

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PATRICK SCOTT BAKER, et al.	.	CA Nos. 03-0749
JACKIE PFLUG,	.	08-0505
CERTAIN UNDERWRITERS AT	.	06-0731
LLOYDS OF LONDON, et al.,	.	08-0504
	.	
Plaintiffs,	.	
	.	Washington, D.C.
v.	.	Thursday, May 6, 2010
	.	9:30 a.m.
	.	
GREAT SOCIALIST PEOPLES OF	.	
LIBYAN ARAB JAMAHIRIYA,	.	
	.	
Defendants.	.	
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	.	
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TRANSCRIPT OF EVIDENTIARY HEARING
BEFORE THE HONORABLE JOHN M. FACCIOLA
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiffs:	RICHARD D. HEIDEMAN, ESQ. TRACY REICHMAN KALIK, ESQ. NOEL NUDELMAN, ESQ. Heideman Nudelman & Kalik, P.C. 1146 19th Street, NW 5th Floor Washington, DC 20036 202-463-1818
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by computer-aided transcription.

P R O C E E D I N G S

1
2 THE DEPUTY CLERK: Civil case 03-749 and 08-505,
3 06-731, and 08-504, Patrick Scott Baker et al., Jackie Pflug,
4 and Certain Underwriters at Lloyds of London et al. versus Great
5 Socialist Peoples of Libyan Arab Jamahiriya et al. This is an
6 evidentiary hearing. The attorneys representing the plaintiff
7 are Richard Heideman, Ed McAllister, Tracy Kalik, Noel Nudelman
8 and Stephen Perles.

9 THE COURT: Good morning.

10 MR. HEIDEMAN: Good morning, Your Honor.

11 THE COURT: You may proceed.

12 MR. HEIDEMAN: Thank you very much. May it please the
13 Court, we call to the witness stand Ambassador Robert Oakley.

14 **ROBERT B. OAKLEY, WITNESS FOR THE PLAINTIFFS, SWORN**

D I R E C T E X A M I N A T I O N

15
16 BY MR. HEIDEMAN:

17 Q. Would you state your name, please, sir.

18 A. Robert Bigger Oakley.

19 Q. Ambassador Oakley, I'm going to ask you please to speak
20 directly into this microphone.

21 A. Yes.

22 Q. This particular courtroom that we're in has a whole video
23 system and it's a different kind of system, and in order for the
24 court reporter to hear you clearly, and His Honor, if you'll
25 talk loudly, clearly, and slowly into the microphone, we'll

1 appreciate it.

2 A. All right.

3 Q. Thank you for making a special trip back to Washington to
4 be here today. We appreciate it. Would you please tell the
5 Court your address.

6 A. 3900 Watson Place, Building A, Apartment GFG, Washington,
7 D.C., 20016.

8 Q. Thank you. And what, sir, is your occupation?

9 A. I'm mostly retired. Mostly I was a foreign service officer
10 for, what, 30 years.

11 Q. And as a foreign service officer, could I trouble you to
12 recite briefly to the Court your background with the
13 United States government.

14 A. I joined the foreign service in 1957. My first overseas
15 assignment was in Khartoum, Sudan, then back to Washington, then
16 Abidjan, Ivory Coast. After that Saigon, Vietnam; Paris,
17 France; the U.S. mission to the United Nations; the American
18 embassy in Beirut, Lebanon, and back to Washington, D.C. on the
19 National Security Council staff.

20 Then I was assigned to deputy assistant secretary for East
21 Asia with the State Department. I was U.S. ambassador to the
22 Congo, U.S. ambassador to Somalia, then I became head of the
23 special coordinator for counterterrorism in the State
24 Department. Then I again went to National Security Council
25 staff with National Security Advisor Colucci and General Powell.

1 Then I was sent as ambassador to Pakistan. That's when the
2 ambassador died in a plane crash. I stayed there until 1991
3 September, when I retired. I was called back briefly to be the
4 critical part of the U.S. operation in Somalia in 1992. Went
5 back to civilian life again in March of 1993. Then President
6 Clinton called me back to Somalia when things went bad for
7 Blackhawk Down. And I retired in 1994.

8 Q. Are you presently retired except for the work you
9 continually get called back to do?

10 A. I consult a little bit with the National Defense University
11 on South Asia and counterterrorism matters.

12 Q. Thank you very much. Let me hand you what has been
13 marked -- and I'm giving a copy with an exhibit sticker No. 70
14 to the court reporter. Let me ask you if you can identify
15 Plaintiff's Exhibit 70.

16 A. Yes.

17 Q. What is that, sir?

18 A. That's a brief summary of my CV which I just read to you.

19 Q. Thank you very much. We'll move Exhibit 70 into evidence
20 at this time, Your Honor.

21 THE COURT: It will be admitted.

22 (Plaintiff Exhibit No. 70
23 received into evidence.)

24 BY MR. HEIDEMAN:

25 Q. Ambassador Oakley, specifically I'd like to focus not on

1 your outstanding and important wide career on behalf of the
2 United States government, for which the people of the country
3 and the nation are grateful. But with your permission, sir, I'd
4 like to focus on your work as the special -- was it special
5 advisor or special coordinator for counterterrorism at State
6 Department?

7 A. Yes. Special coordinator for counterterrorism, reporting
8 directly to Secretary of State.

9 Q. Thank you. I'm just going to walk forward and modify this
10 microphone a little bit so it will pick up your voice a little
11 more and make it a little louder.

12 A. All right.

13 Q. Thank you, sir. As the special coordinator for
14 counterterrorism, working directly for the Secretary of State,
15 sir, could you please tell the Court what were your
16 responsibilities?

17 A. Well, I had a small staff of about eight people, all of
18 whom were very, very good. Our job was several jobs. One was
19 to coordinate, as the title implies, the activities of all U.S.
20 government agencies here in Washington. Second one was to work
21 with foreign governments, a number of trips abroad working with
22 various ministers of interior primarily and their intelligence
23 agencies, again to understand what they knew about terrorist
24 activities and to share with them what we knew, which is
25 invaluable because the information flowed both ways,

1 particularly important in dealing with the hostages in Lebanon
2 and things of this sort, Abu Nidal, because the Europeans were
3 threatened just as we were. Also to do special reports such as
4 some of those which you have here as attachments.

5 Q. And I'll get to those in a moment.

6 A. I was just saying those were the duties we primarily
7 carried out.

8 Q. Thank you. What were the years, sir, during which you
9 served as the special coordinator for counterterrorism,
10 reporting directly to the Secretary of State?

11 A. From 1984 to 1986.

12 Q. So during the time period of the hijacking of EgyptAir
13 Flight 648 in November 1985 and the subsequent Rome and Vienna
14 airport attacks of December 27, 1985, you were the special
15 coordinator for counterterrorism at the U.S. Department of
16 State, reporting directly to the Secretary of State; is that
17 correct?

18 A. That's correct. And of course in that position we had
19 access to all the intelligence from all the different U.S.
20 government agencies and information provided by foreign
21 governments.

22 Q. Throughout your foreign service career, have you
23 specialized, sir, in the area of the affairs of the Middle East,
24 Africa, South Asia, terrorism and counterterrorism?

25 A. That's correct.

1 Q. What academic programs have you completed and what degrees,
2 sir, do you hold?

3 A. I have a bachelor's degree from Princeton University. I
4 did some work at Tulane University before I was called up for
5 the foreign service. They said you better come now or there
6 won't be any slots available, so I did.

7 Q. And sir, you've indicated the various positions that you
8 held with the United States government over a long career.
9 Would you please tell the Court the year you first began your
10 career in the United States foreign service.

11 A. 1957.

12 Q. Thank you. And did I also hear you say when you already
13 recited many of your positions that you served in addition as a
14 special assistant to the President of the United States and on
15 the staff of the National Security Council?

16 A. Twice. Once under President Nixon and Ford, and once under
17 President Reagan.

18 Q. Thank you. We're honored to have you here, sir. Would you
19 please, if you wouldn't mind boasting a bit, share with the
20 Court whether or not you've received any honors, high honors
21 from the United States government for your outstanding and
22 esteemed service.

23 A. Well, the Superior Honor Award from the State Department,
24 Distinguished Honor Award from the Defense Department for
25 service in Somalia, and several other awards which are not worth

1 really talking about.

2 (Laughter)

3 Q. And in addition, sir, did you receive the distinguished
4 public -- did you receive the Diplomatic Award For Excellence
5 from the American Academy of Diplomacy?

6 A. Yes.

7 Q. And what training did you receive for all the various
8 positions that you've indicated in which you've served?

9 A. Basic training is all, because I was always so busy, there
10 was never time for training.

11 Q. And please describe the work and responsibilities that you
12 had as the special coordinator for counterterrorism at the
13 Department of State during the years 1984 through 1986.

14 A. Well, coordinating various agencies of the United States
15 government here in Washington, liaison with foreign governments,
16 ministries of interior and their intelligence agencies.

17 Q. I'm going to ask you to speak a little slower and louder,
18 if you wouldn't mind, Mr. Ambassador.

19 A. All right.

20 Q. Could you repeat what you've said.

21 A. Coordinating the government activities of various U.S.
22 government agencies here in Washington involved in
23 counterterrorism, chairing meetings with terrorist incidents
24 such as hijackings, liaison with foreign governments, ministers
25 of interior and intelligence agencies, publishing special

1 reports on terrorist incidents and on patterns of terrorism.
2 Those were our primary duties.

3 Q. Thank you very much. And did you oversee the formulation
4 and implementation of U.S. counterterrorism policy during those
5 years?

6 A. Yes.

7 Q. And, sir, did your work that you've described ever focus on
8 the government of Syria and Syria's sponsorship of terrorist
9 organizations?

10 A. Well, Syria was one of our primary foci. There's no
11 question what Syria, Libya, Iraq were the three primary state
12 sponsors of terrorism. Therefore, we spent a lot of time
13 studying Syria.

14 Q. Thank you. And did your work also include special focus on
15 the Abu Nidal terrorist organization?

16 A. Yes. Because it quickly became apparent that Abu Nidal was
17 a surrogate for the Syrian government. The Syrian government
18 provided them with a number of essential ingredients to support
19 their activities, training, money, the support of Syrian
20 embassies abroad, travel documents and other things; became
21 quite clear that Abu Nidal was working on behalf of the Syrian
22 government.

23 Q. Thank you. And have you published any works concerning
24 terrorism in general and/or relating to Syrian support for
25 terrorism?

1 A. Yes. We put out a special report in December of 1986
2 immediately after the Vienna and Rome and EgyptAir hijackings
3 detailing the activities of the Syrian government. I think you
4 have that as one of your exhibits.

5 Q. Yes, and I'll get to it in a moment. Lastly, in terms of
6 qualifications, would you please share with the Court what
7 positions in professional associations you have held in your
8 field.

9 A. Well, the American Academy of Diplomacy, the Council of
10 Foreign Relations, National Defense University, as a fellow at
11 the National Defense University. Those are the three primary
12 things I've had since I've retired.

13 Q. And now are you also serving on the board of trustees of
14 the International Rescue Committee?

15 A. Yes.

16 Q. Thank you very much.

17 MR. HEIDEMAN: At this time, Your Honor, we would ask
18 the Court, pursuant to Federal Rule of Evidence 702, to accept
19 the qualifications of Ambassador Robert Oakley and to permit him
20 to testify as an expert in the field of terrorism,
21 counterterrorism, Middle Eastern affairs, politics, and the very
22 issues that are at the core of this lawsuit.

23 THE COURT: So ordered.

24 MR. HEIDEMAN: Thank you very much, Your Honor.

25 BY MR. HEIDEMAN:

1 Q. Mr. Ambassador, it was required that I qualify you before I
2 could ask you directly. Now ready to ask you, as the Court has
3 accepted you as the very expert you are. Tell the Court, sir,
4 whether or not in your opinion, based upon your expertise and
5 your actual knowledge from your work at the time as the special
6 coordinator for counterterrorism, whether or not at that time
7 Syria was on the State Department list of state sponsors of
8 terrorism.

9 A. Yes. I think Syria was maybe the first country we put on
10 that list.

11 Q. And that would have been on December 27, 1979; is that
12 correct?

13 A. That's correct.

14 Q. And tell the Court whether or not, in your expert opinion
15 and based upon your actual knowledge, Syria continues today on
16 the State Department list of state sponsors of terror.

17 A. Yes.

18 Q. Tell the Court whether or not in your opinion,
19 Mr. Ambassador, Syria not only was on the list of state sponsors
20 of terrorism, but tell the Court whether or not Syria actually
21 sponsored terrorist activities during the time period from 1979
22 right up through the current period.

23 A. Yes, they did.

24 Q. Tell the Court if you would, please, your opinions based
25 upon not only your expertise but your actual knowledge, as to

1 the nature of the material support that Syria has provided to
2 terrorist organizations over the time period from 1979 through
3 now.

4 A. They assist in recruitment, they provided training, they
5 provided weapons, they provided money, they provided travel
6 documents, and they provided support for Syrian embassies abroad
7 for terrorists that were actually operating abroad.

8 Q. During the early 1980s, after Syria was put on the State
9 Department list of state sponsors of terrorism, would you
10 express to the Court what was the level of concern by the
11 United States government in relation to Syria and its support
12 for terrorism.

13 A. The early 1980s, the United States government was not
14 terribly concerned because we were not primary targets. Syria
15 was operating against Israel and Arab regimes in the Middle East
16 that you can describe as moderate, who had some relationships
17 with Syria and were close to the United States, but they weren't
18 operating at that point directly against the United States, or
19 indirectly.

20 Q. Did there come a time when Syria began to sponsor very
21 specific violent and brutal terrorist organizations?

22 A. That began when Abu Nidal moved from Iraq to Syria. I
23 guess that must have been about 1984. Iraqis became fed up with
24 Abu Nidal and kicked them out. They found a ready base in
25 Syria. Syria found a willing instrument in Abu Nidal, and at

1 that point they began to attack U.S. targets.

2 Q. When Abu Nidal became sponsored by the government of Syria,
3 was it sponsored generally by the government, and with what
4 intelligence arms of the Syrian government did that sponsorship
5 play itself out?

6 A. It's primarily their external intelligence agencies were
7 the direct sponsors of Abu Nidal.

8 Q. Would that include the Syrian Air Force intelligence and
9 other military and army intelligence?

10 A. Indeed.

11 Q. Tell the Court, if you would --

12 A. The Syrians had several different intelligence agencies, so
13 it's hard to figure out which was doing what at any particular
14 moment.

15 Q. Thank you. You previously indicated that Syria was placed
16 on the State Department list of state sponsors of terror. Let
17 me hand you what is already in evidence as Exhibit 41 and ask
18 you whether or not this document reflects that Syria remains on
19 the State Department list of state sponsors of terror.

20 (Witness reviewing document.)

21 A. Indeed.

22 Q. And let me ask you whether or not the Abu Nidal
23 organization also is on the foreign terrorist organization lists
24 of the U.S. State Department, and I'll hand you a copy of
25 Exhibit 43 that is already in evidence.

1 (Witness reviewing document.)

2 A. Yes, technically, but Abu Nidal is pretty much inert since
3 Abu Nidal himself was killed in the operation. No longer
4 sponsored by Libya or Syria as best as I can tell.

5 Q. Tell the Court if you would of the violent nature, brutal
6 nature of the activities of the Abu Nidal terrorist organization
7 from the time it became sponsored by Syria in the mid-'80s and
8 prior to and leading up to the EgyptAir hijacking.

9 A. Bombings of facilities of foreign governments, kidnappings,
10 assassinations, both of civilians and of government personnel.
11 Hijacking of airplanes. Those are the primary activities.

12 Q. And in support of those activities by the Abu Nidal
13 organization, did Syria provide the Abu Nidal organization with
14 headquarters in Syria?

15 A. Yes. In Damascus, also training bases in Syria and in
16 Syrian-controlled Lebanon.

17 Q. And those that were in Syrian-controlled Lebanon, were they
18 in the Bekaa Valley?

19 A. That's right.

20 Q. And did Syria provide the Abu Nidal organization, after
21 they relocated their headquarters to Syria in the mid-'80s, with
22 safe haven for their terrorist operatives?

23 A. Yes, indeed, both in Syria and in the Bekaa Valley and they
24 also lent support with Syrian embassies abroad.

25 Q. And did Syria provide the Abu Nidal organization with

1 logistical support, without which Abu Nidal organization would
2 not have been able to commit the attacks that they performed?

3 A. Yes, including money and travel documents.

4 Q. Did Syria provide the Abu Nidal organization and its
5 operatives and terrorists with the ability to travel through
6 Damascus?

7 A. Indeed. Airport in Damascus was the primary hub for Abu
8 Nidal travel operations.

9 Q. Did the material support that you've just described
10 continue from the time that the Abu Nidal organization moved its
11 headquarters to Syria until they subsequently became very
12 involved with the sponsorship of the EgyptAir hijacking?

13 A. Yes.

14 Q. In your opinion, did Syria sponsor the Abu Nidal
15 organization and its hijacking of EgyptAir Flight 648?

16 A. Indeed. On the exhibits there's a document that we
17 produced in our office that makes the point that EgyptAir was
18 one of the activities sponsored by Syria.

19 Q. And did Syria sponsor the Abu Nidal organization in its
20 committing the Rome and Vienna coordinated airport attacks of
21 one month later, being December 27, 1985?

22 A. Indeed, yes.

23 Q. Let me hand you what has previously been introduced into
24 evidence and admitted into evidence, Your Honor, being
25 Plaintiff's Exhibit 42, entitled "Patterns of Global Terrorism

1 1985," published by the United States Department of State in
2 October 1986. Mr. Ambassador, could you tell the Court if
3 you're familiar with Exhibit 42 in evidence?

4 A. These are one of the documents produced by my office.
5 Pages 2, 6, and 40 are the ones which primarily relate to Abu
6 Nidal and Syria.

7 Q. And what are the conclusions of the United States
8 Department of State acting on behalf of the United States
9 government in relation to Syria's sponsorship of terrorism,
10 Syria's sponsorship of the Abu Nidal organization, and Syria's
11 sponsorship of the Abu Nidal organization's hijacking of
12 EgyptAir Flight 648 and one month later the Rome and Vienna
13 airport attacks?

14 A. Pages 2, 6, and 40 specifically relate to EgyptAir and
15 Vienna and Rome. It's activities conducted by Abu Nidal on
16 behalf of the Syrian government.

17 Q. And are the conclusions in those reports -- and you've
18 referenced pages 2 and 6 and 40, I'll ask you to look at those
19 briefly in a moment -- are the conclusions within that report
20 concerning Syria's support of the Abu Nidal organization
21 consistent with the intelligence of the United States
22 government, other governments, and actual evidence and
23 information gathered by the United States government proving the
24 direct support of Syria for Abu Nidal and the EgyptAir hijacking
25 and Rome and Vienna airport attacks?

1 A. Yes, including U.S. intelligence information, intelligence
2 provided by other governments, and subsequent affidavits
3 provided by three of the Abu Nidal terrorists.

4 Q. Thank you. And have you had the opportunity to review the
5 affidavits that we obtained in preparation for this case from
6 Omar Ali Rezaq, the hijacker?

7 A. Yes.

8 Q. And also from Mustafa Badra, the Vienna convicted Abu Nidal
9 terrorist relating to the Vienna airport attack?

10 A. Yes, indeed.

11 Q. And also both the affidavit and the subsequent de bene esse
12 deposition of Khaled Ibrahim related to the Rome airport attack?

13 A. Indeed.

14 Q. And tell the Court the significance of your opinion, sir,
15 of those three actual affidavits, all of which -- and the
16 deposition, all of which are in evidence in this case?

17 A. They confirm, if confirmation were needed, the judgments
18 which my office rendered at the time that Abu Nidal conducted
19 these operations on behalf of the Syrian government. As I told
20 you, quite frankly I was amazed, reading those depositions and
21 affidavits, how much good information we published, had and
22 published in the week after the hijackings occurred.

23 Q. Thank you. As it relates to Exhibit 42, which is in front
24 of you, the State Department report on patterns of global
25 terrorism, you referred to pages 2, 6, and 40. Could you look

1 at each one, tell the Court what you believe it should pay
2 special attention to on those three pages, sir.

3 A. Page 2, at the bottom of the page, it talks about hijacking
4 the Egyptian airliner from Athens to Malta, and the
5 near-simultaneous machine gun and grenade massacres at the Rome
6 and Vienna airports in December. On page 2.

7 Page 6 it talks about Syrian sponsorship of terrorism. It
8 says "Syrian-sponsored groups are responsible for attacks in 15
9 countries in 1984-1985, and involved in 30 terrorist attacks in
10 1985 against moderate Arab, U.S., British, Palestinian,
11 Jordanian and Israeli targets. Support for international
12 terrorist groups has cost Syria little but raised the cost to
13 participants of any peace initiative that might exclude
14 Damascus."

15 On page 40, which is a chronology, "23 November of 1985,
16 Malta, Egyptian jetliner was hijacked from Athens to Malta.
17 Terrorists murdered several persons including an American woman,
18 and wounded the other Americans on board. The Arab
19 Revolutionary Brigades -- a cover name used by Abu Nidal Group
20 -- claimed responsibility for the hijacking."

21 Then you have Italy and Austria, December 27,
22 "near-simultaneous machine gun and grenade attacks at Rome and
23 Vienna airports with more than 20 persons dead, including five
24 Americans."

25 Q. Thank you. For the ease of the court reporter, on those

1 three pages, did you actually quote from and read all the words
2 of the paragraphs to which you were referring?

3 A. I did.

4 Q. Thank you very much. Mr. Ambassador, in relation to the
5 Abu Nidal organization and as the State Department coordinator
6 for counterterrorism, please explain to what extent your office
7 followed the actions and analyzed the actions and worried about
8 the actions of the Abu Nidal organization even prior to the
9 EgyptAir hijacking and separately the Rome and Vienna airport
10 attacks?

11 A. Abu Nidal, as an instrument of Syrian government, as we
12 have discussed, has carried out a number of terrorist
13 activities, most of which are in this chronology, both -- they
14 hadn't been involved directly against the United States prior to
15 these activities, but they involved attacks against Western
16 European countries, again moderate Arab countries, both civilian
17 and government targets. Therefore, they were a target of great
18 concern to the United States, and potential for actions against
19 the United States were always there. There were a couple of
20 bombings near U.S. embassy facilities I think in Amman, Jordan,
21 although they didn't do any damage.

22 Q. Thank you. And did the State Department coordinate also
23 through your office and under your leadership with the various
24 U.S. government intelligence agencies, including but not limited
25 to the National Security Council?

1 A. Indeed.

2 Q. And the Central Intelligence Agency and the Defense
3 Intelligence Agency?

4 A. Indeed, yes.

5 Q. Let me hand you what's already in evidence as Plaintiff's
6 Exhibit 48 and ask if you can identify that document, and if so,
7 please tell the Court what's important about that document,
8 being Exhibit 48, please, sir.

9 A. Well, it's the National Intelligence Daily, published by
10 the CIA December 28, 1985. It's partly redacted. On the other
11 hand, it does talk about --

12 Q. We're having trouble hearing you, Mr. Ambassador. Please
13 speak louder and slower.

14 A. It says, "The armed attacks at the El Al counters in Vienna
15 and Rome airports closely resemble previous Abu Nidal attacks.
16 The style of coordinated attacks matches previous Abu Nidal
17 incidents. So far this year the Syrian sponsored Abu Nidal
18 group has conducted six coordinated attacks in Western Europe."

19 Go down to the bottom, "retaliate against those governments
20 the imprison its members. Both Italy and Austria are now
21 holding three group members each. Senior officials of the Abu
22 Nidal group last week had discussions with Austrian officials
23 about the early release of its prisoners.

24 Among the approximately 15 attacks in Western Europe this
25 year, Abu Nidal has not attacked any Israeli targets," but they

1 did attack the targets in Rome and Vienna airports with the El
2 Al counters.

3 Q. And what is your opinion, sir, as to whether or not the Abu
4 Nidal organization committed the EgyptAir hijacking of Flight
5 648?

6 A. Clearly they did.

7 Q. And what is your opinion, sir, as to whether or not at the
8 time the Abu Nidal organization committed the EgyptAir hijacking
9 of Flight 648, whether or not they were sponsored materially and
10 directly by the government of Syria?

11 A. Yes, they were.

12 Q. As it relates separately to the Rome and Vienna airport
13 attacks, what is your opinion, sir, as to whether or not the Abu
14 Nidal organization committed both the Rome and Vienna airport
15 coordinated attacks?

16 A. Yes, and we so stated at the time, both privately and in
17 our publication, which is unclassified, designed to generate
18 more support for activities, for U.S. government activities
19 against Abu Nidal.

20 Q. Did your office issue also the report entitled the "Syrian
21 Support For International Terrorism," and I'm paraphrasing as to
22 the report. It's actually Exhibit No. -- I'm sorry, go ahead.

23 A. We did.

24 Q. And did you approve that, and did you agree with that?

25 A. Yes, indeed, and we did it in a hurry because we felt it

1 was essential to show to other governments, to the public, to
2 Congress, what the Abu Nidal organization and Syria were doing
3 in response to terrorism, strictly attacks against the
4 United States.

5 Q. As the special coordinator for counterterrorism, sir -- and
6 by the way, the exhibit number for the last document I
7 referenced, "Syrian Support For International Terrorism, 1983 to
8 1986," is Exhibit 47. Is this the document to which you've just
9 been referring, sir?

10 A. Yes. And as you can see, it was published very quickly
11 after the attack, because we felt it was important to -- it
12 says, "The chronology is selected terrorist incidents by
13 Syrian-supported groups is not intended to be all-inclusive but
14 is illustrative of Syria's involvement in and support for
15 terrorism and terrorist groups. The groups cited all have links
16 with Syria."

17 Q. Did the United States government consider the Abu Nidal
18 terrorist organization one of the most violent and brutal and
19 worst, yet also effective, terrorist organizations ever?

20 A. Indeed.

21 Q. Did the United States government consider at the time, sir,
22 in 1985, Syria as indeed one of the worst sponsors of terrorism
23 in the world?

24 A. Yes.

25 Q. And in your opinion, as you sit here today, does Syria

1 remain one of the worst sponsors of terrorism in the world?

2 A. Frankly, I don't think so.

3 Q. And what has changed?

4 A. The Syrian government has become much more cautious.
5 They've been hurt by sanctions. They've been hurt by the
6 pressure of other governments, not just the United States. And
7 they also have incentives not to attack the United States,
8 directly or indirectly, because they're hopeful that the
9 United States will help them find a peace agreement with Israel.

10 Q. Are you aware, sir, that the President of the United States
11 just in the last few days continued Syria on the list of state
12 sponsors of terror?

13 A. I'm sure.

14 Q. Thank you very much. And Mr. Ambassador, would you tell
15 the Court whether or not you have prepared an affidavit and
16 report of your opinions in this case?

17 A. Yes, I have.

18 Q. And let me hand you what's been marked as Exhibit 71 and
19 ask you if you can identify this document.

20 A. Yes. That's my affidavit.

21 Q. And in your affidavit, sir, have you set forth the various
22 opinions as you did here today?

23 A. Yes, I have.

24 Q. And have you set forth the background that you have in this
25 field, and your expertise?

1 A. Yes.

2 Q. And on page 5 in paragraph No. 13, you have set forth the
3 following conclusion. Let me see if I can make it easier for
4 you and read it into the record.

5 "This evidence further confirms that the U.S. Government
6 findings relating to these terrorist attacks that there can be
7 absolutely no doubt of:

8 "a. the direct responsibility of the Syrian government for
9 the EgyptAir Flight 648 hijacking of November 25, 1985 -- which
10 caused the death of American citizens and others, including the
11 death of Scarlett Rogenkamp and the injuries of Patrick Scott
12 Baker and Jackie Nink Pflug -- as a result of Syria's direct
13 support for the Abu Nidal organization generally, which included
14 allowing the Abu Nidal organization terrorist cell which carried
15 out the EgyptAir Flight 648 hijacking to train in
16 Syrian-controlled territory and free transit throughout
17 Syrian-controlled territory, supporting and enabling the
18 terrorist attack."

