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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

WILLIAM B. TUTTLE, JR., RAYMOND J. : VOLUME I
JOHNSON, GEORGE H. KUCHEN, JOHN E. :
STRAIT, RICHARD SIROIS, WILLIAM :
MENKINS and JAMES A. TAYLOR :
vs. :
DANIEL MARVIN, TRINE DAY, LLC : 2:04 CV 948

Trial in the above-captioned matter held on Monday,
January 23, 2006, commencing at 9:05 a.m., before the
Hon. David C. Norton, in the United States Courthouse,
Courtroom II, 81 Meeting St., Charleston, South Carolina.

APPEARANCES:

BOBBY G. DEEVER, ESQUIRE, 3760 Bald Mountain Rd.,
West Jefferson, NC, appeared for plaintiffs.
BENJAMIN W. DEEVER, ESQUIRE, 705 Princess St.,
Wilmington, NC, appeared for plaintiffs.
CHRIS OGIBA, ESQUIRE, 205 King St., Charleston,
SC, appeared for defendants.
BARRY A. BACHRACH, ESQUIRE, 311 Main St.,
Worcester, MA, appeared for defendants.

REPORTED BY DEBRA L. POTOCKI, RMR, RDR, CRR
Official Court Reporter for the U.S. District Court
P.O. Box 835
Charleston, SC 29402
843/723-2208

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WITNESS: JAMES TAYLOR

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1 (Jury not present.)

2 THE COURT: As Yogi Berra said, it's deja vu all over
3 again. I'm ready to go when y'all are. What have you got?

4 MR. OGIBA: Do you want to go?

5 MR. COLLINS: Judge, I think we wanted to address
6 some of the jury charges.

7 THE COURT: Okay.

8 MR. OGIBA: That's right, and we've got couple other
9 matters, too.

10 MR. COLLINS: Judge, obviously we sent in, I sent
11 myself in to Eli; I'm sure you've seen it.

12 THE COURT: Maybe the best thing is we've made some
13 changes to the jury charges I provided you ten days ago,
14 reflecting what y'all gave us on Monday. And so why don't I
15 just give these to you, and then you can take a look at these
16 sometime when the trial gets a little boring, and then we can
17 talk about them later on this afternoon. How does that sound?

18 MR. OGIBA: Sounds good.

19 MR. COLLINS: There was one addition, I don't know
20 whether you want me to bring it up now.

21 THE COURT: Sure.

22 MR. COLLINS: We would like something in the charge
23 that lets the jury know that the defendants in this case owed
24 a duty to our clients, under our negligence cause of action,
25 to accurately vet, investigate and publish only the truthful

1 and nonlibelous portion.

2 THE COURT: I think I got rid of your negligence
3 cause of action Halloween of last year.

4 MR. COLLINS: Well, we've got the negligence standard
5 that you gave us in the defamation claim. It was in the
6 charges.

7 THE COURT: All right, go ahead.

8 MR. COLLINS: The reasons for that --

9 THE COURT: You said negligence cause of action,
10 Groucho Marx, the duck comes down when you say that.

11 MR. COLLINS: And basically it's an allegation in the
12 complaint that was admitted by the defendants. I know there's
13 some language in the charge that says just because you don't
14 investigate or you don't thoroughly investigate, that doesn't
15 necessarily mean you breached a duty. But they admitted to
16 that, and we'd like to have that in front of the jury.

17 THE COURT: Yes, sir.

18 MR. OGIBA: Respectfully, Your Honor, I don't think
19 in the answer, unless you can bring it out right now, I don't
20 think we admitted to any breach of any duty. I think that's
21 an overstatement.

22 MR. COLLINS: No, no, you didn't admit to the breach,
23 you admitted to the existence of the duty.

24 MR. OGIBA: Okay. I guess the other argument we
25 would make to that, Your Honor, is one of our arguments we put

1 forth in our letter on Friday, is that the negligence standard
2 shouldn't apply at all, given that we believe that the
3 plaintiffs are public officials.

4 THE COURT: Well, as you will find, you lost that
5 one.

6 MR. OGIBA: Okay.

7 THE COURT: Okay?

8 MR. OGIBA: Okay.

9 MR. COLLINS: That's all I can add.

10 THE COURT: Why don't you take a look at this and
11 then we'll revisit it maybe this afternoon or first thing
12 tomorrow morning.

13 MR. COLLINS: Okay, sir.

14 THE COURT: And here's the -- here's a proposed
15 jury -- not just for one client, one -- you know. A partial
16 one. So you take a look at these two.

17 MR. OGIBA: Your Honor?

18 THE COURT: Yes, sir.

19 MR. OGIBA: We have two other matters.

20 THE COURT: Anything else from the plaintiffs?

21 MR. COLLINS: No, sir.

22 MR. OGIBA: We have two other matters that we just
23 wanted to get clarification on. In your jury instructions you
24 indicate that given that we have eight jurors, you require a
25 unanimous verdict.

1 THE COURT: Um-hum.

2 MR. OGIBA: And we just wanted clarification on the
3 record as to the effect of a nonunanimous verdict.

4 THE COURT: The effect of a nonunanimous verdict is
5 we'll have deja vu over and over again.

6 MR. OGIBA: So it would be a mistrial rather than a
7 finding of no liability.

8 THE COURT: Right, it would be a mistrial. Unless
9 the parties agree to be bound by a nonunanimous verdict.
10 Y'all can do that, if you want to, I don't care, but I usually
11 do anything the lawyers will do, except write a check. If you
12 agree to write a check, I'm not going to do it, but if you
13 agree to take a majority verdict, that's fine with me, that's
14 up to you and your clients.

15 MR. OGIBA: Okay. And the only other issue we wanted
16 to bring up, Your Honor, was with plaintiffs' recently
17 discovered witness, Chuck Borg, I think at the -- I went
18 through the transcript from the previous trial -- the
19 plaintiffs were planning or hoping to call Mr. Borg as a
20 rebuttal witness in the trial, and we would just request that
21 if they do decide to call Mr. Borg as a rebuttal witness, that
22 we have the opportunity to depose him prior to him being
23 called as a witness.

24 THE COURT: Yes, sir?

25 MR. BEN DEEVER: Your Honor, I believe that issue was

1 addressed at the close of the last proceedings. They were
2 advised of his presence and then when he was going to testify
3 to, and I believe in your closing at the last proceeding you
4 said go ahead and get it done this week, that it was planned
5 to get done this week. They have had an opportunity to
6 contact us, to do his deposition, they've been on alert that
7 he was going to be presented as a possible witness, rebuttal
8 witness, and there's been no attempt whatsoever to depose him.
9 We've had several months to get that done.

10 MR. OGIBA: Respectfully, Your Honor, in the closing
11 from the previous trial, and we've got copies of the
12 transcript, if you'd like to see them.

13 THE COURT: I've read them.

14 MR. OGIBA: Okay. But you indicated in your closing
15 that you hadn't decided whether or not you were going to allow
16 Mr. Borg to testify. But as a rebuttal witness, that you were
17 going to give them extra leeway. However, if Mr. Borg is not
18 going to be called as a rebuttal witness, we would not need to
19 depose him. But if he is going to be called as rebuttal, we
20 would just request that we have an opportunity to depose him
21 the night before.

22 THE COURT: I guess the question number one is, are
23 you going to call him as a rebuttal witness or not?

24 MR. BEN DEEVER: Yes, sir, Your Honor, it's our
25 intention.

1 THE COURT: Number two, where is he?

2 MR. BEN DEEVER: He's in Alaska right now, en route
3 to Charleston.

4 THE COURT: All right. In looking at the transcript,
5 it says two depositions, Walter Mackem and Charles Borg.
6 Okay, I say. I said, Do it this week. And you say, Yeah, we
7 could do it this week. And you say, Right, we're going to do
8 it this week. We would like to reserve the right to depose
9 him. Which is kind of internally inconsistent.

10 MR. OGIBA: Well, our impression, Your Honor, was
11 that if they call him as a rebut -- if they were not going to
12 call him as a rebuttal witness, then there was no need to
13 depose him. But if they were going to call him as a rebuttal,
14 then we would need to depose him. So given that you were kind
15 of reserving your ruling as to whether you were going to allow
16 them to call him as a rebuttal witness, we were going to --

17 THE COURT: I didn't -- he still might not be able to
18 be called as a rebuttal witness, because there may be nothing
19 to rebut, I guess. I don't know what he's going to rebut.
20 Well, let's find out whether he's going to be a rebuttal
21 witness. I mean, I don't -- generally you don't even have to
22 identify rebuttal witnesses, and so I don't see how you can
23 insist on the right to depose somebody that they don't really
24 have to identify.

25 MR. OGIBA: Okay.

1 THE COURT: I mean, all right?

2 MR. OGIBA: Okay.

3 THE COURT: And he was there last time we had this
4 trial, and it looks like my sense was reading this that y'all
5 were going to go ahead and depose Mr. Mackem and Mr. Borg
6 while they were there, just to get ready for the next trial.

7 MR. OGIBA: Well, Your Honor, I think we had some
8 issues at the last trial, given that Mr. Bachrach had flown
9 out of town, given that we had had notice the night before
10 that there was going to be a mistrial called the following
11 day. So I guess that's why we hadn't -- we didn't depose him
12 then. As well as the fact that we didn't know if they were
13 going to call him.

14 THE COURT: Is there any objection to making him
15 available just to be interviewed by Mr. Ogiba?

16 MR. BEN DEEVER: Not at this time, Your Honor.

17 THE COURT: How does that sound?

18 MR. OGIBA: That's fine.

19 THE COURT: All right. I'd like to get this factual
20 presentation over by Wednesday, and get to the jury on
21 Thursday. Or how about this. I'm going to get this thing
22 over and get to the jury on Thursday.

23 MR. BACHRACH: Your Honor, our only problem is Tony
24 Trung, who is one of our witnesses, is coming in Wednesday
25 night, because we thought the way the last trial went, that he

1 would be testifying --

2 THE COURT: Thursday morning is fine. We're going to
3 get to the jury Thursday afternoon. I mean that's -- I guess
4 he'd be your last witness, hopefully?

5 MR. BACHRACH: Our intent was to call Mr. Millegan as
6 our last witness, but we can be flexible.

7 THE COURT: Well, I mean, I'm not going to stop the
8 trial Wednesday afternoon at 3:30, and let you put up
9 Mr. Trung and then Mr. Millegan, okay?

10 MR. BACHRACH: I understand, Your Honor.

11 THE COURT: Okay. And then I guess, I mean, so as
12 long as we get to the jury, you know, argue and charge
13 Thursday afternoon, we're fine, okay? So how long is y'all's
14 case going to take this time?

15 MR. COLLINS: We were thinking at least two days.

16 THE COURT: Have you got all your witnesses here
17 except the fellow flying in from Alaska?

18 MR. COLLINS: And he'll be here tomorrow.

19 THE COURT: So we'll just --

20 MR. COLLINS: We don't have Colonel Tuttle, but we
21 have him by deposition.

22 THE COURT: Yeah, that's like last time. Who's going
23 to make the opening statement, Mr. Deaver?

24 MR. COLLINS: Mr. Deaver the younger.

25 THE COURT: The younger. How about Mr. Ogiba the

1 younger?

2 MR. OGIBA: The younger.

3 THE COURT: Anything else? I mean, there was
4 something about in your letter about a motion in limine and
5 Martin Luther King. I've read the transcript, I mean, there
6 was no questions about that, that was your client talking
7 about that kind of stuff.

8 MR. OGIBA: Yes, Your Honor. We had left -- and I
9 think in our letter I indicated in the small paragraph after
10 our initial argument, that if our clients open up that door,
11 we have -- I mean, obviously we have no right to object. But
12 I guess, you know, kind of bringing that up on direct, I think
13 that's where we'd like to draw the line.

14 THE COURT: Anything?

15 MR. DEEVER: Your Honor, there is a transcript of
16 that, and he would be subject to cross-examination on the
17 transcript as well.

18 THE COURT: Well, he'd be subject to cross-
19 examination, if it were prior inconsistent statement, I agree
20 with you. I mean, if he denies making that statement or
21 denies something like that, then he'd be subject to
22 cross-examination with regard to that transcript. But he
23 can't bring it up and have him admit it. I don't know why
24 you'd bring it up. If he opens the door, then you can walk
25 right through it. But I think the motion in limine last time

1 was we were going to stay away from all that stuff, right?

2 And then he opened the door.

3 MR. DEEVER: We're not going to make it an issue,
4 except as to credibility.

5 MR. BACHRACH: One last thing on that, Your Honor?

6 THE COURT: Yes, sir.

7 MR. BACHRACH: Just -- there's the tape of General
8 Yarborough that was allowed in. If we don't open the door,
9 that tape would be much more truncated than before, and I just
10 wanted to alert the Court to that, as it comes up, if we don't
11 open the door.

12 THE COURT: Okay. Generally that's what happens when
13 you get -- the door is open a crack or halfway or all the way
14 through, that's fine. Is there anything else from anybody
15 else?

16 MR. COLLINS: Not from the plaintiff.

17 MR. OGIBA: No, Your Honor.

18 THE COURT: I'm not lumping the defendants, either.
19 It's going to be individual liability, each plaintiff, each
20 defendant, and vice versa, each defendant, each plaintiff. So
21 you got one, you got one. Okay?

22 MR. OGIBA: Your Honor, one other matter. We've --
23 before you got in here, we left copies of the books, eight
24 copies of the books and copies of the defendants' exhibits.
25 And just so the Court knows, we've added one exhibit to the

1 agreed to exhibits, but that was the General Dang letter that
2 was admitted in the previous trial. We've given a copy of the
3 updated witness list or exhibit list to plaintiffs' counsel.

4 THE COURT: Any objection to any of those exhibits?

5 MR. COLLINS: I assume they're the same ones from
6 last time.

7 MR. OGIBA: They are, except for General Dang's
8 letter.

9 MR. COLLINS: Okay, well, that one --

10 MR. BACHRACH: Without the affidavit.

11 MR. COLLINS: I assume we'll probably be arguing over
12 the admissibility of that again.

13 THE COURT: You think I'm going to reverse myself?

14 MR. COLLINS: I hope so.

15 THE COURT: There's two ways to get the answer no;
16 one's not to ask. Anything else? Okay. Opening, opening,
17 I've got a short opening charge, and then we'll just go
18 forward. We're missing one. So we'll just be -- Y'all have
19 any more copies of your book?

20 (Discussion held off the record.)

21 THE COURT: I'll just say, you know, those are the
22 exhibits, they'll refer you to them, but just don't look at
23 them until they're referred to at the trial. You'll have a
24 copy of them back for your perusal at the time we deliberate,
25 okay?

1 MR. OGIBA: Thank you, Your Honor.

2 THE COURT: Anything else? Okay. We'll be at ease
3 until we get the last juror, then I'll come down and we'll
4 start with the opening statements, all right?

5 (A recess was held at this time.)

6 THE COURT: Are we ready to go? Bring the jury in
7 for me.

8 (Jury present.)

9 THE COURT: Welcome back, ladies and gentlemen of the
10 jury, you can take your seats now. And we're going to start
11 the trial of this case, but all that stuff that's in front of
12 you, each person take a book, each person take the exhibits in
13 the binder, and each person take a copy of the exhibits in the
14 notebooks, okay? There's one for each of you, and each person
15 take a pencil and each person take a pad, all right? So
16 that's all for you.

17 Now, as far as the exhibits go, the lawyers will refer to
18 the exhibits in the book as Plaintiffs' Exhibit 1 or
19 Defendants' Exhibit 6, and so when they refer to that, you're
20 welcome to go and look at them, which will make more sense.
21 You don't have to look at them if you don't want to, but
22 you're welcome to look at them. But don't look at any one
23 that hasn't been referred to by the lawyers at the time. But
24 you will have a copy of all the exhibits at the end of the
25 case for your use in your deliberations, okay? And when --

1 your notes and your books and exhibits, you can just turn them
2 upside down on your chair or floor or whatever and leave them
3 in here. You don't have to carry them back and forth to the
4 jury room. All right.

5 Like I say, we're going to start the trial of this case
6 now, and I'm going to give you some preliminary instructions
7 to guide your participation in this trial.

8 It will be your duty to find the facts from the evidence
9 that will be presented to you. You and you alone are the
10 judges of the facts in this case. You will then have to apply
11 to those facts, the law as I will give it to you at the
12 conclusion of the trial. And you must follow that law whether
13 you agree with it or not. And you must not be influenced by
14 any personal likes or dislikes, opinions, prejudices or
15 sympathy. This means you must decide the case solely on the
16 evidence before you and according to the law.

17 And nothing I might say or do during the course of this
18 trial is intended to indicate or should be taken by y'all as
19 indicating what your verdict should be. That's entirely for
20 you to decide.

21 I'll now talk to you about the different types of evidence
22 that may be presented to you in this case, and from which you
23 are to decide what the facts are.

24 The evidence in this case will most probably be the sworn
25 testimony of the witnesses, both on direct and cross-

1 examination, regardless who have called the witness, any
2 exhibits which will be received into evidence and which you'll
3 have back in the courtroom, and any facts to which all the
4 lawyers will agree or stipulate.

5 But certain things are not evidence and you may not
6 consider them in deciding what the facts are. I'll list them
7 for you now. The arguments and statements by the lawyers are
8 not evidence. The lawyers are not witnesses. What they'll
9 say in their opening statements, closing arguments and at
10 other times is intended to help you interpret the evidence,
11 but it is not evidence.

12 At the end of the trial, if the facts as y'all remember
13 them differ from the way the lawyers have stated them, your
14 memory of them controls. Questions and objections by the
15 lawyers are not evidence. Attorneys have a duty to their
16 clients and to the Court to object when they believe a
17 question is improper under our rules of evidence. You should
18 not be influenced by the fact an objection is made or my
19 ruling on it.

20 Testimony that may be excluded or stricken or that you may
21 be asked to disregard is not evidence, and must not be
22 considered. And, of course, anything you have seen or heard
23 then court is not in session, is not evidence. You're to
24 decide this case solely on the evidence received at this
25 trial.

1 Now, there are two kinds of evidence, direct and
2 circumstantial evidence. Direct evidence is direct proof of a
3 fact, such as the testimony of an eyewitness. Circumstantial
4 evidence is indirect evidence, such as the -- it is the proof
5 of a chain of facts from which you could find that another
6 fact exists, even though it's not been proved directly.

7 It's for y'all to decide whether a fact's been proven by
8 circumstantial evidence. In making that decision, you must
9 consider all the evidence in the light of reason, your common
10 sense and experience.

11 You're entitled to consider both kinds of evidence. The
12 law permits you to give equal weight to both, but it's for
13 y'all to decide how much weight to give to any evidence at
14 this trial.

15 In deciding what the facts are, you must consider all the
16 evidence. In doing this, you must decide which testimony to
17 believe and which testimony not to believe. You may believe
18 or not believe all or any part of any witness' testimony.

19 In making that decision you can take into account a number
20 of factors, including the following: Was that witness able to
21 see or hear or know the things about what that witness
22 testified? How well was the witness able to recall and
23 describe those things for y'all? What was the witness' manner
24 or demeanor when he testified? Did the witness have an
25 interest in the outcome of this case, or any bias or any

1 prejudice concerning any party or any matter involved in this
2 case? How reasonable was that witness' testimony, considered
3 in the light of all the evidence in this case? And was that
4 witness' testimony contradicted by what that witness had said
5 or done at another time, or by the testimony of other
6 witnesses or by other evidence?

7 Now, in deciding whether or not to believe a witness, keep
8 in mind that people sometimes forget things. You need to
9 consider, therefore, whether a contradiction is an innocent
10 lapse of memory or an intentional falsehood. And that may
11 depend upon whether it has to do with an important fact or
12 only a small detail. These are some of the factors y'all can
13 consider in deciding whether or not to believe any testimony
14 in this case.

15 Now, during the trial of this case certain testimony will
16 be read to you by way of deposition. Deposition testimony of
17 a witness who, for some reason, can't be present to testify
18 from the witness stand, is usually presented in writing under
19 oath in the form of a deposition. Such testimony is entitled
20 to the same consideration, and insofar as possible, is to be
21 judged as to credibility and weighed by you in the same manner
22 as if the witness had been present and testifying from the
23 witness stand.

24 Now, as y'all know, this is a civil case. Each plaintiff
25 has the burden of proving his case by a preponderance of the

1 evidence. This means that each plaintiff must produce
2 evidence that, considered in the light of all the facts, leads
3 you to believe that what the plaintiff claims against each
4 defendant is more likely true than not. To put it
5 differently, if you were to put a plaintiff's and a
6 defendant's evidence on opposite sides of some scales, that
7 plaintiff would have to make the scales tip slightly on his
8 side. If a plaintiff fails to meet this burden, your verdict
9 must be for the defendant.

10 Additionally, each defendant has brought several
11 counterclaims against each plaintiff. In considering each of
12 these counterclaims, each defendant simply takes on the role
13 as a plaintiff in its own separate case, and you're to treat
14 it as such. Therefore, each defendant bears the burden of
15 proving each and every element of these claims by a
16 preponderance of the evidence, in order to receive a verdict
17 in its favor. If, in your consideration of all the evidence,
18 the defendant has failed to fulfill its burden of proof, then
19 you must return a verdict for that plaintiff.

20 Now, those of y'all who have been jurors on criminal cases
21 have heard of proof beyond a reasonable doubt. That's a much
22 stricter standard that requires a lot more proof than a
23 preponderance of the evidence. The reasonable doubt standard
24 does not apply in this case, and you should, therefore, put it
25 out of your mind.

1 Now, in this case the plaintiffs allege that defendants
2 wrote, published and promoted a book that inaccurately
3 portrayed the plaintiffs and the plaintiffs' activities near
4 the border between South Vietnam and Cambodia during the
5 Vietnam War.

6 The plaintiffs have brought a claim for defamation.

7 Defendants contend the book is accurate, and have brought
8 counterclaims for libel and abuse of process. I'll give you
9 detailed instructions on the law at the end of the case, and
10 those instructions will control your deliberations and
11 decision, and you'll also have a written copy of it with you
12 when you go back, all right?

13 However, in order to help you follow the evidence, I'll
14 now give you a brief summary of the applicable law in this
15 case. Please keep in mind that defamation law is complex.
16 The following brief explanation is only meant to help you
17 understand the evidence, and is not a thorough recitation of
18 the law.

19 The tort of defamation allows a plaintiff to recover for
20 injury to his reputation as a result of a defendant's
21 communication to others of a false message about the
22 plaintiff. Slander is spoken defamation, while libel is
23 written defamation, or one accomplished by actions or conduct.
24 Plaintiffs allege both slander and libel.

25 In order to recover under a cause of action for

1 defamation, each plaintiff must establish four essential
2 elements by the preponderance or greater weight of the
3 evidence.

4 One, a false and defamatory statement by one or more of
5 the defendants concerning that plaintiff.

6 Two, an unprivileged publication to a third party.

7 Three, fault on the defendants' part in publishing the
8 statement.

9 And four, either actionability of the statement,
10 irrespective of special harm, or the existence of special harm
11 caused by the publication.

12 Now, as I said, the defendants have filed counterclaims
13 for libel and abuse of process. The first thing is libel,
14 which is defamation, and I've already given you a brief
15 description of libel.

16 Second is what we call abuse of process. Abuse of process
17 is the employment of a legal process for some purpose other
18 than which it was intended by the law to effect, the improper
19 use of a regularly issued process. In this case, the process
20 is the filing of this lawsuit.

21 In order to recover under a cause of action for abuse of
22 process, each defendant must establish two essential elements
23 by the preponderance or greater weight of the evidence against
24 each plaintiff.

25 Number one, an ulterior purpose, and number two, a willful

1 act in the use of the process not proper in the conduct of the
2 proceeding.

3 Again, this is just a brief overview of the parties'
4 positions in the case. Again, I'll give you detailed
5 instructions on the law at the end of the case that will
6 control your deliberations and decision.

7 Now, the complaint names two defendants. In reaching your
8 verdict, however, you must bear in mind that liability is
9 individual. Your verdict as to each defendant must be
10 determined separately with respect solely on the evidence or
11 lack of evidence presented against it. I instruct you that
12 each plaintiff must prove his individual defamation claim
13 against each defendant separately.

14 Similarly, the plaintiffs are libel only on an individual
15 basis. Therefore, each defendant bears the burden of proving
16 its own claims against each plaintiff.

17 In addition, some of the evidence in this case may be
18 limited to one plaintiff or one defendant. Any evidence
19 admitted solely against one party may be considered only as
20 against that party, and may not in any respect enter into your
21 deliberations on any other party.

22 Now, a few words about your conduct as jurors. First,
23 during the trial you're not to discuss the case with anyone or
24 permit anyone to discuss it with you. Until you retire to the
25 jury room at the end of the case to deliberate on your

1 verdict, you're simply not to talk about this case.

2 Second, don't read or listen to anything touching on this
3 case in any way. If anyone should try to talk to you about
4 it, bring it to my attention promptly.

5 Third, don't try to do any research or make any
6 investigation on your own.

7 And finally, don't form any opinion until all the evidence
8 is in. Keep an open mind until you start your deliberations
9 at the end of the case.

10 Now, if you want to, you can take notes. If you do, just
11 leave them out here, and you'll be able to take them back to
12 your jury room when you deliberate. But remember, they're for
13 your own personal use, and not to be given or read to anyone
14 else.

15 As you know, the trial's going to begin right now. First,
16 each side will make an opening statement. An opening
17 statement is neither evidence, nor is it argument. It's kind
18 of an outline of what that party intends to prove, offered to
19 help you follow the evidence in this case. Think of it like
20 the table of contents in the front of a book. Then the
21 plaintiffs will present their witnesses and the defendants
22 will cross-examine them. The defendants will then present
23 their witnesses and the plaintiff will cross-examine them.
24 After that, the lawyers will make their closing arguments to
25 summarize and interpret the evidence for you, and I'll give

1 you the final instructions on the law. You'll then retire to
2 deliberate on your verdicts.

3 Now, the parties estimate this case is going to extend
4 probably through Thursday of this week. We're going to try to
5 start at 9:30 a.m. each morning, unless there's someone who
6 has difficulty getting here. We'll take a lunch break and a
7 morning and afternoon break, and we'll stop around 5:30, 6:00,
8 6:30, something like that, depending how the witnesses go.

9 Ladies and gentlemen, service on a jury is hard work, but
10 it's also a rare privilege. By the oath you took, you've
11 become an active participant in the public administration of
12 justice, and have become the judges of the facts in this
13 particular case, just as I'm the judge of the law. I'm
14 confident that each of you will discharge those duties to the
15 best of your ability.

16 Mr. Deaver, be glad to hear from you, sir.

17 MR. BEN DEAVER: Good morning. My name is Benjamin
18 Deaver, kind of go by Ben, I've been known in here as Young
19 Ben, or Young Deaver, because this gentleman sitting over
20 here, who was here during the jury selection, is my father,
21 and Mr. Deaver, Mr. Bobby Deaver, so, therefore, they kind of
22 call me Young Deaver here.

23 As the judge spoke to you, we're here because of a book
24 that's been written called Expendable Elite. And before we
25 get into that, I'd just like to -- like I said, I'm Ben

1 Deaver, I practice law in North Carolina, up in Wilmington.
2 My father practices law up in North Carolina also. And
3 sitting beside him is Mr. David Collins, he's a local attorney
4 here in Charleston, I think he's born and raised here in
5 Charleston.

6 There's several plaintiffs in this book. We have sitting
7 over here, we have Mr. Sirois, Mr. Johnson, Mr. Strait, Mr.
8 Taylor and Mr. Kuchen. They're all members of the Special
9 Forces Association, and they were members of camp A-424, which
10 was in South Vietnam, in a district called An Phu, part of
11 Chau Doc.

12 This book took place back in the 1960s, roughly 40 years
13 ago. And if you look at these gentlemen over here, you have
14 to kind of look back at them 40 years ago. Today they're a
15 little older, and they're not the warriors they used to be.
16 But they were warriors back in the 1960s. They were all Green
17 Berets with the Special Forces, and they're very proud, they
18 had a lot of honor, which they still carry, up until the point
19 this book was published.

20 They had respect of the community in which they lived.
21 And the evidence is going to show this. The evidence is going
22 to show that -- Let me say one other thing. There was another
23 gentleman named Colonel Tuttle, who was a plaintiff. He's not
24 going to testify in person, but he's going to be here through
25 a deposition that's going to be read to you. He was the

1 commanding officer over there, and he's ill and lives in South
2 Carolina, but is unable to make it down here.

3 All these men have retired from the military, either as a
4 major, a command sergeant major, sergeant major, sergeant
5 first class. They all completed their tour with the military,
6 retired. And afterwards, the evidence is going to show that
7 they went on to live happy lives. They went on, worked,
8 raised families, had children. Now they're raising their
9 grandchildren. And they've earned, and they have appreciated
10 the respect and the honor that they carried on since 1966.

