

## INTERVIEW II

DATE: August 15, 1985

INTERVIEWEE: SAMUEL A. ADAMS

INTERVIEWER: Ted Gittinger

PLACE: Mr. Adams' residence, Purcellville, Virginia

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A: Okay. The last time I talked to you, which was in Austin, what, last year, was it?

G: Yes, about a year ago now.

A: Yes, about a year ago. I was, of course, in the middle of the *Westmoreland v. CBS* case, as a defendant, and when you're in the middle of one of those damned things, the lawyers are always telling you, "For Christ's sake, don't tell anybody anything, ever." So I didn't give you any bullshit, but I tended to be circumspect, and I do not intend to be circumspect today. I'll lay it on, whatever--

G: Good. Let me think of a big question [to ask] about the trial, and we'll just see where it goes from there.

A: Yes.

G: What did you do by way of getting ready for your testimony?

A: For my testimony. Well, my lawyers knew that there were certain areas in which I was so-called vulnerable, and it was those areas which we concentrated on. For example, I had written a letter to Colonel [Gains] Hawkins right before the documentary was supposed to go on the air, and the letter said something to the effect, "Dear Colonel Hawkins, I've seen the documentary and I think it's a reasonably good effort, but there's one big problem in that it lays too much of the rap on General [William] Westmoreland." And when this letter came to light, everybody went bananas, you know, it sounded like I was letting Westy off the hook, or something.

So we went backwards and forwards over that letter, on how to answer the question in such a way as to explain what the hell I was telling Colonel Hawkins, at the

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same time not selling the farm. And it wasn't too hard to do, because I still thought Westmoreland was wrapped up in it, but where I have always felt different about what happened than the CBS types did, is that I thought a lot more people were involved and a lot more people were aware of what was going on, and that I only thought Westmoreland was one of a number of people who knew generally what was going on, and I always felt sort of sorry for General Westmoreland. The documentary itself sort of laid into Westy, like he was the big badass in the whole operation, and I never really thought that he was. And I always thought that he had fairly good motives, from his point of view. So anyway, we had to go over that letter, and I had to couch my phrases in such a way that I still supported the broadcast, but indicated that I did have some kind of problems--the one that I was mentioning to Colonel Hawkins, whom I talked to this morning.

G: Do you have any other problems with the broadcast? I mean--

A: I think--yes. The main problem with the broadcast, I think, is that--I've generally approached the thing, at least recently, in the last five to ten years or something like that, as a--trying to figure out what went on, and not trying to finger people, although I ended up with a couple of villains. And to me it's just sort of a process, a political process of what went on, ending in the politicization of certain parts of intelligence in that period of time, which was a very bad time to politicize intelligence, because Tet was about to hit. And the broadcast smacked to me a little bit too much of the Watergate syndrome; you know, here we have a bunch of badasses sitting around a table plotting things. Technically I think there was a conspiracy, but I just couldn't conceive of General Westmoreland rubbing his hands together and saying, "What can we do evil today?" It's just not (Laughter)--it almost sounded--the broadcast didn't say that, but you always had Westmoreland's puss coming on the screen every time somebody had done something horrible down below, and he probably didn't know all that stuff. So that's probably the two areas where I deviate from the broadcast. First, I think a lot more people than

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Westmoreland were aware of what was going on, including some, if not all, staffers and some members of the joint chiefs. God knows what the hell the White House thought. I've read their correspondence now, and the main thing I see is confusion.

And then the second thing I deviate from the broadcast is, although I think that technically there was a conspiracy, the word has always bothered me, because I think it was a bunch of well-intentioned men--well-intentioned from their own point of view, although what they did ended in disaster--who were trying to muddle through. And that's how I deviate from the broadcast.

G: Now, you mentioned that some people on the joint chiefs--do you see somebody at that level actively involved in the conspiracy, for want of a better term, or were they simply aware of it, or what role did they--?

