

30 January 2020

Jordan,

I have a long history with the Internet Archive, and I have gone to great lengths to obtain HTML source for web pages in both litigation and post-grant proceedings. I do not understand how you might think that either my expert or I might be misreading the Archive.

The screenshots that Evan provided today refer to the FRAME set, not the individual items that are displayed in it. Indeed, if you look closely at the screenshots (taken by Evan today I presume), you will see a number of URLs for subitems on the page. In red, there is a legend for each item that says "+8 years, 7 months." This is the time difference between the archival date of the FRAME set document, and each sub-item that appears in the page. If you hover a cursor over the red text for an item, it will give you the timestamp for the specific item, generally Thu, August 8, 2019. There are other indexes that provide this information; I find it disconcerting that you are asking for further proof from us when at least some of it is in plain sight.

Mr. Klosson asserts in his testimony that every screenshot in Ex. 1004 was captured by the Archive on February 1, 2011. As he is not an employee of the Archive, I do not understand how he could have personal knowledge of this; it is literally a false statement.

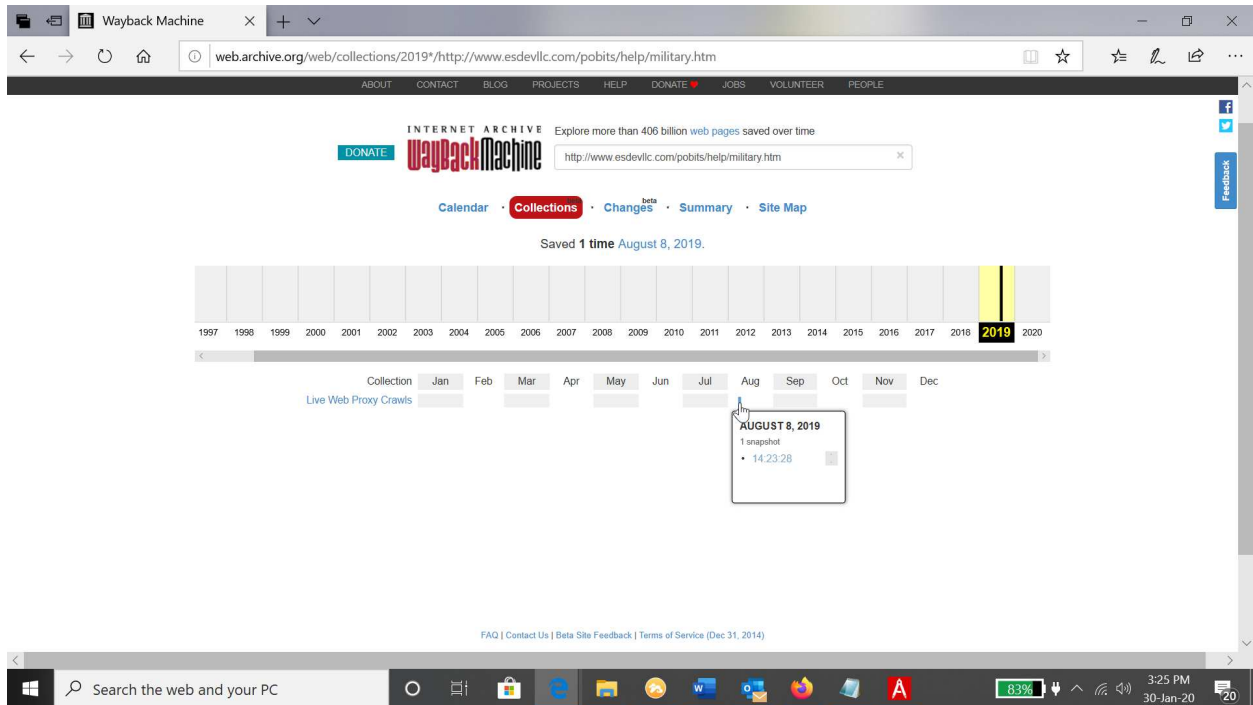
The physical evidence tells a different story as illustrated by the HTML included in our response. Recall that the HTML for the Introduction page (Ex. 2010) states:

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<!-- FILE ARCHIVED ON 07:44:37 Aug 08, 2019 AND RETRIEVED FROM THE INTERNET ARCHIVE ON 08:55:43 Jan 21, 2020. JAVASCRIPT APPENDED BY WAYBACK MACHINE, COPYRIGHT INTERNET ARCHIVE. ALL OTHER CONTENT MAY ALSO BE PROTECTED BY COPYRIGHT (17 U.S.C. SECTION 108(a)(3)). -->
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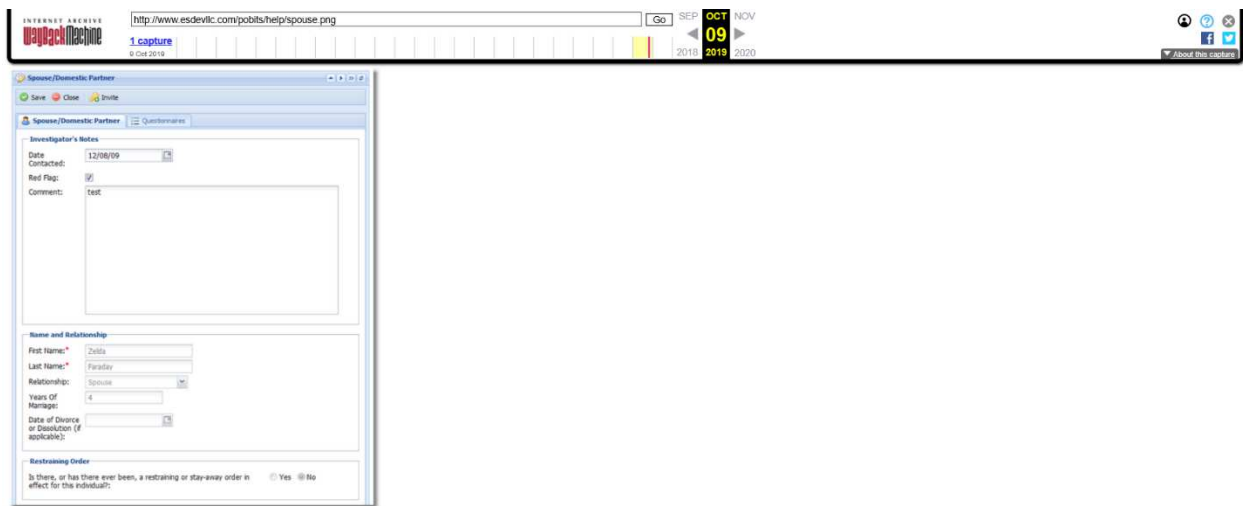
This is the earliest date that this page was stored by the Archive.

By way of further example, I attach screenshots from another child pages below. I would use the "Introduction" page, but it appears that someone (definitely not me) has been initiating "Save Page" events on it through out the day.

The Military.htm child webpage has been captured one time in the history of the Archive. It shows that page was captured by the "Live Web Proxy Crawl" on August 8 2019. "Live web proxy" did not exist in February 2011.

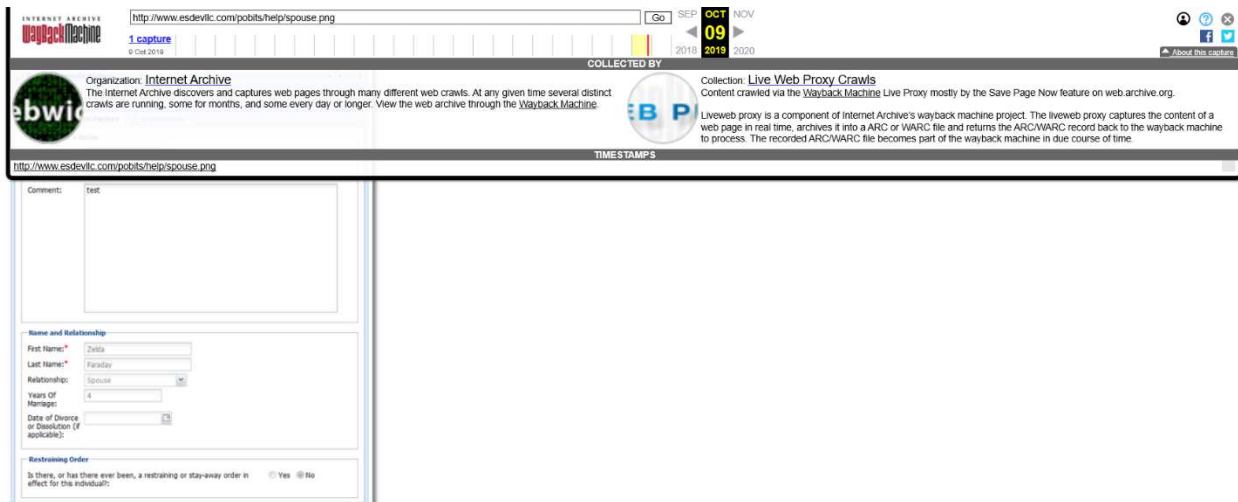


Below is an example of what a sub-object viewed as a standalone object outside the FRAME set would appear. As you can see, it was captured 1 time in the history of the Archive, one day before the IPR was filed.



Below is a screenshot illustrating the “About this capture” popup associated with the same sub-object. It states in greater detail that the object was captured using the “Live Web Proxy Crawl” – primarily associated with the “Save Page” feature. This feature appears when a user attempts to click on a sub-object that has not been stored by the Archive, but exists on the live web. When a person clicks the link, it initiates a crawl of the associated object.

If



Ex. 1004 as filed presents each child page in the FRAME set, and falsely suggests that each page was archived on that date. The Archive itself states that objects in a FRAME set may have very different dates and that each object within the FRAME must be examined individually – the header information displayed above the FRAME cannot be relied upon.

I do not believe that the screenshots Evan provided today refute Mr. Howell's conclusions. Rather, as explained above, it reinforces them.

If you have HTML source showing an earlier archive date for the child pages (which contain the content upon which your IPR arguments are premised), I would be happy to review them.

Best Regards,

Rick