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UNAUTHORIZED BOMBING OF MILITARY TARGETS IN NORTH VIETNAM

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SECOND SESSION

UNDER THE AUTHORITY OF

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UNAUTHORIZED BOMBING OF MILITARY TARGETS
IN NORTH VIETNAM

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UNAUTHORIZED BOMBING OF MILITARY TARGETS IN NORTH VIETNAM

MONDAY, JUNE 12, 1972

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
ARMED SERVICES INVESTIGATING SUBCOMMITTEE,
Washington, D.C.

The subcommittee met at 10 a.m. in room 2337, Rayburn Office Building, Hon. F. Edward Hébert, chairman of the committee, presiding.

Members present: Hon. F. Edward Hébert, Hon. Otis G. Pike, Hon. Alton Lennon, Hon. William J. Randall, Hon. Robert H. Mollohan, Hon. W. C. (Dan) Daniel, Hon. Leslie C. Arends, Hon. Charles S. Gubser, Hon. Alexander Pirnie, Hon. Durward G. Hall, Hon. William L. Dickinson, and Hon. John E. Hunt.

Staff present: Frank M. Slatinshek, Assistant Chief Counsel, Committee on Armed Services, and John T. M. Reddan, Counsel, Armed Services Investigating Subcommittee.

Chairman HÉBERT. The committee will be in order.

The committee welcomes the presence of the public at the hearing today.

I will urge that the public refrain from any demonstration in any manner, shape, or form, one way or the other. At the slightest movement toward a demonstration the door will be closed. There will be nothing disorderly here today.

We will remain in open session as long as we can remain in open session.

Are all the cameras out? Get the cameras out, please.

We will have it quiet, please.

Gentlemen and members of the committee: As I stated before, we will begin in public session, and remain in public session as long as we can. If any sensitive matters come up we will defer consideration of them until we go into executive session, but we will have everything public as far as is feasible and practical.

The procedure will be very simple. General Ryan will give a prepared statement; the committee will not interrupt him to ask any questions while he is reading his statement. General Lavelle will give a prepared statement, and will not be interrupted by any member of the committee while he is reading that statement.

Following the conclusion of the reading of the two statements Mr. Pike will be recognized and he will conduct his questioning in the manner he desires.

The Chair announces at this time that the 5-minute rule of the committee is waived, and a reasonable time will be given each member of

the committee to proceed in the manner he desires. This is a very important hearing, and has a very important bearing, I think, on the future conduct of the military and its connections with the executive and congressional branches. So I want to give all the leeway in the world, and have everybody have his chance to have a day in court.

With those preliminary remarks, I will read this prepared formal statement for the record.

On April 7, 1972, Gen. John D. Lavelle was retired from the Air Force after 32 years, 6 months and 14 days of service. Just 8 months prior to his retirement, General Lavelle had been appointed Commander of the 7th Air Force, and in that position was responsible for all Air Force combat strike, air support, and air defense operations in mainland Southeast Asia.

At the time of General Lavelle's retirement, the Air Force announced that the action was for "personal and health reasons." However, rumors began circulating almost immediately which suggested that the Air Force announcement was less than complete.

On May 4, Congressman Pike addressed a letter to me expressing his concern over this matter and requesting that it be assigned to the Investigating Subcommittee for appropriate inquiry. I granted this request and directed the subcommittee staff to proceed as rapidly as possible. Thereafter, on May 15, the Department of Defense released the following memorandum for correspondents:

"The following statement was made today by Gen. John D. Ryan, Chief of Staff of the Air Force, in response to inquiries: 'Gen. John D. Lavelle was retired at his request for personal and health reasons. His retirement became effective April 7, 1972. He had been relieved of command of the 7th Air Force by me because of irregularities in the conduct of his command responsibilities.'

"The Department of Defense understands the House Armed Services Committee plans hearings on this subject and therefore will have no further comment at this time."

As far as I know, this was the first time that the Air Force had publicly admitted that General Lavelle's retirement involved something more than "personal and health reasons." But the phrasing in General Ryan's statement was so broad that while it left the door wide open for all manner of speculation and conjecture, it shed little light on facts and issues involved in this case.

Precisely what was the nature of the alleged irregularities?

When and where did they take place?

What were the particular conditions or circumstances under which they occurred?

Exactly what command responsibilities were involved, and how did the alleged irregularities run contrary to those responsibilities?

These are some of the questions we will seek answers to this morning, for, in fairness to General Lavelle, the Air Force and the American people, the facts, insofar as national security considerations permit, should be made public.

To help the subcommittee in its effort to reach valid conclusions in this matter, we will hear this morning from the Chief of Staff of the Air Force, General Ryan, and from General Lavelle.

Gentlemen, I thank you for being here.

General Ryan, we will hear from you first.

I announce to the committee that the Secretary of Defense, Melvin R. Laird, is standing by ready to be called if and when we decide to call him, or if and when we need him. The reason he is not here now is that we want to have the basic hearing, and at any time we desire to hear from Secretary Laird he has assured me personally he stands by ready to come at a moment's notice. I want the committee members to know that.

