

Stark - Schneider 3/28/80  
Trial Testimony

2032

1 objections.

2 THE COURT: I assume they are unobjectionable.

3 Call your witness.

4 MR. DUBUC: Dr. Merritt W. Stark.

5 WHEREUPON,

6 MERRITT W. STARK

7 was called as a witness on behalf of the defendant  
8 and, having been first duly sworn, was examined  
9 and testified as follows:

10 VOIR DIRE EXAMINATION

11 BY MR. DUBUC:

12 Q Dr. Stark, would you state your full name and  
13 address for the record?

14 A Merritt W. Stark. Goldsboro, North Carolina.

15 Q Doctor, in what capacity are you presently em-  
16 ployed?

17 MR. LEWIS: Excuse me, Your Honor. I thought  
18 this was my voir dire.

19 MR. DUBUC: I will turn it over to you.

20 THE COURT: He is just introducing him.

21 MR. LEWIS: I am sorry.

22 A I am the Medical Director at O'Berry Center, a  
23 North Carolina Institution for the retarded.

24 Q And during the period 1974 to 1975 were you in  
25 Saigon, Vietnam in connection with duties with the United

1 States Agency for International Development?

2 A All of 1974 and up until the 11th of April of  
3 1975.

4 Q And were you on the C-5A that was involved in  
5 the accident on April 4, 1975?

6 A Yes, sir.

7 Q Now, Mr. Lewis has some preliminary questions  
8 he would like to ask you, Doctor.

9 VOIR DIRE

10 BY MR. LEWIS:

11 Q Good morning again, sir.

12 Doctor, you attended a meeting here in Washington  
13 to confer with other witnesses that were part of the  
14 military crew; is that correct?

15 A That is correct?

16 Q And when was that meeting, approximately?

17 A I arrived in Washington last Thursday morning.

18 Q And you came at whose invitation?

19 A Mr. Piper's.

20 Q And this is the same Mr. Piper that interviewed  
21 you after the crash; is that right?

22 A That is correct.

23 Q Now, the people that were present at the meeting  
24 in addition to the lawyers, were the various crew members,  
25 medical crew members, meaning the nurses and people like

1 and who was the observer and who was the pilot. Perhaps you  
2 know.

3 Do you know who was the pilot?

4 A No, I don't.

5 Q Did you meet him there?

6 A No.

7 Q Did you meet the co-pilot?

8 A Yes.

9 Q What was his name?

10 A Harp, I think, was his last name.

11 Q Did you meet another military officer at that  
12 time, a man in uniform?

13 A [No response.]

14 Q Let me ask you this.

15 How many military officers were present that had  
16 experience or claimed to have experience as to what hap-  
17 pened?

18 A I think there were three men there and perhaps  
19 four or five women, nurses.

20 Q And the military men then explained mechanically  
21 what happened in the flight and what altitude the explosive  
22 decompression occurred and that sort of thing; is that right?

23 A That is correct.

24 Q And people explained their experiences with ex-  
25 plosive decompressions in test situations when they were in

1 training; didn't they?

2 A That is correct.

3 Q And then they explained their impression of how  
4 hard the airplane hit; didn't they?

5 A All of us recounted what happened at the time of  
6 the crash.

7 Q Now, of course, you people were scattered over in  
8 different parts of the airplane, as I understand it. But  
9 everybody sort of described what happened in their part of  
10 the airplane or within their line of vision; isn't that  
11 right?

12 A Correct.

13 Q Now, the nurses undertook to explain what they  
14 observed about the children; didn't they?

15 A That is correct.

16 Q Now, this meeting went on for over two and a  
17 half hours; didn't it?

18 A Something in that time frame.

19 Q Now, there were people taking notes at that con-  
20 ference; weren't there?

21 A I believe that is correct.

22 Q Did you take any notes, sir?

23 A I did not take any formal notes. I wrote down  
24 the names of a few people that were there.

25 Q Do you have those with you?

1 A No.

2 Q Well, whose names did you write down, Doctor?

3 A Lt. Aune.

4 Q Aune?

5 A Aune.

6 Harp.

7 I don't recall the names of the other people.

8 Q But it was your understanding that this group  
9 was the group of witnesses that would be testifying for  
10 Lockheed in the trial; isn't that right?

11 A Correct.

12 Q Now, of the non-witnesses present, Mr. Dubuc was  
13 there?

14 A Yes.

15 Q And Mr. Piper, who you used to know as Major  
16 Piper, was he there?

17 A Yes.

18 Q Were there other lawyers present?

19 I know they don't carry a sign, but did they  
20 identify themselves or appear to be lawyers?

21 A Mr. Jones was there.

22 Q Aiden Jones.

23 That is the gentleman sitting at the table there?

24 A Correct.

25 Q Anybody else? Any other lawyers?

1           A     No.

2           Q     Were there other persons beyond the group we have  
3     described? Were there clerks, assistants of some kind that  
4     weren't witnesses or lawyers?

5           A     There was a lady there and I gathered she was a  
6     secretary.

7           Q     Was she taking notes?

8           A     I believe that is correct.

9           MR. LEWIS: Could I tell him the name of the  
10    person that was taking notes?

11           MR. DUBUC: I believe she was not taking notes.  
12    She is the wife of, I believe, Mr. Malone. I don't believe  
13    there was a secretary.

14           MR. LEWIS: She was the wife of Captain Malone?

15           MR. DUBUC: There was the wife of one of them  
16    there and the husband of somebody else, yes.

17           MR. A. JONES: I think, Your Honor, Captain  
18    Tate's husband was there.

19           MR. LEWIS: Okay.

20    BY MR. LEWIS:

21           Q     Now, was there a physician present?

22           A     Yes. Not other than myself. I was the physician  
23    that was present.

24           Q     I understand, sir.

25           I know you were there and I know you are a

1 physician.

2                   Was there a female physician present?

3                   A     No.

4                   Q     A lady by the name of Quinn, Dr. Quinn?

5                   A     No.

6                   Q     Were there any other doctors present other than  
7     yourself?

8                   A     No.

9                   Q     Now, there were considerable specifics given by  
10    different individuals as to what happened; isn't that cor-  
11    rect?

12                  A     I am not sure they were specifics. I think they  
13    recalled to the best of their ability, what happened at that  
14    time.

15                  Q     All right.

16                  Did any of the lawyers present or perhaps any of  
17    the other witnesses ask each other what their recollection  
18    was about a particular thing in an effort to bring out some  
19    point in the discussion?

20                  A     I don't recall anything like that.

21                  Q     So, your statement is that none of the lawyers  
22    asked any questions at all; is that right?

23                  A     The lawyers would ask each of us to recount our  
24    experiences, our recollection of what happened at the time  
25    of the crash.

1 Q Well, forgive me. Let me start perhaps at the  
2 beginning.

3 Who called the meeting to order?

4 A Mr. Dubuc.

5 Q All right.

6 And did he make any preliminary remarks or any  
7 preliminary statement at all?

8 A My recollection is that he just said that he  
9 would like for each of us to recount our recollection of  
10 what happened at the time of the crash.

11 Q And that was for the benefit of everybody else  
12 present?

13 A Correct.

14 Q Then did he say anything more than that, the  
15 admission that there was going to be a trial, that most of  
16 you were going to be witnesses?

17 A I think we assumed that we were going to be  
18 witnesses.

19 Q I understand that.

20 A But I don't recall his saying that.

21 Q You don't recall whether he said that or not?

22 A No.

23 Q Did any other person address the group -- when I  
24 say "address", I don't mean make a speech, but make any  
25 remarks, introductory remarks, before the questioning of

1 the individual witnesses was had?

2 A I don't recall anything like that.

3 Q All right.

4 Now, this took place you say last Thursday?

5 A I arrived in town last Thursday with the under-  
6 standing that I would be a witness on Friday and then  
7 because of extenuating circumstances --

8 Q You didn't get called?

9 A -- I did not appear on Friday.

10 The meeting that I am speaking about was on  
11 Sunday.

12 Q At the airport -- I am not quarreling with you.  
13 I am just trying to get your recollection. I thought you  
14 told me that the meeting was on Thursday.

15 Didn't you tell me that it was on Thursday?

16 A If I did I was in error.

17 Q Do you remember telling me it was on Thursday?

18 A That is when I arrived in town.

19 Q Do you remember telling me it was on Thursday,  
20 sir?

21 A I had a meeting with Mr. Piper when I arrived on  
22 the plane on Thursday. But the meeting with Mr. Dubuc was  
23 on Sunday.

24 Q This past Sunday, the Sunday last?

25 A That is correct.

1           Q     Do you remember what the date was, for the  
2 record?

3           A     I could figure it out, but I don't know right  
4 off.

5           Q     All right.

6                   Now, did Mr. Dubuc tell you anything about a  
7 rule on witnesses?

8           A     No.

9           Q     Did he tell you whether there was any court  
10 instruction that the witnesses were not to compare their  
11 testimony with each other?

12                   MR. DUBUC: Your Honor, I object.

13                   I don't know that there is any such instruction.

14                   THE COURT: Sustained.

15                   BY MR. LEWIS:

16           Q     Now, who was called on first, if we are finished  
17 with the preliminaries?

18                   Did anybody else say anything else in a prelimi-  
19 nary fashion?

20           A     I don't recall the sequence of who was called on  
21 first.

22                   We were sitting at a table like you might have  
23 here and we just sort of went around from one person, sort  
24 of in order.

25           Q     Where did it take place?

1           A    On the eighth floor, I believe, of 1819 "H" Street,  
2 perhaps.

3           Q    Would that have been Mr. Dubuc's office?

4           A    I think that is correct. But I am not sure of  
5 that.

6           Q    Okay.

7           Now, did people have copies of their statements  
8 handy that they had given the accident investigation team  
9 or did they do this entirely from memory or notes, from  
10 your observation?

11          A    Some of them had them, I believe, and others did  
12 not.

13          Q    Did you have yours?

14          A    I did not have mine.

15          Q    All right.

16          And were there questions of the various people  
17 present, you know, after they had made their statement or  
18 during the middle of their statement, by anybody, to any-  
19 body?

20          A    I don't recall any specific questions.

21          Q    Are you saying there were no questions or you  
22 just don't remember what the questions might have been?

23          A    I think as each individual recounted their re-  
24 collections there certainly was some conversation among the  
25 group.

1 Q Okay.

2 The idea was to arrive at a consensus of what  
3 happened?

4 A No. I don't think that was the case.

5 I think being in one part of the compartment  
6 sometimes your impressions were a little different than  
7 someone in a different part.

8 Q I understand.

9 Did you note the effect of a consensus developing  
10 in this meeting, an overall consensus of how hard the air-  
11 plane hit or other things of that kind?

12 A I think this did develop. That is correct.

13 MR. LEWIS: Indulge me just one minute, Your  
14 Honor.

15 May I just have a brief conference with Mr.  
16 Patrick?

17 THE COURT: Yes.

18 [Discussion off the record between Mr.  
19 Lewis and Mr. Patrick.]

20 BY MR. LEWIS:

21 Q Doctor, you knew a fair number of the adults on  
22 the airplane aside from the military people; didn't you?

23 A I knew a few people on the airplane. That is  
24 correct.

25 Q You knew the FFAC, Friends For All Children,

1 employees; didn't you?

2 A Yes.

3 Q Now, was Rosemary Taylor on the airplane?

4 A I think she was not on the airplane.

5 Q Did you know a Sister Ursula that worked for  
6 them?

7 A Many of these people I had met and I don't  
8 specifically recall Sister Ursula. The name is familiar,  
9 but I couldn't put a face to her.