A: Okay. Well, you'd really have to go through the--it's a terribly complex story about the order of battle, how many bad guys there are out there, and Christ, I almost have to go into it to explain it. One of the sections of the order of battle, which was a matter of controversy, is how many so-called political cadres there were. I have been told that the joint chiefs--various members of it at any rate--had been fully briefed on the higher numbers concerning the order of battle. I don't even call this conspiratorial. I think they knew there were a lot of bad guys out there that wore the political hats, a lot of them carrying guns, who were trying to harm us. I don't think that there was any intent on General Westmoreland's part--goddammit, you get into problems here, because the problem is so complex. I think Westy was not trying to hide the fact that there were a lot more of them out there. You got into some pretty--and I think the joint chiefs were aware, I know that the joint chiefs were aware that there were a lot more political types out there than was listed in the order of battle at this time: 39,175 political cadres were listed in the order of battle component, that component making up one of the four that

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totaled the two hundred ninety-odd thousand in the OB [order of battle]. This would be in around the May 1967 era.

I think that they were aware, *had* to be aware, that the reason for marching these guys out of the order of battle--although they marched them out to a separate section, you know, marched them out of the OB and had another little OB for them to sit in--was political, that you would come up with a much higher number. And I think they were aware, the joint chiefs were--and when I say joint chiefs, I'd have to go virtually individually, which I'm not sure I can do--I know they were aware of the whole problem of coming up with a very much higher number than had been put out before. Now that's one component, political cadre.

Another component: guerrilla/self-defense militia, which early on in the May 1967 era was another of the components making up two hundred and ninety-odd thousand men in the OB. The number of guerrillas and self-defense militiamen was precisely 112,760, of whom about one-third were guerrillas and two-thirds were self-defense militiamen. Okay. I think the joint chiefs were well aware that this particular category, if counted using the same definitions that had been used all along, would probably at least double, maybe triple, if you used the documentary evidence. I think they were aware, too--Christ, it's in the documents--of the political problem of coming up with a higher number, and they knew damned well that the main reason for taking these guys out was because of the political ramifications of higher numbers.

There are certain technical things that they might not have been aware of, although I think they probably were. One of the reasons for taking out the so-called self-defense militia, which is one translation of the Vietnamese term "tu ve", T-U V-E, and I don't know the diacritical marks, one of the reasons they took them out was that these guys were portrayed as old women, kids, who basically carried--you know, every once in a while they'd go run out and plant a punji stick. Now, the extent to which they knew

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that this was not a correct characterization I don't know. I think, having been in the war so long, you know, we'd had advisers there in large numbers since 1962--[Jean] Sauvageot being one of them; I'd like to see what Sauvageot would think on something like this--that they had to be aware that these people were something more than a bunch of old women and little kids putting out punji sticks.

In fact, as I was to discover in Long An Province, in the Chieu Hoi Center, going over the kinds of weapons the self-defense militia brought in, is that by far the commonest weapon that they had was a--well, usually they walked around, when they were armed at all, and--I'd better make myself clear. They weren't armed all the time, but generally they had arms, every one of them, and usually the arms they had were hand grenades, anywhere from a couple to half a dozen. And these hand grenades, as I was to find out, weren't to toss at ARVN [Army of the Republic of Vietnam] or U.S. soldiers, they were to be planted as booby traps.

And one of the big things, as I'm sure I've said to you before, and now I can't remember whether I did or not--one of the big things about the Vietnam War that differentiates it from all other wars is that mines and booby traps caused approximately a third of our casualties, at least during this era, the era of 1966-67-68, as against World War II when the equivalent percentage of casualties caused by mines and booby traps was, I think, something in the neighborhood of three per cent. In other words, you had ten, eleven times more casualties from this device than you had during World War II.

Anyway, the self-defense militia--this is a complex answer to a simple question--laid a large number, and I could never hang a percentage on it, but probably the bulk of the booby traps that were set, certainly in Long An, and probably in [the] Quảng Nam area, where as much as two-thirds of our casualties were from mines and booby traps, around Đà Nẵng. And whether the joint chiefs were aware of this aspect of the self-defense militia, I don't know. I would think they probably would be. For Christ's

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sake, they have a whole goddamned army and marines reporting up through the chain of command. Somebody must have clued them in. There's no way, for example, that the marine member of the joint chiefs--is there a marine member of the joint chiefs?