11 And it's stuff that they're trying to impute on to their
12 grandchildren now, but it's hard to them, and the evidence is
13 going to show that this book has affected their ability and
14 reputation, and their respect, has depleted it, their ability
15 to raise their grandchildren. Their ability to walk in the
16 community, their ability to sit with other military officers,
17 military enlisted men, or to sit in military organizations
18 that they've all belonged to, because they've all been held to
19 this higher standard. Because they are Green Berets and they
20 are Special Forces. And that's something that's hard to earn,
21 and it's something that must be carried, and they carry it in
22 their heart and pride. Just like the soldiers that are over
23 in Afghanistan and the soldiers that are in Iraq, who are the
24 Special Forces over there, they carry it with pride. And the
25 evidence is going to show that.

1 They were in an area called An Phu, part of Chau Doc,
2 South Vietnam, up along the Bassac River. And it was an A
3 camp called camp A-424.

4 And we're going to put on evidence that's going to show
5 that that camp was a very pacified camp. As the plaintiffs
6 are going to testify, it was a resort camp. It was a camp
7 that was designated, prior to Mr. Marvin arriving over there,
8 to be turned over to the regular forces. The regular forces
9 meaning the local Vietnamese over there. And it was a Special
10 Forces camp that was going to be turned over to them, because
11 at that time it no longer provided any importance to the
12 United States. It had no strategic importance.

13 And it's going -- evidence is going to show that the
14 reason that Mr. Marvin was sent to that camp, was because he
15 was a logistics officer. He was quartermaster. And there's
16 nothing wrong with being quartermaster. When I was in the
17 Army, I was quartermaster, I was assigned to a Special Forces
18 unit and I was a quartermaster. I never went through the
19 qualification course, the Q course, to earn the Green Beret,
20 but I did wear the Green Beret and I was a quartermaster.
21 Quartermaster is somebody who does logistics, insures that
22 supplies are there, but it's something that's needed. The
23 Army cannot go without supplies. You have to have food. And
24 the evidence is going to show that.

25 The evidence is going to show that over there in An Phu,

1 like I said, it's a resort. It was very very quiet. That
2 these gentlemen are going to say that the whole time they were
3 there, they never shot their weapon in anger. Basically what
4 they did is they did target practice, they did patrols to help
5 the indigenous people over there, they would go do medical
6 services, do infrastructure, help them build bridges, schools.
7 That was their purpose over there. It wasn't even a complete
8 Special Forces A Team. It was undermanned, because they
9 didn't need all the Green Berets over there that the other
10 camps had, because it was a nonhostile area. And the evidence
11 is going to show that.

12 Then, after these gentlemen testify to all that, we're
13 going to put on some evidence about -- through their
14 testimony, about Mr. Daniel Marvin, the man who wrote this
15 book. We're going to put on that he was a captain of camp
16 A-424. And he was a logistics officer, that he was sent there
17 by his colonel to do logistics, to do accounting, to turn that
18 camp over to the regular forces. And that was his purpose to
19 being in camp A-424.

20 We're going to show that the military was -- it was
21 basically good to Mr. Marvin. He went in, he was a high
22 school drop out, and joined the military. And the evidence is
23 going to show that he climbed the ranks. When he got out of
24 the Army he was a colonel, which was a respectable rank. The
25 military did him good. But he's going to try to say some

1 things, and we're going to present testimony that shows that
2 he's not what he portrays himself to be.

3 And the book, he says he was sent over to camp A-424
4 because he had combat experience in Korea. We're going to
5 have testimony that's going to present that when he was in
6 Korea, it was seven months after the war. He never was in
7 Korea -- never saw any combat in Korea. But, he's claiming
8 that he was given -- and the evidence is going to show from
9 the book, that he's claiming that he was there because he had
10 combat experience, that we're going to show he never had.

11 The case is really going to be very cut and dried, the
12 evidence that we're going to put on. It's going to be the men
13 who served over in camp A-424, who are going to say that the
14 allegations in this book are not true.

15 We're going to have a gentleman named Major General
16 Overholt. He was the JAG officer for the United States Army.
17 He's going to come in and testify. I don't know if any of
18 y'all have seen the TV show JAG or anything like that, and
19 they have the JAG soldiers running around. Let me tell you,
20 this guy, he was the JAG, the top officer for legal in the
21 United States Army. Brigadier general. He's going to come in
22 and say that the allegations that are made against these men
23 in this book, which we're going to prove the evidence is going
24 to show says that they committed mutiny, they committed
25 disobeying direct orders, they committed conspiracy to commit

1 murder, things that they're going to say never happened.
2 Because they didn't happen. There's only going to be some
3 statements made from one person who's going to claim that
4 these things happened. And we're going to put on evidence
5 that's going to show that he has to make those statements,
6 because he wanted to be more than he ever was. That's the
7 author of that book. And in order to do that, he had to
8 surround himself with people that were more than he was.
9 These men were the ones that carried the weapons, they were
10 not logistic officers. He was a logistics officer. And we're
11 going to show after he left camp A-424, he went to the B camp.
12 And when I'm talking about these camps, we're talking about a
13 Special Forces group. Basically you have the group command,
14 you have your A Team -- actually you have your A Teams are on
15 the bottom, they report to a B Team, a C Team, the C Team
16 reports to battalion and then to the group. And that's the
17 structure of the military.

18 The A Teams are the low ones on the pole. They're really
19 the ones that go out and do the civic action, as they did in
20 An Phu. They did civic action, build churches, roads, mostly
21 medical.

22 These men over here, who enjoyed their lives, who are now
23 retired from the military, are now beginning their second
24 retirement -- like I say, this took place roughly 40 years
25 ago -- have to live in the communities. And the evidence is

1 going to show that where they lived, they no longer have that
2 respect, the honor that they earned, because Mr. Daniel Marvin
3 wrote a book that we're going to prove is full of lies, and
4 that defames each and every one of these men.

5 And we're going to ask you at the end of this, after all
6 the evidence is presented, to go back and to find a verdict
7 that yes, these men's reputations have been tarnished, their
8 respect has been dissolved like an Alka Seltzer in water, and
9 we're going to ask you to come back with a verdict in favor of
10 them. Thank you.

11 THE COURT: Thank you, Mr. Deaver. Mr. Ogiba?

12 MR. OGIBA: Thank you, Your Honor. Good morning.

13 Ladies and gentlemen of the jury, my name is Chris Ogiba,
14 I'm an attorney with the firm Nexsen Pruet here in Charleston.
15 I want to make a couple of introductions here. Seated next to
16 me over here is Barry Bachrach, he's an attorney from the firm
17 Bowditch and Dewey from Worchester, Massachusetts, he's my
18 co-counsel. Over here on the bench behind him in the
19 three-piece suit with the mustache, that's Chris Millegan.
20 He's a representative of Trine Day, LLC, that's one of the
21 defendants in this case. Trine Day published the book that's
22 at issue in this case. Sitting next to him is Colonel Marvin.
23 Mr. Deaver spoke fairly extensively about Mr. Marvin in his
24 opening statement. Mr. Marvin is the author of the book, and
25 also, he is a defendant in this case. Seated at the end of

1 the bench over there is Wendy Stockhousen; she is my assistant
2 and she works at Nexsen Pruet as well.

3 Like I said, Mr. Deaver made extensive reference to
4 Mr. Marvin during the opening statement, made some pretty
5 derisive comments about Colonel Marvin.

6 I will tell you now that at no point during the case that
7 we put on, on behalf of the defendants, will you hear anything
8 spoken by Mr. Marvin, Colonel Marvin, or by Mr. Millegan, that
9 disparages these men over here, the plaintiffs. There's
10 nothing, there's nothing disparaging that will be said.
11 There's no -- Colonel Marvin, Mr. Millegan, they hold these
12 men in high esteem.

13 And you will know from the book that despite what
14 Mr. Deaver has indicated in the opening statement, he claims
15 that there's allegations of all kinds of mutiny and disobeying
16 orders and whatnot. And I understand, you're not going to
17 have an opportunity to read the whole book before this trial
18 is over. But when you read the book, you will see that
19 Colonel Marvin portrays these men as heroes. They were
20 heroic. They are portrayed as heroic in this book. Colonel
21 Marvin believes them, to this day, despite the fact that
22 they're bringing this lawsuit against him, despite that, he
23 still feels that their service in Vietnam was heroic and was
24 honorable. Despite what Mr. Deaver said in his opening
25 statement, the book does not portray these men as anything

1 less than honorable.

2 Now, Mr. Deaver spoke a little bit during his opening
3 statement about the war in Afghanistan and Iraq. And I assume
4 he brought that up in order to kind of make you think that,
5 you know, Colonel Marvin is antimilitary, and that he derides
6 these individual plaintiffs, that he thinks poorly of the
7 soldiers that serve over in Afghanistan or Iraq. Couldn't be
8 further from the truth.

9 My brother -- I'm the oldest of 11 kids -- I have a
10 brother, he's number six in line. Number five in line. He
11 served over in Iraq, he was one -- he was a marine, he wasn't
12 a Special Forces guy like the plaintiffs or like Mr. Marvin,
13 Colonel Marvin, but he served over in Iraq, he was a marine
14 and he served in Basra. He was one of the first to cross over
15 the border during the incursion into Iraq. And I e-mailed
16 with my brother almost every day. At least once a week I
17 e-mailed with my brother while he was stationed in Kuwait and
18 then again when he was in Basra. And he had a wife and two
19 kids at home that he left at home to go and serve and to serve
20 on behalf of this country over in Iraq. But his emails to me,
21 they didn't -- they never portrayed a fear of being killed.
22 They never portrayed a fear of being captured or tortured or
23 anything like that. The only thing that he talked about in
24 his emails that scared him, was the whole Vietnam experience,
25 the whole possibility that he would come back from honorable

1 service in Iraq, come home and walk through the airport and
2 get spit on by protesters. He was scared -- I'm not going to
3 say scared -- but he saw the press reports about what was
4 happening in Iraq, and this is back in 2002, they've gotten
5 much worse these days. But he saw those press reports, and he
6 was afraid that the same thing that happened in Vietnam was
7 going to happen here, and that the soldiers who served
8 honorably were not going to be treated well.

9 Well, I will assure you that nothing in this book, in
10 Expendable Elite, does that to these men. None of it sets
11 those men out to be disparaged by the general population, by
12 the people that these men hang around with every day. Nothing
13 in the book does that. And you'll hear testimony that will
14 support that.

15 Now, the judge spoke briefly about the causes of action in
16 this case. And I'm going speak very briefly about this.
17 We'll talk about it later during closing and during your
18 instructions that you'll receive. But the plaintiffs have
19 asserted a cause of action for libel, for defamation. The
20 defendants, Colonel Marvin, and Mr. Millegan on behalf of
21 Trine Day, have asserted counterclaims for libel and for abuse
22 of process.

23 I'm not going to bore you to death with all the standards
24 or elements of those causes of action. But what I will tell
25 you is that -- and again, it's something that Judge Norton

1 talked about earlier, that in order to prove defamation, in
2 order to prove libel, there are two key factors that will come
3 into play in this case, that you need to keep -- that I ask
4 that you keep an ear out for.

5 First of all, the plaintiffs, for that matter, the
6 defendants, on their counterclaim, but we have to prove that
7 the statements that are made that we claim to be defamatory,
8 actually are defamatory. That they defame the people that
9 the statements are made about.

10 Now, what does it mean to be defamatory? What does the
11 statement have to do to be defamatory? A statement is
12 defamatory if it serves to harm somebody's reputation, or if
13 it lowers them in the estimation of the community in which
14 they live. Or, if it deters third parties, other people, from
15 dealing with them.

16 Now, despite what Mr. Deaver said in his opening, you're
17 not going to see any evidence in this trial of people who are
18 running away from these plaintiffs like they've got the
19 plague. I mean, there's nothing -- there's going to be no
20 evidence that's going to be put on in this trial that will
21 show or that will establish that they were defamed, that any
22 statement in the book lowered their estimation in their
23 communities.

24 Now, they might talk about -- they might talk about how
25 now they're seen as heroes, whereas they didn't think that

1 they were heroes. That's not defamatory. Defamatory -- to be
2 defamatory, it has to lower your estimation in the community,
3 not raise it. So that's one thing to keep in mind.

4 The other all important fact or all important element of
5 defamation or libel is that the statement has to be false.
6 You have to prove that the statement that you claim is
7 defamatory, was also false. And that is probably the crux of
8 this case for the defendants and for the plaintiffs on both
9 sides. Because a lot of times in these defamation cases, a
10 lot of times in these libel or slander cases, what you'll have
11 is a he-said-she-said. Judge Norton talked about the scale,
12 you know, you have to prove your case by a preponderance of
13 the evidence. And in that case, you have to prove -- you have
14 to have enough evidence on your side of the scale to weigh it
15 down just slightly in order to prevail on your cause of
16 action. And these he-said-she-said cases, the scale is --
17 it's hard to tip it one way or the other.

18 Now, in this case, you've got he-said-he-said. You've got
19 the colonel with one story, you've got the plaintiffs with
20 another story. You know, you've kind of got, you know, an
21 even balance of the scale. However, that's pretty much as far
22 as the plaintiffs are going to go to prove their case.
23 They're going to put on their own testimony at this trial.
24 That's going to be the extent of what they put on their side
25 of the scale.

1 Now, for Colonel Marvin and for Trine Day, we've got some
2 other stuff to put on our side of the scale. And probably the
3 most important thing, if you're going to pay attention at all
4 during this trial, the one thing that we ask you to really
5 focus on is that we have tapes, audio tapes that were prepared
6 by some of these plaintiffs. They were prepared because the
7 colonel had drafted a first draft of this book back in the
8 late 80s. And he sent copies of this book, this manuscript,
9 to these plaintiffs, to ask if they had any comments on it.

10 And on the manuscript, and you'll see it in this trial, on
11 the manuscript it indicates that it's a true story. Well,
12 these plaintiffs get copies of this manuscript, some of them
13 respond to the colonel in a questionnaire form, they respond
14 to him in writing, but others recorded oral statements, they
15 put it on tape. And you will hear these statements on the
16 tapes. And they will substantiate the exact things that these
17 plaintiffs now allege are false.

18 So you've got the colonel, Colonel Marvin, who has had one
19 story, one story consistent since the mid 1960s, about his
20 service in An Phu. You will have the plaintiffs, who agreed
21 with Colonel Marvin's version of the story in these tapes.
22 We're not going to hide anything, we're going to play them for
23 you in court. You're going to hear these plaintiffs'
24 statements about the book and about the allegations in the
25 book. And you're going to hear that they're the exact same as

1 what the colonel wrote in his book, in which they are now
2 coming to court claiming to be false.

3 So suddenly the scale, we've got the Colonel and
4 Mr. Millegan testifying, we've got plaintiffs' written
5 questionnaires and their oral tapes weighing in our favor.
6 Not only that, but we're going to have an eyewitness account,
7 we're going to have a witness come in to testify about the
8 fact that this was not a resort. An Phu was not a resort.
9 The camp was not a resort. There was extensive military
10 action in this camp and in this district. The plaintiffs are
11 going to testify about it in their -- in the tapes. They talk
12 extensively about fire fights in the tapes. And one of the
13 plaintiffs even talks about how Colonel Marvin saved his life
14 during one of these -- during one of these fire fights.

15 Now, so we'll have an eyewitness who will verify what the
16 military action that occurred in An Phu. So again, weighing
17 the scale a little bit more in our favor.

18 And finally what we will present to you are extensive
19 documents, newspaper articles, other -- all kinds of
20 documentation that Mr. Millegan had reviewed prior to
21 publishing the book, that also support Colonel Marvin's
22 version of the facts. Some of them are official
23 documentation, some of them are -- some of them are
24 correspondence. But again, documents that support Colonel
25 Marvin's version of the facts.

1 And again, this version of the facts does not put the
2 plaintiffs in any bad light. If anything, it portrays them as
3 heroes, it portrays them as men of strong character, who are
4 willing to put themselves on the line to save indigenous
5 Vietnamese. I don't know what's defamatory about that.

6 So basically on one side of the scale you're going to have
7 the plaintiffs' testimony; on the other side you will have the
8 defendants' testimony, the plaintiffs' prior written
9 statements, the plaintiffs' prior oral statements, the -- you
10 will have eyewitness testimony of what happened in An Phu, you
11 will have written documentation that supports the version of
12 facts that Colonel Marvin has portrayed in the book.

13 Now, after you hear all of that, and after you hear the
14 plaintiffs' explanations for why they recorded these oral
15 statements, you're probably going to hear the plaintiffs
16 testify that they were drunk when they recorded these
17 statements, or that the plaintiffs might indicate that oh, I
18 thought the book was fiction. You listen to these tapes and
19 you decide for yourselves whether it sounds like these
20 plaintiffs are contributing to a Harry Potter fiction book, or
21 does it sound like they're recalling what occurred during
22 their service in Vietnam, and whether they are recalling
23 actions taken by Colonel Marvin and actions taken by them in
24 Vietnam. You can decide that for yourselves just by listening
25 to the tapes.

1 So then we have -- so that's really the basis of Colonel
2 Marvin's case.

3 Now, Mr. Millegan is the publisher. You know, Colonel
4 Marvin drafts this manuscript, he supports it with these, you
5 know, these audio tapes and the questionnaires and all the
6 documentation, and he gives it to Mr. Millegan to go and
7 publish with Trine Day.

8 Now, what does Mr. Millegan do? Mr. Millegan, in a lot of
9 ways, is just like each one of you. He had to serve as a
10 judge of the facts. He had to -- well, he had to judge the
11 evidence that was presented to him, as to whether or not the
12 book was true, whether or not there was anything out there
13 that could call the version of facts reflected in the book,
14 whether there was anything out there to call that into
15 question.

16 And you will find -- you will hear evidence and see the
17 evidence in this trial that Mr. Millegan had at his disposal
18 when he received this manuscript. He will have had extensive
19 documentation, he will have had the audio tapes provided by
20 the plaintiffs, he will have had written questionnaires filled
21 out by the plaintiffs, and he will have had written statements
22 provided to him by the Special Forces Association. All of
23 which either speak highly of the book, or support the
24 allegations in the book; none of which calls anything in the
25 book into question.

1 You will see that Mr. Millegan had nothing presented to
2 him by anybody, much less the plaintiffs, that said anything
3 about the book being false, anything in the book being false.

4 So you have to decide, after hearing that evidence,
5 whether it was reasonable for Mr. Millegan to publish this
6 book, after hearing all of this -- after reviewing all of this
7 evidence, after reviewing the manuscript and after
8 reviewing -- after reviewing the tapes and statements made by
9 the plaintiffs, you have to decide whether Mr. Millegan was
10 reasonable in printing that book. And I trust that you will
11 find that he was.

12 Now, that's really the crux of the case here. To a large
13 extent it's going to be which side tips the scale in its own
14 favor, which side tips the scale in its own favor in support
15 of its case and in defense of the claims that are brought by
16 the other side.

17 Now, in a lot of ways this is a very sad case. Because
18 you've got, you know, some fairly, you know, elderly gentlemen
19 who served honorably in Vietnam, all of whom served honorably
20 in Vietnam. And you've got some of them who you'll hear in
21 the tapes, one of these gentleman credits Colonel Marvin for
22 saving his life, and he thanks him on the tape for saving his
23 life during their service in Vietnam. And now he's going to
24 come in here and say it never happened. And he's going to
25 come in here and basically withdraw that thank you to Colonel

1 Marvin. It's pretty sad.

2 You're also going to hear one of these plaintiffs talk
3 about how -- on the audio tapes -- you're going to hear him
4 talk about how in his estimation, Colonel Marvin was a ten out
5 of a ten in terms of -- as if he was going to rate him as a
6 commanding officer, he was a ten out of a ten. And now he's
7 going to come in here and call him a liar.

8 You've got another one of these plaintiffs who's going to
9 come in here and testify -- on these audio tapes you're going
10 to hear one of these plaintiffs testify that he was engaged in
11 extensive fire fighting, in an extensive fire fight, and that
12 he was scared during the fire fight. Now you're going to have
13 him come in, and again, call the Colonel Marvin a kook, call
14 him a liar. It's sad. It's a sad case.

15 We're not going to put on any extensive evidence about why
16 these plaintiffs changed their story, why they have moved from
17 what they represent in their audio tapes, to what they're
18 probably going to testify before this Court in this coming
19 week. But something changed. Something maybe caused them to
20 change. But their testimony, their version of the facts
21 indisputably has changed. Colonel Marvin's has never changed.
22 Colonel Marvin's has never changed. Thank you.

23 THE COURT: Mr. Deaver, call your first witness.

24 MR. DEEVER: Your Honor, the plaintiffs call
25 Mr. Taylor.

JAMES TAYLOR - DIRECT EXAMINATION

1 THE CLERK: State your name for the record.

2 A. My name is James A. Taylor.

3 JAMES TAYLOR, a witness called by the plaintiffs, first
4 having been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. DEEVER:

7 Q. Morning, Mr. Taylor.

8 A. Good morning.

9 Q. Can you hear me all right?

10 A. I can hear you fine.

11 Q. Do you have any difficulty hearing?

12 A. No, I put my hearing aids in.

13 Q. Okay. Will you tell the Court who you are?

14 A. My name is James A. Taylor, I live in Fayetteville, North
15 Carolina, and I've been there for 23 years, and I'm retired
16 over 20 years military.

17 Q. Are you married?

18 A. I'm married. I have three sons and seven grandsons and
19 two great grandsons.

20 Q. Can you tell us a little bit about what your military
21 career was?

22 A. Most of my military career was with the Special Forces. I
23 joined the Army in 1955, I went through basic training, which
24 was eight weeks. Then I went through AIT, which is another
25 eight weeks at Fort Dix New Jersey. From there I reported

JAMES TAYLOR - DIRECT EXAMINATION

1 right into the 77th Special Forces. This was back in 1955.
2 And from there I served several years with Special Forces, I
3 served a tour in Korea, I served two tours in Germany, I
4 served two one-year tours in Vietnam, and another short-term.
5 And then I retired in 1975.

6 Q. What was your rank at retirement?

7 A. When I retired from the military I was a sergeant major
8 E-9.

9 Q. Is that the highest enlisted grade?

10 A. That is the highest enlisted rank you can obtain in the
11 military.

12 Q. Have you had any correspondence with Mr. Marvin since you
13 were in Vietnam with him?

14 A. Well, after the convention in 1988, I met Mr. Marvin
15 there, first time I'd seen him since I'd left An Phu. And we
16 had a conversation and he started corresponding with me. And
17 we did for a few years, until finally after he come out with
18 this second manuscript called the Apocolypse of An Phu, I
19 called Mr. Marvin and told him I wanted nothing to do with him
20 or his book, because it was a pack of lies.

21 Q. What does the -- Was this a manuscript that you think
22 subsequently became Expendable Elite?

23 A. Right. First there was the manuscript called the Bassac
24 Bastards. This didn't get anywhere. So then he had another
25 manuscript called Apocolypse at An Phu, which is basically the

JAMES TAYLOR - DIRECT EXAMINATION

1 same book as the Bassac Bastards. Which is the same type.
2 Number one, I'm not a bastard, in anybody's mind.

3 This didn't fly, so then he come out with another book
4 called Snuff Crown. Same book, different title. Same lies in
5 it. But after I read the Apocolypse at An Phu, after I got
6 it, that's when I really got upset, and I called him and told
7 him I wanted nothing to do with him or his book.

8 Now, you would think by me calling and telling him that,
9 that he would just leave me out of it completely. But no.
10 When he somehow got the book Expendable Elite published, there
11 we are, right on the front. There's our names, there's our
12 pictures right on the front of the book and in the book.

13 Now, I would think that since I told him I wanted nothing
14 to do with him, he would have especially left me off of it.
15 But no, he didn't. He's got one person on there that really
16 had nothing to do with the book. All right? But his picture
17 is on the book. And so basically that's how I, you know,
18 became fully aware of what was going on.

19 When the first manuscript, Bassac Bastards, come out, it
20 was supposed to be a fiction. Mr. Marvin even states that.
21 It was a fiction. Then he had to change it. All right? It
22 took him from his own statement, over 120 people before he
23 could find somebody to publish this book. 120 publishers
24 turned him down before he found Mr. Millegan to publish his
25 book.

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1 MR. BACHRACH: Excuse me, Your Honor, I'd object,
2 move to strike, he's not answering the question.

3 THE COURT: Overruled.

4 BY MR. DEEVER:

5 Q. You said one of the men, one of the plaintiffs, was not
6 even in the book? I mean was not even involved?

7 A. On the front of the book there you'll see a man that's
8 called Doug Fox. Doug Fox was in An Phu for a very short
9 period of time. All right? Then Mr. Marvin got rid of
10 Mr. Fox. Master Sergeant Fox at the time. So he was there
11 for very very short period of time. He was not even really
12 involved with the team much.

13 Now, if I can, I'll point Doug Fox out to you. Doug Fox
14 is the guy leaning right here in the center. Now, Doug Fox
15 can't be around to defend himself, because he just recently
16 passed away.

17 Q. Did you ever get involved with the Special Forces
18 Association about this book?

19 A. Yes, I did. As a matter of fact, I'm the one that went to
20 the Special Forces Association. After the Apocolypse of An
21 Phu came out, I read it, I contacted Special Forces
22 Association, because they have been involved in other cases
23 similar to this, and I was looking for some guidance as to
24 what we could do to try to get this book stopped. All right?
25 Try to keep it from being published or going any further.

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1 So I worked -- I asked them for their assistance to help
2 us try to keep this book off the market.

3 Q. Was that the Bassac Bastards originally?

4 A. That was -- actually it was the -- they were aware of the
5 Bassac Bastards, I made them aware of it, but the Apocolypse
6 of An Phu is when I went to them. And this was before the
7 third one, Snuff Crown, came out. This was back in 19 -- I
8 want to say 1995, '96, somewhere around there. I'm not sure
9 of the dates on that.

10 Q. Was it because it was portrayed then as the truth, instead
11 of a fiction, that upset you?

12 A. When the Apocolypse of An Phu came out, it was definitely
13 supposedly a true story. All right? After he changed the
14 Bassac Bastards, it was supposedly a true story. And then
15 when Snuff Crown come out, it's supposedly a true story. And
16 this is supposedly a true story. I can tell you right now
17 there's nothing further from the truth than this book right
18 here.

19 Q. Tell us when you went to An Phu, and a little bit about
20 being there.

21 A. Okay. When I got to An Phu, I think it was the end of
22 December of '65 or maybe the first of January '65. It was
23 right around that same time period. And they met me at Chau
24 Doc, brought me down the river on a boat, you know, this
25 dangerous territory, but we're riding down the river on a

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1 Sunday afternoon, taking a stroll. And when I got to An Phu I
2 was met by a Master Sergeant Valenzuela, he was the team
3 sergeant there. All right? And we just walked around the
4 camp, no concern, no fear, you know, just a nice place to be.

5 Q. Well, what was going on when you got there?

6 A. When I got there, there was nothing going on. There was
7 nothing happening in An Phu, you know? As Mr. Deaver brought
8 up, this was a resort area. It was a rest area. You know?
9 And for me, it was good relief.

10 Q. Where were you prior to that? What was your assignment
11 prior to An Phu?

12 A. Prior to going to An Phu, I was assigned to detachment
13 A-501, just down in Nha Trang. And I spent about five months
14 there with that detachment. Prior to that, I came to Vietnam
15 from Fort Bragg.

16 Q. What was the mission -- let's -- if you will, please,
17 describe An Phu, what it is and what you and the camp were
18 doing there.

19 A. Okay. When I got to An Phu I was then a weapons sergeant,
20 a light weapons sergeant, I was in charge and responsible for
21 all the light weapons in the camp, the machine guns and all
22 your light weapons that are considered light weapons, I was
23 responsible for the maintenance, their displacement on
24 perimeters and things of that nature. And we didn't have a
25 heavy weapons man, so I was also the heavy weapons man. Which

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1 was responsible for the mortars and .50 caliber and all your
2 heavier equipment, heavy artillery.

3 And when we got there, the first thing I did was I walked
4 around with Master Sergeant Valenzuela and looked at the
5 perimeter and I made recommendations on maintenance and this
6 and that and the other. But primarily there was nothing going
7 on, so we were basically just going out on med patrols, civic
8 action patrols.

9 Q. You said med patrol?

10 A. Medical patrols, I'm sorry, medical patrols where you go
11 out to the village and assist with medical problems. And the
12 medic always went on one -- on them with you, because he had
13 the knowledge to treat them for any diseases and any medical
14 assistance they really needed. We were just along with him to
15 assist him. And now, we ran a lot of medical patrols, and
16 civic action patrols where you go out and you work with the
17 civilians to try to make their life better. All right? You
18 show them how -- build churches, schools, dig wells, things of
19 this nature.

20 And basically that's what the mission to An Phu was, was
21 just medical patrols, civic action patrols. All right?

22 We did run -- we'd run operations, but any time we went
23 out it was just, you know, around camp, just walking around,
24 nobody was really concerned, nobody was really scared to walk
25 in that area. So we just walk around on -- we'd go out on

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1 patrols. We had two FOBs that we manned.

2 Q. What is an FOB?

3 A. That's forward operational base. It's a -- if you
4 visualize the camp is here, there's a little outpost out here,
5 all right? And we manned it. Sometimes there would be two
6 Americans out there, sometimes there wouldn't, you know.
7 Depending on the manpower we had. Because we were never, as
8 he has brought up, full strength, because we had no need to
9 have full strength A Team there, all right? Why put people
10 that are needed in other areas in Vietnam to an area where
11 they're not needed? And your Special Forces headquarters, you
12 know, knew that we were understaffed and knew that we did not
13 really need a full team there.