10 Q You wouldn't know whether she was on the airplane  
11 or not?

12 A That is correct.

13 Q Do you know Margaret Moses?

14 A Yes.

15 Q Was she on the airplane?

16 A I can't answer that question. I don't know for  
17 certain that she was.

18 Q I believe you told me at the airport that you  
19 didn't think she was on the airplane.

20 A I don't recall making that statement.

21 Q Do you know Susan McDonald, a nurse, a Sister?

22 A No.

23 Q Do you know Elaine Norris, a nurse for FFAC?

24 A No.

25 Q Do you know Elsie Ewald?

1 A No.

2 Q Did you know Bridgett Blanc?

3 A Not by that name, no.

4 Q Did you know Debbie Chambers?

5 A No.

6 Q Mary Cusack?

7 A No.

8 Q Did you know Polly Din, a German lady?

9 A No.

10 Q Did you know Susan Durgee?

11 A Yes.

12 Q Was she on the airplane?

13 A Yes.

14 Q Now, when the explosive decompression occurred,  
15 Doctor, there was a tremendous explosion; wasn't there?

16 A Tremendous is such a term that is subject to  
17 different interpretations. It was a very loud explosion.  
18 That is correct.

19 Q Is tremendous explosion a fair way to put it?

20 A You could describe it as a tremendous explosion,  
21 yes.

22 Q You thought that the plane was hit by a missile;  
23 isn't that right?

24 A That is the first thing that came to my mind.

25 Q Now, the plane jolted when this tremendous

1 explosion occurred; didn't it?

2 A That is correct.

3 Q And it was a few minutes later when the oxygen  
4 masks descended following the tremendous explosion; is that  
5 correct?

6 A I don't have any recollection of the length of  
7 time, but shortly thereafter. After the explosion the  
8 masks were available.

9 Q Is a few minutes a later a fair description of  
10 the time interval?

11 A I think that would be excessive..

12 Q All right.

13 Now, when the plane struck the ground it started  
14 striking the ground at regular intervals; isn't that  
15 correct?

16 A There was an initial impact followed by subse-  
17 quent impact.

18 Q All right.

19 Do you recall saying that the airplane started  
20 hitting the ground at regular intervals?

21 A Yes.

22 Q Does that fairly describe it?

23 A Yes.

24 Q Now, some seats in the front section came loose  
25 and moved from their regular position; is that right?

1 A I think that is not correct, to my recollection.

2 Q You didn't see any seats move at all?

3 A Two of the seats toward the back of the plane had  
4 tilted, but their position, except for the tilting, had not  
5 changed.

6 Q Well, I don't mean to quarrel at all, but tilting  
7 is a change in position from a seat that is bolted to the  
8 floor; isn't it?

9 A There was a change in position.

10 Q Now, before the airplane left the ground the  
11 seats appeared to be securely fastened to the floor; didn't  
12 they?

13 A Correct.

14 Q Now, you looked at the dead child.

15 How many dead children were in the upper com-  
16 partment, Doctor?

17 How many dead children were upstairs?

18 A I don't know how many there were upstairs. I  
19 was only aware of one.

20 Q Did you examine any of the adults that died up-  
21 stairs?

22 A No.

23 Q Did you examine the dead child?

24 A When I found the child we were evacuating the  
25 children from the plane. The child appeared not to be

1 breathing. I gave mouth to mouth resuscitation until it  
2 was apparent that this would not be effective.

3 Q But you never did determine precisely how that  
4 child died; did you?

5 A That is correct.

6 Q Now, you have made some speculation but you  
7 couldn't say with any degree of medical certainty how the  
8 child died; could you?

9 A The only --

10 Q I'm asking for a medical opinion as opposed to  
11 speculation.

12 A Would you state your question again, please?

13 Q Yes. And I want to be entirely fair.

14 Could you, as a physician, given an opinion, with  
15 a reasonable medical certainty, reasonable scientific cer-  
16 tainty, as to the cause of death of that child?

17 A I think in answer to your question the way you  
18 stated that the cause of the child's death was due to the  
19 cord being around the child's neck.

20 Q Now, this was something that was hanging around  
21 all the childrens' necks?

22 A Not all of the children. Some of them arrived  
23 on the plane with this little bag around their neck. Other  
24 children had it pinned to their clothes. This particular  
25 child, it was around the neck.

1 Q And how was it around the neck?

2 I am talking about originally now.

3 Was it loose, sort of like a pendant with a tag  
4 on it?

5 A That is correct.

6 Q Now, how did that get tight, if it did?

7 A Apparently the bag had swung to one side and  
8 compressed the child's neck.

9 Q A bag? How big was the bag on the end of the  
10 cord?

11 A Not very big.

12 [Indicating.]

13 Q Ordinarily a bag like that hanging around a  
14 child's neck wouldn't strangle it; is that right?

15 A That is right.

16 Q But if you put enough force on the bag it would  
17 strangle the child; isn't that right?

18 A That is right.

19 Q And force in that kind of situation would be a  
20 function of the weight of the bag times the velocity;  
21 isn't that right?

22 A It could be right.

23 But also the cord could just get tangled around  
24 the neck. And this is what appeared to have been what  
25 happened.

1 Q But it would have had to have been drawn tight;  
2 wouldn't it?

3 I mean it has to get tight to constrict the  
4 windpipe; doesn't it?

5 A That is right.

6 THE COURT: I wonder if this is for my purpose.

7 If you want to develop this as a factual matter,  
8 all right.

9 MR. LEWIS: I understand.

10 May I ask two more questions briefly?

11 THE COURT: Certainly.

12 But I don't think you need to prove the laws of  
13 physics to me.

14 MR. LEWIS: If the Court would just indulge me  
15 on this subject for two quick questions.

16 THE COURT: Surely.

17 BY MR. LEWIS:

18 Q Were the child's eyes bulging?

19 A I don't know.

20 Q Was the tongue sticking out?

21 A I don't recall.

22 Q Now, it took somewhat over an hour to get all of  
23 the children off the plane; is that not correct?

24 A My estimate was about 45 minutes.

25 Q Pardon me, sir?

1 A My estimate was 45 minutes.

2 Q So, would you say the better part of one hour?

3 A I would say 45 minutes.

4 Q So, you think the expression, "the better part  
5 of one hour" would not be an accurate way to put it?

6 A I don't know what the better part of an hour  
7 means.

8 Q All right.

9 Now, you were very concerned with fire, is that  
10 right, Doctor?

11 A That is correct.

12 Q And you saw a blazing inferno behind the section  
13 of the plane that you were in; is that right?

14 A This is what my testimony stated. But I was  
15 confused as to when I looked out of the plane, I was con-  
16 fused as to what was forward and what was backward. I  
17 think in my testimony I said in the back of a plane, but in  
18 looking at pictures I think it was in front of the plane.

19 Q I understand.

20 A But I did see a blazing inferno. That is cor-  
21 rect.

22 Q And it was close to the plane, whether it was in  
23 the front or the back?

24 A Probably 100, 150 yards.

25 So, not too close.

1 Q Did you hear that description by anybody at the  
2 conference that you attended on Sunday?

3 Did people discuss how far the fire was from the  
4 airplane at that meeting?

5 A There was mention of this, yes.

6 Q And is that when you got your testimony straight-  
7 tened out as to where the fire was located?

8 A That is correct.

9 THE COURT: Let me ask something.

10 Doctor, when you saw that fire, you said you  
11 were frightened, you were concerned about the prospect of  
12 fire in the compartment you were in.

13 Did you consider that that fire was close enough  
14 to spread to where you were?

15 THE WITNESS: It seemed to be far enough away  
16 that we were safe.

17 BY MR. LEWIS:

18 Q Doctor, isn't it a fact that you talked to the  
19 people about getting the children out as quickly as pos-  
20 sible because you thought there was a very serious risk of  
21 fire and that the children might die in it?

22 A During the descent, before the crash, I think  
23 all of us anticipated a hard crash landing. And my im-  
24 mediate concern was that we would have a fire and if we did  
25 we would have to get the orphans off the plane as quickly

1 as possible.

2 Q Well, you walked around the perimeter of the  
3 blazing inferno; didn't you?

4 A Not entirely. Part way around.

5 Q You were looking for your daughter?

6 A That is correct.

7 Q And you didn't find any survivors?

8 A No survivors.

9 Q And you were wandering aimlessly on the field  
10 after the crash and you were told to leave the area by  
11 somebody on a helicopter; isn't that true?

12 A Not quite.

13 It wasn't aimless wandering. It was sort of  
14 purposeful. I was trying to make a complete circle of the  
15 burning area because this is where I thought my daughter  
16 might have been.

17 I had gone, perhaps halfway around when one of  
18 the personnel from Air America, Mr. Boyce, as I recall,  
19 told me that there was going to be a thorough search of the  
20 area and probably would not be helpful if I stayed there.

21 So, he let down a chopper that was in the air.

22 Q Doctor, can you tell me where you were located in  
23 the troop compartment before the crash?

24 A [No response.]

25 Q How many rows of seats are there in the troop

1 compartment?

2 A Well, I'm not exactly sure. But perhaps 11 or 12.

3 Q How many seats across are there?

4 A Some of them had three on one side and three on  
5 the other.

6 Q Was that discussed at the meeting that you were  
7 at, that seating arrangement?

8 A It wasn't discussed, but I think we saw pictures  
9 of how the seats were arranged, yes.

10 Q And did you have as clear an understanding of  
11 the seating arrangements before the meeting as you did after?

12 A No.

13 I had a very cloudy picture before the meeting  
14 and a much clearer picture afterwards.

15 Q All right.

16 You had sent for the accident statements voluntar-  
17 ily sometime before this meeting; hadn't you?

18 A I forget exactly how that came about. I was  
19 speaking to some Air Force personnel in regard to some  
20 matter and he asked me if I had seen the collateral report.  
21 I said I hadn't but that I would love to see it because  
22 things were so hazy in my mind. He said that he would send  
23 me a copy, which he did.

24 Q So, before you saw the collateral report you were  
25 really unclear on a lot of aspects of what happened; isn't

1 that true?

2 A That is correct.

3 Q Including the seating arrangement and where you  
4 were and generally what happened; isn't that right?

5 A No.

6 I had a clear picture of where I was.

7 Q I understand.

8 Well, Doctor, it is true that you had a dear  
9 member of your family pass on in that, isn't that true, sir,  
10 in that accident?

11 A That is correct.

12 Q And I am sure you were truly grief stricken fol-  
13 lowing the accident; isn't that true?

14 A This certainly was a major concern. That is  
15 correct.

16 Q And your recollection of what happened in the  
17 confusion after the time it was known that there was a  
18 serious risk of crash, one of your important concerns was  
19 for your daughter's safety; isn't that true?

20 A That is correct.

21 Q I am not suggesting that is not entirely normal  
22 at all.

23 But your daughter would have been downstairs  
24 in the cargo compartment watching some of those children,  
25 is that right, sir?

1 A That is correct.

2 Q And you had received word, plus the noise that  
3 there was a substantial problem with the airplane; isn't  
4 that right?

5 A That is correct.

6 Q You thought there was a serious risk that every-  
7 body would die; isn't that right?

8 A This thought certainly passed through my mind.

9 Q Well, I am trying to find out as gently and as  
10 fairly as I can, Doctor, how much presence of mind you  
11 had during this period, considering your natural concern  
12 for your daughter, and I am sure to a lesser but still im-  
13 portant degree, to your own life.

