

1 UNITED STATES DISTRICT COURT
 2 NORTHERN DISTRICT OF CALIFORNIA
 3 ROBERT VAN BUSKIRK,)
 4 Plaintiff,) Case No.
 5 vs.) C99-20889 JF EAI
 6 CABLE NEWS NETWORK, LP, LLLP,)
 7 et al.,)
 8 Defendants.)
 9 -----)

10 UNITED STATES DISTRICT COURT
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 12 SAN JOSE DIVISION
 13 In re Cable News Network and)
 14 Time Magazine "Operation) Lead Case No.
 15 Tailwind" Litigation) C-98-20946 JFPVT
 16 * * *) MDL Case No.
 17 All Actions) 1257
 18 (Caption continues on following page)
 19 Bethesda, Maryland
 20 Monday, January 17, 2000
 21 Videotape deposition of:
 22 THOMAS MOORER

1 (Caption continued from previous page.)
 2 IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
 3 Civil Division
 4 JOHN K. SINGLAUB,) Civil Action No.
 5 Plaintiff,) CA07004-98
 6 vs.) Calendar 14
 7 CABLE NEWS NETWORK, INC.,) Judge Zeldon
 8 et al.,)
 9 Defendants.)
 10 * * *)
 11 APRIL OLIVER,)
 12 Defendant/Crossclaim Plaintiff,)
 13 vs.)
 14 CABLE NEWS NETWORK, INC.,)
 15 Defendant/Crossclaim Defendant.)
 16 -----)
 17 Bethesda, Maryland
 18 Monday, January 17, 2000
 19 Videotape deposition of:
 20 THOMAS MOORER
 21
 22

1 Videotape deposition of:
 2 THOMAS MOORER
 3 called for oral examination by counsel for the
 4 Plaintiffs, pursuant to notice, held at the
 5 offices of Budow and Noble, P.C., 7201 Wisconsin
 6 Avenue, Bethesda, Maryland, beginning at 9:14
 7 a.m., before Lee A. Bursten, Registered
 8 Professional Reporter and Notary Public in and for
 9 the State of Maryland, when were present:

10 ON BEHALF OF THE PLAINTIFF
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 12 ELIHU H. BERMAN, ESQUIRE
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 18
 19
 20
 21

22 (Appearances continued on next page.)

1 (Appearances continued.)
 2
 3 ON BEHALF OF THE PLAINTIFFS
 4 SHEPHERD, BISHOP, BENTLEY, BAYLOR, AND
 5 GRAVES:
 6 JOSEPH M. NYKODYM, ESQUIRE

88 yrs old in Jan 2000
9707 Old AT Rd
Maphewood
301-581-0980

9/11, 14, 15

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Frederick

John McCarthy
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Larry J. O'Daniel
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0003

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22 (Appearances continued on next page.)
□

0005

1 (Appearances continued.)
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21 (Appearances continued on next page.)
22 □

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1 (Appearances continued.)
2

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21 (Appearances continued on next page.)
22 □

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21
22 (Appearances continued on next page.)

□

1 (Appearances continued.)
2
3 ON BEHALF OF THE DEFENDANTS
4 CNN, TIME, TIME WARNER, AND PETER ARNETT:
5 KEVIN T. BAINÉ, ESQUIRE
6 NICOLE K. SELIGMAN, ESQUIRE
7 ELIZABETH LIN, ESQUIRE
8 Williams & Connolly
9 725 Twelfth Street, N.W.
10 Washington, D.C. 20005
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12
13 ALSO PRESENT:
14 PAULA ADKINS, Videographer
15 JOHN K. SINGLAUB
16 VIRGINIA BRACE
17 RUDI GRESHAM
18
19
20
21
22

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0010

21
22

Death"

0011

1 P R O C E E D I N G S
2 THE VIDEOGRAPHER: Good morning. This
3 is the deposition of Admiral Thomas Moorcer,
4 retired, noticed by the plaintiffs in case number
5 C99-20889 JF EAI, entitled Robert van Buskirk
6 versus Cable News Network, Time Incorporated, and
7 Time Warner Incorporated; also In Re: Cable News
8 Network and Time Magazine Operation Tailwind
9 Litigation; and John K. Singlaub versus Cable News
10 Network Incorporated, Time Incorporated, Time
11 Warner Incorporated, Peter Arnett and April
12 Oliver.

13 My name is Paula Adkins, and I am the
14 legal video specialist operating the equipment for
15 this deposition. I am employed by L.A.D.
16 Reporting. This deposition is being taken on
17 Monday, January 17th, 2000, at the offices of
18 Budow and Noble, 7201 Wisconsin Avenue, Bethesda,
19 Maryland, at the time indicated at the lower
20 portion of the television screen. The time on the
21 screen is 9:14:13.

22 I will now ask counsel to please

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1 identify themselves and indicate the parties they
2 represent.

3 MR. BERMAN: My name is Elihu Berman,
4 and I'm from Clearwater, Florida. I represent
5 Robert van Buskirk, the plaintiff.

6 MR. SIMMONS: And my name is Roger
7 Simmons, Frederick, Maryland. I represent the
8 defendant, cross-claimant and counterclaimant,
9 April Oliver.

10 MR. KAPLAN: My name is Philip Kaplan.
11 I'm a lawyer from Little Rock. I represent April
12 Oliver in the Sadler and Rose cases.

13 MR. SELLINGER: Good morning, Admiral.
14 My name is David Sellinger. I'm from Washington,
15 D.C. I represent April Oliver in the Singlaub
16 case.

17 MR. NYKODYM: Good morning, Admiral. My
18 name is Joseph Nykodym. I'm with the law firm of
19 Cotchett, Pitre & Simon from San Francisco. I
20 represent plaintiffs Michael Shepherd, Arthur
21 Bishop, Michael Bentley, Charles Baylor, and James
22 Graves in the action known as In Re: Cable News

0013

1 Network and Time Magazine Operation Tailwind
2 Litigation.

3 MR. COOK: Good morning. My name is
4 Mitchell Cook. I'm from Key West, Florida. I
5 represent three plaintiffs: Keith Plancich,
6 Denver Minton, and Mark Kinsler. And that case is
7 before the court --

8 THE WITNESS: How about taking a look so
9 I can see what you look like?

10 MR. COOK: Sorry about that.

11 MR. DUNCAN: My name is Phillip Duncan.
12 I represent Colonel Sadler and Michael Rose.

13 MR. JOHNSON: Admiral, my name is David
14 Johnson. I'm from Birmingham, Alabama. I
15 represent Colonel Sadler and Mr. Rose.

16 MR. BAINE: And I'm Kevin Baine from
17 Williams & Connolly, and I represent CNN, Time
18 Warner, and Time, and various individual employees
19 of CNN who have also been named in some of these
20 lawsuits.

21 MR. MITNIK: I'm Keith Mitnik, and I
22 represent General Singlaub in his suit against CNN

0014

1 and Arnett and Oliver and the rest.

2 MS. SELIGMAN: I'm Nicole Seligman from
3 Williams & Connolly, and I also represent CNN,

4 Time, Time Warner and various individual
 5 defendants.
 6 MR. GRESHAM: I'm Rudi Gresham. I am
 7 here with Admiral Moorer as his spokesperson.
 8 MR. BERMAN: I think that's everybody.
 9 And we'll be ready to start.
 10 THE WITNESS: Very good.
 11 THE VIDEOGRAPHER: The court reporter,
 12 Lee Bursten of L.A.D. Reporting, will now
 13 administer the oath to the witness.
 14 THOMAS MOORER
 15 having been duly sworn, testified as follows:
 16 EXAMINATION BY COUNSEL FOR THE PLAINTIFF
 17 VAN BUSKIRK
 18 MR. BERMAN: I can start now?
 19 THE VIDEOGRAPHER: Yes, sir.
 20 MR. BERMAN: Thank you.
 21 BY MR. BERMAN:
 22 Q Admiral, would you state your name for

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1 the record, please?
 2 A I am Thomas H. Moorer, M-O-O-R-E-R.
 3 Q And we're here this morning to talk
 4 about events related to Operation Tailwind and the
 5 CNN broadcast of June of 1998. And I'm going to
 6 ask you a few questions before we get to the meat
 7 of the matter. Would you tell us what is your
 8 age? How old are you, Admiral?
 9 A I'm 88. I will be next month.
 10 Q You'll be 88 next month?
 11 A Yes.
 12 Q Have you taken any medications that
 13 might affect your ability to understand the
 14 questions that are being asked you?
 15 A No.
 16 Q And what if any documents have you
 17 reviewed in preparation for this deposition?
 18 A Well, I've only reviewed the Department
 19 of Defense review of allegations concerning
 20 Operation Tailwind, which is right here.
 21 Q Some time ago, Admiral Moorer, I sent
 22 you a copy of an interview that CNN's

0016

1 representative April Oliver had with you, or
 2 several interviews. Do you recall, have you
 3 reviewed that in connection with this deposition?
 4 A I think so.
 5 Q Until a little bit later, all the
 6 questions I'm going to ask you relate to the
 7 situation as it was in September of 1970. You
 8 were Chairman of the Joint Chiefs of Staff at that
 9 time?
 10 A For one month.
 11 Q All right. What month was that, can you
 12 tell us?
 13 A It was -- I came in at the end of July
 14 and during the month of August. And then the
 15 operation you refer to occurred in September.
 16 Q Correct. For the benefit of the Court
 17 and the jury that will be listening to this and
 18 watching this deposition in court, Admiral, would
 19 you tell us, what is the Joint Chiefs of Staff,
 20 who are the members of that body?
 21 A Well, the members are the Chief of the
 22 Army, Chief of the Navy, and the Chief of the Air

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1 Force; and according to the law, the Commandant of
 2 the Marine Corps attends when subjects relevant to
 3 the interests of the Marine Corps are on the
 4 agenda.
 5 Then there is a Chairman appointed by
 6 the President who prepares the agenda and is
 7 obligated to keep the President as well as the
 8 Secretary of Defense informed as to the position
 9 of the Joint Chiefs of Staff on major issues.
 10 Q I take it that when you told us before

11 you were Chairman for only a month, that doesn't
 12 mean that you were a member of the Joint Chiefs
 13 for only a month?

14 A No, no. I was Chief of the Navy before
 15 that.

16 Q What are the duties and responsibilities
 17 of the Joint Chiefs of Staff?

18 A Well, the Joint Chiefs of Staff meet
 19 sometimes twice a week. But we also have met at
 20 midnight because of the time differential around
 21 the world.

22 And our duties are to review with all

□

1 the intelligence available the specific issue that
 2 has caused the crisis, together with the
 3 day-to-day meetings that we attend relative to
 4 NATO and arms control and just about every
 5 military foreign affairs issue that you can
 6 imagine, and then give our position to the
 7 Secretary of Defense, who then passes it on to the
 8 President.

9 The Chairman of the Joint Chiefs of
 10 Staff attends all National Security Council
 11 meetings. The President always asks the Chairman
 12 of the Joint Chiefs of Staff what is the position
 13 of the Joint Chiefs of Staff on this particular
 14 issue, after everyone -- after others have spoken,
 15 the Vice President, the head of the CIA, all
 16 around the group.

17 And then the Chairman of the Joint
 18 Chiefs of Staff is invited to give the position of
 19 the Joint Chiefs of Staff together with, if
 20 there's a diversion in terms of the position of a
 21 particular member of the Joint Chiefs of Staff, to
 22 advise the President, this is our position however

□

1 it's my duty to advise you that the Secretary -- I
 2 mean, that the Chief of Staff of the Army thinks
 3 this, because.

4 And then the President puts out what's
 5 called a Presidential memorandum, and it starts
 6 out "The President has decided that." And once he
 7 says that, everybody is supposed to get off their
 8 seat and go do something about it.

9 Q Admiral, what was the Studies and
 10 Observation Group, which is sometimes referred to
 11 by its acronym SOG?

12 A Well, that was a special group that was
 13 operating in Laos. It's an operational group
 14 that's -- actually its primary mission is to
 15 obtain intelligence as to location, the number of
 16 personnel, the kinds of personnel. In other
 17 words, all the information that can be obtained by
 18 infiltrating an area. And if you want to put it
 19 that way, generally they are a form of spying, of
 20 getting information. That's their main mission.

21 And naturally they encounter opposition.

22 Q Was SOG under your jurisdiction?

□

1 A It was under the jurisdiction
 2 of actually General Abrams, who was in control in
 3 the -- this was during the Vietnam War. And they
 4 reported directly to General Abrams.

5 Q And reports, those reports came to the
 6 attention of the Joint Chiefs of Staff?

7 A Well, after Abrams had received
 8 briefings and so on and consolidated the
 9 information, it goes to -- not only to the Joint
 10 Chiefs of Staff but also to the CIA, depending on
 11 what the particular information happens to be.

12 Q Admiral, you spoke about the fact that
 13 there were activities around the world that were
 14 under consideration by the Joint Chiefs. Where
 15 did the Joint Chiefs meet? Was that in
 16 Washington?

17 A Yes. We have an office, as you walk in

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18 the building, Pentagon, you turn left and go about
19 a half a block, and I'll introduce you to the
20 place where they meet.
21 Q Tell us briefly, Admiral, if you can sum
22 it up, what was your career that led to your

0021

1 becoming one of the Joint Chiefs of Staff?
2 A Well, I had -- I was at Pearl Harbor
3 when the Japanese attacked. Subsequent to that
4 time I was finally promoted to Rear Admiral, at
5 which time I was commander of the aircraft
6 carriers in the Mediterranean. I was transferred
7 then back to the Pentagon to deal with long-range
8 plans for construction of new ships of various
9 types and new weapons.
10 Subsequent to that time I was then
11 ordered out to Japan, where I was Commander of the
12 Seventh Fleet, which is a major Naval force in the
13 western Pacific. From that I was ordered to
14 Commander in Chief of the Pacific fleet, which
15 included the entire area of the Pacific Ocean.
16 Then I was Commander of the Atlantic
17 fleet, which consists of all the area in the
18 Atlantic Ocean. And at that time I was the
19 Unified Commander, so I was not only Commander of
20 the Navy but I was the Commander of the Air Force
21 and the Marines and the Army, too, in the
22 Pacific -- I mean, in the Atlantic. I'm the only

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1 Naval officer that's ever commanded both the
2 Atlantic and Pacific fleets.
3 I was then Chief of the Navy for three
4 years, at which time President Nixon transferred
5 me over to Chairman of the Joint Chiefs of Staff.
6 I stayed there for four years until 1974. And
7 after 45 years in uniform I retired.
8 Q What have your activities been since
9 retirement, Admiral, with regard to any
10 participation you may have had with public events?
11 A Well, quite a bit. I've participated in
12 public events. I'm very interested. After all,
13 my whole life has been involved in the political
14 military relationships around the world. I've
15 been in three wars. So I today have done other
16 activities. I was just selected on the 17th of
17 last month as the outstanding graduate of the U.S.
18 Naval Academy. And so I work on things of
19 interest to the Navy. I go to talk to Congressmen
20 about it. I testify before the Congress.
21 Then in addition to that I've been on
22 several boards, like the Texaco Company. So I'm a

0023

1 busy man.
2 Q I think recently you were in the news
3 with regard to the Panama Canal.
4 A I stay in the news regarding to the
5 Panama Canal. That's about the most stupid thing
6 I've ever been involved in.
7 Q General, going back now to 1970, would
8 you explain to the jury why there were United
9 States military forces in Southeast Asia in 1970?
10 A In Southeast Asia?
11 Q Well, with particular reference to
12 Vietnam and Laos.
13 A Well, of course, coming down to the
14 basic answer to your question, what we were trying
15 to do was to restore the independence of South
16 Vietnam, which was being opposed by North Vietnam.
17 And we became involved in the war called the
18 Southeast Asia War, whatever you want to call it,
19 Vietnamese War. And at that time President
20 Johnson was the President, and also he had as his
21 number one man the Secretary of Defense,
22 Mr. Macnamara.

0024

1 And the North Vietnamese were using Laos
2 as a transition called the Ho Chi Minh Trail to
3 take supplies from North Vietnam down to South
4 Vietnam. And consequently, the activities that we
5 are considering today, their mission was to
6 interrupt this transport of supplies into South
7 Vietnam to be used by the opponents to the South
8 Vietnamese government.

9 Q Was the United States at war with
10 Vietnam?

11 A Well, of course that was an issue which
12 I had many discussions with -- about with
13 Macnamara. I had many other discussions with
14 Macnamara besides that. But nevertheless, we
15 should have been at war. But that was a political
16 decision, not mine, because the Constitution as
17 well as several laws are activated the minute we
18 declare war.

19 We could be fighting with 500,000 men,
20 which we were doing in South Vietnam, but if we
21 don't declare war, it's not a war. As a matter of
22 fact, when I was commander of the Pacific fleet, I

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1 was living in Honolulu. I made a speech down at
2 the Royal Hawaiian Hotel, and made -- used the
3 phrase, "this dirty little war."

4 And before I could get back to my
5 headquarters I got a telephone call from Macnamara
6 and his public affairs officer saying, don't ever
7 use that term, because it's not a war. And I
8 said, well, get in the airplane and come out here
9 and we'll show you a war. So that was never --
10 you're right, the answer to your question, the
11 long answer is no, we did not declare war.

12 Q We were not at war with North Vietnam
13 and we were not at war with Laos, is that correct?

14 A Yes. We weren't at war with Laos. And
15 of course Laos is a mixed-up country. I don't
16 know if you've ever been there, but you would
17 never go again. And they had -- the North
18 Vietnamese were using Laos as -- not only as a
19 transition area down to Ho Chi Minh Trail, but
20 also it involved the relationship with Cambodia.

21 Q If we were not at war with Laos, by what
22 right did United States military forces enter into

0026

1 Laos?

2 A Well, because the Laotians did not have
3 the capability of stopping the Ho Chi Minh Trail
4 transition. And as a matter of fact, to our
5 knowledge, in Cambodia at one time -- I got in an
6 airplane and I went to the capital of Laos, Luang
7 Prabang, and had dinner with the President of
8 Laos, as well as the American ambassador that was
9 in -- assigned to Laos, and I told them that we
10 wanted to conduct operations in Laos to interdict
11 this flow of material that was coming out in large
12 quantities. We bombed it, we did everything to
13 it.

14 We wanted to have the South Vietnamese
15 use their own forces to interdict. And they were
16 feeling in Washington that we couldn't -- did not
17 have permission to do that. And the President
18 told me that he would give permission, assuming
19 that we exercised every precaution we could in
20 order to make certain that the damage was at a
21 minimum.

22 And so we did have authority to go into

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1 Laos.

2 Q You had authority given by the Laotian
3 authorities?

4 A Yes.

5 Q In September of 1970, did you know about
6 Operation Tailwind?

7 A Well, I only knew that the SOG forces

8 were busy in the gathering of intelligence and in
 9 interdiction. Now, I did not -- I never saw an
 10 operation order or an operation report after
 11 action. I did not see that as a matter of day to
 12 day, although nevertheless I got over a hundred
 13 messages a day as Chairman of the Joint Chiefs of
 14 Staff.

15 I had six officers, and each one of them
 16 had a different area. And they were -- their task
 17 was to take these messages and divide them up
 18 according to these NATO and arms control and all
 19 of the things we dealt with, and then give me the
 20 important messages.

21 So I knew that the SOG forces were
 22 active in Laos. But I primarily knew why, namely

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1 to assist in the interdiction of the Ho Chi Minh
 2 Trail.

3 Q What was the policy of the United States
 4 military forces as you knew it with regard to the
 5 use of nerve gas? And when I use the term "nerve
 6 gas," I'm using it in the manner in which it was
 7 used in the CNN broadcast on Operation Tailwind,
 8 that is, sarin gas or GBU 15, or sometimes
 9 referred to as just GB.

10 A Well, the sarin gas which Mrs. Oliver
 11 talked about ad infinitum, there was none in the
 12 Vietnamese area, although some people have --
 13 there have more or less been allegations to that
 14 effect. The gas was stowed in Okinawa some time
 15 away, and it was put over there not for the
 16 Vietnamese particularly.

17 But during the time that the Vietnam War
 18 was going on, there were always two concerns in
 19 the background of those that were deciding policy.
 20 And they were, one, what are the Chinese going to
 21 do, and are they coming in to assist the North
 22 Vietnamese, or whether the Russians were going to

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1 do it.

2 Now, the Russians were giving the North
 3 Vietnamese large quantities of supplies. And as a
 4 matter of fact they gave them the airplanes they
 5 had, and they were allowed, until we got
 6 permission to mine Haifong Harbor, to bring in
 7 large quantities of supplies into Haifong.

8 And so the question was always how many
 9 Russians are going to participate. As you know,
 10 at the outset of the Vietnam War, President
 11 Johnson made the point, he starts out by saying,
 12 we seek no wider war. Then he said, we're not
 13 going to overthrow Ho Chi Minh. Then he said,
 14 we're not going to cross the DMZ. And so on.

15 You know, it was a war that -- you
 16 either get into a war if the United States is
 17 threatened, or you stay out of the war. It's not
 18 right to kill American boys if we're not defending
 19 our country. That's my position.

20 Q Were there Russian personnel involved on
 21 the side of the North Vietnamese?

22 A Yes, in the sense that the Russians were

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1 supplying the surface to air missiles, the SA 2
 2 missile, with which they were shooting down our
 3 aircraft, and the Russians combined with Jane
 4 Fonda were sitting there cheering the North
 5 Vietnamese on. And they didn't know how to
 6 operate.

7 They had to teach the North Vietnamese
 8 how to adjust the missiles and how to operate the
 9 missiles. And there were Russians there, if
 10 that's your question. The Russians were not in
 11 air to air combat -- I mean in air to air combat.
 12 Neither were they in infantry combat, trying to
 13 stick a bayonet in somebody's belly. But they
 14 were there in a technical sense, advising the

15 North Vietnamese.
 16 Q To get back to my former question,
 17 Admiral Moorer, was there a policy of the United
 18 States military forces with regard to the use of
 19 nerve gas?
 20 A Yes.
 21 Q What was that policy?
 22 A Well, the policy, as you know, we had in

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1 a treaty floating, that had been signed by
 2 President Nixon, I think, but it was not actually
 3 approved by the Senate yet, but nevertheless, we
 4 had no plan to use nerve gas. It wasn't
 5 necessary. We used what we call -- what the
 6 police call tear gas, and they used quite a bit of
 7 it, in terms of trying to capture a criminal, if
 8 he's jeopardizing the lives of other people.
 9 When we rescued large numbers of
 10 soldiers that were isolated in the jungle, and we
 11 rescued them, and frequently we did use tear gas
 12 to clear the area until we pull the wounded or
 13 whatever out of the position he was in. So yes,
 14 we used tear gas. But we never used poison gas.
 15 Q The tear gas, was that a lethal gas?
 16 A What, tear gas?
 17 Q Tear gas, yes.
 18 A No. The police use it every day.
 19 Q General -- I mean Admiral, what was the
 20 policy of the U.S. military forces as you knew it
 21 with regard to American defectors?
 22 A Well, defectors, the policy so far as I

0032

1 knew, and as a matter of fact there were very few
 2 defectors, I think there were two, finally, as
 3 reported in this document right here, but the
 4 policy was to --
 5 MR. SIMMONS: Let the record reflect
 6 that the Admiral pointed to a 1998 report by the
 7 Pentagon in connection with this case.
 8 MR. BERMAN: Would you please -- we
 9 would appreciate no interruptions during the
 10 deposition. I was going to ask him what it was he
 11 pointed to.
 12 MR. SIMMONS: Very well.
 13 BY MR. BERMAN:
 14 Q Would you continue your answer, Admiral?
 15 A Repeat your question.
 16 Q What was the policy of the military
 17 forces of the United States with regard to
 18 American defectors?
 19 A Well, if the defector was identified and
 20 known, they were supposed to bring them back to
 21 their command. And then they would -- which
 22 happened to one marine, they get court-martialed

0033

1 and so on.
 2 Q Was it the policy of the United States
 3 military forces to kill American defectors?
 4 A No.
 5 Q You just indicated a document you
 6 referred to a minute ago, Admiral Moorer. What
 7 was that document you put your hand on just now?
 8 A It says "Department of Defense, Review
 9 of Allegations Concerning Operation Tailwind."
 10 Q Were members of the United States
 11 military forces offered any reward or incentive to
 12 bring in American defectors?
 13 A Not to my knowledge. It's not like a --
 14 catching a criminal, Jesse James or something, and
 15 bringing him into the police and getting \$50. No.
 16 Q No bounties?
 17 A No.
 18 Q I want to turn now to the events of
 19 1998, with regard to the CNN Newsstand broadcast
 20 on June 7, 1998, on the subject of Operation
 21 Tailwind. Were you interviewed by representatives

22 of CNN?

1 A I don't think I was interviewed by
2 representatives of CNN. I was represented by
3 Ms. Oliver there.
4 Q Well, I believe Ms. Oliver is an
5 employee of CNN or was an employee of CNN.
6 A Well, I didn't look at it that way.
7 Okay.
8 Q For how many hours did those interviews
9 go on?
10 A I think it was seven or eight, something
11 like that. She came around to my building. And
12 then one evening when I thought this was all over,
13 I go down below in the lobby, and I lived in an
14 apartment house, and there was Mrs. Oliver, and a
15 man named Jack Smith.
16 I didn't know they were coming. I
17 didn't invite them to come. Why they came without
18 telling me I thought was a breach of etiquette, to
19 say the least. But nevertheless they were there,
20 and I talked to them. And so if you're saying
21 that she is -- I thought that she was suing CNN.
22 But if she was an agent of CNN, I talked to her,

0034

1 you're right.
2 Q Where did the interviews take place?
3 A Right there in the building I lived in.
4 Q Where did you live?
5 A 9707 Old Georgetown Road, in a place
6 called Maplewood. And I moved there after I
7 retired, because no mowing and no cooking.
8 Q Is that where you live today, Admiral?
9 A Yes.
10 Q So the interviews took place at your
11 home?
12 A Yes. It wasn't any interview. It was
13 day after day after -- it was several hours. She
14 would come and go. I was just trying to help her
15 out. She was pregnant. And she called me on the
16 phone and she asked me, could you talk to me. And
17 I said, yes, I'll be glad to help you. And that
18 was a mistake on my part.
19 Q What was the state of your health at
20 that time?
21 A My health is in excellent condition, it
22 always has been. I'm lucky. I'm 88. I'm just

0035

301 581 0980

1 getting wound up.
2 Q Admiral, I'm going to show you a copy of
3 the document that I've sent to you previously,
4 which was a transcript of the interview,
5 interviews that were carried on by April Oliver.
6 These transcripts were furnished to me by
7 attorneys for the defendant CNN. I'll ask if you
8 can identify it. Have you seen that before?
9 A I think so. Have you got any water
10 around here?
11 MR. JOHNSON: I'll see if I can't get
12 you some.
13 MR. BERMAN: I would like this
14 transcript to be marked as an exhibit in this
15 deposition. This will be marked Exhibit A.
16 (Exhibit Number A was marked for
17 identification and was retained by counsel.)
18 BY MR. BERMAN:
19 Q Admiral, I'm going to read you an
20 excerpt from the transcript of your interview by
21 Mrs. Oliver.
22 MR. KAPLAN: Can you give us a page?

0036

1 MR. BERMAN: Yes. I'm referring to the
2 portion labeled beta 4, page 6.
3 MR. BAINE: Beta 14.
4 MR. BERMAN: I'm sorry, beta 14, page 6.

0037

5 BY MR. BERMAN:

6 Q Ms. Oliver asked you, "Now, of course,
7 the reason we are interested in Tailwind," do you
8 see that?

9 A Not yet. Oh, yes. Now I see it.
10 Right.

11 Q "Of course, the reason we are interested
12 in Tailwind is that we have been told by a lot of
13 people now that it was the first time that the
14 U.S., whether it was CIA or the Air Force or the
15 SOG guys I'm not entirely clear, but it was the
16 first time that the U.S. ever used what is known
17 as a lethal nerve gas in combat. Are you -- how
18 much awareness do you have of this?"

19 You answered, "None."

20 A That's correct. That's the truth.

21 Q And your answer, you continued by
22 saying, "And what you should do when you make a

0038

1 statement like that is get -- you said you've been
2 told by people. So get all those people in front
3 of this camera." And Ms. Oliver said, "We have."
4 And you said, "And let them tell you that that was
5 the case." And Ms. Oliver said, "We have gotten
6 that." And you then replied, "But I don't have
7 the information to confirm what they said."

8 Admiral, did you then believe that
9 Mrs. Oliver did have information from other
10 sources that some U.S. military force had used
11 lethal nerve gas in the Tailwind operation?

12 A No. And what I thought about Ms. Oliver
13 is that she had and others there that --
14 Mr. Smith, for instance, that they had a very firm
15 conviction that that was a fact. And consequently
16 I told her she was working the problem backwards.
17 She was starting with a conviction and then
18 attempting to get the information so she could
19 then take steps like this and prove it.

20 So the facts are, there was no gas or
21 poison gas like sarin used in that operation. And
22 this book right here from the Secretary of Defense

0039

1 says so.

2 Q Admiral, I'm not asking you whether --
3 MR. SIMMONS: Excuse me. Could we
4 identify which document he referred to?

5 MR. BERMAN: Again, he referred to the
6 same document.

7 THE WITNESS: I told you that one
8 before. It's "Department of Defense Review of
9 Allegations Concerning Operation Tailwind."

10 BY MR. BERMAN:

11 Q Admiral, I didn't ask you whether the
12 armed forces used nerve gas. I'm asking you
13 whether as a result of what Ms. Oliver told you
14 when she said she had heard it from a lot of other
15 people, whether you then believed that the
16 military forces had used nerve gas.

17 A There it says "No," and I just said
18 none.

19 Q All right. I'm going to show you now an
20 excerpt from the videotape of the broadcast.
21 Would you turn and --

22 (Whereupon a videotape was shown.)

0040

1 BY MR. BERMAN:

2 Q Admiral, you just heard the voiceover
3 statement that you confirmed that sarin was used
4 in Tailwind.

5 A No, I did not confirm it. I said
6 "None." And I must -- play that all over, now you
7 show me where I confirmed it. I mean, the facts
8 are, I did not confirm it. I never confirmed it.
9 The Secretary of Defense says I didn't confirm it.
10 And that's the whole point. What they did in this
11 particular film was they had a picture of me, and

12 then somebody came along, I guess it was Arnett,
 13 and said -- quoted what I said. Instead of
 14 letting me say it, he said it. And so it was
 15 hearsay.
 16 And so I think that that was -- whoever
 17 put this film together was trying to sandbag me.
 18 And the facts are there was no sarin gas in
 19 Southeast Asia.
 20 Q Admiral, I'm going to read you now some
 21 other excerpts from the interview that we've
 22 referred to, Exhibit A. If you look at beta 14,

0041

1 page 7, the next page, at the top of the page
 2 Ms. Oliver said, "These men went into battle very
 3 well prepared. It was not a casual kind of
 4 preparation at all. They were issued the most
 5 cutting edge gas masks available that would
 6 protect against nerve gas. They were issued
 7 something called atropine, which is of course a
 8 nerve gas antidote."
 9 And then I would like to turn to beta
 10 15, page 2. If you'll turn over three more pages,
 11 at the bottom of the page you'll see the beta 15,
 12 page 2.

13 A Page what?
 14 Q 2. Page 2.
 15 A Yes, okay.
 16 Q And Ms. Oliver said, the second time
 17 Ms. Oliver is referred to on that page, one of
 18 the -- the second sentence of that paragraph, "I
 19 mean, these men were briefed beforehand that a
 20 powerful gas would be at their disposal. They
 21 were given the atropine. They were given the
 22 masks. And the gas was put on standby at NKP at

0042

1 their disposal."
 2 NKP is Okinawa?
 3 A That's right. And NKP, the gas was
 4 removed, because -- when we made that agreement
 5 with the Japanese to move back into Okinawa.
 6 Q And then if you look down to the next
 7 time Ms. Oliver's name appears, she said, "And if,
 8 as I believe I can prove, CBU 15 was used in
 9 Tailwind, what would be the next step? I mean,
 10 would CBU be used again?" And then on page 3, the
 11 next page, Admiral, she said, "Well, we've been
 12 told by four different SOG men that the weapon was
 13 based at NKP." That's the first time her name
 14 appears on the page.
 15 Do you see that?
 16 A Yes, I see it.
 17 Q And that they were loaded on A1Es.
 18 Those are helicopters, Admiral?
 19 A No. That's a dive bomber.
 20 Q Dive bombers. And flown in support of
 21 Tailwind.
 22 A Now, I'm not saying that the A1 wasn't

0043

1 flown in support of Tailwind. I'm saying that the
 2 A1 had no sarin gas aboard. That's what I'm
 3 saying.
 4 Q All right. Now, if you'll turn to beta
 5 16, that's several pages further on, Admiral, page
 6 2 of beta 16.
 7 A Yes.
 8 Q The top of the page, Ms. Oliver said,
 9 "There was a great big briefing in Saigon after
 10 Tailwind about three weeks afterward, and they
 11 brought a young, you know, captain down and a
 12 young lieutenant down to brief General Abrams on
 13 just what happened in Tailwind. Are you aware of
 14 this briefing?" And you answered "No."
 15 A That's right.
 16 Q And she went on to say, "Well, there
 17 were 58 stars in the room, and it occurred at a
 18 place called The Wat. And it was a very, you

19 know, big deal briefing. And one of the young men
20 who was interviewed talked about CBU, and was,
21 quote, unquote, accurate and effective every time
22 it was brought in, end quote."

0044

1 Admiral, all of those statements by
2 Ms. Oliver were made to you before she asked you
3 the next question that I want to inquire about
4 now, on beta 16, on page 4.

5 A Yes.
6 Q And I believe I have that on the video.
7 (Whereupon, a videotape was shown.)

8 BY MR. BERMAN:

9 Q Now, Admiral Moorer, you just heard
10 yourself, when she asked you, "Isn't it fair to
11 say in light of all this, everything we've talked
12 about, that Tailwind proved that CBU 15 GB is an
13 effective weapon," and you answered "Yes, I
14 think -- but that was already known, otherwise it
15 never would have been manufactured."

16 Admiral, Ms. Oliver's question asking
17 you if Tailwind didn't prove it was an effective
18 weapon, that question necessarily assumed, did it
19 not, that CBU 15 GB had actually been used in
20 Tailwind, and your answer, "Yes, I think -- but I
21 think that was already known," that answer could
22 be taken to mean that Tailwind did prove that CBU

0045

1 GB 15 is an effective weapon.

2 When she asked you that question,
3 Admiral, did you believe that she did have
4 reliable information from other sources to the
5 effect that U.S. military forces had used nerve
6 gas in Operation Tailwind?

7 A No. And I was really answering the
8 question if I believed it was an effective weapon.
9 And I said that if it wasn't an effective weapon,
10 it would have never been manufactured and never
11 been stockpiled. That's what I was telling her.
12 I wasn't denying that it had been stockpiled.

13 Q Was it your intention, Admiral, to
14 confirm that nerve gas was used in Operation
15 Tailwind?

16 A No. I just read you, "None," right at
17 the beginning of our discussion. And it said none
18 in here.

19 Q Admiral, in another section of the
20 broadcast, and I don't have it on this tape, I
21 have it on another tape, there was a voiceover
22 statement that Admiral Moorer confirmed -- or

0046

1 rather, excuse me, that Admiral Moorer
2 acknowledged in an off-camera interview that
3 Tailwind's target was indeed defectors.

4 Did you make such an acknowledgment?

5 A I think you were quoting Arnett.

6 Q Yes.

7 A And he -- what they did was they took my
8 picture and asked me one question, then they
9 put -- dub in Arnett's voice. And what they were
10 doing then is presenting his say. I mean, they
11 didn't say -- they didn't have me there saying it.
12 They said I said it.

13 And consequently the facts are that I
14 was -- as I told you a while ago, that of course
15 there was -- we don't run around deploying all
16 over the world ineffective weapons. The fact that
17 a weapon is deployed overseas means it's
18 effective, or we wouldn't have it in the first
19 place. That was kind of a dumb question, in my
20 view.

21 Q And once more, Admiral, did you
22 acknowledge, as Arnett said you acknowledged, that

0047

1 Tailwind's target was defectors?

2 A No. And I told Mrs. Oliver twice that
3 if I had known Arnett was going to have anything
4 to do with this operation of her interview, I
5 would have never shown up, and I wouldn't have
6 said one word to her.

7 Q Admiral, referring to the briefing that
8 Ms. Oliver described to you as having taken place
9 in Saigon three weeks after the operation, do you
10 know the identity of the young captain that she
11 referred to?

12 A I guess she's talking about this man
13 that -- Oliver is always bringing up his book.
14 And I never seen the book. I never heard of him.
15 And he reports, that I told you a while ago, to
16 General Abrams, and you were talking about a
17 briefing he gave General Abrams in Saigon. And I
18 think that you're talking about Lieutenant
19 Buskirk.

20 And I wasn't going to answer what he
21 said, since I didn't know what he said.

22 Q The author of the book you've just

0048

1 referred to, was that John Plaster?

2 A No. The book I was talking to was
3 written by Buskirk.

4 Q All right. You don't know the identity
5 of the young captain you referred to?

6 A Well, I assume Buskirk was -- I don't
7 know if he was a captain or a lieutenant or --

8 Q I believe he was the lieutenant, young
9 lieutenant you referred to.

10 A I don't know of any young captains that
11 briefed Abrams. I know of a lieutenant that
12 briefed Abrams.

13 Q I would like to read you one excerpt
14 from the interview. On beta 18, at page 1, that's
15 near the end. Way in the back.

16 MR. NYKODYM: What Bates number is that?

17 CO --

18 MR. BERMAN: Page CO 1129.

19 MR. NYKODYM: Thank you, sir.

20 BY MR. BERMAN:

21 Q Near the upper half of the page, you see
22 the second -- the first time Ms. Oliver's name

0049

1 appears there, she asked you, "Was this the only
2 time that you personally know of that GB or nerve
3 gas was used?" And you answered, "Well, mainly I
4 know about it because of what you told me."

5 A That's right. That's the truth. And
6 she was bringing it up all the time.

7 Q Except for what she told you, did you
8 have any knowledge that nerve gas had been used in
9 Operation Tailwind?

10 A No. Of course not. Because it wasn't
11 used.

12 Q Did you rely on what she told you in
13 answering her questions in the manner in which you
14 did?

15 A No.

16 Q After the CNN broadcast, and there was a
17 storm of protest from the Department of Defense
18 and the Special Forces Association and others, CNN
19 obtained what they called an independent
20 investigation by David Kohler and Floyd Abrams.
21 And on June 2nd of 1988, in his report, Abrams
22 said this. He said -- this is not in front of

0050

1 you, Admiral.

2 A This is, right here. Go ahead.

3 Q He said, "Admiral Moorer will be 87 next
4 month. He lives in an assisted care retirement
5 home. He was interviewed on four occasions for a
6 total of over seven hours. Though a review of the
7 outtakes of the broadcast demonstrates that his
8 memory remains satisfactory, his responses are

9 often cast in hypothetical terms.
 10 "CNN itself ceased calling on Admiral
 11 Moorer to comment on ongoing issues in the early
 12 1990s, and CNN's Pentagon correspondent raised
 13 this credibility issue before the broadcast.
 14 Other reporters we interviewed who covered the
 15 Defense Department have also declined to rely upon
 16 him as a source for the past several years."
 17 A I know. And of course that's totally
 18 incorrect. As a matter of fact I play golf all
 19 the time. I'm going to South Carolina, quail
 20 shooting, in February. I'm on the move all the
 21 time. And anybody that thinks I'm sick, I'm ready
 22 to wrestle them any time.

0051

1 Q Do you know why CNN discredited you in
 2 that way?
 3 MR. BAINE: Objection.
 4 A No, I never know what CNN or what
 5 anybody in the media is going to do. The media
 6 has got a double standard, from my point of view.
 7 And they say one thing one time and one thing the
 8 next. If that serves their purpose to say that
 9 about me, well, we have freedom of speech, and
 10 they can say what they damn please.
 11 MR. BAINE: I'm not sure that the court
 12 reporter noted my objection to the form of that
 13 question. I would like to make it.
 14 MR. SIMMONS: I'm not going to raise
 15 form objections. If someone else objects, I'll
 16 rely upon their objections as well.
 17 BY MR. BERMAN:
 18 Q Did you make a claim against CNN for
 19 discrediting you?
 20 A What?
 21 Q Did you make a claim against CNN for
 22 discrediting you?

0052

1 A No. I didn't make a claim. CNN, I got
 2 a few dollars as expense money, that's all. I
 3 never sued CNN or claimed any large amount of
 4 money or anything like that. I just think they
 5 put me to a lot of trouble for nothing. For
 6 telling the truth.
 7 MR. BERMAN: Admiral, I thank you for
 8 assisting us and for responding to these
 9 questions. And I have no further questions at
 10 this time. Mr. Baine, representing CNN, will have
 11 some questions for you.
 12 THE WITNESS: You're representing
 13 Ms. Oliver?
 14 MR. BERMAN: No, I'm representing van
 15 Buskirk.
 16 THE WITNESS: Van Buskirk. Okay.
 17 That's the young man I'm talking about.
 18 MR. BERMAN: Right.
 19 MR. BAINE: Let's take a quick break. I
 20 think it would be better if I sat in that chair so
 21 the Admiral would be more comfortable.
 22 THE VIDEOGRAPHER: We're going off the

0053

1 record. The time is 10:01:43.
 2 (Recess.)
 3 THE VIDEOGRAPHER: We're back on the
 4 record. The time is 10:08:19.
 5 EXAMINATION BY COUNSEL FOR THE DEFENDANTS CNN,
 6 TIME, TIME WARNER, AND PETER ARNETT
 7 BY MR. BAINE:
 8 Q Admiral Moorer, again, I'm Kevin Baine,
 9 and I represent CNN, Time, and Time Warner, and
 10 some of the employees of CNN who have been sued in
 11 some of these actions. As we were explaining at
 12 the break, I do not represent April Oliver. She
 13 is separately represented here today.
 14 MR. SIMMONS: And she is not a CNN
 15 employee today.

16 THE WITNESS: What's that?
 17 MR. SIMMONS: April Oliver is not an
 18 employee of CNN as we sit here today.
 19 THE WITNESS: I wasn't aware of that.
 20 BY MR. BAINE:
 21 Q Now, Admiral, I have just a couple of
 22 questions to follow up on the questions Mr. Berman

0054

1 asked you. You weren't present during Operation
 2 Tailwind, were you?
 3 A Certainly not.
 4 Q And you weren't in charge of that
 5 operation, you didn't direct it?
 6 A No. I didn't even know about the
 7 details of it, and I wasn't supposed to.
 8 Q Now, sometime after the CNN broadcast
 9 came out, there were additional news articles, and
 10 in one of those articles that appeared in the
 11 Associated Press, you were reported to have said
 12 the following. I want to know whether this is
 13 accurate, referring to sarin gas. "I don't know
 14 that they used it, I don't know that they didn't
 15 use it."
 16 Would that be correct?
 17 A I don't have any proof, that's right.
 18 Q So you don't have personal knowledge
 19 yourself that it was used or that it wasn't used?
 20 A I already said in connection with the
 21 answer to that question that I never saw an
 22 operation order or an operation report. And until

0055

1 I get a report of operations, I don't know what
 2 happened.
 3 At the end of World War II, I was in a
 4 group that was sent to Japan with subpoena power.
 5 We had the authority to subpoena any Japanese,
 6 including the prime minister. And we found in a
 7 cave all of the Japanese battle reports. And up
 8 until that time when we had a chance to read those
 9 battle reports, we didn't know everything that
 10 happened.
 11 Q And so when we're talking about whether
 12 or not sarin gas was used on Tailwind, I take it
 13 your position ultimately is, because you never saw
 14 a document that said that it was used, you don't
 15 have personal knowledge that it was used, and you
 16 don't know that it wasn't used?
 17 A Exactly. And I would have been very
 18 upset and raised hell if it had've been used and I
 19 wasn't told about it.
 20 Q Now, it is a fact, is it not, that there
 21 was a weapon that the United States made that
 22 contained sarin gas?

0056

1 A Of course.
 2 Q And you said that was stored in Okinawa?
 3 A That's right.
 4 Q And that weapon, I take it, was
 5 available if the proper authorization had been
 6 issued for someone to use it, would that be true?
 7 A Sure. That would be always -- it's just
 8 like a nuclear bomb. We've got nuclear weapons
 9 stored around hither and there. But they never
 10 used the weapon until -- and I'm glad you brought
 11 that up. Now, we never used that weapon until we
 12 need it. When Mr. Truman authorized the use of
 13 nuclear bombs in Hiroshima and Nagasaki, it saved
 14 hundreds of thousands of lives of both American
 15 boys and Japanese people.
 16 And so that was in my view a case where
 17 a weapon of heavy damage capability was used to
 18 save American lives. And that was what I meant by
 19 my statement.
 20 Q And in fact if sarin gas had been
 21 necessary to save American lives, you wouldn't
 22 have had any problem with using it for that

0057

1 purpose?

2 A No. But I would have known about it.
3 The point is that permission would have to be
4 gained at the very -- from the Commander in Chief
5 before anybody could use the gas. And it would
6 have been a big surprise to me if the request was
7 submitted and approved from Washington and I
8 didn't know about it.

9 Q During your interviews with April
10 Oliver, I think on several occasions you made
11 essentially this point, that you would have had no
12 difficulty using a weapon such as sarin if it was
13 necessary to save American lives.

14 A Of course.

15 Q Treaty or no treaty.

16 A I've been in three wars, buddy, and when
17 I was at Pearl Harbor, and I took -- I pulled 300
18 boys dead out of the water there, and I've seen
19 plenty of people like that. I am trying and have
20 tried all my career to minimize and save the lives
21 of American boys. And that's what I meant by that
22 statement. And if a case came that I could save

0058

1 American boys' lives, I would use anything to put
2 a stop to their death.

3 That's the point I'm trying to make.

4 Q Just hold with me for one second. I
5 want to see if I can find a portion of these
6 interviews I would like to show to you.

7 MR. BAINE: Why don't we go off the
8 record for a second while I search for this.

9 THE VIDEOGRAPHER: Going off the record.
10 The time is 10:14:08.

11 (Discussion off record.)

12 THE VIDEOGRAPHER: We're back on the
13 record. The time is 10:14:55.

14 BY MR. BAINE:

15 Q Admiral Moorer, you still have in front
16 of you Exhibit A which is the transcribed
17 interview. And I wanted to direct your attention
18 to a portion of that. If you show it to me I can
19 find it for you, perhaps. Let me see if I can
20 give you the right page.

21 At the very bottom of the page that I'm
22 showing you, which is beta 14, at page 7,

0059

1 Mr. Berman read to you a couple of questions and
2 answers, but he skipped one question and one
3 answer. I just wanted to read that question and
4 answer to you.

5 This is right after you say, "But I
6 don't have the information to confirm what they
7 said." Ms. Oliver's next question was, referring
8 to the use of sarin, "However, it would not
9 surprise you?" And your answer was, on the next
10 page, "Well, I would expect them to use whatever
11 was necessary to achieve their mission in an
12 emergency."

13 Do you see that?

14 A Yes. That's a matter of survival.

15 Q And do you recall that there was another
16 occasion when you --

17 A Before you leave that, though, I want to
18 point out to you once again that -- how much would
19 have had to go on before they could have used that
20 gas. There would've had to have been a message
21 from the man on the spot, through Abrams, on up
22 through the Joint Chiefs of Staff, to the

0060

1 President of the United States. He would have to
2 approve it. It would have to go back down.

3 They would have to send a plane up to
4 Okinawa, pick up the weapons, bring them down to a
5 local field, and so on. So it's almost impossible

6 to keep that a secret if it was put in position to
7 be used.

8 Q I would like to read to you from some
9 notes that Ms. Oliver made of another interview
10 that she had with you and ask you whether this is
11 an accurate note of what you told her.

12 A Where is it?

13 Q This is not in front of you. I'm going
14 to read something to you, okay? These are notes
15 that Ms. Oliver made of a previous interview with
16 you, the very first time she spoke to you, when it
17 wasn't on camera. And you were asked this
18 question, and she has notes that this is your
19 answer. I want you to listen carefully, okay?

20 MR. DUNCAN: Could we have a copy of
21 those notes?

22 MR. BAINE: I don't know if you have a

0061

1 copy of those notes. I will be happy to show them
2 to you.

3 MR. DUNCAN: We need a copy of those
4 notes.

5 BY MR. BAINE:

6 Q "QUESTION: So you are aware sarin was
7 used?

8 "ANSWER: I am not confirming for you
9 that it was used. You have told me that. But let
10 me put it this way. It does not surprise me. In
11 an operation of this kind you must make certain
12 that your men are as well equipped for defensive
13 purposes as possible. I don't care if that treaty
14 is ratified or not."

15 Does that sound like an answer you
16 probably gave Ms. Oliver?

17 A Yes. I mean, look. I come back to --
18 I've been shot down in airplanes. I've been
19 picked up by a ship that was sinking, by -- after
20 that. And I'm imbued with a motivation to
21 survive. And so you're asking me survivability
22 question. And for that reason I say, you do

0062

1 anything to survive. And anybody that does that
2 is bent on suicide.

3 Q At another time during your on-camera
4 interview with April Oliver, and this is reflected
5 on what's in front of you, it's at beta 15, page
6 7, and if you hand that to me I can find it for
7 you. Maybe I can help you.

8 MR. DUNCAN: That's CL 1111.

9 THE WITNESS: Oh, you've got a secret
10 number here. Okay. Go ahead.

11 BY MR. BAINE:

12 Q In the middle of that page, after
13 Ms. Oliver tells you of some information that she
14 had received, why don't I read the entire question
15 and answer to you. This would be the second time
16 that Ms. Oliver's name appears on this page.

17 She says, "Okay. We were told of at
18 least one more time that SOG used it." And I
19 think that it's clear we're talking about sarin
20 gas here. "In January of 1971 there was a
21 company, a small recon team that got trapped and
22 was surrounded. And again, CBU 15, which the men

0063

1 called sleeping gas, was brought in. A bomb
2 damage assessment took place, and then an after
3 action report.

4 "It was written up as being there's no
5 question but that this, this CBU 15 sleeping gas,
6 proved crucial in terms of getting Americans out
7 alive. This would be about three months after
8 Tailwind. So I have two instances at least where
9 the Special Forces teams had access to this weapon
10 and have saved American lives."

11 And your response was, "Well, if they
12 have told you that, it's probably true. I was

13 sitting in the Pentagon with 560,000 men over
 14 there, and I'm the first to admit I didn't know
 15 what each and every one of them were doing at the
 16 time."

17 Do you see that question and answer on
 18 that transcript?

19 A Yes. I see that. But I want to point
 20 out once more that if that sarin gas had've been
 21 used in this fashion, all of the American forces
 22 that were participating would be dead. If

0064

1 you start -- sarin covers so much territory. And
 2 as I read this description of what happened, they
 3 obviously had contact with that gas. That gas
 4 attacks the skin. A gas mask is useless against
 5 sarin.

6 And so none of them -- all of them were
 7 wounded. But none of them died. And therefore
 8 they were not exposed to sarin.

9 Q Did you learn more about sarin gas after
 10 this broadcast than you knew about it before the
 11 broadcast? In other words, did you learn some
 12 more additional information about sarin gas and
 13 these weapons through the Department of Defense
 14 report that you've referred to?

15 A Well, of course, I've learned more
 16 detail about it. But I knew about its existence.
 17 I knew about the existence of all -- every weapon,
 18 and where it was. I had that in my files. And so
 19 of course I knew what it would do. But I do know
 20 and have had confirmed that it will enter your
 21 skin instead of your lungs.

22 Q Let me refer to a couple of statements

0065

1 that were attributed to you in other publications
 2 after the CNN and Time reports. I have copies of
 3 these here. I would be happy to show them to you.
 4 But I'll read them to you first and just ask you
 5 whether these statements attributed to you were
 6 correctly attributed to you, okay?

7 A Okay.

8 Q The first is an article in the Florida
 9 Times Union on -- looks like the date of this was
 10 June 10th, 1998. And I'll make copies of these
 11 for you all later on.

12 MR. DUNCAN: If you're going to refer to
 13 them, we really need to make them a part of this
 14 deposition, I think.

15 MR. BAINE: I don't mind doing that.
 16 Let's make this -- we'll just make it Deposition
 17 Exhibit B. That would be fine.

18 MR. DUNCAN: And why don't you go back
 19 and make that note that you referred to earlier an
 20 exhibit as well.

21 MR. BAINE: Okay. I don't mind doing
 22 that. Actually I do. That's a longer thing.

0066

1 We'll do that later, okay?

2 (Exhibit Number B was marked for
 3 identification and was retained by counsel.)
 4 BY MR. BAINE:

5 Q I'll read this to you, and I've
 6 highlighted the portion I'm going to read. It
 7 says, "Just the same, Moorner said he believed the
 8 stories of the soldiers who were involved in the
 9 operation. The soldiers said nerve gas was
 10 dropped from aircraft. 'They would have no motive
 11 for trying to make up a cock and bull story, and I
 12 believe what they said,' Moorner said."

13 Do you see that at the bottom of that
 14 page?

15 A Yes. But the point is that a soldier's
 16 out in the jungle fighting. And he -- some kind
 17 of gas is dropped. And so he probably thought he
 18 would say nerve gas or any kind of debilitating
 19 gas or whatever. The point is that that

20 soldier -- if that had been sarin gas, the point
 21 I'm trying to make is, if that had've been sarin
 22 gas that he detected, he would have never been

0067

1 around to tell -- to make that statement.
 2 So the mere fact that he made the
 3 statement proves that it was not sarin gas.
 4 Otherwise he would have been dead and wouldn't
 5 have said a word.
 6 Q Well, there are ways to protect yourself
 7 from these gases, are there not? You can use
 8 various protective gear, can you not?
 9 A Yes, but the protective gear generally
 10 speaking is -- any time you get into a situation
 11 where you use protective gear to protect your
 12 skin, then you're wearing heavy, cumbersome
 13 overalls that protect your entire body, and you
 14 can't do very much fighting. So to my knowledge
 15 they didn't wear -- they had gas masks, yes, and
 16 the gas masks would protect against breathing of
 17 various kinds of gas.
 18 But to -- so far as sarin penetrating
 19 the body, it doesn't rely on breathing. It's any
 20 part of your skin it penetrates.
 21 Q At the time of the interview by April
 22 Oliver, and I understand you have testified that

0068

1 you didn't confirm the use of sarin gas, and you
 2 didn't have any knowledge one way or the other,
 3 but you did conduct a rather long, elaborate
 4 interview with Ms. Oliver in which the assumption
 5 at the very least appears to have been made that
 6 sarin was used.
 7 Isn't that a fair statement? That was
 8 the assumption of the questions and answers that
 9 were going back and forth.
 10 A Okay. I just testified a short time
 11 ago, when I said -- when I was asked by this
 12 gentleman on my left, you know, where I learned
 13 about -- she asked me how I learned about sarin
 14 gas. I told her, from you. Because that's all
 15 she would talk about. She sat in my waiting room
 16 there for seven hours and talked about nothing but
 17 sarin gas.
 18 Q She told you she had spoken to men who
 19 participated in the mission who told her on-camera
 20 that nerve gas was used, right? She told you
 21 that?
 22 A That's right. But there are more than

0069

1 one kind of nerve gas.
 2 Q And she told you that she spoke to
 3 pilots who loaded it onto their planes, right, or
 4 their helicopters? She told you that?
 5 A But what is "it"?
 6 Q Nerve gas.
 7 A Wait a minute. What is "it"?
 8 Q Sarin.
 9 A Well, now you're getting specific. And
 10 I said no.
 11 Q But she told you these things, right,
 12 during the interview?
 13 A She told me these things, and that's
 14 when I told her, why don't you get them on camera.
 15 Q Exactly.
 16 A And let them speak up and hear what
 17 they've got to say, and not do them like they did
 18 me, put me on TV and then insert hearsay by some
 19 other person like Arnett. And if there's one
 20 person in the world I don't want to speak for me,
 21 it's Arnett.
 22 Q And she told you she had these men on

0070

1 camera saying that nerve gas was used, right?
 2 A Yes, but I never saw it.

3 Q Right. And she told you she had pilots
4 who said there was nerve gas also?
5 A And I never talked to them.
6 Q Right. So you didn't have personal
7 knowledge, but she told you these things?
8 A Yes, of course.
9 Q Now, you didn't say to her, hey, that's
10 crazy, that's wrong, I know that's not true,
11 because you didn't know one way or the other,
12 right?
13 A I never treat anybody like that. Once a
14 man puts on a uniform, if he doesn't tell me the
15 truth, he gets court-martialed.
16 Q So your belief, your frame of mind when
17 April Oliver is speaking to you, was that she was
18 telling you that men in uniform told her this
19 weapon was used, and you were not about to assume
20 that men in uniform had lied?
21 A That's right. Until I knew definitely.
22 I've found some of them lie. But I've found it

0071

1 out -- I've caught them and found it out myself.
2 But up until that point I believe what they say.
3 Q That's right. And so at the time of the
4 interview, when she told you that men in uniform
5 had told her these things, you didn't disbelieve
6 that?
7 A No.
8 Q And when you spoke to news reporters
9 after the Tailwind broadcast, such as the reporter
10 from the Associated Press, again, you said, they
11 would have no motive for trying to make up a cock
12 and bull story and I believe what they said,
13 because you had no reason to disbelieve it at that
14 point, right?
15 A Yes. I even believe you. I believe
16 everybody that tells me anything until I find out
17 differently.
18 MR. BAINE: And let me just mark as
19 Exhibit C an article from the Los Angeles Times on
20 June 9th, 1998.
21 (Exhibit Number C was marked for
22 identification and was retained by counsel.)

0072

1 BY MR. BAINE:
2 Q And this is an article in the Los
3 Angeles Times. And it says as follows, after a
4 description of -- let me just hold back and see if
5 I can get the context.
6 It says -- the article quotes Robert van
7 Buskirk, then an Army lieutenant, describing a
8 mission called Operation Tailwind, in which the
9 commandoes attacked the village with nerve gas,
10 then used it again against a contingent of North
11 Vietnamese troops when they blocked the group's
12 withdrawal.
13 Later on in the article the following
14 appears in reference to you, Admiral Moorer. It
15 said, "Yet he," Admiral Moorer, "said he found van
16 Buskirk's claims believable after hearing what the
17 soldier had said. 'He was there and I wasn't,'
18 Moorer said, adding that he believed use of sarin
19 would be justified to protect American lives."
20 That's the part that's highlighted
21 there. Is that a fair account of what you said to
22 the Los Angeles Times?

0073

1 A Well, the key thing, he was there and I
2 wasn't.
3 Q Right.
4 A And I keep coming back to the same
5 business, using the sarin as Truman used the
6 nuclear bomb, to phrase this, to protect American
7 lives. Why do you think we have a Defense
8 Department in the first place? For 157 years, not
9 one hostile soldier has set foot in the United

10 States. Why? Because we don't let people come
 11 over here and endanger American lives.
 12 And this is the same point.
 13 MR. SIMMONS: Did we get an answer to
 14 the question? I didn't hear an answer.
 15 MR. BAINE: Well, maybe that's a fair
 16 point.
 17 BY MR. BAINE:
 18 Q The question was whether that's a fair
 19 account of what you told the Los Angeles Times. I
 20 take it your answer is yes?
 21 A Well, that's in line with what I told
 22 Mrs. Oliver, why don't you ask the people that

0074

1 were there. I was in Washington.
 2 Q And one thing that was really clear, I
 3 take it, in your interviews and conversations with
 4 Ms. Oliver was that she believed that sarin gas
 5 was used in Tailwind?
 6 A Well, I had to assume she believed,
 7 because she brought it up over and over and over
 8 again.
 9 Q But she never gave you any indication,
 10 did she, that she didn't believe it; I take it it
 11 was pretty clear that she did believe it?
 12 A Well, that's the reason I told her that
 13 she was working the problem backwards. She
 14 believed it, so she was trying to prove it.
 15 Q And what she indicated, would it be fair
 16 to say to you -- strike that. Would it be fair to
 17 say that what Ms. Oliver was essentially saying to
 18 you was, look, I've heard that sarin gas was used,
 19 and it's clear to me that it was used, and I
 20 believe that it was used, that that was her frame
 21 of mind?
 22 A I have to give her credit for believing.

0075

1 She believed it, or she wouldn't have been so
 2 persistent. Or she had a goal, and her goal was
 3 to get a big headline out of -- at the expense of
 4 the man in uniform. And that's what was going on.
 5 Q But in fairness to her, though, she did
 6 tell you that she had men in uniform who had told
 7 her this.
 8 A Yes, but they never put them on camera.
 9 I would like to see them on the camera.
 10 Q Well, you did see van Buskirk and Hagan
 11 on camera, didn't you, saying that nerve gas was
 12 used? Do you remember in the broadcast that van
 13 Buskirk and Hagan, both of whom were Tailwind
 14 participants --
 15 A Yes, and they said it wasn't used.
 16 Q They did say on camera that it was used.
 17 Do you remember that?
 18 A No.
 19 MR. DUNCAN: Objection to the form of
 20 the question.
 21 MR. BAINE: The broadcast will speak for
 22 itself.

0076

1 MR. BERMAN: Note my objection to the
 2 form of the question also.
 3 MR. DUNCAN: Also assumes facts not in
 4 evidence.
 5 MR. BAINE: I can go through this if you
 6 want. There's really no dispute about this. For
 7 the record, let's make clear what I'm talking
 8 about.
 9 MR. DUNCAN: Let me just complete my
 10 record, that the testimony --
 11 MR. BAINE: I'll just refer to the
 12 broadcast.
 13 MR. DUNCAN: That the broadcast was in
 14 the form of what I call the baddest of the bad.
 15 And there's no proof that --
 16 MR. SIMMONS: Excuse me. I object to

17 you coaching.
 18 MR. BAINE: Now you are testifying.
 19 You've made an objection. Let's just leave it at
 20 that.
 21 MR. DUNCAN: You're getting ready to
 22 testify. I'm going to object to that.

0077

1 MR. BAINE: I'm not going to testify.
 2 MR. JOHNSON: Do you want a copy of the
 3 broadcast? Do you want a copy for use?
 4 MR. BAINE: I'm not sure that's
 5 accurate.
 6 BY MR. BAINE:
 7 Q Do you recall, Admiral Moorer, seeing on
 8 the broadcast Lieutenant van Buskirk saying
 9 sleeping gas was slang for nerve gas, in other
 10 words when you got hit with sleeping gas you were
 11 going to sleep forever? Do you remember that part
 12 of the broadcast?
 13 A I don't remember, but I guess it's
 14 feasible.
 15 Q And do you remember that Hagan, who was
 16 a Tailwind participant, made the following
 17 statement on camera on the broadcast? Let's see
 18 if I can find it. He said on camera, "Nerve
 19 gas" --
 20 MR. DUNCAN: Identify which --
 21 MR. BAINE: June 14th. This may also
 22 have been June 7th. I don't remember. June 14th.

0078

1 He says, "Nerve gas, the government don't want it
 2 called that. They want to call it incapacitating
 3 agent or some other form. But it was nerve gas."
 4 MR. DUNCAN: Just a second.
 5 BY MR. BAINE:
 6 Q Do you remember Hagan saying that on
 7 camera?
 8 A No, but I'm sure he said it.
 9 MR. DUNCAN: Let's make a copy of what
 10 you're reading from an exhibit so we can identify
 11 what pages, and then please identify the page that
 12 you're reading from, so we can later reference it.
 13 MR. SIMMONS: I would ask that you not
 14 interrupt the witness when he's answering a
 15 question.
 16 MR. DUNCAN: There's a proper procedure
 17 to follow in depositions. If he's going to read
 18 from a document, let's make it an exhibit and
 19 let's identify the page numbers.
 20 MR. JOHNSON: I've got copies for
 21 everybody if you want them.
 22 MR. BAINE: Do you have your copy of the

0079

1 transcript that you want to use? This is mine.
 2 MR. JOHNSON: There's the June 7th.
 3 There's June 14th. This is for the Admiral.
 4 THE WITNESS: Thank you.
 5 MR. JOHNSON: Anybody else need June
 6 7th? What are we looking at now?
 7 MR. BAINE: Hold on a second. As far as
 8 I'm concerned, we can make those exhibits later.
 9 I don't need them for what I'm doing now. If you
 10 want to make them an exhibit later on, you can do
 11 it. I'm going to move on to another question.
 12 BY MR. BAINE:
 13 Q Admiral, you can put those aside. I
 14 understand that April Oliver was persistent --
 15 A Very.
 16 Q -- in her interviewing of you.
 17 A Seven hours worth.
 18 Q Was she courteous and professional in
 19 her questioning?
 20 A Of course. She's a lady. I treat her
 21 like a lady.
 22 Q And after she interviewed you on one

0080

1 occasion off camera, then another occasion on
2 camera, she -- let me see if I've got this right.
3 I think Ms. Oliver interviewed you four times
4 before the broadcast. Does that sound right?

5 A About.

6 Q And at one point before the broadcast
7 she came to your residence, again by herself, and
8 brought with her a script of the broadcast. Do
9 you remember that?

10 A Yes.

11 Q And I think she also had a draft of the
12 article that was to appear in Time Magazine, do
13 you recall that?

14 A I think so. She had a paper and gave it
15 to me, and I gave it right back to her. She
16 claimed I read it. Somebody claimed I read it for
17 30 minutes. I didn't glance at it, because I knew
18 it was hopeless. I knew if I changed it and then
19 I looked at the TV, it would be right back there,
20 what was on that paper to start off with.

21 So my objections, my corrections, my
22 statements were useless. So I just gave it back

0081

1 to her. I was tired of talking about it.

2 Q You're getting way ahead of me. She
3 showed up and she had a copy of the script with
4 her, right?

5 A Yes.

6 Q And she handed it to you?

7 A Yes.

8 Q Did she invite you to look at the script
9 to make sure it was accurate?

10 A Well, she didn't invite me. She just
11 handed me the paper. I assumed I was supposed to
12 read it or else she wouldn't have given it to me.

13 Q So the idea was, as far as you were
14 concerned, that she was giving you the script so
15 that you could look at it --

16 A I didn't even know whether it was a
17 script or not. She gave me that paper. And I
18 didn't read it. I gave it right back to her. And
19 then it was alleged that I did read it. So the
20 point is that I've had a lot of experience like
21 this. And it's almost impossible to change the
22 content of a paper that somebody gives you to read

0082

1 when they have a vested interest in the paper.

2 Q I'm not making any allegations here,
3 Admiral Moorer, about what you did and didn't do.
4 I hope you understand that. I just want to make
5 sure I understand what happened that day.

6 A Well, that's right.

7 Q So she gave you the document. And I
8 take it that you at least looked at it --

9 A She didn't tell me it was going to be on
10 TV.

11 Q Well, you knew that you had a script in
12 your hand because you looked at it and you
13 discussed whether it was fair to say that there
14 were scores of defectors, right?

15 A That's when I think I told her if I had
16 known Arnett was going to be on it I would have
17 never seen her.

18 Q Okay. But you looked at this document
19 and you saw among other things that it said that
20 there were scores of defectors; as a matter of
21 fact it said you said there were scores of
22 defectors, didn't it?

0083

1 A I don't think I ever said "scores."

2 What happened, she ran down her multiplication
3 tables. She said were there five, ten, 15, 20.

4 Q The script that she gave you said that
5 you acknowledged that there were scores of
6 defectors. And you discussed with her whether

7 that was a fair thing to say. And you said,
 8 "Well, I didn't use the word 'scores,'" right?
 9 A Yes, because I didn't know. And I just
 10 found out when Mr. Gresham gave me this document
 11 right here, there were two. But that's not my
 12 responsibility. The service chief --
 13 Q Sir, that wasn't my question. Let me
 14 just --
 15 A It's his responsibility to keep up with
 16 how many defectors he has in Army uniform. And
 17 the Naval CNO's job is to keep up with how many
 18 defectors in Naval uniform. That was below my
 19 area of responsibility.
 20 Q Admiral Moorer, we're going to get
 21 through this much quicker if I can just get some
 22 answers to some really simple questions, okay?

0084

1 When she showed you the script, you saw that the
 2 script said that you had confirmed there were
 3 scores of defectors. And you initially took
 4 exception to that, right, you said, I don't know
 5 about this "scores," right?
 6 A Yes, that's right.
 7 Q So you looked at the document at least
 8 enough to see the word "scores" and to say to her,
 9 I'm not sure that's right.
 10 A And then I immediately --
 11 Q Right?
 12 A Wait a minute. I immediately assumed
 13 that the document had many other things in it like
 14 that. And I wasn't going to sit there and rewrite
 15 the document or quarrel with the document or
 16 something. I thought it was time for me to get
 17 out of this operation. And I just handed it back
 18 to her.
 19 Q But you had a discussion with her about
 20 whether that word "score" should be changed,
 21 right?
 22 A "Score," that's right. Because scores

0085

1 of defectors would have practically been -- would
 2 weaken the outfit that was involved.
 3 Q Right. And when you raised the question
 4 about the word "scores," I take it she said to you
 5 something like this; well, in the interview you
 6 said it was between 23 and 300, so I thought
 7 "scores" was a fair word to use. Is that pretty
 8 much what she said to you?
 9 A What happened is she reeled off several
 10 numbers. And I told her to take her pick. And
 11 she came back with "scores." And that was in the
 12 document. And that was a word that caught my eye,
 13 because there was no way -- if I want to know how
 14 many defectors there was, I would've called up
 15 General Westmoreland and asked him how many of
 16 these guys in your outfit are running away. And
 17 he would have told me.
 18 But it wasn't my job to keep a running
 19 account of every Marine, Army, Navy, Air Force
 20 soldier that was defecting, whatever you want to
 21 call it.
 22 Q In any event, you had a discussion with

0086

1 Ms. Oliver about whether that word "scores" was
 2 accurate or not, right?
 3 A Yes.
 4 Q Now, did you notice any other parts of
 5 the script that referred to you? For example, not
 6 too much before where the script said "Moorer
 7 indicated scores of U.S. military had defected
 8 during the war," it said something to this effect,
 9 that Moorer confirmed that nerve gas was used in
 10 Tailwind.
 11 And now, when you sat there with April
 12 Oliver that day, did you notice that statement in
 13 the script?

14 A No. And I had previously answered the
15 question, "None."
16 Q I understand.
17 A And it was read out when I was talking
18 to this gentleman here.
19 Q You did understand that the idea, that
20 the reason why April Oliver gave you the script
21 was that you would have a chance to look at it if
22 you wanted to, right?

0087

1 A Yes.
2 Q And she wasn't hiding from you what she
3 was going to say; she was willing to let you read
4 what she was going to say?
5 A Well, she -- let me put it this way.
6 She was going to let me read what she thought was
7 going to be broadcast. But I didn't have any
8 confidence whatever that if I injected
9 corrections, that it wouldn't go wiggle right back
10 to where it was to start off with.
11 So -- I've been through this before with
12 the media, and I don't trust them. And so I just
13 handed it back to her. Why should I sit here and
14 rewrite a document when it -- there's no assurance
15 that that's what will wind up?
16 Q That was pretty unusual, wasn't it, for
17 a reporter to come to you and say, I'm going to do
18 a broadcast on TV and I'm going to give you my
19 script before it goes on so you can read it? Had
20 that ever happened to you before?
21 A Yes.
22 Q Someone gave you a script for a

0088

1 broadcast before it was going to go on the air?
2 A I've had that happen many times.
3 Q Can you remember anybody who ever did
4 that with you before?
5 A Well, I had many, many -- well, one I
6 remember was when we did the Christmas bombing
7 against -- to try to get -- the purpose of that
8 was to release the American POWs who were being
9 tortured. And I went to Mr. Nixon, and that is --
10 we talked about it, how to make them turn the POWs
11 loose.
12 And the minute we started that operation
13 called Christmas bombing, in 1972 I think, I
14 began -- the North Vietnamese began to broadcast
15 the fact that we were killing our own POWs with
16 the bombing. And I get a call from a reporter.
17 And I told him, I said -- the first thing, I said,
18 are you an American? He said yes, he's an
19 American.
20 I said, why do you want to have a
21 miserable Christmas, turn it into an even worse
22 Christmas for the mothers and the fathers and the

0089

1 children of these POWs? We know where all the
2 POWs are. We're not touching a one of them. And
3 don't put that in the paper.
4 He put it in the paper anyway. All
5 night long I got telephone long distance calls.
6 "Why are you killing my father?" "Why are you
7 killing my brother?" "Why are you killing my
8 uncle?" And so that's why I'm very leery when I
9 start talking about something like this, if a
10 reporter is obsessed with the thought that they've
11 got to prove it.
12 Q My question was a little bit different,
13 Admiral Moorer. And I want to make sure that I
14 state it clearly. It might not have been clearly
15 stated the last time.
16 Normally when you deal with the press,
17 they'll come and they'll interview you, and then
18 they'll go off and do their story, right?
19 A Yes, I suppose.
20 Q Now, normally they don't write their

21 story and then send it to you and say, here's my
22 story that I'm going to publish, I want you to

0090

1 read it before I publish it. That's not normally
2 the way they function, is it?
3 MR. DUNCAN: Object, asked and answered.
4 Define "normal."
5 MR. NYKODYM: Assumes facts not in
6 evidence.
7 BY MR. BAINE:
8 Q Must have been a good question, because
9 they didn't like it.
10 MR. BAINE: Could you read it back,
11 please?
12 MR. DUNCAN: He's already answered your
13 question. You don't like his answer, so you keep
14 asking it to try to get a different answer.
15 That's the problem.
16 MR. BAINE: That is not a fair
17 statement, sir.
18 MR. DUNCAN: The record will speak for
19 itself.
20 MR. BAINE: Could you please read the
21 question back.
22 (Requested portion of record read.)

0091

1 BY MR. BAINE:
2 Q Do you understand the question now?
3 A I think it depends on the definition of
4 "normal."
5 Q Okay. That's a fair point. Let me put
6 the question a little differently. In your
7 experience dealing with reporters, do they usually
8 send you the story --
9 A Sometimes yes, sometimes no.
10 Q -- before they publish it?
11 A Sometimes yes and sometimes no. It
12 depends on whether it's classified, what kind of
13 situation is surrounding, and so on. So if you
14 can get them -- it depends on how sensitive the
15 information is, whether you make them do that one
16 way or another.
17 Q In other words, you might impose a
18 condition on a reporter and say, we're talking
19 about sensitive material, I want to make sure I
20 see what you're going to publish to make sure
21 you're not going to publish classified
22 information, so you might require that they send

0092

1 you something before they publish it, right?
2 A Yes. And not only that, I make them
3 read it before a recorder.
4 Q Right. Now, in this case you didn't
5 require April Oliver to send you her broadcast or
6 her article before she went with it, did you?
7 A No.
8 Q You didn't make her do that?
9 A No.
10 Q She did it on her own?
11 A Huh?
12 Q She did that on her own, right?
13 A I assume she did. I don't think anybody
14 gave her the paper.
15 Q Now, my question is this. In your
16 experience when you're dealing with reporters, and
17 I'm not talking about cases where you have said to
18 them explicitly, this is sensitive information,
19 you've got to show me your article before you
20 publish it, I'm not talking about those cases
21 where you've specifically required it, but in
22 other cases where you've just given an interview,

0093

1 is it normally your experience that the reporter
2 will send you a script of the broadcast before
3 it's aired? Or is that not normally your

4 experience?
 5 MR. BERMAN: I object. It's already
 6 been asked and answered.
 7 A Look. If I'm recording it, then I'm not
 8 concerned about whether they gave me a script or
 9 not. If I'm not recording it, it depends -- it's
 10 a judgment call on my part, depending on the
 11 sensitivity and the timeliness of the subject
 12 under discussion.
 13 BY MR. BAINÉ:
 14 Q But again, that wasn't exactly my
 15 question. I'm not asking when you would require
 16 it. I'm saying assuming you didn't require it,
 17 for whatever reason you did not say you've got to
 18 show me the script beforehand, so it's not a case
 19 where you've decided it's necessary.
 20 A She gave it to me.
 21 Q In cases where you have not decided that
 22 it's essential for you to see the script

0094

1 beforehand, in your experience does the reporter
 2 then just go ahead and do the story without
 3 showing it to you in advance?
 4 A Oh, yes. I just described to you when
 5 that was done.
 6 Q Now, after the broadcast was aired, and
 7 there was a fair amount of controversy over it, do
 8 you recall that you had contacts with the Defense
 9 Department about issuing a statement? Do you
 10 remember that?
 11 A Yes.
 12 Q And did the Defense Department send to
 13 you a statement that they suggested that you
 14 should issue?
 15 A Yes, they had a statement, but I rewrote
 16 the statement. And that's when Ms. Oliver showed
 17 up with a Mr. Smith, who I had never laid eyes on.
 18 So he undertook to help me rewrite the statement,
 19 an operation I didn't appreciate, and he changed a
 20 word.
 21 And I got it in his own handwriting. So
 22 I thought that was a very discourteous thing for

0095

1 them to do, to show up without announcing their
 2 presence, and then trying to get in the act to
 3 help me write my statement. So they were in an
 4 opposite position there. She gave me her
 5 statement, and then she wanted to also write my
 6 statement.
 7 MR. BAINÉ: Let me see if I can mark as
 8 an exhibit, the next two exhibits, two statements.
 9 And then we'll talk about them for a second.
 10 (Exhibit Number D and E was marked for
 11 identification and was retained by counsel.)
 12 BY MR. BAINÉ:
 13 Q I'll show them to you one at a time,
 14 Admiral. First I'll show you Exhibit D and ask
 15 you whether -- it's hard to read some of the words
 16 because some of the words are crossed out, but is
 17 that the statement that the Defense Department
 18 sent to you? Now I'm talking about the
 19 typewritten words on that page, not the
 20 handwritten words, because some of the typewritten
 21 words are crossed out. There are some handwritten
 22 words added.

0096

1 But the basic typewritten statement, is
 2 that the statement that the Defense Department
 3 sent to you? I think at the top it even says
 4 "Public Affairs."
 5 A Yes.
 6 Q That's what I wanted to know. And then
 7 this has been edited a little bit. And some of
 8 the handwriting on here is yours and some is not
 9 yours, I take it. And I just wanted to direct
 10 your attention to two words.

11 A I don't think any of it was mine.
12 Q Well, take a look at the word "sarin" on
13 the second to last line. I want to ask you
14 whether that word, "sarin," is your handwriting.
15 A None of this is my handwriting.
16 Q You don't think the word "sarin" is in
17 your handwriting?
18 A I don't think so, no. It's print. How
19 the hell -- I don't know how my printing looks.
20 Q Above that there's the word "rumors."
21 It's kind of hard to make out, but there's a word
22 "rumors" just about the word "sarin."

0097

1 A That's right.
2 Q I want to ask you whether that isn't
3 your handwriting or your printing.
4 A That is not my word. But that was one
5 of the things -- you've got another one there. Is
6 this the only one you've got?
7 Q That's the only one I have that looks
8 like that, with the word "rumors" on it. The word
9 "rumors" was Mr. Bacon's word, wasn't it?
10 A Yes.
11 Q Mr. Bacon, the spokesperson at the
12 Pentagon --
13 A That's right.
14 Q -- suggested that your statement should
15 say that you had heard rumors, right?
16 A And then --
17 Q Is that right?
18 A Mr. Smith struck out the word "of."
19 Q I think that's on the next statement.
20 I'm going to show you that. We'll get to that in
21 a second.
22 A Let me see that.

0098

1 Q Since we're on it, let me give you this.
2 This is Exhibit E.
3 A See, that's his -- he says "indicating"
4 instead of "of." Hang on.
5 Q But on D here --
6 A We almost had a wrestling match. He was
7 hovering over me like a dark cloud there.
8 MR. DUNCAN: Could we identify "he"?
9 Are you talking about Mr. Smith?
10 MR. BAINE: I think this is not your
11 time to ask questions, okay? Really.
12 THE WITNESS: Yes, I'm talking about
13 Mr. Smith.
14 MR. BAINE: I think it's not your time
15 to ask questions.
16 MR. DUNCAN: It's being a document as
17 far as our deposition. "He" is a pronoun. I
18 would like for him to identify it. He just did.
19 It's Mr. Smith.
20 MR. BAINE: I know he did. As
21 Mr. Berman said before, I can clarify things like
22 this, and this is the right way to do it.

0099

1 BY MR. BAINE:
2 Q Just so we're clear, then, on this
3 document, D, it would appear that there are two
4 different handwritings, that there's handwriting,
5 the word "authorized" is in someone's handwriting,
6 and then "however I later learned," et cetera.
7 But the word "rumors" and "sarin" would appear to
8 me to be in separate handwriting.
9 And I guess my question is simply this:
10 Is it your testimony that that's not your
11 handwriting, or that you don't know whether it's
12 in your handwriting, it might be your handwriting?
13 What is your best testimony on that? The word
14 "rumors" and "sarin."
15 A No, they're not my handwriting.
16 Q Okay.
17 A I don't -- I thought mine was bad. But

18 this is worse.
 19 Q And it's your testimony that on Exhibit
 20 E the word "indicating" is Mr. Smith's
 21 handwriting?
 22 A That's right.

0100

1 Q Now, did you authorize Ms. Oliver and
 2 Mr. Smith to release this Exhibit E?
 3 A I gave them that copy.
 4 Q And it was okay for you -- it was okay
 5 with you for them to release that and use it?
 6 A Well, at that point I want to emphasize
 7 it was after 9:00 at night, and I was getting sick
 8 and tired of sitting there in the lobby of my
 9 hotel while these people are asking me. So I told
 10 them to take the thing and go.
 11 Q But you knew that they were going to
 12 release it, right?
 13 A I assumed they were.
 14 Q You started out with the statement that
 15 was sent to you by the Department of Defense.
 16 A That's right.
 17 Q And you ended up with Exhibit E, and you
 18 knew that Exhibit E was what was going to be
 19 released?
 20 A I assumed they were going to release it.
 21 Otherwise they were wasting their time.
 22 Q Just a couple --

0101

1 A Let me just say that to me that was a
 2 very unorthodox move, for people to come into your
 3 private home and then get to harassing you on a
 4 statement like that. That was -- I mean, to me I
 5 thought it was an insult, and certainly uncalled
 6 for, because Mrs. Oliver had never called me that
 7 I didn't give her an appointment.
 8 But she didn't bother to do that this
 9 time. And so all I wanted to do is to get them
 10 out of my house.
 11 Q You mentioned to several reporters after
 12 the CNN broadcast that you had heard rumors and
 13 unconfirmed stories of the use of sarin, did you
 14 not, rumors and unconfirmed stories?
 15 A Well, you know, every operation that
 16 reaches the highlight, even a football game,
 17 people have lunch and sit around and discuss the
 18 situation and the actions involved. And I think
 19 at one time the various types of gas that might be
 20 used were discussed, and probably sarin was one of
 21 them.
 22 What they were calling -- what we were

0102

1 discussing a short time ago, what they were
 2 calling poison gas, however, that was dropped, was
 3 not debilitating to the point that -- it was not
 4 fatal. And the only thing I was referring to was
 5 a discussion and a speculation of what could have
 6 happened if they had've used more gas than they
 7 had in the operation. That's all. And I was
 8 calling that a rumor.
 9 Now, Mr. Smith, he didn't want to use
 10 the word "rumor." And so he wound up sticking in
 11 "indicating" instead of "of."
 12 Q Let me show you one more article,
 13 Admiral. This is an article from the Associated
 14 Press on June 9th.
 15 MR. JOHNSON: Would this be F?
 16 MR. BAINE: What is D? Do we have D?
 17 MR. BERMAN: We have D and E.
 18 MR. JOHNSON: D and E are those two real
 19 short statements.
 20 MR. BAINE: Let's mark this as Exhibit
 21 F. This is Associated Press, June 9th.
 22 (Exhibit Number F was marked for

0103

1 identification and was retained by counsel.)
 2 BY MR. BAINE:
 3 Q Admiral, I'm going to read this to you
 4 and then I'll hand it to you, okay? I've
 5 highlighted it.
 6 You say -- you're reported to have said
 7 to the Associated Press, "'Whether they,' Special
 8 Forces, "'had sarin, you can't prove it by me
 9 either way.'" Moorer said he couldn't entirely
 10 discount the possibility sarin gas was used by
 11 Special Forces. 'There were rumors that this gas
 12 had been used,' he said. 'But I tell everybody if
 13 they want to know, I don't know that they used it,
 14 I don't know that they didn't use it.'"
 15 That's the highlighted portion.
 16 A Well --
 17 Q Is that what you told the Associated
 18 Press?
 19 A I've covered -- I probably said that
 20 over the telephone in an interview. I had
 21 interview after interview after interview. What I
 22 was trying to -- in all of these replies, simply

0104

1 respond to that one question. And I had already
 2 said none. N-O-N-E means zero. And the Secretary
 3 of Defense and all the Defense Department says
 4 zero. General Abrams says zero. He was in
 5 command down there.
 6 I mean, I don't know why the question
 7 kept coming up, coming up, coming up. People
 8 don't understand the English language. And this
 9 thing here, by -- there are rumors that this gas
 10 has been used. And I said I don't know that they
 11 used it and I don't know that they didn't use it.
 12 I said, why not ask the people that were down
 13 there, they know whether they used it or not.
 14 The commander of the operation knew. He
 15 said no. And so I don't know what is afoot here,
 16 whether the -- CNN or April Oliver or somebody
 17 just has a fixed conviction that they're going to
 18 prove this thing one way or another.
 19 And they had that conviction before they
 20 ever talked to me the first time, because the
 21 first question she asked me, she jumped right into
 22 sarin gas. And you can't answer a question about

0105

1 something as provocative and as all-encompassing
 2 as that without getting the background on what the
 3 question is all about.
 4 And so that resulted in the seven-hour
 5 discussion about this one little item, sarin gas.
 6 And it involves the Secretary of Defense, and the
 7 Joint Chiefs of Staff, all in this document. And
 8 they knew no more than I did about it.
 9 Q I want to talk about defectors for just
 10 a minute.
 11 A The what?
 12 Q Defectors for just a minute. And then
 13 we'll try to wrap it up, okay? One of the issues
 14 that came up during your conversation with April
 15 Oliver was what the purpose of Operation Tailwind
 16 was. And if you take a look at Exhibit A, beta
 17 16, page 8, it's CO 1119, down at the bottom of
 18 that page. The last comment attributed to you, do
 19 you see that, down at the bottom?
 20 MR. BERMAN: 1109?
 21 MR. BAINE: Yes.
 22 MR. DUNCAN: 1119.

0106

1 MR. BAINE: Whatever I said it was, is
 2 what it is.
 3 BY MR. BAINE:
 4 Q Ms. Oliver has just made a comment to
 5 you about defectors. She says, "Would, say, if
 6 there were a dozen defectors operating in Laos on
 7 behalf of the enemy, would that be somebody that

8 the U.S. would want to get rid of and take out?"
 9 And your answer, "Yes, I would think so,
 10 I mean, I'm sure there were some defectors. There
 11 are always defectors. And again, the -- you keep
 12 bringing up the mission of this operation. But I
 13 think one of the missions probably was to locate
 14 these people, evaluate the scope of their activity
 15 and who is supporting them, things of that kind,"
 16 et cetera, and then you go on.
 17 I wanted to focus on that one sentence
 18 where you said, "I think one of the missions
 19 probably was to locate these people." Do you
 20 recall saying that to April Oliver?
 21 A I don't know that that was their
 22 mission. In other words, in the process of

0107

1 executing their mission, however, the defectors,
 2 they became visible and were captured.
 3 Certainly if they were shooting at you,
 4 you're going to shoot back. If they're not
 5 shooting at you, they are a very lucrative source
 6 of intelligence. And so we always liked to get
 7 our hands or defectors during the war to learn
 8 from them what they've seen, who they talked to,
 9 where they were, et cetera, et cetera, et cetera.
 10 So there's nothing unusual about that.
 11 Q Let's make sure we're clear on our
 12 terms. Is there a difference between a defector
 13 and a deserter?
 14 A Well, a defector is one who in effect
 15 joins the other side and assists him. A deserter
 16 is one who just wants to run like hell and get out
 17 of this war in the first place. So they're two
 18 different people.
 19 Q So we're talking about defectors,
 20 someone who has gone and joined the enemy, okay?
 21 A Yes.
 22 Q If you come across a defector I take it

0108

1 that you would want to capture the defector, if
 2 you could?
 3 A Yes. And you would capture him unless
 4 he's shooting at you.
 5 Q And I take it if you came across a
 6 defector and he was running away or you couldn't
 7 capture him for some other reason, I take it you
 8 would want to eliminate him, to kill him?
 9 A If he was shooting -- it depends on
 10 whether he was shooting at you or not. I mean, if
 11 he was a threat, you would obviously want to
 12 remove the threat. But you're covering a very --
 13 you said "come across a defector." Well, the
 14 point is that you've got to identify him as a
 15 defector, and until you do that, you're not going
 16 to shoot at him unless he's shooting back.
 17 But as I've come back to the point, the
 18 main objective is to capture him and talk to him
 19 and find out what he knows in the area.
 20 Q And if you can't capture him, then the
 21 second objective I take it would be to eliminate
 22 him so he cannot continue to assist the enemy?

0109

1 A Depending on what you knew about him.
 2 Q If you knew for sure he was a defector.
 3 A Huh? A defector, not a deserter.
 4 Q You're sure he's a defector, but it's
 5 not possible to capture him. Under those
 6 circumstances, wouldn't you want to eliminate him
 7 so that he could not continue to help the enemy?
 8 A Yes, but I would just point out to you
 9 that to establish the fact that he was helping the
 10 enemy is not an easy thing to do. So I would be
 11 very careful that I just didn't -- he wasn't a
 12 deserter. A deserter is a coward. A defector is
 13 one who has joined the other side. There's a
 14 difference.

15 Q After this broadcast was aired and the
 16 Time article was published, there was a lot of
 17 controversy about those two pieces, was there not?
 18 A Probably.
 19 Q And a number of people said that the
 20 reports of nerve gas and killing defectors weren't
 21 accurate, correct?
 22 A Yes.

0110

1 Q And after that occurred, are you aware
 2 of the fact that CNN and Time published
 3 retractions and apologies?
 4 A Yes. And anybody that looks into this
 5 thing would recommend that. Mr. Abrams, if you
 6 read that, said that what had happened is what I
 7 had started out with and began with, when I told
 8 Ms. Oliver that she was working the problem
 9 backwards. She already had a conviction that
 10 there was sarin gas around and so on. So then she
 11 set about to build a case.
 12 The facts are that something like an --
 13 an instance like that, I never have understood the
 14 American people, but they're just wild about some
 15 kind of situation, they're going to catch the man
 16 in uniform in where he's done something, despite
 17 the fact he's out there fighting for his country
 18 and getting killed. There are people that want to
 19 damage the military every chance they have.
 20 And so I think that you just have to
 21 live with that. That's human nature, I'm afraid.
 22 Q You mention the fact that CNN asked

0111

1 Floyd Abrams to conduct this investigation, and
 2 you're aware of the fact that he came up with this
 3 Abrams report, right? You've read the Abrams
 4 report?
 5 A Yes, I've got it right -- there's one,
 6 two, three, four, five, six, seven words at the
 7 conclusion of his -- it says, "CNN should retract
 8 the statement and apologize."
 9 Q And that was Mr. Abrams's
 10 recommendation?
 11 A Mr. Abrams's recommendation. And they
 12 did that. And I got a nice call from Mr. Johnson,
 13 who is the president of CNN, as well as
 14 Mr. Turner, who is rather occupied these days with
 15 more than he can handle. And they both said they
 16 were sorry it happened.
 17 Q And you've said publicly, I believe,
 18 that it took some courage for them to issue that
 19 retraction and apology?
 20 A I thought so, and I appreciated it very
 21 much.
 22 Q And you think they did the right thing?

0112

1 A Sure.
 2 Q Do you have any problem with the way CNN
 3 and Time have handled this?
 4 A No. I don't have any problem with the
 5 way they handled it.
 6 MR. BAINE: Thank you very much,
 7 Admiral.
 8 MR. BERMAN: Just one question, Admiral
 9 Moorer.
 10 MR. SIMMONS: Excuse me. Could you move
 11 around so that the video camera picks it up in a
 12 correct fashion?
 13 MR. BAINE: For one question, why don't
 14 we just --
 15 MR. BERMAN: Neither one of us is on
 16 camera anyway.
 17 EXAMINATION BY COUNSEL FOR THE PLAINTIFF
 18 VAN BUSKIRK
 19 BY MR. BERMAN:
 20 Q Counsel just asked you whether CNN had
 21 not retracted the story. And you have agreed that

22 they did apologize. The retraction, really, did

1 it not take the form of a statement that they did
2 not have enough evidence to confirm that sarin gas
3 had been used or that the mission had been to kill
4 defectors, rather than being an admission that it
5 didn't happen?

6 MR. BAINE: Objection to the form of the
7 question. It speaks for itself. I don't know
8 that the witness's testimony about what it says is
9 worth anything. It is on record.

10 MR. BERMAN: Your objection is on
11 record, Mr. Baine.

12 BY MR. BERMAN:

13 Q Is that your understanding of what
14 happened, Admiral Moorer?

15 A Well, I think that the fact that they
16 retracted the story and apologized indicates that
17 it didn't happen. If it happened I would assume
18 that CNN would be quarreling like hell.

19 MR. BERMAN: Thank you. I have no other
20 questions. Do you have any further questions?

21 MR. BAINE: I have no further questions.
22 So why don't we --

1 MR. BERMAN: That ends the deposition of
2 Admiral Moorer in the case of Buskirk versus CNN.

3 THE VIDEOGRAPHER: Going off the record.
4 The time is 11:13:33.

5 (Recess.)

6 THE VIDEOGRAPHER: Here marks the
7 beginning of tape number 2 in the deposition of
8 Admiral Thomas Moorer. We're back on the record.
9 The time is 11:35:13.

10 EXAMINATION BY COUNSEL FOR THE PLAINTIFFS SADLER
11 AND ROSE

12 BY MR. JOHNSON:

13 Q Admiral, my name is David Johnson, and I
14 represent Corporal Rose, who was the medic for the
15 Green Berets on this Tailwind mission. He's a
16 United States soldier. I represent him. I have a
17 few questions to ask you. And I told my partner
18 if I go over an hour to stop me, because I don't
19 want to intrude on your time. So I just have a
20 few questions.

21 Number one --

22 MR. BAINE: Before you begin,

1 Mr. Johnson, I think we've agreed off the record
2 that I'm going to mark as Exhibit K the notes that
3 I referred to in my earlier examination of Admiral
4 Moorer. And for the record, the question and
5 answer that I read from these notes appears on
6 page 5 and 6 of Exhibit K.

7 Thank you.
8 (Exhibits Numbers G, H, I, J and K were
9 marked for identification and were retained by
10 counsel.)

11 MR. DUNCAN: I think also for the
12 record, Mr. Philip Kaplan wanted to get on the
13 record that there is an agreement by the Admiral
14 once all documents are received from the
15 Department of Defense -- where else are the
16 records?

17 MR. KAPLAN: DOJ and DOJ I think were
18 subpoenaed.

19 MR. SIMMONS: And Admiral Moorer
20 himself.

21 MR. DUNCAN: DOD and DOJ and Admiral
22 Moorer, that this deposition will be reconvened

1 for the purposes of questioning about those
2 documents and those documents only. This is
3 Phillip Duncan making the record.

4 MR. SIMMONS: That's not altogether

0113

0114

0115

0116

5 accurate. If he cuts it off at the end of the day
 6 and I'm only part way through my examination,
 7 we'll have to finish that later.
 8 MR. DUNCAN: We'll need to get that --
 9 MR. SIMMONS: Isn't the record running?
 10 MR. BAINE: I think that's pretty clear.
 11 But why don't we see where we are at the end of
 12 the day.
 13 BY MR. JOHNSON:
 14 Q Admiral, I have marked the CNN Time
 15 Newsstand broadcast as Exhibit G. That's on June
 16 the 8th -- excuse me, the 7th, 1998. And the CNN
 17 broadcast on Newsstand on June 14th is Exhibit H.
 18 And the Time Magazine story on June 15th is
 19 Exhibit I. So let me start by asking you some
 20 questions.
 21 MR. BAINE: I'll note for the record
 22 what you've marked are transcripts of the two CNN

0117

1 broadcasts which may or may not be accurate.
 2 MR. JOHNSON: Yes.
 3 BY MR. JOHNSON:
 4 Q Let me start by asking you, when
 5 Ms. Oliver and Mr. Smith showed up uninvited at
 6 your house and asked you to review document D with
 7 you, did they have some kind of a typewriter or
 8 some kind of a machine that could print out
 9 immediately what you were saying?
 10 MR. SIMMONS: I object to form.
 11 A I think they had a copy machine around
 12 the corner. It's a standard -- at the office for
 13 the apartment houses on that floor.
 14 BY MR. JOHNSON:
 15 Q Did they offer to let you make a copy?
 16 When they brought you the so-called transcript of
 17 the program or the transcript of the article in
 18 Time Magazine, did they offer to let you make a
 19 copy of those?
 20 MR. BAINE: Objection to the form of the
 21 question. You've gotten confused on two meetings.
 22 There's no testimony that they brought a copy of

0118

1 anything.
 2 A The answer to your question is no.
 3 BY MR. JOHNSON:
 4 Q When Ms. Oliver came and offered you to
 5 look at supposedly the program that was going to
 6 run on CNN or the article that was going to appear
 7 in Time Magazine, did she offer to make you a
 8 copy?
 9 A No.
 10 Q Did she leave you a copy?
 11 A No.
 12 Q Did she at any time ever offer you to
 13 keep what she gave you?
 14 A No.
 15 Q Do you know if in fact what she
 16 presented to you was in fact what was used for the
 17 program on CNN?
 18 A I don't know. I don't have any way of
 19 comparing.
 20 Q Now, I'm calling your attention to
 21 Exhibit Number -- this first exhibit, June 7th
 22 broadcast. At any time during these seven hours

0119

1 when Ms. Oliver was talking to you or when
 2 Mr. Smith and Ms. Oliver came to see you after the
 3 program had aired, did they tell you that this
 4 program was going to be about the American
 5 military using sarin nerve gas in Vietnam?
 6 A No. They didn't tell me -- I knew what
 7 it was about.
 8 Q Okay. But did they tell you the theme
 9 of the program was that the American military used
 10 sarin gas?
 11 A No, they didn't tell me what the theme

12 of it was. I knew -- it's what she had been
 13 talking about for the last two months.
 14 Q But you didn't know --
 15 MR. SIMMONS: Excuse me. Could you
 16 please let him finish the answer?
 17 BY MR. JOHNSON:
 18 Q I'm sorry. Go ahead.
 19 THE WITNESS: What's that?
 20 MR. SIMMONS: He keeps interrupting you.
 21 I want you to have an opportunity to say what you
 22 need to say, sir.

0120

1 THE WITNESS: All right.
 2 BY MR. JOHNSON:
 3 Q Did they tell you that the theme of the
 4 program -- one of the themes of the program would
 5 be that they dropped nerve gas in Vietnam during
 6 this Tailwind operation?
 7 A No.
 8 MR. BAINE: You mean in Laos?
 9 MR. JOHNSON: In Laos, excuse me.
 10 A No.
 11 BY MR. JOHNSON:
 12 Q All right. Did they tell you that one
 13 of the themes of this program was that the
 14 Tailwind mission in Laos was to hunt down and kill
 15 American defectors?
 16 A No.
 17 Q At any time during the seven hours did
 18 she ever mention either of those as being the
 19 themes of this program?
 20 A No.
 21 MR. BAINE: Objection to the form of the
 22 question to the extent you keep referring to theme

0121

1 of the program. The interview, which is -- one of
 2 which is recorded and transcribed, speaks for
 3 itself.
 4 BY MR. JOHNSON:
 5 Q Let me quote from the program, all
 6 right? I'm calling your attention to this article
 7 right here. This section right here, where it
 8 says, "Greenfield."
 9 MR. BAINE: Do you have copies of those
 10 for other people?
 11 MR. JOHNSON: I passed them out for
 12 everybody already. Just get yourself a copy, and
 13 get one for him, too.
 14 MR. SIMMONS: Do you want to wait until
 15 we get it?
 16 BY MR. JOHNSON:
 17 Q I'm referring to the part where it says
 18 "Greenfield says." "Earlier this year" --
 19 MR. SIMMONS: Can you identify which
 20 exhibit you're looking at, sir?
 21 THE WITNESS: G.
 22 BY MR. JOHNSON:

0122

1 Q "Earlier this year the United States
 2 nearly went to Iraq over chemical and biological
 3 weapons. Now CNN and Time, after an eight-month
 4 investigation, report that the United States
 5 military used lethal nerve gas during the Vietnam
 6 War."
 7 Did Ms. Oliver ever disclose to you that
 8 she would be stating that during the CNN broadcast
 9 or the Time magazine article?
 10 MR. BAINE: Objection to the form of the
 11 question. And objection, unless you allow the
 12 Admiral to read the lengthy transcripts that have
 13 been marked as an exhibit.
 14 MR. NYKODYM: General, you can still
 15 answer the question.
 16 MR. SIMMONS: I join in the objection.
 17 I think it's an unfair way of presenting the
 18 issue.

19 BY MR. JOHNSON:
 20 Q You can answer the question. Did she
 21 ever tell you that?
 22 A No.

0123

1 Q Did she ever tell you that Peter Arnett
 2 was going to be on the story?
 3 A No. Until I told her if I had known it
 4 I wouldn't have been there myself.
 5 Q What was your objection to Peter Arnett?
 6 A Because of this, what I'm reading right
 7 here about his performance in Iraq.
 8 Q All right. Did Ms. --
 9 A I mean, why -- Peter Arnett's not -- I
 10 don't think he's even an American citizen. But he
 11 spends a lot of his time trying to downgrade and
 12 degrade the U.S. position in world affairs.
 13 Q So you didn't know he was going to be
 14 involved in the program?
 15 A No.
 16 Q And if he had've been, you would not
 17 have participated?
 18 A I wouldn't have had anything to do with
 19 him. I don't respect the guy.
 20 Q Now, did she ever tell you that they
 21 were going to do a story about Operation Tailwind,
 22 a raid into Laos which according to military

0124

1 officials with knowledge of the mission called two
 2 top secrets, dropping nerve gas on a mission to
 3 kill American defectors?
 4 MR. BAINE: Objection to the form of the
 5 question.
 6 A I don't ever remember her relating the
 7 two. The use of the gas on the one hand, she was
 8 stuck with, the sarin gas. And the other, the
 9 defectors. She was -- her questions about
 10 defectors were how many.
 11 BY MR. JOHNSON:
 12 Q Let me call your attention to the page
 13 that I have here as page 3.
 14 A Yes.
 15 Q Where Mr. Arnett is saying, "Admiral
 16 Moorer acknowledged" --
 17 MR. BAINE: Which column are you in?
 18 MR. JOHNSON: Page 3, left hand column,
 19 right down there. "Admiral Moorer acknowledged in
 20 off camera interviews that Tailwind's target was
 21 indeed defectors."
 22 MR. SIMMONS: Counsel, I don't have a

0125

1 page 3.
 2 MR. BERMAN: It's the second page, but
 3 it's numbered 3.
 4 BY MR. JOHNSON:
 5 Q Did you ever acknowledge to Mr. Arnett,
 6 Ms. Oliver, or Mr. Smith, or to anyone else with
 7 CNN and Time that the target of the Tailwind
 8 mission was American defectors?
 9 MR. BAINE: Objection to the form of the
 10 question.
 11 MR. SIMMONS: Objection to form.
 12 A No. It wasn't. I mean, what you see
 13 here, every time you see Arnett's name, he is
 14 interjecting that hearsay comment into the
 15 program. And, I mean, that's the way I looked at
 16 it when I watched it on TV, because he kept saying
 17 "Admiral Moorer said," "Admiral Moorer said."
 18 He's supposed to be giving evidence, not
 19 hearsay. And so he performed exactly like I
 20 expected him to do. Just like he performed in
 21 Iraq.
 22 BY MR. JOHNSON:

0126

1 Q Let me call your attention to Exhibit

2 Number I, and call your attention to page 39 of
3 that, over here on the far right where it says
4 "Confirming the use of sarin." Do you see that?
5 It's Exhibit I.

6 A When I'm talking about that, I'm not
7 talking about this sarin gas. I'm talking about
8 the rescue of -- not only of downed pilots in Laos
9 in North Vietnam, but also many soldiers that got
10 stuck in the jungle doing the fighting. After
11 all, we had 500,000 men over there at one time.

12 And the helicopters would come in, and
13 actually the individual, if he was a pilot that
14 had been shot down, had a radio, and he could make
15 a signal, and the helicopter could home in on him,
16 but he couldn't see him because of the palm trees
17 had a layer of leaves.

18 And he actually let the rescue device
19 through these palm leaves to the injured man. If
20 he was not too injured to seize the end of the
21 cable from the helicopter, they would pull him up.
22 If he couldn't do it himself, a second man would

0127

1 go down himself from the helicopter, get the man,
2 lift him up, and hold him while they lifted the
3 both of them up in the helicopter.

4 Now, during that process the North
5 Vietnamese were all around them. And so they had
6 other aircraft associated with the rescue to drop
7 tear gas, simply to delay the North Vietnamese
8 from approaching the rescue point. And that's
9 what I meant when I said that it was used many
10 times. It was tear gas that was used to hold the
11 North Vietnamese at bay until the rescue was
12 completed.

13 Q And you never did confirm to either
14 Mr. Arnett, Ms. --

15 A I never saw Mr. Arnett in my life.

16 Q -- Ms. Oliver or Mr. Smith that sarin
17 gas was in fact used, did you?

18 MR. BAINE: Objection to the form of the
19 question.

20 MR. SIMMONS: Object to form. Leading
21 the witness.

22 A I did not.

0128

1 BY MR. JOHNSON:

2 Q Now, I want to go from these documents
3 back to these documents.

4 A Yes.

5 Q What did you understand and tell
6 Ms. Oliver the Tailwind mission was about, to your
7 knowledge?

8 A Well, I think I explained to them, it
9 was associated with gaining intelligence and
10 facilitating the blockage of the Ho Chi Minh
11 Trail, which was a fundamental objective, because
12 the North Vietnamese were feeding great number,
13 amount of material out of North Vietnam into Laos,
14 down to the border of South Vietnam, and then
15 infiltrating inside.

16 And some of it was taken to Cambodia.

17 Q It's my understanding you knew what the
18 general nature of the operation was.

19 A Well, I knew that we had operations
20 underway by the Special Forces to gain
21 intelligence. We didn't know exactly how many
22 North Vietnamese were in Laos. We didn't know

0129

1 exactly the number of trucks that were coming down
2 on the trail. All of these things were important
3 to know. And that was what these Special Forces
4 were -- what that mission was.

5 Q And is that what you told Ms. Oliver the
6 mission was of Tailwind, so far as you knew?

7 MR. SIMMONS: Objection to the form of
8 the question.

9 A I think she knew that.
 10 BY MR. JOHNSON:
 11 Q I call your attention to the first
 12 interview here, page number 4.
 13 MR. BAINE: When you say "the first
 14 interview," it's all one interview.
 15 BY MR. JOHNSON:
 16 Q Beta 14.
 17 MR. SIMMONS: January 12, 1998
 18 interview.
 19 MR. BERMAN: CO 1100?
 20 MR. JOHNSON: CO 1100.
 21 BY MR. JOHNSON:
 22 Q Down at the bottom when Ms. Oliver said,

0130

1 "Okay, so what was the mission in Tailwind?
 2 You're generally aware of it but not responsible
 3 for it, but if you're generally aware of it you
 4 had to have been -- had a sense of what the
 5 mission was. What was the point? I mean, this is
 6 the largest incursion by the United States into
 7 Laos in this sort of neutral territory. I mean,
 8 what was the mission?"
 9 And did you tell Ms. Oliver, "Well, the
 10 fundamental mission of course was to deny it to
 11 the North Vietnamese, this utilization of Laos for
 12 their infiltration?"
 13 A That was the answer. Does anybody want
 14 to quarrel with that?
 15 Q And so this record accurately reflects
 16 the answer that you gave her concerning what the
 17 true mission was?
 18 MR. SIMMONS: Objection.
 19 A No.
 20 MR. BAINE: Let me just state for the
 21 record, I don't personally have an objection to
 22 going through this transcript and asking the

0131

1 Admiral whether the transcript is accurate. But
 2 this is not only a transcript. This is a
 3 videotaped deposition. So I think that there is a
 4 record of this videotape that really eliminates
 5 any question about whether this is accurate.
 6 We can probably save the Admiral's time
 7 if we don't do that.
 8 MR. SIMMONS: My objection goes to form.
 9 MR. DUNCAN: Do you have a transcript?
 10 Maybe we should be using your transcript.
 11 MR. BAINE: No. This transcript is the
 12 only one I've got. All I'm saying is there's also
 13 a videotape. There's no mystery about this
 14 interview. It's videotaped.
 15 MR. DUNCAN: Are you saying that this
 16 transcript is inaccurate?
 17 MR. BAINE: No. I'm just suggesting
 18 we'll save time if we don't each go through the
 19 transcript and read it.
 20 MR. SIMMONS: You mischaracterized it.
 21 I'm objecting to the mischaracterization.
 22 MR. JOHNSON: You can make that

0132

1 objection.
 2 BY MR. JOHNSON:
 3 Q Do you remember answering to her, "The
 4 purpose of any operation such as the one you
 5 mentioned was to in effect get the Laotian
 6 government and get all of the factors involved
 7 united to deny Laos to the North Vietnamese, is
 8 what it amounted to?"
 9 MR. BAINE: You've read part of the
 10 answer.
 11 A Where are you reading?
 12 BY MR. JOHNSON:
 13 Q Right down here.
 14 MR. BAINE: Objection to the form of the
 15 question. You read part of the answer, which is

16 why I think it's best just to use the videotape
 17 and let it speak for itself.
 18 A Yes, well, that's -- fundamentally
 19 that's what it was. We wanted to deny Laos to the
 20 North Vietnamese because -- why? Because the
 21 North Vietnamese were using Laos to penetrate
 22 South Vietnam with supplies. And also some

0133

1 supplies went to Cambodia. So we were involved in
 2 Cambodia too.
 3 BY MR. JOHNSON:
 4 Q This particular mission, the Tailwind
 5 mission, was not historically significant, was it?
 6 MR. BAINE: Objection to the form of the
 7 question.
 8 BY MR. JOHNSON:
 9 Q This Tailwind mission was not then of
 10 any particular significance or importance in the
 11 grand scheme of things?
 12 MR. BAINE: Just for the record, let me
 13 state, I don't think you're entitled to lead the
 14 witness, okay? I do object to your leading
 15 questions. I will say so from time to time.
 16 BY MR. JOHNSON:
 17 Q Was this mission historically
 18 significant to you?
 19 THE WITNESS: Who is winning this
 20 argument?
 21 MR. BAINE: I won it. He rephrased his
 22 question.

0134

1 BY MR. JOHNSON:
 2 Q I rephrased my question.
 3 A Restate it after you rephrased --
 4 Q Was this mission historically
 5 significant to you?
 6 A I stick by my answer.
 7 Q That it was not?
 8 A This --
 9 MR. BAINE: Objection to form.
 10 A This mission I still say was focused
 11 on -- actually the fundamental focus of the
 12 Vietnamese War was North Vietnam. North Vietnam
 13 was making use of Laos, violating their
 14 sovereignty, if you will, and we were putting a
 15 stop to it. You haven't heard the end of this.
 16 We were trying to prevail on the South Vietnamese
 17 to do their own fighting.
 18 In other words, we were trying to
 19 substitute their soldiers for ours. And they set
 20 up an attack operation to a town called Tchepone,
 21 T-C-H-E-P-O-N-E, which was right at the border of
 22 North and South Vietnam, and where a majority of

0135

1 trucks carrying the supplies all the way down to
 2 South Vietnam were traveling. And we got the
 3 South Vietnamese to try for the first time to go
 4 on their own and see if they could cut the Ho Chi
 5 Minh Trail at that point.
 6 And we needed the information, how many
 7 North Vietnamese troops were in Laos and what
 8 disposition did the Laotians have and so on. And
 9 so I still stick by my answer.
 10 BY MR. JOHNSON:
 11 Q All right. Do you know of -- well,
 12 excuse me. You were not the joint chief at the
 13 time of this particular operation?
 14 MR. BAINE: Objection.
 15 A Yes. I think it was in September, I had
 16 been Chairman about a month.
 17 BY MR. JOHNSON:
 18 Q Oh, you had been Chairman a month?
 19 A Yes.
 20 Q And you continued to be Chairman for how
 21 long?
 22 A Four years.

0136

1 Q Okay. I got that wrong, then. So
 2 during your four years, did you receive any report
 3 through the Joint Chiefs that any American mission
 4 was to hunt down and kill American defectors?
 5 A Absolutely not.
 6 Q During your tenure as a Joint Chief, did
 7 you receive any report that any American soldiers
 8 in Vietnam, Laos, Cambodia or the Vietnam theater
 9 had used lethal gas or nerve gas or sarin gas to
 10 kill anyone?
 11 A No. That was against the policy. We
 12 would have to get permission from President Nixon
 13 himself to use sarin, that fatal type of gas.
 14 Q My question to you is, did you receive,
 15 ever receive any report or see any report where it
 16 was requested to be used?
 17 A No. And the reason for that was it
 18 wasn't used.
 19 MR. JOHNSON: I think that's all I have
 20 to ask you.
 21 A I would just like to add one point,
 22 which people don't seem to understand. If you get

0137

1 an 18- or 20-year-old boy, in the jungle, hot,
 2 being shot, and so on, and he encounters any kind
 3 of gas, I don't care what it is, he'll think it's
 4 poisonous when it hits him, I mean, even if it's
 5 just ordinary tear gas.
 6 I don't know whether you've been through
 7 it or not, but it's very, very uncomfortable. And
 8 so there are all kinds of gas, even the one that
 9 seemed to be topic A, is fatal. And that's what I
 10 think is the important point here, is that none of
 11 the members of the SOG group were killed. Many of
 12 them were wounded by the machine guns and rifles
 13 and things like that.
 14 But had they been using sarin gas in the
 15 area they were operating, they would have probably
 16 not survived.
 17 Q Did you read the Department of Defense
 18 report?
 19 A Yes.
 20 MR. JOHNSON: And we have an agreement
 21 to mark that as Exhibit J?
 22 MR. BAINE: I think the Admiral has

0138

1 indicated he would like to keep his copy. What I
 2 would suggest is we put on the record that Exhibit
 3 J will be that report and another copy will be
 4 marked so he can keep his copy.
 5 BY MR. JOHNSON:
 6 Q Did you agree with the conclusions
 7 stated in that report?
 8 MR. BAINE: Which conclusions?
 9 A Wait a minute. I don't know it by
 10 heart.
 11 BY MR. JOHNSON:
 12 Q Did you agree with the conclusions
 13 stated in the report that sarin gas was not used
 14 on this Tailwind mission?
 15 A Absolutely.
 16 MR. SIMMONS: I object to the form.
 17 BY MR. JOHNSON:
 18 Q Did you agree with the conclusion of the
 19 report that one of the objectives of the report
 20 was to hunt down and kill American defectors?
 21 A No.
 22 MR. JOHNSON: That's all. Mr. Duncan is

0139

1 going to ask you some questions.
 2 THE VIDEOGRAPHER: We're going off the
 3 record. The time is 11:59:50.
 4 (Discussion off record.)
 5 THE VIDEOGRAPHER: We're back on the

6 record. The time is 12:03:50.
 7 EXAMINATION BY COUNSEL FOR THE PLAINTIFFS SADLER
 8 AND ROSE
 9 BY MR. DUNCAN:
 10 Q Admiral Moorer, my name is Phillip
 11 Duncan. I represent Colonel Sadler, who is one of
 12 the plaintiffs in this lawsuit. Do you know
 13 Colonel Sadler?
 14 A I met him, yes.
 15 Q So you know who he is, is that correct?
 16 A Yes.
 17 Q Do you know that he was the commander of
 18 this SOG unit at the time of the operation?
 19 A Yes.
 20 Q So if in fact he told CNN that nerve gas
 21 or sarin was not used, then would he be a person
 22 in the position to know?

0140

1 MR. BAINE: Objection to the form.
 2 BY MR. DUNCAN:
 3 Q Go ahead.
 4 A Well, that's the reason I told
 5 Mrs. Oliver, why not ask the people that were
 6 there. And if he was there and said it wasn't
 7 used, it wasn't used.
 8 Q If he was the one in charge of the
 9 mission --
 10 A Yes.
 11 Q -- and he said the buck starts here and
 12 stops here, would he be a person in a position to
 13 know whether sarin gas was used or not?
 14 MR. SIMMONS: Object to the form.
 15 A Absolutely.
 16 BY MR. DUNCAN:
 17 Q And if Lieutenant Buskirk actually
 18 reported to him on the mission, would that be
 19 further confirmation that he would be a person in
 20 the know?
 21 MR. SIMMONS: Same objection.
 22 A Are you still talking about Sadler?

0141

1 BY MR. DUNCAN:
 2 Q Right.
 3 A Yes, I would think so, although of
 4 course his forces were spread, and so they could
 5 have been a member of his force that had been led
 6 to believe this or that had been used. But I
 7 think if he said so, I accept his word 100
 8 percent.
 9 Q If Colonel Sadler told CNN that sarin
 10 gas wasn't used, then you would accept his word
 11 100 percent?
 12 MR. SIMMONS: Objection. I object to
 13 form.
 14 A Absolutely. And we have a culture in
 15 the military that if a man doesn't tell the truth,
 16 he's a goner. He would not have been allowed to
 17 keep that command.
 18 BY MR. DUNCAN:
 19 Q Now, if CNN contacted Colonel Sadler on
 20 at least four occasions during their
 21 investigation, and he told them each time that
 22 what they were saying was a lie, that sarin gas

0142

1 wasn't used, my question to you is, would that
 2 have been important for you to know?
 3 MR. BAINE: Objection to the form of the
 4 question, when you say "told them."
 5 MR. SIMMONS: Objection.
 6 BY MR. DUNCAN:
 7 Q Told April Oliver and representatives of
 8 CNN that sarin gas was not used on operation
 9 Tailwind whatsoever, that that was a lie, would
 10 that be an important fact for you to have known
 11 from April Oliver when she was interviewing you?
 12 MR. BAINE: Objection to the form of the

13 question. What representatives are you talking
 14 about?
 15 MR. SIMMONS: Object to the form.
 16 BY MR. BERMAN:
 17 Q Go ahead.
 18 A Absolutely. Yes.
 19 MR. SELINGER: Objection to the form of
 20 the question. Hypothetical.
 21 BY MR. DUNCAN:
 22 Q Now, in reference to that, did April

0143

1 Oliver ever tell you at any time that Colonel
 2 Sadler had told her or any members of CNN that it
 3 was an absolute falsehood that sarin gas was used
 4 on this mission?
 5 MR. SIMMONS: Objection to form.
 6 THE WITNESS: Who is winning this fight
 7 between all of you?
 8 BY MR. DUNCAN:
 9 Q You get to answer.
 10 A Yes. The -- repeat the question.
 11 Q Did April Oliver ever at any time during
 12 her interviews of you tell her that Colonel
 13 Sadler, who was the commander --
 14 A She never said Colonel Sadler. She said
 15 that people have said this. And that's when I
 16 told her, why don't you get them on TV. And she
 17 went on to say she had already done that. And
 18 I've never seen Colonel Sadler on TV saying that
 19 the gas was used.
 20 Q My question goes to, if he told her it
 21 wasn't used, she didn't tell you that?
 22 A No.

0144

1 MR. SIMMONS: Objection to form.
 2 BY MR. DUNCAN:
 3 Q Is that right?
 4 A That's right.
 5 Q And in reference to how the military
 6 functions, if in fact CNN through its employees
 7 had contacted Colonel Sadler, and he had told them
 8 that what they were going to publish was a lie and
 9 false and not true, then what is your opinion as
 10 to what should have been done by CNN in reference
 11 to that particular statement by Colonel Sadler?
 12 MR. BAINE: Objection to the form of the
 13 question. Admiral Moorer was the Chairman of the
 14 Joint Chiefs of Staff. He wasn't a reporter. He
 15 wasn't a journalist. He wasn't an executive of a
 16 news organization. And you're asking for his
 17 opinion about journalism. So I object to that.
 18 BY MR. DUNCAN:
 19 Q Go ahead.
 20 MR. SIMMONS: I join in the objection.
 21 A Well, I think that -- I come back to the
 22 point that I have full confidence in Colonel

0145

1 Sadler, that he was a colonel. No colonel that's
 2 caught in a lie survives his rank. And so I
 3 believe what he says.
 4 BY MR. DUNCAN:
 5 Q So if CNN chose to ignore what Colonel
 6 Sadler said and instead to look at some other
 7 source rather than listen to the commander of the
 8 actual operation, would you be critical of that
 9 kind of journalism?
 10 MR. BAINE: Objection to the form of the
 11 question. Again, you're asking him about
 12 journalism. He's a military man. And I'm going
 13 to object to your taking the occasion of a
 14 deposition to make a closing argument. You can
 15 make those arguments. But it's an objectionable
 16 deposition question.
 17 MR. DUNCAN: I'll rephrase it.
 18 BY MR. DUNCAN:
 19 Q Would you take exception to that kind of

20 methodology in seeking the truth?
 21 MR. SIMMONS: Objection.
 22 MR. BAINE: Objection to the form.

0146

1 MR. SIMMONS: You're going back to a
 2 question you acknowledged was inappropriate.
 3 A The answer to your question is yes.
 4 BY MR. DUNCAN:
 5 Q Now, you started the interview with
 6 Mrs. April Oliver --
 7 A She started it with me.
 8 Q But you started out by telling her none,
 9 you had N-O-N-E, none knowledge about the use of
 10 sarin; wasn't that right?
 11 MR. SIMMONS: Objection. The transcript
 12 speaks for itself, if you're referring to the
 13 January 12th transcript.
 14 MR. DUNCAN: Let's go to CO 1102.
 15 MR. SIMMONS: This is Exhibit A, sir?
 16 MR. DUNCAN: Exhibit A.
 17 A What are you talking about? I've got it
 18 right here.
 19 BY MR. DUNCAN:
 20 Q Do you see C 1102?
 21 A CO 1102.
 22 Q Right. Do you see there where

0147

1 Mrs. Oliver says, "Now of course the reason we're
 2 interested in Tailwind is that we've been told by
 3 a lot of people now that it was the first time
 4 that the U.S., whether it was the CIA or the Air
 5 Force or the SOG guys I'm not entirely clear, but
 6 it was the first time the U.S. ever used what's
 7 known as lethal nerve gas in combat. How much
 8 awareness do you have of that?"
 9 Your response was "None."
 10 MR. SIMMONS: This was covered by
 11 Mr. Berman. It's the exact same passage. I
 12 object to it.
 13 MR. DUNCAN: Well, I'm going to ask a
 14 question, but I have to set up the factual context
 15 of it.
 16 BY MR. DUNCAN:
 17 Q Do you see that?
 18 A Yes. I stand by my answer.
 19 Q And if we go to CO 1129.
 20 A 1129?
 21 Q Right.
 22 A Okay.

0148

1 Q Do you see the question where she says,
 2 Mrs. Oliver, "Was this the only time that you
 3 personally know that GB or nerve gas was used," do
 4 you see that?
 5 MR. SIMMONS: Objection. Same question
 6 asked by Mr. Berman.
 7 A I don't see that. Oh.
 8 BY MR. DUNCAN:
 9 Q Your answer was, "Well, mainly I know
 10 about it because of what you've told me."
 11 A That's true.
 12 Q So you started the interview process
 13 with you telling her you knew none, N-O-N-E, and
 14 you end it by telling her, I know mainly by what
 15 you told me.
 16 MR. BAINE: Objection to the form of the
 17 question.
 18 BY MR. DUNCAN:
 19 Q Is that correct? Is that a fair
 20 statement?
 21 MR. SIMMONS: Objection.
 22 A Yes, that was.

0149

1 BY MR. DUNCAN:
 2 Q Now, you brought with you the Department

3 of Defense record, didn't you?
 4 A Right here.
 5 Q Look at page 7 of that, if you would.
 6 A Page 7 of which?
 7 Q Of the report itself.
 8 A You mean the opening? Yes, I've got it.
 9 Q Do you see in the bottom paragraph there
 10 where it says, "In addition, the joint history
 11 office interviewed Admiral Thomas H. Moorer," do
 12 you see that?
 13 A Yes.
 14 Q "And General John Vogt, U.S. Air Force,
 15 retired"?
 16 A Right.
 17 Q "Who was Chairman of the Joint Chiefs of
 18 Staff and director, Joint Staff, respectively,
 19 during Operation Tailwind"? Do you see that?
 20 A Yes.
 21 Q Help me understand that. Is he the
 22 Chairman of the Joint Chiefs of Staff or --

0150

1 A I'm Chairman of the Joint Chiefs. He's
 2 what amounts to the deputy. He was the director.
 3 I was the Chairman. Look up on the third line.
 4 Vogt was the director. He was the number two in
 5 the Joint Chiefs of Staff hierarchy.
 6 Q If we continue where I left off, it
 7 says, "Admiral Moorer said that he never confirmed
 8 anything to CNN reporters because he could not
 9 remember anything about Operation Tailwind." Do
 10 you see that?
 11 A Yes. I see that. And that's true.
 12 Q "He reported that he had no knowledge of
 13 the use of sarin or the targeting of defectors and
 14 he felt that April Oliver had asked him trick
 15 questions."
 16 A Yes. That's right.
 17 MR. BAINE: Objection to the form of the
 18 question, if that's a question. You're just
 19 reading stuff to him. Why don't you put questions
 20 that aren't leading to him?
 21 MR. SIMMONS: This isn't even a
 22 foundation you're laying for this.

0151

1 BY MR. DUNCAN:
 2 Q Do you see that in the transcript?
 3 A Well, I was referring to the
 4 conversation we had about scores of defectors.
 5 She reeled off a series of numbers and then said,
 6 which one do you take, does that mean scores or
 7 whatever. And "scores" doesn't mean anything to
 8 me.
 9 Q Well, look at the document there, if you
 10 would.
 11 A I'm looking at it.
 12 Q It says, "He reported that he had no
 13 knowledge of the use of sarin." Are you with me?
 14 A Yes.
 15 Q "Or the targeting of defectors"?
 16 A Yes.
 17 Q Are you with me?
 18 A Yes.
 19 Q "And he felt that April Oliver had asked
 20 him trick questions."
 21 A Yes.
 22 Q Is that a true statement?

0152

1 MR. BAINE: Objection to the form.
 2 MR. SIMMONS: Objection.
 3 MR. BAINE: Misleading.
 4 BY MR. DUNCAN:
 5 Q You can answer.
 6 A I already answered. Yes.
 7 Q Now, in reference to that, you've told
 8 us here today that Ms. Amy Oliver either believed
 9 that there was sarin gas actually used or she had

10 her own agenda to get a headline.
 11 MR. BAINE: Objection to form.
 12 MR. SIMMONS: Objection.
 13 BY MR. DUNCAN:
 14 Q Is that a fair statement?
 15 MR. BAINE: Objection to the form of the
 16 question.
 17 A Well, that's not exactly what I said.
 18 BY MR. DUNCAN:
 19 Q What is it that you said?
 20 A I said that she was obsessed with a
 21 conviction that sarin gas was used, or she
 22 wouldn't keep asking me. For seven hours they

0153

1 asked me questions about it. And consequently I
 2 think that she felt that this could be worth a
 3 Pulitzer prize, or I don't know what, if she could
 4 get a story out proving that the United States
 5 military lied about something.
 6 Q And during the interview process, over
 7 and over again to her you confirmed that it was
 8 not used as far as your knowledge?
 9 MR. BAINE: Objection to the form of the
 10 question. That is a complete mischaracterization
 11 of his testimony and a complete
 12 mischaracterization of the transcript that you
 13 have in front of you.
 14 MR. SIMMONS: Objection.
 15 MR. NYKODYM: He can answer the
 16 question.
 17 MR. DUNCAN: The record will speak for
 18 itself.
 19 MR. BAINE: Yes, it will.
 20 BY MR. DUNCAN:
 21 Q Let me ask you the question. During the
 22 course of the conversations and interviews with

0154

1 Ms. April Oliver, what was your position on the
 2 use of sarin gas in Laos in September of 1970?
 3 MR. BAINE: Objection to the form of the
 4 question.
 5 A It was none, because I would have had to
 6 have authority from the White House itself. And I
 7 knew what the policy was.
 8 BY MR. DUNCAN:
 9 Q Now, you've told us that she also
 10 brought the transcript, some kind of transcript to
 11 your house or your home and residence at about
 12 9:00 p.m. with a guy named Jack Smith, is that
 13 right?
 14 MR. SIMMONS: Objection. That's not the
 15 testimony at all.
 16 A I don't know, I'm just not sure about
 17 the time. But I know that I was very surprised to
 18 see them in the lobby of my apartment without ever
 19 advising me that they were coming. I thought that
 20 was very rude.
 21 BY MR. DUNCAN:
 22 Q And they showed you a document at that

0155

1 time, is that right?
 2 MR. SIMMONS: Objection. That's not
 3 correct.
 4 A They -- in the meantime I had been
 5 conversing with the Defense Department. And so
 6 Smith in particular set about to write my
 7 statement for me, is what it amounted to. And we
 8 had -- of course we had very rudimentary equipment
 9 around there for making -- for copy machine and so
 10 on.
 11 And now you're holding one -- I don't
 12 think that's my handwriting, and I do know that
 13 Smith inserted there, instead of "of," he puts
 14 "indications" -- "indicating." That's
 15 definitely -- that's his handwriting, not my
 16 handwriting.

17 BY MR. DUNCAN:
 18 Q Okay.
 19 MR. SIMMONS: Would you state on the
 20 record what exhibit he was looking at?
 21 BY MR. DUNCAN:
 22 Q The document you're referring to is

0156

1 Exhibit E?
 2 A Right.
 3 Q Now, is this a document that you had
 4 typed up, or how did it come into existence?
 5 A I think that -- no, I didn't have it
 6 typed up. It was a rewrite of what the public
 7 affairs officers in the Pentagon told me.
 8 Q Well, did you have --
 9 A And then we took this and started
 10 discussing it, and it wound up like that.
 11 Q I'm sorry. You took Exhibit D?
 12 A Yes. And that's not my handwriting down
 13 there.
 14 Q I just want to make sure I understand
 15 this correctly, and the jury does. You took
 16 Exhibit D, is that correct?
 17 A Yes.
 18 MR. DUNCAN: Have you got that?
 19 A And I think it wound up in this form.
 20 BY MR. DUNCAN:
 21 Q Let me hand you Exhibit D. You took
 22 Exhibit D, is that correct?

0157

1 A Yes. This is Exhibit D.
 2 Q And then Exhibit D was the document you
 3 had, is that correct?
 4 A Well, I had both of them. This one, as
 5 I recall, wound up -- this one.
 6 Q I'm wanting to know how --
 7 MR. SIMMONS: Can we get an indication
 8 on the record which document you just said this
 9 one was? Is it E as in Edward or D as in David?
 10 MR. BAINE: E.
 11 A It started out D, just like the
 12 alphabet, and it wound up E.
 13 BY MR. DUNCAN:
 14 Q My question to you is, how did it wind
 15 up E, how did it come to be E?
 16 A Because we had a discussion, and it
 17 was -- the original copy that I was working on
 18 when they arrived and so on which I got from the
 19 office of the Secretary of Defense was rewritten.
 20 Q Who rewrote it?
 21 A Well, I rewrote most of it. But then we
 22 had -- I discarded this right here.

0158

1 MR. SIMMONS: Which is Exhibit D, as in
 2 David?
 3 A Yes. I think this is definitely not my
 4 handwriting, because I don't print like this and
 5 never do. And the pen remarks that are on that
 6 were put on there by Jack Smith.
 7 BY MR. DUNCAN:
 8 Q And that's Exhibit D we're talking
 9 about?
 10 A That's --
 11 Q Just a second. So the record is clear,
 12 you're now looking at Exhibit E, is that right?
 13 A I'm now looking at Exhibit E, which was
 14 the outcome of the back and forth over this one.
 15 And this is what we call a smooth copy, until
 16 Smith got his hands on it and he erased the "of"
 17 and he put "indicating."
 18 I said -- I said a verbal statement.
 19 That was a discussion, speculating about the use
 20 of this gas. And he changed the "of" to
 21 "indicating." And this was the final form that I
 22 sent back to the Defense Department, I think.

0159

1 Q And so --
2 A But "indicating" is not my word, and
3 definitely not my handwriting.
4 Q So when the statements ends, "I learned
5 of the operation including verbal statements of
6 the use of sarin on the Tailwind mission," you're
7 saying that Mr. Smith changed "of" to "indicating
8 the use of" --
9 A That's what I'm saying.
10 Q And you're saying that's not your word,
11 is that right?
12 A That's right.
13 Q Is that a false statement?
14 MR. SIMMONS: Objection.
15 A "Indicating" is a much stronger
16 statement, in my view, than "of."
17 BY MR. DUNCAN:
18 Q So therefore --
19 A It's the difference between talking
20 about it and doing it.
21 Q Therefore is it a false statement?
22 A I think it's a false statement.

0160

1 Q And that was Mr. Smith that did that?
2 A That's my recollection.
3 Q And at the time he was working for CNN?
4 A Temporarily.
5 Q Now, you understood that April Oliver
6 was working for CNN at the time she was
7 interviewing you and at the time she was doing
8 this story, didn't you?
9 A Right.
10 Q And you used the term, correct me if I'm
11 wrong, you used the term "harassment" when you
12 were referring to Mr. Smith and Ms. Oliver coming
13 out and talking to you about this statement when
14 you first were asked about it.
15 A Yes. In the middle of the night and
16 without even calling me first. I thought it very
17 rude.
18 Q And so did you feel that you were
19 harassed into changing your statement by them?
20 MR. BAINE: Objection to the form of the
21 question.
22 BY MR. DUNCAN:

0161

1 Q Go ahead.
2 MR. BAINE: He said it was rude for them
3 to show up without warning.
4 BY MR. DUNCAN:
5 Q My question was, did you feel they were
6 harassing you, trying to make you say what they
7 wanted you to say instead of what the truth was?
8 MR. BAINE: Objection to form.
9 A Yes, they always do that.
10 MR. SIMMONS: Objection.
11 BY MR. DUNCAN:
12 Q Have I got that right?
13 A Yes, you've got it right.
14 MR. SIMMONS: The "they," was that the
15 Pentagon, or was that --
16 BY MR. DUNCAN:
17 Q Was the "they" Mr. Smith and Ms. Oliver?
18 Were they harassing you, trying to make you say
19 what they wanted you to say instead of the truth?
20 MR. BAINE: Objection to the form of the
21 question.
22 MR. SIMMONS: Objection.

0162

1 A They were trying to write the statement
2 for me. That's what they were doing. Otherwise
3 you wouldn't have his handwriting on the
4 statement.
5 BY MR. DUNCAN:
6 Q Now, did you in fact tell them the truth

7 is that you were not confirming the use of sarin
8 gas?

9 MR. SIMMONS: Objection.

10 A I've said that so many times, I
11 probably -- they knew that. I don't know whether
12 I told them again. I thought they were
13 intelligent people. You don't need to tell them
14 everything. I could have and I could not have. I
15 don't know.

16 BY MR. DUNCAN:

17 Q Do you know how they found out that the
18 Department of Defense had sent you a statement?
19 Did they tell you?

20 A No. I told them that I had been talking
21 to the Secretary of Defense. And they probably
22 went to the Freedom of Information or something

0163

1 and got -- I imagine they got a copy. I don't
2 care whether they got a copy or not.

3 Q Did April Oliver or Mr. Smith talk to
4 you beforehand and ask you anything about the
5 Department of Defense prior to showing up?

6 A No. I think I told them I had been
7 talking to Mr. Bacon, as I recall. But this
8 happened some time ago. You're asking me a detail
9 I can't remember. I'm smart, but not that smart.

10 Q But in any event, when they showed up,
11 did they already have a copy of the statement from
12 the Department of Defense?

13 A No. Not to my knowledge.

14 Q Did they ask you to get yours?

15 A I had it in my hand. I had just been
16 doing that when they walked in. And I still don't
17 think that that was a very correct thing to do, to
18 just walk in and surprise me like that.

19 Q Now, I want to go back in time before
20 that to Ms. Oliver. She came over to your
21 apartment with what has been described as a
22 transcript of the broadcast. Do you recall that

0164

1 event?

2 A Yes. We had discussed that already.

3 Q Right. Now, you were asked numerous
4 questions about whether or not that was an unusual
5 event by Mr. Baine. Do you recall that
6 questioning, that line of questioning?

7 MR. SIMMONS: I recall your objections
8 to the word "usual" and "unusual."

9 A Right.

10 BY MR. DUNCAN:

11 Q My question to you is this. If April
12 Oliver didn't have confidence in her story, didn't
13 believe it and was coming to try to get you on
14 behalf of CNN to okay it beforehand, would that be
15 the kind of situation you felt like you were in
16 when she came over there?

17 MR. BAINE: Objection to the form of the
18 question.

19 MR. SIMMONS: Objection to the form.

20 MR. BAINE: That is a totally
21 hypothetical, and almost -- wait just a second --
22 a ridiculous question.

0165

1 MR. DUNCAN: We're going to find out
2 what he said.

3 MR. BAINE: It's clearly objectionable.

4 BY MR. DUNCAN:

5 Q Go ahead.

6 A What I was about to say -- you're the
7 biggest, I'll talk to you. The facts are that the
8 script, I guess you would call it, the proposed
9 broadcast was not a subject of this discussion
10 when they came over at night.

11 When Mrs. Oliver had that in her hand, I
12 recall I was sitting around in the reception side
13 of the apartment, and when she handed me that, and

14 I handed it right back to her. And somebody --
 15 she says that I took 30 minutes to read it.
 16 That's not the way it was. So you're getting two
 17 papers mixed up. This is one set, and the script
 18 for the broadcast was another one.
 19 And not only that, Arnett started -- I
 20 mean, the local newspaper started out and said
 21 "Moorer Confirms Use of Sarin Gas," in letters
 22 that high, which was a lie. I didn't confirm

0166

1 anything. And I said "None," over and over again.
 2 And in here it says "None."
 3 And yet there was a headline that was
 4 instigated by Arnett, and on top of that, in this
 5 film they got here, what they do is have Arnett
 6 step in and interject hearsay information, what
 7 he's saying what I said, instead of me speaking
 8 for myself.
 9 Q I understand, sir. I appreciate that.
 10 And I understand that. I'm leaving these two
 11 documents, and I'm putting them down. I'm not
 12 talking about when Mr. Smith and Ms. Oliver came
 13 over to your apartment. I'm now talking about
 14 when Ms. Oliver brought the transcript of the
 15 broadcast or what has been referred to as the
 16 transcript of the broadcast to your apartment.
 17 Do you recall that?
 18 A Yes. We had a place we met in the
 19 reception area of this apartment. There's a
 20 hundred people that live there.
 21 Q And you looked at it and saw this -- her
 22 terminology about defectors and called into

0167

1 question her use of "scores," is that right?
 2 A Yes. That's right. And that's all I
 3 did.
 4 Q And you didn't look at that any further
 5 than that?
 6 A (Witness shakes head.)
 7 Q Is that a no?
 8 A That's a no.
 9 Q And so if CNN and April Oliver
 10 represented to the American public that you
 11 approved of the broadcast before it was aired,
 12 that's not true?
 13 MR. BAINE: Objection to the form of the
 14 question.
 15 MR. SELLINGER: Objection to the form.
 16 BY MR. DUNCAN:
 17 Q Go ahead.
 18 A Yes, they -- it's not true. I don't
 19 know what the public thought.
 20 Q In any event, you did not approve of
 21 this broadcast before it was aired?
 22 MR. SIMMONS: Objection.

0168

1 A After I saw it, I sure the hell didn't
 2 approve it.
 3 BY MR. DUNCAN:
 4 Q I'm talking about the transcript itself.
 5 That night when April Oliver was there, you only
 6 looked at that transcript for a few minutes, and
 7 you did not approve of the broadcast?
 8 MR. SIMMONS: Object to form.
 9 BY MR. DUNCAN:
 10 Q Go ahead.
 11 A That's right. Not only that, I never
 12 saw this film until just a few days ago. I never
 13 saw it the next morning, because when I saw that
 14 headline in the newspaper that Moorer confirms,
 15 that convinced me of what was in the -- I knew
 16 that was in the article she wanted me to read.
 17 Q And --
 18 MR. SIMMONS: I'm sorry. He made
 19 reference to a film. What was that film?
 20 BY MR. DUNCAN:

21 Q Did Ms. Oliver offer to show you the
22 film of the broadcast?

0169

1 MR. BAINE: Objection to the form.
2 A No, she did not. She never offered to
3 show me the film. The film was broadcast after
4 she left.
5 BY MR. DUNCAN:
6 Q Before the film was broadcast, she
7 didn't offer to show it to you?
8 A She showed me a script. That's what she
9 showed me.
10 Q And you found fault with that script?
11 MR. SIMMONS: Objection. You're
12 interrupting the gentleman.
13 MR. BAINE: Objection to the form.
14 You're overcharacterizing and mischaracterizing
15 the prior testimony.
16 BY MR. DUNCAN:
17 Q You found fault with one part of the
18 script you looked at, is that right?
19 A I just looked at it, and the problem I
20 had with that was that in the first place there
21 weren't scores; and in the second place, when she
22 asked me the question originally, she was

0170

1 escalating, hoping I would pick a number.
2 Q So did you feel, did you have a feeling
3 one way or the other whether she was
4 misrepresenting things to you?
5 MR. BAINE: Objection to the form. On
6 what point? On the "scores" point?
7 BY MR. DUNCAN:
8 Q On the "scores" point.
9 A On the "scores," yes. I knew it
10 couldn't have been scores.
11 Q Did you have a feeling one way or the
12 other whether she was misrepresenting to you about
13 the use of sarin gas?
14 MR. SIMMONS: Objection.
15 A Yes. That's why I handed the paper back
16 to her, because once I saw the "scores," that to
17 me certainly downgraded the paper from beginning
18 to end, because I figured that if I looked through
19 it and studied it I would find other things that
20 were inaccurate, and I would spend all of my time
21 writing the script for CNN.
22 BY MR. DUNCAN:

0171

1 Q And so it was not your intent or your
2 purpose to approve of that script?
3 A That's right.
4 MR. SIMMONS: Objection.
5 BY MR. DUNCAN:
6 Q Now --
7 MR. GRESHAM: Can you tell me how much
8 longer? The Admiral is getting tired. In all
9 fairness, he can have a little lunch break.
10 MR. DUNCAN: I feel like he is too.
11 THE WITNESS: Speak for yourself.
12 BY MR. DUNCAN:
13 Q You can tell me. I have a couple of
14 more questions.
15 A Go ahead.
16 Q Lawyers have a tendency to keep asking
17 questions. So if you are hungry or want to --
18 A Hell, no, I'm not hungry. Go ahead.
19 Q Now, you were also asked by Mr. Baine
20 about --
21 A Mr. who?
22 MR. BAINE: Me.

0172

1 THE WITNESS: Oh, you.
2 BY MR. DUNCAN:
3 Q The guy beside you there. You were

4 asked about the retraction by Mr. Baine, do you
5 recall being asked about that?
6 A Yes. I mean, I was really quoting
7 from -- I've got so many papers here. Anyway, I
8 was talking about Mr. Abrams's report. And I read
9 from that the fact that Mr. Abrams said that CNN
10 should retract and apologize. That was the two
11 verbs he used. And I guess they did that.
12 Q I want to show you a copy of what
13 purports to be the retraction by CNN.
14 MR. SIMMONS: What document are we now
15 looking at?
16 MR. JOHNSON: It would be I or J.
17 MR. SIMMONS: This is the Pentagon
18 report?
19 MR. DUNCAN: No, it's the purported
20 retraction.
21 BY MR. DUNCAN:
22 Q Do you see that?

0173

1 MR. SIMMONS: I is a Time article dated
2 June 15th.
3 MR. DUNCAN: Whatever the next is.
4 We'll make it L.
5 MR. SIMMONS: Do you have copies of it?
6 MR. JOHNSON: I've got one right here.
7 A That's Mr. Johnson.
8 MR. BAINE: There's more to it.
9 A That's exactly what Mr. Johnson is
10 doing, is he is retracting. And he apologized
11 because he called me on the phone, and I had a
12 conversation with him. Mr. Turner called me on
13 the telephone, and I had a conversation with him.
14 Both of them apologized. So as far as I'm
15 concerned, CNN retracted and apologized.
16 BY MR. DUNCAN:
17 Q They retracted and apologized to you, is
18 that right?
19 A Yes. Well, no, wait a minute, now. You
20 got it backwards. They apologized to me, and then
21 retracted.
22 Q I want to talk to you about retraction.

0174

1 It's tab 13.
2 MR. SIMMONS: I want to object to your
3 continuing use of documents that I have not seen.
4 I note that you objected to it earlier, and now
5 you're following that practice. I have not seen
6 what you're showing the witness.
7 MR. DUNCAN: You have not seen the
8 retraction, the so-called retraction by CNN of the
9 broadcast on the sarin gas?
10 MR. SIMMONS: Sir, you have a document
11 in front of you that I have not seen. It's that
12 simple. You're not showing it to me. You're not
13 giving me a copy. I don't know what it is you're
14 using.
15 MR. DUNCAN: Here is the document. Have
16 you seen this at all?
17 MR. SIMMONS: Let me read your document.
18 If it's like the script, it's not complete.
19 MR. MITNIK: I have a suggestion. Why
20 don't we break for lunch, if we're going to do it,
21 get all this stuff straightened up, take 30
22 minutes.

0175

1 MR. BAINE: That would make sense.
2 Unless Mr. Duncan is almost finished. It would
3 make sense for Mr. Duncan to finish, if he's
4 almost finished.
5 MR. JOHNSON: Let them take a look at
6 this document. You can finish up. Give everybody
7 a chance to look at the document.
8 MR. BAINE: I think you can go ahead.
9 MR. JOHNSON: Let's take a break.
10 MR. BERMAN: Let's finish.

11 MR. SIMMONS: We all vote on finishing.
 12 MR. MITNIK: We're not unanimous. I say
 13 let's take a break. I started this.
 14 MR. DUNCAN: I am going to be a little
 15 bit longer here. If you want to take a break --
 16 THE WITNESS: I don't want to take a
 17 break. Whatever you old guys want to do, be my
 18 guest.
 19 MR. DUNCAN: At some point you're going
 20 to have to have lunch. This is as good a time as
 21 any to do it.
 22 MR. SIMMONS: What time are we coming

0176

1 back?
 2 MR. NYKODYM: 1:30.
 3 MR. BERMAN: Let the record show that
 4 Elihu Berman is leaving.
 5 THE VIDEOGRAPHER: We're going off the
 6 record. The time is 12:38:34.
 7 (Whereupon, at 12:38 p.m., a lunch
 8 recess was taken.)
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0177

1 AFTERNOON SESSION
 2 (1:48 p.m.)
 3 THE VIDEOGRAPHER: We're back on the
 4 record. The time is 13:48:37.
 5 BY MR. DUNCAN:
 6 Q Admiral, you've brought with you a file
 7 today.
 8 MR. DUNCAN: Do we have that file, his
 9 file?
 10 MR. SIMMONS: Mr. Gresham I think has
 11 it.
 12 MR. GRESHAM: Right here.
 13 BY MR. DUNCAN:
 14 Q This has been copied as being the
 15 documents in your file.
 16 MR. DUNCAN: I want to mark this as an
 17 exhibit.
 18 MR. SIMMONS: Are you putting them in
 19 chronological order? What order do you have them
 20 in?
 21 MR. DUNCAN: The order they were handed
 22 to me.

0178

1 MR. JOHNSON: To get it straight, you
 2 need to have these copies just made today.
 3 MR. SIMMONS: Could you mark them
 4 individually, please?
 5 BY MR. DUNCAN:
 6 Q This is yours. So we have it identified
 7 correctly in the record. I don't know what order
 8 yours is in there. If you'll tell me the first
 9 document, I'll find it and we'll mark it.
 10 MR. BAINE: This is not the fastest way
 11 to do this, if that's what you want to do. Let's
 12 go off the record.
 13 THE VIDEOGRAPHER: We're going off the
 14 record. The time is 13:50:06.
 15 (Discussion off record.)
 16 (Exhibits Numbers L and M-1 through 13
 17 were marked for identification and were retained

18 by counsel.)
 19 THE VIDEOGRAPHER: We're back on the
 20 record. The time is 14:00:01.
 21 BY MR. DUNCAN:
 22 Q At this point we've marked the "CNN

0179

1 Retracts Tailwind," the so-called retraction, as
 2 number 11 -- I mean, I'm sorry, Number L. Then
 3 we've marked your entire file in order, M-1
 4 through M-13, as official exhibits of this file or
 5 this deposition. Now, I think the documents you
 6 have in front of you, there is a letter dated July
 7 15th, 1998, to Ms. Meg Greenfield, is that right?
 8 A That's right.
 9 Q And that, for the record, is M-12. On
 10 the second page, your name appears. Did you
 11 author this letter?
 12 A Most of it, yes.
 13 Q Did you have assistance in authoring it?
 14 A Some.
 15 Q Who assisted you?
 16 A Mr. Gresham
 17 Q Mr. Gresham?
 18 A Mm-hmm.
 19 Q You don't have a lawyer, is that right?
 20 A I don't have a lawyer, no.
 21 Q And when you met with CNN and they paid
 22 you what you earlier referred to as some change,

0180

1 you didn't have a lawyer then?
 2 A No.
 3 Q But this July 15th, 1998 letter to Meg
 4 Greenfield, does it contain your thoughts and your
 5 viewpoints about this broadcast?
 6 MR. SIMMONS: Objection. Leading.
 7 MR. BAINE: As of the date that it was
 8 written?
 9 BY MR. DUNCAN:
 10 Q What does July 15th, 1998 contain?
 11 A What does this letter contain?
 12 Q Yes. M-12.
 13 A The purpose of the letter is to set the
 14 record straight with Ms. Greenfield, who, as you
 15 know, was the editor of the Washington Post. She
 16 was -- what I was trying to get her to do was to
 17 publish both sides of an article that she had in
 18 the paper. And she -- what I did was describe to
 19 her this whole situation, that there was -- in
 20 reply to an article I think that was in the
 21 Washington Post.
 22 Q In your letter, in the third paragraph

0181

1 from the bottom on the front page, you say, "If I
 2 had read the script I would have pointed that out.
 3 But I only glanced at it." What are you referring
 4 to there?
 5 A I'm referring to a paper that Ms. Oliver
 6 had that was supposed to in effect be the text of
 7 a forthcoming broadcast.
 8 Q Is this what we've talked about earlier
 9 as the meeting you had with her when she came to
 10 your --
 11 A No.
 12 Q -- building?
 13 A No. That's two different times.
 14 Q Okay. We've talked about two different
 15 meetings. One was with her and a Mr. Smith, and
 16 one was with her alone, where she had the
 17 so-called transcript of the broadcast?
 18 MR. SIMMONS: Objection.
 19 A That's the way I recall it.
 20 BY MR. DUNCAN:
 21 Q Does this reference that meeting where
 22 she was supposed to be showing you the transcript

0182

1 of the broadcast?
 2 MR. SIMMONS: I object to the form of
 3 the question.
 4 BY MR. DUNCAN:
 5 Q Go ahead. You can answer.
 6 A I'm trying to find the paragraph.
 7 Q "If I had read the script I would have
 8 pointed that out, but I only glanced at it."
 9 A Yes. That's a -- the time in our
 10 reception area that I met with her alone.
 11 Q With who? With April Oliver?
 12 A Yes.
 13 Q And the very next paragraph begins with
 14 the sentence, "The Abrams report shows that Oliver
 15 told these persons she was trying to get to
 16 confirm her charges that I had already done so.
 17 She then turned around and told me that unnamed
 18 reliable sources had confirmed her story. I said
 19 that I could not confirm what others told her, and
 20 she could get them to say it on camera. She
 21 assured me she had."
 22 A That's right.

0183

1 Q What are we talking about there?
 2 A We're talking about a statement that
 3 she -- Ms. -- she had made it, and she quoted
 4 others, said where she had gotten the information,
 5 and I told her that I could not confirm what
 6 others told her. And she said, get them to say it
 7 on camera. And she said she had. Well, I've
 8 never seen that.
 9 Q Now let's turn to page 2. Do you see
 10 the paragraph that starts with, "Losing Hagan and
 11 van Buskirk as credible witnesses reduced Oliver
 12 to reliance on Jim Graves and Jim Cathey"?
 13 MR. SIMMONS: Where are you reading?
 14 A Yes.
 15 BY MR. DUNCAN:
 16 Q Do you see that paragraph?
 17 A Yes, that's it. Wait a minute.
 18 "Losing" -- yes, that's it.
 19 Q And continuing, you say, "who claimed to
 20 have been on the recon teams that observed the
 21 base camp that was wiped out by the Tailwind
 22 commandoes"?

0184

1 A That's right.
 2 Q "Graves appeared to support the charge
 3 that nerve gas was used, and he indicated that
 4 Caucasians were seen in the camp. Cathey also
 5 claimed to have seen men he believed to be
 6 defectors, and in retrospect he believed the
 7 purpose of the mission was to kill them." Do you
 8 see that?
 9 A Yes.
 10 Q Then you say, "Their records show that
 11 Graves and Cathey had no connection with the
 12 Tailwind operation and neither ever set foot in
 13 Laos."
 14 A That's right.
 15 Q Is that a correct statement?
 16 A That's right.
 17 Q And you state, "Graves was a Special
 18 Forces instructor in Saigon and Cathey had an Air
 19 Force desk job in" --
 20 A Ben Wat.
 21 Q All right. So what is it that you're
 22 saying in that paragraph?

0185

1 A Well, I go on to say that Mrs. Oliver is
 2 to make it appear that I had confirmed her charges
 3 because she had been unable to find a single
 4 individual who was willing to do so on camera.
 5 And then I said I didn't know enough about
 6 Tailwind to confirm what others are alleged to
 7 have told her. And I never did.

8 She was quoting other people. In other
 9 words, she was asking me to confirm hearsay.
 10 Q And what are you saying in the paragraph
 11 here about that hearsay that she was asking you to
 12 confirm?
 13 A She wanted -- she asked me 50 times to
 14 confirm that sarin gas was used in Laos. That's
 15 what the issue is.
 16 Q The last paragraph, you say what? Would
 17 you read it for the record?
 18 A That's right. I'm talking about the
 19 defense --
 20 Q Would you go ahead and read that
 21 paragraph?
 22 A "Since the CNN Time program ran I read

0186

1 the after action reports, and it is clear to me
 2 that her charges are totally false. There was no
 3 nerve gas used in the Tailwind operation."
 4 Q All right. So what are you trying to
 5 get across to Ms. Greenfield in that statement?
 6 MR. BAINE: Objection to the form of the
 7 question. The document clearly speaks for itself.
 8 BY MR. DUNCAN:
 9 Q Go ahead. You can answer.
 10 A I'm trying to get her to give me equal
 11 time, if you will, in the Washington Post. She
 12 had a -- this is just the beginning of -- there
 13 was an article in the paper, and I called the
 14 reporter and gave him this information, and they
 15 never -- as I recall, they didn't print it. So I
 16 just decided I would tackle the editor.
 17 Q Now, let me show you Exhibit L.
 18 A Okay.
 19 Q Turn to page 2, if you would.
 20 A Okay. What about it? CNN statement?
 21 Q Yes. Text of CNN statement. Do you see
 22 that?

0187

1 A Yes, I've got it.
 2 Q If you follow that down to 7, where it
 3 says "The original report." Do you see that?
 4 A Yes.
 5 Q It says, "The original report came to us
 6 from personnel involved in the Tailwind operation
 7 and was supported by individuals who were in a
 8 position to know about the operation." Do you see
 9 that statement?
 10 A Yes.
 11 MR. BAINE: I'm going to object to your
 12 asking him questions -- let me state my objection
 13 to form, and then you can do what you want.
 14 MR. DUNCAN: If you've got an objection,
 15 state it. "Objection to form."
 16 MR. BAINE: I would like to. And I'll
 17 tell you what the objection to form is.
 18 MR. DUNCAN: I object to speaking
 19 objections.
 20 MR. BAINE: Okay. I object to the form
 21 of your question to the extent you're jumping in
 22 the middle of a document and now you're going to

0188

1 start to ask the Admiral to comment upon a
 2 statement in the middle of a document.
 3 MR. SIMMONS: I join in that objection.
 4 MR. DUNCAN: Fine.
 5 BY MR. DUNCAN:
 6 Q Do you see that statement, "The original
 7 report came to us from personnel involved in the
 8 Tailwind operation and was supported by
 9 individuals who were in a position to know about
 10 the operation"?
 11 A This was a CNN statement. I don't
 12 support -- I mean, I didn't write it.
 13 Q I know. But I'm asking you, do you see
 14 where it says -- the part where it says, "The

15 original report came to us from personnel involved
 16 in the Tailwind operation, and was supported by
 17 individuals who were in a position to know about
 18 the operation"? Do you see that statement?
 19 A I see that statement. But I think --
 20 Q Is that statement true or false?
 21 MR. BAINE: Objection to the form of the
 22 question.

0189

1 A False.
 2 MR. SIMMONS: Will you stop interrupting
 3 the witness, please?
 4 MR. BAINE: I'll object to the form of
 5 the question, and I'll point out that the Admiral
 6 would have no way of knowing whether April Oliver
 7 had that kind of information. You're asking him
 8 to comment on what April Oliver knew. He didn't
 9 know what April Oliver knew.
 10 MR. DUNCAN: I'm asking the Admiral,
 11 based on his analysis which we just read from, his
 12 July 15th, 1998 analysis.
 13 BY MR. DUNCAN:
 14 Q Were you able to determine if there were
 15 any persons in a position to know that supported
 16 Amy's -- or April Oliver's story?
 17 MR. BAINE: Was he able to determine at
 18 what time? Today, or as of the time of this
 19 interview?
 20 MR. DUNCAN: As of July 15th, 1998.
 21 MR. BAINE: That's the month after the
 22 broadcast.

0190

1 A After all the information that's already
 2 been said here, that when we
 3 discussed, Mrs. Oliver and I, this information she
 4 had, and she -- I told her she should get those
 5 people on camera, and she said she already had,
 6 and I to this day have never seen the camera.
 7 BY MR. DUNCAN:
 8 Q And so as far as everything you've
 9 looked at, for CNN to say that the Tailwind
 10 operation report was supported by individuals who
 11 were in a position to know about the operation,
 12 that would be false?
 13 MR. BAINE: I object to your gross
 14 mischaracterization of this document and of the
 15 entire record. You've just -- I'm going to finish
 16 my objection. You just had in your hand Exhibit
 17 M-12, which you chose --
 18 MR. DUNCAN: You've already stated your
 19 objection. If you have a valid objection under
 20 the rules of evidence, state it.
 21 MR. BAINE: I'm in the middle of it.
 22 MR. DUNCAN: You're stating a speaking

0191

1 objection. And you've stated your objection to my
 2 question.
 3 MR. BAINE: I'm in the middle of my
 4 objection, sir. We'll get done a lot faster if
 5 you let me finish.
 6 MR. DUNCAN: I'm not going to let you
 7 argue in the record.
 8 MR. BAINE: I am going to finish my
 9 objection.
 10 MR. DUNCAN: I object to your misuse of
 11 the Federal rules on objections.
 12 MR. BAINE: Fine. Your objection is
 13 also on the record. What you're doing is grossly
 14 unfair. You just had in your hand Exhibit M-12
 15 which you chose not to read in its entirety. You
 16 selectively read from that. Now you're
 17 selectively reading from Exhibit L in a fashion
 18 that is also grossly misleading. I object to the
 19 form of your question and to your misuse of the
 20 records and the documents in this case.
 21 MR. DUNCAN: Well, I object to your

22 earlier misuse of the word "retraction" and

0192

1 getting this witness to say there was a retraction
2 when in fact in reality this retraction contains
3 false statements within it.

4 MR. SIMMONS: Sir, can you move along,
5 please.

6 BY MR. DUNCAN:

7 Q Now, before I was interrupted, I was
8 trying to ask you about this statement.

9 MR. BAINE: I object to that
10 introduction to your next question.

11 A I can't answer your question until you
12 tell me who the individuals were.

13 BY MR. DUNCAN:

14 Q Do you see this? It's CNN, text of the
15 CNN statement.

16 A I see it.

17 Q The only individuals we know about are
18 the ones that were in the broadcast and the ones
19 that were identified by CNN.

20 A Okay.

21 MR. BAINE: Is that a question?

22 A I'm not CNN.

0193

1 MR. BAINE: Was that a question?

2 BY MR. DUNCAN:

3 Q What I'm asking you is, based on what
4 you now know as of even right now, "The original
5 report came to us from personnel involved in the
6 Tailwind operation and was supported by
7 individuals who were in a position to know about
8 the operation," is that true?

9 MR. BAINE: Objection to form. He would
10 have no way of knowing.

11 A I don't know whether it's true or not.

12 BY MR. DUNCAN:

13 Q Have you read the Defense report?

14 A Yes.

15 Q Doesn't it conclude that sarin gas was
16 not used?

17 MR. SIMMONS: Objection.

18 MR. SELLINGER: Objection.

19 A Yes.

20 BY MR. DUNCAN:

21 Q Doesn't it also conclude that for
22 example General Abrams was in the know, wasn't he?

0194

1 A Yes, but after the fact.

2 Q General Abrams was in the know?

3 A Yes, but he was --

4 MR. SIMMONS: Objection. I don't know
5 what "in the know" means.

6 A -- briefed by Buskirk.

7 BY MR. DUNCAN:

8 Q Let me ask you this. Did April Oliver
9 ever ask you about General Abrams and ask you if
10 she should contact him about this story?

11 A Not to my knowledge.

12 MR. SIMMONS: Objection.

13 A I didn't know that Buskirk was going to
14 brief Abrams.

15 MR. SIMMONS: Unless you have a seance,
16 I object to your asking that kind of question.
17 It's unfair and it's ridiculous.

18 BY MR. DUNCAN:

19 Q Did she ever ask you about the -- you
20 made statements to her -- strike that. You made
21 statements to her about how approval for sarin
22 would have to be obtained, didn't you?

0195

1 MR. SIMMONS: Objection.

2 BY MR. DUNCAN:

3 Q It went all the way up the line to the
4 President, didn't it?

5 A That's right.
 6 Q Did she ever make any effort to
 7 ascertain from you who the persons were that she
 8 ought to go contact and ask that would have been
 9 in a line going to the President?
 10 A No. She knows who they are.
 11 Q And from your knowledge, as of May -- or
 12 as of July the 15th, 1998 when you wrote this
 13 letter we went through earlier, were you able to
 14 find any individuals who were in a position to
 15 know that supported the broadcast that you saw on
 16 CNN?
 17 MR. SIMMONS: Objection.
 18 A Was I able to find individuals?
 19 BY MR. DUNCAN:
 20 Q Right.
 21 A That I was able to find individuals who
 22 made a statement?

0196

1 Q Were you able to find any individuals
 2 that were in a position to know about the
 3 operation that supported the fact that sarin gas
 4 was used?
 5 A No.
 6 Q Now, I ask you to turn to the next page.
 7 MR. KAPLAN: What document are you on?
 8 MR. DUNCAN: I'm on L.
 9 BY MR. DUNCAN:
 10 Q Do you see the first sentence at the
 11 top?
 12 A Yes.
 13 Q Do you see where it says, "There is
 14 insufficient evidence that sarin or any other
 15 deadly gas was used"?
 16 A That's right.
 17 Q Now, isn't it a fact that sarin was not
 18 used?
 19 MR. BAINE: Objection.
 20 A Yes.
 21 BY MR. DUNCAN:
 22 Q And so if it says there's insufficient

0197

1 evidence that sarin or any other deadly gas was
 2 used, the fact is there was sufficient evidence
 3 for them to say it was not used?
 4 MR. BAINE: Objection to the form of the
 5 question. You're arguing based upon a single
 6 statement from a three-page document that you have
 7 wrenched out of context. You refuse to read into
 8 the record the preceding sentence, don't you?
 9 MR. DUNCAN: No, I don't refuse to read
 10 anything. But you can take the witness back and
 11 do whatever you want to.
 12 MR. BAINE: I note for the record you
 13 won't read it now.
 14 MR. DUNCAN: All right. We'll just go
 15 back and read the preceding sentence, since you
 16 want that done.
 17 BY MR. DUNCAN:
 18 Q Admiral, turn the page back. Do you see
 19 at the bottom of that very page it says, "The
 20 report concludes that Newsstand broadcast on
 21 Operation Tailwind cannot be supported"? Do you
 22 see that?

0198

1 A Right. I see that.
 2 Q Turn the page. And it says, "There is
 3 insufficient evidence that sarin or any other
 4 deadly gas was used." Do you see that?
 5 A That's correct, yes.
 6 Q The fact is there was all kinds of
 7 evidence that it was not used, wasn't it?
 8 MR. SIMMONS: Objection.
 9 MR. BAINE: Objection to the form of the
 10 question. You're leading the witness, and you're
 11 not entitled to lead the witness.

12 BY MR. DUNCAN:
 13 Q From your statement, all the way to the
 14 Department of Defense saying sarin was not used.
 15 A That's right.
 16 MR. BAINE: Objection to the form of the
 17 question. You keep on leading the witness.
 18 MR. SIMMONS: Objection.
 19 BY MR. DUNCAN:
 20 Q Isn't that right?
 21 A Yes.
 22 MR. BAINE: And Phil, none of these

0199

1 questions are going to be useful to you, because
 2 they're all inadmissible.
 3 A So what's the point?
 4 MR. DUNCAN: Who says I can't lead this
 5 witness?
 6 MR. BAINE: I say you can't lead this
 7 witness.
 8 MR. DUNCAN: You led the witness. Do
 9 you think you have prerogatives and rights that I
 10 don't have?
 11 MR. BAINE: I believe that I can lead
 12 this witness. I don't believe that you can.
 13 That's my position.
 14 MR. DUNCAN: That's up to the judge,
 15 isn't it?
 16 MR. BAINE: Yes, that's right. That's
 17 why I'm stating my objection. I'm not ruling on
 18 them.
 19 BY MR. DUNCAN:
 20 Q Now, sir, let me ask you this. You see
 21 "There is insufficient evidence that sarin or any
 22 other gas was ever used," do you see that

0200

1 statement?
 2 A Of course I see it.
 3 Q Let me ask you this. What did the
 4 Defense Department say in their report?
 5 A I think that they say in effect the same
 6 thing.
 7 Q Don't they say that sarin was not used?
 8 A Yes.
 9 MR. BAINE: What was the date of the
 10 Defense Department report?
 11 A And I think you've got to get into a
 12 timing here. This Defense report was one of the
 13 last things that came out.
 14 BY MR. DUNCAN:
 15 Q And don't we have to get into whether or
 16 not CNN knew that the Defense report was going to
 17 come out?
 18 MR. BAINE: Objection. That's a
 19 meaningless question.
 20 A Of course they knew it was going to come
 21 out.
 22 MR. SIMMONS: It's almost as bad as --

0201

1 the Defense report is July 21.
 2 BY MR. DUNCAN:
 3 Q And the fact is when Amy --
 4 MR. BAINE: April.
 5 BY MR. DUNCAN:
 6 Q -- or April Oliver and Mr. Smith came to
 7 your apartment, you had a Defense Department or a
 8 Pentagon statement about this event, didn't you?
 9 A Yes, but not this document.
 10 Q Right. But they knew about that when
 11 they came to your apartment, didn't they?
 12 A The Public affairs office did. I don't
 13 know who you're talking about when you say "they."
 14 If you're talking about the operations officer and
 15 the executive officer --
 16 Q I'm talking about --
 17 A -- and so on, that's one thing. If --
 18 MR. SIMMONS: Excuse me. Let him

19 finish.
 20 BY MR. DUNCAN:
 21 Q I'm talking about Mrs. Oliver --
 22 A Don't butt in when I'm asking you a

0202

1 question. Now, what are you talking about?
 2 Q I'm talking about Ms. Oliver and
 3 Mr. Smith.
 4 A What about her?
 5 Q At the time they came to meet with you
 6 about the Defense statement that you were going to
 7 release, they already knew about it, didn't they?
 8 A I don't think so. I don't know how they
 9 would have. I don't know whether they had or not.
 10 Ask Mrs. Oliver. She's sitting right next to you.
 11 Q I don't have her under oath yet. But
 12 I'll be asking her that later.
 13 A Okay.
 14 Q But in any event they came to your
 15 residence when you had that in your hand, is that
 16 right?
 17 A Yes. When I had -- what is "that"?
 18 When I had a paper in my hand?
 19 Q Right. D and E.
 20 A And they should have never come to my --
 21 that was the middle of the night, and it was a
 22 very rude thing for them to do. I don't like

0203

1 people butting in my home in the middle of the
 2 night.
 3 Q And my question to you is, from all that
 4 you know, from what the Defense Department says,
 5 was sarin gas ever used in this Operation
 6 Tailwind?
 7 MR. BAINE: For all that he knows today?
 8 That's the 14th time you've asked that question.
 9 A No, it was not used.
 10 BY MR. DUNCAN:
 11 Q And back on July 15th, 1998 you knew
 12 that, right?
 13 A I always knew it.
 14 Q And you always knew it. And so that if
 15 CNN doesn't say to the American public that the
 16 broadcast we ran was false and untrue, then they
 17 have not cleared the names of those soldiers out
 18 there in uniform, have they?
 19 MR. BAINE: That's your closing
 20 argument. That's an improper question. I object
 21 to the form of the question.
 22 MR. SIMMONS: I join in the objection.

0204

1 MR. BAINE: And you have not yet read
 2 into the record the entirety of the CNN statement,
 3 nor have you given the Admiral a chance to read
 4 it.
 5 MR. MITNIK: Let's take three seconds
 6 just to step out the door a second.
 7 MR. NYKODYM: Let's go off the record.
 8 THE VIDEOGRAPHER: We're going off the
 9 record. The time is 14:23:54.
 10 (Discussion off record.)
 11 THE VIDEOGRAPHER: We're back on the
 12 record. The time is 14:25:33.
 13 BY MR. DUNCAN:
 14 Q Without going to April Oliver's notes,
 15 at any time did you ever in your conversations
 16 with her make an overt representation or
 17 confirmation to her that sarin gas was used in
 18 Laos?
 19 A No. I repeat that she said she had
 20 several people that told her, and I said, well,
 21 you should go get them to confirm this. She
 22 says -- and get them on film. And she said, I

0205

1 have. And I've never seen a darn one of them on

2 film.
 3 MR. DUNCAN: That's all.
 4 MR. BAINE: Who's next?
 5 MR. COOK: Two questions. I'll just ask
 6 right from here. I'm sure this microphone is
 7 picking me up okay.
 8 EXAMINATION BY COUNSEL FOR THE PLAINTIFFS
 9 PLANCICH, MINTON, AND KINSLER
 10 BY MR. COOK:
 11 Q Admiral Moorer, I just have two
 12 questions. Just so you know, I represent three
 13 gentlemen. One's named Keith Plancich. Keith was
 14 one of the 16 soldiers involved in the SOG mission
 15 of Tailwind. He received a silver star for that
 16 mission.
 17 I also represent Denver Minton, who
 18 received a bronze star. And I also represent Mark
 19 Kinsler, who was pictured in the broadcast, but he
 20 was not in Vietnam at the time.
 21 A Why don't you come a little closer. I'm
 22 afraid you're going to collapse.

0206

1 Q Just two brief questions.
 2 MR. SIMMONS: Could you tell us who you
 3 are? We need your name.
 4 MR. COOK: I'm sorry. Mitchell J. Cook.
 5 MR. DUNCAN: The camera is going to be
 6 getting his profile.
 7 MR. COOK: All right. I'll step over.
 8 BY MR. COOK:
 9 Q I just wanted to ask you, you may have
 10 answered this, did you talk to anyone else besides
 11 April Oliver or Jack Smith from CNN?
 12 MR. BAINE: Before the broadcast?
 13 MR. COOK: Before the broadcast,
 14 correct.
 15 A Well, I don't know whether it was before
 16 or after. I talked to the other two people,
 17 Mr. Turner and Mr. Johnson.
 18 BY MR. COOK:
 19 Q Okay. But you were interviewed only by
 20 those two individuals?
 21 A They didn't interview me. They called
 22 and apologized to me.

0207

1 Q I'm sorry. The two individuals that I
 2 was referring to is April Oliver and Jack Smith.
 3 Those were the only two individuals who --
 4 A And up until that time I never laid eyes
 5 on Jack Smith. I didn't even know he was alive.
 6 Q Okay. Did anyone mention in those
 7 interviews deaths as to women and children during
 8 Operation Tailwind? Did they ever ask you about
 9 that, if you knew anything about --
 10 A I don't know anything. And I don't
 11 think it's a relevant subject.
 12 Q Okay. I don't either. But you were
 13 asked that, though, sir?
 14 A I could have been. This was over a year
 15 ago. But I don't have any record of it.
 16 Q Okay. Well, that was going to be my
 17 next question. Based on your experience and your
 18 knowledge of Operation Tailwind, do you know if
 19 any women or children were killed during that
 20 mission? Do you know?
 21 A Not to my knowledge.
 22 Q Did you ever read any documentation that

0208

1 such occurred?
 2 A No. No documentation. But of course
 3 when you have people in dangerous territory -- I
 4 don't know whether you've ever been in that or
 5 not.
 6 Q No.
 7 A But it's quite an experience. And
 8 sooner or later everybody gets killed if they stay

9 there long enough.
 10 MR. COOK: That's all I have. Thank you
 11 very much.
 12 THE WITNESS: Thank you.
 13 MR. NYKODYM: I have no questions at
 14 this time. I reserve the right to ask any
 15 questions pending the production of the documents.
 16 Joseph Nykodym with the firm Cotchett,
 17 Pitre & Simon. I represent plaintiffs Michael
 18 Shepherd, Arthur Bishop, Michael Bentley, Charles
 19 Baylor, James Graves, in the action that's venued
 20 in the Northern District of California, Shepherd
 21 et al. versus Cable News Network et al., case
 22 number C-98-20946 JF.

0209

1 EXAMINATION BY COUNSEL FOR THE PLAINTIFF
 2 JOHN K. SINGLAUB
 3 BY MR. MITNIK:
 4 Q Admiral Moorer, I'm Keith Mitnik, and I
 5 represent General Singlaub. And I'm going to be
 6 very brief. I've got just a handful of short
 7 questions here.
 8 You mentioned a phone call from Tom
 9 Johnson from CNN. Could you tell us as best you
 10 can recall, in as much detail as you're capable of
 11 here today, what Mr. Johnson said to you in that
 12 telephone call?
 13 A Yes. It was a call in response to the
 14 statement by Mr. Abrams, I guess, about that CNN
 15 should retract and, you know, apologize. And it
 16 was a very nice call. He simply told me that he
 17 had great respect for the military, and that he
 18 certainly didn't want the paper, his paper to do
 19 anything that would result in demeaning or
 20 degrading the military, and that he was going
 21 to -- he was apologizing to me, and he was going
 22 to take action, corrective action, I guess he

0210

1 said.
 2 Q Did he comment at all on the accuracy of
 3 the story or the inaccuracy of the story?
 4 A Well, he simply didn't comment in detail
 5 on the accuracy of the story, but he clearly
 6 thought the story misrepresented the facts, or he
 7 wouldn't have taken the drastic action he did. I
 8 mean, he doesn't have time to be calling me on the
 9 phone and apologizing. It must have been painful
 10 for him. And the same thing happened to Turner.
 11 Q I was about to ask you, tell me as best
 12 you can recall the details of the telephone
 13 conversation from Ted Turner.
 14 A Well, they were simply -- I mean,
 15 essentially the same call. And they were
 16 basically an apology and expressing their respect
 17 for the military organization and people. And
 18 that was it. It was a short telephone call.
 19 Q Did he make any comments about taking
 20 corrective action?
 21 A I think, as I recall, he did too. It
 22 was -- he didn't go into detail what that was

0211

1 going to be. I'm sure that he and Mr. Johnson
 2 wouldn't make a move without Mr. Turner approving
 3 it. So by and large any corrective action taken
 4 would be mutual agreement between the two of them.
 5 Q Did Mr. Turner make any comments
 6 regarding the accuracy or inaccuracy of the
 7 broadcast?
 8 A No. Not that I remember. I'll tell
 9 you, it's a short call.
 10 Q Did April Oliver ever make any
 11 representations to you regarding the source of her
 12 claim that there were a large number of defectors?
 13 A Well, she tried to get me to specify the
 14 number. And she I recall had said she had heard
 15 there were a significant number. And that's when

16 we got into the discussion later about the scores
 17 of people that were involved.
 18 Q Do you have any recollection of her ever
 19 telling you where she was getting her information
 20 from, that there were a large number or
 21 significant number of defectors?
 22 A Well, I think people that she had talked

0212

1 to had alleged that they had, you know, seen
 2 indications of what they call roundeyes or
 3 whatever, meaning white people instead of
 4 Asiatics, with binoculars.
 5 Q I don't think my question is clear.
 6 What I'm asking is, did she reveal to you the
 7 person or sources who were giving her that
 8 information?
 9 A No. I don't think so.
 10 Q Now, we know that --
 11 A That's when I asked her, you know, why
 12 don't you put them on TV, which she never did.
 13 She said she did, but I never saw them.
 14 Q I don't mean to talk over you. I
 15 thought you were done. We know that April Oliver
 16 told others that she had an Air Force document
 17 that proved that sarin gas had been used during
 18 Operation Tailwind.
 19 MR. SIMMONS: Objection.
 20 BY MR. MITNIK:
 21 Q Did she ever tell you about such a
 22 document?

0213

1 MR. SIMMONS: Objection.
 2 A No, but subsequently I know that there
 3 was a confusion about the number or the
 4 designation of the payload of the airplane,
 5 whether it was one five or two five. And that
 6 particular number was blurred a bit, and I think
 7 the final decision was it was in fact number 2.
 8 BY MR. MITNIK:
 9 Q In any event, do I understand she didn't
 10 make any representations to you about that
 11 document? She didn't bring the document up to
 12 you?
 13 A I don't recall whether she did or not.
 14 But if she did, the only part I mentioned about it
 15 was General Clay, who is a good friend of mine.
 16 His father was in command at [unintelligible] at
 17 the end of World War II. So I know the Clays very
 18 well.
 19 Q I'm not clear. Did she ever say, I have
 20 a document, an Air Force document proves it was
 21 used, to you?
 22 A She said that they -- as I understand

0214

1 and remember, she said that General Clay had I
 2 believe written a letter of appreciation, of
 3 commendation or something to a young pilot
 4 involved in one of the operations.
 5 Q And that was the extent of what she said
 6 about that?
 7 A That's right. That's all I remember.
 8 She was trying to connect that with the payload.
 9 Q You've told us here in the deposition
 10 repeatedly that you never confirmed to April
 11 Oliver the use of sarin gas. I don't want to go
 12 back into that. I want to ask you a separate
 13 question.
 14 A That's right. I did. You're correct.
 15 Q I want to ask you a separate question on
 16 the same subject. If April Oliver told General
 17 Singlaub that you flat out confirmed that sarin
 18 gas was used during Operation Tailwind, would that
 19 be true or accurate?
 20 A She had misinformed him. And let me
 21 just say that anything that General Singlaub says,
 22 I believe.

0215

1 Q If April Oliver told General Singlaub
2 that you flat out confirmed that the target of
3 Tailwind was to kill American defectors, would
4 that be accurate or true?

5 A That's absolutely false. It wasn't
6 true, and I knew that from the word go.

7 Q Do you recall here today how close in
8 time it was to the actual broadcast when
9 Ms. Oliver brought the transcript by your
10 residence?

11 A Well, as I recall it was pretty close to
12 the broadcast, the time the broadcast took place.
13 But I can't give you how many days.

14 Q Mr. Baine characterized Ms. Oliver's
15 actions of presenting you with a copy of the
16 transcript as unusual or extraordinary.

17 MR. SIMMONS: Objection.
18 BY MR. MITNIK:

19 Q I'm curious. Did Ms. Oliver ever tell
20 you why she would be doing such an odd thing?

21 MR. SIMMONS: Objection.

22 MR. BAINE: I object to the form.

0216

1 A No. She never told me. I didn't know
2 why she was doing it. Get me to agree with it, I
3 think. I don't know.

4 MR. MITNIK: Thank you. That's all I
5 have.

6 MR. BAINE: I guess that concludes all
7 the examination by all the plaintiffs, right?

8 MR. SIMMONS: Are you going to go again?

9 MR. BAINE: Well, I have very limited
10 cross-examination based upon all of this. But I
11 suspect you have a lot more. So why don't you go.
12 You might cover what I was going to cover.

13 MR. SIMMONS: We might want to take a
14 break at this point, because I'm going to be a
15 while.

16 THE VIDEOGRAPHER: We're going off the
17 record. The time is 14:39:19.

18 (Recess.)

19 THE VIDEOGRAPHER: We're back on the
20 record. The time is 14:53:25.

21 EXAMINATION BY COUNSEL FOR THE
22 DEFENDANT/CROSSCLAIM PLAINTIFF OLIVER

0217

1 BY MR. SIMMONS:

2 Q Good afternoon, Admiral Oliver -- I mean
3 Admiral Moorer. I'm starting right off with a
4 tongue-twister here. I apologize. I'm Roger
5 Simmons. And I'm thinking Oliver because I
6 represent April Oliver in this matter.

7 You understand that I'll be asking
8 questions here this afternoon following up from
9 questions asked throughout the course of the
10 morning and the afternoon by other parties.

11 Sir, you understand throughout today
12 you've been under oath and attempting to tell the
13 truth as best you can, is that correct?

14 A That's correct. I understand that.

15 Q And truth is something you have said as
16 a military man you value as one of the true
17 purposes of the military mission, is that correct?

18 A Of course.

19 Q You have also said, have you not, sir,
20 that the difference between a democratic and a
21 communistic government is that in the democratic
22 government we advertise and discuss our faults,

0218

1 and that in the communistic government they cover
2 them up, is that fair?

3 A Yes. But I don't need a lesson in that.

4 Q You still believe in that today, don't
5 you, sir?

6 A Of course.
7 Q If indeed sarin was used at some time in
8 Laos during the Vietnam War, you would agree with
9 me it would be inappropriate to cover it up, would
10 you not?
11 MR. NYKODYM: Objection, leading.
12 A Well, I don't know what the issue is.
13 There are many things that in military operations
14 that are secret. I mean, the point is that you
15 come back to the point I made all day, that the
16 issue is the survivability of the men involved.
17 And I'll leave it at that.
18 BY MR. SIMMONS:
19 Q Well, forgive me if I take it a bit
20 further here, Admiral. Are you aware of the
21 phrase "plausible deniability"?
22 A Possible deniability?

0219

1 Q "Plausible." "Plausible."
2 A Plausible.
3 Q "Plausible deniability."
4 A I know what it means, of course.
5 Q What does it mean?
6 A Is it a legal term?
7 Q Have you ever heard it used with the CIA
8 or SOG?
9 A I think that it's used on, you know,
10 highly sensitive materials sometimes. For
11 instance, when we had the plane, a long time ago,
12 shot down over Russia, Mr. Eisenhower said he
13 didn't know anything about it. That's plausible
14 deniability, because it had had far-reaching
15 impact other than just simply whether the
16 President was telling the truth or not.
17 So, yes, I understand what it's all
18 about.
19 Q Have you ever engaged in plausible
20 deniability, sir?
21 A Well, not to my knowledge, except in
22 certain situations where I have been asked

0220

1 questions like this by the media, are you going to
2 bomb such and such a target tomorrow. And I tell
3 them no, even though we did. I mean, you can't
4 operate business like that -- you've got sense
5 enough to know this -- go running around telling
6 everybody what you're going to do tomorrow.
7 Q Getting back to my question, though,
8 have you ever personally engaged in plausible
9 deniability?
10 MR. NYKODYM: Objection, vague and
11 ambiguous.
12 A Well, I imagine I have, in operations
13 involving primarily invasions or bombing, things
14 of that kind.
15 BY MR. SIMMONS:
16 Q Wouldn't it be fair to say indeed that
17 was your duty, to engage in plausible deniability
18 with respect to top secret matters?
19 A In some cases. But that was usually
20 temporary, because -- in other words, until the
21 operation started or something of that kind. In
22 other words, you must use common sense.

0221

1 Q In September of 1970, was the fact that
2 the United States had sarin in its arsenal a top
3 secret fact?
4 A I don't think it was top secret. But it
5 was top secret where it was. It wasn't top secret
6 that it existed.
7 Q If someone had asked you during the time
8 frame it was top secret as to where the sarin was
9 located, would you have answered truthfully?
10 MR. NYKODYM: Objection. Incomplete
11 hypothetical.
12 A No, I would say "no comment."

13 BY MR. SIMMONS:
 14 Q Recently we heard reports in the
 15 Washington Post about some deaths of Korean
 16 civilians during the Korean War. Do you think the
 17 soldiers that related that today were lying about
 18 it because they had repressed memory?
 19 MR. NYKODYM: Objection. Incomplete
 20 hypothetical. Relevance. Assumes facts not in
 21 evidence.
 22 MR. DUNCAN: Let me have a standing

0222

1 objection to this line of questioning as
 2 irrelevant and lack of proper foundation.
 3 BY MR. SIMMONS:
 4 Q You may answer now.
 5 A What?
 6 Q You may answer the question.
 7 A Well, answer it again -- I mean, ask it
 8 again.
 9 Q Sure. Did you read reports about the
 10 killing of civilians in Korea during the Korean
 11 engagement by American soldiers?
 12 A No. But we had the case in Vietnam with
 13 the -- we had the young lieutenant who was
 14 court-martialed for killing civilians. So
 15 generally our policy of course is not to kill
 16 civilians. However, if they are -- civilians are
 17 acting in a military capacity -- and that actually
 18 happened.
 19 For instance, I know one case at Danang
 20 where Marine -- two Marines were teaching their
 21 little boys how to play volleyball, and one of
 22 them pulled out a hand grenade and killed both of

0223

1 the Marines. I mean, you've got to use common
 2 sense in this. I don't --
 3 Q You wrote about that, didn't you?
 4 A Huh?
 5 Q That incident, you wrote about it,
 6 didn't you?
 7 A Yes.
 8 Q You also wrote that you were in full
 9 approval of what Lieutenant Calley did in My Lan?
 10 A I did, that's right. Because the day
 11 before, you never would have heard the whole
 12 story --
 13 MR. DUNCAN: Just a second. So that I
 14 don't have to interrupt you --
 15 MR. SIMMONS: You can have a standing
 16 objection to everything.
 17 MR. DUNCAN: Objection.
 18 BY MR. SIMMONS:
 19 Q Go ahead.
 20 A What happened was those same people had
 21 killed a lot of Lieutenant Calley's forces.
 22 Lieutenant Calley was a fresh caught junior

0224

1 lieutenant that had just been drafted in. He was
 2 responsible for a company of soldiers, some of
 3 which had been killed.
 4 And these women were carrying hand
 5 grenades in the diapers of the babies and so on.
 6 So when they came towards his force, he shot them
 7 down. I approved of that. It caused a great
 8 stir. About that time I got a telephone call from
 9 Mr. Nixon. He was in California and I was in
 10 Washington.
 11 He said, I am getting more letters from
 12 the public about that particular thing, because
 13 after all, wasn't Calley supposed to be carrying
 14 out his duty? And so he says, I want you -- I'm
 15 going to have a press conference at 12:00, and I
 16 want you to get Calley out of the jail and turn
 17 him free before my press conference starts. And
 18 that I did.
 19 So, I mean, you've got to use common

20 sense for the -- whatever the situation turns out
21 to be.

22 Q You indicated that you would like to

0225

1 have had war declared in Southeast Asia, is that
2 fair?

3 A That's fair.

4 MR. NYKODYM: Objection. Misstates the
5 record.

6 MR. SIMMONS: He just said it's fair.

7 BY MR. SIMMONS:

8 Q Isn't it correct that had war been
9 declared, for example in the area of Laos where
10 the issues in this case arose, it would have been
11 much easier in terms of the rules of engagement?

12 MR. NYKODYM: Objection. Assumes facts
13 not in evidence. Incomplete hypothetical.

14 A Of course. As a matter of fact, if war
15 had been declared, there are many things that
16 happen according to the Constitution when war is
17 declared and when war is not declared. In the
18 Vietnam War, the Congress got in -- you're leading
19 me way away now.

20 BY MR. SIMMONS:

21 Q No, you're doing great. Just keep right
22 on.

0226

1 A The Congress got into the War Powers
2 Act, which I thought was stupid. But in any event
3 I thought that in Vietnam we could have done many
4 things that would have saved American lives if war
5 had been declared.

6 Q And the point you make by that is, once
7 you cross into enemy territory, everybody is a
8 target, right?

9 MR. DUNCAN: Objection. Leading.
10 Misleading as well, and misstates the facts in
11 evidence, and on grounds of relevance.

12 BY MR. SIMMONS:

13 Q You may answer.

14 A Yes, everybody's a -- I come back to the
15 same thing I've been preaching all day.
16 Survivability. If you have to kill people to stay
17 alive in a war, you kill them. I mean, that's the
18 history. We've lost a million people in this
19 century, killed.

20 Q And the point you make, as you made here
21 earlier today, sir, is that we have a wonderful
22 garden spot here in the United States with rights

0227

1 and ability to discuss things and talk about
2 things out in the open, that draws a lot of
3 people. And you have concerns about protecting
4 that.

5 MR. NYKODYM: Objection. Misstates the
6 record.

7 A That's right. Don't you?

8 BY MR. SIMMONS:

9 Q Absolutely.

10 A Okay. Both of us --

11 Q You and I are together students of
12 history, sir.

13 A Yes to that question.

14 Q I very much follow the guidelines of
15 history, and I am fascinated by it, and it's
16 something that I share with you as a hobby. And I
17 don't mean to get us off track here.

18 MR. DUNCAN: Objection.

19 BY MR. SIMMONS:

20 Q Going back to the Vietnam War, at that
21 time it was not a popular war within the United
22 States, was it?

0228

1 A No, because of the way Lyndon Johnson
2 and Macnamara handled it. I've already commented

3 that if we get into a war, A, we shouldn't get
4 into the war unless we are threatened; and if we
5 get into the war, we should get in it to win. And
6 we didn't do either one of those situations that
7 obtained in Vietnam.

8 Q During the Johnson administration with
9 Macnamara, what was your job position at that
10 point?

11 A I was Chief of the Navy.

12 Q How long did that last? What time
13 frame?

14 A It lasted until three years. It should
15 have been four. But I was moved up then for
16 Chairman of the Joint Chiefs of Staff. And then I
17 was Chairman of the Joint Chiefs of Staff for four
18 years.

19 Q So you were three years and then four in
20 the Joint Chiefs, is that correct?

21 A That's right.

22 Q Now, as a joint chief, you didn't have

0229

1 more voting power than anyone else; you were just
2 one of five people voting, right?

3 A Unless I was Chairman.

4 Q And as the Chairman you had a bit more
5 equality?

6 A We didn't vote, as people think.

7 MR. NYKODYM: Objection. Vague and
8 ambiguous.

9 A We decided things. We discussed them
10 and decided things. And I was the one, though,
11 that -- at the National Security Council that
12 notified the President what we decided.

13 BY MR. SIMMONS:

14 Q And how would you go about doing that?

15 A Well, we would have a National Security
16 Council meeting, and we would be sitting around a
17 table about this size, and we would have a list of
18 issues, subjects, whatever you want to call it,
19 agenda.

20 And the President would chair it, and he
21 would start out and ask the Vice President for his
22 comments, and he would ask the Secretary of State

0230

1 his comments, and he would ask the head of CIA his
2 comments, and then he would ask the Chairman of
3 the Joint Chiefs of Staff what his comments were.

4 Q Would Dr. Kissinger have been there?

5 A Of course. He was chairman of the
6 committee that prepared the agenda and had the
7 staff. He was -- there was a lot of confusion
8 about that. There's a National Security Council
9 that has a staff. And Kissinger was chairman of
10 that staff. Kissinger was not chairman of the
11 council.

12 Q He was not chairman of what council?

13 A The President was chairman of the
14 council.

15 Q Can you tell me what WSAG is?

16 A Sure. That's Washington Special Action
17 Group. And we had -- when things would come up at
18 all hours, because the time zone is different in
19 different places, we met. Sometimes -- as a
20 matter of fact when we had the Cuban missile
21 crisis we met about 10:00 at night, I think.

22 Q In the summer of 1970, just before you

0231

1 were made Chairman of the Joint Chiefs, you were
2 sitting on the committee of the Joint Chiefs of
3 Staff, were you not?

4 A Well, I was a member of the Joint Chiefs
5 of Staff. I was Chief of the Navy.

6 Q You were not Chairman?

7 A I wasn't Chairman.

8 Q You became Chairman in July, you said,
9 late July?

10 A Yes, 1970. Stayed there until 1974.
 11 Q During July did you have access to CIA
 12 documents on matters in Laos and Vietnam?
 13 MR. NYKODYM: Objection, vague and
 14 ambiguous.
 15 A Yes, naturally I had access to any
 16 document I wanted to see, and many documents that
 17 were at my level. But I couldn't have possibly
 18 seen every document in the world that related to
 19 international and military affairs, for heaven's
 20 sake. I used to get over a hundred messages a
 21 day.
 22 BY MR. SIMMONS:

0232

1 Q But you were involved in top level
 2 discussions about expanding the war into Laos,
 3 weren't you?
 4 A Yes.
 5 Q You and Dr. Kissinger and General Vogt
 6 were all involved in that, weren't you?
 7 A Yes. Each one of us had a different
 8 assignment.
 9 Q Can you take me through what your
 10 assignment was?
 11 A Well, my assignment, beginning in 1970,
 12 was Chairman of the Joint Chiefs of Staff, which
 13 consists of the Chief of Staff of the Army, Chief
 14 of Staff of the Navy -- I mean, CNO, Chief of
 15 Naval Operations, Chief of Staff of the Air Force,
 16 the Commandant of the Marine Corps.
 17 Q And what would have been the role of
 18 Dr. Kissinger?
 19 A Dr. Kissinger was advisor to the
 20 President. And to -- he stayed in Washington and
 21 managed the National Security Council staff, and
 22 responded to the President's desire to have a

0233

1 National Security Council meeting and to present
 2 the council with an agenda over why we're having a
 3 meeting in the first place.
 4 Q Do you remember there being times when
 5 an Alexis Johnson was there --
 6 A He was --
 7 Q -- at a WSAG meeting?
 8 A -- Secretary of State at that time.
 9 Later on it was Rogers. Most of the time I was
 10 there it was Bill Rogers, was under Nixon.
 11 Q Kissinger in the summer of 1970 was not
 12 Secretary of State, he was simply advisor to the
 13 President?
 14 A And chairman of the National Security
 15 Council staff.
 16 Q But how did he get into WSAG, W-S-A-G?
 17 A He was the chairman of WSAG. He called
 18 the WSAG meeting.
 19 Q Okay. And he determined the agenda?
 20 A The purpose of the WSAG, which is an
 21 organization set up at that particular time, and
 22 which is not a permanent thing like Secretary of

0234

1 State, for instance, or Secretary of Defense, but
 2 the purpose of it was simply to, in the event of
 3 crises like for instance when the -- we had the
 4 Cuban missile crisis, some issue like that, it was
 5 up to the staff of the National Security Council
 6 to first collect all of the information, all of
 7 the entire, and more or less program the
 8 discussion that the council itself was going to
 9 have.
 10 Q On something like a mission by the SOG
 11 group, could you give us just a brief description
 12 of what SOG is?
 13 A SOG is -- we've got an ex-commander of
 14 SOG around here someplace, my good friend John
 15 Singlaub. And --
 16 Q How long have you known him?

17 A -- it's a Special Forces organization
 18 that's used for, just as the name implies, for
 19 Special Forces. He could probably tell you better
 20 about that than I can. But anyway, it's a Special
 21 Force organization that makes missions, conducts
 22 missions primarily focused on obtaining

0235

1 intelligence, penetrating enemy lines and so on,
 2 and getting intelligence, wherever they are.
 3 Q Do they penetrate enemy lines with guns
 4 and bombs and grenades and planes from time to
 5 time?
 6 A It depends on whether they get shot at
 7 or not. I mean, -- they penetrate on the basis of
 8 survivability.
 9 Q Who did they report to? Who did SOG
 10 report to?
 11 A Well, in this particular case, depending
 12 on where the area is, they reported to General
 13 Abrams.
 14 Q Did they have any reporting obligation
 15 directly to you?
 16 A Not directly, no.
 17 Q General Abrams is deceased, is he not?
 18 A Huh?
 19 Q Is General Abrams still alive?
 20 A No. At that time he was in Saigon.
 21 Q He died before this whole controversy
 22 came up, did he not?

0236

1 A Oh, yes.
 2 Q So when Mr. Sadler's counsel was asking
 3 you why April Oliver didn't talk to Creighton
 4 Abrams, it was because you knew that Creighton
 5 Abrams had passed away, right?
 6 A Now, wait a minute. Let's get the time
 7 focused right. I'm not sure that Abrams had
 8 passed away.
 9 Q When did he pass away?
 10 A Well, he passed away in the late '70s, I
 11 think.
 12 Q Okay. He wouldn't have been around in
 13 the late '90s, then, would he?
 14 A I doubt it. He may have been there.
 15 Q I'm with you. I just want to be sure
 16 we're in the same time frame now. April Oliver
 17 was talking to you beginning in December of 1997,
 18 is that correct?
 19 A I believe so.
 20 Q By that time you and I can agree that
 21 General Abrams would have passed away, right?
 22 A What -- repeat your statement.

0237

1 Q You were asked earlier today why you
 2 didn't tell April Oliver to go talk to Creighton
 3 Abrams. Do you remember that question and answer?
 4 A No. That would have been difficult.
 5 Q There you go. That's all I'm trying to
 6 get at. Could you tell me who John Vogt was and
 7 why he would have been at a WSAG meeting?
 8 A The name is John Vogt. Vogt. And he's
 9 director of the joint staff.
 10 Q Joint staff of what?
 11 A And he's an Air Force general. And he
 12 had been in command of all aircraft in Vietnam.
 13 Q You were a flyer at one time, weren't
 14 you?
 15 A Yes.
 16 Q Flew during World War II?
 17 A Yes. Got shot down in World War II.
 18 Got picked up by a ship that was sunk the same
 19 day.
 20 Q Sounds like President Kennedy's story.
 21 Sounds kind of harrowing.
 22 A Yes, maybe so.

1 Q General Vogt is still alive today, is he
2 not?

3 A Yes. He's what we call the director of
4 the joint staff. He prepared the agenda. He
5 functioned somewhat like in the joint staff as
6 Kissinger functioned with the National Security
7 Council staff.

8 Q Tell me about how Kissinger functioned
9 with the National Security Council staff.

10 A Well, he had the WSAG as one activity.
11 And any -- he was in effect the President's
12 advisor. As one thing after another came up, it
13 was up to the President. If he wanted to have a
14 National Security Council meeting, he would tell
15 Kissinger to set it up, or he would go to see the
16 President every day, and go over with the director
17 of the CIA all the intelligence that was collected
18 worldwide.

19 And what he did in effect was assist the
20 President in more or less keeping up with world
21 affairs. And Kissinger was the same thing for
22 Nixon that Vogt was for me.

□

1 Q I'm getting a signal here we're running
2 out of time on this tape. We're going to pause so
3 we can change tapes.

4 A Okay. Well, you must be talking too
5 much.

6 Q I must be.

7 THE VIDEOGRAPHER: This concludes tape
8 number 2 in the deposition of Admiral Thomas
9 Moorer. We're going off the record. The time is
10 15:14:26.

11 (Discussion off record.)

12 THE VIDEOGRAPHER: Here marks the
13 beginning of tape number 3 in the deposition of
14 Admiral Thomas Moorer. We're back on the record.
15 The time is 15:16:19.

16 BY MR. SIMMONS:

17 Q Admiral Moorer, Roger Simmons. We're
18 continuing the deposition here in General
19 Singlaub's case against April Oliver, and her case
20 against CNN, and her counterclaim against General
21 Singlaub. I was asking you some questions about
22 the historical structure back in 1970 during the

□

1 time frame you first became the Chairman of the
2 Joint Chiefs of Staff.

3 Do you recall who was the prior Chairman
4 just before you took that job?

5 A Yes. General Wheeler.

6 Q Before General Wheeler stepped out of
7 the role, did you begin attending meetings of
8 WSAG?

9 A The WSAG didn't exist until Kissinger
10 got there.

11 Q That would have been in as of July 17 of
12 1970, Kissinger was there.

13 A Mm-hmm.

14 Q Is that correct?

15 A Not until I got to be Chairman did I go
16 to the WSAG meeting.

17 Q You were attending them as of July 17,
18 1970, were you not, sir?

19 A July 17 on -- December what, 1970?

20 Q July 17, 1970.

21 A Yes, I was. Right.

22 Q So were you doing that as a designee for

□

1 the Joint Chiefs of Staff Chairman role, or some
2 other capacity?

3 A I was the senior one of everybody, the
4 pecking order in the Joint Chiefs. And if Wheeler
5 didn't -- wasn't able to go, I went in his place.

6 Q Okay. So if you could, sir, do you

7 remember a Marshall Green attending these July
8 1970 minutes back in that time frame before the
9 Tailwind operation took place?

10 A Yes, I knew Marshall Green. He was in
11 Hawaii -- I mean, not in Hawaii. In Hong Kong.
12 And then I believe in Indonesia.

13 Q What was his --
14 MR. JOHNSON: Marshall Green?
15 MR. SIMMONS: Marshall Green.

16 BY MR. SIMMONS:

17 Q What was his role in attending WSAG
18 meetings? Why did he attend WSAG meetings?

19 A It was very rare that he attended. When
20 he was acting in place of the Secretary of State,
21 he could attend it, but normally he wasn't a
22 member.

0242

1 Q Who was William Nelson? Do you remember
2 a William Nelson from the CIA?

3 A Yes.

4 Q Did he attend the WSAG meetings?

5 A Only if Mr. -- the CIA director was
6 absent.

7 Q Do you remember Warren Nutter?

8 A Very well.

9 Q Did he attend the WSAG meetings?

10 A Yes, he attended WSAG meetings.

11 Q And what was his role, sir?

12 A He was the political director in the
13 Pentagon and worked for the Secretary of Defense.

14 Q Do you remember a meeting in July of
15 1970 when you first were called in to discuss
16 interdiction in southern Laos and northeast
17 Cambodia?

18 A Well, now, I don't think I was just -- I
19 think I was just becoming Chairman, and I had
20 probably been a Chairman a week.

21 Q Do you remember at that meeting the
22 interdiction forces were approved by Dr. Kissinger

0243

1 and you agreed with it?

2 A Yes. But Dr. Kissinger did not approve
3 of them without checking it with Nixon. And the
4 WSAG meeting, we would have the discussion and so
5 on, and come down with a recommendation. And
6 Kissinger, before anything happened, Kissinger had
7 to take that to the President and get a yes or no.

8 Q So if Dr. Kissinger said it's approved,
9 did that in your mind carry with it the
10 President's approval?

11 A If Kissinger said the President -- I've
12 taken this to the President and he has approved
13 it, then all members of the WSAG were informed,
14 and the minute you -- the President after the
15 National -- and after the National Security
16 meeting would issue what was called a PD, which
17 was a Presidential decision.

18 And once that paper got in your hands,
19 each person, whether he's Secretary of State or
20 Secretary of Defense or Secretary of Treasury or
21 who, was expected to fulfill his part in
22 getting -- completing execution of the President's

0244

1 order.

2 Q You have brought with you a rather large
3 notebook. I'm looking for my copy. Here we go.
4 That's been -- or to be marked Moorer Exhibit J.
5 Do you have that big book there, July 12, 1998
6 book?

7 A What are you talking about?

8 MR. BAINE: You mean the DOD report?

9 MR. SIMMONS: DOD report.

10 THE WITNESS: I've got that right here.

11 BY MR. SIMMONS:

12 Q You have it now in front of you?

13 A Yes.

14 Q That July 21 -- I said July 12 -- July
15 21, 1998 report.
16 A Yes.
17 Q Did you read that whole thing?
18 A Just about. I screened the index, and
19 then checked the items that I wanted to check in
20 it.
21 Q Can you go through --
22 A The answer to your question, did I read

0245

1 every line in it, is no. You haven't read it
2 either.
3 Q I was prepared to be very impressed,
4 sir. Can you give me just your best recollection
5 as we sit here today what portions you did read?
6 A Yes. I read the -- let me see if I can
7 find the index. I read the summary. And I read
8 the conclusion. And I know what the Secretary of
9 Defense thought.
10 Q The Secretary of Defense is Mr. Cohen?
11 A Mr. Cohen.
12 Q You read the summary and the conclusion.
13 How many pages are we talking about there?
14 A I don't have any idea.
15 Q Well, you have it in front of you. Can
16 you show me, and I'll count them up for us?
17 A You're --
18 Q Up until tab A, is that correct?
19 A Up until tab A, yes.
20 Q You read that part?
21 A I read all that.
22 Q Anything else?

0246

1 A Well, when -- reading tab A quirked my
2 curiosity, and I needed some more, then I would
3 turn to which L was, and I would check.
4 Q Which one do you remember --
5 A I don't remember.
6 Q Primarily you --
7 A If you want me to make a list, I'll take
8 it home and read it.
9 Q No. That's fine if you want to do that.
10 Whatever you feel appropriate. I'm just trying to
11 get a feeling for what you're basing things on
12 here today. And you've read the first section of
13 the book up until tab A, is that fair?
14 A Yes. I read the introduction and so
15 forth, and then the comments on Tailwind.
16 Q Now, this didn't come to you in the
17 course of the reporting document, did it?
18 A No.
19 Q No one had a duty to give you that, did
20 they?
21 A Well, I got it from Mr. Gresham, who
22 went over and got it for me.

0247

1 Q Who is Mr. Gresham?
2 A Sitting --
3 Q I understand he's sitting here, but who
4 is he?
5 A Who is he?
6 Q Yes, sir.
7 MR. NYKODYM: Objection, vague and
8 ambiguous.
9 A Well, he's a leader in the Special
10 Forces.
11 BY MR. SIMMONS:
12 Q With Special Forces what?
13 A Huh?
14 MR. DUNCAN: Objection.
15 BY MR. SIMMONS:
16 Q Is he in the Army?
17 MR. DUNCAN: Just a second.
18 A The SOG.
19 BY MR. SIMMONS:
20 Q What is his relationship to you, sir?

21 A He's a friend of mine.
22 MR. DUNCAN: I'm objecting to this line

0248

1 of questioning as being irrelevant. Also --
2 BY MR. SIMMONS:
3 Q When did you first meet Mr. Gresham?
4 MR. DUNCAN: Just a minute. Let me
5 finish my objection here. Also, if the Admiral
6 wants to take that document home and list for
7 you -- in fairness to the Admiral, and list for
8 you what he read, then I don't think you should
9 stop him from doing it.
10 MR. SIMMONS: I'm not stopping Admiral
11 Moorer from anything. I have the greatest respect
12 for the man.
13 BY MR. SIMMONS:
14 Q You understand I'm not trying to tie
15 your hands or stop you or do anything.
16 MR. DUNCAN: Then let's have him list
17 for you then and provide for you the documents --
18 MR. SIMMONS: Sir, you have had your
19 deposition, and you can have cross-examination at
20 the conclusion of mine. But right now I am simply
21 trying to ask a few things that I think might be
22 helpful to my client.

0249

1 BY MR. SIMMONS:
2 Q You understand that, don't you?
3 A I guess so.
4 MR. DUNCAN: Just a second. He
5 volunteered that if you wanted to know what
6 documents he had read, he would take it home and
7 report that back to you. I think that's fair.
8 MR. SIMMONS: Are you finished?
9 MR. DUNCAN: Do you not want him to do
10 that?
11 MR. SIMMONS: Are you finished?
12 MR. DUNCAN: Do you not want him to do
13 that?
14 MR. SIMMONS: Are you finished with your
15 comments? I'm not here for a deposition from me.
16 Are you finished with your comments, sir?
17 MR. DUNCAN: Are you going to keep
18 probing into that area?
19 THE WITNESS: Why don't we meet
20 somewhere else and let you fellows discuss this.
21 BY MR. SIMMONS:
22 Q I want to talk to you. I couldn't care

0250

1 less about him. Would you tell me when you first
2 met Rudi Gresham?
3 A Well, I met him when this -- beginning
4 of this Tailhook. I knew who he was. I knew he
5 was in the --
6 Q The beginning of what?
7 A Huh?
8 Q The beginning of what?
9 A This investigation, when Mrs. Oliver
10 came over and started talking to me about it, I
11 met him.
12 Q You met him in the summer of '98?
13 A Or thereabouts.
14 Q Okay. You had not known him before
15 then?
16 A I had known who he was.
17 Q But you had not personally known him
18 before then?
19 A I know he lives in South Carolina.
20 Q But you had not personally known Rudi
21 Gresham?
22 A I had not personally known him. I know

0251

1 him real well now.
2 Q Do you remember how you first met him?
3 A On a telephone call.

4 Q Did you call him or he called you?
5 A He called me and told me the fact that
6 he was associated with the Special Forces, and one
7 thing led to another, and he has been very helpful
8 now.
9 Q Have you looked at any of the Special
10 Forces websites?
11 A No.
12 Q If you're like me, you're not too much
13 up on the computers. But has anyone told you that
14 the Special Forces had websites where they have
15 depicted body bags, including April Oliver's body
16 bag, as a result of this Tailwind controversy?
17 MR. DUNCAN: Objection as irrelevant.
18 A No one had told me that. I'm not sure
19 that they exist.
20 BY MR. SIMMONS:
21 Q Well, you're not sure what exists?
22 A What you're talking about. I haven't

0252

1 seen it. So I --
2 Q But you haven't seen anything but the
3 Pentagon report. You didn't do any interviewing
4 or researching the facts in the Pentagon report,
5 did you?
6 MR. DUNCAN: Objection to form.
7 A I read the paper. I listen to the
8 radio.
9 BY MR. SIMMONS:
10 Q Fair enough.
11 A Huh?
12 Q You looked at the Pentagon report and
13 you drew conclusions, correct?
14 MR. DUNCAN: Objection as to form.
15 A No, that's not correct.
16 BY MR. SIMMONS:
17 Q Okay.
18 A I've looked at everything I could get my
19 hands on.
20 Q Did you call up Lieutenant van Buskirk
21 and ask him what happened?
22 A No.

0253

1 Q Did you call up Mr. Cathey and ask him
2 what happened?
3 A I had the -- I knew what he said.
4 Q Did you call him up and talk to him?
5 A I didn't call him. I wanted to know
6 where the hell he is.
7 Q Okay. Did you call up Mr. Hagan and ask
8 him what happened?
9 A No. But I know what he said.
10 Q What he said to whom, when?
11 A When he was questioned.
12 Q Have you looked at tapes of what he said
13 when he was questioned?
14 A No. I haven't looked at tapes.
15 Q Have you looked at a transcript of what
16 he said when he was questioned?
17 A I know what he said about sarin gas.
18 Q How do you know that?
19 A I know it because of the way people know
20 anything else. He said so.
21 Q You didn't talk to him, you didn't see a
22 transcript, and you didn't see notes. Who told

0254

1 you what he said?
2 A Well, I think that several people told
3 me what he said.
4 Q Who?
5 A Well, Mr. Gresham for one.
6 Q Okay. I assumed that. Anyone else?
7 A Well, he relayed to me what the other
8 people had said.
9 Q He relayed who what?
10 A And I --

11 Q I'm sorry. Is the "he" Rudi Gresham?
12 A Huh?
13 Q Is the "he" that relayed, is that Rudi
14 Gresham?
15 A Yes. And I read in great detail this
16 report by Mr. Abrams.
17 Q Okay. Did you read the rebuttal from
18 Ms. Oliver?
19 A Yes. I know what she said.
20 Q Did you read the rebuttal?
21 A Yes.
22 Q Is there some reason it's not in the

0255

1 documents you produced here today?
2 A I don't have it in a document. But I
3 could tell you within a close call of what she
4 said.
5 MR. DUNCAN: Let me state for the record
6 an objection as to form. Let me have a standing
7 objection on this area of rebuttal for April
8 Oliver, as far as the document you're going to
9 use. Do you want me to object all the time, or do
10 I have a standing objection?
11 MR. SIMMONS: Sir, I gave you a standing
12 objection about an hour ago.
13 MR. DUNCAN: So that counts for
14 everything?
15 MR. SIMMONS: It counts for any and
16 everything you can think of later.
17 MR. DUNCAN: Okay.
18 MR. MITNIK: Can I have one of those
19 too?
20 MR. SIMMONS: Keith, you can't have
21 anything, because you're more contained.
22 MR. MITNIK: I'll start acting up.

0256

1 MR. SIMMONS: You can have the same
2 objection. I don't care.
3 MR. MITNIK: I'll take it.
4 MR. SIMMONS: Could we mark this please
5 as the next exhibit.
6 (Exhibit Number N was marked for
7 identification and was retained by counsel.)
8 MR. MITNIK: For the record,
9 Mr. Reporter, I have a standing objection to
10 anything and everything.
11 MR. NYKODYM: Me too.
12 MR. SIMMONS: You too, whoever you are.
13 BY MR. SIMMONS:
14 Q Admiral Moorer, I show you what was
15 marked as Exhibit M-11, your copy of the
16 Abrams/Kohler report.
17 A Yes.
18 Q Now would you look over the document I
19 just gave you, N.
20 A No.
21 Q Have you ever seen this before?
22 A No.

0257

1 Q You've never seen this before?
2 A I don't think so.
3 MR. GRESHAM: This, the association saw
4 it, and we discarded it.
5 BY MR. SIMMONS:
6 Q Just so we get it on the record here,
7 Admiral Moorer, what did Mr. Gresham just say to
8 you?
9 A He said that his organization, the
10 Special Forces, had a copy. That's all he said.
11 Q And he said they discarded it, didn't
12 they?
13 MR. GRESHAM: I just -- I know it just
14 doesn't add up. I'm sorry.
15 BY MR. SIMMONS:
16 Q He said they discarded it, didn't they?
17 A I think so. And he was probably right.

18 Q Did you ever look at it?
 19 A Huh? No. I've never seen it before.
 20 Q So when you were sitting down trying to
 21 figure out what the facts were, you never saw
 22 Exhibit N, is that fair?

0258

1 A I don't recall ever having seen it.
 2 Q Okay. Let's go back to 1970 for a
 3 moment. Based on what you now know from whatever
 4 source, isn't it correct that the Tailwind project
 5 was a CIA project much like the Bay of Pigs?
 6 A Yes. The CIA had the disposal of
 7 aircraft from the Air Force, and the CIA was
 8 involved in the planning of many of the things.
 9 Again, I come back to the purpose of the operation
 10 in Laos was primarily to gain intelligence. And
 11 consequently the CIA would pinpoint the areas that
 12 needed investigation, and then when necessary the
 13 armed forces or WSAG would go in and take a look.
 14 MR. SIMMONS: Could you mark this please
 15 as Exhibit O.
 16 (Exhibit Number O was marked for
 17 identification and was retained by counsel.)
 18 BY MR. SIMMONS:
 19 Q Could you now please look at Exhibit
 20 Number O.
 21 A This one?
 22 Q Yes, sir.

0259

1 A Yes.
 2 Q I'm not going to presume to suggest you
 3 remember this exact document. But would this
 4 intelligence information cable be the type of
 5 document you might see in your endeavors as joint
 6 chief or a member of WSAG?
 7 MR. NYKODYM: Could you repeat the
 8 question that was pending?
 9 MR. SIMMONS: When he's finished reading
 10 it.
 11 (Requested portion of record read.)
 12 MR. NYKODYM: Assumes facts not in
 13 evidence.
 14 A Okay.
 15 BY MR. SIMMONS:
 16 Q Can you answer the question? Do you
 17 need it reread?
 18 A No. What's the question?
 19 Q The question is, is this the type of
 20 document you would have seen?
 21 A No, I haven't seen it.
 22 Q Would you ever see intelligence reports

0260

1 of this type?
 2 A Intelligence reports?
 3 Q Yes, sir.
 4 MR. NYKODYM: Vague and ambiguous.
 5 A Yes, I saw quite a few intelligence
 6 reports.
 7 BY MR. SIMMONS:
 8 Q Would you receive intelligence from the
 9 CIA?
 10 A Yes.
 11 Q If the CIA report is, in the area that
 12 Tailwind went into in southern Laos, that there
 13 was a training camp of over 300 U.S. and over 200
 14 Laos prisoners, would that be something of
 15 interest to you?
 16 MR. NYKODYM: Objection. Incomplete
 17 hypothetical. Assumes facts not in evidence.
 18 A Of course that would be of interest to
 19 me. I don't recall this particular message,
 20 though.
 21 BY MR. SIMMONS:
 22 Q You see that I've read correctly from

0261

1 this exhibit number O on page 3, paragraph 6? Did
2 you see that as you read through the document?
3 A Page 3, paragraph 6?
4 Q Yes, sir.
5 A Or a memo designated that way, but --
6 Q If you look at the paragraph 6, I'll
7 read it to you, to be sure we're on the same page.
8 A Not necessary. Yes, I saw this.
9 Q The information related in paragraph 6
10 about 300 U.S. prisoners in Laos, in the area
11 where Tailwind went, was that of interest?
12 A Of course.
13 Q And could it be, sir, that you got
14 information that guided military activities in
15 southern Laos during that time frame of this type?
16 A Well, I think I got the schematic, yes.
17 But I tried to say before that -- you see this
18 message? I got over a hundred of these a day
19 coming from Africa, Europe, Laos, Vietnam, Indies,
20 Philippines and so on. I had six officers that
21 divided these messages up according to the area I
22 assigned them to be responsible for. And they

0262

1 would then come to me and brief me on the ones
2 that they thought were important.
3 I mean, there was no way in God's
4 world -- you've got sense enough to know this --
5 that I could read all of those messages in any one
6 day.
7 Q You did, however, discuss interdiction
8 efforts about this same time frame, in the summer
9 of 1970, moving into the Savan area of southern
10 Laos, with Dr. Kissinger, General Vogt, and others
11 on the WSAG board?
12 A Yes. Probably.
13 Q And you did get reports as to the
14 planning phase of Tailwind, did you not?
15 A Yes, but --
16 MR. NYKODYM: Objection.
17 A -- you're talking about 19 years ago
18 now.
19 BY MR. SIMMONS:
20 Q I'm talking about almost 30 years ago.
21 MR. SIMMONS: Could you mark this as P,
22 please.

0263

1 (Exhibit Number P was marked for
2 identification and was retained by counsel.)
3 A That document was sent to Vogt. This is
4 simply a manifestation of what I just told you.
5 My subordinates had their area of responsibility.
6 And in this case General Zais was responsible for
7 Army actions in Vietnam.
8 Q You've read the first page, have you
9 not?
10 A Yes. I probably read the first page.
11 Although I'm --
12 Q Did you read the next page?
13 A Only because you gave it to me. I don't
14 think it would have gotten to me ordinarily.
15 Q Let's reserve judgment on that until I
16 get you to read the whole thing, sir.
17 A Here' one by Vogt to me says --
18 Q The next page is the second page.
19 A Are you talking about Operation
20 Gauntlet? That's something else.
21 Q It says "Operation Tailwind," does it
22 not? Second page says "Operation Tailwind,"

0264

1 right?
2 A Yes, but it was associated with
3 Gauntlet, too.
4 Q Let's take it one page at a time. First
5 page says "Operation Tailwind," right? And it
6 says, "Memorandum for the director, joint staff."
7 A Yes. "Operation Tailwind." Okay.

8 Q Now, look at the second page. It says,
 9 "Register personnel handling classified document."
 10 Down below it says, "Subject, Operation Tailwind."
 11 A Yes.
 12 Q This is a document that went to you.
 13 A Right.
 14 Q So you were involved in the
 15 preextraction phase of Tailwind?
 16 A Yes.
 17 Q As of September 11, that was the first
 18 day that the troops were put down in southern Laos
 19 for Tailwind. Did you --
 20 A Right.
 21 Q The next document is on the Joint Chiefs
 22 of Staff letterhead. "Top secret" has been marked

0265

1 out here. "Vogt, subject, Operation Tailwind."
 2 And it talks about Prairie Fire in the first line
 3 under that, does it not? What was Operation
 4 Prairie Fire?
 5 A Operation what?
 6 Q Prairie Fire.
 7 A Well, it was an operation, as I recall,
 8 in Laos involving efforts to interdict the Ho Chi
 9 Minh Trail.
 10 Q And this next document we come to, it
 11 also says, "Register personnel handling classified
 12 document." This also is a document you would have
 13 seen, is it not, sir?
 14 MR. NYKODYM: Counsel, you're talking
 15 about DOD 01158?
 16 MR. SIMMONS: Right.
 17 A Okay.
 18 BY MR. SIMMONS:
 19 Q This was not simply a recon mission. It
 20 was paramilitary, wasn't it?
 21 A Yes.
 22 Q Is that your handwriting on the last

0266

1 page? The "Chairman, Joint Chiefs of Staff."
 2 A This is from -- no, that's not mine.
 3 "Hold until President settles with Moorer."
 4 Q "Settles issue. Moorer."
 5 A Huh?
 6 Q No. Read it again. It says, "Hold
 7 until President settles issue. Moorer."
 8 A And this is to Vogt.
 9 Q From who to Vogt?
 10 A Well, I know you're trying to say it's
 11 me, but I don't think so.
 12 Q Who else was the Chairman of the Joint
 13 Chiefs of Staff as of September 11, 1970?
 14 MR. NYKODYM: Objection. Assumes facts
 15 not in evidence.
 16 A Who else? I just told you I had six
 17 officers.
 18 BY MR. SIMMONS:
 19 Q Sir, you were the Chairman of the Joint
 20 Chiefs of Staff?
 21 A That's right.
 22 Q And it indicates that as of 9/11, 1970,

0267

1 something had to be held until the President
 2 settled the issue, does it not?
 3 MR. NYKODYM: Objection. Misstates the
 4 record.
 5 A Right. That's --
 6 BY MR. SIMMONS:
 7 Q Now, the troops are already there in
 8 southern Laos as of that date, right?
 9 A Well, they're there, but they have to be
 10 moved. Laos is a big place.
 11 Q Would you agree with me that if you
 12 didn't write the words on there, "Hold until
 13 President settles issue. Moorer," it was one of
 14 your six people who reported to you?

15 MR. NYKODYM: Objection. Assumes facts
 16 not in evidence.
 17 A Well, the one that sent this to Vogt
 18 had -- I mean -- rather, Vogt is -- he sent it to
 19 somebody.
 20 BY MR. SIMMONS:
 21 Q Vogt was one of your aides or
 22 assistants, and he had authority to transmit your

0268

1 messages to others, right?
 2 A Yes.
 3 Q So when he says "Hold until President
 4 settles issue. Moorer," he had authority from you
 5 to communicate that message?
 6 A And he's quoting me.
 7 Q Who's DJS?
 8 A It says, "Hold until President settles
 9 the issue."
 10 Q "Moorer."
 11 A And --
 12 Q "Moorer." You left out "Moorer."
 13 A Yes. And I don't know who this went to,
 14 but --
 15 Q Who is DJS?
 16 A It's from the DJS.
 17 Q What is the DJS?
 18 A The deputy joint director.
 19 Q And what is file O?
 20 A Huh?
 21 Q You see the word "file," and it looks
 22 like an O?

0269

1 A File O? I don't know what file O is.
 2 They didn't pay me enough to answer that question.
 3 Q And you didn't concern yourself with the
 4 filing process?
 5 A No.
 6 Q As you sit here today, what issue can
 7 you think of regarding Operation Tailwind that
 8 would have required Presidential approval?
 9 MR. NYKODYM: Objection, vague and
 10 ambiguous.
 11 A Any operation that involved the use of
 12 poison gas, for instance. He would have to
 13 release it, because, if you recall, it was an
 14 issue afoot then about whether we were -- whether
 15 the Senate was going to confirm the treaty
 16 forbidding the use of poison gas.
 17 BY MR. SIMMONS:
 18 Q Could you go to Exhibit K, the first of
 19 Ms. Oliver's interviews with you?
 20 A What's that?
 21 Q Do you have K there, sir? Here it is.
 22 I beg your pardon. I had it over here.

0270

1 A Yes.
 2 Q Admiral Moorer, is Henry Kissinger the
 3 person I should ask if sarin was used or not?
 4 MR. KAPLAN: Roger, I didn't hear the
 5 question. Ask it again.
 6 BY MR. SIMMONS:
 7 Q Would Henry Kissinger know if sarin was
 8 used?
 9 A Of course.
 10 Q Would he deny it?
 11 MR. NYKODYM: Objection. Asks for
 12 speculation.
 13 A I don't know whether he would deny it.
 14 You're asking me things that are impossible for me
 15 to answer. Maybe. Maybe yes, maybe no.
 16 BY MR. SIMMONS:
 17 Q In your experience you've seen him deny
 18 many things?
 19 A What?
 20 Q In your experience you saw Dr. Kissinger
 21 deny many things that he knew were true?

22 A Of course.

0271

1 MR. NYKODYM: Objection, assumes facts
2 not in evidence.
3 BY MR. SIMMONS:
4 Q And in fact you had someone removing
5 material from his briefcases from time to time to
6 find out what the truth was?
7 A Well, you're saying what -- you're
8 asking me to use hearsay again.
9 Q Not at all. I don't want you to go to
10 hearsay. I don't want you to use the Department
11 of Justice. I don't want you to use Rudi Gresham.
12 I want you to talk about what you know, sir. It
13 is correct --
14 A I don't know what Kissinger would do.
15 God help us, if I knew what Kissinger would do, I
16 would probably be ten years younger.
17 Q Okay. Younger in terms of age or
18 younger in terms of health? Because I think that
19 would defy everybody's credibility, sir.
20 A Right.
21 Q Your health is remarkable. And you
22 would agree with me that in your regime you also

0272

1 are a swimmer?
2 A That's right.
3 Q You're a golfer, you're a hunter.
4 A Yes.
5 Q And you do very complex --
6 A I'm a pilot.
7 Q You are still a pilot?
8 A Sure.
9 Q You're still qualified to fly a plane?
10 A I don't think I'm qualified. But I fly.
11 Q Sir, you would acknowledge that you have
12 a very sharp memory?
13 A I hope so.
14 Q And when someone asks you a policy
15 question that affects the national interest, you
16 answer carefully and thoughtfully, do you not?
17 A I try to.
18 Q And when April Oliver came in to talk to
19 you in December of 1997, she was raising some
20 pretty powerful questions, wasn't she?
21 A Well, I wouldn't say that.
22 Q She was raising questions about sarin

0273

1 gas. You said from the beginning she seemed to be
2 concerned about that topic throughout.
3 A She seemed to be convinced already.
4 See, and I told her she was working the problem
5 backwards. She was going to prove it.
6 Q Did you make any notes of the first
7 meeting you had with Ms. Oliver?
8 A No.
9 Q That would have been --
10 A She probably made plenty of notes.
11 Q Do you recall how the first meeting came
12 about?
13 A She called me on the phone and asked me,
14 she said could she -- she wanted to talk about
15 Laos, I think, or whatever. And she -- I said
16 okay. I had only been in this place I live now
17 for a short time. And at that point she came, and
18 immediately she jumped into this sarin gas
19 business. She was determined. And I want to read
20 you something.
21 Q Well, I'm going to give you a chance to
22 talk about everything there is here. Could we

0274

1 stay with my agenda for a little bit?
2 MR. JOHNSON: Let him answer the
3 question, please.
4 BY MR. SIMMONS:

5 Q Exhibit K there you have.
6 A Huh?
7 Q You have Exhibit K in front of you?
8 A Yes. What about it?
9 Q Have you had a chance to read it over?
10 A No.
11 Q Could you please now take some time to
12 read it.
13 (Witness complies.)
14 (Discussion off record.)
15 A Okay. What do you want to know?
16 BY MR. SIMMONS:
17 Q Have you read over Exhibit K now, sir?
18 A Most of it. I skimmed it.
19 Q In reading through or skimming it --
20 you're welcome to take more time if you need --
21 did it appear to accurately reflect what April
22 Oliver asked you and what you responded in

0275

1 December of 1997?
2 A 1987?
3 Q 1997.
4 A I'm trying to find a date.
5 Q I can help you. There's no date on it
6 that you're going to find. Let me show you the
7 next exhibit which would be Exhibit Number -- this
8 would be Q.
9 (Exhibit Number Q was marked for
10 identification and was retained by counsel.)
11 MR. NYKODYM: Counsel, may I just have a
12 standing objection to the use of these documents
13 in this deposition, given that plaintiffs' counsel
14 was notified at approximately 4:30 on Friday that
15 the documents would be available, which is hardly
16 enough time for us to make reasonable use of those
17 documents. And they wouldn't be available today.
18 MR. SIMMONS: You have a standing
19 objection to everything.
20 MR. DUNCAN: And let me just state that
21 I would like the documents brought forward
22 pursuant to this letter. And so far they are

0276

1 being refused to be brought.
2 MR. BAINE: No one is refusing them.
3 Let's just not make this record so convoluted.
4 The witness has -- I'm in the middle of a
5 statement. The witness has in front of him a
6 document that is not a Defense Department
7 document. It's a letter from April Oliver to
8 Admiral Moorer.
9 Could you just let him answer the
10 question about that exhibit, which is not anything
11 that was referred to in any letter on Friday.
12 BY MR. SIMMONS:
13 Q Admiral Moorer, do you recall receiving
14 this December 22 letter thanking you for meeting
15 with Ms. Oliver?
16 A Yes.
17 Q So can we agree that you met with her
18 and talked to her sometime prior to December 22,
19 1997 for the first time?
20 A Yes. I assume so. I mean, how the hell
21 would I know that?
22 Q Admiral Moorer, you remember

0277

1 receiving --
2 MR. DUNCAN: I want to state for the
3 record that this is a typewritten version of the
4 notes that April Oliver -- handwritten notes that
5 April Oliver used in interviewing the Admiral, as
6 I understand it, and was utilized by CNN's counsel
7 this morning. And I do not have -- have not had a
8 copy of this prior to this time.
9 And I understand that the records that
10 CNN had on Ms. Oliver's interviews were subpoenaed
11 by Mr. Berman. And if this was given in reference

12 to that, then it was not forwarded to me by
 13 anyone. And I object to its use.
 14 MR. SIMMONS: Your objection is noted.
 15 You have all objections, I've told you, that you
 16 can think of afterwards. And can we now get the
 17 Admiral's answer?
 18 A What's the question?
 19 BY MR. SIMMONS:
 20 Q All I'm trying to establish, sir, is the
 21 first time you talked to April Oliver was sometime
 22 in December of 1997, is that correct?

0278

1 A I guess so.
 2 Q And having looked over Exhibit Number K,
 3 did you see anything in there inaccurate as you
 4 read it over, as to what she asked you and you
 5 responded?
 6 MR. MITNIK: That is a --
 7 A I'm not going to answer a question like
 8 that. I'll take it home and write you the answer.
 9 BY MR. SIMMONS:
 10 Q That's not going to work, so let's just
 11 take it through. I need to know today, without
 12 the involvement of Mr. Gresham or others. Sir,
 13 you've testified many times before, have you not?
 14 A Where?
 15 Q Before Congress, for military courts,
 16 before --
 17 A Probably 200 times.
 18 Q 200 times. You understand that when
 19 someone asks you a question under oath, there is a
 20 need to get that answer soon after the question,
 21 and not with the interference or influence of some
 22 other source. And that's all I'm saying here. I

0279

1 would like to get your reading of Exhibit K as we
 2 sit here right now, to see if it appears to be
 3 accurate.
 4 If you later decide to change your mind,
 5 that's fine, that's your choice. But I want to
 6 know under oath today what your recollection is
 7 and if this is an accurate recitation.
 8 MR. DUNCAN: Let me just interpose an
 9 objection. That's a seven-page document.
 10 MR. SIMMONS: You are indeed correct.
 11 A Well, you just sit down until you get
 12 blue in the eyes, and I'm going to stay here until
 13 3:00 in the morning and see who --
 14 BY MR. SIMMONS:
 15 Q I'm not trying to challenge you.
 16 A We'll see who can outlast each other.
 17 Q No, I'm sure you're much more --
 18 A I mean, that's a foolish thing for you
 19 to be doing.
 20 Q No, it's not. It's very important. You
 21 realize that very serious things have been said
 22 about my client, and her career has been ruined.

0280

1 And she's here trying to defend her name as best
 2 she can, sir. I'm trying to get the record as to
 3 whether or not you told her the things you said
 4 you told her.
 5 MR. DUNCAN: Let me just state for the
 6 record, very serious things have been said about
 7 the plaintiffs.
 8 BY MR. SIMMONS:
 9 Q Could you look at Exhibit K, sir.
 10 MR. DUNCAN: And their careers have been
 11 tarnished and ruined. And --
 12 A I've got Exhibit K.
 13 BY MR. SIMMONS:
 14 Q Let's take the very first one.
 15 A I'm not going to answer one by one.
 16 MR. DUNCAN: I'm going to get my
 17 objection in here.
 18 A I'm going to read the things, because

19 they're related.
 20 MR. DUNCAN: Just a second. I have an
 21 objection. This is not about trial by ambush.
 22 You have this document. It has not been delivered

0281

1 to anyone as of now until this day. The Admiral
 2 has asked for time to review it, and he will come
 3 back at another time and answer your questions
 4 about it. That is not --
 5 MR. SIMMONS: Excuse me.
 6 MR. DUNCAN: -- and unfair request --
 7 MR. SIMMONS: You have been
 8 fillibustering all afternoon, sir. Will you
 9 please --
 10 MR. DUNCAN: That is not an unfair
 11 request by him.
 12 MR. SIMMONS: And I did not interrupt
 13 you in this manner. And I'm asking you to please
 14 calm down.
 15 MR. DUNCAN: Your tactic here of
 16 bringing a document here --
 17 MR. SIMMONS: No, no, no, no, no, no,
 18 no, no, no, no, no, no, no, no, no --
 19 MR. DUNCAN: -- that you've had for a
 20 long time --
 21 MR. SIMMONS: You cannot talk over me.
 22 You cannot filibuster.

0282

1 MR. DUNCAN: -- it has not been honored.
 2 And I think that the Admiral's request is a fair
 3 request.
 4 MR. SIMMONS: Sir, you keep implying
 5 that I have some duty to you. You have not sent
 6 me any document request or subpoena, have you?
 7 MR. DUNCAN: CNN --
 8 MR. SIMMONS: Have you?
 9 MR. DUNCAN: CNN --
 10 MR. SIMMONS: Have you?
 11 MR. DUNCAN: No. But CNN --
 12 MR. SIMMONS: Thank you.
 13 MR. DUNCAN: CNN was subpoenaed, and
 14 they had this document.
 15 MR. BAINE: Since you've made a
 16 reference to CNN, I would like to make a statement
 17 on CNN's behalf. You have not sent me any
 18 document request on behalf of your client. Nobody
 19 in this room has ever sent me a document request
 20 that would call for CNN to produce this document.
 21 Okay?
 22 Mr. Berman asked to have a copy of the

0283

1 videotapes that were made and a transcript of
 2 those videotapes. And that is all he asked for.
 3 And no one else in this room ever asked for
 4 anything else. Our job is not to start sorting
 5 through all the documents to see if there's
 6 anything you all might be interested in.
 7 Your job is to ask us for documents, and
 8 our obligation is to produce the documents that
 9 you ask for.
 10 MR. COOK: We have a stay on discovery.
 11 MR. SIMMONS: I object to all this
 12 colloquy during my examination. Can we please
 13 keep going, so the Admiral doesn't have to be here
 14 until three in the morning.
 15 THE WITNESS: I don't mind.
 16 BY MR. BERMAN:
 17 Q This was a two-and-a-half-hour
 18 conversation, the first conversation, is that
 19 right, sir?
 20 A About.
 21 Q And when you asked, "What was the
 22 mission," were you told, "We've been told a host

0284

1 of reasons, everything from an advance foray prior

2 to Lan Som to a training mission for the
 3 Vietnamese to lead the Montagnards"?
 4 Did you respond to that, "I had dinner
 5 with the Laotian President (Savapone?) sometime
 6 that year before Lan Som 719. The Ambassador set
 7 it up. And you see the State Department had told
 8 me that the President would not allow forays deep
 9 into Laos. But that was not the reply that I got
 10 from him, it was not reflective of the State
 11 Department's position.
 12 "He told me he would not strongly object
 13 to our going in like this, he was concerned about
 14 the safety and protection of some villages, but in
 15 principle he had no objection to large scale
 16 operations. Lan Som's aim of course was to cut
 17 the Ho Chi Minh Trail in half, cut those supplies
 18 coming from the North to the South. The NVA even
 19 had tanks coming down the trail. We had to stop
 20 it."
 21 Does that sound like it was a correct
 22 question and a correct answer as to what words

0285

1 were spoken on December 17, 1997 between you and
 2 Ms. Oliver?
 3 A What are you talking about? What was
 4 the mission?
 5 Q Yes, sir. The passage I just read you
 6 and your response.
 7 A That information I gave about what
 8 happened with the Laotian President -- you didn't
 9 spell his name right -- was true. I already said
 10 this once before. I was in Cambodia.
 11 Q I'm not asking now, so you understand,
 12 I'm not asking whether it's true or not. I'm
 13 asking, as you recall, were these words spoken on
 14 December 17 between Ms. Moorer and you? After
 15 reading them, would you agree that they were?
 16 A If you're asking me whether this took
 17 place, the answer is yes.
 18 Q Thank you. The next question was, "What
 19 was the date of your meeting with the President of
 20 Laos, was it prior to Tailwind?" Did you answer,
 21 "I can't remember. But it was prior to Lan Som
 22 719"?

0286

1 A That's right.
 2 Q The next question is, "Lan Som was in
 3 February '71. That is four or five months after
 4 the mission in question here. How could there
 5 realistically be any connection? Are you saying
 6 there is? What was your understanding of the
 7 mission? You were aware of it, you told me that
 8 before."
 9 Did you respond, "Yes, I was well aware
 10 of it at the JCS. I understood that these SOG
 11 patrol were primarily to get up to date
 12 information on how strong the opposition was in
 13 Laos. Of course the opposition was also in the
 14 form of Laotians and not just North Vietnamese"?
 15 Would that have been a correct question
 16 and answer at the time, sir?
 17 A That's okay.
 18 Q And if I take you through this question
 19 by question, would you prefer I do that, or do you
 20 want to read it and tell me any place you see
 21 something you believe wrong or inaccurate?
 22 A Well, I don't think there's much

0287

1 difference in what happened. But I will try that.
 2 Q Okay, sir. Why don't you read and tell
 3 us what pages you've read as you go.
 4 MR. JOHNSON: Where does he start, what
 5 pages?
 6 MR. SIMMONS: Page 1.
 7 BY MR. SIMMONS:
 8 Q Did you see anything on page 1 that you

9 felt was inaccurate?
 10 A That's okay. Well, now, I explained
 11 here that --
 12 Q You're looking at page 2, sir? It's the
 13 second page of the document.
 14 A Yes.
 15 Q Could you tell us what question?
 16 A That was the first question.
 17 Q Okay.
 18 A She's talking about, "What about these
 19 Marine defectors?" I don't know what she's
 20 talking about there. But I do know, I said, "I
 21 want you to understand I really don't get heavily
 22 involved in this. I did not have operating

0288

1 control over it. It did not go through the JCS."
 2 Q That's in the transcript you're reading.
 3 That quote, what you just said, is in there,
 4 right?
 5 A Yes.
 6 Q So it looks like this question, this
 7 response is accurate as to what was said that day
 8 by Ms. Moorner and you?
 9 A Then she asks --
 10 Q I mean by Ms. Oliver and you. Now I've
 11 flipped the names.
 12 A You're getting me in trouble right away.
 13 "Who did it go through?"
 14 Q What are you referring to?
 15 A The operation. Who -- and I say, the
 16 "SOG, after all, was conceived by agents of the
 17 CIA."
 18 Q You're reading from the report. I mean,
 19 the document.
 20 A That's my answer. "The CIA briefed the
 21 President daily. The CIA and White House would
 22 know about this before the JCS."

0289

1 Q The JCS was Joint Chiefs of Staff,
 2 right?
 3 A "The White House was involved in Laos
 4 issues because of the sovereignty issue." I've
 5 already explained about the problem with the
 6 President.
 7 Q Are there any problems with page 2?
 8 Does it appear to be accurate?
 9 A It's all right.
 10 Q Now we're looking at page 3, beginning
 11 with "Cluster bombs."
 12 MR. DUNCAN: My copy is missing page 3.
 13 BY MR. SIMMONS:
 14 Q Admiral Moorner, would you read the first
 15 question on the third page you're looking at so we
 16 can all be sure we're looking at the same
 17 document?
 18 A This is April Oliver talking. She says,
 19 "One person inside the Nixon White House, not
 20 Haig, has told me that Vietnamization was in full
 21 force in 1970. The U.S. was drawing down, a
 22 weapon that would have allowed the U.S. to keep

0290

1 the enemy body count up and the U.S. body count
 2 down might be very attractive."
 3 Q Could you show me what page you're on?
 4 MR. BAINE: Let me make an observation.
 5 Excuse me. The witness is looking at a different
 6 document from everyone else. It is to my
 7 knowledge the exact same words, but printed out in
 8 a different format. And so the page numbers do
 9 not correspond exactly. Exhibit K --
 10 MR. SIMMONS: Can I borrow it long
 11 enough to get the pages numbered right?
 12 MR. BAINE: Exhibit K -- I passed out
 13 copies of Exhibit K before. And so many of you
 14 have exactly what Exhibit K is. The document that
 15 Mr. Simmons has passed out to you is simply a

16 different printout, I believe, of the exact same
 17 words. So the pagination is different.
 18 MR. MITNIK: Why is that, Kevin?
 19 MR. BAINE: I don't know why. I think
 20 because it was printed out from the computer at
 21 two different times. They're exactly the same,
 22 but the page numbers are not the same.

0291

1 MR. MITNIK: I don't understand why.
 2 BY MR. SIMMONS:
 3 Q Just keep going. What's going to
 4 control is the document you have in front of you,
 5 sir. That's the official document.;
 6 MR. JOHNSON: Where he is reading, I
 7 would like for him to resume reading exactly where
 8 he was.
 9 A I'm still talking about Mrs. Oliver.
 10 She says -- she's talking. "These men who have
 11 put" -- "we have put on camera" -- incidentally,
 12 I've never seen them -- "say nerve gas was used.
 13 They were given NBC gas masks and they were given
 14 atropine. They say the gas put the enemy on the
 15 ground convulsing within two minutes. There is
 16 only one gas weaponized in cluster bombs in this
 17 arsenal, U.S. arsenal that could have done that,
 18 and that is GB. We plan to report that, we have
 19 that information already. What I am asking you,
 20 if this weapon is so good, why not use it again?"
 21 And I say, "People in charge want to
 22 save lives" --

0292

1 BY MR. SIMMONS:
 2 Q You don't have to read it out loud, sir.
 3 If you just read it for accuracy and tell us if
 4 you have any problems with any of it.
 5 A Well, the rest of the people want to
 6 know my answer.
 7 Q No, that's all right. They're now with
 8 you.
 9 A Huh?
 10 MR. DUNCAN: I would like him to read
 11 it. If he wants to read it out loud, that's fine.
 12 BY MR. SIMMONS:
 13 Q Let them know what your answer is, but
 14 you don't need to read the thing out loud. Just
 15 tell us if you have any problems with anything in
 16 the document as you go.
 17 A Well, unfortunately I can --
 18 MR. MITNIK: Read it out loud, Admiral
 19 Moorer.
 20 MR. SIMMONS: No, excuse me. This is my
 21 examination, Keith.
 22 MR. MITNIK: He says he's uncomfortable

0293

1 with it.
 2 MR. SIMMONS: That's fine. I am asking
 3 the questions.
 4 A You're trying to foul me no end.
 5 BY MR. SIMMONS:
 6 Q No, I'm not. No, I'm not. I'm not at
 7 all. You do it however you feel comfortable, sir.
 8 A You've changed your position, huh?
 9 Q I want you to be comfortable. That's my
 10 position.
 11 A Okay. She said, "Are you saying it was
 12 used again, if so, how much?" And I say, "It
 13 would be many considerations. How much is
 14 available, where it is, what effect it has on our
 15 own people. Then you have to think also about the
 16 friendlies and what happens to them. The
 17 Montagnards were very helpful to us."
 18 And Mrs. Oliver says, "We are trying to
 19 piece that together. The officials" -- she never
 20 names officials -- "stats are say just three
 21 Montagnards died. The men say 60 died."
 22 Q "As many as 60 did."

0294

1 A "As many as 60 did." And I say, "this
2 is Montagnard's community here in the country
3 because you can visit. You really have to look at
4 the overall picture in Laos, Laos as part of the
5 whole spectrum of support. From Abrams's point of
6 view, there was infiltration into South Vietnam.
7 The U.S. was not initially allowed to exercise hot
8 pursuit in Laos. And many Laotians were active in
9 aiding and abetting the enemy. You have to see
10 this operation in the context of the whole war.
11 And when" --

12 Q "Then."

13 A Huh?

14 Q "Then." "Then there were."

15 A "Then there were the political
16 controllers in Washington who were always looking
17 beyond at China and Russia and that always further
18 complicated the whole operation." "You did not
19 object to anything I have said so far." "No, I
20 did not. Now I'm not absolutely confirming it for
21 you either. I was aware of that operation but not
22 controlling it. Laos has been a problem and we

0295

1 wanted to fix it."

2 "Okay. But isn't that a bit of
3 plausible deniability in action? How could a
4 joint operation of this size go on and you not
5 control it? After all, SOG gets turned over to
6 the JCS in 1965." "Well" --

7 Q "And CIA gives it up."

8 A "CIA gives it up." "Well, it's not that
9 huge an operation." "But in a technically neutral
10 country, the largest deepest raid, in a joint
11 operation -- you had to be aware of it." "Well,
12 let's just say I had a lot of things cross my
13 desk, and some things I chose not to look at as
14 carefully. You know, like Mr. Clinton says when
15 he says he is not really aware of something being
16 done. I had lots and lots of responsibilities."

17 "But the White House knew?" "Nixon
18 knew" --

19 Q "Undoubtedly knew"?

20 A Huh? "Undoubtedly knew" -- I'm trying
21 to speed this thing up, and what you're doing is
22 slowing it down.

0296

1 Q Sorry.

2 A "Did the JCS brief him on that?" "Let's
3 just say I would be very surprised if he didn't
4 know. I assume that he knew. You would have to
5 understand the command structure in 1970. I know
6 how it worked. I would go over there almost daily
7 on some days and Kissinger would be in to see him
8 about five times a day. I would be most surprised
9 if Nixon didn't know.

10 "Remember, operations are scheduled in
11 advance. When an operation is scheduled, it
12 generates a lot of questions. The subject comes
13 up over and over. People attend conferences. I
14 used to go over to the White House all the time
15 when there was a crisis."

16 "Did you for Tailwind?" "I don't
17 recall. But I was always at National Security
18 Council meetings." "But wouldn't this have been
19 more tightly held than an NSA meeting?" And then
20 I get into the WSAG. "Yes. We had a special
21 ground called the Washington Special Action Group,
22 WSAG. It included Kissinger and me, a small

0297

1 group. I don't exactly remember it coming up in
2 WSAG."

3 "Wouldn't a joint operation have to go
4 all the way to the top of the joint chiefs? This
5 is a good exercise in jointness, after all."

6 "That's a correct assumption. That makes some
7 sense. But sometimes these things were run with
8 more political considerations than military, such
9 as when do the papers come out and we don't want
10 this in Sunday morning's news. The military did
11 not participate in the planning. It was the CIA's
12 doing. We were obviously aware of it. The
13 information on an operation of this top secret
14 scope is decimated" --

15 Q "Disseminated"?

16 A "Is disseminated only to those that
17 would need to know. And that would include the
18 President and Kissinger." And Mrs. Oliver says,
19 "So Nixon knew?" "If he knew, so what? Why do
20 you want this information anyway?" That's a good
21 question.

22 She says, "I think there is some

0298

1 historic issues at play here. If the U.S. used
2 nerve gas in combat in Vietnam, it is worthy to
3 report. And it has some important policy
4 implications for today, with the debate over the
5 chemical weapons convention."

6 And I think Mrs. Oliver is mixed up
7 there. She probably meant to say "combat in
8 Laos." Anyway, "Treaties will never stop people
9 from using this weapon. But you have said the
10 important word -- history. And that I can
11 respect. You have to use every resource in your
12 command to win. The U.S. is the garden spot of
13 the world and people here don't understand how
14 others live or what it takes to win. I would have
15 used any weapon, any tactic and any move to defend
16 the security of the United States." And that's a
17 true statement.

18 "So that would include GB, weaponized in
19 the U.S. arsenal. We know there was 4 million
20 pounds of it manufactured, and that it was stocked
21 at NKP." I repeat what I said, because -- and I
22 repeat that Mr. Truman took the same position when

0299

1 he dropped the nuclear bombs on Japan. In other
2 words, to defend the security of the United
3 States. That's everybody's job. And I don't care
4 what the reporters read into it.

5 Okay. "So that would include GB,
6 weaponized in the U.S. arsenal. We know we had 4
7 million pounds of it manufactured, and it was
8 stocked in NKP." "Yes." "But you are not going
9 to report that we were using some illegal weapon,
10 are you? Because remember, it wasn't technically
11 illegal yet."

12 "Oh, I know we hadn't ratified the
13 Geneva protocol yet. I remember you guys fighting
14 the war didn't want Congress to sign that, did
15 you?" "Well, if a country gets pressed in war, I
16 would be deterred by the existence" -- "I won't be
17 deterred by the existence of a treaty. In fact
18 they would be expected to do otherwise."

19 "My question to you then is, how much
20 was it used?" "You can't have a blanket rule on
21 that. You can't say, okay, we used it once in an
22 extreme situation, we know it works, now we can

0300

1 never use it again. You have to look at each
2 situation. The keyword is survivability." I'll
3 come back to that. "You have to survive at all
4 costs. Treaty or no treaty. I guarantee no damn
5 treaty would have stopped me."

6 "So you're aware sarin was used?" "I am
7 not confirming for you that it was used. You have
8 told me that. But let me put it this way, it does
9 not surprise me. In an operation of this kind,
10 you must make certain that your men are so well
11 equipped for defensive purposes as possible. I
12 don't care if the treaty is ratified or not."

13 "So nerve gas was used in Vietnam, and
 14 in all likelihood used more than once." And I
 15 didn't say anything. It says, "does not object."
 16 "Let me ask you this, in the interests of history,
 17 do you think it was a mistake not to get it out in
 18 the open earlier? It is seen as so taboo now, and
 19 it's hard for people even to discuss."
 20 "No! Not at all! And of course it is
 21 not so unique. The Germans used chlorine and
 22 other chemicals. The public at large found that

0301

1 horrible. And they would find this horrible too.
 2 I would think it should have come out" -- "I would
 3 think it should have come out" --
 4 MR. BAINE: "I don't."
 5 BY MR. SIMMONS:
 6 Q "I don't think it should have come out."
 7 A "We are going to report the U.S. used
 8 nerve gas in combat during Tailwind." There you
 9 are. "We are going to report that U.S. used nerve
 10 gas in combat during Tailwind. Will we be correct
 11 in saying this is the first time the U.S. used
 12 it?" I said, "You might want to qualify that a
 13 bit." "How?" "Well, I'm not so familiar with the
 14 European theater. But I think there might have
 15 been a few isolated pockets where poison gas was
 16 used."
 17 "You mean in World War II?" "Yes."
 18 "Really?" "Yes, I think so." "So we would be
 19 okay in saying first time in the Vietnam War?"
 20 "Yes, I think so." "Let me get into another area,
 21 a bit wilder speculation here. A retired general
 22 told me about Adam, the backpack nukes. I know

0302

1 SOG was trained on them, and I know they were in
 2 theater. Somewhere amidst 85,000 arc lights could
 3 Adam have been used?"
 4 "No, absolutely not. We discussed it.
 5 We considered it. We ruled it out." "Will you
 6 consider going on camera, in the interests of
 7 history? Some sorts of questions on Tailwind" --
 8 Q "Same sorts of questions."
 9 A Huh?
 10 Q "Same." The word "same." "Same sorts
 11 of questions."
 12 A "Would you consider going on camera, in
 13 the interests of history? Same sorts of questions
 14 on Tailwind we've gone over here?" I said, "Let
 15 me think about it."
 16 Q So to the best of your recollection,
 17 sir, does that accurately reflect what she asked
 18 you and what you said in December of 1997?
 19 A Well, I think that by and large this was
 20 exactly the way -- what I said, but I don't
 21 understand the point of the question.
 22 Q In reading it over does it appear to

0303

1 depict the interview you had with Ms. Oliver
 2 accurately? I'm referring to Exhibit K.
 3 A Well, I didn't make a copy of what she
 4 said. So I don't know whether it's accurate or
 5 not.
 6 Q As you read it over here today, did you
 7 see anything that you believed to be inaccurate in
 8 it?
 9 A Well, I think the speculation here --
 10 Q Not inaccurate in the sense of generally
 11 true or false, but in the sense of what was said
 12 at the conference or at the meeting with Ms. --
 13 MR. DUNCAN: Let the witness answer the
 14 question.
 15 MR. SIMMONS: I want to be sure he
 16 understands what I'm asking him.
 17 A What are you asking?
 18 BY MR. SIMMONS:
 19 Q I'm asking, we can both agree you met

20 with Ms. Oliver in December of 1997, right?
 21 A Yes.
 22 Q And she asked you questions, you gave

0304

1 answers, right?
 2 A Right.
 3 Q I'm not asking were the answers you gave
 4 perfect and accurate in all respects. I'm asking
 5 is Exhibit K an accurate reflection of what she
 6 said to you and you said to her.
 7 MR. JOHNSON: I object to that question,
 8 because if it's not accurate in all respects, it's
 9 not accurate. He shouldn't be tricked into saying
 10 it's accurate when in fact it's not accurate.
 11 MR. KAPLAN: That's a speaking
 12 objection.
 13 MR. JOHNSON: I'm going to make it.
 14 MR. NYKODYM: Objection, assumes facts
 15 not in evidence.
 16 BY MR. SIMMONS:
 17 Q Do you have any additions or changes you
 18 want to make to the document as you sit here right
 19 now, sir?
 20 A Well, I have a couple, and I already
 21 told you if you want me to send you the answers.
 22 Q Okay. We've got them then, right?

0305

1 A Huh?
 2 Q We've got them then, right? We've got
 3 your changes, right?
 4 MR. MITNIK: That's not what he said.
 5 He said, I'll send them to you.
 6 A I said I'll send them to you.
 7 BY MR. SIMMONS:
 8 Q Do you have any you want to make here
 9 right now?
 10 A No.
 11 Q That's good. You did say by and large
 12 Exhibit K seemed to be accurate, is that correct?
 13 A By and large what?
 14 Q Exhibit K seems to be accurate.
 15 A So far as the questions are concerned.
 16 Q Yes.
 17 A I think that there's a kind of wide
 18 exploration going on here in these questions.
 19 Some of them don't make any sense to me.
 20 Q Other than that, do you have any
 21 corrections you want to make?
 22 A I just told you, I'll send them to you.

0306

1 Q Apart from going back and writing them
 2 up and sending them, do you have anything you saw
 3 here today?
 4 A I'm not going to make any now.
 5 Q Okay. I'm going to go into another
 6 fairly lengthy document. Do you want to break at
 7 this point to get some more water?
 8 A No, go ahead.
 9 Q What exhibit are we up to? R.
 10 MR. DUNCAN: I would like to request a
 11 break so I can get that box of documents and
 12 review them.
 13 MR. SELLINGER: This next exhibit
 14 doesn't have anything to do with DOD documents.
 15 MR. JOHNSON: Phil, I talked to them.
 16 They said they would send us a copy of the
 17 documents.
 18 MR. DUNCAN: I would still like to
 19 review them while we're here.
 20 MR. JOHNSON: I think that's impossible.
 21 MR. BAINE: When we take a break, I'm
 22 walking out. But I'm not going to walk out until

0307

1 there's a break. It's that simple.
 2 MR. DUNCAN: I'm asking for a break so

3 you'll get the box of documents.
 4 MR. SIMMONS: Can we give the exhibit,
 5 Exhibit R to the Admiral?
 6 (Exhibit Number R was marked for
 7 identification and was retained by counsel.)
 8 A Is this what we're talking about now?
 9 BY MR. SIMMONS:
 10 Q Admiral Moorer, you have Exhibit R in
 11 your hands. At the top it says "Admiral Moorer,
 12 May 2, 1998, interview by April Oliver." Would
 13 you please, sir, read this document and do the
 14 same with it that you just did with Exhibit K.
 15 (Witness complies.)
 16 MR. DUNCAN: Would you identify Exhibit
 17 R?
 18 MR. SIMMONS: I just did.
 19 MR. DUNCAN: Is it a document that
 20 you're saying was given to the Admiral?
 21 MR. SIMMONS: I have identified it to
 22 the extent I'm going to.

0308

1 MR. DUNCAN: You're not going to state
 2 whether it was given to the Admiral or not?
 3 MR. SIMMONS: Sir, will you just let him
 4 read?
 5 MR. DUNCAN: Would you properly identify
 6 documents that you're going to utilize in this
 7 deposition that you're producing for the first
 8 time?
 9 MR. SIMMONS: For the record, this is a
 10 contemporaneous record of what April Oliver asked
 11 Admiral Moorer on May 2, 1998, between the hours
 12 of 10:00 a.m. and 12:15 p.m. It has his answers
 13 and her questions.
 14 A Okay. I'll read the question.
 15 BY MR. SIMMONS:
 16 Q Go ahead.
 17 A "Admiral, I wanted to fully brief you on
 18 our research. Our program airs on June the 7th,
 19 and we have learned a lot in the past few months
 20 since we first met. The most important point we
 21 have learned has to do with defectors. You
 22 yourself told us on camera that this Tailwind

0309

1 mission was about defectors. Since then we have
 2 learned, to specifically target them, to kill
 3 them. Is that your understanding?"
 4 "Generally SOG's" --
 5 Q "Of this specific mission." "Is that
 6 your understanding" --
 7 A "Is that your understanding of this
 8 specific mission?" "Generally SOG's objectives
 9 was to locate personnel such as defectors or
 10 Laotian military or track NVA movements within
 11 Laos. Tactics -- I did not get involved with
 12 exactly how they did it. I knew what they were
 13 trying to do. But I was too busy. I had the
 14 Israeli problem to worry about. I didn't go into
 15 detail on exactly how they would do it. It was
 16 not the only such mission of its kind.
 17 "Compartmentalization is key here. I
 18 didn't even tell General Abrams about when I was
 19 going to mine Haifong Harbor because I was too
 20 worried about leaks. That would have been
 21 disastrous. Leaks were always a problem. I can
 22 also remember talking about the Christmas bombing

0310

1 with Nixon. He asked me if there was a leak or
 2 not. And I promised him it wouldn't."
 3 "Yes, but" --
 4 Q At that point is there anything you want
 5 to correct in that answer that you just read?
 6 A What's that?
 7 Q You read the first question, the first
 8 answer. Is there anything you want to correct
 9 there? Does that appear to be an accurate

10 reflection of what was said?
 11 A Well, I don't know. It's much ado about
 12 nothing, because there were only two defectors.
 13 Q Is there anything in this question and
 14 answer that is inaccurate that you've just read on
 15 the first page of Exhibit Number R?
 16 A Well, I said I did not get involved with
 17 exactly how they did it.
 18 Q That's in there, isn't it?
 19 A But I was involved in the war in Israel.
 20 Q That's in there, isn't it?
 21 A And --
 22 Q My question isn't what you said. You

0311

1 just read it. My question is, does this appear to
 2 be an accurate recitation.
 3 MR. MITNIK: Admiral Moorer, read the
 4 question and the answer and see if there's
 5 anything in there that implies anything other than
 6 what you believe is accurate.
 7 MR. SIMMONS: No, no, no, no, no.
 8 BY MR. SIMMONS:
 9 Q No. What I am asking is, you read the
 10 question and the answer. Is there anything in
 11 there to your recollection that is contrary to
 12 what was said on May 2, 1998 between you and
 13 Ms. Oliver?
 14 A Well, let us say no.
 15 Q Okay. Now, the next question begins
 16 with "Yes."
 17 A "Yes, but back to the Tailwind mission.
 18 I understand about compartmentalization. That was
 19 common in SOG. Now you have told us before" --
 20 "Now you had told us before the CIA was involved
 21 in this operation. Was it the CIA's job to track
 22 defectors?"

0312

1 Q And your answer is?
 2 A "Yeah, trying to track defectors was one
 3 of the jobs but it had several jobs. Again, I
 4 knew the general overall task on this mission.
 5 But I did not know about the tactics."
 6 Q Is that an accurate recitation of the
 7 question and answer?
 8 A Yes.
 9 Q Next question.
 10 A "But was the mission at hand here to try
 11 and kill these defectors, that they were creating
 12 a real military problem that had to be
 13 eliminated?" "I told you before that I would not
 14 hesitate to use any tactic or weapon to save
 15 American lives."
 16 Q Is that an accurate question and answer?
 17 A What's that?
 18 Q Does that accurately --
 19 A Are you going to ask me that question
 20 every question?
 21 Q Yes, sir. If you can pause after every
 22 answer and tell me whether it was accurate or not,

0313

1 I could stop interrupting you.
 2 A "But defectors were a grave problem, one
 3 that was costing American lives?" "Yes. They had
 4 generally gotten mixed up in Laos doing various
 5 things."
 6 Q Is that a correct --
 7 A Yes. "One of the breaks we have had in
 8 the last" -- "best few weeks is locating several
 9 SOG recon teams who were sitting on the ridge line
 10 surrounding the village base camp where the
 11 defectors were. They report back to headquarters
 12 that there are roundeyes or longshadows in that
 13 village. At least one person we have talked to
 14 observing the camp says they were walking about
 15 unfettered, freely mixing with locals. Is that
 16 intelligence accurate?"

17 Q That's the question. And your answer
18 is, please?
19 A What's that?
20 Q I just want to reflect that that was a
21 question. It's not clear when you're reading into
22 the camera where the question is. Go ahead.

0314

1 A "One of the prime factors in such a
2 decision on a mission would be the confidence you
3 have in the accuracy of the information obtained
4 in the field. If it is an unconventional
5 operation, and you did not have absolutely
6 accurate intelligence, then you would hesitate
7 about doing it. For such a mission to occur, you
8 would have to have a complete confidence in its
9 accuracy. And then you would have to go ahead and
10 do whatever it takes to protect American lives."

11 Q Is that accurate?

12 A Okay.

13 Q The next question.

14 A "So killing these defectors was the
15 mission? And it was done to protect American
16 lives?" "Yes, I have no doubt about that. Now I
17 was not looking through the field glasses. But I
18 assumed the information was corroborated somewhere
19 and that the recon teams saw what they saw."

20 Q Is that correct?

21 A I assume that. "And then the correct
22 decision in your view was to eliminate them? Why

0315

1 not capture them?" I say --

2 Q No. That's a follow-up question.

3 A -- "Well, you would have to examine that
4 possibility. You would have to see if it was
5 possible to capture them" --

6 Q Excuse me. You left off the answer.
7 It's at the bottom of the prior page. "And then
8 the correct decision in your view was to eliminate
9 them?" The answer appears to be yes, at the prior
10 page, sir. Do you see a "yeah" at the bottom?

11 A Yes.

12 Q Was that your answer to the question
13 about the correct decision was to eliminate them?

14 A Assuming my -- I said "assume the
15 information was corroborated."

16 Q At this time she said, "And then the
17 correct decision in your view was to eliminate
18 them?" Your response was, "Yeah."

19 MR. DUNCAN: He told you --

20 BY MR. SIMMONS:

21 Q Is that accurate?

22 MR. DUNCAN: He told you --

0316

1 MR. SELLINGER: Don't interrupt. This
2 is a speaking objection.

3 MR. DUNCAN: Just a second. You're
4 being unfair with him.

5 MR. SIMMONS: No.

6 MR. SELLINGER: He's just asking --

7 MR. DUNCAN: He's referring back to the
8 corroboration he just said before. And he's
9 pointing you to it. You don't like that, so
10 you're going to keep him from pointing you to it.

11 MR. SELLINGER: Okay. Now --

12 MR. DUNCAN: You did the same thing to
13 him that Ms. Oliver did in the broadcast.

14 MR. SELLINGER: Reading it in light of
15 the prior answer.

16 THE WITNESS: What's that?

17 MR. SELLINGER: Reading it in light of
18 the prior answer, was this the question and the
19 answer? Is it right?

20 THE WITNESS: No. That was -- it
21 depends on that my assumption is correct.

22 BY MR. SIMMONS:

0317

1 Q Okay. Let's go to the next question
 2 now.
 3 A Well, I'm not leaving that answer.
 4 MR. MITNIK: What assumption?
 5 THE WITNESS: Huh?
 6 MR. MITNIK: What assumption?
 7 BY MR. SIMMONS:
 8 Q Admiral Moorer, could you look at page 3
 9 now, beginning with the question "Why not capture
 10 them?"
 11 MR. DUNCAN: Just a second. He said he
 12 wasn't leaving the question.
 13 MR. SIMMONS: I'm asking these
 14 questions, sir.
 15 MR. JOHNSON: He's got a right to
 16 complete his answer.
 17 BY MR. SIMMONS:
 18 Q "Why not capture?" Could you go ahead,
 19 please?
 20 MR. JOHNSON: He has a right to complete
 21 his answer.
 22 BY MR. MOORE:

0318

1 Q Can we continue?
 2 A I would add to the bottom line, and
 3 delete the "yes," and not say "provided," "the
 4 information was corroborated."
 5 Q Now, would you go to the next page? Is
 6 there anything more there?
 7 A No.
 8 Q Now, the next page.
 9 A "Why not capture?" "Well, you would
 10 have to examine that possibility. You would have
 11 to see to it" -- "see if it was possible to
 12 capture them and bring them out. If it was
 13 impossible, then you can't leave them out there.
 14 You would have to eliminate them."
 15 Q Is that accurate?
 16 A Yes. "Elimination was successful in
 17 this case?" I say "Yes. But again, I do not
 18 remember exactly, but I do not think there was
 19 just one such incident. That there was a large
 20 group makes it a big incident. But again, I do
 21 not remember the specifics of this action. I am
 22 the" -- "aware of the fact that there was this

0319

1 objective in Laos."
 2 Q Okay. Is that accurate?
 3 A Yes, about the objective. "Our
 4 understanding" --
 5 Q No, the question is, is that an accurate
 6 quote as to what she said and you answered?
 7 A I say "I do not remember exactly."
 8 Q Right. But does that reproduce what you
 9 said in response to the question indicated on the
 10 page here, "And elimination was successful in this
 11 case?"
 12 A I say, "I do not remember the specifics
 13 of this action."
 14 Q Is that an accurate depiction of what
 15 you said?
 16 A I don't. That's right.
 17 Q Next question.
 18 MR. MITNIK: Wait. I object to the form
 19 of that question, because you're implying that it
 20 may be all-encompassing of everything said, and he
 21 made one statement and said "that's right." It's
 22 an ambiguous question.

0320

1 BY MR. SIMMONS:
 2 Q The next question, Admiral Moorer.
 3 MR. DUNCAN: I join that objection.
 4 BY MR. SIMMONS:
 5 Q The next question, "Our understanding,"
 6 can you read it?

7 A I would certainly delete the "Yes,"
 8 because...
 9 Q Can you read the question and answer so
 10 we know what you're talking about, sir?
 11 A "Well, you would have to examine
 12 that" -- "Well, you would have to" -- she says,
 13 "Why not capture them?" And, "Well, you would
 14 have to examine that possibility. You would have
 15 to see if it was possible to capture them and
 16 bring them out. If it was impossible, then you
 17 can leave them out there."
 18 Q "Can't"?
 19 A "You would have to eliminate them."
 20 "And elimination was successful in this case?"
 21 I'm not sure it was. I say, "I do not remember
 22 exactly." But I do not -- in other words, with a

0321

1 "Yes" like that, it has me saying that everything
 2 was successful. But I turned around and said "I
 3 do not remember exactly."
 4 So I'm not going to -- the question
 5 wants to know if the elimination was successful.
 6 And I don't say -- I shouldn't say I delete "Yes."
 7 I say "I do not remember exactly."
 8 Q Do you think you may have said "Yes" to
 9 her at the time?
 10 A Huh?
 11 Q Could you have said "Yes" to her at the
 12 time? "Yes, but I do not remember exactly"?
 13 A How the hell can I remember that? I
 14 don't know what I could say.
 15 Q All right.
 16 A I just told you I want to take the "Yes"
 17 out of it.
 18 Q Okay. Anything else you want to take
 19 out?
 20 A "Our understanding when you mention a
 21 large group, is that there were as many as 20 in
 22 this village. Isn't 20 a large group, and isn't

0322

1 that memorable"?
 2 Q "Memorable."
 3 A "That's a very large group. Probably
 4 others had been picked up by the Russians. They
 5 really liked electronic repairmen. The NVA really
 6 liked getting their hands on them. They would
 7 treat them nicely."
 8 Q Anything you want to change on that one?
 9 A No.
 10 Q Okay. Next question.
 11 A "Our understanding is that these
 12 defectors might have been doing signal
 13 intelligence, et cetera. Is that your
 14 understanding?"
 15 "The problem at the outset of the
 16 operation, now again I did not get an exact
 17 rundown on the tactics of it, but there were
 18 people mixed up with the locals. It is very
 19 difficult to capture such people as a group,
 20 especially if it's a big group. Now, I'm sure
 21 that there would be an effort to capture them
 22 alive. If they could capture them alive, they

0323

1 would do it. Because we would want to interrogate
 2 them about the other side.
 3 "But at the same time they were of no
 4 assistance to what we were doing over there. If
 5 they caught say a senior sergeant then the enemy
 6 would soon find out just what school they had gone
 7 to or what communications they knew or what codes.
 8 They would interrogate them and treat them well
 9 and get them on their side."
 10 Q Anything inaccurate in the question and
 11 recitation?
 12 A No.
 13 Q Thank you.

14 A "But" --
 15 Q Next question.
 16 A -- "is communications, codes, signal
 17 interpretation what was going on in this specific
 18 village?" I say, "I think it could have been.
 19 The enemy would interrogate them in detail. But
 20 the enemy would get useful information out of them
 21 and do anything to get them to turn. And if they
 22 could get them to do something useful, they would

0324

1 do anything to keep them cooperative, even serve
 2 them ice cream."
 3 "You mean drugs, women and so forth?"
 4 "Drugs, yes. Women, I don't know about. Have you
 5 ever seen the women over there?"
 6 Q Admiral Moorer, anything in those two
 7 questions and answers that would be inaccurate as
 8 to what was said at the interview?
 9 A No. Up until I just finished.
 10 Q Okay. Next question.
 11 A "We have been told that the Tailwind
 12 hatchet force" --
 13 Q "When the Tailwind"?
 14 A "When the Tailwind hatchet force hit the
 15 ground the defectors went scrambling into a
 16 defensive perimeter around the base camp. Does
 17 that make them enemy?" "If they are participating
 18 in a defense and you are on the offense, then of
 19 course. No holds barred."
 20 Q Would that be correct?
 21 A Yes.
 22 Q Next question.

0325

1 A "Wouldn't the White House have to
 2 approve such an operation to go after defectors?"
 3 "There's a lot of people in the White House."
 4 "Specifically did NSA Kissinger know and approve
 5 it?" "He would be generally aware. That would
 6 be" -- "That would be a member of the National
 7 Security Council staff that would know" -- "There
 8 would be a member of the National Security Council
 9 staff that would know" what Kissinger knew and so
 10 on.
 11 Q And those two questions and answers, are
 12 they accurate?
 13 A They're okay. And then, "Haig,"
 14 question mark. "Not Haig. He was just
 15 Kissinger's aide really. Whether he really knew,
 16 I don't know."
 17 Q Is that accurate?
 18 A That's right.
 19 Q Next question.
 20 A And now he has April Oliver talking.
 21 "Now I can imagine the scenario where the military
 22 comes to the White House and says we have a

0326

1 problem, a nest of defectors causing U.S. lives.
 2 We could go capture them, and the politicians say
 3 no way, you can't bring these boys home. We can't
 4 go through 20 court-martials. Do whatever is
 5 necessary. Did that occur?"
 6 "No," I said. "I don't think so. I
 7 really don't know. That might be a conversation I
 8 normally might not know about on a CIA operation."
 9 Q Would that be a correct question and
 10 answer?
 11 A Yes.
 12 Q Next question.
 13 A "What would you know?"
 14 Q "So who would know?"
 15 A "So who would know?" "The CIA gives the
 16 President a report every day on what they do.
 17 They give him the key points in intelligence.
 18 There could have been a CIA action officer on the
 19 National Security Council that would have had that
 20 conversation. I don't know."

21 "So you didn't know the details about
22 this operation before?" "I did not know before.

0327

1 Afterwards, yes." Next question. "Was it your
2 understanding that the SOG team achieved their
3 objective?" "I don't know about achieve. I knew
4 about the problem. And I knew when the operation
5 was finished. I didn't analyze the details.
6 There was no hooray, hooray, we've won."
7 Q The last four questions and answers, do
8 you want to make any corrections, sir?
9 A What's that?
10 Q As to the last four questions and
11 answers, do you have any corrections?
12 A No.
13 Q Okay. Next question.
14 A "Was it your understanding that the SOG
15 team achieved their objective?" "I don't know
16 about achieve. I knew about the problem. And I
17 knew when the operation was finished. I didn't
18 analyze the details. There was no hooray, hooray,
19 we won again."
20 Q Is that accurate?
21 A "Now, about" --
22 Q Is that accurate?

0328

1 A Yes. I just told you it was accurate.
2 Q I'm sorry. I apologize. I didn't mean
3 to interrupt you.
4 A "Now, about the mission completed. It's
5 got to be a difficult choice. On the one hand,
6 those defectors are somebody's father or child.
7 On the other hand they are a huge military
8 headache and need to be taken care of. Is there a
9 moral choice here, any ambivalence?"
10 "I think that the second attitude you
11 describe is more like it. When you go into a
12 fight it is life or death. You can't ease up on
13 an operation. You can't go in with sentiment.
14 You can't go in with no drive and aggression. If
15 you're going in and need to do a job, you really
16 have to put your heart and soul into it.
17 Otherwise you might get yourself killed if you are
18 fighting only halfway. I suspect in general you
19 participate tooth and nail."
20 Q Is that accurate?
21 A Yes. "So you were aware the problem had
22 been taken care of?" "I don't think I was ever

0329

1 given an after action report about that particular
2 incident. After all these were only ten or 15
3 soldiers out of 100,000 or so. I do not remember
4 the specifics. I do not remember that it was
5 executed, and it was finished."
6 Q Is that accurate?
7 MR. BAINE: "I do remember."
8 THE WITNESS: "I do remember that it was
9 executed."
10 BY MR. SIMMONS:
11 Q "I do remember." Is that accurate, sir?
12 A Yes.
13 Q Go ahead.
14 A "How can you be sure that there were not
15 POWs there? The hatchet force team was told to go
16 in and shoot anything that moves. They wouldn't
17 be told that if they were POWs there, would they?"
18 "Now you're getting into the rules of
19 engagement. Every combat force gets information
20 on the rules of engagement. We had terrible rules
21 of engagement during the Vietnam War. The rules
22 of engagement tell you who to shoot and who not to

0330

1 shoot. Sometimes it comes down that all right,
2 all targets are okay."
3 Q Is that accurate?

4 A Yes. "And it must have been concluded
5 that the target in this case were all defectors
6 and not POWs?" "Let's say that they were
7 evaluated and the conclusion was reached that they
8 were defectors."

9 Q Is that accurate?

10 A She's asking me a question. "On this
11 specific operation?" I said yes.

12 Q Is all of that accurate?

13 A "Is our number of about 15 defectors
14 killed about right?" "I do not know for sure.
15 You'll have to talk to someone who was there. I
16 do not know if there were 20 or 15. But there was
17 a group."

18 Q Is that accurate?

19 A Yes, that's accurate. "What do you
20 think they were doing out there?" "I think they
21 were people who were disenchanted with the way the
22 war was going and what they were doing. They

0331

1 hoped that they could some day escape and give
2 up back to the American armed forces and get back
3 to the U.S. and Mr. Carter."

4 Q Is that accurate?

5 A Yes. "You make it sound as if they are
6 more like deserters." "Defectors are deserters.
7 And they were out there seeking the best way to
8 stay alive until they could escape and go home.
9 They were in my opinion probably deserters that,
10 after all, this war was unique. There was no
11 public support for it. Soldiers came back in
12 uniform, were booed.

13 "These people apparently couldn't take
14 it anymore. They said, I'll escape. Going into
15 Laos is not the same as the Germans. They were
16 endeavor to make" -- "they endeavored to make
17 their way back home through Laos. And they were
18 picked up by Laotian military people. And they
19 were biding their time until the war was over.
20 And they could make an escape back to the United
21 States."

22 Q Is that accurate?

0332

1 A I think so. That's what I -- my
2 opinion.

3 Q Next question.

4 A If you ask me a question, I'm giving an
5 opinion.

6 Q Sure.

7 A "So there is this kind of gray area
8 between defectors and POWs, they're kind of in the
9 middle." And the answer is, "In order to survive
10 they were cooperating with the enemy, doing
11 things, to get through this stage and achieve
12 their hope of getting home. They had set about
13 doing things that would not displease their
14 captors" -- "displease their captors. They were
15 collaborators. They did not wave the Laotian
16 flag, but they did not want to be eliminated.
17 They were taking the long range view.

18 "They all got together and somehow
19 decided how to survive until they could get out.
20 They knew it would not have been effective to have
21 attacked their captors. They did not have the
22 equipment and in that situation that could not

0333

1 escape. If they had to in some way assist their
2 captors they would do it to survive."

3 Q Is that accurate?

4 A Well, "How would they support the
5 enemy?" "They would be interrogated. With the
6 view to see if that individual had a talent or
7 capability to be used. And if they did, the enemy
8 would give them a job that they were fully
9 conservant with and also give them food. And they
10 would do anything to survive until the war was

11 over."
 12 Q Is that accurate? I'm sorry.
 13 A "Conditions change."
 14 Q Is that accurate?
 15 A And question, "Yes" -- "They were just
 16 getting by?" "Yes, just getting by. Until
 17 sometime later. Again, there weren't a lot given
 18 the large number of soldiers we had over there."
 19 Q Is that accurate?
 20 A Yes. "How many were there in general?
 21 Singlaub has given us a figure of 23 and someone
 22 else has said 300 and so on." "But there is no

0334

1 way that I can really give you accurate figures on
 2 that. Even today, several bodies are disputed. I
 3 tell you this, one figure is too low and the other
 4 is too high. It's someplace in the middle.
 5 "Many of the missing on the missing list
 6 are truly missing. Not every missing person is a
 7 defector. There is not a reliable source of
 8 figures on this. It depends on who is computing
 9 the information and how they handle the
 10 inferences."
 11 Q Is that accurate?
 12 A Yes, that's just a statement of opinion.
 13 "Did conventional forces have different rules of
 14 engagement for defectors than SOG?" "I think so.
 15 But it would be on a case by case basis."
 16 Q Is that accurate?
 17 A Mm-hmm. "We have been told, including
 18 by Singlaub, that killing defectors, that
 19 defectors were always a top priority target for
 20 SOG." "Yes, I think so. You can rely on
 21 Singlaub. He was heavy into this from the start.
 22 He would have no reason to misinform you. You can

0335

1 believe him."
 2 Q Did you tell April that?
 3 A Huh?
 4 Q Did you tell April what you just said?
 5 Is that an accurate question and answer that you
 6 just read?
 7 A Yes. It's just like we've been doing.
 8 Q Thank you.
 9 A "But the conventional forces might be
 10 more apt to take a defector prisoner." "It's on a
 11 case by case basis. You get into the game here."
 12 Q "The PR game"?
 13 A "PR game here. You can't have soldiers
 14 writing home, dear mom, yesterday I saw a defector
 15 and he was American but we had to shoot him. That
 16 would hit the papers sooner or later and LBJ would
 17 be mad."
 18 Q Is that accurate?
 19 A Of course. "So a big PR problem?"
 20 "Sure." "So this was sensitive." "It's very
 21 sensitive subject matter. Many mothers and
 22 fathers do not believe their sons would defect.

0336

1 If you kill a defector, you have a big PR
 2 problem."
 3 Q Is that accurate?
 4 A Yes. You don't have to ask me that
 5 every time.
 6 Q Okay. Just tell me, then, if something
 7 is not accurate.
 8 A "Because of the PR problem with
 9 defectors, that is why the operation was given to
 10 a black operation like SOG?" "Yes." "Isn't it
 11 unusual to conduct such a large operation against
 12 a large group of defectors?" "Yes." "You said
 13 earlier that there was more than one operation.
 14 What others?"
 15 "I can't name them. But I do not think
 16 that an organization such as SOG would be
 17 justified if there was just one operation. There

18 was a long-standing effort to find out on the
19 ground the movements of the enemy and the
20 intelligence."
21 "But this is more than a recon job.
22 This is a hatchet force or exploitation force."

0337

1 "Well, what do you do after you have the recon?
2 You have to exploit what reconnaissance you get."
3 "So obviously the intel in this case was deemed
4 accurate?" "Yeah. Intelligence is the origin of
5 all operations. You have to have intelligence at
6 the outset."
7 "Ever heard of Salt and Pepper?" "No."
8 "Turning now" --
9 Q Before you go to the next subject, is
10 there anything you want to correct in that last
11 series of questions and answers?
12 A No.
13 Q Thank you.
14 A I don't think so. "Turning now to
15 another subject matter, the gas. We discussed CBU
16 15, which is GB, which is sarin when we last met.
17 I have been talking to lots and lots of Air Force
18 people. And specifically to 30 different A1
19 pilots based at NKP. And they say that they had
20 this weapon and used it a lot on search and
21 rescue, SARs." That's right.
22 "The sun is going down. The pilot is

0338

1 surrounded. In moments he will be captured and
2 killed. They drop the CBU 15. But what is
3 dramatic is that sometimes the pilot on the ground
4 might not have a gas mask. How would it be
5 decided to use such a weapon in that situation?"
6 "Well, the weapon had to be on the
7 airplane to begin with. The pilots would have had
8 sufficient information that this weapon was needed
9 to remove this threat. But the pilot would not
10 want to kill his objective -- the downed man. You
11 can't go dropping weapons like this willy-nilly."
12 "How do you decide whether to drop the
13 weapon?" "It depends on good communication
14 between the man on the ground. Hopefully the
15 pilot can tell you, I'm just behind the big oak
16 tree, up the hill. The pilots would have to know
17 they have a good chance of attacking without
18 killing him. There is no point in killing him
19 while trying to save him.
20 "The key to that decision depends on
21 sufficient communications to pinpoint his
22 position. And if that is the case, and they are

0339

1 confident, then the attack would take place and
2 the helicopter would make the pickup while the
3 results of the attack is debilitating the enemy.
4 You would not want to use the weapon unless you
5 know exactly where he was. If he gets killed it's
6 a lost cause."
7 "But maybe not. Some describe a
8 situation in which the gas would be dropped
9 enemy," it says. "The sun is going down. The gas
10 could prevent the capture of another POW who would
11 then not give info to the enemy. And it would
12 kill a lot of enemy and keep them from gaining the
13 radios and other weapons on the aircraft. So the
14 pilots would drop the weapon in the hope of
15 preventing a capture, as a sort of prophylactic,
16 even if it killed the airman."
17 "Well, one important factor here is the
18 wind. It's important to talk to the pilots to
19 make sure you drop the weapon downwind. You
20 obviously want to drop downwind from where he is.
21 You want to make sure the wind is not blowing over
22 him. But the decision to use the weapon or not is

0340

1 an on-the-scene decision. There are three or four
2 vital pieces of information what to do. And if
3 the wind is right and communication is good, I
4 would be included to go ahead with the attack."

5 MR. BAIN: "Inclined."

6 BY MR. SIMMONS:

7 Q "Inclined."

8 A What's that?

9 Q The word is "inclined," not "included."
10 "I would be inclined to go ahead with the attack."

11 A Yes, "I would be inclined to go ahead
12 with the attack. I would try and rationalize as
13 much as I could towards a possible attack. It's
14 not just wind but time of day that matters too.
15 But the decision may have to be made on the spur
16 of the moment. I said to you a couple of times in
17 my mind if that weapon gives the best chance of
18 rescuing an American boy, that's what you do."

19 Q Is that all accurate?

20 A That's all. "I know this is a bit
21 exacting but I just want to make sure we know what
22 we're talking about. CBU 15 is GB is sarin is

0341

1 nerve gas. Not everybody. Not some of the men on
2 the ground. They know GB."

3 Q Excuse me. You didn't read your answer
4 there.

5 A "I think everybody knows that," I said.
6 "Not everybody. Not some of the men on the
7 ground. They know GB, but" -- I don't know what
8 that means.

9 MS. OLIVER: It's a typo.

10 A "They don't know it's sarin. Think they
11 are just play acting?" "I think everyone
12 associated with those kinds of weapons knows their
13 effects."

14 BY MR. SIMMONS:

15 Q Is that all accurate?

16 A Yes. "Ever hear of a program of VX
17 lobbed into Cambodia?" "No. When you are trying
18 to make the decision to use the weapon, you try to
19 determine whether it would kill the pilot or not.
20 But of course that depends on the degree of
21 exposure. Germans first used gas in World War I.
22 Their two major innovations were the tank and the

0342

1 gas. But the worldwide reaction to the pain the
2 victims of gas suffered was abhorrence.

3 "And now people try to make it like the
4 nuclear bomb. There is always a public movement
5 to eliminate nuclear weapons, eliminate gas,
6 eliminate mines. But the problem is there is no
7 assurance the enemy will do the same thing. So
8 one side ends up doing away with the weapon and
9 then the other side is in a hell of a fix. The
10 opponent finds out and exploits it."

11 Q Is that all accurate?

12 A Yes. "Now, turning to Tailwind for a
13 moment, one of the new pieces of information we
14 have is that Als had prepped the camp where the
15 defectors were based the night before the SOG team
16 attacked. We've been told CBU 15 was used in
17 preparing the camp. Are you aware of that? Does
18 that fit with what you said earlier about any
19 weapon, any tactic," and so on, "in saving an
20 American life?"

21 "I do not know this for sure. I know
22 they were trying to" -- "what they were trying to

0343

1 do there. I do not know exactly how they did it.
2 But the fact that this was an unconventional
3 operation, yes, I tried to use every capability
4 and facility to ensure success. I think you have
5 to check that off the list in the planning. And
6 in fact you have to use every capability you
7 have."

8 Q Is that all accurate?
 9 A Yes. "And so prepping the camp with gas
 10 was a part of the battle plan?" "Fundamentally
 11 what you described is aimed at saving American
 12 lives. I have no problem with it. So is
 13 collecting intelligence, eliminating defectors. I
 14 come back to the point, if an operation is
 15 necessary to keep the losses of Americans to an
 16 absolute minimum, and if that capability ensures a
 17 significant reduction or elimination of American
 18 casualties, I'd use it."
 19 "One pilot told me he flew the weapon 15
 20 different times. There are 60 or so pilots at NKP
 21 who fly Als. Could this weapon have been used
 22 more than a hundred times?" And I said, "I don't

0344

1 have the figure."
 2 Q Is everything on that page accurate?
 3 A Well, I guess so. "But it was used a
 4 lot?" "Then again, did the pilot use it every
 5 time he flew it?" "I don't know." "Well, I can't
 6 comfortably say that if a pilot was involved" --
 7 MR. KAPLAN: "Can."
 8 BY MR. SIMMONS:
 9 Q "Well, I can."
 10 A "I can comfortably say that if a pilot
 11 was involved in a SAR operation, then he probably
 12 flew it. I think it could be useful in a lot of
 13 those operations. I'm not aware of how many times
 14 it was used."
 15 Q SAR operations is search and rescue?
 16 A What?
 17 Q What is a SAR operation?
 18 A Surface to air rescue operation. When
 19 the helicopter goes to pick up a downed pilot or a
 20 wounded soldier or whatever.
 21 Q Okay.
 22 A And the question is, "But it was always

0345

1 available on SARs?" "By and large it was
 2 available. Whether or not it could be carried as
 3 easily as a 500-pound bomb, I don't know." "By
 4 and large means what?" "If the rules of
 5 engagement included it. And that decision would
 6 be made at the squadron command level or area
 7 command level. It would be stipulated in the
 8 rules of engagement."
 9 "We have" -- this is a question. "We
 10 have heard the weapon was generally available from
 11 '69 to '70." "I do not know the exact dates of
 12 the weapon in the area. I am not aware
 13 specifically. Let me say this. It was definitely
 14 available in the Vietnam War, which is a much
 15 bigger operation than you realize. It takes
 16 authorization to move the weapon into Southeast
 17 Asia. That is only step one. And there are many
 18 steps to make it available to pilots."
 19 "Who gives authorization to move it?"
 20 "The Secretary of Defense would probably authorize
 21 it, or at least be advised." "And to use it?"
 22 "The weapon itself would not be located in the

0346

1 area if it wasn't contemplated it would be
 2 required."
 3 Q Is that page all accurate?
 4 MR. BAINE: I'm going to state for the
 5 record that in the middle of the third to the last
 6 answer, I'm not sure that was read exactly
 7 correctly. It says, "Let me say this."
 8 MR. SIMMONS: Let me get his answer,
 9 Kevin, and you can do that.
 10 MR. BAINE: But I think it's important.
 11 "Let me say this. It was definitely available in
 12 the Vietnam War. This is a much bigger operation
 13 than you realize." I just wanted to read that.
 14 BY MR. SIMMONS:

15 Q That page, did you have any corrections
 16 you want to make to it?
 17 A No, I'll accept that.
 18 Q Okay. Next page.
 19 A "Would the White House be aware?"
 20 "Someone on NSA staff would be aware."
 21 Q The NSC, right?
 22 A Should be NSC. "I'm sure he had a

0347

1 briefing. He was generally briefed on all weapons
 2 in Southeast Asia. And I'm not sure he thought
 3 about it seriously. It was just another weapon in
 4 war. He was told what its characteristics are.
 5 But in the broadest sense the U.S. was not to
 6 initiate gas warfare."
 7 "But you told me before the NVA didn't
 8 use gas." "That's true. What I mean is that we
 9 would not initiate in terms of regiment versus
 10 regiment or division versus division. But when
 11 you get into special operations, that's another
 12 question. If the weapon could save American
 13 lives, I would never hesitate to use it."
 14 "And did it save American lives in
 15 Laos?" "Yes." "How many Americans' lives were
 16 saved by this weapon?" "I don't want to speculate
 17 on that." "Estimate? 100 or more?" "Well, it
 18 wasn't used every time a helicopter was shot down.
 19 I don't know." "Was it ever used in South
 20 Vietnam?" "I do not recall using it in South
 21 Vietnam."
 22 "Two pilots who flew in Tailwind swear

0348

1 they were briefed that the debilitating gas in
 2 this strange boxy dispenser was in fact tear gas.
 3 Now, does that make sense to you? Would the
 4 pilots in general operating the aircraft know
 5 exactly what they carried?"
 6 "I think by and large the pilots would
 7 know. Before he would fill his bomb racks with an
 8 exotic weapon, he would want to know what it was
 9 before he took off. I don't know of a pilot that
 10 would take off with a mysterious weapon on his
 11 plane. If it's a small scale operation the pilot
 12 is going to find out. He's got to know how best
 13 to use it. He doesn't do the wrong thing."
 14 Q "So he doesn't do the wrong thing."
 15 A "So he doesn't do."
 16 Q Is there anything on that page and the
 17 answer before that is inaccurate?
 18 A No, it's all right.
 19 Q Okay.
 20 A But it's really wandering all over hell
 21 and high water in this thing.
 22 MR. SIMMONS: Sure.

0349

1 MR. DUNCAN: Let me just state on the
 2 record that you've been pressing the Admiral here
 3 for a very long time. It's 5:10. He's making
 4 mistakes in reading. I think that due to his age
 5 and due to the fact you're giving him a new
 6 document, that this deposition should be recessed.
 7 He should have been given the
 8 opportunity to --
 9 MR. SIMMONS: Sir, I'm going to tell
 10 you --
 11 MR. DUNCAN: -- directly review
 12 documents so he can properly respond to questions.
 13 I object because you're taking unfair advantage of
 14 the situation here with the Admiral.
 15 BY MR. SIMMONS:
 16 Q Could you go ahead and finish now, sir?
 17 "Are you aware."
 18 MR. DUNCAN: The record will speak for
 19 itself.
 20 A "Are you aware that a lot of yards died
 21 in this operation? All the Americans" --

22 BY MR. SIMMONS:

0350

1 Q Should be "on the."
 2 MR. BAINÉ: "On the."
 3 THE WITNESS: Huh?
 4 MR. BAINÉ: "On the SOG team."
 5 A "On the SOG team" --
 6 BY MR. SIMMONS:
 7 Q "Get."
 8 A "Get" -- "SOG team get out alive. But
 9 the yards' masks were too large." "I remember a
 10 general discussion of these people. I cannot say
 11 whether their gas masks fit or not. I always felt
 12 we never discharged our full obligation to these
 13 little people. They did help us quite a bit. One
 14 gave me a happy house" one time, which is quite a
 15 deal.
 16 "Soon after I am told the U.S. started
 17 making smaller gas masks."
 18 Q "M 17 gas masks."
 19 A "M 17 gas masks. I knew the yards
 20 were" -- that "yards" should be in capitals --
 21 "were involved in this operation. I do not know
 22 the details about the gas masks. I can't say we

0351

1 instituted a smaller gas mask because of this. I
 2 do not remember. I'm surprised we didn't have
 3 them sooner."
 4 "There could be a lot of politics in the
 5 next few weeks, and I just want to be sure that
 6 you are comfortable with the candid nature of our
 7 discussions. If need be, would you take a call
 8 from the head of my company to verify again what
 9 we have talked about?"
 10 "Yes, of course. And now, frankly I'm
 11 more interested in how your baby is doing."
 12 Q Is there anything in that page that's
 13 inaccurate?
 14 A Yes, particularly about the baby.
 15 Q What? You weren't interested in the
 16 baby?
 17 A Oh, I said I was very interested in how
 18 the baby --
 19 Q But the page is accurate?
 20 A Yes.
 21 MR. SIMMONS: Why don't we stop here at
 22 this point for a brief break.

0352

1 Can I ask one question before the break?
 2 BY MR. SIMMONS:
 3 Q You have referred, and there's reference
 4 in these two interviews, to NKP. Was that Nakhorn
 5 Phanom in Thailand?
 6 A No. That's in Okinawa.
 7 Q Nakhorn Phanom was in Thailand, wasn't
 8 it?
 9 A Huh?
 10 Q It was referred to, N-A-K-H-O-R-N Phanom
 11 in Thailand, wasn't it?
 12 A Yes. But this is --
 13 Q NKP was Nakhorn Phanom?
 14 A NKP was in Korea. I mean, Okinawa.
 15 GENERAL SINGLAUB: NKP is Nakhorn
 16 Phanom. That's a standard abbreviation known to
 17 everyone who ever served in Southeast Asia.
 18 MR. SIMMONS: And it's in Thailand,
 19 right, sir?
 20 GENERAL SINGLAUB: Thailand, yes.
 21 MR. SELLINGER: The record should
 22 reflect the correction.

0353

1 MR. SIMMONS: General Singlaub has
 2 indicated NKP is in Thailand.
 3 THE WITNESS: He knows.
 4 MR. SIMMONS: Thank you.

5 THE VIDEOGRAPHER: This concludes tape
6 number 3 in the deposition of Admiral Thomas
7 Moorer. We're going off the record. The time is
8 17:13:45.
9 (Exhibit Number S was marked for
10 identification and was retained by counsel)
11 (Recess.)
12 THE VIDEOGRAPHER: Here marks the
13 beginning of tape number 4 in the deposition of
14 Admiral Thomas Moorer. We're back on the record.
15 The time is 17:25:10.
16 MR. DUNCAN: Let me state for the
17 record, I believe Mr. Baine is going to provide me
18 with a copy of the box of the material in his car.
19 Is that correct?
20 MR. BAINE: That's correct. I offered
21 to go down and get it for you right now, but I
22 also have agreed to your alternative request that

0354

1 I copy every document in the box and send it to
2 you. And I'll do that.
3 MR. DUNCAN: Which is 5:30, is when
4 you've offered to go down and get it for me. Let
5 me state too --
6 MR. BAINE: What does that mean? I'm
7 not going to let you just say that and imply I
8 didn't make the offer before. When the question
9 first came up, I said I would get it for you the
10 very first time we broke.
11 MR. DUNCAN: Which was five --
12 MR. SIMMONS: This was the first that we
13 broke.
14 MR. BAINE: I made the offer hours ago,
15 Phil. Come on.
16 MR. DUNCAN: Let me also ask, if there
17 are other documents you're going to use, I would
18 like to have copies of them.
19 MR. SIMMONS: You will get copies as I
20 use them.
21 MR. DUNCAN: Let me state for the record
22 that I think what I'm witnessing here is

0355

1 railroading of the witness. Trial by ambush. He
2 is not being given the documents. I object. I
3 think the same kind of thing that this lawsuit is
4 all about is going on.
5 BY MR. SIMMONS:
6 Q Admiral Moorer, you have been shown the
7 documents marked as Exhibit S to your deposition.
8 MR. BAINE: What is S?
9 MR. SIMMONS: S is the script.
10 A Look. I want to make a point here. I
11 want to make it clear that I'm not agreeing with
12 everything I read. And you're not giving me a
13 chance. You're trying to railroad me. And you've
14 been very rude, I think.
15 And so we'll just see about this. I
16 think that we ought to get through with this
17 thing. These are questions we were dealing with
18 when I was reading them, so far-fetched, they have
19 nothing to do with the issue of whether or not CNN
20 was falsifying the news or being nonjournalistic,
21 whatever.
22 These are things about how many

0356

1 defectors and what you do to a defector and what's
2 the difference between a defector and a deserter.
3 That doesn't have anything to do with this case.
4 And I want it clear, to make clear that I am not
5 agreeing with everything that's in this record.
6 BY MR. SIMMONS:
7 Q Are you tired? Do you want to stop now,
8 Admiral Moorer?
9 A Yes, I'm ready to stop, because I think
10 you need a rest.
11 Q I don't. I assure you, sir, I'm willing

12 to go until three in the morning, as you
 13 indicated. The question is are you, sir, in need
 14 of a rest.
 15 A I think that we ought to stop.
 16 Q Let me just ask a few questions.
 17 MR. MITNIK: Wait a minute. Wait a
 18 minute. Wait a minute.
 19 MR. SIMMONS: Just a minute. I want to
 20 ask him three questions.
 21 MR. MITNIK: You can ask him three after
 22 I say what I've got to say. Hold on. I've got

0357

1 questions that I want to ask in follow-up. I want
 2 my opportunity today, because I don't want there
 3 to be some question later that we left here and
 4 talked and then came back and asked. I want to do
 5 them live.
 6 If we're leaving because the general
 7 wants to leave, then we're shutting it down right
 8 now. We're not going to say, I get to ask a few
 9 more, Mitnik, but you don't.
 10 MR. SIMMONS: Mitnik, did you talk to
 11 him in the break?
 12 MR. MITNIK: I talked to my client in
 13 the break.
 14 MR. SIMMONS: Did your client talk to
 15 him in the break?
 16 MR. MITNIK: You can inquire.
 17 MR. SIMMONS: I was going to.
 18 MR. MITNIK: You can inquire -- because
 19 of that accusation --
 20 MR. SIMMONS: That's all I was going to
 21 ask.
 22 BY MR. SIMMONS:

0358

1 Q Did you talk to anyone during the break,
 2 sir?
 3 A I only talked to my wife.
 4 Q And did you talk to General Singlaub?
 5 A No. I didn't talk to this gentleman
 6 either.
 7 Q Did you overhear them talking to each
 8 other?
 9 A No.
 10 Q What about Mr. Gresham, did you talk to
 11 Mr. Gresham?
 12 A Yes, I talked to Mr. Gresham about
 13 going -- he's my ride.
 14 Q And did Mr. Gresham talk to anyone
 15 during the break?
 16 A Huh?
 17 Q Did Mr. Gresham talk to anyone during
 18 the break?
 19 A I don't know.
 20 Q Did he talk to General Singlaub?
 21 A Ask him. No, I didn't talk to my friend
 22 John Singlaub.

0359

1 Q Just a minute ago you came in and made a
 2 speech when you came back into the room. Did you
 3 talk to anyone about any aspect of that before you
 4 came back in?
 5 A No.
 6 MR. GRESHAM: You talked to your wife.
 7 A I talked to my wife.
 8 MR. SIMMONS: Mr. Gresham, if you would,
 9 don't feed questions between -- answers when I'm
 10 asking the Admiral questions, because, A, you're
 11 not his attorney. B, you're a witness. And C,
 12 it's improper even if you are an attorney.
 13 MR. MITNIK: Now that you've had a
 14 chance to ask that, I want to reiterate my point.
 15 I want him to answer my questions here, because
 16 obviously there are going to be accusations
 17 someone is trying to twist testimony. If we do it
 18 here, then I don't have to listen to that at some

19 later date, I didn't think. Apparently I have
20 already been --
21 MR. SIMMONS: I am prepared to continue,
22 Mr. Mitnik. I am prepared to continue.

0360

1 MR. MITNIK: But if the general wants to
2 leave because he's tired --
3 MR. SIMMONS: I am prepared to continue.
4 MR. MITNIK: We don't have any choice in
5 the matter, because he's a witness.
6 MR. SIMMONS: I'm prepared to continue.
7 MR. MITNIK: General, are you up to --
8 I'm sorry. Admiral, are you up to continuing?
9 THE WITNESS: Well, I think that I'll
10 come back another day. I don't think that I can
11 be forced to stay here.
12 MR. SIMMONS: No, you can be forced.
13 MR. MITNIK: No, sir. We don't want to
14 force you.
15 BY MR. SIMMONS:
16 Q Can you come back tomorrow?
17 A No.
18 Q Okay. When can you come back?
19 A Well, I'll have to look at my calendar
20 and say, because I'm a busy person. I think that
21 we'll communicate with you and tell you when we
22 come back. But I've got to go home first.

0361

1 MR. BAINE: That's fine. Let's break
2 for the day. And we'll appoint somebody to
3 communicate with Mr. Gresham about when the
4 Admiral can come back.
5 MR. SIMMONS: Sounds good. Just so the
6 record is clear, before we break, I have a number
7 of additional questions. I was not to the point
8 where I was getting to the Department of Defense
9 issues. So when we come back, I have a number of
10 more questions I need to finish before I turn the
11 floor over to anyone.
12 MR. BAINE: Right. I think that's
13 understood.
14 MR. SIMMONS: So we are suspending.
15 We're not finishing.
16 MR. MITNIK: I would like an opportunity
17 to intervene and ask some questions before we
18 leave.
19 MR. SIMMONS: No. No.
20 MR. MITNIK: Especially in light of the
21 accusation --
22 MR. SIMMONS: No. No.

0362

1 MR. MITNIK: -- that I am somehow giving
2 the witness an answer, which is offensive, which I
3 did not do. But I can protect myself by doing it
4 here now, and I don't have to listen to that
5 nonsense again.
6 MR. SELLINGER: You can't intrude on
7 this gentleman. He says he's tired and he would
8 like to stop.
9 MR. MITNIK: I know. But between now
10 and the next time, I don't want there to be any
11 inference that I talked to him.
12 MR. SIMMONS: There is what there is.
13 He's talking about his good friend John Singlaub.
14 MR. MITNIK: I'm asking that you let me
15 intervene and let me ask my questions.
16 MR. SIMMONS: No. I am not finished
17 asking my questions.
18 MR. DUNCAN: Why don't we just have an
19 agreement that nobody talk to him between now and
20 then, until we reconvene.
21 MR. SELLINGER: That's fine.
22 MR. BAINE: That's fine.

0363

1 MR. SIMMONS: Fine with me.

2 MR. JOHNSON: Everybody's in agreement?
 3 MR. SELLINGER: Nobody talks about his
 4 testimony.
 5 BY MR. SIMMONS:
 6 Q Admiral Moorer, did you hear what
 7 everybody agreed to, and are you agreeable to it?
 8 A No, I didn't hear. What is it?
 9 Q Everybody has agreed they will not talk
 10 to you about this deposition or your testimony,
 11 other than scheduling, between now and when we
 12 resume.
 13 A Okay.
 14 Q Is that agreeable with you?
 15 A Sure.
 16 Q Including Mr. Gresham?
 17 A Right.
 18 Q Thank you.
 19 MR. NYKODYM: We're going to stipulate
 20 that since there is some question about how many
 21 originals were going to be produced, that we would
 22 agree that an original would be produced and that

0364

1 a certified copy of the original would be of use
 2 for all purposes should the original be lost or
 3 misplaced or otherwise unavailable.
 4 If there are any objections to that
 5 stipulation --
 6 MR. SELLINGER: Can you make it broader
 7 than that?
 8 MR. SIMMONS: Why can't we just say a
 9 copy can be used for all cases?
 10 MR. NYKODYM: A copy can be used for all
 11 cases.
 12 MR. DUNCAN: Has there been any waiver
 13 of signature for the witness on this deposition?
 14 MR. BAINE: I think we should explain
 15 that. Admiral Moorer, you have a right to receive
 16 a copy of this transcript and read it and sign it,
 17 or you can waive that and say you don't care to do
 18 that. It's up to you.
 19 MR. MITNIK: You want to do that.
 20 THE WITNESS: You mean the transcript
 21 for today?
 22 MR. BAINE: The transcript that this

0365

1 gentleman is making of your deposition. Do you
 2 want to read that and sign it?
 3 THE WITNESS: Yes.
 4 MR. MITNIK: You would want to do that.
 5 MR. BAINE: Fine.
 6 MR. MITNIK: If you had a lawyer, he
 7 would tell you to do it.
 8 THE VIDEOGRAPHER: This concludes tape
 9 number 4 in the deposition of Admiral Thomas
 10 Moorer. We're going off the record. The time is
 11 17:34:25.
 12 MR. DUNCAN: Before we go off the
 13 record, I don't want to leave a false impression
 14 here. We've got a written transcript, we don't
 15 need the video. We're all agreeing in this room
 16 that we're not going to talk to the Admiral. But
 17 I do not want the Admiral left with the impression
 18 he does not have the right to get a lawyer or
 19 anything like that.
 20 MR. SIMMONS: Of course not. He has
 21 that right. And he is free to agree or not agree.
 22 He just agreed he would not talk to anyone.

0366

1 MR. NYKODYM: May I just bring up one
 2 little housekeeping stipulation, that this
 3 deposition transcript can be used in all actions
 4 including the action venued in the Northern
 5 District of California, number C-98-20946 JFP VT.
 6 Hearing no objections, so stipulated.
 7 (Signature having not been waived, the
 8 deposition of Thomas Moorer was adjourned at 5:37

9 p.m.)
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0367

1 ACKNOWLEDGMENT OF DEPONENT
2 I, Thomas Moorer, do hereby acknowledge
3 that I have read and examined the foregoing
4 testimony, and the same is a true, correct and
5 complete transcription of the testimony given by
6 me and any corrections appear on the attached
7 Errata sheet signed by me.
8
9

10 _____ (DATE) _____ (SIGNATURE)
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0368

1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC
2 I, Lee A. Bursten, Registered
3 Professional Reporter, the officer before whom the
4 foregoing deposition was taken, do hereby certify
5 that the foregoing transcript is a true and
6 correct record of the testimony given; that said
7 testimony was taken by me stenographically and
8 thereafter reduced to typewriting under my
9 supervision; and that I am neither counsel for or
10 related to, nor employed by any of the parties to
11 this case and have no interest, financial or
12 otherwise, in its outcome.

13 IN WITNESS WHEREOF, I have hereunto set
14 my hand and affixed my notarial seal this 23rd day
15 of January 2000.
16 My commission expires:
17 MD - April 1, 2002
18
19

20 _____
21 NOTARY PUBLIC IN AND FOR THE
22 STATE OF MARYLAND

□