

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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,)

Plaintiff,)

vs.)

LOCKHEED AIRCRAFT CORPORATION,)

Civil Action

No. 76-544-3

Defendant and)
Third Party Plaintiff,)

vs.)

PM. SESSION

THE UNITED STATES OF AMERICA,)

Third Party Defendant.)

Washington, D. C.

Wednesday, May 21, 1980

The trial in the above-entitled matter was resumed
before the Honorable LOUIS F. OBERDORFER, United States
District Judge, and a jury duly empaneled and sworn, in Court-
room Number 4, commencing at approximately 1:45 o'clock, p.m.

APPEARANCES:

(AS HERETOFORE NOTED)

OFFICIAL REPORTER: Sylvia T. Seymour

P R O C E E D I N G S

9:20 a.m.

(Out of the presence of the Jury.)

THE COURT: Mr. Lewis, Mr. Dubuc, I had word telephoned into chambers just a few minutes ago that the father of one of the alternate jurors has died suddenly, and I propose to excuse him.

MR. DUBUC: All right.

MR. LEWIS: Fine with me, sir.

(Discussion over at 9:25 a.m.)

(The following was in chambers out of the presence of the Jury, starting at 9:30 a.m.)

THE COURT: What was your problem, Mr. Rosborough?

MR. ROSBOROUGH: I was sick all night last night with a virus, but I took some Kaopectate.

THE COURT: Have you been to the doctor?

MR. ROSBOROUGH: No, I haven't.

THE COURT: Do you think you better be excused so other people don't catch it?

MR. ROSBOROUGH: If necessary, if it is necessary.

THE COURT: Do either of you have a view on this? I hate to have the whole Jury come down with something.

MR. LEWIS: I would, too, but he might be taken to the nurse and might be something not contagious.

MR. ROSBOROUGH: I went to Health Unit this morning and they gave me Kaopectate.

1 THE COURT: What did they say it was?

2 MR. ROSBOROUGH: Well, she said to take that and
3 if it continues --

4 THE COURT: What's the doctor's name?

5 MR. ROSBOROUGH: It was a nurse.

6 THE COURT: Here in the courthouse?

7 MR. ROSBOROUGH: Yes, sir.

8 (A discussion was held off the record.)

9 (Mr. Rosborough left the room.)

10 - - -

11 THE COURT: Note the presence of Mr. Dubuc for the
12 Defendant and Mr. Lewis and Mr. Patrick for the Plaintiff,
13 and the presence now of Alternate Clarence Jackson.

14 MR. JACKSON: They notified me upstairs in the
15 jury lounge that I lost my father this morning.

16 THE COURT: I'm sorry.

17 MR. JACKSON: I don't think I can meditate on
18 the trial.

19 THE COURT: You certainly can be excused and we
20 appreciate your sticking with us this long.

21 MR. JACKSON: Thank you.

22 (Mr. Jackson left the room.)

23 THE COURT: Now bring in Mr. Rosborough.

24 MR. LEWIS: Before he comes in, may I ask that we
25 not discuss the situation in front of him?

1 THE COURT: Do you want to discuss it now?

2 MR. LEWIS: If we have any more data.

3 THE COURT: I don't have any more data. It is
4 just a question of anything else.

5 MR. LEWIS: We are skimming down as far as jurors
6 and alternates are concerned, Your Honor. While nobody,
7 least of all I, want the Jury to get the flu, at the same
8 time this juror is a fresh juror who has taken a very interest
9 in the case. He just seems to be following the testimony
10 and interested in the case as far as one can observe, and
11 perhaps provides a small antidote for the problems that we
12 put forward in the second case. I don't know. He wasn't
13 in the deliberations. I would hate to lose him without
14 being reasonably sure that he was unfit for service.

15 THE COURT: Let me see if the nurse is here yet.

16 (Discussion off the record.)

17 THE COURT: Good morning; why don't you put your
18 name on the record?

19 MS. LITTLE: My name is Susan Little.

20 THE COURT: And your position?

21 MS. LITTLE: Registered nurse with Health Service
22 Health Unit for the courthouse.

23 THE COURT: These gentlemen are some of the lawyers
24 in our trial that is going on.

25 MR. LEWIS: Good morning.

MR. DUBUC: Good morning.

1 THE COURT: Mr. Rosborough came in and said he had
2 been ill.

3 MS. LITTLE: That's correct.

4 THE COURT: We are considering whether to excuse
5 him. One reason for excusing him is because he is too ill
6 to follow the procedure; another reason to excuse him would
7 be that he might have something contagious. If he sat in
8 close proximity to the Jury, he might make them sick.

9 Do you have an impression of his condition?

10 MS. LITTLE: It is a little difficult to tell
11 at this point exactly what the problem is. He has complained
12 of diarrhea since last night on and off. I have given him
13 some medication at this point.

14 THE COURT: Can you tell whether he had any fever?

15 MS. LITTLE: He doesn't appear to have, no.

16 THE COURT: Anything else you can tell us about
17 his condition?

18 MS. LITTLE: Absolutely nothing at this point.

19 THE COURT: When is a doctor coming through here?

20 MS. LITTLE: No today.

21 MR. LEWIS: May I, Your Honor?

22 THE COURT: Yes.

23 MR. LEWIS: Is he normally alert?

MS. LITTLE: Yes.

MR. LEWIS: Nothing wrong with perception or

1 or consciousness from what you can see?

2 MS. LITTLE: There does not appear to be.

3 MR. LEWIS: Is what he has consistent with a
4 mild stomach upset of a non-bacterial nature?

5 MS. LITTLE: That's quite possible.

6 MR. LEWIS: Thank you.

7 THE COURT: Mr. Dubuc?

8 MR. DUBUC: I am also concerned about the entire
9 Jury because I think this does cut both ways; and if we got
10 one that's ill and hasn't been exposed for too long, two or
11 three could get ill, and we are going to be in deep trouble and
12 have to do all of this again. I just wonder -- Is this
13 something that may, first of all, require him to be excused
14 from time to time during the day from the Jury?

15 MS. LITTLE: That's quite possible. Again, it is
16 difficult to tell very much in the early stages whether it is
17 something that the individual ate, whether they are becoming
18 ill. I really can't give you a flat answer.

19 MR. DUBUC: In the incubation period he would
20 be infectious if he is becoming ill?

21 MS. LITTLE: There again it is hard to say,
22 because I don't know what it is.

23 MR. DUBUC: Is there anything like this going
24 around; in other words, is this something that you have seen
25 similar cases of or you know about?

1 MS. LITTLE: I have seen a few in the past week
2 of stomach upsets, not too many, and not too many diarrhea
3 this week.

4 MR. DUBUC: How would you compare those to Mr.
5 Rosborough? I am just wondering if it is something difficult
6 or something simple.

7 MS. LITTLE: It is hard to say. It is so
8 individualized.

9 THE COURT: What would I have to do to get him
10 examined by a doctor before the court? How do you go about
11 getting doctors? Would we send him to a hospital?

12 MS. LITTLE: Probably. I do not have one
13 available.

14 THE COURT: Your procedure would be to send
15 somebody to an emergency room?

16 MS. LITTLE: Yes. The only other thing would be,
17 I might be able to -- I don't know -- to call my supervisory
18 people and see if there is another physician in the area that
19 I could have him looked at by. There again, that physician
20 would probably not be able to leave the particular health
21 unit he was assigned to.

22 THE COURT: He would not?

23 MS. LITTLE: He would not be able to leave
24 the health unit that he was assigned to.

25 THE COURT: So this is something that won't resolve

1 itself before an hour or so?