19 Is that your first conclusion and opinion, sir?

20 A. That's correct.

21 Q. And secondly, on page 6, and item b, is it your opinion,
22 and I'll read it into the record, that "the direct
23 responsibility of the Syrian government for the attack of the
24 Rome and Vienna airports on December 27, 1985 -- which injured
25 and took the lives of many innocent Americans and others.

1 Members of the ANO terrorist cells which committed the Rome and
2 Vienna airport attacks were trained in Syrian-controlled
3 territory, transited through Damascus where they received
4 tickets for air travel and were allowed to make final
5 preparations for the attack, and after their placement in Rome
6 and Vienna maintained contact with and were supported by
7 handlers in Damascus supporting and enabling the terrorist
8 attacks."

9 Is that your opinion, sir?

10 A. Yes, it was, and is.

11 Q. Thank you. And in item c on page 6, is it your opinion,
12 sir, that, and I quote, "The Syrians provided large-scale,
13 significant and essential and specific general material and
14 substantial support to the Abu Nidal organization, including,
15 but not limited to, weapons training, financial support,
16 passports and safe haven, at the time of the EgyptAir hijacking
17 and the Rome and Vienna airport attacks, without which support
18 said acts of terrorism could not have occurred against the
19 American victims."

20 Is that correct?

21 A. That's correct.

22 Q. And, sir, are those your conclusions and opinions in your
23 professional and expert opinion based upon your actual
24 knowledge, your experience, and your expertise?

25 A. They are.

1 Q. Thank you. Just one more area.

2 Since the EgyptAir hijacking and the Rome and Vienna
3 airport attacks, tell the Court the nature of Syria's continued
4 sponsorship of terrorism over the last twenty-some years.

5 A. Well, it moved up to a peak in the 1980s, and it's tapered
6 off. Now it's sort of fairly low level, not directed against
7 the United States, but directed against some Arab countries and
8 organizations which it feels is hostile to Syria. But in the
9 1980s the Syrian government was probably the worst in terms of
10 state sponsors of terrorism.

11 Q. And since that time, since the 1980s, has Syria been a very
12 direct and material supporter of what the United States
13 considers to be a foreign terrorist organization, that of
14 Hezbollah, which occupies Lebanon under the tutelage and support
15 of the Syrian government?

16 A. Indeed. Of course Hezbollah was also involved in the
17 hostage taking of U.S. citizens in Lebanon, both involved in
18 taking and the release in exchange for certain favors by the
19 United States government.

20 Q. And Hezbollah continues as one of the worst terrorist
21 organizations sponsoring terrorist activities even today; isn't
22 that true?

23 A. It does.

24 Q. Is that correct, sir?

25 A. That's correct.

1 Q. And one of the other organizations that the Syrian
2 government sponsors and even hosts today in Damascus is that of
3 another terrorist organization classified by the U.S.
4 government, and that is Hamas; isn't that the case?

5 A. Indeed.

6 Q. And in fact, Khaled Meshaal, the head of Hamas, is based as
7 we speak in Damascus, and his terrorist organization, Hamas, is
8 based in Damascus, Syria; is that not true?

9 A. Correct.

10 Q. And Syria provides today material support to both Hezbollah
11 and Hamas and other terrorist organizations?

12 A. Yes, they do.

13 Q. Is that correct?

14 A. That's correct.

15 MR. HEIDEMAN: Thank you very much. I have nothing
16 further for this witness. Mr. Ambassador, we thank you very
17 much for taking your time.

18 THE COURT: Indeed.

19 MR. HEIDEMAN: In that regard, I would like to move
20 into evidence the ambassador's report and notarized affidavit,
21 being Exhibit 71.

22 THE COURT: It'll be admitted.

23 (Plaintiff Exhibit No. 71
24 received into evidence.)

25 MR. HEIDEMAN: Thank you.

1 THE COURT: Thank you so much, Mr. Ambassador.

2 THE WITNESS: You're welcome.

3 (The witness steps down.)

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: Thank you, Mr. Ambassador.

6 MR. HEIDEMAN: May the record reflect we thank the
7 ambassador for travelling back to Washington specially to
8 testify here today. Mr. Ambassador, we thank you for traveling
9 back here to Washington to appear here today, and we appreciate
10 your testimony. Thank you, sir.

11 THE COURT: Thank you, sir.

12 (The witness exits the courtroom.)

13 THE COURT: Is there some brief business we can do
14 while we are waiting?

15 MR. HEIDEMAN: If the Court would like, sure.

16 THE COURT: These calls are to Texas?

17 MS. KALIK: Minnesota is the first call and then to
18 Texas.

19 THE COURT: So Minnesota is 9:15 and so is Texas,
20 right?

21 MS. KALIK: Yes.

22 MR. HEIDEMAN: The plaintiffs will call by de bene
23 esse deposition Professor Yoram Schweitzer. May it please the
24 Court, we'd like to file at this time as Plaintiff's Exhibit 53
25 the deposition of Mr. Schweitzer, which I'll hand to the court

1 reporter. I believe it's in the Court's binder, but let me hand
2 up with permission of the Court an extra copy of Exhibit 54 --
3 I'm sorry. The de bene esse deposition of Yoram Schweitzer was
4 taken both in the matter of Baker and Pflug, and that's Exhibit
5 53.

6 THE COURT: Okay.

7 MR. HEIDEMAN: The deposition, the de bene esse
8 deposition of Yoram Schweitzer was simultaneously taken in the
9 matter of Certain Underwriters at Lloyds of London, being
10 Exhibit 54. At this time we will file and move into evidence
11 both 53 and 54.

12 THE COURT: They're both admitted. Thank you.

13 (Plaintiff Exhibit Nos. 53
14 and 54 received into
15 evidence.)

16 MR. HEIDEMAN: Thank you very much. For the Court's
17 convenience I'll hand up one copy and ask the Court to reference
18 Mr. Schweitzer's short form qualifications, which is Exhibit B
19 to Exhibits 53 and 54. And without taking the time, therefore,
20 since the resume is there, to go through the deposition as it
21 relates to the qualifications, since we have another
22 deposition -- I mean a witness in a few minutes, we would ask
23 the Court, pursuant to Federal Rule of Evidence 702, to qualify
24 Mr. Schweitzer as an expert and accept his expert opinions in
25 this case.

1 THE COURT: So ordered.

2 MR. HEIDEMAN: Thank you very much.

3 For the convenience of the Court, I will quickly share with
4 the Court some specific matters within the deposition which I
5 believe may be helpful. On page 4 he confirms his name is Yoram
6 Schweitzer at line 12, and attached as Exhibit A at line 24 is
7 the de bene esse deposition. He notes that he's at the
8 Institute for National Security Studies in Tel Aviv, Israel.

9 Indicates on page 5, line 7, that it's an academic think
10 tank and that it used to be called the Jaffee Center For
11 Strategic Studies, which is quite "a significant Israeli think
12 tank that is membered by former senior Army colonels, brigadiers
13 and higher and academic scholars" that basically deals with
14 "strategic issues, among them terrorism."

15 At line 18 on page 5 Mr. Schweitzer confirms that he was a
16 member of the research team that dealt with international
17 terrorism in the institute. Page 6, line 17, that he received
18 his master's degree from Tel Aviv University, and the subject is
19 Middle East history, political science and military history.

20 On page 7 Mr. Schweitzer references that his expertise, at
21 line 11, includes but is not limited to global terrorist
22 movements in general and al-Qaeda specifically, the various
23 Palestinian terrorist movements, state sponsorship of terrorism
24 and the Hezbollah movement.

25 Moving forward to page 8, Mr. Schweitzer indicates that

1 from 1982 to 1987 his field of work and studies and his academic
2 career concentrated on terrorism and state sponsorship of
3 terrorism, and that he did that work through the Jaffee Center
4 for Strategic Studies. He answers that question "Yes" on page
5 9, line 2.

6 Page 9, lines 5 and 6, he indicates that he became familiar
7 with the activities of an organization known as the Abu Nidal
8 organization. And he indicates on line 14 of page 9 that Abu
9 Nidal is the nom de guerre of the person, the head of the
10 organization, Sabri al-Banna, which means the father of
11 struggle, and he says "nidal" means "struggle" in Arabic.

12 On page 10 at line 10 he indicates that the Abu Nidal
13 organization was operating under several auspices of states who
14 sponsored his operations. And at line 21 indicates that besides
15 working for several sponsors like Iraq, Syria, Libya, Abu Nidal
16 under the leadership of Sabri al-Banna was also focusing on
17 international terrorism almost exclusively.

18 Page 11, line 16, Mr. Schweitzer indicates his opinion that
19 "the Syrians were supporting Abu Nidal's line of operation
20 against Arab countries that supported the Israeli/Egyptian peace
21 treaty."

22 Line 24 of page 11, Mr. Schweitzer indicates that Abu Nidal
23 in 1983 actually moved his base of operations to Syria.

24 Page 12, line 20, Mr. Schweitzer expresses the opinion that
25 "When Syria was its main sponsor, Abu Nidal attacked rivalries

1 which were shared by the Syrian preferences like Israeli
2 targets, Jordanian targets, and Egyptian targets." He indicates
3 that "Syria was in the opposing camp to the peace process that
4 broke out between Israel and Egypt."

5 On page 13, line 14, Mr. Schweitzer states, "Abu Nidal
6 attacked American targets, attacked British targets, and of
7 course operated in Western countries where his unselective
8 operations were also hurting the local European countries."

9 On page 14 at line 17, Mr. Schweitzer states, "Abu Nidal
10 was considered to be one of the major threats to the
11 international community in general and to Israel in particular."

12 On page 15, line 24, Mr. Schweitzer states... as well as
13 other attacks of Abu Nidal in 1985 because "Abu Nidal was the
14 most influential organization in 1985 on the international arena
15 because Hezbollah and other organizations which I won't mention
16 that I also delved into in the academic field as well as the
17 research in the army. So for me," quote, page 16, line 5, "Abu
18 Nidal was a key organization to study and study thoroughly from
19 intelligence resources as part of my qualification for the job."

20 Moving forward to page 19, line 19, he states "I also
21 looked at the connections of Syria to Abu Nidal and to other
22 organizations, by the way, that Syria sponsored."

23 He indicates on page 21 that he became in charge of the
24 section "that dealt with international terrorism in the Israeli
25 military intelligence," and at line 19 that he served as

1 commander of the international terrorism military intelligence
2 section for the Israeli government.

3 Moving forward to page 28, line 10, he's asked, "In
4 becoming an acknowledged expert in relation to Abu Nidal, its
5 past, its terrorist activities, and its sponsorship of Syria and
6 others, have you over the course of your career conducted a
7 thorough and complete review of all activities of the Abu Nidal
8 organization, its structure, its activities, its specific
9 terrorist operations, as well as materials both classified and
10 otherwise relating to the countries including Syria which
11 sponsored the Abu Nidal organization?"

12 And he gives the answer at line 19, "Of course."

13 Line 20: "In that context, would you please explain to the
14 Court whether or not you have formed opinions and whether or not
15 you have specific information to share with the Court in support
16 of those opinions as to which terrorist organizations conducted
17 the EgyptAir hijacking of November 23, 1985, as well as the Rome
18 and Vienna airport attacks of December 1985 and by which
19 countries that terrorist organization was sponsored."

20 Page 29, line 3: "Abu Nidal was sponsored" -- strike the
21 answer. Page 29, line 3: "Abu Nidal was responsible for these
22 three attacks. It was sponsored in these years by both Syria
23 and Libya."

24 Line 6: "On what do you base your opinions?"

25 Line 7: "First of all, there was an admission, a claim of

1 responsibility by Abu Nidal. And I read a lot of material. Now
2 I'm going to discuss the open sources material that indicate
3 sponsorship of these two states to Abu Nidal in general terms
4 and specifically for these operations."

5 Line 14. "I would focus" -- he's continuing his answer.
6 "I would focus with your permission on the Syrian assistance to
7 Abu Nidal. Now I know for a fact that from 1983 to 1987 and
8 later on if you want... Syria was supporting the Abu Nidal
9 organization."

10 Line 19: "If I look at state sponsorship of terrorism, it
11 will be a brief academic analysis of a certain organization.
12 You see that there's a hierarchy of sponsorship to terrorism by
13 states. The lowest one would be just enabling visits or
14 conventions of terrorist organizations in certain states who
15 allow them to come."

16 Page 30: "Another level, a higher level, would be to have
17 these organizations establishing offices, whether official or
18 unofficial, in the state. And another one would be to allow the
19 organizations to have training camps in their territories,
20 sovereign territories, or in a territory which they control in
21 other countries."

22 Line 8, continuing the answer: "Another level would be to
23 provide logistical assistance to these organizations, whether
24 it's equipping them with rifles or munition or supplying them
25 instructors, or letting them have falsified passports, which is

1 another level, or allowing them to run their operations abroad
2 from their territory, with their knowledge or without their
3 knowledge, with their supervision or without it."

4 Continuing the answer, line 16: "And of course, a higher
5 one would be to help them specifically with smuggling arms to
6 the operation site through diplomatic channels or others,
7 through their official airliner companies. And another phase
8 would be to use these organizations as proxies. And of course
9 the highest level would be to use their own operatives. But
10 this has nothing to do with the operation itself."

11 Line 24: "So I think that Syrian support to Abu Nidal in
12 the period that we're talking about included almost everything
13 until the level of using Abu Nidal under their strict directions
14 and supervision in a specific terrorist organization."

15 THE COURT: All right. Let me just check with
16 Mr. Cramer. John, are you ready?

17 MR. CRAMER: Yes, sir.

18 MR. HEIDEMAN: Shall I pause and be able to continue.

19 THE COURT: Yes. We're just about to make the
20 connection.

21 (Video conference being connected.)

22 MS. KALIK: Mr. Olsen?

23 THE WITNESS: Yes.

24 MS. KALIK: Can you hear me?

25 THE WITNESS: Yes.

1 MS. KALIK: And can you see me? This is Tracy.

2 THE WITNESS: Yes.

3 MS. KALIK: Plaintiffs call Jim Olsen.

4 **JAMES A. OLSEN, WITNESS FOR THE PLAINTIFFS, SWORN**

5 DIRECT EXAMINATION

6 BY MS. KALIK:

7 Q. Good morning, Mr. Olsen.

8 A. Good morning.

9 Q. I'll ask you to speak loudly and clearly so that our court
10 reporter here in Washington can record your answers. Okay?

11 A. Yes, ma'am.

12 Q. Thank you. Can you please state your full name?

13 A. James A. Olsen.

14 Q. And Mr. Olsen, where do you live?

15 A. Eden Prairie, Minnesota. 7611 Paulsen Drive.

16 Q. How long have you lived there in Eden Prairie?

17 A. Sixteen years.

18 Q. Thank you. And Mr. Olsen, do you have with you some
19 documents that my office sent to you in advance of your
20 testimony?

21 A. Yes, ma'am.

22 Q. Okay. And can you look at the document that the plaintiffs
23 marked as Exhibit No. 72?

24 A. Yes.

25 Q. And do you recognize this document?

1 A. Yes, ma'am.

2 Q. And can you tell the Court what this document is?

3 A. This is my birth certificate.

4 Q. And Mr. Olsen, on what date were you born?

5 A. 10/21/61.

6 Q. So that is October 21, 1961?

7 A. Correct.

8 Q. And where were you born?

9 A. Fargo, North Dakota.

10 Q. I'm sorry. Could you say the city again?

11 A. Fargo, North Dakota.

12 Q. Thank you. Fargo, North Dakota.

13 MS. KALIK: And plaintiffs will move Exhibit No. 72
14 into evidence as the birth certificate of Jim Olsen.

15 THE COURT: It'll be admitted.

16 MS. KALIK: Thank you.

17 (Plaintiff Exhibit No. 72
18 received into evidence.)

19 BY MS. KALIK:

20 Q. Do you have there document No. 73?

21 A. Yes, ma'am.

22 Q. And could you tell the Court what document No. 73 is?

23 A. That is my personal passport.

24 Q. And what country issued your passport?

25 A. United States of America.

1 Q. So you are a United States citizen?

2 A. Yes, ma'am.

3 Q. And from the time of your birth until today, have you
4 remained a U.S. citizen?

5 A. Yes.

6 MS. KALIK: Plaintiffs would now move Exhibit No. 73
7 into evidence.

8 THE COURT: It'll be admitted.

9 MS. KALIK: Thank you.

10 (Plaintiff Exhibit No. 73
11 received into evidence.)

12 BY MS. KALIK:

13 Q. Mr. Olsen, where did you attend high school?

14 A. Hillsboro, North Dakota.

15 Q. And after attending high school in North Dakota did you
16 attend university?

17 A. Yes, ma'am. Mayville State University.

18 Q. Could you spell the name of your university?

19 A. M-A-Y-V-I-L-L-E.

20 Q. Maybille State University. And where is Maybille State
21 University?

22 A. It's Mayville.

23 Q. I'm sorry, Mayville. Thank you. Where is that, sir?

24 A. It's in the state of North Dakota.

25 Q. And what degree did you get?

1 A. I received a degree in physical education and health and
2 also in elementary ed.

3 Q. And after graduating, did you begin working right away?

4 A. Yes, ma'am.

5 Q. Where did you work?

6 A. My first two years was in Maple Valley, North Dakota, and
7 the last 24 years has been in the Waconia school district in
8 Waconia, Minnesota.

9 Q. And are you a physical education teacher still today?

10 A. Yes.

11 Q. Now, Mr. Olsen, are you currently married?

12 A. Yes, ma'am.

13 Q. And what is your wife's name?

14 A. Jackie Nink Pflug.

15 Q. And how did you meet Jackie Nink Pflug?

16 A. I met Jackie through a friend of mine that I teach with.

17 Q. When did you meet?

18 A. 1992.

19 Q. 1992? Is that what you said, sir?

20 A. Yes.

21 Q. And did there come a time that you two got married?

22 A. Yes, ma'am.

23 Q. And when did you get married?

24 A. May 25, 1996.

25 Q. Do you and Jackie have any children together?

1 A. Yes, ma'am.

2 Q. How many children?

3 A. One.

4 Q. And is that a son or a daughter?

5 A. Son.

6 Q. What is your son's name?

7 A. Tanner James Olsen.

8 Q. Do you have there an exhibit that has been marked as
9 Exhibit No. 74?

10 A. Yes, ma'am.

11 Q. And could you tell the Court what Exhibit 74 is.

12 A. That is my son or our son's birth certificate.

13 Q. And where does Exhibit 74 state that your son was born?

14 A. Robbinsdale, Minnesota.

15 MS. KALIK: Plaintiffs would now move Exhibit 74 into
16 evidence.

17 THE COURT: It'll be admitted.

18 (Plaintiff Exhibit No. 74
19 received into evidence.)

20 BY MS. KALIK:

21 Q. Is your son Tanner a United States citizen?

22 A. Yes, ma'am.

23 Q. And you have there a copy of Exhibit No. 75?

24 A. Yes, ma'am.

25 Q. Can you identify for the Court what has been marked as

1 Exhibit No. 75?

2 A. That is my son's passport.

3 Q. Thank you. And Tanner still remains a United States
4 citizen today; is that correct?

5 A. Yes.

6 MS. KALIK: Plaintiffs would now move Exhibit 75 into
7 evidence.

8 THE COURT: It'll be admitted.

9 (Plaintiff Exhibit No. 75
10 received into evidence.)

11 BY MS. KALIK:

12 Q. Now, was your wife, Jackie, to your knowledge, ever injured
13 during a terrorist incident?

14 A. Yes.

15 Q. And what incident would that be?

16 A. Excuse me?

17 Q. What incident would that be?

18 A. That would be the hijacking of Egypt 648 where she was shot
19 in the head.

20 Q. Did that occur in November 1985?

21 A. Yes.

22 Q. Does Jackie speak with you about her being a victim of the
23 EgyptAir Flight 648 hijacking?

24 A. Yes, ma'am.

25 Q. And what does she tell you about that?

1 A. That she was -- the plane was hijacked and it landed in
2 Malta, and that because the Maltese government did not give the
3 hijackers what they wanted, there were people that were,
4 passports were pulled, and because Jackie was a United States
5 citizen, she was pulled to the front of the plane and they
6 executed the American people, or attempted to execute them.
7 That's a brief explanation.

8 Q. Thank you. And when Jackie speaks with you about this
9 period in her life, how does that make you feel?

10 A. Well, I think the hijacking affects us daily. The incident
11 that Jackie went through, the accident, the injuries that she
12 received, would you like me to talk about that, ma'am?

13 Q. Yes, please, sir.

14 A. Well, the hardest part of the year is during November on
15 the anniversary of the hijacking. It is very difficult around
16 that time of the year for Jackie. But I believe that we are
17 affected with this injury and with this accident daily. As I
18 watch Jackie try to go through her mother or her wife activities
19 and being -- and hitting an overload period as we call it about
20 mid-afternoon because her brain has had to work so hard through
21 her daily activities that she has to shut down. And as a
22 husband I pick up a lot of the tasks and things, because I know
23 Jackie cannot do it because of her injuries.

24 Sometimes when we walk down the street I'm on her left, on
25 her left side many times, so that she does not step off a curb

1 or whatever it might be that's in front of her, because of her
2 loss of vision, of her up, lower and left peripheral. Just
3 helping her maneuver.

4 Numerous times around the home she runs into things.
5 Obviously, I feel saddened for that reason that tend to occur.
6 She has trouble maneuvering through the home at times.

7 The big thing, as I said, would be the overload part of the
8 day when she becomes irritable, impatient, has a tendency to cry
9 because she can't go on anymore during the day. Obviously, I
10 feel saddened with that.

11 The need for seizure medication. I leave to work every day
12 wondering if I will receive a phone call and that she may have
13 had a seizure. Thank God I don't travel a lot. I have found
14 myself not going away from our home for long periods of time
15 because of knowing that Jackie might not be able to handle what
16 goes on around the house and being with our son and being able
17 to keep up with him. He's a very active boy.

18 Q. How has Jackie's injuries affected Tanner?

19 A. Tanner has received some help through psychologists, and
20 every night we have to go through a routine of rechecking doors.
21 And the fact that Tanner has sometimes said that he's very
22 afraid that someone is going to get him like someone got mom,
23 but we have to reassure him that nobody is going to get us; we
24 will protect him, and something like that that happened to his
25 mother won't happen to him.

1 It's constant reassuring. He has talked to doctors about
2 this. I guess that would be how it affects Tanner.

3 Q. And is Jackie able to care for Tanner as his mother on a
4 daily basis?

5 A. Yes, to a point. She gets to a point where she just can't
6 do those mother-type activities because of her tiredness and
7 being overloaded because of the brain injury.

8 Q. And would you say that Jackie's injuries manifest
9 themselves on a day-to-day basis?

10 A. Yes, ma'am.

11 Q. How has Jackie's involvement being a victim of the EgyptAir
12 hijacking affected your marriage?

13 A. At times, because Jackie does get tired, her impatience and
14 irritability comes in the way between her and I. I just have to
15 continue to understand that it's not me; it's just her being so
16 tired. And I have to sometimes be careful what I say or how
17 hard I make her think through the day. Sometimes I have to
18 write questions down and ask later because of that. I really
19 have a very strong marriage; it's just that we have to cope with
20 what she's gone through.

21 Q. Thank you, Mr. Olsen. Is there anything further that you
22 would like to tell the Court regarding how you have been
23 affected by your wife's involvement and being a victim on
24 EgyptAir's Flight 648 hijacking?

25 A. I think that is probably it. I know one more thing is when

1 she leaves the house and drives, she has a tendency to sometimes
2 get lost, and I'll receive a phone call and I'll have to guide
3 her back to where she needs to go, to get back to the place that
4 she's going. That would be one other thing that, you know,
5 affects her.

6 Q. So do you have to continue to provide care to her as a
7 result of her injuries?

8 A. Yes.

9 Q. And other than guiding her back through when she gets lost,
10 are there other examples that you can cite to the Court?

11 A. Around the home?

12 Q. Yes, sir.

13 A. For example, making sure that the home is cleared and
14 cleaned of any obstacles where she might be walking, so that she
15 does not run into them because of the loss of her left upper and
16 lower peripheral vision, helping with tasks around the home to
17 allow her to have time to rest.

18 Q. Thank you, Mr. Olsen. I have nothing further for you
19 unless the Court has any further questions for you.

20 THE COURT: No, I don't. Thank you very much,
21 Mr. Olsen.

22 THE WITNESS: Yes, sir.

23 (Video disconnected .)

24 THE COURT: Do we have someone else on video?

25 MS. KALIK: We need to call to Texas.

1 THE COURT: I was wondering, could we take five now
2 and give our reporter a break and then call Texas? Let's try
3 five to 11:00, please.

4 (Recess from 10:45 a.m. to 10:58 a.m.)

5 MS. KALIK: The plaintiffs will now call Eugene Nink.

6 **EUGENE J. NINK, WITNESS FOR THE PLAINTIFFS, SWORN**

7 DIRECT EXAMINATION

8 BY MS. KALIK:

9 Q. Good morning, Mr. Nink.

10 A. Good morning.

11 Q. I'll ask you to keep your voice up and speak slowly and
12 loudly so that the court reporter here in our courtroom in
13 Washington, D.C. can record all of your answers and Your Honor
14 can hear them as well.

15 Can you please state your name?

16 A. Eugene Joseph Nink.

17 Q. And Nink is spelled N-I-N-K; is that correct?

18 A. Yes, ma'am.

19 Q. And where do you live, Mr. Nink?

20 A. I live at 408 Yorkshire.

21 Q. 408 Yorkshire; is that correct? Mr. Nink, could you please
22 put the papers you have there down on the table, because I think
23 when you're rattling them it's picking up on our microphone.

24 Thank you.

25 And what city is that in, Mr. Nink?

1 A. It's in Pasadena, Texas.

2 Q. Thank you. Now, those papers that you were just rattling,
3 are those the papers that you received from my office?

4 A. Yes, ma'am.

5 Q. Do you see the paper there that has been marked as Exhibit
6 No. 76? It's your birth certificate, sir, if that will help
7 you.

8 A. Yeah. I have it.

9 Q. And it's marked as Exhibit No. 76?

10 A. Yes.

11 Q. Okay. And do you recognize that document?

12 A. Yes, ma'am.

13 Q. And could you identify it for the Court?

14 A. It's a certificate of birth.

15 Q. And on what day were you born, Mr. Nink?

16 A. December 13, 1924.

17 Q. And where were you born?

18 A. Houston, Texas.

19 Q. Thank you.

20 MS. KALIK: Plaintiffs would now move Exhibit No. 76
21 into evidence, Your Honor.

22 THE COURT: It will be admitted.

23 (Plaintiff Exhibit No. 76
24 received into evidence.)

25 BY MS. KALIK:

1 Q. Mr. Nink, do you have now another document there marked as
2 Exhibit No. 77?

3 A. Yes, ma'am.

4 Q. And what is that document?

5 A. It's a passport.

6 Q. And is that a copy of your passport, Mr. Nink?

7 A. Yes, ma'am.

8 Q. And does it show that you are a citizen of the
9 United States?

10 A. Yes.

11 Q. From the time of your birth until today, have you remained
12 a citizen of the United States?

13 A. Yes.

14 MS. KALIK: Plaintiffs will now move Exhibit 77 into
15 evidence, Your Honor.

16 THE COURT: It'll be admitted.

17 (Plaintiff Exhibit No. 77
18 received into evidence.)

19 MS. KALIK: Thank you.

20 BY MS. KALIK:

21 Q. Mr. Nink, are you married?

22 A. No. No. My wife passed away a few years ago.

23 Q. What was your wife's name?

24 A. Rylma Mae.

25 Q. Rylma Mae Nink. Is that spelled R-Y-L-M-A, her first name?

1 A. Yes, ma'am.

2 Q. And her middle name, M-A-E?

3 A. Yes.

4 Q. Thank you. And did you and Rylma have any children
5 together?

6 A. We had three daughters.

7 Q. And what are your daughters' names?

8 A. Gloria Jo, Jackie Ann, and Mary Ellen.

9 Q. And Jackie Ann is your middle daughter, then?

10 A. Yeah.

11 Q. And your daughter Jackie, was she injured in a terrorist
12 incident?

13 A. Yes, she was.

14 Q. What incident would that be?

15 A. Beg your pardon?

16 Q. What incident would that be?

17 A. That would be a hijacking.

18 Q. And that's the hijacking of EgyptAir Flight 648, sir?

19 A. Yes, ma'am.

20 Q. Do you recall when that occurred?

21 A. Not exactly.

22 Q. If I told you it was in November 1985, would that refresh
23 your recollection?

24 A. Yes. I think so.

25 Q. What do you remember about Jackie when she was a young girl

1 growing up?