14 A Knowing my daughter -- and you are quite correct,  
15 I did have concern for her. I remember asking myself the  
16 question: What would my daughter want me to do? And the  
17 reply that I got back was: Dad, you do whatever you have  
18 to do upstairs and I will do whatever I can do downstairs.

19 Q And I am sure you did what you had to do with  
20 that in mind.

21 My question, though, goes to recognizing that  
22 you were doing what you had to do, whether that apprehension  
23 for the life of your beloved daughter didn't to any degree  
24 impair any part of your consciousness as you went through  
25 those duties.

1           Isn't that fair?

2           A    After having reached the decision that I mentioned  
3           before, I just put that out of my mind as much as I could.

4           Q    Well, I am sure you did.

5           My question is: Were you able to put it completely  
6           out of your mind, Doctor?

7           A    Yes. At that time I was.

8           Q    And how about after the crash? Were you able to  
9           put it out of your mind then?

10          A    I didn't put it out of my mind, but the priorities  
11          that I had established were, first of all, to get the  
12          orphans off the plane as quickly as possible.

13          Q    Right.

14          A    And then make a search of the surrounding area for  
15          my daughter.

16          Q    I understand that.

17          But after you got the job done, the immediate job  
18          of getting the children away from the airplane, that was  
19          when your grief really hit you, is that right, sir?

20          A    That is correct.

21          Q    And it was pretty profound at that time, wasn't  
22          it, sir? You realized that there was a likelihood that  
23          this wonderful child of yours had died?

24          A    That is correct.

25          Q    And part of this was the motivation for you

1 wanting to see the collateral report?

2 A Well, I think you can't survive a crash like that  
3 without having an interest in it. Certainly I had an in-  
4 terest in the collateral report.

5 Q Of course you did.

6 You then read all of the statements of everybody?

7 A Yes.

8 THE COURT: Mr. Lewis, again, I am not the jury.

9 Do you have something that you are trying to  
10 elicit for my benefit?

11 MR. LEWIS: No, Judge.

12 The problems is, Your Honor, obviously it is a  
13 delicate matter and I had no opportunity to take the  
14 witness' deposition.

15 He is a fine gentleman. It is a delicate subject.

16 I think I have a legitimate right of inquiry.  
17 And I am prejudiced in the most extreme form by the form  
18 that this comes in, Judge. Not through the Court's actions,  
19 because you have been more than generous, but I am talking  
20 about the timing of this.

21 THE COURT: You are asking for relief or not?

22 MR. LEWIS: Well, yes, if it please the Court.  
23 I would move.

24 THE COURT: Do you want to excuse the Doctor for  
25 a moment?

1 MR. LEWIS: Yes.

2 THE COURT: Have you finished your examination?

3 MR. LEWIS: Yes.

4 THE COURT: Let's see if Mr. Dubuc wants to  
5 examine in any way. He is certainly privileged to.

6 MR. DUBUC: I have no questions.

7 THE COURT: Doctor, would you mind stepping out-  
8 side just a few minutes and you will be called back very  
9 shortly?

10 THE WITNESS: All right.

11 THE COURT: Thank you.

12 I think you will see a chair right outside.

13 THE WITNESS: Thank you.

14 [Whereupon, Dr. Stark left the courtroom.]

15 THE COURT: Mr. Lewis.

16 MR. LEWIS: If it please the Court, it is my  
17 understanding from Mr. Dubuc when he spoke to me the other  
18 day that this was the "Government's witness." And the  
19 Government was, to say the least, derelict in the Court's  
20 instructions in that regard.

21 THE COURT: By the way, I wanted to note the  
22 presence in the courtroom of a representative of the Air  
23 Force. I believe he was here yesterday.

24 I am glad to have you, Mr. VanNuys.

25 I think it ought to be on the record that you

1        were here during the testimony of the Government personnel  
2        and of this witness.

3                I am just noting it for the record.

4                You can sit at counsel table or back in the  
5        courtroom, whatever you wish to do.

6                MR. DUBUC: Your Honor, I don't believe what Mr.  
7        Lewis just indicated is absolutely correct.

8                I believe I indicated in my description of  
9        witnesses at the beginning of the case to the jury that  
10       we would be calling Dr. Stark.

11               THE COURT: Let him tell me what is bothering  
12       him and then you answer it.

13               MR. LEWIS: When the matter came up, Your Honor,  
14       in court the other day I went over -- and I vouch for  
15       this -- I went over to Mr. Dubuc and I said: May I con-  
16       tact Dr. Stark? He said: He is Pat Piper's witness and  
17       they have him some place and I don't know where he is. And  
18       then we went through the matter that you know of to finally  
19       locate him.

20               So, it was my perhaps mistaken understanding, but  
21       from the words given to me it was my understanding that  
22       he was a Government witness.

23               I don't mean that Mr. Dubuc didn't ultimately  
24       say he wanted to call him. But it will be recalled by the  
25       Court that the Government did not follow, even in a

1 rudimentary form, the procedures required of all of us by  
2 the Court.

3 I concede, and I appreciate, more than I can  
4 express, the opportunity to meet the man. I did have a  
5 conversation with him and the Court was kind enough to  
6 give us a little extension on the time we started. I did  
7 talk to him for the first time myself, although he had  
8 been contacted earlier.

9 We had the statement which we found in the  
10 collateral report, the question and answer of Mr. Piper,  
11 which covers a lot of the things that we are interested in.  
12 Then we had the voir dire this morning.

13 With a man whose daughter has died on the air-  
14 plane, Your Honor, it was necessary for me to ask these  
15 questions. I am not a hard person.

16 THE COURT: I don't think that you shattered  
17 him by asking the questions.

18 MR. LEWIS: But his capacity to recollect and  
19 so forth is important.

20 It does seem, and he has stated, that they came  
21 together with a common story, in effect. He suggested  
22 that was the phenomena that occurred.

23 THE COURT: I heard all that.

24 What do you want me to do, if anything?

25 MR. LEWIS: I want you to exclude the witness

1 because he was not on the defendant Lockheed's witness list.

2 They moved to amend it by adding a witness of  
3 ours and the Court ruled expressly against that.

4 THE COURT: I am not going to grant your motion.

5 Is there anything else?

6 I might say that you are privileged to, subject  
7 to arguments I haven't heard, you are privileged to elicit  
8 these facts in your cross-examination.

9 MR. LEWIS: It would seem to me, Your Honor, that  
10 with respect to the rule on witnesses, as I have always  
11 understood it, that after a trial starts, certainly counsel  
12 can talk to the witness -- otherwise he wouldn't know what  
13 the witness was going to say -- but to have all the  
14 witnesses on your side get together and compare stories and  
15 reach consensus does, if it please the Court, violate the  
16 rule.

17 THE COURT: I don't know exactly what the rule is.  
18 The rule on witnesses to me is that all witnesses leave the  
19 courtroom.

20 MR. LEWIS: Well, you understand, just very  
21 briefly, this is Lewis on the law, and although I have  
22 read it in the past and gone into this specific point, I  
23 don't want the Court to rely on it as being tippy top. But  
24 essentially the history is this: If you will recall in  
25 the hypothecate a woman of previous good character was

1 charged with adultery.

2 THE COURT: I know the story. But I don't know  
3 where the rule is written.

4 MR. LEWIS: The rules comes straight from that,  
5 Your Honor.

6 THE COURT: Is it written anywhere?

7 MR. LEWIS: Yes.

8 THE COURT: In what book?

9 MR. LEWIS: It is written in the books that  
10 report the common law.

11 THE COURT: It is not in the Federal Rules of  
12 Evidence, the Federal Rules of Civil Procedure.

13 MR. LEWIS: I will stand corrected. I have  
14 somebody with me who perhaps knows more about that than I  
15 do.

16 It is a common law rule, if it please the Court.  
17 I don't know whether it is precisely in the rule.

18 The thrust of it is to keep the witnesses from  
19 comparing their stories and ganging up, like in the  
20 hypothecate.

21 Now, in our instance, Judge, I see no objection  
22 and the cases clearly say, certainly counsel can talk to  
23 the witness and so forth. But counsel does not tell the  
24 witness what was said in the courtroom and so forth like  
25 that.

1           I think the rule is different with professional  
2           witnesses because they are taking the information of others  
3           and expressing an opinion.

4           But in the case of fact witnesses, which is what  
5           this person is, to have a conference, you know, to have a  
6           conference and everybody sort of agree on a common story  
7           does seem to take us to the front tiers of the rule.

8           THE COURT: I am going to honor the rule, assum-  
9           ing there is one, to the extent to allow you to elicit  
10           this information and argue about it to the jury. They are  
11           going to have to decide the credibility. To keep somebody  
12           out of the courtroom and keep whatever he recalls from  
13           the jury seems to me more drastic than the circumstances.

14           If there is any disciplinary aspect to this,  
15           there is a long list. I don't know whether there is some  
16           ethical aspect to this meeting or not.

17           MR. LEWIS: The whole point of the story in the  
18           hypothecate was to keep the victim, in our case, Michael  
19           Moses Schneider, from being ganged up on by people that  
20           put their heads together and say: What are we going to say?

21           THE COURT: The jury is here to decide that.

22           MR. LEWIS: Your Honor --

23           THE COURT: I have ruled.

24           MR. LEWIS: I am sorry, Your Honor.

25           May I then ask this: There are other Government

1       witnesses. May we have those first and then let's have in  
2       that interim a chance to check the book to make sure, even  
3       if it is a small part.

4                   THE COURT: If I am wrong, we will do it all  
5       over.

6                   MR. LEWIS: That is a terrible punishment, Judge.

7                   THE COURT: I understand.

8                   MR. LEWIS: Thank you.

9                   MR. DUBUC: Your Honor, could I be heard on that  
10      point?

11                  THE COURT: Sure.

12                  MR. DUBUC: Your Honor, of course, there has  
13      also been some testimony from counsel's witnesses in the  
14      plaintiff's case about two medical meetings at which not  
15      only medical witnesses were present but Ms. Lievermann.

16                  THE COURT: And you.

17                  MR. DUBUC: Well, only one. One of the two.

18                  THE COURT: You don't get anywhere by saying,  
19      one of the two.

20                  MR. DUBUC: I am not saying that. But there was  
21      certainly an exchange of information with lay witnesses.

22                  THE COURT: Do you think we ought to go back and  
23      strike that testimony too?

24                  MR. DUBUC: No.

25                  But I am just saying if there is going to be

1 something on that, then we would certainly want to be heard  
2 on such a similar motion.

3 Our point on this is also that Mr. Lewis did  
4 initially list Dr. Stark -- I just want the record to be  
5 clear -- he listed Dr. Stark and apparently they contacted  
6 him, just as he told us this morning, but for some reason  
7 decided not to call him. And if he wanted to take a  
8 deposition, certainly he could have done that.

9 THE COURT: Thank you.

10 MR. LEWIS: I don't wish to reargue the matter,  
11 Your Honor.

12 THE COURT: I should say that I would like to  
13 get this thing moving.

14 MR. LEWIS: I would like to just note two things  
15 for the record, if the Court would indulge me.

16 I am very interested in that same thing.

17 I would like to say for the record that the  
18 meeting has the affect of bringing survivors together and  
19 an exploitation -- I am sure not intentionally -- of  
20 phenomenon of the survivors' syndrome.