2 MS. LITTLE: I will do the best I can with making
3 a couple of phone calls.

4 (Ms. Little left the room.)

5 THE COURT: Anything else? Let's see if he has
6 anything he wants to say.

7 MR. LEWIS: I don't think there is any evidence,
8 Your Honor, that the man has anything that is contagious.
9 I am not arguing that it might not be contagious. He
10 certainly can run into a whole host of people that he doesn't
11 know about as well as other jurors with medical problems,
12 and I don't think he is sick enough to be excused at this
13 time; and if the situation changes, I guess we just have to
14 take that when we see it. But I think he's an important
15 juror.

16 THE COURT: He was also the one to interrupt the
17 proceedings for other personal reasons. We had at least
18 three recesses between recesses on account of him.

19 MR. DUBUC: I also note Mr. Lewis is correct that
20 he is a fresh juror, which may give us input, but the remainder
21 are also fresh jurors.

22 THE COURT: There would be two more.

23 MR. DUBUC: Two also fresh and not in risk of
24 something. I am concerned about the whole Jury. I have had
25 these things in my office in the last three or four weeks; and

1 once it starts, I've had three or four.

2 THE COURT: Maybe that's where he got it from.

3 MR. DUBUC: No, it wasn't in our office, Your
4 Honor. I want that on the record.

5 MR. LEWIS: We object to excusing him.

6 (Mr. Rosborough enters the room.)

7 MR. ROSBOROUGH: I feel fine, really.

8 THE COURT: But you will have to be up and down.

9 MR. ROSBOROUGH: I don't think -- not necessarily.
10 It has checked quite reasonably.

11 THE COURT: We will start out; and if you can't
12 hold out, I will bring you back out. While we are recessing
13 today, would you sit out in the chairs in the hallways and
14 sort of stay out of the Jury room?

15 MR. ROSBOROUGH: Yes.

16 THE COURT: And if you cough or something, cover
17 your face with a handkerchief.

18 MR. ROSBOROUGH: Okay.

19 THE COURT: Very well.

20 (In-chambers discussions over at 9:45 a.m.)

1 JUDGE OBERDORFER: Mr. Lewis.

2 MR. LEWIS: Your Honor, may I just state for the
3 record that we just received a document dated April 30th, 1980,
4 which is apparently a report of Phyllis Stotenstein on
5 Mrs. Marchetti, and a note from Temple Ratcliffe, dated 5/21/80.
6 It says this was discovered last evening during the review of
7 our files.

8 MR. DUBUC: This is a report we discovered last night.
9 It's a supplemental that conforms to some things already
10 testified about in another case, and indeed, refers to several
11 cases, and that's what it was. She is not going to be called
12 today, so I don't know if there is going to be a -- I think she
13 has testified to what is in there where she testified in the
14 Zimmerly case, and all it concerns is the interpretation of
15 one test and what has changed since then. If you read the
16 Zimmerly transcripts you find exactly what is in there. We
17 found it last night.

18 MR. LEWIS: She said that she had a separate letter
19 re Michael Schneider, and I just wondered if you came upon that,
20 also.

21 MR. DUBUC: I think it says she will send it, and since
22 that case is not on trial now, we did not look through
23 Michael Schneider's portion of it, and I would be happy to
24 look at it and give it to Mr. Lewis.

25 MR. LEWIS: Thank you, I would appreciate it if you

1 would.

2 JUDGE OBERDORFER: Anything else?

3 MR. DUBUC: This is after the Schneider trial.

4 JUDGE OBERDORFER: If there is nothing else, bring
5 back the Jurors.

6 (Whereupon, the Jurors entered the room.)

7 JUDGE OBERDORFER: Good morning, Ladies and Gentlemen.

8 MR. DUBUC: I call Dr. Stark.

9 Whereupon,

10 MERRITT W. STARK

11 was called as a witness and, having been first duly sworn,
12 was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. DUBUC:

15 Q Good morning, Dr. Stark.

16 A Good morning.

17 Q Doctor, could you state your name and address for
18 the record, please?

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

20 Q What is your profession, Doctor?

21 A Medical Doctor or Physician.

22 Q In what capacity are you presently engaged in that
23 profession?

24 A Presently, I am the Medical Director of the State
25 Institution in North Carolina for the mentally retarded.

1 Q Does that include adults and children or is it
2 specifically an age group?

3 A The age group is between six years and up.

4 Q What is your profession specialty or concentration?

5 A Pediatrics.

6 Q How long have you been engaged in Pediatrics?

7 A I passed my Specialty Boards in 1948.

8 Q So, you are Board-certified?

9 A That's correct.

10 Q Have you been engaged in one fashion or another with
11 Pediatrics since that time?

12 A Twenty-five years in the private practice of
13 Pediatrics in Denver. When I was overseas, for a little over
14 six years, as a Pediatrician and Public Health Officer, and
15 since I came back, two years with the Indian Health Service as
16 a Medical Director of a seven-State area in Aberdeen, South
17 Dakota.

18 Q Would it be fair to say that you have treated and
19 observed thousands of children in your career?

20 A That is correct.

21 Q Now, Doctor, you mentioned a period of time you were
22 overseas, which is what we are concerned with here. In what
23 capacity and where were you overseas in the Public Health
24 Service?

25 A I first went over to Vietnam in 1967 as a volunteer

physician. This was a two-month stint and I was stationed at one of the Province hospitals in the Delta, the Province of Bocklu.

I then returned to the States and served in private practice for another year and then returned to Vietnam in 1969 with the State Department, the Agency for International Development, and from August of 1969 until April of 1979, I was in Vietnam. My capacity there varied. When I first went, I was assigned to the Delta, to the capitol of the Delta, Ken Tut, and I was Medical Director of the regional medical facility in Ken Tut. I served there for a year and then I was transferred as Chief Health Officer to Region 3, which are the 12 provinces that surround the City of Saigon.

I served in that capacity for three years. With the drawdown of American Forces and the retrenchment of personnel, the last two years, I worked out of Saigon, and my responsibilities were countrywide, covering all 45 provinces in the country.

Q What were those responsibilities?

A When I was in the Delta I served as Pediatric consultant to the Pediatric ward. I had provincial responsibilities to see that districts and hamlets receive some sort of help in health care.

I had some responsibilities with the medical students from Saigon, who were sent down to the regional hospital to

1 further their training, and I set up a training program for
2 the medical students.

3 Q How about your responsibilities when you were in the
4 Delta, in the Provinces, Region 3?

5 A When I was in Region 3, I was the Chief Health
6 Officer for the 12 provinces that surrounded Saigon, and this
7 meant the medical care to the civilian populus. Each province
8 had a province hospital and staffing the hospital, getting
9 supplies to the hospital, staffing the hamlets, the various
10 health dispensaries, all of this came under my job as an
11 adviser to the Ministry of Health.

12 MR. LEWIS: Could we approach the Bench?

13 JUDGE OBERDORFER: Yes.

14 (Whereupon, the following comments were made
15 at the Bench:)

16 MR. LEWIS: Your Honor, it sounds like counsel is
17 trying to qualify the Doctor as an expert witness, and he
18 didn't list him as an expert witness...

19 MR. DUBUC: He is not going to give a medical
20 opinion. I want him to describe what he saw.

21 MR. LEWIS: His experiences in the various things
22 throughout the Delta seems excessive. I would ask counsel to --

23 MR. DUBUC: I am not trying to make him an expert
24 for the purpose of any medical evaluation. The doctor is
25 somewhat in the same position that Rosemary Taylor is, and

1 some of these other people.

