comment Defense Secretary Donald Rumsfeld made during a Christmas Eve address to U.S. troops in Bag
about the terrorist attacks of September 11, 2001.

In the speech, Rumsfeld made a passing reference to United Airlines Flight 93, which crashed in Pennsylvania aft
hijackers.

But in his remarks, Rumsfeld referred to the **"the people who attacked the United States in New York, shot do**
A Pentagon spokesman insisted that Rumsfeld simply misspoke, but Internet conspiracy theorists seized on the r
Some people remain skeptical of U.S. government statements that, despite a presidential authorization, no planes
circulate that a U.S. military plane shot the airliner down over Shanksville, Pennsylvania." - CNN (12/27/04)

"A Boeing 767 out of Boston made an emergency landing Tuesday at Cleveland Hopki
have a bomb ... the plane had been moved to a secure area of the airport ... United

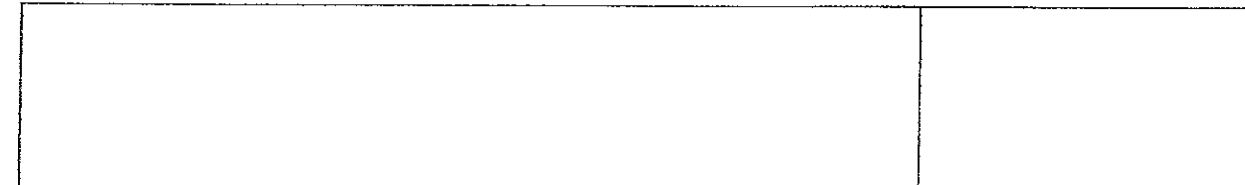


EXHIBIT F

stooge

From: "stooge" [REDACTED]
To: [REDACTED]@thewebfairy.com>
Sent: Friday, January 28, 2005 1:35 PM
Subject: Copyright Infringement!

Dear Rosalee Grable,

My name is Valencia McClatchey and this is to notify you that the alias "Killtown" is infringing on my copyrighted photo in his Flight 93 article.

The "End of Serenity" photo is shown 3 times in the article without my permission. In fact, the so called Killtown had phoned me months ago requesting permission & was totally denied it's use or my name. Both of which are portrayed in the article.

I have notified my Attorney's about this article & the infringement as well as this website for further legal litigation in which this site will also be named in the lawsuit.

Valencia McClatchey
[REDACTED]

CONFIDENTIAL

1/28/2005

MC 00116

stooge

From: [REDACTED]
To: [REDACTED]
Sent: Friday, January 07, 2005 6:42 PM
Subject: End of Serenity photo

January 7, 2004

Dear FEMA,

My name is Valencia McClatchey, owner of copyright photo "End of Serenity". It has been used without my permission and was downloaded from your site. The website is under Killtown, geocities. Rememering 9/11 is where it was obtained. I would greatly appreciate your efforts to remove the photo from your achives to prevent any further infringements of my copyright.

Sincerely,
Valencia McClatchey

[REDACTED]

CONFIDENTIAL

1/28/2005

MC 00117

stooge

From: [REDACTED]
To: [REDACTED]
Sent: Friday, January 28, 2005 10:55 AM
Subject: "End of Serenity" copyright

Dear FEMA,

I had contacted you previously regarding my photo on your website in the Flight 93 gallery. I had requested that it be removed from your site due to unauthorized use & the ability of persons to download & print the photo. It is still available and PRINTABLE !

It is a copyrighted photo & I am sole owner of such. There is no declaration of that associated with your gallery photo.

Please either take it offline or attach a copyright warning!

Val McClatchey
[REDACTED]
[REDACTED]
[REDACTED]

CONFIDENTIAL

1/28/2005

MC 00118

stooge

From: [REDACTED]
To: <copyright@yahoo-inc.com>
Sent: Friday, January 28, 2005 11:14 AM
Subject: Unauthorized use

Dear Geocities,

I have a problem with a site at geocities.
Killtown's article titled "What really happened to Flight 93"
The author used my copyrighted photo "End of Serenity" without my authorization, in fact Mr. Killtown, whomever he is, had called me requesting permission & was totally DENIED the use. It appears 3 times in the article. (Cloud of smoke rising over red barn) & my name attached with the photo. This article has brought me much dismay & disgust in our town that I would "allow" it's use in an article such as his.
My attorney will be contacting you regarding the identity of Killtown so that he may be notified of impending legal matters. I am requesting that this person's website be removed due to this matter.

