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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

RECORD NO. 740507

IN THE SUPREME COURT OF VIRGINIA

AT RICHMOND

JUANITA K. SURFACE, ADMINISTRATRIX
OF THE ESTATE OF SANDRA JANE SURFACE,
DECEASED

v.

PEGGY S. JOHNSON, ADMINISTRATRIX
OF THE ESTATE OF J. FRED JOHNSON,
DECEASED

From the Circuit Court of the County of Roanoke

A P P E N D I X

John H. Kennett, Jr.
133 Kirk Avenue, Southwest
Roanoke, Virginia 24002
Counsel for Appellant

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IN THE SUPREME COURT OF VIRGINIA

JUANITA K. SURFACE, Administratrix of the Estate of Sandra Jane Surface, Deceased, Appellant	:	
v.	:	RECORD NO. 740507
PEGGY S. JOHNSON, Administratrix of the Estate of J. Fred Johnson, Deceased, Appellee	:	

A P P E N D I X

ORDER GRANTING WRIT OF ERROR ON OCTOBER 15, 1974

Upon the petition of Juanita K. Surface, administratrix of the estate of Sandra Jane Surface, deceased, a writ of error is awarded her to a judgment rendered by the Circuit Court of Roanoke County on the 29th day of January, 1974, in a certain motion for judgment then therein depending, wherein the said petitioner was plaintiff and Peggy S. Johnson, administratrix of the estate of J. Fred Johnson, deceased, was defendant; no bond being required.

A copy,

Testee:

Howard G. Turner

Clerk

(1) MOTION FOR JUDGMENT FILED ON MAY 7, 1973, RECORD PAGES ONE THROUGH THREE.

The Plaintiff, JUANITA K. SURFACE, moves the Circuit Court of the County of Roanoke for a judgment against the Defendant, PEGGY S. JOHNSON, ADMINISTRATRIX OF THE ESTATE OF J. FRED JOHNSON, DECEASED, for the sum of TWENTY-FIVE THOUSAND FIVE HUNDRED DOLLARS ($25,500.00), with interest thereon from the date of judgment until paid, together with the cost of this action, all of which is justly due and owing from the Defendant to the Plaintiff by reason of the following:

(1) That by order of the Clerk of the Circuit Court of the City of Salem on June 7, 1971, Juanita K. Surface qualified as Administratrix of the Estate of Sandra Jane Surface, Deceased; that by statute, the Plaintiff is entitled to maintain this action alleging the death of her deceased on May 27, 1971 was caused by the wrongful or negligent act of J. Fred Johnson toward her deceased and also the statute provides such right of action survives the death of the wrongdoer, J. Fred Johnson, and may be maintained against his administrator; and that by order of the Clerk of this Court on June 7, 1971, Peggy S. Johnson qualified as Administratrix of the Estate of J. Fred Johnson, Deceased.

(2) That on May 27, 1971 at approximately 11:05 P. M., the Defendant's deceased was the pilot or operator of a Cessna 177 single engine airplane in which Carolyn Hundley Johnson, Riley Muriel Thompson and the Plaintiff's deceased were guest passengers; and that during this time, the Defendant's deceased owed the Plaintiff's deceased and the other passengers a duty to exercise at least slight care and caution for their safety as passengers in the airplane.

(3) That in wanton and gross and complete disregard of his duty to exercise at least slight care and caution for the safety of the Plaintiff's deceased, the Defendant's deceased: (a) was operating the airplace without a pilot's license which would have authorized him to operate an airplane with guest passengers but only with a student's license which only authorized him to operate an airplane "solo" or by himself without passengers; (b) was operating the airplane with the Plaintiff's deceased as a passenger when he was not capable through training or experience to operate an airplane; (c) was flying or operating the airplane from Woodrum Airport near Roanoke, Virginia, en route to an airport near Beckley, West Virginia, flying across Craig County, Virginia, near New Castle, Virginia, when weather conditions were such that it was dangerous to fly or operate an airplane along such route of travel

and the information concerning such hazardous weather conditions was available at the U. S. Weather Bureau station at Woodrum Field and available to all pilots who should inquire before boarding an airplane; (d) was flying from Woodrum Field to an airport near Beckley, West Virginia across Craig County, Virginia without filing a flight plan; (e) was flying or operating the airplane with alcoholic impairment of efficiency and judgment even though the weight of alcohol in his blood was not necessarily sufficient for the Defendant's deceased to be intoxicated or for it to be apparent to others that he had been imbibing; and (f) was flying or operating said airplane in a grossly reckless manner technically referred to by the investigators of the National Transportation Safety Board as "spatial disorientation".

(4) That as a direct and proximate result of the gross negligence by the Defendant's deceased toward the Plaintiff's deceased as aforesaid, the Defendant's deceased crashed said airplane into the ground near New Castle, Virginia on May 27, 1971 at approximately 11:05 P. M. killing the Plaintiff's deceased and also killing himself and the other two passengers.

(5) That the measure of damages to which the Plaintiff is entitled to recover from the Defendant consists of

Twenty-Five Thousand Dollars ($25,000.00) for solace to be distributed among the parents and brothers and sisters of the Plaintiff's deceased and Five Hundred Dollars ($500.00) for actual funeral expenses.

WHEREUPON, the Plaintiff prays for judgment against the Defendant for the sum of Twenty-Five Thousand Dollars ($25,000.00), with interest thereon from the date of judgment until paid, together with cost of this action.

JUANITA K. SURFACE
Administratrix of the Estate of
Sandra Jane Surface,
Deceased
BY COUNSEL

(2) RESPONSIVE PLEADING FILED MAY 17, 1973, RECORD PAGES TWELVE THROUGH THIRTEEN.

Comes now the defendant, Peggy S. Johnson, Administratrix of the Estate of J. Fred Johnson, deceased, for her answer to the motion for judgment states the following:

1. The defendant is not advised concerning the truth of Paragraph 1 and accordingly requires strict proof thereof, except to state that Peggy S. Johnson is the duly qualified Administratrix of the Estate of J. Fred Johnson, deceased.

2. The allegations of Paragraph 2 of the motion for judgment are denied and this defendant requires strict proof that her decedent was the actual pilot or

operator of the aircraft therein described.

3. The allegations of Paragraph 3 of the motion for judgment are denied, except that this defendant acknowledges that her decedent was an occupant of the plane which crashed and that all occupants were killed, including the plaintiff's decedent.

4. That the allegations of Paragraph 4 of the motion for judgment are denied, except the defendant admits that the plaintiff's decedent died in the crash of the plane at the date and time alleged.

5. That the allegations of Paragraph 5 of the motion for judgment are denied, this defendant requiring strict proof of all matters concerning relationship to the plaintiff's decedent and damages suffered.

And now having fully answered, this defendant prays that the motion for judgment may be dismissed with her reasonable costs and attorney's fees in this behalf expended.

PEGGY S. JOHNSON,
Administratrix of the Estate of
J. Fred Johnson, Deceased

By Counsel

(3) FINAL JUDGMENT ENTERED ON JANUARY 29, 1974, RECORD PAGE TWENTY SIX.

This day came the plaintiff and defendant, in person,

and by counsel, and responsive pleadings have been filed herein, the parties announced ready for trial. There came also a panel of thirteen qualified jurors, drawn and summoned in the manner prescribed by law, from the list of which counsel for the plaintiff and defendant, each struck off alternately three of said jurors leaving the following as the Jury for the trial of the case, to-wit: Bernice M. Adkins, Tommy Allen Aker, George C. Burch, George W. Sandridge, Elmer J. Haga, Edward Gregory and George L. McFarland, who were duly sworn well and truly to try the issue joined and a true verdict to render according to the law and the evidence.

At the conclusion of the plaintiff's evidence, the defendant, by counsel, moved the Court to strike the evidence of the plaintiff for reasons assigned at bar and contained in the record herein and enter up summary judgment on behalf of the defendant, which motion, the Court, after hearing argument of counsel, doth sustain said motion, to which ruling of the Court, the Plaintiff, by counsel duly excepted.

It is, therefore, ADJUDGED and ORDERED that the Jury be excused from further deliberation herein. And it is still further ADJUDGED and ORDERED that this case, be, and the same, hereby, is dismissed from the docket of this Court.