General Ryan, you may read your statement without interruption. (The biographical sketch of Gen. John D. Ryan is as follows:)

BIOGRAPHICAL SKETCH, GEN. JOHN D. RYAN

Gen. John Dale Ryan is Chief of Staff of the United States Air Force.

General Ryan was born in Cherokee, Iowa, Dec. 10, 1915. Following graduation from Cherokee Junior College in 1934, he entered the United States Military Academy from which he graduated in 1938. He next attended flying school at Randolph and Kelly Fields, Texas, and received his pilot wings in 1939.

General Ryan remained at Kelly Field as a flight instructor for approximately two years. From January 1942 until August 1943 he was Director of Training at Midland Army Air Field, Texas, and was instrumental in establishing an advanced bombardier training school. His next assignment was as operations officer for the Second Air Force at Colorado Springs, Colorado. In February 1944 he was transferred to Italy where he commanded the 2d Bombardment Group and later became operations officer for the 5th Bombardment Wing, Fifteenth Air Force.

He returned to the United States in April 1945 and became Deputy Air Base Commander, Midland Army Air Field, Texas. In September 1945 he was assigned to the Air Training Command (ATC) at Fort Worth and Randolph Fields, Texas, where he remained until April 1946 when he assumed duties with the 58th Bombardment Wing and participated in the Bikini Atoll atomic weapons tests. From September 1946 to July 1948, he was Assistant Chief of Staff for Plans of the 58th Bombardment Wing and then Eighth Air Force Director of Operations. For the next three years, he commanded the 509th Bombardment Wing at Walker Air Force Base, New Mexico. Between July 1951 and June 1956, General Ryan commanded the 97th Bombardment Wing and the 810th Air Division, both at Biggs Air Force Base, Texas, and the 19th Air Division at Carswell Air Force Base, Texas.

General Ryan became Director of Materiel for the Strategic Air Command (SAC) in June 1956 and four years later assumed command of SAC's Sixteenth Air Force in Spain. In July 1961 he was named Commander of the Second Air Force at Barksdale Air Force Base, Louisiana.

In August 1963 General Ryan was assigned to the Pentagon as Inspector General for the U.S. Air Force. One year later he was named Vice Commander in Chief of Strategic Air Command and in December 1964 became Commander in Chief. He was assigned as Commander in Chief, Pacific Air Forces, in February 1967.

General Ryan was appointed Vice Chief of Staff of the U.S. Air Force in August 1968 and Chief of Staff of the U.S. Air Force in August 1969.

His military decorations and awards include the Distinguished Service Medal (Air Force design) with two oak leaf clusters, Distinguished Service Medal (Army design), Silver Star with one oak leaf cluster, Legion of Merit, Distinguished Flying Cross with one oak leaf cluster, Air Medal with five oak leaf clusters, Purple Heart, French Croix de Guerre with Palm, Chinese Order of the Cloud and Banner, Korean National Security Merit First Class, the Vietnamese National Order of Vietnam/Commander and Gallantry Cross with Palm, Grand Cross, Royal Order of Phoenix (Greece), and Grand Cross of Aeronautical Merit (Spain). In July 1971 General Ryan became the first foreign dignitary to receive the Golden Wings of the Philippine Air Force.

In December 1962 he joined a select group of athletes, who have been successful in their professional careers since their college football days, when he was chosen a member of the Sports Illustrated Silver Anniversary All-American team.

He received an honorary doctor of laws degree from the University of Akron Ohio.

General Ryan is married to the former Jo Carolyn Guidera of San Antonio, Texas. They have a son, Captain Michael E., USAF, and a daughter, Patricia Jo. A second son, Captain John D., Jr., USAF, was killed in January 1970 when his F-4D crashed on takeoff.

**STATEMENT OF GEN. JOHN D. RYAN, CHIEF OF STAFF, U.S.
AIR FORCE**

General RYAN. Mr. Chairman, members of the committee:

I am Gen. John D. Ryan, Chief of Staff, U.S. Air Force. I appreciate the opportunity to appear before this committee.

I am informed that the committee is interested in the facts and circumstances surrounding the return from Vietnam and retirement from the Air Force of Gen. John D. Lavelle.

As you know, General Lavelle was Commander of the 7th Air Force in Vietnam. He assumed that duty on August 1, 1971.

On March 8, 1972, I received a copy of a letter from an Air Force NCO alleging that the rules of engagement were being violated and that there were irregularities in the reports rendered.

I sent Lt. Gen. Wilson, the Air Force Inspector General, on March 9, to Southeast Asia to investigate this matter.

On March 23, the Inspector General confirmed the allegations. Some missions had not been flown in accordance with the rules of engagement and there were irregularities in the operational reports. General Lavelle admitted to the Inspector General that this had occurred.

I ascertained from the Chairman, JCS, the Secretary of Defense, and CINCPAC that authority to deviate from the rules of engagement had not been given General Lavelle.

On March 23 I summoned General Lavelle to Washington and discussed the matter with him.