2 JUDGE OBERDORFER: Objection is overruled.

3 (Discussion at the Bench concluded.)

4 BY MR. DUBUC:

5 Q Doctor, we were talking about the provinces. Is
6 BaSuyen Province the one that you are familiar with?

7 A Yes.

8 Q Is that in Region 3?

9 A No; that's in Region 4 in the Delta.

10 Q That's in the Delta?

11 A The pronunciation of some of the provinces is a little
12 difficult, different; but I think we pronounce that BaSuyen.

13 Q That's spelled B-a-S-u-y-e-n?

14 A BaSuyen.

15 Q That's in the Delta?

16 A That would be one of the southernmost provinces in
17 the Delta.

18 Q Was that under your area of responsibility during the
19 times you mentioned?

20 A Not entirely, but I visited all of the provinces at
21 one time or another, and at some time in the latter two years
22 of my work over there it would have come under my responsi-
23 bility.

24 Q Can you tell us with respect to BaSuyen Province,
25 what facilities or clinics or things you described were

1 available for the care of expectant mothers?

2 MR. LEWIS: Objection.

3 JUDGE OBERDORFER: Objection sustained.

4 BY MR. DUBUC:

5 Q Doctor, during the period of time you were in Saigon -
6 I think you said between 1973 to 1975?

7 A Yes.

8 Q Did you have occasion to inspect any of the Friends
9 for All Children facilities in Saigon?

10 A Yes.

11 Q Did you have occasion in connection with those
12 inspections or review, to note what if any programs they had
13 for formal evaluation of infants in the developmental stand-
14 point?

15 A I was quite familiar with Friends For All Children,
16 and during the six years that I was over there, I had several
17 communications with the staff of Friends For All Children,
18 Rosemary Taylor and others that comprised her staff, and I also
19 visited the various orphanages from which they received their
20 charges.

21 The evaluation that any child would get in one of the
22 facilities they had, would be minimal, but would vary from time
23 to time. On several occasions they had consultants come over
24 from the States for short periods. There was a Dr. Steve
25 Barnett, who was invited over by Friends For All Children.
There was a nutritionist that came over to study nutritional

1 problems in her group, and I think there were also psychologists
2 that came over and child evaluators.

3 There was one lady I recall who came over and her job
4 was to try to come up with some sort of a assessment that would
5 satisfy the Federal Government. My understanding was that the
6 United States Government --

7 MR. LEWIS: Your Honor, I have to object to any
8 hearsay.

9 JUDGE OBERDORFER: Just what you saw yourself, Doctor.

10 MR. DUBUC: He was the medical representative .

11 JUDGE OBERDORFER: Just what he saw.

12 MR. DUBUC: I understand, Your Honor.

13 THE WITNESS: I spoke with the assessor.

14 JUDGE OBERDORFER: Doctor, we don't want to hear
15 whether you spoke to some third person; we want to hear what
16 you observed and saw and did.

17 MR. LEWIS: May I have a directive during this time
18 that Melissa Marchetti was there at To Am Nursery?

19 MR. DUBUC: Yes, she was at To Am Nursery.

20 Your Honor, may I ask that the Doctor be permitted
21 to testify as to what he, as an official, did or received in
22 his official course of his business?

23 JUDGE OBERDORFER: Yes.

24 MR. DUBUC: It would be what you received or infor-
25 mation you gathered in your official course of business is what

1 we are talking about.

2 THE WITNESS: One of the problems was the assessment
3 of the development of these children before they were sent
4 back to our country, and this was the difficulty, and various
5 specialists came over to advise us and the adoption centers
6 about the evaluation of children.

7 The evaluation was difficult because many times we
8 did not know when the child was born; we did not know who the
9 parents were; we did not know anything about their previous
10 environmental conditions prior to their arrival at the adoption
11 center, and to make an evaluation was difficult.

12 Q Doctor, you mentioned some psychologists that came
13 over and some doctors that came over; were they available on a
14 full-time basis for Friends For All Children, or was it on
15 some different basis?

16 A I think their expenses were paid by Friends For All
17 Children, but they served the other adoption agencies, too.

18 Q For how long a period of time would they be there,
19 these doctors you are talking about?

20 A Usually for short periods; from a week to perhaps two
21 months.

22 Q To your knowledge, based upon your evaluation of
23 the Friends For All Children nurseries, do you know if they
24 had any full-time psychologists or developmental assessment
25 programs for those children? Full-time.

1 MR. LEWIS: Your Honor, counsel is leading this
2 witness.

3 JUDGE OBERDORFER: He can answer that question.

4 THE WITNESS: I was somewhat familiar with the
5 staffing of the adoption agencies, but I can't say for
6 certainty what their qualifications were that would -- I don't
7 think they had any full-time psychologists or full-time
8 nutritionists.

9 BY MR. DUBUC:

10 Q Now, Doctor, could I direct your attention to the
11 date of April 4, 1975; were you in Saigon on that date?

12 A I was.

13 Q Did there come a time on that date when you were
14 assigned to accompany a flight of C-5-A from Saigon to the
15 United States?

16 A That's correct.

17 Q Did you have much notice on that assignment?

18 A Actually, very short notice. I received notifica-
19 tion that I would be accompanying the flight at about 11 o'clock
20 in the morning, and the pickup time was to be about 2 o'clock.

21 Q Could you describe for us what you knew or observed
22 about the military and economic situation in Saigon on
23 April 4, 1975?

24 A On April 4, 1979 --

25 Q 1975.

1 A -- '75, a good part of the country had been overrun
2 by the enemy. Da Nang had fallen; Na Trang had fallen; all
3 of the --

4 MR. LEWIS: Your Honor, unless this goes to
5 Melissa Marchetti, it's only historical. I really think it's
6 repetitious.

7 MR. DUBUC: Your Honor, there has been some testimony,
8 because of the conditions, there was a large in-flow of
9 children, large numbers. I am trying to get some background.

10 MR. LEWIS: Very round-about way.

11 JUDGE OBERDORFER: I thought you were asking about
12 Melissa Marchetti.

13 MR. DUBUC: Also asking about what happened on
14 April 4th and what the condition was when he went to the
15 airport; that's also part of this.

16 JUDGE OBERDORFER: I don't see the relevance of that,
17 Mr. Dubuc.

18 MR. DUBUC: All right, your Honor.

19 BY MR. DUBUC:

20 Q Doctor, did there come a time when you went to the
21 airport in Saigon on April 4, 1975?

22 A That's correct.

23 Q Was that in connection with any official capacity?

24 A Yes. I went as a representative of the Agency for
25 International Development to escort the orphans out of Vietnam.

1 It was not clearly identified what exactly my responsibility
2 was. I was just told that I would be the medical officer
3 accompanying the orphans.

4 Q Did there ultimately come a time when you went aboard
5 the C-5-A in Vietnam on April 4th, 1975?

6 A That's correct.

7 Q Do you recall what part of the airplane you were in?

8 A I was in the troop compartment, and I was stationed
9 forward of the ladder up which the orphans were brought from
10 the cargo hatch.

11 Q Can you tell us what you observed as to the orphans
12 or children in the troop compartment where you were located?
13 This is while you were on the ground.

14 A Would you restate that question again, please?

15 Q What, Doctor, did you observe in the troop compart-
16 ment on the C-5-Airplane on April 4, 1975, while you were still
17 on the ground when the orphans were in the airplane?

18 A I did not go up to the troop compartment until
19 shortly before the plane took off. I had responsibilities down
20 in the cargo hatch, and also with the Vietnamese officials
21 outside the plane.