14 Q. What about the activities of the civilian personnel, not
15 the ones that were CIDG or LLDB, but the people that lived in
16 that area, what was their life like?

17 A. Their life was -- really, it was a shame. They're very
18 poor people. Their life was mostly farmers, or running the
19 local little markets, all right? And a very simple life. The
20 only thing they wanted was to be left alone and live in peace,
21 you know? And we was there trying to help them obtain that
22 peaceful living.

23 They were what were considered the Hoa Hoa people, they
24 were really good people. They were nice people. They were
25 friendly people. You know? We would leave the camp and walk

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1 down into the main town of An Phu, and we'd go down there and
2 we'd have lunch. All right? Have -- go down there and eat
3 chicken and rice, that's all I liked was chicken and rice.
4 But we would just walk from the camp downtown to their little
5 village and set there and have lunch with them. So you can
6 see, obviously we weren't too worried about anything.

7 Q. How long were you in that particular camp?

8 A. I got in An Phu, like I said, either the last of December,
9 first of January, and I left the end of July. When I left
10 there I went to another camp called Thuan Binh.

11 Q. During that time that you were there, was An Phu ever
12 attacked by the Viet Cong or by the North Vietnamese?

13 A. During the time I was there, An Phu never never came under
14 fire. We never had -- like I said, I spent almost six months
15 there. I never fired a weapon. You know? Now, if they're
16 having all these big battles, if you glance through the book
17 and you'll see we had some horrendous battles, we fought more
18 battles in An Phu than they had in all of Vietnam, according
19 to this book.

20 Now -- and I'm sitting here and I'm telling you and I'm
21 looking you right straight in the eyes and telling you, I
22 never once fired a weapon. I never once fired my M-16 rifle
23 in that camp. Now, if we're under that much enemy attack and
24 enemy pressure, I would have had to do something, either that
25 or run, and I didn't run.

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1 Q. Well, in the book, are you portrayed as a hero?

2 A. Oh, yeah, in the book I'm definitely portrayed. I've done
3 several things. Me and an interpreter, supposedly now, chased
4 off a whole Viet Cong either company or regiment. Each
5 manuscript it changes a little bit. But we chased off a whole
6 bunch of people with me with machine gun and the interpreter
7 carrying the ammunition. Does that sound like Rambo? I'm not
8 Rambo. I didn't do this. It is not true. If it had to
9 happen, I would have definitely remembered that, you know?
10 But in the book, it does. It portrays me as a hero.

11 As a matter of fact, everybody sitting back there in some
12 way are portrayed as heroes. But we will be the first to tell
13 you, we weren't heroes. If I'm going to be a hero, I'm going
14 to do something to deserve that status. I don't want somebody
15 making up a bunch of crap in a book to try to make me look
16 good. I think my military service speaks for itself. I don't
17 need this.

18 Q. Did you leave that camp under any particular order or
19 circumstances?

20 A. When I left An Phu, just as everybody was leaving An Phu,
21 because the camp was being ready to be turned over to the
22 ARVN, that's the Vietnamese regular Army, all right? So we
23 were just being phased out. We were there just primarily for
24 the turnover to that -- of that camp, and the FOBs, to the
25 regular Vietnamese Army, all right?

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1 So as that happens, and during the period towards the end
2 closer to the turnover, then people started departing the
3 camp. And I don't remember the exact order, but one by one,
4 maybe two by two, the Americans were leaving that camp and the
5 ARVN was taking over. I left, I think, on July 28th or
6 somewhere around there. And that's when I left there, I went
7 to Chau Doc. From Chau Doc I went to the -- another A camp
8 called Thuan Binh. But primarily the camp was being phased
9 out and turned over.

10 And once again, you don't turn a camp over in any hostile
11 country, unless it is a peaceful area. There is no real
12 imminent threat or any danger left.

13 Q. What is it -- what is there about it, this book, making
14 you a hero, that bothers you?

15 A. Well, first of all, what bothered me is, like I said, I
16 spent a lot of time in the military and it was all honorable
17 service. This book, according to this book now, we committed
18 mutiny, we committed treason, we disobeyed lawful orders, and
19 we invaded a sovereign country. Neither me nor anybody else
20 sitting back there done any of that. Not even Mr. Marvin.
21 But according to Mr. Marvin, as things transpired, that's what
22 we could be accused of. Now, keep in mind that I believe, if
23 I'm not mistaken, three of those things could be the death
24 penalty. One could be life in prison. What's that say about
25 my career? Now, would you be upset? I'm definitely upset.

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1 Q. During your military career, were you ever accused of any
2 violations of the Uniform Code of Military Justice?

3 A. No, sir. Over 20 years, no, ma'am, I was never accused of
4 anything other than honorable service.

5 Q. Have you violated a direct order from a superior officer?

6 A. Never.

7 Q. Would you have -- had you ever done that, would you have
8 attained the rank that you retired at?

9 A. No, sir. If you had violated a lawful order from a
10 superior officer, that is grounds for court-martial. Now, if
11 that being the case, then I would not have retired as a
12 sergeant major in the Army. Keep in mind, that's the highest
13 enlisted rank held. If you have a court-martial on your
14 record, you can forget it; you're not going to get promoted.

15 Q. How does Mr. Marvin account for the fact that he and you
16 and these other men, some of them, disobeyed a direct order
17 from Colonel Tuttle to report to camp B-42, your next higher
18 echelon.

19 A. Yeah. Well, according to the book, we received a radio
20 message for the members of A-424, the Special Forces A Team,
21 to depart camp and report to B-42. Now, this is a lawful
22 order from Colonel Tuttle, who was at the time not the B
23 commander, but the C commander, all right? Because we had the
24 A Team, the B Team and the C Team. The C Team is the -- our
25 highest headquarters. And of course then you can go to Nha

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1 Trang, which is the headquarters of all Special Forces.

2 This order did not come in. There was no order, radio
3 message, that came to An Phu for us to leave the camp. There
4 was no need to, because they knew we were going to leave
5 anyhow. We were turning it over, remember? There was no
6 radio message that came into that camp. Because if it had
7 came in, Ray Johnson, sitting back there, was the radio
8 operator. At the time this was transpiring, I was then the
9 team sergeant, all right? Ray Johnson would have brought that
10 radio message directly to me to read. But this message
11 implicates that we violated a lawful order by not leaving An
12 Phu and go into the B camp.

13 Q. Was there another order of similar import for you to leave
14 An Phu?

15 A. There was, supposedly now, I'm saying supposedly,
16 according to this book, there was several orders that came
17 down advising us to leave the camp and report to B-42. And we
18 ignored -- supposedly ignored all of them. We did not ignore
19 any orders, because there was never any such orders came down
20 over the radio.

21 Q. To the public now, based on that book, does that leave you
22 an accused felon? Does that leave you in the status of having
23 an accusation against you of committing several severe
24 violations of the Uniform Code of Military Justice?

25 A. That not only leaves me, but everybody on the team, in the

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1 status of being -- well, I think the term was used, renegades
2 or something of that nature, up there in An Phu, all right?
3 So that leaves all of us, me -- and I speak for myself, which
4 I will -- as being accused of violating orders, mutiny, even
5 goes so far as treason. And that puts us in a pretty bad
6 light, you know? After being -- serving my time as I did in
7 Special Forces, and then being put in this position where I'm
8 accused of being a renegade, you know? A loose cannon, I
9 think was the phrase that was used.

10 Q. Were you a member of the Special Forces Association at the
11 time that this book was published?

12 A. No, at the time the book was published I was not a member
13 of the association. I joined the association after this
14 transpired. Oh, I'm sorry, you mean when the book was
15 published?

16 Q. Yes.

17 A. Yes, I was a member of the association when the book was
18 published.

19 Q. Did you talk with the Special Forces officers about
20 getting some type of relief to clear your name?

21 A. When I went to the Special Forces Association and I met
22 with an individual named Jimmy Dean, who was the administrator
23 of Special Forces Association, we had a discussion. He, in
24 turn, came up with a questionnaire he asked me to fill out,
25 and he sent one to each member of the detachment to fill out.

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1 They, in turn, got with the lawyers to decide what course of
2 action to take.

3 The lawyers then drafted up a letter and sent it to
4 Mr. Marvin, Mr. Millegan, I believe, and asking them to take
5 the book off the market or change it to a fiction. They
6 totally ignored the first letter, to my knowledge. So there
7 was another letter sent 30 days later, again asking, change
8 the title, make it a fiction, or take it off the publication.
9 They again ignored it.

10 Q. Was Mr. Marvin a member of the association also?

11 A. At one time Mr. Marvin was a member of the Special Forces
12 Association. And I won't go into any reasons for it, but he
13 was expelled from the Special Forces Association. I'm not
14 familiar with the details behind that. Only thing I can tell
15 you is I do know he was expelled from the Special Forces
16 Association.

17 Q. Now, he was a member at the time, was he not, that you
18 went to Special Forces and complained about what his conduct
19 was as a member of the Special Forces Association?

20 A. Yeah, he was a member of the Special Forces at that time.

21 Q. Was the Special Forces Association -- What is it? Explain
22 to us; is it a fraternal organization?

23 A. It's a fraternal organization of retired and active duty
24 Special Forces personnel. We have approximately, I want to
25 say nine to 11,000 members now. We have chapters all over the

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1 United States, Korea, Japan, Okinawa, Panama. It's a big
2 organization, and it does a lot of good for a lot of people.

3 Q. Does it have a constitution or bylaws?

4 A. The association has a constitution, bylaws, and every
5 chapter is held liable to this constitution and bylaws, just
6 as any other -- with any other fraternal organization.

7 Q. Are there provisions for disciplinary action against a
8 member who violates the constitution or the bylaws of the
9 corporation -- of the association?

10 MR. BACHRACH: Objection, Your Honor, relevance.

11 THE COURT: Sustained.

12 MR. DEEVER: We'll get into the book now, if you
13 would allow me just a moment, Your Honor. I want to give him
14 his book, Your Honor, but I don't have -- this is --

15 BY MR. DEEVER:

16 Q. You have yours.

17 A. Yeah.

18 Q. Okay. Will you pull that -- hold that up and identify
19 what it is you have there.

20 A. That is the book in question, entitled Expendable Elite,
21 written as a true story by Mr. Marvin.

22 Q. Are you mentioned in that book by name?

23 A. I'm mentioned in the book several times by name.

24 Q. Okay. Well, let's, if you will, please, and if you,
25 members of the jury, if you will look at your book, we will go

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1 through various pages where there's reference to Mr. Taylor,
2 and you can follow with us and you can read along with what
3 he's -- what involves Mr. Taylor, and he can make his comments
4 on it.

5 Let's first look at -- Did you prepare a statement that
6 where you prepared in your own hand to go through and take
7 references in the book that you -- where you are, and make
8 comments on it?

9 A. Yes, I did. I made a -- at the request of Special Forces
10 Association and the attorneys, I went through the book, and
11 anything that pertained to me, I wrote down the page number
12 and a brief description of what pertained to me, and then I
13 gave my opinion in this statement as to what I thought about
14 it.

15 Q. All right. Let's look at page 84, if you will, please.
16 All right. Are you mentioned there?

17 A. Yes, I am.

18 Q. Will you read that portion that concerns you?

19 A. It says, "Jim Taylor was one of the first to respond." Do
20 you want to start there or --

21 Q. That's okay.

22 A. "Jim Taylor was one of the first to respond. Jim was born
23 in Beardstown, Illinois, in 1938 in a large family that
24 eventually included 15 brothers and sisters. He was raised in
25 the city, played football, and been in a few fist fights

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1 before enlisting in the Army of June of 1955. He loved the
2 Special Forces, and he was especially proud to have been at An
3 Phu with the Hoa Hoa."

4 Q. Is that true?

5 A. Well, it is true, I am from Beardstown, Illinois, I am
6 from a large family and I'm proud of it. But I didn't grow up
7 fighting my way through life. All right? I had a real happy
8 life. We had a real close family. We had a real close
9 neighborhood. We had no need to fight. But I am from
10 Beardstown. And yes, I am proud of Special Forces, and I'm
11 proud of the time I spent at An Phu.

12 Q. Keep reading, if you will then, about meeting Sergeant
13 Valenzuela.

14 A. Is that out of the same page, sir?

15 Q. Yes. It goes forward there.

16 A. About where -- Valenzuela?

17 Q. Yes, where -- it might be on the next following page.

18 A. That's on page 84, okay. Here we are.

19 Q. Yeah, I believe that's what I said, but you were not
20 reading from 84?

21 A. Yeah, I'm on 84.

22 Q. Okay.

23 A. It says -- where it starts, "We went back to our camp in
24 time for lunch."? "We went back in our camp in time for
25 lunch. I wrote what I'd learned at Tan Chau, what Major Le

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1 had told me about Bassac Bastards (sic) and put in the
2 outgoing mailbox to go to my friend at Fort Bragg and took my
3 afternoon siesta.

4 "Sergeant First Class James A. Taylor arrived by assault
5 boat 17:30 hours, a welcome addition to our camp. Team
6 Sergeant --" it's supposed to be Valenzuela, but it's
7 Valenbarel (phonetic) (sic) here -- "Val -- Team Sergeant Val
8 brought Taylor to my office after he'd gotten settled in his
9 cubicle located next to the aid station. Jim was a heavy
10 weapons man with almost a decade of service and all but six
11 months of that was with airborne status. He was lean,
12 muscular and had an airborne crew cut and looked tough as
13 nails until he smiled. A ready smile, a good sense of humor,
14 and the ability to laugh when going through -- when going got
15 tough and valuable assets of this kind -- valuable assets in
16 this kind of business."

17 Do you want -- keep going? "I welcomed him aboard and
18 told him he'd take over the four-deuce, would be responsible
19 for maintenance of all mortars, training all crews, even at
20 FOBs --" that's forward operational bases. "'I also want you
21 to take over the supply room activities. After Val shows you
22 around camp and you begin to know where everything is, I want
23 to take a good inventory of ammunition stock, order what we
24 need to get up to snuff, scrounge whatever extra mortars and
25 ammunition you can get your hands on to support our new top

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1 secret mission. We've been short of people and even shut down
2 for too long. We'll be ready for whatever comes across the
3 border.'

4 "'Yes, sir, I'll do my best.' With a questioning look he
5 says, 'But what is the top secret mission and what did you
6 mean when you said the team was shut down?' 'I'll let Val
7 explain that to you.'"

8 Q. All right. Did that conversation ever take place?

9 A. No, sir. That conversation did not take place. I was not
10 aware of any top secret mission, because there was no top
11 secret mission in An Phu, that we were aware of.

12 Q. Did you ever get briefed by Valenzuela?

13 A. I had known Valenzuela before I got to An Phu. When I got
14 to An Phu, Valenzuela and I -- he was a team sergeant, I was
15 coming in new to the team. We sat and talked just like it
16 would if you went from one job to another, you sit and talk
17 and you have a discussion. I guess that's a sort of a
18 briefing.

19 Q. Was there ever any talk about a top secret mission?

20 A. No, sir, there -- there was never any talk of any top
21 secret mission when I arrived in that camp.

22 Q. Was there ever, while you were there, any talk about a top
23 secret mission?

24 A. There was never, that I'm aware of, any top secret mission
25 in that camp. There was never any discussion in it. And I

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1 went from being a weapons man to a team sergeant. And being a
2 team sergeant, that is the highest -- and in charge of all the
3 enlisted men in the team, responsible to the team leader.

4 I -- you would think I would surely have been made aware of
5 this.

6 Q. Have you ever heard anyone, other than Mr. Marvin in this
7 book, say anything about a top secret mission there?

8 A. No. I have never heard anybody refer to anything in An
9 Phu as being top secret.

10 Q. What was the mission at An Phu?

11 A. The mission at An Phu was, as I explained earlier, we were
12 mostly just CA, medical patrols --

13 Q. What is CA?

14 A. Civic action, which I explained is helping the people in
15 the villages, you know. And medical patrols where you go out
16 and the medic goes with you, and he assists with medical
17 problems that they might be facing.

18 Q. So that part is untrue, as far as you're concerned?

19 A. That part is definitely untrue in this book.

20 Q. All right, let's go to page 90. Page 90. Can you tell
21 what the status -- what preceded your account there of page
22 90, Martha Raye?

23 A. Okay. Where early in the morning?

24 Q. Yes.

25 A. "Early in the morning January 12 received word that Martha

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1 Raye would be visiting our camp. There's not a man who wears
2 Green Beret who wouldn't want Colonel Maggie, as we called
3 her, to visit him, no matter where he was. There was none
4 other as brave or as -- and as loyal as she was to the Special
5 Forces troops. She would regularly go to every Special Forces
6 camp, no matter how remote or dangerous, to visit her friends.
7 She was a lieutenant colonel in the U.S. Army Nurses Corps and
8 an honorary Green Beret. She always came with a black bag in
9 hand and ready to help out whenever there was wounded --
10 whenever there were wounded and whenever she was needed."

11 Q. Hold that right there now. He states in the book that
12 Martha Raye was a lieutenant colonel in the Nurses Corps?

13 A. Martha Raye was never a lieutenant colonel in the Nurses
14 Corps.

15 Q. Was she ever in the Army?

16 A. To my -- she was never in the service. Her life was
17 acting. She was an actress. And I don't know if you're aware
18 of Martha Raye or know who she is, she used to do a lot of
19 commercials, she's big time Vaudeville, big time in the
20 movies, she played with stars such as Bob Hope, John Wayne,
21 all these people. She was an actress. She was not a
22 lieutenant colonel in the Nurses Corps.

23 Q. Well, go ahead and continue reading about the arrival of
24 Martha Raye.

25 A. "When we heard the familiar sound of a chopper's beating

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1 rotors, as we looked and saw a single Huey coming to our
2 landing zone. I sent Menkins to the commo bunker to tell
3 Eleam to make contact with the chopper and turn it away.
4 Though Eleam got to the chopper, Colonel Maggie insisted she
5 visit her friends and ordered him to land.

6 "Assuming that the chopper would turn back, I began to
7 walk towards the operational center and glanced to see the
8 chopper circling towards the west. Of course, (sic) it took
9 it within range of VC heavy weapons company. John Eleam came
10 charging out of the ammo bunker to tell us that Colonel Maggie
11 had gotten on the radio himself and told him, 'I don't care
12 about the purple zone, I told that pilot to take me down.'

13 "We watched the chopper begin to approach from the west
14 and our worst fears were realized. We saw .50 caliber tracers
15 racing (sic) up the other side of Fu Hoi PF outpost, searching
16 out Colonel Maggie's chopper. If one of those bullets were to
17 hit the right place, that chopper would have become a ball of
18 fire. The pilot saw what was going coming at him and veered
19 sharply towards our camp, gave the engine full throttle and
20 came down towards us with his tail on fire. Like his tail was
21 on fire."

22 Q. Okay. Keep going.

23 A. "We knew he may have been hit by the way he brought the
24 chopper down kind of hasty like, cut the engine and everyone
25 got out real fast. The crew chief circled the ship quickly on

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1 foot, checking for smoke and ended up standing next to the
2 chopper, looking at the two .50 caliber holes in the fuselage
3 and scratching his head.

4 "Colonel Maggie strode towards us, black leather bag in
5 hand, a Green Beret pulled down over her thigh -- her right
6 ear, looking calm and cool in her Hollywood sunglasses.
7 Unruffled by what happened, she got within a few feet of us
8 and shouted, said, 'You really need to do something about your
9 neighbors. They're not very friendly!'"

10 Q. All right. Where were you at the time that -- Were you
11 there at the time that Colonel Maggie arrived?

12 A. I was in camp when Colonel Maggie arrived, yes.

13 Q. What did you see happen?

14 A. Well, I seen the chopper come in, and it landed as a
15 normal chopper would. There was no .50 caliber machine gun
16 fired at that helicopter. If there had been, I'll guarantee
17 you that pilot would not have come into that camp. Martha
18 Raye in there or not, he would have headed right out of that
19 area. There was no .50 caliber rounds in that helicopter.

20 Q. Did you see the chopper coming in?

21 A. I was down on the landing strip when the chopper landed.
22 And I seen nothing. I hear -- I didn't hear anything. And
23 I'm sure you've never heard a .50 caliber machine gun go off,
24 but when it goes off, you definitely know it's a .50 caliber
25 machine gun.

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1 Q. And you never heard any of that?

2 A. I never heard it.

3 Q. Your hearing was better then than it is now?

4 A. I'm sorry?

5 Q. I said, your hearing was better then than it is now, isn't
6 it?

7 A. My hearing was definitely better then.

8 Q. Well, whenever the chopper landed, did you see Miss Ray
9 get off the chopper?

10 A. I seen Martha Raye, who we called Maggie, get off the
11 chopper. And she walked over, she shook hands with everybody
12 and greeted everybody. And she stayed in the camp for
13 probably about maybe 10, 15 minutes or so.

14 Q. And then what did she do?

15 A. Well, after she greeted everybody, they walked up towards
16 the team house, all right, she just -- primarily just visited
17 with the team members that were in camp at the time, and
18 chatted with them for a little while before she departed the
19 area.

20 Q. And that was all that happened?

21 A. That was it. That's all. She was just -- she was just
22 the friendly person she always was, you know. She loved to
23 come out, she loved Special Forces. Nobody can deny that.
24 She was great for Special Forces.

25 Q. Big morale boost? She was a big morale boost?

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1 A. She was a big morale booster. Until she passed away
2 recently, she was at every Special Forces convention she could
3 make, and we have one every year. That's for all of Special
4 Forces, acting, retired, get together from one big annual
5 convention. And Martha Raye would attend each and every one
6 of them that she possibly could.

7 Q. On page 97, if you will, please, there's a reference
8 there, is there not, to you?

9 A. Reference me?

10 Q. Yes.

11 A. Down here where I called a team meeting?

12 Q. Yes.

13 A. "I called a team meeting as soon as I finished with Major
14 Le. I told them we would be conducting operation out of the
15 FOB at Phu Hiep, and that Sergeant Taylor, myself, Flash and
16 Quang would be going with the lead element at 0600 hours. I
17 told them Major Le would be at Province at a meeting with
18 Major Re and I would be leading the operation out of Phu Hiep.
19 'Everything is set for movement by LLDB of the mortars and
20 machine guns to Dong Co Ki and Phu Loi outpost. Menkins, I
21 want you to make sure we have a 15-day load of ammo plus
22 whatever they need for weapons, training -- and training at
23 the outposts.'

24 "When asked about the details of the Phu Hiep, I told them
25 they'd be told later. 'Why all the secrets, Dai-uy? You know

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1 you can trust us,' Sergeant Valenzuela asked.

2 "'Sure I trust you guys. Major Le trusts his men in
3 combat also (sic). And commanders also. But certain details
4 will be kept secret until the time is right. Details of what
5 we are planning would lead to heavy casualties if the wrong
6 ears heard them. Just trust me. The moment you get word,
7 you'll understand why I'm not sharing the details with you
8 now.'"

9 Q. Were you -- did that meeting ever take place?

10 A. That meeting, again, never took place. You know. At the
11 time, I was pretty young, and I was a sergeant first class in
12 the Army. And I had, I thought, a real good memory, which I
13 still have a good memory, all right? And if things of this
14 nature where you feel like you're going to be in imminent
15 danger, you don't forget. And I can tell you right now, this
16 did not happen.

17 Q. All right. Let's go to pages 98 and 99.

18 A. Okay. Where Major Le?

19 Q. Major Le, yeah.

20 A. "Major Le's secret orders -- secret order envelopes in my
21 breast pocket and Flash at my side, I joined Sergeant Taylor
22 and Quang outside the operation center at 0600 hours sharp.
23 We got in our Jeep with our gear in hand and Tran drove us to
24 the boat dock where Lieutenant Thuan Nguyen waited our
25 arrival. Half of his company had boarded the ten available

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1 assault boats and a barge. Four assault boats remained to
2 permit a small reaction force capable (sic) should there be a
3 need due to enemy action in other places.

4 "Flash felt uneasy with Major Le's absence from the
5 operation until I explained my logic, thinking it would be a
6 test of my ability to perform under fire. 'Yes, Dai-uy, I
7 think you are right. He has never missed an operation of
8 company size before and would have -- and would have to have a
9 good reason.'

10 "Sergeant Taylor, yet unconvinced, voiced his opinion. 'I
11 would still feel better if Thieu-ta were here.'" Thieu-ta
12 being the Vietnam word for major. All right?

13 "Wanting Jim Taylor to know that he wouldn't be in the
14 dark much longer, before I turned to Lieutenant Thuan Nguyen
15 in the lead assault boat, I told Taylor, 'Time to go, Jim; you
16 bring up the rear in the barge and I'll tell the -- tell you
17 the whole story when we get to Phu Hiep.'

18 "'At this time' (sic) he said, with a wide grin on his
19 face."

20 Q. Did that happen?

21 A. No, sir, that did not happen. That did not happen at all.

22 Q. Page 101, if you will refer to that, please.

23 A. Okay.

24 Q. Any reference there to you?

25 A. There's quite a few references to me on this page.

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1 Q. Would you just read that and explain what it is?

2 A. Okay. Starts at the top, says, "'You have 30 minutes to
3 brief your men and check on their equipment and ammunition
4 here at the FOBs.' I'll explain to the company commanders,
5 Sergeant Hung Nguyen and Sergeant Jim Taylor, with Flash
6 translating. At 1030 hours we will be in form of a column of
7 twos south of the FOB and north Phu Hoa hamlet, using a large
8 grove of trees as cover. There will be a -- there we will
9 proceed north along Co Lau River for 500 meters. Lieutenant
10 Thuan, you will lead with your company and Ang, you and your
11 platoon will follow. Sergeant Hung will continue -- will
12 command the four 60 millimeter mortar sections, laying in
13 behind your platoon and fire support unit. Sergeant Taylor
14 and Sergeant Hung will work together with Quang there as an
15 interpreter to the bridge -- to bridge the language gap as he
16 is needed. The sergeant leading the third platoon up the
17 444th will return to Hung, provide security for the fire base.
18 If you have any questions, ask them as I tell you the plans.'

19 "'When we reached that point we will turn and head west in
20 a column until Ang's platoon has completely turned to the
21 west. Ang, you will -- you will radio your position to Thuan.
22 Thuan, you tell Flash and he'll let me know. And then we'll
23 move (sic) to the center of the column and lead the attack
24 force north from there and make contact with the VC. Sergeant
25 Hung, you will set up fire support base due north of the FOB

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1 and immediately behind our line of departure. Start dropping
2 HE into the VC positions as soon as they make their positions
3 known. We'll keep moving north until we push the enemy across
4 the border.'

5 "Sergeant Taylor suggested, 'And maybe a little ways into
6 Cambodia, Dai-uy?' 'That's the plan, Jim. I was just given
7 this command for the express purpose of denying the enemy
8 sanctions (sic) across from An Phu. It was a political
9 victory Major Le won in Saigon and one that we've got to win
10 on the ground.' Sergeant Hung asked for the first time to get
11 his mortar set up. 'You've got it, Sergeant Hung, bring your
12 mortars and the security forces up to the left of the
13 Lieutenant Thuan's company.'"

14 Keep going?

15 Q. Did that operation ever take place?

16 A. No, sir, that operation did not take place.

17 Q. Did you ever, in the whole time that you were at An Phu,
18 ever suggest or even hear anything about members of A-424
19 going into Cambodia?

20 A. No member, to my knowledge, and I know personally, I never
21 went into Cambodia. And to my knowledge, no member of the
22 team ever went into Cambodia.

23 Q. Was there any standing general order prohibiting intrusion
24 into Cambodia?

25 A. There was a -- I don't know if it's order, memo,

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1 referendum, but it was put out that Cambodia was a sovereign
2 country, and you do not invade a sovereign country under any
3 circumstances.

4 Q. Does that mean also by firing into the country?

5 A. That means by any means. On foot, firing into it. If
6 that country is a sovereign country, you're not permitted to
7 do any of this. Go into it on foot, fire into it. As a
8 matter of fact, even fly over it.

9 Q. If you were to have gone into Cambodia like is being
10 related here, would that have been a violation of that order?

11 A. That would definitely be a violation. That is what comes
12 from invading a sovereign country. That is definitely a
13 violation of orders.

14 Q. Let's look at page 103, having to do with mortar.

15 A. It says Sergeant Hung and Sergeant Taylor?

16 Q. Um-hum.

17 A. Okay. "Sergeant Hung and Sergeant Taylor --" Let me back
18 up. "I walked back in with him to the far support base and
19 thanked Sergeant Hung and Sergeant Taylor for the excellent
20 fire support they provided from their 60-millimeter mortars."

21 Q. Did you ever at any time fire those mortars that he's
22 referring to?

23 A. No.

24 Q. Did you ever fire any mortar into Cambodia at any time?

25 A. No, we never did. As a matter of fact, if you can see

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1 this in my book, I've highlighted in yellow and I've also
2 highlighted in red. The yellow means it's a little lie; the
3 red means it's a big lie.