2 A. Well, she was a good kid, well behaved, just a normal girl.

3 Q. How would you describe your relationship with her?

4 A. Oh, we got along well.

5 Q. Were you all close?

6 A. Yes.

7 Q. Did your family celebrate holidays and birthdays together?

8 A. Yes, we do.

9 Q. And do you have any specific memories of that?

10 A. I suppose so, yes. I have good memories.

11 Q. Did Jackie attend college?

12 A. Yes, she did.

13 Q. Do you recall what degree she pursued in college?

14 A. Well, whatever the school teacher.

15 Q. She became a school teacher. Is that correct?

16 A. Yes. She became a school teacher.

17 Q. And after Jackie moved out of your house to attend college,
18 did you communicate with her often?

19 A. Did I what?

20 Q. After Jackie moved out of your house and went to attend
21 college, did you communicate with her often?

22 A. Yes.

23 Q. How did you communicate?

24 A. Telephone mostly.

25 Q. And did you ever write letters to each other?

1 A. Some.

2 Q. And prior to her being a victim of the hijacking that you
3 earlier identified, how would you describe Jackie?

4 A. She was a good girl. She was well liked. Normal girl.

5 Q. Would you describe her as adventurous?

6 A. Yes. I suppose you could say that. She liked to travel
7 and see what -- she wanted to see the world.

8 Q. Do you recall where Jackie traveled in 1985?

9 A. I don't know.

10 Q. Was Jackie living overseas at that time?

11 A. Yes.

12 Q. Where was she living?

13 A. I don't know. I can't recall.

14 Q. If I told you that it was in Cairo, Egypt, would that
15 refresh your recollection?

16 A. Yes. Cairo. I believe that's the name of the place.

17 Q. Okay. How did you feel when you learned that the flight
18 that your daughter Jackie was on had been hijacked?

19 A. Well, kind of concerned, I suppose.

20 Q. How did you find out about the hijacking?

21 A. I can't recall. It was on TV, but I can't recall exactly.

22 Q. Were there news people around you?

23 A. Yes. They showed up.

24 Q. And they were there at your house?

25 A. They were in the street in front of my house, yeah.

1 Q. And did you know that Jackie was actually injured?

2 A. We weren't sure about exactly what had taken place then.

3 Q. When did you find out that Jackie had been shot?

4 A. I don't recall exactly, but we got the news.

5 Q. And did you know that she was at a hospital in Malta?

6 A. Yes. We found that out.

7 Q. Do you recall speaking with her husband at the time, Scott
8 Pflug?

9 A. Yes.

10 Q. And what did Scott tell you?

11 A. I guess he told us she'd been shot. I don't remember.

12 Q. Do you remember, were you able to speak with Jackie
13 following the hijacking?

14 A. I don't believe so. She was in the hospital. No.

15 Q. So she wasn't able to speak to you; is that correct?

16 A. Oh, I don't think so.

17 Q. Eventually, did Jackie return to the United States?

18 A. Yes.

19 Q. And where did she go when she returned to the
20 United States?

21 A. I can't recall.

22 Q. Do you recall if she went to her -- to Minneapolis,
23 Minnesota, where her husband's family lived?

24 A. I believe that's -- yes. That's where they ended up.

25 Q. Did you speak to her then?

1 A. Huh?

2 Q. Were you able to speak with her then?

3 A. Yes, uh-huh. We kept in touch.

4 Q. Do you recall when you were first able to see her following
5 the hijacking?

6 A. Huh?

7 Q. Did Jackie come and visit you following the hijacking?

8 A. Yes. I don't recall where that took place.

9 Q. But you did see her sometime thereafter?

10 A. Sometime after, but where it took place I don't recall.

11 Q. And what was Jackie like when you saw her at that time?

12 A. Well, she was different, I suppose. I don't know. About
13 the same old Jackie. But she was different.

14 Q. She was different. Were you worried about her?

15 A. I suppose we were in some ways, yes.

16 Q. Do you still speak with Jackie often today?

17 A. Yes.

18 Q. How often do you speak with Jackie?

19 A. Just talked to her the other day. But we talk together on
20 the phone and she comes down occasionally to Houston.

21 Q. And you visit with her then?

22 A. Yes. She stays with me.

23 Q. I just have one more question for you, Mr. Nink. How would
24 you say that Jackie's being a victim of the hijacking has
25 affected you? Could you tell the Court that?

1 A. Well, I don't know whether it's affected me in any way.
2 You know, things happen. You accept things the way they are,
3 move on.

4 Q. Have you found this upsetting to you when it was occurring?

5 A. Yes. I was P'd off at those people over there.

6 Q. I'm sorry, you were what?

7 A. Teed off at those people over there.

8 Q. Teed off. I can certainly understand that, Mr. Nink. Is
9 there anything else you'd like to share with the Court today? I
10 appreciate your time in coming in and we're finished unless the
11 Court has something further for you.

12 THE COURT: No. Thank you very much, sir. Are there
13 other witnesses in Texas?

14 MS. KALIK: There are.

15 THE COURT: Who's your next witness?

16 MS. KALIK: Our next witness would be Mary Nink.

17 THE COURT: Would you ask Mary to step in, please.

18 (Mary Nink appears on video screen.)

19 MS. KALIK: Mary, can you hear me?

20 THE WITNESS: Yes.

21 MS. KALIK: Plaintiffs will now call Mary Nink
22 O'Donnell.

23 **MARY E. NINK O'DONNELL, WITNESS FOR THE PLAINTIFFS, SWORN**

24 DIRECT EXAMINATION

25 BY MS. KALIK:

1 Q. Good morning, Ms. O'Donnell. I'll ask you to keep your
2 voice up and speak slowly and loudly so that our court reporter
3 here in Washington and the Judge can hear you here. Okay?

4 A. Okay.

5 Q. Thank you. Could you please state your full name?

6 A. Mary Ellen Nink O'Donnell.

7 Q. And Nink is your maiden name; is that correct?

8 A. Yes.

9 Q. What is your address, Ms. O'Donnell?

10 A. 28226 May Road, Splendora, Texas.

11 Q. And how long have you lived in Splendora, Texas?

12 A. Six years.

13 Q. Do you have the documents that my office sent to you in
14 advance of your testimony this morning?

15 A. Yes.

16 Q. Can you please look at the exhibit that's marked No. 78?

17 A. Yes.

18 Q. And could you identify that document for the record?

19 A. My birth certificate.

20 Q. It's your birth certificate; is that correct?

21 A. Yes.

22 Q. And when were you born?

23 A. September 27, 1956.

24 Q. And where were you born?

25 A. Houston, Texas.

1 Q. And this birth certificate indicates that your parents are
2 who?

3 A. Eugene Nink and Wilma Nink.

4 Q. And is Wilma Nink your mother; is that correct?

5 A. Yes.

6 Q. And does she also go by the name Rylma Nink?

7 A. Yes. Wilma, Rylma. I know her by "Mama."

8 Q. I understand. Plaintiffs will now move Plaintiff's Exhibit
9 No. 78 into evidence, Your Honor.

10 THE COURT: It'll be admitted.

11 MS. KALIK: Thank you.

12 (Plaintiff Exhibit No. 78
13 received into evidence.)

14 BY MS. KALIK:

15 Q. Now, Ms. O'Donnell, were you born a United States citizen?

16 A. Yes.

17 Q. And from the time of your birth until today, have you
18 remained a United States citizen?

19 A. Yes.

20 Q. Now, other than yourself, did your parents have any other
21 children together?

22 A. Yes. My two sisters.

23 Q. What are your sisters' names?

24 A. Gloria Nink and Jackie Pflug Olsen.

25 Q. Does your sister Jackie Nink Olsen also go by the name of

1 Jackie Nink Pflug?

2 A. Yes.

3 Q. Are they older than you or younger than you?

4 A. Older.

5 Q. Who's the oldest?

6 A. Gloria is the oldest, Jackie is the middle sister, and I'm
7 the youngest.

8 Q. Thank you. Now, was your sister Jackie injured during a
9 terrorist incident?

10 A. Yes, she was.

11 Q. And that would be what incident?

12 A. EgyptAir flight. EgyptAir.

13 Q. EgyptAir Flight 648; is that correct?

14 A. Yes.

15 Q. Now, when you were growing up, where did you live?

16 A. We lived at 408 Yorkshire in Pasadena.

17 Q. Is that in Texas?

18 A. Yes. It is in Texas.

19 Q. And what did your father do when you all were growing up?

20 A. My father worked at Ethyl Corporation. He was an operator
21 there. He retired from Ethyl. And my mom was a housewife.

22 Q. She took care of you and your sisters?

23 A. Yes. She took care of the home, took care of us and my
24 dad.

25 Q. And what do you recall about your sister Jackie when you

1 were growing up?

2 A. We were very active. We were a close family. We took
3 summer vacations all the time, went camping, went to visit
4 relatives in other states, Florida and New Hampshire and
5 Vermont. That's where my mom was from. We played softball
6 every spring. Me and Jackie, as we grew older, were on the same
7 team. So we did a lot of stuff together as a family.

8 Q. Do you have -- how would you describe your relationship
9 with your sister Jackie?

10 A. I'd describe it as good. We're friends. We talk maybe
11 once a week or e-mail each other once a week to see how
12 everybody's doing. I let her know about events happening in
13 Houston with the family, and she lets us know what's going on up
14 there with her and Jim and Tanner.

15 Q. Do you recall when Jackie went to college?

16 A. Yes. I was still in high school, and she went away to Sam
17 Houston State University, so I had the bedroom all to myself.

18 Q. So that's a nice benefit when your big sister moves away.
19 Did you stay in touch with her once she moved and went to Sam
20 Houston College?

21 A. Yeah. She'd come home on weekends. She was active in
22 college. She had a lot of friends there and everything, and she
23 lived in Huntsville, which wasn't too far away from home anyway.
24 So she was able to come home on weekends quite a bit to visit
25 with the family and see Mom and Dad.

1 Q. And do you recall, did Jackie attend any schooling
2 following Sam Houston University?

3 A. Yes. She went and attended University of Houston Clear
4 Lake to receive her master's, but she was teaching at the time
5 she was doing that also.

6 Q. So following her graduation from Sam Houston she began a
7 career in teaching; is that correct?

8 A. Yes. She began a career in teaching in Baytown, and during
9 that time, that's when she decided to go ahead and get her
10 master's degree.

11 Q. So she was obtaining her master's degree on a part-time
12 basis?

13 A. Yes.

14 Q. And after her graduation with her master's degree, did she
15 continue teaching?

16 A. Yes. She continued teaching.

17 Q. Do you know where she continued teaching?

18 A. I believe she was still at the Goose Creek School District.
19 That is in Baytown, which is about 10 minutes from Pasadena.

20 Q. And what types of teaching did she do?

21 A. I believe she was teaching special education students,
22 which was the field that she wanted to be in.

23 Q. Do you know if Jackie enjoyed teaching?

24 A. She enjoyed it very much.

25 Q. Did she ever speak to you about that?

1 A. She probably did. If you're asking did I remember a
2 conversation, no, but I knew she was happy teaching. That's
3 what she had always wanted to do, so she was doing exactly what
4 she wanted to do, and that was teach.

5 Q. How would you describe Jackie prior to her being a victim
6 of the hijacking of EgyptAir Flight 648?

7 A. Jackie was always very active. She lived in Baytown, she
8 had her teaching, she had her friends. She was always very
9 active with her friends, doing just different things that
10 friends do, shopping trips in Texas, visiting other friends,
11 just, you know, regular stuff that people do.

12 Q. Did there come a time that Jackie decided to live abroad?

13 A. Yes. She was all excited. She finally made the decision
14 that she wanted to teach overseas, and so she started taking the
15 steps to do that, going on interviews and -- I mean, we were all
16 happy for her. She was about to do something that she'd always
17 wanted to do, and that's travel and teach at the same time. You
18 know, good combination.

19 And so her first teaching job she was all excited about.
20 She was going to Norway to teach. I remember we were all
21 excited for her, but we were sort of heartbroken too because she
22 was going far away, but she -- and I think she too was -- you
23 know how you anticipate something, but you know you're leaving
24 your family behind. But she was excited about it. She didn't
25 back down, and she went with it.

1 Q. And once she moved to Norway, did you stay in touch with
2 her?

3 A. Yeah. I believe we would talk on the phone occasionally.
4 We may have written letters to each other. She really enjoyed
5 it over there. She had a good time. She enjoyed the teaching.
6 She enjoyed the people. She enjoyed Norway, the snow, the
7 skiing. She just had a really good time. She was going places
8 and meeting new people and seeing new things.

9 Q. Do you recall where Jackie was living in November of 1985?

10 A. She was in Cairo, Egypt.

11 Q. What was she doing in Egypt at this time?

12 A. Teaching at one of the American schools.

13 Q. And do you know how she ended up in Athens in November of
14 1985?

15 A. Yes. Scott, her husband at the time, was a coach. So he
16 had the girls' volleyball team and they traveled over there for
17 a volleyball tournament, and she decided to go over there and be
18 with him and the team and watch the games, and just the
19 opportunity to go to Greece, I mean to Athens also at the same
20 time, to do some sightseeing, so that's why she was there.

21 Q. Do you recall where you were living on November 23, 1985?

22 A. Yes. I was living in Deer Park, Texas, which is also a
23 suburb of Houston, which is less than probably 10 minutes from
24 my parents' home.

25 Q. And what were you doing at that time?

1 A. I was raising my children. I was married with -- the
2 husband I was married to had three kids, I had two of my own,
3 Michael and Elena, and so I was busy with raising my kids and
4 their school and their activities.

5 Q. How did you learn of the hijacking of EgyptAir Flight 648?

6 A. I learned that night. My sister Gloria called me and told
7 me about it, that she had heard it on the news, and that we
8 weren't sure if Jackie was on that flight. We knew that she was
9 over there, but we weren't sure when she was taking off. We all
10 prayed it wasn't that flight. We were praying that maybe she
11 took an earlier flight or maybe it wasn't that one.

12 And it was confirmed that night that she was on that
13 flight. My sister had called one of the news stations to see if
14 they could tell us anything, and they returned our call saying
15 that Jackie's name was on the list of passengers.

16 Q. And how did you feel when you found that out?

17 A. Devastated. I mean, devastated. Your sister's on a flight
18 and it's hijacked and you don't know anything more about it than
19 that, that she is on that flight, and all you can do is watch
20 the news and hope you get some information that will help you or
21 make you feel better or tell you anything. So, yeah, just
22 devastated.

23 Q. How did your parents find out about the hijacking of
24 EgyptAir Flight 648?

25 A. They found out through my sister Gloria, my older sister

1 Gloria, the one that called me, and she was the one that
2 informed my mom about it. And that's how we found out. That's
3 how they found out. And from there it was just waiting to hear
4 from somebody.

5 Q. Did you ever then hear from some official from either the
6 United States or EgyptAir?

7 A. Yeah. I believe it was the next day or that night that I
8 believe someone from the State Department -- I know that had to
9 be the State Department, had called them and informed them what
10 had happened and that Jackie -- confirmed Jackie was on the
11 flight. I didn't take the phone call; I wasn't at the home, but
12 I know that they received it that night.

13 Q. Now, you mentioned that your mom was very upset when she
14 got the call; is that correct?

15 A. Yes. She was very upset. So was my dad.

16 Q. Was Jackie close with your mom and dad when she was growing
17 up?

18 A. Oh, yeah. Very close. We all were very close to our
19 parents.

20 Q. What do you recall in particular about Jackie's
21 relationship with your mom?

22 A. Jackie had a very good relationship with my mom. Jackie
23 was good in school. She was very active in school and sports.
24 They had a good mother-daughter relationship. I can't even
25 remember them arguing or fighting. It was just a good

1 mother-daughter relationship. Jackie respected my mom and my
2 dad, and they respected her, and they tried to -- as far as when
3 she was in high school, you know, they encouraged her to, you
4 know, go for what she wanted to do, if she wanted to go to
5 college, you know, to get the good grades and follow through
6 with it and go to college so she could be a teacher.

7 Q. Do you know that after Jackie went to college, did she stay
8 in contact with your mom and dad?

9 A. Oh, yeah, constantly. She would probably call just like I
10 did. I would call them or go visit them. It's not -- we all
11 lived really close, in an area really close. So she would go
12 visit them or call them, tell them what she was up to, or my
13 parents would go over and visit her where she was living. We'd
14 get together for Christmases and birthdays and holidays.

15 Q. How did your mom and dad react when they found out she was
16 going to go live overseas and teach?

17 A. I believe they were happy for her. I would think when any
18 child leaves to go overseas to teach, it's difficult. They're
19 leaving you. I believe they were excited for her, but upset in
20 a way that she was actually leaving the United States, and that
21 it would be a while before they would see her and -- you know,
22 to get to physically see her. But they were happy for her.
23 They were glad she was doing what she wanted to do.

24 Q. Now, taking you back to the night of November 23, 1985, did
25 you ever hear any conflicting reports concerning the fate of

1 your sister?

2 A. What do you mean, conflicting reports?

3 Q. Well, did you hear that she had been shot or did you hear
4 that she had been killed?

5 A. I believe the only report that we heard was that she had
6 been shot. We didn't know the outcome until -- actually we
7 found out when she was going to the hospital, when she was at
8 the hospital, that she was alive. We knew she was shot but we
9 did not know if she was alive or dead.

10 Q. And so when was it that you learned that she was alive?
11 How long would you say it was later?

12 A. I think it was like -- it had to be between six and eight
13 hours before we ever knew anything. We were at the house, and I
14 believe it was like all night that night we knew that she was on
15 the flight. My mom knew in the morning that she had been shot,
16 and I believe by maybe 1 or 2:00, we knew that she was alive,
17 that they were -- she was at the hospital and they were going to
18 perform surgery on her.

19 Because I remember it was after 12 and we were contacting
20 the hospital in Pasadena, because we knew she was going to have
21 surgery and she had had an adverse effect to some anesthetic,
22 and we were trying to contact the doctors to find out what type
23 it was so they wouldn't make a mistake and use the same kind.

24 Q. So she had had a prior surgery there in Texas and had an
25 adverse effect to anesthesia; is that correct?

1 A. Yes. That is correct. So we were just trying to find out
2 what it was so we could tell the doctors overseas just be
3 careful. So it had to be between eight and 10 hours.

4 Q. And did you know at that time the extent of Jackie's
5 injuries?

6 A. No, we did not. We did not. We just knew that she had
7 been shot. I believe we knew she had been shot in the head, but
8 that was it. We did not know the extent of the injuries.

9 Q. Were you able to speak with Jackie at that time?

10 A. No, we were not. She was rushed into surgery. We knew she
11 had a head wound and we were not able to talk with her. I
12 believe it was several days later that my parents were -- Scott
13 was there, so he was able to talk with them, and they may have
14 been able to talk with Jackie on the phone.

15 Q. And when you speak of Scott, that would be Jackie's former
16 husband, Scott Pflug; is that correct?

17 A. Yes.

18 Q. Now, as you understand it, what were the injuries that
19 Jackie did have?

20 A. From...

21 Q. From her being shot in the head.

22 A. Okay. We understood that her peripheral vision was gone.
23 She -- I believe probably -- I know her peripheral vision was
24 gone. She just couldn't see the way she used to see. That was
25 one of the injuries. I'm sure, you know, she had other injuries

1 as far as mental and physical, but that was one of the bigger
2 injuries right there. And later on down the line she developed
3 seizures also.

4 Q. Do you recall when Jackie returned to the United States
5 following her injuries?

6 A. She went -- yes. She went to Germany for a few days, and
7 then from Germany she flew back to Minnesota, and she went to
8 the hospital in Minnesota for a while before she was released.
9 And then from there she went and lived with Scott's parents and
10 Scott in Minnesota.

11 Q. And do you know how long that took for her to return to the
12 United States?

13 A. I would say all in all it probably was between three and
14 four weeks.

15 Q. And you said she eventually returned to Minnesota; is that
16 correct?

17 A. Yes.

18 Q. Do you know, did Jackie receive medical treatment there in
19 Minnesota?

20 A. Yes, she did. She received -- she was probably in the
21 hospital there for just a while so they could evaluate her, and
22 then from there she was allowed to go home, but she continued to
23 see the doctors.

24 Q. Now, when you learned about the extent of Jackie's
25 injuries, how did your mom and dad react to that news?

1 A. I believe they were -- they were really upset. They were
2 upset at the fact that your child is injured, your child has
3 been shot in the head and left for dead from people that -- who
4 would do this to somebody? And you know, why? And they were
5 extremely upset about it. They hadn't been able to really -- I
6 think their thing was they hadn't been able to really speak to
7 Jackie a whole lot. They had spoken to her but they hadn't seen
8 her. And I think their anxiety and their fear was to actually
9 see her and to see how she was and to, you know, talk to her and
10 be with her. That was their state of mind.

11 Q. Do you recall when they did get to see her for the first
12 time following the hijacking?

13 A. I wasn't there, but my mom and dad did fly up to Minnesota
14 when she was with Scott, and they did visit with her when she
15 was back in Minnesota.

16 Q. At Scott's parents' home, you said?

17 A. Yes.

18 Q. And do you recall what your parents told you about that
19 visit to her?

20 A. As far as what they told me, no, I don't recall any
21 conversations. I'm sure I asked how she was, how she's feeling.
22 They probably conveyed that she probably looked like the same
23 old Jackie, knowing my mom and dad. But I think from it all
24 they saw that Jackie, you know, she had survived. Jackie may
25 have looked the same, but maybe -- but Jackie in a way wasn't

1 the same.

2 Q. And how was she different?

3 A. She was probably -- Jackie was more subdued, I believe.
4 Jackie's a survivor. When I first saw her, it was like she was
5 talking to all her friends and being happy and, you know, trying
6 to make everybody else feel at ease around her. Even though we
7 were upset what happened to her, she didn't want anybody around
8 her to feel sorry for her or to be upset for her, that she was
9 going to come out of this okay.

10 But I could tell she was -- you know, she was more to
11 herself and stayed to herself a lot, especially when she was,
12 you know, just in a room by herself.

13 Q. And how did that make you feel when you saw her like this?

14 A. Well, it wasn't the Jackie we all knew. She had lost a
15 lot. I mean, in a way we felt sorry for the fact that she
16 wasn't teaching anymore, she wasn't overseas where she wanted to
17 be, she didn't have the life that she had. Everything that she
18 had had had all of a sudden come to an end because someone had
19 shot her.

20 Everything that she had in Cairo, her life, her friends,
21 her kids, her teaching, her traveling had all come to an end.
22 You know, you feel bad when someone's dream has been blown away.

23 Q. Thank you. How would you say your sister's involvement as
24 being a victim of the hijacking has affected your life?

25 A. As far as affecting my life when this happened, I still had

1 to go and raise my kids and be a mom and be a wife and be a
2 daughter to my parents. I had to be there for them. And we
3 had -- we were a close-knit family to begin with, so I think
4 that helped us. But I think it affected -- it's upsetting more
5 that Jackie lost everything she had, was what I believe upset me
6 more, was what she lost.

7 Q. Do you still worry about Jackie today?

8 A. I think we always will worry about Jackie. I mean, she's a
9 survivor, though. She's an inspiration. Sometimes I think she
10 worries about us more. But Jackie's an inspiration to us all.
11 She survived the hijacking, she survived a head shot wound. She
12 decided to move on with her life instead of feeling sorry for
13 herself. So yeah, we worry about her, but then again, we always
14 worry about each other. Our family worries about everybody in
15 our family. We're just like that.

16 MS. KALIK: Thank you, Ms. O'Donnell. I'm finished
17 with my questions unless the Court has something further for
18 you.

19 THE COURT: No, I don't. Thank you very much,
20 Ms. O'Donnell.

21 MS. KALIK: Is your sister Gloria there?

22 THE WITNESS: She is.

23 MS. KALIK: Okay. We'll have her next.

24 The plaintiffs will now call Gloria Nink.

25 **GLORIA JO NINK, WITNESS FOR THE PLAINTIFFS, SWORN**

1 DIRECT EXAMINATION

2 BY MS. KALIK:

3 Q. Good morning, Ms. Nink. Could you please state your name
4 for the record.

5 A. Gloria Jo Nink.

6 Q. Thank you. And if you could, please keep your voice up and
7 speak loudly and clearly so that the court reporter here in
8 Washington and the Court here can hear all of your answers.

9 A. Okay, yes.

10 Q. Thank you. Ms. Nink, where do you live?

11 A. I live at 117 Litchfield Lane in Houston, Texas.

12 Q. And how long have you lived there?

13 A. Four years.

14 Q. Now, do you have with you some documents that my office
15 sent to you in advance of your testimony?

16 A. Yes, I do.

17 Q. I'd like you to look at the exhibit that's been marked as
18 Plaintiff's Exhibit No. 79, and can you identify that for the
19 Court?

20 A. That's my birth certificate.

21 Q. And on what date does it show that you were born?

22 A. March 12, 1953.

23 Q. And where were you born?

24 A. Houston, Texas.

25 MS. KALIK: Plaintiffs would now move Exhibit No. 79

1 into the record, Your Honor.

2 THE COURT: It'll be admitted.

3 (Plaintiff Exhibit No. 79
4 received into evidence.)

5 MS. KALIK: Thank you.

6 BY MS. KALIK:

7 Q. Now, do you have document No. 80 there with you as well,
8 Ms. Nink?

9 A. Yes.

10 Q. And could you identify for the Court what that is?

11 A. That's my United States passport.

12 Q. Thank you. And from the time of your birth until today,
13 have you remained a United States citizen?

14 A. Yes.

15 MS. KALIK: Plaintiffs would now move Exhibit No. 80
16 into the record.

17 THE COURT: It will be admitted.

18 MS. KALIK: Thank you.

19 (Plaintiff Exhibit No. 80
20 received into evidence.)

21 BY MS. KALIK:

22 Q. Now, Ms. Nink, what is your father's name?

23 A. Eugene Joseph Nink.

24 Q. And your mother's name?

25 A. Rylma Mae Nink.

1 Q. And is your mother currently alive?

2 A. No. She passed away November 17, 2004.

3 Q. November 17, 2004. Could you look at the document that is
4 marked as Exhibit No. 81, please?

5 A. Yes.

6 Q. And could you identify that document for the Court?

7 A. It's her birth certificate, my mother's.

8 Q. And that's the birth certificate of Rylma Mae Marshall?

9 A. Yes. Marshall was her maiden name.

10 Q. Where was your mother born?

11 A. Claremont, New Hampshire.

12 Q. And was your mother a United States citizen from the time
13 of her birth until the time she passed away?

14 A. Yes.

15 MS. KALIK: Plaintiffs would now move Exhibit No. 81
16 into the record.

17 THE COURT: It will be admitted.

18 (Plaintiff Exhibit No. 81
19 received into evidence.)

20 MS. KALIK: Thank you, Your Honor.

21 BY MS. KALIK:

22 Q. Now I'd like you to look at Exhibit No. 82 there.

23 A. Yes.

24 Q. And could you identify for the Court what Exhibit 82 is?

25 A. It's my mother's death certificate.

1 Q. And you stated earlier that your mother had passed away on
2 November 17, 2004; is that correct?

3 A. Yes.

4 Q. And where did your mother pass away? In what city and
5 state?

6 A. Houston, Texas.

7 Q. Thank you.

8 MS. KALIK: Plaintiffs would now move Exhibit No. 82
9 into the record, Your Honor.

10 THE COURT: It will be admitted.

11 (Plaintiff Exhibit No. 82
12 received into evidence.)