22 Q Can you describe what you saw when you ultimately
23 went up to the troop compartment?

24 A By the time I got up, the children had been strapped
25 in their seats, two infants to a seat, with a pillow between

1 them and the seatbelt. The children were strapped in with
2 the clothes they had on when they came to the airport. Many of
3 them were overdressed. These were their worldly possessions,
4 and they had them on. It was very hot, so I felt that they
5 were overdressed for the temperature in the compartment.

6 Q Doctor, do you recall, as to the children -- were
7 you assigned to a certain area of the troop compartment as to
8 children, to observe them?

9 A I wasn't really assigned to a particular area. The
10 people upstairs just sort of got together and we decided you
11 take this row and I'll take this row, and so I did have one row
12 orphans that I had assumed responsibility for.

13 Q Were there some Air Force flight nurses in that
14 compartment?

15 MR. LEWIS: Your Honor, counsel is leading the
16 witness; he really is.

17 JUDGE OBERDORFER: This kind of thing he is leading
18 on has been testified to before.

19 MR. LEWIS: I understand that, your Honor, but do we
20 slip over to the importance of --

21 JUDGE OBERDORFER: You will keep watching him and he
22 will watch himself.

23 BY MR. DUBUC:

24 Q Were there Air Force flight nurses in that compartment
25 also?

1 A There were other personnel up there, and I assumed
2 that they were Air Force flight nurses, although I came up at
3 the last minute. I didn't introduce myself to any of them
4 because it was really a very hectic scene.

5 Q Now, did there come a time when the aircraft took
6 off on April 4, 1975?

7 A That's correct.

8 Q After the aircraft took off and before any decompres-
9 sion, can you tell me what if anything you observed about the
10 children in the troop compartment, as the airplane is climbing
11 out?

12 A The children, because they were overdressed and
13 because it was so hot -- the outside temperature, I think, was
14 in excess of 90 degrees -- the children, when you get over 100
15 children together, they don't all act the same. I think many
16 of them were fussing. We were concerned, because of the heat,
17 about dehydration, so the ones that were fussing and crying,
18 we gave water to. If they were asleep, we left them alone.

19 I don't think there was any average that all the
20 children did or didn't do, and you wouldn't expect that.

21 Q You mentioned they were asleep and you left them
22 alone and some of them went to sleep after take off?

23 A I think a good many of them did because as the
24 engines were started and they got the air circulating, the
25 temperature in the cargo hatch cooled down and the vibrations

1 of the plane, I think a good many of the infants went to
2 sleep.

3 Q Now, Doctor, were you assigned a seat and a seatbelt
4 in the airplane?

5 A None of the people upstairs had a seat. All of the
6 seats were occupied by the orphans, to the best of my know-
7 ledge. I did not have a seat.

8 Q What if anything or where were you when you took off?

9 A I was stationed right in front of the row of infants
10 that I was watching.

11 Q Did there come a time after the takeoff when rapid
12 decompression occurred?

13 A Yes. I don't know the exact time, but it seemed to
14 be 12 or 14 minutes after takeoff there was a very loud, what
15 I call, an explosion. My first thought was, as I mentioned
16 before, that we had been struck by a surface-to-air missile.
17 But this was not the case, and someone announced that the rear
18 cargo hatch had blown out.

19 Q Where were you when that occurred?

20 A The same place.

21 Q What if anything occurred to you as a result of this
22 decompression at the time of the decompression; do you recall?

23 A I think my immediate reaction was that the plane
24 would likely crash, and so, I was somewhat pleasantly surprised
25 when the airplane didn't descend rapidly, but the pilot seemed

1 to have some control of the plane. Shortly thereafter, we
2 received an announcement that the cargo hatch had blown out and
3 that we were turning around and returning to Saigon.

4 Q Following that rapid decompression, can you tell us
5 what if anything you observed as to those infants in the cargo
6 compartment you were watching or keeping track of?

7 A I don't recall any particular change with any of the
8 infants.

9 Q Did you, in following the rapid decompression, use
10 any oxygen?

11 A Shortly after the explosion, oxygen masks were
12 dropped down and they would not reach the entire length of the
13 row where all the infants were. I held the mask over a couple
14 of the infants, but it didn't seem to make a great deal of
15 difference, and when I put it up to my mouth, I didn't feel
16 anything or notice anything. I figured that perhaps the oxygen
17 wasn't working and it didn't seem to make any difference to the
18 orphans, so I ceased my activities.

19 Q With respect to the orphans, are you familiar with
20 signs of hypoxia inoxylia?

21 A Relatively familiar, yes.

1 Q When you put the masks on the orphans, were these
2 orphans asleep or awake?

3 A I really can't answer that question. The oxygen
4 masks came down, and I felt the reason they are down is to give
5 them to the orphans, so I held them over their mouth, but it
6 didn't really didn't seem to make any difference, and thinking
7 that there was no oxygen coming out, I discontinued it.

8 Q Did you observe the orphans -- with respect to the
9 orphans that you gave the masks to, did you observe, or the
10 others that you observed, did you observe any of these signs
11 or symptoms you mentioned as to hypoxia?

12 A No.

13 Q Did you notice anything that looked like hypertonia?

14 A I didn't notice anything that I could relate to
15 hypertonia. The infants were all covered up, and hypertonia
16 is something that you would almost have to examine the infant
17 for. I didn't notice anything that I would relate to hyper-
18 tonia.

19 Q When you say "you have to examine," you mean a
20 complete physical examination?

21 A No, but they would appear flaxed, their head would
22 perhaps flop over if they were hypertonic. I didn't notice
23 anything like this.

24 Q You said you started to use the mask and then
25 discarded it; did you use oxygen -- you yourself - use oxygen
for any period of time during this descent?

1 A No, I did not.

2 Q At the time of the accident, Doctor, forgive me,
3 but how old were you?

4 A 59.

5 Q Did you, during the descent, experience any feeling
6 of hypoxia or loss of function of any kind?

7 A No.

8 MR. LEWIS: Counsel is leading this witness.

9 JUDGE OBERDORFER: Let's stop this now.

10 BY MR. DUBUC:

11 Q What if any other effect on you did you notice as
12 a result of decompression during the descent?

13 A I really was not aware of any symptoms..

14 Q Were you able to observe what you saw and recall it?

15 A Would you repeat the question?

16 Q I said, were you able to observe what you saw and
17 later recall it?

18 A I think I was, yes.

19 Q Were you unconscious at any time?

20 A No.

21 Q Doctor, between the time of the rapid decompression
22 and the time the airplane landed, what if anything did you do
23 other than what you have already told us about the oxygen with
24 respect to the infants that were in your area?

25 A After the explosion, I thought probably the plane

1 would crash. The pilot was able to keep it under control,
2 but he did so by accelerating and then slowing down, so I
3 figured that we probably would not have a normal landing and
4 I was sort of preparing for a crash landing. So, there really
5 isn't a great deal that you can do. I just checked the seat-
6 belts of the infants to make sure that they were tight.

7 Some of the crew upstairs, I believe, Captain Hadley,
8 or Mr. Hadley, came by, and my concern at that time was, if we
9 did crash, that fire would be distinct possibility, so we made
10 plans for getting the orphans out of the troop compartment as
11 quickly as possible.

12 On the C-5-A the troop compartment is located a long
13 way from the ground, maybe, I think they mentioned two or
14 three stories high, and there's a chute that goes down and
15 I had mentioned that I would go down the chute and receive
16 the orphans as they were passed down.

17 Other than that, I think we pretty much stayed in our
18 areas, made sure that the seatbelts were tight and sort of
19 comforted the infants and sort of waited.