21 I am going to want to put on evidence on that  
22 in rebuttal, if it please the Court, and the affect of that.

23 THE COURT: I'm not passing on your rebuttal at  
24 this time. I am saying that you are perfectly free to  
25 develop this in cross-examination and in argument.

1 MR. LEWIS: I understand.

2 Thank you, Your Honor.

3 I wanted to give notice of it to counsel.

4 THE COURT: Thank you.

5 MR. DUBUC: Your Honor, may we also develop it  
6 on argument, the same thing as far as medical meetings?

7 THE COURT: I think that has already been  
8 elicited. It is in evidence. There have been several  
9 people that testified about it.

10 MR. DUBUC: I'm just talking about in argument  
11 as well.

12 THE COURT: I will come to that.

13 Now, you have the rule?

14 MR. PATRICK: Yes, sir.

15 THE COURT: What does the rule say?

16 MR. PATRICK: It is Rule 615 of the Federal  
17 Rules of Evidence. There is an advisory committee note.  
18 And Volume 6 of Wigmore, Sections 1837, 1838, 1841 discuss  
19 the matter.

20 I hasten to say, Your Honor, we are somewhat I  
21 hope with a twinge of regret that the Court will recognize  
22 that it is my understanding that a number of cases have  
23 permitted a witness to testify notwithstanding a violation  
24 of the rule, but have left the matter for the jury in  
25 judging the weight given the testimony.

1           However, I do think, most respectfully, that this  
2       is an additional ground for our motion, which is to re-  
3       strict Lockheed and the Government to the witnesses before-  
4       hand. And it does seem to me that exclusion of the witness  
5       under the circumstances and in light of the Court's prior  
6       order would be permissible.

7           THE COURT: Thank you.

8           Call the witness.

9           MR. DUBUC: Your Honor, before we call the  
10       witness could we have just a two minute recess?

11           THE COURT: Two minute recess?

12           MR. DUBUC: Just for me to leave for two minutes.

13           THE COURT: Two minutes, for what?

14           I just can't hear you.

15           All right.

16           We will take a two minute recess.

17           [Recess.]

18           THE COURT: Mr. Patrick.

19           MR. PATRICK: Your Honor, we would make one  
20       further request on the record.

21           I would remind the Court that it was Mr. Dubuc  
22       who invoked the rule and refused to permit our expert  
23       witness, Dr. Malone, experts normally being excused from  
24       the rule, he refused to permit our doctor to sit in and  
25       listen to the testimony, which we had hoped would shorten

1 somewhat his testimony.

2 We think at the very least we are entitled to  
3 an instruction by the Court that the rule was invoked, an  
4 explanation of what the rule means, and a statement that  
5 the Court is permitting him to testify notwithstanding this  
6 breach of the rule, with his credibility to be --

7 THE COURT: I will consider putting in the final  
8 instruction a reference to whatever testimony you elicit  
9 about the preparation of this witness.

10 Mr. Dubuc?

11 MR. DUBUC: But I notice that rule, Your Honor,  
12 pertains to witnesses in the courtroom or transcripts. I  
13 don't understand.

14 THE COURT: I saw some reference to sequestering  
15 witnesses, which would have the affect of precluding any  
16 preparation of the witness after the rule becomes in effect.

17 It says: If efficacy of excluding or sequester-  
18 ing witnesses --

19 MR. DUBUC: From the courtroom.

20 THE COURT: You don't sequester from the court-  
21 room. You sequester in a cell if you need to.

22 --- has long been recognized as a means of dis-  
23 couraging and exposing fabrication, inaccuracy and collu-  
24 sion.

25 MR. DUBUC: Right.

1           That is correct, Your Honor.

2           THE COURT: Now, if I had sequestered these  
3           witnesses, that would be one thing.

4           If there is some ethical or professional-ethical  
5           violation here, that is another thing.

6           But the witness comes to the courtroom now the  
7           way he is and it would be extremely artificial to try this  
8           case without the testimony of this witness. A fact is a  
9           fact. The witness was where he was on the plane; he was  
10           where he was in Mr. Dubuc's office. The jury will know  
11           both of those facts and I have a lot of confidence in  
12           juries.

13           We can bring them back now.

14           [Jury enters.]

15           THE COURT: Swear the witness.

16           WHEREUPON,

17                            MERRITT W. STARK

18           called as a witness on behalf of the Defendant,  
19           and, having been duly sworn, was examined and  
20           testified as follows:

21                            DIRECT EXAMINATION

22           BY MR. DUBUC:

23           Q     Dr. Stark, would you state for us your full  
24           name and address?

25           A     Merritt W. Stark. Goldsboro, North Carolina.

1           Q    And are you a physician, sir?

2           A    I am.

3           Q    And in what capacity are you presently employed?

4           A    I am the Medical Director of O'Berry Center,  
5           a state institution for the retarded in North Carolina.

6           Q    And where did you attend medical school?

7           A    University of Colorado.

8           Q    And do you have any particular specialty in  
9           practice?

10          A    Pediatrics.

11          Q    In connection with that position, did you prac-  
12          tice in pediatrics for a period of time after graduation  
13          from medical school?

14          A    I was in the private practice of pediatrics in  
15          Denver, Colorado from 1948 to 1969.

16          Q    And after 1969 in what capacity were you en-  
17          gaged?

18          A    In 1969 I was an employee of the Federal Govern-  
19          ment, USAID, a department in the Department of State, with  
20          assignments in Vietnam.

21          Q    And when did you go to Vietnam?

22          A    August of 1969.

23          Q    And what was your function or capacity for USAID  
24          in Vietnam?

25          A    I was in Vietnam for a period of a little over

1 six years. And my capacity there wasn't always the same.

2 The first year that I was in Vietnam I was as-  
3 signed to the City of Cantho in the Delta. I was the  
4 advisor to the Province Medical Chief.

5 Cantho is the capitol city of the Delta and  
6 referrals from the 15 provinces that comprise the Delta  
7 came to our original hospital in Cantho.

8 I had some responsibilities for training the  
9 medical students from the medical school in Saigon and some  
10 additional assignments on the pediatric ward at the hospital.

11 Q How long were you involved in that particular  
12 activity?

13 A I was assigned to the Delta for a period of one  
14 year and then I was transferred to Region III. Region III  
15 comprises the 12 provinces that surround the City of  
16 Saigon. The headquarters of Region III were in Ben Hua.  
17 And I was there for a period of approximately three years  
18 as Chief Health Officer of Region III.

19 My duties at that time involved advising the  
20 public health, the Vietnamese public health officials,  
21 assisting them, in a medical care delivery system for the  
22 civilians of Region III.

23 In that capacity I had responsibilities for  
24 surveying conditions in day care centers, orphanages, the  
25 hospitals in Region III.

1                   In the 12 provinces, each province had a hospital  
2 and we provided medical care for the civilians. So, sur-  
3 veillance of the different hospitals and nutritional  
4 problems, epidemic disease.

5                   I was Chief Health Officer in Region III for a  
6 period of three years and then with the reduction of  
7 American forces in Vietnam, the early part of '74 I was  
8 transferred to Saigon and my duties at that time were  
9 country-wide covering the 45 provinces of South Vietnam,  
10 with particular responsibilities in children's health. And  
11 this included all the orphanages in South Vietnam, probably  
12 about 200, numerous day care centers, nutritional problems,  
13 special work with the mountain yards. And at that time  
14 we were also getting tremendous numbers of refugees from  
15 areas where the war activities forced the relocation of  
16 a large number of civilians.

17                   So, the last year and a half, in addition to my  
18 duties with the children, I was heavily involved in the  
19 settlement and public health problems of the refugees.

20                   Q     All right.

21                   You have mentioned your responsibilities included  
22 public health problems, nutritional problems and so on in  
23 connection with some of the orphanages and day care cen-  
24 ters; is that correct?

25                   A     That is correct.

1 Q Could you describe for us with respect to, let's  
2 say the orphanages, what you observed as to medical health  
3 facilities, nutritional problems, as you have mentioned,  
4 and the like? What you observed?

5 MR. LEWIS: Your Honor, the doctor is certainly  
6 knowledgeable in a number of different orphanages and I  
7 think counsel should be a little more particular because  
8 apparently the quality is very wide.

9 THE COURT: Don't argue your point.

10 MR. DUBUC: I am trying to get it generally.

11 He said he had a region and then he had Vietnam.

12 THE COURT: Get the particulars.

13 MR. DUBUC: Okay.

14 BY MR. DUBUC:

15 Q Among the orphanages that you had responsibility  
16 for coordinating medical information with, were any of  
17 those orphanages run by Father Olivier?

18 A Father Olivier had a wide range of interests and  
19 responsibilities in Vietnam. There were several orphanages.  
20 Exactly how much responsibility he had for each orphanage,  
21 I don't know.

22 Throughout the 45 provinces of South Vietnam there  
23 were certain orphanages in the outlying provinces that fed  
24 children into Saigon and these might be accepted by Father  
25 Olivier.

1 Father Olivier himself was considered almost in  
2 the category of a Saint by the South Vietnamese people. He  
3 was an elderly man, probably well into his 70s.

4 There was some criticism of Father Olivier by  
5 some of the AID personnel because he attempted to do more  
6 than he could. Father Olivier was placed in the very dif-  
7 ficult position of perhaps having enough food for two  
8 children, but having eight or ten children who needed the  
9 food. And Father Olivier was the kind of person that  
10 could not say no.

11 So, rather than give the food to two children he  
12 would divide it up and give it to six or eight or ten  
13 children. And the criticism was that he undertook to do  
14 more for people than he had the capability of doing.

15 He had many other interests. In the two years  
16 that I was in Saigon he became aware that there were a good  
17 many unmarried or widowed mothers to be who had no place  
18 to go. So, he set up an agency for the unwed mothers.

19 He also had church responsibilities.

20 The people of South Vietnam, the Vietnamese  
21 people, looked on Father Olivier as very much of a Saint.

22 I made an appointment to meet with Father Olivier  
23 because I heard so much about him. I wanted to see what  
24 sort of a man this was. And he was everything that the  
25 Vietnamese people thought. He was just a fine person.

1 But he did have the tendency to try to do more than he had  
2 the capability to do. His orphanages were overcrowded.  
3 Orphanages that were built to house 150 children might have  
4 as many as 350 or 400.

5 In order to keep the orphanage going he had to  
6 pay local people to care for the orphans. And many times  
7 he did not have the money.

8 The distribution food for the orphans was done  
9 by the Ministry of Social Welfare. And the amount of food  
10 that was distributed was dependent on how many orphans you  
11 had in your institution. And the amount that was provided  
12 was not adequate for the number of orphans.

13 So, malnutrition, infections, were common in all  
14 of the orphanages. But, particularly those that were over-  
15 crowded.

16 Medical care to all of the orphanages was minimal  
17 or possibly even non-existent. And this would be true of  
18 Father Olivier's orphanages.

19 The amount of staff was inadequate. The amount  
20 of food was inadequate. Medicines were inadequate. Most  
21 of the children did not get additional vitamins.

22 The water that they got was not sterile. So,  
23 gastrointestinal infections were common.

24 The mortality in the orphanages was high.

25 But if you can sort of gather what I am saying

1 about Father Olivier, there were just hundreds and hundreds  
2 of people who just did not have enough to eat. Refugees  
3 were coming into Saigon from all over the country. He  
4 just could not say no to a person.