13 BY MS. KALIK:

14 Q. Ms. Nink, who is the administrator of your mother's estate?

15 A. I am.

16 Q. And if you could, could you please look at the document
17 that's been marked as Exhibit No. 83.

18 A. Yes.

19 Q. And could you identify for the Court what Exhibit No. 83
20 is?

21 A. It's a letter of administration appointing me as the
22 administrator of my mother's estate.

23 Q. And you have been appointed as the independent
24 administrator; is that correct?

25 A. Yes.

1 Q. And what state issued these letters of administration?

2 A. Texas. Houston, Texas.

3 Q. Thank you.

4 MS. KALIK: Plaintiffs would now move Exhibit No. 83
5 into the record.

6 THE COURT: It will be admitted.

7 (Plaintiff Exhibit No. 83
8 received into evidence.)

9 BY MS. KALIK:

10 Q. Now, other than you, your parents had other children
11 together; is that correct?

12 A. Yes.

13 Q. And what are your siblings' names?

14 A. Jackie Ann Nink, and Mary Ellen Nink.

15 Q. Where did you and Jackie and Mary grow up?

16 A. We were born in Houston but we grew up in Pasadena, Texas.

17 Q. How would you describe your childhood growing up with
18 Jackie?

19 A. It was a good childhood. We had -- we were really involved
20 in each other's lives. We went to school. We were like two
21 years apart from each other. When we were -- I was in
22 elementary, they were in elementary. My parents were very, very
23 good parents. We went to -- we took vacations in the summer.
24 We went to see her mother off and on, which lived in New
25 Hampshire, in the summers.

1 Q. That would be your grandmother?

2 A. That would be my grandmother. We also went a lot to -- the
3 phone's ringing.

4 Q. Oh, there in --

5 A. Right at this desk.

6 Q. I think it's okay. You can just continue on.

7 A. Okay. We were very close to my father's mother and she
8 lived in Smithville, Texas. We spent a lot of summers together
9 with her. We were just very close.

10 Q. And how would you describe your parents' relationship with
11 Jackie when she was growing up?

12 A. It was good. They supported her in everything she wanted
13 to do. They were involved in baseball a lot. Jackie and Mary
14 played and I did too, but they played baseball. My mother was
15 the assistant coach to their baseball team for about three or
16 four years. And then also my parents were coordinators of the
17 softball league -- well, softball for girls, the softball
18 league. So during the summers we were involved in softball.

19 Q. Now, when did you move out of your parents' home?

20 A. Probably when I was about 19.

21 Q. After your graduation from high school; is that correct?

22 A. Yes.

23 Q. Was Jackie still living at home at the time?

24 A. Yes, she was. She was probably a junior or senior in high
25 school.

1 Q. And once you moved out of your parents' home did you stay
2 in contact with Jackie?

3 A. Yes, I did. I lived in Pasadena in an apartment, so I went
4 to see my parents every week. So I saw Jackie and Mary.

5 Q. And do you recall when Jackie went away to college?

6 A. Yes. She went -- well, she went to college for one year at
7 San Jacinto Junior College, which was in Deer Park, and she was
8 living at home at that time for about a year, and then she went
9 on to Sam Houston College.

10 Q. And once Jackie went on to Sam Houston College, did you
11 stay in contact with her?

12 A. Yes, we did. She was -- she had a lot of friends there and
13 was very active, but she liked being close to her family. She
14 got homesick a lot, so she was at home on the weekends. So we
15 saw her then.

16 Q. And she would come home to visit you and your parents and
17 your sister; is that correct?

18 A. Yes. That's correct.

19 Q. Now, when she graduated from Sam Houston College, do you
20 recall her career that she pursued?

21 A. Well, she started -- she wanted to teach, so she applied at
22 the elementary school in Baytown and she started teaching first
23 grade. And she really liked it. She liked teaching the little
24 children. And then she started getting, working toward getting
25 her master's degree. And once she got her master's degree she

1 applied for a job also in Baytown as a diagnostician where she
2 would test children for any -- special needs children. Then she
3 started teaching special education children.

4 Q. Did she enjoy teaching the special education children?

5 A. Yes. Yes, she did. She would tell us some stories about
6 some of the children. She really did like it.

7 Q. Now, do you know, did Jackie communicate with your parents
8 when she was teaching there in Baytown?

9 A. Oh, yes. Baytown wasn't far from Pasadena, so she came
10 over quite often, and she was very close to both my parents.
11 She talked all the time.

12 Q. And did you all celebrate holidays together?

13 A. Yes, we did. Really all the holidays.

14 Q. How would you describe Jackie prior to her being a victim
15 of the November 23, 1985, hijacking?

16 A. Jackie was very outgoing. She was living with a girlfriend
17 in Baytown. She had a lot of friends. She got involved in the
18 school, her kids. She'd visit us on the weekends and at
19 holidays. She was just very cheerful, happy. She had a focus
20 of what she wanted to do in mind and she went ahead and did it.
21 She wanted to teach. She wanted to travel. So eventually she
22 went overseas to teach.

23 Q. And do you recall when she went overseas?

24 A. Probably in around '83, '84, because she went to Chicago
25 to -- they had some type of seminar to apply for different jobs

1 overseas, and she got accepted or she got a job going to Norway
2 at an American school. And she stayed there for a year, and
3 that's where she met her to-be husband, Scott Pflug. And she
4 had one more year after that, but he had already been there a
5 year before her, but his contract was up. So they both had to
6 apply for a job together, and they got a job together in Cairo,
7 Egypt.

8 Q. Was she teaching there in Cairo, Egypt?

9 A. Yes, she was, at the American school. And he was a coach
10 at that same school. And they loved it. They loved Cairo. She
11 got used to the way of life, going to the markets, doing
12 different things. She liked it.

13 Q. Do you recall where you were living on November 23, 1985?

14 A. I was living in Houston.

15 Q. And what were you doing at that time?

16 A. I was working for an oil company, but are you talking about
17 that weekend?

18 Q. Well, just generally, you were working for an oil company?

19 A. Yes.

20 Q. And then on that particular date, do you recall what you
21 were doing that weekend?

22 A. Yes. I was -- it was just a quiet weekend. I was just
23 doing some errands, and Saturday night I called my mother about
24 10:00, or a little after 10 just to check in, see how she was
25 doing. I usually don't call her that late but I did that night.

1 And she told me that she heard on the news that there was a
2 hijacking from Greece to Cairo, and she knew that Jackie was in
3 Greece and she knew that she was coming back sometime, but she
4 didn't know exactly what flight she was going to be on.

5 So I called a local news station and identified myself and
6 told them what it was regarding, and they got my numbers and my
7 parents' numbers. And about 10 minutes later I got a call from
8 the news station saying that Jackie was on the plane. She was
9 one of the passengers. And that's all we knew.

10 So I had to call my mother and tell her. And she was very
11 upset because she did not know what was going on. She didn't
12 know what was happening to Jackie at the time. She just knew
13 Jackie was on the plane.

14 Q. And how did you feel at that moment when you received that
15 phone call from the news station?

16 A. I was very upset, devastated, and then I knew I had to tell
17 my mother, and that was hard, because she cried.

18 Q. And so you called your mother to let her know that Jackie
19 was on the flight. What happened next?

20 A. Well, the next morning I went home to my parents, and my
21 mother, she got a call. I don't know when she got a call, but
22 she came out crying, that she said Jackie was shot in the head.
23 She did not -- we did not know if she was alive or dead. Later
24 on we found out Jackie was laying on the tarmac for about five
25 hours, and at the time the terrorists thought that she was dead.

1 But she was in and out a lot and she tried to remain still. So
2 she was there for five hours. So we didn't know what was going
3 on for a while.

4 Q. Now, when you spoke to your mother to let her know that you
5 had been told that Jackie was on the flight, did you have an
6 opportunity to speak with your father as well?

7 A. I probably did -- I did see him the next day. Yes, I did.
8 I went over there that morning, the next morning, and saw both
9 of them. And they were both very, very upset. We did not know
10 what was going on for a while, for about five or six hours,
11 until we got a call that she was alive and she was shot in the
12 head, she was going into surgery. And of course they were
13 relieved.

14 Q. And upon learning that Jackie was going into surgery, did
15 you know the extent of her injuries at that time?

16 A. No. We just knew she was shot in the head. And we did
17 recall a year or so before this she had surgery, and we knew
18 that she almost died from that surgery because she had an
19 allergic reaction to the anesthesia.

20 And we knew it was at Bayshore Hospital in Pasadena, so I
21 called over there and I talked to a doctor and they got her
22 records and then gave us the name. And then I called a doctor
23 in Malta and we were able to tell the doctor the name.

24 Q. You were able to tell them the name of the anesthesia?

25 A. Of the anesthesia.

1 Q. And did he give you any other information regarding
2 Jackie's condition at that time?

3 A. No. He said he was going into surgery, and he didn't
4 really know what -- until he got into surgery what was going on.

5 Q. And so then did you hear back from the doctor following the
6 surgery?

7 A. We heard back. I can't remember if it was from the
8 hospital or from the State Department, but we did hear back.
9 And we did hear that Scott was being taken over to Malta, and he
10 kept in contact with us, or with my parents, and let us know
11 what was going on.

12 Q. What did he tell you or your parents, if you recall?

13 A. I didn't really talk to him. They talked to my parents and
14 of course they told us that she -- they had the surgery and she
15 was okay. But we knew that she lost some of her vision,
16 peripheral vision.

17 Q. Were you able to speak with Jackie at that time?

18 A. No, I did not. No.

19 Q. Do you know if either your mother or your father was able
20 to speak to Jackie at that time?

21 A. I think they did. And of course, after she was at the
22 hospital in Malta they took her to a hospital in Germany, and
23 she stayed there for a couple of weeks.

24 Q. And during this time when Jackie was being treated
25 overseas, how was your family reacting to all of this?

1 A. Well, they were glad that she was alive. They knew that
2 she had a long haul ahead of her, dealing with being shot,
3 dealing with being on the plane with a terrorist, the unknown,
4 what was going to happen to Jackie, and we just knew that there
5 was going to be a lot to deal with, for her to deal with.

6 Q. When did you learn of the full extent of Jackie's injuries?

7 A. Probably about a couple weeks later. She did -- after
8 Germany she went to Minneapolis, and Scott and her decided to go
9 there because his family was there. So they started living with
10 his parents, and eventually they got their own place. But
11 Jackie and Scott were both moved out of their home in Cairo,
12 Egypt from their teaching jobs.

13 The American school did pay them for the rest of the school
14 year, but after that they had to get their own jobs and start
15 working for a living. But in the meantime, their life was still
16 hard because Jackie had a lot to deal with. She was -- as far
17 as her reading skills, it was first grade. She had her
18 peripheral vision, she had to learn how to maneuver around
19 because getting used to her vision from the left to the right.
20 She had to learn all over again to go to the grocery store.

21 She would make a list of the items she was going to buy and
22 she also had to make a recording of the items and run that
23 through while she was going from aisle to aisle. She had to
24 learn all over again to do things we take for granted and she
25 had to learn how to do them. She had to learn to know that I

1 need to make a list. I need to record this.

2 There was things, when she looked at signs, you could
3 not -- we take for granted on the sign every letter of the word.
4 Some letters were missing in that word and she had to kind of
5 figure that out.

6 Q. Was Jackie receiving medical care during this time?

7 A. Yes, she was. She was. She was also taking medication for
8 seizures. And I don't know when she had to have another surgery
9 to put a plate underneath the skin over that hole where she was
10 shot. So that was also -- she had to have another surgery. And
11 she had to -- she went in and out of the hospital. She had to
12 go to a chiropractor because she had problems with her neck and
13 shoulders, and she also -- I believe she went to therapy or
14 maybe a psychiatrist to help her deal with things.

15 Q. Now, did you have an opportunity to see her sometime after
16 she returned to the United States when she was living in
17 Minneapolis?

18 A. Yes. She came down to -- well, she was in Minneapolis in
19 December, and in January she came down to Houston.

20 Q. And when you saw her there in Houston, what do you recall
21 about Jackie?

22 A. Jackie was wearing a wig. She was very quiet. She -- if
23 you saw her, she just looked like Jackie, but she had a lot to
24 deal with. She was real quiet.

25 Q. And was this different from Jackie before the hijacking?

1 A. Yes.

2 Q. How was she different?

3 A. Before the hijacking?

4 Q. Uh-huh.

5 A. Jackie was just very Jackie. She was very happy. She knew
6 what she wanted to do. She did a lot of things. But then once
7 the hijacking, she had to learn how to do things all over again,
8 even walking. She had to see where she was walking. To read,
9 she couldn't read very well because some of the letters in the
10 words were missing. She had to learn how to read all over
11 again. She had to function. Things we take for granted.

12 Q. Did you notice her being particularly fearful?

13 A. Yes.

14 Q. What things was she fearful of?

15 A. Well, I think it took her a while to learn how to drive.
16 It's just like starting over again to do things and learning how
17 to learn how to do them again, what worked for her. I'm sure
18 she tried different ways of doing things, like going to the
19 grocery store. I remember one time she told me she and Scott
20 went to get gas and he was filling up the gas tank. She went in
21 to give him change and she didn't know how to do it. She did
22 not know how much change to give him.

23 And of course, them behind the counter got very impatient
24 with her because he didn't know what she was going through,
25 because she looked normal.

1 Q. Now, you said that she was getting medical attention there
2 in Minneapolis just following the hijack. Do you know, does she
3 still get medical treatment today?

4 A. Yes, she does.

5 Q. What type of treatment does she get?

6 A. Well, I think she just gets tests on her brain. She did
7 tell me she went about, I think last month to have some more
8 tests done on her head.

9 Q. Does she still take any medication?

10 A. Yes. Yes, she does. She takes medication for seizures. I
11 do know she has little tiny seizures every day, but the
12 medication controls them that she doesn't have a big seizure
13 like she used to. She used to have a lot of seizures, and the
14 only way to put them under control is they had to call the
15 ambulance and she had to be taken to the hospital. That
16 happened a lot.

17 Q. How has Jackie's being a victim of the EgyptAir Flight 648
18 hijacking, do you know, how did it affect your mom afterwards?

19 A. My mother was very worried for Jackie. She was very
20 concerned. She knew this would change Jackie's life really
21 forever. Jackie had to move away from Cairo. She had to forget
22 about the idea of teaching overseas. This changed her life and
23 Scott's lives. It changed everyone's lives. It changed Scott's
24 family's life, because they were very supportive, and Jackie and
25 Scott moved in with his parents for a while, and they were

1 concerned about their child. And Scott had to get a job in
2 Minneapolis. He couldn't work overseas like he used to.

3 It upset my mother knowing that Jackie wasn't able to do
4 what she always used to do. And it upset my father, too. They
5 made a lot of trips to Minneapolis, three to four years
6 afterwards, a lot of trips to see her.

7 Q. And how has Jackie being a victim of EgyptAir Flight 648
8 affected your life?

9 A. Because I was concerned for Jackie. I worried about
10 Jackie. I was wondering how she was going to make it. We were
11 really close, so I just worried about her. You want to kind of
12 just take over their lives and make sure everything is okay, but
13 they have to work things out themselves. And Jackie did very
14 well to overcome everything.

15 Q. Do you still worry about her today?

16 A. Yes.

17 Q. Is there anything further that you would like the Court to
18 know regarding your experiences or your mother or your father's
19 experiences in regards to Jackie's being a victim of the
20 EgyptAir hijacking?

21 A. This affected my parents' lives. They were so worried
22 about Jackie. It affected her life, but Jackie did very well.
23 She learned what she had -- she knew what she had to do. And
24 she was very depressed for a very long time, and her marriage
25 failed because of this, because it changed their whole lives.

1 And it upset my parents' lives, and my sister Mary and I were
2 both very concerned for everyone. It disrupted.

3 MS. KALIK: Thank you. I have nothing further unless
4 the Court has something for you.

5 THE COURT: No, nor do I. Thank you very much, ma'am.

6 MS. KALIK: Thank you for your time this morning.

7 THE WITNESS: Thank you.

8 (The witness steps down.)

9 THE COURT: Is that the end of Texas?

10 MS. KALIK: Yes.

11 THE COURT: Say goodbye to Texas, John.

12 MR. CRAMER: We're done.

13 THE COURT: Thank you very much, John.

14 Shall we finish the Schweitzer deposition and maybe break
15 for lunch?

16 MR. HEIDEMAN: As you prefer, Your Honor.

17 THE COURT: I think that makes sense. Unless you have
18 a witness waiting that you want to put on. I'll leave it up to
19 you. I'd like to stop about 12:30.

20 MR. HEIDEMAN: That will be fine.

21 THE COURT: I think we were about page 24.

22 MR. HEIDEMAN: On page 23 Yoram Schweitzer was asked,
23 "Did you actually become the director of the terrorism and low
24 intensity warfare project at Tel Aviv University's Institute for
25 National Security Studies?" And the answer at line 22 is yes,

1 he's the director of the terror-related project.

2 On page 24 he indicates that he was a senior researcher on
3 terror projects, and also a researcher at the Institute For
4 Counterterrorism at the Interdisciplinary Center, which is
5 otherwise known as the IDC. And he indicates at line 18, page
6 24, that he's been dealing with international terrorism in the
7 academic world as well since he left official service in 1998.

8 He comments on the outstanding reputation, on page 25, of
9 the Interdisciplinary Center -- which I share with the Court is
10 located at Herzliya, Israel -- in, quote, "the field of
11 terrorism." And he says it's indeed, quote, "some of the
12 leading academic and cutting-edge terrorism analysis work and
13 research work that is done anywhere in the world."

14 That question was asked at lines 7 through 11, and he
15 answers, "Yes, it's among the institutes that are on the cutting
16 edge of counterterrorism research."

17 On page 26, Yoram Schweitzer indicates he's had a book
18 published on al-Qaeda and the globalization of terror. It was
19 published for commercial publication in 2002. And in addition
20 he's published booklets and articles in periodicals abroad.

21 He's asked on page 26, line 20, if all of his booklets and
22 articles and studies since 1982 have been "concentrated in the
23 area of international terrorism," and gives the answer, "Yes."

24 I believe I've already read into the record what he
25 indicated about a number of matters relating to what's listed on

1 page 26 and 27. And also he's asked by me on the bottom of page
2 27 and the top of page 28, line 25... "let me further inquire as
3 to whether or not in your capacity as head of the Israeli
4 counterterrorism section you were, quote, an expert in Abu Nidal
5 and state sponsorship of terrorism of Abu Nidal by Syria," end
6 question.

7 Answer on line 5, page 28, "Yes. I had to do it as part of
8 my capacity to be the most knowledgeable about those who were
9 considered to be adversaries of Israel on the international
10 arena, and both Syria, Libya and the Abu Nidal organization were
11 considered such."

12 Page 28, line 20, "In that context, would you please
13 explain to the Court whether or not you have formed opinions and
14 whether or not you have specific information to share with the
15 Court in support of those opinions as to which terrorist
16 organization conducted the EgyptAir hijacking of November 23,
17 1985, as well as the Rome and Vienna airport attacks of December
18 27, 1985, and by which countries that terrorist organization was
19 sponsored."

20 Page 29, line 3, he gives the answer, "Abu Nidal was
21 responsible for these three attacks. It was sponsored in these
22 years by both Syria and Libya."

23 I've already read into the record what he referred to as
24 his -- an explanation on Syria and assistance to Abu Nidal, but
25 I would point the record for the Court specifically to page 29,

1 starting with the answer on -- question on line 6, and the
2 answer that continues through pages 29, 30, and to the top of
3 31. I won't repeat it because I believe I read that into the
4 record.

5 I'll now complete the rest of his deposition, skipping
6 forward to page 31. Question, line 8: "Can you please tell us
7 how during this period of time Syria sponsored the Abu Nidal
8 organization?"

9 "Answer: First of all, Syria allowed Abu Nidal to use
10 territory in the Bekaa Valley which was under Syrian strict
11 control although not sovereign territory."

12 Second, line 13, answer continues: "Syria allowed Abu
13 Nidal to have local safe houses in Damascus where Syrian
14 operatives met, planned, instructed and even provided materials
15 that were later used in their operations, like documents -- like
16 money, et cetera."

17 Continuing on line 18, page 31: "Abu Nidal organization's
18 international terror apparatus was managed from Damascus. The
19 most senior leadership that were involved in international
20 terrorism were residing in Damascus. And not only that, but
21 while the cells were sent abroad for their operations, they
22 contacted Abu Nidal's senior operatives while they were in
23 Damascus to get further instructions."

24 Line 25, continuing: "In spite of the fact that Syria
25 supported Abu Nidal quite closely and continuously, I think they

1 knew the character of Abu Nidal's organization and they remember
2 the past when they were operating against Syria."

3 Continuing, "So I think that in spite of this strict
4 cooperation, the Syrians closely supervised Abu Nidal's
5 operatives while they were staying in Syria."

6 Question, page 32, line 7: "Is it your expert opinion that
7 Syria provided terrorist training camps for the Abu Nidal
8 organization in the time period leading up to the EgyptAir
9 hijacking of November 1985 and the Rome and Vienna airport
10 attacks of December 1985?"

11 "Answer: Yes."

12 Question on line 13, page 32: "And is it your opinion that
13 Syria provided safe houses in Damascus that housed the people
14 and the operations of the Abu Nidal organization in the time
15 period leading up to the EgyptAir hijacking of November 1985 and
16 the Rome and Vienna airport attacks of December 1985?"

17 Answer, line 19: "Yes."

18 Page 32, line 20: "Question: Is it your opinion that the
19 international terrorist operations of the Abu Nidal organization
20 in the time period leading up to the November and December 1985
21 EgyptAir hijacking and Rome and Vienna attacks were managed,
22 conducted and overseen in all respects from the Abu Nidal
23 headquarters offices in Damascus, Syria?"

24 Answer, page 33, line 2, the answer's "yes. Part of it" --
25 the answer continues. "Part of it was also probably supervised

1 from other places, but Syria was definitely serving." Quote,
2 "Damascus definitely served for the purpose of guiding and
3 definitely launching these gentlemen to their sites of
4 operation."

5 Page 33, line 7: "And is it your expert opinion that once
6 the terrorist cell teams were sent out from their training in
7 Syria or their safe houses in Damascus or their offices in
8 Damascus, that those terrorist cells in relation to the EgyptAir
9 hijacking and the Rome and Vienna airport attacks retained and
10 continued contact with the Abu Nidal organization's senior
11 leadership in Damascus, Syria?"

12 Answer, line 14, "Yes. At least in two cases I know for a
13 fact they were contacting the headquarters in Damascus. Maybe
14 one of the operations also contacted other places. But not only
15 that," line 18, quote, "the Syrians allowed them to leave the
16 country with their specific *laissez-passer* that were authorized
17 by the Syrian intelligence, so they could leave Lebanon, or
18 Damascus in this case, for their operations abroad."

19 Line 23, "The Syrians allowed them to leave the country
20 with specific permission without being questioned from their
21 territory."

22 Page 34 and 35 then completes the deposition. Page 34,
23 line 7: "In your expert opinion, what additional support did
24 Syria provide to the Abu Nidal organization and the terrorists
25 that were trained in its camps under Syrian control in the time

1 period leading up to the EgyptAir hijacking and the Rome and
2 Vienna airport attacks?

3 "Answer: Syria supplied cars" -- and this is at line 13.
4 "Syria supplied specific cars with specific allowances to cross
5 the border from one country to another without being stopped or
6 interfered with."

7 And line 16, "Syria supplied specific certificates that
8 allowed Abu Nidal operatives to move freely and not to be
9 harassed by any security guards."

10 Line 18: "Also they supplied permission for Abu Nidal
11 operatives to leave the country from its borders, including the
12 airports, including every other border, without being interfered
13 with."

14 Line 21, quote continuing, "This allowed Abu Nidal
15 operatives a free passage to wherever, if they needed to leave
16 the country towards their mission."

17 Question, line 24, page 34: "And in terms of passage out
18 of the area, are you referring both to passage from airports in
19 Damascus but also in Lebanon?"

20 Page 35, being the last page, line 2: "Answer: Yes, from
21 Lebanon to Syria and from Lebanon out and from Damascus out."

22 Page 35, line 4, "Question: In your expert opinion,
23 without the type of support and assistance that you have
24 described, could the EgyptAir hijacking of November 23, 1985,
25 have been able to take place?"

1 Answer, line 8: "No. This organization needed assistance
2 of state for everything, for the logistics, for training camps,
3 for their freedom of preparation, for leaving the country, false
4 identities, for everything."

5 Line 12: "The state sponsorship of the Palestinian
6 terrorist organizations in general and Abu Nidal specifically is
7 a crucial factor in their capability to operate in the
8 international theater."

9 Line 16, page 35. "Question: In your expert opinion, the
10 assistance and support which you've described that was provided
11 to the Abu Nidal organization, without that assistance and
12 support, could the EgyptAir hijacking of November 23, 1985, and
13 the Rome and Vienna airport attacks of December 1985 have taken
14 place?"

15 Answer, line 22: "No, because these specific cells were,"
16 quote, "qualified in all aspects for this operation and assisted
17 with from Damascus and from Lebanon, which both of them were
18 controlled by Syria."

19 End quote, end of deposition. And that completes the
20 witness Yoram Schweitzer, which is already in evidence as
21 Exhibits 53 and 54, Your Honor.

22 THE COURT: Thank you. 1:45, please.

23 MR. HEIDEMAN: Thank you.

24 THE COURT: Live witnesses this afternoon?

25 MR. HEIDEMAN: Yes.

1 THE COURT: And Lynn, we're staying here?

2 THE DEPUTY CLERK: Yes.

3 THE COURT: All right. Thank you.

4 (Recess from 12:29 p.m. to 1:47 p.m.)

5 MR. HEIDEMAN: May it please the Court.

6 THE COURT: Sure.

7 MR. HEIDEMAN: I have some matters relating to the
8 State Department that I'd like to cover with the Court. I also
9 have some matters regarding the Certain Underwriters plaintiffs.

10 THE COURT: Surely.

11 MR. HEIDEMAN: We do, however, have a live witness, so
12 what I thought I would do with the Court's permission is, since
13 he will be testifying not about the State Department matters,
14 I'll cover those later, but he will be testifying about
15 information that has come from the Certain Underwriters, and so
16 for purposes of the record being clear and so that the predicate
17 foundation is in the record, at this time, with the Court's
18 permission, I have a number of people testifying under oath by
19 affidavit that I would like to move into evidence.

20 First will be Exhibit 84. And I have a binder to hand to
21 the Court. I'll review these -- may I have leave of the Court
22 to review these with the Court at a later time?

23 THE COURT: Sure.

24 MR. HEIDEMAN: Then at this time we will tender to the
25 Court Plaintiff's Exhibit 84, being a sealed affidavit from Ian

1 Durrant of the United Kingdom. I'll hand the original to the
2 court reporter and move Exhibit 84 into evidence.

3 THE COURT: It'll be admitted.

4 (Plaintiff Exhibit No. 84
5 received into evidence.)

6 MR. HEIDEMAN: As to Exhibit 85, may it please the
7 Court, Exhibit 85 is also sealed documents, and it is an
8 affidavit of Neil Darvill, also of the United Kingdom, with
9 documents attached that relate to the underlying policies of
10 insurance on behalf of the Certain Underwriters plaintiffs. And
11 accordingly, we would move Exhibit 85 into evidence.

12 THE COURT: It's admitted. Thank you.

13 (Plaintiff Exhibit No. 85
14 received into evidence.)

15 MR. HEIDEMAN: Thank you very much. As to Exhibit 86,
16 may it please the Court, this is an affidavit of Neil R.
17 Gilchrist, who's testifying also under seal, who is an attorney
18 in the United Kingdom and who files various attachments. And
19 accordingly, we would move Plaintiff's Exhibit 86 into evidence.

20 THE COURT: That'll be admitted.

21 (Plaintiff Exhibit No. 86
22 received into evidence.)

23 MR. HEIDEMAN: Thank you. Plaintiff's Exhibit 87, may
24 it please the Court, is an affidavit received from La Reunion,
25 which is an insurance plaintiff based in France. I would like

1 to share with the Court, we have received via transmittal an
2 exact copy of the document bearing the signature and seal of the
3 affiant, Pascal Onfray, the original of which is on its way to
4 us. We would accordingly move Exhibit 87 into evidence. And
5 then if that's approved we would request leave of the Court to
6 substitute the original into the Court's file upon our receipt.

7 THE COURT: Permission granted.

8 MR. HEIDEMAN: So is Exhibit 87 accepted into
9 evidence?

10 THE COURT: It is.

11 (Plaintiff Exhibit No. 87
12 received into evidence.)

13 MR. HEIDEMAN: And may we therefore tender the
14 substitution?

15 THE COURT: You may.

16 MR. HEIDEMAN: Thank you very much. As to Exhibit 88,
17 may it please the Court, this is an affidavit also under seal of
18 Robert John Burge, a British citizen, also expressing opinions,
19 with attachments. We would move Plaintiff's Exhibit 88 into
20 evidence.

21 THE COURT: Admitted.

22 (Plaintiff Exhibit No. 88
23 received into evidence.)

24 MR. HEIDEMAN: Thank you. The last one in this series
25 is Plaintiff's Exhibit 94, which is an additional supplemental

1 affidavit from Ian Durrant, a British citizen, who also had
2 filed one of the earlier affidavits. And I'd like to point out
3 to the Court as to Exhibit 94, we've learned there's a
4 typographical error in item No. 9, and the witness about to
5 testify will actually correct that particular percentage error
6 that we've been advised exists in that one line. Accordingly,
7 we would move Exhibit 94 into evidence.

8 THE COURT: It's admitted.

9 (Plaintiff Exhibit No. 94
10 received into evidence.)

11 MR. HEIDEMAN: Thank you. And as to each of those
12 affiants, Your Honor, six affidavits, five separate people,
13 their qualifications are stated therein, and accordingly,
14 pursuant to Federal Rule of Evidence 702, we would ask that the
15 Court receive as properly qualified each and every one of them
16 to testify in this matter based on their expertise and to be
17 permitted to express, based upon both their knowledge, their
18 experience, their expertise, their opinions on the matters
19 pending before the Court in relation to the Certain Underwriters
20 group of plaintiffs, and we so move pursuant to Rule of Evidence
21 702.

22 THE COURT: Motion granted.

23 MR. HEIDEMAN: Thank you very much. Accordingly, Your
24 Honor, next we will call James Markham to the stand from the
25 Center for Forensic Economic Studies.

1 THE COURT: Good afternoon, Mr. Markham.

2 THE WITNESS: Good afternoon.

3 **JAMES MARKHAM, WITNESS FOR THE PLAINTIFFS, SWORN**

4 DIRECT EXAMINATION

5 BY MR. HEIDEMAN:

6 Q. Mr. Markham, I understand you've joined us today from
7 Philadelphia; is that correct?

8 A. I work in Philadelphia. I live in Wilmington, Delaware.

9 Q. Thank you for coming specially to this trial today. Would
10 you please state your full name to the Court and spell it for
11 the court reporter.

12 A. My name is James Markham. Last name is M-A-R-K-H-A-M.

13 Q. Thank you very much. And Mr. Markham, would you please
14 tell the Court your occupation.

15 A. I am a senior economist with the Center for Forensic
16 Economic Studies in Philadelphia.

17 Q. Thank you very much. And could you please tell the Court
18 about the subject matter of your specialty.

19 A. Certainly. What we do in forensic economics essentially is
20 assess damages in civil litigation. Most of it is serious
21 injury cases and deaths, but approximately 20 or 25 percent is
22 commercial matters, and for me that includes insurance matters.

23 Q. And do you have experience in handling both the assessment
24 of damages in personal injury, wrongful death, and also in
25 insurance coverage and claims matters?

1 A. Yes, I do.

2 Q. Thank you very much. Tell the Court, please, what academic
3 programs you have completed and what degrees you hold.

4 A. Certainly. I have my bachelor's degree from Brandeis
5 University, that was from 1976, and I majored in economics. I
6 went directly to law school at Villanova University and
7 graduated from there in 1979. After that I was working, and
8 while working I completed a MSBA at Temple University, which is
9 a joint master's in finance and MBA program. Then in more
10 recent years, I just completed last year, in 2009, a Ph.D. in
11 economics at the University of Delaware.

12 Q. Thank you very much. What specialized training have you
13 completed in your area of expertise?

14 A. What's relevant in this context is the ability to apply a
15 time value of money to cash flows, either adding interest to
16 cash flows to bring them up to a current number, or discounting
17 future values to present value. And in addition, I took the --
18 although my area of specialty in my Ph.D. was finance, I took
19 the required Ph.D. training in labor economics as well, which is
20 quite relevant to forensic economics because the task is to
21 assess the quality of information sources for the purpose of
22 assessing -- generally people's economic damages consist of
23 their loss of earnings.

24 Q. Thank you. And do you practice in the field of forensic
25 economics as the senior economist for the Center for Forensic

1 Economic Studies in Philadelphia?

2 A. Yes, I do.

3 Q. Please list in chronological order the positions you've
4 held since completion of your formal education and the length of
5 time in each position.

6 A. I was in the private practice of law from 1979 until 1982.
7 That was in a small firm in Philadelphia that has dissolved,
8 mainly involving construction litigation. After that I went
9 inside the property casualty insurance industry for five years
10 and was handling large liability cases. They were mainly
11 serious personal injury cases and death cases. That was with
12 Home Insurance Company and with Colonial Penn Insurance Company.

13 After that I spent most of my career at the American
14 Institute for CPCU, which is a professional organization that
15 produces professional education for people in the property
16 casualty insurance industry. I had completed the CPCU -- those
17 initials stand for chartered property casualty underwriter. I
18 had completed that designation in 1987, and it is a prestigious
19 designation within the industry. It's probably not well known
20 outside of it.

21 But soon after I completed it, I went to work for the
22 organization that grants that designation, initially in charge
23 of their claims education programs, but eventually I was in
24 charge of the entire curriculum at that organization, meaning
25 that I had to help design and produce textbooks that describe

1 practices and procedures and products throughout the property
2 casualty insurance industry.

3 Q. Please describe to the Court your current work in the field
4 of being a forensic economist.

5 A. Well, as I said, our work is assessing damages in civil
6 litigation, and most of that has to do with serious injury cases
7 and death cases.

8 Q. And either before or since receiving your Ph.D. at the
9 University of Delaware, please tell the Court whether or not
10 you've taught or lectured in your field or held academic
11 affiliations.

12 A. Certainly. I initially first ever taught economics for
13 Villanova University sometime in the late '80s. Off the top of
14 my head I couldn't even give you the exact date. Soon after I
15 started working for the American Institute, I began teaching
16 some of its courses for local -- local meaning Philadelphia
17 area -- students. Most students going through institute
18 programs had to self-study, meaning they simply got textbooks
19 and were on their own for a few months, and then had to sink or
20 swim with a national exam. In some geographic areas, for
21 example Philadelphia, there were organized classes.

22 So over the years I taught mostly macroeconomics there. I
23 also taught the accounting and finance courses that were part of
24 the Institute's program. Then after I left the Institute in
25 2003, I was an adjunct faculty member at Temple University for a

1 year in the risk management and insurance department, teaching
2 risk management and insurance procedures.

3 While I was at the University of Delaware I spent five
4 semesters teaching macroeconomics, meaning a normal course load
5 for a faculty member, two courses, and then one semester
6 teaching microeconomics as well.

7 Q. Thank you. Have you been published in journals or other
8 publications which are focused in your field?

9 A. I've published a number of textbooks that I've either
10 edited or been a contributing author to. They concern insurance
11 claims practices and insurance company finance and insurance
12 company operations.

13 Q. Are you a member of any professional societies,
14 associations, or organizations?

15 A. Yes. I'm a member of the CPCU Society, I'm a member of the
16 National Association of Business Economists, and the National
17 Association of Forensic Economists.

18 Q. Thank you. Let me hand you what's been marked for
19 identification as Exhibit 89 and ask if you can identify
20 Plaintiff's Exhibit 89, sir?

21 A. Yes, I can.

22 Q. Tell the Court, what is Plaintiff's Exhibit 89?

23 A. This is my CV.

24 Q. And is it accurate?

25 A. It is accurate.

1 Q. Does it accurately reflect your academic and professional
2 credentials?

3 A. Yes, it does.

4 MR. HEIDEMAN: At this time, Your Honor, we would move
5 Plaintiff's Exhibit 89 into evidence.

6 THE COURT: It will be admitted.

7 (Plaintiff Exhibit No. 89
8 received into evidence.)

9 MR. HEIDEMAN: Thank you. And pursuant to Federal
10 Rule of Evidence 702, we would like to qualify Dr. James Markham
11 as an expert in the field of forensic economics, and otherwise
12 qualified to testify on the issues that are before the Court as
13 it relates to calculations involving damages for each of the
14 killed or injured plaintiffs, as well as in relation to the
15 Certain Underwriters plaintiffs that involves the commercial
16 aviation insurance issues.

17 THE COURT: He will be so admitted.

18 MR. HEIDEMAN: Thank you very much.

19 BY MR. HEIDEMAN:

20 Q. Dr. Markham, have you provided a report to us concerning
21 Scarlett Marie Rogenkamp, one of the deceased plaintiffs
22 appearing in this case through her estate?

23 A. Yes, I have.

24 Q. Let me ask you if Plaintiff's Exhibit 91 is a document
25 which you can identify.

1 A. Yes, it is.

2 Q. Is Plaintiff's Exhibit 91 a copy of the report that you
3 have prepared at the Center for Forensic Economic Studies
4 relating to Scarlett Marie Rogenkamp?

5 A. Yes, it is.

6 MR. HEIDEMAN: At this time, Your Honor, we would move
7 Plaintiff's Exhibit 91 into evidence.

8 THE COURT: It's admitted.

9 (Plaintiff Exhibit No. 91
10 received into evidence.)

11 MR. HEIDEMAN: Thank you.

12 BY MR. HEIDEMAN:

13 Q. Would you please turn to Plaintiff's Exhibit 91,
14 Dr. Markham, and let's see if we can together walk through this
15 for the benefit of the Court, which of course may have questions
16 for you as well.

17 A. Certainly.

18 Q. First would you advise the Court as to the nature of the
19 assignment that you accepted relating to the estate of Scarlett
20 Rogenkamp arising as a result of the death of Scarlett Rogenkamp
21 on November 23 or 24, 1985.

22 A. Yes. As you just mentioned, Scarlett Rogenkamp was killed
23 in November of 1985. And the assignment was to assess her
24 future earnings and lost pension that resulted from her death.

25 Q. And did you operate based upon the assumption that on

1 November 23 or November 24, 1985, Scarlett Rogenkamp's power and
2 ability to labor and earn money was completely destroyed by
3 virtue of her having been executed on that aircraft?

4 A. Of course.

5 Q. Thank you. Tell the Court the type of documents that you
6 reviewed in preparing this report and your expert testimony here
7 today, please, sir.

8 A. We reviewed the Social Security record for Scarlett
9 Rogenkamp, and from that we were able to establish that she was
10 working as a civilian employee of the United States Air Force,
11 and had been so working since 1978 I believe. And based on the
12 salary she earned as reported by the Social Security record, we
13 were able to establish that she was very, very likely a GS-12 at
14 the time. She made more than a GS-11 can make and she made less
15 than a GS-13 must make.

16 Q. Thank you. Before I move into any of your determinations
17 and opinions, let me indicate to the Court that Exhibit 91B,
18 which is attached as an appendix called Appendix A to the
19 Scarlett Rogenkamp report, those are confidential records from
20 the Social Security Administration, from there through the
21 remainder of that report. Is that correct, Dr. Markham?

22 A. Yes. That's what we looked at.

23 Q. Thank you.

24 MR. HEIDEMAN: Accordingly, Your Honor, as these were
25 relied upon and as they are self-authenticating documents from

1 the Social Security Administration, we would specifically move
2 91B into evidence and do so pursuant to the Court's advance
3 order that medical records and other confidential records of the
4 plaintiffs could be filed and would be maintained under seal.

5 THE WITNESS: So ordered.

6 MR. HEIDEMAN: Thank you very much.

7 (Plaintiff Exhibit No. 91B
8 received into evidence.)

9 BY MR. HEIDEMAN:

10 Q. In addition to the Social Security records now in evidence
11 as 91B, being the reported earnings of Scarlett Rogenkamp for
12 the time period stated therein, please tell the Court what other
13 documents you reviewed and information you considered in
14 preparing this report.

15 A. We relied on otherwise entirely published data sources to
16 estimate her life span, to estimate her work life span, to
17 estimate her earnings as a federal civil service employee, and
18 to determine what pension she would have gotten. All of this is
19 available from public sources.

20 Q. Thank you very much. And were those records available to
21 you in the offices of or through the offices of the Center for
22 Forensic Economic Studies?

23 A. Yes.

24 Q. Did you review those records as you do in each and every
25 matter where the Center and you are engaged to prepare economic

1 reports and to submit to courts for their consideration?

2 A. Yes, I did.

3 Q. Thank you. Section 2 on page 1 of your report, in evidence
4 as Plaintiff's Exhibit 91, indicates introduction and
5 background. What is relevant to the Court on that particular
6 point? And I direct you specifically, since the Court well
7 knows about the hijacking, to paragraph 2, which is at the top
8 of page 2.

9 A. Of course. She was 38.7 years old at her death, and that
10 is relevant to her expected life span, and of course her work
11 life span also.

12 Q. And in preparing this report, did you base it upon certain
13 factors both as to her work and college level, marital status,
14 and -- if relevant, and her last U.S. location?

15 A. I'm not clear what you're asking. I'm sorry.

16 Q. Yes, sir. In making the determinations set forth in the
17 report, did you assume she in fact was, as has been proven in
18 this court, a U.S. government civil service employee working for
19 the United States Air Force?

20 A. Yes.

21 Q. And did you further make the determination, as you
22 mentioned a few moments ago, as to her government service level?

23 A. Yes.

24 Q. And that was what, sir?

25 A. That she would have been a GS-12.

1 Q. At the time of her death?

2 A. Correct.

3 Q. Thank you very much. Anything further about section 2?
4 Let me move to section 3 on page 2. As to life expectancy and
5 work life expectancy, please explain to the Court what you
6 considered in that area of preparing your report.

7 A. Her work life -- her life expectancy is estimated based on
8 the federally published statistics. She would have been
9 expected to survive to age 82.67, given her attained age at the
10 time of her death had she not been killed. And her work life
11 expectancy is probably, we judge to be dictated by the
12 retirement terms of the federal civil service options that were
13 available to her. In other words, she would have retired at age
14 60, would have been our projection.

15 Q. Tell the Court on that point, please, that although you've
16 assumed she would have retired at age 60, was there any
17 requirement with the United States Air Force, had she remained
18 with the United States Air Force, that would have mandated her
19 retirement at 60?

20 A. No, not that I'm aware of.

21 Q. Is there any requirement that she wouldn't have been able
22 to work in any other capacity, either for the United States
23 government, in the senior executive service, or some other
24 branch of the U.S. government, or even for a state government or
25 private industry past the age of 60?

1 A. No.

2 Q. So do we understand as we move forward that in calculating
3 the financial considerations you have only assumed a work life
4 expectancy to age 60?

5 A. That's correct.

6 Q. But had she worked longer, to 65, to 70, to 72, to 78, or
7 even beyond that -- which of course is very common these days,
8 is it not?

9 A. It's increasingly common.

10 Q. And assuming she was healthy, and the testimony is that she
11 was healthy, and assuming she hadn't otherwise had a disease or
12 injury in her life that would have stopped her from being
13 healthy, it would be a fair and proper assumption that she would
14 have worked beyond age 60; is that correct?

15 A. She could have worked beyond age 60.

16 Q. But these projections you're about to suggest to the Court,
17 outline to the Court, are only based upon age 60; is that
18 correct?

19 A. Correct.

20 Q. And will you be able, after we get that testimony from you,
21 to also give to the Court further considerations, had she in
22 fact worked longer than age 60 and closer to but not all the way
23 to her life expectancy?

24 A. Well, I would have to do some calculations and did not
25 bring a computer with me, but if you're willing to bear with me,

1 I can probably work on it.

2 Q. Thank you very much. Moving forward now to section 4 of
3 your report, earning capacity. Would you please explain that
4 portion of your report to the Court.

5 A. Yes. The earnings figures listed for 1985, 1984, 1983 came
6 from the Social Security record. And this was what enabled us
7 to identify her as being a GS-12 at the time of her death.

8 Q. All right. And in this report on page 2 in section 4 it
9 indicates the amount of money she earned in 1983, in 1984, and
10 in 1985; is that correct?

11 A. Correct.

12 Q. And in that regard, in 1985, she was murdered at the end of
13 November. Did she receive full pay for December and is that
14 included in the 1985 computations, if you know?

15 A. I'm not certain about that.

16 Q. It would be a fair presumption, though, that being a
17 government employee, she would have had some benefits that would
18 have compensated her for December as well; is that correct?

19 A. It appears to be an entire year's salary, would be my
20 estimate.

21 Q. Okay. The second paragraph, please, of page 2. In this
22 section 4, what does that indicate to the Court?

23 A. Are you referring to the paragraph, "I assessed
24 Ms. Rogenkamp's future earnings"?

25 Q. Yes, you can move on to that one, that's fine, because

1 you've already explained she was a GS-12.

2 A. Our task is to assess what she would have made if she had
3 not been killed. And of course she never got to live that life.
4 So this is our assessment, one we kept very conservative, which
5 was to say she just stays a GS-12 step 5, which is the middle of
6 the GS-12 schedule, and right where her salary was at the time,
7 for her entire career.

8 An alternative scenario would be that she would stay a
9 GS-12 but would rise to step 10, which is the top of the GS-12
10 scale, as quickly as the civil service rules would have
11 permitted. And those were the two assumptions we worked with.
12 We had no basis for assuming that she certainly would have
13 gotten a promotion. I note that she got a raise between 1984
14 and 1985 that was 6.1 percent, and that is in excess of the
15 general raises for the federal employees of that year. From '84
16 to '85 in general it was 3.5 percent, so she was apparently an
17 above average employee.

18 But beyond that we know nothing about her performance, what
19 her supervisors thought, what were the opportunities, what were
20 her educational qualifications. We have a minimal record to go
21 on with Ms. Rogenkamp.

22 Q. I'm going to ask you about supplementing that as well, and
23 I'd like to tell you why. The Court has received testimony that
24 the chief of staff of the United States Air Force wrote a letter
25 at the time of her death, a condolence letter to the family,

1 attached to which is a document that's in evidence that includes
2 his laudatory comments about her outstanding work.

3 So would you be able to determine the additional amounts
4 she might have earned had she gone beyond a GS-12 step 10, based
5 upon the high praise expressed at her funeral at the time of her
6 death?

7 A. Well, if you or anyone could specify what other scenario I
8 should consider, whether it's a GS-13 step whatever, I have
9 those GS scales available with me, in print fortunately, so I
10 could do that calculation.

11 Q. All right. Thank you very much. Moving on to page 2,
12 section 5, on the pension, please explain to the Court what
13 you've considered there in preparing this report.

14 A. Certainly. Ms. Rogenkamp was hired in the 1970s, and it's
15 early enough that it's to qualify for the Civil Service
16 Retirement System. The federal government has two parallel
17 systems for civil service employees' retirement based on when
18 they were hired. And the Civil Service Retirement System is in
19 many ways simpler to deal with. And that's what I assessed her
20 retirement benefits on.

21 A participant in that system would have contributed 7
22 percent of her salary during her work life toward the pension.
23 And I've considered that 7 percent when adding up her likely
24 earnings. And then thereafter they're able to retire, the first
25 option that would have been available to her would have been at

1 age 60, because you can retire at age 60 with 20 years of
2 service, and at that point she had 29 years of service. So
3 that's when I said she would have retired.

4 Q. And so, similarly to the question I asked you on the work
5 life expectancy, you have used a retirement age of age 60; is
6 that correct?

7 A. That's correct.

8 Q. And when you do your recalculations or your supplemental
9 calculations for consideration by the Court, can you also extend
10 that as it applies to the pension factor?

11 A. I believe so.

12 Q. Thank you very much. Explain to the Court more about this
13 section 5 on the pension on page 2 and the top of page 3, in
14 terms of the methodologies that you utilized and the factors
15 that you considered and the percentages that are there and what
16 those mean to the Court.

17 A. Certainly. The Civil Service Retirement System spells out
18 exactly how much pension a person gets based upon their years of
19 service and their highest three years' salary. And in her case,
20 with 29 years of service, she would have been entitled to 54.25
21 percent of her highest three years' salaries for the rest of her
22 life as a pension. And that amount goes up every year based on
23 a cost of living adjustment that is tied to the consumer price
24 index.

25 So the amount that you calculate at retirement is not the

1 amount you continue to receive for the rest of your life. It
2 goes up, tracking the consumer price index, and that is
3 indefinite right through a person's natural death.

4 Of course, we had to project the changes in the consumer
5 price index after 2009 because they're not yet known.

6 Q. And the projected cost of living adjustment based on the
7 average change in the consumer price index from 1999 to 2009
8 that you used is 2.56 percent; is that correct?

9 A. That's correct.

10 Q. Thank you. Now, just one point about this. Had she had
11 more than 29 years of service, that is had you expanded the work
12 life expectancy to a higher age for a healthy, intelligent,
13 competent, highly acclaimed government civil service employee,
14 then would that have also affected the percentage of the average
15 of her highest three years' salary for life?

16 A. Correct. It would. That percentage would go up and indeed
17 also her highest three years' salaries would be higher.

18 Q. Thank you. So when you do the additional calculation, I'll
19 ask you to consider that third factor as well for consideration
20 by the Court. Will you do so?

21 A. Yes.

22 Q. Now, in the issue of maintenance, which is on page 3,
23 section VI, explain to the Court, please, what maintenance is,
24 why it's considered, what factors that you factored in in
25 putting maintenance into this report.

1 A. Yes. Maintenance is the amount that a person would spend
2 of their income on their own direct consumption, to maintain
3 themselves. And there are any number of methodologies, but we
4 use data from the consumer expenditure survey published by the
5 Bureau of Labor Statistics, and take out of that -- that study
6 presents spending patterns by income level and age level. And
7 we take out of that what we would consider the necessities,
8 food, shelter, basic transportation, not even purchase of new
9 cars, utilities, those elements that are basic to survival, and
10 that's how we estimate personal maintenance.

11 Of course, anything she would have consumed directly
12 herself would not be available to her estate. That is the
13 essential rationale for the deduction.

14 In her case she was single and so the maintenance rate is
15 most of her income. And that rate actually is slightly less
16 with a slightly higher salary. I think you can see the logic of
17 that; that people who make more do not need to spend as much of
18 their higher income on necessities as people who make lower
19 incomes.

20 Q. And in the third paragraph there of that section VI --
21 well, go back just a bit. Indicate what percentage of a step 5
22 salary and what percentage of a step 10 salary you've assumed.

23 A. We assumed she would have consumed 62.6 percent of a step 5
24 salary and 56.8 percent of a step 10 salary.

25 Q. Thank you. And in the next paragraph, explain that to the

1 Court, please.

2 A. The next paragraph addresses the reality that retired
3 people tend to consume proportionally less of their incomes,
4 even when you consider they have lower incomes. So if you look
5 at the spending patterns of people in retirement, they are
6 somewhat less than people who are actively working. And on that
7 basis we projected her maintenance during the time after she
8 retired at being 51.7 percent of her income.

9 Q. Thank you. And you've prepared a number of tables that are
10 attached to the report that you've prepared, and it is in
11 evidence as Exhibit 91. Is that correct?

12 A. That's correct.

13 Q. Let's turn -- I'm going to ask you to turn to Table 1, but
14 before we do, tell the Court what Table 1 shows and how you
15 calculated it.

16 A. Table 1 in general shows the lost earnings of Scarlett
17 Rogenkamp had she remained a grade 12 step 5 for her career.

18 Q. Turn to that Table 1 so we can explain it to the Court,
19 please.

20 A. Certainly.

21 Q. Would you indicate to the Court, looking at Table 1 of
22 Exhibit 91, what this indicates. You of course don't have to
23 indicate each column or line, they speak for themselves, but
24 explain it generally to the Court and then take us down to the
25 bottom to explain your computations.

1 A. Certainly. The left-most column is the chronology of years
2 through her projected retirement, which would have been 2007.
3 The listed salaries in the next column start with her actual
4 salary in 1985, and then move it forward at the actual rate of
5 increase that the federal GS schedule was increased each year by
6 year.

7 So in other words, I'm assuming in this presentation she
8 simply got the same raise as everyone else in the federal civil
9 service -- or excuse me, that everyone else averaged. And you
10 can see that by 2007 her annual salary would have been \$62,566.

11 In the middle column that only has four numbers, that was
12 done to calculate what would have been her highest three-year
13 average salary, which is relevant for pension purposes. We
14 projected she would have retired at 60 years old, which I
15 believe is in March she would have been 60. That's why we have
16 a fragment of a year there. And the far right column is the
17 amount actually lost. So of course it is equal to the annual
18 salary for every year except the last one, when we project she
19 would have retired in March of 2007.

20 We show the total of those lost earnings as \$1,013,117. We
21 also deduct from that the amount she would have had to
22 contribute to her pension, which is \$70,918, and then her
23 maintenance, which was, at the rate I just quoted a minute ago,
24 62.6 percent, would have come out as maintenance, which equals
25 \$634,211. And the total loss there after the deduction for her

1 pension and maintenance would have been \$307,987.

2 Q. Thank you. So if she had been a grade 12 step 5 from 1985
3 through projected retirement, your estimated retirement of 2007,
4 she would have had lost earnings of \$1,013,117, less \$70,918,
5 being the amount she would have contributed, been required to
6 contribute to her pension; is that correct?

7 A. That's correct.

8 Q. What are those two numbers, when you just subtract the
9 70,000 item from the million 13?

10 A. Can you bear with me?

11 Q. Sure.

12 (Witness computes on a calculator.)

13 A. That difference is \$942,199.

14 Q. And then you subtract from that the maintenance, using an
15 assumption of 62.6 percent of her consumption factor of her
16 income that would have been spent as maintenance on her life of
17 634,211; is that correct?

18 A. Correct.

19 Q. And that gets you to the net loss of 307,987 if you use the
20 assumptions in Table 1; is that correct?

21 A. Yes.

22 Q. And as we've already said, if you were to use a higher
23 retirement age, you would then simply go to your age, use the
24 year, and modify the amount, which would increase the loss; is
25 that correct?

1 A. It would increase the loss of her earnings, yes, for sure.

2 Q. All right. And we'll ask you to do that, and when you do
3 so to provide it to us as Table 1-A so the Court has it as a
4 comparison using a retirement age that is at a higher age for an
5 able-bodied, intelligent, excellently competent woman working
6 for the United States government in her field.

7 A. Yes. I'll just need to know to what date you'd like that
8 projected.

9 Q. Considering -- do you know how old her parents are?

10 A. I do not.

11 Q. Well, the -- fine. Let's use the age of 70.

12 A. Okay.

13 Q. Thank you. Now let's go to Table 2. Can you explain to
14 the Court what Table 2 shows. Looking back on page 3 of your
15 report, explain Table 2 and then we'll ask you to walk the Court
16 through Table 2.

17 A. Table 2 is the lost earnings Scarlett Rogenkamp would have
18 experienced had she had a career at grade 12 rising up to step
19 10 as rapidly as possible, and then retiring at age 60.

20 Q. Thank you very much. Now, if you would on Table 2 actually
21 walk the Court through Table 2 as you did Table 1.

22 A. This is very parallel to Table 1. The difference is I've
23 added a column for what steps she would have been at at
24 different years. These steps that are listed in the third
25 column are as rapidly as a person would be able to rise through

1 the civil service, according to the civil service rules.

2 So she would have had to spend two years as a step 5, two
3 years as a 6, two years as a 7, three as an 8, three as a 9,
4 before she could have gotten to step 10. And then the salaries,
5 based on the increments that are in each year, change. In other
6 words, the general civil service salaries move a certain
7 percentage for everyone going from any one year to the next
8 year, but then on top of that adding step increases where they
9 would have occurred. And so of course this reaches a higher
10 salary in the end. It indicates a 2007 year salary of \$71,953.

11 Q. And that too is at age 60?

12 A. Correct. That would have been the year in which she turned
13 60. So again, we show a loss of only a fragment of the year.
14 Her birthday was in March, so 2007 loss is indicated to be of
15 course less than the entire amount of the salary rate.

16 Q. And her total lost earnings on Table 2 is \$1,128,113, less
17 the pension of \$78,968 she would have had to contribute,
18 correct?

19 A. That's correct.

20 Q. And that number is?

21 A. The difference?

22 Q. Yes.

23 A. Bear with me.

24 That difference is 1,049,145.

25 Q. From which you've deducted the maintenance of 640 using the

1 percentage as indicated in your report; is that correct?

2 A. That's correct.

3 Q. And you come up with a net loss assuming she would have
4 retired at age 60 of 408,377.

5 A. That's correct.

6 Q. We'll ask you if you would to similarly assume an age 70,
7 not an age 80, not an age 76 or 72, but an age 70 for this
8 woman, and prepare that to submit to the Court as Table 2-A.
9 Would you do so?

10 A. Yes.

11 Q. Thank you. Now, if you would -- we understand from your
12 report on page 3 that you also prepared a Table 3. So turn back
13 to page 3 and explain to the Court the factors considered in
14 Table 3's preparation, please, sir.

15 A. Table 3 is projected pensions based on the civil service
16 rules and the final high three salary average that we estimated
17 from the two previous tables, and projected out over her
18 expected life span.

19 Q. So this is the loss of her pension to her life expectancy;
20 is that correct?

21 A. Correct.

22 Q. And if you were to have her retiring at age 70 rather than
23 age 60, that would, shall we say, reverse modify the pension
24 factor, would it not?

25 A. Well, the pension would be for a shorter duration. It

1 would start in 2017, and her expected life span would remain the
2 same. It would, however, be based on higher salary amounts and
3 a higher percentage too, because of working longer.

4 Q. Right. So when you prepare the amended tables, could you
5 also do a Table 3-A that considers the pension factors and takes
6 that through to age 70?

7 A. Yes.

8 Q. Thank you. Is there anything further on page 3 of your
9 report that you would like to explain to the Court that we
10 haven't mentioned?

11 A. I think I mentioned that the initial salary which is listed
12 at the top of each of these presentations is effective only that
13 first year. Then cost of living increases kick in. I believe I
14 mentioned that. And we estimate them at 2.56 percent going
15 forward.

16 Q. Thank you. Then going forward, please, to the summary on
17 page 4 of your report. Would you explain that step by step to
18 the Court?

19 A. Certainly. The two scenarios are being a grade 12 step 5
20 for her entire career, and we estimated her lost earnings net of
21 maintenance and her contributions for pension would have been
22 \$307,987. And with the salary that would have been associated
23 with that grade and step, she would have lost pension benefits
24 of \$328,891. And those lost pension benefits I add are net of
25 maintenance also. The total loss in that scenario in which she

1 remains a grade 12 step 5 throughout her career is \$636,878.

2 Q. Stop for a moment. And that's if she had stayed for her
3 entire career at a grade 12 step 5, which is what she had when
4 she died, correct?

5 A. Correct.

6 Q. The next column?

7 A. The next column is the other scenario in which she gets to
8 a step 10 as rapidly as civil service rules allow. Her lost
9 earnings after her contribution to pension and net of
10 maintenance would have been \$408,377. Her lost pension net of
11 maintenance would have been \$378,231. And those two figures
12 total to \$786,608.

13 Q. And that assumes that she would have increased rapidly to a
14 grade 12 step 10 and then stayed at that level; is that correct?

15 A. Correct.

16 Q. All right. And how would these two numbers for the Court
17 to consider, how would those numbers change? Not the exact
18 amount, but how would they change if you assumed work life
19 through the age of 70?

20 A. It would increase. There would be more of an increase in
21 the earnings factor than the reduction in the pension.

22 Q. Thank you. So when you prepare tables, please, 1-A, 1-B --
23 strike that, 1-A, 2-A, and 3-A, I'm also going to ask you to
24 prepare for the Court page 4-A, which would take into
25 consideration the 70-year retirement, okay?

1 A. Okay.

2 Q. Thank you. And there's an asterisk here that indicates
3 this is net of maintenance. These are not the gross dollars she
4 would have lost, but it's already been reduced by the
5 maintenance percentage consumption factor that you previously
6 testified about; is that correct?

7 A. That's correct.

8 Q. Thank you. Have you formed any other opinions about the
9 economic losses of the -- suffered by the estate of Scarlett
10 Rogenkamp as a result of her execution on EgyptAir Flight 648?

11 A. No. This presents everything we considered.

12 Q. Thank you very much. Before I move on, does the Court have
13 questions on this particular report?

14 THE COURT: Yes, I do. Doctor, does maintenance
15 include taxes, health insurance and FICA?

16 THE WITNESS: It would include health insurance, it
17 would not include taxes. And you said FICA was the other one?
18 It would not include that.

19 THE COURT: Why would you not include those?

20 THE WITNESS: Because they are -- they're part of a
21 person's gross income. They don't really spend it on
22 themselves, and that's really what we're trying to get at is
23 what they spend on themselves.

24 THE COURT: Thank you.

25 MR. HEIDEMAN: At this time, Your Honor, we'll move

1 Exhibit 91 into evidence.

2 THE COURT: It'll be admitted.

3 MR. HEIDEMAN: Thank you very much. May I move on to
4 the next plaintiff victim, Your Honor?

5 THE COURT: That's Mr. Baker.

6 MR. HEIDEMAN: That's Patrick Scott Baker.

7 THE COURT: Yes, please.

8 BY MR. HEIDEMAN:

9 Q. Thank you. Let me hand the witness, with the original to
10 the court reporter, Plaintiff's Exhibit 92, and ask you,
11 Dr. Markham, can you identify Plaintiff's Exhibit 92?

12 A. Yes, I can.

13 Q. What is Plaintiff's Exhibit 92?

14 A. This is the report we prepared on the Patrick Scott Baker
15 case.

16 Q. And did you prepare in your office this report and,
17 consistent with the applicable standards used in your industry
18 and by the Center for Forensic Economic Studies in doing
19 economic and statistical analysis?

20 A. Yes, I did.

21 Q. Thank you.

22 MR. HEIDEMAN: We'll move Plaintiff's Exhibit 92 into
23 evidence, Your Honor.

24 THE COURT: It'll be admitted.

25

1 (Plaintiff Exhibit No. 92
2 received into evidence.)

3 MR. HEIDEMAN: Thank you.

4 BY MR. HEIDEMAN:

5 Q. Attached to Plaintiff's Exhibit 92, Dr. Markham, is
6 Plaintiff's Exhibit 92B, which you've actually labeled with a
7 cover page of Exhibit A, and that attaches various tax returns
8 and information from the Social Security Administration; is that
9 correct?

10 A. That's correct.

11 Q. That information is confidential to each citizen of the
12 United States; is that correct?

13 A. I believe so.

14 Q. Thank you very much.

15 MR. HEIDEMAN: Your Honor, I have an inquiry of the
16 Court before I move 92B into evidence. Of course the Social
17 Security records, as we did with Ms. Rogenkamp, we will ask to
18 be put in and under seal. My inquiry is does the Court wish to
19 have in the record at all the tax returns? Because if so, I'll
20 put them in under seal. If not, I'll withdraw them, even though
21 the witness, I share with the Court, reviewed and has considered
22 those in preparing his testimony.

23 THE COURT: No. Let's admit them under seal. So
24 Appendix A is admitted but under seal.

25 MR. HEIDEMAN: Thank you very much, Your Honor.

1 (Plaintiff Exhibit No. 92B
2 received into evidence.)

3 BY MR. HEIDEMAN:

4 Q. Returning now to Plaintiff's Exhibit 92 at the beginning,
5 could you please explain to the Court what this exhibit is and
6 what it assumes, just starting with paragraph 1, page 1 of your
7 report, being Exhibit 92B.

8 A. Certainly. The assignment in this case was to compare
9 Patrick Baker's lifetime earnings to what would be the lifetime
10 earnings of a typical career path for a bachelor's degree holder
11 or a master's degree holder.

12 Q. Thank you very much. And in that regard, later on in your
13 report you indicate what you assumed to be his degree holding
14 and what he aspired to; is that correct?

15 A. Correct. It's my understanding that he actually had a
16 bachelor's degree before the attack in 1985, and that he aspired
17 to go on to receive a master's degree.

18 Q. And the Court has received his direct testimony on that
19 fact, so we'll ask you to, when you present your report, present
20 a report including that assumption as well. All right?

21 A. Yes.

22 Q. Thank you, sir. Now, in terms of the documents you
23 reviewed, being Roman numeral I of your report, please explain
24 it to the Court.

25 A. We had Patrick Baker's Social Security record, and we had a

1 pretty complete set of his tax returns from 1987 to 2008. I say
2 pretty complete because 2004 was missing and 1998 only showed
3 some 1099 forms.

4 Q. And are those the documents, at least the cover pages of
5 each of the tax returns, plus the Social Security report, that
6 have previously been identified as Plaintiff's Exhibit 92B which
7 the Court has ordered be filed and admitted into evidence under
8 seal?

9 A. Yes, it is.

10 Q. Thank you for bringing those to us and incorporating them.
11 As to Roman numeral II, introduction and background of your
12 report, of course the Court well knows the nature of the case,
13 so move to paragraph 2.

14 A. The relevant fact there is that Mr. Baker was 28.4 years
15 old at the time of the shooting, and that is relevant to his
16 life span and his work life span.

17 Q. Thank you very much. So he was 28.4 years when he was shot
18 in the back of the head, correct?

19 A. Correct.

20 Q. And you're also assuming that he was unable to pursue
21 career paths that would have made use of his academic training
22 and his postsecondary education, correct?

23 A. Correct. That was the whole premise of this analysis, was
24 to compare his actual earnings to the traditional -- the
25 earnings path of a traditional bachelor's degree or master's

1 degree career.

2 Q. And assuming, because it's true, the Court has received
3 evidence both from Patrick Baker directly, he used the words
4 that he went to a comfort zone after the shooting, and the
5 psychologist who testified yesterday, explain to the Court
6 how -- I'm using my word -- Patrick Baker retreated for a
7 prolonged period of time -- I think the number of years may have
8 been at least 15 -- to work that shall we say -- to doing things
9 in life that took him away to this comfort zone. Have you
10 assumed that information in preparing your report based upon
11 what you understood each of them may well be testifying to in
12 the courtroom?

13 A. Yes. It's a simple assumption to make that he led the life
14 he did and had the earnings he had. And my assignment was to
15 then compare that to what would have been a traditional
16 bachelor's degree or master's degree earnings path.

17 Q. Thank you. And the bachelor's degree in biology that he
18 had, did you also take into consideration the work in a
19 laboratory that he has expressed under oath he was interested in
20 doing?

21 A. I don't know what you're referring to.

22 Q. All right. Thank you. On page 2 at the very top your
23 report indicates he spent most of his working life as a
24 commercial fisherman, married then in 1998; is that correct?

25 A. That's correct.

1 Q. Did you see a change in his working life and earnings after
2 he married in 1998 from the period before?

3 A. It's not -- I'm not in a position to draw conclusions about
4 why things happened in his life.

5 Q. Of course.

6 A. But starting in a few years after he got married, he began
7 working consistently for a place called Anvil Corporation. I
8 don't even know what that is. And thus, his earnings since the
9 middle part at least of the last decade have been fairly
10 consistent.

11 Q. And he testified, let me share with you in open court, that
12 he's working for -- been working for an engineering firm.

13 A. Okay.

14 Q. Thank you. Move now, please, to your assumptions on page
15 2, Roman numeral III of your report.

16 A. Correct. We project his life span based on his attained
17 age at the time of the attack to be to age 77.2, which would be
18 the year 2034. We also estimated his work life in two different
19 scenarios. One is called a statistical work life, and then the
20 other is the retirement age for Social Security purposes for
21 people born in 1957, as he was, is to 66.5.

22 Now, the statistical work life is, as the name suggests,
23 sort of an average statistical expected work life based on age
24 and education at the time. For example, he was a 28-year-old
25 male with a bachelor's degree. And that group of people have a

1 certain pattern of staying in the work force. And the
2 statistical work life accounts for all the possibilities for
3 being out of the work force, good and bad, and you could think
4 of it as the projected median retirement for people of his
5 demographic.

6 Q. And his retirement age for Social Security purposes was
7 assumed at 66.5; is that correct?

8 A. That is what it is for people born in 1957.

9 Q. But his statistically expected work life based on age and
10 education was only 61.7; is that correct?

11 A. That's correct.

12 Q. So similarly as I asked you with Ms. Rogenkamp, if you
13 brought that forward by an additional period of time to age 70,
14 then you would be able to provide additional information
15 supplemental to the Court in each of the factors we're about to
16 discuss; is that correct?

17 A. Yes.

18 Q. Okay. I'll be asking you to do so as I did for
19 Ms. Rogenkamp, and so I won't repeat that issue and will ask
20 that each of the tables then be properly modified and we'll come
21 back to that issue. All right?

22 A. Okay.

23 Q. Thank you. Now, as to the Roman numeral IV, the earnings
24 history, would you share with the Court what you determined by
25 reviewing his records as a commercial fisherman and also for

1 Anvil Corporation.

2 A. The Roman numeral IV only recites the recent earnings with
3 Anvil Corporation. In the tables I've listed the data we have
4 on his actual earnings as a fisherman.

5 Q. And we'll come to that when we get to the tables then.

6 A. Correct.

7 Q. Tell the Court what paragraph 5 of your Roman numeral V of
8 your report indicates.

9 A. Of course. This starts to get into the analysis of the
10 tables and how we in a sense create an earnings path for both a
11 bachelor's degree and a master's degree for someone of his age.
12 And the starting place for this -- let's talk about Table 1
13 since Table 2 is exactly parallel.

14 Table 1 concerns bachelor's degree earnings. The top row
15 of Table 1 has numbers associated with the year 2008. This is
16 actual data from the current population survey done by the
17 Census Bureau on earnings distribution among people in the
18 population with a bachelor's degree. And the way you would read
19 this is that 10 percent make \$26,700 or less. 25 percent make
20 \$38,317 or less. 50 percent make \$55,729 or less. And 75
21 percent make \$81,782 or less.

22 So in other words, it gives you the percentile distribution
23 of earnings for people with bachelor's degrees in the year 2008.
24 It is a snapshot of the year 2008, so of course it includes a
25 wide array of experiences and age levels, and that's why you see

1 quite a variation here.

2 But the beauty of that is you can take those figures from
3 2008 and move them backwards in time with that column called
4 AHE -- that column labeled AHE is average hourly earnings -- how
5 that has changed in the economy over all those given years. And
6 if you take that percentile distribution for 2008, you can roll
7 it backwards to the year 1985 and see what would have been a
8 similar percentile distribution for people with bachelor's
9 degrees around the time of 1985.

10 Then what we did was create essentially an earnings path.
11 And the two key numbers from that whole table of numbers is the
12 10 percent number for 1986, \$13,188, and the 75th percentile
13 number for the year 2008, \$81,792. We assumed that Mr. Baker,
14 had he followed the typical bachelor's degree career path, would
15 have risen from the 10th percentile in 1986 to the 75th
16 percentile in 2008, which is quite consistent with his age
17 profile. He was in his late 20s and he's now in his early 50s.
18 People in their early 50s are typically in prime earnings years.
19 So 75th percentile is not an excessive estimate at all.

20 Then the far right column of Table 1 simply shows a
21 step-by-step progression from \$13,188 up to \$81,792 in the year
22 2008. So this far right column of Table 1 is the hypothetical
23 earnings life that he did not experience because he was
24 withdrawn from the market for a typical bachelor's degree type
25 career. But this is very plausibly based on the current

1 population survey data and the Bureau of Labor Statistics data
2 on average hourly earnings changes over the years.

3 Q. Thank you. Does that fully explain Table 1 to the Court,
4 subject to questions the Court may have?

5 A. I would ask if the Court has questions.

6 THE COURT: No, I don't. I understand.

7 MR. HEIDEMAN: Thank you.

8 BY MR. HEIDEMAN:

9 Q. Then tell the Court, is it the case that Table 2 uses the
10 same methodologies but is based upon master's degree earnings
11 rather than bachelor's degree earnings; is that correct?

12 A. That's exactly correct. And one other difference is we
13 assume the earnings stream does not begin until 1988, because he
14 would have had to go earn that master's degree.

15 Q. All right. And what are the conclusions there on Table 2
16 that are for consideration by the Court and that you're going to
17 carry forward to another summary table?

18 A. We assumed that, had Mr. Baker followed a master's degree
19 earnings path, he would have been in the 10th percentile in the
20 year 1988, earning \$18,464, and risen to the 75th percentile by
21 the year 2008, making \$100,687.

22 Q. Thank you. Can you explain to the Court the comparative
23 information on Table 3.

24 A. Table 3 is the bachelor's degree scenario, in other words,
25 we're assuming the bachelor's degree earnings, and we're

1 comparing that to his actual earnings right through 2008. After
2 that, we grow the earnings, both the actual earnings column and
3 the bachelor's degree earnings column, at the average rate of
4 wage increase in the economy over the past 20 years, which has
5 been 3.26 percent.

6 You can identify the loss then as the difference. It's
7 simply the bachelor's degree column minus the actual earnings.
8 And the present value column on the far right is, it's identical
9 to the loss column until you get into future years, and then of
10 course it's reduced to present value, and then totaled at the
11 bottom.

12 We also add an amount of 4.8 percent for pensions, which is
13 typical among private employers. That is the typical cost of
14 the employer's contribution to a pension. That's an
15 economy-wide average number, and that would be something the
16 typical person pursuing a bachelor's degree would get over and
17 above their salary. So that figure, 54,601, is 4.8 percent of
18 the total earnings figure, \$1,137,524. Together those two
19 figures add up to \$1,192,125. And this, by the way, assumes
20 that he works to age 66-1/2, and that would take him to just
21 inside of the year 2024.

22 Q. Does this already net out the amount of money he earned
23 according to the Social Security Administration and the tax
24 returns that you've reviewed?

25 A. Correct. The column listed, actual earnings, is netted

1 out. So we are in a sense just looking at the difference in
2 what he would have made had he pursued a typical bachelor's
3 earning kind of career.

4 Q. So the 1,192,125 on the bottom of page 3 is his lost
5 earnings in your opinion as a result of the hijacking and his
6 taking a bullet in the back of his head, after deducting the
7 amount of money he actually earned as a fisherman and from Anvil
8 Corporation, and then projected forward to age of retirement at
9 age 67; is that correct?

10 A. Correct. Age 66.5.

11 Q. And that's using as I recall the Social Security
12 Administration retirement age.

13 A. Right.

14 Q. All right. So if you brought that forward to age 70, that
15 would only be for an additional four years; is that correct?

16 A. Approximately.

17 Q. All right. We'll ask you to do that and give us a Table
18 3-A as well. But thank you for explaining Table 3. Let me
19 pause and ask you if Table 4 relates to this Table 3 before I go
20 on to the master's degree profile.

21 A. It's the same as Table 3 except that it stops at age 61.7,
22 which is the statistical work life. And so of course the total
23 figure's a little bit less. The pension figures are a little
24 bit less.

25 Q. So if you did Table 4-A, when you do that, to carry it to

1 age 70, then that will add more years because you used in Table
2 4 a 61.7 age retirement assumption, as opposed to the Social
3 Security assumption on the previous Table 3 of 66.5, I believe
4 it was; is that correct?

5 A. Correct.

6 Q. Thank you. And we'll ask you therefore to do Table 4-A as
7 well. But just so the Court fully understands Table 4, assuming
8 he would be deemed to retire only at age 62, his loss after
9 considering -- after deducting his actual earnings and carried
10 forward is \$988,311; is that correct?

11 A. That's correct. Just one issue to clarify. You've
12 referred to Table 3-A and 4-A that you'd like me to create.
13 They would be the same thing.

14 Q. Okay. Just one moment, please.

15 (Counsel conferring.)

16 Thank you. Can you explain 3-A and 4-A again? I'm sorry.
17 I didn't hear your answer.

18 A. You've talked about having me construct a Table 3-A and
19 4-A, which would take these tables up to year 70. They would be
20 the same thing.

21 Q. Thank you very much.

22 THE COURT: That's right. Because we're going to
23 2024.

24 BY MR. HEIDEMAN:

25 Q. Right. Now explain to the Court Table 5, please.

1 A. Table 5 is assuming a master's degree, assuming work to age
2 66.5, and it works very much like the previous tables. And of
3 course reaches higher numbers. The grand total of the earnings
4 would be \$1,584,048. The amount of the pension would be
5 \$76,034, for a total of \$1,660,082.

6 Q. Thank you. And so if you brought that forth to age 70, it
7 would only be for some years, but then that Table 5-A would be
8 the same as Table 6-A; is that correct?

9 A. Correct.

10 Q. And explain to the Court what Table 6 is.

11 A. Table 6 is the same as Table 5. It's a master's degree
12 profile versus Mr. Baker's actual earnings, but extended only up
13 to age 61.7, the statistical work life, and in this case it
14 totals lost earnings of \$1,302,947, the lost pension would be
15 \$62,541, for a total of \$1,365,488.

16 Q. Thank you very much. Carry us back, if you would, then, to
17 your report, sir, so we can see how those tables plugged in to
18 the remainder of your report and your summary conclusions,
19 please. So go back to page 2 on the bottom where you were
20 beginning there to explain Tables 1 and 2, and in the next
21 sentence 3 and 4. Is there anything further about that
22 paragraph that needs explanation in your view to the Court?

23 A. There's actually a typo here. I'm sorry.

24 Q. All right.

25 A. In the last paragraph on page 2 there's a sentence that

1 begins "Tables 2 and 3 in their entirety." That should be
2 "Tables 1 and 2 in their entirety."

3 Q. Thank you.

4 THE COURT: Where is that again, Doctor?

5 THE WITNESS: Bottom of page 2, the last paragraph,
6 there's a sentence that begins "Tables 2 and 3 in their
7 entirety." And that should be "Tables 1 and 2."

8 BY MR. HEIDEMAN:

9 Q. Thank you. And your point there is that from those Tables
10 1 and 2 it's possible to also construct alternative earnings
11 paths; is that correct?

12 A. Yes, exactly.

13 Q. Because Table 1 utilizes the bachelor's degree achievement,
14 and Table 2 the master's degree potential; is that correct?

15 A. Correct.

16 Q. Okay. Thank you. Now go to the top of page 3 for that
17 first paragraph above pension and explain that to the Court.

18 A. It is what I've already explained, that the career path,
19 the hypothetical career path that Mr. Baker did not pursue, that
20 we lay against his actual earnings, is one based on starting him
21 in the 10th percentile in the year 1986 for bachelor's degree,
22 and then moving to the 75th percentile in 2008, and for the
23 master's degree career starting him at the 10th percentile in
24 1988 and moving him to the 75th percentile in 2008.

25 Q. Thank you very much. Now Roman numeral VI on pension,

1 please. Explain that to the Court.

2 A. Again, that is something I have already mentioned. That
3 the typical pension cost to employers is 4.8 percent of wages
4 and salaries, and that is something he would likely have
5 experienced following a typical bachelor's degree or master's
6 degree career path, so I added that in to the calculations of
7 Tables 3 through 6.

8 Q. Thank you. And in Roman numeral VII, growth and
9 discounting, advise the Court what you considered there, please.

10 A. Correct. For years after 2009 we have to project what
11 earnings will be, and simply grew them by the average growth in
12 hourly earnings in the U.S. economy for the last 20 years. So
13 that's the 3.26 percent, and that is the figure used to grow
14 both the column called actual earnings and the profile earnings,
15 whether it's bachelor's degree or master's degree, in Tables 3,
16 4, 5, and 6.

17 And the discounting factor is the present value figure for
18 losses that occur after the year 2010 are discounted back to
19 their present value, and that gets you to the present value loss
20 column in the far right of Tables 3, 4, 5, and 6.

21 Q. So the discount of future losses to their present value
22 that you used is 4.21 percent?

23 A. That's correct.

24 Q. And then in Roman numeral VIII, the tables?

25 A. That's just guidelines to orient the reader to how these

1 tables differ one from the next. Table 3 presents a bachelor's
2 degree earning profile and work life to age 66. Table 4
3 presents a bachelor's degree earning profile and work life to
4 age 61.7. Table 5 presents a master's degree earnings profile
5 with work life to 66.5. And Table 6 presents a master's degree
6 earnings profile and work life to age 61.7.

7 Q. Thank you very much. And on the bottom of page 3, without
8 considering the work life retirement period of age 70 that I've
9 asked you to prepare, so not yet including that, please explain
10 to the Court the results from tables -- analysis of Tables 3, 4,
11 5, and 6.

12 A. Certainly. They are summarized in that table that's at the
13 bottom of page 3 of my report. In comparison to the bachelor's
14 degree earning profile and assuming a work to life age 61.7,
15 Mr. Baker earned 988,331 less dollars than he would have with a
16 typical bachelor's degree earning profile. With the bachelor's
17 degree earning profile and work life to age 66.5, Mr. Baker
18 earned \$1,192,125 less than he would have earned with that
19 bachelor's degree earning profile.

20 Q. And before you go to the master's degree, let me just ask
21 as I did before, not to be repetitive, these are numbers after
22 first deducting what he actually earned during the time period,
23 or would be projected to actually earn during the time period,
24 to the various ages; is that correct?

25 A. That's correct.

1 Q. Thank you. And now as to the master's degree, your
2 opinion, sir?

3 A. A master's degree earnings profile to age 61.7 would have
4 generated 1,365,488 more dollars than what Mr. Baker actually
5 earned. And a master's degree earnings profile out to age 66.5
6 would have generated \$1,660,082 more than what Mr. Baker earned.

7 Q. And that's what you've indicated on page 4 of your report
8 being Roman numeral IX, summary, is that correct?

9 A. Those are the same numbers that are in that table. That's
10 correct.

11 Q. Thank you very much. Is there anything further about your
12 report as to economic assessment and analysis as to Patrick
13 Scott Baker, now in evidence as Exhibit 92, that you haven't
14 explained to the Court or would like to comment on?

15 A. No. I think I've said everything necessary.

16 Q. Thank you very much. And in terms of both the two that
17 I've asked you about so far, what would be the best methodology
18 for you to be able to do the carry-forward to the, what I'll
19 call the Table A exhibits I've asked you for?

20 A. I'm not clear what you're asking.

21 Q. When would you be able to do that supplementation?

22 A. As soon as I can get access to a laptop computer.

23 Q. Good. We have one here, so perhaps we can do it at a
24 recess at an appropriate time. Thank you very much. Does that
25 complete your testimony subject to any questions the Court may

1 have on Patrick Scott Baker's economic loss analysis?

2 A. Yes, it does.

3 THE COURT: Doctor, if you go forward from 66.5 to 70,
4 do you have to allow for the fact that by that point he's
5 getting his Social Security and his pension, in ascertaining the
6 likelihood of whether he would continue to work? In other
7 words, he may -- I would imagine some people at a point in their
8 life where --

9 THE WITNESS: Of course. That's why we talk in terms
10 of statistical work lives, because they are exactly the result
11 of those influences. If a person has those things available,
12 they have them available, but --

13 THE COURT: Is he more likely to, or is any human
14 being more likely to retire at 66.5 than 68 or 70, if that
15 person has a combination of Social Security and pension coming
16 in?

17 THE WITNESS: If I understand your question correctly,
18 I would say yes, a person who has Social Security and pension
19 available will be much more likely to retire early than someone
20 who does not have those.

21 THE COURT: But you will not take that into account in
22 your analysis because your analysis is arithmetical and you
23 can't predict the future, what any human being is going to do.

24 THE WITNESS: Right. And essentially I would say I've
25 already taken it into account with the statistical work life.

1 THE COURT: I understand. Because the statistical
2 work life, being a snapshot of the economy, already takes into
3 account that some folks just don't keep working because the
4 pension and Social Security is enough to go fishing.

5 THE WITNESS: Exactly.

6 THE COURT: Okay. Why don't we take our break right
7 there and he can do his calculations and then we'll begin.
8 3:20.

9 (Recess from 3:09 p.m. to 3:22 p.m.)

10 BY MR. HEIDEMAN:

11 Q. Just before the recess, Dr. Markham, the Court asked you a
12 question about, not about fishing but about the question of the
13 impact of a pension on someone's potential for retiring. You do
14 have evidence that Scarlett Rogenkamp had a government pension
15 and that's included in your report; is that correct?

16 A. Correct.

17 Q. As it relates to Patrick Scott Baker, is there any evidence
18 that he had a pension or has ever accrued any pension benefits
19 as a commercial fisherman or his work with Anvil Corporation as
20 an engineer?

21 A. I have no evidence of any pension benefits, and it's pretty
22 unlikely with a fishing job.

23 Q. Thank you very much.

24 MR. HEIDEMAN: Moving now, if I may, Your Honor, to
25 Jackie Nink Pflug.

1 THE COURT: Please.

2 BY MR. HEIDEMAN:

3 Q. We'll hand Dr. Markham Plaintiff's Exhibit 90 and ask you,
4 Doctor, if you can identify this document?

5 A. Yes, I can.

6 Q. Is this a report that you prepared relating to Jackie Nink
7 Pflug, who is a plaintiff and has testified in this case?

8 A. That's correct.

9 Q. And did you prepare this report similar to the others, in
10 the same fashion and pursuant to the responsibilities of the
11 Center for Forensic Economic Studies, doing economic and
12 statistical analysis consistent with applications utilized and
13 appropriate in your industry?

14 A. Yes, I did.

15 MR. HEIDEMAN: We'll move Plaintiff's Exhibit 90 into
16 evidence, Your Honor.

17 THE COURT: It'll be admitted.

18 (Plaintiff Exhibit No. 90
19 received into evidence.)

20 MR. HEIDEMAN: Thank you.

21 BY MR. HEIDEMAN:

22 Q. And in that regard also did you review, as it indicates on
23 page 1 of your report, Roman numeral I, certain U.S. government
24 information and confidential information also regarding Jackie
25 Nink Pflug, and as provided by her or by government authorities

1 or by her wife, and similarly the neuropsychological report
2 provided by -- prepared by Dr. Spector, who's testified here?

3 A. We saw the Social Security record for Ms. Pflug --
4 referring to Mrs. Pflug?

5 Q. Jackie -- Ms. Pflug.

6 A. I saw the Social Security records for Ms. Pflug and her tax
7 returns for 1988 and then '91 through 2008.

8 Q. Thank you. And is her Social Security record as well as
9 the cover pages of those tax returns that you reviewed and
10 considered and upon which you have based assumptions and
11 analysis on behalf of Ms. Pflug, are they attached as Exhibit A
12 to your report and marked for identification as Plaintiff's
13 Exhibit 90B?

14 A. They're attached as Appendix A and marked as 90B, correct.

15 Q. I believe I used the word "Exhibit A." I apologize.
16 Appendix A and they bear an exhibit sticker of Plaintiff's
17 Exhibit 90B?

18 A. Correct.

19 MR. HEIDEMAN: Your Honor, at this time we'll move
20 Plaintiff's Exhibit 90B into evidence under seal pursuant to the
21 confidential order.

22 THE COURT: So ordered.

23 (Plaintiff Exhibit No. 90B
24 received into evidence.)

25 MR. HEIDEMAN: Thank you very much.

1 BY MR. HEIDEMAN:

2 Q. Returning now to the first page of your report,
3 Dr. Markham, could you please explain to the Court more about
4 what you considered in terms of documents and also make
5 reference, please, to the report you reviewed of Dr. Jack
6 Spector.

7 A. Certainly. The assignment here in general was to compare
8 the earnings and pension benefits that Ms. Pflug would have
9 experienced as a special ed teacher had she had that as her
10 entire career, versus the actual life that she had. And of
11 course the report of Dr. Spector provides background for why the
12 life she had occurred rather than the life as a special ed
13 teacher.

14 He cites that she had lost her confidence in her cognitive
15 skills that would have been necessary as a teacher, and felt she
16 had to abandon that career back in the late 1980s. And she then
17 showed quite a bit of initiative in creating a career as a
18 public speaker for herself, which is the life of actual earnings
19 that we compared against the hypothetical earnings of a special
20 education teacher.

21 Q. And the work as a public speaker, is it your understanding
22 based upon your materials received from Jackie Pflug, including
23 the education and work history summary, that her work as a
24 public speaker relates directly to and arises out of her
25 experiences as a result of being shot in the head on the

1 hijacking of EgyptAir Flight 648?

2 A. That's my understanding.

3 Q. Thank you very much. Now, in addition, did you review
4 various professional and governmental publications?

5 A. We did. Also I should mention that her husband provided us
6 with a copy of his benefits statement through the Minnesota
7 Teachers Retirement Association, which was an important lead for
8 tracking down what would be the pension benefits for all
9 Minnesota public teachers. So his own personal information was
10 not necessarily useful, but it gave us the leads to get the
11 information about the plan that all Minnesota teachers
12 experience when they retire.

13 Q. And based upon that report that you were able to utilize,
14 does it give you information about all Minnesota public school
15 teachers at the elementary level, the middle school level, the
16 high school level, and all of those?

17 A. It's my understanding that all teachers at those levels you
18 just recited are subject to this retirement plan in Minnesota.

19 Q. Thank you. Moving to page 2 of your report, please explain
20 to the Court your assumptions as set forth in the introduction
21 and background.

22 A. What's relevant there, of course, I think most of this
23 you've already heard in direct testimony from other sources.
24 She had a demonstrated interest in being a special ed teacher,
25 and that was the basis for projecting a career of earnings in

1 that capacity.

2 Q. Thank you. And did you base it also upon the fact that she
3 had worked as -- actually worked as a teacher, a special ed
4 teacher and an educational diagnostician in Texas plus in Norway
5 before working in Cairo?

6 A. Of course. That's what I mean by the demonstrated history.

7 Q. Yes. And in terms of her degree status, what did you
8 assume as her actual degree, and then what did you assume as the
9 degree to which she aspired?

10 A. We were informed that she has a master's degree and that
11 she aspired to a doctoral degree.

12 Q. And was that master's degree as you understand it in
13 special education from the University of Houston?

14 A. That is my understanding.

15 Q. And what did you assume about her obtaining a doctoral
16 degree for your alternate analysis that you're presenting to the
17 Court?

18 A. It ended up not really entering into the analysis in that
19 we established typical earning profiles for special education
20 teachers, which are recorded and researched by the Bureau of
21 Labor Statistics based on anyone who performs that role.

22 So for example -- we'll be eventually getting to this, but
23 we cite to earnings levels for special education teachers in the
24 Minneapolis, St. Paul, Bloomington, Minnesota metropolitan area.
25 That's developed by the Bureau of Labor Statistics based on

1 anyone who does the job in that metropolitan area, and so would
2 include some people with bachelor's degrees, some people with
3 master's degrees, and possibly some people with doctoral
4 degrees. So it's the doing of the job that is what we
5 benchmarked, and the degree didn't become an assumption, so to
6 speak.

7 Q. Thank you very much. Is there anything further about Roman
8 numeral II, page 2 of your report to explain to the Court?

9 A. No. I think the rest is self-explanatory.

10 Q. Move to Roman numeral III, please, as to earnings history.
11 What did you consider in preparing this report?

12 A. We had information from Ms. Pflug's essentially resume that
13 identified the early stage salary she had in Minnesota in the
14 late 1980s, at the time she tried to pursue a career as a
15 special ed teacher. This is after the shooting and after she's
16 had her injuries. And that did not work out well. But that
17 became a reliable benchmark for where to start her earnings
18 history.

19 And then the rest of Roman numeral III is her actual
20 earnings history as we have developed it from her tax returns
21 and th Social Security record.

22 Q. So the background information, you used two pieces. Let me
23 make sure I understand. That when she was at the Cairo American
24 school she was earning approximately \$40,000 annually in 1985
25 dollars, correct?

1 A. That was her report, and that is relevant for identifying
2 what amount she would have earned for the remainder of that
3 school year, which only would have gone to about June of '86.

4 Q. And because of the shooting and the bullet she took into
5 her brain, we know from her testimony that she subsequently
6 attempted to go back to work for a certain period of time in
7 Minnesota, and for that you are using an assumption that she was
8 earning -- would have earned \$30,000 rather than \$40,000 that
9 she was earning overseas; is that correct?

10 A. Those are both numbers reported by her in her brief resume.

11 Q. Yes. Did you do any computation for the Court that if she
12 had continued to work overseas, continued to do the type of
13 special ed work, high-level special ed work that she was doing
14 with a \$40,000 salary, how that would have grown as compared to
15 salary as a Minnesota teacher which appears to be a starting
16 salary much lower?

17 A. I did not do that analysis because we had no idea how long
18 these contracts for Americans teaching abroad would extend, and
19 simply didn't know what was a plausible scenario to assume.

20 Q. If you had more information on that particular matter, you
21 could provide additional supplementation; is that correct?

22 A. Correct.

23 Q. Thank you. Now moving on to the actual report you
24 prepared, the table A in Roman numeral III, is this the actual
25 money that she earned from 1985, being the year of the hijacking

1 and the shooting, through 2008?

2 A. Correct. 1985 is just the amount post shooting. So only
3 about a month worth of income there.

4 Q. Okay. And as we understand it, except for the amount that
5 she earned when she attempted to go back to work in 1988 at the
6 school district in Minnesota, all of the other income was from
7 speaking about the hijacking; is that correct?

8 A. Correct. I'm not exactly clear when she started her
9 teaching career. It was '88 or '89. I'm not entirely clear on
10 that.

11 Q. Thank you very much. And you indicate as a footnote on the
12 bottom of page 2 that she incorporated her speaking business
13 about the hijacking and her experiences and her motivational
14 speaking in 2007 under the name Jackie Pflug & Associates, Inc.
15 Do I assume that you've treated that income as if it were a
16 personal income and not just separate corporate or duplicate
17 corporate income?

18 A. We considered the amount she paid herself as salary plus
19 the earnings, the profits for the owner.

20 Q. Thank you. So it's all incorporated?

21 A. Correct.

22 Q. Thank you very much. Moving to page 3 of your report,
23 please indicate what you have assumed as to Jackie Pflug's work
24 life and life expectancy for purposes of this report.

25 A. Her life expectancy is a straightforward matter from the

1 tables, that we expect her life span to extend to age 81.8 in
2 the year 2036. Her work life expectancy as a teacher, we
3 believe would have been dictated by the available retirement
4 benefits in the Minnesota Teachers Retirement Association plan.
5 And that would have resulted in retirement at age 60.8.

6 Q. And you used Minnesota because that's the state to which
7 she went after the shooting, being the state of residence of her
8 husband, Scott Pflug, who's testified in this trial, and that's
9 where she's lived since the shooting; is that correct?

10 A. Correct.

11 Q. You didn't consider the state's or other international
12 jurisdictions. You've already said no to international
13 jurisdictions, but the fact that she was from Texas prior to
14 going to teach in Norway and in Cairo, you didn't consider any
15 states other than Minnesota; is that correct?

16 A. We did not.

17 Q. Thank you. Now, the work life expectancy you've assumed
18 therefore for Jackie Pflug in this report is?

19 A. To age 60.8.

20 Q. So similarly, I will -- assuming she had not been shot with
21 a bullet to her head, I'll ask you to file a supplemental to age
22 70.

23 A. I understand.

24 Q. Thank you very much. As to paragraph Roman numeral V,
25 earning capacity, absent the attack, could you please walk the

1 Court through each paragraph of that?

2 A. Certainly. Again, we have to project what would have been
3 an earnings path had she pursued and been able to pursue the
4 life as a special ed teacher. We have her report of a salary of
5 \$30,000 in 1988, so we have a pretty clear beginning point.

6 For where to bring that up into the present day, or near
7 present day, we relied on the occupational employment statistics
8 produced by the Bureau of Labor Statistics. This is research
9 into specific occupations and specific geographic areas. It
10 covers pretty much all the United States and many, many
11 occupations.

12 We used, in the written report here, a benchmark of special
13 education teachers in middle schools in the Minneapolis, St.
14 Paul, Bloomington, Minnesota area. In May of 2008 the
15 occupational employment statistics report that we rely upon, for
16 that occupation the 75th percentile earned \$65,570. And that is
17 what we used as the benchmark for bringing her salary from
18 30,000 back in 1988 up to -- excuse me -- let me check -- 1988
19 up to 2008 for the career that she was not able to pursue.

20 Q. Thank you. I have a question about that.

21 A. Yes.

22 Q. Jumping forward just for a moment to Table 1, which is
23 earnings of Jackie Pflug absent the attack and assuming a work
24 life to age 60.8, I see there in 1986 you are assuming expected
25 earnings of 25,146. What salary is that based on?

1 A. That is based on the -- let me think about this, where did
2 that one come from.

3 Q. I think I see the answer. Three lines later in 1988 you
4 used the number \$30,000, which is the Minnesota teaching salary.

5 A. Correct, but I think the '86 salary is assuming she started
6 in September in Minnesota. In other words, she would have
7 finished the -- we would assume she would have finished the
8 contract in Cairo in June, not had income in the summer and then
9 started in September. I'd have to go back and deconstruct that
10 number again, but I think that was the scenario we were
11 assuming.

12 Q. Is it your information, as I believe she's testified, I
13 hope I state this right, I believe she testified that she and
14 her husband both went to Cairo American school, they went there
15 after their wedding in Texas in August of 1985, they both had
16 contracts, I believe I'd have to fact check, but I believe she
17 said she had a two-year contract. And are you telling the Court
18 that her contract was at \$40,000 a year for 1986?

19 A. I did not know the duration of her contract. I had her
20 report that she was paid 40,000, and we assumed or I assumed
21 that it was possibly just a one-year contract, and that absent
22 the attack she would have been going back to Minnesota in 1986
23 anyway. So I really didn't know what would have happened in
24 1986 absent the attack. It was somewhat speculative.

25 Q. But as opposed to reducing her expected earnings back down

1 for 1988 to 30,000, since in 1985 she was -- '85-'86 school year
2 she was actually earning 40,000, it would be reasonable and
3 proper to use an alternate assumption of a starting salary in
4 1985-'86 school year of 40,000, and then growing and doing your
5 calculation based upon that; is that correct?

6 A. Not if she's in Minnesota.

7 Q. But she wasn't at the time a Minnesota resident. So I'm
8 simply asking you, assuming that she would have stayed in an
9 increased salary in her field of specialization of being a
10 special ed teacher in various places, it wouldn't be
11 inappropriate to use a starting salary of '86 at \$40,000, would
12 it?

13 A. Again, I don't know the duration of those contracts for
14 international teachers. I'm sorry. I'm not trying to be
15 difficult, but I just -- it's information I simply don't have.

16 Q. I understand, and I'm not trying to be difficult either.
17 I'm trying to give her proper fair due. The testimony is
18 clear -- I understand you weren't in the courtroom and you can
19 only go from what was given to you in advance. But the
20 testimony, the proof is now clear that at the time she was a
21 highly acclaimed teacher, she had worked in Norway, she then got
22 a job with her husband at the Cairo American school. It was a
23 contract. Assume it was \$40,000.

24 I'm simply asking you to prepare for the Court's
25 consideration, using a starting value of \$40,000 for the year

1 1986, which would be the school year 1985-1986, had she not been
2 shot, and then growing it from there using that as a base
3 salary, and taking -- bringing it all the way forward, so that
4 the Court can give her fair consideration, as I know the Court
5 wants to do and you want to do in these various factors. Okay?

6 A. I can do that. Are you asking me to consider what would be
7 a salary in the present day or near present day for
8 international teachers?

9 Q. Yes. If you have that information available to you or
10 could glean that information, assuming she had remained in that
11 area, please. Then the Court would have that factor for
12 consideration, since she demonstrated such expertise in teaching
13 in foreign schools, both Norway as well as in Cairo, Egypt as a
14 special education teacher.

15 A. I will see if we can develop that information.

16 Q. Thank you very much. Now, please walk the Court further
17 through Roman numeral V.

18 A. Again, the issue we're trying to develop is what would have
19 been her earnings path following a career as a special ed
20 teacher. As I just discussed, we assumed she would have started
21 at 30,000 and progressed in 19 -- excuse me, 2008, to a figure
22 of \$65,570, that number being the 75th percentile of special ed
23 teachers in the St. Paul, Minneapolis, Bloomington, Minnesota
24 area for special ed teachers in junior highs.

25 Q. In junior highs.

1 A. That's correct.

2 Q. The information she provided to you, was she teaching in
3 junior highs or in high school, do you recall?

4 A. I actually don't have information as to which level she was
5 in. So I do have some alternative numbers available concerning
6 high school teachers as well.

7 Q. You prepared those in advance as you came here today?

8 A. Correct.

9 Q. So when you get to the tables and can you explain to the
10 Court the alternate numbers you brought and what do they relate
11 to?

12 A. Well, it's just this, that the special ed teachers at 75th
13 percentile for teachers of special ed in high school is somewhat
14 higher than it is for those in junior high, and that affects her
15 entire earnings path and the entire bottom line of the analysis.

16 Q. Thank you. And you'll share that with the Court today?

17 A. Yes.

18 Q. Thank you very much. Anything further about Roman numeral
19 V before we get to the growth of earnings, what percentage did
20 you use?

21 A. The growth percentage is 2 percent, and that is based on
22 the statement by the Minnesota Teachers Retirement Association
23 that that is what their members foresee.

24 Q. Thank you. And discounting, what did you use there,
25 please?

1 A. Again, we discounted at 4.21 percent.

2 Q. And that's discounting future earnings to present value?

3 A. Correct. Any figure after 2010 is discounted.

4 Q. Thank you. Now, page 3, Roman numeral VI, earning
5 capacity, can you walk the Court through that, please?

6 A. As noted in the previous page, we have her actual earnings
7 history, and assessing her earning capacity as of now, we looked
8 at what she earned over a five-year span, and it averaged
9 \$86,019. And I think that is representative of what she could
10 earn working full-time. We've gotten information that she will
11 have to cut back her schedule, and so we assumed over the
12 remainder of her work life that she would be working only
13 half-time.

14 Q. Thank you. And then continuing on page 4, paragraph 2,
15 please explain that to the Court.

16 A. Correct. The numbers that are after 2008 are grown by the
17 average change in hourly earnings for workers in the private
18 nonfarm sector. That's the 3.26 percent that I mentioned in the
19 Patrick Baker matter.

20 Q. Thank you. And what does this mean about, since Ms. Pflug
21 is self-employed, would you explain that to the Court?

22 A. Sure. Her actual take-home pay, if you will, as a
23 self-employed person is somewhat reduced from the face amount
24 because she must pay what amounts to the employer's share of the
25 Social Security taxes, and there is also a deduction for that

1 amount, but of course you're only getting a deduction, not a
2 credit, so the after-deduction cost of it I estimate to be about
3 65 percent of 70 percent which is 4.55 percent.

4 So in other words, this is an added tax that she has to pay
5 because she's self-employed that essentially reduces the
6 earnings she enjoys in her speaking career.

7 Q. Thank you. Roman numeral VII, lost pension benefits.
8 Please explain that to the Court.

9 A. She is a tier 1 member of the Minnesota -- or excuse me, I
10 should say someone who had been a special ed teacher from 1988
11 right through the present would qualify as a tier 1 member of
12 the Minnesota TRA, and they would have available a salary
13 formula as set forth in Roman numeral VII. It's the high five
14 annual salary times a percentage factor based on years of
15 service and age. And we of course used our projected salaries
16 in the special ed career that she did not have for estimating
17 the high five annual salaries.

18 Q. Thank you. And you prepared some tables as indicated in
19 Roman numeral VIII?

20 A. Yes. And Table 1 is, it's called "Earnings absent the
21 attack." That is, in other words, the life as a special ed
22 teacher. Had she not experienced the attack, these are the
23 earnings we project she would have had through her projected
24 retirement at age 60.8.

25 Q. And you can -- did you use, as you did with the other

1 people also, a Social Security age of 66.5?

2 A. No. We assumed that in her case the pension of a Minnesota
3 teacher would have been dictating when she would have retired.

4 Q. So you're assuming that she would have worked her entire
5 life in Minnesota as a Minnesota teacher.

6 A. That's the alternative earnings path that we developed,
7 correct.

8 Q. I understand. Okay. So I'll ask you, please, to, as we
9 did with the other people, expand that and to do two for the
10 Court. One, 66.5, being the same as you did for the other
11 people already, and then to the age of 70, so the Court can make
12 its determination.

13 A. Correct. She's actually born in 1955, so I think it's a
14 slightly different number than 66.5, but I understand what
15 you're saying. The Social Security age and age 70.

16 Q. Yes, please. Thank you. And now Table 2, what does it
17 show, before you walk the Court through the actual table?

18 A. Table 2 shows her earnings given the attack, in other
19 words, this is the earnings she actually experienced right up
20 through 2008, and then thereafter we projected based on her
21 earning capacity for the remainder, but cut back to a 50 percent
22 work schedule.

23 Q. Okay. And though you prepared Table 2, because what you've
24 done is you've calculated her lost earnings and then you're
25 deducting for the Court the actual money that she has earned; is

1 that correct?

2 A. That she has earned and that we project she will earn.

3 Q. Right. Therefore, you should also assume she would have
4 continued speaking at the same level as you did from the period
5 July 1, 2010, to be fair, so when you bring those forward to
6 66.5 or whatever the age is, and 70, please do that as well.

7 And lastly, Table 3 shows, it says here the lost teacher
8 benefits assuming a retirement at 60.8; is that correct?

9 A. Correct. That would be the pension out to her expected
10 life span.

11 Q. All right. Now turn to the document actually called Table
12 1 and explain that, as well as Table 2 and then Table 3 to the
13 Court, before the summary table.

14 A. Didn't we just go through Tables 1, 2, and 3? I'm sorry.

15 Q. Just the bottoms.

16 A. Okay. Table 1 is again the projected earnings in the
17 career as a special ed teacher, and the earnings would have
18 totaled \$1,506,558. From that there would have been a mandatory
19 pension contribution that all the Minnesota teachers had to make
20 of \$77,507, which would have netted her earnings of \$1,429,051
21 in the career as a special ed teacher up to an expected
22 retirement age of 60.8.

23 Q. So had she not been shot, had she been a special ed teacher
24 earning \$30,000 in 1988, that's what these numbers would show?

25 A. Correct.

1 Q. Thank you. Table 2?

2 A. Table 2 is her actual earnings plus her projected earnings
3 that she will have in her speaking career out to the same age,
4 60.8. They total \$1,698,741, and from that there is the after
5 deduction cost of the self-employment tax of \$77,293, for a net
6 of \$1,621,448.

7 Q. All right. And then you factor in pension benefits on page
8 3 -- Table 3; is that correct?

9 A. Table 3 is strictly pension benefits assuming she begins
10 her -- this would apply only to the life as a special ed
11 teacher, and that begins at age 60.8 and extends to her expected
12 life span and totals \$451,374.

13 Q. Okay. Now let's turn back to the summary so you can tie
14 these together for the Court, please. That would be on page 6;
15 is that correct?

16 A. That's correct.

17 Q. Called the summary table?

18 A. Correct.

19 Q. Okay. Please, sir.

20 A. Okay. The first two lines are the economic benefits she
21 would have realized as -- I'm speaking of the first two lines on
22 the summary table, page 6. They are the economic benefits she
23 would have realized as a special ed teacher in the Minneapolis
24 area. It is earnings of \$1,429,051, pension benefits of
25 \$451,374, and I apologize, I did not show on this table the sum

1 of them, but that sum is \$1,880,425.

2 Q. And that's what you believe she would have earned as a
3 special ed teacher, assuming she was teaching in the Minnesota
4 area with a salary in 1988 of 30,000 and retiring at age 60.8.
5 Is that correct?

6 A. That's correct.

7 Q. So if you factor in the other matters I've mentioned,
8 you'll be able to provide to us an alternate table for the
9 Court's consideration; is that correct?

10 A. Correct.

11 Q. Thank you. And then you're deducting, I assume, from that
12 what she's actually earned as speaker's earnings or expected to
13 earn.

14 A. Correct. That comes from Table 2. That is her actual
15 earnings plus what we project she will actually earn, totaling
16 \$1,621,448.

17 Q. And that nets to, using those assumptions, an economic loss
18 of \$258,977.

19 A. Exactly.

20 Q. Now, you indicated during your testimony that you had some
21 alternate information you had considered before you arrived at
22 court that modified, I believe, this summary table. Can you
23 explain that to the Court, and do you have a copy to show the
24 Court?

25 A. I have a hand-drawn copy if the Court can tolerate that. I

1 think the numbers are readable.

2 Q. Do you have one copy or two?

3 A. I have just one copy.

4 Q. Okay. Why don't we get it down and then we'll put your
5 notation in as Exhibit 90C. If I could have an exhibit sticker.
6 Please go ahead. Would you explain to the Court what you did
7 and why you did it?

8 A. What I did was realize that we had simply assumed she would
9 be pursuing her special ed career in junior high, and didn't see
10 a basis for that limiting assumption. So I also looked at the
11 statistics for special ed teachers in high school. And it turns
12 out that that number is 2.29 percent higher. In other words,
13 the 75th percentile number would have been in the year 2008
14 \$67,070.

15 And that 2.29 percent differential carries right on through
16 everything, through every past year and into the pension
17 benefits as well. So it's an easy calculation to say that with
18 a high school special ed salary, the total of her benefits,
19 meaning her earnings and her pension from working in special ed
20 at high school, would have been \$1,923,487, instead of the
21 \$1,880,425 that I cited a minute ago.

22 That was one possible adjustment. Another possible -- two
23 other possible adjustments are that had she been earning in the
24 90th percentile, and that's not inconceivable, it depends on
25 years of seniority typically for teachers, and also degrees

1 earned. So if she had been earning in the 90th percentile at
2 the junior high level, that would have resulted in the numbers
3 being 16.76 percent higher.

4 The total of earnings and pension in that case would have
5 been \$2,195,584. And had she been both teaching in high school
6 and at the 90th percentile, the numbers would have been 19.93
7 percent greater, and the sum of her teaching earnings and
8 pension would have been \$2,255,194.

9 Q. And that would have been the combination including the
10 pension factor?

11 A. The pension and the earnings of those different scenarios.

12 Q. And that would replace the number on page 6, summary table,
13 of \$1,429,051 plus the 451 that you told us totaled 1,880,421.

14 A. 425, correct.

15 Q. 425. So instead of earnings, under your initial
16 projections, of 1,880,425, that she would have earned as a
17 special ed teacher, Minnesota, 30,000 starting salary in 1988,
18 if you used the same assumptions, keeping her in Minnesota,
19 keeping her with a starting salary of 30,000, keeping her with a
20 retirement age of 60.8, but do I understand correctly that if
21 you assume that she was not a special ed teacher in junior high
22 but rather in high school, and that she had grown to the 90th
23 percentile because of her seniority, that number would be
24 \$2,255,194, from which you then would reduce the actual and
25 projected earnings as a speaker since the hijacking. Is that

1 correct?

2 A. Correct. The number if she's in high school and at the
3 90th percentile would total \$2,255,194. And from that you would
4 deduct the same earnings as a speaker that are shown on summary
5 table on page 6. In other words, her actual earnings experience
6 doesn't change. We're simply dealing with different
7 hypothetical careers as a special ed teacher.

8 Q. And the net therefore total economic loss, if you use the
9 high school level as a special ed teacher in the 90th
10 percentile, is?

11 A. The net would be \$633,746.

12 Q. Now, what you have brought here and written out on this
13 Exhibit 90C that we'll file with the Court, do you believe those
14 to be reasonable and proper assumptions for the Court to
15 consider in determining the amount of economic loss? Not pain,
16 not suffering, not the mental anguish of being on that
17 hijacking, not anything else that the Court may consider, but in
18 terms of her economic loss, do you believe what you've just
19 testified to to be reasonable and proper for the Court to
20 consider?

21 A. It's certainly reasonable to be considered, right. These
22 are lost earnings as a special ed teacher. Not pain and
23 suffering, not any of those other elements.

24 Q. As a special ed teacher in Minnesota, teaching high school,
25 and with a starting salary of only 30,000, even though she was

1 earning 40,000 three years earlier, and with a retirement age of
2 60.8.

3 A. That's correct.

4 Q. So if you add the additional factors I've asked you about
5 during your testimony here today, for which I thank you, that
6 would modify the numbers even more significantly and increase
7 the analysis of her loss in important numbers; is that correct?