G: When they talk about marine matters, he sits with them, yes, the commandant.

A: Yes, okay--that the commandant of the marine corps would not know of the dangers of mines and booby traps, because in 1966 and 1967 something like half of his casualties were coming from these devices. He'd have to know this stuff. Christ, down in various marine corps training areas they would set up Viet Cong villages and have marines go through them with the express purpose of warning and showing them the various types of booby traps. The whole village would be booby trapped. So the marines must have known this goddamned thing. They would know the danger of mines and booby--the army had to, too. They were having the same problems. Of course, you know, the air force and the navy wouldn't, but the ground troops, the marines and army, would have to know that.

And also, I made trips up into I Corps, too, and I went into 3rd MAF [Marine Amphibious Force] interrogation center, and during a six-month period or around a six-month period during 1966 they'd captured very few, a small number of VC, who had actually turned out to be hard-core VC. Millions of suspects, but when you came down to quote, "soldiers," you didn't get a hell of a lot of them. And well over half of those guys were self-defense militiamen. Now, that must have perked up through the chain of command. These people knew about the nature of the war, and they knew who was setting these things, and so therefore they had to know at least something of the nature of the, if you want to call it, deception that was going on to conceal the fact that there was a hell of a lot of people out there who were actively doing us damage, not just running out and sticking a punji stick in the ground, but who would put a hand grenade across a path, or who sometimes sniped--these self-defense militiamen very often had ancient French

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MAS [Manufacture d'armes de Saint-Étienne] rifles--and these people had to know about it.

Therefore they had to know that the reason for taking these guys out of the order of battle was political, and they had to know that--they probably knew, I've never seen any direct evidence--they probably knew that it was the self-defense militiamen that were laying the bulk of the mines and booby traps. Here's your terribly long answer to a very short question. But it's a good one, yes, a good question.

G: Let me go back to the trial for a second. Were you able to sit in and listen to other testimony, or did they invoke the rule?

A: No, I sat there during the--I missed a half a day. The other four and a half months, I was there.

G: I see.

A: I sat five feet away from General Westmoreland during the whole trial. I sat virtually as far away as I am from you now, which is what, about four feet?

G: Did you read the coverage it was getting in the *New York Times*?

A: I read a fair amount of it; I didn't read it all.

G: What did you think of the way the major papers covered the trial?

A: It improved with age, and I think it's because the OB is a terribly complex subject. It's complex, but once you get the hang of it, it's understandable, and as the press began to understand the issues and what was being talked about, I think that the reporting got better and better as time went on. I think the early reporting tended to be pretty bad, but it got better as time went on.

You're asking about specific people, now, I guess. Myron Farber, he was the *Times* guy. I think he--goddammit, Myron was--our side went apeshit over Myron, because they thought he was pro-Westy, and I thought well, that's baloney. Myron was Myron. And I think what happened was that right in the beginning, of course, he was reporting the plaintiff's case, and every plaintiff's witness that came out and said

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something, he'd report what the plaintiff's witness said, the main thing. And he'd sort of slough off the cross-examination at the end. And the trouble was, by the time it got to our case, the defendant's case, Myron was a hell of a lot more sophisticated than he was in the beginning, and so he spent more time reporting the cross than hitherto. But by and large, I think Myron--the *Times* was okay. Christ, the best people weren't the *Times* or the *Washington Post*, it was the *Philadelphia Inquirer*, a guy called [David] Zucchini, and the guy for *Variety*. *Variety* had a guy in there every day, Kevin Goldman, and he was terrific. Those were the two best, Zucchini and Goldman. Eleanor Randolph was the *Washington Post* reporter, who did, incidentally, an article on me which was just sort of ecstatic, you know, great guy. Unfortunately, her problem was that she would be hauled off. The [Ariel] Sharon trial was on at the same time, and there were a bunch of other trials, and every once in a while the *Washington Post* would ring her up and say, "Hey, today go report the Sharon trial." I liked her better as a reporter than Myron. I tend to think she was probably a little bit better, but her problem was she didn't see the thing every day. As I say, Zucchini and Kevin Goldman were, I think, the two best of the lot.