5 So, he took them in under his umbrella and tried  
6 to help them as much as he could. But he did not have the  
7 capability to do all of the things that he wanted to do.

8 Q Thank you, Doctor.

9 You mentioned malnutrition.

10 In the course of your liaison activities of  
11 serving these orphanages and visiting them and assessing  
12 some of the things you just told us, the medical avail-  
13 ability as well as certain ailments, did you find any  
14 ailments such as pneumococcemia in some of these orphanages?

15 THE COURT: There is an objection.

16 Just a moment.

17 MR. LEWIS: If there has been a diagnosis that  
18 this child had it, then that is one thing. But to go  
19 through a whole category of things, like leprosy and things  
20 like that, that is not fair.

21 MR. DUBUC: There is a suggestion of that in  
22 one of the hospital records. I will refer to it if you  
23 want. There is a reference to it.

24 THE COURT: The question is also leading.

25 BY MR. DUBUC:

1 Q You mentioned malnutrition, Doctor.

2 Does the definition of "malnutrition", as you  
3 mentioned it include any diagnosis of some of these child-  
4 ren you mentioned in these orphanages of such things as  
5 marasmus and kwashiorkor?

6 MR. LEWIS: I object to counsel suggesting.

7 THE COURT: Objection sustained.

8 You have to form your questions directly or  
9 abandon them.

10 MR. LEWIS: Could we approach the bench?

11 THE COURT: No. It is not necessary.

12 BY MR. DUBUC:

13 Q Doctor, you mentioned malnutrition.

14 Within that term, could you tell me whether  
15 there were any other specific types of diagnoses or problems  
16 that you observed?

17 A Infections in the orphanages were very common.  
18 You had a great many children brought together. So, that  
19 respiratory infections, colds, pneumonia, and particularly  
20 gastrointestinal disturbances, diarrhea, were very common  
21 in all of the orphanages.

22 And the mortality in the orphanages was much  
23 higher than you would have in this country.

24 In any underdeveloped country, such as Vietnam,  
25 it is very difficult for Americans to comprehend conditions

1 in an orphanage in an underdeveloped country.

2 So, malnutrition, undernutrition, frequent in-  
3 fections was a common thing.

4 Q Now, were there any laboratory facilities in  
5 these orphanages or did they have access to them?

6 A I can't recall a single orphanage that had access  
7 to a laboratory like we would have in this country.

8 None of the orphanages had frequent medical care.

9 In Saigon some of the orphanages would have a  
10 doctor that visited their orphanage once a week or once  
11 every two weeks. But day-to-day surveillance of the  
12 orphans, you would not find that in Vietnam.

13 Q Are there certain diagnoses within that malnutri-  
14 tion term that you have used which require laboratory  
15 assistance in making the diagnosis?

16 A If a child has diarrhea, what we would do in  
17 this country would be to take a culture and depending on  
18 the organism that grew, the treatment would be specific  
19 for that infection.

20 In Vietnam we did not have the laboratory. The  
21 orphanages did not have access to a laboratory. The only  
22 way this could be done was if a child were sick enough,  
23 then he might be admitted to a hospital which had these  
24 facilities.

25 Toward the end of the United States involvement

1 in Vietnam an intensive care center was set up at the  
2 Seventh Day Adventist Hospital to care for infants and  
3 small children who had serious illness.

4 Q Doctor, do you know or are you familiar with  
5 the term "maramus"?

6 A Yes.

7 Q And are you familiar with the term "kwashiorkor"?

8 A Kwashiorkor, yes.

9 Q And could you tell me what maramus is, as far as  
10 your understanding is concerned?

11 MR. LEWIS: Your Honor, could we approach the  
12 bench?

13 THE COURT: All right.

14 [Whereupon, the following took place at  
15 the bench outside of the hearing of the jury:]

16 THE COURT: Incidentally, one reason I resisted  
17 this is the reporter told me this morning that she and  
18 her colleagues have been having trouble with what we are  
19 saying up here. So, I think we ought to sound off, even  
20 if the jury hears a little bit.

21 MR. LEWIS: I am willing to do that, sir.

22 Your Honor, what counsel is trying to do is to  
23 perpetrate a half truth. I am sure not intentionally. But  
24 that is the affect of it.

25 The Denver Hospital and the Denver Developmental

1 Center, they refer to the fact that when the child was  
2 brought to this country, the presidio, he was diagnosed as  
3 have kwashiorkor and marasmus.

4 Now, marasmus is a condition that you die from  
5 almost immediately. It is almost very fatal. It is a  
6 result of starvation.

7 Kwashiorkor is a protein deficiency disease of  
8 a little different origin.

9 A review of the hospital records and the special  
10 records of the presidio shows that the child did not suffer  
11 from it. It says he has fair nutrition. It had several  
12 categories: Good, fair, poor and bad.

13 The laboratory tests show with the protein  
14 levels and the various food levels in the child's blood  
15 when he arrived in Denver General Hospital -- which was  
16 two or three days, I can't tell you precisely -- post-  
17 arrival, that he could not have had marasmus or kwashiorkor.

18 I believe the testimony is that it was impossible.

19 Now, to have counsel get up and ask this doctor  
20 to recite all of the maladies of all of the types of  
21 diseases that you can have is grossly prejudicial to this  
22 child. It truly is, sir.

23 The standard that we have been observing is the  
24 smoke that is some distance. They can't wander all over  
25 the lot. I think counsel should really be precise and not

1 lead this witness.

2 The witness has been heavily coached. All his  
3 other witnesses, Your Honor, have, too. You can tell  
4 from their testimony. They have been heavily coached.

5 THE COURT: You are going to bring that out?

6 What is your answer to that, Mr. Dubuc?

7 MR. DUBUC: Well, first of all, Your Honor, the  
8 hospital record, as I understand it, shows a history of  
9 this. It is in the record.

10 THE COURT: A history or a suspicion?

11 MR. DUBUC: This is a history that was given in  
12 '76 or '77 apparently by Mr. or Mrs. Schneider or somebody.  
13 It was certainly long after he was with her. This is why  
14 they took Michael to the hospital, for this study, the  
15 Denver study, whatever it was.

16 Now, Mr. Lewis could have asked her whether she  
17 gave that history. I was going to ask her about that, but  
18 I never got to it.

19 But, until I can get that cleared up, it is in  
20 the hospital record. That is not the only thing in the  
21 hospital record. There are other indications in other  
22 hospital records of malnutrition.

23 My questions to this doctor this morning have  
24 only been so far to ask him what each of these two things  
25 are. My next question is going to be, depending on his

1 answer, relating to nutrition, whether these require labo-  
2 ratory diagnosis, and, if so, did he find that in those  
3 diagnosed in Vietnam.

4 I am not going to pursue it much more than that.

5 MR. LEWIS: This is not an expert witness that  
6 we have been warned about. We haven't had any idea this  
7 was an expert witness.

8 If you want to ask him about what is kwashiorkor,  
9 you are not asking what he saw, essentially, which I will  
10 take as an expert. But you want him to say that he knows  
11 the different qualities of this condition and so forth  
12 like that.

13 It really goes far beyond the pre-trial order.  
14 In these circumstances, Your Honor, it is just very unfair  
15 to the child.

16 MR. DUBUC: We are not making him an expert.

17 He has testified that this was his job to  
18 observe and that is all that I am asking him about.

19 THE COURT: Objection sustained.

20 MR. LEWIS: While we are here, Your Honor, this  
21 little boy —

22 THE COURT: Don't "little boy" me now, Mr. Lewis.  
23 I am not the jury.

24 Go ahead.

25 MR. LEWIS: I am sorry, Your Honor. I sometimes

1 get involved emotionally with my case. I'm not trying to  
2 prejudice you.

3 This plaintiff was in an orphanage in the city  
4 of Saigon, according to the records.

5 THE COURT: For two days.

6 MR. LEWIS: No.

7 He was in for his whole life.

8 THE COURT: Father Olivier's orphanage in Saigon?

9 MR. LEWIS: Yes.

10 THE COURT: That wasn't clear on the record.

11 MR. LEWIS: It is clear from the records.

12 Now, counsel is getting this witness to talk  
13 about conditions all over Saigon in areas that are not  
14 remotely relevant to it.

15 MR. DUBUC: I will ask him that.

16 MR. LEWIS: He is leading this witness.

17 THE COURT: Leading is objectionable.

18 I will sustain your objection to leading this  
19 witness.

20 Do you want something more?

21 MR. LEWIS: I would just like you to caution  
22 counsel to limit --

23 THE COURT: Do you understand that the Olivier  
24 orphanage that this child was in was in Saigon?

25 MR. DUBUC: Yes.

1           I asked if he had one in Saigon. He said yes.

2           THE COURT: I don't care about his testimony  
3           about it. He is going to say that the orphanage in Saigon  
4           had all of the conditions.

5           MR. DUBUC: I will ask him that.

6           THE COURT: And then quit this line.

7           MR. DUBUC: Maybe a couple of other questions  
8           along this, on the kwashiorkor.

9           [Whereupon, the following took place in  
10           open court:]

11           BY MR. DUBUC:

12           Q     Doctor, you were speaking of Father Olivier's  
13           orphanages.

14           Did he have one or more of those within or near  
15           Saigon?

16           A     I am not sure how many orphanages.

17           And when you say, did he have an orphanage, I  
18           am not sure it was actually his orphanage. But there were  
19           certain orphanages that he worked closely with. I think  
20           there was one orphanage that he worked at, but there were  
21           others that he had an interest in.

22           Q     And with respect to your description you have  
23           been giving, would that include those such as Goldsbat and  
24           others that he worked with in and around Saigon?

25           A     That is correct.

1 Q Now, you mentioned something about also that your  
2 duties included facilities for child health or child care  
3 facilities.

4 Did that include facilities for, I think you  
5 said mothers or mothers who were with child and going to  
6 have children?

7 A That was one.

8 MR. LEWIS: May I limit it to the Dong Chua Cuu  
9 The Redemptionist Orphanages in Saigon, if it please the  
10 Court?

11 THE COURT: Ask him that question.

12 MR. DUBUC: I was on the pre-mother care.

13 Do you want me to go back?

14 THE COURT: No.

15 Let's go on.

16 If you are off the orphanages, go on.

17 BY MR. DUBUC:

18 Q I think my question was: You had mentioned some  
19 child care facilities, which I think you said were for the  
20 mothers who were going to have children, or widows who were  
21 going to have children; is that correct?

22 You did mention that; didn't you?

23 A I did, yes, sir.

24 Q Could you tell us something of your observations  
25 with respect to those facilities?

1 THE COURT: Objection sustained.

2 BY MR. DUBUC:

3 Q Now, Doctor, in connection with your duties,  
4 did there come a time when you were assigned in some  
5 capacity to a C-5A flight leaving Saigon on April 4, 1975?

6 A That is correct.

7 Q And when did you learn first that you were going  
8 to be on that flight?

9 A On Friday morning, the 4th of April of 1975, at  
10 about eleven o'clock. The head of the Public Health  
11 Division in Saigon called me in and told me about a flight  
12 that would be leaving that day.

13 They had received Presidential authority to use  
14 one of the Army aircraft to remove the children from some  
15 of the agencies in Vietnam. And the orders that I got  
16 were to accompany the orphan airlift. That is what it was  
17 called.

18 I received information that I would be the  
19 medical officer accompanying the orphans at about eleven  
20 o'clock and was told to be at the orphanage collection site  
21 at two o'clock.