Val McClatchey
"End of Serenity" copyright

[REDACTED]

CONFIDENTIAL

1/28/2005

MC 00119

stooge

From: [REDACTED]
To: [REDACTED]@thewebfairy.com>; "attorney" [REDACTED]
Cc: "Killtown" [REDACTED]
Sent: Friday, January 28, 2005 6:05 PM
Subject: Re: Alleged Flight 93 Copyright Infringement!

whya lawsuit ?????????????? we have an internet stalker and judge judy took notice paramount studios may johnson aranged aerriele louise vp lou gentile radio show ; plus us all paid for by paramuont studios to appear there we agreed aerriele jammed out geeeeeeeeeeeeeeeeeee intersting this internet stuff fbi could not do anything this person even changed passwords so we could not email out and spoofed and stole our identity and passed off stuff in other names to bruce burgess of www.bluebookfilms.com ark of the covenant revealed internet a vast odd sea cheers john
www.hutchisoneffect.com

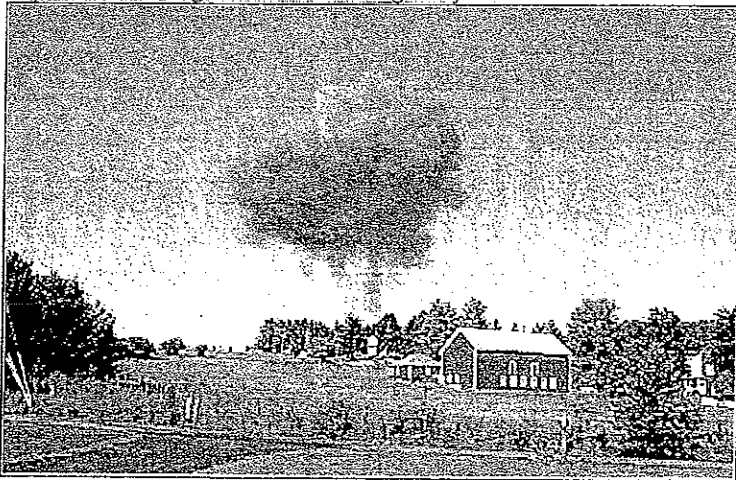
----- Original Message -----

From: [REDACTED]
To: attorney ; [REDACTED]
Cc: Killtown
Sent: Friday, January 28, 2005 1:57 PM
Subject: Alleged Flight 93 Copyright Infringement!

Dear "Stooge,"

Regarding the picture shown at
<http://thewebfairy.com/killtown/flight93.html> to which you claim copyright:

I believe you are referring to the photo originally shown at
http://www.fema.gov/kids/911/911_gallery7.shtm



<http://www.fema.gov/graphics/remember911/07.jpg>

There has been a lot of curiosity about the exact location from which this photo was taken. Since you say you took this photograph, surely you can clear up the confusion about the photo's locale.

A correspondant who visited the Flight 93 Memorial reports that all the roads in the vicinity are dirt roads, while your picture shows a nicely paved one. Which one did she miss?

I notice that your Area Code, [REDACTED] is for Erie, PA, which is 84 miles from Sharpsville.