G: Did you have any feel for how the jury was going as the trial progressed?

A: Oh, yes, I did, definitely. And I think I had it pretty well read. One of my--I purposely--well, I don't know whether I purposely did it, but it's how I ended up. And you have to envisage the courtroom. You have the judge [Pierre Leval] sitting up front, and looking at him, to our right was the jury. And then you had in front of him two long tables directly in front of the judge. The front table had the plaintiff's people, and you had Westy's lawyer, and then Westy sitting at the far end, and then behind that table was the defendant's table, and you had the defendant's lawyer, and then usually George Crile or Mike Wallace, or sometimes both of them. Crile was there every day, too. And then invariably me, also sitting at the end. And one of the things about sitting at the end of the



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table is [that] I was facing directly towards the jury, and I used to watch them like a hawk.

I would say that by the end of the plaintiff's case, I thought the thing was about fifty-fifty. If it had stopped then, and there'd been a vote, it would have been a hung jury, and it probably would have been hung halfway. There were certain people that I thought would have voted on our side, and others that I thought would have voted on their side. Our case started up, I think, in January, this year, 1985, and ended up on whatever it was, 14-15 February 1985. And my reading was at that time that we would have gotten a pretty heavy jury vote in our favor. There was one holdout, a guy by the name of [Michael?] Sussman--that's S-U-S-S-M-A-N--whom I'd always had questions about, and his wife[?]. This was mainly looking at their expressions and seeing what they laughed at and what they didn't laugh at, and what they paid attention to, what they didn't pay attention to. And I had begun to think that even Sussman was leaning our way, him being the holdout, but I discovered later that he wasn't. You know, I was wrong.

My guess was that we would have had about nine or ten voting or leaning strongly our way; one guy who was still undecided--that's a guy called Marvin Gold[?]-and then Sussman probably would have voted against us at the end of the case, bearing in mind that we still had two strong witnesses coming on, before Westy threw in the sponge. And also bearing in mind (a) that they wouldn't have heard the closing arguments of either side, or (b) that they hadn't received the instructions from the judge. And I think the instructions that the judge was ready to give to them would have thrown even Sussman to us. Hard to say.

My reading of Sussman, which is not--you know, I have not talked to the guy; he's very close-mouthed about the whole thing. My reading of Sussman is that he might have been able to shoehorn--he might have gone along with the rest of the jurors. Don't know. There might have been a hung jury on Sussman's account. Don't know. In other

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words, I think the jury was leaning heavily our way. I had a pizza party for--I think seven juror members showed up at my pizza party. This was about three or four days--and this is where a lot of my reading is of what I'm telling you, because I asked them not only about what their own feelings were, but also what the people that weren't at the party felt. I think we would have gotten it, but you can't tell.

G: Who do you think were the more effective witnesses, as far as the jury is [concerned], and the most effective evidence?

A: Okay. Now, starting with the plaintiff's case, it's clear to me that by far the best witness was Westmoreland, because he's a very attractive, sincere-seeming, and I think basically sincere man, who was taking on this big goddamned asshole corporation, CBS. I could almost feel sympathy, you know, I had mixed feelings myself about just the situation, except, of course, I was on CBS's side, because I was part of the ball of wax. But I could *see* that the jury, for example, loved Westmoreland.

They                      liked McNamara.

G: Really?

A: Yes, they liked McNamara. The guys they didn't like, I am told--there's going to be a book about this. One of the jurors by the name of Pat Roth, R-O-T-H, is writing a--she kept a diary, and she's going to be publishing her diary [*The Juror and the General: An Eyewitness Account of the Libel Trial of the Century, Westmoreland vs. CBS* by Patricia Roth], so you'll be able to get a better reading than what I've given you. She said that the people she found difficult to believe, she thought were liars, on their side were [George] Carver and [Daniel] Graham. And the consensus is among the jurors that Carver and Graham were not good witnesses for their side. The best witness was Westmoreland; McNamara was thought to be a good one. There's a guy called [John F.] Stewart who was thought to be pretty solid.