22 When I received this information I called the  
23 agency, Friends For All Children, and inquired who would  
24 be the escorts on the plane. I had had some previous ex-  
25 perience with bringing orphans back to this country from

1 Vietnam. This had been done by a commercial flight. The  
2 commercial flights would sometimes assist by bringing back  
3 eight orphans or ten orphans, but they required a certain  
4 number of escorts. It was one escort for three and  
5 possibly four children.

6 My understanding was that we were going to  
7 evacuate several hundred children and I wondered who was  
8 going to be assisting in this operation. The agency men-  
9 tioned that they had five or six people that would be going  
10 and if I knew anyone else that could go as an escort, to  
11 please try to get their help.

12 So, after I received word at eleven o'clock my  
13 wife was teaching school in Saigon and I dropped by the  
14 school where she was teaching. This was to be the last  
15 day of school for the children. But she felt that she  
16 could not go because she hadn't finished up with the  
17 school assignments and grades and all.

18 So, I proceeded back to where we were living  
19 and my daughter had just arrived home. At that time there  
20 was an order out that dependents and anyone not in Vietnam  
21 in an official capacity was to leave. So, wives and  
22 dependents were being encouraged to leave the country.

23 My daughter had been scheduled to accompany the  
24 orphans from one of the Catholic agencies on Saturday. I  
25 prevailed on her to come with me on this particular flight

1 because we were going to be short of escorts.

2 So, we hurriedly put our things together and I  
3 had to pick up a copy of my orders at USAID and we arrived  
4 at the collection site at two o'clock.

5 The understanding that I had was that the plane  
6 was scheduled to depart shortly thereafter.

7 When I pulled into the collection site for the  
8 orphans there were three or four buses that were already  
9 there. I spoke with Margaret Moses, as I recollect, and  
10 she gave me a list of the orphans that comprised Friends  
11 For All Children. And when she gave it to me she mentioned  
12 that these would not necessarily be the orphans that were  
13 going to be on the plane; that they just didn't have time  
14 to make out an appropriate list.

15 I had also received from USAID a memo from the  
16 Vice President of Vietnam, who had given permission to  
17 the airport officials to waive certain regulations that they  
18 had to follow.

19 At about 2:15 the orphans that were not on the  
20 bus were loaded and we proceeded in a caravan to Ton Son  
21 Nhut Air Base.

22 The government of Vietnam at that time was still  
23 a functioning government and the guards had certain orders  
24 that people could not be allowed on the Air Base without  
25 proper credentials. The orphans did not have these proper

1 credentials and there was some discussion among all guards  
2 as to whether we would be allowed to proceed. But with  
3 the letter that I had from the Vice President they agreed  
4 to let us on. But there were a good number of the guards  
5 that were reluctant to do this.

6 We then drove over to where the C-5A was un-  
7 loading the last of the military cargo and we probably  
8 waited on the buses for approximately 30 minutes.

9 It was very hot. Temperatures in Saigon at that  
10 time of year ran between 90 and 100. And waiting in the  
11 hot sun in the buses, everyone got very hot; the infants  
12 were fussing. Many of these were small children. The  
13 aids from the orphanages would be carrying the infants or  
14 two infants while they were on the bus.

15 After waiting there for approximately 30 minutes  
16 and the last of the military cargo was unloaded, we  
17 finally started loading the orphans onto the plane. And  
18 this was done bus load by bus load. We would unload one  
19 bus and then unload another bus.

20 The first bus load of children, most of these  
21 were the younger children, and they were assigned to the  
22 upper structure of the plane.

23 The C-5A is a very sizeable plane. Someone said  
24 it is four or five stories high. And in the upper part of  
25 the plane I think they speak of that as the flight deck.

1 But in the flight deck there are seats and as the infants  
2 were brought from the cargo, which is the big open area  
3 below, as they were taken up the steep ladder to the flight  
4 deck they were placed two in a seat with a pillow in front  
5 of them and tied in with seat belts to the seat, two  
6 infants to a seat.

7 And we probably had about 150 orphans in the  
8 upstairs portion.

9 The larger children we tended to keep downstairs.  
10 They were laid on the floor and the straps that were used  
11 to hold the cargo were the straps that were used to sort  
12 of immobilize the children on the floor during takeoff.

13 There were a few seats around the outside of the  
14 cargo and some of the older children, the ones that could  
15 sit up, sat with some of the escorts in these seats.

16 Loading probably took the better part of an hour.  
17 But all during this period there was considerable concern  
18 that we would not be allowed to leave. There were a num-  
19 ber of Vietnamese officials who felt that taking children  
20 out of Vietnam was not the right thing to do and there was  
21 a lot of communication and arguing.

22 I had some concern that someone might come up  
23 and just say, "You can't do this."

24 But finally we did get the orphans loaded. The  
25 senior military officer, his wish prevailed that we be

1 allowed to leave, and the doors were closed and about four  
2 o'clock we took off from the runway at Ton Son Nhut.

3 Q In which compartment were you, Doctor, when the  
4 airplane took off?

5 A I was in the upper compartment.

6 As I mentioned, my daughter came with me and  
7 she spoke some Vietnamese. Most of the older children were  
8 in the downstairs compartment. So, I figured that she  
9 would be more helpful working with the older children. I  
10 figured that most of the problem children would be among  
11 the younger infants that we had put in the upstairs, in  
12 the upper hatch. So, this is where I went.

13 Q And would you tell us what you observed in that  
14 upper troop compartment -- that is the upper compartment --  
15 as to the children after the airplane took off and before  
16 the rapid decompression?

17 A As I mentioned, it was very hot when the children  
18 were on the buses and during the loading procedure this  
19 was an upsetting procedure for all of the children, being  
20 put in the seat and strapped in.

21 So, there was a good bit of fussing and crying.  
22 Besides, it was very hot.

23 My thought was that as soon as we took off and  
24 we got a little circulation of air that the temperature  
25 would cool off and the infants that were fussing would

1 quiet down. And this, in fact, is what happened. Up until  
2 the time of takeoff many of the children were fussing. We  
3 did give them fluids, but there still was a lot of fussing  
4 because of the heat.

5 Many of the children were excessively clothed  
6 when they arrived. And my thought was as soon as we get  
7 airborne, then we can turn our attention to care for the  
8 infants and do what needed to be done.

9 Q When you say "excessively clothed" what are you  
10 referring to?

11 A I think when the agency people dressed the  
12 children they put on clothes because they felt that the  
13 airplane might be cool. So, they arrived there with more  
14 clothes on than they needed during that period.

15 Q You mentioned seating the children two to a seat.  
16 Did you personally look at how the children were  
17 secured to the seats in the troop compartment?

18 A Yes, I did.

19 The children were placed two children to a seat  
20 with a pillow in the front and then the seatbelt was at-  
21 tached. So, the children were quite firm in their seats.

22 Q Can you recall whether those seats were forward  
23 facing seats?

24 In other words, the children sat facing the for-  
25 ward part of the airplane or aft facing?

1           A    The back of the seat was forward and the child-  
2       ren were facing toward the back.

3           Q    I see.

4                 Now, did there come a time when there was a  
5        rapid decompression of the airplane?

6           A    We had been airborne possibly for 18 or 20 min-  
7       utes. I am not exactly sure about the length of time.

8                 But I had been doing quite a bit of flying in  
9        Vietnam and suddenly this very loud explosion and my first  
10      thought was that we had been hit by a surface to air  
11      missile.

12                 There was a substantial shock to the plane and  
13      I think everyone on board felt that we might crash.

14                 But the pilot was able to keep the plane under  
15      some control and shortly after this explosion the word  
16      came up that we were turning around and heading towards  
17      Saigon.

18           Q    Now, you describe this as an explosion.

19                 What, if anything, did you observe or feel your-  
20      self in the troop compartment at that time?

21           A    I don't think there was anything physical that  
22      I noticed, just this loud sort of explosion which sort of  
23      rocked the plane.

24           Q    Were you seated at that time?

25           A    I was standing up between the seats at that time.

1 Q What affect, if any, did it have upon you?

2 A Well, I didn't fall to the ground or anything  
3 like that.

4 Q And following the rapid decompression, can you  
5 tell us what you observed and what you did?

6 A When we got the word that we were turning around  
7 and heading back to Saigon I sort of had the feeling that  
8 we still might have a crash landing. The plane was under  
9 some control, but it wasn't a normal flight. The plane  
10 would slow down and then there would be a period of ac-  
11 celeration and then it would slow down and another period  
12 of acceleration.

13 Two or three of the other people that were help-  
14 ing with the orphans upstairs, I remember talking to a  
15 couple, and mentioned that if we did crash that we would  
16 have to be concerned about fire and that we should get the  
17 orphans all down the chute as rapidly as we could.

18 The flight deck is two or three stories above  
19 the ground and I felt that we would have to get the in-  
20 fants down as quickly as possible.

21 So, I remember saying that I would be happy to  
22 go down and receive the orphans as they were slid down the  
23 chute.

24 Then I think the rest of the time we just checked  
25 on our -- the people in the flight deck upstairs, we sort

1 of each had responsibility for a row of orphans. I had  
2 ten or twelve children in my row and I just tightened  
3 their seatbelts.

4 After the explosion, a very short time later --  
5 I don't know the exact time -- but oxygen masks were low-  
6 ered. But there was insufficient oxygen masks for all of  
7 the children.

8 I did not put on an oxygen mask and I didn't  
9 notice any particular need for one. And it was hard to  
10 know which orphan to give the oxygen to. And it didn't  
11 seem to make any difference in their reaction with the  
12 mask.

13 So, after a short time I just forgot about the  
14 masks and checked each infant to make sure that the seat-  
15 belts were fairly snug in case we did have a hard landing.

16 Q Doctor, you say you did not put on an oxygen  
17 mask?

18 A No. I did not put on an oxygen mask.

19 Q Did you feel any effects --

20 THE COURT: Asked and answered.

21 A NO.

22 BY MR. DUBUC:

23 Q You mentioned something about trying to give  
24 oxygen to the children and you said --

25 MR. LEWIS: Your Honor, counsel is just pro-

1 ceeding on the same subject.

2 BY MR. DUBUC:

3 Q Doctor, did you observe the children in your  
4 area at the time of decompression as the airplane des-  
5 cended?

6 A Yes. I observed the children.

7 But I think you have to be aware of the fact  
8 that most of us thought we were going to crash. And I  
9 don't recall seeing anything particularly unusual about  
10 the children. The sound, the explosion did not seem to  
11 materialy change any of the reaction of the children.

12 After we got airborne, as a result of the wait-  
13 ing and the heat, many of the children had gone to sleep,  
14 and this was pretty much the way they were. I didn't  
15 notice any change after the explosion particularly.

16 Q Were some of them awake --

17 MR. LEWIS: Your Honor, counsel is leading this  
18 witness.

19 THE COURT: Reform the question.

20 BY MR. DUBUC:

21 Q Prior to the decompression did you observe any  
22 of the children awake?

23 A Some of the children were awake.

24 Well, 150 children, some were awake, some were  
25 asleep, some were crying, some were wet, I am sure some

1 had soiled diapers. But this just didn't seem to be the  
2 time to be tending to their personal needs. We sort of  
3 put this off until a more suitable time.