CONFIDENTIAL

1/28/2005

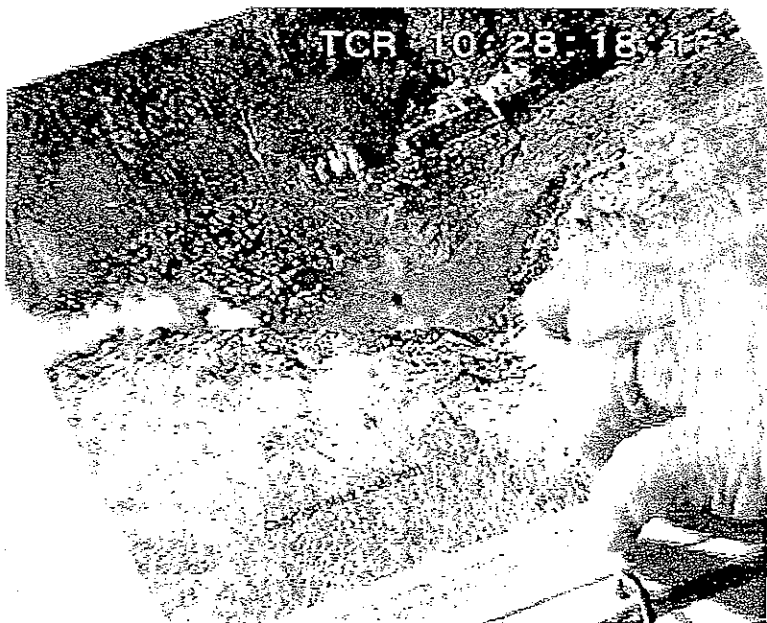
MC 00121

Mapquest:
<http://tinyurl.com/64rp7>

I'm wondering how you happened to be so close to the scene of the crime to catch that fateful shot?

Since the photo comes from a publicly accessible webpage who's sponsor is paid for by tax dollars, I hesitate to ask Killtown to delink it just willy-nilly, lest this set a bad precedent and people start thinking that a mere human can "own" historic images they were lucky enough to catch.

But if you can answer my questions, I will be happy to make Killtown delink the picture as a favor. Killtown can link one of the pictures of the resulting empty hole instead.



<http://thewebfairy.com/killtown/images/flight93/impactspot.jpg>

----- Original Message -----

From: stooge

To: [redacted]@thewebfairy.com

Sent: Friday, January 28, 2005 12:35 PM

Subject: Copyright Infringement!

Dear Rosalee Grable,

My name is Valencia McClatchey and this is to notify you that the alias "Killtown" is infringing on my copyrighted photo in his Flight 93 article.

The "End of Serenity" photo is shown 3 times in the article without my permission. In fact, the so called Killtown had phoned me months ago requesting permission & was totally denied it's use or my name. Both of which are protraited in the article.

I have notified my Attorney's about this article & the infringement as well as this website for further legal litigation in which this site will also be named in the lawsuit.

Valencia McClatchey
[redacted]

CONFIDENTIAL

1/28/2005

MC 00122

EXHIBIT G

turn of nearly 90 degrees. [Cleveland Newschannel 5, 9/11/01]

11) Another unnamed witness sees the plane overhead. It makes a high-pitched, screeching noise. The plane then makes a sharp, 90-degree downward turn and crashes. [Cleveland Newschannel 5, 9/11/01]

12) Tom Fritz, about a quarter-mile from the crash site: he hears a sound that "wasn't quite right" and looks up in the sky. "It dropped all of a sudden, like a stone," going "so fast that you couldn't even make out what color it was." [St. Petersburg Times, 9/12/01]

13) Terry Butler, a few miles north of Lambertsville: "It dropped out of the clouds." The plane rose slightly, trying to gain altitude, then "it just went flip to the right and then straight down." [Pittsburgh Post-Gazette, 9/12/01]

14) Lee Purbaugh, 300 yards away: "There was an incredibly loud rumbling sound and there it was, right above my head - maybe 50 feet up... I saw it rock from side to side then, suddenly, it dipped and dived, nose first, with a huge explosion, into the ground. I knew immediately that no one could possibly have survived." [Independent, 8/13/02]

Upside down and a sudden plunge:

15) Linda Shepley: She hears a loud bang and sees the plane bank to the side. [ABC News, 9/11/01] She sees the plane wobbling right and left, at a low altitude of roughly 2,500 feet, when suddenly the right wing dips straight down, and the plane plunges into the earth. She says had an unobstructed view of Flight 93's final two minutes. [Philadelphia Daily News, 11/15/01]