20 Q When you say "comforted," were some of them fussy?

21 A Not really "comforted" them, but maybe put a hand
22 on them if they were crying or checked under the belt to make
23 sure that the seatbelt was not too tight.

24 Q Now, did there come a time, do you recall, whether
25 there were any instructions or directions given as to preparing

1 for a landing?

2 A The only instructions that I recall were shortly
3 before the impact there was a message or someone yelled out,
4 "Brace yourself for landing" or words to that effect.

5 Q You previously told us you did not have a seat
6 assigned; what did you do when you heard that instruction?

7 A My concern was that the impact of the crash would
8 throw the seats forward, so I sort of crouched down and braced
9 my back against the back of the seat behind me.

10 Q Do you recall which direction these seats faced;
11 did they face toward the front or rear of the airplane?

12 A The seats were facing toward the rear of the airplane.

13 Q And you got down between one of the seats and braced
14 against one of those?

15 A I braced against the seat behind me, that's correct.

16 Q Can you describe for us what you observed or felt
17 as far as the landing was concerned?

18 A Well, when someone yelled out, "Brace yourself for
19 landing," I was really anticipating a devastating crash, and
20 there certainly was a very definite impact, but everything
21 remained pretty much as it was. It seems as though there were
22 sort of a series of impacts, and I became aware of glass and
23 things flying through the -- this was toward the end, prior
24 to our coming to a complete stop. I think I just was relieved
25 that we apparently survived and didn't notice anything unusual

1 about the orphans.

2 Q Did you observe the orphans after you came to a stop?

3 A Not really observe them; I think my immediate concern
4 was to get these orphans off the plane.

5 Q Well, where were the orphans that you had observed
6 seated in the seats before the impact; where were they, actually

7 MR. LEWIS: Objection.

8 BY MR. DUBUC:

9 Q Where were they afterward?

10 A They were in the same position as they had been. The
11 seats in my row were not distorted in any way.

12 Q Were you conscious during this whole period of time?

13 A That's correct.

14 Q And you mentioned after it came to a stop, with
15 respect to this landing and sequence you just described, did
16 that take a period of time?

17 A Well, it seemed like a long time, but apparently
18 it was not a very long time.

19 Q Was it instantaneous?

20 MR. LEWIS: Counsel is leading the witness.

21 JUDGE OBERDORFER: This is leading. Objection
22 sustained.

23 BY MR. DUBUC:

24 Q Do you have any estimate as to the time between impact
25 and when you stopped?

1 A I think 25 or 30 seconds, perhaps; I don't know.

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

3 A No.

4 Q Did you observe or smell any smoke in the troop
5 compartment?

6 A No.

7 Q Were you injured in any way in connection with this
8 landing?

9 A No.

10 Q After the part of the airplane you were in, the
11 troop compartment, came to a stop, what did you do?

12 A Gee, I immediately went back to where we had loaded
13 the infants, in that direction, and someone had almost immed-
14 iately, as we came to a stop, kicked the cargo hatch open, and
15 I was somewhat surprised to find that instead of being way up
16 in the air, as I had envisaged, we were at ground level.

17 So, immediately, we began loosening the seatbelts
18 and getting the orphans off the plane. There might have been
19 a few seconds or a minute delay while we just sort of looked
20 around and assessed the damage. Everyone seemed to be
21 perfectly all right. When the cargo door was opened, I recall
22 one of the orphans had just apparently loosened his own seat-
23 belt and just bolted out the door.

24 One of the crewmen had sustained a broken leg and
25 was not able to move around, so we sort of positioned him by

1 the door. One of the flight nurses had sustained a broken arm,
2 so, she was in my section, so she and I were loosening the
3 seatbelt and handing the orphans to this fellow that we had
4 stationed by the door, and he handed them outside, and we
5 were doing this pretty rapidly, but there was really no place
6 outside for the orphans to go. They were just laid on the
7 ground, and when it became evident that fire was not a particu-
8 lar hazard, we slowed down our process until the choppers
9 arrived, and then as the choppers removed the orphans, we
10 would pass more out.

11 Q With respect to these children that you unbelted,
12 you and this nurse and others handed out, what did you observe
13 about them as to their condition?

14 A Their condition was essentially unchanged from the
15 time they were put aboard the plane, as near as I can determine.

16 Q Doctor, with respect to the choppers you mentioned,
17 have you got any estimate of how long it took them to get to the
18 scene?

19 A They certainly arrived very quickly. I would think
20 perhaps five minutes.

21 Q Subsequent to the arrival of the choppers, was there
22 some process established for continuing to remove the children?

23 A As the choppers came, we just kept the process going
24 of handing the orphans out.

25 Q Do you have any estimate of about how long it took

1 to get all orphans out of the troop compartment?

2 A I had a watch on but I don't recall ever looking at
3 my watch; but I would estimate 45 or 60 minutes.

4 Q Did you make any walk-through of the airplane --
5 withdraw that.

6 Were you on the airplane until all the infants were
7 removed?

8 A I was.

9 Q At that time, did you make any check to see if there
10 were any left in the airplane?

11 A Yes, I made a thorough search. I was removing
12 orphans from the front part, and this was the area that I had
13 some knowledge of. There were also people in the back that were
14 removing orphans from their section. I didn't have much
15 knowledge of that section, but after all of the orphans were
16 removed, I made a thorough search of the plane underneath the
17 seats, and there were no other children aboard when I left the
18 plane.

19 Q Did you observe any dead orphans in the troop compart-
20 ment?

21 A Yes. As a matter of fact, as we were sort of unload-
22 ing these orphans by row - we would do one row and then we would
23 move back and get the next row - and possibly two rows in front
24 of where I was stationed, one of the infants appeared not to
25 be alive.

1 There was a cord around his neck and I unloosed the
2 seatbelt, held the infant up, gave artificial respirations
3 for a few seconds, and the child actually seemed to be dead, so
4 I went ahead and got the others.

5 Q You mentioned "a cord"; what significance if any did
6 that have to you?

7 A Well, when the infants were boarded, all of the infants
8 it seems to me, came aboard with a little pack which in some
9 cases was put around their neck, and I think in another case,
10 it was pinned, and what had apparently happened, this child
11 with the cord around the neck and I assumed that the child
12 had strangulated.

13 Q Unfortunately, you lost your daughter in this accident;
14 is that correct?

15 A That is correct.

16 Q Do you know what part of the airplane she was in?

17 A She was in the cargo hatch, which was below the troop
18 compartment.

19 Q After the infants were all removed from the troop
20 compartment and taken away by helicopters, did you look for
21 your daughter?

22 A Yes. After the infants were all out, I assumed that
23 my daughter had not survived, but I thought there might be a
24 remote possibility that in the crash that she had been thrown
25 free, so I determined to make a -- to walk around the part

1 of the airplane that was burning, because this is where I
2 thought she would have been.

3 So, I started to circle around and probably got
4 a third of the way around. These were rice paddies where we
5 crashed, and everytime you put your foot down, why, you would
6 go up six or eight inches in the mud, so it really was very
7 hot, so I didn't make much progress as I would have liked.

8 But I would imagine that I got about a third of the
9 way around the plane, or perhaps halfway.

10 Q You mentioned the portion that was burning; did
11 you have an estimate of how far that was from the troop compart-
12 ment?

13 A It was a goodly distance, a hundred or 150 yards.

14 Q Subsequently after you made your search, what if
15 anything did you do?

16 A I was walking through the rice paddies and one of the
17 men that I knew from Air America came near enough, and told
18 me that there would really be no need for my doing this myself;
19 that they were going to make a thorough search of the area and
20 he flagged down a Vietnamese chopper that picked me up.

