

TOTE - Marchetti

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA1
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MELISSA HOPE MARCHETTI, also known :
as NGO THI HOA THUONG, a minor who :
sues by and through her next :
friends and adoptive parents, DENNIS :
AND PAMELA MARCHETTI, :
and by and through her guardian :
ad litem, CHARLES R. WORK and :
PEABODY, RIVLIN, LAMBERT & MEYERS, :
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Plaintiff, :
-v- :
LOCKHEED AIRCRAFT CORPORATION, :
Defendant :
and :
Third Party Plaintiff :
-v- :
THE UNITED STATES OF AMERICA, :
Third Party Defendant. :
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Civil Action

No. 76-544-3

Washington, D.C.
Tuesday, May 20, 1980

A. M. SESSION

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The above-entitled matter came on for trial before
the Honorable LOUIS F. OBERDORFER, United States District
Judge, and a jury duly empaneled and sworn, in Courtroom Number
3, commencing at approximately 9:30 o'clock a.m.

APPEARANCES:

For the Plaintiff

OREN LEWIS, ESQ.

WILLIAM COHEN, ESQ.

ROBERT LEWIS, ESQ.

MICHAEL MARCUS, ESQ.

RICHARD JONES, ESQ.

J. VERNON PATRICK, ESQ.

JOHN FRICKER, ESQ.

OFFICIAL REPORTER: Sylvia T. Seymour

1 APPEARANCES (continued):

2 For the Defendants:3 CARROLL DUBUC, ESQ.
4 TEMPLE RATCLIFFE, ESQ.
5 AIDAN JONES, ESQ.
6 JAMES PIPER, ESQ.

7 ***

8 C O N T E N T S

	<u>Defendants' Witnesses</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
10	MARCIA RAE TATE	19	42		
11	Examination by Mr. Dubuc			72	
12	Examination by Mr. Lewis				
13	HARRIETT MARIE NEAL				
14	Examination by Mr. Dubuc	73			
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P R O C E E D I N G S

2 MR. PATRICK: There were a couple of things I wanted
3 to call Your Honor's attention to or ask Your Honor this morning
4 First of all, I understand that Lockheed--that someone from
5 New York Lockheed's principal company, insurance company,
6 is coming down this afternoon about 4:00 or 4:30. Is that
7 right?

8 MR. DUBUC: 4:30.

9 MR. PATRICK: And Mr. Piper is still out of town;
10 but his superior would be available at that time for a meeting
11 with the Court and with us, Your Honor. I wanted to be sure
12 that that would be satisfactory with the Court.

13 THE COURT: Yes, that will be fine.

14 MR. PATRICK: Secondly, Your Honor; it is my under-
15 standing-- We have been checking the record. It is my under-
16 standing a Motion for Leave to File and Amended Complaint
17 to add Mr. and Mrs. Marchetti was filed April 18; that no
18 order, as yet, has been entered sofar as I can determine.
19 One was entered April 29 in the Zimmerly case and--

20 THE COURT: That was subject to some kind of further
21 transaction.

22 MR. PATRICK: On assignment. And we have discussed
23 that with Mr. Marchetti and, you know, we will have such an
24 assignment executed. I think that is agreeable with the
25 Marchetti's and-- Your Honor, except for that, which we

1 think is sort of a housekeeping detail, we would have by the
2 end of the case. And I think there are a few other housekeeping
3 matters with respect to the plaintiffs' exhibits, for example;
4 medical bills and things of that sort, which I would hope
5 we would be able to resolve with Lockheed's counsel without
6 troubling the Court. And I think a Dr. Reff who is in surgery
7 this morning--

8 THE COURT: Dr. who?

9 MR. PATRICK: Reff--an orthopedic surgeon who is
10 in surgery this morning. We have an agreement with Lockheed
11 we can call him out of order this afternoon about 3:30.

12 MR. DUBUC: Your Honor, that is conditioned on--
13 I understood Mr. Lewis' representation, plaintiff rests after
14 Dr. Reff is called. I don't want to be in the position of
15 starting my case and accommodating plaintiffs this way and
16 reopening their case.

17 THE COURT: Have you ever seen him?

18 MR. DUBUC: As Mr. Lewis told me this morning--
19 I had not heard except as Mr. Patrick representing it.

20 MR. PATRICK: As I say, except for these housekeeping
21 matters; the Motion, the exhibits, and Dr. Reff, it is my
22 understanding we are ready to rest at this time.

23 THE COURT: While you are up--

24 MR. PATRICK: Yes, sir.

25 THE COURT: What about our hearing on the schedule

1 for Wednesday--for tomorrow at 4:30 on the pending Motion
2 for Summary Judgment on the presence issue?

3 MR. PATRICK: I would like to keep that if we could,
4 if it please the Court, for tomorrow.

5 THE COURT: I would like to do that tomorrow.

6 MR. PATRICK: We have Mrs.-- We have Ms.--

7 THE COURT: Taylor?

8 MR. PATRICK: --Taylor still here and I think she
9 would be available.

10 I wanted to ask the Court; we have had some deposition
11 testimony from one of the Government people that indicated
12 that this Tab 52 was best evidence available although I think
13 he stated there had been one child who was omitted from that--
14 in addition to that list. But sofar as it was concerned,
15 it was the best evidence available.

16 I am not certain I know what kind of evidence the
17 Court would want to hear orally but we would certainly have
18 Ms. Taylor available. Would the Court want us to try to have
19 anyone else available from the Air Force?

20 THE COURT: What I want to do is-- What I am hoping
21 to do, just so you will understand--

22 MR. PATRICK: Sure.

23 THE COURT: --I am trying to eliminate as many loose
24 ends as I can before I put these cases up for circulation.

25 MR. PATRICK: Right.

1 THE COURT: I don't want each of my colleagues
2 having to try the presence issue, if you can avoid it. I
3 would like to hear the best you have on that and the best
4 Lockheed has, and I assume it can be submitted as a matter
5 to me, not the jury-- I assume it will apply across the board
6 in the sense it will apply to Tab 52, at least, and that I
7 can receive references to depositions and I can receive affi-
8 davits and I don't have to close the record tomorrow.

9 MR. PATRICK: All right, sir.

10 THE COURT: But if I can just get on top of what
11 you have, maybe I can decide the Motion now, or it may be
12 that it would be some days before it was decided. But I would
13 like to decide it before we, in a sense, go public with this.

14 MR. PATRICK: We would very much appreciate that,
15 Your Honor. Thank you.

16 MR. LEWIS: Could I contribute something to this,
17 Your Honor.

18 THE COURT: Certainly.

19 MR. LEWIS: In the deposition program for Group 2,
20 Colonel Waxtein's deposition was taken. Colonel Waxtein,
21 if you recall, Your Honor, was the investigating officer
22 putting certain parts of the Air Force's investigation together.
23 He testified in the deposition, as I recall, at that time
24 certain matters that would affect this Motion, and we would
25 want to put his deposition on. If there was any objection

1 to that, rather than calling him I guess we would have to
2 ask he be brought here. But we would be happy with his
3 deposition.

4 Major Piper was the officer who actually had the contact
5 with the FAC people and presumably he will be here.

6 THE COURT: Will he be here this afternoon?

7 MR. DUBUC: My understanding is he is still out
8 of town, but I made that arrangement because Your Honor had
9 asked for that and I talked to him last night and he agreed
10 to be here.

11 MR. LEWIS: Colonel Waxtein's deposition seems
12 to lie the issue at rest from a factual standpoint.

13 THE COURT: Has that been filed?

14 MR. LEWIS: I am sure it has, sir. In the Group
15 2 cases, he was asked questions, for example, as to whether
16 the investigation was conducted pursuant to the regulation--
17 I believe we know about. And he said it was.

18 And this was the best evidence, and this was
19 the evidence they used--I mean, the master list was the evidence
20 they used.

21 THE COURT: When was that deposition taken? You
22 must have it.

23 MR. LEWIS: I believe--

24 MR. PATRICK: Tuesday, May 6, 1980, Your Honor.

25 THE COURT: All right, so that was taken after

1 you filed your motion.

2 MR. PATRICK: Yes, sir, it was taken in connection
3 with--I think at the time of the--in connection with the
4 Group 2 people in light of the, I guess, in light of the question
5 having been raised in the Reynolds case and in the other cases
6 there.

7 THE COURT: Are you able to tell-- I don't think
8 you need to tell me--but are you able to tell Lockheed, sort
9 of in the spirit of a pretrial, what it is you are going to
10 be offering tomorrow so that they can be in a position to
11 deal with it a little bit? I don't want to pin them down.