Enter: January 29, 1973

F. L. Hoback, Judge

(4) NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR FILED ON FEBRUARY 28, 1974, RECORD PAGES TWENTY-SEVEN AND TWENTY-EIGHT.

TO THE HONORABLE ELIZABETH W. STOKES, CLERK

PLEASE TAKE NOTICE that the undersigned appeals this civil action at law in which final judgment was entered on January 29, 1974 and intends to apply to the Supreme Court of Virginia for a writ of error and supersedeas in regard to the aforesaid judgment; a transcript of the testimony and other incidents of the trial is to be hereafter filed; and for the purpose of this appeal, the undersigned assigns the following as error, referring to Peggy S. Johnson, Administratrix etc. as "Defendant", the undersigned as "Plaintiff" and the Court as the "trial court";

(1) The granting by the trial court of the motion of the Defendant to strike the evidence of the Plaintiff and to enter summary judgment on behalf of the Defendant, made by the Defendant at the conclusion of the Plaintiff's evidence.

JUANITA K. SURFACE,
Administratrix of the Estate
of Sandra Jane Surface, deceased

By John H. Kennett, Jr., Her
Counsel

(5) TRANSCRIPT FILED ON MARCH 25, 1974.

(All portions of transcript included in the Appendix occurred during trial on January 29, 1974 and the transcript page numbers appear in the top right hand corner.)

BY MR. KENNETT: Trooper Moses. [Page Five, Line Eight]

E. G. MOSES, a witness of lawful age, who, after having been first duly sworn, testified as follows:

DIRECT EXAMINATION
BY MR. KENNETT:

Q. Please state your name?

A. E. G. Moses, State Police Trooper, New Castle.

Q. How long have you been a State Trooper?

A. Sixteen -- seventeen years.

Q. Ah - - what - - where were you stationed on May 27th, 1971?

A. At New Castle.

Q. Ah --- Did anything happen in regard to an airplane accident on that day?

A. Yes, it did.

Q. Tell us --- tell the Court and the Jury what happened?

A. Well, this aircraft they'be been talking about crashed very near my home, and I was the first person on the scene and in-

vestigated it.

Q. All right. - - ah - - - Tell us what happened when you got to the scene.

A. Well, all the occupants were killed - - ah - - obviously dead.

Q. All right. And - - ah - - just describe where they were and so forth?

A. Dr. Johnson was occupying the left seat. This plane had four seats, two in the front and two in the back, and Dr. Johnson was in the left front - - ah - - Mr. Thompson was in the right front, and the two women were in the back. Carolyn Johnson was in the right rear, and the Surface girl was in the left rear.

Q. Were they thrown from the plane, or were they - - strapped?

A. They were not.

Q. Were they - - - they had seat belts on?

A. They were.

Q. Ah - - - Were you able to identify the bodies?

A. I called the - - Dr. W. F. Mitchell, who is the Virginia State Medical Examiner for Craig County, to the scene, and he supervised the removal of the bodies from the aircraft, and also he took - - - ah - - identification from each body, and I was able to identify the body on the scene, and they put each one in a separate - - ah - - bag, and I wrote the name on it and put it with the - - the body according to what Dr. Mitchell said. He identified each person at

the scene.

Q. And you did, too, I mean with him?

A. I watched him. I held the light for him.

Q. All right - - ah - - Could - - - what were the weather conditions at the time?

A. Well this happened at Ten-o-Four p.m., and I was called at approximately ten minutes after Ten. - - Ah - - I was inside of my home, and I didn't hear the aircraft. I was called by the Sheriff's Office. Ah - - A citizen had called them, and it was just a matter of making the two telephone calls. I dressed and was outside the house within five minutes, enroute to the scene, which was just a couple of miles from my house -- two or three miles. - - Ah - - It was very dark. A summer electric storm was approaching from the West. It was not foggy.

Q. Was that approaching from the way the aircraft - - - craft was flying?

A. The aircraft was flying toward the storm -- from Roanoke. - - Ah - - it was real dark - - ah - - so dark there was no horizon. You could not see a visible horizon - - ah -

BY MR. SMITH: Your Honor, may I interpose an objection. How did you know which way the plane was flying, West or East?

A. I didn't.

BY MR. SMITH: Well I - - I - - I think the officer should state what he knows.

A. Well, I didn't -

BY MR. SMITH: Well -

Q. (Mr. Kennett continuing) Well can you tell from the way it was pointed?

A. No.

BY MR. SMITH: All right, go ahead.

Q. (Mr. Kennett continuing) Well the - - - it was - - - it was in the West direction - - it was a -

A. The storm was in the West.

Q. All right. Go ahead.

A. Ah - - This was a warm night. There was no fog there. - - - Ah - - it was stated earlier there was fog. There was no fog, but - - ah - - a heavy black clouds in the sky. You could not see any stars. It was real dark, and lightning was flashing in the West. It would light up the sky every ten or fifteen seconds - - - would light up the whole area. It was a real dreadful time.

Q. Mister - - - that's - - - that's all.

CROSS EXAMINATION
BY MR. SMITH:

Q. Trooper, did this plane fly into a mountain?

A. No, it didn't.

Q. Was it in an open field?

A. The plane crashed - - ah - - struck a tree, which is on the border line of an open field and some woodland.

Q. And the ground was relatively level?

A. Relatively, yes.

Q. Uh huh.

A. It was hilly around there, but the spot where he hit was

relatively level.

Q. We read about so many planes that fly into our mountains down in that area, but this was in a - - in a relatively level area, is that correct?

A. That's correct.

Q. Now was there anything to indicate to you that he attempted to land the plane, or what?

A. No. From my observations, it appeared he came straight down. There was part of the aircraft in the tree over the aircraft is why I think it came straight down.

Q. Part of it in the tree above where it was located on the ground when you got there?

A. That's correct.

Q. Was the plane completely demolished?

A. Well, you could tell it was an airplane, but it was torn up right bad.

Q. Well, was it a fact that it was hauled away in a pick-up truck?

A. Yes, it was. I don't know what it was hauled in. I think it was hauled away. I didn't get to see that.

Q. Oh, you didn't see that?

A. No, I didn't.

Q. All right. - - Ah - - Did you find - - ah - - ah - - a log book or the plane's log, or anything of that nature in this investigation?

A. I found some papers, but I don't remember what they were or where they were found.

Q. You didn't look at them?

A. It's been too long.

Q. You didn't look at them?

A. I looked at some papers, but I can't say what they were. It's been too long.

Q. All right. What did you do with these papers?

A. What I had was turned over to the F.A.A. Authority.

Q. Do you know which authority?

A. No, I don't. I don't remember that.

Q. And your identification of the - - - of the places occupied by these four people was based on what the coroner of Craig County took from their persons? - - - Is that right?

A. That's right.

Q. And no one of 'em was thrown out of the plane?

A. Dr. Johnson was partially out of the aircraft on the left front side. The rest of them were in the aircraft.

Q. And you say -

A. - - - He was still strapped to the left front seat.

Q. The seat - - - - seating area then was intact, I take it?

A. Basically, except for the left front seat, which was disarranged some. The one he was occupying. However, the belt was still fastened.

Q. Was there any fire?

A. No, it wasn't.

Q. Did you or anyone in your presence make any investigation as to the - - ah - - the - - actual - - ah - - functional parts of the plane to see if there was anything awry like it - - - it might - - have happened in the air rather than on the ground, or was that possible?

A. No, sir. I didn't do that.

Q. You did not do that?

A. Right.

Q. Were you present when any official did that?

A. No, I wasn't.

Q. All right, sir. I think that's all, Your Honor.

BY MR. KENNETT: Thank you.

BY THE COURT: Has everybody finished with the Trooper?

BY MR. KENNETT: Yes, sir.

BY THE COURT: Now, we don't want to excuse him, if you need him. Otherwise, he'll be excused.

BY MR. KENNETT: No. I think - - think it's all right. - - - Thank you sir.

BY THE COURT: You're excused.

WITNESS IS EXCUSED.

BY MR. KENNETT: Your Honor, I want the Court to take judicial knowledge that the pleadings admit that - - ah - - both Sandra Surface and Mr. Johnson were killed in this plane crash.

That is acknowledged by the Defendant in the - - - in the pleadings.

BY THE COURT: Is that correct, Mr. Smith?