21 Q Where did it take you?

22 A Well, they took me to a different area, than they
23 had taken everybody else. I was taken to the Vietnamese chopper
24 pad, and most of the other choppers had gone to the Air America
25 Chopper Pad or the Hospital Chopper Pad.

1 Q Subsequent to the time you were taken to the
2 Vietnamese Chopper Pad, where did you go?

3 A Well, this was a rather circuitous trip. The German
4 Television Crew, they wanted to put me in the hands of some
5 Americans, so I got in their car and they drove until they
6 flagged down an American jeep, and I got in the jeep, and they
7 were heading out to the crash site itself, and as soon as I
8 found that out, I said, "Let me out, because I don't want to
9 go back there."

10 Then another foreign person picked me up and from
11 the landmarks that I saw, I saw that I was as close to my home
12 as I was to the hospital, so he very kindly took me to where I
13 lived.

14 Q You mentioned you didn't seem to be injured from the
15 crash; did you note at any subsequent time any injuries that
16 required any medication?

17 A No.

18 MR. DUBUC: Thank you, Doctor. You may ask him.

19 THE COURT: Mr. Lewis.

CROSS-EXAMINATION

BY MR. LEWIS:

Q I gather that you don't remember seeing any nurses in the upper compartment; is that correct? Is that your testimony?

A In the upper compartment?

Q Yes, sir, the troop compartment.

Q There were personnel up there. I couldn't establish if they were nurses or just flight attendants.

Q All right. Now, sir, you got a copy of the collateral report, did you not; isn't that true?

A Yes, I did.

Q And you read it?

A Correct.

Q Did you note that people -- that there were a number of injuries in the troop compartment from reading the collateral report?

A Yes.

Q Specifically do you remember the injuries that Linda D. Adams said she had?

A When you asked me if I read the collateral statement, I did read the testimony of the people that they took testimony from. The collateral report itself is a three volume, weighing about 20 pounds. So although I read their statements -- I did read her statement, but I can't recall specifics from what you said.

1 MR. LEWIS: Your Honor, I move the admission of
2 the collateral report, Volume I, in evidence. I have only
3 a marked copy but I will supply an unmarked copy.

4 MR. DUBUC: I will object, Your Honor.

5 THE COURT: Sustained. You closed your case.

6 BY MR. LEWIS:

7 Q Now, Linda Adams told you or said in the
8 collateral report that it was a little harder to breath and
9 she got light-headed.

10 THE COURT: Just a moment.

11 MR. DUBUC: Note my objection. It is not in
12 evidence. She is not an issue in the case. How can Counsel
13 read from something that is not in evidence? The doctor
14 already indicated he doesn't remember.

15 MR. LEWIS: May I refresh his recollection,
16 Your Honor? He said he read it.

17 THE COURT: The objection is sustained.

18 MR. DUBUC: My objection then would be, if he wants
19 to refresh his recollection, show it to him without reading it.

20 BY MR. LEWIS:

21 Q Let me show you collateral report Volume No. I,
22 sir --

23 MR. DUBUC: What page, please.

24 MR. LEWIS: Of course.

25 Q Would you turn to page 144, please? There is a

1 tab there, sir, and that's tab 24. Do you see that? It is
2 down at the bottom of page 124.

3 A I got page 124.

4 Q Would you look about a third of the way down, just
5 look at that where she talks about her experience after the
6 explosive decompression. Do you see that?

7 A Yes.

8 Q Now, does that refresh your recollection as to
9 what Linda Adams said in this statement?

10 A No.

11 Q It doesn't refresh your recollection as to what
12 you read earlier?

13 MR. DUBUC: Objection.

14 A This particular part that I am reading, I can
15 understand that. But as far as bring back her whole report,
16 no.

17 Q I am not talking about the whole report. I am
18 talking about this part.

19 A Yes, I can understand this.

20 Q She said that it was harder --

21 THE COURT: Just a moment. Mr. Dubuc's objection
22 was to your reading the thing and I sustained the objection.

23 MR. LEWIS: I am sorry. He said that reading this
24 page refreshes his recollection about this part.

25 THE COURT: Ask him the question again.

1 BY MR. LEWIS:

2 Q Doctor, what was Linda Adams reaction as far as
3 breathing to the explosive decompression?

4 A She mentions in her testimony that it got a little
5 harder to breathe and just really light-headed, I guess; I felt
6 really strange. That's her testimony.

7 Q Now, would that be consistent with symptoms
8 of hypoxia?

9 A Possibly.

10 Q Sir, would you turn to tab 20, and this is the
11 statment of Sergeant Phillip R. Wise, 9th Aeromedical
12 Evacuation Group, and would you turn to page 96 within that
13 tab, and would you look over that page, starting with the
14 question "What do you think happened?" Just read that to
15 yourself?

16 MR. DUBUC: Your Honor, I think the record should
17 be clear -- He is referring to this for some reason -- I think
18 it should be made clear that Sergeant Wise was not in the
19 troop compartment.

20 THE COURT: Yes, sir. But I will show that there
21 was no difference in the air at all.

22 MR. DUBUC: Could I see what page Counsel is
23 referring to?

24 MR. LEWIS: 96.

25 MR. DUBUC: The collateral report we have has

1 tab numbers.

2 MR. LEWIS: Page 96.

3 MR. DUBUC: Could I see the section you are
4 referring to?

5 MR. LEWIS: Yes.

6 MR. DUBUC: Those are your page numbers, I think.

7 BY MR. LEWIS:

8 Q Have you had an opportunity to read that?

9 A Yes.

10 Q Now, that refreshes your recollection at the
11 time that --

12 THE COURT: You asked that question.

13 Q That refreshes your recollection --

14 THE COURT: You are just stating that.

15 MR. LEWIS: I am sorry. I have a right to lead,
16 though.

17 THE COURT: You are still asking the questions.

18 BY MR. LEWIS:

19 Q Doctor, does this not refresh your recollection
20 of what you read at that time about Sergeant Wise, about this
21 stage of what he said?

22 A As I read this testimony, Mr. Lewis --

23 Q Excuse me, sir. Would you answer this question
24 about this page?

25 THE COURT: The question is: Does it refresh

1 your recollection, Doctor?

2 THE WITNESS: This refreshes my recollection.

3 BY MR. LEWIS:

4 Q Sergeant Wise was a member of the flight crew,
5 wasn't he?

6 A I don't know that.

7 Q Sergeant Wise describes his -- that he had hypoxia
8 doesn't he?

9 MR. DUBUC: I object. Your Honor, could we
10 approach the bench?

11 THE COURT: Yes.

12 (The following was at the bench out of the
13 presence of the Jury.)

14 MR. DUBUC: I object to the use of Counsel
15 testifying from a document he hasn't offered in evidence.
16 This witness did not prepare this report. He had only an
17 opportunity to read it. He has no personal knowledge nor did he
18 interview any of these people. All he is asking him to do
19 is recall this if he can, and most of the time he can't. He
20 has him read something not in evidence, and then he is asking
21 him to paraphrase it through the question from a document not
22 in evidence. He can call Sergeant Wise or someone else.

23 THE COURT: Your case rested some time ago now.

24 MR. LEWIS: I think I understand that, Your Honor.
25 This is the senior Government medical representative on the
airplane, representative of the United States Government,

1 and I believe that I have a right as a Government person to
2 question him, a Government representative of one of the
3 Defendants in the case.