4 Q. And that firing those mortars into Cambodia was in red?

5 A. Pardon?

6 Q. The firing of the mortars into Cambodia was underlined in
7 red?

8 A. It is definitely red.

9 Q. Let's, on page 104, there's mention about pipelines.

10 A. Okay. "Most of the 700 pipelines were disarmed or
11 destroyed that afternoon." Let me back up. "Most of the
12 pipelines were disarmed or destroyed that afternoon were part
13 of the eye level in thick bamboo with thin, barely
14 distinguishable trip wires strung at various distances from
15 the ground. Each of the positions where it would be inflict
16 the maximum casualties with serious head injuries. The
17 three-quarter inch diameter iron pipe mines were stuffed with
18 plastic explosives or dynamite that would be triggered by a
19 pull type or pressure type release type detonator."

20 Continue?

21 Q. Did you see any mines as described there?

22 A. No. Believe you me, 700 pipe mines are a lot of pipe
23 mines. And if they were there, I would have seen them. I did
24 not see 700 pipe mines.

25 Q. Were you even there?

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1 A. I was there.

2 Q. You were there?

3 A. Yes. According to the book, I was there.

4 Q. No, I mean, were you, in reality, were you there?

5 A. In reality, no, I was not there. All right? This is --

6 Q. You have, at times, seen and know what he's talking about,
7 about the mines, haven't you?

8 A. I've seen several -- on several occasions in other areas
9 of Vietnam, I've seen pipe mines, I've seen boobie trapped
10 grenades, I've seen all different types of weapons.

11 THE COURT: Mr. Deaver, why don't we take a short
12 break at this time because it's been a couple hours.

13 MR. DEAVER: Thank you, Your Honor.

14 THE COURT: Go to your jury room and we'll start
15 again in about 15 minutes.

16 (Jury excused.)

17 THE COURT: We'll start at 20 till. Now, if I
18 remember correctly, Mr. Menkins is no longer part of this
19 trial, right?

20 MR. DEAVER: No, he's not, he's either dead or out of
21 contact.

22 THE COURT: Withdrawn.

23 (A recess was held at this time.)

24 (Jury not present.)

25 THE COURT: Ready to go? Okay. Bring them in.

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1 Thank you.

2 (Jury present.)

3 BY MR. DEEVER:

4 Q. Mr. Taylor, we were going through portions of Expendable
5 Elite that make reference to you and discussing those. And I
6 believe the last matter that we discussed was the 700 pipe
7 bombs?

8 A. Yes, sir.

9 Q. On page 104.

10 A. Yes, sir.

11 Q. All right. You say there were no incidents about 700
12 mines.

13 A. No, there were no 700 pipe mines in that area. Again, if
14 you notice, in my book it's red. It's not yellow, it's red.

15 Q. All right. Let's go to page 122 and 123. On -- there's
16 reference to you on that page? 122?

17 A. Yes, there is. Starts down there with says Sergeant
18 Taylor, assisted by Sergeant Bridgewater?

19 Q. Yes.

20 A. Says Sergeant Taylor -- "Taylor, assisted by Sergeant
21 Bridgewater, set the elevation and direction on the four-deuce
22 attached -- attached the proper number of powder increments
23 and fired the first rounds of white phosphorus to mark and
24 adjust fire with. One or more of the rounds -- one or more of
25 the WP was on the way after Taylor made the adjustments

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1 radioed from the outpost, translated and relayed through the
2 command bunker to his mortar pit via field telephone.

3 "'On target,' Minh hollered, after receiving word from the
4 outpost. 'Fire for effect.'

5 "The loud blast of exploding powder increments propelled
6 the heavy high explosive projectiles about 5000 meters in
7 rapid-fire to support of the PF outposts were quickly followed
8 by the thunder-like percussion of 155 Howitzers as they began
9 to fire in tandem to support Phu Hiep FOB. The wooden
10 structure supporting the sandbagged roof of our command bunker
11 shivered with each resounding blast of nearby guns firing at
12 maximum range to impact between the FOB and the border. In
13 less than a minute, they had been adjusted -- they had
14 adjusted their fire and were pounding the VC positions above
15 the FOB with devastating fury."

16 Q. Were you in charge of the mortars?

17 A. Yes, I was charged with four-deuce mortar pits over there.

18 Q. And there was a 4.2 mortar?

19 A. There was a 4.2 mortar in An Phu. Every Special Forces
20 camp had a 4.2s and 81 mortars.

21 Q. Did you ever fire them in support of Phu Hiep or any other
22 outpost?

23 A. Never fired them in support of Phu Hiep or any other
24 operation, because there was no activities in that area, you
25 know, that's what I'm trying to point out. There was nothing

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1 to fire at. Especially white phosphorus.

2 Q. And the roaring of the 155 Howitzers?

3 A. No, there was none that I'm aware of. We had 155 -- we
4 didn't have the 155s, the ARVN, the Vietnamese had the 155s.
5 We had none.

6 Q. Did you ever fire in conjunction with the 155s at Phu Hiep
7 or anywhere else?

8 A. No, sir. No, ma'am. No, sir, did not. We did not, like
9 I said, did not fire the four-deuce from any hostile reasons
10 at all.

11 Q. And I believe you were referring back to page 103, that
12 you and -- that you were told to get your -- get the M-79
13 grenade launcher and go on another operation.

14 A. Refer back to 103 for what?

15 Q. Page 103, was there a reference there about -- that you
16 and the team supposedly got your M-79 grenade launcher and
17 went on another operation?

18 A. Okay. Where it said the time it finally arrived?

19 Q. Yes.

20 A. "The time had finally arrived. The VC must be shown that
21 it would no longer be safe near the border with An Phu. I
22 looked at Thuan and told him, 'We must continue our operations
23 on Cambodia -- into Cambodia and push the VC back from the
24 border before dark. I would like to put fear in their hearts,
25 thinking we were not afraid of them, and they'll be afraid of

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1 us.'" "

2 Q. Did that happen?

3 A. No, it did not happen.

4 Q. But it sounds good?

5 A. It sounds good in the book, but it did not happen.

6 Q. All right. Let's go to page 125, and I believe there was
7 a reference to you in that.

8 A. Okay.

9 Q. Concerning a two-pronged attack?

10 A. "Two-pronged assault plan to penetrate the VC encirclement
11 was put into action. Lieutenant Hong, with Sergeant Taylor
12 and Tony at his side, would take two platoons, circle around
13 and attack from the west. I would go with Major Le and
14 remaining Strikers, work our way quickly through the hamlet,
15 and prepare to attack the VC from the south. Major Le
16 instructed Lieutenant Thuan to redirect all defensive fires
17 into the northwest and southeast when he saw two parachute
18 fliers top -- pop to signal the beginning of our assault.

19 "Once our two attacks were in position (sic) Lieutenant Le
20 called the next Howitzer mission, placing four more rounds of
21 HE northwest of FOB, followed by two parachute flares.

22 "Our two attack elements fired a five mortar salvo of 25
23 rounds of 60-millimeter HE into the enemy ranks and began our
24 assault on their position. Though we were not (sic)
25 outnumbered two to one we were confident that our strategy and

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1 courage of the Strikers would give us a victory. An intense
2 fire fight ensued as we leap-frogged toward them, each attack
3 forcing -- force covering the attack (sic) of the other by
4 kneeling and firing in a steady rain of bullets as the enemy
5 who lacked both cover and concealment.

6 "In addition, two (sic) parachute flares lit the FOB we
7 saw VC falling under continuing crossfire. The other
8 enstranged (sic) themselves into the outer perimeter barbed
9 wire belt while FOB Strikers used their remaining ammunition
10 to kill or injure the VC who had been caught unaware in the
11 middle of a working their way through the triple concertina,
12 double-apron barbed wire, and tanglefoot wire. (sic) Their
13 plan had not -- had -- the plan we were -- the plan we had
14 were not interrupted. When we got -- it was -- it was to
15 regroup at the base of the FOB parapet, storm the compound and
16 complete their revenge by killing or capturing the remaining
17 defendants (sic) and their families.

18 "By 0600 hours we successfully -- we had successfully
19 routed the enemy who fled into Cambodia in the direction of
20 Bung Ven Base. Seven of the barefoot, black pajama-clad men
21 were caught up in a trap formed between the two attacking
22 elements and captured unhurt. We would later learn from these
23 prisoners that their commander didn't expect a relief force to
24 come to Phu Hiep to -- to Phu Hiep's rescue. He believed
25 their cunning plan to deceive were foolproof."

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1 Q. Did this operation, that two-prong attack at Phu Hiep,
2 occur?

3 A. It did not occur. I -- again, I am supposedly on this
4 operation. I was not on an operation of this nature.

5 Q. Were you on any operation of that import, of that type?

6 A. Never. In all my duration at An Phu, the six months that
7 I was there, I was never in any type of operation of this
8 nature.

9 Q. Do you know where Mr. Marvin got this type of a battle
10 plan or that type of activity for An Phu?

11 A. I have no idea where he got any of this information, other
12 than he just fantasized it, I guess, in his mind. He just --
13 he had nothing better to do than sit and fantasize these big
14 battles.

15 Q. Let's skip some of these other things. We go to page 149?

16 A. Where it says on return to camp?

17 Q. About removing the 4.2 mortar.

18 A. Where it says, "On return to camp I briefed my XO and Team
19 Sergeant and asked Val to tell Jim Taylor that he'd be taking
20 a four-deuce up with Don Davis to assist the gunner. 'Okay,
21 Dai-uy, I'll brief him on the mission so he takes everything
22 he needs plus enough to cover the 81's mission.'

23 "'Good thinking, Val. And, I'll expect Jim to brief
24 Barnes on his missions with the 81 after he gets in the FOB in
25 the morning. And, ask Ray Johnson to check out and send

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1 whatever radio gear they need to help.'" (sic)

2 Q. Do you have any recollection of that?

3 A. Well, if it's referring that we took the four-point deuce
4 up there, no, we did not.

5 Q. You never did?

6 A. No. Never.

7 Q. Page 150 and 51, having to do with a firing at one of the
8 bases there.

9 A. That says, at the moment? Down there.

10 Q. Yes.

11 A. "At the moment, when flames began to kindle exterior
12 walls, Major Le called for a second and final mission of the
13 big ARVN Howitzers. In another 20 minutes, we were expecting
14 -- expected most of the 407th VC battalion to be busy trying
15 to keep the flames from destroying everything the Communists
16 had built in Bung Ven, Jim Taylor was called on to execute the
17 first-ever bombardment at Bung Ven base.

18 "He and Don Davis were ready. Pre-set powder increments
19 of high explosive war heads were laid out neatly next to the
20 four-duece tube. The first 20 rounds on their way in a high
21 parabolic path of ammunition and gasoline dumped just over --
22 dumped in just over two minutes. (sic) The third round found
23 its mark, scoring a direct hit on the ammunition stockpile.
24 Each successive round found its target, filling the air with
25 cracking and rumbling sounds of secondary blasts and bursting

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1 gasoline drums. Flames from the now raging inferno leaped
2 skyward, fed by the bursting and rupturing of gasoline
3 containers. Dense columns of smoke now billowed above the
4 trees, darkening the sky above Bung Ven.

5 "Sergeant Taylor traversed the tube of his four-deuce and
6 set the elevations for the next mission. Sergeant Davis fed
7 the tube with one round after another of high explosive heads
8 and variable time fuses that would cause them to burst into
9 the air above the barracks building and just completed
10 hospital. Countless steel shards were propelled earthward to
11 inflict casualties among the now terror-stricken VC, no longer
12 shielded by the political umbrella of the former sanctuary.

13 "The third and final mission of the four-deuce, directed
14 at the ammunition factory, sent HE and WP rounds screaming
15 through the air towards the targets as Lieutenant Triet led
16 the Strikers into the FOB, having successfully misled the
17 enemy into believing there would be a ground attack. I joined
18 Major Le on top of the bunker just as precocious (sic) waves
19 from tremendous explosions rocked our concrete structure.
20 Major Le, grinning from ear to ear, cheered and pointed to a
21 large column of black smoke that rose 100 feet above the
22 surrounding layers of billowing, pitch-black like (sic) clouds
23 of smoke. 'Your gunners have destroyed a factory, Dai-uy.
24 They have scored a direct hit on the powder room, and
25 whoooosh, the factory is -- no more factory.' So excited

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1 Major Le -- Major Le -- so excited was Major Le that he almost
2 fell off the bunker, unable to suppress his emotions."

3 Keep going?

4 "Secondary explosions persisted for more than two hours as
5 the many fires spawned by the initial WP bombardment fed on
6 scattered mounds of boxed rockets, shells and mines. The
7 flames were still visible as we boarded our boats and barges
8 and headed down the river from (sic) camp, basking in the
9 glory of our triumph. 'It is such a victory -- such a greater
10 victory (sic) that I had hoped for, Dai-uy. We have destroyed
11 their secret base with no casualties among our people.'

12 "I reached out, shook his hand, and told him, 'I will
13 never forget this, this place and what we have achieved
14 together here with the Hoa Hoa at An Phu.'"

15 Q. And then there's some italicized portions that follow
16 that? Some italicized portions that appear to be commentary?

17 A. Yeah. Said, "We would later receive confirmed
18 intelligence about 238 Viet Cong KIAs and 411 WIAs --" KIA is
19 killed in action, and WIA means wounded in action. "-- to our
20 attack on Bung Ven. The reports, some in writing, confirmed
21 that we had destroyed their factory, field hospital, barracks
22 and a large stockpile of ammunition and gasoline.

23 Intelligence experts estimated the ammunition stock to be --
24 have been sufficient to support the Southward Regiment for 60
25 days."

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1 Q. That's good there. Well, that was probably one of the
2 most successful operations in Vietnam during the war. Are you
3 proud of that?

4 A. Well, if it had happened, it would have been something to
5 be proud of. But again, I can assure you, this did not
6 happen. I did not move my four-duece from An Phu closer, I
7 did not fire my four-duece into Cambodia. Because there
8 again, we're invading a sovereign country, and this is not
9 permitted.

10 Now, I am not going to violate any laws that's going to
11 jeopardize my career, to fire into a sovereign country.

12 Q. Well, look at one more little thing on page 152. That
13 after the italicized part?

14 A. Said before the night passed?

15 Q. Yes.

16 A. "Before the night passed, I brought Jim Taylor into my
17 office and told him he would now be Team Sergeant. 'But,
18 Barnes is the ranking man, Dai-uy.'

19 "'I'm well aware of this, Sarge,' I told him, 'I am also
20 aware of what you -- aware that you can get the job done. You
21 are a man -- you're a man the men look up to and someone I
22 trust to get the job done - any job. Rest assured that I will
23 go to Phu Hiep the first thing in the morning and tell
24 Barnes.'

25 Shortly after breakfast, Don Davis, Flash and I, with a

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1 squad of Strikers for security, headed to Phu Hiep in three
2 assault boats. Sergeant Barnes and John Eleam greeted us at
3 the FOB boat dock and gave us a tour of the FOB. I got
4 Sergeant Barnes aside and explained my decision and confidence
5 in Jim Taylor. I told Barnes he would stay at Phu Hiep and
6 head up our side of all that happened in the FOB. 'Sounds
7 good to me, Dai-uy,' Barnes returned, 'I like it.'" (sic)

8 Q. Did that conversation ever take place?

9 A. No, it did not. Furthermore, if you understand the rank
10 structure in the Army, I'm a sergeant first class, E-7.
11 Master Sergeant Barnes is a master sergeant E-8. Now, no
12 master sergeant in his right mind is going to take any orders
13 from an E-7, who is really -- he is my superior. It's like
14 you going up to your boss and say I'm going to tell you what
15 to do. I'm not walking up to a master sergeant and saying,
16 you're working for me, I'm going to tell you what to do. This
17 conversation never took place. And I'm sure that Master
18 Sergeant Barnes would have had more to say than just agree
19 that it's okay with him.

20 Q. Is that contrary to military protocol and customs?

21 A. Most definitely. It is contrary to the military protocol,
22 because the military protocol is somewhat like civilians. You
23 work for somebody, you have a boss, you're responsible to that
24 boss. I was an E-7, Master Sergeant Barnes was an E-8. I'm
25 responsible to him; he's not responsible to me. Just as it

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1 would be the other way if I was a civilian.

2 Q. Well, it's even more so in the military, isn't it?

3 A. Yes, it is, it's definitely more so in the military.

4 Because what that is doing to Sergeant Barnes is saying that
5 he is not efficient enough to do a team sergeant's job. So
6 I'm going to put this E-7 to do your job, because obviously
7 you can't do it. That would end -- that would hurt his
8 career, definitely.

9 Q. All right, page 172 and 173, let's look at the third --
10 fourth paragraph down, about your team meetings.

11 A. Where it says this particular evening?

12 Q. No, before that. Paragraph above that.

13 A. Okay. Our team meeting?

14 Q. Yes.

15 A. It says, "Our team meetings were informal and we had --
16 and no one had (sic) anything else to say, we just got up from
17 our chairs and went about our business. I normally went up on
18 to the command bunker. I liked it there. It was solid,
19 powerful in its own ways and commanded a view at night of
20 enemy mortar, rockets and tracer fires that took place the
21 length of our western border with Cambodia. When the area was
22 quiet, it was a place of peace and hope for the future, and a
23 place to reflect on one's own merits and shortcomings.

24 "This particular evening, I invited Sergeant Taylor to
25 join me, wanting to confide in him and seek his advice and

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1 counsel. We had been together just a short time, but I
2 respected his judgment and trusted him.

3 "As soon as we were in the bunker, Jim turned toward me
4 and looked me in the eyes and said, 'What's up, Dai-uy?'

5 "'Jim, I did a lot of soul searching on the way back from
6 the command meet -- commander's meeting in Can Tho. The
7 helicopter crash was on my mind and I was thinking about our
8 team and how you guys stacked up against other guys on other
9 teams. What I told you all -- what I told you all was true.
10 We've done an awful lot with just a few men here in An Phu.
11 At the same time, I know we might even do more and better for
12 the Hoa Hoas and I need to know what I can do to make that
13 possible.

14 "'Jim, we both know that I'm stubborn, I like to have
15 things going my way. My main concern is that I don't let my
16 way get in the way of doing right for the Hoa Hoa.

17 "'One question keeps nagging me since I walked away from
18 the crash site intact, except for some burns. What if I had
19 been killed in that crash? I had done good enough -- had I
20 done a good enough job here in An Phu that you guys would keep
21 moving forward, keep the momentum up? The more that question
22 came to mind, the more I needed to know the answer.'

23 "'Just what are you getting at, Dai-uy?' I (sic) asked.'
24 Dai-uy is Vietnamese for captain. All right? When you see
25 that, that's referring to Marvin.

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1 "'Sarge, I need you to talk to me like a brother. Tell me
2 where you think I'm goofing up, what I'm doing wrong, and I
3 know it's not right for me to ask you, but I trust you and
4 respect your judgment. Just let it all hang out, Jim. No
5 holds barred and don't worry about my feelings. I very seldom
6 ask for advice, but when I do, I want it straight from the
7 shoulder. Okay?'

8 Jim smiled and said, 'Okay, Dai-uy. As a matter of fact,
9 while you were gone I asked the lieutenant if we could have an
10 old-fashioned gripe session. I told him I thought it would be
11 good for the team. He agreed, and after lunch that day we got
12 together and got down to the nitty-gritty of what makes our
13 team tick. Oh, there were a few gripes, but not anything like
14 I've heard in teams I've been in before -- in before An Phu.

15 "'It was unanimous that you were too neat and tidy, kind
16 of like a Mister Clean. At the same time we all liked it
17 because you did more than your share of any dirty work while
18 you were demanding high standards from all of us. The other
19 guys that were here before you just came aboard, remembered
20 what it was like and then I remembered -- I'm sorry -- then I
21 remembered what it was like in so many other teams that we
22 agreed that your way is better. We probably have the best
23 looking and most secure camp in all Vietnam and everything
24 works. You should know that the LLDB NCOs like you -- like
25 the way you pitch in and help no matter what's going on --

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1 what's being done.'" Keep going?

2 Q. Did this conversation ever take place?

3 A. Well, first of all, in all the time that Marvin was in An
4 Phu, we never had a meeting. We never had a meeting per se.
5 Never was I called to the commo bunker to have this
6 conversation with Marvin. Because there was just no way it
7 could happen. Because when he was in An Phu, he was just a
8 little bit above us. His philosophy is, he's the boss. And I
9 served in a lot of teams, and we work as a team. But he was
10 just up here. He never come down to the -- we had a dining
11 area. He would never come down to the dining area and sit and
12 chat with us. He would go off, he would go to the top of the
13 bunker there, or he would go with Major Le, and had really not
14 that much association with the team.

15 As far as meetings, this meeting here definitely did not
16 take place. He didn't ask for my opinion on the job he was
17 doing. And I never expressed it.

18 Now, according to book, I did. But again, if you see my
19 book, that's red. And that means it's not only a fantasy,
20 it's a big lie. It did not happen.

21 Q. Well, let's avoid the photograph. Go to page 181, if you
22 will, please.

23 A. Where it says Jim Taylor spoke out?

24 Q. Yes.

25 A. It says, "Jim Taylor spoke out, saying, 'I think there's

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1 going to be one big terrible battle if that whole regiment
2 attacks us at one time. They didn't order those caskets for
3 us and now we know they'll be prepared to lose a lot of men.
4 It's as simple as that.'

5 "Suddenly Major Le slammed his fist down on the lecturn
6 and almost shouted out, 'It's very clear to me now, very
7 clear.'

8 "'What's clear you to, Thieu-ta?' Jim Taylor asked.

9 "'They will attack us on the 19th of May. I am very
10 certain of that because Ho Chi Min -- because it's Ho Chi
11 Minh's birthday. This is why we must have -- this is why they
12 must have the caskets by the 17th. They will have at least
13 two more -- two days (sic) to move them to different places
14 where they anticipate the greatest need because of
15 unexpected -- because of expected casualties. I will send the
16 high priority message to Major Chuan at C-4 asking him to
17 speak with Colonel Tuttle about the urgency of our need for a
18 sixth company.'" Keep going?

19 Q. That's good for right now. Did you ever attend any
20 meeting where this conversation took place?

21 A. No, I was not.

22 Q. You never had any discussion about Ho Chi Minh's birthday?

23 A. No, I really could care less when Ho Chi Min's birthday
24 was.

25 Q. Then read that -- start at the end -- the beginning of

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1 that last paragraph on page 181.

2 A. It says, "'It all makes sense now, Thieu-ta.'" Thieu-ta
3 being the Vietnamese equivalent of a major. "I said, then
4 turning to Jim Taylor and telling him to 'bring Barnes and
5 Johnson from the Phu Hiep FOB tomorrow. I want the whole
6 team, except for Eleam in the commo bunker -- except for Eleam
7 in the commo bunker -- in the dining area at 1400 hours.
8 We'll discuss the whole situation and we'll have a full-blown
9 team meeting. Tell Eleam he'll be going back tomorrow with
10 Barnes after the meeting. Barnes can bring him up to snuff on
11 the way to Phu Hiep. I want Ray here to help with logistical
12 end, especially with Didion gone. And tell Eleam I'd be
13 bringing him very hot -- a very hot message shortly.' Jim
14 headed out with a note pad in hand to get everything rolling
15 for the meeting. I thanked Major Le for briefing -- for the
16 briefing and for his coming up with what I too thought was a
17 logical date. 'Please tell your ladies how proud we are of
18 all of them, Thieu-ta. We owe them a big bonus. If you see
19 Lieutenant Strait when you are down at the subsector, please
20 tell him I need him here.'

21 "'Certainly, Dai-uy. I'm going to see Captain Tuoi and
22 tell him that we -- what we have discovered. When I return I
23 will arrange for the bonuses as you suggest.'"

24 Q. Okay. Do you recall -- Did this ever happen?

25 A. No. I'll repeat it again. The time I was there, Marvin

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1 never held a team meeting.

2 Q. Okay. Go to about the -- a little bit past the middle,
3 and start with your name there.

4 A. It says where Jim Taylor?

5 Q. Yes.

6 A. "Jim Taylor led off the team meeting at 1400 hours on the
7 16th of May with an enemy situation briefing, highlighted by
8 the fact that southward VC regiment was now around 2000 strong
9 and with a lot of heavy weapons including recoilless rifles
10 and 82 mortars. 'Thieu-ta believed that they'll attack on 19
11 May, Ho Chi Minh's birthday. Makes sense and that's what
12 they're up inside Cambodia far enough so we can't touch them.
13 They could hit Khanh-An, Khanh-Bin and Phu Hiep in a
14 coordinated assault with only a short march across the border.
15 That's what we got to be prepared to deal with.

16 "'We've got word yesterday from Major Le,' Jim continued,
17 that a new VC battalion has moved into the area northwest of
18 our camp and bivouaced on the north bank of the Stoeng Takey
19 River, 7000 meters away and out of our mortar range. It's a
20 bad situation, Dai-uy.'" (sic) Keep going?

21 Q. Yes.

22 A. "'Sure is, Jim. I've asked Colonel Tuttle to approve the
23 sixth company on an urgent basis. Major Le says he'll have no
24 problem recruiting the infantry. He'll pull the -- what
25 sergeants he needs for the new company from our other

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1 companies and, as he recruits new men, promote combat-
2 experienced men to sergeant within the old companies to reach
3 combat effectiveness. That will give us enough manpower to
4 get into the area and establish the FOB a short distance
5 southwest (sic) of the hamlet of Phu My and on my west bank --
6 on the west bank of the Chau Doc River.' Pointing to the
7 exact location on the tactical map, I went on. 'Major Le and
8 his men are going to be (sic) putting FOB together as we meet.
9 We'll call it Vinh Hoi Dong.'"

10 Q. You didn't study Vietnamese before you went to Vietnam,
11 did you?

12 A. Pardon?

13 Q. You didn't study Vietnamese before you went to Vietnam,
14 did you?

15 A. No. No, very little. We had some Vietnamese classes, all
16 right, in Fort Bragg, called pre-mission training. But as far
17 as formal instruction in Vietnamese, no.

18 Q. Did you have this conversation at this meeting, telling
19 him about the 7000 strong Southward Regiment?

20 A. No, we did not.

21 Q. Did you ever hear about a 7000-man regiment?

22 A. No. I never did. I would have -- I was never present --

23 Q. I'm sorry, 2000. Excuse me, 2000.

24 A. Well, 2000, 7000, doesn't make any difference, because
25 there wasn't 2000, there wasn't, to my knowledge, anybody over

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1 there.

2 Q. Let's just look at page 198, and it has to do with a fire
3 engine siren.

4 A. Has to do with what?

5 Q. With a fire engine siren.

6 A. Okay. Where?

7 "'Well, Dai-uy,' Jim answered, 'As we approached the B
8 Team boat dock I saw the makeshift fire engine. Don't know
9 who the belongs to, but it had a siren on the fender and I
10 told Hung that I sure would like to have one like that on our
11 Jeep. (sic) Honest, Dai-uy, I didn't think he'd steal it right
12 off the fire engine.'

13 "'Jim, you knew better than that. Your buddy Hung would
14 probably go to Saigon and steal Premier Ky's purple fly suit
15 if you asked him to. Look, what's done is done, but I want
16 you to put the word out to the C Team with my contacts -- with
17 any contacts you have in Saigon, to see if you can get a new
18 siren to take whatever oath -- to take to whoever owns that
19 fire engine. Okay?'"

20 Q. Did you get a siren?

21 A. Pardon?

22 Q. Did you get a siren?

23 A. No, I didn't. I sure didn't.

24 Q. Was there ever anything that you recall at the camp about
25 a fire engine siren?

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1 A. No. No, we didn't have any fire engine sirens. Now, this
2 Sergeant Hung that he keeps referring to here, was my
3 counterpart in the LLDB. He was a very honorable man. He was
4 one of the fine upstanding LLDBs.

5 Q. Let's go to page 207 -- No, let's go to 210, about the SLR
6 photo mission.

7 A. Okay. It says, "On return to camp I met with Jim Taylor,
8 Johnson, Brown and Sirois while Eleam held down the commo
9 bunker. After bringing them up to date on our meeting at
10 subsector I asked Jim to request an SLR mission on the latest
11 date they could make it and -- make the run and get the photos
12 to us on the morning of the 17th. 'Shoot for that, Jim,' I
13 emphasized. 'You'll have to go -- you'll have the afternoon
14 to go over the photos with a fine tooth comb and brief Major
15 Le and me that evening. We'll get together with Captain Tuoi
16 early on the 18th and decide what realignment is needed to
17 defend against the Southward Regiment.'

18 "Jim said he'd take care of it. 'Anything else, Dai-uy?'

19 "'Yes, you and Ray go over to Vinh Hoi Dong after lunch
20 and see how things are going with the new FOB. Do what needs
21 to do -- do what needs doing to make certain that mortar crews
22 are ready with the 81 in fact -- 81 mortar. In fact, I'll
23 give you a target to throw some out into so you can gauge
24 their capabilities as a crew.'

25 "'Whip it on me, Dai-uy.'

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1 "I told him there was a patch of high ground in grid 0498,
2 west of the FOB. The last meeting that -- the last meeting of
3 the VC 267th battalion commander and his company commanders
4 were -- was in the area. 'Make it ten rounds of whatever HE
5 ammo they have on the FOB.'"