BY MR. SMITH: Yes, sir.

BY THE COURT: All right, sir.

BY MR. KENNETT: And they also acknowledge that Mrs. Johnson is the administratrix of - - ah - - Dr. Johnson. - - - - All right. The next witness is - - - ah - - - Mr. Hoke.

FRANKLIN HOKE, a witness of lawful age, who, after having been first duly sworn, testified as follows:

DIRECT EXAMINATION
BY MR. KENNETT:

Q. Please state your name?

A. Franklin Hoke.

Q. What is your occupation?

A. I'm an air traffic control specialist.

BY MR. SMITH: Mister - - may I get your name, please.

A. Franklin Hoke. H O K E.

BY MR. SMITH: Hoke. Thank you.

BY THE COURT: You're an aircraft what? I didn't -

A. Air traffic control specialist, at the - - ah - - FAA Flight Service.

BY THE COURT: Yes, sir.

Q. (Mr. Kennett continuing) At - - at - - at - - at what - - ah - - location?

A. At Roanoke.

Q. Ah - - Woodrum Field?

A. Right.

Q. Ah - - what was - - - what were - - your occupation on - - ah - - May 27, 1971?

A. I was on duty. I worked the day shift, and - - ah - - change of position, but at - - at - - one time during that day I received a call, and - - ah - - the person asked for a weather briefing to Beckley, West Virginia, and I gave -

Q. Was the aircraft flying - - ah - - ah - - to West Virginia identified by number?

A. That's the only thing we have, is the aircraft number.

Q. And what was the aircraft number?

A. Seven One Yankee -- Two Two Seven One Yankee, I believe.

BY MR. SMITH: Your Honor, may I get this straight. You got this from the telephone -- you received the number of this aircraft?

A. That's right.

BY MR. SMITH: Did you know who made the call?

A. Oh, no. Unless I recognize the person's voice, I don't know who it is. They give me a number. That's what I have to go by.

BY MR. SMITH: All right - - - All right, I'll - - - I'll not contest that, Your Honor, at this point.

A. Two Two Seven One Yankee, that's right.

BY MR. KENNETT: Well, we're going to have to tie it in. I mean that - - that was - - to - -- that was his plane.

Q. (Mr. Kennett continuing) What was the number?

A. Two Two Seven One Yankee.

BY MR. SMITH: Does that mean Y?

A. Pardon?

BY MR. KENNETT: N 2271Y.

Q. (Mr. Kennett continuing) All right, and what information did you give to the caller about -- from 2271Y in regard to the weather?

A. Well, specific weather. I can't - - - I don't remember, what I gave him, but during a normal routine briefing you give a pilot the current weather that you have at the time, or, if he's going later you give him the forecasted weather, and if he were going now, I would give him the current weather, plus the forecasted weather, plus any weather reported by pilots aloft, or any - - ah - - indications of malfunction of the FAA equipment. It would be a normal routine briefing.

Q. You don't remember what this briefing was?

A. No, I don't know.

Q. All right. That's all.

BY MR. SMITH: No questions.

BY THE COURT: Is everybody finished with Mr. Hoke?

BY MR. KENNETT: Yes, sir.

BY THE COURT: You're excused, sir.

WITNESS IS EXCUSED.

BY MR. KENNETT: All right, Mr. Perdue.

RICHARD PERDUE, a witness of lawful age, who, after having been first duly sworn, testified as follows:

DIRECT EXAMINATION
BY MR. KENNETT:

Q. Please state your name?

A. My name is Richard Perdue.

Q. And - - ah - - what is your present occupation?

A. I'm a counselor at Virginia Western Community College.

Q. And what was your occupation on May 27, 1971?

A. I was General Manager and Chief Instructor for - - ah - - Air Transport Associates, Woodrum Field.

Q. And what were those duties?

A. Supervising - - ah - - the operation of the flight school and also controlling the flying and teaching flying also.

Q. Ah - - - were you then - - ah - - a flight instructor?

A. Yes, sir.

Q. Are you still one?

A. Yes, sir.

Q. Ah - - - prior to May 27th, 1971, now how long had you been teaching flying at that particular school?

A. Roughly about two years.

Q. Ah - - - do you know - - ah - - J. Fred Johnson?

A. Yes, I knew Fred.

Q. All right, how did you know him?

A. I knew him from flying - - ah -

Q. Well was he a student of yours?

A. Yes, sir.

Q. All right. How long had he been a student?

A. I'd flown - - ah - - twenty - - well, roughly twelve or fourteen hours with Fred -- sixteen hours, but I'd known him over a period of probably four months, something like that, five months.

Q. All right. Now - - ah - - what - - ah - - just tell us something about him. Was he a student, pilot, or what?

A. Fred was a student pilot, yes.

Q. And - - ah - - what is a student pilot. Just explain it to the Jury.

A. Well, basically a student pilot is - - ah - - licensed by the FAA to - - ah - - learn to fly, and upon completion of his solo, he can pilot the aircraft by himself, and - - ah - - make cross country flights by himself, if so endorsed by an instructor on each flight, and - - ah - - after a certain amount of requirements he can get his private license, which would allow him to carry passengers.

Q. All right, and at this time - - ah - - Fred did not have his - - ah - - private license. He was still a student?

A. Still a student, yes, sir.

Q. And you said a student cannot carry passengers?

A. No, sir.

Q. Now, had he been -- you said it - - - well can a student carry passengers?

A. Well, not by FAA requirements, no, sir.

Q. All right. Let's go one step further. Now, had he

soloed yet?

A. Yes, sir.

Q. Had he soloed across country?

A. He was signed off for solo across country with my endorsement in his log book, but I had his log book at the flying school, and I had not endorsed him for that flight.

Q. All right. Let me ask you this - - ah - - was he - - ah - - soloed - - ah - - certified to solo across country at night time?

A. No.

Q. All right. Now, had you had any - - ah - - dealings with Fred this particular day?

A. Yes, sir.

Q. Ah - - what were they?

A. I received a telephone call from Fred - - ah - - requesting that - - ah -

Q. Now this was on May the 27th, '71?

A. The day he was killed, yes, sir.

Q. Go ahead.

A. - requesting that I fly Riley Thompson to Beckley. I had flown Riley to Beckley previously to - - previous to this date for Fred, and so Fred asked me would I take him again.

Q. Let me ask you this. Was - - - as far as you know, was Riley Thompson a pilot then?

A. No, I was going to teach Riley after Fred got his

license. Fred asked me would I do it, and I told him: Yes.

Q. But you hadn't started yet?

A. No, sir.

Q. All right. What about Carolyn Johnson. Was she a pilot?

A. Ah - - no, sir.

Q. So the only one that you were teaching was Fred?

A. Right. The only one I taught. I had taken his wife flying with two of his children by his previous marriage one Sunday. Fred asked me to take 'em flying for him, and I took 'em around Salem and around the Roanoke area, Carvins Cove and back in.

Q. I understand, but from the point of view of -

A. No, she was not.

Q. - - of - - of teaching, the only - - ah - - you - - did you even know Sandra Surface?

A. Just that time I took her flying, I - - with Fred a couple of times at the airport. Just a casual hello. I didn't know her personally.

Q. So. And the only one of the four, Sandra Surface, Riley Thompson - - ah - - ah - - Carolyn Johnson and Fred Johnson, that you were instructing was Fred Johnson?

A. Yes, sir, Fred.

Q. And - - ah - - he was certified to cross the country in the daytime with your permission?

A. Yes, sir.

Q. Why did you require his (sic) permission?

A. Well, it's - - - well, I'll explain the situation. - - Ah - - when you have a student pilot, it's - - ah - - common practice -- it's recommended by the FAA to keep a log book in your flying school and to make a solo across country you have to have a proper weather check. I check the weather with each student to make sure that it is - - ah - - a safe cross country, and I also on - - - have to endorse the log book and let the student take that and land at a airport twenty-five miles from point of departure and get it signed to validate that he has been there on a legal cross country, but I have to endorse the log book stating that he is qualified to take that, had the proper weather check and return the same day.

Q. Now, this particular plane that - - ah - - Fred Johnson had - - ah - - describe it.

A. Well, it was a Cessna. We call it a cardinal - - ah - - single engine aircraft - - ah - - - - ah rumble type, light, single engine aircraft, high -wing type, with - - ah - - the basic instrumentation that you receive from the factory on these kind of aircraft - - ah - -

Q. Well was it - - was it - - ah - - ah - - geared up - - ah - - ah - - a fitted to where you could take instrument flights on it?

A. Ah - - you could take instrument flights on it - - ah - - but it's recommended you have two radios and - - ah - - other equipment is recommended - - ah - - I personally would fly it instruments - - ah

- - myself. I would have.

Q. Now, on - - now, let's get back to the particular day in question. You say that Fred had called you and asked you to take this Riley Thompson to Beckley, West Virginia, as you had done on a previous occasion. Now, what did you do?

A. About Three-thirty, I received this call and - - ah - - I agreed to take - - ah - - Riley to Beckley at Five O'clock, and - - ah - - around Four-thirty, I got a call back - - ah - - from Fred asking could I delay it until about Nine O'clock that night. He had to work on some cattle or something. I said: Well, no, I had an engagement with my girl, who happens to be my wife now, and I - - also the weather was going to be bad. I told him I - - - I - - - thought the weather was going to be bad, and I didn't feel like that I wanted to make the flight, and I requested that he go on Piedmont -- send Riley over on Piedmont, or either get D. Scott, but I said since D is a private pilot, send him on Piedmont, and he agreed. He said: Okay. - - Ah - - if I can't get somebody else that's qualified, I'll send him over on Piedmont, and I said: That's fine, so I canceled him off our schedule and wrote it on there, and I think I turned it over to the FAA when they came. We kept a schedule sheet and scheduled out each instructor.

Q. What - - what was your observation of the weather conditions at that -

A. Well - - well, I think like the State Trooper said - - ah - - you have - - ah - - at night time you get more activity from

the cooling and all thunder storm activity, and we'd had this intermittent rain, you know, the nights before, and - - ah - - I looked outside, and I - - you know - - a lot of cumulus buildup, the thunder - - ah - - storm type clouds were prevailing and - - ah - - having - - ah - - thousands of hours in mountain flying I -- something like twenty-five hundred at the time. I felt like I knew the weather - - ah - - well enough that I wouldn't take the flight myself that late, from my own experience.

Q. In that - - in that plane?

A. In that plane, yes, sir.

Q. All right. Answer any questions of Mr. Smith and Mr. Cruey.

CROSS EXAMINATION
BY MR. SMITH:

Q. Mister - - Mr. Perdue, I - - I'm a little disturbed about one thing. You're now at Western Community College as a counselor?

A. Yes, sir.

Q. And you work in aviation there?

A. No, sir. I teach flying for Nicholson Air Service in Dublin every weekend.

Q. I see, and what do you do at Community College?

A. Counselor.

Q. Yes, but not connected with - - ah - - flying at all?

A. Ah - - no, sir.

Q. All right, but doesn't Community College have a flying

section where they take lessons?

A. No, sir.

Q. They do not?

A. No, sir. They teach a private ground school over there, but not -- they're not teaching it this quarter. I taught -

Q. Well, maybe that's what I want to ask you about. Do you - - - do you know whether Dr. Johnson, his wife, Carolyn, Dick Tilley and others took that ground course at Community College?

A. Ah - - No, I don't. I usually gave Fred ten or fifteen minutes of ground school - - ah - - before each flight on what we'd be doing and also -

Q. Well, you just don't know about Community College?

A. No, sir, I don't.

Q. You don't know that they did not?

A. No, sir, I do not.

Q. All right. Now - - ah - - when you undertook to teach Dr. Johnson - - ah - - were you also teaching - - Richard Tilley?

A. Ah - - Intermittently - - ah - - Dick - - ah - - started flying with me and - - ah - - he quit and started flying with another instructor, and - - ah - - something happened there, and I told Dick I'd like to get back with him and try to finish him up, you know, because he was flying just points.

Q. Well, they were co-owners of this plane that was crashed along with a couple of others?

A. I don't know. It was my understanding - - ah - - Fred

had mentioned it to me that some other people owned it, but I didn't - - I - - I never saw the aircraft as far as the paper work on the bill of sale, or anything. He -

Q. You did not teach him in that plane?

A. Teach who?

Q. Teach flying?

A. Yes. I taught flying in that plane.

Q. In that plane - - the one that crashed?

A. Yes, sir.

Q. Oh, you used their plane to teach them, is that what you're saying?

A. Well, I was leased out by my boss to fly with private individuals. We also had our own private four aircraft that I taught in normally.

Q. Let's stick to this particular case. You taught Fred his flying -- what he knew about it - - Tilley what he knew about it?

A. No. I didn't start Dick off - - ah -

Q. Well, all right. Which plane did you use to teach them?

A. The one that Fred was killed in.

Q. I see. All right, and - - ah - - now you - - you also mentioned - - ah - - occasionally you took - - ah - - Sandra Surface up in that plane?

A. No, sir.

Q. The lady whose - - whose administrator's suing here?

A. No, sir. The only person that I flew with - - ah - -

other than Fred -- kin to Fred - - ah - - was his wife - - ah - - that is his second wife.

Q. And that's Carolyn?

A. Yes, sir, and two young boys, that Fred said were his children by his previous marriage.

Q. Oh, I see, but you did not take Sandra up in the plane?

A. No, sir.

Q. Did you ever take Riley Thompson up?

A. Yes, sir. I took Riley to Beckley and Riley - - ah - - also rode in the back maybe twice or three times with us, maybe, on a cross country.

Q. You mean while you were instructing?

A. Yes, sir.

Q. Uh huh. Did you ever meet Sandra?

A. No, sir, not to my knowledge.

Q. So the gist of this thing is that you were going to fly him in the afternoon. He postponed it -- Dr. Johnson postponed that to take care of some business -

A. Yes, sir.

Q. - and you couldn't fly him at night?

A. Well, I -

Q. - or wouldn't?

A. I - - I could, but I had an engagement with my wife, who was my girl friend, plus I told Fred I felt like the weather was going to be bad.

Q. All right. Did you - - - were you out there when they took off?

A. No. I was up at my girl friend's house all that afternoon -- that evening.

Q. Uh huh. - - Ah - - did you call the tower about the weather when you got the call from Dr. Johnson on the afternoon flight?

A. No, sir.

Q. You did not?

A. Witness nods head: No.

Q. Now, the log book of this plane - - - did you say you had it in your possession?

A. We keep 'em in - - - we have what we call a log book rack that we keep 'em in.

Q. Well, have you got it?

A. I turned it over to the FAA.

Q. I see. - - - Uh huh.

A. Or the National Transportation Safety Board. One of the gentlemen took it. It may've been Mr. Foster or Mr. Dollman. It may've been Mr. Foster.

Q. I think that's all, Your Honor.

BY MR. KENNET: Just one other thing. Mr. Smith raised the question about who owns the airplane. I have here the - - the proper authen - - - authentic copy from the Department of Transportation which will show that - - ah - - the airplane was owned by Fred J. Johnson.

MR. KENNETT SHOWS DOCUMENTS TO MR. SMITH AND MR. CRUEY, WHO EXAMINE THEM.

BY MR. SMITH: Where do you find the - - - where does it say -

BY MR. KENNETT: Application for registration and the Bill of Sale.

BY MR. SMITH: Well, I - - - - I don't know what this registration of a vehicle, but we're going to claim they own it. I never -

BY MR. KENNETT: Let me ask you this. Are you - - - may it please the Court, I ask the Court to take at this time the judicia knowledge - - we'll introduce into evidence a document from the Federal Aviation Administration, properly attested unde seal, with everybody certifying everybody else's -

BY MR. SMITH: Judge, we don't object to it's admissibility so long as it's known that it's a registration of a plane.

BY MR. KENNETT: Well, now, who does this -

BY MR. SMITH: Which would certainly show the ownership.

Q. (Mr. Kennett continuing) Who does this show that the plane was - - - the name that the plane was registered in?

A. J. Fred Johnson, Jr.

Q. And that's the Bill of Sale?

A. Yes, that's - - ah - - a Bill of Sale by the FAA.

Q. It was by the previous owner, isn't it?

A. Yes, previous owner, but it's a part of a transportatio bill.

Q. And then this is the application for the registration?

A. Yes, sir.

Q. We'll introduce this into evidence.

BY THE COURT: Plaintiff's Exhibit One.

