

Exhibit 51

(Public)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

VIETNAM VETERANS OF AMERICA, et al.,

Plaintiffs,

-versus-

Case No. CV 09-0037-CW

CENTRAL INTELLIGENCE AGENCY, et al.,

Defendant.

STENOGRAPHIC MINUTES OF THE DEPOSITION OF
PLAINTIFF DAVID C. DUFRANE, held on MONDAY, JUNE 13,
2011, in the United States Attorney's Office, James T.
Foley Courthouse, 445 Broadway, Albany, New York, before
STEPHANIE A. RAGONE, Court Reporter and Notary
Public in and for the State of New York.

A P P E A R A N C E S:

MORRISON & FOERSTER, LLP
425 Market Street
San Francisco, California 94105-2482
BY: BEN PATTERSON, ESQ.
Appearing for Plaintiffs

BRIGHAM J. BOWEN, TRAIL ATTORNEY
Federal Programs Branch
U.S. Department of Justice
Civil Division
20 Massachusetts Ave., NW
P.O. Box 883
Washington, DC 20044

1 Q Did you turn over correspondence with
2 Veterans Administration?

3 A Yes.

4 Q Anything else?

5 A Doctors' reports.

6 Q From what facility, sir?

7 A Well, from just private doctors.

8 Q Did you have doctors' reports from doctors
9 at the Veterans Administration?

10 A Yes.

11 Q And you turned those over as well?

12 A Yes.

13 Q Anything else?

14 A Not to my knowledge that I can think of,
15 no, sir.

16 Q Who have you talked to about this case?

17 A I have had some correspondence of some type
18 of communication with two of the other people that
19 were involved.

20 Q Who are those two people?

21 A Eric Muth and Frank Rochelle. And I did
22 get a phone call -- I am not even sure when it was,
23 it was four or five years ago from Mrs. Price. Her
24 husband is one of the plaintiffs.

25 Q Is that Bruce Price?

(Dufrane - Bowen)

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1 A Yes. She called me and we had a
2 conversation.

3 Q And your recollection is that conversation
4 was four or five years ago?

5 A Yeah, yeah, it is.

6 Q And that would be before this lawsuit
7 began; is that correct?

8 A I -- I don't really know. It might have
9 been right around the time it started or just before.
10 I think it might have been before.

11 Q Okay. Anyone else that you talked to about
12 this case?

13 A My wife.

14 Q Anyone else?

15 A Not about the case. In general I have
16 mentioned it, you know, a number of times. I'm not
17 sure to who, though.

18 Q Right. I am talking about the matters that
19 are the subject of the case, I'm just talking about
20 right now the case, just to clarify.

21 Have you spoken to anyone in the
22 media?

23 A Ever?

24 MR. PATTERSON: Objection, vague,
25 vague and ambiguous.

1 BY MR. BOWEN:

2 Q You may answer the question if you
3 understand it.

4 A No, yeah, I talked to a reporter from the
5 Detroit Free Press at one point.

6 Q Do you recall when that was?

7 A I believe it was before this case also.

8 Q Okay. You have a sense for how long ago
9 that was?

10 A Again four or five years ago probably or it
11 may have even been longer than that.

12 Q Do you recall whether the Press the Detroit
13 Free Press published an article?

14 A No, they did not.

15 Q Other than this case have you ever filed a
16 lawsuit before?

17 A Yes.

18 Q When?

19 A I filed one against the United States for
20 compensation relating to Edgewood.

21 Q Do you recall when this was?

22 A Not really. I don't remember the exact
23 dates. I believe it was probably ten years ago,
24 maybe.

25 Q So ten years ago would be approximately

(Dufrane - Bowen)

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1 veterans until that period, that's why I never joined
2 before.

3 Q Have you had any breaks in your membership
4 when you were not an active member of the Vietnam
5 Veterans of America?

6 A My wife pays my dues. I don't think so.
7 If it was it was a week or two. I don't know, I
8 don't have a clue.

9 Q Did anyone ask you to join Vietnam Veterans
10 of America?

11 A Yes.

12 Q Who?

13 A I'm not sure who asked me to join. I think
14 maybe I got a thing in the mail or something, I'm not
15 sure.

16 Q All right. Are you familiar with an
17 organization called Swords to Plowshares?

18 A Just because of the lawsuit. I don't know
19 what they do.

20 Q Have you ever contacted them for
21 assistance?

22 A No.

23 Q Are you familiar with the Nehmer class
24 action lawsuit for Vietnam Veterans exposed to Agent
25 Orange?

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1 somewhere. But nothing, you know, nothing in real
2 terms about Edgewood, other than, you know, that we
3 had done some stuff in the Army and they were just
4 doing some follow-up and, you know, the research by
5 an independent.

