

# **EXHIBIT 31**

CONFIDENTIAL

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

VIETNAM VETERANS OF  
AMERICA, et al.,  
Plaintiffs,  
vs. NO. CV 09 0037-CW  
CENTRAL INTELLIGENCE VOLUME III  
AGENCY, et al.,  
Defendants.

CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

CONTINUED VIDEOTAPED DEPOSITION OF DAVID ABBOT

August 23, 2012

9:11 a.m.

United States Courthouse  
75 Spring Street SW, Suite 600  
Atlanta, Georgia

REPORTED BY:

Jennifer A. Davis,

RPR, CRR, CCR-2496

PAGES 432 - 560

Page 432

## CONFIDENTIAL

1 Does that make sense? 10:37:39

2 MR. PATTERSON: This will be 859. 10:37:56

3 (EXHIBIT 859 MARKED) 10:38:08

4 BY MR. PATTERSON: 10:38:08

5 Q. What's just been marked as Exhibit 859 is 10:38:16

6 an e-mail from David Abbot to Melissa Hill dated 10:38:18

7 March 6th, 2006. It's produced at DVA095 003342. 10:38:22

8 Do you recognize this e-mail, Mr. Abbot? 10:38:33

9 A. Not specifically, but I recognize it as 10:38:38

10 one of those that I sent to Muskogee in response to 10:38:40

11 a claim requesting verification. 10:38:48

12 Q. So you did send this e-mail? 10:38:50

13 A. (Nods affirmatively) 10:38:52

14 Q. Yes? 10:38:53

15 A. Yes. 10:38:53

16 Q. And in the middle of that paragraph -- so 10:38:54

17 here you write, "Here is the response from DoD." In 10:38:58

18 the middle of that paragraph, four lines down, says, 10:39:02

19 "Individual has no records to verify this claim as 10:39:04

20 they were burned in the archives fire. He does 10:39:09

21 submit a 'buddy statement,' which does support some 10:39:12

22 of the service member's claims, but never states 10:39:17

23 that the gas chamber was filled with mustard 10:39:20

24 agents." And the last sentence says, "We do not 10:39:23

25 consider the service member as being exposed to 10:39:26

Page 494

## CONFIDENTIAL

1      mustard agent."      10:39:29

2                So in this instance, even though the      10:39:33

3      service member had a buddy statement, that wasn't      10:39:35

4      sufficient for the DoD to verify their      10:39:38

5      participation?      10:39:40

6                MS. FAREL: Objection to the extent that      10:39:41

7      you mischaracterized the document and calls for      10:39:42

8      speculation.      10:39:45

9                A. Okay. Ask that again.      10:40:00

10     BY MR. PATTERSON:      10:40:02

11               Q. Sure. So in this instance, even though      10:40:03

12     the service member had a buddy statement, that was      10:40:05

13     not sufficient for the DoD to verify their      10:40:09

14     participation?      10:40:13

15               MS. FAREL: Objection. Vague. Calls for      10:40:15

16     speculation.      10:40:18

17               A. Well, DoD has specified that there was no      10:40:23

18     specific language referring to a chamber exposure.      10:40:27

19     It would be speculative to say had the buddy      10:40:32

20     statement included those statements, would they --      10:40:35

21     would that have changed their mind. I don't know.      10:40:38

22               In all of the instances where something      10:40:43

23     went over to DoD and they responded, the full      10:40:46

24     context of their response was what was sent to the      10:40:51

25     regional office so that they would be able to make      10:40:54

Page 495

## CONFIDENTIAL

1 the best determination from -- for their claimant. 10:40:56

2 One could speculate that maybe it would 10:41:02

3 have been helpful if the buddy statement had had 10:41:06

4 more information. I don't know. 10:41:09

5 BY MR. PATTERSON: 10:41:13

6 Q. Ordinarily, in claims adjudications a 10:41:14

7 veteran can prove their service-related incident 10:41:20

8 through a buddy statement. Right? 10:41:21

9 MS. FAREL: Objection. Lack of 10:41:25

10 foundation. 10:41:26

11 A. I don't know if I can go with 10:41:27

12 "ordinarily." We do accept as legitimate evidence 10:41:27

13 buddy statements. But whether a buddy statement 10:41:32

14 ordinarily results in being significant enough to 10:41:37

15 grant service connection is a whole separate 10:41:41

16 question. 10:41:43

17 BY MR. PATTERSON: 10:41:49

18 Q. But in this instance a buddy statement was 10:41:50

19 not sufficient to -- 10:41:51

20 A. Correct. 10:41:52

21 Q. -- verify? 10:41:53

22 A. That's correct. 10:41:55

23 MS. FAREL: Make sure you let him finish 10:41:56

24 his question for the record. 10:41:57

25

Page 496

## CONFIDENTIAL

1 BY MR. PATTERSON: 10:42:01

2 Q. So his claim would have been denied then? 10:42:01

3 MS. FAREL: Objection. Calls for 10:42:03

4 speculation. Lack of foundation. 10:42:03

5 A. I'm sure it was. 10:42:11

6 BY MR. PATTERSON: 10:42:13

7 Q. And before we have the sentence about the 10:42:14

8 buddy statement, it says, "Individual has no records 10:42:17

9 to verify this claim as they were burned in the 10:42:20

10 archives fire." 10:42:22

11 What is this archives fire? 10:42:24

12 MS. FAREL: Objection. Calls for 10:42:27

13 speculation. Lack of foundation. 10:42:28

14 A. I presume that they are referring to the 10:42:30

15 fire that we had at -- I say "we had" -- the fire 10:42:33

16 that the National Personnel Records Center had in 10:42:37

17 1950 whatever it was. I don't remember the year. 10:42:42

18 BY MR. PATTERSON: 10:42:47

19 Q. So this particular service member's 10:42:47

20 records were destroyed in the archives fire? 10:42:51

21 MS. FAREL: Objection. Calls for 10:42:55

22 speculation. 10:42:56

23 BY MR. PATTERSON: 10:42:59

24 Q. But despite that fact that his records 10:42:59

25 were destroyed in the archives fire, the DoD didn't 10:43:02

Page 497

CONFIDENTIAL

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATE

STATE OF GEORGIA:

COUNTY OF COBB:

I hereby certify that the foregoing transcript was taken down, as stated in the caption, and the colloquies, questions, and answers were reduced to typewriting under my direction; that the transcript is a true and correct record of the evidence given upon said proceeding.

I further certify that I am not a relative or employee or attorney of any party, nor am I financially interested in the outcome of this action.

This the 4th day of September, 2012.

---

JENNIFER A. DAVIS, RPR, CRR, CCR-2496