16) Kelly Leverknight in Stony Creek Township of Shanksville: "There was no smoke, it just went straight down. I saw the belly of the plane." It sounds like it is flying low, and its heading east. [Daily American, 9/12/01, St. Petersburg Times, 9/12/01]

17) Tim Thornsberg, working in a nearby strip mine: "It came in low over the trees and started wobbling. Then it just rolled over and was flying upside down for a few seconds ... and then it kind of stalled and did a nose dive over the trees." [WPXI Channel 11, 9/13/01]

What sense can be made of all these different accounts? Some say it was flying a couple thousand feet up and suddenly plunged down, some say it was flying extremely low. Turns, climbs, strange noises, flipping, etc... While many of these accounts conflict, virtually all support a missile strike, because of the common theme of noises and a plane struggling to rise and stay in the air. The plunge doesn't seem to be a deliberate thrust of the plane towards the ground, but instead the result of engine failure. Other passenger planes hit by missiles continued to fly for several minutes before crashing. For instance, a Korean Airline 747 was hit by two Russian missiles in 1983, yet continued to fly for two more minutes. [KAL Cockpit Voice Recorder transcript] Is that what happened here?



Flight 93 crash site. North is to the top. Note the impact point north of the road, and the burned trees to the south of it.



Flight 93 crashes in the Pennsylvania countryside.

10:06 A.M. Flight 93 just north of the Somerset County Airport, about 80 miles southeast of Pittsburgh, 124 miles or 15 minutes from Washington DC. Little information has been made public. It is now believed its target was the White House. The plane was generally obliterated upon landing, except for one half ton piece of engine found over a mile away. [Independent, 8/13/02] One story calls what happened to this engine "intriguing," because "the heat-seeking, air-to-air Sidewinder missiles aboard an F-16 would likely target one of the Boeing 757's two large engines." [Philadelphia Daily News, 11/15/01] Smaller debris

fields were also found 2, three and eight miles away from the main crash site. [CBS, 5/23/02] [10:00, MSNBC, 9/22/01, 10:03, NORAD, 9/18/01, 10:06, Guardian, 10/17/01, 10:06, Pittsburgh Post-Gazette, 10/28/01, 10:06, MSNBC, 9/3/02, 10:06, Mirror, 9/13/02, 10:07, AP, 8/19/02,

<http://www.unansweredquestions.net/timeline/AAflight93.html>

1/8/2004

MC 00141

EXHIBIT H

CRASH OF FLIGHT 93

Three-minute discrepancy in tape

Cockpit voice recording ends before Flight 93's official time of impact

By WILLIAM BUNCH
bunch@phillynews.com

THE FINAL three minutes of hijacked United Flight 93 are still a mystery more than a year after it crashed in western Pennsylvania — even to grieving relatives who sought comfort in listening to its cockpit tapes in April.

A *Daily News* investigation has found a roughly three-minute gap between the time the tape goes silent — according to government-prepared transcripts — and the time that top scientists have pinpointed for the crash.

Several leading seismologists agree that Flight 93 crashed last Sept. 11 at 10:06:05 a.m., give or take a couple of seconds. Family members allowed to hear the cockpit voice recorder in Princeton, N.J., last spring were told it stopped just after 10:03.

The FBI and other agencies refused repeated requests to explain the discrepancy.

The cockpit voice recorder a roughly 30-minute tape loop, is supposed to record the sounds inside the cockpit right up until the moment of impact and usually does.