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There were a couple of other guys that seemed pretty good, but then people had different feelings about them as time went on. There was a guy called Bob Heenan[?], for example, one of their witnesses, that gave a good initial impression, which may have [dispersed?]. Now, the best witnesses on our side. Okay, as I say, when you got to the plaintiff's case, which went on first, I would say that it was about fifty-fifty, or conceivably if anything, leaning toward their side a little bit, because they'd heard a pretty steady dose of how Westmoreland had been screwed and how our facts were all screwed up.

Okay. At that point, the jury--and I was the first witness--had seen this jerk at the end of the table, scribbling notes all the time and sort of staring at them, and they thought I was--at least Eileen Miller, who was the one who told me this--they sort of thought that I was this very peculiar guy, who probably had butterflies coming out of his ears. There'd been a lot of testimony about how I was a--not completely, not unmixed, but a lot of testimony that there was this jerk, Adams, that was totally obsessed with the subject. And I think my testimony, right in the beginning, indicated that at least I wasn't a jerk, and so it sort of was a good start. I wouldn't say I was the best--I got all balled up in a couple of cross questions--but the impression was that all of a sudden they said, "Hey, wait a minute. This stuff conceivably might be true, you know. You certainly have this guy Adams, who does not seem wacko, who certainly knows a hell of a lot about the subject and isn't backing down at all."

Okay. Then I would say after that, George Allen was probably a pretty good witness. There were problems with George Allen, because he was doing *mea culpas*. We had a lot of *mea culpas* up there. But again it was a solid guy who had had an enormous amount of experience in Vietnam. I mean, he worked on Vietnam [for] seventeen years, I think, who was saying, "Yes, this thing happened, and we did it." And there was a sort of accumulation of people that came--part of the way our case was built

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was to build an accumulation of people who were saying, "Yes, this did happen," and to show that these weren't wacko people. George Allen still works with the agency. Another witness who was, I think, very good, I think better than a lot of people gave him credit for, was a guy called Dick [Richard] Kovar, who at that time, or just slightly before, had been writing the President's daily brief. And he came on, and he virtually--he started choking up, saying how this thing had happened.

Another guy that was very good was a guy called Don Blascak, B-L-A-S-C-A-K, who is an active duty army colonel, a special forces type, who had been working in Carver's office and who was clearly up there virtually against his better judgment, knowing that his army career was not going to take off, or feeling, at any rate, that he was doing a real number on his army career. A very well-spoken guy.

[Joseph] McChristian came on, and I think McChristian--how can I put this? McChristian was the first guy who came on who said that a section of Westmoreland's story that had been told by Westmoreland under oath was not true. And I think this was a jolt to the jury. The guy, you know, he ended up as a major general, and to have a major general come up, who is a West Pointer, [and] say, "my fellow West Pointer"--he wasn't saying this, what he was saying was giving a very different version of exactly the same thing that was diametrically opposed to what Westmoreland had said.

And then, of course, obviously the best witness, I think, the best single witness was Gains Hawkins. He was a boffo. It was, of course, him that caused--well, you can't say this--it was right after his testimony that Westy decided to throw in the sponge, because he said he did it. It was his ballpoint pen that crossed out the numbers, and his understanding of meetings with Westmoreland and also meetings with [Phillip] Davidson, who was Westmoreland's chief of intelligence, and Charley Morris[?], the poor bastard that just died, where it is clear that there was orders coming from on high to

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cut the numbers, and he, Colonel Hawkins, did it. I just talked to him this morning on the phone. And so I think Hawkins was probably the best witness.

It's hard to say who the other ones were. There were a lot of lesser witnesses, lesser in the sense that they didn't have as much rank. I think we had a couple of infantry men on who were talking about mines and booby traps and who they perceived as being their enemies in the field. And I think those guys were effective. But you can't tell who was best. I expect if you had twelve jurors and asked the same question that they would come up with a list of people--I think probably all of them would put Hawkins up pretty close to the top, and a couple of them said I was an extremely good witness, but I'm sure there were others that didn't think I was as great as--

George Crile--the sort of cumulative effect of George, who was probably on the stand longer than anybody except Westy--was that he didn't crack, didn't give them an inch. Now, whether he was a good witness or not, I couldn't say. Read Pat Roth's book and see what she has to say about it. There. Long answer.

