

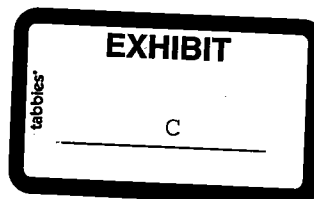
**EXHIBIT C
TO
MS. MCCLATCHEY'S RESPONSE TO
DEFENDANT'S MOTION IN LIMINE TO
EXCLUDE CERTAIN DOCUMENTS AND
TESTIMONY REGARDING IPHOTOART**

VALENCIA MCCLATCHEY VS THE ASSOC. PRESS, DEPOSITION OF GENE PUSKAR, 3/15/2006

Page 1 to Page 69

CONDENSED TRANSCRIPT AND CONCORDANCE
PREPARED BY:

AKF Reporters, Inc.
436 Boulevard of the Allies
Pittsburgh, PA 15219-1314
Phone: 1-888-253-3376
FAX: 1-412-261-2537



Page 57

- (1)A. I don't recall.
- (2)Q. You don't recall?
- (3)A. Huh-uh.
- (4)Q. So it might have happened, or you just don't remember?
- (5) remember?
- (6)A. It might have happened or what?
- (7)Q. Strike that, I'll ask you another question. So you don't recall whether or not they asked you what rights do we have in this photograph; is that correct?
- (8) what rights do we have in this photograph; is that correct?
- (9) that correct?
- (10) I don't recall any conversations regarding this photograph.
- (11)A. I don't recall any conversations regarding this photograph.
- (12) photograph.
- (13)Q. If an editor at the Associated Press had asked you what rights do we have in the McClatchey photograph you're transmitting, what would you have told them?
- (14) you what rights do we have in the McClatchey photograph you're transmitting, what would you have told them?
- (15) have told them?
- (16)A. I would have told them I don't know.
- (17)Q. And why is that?
- (18)A. Because I didn't.
- (19)Q. What is your professional opinion as a photographer for at least 28 years of the photograph taken by Ms. McClatchey?
- (20)A. My opinion of it?
- (21)Q. Yes.
- (22)A. How do you mean that?

Page 58

- (1)Q. What do you think of the photographic value of the photograph that Ms. McClatchey took?
- (2) the photograph that Ms. McClatchey took?
- (3)A. I mean there's a lot of things going – I mean to answer your question, I don't know whether I should speak to the technical, and I can't speak to that, because this is a flimsy copy of I'm sure a much better image.
- (4) I'm sure a much better image.
- (5) Compositionally –
- (6)Q. Let's break it down. Compositionally what is your professional opinion of the McClatchey photograph?
- (7) your professional opinion of the McClatchey photograph?
- (8)A. I think it's – We have a saying in journalism, "F-11 and be there," which implies what this picture means. This is a mediocre picture at best compositionally, technically and every other way. What it is is a moment. "F-11 and be there," she was there at a moment in time. Just like Joe Rosenthal at Iwo Gima, and my friend Ron Edmonds when Reagan was shot. Just like I was on the sidelines when the Steelers won the Super Bowl, it was F-11 and be there. So this picture is a picture of a moment in time that is like – it's like Pearl Harbor. It's the day that changed our world and the way we look at it, the way we check on airplanes

Page 59

- (1) and the way we look on playgrounds at strangers walking through when our kids are playing. It was a dawn of a new paranoia in our world. So for that it's a picture, a picture of that moment. It's technically not great, it's compositionally pretty boring, but it's a moment.
- (2) walking through when our kids are playing. It was a dawn of a new paranoia in our world. So for that it's a picture, a picture of that moment. It's technically not great, it's compositionally pretty boring, but it's a moment.
- (3) was a dawn of a new paranoia in our world. So for that it's a picture, a picture of that moment. It's technically not great, it's compositionally pretty boring, but it's a moment.
- (4) for that it's a picture, a picture of that moment. It's technically not great, it's compositionally pretty boring, but it's a moment.
- (5) moment. It's technically not great, it's compositionally pretty boring, but it's a moment.
- (6) compositionally pretty boring, but it's a moment.
- (7) moment.
- (8)Q. So it's a moment such as when you said Iwo Gima, such as the marines raising a flag, there happened to be a photographer at that one moment to capture that; is that correct?
- (9) Gima, such as the marines raising a flag, there happened to be a photographer at that one moment to capture that; is that correct?
- (10) happened to be a photographer at that one moment to capture that; is that correct?
- (11) moment to capture that; is that correct?
- (12)A. Uh-huh.
- (13) MR. PENCHINA: Let me remind you to say yes or no instead of uh-huh.
- (14) MR. PENCHINA: Let me remind you to say yes or no instead of uh-huh.
- (15)A. I'm sorry, yes.
- (16)Q. In your two or three days that you were at the one year anniversary of the Flight 93 crash, did you see any other photographs that were taken of the moment of the crash of Flight 93?
- (17) In your two or three days that you were at the one year anniversary of the Flight 93 crash, did you see any other photographs that were taken of the moment of the crash of Flight 93?
- (18) did you see any other photographs that were taken of the moment of the crash of Flight 93?
- (19) were taken of the moment of the crash of Flight 93?
- (20)A. No.
- (21)Q. So the fact that it is the only picture taken of that moment would also increase the value, even if you thought it was a mediocre photograph; is that correct?
- (22) So the fact that it is the only picture taken of that moment would also increase the value, even if you thought it was a mediocre photograph; is that correct?
- (23) even if you thought it was a mediocre photograph; is that correct?
- (24) photograph; is that correct?
- (25)A. I don't understand what you mean by value.