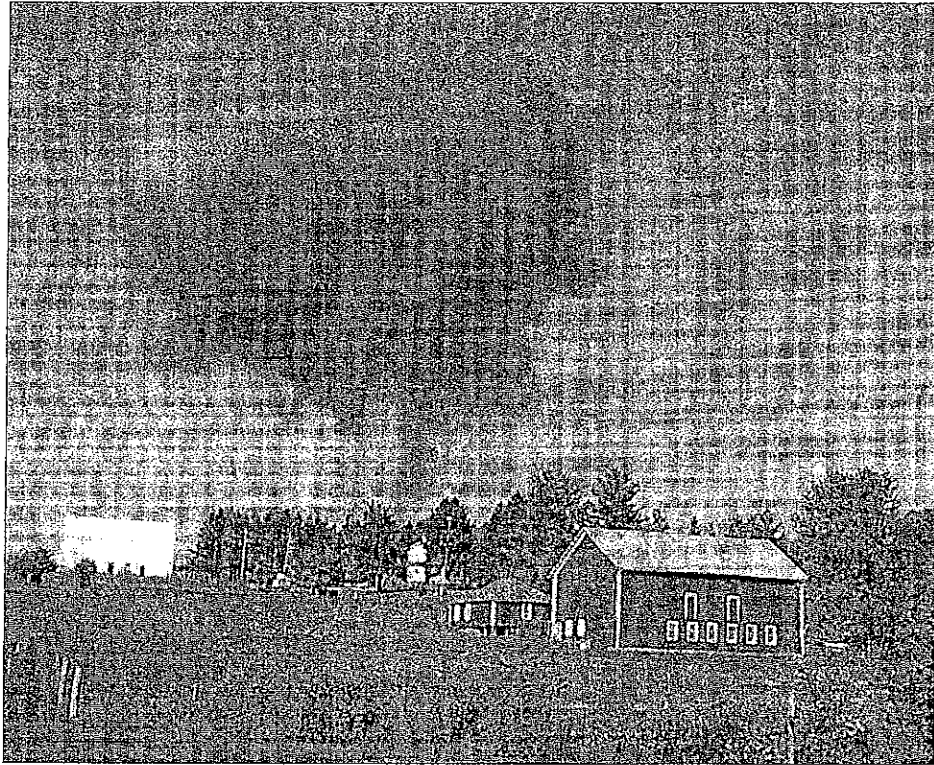
Aviation experts said there could be several explanations for the gap.

They said it could mean that the FBI and other government agencies either failed to properly synchronize the times, or there were other problems in the retrieving or handling of the tape from the so-called "black box" recovered from the wreckage at Shanksville, Pa.

Or, experts speculated, it could mean there was a major on-board electrical failure on the plane three minutes before Flight 93 crashed, causing the recorder to quit working.

What's not told

The broader significance is that the three-minute gap points to how little is really known about how and why Flight 93 crashed — even as the saga of the doomed jetliner and cell-phone calls from some of the 40 passengers and crew continue to captivate the



Plume of smoke from the initial impact of United Flight 93 rises near Shanksville, Pa., on 9/11

VAL MCCLATCHNEY/For the Daily News

nation.

"That's part of the whole war aspect — we don't want to tell about what we did and didn't do," said Vernon Grose, a former National Transportation Safety Board member who says he still has questions about the Flight 93 crash. He said he doubts there will ever be "a nice, open public hearing with eyewitnesses telling what they saw."

However, in recent weeks, two books about Flight 93 have topped the best-seller lists, while

President Bush and other top government officials continue to invoke the story — based largely on the cell-phone calls — of fighting between the passengers and the hijackers as a "Let's roll" rallying cry to continue the war against global terrorism.

But the FBI has clamped a tight lid of secrecy on the flight data recorder — which could best show how Flight 93 actually crashed — and on the cockpit voice recorder.

"We have no comment at all on the tape issue," said Sam Dibbley,

spokeswoman for the U.S. Attorney's office in northern Virginia that presented the tape to families.

An FBI spokesman, Steven Berry, said the bureau continues to officially list the time of the Flight 93 crash as 10:03 a.m. The NTSB referred all questions to the FBI.

But the relatives of Flight 93 passengers who heard the cockpit tape April 18 at a Princeton hotel said government officials laid out a timetable for the crash in a briefing and in a transcript that

accompanied the recording. Relatives later reported they heard sounds of an on-board struggle beginning at 9:58 a.m., but there was a final "rushing sound" at 10:03, and the tape fell silent.