6 Q. Did this ever occur?

7 A. This did not occur. I keep repeating that -- and I'll say
8 it again. This book does not reflect anything that happened
9 in the camp of An Phu or in An Phu district.

10 Q. On page 222, and we'll go on to something else.

11 A. 222?

12 Q. Yes.

13 A. It says, "Jim Taylor and an LLDB sergeant were standing by
14 the four-deuce pit, ready to respond to enemy fire from the
15 west. Ray Johnson was manning the communication bunkers while
16 Sergeant Brown laid out surgical instruments and wound
17 dressing material in the aid station, assisted by nurses Co
18 Lau and Tran Thi. Brown hoped his cross-training as a medic
19 would prove adequate when the casualties started coming in.

20 "At 0335 (sic) hours on the 19th, just as I was beginning
21 to wonder if we were being lured into thinking an invasion was
22 imminent, when it was a ruse, two bright blue flares lit up
23 the sky above Khanh Bin, the signal for a coordinated attack
24 by the Viet Cong on all the northern outposts.

25 "The 261st VC battalion reinforced with the 267th with an

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1 estimated strength of 700 men armed with 81 mortars, 60
2 mortars, 57 recoilless rifles, and 3.5 rocket launchers, light
3 machine guns and assorted small arms, attacked then surrounded
4 the FOB at Khanh Bin. Bombarded with hundreds of rockets,
5 mortar rounds and artillery shells, the 102 (sic)
6 lightly-armed defenders commanded by Lieutenant Luong Le,
7 though outnumbered five to one held their ground against the
8 human-wave assaults launched every 15 to 20 minutes. The
9 enemy soon learned how courageous and ferocious the Hoa Hoas
10 could be as they tried in vain to penetrate their defenses and
11 seize the FOB.

12 "The mortar barrage --"

13 Q. That's enough of that, Jim. Were you ever in that bunker
14 with your counterpart, the LLDB sergeant?

15 A. No, this -- again, this didn't transpire.

16 Q. Did you ever order any SLR photographs of that area?

17 A. In all the time I was in An Phu, there was no reason to
18 order any aerial photographs of An Phu. No, I never ordered
19 any aerial photographs of An Phu. Furthermore, if I had have,
20 they would have probably questioned, why do you want them, you
21 know? Why do you need them?

22 Q. And you don't think you could have shown cause why you
23 needed them?

24 A. I know I couldn't have shown cause. They might show
25 somebody out there playing horseshoes.

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1 Q. Did you play a lot of horseshoes at --

2 A. Well, we played quite a bit of horseshoes, you know, we
3 had to entertain ourselves, so we played a lot of horseshoes.

4 Q. Let's kind of cut to the chase and go to this page 281.
5 And this whole section here, will you read the portions
6 starting with where Big John -- where it states here that you
7 and Lieutenant Strait were sitting and waiting and that Big
8 John spoke up?

9 A. Where it says, "'I know what you mean,' John Strait
10 answered, 'So does Jim.'" That where you want to start?

11 Q. Yeah, that's good.

12 A. Okay. "'Now comes the heavy part,' I advised, 'Each man
13 on this team has to make a decision. I aborted a CIA mission
14 two days ago and then was warned by the agent --"

15 Q. Excuse me, Jim, let's go back -- go to 281, so this will
16 tie in. Start with third paragraph there.

17 A. Where it reads secret?

18 Q. Where it reads -- on page 280, Big John spoke up before I
19 could sit down. 280.

20 A. 280?

21 Q. Yes.

22 A. Okay. Yeah, okay. Where it says, "A quick glance at John
23 and Jim left no doubt in my mind that they were apprehensive.
24 Jim Taylor spoke up, suggesting that not many who mess with
25 the company get away with it. He wondered --"

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1 Q. Jim, I'm sorry to interrupt you again, but if you will go
2 to -- look on page 280, and start with the third paragraph.
3 280.

4 A. Start with the third paragraph. Okay. Where it says
5 that's right, John?

6 Q. The paragraph above that.

7 A. Okay, Big John?

8 Q. Yes.

9 A. Okay. Says, "Big John spoke up before I could sit down.
10 'What's up, Dai-uy? There's a lot of strange activity in both
11 the commo bunkers and Woolley says you told him not to tell
12 anybody what was going on.'

13 "'That's right, John.' I grabbed a cup of coffee, sat down
14 and shared everything with Major Le and I had discussed, even
15 our concerns that the CIA was behind what's going on, read the
16 message to them and then sent out. (sic) I told -- and told
17 them, 'Unless there's some sort of miracle, we're in a real
18 hurting situation. All we can do is wait for a response to
19 our demand for total amnesty and make certain that the
20 Strikers know that we're not selling them down the river.
21 Major Le and I are going to make the rounds of all the FOBs to
22 let them know -- them and our men know that we are together
23 standing by the CIDG. We leave here at 1500 hours.'"

24 "John, while I'm gone this afternoon, make certain that
25 between you and the LLDB there is someone in the supply room

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1 to take weapons and ammunition from any Strikers who decide to
2 call it quits.'

3 "'Sure thing, Dai-uy. You just mentioned that you and
4 Thieu-ta believe this is something to do with CIA. The
5 company is big time. What's going on?'

6 "'All I want to know is there is a good chance that this
7 whole business is tied in with what happened a couple days
8 ago. John, I'm sure you remember what Agent Mackem said after
9 I ordered him out of the camp.'

10 "'Yes, sir. Couldn't ever forget that, but I don't know
11 why he said it.'

12 "'Until that moment we were training Strikers who had
13 volunteered for what they were told was a very dangerous
14 mission, a suicide mission. That's all they were told by
15 Major Le -- and Major Le has kept his team in the dark the
16 same as I have you men about the mission the CIA brought up to
17 us and what was behind the abrupt departure of Walter Mackem.
18 I accepted a highly classified mission from the CIA while
19 making a counter demand that Major Le and I had agreed to.
20 They didn't come through with that demand (sic) which had to
21 do with the president at the end of the -- and the end of the
22 enemy sanctuaries, so I aborted the mission. When I ordered
23 the spook out of camp, I was more or less put on notice by
24 Mackem that I had not heard the last from the agency on this
25 matter.'

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1 "A quick glance at John and Jim left no doubt in my mind
2 that they were apprehensive. Jim spoke up, suggesting that
3 not -- there's not -- suggesting that not many who mess with
4 the company get away with it. He wondered what would happen
5 next.

6 "'I wish I knew, Jim. You men know as much as I'm going
7 to tell you. The less you know about some things dealing with
8 the CIA, the better off you are. Too often, you do a job for
9 them and then they (sic) are declared expendable, if you know
10 what I mean.'

11 "'I know what you mean,' John Strait answered, 'and so
12 does Jim.'"

13 Keep going?

14 Q. Yes, please.

15 A. "'Now comes the heavy part,' I advised, 'Each man on this
16 team has to make a decision. I aborted a CIA mission two days
17 ago and then was warned by the agency that I had disobeyed
18 orders by backing Major Le on the amnesty issue. These were
19 my decisions and I purposely kept you guys out of the process.
20 As long as I'm commanding this independent operation, I don't
21 have to answer to anyone. The time has come for each of you
22 to decide if you want to go or stay. I want you to know that
23 anyone who decides it is best to go and report to the B Team
24 for reassignments will go with my blessings.

25 "'I don't know how many Strikers will desert. I don't

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1 know the VC will attack and I'm sure -- and I sure don't have
2 the least idea of what headquarters will do with our message.
3 Premier Ky is involved, the CIA is involved and we're smack
4 dab in the middle. I believe it's up to us to stand by the
5 Hoa Hoa and I'm here to the end. Anyone who leaves has got to
6 go -- got to get his stuff together and be on the boat on the
7 way to Chau Doc in time for our boats to get back before
8 dark.'

9 "Again, Marvin Woolley rushed in from the commo bunker --
10 from our commo bunker to our team dining room, interrupted our
11 meeting and handed me a message he'd just received at 1300
12 hours. 'This is another hot one, Dai-uy. I knew you'd want
13 it right away.'

14 "It read: Secret to Marvin. Repeat. Urgent. A-24 (sic)
15 must depart An Phu and report to B-42 no later than 2000
16 hours --" which is 8:00 o'clock in the evening, "-- today.
17 B-42 advised. Signed Tuttle."

18 Q. Now, can you tell us a little bit about how messages were
19 received and how --

20 A. Messages --

21 Q. -- you communicated with C-4 and B-42?

22 A. Messages were transferred via CW or key radio messages,
23 and they'd come either from B-42 or from the C Team. Very
24 seldom would they come directly to the A Team; they would go
25 through the B Team down to us. But in this case he's saying

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1 this came straight from Colonel Tuttle, who was the C team
2 commander, giving us the order to evacuate An Phu and go to
3 B-42.

4 Q. As you read that, is that a direct order to you and all
5 the men --

6 A. If this message were true, it would be a direct order for
7 the members of that team to depart An Phu and report to the B
8 Team, our next higher headquarters. Now, if we didn't, that
9 entails disobeying a direct order.

10 Q. If it had occurred, if this message had occurred, what
11 would you have done, if you would have seen a message of this
12 import?

13 A. Well, first of all, if this message had come down to the
14 team, and me being the senior enlisted man and team sergeant,
15 I would have advised everybody in that team, get your stuff
16 ready and let's get out of here. The Colonel says we're
17 going -- we're to leave An Phu, we're going to leave An Phu.
18 As far as the enlisted men go, and I'm sure they all would
19 have went with me. I can tell the enlisted men what to do,
20 but I couldn't tell the officers. So I am sure that if this
21 message had come down, my reaction would have been, get your
22 stuff together, we're to report to the B Team. That would be
23 obeying the order, if it had occurred.

24 Q. And if you did not obey it, what would be the
25 consequences?

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1 A. Well, if you did not obey, again, it's a court-martial
2 offense, disobeying a lawful order. And I, for one, would not
3 jeopardize my career and face a court-martial and disobey an
4 order of this magnitude.

5 Q. What did Mr. Marvin say occurred after that message came
6 in?

7 A. Do you want me to go on to read it?

8 Q. Yes.

9 A. "'In other words,' I told John Strait and Jim Taylor,
10 'we've been ordered to abandon ship, to desert the Hoa Hoas to
11 betray our pledge to help them against the Communists. I
12 can't do that. They'll have to come and take me out of here.
13 How do you guys stand?'

14 "Lieutenant Strait, sitting across the table from me,
15 spoke first. 'I can't quit these good people, Dangerous. I'm
16 staying with you.'

17 I shook his outstretched hand. 'Thanks, John, I
18 appreciate it. But, look, you men know what the message said.
19 So far none of you have gone against orders. I can't or won't
20 ask you to stay. If you decide to stay, I'll cover you by
21 ordering you to stay and I'll send a message to B-42 telling
22 them so. You'll have that on your file to protect you later
23 on -- later, if there is later. Just think about it for now
24 and let me know your answer when you get back from the FOBs.'"

25 Q. Now, is what is going on in the book at this point, is

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1 that some type of a violation of the Uniform Code of Military
2 Justice about conspiracy or about mutiny or anything along
3 those lines?

4 MR. BACHRACH: Objection, Your Honor.

5 THE COURT: I'll sustain it as a leading question.
6 Rephrase the question.

7 BY MR. DEEVER:

8 Q. Pardon me. Would this conversation, where it's explained
9 to you that if you -- that you don't have to leave, but if you
10 do stay, that Mr. Marvin is going to send a message, a false
11 message, to B-42, stating that you are ordered to stay, and
12 that will cover you in the event of a court-martial, the
13 question was, is this -- is this type of conversation that's
14 going on, in violation of the Uniform Code of Military
15 Justice?

16 MR. BACHRACH: Objection, Your Honor.

17 THE COURT: Basis?

18 MR. BACHRACH: He's not an expert on the issue. It's
19 a lack of foundation.

20 THE COURT: Lay a foundation for his knowledge of the
21 Uniform Code of Military Justice.

22 MR. DEEVER: Yes, thank you, Your Honor.

23 BY MR. DEEVER:

24 Q. Have you ever taken any classes in the military -- you
25 know -- First of all, you know that the Uniform Code of

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1 Military Justice is?

2 A. Yes, I do know that Uniform Code of Military Justice is.

3 Q. And is what it?

4 A. The Uniform Code of Military Justice is the laws that
5 governs the military on legality. It describes different acts
6 such as mutiny, treason and things of this nature.

7 Q. And are there -- have you ever had any classes at all in
8 it?

9 A. Yes, sir, I've had classes on the UCMJ. Everybody that
10 was in the service any time at all had classes on UCMJ. It's
11 called the Uniform Code of Military Justice.

12 Q. Were these classes taught by officers who -- or anyone
13 from the JAG that explained these things to you?

14 A. I don't really recall who taught them. They were taught
15 usually by officers, all right, but it could have been the
16 company XO or the, you know, even your own team leader, you
17 know, that had the knowledge of the UCMJ that taught them. It
18 could have also been from JAG. The classes we had in Special
19 Forces were usually conducted on a more or less informal
20 basis. So it would have been either somebody from JAG or
21 somebody that had a knowledge of UCMJ that was teaching
22 classes.

23 Q. Do you know how many of these classes or instructions that
24 you've had on the UCMJ?

25 A. I would say probably throughout the military career, I've

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1 had probably eight or ten or more.

2 Q. Were there question and answer sessions that were the --
3 where the students were authorized to inquire, ask questions
4 and discuss these things?

5 A. They were usually both types. Normally it would be
6 somebody just going over the Uniform Code of Military Justice,
7 explaining to you and making sure that you understood the Code
8 of Military Justice.

9 Q. And did they particularly discuss with you the punitive
10 articles of the Uniform Code?

11 A. They -- when they had the classes, they covered
12 everything, the Uniform Code of Military Justice, the punitive
13 aspects of it, what every part of it entailed, and your
14 responsibility to it.

15 Q. Do you feel like you understood, and understood today,
16 now, the Uniform Code of Military Justice, to the extent that
17 you were aware or could be aware that this type of conduct was
18 prohibited by the UCMJ?

19 MR. BACHRACH: Objection, Your Honor.

20 THE COURT: Basis?

21 MR. BACHRACH: Again, he hasn't been qualified as an
22 expert in the UCMJ. It's a legal document, it's a legal code
23 for the military, and I don't believe he's appropriate to be
24 opining on legal issues about the UCMJ.

25 THE COURT: I'll overrule your objection. I think

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1 he's laid a proper foundation, and he can answer in accordance
2 with Rule 701 of the Federal Rules of Evidence.

3 BY MR. DEEVER:

4 Q. You may answer it.

5 A. I felt that I was -- had enough knowledge on UCMJ to know
6 that this was a violation of the UCMJ, as it is in the book.

7 Q. All right. If you can continue. After you -- I think you
8 read about Lieutenant Strait said you couldn't quit the good
9 people? Go down to the -- well, let's read the rest of it.
10 Just follow through where you stopped?

11 A. Okay. It says I -- where I stopped was, "'We will,
12 Dai-uy. But, you know it's possible that they have another
13 reason for ordering us all out at once and having us on that
14 open river this afternoon?'

15 "'John, the possibility of being ambushed on orders of the
16 company and then reported as casualties of VC crossed my mind.
17 We could bypass Chau Doc, going cross-country over to Tan Chau
18 and bum a ride down the Mekong River past the Hoa Hoa village
19 to Can Tho, but who's to say how friendly the rest of our guys
20 would be if they were told -- if they knew we were going
21 against the CIA? (sic) Anyway, John, none of us want to
22 desert the Hoa Hoa, so go and talk to Lieutenant Ba and find
23 out what we can do to help the families of any of those who
24 choose to leave the CIDG. I say leave because I like that
25 word better than desert. It just doesn't fit in.

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1 "Jim, I want you to go with Sergeant Hung and his
2 demolition people and make certain there's enough plastic
3 explosive wired in the two big ammo bunkers of each commo
4 bunker (sic) to blow the whole camp to the moon if I have to
5 pull the switch. We're not going to leave this to the VC, the
6 company or anyone else.'"

7 "'Sure thing, Dai-uy. I'm staying with you.'"

8 Q. Now, at that point, where you said that you were staying
9 with him, do you know what the implications are on that?

10 A. That would be the implications of mutiny.

11 MR. BACHRACH: Your Honor, I just preserve the
12 objection.

13 THE COURT: Okay.

14 Q. Do you?

15 A. I do know what the implications are. That would be the
16 implication of mutiny. All right? And I'm not about to
17 commit mutiny.

18 Q. Well, what about this paragraph that -- I don't know, I
19 guess it was John in the book, it was John Strait, that said
20 we will, but we know there's a possibility of a better reason
21 for wanting us out in the open and going together? Did you,
22 reading this, did you ever have any -- in fact, any time
23 during your whole military career, did you ever have the
24 feeling that your own Special Forces compatriots would ever
25 intentionally do any harm to you whatsoever for anything?

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1 A. Not once in my military career with Special Forces would
2 I -- would this even come across my mind. It just would not
3 happen. Special Forces are very close-knit operation --
4 organization. And it is to this day. It was probably even
5 closer back then, because we were all A Teams scattered out
6 throughout Vietnam. And any way we could help one another on
7 any other A Team, we would do it. As far as firing on another
8 A Team or anybody firing on us, no, I don't believe it would
9 ever happen. There is no doubt in my mind that this would
10 never come about.

11 Q. Did you ever have the fear that the Central Intelligence
12 Agency would ever do you any harm?

13 A. I had no reason to fear the CIA. I have no reason to fear
14 the CIA. They had nothing out against us.

15 Q. All right. Start then where you -- thanks, Jim.

16 A. Pardon?

17 Q. Start reading again the next paragraph that starts with
18 thanks, Jim.

19 A. Start reading where?

20 Q. Thanks, Jim. It's the third paragraph. After you had
21 said that you were staying with him. On page 282.

22 A. On 282?

23 Q. Yes, up near the top.

24 A. Okay, here it is. "'Thanks, Jim. Woolley, you've got to
25 get our commo bunker -- you've got to get to the commo bunker

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1 pretty quickly. Take this message and send it to C-4 and copy
2 to B-42.' I handed him a short message that read: Secret.
3 To Tuttle. Amnesty must be granted Strikers of An Phu. Will
4 advise later today if I will send team members to B-42. I am
5 staying. Signed Marvin."

6 "'Well, Dai-uy, you can also count on me to ride this
7 thing out with you.' (sic) We smiled at each other and shook
8 hands."

9 Q. All right. Let's go down to the second paragraph from the
10 bottom, about this conversation between Major Le and Captain
11 Marvin.

12 A. Okay. Where it says --

13 Q. I was just thinking.

14 A. "'I was just thinking about the men, Thieu-ta. As you
15 know, I was ordered to take my team to Chau Doc. Each of my
16 men has said he wants to stay with you and your people. If I
17 allow them to stay, they could all end up in prison. If they
18 were to leave by a safe route, they'd be deserting your
19 people. It boils down to a question of honor, and I'll tell
20 you, Thieu-ta, I'm mighty proud of each and every one of them
21 for their courageous decision.'"

22 Q. And is that -- does that -- where he's talking about his
23 men there, is he talking about all of the men in A-424 at that
24 time?

25 A. That's what he's saying, that every man in A-424 had

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1 decided to violate the orders and stay in An Phu and stay with
2 the Hoa Hoa.

3 Q. He also mentioned that it boils down to a question of
4 honor. Do you agree with that?

5 A. No. Not in this phase here. It's not a matter of honor.
6 Your honor is to your country. Your country is first. Now,
7 yes, you honor the people you're working with, all right, but
8 in a situation like this, you've got to stop and consider, you
9 are an American soldier, your honor is to your Army, to the
10 American people. And if you are ordered to do something --
11 sometimes you may not agree with it -- then you are going to
12 follow the orders of your own people.

13 Q. Okay. Let's go on over to the next -- about the third
14 paragraph from the bottom on page 283. He gestured at the
15 note.

16 A. Where it says after breakfast on the 18th?

17 Q. You're on page 283?

18 A. 283, yeah.

19 Q. Go to the third paragraph from the bottom.

20 A. "He gestured at the note on his desk. 'I have just
21 received word from a trusted friend in Can Tho. He tells me
22 the ARVN regiment is being sent to Chau Doc to enforce the
23 edict that Premiere Ky has directed at An Phu. He tells me
24 there are -- they are coming here with armored personnel
25 carriers and big weapons.'

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1 "It took a minute for the full impact of what he'd said to
2 hit me. When it did, a cold sensation of impending doom took
3 control of my mind and spirit momentarily. Quickly I pushed
4 that feeling out of my mind, knowing that it was exactly the
5 reaction they want. I stood there erect, (sic) letting Major
6 Foy (sic) know I was with him, and was there to help and not
7 to hinder.

8 "Major Le continued, 'Our agents in Chau Doc report that
9 the police are ordering people to move their boats away from
10 the entire docking area in front of your B Team and beyond.
11 The cleared area must be 1000 meters long. They are told the
12 Government boats will be using the docks.'

13 "'That makes sense, Thieu-ta.'"

14 Q. All right. This -- move down, if you will, please, to he
15 thought for a short time on the note pad.

16 A. Okay, says, "He thought for a short time, did some
17 figuring on a note pad and he told me it would be morning --
18 it would be morning after the boats and the regiment were
19 assembled in Chau Doc. 'They will not try to come up the
20 river after dark, Dai-uy, so I believe they will be prepared
21 to attack us before the morning of the 20th. So, my friend,
22 in case I am wrong, we must be ready before that day -- before
23 the -- the day before.'

24 "'You know better than I do, Thieu-ta, that we must be
25 prepared to fight the southwest regiment and the ARVN regiment

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1 at the same time.'

2 "'Yes, Dai-uy, and we have (sic) fewer than 200
3 Strikers -- we have 200 fewer Strikers than we had just
4 yesterday.'

5 "As if on signal, Sergeant Taylor and Sergeant Hung, who
6 had been standing by in Major Le's office doorway, cleared
7 their throats to get attention. They had a proud look on
8 their face and a map in hand.

9 "'Got something for us, Jim?'

10 "'Yes, sir, Hung and I have prepared (sic) a map showing
11 both friendly and enemy order of battle. We thought you and
12 Major Le would like to have one for your meeting.'

13 "'Sure would.'"

14 Q. All right. There's an exhibit next -- on the next page,
15 Special Operations Map No. 8.

16 A. Pardon?

17 Q. There on the next page, there is a -- on page 285?

18 A. Right.

19 Q. There is a map, Special Operations Map No. 8 it's
20 designated.

21 A. Yeah.

22 Q. Did you prepare that?

23 A. No, I did not. I did not prepare any maps of this nature
24 while I was in An Phu.

25 Q. Well, this map that you and Hung were supposed to have

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1 prepared, if you'll start at the paragraph above the last
2 paragraph on that page, it tells something about it. If you
3 would read that, please.

4 A. Where it says it showed that Southward Regiment?

5 Q. Yes.

6 A. "It showed that the Southward Regiment had been brought up
7 to a 2400-man strength with one 57 (sic) recoilless mountain
8 gun --"

9 Q. Read the millimeter on that again.

10 A. "-- 75 millimeter mountain gun, four 75 millimeter
11 recoilless rifles, 14 of the 57 -- 14 of the 57 recoilless
12 rifles and six 81 millimeter mortars against our two 155
13 millimeter Howitzers and five 81 millimeter mortars and one
14 four-deuce.

15 "We are outnumbered and outgunned, yet we have not
16 counted the ARVN regiment's men and guns,' Thieu-ta added,
17 'it's not good.' Smiling and standing to shake hands with
18 Taylor and Hung, he told them, 'You've done your job -- you've
19 done a good job to put all this information down in a very
20 important document for planning. Thank you very much. You
21 are good men.'"

22 Q. All right. Did any of this scenario that you've been
23 reading of this situation, did it ever exist at An Phu?

24 A. The situation like this never, and I will repeat, never
25 existed in An Phu.

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1 Q. All right, let's go over to page 286, if you will, please.

2 A. 286?

3 Q. Yes, and this is on the 18th of June -- at lunch on the
4 18th of June.

5 A. Okay. Where it says within a half hour I took my message
6 to Woolley?

7 Q. Okay.

8 A. It says, "Within a half hour I took my message to Woolley
9 in the commo bunker and told him to send it to B-42. Secret.
10 To Brewer. Our agent report 9th ARVN division unit marshaling
11 your location to attack this camp. I remind you that An Phu
12 is closed to all outsiders. We demand amnesty for all
13 Strikers. We will engage any force entering our areas.
14 Signed Marvin."

15 Q. Now, what is B-42 that he's referring to there?

16 A. Well, what he's saying, if they send this ARVN troops and
17 American advisers towards An Phu down the river, that we are
18 going to fire on them. We are going to shoot at our own
19 friendly forces.

20 Now, we are in no way going to fire on any friendly
21 forces. No one in -- there will be American advisers with
22 that unit. Now, what he's telling -- what this message is
23 telling the B Team, that hey, we're going to shoot them if
24 they come up the river after us.

25 Q. Going to shoot them or anyone?

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1 A. Anybody that come up that river towards An Phu.

2 Now, you also got to think back. He said send this
3 message to B-42. Earlier, he says he was accountable to
4 nobody. He was accountable to C-4, not B-42. B-42, according
5 to him, was not even in our chain of command. Which is
6 erroneous, because B-42 was in our chain of command.

7 Q. All right. Start with at lunch, after that message.

8 A. "At lunch on the 18th of June I discussed the message flow
9 and how the threat posed by the friendly and enemy alike.
10 (sic) I asked Jim Taylor how we stood with ammunition.

11 'We'll be in good shape on everything if we get -- if we
12 just -- if it was just the Cong we were fighting,' Jim
13 answered, 'but I'm not sure we've got enough to hold off the
14 Cong and the ARVN. Are you sure the ARVN regiment -- are you
15 sure about the ARVN regiment, Dai-uy?'

16 "'Dead serious, Jim. Unless they back out, we have no
17 choice.' Turning to Lieutenant Strait, I asked about the
18 families of those Strikers who chose to leave the CIDG, 'Can
19 we possibly help them in any way, John?'

20 "'Apparently there is no problem, Dai-uy. Lieutenant Ba
21 simply reminded me that the Hoa Hoa take care of their own.'

22 "Woolley was back again, this time with Colonel Brewer's
23 response to my earlier message. I asked him to read it aloud.
24 Secret. Urgent. To Marvin. You must comply with orders from
25 C-4. I will send escort to bring your team to this location.

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1 No knowledge of mission of 9th ARVN division unit arriving
2 this location. Signed. Brewer.

3 "Grabbing a pen I wrote a quick answer to read (sic) it
4 aloud before handing it to Woolley to send. Secret. Urgent.
5 To Brewer. I have ordered my men to remain in An Phu. Do not
6 send escort. This area is closed. All military traffic will
7 be fired on. We demand immediate amnesty for Strikers.
8 Signed Marvin." Keep going?

9 Q. Yes, keep going, please.

10 A. "Woolley was concerned with Colonel Brewer's possible
11 reaction. He advised, 'I'll send this, Dai-uy, but I think --
12 but I think Colonel Brewer is going -- Colonel Brewer is --
13 but I don't think Colonel Brewer is going to like it. Are you
14 bluffing about shooting our own people if they come up the
15 river?'

16 "No bluff, Woolley, we can't afford to bluff. If we let
17 them in it will serve as no useful purpose. If we leave, who
18 knows what will happen to Major Le and his people? And who
19 knows what will happen to us if we are under Colonel Brewer's
20 control? The CIA, Premier Ky and our embassy all know
21 about -- a lot about Strikers -- about the Strikers would
22 desert if they withdrew amnesty. (sic) If we hadn't stood by
23 them, how many more would have left? I don't know, but I
24 believe we'd have been sitting ducks for the Southward
25 Regiment. And then what? I'll get with Major Le and let him

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1 know about the escort party. We'll have an ambush in place on
2 the Bassac River three kilometers from Chau Doc. They have
3 orders to fire warning shots at all intruders. If their
4 warning goes unheeded, they are to do whatever is necessary to
5 stop them.'

6 "'Even kill them,' asked Woolley?

7 "'Yes, I answered.'

8 "Sergeant Taylor lifted up his voice in support, saying,
9 'I agree with Dai-uy. This is serious business. Our Hoa Hoa
10 could be slaughtered if we don't stand tough.'"

11 Q. All right.

12 MR. DEAVER: Your Honor, is there going to be a break
13 any time soon?

14 THE COURT: Whenever he gets done testifying.

15 BY MR. DEAVER:

16 Q. All right, let's look at 289. There's another message.

17 A. Down there where the message is?

18 Q. Yes.

19 A. Says, "Woolley came running in again with a burning
20 message from C-4. It read -- I read it aloud and we all had
21 to know what was going on. The message was, Secret. To
22 Marvin. Situation very dangerous. SF has no control. Your
23 team must leave An Phu as soon as possible. Report to Colonel
24 Brewer. No amnesty. ARVN under orders to take control of An
25 Phu no later than 201500 hours. The 20th -- 1500 hours in

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1 June. No danger for you on your movement to B-42 location
2 this date. Urgent reply requested. From Tuttle."