4 The ones that were crying, we gave water to.  
5 Some of the infants had diluted milk formula, which we  
6 gave.

7 But I don't think there was any standard reaction  
8 that would apply to all of the infants.

9 Q Okay.

10 So, there were some differences before the  
11 decompression?

12 A Yes.

13 Q Can you tell us whether there were any dif-  
14 ferences after the decompression?

15 A I really can't give you any specific answer.

16 I think we were all so concerned with the  
17 possibility of a crash, I didn't really pay that much  
18 attention. But I certainly wasn't aware of any particular  
19 problem with any of the infants.

20 Q Now, between the decompression and the time of  
21 the ultimate landing, did you have occasion to check the  
22 infants in the area you described you had responsibility  
23 for?

24 A Yes.

25 I tightened all their seatbelts and some of the

1       ones were given water or diluted milk formula if they were  
2       crying.

3       Q       Now, did there come a time when you received  
4       some information or instructions as to the preparation  
5       for landing?

6       A       Yes.

7               Shortly before we landed there was an announcement,  
8       prepare for landing.

9               Let's see. I forget exactly how it was worded,  
10      prepare for a hard landing or something like that.

11              So, I was aware that it might be a hard landing.

12       Q       And did you have a seat yourself for that landing?

13           THE COURT: There is an objection.

14           Just a moment.

15           MR. LEWIS: Counsel is leading this witness,  
16       Your Honor. He knows what he presumably meant.

17           THE COURT: That is overruled.

18       A       I did not have a seat. None of the --

19           THE COURT: You have answered the question.

20           THE WITNESS: Excuse me.

21           BY MR. DUBUC:

22       Q       Then, in your situation, without a seat, how  
23       did you prepare yourself for landing?

24       A       My concern was that the seat in back of me might  
25       push forward as a result of the hard impact. So, I braced

1 my back against the seat behind me as hard as I could and  
2 just pushed back as hard as I could.

3 Q And you mentioned an impact.

4 Can you describe that for us?

5 A There was an initial impact which was certainly  
6 hard, but the plane didn't explode or anything like that,  
7 which is sort of what I had anticipated might happen.

8 Then following this initial touchdown, then there  
9 was a series of crashes as the plane crashed across the  
10 landing area. This took a matter of, I guess, a few  
11 seconds. It seemed much longer.

12 But finally the plane came to a complete halt.

13 Q Okay.

14 And during that period of time were you in this  
15 braced position that you have described for us?

16 A That is correct.

17 Q Did you remain conscious throughout this period?

18 A Yes.

19 Q Did you see any fire in your area or in this  
20 troop area during that period?

21 A No.

22 Q Did you see any smoke?

23 A No.

24 Q Did any parts of the airplane in the area you  
25 were in, wedged in the seats, come loose during this

1 period?

2 A Not in the area where I was.

3 Q Now, were you injured in any way as a result of  
4 this?

5 A I was not injured.

6 Q Could you tell us what happened when the airplane  
7 came to a stop, at least the part that you were in came to  
8 a stop?

9 A When the plane came to a stop and we were still  
10 breathing, my first concern was that there might be a fire  
11 and I had pictured ourselves up two or three stories high  
12 in the troop compartment..

13 Almost immediately as the plane stopped someone  
14 kicked the escape door out and instead of being away up  
15 in the air we were right even with the ground. We did  
16 not have any fire in the immediate area and I was aware of  
17 a tremendous burning area which I thought was behind the  
18 plane, maybe 100 or so yards.

19 I still thought there might be a chance of fire  
20 in our area. So, we immediately started unbuckling the  
21 orphans and we sat up a little system.

22 One of the crew men had sustained a broken leg  
23 and couldn't move. So, we stationed him in the door.

24 One of the other ladies, a nurse, had broken her  
25 arm. So, she could only carry infants with one arm.

1                   So, from the area where I was, we would loosen  
2 the seatbelts, take the infants and give them to the  
3 crew man with the broken leg and he would hand them to  
4 someone outside. And we did this very quickly until we  
5 had more infants outside and there was no place to put  
6 them outside except on the ground. And it seemed rather  
7 foolish to just put them outside.

8                   So, when it became apparent that fire was not  
9 going to be a problem, we kept the infants inside until  
10 the choppers arrived, which was a matter of just a few  
11 minutes before the choppers arrived and started taking the  
12 orphans back to Ton Son Nhut.

13                  Then we sort of delivered the orphans to the  
14 outside at a pace that the choppers could handle.

15                  Q    All right.

16                  During this period of time, during the evacua-  
17 tion of the children to the helicopters and then to the  
18 hospital, did you notice any fumes in the area? Did you  
19 smell any fumes of any kind?

20                  A    I was not aware of any.

21                  Q    And with respect to the children you observed,  
22 you said you were unbuckling the seatbelts for these  
23 children.

24                  Were they still in their seats after this?

25                  A    Yes.

1 Q And did you observe these children that were re-  
2 moved?

3 A I just observed that they were alive and not  
4 apparently injured. And the only infant that was not this  
5 way was the one, I think, that I described that had the  
6 cord around the neck. This child was not alive.

7 Q When you say "a cord around his neck," what do  
8 you mean by that, Doctor?

9 A When they came aboard there was a little bag  
10 with their personal possessions, I presume, tied around  
11 their neck or pinned onto their shirt. This bag had become  
12 entangled in the child's neck and I thought had cut off  
13 the circulation.

14 Q Did you make any efforts to revive that child?

15 A I tried. I gave the child mouth-to-mouth res-  
16 uscitation briefly and there was no response. I stopped  
17 and got the other orphans off.

18 Q Can you give you an estimate of approximately how  
19 long it took from the time the troop compartment stopped  
20 its motion before the orphans were taken out of their  
21 seats, taken out of the airplane, and put on helicopters and  
22 evacuated to hospitals?

23 A I thought this time was approximately 45 minutes.

24 Q All right.

25 And then did you go to the hospital?

1 A No.

2 After all the orphans were unloaded I had a  
3 thought or a vain hope, I guess, that my daughter might  
4 have been thrown out of the airplane. And when I saw  
5 this burning area I had assumed that was the cargo hatch.

6 So, I started to walk around. I was planning  
7 on making a circle of the burning just to see if by  
8 chance my daughter might have been thrown out. And I  
9 think I got perhaps halfway around the burning area when  
10 one of the Air America crew came over and said that there  
11 was really no need for me to look further; that they  
12 would make a complete search of the area.

13 There happened to be a Vietnamese chopper,  
14 which we flagged down. I climbed aboard the chopper and  
15 he asked me where I wanted to go and I said back to Ton  
16 Son Nhut.

17 All of the other choppers had gone to the  
18 hospital at Ton Son Nhut, but he took me to the Vietnamese  
19 side of Ton Son Nhut.

20 When I got there there was a German television  
21 crew that was filming the crash and they offered to take  
22 me to where I could pick up an American vehicle.

23 So, we drove maybe five or six blocks and they  
24 stopped and I got into an American vehicle. The vehicle  
25 though was headed out to the crash, which is just where I

1 came from. That was not where I wanted to go.

2 So, after riding a block with them and finding  
3 they were going to the crash site I got out and someone  
4 gave me a ride in their car and I realized that I was not  
5 too far from where I lived and I thought my wife would be  
6 quite worried.

7 So, instead of going to Ton Son Nhut I went  
8 directly to where we lived.

9 Q Doctor, you said you walked from the troop com-  
10 partment over to the area where this burning area was  
11 located?

12 A That is right.

13 Q I think you mentioned previously 100 yards.  
14 Is that the basis of your estimate, the 100  
15 yards?

16 A Well, you couldn't get too close because this  
17 was a very intense fire. So, I just got as close as I  
18 could safely be.

19 Q All right.

20 Now, other than the one child you mentioned that  
21 had the cord tangled around his neck, which I think you  
22 told us about, did you observe any of the other children  
23 removed from the airplane to be unconscious?

24 A I really don't think at the time of the crash.  
25 All I could say was that the children were alive and

1 breathing and we just picked them up.

2 Q And had you had occasion to inspect or look at  
3 the Seventh Day Adventist Hospital Intensive Care Unit in  
4 the course of your duties?

5 A Yes.

6 Q And what would you say as to those facilities,  
7 as far as their ability and competency to make examinations  
8 and take care of children in connection with an incident  
9 like this?

10 A The intensive care unit, I am not sure how they  
11 got involved in this. I really can't answer that question  
12 because I was not involved in the examination of the in-  
13 fants after the crash.

14 Q Well, how would that hospital rank in your view,  
15 based on your experience, with other hospitals in the  
16 area?

17 A In the area?

18 Q Yes.

19 A Well, there just were no other hospitals in the  
20 area. That was just about the only one. In fact, it was  
21 the only one, except for some Vietnamese hospitals. But  
22 I think they were not involved.

23 But the facilities at the Seventh Day Adventist  
24 Hospital were certainly minimal.

25 Q Thank you, Doctor.

## 1                   CROSS-EXAMINATION

2                   BY MR. LEWIS:

3                   Q     Doctor, you were kind enough to meet me this  
4                   morning and discuss some of this with me; is that correct?

5                   A     That is correct.

6                   Q     This is the first time you and I have met; is  
7                   that correct?

8                   A     That is right.

9                   Q     Now, was there a meeting last Sunday where the  
10                  Lockheed witnesses got together to tell each other what  
11                  they remembered had happened?

12                  A     That is correct.

13                  Q     And that meeting took place in Lockheed's  
14                  lawyer's office; is that right?

15                  A     Correct.

16                  Q     And the people that were present included Mr.  
17                  Dubuc, this gentleman over here, and this gentleman in  
18                  the black suit, is that correct, Mr. Jones?

19                  A     Mr. Jones, yes.

20                  Q     And there was an Air Force lawyer there?

21                  Do you remember that?

22                  A     I think not.

23                  Q     Now, there were a number of people that you  
24                  remembered having been on the plane that crashed; is that  
25                  right?

1 A No.

2 Q I am speaking of crewmen and nurses.

3 A Until I met them in the office, I didn't recall  
4 any of these other people at the crash.

5 Q I understand.

6 But you also sat around a table and the meeting  
7 was convened by Mr. Dubuc; is that right?

8 A Correct.

9 Q And one person after another told about what he  
10 remembered about the crash and was asked some questions  
11 from time to time by Mr. Dubuc or others about details; is  
12 that right?

13 A I don't think there was so many questions asked.  
14 I think we each sort of recounted what we recalled speci-  
15 fically about the crash.

16 Q And at that time some people had their statements  
17 that they had given the Air Force earlier and some didn't;  
18 is that right?

19 A That is correct.

20 Q And as a result of that meeting you observed  
21 that people were trying to sort of reconcile or get their  
22 common thread of what happened, is that right?

23 A No. I don't think that is quite right.

24 I think different people remember different  
25 things about the crash and we were all in different

1 locations.

2 So, each of us just recounted what happened as we  
3 remembered it. Naturally people remember different  
4 things.

5 Q I see.

6 But did it seem to assist people in recollecting  
7 what happened, that process?

8 A Yes.

9 I think there is no question that that is true.

10 I think I mentioned earlier that one of the  
11 ladies that was helping me take the orphans off had a  
12 broken arm and so she was only able to use one arm. And  
13 when I was telling my story, when I was recounting what  
14 I remembered, she said I am the person with that broken  
15 arm.

16 Q Until that meeting your memory was fuzzy about  
17 what happened; wasn't it?

18 A Yes.

19 Q And a number of things that you told us today  
20 were made less fuzzy by what you heard at that meeting;  
21 isn't that true?