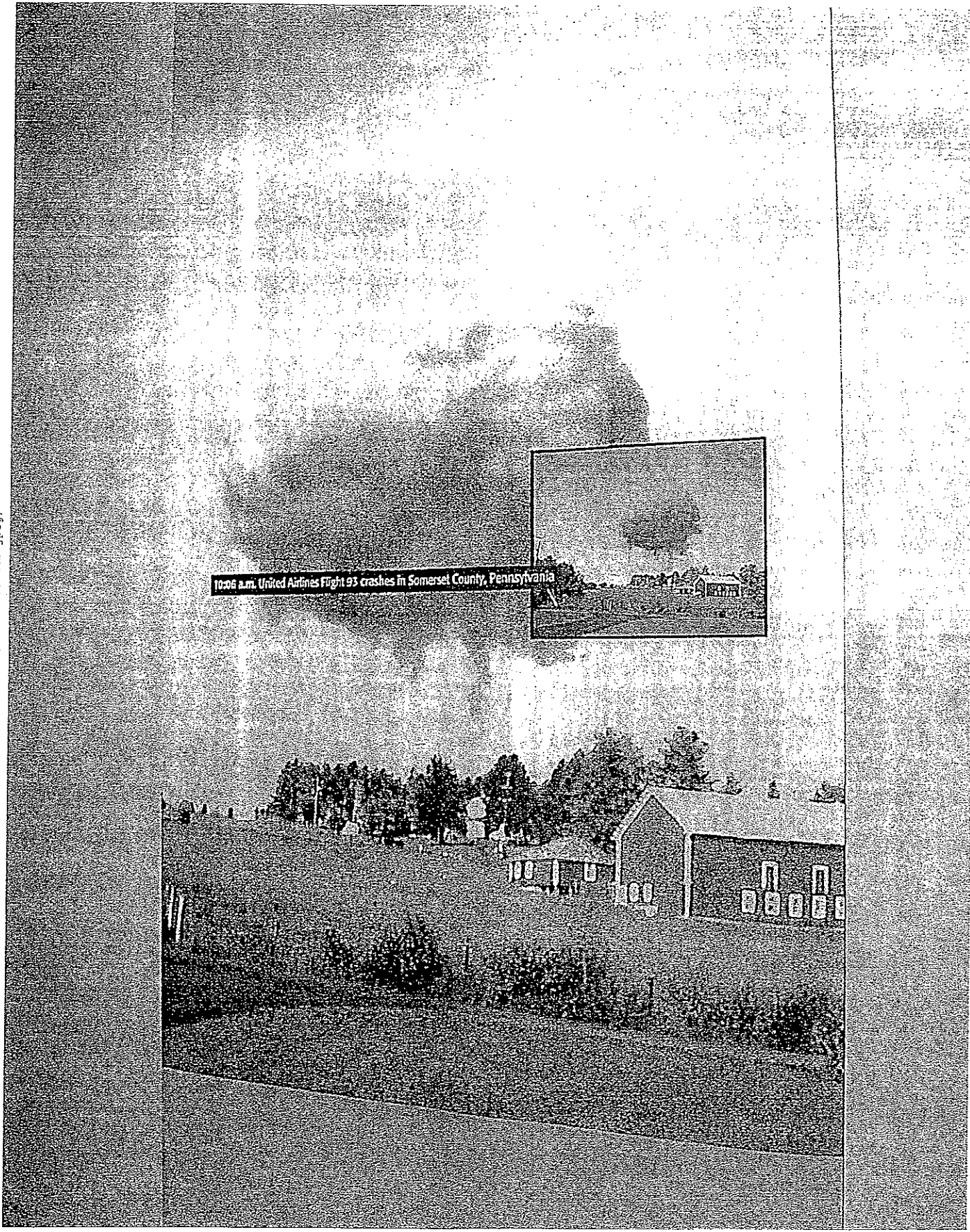
What can be heard

"There is no sound of the impact," said Kenneth Nacker, whose brother, Lou Nacker Jr., is one of the passengers believed to

See **FLIGHT 93** Next Page

EXHIBIT I

4m000368 (1600x1200x24b jpeg)



bearing witness 2 (1600x1200x24b.jpeg)