3 Q. And look at up above where the paragraph that says Major
4 Le and I stayed in the command bunker until 0300?

5 A. I'm sorry, I didn't hear you.

6 Q. Up above it has a paragraph that gives the date of this
7 time frame where all this is supposed to be going on. It's
8 right in the middle of the page on -- middle of page 289.

9 A. Okay, yeah, says, "Major Le and I stayed in command bunker
10 until 0300 hours."

11 Q. Yes. On the date that follows it.

12 A. It says, "Major Le and I stayed in command bunker until
13 0300 hours on the 19th of June."

14 Q. Okay. Did anyone ever attempt to coerce you or intimidate
15 you to make the statements that you're making, to file the
16 complaint in this action?

17 A. No, nobody had to intimidate me or try to coerce me to
18 make any statements here in this court.

19 Q. Do you know of any other actions that you could have taken
20 other than having -- or the Special Forces Association
21 contacting Mr. Marvin and communicating with him and Trine Day
22 not to publish this as a work of truth?

23 A. There was two attempts to try to get them to not publish
24 the book. Or, as I said earlier, change the title to a
25 fiction and leave our names out of it. They ignored both

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1 opportunities.

2 Q. Is there any other way other than this lawsuit for you to
3 clear your name about these accusations?

4 A. Any other way to settle this?

5 Q. No, to clear your name. You've been accused, according to
6 your testimony, of various violations of Uniform Code of
7 Military Justice, of going into Cambodia and all these things.
8 Is there any way, other than filing this lawsuit, that you
9 could have made any effort to clear your name?

10 A. No, I think we made every effort possible to get them to
11 withdraw my name and to publish the book as a false book or
12 based on a true story or any other way other than using our
13 names. I think we used every means that we could to stop them
14 from publishing this book. And using our name. So I don't
15 see any other way, other than a lawsuit, because any other
16 opportunity we gave them, they just ignored.

17 Q. Was there anything that happened at An Phu or with any
18 subsequent contacts between you and Mr. Marvin, that would
19 cause you to want to file a lawsuit against him, other than
20 this book? Was there anything that happened previously, other
21 than this book?

22 A. No, there's nothing.

23 Q. Did you have a good relationship with Mr. Marvin at An
24 Phu?

25 A. When I was at An Phu, yes, we had a good relationship,

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1 as -- when we was at An Phu, it was nothing as it is depicted
2 in the book, all right? Nothing whatsoever like this book
3 describes it.

4 Q. Are you proud of the work that you did in An Phu?

5 A. I'm definitely proud of the work we did in An Phu. I
6 think the team did a great job. We done our job, we assisted
7 the local civilians, we done our medical patrols, we done
8 everything we could to help the people in that district. And
9 yes, I'm proud of what I done there.

10 Q. How long did you serve in the military?

11 A. I served in the military for over 20 years.

12 Q. And this period at An Phu was about six months of your
13 military career?

14 A. It was six months, yeah, give or take a day or two, six
15 months, yes.

16 Q. Mr. Ogiba said in his opening statement here that this
17 book portrayed you as a hero. Do you think it portrays you as
18 a hero or as a criminal?

19 A. I think it portrays me as a criminal. It accuses me of
20 violating -- it's trying to make me feel like I'm a hero, and
21 I guess I should feel honored about that, but I'm not. This
22 book portrays not only me, but every member of that team, as a
23 bunch of criminals. And believe you me, I'm 67 years old,
24 I've never had a speeding ticket. Now I'm not a criminal, but
25 according to this book, the way it's published right now, I am

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1 a criminal. Because Mr. Marvin wrote this book as a true
2 story. And I will be the first to tell you, this is not a
3 true story.

4 Q. As -- have these accusations caused you any type of
5 concern or discomfort?

6 A. These accusations have cost me a lot of frustration. I
7 have family members -- I have one daughter-in-law, in fact,
8 that believes this is a true story, but I just don't want to
9 admit it because I don't want her to know what I've done.
10 She's never been connected to the military. She doesn't know.
11 She gets the book, she reads it and she believes it.

12 A lot of people that have no contact with the military,
13 pick this book up and they read it and say, this is Special
14 Forces, that's got to be a true story.

15 And I go to coffee with friends down there in the morning.
16 They know about this book, they read it. And they say, Boy,
17 you ought to feel good. When I got turned around -- there are
18 no truth in this book, none whatsoever. Why should I feel
19 good? It causes a lot of frustration, caused a lot of
20 heartaches. And the time that really frustrates me to no end,
21 because I have to constantly defend myself and my reputation
22 and my time in the service.

23 Q. Look at the book on the dust cover, on the inside dust
24 cover, and read that portion starting with Expendable Elite
25 reveals.

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1 A. It says Expendable Elite -- excuse me. It says,
2 "Expendable Elite reveals the fears that these elite warriors
3 share with no other military person - not the fear of the
4 enemy that they have been trained to fight in battle, but the
5 fear of the wrath of our Government should they no longer be
6 needed and find themselves classified as expendable."

7 Q. Do you know any -- just can you name one of the seven to
8 9000 members, veterans of the Special Forces, that have that
9 fear?

10 A. No, I know of none that had that fear, because -- if
11 you're referring to the fear of being --

12 Q. The wrath of your government if --

13 A. The wrath of the government, no, we don't fear the wrath
14 of the government. Why should we? We served the government.

15 MR. DEAVER: Thank you. That's all.

16 THE COURT: Ladies and gentlemen of the jury,
17 we'll -- Step down, Mr. Taylor, thank you very much. We'll go
18 to lunch right now, we'll start again at 2:30. Okay?

19 (Jury excused.)

20 (A recess was held at this time.)

21 (Jury present.)

22 THE COURT: I hope y'all had a nice lunch.

23 Mr. Taylor, if you want to come back up here, we're ready for
24 you.

25

CROSS-EXAMINATION

JAMES TAYLOR - CROSS-EXAMINATION

1 BY MR. BACHRACH:

2 Q. Good afternoon, Mr. Taylor. How would you like me to
3 address you; Sergeant Taylor, Mr. Taylor?

4 A. Jim Taylor, Mr. Taylor, that's fine.

5 Q. Mr. Taylor, I just have a few questions for you. I
6 believe you testified on your direct examination that there
7 was no action in the An Phu district while you were there.
8 Correct?

9 A. That's correct.

10 Q. Now, isn't it true that on June 4th, 1966, you were
11 presented, by General Dang, with the Vietnamese Cross of
12 Galantry at a victory celebration held in the An Phu camp?

13 A. I was presented with the Vietnamese Cross of Galantry, but
14 you've got to understand, anybody that goes to Vietnam gets a
15 Vietnamese Cross of Galantry. All right? It's not just for
16 any action or anything. If you served in Vietnam in an A
17 Team, you got a Vietnamese Cross of Galantry.

18 Q. But isn't it true that you received it at a victory
19 celebration?

20 A. I received it at a celebration. I would not call it a
21 victory celebration, because there was no victory to
22 celebrate.

23 Q. Do you remember giving sworn testimony on October 31st in
24 this matter?

25 A. I gave testimony on October 31st, but I'd have to review

JAMES TAYLOR - CROSS-EXAMINATION

1 it to see what matter you're talking about.

2 MR. BACHRACH: May I approach the witness?

3 THE COURT: Sure.

4 Q. Showing you on page 213, I asked you the question which
5 was reading from your questionnaire. Question: And this is
6 what you had written. General Quang -- actually should be
7 Dang -- presented me with a Vietnamese Cross of Galantry at
8 Camp Dang Nam. I do not know what victory. Answer: Okay,
9 that probably happened then. Correct?

10 A. That's what it says, yes.

11 Q. And you've listened to the tape recordings made by
12 Lieutenant Strait, correct?

13 A. Yes, I listened to them tapes.

14 Q. And Lieutenant Strait was second in command?

15 A. He was the detachment XO, yes. Detachment XO means the
16 executive officer of the team.

17 Q. And you heard on those tapes, Lieutenant Strait describe
18 in detail a fierce battle at Khanh Bin in May of 1966, didn't
19 you?

20 A. Yes, it was on the tapes, but also I think you'll find on
21 the tapes where Lieutenant Strait or John Strait stated that
22 at the time he made those tapes, he was a commander of the
23 American Legion there, he'd been to the Legion drinking beer,
24 and he came back and he made these tapes for Marvin. And he
25 just assumed that he was talking, you know, just army buddy to

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1 army buddy, and he was the impression that it was going to be
2 a fiction story.

3 Q. So when we listen to these tapes, as we will, it's your
4 testimony that he indicated on the tapes that he had been
5 drinking at the command post and came back and made this tape?

6 A. That is my impression, and I think he also made that clear
7 at the last testimony.

8 Q. And that's what we're going to hear him say on the tape?

9 A. Well, I don't know what you're going to hear John Strait
10 say. I'm not going to try to speak for what he's going to say
11 up here today.

12 Q. Well, you've listened to the tapes?

13 A. Yes, I told you I've listened to the tapes.

14 Q. And you just indicated to us that when we listen to the
15 tapes we're going to hear John Strait indicate on the tapes
16 that he had been drinking at the command post at the American
17 Legion while he was making the tapes.

18 A. I believe that's exactly what I just said.

19 Q. Now, refresh for the jury and me again what an FOB is.

20 A. It's a forward operational base. You've got your main
21 camp here, then you have what is considered an FOB, it's
22 manned by a reduced strength force, out away from the main
23 camp.

24 Q. And there was an FOB in Khanh Bin, correct?

25 A. There was an FOB at Khanh Bin.

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1 Q. And you were up in Khanh Bin at various times?

2 A. I was in Khanh Bin at various times, yes.

3 Q. And usually there would be two American soldiers up at
4 Kharh Bin?

5 A. That's normally the policy. Any time you go out of camp,
6 you go out, you have two Americans, not one.

7 Q. And how far was Khanh Bin from the Cambodia border?

8 A. Oh, I have no way of recollecting that, because this is
9 over 40 years ago. You know? I would say probably in the
10 neighborhood of four to 5000 meters. I'm not sure.

11 Q. Wasn't it virtually on the Cambodia border?

12 A. It could have been closer, I don't know. I just said I'm
13 not sure. This was 40 years ago, you know, and I'm trying to
14 remember the geographic area there, and it's 40 years later.

15 Q. So you were at the Khanh Bin FOB, but you don't recall how
16 close it was to the Cambodian border.

17 A. No, I don't.

18 Q. And you recall listening to Mr. Strait on the tapes
19 indicating that there was firing back and forth from the enemy
20 on the Cambodian side of the Khanh Bin FOB, and there was
21 firing back and forth. You heard him say that on the tapes,
22 correct?

23 A. I don't directly remember that.

24 Q. Well, you heard him describe the battle at Khanh Bin,
25 correct?

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1 A. It was mentioned on the tapes, yes, I will say that it was
2 mentioned on the tapes.

3 Q. And there was an FOB at Phu Hiep also, correct?

4 A. There was an FOB at Phu Hiep.

5 Q. And do you recall hearing Mr. Strait on the tapes
6 discussing firing back and forth from the enemy on the
7 Cambodian side between the FOB at Phu Hiep and the enemy on
8 the Cambodian side of the border?

9 A. I think in order for me to answer that question, I would
10 have to review those tapes to recall all that.

11 MR. BACHRACH: May I approach the witness again, Your
12 Honor?

13 BY MR. BACHRACH:

14 Q. You recall, again, giving testimony in this matter on
15 October 31st of this -- the past year, correct?

16 A. I possibly could have, yes.

17 Q. Directing your attention to page 203. "Question: Was
18 there activity up in -- fighting activity up in Phu Hiep?
19 Answer: No. There was no -- and then you said no. Firing
20 back and forth across the border." And you said, "No,
21 absolutely not." At that point I asked: "Did you hear --
22 listen to Mr. Strait's tape where he confirms that there was
23 activity along -- up at the Phu Hiep FOB? Answer: I heard
24 that on the tape, but there again, you know, the circumstances
25 the tapes are made under were more or less like Marvin asked

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1 him make the tapes, and he agreed to do it. All right? But
2 when he done it, he was under the impression that this first
3 book was going to be a fiction. This is just one GI buddy
4 talking to another GI buddy, you know, like you get in a bar
5 with your buddy and say I done this and done that and mostly
6 just nonsense."

7 Do you recall giving that testimony?

8 A. I sure do.

9 Q. So you recall hearing on the tape that there was firing
10 back and forth between the enemy in Cambodia and the FOB at
11 Phu Hiep?

12 A. Yeah, I can remember that, yes.

13 Q. And you also heard on the tape, did you not, Lieutenant
14 Strait thank Colonel Marvin for saving his life during the
15 battle at Khanh Bin, didn't you?

16 A. Yes, I heard that on the tape, but I also heard straight
17 from Mr. Strait that he said this was not true.

18 Q. But you heard him say it on the tape?

19 A. Yes, it's on the tapes, and when you listen to the tapes
20 you'll hear it, but again, I heard Mr. Strait again say this
21 is not true, that was beer talking.

22 Q. When you listened to the tapes, did you -- You listened
23 closely to the tapes, correct?

24 A. I listened to them, yes, but they really didn't pertain to
25 me, so I won't say that I paid that much attention to them,

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1 but I did listen to them.

2 Q. Well, wasn't it important for you to listen to the tapes
3 closely, because you're claiming this book was false, and here
4 there's a tape by Lieutenant Strait that confirmed many
5 aspects of the book, correct?

6 A. I think -- I think what I said, that this book was false
7 with everything pertaining to me and my activities in the
8 camp. I'm not going to try to answer a question for John
9 Strait.

10 Q. So as I -- but you were -- you approached the Special
11 Forces about this book, correct?

12 A. Yes, I did, just as I testified.

13 Q. And you approached Jimmy Dean --

14 A. Yes, I did.

15 Q. -- at the Special Forces. And who is Jimmy Dean?

16 A. Jimmy Dean, at that time, was the administrator/secretary
17 of the Special Forces organization.

18 Q. And what exactly did you tell him about the book?

19 A. Well, we discussed the book, and I told him that the book
20 was not a true book, and that I needed some advice as to what
21 we could do to try to get the book stopped or pulled off the
22 market. And that was the topic of the discussion we had.

23 Q. You, in fact, told him the book was false with respect to
24 all of you, didn't you?

25 A. I said that the book was not true. I didn't go into any

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1 particular aspects of it, I just said the book was not true.

2 Q. So you told him the book wasn't true?

3 A. Yeah.

4 Q. And you, in fact, prepared with Mr. Dean, questionnaires
5 to send to the plaintiffs, correct?

6 A. No, sir, I did not have anything to do with preparing for
7 that questionnaire. We had the conversation. Mr. Dean came
8 back to me and he says, I've got a questionnaire I want you to
9 fill out, he says, and I'm going to send one to every member
10 that was on that team. And so he says he was going to send
11 them to the members. I said, have them return them straight
12 to the association, I don't want them coming to me, because I
13 don't want people to think that I had any influence on
14 anything they had to say. So the questionnaire was made out,
15 I filled out one, everybody sent out one, and mailed it right
16 straight back to the association.

17 Q. And it's your testimony that you had nothing to do with
18 preparing the questionnaire?

19 A. No, I had nothing to do with it. The association did
20 that.

21 Q. Do you recall a telephonic deposition you gave when I was
22 asking questions on March 29th, 2005, in which you testified
23 under oath?

24 A. I'd have to review it.

25 Q. I'm showing you a copy of your deposition of that day.

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1 And on page 24 I asked, "Question: Did you again discuss this
2 with the officers of the Special Forces Association? Answer:
3 I sure did. I went out and talked to Jimmy Dean, and we had a
4 meeting, and we made up a questionnaire. And we sent it to
5 every member of the team, had them fill out the questionnaire
6 and return it to the Special Forces Association. Not me, to
7 Jimmy Dean and the Special Forces Association, so they could
8 give their background information on the book."

9 Did you give that testimony, sir?

10 A. I did, but I think that's a misrepresentation. I think I
11 should have said they prepared the questionnaire, and not me.

12 Q. But at this deposition, which was closer in time, you
13 indicated that you assisted him in -- Jimmy Dean, in preparing
14 the questionnaire.

15 MR. DEEVER: Object, Your Honor.

16 THE COURT: What's the basis?

17 MR. DEEVER: He is using a deposition that has not
18 been sworn to or -- or that was not verified, not read by him.
19 And where he says --

20 THE COURT: Wait a minute. Get him to identify the
21 deposition, get him to say the deposition happened. I mean,
22 you use a deposition like this every day.

23 MR. DEEVER: We do, but he also said that that wasn't
24 what he said.

25 THE COURT: No, he didn't say that. Okay? I mean,

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1 I've got it written right here what he did say, if you want me
2 to read it to you. All right?

3 MR. DEEVER: They --

4 THE COURT: All right. Get him to identify the
5 deposition first.

6 MR. DEEVER: And also the date, get the correct date
7 on that, please.

8 MR. BACHRACH: The correct date is March 29th, 2005.

9 BY MR. BACHRACH:

10 Q. Do you recognize this deposition?

11 A. Yes, it looks like the one I made.

12 Q. And do you recall being in an office and I was asking you
13 questions over the phone?

14 A. Yes, I do, and I recall also that sometimes that phone was
15 very hard to understand.

16 Q. And I'll just do this once again. Do you recall me asking
17 you --

18 THE COURT: Wait a minute. Ask him who the court
19 reporter was, ask him who was present, ask him what offices it
20 was in.

21 BY MR. BACHRACH:

22 Q. Were you sworn in to give the truth?

23 A. I was sworn in at the deposition, yes.

24 Q. And there was a court reporter there, correct?

25 A. There was a court reporter there.

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1 Q. And this deposition has the certificate of the court
2 reporter where she certified that you came before her, and the
3 person herein before named who was by me duly sworn to testify
4 to the truth and nothing but the truth, witnesses knowledge
5 touching and concerning the matters in controversy and the
6 cause, that the witness was thereupon examined under oath, and
7 the examination reduced to typewriting under my direction, and
8 the deposition is a true record of the testimony given by the
9 witness.

10 A. That's what it says, yes.

11 Q. So she certified -- And who else was at the deposition?

12 A. I believe Ray Johnson was there, and I think John Strait
13 was there.

14 THE COURT: Lawyers?

15 Q. And who were the lawyers there?

16 A. The lawyers was Bob Deavers and Ben Deavers.

17 MR. BACHRACH: And I believe, Your Honor, if he
18 doesn't make corrections after a certain date, it's deemed --

19 THE COURT: I don't know what the rule is.

20 MR. BACHRACH: What?

21 THE COURT: Okay, go ahead and ask him the questions
22 about it.

23 BY MR. BACHRACH:

24 Q. Directing your attention to page 24, I'll again read to
25 you. "Question: Did you again discuss this with the offices

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1 of the Special Forces Association?"

2 A. And I said yes, I did.

3 Q. And the answer -- you can bear with me. "I sure did. I
4 went out and talked with Jimmy Dean, and we had a meeting, and
5 we had made up a questionnaire, and we sent it to every member
6 of the team, had them fill out the questionnaire and return it
7 to the Special Forces Association. Not me, to Jimmy Dean and
8 the Special Forces Association so they could give their
9 background information on the book."

10 That's what you said at that date, correct?

11 A. That's, I guess, what I said at that date.

12 Q. Did you -- Were you aware of there being Viet Cong and
13 North Vietnamese enemy sanctuaries in Cambodia while you were
14 in An Phu?

15 A. No, I was not aware of it.

16 Q. You did see maps on Colonel Marvin's desk which indicated
17 that there were enemy positions and sanctuaries in Cambodia,
18 correct?

19 A. I seen maps on Colonel Marvin's desk that had areas marked
20 across the border. It did not say Viet Cong areas of refugee.

21 Q. Bear with me, I'm sorry, my eyesight is going. And, sir,
22 do you recall giving testimony, sworn testimony,
23 October 31st of 2005 in this matter?

24 A. Yes, I do.

25 Q. And directing your attention to page 205, you were asked,

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1 "But you do acknowledge having seen maps in Colonel Marvin's
2 tent or wherever he stayed, that showed enemy positions in
3 Cambodia, correct? I seen maps in his office that he said
4 showed enemy positions, that Marvin said showed enemy
5 positions."

6 You were asked that question and you gave that testimony,
7 correct?

8 A. I think -- and I think that's just the way I answered it
9 here today.

10 Q. So you saw maps in his office in which Colonel Marvin
11 indicated that there were enemy positions in Cambodia?

12 A. I think that's what I said just earlier.

13 Q. Okay. And to your knowledge, there were no North
14 Vietnamese or Viet Cong sanctuaries in Cambodia while you were
15 across the border of An Phu while you were in South Vietnam?
16 Is that your testimony?

17 A. When I was in An Phu I had no knowledge of any activity in
18 Cambodia, because that was really of no concern of ours.

19 Q. You're not aware of any activity or you're not aware of
20 any enemy sanctuaries in Cambodia?

21 A. I'll put it this way. Any sanctuaries or activity.

22 Q. Did you listen to the tape recording that Raymond
23 Johnson -- the tape recording of the telephone conversation
24 between Raymond Johnson and Colonel Marvin?

25 A. I think I listened to that tape one time, and that was

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1 years ago.

2 Q. Do you recall Mr. Johnson describing a mission into
3 Cambodia that he took?

4 A. No, I don't recall that.

5 Q. You don't recall that?

6 A. No.

7 Q. Did you ever listen to the tapes of Mr. Sirois in this
8 matter?

9 A. Again, I listened to the tapes of Mr. Sirois, but they
10 live in a different part of the state or a different state
11 completely. And when I got the tape, my purpose of the tapes
12 was to send it to them so they could hear it themselves. I
13 did, however, listen to it, but again, just briefly.

14 Q. Did you listen to Mr. Sirois say on his tape that there
15 was lots of action and he was scared?

16 A. No, I don't recall saying that.

17 Q. No, do you recall hearing that on his tape?

18 A. No, I don't recall hearing that on the tape.

19 Q. What is H and I?

20 A. Pardon?

21 Q. H and I?

22 A. H and I.

23 Q. Are you familiar with the term H and I, harassment and
24 intimidation?

25 A. I'm familiar with it, but --

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1 Q. Do you recall when you listened to Lieutenant Strait's
2 tape, that him discussing your forces engaging in H and I with
3 respect to the enemy on the Cambodian side of the border?

4 A. No, I don't.

5 Q. You don't recall that?

6 A. No, I don't recall that.

7 Q. Now, with respect to the book, you said it's not true, and
8 you marked in red and yellow what's not true. Correct?

9 A. That's correct.

10 Q. But as we flip through this, there's much white left in
11 the book, correct?

12 A. That book has marked stuff that particularly has my name
13 and pertains directly to me.

14 Q. So you don't know if the book is entirely false or not?

15 A. The book is entirely false; I will say that.

16 Q. So you're willing to say under oath that the book is
17 entirely false?

18 A. I am willing to say under oath or anywhere else that the
19 book is false.

20 Q. And you told that to Jimmy Dean, didn't you?

21 A. I did tell that to Jimmy Dean.

22 Q. And if I could direct your attention to Defendants'
23 Exhibit 20. Now, The Drop is what?

24 A. The Drop is a quarterly magazine put out by the Special
25 Forces Association.

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1 Q. Directing your attention to Exhibit 20, which is put out
2 by the Special Forces Association, you notice on page two --

3 THE COURT: It's the notebook, not the bound book,
4 okay?

5 BY MR. BACHRACH:

6 Q. On the second page it says, "Jimmy also briefed Chapter
7 118 on LTCR Dan Marvin and his book, Expendable Elite, which
8 is proven to be 100 percent lies."

9 That's what this says, correct?

10 MR. COLLINS: Your Honor, I'll object to that --
11 questions about The Drop. I mean, any --

12 MR. DEAVER: Any conversations --

13 THE COURT: Wait a minute.

14 MR. COLLINS: I'm sorry.

15 THE COURT: I have enough trouble with one lawyer per
16 side. If somebody is going to object, it's going to have to
17 be Mr. Deaver, who did the direct examination.

18 MR. COLLINS: All right, sir.

19 THE COURT: I can keep up with one a side, but more
20 than one, I get overmatched.

21 MR. COLLINS: Well said, Your Honor.

22 THE COURT: If it's in evidence, it's in evidence.
23 Okay? But go ahead and rephrase the question, and we'll let
24 them see if they want to object.

25 MR. BACHRACH: Okay.

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1 BY MR. BACHRACH:

2 Q. Now, you told Jimmy Dean that the book was entirely false,
3 correct?

4 A. I sure did.

5 Q. And at least in part, he was relying on your statements in
6 making that he had been briefed that the book was 100 percent
7 lies, correct?

8 A. Well, I don't believe it was entirely on my statement.
9 Knowing Jimmy Dean, he probably had a copy of the book and
10 read it himself.

11 Q. But how would he know?

12 A. How would he know what?

13 Q. How would he know the book is 100 percent lies, if he had
14 no involvement in An Phu during that time?

15 MR. DEEVER: Your Honor, object to that.

16 THE COURT: Sustained. I don't know how he can tell
17 what Jimmy Dean would know.

18 MR. BACHRACH: Well, he just said -- I'm sorry, Your
19 Honor. I'm sorry.

20 THE COURT: Okay.

21 MR. BACHRACH: Could you read back the last answer.

22 (The requested portion was read by the reporter.)

23 BY MR. BACHRACH:

24 Q. Let me rephrase the question. Was Jimmy Dean in An Phu
25 during the time period reported in the book?

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1 A. No, Jimmy Dean was not there.

2 Q. So he couldn't simply determine if it was true or false by
3 his reading the book, correct?

4 MR. DEEVER: Object, Your Honor, that's not what he
5 said about the book.

6 THE COURT: Overruled. Go ahead. Read the -- Do you
7 remember what the question was?

8 A. No, repeat the question, please.

9 BY MR. BACHRACH:

10 Q. So Jimmy Dean couldn't have determined whether the book
11 was true or false just simply on his reading it, correct?

12 A. Well, let me answer it this way. Jimmy Dean is one of the
13 original Special Forces members. He's got years and years and
14 years experience in Special Forces operations, he knows how a
15 Special Forces A Team operates. And if you've been around
16 Special Forces for awhile, and you read this book, and you
17 know that the statements made in this book cannot be true,
18 then you form an opinion of that book. And I believe that
19 that's what Jimmy Dean did, through his expertise of being
20 around Special Forces and knowing how Special Forces operates.

21 Q. But you did tell him it was entirely false?

22 A. I can tell you -- I can testify that it's entirely false.

23 Q. Were you present when any of the -- any of the other
24 plaintiffs told Jimmy Dean it was entirely false?

25 A. At what time?

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1 Q. At any time.

2 A. I heard them testify that the portions of the book as far
3 as they were concerned, were false.

4 Q. Told that to Jimmy Dean?

5 A. No, not -- no, not to Jimmy Dean, I'm talking about here
6 in court.

7 Q. No, my question was, were you present at any time where
8 any of the other plaintiffs told Jimmy Dean that the book was
9 false?

10 A. No, I was never present when this --

11 Q. Now, you felt this was the Special Forces Association's
12 business?

13 A. Yes, I believe it's Special Forces' business, because it
14 involves Special Forces as a whole. When you write a story
15 about a unit, a Special Forces unit, an A Team, you're writing
16 a story about the whole unit. It pertains to the whole unit.

17 Q. And the Special Forces Association is, in fact, paying
18 your costs for this lawsuit, correct?

19 A. Yes, they're paying the costs of it.

20 Q. And at least through you, there was information provided
21 to the Special Forces Association that the book was entirely
22 false.

23 A. That's correct. I went to the Special Forces for their
24 assistance on it.

25 Q. And you did that even though you had heard the tapes of

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1 Lieutenant Strait, Mr. Johnson and Mr. Sirois?

2 A. No, I believe I done that before I heard the tapes, or any
3 tapes on this.

4 Q. After you heard the tapes, did you raise a question with
5 the Special Forces that the tapes confirmed aspects of the
6 book?

7 A. After I heard the tapes, I made a copy and gave the
8 Special Forces Association a copy of the tapes.

9 Q. Now, just to be clear, at the time when the order from
10 Colonel Tuttle came into the camp that you would vacate the
11 camp and go to B camp, of all the plaintiffs here, only you
12 and Lieutenant Strait were present in the camp at that time,
13 correct?

14 A. No, that is not what I said. I didn't make that
15 statement.

16 Q. No, I'm asking you if that's true.

17 A. No, that's not true. Other members of the team were in
18 the camp, I'm sure.

19 Q. I'm talking about the plaintiffs. Was Mr. Sirois present
20 at the camp at that time?

21 A. Well, thinking back, I know Ray Johnson was in the camp,
22 because he's a radio operator, all right?

23 Q. You're sure that Ray Johnson was in the camp at that time?

24 A. Yeah, he was in the camp at that time, I'm pretty sure.

25 Q. He wasn't in Saigon?

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- 1 A. No, he wasn't in Saigon.
- 2 Q. Did you read in the book anywhere, where Mr. Johnson was
3 mentioned being there at that time?
- 4 A. At the time of the message?
- 5 Q. Yes.
- 6 A. No, I -- I can't recall it was worded in that way in the
7 book. I'd have to get my book and review it to tell you.
- 8 Q. Because you spoke in terms of 'we' this morning, as if it
9 was -- as if they were there for a fact.
- 10 A. Well, I'm quite sure that some of them were in the camp at
11 that time. You know --
- 12 Q. Do you know that for a fact?
- 13 A. I know that, yes, I know that for a fact.
- 14 Q. Now, you believe in the chain of command, correct?
- 15 A. I definitely believe in the chain of command.
- 16 Q. And your chain of command would have been Colonel -- then
17 Captain Marvin, correct?
- 18 A. Yes, it would have been.
- 19 Q. Now, you testified about the Special Forces Association
20 sending letters to Trine Day concerning the book, correct?
- 21 A. That's correct.
- 22 Q. And those letters were sent after the book had already
23 been published, correct?
- 24 A. That's correct.
- 25 Q. So the Special Forces Association didn't send any letters

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1 to Trine Day before it was published?

2 A. Well, not really. Had no reason to until this book hit
3 the market.

4 MR. BACHRACH: I have no further questions at this
5 time, Your Honor.

6 THE COURT: Okay, thank you. Mr. Deaver?

7 REDIRECT EXAMINATION

8 BY MR. DEAVER:

9 Q. Mr. Taylor, have you read the letters that were sent by
10 the association to Trine Day and to -- well, to Trine Day, to
11 Chris Millegan?

12 A. Yes, I've read the letters, both of them.

13 MR. DEAVER: May I have just a moment?

14 THE COURT: Sure.

15 Q. If you will, look at -- I want to show you what has been
16 marked here Plaintiffs' Exhibit 2, but it is -- I ask you if
17 you can identify that, if that's one of the letters that you
18 referred to.

19 A. Yes, sir, this is one of the letters that were sent to
20 Mr. Millegan.

21 Q. Will you read it to the --

22 A. Okay.

23 Q. -- Court.

24 A. It says, "Mr. Millegan: This letter is reference to a
25 recently published book by Trine Day titled Expendable Elite,

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1 One Soldier's Journey into Covert Warfare.

2 "We not -- we are not aware of your vetting procedures for
3 people such as Mr. Marvin, however, they surely have dubious
4 impressions of credibility with us. At the outset, we find
5 five statements on the inside cover of the book to be false
6 and misleading, we also find, in reference to the book,
7 Mr. Marvin uses -- Mr. Marvin's use of, and his colleagues,
8 (sic) 'And ye shall know the truth, and the truth shall make
9 you free,' to be insulting to members of this association.

10 "In view of the honorable and truthful combat history of
11 the silent professionals, we are offended by Mr. Marvin's
12 fictional account of covert operations with us and insist that
13 you publish -- make immediate -- the publisher make immediate
14 measures to change the book to fiction by a dreamer, or remove
15 it from all avenues and sources of sales within the next 30
16 days of the date of this letter. Should you choose to ignore
17 this request, we will have no recourse other than legal
18 actions and the publication of our documentations to disprove
19 these publications -- these published false statements.

20 "Mr. Millegan, this is our clearly determined promise,
21 that should you fail to believe our challenge, we invite you
22 to challenge (sic) the Warner Books or CNN about our resolve
23 when truthfulness of U.S. Special Forces combat operations is
24 at stake.

25 "Mr. Marvin has been informed that he owes an unvarnished

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1 apology to U.S. Army Special Forces to include detachment
2 A-424 members, and more importantly, he owes this great
3 country of ours. He owes us apologies for his prostitution of
4 any truth found in his unworthy book. Sincerely Wayne Lawley,
5 president; Jimmy Dean, secretary."

6 MR. DEEVER: This is Exhibit 2 in the -- of the
7 notebook that we have.

8 Q. And was there any response to that letter?

9 A. To my knowledge, no, there was no response whatsoever,
10 they just chose to ignore it.

11 Q. I'll show you what is marked Plaintiffs' Exhibit 3 in your
12 notebooks, and ask you if you are familiar with that
13 Exhibit 3.

14 A. Yes, I'm familiar with this Exhibit 3.

15 Q. What is that?

16 A. This is the follow-up letter to the letter that's sent on
17 13th of August.

18 Q. This letter that you just read, requesting Trine Day to
19 change this to a fiction or not to distribute it?

20 A. That's true.

21 Q. And this is -- Will you please read your response.

22 A. This is 22 September 2003.

23 THE COURT: Wait a minute. Let's not read any more.
24 How about -- everybody can read over there, they can read it,
25 it's in evidence.

JAMES TAYLOR - REDIRECT EXAMINATION

1 MR. DEEVER: Give them just a moment, Your Honor, to
2 read it.

3 THE COURT: Okay. Or you can read it.

4 MR. DEEVER: Okay. This can be read.

5 THE COURT: It's in evidence. They'll have it
6 back --

7 MR. DEEVER: In deliberations, yes, sir.

8 BY MR. DEEVER:

9 Q. But the substance of that letter, is it not, is that there
10 was no response whatsoever from Trine Day, and there was no
11 action taken regarding the request to change it.

12 A. This is true, there was no action taken by Trine Day or
13 Mr. Millegan in response to the first letter.

14 Q. Now, these interrogatories that were sent out by the
15 association to the members of the -- the known members of
16 A-424 whose addresses were had, did you take any part in
17 preparing those documents?

18 A. These two documents here?

19 Q. No, no, no, the interrogatories that were sent out, the
20 questions that were sent out to members of A-424 about the --
21 about their activities in An Phu.

22 A. No, I didn't. The questions were made up by the Special
23 Forces Association, that were sent out to the members, you
24 know, to answer and reply to them. Is that the ones you're
25 referring to?

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1 Q. Yes. And were they sent to you?

2 A. I received a copy just like everybody else that was
3 involved in it.

4 Q. Did the members of A-424 send the -- their answer to you?

5 A. No, they did not send their answers to me, they were
6 purposely told to send them directly back to the Special
7 Forces Association.

8 Q. Was Mr. Marvin a member of the association at that time?

9 A. At that time of them questionnaires, I'm not sure whether
10 he was still a member or he'd already been expelled.

11 Q. But at the time that you brought the book to the attention
12 of the association, he was a member, is that right?

13 A. At the time I brought the book to the attention of the
14 Special Forces, yes, he was a member.

15 Q. Now, you were asked if this book is 100 percent false, and
16 I believe you said yes. Are there any -- Is there anything in
17 the book that is true?

18 A. Well, I can tell you as far as I'm concerned, that the
19 fact that I'm from Beardstown, Illinois, is true. The fact
20 that I'm from a large family is true. The fact that there was
21 a fire in An Phu, the fact that we did participate and help
22 put the fire out. Other than that, there's very little, if
23 anything, else I can say that is true in this book. As far as
24 I'm concerned.

25 Q. Were there any reports that were sent to upper -- to the

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1 higher headquarters, to B-42, that were required to be sent by
2 A-424?

3 A. There was -- we kept and maintained a daily situation
4 report, and we kept a monthly operational report, and they
5 were forwarded -- the daily SITREP was sent to B-42 by radio.
6 The monthly operational report could have either been sent by
7 radio, or with the mail, out when the helicopter came in
8 bringing the mail, or when we took the mail from An Phu to
9 Chau Doc.

10 Q. What facilities did you have to prepare these reports?

11 MR. BACHRACH: Objection, Your Honor, it's going
12 beyond the scope of the cross. We didn't get into MOPSUMS.

13 THE COURT: I'll sustain that.

14 MR. DEEVER: I have no further questions, Your Honor.

15 MR. BACHRACH: I just have one question, Your Honor.

16 THE COURT: Okay.

17 MR. BACHRACH: I promise.

18 RECROSS-EXAMINATION

19 BY MR. BACHRACH:

20 Q. I just -- Mr. Taylor, you identified the letters that were
21 sent by the Special Forces to Trine Day. You're not aware of
22 any documentation was sent with those letters to show where
23 the book was false, correct?

24 A. To my knowledge, these are the letters as they were sent
25 out. If there was anything sent with them, I have no

JAMES TAYLOR - RECROSS-EXAMINATION

1 knowledge of that.

2 Q. So you have no knowledge of any documentation sent with
3 the letters?

4 A. No.

5 MR. BACHRACH: Sorry, Your Honor. I'll withdraw
6 that.

7 THE COURT: I knew you couldn't do one.

8 MR. BACHRACH: I withdraw that. I have no further
9 questions, Your Honor.

10 THE COURT: Good. Thank you, Mr. Taylor. Do you
11 want to call your next witness?

12 MR. BEN DEAVER: Your Honor, we'd like to call
13 Mr. Strait, please.

14 THE COURT: Okay.

15 THE CLERK: State your name for the record.

16 A. Johnny Strait.

17 JOHN STRAIT, a witness called by the plaintiffs, first
18 having been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. BEN DEAVER:

21 Q. Would you state your name for the record, please, sir?

22 First of all, I understand you have pretty bad hearing?

23 A. I'd like to apologize to the jury and the judge here, and
24 you, that I do have a hearing problem and I have -- I can hear
25 a lot of noises, but I can't understand a lot of things here.

JOHN STRAIT - DIRECT EXAMINATION

1 And also I have trouble reading, because I have problems with
2 my left eye. So be patient with me, please.

3 Q. All right. Well, I'll try to speak as loud as possible.

4 Would you state your name for the record, please, sir?

5 A. John Strait.

6 Q. And where do you live, sir?

7 A. I live? Jonesville, Michigan, farming community up in
8 lower Michigan.

9 Q. And how long have you lived there, sir?

10 A. Well, I was born there, and I lived there until I was 18,
11 and then I joined the Army. And then I lived in North
12 Carolina and all over the world for 22 years. And then I
13 moved -- then I went back to North Carolina after I retired in
14 '75, and stayed a couple three years. Then I went back to
15 Michigan and got a job as a rural mail carrier. And that's
16 where I reside now, and raised my family there and grand kids.

17 Q. I'm sorry, did you say did you retire from the military?

18 A. I retired from the military in 1975.

19 Q. How many years did you serve, sir?

20 A. 21 years, nine months and some days. I get paid for 22
21 years.

22 Q. Okay. And when you enlisted in the military -- or excuse
23 me -- when you went into the Army, did you go as an enlisted
24 man, were you an officer?

25 A. I went in the Army in September of 1953 as enlisted. And

JOHN STRAIT - DIRECT EXAMINATION

1 I went to Fort Knox, took basic training, 16 weeks infantry
2 training. And they were getting ready -- they were shipping
3 people to Korea at that time. And ten of us went to airborne.
4 I went to airborne down in Fort Campbell, Kentucky, and stayed
5 there.

6 And then I went to Germany, spent a year over there, same
7 tour, because I didn't have enough time to gyroscope to the
8 11th.

9 So then I come back and got a discharge, and went to
10 college at Hillsdale College for year and a half, and that
11 wasn't for me. So I reenlisted back again in '58. And
12 then -- let's see.

13 I went to Germany. I spent three years in Germany, and
14 then I came back to Fort Bragg here, and I went to -- that's
15 when I enlisted for -- re-enlisted for Special Forces, that
16 was in 1962. And I stayed in Special Forces until, oh, golly,
17 '68, '67, somewhere through there. And anyway, I went to --
18 in 1964 I went to OCS. I made sergeant first class, D-7.
19 Then I went to OCS, I was 29 years old at the time. And then
20 I went back to Special Forces as an officer, and that's when I
21 went to Vietnam, I was an officer then.

22 Q. Okay. So back in 1962 when you first went to Special
23 Forces --

24 A. In June of 1962, yes, sir.

25 Q. -- what was your rank then?

JOHN STRAIT - DIRECT EXAMINATION

1 A. I was sergeant first class.

2 Q. Were you -- did you have to go through the Special Forces
3 qualification course?

4 A. I went through the Special Forces qualification force, and
5 I don't know -- when I got out. Then I went to the 5th group.
6 Operation intelligence is the training I got.

7 Q. All right. You also said that you ended up going to
8 officer training course, correct?

9 A. What's that?

10 Q. You also indicated that you went through the officer
11 training course, correct?

12 A. Yes, after I got back from Fort Benning, OCS, I went
13 through the officer Special Forces course, so I got trained
14 twice with them there.

15 Q. You went through the Special Forces qualification course
16 two times?

17 A. Twice, yes.

18 Q. Okay. And your first assignment as an officer with
19 Special Forces, where were you assigned? First of all, what
20 was your rank at that time, sir?

21 A. Second lieutenant.

22 Q. Where were you assigned then?

23 A. To Third Special Forces Group, I was detachment commander.

24 Q. Where was that located, sir?

25 A. Fort Bragg.

JOHN STRAIT - DIRECT EXAMINATION

1 Q. During your tour of -- twice, of the Special Forces
2 qualification course, can you give us an understanding of what
3 the qualification course -- first as an enlisted man -- what
4 it entails.

5 A. You mean the type training it took, or what I -- what
6 the -- what I was trained as?

7 Q. Well, what's it take to earn the Green Beret as an
8 enlisted man?

9 A. Well, to earn a Green Beret, you had to go through the
10 qualification force, the branch training, they called it. And
11 that was just kind of a general thing, a general military
12 Special Forces type training. Then you had to go through a
13 MOS school, which I went through operations intelligence. And
14 that qualified me to -- as S-2 intelligence, or I could be
15 operations there.

16 Q. That was as an enlisted man?

17 A. That was enlisted man, yes.

18 Q. You already had your jump wings, correct?

19 A. I was master parachutist at that time, yes.

20 Q. Was there any other training that was involved, maybe
21 escape and evasion, anything along those lines?

22 A. For the Special Forces training?

23 Q. Yes, sir.

24 A. Not at that time, that I can remember. There was -- we
25 got a lot of training in there of various types, but it was

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1 all part of the course, but it wasn't a separate course.

2 Q. Okay. Any type of, I don't know, assassination as an
3 enlisted man?

4 A. No.

5 Q. So there was no assassination courses?

6 A. Not to my knowledge.

7 Q. How about as an officer, when you went through as an
8 officer, was the training any different than it was as an
9 enlisted man?

10 A. To me, it was easier, because I knew pretty much what was
11 going on there, it wasn't -- it wasn't like the operation
12 intelligence course. They gave you a little bit of a -- a
13 little bit of everything here. Used a wide brush to paint the
14 thing there, so --

15 Q. Okay. And then when you graduated, you received your
16 commission. What was your commission in?

17 A. Infantry.

18 Q. So you were an infantry officer?

19 A. Yes.

20 Q. Now, when you went through the Special Forces course as an
21 officer, did you have any special courses that you had to take
22 at that point?

23 A. You mean after I got commissioned, special courses in
24 there?

25 Q. After you were commissioned and you went through the

JOHN STRAIT - DIRECT EXAMINATION

1 Special Forces course as an officer, did you receive any
2 special training?

3 A. Not really. I took a correspondence course with the
4 Unconventional Warfare Center on unconventional warfare. I
5 went through the officers' basic -- or advanced infantry
6 training as a captain, and stuff like that. But as far as
7 special training, scuba and stuff like that, no.

8 Q. How about assassination training, did you have any of
9 that?

10 A. No.

11 Q. Not as an officer?

12 A. Not as an officer nor enlisted.

13 Q. Okay. During your tenure with Special Forces, you were
14 assigned to camp A-424.

15 A. In Vietnam? Yes, sir.

16 Q. And when did you arrive to camp A-424, sir?

17 A. It was about mid March of 1966.

18 Q. And right before getting to camp A-424, did you have to go
19 to another camp? To get assigned to camp A-424?

20 A. Right from -- when I first got in country?

21 Q. Yes, sir.

22 A. That was my first camp.

23 Q. Okay. Did you have to maybe go to the B Team or C Team to
24 get to the A Team?

25 A. Started out in Nha Trang, and then I went to the C Team

JOHN STRAIT - DIRECT EXAMINATION

1 and then went to the B Team and then assigned to A-424 from
2 B-42.

3 Q. All right. So you were at the C Team at one time?

4 A. Yes.

5 Q. And how did you know to go to the B Team?

6 A. Pardon?

7 Q. How did you know to go to the B Team?

8 A. How did I know it?

9 Q. How did you know to go to the B Team when you were at the
10 C Team?

11 A. Well, they give you an order to go there.

12 Q. So then you were at the B Team; how did you know to go to
13 A-424?

14 A. Well, I had assignment from C-4 that -- I believe it
15 was -- it may have been from Nha Trang, I'm not sure, that I
16 was assigned to a certain team here, and they just went down
17 through the chain of commands there.

18 Q. Okay. So the chain of command was C Team, B Team, A Team?

19 A. Yes.

20 Q. When you first arrived in camp A-424, in mid March 1966,
21 how did you arrive there?

22 A. I believe I come up on the engineer boat. I'm not sure
23 who come down and got me. But they picked me up at Chau Doc.

24 Q. And Chau Doc is where the C Team --

25 A. That's the B Team.

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1 Q. That's where the B Team is?

2 A. That's the B Team, yes.

3 Q. And you believe you came on a boat?

4 A. Yes, sir. Engineer boat.

5 Q. Now, and I apologize for this, what's an engineer boat?

6 A. It's just an open bow boat that the engineers use to,
7 well, make bridges with and use as transportation, stuff like
8 that. There's no seats in it really, they pretty much set on
9 the floor. It's a big open boat. Utility boat there, it's
10 not large, just about 50 or 60 horse engine on them is all.

11 Q. Was it a fast boat?

12 A. No.

13 Q. It was a slow boat?

14 A. No, it's -- it's -- it wasn't square really, but it was
15 kind of half oval in front, it wasn't made for speed and
16 stuff, it was --

17 Q. Was it a heavily-armed boat?

18 A. No, there was no armament on it. It's a plastic boat and
19 that's it. And there was no weapons or anything on it there.

20 Q. So this boat took you from Chau Doc to An Phu?

21 A. Yes.

22 Q. This unarmed engineer boat?

23 A. (Witness nodded affirmatively.)

24 Q. Now, when you first got to An Phu, can you tell us what it
25 was like when you first arrived?

JOHN STRAIT - DIRECT EXAMINATION

1 A. What's that?

2 Q. Could you tell us what it was like when you first arrived
3 to An Phu?

4 A. Well, when I first arrived to An Phu I walked in, they
5 were playing horseshoes out there. And I don't think I played
6 any, because I'm not good at horseshoes. And then Sergeant
7 Taylor, he started taking me around and showing me the camp
8 and stuff, and showing me where I slept, where the stretcher
9 was and where the outposts were and -- or inside the camp
10 there, the different places.

11 Q. Now, when you say they were playing horseshoes, who was
12 playing horseshoes; do you remember?

13 A. I'm not sure. The only one I can really say was, I think,
14 Captain Marvin at the time, and there was -- there was several
15 people out there. I don't know if the whole team was out
16 there or not.

17 Q. Okay. How many American soldiers would you say were
18 there?

19 A. That were assigned to there?

20 Q. While you were there, when you arrived in March '66.

21 A. Seven, eight, I don't know, not many. Well, there might
22 -- yeah, because the actual that I relieved or took his place,
23 he was there, I think one day, and then he left there, so
24 probably had an extra man there, might have been eight people
25 there.

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1 Q. But then the following day it dropped down to seven?

2 A. Yeah, um-hum.

3 Q. How many men are usually on a Special Forces A Team?

4 A. Twelve.

5 Q. So this team was run in less than -- is running about
6 three-quarters percent?

7 A. Well, I think the only one that might have been up to
8 strength was the officers, we had two officers, and we didn't
9 have any intel people. Sergeant Taylor was working as the
10 ONI, as the op sergeant, so I think he had -- they were a
11 little over 50 percent strength there, but not much. By one
12 man, I think.

13 Q. Do you know why that was?

14 A. That's because the orders I received when I went through,
15 and Colonel Tuttle and I think Colonel Brewer, or at the time
16 it was Major Brewer, they said that the team -- the camp was
17 being turned over to MACV, which are the CIDG troops we had
18 would become part of the village defense force, the RFPF
19 companies.

20 Q. So when you left the C Team, your orders -- you were told
21 that your purpose up at A-424 was to help shut down the A-424?

22 MR. BACHRACH: Objection, Your Honor.

23 A. It -- it changed, but there was a -- a border surveillance
24 mission, just about all the teams had along the borders there.
25 That went along, just -- they were there because they had --

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1 at one time they had moved the camps all along the border
2 there. And they give them border surveillance, so every team
3 had that, but An Phu was being turned over to -- one of the
4 first camps turned over to MACV.

5 Q. Do you know why that camp was scheduled to be turned over
6 to MACV?

7 A. Because they'd reached the status where they were pretty
8 pacified up there. And you -- Vietnam, we usually had from a
9 V village up to an A village. A V is controlled by the VC,
10 and as you work up you get to an A village, and then they'll
11 go in and have their own self-defense and elections and stuff
12 like that. And I think An Phu at that time were up to that
13 level.

14 Q. As an A village?

15 A. As a what?

16 Q. I'm sorry, as an A village?

17 A. As classified A, which meant they were secured.

18 Q. Now, earlier Mr. Bachrach was mentioning about some
19 hostilities that were in that area. Correct? You were here
20 when Mr. Bachrach was speaking, and Mr. Taylor. He mentioned
21 a place called Khanh Bin --

22 A. Um-hum.

23 Q. -- which was a FOB. Was there ever any conflict up at
24 FOB?

25 A. At one time, there was. The one I knew of was on

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1 January -- on May -- May 19th, 20th, 18th, somewhere through
2 there.

3 Q. Were you there at Khanh Bin?

4 A. I wasn't at Khanh Bin itself. I went the night before on
5 an ambush south of there. And I went with the LLDB, and I
6 think at one platoon of CIDG. Set up on a bridge site. And
7 that's as close as I got to Khanh Bin that night. So --

8 Q. So when you went to that ambush, what happened that
9 evening?

10 A. Well, that ambush, we got up to the ambush site and
11 Lieutenant Bob, which is the LLD commander. Now, the LLDB,
12 that's Special Forces there, Luc Luong Dac Biet, I think is
13 the way you pronounce it here. But anyway, he took me and
14 Sergeant Woolley, dropped us about 100 -- between 50 and
15 100 yards from the ambush site, said stay here, we'll come
16 back and get you. Okay. So that's where I stayed until he
17 come back and got me.

18 Q. All right. Did you fire your weapon that evening?

19 A. I had never fired a weapon in -- AR-16 in An Phu. There
20 was no need for it. There's no enemy that come around there
21 to speak of.

22 Q. So the whole time you were there, you never fired your
23 weapon?

24 A. Never fired my weapon, no. Not at the enemy or anything.
25 I fired it at target practice and birds and stuff, but that's

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1 about it.

2 Q. But there was something that happened in Khanh Bin that --
3 between May 18 and May 20?

4 A. That ambush site that -- we did make contact -- or we
5 didn't, I wasn't even close to it hardly. But they got one
6 weapon, one pair of sandals there, or -- yeah, sandals, flip-
7 flops, they call them.

8 Q. At Khanh Bin on the -- between May 18th and May 20th, do
9 you know if there were any Americans that were up there at
10 that time?

11 A. There was no Americans up there at that time.

12 Q. In fact, did you, while you were over there, did you ever
13 see an American fire his weapon in hostility?

14 A. No. Not at An Phu, I didn't. At other camps I was at, I
15 did, but not in An Phu.

16 Q. Well, let's try to stay with An Phu right now.

17 A. Okay.

18 Q. But while you were in An Phu, did you ever see an American
19 fire his weapon in hostility?

20 A. Never.

21 Q. Did you ever see any Americans get shot?

22 A. Never.

23 Q. Did you ever hear of any Americans getting shot?

24 A. Never.

25 Q. Now, a little while ago there was some testimony about a

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1 celebration where General Van Dang came down and they had a
2 celebration.

3 A. Yes. That's --

4 Q. Was there a celebration?

5 A. There was a celebration there, but as far as him being
6 there, I can't -- I'm not sure on that, I can't remember that,
7 so --

8 Q. Do you know what that celebration was about?

9 A. Supposed to have been a victory of Khanh Bin and one RF
10 outpost, as far as I know there.

11 Q. So it was a victory for you finding a pair of sandals?

12 A. Well, no, there was that, and then the Khanh Bin itself
13 was hit by, I think a sapper team that night.

14 Q. A sapper team is kind of like a probe?

15 A. Like a probe that was usually -- it's more or less like a
16 terrorist they use now, they'll have a team, and usually one
17 or two guys went in with a rocket launcher, a B-40, to --
18 antitank weapons there, go in and try to make as much problems
19 as they can, kill, and so they usually end up as a suicide
20 there, like you did up there, I believe.

21 Q. So your whole time over in An Phu, was that the only probe
22 that you were aware of at Khanh Bin?

23 A. Yeah, that's the only one that I got any involved in, is
24 up there, that's the only two that I was ever involved in.

25 Q. What was your responsibility at camp A-424, sir?

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1 A. I was XO, and mainly CA psy ops, because we could --
2 peaceful area like that, I had a -- one of the fellows there
3 raising corn, he raised about an acre of corn. Wasn't very
4 big corn, but it's corn. And we got some IR-8 rice from the
5 Philippines. I didn't, the actual 4-B had this all this in
6 the mill there, but I got credit for it there. Had the rice
7 and they planted a new strain of rice and stuff like that.
8 And they had the ag agent there, I got a -- from our high
9 school ag teacher, I got the soil test kit, he sent it over to
10 me and I gave it to Mr. Doc, I think his name was. And to set
11 the soil in there. Which he knew how to use and he used it
12 there. And when I left, I don't know if -- it was too late to
13 use it that year, but whether he used it the next year, I
14 don't know, so --

15 Q. Who was your -- in your chain of command, the next up in
16 your chain of command?

17 A. Captain Marvin.

18 Q. Okay. Did he have to report to anyone?

19 A. The B Team.

20 Q. All right. Do you know who his commander might have been?
21 Do you know who he might have had to report to in the B Team?

22 A. Well, the CO, which I think at that time was Captain -- or
23 Colonel Brewer, or I think there was another colonel there at
24 that time, I'm not sure who was commander at that particular
25 time.

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1 Q. All right. Who would be next up in command?

2 A. Pardon? Next --

3 Q. Who would be the next man in command?

4 A. That would be Colonel -- C-4, that would be Colonel
5 Tuttle.

6 Q. Was Colonel Tuttle -- even though Captain Marvin was at
7 camp A-424, was it Colonel Tuttle who was in charge of that
8 camp?

9 A. Yeah, he's in charge of all of them in his area. He had
10 all the -- he was in charge of all the B Teams and A Teams
11 there, he was in the chain of command.

12 Q. So what he would say is something that would have to go?

13 A. What's that?

14 Q. If he gave an order, it would have to be followed by the
15 men of camp A-424?

16 A. Oh, absolutely.

17 Q. You have a copy of the book, sir, correct? Are there any
18 portions in that book where your name is mentioned?

19 A. There's quite a few places in here.

20 Q. I take it you've had an opportunity to read the book in
21 its entirety?

22 A. I've read it a couple times, and --

23 Q. You heard Mr. Ogiba earlier saying that that book portrays
24 you as a hero.

25 A. Say what?

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1 Q. Mr. Ogiba, at the beginning of today, said that book
2 portrayed you as a hero.

3 A. It pertained to me as a hero?

4 Q. Portrayed you.

5 A. It may have portrayed me as one, but I was not.

6 Q. Would you mind turning to page 280 in the book, sir.

7 A. Okay.

8 Q. Under the third paragraph down it mentions somebody named
9 Big John. Can you tell me who Big John is?

10 A. Apparently it was me.

11 Q. So you're Big John?

12 A. Apparently.

13 Q. Would you mind turning to the next page, please.

14 A. 281?

15 Q. Yes, sir.

16 A. Okay.

17 Q. Where it goes down, it read, Secret. Marvin.

18 A. Secret. Okay.

19 Q. Would you mind reading that real quick, please, sir?

20 THE COURT: Mr. --

21 A. "Secret. To Marvin. Urgent. Repeat. Urgent. A-424
22 must depart An Phu and report to B-42 not later -- which --
23 not later, NLT, than 2000 hours, that's 8:00 o'clock, today.
24 CO, B-42 advises. Send. Colonel Tuttle. Or send Tuttle."

25 Q. All right. So that represents Colonel Tuttle giving an

JOHN STRAIT - DIRECT EXAMINATION

1 order -- What does that represent, sir?

2 A. That would represent he was in chain of command there,
3 because he's giving orders to the B Team and A-424.

4 Q. And what were those orders?

5 A. To report to the B Team. B-42.

6 Q. All right. According to the book --

7 MR. BEN DEEVER: And, Your Honor, if I may just for
8 judicial economy, instead of having him read every piece of
9 the book, maybe I can have some leeway in summarizing.

10 THE COURT: Or read it yourself and ask him. He said
11 he has problems reading.

12 MR. OGIBA: That's fine.

13 BY MR. BEN DEEVER:

14 Q. So that right there, once again, what does that say?

15 A. That we had to go to the B Team, that we'd -- it's talking
16 about this message, right?

17 Q. Yes, sir.

18 A. It means that we'd have to go to -- we were ordered to
19 report to the B Team by 8:00 o'clock today. That day.

20 Q. And the paragraph up underneath says, "'In other words,' I
21 told John Strait and Jim Taylor, 'we've been ordered to
22 abandon ship, to desert Hoa Hoas, to betray our pledge to help
23 them against the Communists. I can't do that. They'll have
24 to come and take me out of here. How do you guys stand on
25 this?'" That's what it reads, correct?

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1 A. How do I stand on that? That's not correct.

2 Q. Let's go to the next paragraph where it says Lieutenant
3 Strait. Why don't you read that again, sir.

4 A. "Lieutenant Strait, sitting across the table from me,
5 spoke first, 'I can't quit these good people, Dangerous, I'm
6 staying with you.'

7 "I shook his out reached hand. 'Thanks, John, I
8 appreciate it.'"

9 Q. All right, that's fine right there. Now, what's that --
10 what's that saying?

11 A. It says that I agreed with him to disobey a lawful order,
12 a direct order.

13 Q. A direct order from Colonel Tuttle?

14 A. From Colonel Tuttle.

15 Q. Who was in the chain of command?

16 A. He was the chain of command.

17 Q. And from what you said earlier, was in charge of camp
18 A-424?

19 A. Yes.

20 Q. Did that, in fact, happen?

21 A. No way.

22 Q. You didn't disobey a direct order from Colonel Tuttle?

23 A. I've never disobeyed a direct order from any of my
24 superiors, that were legal orders.

25 Q. Is there any portion in this book that you're aware of

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1 that says that the members of camp A-424 set up a perimeter to
2 keep any American forces from coming into camp A-424?

3 A. I think there is in there.

4 Q. Do you know where it is in the book?

5 A. Do I know where it's at?

6 Q. Sir? Do you know where it's located in there?

7 A. I didn't understand you.

8 Q. Do you know where that's located in the book?

9 A. No.

10 Q. All right. But you have read it?

11 A. I think I've read it, yeah.

12 Q. And I believe Mr. Taylor read it a little while ago.

13 A. Okay.

14 Q. Correct? While you were at camp A-424, did you set up a
15 perimeter to attack friendly forces?

16 A. Never.

17 Q. Why wouldn't you do that?

18 A. I wouldn't do it.

19 Q. Why not?

20 A. Because it's against the rules, regulations there, and
21 it's murder; it would be.

22 Q. If you killed them, it would have been murder?

23 A. If I killed them, yeah.

24 Q. Would it equal conspiracy to commit murder, if y'all set
25 that up?

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1 A. I didn't hear you.

2 MR. BACHRACH: Objection, Your Honor.

3 MR. DEEVER: Withdrawn, Your Honor.

4 THE COURT: I'll sustain that. Go ahead.

5 BY MR. DEEVER:

6 Q. Would you mind turning to page 287, please. Down near
7 the bottom where it says, having missed my normal afternoon
8 sleep.

9 A. What is that now?

10 Q. Down near the bottom where it begins by reading, having
11 missed my normal afternoon sleep.

12 A. Okay. Yeah.

13 Q. Would you mind reading a little bit from there, sir.

14 A. "Having missed my normal afternoon sleep, I went to my
15 cubicle for a short rest at 1600 hours." That's 4:00 o'clock.
16 "And was fast asleep within a few seconds of my head hitting
17 the pillow. My rest was short lived as I was wakened by
18 Lieutenant Strait shaking my shoulder. 'What's up, John,' I
19 asked, half asleep.

20 "'I hate to bother you, Dai-uy, but Major Le just brought
21 a report from the ambush site.'

22 "That woke me with a start. 'What happened, John? Any
23 casualties?'

24 "'None, Dai-uy. Lieutenant Luong Le's spotters sighted
25 three assault boats coming up the river with two Americans and

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1 about 15 RF soldiers. They ignored a loud speaker warning and
2 turned back -- to turn back broadcast it by Minh's man on the
3 Lambretta. Luong then ordered his men to fire warning shots
4 with two light machine guns and then threw two rounds of 60
5 mortar HE -- high explosive -- in the path of their boats but
6 as far enough in front to be a warning only.'"

7 Q. Keep going. Did they turn back?

8 A. "'Did they turn back?' I asked.

9 "Big John laughed. 'The way that the Major Le tells it,
10 they almost lost control of the lead boat trying to turn back
11 too fast. The last our Strikers saw of them were roaring at
12 full speed -- or full throttle -- straight down the river
13 towards Chau Doc.'"

14 Q. All right. That's good right there. Can you tell me,
15 when you were over in An Phu, camp A-424, can you tell me, did
16 that happen?

17 A. It never happened. It never happened.

18 Q. All right. What are they talking about right there?

19 A. They're talking about a capital crime here, of firing on
20 your Americans and the friendly forces like that.

21 Q. But the book says that -- because we asked earlier, if
22 you're Big John, you're Big John, said Big John laughed.
23 Would you find that to be something funny?

24 A. Well, I wasn't there, that never happened, so -- No, it's
25 not funny.

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1 Q. All right. So does -- you said that that states that you
2 committed a crime.

3 A. It definitely, if I would have done that, I would have
4 committed a crime. Which would be a capital crime.

5 Q. Would it be a violation of the UCMJ?

6 A. Would be a violation of UCMJ, and the laws of land
7 warfare, I believe.

8 Q. Now, as an officer, did you have any training in the UCMJ?

9 A. Yes.

10 Q. All right. How did you receive your training?

11 A. Oh, golly, several different ways during -- when I went
12 through OCS and the advanced courses and like that, usually a
13 JAG officer would -- Staff Judge Advocate, military lawyers,
14 would teach a class. When we were enlisted in companies, you
15 might get the CO teaching it, you might get the troop
16 information NCO teaching it, and there's various ways you get
17 it here.

18 Q. So you had quite a bit of training with the UCMJ during
19 your 20 some years with the United States Army?

20 A. Yes.

21 Q. Did anything in the training -- scratch that.

22 A little while ago they mentioned something about some
23 tapes.

24 A. What is that?

25 Q. A little while ago there was a mention of some audio

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1 tapes.

2 A. What was mentioned on them?

3 Q. A short while ago there was a mention of some audio tapes.

4 A. Yes.

5 Q. Audio tape that you provided. Did you --

6 A. Yes.

7 Q. -- provide any audio tapes --

8 A. I did.

9 Q. -- to Mr. Marvin?

10 A. Yes, I provided, I don't know, I think one and a half
11 tapes or something like that, the one tape with two sides, I
12 think another tape was one side there, if I remember right.

13 Q. Do you remember when you provided those tapes?

14 A. It was in May, May or June, I believe, in -- of 1988.

15 Q. Were you told why you were making those tapes?

16 A. No. At that time I hadn't seen Captain Marvel -- or
17 Captain Marvin, in -- well, since 1966 when I left An Phu,
18 which I think around June, somewhere in the latter part of
19 June, I'm not sure when it was there. But I hadn't seen him.
20 And I seen his name in the Special Forces magazine. So I
21 called him up. And I was quite thrilled to talk to him. And
22 at that time I had a lot of respect for him, and considered
23 him a friend there.

24 Q. All right. Why were you thrilled?

25 A. Well, I hadn't seen him in a long time, and I'd been in

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1 Jonesville for quite a few years at that time, and wasn't in
2 contact with anybody from Special Forces. So he was really
3 the first one. Or not the first one, but he was about the
4 second, because I had joined the Special Forces Association
5 there just a short time before that. That's where I seen his
6 name in there. So I called him up, and I was quite thrilled
7 that he still remembered me and everything like that, so --

8 Q. So the -- When did he ask you to make tapes? Was it
9 during that first phone conversation?

10 A. Well, he was -- he sent a questionnaire something, he said
11 he was writing a book, a novel, a fiction novel about the
12 Bassac Bastards here, which is supposed to be a story about
13 the Hoa Hoas and the Americans over there.

14 Q. So you said he was writing this book and he asked you to
15 make tapes?

16 MR. BACHRACH: Objection, Your Honor, leading.

17 THE COURT: Overruled.

18 A. Yeah, I don't know if he asked me to send them or if I
19 just volunteered them there. But he mentioned that he was
20 making a book, and I don't know how it come about here.

21 Q. But you did provide some tapes?

22 A. Oh, yes.

23 Q. Was there ever any conversation prior to -- you mentioned
24 one phone conversation. Did you have any other conversations
25 prior to sending the tapes?

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1 A. There was -- I think several calls, I'm not sure. And
2 then I think I got some letters from him, and I think I got a
3 newspaper article or something from him. I can't remember
4 what it was, but I assumed that he wrote the article, I'm not
5 sure, so --

6 Q. Did he send you a questionnaire?

7 A. He -- he did send me a questionnaire, I think, and he
8 asked me about who -- let's see, who -- who in my life was my
9 greatest influence on me, or who had -- and I told him that a
10 Mr. Spots, our agriculture teacher was.

11 Q. And is he the one that provided you with the testing for
12 over in An Phu?

13 A. He's the one that give me the test stuff for soil testing.

14 Q. All right. So you said that you spoke with him via
15 telephone, he said he's writing a novel, the Bassac Bastards,
16 and want you to add some input?

17 A. Yes.

18 Q. And you did add some input; did you?

19 A. I gave him some input, yes.

20 Q. Did you ever give him any input over the telephone?

21 A. Pardon?

22 Q. Did you ever talk to him over the telephone about things
23 that happened over in An Phu?

24 A. I'm sure we did. I can't -- that's a long time ago, so I
25 can't remember. I'm sure we did.

JOHN STRAIT - DIRECT EXAMINATION

1 Q. Are you a member of any veterans' organizations?

2 A. I belong to several organizations, I belong to Masons, the
3 VFW, Military Officers Association, American Legion, Special
4 Forces Association, and several like this.

5 Q. Do you do anything with those organizations?

6 A. The only one I was really that active was probably the
7 American Legion over in small town named Quincey.

8 Q. What organization was that, sir?

9 A. Pardon?

10 Q. Which organization was that, sir?

11 A. That was the American Legion.

12 Q. And did you hold any office or --

13 A. I was commander during that period in there. I can't give
14 you exact years, probably '88, '89, which way from there I'm
15 not sure which. But that's the period I was commander.

16 Q. So when you did provide these tapes, you thought it was
17 for a novel, correct?

18 A. I -- I didn't understand that.

19 Q. When you provided the tapes, you were -- assumed it was
20 for a novel. The tapes.

21 A. I -- Say that again?

22 Q. When you provided these tapes, you assumed they were for
23 the writing of a novel?

24 A. Oh, I thought they were for the -- his novel that he was
25 writing, yes.

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1 Q. Can you tell us the circumstances behind when you sat down
2 to make the tapes? When you had the microphone, the tape
3 recorder, and you started talking into it.

4 A. Well, when I started talking into that, and -- Anyway,
5 I -- when I was in the Legion there, at this time as
6 commander, I would spend quite a few hours in there. And
7 usually people buying you drinks and stuff. And usually when
8 I would go home my wife would take me home. And this
9 particular time it was in the springtime, I know, I had my
10 camper set out back and I had one of these voice-activated
11 recorders. And I just went out there and just whatever come
12 up, I talked about, and just mentioned it there. So when you
13 hear the tapes, it will be just willy nilly. And a lot of the
14 stuff in the tapes were a combination of An Phu and other
15 teams that I served on. I served with four different camps
16 over there along the border there. So some of this stuff,
17 information I got in these tapes, were actually incidents that
18 was at another team and not An Phu there.

19 Q. Did you spell it out in the tapes that, hey, this happened
20 in An Phu, this happened somewhere else?

21 A. No, I didn't -- not on tapes, I didn't, no, I just -- at
22 the time everything just running together, and as the stuff
23 come up I -- I'd say it there, so --

24 Q. Did you have anything to drink that night?

25 A. Did I what?

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1 Q. Have anything to drink?

2 A. Well, there was three different nights, yes, I had quite a
3 little bit to drink then.

4 Q. How about during all three nights?

5 A. All three nights I drank quite a bit. Because most of the
6 time I'd go and -- to the Legion and spend about three to five
7 hours drinking beer and whatever anybody would come in and
8 drink, and then BS, tell war stories and what have you.

9 Q. Now, when you say tell war stories, were you just telling
10 what happened over there, did you balloon things up?

11 A. Oh, sure, you blow it up when you talk to another veteran
12 there, it's one up always, so --

13 Q. So when you left there -- Withdraw that.

14 You left there, went home slightly intoxicated and made a
15 tape.

16 A. Yes.

17 MR. BACHRACH: Objection, Your Honor, leading.

18 THE COURT: Sustained.

19 MR. DEEVER: Your Honor, I was just summarizing what
20 he said.

21 THE COURT: Go ahead, ask a question.

22 BY MR. BEN DEEVER:

23 Q. We're going to play those tapes for you.

24 MR. BEN DEEVER: Your Honor, I don't know if we want
25 to take break so we can set them up?

JOHN STRAIT - DIRECT EXAMINATION

1 THE COURT: Okay, let's take a break, start again at
2 4:15, okay? So you can go to your jury room and we'll go from
3 there.

4 MR. BEN DEEVER: Thank you, Your Honor.

5 (Jury excused.)

6 (A recess was held at this time.)

7 THE COURT: We'll bring the jury in.

8 (Jury present.)

9 THE COURT: Thank you very much. Do you want to
10 continue, Mr. Deaver, please, sir.

11 MR. BEN DEEVER: Yes, sir, thank you.

12 BY MR. BEN DEEVER:

13 Q. You ready, Mr. Strait?

14 A. I think so.

15 Q. Okay, sir. One thing I didn't ask you. Are you married?

16 A. Yes, I am. I married a girl from Virginia on Christmas
17 Eve 1958, I went down to Bennettsville, South Carolina and got
18 married. So we've been married 47 years. And I don't beat
19 her or the kids.

20 Q. All right, sir. Right before we took a break we were
21 going to discuss some audio cassette tapes.

22 A. I can't understand that.

23 Q. Right before we took the break, we were going to discuss
24 these audio cassette tapes. But I think because they were
25 going to take awhile, the judge allowed everybody to have a

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1 recess. So we're going to go on into these audio cassettes
2 that you stated earlier that you provided to Mr. Marvin.

3 A. Um-hum.

4 Q. Okay? You ready, sir? And just to know, you did provide
5 audio cassettes, correct?

6 A. As far as I know, I did, yes.

7 Q. When you did the audio cassettes, were you under oath to
8 tell the truth?

9 A. I am, yes.

10 Q. No --

11 A. Then?

12 Q. When you made these tapes?

13 A. Absolutely no, no.

14 Q. You didn't put your hand on the Bible?

15 A. No, I opened a bottle and just having a good time and --

16 Q. So you had your hand on the bottle, not the Bible?

17 A. Bottle, yeah.

18 Q. Yes, sir. We're going to go on and play these tapes, if
19 you may, please. And if you'd listen very closely. And if
20 you can't hear, please let me know.

21 (Audio tape was played.)

22 A. I can't understand that.

23 Q. I'm sorry, say again?

24 A. Let me turn my hearing aid down a little bit, see if it
25 will work better. Keep playing it a little bit, if you would.

JOHN STRAIT - DIRECT EXAMINATION

1 (Audio tape was played.)

2 BY MR. BEN DEEVER:

3 Q. Mr. Strait?

4 A. Yes.

5 Q. Could you understand that?

6 A. Yes, I did.

7 Q. He's mentioning you accidentally shot off a shotgun?

8 A. Um-hum.

9 Q. When you were hanging it on the wall. Did that happen?

10 A. Yes.

11 Q. That did happen?

12 A. Did happen, yes.

13 Q. That's true. Is it mentioned in the book?

14 A. It happened in the book, which is fairly accurate. I
15 wouldn't say it's 100 percent, but it's fairly accurate, yeah.

16 Q. Okay. Thank you, sir.

17 (Audio tape was played.)

18 Q. Mr. Strait, right there it was -- you heard a change in
19 everything in the tape?

20 A. What's that?

21 Q. Right there where the tape was playing and then there was
22 a change in the quality, made a noise, you were saying
23 something about maybe an 81, and then it changed subjects?

24 Did you just notice that?

25 A. I didn't.

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1 Q. Okay.

2 (Audio tape was played.)

3 Q. Excuse me, sir. Could you hear anything in the background
4 there? If I could rewind this and just if you could tell me
5 if you heard something, there was a break in your speaking.

6 (Audio tape was played.)

7 Q. That right there, did you hear a clink?

8 A. I heard something --

9 Q. Was it possible maybe you were drinking at the time and
10 that was a glass?

11 MR. BACHRACH: Objection, Your Honor, leading.

12 THE COURT: Rephrase the question.

13 BY MR. BEN DEEVER:

14 Q. What do you think it's possible that that clinking noise
15 could have been?

16 A. What noise?

17 Q. There was a clinking noise. Let me play it for you again.
18 It actually goes twice.

19 (Audio tape was played.)

20 Q. Could you hear that noise?

21 A. I heard a noise, but I couldn't identify it there.

22 Q. Okay. Were you drinking at the time you were making this
23 tape?

24 A. No.

25 (Audio tape was played.)

JOHN STRAIT - DIRECT EXAMINATION

1 Q. Mr. Strait, do you remember making that tape?

2 A. Yes, I do.

3 Q. We're going to listen to another one here in a minute, I'm
4 just letting this one rewind. A couple things in that tape.
5 I think at the very beginning you said something along the
6 lines, I don't know, this makes a good story. Where were you
7 leading with this tape?

8 A. Where was I leading with him? I have no idea.

9 Q. Why don't you have any idea?

10 A. Well, when I started talking I had no idea where I was
11 going there. But the -- I made the tapes for his book, that's
12 all.

13 Q. For which book?

14 A. For that Bassac Bastards. It's now a book.

15 Q. You also mention in there that you were provided a forward
16 by Martha Raye.

17 A. I was what?

18 Q. You were provided a forward that was written by Martha
19 Raye. In the tape you mentioned, yes, about Martha Raye, saw
20 the forward by Martha Raye.

21 A. I think that's one that he sent me. I don't recall that
22 right now.

23 Q. Did he send you a copy of the book, the transcript?

24 A. No. First transcript I seen of the book was when we had
25 the convention in June of 1988.

JOHN STRAIT - DIRECT EXAMINATION

1 Q. So he just sent you a copy of --

2 A. It was a newspaper clipping, I think he may have sent some
3 letters like if something like that, and -- but as far as the
4 thing on Martha Raye, I don't recall that. So --

5 Q. Do you recall reading a newspaper clipping?

6 A. I remember a newspaper clipping there, but I don't know
7 what it was about, whether it was about the book or whether it
8 was about anything right now, I can't tell you now.

9 Q. All right. Where were you when you were making this tape?

10 A. Where was it?

11 Q. Where were you? Were you at home?

12 A. I was at home in my camper at -- with a tape recorder.

13 Q. You mentioned something in there about -- you mentioned
14 something in there about because the tape was addressed to
15 Mr. Marvin, correct?

16 A. Um-hum.

17 Q. All right. So you mentioned something there about you
18 saved my ass, and I thank you for that. What did you mean by
19 that?

20 A. This was for his book there where it come about there, is
21 what -- up at Khanh Bin I was talking to the fact, forward air
22 controller on the radio, and he was setting in a hole probably
23 three or four feet deep, something like that. And he says
24 incoming recoilless. And I'm talking, and he threw something
25 or a stick or something, and got my attention, I just jumped

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1 in the hole and jumped right back out, because if it had been
2 a recoilless rifle, it would have hit me before I even said
3 that there. So years later I come up with that for his book
4 here. And he did not save my life there.

5 Q. All right. So you were saying you just made that up on
6 this tape?

7 A. Um-hum.

8 Q. Kind of like what you said earlier on the tape, it makes a
9 good story.

10 A. It -- from the initial stuff I got for him in talking to
11 him on this book, it sounded like he was making a nice good
12 novel here. Just like, you know, some of the novels, you
13 know, that 007 or stuff like that, intriguing here.

14 Q. So a lot of what you said on the tape didn't really
15 happen?

16 MR. BACHRACH: Objection.

17 A. There's a lot on that tape --

18 MR. BACHRACH: Objection.

19 A. Very little happened.

20 THE COURT: Basis?

21 MR. BACHRACH: It's vague and leading.

22 THE COURT: Rephrase the question.

23 BY MR. BEN DEEVER:

24 Q. What parts on the tape that we just listened to happened?

25 A. Oh, the ambush happened.

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1 Q. And is that the same ambush you spoke about earlier before
2 we listened to the tape?

3 A. Yeah, it happened like that.

4 Q. And I'm just -- is that the one where you were about a
5 100 meters away?

6 A. About 100 meters away, yeah. And that I went -- we walked
7 up to the Cambodian outpost or FOB at Khanh Bin there, and
8 that was about it. And the looks of things up there looked
9 pretty bad here, and it was my first time that I seen what
10 fighting will do to you. So it was -- looked a lot worse to
11 me than it actually was here, judging later on when I actually
12 got into a place like this.

13 Q. I'm sorry, Khanh Bin looked --

14 A. Khanh Bin.

15 Q. Khanh Bin, you're saying, looked pretty bad to you at the
16 time?

17 A. Um-hum.

18 Q. All right. What did you base that on?

19 A. At the time that I seen that?

20 Q. Yes, sir.

21 A. Just the way it looked there, because I'd never seen
22 anything like that before.

23 Q. All right. And after that, did you get a chance to see
24 anything else? Anywhere else?

25 A. Say again?

JOHN STRAIT - DIRECT EXAMINATION

1 Q. After you left An Phu, did you get an opportunity to see
2 other areas that had been hit?

3 A. Yes, I did. Kinh Quan II, over near Muc Wa.

4 Q. Were they as bad as Khanh Bin?

5 A. They was worse.

6 Q. Which was worse?

7 A. Khanh Bin. Muc Wa.

8 Q. It was a lot worse off than --

9 A. Yeah.

10 Q. So prior to going to Khanh Bin, how much battle did you
11 see?

12 A. None. Myself personally, I didn't see any, other than
13 observing it. I was not part of it here.

14 Q. And even in An Phu, did you get to participate in any
15 battles?

16 A. At Khanh Bin?

17 Q. In An Phu. Did you --

18 A. No.

19 Q. -- did you personally participate in any battles?

20 A. The closest I come was 100 yards or so, whatever, at the
21 ambush, that's the only time I had any of that.

22 Q. All right. Well, let's go into this second tape, if I
23 may, please. If I have it set up properly.

24 And if you can't hear it, please let me know, sir, and for
25 y'all, too, please.

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1 (Audio tape was played.)

2 A. I couldn't hear that.

3 Q. Let me move this microphone over a little closer.

4 (Audio tape was played.)

5 A. I can't understand that.

6 (Audio tape was played.)

7 MR. BEN DEEVER: Let's start at the beginning of
8 that, now that you can hear it.

9 (Audio tape was played.)

10 BY MR. BEN DEEVER:

11 Q. All right, Mr. Strait, is that also a tape that you
12 provided?

13 A. Was that one there? Yes.

14 Q. Yes, sir.

15 A. As far as I know, yeah.

16 Q. All right. Was it your voice on it? Did it seem to be
17 your voice on that tape?

18 A. Yep.

19 Q. If I can go through and ask you a couple questions on this
20 one.

21 A. Um-hum.

22 Q. On the first tape you mentioned that you received some
23 newspaper articles, I think a forward by Martha Raye, but you
24 can't really recall. That you received information?

25 A. That's true.

JOHN STRAIT - DIRECT EXAMINATION

1 Q. On this one at the very beginning you mentioned something
2 about you received orders of battle. Can you tell me what
3 those are?

4 A. I know what an order of battle is, but I don't remember
5 getting any.

6 Q. Well, if you like, I can play it again. At the very
7 beginning, you said --

8 A. Yeah, I --

9 Q. -- 6 June, received orders of battle. I did not realize
10 that there was that much up there, had no idea there was that
11 many up there.

12 A. The only thing I can think of, it might have been, and I'm
13 not sure, is that OPSUM, or something like that -- I'm not
14 sure.

15 Q. But you received something?

16 A. Yeah, I -- I think I received -- I don't know when I
17 received that. If it was before the tape or after the tape
18 or --

19 Q. Well, on the tape you mentioned it.

20 A. Well, then probably I got it then.

21 Q. Okay. Well, what did you mean when you said, I did not
22 realize that there was that many -- that much up there. Had
23 no idea there was that many up there. What were you talking
24 about?

25 A. Well, the only thing I could think of there is after

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1 seeing the number of people that were killed up there, which
2 was not that many, and then what -- he gave me the breakdown
3 like there was -- 412, then there was the -- and the -- I
4 didn't realize that many up there.

5 Q. Why didn't you realize there were that many up there? Did
6 you not see them while you were up there?

7 A. When I was there, there wasn't that much evidence there.

8 Q. Okay. So what did you base your evidence on when you saw
9 this? Was it that orders of battle that you mentioned?

10 A. That's what he sent me, yes.

11 Q. So it's not really what you saw up in An Phu, but it's
12 what Mr. Marvin sent you?

13 A. Yeah.

14 Q. Okay. You mentioned something about you received a
15 Vietnam Medal of Galantry. Congratulations. Can you tell us
16 what that is, sir?

17 A. Well, that Medal of Galantry, as far as I'm concerned, was
18 phony here, because I never served any combat with them here.
19 Closest I was, was from 50 to 100 meters from the action.
20 That's the only one that I been fired at on here.

21 Q. But you received the Medal of Galantry.

22 A. Yeah. I received a Medal of Galantry in Tre Thuan for
23 action, too, but I wasn't at that one, either.

24 Q. So you actually received two Medals of Galantry?

25 A. Yes.

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1 Q. Both of them you're saying that you weren't involved in
2 any combat when you received them?

3 A. Well, the one at An Phu, the only -- closest I come to
4 combat, like I say, was probably 50 to 100 meters away here.
5 And the one at Tre Thuan, I didn't even go on the operation
6 that they given the -- those Cross of Galantries out for. So
7 it's just a way of the orientals or Vietnamese rewarding you,
8 whatever you want to call it, bribing you.

9 Q. Their way of saying thank you.

10 A. Yeah, well --

11 Q. When you and I first started speaking, you mentioned
12 something about that was pretty much -- A-424 was your first
13 assignment in the field in Vietnam?

14 A. Um-hum.

15 Q. All right. On this tape, what do you -- what did you mean
16 about, I was the best qualified to go to these places. If
17 this was your first assignment, why would that make you the
18 best qualified?

19 A. The FOBs, because I was the only infantry there.

20 Q. Would it have anything to do with what you were also
21 saying earlier as far as being at the Veterans Association,
22 y'all were drinking and trying to outdo each other?

23 A. I don't know.

24 MR. BACHRACH: Objection.

25 THE COURT: I'll sustain that, that's a leading

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1 question.

2 MR. BEN DEEVER: Yes, sir, Your Honor.

3 BY MR. BEN DEEVER:

4 Q. So because you were the only infantry soldier there --

5 A. The only in --

6 Q. -- in A-424?

7 A. Yes.

8 Q. What about enlisted men?

9 A. Well, enlisted man, it was Jim Taylor, he was Special
10 Forces, but I don't know if he had much infantry training.
11 Basic training, maybe, but -- and then some of the others I'm
12 not sure. But Jim Taylor, or our weapons man would be
13 probably equal qualified, or --

14 Q. Almost done with you, sir. On the tape also you mentioned
15 that up at the FOB you would take photographs?

16 A. Um-hum.

17 Q. I believe you said on the tape that you took photographs
18 of kids and families. Was the FOB a place where families and
19 kids played?

20 A. Absolutely. When they would go up to the FOB, they'd take
21 their whole family with them and build little hooches all
22 around the perimeter here.

23 Q. And finally, according to that tape, you gave Mr. Marvin
24 permission to use your name in the novel.

25 A. I gave him permission to use the name for that novel, but

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1 I didn't give him permission to use it for anything illegal or
2 dishonest.

3 Q. Okay. I believe you said because it offers authenticity,
4 is that correct?

5 A. I couldn't even pronounce the word then.

6 Q. I can't either.

7 MR. DEAVER: I have nothing further, Your Honor.

8 THE COURT: Okay. We'll quit for tonight and start
9 at 9:30 tomorrow morning. So don't discuss the case among
10 yourselves, don't let anybody discuss it with you. We'll
11 start again at 9:30 tomorrow morning.

12 (Jury excused.)

13 THE COURT: Anything else before we quit?

14 MR. OGIBA: No, Your Honor.

15 THE COURT: We'll see you all at 9:00 o'clock
16 tomorrow morning, at 9:00 o'clock. Lawyers here at
17 9:00 o'clock for the jury charge. Okay? You're not planning
18 on playing these whole tapes again?

19 MR. BACHRACH: No, that's why it's good tonight, I'll
20 fine tune exactly what to play.

21

22 (Court adjourned at 5:45 p.m.)

23

24

25

REPORTER'S CERTIFICATION

I, Debra L. Potocki, RMR, RDR, CRR, Official Court Reporter for the United States District Court for the District of South Carolina, hereby certify that the foregoing is a true and correct transcript of the stenographically recorded above proceedings.

S/Debra L. Potocki

Debra L. Potocki, RMR, RDR, CRR