6 Q Did you respond to the National Research
7 Council survey?

8 A Yes, I did.

9 Q Prior to your VA visit in 1986 or
10 thereabouts had you spoken to anyone else besides --

11 A No, not to my knowledge.

12 Q -- the survey and your girlfriend?

13 MR. PATTERSON: Objection.
14 Mischaracterizing prior testimony.

15 A I am not even sure I told the girlfriend.
16 I'm just assuming I may have because I am not even
17 sure about that.

18 Q Have you told your wife about your time at
19 Edgewood?

20 A My new wife?

21 Q Yes.

22 A Yes.

23 Q When did you first tell her about your
24 experience in Edgewood?

25 A It was probably a while after we started

(Dufrane - Bowen)

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1 going together. In fact, we may have been married
2 before I brought anything up. I was -- I was going
3 to the VA.

4 Q And you were talking to the VA --

5 A Yeah.

6 Q -- about your experience at the time you
7 told your wife?

8 A Yeah.

9 Q So after 1986?

10 A Yeah.

11 Q Would this be after you went back to the VA
12 in approximately 1993?

13 MR. PATTERSON: Objection, lacks
14 foundation, misstates prior testimony.

15 BY MR. BOWEN:

16 Q You stated previously that you went in
17 approximately 1986 to the VA and then you went back
18 in the early nineties; is that correct?

19 A Right, right.

20 Q My question is would you have spoken to
21 your current wife before or after?

22 A Before.

23 Q Before you went back to the VA?

24 A Yeah.

25 Q In the early nineties?

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1 A Yeah.

2 Q I see. So sometime between 1986 and 1993?

3 A Later, late end of that, maybe in '89, '90
4 somewhere.

5 Q Who also have you told about your time at
6 Edgewood?

7 A During what time period?

8 Q Well, during any time period. You can list
9 as many people as you can remember.

10 A Very few. Nobody will understand it or
11 believe it.

12 Q You have been married prior to this
13 marriage; is that correct?

14 A That's correct.

15 Q Had you told your prior wife --

16 A No.

17 Q -- about your experience at Edgewood?

18 A No.

19 Q So only your current wife?

20 A Right.

21 Q Any other members of your family?

22 A That know about it.

23 Q That you have talked to about it?

24 A Not in any depth, no. I have two boys and
25 a daughter. My daughter is the one who found the

1 A Well, my claims are filed by my -- I have a
2 local VA office and he files those claims, you know,
3 from my records.

4 Q Do you review these claims that go in?

5 A Yes.

6 Q And you signed them?

7 A Yes.

8 Q And you review them for accuracy; is that
9 right?

10 A Well, you know, I trust the guy that I am
11 dealing with here.

12 Q Have you corresponded with any members of
13 Congress regarding your Edgewood experience?

14 A Yes.

15 Q Whom?

16 A John McHugh.

17 Q Who is John McHugh?

18 A He was a congressman in my district.

19 Q Do you recall when you corresponded with
20 Mr. McHugh?

21 A No. It was a number of times, I don't
22 remember the dates.

23 Q Sometime -- would it have been in the last
24 decade?

25 A Yeah.

(Dufrane - Bowen)

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1 Q Would it have been in the early two
2 thousands?

3 A Yeah, probably. He is gone now. I have
4 not talked to the new congressman at all.

5 Q Anyone else in Congress?

6 A I talked to Bernie Sanders one time in
7 Vermont.

8 Q You talked with Bernie Sanders?

9 A I talked with him, we are buddies.

10 Q When was this?

11 A He invited me to some -- something at the
12 Vermont National Guard, I think it might have been
13 something to do with Agent Orange and I had a
14 personal invitation from him. And then I saw him on
15 the sidewalk in Burlington one day and talked to him
16 a little bit, not about Edgewood, I don't think.

