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

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

Trial in the above-captioned matter held on Monday,
October 31, 2005, commencing at 9:07 a.m., before the
Hon. David C. Norton, in the United States Courthouse,
Courtroom II, 85 Broad Street, Charleston, South Carolina.

APPEARANCES:

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

BENJAMIN W. DEEVER, ESQUIRE, 705 Princess St.,
Wilmington, NC, appeared for plaintiffs.

CHRIS OGIBA, ESQUIRE, 205 King St., Charleston,
SC, appeared for defendants.

BARRY A. BACHRACH, ESQUIRE, 311 Main St.,
Worcester, MA, appeared for defendants.

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

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WITNESS: DANIEL MARVIN

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1 (Jury not present.)

2 THE COURT: I'm ready when y'all are.

3 MR. BACHRACH: We're ready, Your Honor.

4 THE COURT: You filed three motions; I don't know
5 whether you want to go with those or what you want to do.

6 MR. BACHRACH: Yes, we would -- we'd like to, Your
7 Honor.

8 THE COURT: All right. I guess every journey of a
9 thousand miles starts with the first step.

10 MR. BACHRACH: Your Honor, my name is Barry Bachrach,
11 and I'm from the law firm Bowditch and Dewey, and I represent
12 defendants Trine Day and Colonel Daniel Marvin. I'd like to
13 address the first motion in limine, and Mr. Ogiba will address
14 the second and third.

15 The first motion in limine addresses our seeking a ruling
16 in advance to preclude plaintiffs from bringing extraneous
17 materials into this case. In particular, we're concerned
18 about -- after viewing their exhibit list, they're trying to
19 bring in information about a book, A Smoking Gun, which has
20 nothing to do with the book at issue. It relates to issues
21 involving the Kennedy assassination and aftermath of the
22 Kennedy assassination. And if we bring these extraneous
23 materials into this trial, it would require us to call the
24 author of the book, and basically we'd have a trial within a
25 trial as to the truth of that matter, instead of focusing on

1 what is important in this case, is whether or not what is
2 stated in the book Expendable Elite, is true.

3 So, Your Honor, we'd ask for a ruling in advance that the
4 Court preclude the plaintiffs from mentioning or introducing
5 evidence concerning the issues concerning Without a Smoking
6 Gun, issues concerning the Martin Luther King assassination,
7 the Kennedy assassination, just so that this case,
8 particularly in the time lines that His Honor wants to try it,
9 so that we don't turn this into a number of collateral issues.

10 And that's the crux of our motion, because we're concerned
11 that if this other information gets in, we're going to be
12 required to bring in rebuttal evidence, and turn this into
13 trials within trials. And I believe it will confuse and cause
14 unfair prejudice to the jury.

15 THE COURT: Okay. Who's on? Y'all going to bring
16 that stuff in? I don't mind refighting the Vietnam War, but
17 taking on the Vietnam War and the Kennedy assassination and
18 the Martin Luther King assassination is a tall order.

19 MR. BEN DEEVER: And Martin Luther King, Your Honor.

20 MR. BOBBY DEEVER: We are somewhat in agreement with
21 that. We're trying our best now to streamline this trial as
22 much as we can and avoid any extraneous information, and
23 probably if we were to use anything from that, it would be
24 pursuant to the rules of prior statements of the witness, and
25 it goes to his credibility.

1 There may be -- we're not going to relitigate the suicide
2 of Colonel -- Lieutenant Commander Pitzer. We have no
3 intention of that. But any prior statements that are
4 disseminated by defendant Marvin, I think are fair game to
5 attack his credibility.

6 So we don't have any intention to bringing in that issue,
7 except as to his comments about this very -- about the very
8 book that we're litigating.

9 THE COURT: Okay. All right. So you're not seeking
10 to introduce Without a Smoking Gun, or -- but just if, in
11 fact, something that Mr. Marvin said is inconsistent with
12 something he says in this trial?

13 MR. BOBBY DEEVER: Yes, Your Honor. No, we wouldn't
14 introduce the book into evidence, but we might present it to
15 Mr. Marvin to identify, and then his statements in there that
16 are inconsistent with Expendable Elite, he would be bound by
17 those. But at this point we don't intend to do that.

18 THE COURT: Okay.

19 MR. BOBBY DEEVER: But we would not like to leave
20 that with the Court, and whatever the Court's ruling --

21 THE COURT: All right, well, yes, sir?

22 MR. BACHRACH: Excuse me, Your Honor. My concern is
23 Expendable Elite in no way mentions the Pitzer situation, nor
24 does it make any mention concerning the issues of the Kennedy
25 assassination. And so I'm somewhat at a loss of my brothers

1 wanting to keep open and try to get in, inconsistent
2 statements. Because frankly, from our perspective, if he
3 tries to bring in any statements from that book, they're not
4 relevant to Expendable Elite. I challenge them to say
5 anywhere within Expendable Elite, Pitzer or the Kennedy
6 assassination is mentioned. And so I think it's completely
7 irrelevant. And I'm just concerned about if it gets in, it
8 then puts the onus on us to have to rebut it, and actually
9 call witnesses to verify the statements that Colonel Marvin
10 made in that book.

11 THE COURT: Okay. Well, I think we'll cross that
12 bridge when we come to it. I mean, I'm not going to do a
13 blanket ruling on a motion in limine that was brought, you
14 know, Friday afternoon, till I listen to the trial. And it
15 would have to be a function of what Mr. Marvin has to say here
16 in this courtroom, I would think. So we'll just -- we'll
17 handle that when it comes up. All right?

18 MR. BACHRACH: Thank you, Your Honor.

19 THE COURT: All right. The exclusion of witnesses
20 motion?

21 MR. OGIBA: Yes, Your Honor. As our motion
22 indicates, we -- The plaintiffs have listed a significant
23 number of witnesses in their pretrial brief which was
24 submitted, you know, post-deadline under the local rules, that
25 had not been identified at any point during the litigation.

1 THE COURT: Actually, under the local rules they
2 don't give you a copy either, so --

3 MR. OGIBA: Right, right, we kind of lucked out on
4 that, I guess. But they never filed the 26(f) report, there
5 was never any -- never any disclosure of many of these
6 witnesses. Our brief sets forth the witnesses that they have
7 identified. They've identified the plaintiffs, they've
8 identified their experts, Overholt and Dix, but they haven't
9 identified anybody else.

10 We concede that we have identified Jimmy Dean, and we've
11 identified Mackem in our 26(f) report, and in our proposed
12 voir dire for the jury. They, again, did not submit any
13 proposed voir dire for the jury, so the jury had no -- so no
14 voir dire was allowed for those individual witnesses.

15 So as to Mackem and Dean, we don't have any objection as
16 to Dean. As to Mackem, we had listed him as a witness, but we
17 were unable to locate him. We would just respectfully request
18 that we be allowed to depose him prior to his testimony. I
19 spoke with counsel yesterday; it didn't seem like there was a
20 problem with that, but I'll let them speak for themselves.

21 THE COURT: Okay. Yes, sir, Mr. Deaver?

22 MR. BEN DEAVER: Yes, sir, I'm Benjamin Deaver. As
23 far as -- we really don't have any objections to allowing that
24 motion to come in. We are in the process of trying to make
25 arrangements for Walter Mackem to be deposed, hopefully this

1 evening. It was a last minute thing that was thrown on us to
2 try to arrange his deposition, so we were in the process, my
3 office in Wilmington is trying to make that arrangement as we
4 speak today.

5 I guess there's no objections to Jimmy Dean, Overholt, and
6 the other witnesses that they have objections to, we'll
7 concede to that, that we won't bring them in, based on the
8 fact that they're saying they're not going to bring in
9 Valentine at this point.

10 THE COURT: All right. So Roxanne Merritee,
11 Christenson, McCarthy, Vanek, Bogart, Oerding, O-E-R-D-I-N-G,
12 and Bleachard are not going to be called in the case in chief?

13 MR. BEN DEAVER: No, sir. We're not going to --
14 based on what we were told this morning as far as that, their
15 expert's not going to come in, a lot of that was used to
16 attack the credibility of the expert. But if he's not coming
17 in, then they're not going to be needed.

18 THE COURT: Well, they wouldn't be coming up in your
19 case in chief anyway.

20 MR. BEN DEAVER: Correct, Your Honor. Well,
21 except Merritee, she would come in, in the case in chief. But
22 we have a document that we hopefully can just bring in that
23 way, without having her presence necessary.

24 THE COURT: All right. So I'll grant the motion to
25 exclude Christenson, McCarthy, Vanek, Bogart, Oerding and

1 Bleachard from testifying in the case in chief. Okay.
2 Anything else?

3 MR. OGIBA: Okay. Your Honor, I guess just for
4 clarity's sake, you're reserving the right to -- with
5 Merritee, you're allowing the plaintiffs to call Merritee in
6 their case in chief?

7 THE COURT: Well, probably not, but then I want to
8 listen to it first, all right?

9 MR. OGIBA: Okay.

10 THE COURT: All right.

11 MR. OGIBA: Thanks. As to our third motion in
12 limine, Your Honor.

13 THE COURT: Um-hum.

14 MR. OGIBA: Again, this is a motion under the local
15 rules, Local Rule 30.03, this is as to the videotape of the
16 deposition of plaintiff Tuttle. We were provided with a
17 letter late last week, I think on -- actually, yes, on Friday
18 we were provided with a letter from plaintiffs that Tuttle
19 will not be attending the trial, due to illness.

20 However, as to his videotape deposition, we would object
21 to that, because we have not had an opportunity to review that
22 tape, we have not had an opportunity to edit that tape
23 pursuant to the local rules. And so that's the crux of our
24 motion. This may have already been conceded.

25 MR. BOBBY DEEVER: We will bring in the video, we

1 want to try to, we have a written transcript, and we would use
2 that.

3 THE COURT: Okay, that's fine.

4 MR. BOBBY DEEVER: And incidentally, I just would
5 like to -- while we're addressing that, we have a letter from
6 the doctor about Colonel Tuttle that I'll give to the --

7 THE COURT: That's fine. I mean, I think you can --
8 and you said in his deposition it was anticipated that due to
9 his health that he probably wasn't going to be able to attend
10 trial anyway.

11 MR. OGIBA: That's correct. We would just request an
12 opportunity to review the transcript that's being submitted,
13 prior to its submission.

14 THE COURT: Well, I mean, they're going to do it the
15 old-fashioned way, somebody is going to get up here and read
16 it, questions and answers, then when you come to object, then
17 you object and I'll read along with you.

18 MR. OGIBA: Thank you, Your Honor.

19 THE COURT: So for purposes of trial, I think that
20 you can tell the jury that Colonel Tuttle is in such bad
21 health he couldn't be here, but you'll hear from him by
22 deposition, whatever you want to tell them, just give them a
23 reason why he's not here.

24 MR. BOBBY DEEVER: Thank you.

25 THE COURT: Anything else?

1 MR. OGIBA: Yes, Your Honor, we have two other minor
2 matters.

3 THE COURT: Okay.

4 MR. OGIBA: We would just like to reiterate what we
5 had mentioned to you in our pretrial conference, that Tony
6 Trung, who is one of our witnesses, will not be arriving until
7 Thursday. We did not think that was going to be a problem,
8 given the number of witnesses that the plaintiffs had
9 identified. But now looking at how streamline the case is, we
10 just wanted to make Your Honor aware of that.

11 THE COURT: Okay. Well, you know, if we're so far
12 along that we have to wait for Mr. Trung on Thursday morning,
13 then everybody will be happy. I'm not going to go to the jury
14 Wednesday. I mean, I've reserved all week, so if Mr. Trung
15 comes in, then you can call him, and if that's the last
16 witness, then we'll just go ahead and argue and charge and
17 rest and all that kind of thing.

18 MR. OGIBA: Thank you. And the last matter that I
19 wanted to bring up, just to bring to the Court's attention, I
20 don't know how many Catholics are on the witness list or in
21 the -- or among jurors, but tomorrow is a holiday of
22 obligation for Catholics. And I've brought in the bulletin
23 from the Cathedral of Saint John the Baptist. There's -- I
24 would just request that we have additional time tomorrow at
25 noon. There's a mass at 12:05, mass should take about an

1 hour, just additional time for that break for the holy day of
2 obligation.

3 THE COURT: I mean, is that -- is there somebody that
4 we know needs to go there?

5 MR. OGIBA: Me.

6 THE COURT: Okay. Well, you might have a few more
7 sins to confess to. So remind me of that tomorrow, okay?

8 MR. OGIBA: I will, thank you.

9 THE COURT: Anything else?

10 MR. OGIBA: That's all we have, Your Honor.

11 THE COURT: Anything from the plaintiff?

12 MR. BOBBY DEEVER: No, Your Honor.

13 THE COURT: I know that you got together and you
14 marked some of the exhibits into evidence. You can go ahead
15 and mark those into evidence. Now, the ones that you object
16 to, when they're offered, you state your objection and I'll
17 rule on them at that time, okay?

18 MR. OGIBA: Okay.

19 THE COURT: So anything else? So if you think of
20 anything, we'll just wait for the jury to get here. Then
21 who's going to make the opening statement for the plaintiffs,
22 Mr. Deaver?

23 MR. BOBBY DEEVER: Excuse me, Your Honor. On the
24 exhibits, we have a notebook, and it has -- we have the ones
25 that are agreed upon at the front, but we have the others at

1 the back of it. We might need a few minutes to remove those
2 from the notebook.

3 THE COURT: You have one for each juror?

4 MR. BOBBY DEAVER: Yes, Your Honor.

5 THE COURT: That's fine, they're not going to be here
6 till 10:00 o'clock, so we have 40 minutes. All right? Or,
7 you know, I'm just thinking out loud with you, I have no
8 objection to you giving the juror the complete notebook, with
9 the proviso that I tell them that they cannot look at any
10 exhibit unless and until it's in evidence.

11 MR. BACHRACH: Well, Your Honor, we hadn't
12 anticipated that, and we haven't made books for each of the
13 jurors. And I think it would be unfair to give them entire
14 books at this point of just the plaintiffs' exhibits. I mean,
15 if we can get ours together and give them to them at an
16 appropriate time, but I also think it's dangerous to give it
17 to them in the very beginning, before the case has started,
18 because people naturally look at things. And so I would ask
19 the Court that we present to them later, and not right now.

20 MR. BOBBY DEAVER: We will be needing those exhibits
21 as soon as we start the trial, Your Honor.

22 THE COURT: Okay.

23 MR. BOBBY DEAVER: Of course with instructions, we
24 don't have to worry about any of that.

25 THE COURT: How many are agreed to? I can't

1 remember.

2 MR. BEN DEEVER: We have 20 that are agreed to, and,
3 Your Honor, I believe maybe 12, 13 that are not agreed to,
4 Your Honor.

5 THE COURT: Since we have time, you can give them the
6 20 that are agreed to. Okay?

7 MR. BEN DEEVER: Yes, sir.

8 THE COURT: Because it's 1 through 20 that y'all have
9 in the notebooks?

10 MR. BEN DEEVER: Yes, sir.

11 THE COURT: And then we can supplement it as they
12 come in.

13 MR. BEN DEEVER: Yes, sir.

14 THE COURT: But so you've got some time to redact
15 those, okay? And then you've got some time to get your own
16 notebooks, if you want to.

17 MR. BACHRACH: We will, Your Honor.

18 THE COURT: All right, let me know if you need
19 anything else.

20 (A recess was held at this time.)

21 (Jury not present.)

22 THE COURT: Ready to go?

23 MR. BOBBY DEEVER: Plaintiffs are, Your Honor.

24 MR. OGIBA: Yes, Your Honor.

25 THE COURT: Who's going to make the opening statement

1 for plaintiff?

2 MR. BOBBY DEEVER: Your Honor, I will.

3 THE COURT: How about for y'all?

4 MR. OGIBA: I will, Your Honor.

5 THE COURT: Okay. And I'm not mentioning a
6 negligence cause of action in my opening remarks, I'm just
7 going to go on libel, because I'm not so sure that there is
8 such a thing, so rather than mention it in the opening and
9 then withdrawing it, I'm just not going to mention it. If we
10 add it in, we add it in, okay?

11 MR. BOBBY DEEVER: Yes, Your Honor.

12 MR. OGIBA: Yes, Your Honor. We would just bring up
13 our abuse of process counterclaim as well.

14 THE COURT: Yeah, the other one -- I already
15 informally or formally threw that one out.

16 MR. OGIBA: That's right, and we've just got the
17 libel and abuse of process left.

18 THE COURT: And I informally threw out the false
19 light cause of action, and I'm still thinking about the
20 negligence. And the research that I've done so far, leads me
21 to believe there's probably not a negligence cause of action,
22 but I'm open for suggestion after I hear the facts.

23 MR. BOBBY DEEVER: Yes, Your Honor, we feel that
24 there is negligence against Trine Day, the publisher.

25 THE COURT: Okay. I understand that, but I just --

1 I'm not going to mention negligence. This is a boilerplate
2 thing that takes about three minutes, five minutes, and just
3 outlines some of the issues, then y'all get to outline any
4 issues you want to, okay?

5 Did you want to give them pads and pencils please, Gail.
6 And if you have your exhibits ready for the jurors?

7 MR. BOBBY DEEVER: Yes, Your Honor.

8 THE COURT: Okay. I mean, there's only 11 jurors
9 because I had to excuse one. There's one from Richland who
10 was -- didn't show up today because he thought it was
11 tomorrow, so rather than wait an hour and a half for him to
12 get here, I just excused him, we've got plenty of jurors. I
13 don't know, what's his name?

14 THE CLERK: Mr. Carter.

15 THE COURT: Billy Carter. No relation. Ready to
16 bring the jury in? Bring them in.

17 (Jury present.)

18 THE COURT: Ladies and gentlemen of the jury, why
19 don't you move this way as much as possible, because this is
20 where the action is, right here. And y'all can pass out those
21 pads and pencils. If you want to take notes, you're welcome
22 to do so, all right? Y'all can sit down.

23 Ladies and gentlemen of the jury, Happy Halloween. Glad
24 to see some of y'all back here. I'm going to give you some
25 preliminary instructions right now to guide you in your

1 participation at this trial.

2 It will be your duty as jurors to find the facts from the
3 evidence that will be presented to you. You and you alone are
4 the judges of the facts. You'll then have to apply to those
5 facts, the law as I will give it to you at the conclusion of
6 the trial, and you must follow that law whether you agree with
7 it or not. And you must not be influenced by any personal
8 likes or dislikes, opinions, prejudices or sympathy. This
9 means you must decide this case solely on the evidence before
10 you, and according to the law. And nothing that I might say
11 or do during the course of this trial is intended to indicate
12 or should be taken by you as indicating what your verdict
13 should be. That's entirely for y'all to decide.

14 I'll now talk to you about the different types of evidence
15 that may be presented to you in this case, and from which you
16 are to decide what the facts are. The evidence in the case
17 will be the sworn testimony of the witnesses, both on direct
18 and cross-examination, regardless of who called the witness,
19 any exhibits which will be received into evidence and which
20 y'all have back in the jury room, and any facts to which all
21 the lawyers will agree or stipulate to.

22 But certain things are not evidence, and you may not
23 consider them in deciding what the facts are. I'll list them
24 for you now. The arguments and the statements by the lawyers
25 are not evidence. The lawyers are not witnesses. What they

1 will say in their opening statements, closing arguments and at
2 other times, is intended to help you interpret the evidence,
3 but it is not evidence. At the end of the trial, if the facts
4 the way y'all remember them, differ from the way the lawyers
5 have stated them, your memory of them controls.

6 Questions and objections by the lawyers are not evidence.
7 Attorneys have a duty to their clients and to the Court to
8 object when they believe a question is improper under our
9 rules of evidence. You should not be influenced by the
10 objection or by my ruling on it.

11 Testimony that may be excluded or stricken or that you may
12 be instructed to disregard is not evidence and must not be
13 considered. Of course, anything you may have seen or heard
14 when the Court is not in session is not evidence. You're to
15 decide this case solely on the evidence received at this
16 trial.

17 Now, there are two kinds of evidence, direct and
18 circumstantial evidence. Direct evidence is direct proof of a
19 fact, such as the testimony of an eyewitness. Circumstantial
20 evidence is indirect evidence, that is, proof of a chain of
21 facts from which you could find another fact exists, even
22 though it's not been proved directly. It is for you to decide
23 whether a fact has been proven by circumstantial evidence.

24 In making that decision, you must consider all the
25 evidence in the light of reason, your common sense and

1 experience.

2 You're entitled to consider both kinds of evidence. The
3 law permits you to give equal weight to both, but it's for you
4 to decide how much weight to give to any evidence in this
5 case.

6 Now, in deciding what the facts are, you must consider all
7 the evidence. In doing this, you must decide which testimony
8 to believe and which testimony not to believe. You may
9 disbelieve -- you may believe or not believe all or any part
10 of any witness' testimony.

11 In making this decision, you can take into account a
12 number of factors, including the following. Was the witness
13 able to see or hear or know the things about what that witness
14 testified? How well was the witness able to recall and
15 describe those things for y'all? What was the witness' manner
16 or demeanor while testifying? Did the witness have an
17 interest in the outcome of the case, or any bias or any
18 prejudice concerning any party or any matter involved in the
19 case? How reasonable was that witness' testimony, considered
20 in the light of all the evidence in the case? And was that
21 witness' testimony contradicted by what that witness had said
22 or done at another time, or by the testimony of other
23 witnesses or by other evidence?

24 Now, in deciding whether or not to believe a witness, keep
25 in mind that people sometimes forget things. You need to

1 consider, therefore, whether a contradiction is an innocent
2 lapse of memory or an intentional falsehood. And that may
3 depend upon whether it has to do with an important fact or
4 only a small detail. These are some of the factors y'all can
5 consider in deciding whether to believe testimony.

6 Now, during the trial of this case certain testimony will
7 be read to you by way of a deposition. A deposition testimony
8 of a witness who, for some reason, can't be present to testify
9 from the witness stand, is usually presented in writing, under
10 oath, in the form of a deposition.

11 Such testimony is entitled to the same consideration, and
12 insofar as possible, is to be judged as to credibility and
13 weighed by you in the same manner as if the witness had been
14 present.

15 Now, this is a civil case. The plaintiffs have the burden
16 of proving their case by a preponderance of the evidence.
17 This means the plaintiffs have to produce evidence which,
18 considered in the light of all the facts, leads you to believe
19 that what the plaintiff claims is more likely true than not.

20 To put it differently, if you were to put the plaintiffs'
21 and the defendants' evidence on opposite sides of a set of
22 scales, the plaintiffs would have to make the scales tip
23 slightly on their side. If the plaintiffs fail to meet this
24 burden, your verdict must be for the defendants.

25 Additionally, the defendants have brought several

1 counterclaims against the plaintiffs. When considering each
2 of those counterclaims, the defendants simply take on the role
3 as the plaintiff in their own separate case, and you're to
4 treat it as such. Therefore, the defendants bear the burden
5 of proving their claims by a preponderance of the evidence, in
6 order to receive a verdict in their favor.

7 If, in your consideration of all the evidence, the
8 defendants have failed to fulfill their burden of proof, then
9 you must return a verdict for the plaintiffs on the
10 counterclaim.

11 Now, those of you who have been jurors on a criminal case
12 have heard of proof beyond a reasonable doubt. That's a much
13 stricter standard, it requires a lot more proof than a
14 preponderance of the evidence. The reasonable doubt standard
15 does not apply in this case, and you should, therefore, put it
16 out of your mind.

17 In this case the plaintiffs allege that the defendants
18 wrote, published and promoted a book that inaccurately
19 portrayed the plaintiffs and the plaintiffs' activities near
20 the border between South Vietnam and Cambodia during the
21 Vietnam War. The plaintiffs have brought a claim for
22 defamation.

23 Defendants contend the book is accurate, and have brought
24 counterclaims for abuse of process and libel.

25 I'll give you detailed instructions on the law at the end

1 of the case, and those instructions will control your
2 deliberations and decision. However, to help you follow the
3 evidence, I'll give you a brief summary of the applicable law
4 in this case.

5 Please keep in mind that defamation law is complex. The
6 following brief explanation is only meant to help you
7 understand the evidence, and is not a thorough recitation on
8 the law.

9 Defamation. The tort of defamation allows a plaintiff to
10 recover for injury to his reputation as a result of a
11 defendants' communication to others of a false message about
12 the plaintiff. Slander is spoken defamation, while libel is
13 written defamation, or one accomplished by actions or conduct.
14 Plaintiffs allege both slander and libel.

15 In order to recover under a cause of action for
16 defamation, the plaintiffs must establish four essential
17 elements by the preponderance or greater weight of the
18 evidence.

19 One, a false and defamatory statement by defendants
20 concerning the plaintiffs; two, an unprivileged publication to
21 a third party; three, fault on the defendants' part in
22 publishing the statement; and four, either actionability of
23 the statement irrespective of special harm, or the existence
24 of special harm caused by the publication.

25 Defendants have counterclaimed for libel and abuse of

1 process. Libel, I've already talked about. Abuse of process
2 is the employment of a legal process for some purpose other
3 than what it was intended by the law to effect; the improper
4 use of a regularly issued process. In order to recover under
5 a cause of action for abuse of process, the plaintiffs must
6 establish two essential elements by the preponderance or
7 greater weight of the evidence. One, an ulterior purpose, and
8 two, a willful act in the use of the process not proper in the
9 conduct of the proceeding.

10 This is just a brief overview of the parties' positions on
11 the case. I will give you detailed instructions on the law at
12 the end of the case that will control your deliberations and
13 decisions.

14 Now a few words about your conduct as jurors. First,
15 during the trial you're not to discuss this case with anyone,
16 or permit anyone to discuss it with you. Until you retire to
17 the jury room at the end of the case to deliberate on your
18 verdict, you're simply not to talk about the case.

19 Second, do not read or listen to anything touching the
20 case in any way. If anyone should try to talk to you about
21 it, bring it to my attention promptly. Third, do not try to
22 do any research or make any investigation about the case on
23 your own. And finally, don't form any opinion until all the
24 evidence is in. Keep an open mind until you start your
25 deliberations at the end of the case.

1 Now, if y'all wish, you can take notes, but if you do,
2 leave them -- either turn them over on your chair or take them
3 in the jury room when you leave at night. Remember, they're
4 for your own personal use, and they're not to be given or read
5 to anyone else.

6 The trial is now going to begin by each side making an
7 opening statement. An opening statement is neither evidence
8 nor argument. It is an outline of what that party intends to
9 prove, offered to help you follow the evidence, like the table
10 of contents in the front of a book.

11 Then the plaintiffs will present their witnesses and the
12 defendants may cross-examine them. Then the defendants will
13 present their witnesses and the plaintiffs may cross-examine
14 them.

15 After that, the attorneys will make their closing
16 arguments to summarize and interpret the evidence for you, and
17 I'll give you your final instructions on the law. You will
18 then retire to deliberate on your verdict.

19 Okay. This case is going to be completed sometime this
20 week, but we don't know exactly when right now, but we're
21 going to try to start at 9:30 in the morning for the rest of
22 the week, if it's convenient with everybody. We'll have a
23 midmorning break, we'll have a mid-afternoon break, lunch
24 break, and we'll finish sometime between 5:00 and 6:30,
25 something like that, depending upon how the evidence flows in.

1 Okay?

2 Ladies and gentlemen, service on a jury is hard work but
3 it's also a rare privilege. By the oath you took, you are
4 each active participants in the public administration of
5 justice, and y'all are the judges of the facts in this case,
6 just as I'm the judge of the law. I'm confident that you will
7 all discharge this duty to the best of your ability. Okay?

8 Mr. Deaver, be glad to hear from you in your opening
9 statement.

10 MR. BOBBY DEAVER: Thank you, Your Honor.

11 Good morning, members of the jury, ladies and gentlemen.
12 I'm Bobby Deaver. I was not privileged to be at the voir dire
13 or the jury selection, and just so that you know, I'm --
14 that's -- I'm Ben's father, and he was here and did the jury
15 selection.

16 This case that is before you now is going to be proved by
17 the plaintiffs' -- we will present the evidence that we feel
18 establishes the claim that they have filed in their complaint
19 with the Court.

20 The evidence will show that these plaintiffs were members
21 of the -- of an A Detachment in Vietnam in 1965 and 1966.
22 This evidence shows that this happened a long long time ago.
23 The defendant Marvin was also in that A Detachment. The
24 period of time was approximately seven months that Mr. Marvin
25 was the captain, the commander of the A Detachment.

1 And the plaintiffs were, during that period of time, not
2 all in that detachment, but over -- some were in and some out
3 during that time.

4 The evidence will show that these men have enjoyed good
5 reputations in the military, that they're all retired from the
6 military, that they served honorably during that period of
7 time, and once they were out of the Army, they went on about
8 becoming good citizens, parents, husbands in the community in
9 which they were living. Their reputations continued during
10 that long period of time between 1966, and until sometime in
11 1988.

12 During that period of time defendant, Mr. Marvin, started
13 contacting some of these members, former members of this A
14 Detachment, and informed them that he was writing a book about
15 his and their activities and accomplishments in An Phu, South
16 Vietnam.

17 Now, An Phu, just for reference, will show that An Phu was
18 a village, and under the governmental organization of Vietnam,
19 the nation had several provinces which are equivalent, I would
20 say, to a state. They had districts that were equivalent to a
21 county, and then they had hamlets or villages that were
22 somewhat equivalent to a precinct, as we know it, or a
23 township.

24 The evidence will show that Chau Duc was the provincial
25 capital, and it was on the confluence of a couple rivers in

1 the Delta area. And that the plaintiffs were in this village
2 occupying a compound which was somewhat like a fortress or an
3 outpost, and they were advising the indigenous South
4 Vietnamese soldiers and arming them, feeding them, uniforms,
5 and advising and training them.

6 An Phu was one of the, or if not the most pacified area of
7 Vietnam at that time. Pacified, meaning that there were no
8 Viet Cong in that village or that township or that state, in
9 that province.

10 Their work consisted of doing civil affairs type work,
11 working on projects, building schools, communicating with the
12 people, helping them to develop an infrastructure of schools
13 and roads, piers, docks, because they were on a river area.
14 And primarily, some of these plaintiffs were medics, and went
15 on medical patrols to the villagers and treated them, giving
16 them shots, treating illnesses, doing paramedical work in
17 those communities. And they were very well appreciated. The
18 people and these men got along wonderfully well. It was a
19 very successful operation that they did.

20 None of these plaintiffs fired their weapon, personal
21 weapons, in anger during their entire tour in An Phu, except
22 John Strait, he, on one patrol that where there was some
23 hostile fire.

24 The combat in that area was conducted on forward operation
25 observation posts or bases that were out from An Phu, along

1 the Bassac River that bordered Cambodia. And that's where the
2 action took place, when it did take place.

3 The evidence will show that there was not one hostile
4 round fired into Camp Dan Nam, which was the camp in which
5 they were located, during that entire period of time they were
6 there.

7 They completed their tours of duty, went back to the next
8 higher echelon, which was a B Detachment, and then they were
9 assigned to other A detachments, because A-424, which they
10 belonged to and which Mr. Marvin commanded, was dissolved.
11 The operation of that area was turned over to Regional Forces,
12 and these men were reassigned and they left.

13 They went on to complete their military careers. They, as
14 I said earlier, established themselves as good citizens, they
15 were honorably retired from the military, until about 1988,
16 when Mr. Marvin started contacting them by phone, or some by
17 e-mail and some by mail, and telling them that he was going to
18 write a book.

19 Well, they had the respect, their respect for Mr. Marvin,
20 he was a former commander of theirs, they cooperated with him
21 very well. Some of them sent photographs that they had that
22 were -- and memorabilia from their short stay there at An Phu.
23 And some sent -- he had sent out questionnaires to them to ask
24 them what recollections and things of that nature, and
25 evaluating him.

1 They responded in various ways, but they responded. And
2 some of them sent tapes, cassette tapes voicing their
3 recollection instead of having to write everything out.

4 And then -- because they thought that this was a novel.
5 They were told it was a novel. And so they sent all of this
6 stuff and said -- a couple of them said yeah, you can use my
7 name, if you want to, you know, it doesn't matter.

8 Colonel Tuttle did not. Colonel Tuttle was the superior
9 officer to all of these, and he was the one who commanded the
10 C Detachment, which was the third step up from the A
11 Detachment. And just for information, the next higher echelon
12 would have been group, a Special Forces group, and it was the
13 Fifth Group in that Fourth Corps sector.

14 And he was the one who issued the orders or -- in fact, he
15 assigned Mr. Marvin, it was Captain Marvin then, to An Phu.

16 And Colonel Tuttle will testify. Incidentally, he will
17 not be here personally to testify, because infirmity, illness,
18 he's 84 years old. But he was deposed, which was taken many
19 months ago, before he had some -- had to have some surgery.

20 And he will tell you that he met Captain Marvin at Can
21 Tho, which -- at an echelon that he commanded. And that
22 Captain Marvin, at that time, was a quartermaster officer, and
23 he was with Special Forces. But he was sent there because
24 this camp was going to be wound down and turned over to the
25 Regional Forces. And there has to be accountability for

1 property, for weapons, for ammunition, for buildings, for
2 vehicles, everything that was there, they were just going to
3 turn it over to a regional force, which would be advised by
4 the MACV, they called it, military eval group in Vietnam. So
5 that was done.

6 When they found out that this book -- they had portions of
7 the transcript from Bassac Bastards, was the name of the
8 transcript that had been written by Mr. Marvin, they didn't
9 read it that closely, and they were mentioned about things
10 that they did that they didn't do. But it didn't matter, it
11 was a novel, and they were really pulling for him to have a
12 successful book. It was -- they still had the loyalty that
13 you developed in military service, with particularly your
14 commander and your fellow soldiers, in foreign environments in
15 particular.

16 Later it was developed into a manuscript for Apocolypse at
17 An Phu. It was then changed to Snuff Crown. And ultimately
18 it was published by defendant Trine Day as Expendable Elite.

19 When they got the copies of Expendable Elite and read it,
20 they were absolutely ballistic for what Mr. Marvin said
21 this -- every word of this book is true. And they read the
22 book, and the first thing there is that Colonel Tuttle is
23 alleged to have told him that we're going to violate the
24 international law, we're going to violate the general orders
25 that are in existence. You are going to take the war to the

1 Viet Cong in Cambodia. You're going to fire over into the --
2 into their areas or sanctuaries, as they were called, you're
3 going to patrol it, you're going to attack them physically.
4 You will go into Cambodia and do this.

5 Well, Colonel Tuttle read it, and he said that never
6 happened. It just didn't -- he was never -- he didn't even
7 have authority to authorize anything like that.

8 Then when you start reading about -- when they started
9 reading about a particular incident toward the end of the --
10 winding down of the An Phu camp and the dissolution of A-424,
11 they were depicted as mutineers. The book penned by
12 Mr. Marvin said that they were given a direct order to leave
13 An Phu, to go back to B-42, which they did. I mean, they
14 didn't receive that order that way, but they went back to B-42
15 and were reassigned and completed their military careers.

16 But according to Mr. Marvin's account of this incident,
17 and you will hear it from the words of the book, right from
18 his pen, Mr. Marvin told Colonel Tuttle and sent him a message
19 back and says, we are not going, we will not leave. And this
20 is in the presence of several of his men there, and he said --
21 he writes that John Strait said, well, after Mr. Marvin said,
22 well, they're going to have to come in and take me out, he
23 quotes Mr. Strait as saying, well, I'm with you. I'll stay
24 with you. And later on, one of the other members who was not
25 a party to this -- we don't know where he is -- said, well,

1 I'm with you, too. And then later on Jim Taylor, one of the
2 plaintiffs, said, well, I'm staying with you, too.

3 And then the book says that they went on to send out a
4 patrol. Because in the -- you'll hear the exact wording on
5 this -- that they were going to send out a patrol to block any
6 men from B-42, their upper next higher echelon, from coming
7 into camp. It will bar anybody, everybody, everybody was
8 barred from coming into their camp. And they sent out an
9 ambush patrol to keep them away. With the instructions, with
10 the specific instructions that -- to shoot over their heads,
11 and if they don't stop, do whatever is necessary. And
12 Mr. Taylor is quoted in the book as saying, well, do you mean
13 to kill them? He said yes, kill them. Your own fellow
14 soldiers now.

15 And then John Strait was supposed to have -- was quoted
16 as -- when coming back in there, laughing that they had fired
17 at these men from B-42, there were two Americans and some
18 South Vietnamese, and they ran like scalded dogs, or something
19 along those lines. And that John thought it was funny.

20 Then they wired, according to the book -- although the
21 bunkers had been wired the whole time it was built -- they
22 wired the bunkers, had the switches ready. They said that
23 there was a regiment of South Vietnamese, or ARVN, Army of
24 Republic of Vietnam, the ARVN regiment was amassing at Chau
25 Duc, which was the provincial capital, not far from where An

1 Phu was, boarding landing barges and everything, and they were
2 going to come up the river and wipe them out, kill every one
3 of them, and all of the four or 500 South Vietnamese soldiers
4 that were in the camp. And that was underway.

5 So they wired everything with explosives, with the
6 intention of blowing themselves up, and all of these Special
7 Forces that are ARVN or CIA people that came in with them to
8 wipe them out. They'd fight them as long as they could, and
9 then they would blow themselves up.

10 That is what has been alleged, what they, these men, have
11 been accused of in the book. And, you know, you'll hear it.

12 Then you will hear from Hugh Overholt, who is a Major
13 General retired United States Army, who was the JAG of the
14 United States Army for over two years. And he will tell you
15 what offenses that this account, this written word describing
16 the conduct of these men constituted. And he'll tell you that
17 one them is mutiny, and the punishment for that is death.

18 He will tell you that when they disobeyed that direct
19 order from Colonel Tuttle, that that is a specific offense
20 also under the Uniform Code of Military Justice, that in time
21 of war warrants the death penalty as a maximum punishment.

22 He will tell you what conspiracy is, what solicitation of
23 someone to commit a felony is, and how these allegations in
24 this book against these men and against Colonel Tuttle,
25 constitute the most heinous crime that a person can commit in

1 the military. And that the punishment in the civil courts
2 that warrants the death penalty is murder. But in the
3 military it is -- there are three or four offenses that
4 warrant the death penalty, and that these men are accused of
5 having committed those.

6 The plaintiffs will get on the witness stand and they will
7 testify that none of these things happened. They just didn't
8 happen, that they were fantasies brought about by Mr. Marvin,
9 who was their commander who they respected, but sometime
10 between 1966 and 1988, he had rebuilt, redesigned himself,
11 created a new persona of Captain Marvin that never existed,
12 except in his mind.

13 But yet, the -- when today, through their Special Forces
14 Association, wrote Mr. Millegan, who is the president and
15 owner of Trine Day, that don't publish this book in this
16 fashion; it is embarrassing, humiliating, it charges these men
17 with crimes of enormous proportion. And he ignored it.

18 All they wanted him to do, all they wanted Mr. Marvin to
19 do, and Trine Day, the publisher, was don't call this
20 nonfiction. It is fiction. You can publish exactly what
21 you've written any time you want to, except don't say that
22 it's true and that these men did those acts. You can leave
23 their names in there. And they refused to do it.

24 So the only way these men could protect their honor, their
25 integrity, their reputations, the respect that they have in

1 the community, is to bring this action into this court, to
2 have a redress of their grievances, and to get relief from the
3 Court, which is permitted under the Rules of Civil Procedure
4 for the Federal Court.

5 That's why they're here and that's why you're here. And
6 you will listen to the evidence that the plaintiffs present,
7 and then the defendants. But we feel that if you -- that all
8 of the evidence, that the preponderance of it will show that
9 these men have been libeled, and that's what they're suing
10 for, and that Trine Day, the publisher, was negligent, in not
11 vetting the book that he was getting ready to publish, as a
12 true nonfictional account of what happened there, if he would
13 just simply have presented it to the public in its identical
14 form as fiction, then we wouldn't be here.

15 But the only recourse that they have is this, and they're
16 here. It's a lot of trouble for them, a lot of expense for
17 them, and it's a lot of trouble for -- we won't say trouble --
18 it's one of the functions of the court and that's why we have
19 the court system, and that's why we're here. Thank you.

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

21 MR. OGIBA: Thank you. Thank you, Your Honor.

22 Good morning, ladies and gentlemen of the jury. Before I
23 start, my name is Chris Ogiba, I'm an attorney here in
24 Charleston, I'm with the law firm of Nexsen Pruet. I just
25 want to make a couple quick introductions before I start. My

1 co-counsel sitting at the table over here is Barry Bachrach,
2 he's with the law firm of Bowditch and Dewey. Sitting on the
3 bench back here, I know Mr. Deaver was making some reference
4 to these individuals, but the gentleman in the black suit is
5 Colonel Marvin. He's going to -- he's been referenced as
6 Captain Marvin. He was captain at the time, the time frame
7 that's set forth in the book, but he retired as a lieutenant
8 colonel. And the gentleman sitting next to him in the three-
9 piece suit is Chris Millegan. He is a representative of Trine
10 Day, the publisher of this book.

11 To begin, I mean, just kind of going off from what
12 Mr. Deaver indicated in his opening statement, obviously we
13 have a lot of differences. We disagree with their
14 characterization of the book. We disagree with what the book
15 says. I think the plaintiffs are trying to paint Colonel
16 Marvin as anti-military, as somebody who is accusing his men
17 of all these heinous crimes, that he was -- he's subversive.
18 That's how the plaintiffs are trying to paint him. And he's
19 not that way at all. And I think the evidence, as it will
20 come out in this trial, will indicate to you, as it does to
21 us, that that is not the case.

22 Speaking of myself, I'm the oldest of 11 kids. I have a
23 brother who is in the Marines, he's actually the middle child,
24 he's number six. He joined the Marines right after high
25 school, and this is back in 2001. And he went to Iraq, and he

1 served in Iraq, he was in Basra and he was in Falujah for
2 about a year and a half. And while he was over there, he
3 e-mailed me all the time, e-mailed me every day, most of the
4 time every day.

5 And it was strange to me -- he left a wife and two kids at
6 home -- and when he e-mailed me and he told me what he was
7 afraid of, he wasn't afraid of dying, that he never e-mailed
8 me about being afraid of dying or being afraid of the enemy or
9 anything like that. He was afraid of how the war was being
10 portrayed at home, and how he was going to be treated when he
11 got home. And that always blew my mind, because I never
12 thought of it in those terms.

13 And I can tell you, from that perspective, that if you
14 read this whole book, if you read Expendable Elite, you will
15 come away not with the opinion that Mr. Deaver is leaving with
16 you, but that these men, that these plaintiffs, were heroes,
17 that they served honorably in Vietnam, and that they served
18 heroically in Vietnam. And that's what this book is about.
19 This book is about their honorable service.

20 Mr. Deaver takes out portions of the book, and I would
21 argue, mischaracterizes portions of the book, as setting these
22 men up as criminals, as traitors, as mutineers. That's not
23 the case. And the evidence, as we move forward in this trial
24 the evidence will show that that is not the case.

25 Now, the judge, Judge Norton, indicated to you and

1 explained to you what the plaintiffs must establish in order
2 to prove defamation in this case, what they must do to prove
3 libel. Because what they claim is included in this book, the
4 fact that it's written down, that would constitute libel.
5 Defamation is broken down into two categories, libel and
6 slander. If it's written down, it's libel.

7 What the plaintiffs must prove to establish libel, and
8 part of this is what the judge has explained to you, they must
9 prove that the statements in the book were defamatory.

10 And what does it mean, defamatory? What does it mean to
11 defame someone? It means that it harms the plaintiffs'
12 reputations. The plaintiffs must prove to you that the
13 allegations in this book harmed their reputations.

14 Or, they could also establish that the allegations in this
15 book lowered their estimation in their communities. They've
16 got to prove that to you. It can't be speculation, there's
17 got to be proof of that.

18 Or, they can prove that it deterred third parties from
19 dealing with them. Other individuals decided not to become
20 friends with them because of what was written in this book.
21 They have got to prove that. That's what they need to prove,
22 to prove that the statements in the book were defamatory.

23 Additionally, the plaintiffs must establish that the
24 defamatory statements in the book, if they can establish that
25 they're defamatory, were false. They have to prove that it

1 didn't happen. They have to establish evidence of that.

2 And that really is kind of the crux of our case. I think,
3 when you see the evidence as it's presented to you, you will
4 see that more likely than not in this case, and certainly from
5 our perspective, absolutely, that the statements in this book
6 are true.

7 You will hear from the plaintiffs' own mouths that the
8 statements in this book are true. Mr. Deaver kind of, you
9 know, glossed over the fact that when Colonel Marvin sent them
10 the manuscript, the Bassac Bastards, back in 1988, that some
11 of these plaintiffs furnished Mr. Marvin with audio tapes of
12 comments, and he solicited this, he wanted to make the book as
13 accurate as possible, so he asked these plaintiffs to
14 contribute to the book.

15 And on the transcript of Bassac Bastards that he sent to
16 these individuals, it says right on the front, it says this is
17 a true story. It represents that it's a true story. I mean,
18 they come in here now and say that, you know, that they didn't
19 read it or that it's not -- they didn't know it was true, but
20 it says it on the transcript. And you will hear from these
21 tapes that Mr. Deaver referred to briefly, but which we will
22 introduce into evidence, you will hear on these tapes what
23 these plaintiffs said, to contribute to this book.

24 I mean, they're claiming, I guess, now, that they thought
25 the book was fiction. Well, listen to these tapes, use your

1 common sense and listen to these tapes, and see -- and you
2 make -- I mean, you will make the decision as to whether you
3 believe that the statements made in these tapes, whether they
4 were recollections of what happened, which is what we think
5 the tapes sound like, and which was represented to Colonel
6 Marvin when the tapes were presented to him, or, are they
7 fantasies that some individual -- that the plaintiffs just
8 concocted in their own heads, you know, sitting down and
9 recorded tapes of fantasies that could be included in this,
10 you know, fantastic fictional book.

11 You're going to make that determination, and you're going
12 to hear that evidence in this case.

13 I would just -- we would just ask you, respectfully, to
14 keep -- to not lose the forest through the trees in this case.
15 As you can see from Mr. Deaver's opening statement, there's a
16 lot of stuff in this case, there are a lot of allegations and
17 a lot of facts in this case. The plaintiffs are going to try
18 to throw as much stuff up against the wall to see what sticks.
19 That's what they're going to try to do.

20 We, we just ask that for every allegation that they make
21 about what is in the book, that they point to where in the
22 book it is, and quote from the book where they say, you know,
23 for example, Mr. Deaver claims that Colonel Tuttle had issued
24 an order that they were to join the B Company. And that the
25 plaintiffs -- that in the book it alleges that the plaintiffs

1 and Colonel Marvin, at the time Captain Marvin, disobeyed that
2 order, a mutiny. When you look at the book, if you read the
3 book, you will not see that in the book. You will not see
4 that kind of allegation in the book.

5 I would just ask that if they're going to make
6 allegations, that you hold their feet to the fire. That if
7 they're going to say this is in the book, I read this in the
8 book, that they point to where in the book they read that.

9 And I just ask that you consider, when you hear the
10 testimony, when you hear the tapes that we present on cross-
11 examination of the plaintiffs, that you listen to these tapes
12 and determine if the plaintiffs are believable in those tapes,
13 if those tapes of credible, if what they're saying on those
14 tapes, if you were Colonel Marvin or if you were Chris
15 Millegan in Trine Day, if you were listening to these tapes,
16 would you believe what was on them? And we would argue that
17 you would, but that's for you to determine.

18 I would also ask that you consider, during the course of
19 this trial, how the plaintiffs were harmed by this book. You
20 will hear evidence during this trial that when the book, or
21 when the manuscript, and when the book came out, that the
22 plaintiffs wanted extra copies to hand to their families, to
23 hand to their children. If this is full of lies, accusing
24 them of crimes and, you know, atrocious crimes for which they
25 could be convicted and killed, why would they want to provide

1 that to their kids and to their families? I would just ask
2 that you consider how they were harmed by what was written in
3 this book.

4 And I guess the last thing I would just ask to leave you
5 with is when you hear the tapes and when you hear the
6 plaintiffs' testimony here today, that you consider -- or
7 during the course of this trial -- that you consider whether
8 the plaintiffs were telling the truth then, in 1988 when they
9 were providing these tapes and providing these written answers
10 to written questionnaires, were they telling the truth then,
11 or are they telling the truth now.

12 The one thing that you will know throughout the course of
13 this trial is that Colonel Marvin, his stories never changed.

14 Thank you.

15 THE COURT: Thank you, Mr. Ogiba. Mr. Deaver, do you
16 want to call your first witness?

17 MR. BOBBY DEEVER: We call Mr. Marvin.

18 THE COURT: Okay.

19 THE CLERK: State your name for the record.

20 A. Colonel Dan Marvin.

21 Daniel Marvin, a witness called by the plaintiff, first
22 having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. BOBBY DEEVER:

25 Q. Good morning, Mr. Marvin.

DANIEL MARVIN

- 1 A. Good morning.
- 2 Q. You are the author of the Expendable Elite?
- 3 A. Yes, I am.
- 4 Q. And you -- May I see that? I'll show you Exhibit No. 16,
5 and ask that you identify that, please, sir.
- 6 A. That is a book that I wrote, and Trine Day published,
7 called Expendable Elite, One Soldier's Journey into Covert
8 Warfare.
- 9 Q. Thank you. You were a captain when you went to Vietnam in
10 1965, were you not?
- 11 A. That is correct.
- 12 Q. And you were assigned by Colonel Tuttle to An Phu, to A
13 Detachment A-424?
- 14 A. I was asked by Colonel Tuttle if I would volunteer to
15 command A-424. Because normally Colonel Tuttle would assign
16 men to the B Team, B-42, and Major Arnn, who was at that time
17 the commander, was actually killed the day I arrived there,
18 would have assigned me to an A Team that he wanted to assign
19 me to.
- 20 Q. In any event, you left the C Detachment and went to take
21 command of the A Detachment 424?
- 22 A. That is correct, I went to the B Team first, and then from
23 the B Team to the A Team.
- 24 Q. Was that just for transportation?
- 25 A. I had to report to Major Arnn, but actually Major

DANIEL MARVIN

1 Willifer, in his absence, because Major Arnn was killed when I
2 was en route to Chau Duc, where B-42 was.

3 Q. You mean Can Tho.

4 A. No, I came from Can Tho.

5 Q. You came from Can Tho to Chau Duc.

6 A. To Chau Duc, and then by assault boat with Specialist
7 Menkins, one of the plaintiffs, met me there.

8 Q. And that's one of the plaintiffs that's here today?

9 A. No.

10 Q. He is not. It was not -- he was one of the -- he was one
11 of the members of the A-424 that was assigned about the same
12 time you were?

13 A. That is correct.

14 Q. Will you look at page 282 of the Expendable Elite,
15 please?

16 A. I have it in front of me.

17 Q. Would you start reading at the top of that?

18 MR. COLLINS: Excuse me, Your Honor, do you want to
19 get the exhibits?

20 MR. BOBBY DEEVER: We offer that into evidence.
21 Exhibit 16.

22 THE COURT: Any objection?

23 MR. OGIBA: No objection, Your Honor.

24 (Defendants' Exhibit No. 16 received.)

25 MR. OGIBA: Your Honor, just so you know, we've got

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1 copies of our exhibits now, too.

2 THE COURT: Okay.

3 MR. BOBBY DEAVER: That is Defendants' Exhibit 16.

4 THE COURT: Do you want to just hand out a copy to
5 each juror?

6 MR. OGIBA: We have enough copies for all the jurors.

7 A. Did you want me to start at the first full paragraph?

8 THE COURT: Let's wait till we get everything handed
9 out first.

10 A. Excuse me, Judge.

11 THE COURT: That's no problem. Now, there's going to
12 be some exhibits passed around and you're going to have copies
13 of the exhibits with you, but don't refer to the exhibits
14 until they're in evidence, until the lawyers refer them to
15 you, okay? Because there's a bunch of stuff in there you can
16 look at if you want to; if you don't want to look at it, you
17 don't have to, but you'll at least have a copy of it, and the
18 defendants will have some exhibits and will probably update
19 your books as we go.

20 BY MR. BOBBY DEAVER:

21 Q. If you would, please, we'll start at page 281, at the
22 paragraph in about the middle of the page.

23 A. Excuse me, sir?

24 Q. Start at the paragraph that starts on page 281, that again
25 Marvin --

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1 A. Yes. "Again, Marvin Woolley rushed in from the
2 communications bunker to our team dining room, interrupted our
3 meeting, and handed me a message he'd just received at 1300
4 hours, saying, 'This is another hot one, Dai-uy. I knew you'd
5 want it right away.'" Of course, Dai-uy means captain. "It
6 read: Secret. To Marvin. Urgent. Repeat. Urgent. A-424
7 must depart An Phu and report to B-42 no later than 2000
8 today. CO, B-42 advised. Signed, Tuttle.

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

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

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

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1 "'We will, Dai-uy. But, you know it's possible that they
2 have another reason for ordering us all out at once and having
3 us open up -- having us on that open river this afternoon?'

4 "'John, the possibility of our being ambushed on orders of
5 the company --" that means the CIA "-- and then reported as
6 casualties of a VC action crossed my mind. We could bypass
7 Chau Duc going cross-country over to Tan Chau, and then bum a
8 ride down the Mekong River past Hoa Hoa Village to Can Tho,
9 but who's to say how friendly the rest of our guys would be if
10 they were told we'd gone against the CIA? John, none of us
11 want to desert the Hoa Hoas, so go and talk to Lieutenant Ba
12 and find out what we can do to help the families of any who
13 choose to leave the CIDG.'"

14 Can you hear me okay, sir?

15 Q. Yes, that's fine, thank you.

16 A. "'I say leave because I like that word better than desert.
17 It just doesn't fit.'

18 "'Jim, I want you to get with Sergeant Hung and his
19 demolition people and make certain there's enough plastic
20 explosive wired in the two big ammo bunkers and each of our
21 commo bunkers to blow this whole camp to the moon if I have to
22 pull the switch. We're not going to leave this to the VC, the
23 company or anyone else.'

24 "'Sure thing, Dai-uy. And, I'm staying with you, too.'

25 "'Thanks, Jim. Woolley, I know you've got to get back to

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

7 "'Will do, Dai-uy. And you can also count on me to ride
8 this thing out with you.' We smiled at each other and shook
9 hands."

10 Q. All right. If you could stop there, and let's go back to
11 page 281, where it reads, "Secret. To Marvin. Urgent.
12 Repeat. Urgent. A-424 must depart An Phu and report to B-42
13 not later than 2000 hours today. Commander of B-42 advised.
14 Signed, Tuttle."

15 A. Right.

16 Q. Now, Colonel Tuttle was Colonel Tuttle, who was the C
17 commander, is that correct?

18 A. That is correct.

19 Q. And he was your superior officer?

20 A. He was -- he was Major Brewer's -- Colonel Brewer's
21 superior officer, who was the C.O. of the B Team.

22 Q. And everybody in the echelon ahead of you would be your
23 superior officer?

24 A. Certainly. All the way up to the Commander in Chief.

25 Q. Well, Colonel Tuttle was in that chain of command, wasn't

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1 he?

2 A. But not in a position to give me orders.

3 Q. But the message is clear.

4 A. As is stated, yes.

5 Q. That you and A-424 are to leave and report to B-42, which
6 is your next immediate command.

7 A. That is correct.

8 Q. And then you said, "They'll have to come and take me out
9 of here."

10 A. That's right. I was not about to betray the Vietnamese
11 people I was charged to defend.

12 Q. You were going to betray the United States Army though,
13 weren't you?

14 A. No, I was not.

15 Q. You were disobeying this order.

16 A. It was an illegal order.

17 Q. Do you really think that a quartermaster captain has the
18 right to check the judgment of Colonel Tuttle, who is a
19 commander of that whole B and C and A Detachments, to order
20 you to go to another -- to your next superior headquarters and
21 report for duty?

22 A. That is correct. I was commanding an independent
23 operation, as it's indicated in the book. An independent
24 operation, you don't report to anybody until the operation is
25 over. It's a plan between the United States Army and the

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1 Central Intelligence Agency.

2 Q. Mr. Marvin, you know that that is absolutely false, don't
3 you?

4 A. I wouldn't say it, if it was false.

5 Q. You are saying that you and these men had -- did not have
6 to report to anybody?

7 A. My men had to report to me, and they followed my orders in
8 every instance throughout the entire time that they and I were
9 there together. I was proud of them.

10 Q. And you were disobeying Colonel Tuttle's order, were you
11 not?

12 A. It was an illegal order that I did not have to obey.

13 Q. And then you said that John Strait was going to stay with
14 you?

15 A. That's right.

16 Q. And Jim Taylor?

17 A. All of them.

18 Q. And all of them were going to stay with you. And then you
19 told them to -- in your book, you told them to wire the -- all
20 the bunkers around there --

21 A. The bunkers were already wired, sir.

22 Q. They --

23 A. And it was just to double check to make sure that there
24 was enough plastic explosive, as I say in the book, to just
25 blow the whole damn thing up.

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- 1 Q. The -- and --
- 2 A. Excuse my language.
- 3 Q. And you and the men and all of the United States Army
- 4 advisers and the CIA and the ARVN regiment that was coming in
- 5 there, just blow them all to hell?
- 6 A. Why do you say CIA, sir?
- 7 Q. You did.
- 8 A. No, I did not. Show me where in the book.
- 9 Q. You do in the book, do you not?
- 10 A. No.
- 11 Q. Let's look then at the -- look right above on page 282.
- 12 "Jim, I want you and Sergeant Hung."
- 13 A. Right.
- 14 Q. What is the last sentence? "We're not going to leave this
- 15 to the VC, the company," meaning the CIA, "or anyone else."
- 16 A. See, the camp was under the jurisdiction of the Central
- 17 Intelligence Agency, as long as I commanded that camp as an
- 18 independent operation. And I would just as soon they had
- 19 nothing left, because they betrayed the Hoa Hoas and my men
- 20 and the Vietnamese Special Forces.
- 21 Q. So you independently are telling the United States Army
- 22 how they're supposed to run this war?
- 23 A. The U.S. Army gave me the independent operation, asked me
- 24 if I'd accept it, on the 26th day of December of 1965. I
- 25 accepted it. And when Colonel Tuttle told me that when I left

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1 the door, it's as if I never met him, that's the way it was.
2 That's how independent operations work.

3 Q. You did not -- you never left the command of Colonel
4 Tuttle, did you?

5 A. Yes.

6 Q. And you didn't have to report to anybody?

7 A. That is correct. I could ask for logistical support, and
8 they had to provide it. And they --

9 Q. Excuse me. Didn't they tell you in the book that he
10 wasn't going to give you any?

11 A. Not that I know of. Show me where that is.

12 Q. If you'll bear with me one moment.

13 A. I know what you're thinking of, counsel.

14 Q. Okay. Well, you tell me what I'm thinking of; I won't
15 have to look this up.

16 A. When I accepted the independent operation, he said, you
17 knew that you or your men, when they are caught inside of
18 Cambodia, will be dropped from the roles as deserters. When
19 you are anyplace on the other side of the border, fighting the
20 enemy, you will receive no artillery support, no air support,
21 and not even med evac support.

22 Q. None of the B-42, or none of the -- well, let's go to
23 that, the B-42. Go a little further. Did you send out an
24 ambush to stop anyone coming into Camp An Phu?

25 A. When is this, sir?

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1 Q. Let's see. It was --

2 A. Sir, are you speaking of the time when Colonel Brewer was
3 going to send some people up the Bassac River, after he'd
4 ordered us out?

5 Q. Yes.

6 A. Yes, I did set up an ambush, because I had closed the area
7 to all outsiders, and that was my legal authority as the
8 commander of an independent operation, which comprised the
9 complete district of An Phu, not just the villages you stated
10 earlier.

11 Q. And you sent out an ambush and told them that to shoot
12 over their heads, and if they didn't stop, to kill them?

13 A. They were ordered not to come, by me.

14 Q. The patrol that you sent out, the ambush patrol, was
15 instructed to shoot over their heads, and if they didn't stop,
16 to kill them, didn't you?

17 A. That is correct.

18 Q. Your own soldiers, your own fellow soldiers?

19 A. Not my own soldiers, no. They'd be people sent by the B
20 Team, against lawful orders.

21 Q. The B Team is the next higher echelon and is also Special
22 Forces, isn't it?

23 A. Not in an independent operation.

24 Q. This camp, An Phu, at Dan Nam, was being -- it was
25 programmed already to be turned over to the Regional Forces

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1 and to MACV, wasn't it?

2 A. It was supposed to have been converted to Regional Forces
3 on the first day of June 1966. But there was so much action,
4 in fact, more action, combat action in An Phu than any other
5 district along the border, that they had to delay the
6 conversion.

7 Q. This incident we're talking about that you say happened on
8 June -- that we're just discussing, happened on June 17th,
9 didn't it?

10 A. The biggest combat actions were in May, 19th to the 24th.

11 Q. This order from Colonel Tuttle was on the 17th --

12 A. That was in June, right.

13 Q. June 17, wasn't it?

14 A. That's correct. And we were over -- about two months from
15 conversion by that time.

16 Q. If you will look at page 287, please.

17 A. Yes, sir.

18 Q. Colonel Brewer was the B-42 commander, wasn't he?

19 A. That is correct.

20 Q. You sent regular reports to Colonel Brewer, didn't you?

21 A. I sent regular reports, whether they be SPOTREPs, SITREPS
22 and MOPSUMs, which are monthly operational summaries, for all
23 actions other than that that was within the top secret area of
24 my mission, which was anything inside or going into Cambodia.
25 They were all sent through the B Team to the C Team to the

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1 Fifth Group headquarters at Nha Trang.

2 Q. And these were just regular reports that were going out?

3 They were required --

4 A. You'd have to have been there to know what regular means.

5 Each one was different, and it all depended what actions were
6 taking place.

7 Q. Well, that was one of the provisions in the monthly
8 operation reports, wasn't it?

9 A. That is correct.

10 Q. But they were just routine, it -- what happened in the
11 camp? And what your --

12 A. It provided information to the higher headquarters, to the
13 different channels within Special Forces, of what happened at
14 An Phu, and there was absolutely nothing routine, other than
15 it had to go out every month. The SITREPS and SPOTREPs went
16 out based on what happened at that time. It's a situation
17 report and a spot report, and it's based on an enemy action.
18 There's nothing routine.

19 Q. Okay. If you'll read there from 287 then, please, start
20 at the -- yeah, start at the top, if you would, please.

21 A. At the very top at and?

22 Q. Yes, please.

23 A. "And, who knows what will happen to us once we're under
24 Colonel Brewer's control? The CIA, Premier Ky and our embassy
25 all knew a lot of the Strikers would desert, if they withdrew

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1 amnesty. If we hadn't stood by them, how many more would have
2 left? I don't know, but I believe we would have been sitting
3 ducks for the southward regiment. And then what? I'll get
4 with Major Le and let him know about the escort party. We
5 have an ambush place -- in place on the Bassac River, three
6 kilometers from Chau Duc.'" That's the B Team headquarters.
7 "'They have orders to fire warning shots to all intruders. If
8 their warning goes unheeded, they are to do whatever is
9 necessary to stop them.'"

10 Did you want me to continue?

11 Q. Please.

12 A. "'Even kill them, asked Woolley?'

13 "'Yes, I answered.' Sergeant Taylor lifted up his voice
14 in support, saying, 'I agree with Dai-uy. This is serious
15 business. Our Hoa Hoa's could be slaughtered if we don't
16 stand tough.'

17 "I found Major Le --"

18 Q. That will be fine, if you will. Now, that's Sergeant
19 Taylor you're talking about is Jim Taylor who is sitting here
20 as a plaintiff, isn't that correct?

21 A. That is absolutely correct.

22 Q. And every word in that book is true?

23 A. Excuse me?

24 Q. Every word in that book is true?

25 A. I have made some mistakes in the book. Like I quoted all

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1 the messages, I quoted from -- to Captain Marvin from Colonel
2 Tuttle. Really the messages were done on one-time pads, and
3 there were code names used. I was just trying in the book to
4 put people into it that were there and were doing the actions.

5 Other than that, I would say I've left a lot of swear
6 words out. I left all them out. Because my wife especially
7 was -- said she'd like to have the book so it could be read by
8 everybody. So I mean, we swore like mad. I mean, you can ask
9 your plaintiffs when they get up here if they used a lot of
10 swear words. John Strait himself asked me to take the F-words
11 out of the book. And it was full of them, and it was true.
12 It's still true without the F-words.

13 Q. But other than the profanity, everything else is true?

14 A. Everything that's in here, actually happened. If there's
15 something in here that happened that I didn't put in here, it
16 might be something like one of my men telling me about going
17 to the whorehouse in Chau Duc. I didn't want that in the
18 book. I wanted this to be a book showing a brave team. The
19 bravest men I've ever met in my life are represented in this
20 book.

21 Q. And they're also represented in this lawsuit, aren't they?

22 A. That's correct.

23 Q. Look at the forward there, if you will, please.

24 A. Where it says Colonel Maggie?

25 Q. Yes.

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1 A. Right.

2 Q. Yes, and it's signed down there, Lieutenant Colonel Martha
3 Raye, United States Army Nurses Corps?

4 A. Okay. I was giving Colonel Maggie some -- a reward,
5 really, for what she'd done. She is the only representative
6 that went around the country for the media, for the
7 entertainment groups, that visited every Special Forces camp
8 in Vietnam. And I don't care what anybody says; when she came
9 into a camp, and I've talked to other camp commanders while I
10 was there, she had her black bag with her when she came off
11 that chopper, and she went in, and she helped Sirois in the
12 medical center when she arrived that time she arrived, one of
13 the plaintiffs. Now whether he remembers that or not, I don't
14 know, that's a long time ago.

15 Q. But he did --

16 A. But she was -- she was appointed an acting lieutenant
17 colonel by the commanding officer of the Fifth Special Forces
18 Group.

19 Q. Mr. Marvin, you know that she was given an honorary title
20 and nothing else. She's never been in the military.

21 A. That's a lie. She served in World War II, Korea and
22 Vietnam, supporting the troops and making us happy.

23 Q. I said she was never in the military, and you know that.

24 A. She was serving with the military. She was never a
25 military officer.

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1 Q. She was entertaining the military.

2 A. Well, entertaining, yes, and helping.

3 Q. Okay. But she was never in the military.

4 A. Nope.

5 Q. And she was never a lieutenant colonel.

6 A. She was an acting lieutenant colonel by the order of the
7 full colonel who commanded the Fifth Special Forces Group in
8 Vietnam. And you can see that in the book that's been written
9 about Martha Raye, too.

10 Q. Now, you know that that Fifth Group commander had no
11 authority to commission anyone.

12 A. Does this in any way defame my men?

13 Q. Well, later -- it does later on when you have her getting
14 a couple of bullet holes in the helicopter coming in for a
15 landing.

16 And you're sure that Mr. Sirois assisted her, or she
17 assisted him in the room, in the --

18 A. She had to have assisted Specialist Sirois at the time,
19 because he was in charge. We had the finest medics in the
20 whole United States Army there. And I couldn't do anything in
21 the dispensary, without the medic in charge approving it,
22 whether it be Sirois or Kuchen or Tenorio or whoever.

23 Q. Now, this -- that she came into the camp in January, did
24 she not, of 1966?

25 A. Whatever it says here in the book. I think it was mid

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1 January, but I'll look it up here.

2 Q. If you would, please.

3 A. It's in Chapter 7, I believe. Oh, it's in the forward?

4 12 January. 12th of January 1966. Thank you.

5 Q. Do you know when Mr. Sirois came to A-424?

6 A. Well, whatever medic was in --

7 Q. Sirois. Sirois. You remember specifically it was Sirois
8 that assisted.

9 A. I said that without referring to the book. But when
10 Martha Raye came to the camp, she went right to the
11 dispensary.

12 Q. Refer to the book, and it says Sirois in there.

13 A. He came in on the 12th day of March of 1966. That's an
14 error I'm sure that we'll correct in the new edition of the
15 book, to have the right medic in there. But it's what
16 happened. And there was a medic. And they should be given
17 credit whenever they can be.

18 Q. Mr. Sirois was not there, was he?

19 A. At that time, no.

20 MR. BOBBY DEAVER: Excuse me, please, Your Honor.

21 THE COURT: Sure.

22 (Brief interruption in proceedings.)

23 A. I do thank you for pointing that out to me, because when
24 we redo the book, we'll make a correction.

25 Q. Certainly; we want it accurate.

DANIEL MARVIN

1 A. Excuse me?

2 Q. We do want it accurate.

3 A. Absolutely. That's important.

4 Q. If you will turn to page one, please.

5 A. Excuse me. May I go back to that last question? Because
6 if you go back to 91 of the book, it's Colonel Maggie,
7 Sergeant Tenorio is the medic, not Sirois.

8 Q. Did you get that from some tape that Sirois sent you?

9 A. I guess I just happened to see him here, and let me tell
10 you, he and those other medics did jobs that nobody could
11 believe, really, in this building. And I mistakenly mention
12 his name here in the court as being the one that was there
13 when Colonel Maggie came, but he was not. And it's not in the
14 book.

15 Q. Okay. Page one, please.

16 A. I'm at page one.

17 Q. All right. If you'll read that, the bold print up there
18 starting, Lieutenant Colonel Tuttle.

19 A. "Lieutenant Colonel Tuttle, the commander of all Special
20 Forces in the Fourth Tactical Corps of South Vietnam, spoke in
21 a whisper, 'Dan, if you take command of A-424 and accept this
22 top secret mission, you'll be on your own.'" Which is, of
23 course, typical. Independent. "'When you leave this room, it
24 will be as if we never met. We can't and won't stand behind
25 you if you are caught doing what I'm about to tell you to do.

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1 Got it, Captain?'"

2 Q. That's a question, isn't it?

3 A. Do I understand him, right, is what he meant.

4 Q. Yeah. "You got it, Captain?" I mean, that's what it
5 says.

6 A. That's right.

7 Q. Now, you have -- you were present on the telephone
8 whenever Colonel Tuttle's deposition was taken, weren't you?

9 A. That is correct.

10 Q. And he denied anything at all about having any meeting
11 with you, other than in the mess hall, if you happened to have
12 been there, he didn't know. And that none of this ever
13 happened. Didn't he?

14 A. I knew that from the time that he told me that when I left
15 the door, it would be as if I never met him. He was forbidden
16 by the joint policy between CIA and the Department of Defense,
17 in acknowledging any activity that he ever had with the CIA
18 that was illegal in any nature whatsoever. He would have to
19 say that he didn't do it.

20 Q. Do you know --

21 A. Wasn't a surprise to me.

22 Q. Do you know what that joint resolution was?

23 A. Everything to do with covert operations is verbal.

24 Q. Which means that you can say just about anything you want
25 to, and you've got nothing to back it up. Is that right?

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1 A. I do not have anything official from higher headquarters,
2 no. And I understood that when I went into it, and probably
3 it hurt my wife more than anybody else.

4 Q. But you have nothing, absolutely nothing to confirm or to
5 substantiate or corroborate what you're saying there that
6 Colonel Tuttle had.

7 A. That is correct. And you would never expect to have it.
8 There wouldn't be anybody allowed into a meeting of that
9 nature. There would be no recording, no writing, no typing,
10 no nothing.

11 Q. And if it never happened, that's still the way it would
12 happen, isn't it?

13 A. I can't answer that question because it did happen.

14 Q. Despite what Colonel Tuttle says.

15 A. Despite what Colonel says, which I expected him to say.

16 Q. He was not a person of integrity, he was not a person of
17 honesty?

18 A. Absolutely he was a person of integrity. But he can't say
19 what he's been ordered not to say.

20 Q. Well, you can, can't you?

21 A. In 1984, I came to know the Lord as my personal savior.
22 And that day is the day I started writing this book. Because
23 I no longer feared the company sending somebody like me, a
24 trained assassin, to kill me for telling the truth, because I
25 depended on him to keep me alive, and he's done it.

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1 Q. You have never had one day training as an assassin, have
2 you?

3 A. You know I have, because I've talked to you about it
4 before, and written to you about it before. Yes, I have in
5 Special Forces training.

6 Q. At Fort Bragg?

7 A. Fort Bragg, the spring of 1964.

8 Q. And you were taught assassin training?

9 A. In fact, it was titled counterassassination technique.
10 There were no written lesson plans. In fact, when I talked to
11 General Yarborough, and you have a copy of the tape, he
12 admitted that we had CIA advisers, he called them, and that we
13 did conduct counterassassination training and counterterrorist
14 training.

15 Q. Let me show you what is in our book here, Plaintiffs'
16 Exhibit 8, and that is a cassette tape that was provided to us
17 by you. Is that correct?

18 A. Well, I provided them to my attorney and then he provided
19 them to you, to be straight.

20 Q. Okay. But you provided at our request, through your
21 attorney.

22 A. Well, he asked me for it. I don't know what you asked
23 for.

24 Q. And that is that tape recording of your conversation with
25 Major -- General Yarborough?

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1 A. Major General Yarborough and Rudy Gresham, his attorney,
2 who you know from listening to the tape said that the most
3 important thing is loyalty to Special Forces. Otherwise, not
4 the truth, just loyalty to Special Forces.

5 Q. And in that taped conversation with General Yarborough --
6 Now, he was one of the fathers of Special Forces, wasn't
7 he?

8 A. He's an old timer, yes. Good man.

9 Q. You told him that you got orders from Colonel Tuttle to
10 take the war into Cambodia, didn't you?

11 A. No, I did not. I never told anybody that. I never got
12 orders from anybody. I was asked if I would volunteer.

13 All covert operations, whether it be across border,
14 whether it be assassinations, industrial sabotage, anything of
15 a covert nature is completely off the records, and it's got to
16 be accepted by the individual himself.

17 Q. And you were offered, I believe you said in one of your
18 writings, that you were asked by the Mafia to assassinate some
19 of the other Mafioso in their area?

20 MR. OGIBA: Objection, Your Honor. I think this is
21 covered under our first motion in limine. This is irrelevant
22 to the book and has nothing to do with plaintiffs' causes of
23 action.

24 THE COURT: I'll overrule this one. Go ahead.

25 A. No, the Mafia never asked me to kill anybody. Period.

DANIEL MARVIN

1 Q. They offered you a job doing that, didn't they?

2 A. They offered Master Sergeant Joe Hill and I --

3 Q. Well, that's you, right?

4 A. -- a job. Hum?

5 Q. That's you, is it not? You're saying I?

6 A. Master Sergeant Joe Hill and I.

7 Q. Okay. Well, you -- that's what I asked you, if you were
8 not offered that job.

9 A. No, you had asked me if I was asked by them to kill
10 somebody, and I said no.

11 Q. Well, that's what -- to assassinate?

12 A. If I would have taken a job. If I would have taken the
13 job, and that's a big if. And I didn't. Then I would have
14 been asked to kill somebody, maybe. I don't know. It would
15 be up to the Don.

16 Q. You also said, in one of your e-mails, did you not, that
17 you were asked -- that you volunteered to assassinate the
18 president at that time of Iraq? Hussain?

19 MR. OGIBA: Your Honor, we object again, renewing our
20 objection. Irrelevant.

21 MR. BOBBY DEEVER: He's talking about assassination
22 training.

23 THE COURT: I'll overrule that.

24 A. You asked me -- you didn't ask about assassination
25 training. You asked if I was asked by who?

DANIEL MARVIN

1 Q. You were the one that said it, that --

2 A. What did I say?

3 Q. You said that you were promoted to colonel, full bird
4 colonel, when you volunteered to do the assassination of Saddam
5 Hussain, didn't you?

6 A. I volunteered to be recalled to active duty to work as a
7 Special Forces member to command a Special Forces operation.
8 And I said if I am ordered to act in duty, I want to be
9 ordered as a full colonel, because I felt I deserved it by
10 that time. They called me from the office at Carlisle
11 barracks, the Army War College, and asked me to come down and
12 get a new I.D. card.

13 And I went down and got a new I.D. card, took my wife with
14 me, renewed hers while we were there, and they gave me an I.D.
15 card showing me as a full colonel. So I figured they'd done
16 just as I'd asked them to do.

17 I never went to Iraq. I never, in writing, asked to --
18 that I know of -- asked to specifically assassinate Saddam
19 Hussain. I would assassinate any foreign leader that our
20 government determined to be going against this nation, and
21 that they couldn't get any other way.

22 And then when that whole thing was scrubbed and they
23 decided -- I got a letter from the State Department saying
24 that they didn't need me, basically, then I went down to
25 Carlisle barracks and I got a new I.D. card. I've got it

DANIEL MARVIN

1 right here. This is kind of proof of the pudding, because
2 when you retire, I retired May of '73, you get an I.D. card.
3 That I.D. card is as good as you're alive. As long as you're
4 alive. My I.D. card then should have read May of '73. This
5 reads -- I have a hard time without my glasses here. 12
6 October 1990.

7 THE COURT: Give him his glasses.

8 A. Thank you very kindly. October 1990 is when I received
9 this, and that's when the mission was obviously aborted, and
10 they didn't need old Dangerous Dan.

11 Q. Do you have anything in your records anywhere, or any
12 copies of your I.D. card showing you as a colonel?

13 A. No, they take your old I.D. card when they issue a new
14 one. Simple as that.

15 Q. But there's nothing to support that you were promoted to
16 colonel, is there?

17 A. I don't think I need anything. That was not -- never
18 used. I was never actually brought on active duty as a
19 colonel.

20 Q. Well, you started putting it on your letterhead.

21 A. Absolutely. You would, too.

22 Q. You started --

23 A. Wouldn't you?

24 Q. You started putting it on letterhead --

25 A. That's correct.

DANIEL MARVIN

1 Q. -- that you were Colonel --

2 A. Colonel Daniel Marvin, that is correct.

3 Q. -- Daniel Marvin. And the only way that you could get a
4 new card was to turn in your old one, is that right?

5 A. They called me and told me to come get a new one. So I
6 did. And I'd already got a letter from Department of the
7 Army, stating that they didn't need me.

8 Q. Do you have that letter?

9 A. Not here, no. It doesn't matter. Doesn't have anything
10 to do with defaming the defendants.

11 Q. It has something to do with credibility, Mr. Marvin.

12 Everything you have said so far is totally unsupported by --

13 MR. BACHRACH: Objection, Your Honor, argumentative.

14 THE COURT: Well, I'll sustain that. Ask a question.

15 BY MR. BOBBY DEEVER:

16 Q. You can also get a new date on your card whenever you lose
17 your card, you can get a new card issued?

18 A. That is correct, but if you'll check the records and the
19 Department of the Army, and the office that issues the I.D.
20 cards, it will show the reason for the replacement of the I.D.
21 card, and it was a change in rank.

22 Q. Is that what it says on your new card?

23 A. It says lieutenant colonel indefinite. You're welcome to
24 look at it.

25 Q. I've seen it; thank you.

DANIEL MARVIN

1 A. Okay.

2 Q. And if your card wears out, if it gets too --

3 A. If you ran it through the wringer or the combine or
4 something like that, you'd go get a new one, yeah. But it
5 says right there on there why, on the form.

6 Q. But it also says the date of issue.

7 A. Absolutely. I mean, everything is a date of issue in the
8 army; you know that.

9 MR. BOBBY DEAVER: Can I have one moment, Your Honor?

10 THE COURT: Sure.

11 (Brief interruption in proceedings.)

12 THE COURT: Why don't we take our morning break at
13 this time. We'll start in about ten minutes, okay?

14 (Jury excused.)

15 (A recess was held at this time.)

16 MR. BACHRACH: Your Honor, before the jury comes in,
17 could we have a side bar? Because there's going to be an
18 evidentiary issue almost immediately.

19 THE COURT: Okay.

20 (Jury present.)

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

22 THE COURT: Okay. Mr. Deaver?

23 MR. BOBBY DEAVER: Thank you, Your Honor.

24 BY MR. BOBBY DEAVER:

25 Q. Mr. Marvin, there were general orders that prohibited

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1 entry into Cambodia, crossing the lines, and it was a
2 court-martial offense to do that, wasn't it?

3 A. Well, you actually brought that out, and we asked you to
4 provide a copy of the general orders, and you never could.

5 Q. Answer the question yes or no and then you can explain it.

6 THE COURT: If the question --

7 A. Would you ask the question again, please?

8 THE COURT: Mr. Marvin?

9 A. Yes, sir.

10 THE COURT: There's rules. He's not going to talk
11 when you talk, and you're not going to talk when he talks,
12 because it's very difficult for the court reporter to get
13 everybody down at the same time. And nobody talks when I
14 talk.

15 A. Yes, sir. I understand.

16 THE COURT: All right. So if you can answer the
17 question yes or no, do so, and then you have every right to
18 explain any answer you want to.

19 A. Thank you.

20 THE COURT: Ask your question again.

21 BY MR. BOBBY DEEVER:

22 Q. The question was, you knew there was a general order that
23 precluded firing into Cambodia, in any manner intruding into
24 Cambodia from Vietnam by the American forces, wasn't there?

25 A. No.

DANIEL MARVIN

1 Q. There was not?

2 A. No.

3 Q. And you didn't know anything about it, if there was?

4 A. No. Not for an independent operation.

5 Q. The question, Mr. Marvin, was, was there a general order
6 prohibiting firing into Cambodia?

7 A. Not that I know of. I was never involved in anything
8 other than an independent operation.

9 Q. Well, will you look at page 43 of your book, please?

10 A. I gave it back to you. Yes, sir, I'm at 43.

11 Q. Start with the top of the page, please.

12 A. "I told them I wouldn't allow what happened at Vinh Gia
13 Camp to happen here. They probably knew the team leader was
14 relieved, but didn't know he was serving time in Leavenworth
15 Penitentiary because he was honest. He admitted firing HE
16 rounds into the VC base in Cambodia in retaliation for their
17 rocket attack from that same base earlier in the day that
18 killed or wounded some of his Strikers. Sergeant John Eleam
19 told how he'd heard about that while monitoring B Team radio
20 channels. 'Did they really put him in prison for firing on
21 the enemy, Dai-uy?' John had handsome features, stood about
22 five seven, was black and slight, but muscular.

23 "That's what I was told,' I answered."

24 Q. That's far enough. This says, does it not, and quoting
25 you, about the camp commander who was sent to Fort Leavenworth

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1 Prison for firing into Cambodia?

2 A. That is correct.

3 Q. There had to be some violation of some military law by his
4 doing that, in order to put him in the penitentiary, wasn't
5 there?

6 A. I can't answer yes or no on that. I can say -- Judge, all
7 I could say is that I don't know who gave him orders at all.
8 Whether they were Fifth Group orders, C Team orders, B Team
9 orders, that told him he couldn't fire against the enemy. I
10 think whoever gave those orders was sick, that they wouldn't
11 allow our men to fire against the enemy.

12 Q. But the answer then is yes, there was a regulation
13 prohibiting that?

14 A. I don't know that there was a regulation, sir. Somebody
15 told him. I don't know who it was; was it an official order?
16 I know you could not find any orders when we asked you to
17 provide them.

18 Q. I would appreciate it if you wouldn't comment about any
19 conversations that we have -- might have had.

20 A. Yes, sir.

21 Q. Because that would tend to make me a witness, and I don't
22 want to be.

23 A. Yes, sir.

24 Q. Look at the bottom of page 42.

25 A. Yes, sir, I'm at the bottom of page 42.

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1 Q. Read that, starting with I told my men.

2 A. "I told my men that we had to be prepared to deny having
3 taken any action that would have been the basis for reports we
4 would receive coded, quote, 'Nantucket,' unquote, the code
5 word for all reports relating to the violation of neutral
6 territory, and we would have to deny them fast." And then,
7 quote, "'I'll prepare some canned responses and give them to
8 Eleam to keep handy in the commo bunker. Eleam, I want you to
9 make sure our commo men know where they are.'" Unquote.

10 "'Will do, Dai-uy,' Eleam answered.

11 "'Unless you want to go to Leavenworth,' I warned, 'and
12 take me with you, you'll all keep quiet about everything we do
13 here except civic action and medical patrols. That way you
14 aren't apt to slip to say the wrong thing.'"

15 Q. So you were aware at that time that there were
16 prohibitions against any intrusion into Cambodia, weren't you?

17 A. Yes. But not in my area. Ours was a top secret mission.
18 And as I told you earlier, I could not include in any of my
19 reports, SITREPS, SPOTREPs or MOPSUMs, anything to do with any
20 of the top secret part of the mission, which was going into
21 Cambodia or firing into Cambodia.

22 Q. When you wrote Bassac Bastards, it was not top secret, was
23 it?

24 A. Yes. As a matter of fact, you know, I really had hoped --
25 I know I scared my wife half to death -- that the CIA would

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1 try and take me to court, but then I was told by a friend of
2 mine in the CIA --

3 MR. BOBBY DEAVER: Object.

4 THE COURT: You can't say what somebody else told
5 you.

6 A. Oh, okay.

7 THE COURT: That's okay, no problem. Unless it's one
8 of the people here in this court.

9 A. I apologize.

10 THE COURT: That's no problem.

11 BY MR. BOBBY DEAVER:

12 Q. And I apologize, I'm kind of familiar with the rules of
13 the court, and I'm sure that you aren't, and --

14 A. Right.

15 Q. -- I don't mean to try to take advantage of you or
16 anything.

17 A. I understand.

18 Q. But you have two instances right there, where you are
19 acknowledging that you might go to a penitentiary, your men
20 might go to the penitentiary, you knew about this lieutenant
21 that was already in Leavenworth for firing into Cambodia,
22 cross-border intrusion.

23 A. That's right. One of the reasons for the book.

24 Q. Because there was a prohibition against --

25 A. Because I thought the world should know what Green Berets

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1 have to put up with, and what good work they did where they
2 were, and so that they would -- I tried to get -- I wanted
3 this to go into all the service academies and all of that
4 nature, so that people could learn that if you're going to get
5 involved in covert operations, and that's the reason for this
6 title, Expendable Elite, is that they're in danger of being
7 the victim of our own government.

8 Q. These men have been at risk because they were with you,
9 and they should look behind their backs all of the time, that
10 some CIA agent might try to assassinate them?

11 A. No, sir, I didn't say that.

12 Q. What are you saying about the risk of being in the
13 military?

14 A. Primarily people like myself, when they accept a covert
15 operation, that they understand that there's nothing in
16 writing, there's no back-up, it's all done in what they call
17 compartmentalized basis. That's why Colonel Brewer knew
18 nothing of what I was doing. And that's the kind of danger
19 you get involved in, to the extent that you have the CIA
20 sending a regiment to kill you and your men.

21 Q. And do you really believe that a regiment was being sent
22 to wipe you out?

23 A. I know it was.

24 Q. You don't know a Chuck Borg, do you, who was the senior
25 adviser to the 15th ARVN regiment?

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1 A. I don't know -- no, I -- no is the answer, and I don't
2 know that the 15th ARVN regiment was involved. I have never
3 mentioned that designation to anybody any way.

4 Q. Well, you know that the 15th ARVN regiment was the -- had
5 the area of operation, being Chau Duc province, don't you?

6 A. No, I do not. I had only to do with unconventional
7 operations.

8 Q. Okay. Let's -- and this is roundabout, but we're going to
9 put that tape on of your conversation with General Yarborough.

10 Now --

11 THE COURT: This is subject to the defense objection.

12 MR. BOBBY DEEVER: Subject --

13 MR. OGIBA: Thank you, Your Honor.

14 THE COURT: No problem.

15 BY MR. BOBBY DEEVER:

16 Q. This was a conversation with General Yarborough that you
17 initiated, was it not?

18 A. That is correct.

19 Q. And you recorded it?

20 A. That is correct.

21 Q. And in it, he -- you told him that you had been ordered
22 by -- you had volunteered to Colonel Tuttle to take this
23 independent operation and go into Cambodia?

24 A. I may have. It's been so long since I listened to that
25 tape, I don't have the least idea.

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1 Q. And you don't remember what his response was, do you?

2 A. No, I do not, but it was probably a negative.

3 Q. Negative what?

4 A. I mean not saying anything that would give credence to it,
5 because it's a top secret covert operation.

6 Q. Well, everything you did was top secret, wasn't it?

7 A. Only at certain times when I was on those kind of
8 missions.

9 Q. That kind of mission, that mission, that one mission that
10 you're talking about at An Phu.

11 A. That is correct, that was the top secret mission. I've
12 been in others, too.

13 Q. Do you know if these men were cleared for top secret?

14 A. I doubt that any of them were.

15 Q. But yet you shared this top secret information that you
16 had, with them?

17 A. No. One of their complaints was, justifiably, that I
18 shared very little of the secret information with them, and I
19 did that so as not to have them knowledgeable about something
20 that could cause them trouble with our Government.

21 Q. You told them that you were -- in the book -- that you
22 were going to take the war to Cambodia, didn't you?

23 A. Yes. Have you got a page number on that, sir?

24 Q. 40.

25 A. Did you say 40, sir?

DANIEL MARVIN

1 Q. 40.

2 A. Thank you. Yes, I did, and I could hardly take it all by
3 myself. I needed the team to work with the Vietnamese CIGD,
4 to work with the Regional Forces, to everybody else that
5 backed us up, to support any operations.

6 Q. Were you cleared for top secret?

7 A. Absolutely. Had been since I was a young captain.

8 Q. And you then -- then you know that you do not share top
9 secret information with anyone not authorized to receive top
10 secret information, don't you?

11 A. That's right. And I didn't.

12 Q. You didn't tell them you were going to take the war into
13 Cambodia, that Colonel Tuttle told -- asked you to?

14 A. That is correct.

15 Q. You did?

16 A. I did tell them.

17 Q. That's top secret, wasn't it?

18 A. They didn't know that.

19 Q. Oh, if they don't know it's top secret, you can tell them
20 anything?

21 A. We were on an independent operation, okay? Everything
22 that goes on independent operation is up to the commander of
23 that independent operation, which was me. Anything that I
24 told them to do, they had to do. And I didn't refer to any
25 classification of any kind whatsoever. And if the Government

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1 wants to take me to court for that, I'd say they should do it.

2 Q. You know that they couldn't prove their case, don't you?

3 A. I know that it was a top secret covert operation, and they
4 couldn't prove anything. Unless they brought the CIA into it.

5 Q. Back to it. You gave top secret information to persons
6 who were unauthorized to receive it. Is that correct?

7 A. Yes and no. I gave instructions to work with our men and
8 the Vietnamese, to attack the area inside of Cambodia that our
9 president had illegally given to the enemy.

10 Q. And that's your opinion, isn't it?

11 A. No.

12 Q. Oh, it isn't your opinion?

13 A. That's what I know.

14 Q. And you know all these orders, Colonel Tuttle's orders
15 were illegal?

16 A. That's correct. I know what independent covert operations
17 are.

18 Q. Well, would you please tell us -- you've used that a lot.
19 Now tell us what covert independent operation is.

20 A. A covert operation is an operation that is completely
21 undocumented, and is to do normally an illegal act on behalf
22 of the United States of America. The independent part is when
23 they just wipe out the chain of command, so if you goof up,
24 there's no -- nobody has to stand accountable except the
25 commander of that independent operation. It's not what

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1 anybody or everybody would ever accept. But I happened to
2 like that kind of situations. And I accepted it, and I did a
3 good enough job that they gave me a medal for it.

4 Q. For what?

5 A. For all of my work at An Phu, Vietnam, as commander of an
6 independent operation.

7 Q. Who gave you the medal?

8 A. The United States Government. A Bronze Star. My attorney
9 has it.

10 Q. What period of time did that Bronze Star cover?

11 A. The 27 December 1965 to 1 August 1966, unless I'm a day
12 off.

13 Q. And that's meritorious service?

14 A. That is correct.

15 Q. But there were no records. How did anybody know that you
16 did that, if there were no records whatsoever to verify it?

17 A. I guess you'd have to ask them that, sir.

18 Q. All right. You tell me who it was, and maybe we can
19 subpoena them, okay?

20 A. I don't know who it was. I mean, General Westmoreland
21 signed the certificate of award. And also Resor, who was the
22 Secretary of the Army. I think they're both dead now.

23 Q. I know General Westmoreland is.

24 A. Yes, sir.

25 Q. It was a terrible loss to the State of South Carolina and

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1 the United States, wasn't it?

2 A. I reserve my right on any comment about General
3 Westmoreland.

4 Q. So let's just, to review, you told these men that you were
5 going to be going into Cambodia, that you were going to be
6 taking the war to Cambodia, and they yelled, airborne.

7 A. Yes, I'd say they were happy as a hog in slop.

8 Q. Were they bound by anything to deny that they were
9 involved in a covert operation?

10 A. Almost everybody in Special Forces, there's only one other
11 man that I know of, and his name is Jerry Wilsey, who was
12 willing to go to Congress with me and testify to any of this,
13 and we've notified our congressmen. To the best of my
14 knowledge there's no other Green Beret that is willing to come
15 forward to give the truth about covert operations.

16 Q. And the truth as you see it, is that what you're saying,
17 or just --

18 A. The truth as I know it, sir.

19 Q. And Westmoreland was a traitor, wasn't he, to the country?

20 A. General Westmoreland, in his book, A Soldier Reports,
21 admits having complete knowledge of the enemy sanctuaries
22 inside of Cambodia, having complete knowledge of ships going
23 up and down the Mekong River carrying enemy goods. But he was
24 ordered not to tell Congress. He was ordered not to tell the
25 press. That is in his book, A Soldier Reports.

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1 Q. And you said that he should have resigned his commission.

2 A. That is correct. Even according to what he said in his
3 book, where he has a quote from Napoleon Bonaparte, where if
4 an officer is given a command by the Commander in Chief, which
5 would be detrimental to his command, he should resign, rather
6 than obey that command.

7 Q. You were given an order by Colonel Tuttle to report to
8 B-42, and instead of resigning, you just ignored it.

9 A. That was an illegal order, and I continued to obey my
10 original charge that I volunteered to do, and that was to be
11 with the Buddhist Hoa Hoas of An Phu, and my men all stayed
12 with me, rather than abandon and betray those people.

13 Q. And these noble, bravest men that you know, you would
14 believe what they said, wouldn't you?

15 A. I believe what they did at the time.

16 Q. Do you believe what they say now?

17 A. I haven't heard them, except in questionnaires that I've
18 read.

19 Q. But you believe that they're honorable men; do you?

20 A. Not necessarily so, not based on what they've written, and
21 contradicted what they had written me in 1988.

22 Q. Specifically, what are you referring to that they've
23 written you?

24 A. Or put on audio tapes. You know, whatever. Whatever way
25 that they responded. In March of 1988 I sent them a copy of

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1 the manuscript, which was called the Bassac Bastards. And
2 just so y'all know, that was because we called -- the river
3 was Bassac River, and we called ourselves the Bassac Bastards,
4 as a team. I mean, it's not unusual for Special Forces.

5 And after I sent that to them, then I got information
6 back, even from Sergeant Taylor, a questionnaire, just on, you
7 know, where he'd been, what he'd done, he'd been in fights
8 when he was young, what he thought of me as a leader. And I
9 got these, plus audio tapes from Sirois, from Strait, and I
10 recorded a telephone conversation between Ray Johnson and
11 myself. And a lot of what's in those different tapes, is in
12 the published book. Based on their word at that time.

13 Q. Well, we'll probably be hearing that a little later. But
14 just to kind of lay the groundwork for that conversation with
15 General Yarborough, when you told him that you had some CIA
16 officer who said he was a CIA officer, gave you orders to
17 assassinate Prince Sihanouk, that you volunteered to do it.
18 Is that correct?

19 A. Part of what you said is correct, but the CIA doesn't give
20 any orders to any of us to kill anybody. They ask us if we
21 would do it, because it's our job to do. And you have to
22 volunteer for any assassinations, because there's no statute
23 of limitations on murder. And all you've got to do -- me --
24 have to do in my own mind, is determine whether I should do it
25 because I believe it's good for the United States of America,

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1 or not do it because I think they're trying to send me into a
2 suicide mission.

3 Q. And you did not question whether there had been a
4 presidential review and a presidential report on whether the
5 assassination was appropriate or proper or authorized?

6 A. When a CIA man comes to you, you assume that it's okay.
7 You don't question the CIA.

8 Q. And General Yarborough said that was foolish to assume
9 anything, didn't he?

10 A. General Yarborough was -- I can't say what he was saying.
11 What he's saying was not right.

12 Q. Did you tell him that it was not right?

13 A. I'd have to listen to the telephone conversation. I
14 didn't want to lose General Yarborough on the phone. I was
15 recording him, and I wanted to get information from him on
16 certain things that were important to me on an investigation
17 that I was running, actually at the bequest of a friend of
18 mine in the CIA who chooses not to be known. And I did not
19 want to lose General Yarborough. I even went to the extent,
20 when he said to call Rudy Gresham -- I think that's on the
21 same tape -- I called Rudy Gresham just to see what the party
22 line would be, because basically that's what it was. He told
23 me on the phone, and it's on that recording, he represented
24 everybody but the White House of the United States. And said
25 that I should be -- I think be careful to remain loyal to the

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1 Green Berets. I'd rather remain loyal to the truth.

2 Q. Wasn't he referring to wild accusations that would reflect
3 on the integrity of the Special Forces, and that there are
4 people every day that were great Green Berets in their own
5 mind, and were not even in the Special Forces, and when
6 they -- statements such as that are made, that it does reflect
7 on the integrity of the Special Forces?

8 A. Excuse me, sir, did you say that people that were not
9 Green Berets, were Green Berets in their own mind? I don't
10 understand that. Did you have a specific question? Could you
11 narrow that down?

12 Q. Yes, okay. There are imposters, are there not, Green
13 Berets?

14 A. Even my very best friend, Master Sergeant Gerard B.
15 Parmenter, as a sergeant first class, posed as an Air Force
16 general.

17 Q. But there are people who claim to be Special Forces, that
18 claim to have had Special Forces training and Special Forces
19 operations and everything, that never were in uniform, aren't
20 there?

21 A. I've never run into any of those.

22 Q. You never have?

23 A. No, I have not. I ran into a man that was a veteran,
24 military veteran, who had worn a uniform, who was spouting off
25 at a memorial party that he was a Green Beret, and I soon

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1 squashed that, because he wasn't.

2 Q. This is what I'm referring to. And then that type of
3 person can give the Army and the Special Forces a bad name,
4 can't he?

5 A. I would say that's true. I don't know what it has to do
6 with what we're doing here today.

7 Q. Well, isn't that what Rudy Gresham referred to you in that
8 tape?

9 A. No, Rudy Gresham was trying, in his own way, to get me to
10 be silent about the truth, to protect the Green Berets, and
11 that's why this is happening today.

12 Q. He was trying to get you to quit making statements such as
13 you've been making today, wasn't he?

14 A. No, he was trying to quit me from telling the truth.

15 MR. BOBBY DEEVER: Your Honor, that's all I have at
16 this time. And I wanted to put the tape into evidence.

17 THE COURT: Well, I think I want to listen to the
18 tape first. We'll hear it right after lunch; how does that
19 sound? All right, ladies and gentlemen of the jury, we can go
20 to lunch right now, and we'll start again at 1:15. Okay?

21 Excuse me, 2:15.

22 (Jury excused.)

23 THE COURT: I'm going to listen to this, so y'all be
24 back at 2:00 o'clock, and I'll listen to your objections about
25 that.

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1 (A recess was held at this time.)

2 (Jury not present.)

3 THE COURT: I'm ready to hear your objection.

4 MR. BACHRACH: Yes, Your Honor, we apologize for
5 being a bit late. We got hung up on a tape recording snafu
6 downstairs, so I'm sorry we're a little late.

7 THE COURT: That's all right.

8 MR. BACHRACH: Our objection is mainly that there are
9 parts of the tape to which we have no objection, to the extent
10 it discusses matters in the book, such as the assassination of
11 Prince Sihanouk and that colloquy.

12 However, the tape begins discussing orders to kill, which
13 was unrelated to this book. After the colloquy concerning
14 Prince Sihanouk, it then discusses the issue concerning
15 William Pitzer, which gets into Without a Smoking Gun. And we
16 believe that's prejudicial and outside the scope of this case.

17 It then gets into issues of arms being illegally sent
18 to -- from overseas, back here. Again, that's not in the
19 book. We believe that's prejudicial. And it even raises
20 issues of, at that point in time, whether they were being
21 supplied to organizations such as the Black Panthers or other
22 organizations such as that. And I believe that this type of
23 information, which is irrelevant, is prejudicial and could
24 bias the jury.

25 So we have no objection, if the tape were pruned down to

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1 address exactly what the issues that are related in the book.
2 But we do have an objection about the entire tape going in,
3 because it's our position that several aspects of the tape do
4 go beyond what is relevant here. It doesn't really shed any
5 light on credibility, and creates issues of a trial within a
6 trial.

7 If we have to get into defending the issue or the
8 Colonel's involvement in the Martin Luther King assassination
9 and what information he provided on that, which is what we may
10 have to do if this tape goes in, we're going to turn this into
11 a lengthy trial within a trial.

12 If we have to get into the gun running issues, that would
13 also require the Colonel to get into an investigation he
14 started that goes beyond the pale of what's at issue here,
15 which is whether or not what's reported in Expendable Elite,
16 is true or not.

17 So that's our objection, Your Honor, that the tape just
18 discusses many issues beyond what's in the book. And like I
19 said, we don't have a -- we're not objecting to the tape in
20 toto. My suggestion would be that if the parties could agree
21 overnight what should go in on the tape and what isn't, what
22 we don't object to, it could be played first thing tomorrow.

23 THE COURT: Yes, sir.

24 MR. BEN DEEVER: Your Honor, we'd argue that it's not
25 going to be overly prejudicial to them if the jury hears this

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1 tape in its entirety. And I think it's extremely relevant to
2 the nature of the allegations that -- of libel slander. It
3 goes -- and I think probably Federal Rule of Civil Procedure
4 405, reputation and opinion, we kind of touch base on that,
5 that this is a tape -- I take it Your Honor listened to the
6 tape in chambers? It's a tape that was solicited by Daniel
7 Marvin, advice or a conversation with General Yarborough. And
8 he gets into these, these realms that are outside.

9 And that it goes to show that Daniel Marvin has trait, a
10 tendency of not telling the truth. And that General
11 Yarborough, somebody with superior knowledge of those times
12 and what was going on in that area and of military, and it's
13 evident from the tape that General Yarborough -- and I think
14 that the jury can infer from it that -- didn't believe him.
15 Thought that it was a little out -- gone. And kind of the --
16 like the Jimmy Buffett CD, Tuesday, Thursdays and Saturdays,
17 where he introduces Coconut Telegraph, if you don't want it
18 printed, don't say it. And he said it, Your Honor, and he
19 actually taped it and provided us with copies of the tape, and
20 we would say that it should come in, in its entirety.

21 THE COURT: Yeah?

22 MR. BACHRACH: If I may, Your Honor, with respect
23 to -- I've listened to the tape again closely at lunch. It's
24 not that General Yarborough is disagreeing with him. In fact,
25 in many instances, General Yarborough is indicating that there

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1 may be mavericks out there that should be reported, you should
2 report it like you are, Colonel. With -- particularly with
3 the Sihanouk matter. So that -- it's for the jury to decide
4 whether it's true or not.

5 My concern is the -- if I have a conversation with someone
6 and discuss seven things with them, one of which is relevant
7 to the case and others which aren't, the fact that I had this
8 one discussion, shouldn't allow everything in, because it does
9 create an issue for us, as to having to -- if the plaintiffs
10 are going to challenge us on issues relating to these other
11 topics, this trial could be extended. We have to bring in
12 evidence to show the -- you know, it turns it into a trial
13 within a trial.

14 And I don't have the case law with me on top of my head,
15 but there is a good amount of case law that trials within a
16 trial are not appropriate.

17 And I don't believe it does go to his credibility, other
18 than what he talks about with the general as to what occurred
19 in this book. I don't believe it goes to his credibility on
20 what he wrote in this book, without us putting in more
21 evidence to support the statements he's making in this one
22 lengthy discussion he had on several topics.

23 THE COURT: Okay. I'll overrule part of your
24 objection, I'll grant part of your objection. I listened to
25 the tape. There is a fleeting reference to whatever that

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1 doctor's name was that had the --

2 MR. BACHRACH: Pitzer.

3 THE COURT: Pitzer -- at the start of the tape and
4 probably two-thirds of the way through the tape. First
5 reference just mentions his name, which couldn't be
6 prejudicial to anybody, because nobody knows anything about
7 that. The second one is just about the fact that he had, I
8 don't know, the tape, and somebody supposedly killed him and
9 it really was suicide or something like that.

10 But you can't make any sense out of the General's
11 responses, unless you listen to the question. Okay? I mean,
12 it would just be -- the responses are not -- they're not
13 irrelevant, because the General says essentially, you know,
14 there's no such -- the Special Forces don't do this kind of
15 thing, especially in the United States, and probably nowhere
16 in the world. There's no such thing as blackouts. That's his
17 opinion, that's what he says.

18 Now, I'll grant your objection when we get to the point of
19 smuggling weapons from Thailand to Detroit. I think that's
20 blatant hearsay, because he's not saying what he was asked to
21 do, he said what someone else may have been doing at the time
22 and he didn't want anything to do with it.

23 The other three areas that he brings up are things that
24 Colonel Marvin says that he did, or he was asked to do, and
25 the General responds, say well, you know, there may be people

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1 out there that do that kind of thing, you ought not to bring
2 this up to your congressman and all that kind of stuff. So I
3 think that is relevant to this case. It's not unduly
4 prejudicial under Rule 403, which as I take your objection.
5 Okay? So you can cut that off right as -- when you start
6 getting into Thailand.

7 MR. BOBBY DEAVER: And there's a particular point, I
8 believe, Your Honor, that you referred to, that all after
9 that.

10 THE COURT: All after that.

11 MR. BOBBY DEAVER: That would simplify things.

12 THE COURT: Everything after -- once he mentions
13 Thailand or right before he mentions Thailand, cut it off.

14 MR. BOBBY DEAVER: Before he says he was sent to
15 Thailand --

16 THE COURT: That's a good -- I don't know how you're
17 going to jump up -- you know, when he says he was sent to
18 Thailand, then we just quit, before he gets into the nuts and
19 bolts of the thing.

20 MR. BACHRACH: Your Honor, and may I ask that other
21 than on Prince Sihanouk, that there be no follow-up questions
22 on the tape; the tape speaks for itself?

23 THE COURT: You know, I don't know what -- you know.

24 MR. BACHRACH: We'll handle those --

25 THE COURT: Yeah, I guess you handle those things. I

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1 mean, if, in fact, Mr. Deaver said isn't it a fact that you
2 were asked to -- what is it -- do X, and he says yes, then the
3 tape doesn't come in. If he says no, then the tape comes in
4 as a prior inconsistent statement. Coming in one way or the
5 other. I don't understand your objection as to that. You're
6 saying it was overly prejudicial, and so I ruled on, you know,
7 what your objection was, okay?

8 MR. BACHRACH: Okay. We'll play it question by
9 question then.

10 THE COURT: That's fine.

11 MR. BACHRACH: And I just want to -- I accept Your
12 Honor's ruling, but I want to preserve my objection for --

13 THE COURT: No problem.

14 MR. BACHRACH: Thank you, Your Honor.

15 THE COURT: For the wise people in Richmond.

16 (Defendants' Exhibit 8 received.)

17 (Jury present.)

18 THE COURT: Hope everybody had a nice lunch.

19 Mr. Deaver, do you want to continue for me, please?

20 MR. BOBBY DEAVER: Ben will play the tape, Your
21 Honor, at this time.

22 THE COURT: That's fine.

23 MR. BEN DEAVER: All right, sir, please the Court.

24 (Tape recording was played.)

25

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1 BY MR. BOBBY DEAVER:

2 Q. Do you recall that conversation now?

3 A. Absolutely.

4 Q. Do you agree with General Yarborough that anyone that
5 would take and accept an assignment from some rogue, somebody
6 that had no authority to do what you say that you were asked
7 to do, would be a fool?

8 A. I agree with that, but I did not accept an assignment, or
9 was never offered an assignment by a rogue.

10 Q. You were offered an assignment by Walter Mackem?

11 A. Did he tell you he's a rogue?

12 Q. Did you say he was a rogue?

13 A. No, I did not. I have -- he was a representative of the
14 Central Intelligence Agency who came to my camp in Vietnam,
15 with the proper credentials, and with plans for an operation
16 to kill Prince Sihanouk. And asked me if I would accept that
17 mission, and use indigenous forces dressed and equipped to
18 look as if they were Viet Cong or North Vietnamese, so the
19 blame would be put on the communists for his death, and not on
20 us.

21 Q. Did you hear General Yarborough say that there were no
22 such missions of that nature?

23 A. General Yarborough -- Yes, I did. General Yarborough, as
24 Commanding General of the U.S. Army John F. Kennedy Special
25 Warfare Center, would have nothing to do with operational

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1 missions, and would be not in the chain of command whatsoever.

2 Q. That wasn't his only job, was it?

3 A. Well, later -- No, it was not his only job. He has lots
4 of jobs. He went from there, I believe, to be Deputy Chief of
5 Staff for Intelligence for the United States Army. And that's
6 when William Pepper wrote him up in the book Orders to Kill,
7 and also an Act of State, and indicated in that book that
8 General Yarborough had organized Reserve Special Forces and
9 other actions that directly led to the assassination of
10 Dr. Martin Luther King.

11 Q. And you believed that, don't you? Didn't you?

12 A. Yes, I still do.

13 Q. And you heard what General Yarborough said, that not one
14 word in that book had any authenticity whatsoever, or was
15 emitted from his mouth, did he?

16 A. I heard that, yes. But would you -- well, I would not, if
17 I was General Yarborough, admit to having set up the
18 assassination plot to kill Dr. Martin Luther King.

19 Q. Well, anyone that denies that they did any assassination
20 or set up any plots, automatically, therefore, did do that?

21 Is that what you're saying?

22 A. No.

23 Q. He told you that that whole book was a parcel of lies.

24 A. You asked me if anybody, and this is one, just one person
25 we're talking about and one plan, and that's Dr. -- General

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1 Yarborough and Dr. King.

2 Q. And in that, he said he had no conversation, he had no
3 input, nothing at all in that book quoting him was true?

4 A. Yes, that's what he said. And if I was him, I probably
5 would have said the same thing to protect myself against
6 getting hung.

7 Q. You were not trying to protect yourself now from getting
8 hung, are you, admitting that you took orders from some CIA
9 agent that flew in on a white helicopter and told you to go
10 assassinate a head of state of a foreign nation?

11 A. Is that a yes or no answer?

12 Q. Yes.

13 A. I don't know exactly where you were leading there. I did
14 write the book purposely to tell the truth. And if I would
15 have been brought to court by the CIA or the Defense
16 Department, speaking for the special operations command, they
17 would have had to admit that everything in the book was true,
18 before they could bring me to court. Because the only thing
19 they could bring me to court for was releasing, number one,
20 the identity of a special -- of a CIA agent, and number two,
21 telling about the mission to assassinate Prince Sihanouk.
22 They'd have to think that was true, if they wanted to
23 court-martial me for telling top secret information.

24 Q. Releasing top secret information is a serious offense,
25 isn't it?

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1 A. That is correct.

2 Q. And there was just a vice presidential chief of staff that
3 resigned because he was indicted for doing exactly what you're
4 talking about, isn't it?

5 A. No, he was indicted for doing something that was illegal.
6 And I could not be -- I mean, I would have welcomed going to
7 court about that situation in Vietnam, because every bit of
8 top secret information that's in that book is based on illegal
9 operations that are stemmed from our government.

10 Q. The Attorney General of the United States, or the JAG of
11 the Army, would have to believe what you're saying before they
12 would prosecute you though, wouldn't they?

13 A. I think the jury -- Oh, before they would prosecute me?

14 Q. Yes.

15 A. Yeah, I doubt that the Judge Advocate General of the
16 United States Army even has had a briefing on top secret
17 classified covert operations.

18 Q. Well, perhaps we can find out tomorrow.

19 A. Yes.

20 Q. And you say that you were given an assignment or asked to
21 assassinate a lieutenant commander of the United States Navy
22 at Bethesda Naval Hospital?

23 A. That's not in the book, sir.

24 MR. BACHRACH: Objection, Your Honor.

25 MR. BOBBY DEEVER: Well, that's what he said in the

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1 tape.

2 THE COURT: Overruled.

3 BY MR. BOBBY DEEVER:

4 Q. That's what you said, isn't it?

5 A. That's correct. On the 6th day of August, I think it was,
6 in --

7 Q. 1964?

8 A. -- 1965.

9 Q. '5?

10 A. '65 -- You're right, '64, excuse me. No. Let me think a
11 minute.

12 Q. Okay, it's been a long time.

13 A. That was 6th day of August of 1965. I'd been through my
14 training, and I was recognized as an outstanding officer that
15 could take on and wanted to take on most unusual missions.
16 And Colonel C.W. Patten, in fact, he's the one, when I called
17 him about this, he asked me to call General Yarborough. Or
18 write General Yarborough, but I didn't have his address.

19 C.W. Patten called me up to his office, Smoke Bomb Hill,
20 Fort Bragg, North Carolina, he was the group commander of the
21 6th Special Forces Group Airborne at Fort Bragg. I was the
22 logistics officer for the group.

23 He asked me to report to a -- to go meet, really, not to
24 report to, but to meet a company man under the pines in back
25 of the headquarters.

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1 When the Colonel tells you to do something like that, you
2 do it. I mean, that's the kind of thing we did.

3 Q. Yes, when you get an order from a colonel, you comply,
4 don't you?

5 A. If you're directly working for him, yes.

6 Q. Unless it is an illegal order?

7 A. Well, you can still get a direct order -- well, it -- that
8 was not an illegal order. You don't have to obey an illegal
9 order; you know that.

10 Q. Well, you heard what General Yarborough said, that there
11 was none of that authorized.

12 A. He would say that. I would have said that if I was him,
13 too. But anyway --

14 Q. You'd say whatever --

15 A. Did you want me to answer that question then?

16 Q. Go right ahead, yes.

17 A. I met the CIA agent, I looked at his identification. I
18 knew that it was false anyway, but I didn't pay any attention
19 to what it said. He asked me if I would volunteer to
20 assassinate a man who was about to give secrets to the enemy.

21 Now, if you were a Green Beret officer trained like me --

22 Q. You're not answering the question.

23 A. I'm not asking. You -- I'm just making a statement. You
24 would probably say yes, like I did.

25 But what I didn't know was that it was -- it was to happen

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1 in the United States of America. The way that we were trained
2 was that any time that we were asked to assassinate a man, it
3 didn't matter if it was American or not, but it would be
4 overseas.

5 I was on orders at the time to go to Vietnam. So I
6 assumed -- maybe I shouldn't assume anything -- but I assumed
7 that that target was somewhere overseas in some headquarters,
8 some -- and had some information he was going to give to the
9 enemy.

10 So I said yes, I'd accept it. Then I asked who it was and
11 where he was, and he said Lieutenant Commander William Bruce
12 Pitzer, and he's at Bethesda Naval Hospital. Well, I refused
13 the mission.

14 Now, there was another man -- well, I told him, I said, I
15 couldn't do that, I've got a wife and three children. You'd
16 have to drop me from the rolls today, if I accepted that
17 mission, so I could go off and do it. And then I'd come back
18 when it was done and be picked up. And meanwhile, my wife and
19 family wonder where the heck old Dangerous Dan was.

20 Well, when you go overseas, they know where you are, they
21 know you're overseas, they know you're in Vietnam. So that's
22 what I assumed it was. But that's not what I was asked. So I
23 refused the mission.

24 Q. And you say there was another man went with you?

25 MR. BACHRACH: Objection, Your Honor. This is going

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1 beyond --

2 THE COURT: I'll sustain that one.

3 BY MR. BOBBY DEAVER:

4 Q. You said in there that -- in that tape to General
5 Yarborough, that Lieutenant Commander Pitzer was killed,
6 didn't you?

7 A. October '66.

8 Q. And that his widow and the Department of Navy made an
9 investigation and found it was suicide?

10 A. I don't believe I said that on the tape.

11 Q. You said his widow believed it was suicide.

12 A. Yes, that's what she was told. I -- I found the widow and
13 spoke to her twice, recorded both conversations. And started
14 investigation of my own on it. And I am convinced in my mind
15 and in my heart that he was killed by somebody just like me,
16 who accepted the assignment.

17 Q. Did you hear General Yarborough say that there were no
18 such things occurring in this country, that it was not within
19 the parameters of Special Forces, not within the parameters of
20 the United States Army, and that there had to be a
21 presidential finding before anyone could be assassinated
22 anyway?

23 A. That's the aboveboard -- Yes. That's the aboveboard legal
24 policy, but nothing related to covert operations is in
25 writing, or is promulgated or is -- doesn't even have to go

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1 through the White House, except assassination of a foreign
2 leader, the president has to personally approve that. But
3 it's all word of mouth.

4 I would expect General Yarborough to say that, to protect
5 General Yarborough and his family.

6 MR. BOBBY DEEVER: I don't have any more questions at
7 this time, Your Honor.

8 THE COURT: Okay, thank you.

9 MR. BACHRACH: Your Honor, we'd like to reserve our
10 direct for our case in chief.

11 THE COURT: That would be fine, no problem.

12 MR. BACHRACH: Thank you, Your Honor.

13 THE COURT: Thank you. All right, step down. Thank
14 you.

15 A. Thank you, sir.

16 MR. BOBBY DEEVER: Your Honor, we have the transcript
17 of Colonel Tuttle that we'd like to have read to the jury.
18 And if you just allow us a moment to get them, the mechanics
19 of it.

20 THE COURT: Like I said before, Colonel Tuttle
21 couldn't be here because of his age and his health, so they
22 took -- the lawyers were in a conference room, Colonel Tuttle
23 was sworn, he gave a statement under oath, just like they took
24 the oath here. It is evidence in this case and you can
25 consider it as evidence in this case as if he were here.

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1 MR. BEN DEEVER: May I approach, Your Honor, with a
2 copy of the transcript for the Court?

3 THE COURT: Thank you.

4 MR. BOBBY DEEVER: Your Honor, without objection from
5 Mr. Ogiba, we would ask Mr. Collins to read the deposition.

6 THE COURT: Okay.

7 MR. COLLINS: We're going to do this question and
8 answer?

9 MR. BOBBY DEEVER: We will do it on a question and
10 answer basis.

11 THE COURT: Good. So you're going to be the lawyer
12 and he's going to be Colonel Tuttle.

13 MR. BOBBY DEEVER: Yes, Your Honor.

14 THE COURT: Then on cross-examination -- Is there any
15 cross-examination?

16 MR. OGIBA: I'll read the cross-examination, if there
17 is.

18 MR. COLLINS: Your Honor, I'd ask the Court indulge
19 me on the Vietnamese wording, I'm not -- obviously not fluent
20 in the language.

21 MR. BOBBY DEEVER: Neither was the court reporter.
22 The language is bad, the typing, but that's to be expected.

23 This was -- and I'm reading from the deposition itself.
24 Deposition of William B. Tuttle, taken by the plaintiff, Lake
25 Wylie, South Carolina, January the 11th, 2005, reported by

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1 Jackie Johnson, court reporter/notary public.

2 In attendance were myself for the plaintiffs, and Jay
3 Bender -- well, we'll just eliminate that, he's no longer a
4 party. David Collins, Barry Bachrach by telephone, and also
5 present were Daniel Marvin by telephone, and, well, Donald
6 Graves, the video, but that's not involved either.

7 "Proceedings: Present is Jay Bender --" this was by me.
8 "Present is Jay Bender, David Collins, Bobby Deaver, Jackie
9 Johnson and Donald Graves.

10 First, Colonel Tuttle, if you would, put your hand on the
11 Bible and be sworn. Whereby William B. Tuttle, having been
12 sworn, was examined and testified as follows:

13 Examination by counsel for the plaintiffs, by Mr. Deaver:

14 Q. Colonel Tuttle, we are at your residence at Blackberry
15 Lane in Lake Wiley, South Carolina, this is your present
16 residence. How long have you resided here?

17 A. Since December of '95.

18 Q. And your daughter, Louise, is present in and out. I'm
19 going to try to make this very brief, Colonel. Colonel, I
20 know that you're feeling very uncomfortable right now because
21 of the surgery, but can you tell us what your military history
22 is? Were you an enlisted man at any time?

23 A. Yes, sir. I was an enlisted man in the Virginia National
24 Guard before I went to the Military Academy.

25 Q. And when did you -- at West Point?

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1 A. Yes, sir.

2 Q. When did you attend the Academy?

3 A. '41 to '44. It was three-year course then because of the
4 war.

5 Q. Then when you completed that, what was your first
6 assignment?

7 A. My assignment was the infantry school basic training, and
8 then I went to parachute school. Then I went to the 13th
9 Airborne Division at Camp McCall for troop duty. Then I was
10 shipped out as a replacement to the 82nd Airborne, and I
11 joined them in the Bulge.

12 Q. That was the Battle of the Bulge we're referring to now,
13 World War II?

14 A. Yes, sir.

15 Q. Were you a platoon leader?

16 A. I was a platoon leader.

17 Q. How long were you in the service as a platoon leader with
18 the division?

19 A. Yes, I was -- later on, I stayed with the 508 parachute
20 regiment in Frankfurt, when the division went back, and I
21 stayed there until 1946. I was a company commander for a
22 short time there in the 508. Then I shipped out in 1946 to
23 the States, and for a short time I was at Fort Dix as a
24 training company commander, and then I went back to Bragg at
25 the 82nd.

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1 Q. And then you had somewhat of a career with the 82nd?

2 A. Yes, I had most of my career with the 82nd. I had been on
3 jump status practically my whole career. I went from there to
4 Korea, company commander in Korea, '52, '53.

5 Q. What unit was that?

6 A. That was 40th division.

7 Q. The National Guard?"

8 MR. COLLINS: Mr. Deaver, I seem to be missing page
9 six.

10 MR. BOBBY DEAVER: You are there?

11 MR. COLLINS: I'm missing page six.

12 MR. BACHRACH: Your Honor, I have page six.

13 (Brief interruption in proceedings.)

14 MR. COLLINS: Top of page six, answer of Colonel
15 Tuttle:

16 A. "Then I came back and joined the test board of bang rocket
17 recoils department. That's why I can't hear anymore. I was
18 on substatus there. Then I went from there to the Citadel for
19 three years as a tack officer. Then I went to Germany. I was
20 operations officer for a battle group, two battle groups,
21 assistant G-3 at the 24th Division. Then I returned to Bragg
22 and I joined the Special Forces in 1962.

23 Then while I was there, the Special Forces, I was a
24 training commander and an MATA director, Military Assistant
25 Training Adviser. That's where the regular advisers. Then I

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1 shipped out and went as a -- a volunteer for Vietnam. Then I
2 got stuck there in Saigon for a few months until I volunteered
3 to get down to the Fifth. I joined the Fifth in August of
4 '65.

5 Q. This is the Fifth Special Forces?

6 A. Fifth Special Forces. I became C-4 commander in August
7 of -- August '65, and I left in June '66.

8 Q. Sir, if you would, please, can you explain what C-4 is?

9 A. C-4 is a unit. They use different -- back then there was
10 no branch. We had all branches, you know, artillery,
11 infantry, even quartermaster.

12 Q. But no Special Forces branch?

13 A. No Special Forces branch.

14 It was unfortunate, because a lot of the artillery
15 officers were discriminated against, because they said, you
16 haven't had a battery yet. You haven't had any troop duty.
17 Even they had an A Team in combat. So it was tough until --
18 it became a branch now, of course.

19 Q. When did it become a branch, if you recall?

20 A. Oh, it must have been -- I was out of the service then.
21 Five, maybe seven, eight years ago, ten years ago maybe. I
22 retired in January '59.

23 Q. So at that time the Special Forces was not really a career
24 branch?

25 A. It was not a career branch, and unfortunately some

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1 officers suffered because of that. It was not a career branch
2 on their efficiency reports.

3 Q. That's been corrected though. But when you went to
4 Detachment C, that was at Can Tho?

5 A. That was at Can Tho. That was Cole Kidd with the Fourth
6 Division, an adviser in Fourth Corps, and I saw him quite
7 often.

8 Q. You saw whom now?

9 A. The division -- I beg your pardon, the Fourth Corps, the
10 corps adviser, the corps adviser, Fourth Corps adviser.

11 Q. And you were directly under the Fourth Corps from --
12 actually the Fifth Group was?

13 A. I was under operational control of the Fifth in Nha Trang,
14 way up there in Nha Trang, but I was administratively I'll say
15 detached to the Fourth Corps, like all the C Teams were. But
16 operational control of the -- we conducted our own operations
17 and just coordinated with the corps adviser.

18 Q. Now, beneath the Detachment C, you had B detachments and A
19 detachments?

20 A. I had two B detachments and 15 A detachments, plus a Mike
21 Force detachment. So I had a total of 16. It was primarily
22 border surveillance, 170 kilometers from the Cambodia border,
23 from Third Corps boundary to the Bay of Siam. And I had a
24 team on Phu Pai Island, and I had a team in Ca Mau, and I had
25 two -- several in the Center Mountains area.

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1 Q. And one of those units was A-424 at An Phu?

2 A. That was at An Phu that Captain Marvin took over.

3 Q. Before he took over, were there any plans for the
4 dissolution of the detachment at An Phu?

5 A. No, there was no dissolution before. I mean, it was all
6 known that An Phu, being a quiet sector, didn't have a full
7 team. It would be the first ones to go to regional force.

8 Now, regional force, you know, were the province chiefs'
9 main troops and under MAT program. They paid them, you know,
10 all that and clothed them. Where as CIDC, they were under the
11 CIA, and the CIA -- the A Team commanders had a big job.
12 They're not only the commander of, say, four or five CIDG
13 companies, but they handled between 20 and \$30,000 worth of
14 piasters every month. It was a big job.

15 So when you go from CIDG first class under the CIA, where
16 you had your own uniforms, weapons and pay, ammo, everything
17 was different. So that's why Marvin, being handy in
18 logistics, being a quartermaster officer, was sent there from
19 Nha Trang. Nha Trang sent him down there and told him, this
20 is the man to handle the transition and make it smooth as pie.
21 Because he was an expert in logistics and accountability and
22 so on.

23 Q. Do you recall December 1965, around Christmas, whenever he
24 arrived at Can Tho?"

25 MR. BOBBY DEEVER: Mr. Bachrach objected.

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1 MR. BACHRACH: I'll waive the objection.

2 THE COURT: Okay.

3 BY MR. BOBBY DEAVER:

4 Q. "Question: Go ahead.

5 A. Yes, sir, I do. And there was nothing particularly unique
6 about it. I mean, just they have an open mess area. You eat
7 with a lot of people. So if he said he had breakfast with me,
8 okay, he said he had breakfast with me. I had breakfast with
9 a lot of A Teams coming in from the field. It was an open
10 mess. So there was nothing particular that I can recall that
11 was special about that breakfast.

12 MR. BOBBY DEAVER: If you would bear with me a
13 moment, I'd like to have this marked as Deposition 1."

14 MR. BOBBY DEAVER: And we can skip over that. Let's
15 go to the next question.

16 Q. "I'm going to show you -- in fact, I'll exchange with
17 you."

18 MR. BOBBY DEAVER: On the next page?

19 MR. COLLINS: You're talking about page 11?

20 MR. BOBBY DEAVER: Page 11.

21 A. "Yes, I purchased this in --

22 MR. BOBBY DEAVER: Deposition Exhibit 1 is a copy of
23 Expendable Elite by Daniel Marvin, a book, and Mr. Bender's
24 examining it now. Mr. Bender: No objection to the book. The
25 extraneous paper and the underlining are not part of the

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1 original. The book only is introduced into evidence, and the
2 cover.

3 Q. So I'll show you what's marked as Deposition Exhibit 1 and
4 ask if you're familiar with this.

5 A. Yes, sir, I've read it.

6 Q. What is this now, for the record?

7 A. Oh, that's the Expendable Elite, written by Daniel Marvin.

8 Q. I'm going to ask you some questions about that.

9 Now, you have your personal copy there?

10 A. Yes, sir.

11 Q. Where did you acquire that?

12 A. At Rock Hill at Books-a-Million, South Carolina.

13 Q. Was that right after it was published?"

14 MR. BACHRACH: You can go down to line 11.

15 A. "It's just a copy that I -- when I heard it was published,
16 I ordered a copy. That's all it is, a regular copy.

17 Q. Have you had an opportunity to read it?

18 A. Yes, sir.

19 Q. I'd like to ask you some questions about that, if you
20 will, please. Did you see any reference in that Expendable
21 Elite to you, yourself, by name? Were you referred to in that
22 book?

23 A. Yes, I was referred to many times in the book. And I am
24 particularly offended by the fact that it starts out, really,
25 with Captain Marvin's timing -- stating in the book that I

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1 gave him a secret order to invade Cambodia and assassinate and
2 kill Prince Sihanouk of Cambodia. That's really an outrageous
3 lie."

4 MR. BOBBY DEAVER: And Mr. Bachrach moved to strike.

5 MR. BACHRACH: I'll waive my motion to strike.

6 "MR. BOBBY DEAVER: Yes, you will have plenty of time
7 to object to any of his testimony at a later time. We're not
8 going to try to --" And then you reserve your motions.

9 Colonel Tuttle?

10 MR. COLLINS: Do you want me to go with the
11 extraneous banter?

12 MR. BOBBY DEAVER: After Mr. Bachrach reserving his
13 motion. Line ten?

14 A. "Knock it off. Line ten: Knock it off. Who is that?

15 MR. BOBBY DEAVER: This is Barry Bachrach. He's the
16 attorney for Dan Marvin.

17 A. He keeps chirping in all the time."

18 MR. BOBBY DEAVER: Just for the -- your
19 understanding -- we have a speaker phone, and Mr. Bachrach was
20 questioning him and attending -- and Mr. Marvin were attending
21 this deposition through telephone. So that's why some of this
22 doesn't make a lot of sense. But that's the -- what's going
23 on.

24 "MR. BOBBY DEAVER: Well, he's just a part of this
25 deposition, so get used to it.

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1 A. Okay.

2 Q. I understand. I got it. I've got it."

3 MR. BOBBY DEEVER: Oh, you say it. You read the I've
4 got it.

5 A. "I've got it. I've got it.

6 MR. BOBBY DEEVER: And the admissibility of it, all
7 of those things are reserved.

8 Q. Colonel, I'm going to quote from Chapter One on page one
9 and just read this. 'Lieutenant Colonel Tuttle -- this is all
10 in quotes -- the commander of all Special Forces in Fourth
11 Tactical Groups of South Vietnam spoke in a whisper, quote,
12 'Dan, if you take command of A-424 and accept this top secret
13 mission, you'll be on your own. When you leave this room, it
14 will be as if we never met. We can't and won't stand behind
15 you, if you are caught doing what I'm about to tell you to do.
16 Got it, Captain?'

17 A. That's the caption in the book and it's a complete lie.

18 Q. Does it have any implications to you and your career and
19 your reputation?

20 A. Well, I would say that now that it's widely disseminated,
21 they must think what the hell is going on with the Special
22 Forces there. Yeah, it sure has.

23 Q. And Colonel Tuttle in particular, right?

24 A. In particular, yes, when I had command of C-4.

25 Q. Are you familiar with Article 90 of the Uniform Code of

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1 Military Justice?

2 A. Well, basically, yeah.

3 Q. Does it have anything to do with disobedience of orders?

4 A. Well, disobedience of orders in what respect do you mean?

5 MR. BOBBY DEEVER: Well, let me read this portion of
6 it, and I will put this into evidence as Exhibit 2, and I'll
7 explain that to you in just a moment, Barry. Let Mr. Bender
8 examine it and I will state what it is. It's a photocopy of
9 the Uniform Code of Military Justice, Article 90, the
10 substance of the charge and the elements of the offense.

11 Mr. Bender: No objection.

12 Q. Would you read the highlighted portion of the Article 90,
13 please?

14 A. Any person subject to this chapter who strikes a
15 superior --

16 Q. No, excuse me. Just this, the highlighted portion.

17 A. Oh, willfully disobeys a lawful command of his superior
18 commissioned officer, shall be punished, if the offense was
19 committed in time of war, by death or such other punishment as
20 a court-martial may direct.

21 Q. Thank you. Now, were there any orders of superior
22 officers in existence at that time that prohibited exactly
23 what Dan Marvin has stated that you and he conspired to do?"

24 MR. BACHRACH: Your Honor, I will maintain this
25 objection, because the order's never been introduced into

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1 evidence.

2 THE COURT: I'll overrule that objection. Go ahead.

3 MR. BOBBY DEEVER: Go ahead.

4 A. "Well, all I can state is that he made a statement in his
5 book that's a complete lie.

6 Q. Well, was that statement that you were conspiring with him
7 to disobey or to avoid any orders that were already standing
8 orders that were in existence about border crossings?

9 A. Yes. We were violating -- everybody knew we weren't
10 supposed to go into Cambodia. Everybody knew that, and that
11 would, of course, be violating that order.

12 Q. There was a general order in effect prohibiting that?

13 A. A general order in effect. That's affirmative.

14 Q. And are you familiar with international law that prohibits
15 one person going into -- a citizen or one person going into
16 another country, crossing that line --

17 A. Yes, sir.

18 Q. -- without permission of the country to which you're
19 visiting?

20 A. Yes, sir.

21 Q. And that was in effect at the time, was it not?

22 A. Yes, it was.

23 Q. And was there also a Special Forces regulation that
24 prohibited a member of Special Forces to use their diplomatic
25 passport to go into any country that was not approved by

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1 Special Forces?

2 A. That's correct.

3 Q. In effect, Dan Marvin is saying that you and he conspired
4 to violate those standing orders, wasn't he?

5 A. I understand --

6 Q. What was Daniel Marvin suggesting in there?

7 A. Yes.

8 Q. What was he suggesting?

9 MR. BOBBY DEEVER: He's objecting to that.

10 Q. What was he objecting, by stating this, that you and he
11 were doing? Go ahead.

12 A. He was stating that I was giving him a secret order that
13 nobody would know about, which was entirely wrong, to invade
14 Cambodia and assassinate Prince Sihanouk. Of course it's a
15 total lie.

16 Q. And you remember when you read about that Article One,
17 what the maximum punishment was -- would have been?

18 A. They said death, yes.

19 Q. Under the UCMJ. Thank you. Now, there's a reference also
20 to page nine of the book.

21 A. What about it?

22 Q. I believe you have it highlighted as well. If you'll go
23 to that highlighted portion, there's a reference to Colonel
24 C.W. Patten?

25 A. Patten never mentioned it. I knew Colonel Patten. Never

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1 mentioned him at all.

2 Q. You had never spoken with anyone concerning Dan Marvin?

3 A. Prior to Vietnam?

4 Q. Yes.

5 A. That's correct.

6 Q. Or prior to his arrival?

7 A. Not prior to his arrival either. But he was supposed to
8 be the real slick operator, because he's a quartermaster
9 officer commissioned in that field, and an expert when -- as I
10 said before, the conversion would not be an easy job.

11 Q. And by conversion, you're talking about --

12 A. From CIDG to Regional Force.

13 Q. And that would mean taking the Special Forces' control
14 away?

15 A. Control away, pay and everything. Pay was an important
16 thing, too. See, ARVN wanted to get in the pay business.
17 Because they --

18 Q. Now, ARVN is the Army --

19 A. Army of Vietnam. They wanted to get in the business of
20 coming in and paying them because, well, there's money in
21 that.

22 Q. Now, he states in the book, and I'm going to read this, in
23 the interest of time, quote, 'I knew then and there that he
24 had discussed my modus operandi with Colonel Patten. In
25 Patton's final evaluation of my performance as his chief

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1 logistics officer in 1965, he used almost those exact words in
2 discussing my attributes that were, as he wrote in the formal
3 report, quote, well suited for unconventional warfare.'

4 A. Never heard it before. We're not going to go through page
5 by page of this book, are we?

6 Q. We're going to do some of it.

7 A. Good God.

8 Q. And I will, because I know that you are feeling horrible,
9 we'll skip some of them. The main ones that I'm going to make
10 reference to --

11 A. Well, how about the one where he said he relieved --

12 Q. On page 275?

13 A. -- relieved Lieutenant Garcia, the Mike Force commander.
14 That never happened. He was an outstanding officer. He also
15 said that his counterpart, the LLDB, the Vietnamese Special
16 Forces, responsible for relieving Marvin's predecessor, and
17 that was not true. What was his name? Hell, that would ruin
18 his career."

19 MR. BOBBY DEEVER: Then there was an objection by
20 Mr. Bachrach.

21 Q. "And -- question: Did Marvin make any reference to a Mike
22 Force commander that was relieved?

23 A. Yes. In the book he said that he had relieved -- he may
24 relieve the Mike Force commander, Lieutenant Garcia, the
25 Reaction Force.

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1 Q. And that is not true?

2 A. It's not true.

3 Q. Regarding Lieutenant Garcia, was he not the only -- he was
4 the only Latino officer in C-4, wasn't he?

5 A. Only Latino?

6 Q. Yes.

7 A. Oh, no, I mean, you're going back.

8 Q. Excuse me. Excuse me. Only Latino officer in the Mike
9 Force.

10 A. Oh, I don't know about that. I mean, officers came and
11 gone. I mean, you can't -- I can't say that, no.

12 Q. If you will, please, go to page 275. If you will, look at
13 the summary heading, we'll call that, for Chapter 13,
14 Apocolypse at An Phu.

15 A. Yes, that chapter talks about us deserting the --"

16 MR. BOBBY DEEVER: Hoa Hoas.

17 MR. COLLINS: Thank you, Mr. Deaver.

18 A. "80 percent of the troops of the CIDG were --"

19 MR. COLLINS: One more time?

20 MR. BOBBY DEEVER: Hoa Hoas.

21 A. "-- Hoa Hoas, a very fine religious outfit.

22 Q. Sir, are we on the same page, 275?

23 A. Yeah.

24 Q. Well, if you will --

25 A. We're talking about --

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1 Q. -- read the highlighted portion. The highlighted portion
2 on page 275, if you will, and just read it into the record,
3 1300 hours."

4 MR. BOBBY DEEVER: There was an objection by
5 Mr. Bachrach: "You're going to have him read it into the
6 record?"

7 And you -- then you.

8 A. "He said, in other words, I am even ordered to abandon --

9 Q. Excuse me. To make it simple, if you would just read the
10 portion of the book that you have highlighted there at the top
11 of the chapter, starting with 1300 hours.

12 A. '1300 hours, 17 June '66. Marvin Woolley came running in
13 from the communications bunker and interrupted my meeting with
14 John Strait and Jim Taylor. He stepped in front of me, a
15 message in his hand. That is a hot one, I knew you'd want it
16 right away. I took it and read it aloud. Secret. To Marvin.
17 Urgent. Repeat. Urgent. Must depart An Phu and report to
18 B-42 NLT 2000 today. Advised. SGD Tuttle.'

19 That's an obvious lie, because I was gone by 17 June. I
20 wasn't even in Vietnam. I was back in the States.

21 Q. You were not in Can Tho or in command of C-4 or --

22 A. No, I wasn't in command of C-4.

23 Q. -- on the 17 of June?

24 A. I wasn't even there. And there's proof of that on my
25 orders, special orders.

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1 Q. So that order for him to take A-424 and abandon An Phu,
2 that is the same kind of bull that we've been talking about
3 earlier?

4 A. Yes."

5 MR. BOBBY DEEVER: And objection to the form of the
6 question. I suppose, in retrospect, it was.

7 Q. "So this is an attribution of a secret message that you --
8 that this is an attribution of a secret message that you sent
9 to Marvin on June 17th?

10 A. I couldn't have sent it. I wasn't there.

11 Q. Let's look at page 277. There's a reference to another
12 message. If you would, read that, what it states.

13 A. I read it aloud: 'Secret to Marvin. Urgent. Group
14 headquarters received priority message from LLDB Ky, that's
15 Premier Ky, has withdrawn amnesty from CIDG of An Phu. All
16 will go before military tribunal after conversion to Regional
17 Forces. Do nothing until advised. SGD Tuttle.' Absolute
18 lie.

19 Q. And then on page 278 there's another reference to you on
20 about the middle of the page, and what does that reference?

21 A. Which one are you referring to, your team would be --

22 Q. Are you on page 278?

23 A. I'm on 278.

24 Q. The paragraph that starts, Colonel Tuttle.

25 A. 'Colonel Tuttle has told me nothing, Thieu-ta, just to

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1 wait for orders from him. Do you have any idea what's going
2 on?' None of this makes sense.

3 Q. Well, was there anything going on between you and An Phu
4 and A-424?

5 A. Nothing.

6 Q. Then on page 279 there are a series of secret urgent
7 messages attributed between you and Marvin. When you read
8 the --

9 A. Yes, it says --

10 Q. Question: I think the question was, will you read the
11 message, the referenced messages?

12 A. Yes. 'Secret. Urgent. To Tuttle. Regarding your
13 message this day on amnesty. I stand with Major Le. We
14 demand total amnesty for Strikers. Southward regiment poised
15 to attack within next three days. An Phu is closed to all us
16 and RVN outsiders until amnesty is restored. SGD Marvin.'

17 MR. BOBBY DEEVER: That that you read as us, would
18 you read it just the letters?

19 MR. COLLINS: I'm sorry.

20 MR. BOBBY DEEVER: An Phu is closed to all US.

21 A. "Is closed to all US and RVN outsiders until amnesty is
22 restored."

23 MR. BOBBY DEEVER: Signed Marvin?

24 A. "SGD Marvin.

25 Q. Now, is that saying that there are no US forces of any

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1 nature are able to go into An Phu unless Marvin concedes it?

2 A. Yes, sir, that's what he's saying.

3 Q. Are you familiar with the UCMJ, the Uniform Military Code
4 of Justice on mutiny? Have you had an opportunity to examine
5 Article 94 of the UCMJ?

6 A. Any person subject to this --

7 Q. Excuse me. Have you had an opportunity to view this?

8 A. Yes.

9 MR. BOBBY DEAVER: I want to put this into
10 evidence --

11 A. Oh, sure.

12 MR. BOBBY DEAVER: -- as Deposition Exhibit 3. Thank
13 you. These are just specifications.

14 Q. Now, if you will recall, we just read the message that was
15 attributed to you that told him and A-424 to leave An Phu no
16 later than 2000 hours and report to B-42, and then you just
17 read that he is denying that he's not going to do that, or not
18 even you or the Army or either nation will be able to come
19 into where he is holed up at An Phu?

20 MR. BOBBY DEAVER: The message of the first one was
21 on June -- 17th of June. I think we related that. This
22 follows a series of messages, and it's on the 17th as well, I
23 believe, of June.

24 A. And I was long gone. I wasn't even there.

25 Q. Now, let me just read this and see if this is Article 94

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1 that you made reference to. 'Any person subject to this
2 chapter who, with intent to usurp or override lawful military
3 authority refuse, in concert with any other person, to obey
4 orders or otherwise do his duty or fails to do his utmost to
5 prevent and suppress a mutiny or sedition being committed in
6 his presence, or fails to take all reasonable means to inform
7 his superior commissioned officer or commanding officer of a
8 mutiny which he knows or has reason to believe is taking
9 place, is guilty of a failure to suppress or report a mutiny.'

10 Now, those are two separate offenses, right?

11 A. Right.

12 Q. Does this series of messages, does that attribute mutiny
13 to the whole A-424 unit?

14 A. It sure does.

15 Q. And what is the penalty for --

16 A. Well, the penalty there, by death or such punishment as
17 court-martial may direct.

18 Q. Are you reading from Article 90?

19 A. Yes, I am reading from Article 90.

20 Q. Now, if you'll go down next was a message -- well, we
21 don't need to include that, because it's between the CIDG
22 company commander.

23 Then on page 281 in the middle of the page, is there
24 another secret message that's attributed to you?

25 A. Yes. It said, "Secret. To Marvin. Urgent. Repeat.

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1 Urgent. A-424 must depart An Phu and report to B-42 NTL 2000
2 hours today. B-42 advised. SGD Tuttle."

3 Q. Did you ever send that message?

4 A. No, sir, I never did.

5 Q. Or anything similar to it?

6 A. No, never did.

7 Q. If, just hypothetically, if a commander of one of your
8 detachments had sent any messages that he was doing, as Marvin
9 has alleged that he did at An Phu, in disobeying the orders
10 and ordering no one else to come into the command, what would
11 you have done?

12 A. I'd have him court-martialled.

13 Q. And would you put someone else in command to relieve him?

14 A. I sure would.

15 Q. Now, if you'll turn to page 282, there's another message,
16 secret message attributed to Marvin. Would you read that in
17 paragraph four?

18 A. It says, 'Secret. To Tuttle. Amnesty must be granted
19 Strikers of An Phu. Will advise later today if I will send
20 team members to B-42. I am staying. SGD Marvin.'

21 MR. BOBBY DEEVER: The SGD is for signed.

22 MR. COLLINS: Signed Marvin, excuse me.

23 MR. BOBBY DEEVER: Just for clarification.

24 Q. "Did you ever receive that message?"

25 A. Never received that message.

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1 Q. We'll just leave it at that.

2 A. That's it.

3 Q. And that was on page 282.

4 On 289 there's another of a series of radio -- secret
5 radio messages that are attributed to you and to Marvin. If
6 you will read --

7 A. 'Message. Secret. To Marvin. Situation very dangerous.
8 SF has no control. Your team must leave An Phu ASAP. Report
9 to Colonel Brewer. No amnesty. ARVN under orders to take
10 control of An Phu NLT 201500 June --'" I guess that is "'-- No
11 danger for your movement to B-42 location this date. Urgent
12 reply requested. From Tuttle.'" Of course, I wasn't even
13 there then. I couldn't have sent that.

14 Q. And then there's a response to you at the bottom of page
15 289.

16 A. "Secret. To Tuttle. Your message to abandon Strikers.
17 Suggest SF gain control of situation. We wait with Major Le
18 for amnesty. Signed Marvin."

19 Q. And what's the substance of that message?

20 A. I never sent that. I wasn't even there.

21 Q. Well, this was a message to you from Marvin that you just
22 read?

23 A. Yes.

24 Q. What is the substance of that message?

25 A. Abandoning Strikers. We never did have any intent ever to

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1 abandon Hoa Hoas."

2 MR. BOBBY DEAVER: Hoa Hoas.

3 MR. COLLINS: Hoa Hoas.

4 Q. "None of that occurred?

5 A. Never occurred.

6 Q. Let's see then on page 290 -- 291. Excuse me. It starts
7 at 290. Yes. If you would read that portion on 291 -- excuse
8 me -- 290.

9 A. Whereabouts on 290?

10 Q. It was on 289 and 290. I believe I have it highlighted
11 there.

12 A. Marvin and --

13 Q. Let's go on to 360.

14 A. Well, Major Le was, of course, head of the -- he was the
15 LLDB commander, and he said, Major Le was given a copy of my
16 message. This is Marvin talking. And he quickly wrote a note
17 and had it hand carried to me. It read, men are very brave to
18 stay with us -- in other words, the Special Forces were very
19 brave to stay with us -- in this very dangerous situation.
20 Thank you.

21 Q. Well, there's a reference on page 306 to a conversation
22 between Colonel Brewer and Dan Marvin, where Marvin asked --
23 well, what was it he told Colonel Brewer about you?"

24 MR. BOBBY DEAVER: And an objection and --

25 Q. "Can you read line 11?"

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1 A. 'Colonel Brewer seemed to be paying attention, as I added,
2 I knew all along that one day we'd have this confrontation.
3 It was inevitable.'

4 Q. Now go to the bottom of that paragraph.

5 A. 'Ask Colonel Tuttle about what he sent me to do in An Phu
6 now that we're out there. Maybe he'll tell you the truth,
7 maybe he won't.' Total lie.

8 Q. And if you told Colonel Brewer that you had sent Marvin
9 out there to do, what was it?

10 A. Well, you mean as far as --

11 Q. To An Phu. Why was he sent to An Phu?

12 A. Well, he was sent to An Phu to be responsible for a smooth
13 transition to Regional Force.

14 Q. Now, An Phu was a -- Can you describe what type of
15 activity was going on at An Phu during the period of time made
16 reference to in the book?

17 A. Well, An Phu was -- I had, you know, some outstanding team
18 captains, Joe Parent and Captain Leo Donker and Captain
19 Shelton, all A Team commanders, one at Foopah Island, one
20 there in Kai Kai, another one at Tuinon, all KIA. Never
21 mentioned them at all. He mentioned about Major Arnn getting
22 killed by snipers. I got there right after it happened, and
23 he was killed by remotely fired land mine. I mean, it goes on
24 and on, the book is just riddled with lies.

25 MR. BOBBY DEEVER: I'm going to put two more, if you

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1 will, please, two more exhibits into evidence."

2 MR. BOBBY DEAVER: And they were marked Exhibits 4
3 and 5 for identification. Exhibit 4, it's for the accusations
4 that were made against Colonel Tuttle. And Mr. Bender wanted
5 to know -- didn't see a heading. What is that? At the top,
6 UCMJ Article 92, failure to obey order or regulation. And
7 then Article Five would be Article 92. Exhibit 5 would be
8 Article 92. It would be. And there was no objection.

9 Q. "I'm going to just show them to you for you to identify
10 them, and then we'll have them put into evidence. This is
11 Deposition Exhibit 4 and 5.

12 A. Yes.

13 Q. And these are articles of -- Uniform Code of Military
14 Justice articles that he's accused you of violating.

15 A. Yes.

16 MR. BOBBY DEAVER: The Colonel just showed me, he
17 wants to know if you're about finished, and his health is not
18 going to permit much more.

19 A. I just want to make one final statement that --

20 Q. Let me first ask a couple of other questions. Did you
21 have any communication, e-mails or written communications
22 about Marvin's suggesting or informing people that you were
23 deceased?

24 A. I don't know.

25 Q. Then let me -- two other points, if you will, please.

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1 Have you been damaged, do you feel, by these libelous
2 statements?

3 A. Yes, there's no question about it, it's hurt my
4 reputation. I spent 30 some odd years in the Army. Damn
5 right it has.

6 Q. What have the damages -- been the damages on that?

7 A. Well, it's hurt my character for sure, and --

8 Q. Has it harmed you professionally?

9 A. Well, yes. Of course, I'm retired now, but it makes us
10 all in Special Forces look sort of ridiculous, really.

11 Q. If you could have sold your reputation, what would have
12 been the value to you of that?

13 A. Oh. You know what --

14 Q. Monetary?

15 A. Your reputation is your whole life, worth untold millions.

16 Q. Now, one other final question and I'll be through. Marvin
17 filed a counterclaim against you in this lawsuit, alleging
18 that you had libeled him.

19 Have you ever made any statement, verbally or written, of
20 a libelous nature about Dan Marvin?

21 A. To him?

22 Q. Communicated to --

23 A. No, I have not communicated with him at all.

24 Q. Or to anyone else that was a statement of a libelous
25 nature about him?

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1 A. No.

2 MR. BOBBY DEAVER: Thank you, sir."

3 MR. BOBBY DEAVER: All right. So the examination by
4 counsel for the defendant by Mr. Bachrach.

5 THE COURT: Okay.

6 MR. COLLINS: How are you, Mr. Bachrach?

7 MR. BACHRACH: Good, thank you. I hope I don't chirp
8 up here. We all set?

9 MR. COLLINS: Colonel Tuttle is ready.

10 BY MR. BACHRACH:

11 Q. "Colonel Tuttle, I'd like you to look at Exhibit 1, which
12 is the book Expendable Elite. Can you point to me exactly
13 where at the time Captain Marvin was told by you to go into
14 Cambodia?

15 A. If you're stating that I said, 'Now you're crossing the
16 line of departure into Cambodia,' hell, no. He was told --
17 it's in the first page of the book.

18 Q. What was said exactly?

19 A. At the first page of the book he talks about getting a
20 secret mission going into Cambodia and assassinating Prince
21 Sihanouk.

22 Q. Did he say that that secret mission came as an order from
23 you?

24 A. Did he ever same say it came from me?

25 Q. Yes. Does it say anywhere in the book that you gave him

DEPOSITION OF WILLIAM B. TUTTLE READ

1 an order to go into Cambodia and assassinate Prince Sihanouk?

2 A. I'll have to do some researching for the exact words.

3 Q. Well, sir, you earlier today said on your direct testimony
4 that Colonel Marvin stated in the book that you ordered him to
5 go into Cambodia and assassinate Prince Sihanouk. I challenge
6 you to show me anywhere in the book where that statement is
7 made.

8 A. Well, let's say it's -- of course it's not there, that I
9 said before, you will now cross the line of departure and do
10 this. It's implied in the book that I told him that.

11 Q. Sir, is there anywhere in the book where it's expressly
12 stated that you gave Colonel Marvin, then Captain Marvin, an
13 order to go into Cambodia and assassinate Prince Sihanouk?

14 A. All I can say is it's implied in the book well enough. I
15 didn't say we need to cross the LLD or anything like that, no,
16 I didn't.

17 Q. And Colonel Marvin never said in the book that you gave
18 him the order, does he?

19 A. As far as I'm concerned, the book implies that I told him
20 to go into Cambodia. That's the way I understand it. That's
21 the way I understand it, period.

22 Q. Did you read the entire book?

23 A. I sure did.

24 Q. And you indicated that you or your forces ultimately
25 reported to the CIA, correct?

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- 1 A. What did he say?
- 2 Q. Your forces ultimately reported to the CIA.
- 3 A. Nothing. Nothing from the CIA.
- 4 Q. Did your forces, while you were in Vietnam, have any
5 involvement with the CIA?
- 6 A. Me involved with the CIA?
- 7 Q. Yes.
- 8 A. No, not a single thing. The only thing we got -- the
9 Special Force got involved was they got the money from the CIA
10 to pay the troops. That's all.
- 11 Q. Did you, while you're in Vietnam, have any conversations
12 with anyone from the CIA?
- 13 A. A CIA officer was injured severely when Major Arnn was
14 killed with the sergeant major, but he was just going on a
15 recon with Major Arnn. He got severely injured. He didn't
16 get killed.
- 17 Q. Who was that CIA agent?
- 18 A. I don't know who it was.
- 19 Q. Do you know Walter Mackem?
- 20 A. No.
- 21 Q. Have you ever heard the name Walter Mackem?
- 22 A. No.
- 23 Q. Isn't it true that Colonel Marvin indicates in the book
24 that it was Mr. Mackem who gave him the order to assassinate
25 Prince Sihanouk?

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1 A. No, I don't understand that, no.

2 Q. So you don't recall in the book that Colonel Marvin wrote,
3 that it was a CIA agent who provided him the order to
4 assassinate Prince Sihanouk?

5 A. No, I don't recall.

6 Q. You contend that the book states you were the one who gave
7 him the order to go into Cambodia and assassinate Prince
8 Sihanouk.

9 A. Yes, I'm concerned about that. I am. No one knew about
10 it.

11 Q. If the book doesn't say that, you're wrong, right?

12 A. It's just him and me. Nobody else. That's what he says.

13 Q. Did you have any Special Forces training?

14 A. Have what?"

15 MR. BACHRACH: And then it goes on.

16 A. "Yes, I did, I went through the Special Forces officer
17 course.

18 Q. Where was that?

19 A. 1962.

20 Q. Where?

21 A. Fort Bragg.

22 Q. What training did that entail?

23 A. Trained for what?

24 Q. What training did that entail?

25 A. It entailed weapons, demolition, communications,

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1 parachuting into an area and handling guerrillas, and
2 directing guerrillas, advising guerrillas. Yeah, I graduated
3 in December of 1962 in that course there. It was an officer
4 course. Yeah, it was pretty intensive training.

5 Q. Did you go through counterinsurgency special warfare staff
6 officer course?

7 A. Special warfare officer -- staff officer course?

8 Q. Let me restate that. Did you go through counterinsurgency
9 special warfare staff officer course?

10 A. Yes. That's what I went to. That's what I graduated in.
11 1962.

12 Q. And specifically, what were you taught in the
13 counterinsurgency special warfare course?

14 A. What did he say?"

15 MR. BACHRACH: Mr. Deaver said, "What were you taught
16 about the counterinsurgency in that officer course?"

17 A. We talked -- it was -- we talked a lot about
18 counterinsurgency."

19 MR. BACHRACH: Mr. Deaver said, "What were you
20 taught?" And then I also chimed in, "What were you taught?"

21 A. We were taught methods of learning -- getting the native
22 on your side, communicating with the local populous, making
23 friends with them so that we can work our way into the
24 infrastructure of the guerrilla forces and so on.

25 Q. Were you taught assassination techniques?

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1 A. No. By the way, I --"

2 MR. BACHRACH: Just then you went on.

3 A. "I'm going to go ahead and say that I saw that in the
4 book. And even though I was director of the MATA, military
5 and training adviser course, and also the training group
6 commander for enlisted men and executive officer of the Fifth,
7 I never heard of an assassination course at Fort Bragg.

8 Q. Sir, you never heard of an assassination course at Fort
9 Bragg?

10 A. No, sir.

11 Q. Have you ever heard of an assassination course training
12 for anyone in the Special Forces during that time period?

13 A. No. We had training, of course, in demolition and how to
14 do things with all kind of explosives. But as far as training
15 to do assassination, no, we had no course like that."

16 MR. BACHRACH: Then that day ended and we -- I think
17 there's -- and then we proceeded to a second day. Do you have
18 that before you?

19 MR. COLLINS: I believe so. About the 16th of
20 February?

21 MR. BACHRACH: Yes, and it begins on page 54.

22 MR. COLLINS: Yes.

23 Q. "This is clarifying your testimony from the last
24 deposition, the day of deposition.

25 A. Well, we were discuss --"

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1 MR. BACHRACH: Wait a second. I see, you opened up
2 with a clarification that should go in.

3 MR. COLLINS: Would you like me to read that?

4 MR. BACHRACH: Yes, please.

5 A. "Good morning, sir. I'd like to just take a minute to say
6 that the course that I attended was a ten-week unconventional
7 course for U.S. Special Forces. It was October, November,
8 December, with a night jump loaded with rut trucks into the
9 National Forest to marry up with the guerrillas. My
10 classmates were all captains and lieutenants. There's only
11 two lieutenant colonels in the course. It was an
12 unconventional course, not counterinsurgency. Okay?

13 Q. This is clarifying your testimony from the last
14 deposition, the last day of deposition?

15 A. Well, we were discussing that, and I think Captain Marvin
16 there kibitzed and said it was the counterinsurgency course.
17 It was not. It was a U.S. Special Forces course, ten weeks.

18 Q. Okay. Have you had a chance to review your entire
19 transcript from the prior deposition?

20 A. No, sir.

21 Q. Colonel Tuttle, I also have Colonel Marvin on the line
22 just sitting in listening. Colonel Tuttle, it's your
23 testimony that Colonel Marvin libeled you by stating that you
24 gave him an order to invade Cambodia and assassinate Prince
25 Sihanouk, is that correct?

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- 1 A. Yes, sir.
- 2 Q. Where in the book --
- 3 A. No. No, sir. No, sir.
- 4 Q. -- does Colonel Marvin write that?
- 5 A. It was noted on page 11 of the book where I say,
- 6 "Dangerous Dan, I'd like you to take command of Camp Dan Nam
- 7 A-424, an independent operation. Your primary mission will be
- 8 to take the war into Cambodian territory. You will be the
- 9 first to do so."
- 10 And then he implied, which came later on, particularly
- 11 when the CIA agent visited An Phu, that he wanted the members
- 12 of that team to do the execution. Is that clear, sir?
- 13 Q. Is there anywhere in the book where it says that you
- 14 ordered him to assassinate Prince Sihanouk?
- 15 A. No, sir, just implied.
- 16 Q. But it's not written in the book?
- 17 A. No, sir, I couldn't find it in the book.
- 18 Q. Are you familiar with Walter Mackem?
- 19 A. With -- No, sir, I'm not.
- 20 Q. You've never met Mr. Mackem?
- 21 A. No, sir.
- 22 Q. During your tenure in the An Phu region, did you ever meet
- 23 any CIA agents or operatives?
- 24 A. I never met any CIA operatives.
- 25 Q. Did you meet any CIA agents?

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1 A. Did I what, sir?

2 Q. Did you meet anyone involved with the CIA?

3 A. Yes, sir. The CIA would come by periodically and bring
4 the money to pay the CIDG. And as I said before, the A Team
5 commanders handled about 30,000 piasters worth of American
6 dollars to pay the troops. But I never did become acquainted
7 with any of them.

8 Q. Did you ever receive money -- take money from them?

9 A. No, sir, never received nothing.

10 Q. So who would take the money?

11 A. The A Team commanders would get the money, and they'd
12 pay -- he'd pay the CIDG soldiers. There were no CIDG at the
13 C Team, and none of the B Teams, only at the A Team level,
14 sir.

15 Q. So it's your testimony, Colonel, that you never met anyone
16 involved with the CIA during your tenure in Vietnam?

17 A. No, sir, I never met any of them.

18 Q. Who's paying for the lawsuit? Are you paying for lawsuit?

19 A. Yes. Yes, sir.

20 Q. You're paying personally out of your pocket? How much
21 have you paid for this lawsuit?

22 A. I retained an attorney.

23 Q. Have you paid this attorney?

24 A. Yes.

25 Q. Has anyone else -- who else has paid for the attorney in

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1 this lawsuit?

2 A. Nobody else.

3 Q. Are you the only one paying the attorney?

4 A. I'm the only one -- No. I mean, there are other members
5 of the A Team that have retained the same attorney.

6 Q. Is the Special Forces making any payments toward this
7 lawsuit?

8 A. No. The Special Forces Association, I understand they're
9 paying advanced expenses, sir.

10 Q. So the Special Forces Association is paying advance
11 expenses of this lawsuit?

12 A. Yes, sir.

13 Q. Is it paying for any of the attorney's fees?

14 A. I beg your pardon, sir? No. No.

15 Q. Have you had any discussions with any of the other
16 plaintiffs concerning this lawsuit?

17 A. Yes, sir. I've talked to Jim Taylor quite a bit, and I
18 met the others on one occasion, but I have talked to Jim
19 Taylor on the phone in Fayetteville a number of times.

20 Q. How many times have you spoken with Mr. Taylor?

21 A. Oh, I would say -- in fact, he came to my house here where
22 I live in Lake Wylie, sir, and we chatted here, and he brought
23 his wife here.

24 Q. When did he come to your house?

25 A. Yes, sir, he came to my house.

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1 Q. When?

2 A. He drove. He drove his wife, and we went to lunch
3 together and we came back.

4 Q. No. When?

5 A. What? What?"

6 MR. BACHRACH: And then you answer on line --

7 A. "Oh, when did he come? Oh, that was last -- let's see,
8 last year.

9 Q. Okay. And what did you and he discuss at that time?

10 A. What's the -- Will you please say it again, sir?

11 Q. What did you and he discuss about the lawsuit at that
12 time?

13 A. At that time we were just discussing the lawsuit, and I
14 was talking to the other A Team commanders, I mean members,
15 that this was ridiculous, I mean, the fact that I told him to
16 invade Cambodia. It's against general orders, and none of us
17 ever did that. It was pure -- it was pure fantasy.

18 Q. You've read the entire book, correct? You've read the
19 entire book, the Expendable Elite?

20 A. I've read the entire -- the Expendable Elite, yes, sir.

21 Q. Do you recall the statement from General Westmoreland's
22 book, A Soldier Reports, that were quoted in Expendable Elite?

23 A. No, sir.

24 Q. Have you ever read General Westmoreland's book, A Soldier
25 Reports?

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1 A. No, sir.

2 Q. Were you aware of any independent operations in South
3 Vietnam during your tenure there?

4 A. I heard of the classified information -- that SOG took
5 classified -- they did some very very high level operations,
6 SOG, which was not the Fifth Special Forces.

7 Q. Who was involved in these high level operations?

8 A. There were a few. They were volunteers from the Fifth
9 Special Forces who had served maybe three or four months and
10 then returned, and they would say nothing. So I never knew
11 what took place.

12 Q. Who told you about these independent operations?

13 A. I just heard about it. SOG was operating it, I guess,
14 with the high level of the President with the CIA, I guess.

15 Q. Did you hear about this while you were in Vietnam or
16 after?

17 A. Well, I heard about this while I was there on duty.

18 Q. And what was the purpose of these independent operations?

19 A. I don't know, sir. I never heard what they did.

20 Q. Did any of these independent operations infiltrate
21 Cambodia?

22 A. I do not know, sir.

23 Q. Do you know if during your tenure in South Vietnam, that
24 the North Vietnamese and Viet Cong were given safe haven in
25 Cambodia, by Cambodia?

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1 A. We received fire from Cambodia. Captain Leo Donker, very
2 fine A Team commander, SEALS graduate, was killed by an
3 artillery shell that came from Cambodia.

4 Q. Were there any orders concerning how, if at all, the
5 Special Forces were to respond with respect to fire from
6 Cambodia?

7 A. No, sir, there were no orders ever to fire into Cambodia.

8 Q. There were never any orders to fire into Cambodia?

9 A. No, sir. I never did authorize it.

10 Q. Were there any orders with respect to enemy boats going
11 down the Mekong River? Let me ask it this way. Were enemy
12 boats allowed to traverse the Mekong River?

13 A. I don't remember, sir.

14 Q. You don't remember?

15 A. No, sir.

16 Q. Do you recall ever stopping any boats traversing the
17 Mekong River?

18 A. No, sir, I never stopped a boat myself.

19 Q. Did you ever order a boat to stop?

20 A. Possibly some of the -- one of the A Team CIDG camps near
21 the Mekong may have stopped them. We all had assault boats,
22 and we -- you couldn't move without an assault boat going
23 somewhere. In the rainy season the roads were impassable, and
24 the VC controlled the roads. So we either went by air or went
25 by assault boat.

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1 Q. Did you ever stop any VC boats going up or down the Mekong
2 River?

3 A. No, sir, I never did.

4 Q. You never ordered that?

5 A. I never ordered that.

6 Q. Were VC boats going up and down the Mekong River?

7 A. Well, if they're not in uniform -- I expect we passed a
8 lot of Viet Cong going up and down the river. And they have
9 just black pajamas on, what can you tell?

10 Q. You're not aware of any Viet Cong boats going up and down
11 the river?

12 A. No, sir.

13 Q. Are you aware of any supplies of the Viet Cong going up
14 and down the river?

15 A. Well, all these sampans had supplies on them. I mean,
16 they could be anything. I mean, when we finally got some air
17 boats, one camp got some air boats, and we got back in there
18 deep, and we could see more activity back in the VC, back in
19 the boonies there, because we could go over high grass, you
20 know, with an aircraft engine behind you pushing you there.

21 We had one camp -- we had one camp that -- we had one camp
22 had that, and they would go out on patrols.

23 Q. Where did they patrol?

24 A. In the boonies there, in the planer reeds. The rainy
25 season, it's all covered with water.

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1 Q. Did you ever order any boat stopped to search it for
2 supplies going to the Viet Cong?

3 A. No, sir, I never did.

4 Q. Why?

5 A. Well, I expect I used common sense that if an A Team
6 commander or a commander suspected something, he would go and
7 take a look at it.

8 Q. So you were aware that Viet Cong supplies were being
9 traversed up and down the Mekong River, correct?

10 A. Yes, sir.

11 Q. Yet you never stopped any boat to have it searched for
12 Viet Cong supplies?

13 A. No, sir, I never did.

14 Q. Why not?

15 A. Well, in the first place, you had to be sure they were
16 carrying supplies, you know. Not all of them were just
17 carrying plain cargo, I mean, and they're also Navy boats in
18 the area, too.

19 Q. But these were supplies that were used to kill American
20 soldiers, correct?

21 A. What was -- Yes, sir.

22 Q. And these were soldiers under your command, correct?

23 A. Yes, sir.

24 Q. And you did nothing in retaliation with respect to the
25 Viet Cong firing from Cambodia?

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1 A. Well, in the rainy season there's just water everywhere.

2 Q. What about not in the rainy season?

3 A. Well, there's still water just about everywhere down there
4 in the planer reeds, and people coming and going.

5 Q. Men died under your command from fire in Cambodia,
6 correct?

7 A. None of our people fired at Cambodia.

8 Q. No one fired into Cambodia. My question is, men under
9 your command died as a result of fire from Cambodia, correct?

10 A. Yes, sir, Captain Leo Donker. I got right out there after
11 it happened.

12 Q. And you took no action with respect to that, correct?

13 A. Well, it was shell fragmentation from a 105 Howitzer.

14 Q. My question is, men died under your command as a result of
15 fire from Cambodia, correct?

16 A. The policy was not to fire into Cambodia. Yes, sir.

17 Q. You were told not to fire into Cambodia?

18 A. No, sir. We were not to fire -- forbidden to fire into
19 Cambodia or go into Cambodia.

20 Q. Who forbid it?

21 A. Well, the general orders there. We all knew that in
22 Vietnam, Laos, Cambodia. I never got up near Laos.

23 Q. But you were aware that independent missions to which
24 certain Special Forces members volunteered, went into
25 Cambodia, correct?

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1 A. I don't understand. Sir, this thing is so loud. I've got
2 a hearing aid, but I'm sorry, but could you talk a little
3 lower?

4 Q. Okay. I'm usually asked to speak louder. Are you aware
5 of independent missions for which Special Forces members
6 volunteered, which went into Cambodia, while you were in
7 Vietnam?

8 A. No, sir. None of them -- none from the Fourth Corps area,
9 which were all of the 16 A Teams and the two B Teams. None.

10 Q. How often were your troops fired upon from Cambodia by the
11 Viet Cong?

12 A. In the daytime it was sort of unusual. That's when
13 Captain Donker got killed. It was unusual. But in the
14 nighttime you can receive fire most any time of night.

15 Q. Have you read any books or come across any information
16 since you've left Vietnam, which has led you to believe that
17 there were independent forces which -- American forces which
18 went into Cambodia?

19 A. I don't remember.

20 Q. You don't remember ever reading anything to that extent?

21 A. I retired shortly after I came back. I mean, I retired in
22 1973, before the war ended, and I got a job working. No, I
23 didn't.

24 Q. Did you ever read General Westmoreland's book, A Soldier
25 Reports?

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1 A. No, sir.

2 Q. Did you ever read Douglas Valentine's book, The Phoenix
3 Program?

4 A. I met one individual when I was visiting Da Nang who was
5 in the Phoenix Program. But I think I had lunch with him, but
6 we didn't discuss any activities.

7 Q. What was the Phoenix Program?

8 A. I don't know what it was. It was a program to clamp down
9 on security of the local officials, and to be sure that local
10 officials who were really secretly in favor of the VC, to
11 expose them and get rid of them.

12 Q. Were the Special Forces involved in the Phoenix Program?

13 A. No, sir, they never were, not a single man. That was all
14 conducted by the CIA.

15 Q. How do you know that?

16 A. Well, that's what I was told under contract. Just because
17 a man is working with the CIA, doesn't mean he's a CIA member
18 under contract, but I just heard that the men don't know -- I
19 know for certain that none of the Fourth Corps or none of the
20 other corps did either.

21 I talked to the C Team commanders. I know all the C Team
22 commanders, First, Second and Third Corps. No, none of us
23 participated in the Phoenix Program.

24 Q. Did you ever hear of Operation Cherry?

25 A. No, sir, never heard.

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1 Q. Have you ever spoken with John Strait?

2 A. What about John Strait?

3 Q. Have you ever spoken with John Strait?

4 A. Yes, sir, I have. I've spoken to him. We met at my son's
5 house last year and I chatted with him, and he made a
6 remarkable comment, that he never even fired an M-16 one time.

7 As a matter of fact, An Phu was a pretty quiet camp, and
8 that's why we would normally take Martha Raye and Hugh
9 O'Brien, Robert Mitchem. I met Martha Raye and took her to --
10 in my Jeep, to meet Colonel Desobry and we chatted, and she
11 said she was amazed how clean these camps were and how quiet
12 they were. I said, well, at nighttime they're not so quiet.
13 But she never stayed overnight at a camp.

14 Major Carr, retired Lieutenant Colonel Carr, out in
15 Morehead City, North Carolina, right now you talk to him, and
16 he will tell you that she never carried a black bag. He
17 personally put her on the chopper and he met the chopper.
18 Nobody ever reported any firing at any choppers.

19 Q. Have you spoken to Martha Raye since you left Vietnam?

20 A. Spoken to who?

21 Q. Martha Raye.

22 A. No, but I can tell you that Major Carr was given the
23 privilege of escorting her throughout Vietnam and to escort
24 her home. So he knows her real well. You want to talk to
25 somebody who knows Martha Raye, it's George Carr.

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- 1 Q. Where is Mr. Carr located now?
- 2 A. Sir?
- 3 Q. Where does he live?
- 4 A. Oh, he lived in Morehead City, sir, North Carolina. As a
5 matter of fact, I had a little chat with him not so long ago.
6 He's had a stroke or two, and he's coming along.
- 7 Q. Were you aware that John Strait had -- there was a tape
8 recording of comments John Strait made about the book
9 Expendable Elite?
- 10 A. No, all I heard was that there was -- that Captain Marvin
11 made a tape of them where he met them somewhere at Bragg. I
12 heard something about that, yes.
- 13 Q. Did you speak with Mr. Strait about that tape?
- 14 A. I didn't see the tape, no, sir.
- 15 Q. But did you ever speak to Mr. Strait about that tape?
- 16 A. No, sir, I didn't.
- 17 Q. Did Mr. Strait ever make any comments to you about the
18 book Expendable Elite?
- 19 A. Yes, sir.
- 20 Q. What did you and he discuss about the book?
- 21 A. Well, I got the impression that it was from fantasy.
- 22 Q. I'm sorry, I didn't hear your answer.
- 23 A. Sir?
- 24 Q. What was your answer?
- 25 A. It was fantasy, sir, it was all fiction, I mean.

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1 Q. That's what Mr. Strait said to you?

2 A. Well, I know -- and I can't speak for the members of the
3 team, but I can speak for me, because everything where it
4 mentions my name in there is pure fantasy.

5 Q. But my question is, when you spoke with Mr. Strait, what
6 did Mr. Strait tell you about the book?

7 A. Well, he didn't give any details about -- he didn't talk
8 to me details about the book, and I didn't speak to him very
9 long. I talked to him last year very briefly, but he just
10 said it was a -- he's a plaintiff in this trial, as you know.

11 Q. I understand that. Did you ever see a transcription of
12 his taped conversation with Mr. Marvin --

13 A. No, sir.

14 Q. -- Colonel Marvin about the book?

15 A. No, sir. I never did.

16 Q. Would it surprise you if I told you that that taped
17 conversation supported much of what Colonel Marvin wrote in
18 book?

19 A. Yes, sir.

20 Q. Would it surprise you if Mr. Strait confirmed that a CIA
21 operative visited Colonel Marvin while he was in An Phu?

22 A. That a CIA operative visited him while he was in An Phu?

23 Q. Correct.

24 A. He probably had some CIA agent. All of them visited to
25 pay off the A Team commanders for payday.

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1 Q. Other than payday.

2 A. Sir?

3 Q. Would it surprise you if Mr. Strait confirms that CIA
4 agent -- a CIA agent met with Lieutenant Colonel Marvin while
5 he was in An Phu?

6 A. No, sir.

7 Q. It wouldn't surprise you?

8 A. No, sir.

9 Q. You never met any CIA agents or operatives while you were
10 in An Phu?

11 A. No, sir. I have to admit I didn't visit An Phu very
12 often, because it was such a quiet camp. I tried to go where
13 the activity was, and that was one of our quietest camps.

14 Q. Where was the activity?

15 A. What was the activity?

16 Q. No. Where was the activity?

17 A. Well, the activity was up on Phuoc Hoa Island and down in
18 the Kumao Peninsula. That team there in the Seven Mountains
19 areas, where Major Arnn got killed, and over in Thien Ngon,
20 where Captain Shelton, the A Team commander, got killed. But
21 An Phu, which is really not too far from Chau Duc, the
22 province chief would lose face if that camp got overrun, he
23 sure would lose face, and I understand he also had support. I
24 never did see it, but support from 105 Howitzers, 155
25 Howitzers from the Regional Force there located at Chau Doc.

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1 Q. Who commanded the camp at Can Chau?

2 A. Who commanded who, sir?

3 Q. Who commanded the camp at Can Chau?

4 A. Captain Corette.

5 Q. Have you ever heard the name Captain Jim Miles, sir?

6 A. Jim Miles?

7 Q. Correct.

8 A. No, sir.

9 Q. You never heard Jim Miles?

10 A. No, sir, I haven't.

11 Q. Do you recall a Jim Miles being mentioned on page 83 of
12 Expendable Elite?

13 A. No, sir.

14 Q. Do you recall a Jim Miles being mentioned on page 83 of
15 Expendable Elite, as quoted from General Westmoreland's book?

16 A. No, sir.

17 Q. Do you recall, in reading Expendable Elite, Colonel Marvin
18 quoting from General Westmoreland's book, about a ship with
19 10,000 tons of toys going down the Mekong River?

20 A. No, sir.

21 Q. How carefully did you read the book Expendable Elite?

22 A. I read the book Expendable Elite. I particularly paid the
23 attention to where he was using my name all the time. That's
24 what I particularly paid attention to. I can't speak for the
25 other members. They can speak for themselves. But anything

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1 that dealt with me, I made a note of it.

2 Q. Do you recall reading about the five-day battle in Chapter
3 Ten entitled Hell's Fury Unleashed at Khanh-Binh?

4 A. At where?

5 Q. Hell's Fury Unleashed at Khanh-Binh.

6 A. At the firefight I was not there, and I can't verify it.
7 I can't verify it. I didn't --

8 Q. You didn't have any involvement in that?

9 A. No, I was not involved in that.

10 Q. You don't know one way or the other?

11 A. I'm not sure really who was involved in that. There was
12 so much fantasy in the book.

13 Q. Explain to me every bit of fantasy in the book that
14 pertains to you.

15 A. All of it.

16 Q. Well, what do you mean, all of it? Specify exactly what
17 is fantasy in the book concerning you.

18 A. Concerning what now?

19 Q. What is fantasy in the book concerning you? I'd like you
20 to specify exactly what you claim is fantasy in the book
21 concerning you.

22 A. Oh, well, the fantasy concerning me was the very
23 beginning, having a private breakfast with him and giving him
24 a top secret order that said he would be going -- he would be
25 the first to leave going into Cambodia. That's pure fantasy.

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1 I never told anybody to go to Cambodia.

2 Q. Anything else?

3 A. I never told anybody.

4 Q. I understand that. Is there anything else?

5 A. Oh, yes. Well, throughout the book here, I mean, it
6 mentions Chapters 11, and I believe I mentioned before the
7 chapters -- 13 and Chapter 12, I wasn't in the country there.
8 All those dozens and dozens of messages from Marvin to Tuttle,
9 Tuttle to Marvin, I was back in the States.

10 Q. Do you know if any such orders were issued?

11 A. I shipped out -- I shipped out to Tan Son Nhut around 10
12 June.

13 Q. So are you aware who took your place?

14 A. Lieutenant Colonel Peters. I never met him.

15 Q. Now, how were messages transmitted between your encampment
16 and Colonel Marvin's?

17 A. Yeah, all those messages, there's dozens and dozens of
18 them in Chapter 13 and Chapter 12.

19 Q. I understand that. How would they be transmitted? By
20 radio?

21 A. Yes.

22 Q. And would you personally -- Would you personally give your
23 name, if you were to give an order to Colonel Marvin?

24 A. I rarely talked to Captain Marvin, because there was
25 nothing going on there.

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1 Q. But when you did talk to him, did you talk to -- give
2 Colonel Marvin orders by radio or telephone?

3 A. I talked to him primarily by radio.

4 Q. How many times did you talk to him by radio?

5 A. I can't recall.

6 Q. Did you ever give written orders to Colonel Marvin?

7 A. No, sir, didn't need to. There was nothing going on
8 there. He knew he was getting ready to receive the Regional
9 Forces there. They were going to convert over to Regional
10 Forces, and that's what he was sent there for. He was the
11 quartermaster expert to handle the transition from CIDG. They
12 had different weapons, different ammo, different pay, uniform.

13 Q. So it's your testimony that there was never any fire from
14 Cambodia into An Phu?

15 A. There may have been some stray rounds. Every camp got
16 some stray rounds coming in.

17 Q. Wasn't An Phu right on the Cambodian border?

18 A. Not every camp was maybe as close. But what did he say
19 how close the camp was, four miles? Is that what he said?

20 Q. Well, did you know how far his camp was from Cambodia?

21 A. We never fired into Cambodia.

22 Q. No. How far was Colonel Marvin's camp from Cambodia?

23 A. Oh, Can Tho was well over a hundred kilometers.

24 Q. 400 kilometers?"

25 MR. BACHRACH: Restate that.

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1 Q. "What was the distance of Colonel Marvin's camp from
2 Cambodia?

3 A. I think it was about four miles, wasn't it?

4 Q. I'm asking you if you know.

5 A. Well, I expect, no, not exact. As I said before, his was
6 a relatively quiet camp. They had some maybe four operating
7 bases get some action, but the province chief was never going
8 to lose a fortified encampment next to -- so close to Chau Duc
9 province headquarters.

10 Q. So it's your testimony that you never gave Colonel Marvin
11 any of the messages that are identified in Chapters 12 and 13?

12 A. Yes.

13 Q. Do you know if Colonel Marvin received those orders from
14 anyone else?

15 A. No.

16 Q. Do you know if Colonel Marvin was ever written up for
17 disobeying any orders?

18 A. No.

19 Q. Would he have to be written up for disobeying an order, to
20 be punished under the Code of Military Justice?

21 A. Now, when it comes that ARVN regiment showing up to take
22 over An Phu, I was long gone. I wasn't there, and that's --
23 so I understand that's pure fantasy also.

24 Q. How do you understand that's pure fantasy?

25 A. Because no ARVN regiment was ever dispatched to take over

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- 1 An Phu.
- 2 Q. How do you know?
- 3 A. Well, I heard that from the team members.
- 4 Q. From what team members?
- 5 A. Sergeant Taylor, Lieutenant Strait.
- 6 Q. Would it surprise you if I told you that Colonel Strait is
7 on a tape recording corroborating that an ARVN regiment was
8 sent toward An Phu to wipe it out?
- 9 A. Yes, sir.
- 10 Q. That would surprise you?
- 11 A. Yes, sir.
- 12 Q. Have you -- you know that your attorney has a tape of John
13 Strait's comments concerning the book, correct?
- 14 A. I understand that he met him somewhere, some reunion
15 someplace. Maybe it was at Fort Bragg. I don't know where it
16 was. And he did some taping. Yes, I heard about that.
- 17 Q. And have you ever asked to listen to that tape?
- 18 A. No, sir.
- 19 Q. Have you ever discussed with John Strait the tape
20 recording?
- 21 A. No, sir, I never did.
- 22 Q. Don't you think it would be important for you to listen to
23 that tape?
- 24 A. Well, no, when it seems so far-fetched that -- no, I
25 didn't.

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1 Q. What if you assume that John Strait confirms what Colonel
2 Marvin says in his book in that tape?"

3 MR. BACHRACH: I think you say no, sir.

4 A. "No, sir.

5 Q. You still would not feel it is important to listen to that
6 tape?

7 A. No, sir.

8 Q. Why?

9 A. Well, because -- well, a lot happened since that's taken
10 place. In fact, this whole thing started back in 1997. We
11 got a phone call from a member of -- director of Special
12 Forces Association at Fayetteville, saying that I had been
13 involved in Cambodia and involved in an assassination of
14 Cambodia.

15 Let me see where that thing -- it goes way back. Let's
16 see here. I don't have it real handy, but --

17 MR. BACHRACH: Okay. What papers does he have?

18 A. Well, I was notified back in '97 from Rudy Gresham by
19 phone. And I said what -- he's written a book about he's
20 claiming that you participated in the attempted, well, I
21 guess, assassination of Prince Sihanouk. I said, that's crazy
22 as hell.

23 I wrote a letter back to him to the Special Forces
24 Association. That was back in 1997. I just forgot all about
25 the thing, thinking it was just some kind of kook getting on

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- 1 the Internet.
- 2 Q. Where in the book does it indicate that you participated
3 in a plot to assassinate Prince Sihanouk?
- 4 A. When was that?
- 5 Q. Where? Where in the book does it indicate that you
6 participated in a plot to assassinate Prince Sihanouk?
- 7 A. It doesn't say so in the book.
- 8 Q. It doesn't say so in the book, correct?
- 9 A. That's right, it does not say that in the book.
- 10 Q. Okay. Do you recall attending a victory celebration after
11 a five-day battle at Khanh-Binh?
- 12 A. No, sir.
- 13 Q. Have you looked at the photos that are in the book
14 Expendable Elite?
- 15 A. I've looked at the photos, and a lot of them are -- just
16 like that one with Martha Raye with a black bag that Major
17 Carr said she never carried one on the chopper. I've looked
18 at that, too.
- 19 Q. Who was escorting Martha Raye in that picture?
- 20 A. Who was escorting her?
- 21 Q. Correct.
- 22 A. It appears to be a lieutenant. I can't recognize who it
23 is.
- 24 Q. It wasn't Major Carr, correct?
- 25 A. It looks like it's an officer. I can't tell from the

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1 photo who it is. I don't recognize it.

2 Q. It's not Major Colonel Carr, correct?

3 A. Major Carr is available. You would like to talk to him,
4 because he personally placed her on every chopper when she
5 visited a camp, and he met the chopper coming back.

6 Q. And that photo shows Martha Raye with a black bag,
7 correct?

8 A. What? She never had a black bag. That was a set-up
9 quoting Major Carr.

10 Q. So that photo was a set-up, her carrying that black bag?

11 A. Major Carr said that.

12 Q. Major Carr said that was a set-up?

13 A. That's right.

14 Q. So Major Carr is claiming that the photo is a lie?

15 A. Yes, sir.

16 Q. So if Major Carr is wrong, he's committing libel, correct?

17 A. Major Carr what? Say that again, please, slowly.

18 Q. Colonel Tuttle, you understand that if you're repeating
19 what Major Carr said, and if that's false, you're committing
20 libel, correct?

21 A. That's what he told me. It was set up. He said she never
22 had a black bag getting on a chopper or getting off a chopper.
23 She didn't carry anything.

24 Q. And if it's proven that she did, then Major Carr's lying,
25 correct?

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1 A. Well, he's not lying. I believe Major Carr. What would
2 he want to lie about?

3 Q. I don't know; you tell me.

4 A. I'm not going to blame Major Carr. Major Carr had no
5 reason to lie.

6 Q. Is that a picture of you dated June 4, 1966, on a
7 helicopter with Colonel Marvin?

8 A. A picture of me with Marvin on a chopper?

9 Q. Yes.

10 A. Well, I'll take a look at it. It's in the book?

11 Q. Yes.

12 A. There's no number on these pages, I notice there's no
13 number."

14 MR. BACHRACH: Then I withdrew the question, and then
15 I --

16 MR. COLLINS: Okay.

17 Q. "Now, you indicate that it's the CIA that paid the CIDGs?

18 A. The CIA, yes. All the funding came from the CIA for
19 uniforms, pay, weapons, ammo, yes, sir. They are much better
20 equipped than Regional Forces.

21 Q. Are you sure it wasn't the B Team that paid the CIDGs?

22 A. No, sir, it was the A Team.

23 Q. Are you sure it wasn't John Strait who paid the CIDGs?

24 A. Well, I mean to say that I can't swear that maybe on one
25 occasion somebody from the B Team paid them. I mean, I wasn't

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1 there every payday. I mean, my understanding is the A Team
2 commanders at the camp paid them. That's my understanding.
3 Now, possibly a B Team may have paid them one time. That
4 could be.

5 Q. In your lawsuit you allege Colonel Marvin further
6 incredulously alleged that an ARVN regiment force had arrived
7 in Chau Duc under the command of and accompanied by agents of
8 the Central Intelligence Agency.

9 A. What was that?

10 Q. And what is your basis of that statement?

11 A. Well, I was gone. As I said, I was gone when all that
12 took place. So I told you -- I think the members of the team
13 told me that that was ridiculous.

14 Q. Well, who specifically told you that?

15 A. I don't recall.

16 Q. When did they tell you that?

17 A. I guess last year.

18 Q. You recall someone telling you that it's ridiculous, but
19 you don't recall who did?

20 A. I don't recall who told me that.

21 Q. Okay. Colonel, are you familiar with the monthly
22 operational report?

23 A. I used to be.

24 Q. What was the purpose of those reports?

25 A. Well, it gives the offensive operations, defensive

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1 operations, and any contact with the VC and intelligence
2 information.

3 Q. Could I have you turn to Appendix 14 of the book.

4 A. Appendix 14.

5 Q. Colonel Marvin, is there a page on that? You see there
6 are monthly operational reports?

7 A. Yes, sir, I see it.

8 Q. And showing combat statistics?

9 A. Yes, VC contacted, killed, captured, yes.

10 Q. Can you publish for the jury what statistics are given in
11 connection with -- under those reports for the month of
12 May 1966?

13 A. For the month of May? This says 1 January through July.

14 Q. What statistics are given through July?

15 A. Oh, okay, it gives a lot of statistics here. I am
16 assuming that what he placed in here is correct. I mean, I
17 can't verify it. How can I verify it, when there's so much in
18 the book that is not true?

19 Q. Do those monthly operational reports in Appendix 14, do
20 you have any question that they're not accurate -- true and
21 accurate copies?

22 A. I don't have any -- Yes. Yes, sir.

23 Q. You do question whether they are?

24 A. Yes, I question it. I question it.

25 Q. What's the basis of your statement that they may not be

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1 true and accurate copies of monthly operational reports?

2 A. Well, the KIA 532, wow, I mean, then 240 in March, yeah, I
3 question those.

4 Q. You question those figures?

5 A. Yes, sir.

6 Q. Now, who reports those figures?

7 A. Every A Team.

8 Q. And you were commander of the A Team?

9 A. Who was the commander?

10 Q. Who was the commander of the A Team?

11 A. You're talking about Captain Marvin? Commander of the A
12 Team?

13 Q. I guess my question is, is it your position that those
14 statistics that you see reported in those monthly operational
15 reports, is it your contention that someone falsified those?

16 A. Yes.

17 Q. And who do you say falsified them?

18 A. Classified confidential.

19 Q. Well, do you believe that they were falsified?

20 A. Yes, sir. I thought all this was classified confidential.

21 Q. No, the word was falsified.

22 A. Oh, falsified. Oh, falsified. I, after, you know,
23 reading the first part of the book and so on, I can't verify
24 this as true. I mean, he says it's true. I mean, I have
25 nothing to compare it with. I can't go back and dig out the

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1 files of the Special Forces and compare them. I can't do
2 that. I assume you have to get official records. That's what
3 he put in here is --

4 Q. Well, these are official reports, aren't they?

5 A. No.

6 Q. Why do you say that?

7 A. Well, one thing, it's not classified, and they're supposed
8 to be classified. So I don't know what he's put in here.

9 Q. If they are official reports, do you dispute the
10 information contained in them? Do you have any factual basis
11 to say those are not official reports?

12 A. The only thing I can say that they're not official
13 reports, is the fact that there's so much fantasy in the book
14 that I just question any of the stuff in here.

15 Q. So other than your contention that the book is full of
16 fantasy, you have no basis to state that these are not
17 official records?

18 A. Well, I think I can go back to the Fifth Special Forces
19 and get the official records and see, but I think that I
20 certainly would have heard at the C Team headquarters for the
21 month of May, 532 KIA. I certainly would have heard that.

22 Q. Well, this is inconsistent with your testimony that An Phu
23 was very quiet, isn't it?

24 A. It's a quiet camp, yes, sir, it was a quiet camp.

25 Q. But the report as to the number of Viet Cong killed in

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1 action is inconsistent with your statement, correct?

2 A. Sir, I said there's so much fantasy in the book, I cannot
3 verify that being true or not.

4 Q. Is 532 Viet Cong killed in action reflective of a quiet
5 camp or not? Well, what do you consider a quiet camp?

6 A. What kind of camp?

7 Q. What do you consider a quiet camp?

8 A. A quiet camp, according to one month's activity there.
9 There was FOB action activity, but the camp was never
10 attacked. The An Phu camp was never attacked or tried to be
11 overrun, like some of the other A Teams. The other captain
12 was rotated, by the way. He wasn't relieved. Major Carr just
13 told me that Major Le didn't get that officer relieved. Hell,
14 that would have been the end of his career. He was normally
15 rotated, the one that left before Captain Marvin got there.

16 Q. So the person in charge of the camp before Colonel Marvin
17 got there, was rotated out of the area?

18 A. Yes, sir.

19 Q. What was his name?

20 A. He was gone before -- he was gone before Captain Marvin
21 got there. I can't recall his name. He was just normally
22 rotated. We had, you know, we had a total of 343 in that --
23 in Special Forces in the Delta. I can't recall all the names.

24 Q. And it's your contention that the person before Captain
25 Marvin, was rotated out of the area?

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1 A. Yes, sir. That's what Major Carr told me. He was normal
2 rotation, was not relieved as Captain Marvin said, that Major
3 Le wanted him relieved. So Major Arnn removed him. Never
4 heard of that. I never heard of it.

5 Q. Did you have any discussion with anyone from the Special
6 Forces Association as to whether to bring this lawsuit?

7 A. I talked to Jimmy Dean, yes, sir.

8 Q. Who is Jimmy Dean?

9 A. Just Jimmy Dean. Well, I talked to -- back in '97 I told
10 you I talked to Rudy Gresham, who is a director of the board,
11 how a ridiculous thing that he was talking about on the
12 Internet. That's about all. And then Jimmy Dean. I met
13 Jimmy Dean here in Rock Hill.

14 Q. When did you first have any discussions with the other
15 plaintiffs about bringing a lawsuit against Colonel Marvin?

16 A. Let me ask my attorney what you said. I'm sorry. I do
17 wear a hearing aid. What did he say? When? That was last
18 fall.

19 Q. That was the first time you discussed bringing a lawsuit
20 against Colonel Marvin?

21 A. Fall of '93, not '94.

22 Q. 2003?

23 A. 2000. 2003.

24 Q. And who did you have that discussion, first discussion
25 with bringing a lawsuit against Colonel Marvin? With whom did

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1 you have that first discussion about bringing a lawsuit
2 against Colonel Marvin?

3 A. I had a first discussion with -- yes, sir, with
4 Mr. Deaver, sir.

5 Q. With your attorney?

6 A. Yes, sir.

7 Q. When did -- when was your first discussion -- with whom
8 did you have a discussion about bringing a lawsuit, other than
9 your attorney?

10 A. Nobody else except Deaver.

11 Q. Did you ever discuss with the other plaintiffs about
12 bringing a lawsuit?

13 A. Yes, sir. We met the fall of 2003 in Rock Hill, and we
14 discussed it for about an hour, and then --

15 Q. Was your attorney present during that discussion?

16 A. Yes, sir.

17 Q. Then I won't ask you what was discussed. Did you ever
18 meet with the Special Forces Association about bringing a
19 lawsuit against Colonel Marvin?

20 A. No, sir.

21 Q. Did you ever discuss with the Special Forces Association
22 whether to bring a lawsuit against Colonel Marvin?

23 A. No, sir.

24 Q. Have you ever had any discussion with the Special Forces
25 Association about your lawsuit against Colonel Marvin?

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1 A. Well, I talked to Jimmy Dean, secretary, on the phone
2 about three or four times. He's retired now.

3 Q. You spoke to Jimmy Dean's secretary?

4 A. Yes, sir.

5 Q. When was the last time you spoke to Jimmy Dean?

6 A. Oh, it's been over a year.

7 Q. What did you and he discuss the last time you talked to
8 him?

9 A. Well, I think we discussed what's going on, and he said
10 they're -- it's in the lawyers' hands. That's about all.

11 Q. Who said it was in the lawyers' hands?

12 A. Jimmy Dean.

13 Q. How does he know it was in the lawyers' hands?

14 A. I don't know.

15 Q. What role does the Special Forces Association have in
16 connection with this lawsuit?

17 A. Well, they're financing it, and from what I understand,
18 they're going to pay the expenses.

19 Q. Who is going to pay the attorneys' fees? Did you hear my
20 question?

21 A. I guess whatever the court costs are, they pay the
22 expenses.

23 Q. Okay. So the Special Forces Association is paying
24 attorneys' fees for this lawsuit?

25 A. No, sir.

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- 1 Q. Who's paying the attorneys' fees?
- 2 A. A contingency.
- 3 Q. Oh, it's a contingency fee case?
- 4 A. It's a contingency, I guess. Nobody has paid anybody yet.
- 5 Q. Okay. I understand. So this is a contingency fee case?
- 6 A. Yes, sir.
- 7 Q. And the Special Forces Association is paying the expenses
- 8 associated with the lawsuit?
- 9 A. Yes, sir.
- 10 Q. Do you recall going to An Phu to celebrate major victories
- 11 during the month of May of 1966?
- 12 A. No, sir.
- 13 Q. Do you recall there being a reviewing stand from which
- 14 Major Phoi Van Le reported the May statistics as you sat in
- 15 the reviewing stand?
- 16 A. I don't recall, sir.
- 17 Q. You don't recall that?
- 18 A. No, sir.
- 19 Q. Do you recall ever going to An Phu and sitting in a
- 20 reviewing stand in connection with victories won?
- 21 A. Yes, sir, I saw the photos.
- 22 Q. You saw the photos?
- 23 A. Yes, sir.
- 24 Q. Are those true and accurate photos?
- 25 A. I expect they are. I mean, I was there for some kind of

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1 award ceremony or whatever.

2 Q. Do you recall what award ceremony you were there for?

3 A. No, sir, I don't.

4 Q. Do you recall -- you don't recall that being a ceremony to
5 celebrate victories in May of 1966?

6 A. No, sir.

7 Q. You have no recollection as to why you were in An Phu at
8 that time?

9 A. I was probably there for an award or some decoration.
10 Probably that's why I went there.

11 Q. Who was getting an award or decoration?

12 A. I don't know, sir. There were 16 A Teams. It would be
13 impossible to recall.

14 Q. Now, with respect to fire coming from Cambodia, you
15 testified previously that men under your command died as a
16 result of fire from enemy fire from Cambodia, correct?

17 A. Yes, sir, Captain Leo Donker.

18 Q. Was there anyone else?

19 A. Just that one shell fragmentation went through his flak
20 jacket.

21 Q. That was the only person under your command who died as a
22 result of fire from Cambodia?

23 A. I wouldn't say that. I said that particular round that
24 came across, the 105 round, that particular round. In the
25 past, I can't say.

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1 Q. What's your best estimate as to how many men under your
2 command died as a result of enemy fire from Cambodia?

3 A. Oh, I was -- right offhand, I would take a guess and say
4 probably just one.

5 Q. Were you in favor of this country's policy of permitting
6 the enemy to have safe havens in Cambodia?

7 A. No. Don't make it policy. No.

8 Q. There was no such policy?

9 A. The general rule was we didn't fire or go into Cambodia.
10 That was a general rule.

11 Q. But you were aware that the enemy had camps and were
12 firing from Cambodia, correct?

13 A. Yes, I was aware of that. I could tell -- I could
14 identify the artillery fragmentation.

15 Q. Did you agree or disagree with the order not to return
16 fire into Cambodia?

17 A. Well, that's -- I just obey orders. Naturally, if you
18 have one of your A Team commanders killed, you don't think
19 much of that at all, but still we had orders not to fire into
20 Cambodia.

21 Q. And are you aware of whether there were independent
22 operations that went into Cambodia to fight the enemy?

23 A. Aware of -- say that again, please.

24 Q. Were you aware of any independent operations that went
25 into Cambodia to fight the enemy?

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1 A. No, sir. No, none. After I departed, a long time after I
2 had been gone, President Nixon went into Cambodia. That was
3 years after I was gone.

4 Q. But while you were there, you're not aware of any
5 independent operations of Americans going into Cambodia?

6 A. That's correct, sir.

7 Q. Has anyone ever discussed that with you?

8 A. No, sir.

9 Q. And you've never read anything to that effect?

10 A. No, sir.

11 Q. Have you ever watched any television programs where that's
12 been reported?

13 A. No, sir.

14 Q. Do you watch the History Channel?

15 A. Watch what?

16 Q. The History Channel?

17 A. No, I don't have the History Channel. I don't have it on
18 my TV.

19 Q. So you didn't watch a recent program reporting independent
20 operations going into Cambodia, correct?

21 A. Correct.

22 Q. Would it surprise you that it was reported on television
23 that there were independent operations that went into
24 Cambodia?

25 A. I don't know, sir. I just don't know.

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1 Q. Colonel, are you familiar with Colonel Chaun?

2 A. Colonel Major Chaun? No, I'm not familiar with him.

3 Q. Who was your counterpart in ARVN Special Forces?

4 A. Who was commander of the Army?

5 Q. Who was your counterpart?

6 A. Oh, my counterpart. Major Chaun.

7 Q. And you're familiar with Major Chaun?

8 A. Familiar with what, sir?

9 Q. Have you spoken to Major Chaun?

10 A. I talked to Major Chaun, I had an office right across the
11 hall from him.

12 Q. Have you ever spoken to him about the book Expendable
13 Elite?

14 A. No, sir, I never have. I don't even know where he is.

15 Q. Have you spoken to him since you left Vietnam?

16 A. No, sir, I have not.

17 Q. Would you be surprised that if Major Chaun wrote -- would
18 you be surprised that if Major Chaun wrote to Colonel Marvin
19 and indicated that he read the book thoroughly, and the book
20 was direct and precise?

21 A. Wow. Boy, I am surprised. You said it, sir. Sir, this
22 happened 40 years ago. I'm 85 years old. Give me a break,
23 will you?"

24 MR. BACHRACH: And that's the conclusion. Thank you
25 very much.

DEPOSITION OF WILLIAM B. TUTTLE READ

1 MR. COLLINS: Thank you.

2 THE COURT: That's it. Why don't we take our
3 afternoon break at this time. Go to your jury room and start
4 again in 15 minutes.

5 (Jury excused.)

6 THE COURT: We'll start again at 20 minutes till.

7 (A recess was held at this time.)

8 THE COURT: Bring the jury back in for me, please.

9 (Jury present.)

10 THE COURT: Call your next witness.

11 MR. BOBBY DEAVER: Your Honor, I move to introduce
12 the exhibits that were attached to that deposition.

13 THE COURT: Any objections?

14 MR. BACHRACH: I'd have to check, Your Honor. I
15 don't believe that we -- I think they're agreed upon already.

16 THE COURT: Unless you're going to use them right
17 now, why don't you fool around with them when the jury's not
18 here.

19 MR. BOBBY DEAVER: Yes, they're not going to object
20 to it.

21 THE COURT: So you can separate them out and give
22 them to the clerk and she'll put numbers on them and we'll go
23 from there.

24 MR. BOBBY DEAVER: We'd call James Taylor as our next
25 witness.

JAMES TAYLOR

1 THE COURT: Sure enough, Mr. Taylor, come on up and
2 be sworn, please.

3 THE CLERK: State your name for record.

4 A. James A. Taylor.

5 James Taylor, a witness called by the plaintiff, first
6 having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. BOBBY DEAVER:

9 Q. Your name, please?

10 A. James A. Taylor.

11 Q. Where do you reside, Mr. Taylor?

12 A. Fayetteville, North Carolina.

13 Q. And how long have you been in Fayetteville?

14 A. 23 years.

15 Q. Were you ever in the Army? Were you ever in the Army?

16 A. Yes, sir, I spent a little over 20 years in the Army.

17 Q. What was that period of time?

18 A. From June 1955 till October of -- 31st of October '75.

19 Trick or treat.

20 THE COURT: 20 years today.

21 A. 20 years today.

22 Q. You were -- When you went in, were you trained in
23 infantry?

24 A. Most of my time was with infantry type. I was -- most of
25 it was Special Forces.

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1 Q. After your basic training, you went -- Where did you go
2 from there?

3 A. After basic training I went to Fort Dix, New Jersey, for
4 AIT.

5 Q. You have to explain that, please.

6 A. That's advanced infantry tactical training. Then I went
7 from a Fort Dix, New Jersey to Fort Bragg, North Carolina, to
8 the 77th Special Forces.

9 Q. What was your training with the 77th?

10 A. We had various training. When you start, first start out
11 in Special Forces, you're on -- you have to go through
12 weapons, demo --

13 Q. Demolition? You're going to have to use the --

14 A. Okay.

15 Q. -- the full term.

16 A. Weapons training, demolitions training, intelligence
17 training, medical training, tactical training, raids and
18 ambushes, communications, and all the basic MOSs.

19 Q. Basic what?

20 A. Basic MOSs that --

21 Q. Military occupational specialty?

22 A. Occupational MOSs that they use in Special Forces.

23 Q. Now, when you went into Special Forces, was it a
24 relatively young organization?

25 A. Yes, sir, when I went in Special Forces -- they'd

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1 organized in 1952, and when I -- just prior to me getting
2 there, they had deployed part of the -- it was the
3 10th originally, and they deployed it to Germany, then we, at
4 Fort Bragg, became the 77th Special Forces.

5 Q. And it was a relatively small unit?

6 A. Yes, sir, when I got there after they had moved the
7 10th out, there was approximately 480 some people in Special
8 Forces.

9 Q. What did you do while you were in Special Forces during
10 that period of time?

11 A. Well, my basic MOS, which is military skills, was light
12 weapons. For years, I was a weapons man. However, being a
13 weapons man, you're both light weapons man and a heavy weapons
14 man. Light weapons being that you handled the basic small
15 arms. The heavy weapons training means that you went into
16 your mortar training and your bigger type weapons.

17 Q. So you were weapons in general then?

18 A. Yes, sir.

19 Q. Were you assigned as a weapons man in a particular unit?

20 A. Yes, sir, I was assigned as a weapons man in a Special
21 Forces A Team, that's a 12-man A Team, most of the time, until
22 later -- you get promoted, then you go into different type of
23 jobs.

24 For example, I went from weapons trainings, then I went to
25 intelligence school and became an intelligence sergeant for an

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1 A Team, and then later I became a team sergeant, which is the
2 senior enlisted man on the team.

3 Q. Did you have any overseas assignments?

4 A. Yes, sir, I sure did. I spent a year in Korea,
5 approximately six and a half years in Germany, approximately
6 three years in Vietnam, and then back to Germany, and then
7 back to the States here.

8 Q. What did you do in Vietnam?

9 A. In Vietnam I was a light weapons specialist most of the
10 time, until I went to An Phu, A-424, and I started there as
11 light weapons man and later became the team sergeant.

12 Q. Were you at An Phu with the Detachment A-424 when
13 Mr. Marvin was a captain there?

14 A. I arrived in Detachment A-424 just a few days after Marvin
15 took over as team leader. That would have been in the --
16 probably the latter part of December '65, or the first part of
17 January 1966.

18 Q. What were the -- what was going on in -- with A-424 when
19 you arrived there?

20 A. When I arrived there, there was absolutely nothing going
21 on. It was really a pacified area. It was a nice area to be
22 in, because you really had nothing to worry about. You go
23 about your daily chores, like mine, when I first got there
24 would be checking weapons on the perimeter, making sure they
25 were okay, just basically checking the defense of the camp.

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1 All right? But basically in An Phu, it was quiet. There was
2 nothing to do.

3 Q. Over what period of time was it that way?

4 A. The whole period of time I was there, it was a -- what was
5 considered a pacified area. In other words, there was no
6 imminent danger of any attack or any hostilities in that area.

7 Q. Was the headquarters of the -- your unit there, was that
8 Camp Dan Nam?

9 A. Yes, it was known as Camp Dan Nam. An Phu was a province,
10 the town in province, and camp at that time was Dan Nam, but
11 we all referred to it as An Phu.

12 Q. Was the camp there at An Phu ever attacked?

13 A. Not during the period of time I was there.

14 Q. Have you read the Expendable Elite?

15 A. Yes, sir, I have.

16 Q. You are referenced in there on numerous occasions, are you
17 not?

18 A. Yes, I am.

19 Q. Were the activities that you were involved in, in
20 actuality at camp -- at the camp, were you involved in civic
21 affairs and working with the -- some of the people of An Phu?

22 A. We done what we called a lot of civic action programs. We
23 done med cap.

24 Civic action is where you go out and you assist the
25 community in building churches, schools. And we had a lot of

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1 medical patrols, which you go out around amongst the local
2 villages, and the medic would go with you, you would give them
3 shots, you would take care of them, you teach them hygiene.

4 And then we had a lot of what they call psychological
5 operations, that you just go out and you just talk to the
6 people and help them in any way that you can.

7 Q. Well, do you have your copy of Expendable Elite there?

8 A. Yes, I do.

9 Q. Would you look at the first reference to you in that,
10 please?

11 THE COURT: Since we're all following along, what
12 page are you looking at?

13 MR. BOBBY DEAVER: Yes, sir, he's going to --

14 THE COURT: Okay.

15 MR. BOBBY DEAVER: -- find the first reference, and
16 then --

17 BY MR. BOBBY DEAVER:

18 Q. Will you look at --

19 A. It's on page 84.

20 Q. Okay. And what is -- what is the -- would you read that
21 portion that related to you?

22 A. Okay. "Sergeant First Class James A. Taylor arrived via
23 assault boat at 1730 hours, a welcome addition to the camp.
24 Team sergeant Val brought Taylor to my office after he'd
25 gotten settled into his cubicle located at the aid station."

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1 Q. Was that essentially what happened?

2 A. That part, yes, that did happen like that.

3 Q. Go down to the middle paragraph, "I welcomed him aboard."

4 A. Okay.

5 Q. Would you read that portion, please?

6 A. It says, "I welcomed him aboard, and told him, take over
7 on the four deuce --" which is a mortar "-- would be
8 responsible for maintenance of all mortars, training all crews
9 and even at FOBs. 'I also want you to take over supply room
10 activities. After Val shows you around camp and you begin to
11 know where everything is, I want you to take a good look at
12 inventory of our ammunition stocks. Order what we need to get
13 up to snuff and scrounge up whatever extra mortar ammunition
14 you can get your hands on to support our new top secret
15 mission. We have been short people and even shut down for too
16 long. We have to be ready for whatever comes across the
17 border.'"

18 Do you want me to keep going?

19 Q. Yes, please.

20 A. "'Yes, sir, I'll do my best.' With a questioning look, he
21 asked, 'but what is -- I asked, but what is top secret mission
22 and what did you mean when you said the team was shut down?'

23 "'I'll let Val explain that to you. He was here for the
24 shut down and knows about our new mission that will take a lot
25 more mortar ammunition than the B Team is going to understand.

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1 Unfortunately, we can't tell them what our mission is.' I let
2 Taylor know that I'd be counting on him to get the ammo we
3 needed. 'Got it, Sergeant?' 'Yes, sir. Anything else?'"

4 Q. Did -- were you told about any top secret mission when you
5 got there?

6 A. No, sir, I was never informed of any top secret mission
7 while I was in An Phu.

8 Q. So this accounting here is inaccurate; is that what you're
9 saying?

10 A. That's right here, is -- it's just a fabrication.

11 Q. All right. Well, let's go over to page 97, and there's a
12 section that starts that -- supposed to be a team meeting that
13 was called by Captain Marvin?

14 A. Okay.

15 Q. All right. Would you read that, please?

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

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1 whatever they need for weapons trainings at the outposts.'"

2 Q. Let's go to back to page 90, if you will, please, and
3 start with the, "Early on the morning of January 12th."

4 A. "Early on the morning of January 12th we received word
5 that Martha Raye would be visiting our camp. There's not a
6 man who wears a Green Beret who wouldn't want Colonel Maggie,
7 as we called her, to visit him no matter where he was. There
8 was none other -- there was none other as brave and loyal as
9 she was to Special Forces troops. She would regularly go to
10 every SF camp, no matter how remote or how dangerous, to visit
11 her friends. She was a Lieutenant Colonel in the U.S. Army
12 Nurse Corps and an honorary Green Beret. She always came with
13 a black bag in her hand, ready to help whenever there was a
14 wounded or whenever she was needed."

15 Keep going?

16 Q. Yes. It was stated here that she was a Lieutenant Colonel
17 in the Army Nurses Corps?

18 A. No, sir, she was not a Lieutenant Colonel in the Army
19 Nurses Corps.

20 Q. Then start, "When we heard the familiar sound of
21 choppers."

22 A. "We heard a familiar sound of a chopper's beating rotors,
23 we looked up and saw a single Huey coming towards our landing
24 zone. I sent Menkins to the commo bunker to tell Eleam to
25 make contact with the chopper and turn it away.

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1 "Though Eleam got through to the pilot, Colonel Maggie
2 insisted she visit her friends and ordered him to land.

3 "Assuming the chopper would turn back, I began to walk
4 toward the operations center and glanced up to see the chopper
5 circling toward the west, on a course that took it within
6 range of the VC heavy weapons company. John Eleam came
7 charging out of the commo bunker to tell us that Colonel
8 Maggie had gotten on the radio herself and told him, 'I don't
9 care about purple zones. I don't -- I told that pilot to take
10 me down!'

11 "We all watched as the chopper began approaching from the
12 west and our worst fears were realized when we saw .50 caliber
13 tracers racing up from the other side of Phu Hoi PF Outpost,
14 searching out Colonel Maggie's chopper. If one of those
15 bullets were to hit the right place the chopper would have
16 become a ball of fire. The pilot saw what was coming at him
17 and veered sharply toward our camp, gave the engines a full
18 throttle and came towards us like his tail was on fire.

19 "We knew he may have been hit by the way he brought the
20 chopper down kind of hasty-like, cut the engines, got out --
21 got everybody out fast. The crew chief circled the ship
22 quickly on foot, checking for smoke and ended up standing next
23 to the chopper looking at two .50 caliber holes in the
24 fuselage and scratching his head.

25 "Colonel Maggie strode toward us, black leather nurse's

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1 bag in hand, a Green Beret pulled down over her right ear,
2 looking calm and cool in her Hollywood sunglasses. Unruffled
3 by what had happened, she got within ten feet of us and
4 shouted, 'You really should do something about your neighbors.
5 They're not very friendly!'"

6 Q. Excuse me. Were you at An Phu at the time that Colonel
7 Maggie came in?

8 A. Yes, sir, I was.

9 Q. Did you see her chopper come in and land?

10 A. Yes, sir, I watched her chopper as it came in, and up to
11 the point where it landed.

12 Q. Did you see any veering of it or any bullet holes in it?

13 A. No, the chopper just came in and it just sat down and
14 landed just as nice and easy as if, you know, like a
15 helicopter is supposed to do.

16 Q. How long was she there at the camp?

17 A. She wasn't at the camp, I would say probably not more
18 than, at the most, 15, maybe 20 minutes.

19 Q. Did you go on any combat patrols with Captain Marvin or
20 any other of the men in the -- at An Phu?

21 A. No, I never went on operation with Captain Marvin.

22 Q. Did you ever go on a combat patrol?

23 A. As far as the other -- we would have patrols occasionally.
24 We'd go out around the camp and just check and maybe talk with
25 some of the people in the area, and then we'd head back to

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1 camp.

2 Q. Did you read anywhere in the Expendable Elite that you
3 were on a combat patrol and under fire?

4 A. I read in here in several places in the book, it indicates
5 that I was on combat patrols under heavy fire. In one case
6 myself and an interpreter, and I think in this book it says
7 five CIDG chased off a whole Viet Cong company or battalion or
8 something. And I sure don't remember. And I'm sure if I'm
9 carrying a machine gun and the interpreter is carrying the
10 ammunition and I'm shooting like that, I would have a
11 recollection of that.

12 Q. Can you find the reference to that?

13 A. I'd have to look through it and find it. It is in the
14 book.

15 Q. Will you turn to page 282, please? There is a reference
16 in here to, in the middle of the page reads, and I think we've
17 read this before, that, "Secret. To Marvin."

18 A. Right.

19 Q. Would you start there, please?

20 A. At the thanks Jim Woolley? Or just the secret to Marvin.

21 Q. Secret to Marvin.

22 A. It's a message that says, "Secret. To Tuttle. Amnesty
23 must be granted --"

24 Q. Are you on page 281 or 282?

25 A. That's 282. Okay. Here we go. "Secret. To Marvin.

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1 Urgent. Repeat. Urgent. A-424 must depart An Phu and report
2 to B-42 no later than 2000 hours today. CO, B-42 advised.
3 Signed Tuttle. SGD Tuttle."

4 Q. And the next paragraph, please?

5 A. "'In other words,' I told John Strait and Jim Taylor,
6 'we'd been ordered to abandon ship, to desert the Hoa Hoas, to
7 betray our pledge to help them against the communists. I
8 can't do that. They'll have to come and take me out of here.
9 How do you guys stand on this?'"

10 Q. Now, was -- you were the Sergeant Taylor referred to here?

11 A. I'm the Sergeant Taylor referred to here. I was the only
12 Sergeant Taylor in the camp.

13 Q. Well, was there any message, anything resembling this that
14 ever occurred?

15 A. No. To my -- these messages never occurred. If they had
16 came into the camp, me, at this time, being the team sergeant,
17 I would have seen these messages.

18 Q. Well, in the book he says right there that he told you and
19 John Strait, something about it.

20 A. That's true, that's what the book says. But again, this
21 is the fantasy. It did not happen.

22 Q. And in the book where he says that -- right the next
23 paragraph, that John Strait was going to be staying with him,
24 did that -- in your presence, was that ever happen -- did that
25 ever happen?

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1 A. No, sir.

2 Q. If you'll go over to page 282 and read -- start with the
3 first full paragraph.

4 A. And --

5 Q. Start with the first full paragraph.

6 A. Okay. Says, "'Jim, I want you to go with Sergeant Hung
7 and his demolition people, make certain there's enough plastic
8 explosives wired in two big ammo bunkers and each commo bunker
9 to blow this whole camp to the moon if we have to pull the
10 switch. We're not going leave this to the VC, the company or
11 anyone else.' 'Sure thing, Dai-uy. And, I'm staying with
12 you, too.'"

13 Q. Was that quote attributed to you?

14 A. No, that quote is definitely not true.

15 Q. Was it attributed to you, that quote, "And, I'm staying
16 with you, too."

17 A. No, I never made that statement. It was -- supposedly I
18 made it. In the book it says I made it. But I never made
19 such a statement.

20 Q. Do you know now, reading it, what it is saying as far as
21 what he's accusing you of?

22 A. Yes, sir, he's accusing me of directing -- or disobeying a
23 direct order from our C Team, which is the higher level of the
24 Special Forces company.

25 Q. And did you comply with making sure that everything in the

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1 camp was ready to blow all to pieces when you were attacked?

2 A. No. There was -- there was no reason to. We had the --
3 the camp, you know, was wired, but we had demo people that
4 were -- that would take care of this business. All right? We
5 might assist them, but we never made any preparations to blow
6 the camp up.

7 Q. This conversation never took place?

8 A. This conversation never took place.

9 Q. Okay. Well, let's go on over to the -- to page 287, and
10 start with in the first -- in the first paragraph where it
11 starts, "We have an ambush in place."

12 A. Okay. Says, "'We have an ambush in place on the Bassac
13 River three kilometers from Chau Duc. They have orders to
14 fire warning shots at all intruders. If the warning goes
15 unheeded, they are to do whatever necessary to stop them.'

16 "'Even kill them?' asked Wolley.

17 "'Yes,' I answered.

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

21 Q. Did that conversation ever take place?

22 A. That conversation, again, never took place.

23 Q. You never heard Woolley have -- ask about are you going to
24 kill them?

25 A. No.

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1 Q. And that you agreed with Mr. Marvin that that was the
2 thing to do?

3 A. No, I would never agree to something that stupid.

4 Q. Well, there are a lot of other references in here to
5 you --

6 A. Excuse me, Ben, I've got to get a drink of water here.

7 Q. Did you ever prepare any map, like the one that is shown
8 on page 285?

9 A. No, sir, that's not my work.

10 Q. Well, read starting in the middle of the page, "You know
11 better than I do."

12 A. It says, "'You know better than I do, Thieu-ta, that we
13 must be prepared to fight the southwest regiment and the ARVN
14 regiment at the same time.'

15 "Yes, Dai-uy, with 200 fewer Strikers than we had
16 yesterday.'

17 "As if on signal, Sergeant Taylor and Sergeant Hung, who
18 had been standing in Major Le's office doorway, cleared their
19 throats to get our attention. They each had proud look on
20 their faces and a map in their hand.

21 "'Got something for us, Jim?'

22 "'Yes, sir, Hung and I have put together a map showing
23 both friendly and enemy order of battle. We thought you and
24 Major Le would like to -- like one for your meeting.'

25 "'Sure would. Thanks to both of you. It's uncanny that

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1 we were just talking about the tactical situation.' Major Le
2 echoed my thanks and took the map and laid it on the desk in
3 front of the Major Le where we could both review the
4 situation. In the margins they had noted the strength of
5 opposition forces in Phu Hiep area where we were outnumbered
6 almost four to one. Over around Khanh-Binh there was a worse
7 scenario which was VC outnumbering our forces five to one.
8 Down around our main camp area, the 346th VC battalion had
9 been relocated to threaten our FOB at Vinh Hoi Dong, Camp An
10 Phu and three PF outposts at that Phu Hoi, Vinh Hoi and Vinh
11 Lon with a two-to-one strength ratio in the enemy's favor.

12 "It showed the southwest regiment had been brought up to
13 24,000 men strength with one --"

14 Q. Would you read that number again, please?

15 A. "It had -- the southwestern regiment had been brought up
16 to 2400 men strength with one 75 millimeter mountain gun, four
17 75 millimeter recoilless rifles, 14 of the 57 recoilless
18 rifles, and six mortars against our two 155 Howitzers, and
19 five 81 mortars and one four deuce."

20 Q. Did you ever prepare a map as he's describing there?

21 A. No, I did not.

22 Q. Did you ever prepare a map ever for him at all?

23 A. No, I did not prepare a map for him.

24 Q. So none of that occurred?

25 A. None of that is true.

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1 Q. Are there any other references to you and your activities
2 that -- that you can recall that -- in reading the book, that
3 you don't agree with?

4 A. I can make that easy. Any reference to me in this book, I
5 can tell you right now is basically fantasy. I hate to say
6 it, but -- and I've read this book through twice. And I can
7 find nothing -- and I've highlighted all these portions in my
8 book that are -- pertain strictly to me. And some of them
9 I've highlighted in red, and some in yellow. The ones in
10 yellow are just flat lies. The ones in the red margin I have
11 are big lies. Anything mentioned about me in this book is
12 nothing but pure lies.

13 The only thing that is really true in this book about me
14 is yes, I am from Beardstown, Illinois. All right? That,
15 I'll give him credit, it did happen.

16 And yes, we did have a fire in the An Phu village and we
17 did help put it out. But basically everything in this book
18 about me, if you see my name, if you read through it and you
19 see my name and it mentions me, is just basically a bunch of
20 lies.

21 Q. Now, you know that these accounts make you out to be a big
22 hero, a big warrior, big fighter?

23 A. Yeah, I really guess I should be flattered, you know? I
24 really should be, because according to the book, not only me,
25 but in some way, every member of this team is a hero, all

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1 right? But if I had done everything that it reflects that I
2 done in this book, then I should have gotten some kind of
3 award.

4 The only person that got an award out of that camp was Dan
5 Marvin. Isn't this strange?

6 Q. And that was a Meritorious Service Award, the Bronze Star?

7 A. Bronze Star Meritorious Service Award. Not one other
8 member in that team even got so much as Good Conduct Award.
9 After all this brave stuff we supposedly did, nobody received
10 an award out of that camp.

11 Q. Was anybody, any Special Forces member in An Phu, ever
12 wounded?

13 A. Never. My duration in that camp, there was never a
14 Special Forces or any American wounded in that camp.

15 Q. Now, have you had any problem with anyone or any criticism
16 of you because of this book?

17 A. I belong to the Special Forces Association, and I'm
18 retired in Fayetteville, North Carolina. There are a lot of
19 retirees and a lot of Special Forces retirees there. I belong
20 to the Retired Military Association, Special Forces
21 Association, the American Legion, and I'm in contact with
22 these people, mostly being retired military or active duty.
23 They see this book and they -- my God, did you really do that?
24 No, I didn't do it. It didn't happen. You know.

25 I have a daughter-in-law that to this day reads this book,

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1 because she's never been connected with the military, she
2 thinks it's true. That I just don't want to -- I'm too modest
3 to let people know what I've done. Well, I'm not modest. If
4 I've done something, I'll let people know about it.

5 Other people in the community come up to you, and they ask
6 you about this book. Well, you're constantly defending your
7 honor, when you have to tell them that no, this book is not
8 true.

9 Q. Do you get any type of harassing from other members of the
10 Special Forces Association?

11 A. Oh, yeah, people come up and they will say, boy, I didn't
12 know you was a hero, you know? And it's a joke, you know,
13 they're laughing about it. And some people though, you know,
14 take this book serious, because they've never been in the
15 military. And they're still laughing at it.

16 Q. Why did you bring this lawsuit? Why did you bring this
17 lawsuit? Why did you file this lawsuit?

18 A. Well, after I read the book -- now, I had been through
19 the -- there was three other manuscripts, the Bassac Bastards,
20 the Apocolypse of An Phu and one called Snuff Crown.

21 Now, when I first seen the Bassac Bastards -- and by the
22 way, we're not bastards, okay, we're soldiers. When I first
23 seen that, it was supposedly going to be a nonfiction book.
24 All right? Or a fiction book. All right? But then when it
25 came out, it came out as a true book. Well, this manuscript

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1 didn't get anywhere, so he came out with another one called
2 the Apocalypse of An Phu, the same story, different name.

3 When I got this manuscript and I read through it, Marvin
4 called my house one day, this was in probably 1995, '96,
5 around there. I got on the phone and I told him I wanted
6 nothing to do with him or his damn book. That's my exact
7 words. And I hung up the phone.

8 Now, you would think then that he would just leave me out
9 of it and forget me, all right? But no, he has to keep using
10 my name, my picture, and telling it that this book is a true
11 story.

12 And so we are constantly defending ourselves. We're being
13 accused of mutiny, treason, invading a sovereign country and
14 disobeying a lawful order.

15 I'm a career soldier, I'm proud of my military career. I
16 don't disobey orders. If I'm a civilian, I work for a
17 civilian out here, I don't disobey my boss' orders. I'm loyal
18 to whoever I'm working for.

19 At the time when Captain Marvin was there and I was his
20 weapons sergeant and his team sergeant, I was loyal to him. I
21 done my job in that camp. I did not do any of this nonsense
22 though. I done my job as I was supposed to do as a weapons
23 man and a team sergeant.

24 Q. Were you proud of what you did in An Phu?

25 A. I was -- yeah, I was exceptionally proud of what I did at

JAMES TAYLOR

1 An Phu. Because we had a good team, all right? We worked
2 good with the people. This Sergeant Hung here, which is my
3 LLDB counterpart, Vietnamese Special Forces and I became real
4 good friends. And we accomplished a lot of things in An Phu.
5 All right? A lot of good things in An Phu. But these are
6 really not reflected in this book.

7 So I'm very proud of what I done in An Phu, all right?
8 And I'm very proud of my service. All my military service.
9 So I really don't need to be ridiculed by a book like this.

10 MR. BOBBY DEEVER: That's all the questions I have,
11 Your Honor.

CROSS-EXAMINATION

12
13 BY MR. BACHRACH:

14 Q. Now, it's your testimony that no one other than Colonel
15 Marvin received medals for their time in the An Phu?

16 A. Nobody in that camp that I'm aware of was awarded an
17 American medal of any kind.

18 Q. What about any other types of medals?

19 A. I believe that two of them got what they call a Vietnamese
20 Cross of Galantry. But -- which is nothing uncommon, you
21 know, you do anything in Vietnam, they give you a Vietnam
22 Cross of Galantry. It's not even recognized by the American
23 government.

24 Q. Do you recall what the circumstances under which they
25 received those Crosses of Galantry?

JAMES TAYLOR

1 A. Yeah, I can recall what it was supposed to have been. It
2 was supposed to have been for one of these big battles that
3 never transpired. Exactly which battle, I don't know, but
4 this is what was -- it was supposed to have derived from. All
5 right?

6 Q. So is it your testimony that there was not a battle at
7 Khanh-Binh?

8 A. Not as far as the Special Forces team is concerned. There
9 was a little action with the -- what they call Regional Force
10 Popular Force, but the American forces were not involved in
11 that. That was the Regional Forces Popular Forces.

12 Q. So it's your testimony that none of the soldiers in A-424
13 were involved in the battle at the outpost at Khanh-Binh?

14 A. That's my testimony.

15 Q. Now, have you had an opportunity to review the tape that
16 Mr. Strait made in connection -- after having read the
17 manuscript of Colonel Marvin's book?

18 A. Yes, I've heard the tapes.

19 Q. And isn't it true that he discusses heavy action at
20 Khanh-Binh?

21 A. He -- he discusses that on the tape. But I think this is
22 something you should discuss with him, because just as he's
23 told me, but I'll let him tell you, the circumstances to which
24 those tapes were made.

25 Q. But on that tape, you -- he acknowledges that there was

JAMES TAYLOR

1 heavy fighting at Khanh-Binh and he was involved.

2 A. Yes. But on that tape he also acknowledges the fact that
3 when he made those tapes, he had been to the Legion all night,
4 he'd been drinking beer. See, this is something that you need
5 to ask him, not me. I wasn't there when he made the tapes.

6 Q. Well, when you listened to the tapes, did it sound like
7 he'd been drinking? If you listen to the tapes, did it sound
8 like he'd been drinking?

9 A. Well, how do you tell by sound if a person has been
10 drinking?

11 Q. Did he sound coherent?

12 A. I've seen a lot of people that drink that sound coherent.
13 I'm not going to judge whether he was drinking or drunk or
14 intoxicated or not.

15 Q. Did you recall that -- since you listened to that tape, do
16 you recall him saying on the tape that Colonel Marvin saved
17 his life during the battle at Khanh-Binh?

18 A. Yes, and I also recall that John Strait told me personally
19 that that was a lie.

20 Q. But you --

21 A. After the tape was made. After the tape was made. See,
22 John Strait, when he made them tapes --

23 Q. Excuse me, sir, please, just answer my question. You
24 heard him on the tape indicate that Colonel Marvin saved his
25 life, correct?

JAMES TAYLOR

1 A. I heard that, yes. But he also stated --

2 MR. BACHRACH: Your Honor --

3 THE COURT: No, he gets to complete his answer. You
4 can't cut him off halfway through. Go ahead.

5 A. John Strait also stated to me personally that when he made
6 that, he had been drinking, and that portions where Marvin
7 said he'd saved his life, was a lie.

8 Q. So is it your testimony there was no combat in the An Phu
9 district?

10 A. There was no combat in the An Phu camp area or in the An
11 Phu district, to my knowledge. An Phu was a very pacified
12 area.

13 Q. Is it your --

14 A. We were preparing to turn the camp over to the ARVN Army.
15 Now, you don't turn it over unless the area is pacified, so
16 that when you turn it over, you're out of there.

17 Q. Is it your testimony that -- and you include in the An Phu
18 district, all the outposts that were up bordering the
19 Cambodian border?

20 A. I'm talking about the area that An Phu A-424 was
21 responsible for. An Phu. The camp.

22 Q. Were soldiers from A-424 positioned in Khanh-Binh at
23 times?

24 A. On the FOB? Yes.

25 Q. Were they positioned at Phu Hiep?

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1 A. Yes, that's another FOB.

2 Q. Was there activity up in -- firefight activity up in Phu
3 Hiep?

4 A. No.

5 Q. There was no --

6 A. No.

7 Q. -- firing back and forth across the border?

8 A. No, absolutely not.

9 Q. Did you hear -- listen to Mr. Strait's tape where he
10 confirms that there was activity along -- up at the Phu Hiep
11 FOB?

12 A. I heard that on the tape, but there again, you know, the
13 circumstances that them tapes were made under, were more or
14 less like Marvin asked him to make the tapes, and he agreed
15 to do it. All right? But when he done it, he was under the
16 impression that this first book was going to be a fiction.

17 So he was just one GI buddy talking to another GI buddy,
18 you know, like you get in a bar with your buddy and say,
19 well, I done this and he done that, and mostly just
20 nonsense.

21 MR. BACHRACH: Can I have Plaintiffs' Exhibit 11,
22 please?

23 May I approach the witness, Your Honor?

24 THE COURT: Sure.

25 (Defendants' Exhibit 11 received.)

JAMES TAYLOR

1 BY MR. BACHRACH:

2 Q. I'd like to show you a premarked copy of Plaintiffs'
3 Exhibit 11. Is this the copy of the Bassac Bastards
4 manuscript that you first saw?

5 A. You mean the manuscript?

6 Q. Yes.

7 A. It appears to be, yeah.

8 Q. May I have it back, please? And you'll notice that this
9 is the first one you saw, and on page one, it -- Could you
10 read the second line, please?

11 A. This says a true account of independent warfare December
12 '65 to August '66.

13 Q. Thank you.

14 A. Now, I don't know when that was put out though.

15 MR. BACHRACH: May I approach the witness again, Your
16 Honor?

17 THE COURT: Sure.

18 (Defendants' Exhibit 7 received.)

19 BY MR. BACHRACH:

20 Q. And you subsequently received a copy of what's been
21 premarked as Defendants' Exhibit 7, correct?

22 A. Yes.

23 Q. And you received that on or about June 17, 1989, correct?

24 A. Yes.

25 Q. In fact, could you read the inscription that Colonel

JAMES TAYLOR

1 Marvin wrote to you?

2 A. "To Jim Taylor: You are by far part of the story and I'm
3 sure proud to know you. Your comrade in arms, Daniel Marvin."

4 Q. And --

5 A. Or Dangerous Dan. I'm sorry.

6 Q. Would you please read -- publish this to the jury.

7 A. The true story. U.S. Army Special Forces Detachment
8 A-424.

9 Q. This is the second manuscript you saw?

10 A. That's the one I got -- yeah, in 1989.

11 Q. Okay.

12 A. A copy of that.

13 Q. Were you aware of Viet Cong and North Vietnamese in
14 Cambodia while you were stationed in An Phu?

15 A. No, I never paid much attention to Cambodia, because it
16 wasn't, you know, part of our concern.

17 Q. But you do acknowledge having seen maps in Colonel
18 Marvin's tent, or wherever he stayed, that showed enemy
19 positions in Cambodia, correct?

20 A. I seen maps in his office that he said showed enemy
21 positions. That Marvin said showed enemy positions.

22 Q. And you saw those in his --

23 A. I seen them in there once or twice, yes.

24 Q. Now, you discussed on your direct exam that Colonel Marvin
25 attributed to you making a map that you claim you didn't make.

JAMES TAYLOR

1 A. That's true.

2 Q. How is that -- how does the attributing of making the map
3 to you hurt you?

4 A. Well, that portion has nothing to do with it. You know?
5 It's just a fact that I didn't make the map. It's in the
6 book. I don't know who made it. That portion doesn't bother
7 me. It's -- other than the fact that, you know, I can say
8 that it's just another one of his fantasies, you know. That
9 people look at it and say, did you do that? I say no, I
10 didn't.

11 Q. And it bothers you that you were portrayed as a hero in
12 this book?

13 A. It really does. You know, I don't mind being a hero, if I
14 am a hero, but I don't like to take credit for things that I
15 didn't do, that I didn't accomplish.

16 Q. But you're not claiming any damage by the fact that the
17 book claims that you're a hero?

18 A. What do you mean by damage?

19 Q. By how -- how have you been harmed by the book claiming
20 that you're a hero?

21 A. Well, I guess you could call heckling, verbal abuse, you
22 know, that's damage.

23 Q. Who has heckled you?

24 A. Several people that have read the book. I've got a
25 brother that knows that -- I told him it's a false book, and

JAMES TAYLOR

1 every time he sees me, he laughs about it. All right?

2 Q. But you've got a daughter who thinks you're a hero.

3 A. She thinks, but like I explained, she has never been
4 around the military community until she met me. She likes to
5 believe that. I tell her it's not true, you know, but she
6 said, well, you know, you're just saying that. You know,
7 because she is like many other civilians that read this, and
8 they say, my God, this is a true story.

9 MR. BACHRACH: May I approach the witness again, Your
10 Honor?

11 THE COURT: Yes.

12 (Defendants' Exhibit 9 received.)

13 BY MR. BACHRACH:

14 Q. I'd like to show you Defendants' Exhibit 9. Do you
15 recognize this document?

16 A. Yeah, that's a questionnaire I filled out, personal data
17 sheet for Colonel Marvin.

18 Q. At what point in time did you fill that out?

19 A. I'm looking for the date on it now. I don't see the date,
20 but it had to be after 1988.

21 Q. So it was after you received the first draft of the book?

22 A. Probably, yeah, would make it 1989.

23 Q. And nowhere in this did you tell Colonel Marvin, in
24 filling this out, that the book was false or untrue.

25 A. No, never crossed my mind, because I thought he was going

JAMES TAYLOR

1 to write a fiction book, a fiction story, a non-true story.

2 Q. But I've shown you the two manuscripts that you had
3 reviewed, which indicate that it was a true account.

4 A. Yes, and let me say this. The first manuscript you showed
5 me, I can't tell you if that's the manuscript I looked at.

6 That one says it's a true story. All right? That says it's a
7 true story, but I don't recall if the first one I looked at
8 had that statement on there.

9 Q. But not to quibble, when I showed it to you, you said it
10 did look like the first one you saw.

11 A. It looked like it, but I don't know if that first one had
12 that very same statement on there. It's a similarity to what
13 I looked at.

14 Q. And at some point after reviewing the manuscripts, you
15 filled out this questionnaire?

16 A. Yeah.

17 Q. And you never said in the questionnaire that what you've
18 written about me is false.

19 A. No, because I probably hadn't even received a copy of the
20 Bassac Bastards when he sent me that questionnaire. That was
21 right after the '88 convention.

22 Q. Do you know -- What was after the '88 convention?

23 A. When these were filled out.

24 Q. Didn't you receive the Bassac Bastards before the '88
25 convention?

JAMES TAYLOR

- 1 A. No, sir.
- 2 Q. You didn't?
- 3 A. The convention was 1988. It says right on that book I got
4 it in June of 1989.
- 5 Q. That was the second draft you received.
- 6 A. That was the second. I never personally received a copy
7 of the first one. I seen it at the convention.
- 8 Q. Did you read it while you were at the convention?
- 9 A. I read through it. I didn't really take it serious.
- 10 Q. And you filled this out after the convention?
- 11 A. Yeah.
- 12 Q. And --
- 13 A. I'm saying yes. I'm pretty sure it was after the
14 convention.
- 15 Q. And in this, you discuss some information, and you
16 indicated that Dangerous Dan's best traits were willing to
17 learn, ability to listen, and realized we had to work as a
18 team, good sense of humor in good and bad times. Is that
19 true?
- 20 A. Yeah.
- 21 Q. And that's still true today?
- 22 A. I told you, when I work for a person, I'm loyal to them.
23 All right? No, that's not true today, I don't feel that way
24 today.
- 25 Q. You don't feel that he's willing to learn, ability to

JAMES TAYLOR

1 listen and realize he had to work as a team, and sense of
2 humor in good and bad times?

3 A. No, I don't feel that way today.

4 Q. The only worse traits you listed was that he was
5 headstrong at times, impatient at times, and he had bad
6 cigars.

7 A. Pardon?

8 Q. The only worse traits you listed at this point in time was
9 that he was headstrong at times, impatient at times, and he
10 had bad cigars?

11 A. He did.

12 Q. What did he smoke?

13 A. I don't know what brand they were, but they were big.

14 Q. Now, you contacted Jimmy Dean of the Special Forces to try
15 to get some action taken against the book, correct?

16 A. Yes, I did.

17 Q. And why did you contact Jimmy Dean?

18 A. Well, when -- this was about the time the Apocolypse of An
19 Phu came out. And I was really getting fed up with it. So I
20 wanted to know what type of action I could take, and knowing
21 that the Special Forces Association had experience in this,
22 and I was a member of them, I went to them and said hey,
23 advise me on this, what can we do.

24 Q. And is it Jimmy Dean who indicated -- suggested that a
25 lawsuit be filed?

JAMES TAYLOR

1 A. No, I don't believe it was. I believe we done that as a
2 group effort.

3 Q. And you assisted in preparing a questionnaire to the
4 various team members, correct?

5 A. No, I did not assist in that.

6 Q. Who prepared that?

7 A. The Association put that questionnaire out.

8 Q. And the -- and you filled one out?

9 A. I filled one out, yes.

10 Q. And in this, you accuse Colonel Marvin, in writing, of
11 certain falsehoods, correct?

12 A. I'd have to have the questionnaire to look at it, but I'm
13 sure I did.

14 MR. BACHRACH: May I approach?

15 THE COURT: What number is that?

16 MR. BACHRACH: This is premarked as Defendants'
17 Exhibit 27.

18 THE COURT: Okay, sure.

19 (Defendants' Exhibit 27 received.)

20 BY MR. BACHRACH:

21 Q. Do you recognize this document?

22 A. Yes, I filled it out.

23 Q. This is the document you filled out and sent to the
24 Special Forces?

25 A. Yes, it is.

JAMES TAYLOR

1 Q. And for what purpose was it sent to the Special Forces?

2 A. The Special Forces was just trying to get a feeling from
3 everybody in the team, their feelings to certain questions
4 that are in that book, and get our response to it, so they
5 could start forming a better -- have a better knowledge as to
6 what was going on.

7 Q. Did you know General Quang Dang?

8 A. Personally, no.

9 Q. Did you ever meet him?

10 A. No, I don't believe so.

11 Q. Did he ever present you with a medal?

12 A. No, not --

13 Q. I may be reading this wrong, but I direct your attention
14 to page three of --

15 MR. BOBBY DEEVER: What is that you're reading,
16 please?

17 MR. BACHRACH: Exhibit 27. Defendants' Exhibit 27.

18 BY MR. BACHRACH:

19 Q. Direct you to question --

20 A. This first question?

21 Q. Yes.

22 A. Says Dan Marvin states he first met General Quang -- Do
23 you want me to read it?

24 Q. Here, I can -- it says here, Dan Marvin states he first
25 met General Quang at a victory celebration on June 4, '66, at

JAMES TAYLOR

- 1 Camp Dan Nam. Do you recall this visit? Question. Answer:
2 And this is your writing, correct?
- 3 A. Yeah.
- 4 Q. General Quang presented me with the Vietnam Cross of
5 Galantry at Camp Dan Nang. I do not know what victory.
- 6 A. Okay, that probably happened then.
- 7 Q. And so you were presented by General Quang with a Cross of
8 Galantry?
- 9 A. Pardon?
- 10 Q. You were presented by General Quang with a Cross of
11 Galantry?
- 12 A. The Vietnamese Cross of Galantry, yes.
- 13 Q. That was true.
- 14 A. Vietnam cross, yeah.
- 15 Q. And that was at a victory celebration?
- 16 A. That's what they say it was. You notice the last part of
17 it I -- you know. Read the last part of that paragraph.
- 18 Q. You claim that you do not know what victory.
- 19 A. Right.
- 20 Q. But you've heard the tape of John Strait, where he talks
21 about what battle this was in connection with, correct? The
22 battle at Khanh-Binh?
- 23 A. Well, it doesn't say that's in connection with that
24 battle. I don't know what battle that was.
- 25 Q. Well, when was the battle of Khanh-Binh?

JAMES TAYLOR

- 1 A. I don't really recall.
- 2 Q. Does it refresh your memory if I told you it was May of
3 1966?
- 4 A. Okay, yeah.
- 5 Q. And so this celebration took place in June 4th of 1966?
- 6 A. I would have to assume so, somewhere around there, yeah.
- 7 Q. So can you assume that this was in conjunction with the
8 victory celebration of the battle at Khanh-Binh?
- 9 A. No, I would not say I --
- 10 Q. You don't know one way or the other?
- 11 A. No, I was not in Khanh-Binh at the battle, all right? So
12 it wouldn't have been that.
- 13 Q. You discussed a fire in the Village of An Phu. What was
14 that?
- 15 A. The village just about burnt down to the ground.
- 16 Q. How did that occur?
- 17 A. I don't know what started it. I have no idea what started
18 it.
- 19 Q. Was it a short mortar?
- 20 A. No, it was no -- nothing to do with enemy fire. It was
21 probably some of them hibachis they cook on something like
22 that tipped over, and them straw huts and them huts over
23 there, they're gone just like that. There was definitely
24 nothing to do with any type of enemy action.
- 25 Q. Did anyone suffer death at that time?

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1 A. I don't know if there was any Vietnamese that were killed
2 in it or -- there was some, I think, that was burned in it,
3 but I don't know if they were serious or not. We was more
4 concentrating on putting the fire out.

5 Q. Are you familiar with an incident where a mortar round
6 went off and hit a house and killed a young boy?

7 A. Well, they indicated that happened. I'm not sure it
8 happened. All right? Because also I think you'll find in
9 there, there's a reference to a 155 that had a short round.
10 So -- you know?

11 Q. Who's they indicated?

12 A. Hum?

13 Q. Who's they indicated?

14 A. I think it was in the book or in some of the -- the
15 paperwork that Marvin had.

16 Q. Now, you believe in the chain of command, correct?

17 A. I definitely do.

18 Q. And the chain of command was -- in your direct command,
19 was taking orders from then Captain Marvin, correct?

20 A. Yes.

21 Q. So if he gave you an order, you had to follow it.

22 A. Yes.

23 Q. Now, you're aware in the book, the way he's written the
24 book, and what he says happened, is that he ordered you and
25 Lieutenant Strait to stay and defend the Hoa Hoas, correct?

JAMES TAYLOR

1 A. That's what he says.

2 Q. Correct. And so that was an order in this direct chain of
3 command that you were required to follow.

4 A. No, you're not. The order from your C Team, your higher
5 command, was -- is the one you follow. A captain does not
6 have the authority to override an order from a higher
7 headquarters.

8 Q. But Colonel Marvin, according to the book, ordered you to
9 stay.

10 A. That's what the book says. But I will repeat, that's
11 far -- that conversation did not take place. That order was
12 not given to me.

13 Q. So it's your contention none of that ever happened?

14 A. None of that happened. And it's not my contention, that's
15 the truth.

16 Q. And you've heard on the tape of Lieutenant Strait, his
17 confirmation --

18 A. I didn't say I agreed, I said I heard it.

19 Q. No, I'm moving to another topic. You have heard, when
20 listening to the tape of Lieutenant Strait, you heard him
21 discuss that there was an ARVN regiment coming down towards
22 the camp, correct?

23 A. On the tape, yeah.

24 Q. Correct. Now, you didn't -- Did you review the
25 questionnaires of the other plaintiffs when they were

JAMES TAYLOR

1 submitted to the Special Forces?

2 A. No, sir.

3 Q. What involvement have you had with the Special Forces in
4 connection with getting out the word that Colonel Marvin's
5 book is purportedly false?

6 A. In connection with the Special Forces Association?

7 Q. Yes.

8 A. We haven't been getting out the word. We've been dealing
9 through our lawyers, all right? And we have been dealing
10 through them.

11 Q. Well, you're familiar with The Drop.

12 A. Yes, I am.

13 Q. What is The Drop?

14 A. It's a quarterly magazine that Special Forces Association
15 puts out.

16 Q. Has The Drop printed information in it which claims that
17 Colonel Marvin's book is false?

18 A. It has had some articles in it, yes.

19 Q. And to what extent were you involved --

20 A. I was not involved in any way with those articles.

21 Q. Did you provide information for those articles?

22 A. No, I did not provide any information on those articles.

23 Q. Who wrote the articles?

24 A. It was Jimmy Dean, who was the administrator of the -- at
25 that time was the administrator of the Special Forces

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1 Association.

2 Q. Did he or did he not get information from you upon which
3 he wrote the articles claiming --

4 A. No, he did not.

5 Q. From whom did he -- Do you know from whom he got the
6 information from?

7 A. I have no idea who he got the information from. As a
8 matter of fact, when I read the articles in The Drop, that was
9 my first knowledge of it. We were informed not to discuss
10 this with anybody except our lawyers.

11 Q. So it's your contention that you had no involvement in the
12 articles -- other than -- strike that.

13 Other than providing the Special Forces with a
14 questionnaire, answer to questionnaire as to what you
15 considered false about the book, it's your contention you had
16 no involvement in preparing or disseminating the publications
17 of The Drop, which claim that the book is false?

18 A. I had nothing to do with that.

19 Q. Do you know who had anything to do with that?

20 A. Jimmy Dean, the administrator of the Special Forces
21 Association. He is the person that puts out The Drop.

22 Q. And the Special Forces Association is paying for this
23 lawsuit, correct?

24 A. On contingency.

25 Q. But it's paying your expenses?

JAMES TAYLOR

1 A. Yes.

2 Q. Was it the Special Forces who retained Mr. Deaver to
3 represent you?

4 A. At our request.

5 MR. BACHRACH: May I just confer with counsel for a
6 moment?

7 THE COURT: Sure.

8 MR. BACHRACH: It's late in the day and my notes have
9 disappeared. Just bear with me for one second.

10 THE COURT: Sure.

11 MR. BACHRACH: I have no further questions.

12 THE COURT: Okay. Any redirect?

13 MR. BOBBY DEEVER: Yes, Your Honor, please.

14 THE COURT: Okay.

15 REDIRECT EXAMINATION

16 BY MR. BOBBY DEEVER:

17 Q. You were shown this Plaintiffs' Exhibit 11 as being the
18 transcript of the Bassac Bastards. Would you look at that,
19 please, and tell me, what is the name of that transcript?

20 A. The Bassac Bastards and the People of An Phu.

21 Q. That is not the Bassac Bastards, is it?

22 A. No.

23 Q. Look on the next page, please. And it says on it where
24 you read that this is a true account. Is that what it says?

25 A. That's what it says.

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1 Q. Read the first two paragraphs.

2 A. "More than two decades have passed since I lived the
3 experience candidly expressed in the book. My notes,
4 documents and photos, what has been highly classified
5 unconventional mission gathering dust over the first 12 years.
6 In 1978 I began putting together a military diary, a
7 chronological record of events structured as a teaching
8 vehicle, hardly exciting reading, but important in my mind. I
9 queried Department of the Army to determine their interest in
10 my book as a reference for Special Forces soldiers, and was
11 told to clear my manuscript with the Central Intelligence
12 Agency and the Special Operations Office of the United States
13 Army. In my judgment, that would have resulted in watering
14 down version, a distortion of the facts, with few revelations
15 of high level subterfuge, the majority of the real truth of
16 covert operations relegated to the editing room floor. No
17 longer book of hard truth, but, at best, prodemocracy manual
18 pertaining to depict unconventional warfare aspects of that
19 far off conflict. Thus, in 1988 I began rewriting it as a
20 fiction, based on the fact a novel called the Bassac
21 Bastards."

22 Q. Okay. In 1988 he says he began rewriting everything as a
23 novel. Is that correct?

24 A. That's right.

25 Q. And called the Bassac Bastards. That manuscript that he

JAMES TAYLOR

1 showed you there is not the manuscript of the Bassac Bastards,
2 is it?

3 A. No, it isn't.

4 Q. Mr. Taylor, you were shown Defendants' Exhibit 27 as a
5 questionnaire.

6 A. Yes, sir.

7 Q. Will you just start reading what this is, what the
8 questions were and what the answers are?

9 A. You want to start up here with individual references?

10 Q. Yes.

11 A. Individual references, page 84. What it states that I
12 arrived in camp and that Val would brief me on the special
13 secret mission. I was never briefed on a secret mission by
14 anyone.

15 Q. Now, you went through the book, did you not, and took the
16 accounts of the book that you disagreed with.

17 A. That's right.

18 Q. Are they any different than what you've testified to? Are
19 these accounts any different than what you've testified to?

20 A. No, they're all saying that I was never briefed, that the
21 book is false. Every one of these questionnaires will verify
22 what I've said about the book.

23 Q. Read a few more of those, and then I want you to go to
24 the --

25 A. Okay. Page 90. When Martha Raye arrived in camp, there

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1 were no .50 caliber rounds fired at her chopper, let alone
2 hitting it. She was in camp for a very brief period.

3 Page 97. I was not called to a meeting and told about an
4 operation that was about to take place at 0600 hours.

5 Page 98 and page 99. None of this took place. I'd have
6 to look at the book to refer to that.

7 Page 101, where it suggests that I wanted to cross the
8 border into Cambodia is a flat lie.

9 Q. Keep going.

10 A. I never fired any support with a 60 millimeter mortar, and
11 never stated that I thought Major Le would test Marvin.
12 That's in the book, where Marvin said he thought Major Le was
13 testing him.

14 Page 104. There was never 700 pipe bombs disarmed or
15 destroyed in our area. We never ran across any hand grenades,
16 booby traps or any other weapons.

17 It also states on page 105 that we all took our first
18 steps into Cambodia territory. I am sure this did not happen.

19 I can't even read my own writing.

20 Let me sum up this operation by saying that it did not
21 take place. Furthermore, I don't remember Marvin ever leaving
22 the camp, unless he and Major Phoi were joy riding in Major
23 Le's Jeep.

24 Keep going?

25 Q. Let's turn now to the questionnaire that he was asking you

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1 about.

2 A. Pardon?

3 Q. The questionnaire that's a part of that?

4 A. This is it.

5 Q. Okay, well, there's another questionnaire in there. Is
6 that the one that was sent to you by your attorney?

7 A. This was given to me by Jimmy Dean. The attorneys -- the
8 questionnaire, you're talking about?

9 Q. Yes. There is a questionnaire in there further deep down.

10 A. Here it is.

11 Q. And that's one that you filled out for us?

12 A. That's the one I filled out, yes.

13 Q. Okay. Now, at the time that these questions were sent to
14 you or asked of you by Jimmy Dean, were you contemplating any
15 lawsuit or anything, or just --

16 A. No, not at this time.

17 Q. You were just responding to --

18 A. We were just -- this is in response -- when I went and
19 talked to Jimmy Dean and the Association, not, you know, just
20 Jimmy Dean in particular, I just went to the Association for
21 some guidance on how to handle this -- the book, you know, and
22 everything.

23 So they -- Jimmy Dean and I met, and we discussed it, and
24 he says he's going to make up a questionnaire and send it to
25 everybody in the team and let them fill it out and return it

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1 to him. All right.

2 Q. Trying to verify --

3 A. Trying to gather information not only from me, but from
4 other members in the team, so that he could sit down -- not
5 me -- he could sit down and evaluate so that he could tell me
6 if he felt that we had enough basis for a lawsuit.

7 Q. Okay. Then just continue, if you will, there are a couple
8 more pages of what you responded.

9 A. From the questions in print?

10 Q. Yes.

11 A. All right. This is going by pages in the book. When I
12 say page 104, that will be on page 104.

13 Okay. On page 110 and 111, Marvin never went on any
14 operation while I was in the camp. As a matter of fact, he
15 never went anywhere unless he was with Major -- was with Major
16 Le alone.

17 And we'll go down to page 104. Mr. O'Brien did arrive,
18 this reference is accurate, Hugh O'Brien, when he came into An
19 Phu, Mr. O'Brien did arrive in An Phu and John Eleam did, in
20 fact, outdraw him.

21 Hugh O'Brien was supposed to be an original quick draw
22 artist. And they had a -- a routine he would go through where
23 he would draw his pistol, and John Eleam would catch it with
24 his hands. If he caught it, that means he outdrew him. And
25 John outdrew him, I think five out of five times.

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1 I'm skipping through pages. Is that what you want me to
2 do?

3 Q. Yes.

4 A. Page 139, we had no Spooky in our area. If you remember,
5 we were at a top secret operations with no support of any kind
6 from anyone. There was no need to call in a gun ship in the
7 area anyhow, because you remember, when Captain Marvin said he
8 got this top secret mission and they told him he would have no
9 support, he would be entirely on his own? And then later on
10 he's saying we called in Smokey, a gun ship, that's a plane
11 that shoots Gatling gun in support of an A camp under fire.

12 Q. Were you just being facetious there?

13 A. Hum?

14 Q. Were you just being facetious there on that answer?

15 A. Yeah, I was really being facetious here, but there was no
16 need to call one in.

17 On page 258, these are things in the book about me that I
18 answered, you know. I don't recall a CIA agent coming into
19 our camp. I am sure that I would remember a young blond and
20 drinking coffee with her. Supposedly when this agent come in,
21 he had a young lady with him, and I sat in our little team
22 area there and had coffee with her. I think I would really
23 remember that.

24 Q. Did it happen? Did it happen?

25 A. No, it didn't happen. That's where -- I was being

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1 facetious there, too, it did not happen.

2 On page 276. I would never agree to send a man on a chow
3 run and R and R, if we were about to be attacked or ordered to
4 report to the B Team. We have -- member of the team would go
5 into Can Ton and go to Saigon and buy food for the team and
6 fly it back out. And what this is referring to was one of the
7 members was getting ready to go on to -- on a chow run and
8 then go on R and R for a few days. If we're under such heavy
9 fire and under attack, as a team sergeant, I'm not going to
10 let a guy take off on me and go on chow run and R and R, while
11 I'm out there fighting. So this could not have happened,
12 would not have happened.

13 Page 281. Once again, there was never a message to report
14 to the B Team. If there was such a message to -- a message,
15 the B Team would have departed -- the team would have departed
16 for the B Team as ordered. I would never disobey an order
17 from Colonel Tuttle, and never in my career, and never in my
18 career of -- and never the career of the team in a position to
19 be considered as committing treason. There was never any
20 conversation about the whole team staying in An Phu. I never
21 rigged the camp with demolitions or -- to destroy the camp.

22 And it's getting close to the end of it.

23 Q. Okay. We'll just stop there then. But that was the --
24 what you said in response to the -- to the questionnaire that
25 was sent by Special Forces --

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1 A. Yes.

2 Q. -- Association? Okay. Mr. Bachrach asked you if you
3 would obey Captain -- then Captain Marvin's orders, and that
4 you were ordered to stay, whenever the orders came down for
5 you to go for -- for everybody to go to B-42, to Chau Duc, you
6 were asked if -- that you said Captain Marvin ordered you to
7 stay, and you would have dis -- would not have obeyed his
8 order?

9 A. No, sir, I would not have.

10 Q. Well, if you will read, please, here, just what was said
11 in the book, this one paragraph there.

12 THE COURT: What page are you looking at?

13 Q. It's 281, 282.

14 THE COURT: Okay.

15 Q. Which page is it?

16 A. 281. It says, "I shook his outstretched hand. 'Thanks,
17 John. I appreciate it. But, look, you men know what the
18 message said. So far none of you has gone against orders. I
19 can't and won't ask you to stay. If you decide to stay, I'll
20 cover you by ordering you to stay and I'll send a message to
21 the B-42 telling them so. You'll have that on your file for
22 your protection later, if there is a later. Just think about
23 it for now and let me know your answer when we get back from
24 the FOB.'"

25 Q. Well, there really wasn't an order in that book for you to

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1 stay. Didn't he state that he would not and could not order
2 you to stay?

3 A. No. No, they -- Right. He -- there was no order for us
4 to --

5 Q. I mean in the book.

6 A. Yeah, in the book.

7 Q. You were asked about the embarrassment by your -- by your
8 daughter's adulation of you for what you allegedly did in An
9 Phu, and whether you were harmed by these accusations, or
10 these glorifications of you.

11 Could you put a monetary damage on a -- figure on your --
12 on the damages you feel that you've -- have incurred and/or
13 continue to?

14 A. For the liability portion of it, or --

15 Q. Yes.

16 A. I put a monetary figure of \$100,000 on it.

17 Q. And you've thought about that and considered it?

18 A. Yeah.

19 MR. BOBBY DEEVER: That's all I have, Your Honor.

20 MR. BACHRACH: I know the time is late, I just have a
21 couple of follow-up questions, and then I'll let everyone be
22 done.

23 RE-CROSS-EXAMINATION

24 BY MR. BACHRACH:

25 Q. How did you arrive at a figure of \$100,000?

JAMES TAYLOR

- 1 A. How? I just thought of a figure that I was satisfied
2 with.
- 3 Q. That's it?
- 4 A. Hum?
- 5 Q. That's it?
- 6 A. That's it.
- 7 Q. I just want to direct your attention to page 286 of the
8 book. The third paragraph from the bottom reads -- Could you
9 read that into the record, please?
- 10 A. The what?
- 11 Q. Third paragraph from the bottom.
- 12 A. About Woolley?
- 13 Q. Yes.
- 14 A. Do you want me to read it?
- 15 Q. "Grabbing a pen."
- 16 A. Hum?
- 17 Q. Yes, please read, "Grabbing a pen."
- 18 A. Okay. Do you want me to read it?
- 19 Q. Yes, please.
- 20 A. "Grabbing a pen I wrote a quick answer and read it aloud
21 before handing it to Woolley to send it. 'Secret. Urgent.
22 To Brewer. I have ordered my men to remain in An Phu. Do not
23 send escorts. This area is closed to all military traffic --
24 to all military. Traffic will be fired on. We demand
25 immediate amnesty for all Strikers. Signed, Marvin.'"

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1 Q. So Colonel Marvin wrote that he ordered you to stay?

2 A. That's what he wrote in the book.

3 Q. That's what he wrote in the book.

4 One last question just to clarify. What's been premarked
5 as Exhibit 11 is a copy of the Bassac Bastards and the People
6 of An Phu. You notice this is a copyright 1988. You had
7 initially said this is what you reviewed. The second line,
8 you'll agree with me, says a true account of the independent
9 warfare?

10 A. No, I didn't agree with you. That's what -- I said that's
11 what that says.

12 Q. No, but -- No. But you agreed with me that this is what
13 you had reviewed.

14 A. I reviewed a copy -- a small copy of the Bassac Bastards,
15 all right? At the convention.

16 Q. In 1988.

17 A. At the convention in 1988.

18 Q. And you will agree with me that this says a true account
19 of the independent warfare, correct?

20 A. Well, that's what that says, yes.

21 Q. Correct. And what your counsel had you read to the jury
22 on that page, was a history of what led up to this, correct?

23 A. I'd have to reread it, just to make sure.

24 Q. Because I just want to clarify for the jury, what you read
25 was the history leading up to this manuscript.

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1 A. Yeah, this, to me, is not the history leading up to it,
2 it's just the fact that he decides he's going to change it and
3 make it a better story.

4 Q. But it's what happened in the past. This is discussing
5 what had happened up until this point.

6 A. This is -- this is a discussion of what he said happened
7 to that point.

8 Q. Correct. That he's putting in here what had happened up
9 until this draft.

10 A. Yeah. That I -- that I disagreed with.

11 Q. And on the face of this draft it says a true account.
12 Whether you agree or disagree, it says a true account.

13 A. That's what that says, yes.

14 Q. Correct.

15 MR. BACHRACH: Thank you. I have no further
16 questions.

17 THE COURT: All right. Thank you very much. You're
18 excused. Ladies and gentlemen, so are you. Don't discuss the
19 case among yourselves, don't let anybody discuss it with you.
20 We'll start again 9:30 tomorrow morning.

21 (Jury excused.)

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23 (Court adjourned at 6:26 p.m.)

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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.



Debra L. Potocki, RMR, RDR, CRR