G: Fine. When Westmoreland decided, as you put it, to throw in the sponge, what was the general feeling as to why? Was it Hawkins' testimony, Hawkins and McChristian, or--?

A: Yes. There have been at times speculations that they were running out of money, the plaintiffs, but that's baloney, total crap. Because they'd maintained a level of spending for two and a half years, and five days or a week, whatever it is, before it was supposed to go to jury they threw that thing, they--I think the problem was that basically our--as I thought it would be, from the very beginning, right from the beginning, I thought once we hit them with our witnesses who said they saw this thing happen, and that they themselves did it, their case was going to fall apart. And I think that's what happened. And certainly everybody in the defendant's camp, so to speak, felt that.

The difference between me and the others is I was so familiar with our case, I was more familiar, I am sure, than anybody else was, at least, insofar as our witnesses were

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concerned. I knew that this was going to happen, you know, I knew morally or whatever you want to call it. I knew intellectually, I guess, that this was probably what was going to happen when we hit them with McChristian and Hawkins, and a guy that never came on, a guy called Barry Williams[?], and perhaps another guy. We didn't know whether we would put him on or not, a guy called Bernie [Bernard] Gattozzi. When these guys came on, their case was going to collapse. Most people--everyone in the defendant's camp, I guess virtually all the reporters--I don't know about Myron Farber, I have yet to talk to him. Not a bad guy. But I think that they felt that it was this pounding that Westy was getting. You know, I am told, or rather I read in David Halberstam's article that as Colonel Hawkins was testifying, Mrs. Westmoreland was weeping, or having a hard time keeping her act together. And I guess--I don't know whether that's an indication or not.

Oh, Christ! I'll relay this one to you. Right after the thing folded--oh, you'll probably be the first one [to] hear. Maybe you ought to wait for my book. Right after the case was over, the judge asked the opposing lawyers to have lunch with him, after the case had been decided; Westy had dropped out. And I don't know where they had lunch, but as they were leaving lunch, Dan Burt was walking out of wherever they were having lunch with one of the CBS lawyers, a lawyer by the name of Randy Mastro, whom I used to work with very closely, and who told me this. And Burt said to Mastro, "Our main problem," he said, and I'm paraphrasing, "is that you guys had the facts. Even more basic than that is that the son-of-a-bitch did it." I believe [that] Randy--you know, Randy told me that, was just sort of awestruck, mostly, from his point of view, wondering about the professional ethics of Burt for letting loose something like that to the opposing counsel.

But I think that Burt, who is a smart guy--a lot of the people are dumping on Burt; Burt was, of course, the chief prosecution lawyer. I think that Burt probably had seen the handwriting on the wall. I think he saw what was coming, and I think--I'm not the person to ask about the inner workings of the plaintiff's legal team, whatever it was, which was a

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rat's nest of people ranging from Burt to the people that worked for Burt in the Capital Legal Foundation, to David Dorsen. Apparently there's a fair amount of cleavage now between Dorsen and Burt, and some other guys that came in and out of their case. But I'm not the one to ask about that stuff.

G: How would you rate the performance, in general, of the lawyers in front of the jury?

A: In front of the jury? Okay. In front of the jury, it is no doubt that [David] Boies was way better than Burt. Burt was--I have to say Burt was a jerk. In front of the jury. He had never had a case before in front of a jury. Burt did some things that were just awful, in my view, in front of the jury. He browbeat Crile so that I began--I was watching these jury members, and he would ask questions in such a nasty way: "*Now*, Mr. Crile," and unfortunately this won't come over to the tape recorder, "*Now*, Mr. Crile, *is it not so?*" And then he would ask something like that. And Crile was very good. He would always keep his temper. But Burt wasn't. Burt looked like he was mad as hell and when he would read testimony which sounded favorable to us, he would do it in sort of an offhand, joking way. And I think he was a net minus in front of the jury.

Dorsen, who was not part of the Capital Legal Foundation, but who was on their side--Dorsen had a good, workmanlike way, and he was pretty good. One of their better guys was Tony Murry, a black guy whom I really liked a lot, and I think Tony was probably the best of the associates on either side, in my view. He was very well-spoken, very reasonable and sane-sounding, and a very bright guy.

Okay. Now, on our side, Boies no doubt was far better than Burt in front of the jury. He's a very smooth guy, very articulate. He is good, very good on cross, so good that when after about a half a dozen witnesses had come on for the plaintiff, that when Boies got up to do his cross-examination, members of the press corps would start doing the *Jaws* scene: dum-dum-dum-dum-dum-dum.

(Laughter)

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And my problem with Boies--well, in front of the jury, he was good, he was good. Our associates got such cameo spots that it's hard to evaluate them. I could go into each one, but I don't think it makes a hell of a lot of difference.

Now you asked, in front of the jury. There's a whole series of stuff before we even get to jury, and I think that there--may there be no lightning bolt that comes and descends on me--that Burt was probably better than Boies. The amazement I had is that the gosh-darn thing got as far as it did, because--of course, I have, being obsessed, and all that kind of stuff, a very strong predilection as to the strength of our case. I knew how strong our case was, and so I was always amazed that Burt could keep the balls in the air. And he did a very good job in his initial briefs.

Let me give you a small explanation of what I mean. What happens is that there's a series of briefs written before the thing gets to the trial at all. Basically, the defendant writes a reply brief first, a big fat moose, you know, a foot-thick job, with appendices. And then--

(Interruption)

To repeat, we wrote a brief, we being the defendants, wrote a brief requesting that the thing be thrown out. They write a reply brief. They write a reply to our reply, and then finally we end up with the last one. Our initial brief was pretty good. I think it could have been better. Their reply brief, given the material they had, I thought was terrific.

Then our reply to their reply, I thought was not very good. And it comes from a technical reading of the best defenses in a libel case. Explanation: there are two ways to beat off a libel suit. One of them is if you have the facts, in other words, if what you said was true; and the other, basically, is you may have been wrong but did you think it was true? This was the famous malice article: did you display malice? Okay.

In our first brief, the one which we requested to throw the thing out, we primarily depended on the truth defense--they call it the truth defense--and then there were some



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constitutional gimmicks that we threw in. We left out the malice defense. I figured that we were going to throw the malice defense in our reply to their reply, in other words, our second brief. And I thought that, I felt all along, that we had a strong truth defense, but that our malice defense was virtually impenetrable, because even if I'm wacko and George Crile is wacko and Mike Wallace is wacko and CBS is wacko, Jesus, we thought we were right. And there's all kinds of voluminous evidence, notes, internal correspondence, showing that we were zipping along, rightly or wrongly, with the firm view that we were telling the truth. Certainly I was, and I believe the rest of them were, too. I'll show you the damned files up there. We have files up the--I've got a whole roomful of files up there, indicating that we had a lot of evidence pointing towards the fact that we thought that our story was correct. Okay. And here is my problem with the second brief, is we virtually left out the malice defense. We did not emphasize or lay out the huge amount of material we had which indicated that we thought that we were right.

And the problem is, and why this is so key, is that in a libel case it is very unusual in the initial stages to win on a truth defense because truth has to do with the interpretation of facts, and facts are a jury question. So almost all the time, if that's what you're depending on, unless you've got such ironclad facts that they are virtually impossible to [dis]prove [?], you're going to lose in the initial request for summary judgment, they call it, if you depend on truth, because the other side will, as they did in this case, trot out another set of facts that at least appear to contradict ours.

Where you normally win in a libel action in the summary judgment stage, that is the initial stage, is on malice. And our malice case was virtually nonexistent. And God darn it, Boies was running the outfit, and I saw personally our second brief turn from a fairly strong malice case to one in which it didn't exist. And in my view, Boies was the--I may be wrong; I know I'm not--that Boies was the guy who took out most of the malice defense.

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And God darn Burt, I think, in that initial stage, did about as good a job as could be done. You know, I'd give him an A for his lawyerly conduct in those initial stages. The problem was in front of a jury he just acted like a jerk. And he blew it. I don't think he could have won anyway; I don't think he could have had--what's his name, [Edward Bennett] Williams? What's that guy's name? You know.

G: Racehorse [Richard] Haynes?

A: No, no. The famous trial lawyer, somebody Williams. Westy went to Williams.

G: Oh, he did?

A: Yes, and Williams said, "You don't have a prayer on this one. Forget it." What's his name? I mean, he's a household word, virtually. I can't remember it. Anyway, I don't think he could have had that guy and won, even in front of a jury, because our witnesses were too strong.

But Burt just did not measure up in front of the jury, and Boies, who I think did not do anywhere near as well in the initial stages, in the paper stage, as Burt did, was a lot better in front of the jury.

I have another--we can't call it complaint, but . . . disagreement with the way the case was run, in that, and again, this probably had to do with my temperament more than anything else. I think we could have been--we were ultraconservative in running our case. We ran only what Boies thought were ironclad witnesses who had no flaws in their presentation. I think that there were half a dozen other witnesses we could have put on, who had slight flaws in their stories. In other words, areas where they could have been attacked, but who, in front of a jury, would have been, in my view, extremely good.

Case in point: There was a kid--a kid, now forty--there was a guy out in California, lives in Sacramento, whose name is Bruce Jones, who's very articulate, who saw his numbers being changed, who is still at this time angry, who had a great story about the manipulation of numbers during the My Lai massacre. That's a story in itself.

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And who I thought would have been a tremendous witness in front of a jury, but who had unfortunately committed what Boies thought, what a number of our lawyers thought, was a blunder, in that when questioned during a deposition before the trial, he said that he had thought he was being followed. And it turns out there was good reason why he thought he was being followed: his girlfriend told him, "Who the hell is following you? I keep seeing this guy follow you."

But he went to step two, and said, "I'll bet you Danny Graham set this thing up." And so the feeling was is that they would zero in on that and say, "Look, you've got this crazy bastard that thinks that Danny Graham"-- To me, it's not all that (Laughter), seeing all the blood that is in Danny Graham's long career in the army, all the ruined careers and God knows what--I think it's extremely unlikely that Danny was siccing bad guys on Bruce Jones' tail. But anyway, because of this, they took a character, this guy Bruce Jones, who had a marvelous story, who was articulate and who had a large body of cut and dried facts. Those are the things, in my view, that go across best with a jury, "I saw this happen on October 13, 1967: Lieutenant Colonel McMurray came to me,"--and this is practically verbatim--"and said, 'I want you to cut that unit, that unit, that unit and that unit.' 'But sir, why do we do it?' 'Because I'm telling you so.' 'But aren't they still there?' 'Of course they're still there.'" And I think we probably could have gotten Bruce to say something like, you know, "I flipped off that Danny remark." Which is what happened, you know. [A]"I betcha Danny did it" type of thing.

And there were a number of guys like that, that I would have put on. And of course, one of Boies' problems [was] that he didn't know the witnesses very well. Not necessarily his fault, because he had a lot of stuff to do besides learn--he was much better on cross than he was on direct. So there you have it. Burt was terribly good on paper, A on paper. Boies, in my view, was not as good on that. Burt was *lousy* in front of the jury, but awfully gutsy in the way he ran his case. He would throw our best evidence

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right in our face, and say, "Does this not prove that I'm right." (Laughter) And "you're screwing with Westy," and we'd sort of stand there gaga, and find ourselves trying to prove that our own evidence was not proving his case. And then Boies was very good in front of the jury, good in front of the jury, but I think, in my view--which I'm sure is not shared by all lawyers, or even maybe the majority of them--that we could have put on a lot more people with--well, we could have put on a lot more people that had good stories, and I think we could probably have fielded questions like, "Were you really being followed by Danny?" Just that kind of stuff. Again, because he didn't really believe it.

End of Tape 1 of 1 and Interview II

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