Page 60

- (1)Q. In terms of historical photograph, being one of a kind, that sort of value.
- (2) In terms of historical photograph, being one of a kind, that sort of value.
- (3)A. Well, the value is not for me to determine. I personally don't know what all there is that was shot on this event at this moment, or soon after this moment. I know we had pictures given to the AP by a volunteer fireman who was at ground zero, right back there, moments after the thing happened, which is another example of how we get pictures from people who aren't AP employees. But my point is yes, this is a moment. And my ability to ascertain value is neither here nor there. I think the fact that I didn't see this picture until a year after the event, and I covered this event probably longer than anybody who was there, or as long as anybody who was there, the fact that it took me a year to see it made we wish I would have had it on September 11th, 2001, then it would have been valuable to me. A year later it was a feature story about this lady who took this picture a year before. But as a newsperson, its value would have been a year earlier for me.
- (4) Well, the value is not for me to determine. I personally don't know what all there is that was shot on this event at this moment, or soon after this moment. I know we had pictures given to the AP by a volunteer fireman who was at ground zero, right back there, moments after the thing happened, which is another example of how we get pictures from people who aren't AP employees. But my point is yes, this is a moment. And my ability to ascertain value is neither here nor there. I think the fact that I didn't see this picture until a year after the event, and I covered this event probably longer than anybody who was there, or as long as anybody who was there, the fact that it took me a year to see it made we wish I would have had it on September 11th, 2001, then it would have been valuable to me. A year later it was a feature story about this lady who took this picture a year before. But as a newsperson, its value would have been a year earlier for me.
- (5) personally don't know what all there is that was shot on this event at this moment, or soon after this moment. I know we had pictures given to the AP by a volunteer fireman who was at ground zero, right back there, moments after the thing happened, which is another example of how we get pictures from people who aren't AP employees. But my point is yes, this is a moment. And my ability to ascertain value is neither here nor there. I think the fact that I didn't see this picture until a year after the event, and I covered this event probably longer than anybody who was there, or as long as anybody who was there, the fact that it took me a year to see it made we wish I would have had it on September 11th, 2001, then it would have been valuable to me. A year later it was a feature story about this lady who took this picture a year before. But as a newsperson, its value would have been a year earlier for me.
- (6) after this moment. I know we had pictures given to the AP by a volunteer fireman who was at ground zero, right back there, moments after the thing happened, which is another example of how we get pictures from people who aren't AP employees. But my point is yes, this is a moment. And my ability to ascertain value is neither here nor there. I think the fact that I didn't see this picture until a year after the event, and I covered this event probably longer than anybody who was there, or as long as anybody who was there, the fact that it took me a year to see it made we wish I would have had it on September 11th, 2001, then it would have been valuable to me. A year later it was a feature story about this lady who took this picture a year before. But as a newsperson, its value would have been a year earlier for me.
- (7) given to the AP by a volunteer fireman who was at ground zero, right back there, moments after the thing happened, which is another example of how we get pictures from people who aren't AP employees. But my point is yes, this is a moment. And my ability to ascertain value is neither here nor there. I think the fact that I didn't see this picture until a year after the event, and I covered this event probably longer than anybody who was there, or as long as anybody who was there, the fact that it took me a year to see it made we wish I would have had it on September 11th, 2001, then it would have been valuable to me. A year later it was a feature story about this lady who took this picture a year before. But as a newsperson, its value would have been a year earlier for me.
- (8) at ground zero, right back there, moments after the thing happened, which is another example of how we get pictures from people who aren't AP employees. But my point is yes, this is a moment. And my ability to ascertain value is neither here nor there. I think the fact that I didn't see this picture until a year after the event, and I covered this event probably longer than anybody who was there, or as long as anybody who was there, the fact that it took me a year to see it made we wish I would have had it on September 11th, 2001, then it would have been valuable to me. A year later it was a feature story about this lady who took this picture a year before. But as a newsperson, its value would have been a year earlier for me.
- (9) how we get pictures from people who aren't AP employees. But my point is yes, this is a moment. And my ability to ascertain value is neither here nor there. I think the fact that I didn't see this picture until a year after the event, and I covered this event probably longer than anybody who was there, or as long as anybody who was there, the fact that it took me a year to see it made we wish I would have had it on September 11th, 2001, then it would have been valuable to me. A year later it was a feature story about this lady who took this picture a year before. But as a newsperson, its value would have been a year earlier for me.
- (10) employees. But my point is yes, this is a moment. And my ability to ascertain value is neither here nor there. I think the fact that I didn't see this picture until a year after the event, and I covered this event probably longer than anybody who was there, or as long as anybody who was there, the fact that it took me a year to see it made we wish I would have had it on September 11th, 2001, then it would have been valuable to me. A year later it was a feature story about this lady who took this picture a year before. But as a newsperson, its value would have been a year earlier for me.
- (11) moment. And my ability to ascertain value is neither here nor there. I think the fact that I didn't see this picture until a year after the event, and I covered this event probably longer than anybody who was there, or as long as anybody who was there, the fact that it took me a year to see it made we wish I would have had it on September 11th, 2001, then it would have been valuable to me. A year later it was a feature story about this lady who took this picture a year before. But as a newsperson, its value would have been a year earlier for me.
- (12) I didn't see this picture until a year after the event, and I covered this event probably longer than anybody who was there, or as long as anybody who was there, the fact that it took me a year to see it made we wish I would have had it on September 11th, 2001, then it would have been valuable to me. A year later it was a feature story about this lady who took this picture a year before. But as a newsperson, its value would have been a year earlier for me.
- (13) longer than anybody who was there, or as long as anybody who was there, the fact that it took me a year to see it made we wish I would have had it on September 11th, 2001, then it would have been valuable to me. A year later it was a feature story about this lady who took this picture a year before. But as a newsperson, its value would have been a year earlier for me.
- (14) as anybody who was there, the fact that it took me a year to see it made we wish I would have had it on September 11th, 2001, then it would have been valuable to me. A year later it was a feature story about this lady who took this picture a year before. But as a newsperson, its value would have been a year earlier for me.
- (15) had it on September 11th, 2001, then it would have been valuable to me. A year later it was a feature story about this lady who took this picture a year before. But as a newsperson, its value would have been a year earlier for me.
- (16) a year later it was a feature story about this lady who took this picture a year before. But as a newsperson, its value would have been a year earlier for me.
- (17) picture a year before. But as a newsperson, its value would have been a year earlier for me.
- (18) its value would have been a year earlier for me.
- (19) me.
- (20)Q. Do you have any understanding of what the