17 Q Not about Edgewood?

18 A Not that time.

19 Q Anyone else in Congress?

20 A Betty Little, but I don't think Betty
21 helped me at all. I don't know if I talked to her or
22 not. I talked to a few of them. I was grasping at
23 straws trying to get --

24 Q Did you correspond with the current
25 Secretary of State Clinton?

1 A Yes.

2 Q When she was a senator for the state of New
3 York?

4 A Yes.

5 Q Do you remember when that was?

6 A No.

7 Q So when you left Edgewood your recollection
8 is that you were instructed not to talk about your
9 experience, that's correct; right?

10 A Right.

11 Q At some point you began speaking with
12 people including the VA in 1986; is that correct?

13 A That's correct.

14 Q And the VA, throughout the last decade or
15 so as you described; is that correct?

16 A That's correct.

17 Q And members of Congress?

18 A That's correct.

19 Q Your family? What caused you to feel that
20 you could talk about Edgewood notwithstanding your
21 instruction not to talk about it?

22 A Because I needed to get some medical help
23 and nobody was helping me. And at that point the cat
24 was out of the bag.

25 Q What do you mean when you say the cat was

1 out of the bag?

2 A There was stuff all over. It was, every
3 once in a while you would see a blurb in the paper.
4 Like I told you, the Internet was loaded with the
5 stuff, you know. And, you know, I needed some -- I
6 still do. I need somebody to take a look at these
7 headaches and this, particularly my left arm.

8 Q So when you spoke, the first time that I am
9 aware of, when you responded to the survey from the
10 National Research Council --

11 A Right.

12 Q -- did you feel that you were talking, you
13 were responding to the survey in spite of the
14 instruction not to talk about Edgewood?

15 A No.

16 Q You felt at liberty to respond to the
17 survey?

18 A I assumed that the survey was authorized by
19 the government.

20 Q Okay. What about when you went to the VA
21 in 1986, did you feel that you were disobeying the
22 instruction?

23 A I was a little cautious at that point, yes.

24 Q But you went ahead and did it anyway?

25 A Yes.

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1 Q Did there come a point in time where you
2 felt that you were entitled to talk about your
3 experience at Edgewood Arsenal, notwithstanding what
4 you understood to be an injunction against talking?

5 MR. PATTERSON: Objection, vague,
6 ambiguous.

7 A I don't understand that at all.

8 Q Did you ever come to a point where you felt
9 that the secrecy instruction did not apply to you?

10 A No, no.

11 Q Do you feel it still applies to you?

12 A Yeah. I do not -- not as broad a sense any
13 more but it's still -- still there.

14 Q Do you believe you are not allowed to talk
15 about your experience at Edgewood?

16 A Not completely.

17 Q What effects of your experience at Edgewood
18 do you feel you are not allowed to talk about?

19 A I got a letter -- I'm not sure if it's in
20 here somewhere -- they sent saying that we could go
21 and seek medical help from the outside but we were
22 limited to what we could discuss. So there is
23 still -- it's still there.

24 Q And do you feel constrained by those
25 limitations?

1 A Yeah.

2 Q Are there topics that you would like to
3 discuss with other people that are not included in
4 the things that you are permitted to say?

5 MR. PATTERSON: Objection, vague.

6 BY MR. BOWEN:

7 Q Is there anything you would like to talk
8 about relating to Edgewood that you feel that you can
9 not talk about at this time?

10 A No, not really. But no, I am not following
11 the question, really. What -- give me a specific
12 what I might want to talk about.

13 Q That's what I am asking you. Is there
14 anything from your Edgewood experience that you feel
15 that you can't talk about but would like to talk
16 about?

17 A Yeah, yeah. Actually, if I wanted to talk
18 to somebody about some of what happened during the
19 experiments or whatever, I think I'm still prohibited
20 from doing that, you know.

21 Q Is there anything from the experiments that
22 you have not disclosed to me today because you feel
23 like you can't talk about it?

24 A No. Oh, no, no.

25 Q If I asked you a question about the

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1 experiments you feel you could tell me?

2 A I could tell you.

3 Q Is there a -- so it's your testimony that
4 there are aspects of your experience at Edgewood that
5 you feel you cannot talk about because you were told
6 not to talk about it?

7 A Right.

8 Q And what about your experience at Edgewood
9 do you feel you cannot talk about?

10 A I don't know the exact title. But there in
11 the letter, we have the letters, the reasons they did
12 the testing, you know, some of the operational stuff
13 that happened at Edgewood as far as the testing went.
14 There is, you know, can't talk about -- for me I
15 can't talk about it anyway because I don't know what
16 the chemicals were, for the most part.