4 MR. DUBUC: He is not a representative of the
5 Government now.

6 MR. LEWIS: There are inconsistent statements. I
7 proffer that the air was the same.

8 THE COURT: You can't proffer anything because
9 you are not putting on any more testimony. That's the whole
10 point of this. You are now using the cross-examination of
11 the Defendant's witness to put in further affirmative evidence.
12 What you are doing isn't cross-examining him. You can put
13 that on in rebuttal witnesses to rebut him, but you can't
14 use him as a springboard with which to do this.

15 MR. LEWIS: For guidance, if it please the Court,
16 then can I offer the collateral report?

17 THE COURT: No, you can't offer it, not now, but
18 in rebuttal case you can -- you may offer it or you may not.
19 You certainly can't put the collateral report in while you
20 are cross-examining Mr. Dubuc's witness. It is not the case
21 for your affirmative case. This witness really doesn't have
22 the responsibility, custodial or in terms of preparation in
23 this regard.

24 MR. LEWIS: Well, he sent for a copy of the
25 collateral report. He testified earlier and I can show you

1 that again. His memory was fuzzy about the events of the
2 accident.

3 THE COURT: You can ask him questions about what
4 happened, but you can't ask him in a way that gives you an
5 opportunity to read what Sergeant So-and-So said, and none of
6 us was there to hear it. The objection is sustained.

7 Mr. Lewis, let's go on.

8 (End of bench discussion; now in open court.)

9 BY MR. LEWIS:

10 Q Doctor, what other medical cases, death or injuries
11 did you notice in the troop compartment before you left the
12 scene or any where in the airplane?

13 A Would you rephrase your question or restate it?

14 Q Surely, sir. I want to know what medical cases,
15 either injuries or death, you observed of anybody, in addition
16 to what you have already testified to, before you left the
17 crash site?

18 MR. DUBUC: Excuse me, Your Honor. The question
19 contemplates the crash site. I am not sure whether that means
20 just the troop compartment.

21 THE COURT: He said the crash site. I think
22 everybody knows what that is.

23 A Immediately after we had stopped and we looked
24 around for just an overall assessment, I was aware that there
25 were two injured aircraft personnel forward of where I was

1 sitting.

2 Q Where would that be?

3 A I can't tell you how to describe it. They were about
4 12 or 15 feet in front of where I was sitting, but exactly . .

5 Q After the airplane came to rest, did you go forward
6 as the only doctor on the airplane to examine them?

7 A No. I just noticed that they were injured and I
8 think my concern was getting the orphans.

9 Q Did you notice whether they were alive or dead?

10 A My impression was that they were not alive.

11 Q Both of them were dead?

12 A That was my impression.

13 Q Were they men or women?

14 A Men.

15 Q Both were men? They both had uniforms on?

16 A I don't recall specifically.

17 Q Could you notice or observe any other injured adults
18 or children?

19 A Yes. When we started to unload the orphans, one of
20 the military personnel we noted had a broken leg or he
21 thought his leg was broken. And also one of the attendants
22 in the forward section where I was thought her arm was broken.
23 The only other -- the child that I mentioned that appeared to
24 have suffocated.

25 Q Anything else?

A Then an acquaintance of mine, Susan Dirgy, who

1 was bleeding from the side of her face.

2 Q Do you know whether she had any other injuries?

3 A I'm sorry?

4 Q Do you know whether she had any other injuries other
5 than the injury to the side of her face?

6 A My only recollection of her was that she was holding
7 her hand and immediately got off the plane and that was the
8 last that I saw of her.

9 Q She could have had other injuries that later
10 examination disclosed; isn't that true?

11 A Possibly.

12 MR. DUBUC: Objection.

13 THE COURT: The objection is sustained. That's
14 speculative.

15 Q How many impacts were there?

16 A I really don't know. It seemed as though there was --

17 Q A series of them?

18 A It seemed that way, yes.

19 Q That means about how many? Can you qualify that?

20 A Well, it is sort of like when you are driving your
21 car over a rough road, every little bump in the road is
22 probably an impact; but how many impacts, how many bumps there
23 are in the road, I wouldn't be able to tell you.

24 Q Well, when you testified in the Schneider case,
25 you said: And following this initial touchdown, then there

1 was a series of crashes as the plane crashed across the
2 landing area.

3 Does that fairly describe it?

4 A Yes, I think so. The crash site was a series of
5 paddies, and each paddy is sort of like a square, and there is
6 an elevation of earth around the paddy, and these paddies
7 had been used for many, many years. So these mounds
8 surrounding the paddy become very hard; and as the plane
9 went through there, it would hit those mounds.

10 Q And there was sort of a crash-type feeling every
11 time you hit?

12 THE COURT: That's awfully suggestive question,
13 Mr. Lewis. Why don't you ask him what he felt.

14 BY MR. LEWIS:

15 Q What did you feel each time you hit one of those
16 mounds? You felt a severe jolt?

17 A No. There were --

18 THE COURT: Mr. Lewis --

19 MR. LEWIS: Your Honor, I have a right to cross-
20 examine him.

21 THE COURT: I told you not to do that.

22 THE WITNESS: It wasn't a series of jolts.

23 THE COURT: See what he thinks in his own mind and
24 not what you tell him.

25 MR. LEWIS: All right, sir.

1 A I think the example of a car going over a rough
2 road would be a very good parallel.

3 Q All right.

4 A I don't think you can --

5 Q That would be a road with ruts in it?

6 A What is that?

7 Q A road with ruts in it?

8 A Yes.

9 THE COURT: Mr. Lewis, we will have to adjourn
10 now for our 11 o'clock recess.

11 MR. LEWIS: Yes, sir.

12 THE COURT: Ladies and gentlemen, you are excused
13 until 11:15.

14 (A recess was taken from 11:00 to 11:25 a.m.)

15 MR. LEWIS: With the Court's permission, I would
16 like to take up just a couple of things for guidance, if I
17 may.

18 THE COURT: Sure.

19 MR. LEWIS: I would like to tell the Court that I
20 am certainly not willfully disobeying any order of the Court.
21 It was my impression -- and apparently I am incorrect --
22 that the witness was asked about the impacts and things like
23 that, and he said, I think something like, a very definite
24 impact, and I had thought that I was entitled to suggest the
25 answer in that; and if I am not, I certainly don't want to.

1 THE COURT: I know what the rule is; but when you
2 get into the transcript and what language you use, and it is
3 his saying yes to your choice of colored words --

4 MR. LEWIS: I understand that, Your Honor.

5 THE COURT: -- that just doesn't sound right to me.
6 Maybe you are entitled to. You persuade me of that and I
7 will change. His idea was that it was like a car going over
8 a rough road. That's what he said when he was allowed to
9 speak his mind.

10 MR. LEWIS: He also said, Your Honor --

11 THE COURT: If he said something else somewhere else
12 why don't you leave it there instead of trying to get him
13 to repeat it. If he said it, there is no reason for you
14 to repeat it or to get him to repeat it. If he hasn't said
15 it, it is poor to have you put the words in his mouth on
16 cross-examination or direct examination.

17 MR. LEWIS: Perhaps it is, Your Honor. It is a long
18 line of cross-examination and I may get too enthusiastic.

19 THE COURT: Well, I am going to shorten it.
20 But that's got nothing to do with it. You try to avoid and
21 you object to the Defendant attempting to frame a record by
22 having your words, having you generate words and then having
23 the witness say yes. I don't think that's the right way to
24 do it.

25 If, as you say, he said it before, you have your

1 argument; it doesn't make any difference where you draw it
2 from. You don't have to repeat it every time.

3 MR. LEWIS: All right, Your Honor. My I touch
4 briefly on two other matters?

5 THE COURT: Yes.

6 MR. LEWIS: The remainder of my cross-examination
7 at least will be very short.

8 THE COURT: All right.

9 MR. LEWIS: I am conscious of the Court's original
10 direction that you were going -- that you didn't want me to
11 go into some areas in the voir dire. It is for that reason
12 that I am raising an area that he mentioned in his statement
13 about President Ford ordering the trip. I just didn't want
14 to ask him --

15 THE COURT: What's the relevance of that?

16 MR. LEWIS: The relevance will only be in the
17 fact that there were -- he also said there were a number of
18 photographers around, and I can prove that President Ford
19 met the airplane, the children were held on the airplane
20 until President Ford arrived, a period of an hour and a half
21 or so, two babies were kept out so that they could be handed
22 to President Ford, and I can prove that in effect this was
23 a publicity --

24 THE COURT: Maybe you should have sued President Ford

25 MR. LEWIS: No. I am only reacting to the mercy

1 argument that was made earlier. I am raising this, Your
2 Honor, in all --

3 THE COURT: Well, I hope that won't be made again,
4 and you have objected to it very powerfully. And if it is
5 as objectionable as you said it was in the motion for a new
6 trial --

7 MR. LEWIS: It is.

8 THE COURT: You couldn't possibly ask to reciprocate
9 and have the same kind of thing.

10 MR. LEWIS: You are entirely right, sir; it is
11 very bad. But the problem is that if that solves the
12 problem, I wanted to make the proffer, and I didn't want
13 to do it --

14 THE COURT: I just assume you leave that out.
15 The question here is whether these children who were onboard
16 were injured; and whether President Ford met the plane or
17 not has nothing to do with it.

18 MR. LEWIS: I understand, sir. May I touch on
19 one other matter? It is important business, Your Honor.
20 And that is with respect to the next witness, Mr. Edwards.
21 When Edwards testified before, it was my impression that he
22 said that there was something less than two G-forces at the
23 time of the first impact and the second impact.

24 But in his deposition he said that he hadn't
25 considered the initial G-forces in either instance; that he

1 started his calculations after the impact, and it was only
2 in a somewhat different frame than I had understood him to
3 say, and I would like an opportunity for a brief voir dire
4 on this subject before he testifies.

5 THE COURT: You are welcome to that. Sure.

6 MR. DUBUC: Your Honor, if I may, it is my understand
7 that Mr. Lewis examined or somebody examined Mr. Edwards --
8 I wasn't at the deposition -- between the last trial and
9 this trial on this subject. And it is also my understanding
10 that he didn't -- that he tried to get him to say what he
11 just proffered. He didn't say that. I am trying to get the
12 deposition out.

13 THE COURT: I have no objection to a brief voir dire
14 before we start. That can't do any harm.

15 MR. DUBUC: All right, Your Honor. He's had
16 voir dire and he's had a deposition between this case and
17 the last case.

18 THE COURT: Mr. Edwards would be well-served to
19 have a voir dire on the whole situation. Bring back the
20 Jury now.

21 (The Jury enters the courtroom.)

1 Q Sir, you have given a number of estimates of time,
2 for example, the number of seconds between the different points
3 Are you really confident about your estimates?

4 MR. DUBUC: Excuse me, Your Honor. Can we get it
5 pinned down to what points? That is pretty general.

6 BY MR. LEWIS:

7 Q Tell me, do you know how long it was between the time
8 the airplane hit on one side of the Saigon River and then hit
9 for the second time on the other side of the Saigon River?

10 A No.

11 Q You can't tell us how long that was?

12 A That's correct.

13 Q All right. How can you estimate, then, the length
14 of time between the second impact and the time the airplane --
15 the part you were in -- came to rest?

16 A That would have to be strictly an estimate.

17 Q It's really pretty speculative, isn't it, sir? I
18 mean, you weren't looking at your watch, were you?

19 A That's correct.

20 Q And you wouldn't want somebody to base a calculation
21 of speed or anything like that on your estimate of time, would
22 you? That wouldn't be fair, would it?

23 A I think there are certain conclusions that you could
24 logically draw exactly the length of time it takes for a plane
25 from the time it hits until it stops moving.

1 Q Did you figure that out? Did somebody discuss that
2 with you?

3 A No.

4 Q Well, how can you figure that and you can't tell us
5 the time which was measured incidentally, between the first
6 and second impact?

7 MR. DUBUC: Objection. He's asking two questions.

8 THE COURT: Sustained.

9 MR. LEWIS: I will withdraw.

10 MR. DUBUC: Ask the first and then the second and --

11 THE WITNESS: May I ask if you would be able to
12 determine --

13 THE COURT: No, you can't ask questions.

14 THE WITNESS: Excuse me.

15 BY MR. LEWIS:

16 Q But we have two different -- we have in the same
17 sequence of events, we have the time the airplane hit on one
18 side of the Saigon River, traveled at a speed, a certain speed,
19 to the other side of the Saigon River. Now, then, we have the
20 airplane, at least the part you were in traveling some distance
21 Now, when you say you can tell us how long it took that second
22 thing to happen, but you can't tell us --

23 A No, I don't recall saying that I can tell you that. I
24 I did, that's an error.

25 Q Then, you don't know how long it was between the time

1 of the second impact and the time that the part of the airplane
2 you were in came to rest; is that correct?

3 A That's correct.

4 Q I just have one other question, Doctor. You remembere
5 the meeting in Mr. Dubuc's office that we discussed the last
6 time. Do you remember that, sir?

7 A Yes.

8 Q And it is correct, is it not, sir, that prior to that
9 meeting where the witnesses for Lockheed were present, that
10 your recollections were very fuzzy?

11 A That is right. I think that perhaps needs some
12 clarification. My recollections of the incident that I was in
13 is not fuzzy, but the overall picture of what happened in other
14 parts of the plane, I would say I was very definitely fuzzy.

15 Q Well, there isn't any question that the process of
16 everybody sort of telling you what happened enabled everybody
17 to put their version together and helped them recollect; is that
18 what happened?

19 A I think listening to the other people that were involve
20 in the crash, we got a broad picture of what they saw and were
21 able to perhaps compare it with our own recollections.

22 Q I understand that. Now, in the Schneider trial, you
23 testified on Page 2110, at line 16 --

24 THE COURT: Let the defendant find his place.

25 MR. LEWIS: Yes, sir.

1 THE COURT: Okay.

2 BY MR. LEWIS:

3 Q Question and answer. "Until that meeting, your
4 memory was fuzzy about what happened, wasn't it?" And you
5 answered, "Yes." That does conform with your recollections of
6 what you said at that time? Is that right, sir?

7 A Would you repeat the question and my answer again.

8 Q Yes, sir, I surely will. "Until that meeting, your
9 memory was fuzzy about what happened, wasn't it?" And I have
10 an answer, "Yes."

11 A I think my answer was thinking that question related
12 to the total picture of what happened, and it certainly was
13 fuzzy in that regard.

14 Q Thank you very much, Doctor.

15 THE COURT: Redirect?

16 REDIRECT EXAMINATION

17 BY MR. DUBUC:

18 Q Sir, was your recollection of what you saw yourself
19 in the troop compartment and what you did yourself fuzzy?

20 A I think not.

21 Q Thank you very much.

22 THE COURT: Any recross?

23 MR. LEWIS: No.

24 THE COURT: Doctor, thank you very much.

25 THE WITNESS: Thank you, Your Honor.