12 MR. PATRICK: Yes, Your Honor, I think it is pretty
13 much in our Motion already. We got the Wendy Grant deposition
14 which is attached to the Motion. There are portions of that
15 in which we understand or construe that as having--

16 THE COURT: I don't want to argue it now, I don't
17 think, if you don't mind. If you just give them some warning
18 as to what it is--

19 MR. PATRICK: I understand.

20 The question of FAAC business records was raised
21 in that deposition and there was, indeed, a stipulation.

22 Then we have this Waxtein deposition and then we
23 have got Ms. Taylor. And this, really, I think relates
24 across the board kind of question. Now there, you know,
25 if we are put to the burden of trying to prove it as to each

1 child--and there may be additional witnesses like Elaine Norris
2 and people who were in her position who might have something
3 to offer with respect to that subject.

4 But our--and I am not trying to argue, but it is
5 our position and our anticipated position that in light of
6 the agreement of January which was executed after the September
7 stipulation, that if there is any admissible evidence, then
8 that question would be foreclosed. It is not a question of
9 the normal-- The normal question of a summary judgment would
10 be whether-- There is no question, you know, that can be
11 raised. We think it is a little bit different.

12 THE COURT: Mr. Dubuc, yes.

13 MR. DUBUC: On that subject, I would just like to
14 note for the record; first of all it would help us in preparing
15 for this to get a response from the plaintiffs to written
16 requests I have already made to them, and that is specifically
17 as to those cases, the next three or four, whatever they are
18 talking about--after the Reynolds, Tefft and Brook cases--
19 that they have chosen for the next round, having the next
20 round--maybe in New York--in Your Honor's procedure.

21 THE COURT: Does this relate to the Taylor, the
22 presence question?

23 MR. DUBUC: It does because, for one thing, in the
24 next three cases we only challenge one and that was Reynolds
25 and it would certainly help us to know at least in the

1 immediate future what the next three cases are. There may
2 be no issue on that. We may have been able to eliminate a
3 good portion of what the hearing would be.

4 Secondly, I would like to know from the Court that
5 our information to date is that they have, plaintiffs have
6 received and filed 63 cases--have received leave to file an
7 additional four, which are 67, and there are still outstanding
8 on those eight cases, seven or eight cases which there was
9 not sufficient determination or documentation available to
10 determine whether or not we have got a question of representa-
11 tion of the parents.

12 That totals, Your Honor, approximately 74 out of
13 150 cases. And within that 74 I believe there is something
14 like 30 or 35 cases that involved foreign plaintiffs. And
15 I think there may be eight or ten remaining American cases
16 that have not been filed. But the vast majority of the other
17 half of the cases--half of the cases represented here--

18 THE COURT: That is 30 or 35 of the cases, of the
19 67 or of the difference between 67 and--

20 MR. DUBUC: No, 30 or 35 of the ones filed already
21 that are foreign cases, and of the remainder, the other 75
22 which we haven't heard from yet--at least our calculations.
23 and review of the records indicate there are only about ten
24 Americans and the remainder are foreign residing plaintiffs.

25 We believe that to have an across the board determinati

1 at this point as to 75 unfiled cases where we already know
2 we have some great problems--not only with respect to represen-
3 tation and assessment of the documentation whether or not
4 there has been change as there was in the Blank case which
5 has been settled, and we have several months' worth of
6 discussions and dealings with the German court which found
7 that the original plaintiffs were the grandparents and they
8 were not qualified to be the adoptive parents and, apparently,
9 the brother or sister-in-law then took up the baton and they
10 are not completely complete, or whatever it is. There has
11 been-- In that one case, as an example, there has been a
12 lot of problems and for us to, we feel, sit across the board
13 with almost 50 percent of the claimed cases remaining unfiled
14 and foreign countries--well over 50 percent of the cases are--
15 ninety out of the 150 are foreign residents. We may be dealing
16 with something that is both premature and it may place us
17 in a position where later on we may find out that we have
18 decided or dealt with something that may not be quite as we
19 know it to be today.

20 And I understand that the plaintiffs have some
21 problems, too. They have problems even getting some medical
22 records in some of these foreign plaintiffs, much less
23 corresponding with them.

24 I am just suggesting that because that is what
25 exists and there is a very large portion of this iceberg that

1 as far as I can see is substantially still underwater.

2 THE COURT: I have thought dimly about that for
3 the future. And, as I see it, a time will come that the line
4 has been dead at the other end. Nobody answered, and we will
5 just hang up and dismiss the cases without prejudice. You
6 still face a liability; but I don't.

7 MR. DUBUC: We understand. We understand.

8 THE COURT: I am glad to have that perspective.

9 I still am of a view that the presence of detaillen is an
10 opportunity to bring to a head whatever we know now. So let's
11 find the facts as we know them now on the subject, and draw
12 conclusions from them then. And if they don't--if the
13 evidence doesn't apply to some plaintiffs we won't apply it.

14 MR. DUBUC: I understand that. I thought I should
15 raise that because I thought it should be one of the considera-
16 tions of, first of all, the scope, what we finally get to
17 in dealing with this problem.

18 THE COURT: I wanted also to refer back to my sort
19 of explosive decompression yesterday afternoon about the
20 meetings. I am glad you have responded this quickly. I was
21 concerned for fear that by combination of accidents and
22 oversights on my part and yours, that is counsel's, or failure
23 of communication that is between us; that this Marchetti case
24 might have been barreling along to trial without having really
25 considered carefully the gap between whatever was discussed

1 in conference in chambers the other day about disposition
2 of it and, the plaintiff's case having been displayed, what
3 is the outside basis for the claim. .

4 And also, as you probably, probably said to you,
5 I am germanating some sort of self help device in the event
6 you all aren't able to conceive of something that will work
7 to process these things.

8 For the conference this afternoon, in case you all
9 have an opportunity to anticipate it and give some thought
10 to it beforehand, I would like to have a consideration of
11 the Marchetti case qua case--with the points of departure
12 being what we discussed in chambers, which is what I call
13 it--was conditional only in the sense that you all wanted
14 sort of moratorium on trials--the defendants did, in order
15 to let the--get the material together to process in a settlement
16 mode some of the other cases. And the guardian is obviously
17 concerned, among other things, about the difficulty that that
18 would pose if the cases were delayed in providing relief for
19 any plaintiff who may ultimately win a judgment but in the
20 interim is not getting what Dr.--what some doctors, at least,
21 say is necessary observation and treatment.

22 And I would guess I have said this several different
23 times and several different ways. I would also like to consider
24 it possibly as a second agenda item assuming you all can come
25 close together on the--what would be paid in this case. I

1 would like you all to consider--if not at this sitting, while
2 your principals are here, the possibility of having a similar
3 structured, if I can borrow the word, conference about
4 settling the three imminent cases. Again, I am thinking about
5 my dealing these things off to my colleagues and I think it
6 would be an imposition to hand them cases which, without having
7 done the best I could, to find the common ground between.

8 So I would like in this conference now to plan for,
9 if not to conduct, to plan for conferences for those three
10 cases. I would like to have you consider, Mr. Dubuc, whether
11 you would want to make offers of judgment in cases that are
12 as far along as Marchetti or as far along as Reynolds and
13 Tefft and the other.

14 With respect to your condition about postponing
15 the trial, I have one attitude about that, if no plan is in
16 place for providing for these children down the line whose
17 trials can't be reached for years, in any event, no matter
18 what we do. And another attitude, if there is no provision
19 for them.

20 And I have got some ideas about how you could do
21 that, if you had a mind to do it. I think the essential
22 ingredients are, of course, money for the payment--to or
23 for the benefit of those children as their needs appear in
24 this interim. That is, money unequivocally committed to that
25 purpose, to be disbursed by somebody that you and the plaintiffs

1 trust. And that wouldn't preclude your recovering the unexpended
2 balance, if the need didn't materialize or if--when the case
3 got to trial you won.

4 And I think the necessary ingredient to that is
5 to provide something for efforts of counsel which produce
6 that result, if it is produced. That is to put that fund
7 in place, and that machinery.

8 I don't know whether conversations that Mr. Work
9 and Mr. Piper and Mr. Patrick have had have reached you or
10 whether they have, they cover this.

11 MR. DUBUC: Yesterday's do not. I tried to get
12 Mr. Piper last night, and I couldn't get him.

13 THE COURT: But I am thinking along these lines.
14 As in all things like this, it is a better solution if you
15 all arrive at your variation of it.

16 MR. DUBUC: Well, I--

17 THE COURT: You don't need to comment on this now,
18 but I wanted it on the table for your conversation this
19 afternoon.

20 MR. DUBUC: I would have to pass this on.

21 THE COURT: I understand.

22 MR. DUBUC: I don't know whether I can do it this
23 morning while we are doing that.

24 THE COURT: I understand, but you have a lot of
25 lobes to your brain and you can have one of them mulling on

1 this while you are getting ready.

2 MR. DUBUC: It is getting near capacity, Your Honor.

3 THE COURT: Is there anything else, Mr. Patrick,
4 before we start?

5 MR. PATRICK: Yes.

6 MR. DUBUC: I have one other matter, Your Honor--
7 housekeeping. We did file a Motion for Additional Time to
8 Respond on the Zimmerly.