17 Q What I am asking you is I am talking about
18 is there anything that you have in your mind and in
19 your memory that you would like to talk about?

20 A No.

21 Q That you cannot talk about?

22 A No. I don't want to, not that I don't want
23 to talk about it, no.

24 MR. BOWEN: I think it's probably
25 time for a lunch break.

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1 Q How are you aware of that?

2 A I happened to see it on the Internet.

3 Q How long ago would you say this was?

4 A Not too long ago, within the last year.

5 Q Last year?

6 A Yeah.

7 Q Did you write to Edgewood or to the Army to
8 request your Edgewood test file?

9 A Yes.

10 MR. PATTERSON: Objection, vague
11 ambiguous, vague to time.

12 BY MR. BOWEN:

13 Q Yes, you did?

14 A (Nods.)

15 Q Do you know when you did that?

16 A Back in the early nineties when I first got
17 my files.

18 Q Do you mean to say after your daughter
19 found your files in the attic?

20 A Right.

21 Q So in the early nineties, shortly after
22 that time you wrote to the Army or Edgewood for your
23 test file?

24 A Yes.

25 MR. PATTERSON: Objection, misstates

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1 prior testimony.

2 BY MR. BOWEN:

3 Q Your answer is yes to that question?

4 A Yes.

5 Q Do you recall whether you wrote to Edgewood
6 directly?

7 A I think, no, I didn't write to Edgewood
8 directly.

9 Q Do you remember who you wrote to?

10 A National Research Council.

11 Q Okay.

12 A And the Army.

13 Q Did you receive your file?

14 A Yes, sir.

15 Q Do you recall how long it took for you to
16 receive it?

17 A Not long.

18 Q Less than a year?

19 A Yeah.

20 Q I direct you to the last page of Exhibit
21 236.

22 MR. PATTERSON: Counsel, I noticed
23 there aren't any Bates numbers on this document.

24 Has this not been produced?

25 MR. BOWEN: I believe it has been

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1 to my local VA to be tested or something.

2 Q Do you recall any notification in 2008?

3 A Yes, yes.

4 Q Let's take a look and see if we are talking
5 about the same thing.

6 (Defendant's Exhibit 237, 9/14/06
7 Letter, is marked for identification.)

8 BY MR. BOWEN:

9 Q Mr. Dufrane, I have handed you a document
10 that has been marked Defendant's Exhibit 237 and it
11 appears to be dated September 14th, 2006. This
12 exhibit runs from Bates number VET003-000431 through
13 434. Do you recognize this document?

14 A Yes, I do.

15 Q What do recognize it to be?

16 A It's a copy of the one that was sent to me
17 at my house. I have this.

18 Q You received this document in 2006?

19 A Yes, I did.

20 Q This letter notifies you that you
21 participated in tests at Edgewood Arsenal during your
22 military service; is that correct?

23 MR. PATTERSON: Objection, leading,
24 calls for an expert conclusion.

25

1 numbness and tingling, that's basically the issues to
2 address over the years. And they have, you know,
3 issues are still there. They just haven't medically
4 done much of anything.

5 Q Perhaps we can talk about those briefly.
6 Help me if I am mischaracterizing what you said
7 earlier. You have a service-connected disability
8 rating for post-traumatic stress disorder and for the
9 chronic pain?

10 A Right.

11 Q The numbness and the tingling; is that
12 correct?

13 A Yes, right.

14 Q And you also state now that you have sought
15 a disability rating for dental issues; is that
16 correct?

17 A I did but they denied it.

18 Q And they denied it; yes?

19 A Yes.

20 Q Do you remember what the basis for that
21 was?

22 A My claim was that the headaches made me
23 grind my teeth. The dentist in Albany said that I
24 was grinding my teeth to give myself a headache.

25 Q Do you remember if there was any other

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REPORTER'S CERTIFICATE

I, STEPHANIE RAGONE, Court Reporter
and Notary Public in and for the State of New York,
do hereby certify that I recorded stenographically
the foregoing proceedings, taken at the time and
place as mentioned, and the preceding is a true
and accurate transcript thereof, to the best of
my knowledge and belief.

STEPHANIE RAGONE

DATED: