

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

WILLIAM B. TUTTLE, JR., RAYMOND J. : VOLUME IV
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 Thursday,
January 26, 2007, commencing at 9:00 a.m., before the
Hon. David C. Norton, in the United States Courthouse,
Courtroom II, 81 Meeting St., Charleston, South Carolina.

APPEARANCES:

BOBBY G. DEAVER, ESQUIRE, 3760 Bald Mountain Rd.,
West Jefferson, NC, appeared for plaintiffs.

BENJAMIN W. DEAVER, 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
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843/723-2208

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1 (Jury not present.)

2 THE COURT: While the jury's out, I want y'all to
3 listen to me. I'm going to make another pitch for the truth
4 trial. I want the parties to listen to me. If each of you
5 got a verdict against them, in order to collect on that
6 verdict, you each would have to go to Oregon and New York, and
7 sue them to collect on the judgment.

8 What would happen then, because neither one of them has
9 any money, is they would probably go into bankruptcy. And if
10 they went into bankruptcy, you'd have to hire another lawyer
11 to go to Bankruptcy Court to pursue your judgment. And
12 there's no -- nothing that they can pay out of Bankruptcy
13 Court. So you can do that, if you want to, all right?

14 Now, each of you would have to go to California, Michigan,
15 New York, North Carolina, each of you, and sue them, if you
16 got a verdict against them. And what would happen there is
17 they'd go to Bankruptcy Court and you'd have to get more
18 lawyers to go to Bankruptcy Court to collect against them.
19 And what would happen then is that you wouldn't get anything
20 because they don't have anything. All right?

21 Now, this case ain't about money, because there's no
22 money. All right? This case is about the truth. And a
23 verdict that says who's telling the truth should satisfy
24 everybody, because I'll be dead before any of y'all collect
25 any money from anybody else. Okay? Now, y'all think about

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1 that. Because if we had a truth trial, we'd dispense with all
2 this stuff about defamation and malice and everything like
3 that, and it would be one simple question, Did the book tell
4 the truth against each of you or did the book lie, period.
5 Or, did y'all lie against them, period. That's it. Okay?
6 Now, y'all think about that.

7 If you want to spend good money after bad, you're welcome
8 to do that. It's only going to be done by consent, because
9 I'm ready to go, but I'm just telling you that that's what's
10 going to happen. All right? And I'm sure your lawyers have
11 told you something like that, too.

12 Now, so just let me know. All right?

13 In the alternative, what you're going to have this jury do
14 is answer 42 verdicts. It's not going to happen tomorrow.
15 You're going to be back here next week. Because I'm going to
16 ask the jury whether they want to come back in on Monday or
17 Tuesday or Wednesday or Thursday, whenever they want to come
18 back. Because it's not going to happen tomorrow. It may
19 happen today, but I doubt it, but it's not going to happen
20 tomorrow, okay? So you're looking at spending the weekend
21 here with us, all right? So that's something else you might
22 want to think about. Okay. Anything else?

23 MR. OGIBA: Not from us, Your Honor.

24 THE COURT: How about do you want -- Are they all
25 back? All right.

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1 I've looked at your judgment as a matter of law. I think
2 your -- about the issue about there's no defamation.
3 According to defamation, to be defamatory the words complained
4 of on their face are by reason of intrinsic facts, must tend
5 to impeach or injure the reputation. Okay? And according to
6 Chief Justice Toll, it's for the trial court to determine
7 whether communication is reasonably capable of conveying a
8 defamatory meaning. If the question is one in which
9 reasonable minds might differ, it's for the jury to determine.
10 I think reasonable minds and intrinsic facts takes this case
11 to a jury. So I'm going to deny your motion for a judgment as
12 a matter of law.

13 MR. OGIBA: Thank you, Your Honor.

14 THE COURT: Ready to go?

15 MR. DEAVER: Your Honor, in view of your last
16 instructions, I think it would be prudent for us to discuss
17 this with our clients to see whether, you know, what their
18 feelings are about it, about the truth trial.

19 THE COURT: Okay. I mean, y'all can do that, but I
20 think we've got to go forward and get the -- I mean, it's not
21 going to stop the trial, it's just going to shorten the
22 verdict. The trial has to go forward. You still have to
23 finish. You can do that at the break. We'll let them think
24 about that for awhile, all right?

25 MR. DEAVER: Thank you.

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1 THE COURT: All right. Mr. Marvin, do you want to
2 come on back. Bring the jury in for me, please.

3 (Jury present.)

4 THE COURT: Welcome back, ladies and gentlemen.
5 Okay, Mr. Deaver.

6 MR. DEAVER: Thank you, Your Honor. Good morning,
7 ladies and gentlemen, Mr. Marvin.

8 BY MR. DEAVER:

9 Q. You have been testifying about an independent operation
10 where you were out of control of anyone, is that correct?

11 A. With the exception of the Central Intelligence Agency,
12 sir.

13 Q. Were you assigned to the Central Intelligence Agency?

14 A. No, sir.

15 Q. You --

16 A. But on the basis of the independent operation, I was out
17 from under the control of the U.S. military.

18 Q. Were you assigned to a different unit, or get any kind of
19 orders taking you out of the Army or putting you in a
20 capacity?

21 A. No, sir.

22 Q. And as far as the Army was concerned, you didn't exist, is
23 that right?

24 A. You would have to ask the Department of the Army that,
25 sir.

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1 Q. I believe you said that you had recommended Sergeant
2 Taylor for a Silver Star for his action at Khanh Bin, and that
3 he came back that you couldn't -- he couldn't get the Silver
4 Star because his unit didn't exist. Is that right?

5 A. That is correct, sir.

6 Q. Now, in your monthly May operation report, you set out a
7 whole chronology of what occurred at Khanh Bin, didn't you?

8 A. In the Khanh Bin area and other areas, sir, during that
9 five-day battle.

10 Q. And in that, you -- all of this that you said that
11 Sergeant Taylor did, or the actions that he was involved in,
12 were itemized on there and sent to your next higher
13 headquarters and on up the line, didn't it? Didn't you?

14 A. The actions of the days of those five days were put in
15 chronological order at the end of the monthly operational
16 summary. I don't believe -- I'd have to look at it, sir --
17 it's in evidence -- whether I named any names in it. But
18 where I did, they were correct.

19 Q. Would not the Awards and Decorations Board be -- once a
20 recommendation is made for an award such as the Silver Star,
21 wouldn't they do an investigation about the activities and get
22 affidavits from people who were involved in the action, and if
23 there were any injuries, get the medical reports and get --
24 primarily it requires five affidavits to be awarded the Silver
25 Star, doesn't it?

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1 A. I have no idea, sir. I don't run the boards, all I did
2 was recommend a man for the Silver Star, based on his actions.

3 Q. Now, you know that you don't -- How did you make the
4 recommendation?

5 A. By letter, sir.

6 Q. You've been in the Army long enough at that time to know
7 that the Army has a process for everything that is done, don't
8 you? Didn't you know it then?

9 A. I would hope so, yes, sir.

10 Q. And you know that you don't just write a letter for a
11 recommendation, that you have to submit supporting data as to
12 why the award is to be made. Is that correct?

13 A. I supplied whatever was necessary, sir.

14 Q. Apparently it was not -- you didn't, because it was sent
15 back to you, wasn't it?

16 A. It was denied, yes, sir.

17 Q. Just simply denied?

18 A. Sir, that was a long time ago. All I know is that I put
19 Sergeant Taylor in for a Silver Star. I also put all my men
20 in for a Soldier's Medal for the defense of the village of An
21 Phu when we put out the fire. They received none. And all I
22 could ascertain from what the B Team commander, Colonel
23 Brewer, told me, is that it was denied, period.

24 Q. Now, it's not unusual for an award to be denied, is it?
25 Or recommendation for an award?

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1 A. I don't know, sir.

2 Q. Well, you were involved in this, in this intense combat
3 activity in An Phu that went on for the -- the most intense
4 combat that occurred in any of the A Team sectors, weren't
5 you?

6 A. That is correct, sir. It's in the record.

7 Q. And in what record?

8 A. In the monthly operational summary and the report by the
9 Joint Chiefs of Staff that I mentioned earlier in the trial.

10 Q. Do you have that report from the Joint Chiefs of Staff?

11 A. My attorney can answer that, sir.

12 Q. Your attorney's not on the witness stand, Mr. Marvin.

13 A. I'll answer yes, sir, we have it with us.

14 Q. And during that period of time there were no -- no
15 casualties of the Special Forces, were there?

16 A. There were two casualties amongst the officers that were
17 with the Mike Force, sir, but not -- none of my men were ever
18 wounded.

19 Q. Let's go back to that Silver Star, I don't want to belabor
20 it, but do you know that the process is for recommendation of
21 an award of a medal for bravery or for, say, courage and
22 galantry above and beyond the call of duty? Do you know what
23 the procedure is?

24 A. Sir, I was a young captain and commander of an A Team, and
25 I did exactly what Colonel Brewer, my B Team commander, asked

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1 me to do. I don't recall exactly what it was at this moment.

2 Q. You did what Colonel Brewer, your B Team commander,
3 directed you to do? You were not under him, were you?

4 A. For this purpose, for a conventional operation, as I
5 explained to the jury earlier, everything within the monthly
6 operational summary is -- is unclassified unconventional
7 operations, and not part of the top secret mission of going
8 into Cambodia or firing into Cambodia.

9 Q. Did you obtain any affidavits from anyone to support this
10 recommendation for award to -- for Jim Taylor?

11 A. No, sir.

12 Q. You just sent a letter out and said I recommend him for
13 the Silver Star?

14 A. I provided Colonel Brewer what he asked for, sir.

15 Q. And when was it he told you that you didn't exist?

16 A. Subsequent to my sending in the recommendation.

17 Q. There were awards to your men of the Vietnamese Cross of
18 Galantry, weren't there?

19 A. Yes, sir, the Vietnamese were very -- not only capable,
20 but it was important to them to honor those who served
21 honorably, and they did so.

22 Q. Well, the Vietnamese thought that your men existed, is
23 that right?

24 A. They didn't think it, they knew it, sir.

25 Q. But the United States Army didn't.

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1 A. Sir, I think I've explained to the jury how independent
2 operations work. The Army knew that we existed as far as
3 anything went. Certain parts of the Army. Now, we were there
4 under the unclassified missions of civic action, advisory to
5 the district chief, to psychological operations, and to
6 securing 30 miles of border with Cambodia. They knew all of
7 that. And other than that, it was an independent operation
8 with a top secret mission to be the first people to actually
9 fight the enemy inside Cambodia in the safe havens that our
10 president gave them.

11 Q. And you say that despite the fact that these men and your
12 own witness said that the Khanh Bin battle was a one-day
13 affair. Are you the only person that thought that this was a
14 five-day battle, day and night?

15 A. Sir, I didn't --

16 MR. BACHRACH: Objection, Your Honor, I think he's
17 misstating the testimony.

18 THE COURT: You can clear it up. Thank you. Go
19 ahead. He changed the question, okay?

20 MR. DEAVER: Thank you, Your Honor.

21 BY MR. DEAVER:

22 Q. You have stated that this was a five-day battle, day and
23 night, have you not?

24 A. Yes, sir.

25 Q. Has anyone, anywhere, stated that this was a five-day

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1 battle or anything to corroborate it being a five-day battle?

2 A. Yes, sir.

3 Q. And what is that? Who was that?

4 A. I talked to and corresponded with a lot of people, to
5 include my own men, who, in the tapes that you heard right
6 here in this courtroom, especially Lieutenant Strait,
7 indicated that more or less, to the best of his knowledge,
8 everything in that book was correct, with the exception of the
9 fact he was never told about the assassination of Sihanouk.
10 And that is very clear in the book that he was never told,
11 none of my men were told that Sihanouk was the target of an
12 assassination plot. And that it's as simple as that.

13 And that -- one of the reasons for the book is to give
14 these men credit where credit was due. They were heroes, and
15 this tells of their heroic actions. I mean, perhaps the
16 Department of the Army would not recognize what they did
17 because of the independent nature of the operation, but that's
18 not my fault.

19 Q. That battle at Khanh Bin had nothing to do with an
20 independent operation, did it? It was all -- it all took
21 place in Vietnam, and it took place with an A detachment that
22 was there as advisers, and you were an adviser, is that
23 correct?

24 A. I commanded the operation, sir.

25 Q. The battles that you referred to took place in Vietnam

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1 though, did it not?

2 A. Yes, sir, that's clearly pointed out in the monthly
3 operational summary. Because it was not part of the top
4 secret operation, it is included in detail in the monthly
5 operational summary that y'all have in front of you.

6 Q. But you were under the command of the B Team, the B
7 detachment and the C detachment, were you not?

8 A. You can only be under one command, sir, and I was -- for
9 conventional -- for the normal unclassified operations, I was
10 under the command of Colonel Brewer, period.

11 Q. But this action at Khanh Bin was a conventional action,
12 was it not?

13 A. That is correct. It was a defensive operation against the
14 enemy who had attacked from their sanctuaries in Cambodia, and
15 the Joint Chiefs of Staff report clearly indicates that they
16 came in from Cambodia to attack us. And that's all included
17 within the monthly operational summary, and this map tells all
18 about the battle, where they came from and where our defensive
19 forces were, and that's it. Cut and dry.

20 Q. On the conventional end of the battle, you could make a
21 recommendation for any awards for any heroic action, could you
22 not?

23 A. Sir, I told you exactly what I did, and the answer to that
24 is yes, I did my best, and I cannot help what the higher
25 headquarters did.

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1 Q. Did you put anything in that -- any of these monthly
2 reports, that you recommended Sergeant Taylor for a Silver
3 Star?

4 A. Not that I know of, sir.

5 Q. Well, isn't that something rather significant that would
6 go in the monthly reports?

7 A. If it was, then I'm in neglect for not having it put in
8 the reports.

9 Q. This Silver Star and this assassination that you say that
10 you were permitted to do, is only corroborated by your word,
11 isn't it?

12 A. There was no assassination that I know of, sir.

13 Q. There was an assassination mission that you volunteered
14 for to assassinate Prince Sihanouk.

15 A. That is correct, sir. And it would be known only to
16 myself and Major Phoi Van Le and Walter Mackem, the CIA agent,
17 and whoever he communicated with.

18 Q. No one above him would know this?

19 A. Sir, I said whoever he would communicate with.

20 Q. Was Major Le cleared for American top secret information?

21 A. Sir, you'd have to ask Major Le that. I don't know. We
22 were an independent operation, the CIA agent came to our camp,
23 he talked with Major Phoi Van Le. If Major Phoi Van Le
24 required any clearance as far as the Central Intelligence
25 Agency went, he would have known it before he even got in that

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1 helicopter, that Air America helicopter, and came to our camp.

2 Q. What kind of assurance did you have that this mission that
3 you were offered could even -- could be authorized, or that
4 the man who was -- as you said, came to you, was authorized to
5 do that?

6 A. Sir, I'd have to rely on the fact that my B Team commander
7 sent that airplane, that helicopter, into my area, knowingly
8 with a company man, informed us of it by radio. The Air
9 America pilots, I don't believe, just carry any kind of rogue
10 element around with them.

11 And when he came in with the documentation, with the maps
12 and everything else from the Central Intelligence Agency that
13 showed the very route and exactly the couple of point places
14 on that route that he recommended we set up an ambush, I had
15 to believe in my heart that he was a Central Intelligence
16 Agency bringing a mission that we would expect to receive at
17 one time or another, or not receive, actually, because of our
18 training and the reason that we existed.

19 Q. Don't you think that was pretty naive of you?

20 A. No, sir.

21 Q. You told this to General Yarborough, and he told you it
22 was naive, didn't he?

23 MR. BACHRACH: Objection, Your Honor.

24 THE COURT: Basis?

25 MR. BACHRACH: It's irrelevant. It was part of our

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1 motion in limine. And the colonel hasn't raised anything.

2 MR. BEN DEEVER: Your Honor, that motion in limine
3 was ruled on last time we were here, the tape was allowed in
4 under limited purposes.

5 THE COURT: Okay. I'll overrule the objection.

6 BY MR. DEEVER:

7 Q. You may answer.

8 A. Would you ask that again, please, sir?

9 Q. I asked if General Yarborough did not tell you that it was
10 naive for anyone to act on the only information that you had.

11 A. General Yarborough was nowhere in the chain of
12 communications involved in the assassination plot against
13 Prince Sihanouk, and he would not be. Nobody except those
14 within the authorized communications chain would have any
15 knowledge whatsoever of an assassination plot on Prince
16 Sihanouk, except the president of the United States and
17 whoever he relayed that to.

18 Q. The president has a council -- there is a council that's
19 established for doing exactly what you're talking about, isn't
20 there?

21 A. I don't know, sir.

22 Q. You just think that somebody comes down and tells you to
23 do this, and that it must be all right?

24 A. I know exactly what happened in the case of An Phu,
25 Vietnam, where I commanded an independent operation, and I

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1 know that in my heart I felt that it was a real mission that
2 was brought to me by the Central Intelligence Agency, that
3 they asked me if I would perform, and I accepted it on a quid
4 pro quo, but it never happened.

5 Q. You still believe that happened, don't you?

6 A. I believe that we did not assassinate Prince Sihanouk; I
7 said it didn't happen.

8 Q. I say you still believe that this scenario that you've set
9 out in the book really happened, don't you?

10 A. I know it did, sir.

11 MR. DEAVER: Your Honor, we'd like to play the
12 tape --

13 Q. There was a tape recording, was there not, of your
14 conversation with General Yarborough?

15 A. Yes, sir, I provided it to my attorneys.

16 Q. All right.

17 MR. DEAVER: Your Honor, we'd like to present that
18 tape for impeachment about his saying that he was not told it
19 was naive.

20 THE COURT: He never answered the question. You
21 can't impeach someone that doesn't answer the question. Ask
22 him the question again.

23 BY MR. DEAVER:

24 Q. I asked you, Mr. Marvin, if General Yarborough did not
25 tell you that it was naive when you told him what you've

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1 related here.

2 A. I don't recall that General Yarborough used those exact
3 words, sir, but I would not expect him to say anything other
4 than he had no knowledge, because he would have had no
5 knowledge.

6 THE COURT: You can play that portion where you say
7 he said that.

8 MR. DEAVER: I have a transcript of that, if we could
9 use it in lieu of.

10 THE COURT: That would be good.

11 MR. DEAVER: We'd like to mark this for --

12 THE COURT: Identification.

13 MR. DEAVER: -- identification only. May I approach
14 the witness, Your Honor?

15 THE COURT: Sure.

16 BY MR. DEAVER:

17 Q. I show you this Plaintiffs' Exhibit No. 4 which is marked
18 for identification, and ask you if you would look through
19 that, please.

20 A. I would only want to look at that part that the judge
21 approved. Which part is that, sir?

22 Q. You can look at all of it before I ask you -- look through
23 it, please, say you can identify it.

24 A. I'm just trying to save time, sir.

25 Q. We all want to.

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1 A. What page are you referring to, sir?

2 Q. First of all, can you identify this as being a transcript
3 of a conversation that you had with Lieutenant -- General
4 Yarborough?

5 A. I don't know.

6 MR. BACHRACH: Objection, Your Honor. We're talking
7 about one simple point in it.

8 THE COURT: I don't think he has to identify
9 anything. If you tell me, and the other side says that it's a
10 transcript, it's a transcript, okay? Is there any doubt about
11 that?

12 MR. BACHRACH: No, Your Honor. It's a transcript.

13 THE COURT: It's an accurate transcript of the
14 conversation, right?

15 MR. BACHRACH: From my quick review, yes, Your Honor.

16 THE COURT: All right, so --

17 MR. DEAVER: Then I'll admit this.

18 THE COURT: You're not going admit it into evidence,
19 you're going to ask him questions about it.

20 BY MR. DEAVER:

21 Q. Did you have a conversation with General Yarborough by
22 telephone --

23 A. Yes, sir.

24 Q. -- that was recorded? On page 13 of the transcript?

25 A. Yes, sir.

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1 Q. Would you look at the line 17, please?

2 A. Yes, sir.

3 Q. And does General Yarborough say this is really naive?

4 A. Well, I couldn't say what he was talking about, unless I
5 read something before that.

6 Q. All right. We will then.

7 A. I'd like to point out I did call General Yarborough; he
8 didn't call me.

9 Q. Well, start with the first -- well, we go back a couple of
10 pages, to page 11.

11 A. Yes, sir.

12 MR. BACHRACH: Objection, Your Honor. I think all he
13 has to do is go back a couple of questions, not --

14 A. Yes, sir.

15 MR. BACHRACH: -- not a couple pages.

16 MR. DEAVER: Well, he --

17 THE COURT: He wants the context. You've got the
18 context now, Mr. Marvin?

19 A. Yes, sir.

20 THE COURT: All right.

21 A. Actually, line item 12 on page 13 is what I was looking
22 for, sir.

23 BY MR. DEAVER:

24 Q. Well, if you will start on page ten at the bottom, line
25 24.

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1 MR. BACHRACH: Objection, Your Honor.

2 THE COURT: Okay. Now that he's seen it, will you
3 just ask him whether Colonel Yarborough said that or General
4 Yarborough said that or not, which is, I think, what you want.

5 BY MR. DEAVER:

6 Q. Have you read this, reviewed it? Have you had a chance to
7 look at it?

8 A. If my attorney says that it's an accurate depiction, then
9 I have reviewed it, because I made the telephone call.

10 Q. And you told General Yarborough that -- about the -- about
11 this alleged assassination plot, did you not?

12 A. That is correct, sir. Wasn't alleged though, it was an
13 assassination plot.

14 Q. You told him about the visit of the CIA agent to you?

15 A. I told General Yarborough the truth of Walter Mackem
16 visiting my camp and asking me if I would accept a mission to
17 assassinate Prince Sihanouk.

18 Q. And he told you -- you told him how, did you not, how
19 the -- how it came about, how you were approached by --

20 A. Yes.

21 Q. -- Walter Mackem? And then he told you that that was --
22 was naive?

23 A. Yes, sir, on -- I'll read the line that you asked me to.
24 General Yarborough to me: "This is really naive. Kind of a
25 shadow warfare. I think -- and he paused -- I think the fact

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1 that you got such an order is of interest historically, and I
2 think perhaps it ought to be run down to find out where the
3 hell it came from. But if you put it to Congress and you find
4 them in the National Review, in the shock newspapers and all
5 of that, you do the country a disservice, you see."

6 Now, to the best of my knowledge, General Yarborough never
7 took any action to have this investigated.

8 Q. Now, when was this conversation made?

9 A. The date should be on the transcript, sir, although I
10 don't see it right off. I don't see a date on the transcript.
11 I don't recall exactly the date. It should be on the
12 transcript.

13 Q. Do you recall approximately when it was?

14 A. I'd hate to guess on anything as important as this, sir.

15 Q. What was your purpose in calling him?

16 A. It has nothing to do with the book, sir.

17 Q. It has to do with a book though, does it not?

18 MR. BACHRACH: Objection, Your Honor. Other than
19 what we've been into right here, the witness has said the rest
20 didn't have anything to do with the book.

21 THE COURT: Okay, so what relevance does it have?

22 BY MR. DEAVER:

23 Q. General Yarborough was retired at the time you called him?

24 A. Yes, sir.

25 Q. And what was -- what had been his position in the

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1 military, and why were you calling him about it?

2 A. Why I was calling is not relevant to this book.

3 MR. BACHRACH: Objection, Your Honor, just asked and
4 objected to.

5 THE COURT: What does it make more or less likely in
6 this case, is relevance. Now, if you can explain to me what
7 that question makes more or less likely in this case, I'll
8 hear you.

9 MR. DEAVER: The opinion of a general officer about
10 the whole episode.

11 THE COURT: Well, then I'll sustain the objection.

12 BY MR. DEAVER:

13 Q. Did General Yarborough tell you that if anything like this
14 occurred, that it was a maverick operation?

15 A. I just read you exactly what he said where you referred me
16 to, sir.

17 Q. Well, look at page nine, line 12. Those are your words,
18 are they not?

19 A. Sir, that related to something totally different and
20 irrelevant with regard to the book and this trial.

21 Q. Didn't General Yarborough tell you that the whole matter
22 that you told him came as a complete surprise to him; that he
23 knew Prince Sihanouk?

24 MR. BACHRACH: Objection, Your Honor.

25 THE COURT: Again, what does it make more or less

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1 likely in this case?

2 BY MR. DEAVER:

3 Q. What was -- wasn't General Yarborough in the intelligence
4 branch of the Army for a long time during the Vietnam War?

5 A. I don't know, sir.

6 Q. Thank you.

7 MR. DEAVER: I'm not through yet.

8 THE COURT: Okay, no problem.

9 BY MR. DEAVER:

10 Q. But you did discuss with General Yarborough more about
11 the -- this Prince Sihanouk assassination plot?

12 A. Sir, you have the transcript in front of you. Yes, I did.

13 Q. What else did you tell him about this operation?

14 A. I'd have to go through the transcript, sir, it's in there.

15 Q. Well, if you'll look --

16 A. Basically I just told him the truth of what happened.

17 Q. If you'll look on page nine, line 12.

18 A. Yes, sir.

19 Q. Would you read that paragraph?

20 MR. BACHRACH: Objection, Your Honor.

21 MR. DEAVER: To himself.

22 THE COURT: To himself, all right.

23 A. Thank you. Yes, sir, basically it outlines the facts that
24 I -- of exactly what I told the jury earlier, that when a CIA
25 agent comes to my camp and he's sent by the next higher

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1 command or identified as such, comes in a CIA helicopter, and
2 he has a mission in hand and he asks to talk to me in a
3 classified area, that what he's bringing to me is a real
4 mission. And that I would do exactly what he told me. And
5 that's what General Yarborough said.

6 Q. What was -- what was General Yarborough's response?

7 MR. BACHRACH: Objection, Your Honor, it begins to
8 go -- this is not just about the book, it's about other things
9 that occurred, and General Yarborough starts talking about
10 other things.

11 THE COURT: Okay. Well, unfortunately the only
12 person in the courtroom besides the jury who doesn't have the
13 transcript that you're objecting about, is me. Okay?

14 MR. DEAVER: I apologize.

15 THE COURT: So as Johnny Carson used to do Carnac the
16 Magnificent --

17 MR. DEAVER: We expect too much of our judges, Your
18 Honor, I apologize.

19 (Discussion held off the record at side bar.)

20 THE COURT: I'll sustain the objection as hearsay.

21 BY MR. DEAVER:

22 Q. Have you discussed any of this mission to Cambodia with
23 Walter Mackem?

24 A. No, sir. He discussed it with me when he came to my camp.

25 Q. You have not, when you were writing this book, since he

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1 was the only person that could corroborate it, have you
2 contacted him about it?

3 A. Actually, he is not the only person who could corroborate
4 it. Major Phoi Van Le could corroborate it, and he's in the
5 United States as a U.S. citizen. Walter Mackem is a CIA
6 agent, sworn to secrecy. He could not legally corroborate
7 this.

8 Q. He could get permission, could he not?

9 A. I don't think that he'd want to, sir.

10 Q. Well, what about Major Le, have you discussed it with him?

11 A. Major Le is 78 years old. He's confirmed everything in
12 the book in letters to me. His wife has got Alzheimer's. He
13 would rather stay in the background. And he's praying that
14 the truth will be evident here and that it will be published
15 by the Court.

16 Q. On the dust cover of your Expendable Elite on the inside
17 cover it states that the men of the Special Forces are --
18 don't fear the enemy they're fighting, but they fear the
19 government that they're working for?

20 A. You'd have to read on to the extent that we feared the
21 government or no, to the extent that we feared the government
22 only if we were declared expendable. And we were, in fact,
23 declared expendable, and they sent an ARVN regiment to kill
24 us.

25 Q. Who declared you expendable?

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1 A. Sir, you'd have to ask the Central Intelligence Agency who
2 within their organization or in the White House declared us
3 expendable.

4 Q. Is there a provision for declaring Special Forces troops
5 expendable? Is there any type of regulation or anything
6 within the Army regs that would permit that?

7 A. Sir, I would have to be awful naive to think that they'd
8 ever publish anything like that.

9 Q. Well, are you saying that if just Colonel Tuttle wants you
10 wiped out, that he can put together a regiment and have you
11 wiped out?

12 A. Sir, Colonel Tuttle was nowhere in any influence in the
13 organization or operation once that I left his door, as he
14 personally told me. And it's in the book, sir.

15 Q. I know it's in the book, Mr. Marvin, that's not at issue.

16 You're saying, and you said that now that when you got a
17 mission to do something covert, like violate the international
18 law and fire into Cambodia, take the war into Cambodia to
19 fight the Viet Cong there, that Colonel Tuttle has nothing at
20 all to do with it?

21 A. I didn't say that, sir.

22 Q. Well --

23 A. I mean, you can read it back. I did not say that, sir.

24 Q. What did you say about Colonel Tuttle not having any
25 authority over you?

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1 A. You had -- you had suggested in your word to the jury,
2 that Colonel Tuttle -- could Colonel Tuttle send a regiment
3 against my camp. And all I did was explain that once I left
4 his door, as he personally instructed me, it was as if I never
5 met him. He knew nothing about the operation, and he could
6 never testify about it.

7 Q. He could deny it, couldn't he?

8 A. I would imagine he would deny it, sir.

9 Q. And he did deny it, didn't he?

10 A. Yes, sir, I would expect that he would. I mean, any
11 sensible person would, that was within the circumstances that
12 he was within.

13 Q. There would also be -- could be another very good reason
14 that he would deny it, couldn't there?

15 A. I don't know of any, sir.

16 Q. If it didn't happen, if it wasn't true, he would deny it,
17 wouldn't he?

18 A. Sir, I can't answer that, because it is true.

19 Q. And it is denied, too, isn't it? About Colonel Tuttle?

20 A. And I would expect him to deny it, sir.

21 Q. At Khanh Bin, where the five-day battle occurred, how far
22 is it from An Phu to Khanh Bin?

23 A. Khanh Bin is in An Phu, sir.

24 Q. From Camp Dan Nam, how far is it?

25 A. I'd have to count it on the map, sir, I'd say about

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1 20 kilometers.

2 Q. And how long would it take to get to Khanh Bin from -- or
3 did it take?

4 A. Sir, that would depend on the situation. And I don't have
5 exact recollection of an action that happened in 1966 as to
6 exactly how long it took there. That all depends on the
7 vehicles, the mode of transportation and the enemy activity
8 along the route. Very fortunately, Lieutenant Strait, as he
9 testified to, protected the bridge so that we didn't have any
10 loss of time in having to ford the river, the canal there.
11 But whatever time it took, it took, but we got there in time
12 to get rid of the enemy from surrounding our area at Khanh
13 Bin.

14 Q. Did you have any ARVN relief sent to Khanh Bin?

15 A. The only relief or any activity that ARVN was involved in
16 is, as I've told before, we were Special Forces, and we had
17 Mike Force to come to our aid when we requested them. But the
18 ARVN artillery, two 155 Howitzers were used extensively in our
19 defense of Khanh Bin, and they were under the direct control
20 of the district chief, not ARVN.

21 Q. Was the ARVN Army under the direction of the CIA?

22 A. I just explained, sir, to the jury, that the ARVN two 155
23 millimeter Howitzers were under the control of the district
24 chief.

25 Q. I'm talking about the ARVN army.

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1 A. Sir, I'm not in control of the ARVN army. The ARVN
2 elements that -- the division elements within the Fourth Corps
3 were under the control of Commanding General -- Lieutenant
4 General Quan Van Dang, who is the one who turned that regiment
5 back, and he's affirmed that in writing and sent it back home
6 to stop the attack on our camp.

7 Q. This photograph in the Expendable Elite of Martha Raye
8 getting off a helicopter, would you look at that, please?

9 A. Yes, sir. It's the sixth page of photographs.

10 Q. That wasn't taken at An Phu, was it?

11 A. Yes, sir. Why would you doubt that? Excuse me, I didn't
12 mean to ask you a question. I don't know why anybody would
13 doubt that it was taken at An Phu. You could take and
14 superimpose that picture over the outer and inner defenses of
15 An Phu, and prove exactly where it was taken. And this
16 picture -- just below that, by the way, is a picture of Martha
17 Raye with my men, and the command bunker is right behind them.
18 In my camp.

19 Q. Well, she was there; nobody's questioning that, that she
20 was there in An Phu and that she spent some time with you and
21 you were photographed with her and she posed in photographs
22 for others.

23 A. Yes, sir. In fact, I believe it was one of my men, I
24 don't know whether it was one of them setting right there,
25 that took this picture. It certainly wasn't me, I didn't take

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1 any pictures.

2 Q. Whenever you say you were made an independent operator,
3 then the chain of command had no control over you, is that
4 correct?

5 A. Not for the top secret operations, sir.

6 Q. What about the leaving -- transferring you to another
7 unit? Who had that authority?

8 A. That authority was reserved to the commanding officer of
9 the Fifth Special Forces group or anybody he put in the chain
10 of command between him and I, sir.

11 The normal rotation policy for Special Forces officers in
12 Vietnam at that time, was six months in a location. And it
13 was also within the power of the commanding officer of the
14 Fifth Special Forces group to extend that. And I asked
15 General Heintges, the deputy commanding general under General
16 Westmoreland, to personally approve or get approved my
17 extension in An Phu, so we could have a successful conversion,
18 which we desperately needed in order to keep the conversion
19 program going. Or to get it started.

20 Q. And that conversion was completed, and all of the
21 equipment was -- and material were turned over to the regular
22 forces.

23 A. No, sir, to the regional forces. Yes, sir.

24 Q. Excuse me, the regional forces.

25 A. That is correct, sir.

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1 Q. Now, during that period of time were Sergeant --
2 Lieutenant Strait and Sergeant Taylor, the other men, the
3 plaintiffs, were they under the control of B-42 and C-4?

4 A. They -- all of them, at any time they were in camp An Phu,
5 reported direct to me and to me alone.

6 Q. Did anyone else have any authority over them?

7 A. The -- Colonel Brewer had authority over me, but that was
8 it. Nobody else had any authority over them individually. I
9 mean, the command structure of the Army is very simple. You
10 report to the first commissioned officer that is above you.

11 Q. Whenever a man was transferred out of your unit -- some
12 came in and stayed just a short period of time -- who
13 transferred them in? Who sent them down?

14 A. That would be the B Team commander would send them to my
15 unit, but I had authority, as I show in the book, to send them
16 out any time that I wanted to, because I had the exclusive
17 right within my independent operation to have only those
18 people that I desired to have, and these men that are
19 plaintiffs here are some of them, and they were the very best.

20 Q. Did B-42, the B detachment, have authority to transfer
21 these men out?

22 A. To transfer them out? Only in normal rotation, sir,
23 unless I suggested it.

24 Q. There were some that came in and went and left, some that
25 were good men that just had to pack up their bags and go

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1 because B-42 sent them, didn't they?

2 A. They had to -- they wanted to pack up their bags and go
3 because it was normal rotation; they were due to leave that
4 camp to go someplace else; hopefully home.

5 Q. There were some, and I'd have to get into the book to see,
6 but they stayed a short period of time and went on to another
7 A camp, didn't they?

8 A. I'm sure there were, sir.

9 Q. And who transferred them?

10 A. I would say the majority of them were transferred under
11 normal rotation, or they were just attached when we had a
12 specific time of need for some additional troops within my
13 command. And there were a few who I asked to leave. And I
14 tried my best, especially in the situation with Sergeant Fox,
15 to make sure that there was no derogatory comments on him.
16 He'd been worked hard and put up wet in Special Forces for a
17 long time, and I honored what he had done for Green Berets in
18 his time of service, and just transferred him out as if it was
19 a normal thing.

20 Q. Whenever this order that you said came from Colonel Tuttle
21 in the book, to -- for you and your men to report to B-42, it
22 was not an illegal order as far as your -- these men were
23 concerned, was it?

24 A. Sir, that order was to me.

25 Q. That order was for the whole team, A-424, to report to

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1 B-42, wasn't it?

2 A. Sir, if General Westmoreland wanted the Fifth Special
3 Forces group to do something, he sent an order to the
4 commanding officer of the Fifth Special Forces group, and he
5 would take the action on down the line to do as was legally
6 proper. In this particular case, Colonel Tuttle ordered me to
7 have my team leave An Phu and betray the mission that we had,
8 to betray the South Vietnamese, the Vietnamese Buddhist Hoa
9 Hoas, in this particular case.

10 I, in my heart, could not do that. I could not -- I feel
11 bad the United States betrayed Vietnam, but I would not betray
12 the people that I was there to protect.

13 Q. And even if it meant disobeying a direct order from the
14 C-4 commander.

15 A. Sir, if they want to court-martial me -- and Colonel
16 Brewer asked that I be court-martialed for disobeying that
17 order -- I would welcome it. Because then I could prove to
18 the world that what I was doing was true and accurate, to
19 include the top secret mission.

20 Q. Let's look at that on the -- page 281.

21 A. Yes, sir. I've got it right here, sir.

22 Q. Look at page 281 and look at that order that you say was
23 from Colonel Tuttle.

24 A. It was from the commanding officer of C-4. We talked
25 about that yesterday, sir.

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1 Q. Who signed it in this order?

2 A. Sir, I put the names in the book, and I ask the publisher
3 to forgive me now, because I thought at the time that Colonel
4 Tuttle was still commanding. I was not told that Colonel
5 Tuttle had left. And actually I didn't need to be told, he
6 wasn't -- I was not directly responsible to Colonel -- to the
7 commander of C-4 anyway.

8 Q. Well, you wanted to be accurate in the book, didn't you?

9 A. I wanted to be, but like I say, I did not know that
10 Colonel Tuttle had left C-4.

11 Q. Did you have this message at the time that you wrote this
12 book?

13 A. No, sir. I had my notes on a three-by-five card that told
14 of the message and who it came from and who it was to, and
15 what the content was of it. Just handwritten on a
16 three-by-five card.

17 Q. What does this say about you reporting or your unit
18 reporting to B-42?

19 A. Would you like me to read it, sir?

20 Q. Yes, please, the entire message that you say.

21 A. Secret. To Marvin. Which should have read to the CO of
22 A-424.

23 Q. Just read what the message said.

24 A. "Secret. To Marvin. Urgent. Repeat. Urgent. A-424
25 must depart An Phu and report to B-42 no later than 2000 hours

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1 today -- which is 8:00 p.m. C.O. B-42 was advised, or
2 advised. Signed, Tuttle."

3 Q. Now, that says that A-424 is to report, is that right?

4 A. Well, they were under my command; I couldn't have anybody
5 else depart, sir.

6 Q. Go down, if you will, please, to the second -- third
7 paragraph below that where you have the order.

8 A. Starting with I shook? That's the third paragraph below
9 that order.

10 Q. Where I shook his outstretched hand?

11 A. Yes, sir.

12 Q. You said, "Thanks, John. I appreciate it. But, look, you
13 men know what the message said. So far none of you have gone
14 against orders." Is that correct?

15 A. Yes, sir.

16 Q. Did you tell them that this was an illegal order?

17 A. Shall I read what I told them, sir?

18 Q. Yes, please.

19 A. Said, "So far none of you have gone against orders. I
20 can't or won't ask you to stay. If you decide to stay, I'll
21 cover you by ordering you to stay and I'll send a message to
22 B-42 telling them so."

23 Q. You said --

24 A. I wanted to protect my men, sir.

25 Q. You also said that you can't order them, didn't you?

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1 A. No, I said I can't ask them. In my heart, I couldn't ask
2 them.

3 Q. In your command you couldn't ask them to go against an
4 order from the Colonel Tuttle either, could you?

5 A. I ordered them to obey me, sir.

6 Q. And disregard orders from anybody else? Is that what
7 you're saying?

8 A. Only I was disregarding the order, sir.

9 Q. They were disobeying the order, were they not, when
10 they -- they told you that they're staying with you.

11 A. I asked them if they would like to stay, sir. They, too,
12 felt a burden for the Buddhist Hoa Hoas at the time, and they
13 said that they wanted to stay.

14 Q. Well, these are your words when you're quoting these men,
15 are they not?

16 A. To the best of my knowledge, yes, sir.

17 Q. They're not the words of these men that --

18 A. When I put it in quotes in the book as them saying it, to
19 the best of my knowledge, that's what I put on that
20 three-by-five card, and I wouldn't guarantee it to be
21 100 percent word-by-word accurate, ands or ors or whatever,
22 but that is the intent of what they said.

23 Q. Well, those cards are burned now.

24 A. Yes, sir, but not what was on them. It's in the book.

25 Q. Now, on the next page you had a -- on page 282 there was

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1 another message?

2 A. Yes, sir.

3 Q. And that was secret to Tuttle.

4 A. Yes, sir.

5 Q. Not to C.O. of C-4.

6 A. Sir, I thought I explained that. All the messages were on
7 a one-time pad, and they're addressed -- it was all coded, and
8 it was addressed to the C.O. of C-4 from the C.O. of A-424, no
9 names on it. I put the names in the book to put the reality
10 in the book of who was doing what to whom, as I thought it
11 was.

12 Q. So you were not aware that Colonel Tuttle had already
13 left?

14 A. Yes, sir, I just told the jury that.

15 Q. You were not aware at the time that you wrote this book,
16 that Colonel Tuttle was not there at that time.

17 A. That is correct, sir. If I had known, sir, I would have
18 changed it.

19 Q. Well, this book, every word in it is true, isn't it?

20 A. Sir, the book is a factual representation of what happened
21 in the seven months I was at An Phu and later. And there is a
22 disclaimer in front of the book, I mean, this is from memory,
23 not only mine, but the words on the audio tapes that you heard
24 here from Sirois, and from Strait especially, and from Ray
25 Johnson, I assumed were all true, and virtually all of that is

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1 in the book.

2 Q. There are some quotations in here on the words from
3 Mr. Taylor, are there not?

4 A. Yes, sir. I just explained, I would write that down on
5 three-by-five cards. In fact -- well, that's enough.

6 Q. When did you write this down? While you were talking to
7 them?

8 A. No, sir, I'd usually go back into my office and do it in
9 private, because I didn't want anybody to know that I was
10 putting this information down on cards, documenting everything
11 that happened and sending it home to protect what we were
12 doing there.

13 Q. Well, you don't have any recorded information, any tapes
14 or any letters from Sergeant Taylor that this occurred, that
15 corroborate what he did, do you?

16 A. Nor from anybody else other than was here in the courtroom
17 and the jury heard from, sir. I think there was a total of 24
18 men that went through my team during that period of time.

19 Q. Do you have anyone that would come down here and testify
20 that this is true, that was with you? Any one member of your
21 team?

22 A. Three members of my team, during this court session,
23 testified that it was true, on audio tape, in 1988, after they
24 had read the manuscript.

25 Q. After you read the complaint that they filed against you,

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1 did you -- did you get any of the other 24 men that came
2 through your team to come down here and corroborate anything
3 that you said?

4 A. I have -- No, sir, and I wouldn't expect them to. There's
5 one Special Forces sergeant, Sergeant Jerry Willsie of
6 Syracuse, New York, who was willing to come forward, but only
7 if we go to Congress. He feared coming to this court, because
8 of the influence of the Special Forces Association, of which
9 he is the president of a chapter.

10 Q. He's afraid of what?

11 A. Of the Special Forces Association influence on this court.

12 Q. Did you make any effort to depose him?

13 A. Sir, he's also my friend. I would not go against the will
14 of my friend. He was willing to go to Congress, and that
15 should be sufficient. I would just pray that someday there's
16 somebody brave enough in Congress to call us.

17 Q. Is brave the right word about calling you?

18 A. Yes, sir.

19 Q. And finally one other matter and then I'll stop. Now, I
20 asked you yesterday if you knew that the war in Korea ended on
21 July 27th, 1953, and you said you didn't know.

22 A. That is correct, sir.

23 Q. You knew on May 18, 2005, that it had ended on July 27,
24 1953, didn't you?

25 A. I may have, if I had been reading about it or something.

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1 What does that have to do with my book, sir?

2 Q. We're talking about the truthfulness of it, Mr. Marvin.

3 A. Yes, sir.

4 Q. And the truthfulness of what you're testifying. This is
5 in the file.

6 MR. DEAVER: Let me mark this, please, as --

7 MR. BACHRACH: Objection, Your Honor. Is he
8 introducing the deposition exhibit, or --

9 THE COURT: I don't think so, I don't know.

10 MR. DEAVER: I'm just identifying it, but I will.

11 BY MR. DEAVER:

12 Q. Were you deposed in Worchester, Massachusetts, on May 18,
13 2005?

14 A. I was deposed in the offices of my attorney, yes, sir. I
15 don't remember the exact date. But it would be on the
16 deposition.

17 Q. Were you not asked that you wrote -- did you write the
18 book which is the subject of the lawsuit entitled Expendable
19 Elite?

20 A. Oh, yes, sir, that's what it was all about.

21 Q. And you were asked first -- when you said yes, and then
22 you were asked, and this is a book of truth. And your answer
23 was, amen, yes. And I -- you were asked, I believe that you
24 stated every word in this is true, and you said yes. Did you
25 say that?

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1 A. If that's in the record, yes, sir.

2 Q. And you stated in -- pursuant to a question that you
3 stated in the book Expendable Elite in several instances that
4 you got into the Green Berets because of your combat
5 experience in Korea. Is that correct?

6 A. That is correct. That's the only way that an officer
7 could volunteer to become -- to go to training in Special
8 Forces at that particular point in time, was to have had
9 combat experience, which they proved to be a fact in my
10 record, sir, at Department of the Army.

11 Q. They proved that you were in combat in Korea from your
12 records in the Army?

13 A. Yes, sir. Sir, I did not publish the Department of Army's
14 special orders that awarded me the Korean Service Medal; they
15 did. Okay?

16 Q. That Korean Service Medal is awarded for a period of time,
17 and was awarded for a period of time of being in Korea, and it
18 had nothing to do with combat, did it?

19 A. You're absolutely incorrect there, sir. The Korean
20 Service Medal was only awarded for the time in Korea that
21 people served honorably in combat, even if it was just one
22 day.

23 Q. That Korean Service Medal was awarded to anybody who was
24 in Korea from the time that the Korean War began, until
25 July 27th, 1954, wasn't it?

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1 A. Sir, I don't have those dates. Department of the Army is
2 the one that published the orders, the special orders, it's in
3 my record, that authorized me to wear the Korean Service
4 Medal. I felt that I had earned it, and I wear it. With
5 pride.

6 Q. But that Korean Service Medal was not a combat medal, was
7 it?

8 A. Sir, you'd have to get the regulations out that stipulate
9 the award and what it meant, to prove to the jury one way or
10 another what it was for.

11 Q. Well, you have already testified, didn't you, that it was
12 for combat in Korea?

13 A. That's what I said, yes, sir.

14 Q. And you said that you were in combat in Korea shortly
15 after you got there. Is that correct?

16 A. It was all over with, within a couple weeks after I got
17 there, yes, sir.

18 Q. The war was over with?

19 A. Yes, sir.

20 Q. And you were asked if you got there in March of '54, and
21 you said that's correct.

22 A. If that's what I said, yes, sir.

23 Q. And you were asked, You know, don't you, Mr. Marvin, that
24 that conflict ended on July 27, 1953? And do you remember
25 what your response was?

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1 A. Whatever -- whatever is in the record, sir.

2 Q. Let me quote it. "Officially, yes. No different than the
3 war in Iraq was declared over by President George Bush over a
4 year ago, and we've had more men killed since then than before
5 in combat."

6 A. That's exactly what I said, if it's in the record, sir,
7 and it's true.

8 Q. And there were not more men killed in Korea after the war
9 ended than before, were there?

10 A. I did not say that, sir.

11 Q. Well, you said that you were analogizing it, were you not,
12 to the Iraqi war?

13 A. I did not say that, sir.

14 Q. You didn't say what?

15 A. What you said previously that I answered that I didn't say
16 it, sir.

17 Q. But you said we've had more men killed since Bush declared
18 the war over in Iraq.

19 A. That's true in Iraq, yes, sir.

20 Q. Well --

21 A. As true as we set here.

22 Q. Well, you were using that to support the -- your statement
23 that there was conflict -- there was combat still going on in
24 Korea after the conflict ended.

25 A. That is correct, sir.

DANIEL MARVIN - CROSS-EXAMINATION

1 Q. But you knew then, when I asked you yesterday, when the
2 war ended, didn't you?

3 A. If you're talking about official ending of the war, you
4 might have quoted it to me at that time, sir, but I don't have
5 any specific personal memory of when the war ended. I assumed
6 it was after I arrived there, or I would not have received
7 that recognition.

8 Q. On April -- June -- in June, whenever you received that
9 order from Colonel Tuttle to depart An Phu and you disobeyed
10 it, did you order a team of -- or an ambush squad to go out
11 and intercept the B-42 unit that was coming down to An Phu?

12 A. Sir, I was the only one that could have ordered it, and I
13 did not disobey a legal order.

14 Q. But you did, you were the only one that could order an
15 ambush team to go out there?

16 A. That is correct. I sealed my area to all outsiders. It
17 was an independent operation. I had that authority and
18 responsibility to my men, to the Vietnamese Buddhist Hoa Hoas,
19 to maintain security in my area. We had improved, through all
20 the battles, made our area the most secure, to the best of my
21 knowledge, of all the areas in South Vietnam.

22 Q. And you sent that squad out on that ambush site --

23 A. There was a platoon, sir.

24 Q. That assault -- the ambush team.

25 A. Yes, sir. With weapons.

DANIEL MARVIN - CROSS-EXAMINATION

1 Q. And with orders to kill your fellow Americans if they came
2 toward -- any further toward An Phu, is that correct?

3 A. Sir, I ordered them to warn any boats that came up that
4 river -- they would have been assault boats -- that they were
5 not allowed into the area. Colonel Brewer, who would be the
6 man that had sent them, and I had talked to him later on in
7 civilian life after that, he would have known that the area
8 was off limits to him, because I had told him so. And he
9 would know that he was sending his own men into danger,
10 whether they be Americans or South Vietnamese. And I gave
11 them orders that if they did not heed the warning, if
12 continued to come into An Phu, to shoot to kill.

13 Q. Their own American -- your own American soldiers.

14 A. Yes, sir. By the way, there were no Americans on the
15 ambushed forces, somebody in this court said earlier.

16 Q. Well, they were units of the -- of the camp at -- Camp Dan
17 Nam, weren't they?

18 A. They were members of my CIDG, commanded by a lieutenant of
19 the CIDG.

20 Q. But they were your orders to kill these Americans.

21 A. They were my orders to kill anybody that came in those
22 boats, if they did not heed the warning to turn and go back.

23 Q. Did you, at that point, declare those Americans, Green
24 Berets from B-42, expendable?

25 A. Sir, I don't know if there was any Americans in that

DANIEL MARVIN - CROSS-EXAMINATION

1 force, and I don't think you do either.

2 Q. No, I -- I don't know that the force was even there. But
3 from the indications, B-42 was coming to -- and they were
4 Americans, were -- the B-42?

5 A. Yes, sir, they could have been Colonel Brewer himself.

6 Q. And you just shot him.

7 A. Colonel Brewer should have known better than to come up
8 the river, sir.

9 Q. And disobey your order?

10 A. That is correct, sir.

11 MR. DEAVER: Thank you. I have nothing further.

12 REDIRECT EXAMINATION

13 BY MR. BACHRACH:

14 Q. Good morning, Colonel.

15 A. Good morning.

16 Q. Just to clear up the last point, and no one got killed in
17 that incident, correct?

18 A. That is correct, sir. No one even got injured.

19 Q. I'd like to bring to your attention, there was discussion
20 about Joint Chiefs of Staff memo during your --

21 A. Yes, sir.

22 Q. Do you recognize this document?

23 A. Yes, sir.

24 MR. DEAVER: Object, Your Honor.

25 THE COURT: Overruled.

DANIEL MARVIN - REDIRECT EXAMINATION

1 Q. And what is it?

2 A. This is a copy of Appendix 13 to Section Two to
3 Operational Report on Lessons Learned, Joint Chiefs of Staff,
4 31 July, 1966.

5 MR. BACHRACH: I'd like to introduce this into
6 evidence, Your Honor.

7 MR. BEN DEEVER: Your Honor, we object to it. It
8 wasn't produced during discovery.

9 THE COURT: Okay. I'll sustain that.

10 MR. BACHRACH: Your Honor, we produced this to them
11 before. It was got -- Should I establish how we got it?

12 THE COURT: I mean, you're replying to his
13 insinuation that there was no Joint Chiefs of Staff memo he
14 provided?

15 MR. BACHRACH: Then he -- it's in the objected to
16 exhibits, I believe.

17 THE COURT: Mark it for identification. I guess I
18 can ask you, what does it make more or less likely in this
19 trial, since I asked Mr. Deaver that successfully several
20 times.

21 MR. BACHRACH: It discusses the Khanh Bin battle.

22 THE COURT: You need to authenticate it, you need to
23 have a hearsay exception.

24 BY MR. BACHRACH:

25 Q. Is this a -- Could you explain to the jury, how did you

DANIEL MARVIN - REDIRECT EXAMINATION

1 get this document?

2 A. I sent in through the FOIA to receive any documents that
3 they had from the Fifth Special Forces group or higher, that
4 corroborated the fact that we had the battles that we had
5 within An Phu. Two full colonels from the special operations
6 command -- and I assumed it would be a tough battle to get
7 this document -- refused to provide it under the FOIA Act. A
8 very courageous lady within NARA called Stephen Sherman, who
9 is a person that they depend on to provide them documentation
10 on Special Forces activities, he's well known and respected by
11 every Special Forces man that I know of, he personally sent me
12 this information that is -- that he received from Joint Chiefs
13 of Staff's files that proves what they said about the five-day
14 battle at Khanh Bin. And also includes a table --

15 THE COURT: Wait a minute. You don't get to say
16 what's on the document. He just asked you the question where
17 you got it.

18 A. Right, sir. Excuse me, sir.

19 BY MR. BACHRACH:

20 Q. And Steve Sherman is who?

21 A. Steve Sherman is -- he's a collector of -- and documenter
22 of anything to do with Special Forces operations.

23 Q. And this document was prepared in July 31, 1966?

24 A. By the Joint Chiefs of Staff, yes, sir.

25 MR. BACHRACH: I'd offer it into evidence, Your

DANIEL MARVIN - REDIRECT EXAMINATION

1 Honcr.

2 MR. DEAVER: Object, Your Honor.

3 THE COURT: Basis?

4 MR. DEAVER: This is not an original document.

5 THE COURT: You're going to lose on that one. Let's
6 go to the next one. You don't have to have an original
7 record.

8 MR. DEAVER: It is not an official publication; it's
9 a copy of an official publication.

10 THE COURT: You're going to lose on that one, because
11 you don't have to have the original record.

12 MR. DEAVER: It is a copy of a publication.

13 THE COURT: We have rules, you cite the rules, you
14 tell me how you get it in, how you keep it out. Now, the way
15 you keep it out is you telling me or someone telling me that
16 they didn't give it to you before today.

17 MR. COLLINS: Judge, I think we're by that, we agree
18 it was given to us and listed as an excluded document. We did
19 not agree it was admissible.

20 THE COURT: Okay.

21 MR. COLLINS: I don't think this document has been
22 properly authenticated. It's a memo from the Joint Chiefs of
23 Staff. I don't see anything in here from the Joint Chiefs of
24 Staff, quite frankly.

25 THE COURT: Let's see it. You might as well put --

DANIEL MARVIN - REDIRECT EXAMINATION

1 Have we got a number on it?

2 MR. BACHRACH: Yes, for I.D. 43.

3 (Brief interruption in proceedings.)

4 THE COURT: Now, what's your objection?

5 MR. COLLINS: It's not properly authenticated. The
6 testimony from the witness says that he believes it to be an
7 official record of the Joint Chiefs of Staff. Just a general
8 perusal of the document doesn't appear to have any of the
9 earmarkings of any type of document that should be produced by
10 the Joint Chiefs of Staff. Doesn't even reference the Joint
11 Chiefs of Staff, from what I can see. And if it is, I believe
12 it to be hearsay also.

13 THE COURT: I agree with the second part. Okay. I
14 don't have an evidence book, but you're going to have to
15 comply with 1003, 1004, 1005, which you haven't done so far,
16 to authenticate it.

17 MR. COLLINS: Your Honor, while they're scrambling
18 for their evidence books --

19 THE COURT: Somebody has to use them. I'll sustain
20 the objection. You can try to tighten up later on. So let's
21 continue with the testimony. I don't think the jury needs to
22 sit around here watching everybody shuffle papers.

23 BY MR. BACHRACH:

24 Q. Now, you indicated that this document was prepared in
25 July 31, 1966?

1 A. That's what it says on the bottom, sir, with the Joint
2 Chiefs of Staff publication.

3 THE COURT: Okay. Mr. Bachrach, we're not going to
4 get into this. You can't regurgitate something that's not in
5 evidence.

6 MR. BACHRACH: I was not trying to get him to
7 regurgitate it, I was trying to --

8 THE COURT: He's doing a good job, whether you're
9 getting him to do it or not.

10 MR. BACHRACH: I have no more questions, Your Honor.

11 THE COURT: Okay. Anything else?

12 MR. COLLINS: We're done, Your Honor.

13 THE COURT: Thank you. Ladies and gentlemen of the
14 jury, why don't we go to the jury room, relax for about 15
15 minutes.

16 (Jury excused.)

17 (A recess was held at this time.)

18 (Jury not present.)

19 MR. COLLINS: Your Honor, we're in the middle of a
20 tribal conference, as they say in whatever -- Survivor -- and
21 I'm making some progress. Would you like me to continue that
22 at lunch, or if you give me about five minutes, I think I can
23 wrap it up.

24 THE COURT: Why don't you continue that. And who's
25 going to be the next witness?

ROBERT MILLEGAN - DIRECT EXAMINATION

1 MR. BACHRACH: Mr. Millegan.

2 THE COURT: Who's responsible for cross-examining
3 Mr. Millegan?

4 MR. COLLINS: That would be me. But I think I can
5 leave the tribal council in capable hands of the Deavers.

6 THE COURT: Why don't you let them continue the
7 tribal council, and then we can start with the testimony at
8 the same time.

9 (Mr. Bobby Deaver excused.)

10 (Jury present.)

11 THE COURT: Call your next witness for me.

12 MR. BACHRACH: Mr. Millegan.

13 THE COURT: You've already been sworn.

14 DIRECT EXAMINATION

15 BY MR. BACHRACH:

16 Q. Good morning again; how are you doing, Chris?

17 A. I'm doing fine, sir, holding up, thank you.

18 Q. How long have you been in the publishing business as Trine
19 Day?

20 A. 2002, November-December 2002.

21 Q. Now, do you have -- did you ever have a career as a
22 musician?

23 A. Yes.

24 Q. Do you write songs?

25 A. I still play some, yes.

ROBERT MILLEGAN - DIRECT EXAMINATION

1 Q. Do you write songs?

2 A. Yes, I do.

3 Q. Did you write any songs that have ever been in movies?

4 A. Yes, I have.

5 Q. What movies?

6 A. National Lampoon's Last Resort.

7 Q. And you have CDs out?

8 A. Yes, I do, sir.

9 Q. Now, as a publisher, it's important to you that you
10 publish books that are true, correct?

11 A. Yes, it is.

12 Q. And when you get a manuscript that you decide that you're
13 going to pursue, do you do anything to determine whether the
14 content of the book is true?

15 A. Yes. Yes, we do research and look at different things and
16 try and determine what the story is, yes.

17 Q. And --

18 A. The factual basis of it, yes.

19 Q. You do that personally?

20 A. I do that personally. Now I also have an editor, Dr. Russ
21 Becker, he's a -- he helps me now also.

22 Q. What's his background?

23 A. He was a college professor of English, and also a history
24 minor.

25 Q. Where did he teach?

ROBERT MILLEGAN - DIRECT EXAMINATION

1 A. Lane Community College in Eugene, that I know of.

2 Q. Now, when you got the first draft of what eventually
3 became Expendable Elite, did you research the truth of what
4 was sent, what was given to you?

5 A. I did some research, I went to the college library. Also,
6 I have a personal library of 5000 plus books out, a couple
7 other thousand in boxes. My father was a branch chief head of
8 East Asia for the CIA, and was in country in Vietnam in 1956.
9 And he told me some things I never understood about it. So
10 I'd done, in the late 60s, I've done years of research of
11 reading of Vietnam, to understand things my father told me.

12 Q. Are you familiar with a book written by Prince Sihanouk?

13 A. Yes, Prince Sihanouk's autobiography is called My War with
14 the CIA.

15 Q. And had you read that before you got a draft of Colonel
16 Marvin's book?

17 A. Yes, yes, I made a particular study of intelligence
18 operations and covert operations in Vietnam and in other
19 places in the world, yes.

20 Q. And what did Prince Sihanouk indicate in that book about
21 his war with the CIA?

22 MR. COLLINS: Your Honor, I object to that testimony
23 on the basis of hearsay.

24 MR. BACHRACH: It's going to his knowledge and
25 background in researching the book as to what he knew.

ROBERT MILLEGAN - DIRECT EXAMINATION

1 THE COURT: I'll overrule that.

2 A. Well, he, like I said, the title is My War with the CIA,
3 and he documents the -- because the political pressures that
4 he had to contend with CIA also trying to overthrow him and
5 to, you know, use the sovereignty of his country. So
6 there's -- it's a long story, but basically it talks about his
7 coming -- he was the Prince there, and that he had trouble
8 with the CIA in his duties.

9 Q. Now, prior to publishing Expendable Elite, did you -- you
10 were -- were you given information by Colonel Marvin?

11 A. Copious amounts of information.

12 Q. Just directing your attention to the book that's been
13 marked as Exhibit 16, do you have a copy?

14 A. No, I do not, sir.

15 Q. There's a series of photos at the back of the book.

16 A. Yes, sir.

17 Q. Were you given photos prior to publishing the book?

18 A. We were given many photos. This is just a portion of the
19 photos that we were given.

20 Q. Did the photos support statements made by Colonel Marvin
21 in his book?

22 A. Yes, yes, absolutely. They support many of the statements
23 of Colonel Marvin and the statements of the plaintiffs in this
24 case in their recorded audio tapes.

25 Q. Did Colonel Marvin give you, prior to your publication of

ROBERT MILLEGAN - DIRECT EXAMINATION

1 the book, the letter from Jimmy Dean which has been marked as
2 Defendants' Exhibit 13?

3 A. I have to see it.

4 Q. Showing you what's been marked as Defendants' Exhibit 13.

5 A. Now I have to put my glasses on. Yes. Yes. Yes.

6 Q. Now, he referred to Martha Raye as Colonel Maggie in that
7 letter, correct?

8 A. Yes. It's my understanding that Martha Raye has been
9 given an honorary colonelship from many different people,
10 including President Johnson, and she's buried in uniform at
11 Fort Bragg.

12 Q. Just to refresh -- show you -- what did you -- what was
13 your -- did this cause you to believe the book was -- anything
14 in the book was false?

15 A. No. It led me to confirm what was in the book. He says
16 that, you know, it's written like a man who was on the ground
17 and knows of what he speaks. Maggie's forward was a piece of
18 art, and he was going to, you know, preserve the flag that
19 Marvin had presented him, and the picture, and put it up at
20 the place. So they were proud of Colonel Marvin.

21 Q. Do you know where Martha Raye's buried?

22 A. At Fort Bragg.

23 Q. And do you know in what type of clothes she's buried?

24 A. She's buried in uniform. At least that's according to
25 what I've read on the Internet in places. I have not seen her

ROBERT MILLEGAN - DIRECT EXAMINATION

1 actually buried.

2 Q. Now, prior to publishing the book Expendable Elite, you
3 had tapes from Mr. Strait?

4 A. Yes.

5 Q. Mr. Johnson?

6 A. Yes.

7 Q. And Mr. Sirois?

8 A. Yes.

9 Q. Did you listen to those tapes?

10 A. Extensively.

11 Q. And did you listen to them more than once?

12 A. Yes.

13 Q. And why would you listen to them more than once?

14 A. Well, because I was comparing the book and reading through
15 the book, and I had had one person read the book and he says,
16 you know, it doesn't really get to the action, there's just a
17 lot of color and -- a lot of color in there. And I wanted to
18 listen back to the tapes and you listen to the tapes and you
19 read the book and you see that what's on the tapes is a lot of
20 what's in the book. And they were saying there that, you
21 know, in the tapes they wanted to, you know, have the civic
22 action. And I thought it was a good idea to have a book about
23 Vietnam that, you know, it portrayed their activities very
24 very well in taking care of the people. And it was a -- you
25 know, I don't agree with everything that, you know, my author

ROBERT MILLEGAN - DIRECT EXAMINATION

1 says politically, but that is not my job as a publisher.

2 Q. Based upon -- How many times did you listen to the tapes
3 before the book was published?

4 A. I believe all of them at least twice; some of them more
5 than that.

6 Q. Do you recall listening to Mr. Strait's more than that?

7 A. Yes.

8 Q. And is that because he gave the most extensive
9 information?

10 A. Yes. Yes, and it was interesting. And I played it for my
11 wife and some other people, too.

12 Q. Did anything in those tapes cause you to believe that
13 anything was untrue in Colonel Marvin's book?

14 A. No. I mean, what I had was I had an author who had done
15 what authors do. And then when he sent me the information, he
16 sent me a biographical sketch of him. And one thing that very
17 much impressed me was that he was a lieutenant colonel and he
18 was not a high school graduate.

19 And so, you know, an author will take a book -- I don't
20 get a lot of books from not -- people that are high school
21 graduates. And that author will take a book and they'll do
22 things in chronological, make outlines and stuff like that,
23 make a tail, and then they'll, you know, and he had sent it
24 out to his men. And this document that he sent out to the men
25 included all the elements that we're talking about here at the

ROBERT MILLEGAN - DIRECT EXAMINATION

1 trial. And he sent it to his men, and then they added, you
2 know, stuff, and then he took that stuff that they gave him
3 and put it in the book.

4 Q. And so the tapes confirmed what was in the book for you?

5 A. Yes. Yeah, I mean, the tapes were a major part of the
6 book.

7 Q. Right. There was more in the book, but the tapes
8 confirmed -- for example, Mr. Strait in his tape confirmed the
9 fact that a man and woman came to the camp to visit Colonel
10 Marvin, as he wrote in the book.

11 A. Yes. Yes.

12 Q. And you heard Mr. Strait on his tape indicate that that
13 was a flimsy cover.

14 A. Yes, yes. And there are other information --

15 Q. Well, let me, so we move it along, let me just ask the
16 questions, because there is other information and I'm going to
17 let the jury see what you saw to determine that it was a
18 publishable book.

19 Now, you heard on Mr. Strait's tape that he would support
20 Colonel Marvin's statement about the CIA coming that day,
21 correct?

22 A. Excuse me; what was the question?

23 Q. You heard on Mr. Strait's tape that he would support
24 Colonel Marvin --

25 A. Oh, yes.

ROBERT MILLEGAN - DIRECT EXAMINATION

1 Q. -- about the CIA trip that day.

2 A. He even made the statement something like, you know, if
3 you had a mission, damn it, you had a mission. I mean, he
4 said, I knew something was up. And like I say, from my
5 understanding of compartmentalized missions, that they're a
6 need-to-know type basis, and depending on who had the
7 classification, then with the colonel's classification, it all
8 made sense to me.

9 Q. Now, you also heard on that tape about the ARVN regiment
10 coming down to his camp. Correct?

11 A. Yes. Yes.

12 Q. And I believe I showed you the -- no, I didn't show you, I
13 showed the colonel -- Did you have what's been marked as
14 Defendants' Exhibit 35 before you published the book?

15 A. Yes, indeed. Yes. Yes, this is a letter from General
16 Dang basically, you know, confirming that event. And then
17 also, I mean, I knew who General Dang was before I saw this
18 letter, I knew who the Hoa Hoas were and I had an
19 understanding of that. I mean, it was a very complex
20 political situation. And then you had the Hoa Hoas, like I
21 said, they're, you know, it's not just the village, it's 60
22 plus thousand just in his area. And they controlled the two
23 rivers there, the Bassac, which, you know, goes down to the
24 Mekong Delta.

25 Q. Did this --

ROBERT MILLEGAN - DIRECT EXAMINATION

1 A. Saigon.

2 Q. Did this confirm for you that he and General Desobry came
3 to Colonel Marvin's camp and gave the Hoa Hoas amnesty?

4 A. Yes. And that he also provided a document that was
5 presented to me as being written in Colonel Dang's own
6 handwriting that was very detailed about the very complex
7 political situation that this had involved. Because it was
8 very important to the South Vietnamese and to the Americans to
9 have the Hoa Hoas on their side.

10 Q. And he wrote in here that I wanted to avoid any bloodshed
11 between two friendly anticommunist forces --

12 A. Yes.

13 Q. -- to work toward national unity and reconciliation.

14 A. Yes, and I understood what that meant, yes.

15 Q. What did that mean?

16 A. Well, it meant that -- like has been said, the Hoa Hoas
17 were a very independent group. And they had, at one time had
18 had their own army. And so it was very important. Because I
19 mean, these are areas that -- one of the biggest reasons for
20 the peaceful, you know, somewhat of the peaceful situation
21 there was because of the Hoa Hoas. And excuse me, I got lost
22 there. What was the question again?

23 Q. Did that confirm for you that General Dang and Colonel
24 Desobry arrived at the camp to avoid any bloodshed between the
25 South Vietnamese regiment coming down to the camp?

ROBERT MILLEGAN - DIRECT EXAMINATION

1 A. Yes.

2 Q. And that confirmed what the colonel had written in his
3 book?

4 A. Yes, yes.

5 Q. So you believed it was true?

6 A. Yes, I do.

7 Q. You had no reason to believe it wasn't true?

8 A. No. It had been confirmed in the audio tapes also.

9 Q. And you had heard it in the audio tapes and you got a
10 letter from General Dang, and you also referenced that you had
11 handwritten notes from General Dang?

12 A. Yes, that's how they were represented. I have no direct
13 knowledge.

14 Q. And based on -- and he went into more detail in those
15 notes?

16 A. Very very specific political detail that -- it is a very
17 complex political situation between the Roman Catholic
18 government and the -- you had the Hoa Hoas, you also had Cao
19 Daiist and the river pirates, and it was a very complex
20 situation.

21 Q. You heard -- just so we can move this along -- you heard
22 the colonel testify about the strain between the central
23 government and the Hoa Hoas, and he was correct in that.

24 A. Oh, absolutely. Yes.

25 Q. So I don't want to repeat what we did. Now directing your

ROBERT MILLEGAN - DIRECT EXAMINATION

1 attention to the book again.

2 A. Yes, sir.

3 Q. Were you given Appendices 1 through 14 prior to publishing
4 the book?

5 A. Yes.

6 Q. And did you review them?

7 A. Yes, I did.

8 Q. Did they confirm for you the truth of what Colonel Marvin
9 was saying?

10 A. Yes. They substantiated his story, yes.

11 Q. Did he give you any newspaper articles?

12 A. Quite a few; some from Vietnam and then some from the
13 States, from -- seemed to be from a period of early 60s on up
14 through the 90s, mid 90s or so.

15 MR. BACHRACH: I'd like to mark this for I.D. This
16 was an objected to exhibit.

17 THE COURT: Okay.

18 THE CLERK: Defendants' 44.

19 BY MR. BACHRACH:

20 Q. I'm showing you what's been marked for identification
21 Defendants' Exhibit 44. Do you recognize this document?

22 THE COURT: Mr. Bachrach, how about giving me one.

23 MR. BACHRACH: I'm sorry.

24 A. Yes, sir, this is one of the documents that Colonel Marvin
25 supplied to me.

ROBERT MILLEGAN - DIRECT EXAMINATION

1 Q. And what is this?

2 A. This is an English Saigon paper account of the battle at
3 Khanh Bin.

4 Q. Did you rely on this in determining whether or not the
5 matters written in the book by Colonel Marvin were true?

6 A. This was one of a plethora of documents, yes.

7 MR. BACHRACH: I'd like to admit this into evidence.

8 MR. COLLINS: Your Honor, I object to that. There's
9 been no proper authentication of documents.

10 THE COURT: I sustain that.

11 BY MR. BACHRACH:

12 Q. Where did you get this document?

13 A. From Colonel Marvin.

14 Q. And what did Colonel Marvin represent to you that this
15 document was?

16 A. Well, Colonel Marvin sent this to me with a, you know,
17 large stack of documents, and he represented it to be what it
18 is. It's a Saigon paper account, May 1966.

19 MR. BACHRACH: I'd like to introduce it, Your Honor.

20 MR. COLLINS: Your Honor, same objection.

21 THE COURT: Same ruling. There's no authentication.

22 MR. BACHRACH: Your Honor, it's a document that he
23 got to review to determine the truth of the --

24 THE COURT: I understand that, but that doesn't mean
25 it's admissible into evidence. He's testified that he got it.

ROBERT MILLEGAN - DIRECT EXAMINATION

1 BY MR. BACHRACH:

2 Q. So you received newspaper articles, you indicated?

3 A. Yes, I did.

4 Q. And based on your review of the newspaper articles, did
5 that support whether, in your mind, what Colonel Marvin wrote
6 about the Khanh Bin battle was true or false?

7 A. Well, true. There was another Vietnamese paper with
8 pictures and everything talking about the battle; it's written
9 in Vietnamese. So he did supply a translated page with it
10 also. I couldn't read Vietnamese.

11 MR. BACHRACH: I'd like to identify this document.

12 THE CLERK: 45 for I.D.

13 BY MR. BACHRACH:

14 Q. I'm only going to show you the first page of this that has
15 been marked for identification. What was this?

16 A. This is a Vietnamese article. I did not have this, I had
17 a copy. This seems to be the original.

18 Q. So that's not the document you had?

19 A. That is not the document I had. I had a copy.

20 MR. BACHRACH: Could I mark this 46.

21 BY MR. BACHRACH:

22 Q. Showing you what I've marked for identification as
23 Defendant 46.

24 A. Yes.

25 Q. Do you recognize that document?

ROBERT MILLEGAN - DIRECT EXAMINATION

1 A. This is similar to the document I received. This might be
2 the document.

3 Q. Is it the document you received?

4 A. No, I think mine had the color -- had color.

5 Q. I gave that to the --

6 MR. COLLINS: You can use this one.

7 A. Yes.

8 Q. Is that the copy you received?

9 A. Yes.

10 Q. And what is that?

11 A. Well, like I say, it's in Vietnamese, I can't read it.

12 There is a translation on this side that says --

13 MR. COLLINS: Your Honor, that's what I would object

14 to. I guess, one, this document's not been properly

15 authenticated. I know he hasn't moved it into evidence yet.

16 But as to the translation, we don't know who translated it.

17 Unless Mr. Millegan is fluent in Vietnamese, there's no way to

18 assure that the part he's about to read is actually what this

19 document says.

20 MR. BACHRACH: I'll remove the translated part.

21 THE COURT: Okay.

22 MR. COLLINS: What did you say?

23 MR. BACHRACH: I'll remove the translated part.

24 MR. COLLINS: Don't allow him to testify about it.

25 MR. BACHRACH: And I will not allow him to testify

ROBERT MILLEGAN - DIRECT EXAMINATION

1 about it.

2 THE COURT: So removing the translated part, you have
3 no objection to it?

4 MR. COLLINS: It's still no authentication.

5 A. There are some words I can read. It says --

6 Q. And do you -- This is a document received. What is it?

7 A. It is a Vietnamese news article about the battle at Khanh
8 Bin.

9 Q. And does it also have pictures?

10 A. It has pictures, yes.

11 Q. And did you rely on this in determining whether or not
12 what Colonel Marvin wrote in the book about the battle of
13 Khanh Bin was true?

14 A. Yes, I did. This was continued confirmation of his story,
15 yes.

16 Q. And did the colonel indicate to you when he gave it to you
17 that this was a copy of a newspaper article published by the
18 Saigon newspaper?

19 A. I don't know if he presented it as a Saigon newspaper, but
20 he presented it to me as a Vietnamese newspaper about the
21 battle at Khanh Bin.

22 Q. And this was published contemporaneously with the battle?

23 A. Yes.

24 MR. BACHRACH: I'd like to move it into evidence.

25 MR. COLLINS: Authentication, Your Honor.

ROBERT MILLEGAN - DIRECT EXAMINATION

1 THE COURT: How do you authenticate it?

2 BY MR. BACHRACH:

3 Q. In any event, you've indicated that you relied on
4 newspaper articles, correct?

5 A. Yes. Vietnamese and American.

6 Q. And that confirmed for you what you wrote in the book --
7 excuse me -- what Colonel Marvin wrote in the book about the
8 battle of Khanh Bin?

9 A. Yes, it did.

10 Q. Did you have any question in your mind when you were
11 determining to publish the book, whether or not the battle of
12 Khanh Bin occurred?

13 A. I -- yes, it occurred. Yeah, I feel it occurred, yes.

14 Q. And did you have any question in your mind as to whether
15 or not Colonel Marvin's description of the battle occurred as
16 he described it?

17 A. No, I had -- I had no recollection of it. I had to rely
18 on his recollection. And to me it seemed correct, and it did
19 jive with other information that he presented me with.

20 Q. And in addition to the newspaper articles, there was also
21 the tapes of the plaintiffs?

22 A. Yes.

23 Q. You also reviewed a copy of a monthly operational summary
24 for the month of May --

25 A. Yes.

ROBERT MILLEGAN - DIRECT EXAMINATION

1 Q. -- 1996?

2 A. Yes.

3 Q. And that has been introduced into evidence.

4 A. Yes.

5 MR. BACHRACH: May I approach the bench, Your Honor?

6 THE COURT: Sure.

7 (Discussion held off the record at side bar.)

8 THE COURT: Pursuant to Rule 902, Subsection (6),
9 I'll admit this newspaper article for the limited purposes of
10 what he was provided and his state of mind when he decided to
11 publish this book; we'll take out the translation though.

12 MR. COLLINS: Fair enough.

13 MR. BACHRACH: Bear with me for a second. Are we
14 ready to begin, Your Honor?

15 THE COURT: Sure.

16 BY MR. BACHRACH:

17 Q. Showing you what's been marked as Defendants' Exhibit 47,
18 was that a document you were provided before the book was
19 published?

20 A. Yes, part of it. The larger document, but yes.

21 Q. But that's a newspaper article?

22 A. Yes, it is.

23 Q. And what did that show to you?

24 A. Well, it showed to me that people in Vietnam at the time
25 were reporting about a battle at Khanh Bin. And that there's

ROBERT MILLEGAN - DIRECT EXAMINATION

1 obviously a list here of weapons, I would gather, captured.

2 MR. COLLINS: Your Honor, I'll object to that.

3 There's been no foundation laid that Mr. Millegan speaks
4 Vietnamese.

5 A. I speak My Lai; I don't speak Vietnamese.

6 THE COURT: Sustained. Go ahead.

7 BY MR. BACHRACH:

8 Q. Did you rely on that, in part, with respect to whether you
9 believed that a battle did take place at Khanh Bin, as written
10 by Colonel Marvin?

11 A. Yes.

12 Q. Now, you also were given a monthly operational report, and
13 that's one of the appendices in the book, correct?

14 A. Yes.

15 Q. And you reviewed that. And did that confirm for you what
16 was written in the book was true?

17 A. It -- Yes.

18 Q. At least with respect to that document.

19 A. Right. It seemed to substantiate, you know, the story,
20 yes.

21 Q. I'm showing you what's been marked for identification as
22 Defendants' Exhibit 48.

23 THE COURT: Thank you.

24 Q. Do you recognize that document?

25 A. Yes, this seems to be the original of one that I received

ROBERT MILLEGAN - DIRECT EXAMINATION

1 a copy of.

2 Q. And you received a copy of that newspaper article before
3 you published your book?

4 A. Yes, I did.

5 Q. Did you rely on that in determining whether or not what
6 was written in the book about the Khanh Bin battle was true?

7 A. Again, it confirms the events in the book, yes.

8 MR. BACHRACH: I'd like to introduce that into
9 evidence.

10 MR. COLLINS: Your Honor, it looks like a newspaper
11 article.

12 THE COURT: Okay. Go ahead.

13 MR. COLLINS: What number was that, please?

14 MR. BACHRACH: 48.

15 BY MR. BACHRACH:

16 Q. What did you learn from this newspaper report?

17 A. Well, if I remember correct, it was --

18 Q. You don't have it in front of you?

19 A. No, it's a story of General Dang and of the giving awards
20 for the battle. It talks about the battle at Khanh Bin and
21 how some Fourth Corps Special Forces combatants got cash
22 awards. I believe that's Vietnamese Special Forces.

23 Q. So that's further information you had in relying -- in
24 determining the truth of what was asserted by Colonel Marvin?

25 A. Yes, indeed, yes.

ROBERT MILLEGAN - DIRECT EXAMINATION

1 Q. Yesterday a letter from Tony Trung was introduced into
2 evidence.

3 A. Yes.

4 Q. Did you have a copy of that prior to the publication of
5 the book?

6 A. Yes.

7 Q. And who gave that to you?

8 A. Colonel Marvin.

9 Q. Did you rely on that document in determining or reviewing
10 whether or not what you were going to publish as Expendable
11 Elite had true and accurate information in it?

12 A. Yes, it was confirmation from another source, a source
13 that was there, and it seemed to be very -- a natural flow of
14 communication. Yes, yes, I relied upon it.

15 Q. And that further supported your belief as the truth in the
16 book?

17 A. Yes, it did.

18 Q. Did anyone present you, prior to your publication of the
19 book, with any information that caused you to question in any
20 way the truth of what was asserted in Colonel Marvin's book,
21 Expendable Elite?

22 A. No. No, I received none.

23 Q. Now, you received a letter from the Special Forces,
24 correct?

25 A. Yes.

ROBERT MILLEGAN - DIRECT EXAMINATION

1 Q. Did that letter provide you any substantive information
2 prior to publication of the book -- excuse me, that was
3 received after you published the book, correct?

4 A. Yes.

5 Q. Even at that time did they provide you with any
6 substantive information that put into question the truth of
7 any aspect of the book?

8 A. No. They gave me nothing. No documentation at all.

9 Q. And as you know, the plaintiffs have known that Colonel
10 Marvin was going to write a book since 1988.

11 A. Yes, yes. It -- like I say, I mean, he was doing what an
12 author does. I mean, you write the story and you send it to
13 people to -- that were with you to help you understand things
14 and remember what you didn't remember and stuff.

15 Q. And did Colonel Marvin show you -- there were various
16 manuscripts of the book?

17 A. Yes.

18 Q. Since 1988?

19 A. Yes.

20 Q. And did Colonel Marvin indicate to you which manuscripts
21 he sent to certain of the plaintiffs?

22 A. No. I don't believe he said I sent this manuscript to
23 these people. I believe there was a -- No. No.

24 Q. Now, in all the manuscripts that you've seen since 1988,
25 the manuscripts indicate this is a true account, correct?

ROBERT MILLEGAN - DIRECT EXAMINATION

1 A. Yes. I -- he had sent me a thing that did have, you know,
2 his history of the book of how he had gone to write it. So
3 yes.

4 Q. Well, you understood at one point he was going to write a
5 novel.

6 A. He had -- Yes. Yes.

7 Q. When did you first discuss with Colonel Marvin the
8 printing of his book?

9 A. It would have been in 2002, I believe. I don't know
10 exactly when. Either the end of the year 2000 -- yeah, end of
11 the year 2002.

12 Q. At that time did he present that to you as nonfiction?

13 A. Oh, no.

14 Q. Nonfiction?

15 A. Yes, it's nonfiction, yes. It was a true story.

16 Q. He never presented it to you as fiction?

17 A. No, never.

18 Q. Never discussed with you that it was going to be published
19 as fiction?

20 A. No, he presented me with the history, and I had known that
21 he had been -- you know, he had met with somebody and he
22 impressed him, and then he had his conversion, and so yeah, it
23 was -- I had known he'd been doing a true story since that
24 time, yes. Since '86, I believe. I don't publish any novels,
25 I just --

ROBERT MILLEGAN - DIRECT EXAMINATION

1 Q. Trine Day only publishes nonfiction?

2 A. Yes.

3 Q. Now, you're aware that the Special Forces Association has
4 published articles in The Drop concerning the book is false,
5 correct?

6 A. Yes, I have been sent copies.

7 Q. And you were sent a letter, were you not, from the Special
8 Forces, indicating that they were retaining attorneys for the
9 plaintiffs?

10 A. In the second letter they talked about direct legal
11 action, yes, I believe, yes, and they would be helping -- I
12 can't remember the exact words, but they would be helping the
13 plaintiffs with legal.

14 Q. And the Special Forces was demanding that you cease
15 publishing the book.

16 A. Or that I put a disclaimer on it that it was fiction by a
17 dreamer, I believe was the words.

18 Q. Yet they at no time provided you with any substantive
19 information to cause you to question the truth of the things
20 asserted in the book.

21 A. No. They said there that they had documentation, but they
22 have not presented it to me.

23 Q. And -- I'm sorry, I apologize, I had one of those brain
24 burps. Sometimes that happens to us all.

25 THE COURT: Especially on the fourth day of a trial.

ROBERT MILLEGAN - DIRECT EXAMINATION

1 MR. BACHRACH: Yeah, and when everyone wants to get
2 it done.

3 BY MR. BACHRACH:

4 Q. Let me go back on here with respect to -- So you were
5 informed by the Special Forces that they were associating with
6 the plaintiffs and taking the position the book was false.

7 A. Yes. Yes, and they explained how they had -- I don't know
8 if they -- they said that they had done something to time
9 Warner and CNN, I didn't quite, you know.

10 Q. So they threatened you?

11 A. Yes.

12 Q. And they threatened you. Did they -- Do you recall what
13 threat they made exactly?

14 MR. DEAVER: Object, Your Honor, as to the threat,
15 threatening terminology.

16 MR. BACHRACH: I'll withdraw the question.

17 BY MR. BACHRACH:

18 Q. In any event, you received a letter from them demanding --

19 A. Yes. Demanding.

20 Q. -- you cease publication, or publish the book as fiction
21 by a dreamer.

22 A. Yes.

23 Q. And you didn't.

24 A. No, I did not.

25 Q. And did you -- was your decision not to do so because they

ROBERT MILLEGAN - DIRECT EXAMINATION

1 had provided you with no information which would cause you to
2 question the truth of the book?

3 A. That was one of the reasons, yes. I mean, I didn't see
4 anything more there that was substantive that gave me
5 substance, it just seemed to be a demand.

6 Q. So did you feel at that point that they were trying to
7 chill your ability to publish this book?

8 A. It seemed like they were trying to, you know, stop the
9 story from being disseminated. Yes, they did not want the
10 facts of the book out or, you know, I didn't -- I didn't
11 really question their reasoning as to why they were doing it.
12 It seemed silly.

13 Q. But you felt that the plaintiffs, through the association,
14 were trying to chill the book?

15 A. Yes.

16 Q. And by chilling the book, meaning stop the publication.

17 A. Well, stop the dissemination of the published book, yes.

18 Q. How has this lawsuit and the statements made that the book
19 is false, by the plaintiffs, affected Trine Day?

20 A. It's immeasurable. It's affected it greatly. It's
21 affected Trine Day's ability to raise funds. Trine Day is not
22 a -- is a publishing house that I started on \$5000 worth of
23 borrowed money. And it's -- it is -- it keeps going by
24 selling books and having -- putting the money back in. And
25 part of selling books is to advertise. And it has left us

ROBERT MILLEGAN - DIRECT EXAMINATION

1 without any money to advertise. It substantially has affected
2 the sales of our books and affected our overall sales. Last
3 year, 2004, we did over 220,000 in sales through our
4 distributor. Last year we did about 120,000, with more books.
5 And then it has affected my ability to plan, because
6 publishing is a --

7 Q. Well, let me stop you there. You said with more books.
8 So you sold less --

9 A. Right.

10 Q. -- even though you were publishing more books?

11 A. Yes.

12 Q. And how did this lawsuit affect your relationship with the
13 distributor?

14 A. Well, it did. I had to pay for the distributor's lawyer;
15 cost me \$8000.

16 Q. Has it affected the distribution of your books?

17 A. No. One reason I went with the distributor I did was
18 because the main publisher and the distributor was a publisher
19 of the book, The Politics of Heroin of Southeast Asia, and
20 they were very -- had had problems getting books published,
21 and dealt with the CIA before. So it's one reason I went with
22 them. So no, they have not given me any problems about the
23 content of the book. I have had to pay for their lawyer.

24 Q. And the lawsuit has also cost you money so that you can't
25 do what you need to do to promote and sell your books?

ROBERT MILLEGAN - DIRECT EXAMINATION

1 A. To promote and sell our books, and then also to raise
2 funds. I mean, you go to a bank and you want to get a loan
3 and you -- you have a lawsuit, and they say, well, thank you
4 very kindly, sir.

5 Q. I'm showing you what's been marked as Defendants'
6 Exhibit 32.

7 A. Yes.

8 Q. Could you explain what that is?

9 A. This is my tax forms from 2004.

10 Q. And what does that show?

11 A. Well, it shows that in 2004 my ordinary business income
12 was \$26,000. \$26,355.

13 Q. What has it been in 2005?

14 A. We're losing money. We're about 20, 30,000 down. I
15 haven't had the money to pay the accountant to get the books
16 done for the year. I have done just my own.

17 Q. How did you do in 2003?

18 A. We lost money in 2003.

19 Q. But you were starting on the rise in 2004?

20 A. Yes. Yes.

21 Q. And how much have you paid in attorneys' fees, or do you
22 owe attorneys' fees in this case?

23 A. I try not to think about it. It's -- it's somewhere
24 around \$50,000.

25 Q. Do you attribute the loss of monies that you've sustained

ROBERT MILLEGAN - DIRECT EXAMINATION

1 in 2005, as a direct result of this lawsuit?

2 A. Absolutely.

3 Q. And explain why.

4 A. Well, I've had to give you guys money instead of
5 advertising my books, using some of that money to advertise
6 books. When you advertise books, I mean, I have a chart, you
7 advertise, sales go up; you don't advertise, sales go down.

8 Q. Has it hurt the sales of Expendable Elite?

9 A. It has actually increased within the last couple months,
10 the sales of Expendable Elite.

11 Q. But I mean during the entire term of the lawsuit.

12 A. You know, I don't know. I don't know because I don't know
13 who all would buy it, and I'm sure there are people that would
14 not buy the book because of what Special Forces says. It
15 never sold a lot. We didn't print a lot.

16 MR. BACHRACH: I don't have any questions for you
17 right now.

18 I have no more questions, Your Honor.

19 THE COURT: Okay.

20 CROSS-EXAMINATION

21 BY MR. COLLINS:

22 Q. Round two for you and me.

23 A. Good, Dave, Mr. Collins.

24 Q. You can call me Dave, that's all right.

25 A. Dave?

ROBERT MILLEGAN - CROSS-EXAMINATION

1 Q. That's fine. What song did you write for National
2 Lampoon's Resort Vacation?

3 A. Well, there's two. One is called Wherever You Are, and
4 the other one is called Sad and Lonely.

5 Q. Great movie.

6 A. Well, it has the two Coreys in it, Corey Feldman, Corey
7 Haim. Kind of corny really.

8 Q. I like corny stuff. All right. Let me ask you some
9 questions about some of your testimony.

10 A. Yes, sir.

11 Q. Your dad was a CIA officer?

12 A. Yes, sir.

13 Q. In Vietnam?

14 A. No, he was branch chief in Virginia, D.C. there, and then
15 also he went covert in 1950, and took myself as a one-and-a-
16 half year old child to Indonesia, and I spent a year and a
17 half in Indonesia in the early 50s.

18 Q. Didn't you testify on your direct examination, something
19 to do with the year 1956?

20 A. Yes, yes, my father was in country in Vietnam in 1956
21 meeting with Colonel Lansdale.

22 Q. Now, who is Colonel Lansdale?

23 A. Colonel Lansdale went into Vietnam in '54, was main
24 liaison for the United States at the beginning of their
25 relationship with Vietnam. He ended up becoming a general.

ROBERT MILLEGAN - CROSS-EXAMINATION

1 He was head of, oh, Operation Mongoose, the operation that
2 took -- was going to -- you know, set up to assassinate Fidel
3 Castro.

4 Q. Now, the French did not leave Indochina until 1954,
5 correct?

6 A. Yes, Bien Ven Phu.

7 Q. The battle of Bien Ven Phu was 1954?

8 A. Yes.

9 Q. And that ended the French occupation of Indochina?

10 A. Yes, things don't end on a certain date. There's, you
11 know, things going in and out, but yes, yes.

12 Q. Okay. You testified -- Let me ask you something about
13 Prince Sihanouk.

14 A. Yes.

15 Q. Is he still alive?

16 A. Yes, he is.

17 Q. And he's still the ruler of Cambodia?

18 A. I believe so, yes. Yes.

19 Q. So in last 50 years, I guess, or 40 years, however long
20 it's been, the United States government or the CIA or any
21 other entity has not been successful in attempting to remove
22 him from power, have they?

23 A. No, Project Cherry was not successful. There were several
24 projects that were designed to assassinate Sihanouk.

25 Q. But none have been successful, even as we speak?

ROBERT MILLEGAN - CROSS-EXAMINATION

1 A. Well, many things in life are not successful, yes, sir.

2 Q. Okay. You testified that Colonel Marvin had provided you
3 with, I think you said copious notes, and other materials
4 about this book.

5 A. Yes.

6 Q. Where are those notes?

7 A. Notes?

8 Q. Notes? Didn't you say copious notes?

9 A. Not notes of his, but -- No, he did not give me any notes
10 per se that he had written. He gave me notes that other
11 people had written, and letters to his -- well, there were --
12 I guess there was letters to his wife, that would be
13 considered notes by him.

14 Q. Okay.

15 A. But no, there was no notes about the book. The notes I
16 was talking about were from General Dang, that were presented
17 to me.

18 Q. All right. How about any of these mysterious
19 three-by-five cards that we've heard some testimony about?

20 A. No, I never saw those.

21 Q. You've never seen any of those?

22 A. No, I have not.

23 Q. And as you understand it, that is contemporaneous -- those
24 were contemporaneously made while the actions were taking
25 place in Vietnam?

ROBERT MILLEGAN - CROSS-EXAMINATION

1 A. I understood that, and I asked the colonel for those. And
2 I says, Colonel, you should have kept those. And Colonel
3 says, well, I had the information; I didn't need them. And
4 you know --

5 Q. So there's really no way for you, as a publisher, to
6 determine whether or not there's a difference in what you're
7 reviewing, and the firsthand material that Colonel Marvin had
8 possession of.

9 A. Well, a lot of the firsthand material is from the audio
10 tapes of the plaintiffs, when the author went to other people
11 who were there and asked them for color and detail about, you
12 know, what was going on.

13 Q. Okay. We'll get to the tapes in just a second. But I
14 believe Mr. Bachrach introduced into evidence a Vietnamese
15 newspaper.

16 A. Yes, he did, sir.

17 Q. And you don't read Vietnamese, do you?

18 A. No, I do not, sir.

19 Q. Okay. Did you have an opportunity -- did you have the
20 opportunity to review any American newspaper articles about
21 it?

22 A. American newspaper articles about Colonel Marvin where he
23 had told the same story, yes.

24 Q. Okay. I'm going to show you what's been introduced into
25 evidence as Plaintiffs' Exhibit 40.

ROBERT MILLEGAN - CROSS-EXAMINATION

1 A. Um-hum.

2 Q. Did you have an opportunity to review that newspaper
3 article?

4 A. No, I did not have this.

5 Q. Okay. And what's the date on that?

6 A. February 1966.

7 Q. Could you publish to the jury the first sentence of that
8 newspaper article?

9 A. An Phu Villagers Have No Fear of the Viet Cong. And
10 that's generally because of the Hoa Hoas, and the An Phu
11 village was protected. It's --

12 Q. Was protected?

13 A. Yeah, the village. An Phu -- I mean, there's a village of
14 An Phu and there's the district of An Phu. I mean, they're
15 two different things.

16 Q. Um-hum.

17 A. You know, I mean, Khanh Bin is in the An Phu district.

18 Q. Right.

19 A. But Khanh Bin is not the An Phu village.

20 Q. Okay. Look down in the last paragraph of the first column
21 of that exhibit.

22 A. Yes.

23 Q. Is there a quote that is attributed to then Captain Daniel
24 Marvin, "The people here have no fear of the VC."?

25 A. Yes.

ROBERT MILLEGAN - CROSS-EXAMINATION

1 Q. Captain Daniel Marvin, team leader.

2 A. Yes.

3 Q. Now, if you had reviewed this newspaper article, would it
4 have influenced your decision as to whether or not to publish
5 the book, or at least raise some questions about its
6 authenticity?

7 A. Well, if you continue reading there, he says that this is
8 the center of the Hoa Hoa sect of Buddhists. They detest
9 communists primarily because of the VC denial of religion.

10 A big problem in Vietnam is you had -- when you went into
11 a village, you didn't know who the VC were. But in the Hoa
12 Hoas, the Hoa Hoas didn't like the VC themselves. The Hoa
13 Hoas had -- at one time their own army to fight the VCs
14 themselves. The Hoa Hoas were very much anticommunist.

15 So no, this does not bring into any doubt in my mind as to
16 Colonel Marvin's story.

17 Q. Okay. Did Colonel Marvin ever tell you that he was
18 involved in other covert operations?

19 A. Yes --

20 MR. BACHRACH: Objection, Your Honor.

21 THE COURT: Well, I think I can overrule. Just that
22 one question, right now.

23 MR. COLLINS: Well, depending on the answer.

24 A. Yes.

25 Q. What were they?

ROBERT MILLEGAN - CROSS-EXAMINATION

1 A. I thought --

2 MR. BACHRACH: Objection, Your Honor.

3 THE COURT: Sustained. What does it make more or
4 less likely in this case?

5 MR. COLLINS: Well, it goes to his state of mind as a
6 publisher.

7 THE COURT: All right. Whoa, whoa, whoa, whoa. The
8 government pays me to do something. I have to do it.

9 A. They ain't paying me.

10 THE COURT: You need to set a period of time, because
11 that's a broad question and there's a lot of stuff that's gone
12 under the bridge, and we're talking about the time prior to
13 publication, as to that question.

14 MR. COLLINS: Yes, sir.

15 A. Yes, he told me about other --

16 MR. BACHRACH: Objection.

17 THE COURT: Wait a minute. Sit down. All right?
18 Let him answer the question. If it's improper, then I'll
19 strike it. Okay?

20 MR. BACHRACH: I'm sorry, Your Honor.

21 THE COURT: Go ahead.

22 A. Yes, it did influence my decision, because he told me
23 about his involvement with other operations, which actually
24 could be deemed more glamorous and more news catching than
25 some book about an operation in Vietnam 60 -- you know, in the

ROBERT MILLEGAN - CROSS-EXAMINATION

1 60s.

2 Q. Are we talking about within the same time frame?

3 A. What do you mean, sir, what time frame of what?

4 Q. Well, I'm talking about the Vietnam era, the 60s, that
5 basic time frame, prior to publication of the book, or around
6 the time of the publication of the book.

7 A. What is your question?

8 Q. I'm sorry, that's not very artfully asked, and I apologize
9 for that. You testified that Colonel Marvin had told you of
10 other covert operations that he was involved in. Is that a
11 fair representation of what you told me?

12 A. Yes.

13 Q. Okay. What I want to know, if those operations involved
14 the same time period that we're talking about with this book.
15 In other words, the Vietnam era.

16 A. Well, the Vietnam era is very -- they did not -- they were
17 not done during the time of this book, from '65 to '65,
18 December of '65 to August or so of '66, no.

19 Q. But did they involve action in the Vietnam War? I'm not
20 interested in anything that occurs after that.

21 A. No, he didn't talk about anything in -- that he had done
22 with the -- There was one thing of a -- this was after
23 Vietnam, when he was in Thailand. It wasn't a covert action,
24 it was just he was -- did something in a -- he stopped the
25 flow of sterile weapons from Thailand to the United States.

ROBERT MILLEGAN - CROSS-EXAMINATION

1 Q. Okay. Any other ones?

2 A. Concerning Vietnam?

3 Q. Right.

4 A. Not that I'm aware of.

5 Q. Okay. All right. I believe you testified that one of the
6 items that you relied on is Defendants' Exhibit 13, which is a
7 letter from the Special Forces Association, in particular
8 James C. Dean, is that correct?

9 A. Yes. Yes.

10 Q. All right. Now, that's something that Colonel Marvin gave
11 you in the package, is that correct?

12 A. Yes.

13 Q. Does that letter state that Mr. Dean is commenting on the
14 entire manuscript, or --

15 A. No, it does not, no, it says that he's talking about
16 Chapter 7.

17 Q. And what chapter is that?

18 A. Well, I'd have to, you know, refresh my memory here.

19 Q. I had to also.

20 A. And, you know, I'm not completely sure that the Chapter 7
21 he was looking at is this same one, because I'm not -- the
22 manuscript he was looking at -- because this was in 1995. So
23 he was not looking at this Expendable Elite, he would have
24 been looking at Bassac Bastards or Apocolypse at An Phu. So I
25 do not know if this Chapter 7 is the same Chapter 7 that he

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1 was looking at. But --

2 Q. Well the --

3 A. He was confirming one of the chapters in a manuscript that
4 he saw.

5 Q. Were the chapters rearranged?

6 A. You know, I can't remember. I know that we did do -- it
7 had gone through some revision. When I first received it, it
8 was -- the whole book was still all in the diary format, and
9 just part of the book was in more of the story format.

10 Q. What is Chapter 7?

11 A. Chapter 7 here is called the shotgun.

12 Q. Okay. That doesn't involve alleged mutiny, does it?

13 Or --

14 A. There is no allegations of mutiny in the book.

15 Q. It doesn't involve the issue that we've heard about --

16 A. You know, I --

17 Q. Hold it. Let me finish my question.

18 A. Okay.

19 Q. It doesn't involve the issue we've been discussing when
20 Colonel Marvin disobeyed what he perceived to be an illegal
21 order and set up an ambush site on the river, does it?

22 A. No. But again, as I stated, I have no idea of what
23 Chapter 7 that he was referring to.

24 Q. Okay, fair enough.

25 Now let's talk a little bit about these tapes. I believe

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1 we covered this when you and I had an opportunity to speak
2 last time, but I want to make sure that I understand it. You
3 relied upon the tapes of Mr. Johnson, Mr. Strait and
4 Mr. Sirois, in determining whether or not to publish this
5 work. Isn't that true?

6 A. As to the veracity, and I mean, like I say, I listened to
7 the tapes several times. And I could, you know, listen to the
8 tapes and read the book, and I could see the tapes in the
9 book.

10 Q. At that time when you were listening to those tapes, you
11 really didn't know whose voice was on those tapes, did you?

12 A. No, they -- they said who -- I knew who they were from the
13 book, and did I know that that was John Strait speaking? No,
14 but they -- the people said that they could use his name,
15 and -- I don't know. I mean, is it your contention that they
16 hired actors to do it?

17 Q. Well, the good thing about this is I get to ask the
18 questions.

19 A. Okay.

20 Q. Okay? There was an easy way to verify that though, wasn't
21 there? Couldn't you have verified that very easily?

22 A. I don't know.

23 Q. Comes to mind that maybe you could have picked up the
24 phone. Colonel Marvin certainly knew how to get in contact
25 with his troopers, right?

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1 A. I don't know. People move, I don't know. I -- no, I did
2 not contact the people. I mean, those -- their tapes had been
3 in 1988. I mean, the history of the book and, you know, had
4 gone quite a ways. So no, I did not doubt the veracity of Mr.
5 Marvin. He seemed to be a very earnest, candid fellow.

6 Q. Did you talk to Tony Trung?

7 A. No, I did not talk to Tony Trung.

8 Q. Okay. Did you talk to any of the other 24 members,
9 American members of that team?

10 A. No, I did not.

11 Q. Have you talked to any of those 24 guys since this trial
12 started, or since this case was filed?

13 A. No, but I have complete verification in black and white
14 from the Joint Chiefs of Staff in their operations of lessons
15 learned.

16 Q. Well --

17 A. Since this --

18 Q. That's not in evidence. Okay?

19 A. Well --

20 Q. Well, no.

21 A. -- we can play games.

22 Q. No, I'm not interested in playing games, Mr. Millegan.

23 A. Okay.

24 Q. I'm interested in finding out why you published this book.

25 A. May I read something, sir, in the publisher's afterword?

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1 I mean, I put in here directly my thoughts at the time as to
2 why I published the book.

3 Q. Please.

4 A. Okay. The last paragraph is really the most -- "Coming
5 from the family of a repented CIA officer, whose publicly
6 declared reason for leaving the agency was the CIA's
7 predilection for using the ends to justify the means, I could
8 relate to Dan's desire to tell his story, Expendable Elite. I
9 can't -- I could relate to Dan's desire for telling his story.
10 Expendable Elite affords us all the opportunity to learn from
11 a clearer historical record, garner some understandings into
12 the use of Special Forces in conflicts, and hopefully spread
13 the balm of daylight that may help heal the souls of their
14 secret burdens. Truth, as has been said, is the first
15 casualty of war, and with variance from truth, our humanity
16 and our republic suffers."

17 Q. Now, it's also true that you run a publishing house, isn't
18 that --

19 A. What?

20 Q. You run a business?

21 A. Yes, I do.

22 Q. And the goal of that business is to make money, isn't it?

23 A. Well, the goal of the business, no, is -- I support myself
24 from it, but the goal of the business is not to make money.

25 That is not the reason to --

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1 Q. Isn't it true that this was the second book that Trine Day
2 published?

3 A. Yes.

4 Q. Isn't that what you told me earlier?

5 A. Yes, it is.

6 Q. At that time you only had one book on the shelf?

7 A. Yes, it is.

8 Q. All right. So it was important for your business starting
9 out to have another book on the shelves, wasn't it?

10 A. Yes, indeed.

11 Q. Okay. Now, let me ask you this. If this book had not
12 contained allegations of the assassination plot against Prince
13 Sihanouk, the ARVN regiment supposedly coming up to wipe out
14 A-424, massacre of civilian farmers and the other -- some of
15 the other events portrayed in this book, would you have
16 published it?

17 A. Yes. Those events -- those -- I did not look at this as a
18 sensationalist book, no. To me, this is very almost, you
19 know -- I published some books that have stronger allegations.

20 Q. But that -- and that's your business?

21 A. Yes.

22 Q. You publish sensationalism?

23 A. No, I do not publish sensationalism. I publish reporting
24 on secret -- on secrets.

25 Q. And there's a difference?

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1 A. No, I'm not -- I'm not a sensationalist publisher, no.

2 Q. Okay. Have you ever been contacted by anybody from the
3 Central Intelligence Agency regarding your publication and
4 dissemination of this book?

5 A. No, I have not.

6 Q. Okay. With regard to your advertisement, I believe you
7 testified that the money that you've spent with your legal
8 team, is taking money away from your advertising budget. Is
9 that correct?

10 A. I have no advertising budget.

11 Q. But you do maintain a web site?

12 A. Yes, I do.

13 Q. And you advertise your books on your web site?

14 A. Yes, I do.

15 Q. And you do that work yourself, don't you?

16 A. With myself and Mr. Ed Bishop, yes, I do.

17 Q. Another thing you said in your direct testimony,
18 Mr. Millegan, that struck me as odd, was you said that this
19 lawsuit has actually helped you with the sales of Expendable
20 Elite.

21 A. Like they said, you know, publicity is publicity, it
22 doesn't matter how they sell your name. But during the last
23 three months, the sales of the book have gone up because there
24 has been interest in Expendable Elite.

25 Q. Okay.

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1 MR. COLLINS: Your Honor, may --

2 A. 200 books, basically.

3 MR. COLLINS: Your Honor, that's all we have. Thank
4 you, Mr. Millegan.

5 A. Thank you, sir.

6 MR. BACHRACH: No further questions, Your Honor.

7 THE COURT: Thank you, Mr. Millegan.

8 A. Thank you.

9 MR. OGIBA: No further witnesses, Your Honor.

10 THE COURT: Okay. They rested.

11 MR. COLLINS: Your Honor, I think we have some
12 motions.

13 THE COURT: We'll just go to lunch a little early
14 today. So we'll start -- we'll come back, and it's -- start
15 at 1:15 -- 1:30, because I have a plea at 1:15. 1:30.

16 (Jury excused.)

17 (A recess was held at this time.)

18 (Jury not present.)

19 MR. OGIBA: Could we go to side bar, Your Honor?

20 THE COURT: Yes.

21 (Discussion held off the record at side bar.)

22 THE COURT: Go ahead and bring the jury in.

23 (Jury present.)

24 THE COURT: Ladies and gentlemen of the jury, the
25 defendants have rested; now the plaintiffs are going to call

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1 some rebuttal witnesses and we'll go from there.

2 MR. DEAVER: Mr. Borg, please.

3 THE CLERK: State your name for the record.

4 A. Charles Borg.

5 CHARLES BORG, a witness called by the plaintiffs, first
6 having been duly sworn testified as follows:

7 DIRECT EXAMINATION

8 BY MR. DEAVER:

9 Q. Good afternoon, Mr. Borg.

10 A. Good afternoon, sir.

11 Q. A little warmer here than your home, isn't it?

12 A. Right now it's about the same.

13 Q. Would you state your name to the Court, please?

14 A. My name is Charles Borg, that's spelled B-O-R-G.

15 Q. Where do you reside?

16 A. Anchorage, Alaska.

17 Q. And you came down from Anchorage to testify in this case,
18 did you?

19 A. Yes.

20 Q. What are you doing in Alaska now?

21 A. I'm retired. Retired from the military in 1980, and then
22 had a subsequent follow on career with the State of Alaska,
23 and then a follow along partial career to that with the
24 Federal Government in health care affairs. Then I retired
25 retired about five or six years ago.

CHARLES BORG - DIRECT EXAMINATION

1 Q. You're just enjoying life?

2 A. Yes, sir.

3 Q. Did you have any time in service during your lifetime?

4 A. Any time in service?

5 Q. Military service?

6 A. Right. I went in the Army in 1960, retired in -- excuse
7 me. 1960. I retired in 1980. I was commissioned in the
8 infantry in 1960.

9 Q. Tell us a little bit about what your training was and what
10 assignments you had, please.

11 A. All right. Typical for those days, if you were infantry,
12 you went to Fort Benning, Georgia, where I attended jump
13 school, ranger training. Then deployed to Germany where I was
14 with the 24th Infantry Division for a little over three years.

15 And came back, was assigned to the Fourth Infantry
16 Division at Fort Lewis, Washington, for just a little over a
17 year.

18 And then in early 1966, after I had received some training
19 preparatory to an advisory job that I was going to have in
20 Vietnam, advising the Vietnamese military, I arrived in
21 Vietnam in February of 1966, spent a year tour there with the
22 ARVN. And returned to the States to -- for some schooling,
23 and about a year, 16 months from the time I came back, I was
24 back in Vietnam, this time with the 23rd Infantry Division in
25 the northern part of the country, what they call I Corps,

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1 you've heard referred to before. My first tour was in the
2 Delta in Four Corps area.

3 After that I came back to States, was assigned to Alaska,
4 remained there a time, and my final assignment was at the
5 Pentagon on the Army General's staff in Washington, D.C. Then
6 I retired from there in 1980.