8 A. It would.

9 Q. And we'll ask you to do that and transmit that to the
10 Court. And with the Court's permission, when that's transmitted
11 as to Ms. Pflug we'd ask that it be separate of course from
12 Mr. Baker, separate from Ms. Rogenkamp. And for Ms. Pflug's
13 analysis we'll ask that that will then bear, Your Honor, in the
14 record an exhibit sticker of 90D.

15 THE COURT: That's fine. Thank you.

16 MR. HEIDEMAN: Thank you very much. We'll ask you for
17 your handwritten notes that you brought here, and we'll put an
18 exhibit sticker on it of 90C, which at this time, Your Honor, we
19 would move into evidence.

20 THE COURT: It'll be admitted.

21 (Plaintiff Exhibit No. 90C
22 received into evidence.)

23 MR. HEIDEMAN: Thank you. And as to the anticipated
24 90D, we would move that into evidence in advance -- in
25 anticipation of receiving it so that it's already in evidence

1 since it's been testified to.

2 THE COURT: That's fine.

3 (Plaintiff Exhibit No. 90D

4 received into evidence.)

5 MR. HEIDEMAN: Thank you. And similarly, going back
6 for just a moment to Ms. Rogenkamp, I believe that the exhibit
7 sticker hers will bear would be 91C being the supplement, and we
8 would move 91C in advance subject to its receipt and filing.

9 THE COURT: It'll be so ordered.

10 (Plaintiff Exhibit No. 91C

11 received into evidence.)

12 MR. HEIDEMAN: Thank you. And as to Mr. Baker, may it
13 please the Court, that will bear an exhibit sticker of
14 Plaintiff's Exhibit 92C for that supplement. And at this time
15 we would move Exhibit 92C into evidence in anticipation of
16 receiving that for filing with the court reporter.

17 THE COURT: Admitted.

18 (Plaintiff Exhibit No. 92C

19 received into evidence.)

20 MR. HEIDEMAN: Thank you very much.

21 THE COURT: You're welcome.

22 BY MR. HEIDEMAN:

23 Q. Before I go, Dr. Markham, to your testimony regarding the
24 Certain Underwriters, since you've also come prepared to testify
25 about that, let me ask you if you have anything further about

1 Jackie Nink Pflug to add other than what we have covered thus
2 far.

3 A. I do not. I think the report has been explained.

4 MR. HEIDEMAN: Thank you, Your Honor.

5 THE COURT: Thank you. I have nothing.

6 MR. HEIDEMAN: Thank you very much. Then may we
7 proceed to the Certain Underwriters testimony?

8 THE COURT: Yes, please.

9 MR. HEIDEMAN: Thank you very much.

10 BY MR. HEIDEMAN:

11 Q. Let me hand you, Dr. Markham, what has been marked as
12 Exhibit 93, and ask if you can identify this document.

13 A. Yes, I can.

14 MR. HEIDEMAN: One moment, please, Your Honor. Just
15 wondering if, since we've been working the court reporter hard,
16 if the court reporter needs a quick break?

17 THE COURT: Five minutes. 10 after, please.

18 (Recess from 4:04 p.m. to 4:14 p.m.)

19 BY MR. HEIDEMAN:

20 Q. Referring to Plaintiff's Exhibit 93 -- may I continue,
21 Your Honor?

22 THE COURT: Please.

23 MR. HEIDEMAN: Thank you very much.

24 BY MR. HEIDEMAN:

25 Q. Is this a report, Dr. Markham, that you have prepared

1 regarding the plaintiffs referred to as Certain Underwriters at
2 Lloyds of London?

3 A. It is.

4 Q. Does this report, as distinguished from the others
5 regarding the individuals who were killed or injured, does this
6 relate to what issues, sir?

7 A. This relates to the losses experienced by underwriters who
8 insured the aircraft that was destroyed in the course of the
9 hijacking.

10 Q. And in preparing these reports, have you had the
11 opportunity to be provided with information that is contained in
12 the various exhibits, Your Honor, that were moved into evidence,
13 being the affidavits of the Certain Underwriters related
14 plaintiffs, the six affidavits?

15 THE COURT: I understand.

16 MR. HEIDEMAN: Thank you.

17 BY MR. HEIDEMAN:

18 Q. Have you utilized in your report information gleaned from
19 the people who have provided affidavits on behalf of the Certain
20 Underwriters?

21 A. Yes, I have.

22 Q. Thank you very much. So please tell the Court as to
23 paragraph 1 what you evaluated and then go to the issue of the
24 loss of the aircraft.

25 A. I evaluated both the loss of the aircraft and accumulated

1 interest on that sum, since the loss and -- excuse me -- since
2 the loss settlement, and also the bills for the loss surveyors
3 who worked for the underwriters in handling this matter. And
4 then also assigned specific dollar loss amounts to those who are
5 named party plaintiffs in this case.

6 Q. And thank you. And what were the assumptions as to the
7 loss of the aircraft that you have utilized?

8 A. With respect to the aircraft, the underwriters agreed to
9 pay \$14 million for the loss on January 16, 1986.

10 MR. HEIDEMAN: Pause for a moment, please.

11 Your Honor, I represent to the Court that that is included in
12 the testimony in one or more of those six affidavits.

13 THE COURT: I understand.

14 MR. HEIDEMAN: Thank you.

15 BY MR. HEIDEMAN:

16 Q. Number 2, please.

17 A. Number 2, that the salvage of the aircraft produced a gross
18 sale figure of \$3,502,033 on April 28, 1987, and that 10 percent
19 of that was owed to the government of Malta, resulting in net
20 salvage of 3,151,830 U.S. dollars on April 28, 1987.

21 Q. Thank you. And point 3?

22 A. Point 3, I compounded interest on an annual basis, in other
23 words, just once a year.

24 Q. All right. And then you have attached a Table 1. Would
25 you like to go through that now before you get to the issue of

1 the loss surveyors' bills, or would you like to cover that
2 first?

3 A. We can talk about the aircraft first.

4 Q. All right. Shall we turn to Table 1, being page 3 of your
5 report at Exhibit 93?

6 A. Correct. Table 1 begins, chronologically speaking, on
7 January 16, 1986, the date that the underwriters agreed to the
8 loss settlement of \$14 million. At that point, there was an
9 obligation of \$14 million by those who were ultimately
10 responsible for this loss. So that amount was established on
11 that date.

12 The prime interest rate, which is the second column shown
13 in Table 1, is based on published statistics from the Federal
14 Reserve Bank and the economic indicators report put out by the
15 President's Council of Economic Advisers. That rate is subject
16 to change at irregular intervals, but you can have annual
17 averages, which are the basis for that column of numbers, and
18 that is what is published by the Council of Economic Advisers
19 and the Federal Reserve Bank.

20 So the indicated prime interest rates are annual averages
21 for a number that is subject to irregular changes at different
22 times.

23 In any case, the prime rate that applied in each year was
24 applied to the outstanding obligation, the principal amount, and
25 that generated an amount of interest owed on that principal.

1 And you add them together and you end up with a figure for the
2 obligation at the end of the period. So for example in 1986,
3 started with \$14 million. On \$14 million at 8.33 percent, there
4 would be \$1,118,274 of interest owed. And you add them together
5 and you have \$15,118,274 owed by the end of 1986. That figure
6 carries over to the beginning of 1987 and so on.

7 The only wrinkle in these calculations is that in 1987 I
8 had to calculate the interest up to the date the salvage was
9 realized, in other words, up to April 28, based on the figure
10 \$15,118,274. Then after April 28, subtracted out the salvage of
11 \$3,151,830. I should refer to that as the net salvage. And
12 then computed the remainder of the interest for 1987 based on
13 that lower figure.

14 So the overall interest figure for 1987 represents 8.21
15 percent applied first to the \$15 million number, and then for
16 the portion of the year after April 28, applied to that figure
17 minus the net salvage. And that interest figure is added and
18 salvage is taken out to get to the obligation at the end of
19 1987, \$13,031,836.

20 Thereafter, it's straightforward. In other words, there's
21 no more salvage to deal with. It just is a figure that begins
22 at one point at the start of a year, interest is accrued based
23 on the prime rate. You have then an obligation that's
24 outstanding by the end of the year. That end-of-year figure
25 carries forward to the beginning of the next year, and so on and

1 so on, until we get to 2010, where I ran the numbers through
2 April 30 of this year and then stop the analysis.

3 The grand total by the time you get to April 30, 2010 is
4 \$61,341,296.

5 Q. Thank you very much. I only have one question. You
6 testified about it. I want to be sure it's clear. On Table 1,
7 the line 1987, the obligation at the start of the period is the
8 same as the obligation at the end of the previous period, being
9 \$15,118,274. From that amount you have deducted salvage but
10 added to that amount the interest in the next column of
11 \$1,065,392, correct?

12 A. That is correct.

13 Q. Tell the Court exactly the amount that was deducted in
14 salvage right there on that line in Table 1.

15 A. That was the net salvage figure. \$3,151,830.

16 Q. 3 million, 100 --

17 A. And 51,830.

18 Q. All right. And so that was fully deducted in year 1987?

19 A. Correct.

20 Q. And that's why there's a drop in the obligation at the end
21 of 1987 from the previous year, 1986?

22 A. Correct.

23 Q. And thereafter you grow it only by the prime interest rate,
24 using the public statistics from the Federal Reserve to which
25 you've already testified; is that correct?

1 A. That is correct.

2 Q. So your concluding number of the obligation after first
3 deducting the salvage value, but adding accrued interest at the
4 prime rate, is \$61,341,296. Is that correct?

5 A. That is correct.

6 Q. Thank you very much. Turn, please, now to page 2 of your
7 report, and share with the Court your testimony regarding the
8 loss surveyors' bills and tell the Court what that means.

9 A. Correct. The underwriters in this case had to employ loss
10 survivors, who are commonly known as loss adjustors in the
11 United States. The term "loss surveyor" applies typically to
12 aircraft and ship hull losses.

13 In any case, they had to handle this matter for the
14 underwriters, in other words, reach a settlement with the
15 insured, and then deal with the salvage, and of course in this
16 case also deal with the government of Malta. So this was a very
17 labor-intensive operation and it generated bills from two
18 different loss surveyors.

19 Q. Are those reflected on the Tables 2 and 3?

20 A. That is exactly what Tables 2 and 3 are about. Table 2 is
21 the loss surveyor bill from Beaumont & Son. It was initially
22 presented at 36,848.86 British pounds on June 11, 1987. And I
23 converted that amount to U.S. dollars on that date, and that
24 converts to 61,113.83 U.S. dollars.

25 Similarly, Table 3 is the loss surveyor bill from Lloyds

1 aviation department. Initially 87,036.58 British pounds,
2 presented on the 24th of July of 1987, converted on that date to
3 139,580.56 U.S. dollars.

4 Q. And now let's look actually at Table 2 itself. The
5 obligation you're beginning with on Table 2 for the loss
6 surveyor bill for Beaumont & Son is \$61,114, being the converted
7 rate from British pounds.

8 A. That's correct.

9 MR. HEIDEMAN: And I proffer to the Court that in one
10 of the exhibits is an affidavit that's already in evidence from
11 one of the lawyers involved, that under the policy they're
12 entitled to recover costs, attorneys' fees, and interest from
13 date of loss through date of judgment. And then either that
14 affidavit or another affidavit indicates they're entitled to
15 also recover attorneys' fees for cost of collection, and that
16 would include of course from date -- for the amount of the
17 judgment, plus interest on the judgment, plus the cost of
18 attorneys' fees incident to collection.

19 And one of the affidavits, I proffer to the Court,
20 indicates that it's his opinion that the amount of those
21 attorneys' fees reasonably would be set at 33-1/3 percent of the
22 cost of the amount of the judgment to be collected, plus of
23 course any actual costs and expenses incurred. I believe all
24 those things are referenced in a combination of the six
25 affidavits that have been filed.

1 THE COURT: I understand.

2 MR. HEIDEMAN: Thank you, Your Honor.

3 BY MR. HEIDEMAN:

4 Q. Returning now therefore to Table 2. Just on the loss
5 surveyor bill for Beaumont & Son, when you start at 61,114, the
6 interest factor you've used again is the prime rate; is that
7 correct?

8 A. Correct. These are the same interest rates as in Table 1.
9 It's the same prime rate.

10 Q. When you carry that down to April 30, 2010, it's \$300,006;
11 is that correct?

12 A. Correct.

13 Q. And on Table 3, you start with an obligation having been
14 converted from British pounds of \$139,581; is that correct?

15 A. Correct.

16 Q. You grow it with the prime rate using the same factors; is
17 that correct?

18 A. Correct.

19 Q. And then as of April 30, 2010, it would be \$680,656?

20 A. That is correct.

21 Q. And neither of those items include interest on a go-forward
22 basis after judgment, nor do they include the costs of
23 collection, nor attorneys' fees that may be incurred incident to
24 collection as the Court may determine to reasonably award in
25 this case; is that correct?

1 A. That is correct.

2 Q. Thank you. Returning now from Table 3 to your report, does
3 that complete all of your testimony under the section called
4 "Loss surveyors' bills" on page 2?

5 A. Well, the two bills together as of April 30, 2010, total
6 \$980,662.

7 Q. Thank you very much. Now, on the allocation of damages
8 section, please, could you explain that?

9 A. Certainly. The aircraft loss and the loss surveyor bills
10 together total \$62,321,958. And in Table 4 I allocate that to
11 named party plaintiffs in this case.

12 Q. And that's in accordance with the affidavits that are in
13 evidence now from Mr. Ian Durrant, the latter one being Exhibit
14 94, the first one from Mr. Durrant I believe is 84. So based
15 upon Mr. Ian Durrant's affidavits in evidence as Exhibits 84 and
16 94, you have done this calculation; is that correct?

17 A. That's correct.

18 Q. And can you explain Table 4 to the Court, please?

19 A. Certainly. The total loss was covered 75.55 percent by a
20 group that's being referred to as Certain Underwriters of
21 Lloyds. And it was covered 8.5 percent by La Reunion Aerieenne,
22 a French company. The underwriters that comprised the Certain
23 Underwriters of Lloyds who are party plaintiffs are listed below
24 that term. And we see under the column "Subshare" the
25 percentage of the 75.55 percent that each of these various

1 underwriters had.

2 So the total share reflects a multiplication of 75.55
3 percent times the respective subshare, and gives you that column
4 with a great number of decimal places called total share. And
5 that total share figure is applied against the \$62,321,958
6 figure of total loss, to arrive at the respective loss for each
7 of the named party plaintiffs in this case.

8 Q. Thank you very much. So this Table 4 breaks down for the
9 Court among the named plaintiffs the \$62,321,958, for share
10 percentages, 8.5 percent for La Reunion; is that correct?

11 A. That's correct.

12 Q. And we represent to the Court that the La Reunion affidavit
13 is in evidence. That's the one, Your Honor, that we're awaiting
14 the substitution in of the original.

15 And the other amount broken down under Certain Underwriters
16 of Lloyds of London is 75.55 percent; is that correct?

17 A. There was a total of 75.55 percent from all of that
18 collective group of Certain Underwriters at Lloyds. Not all of
19 them are named plaintiffs. So the group that is listed here is
20 not exhaustive of the 75.55 percent.

21 Q. All right. So the total loss is 62,321,958, to be
22 allocated among the various actual insurers, underwriters,
23 reinsurers or the people who today hold in their names, as
24 successors in interest or assignees, the assignments or the
25 direct interest or the subsequent or successor interest in those

1 actual claims; is that correct?

2 A. Correct.

3 Q. Now, as it relates to -- if you total 75.55 and 8.5, what
4 do you get, sir?

5 A. That totals 84.05 percent.

6 Q. And then not listed here are the individual people who are
7 entitled to receive the additional, would it be 15.95 percent,
8 more or less, of information to be determined and provided to
9 the Court; is that correct?

10 A. Correct. I don't know anything about that additional -- I
11 don't know if the insured was even reinsured for those. I
12 simply don't even know.

13 Q. Thank you. In addition to reviewing what Mr. Durrant said
14 in his affidavits, I understand from Mr. McAllister that you
15 also have actually reviewed the actual source documents relating
16 to the insurance contract documents, the original documents,
17 including the pages that indicate who were the insurers, the
18 reinsurers, the underwriters, and what percentage of the loss
19 each of them had insured and therefore were liable for and
20 therefore have incurred as a result of that liability. Is that
21 correct?

22 A. Yes, I did.

23 Q. Thank you. So you believe to the extent you've been able
24 to list the names here, that everything listed here is accurate,
25 there are some additional people that are supposed -- some

1 additional people or percentages to be listed, but for which you
2 haven't been given the information; is that correct?

3 A. That's correct.

4 Q. Thank you very much. Also, earlier in the testimony there
5 was a reference to Exhibit 94, being one of Mr. Durrant's
6 affidavits. It's the one dated yesterday that we received. And
7 I understood that there was a typographical error in paragraph 9
8 of that, and that you had in your documents corrected that
9 particular piece of information, and that it relates to the risk
10 of Switzerland Insurance Company. "Swiss held 10 percent share
11 of the risk held by English & American (3.635 percent of the
12 75.55 percent, which totals .0635 percent)," which I understand
13 is a typo. And can you correct that for us?

14 A. Yes. From looking at the original slips from the Lloyds
15 underwriting floor, we show that the overall share of English &
16 American that is correctly cited here as 3.635 percent of the
17 75.55 percent, that 3.635 share was itself split up 70 percent
18 to -- excuse me, 65 percent to English & American, 20 percent to
19 Nippon, 10 percent to Switzerland, which is correctly stated
20 here, and 5 percent to National Insurance New Zealand.

21 What's incorrect in paragraph 9 is that Mr. Durrant
22 correctly says that Switzerland Insurance Company has 10 percent
23 of the English & American share, but he then commits a typo in
24 reporting what that number would come out to be. 10 percent of
25 3.635 is obviously .3635. And that is how I've reported it in

1 Table 4. Mr. Durrant I think just commits a typo and reports it
2 as .0635. So the correct number there is .3635 percent, as
3 indicated in Table 4.

4 Q. So that the record is clear, I've taken a copy of
5 Mr. Durrant's affidavit, in evidence, Your Honor, as Exhibit 94.
6 I've put an exhibit sticker on a fresh copy of that as 94A.

7 And I'm going to hand you, Dr. Markham, a copy of 94 now
8 marked 94A, and ask you to take this blue pen and make the
9 correction with your initials as you believe it should be, based
10 upon your actual review of the documentation.

11 (The witness complies.)

12 A. Okay. I've done so.

13 Q. Thank you.

14 MR. HEIDEMAN: At this time, Your Honor, we will move
15 Exhibit 94A also into evidence so that the record is clear on
16 that typographical correction.

17 THE COURT: It will be admitted.

18 (Plaintiff Exhibit No. 94A
19 received into evidence.)

20 MR. HEIDEMAN: Thank you very much.

21 BY MR. HEIDEMAN:

22 Q. Dr. Markham, do you have any further opinions relating to
23 the losses of Certain Underwriters at Lloyds of London about
24 which you have not already testified here today?

25 A. No. I believe the report has been fully explained.

1 Q. Thank you very much.

2 MR. HEIDEMAN: Your Honor, does the Court have any
3 questions?

4 THE COURT: No. I think I understand the analysis.

5 MR. HEIDEMAN: Thank you very much. One moment
6 please, Your Honor.

7 (Counsel conferring.)

8 MR. HEIDEMAN: So that the record is clear, Your
9 Honor, we would at this time move Exhibit 93 into evidence,
10 being Dr. Markham's report as to Certain Underwriters of Lloyds
11 of London and their losses.

12 THE COURT: It will be admitted.

13 (Plaintiff Exhibit No. 93
14 received into evidence.)

15 MR. HEIDEMAN: Thank you very much. I have nothing
16 further of Dr. Markham. I would like to make sure that if
17 there's any exhibit not already moved into evidence during these
18 first four days of trial, that we can perhaps address that with
19 the clerk so that if we missed something we can, as we proceed
20 to getting ready to finish the trial, we can be sure everything
21 has been admitted.

22 THE COURT: That's a very good idea.

23 MR. HEIDEMAN: Thank you very much.

24 THE COURT: And we're concluded for the day?

25 MR. HEIDEMAN: As the Court determines.

1 THE COURT: Thank you very much, Doctor.

2 THE WITNESS: Thank you.

3 (The witness steps down.)

4 THE COURT: 9:30?

5 MR. HEIDEMAN: Yes. Did the Court want me to do
6 anything further today or wait till the morning?

7 THE COURT: How much do you have left to do before
8 your closing argument?

9 MR. HEIDEMAN: I have the Certain Lloyds of London
10 Underwriter affidavits that have been -- that are now in
11 evidence. In addition, I have some brief State Department
12 matters that we want to cite to the Court for which I have the
13 written documents.

14 THE COURT: You think we can finish that by 5:00?

15 MR. HEIDEMAN: Yes.

16 THE COURT: Then let's go.

17 MR. HEIDEMAN: Thank you.

18 THE COURT: I'm teaching tonight at the D.C. bar so I
19 have to get there.

20 MR. HEIDEMAN: May it please the Court, we have three
21 matters, official documents from the United States Department of
22 State. In toto they are this whole binder. I hate, quite
23 candidly, to further encumber the Court record, because the
24 amount of references is very limited to very few words. If I
25 may recite into the record, with the Court's permission, in lieu

1 of putting the documents in, since they're all from the U.S.
2 Department of State, if I may recite into the record the
3 pertinent parts with page citation numbers and the document
4 number, I believe it might be in the interest of --

5 THE COURT: Okay. Let's do that, please.

6 MR. HEIDEMAN: Thank you. First, Your Honor, dated
7 February 17, 2010, U.S. Department of State, from the Bureau of
8 Near Eastern Affairs, in the document called "Background Note:
9 Syria," there is a section on U.S.-Syria relations. I repeat
10 that this is a February 17, 2010, document. I recite to the
11 Court from the second paragraph under "U.S.-Syrian relations,"
12 and I quote as follows:

13 "Syria has been on the U.S. list of state sponsors of
14 terrorism since the list's inception in 1979. Because of its
15 continuing support and safe haven for terrorist organizations,
16 Syria is subject to legislative mandated penalties, including
17 export sanctions and ineligibility to receive most forms of U.S.
18 aid or to purchase U.S. military equipment."

19 Later in the same paragraph it references the fact, and I'm
20 paraphrasing, about Abu Nidal, it references that Syria
21 "expelled the Abu Nidal organization from Syria." And that
22 occurred -- Abu Nidal was expelled, I share with the Court, in
23 1987. That's the context in that paragraph.

24 From this report there's only one other quotation. It's in
25 the next paragraph. Still under the section of U.S.-Syrian

1 relations. This is the 2010 report. And I quote: "Issues of
2 U.S. concern include the Syrian government's failure to prevent
3 Syria from becoming a major transit point for foreign fighters
4 entering Iraq, its refusal to deport from Syria former Saddam
5 regime elements who are supporting the insurgency in Iraq, its
6 ongoing interference in Lebanese affairs, its protection of the
7 leadership of Palestinian rejectionist groups in Damascus, its
8 deplorable human rights record, and its pursuit of weapons of
9 mass destruction."

10 The last sentence reads on, "In May 2004 the U.S.
11 government, pursuant to the provisions of the Syrian
12 Accountability and Lebanese Sovereignty Restoration Act, imposed
13 sanctions on Syria which banned nearly all exports to Syria
14 except food and medicine."

15 The second matter, Your Honor, relates to the United States
16 Department of State publication from the Office of the
17 Coordinator of Counterterrorism released April 2009, and it is
18 the "Country Reports on Terrorism, 2008."

19 And may I quote from that, Your Honor, and read it into the
20 record?

21 THE COURT: Sure.

22 MR. HEIDEMAN: On page 184 is a section specifically
23 on Syria. And I quote: "Syria was designated in 1979 as a
24 state sponsor of terrorism. Syria provided political and
25 material support to Hezbollah" -- and that is spelled in this

1 report as H-I-Z-B-A-L-L-A-H -- "and allowed Iran to use Syrian
2 territory as a transit point for assistance to Hezbollah.
3 Hamas" -- that's in all caps, H-A-M-A-S, comma -- "Palestine
4 Islamic Jihad (PIJ), the Popular Front for the Liberation of
5 Palestine (PLFP), and the Popular Front for the Liberation of
6 Palestine-General Command (PFLP-GC), among others, based their
7 external leadership within Syria's borders." On page 184.

8 On page 185, it continues... "groups with leaders in Syria
9 have claimed responsibility for deadly anti-Israeli terrorist
10 attacks."

11 "President Bashar, al-Asad," small A-L - A-S-A-D,
12 "continued to express public support for Palestinian terrorist
13 groups. Hamas Politburo head and *de facto* leader Khalid,"
14 K-H-A-L-I-D, "Meshal," M-E-S-H-A-L, "and his deputies continued
15 to reside in Syria. Syria provided a safe haven for Meshal and
16 security escorts for his motorcades. Meshal's use of the Syrian
17 Ministry of Information as the venue for press conferences this
18 year" -- again, that's 2008 country report -- "could be taken as
19 an endorsement of Hamas's message. Media reports indicated
20 Hamas used Syrian soil to train its militant fighters."

21 Continuing, a new quote. "The Syrian government allowed a
22 Palestinian conference organized by Hamas, PFLP-GC, and PIJ to
23 occur in January and another Hamas-organized conference
24 reportedly funded by Iran to take place in November."

25 Next paragraph. "Highlighting Syria's ties to the world's

1 most notorious terrorists, Hezbollah operations chief Imad,"
2 I-M-A-D, "Mugniyah," M-U-G-N-I-Y-A-H, "perished in a February 12
3 car bombing near Syrian military intelligence headquarters in
4 the Damascus neighborhood of Kafr Sousa," S-O-U-S-A.

5 It goes on to describe the atrocities of Mugniyah, saying,
6 "Among other atrocities, Mugniyah was wanted in connection with
7 the 1983 bombings of the Marine barracks and the U.S. embassy in
8 Beirut, which killed over 350." "Despite initial attempts to
9 cover up the incident, the Syrian government reluctantly
10 acknowledged some days later that one of the world's most wanted
11 terrorists had been present and died on Syrian soil."

12 Continuing on the bottom of page 185. "Throughout the year
13 Syria continued to strengthen ties with fellow state sponsor of
14 terrorism, Iran."

15 And lastly from this report on page 186: "Syria remained a
16 source of concern regarding terrorist financing."

17 And that ends the citations from that second State
18 Department document. And the third and last one, if I may.

19 THE COURT: Please.

20 MR. HEIDEMAN: From the U.S. Department of State
21 documents obtained publicly from a recent speech on April 29,
22 2010, by Secretary of State Hillary Rodham Clinton. Reading
23 only in pertinent part: "We have spoken out forcefully about
24 the grave dangers of Syria's transfer of weapons to Hezbollah,"
25 which here is spelled H-E-Z-B-O-L-L-A-H. "We condemn this in

1 the strongest possible terms and have expressed our concerns
2 directly to the Syrian government. Transferring weapons to
3 these terrorists -- especially longer-range missiles -- would
4 pose a serious threat to the security of Israel. It would have
5 a profoundly destabilizing effect on the region. And it would
6 absolutely violate UN Security Council resolution 1701, which
7 bans the unauthorized importation of any weapons into Lebanon."

8 And the last quote from the same document. "We do not
9 accept such provocative and destabilizing behavior -- nor should
10 the international community. President Assad," there spelled
11 A-S-S-A-D, "is making decisions that could mean war or peace for
12 the region. We know he's hearing from Iran, Hezbollah, and
13 Hamas." "It is crucial that he also hear directly from us, so
14 that the potential consequences of his actions are clear."

15 And that concludes the recitation into the record of these
16 three recent State Department documents.

17 THE COURT: Thank you very much.

18 MR. HEIDEMAN: Thank you, Your Honor.

19 THE COURT: 9:30 tomorrow morning.

20 (Proceedings adjourned at 4:53 p.m.)
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I N D E X

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EXHIBITS RECEIVED

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CERTIFICATE

I, BRYAN A. WAYNE, Official Court Reporter, certify that the foregoing pages are a correct transcript from the record of proceedings in the above-entitled matter.

BRYAN A. WAYNE