9 THE COURT: I signed that.

10 MR. DUBUC: Thank you.

11 MR. PATRICK: Your Honor, to try to save the Court
12 and opposing counsel some time, I found the spot in the Waxtein
13 deposition. It is at page 55 commencing at line 17 and going
14 on through page 56 and, I guess, down to line 14.

15 THE COURT: This was the deposition of May 6, 1960?

16 MR. PATRICK: Mr. Waxtein, May 6, 1980; Bernard
17 A. Waxtein, Jr.

18 THE COURT: And you think that has been filed?

19 MR. PATRICK: I believe so, sir. And if it is not,
20 we will certainly get a copy to you.

21 THE COURT: Is it your deposition or the defendant's
22 deposition?

23 MR. PATRICK: I am sorry. I think it is the plaintiff's
24 deposition of-- Yes, taken by counsel for plaintiffs.

25 THE COURT: Thank you.

1 MR. PATRICK: Your Honor, I may have to be excused.

2 I have got to take some medical tests again this morning.

3 THE COURT: You are certainly free to do that. Are
4 you feeling all right?

5 MR. PATRICK: Yes, sir--I hope so.

6 THE COURT: Thank you.

7 MR. DUBUC: Your Honor, before we bring the jury
8 back in, since we did rather juggle our schedule radically
9 this morning in order to accommodate the problem with Dr.
10 Reff, I wonder if I could just have two or three minutes.

11 THE COURT: Thank you. I will just stay right here.

12 MR. RICHARD JONES: Excuse me, Your Honor. During
13 the interim Mr. Work wanted the Court to know he had a hearing
14 this morning, but he will be here shortly before noon.

15 THE COURT: Will he be in here? That will be in
16 chambers. I don't know what your pleasure is with the Marchetti's.
17 I can either have them in there or not, as you please.

18 MR. LEWIS: Your Honor, did the Court want me to
19 mention when the jury comes in, with the exception of the
20 witness, Dr. Reff, that we rest?

21 THE COURT: Please do.

22 MR. LEWIS: Yes.

23 MR. DUBUC: I just want to be sure for the record;
24 we will be filing a Motion at the close of plaintiff's case.
25 This is technically--

1 THE COURT: They are going to close it.

2 MR. DUBUC: This is technically--on the condition,
3 I want to advise the Court we reserve our right to file the
4 Motion, and want to file it after their witnesses this afternoon.

5 THE COURT: That is the Motion for Directed Verdict?

6 MR. DUBUC: Yes, Your Honor.

7 THE COURT: It is reserved.

8 (Whereupon the Jury entered)

9 THE COURT: Mr. Lewis.

10 MR. LEWIS: If it please the Court, with the exception
11 of Dr. Reff who is operating this morning, and cannot be here
12 until this afternoon, and some housekeeping details; we rest.

13 THE COURT: Very well, Mr. Dubuc?

14 MR. DUBUC: Your Honor, I am reserving my rights
15 to file a Motion after Dr. Reff appears, if that is permitted.

16 THE COURT: Yes, you have that reserved.

17 MR. DUBUC: In which case I understand we can proceed
18 with our case.

19 THE COURT: Yes, call your first witness.

20 MR. DUBUC: Captain Marcia Tate.

21 THE DEPUTY CLERK: She has been sworn.
◆

22 MR. DUBUC: Would the Court wish to remind her of
23 her status?

24 THE COURT: You are still under oath.

25 MR. DUBUC: Thank you.

1 Thereupon,

2 MARCIA RAE TATE,

3 a witness, having been called as a witness for and on behalf
4 of the defendants, and having been duly sworn by the Deputy
5 Clerk, was examined further and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. DUBUC:

8 Q Captain, would you state your name and address for
9 the record, please.

10 A Marcia Rae Tate.

11 Quarters 4212B, USAF Academy, Colorado.

12 Q USAF Academy is what?

13 A United States Air Force Academy.

14 Q And what are your duties there?

15 A I am a nurse in the Health Education Program at
16 USAF Academy Hospital.

17 Q Would you describe your nursing training and background
18 before you were in the Air Force?

19 A Yes, I went to a three-year diploma school of nursing
20 in South Bend, Indiana and worked for a year prior to coming
21 in the Air Force in a medical unit, St. Johns Hospital; Anderson,
22 Indiana.

23 Q In what areas did you work in that hospital?

24 A In that particular hospital I worked generally only
25 in medical nursing. As a student nurse I worked in medical.

1 Ob-Gyn or obstetric nursing, pediatric surgical nursing.

2 Q In connection with your work in the St. Johns Hospital,
3 did you have any connection with pediatrics?

4 A Very shortly as I recall, for instance, probably
5 more like a month or so I worked in pediatrics.

6 Q All right, and then could you tell us how you came
7 to go in the Air Force?

8 A I am sorry?

9 Q How did you come to enter the Air Force?

10 A I just decided to join the Air Force.

11 Q All right, and after joining the Air Force what
12 if any additional training did you receive?

13 A The additional training that I received after I
14 was in the Air Force was in Flight Nursing School which is
15 Boise Air Force Base, San Antonio, Texas.

16 Q What did that training consist of?

17 A That was a course that was aimed at teaching nurses
18 and medical technicians how to do nursing care in an airplane
19 at an altitude that is generally higher than sea level.

20 Q And what specific training, if any, did you receive
21 dealing with altitudes above sea level?

22 A Well, the training which lasted probably about eight
23 weeks or so consisted of also going into an altitude chamber
24 in which a sudden rapid decompression would occur. And then
25 each of us were in the environment of hypoxia or lack of oxygen

1 for a short period of time.

2 Q All right, and what, if anything--what instruction
3 were you given on hypoxia, signs of hypoxia, and things of
4 that nature?

5 A We were given very in-depth courses in hypoxia and
6 signs and symptoms of it, some of which I can recall right
7 now including tingling in the extremities, possibly fainting,
8 passing out, prior to that disorientation, dizziness, cianosis
9 about the lips and the hands.

10 Q Now in connection with that course what, if any,
11 instruction was given as to adults versus children and so
12 on?

13 A The fact that adults and children as well as different
14 body weights, illnesses, changed the relation to lack of oxygen.

15 Q So there was some consideration of--

16 MR. LEWIS: Objection, Your Honor. Counsel is suggest-
17 ing the answer in this case.

18 BY MR. DUBUC:

19 Q Well, when you just described what instruction you
20 were given what, if any, differentiation was given as to adults,
21 children, older people, younger people?

22 A Well, there was a definite differentiation made.

23 Q And with respect to the training following that,
24 what if anything did you do in the Air Force?

25 A Following that training I did become a night nurse.

1 That is, I went from a hospital setting to flying status and
2 was assigned to the Ninth Air Medical Evacuation Group out
3 of Clark Air Force Base in the Philippines.

4 Q And what were your duties there?

5 A I was a night nurse on a C-9 aircraft that airlifted
6 patients to and from Clark Hospital.

7 Q And when you say "to and from" from where was it?
8 Other points in the Pacific?

9 A Right.

10 Q Were those ill people or injured people, that sort
11 of thing?

12 A Yes.

13 Q Now did there come a time when, in connection with
14 those duties you were assigned to a C-5A that was involved
15 in a flight out of Saigon on April 4, 1975?

16 A Yes.

17 Q And where were you when you were first assigned
18 to that flight?

19 A I was in my quarters on base at about 6:00 o'clock
20 in the morning and I received a phone call saying that I had
21 been chosen to go on this flight to Vietnam.
↓

22 Q That was the first indication--

23 A Yes.

24 Q --or word that you had, as to the flight?

25 A Yes.

1 Q And did you leave for Saigon that day?

2 A Yes, sir.

3 Q Did there come a time when you arrived in Saigon?

4 A Yes.

5 Q And you recall approximately what time of day that
6 was?

7 A I believe that was about 10:30, 11:00 o'clock.

8 Q And were you told either in Clark or en route
9 somewhere, what the purpose of your flight was?

10 A Prior to leaving Clark there was a briefing on the
11 ground indicating we were going to Vietnam to pick up orphans.

12 Q After you arrived Saigon, can you tell us what, if
13 anything, you did?

14 A Well, after we arrived in Saigon I went up to the
15 night deck while we awaited the orphans.

16 Q All right, and what if anything did you do on the
17 flight deck?

18 A At that time, I received some information in a very
19 brief tour of the part of the aircraft that I had not yet
20 seen, which was the flight deck and the forward troop compartment
21 in the aircraft.

22 Q And where were you assigned with respect to the
23 flight?

24 A Prior to landing at Saigon the other flight nurse
25 that was with me, and I, decided that I would remain upstairs

1 in the airplane; that is, in the troop compartment.

2 Q Now did there come a time when passengers, including
3 infants, were loaded?

4 A Yes.

5 Q And what can you tell us about that--and your partici-
6 pation?

7 A When the arrival of orphans came about, there was
8 quite a lot of confusion in that. There were buses pulling
9 up and there were Vietnamese soldiers and there were Americans
10 who were milling around the airplane as the orphans were brought
11 from the bus into the aircraft.

12 Q I think you said you were in the troop compartment?

13 A At the time before the infants were actually unloaded,
14 I went down to the buses and met the infants by the aircraft
15 and then I--at one point, took a couple of infants with me
16 up the rear ladder into the troop compartment and I remained
17 there.

18 Q Is that the only entrance to the troop compartment,
19 the rear?

20 A To the troop compartment, yes, sir, that is the only
21 entrance.

22 Q All right, is there any stairway in that airplane?

23 A No, there is not.

24 Q Is this a ladder--Where is that ladder located?

25 A That ladder is in the rear section of the airplane.

1 Q Now you indicated you took a couple of infants into
2 the troop compartment. What did you do after that?

3 A After that I was handed some other infants, other
4 members of the crew were unloading onto the aircraft and I
5 positioned them into the seats putting a pillow across their
6 laps and strapping them in with the seatbelts.

7 Q Did you do that yourself with respect to the infants?

8 A Yes.

9 Q Were there other medical flight crew aboard from
10 the Air Force?

11 A Yes.

12 Q Were some of them also in the troop compartment?

13 A Yes.

14 Q What, if anything, did you observe they were doing
15 with the infants?

16 A They also were following that procedure of putting
17 the children into the seats with a pillow across their lap
18 and strapping them in securely.

19 Q Do you recall whether there were any civilian attendant
20 aboard?

21 A Yes, there were some escorts aboard with the orphans
22 and whom, we were told, going back to the States.

23 Q Were they any way assisting in seating and strapping
24 the infants in, if you recall?

25 A I can't recall.

1 Q Is it your best recollection that the seating and
2 actual securing was done by the medical flight crew?

3 A Yes, to my recollection, it was.

4 Q I show you Exhibit 2-T in evidence. Does this describe
5 the seating and the use of straps and pillows in the troop
6 compartment where you were located on April 4, 1975 prior
7 to take-off?

8 A Yes, it is.

9 Q Do you recall at any time any of these infants that
10 you observed in the troop compartment being put in seats
11 without the pillows--

12 MR. LEWIS: Counsel is leading his witness, Your
13 Honor.

14 MR. DUBUC: Your Honor, I just showed her a picture.
15 That is one way--and I am asking her if she recalls.

16 THE COURT: That particular objection is overruled;
17 although you obviously have been a little loose with yourself.

18 MR. DUBUC: I am trying to speed it up, Your Honor.

19 THE COURT: Go ahead.

20 BY MR. DUBUC:

21 Q Do you recall any of the infants seated, any of
22 the young infants pictured in Exhibit 2-T, in seats without
23 this arrangement of pillows?

24 A I don't recall any.

25 Q Now did there come a time when the aircraft took

1 off?

2 A Yes.

3 Q And can you describe-- Well, before we get to that,
4 can you describe what you observed as to how the infants were
5 dressed, the small infants?

6 A Yes, they were dressed pretty warmly in that they
7 had little sweaters and hats on.

8 Q As I just asked you; did there come a time when
9 the airplane took off?

10 A Yes.

11 Q What, if anything, do you recall about observing
12 the infants during the take-off in the initial portions of
13 the climb?

14 A I recall that they all appeared kind of warm and
15 fussy initially as we took off and some of them then fell
16 asleep and some of them stayed awake and just looked around.

17 Q What, if anything, do you recall about the temperature
18 inside the airplane?

19 A I recall that it cooled off slightly, but I was
20 very busy with the infants trying to get juice, so I don't
21 really recall anything unusual about the temperature.

22 Q I am referring to the time before the rapid decompre-
23 sion.

24 A Yes, sir.

25 Q Is that your answer--

1 A Yes, sir.

2 Q --considering that time?

3 A Yes, sir.

4 Q Now did there come a time--withdrawn. During the
5 climb-out of the aircraft what, if anything, were you doing?

6 A During the climb-out or after the climb-out when
7 we, really, started to level off, I continued to go to the
8 galley section to get juice for some of the infants and gave
9 them the bottles of juice.

10 Q And did there come a time when there was a rapid
11 decompression?

12 A Yes.

13 Q Where were you at that time?

14 A At that time, I was near the galley which is in
15 the rear section of the airplane and I had gone to the refriger-
16 tor to get some juice when the rapid decompression occurred.

17 Q Tell us what you observed as to the decompression?

18 A There was a very loud boom that occurred, and some
19 very fine slight debris momentarily went through the area
20 I was standing at and slight condensation, and then it just
21 cleared.

22 Q Did you at that time recognize what had happened?

23 A Yes, sir.

24 Q How did you know that?

25 A I knew from having gone to flight school, a rapid

1 decompression had occurred and I could also see from where
2 I was standing over the ladder going down to the cargo departme
3 that we had lost part of the airplane.

4 Q And are you able to tell us, or to compare what
5 occurred in this rapid decompression with what you referred
6 to as training you had received in flight school?

7 A It was very much like the training I had been through
8 in flight school. I did not notice any hypoxic effects at
9 any time, although in flight school we did not don a mask
10 until the point of having noticed some hypoxia. But I did
11 not notice any at this time.

12 Q Would you explain that a little bit, what you mean
13 by that, in flight school not having donned a mask?

14 A In flight school we were instructed to wait until
15 we felt the real need to have oxygen. That is, until we either
16 were becoming disoriented or we were dizzy or we were short
17 of breath or whatever abnormal signs were occurring. And
18 if we did not respond immediately then another individual
19 who was in the chamber with us would then put the mask on
20 us.

21 Q When you were in flight school in those circumstances
22 did you also in the chamber have opportunities--

23 MR. LEWIS: Your Honor, Counsel is leading his
24 witness.

25 BY MR. DUBUC:

1 Q What, in the chamber training that you have just
2 described--what if any opportunities did you have for observ-
3 ing others under the same circumstances?

4 A We went through the chamber at least twice and during
5 those situations there were other members of the Air Force
6 who were also going through that training that we observed
7 in situations in which there was a lack of oxygen.

8 Q And was that part of the training?

9 A Yes.

10 Q Now with respect to the rapid decompression in the
11 C-5A on April 4 you indicated you were back in the galley
12 area. Were there children in that area?

13 A Just immediately forward of me there were children.

14 Q All right, what, if anything, did you observe as
15 to those children?

16 A The children in the area in which I was standing
17 at the time of the rapid decompression were four children, as
18 I recall, that were in the crew seats in the most rear part
19 of the airplane and these children were awake and they were
20 just kind of looking up at me and I was taking some oxygen
21 from the mask that had fallen and trying to pass it to the
22 children in this area by me. But at no time did they fall
23 asleep or appear to pass out or appear to turn blue or appear
24 to have any shortness of breath at all. I did have trouble
25 giving them the oxygen because the masks did not reach some

1 of the children and if it did they were alert enough that
2 they pushed the mask away. It was just more of a nuisance
3 to them. So I attempted to put oxygen in front of their face
4 and also use it myself.

5 Q Now when you say "use it" yourself, did you use.
6 it right away, continuously?

7 A I used it fairly quickly after the rapid decompression
8 Yes, I would say 30 seconds or so I was using oxygen. Again
9 the same mask I was using I was also trying to pass to the
10 infants so I did not use it continuously.

11 Q You did not use it?

12 A I did not use it continuously.

13 Q And did you feel any ill effects?

14 A No, sir.

15 Q As to the children you observed, did you observe
16 any of the signs of hypoxia that you previously described?

17 A No, sir.

18 Q Did you remain in that area?

19 A No, after what appeared to be two minutes or so,
20 one of the flight crew members who was also in that area and
21 had a head set on and therefore was in contact with the flight
22 deck where the pilot was, told me that it was okay to remove
23 my oxygen, that we were going back to Saigon to land. So
24 I took my oxygen mask off, or I just let it there, and I
25 went up toward the front section of the aircraft where I had

1 previously been and in which I had domain over two seats of
2 children, two rows of children, and I stayed with those children
3 until the time of impact.

4 Q Now with respect to the children--withdrawn.

5 Do you know what hypotonia is?

6 A Yes.

7 Q Do you know the symptoms of hypotonia?

8 A Yes.

9 Q And did you observe any of the children you saw
10 after the decompression having any of those signs of hypotonia?

11 A I think--hypotonia is really flabbiness and flaccidity
12 of the muscles. The children--they were all seated and they
13 were sitting up. They appeared to be moving normally, so
14 I didn't notice any lack of muscle control in any of the children.

15 Q With respect to any of the children that you admin-
16 istered oxygen to, did you notice any shallow breathing?

17 A No, sir.

18 Q Now you indicated you went back to the forward part
19 of the airplane--

20 A Yes.

21 Q --at some point?

22 A Yes.

23 Q --after the decompression, to prepare for landing?

24 A Right.

25 Q What, if anything, did you do as to the children

1 in your area before landing?

2 A As I recall, I went back to that section and I just
3 checked the children and they were all strapped into their
4 seats, appeared to be the same as they had been prior to the
5 rapid decompression, and so I just kind of stayed in that
6 area by them.

7 Q Did you observe as to those children, any signs
8 of hypoxia?

9 A No, I did not notice any.

10 Q Or hypotonia?

11 A No, sir.

12 Q Now you say you stayed in that area. Did there
13 come a time when you made some preparations for landing?

14 A I knew that we were going to have to land at some
15 point, so I, at one point, just braced myself by lying across
16 the seats of the infants in one of the rows and outstretched
17 my arms over them and stayed there.

18 Q Was that on the right side or left side of you?

19 A That was on the right side as you faced the flight
20 deck.

21 Q And you say you outstretched over them. What was
22 the reason for that?

23 A I knew that that was a safe position, from my training.

24 Q Did you have an assigned seat or seatbelt?

25 A No.

1 Q Did any of the medical flight crew members have
2 any?

3 A No.

4 Q Did any of the flight attendants have assigned flight
5 seats?

6 A No.

7 Q What, if anything, can you tell us about the tempera-
8 ture in the troop compartment after decompression?

9 A I didn't notice any significant change in temperature
10 after the decompression.

11 Q Now you mentioned you braced yourself over the children
12 in that area, forward and the righthand side; is that correct?

13 A That is correct.

14 Q All right, did there come a time during--withdrawn.

15 Can you tell us anything about any--withdrawn.

16 Did you, during any part of the descent, yourself,
17 either when you were using oxygen or after you were told by
18 this crew member you didn't need it any more; did you experience
19 any signs of hypoxia as you had been taught to recognize it?

20 A No.

21 MR. LEWIS: Counsel repeated himself and is leading
22 the witness.

23 MR. DUBUC: This is her--

24 THE COURT: My problem is I think she has already

25 told us that.

1 MR. DUBUC: I am sorry. I thought I had asked her
2 about the children and I don't recall whether I asked her--

3 THE COURT: You did ask her whether she felt any.

4 MR. DUBUC: All right.

5 BY MR. DUBUC:

6 Q Now during the descent, do you recall whether any
7 of the children were crying or excited?

8 A As I recall, some were crying and some were not
9 crying.

10 Q Now did there come a time when the airplane did
11 land?

12 A Yes.

13 Q All right, can you describe what you observed as
14 to that landing?

15 A I had my head down. Again, I was outstretched over
16 these infants' laps and, of course, they were facing the rear
17 and I was facing forward. And I did not lift my head from
18 that position.

19 I kept my head down and stayed there until we came
20 to a complete stop.

21 Q And can you describe the landing itself?

22 A Yes, as I recall the landing it was a bumpy landing
23 but it was not particularly violent.

24 Q All right, are you able to compare it to anything
25 else you had experienced?

1 A Yes, there was--very similar to me--to a rough
2 landing in a commercial aircraft that I had been in previous
3 to that.

4 Q And would that be on a runway or rough landing of
5 a commercial aircraft some field or something?

6 A On a runway.

7 Q Now you say you kept your head down and--in this
8 bumpy landing. Did there come a time the airplane came to
9 a stop?

10 A Yes.

11 Q Are you able to estimate that time?

12 A From the time the landing started, you mean?

13 I would just have to estimate at maybe a minute,
14 60 seconds, something like that--90 seconds, maybe.

15 Q Did you observe or feel, or were you able to distin-
16 guish between whether there was one or more landings?

17 A I was not.

18 Q In connection with the landing, as you were braced,
19 do you recall whether or not you had any forces operating
20 on you? In other words side to side or front to back?

21 A I recall that I didn't move from that position side
22 to side or front to back. I stayed right in that position.
23 I was not thrown in any direction.

24 Q Did you observe any fire in the troop compartment?

25 A No, sir.

1 Q Did you observe any smoke in the troop compartment?

2 A After we came to a stop there was a brief smell
3 of fumes and there was some very fine ash-like substances
4 that came through the compartment or appeared only momentarily
5 and then dissipated.

6 Q Did you observe any fire in the troop compartment--

7 A No, sir.

8 Q --after you came to a stop?

9 A No, sir.

10 Q All right. Now you mentioned you were not thrown.

11 Were you injured in this incident?

12 A No, sir, I was not.

13 Q What did you do after the airplane came to a stop?

14 A I went to an exit which was on the left side of
15 the airplane, very close to my area, and was going to open
16 the exit and it was really large and when I turned around to
17 go back--that is, to go back to the area I had come from--
18 somebody had already opened the exit, so I just turned around
19 and stepped out of the exit onto the ground.

20 Q What, if anything, did you observe or do at that
21 time?

22 A Surveying the situation on the outside, I could
23 see that there was an area of the aircraft that was burning
24 in front of us quite a distance away and that our section
25 was a separate entity and that we were just stationery on

1 the ground and so I looked back into the exit and directed
2 other crew members to begin taking the orphans out to pass
3 them out to me.

4 Q And was that process followed?

5 A Yes.

6 Q And were a number of the children passed out to
7 you?

8 A Yes.

9 Q And did you have an opportunity to observe them
10 as they came out?

11 A Yes, briefly, as they came to me.

12 Q Can you tell us what, if anything, you observed
13 as to those children you saw, after the accident?

14 A The children that I saw appeared to be in the same
15 condition as they were prior to the take-off and landing.

16 Q And when you say "the same condition," what do you
17 mean?

18 A They did not appear to have any injuries. They
19 were either awake or asleep as they had been, mainly awake--
20 and they looked in good condition.

21 Q Did you observe any signs of hypotoniz in those
22 children after the accident that you observed?

23 A No.

24 Q After the accident and before you exited, did you
25 have an opportunity to see or observe any of the children

1 in the forward part of the airplane?

2 A I didn't really look.

3 Q What is the configuration of the seats in that troop
4 compartment?

5 A All of the seats face rear or aft except for the
6 crew seats which are at the back part of that troop compartment.

7 Q Now following--as the children were being evacuated
8 from the airplane itself, can you tell us about how long that
9 took?

10 A I would estimate that it took about 20 minutes,
11 25 minutes maybe.

12 Q And can you describe the terrain you were standing
13 in around the airplane as they were being evacuated?

14 A Yes, it was rather rugged terrain. Some of it was under
15 water. It was bumpy, a swamp-like area.

16 Q Now did there come a time when the children were
17 taken from the accident scene somewhere?

18 A Yes, uh-huh.

19 Q And how was that done?

20 A There were helicopters that landed within minutes
21 after we crashed, maybe five minutes or so. And one helicopter
22 after another kept coming in and we would give babies to the
23 helicopter pilots who would then take them away.

24 Q Did you observe any of the children in the troop
25 compartment prior to the landing, to be unconscious?

1 A No, I did not.

2 Q Did you observe any of the children in the troop
3 compartment after the landing to be unconscious?

4 A I did not.

5 Q Do you recall observing any of the children who
6 were out of their seats; in other words, after the landing?

7 A No, sir.

8 Q Do you recall whether--withdrawn.

9 With respect to the evacuation from the troop compartment
10 of the children, was that done by the medical flight
11 crew or did others participate?

12 A Certainly, the flight crew and the medical crew
13 both worked together. Whether or not there was some assistance
14 from escorts--I believe there was.

15 Q You mentioned the flight crew. Did they participate
16 as well?

17 A Yes.

18 Q Now they were in a different area of the airplane?

19 A I am talking also about the flight mechanic or
20 loadmaster Sergeant Perkins, for instance, who was injured
21 and who also helped us take babies out.

22 Q Do you know how Sergeant Perkins was injured?

23 A Yes, he was on a ladder, on a rear ladder coming
24 up to the troop compartment when the depression occurred and
25 half the ladder was blown away, and he suffered an injury

1 to his leg.

2 Q Do you recall any of the infants in the troop
3 compartment who was not alive? Did you observe any that was
4 not alive?

5 A No, I did not.

6 Q Did you at any time go back into the airplane after
7 the evacuation?

8 A Yes, after I was fairly certain we had all the infants
9 out of the troop compartment, I went back in and checked every
10 seat to make sure that all the children were gone. They were.

11 Q And did you observe any seats that were actually
12 torn from their mountings?

13 A Not as I recall.

14 Q Do you recall any that were overturned or slightly
15 different position?

16 A I recall it in the most rear part of the airplane
17 again in those crew section seats that I had put my purse
18 under there and when I went back in to check for the infants
19 I found my purse and I remembered that the seats were--had
20 flopped forward in that area.

21 Q Had they actually been torn from the mountings in
22 the front?

23 A I don't think so.

24 Q You say you went back for your purse?

25 A Yes, sir.

1 THE COURT: Mr. Lewis.

2 CROSS EXAMINATION

3 BY MR. LEWIS:

4 Q You were terrified during the explosive decompression
5 and landing, weren't you?

6 A I was certainly scared. I was not without my senses
7 at all.

8 Q I didn't suggest that, Ma'am. I just remember that
9 you said in your deposition that you were terrified.

10 Is that not your current recollection?

11 A Yes.

12 Q You were terrified, weren't you?

13 A As I recall, yes.

14 Q You thought you were going to die, didn't you?

15 A I knew it was a good possibility, sir.

16 Q You did think you were going to die, didn't you?

17 MR. DUBUC: Objection.

18 THE COURT: Overruled.

19 BY MR. LEWIS:

20 Q Didn't you think you were going to die, based upon
21 your knowledge of airplane crashes?

22 A I just knew it was a good possibility.

23 MR. LEWIS: Indulge me one moment, Your Honor.

24 THE WITNESS: Pardon me?

25 MR. LEWIS: I am just asking-- Excuse me one moment.

1 BY MR. LEWIS:

2 Q Now the standard procedure that you learned following
3 a rapid decompression is for the medical crew members to put
4 oxygen on and keep it on. Isn't that true?

5 A Yes, I recall, yes.

6 Q And the reason for that is that so you will be in
7 the position to aid other people. Isn't that true?

8 A That is correct.

9 Q And isn't it true that you learned that if you
10 didn't keep your oxygen on that you might have problems with
11 fuzzy-headedness and not really knowing what was going on?

12 Q You could lose some of your mental acuteness; isn't
13 that true?

14 A That would be true.

15 Q Now did you follow the procedure that you were
16 instructed to follow during your training?

17 A I think that I did in that I attempted to take care
18 of myself with oxygen. However, this was an unusual situation
19 and our passengers did not have oxygen immediately as they
20 normally would in an aircraft in which the oxygen mask were
21 within their reach. So I attempted to share my oxygen with
22 them.

23 Q Now there was an emergency crew bottle very near
24 you, wasn't there--that would have been able to have been
25 passed from baby to baby?

1 A Possibly.

2 Q And you didn't use that one, did you, for that purpos

3 A No. There was-- It was just easier for me to use
4 the oxygen which was right in front of me, which was in a
5 mask.

6 Q But would it reach all the children? How long was
7 the cord?

8 A I certainly wouldn't have been able to give all
9 the children oxygen from the tank either. There were just
10 too many children.

11 Q I know that, Ma'am. I appreciate the difficulty.
12 But tell me how long the cord was on that oxygen mask.

13 A I would have to estimate that it was two feet,
14 maybe.

15 Q All right, now the children that you were talking
16 about that you gave oxygen to, were they the 20 children
17 that you had in your care?

18 A No, sir, these were the children back by the galley
19 section.

20 Q They were the larger children; is that right?

21 A I don't recall. No, sir, I think they were infants
22 just like other children in the two rows in which I had been
23 assigned originally.

24 Q We are talking about-- How many crew seats were
25 there?

1 A Two crew seats.

2 Q All right. Now--and are you telling us that there
3 was oxygen above those two crew seats?

4 A Yes.

5 Q And there would have been two masks, right?

6 A I can't recall how many masks there were, sir.

7 Q You don't remember whether there were more than
8 two masks, or not?

9 A Right, I do not remember.

10 Q Do you remember how many babies there were in a
11 seat?

12 A As I recall there were two babies to a seat, so
13 I believe in that area right there, there were four babies.

14 Q Now how long did it take to evacuate all of the
15 people from the scene by the rescue helicopters?

16 A As I said, I would estimate 20 to 25 minutes.

17 Q This was the helicopter rescue operation we are
18 talking about?

19 A Right.

20 Q Let me read to you from the collateral investigation
21 of aircraft incident involved C5-A. 58218--

22 MR. DUBUC: Could I have the record for that?

23 MR. LEWIS: This is the collateral report and on--
24 paragraph 25 this sentence reads--

25 MR. DUBUC: 25 of what?

1 MR. LEWIS: Paragraph 25 of the collateral report.

2 MR. DUBUC: Collateral report. May I have a moment
3 to get that, Your Honor.

4 THE COURT: What exhibit number is that?

5 MR. DUBUC: I don't believe it is in evidence and
6 I think I am going to object to having him read from it.

7 THE COURT: You will have to establish she knows
8 about it.

9 BY MR. LEWIS:

10 Q Did you participate by giving a statement to the
11 Air Force investigators?

12 A Yes, this is Colonel Waxtein?

13 Q Yes.

14 A Yes.

15 Q Did you understand that was for the purpose of a
16 collateral report?

17 A Yes, sir.

18 MR. LEWIS: If it please the Court, I will offer
19 the collateral report.

20 MR. DUBUC: I think I will object to that unless
21 he can establish that this witness participated in writing
22 what he is referring to here. If he is talking about her
23 statement, that is another thing. If he is talking about--

24 THE COURT: What are you talking about, her statement?

25 MR. LEWIS: No, I am talking about a composite that

1 relates to the statements of the crew members in general.

2 MR. DUBUC: I think he will have to ask her if she
3 has seen it, or participated in it.

4 THE COURT: He did ask that. He did ask her if
5 she participated in it and she answered in the affirmative.

6 MR. DUBUC: She said she gave a statement. This
7 is the summary of the collateral report which I understand
8 is written by Colonel Waxtein.

9 THE COURT: You will have to do that some other
10 way.

11 BY MR. LEWIS:

12 Q How long did you say that it was until the pilot
13 gave the instructions to take off the oxygen masks?

14 A I would estimate about two minutes.

15 Q Did you testify in your deposition-- Do you remember
16 when your deposition was taken October 24, 1978, Ma'am?

17 Do you remember that?

18 A Yes.

19 Q Let me read you what you said about that at that
20 time--on page 52, counsel.

21 Question: --

22 MR. DUBUC: Can the witness have a copy? Are you
23 going to ask her if it is accurate; or something?

24 MR. LEWIS: Yes, I don't--

25 MR. DUBUC: I will be happy to share a copy with

1 her.

2 THE COURT: Very well.

3 MR. DUBUC: 52?

4 MR. LEWIS: Yes.

5 I am going to read you the questions and answers,
6 Ma'am, and ask you whether they are accurate. It doesn't
7 seem to have any lines, so I can't give the line designation.

8 Question: "Do you know how long a period it was
9 from the sudden decompression to the word from the pilot
10 that you could take the oxygen off?

11 Answer: "No, sir, I do not know exactly how long
12 that was.

13 Question: "Could you give us any estimate in minutes?

14 Answer: "I would say not more than a few minutes.

15 Question: "What does that mean?

16 Answer: "Probably not more than four or five minutes.

17 BY MR. LEWIS:

18 Q Did you say that?

19 A Yes, sir, no more than four or five--and probably
20 more like two or three.

21 Q Why didn't you say two or three at the time of the
22 deposition?

23 A Sir, I don't know.

24 Q Was your recollection better on October 24th, 1978
25 than it is now?

1 A I don't know, sir.

2 Q Did you attend a meeting, Ma'am, in Mr. Dubuc's
3 office after the start of the trial, in which Dr. Stark and
4 some other members of the crew were present?

5 A After this trial, sir.

6 Q In Mr. Dubuc's office. After the start of this
7 trial process in March.

8 A Yes, sir.

9 Q And who was present at that meeting?

10 A As I recall, Dr. Stark, Captain Sharp, Major Malone,
11 myself, Dr. Stark's wife, and I think that is all--Mr. Piper.

12 Q Did the various witnesses tell about what they
13 recalled having happened at that time?

14 A Yes, sir.

15 Q The lay witness?

16 A Yes, sir.

17 Q By "lay witnesses" I am speaking about non-experts,
18 witnesses like yourself and the other nurses.

19 A Yes.

20 Q The fact witnesses. Did any of the attorneys suggest
21 that the trial was in process and that you shouldn't discuss
22 your testimony in front of anybody else?

23 A I can't recall.

24 THE COURT: Objection sustained.

25 BY MR. LEWIS:

1 Q Now did children around you, were they crying at
2 any time after the explosive decompression?

3 A Yes, as I recall some were crying and some were
4 not. As I said, they appeared in the same way, shape, and
5 form, prior to the decompression as after.

6 Q You have your deposition there?

7 A Yes, sir.

8 Q Would you turn to page 31.

9 Question: "And you tried to help some of the children
10 around you.

11 Answer: "That is right.

12 Question: "Now were they crying?

13 Answer: "No, sir. I do not remember these particular
14 children."

15 A You asked me any time after the rapid decompression
16 and I am also considering the children in the area that I
17 went to after the rapid decompression, which is the forward
18 section, not this rear section.