7 Q. You say you were in Vietnam beginning in February of 1966?

8 A. Approximately February 22, 1966, I arrived in country,
9 yes, sir.

10 Q. And where was your area of -- what was your assignment
11 there?

12 A. I was assigned to the Ninth Infantry Division, that's the
13 ARVN infantry division, headquartered in Sa Dec; that would be
14 to the south and east of Chau Doc. And from there, I was
15 assigned as a battalion adviser to the -- one of the ARVN
16 regiments, the second battalion of the 15th Regiment. The
17 Ninth ARVN division was made of three regiments, the 13th,
18 14th and 15th, each regiment having generally -- excuse me --
19 operational jurisdiction or pieces of the whole division's
20 sector, which ran generally between the Mekong and the Bassac
21 Rivers.

22 Q. Were these areas of operation fairly stabilized, as far as
23 where you were going to be?

24 A. Yes. The 15th Regiment, and I was with one of the
25 battallions of the 15th, the 15th regiment was made up three

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1 battalions, the first, second and third battalion. The second
2 battalion was mine, I was a senior adviser to that battalion.
3 And our area of operation focused primarily in the western
4 corner of the region, particularly in the Chau Doc area. We
5 operated in Chau Doc Province, and then in the Seven Mountains
6 area south of Chau Doc, and then a place called Kinh Giang
7 forest area, which is a little further south. But after each
8 operation, we would return to the Chau Doc area for what we
9 referred to as stand down, after we'd completed our military
10 operation or mission.

11 Q. Did any other elements of that Ninth Division operate in
12 Chau Doc?

13 A. I don't recall in the six months that I was with the 15th
14 Regiment, any other regiment or any other elements of another
15 regiment of the 9th ARVN division coming into that area of the
16 AO, area of operation.

17 Q. Were there communications between the three battalions
18 that you had?

19 A. Yes.

20 Q. And you were under one command of the 15th?

21 A. The regiment headquarters was in a town called Long Swin
22 in An Giang Province, which is a town -- it's in a Hoa Hoa
23 area. And very stable, very safe. Our regimental
24 headquarters was there; I answered to a major, was my boss.
25 My counterparts in the first and third battalions were some

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1 distance away, but we were in daily communication either by
2 wheeled vehicle, helicopter or radio.

3 Q. What was the mission of the 15th regiment?

4 A. Mission of the 15th regiment was to keep the border
5 secure, to root out main VC elements that were known to exist
6 or known to have moved into the -- that area of the 9th ARVN
7 division's area of operation.

8 Q. Were there VC units in that area?

9 A. Yes.

10 Q. Did you ever take any kind of action in the -- any -- into
11 Cambodia, where the --

12 A. No. No, no, no, we never went into Cambodia. It was
13 pretty much -- pretty drilled into us, that involved
14 international border incident, and you steered clear of that
15 sort of thing. And the ARVN never expressed an interest in
16 going there. But if they had, we, as Americans, would have
17 not participated in an operation like that. But I know that
18 no element of the 15th regiment ever wandered into Cambodia.

19 Q. Did you ever go up into the An Phu district?

20 A. Yes. In late May of 1966, there was a short operation for
21 my battalion. I remember going in that area. And it wasn't
22 until I read the book that I was able to associate it with the
23 action, probably in relation to the incident at Khanh Bin.
24 But it was a very short operation for us. I think we deployed
25 one day, moved -- we were in the southern area of the -- of An

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1 Phu district. And we moved up to a canal and kind of stayed
2 there. We were in a -- generally blocking position, as I
3 recall. Then the action was over and we returned to the Chau
4 Doc vicinity.

5 Q. How long were you in the Khanh Bin area?

6 A. One day.

7 Q. Were you in the Chau Doc area during the middle of June of
8 1966?

9 A. Yes. After the Khanh Bin thing, or late May, we stood
10 down in the Chau Doc area, as we normally did when there were
11 no missions assigned. This is generally a retrain and refit,
12 receive replacements, store up on ammunition and that sort of
13 peacetime activity.

14 We moved in early June to a district called Me An, which
15 would have been about 30 miles, 35 miles to the east of An Phu
16 district. And we operated there for the better part of a
17 week. And then that operation terminated, and we moved again
18 back to the Chau Doc area. And we had no mission assigned
19 that we did, we moved back, waited to be assigned another
20 mission, and then in late June and early July, we deployed
21 south to the Seven Mountains area, just south of Chau Doc.

22 Q. And the Seven Mountains is not in the An Phu district, is
23 it?

24 A. It's the opposite direction.

25 Q. During that time of the middle of June, were you in

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1 constant contact with the other elements of the 15th regiment?

2 A. Yes.

3 Q. Were you in contact with elements of the 13th and 14th
4 regiment, please?

5 A. I wasn't directly in contact with them, but my boss, who
6 was a senior adviser of the 15th regiment, would have been in
7 contact with his counterparts. They were some distance away,
8 the 13th and the 14th battalion, sort of at the opposite end
9 of the area of operation of the 9th ARVN division.

10 But any operation that was going on, he would have
11 certainly been privy to, particularly because he was
12 reasonably close to division headquarters at Sa Dec, 9th ARVN
13 division headquarters, a place called Sa Dec. He was in about
14 a 45-minute drive through a secure area to get to Sa Dec.

15 Q. Have you read Expendable Elite?

16 A. Yes, I have.

17 Q. Did you read an account in there about an ARVN regiment of
18 2000 or so men massing in Chau Doc?

19 A. Right. The book stated there was 1500 ARVN with armored
20 personnel carriers massing in Chau Doc, and something about a
21 mission to go into An Phu district. That was according to
22 book.

23 Q. Were you there during the entire period?

24 A. Yes.

25 Q. Did the 15th regiment or any element of the -- any

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1 regiment of the 9th division mass in Chau Doc, bring the
2 armored vehicles down and prepare for anything?

3 A. No. And I'd like to say this to that, to that question.
4 Movement such as it's implied in the book, would have been a
5 big deal. Because first of all, to bring armored personnel
6 carriers, they look like tanks. There's just one road to get
7 them up there. And movements through all of those villages
8 would have been a well-known event. Plus, through the daily
9 routine of communication with the other elements through the
10 advisers that we had with the ARVN units, we would have known
11 that something is going on. We certainly would have been
12 briefed on it. And it just didn't happen. There was no
13 staging in Chau Doc for an incursion into An Phu district.

14 Q. Were you ever given any type of order to do that?

15 A. No.

16 Q. Was the 15th regiment ever given an order to that effect?

17 A. No.

18 MR. BACHRACH: Objection, Your Honor.

19 THE COURT: Basis?

20 MR. BACHRACH: Hearsay.

21 THE COURT: Rephrase it to his knowledge.

22 BY MR. DEAVER:

23 Q. Were orders in the -- whenever there was an operation or
24 anything, any information that needed to be disseminated to
25 the different battalions, that would cause any type of

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1 activity on the part of the battalion, were you privy to
2 those?

3 A. Oh, yes, we would have been privy to any kind of
4 information. It was always forged in the form of a warning
5 order or this is a preparation to do something that would give
6 you a chance to pack your bags and get ready to go. And then
7 you would usually follow up within hours, or with a full
8 operations order. That's kind of how you prepared to go into
9 action. Things haven't changed much. But that's how we did
10 it back then. And none of that happened.

11 Q. No operations orders?

12 A. No.

13 Q. No --

14 A. As I say --

15 Q. No verbal orders?

16 A. No.

17 Q. Did any other -- I believe I asked you that, if any other
18 regiments of the division were ever in the Chau Doc area while
19 you were there?

20 A. No. No.

21 MR. DEAVER: Thank you, sir.

22 A. Sure.

23 CROSS-EXAMINATION

24 BY MR. BACHRACH:

25 Q. Good afternoon.

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1 A. Afternoon, sir.

2 Q. Were you a Green Beret?

3 A. No.

4 Q. So you weren't in Special Forces?

5 A. I was not.

6 Q. And you weren't in direct contact with the 13th and 14th
7 regiment, correct?

8 A. No, not direct contact.

9 Q. That --

10 A. No. No, not direct contact.

11 Q. Now, you indicated you left the Chau Doc area sometime in
12 late June?

13 A. Late June and early July we moved into the Seven Mountains
14 region, which is still part of Chau Doc Province. But it's in
15 the opposite direction of An Phu. It's to the south of Chau
16 Doc.

17 Q. Do you recall when in June?

18 A. Yeah, it was -- I'm going to say -- I'm going to give or
19 take a day here, but it was probably around the 26th, 27th of
20 June, and we were in the Seven Mountains through after the 4th
21 of July.

22 Q. When did you start the movement; the 26th of June?

23 A. It could have been. I don't know precisely. I say it was
24 late June. I should say at this point that what I used to
25 trigger my memory of these operations, being it was 40 years

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1 ago, was I had one of these little Pen EE cameras that's
2 referred to in the book, little cameras, and I used to carry
3 that. And when I would get the film developed, I would mark
4 on the back the approximate time to the month and what was
5 going on and where it was going on, and that was my -- those
6 are my notes.

7 Q. How long would it take to get your regiment ready to move
8 into the mountains?

9 A. An ARVN division could get ready and move pretty quickly.

10 Q. Well, you said pretty quickly.

11 A. A matter of hours.

12 Q. And you don't recall exactly what day you began moving
13 in --

14 A. Not precisely. I'm going to have to tell you, and I got
15 that -- I can probably get it within about 48-hour time frame
16 of 26th, 25th to the 26th of June.

17 Q. Could have been 26th, 25th; could have been the 24th?

18 A. 27th. It might have been the 24th.

19 Q. 23rd?

20 A. I don't know for sure.

21 Q. 22nd?

22 A. Now you're getting back into the Tom Bin (phonetic) thing.

23 And --

24 Q. The Khanh Bin?

25 A. Or the An Phu time frame there. And at that time frame,

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1 and I would have to go back to the book to tell you precisely
2 when -- or you could tell me precisely what those dates were
3 when this regiment was supposedly being massed in Chau Doc.

4 Q. I'm looking to find out when you left Chau Doc, and --

5 A. I left Chau Doc for the Seven Mountains region subsequent
6 to the An Phu rebellion.

7 Q. What An Phu rebellion?

8 A. When it was alleged or stated that there was an ARVN
9 regiment massing in Chau Doc with a mission of going into An
10 Phu. In other words, what I'm telling you is that I was in
11 Chau Doc at that time.

12 Q. But right about that time -- and you don't know exactly
13 when -- you moved into the mountains.

14 A. Um-hum.

15 Q. You need to say yes or no, sir, for the reporter.

16 A. Yes. But if you want precise dates, I would have to -- I
17 would have to go to your book here to tell you --

18 Q. I'm not asking you about the book, I'm asking you about
19 your --

20 A. There's no mistaking, sir, in any recall, that I was in
21 Chau Doc at the time that the book states that there was a
22 regiment massing in Chau Doc. I'm telling you that that
23 didn't happen. I was there.

24 Q. But you can't recall exactly when you went into the
25 mountains, correct?

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1 A. No, not exactly. I will tell you it is within 48 hours.

2 Q. Were you ever at camp An Phu?

3 A. No.

4 Q. You indicated you were -- were you involved in the mission
5 relative to Khanh Bin?

6 A. We -- my battalion, the second battalion of the 15th,
7 moved into an area just north of Chau Doc for one day in late
8 May of 1966, that I, after reading the book, associated with
9 that action that you call Khanh Bin. We were a good ways away
10 removed distance away from Khanh Bin. We were actually, I
11 think south of the Special Forces A Team camp.

12 Q. Now, who did you report to?

13 A. I reported to my boss, who was a Major Lynn, L-Y-N-N. He
14 was a senior adviser to the 15th regiment.

15 Q. Who did he report to?

16 A. He reported to the senior adviser of the 9th ARVN
17 division, a Major Connelly, later a -- excuse me, a Colonel
18 Connelly, later a Colonel Brigham, who reported to General
19 Desobry, who reported to the MACV.

20 Q. So then Colonel Desobry was the first --

21 A. Colonel Desobry was my boss' boss.

22 Q. And Lieutenant General Dang was in charge of the ARVN in
23 that area?

24 A. That's correct, yeah.

25 Q. And you were never in camp An Phu?

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1 A. That's correct. I will tell you that there was --

2 Q. There's no question, sir.

3 A. Okay.

4 Q. So you don't have any knowledge whether General Dang and
5 Colonel Desobry were in camp An Phu, as reported in the book.

6 A. I would not have knowledge as to whether -- if they landed
7 in An Phu by helicopter, no.

8 Q. I'm going to show you what's been marked as Exhibit 35,
9 and this is a letter from General Dang to Colonel Marvin.

10 A. Um-hum.

11 Q. And you've confirmed that Colonel Desobry was Lieutenant
12 General Dang's -- Lieutenant General Dang's adviser?

13 A. Yeah, I believe Lieutenant General Dang was a Major
14 General at that time, but he was the commander of Four Corps,
15 yes.

16 Q. And General Dang wrote, "I would like to say that it was
17 my duty to go to your Green Beret camp in An Phu with my U.S.
18 Army adviser, Colonel William Desobry, and personally ensure
19 the brave irregular fighters that they were safe from military
20 tribunal action, and that their amnesty was restored to them.
21 I wanted to avoid any bloodshed between two friendly
22 anticommunist forces, and to work toward national unity and
23 reconciliation."

24 So it's your testimony today, you have no knowledge of
25 whether that happened or not?

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1 A. That's correct. As to whether General Dang was -- or with
2 Colonel Desobry, flew into An Phu, I have no knowledge of
3 that.

4 Q. What was the relationship between the Hoa Hoas and the
5 ARVN -- the South Vietnamese central government army?

6 A. I can't comment on the relationship to the central
7 government. I can comment on the relationship within the
8 Ninth ARVN division area of operation, which was that between
9 the Mekong and the Bassac Rivers; it was pretty good. We had
10 an ARVN regimental command post in Long Swin, which was in An
11 Giang Province, which was largely Hoa Hoa.

12 Q. And General Dang, in the letter to Colonel Marvin,
13 confirmed that he gave -- he came to a camp and gave the Hoa
14 Hoa's amnesty, correct?

15 A. That's what the letter says. You just showed me the
16 letter.

17 Q. And you have no knowledge of whether or not that occurred?

18 A. I have no knowledge as whether or not that occurred. I
19 have no knowledge during the -- during the whole year I was
20 there, that there was bad blood between the Hoa Hoa and the
21 central government. I was -- I was very much aware that those
22 people were good folks, and they -- they were secure -- An
23 Giang Province was a model province in terms of security.

24 Q. You just didn't know whether there was --

25 A. I don't know that General Desobry went into An Phu, that's

CHARLES BORG - CROSS-EXAMINATION

1 right. Or General Dang with Colonel Desobry.

2 Q. Because you were never in camp An Phu.

3 A. I was never in camp An Phu, no. It was a small camp. In
4 fact, we did not operate, other than that one little incident
5 that I told you about, that one day in late May of 1966, we
6 did not operate in An Phu district.

7 Q. How late in May was it?

8 A. It was late May 27th, 26th, somewhere around there.

9 Q. Do you know when the battle of Khanh Bin took place?

10 A. I'd have to go to your book to find out the precise dates,
11 yeah.

12 Q. But you think you were there about May 27th or 28th?

13 A. As I recall in reading the book and going over my notes,
14 we moved my battalion, the second of the 15th, moved into the
15 southern part of An Phu district as the Khanh Bin thing was
16 winding down.

17 Q. But it was still occurring.

18 A. Well, I can tell you that our action at our battalion was
19 pretty -- was pretty light. We had no contact. We moved up
20 to a body of water, a canal. There were no shots fired. We
21 sat there for several hours, got the order to pick up and move
22 out, move back from whence we came.

23 Q. By the time you got there was it completely over or was it
24 winding down?

25 A. I can't tell you. My perception was that it was winding

CHARLES BORG - CROSS-EXAMINATION

1 down, and we were asked -- or ordered to leave, which left me
2 the impression that it was completely over.

3 Q. How long after you got there, were you ordered to leave?

4 A. As I recall, we moved, in arriving late morning, around
5 noon, and we probably were given the order to move back at
6 about 15 or 1600, 3:00 or 4:00 in the afternoon.

7 Q. And that was May 27th or 28th?

8 A. Late May.

9 Q. You're guessing.

10 A. No, I'm not guessing when I tell you late May.

11 Q. You're guessing about the date?

12 A. When I said the 27th? Again, if you want me to go to the
13 book and tell you precisely when the Khanh Bin action was
14 going on, then I can tell you approximately when -- within a
15 24-hour period, when we moved into the southern area of An Phu
16 district.

17 Q. You're here testifying, and I'm looking for your memory.

18 A. Okay.

19 Q. What you recall and remember.

20 A. Okay.

21 Q. Based upon your knowledge.

22 Did you listen to any of the tapes made by any of the
23 plaintiffs?

24 A. Only the tape that was played on Wednesday, yesterday.

25 Q. Yesterday. So you never heard the tape of John Strait.

CHARLES BORG - CROSS-EXAMINATION

1 A. No.

2 Q. You never heard John Strait say on tape that --

3 A. I didn't listen to John Strait's tape.

4 (Three parties speaking at once.)

5 Q. What?

6 A. I didn't listen to John Strait's tape.

7 MR. DEAVER: He said he didn't hear it.

8 Q. So no one ever played for you the tape where John Strait
9 said I'm aware of --

10 A. I just said I did not hear any tapes.

11 THE COURT: That's -- I'll sustain that. I mean, you
12 can't publish the tape by asking him questions of something
13 he's never heard.

14 BY MR. BACHRACH:

15 Q. Who did you speak with when you came down here in
16 connection with preparing for your testimony?

17 A. Bobby Deaver.

18 Q. Anyone else?

19 A. You see, I was down here two months ago when the trial was
20 canceled. I met Jim Taylor and Dick Sirois and Ben. About
21 the only one I've had contact with is -- has been Bobby.

22 Q. So you've never spoken to Mr. Strait about what he said on
23 the tape?

24 A. Oh, I met -- I met Strait also at that time, yeah.

25 Q. Did you speak to him about what he said on the tape?

CHARLES BORG - CROSS-EXAMINATION

1 A. No.

2 Q. Did you speak to any of the plaintiffs about what they
3 said on the -- the three plaintiffs who made tapes, what they
4 said on the tapes?

5 A. No.

6 Q. You looked at the book to refresh your memory, correct?

7 A. I read the book. I read the book twice.

8 Q. And it refreshed your memory on certain dates?

9 A. Recalling getting out my pictures and determining what my
10 battalion was doing relative to the incidents in the book,
11 yeah.

12 Q. Don't you think it would have been important to also
13 listen to what the plaintiffs here are complaining about, said
14 occurred?

15 A. I don't understand your question.

16 Q. Well, Lieutenant Strait was in camp An Phu, correct?

17 A. You said that.

18 Q. Do you know if he was?

19 A. I have no knowledge of it. I never met him before this
20 trial started getting underway in November.

21 Q. You read the book and it said that Lieutenant Strait was
22 in camp An Phu.

23 A. I read the book, and I understood that a Lieutenant Strait
24 was in An Phu, sure.

25 Q. Didn't you think it would be important to hear from

CHARLES BORG - CROSS-EXAMINATION

1 Mr. Strait, what he said --

2 A. Look --

3 Q. -- on tape what occurred?

4 A. Counselor, I'm coming down here to a trial. And I'm going
5 to come and witness or express my knowledge and -- of my -- my
6 recall of what went down as relative to my personal
7 situations. No, I don't care really what Jim Strait or John
8 Strait said on his tapes, because that involved something
9 else.

10 I'm here to tell you about the 15th ARVN infantry
11 regiment, what it did and didn't do on a particular day in
12 late June with regard to massing in Chau Doc, and its mission
13 to go up and -- with an incursion into An Phu.

14 Q. And so you don't -- you didn't really care what the
15 plaintiffs would say on tape, what they observed while they
16 were in camp An Phu.

17 MR. DEAVER: Object.

18 A. No.

19 MR. DEAVER: That's what he just answered.

20 THE COURT: He said that twice now, so -- He answered
21 no.

22 MR. BACHRACH: Okay.

23 BY MR. BACHRACH:

24 Q. Now, you were the 15th regiment second battalion, correct?

25 A. That's correct. I was a senior adviser of the second

CHARLES BORG - CROSS-EXAMINATION

1 battalion, 15th regiment. I was a captain, I had a lieutenant
2 and two sergeants working for me.

3 Q. And there were two other battalions?

4 A. There were two other battalions, correct.

5 Q. And there were -- your superior was in direct contact with
6 the other battalions.

7 A. Yes.

8 Q. You weren't.

9 A. Let me think about that a minute. Because we had occasion
10 to routinely talk with the -- my counterparts in the other
11 battalions. And -- by radio, daily situation reports,
12 sometimes direct to them, we would monitor their reports
13 coming into regiments, we could get off line and talk on
14 another frequency. We had occasion to visit with them when we
15 were in the -- between operations when we were not deployed.
16 Certainly we would visit with them when we were operating as a
17 regiment. Because they were in the same rice paddies.

18 Q. In June, were the first and third battalions in your area?

19 A. No. Let me -- let me go back. As I previously stated, in
20 late -- early June -- in early June, the 15th regiment or
21 element of the 15th regiment were operating in Me An district,
22 which is 30 to -- in an area 30 to 35 miles to the east of An
23 Phu, in a nonrelated operation.

24 After that operation terminated, the battalions would move
25 back to their stand down or staging areas. My staging area

CHARLES BORG - CROSS-EXAMINATION

1 was the second of the 15th, was in Chau Doc. The first
2 battalion moved to a district -- or a province headquarters
3 called Cao Lon, which was some distance away, it was -- Me An
4 district is part of Cao Lon Province.

5 Q. Where is that located?

6 A. About 30, 40 miles to the east and south of Chau Doc.

7 Q. Where is it in relation to camp An Phu?

8 A. 30 to 35 miles east. South and east.

9 Q. Where was --

10 A. And the third battalion moved back to an area in Kinh
11 Giang Province, the rock jog area. If you look at the Gulf of
12 Siam where Chau Doc curves back, there's a Ha Tinh Special
13 Forces camp. To the east of Ha Tinh is a province
14 headquarters, equivalent of Chau Doc, it sits on the Gulf of
15 Siam. It's a part of the Ninth ARVN division area of
16 operation, and third battalion would move into that area.

17 Q. Now, in preparing for your testimony today, is Bobby
18 Deaver the only one you spoke to, to prepare for your
19 testimony?

20 A. Yeah. With regard to the testimony, I've had some
21 conversations with a Mr. Drew Dix who is also familiar with
22 the Chau Doc area, although we weren't there at the same time,
23 but we have talked with regard to names of people that we knew
24 and places that we operated in, in that area, sure.

25 Q. When was Mr. Dix there?

CHARLES BORG - CROSS-EXAMINATION

1 A. 1968.

2 Q. So after --

3 A. Yeah, it was after. I didn't know him on my tour.

4 Q. When did you meet with Mr. Deaver to prepare for your
5 testimony?

6 A. I met Mr. Deaver the first time on the -- I think it was
7 November 2, it was the day after your trial here, which was
8 canceled out. He had come out of the hospital the night
9 before I was to return to Alaska, we went out and had super
10 that night and got acquainted. And prior to that we'd had
11 some telephone conversation relative to my coming, being
12 available to come to the trial, whenever it was going to be
13 scheduled to happen.

14 When I returned home after that meeting with Mr. Deaver in
15 November, we didn't know when this trial was going to be
16 rescheduled. I kept in contact with Mr. Deaver through the
17 Christmas vacation time frame, in order to find out what was
18 going on, and determine from him if he had intended for me to
19 come back down to travel from Alaska to testify here. And
20 about a week ago -- was probably two weeks ago -- around the
21 2nd or 3rd of January, actually, that we talked on the phone
22 and he asked me to come back.

23 Q. And did you spend any time with him on this trip preparing
24 for your testimony today?

25 A. We've discussed my testimony very briefly with regard to

CHARLES BORG - CROSS-EXAMINATION

1 my knowledge of what the 15th regiment was doing, and my -- in
2 the late June time frame, with regard to the massing of an
3 ARVN regiment in Chau Doc.

4 Q. And other than Mr. Deaver and Mr. Dix, there's no one else
5 you've talked to in preparing for your testimony?

6 A. That's correct.

7 Q. Are there any -- you've read the book twice. You need to
8 say yes or no.

9 A. Yes, I'm sorry.

10 Q. You're not used to it. Are there any allegations in the
11 book that it was the 15th regiment that was massing and coming
12 down towards camp An Phu?

13 A. I don't think that there is a direct mention -- or a
14 mention directly of the 15th regiment. But I have to tell you
15 again, that a movement of a regiment, along with the
16 supporting elements, and along with the armored personnel
17 carriers coming into Chau Doc, would have been a big deal, and
18 everybody in the Ninth ARVN division area of operation would
19 have known it's happening, because they have to trail up that
20 road through the villages, you're talking about dozens of
21 trucks to haul the people to get up to Chau Doc and that
22 staging area. And everybody in town would have known about
23 it. You would have heard for miles the armored personnel
24 carriers, the tanks rattling the tracks along that delta road.
25 And so it would have been an action that would have gotten a

CHARLES BORG - CROSS-EXAMINATION

1 heck of a lot of attention.

2 Q. Is the allegation that they came by land?

3 A. There is no allegation with regard to how they got there.

4 Q. You're sure of that?

5 A. I don't recall reading that in the book.

6 Q. And just a yes or no, there's no allegation that you
7 recall in the book that it was the 15th regiment?

8 A. That's correct.

9 MR. BACHRACH: No further questions, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. DEAVER:

12 Q. Mr. Borg, did you, during this period of time that you
13 were with the second battalion of the 15th regiment, maintain
14 situation maps?

15 A. Yes.

16 Q. Tell us what a situation map is.

17 A. A situation map would have been, at least at the battalion
18 level, a map, much smaller scale than you see over there, that
19 would have shown our area of operation where we kept account
20 of the enemy activity, posting of certain intelligence reports
21 where we could project that we might be going for an
22 operation, and keeping on top of things that y'all have become
23 familiar with listening to the testimony.

24 Q. Did you keep -- did you use grease pencils?

25 A. Yes.

CHARLES BORG - REDIRECT EXAMINATION

1 Q. Did you keep on your map, your situation map, the location
2 of each enemy unit, as well as the friendly units?

3 A. I'm having to think about that, but yes. And the map
4 consisted of a -- you know, we were operating out of the back
5 end of a Jeep or off of a pack on our back, as a battalion
6 adviser, and our situation maps consisted of a one-foot-by-one
7 foot board with the maps folded on top of it. So it didn't
8 cover a large large large area. But yes, we would have had
9 marked all the regional force, popular force locations. We
10 would have had marked the locations of the ARVN units in the
11 area, we would have had marked -- certainly when we were on
12 operation, we knew where those were, because we would have
13 been involved with them. But we knew where the friendly/enemy
14 unit positions were located, certainly the friendly, and we
15 would post, to the best of our knowledge, or we would post the
16 enemy locations, based on the intelligence reports that we
17 would receive. Yeah.

18 Q. On a situation map, generally you keep up with where all
19 of your assets are located, don't you?

20 A. Sure, sure.

21 Q. Your unit, the 15th regiment, did not have a -- like in
22 the American army here, you didn't have barracks and motor
23 pools and all of those things that were set out and protected
24 by things of that nature, did you?

25 A. That's right. When we moved into an operation, operation

CHARLES BORG - REDIRECT EXAMINATION

1 anywhere from a week to two weeks, basically lived off the
2 land. And carry rice balls for food with a little meat and
3 pork stuck in them, and that was what we ate.

4 After and between operations, what we call stand down,
5 when my battalion moved back into the Chau Doc area, we moved
6 into a small hamlet and moved in with the people who lived
7 there. I happened to usually reside with a guy who -- he was
8 a sculptor, or he made these cement grave markers for the
9 Buddhist cemetery.

10 Q. There would not have been another -- on your situation
11 maps, you never saw another of the other two regiments, the
12 13th or the 14th regiments, in Chau Doc area, did you?

13 A. I can tell you for fact that the 15th -- or the 13th or
14 the 14th regiments were never in Chau Doc while I was with the
15 15th regiment. Later, I moved to the ARVN division
16 headquarters where I was an operations officer for the Ninth
17 ARVN division. And during that six-month period, the 13th or
18 the 14th regiment never got into that area of operation, the
19 Ninth ARVN division.

20 MR. DEAVER: Thank you, sir.

21 MR. BACHRACH: No further questions, Your Honor.

22 THE COURT: Thank you, sir.

23 MR. DEAVER: Mr. Dix?

24 THE CLERK: State your name for the record.

25 A. Drew Dix.

DREW DIX - DIRECT EXAMINATION

1 DREW DIX, a witness called by the plaintiffs, first having
2 been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. DEAVER:

5 Q. Your name is Drew Dix?

6 A. That's correct.

7 Q. Where do you reside, Mr. Dix?

8 A. I reside in New Mexico.

9 Q. Where is your original home?

10 A. My original home? I'm originally from Colorado.

11 Q. Pueblo?

12 A. Pueblo, Colorado.

13 Q. Did you -- what was your last -- you're not employed now,
14 are you?

15 A. I'm retired.

16 Q. What was your last duty, job position?

17 A. My last job was -- I was director of Homeland Security for
18 the State of Alaska, deputy commissioner within the state
19 government.

20 Q. And you retired from that?

21 A. Yes, sir.

22 Q. Did you have any military experience in your background
23 that allowed you to get that appointment?

24 A. Yes, sir, I was in Special Forces for almost 15 years
25 while I was in the Army, out of a 20-year career in the Army.

DREW DIX - DIRECT EXAMINATION

1 A lot of my experience was in counterterrorism and special
2 operations.

3 Q. What training did you have to qualify for Special Forces?

4 A. Well, actually I -- when I went in the Army I was too
5 young for Special Forces; you had to be 21. So I was in the
6 82nd until I --

7 Q. 82nd Airborne Division?

8 A. 82nd Airborne Division, that's right. Until I reached the
9 age of 21. Then I went to -- about some -- sometime after I
10 reached 21, I went to Special Forces training, and I was an
11 operation intelligence sergeant. And I went to their ONIs,
12 what they call it, training Special Forces.

13 Q. When you -- This was at Fort Bragg?

14 A. Yes, sir, Fort Bragg.

15 Q. What was your assignment after you completed your Q
16 course, qualification course.

17 A. After I completed the qualification course, I was in
18 the -- assigned to Sixth Special Forces group at Fort Bragg,
19 North Carolina.

20 Q. What were your duties there?

21 A. I was in -- I was an intel sergeant on an A Team, and this
22 was an A Team within the B Company of Sixth Special Forces.

23 Q. Were you subsequently assigned to Vietnam?

24 A. Yes, sir, I was assigned to Vietnam in 1967.

25 Q. What were your -- What did you anticipate doing when you

DREW DIX - DIRECT EXAMINATION

1 got to Vietnam?

2 A. Well, because I was a young motivated Special Forces
3 soldier, I wanted to be part of an A Team. And so that's what
4 I expected to be assigned to when I went to Vietnam.

5 Q. And what happened on your way to that A Team?

6 A. Well, I wasn't assigned to an A Team. When I got to
7 Cameron Bay in Vietnam, I was -- didn't receive the normal
8 shipment up to Nha Trang, which is where all the Special
9 Forces were assigned, and was told to wait for -- until I got
10 my orders. And I was there for about two days, until I
11 received orders to go to Saigon. And I -- I was disappointed,
12 because I thought at that time I would not get a chance to be
13 on an A Team.

14 Q. When you got to Saigon, where were you supposed to go in
15 Saigon?

16 A. Well, I was told that -- land at Tan Son Nhut Air Base in
17 Saigon. And then I was met by an individual driving a black
18 van, and took me off to what they called the Old Embassy
19 House. The Old Embassy, forgive me. And started receiving
20 briefings on a project that I was going to be assigned to, to
21 MACV. MACV is Military Assistant Command Vietnam. And I was
22 assigned to the combined studies group, which later became
23 combined studies division, within MACV.

24 Q. What was that combined studies group?

25 A. Combined studies group was designed to go -- they had an

DREW DIX - DIRECT EXAMINATION

1 individual assigned to each province within Vietnam. There
2 were 44 provinces. And there would be one American assigned
3 to each province that would work with the Central Intelligence
4 Agency. And we would organize, train and lead an element that
5 would go after the Viet Cong infrastructure, eliminate them
6 through capture.

7 Q. Now, this was a covert type of operation?

8 A. The word would be clandestine.

9 Q. Clandestine. And there's a difference between clandestine
10 and covert?

11 A. There is.

12 Q. But this was a secret operation that was going on; it was
13 not a publicly known operation, was it?

14 MR. BACHRACH: Objection, Your Honor.

15 THE COURT: Basis?

16 MR. BACHRACH: Leading.

17 THE COURT: Overruled, go ahead.

18 A. The operation was clandestine in nature, in that we
19 conducted operations behind the lines and under direction of
20 the Central Intelligence Agency. I was still a member of the
21 United States Army. I was no longer a member of the 5th
22 Special Forces group. And we were to -- well, I'll stop
23 there.

24 Q. Have you received authorization to be able to disclose
25 what you're testifying about now?

DREW DIX - DIRECT EXAMINATION

1 A. Yes, sir, I have. I made a call, and unrelated to this
2 matter, to my former boss, about disclosing that. Because I
3 had been -- a few years ago been asked about some things, and
4 I didn't feel comfortable until I got the release to discuss
5 it. And they said that it was fine, I could -- it's been
6 declassified.

7 Q. Where were you assigned from, from Saigon?

8 A. When I went -- after two or three days of briefing, might
9 have been three or four days, I went to -- my province was
10 Chau Doc Province. And that's where I was assigned and went
11 there after about three or four days of briefings in Saigon.

12 Q. What unit did you go to? Any military unit?

13 A. There was no military unit at all. When I --

14 Q. Excuse me.

15 A. When I left Saigon, I was in civilian clothes. We went
16 from Saigon to Can Tho, which is the 4th Corps capital, and
17 received a briefing from the regional officer in charge for
18 the CIA in Can Tho. And then they gave me more of the details
19 of what I would be doing in Chau Doc, and who I would be
20 reporting to while I was in Chau Doc.

21 Q. Did you have to report to anyone in Chau Doc?

22 A. I did. I reported -- my immediate supervisor was Jim
23 Moore, at the time.

24 Q. That was his name at the time?

25 A. That was his name at the time. His name is -- it's common

DREW DIX - DIRECT EXAMINATION

1 knowledge, relatively common knowledge that his name was not
2 Moore then. It was then, but now it's Monroe.

3 Q. Did you perform the services that you were directed to
4 perform?

5 A. Yes, sir, I -- there was some element of the unit there,
6 took some few days to get -- few weeks to get organized to
7 find out the type of unit I had, the type of qualifications
8 each individual had. Very complex province, because there
9 were ethnic Cambodians, Vietnamese, and I did have some
10 Chinese ethnic individuals working for me. So I had to get
11 that organized. And I did begin working to collect
12 information that we could process, and intelligence, and start
13 to eliminate the VC infrastructure.

14 Q. And by eliminating the VC infrastructure, what are you
15 referring to?

16 A. Well, it was a capture mission. We tried to capture the
17 enemy. We'd get information on where they were. The way Chau
18 Doc was operating, there are five districts; four of them were
19 very close to the border. So a lot of the enemy, the Viet
20 Cong, had superimposed over the government, local governments
21 in Chau Doc and other provinces, their own village chiefs,
22 hamlet chiefs, province chief, district chiefs and different
23 levels of government.

24 So we would start to collect this information to go in to
25 root them out and to bring them in.

DREW DIX - DIRECT EXAMINATION

1 Q. How long were you -- did you do this, and can you explain
2 just how it was done.

3 A. I did it for about a year, as was my assignment. When my
4 year was up, I requested to stay, and that was denied; they
5 had other plans for me. But the -- how we did it, without
6 going to agonizing detail, but I will tell you what I did is I
7 created eighteen-man teams. Because of the different
8 structure of these -- my unit, and some of them came to --
9 from some of the villages and hamlets within Chau Doc
10 Province, I sent them back in smaller cells to collect
11 information. They would pool that information, and I'd keep
12 it -- what we called the black book, where I'd put the
13 information down. Because we never operated on one source of
14 information; I always tried to corroborate it and substantiate
15 it in some way. And I would conduct an operation to go in and
16 snatch the individual where they were either residing or known
17 to be moving from one place to another, or having a meeting.

18 And we had a very good unit, I had a counterpart, we call
19 it a counterpart, that was -- who was just a great warrior,
20 and we went in and we started picking up a lot of VC
21 infrastructure.

22 Q. Approximately how many a month would you snatch?

23 A. Well, our peak months, we were up to 60. After the Tet
24 Offensive of 1968, which was the end of January '68, it
25 started peaking out, and we were picking up 40, 50, and we got

DREW DIX - DIRECT EXAMINATION

1 up to 60 in a month.

2 We kept score, because we had a monthly report. That's
3 the only report I had to make was a monthly report on the
4 results of what we had done. And of course my -- the chain of
5 command knew what the results were, because we were sending
6 those individuals that we captured to the local police and to
7 Can Tho or Saigon, depending on how high level the prisoner
8 was.

9 Q. Did you do any other -- Did you have anybody else at any
10 time going with you on operations?

11 A. I had -- if I went into a predominantly Cambodian area, I
12 had Cambodians that went with me. If I went into a Vietnamese
13 Hoa Hoa area, I had primarily Vietnamese. Mainly because they
14 could move through the area, they had relatives or could speak
15 the language better. And that's who I had with me. I usually
16 went in with about five or six, depending on the rank of the
17 individual that we were going to capture, attempt to capture.
18 The higher rank the individual, the higher the security was.
19 And sometimes they had a company-size security element.

20 Q. On those occasions, did you still make your capture?

21 A. We -- we -- a few cases the capture got out of, and it
22 became into more like an ambush and a fire fight, and in a few
23 cases the individual was killed.

24 Q. But that was not the intention?

25 A. Not the intention at all, no. We got a lot of value --

DREW DIX - DIRECT EXAMINATION

1 excuse me, out of a capture, so we -- the professional
2 interrogators could get information on the enemy activity.

3 Q. Now, when your year was up, you said you volunteered to
4 stay?

5 A. I did. I volunteered to stay; it was declined. I didn't
6 know at the time, but they -- I had a -- I had an appointment
7 in Washington to -- that I had to be there in January.

8 Q. You were -- you received, at that appointment, the
9 Congressional Medal of Honor?

10 A. That's correct.

11 Q. After you -- Did you write a book?

12 A. Yes, sir, I did.

13 Q. When was that?

14 A. In 2000 it was published.

15 Q. Does it relate to the Chau Doc area and to what was going
16 on there?

17 A. It does. The purpose of writing the book was to give some
18 credit to individuals, mainly the indigenous troops that I
19 have great respect for that did a wonderful job, and quite
20 frankly, kept me alive. And there was a lot of controversy
21 about some organizations over there, and I thought that the
22 book would set the stage right and put it in right -- correct
23 perspective.

24 Q. After you left Chau Doc, did you have any more experience
25 in intelligence or covert operations?

DREW DIX - DIRECT EXAMINATION

1 A. I did work, I stayed in Special Forces, and after -- I was
2 a sergeant when I went in Special Forces, intel sergeant, as I
3 mentioned. And I received a direct commission to first
4 lieutenant. When I first went back to Fort Bragg, I went back
5 to the same A Team that I was assigned to, becoming the Sixth,
6 and was the team leader for that A Team. And then I was sent
7 down to MacDill Air Force base in the mid 70s, 1976 actually,
8 to help organize a joint special operations unit, to pull
9 together all of the special operations factions within the
10 different services in the military. We did some operations,
11 not covert, but clandestine operations throughout the world.

12 Q. What countries, for instance?

13 A. Well, I can just say that I spent quite a bit of time in
14 Central America, and I spent some time in Korea, and I spent
15 some time in parts of Europe.

16 Q. And during that whole -- that period of time, were you
17 working with special operations in those countries?

18 A. I was working with -- Yes. Yes, I was. I was -- we were
19 working with special operations, and some were unconventional
20 warfare. And the difference being unconventional warfare is
21 that where you mainly work with indigenous troops and conduct
22 operations in their country.

23 Q. Were you cleared by the American government for any type
24 of covert information?

25 A. Well, I was -- I had top secret clearance, and then with

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1 some modifications to that, which would be a little higher,
2 but you don't really get cleared for covert operations. You
3 get a top secret clearance, if it happens to be a top secret,
4 some people have secret. And then you conduct -- then you
5 have access to that information that you need to conduct your
6 operations. I didn't conduct covert operations. Covert
7 operations require that it be complete deniability.

8 Q. Who is the -- what is the authority to direct the
9 implementation of a covert operation?

10 A. Well, the way it was taught when I was in Special Forces
11 is we have what we call a National Command Authority, which is
12 composed of the president and his cabinet and a few people
13 that decide what needs to be done, and it comes down in a
14 directive from the National Command Authority. And if that
15 National Command Authority elects to do it through the
16 military or Central Intelligence Agency, which was probably
17 part of it, and again, I'm at a lower level, so I don't -- and
18 that is, the National Command Authority is structured probably
19 different in every administration. But that's another word
20 for the president and those folks that make decisions like
21 that. But it is definitely taught within the Special Forces
22 that National Command Authority directs those operations.

23 Q. Does a C detachment commander have the authority to
24 conduct a covert operation?

25 MR. OGIBA: Objection, Your Honor, speculation.

DREW DIX - DIRECT EXAMINATION

1 THE COURT: Lay a foundation for it.

2 MR. DEAVER: Excuse me?

3 THE COURT: Lay a foundation for his knowledge of
4 what a C commander's authority is.

5 BY MR. DEAVER:

6 Q. Once the NCSA does the -- determines a covert operation is
7 permissible, what is the next step?

8 MR. OGIBA: Your Honor, objection. This witness has
9 testified he has knowledge about clandestine operations, and
10 he has testified he has no knowledge about covert operations.

11 THE COURT: I'll grant you the first part, and I
12 don't think -- I think you're stretching what he said on the
13 second part.

14 MR. OGIBA: He's never served in a covert operation.

15 THE COURT: So lay a foundation for his knowledge as
16 to covert operations.

17 BY MR. DEAVER:

18 Q. What background do you have that gives you the -- that
19 gave you the information concerning the structuring of a
20 covert operation?

21 A. The beginning was in Special Forces training where they
22 establish how things are done. And not only do they say how
23 they're done within our government, they say what is happening
24 around the world. And it's an academic process where we learn
25 how things are done.

DREW DIX - DIRECT EXAMINATION

1 When I went to MacDill Air Force base and was a part of
2 the joint operations support command, which was a part of
3 readiness command, we had people assigned with us that helped
4 us and directed us in conducting clandestine. And we knew
5 about covert operations, we -- I just didn't -- wasn't part of
6 them after the late 70s.

7 Most Special Forces -- I would have to say most, because I
8 don't know, there might be a few cases where somebody fell
9 through the cracks. But most Special Forces qualified
10 individuals know the structure of clandestine and covert
11 operations. I mean it's -- we -- they know that. Part of the
12 training.

13 Q. Did you have a classification that was called read only?

14 A. A security classification?

15 Q. Yes.

16 A. Well, I had a top secret clearance, and there's -- there's
17 some levels that I -- I'd rather not get into detail -- but
18 there are some levels where it -- the -- where it's not
19 discussed verbally, it's all written material. And that is
20 because there's collection -- there's surveillance information
21 that can detect the common voice, so it was read. And but
22 yes, I had a clearance that allowed me access to that.

23 Q. Where is that read only material located?

24 A. Well, there aren't many -- Where is it located?

25 Q. Yes, when you read it.

DREW DIX - DIRECT EXAMINATION

1 A. Oh, when you read it, in some commands they have a room
2 where you can go in and read the information. And it's a room
3 that, you know, doesn't have the windows. It's kind of like
4 this. Or if you are in a -- if you're in a -- maybe a -- not
5 a cleared location -- and actually when I was assigned to
6 Alaska, after I -- one of my last assignments before I retired
7 from the Army, I didn't -- I didn't have a need to know, but
8 they didn't read me off of that security clearance, because
9 there was nobody in Alaska that had it at the time. So I kept
10 it for a couple of months until somebody came in with that
11 clearance. And that was to keep somebody in Alaska, have
12 access to that information. And it's just information that
13 needs to be available to some -- to people throughout the
14 military and different places, not -- it's not freely
15 disseminated.

16 Q. How did you get it?

17 A. How did I get what?

18 Q. How did you get the read information in Alaska?

19 A. They -- in Alaska it was kind of logistically tough
20 because they flew somebody up in an aircraft, they had the
21 black bag, and put you in a room and opened it up and stepped
22 out of the room and you read it and they left.

23 Q. After you retired from the Army, did you do any kind of
24 work of a secret nature?

25 A. I did. I retired, and the State of Alaska hired me to do

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1 something. And I needed a job, so I took it. But shortly
2 thereafter, I was contacted by the Navy, the Navy Special
3 Warfare Command, space and warfare command. And I
4 conducted -- and actually for ten years, contract work for the
5 Navy on the sea ice in a surveillance mission.

6 Q. What did you do?

7 A. In beginning of 1985, that was the first time I went out
8 on the ice, and because I had some experience in the cold
9 weather regions and parachute qualified, I'd go in and set up
10 an ice station in the Arctic Ocean for surveillance. It was
11 classified at the time; no longer classified. And we were to
12 keep track of the Soviet bombers that were our biggest threat
13 during what -- that was what we called the real cold war,
14 because it was kind of cool up there. But the cold war and
15 the -- to keep track of where they were at the time.

16 Q. How did you get to the site? Was there a camp there or --

17 A. Well, it's -- the North Pole is -- we picked the North
18 Pole area because of the way the ice gyros around. It has the
19 longest chance of survivability of the ice. And that was
20 about 750 miles north of Greenland. We parachute in with
21 another guy, and then we picked the ice and -- and tried to
22 find a spot smooth enough to land a small airplane.

23 Q. What was the temperature there?

24 A. Oh, well, 35, 40 below or something like that.

25 Q. And you did this for ten years?

DREW DIX - DIRECT EXAMINATION

1 A. 10 springs. We'd do it every spring. You couldn't go up
2 until the sun came up on the 21st of March. And then it --
3 then we'd leave about the last week in April.

4 Q. Do you feel like your experience in the operations that
5 you've been in that were clandestine, and the Navy, the
6 readiness command down at MacDill Air Force base, that you are
7 familiar with -- that you are an expert in operations such as
8 were described, even though not exactly that way, as -- by
9 Mr. Marvin in his book, Expendable Elite?

10 MR. OGIBA: Objection, Your Honor, calls for a legal
11 conclusion.

12 MR. DEAVER: I'll just tender him as an expert.

13 THE COURT: Do you want to ask him any questions
14 about his qualifications?

15 MR. OGIBA: Your Honor -- actually, we would, thank
16 you.

17 THE COURT: Okay.

18 VOIR DIRE

19 BY MR. OGIBA:

20 Q. Now, Mr. Dix, you are being proffered as an expert witness
21 in what?

22 A. I'm -- in special operations and clandestine operations.

23 Q. Okay. Do you hold yourself out to be an expert in
24 independent operations?

25 A. I've never heard of that word until I came to this trial.

DREW DIX - VOIR DIRE BY MR. OGIBA

1 Q. Okay. Do you hold yourself out to be an expert in covert
2 operations?

3 A. No, sir.

4 Q. And just for clarification's sake, when did you -- when
5 were you in Vietnam?

6 A. First went to Vietnam in 1967.

7 Q. Okay. Are you aware of the time frame that -- in which
8 this book took place?

9 A. Yes, I am.

10 Q. Was that before you got to Vietnam?

11 A. That was before I got to Vietnam, that's right.

12 Q. Okay.

13 MR. OGIBA: Your Honor, we would object to this
14 witness as an expert. He's not an expert in covert
15 operations, and he's certainly not an expert in covert
16 operations in the time frame that this book took place.

17 THE COURT: Okay. Despite the bandying around of an
18 expert, under Rule 702, I think he's qualified under 701 as a
19 lay witness for opinion testimony, so I'll overrule your
20 objection.

21 BY MR. DEAVER:

22 Q. Have you read Expendable Elite?

23 A. I did. Some time ago I read it.

24 Q. Are you -- do you recall that Mr. Marvin said that he
25 was -- You heard his testimony here, did you not?

DREW DIX - DIRECT EXAMINATION

1 A. Yes, I did. I came on -- well, that was probably the
2 first time he testified. I heard it, yes.

3 Q. During your 15 years with the Special Forces, was there
4 ever, to your knowledge, any incident, any assignment such as
5 Mr. Marvin described?

6 A. I've never heard of an independent operation. I've heard
7 of people in -- being independent, but I've never heard of an
8 independent operation that's classified as covert or
9 clandestine operations. And I've never heard of another
10 operation being conducted in the manner that was explained in
11 trial.

12 Q. Now, you've never heard of an A detachment commander being
13 an independent operation and being an A detachment commander
14 at the same time?

15 MR. OGIBA: Objection, Your Honor, hearsay.

16 THE COURT: Overruled.

17 A. I've never heard of that. I'm -- I understand the chain
18 of command and how it works. If I can elaborate on that just
19 briefly, is -- and I know it was a year or so later, but the
20 way it was done in my case in the same province was they
21 established who I worked for, and it was through a direct
22 chain of command within the Central Intelligence Agency.

23 I didn't -- was not assigned to the 5th Special Forces
24 group, so that allowed me to maintain -- do what I wanted to
25 do within a chain of command.

DREW DIX - DIRECT EXAMINATION

1 Q. What type of identification did you carry? Did you have a
2 CIA card or a --

3 A. No, sir, I didn't have a CIA card. I didn't carry any
4 identification.

5 Q. How did you obtain money to pay the people that worked for
6 you, or equipment, how did you outfit them, clothe them, look
7 after them?

8 A. Yes. I received a budget, a budget to conduct operations,
9 and I paid the individuals and clothed them. I even paid for
10 the ammunition that -- Not all the money was in my hands, it
11 was charged off on that monthly operation report when I made
12 orders for ammunition, and we paid for every mortar round,
13 every machine gun round, every weapon that we purchased, and
14 the payroll. We also paid for bounties on weapons. And I had
15 a reward structure for captured individuals.

16 Q. Do you have an opinion satisfactory to yourself, as to
17 whether an operation such as you heard Mr. Marvin describe
18 here, was a reality in the Special Forces?

19 MR. OGIBA: Objection, Your Honor, calls for
20 speculation.

21 THE COURT: Overruled.

22 A. My opinion is -- I'm not sure -- first of all, I'm here
23 for two reasons. One is I have considerable knowledge in
24 clandestine and covert operations. The other is that I'm very
25 familiar with Special Forces sergeants and officers. I don't

DREW DIX - DIRECT EXAMINATION

1 know of any circumstance where that could have taken place,
2 with the experience level and professionalism of the NCOs
3 involved.

4 Q. Let me show you, or --

5 MR. DEAVER: I don't need to put this in evidence,
6 it's just the dust cover for your Expendable Elite.

7 THE COURT: Everybody has one.

8 MR. DEAVER: Yes. Let me just show this to him.

9 BY MR. DEAVER:

10 Q. Do you see on the inside cover about midway down, a
11 statement that the Special Forces soldiers don't fear the
12 enemy? On your left-hand side.

13 A. I see that.

14 Q. Do you know -- you know many many Special Forces members,
15 don't you, and former members?

16 A. I know a lot. I'm fortunate to have trained with them,
17 and I keep in contact with some now, the ongoing Special
18 Forces soldiers, yes.

19 Q. Do you know any -- do you know -- can you name one who has
20 that feeling, or fears the government that they work for?

21 A. I don't know any.

22 Q. Does it offend you that someone would write something like
23 that? For --

24 MR. OGIBA: Objection, Your Honor, leading.
25

DREW DIX - DIRECT EXAMINATION

1 BY MR. DEAVER:

2 Q. What do you think of that statement?

3 A. I am not sure where the thought process was when this
4 statement was made, because I can't imagine, I mean, Special
5 Forces soldiers have, you know, the -- of the highest
6 integrity, and they have to have faith in the government
7 that's sending them to do some of these dangerous missions.
8 You wouldn't do it if you didn't feel like you had faith in
9 the government.

10 Q. Do you know any that has fear of the government? Any
11 retaliation for -- because they know something of a secret
12 nature?

13 A. I don't. I don't know anybody that has fear of the
14 government that is a Special Forces person that fears the
15 government because of what they have done in Special Forces.
16 No, I don't know of anyone.

17 Q. In the Expendable Elite Mr. Marvin wrote that the Khanh
18 Bin was the biggest military operation that the Special Forces
19 had been involved in. Is that true?

20 MR. OGIBA: Ogiba, Your Honor, assumes facts not in
21 evidence.

22 MR. DEAVER: He knows if it's true or not, if he
23 knows of another one that's bigger.

24 THE COURT: Are you telling me that that's in the
25 book?

DREW DIX - DIRECT EXAMINATION

1 MR. DEEVER: Yes, Your Honor. No, in Mr. Marvin's
2 testimony.

3 MR. OGIBA: I don't believe it was, Your Honor.

4 MR. BEN DEEVER: It definitely was, Your Honor, he
5 testified that that was -- the battle at Khanh Bin was the
6 largest involvement battle that Special Forces has ever had.

7 THE COURT: Okay, I believe he did. I remember that.
8 Overruled.

9 A. I heard that part of the testimony, and it said up until
10 the time, that was the largest battle. And when I was in
11 Special Forces training, which was before this time frame,
12 which was in late '65 and '66, the operations intel part of
13 the training, we had extensive classroom work on battles that
14 were ongoing, and had been -- taken place in Vietnam, because
15 that was the center of our training at the time. And there
16 were several battles used to depict the Special Forces A camp
17 defense, the structure of the Mike Force to relieve these
18 besieged camps.

19 Q. Was C.Q. Williams involved in one of those battles?

20 A. Well, I can remember some that we used, one was the C-2
21 Ben Hed, I believe, in Nang Dam -- Nam Duong -- and then Duong
22 Swa (phonetic) -- C.Q. Williams was a captain in Special
23 Forces. That -- that battle was used in one of our classes.

24 Q. What happened to C.Q. Williams in that battle?

25 A. Well, he, as a result of his action, he received the Medal

DREW DIX - DIRECT EXAMINATION

1 of Honor, and that's how I got to know him pretty good.

2 Q. Which battle did you describe that Roger Donlin was in?

3 A. Battle of --

4 MR. OGIBA: Objection, Your Honor, relevance.

5 THE COURT: I'll sustain that.

6 MR. DEAVER: Sustained?

7 BY MR. DEAVER:

8 A. The casualties in those battles were very significant.

9 Q. And they were American casualties as well?

10 A. American and indigenous troops, yeah.

11 Q. Were -- you were not assigned to the Fifth Special Forces
12 group or any Special Forces group in -- when you were awarded
13 the Medal of Honor, were you?

14 A. When I was awarded the Medal of Honor, I was already back
15 from Vietnam, and I was assigned to the Sixth Special Forces
16 group.

17 Q. Let me rephrase that.

18 A. Right.

19 Q. At the time of the action for which you were awarded the
20 Medal of Honor, were you assigned to any Special Forces group?

21 A. No, sir. I was assigned to military systems command,
22 Vietnam, combined studies division, which is depicted on the
23 back of the Medal of Honor.

24 Q. Who recommended you for the Medal of Honor?

25 A. The individuals that recommended me were Americans that

DREW DIX - DIRECT EXAMINATION

1 had witnessed the action that I was involved in. There was
2 some Navy Seals, there was some from Special Forces
3 individuals that were stationed at B-42 that is downtown Chau
4 Doc, that they had witnessed the actions. And a few other
5 civilians that I was able to rescue during the time.

6 Q. Were you ever informed, or were any of these people ever
7 informed that you couldn't get the Medal of Honor because you
8 didn't exist?

9 A. A lot of the people that were -- I found out later now, I
10 didn't know this at the time, because I wasn't aware that they
11 had recommended me for the Medal of Honor. I don't know what
12 that process was and who actually orchestrated it. But it was
13 some -- the individuals I worked for. The -- some of the
14 people, I found out later, didn't realize that I could get it,
15 because they thought I was civilian. And that's when they
16 found out I was actually a staff sergeant United States Army.

17 Q. You heard Mr. Marvin testify that he had put Jim Taylor in
18 for a Silver Star?

19 A. Yes, sir, I did.

20 Q. What is the procedure -- you're familiar with awards and
21 decorations and the process and everything along those, don't
22 you?

23 A. Certainly. I have recommended men for combat awards.

24 Q. How is the recommendation made?

25 A. Well, after a battle, and part of an after action, and you

DREW DIX - DIRECT EXAMINATION

1 discuss what went on, then some individuals said, oh, you
2 know, somebody did something really good, and they write it
3 up, and there's a form, I don't recall the number of the form,
4 but it's filled out. And it says basically individuals
5 awarded, recommended award the Bronze Star medal or Silver
6 Star or whatever. And then there's a small block in there for
7 the narrative, and how a citation which would be written, and
8 then there's a block that says a number of witnesses -- not
9 the number of witnesses -- the names of the witnesses. And
10 then supporting documents of the action that they -- the
11 recommending individual saw that was -- was the action and
12 what happened and what they did to earn that.

13 And it is submitted through the chain of command. And the
14 chain of command probably has assigned someone to review that,
15 if it's a big theater of operations, review it and recommend
16 up or down supporting -- whether that is supported to be
17 forwarded or downgraded. They have that option to downgrade
18 to a lesser medal. Or upgrade. The commander does.

19 Q. Have you ever heard of one, did you ever have one sent
20 back and said this individual didn't exist?

21 A. Well, I didn't, no. I've had some sent back for
22 administrative procedures and I got my act together, because I
23 wanted the individual to get the award, and then I corrected
24 it and sent it forward.

25 MR. DEEVER: Thank you, sir.

DREW DIX - CROSS-EXAMINATION

CROSS-EXAMINATION

1

2 BY MR. OGIBA:

3 Q. Hi, Mr. Dix.

4 A. How are you, sir?

5 Q. I'm fine; how are you?

6 A. Perfect.

7 Q. Just to clarify some of your testimony from before, you
8 were not in Vietnam in 1965 or 1966, correct?

9 A. That's correct.

10 Q. You were not a member of the Special Forces in 1965 or
11 1966, were you?

12 A. I was -- No, I wasn't.

13 Q. So you arrived in Vietnam in 1967, correct?

14 A. That's correct.

15 Q. You've also testified that you don't hold yourself out to
16 be an expert in covert operations, correct?17 A. I didn't -- I said that I'm an expert in how the
18 operations are run. I didn't necessarily say I ran covert
19 operations. So --20 Q. And you have indicated that you believe that you're an
21 expert on how they're run, because of the training you got for
22 Special Forces, correct?23 A. I know how they're run, and if you want to -- if someone
24 uses the term expert, then that's what it is. I know how
25 they're run. I --

DREW DIX - CROSS-EXAMINATION

1 Q. But -- I'm sorry. But you got that training through your
2 Special Forces training, correct?

3 A. That's correct.

4 Q. So is it fair to say that under that standard, any Special
5 Forces member could be an expert in how a covert operations
6 run?

7 A. Well, I didn't call myself an expert. I know how they're
8 run. And I think the expert is a degree of how well you know
9 something. I know how they're run. And I think every one of
10 those individuals back there in Special Forces might know how
11 they're run. They could be a part of it, sure.

12 Q. Now, when you testified about receiving the Medal of
13 Honor, were -- did you receive that Medal of Honor for work
14 that you did in a covert operation?

15 A. I -- No. No, I wasn't.

16 Q. Because you never served in a covert operation?

17 A. That was a clandestine -- clandestine operations is a term
18 on how you use it where you're trying to deny people access or
19 how you get something done. I was assigned in a clandestine
20 unit, but the action was not of a clandestine nature.

21 Q. Okay. But you, in your direct, you draw a distinction
22 between clandestine and covert operations, correct?

23 A. That's correct.

24 Q. I believe your testimony was that covert operations afford
25 complete deniability. I think that's your quote, is that

DREW DIX - CROSS-EXAMINATION

1 correct?

2 A. That's correct.

3 Q. That's not the case in clandestine operations?

4 A. Clandestine operations are not complete deniability, no.

5 Q. Now, I believe Mr. Deaver asked you about some individuals
6 you may have put up for medals. Those individuals that you
7 put up for medals, were they in a covert operation?

8 A. No.

9 Q. Okay. So those individuals were not afforded complete
10 deniability?

11 A. I put up individuals for awards in 101st Airborne
12 Division, and when I was assigned in Chau Doc, for some
13 individuals that were conventional military that were
14 ancillary to what we were doing, but they were part of what we
15 were doing. And I had to research who they worked for, who
16 they were assigned to, in order to process that and put that
17 in their chain of command. They were -- had become involved
18 in something that we were involved in, and their action was --
19 deserved to be recognized, and so I put them in for an award.

20 Q. Okay. But I guess my question was, were those individuals
21 in covert operations?

22 A. Those individuals weren't, no.

23 Q. Okay. Now, you also testified about -- somewhat
24 extensively about your lack of knowledge of the battle at
25 Khanh Bin. Is that correct?

DREW DIX - CROSS-EXAMINATION

1 A. That I testified that I had no knowledge of the battle at
2 Khanh Bin? I -- I wasn't there in the battle of Khanh Bin.

3 The battles that were used during my training in Special
4 Forces were very large battles and had a lot of casualties.
5 The battle at Khanh Bin wasn't one that was used as an
6 example.

7 Q. Okay. Those other battles that were used as examples,
8 were those battles in which Special Forces incurred
9 significant casualties?

10 A. Special Forces and indigenous, yes.

11 Q. Are you aware of whether there have been any allegations
12 that there were extensive Special Forces casualties in the
13 battle of Khanh Bin?

14 A. No, I -- I think I heard that there were two wounded
15 Special Forces.

16 Q. Would you characterize that as extensive casualties?

17 A. No, I wouldn't.

18 Q. Is it your testimony that the battle of Khanh Bin never
19 happened?

20 A. No, I was just saying that it didn't appear to be
21 significant enough to use as a model. That was my intention.

22 Q. Do you have any belief or evidence to support any
23 allegation that the battle of Khanh Bin never happened?

24 A. I have no evidence, and I hadn't given any serious
25 thought, until now, about the battle of Khanh Bin, because I

DREW DIX - CROSS-EXAMINATION

1 wasn't there at the time.

2 Q. Okay. Now, have you read the book Expendable Elite?

3 A. I read it. I have to admit I didn't go into great detail
4 in studying it, but I did read it.

5 Q. Did you read the parts of the book dealing with the battle
6 of Khanh Bin?

7 A. I did. Because I got to -- I knew the area very well,
8 because Chau Doc was my province. And we spent a lot of time
9 along the border area, and Chau Doc has the largest border
10 area, probably, of any province, because the way it's shaped.
11 And the infiltration routes. I know Khanh Bin, Khanh An,
12 Duong Co Ki and all of those places very well.

13 Q. So you did read in the book about the battle of Khanh Bin?

14 A. I read about it, yeah.

15 Q. And having -- have you reviewed any other documents
16 concerning the battle at Khanh Bin?

17 A. No, I haven't.

18 Q. And as you testified, you were not in camp An Phu at any
19 point during the relevant times in this book, correct?

20 A. That's correct.

21 Q. Because you were never in Vietnam until 1967, correct?

22 A. That's correct.

23 Q. All right. And do you have any personal knowledge as to
24 any of the events depicted in the book?

25 A. Personal knowledge --

DREW DIX - CROSS-EXAMINATION

1 Q. Did you observe any of the events?

2 A. No, I didn't.

3 Q. Now, I believe, and I apologize for skipping around a
4 little bit, but I believe --

5 A. That's quite all right. That's quite all right.

6 Q. I believe you testified earlier about -- or you indicated
7 to Mr. Deaver that you were given authority to testify here
8 today, because the operations about which you're testifying
9 have been declassified, correct?

10 A. I was not given authority specifically because of this
11 trial. I have been given authority to talk about -- I
12 published a book, and I got permission to reveal that
13 information, including my boss' real name and that sort of
14 thing. So --

15 Q. And you testified that you got that permission over the
16 phone?

17 A. Oh, no, sir, I wouldn't even talk on the telephone about
18 what we were doing until they told me it was okay. I went to
19 Florida, where my boss was living at the time.

20 Q. Okay. And who was your boss?

21 A. The individual, he's deceased now, but the one that gave
22 me the authority was Jim Ward.

23 Q. Okay. Did he provide you with any documentation giving
24 you that authority?

25 A. He didn't give me any documentation. I hand carried the

DREW DIX - CROSS-EXAMINATION

1 manuscript of my book to him. He kept it, and through
2 whatever channels he used, he got approval that it was okay.
3 And he did call me on the telephone, because I didn't stay
4 down there until I got per -- approval. And he said okay,
5 it's fine, we like it.

6 Q. All right. And I believe -- was it during that same
7 telephone conversation in which he informed you that your
8 mission was -- had been declassified?

9 A. That's true. And he said everything -- not the whole
10 mission. He said everything that I submitted in this book and
11 the structure of the unit. So whatever I discussed here is in
12 written form and it's approved to talk about. And no, I
13 didn't -- didn't give me a written debriefing on it, no.

14 Q. So you have no written confirmation that your mission was
15 actually declassified. You're relying on the word of your
16 boss; your deceased boss?

17 A. My involvement in the unit. Yeah, I was permitted to talk
18 about my involvement in the unit.

19 Q. Okay. But that was verbal and not written, correct?

20 A. That's correct.

21 Q. All right. Who have you discussed your testimony with
22 here today in preparation for your testimony?

23 A. I talked to Mr. Deaver about -- because I was brought up
24 as a witness to see what I had to contribute.

25 Q. And were you -- was it your impression that you were going

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1 to testify as an expert witness?

2 A. Before -- yes, it was, yeah. Because I -- well, if I --
3 if you want me to add to that. Because it was clear I wasn't
4 there at the time. If I was there at the time, then maybe I
5 wouldn't be -- I'd be more than an expert witness, I'd have
6 some facts on what took place. I was being asked to come here
7 to elaborate on how the structure of the unit was. And since
8 it was in the same area and it was -- had, in theory, the same
9 type of mission, in theory.

10 Q. All right. But the unit that -- You are aware that at
11 least in the book and via the testimony, that that unit was an
12 independent or a covert unit, correct?

13 A. Again, I've never heard of the word independent operation.
14 I'm aware that it was called independent in the book, and I'm
15 aware it was called covert.

16 Q. Okay. And you are aware -- Okay. You are aware that the
17 unit was called covert in the book and via testimony at this
18 trial, correct?

19 A. That is correct.

20 Q. And you have testified that you do not hold yourself out
21 to be an expert in covert units.

22 A. I am -- I guess if -- yeah, I know what covert operation
23 is. And if you want to use the term expert, degrees of it,
24 I'd have to say that I don't call myself an expert. I guess
25 that's because I'm not that arrogant. I don't easily call

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1 myself an expert, so --

2 Q. Okay. Well --

3 A. If you want me to say it, I'll say I'm an expert.

4 Q. But just to be clear, you're not holding yourself out as
5 an expert?

6 A. I am holding myself out as an expert. I'll make myself
7 more clear, because you want me to say that, and I am. I am
8 an expert in covert operations.

9 Q. But you've never served in a covert unit.

10 A. No, I haven't. And I guess I probably wouldn't tell you
11 if I had. That's where that is coming from.

12 Q. Okay. So the whole complete deniability plays into why
13 you wouldn't be able to tell me, if you were in a covert unit.

14 A. Because the unit I was in was not covert. I can talk
15 about it. I'm not going to talk about some others. It
16 doesn't -- it wouldn't matter here, because it's not relative
17 to this trial. If they were covert, I know about covert, and
18 I know the difference between covert and classified.

19 Q. Between --

20 A. I mean clandestine.

21 Q. Okay. But is it your testimony that you have, in fact,
22 served on covert units?

23 A. I -- No. As covert units?

24 Q. Or in covert operations?

25 A. No, I haven't.

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1 Q. All right. But you still hold yourself out as an expert
2 in covert operations?

3 A. Yes, I do.

4 Q. Now, your statement before about even -- if you had served
5 in a covert unit, you wouldn't be able to tell us about it,
6 what do you mean by that?

7 A. Well, because there is a deniability, and there might be
8 things that are still ongoing, and I think they're far more
9 serious than what I or you or anyone else can imagine.

10 Q. So -- and again, you've read the book Expendable Elite,
11 correct?

12 A. I read it, and -- and there were some -- Yes, I did read
13 it.

14 Q. And you are aware that one of the allegations that the
15 plaintiffs are bringing up is that -- and which is in the book
16 -- is that Colonel Tuttle had instructed now Colonel Marvin
17 that his unit in An Phu was to be covert. Correct?

18 A. I -- yes, that's the way I think I read it, and certainly
19 the way I hear you saying it.

20 Q. All right. So pursuant to your earlier testimony, if
21 Colonel Tuttle had actually given that order, he wouldn't be
22 able to talk about it, unless it had been declassified,
23 correct?

24 A. If you want my opinion on that, I would say that he
25 wouldn't have given that order in a C Team office.

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1 Q. Okay.

2 A. On a covert operation.

3 Q. I guess that's not my question though.

4 A. Okay.

5 Q. If he had given that order that he was going to be
6 engaging in a covert operation or in a covert or independent
7 unit, he wouldn't be able to talk about it.

8 A. I guess I'd have to say if he had, but I can't imagine him
9 doing that in the office -- in -- I've been to that C Team.

10 Q. So if he had, he would not be able to discuss it, just
11 like you're not able to discuss covert operations?

12 A. If he had.

13 Q. Are you a member of the Special Forces Association?

14 A. Yes, I'm an honorary life member.

15 Q. All right. And are you friends with Jimmy Dean?

16 A. I've known Jimmy Dean, and I know a lot of the members of
17 Special Forces Association.

18 Q. All right. Are you -- Do you have any position of
19 authority in the Special Forces Association?

20 A. Honorary member, but no, I don't.

21 Q. Have you heard testimony before that the Special Forces
22 Association is actually paying for the defense -- or for the
23 court costs and the attorneys for the plaintiffs in this case?

24 A. If they've been paying the court costs? I don't know
25 that -- I don't -- no, I can't elaborate -- elaborate on that.

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1 Q. Okay. So the decision to -- for the Special Forces
2 Association to fund this lawsuit, you aren't aware of that
3 before that decision was made?

4 A. No, and I have not talked to anybody from the Special
5 Forces Association regarding the lawsuit in that capacity.
6 There's members here that are part of Special Forces
7 Association, as -- a lot of former Special Forces members.
8 But we didn't -- I've never discussed it with them as an
9 association at all.

10 Q. So as a member of the association, you never gave your
11 permission for the association to fund this lawsuit?

12 A. No, I never talked to them about it.

13 Q. But you are a member of the association that is funding
14 this lawsuit.

15 A. I don't -- the only communications I have with the
16 association is through a news publication that we get every
17 quarter. And there's no -- there was nothing in there about
18 should we or shouldn't we or whatever. I don't know.

19 Q. So that's news to you, that your association is funding
20 this lawsuit.

21 A. They're involved in it, but I don't know that they're
22 paying any bills. I don't know that.

23 Q. All right. You're not being paid for your testimony
24 today?

25 A. Absolutely not.

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1 Q. All right. And just one last issue I'd like to address
2 concerning your direct testimony. As I understand your direct
3 testimony, when you were in Vietnam in 1967, and then I guess
4 in 1968, you confirmed that you did deal with CIA -- with the
5 CIA and CIA agents, correct?

6 A. That's correct.

7 Q. All right. Was it common knowledge that the CIA was --
8 had agents and was operating in Vietnam?

9 A. It is not common knowledge. The -- they did a real good
10 job at not making it common knowledge. In fact, my immediate
11 supervisor that my -- was briefed that I would report to, was
12 not the one that was apparently my boss. It was someone that
13 was a State Department employee. And there's a lot of
14 difference between State Department and CIA. So it wasn't --
15 there wasn't a lot of intrigue going on, people running around
16 doing stuff in the CIA. A lot of the Special Forces people
17 that were in like the B Team, on the edge of the downtown
18 area, they knew we were civilians, but they didn't know really
19 what the deal was. So it's not -- it wasn't common.

20 Q. It wasn't common knowledge that the CIA was operating in
21 Vietnam?

22 A. No, I -- I don't -- you said around the area. In Vietnam,
23 sure, the CIA was involved.

24 Q. And --

25 A. Among our circles.

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1 Q. Okay. And you were certainly aware of their involvement
2 while you were in Vietnam.

3 A. Well, that's who I reported to.

4 Q. Were you -- Do you have any personal knowledge about the
5 CIA's involvement while you were not in Vietnam? For example,
6 from 1965 until 1966.

7 A. What I know about the CIA prior -- involvement prior to me
8 being there, was what I learned from my boss there, because I
9 had to get that information to see how we were structured and
10 who paid the bills and that. And they've been doing it for
11 about -- about probably a year and a half, two years. There
12 was a unit called -- originally CT, counterterrorism, and mine
13 was an offshoot of the CT program.

14 Q. So as you were informed, the CIA was operating in Vietnam
15 during the time frame of this book, 1965, 1966.

16 A. Yes, they were.

17 Q. You testified also, you just testified about, you know,
18 you're interested in who was paying the bills. Does that mean
19 that the CIA was paying your bills?

20 A. You mean to fund the operation?

21 Q. Yes.

22 A. Not my personal bills. That would have been nice, but --
23 No, that -- my budget, if I recall, was about \$80,000 a month.
24 I didn't have my hands on that \$80,000, except for my payroll,
25 which I looked everybody in the eye and paid them. And the

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1 other money for ammunition, weapons, even boats to move up and
2 down the river, all came out of a budget. And when we used
3 aviation support, it was Air America, and they charged that
4 to -- against my account. Because I didn't have U.S. support
5 at all. U.S. military support.

6 Q. Through the Department of Defense.

7 A. Through the Department of Defense, right.

8 Q. So you were funded by the CIA? Your operation?

9 A. My operation. I was -- my pay still came from the
10 Department of Defense.

11 Q. Okay.

12 A. My personal pay.

13 Q. You're not a CIA agent, are you?

14 A. I'm not.

15 MR. OGIBA: No further questions.

16 REDIRECT EXAMINATION

17 BY MR. DEAVER:

18 Q. Would you have to kill him if you told him?

19 A. Only if I heard he was listening.

20 Q. In the Special Forces Association there are members,
21 regular members, and then there are honorary and associate
22 members, are there not?

23 A. That's true.

24 Q. And you are not a regular member?

25 A. Well, I'm a -- I've got to look at my membership card.

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1 But they're very generous, a few years ago, to make me an
2 honorary life member. And I think that's my status now.

3 When -- before I was made an honorary life member, I was a
4 decade association member, which meant that I had ten years
5 with Special Forces. Well, I was a member because I joined.
6 And then the life membership superseded that. So I was a
7 paying dues member at one time. I don't pay the dues now.
8 Thank you.

9 Q. And that's the benefit of being honorary.

10 A. Right.

11 Q. It also denies you any authority to vote on any issues or
12 to take -- participate in any administration of the
13 association, doesn't it?

14 A. That's true, I don't vote. And, in fact, I don't think
15 I'm -- I'm even assigned to a chapter. You know, forgive me,
16 but I don't think I am.

17 Q. You're not.

18 A. Yeah. No, I'm not a chapter member.

19 Q. No. And finally, you were asked about the individuals
20 that you recommended for medals and awards, whether they were
21 covert, and you said no.

22 You have read the Expendable Elite account of Sergeant
23 Johnson, Ray Johnson?

24 A. Um-hum.

25 Q. You've read about Jim Taylor, George Kuchen, John Strait

DREW DIX - REDIRECT EXAMINATION

1 and Dick Sirois? Were any of those men, as described in that
2 book, could they conceivably be covert?

3 MR. OGIBA: Objection, Your Honor, foundation.

4 THE COURT: Overruled.

5 A. No. And let's say if there was a part of the mission,
6 this thing that was covert, and they're real people, they
7 occupied a TOE special which is, in Special Forces, Table of
8 Organization Equipment, position, and they have a serial
9 number, service number, and they're a real person. A lot of
10 times covert operations are conducted with active duty
11 military doing other roles, but they're part of the military.
12 And I see pictures here of these people in uniform, and they
13 got berets on and sergeant stripes and they're real people.
14 And if they conducted -- performed heroically, they should be
15 decorated accordingly.

16 Q. Did you read that their units, from their position there,
17 even at Camp Dan Nam, they -- in the book they were attributed
18 to firing into Cambodia? Would people in uniform operate a
19 covert operation in that fashion?

20 A. No.

21 MR. DEEVER: Thank you.

22 MR. OGIBA: No further questions.

23 THE COURT: Ladies and gentlemen of the jury, go to
24 your jury room at this time. We'll start again in about 15
25 minutes.

1 (Jury excused.)

2 MR. OGIBA: Do you want to take up the other rebuttal
3 witness issue now, or --

4 MR. COLLINS: What's the issue?

5 MR. OGIBA: Whether you're going to be allowed to
6 call him.

7 THE COURT: I can't do it in the abstract. You can
8 call him and see what he's going to say, and you object and
9 I'll make a ruling. As long as it's rebuttal.

10 (A recess was held at this time.)

11 (Jury not present.)

12 MR. DEEVER: Your Honor, we had talked before about
13 having a third witness. In the interest of time and just
14 plain humanity --

15 THE COURT: Exhaustion?

16 MR. DEEVER: -- I let my witnesses go.

17 THE COURT: So you're all done.

18 MR. DEEVER: Yes, Your Honor.

19 MR. COLLINS: We're done.

20 MR. DEEVER: We're done, yes.

21 THE COURT: We'll take care of the documents. All
22 right then, what I'm going to do is I'm going to bring the
23 jury in, I'm going to tell them that y'all rest again, I'm
24 going to let them go, I'm going to bring them back Monday, I'm
25 going to tell them that although they're leaving and although

1 we'd like to get the case to the jury tonight or tomorrow,
2 there's just simply not enough time, because we've got 52
3 pages or 35 or whatever, lots of pages of jury instructions,
4 plus we have --

5 MR. DEEVER: Can't we eliminate some of those with a
6 couple motions that we made?

7 THE COURT: Maybe; we'll see. That's what we're
8 going to be doing. There may be some difference in the jury
9 instructions and the verdict forms. And so I'm going to tell
10 them we're going to be working on all that kind of stuff.
11 I'll bring them back in at 10:00 o'clock on Monday, and let
12 y'all do closing arguments and charge, okay?

13 MR. OGIBA: Sounds great.

14 THE COURT: Any problem with that?

15 MR. OGIBA: No, Your Honor.

16 MR. BACHRACH: No, Your Honor.

17 (Jury present.)

18 THE COURT: Mr. Deaver? Do you want to rest again?

19 MR. DEEVER: Your Honor, the plaintiff rests.

20 THE COURT: Okay. Ladies and gentlemen of the jury,
21 you've now heard all the evidence in the case, all right?
22 That's the good news. You can go home; that's the better
23 news. The bad news is that we're going to have to come back
24 on Monday morning to hear the argument and charge. And the
25 reason for that is, is we've got five plaintiffs, two

1 defendants, I've got 40 pages of jury instructions I have to
2 go over with the lawyers, we've got legal motions to do today.
3 I only have half a day set off tomorrow, and there's just no
4 way to get this thing to y'all until Monday. All right? I
5 mean, I can't -- it's physically impossible for you to take
6 this case, hear the final arguments of the lawyers, my final
7 charge on the law, and decide lots of verdicts, okay? Because
8 we have one plaintiff versus Defendant A on three counts, you
9 know, there's a lot of questions we have to go through. And
10 I've been throwing paper at these guys for two weeks, all
11 right? Got the first jury instructions two weeks ago
12 tomorrow, and I've done four other ones this week. So even
13 though y'all have been here late, we've been here early and
14 later, so it's not like we're -- I didn't get to watch
15 American Idol last night.

16 So I apologize for that, but that's just the way -- it
17 just took longer than we all thought it was going to be.
18 Everybody worked hard. As you know, we work pretty long hours
19 and we're relatively efficient, for a court anyway.

20 So you are excused, just come back at 10:00 o'clock Monday
21 morning. And at 10:00 o'clock Monday morning, everybody has a
22 job. First thing, the lawyers will do their thing, they will
23 give you closing arguments. I'll do my thing, I'll give you
24 the closing charge on the law. Then y'all will do your thing
25 to decide this case, all right?

1 So thank you very much for your patience and forbearance,
2 and we will see you Monday morning 10:00 o'clock.

3 JUROR: Will it be done Monday?

4 THE COURT: It will be done as soon as y'all make all
5 the decisions. After it's in your hands, it's up to you. We
6 all hope and pray it will be done Monday, all right?

7 Gail is going to come back and see if you need excuses for
8 work or any parking tickets she can fix.

9 (Jury excused.)

10 THE COURT: Now, I guess we ought to go -- and I'll
11 be glad to hear you with regard to your judgment as a matter
12 of law, which we took under advisement a couple days ago, if
13 you want to flesh anything out. Because again, some of these
14 motions have some effect on the verdicts. So anything else
15 you want to add to your written motion?

16 MR. OGIBA: Well, Your Honor, I think our written
17 motion really sets it out, sets out our arguments. I don't
18 think anything has changed from our case or from their
19 rebuttal witnesses, in terms of our defamation arguments.
20 Which, I mean, I think we just have to be careful not to
21 collapse. I mean, we just have to be careful not to collapse
22 the actionability requirement with the defamatory requirement
23 under the law. And we believe that under the defamatory
24 requirement, since, if anything, their estimations were
25 artificially raised as a result of these statements, they

1 certainly weren't lowered. So that's our -- we would just ask
2 that you consider the defamation arguments that we made.

3 THE COURT: Of course, in the light most favorable to
4 the plaintiffs, which is where I have to judge as a matter of
5 law, there is evidence in the record that a reasonable jury
6 could construe to accuse these gentlemen of mutiny, failure to
7 obey a direct order, which are court-martial and/or criminal
8 offenses under the UCMJ.

9 MR. OGIBA: Correct, Your Honor, and I think that's
10 where -- and we don't dispute that finding by you, but
11 certainly that finding goes toward the actionability element
12 of the defamation claim. But then as to the defamation
13 element or the defamatory content of the statements, that
14 element of the defamation claim, it's our argument that they
15 need to establish evidence that there was -- that they
16 intended to impugn their reputations; rather, they produced
17 evidence that it inflated their reputations. They were
18 considered heroes and they were put on a pedestal. There's no
19 evidence that they were ever called murderers or mutineers or
20 anything. There's no testimony about that. There's only
21 testimony that they were artificially elevated as a result of
22 these statements.

23 THE COURT: Of course, I think they all testified
24 that they were held up to ridicule as a result of this book by
25 their fellows in the Special Forces.

1 MR. OGIBA: Well --

2 THE COURT: Again, it's in the light most favorable
3 to the plaintiff, right?

4 MR. OGIBA: Well, I think under the standard, Your
5 Honor, I think there has to be a reasonable interpretation of
6 the evidence that's been presented, and I don't think there's
7 been any real evidence presented or testimony presented by the
8 plaintiffs that that -- that they were ridiculed by fellow
9 Special Forces members. In fact, I think the Special Forces,
10 some of the Special Forces members asked for their signatures
11 on the book. I mean, I don't think there was any evidence of
12 ridicule.

13 THE COURT: Okay. Again, I think when I discussed at
14 the break about two reasonable interpretations, I think
15 there's two reasonable interpretations. And when there's two
16 reasonable interpretations, they make the decision, not me.
17 Okay?

18 MR. OGIBA: Fair enough, Your Honor.

19 THE COURT: As far as special damages, you win on
20 special damages. There's no evidence of special damages.
21 It's not in the charge as to their claims. Okay? And it's
22 not on the verdict form as to their claims against your
23 clients. It is in the verdict form, I think, in your claims
24 against their clients. Okay?

25 MR. OGIBA: And --

1 THE COURT: So there will be special damages, it will
2 just be going back to them.

3 MR. OGIBA: And I guess last issue we'd like to
4 address, Your Honor, would be under the actionability element,
5 I believe that Your Honor included a sentence in there dealing
6 with the criminal charges in the book, the interpretation that
7 there were crimes committed. And the testimony from at least
8 two of the plaintiffs indicate that they weren't there during
9 the times when the alleged crimes occurred. Their explanation
10 that the unit was charged, and that they were impliedly
11 charged, they have to be individually charged with the crimes.

12 THE COURT: Yes, sir.

13 MR. DEAVER: In the instructions there's a provision
14 about implication. And they were a member of a unit that was
15 supposedly renegade.

16 MR. OGIBA: I believe that's an implication under the
17 defamatory meaning of the statements, not the actionability
18 requirement.

19 THE COURT: I think the -- at least by page 13, it's
20 in the actionability section as opposed to the defamatory
21 section. Is that what you just said?

22 MR. OGIBA: I believe so.

23 THE COURT: Okay. Who is it, Mr. Kuchen and
24 Mr. Sirois were not there at the time of the --

25 MR. OGIBA: That's right.

1 (Brief interruption in proceedings.)

2 MR. OGIBA: It may, in fact, be a distinction without
3 meaning, Your Honor, given that you've also found that because
4 of -- because it implies their fitness in their business or
5 profession, but we would simply request that at least two of
6 those, Mr. Kuchen and Mr. Sirois, be removed from that
7 following sentence.

8 THE COURT: Okay. Any problem with that?

9 MR. BEN DEEVER: Can we have a second, Your Honor,
10 please?

11 THE COURT: Sure. And Mr. Johnson?

12 MR. COLLINS: Chris, so I understand the motion, the
13 motion is that in the jury instructions, Mr. Kuchen and
14 Mr. Sirois should be taken out of that one sentence involving
15 alleged criminality? Is that what you're asking?

16 MR. OGIBA: That's correct. And Mr. Johnson.

17 MR. COLLINS: Judge, I guess my response to that
18 would be that throughout the time frame of this book, there --
19 as you know, as we've discussed, there's several actions which
20 we feel constitute criminality. Firing into Cambodia, the
21 assassination, Snuff Crown, the alleged mutiny, and all these
22 are interwoven within the fabric of the book, and they all
23 reflect on the soldiers that served with A-424.

24 Now, it may be true that Mr. Kuchen was not there for one
25 of them, but as far as I know, there's not any of the

1 plaintiffs that were there for none of them.

2 MR. OGIBA: I think that's the argument, Collins,
3 that we're making with Sirois and Kuchen and Mr. Johnson.
4 Certainly, I mean if -- your testimony would be fantastic for
5 your case, but unfortunately your clients testified that they
6 were not charged with any crime in the book.

7 MR. BEN DEEVER: Also, Your Honor, I believe they
8 also testified that they all, as a team, a unit, as one,
9 worked in concert, and that anything that one of them did,
10 required assistance from all the other ones. And so anything
11 that one did, whether it was firing a mortar into Cambodia, as
12 alleged in the book, that they worked in concert, because it
13 required the supply man, the mortar man, everyone.

14 THE COURT: All right. I'm just going to delete any
15 reference to any individual name. I'm not going to argue
16 about that. So it's going to say defendants' alleged
17 defamatory statements are also actionable because they allege
18 crimes of moral turpitude.

19 MR. COLLINS: That would suit us.

20 MR. BEN DEEVER: Yes, sir, Your Honor, thank you,
21 sir.

22 THE COURT: Because there are more crimes than just
23 the mutiny.

24 MR. OGIBA: Correct, Your Honor. But I guess our
25 argument is that plaintiffs -- a few of the plaintiffs have

1 testified that there were no specific crimes alleged about
2 them. So we -- I guess by eliminating all of the plaintiffs'
3 names from here, it just implies that -- it still implies that
4 all of the plaintiffs were -- should be included under the --
5 under that actionability finding.

6 THE COURT: The next page says that anyway. I don't
7 know whether it's -- any plaintiff that has not been accused
8 of at least one crime.

9 MR. BACHRACH: Well -- Is it all right for me to
10 talk?

11 THE COURT: Yeah.

12 MR. BACHRACH: I don't believe Mr. Kuchen was accused
13 of any crimes in the book. He was out by March of '66. And
14 the portions of the book that they read in, didn't accuse him
15 of any either shooting into Cambodia or going into Cambodia.
16 He admitted that on the stand. And he obviously wasn't there
17 during the mutiny. Alleged mutiny.

18 THE COURT: The whole book is in evidence.

19 MR. BEN DEEVER: Exactly.

20 THE COURT: The whole book is in evidence, so just
21 because it wasn't brought out --

22 MR. BACHRACH: No, but there isn't anything in the
23 book; on cross-exam he acknowledged that.

24 THE COURT: What harm is there to just take any
25 reference to the crimes out? I've already determined it's

1 actionable, because fitness for their profession.

2 MR. COLLINS: Perhaps you could say some of the
3 defendants or some of the plaintiffs.

4 MR. DEEVER: On Kuchen, are we still talking about
5 Kuchen?

6 THE COURT: Yeah.

7 MR. DEEVER: He was there on January the 1st,
8 whenever they had their -- they had their meeting, and they
9 all conspired at that time to fire into Cambodia and to take
10 the war into Cambodia. And then on January the 1st, they, the
11 team, fired into the Cambodia. They had a big celebration.
12 Allegedly. We have to kind of separate their testimony from
13 what they said didn't happen, not what they said didn't happen
14 in the book.

15 Just for example, on page 42, "I told my men that we had
16 to be prepared to deny any action taken that would have been
17 the basis for reports we would receive coded Nantucket." That
18 is a conspiracy right there to issue false reports. There are
19 plenty of them in here, if you just take the time to read it.

20 MR. COLLINS: As we've heard, it's in the book.

21 MR. DEEVER: It's in the book.

22 MR. BEN DEEVER: It's in the book.

23 MR. OGIBA: Your Honor, we would also maintain on
24 that point that what constitutes a crime is dependent on what
25 their expert deemed to be a crime, and I don't believe their

1 expert testified about Nantucket.

2 THE COURT: He didn't; he testified about conspiracy
3 though.

4 MR. OGIBA: Not in that context.

5 MR. COLLINS: He's uncontroverted. Nobody has said
6 anything otherwise.

7 (Brief interruption in proceedings.)

8 THE COURT: I hope y'all are ready for your third
9 trial. Because if one, two, three, four, five, six, seven
10 people with law degrees can't understand these instructions,
11 how are you going to get eight people on a jury to understand
12 them? So even though you haven't taken Plan A, perhaps Plan B
13 would take a vote of six to two, one side or the other. Less
14 than unanimity. That's between y'all. I can't force you to
15 do it, I'm just telling you that be careful what you ask for,
16 because you might get it. Okay? You don't have to tell me
17 that now, you can tell me that by Monday.

18 MR. BACHRACH: We can tell you Monday.

19 THE COURT: That's fine. Or just over the weekend,
20 so I can change the last page, which is easy to change, it
21 says unanimous. Just say, you know, doesn't have to be
22 unanimous, but six of you have to agree.

23 MR. BACHRACH: We can e-mail that to Eli?

24 THE COURT: He won't be there.

25 (Brief interruption in proceedings.)

1 THE COURT: I know in your complaint, and I'm sure
2 when you drafted this complaint you had no idea this was where
3 you were going to end up talking about Supreme Court cases.
4 This is a libel case, this is not a slander case, right?
5 We're talking about the book.

6 MR. COLLINS: I think generally that's correct.

7 MR. DEEVER: We would just waive, and amend our
8 complaint to withdraw -- to strike the word and slander.

9 MR. COLLINS: We're talking about the book.

10 THE COURT: Okay.

11 MR. COLLINS: It's in the book.

12 THE COURT: The reason for that is because, as my
13 lawyer is telling me, slander is actionable on five separate
14 categories, but libel is actionable per se, no matter if it
15 degrades the profession. So really the criminal stuff doesn't
16 really make any difference, because you don't have to prove
17 it.

18 MR. COLLINS: I'll still be able to argue it.

19 THE COURT: You can argue anything you want, as long
20 as it's in the record.

21 MR. BACHRACH: So does (d) come out?

22 THE COURT: No, (d) doesn't come out. The first two
23 sentences of (d) come out. See where it says the law regards
24 the alleged libel as actionable --

25 MR. BACHRACH: But that -- Your Honor, if you make a

1 ruling that it's actionable, and that's not an element they
2 have to prove, isn't it just easier to instruct them on the
3 elements they have to prove, and we would agree that this --
4 because my concern is if you strike the two sentences, and
5 then you leave it -- starts off the law with regard to the
6 alleged libel is actionable because it tends to degrade
7 plaintiffs' reputation and character, it makes it sound like
8 you're making a ruling that it degrades the character, and
9 they could read this and say you've made that finding.

10 THE COURT: How about if I just say the Court has
11 decided as a matter of law that the statements in this book is
12 actionable, period.

13 MR. BACHRACH: Meet the elements.

14 THE COURT: Meets the elements of actionability;
15 therefore, you don't have to take into consideration. And
16 they have to find the other four elements.

17 MR. BACHRACH: That's good.

18 MR. DEEVER: We'll live with that.

19 THE COURT: What I'm going to do under actionability
20 is say the Court has -- something to the effect --
21 actionability has been decided by the Court, the statements
22 are actionable; therefore, you don't have to worry about this
23 element, or something to that effect, without getting into
24 parsing all that. Is that okay?

25 MR. COLLINS: That suits us.

1 THE COURT: Okay. But you're still going to have
2 that last sentence, you know, this element is only one of
3 four, you're still going to have to say they proved the --
4 have to prove the other three.

5 MR. COLLINS: Is that all you've got, Chris?

6 MR. OGIBA: That's all we have.

7 THE COURT: Okay. Now we hear the rest of the story.

8 MR. COLLINS: Two things from us. First of all,
9 regarding the abuse of process claim, we think we're entitled
10 to judgment as a matter of law on that, mainly because there's
11 been no testimony that I've heard regarding an ulterior
12 purpose, nor has there been any willful act on abuse of
13 process. We've heard a bunch of stuff about the lawsuit and
14 all that, but of course that's a legal and proper purpose.

15 THE COURT: I've heard a lot of ulterior purposes
16 from the Special Forces Association; unfortunately, they are
17 circling the courthouse and not in the courthouse, so how
18 about what evidence in the light most favorable to your
19 clients, do we have as an ulterior purpose?

20 MR. OGIBA: I think there's been evidence, Your
21 Honor, that these plaintiffs coordinated through the Special
22 Forces Association, provided the Special Forces Association
23 with their -- with any information and documentation that the
24 Special Forces Association had, and then used the Special
25 Forces Association as a vehicle to strong-arm the publisher

1 and the author to withdraw the book from the market.

2 THE COURT: I think that's a figment of an overactive
3 imagination. Okay? I don't think there's any evidence that
4 says that any of these plaintiffs strong-armed or had any
5 effect on what the Special Forces Association was going to do.

6 MR. BACHRACH: But they were -- they were part and
7 parcel; they associated with the association, they --

8 THE COURT: They're members.

9 MR. BACHRACH: They worked with them. One -- yeah,
10 they're members.

11 MR. DEAVER: So was Mr. Marvin.

12 MR. BACHRACH: But, for example, Mr. Taylor, there's
13 at least a dispute about viewing it in the light most
14 favorable to us, worked on the questionnaire with the Special
15 Forces Association, and we would say that they worked together
16 with the Special Forces Association funding it, but that they
17 are doing this to try to stifle the book. And that's the
18 ulterior motive, improperly chilled speech.

19 THE COURT: Have you ever seen any case that bringing
20 of a lawsuit is abuse of process? Against --

21 MR. BACHRACH: Yes. Well, more in the analogous. In
22 the -- you see it in the anticompetitive type where it's
23 improper because -- where the impropriety is because you're
24 bringing the lawsuit to chill competition. In this case
25 they're bringing the lawsuit to, in the face of their own

1 statements, at least three of the plaintiffs who stated and
2 gave information verifying contents of the book, it could be
3 implied that there's an ulterior motive. Why is there a
4 different story on the stand, than what they said in the
5 tapes? And what is their motive? Their motive is to try to
6 chill the speech improperly, and chill the book -- and to stop
7 publication of the book.

8 MR. COLLINS: Your Honor, you have to focus on the
9 abuse of the process that occurs after the process has
10 actually been initiated. Here, the process is the filing of
11 the lawsuit, which is certainly a legal right that plaintiffs
12 have. There's been no evidence that anything occurred after
13 that. There's been -- I'm not even exactly sure what process
14 they're saying is being abused. I can only assume it's the
15 filing of a lawsuit.

16 THE COURT: That right?

17 MR. BACHRACH: It's the filing and the use of the
18 lawsuit as a vehicle to chill speech.

19 THE COURT: I don't have a problem with the concept
20 that you say, but how can I say that if you file a lawsuit,
21 you survive summary judgment, you survive a directed verdict,
22 you go to a jury, that that's an abuse of process?

23 MR. BACHRACH: I don't believe we filed summary
24 judgment.

25 THE COURT: I know, I'm just saying -- and for good

1 reason, because you'd lose. All right?

2 MR. BACHRACH: Because, Your Honor, if the jury --
3 this jury could find that we've got plaintiffs, Mr. Strait on
4 tape, saying -- giving his memories and remembrances, now
5 coming up here and giving an entirely different story. And
6 before they filed the suit, in fact, 12, 15 years before they
7 filed the suit, Mr. Sirois, Mr. Strait, and at some point
8 Mr. Johnson, I think it was a little later, give statements to
9 Colonel Marvin. And we heard Mr. Sirois say that his tape,
10 the memories on his tape are true. And we heard Mr. Strait
11 give excuses why they're not true. But they come up here, and
12 things that are verified, they're now saying on the stand,
13 aren't. And I think it's for the jury to determine, well,
14 they willingly gave this information and they said it was true
15 at one point; now they're not saying it's true. They're
16 associating with the Special Forces, which is trying to chill
17 the speech. I believe there's ample evidence from which a
18 jury could find that this -- that this lawsuit was filed for
19 an improper purpose, and being used improperly.

20 MR. COLLINS: Sounds like to me this -- what
21 Mr. Bachrach is talking about is an issue of credibility of
22 the witnesses. And he's certainly free to argue that, or
23 Chris is, on Monday, to the jury. But there's been no
24 pointing to an abuse of process. There's no extortion,
25 there's no threats while this process is ongoing, there's none

1 of that. And that's the kind of stuff that abuse of process
2 addresses.

3 MR. BACHRACH: The theory of our case has been that
4 this lawsuit is a distortion, a strong-arm bullying attempt
5 to try to keep a book secret, and a book secret that
6 plaintiffs themselves, three of them at one point gave
7 information which is put in the book, and now they want to say
8 is not true.

9 THE COURT: One of the plaintiffs said the lawsuit --
10 didn't even know the lawsuit was filed.

11 MR. BACHRACH: That gets into Rule 11 issues, but --

12 THE COURT: No, doesn't get --

13 MR. BACHRACH: I mean for a plaintiff to not even
14 know that a lawsuit is being filed on his behalf, and for that
15 plaintiff to have given a tape and said he went into Cambodia,
16 and then to come here and say he didn't, under oath, and then
17 say, well, what's on the tape is true, I mean, it creates
18 potential, what we believe, evidence that could go to an
19 ulterior motive.

20 THE COURT: How can someone abuse process if they
21 don't know the lawsuit that you're complaining about was
22 filed?

23 MR. BACHRACH: I'm not sure, Your Honor. That may be
24 a bigger problem, because I'm thinking how can a plaintiff not
25 realize a lawsuit's been filed on his behalf?

1 THE COURT: I've been here 16 years; it happens all
2 the time.

3 MR. BACHRACH: Your Honor, I don't know, in my
4 practice my clients know when lawsuits are being filed. I've
5 never filed anything without someone's authority.

6 MR. COLLINS: In fairness, Judge, to Mr. Johnson, I
7 think this is being taken out of context a little bit. I
8 think we could prove, if we had to, if we were asked to, that
9 he knew the lawsuit was filed.

10 (Brief interruption in proceedings.)

11 THE COURT: Okay. Mr. Bachrach, if, in fact, the
12 plaintiffs had wanted to, they could have asked for an
13 injunction as part of the remedies in this case, which is
14 something the Court could do, right?

15 MR. BACHRACH: Enjoin someone -- I don't believe -- I
16 don't believe a court can enjoin someone from a future act.
17 At least in remedies I have a vague memory --

18 THE COURT: I think if, in fact, it was found to be
19 defamatory, could not the plaintiffs have said, if I win, that
20 the book's not true, it's defamatory, I want to enjoy Trine
21 Day from distributing this book again, is that not a remedy
22 available under the law?

23 MR. DEEVER: We considered that, Your Honor, and the
24 reason we did not do that was to allow them to earn a little
25 money that we could get when we got our judgment.

1 THE COURT: That's one of those it was a good idea at
2 the time.

3 MR. COLLINS: Absolutely.

4 MR. BACHRACH: I guess, Your Honor, I'm going to have
5 to, without researching it, feign some -- not feign, I am --
6 I'm obviously ignorant on this point, because my understanding
7 is that you cannot enjoin someone from committing future
8 misconduct. That you can enjoin someone from -- I guess my
9 simple answer is I don't know, I'd have to research it. If I
10 can come up -- if I --

11 THE COURT: But if -- and by enjoining the
12 distribution of this book, that would stifle it, I guess, if
13 they won.

14 MR. BACHRACH: If they won, and -- if they won and
15 you could issue an injunction, that would -- well, of
16 course -- Yes, if it was defamatory.

17 THE COURT: But then if, in fact, I could do that
18 within the process, then how does the stifling of your
19 client -- ulterior motive outside the process.

20 MR. BACHRACH: Because that's assuming they won. I
21 mean, if the jury finds that there was -- they knowingly knew
22 they had no basis for the claim, because they made statements
23 that support the book, and yet they filed the lawsuit to try
24 to strong-arm or put someone out of business because they
25 didn't have attorneys' fees, it's improper use, it's trying to

1 use the lawsuit as collateral or a wedge to get something that
2 they couldn't otherwise get, because the book is true. I
3 mean --

4 THE COURT: That seems pretty circular to me; maybe I
5 missed something.

6 MR. BACHRACH: I think it's into the jury's hands.
7 First they have to decide whether or not these guys are
8 telling the truth or who's telling the truth. If they find
9 that the plaintiffs were not -- were telling the truth before
10 and not telling the truth now, a jury could find that, okay,
11 in 1988 they were telling the truth; why -- you know, and yet
12 knowing that that was the truth, they filed this lawsuit to
13 try to put pressure or do something to try to get the book
14 stifled.

15 THE COURT: I'm looking at page 23 of the -- at least
16 the last instructions, is that what you're looking at?

17 MR. BACHRACH: Yeah, the improper purpose usually
18 takes the form of coercion to obtain collateral advantage not
19 properly involved in the proceeding itself, such as the
20 surrender of -- Sorry.

21 THE COURT: I'm looking above that. There is no
22 liability where a party has done nothing more than carry out
23 the process to its authorized conclusion, even with bad
24 intentions.

25 MR. BACHRACH: So I guess what I hear you saying,

1 Your Honor, is that as this plays out, this -- we may not have
2 abuse of process, but if the jury were to come back in our
3 favor, there may be a malicious prosecution down the road.
4 Or -- because bad intention, I mean, that's where you get into
5 the --

6 THE COURT: Well, I don't know, I mean, you may have
7 lots of things down the road. It seems to me malicious
8 prosecution, you know, most malicious prosecutions I've seen
9 are when somebody gets arrested at the Wal-Mart and really is
10 not guilty, and the case is dropped as opposed to decided by a
11 jury.

12 MR. BACHRACH: Wal-Mart wouldn't do that. Well,
13 based on that statement you've just shown me, Your Honor --

14 THE COURT: Which is direct from Ralph King
15 Anderson's South Carolina Law.

16 MR. BACHRACH: I'm not -- Based on that, I'm not
17 going to push anymore.

18 THE COURT: All right. So I'll grant a judgment as a
19 matter of law as to the abuse of process claims by the
20 defendants against the plaintiffs, which helps.

21 MR. COLLINS: One last thing I'd like to bring up,
22 and this is regarding the counterclaim of Trine Day against
23 the plaintiffs, not Colonel Marvin's counterclaim, but solely
24 the counterclaim of Trine Day.

25 I'm not aware of any false or defamatory statements that

1 are in the record regarding Trine Day.

2 Now, we've heard plenty of evidence, concedingly, about
3 Colonel Marvin. And I'm not interested in discussing that.
4 But with regard to the publisher, I'm not aware of any of the
5 plaintiffs testifying with even being asked questions about
6 the publisher. I've looked at the documents that are in the
7 exhibits. I can't find anything, any statements, any written
8 statements about Trine Day that are defamatory. If there's no
9 defamatory statement, then there's no defamation counterclaim.

10 THE COURT: Makes sense.

11 MR. BACHRACH: Your Honor, I think what we'd say
12 there is with respect to -- we've got the letters again from
13 Jimmy Dean, which are based on statement -- he can only get
14 the information from the plaintiffs to Trine Day, that he's
15 publishing a book that's full of lies. And in that way you're
16 accusing someone in your business, publishing something full
17 of lies, that isn't, then that's defamation.

18 MR. COLLINS: Your Honor, Jimmy Dean is not a party
19 to this lawsuit, nor is the Special Forces Association.

20 MR. BACHRACH: We realize that, but many of the
21 plaintiffs acknowledge telling Jimmy Dean and, in fact, one --
22 there's a dispute of fact -- but worked with Jimmy Dean with
23 respect to, you know, providing the questionnaires and putting
24 out -- giving them information. If you publish -- if you
25 publish something and it gets republished, you're still libel

1 for your original publication, by them telling Jimmy Dean that
2 it's full of lies. Jimmy Dean wouldn't know, but for their
3 statements.

4 THE COURT: Well, the problem with that argument is,
5 looking at count three, counterclaim, it's libel, so it has to
6 be written.

7 MR. BACHRACH: But it was published in The Drop.

8 THE COURT: Yeah, but they didn't publish it in The
9 Drop.

10 MR. BACHRACH: But it was published based upon
11 publications they made.

12 THE COURT: Well, that's a nice argument, but
13 there's, number one, no factual basis for it, because nobody
14 ever called Jimmy Dean or anybody.

15 MR. BACHRACH: Well, there's written questionnaires
16 that were put into evidence that they provided the Special
17 Forces.

18 MR. COLLINS: Judge, there's nothing, as far as I
19 know, even in the written questionnaires.

20 THE COURT: About Trine Day.

21 MR. COLLINS: About Trine Day.

22 MR. BACHRACH: There's nothing in the written
23 questionnaires about Trine Day, but --

24 THE COURT: So that can't libel Trine Day, because
25 they're not mentioned.

1 MR. BACHRACH: No, but -- Correct. But it forms the
2 basis for then Jimmy Dean's publication to Trine Day that
3 demands -- telling them that the -- he's publishing a book of
4 lies.

5 THE COURT: Okay. But the plaintiffs didn't sign
6 those letters, have anything to do with those letters, as far
7 as I know. You know, you've got a libel claim against five
8 individuals, and so far we've gotten no libel that was
9 committed by any of those individuals against Trine Day, that
10 I've heard so far.

11 MR. BACHRACH: Except unless you take it -- if I
12 publish -- if I, for example, write someone and tell them a
13 lie and they pass that on, I'm just as libel.

14 THE COURT: They didn't write anything about Trine
15 Day in those questionnaires.

16 MR. BACHRACH: But they worked with the Special
17 Forces, who were paying for this, to libel Trine Day, at least
18 in the demand letters.

19 (Brief interruption in proceedings.)

20 MR. BACHRACH: Your Honor, can I also add, I mean, if
21 you go to Exhibit 20 where it indicates Jimmy also briefed
22 such and such, Dan Marvin and his book, Expendable Elite,
23 which has been proven to be 100 percent lies, and that's based
24 on the written information provided --

25 THE COURT: How do you know what that's based on? I

1 mean, that's pure speculation.

2 MR. BACHRACH: Well, it's based on -- certainly the
3 plaintiffs had to give him the information. Unless -- he says
4 it's been proven to be 100 percent lies.

5 MR. BEN DEAVER: Your Honor, there were 24 other men
6 that were assigned to that A-424. It's possible that it could
7 have gone to any one of the other 24 men, and it's --

8 MR. COLLINS: That's not --

9 MR. BEN DEAVER: -- purely speculation.

10 MR. COLLINS: The issue that there's no libel between
11 the plaintiffs and Trine Day. The publications that he's just
12 talking about are in The Drop. That's the Special Forces
13 Association. There's nothing defamatory in a libel nature
14 that passes between the plaintiffs in this case, and Trine
15 Day.

16 THE COURT: What exhibit are the questionnaires that
17 you're relying on?

18 MR. BACHRACH: It would be Exhibits 23 to -- where it
19 talks about Expendable Elite initial questionnaire -- 23, 24,
20 25, 26, 27 -- and 27.

21 (Brief interruption in proceedings.)

22 MR. BACHRACH: Your Honor, if I could assist a little
23 bit?

24 THE COURT: Sure.

25 MR. BACHRACH: Based on your instruction, defamation

1 need not be accomplished in a direct manner. An insinuation
2 may be defamatory. A mere insinuation is as actionable as a
3 positive assertion, if it's false and malicious and its
4 meaning is plain.

5 These questionnaires were sent out about Expendable Elite,
6 and they're commenting on the truth or falsity of a
7 publication, a book that's been published by Trine Day. And
8 hence, by indicating that Expendable Elite is false, and in
9 providing that information to the Special Forces, they've
10 defamed Trine Day.

11 THE COURT: Exhibit 26, there's no Tuttle question
12 there.

13 MR. BACHRACH: Again, Your Honor, he's talking about
14 the book. He's not just saying -- Mr. Marvin, he's saying
15 since the book has been published recently, and then he talks
16 about this time more read the book, he's talking about the
17 book being -- having lies. I mean, the case is not -- I mean
18 frankly, based upon what he says, he says there's something in
19 the book that isn't even --

20 THE COURT: All right, I'll think about it.

21 MR. BACHRACH: Thank you, Your Honor.

22 THE COURT: It's kind of building a house of cards,
23 but we'll see. Yeah.

24 MR. COLLINS: That's all I've got, Judge, thank you.

25 THE COURT: Anything? Anything else?

1 MR. OGIBA: No, that's it, Your Honor.

2 THE COURT: Whatever changes we make, we'll put on
3 CM/ECF, and y'all can pick it up.

4 MR. COLLINS: Is it easier just to e-mail them to us
5 as opposed to going through that?

6 THE COURT: That's fine.

7 MR. COLLINS: Every time I have to go back through
8 that to find my password.

9 THE COURT: He'll e-mail them to you.

10 MR. OGIBA: That's fine.

11 THE COURT: Anything else? All right. I guess the
12 thing is to check all exhibits while y'all are here to make
13 sure that everything's straight. And the verdict form,
14 because let us know about that, too. Or let Eli know in the
15 morning if there's any changes. Because that's what you're
16 going to see and you're going to have to go over them. And
17 then we'll see y'all at 9:00 o'clock Monday morning. Because
18 that will give us an hour to make any changes to whatever we
19 want to do and get y'all set up and go from there.

20 MR. COLLINS: Sounds good.

21 MR. BACHRACH: Thank you, Your Honor.

22

23 (Court adjourned at 4:55 p.m.)

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