BY MR. KENNETT: Plaintiff's Exhibit One. While I'm at it -

BY MR. SMITH: Mrs. Stokes, what is the date of that document?

BY MR. KENNETT: Oh, you mean the date of the bill of sale?

BY MR. SMITH: The date of the transfer or the registration?

BY MR. KENNETT: That is certified -

BY MRS. STOKES: Do you mean -

BY MR. SMITH: Yes, that's -

BY MRS. STOKES: I haven't marked it yet.

BY MR. KENNETT: Registration from the FAA -

BY MR. SMITH: Well, let me look at it, Mr. Kennett.

BY MR. KENNETT: We got that form two days ago. It would be the last registration.

BY THE COURT: Let him see it.

BY MR. SMITH: You mean Dr. Johnson registered two days ago?

BY MR. KENNETT: No, The certification -- it was two days -

BY MR. SMITH: It would be kinda hard to do.

BY MR. KENNETT: - it was two days ago that - - - that this one was the last registration. It was made September 18, 1970.

BY MR. SMITH: September 18, 1970.

BY MR. KENNETT: Well that's the last one. Of course, it's - - ah - - it's changed hands since then.

BY MR. SMITH: The bill of sale is August 31, 1970.

BY MR. KENNETT: Now we go from August to September -

BY MR. SMITH: Your Honor, we - - we - - we want to examine this. We'll give it back to the Clerk then.

BY MR. KENNETT: All right. Go ahead. I have three other documents also certified. This on the 25th -

BY MR. SMITH: How about let us look at 'em before you testify about 'em?

BY MR. KENNETT: All right.

MR. SMITH AND MR. CRUEY EXAMINE DOCUMENTS.

BY MR. SMITH: Your Honor, we admit what he's attempting to prove by this, that neither Carolyn Johnson, Sandra Surface, nor Riley Thompson were certified by the FAA for an airman's certificate. We admit that.

BY THE COURT: Well, it -

BY MR. KENNETT: Well, if you'll do that, I'll introduce these into evidence as Plaintiff's Exhibits - - - identifying them, that Carolyn Johnson, Plaintiff's Exhibit Two -- this is a certification showing that she doesn't have a pilot's license; Plaintiff's Exhibit Three showing that Sandra Surface doesn't have a pilot's license.

BY MR. SMITH: All right. - - - It doesn't say that. It says airman's certificate -

BY MR. KENNETT: All right -

BY MR. SMITH: - whatever that is. All right, let's keep the record straight.

BY REPORTER: Please advise Mr. Kennett to return to a microphone.

BY MR. KENNETT: Excuse me. - - - And Exhibit Four being - - is - - ah - - certification that Riley Thompson doesn't have an airman's certificate. - - - Thank you.

BY THE COURT: Any other questions?

BY MR. KENNETT: No, sir.

BY THE COURT: All right, sir.

WITNESS STANDS ASIDE.

BY MR. KENNETT: Ah - - - Leslie Blankenship.

LESLIE E. BLANKENSHIP, a witness of lawful age, who, after having been first duly sworn, testified as follows:

DIRECT EXAMINATION
BY MR. KENNETT:

Q. Please state your name.

A. Ah - - Leslie E. Blankenship.

Q. And what isyour occupation?

A. I'm - - ah - - Assistant Chief at Roanoke control tower at Woodrum Airport.

Q. And - - ah - - how long have you had that position?

A. I've been with the FAA about seventeen years.

Q. And where - - where were you - - ah - - stationed on May 27, 1971?

A. I was in the - -- ah - - control tower at the airport.

Q. And - - ah - - did you receive any call in regard to an airplane, N2271Y? I guess that call it One Yankee, but -

A. Yes, - - ah - - I did receive a call from that aircraft

Q. And what was it?

A. Ah - - the - - ah -- pilot called and stated that - - ah - - his position was on the - - ah - - south ramp. I asked the aircraft - - ah -

Q. What - - what time of day was that, do you remember?

A. This was approximately - - ah - - Nine-thirty p.m. -

Q. Nine-thirty?

A. Standard time.

Q. All right, morning or afternoon?

A. P.M. - night.

Q. Night - - Nine-thirty at night. The pilot of that plane was on what ramp?

A. On the south ramp.

Q. All right. Go ahead.

A. He called and requested take off instructions.

Q. Let me just ask you. What is a standard - - - I mean suppose - - - I'm flying and I want to take off, what do you do?

A. Well, you call - - - just like this aircraft did, you call - - first contact with the - - ah - - ground control, which is the position I was working that night, and you state your number, and -

Q. You call by radio?

A. That's right. I -

Q. All right. In other words, the man was in the plane

radio communicating with the - - - with the tower?

A. Control tower.

Q. All right, go ahead.

A. I answered this aircraft, runway two-three, and gave him the wind and the current altimeter setting, and - - ah - - I observed the aircraft taxi out to - - ah - - runway two-three, at which time - - ah - - he will contact another individual in the control tower for his - - ah - - take-off instructions.

Q. And you did observe the airplane - - ah - - at Nine-thirty at Woodrum Field?

A. Yes, sir.

Q. Looked - - - and going out to runway -

A. Going out to - - ah - - the take-off runway, yes, sir.

Q. Of course, you don't know the - - the - - of course, the identification of the caller?

A. No, sir.

Q. All right, your witness.

CROSS EXAMINATION
BY MR. CRUEY:

Q. Mr. Blankenship - - ah - - you have any idea who made that call?

A. No, sir.

Q. You know how many individuals were in the plane at that time?

A. No, sir.

Q. Did you give - - ah - - what type of instructions did you give to it?

A. I gave it taxied - - taxiing instructions, which is done for safety.

Q. Did - - did you know - - ah - - Fred Johnson?

A. No, sir.

Q. In - - in the course of your duties, do you make any inquiry as to the pilot of the plane?

A. No.

Q. So - - ah - - anyone could - - ah - - ask permission to taxi and it would be granted? Is that correct?

A. That's - - That's correct.

Q. That's all the questions.

BY MR. KENNETT: All right, stand aside.

BY THE COURT: All right, sir.

WITNESS STANDS ASIDE.

BY MR. KENNETT: Your Honor, could we take about a two-minute recess.

I want to see Mr. Coulter about setting up a tape recording.

BY THE COURT: All right. Now, any of the witnesses who've testified, if Counsel do not desire them to remain, they may leave if they wish. - - - They're excused. All right, let's let the Jury have a recess.

BY THE BAILIFF: Come this way, lady and gentlemen of the Jury.

COURT RECESSES AT 10:55 a.m.

COURT RECONVENES AT 11:12 a.m.

BY THE BAILIFF: The jury's seated, Your Honor.

CHARLES W. GLOVER, a witness of lawful age, who, after having been first duly sworn, testified as follows:

DIRECT EXAMINATION
BY MR. KENNETT:

Q. Please state your name.

A. My name is Charles W. Glover.

Q. And what is your occupation?

A. My occupation is Chief Air Traffic Control Specialist.

Q. And where do you work?

A. I work at the control tower at the Municipal Airport in Roanoke.

Q. And - - ah - - what were you doing on, say, January the 27th and 28th, 1971?

A. Chief of the control tower.

Q. The same job?

A. The same job.

Q. Ah - - - when a person makes a call to the tower from a plane, is it recorded?

A. Yes, sir.

Q. How is it recorded?

A. We have a nine-channel tape recorder installed in our recorder room that records all incoming and outcoming (sic) radio communications.

Q. Now, how big is this machine?

A. The machine's approximately - - ah - - seventy-six

inches high, three feet square and weighs about fifteen hundred pounds.

Q. Would it be feasible to bring it to the Courtroom?

A. No, sir.

Q. Ah - - - Have you personally inspected the - - ah - - conversations from the plane N - - N2271Y, that were made on the night of - - ah - - May - - the 27th of '71?

A. Yes, sir, I have.

Q. When did you first do it?

A. Well, we reviewed the tape immediately after notification of the accident.

Q. Whichwould be what day?

A. Ah - - the following day.

Q. Which would be May the 28th?

A. May the 28th, yes, sir.

Q. Ah - - since that time have -- you said the machine's too big to bring in here - -

A. Yes, sir.

Q. Ah - - - Has a - - has a recording been made off the tape for the purpose of bringing to the Courtroom?

A. Yes, sir, it has.

Q. Ah - - was that made in your presence?

A. It was made in my presence and also -

Q. Did you listen to the recording after it was put on the second recording?

A. Yes, sir, I did.

Q. Did you initial it?

A. I did.

Q. I show you here a tape recording with a cartridge and - - - and a - - ah - - - - can you identify that?

A. Yes, sir, that's my initials.

Q. Is that your initials?

A. Yes, sir.

Q. And now -

BY MR. SMITH: If Mr. Glover has gotten a transcript off of that, we know he did it accurately. We don't object to his reading the transcript.

BY MR. KENNETT: Well, we're talking about identifying the voice.

BY MR. SMITH: Oh - - oh, I see. Go ahead. I'm sorry.

BY MR. KENNETT: Ah - - ah - - can you - - ah Mister - - ah - - Perdue, would you come here a minute and listen to this voice?

Q. (Mr. Kennett continuing questioning the witness Glover) Play it now - - - Have you just now played this just once before outside the presence of the Jury?

A. Yes, sir, I did.

Q. Is this the same one?

A. This is the same tape that we recorded.

Q. The same tape?

A. Yes, sir.

Q. Now, will you - - you play it - - push that button and let Mr. Perdue listen to it.

WITNESS PLAYS TAPE, WHICH IS UNINTELLIGIBLE FOR TRANSCRIPTION.

Q. All right. Thank you.

A. Yes, sir.

BY MR. KENNETT: Do you have any questions you want to ask about that?

CROSS EXAMINATION
BY MR. SMITH:

Q. No, indeed. - - - I - - - I - - - - I couldn't understand what it said, but I'd like - - could you tell me what it said?

A. Yes, sir. The aircraft called in and asked for taxi instructions, and then Mr. Blankenship - - ah - - who testified previously gave him the taxi instructions.

Q. I see. Thank you. - - - The numbers were - - - were - - ah - - runways and wind and -

A. Yes.

Q. - and altimeter and things of that sort?

A. That's correct.

Q. Thank you, Charlie.

A. Uh huh.

WITNESS STANDS ASIDE.

BY MR. KENNETT: Mr. Perdue, will you re-occupy the witness stand?

RICHARD PERDUE, a witness of lawful age, who, after having been first duly sworn, recalled, and testified as follows:

DIRECT EXAMINATION
BY MR. KENNETT:

Q. Ah - - - I remind you, you're still under oath. - - Ah - - Do you recognize that voice that called in for taxi instructions?

A. I can't say that it's - - with one hundred percent certainty that it's Fred's, but it's his style of talking - - ah - - in my experience with him.

Q. Do you believe it to be Fred of your own personal opinion?

A. Yes, sir, but I can't say with one hundred percent certainty. - - - Ah - - - the recording sort of altered the voice some, but his style - - it's his style of talking.

Q. And it sounds to you like him?

A. Yes, sir.

Q. All right, your witness.

CROSS EXAMINATION
BY MR. SMITH:

Q. Let me ask you this about that plane. It had dual controls, did it not?

A. Yes, sir.

Q. It can be flown from either front seat?

A. Yes, sir.

Q. Okay.

DIRECT EXAMINATION
BY MR. KENNETT:

Q. Ah - - - I remind you, you're still under oath. - - Ah - - Do you recognise that voice that called in for taxi instructions?

A. I can't say that it's - - with one hundred percent certainty that it's Fred's, but it's his style of talking - - ah - - in my experience with him.

Q. Do you believe it to be Fred of your own personal opinion?

A. Yes, sir, but I can't say with one hundred percent certainty. - - - Ah - - - the recording sort of altered the voice some, but his style - - it's his style of talking.

Q. And it sounds to you like him?

A. Yes, sir.

Q. All right, your witness.

CROSS EXAMINATION
BY MR. SMITH:

Q. Let me ask you this about that plane. It had dual controls, did it not?

A. Yes, sir.

Q. It can be flown from either front seat?

A. Yes, sir.

Q. Okay.

REDIRECT EXAMINATION
BY MR. KENNETT:

Q. Oh, let - -- ah - - let me ask you this. - - - Ah - - Can you definitely say whether it was Riley Thompson's voice?

A. It wasn't his.

Q. It wasn't his? - - ah - - Thank you. - - - - - Oh, wait a minute. Just let me ask one thing. I don't know if you know, I'm going to develop this with another witness, but I'll ask you. When an owner of an air - - - aircraft is sitting in the pilot's seat, who is the command pilot? I mean, in a case like this, where there's two seats that you can fly the plane from?

A. Well, I -

BY MR. SMITH: What was that question? Who is the what?

BY MR. KENNETT: When the owner of the aircraft is sitting in the pilot seat - - - a pilot's seat, when there are two pilot's seats -

BY MR. SMITH: All right.

Q. (Mr. Kennett continuing) - - - Who is the air - - the pilot in command?

A. Well, I'll tell you. I'll have to go with what Mr. Dollman from FAA said. The owner of the aircraft and all, like he told us, or in this situation, the guy with the pilot's license was - - - which was Fred, plus the - - - he would be as far as I can tell.

Q. So you're saying that - - - that in this particular aircraft, it would - - -you could fly it from the front -- left seat

of the front -- right seat?

A. Uh huh.

Q. But the man who was the owner - - was licensed - - would be the command pilot regardless of which one was in the front?

A. All right, in an aircraft most of the instrumentation is set up for flying from the left side, so it's sort of assumed that the left side is the pilot's side.

Q. Your witness.

BY MR. SMITH: I have no further questions.

BY MR. KENNETT: Thank you.

WITNESS STANDS ASIDE.

BY MR. KENNETT: Thank you - - - - - - - - - Mr. Dollman.

RICHMOND A. DOLLMAN, a witness of lawful age, who, after having been first duly sworn, testified as follows:

DIRECT EXAMINATION
BY MR. KENNETT:

Q. Please state your name.

A. Richard A. Dollman.

Q. What is your occupation?

A. I'm an aviation inspector for the Federal Aviation Administration.

Q. Where are you stationed?

A. Richmond.

Q. And what was your occupation on - - ah - - May 27th - - 28th?

A. The same - - as accident investigator.

Q. Ah - - Did you have an occasion to investigate this accident?

A. I did.

Q. Ah - - when did you first receive the message that this accident had occurred?

A. The following morning.

Q. May the 28th, '71?

A. If that was the following morning.

Q. All right. And then - - then - - ah - - just tell us what you did.

A. Well, I rented an airplane and flew over here.

Q. And flew over to where?

A. Here - - Roanoke.

Q. And then what did you do?

A. I got an automobile from the - - ah - - services people at the flight service station and drove out to the scene.

Q. And what did you find at the scene?

A. Well, I found the NTSD investigators there, Mr. Fox and Mr. Smith, also the aircraft.

Q. And what - - what - - what - what was the air - - - describe the aircraft as you saw it.

A. Well, it was demolished when I saw it.

Q. I know, but what kind was it? Was it - - ah -

A. It was a Cessna.

Q. Could you tell that from the wreckage -- the kind?

A. Well, yes.

Q. Well, just tell the jury what kind of airplane it had been.

A. It was a high wing monoplane, four-place, and - - ah - - very nice aircraft - - ah - - the instrumentation, I don't exactly recall. I'll have to re - - - review this report here to see what we put in it to tell specifically the instrumentation of the cockpit, but the aircraft was demolished, and I don't think that you could - - ah - - salvage anything, except for junk, but it all was in one heap. It was not scattered, and in the wooded area - - semi-wooded.

Q. Could you tell the direction of the flight and all - - did you determine that?

A. Well, we determined that by the investigation.

Q. Well, how did you determine it?

A. Well, we checked at the flight service station. This aircraft - - ah - - someone had called in for - - ah - - the weather between here and West Virginia. We know for a fact the aircraft took off from Woodrum Field. We know for a fact where it impacted, and it was in a westerly direction - - northwesterly direction. Now what his destination was is something else. We have no way of telling since he was not on a flight plan.

Q. All right. Let me ask you, would a - - ah - - did you know what the weather conditions were?

A. Did I know?

Q. Yes, sir. From your investigation?

A. Yes, sir.

Q. What were they?

A. Well, a common word is stinko, but - - ah - - just bad.

Q. Would a - - ah - - flight from Roanoke - - ah - - across Craig County westward toward the Beckley, West Virginia - - or just that direction, would that be beyond the experience level of a student pilot?

A. Very much so. With that particular aircraft and the weather conditions at the time - - - ah - - - it would be pretty hard for an accomplished pilot to take the flight, let alone in that particular type of aircraft.

Q. Now, let me ask - - ask - - - ask you this - - ah - - what is the rule in regard to a student pilot?

A. Well, the Federal Aviation - -- ah - - Regulations states that - - ah - - he is just what the name implies. He is a student. He cannot take passengers by regulation. That regulation stems from the Federal Aviation Act of 1958, as amended. He is prohibited.

Q. And - - ah - - does - - does - - does the - - ah - - what is the rule about filing a flight plan. You said none was - - none was filed. What is the rule about that?

A. That is optional with the pilot. He can either file one -- safety wise, it always behooves him to file one, because then there is always a tracer out on him. We can keep track of him. There's two types of flight plans that can be filed. One of 'em is

IFH. That stands for Instrument Flight Rules. He is controlled from lift off to touch down. The other type is VFR -- Visual Flight Rules. He is not controlled, but they do keep track of him through his flight plan as he filed it.

Q. I - - let me ask you this now. When the owner of an air - - - aircraft - - ah - - is - - ah - - in the aircraft, and there are two seats for pilots - - ah - - who is the command pilot?

A. Well, it's standard operating procedure, so far as the FAA is concerned there, that the owner-operator is the aircraft commander, unless he hires someone, who is properly certificated, to be the aircraft commander. I'll give you an example, if you'd like.

Q. All right.

A. Well, the Cunnard Lines owns the Queen Elizabeth, but the President doesn't Captain that ship. He hires a qualified Captain. In that case, the Captain is the commander of that ship. The same applies to the aircraft.

Q. All right. In other words, say if Fred Johnson had of hired Mr. Perdue to fly him, Mr. Perdue would've been the captain?

A. He would have - - - totally responsible.

Q. But if there were no other pilot - - certified pilot in the plane, then who'd been the captain?

A. The owner-operator, which in this case was Mr. Johnson.

Q. Do you - - do you have in your records what Dr. Johnson's student license number was?

A. Yeah. I get it some place in here. - - - - - - - - -

Yes. Dr. J. Fred Johnson, Jr., and his certificate number is AA-1934467. The AA denotes student. It was issued October the 21st, 1970. That particular certificate was good for two years, or the duration of the medical certificate that was attached to the pilot's certificate.

Q. Ah - - is it dangerous to fly at night, and if so, why?

A. Well, not if you're properly qualified and the aircraft is properly equipped -- no, it was not.

Q. Well, would it've been dangerous for this plane to have flown at night cross country?

A. No. - - - No, not just at night.

Q. Under the weather conditions?

A. Under the weather conditions, yes, sir. Yes, sir.

Q. Your witness, Mr. Smith.

CROSS EXAMINATION
BY MR. SMITH:

Q. Mr. Dollman, with regard to this flight plan, you say it's optional?

A. Yes, sir.

Q. And thousands made daily -- night and day flights without flight plans?

A. Yes, sir.

Q. Ah - - now - - ah - - it's dangerous to fly through a thunder storm, isn't it?

A. Yes, sir. It's generally accepted that you'll avoid them at all - - ah - - costs.

Q. Well, what are their dangers?

A. It'll tear you to pieces.

Q. Wind wise? How about lightning?

A. Well, I've never heard of anybody getting hurt by lightning, even though it strikes the bird. It might put a little hole in it, but -

Q. But it - - it - - it's wind, then that - - ah -

A. Mostly down drafts. - - - With a small aircraft, it's possible - - ah - - ah - - to - - ah - - get your airplane torn up. It's been known to happen. - - - It's been known to happen. Obviously it didn't happen here because the aircraft was intact on impact, if you follow what I mean.

Q. Except the Trooper said some of it was in the tree?

A. Well, it hit the tree before it hit the ground directly under. That is what he's talking about. He was coming straight down. That's what the Trooper was saying.

Q. Was - - was - - ah - - what was in the tree?

A. A piece of - - ah - - the aircraft. I can't recall at this late date.

Q. Were the limbs torn as if it came through the trees? -

A. Oh, yes.

Q. - or that it bounced up in there?

A. No. The - - ah - - the limbs, as I recall - - ah - - showed the path of the aircraft. That's the way you measure the inclination of the aircraft.

Q. It came right through the tree into the ground. Is that right?

A. Uh huh.

Q. Was the plane - - you say it was demolished?

A. Yes. It wasn't any good for anything and neither could - - - nobody could make anything out of it.

Q. You were unable to make any examination as to whether the control wires -

A. The integrity of the controls?

Q. Yes.

A. Ah - - the - - ah - - National Transportation Safety Board - - ah - - Investigator in charge made that determination. I'm sure he did because it's SOP to do that. That was just prior to my arrival.

Q. You did not?

A. I did not do it myself.

Q. All right. Thank you - - - just a moment.

A. Here's what was up in the tree.

BY MR. KENNETT: Just - - - just tell Mr. Smith. I don't -

A. Here's you a picture of what was up in the tree, and it's identified.

Q. You took that photograph?

A. That's the National Transportation Safety Board photograph.

BY MR. SMITH: May we show it to the Jury, Your Honor? You have no

objection?

BY MR. KENNETT: I have no objection, no -

BY THE COURT: All right.

BY MR. KENNETT: - - Ah - - - it belongs to Mr. Coulter. I don't know -

Q. (Mr. Smith continuing) I think that the plane is at the foot of the tree. Is that right, Mr. Dollman?

A. That's correct.

Q. It looks like -

A. That's correct.

Q. - it came down there.

PICTURE IS PASSED AROUND BY THE JURY.

BY MR. SMITH: You don't want to introduce that, do you?

BY MR. KENNETT: It suits me if I can have Mr. Coulter do that.

BY MR. KENNETT TO WITNESS: Ah - - - let me ask you this since you've testified from the photograph. What does the National Transportation Safety Board say about the integrity of the - - ah - - the instrument o f - - the controls?

A. Well, it's in the record here.

BY MR. SMITH: Have you got that man here?

BY MR. KENNETT: No, I don't have him here.

BY MR. SMITH: I think that would be hearsay, Your Honor. We have the right to cross-examine this man.

A. Do you-

BY THE COURT: You can't, that isn't permitted, Mr. Dollman, if they

have objected to reading what someone made as a report. If you care to inspect it, Mr. Smith, and see if you remove your objection.

BY MR. SMITH: I thought he was here. I wanted to cross-examine him--

BY THE COURT: Well -

BY MR. SMITH: - what it was about, but - - ah - - I can't cross-examine this piece of paper.

BY THE COURT: I sustain the objection. It's not admissible.

BY THE WITNESS: I'm kind of curious myself as to what he said.

BY THE COURT: Well, whatever he said, don't you state it because I have sustained the objection. All right.

BY MR. KENNETT: All right, that's all.

WITNESS IS EXCUSED.

BY THE COURT: Now, are you introducing the picture or not? I don't want to have to write any -

BY MR. KENNETT: I - - I suppose not, Your Honor. Everybody's seen it.

BY THE COURT: All right.

BY MR. KENNETT: - - - This - - - - this piece of paper belongs to Mr. Coulter. - - - - Take the stand.

JUANITA K. SURFACE, a witness of lawful age, who, after having been first duly sworn, testified as follows:

DIRECT EXAMINATION
BY MR. KENNETT:

Q. Please state your name.

A. Juanita Surface.

Q. And - - ah - - I hand you a - - - ah - - what - - - what relationship are you to Sandra Jene Surface, deceased?

A. I was her mother.

Q. Now I - - I know this is kind of hard for you, but - - ah - - will you talk louder so the Jury can hear. I don't think they can hear you.

A. I was her mother.

Q. And - - ah - - did you qualify as her Administratrix?

A. Yes.

Q. I hand you a sheet of paper and ask you what that is?

A. This is what I got when I was in Mr. Tilley's office for - - to come -

Q. Come to his office to qualify?

A. Yes, sir.

BY MR. SMITH: We admit the qualification.

BY MR. KENNETT: We introduce this - - now this shows that she did -

BY THE COURT: All right.

BY MR. KENNETT: - qualify.

BY THE COURT: That's Exhibit five.

Q. (Mr. Kennett continuing) Now, how old was Sandra -- your daughter, Sandra Surface?

A. She was twenty-five.

Q. And where did she live?

A. She lived at home, 221 Easton Road, with me.

Q. 221 Easton Road? Where do you live now?

A. 221 Easton Road.

Q. And who all lives at your house?

A. My husband, my young daughter, Seline, and my young son, Richard.

Q. All right. Now, how many - - ah - - what is the name of your husband?

A. Charles G. Surface, Jr.

Q. Now, is this the gentleman here?

A. Yes.

Q. All right. And - - ah - - do you have - - ah - - you say you and your husband - - now how long have you all been married?

A. We've been married thirty-one years.

Q. Thirty-one years and Sandra was twenty-five?

A. Yes.

Q. Now, did she have any brothers and sisters?

A. Two brothers and one sister.

Q. Will you state their names?

A. The oldest brother is Charles G. Surface, the Third.

Q. All right.

A. And then there's Richard Stephen Surface, and he's - - ah - - twenty. Charles is Twenty-seven, and Seline -- Leslie Seline is seven.

Q. She's seven, and she's the one that's home now?

A. Yes.

Q. Now, tell us something about - - ah - - how Sandra's

death affected your family?

A. Well when it happened my oldest son, he wouldn't - - - he wouldn't stay at home for three nights. He just came in and went out, and wouldn't anyone tell my daughter, Seline, about it until about a week or two weeks after the accident, and then my oldest son did that, and then after that she was under a doctor's care because they were so very close. They were just as close as any two people -- a brother and sister, or sisters, could ever be.

Q. And what was your relationship with Sandra?

A. Well, we related to each other very well at all times.

Q. And how does her passing - - ah - - I mean describe -

A. Oh golly, that's - - - that's - - - I just can't describe it because it's - - - unless someone has lost someone in their immediate family, you just - - - there's no way to describe it.

Q. All right. I - - I - - - I know this is difficult, and I'm sorry to put you through it - - ah - - but did you have any - - ah - - funeral expenses for Sandra?

A. I don't remember. I guess my husband did. I can't remember any of it. - - - - Yes.

Q. Now, how much is the funeral expenses?

A. The total?

Q. Yes.

A. One Thousand, Two Hundred Seventy Dollars and Ninety Cents.

Q. So it was in excess of five hundred dollars?

A. Yes.

Q. Now is this a statement that you received?

A. Yes.

Q. You - - you picked this up yourself -

A. Yes.

Q. - at the funeral home?

A. Uh huh.

Q. Your Honor, we introduce this into evidence, which is a statement from Lotz Funeral Home showing the funeral bill of two -- One Thousand, Two Seventy, Ninety, paid by Charles Surface on July - - July - - - July 30th, 1971.

BY THE COURT: Exhibit six.

Q. When was the last time you saw Sandra?

A. Thursday evening, May the 27th.

Q. The same day of the - - - of the -

A. Yes.

Q. - accident -

A. Seventy-one.

Q. What time of day was it?

A. Well - - ah - - she and Carolyn -- Dr. Johnson's wife, - - ah - - Sandra had gone to pick her up and they came over, and around - - ah - - seven-fifteen, Dr. Johnson called, and he asked if Carol was there, and I told him: Yes.

Q. That's Seven-fifteen in the evening?

A. In the evening.

Q. And he called -

A. I know because I was supposed to have gone out to - - ah - - a friend of mine's shower, and - - ah - - that's why I looked at the clock -- to see what - - - how much time I had to get ready.

Q. And it was Seven-fifteen, and they - - - and - - - ah - - your daughter, Sandra, and Carolyn Johnson were both -

A. Dr. Johnson told Carolyn that he had to go to New Castl on a call and that he wanted her to go with him and so then - - ah - - Sandra took her back home, and Sandra didn't come back to the house then.

Q. And Sandra was living at your house?

A. Yes.

Q. All right. Answer any questions Mr. Cruey has for you, or Mr. Smith.

CROSS EXAMINATION
BY MR. CRUEY:

Q. Now, Mrs. Surface, I believe you said that Sandra was twenty-five -

A. Yes.

Q. - years old?

A. uh huh.

Q. Ah - - how much education did she have?

A. Well, she finished high school and she went to college for just a little while.

Q. Was she employed at the time this accident occurred?

A. Yes, she worked at - - ah - - the Gourmet in Roanoke

at the Mall.

Q. Well what kind of work did she do there?

A. She was a waitress.

Q. Ah - - - had she ever been married or have any children

A. No.

Q. Ah - - Did you know - - ah - - Riley Thompson that was also killed in this crash?

A. Yes.

Q. Ah - - I believe that was your daughter's boy friend. Is that correct?

A. Yes. He had been over to our home, and he - - - my husband was in - - ah - - Puerto Rico in February, and he called over to Puerto Rico two or three times and asked my husband if she could marry him.

Q. And where did - - ah - - do - - do you know where - - where Riley Johnson (sic) lived?

A. I guess he lived with Mister -

Q. Riley Thompson, do you know where he lived?

A. I guess he lived with Mr. Johnson. I don't know. I was never over there. - - -ah - - I had no reason to ask him where he lived. If he would -- wanted me to know, I guess he would've told me.

Q. Now, where was your daughter living at the time this occurred?

A. I beg your pardon!

Q. Where was your daughter living at the time this occurred?

A. My daughter was living at home.

Q. At your home on - - ah - - 221 Easton Road? Is that correct?

A. Yes.

Q. Ah - - - how long had she been - - been dating Riley Thompson?

A. I think she met him -- it was either in January or February. I don't know, but I do know that he called over there in February because that was the time that my husband was there in - - ah - - Puerto Rico.

Q. Ah - - did you know - - ah - - Fred Johnson?

A. I had never saw him, but I know of him. I've only talked to him on the telephone.

Q. Ah - - - - did you know his wife, Carolyn?

A. Yes. She was over at my house many times.

Q. Did you know her - - ah - - before she married Dr. Johnson?

A. No - - - huh uh - - - Well, I - - - - Yes, I did too, because - - - ah - - - after my daughter had met Riley - - that was before Dr. Johnson and Carolyn were married, and my daughter went to their wedding. So I did know her too, yes.

Q. Ah - - - - - Did you know Richard Keith?

A. Yes, he was over at my house to pick up some machinery,

I think, that my husband worked on for Dr. Johnson - - ah - - Dr. Johnson.

Q. Well, how long had Sandra been working at the Gourmet Shop?

A. Well, she worked for McKesson and Robbins, and--ah-- due to the late hours, she ---- I think it must've been about two weeks after she --ah-- terminated her stay there at the thing --- there at the McKesson and Robbins that she went to work for Gourmet because she had some ----had something for income while she was looking for a better job.

Q. Well, is this --- is this the Gourmet Restaurant at Crossroads?

A. It's --- ah --- it's the Crossroad Mall, yes.

Q. ------That's all.

BY MR. KENNETT: Come on back -- Mrs. Surface -----May it please, Your Honor --- ad --- the Plaintiff rests.

BY THE COURT: All right.

BY MR. SMITH: Judge, may we have about a five minute consultation here?

BY THE COURT: All right. Let the Jury go to the Jury room again, please.

BY THE BAILIFF: Come this way, Lady and Gentlemen of the Jury.

JURY RETIRES TO THE JURY ROOM.

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[Lines 13 through 24]

BY THE COURT: Members of the Jury, at the conclusion of all the evidence for the Plaintiff, the Defendant, by Counsel, moved the Court to strike the evidence of the Plaintiff and enter up judgment in behalf of the Defendant, which, in every-day language, means we don't think the Plaintiff has proved her case as a matter of law. Having heard arguments of Counsel, the Court is of the opinion that the cause of the accident would necessarily be conjecture or surmise on the part of the Jury, and that the evidence was not sufficient to submit a question to a Jury for decision.

So, the Court has sustained the motion to strike, and you are excused from any further deliberation in this case.