19 Q Now did you watch the airplane break up after the--
20 as it was crashing?

21 MR. DUBUC: Objection, Your Honor. I don't know
22 how she can possibly be in a position to answer that.

23 THE COURT: Overruled.

24 BY MR. LEWIS:

25 Q Did you watch the airplane disintegrate or see any

1 part of it disintegrate?

2 A No, sir, I had my head down over the children's
3 laps and I could not see anything.

4 Q Do you have the impression the airplane was disinte-
5 grating at the time--at any time?

6 A I just know that when I saw the rest of the airplane
7 after the impact, parts of it were scattered about the rice
8 paddy.

9 Q So you have no recollection that you had any
10 impression of any kind that the airplane was disintegrating
11 during the event. Is that right?

12 A I have no knowledge of that,

13 Q Would you turn to page 51, Ma'am.

14 Now at this juncture does that refresh your recollec-
15 tion?

16 A I am not sure where you are referring to.

17 Q Well, the references to the major pieces of the
18 airplane breaking off.

19 A After I crashed, I could see that they had broken
20 off.

21 Q And did the tail break off?

22 A Yes.

23 Q What other parts were separated?

24 A As I recall, the flight deck was in one area of
25 the rice paddy. One of the wings was burning in front of

1 us. And the tail is all I can recall. And our section was
2 separate, a separate entity.

3 Q And did you see any dead people around there?

4 A I saw a lady who appeared to be dead, and another
5 crew member--or rather a crew member who was severely
6 injured, if not dead.

7 Q So you saw a crew member that you thought was dead
8 or appeared to be dead; is that right?

9 A That's right.

10 Q Who was that?

11 A I don't know his name. It was one of the--either
12 loadmasters or flight mechanics that was on the airplane with
13 us.

14 Q Was that Sergeant Perkins?

15 A No, it was not Sergeant Perkins.

16 Q Where was this person you said appeared to be dead,
17 when you last saw him before the airplane hit the ground for
18 the first time?

19 A Before the airplane landed, the last recollection
20 I would have of seeing him was toward the rear of the troop
21 compartment because I believe he may have been the flight
22 mechanic that had the head set on who had contact with the
23 flight deck so that would be the last time I had seen him.

24 Q All right, and where was he when he appeared dead?

25 A He was now toward the forward section. That is,

1 he had actually come to rest outside of the troop compartment
2 at the forward section of it.

3 Q All right, so he had then traveled in the impact,
4 from the back to the front of the troop compartment; is that
5 right?

6 MR. DUBUC: Note my objection. That is an inference
7 from counsel--and I hadn't heard anything about subsequent
8 events.

9 THE COURT: I did. The objection is overruled.

10 MR. LEWIS: You may answer.

11 THE WITNESS: So, I answer that question. Is that
12 correct?

13 THE COURT: Yes.

14 THE WITNESS: I don't know where he was at the time
15 of impact. I just know where I last saw him.

16 BY MR. LEWIS:

17 Q How long before the impact did you see him?

18 A That would have been probably--that was after the
19 rapid decompression, so probably 15 minutes or so.

20 Q And his duty station was at the back of the troop
21 compartment, wasn't it?

22 A As far as I know.

23 Q So if he had stayed at his duty station, then
24 he would have been there at the time of the first impact,
25 wouldn't he?

1 A Sir, I am not really versed on what his duty station
2 was. My job was as a medical crew member, so I don't really
3 know what his job was, if he moved around or stayed in one
4 place. I really don't know.

5 Q But if that was his duty station, then you earlier
6 indicated that you thought--

7 THE COURT: That is--the jury can infer that.

8 MR. LEWIS: All right, Your Honor.

9 BY MR. LEWIS:

10 Q Now, when you got your decompression training, you
11 were put in a decompression chamber?

12 A That is correct.

13 Q And you put an oxygen mask on; is that correct?

14 A Yes.

15 THE COURT: We will take our 11:00 o'clock recess
16 at this time.

17 We will recess until 11:15, ladies and gentlemen.
18 (Short recess)

11:20 a.m.

(Whereupon, after a brief recess, the trial was resumed. as follows:)

(Without the jury)

THE COURT: Bring in the jury.

Captain Aune, you can resume the stand.

(Whereupon, the jury enters the courtroom.)

CROSS EXAMINATION (Continued)

BY MR. LEWIS:

Q Before the recess I was asking you about your training in the chamber. And you told us, I believe, that when you started you had a mask on. Is that correct?

A Yes, I think that is correct.

I am not really sure about that, whether we put the mask on after the rapid decompression or we kept the mask on -- or put it on at a certain point and then took it off, I don't recall.

Q It wasn't that you put the mask on, and then at the instructor's suggestion you then put it on and took it off?

A I don't exactly recall what the procedure was.

Q There was no explosive decompression in the test that you took?

A Yes, there was.

Q How fast?

A At what altitude, you mean?

Q How fast was the decompression?

A As I recall, at a certain altitude there was

1 a rapid decompression and there was a large boom.

2 Q I am not talking about the airplane, I am
3 talking about the test.

4 A I am talking about the test also.

5 Q How fast was it?

6 A It was a momentary boom.

7 Q You don't know the speed?

8 A I have no idea.

9 Q Getting back to the explosive decompression
10 in the C5A, you were back in the area with Lieutenant Aune;
11 is that correct?

12 A Right.

13 Q And she was the only other crew member of the
14 nursing staff that you saw from that time until the impact.
15 Isn't that true?

16 A I believe at some point I also saw Lieutenant
17 Goffinet.

18 Q Anybody else?

19 A I don't recall.

20 Q But you and Lieutenant Aune were in the back
21 of the plane.

22 A Correct.

23 Q And, for all practical purposes, both of you
24 stayed back there during that period of time, until the impact.

25 A No. After I took my oxygen mask off, then I
26 went to the forward section again.

27 Q While you were in the rear of the plane,
28 though, you were there with Lieutenant Aune. Is that correct?

1 A Right; close to her.

2 Q What was she doing from the time of the
3 explosive decompression until you took the mask off?

4 A As I recall, she was trying to help Sergeant
5 Perkins up the ladder, and he was halfway up and very close
6 to the top, but unable to make it all the way up.

7 Q Was she trying to help to give the children
8 oxygen?

9 A If I remember correctly, some of that time she
10 was also doing that and trying to breathe oxygen herself too.

11 Q Do you remember your deposition with respect
12 to that?

13 A I have to look, sir.

14 Q Have you read your deposition since it was
15 taken?

16 A Pardon?

17 Q Have you read your deposition since it was
18 taken?

19 A Yes.

20 Q When?

21 A I'm sorry, not the October 24th deposition, I
22 haven't read since the first trial that we had here.

23 Q When you saw Lieutenant Aune she had an
24 oxygen mask on, didn't she?

25 A I can't recall.

26 Q Let's look at Page 38:

27 Question: Can you describe the activities of any
28 other flight personnel that you could see in the passage

1 compartment after the sudden decompression, until you took
2 off your oxygen mask?

3 Answer: The only other medical personnel that I
4 remember seeing was Lieutenant Aune, who also had an oxygen
5 mask on her face at the time when I saw her, and was
6 breathing oxygen over a seat of some children.

7 Question: She had one of the masks that came from
8 the ceiling. Is that correct?

9 Answer: Yes, sir.

10 Is that the testimony that you gave at a deposition?

11 A Yes, sir.

12 Q You didn't at that time say anything about
13 Lieutenant Aune helping anybody on the ladder, did you?

14 A Not right there, sir, but I think I did in
15 the original statement I gave to Colonel Waxstein.

16 Q The question that you are asked on Page 38 was:
17 you were asked to describe activities of any other flight
18 personnel that you could see in the passage compartment after
19 the sudden decompression, until you took off your oxygen mask.
20 And that was the answer that you gave to that question.

21 A That was one of the activities I can remember
22 she was doing, yes.

23 Q And she had an oxygen mask on?

24 A Yes, sir.

25 Q You were familiar with some of the problems
26 that can happen as a result of an explosive decompression,
27 from your training, weren't you?

28 A Yes, I was.

1 Q You were aware that people can get certain
2 medical problems as a result of that; isn't that true?

3 A Yes.

4 Q But you didn't go to the children -- the 20
5 children that were under your charge until after you were
6 told you could take your mask off, didn't you?

7 A That is correct, I did not.

8 Q Do you know if anybody else was trying to help
9 them?

10 A At that point I didn't, no.

11 Q Did you ask if anybody else was trying to
12 help them?

13 A I was very busy trying to give these children
14 oxygen right by me, so I am sure I didn't ask that at that
15 time.

16 Q For all practical purposes, then, as far as you
17 know, the 20 children that were under your care didn't get
18 any oxygen -- even a whiff?

19 MR. DUBUC: Objection, irrelevant.

20 THE COURT: Overruled.

21 BY MR. LEWIS:

22 Q Isn't that true?

23 A I do not know.

24 Q You communicated the fact that you were
25 frightened to -- is it Lieutenant Goffinet?

A Lieutenant Aune, sir.

Q Did you tell Lieutenant Aune that you were
frightened?

1 A I think one of the statements that I recall was,
2 I said to her that I was frightened.

3 Q Even after you were told that you could take
4 your oxygen mask off, you were still very frightened, and
5 you were convinced in your own mind that the plane could not
6 land safely, and that the plane was going to crash and that
7 everybody on the airplane would die. Isn't that true?

8 A Again, I knew it was a good possibility, sir.

9 Q Weren't you convinced in your own mind that
10 the plane could not land safely and that you were going to
11 crash and everybody was going to die?

12 A I think I was quite certain that we would have
13 a crash landing. I don't know how convinced I was that I was
14 going to die, but I know that it was a good possibility.

15 Q You do recall making your statement, don't
16 you?

17 A Yes, sir.

18 Q That was the one that you gave under oath to
19 Colonel Waxstein?

20 A Yes, sir.

21 Q On Page 69 of the report -- this would be
22 Page 4--

23 MR. DUBUC: I have the copy. Do you want the
24 witness to have a copy?

25 MR. LEWIS: I have an underlined portion
26 that I want her to read.

27 MR. DUBUC: Why don't we give her a copy.

28 MR. LEWIS: All right.

1 May I approach the witness, your Honor?

2 THE COURT: Yes.

3 BY MR. LEWIS:

4 Q Would you start there with the words "Although
5 I was still very frightened." Would you read that out loud.

6 MR. DUBUC: Objection, your Honor.

7 THE COURT: Just a moment. Before you start,
8 do you have an objection?

9 MR. DUBUC: First, I'd like to know which
10 page -- one, two, three or four of eight, that it is.

11 THE COURT: He just showed you a marked page.

12 MR. DUBUC: He showed the witness that, he
13 didn't show me.

14 THE COURT: You weren't there?

15 MR. DUBUC: No.

16 MR. LEWIS: I am sorry. Page 4. Also
17 Page 69.

18 MR. DUBUC: The other objection is, he is
19 asking her to read the statement.

20 THE COURT: Overruled.

21 BY MR. LEWIS:

22 Q Would you start with the word "although" and
23 just read that sentence.

24 A Although I was still very frightened, I said
25 that I was totally convinced in my mind that we could not
land safely and that we really were going to crash, and
probably all of us would die.

Q Then the next phrase reads: I was really

1 convinced of that in my mind.

2 A But I decided, okay, I will go back towards
3 the section of the babies, where I was before, and try to
4 talk with the babies and see that everybody remains as calm
as can be.

5 Q Now, the fact is that that is an accurate
6 statement of what you told Colonel Waxstein at that time?

7 A Yes, sir.

8 Q And you were totally convinced in your mind
9 that you were going to die?

10 A Sir, I think I said I was totally convinced
11 that we really could not land safely, that we were going to
12 crash and probably all of us would die.

13 But, again, I don't know how convinced I was. I
14 knew it was a good possibility that I would die.

15 Q You talked with a woman who was an attendant;
16 who was near you. Is that right?

17 A Yes, sir.

18 Q Do you know her name?

19 A No, sir.

20 Q Do you know where she came from?

21 A She lived in Saigon, I knew that.

22 Q What was she doing?

23 A At the time when I saw her she was -- when
24 I was walking to her she was positioned between two rows of
seats across the aisle from me, and she also appeared nervous,
but calm, and I talked with her and she said her fiancee was
back in Saigon and that she was going back to the States with

1 the babies.

2 Q So she was an escort, trying to help the babies?

3 A Right.

4 Q Did she have the same number that you had --
5 20 or so?

6 A I am not really sure.

7 Q Did you hear the warning horn about the emergency
8 landing?

9 A I'm sorry?

10 Q Did you hear a warning of the emergency -- the
11 fact that the airplane was going to --

12 A No, I didn't hear any warning.

13 Q All right. How did you know to brace yourself?

14 A I just knew that at some point we had to land,
15 so I was going to prepare for the worst.

16 Q But you didn't know how high up you were?

17 A Right, I didn't.

18 Q You couldn't see anything?

19 A That is correct.

20 Q Didn't somebody tell you that this was an
21 emergency landing?

22 A No, sir.

23 Q The pilot gave no such sign or instruction
24 over the loud speaker?

25 A Not to my knowledge, I don't recall hearing
any.

Q The loadmaster, or nobody like that conveyed
any information to you about that?

1 A No, sir, not to me, that I recall.

2 Q Now, the lady that you mentioned, she braced
3 herself like you did?

4 A I don't know, sir.

5 Q Where did she place herself?

6 A At the time of the impact, I don't know.

7 Q When you last saw her what was she doing?

8 A She was still in between two rows of seats
across the aisle from me.

9 Q Did you tell her that she should brace herself?

10 A I don't recall saying that to her.

11 Q This was part of your Air Force training, in
12 the event of a situation like that, that you were to help
13 the other passengers who had not been trained to brace
14 themselves?

15 A Again, I was pretty much going on my own
16 intuition, that we would have to crash, so I got into that
17 position. But I don't recall saying anything to her about
18 a possible crash landing.

19 Q Did you see her trying to protect herself?

20 A I was in that braced position probably for
21 a minute or so before we crashed, and I didn't lift my head,
22 so I did not see anything around me.

23 Q You were talking to her just before she died,
24 weren't you?

25 A Again, at least a minute or so, I was not
26 talking to her prior to impact. I had my head buried between
27 laps of the children, and was braced, and I did not talk to

1 anyone.

2 Q She did die, didn't she?

3 A Yes, sir, I believe she did.

4 Q You didn't know, as a result of your flight
5 training or your nurse's training in the Air Force, or
6 nursing school, whether there was any difference between
7 adults and children, with respect to potential problems re-
sulting from oxygen deprivation?

8 A Yes, sir. I indicated earlier today, that
9 there was a definite difference between adults and children
10 in the time and extent of hypoxia, and it can cause
11 problems.

12 Q Are you familiar with any studies, or did
13 you learn anything in your training that there is any
14 difference between adults and children?

15 A Yes, I recall I did.

16 Q You are familiar with studies?

17 A I was at the time. I am not now. But I
18 recall that we did talk about the differences between adults
and children.

19 Q What was the time the airplane took off?

20 A From where, sir?

21 Q Saigon.

22 A I believe it was about 1:30, 2 o'clock, some-
thing like that -- Saigon time.

23 Q Are you sure about that?

24 A No, sir. That is just an approximation.

25 I believe it was close to that but I am not exactly sure what

1 time it was.

2 Q What was the date of the meeting at Mr.
3 Dubuc's office?

4 A Which meeting, sir?

5 Q Was there more than one?

6 A Yes, sir.

7 Q How many have there been?

8 A That I recall, two, sir.

9 Q What dates were they?

10 A One was yesterday and the other one was
before the first trial occurred. I don't remember the date.

11 Q You don't remember the date at all?

12 A No, sir.

13 Q You can't even come close to it?

14 A I'd have to check the calendar. I think I
15 could identify the date, but not right now, I don't know it
offhand.

16 MR. LEWIS: That is all the questions that I
17 have, your Honor.

18 THE COURT: Very well. Any redirect?

19 REDIRECT EXAMINATION

20 BY MR. DUBUC:

21 Q Lieutenant Goffinet is now known as Mrs. Neal.
Is that correct?

22 A That is correct.

23 THE COURT: That completes your examination?

24 MR. DUBUC: Yes, your Honor. Oh, another

1 question.

2 BY MR. DUBUC:

3 Q Mr. Lewis asked you about a meeting yesterday.

4 Who was at that meeting?

5 A You and me, sir.

6 Q Anybody else?

7 A No, sir.

8 MR. DUBUC: Thank you.

9 THE COURT: You are excused, Captain. Thank
you very much.

10 Next witness.

11 MR. DUBUC: I call Mrs. Neal.

12 WHEREUPON,

13 HARRIETT MARIE NEAL,

14 a witness, called on behalf of the defense, having been
previously duly sworn, testified further as follows:

15 THE COURT: I remind you, you are still under
oath.

16 THE WITNESS: Yes, sir.

17 DIRECT EXAMINATION

18 BY MR. DUBUC:

19 Q Please state your full name and address.

20 A Harriett Marie Neal, 3191 Egan Park Court,
Fairfax, Virginia.

21 Q Are you presently employed?

22 A Yes, I am.

23 Q In what capacity?

24 A I work for Dr. Julius Fogel here in the City