22 A I think the example that I gave. I knew there  
23 was a lady there with a broken arm. But if I had passed  
24 her on the street I wouldn't have known who it was. But,  
25 yes, seeing her in the meeting and recalling the same

1 things, did help.

2 Q Now, you had on your own written the Government  
3 and asked for a copy of all the statements of all of the  
4 witnesses before you knew you were to be called as a  
5 witness; is that right?

6 A No. That is not correct.

7 Q All right.

8 When did you first write the Governemtn and ask  
9 them to give you a copy of the accident investigation  
10 report?

11 A I didn't write the Government at any time.

12 Q I must be mistaken. I thought you told me that  
13 you asked them for copies of the statements of the other  
14 witnesses.

15 A No.

16 Q You didn't do that?

17 A No.

18 I think maybe there is a little misunderstanding.  
19 I was speaking to someone out in California,  
20 and I can't remember exactly what the call was about.

21 Q Don't you think I am right, sir?

22 A I remember now.

23 I had thought, gee, it would be nice if I spoke  
24 to the pilot of the plane because I had the feeling that  
25 the fact that any of us survived at all was the result of

1 his good sense. And I never had a chance to meet him. I  
2 didn't even know what his name was.

3 So, I called out to California and when I was  
4 speaking to the person that answered the phone the mention  
5 was made of this collateral report, which was an investi-  
6 gation of the crash.

7 He asked me if I would like a copy. I said I  
8 would love to have a copy because things are not very  
9 clear in my mind.

10 So, I did not write them.

11 Q Forgive me.

12 You told me that you got a copy of it.

13 A Yes. I did get a copy of the collateral report.  
14 That is correct.

15 Q I thought you had written. I am sorry.

16 But, in any event, you did ask them for it when  
17 they suggested one was available and you did read it?

18 A That is correct.

19 Q Now, before reading it you really weren't very  
20 clear about what happened; were you?

21 A Well, I think I was very clear about what hap-  
22 pened to me and to the people immediately in my area. But  
23 I certainly was not very clear about where the plane landed.  
24 I really didn't realize that we had sort of bounced clear  
25 across the Saigon River. I didn't know where the different

1 parts of the plane were located. There were a lot of  
2 things that I didn't know.

3 But as far as what happened to me, I think I had  
4 a very good recollection of that.

5 Q All right, sir.

6 Now, directing your attention to being on the  
7 airplane, you were the senior medical person on the air-  
8 plane; is that true?

9 A I was the senior medical person on the airplane,  
10 although this was not any formal arrangement.

11 Q I understand.

12 And you never did any examination in the tech-  
13 nical medical sense of any of the children that were on the  
14 airplane, did you, Doctor?

15 A While they were on the airplane?

16 Q Yes.

17 A No.

18 Q Did you do an examination of the children after  
19 they left the airplane?

20 A No.

21 Q Now, you have had enormous grief following that  
22 terrible event; didn't you?

23 A That is correct.

24 MR. LEWIS: That is all the questions I have.

25 Thank you.

1 THE COURT: Mr. Dubuc.

2 MR. LEWIS: Let me ask one question, if I may,  
3 Your Honor.

4 THE COURT: Yes. Surely.

5 MR. LEWIS: I just neglected it. I am sorry,  
6 sir.

7 BY MR. LEWIS:

8 Q Are you familiar -- forgive my pronunciation --  
9 with the Dong Chua Cuu Redemptionist Orphanage in Saigon?

10 A No.

11 Q Have you been there?

12 A I don't know what it is you are referring to.

13 Q Do you ever remember having been to that or-  
14 phanage?

15 A To that orphanage?

16 Q Yes.

17 A Not by that name, no.

18 The Vietnamese sometimes called an orphanage  
19 by one name and the Americans called the orphanage by  
20 another name.

21 Friends For All Children had one of their  
22 agencies, which was called the Newhaven. But the Vietna-  
23 mese might have called it something else. I don't know.

24 Q Well, the orphanage that I am referring to, sir,  
25 is the one that was run by Father Olivier, and I wondered

1 if you could tell me, if you know, any other name.

2 Can you tell me the names of Father Olivier's  
3 orphanages in Saigon?

4 MR. DUBUC: Objection, Your Honor.

5 THE COURT: Overruled.

6 BY MR. LEWIS:

7 Q Can you tell me the names of the Vietnamese  
8 orphanages in Saigon run by Father Olivier by any dif-  
9 ferent name that you know them?

10 A I have given the name of the orphanage earlier  
11 and it slips my mind at the moment. I don't recall that  
12 name now.

13 Q Let me show you Exhibit 34, sir.

14 That is the release by Father Olivier when he  
15 delivered the boy we now know as Michael Schneider to  
16 the facility for the Friends For All Children.

17 I wanted you to tell me if you knew of that  
18 orphanage.

19 If you do, I wanted to ask you some detailed  
20 questions about it.

21 A I don't place this orphanage by this name, no.

22 Q And you couldn't tell me the names and addresses  
23 of Father Olivier's orphanages in Saigon, the ones that  
24 he directly controlled; could you?

25 A No.

1 Q But you would agree that there were vast dif-  
2 ferences in the quality of orphan care facilities in  
3 Vietnam; is that not true?

4 A That is correct.

5 Q Now, if I showed you a blood test of Michael  
6 Schneider with a nursery name of Charlie that was taken  
7 shortly after he arrived in the United States, would you  
8 be able to tell us whether this was a blood test of a  
9 child who suffered from malnutrition or not?

10 I don't want to ask you something if this is  
11 not in your area.

12 MR. DUBUC: Note my objection.

13 THE COURT: Overruled.

14 A I could certainly look at it.

15 MR. DUBUC: What exhibit is that?

16 MR. LEWIS: It is from the Denver General Hos-  
17 pital record.

18 MR. DUBUC: Do you have the number?

19 MR. LEWIS: I believe it is page 3 of DD-48-1.

20 THE COURT: Wait just a minute before you  
21 answer, Doctor, so that defense counsel can find it.

22 BY MR. LEWIS:

23 Q What does the blood values tell you about his  
24 nutrition, Doctor?

25 A Well, there is certainly some suspicious things

1 in this record.

2 Q Let's talk about the protein values.

3 A The protein value is not abnormal.

4 Q You mean he is normal?

5 A I am not sure you can say that it is normal.

6 The values that they gave here are between six and eight  
7 and this value is 8.6.

8 But some of the other values are not normal.

9 The blood cholesterol is below normal. The blood glucose  
10 is below normal.

11 And the two tests that I would be a little bit  
12 concerned about, the three tests, are the alkaline phos-  
13 phatase, the LDH and the SPOT. These are the tests that  
14 we use to determine liver function.

15 Q I understand that. He had a suspected liver  
16 problem at that time, Doctor.

17 I will give you the whole hospital record, if  
18 you want.

19 My question goes to the question of malnutri-  
20 tion, per se.

21 He was in the hospital for some problems. My  
22 question is about malnutrition.

23 Let's just take the protein fraction.

24 Would you tell me what the protein fraction --  
25 is that the right way to put it, Doctor? What do you call

1 that protein fraction there?

2 A The serum proteins.

3 Q Serum proteins.

4 Now, what are the serum proteins of a seriously  
5 malnourished child? Give me the value in fractions, if  
6 you can.

7 If it is not within your area, I don't want to  
8 ask you. I know people have different areas of expertise.

9 A The serum proteins for children with protein  
10 deficiency would be below six.

11 Q How below?

12 If you found a seriously malnourished child and  
13 you gave it a serum protein test, what would you, to be  
14 consistent with your diagnosis, expect the serum protein  
15 level to be of a seriously malnourished child?

16 A I think to take a single test like this, you  
17 can't give an answer, because a child could be severely  
18 malnourished, but if they were dehydrated, if they didn't  
19 have enough fluid in their body, the child actually might  
20 have a low protein but because of the blood concentration  
21 resulting from dehydration the proteins might be elevated.

22 So, actually you could have a child with severe  
23 malnutrition who might have an elevated protein.

24 I think it is very hazardous to take a single  
25 test like this without knowing whether the child was

1 dehydrated, what other diseases that he had.

2 Q Well, are you an expert in analysis of mal-  
3 nutrition from blood tests?

4 A I don't know how to interpret when you say "an  
5 expert". I am very knowledgeable about the clinical  
6 findings in malnutrition. I have seen many cases of mal-  
7 nutrition in Vietnam, severe marasmus, kwashiorkor, and  
8 milder cases of malnutrition.

9 Q I understand.

10 A I don't know exactly what you mean by "an  
11 expert".

12 Q Well, there are some people who specialize in  
13 blood work I gather. I was just wondering.

14 A I don't specialize in blood work.

15 Q Doctor, did you assume the responsibility of  
16 senior medical person on the airplane, you know, sort of  
17 by necessity because you were the only doctor there?

18 A When we arrived at the Air Base I assumed that  
19 I was the senior medical officer. I had received a list  
20 of the orphans from Friends For All Children. And I also  
21 had the letter permitting the guards at the Air Base to  
22 let the orphans board and to let the plane leave.

23 The plane had a crew and included in the crew  
24 were nurses and health technicians. There was so much  
25 confusion at the time of getting the orphans on I had not

1 exerted my authority where a lot of the people there -- I  
2 think there was just so much confusion, they did not know  
3 who I was, just as I did not know who they were. I was  
4 planning on doing this after we got airborne and got the  
5 orphans straightened out.

6 Q I understand, sir.

7 But you didn't direct a program of examination  
8 of these children at the hospital; did you?

9 A Prior?

10 Q No. After the crash.

11 A Would you state your question again, please?

12 Q Yes, sir.

13 Did you give any instructions, as the senior  
14 medical person on that airplane, as to what kind of ex-  
15 amination should be done on the children; what kind of  
16 records should be kept from those examinations?

17 A No. I did not have any contact with the children  
18 after the crash.

19 Q Yes.

20 But did you have contact with persons --

21 A No.

22 Q Did you attempt to reach anybody and give in-  
23 structions as to what kind of examinations should be done  
24 on those children at that time?

25 A No..

1 MR. LEWIS: Thank you very much, Doctor.

2 THE COURT: Mr. Dubuc.

3 MR. DUBUC: I have no further questions.

4 Thank you, Doctor.

5 MR. LEWIS: Thank you for coming.

6 THE COURT: Doctor, you may step down.

7 Thank you very much.

8 THE WITNESS: Thank you, Judge.

9 THE COURT: We will adjourn now for lunch,  
10 ladies and gentlemen.

11 I remind you, don't talk about the case to each  
12 other; don't talk to anybody about it; and don't speak  
13 under any circumstances to any of us.

14 We will reconvene at 1:45.

15 Wait until the jury is out of the room, Doctor.

16 [Jury leaves.]

17 THE COURT: Is there something you want to ask  
18 me?

19 THE WITNESS: I just wondered if I was through  
20 as a witness?

21 THE COURT: As far as I am concerned.

22 Mr. Lewis.

23 MR. LEWIS: No. He is free to go.

24 THE COURT: Are there any plans for this after-  
25 noon?

1                   MR.. DUBUC: I have another witness, Your Honor.

2                   I had asked everybody to check with you.

3                   THE COURT: I wish you would go to three o'clock.

4                   MR. DUBUC: All right, Your Honor.

5                   MR. LEWIS: If it is to the convenience of  
6 anyone, I am confident to quit at any time.

7                   THE COURT: Well, three o'clock will be a good  
8 time.

9                   [Whereupon, at 12:30 the matter recessed,  
10 to reconvene at 1:45.]