General Lavelle admitted to me that he had executed a small number of such strikes to attack military targets, and reported as protective reaction.

After discussing this with General Lavelle, I offered him the option of continued service—a new assignment—in the Air Force in his permanent grade. I told him an application for retirement would probably be accepted.

Concurrently, I discussed this case with the Secretary of the Air Force, the Chairman, JCS, and the Secretary of Defense, and informed them of my recommendations.

General Lavelle, who was receiving medical attention for severe arm pain, made up his mind to retire on March 31 and submitted a request to do so. He stated therein that this was for personal and health reasons. He cited his son's illness as preventing further family separation. He also indicated that he was under treatment and that he had been advised that it was likely that he was in disability status.

General Lavelle's retirement was accepted by the Air Force with separation date to be determined when his physical status was settled.

During the week of April 1 to 7, General Lavelle was processing for retirement—physical examination—determination of disability, and the like.

I issued orders transferring General Lavelle to patient status in Washington. He had been in Washington since March 26 and was in

fact no longer directing 7th Air Force operations. This transfer was in preparation for his retirement.

On April 6, Gen. John Vogt was selected to replace General Lavelle. On April 7, this was announced. On the same date, General Lavelle's retirement processing was completed and his retirement effective.

I would like to emphasize that I have avoided public discussion because I had no desire to add to General Lavelle's personal and health problems by publicizing other circumstances involved in this matter. He stated his reasons for requesting retirement and I considered them, then and now, highly personal and private business.

Thank you, Mr. Chairman.

Chairman HÉBERT, General Lavelle.

(The biographical sketch of Gen. John D. Lavelle is as follows:)

BIOGRAPHICAL SKETCH OF GENERAL JOHN D. LAVELLE

General Lavelle was born on Sept. 9, 1916, in Cleveland, Ohio, where he attended Cathedral Latin High School and graduated from John Carroll University in 1938 with a bachelor of science degree. In 1939 he enlisted as an aviation cadet in the Army Air Corps and received pilot training at Randolph and Kelly Fields, Tex. He received his pilot wings and a commission as a second lieutenant in June 1940.

He returned to Randolph Field as a flying instructor and in 1942 was assigned as part of a cadre to open Waco Army Air Field, where he served as squadron commander and director of flying. During World War II he saw combat in the European Theater of Operations, where he served with the 412th Fighter Squadron.

In January 1946 he was assigned to Headquarters Air Materiel Command at Wright Field, Ohio, as Deputy Chief of Statistical Services. When the U.S. Air Force was established as a separate Service in 1947, he was one of the two Air Force officers who negotiated with all seven Army Technical Services and wrote the agreements for the division of assets and the operating procedures to be effected during the buildup of the Air Force.

He was assigned in October 1949 as the Director of Management Analysis and later as the Comptroller of the Far East Materiel Command at Tachikawa Air Base, Japan. During the Korean War, he was made Commander of the Supply Depot at Tachikawa. In this assignment, he was awarded the Legion of Merit for the reorganization of the theater supply system and the establishment of a procedure for control of the transshipment of supplies direct from the United States to Korea.

In November 1952 he was assigned as Commander of McGuire Air Force Base, N.J., and the 568th Air Defense Group. During his tenure there, the Military Air Transport Service (MATS) facilities and air terminal were constructed and McGuire Air Force Base became an east coast aerial port. When the base was transferred to MATS, he became the MATS Transport Wing Commander. While at McGuire Air Force Base, he established a community relations program which did much to ease the problems that normally befall an area where a military installation grows from approximately 1,500 to 10,000 personnel. General Lavelle is still considered an honorary citizen of many of the small communities around McGuire and an honorary member of the local Lions International and Kiwanis Club.

He attended the Air War College in 1956-1957 and then spent the next five years at Headquarters U.S. Air Force as Deputy Director of Requirements; Secretary of the Weapons Board; and Deputy Director of Programs. While in the Pentagon, he was principally responsible for the reorganization of the Air Force Board system and the establishment of program control through the Program Review Committee and the Weapons Board. He was awarded an oak leaf cluster to his Legion of Merit at the end of this tour of duty.

General Lavelle went to Europe in July 1962 as Deputy Chief of Staff for Operations, Headquarters Fourth Allied Tactical Air Force, NATO, which was comprised of numbered Air Force-size elements of the German, French and Canadian Air Force and the U.S. Air Forces in Europe (USAFE). For his ac-

accomplishments while in this headquarters, he was awarded a second oak leaf cluster to his Legion of Merit and the "Medaille de Merite Militaire" by France.

In September 1964 General Lavelle was assigned to Headquarters U.S. Air Force as the Director of Aerospace Programs, Deputy Chief of Staff for Programs and Resources. As Director, he was principal backup witness in presenting and defending Air Force programs to the Congress after such programs had been approved by the Secretary of the Air Force and the Secretary of Defense. In addition, he served as Chairman, Air Staff Board, and as Chief, Southeast Asia Programs Team.

Command of the Seventeenth Air Force, headquartered at Ramstein Air Base, Germany, was General Lavelle's next assignment in July 1966. Seventeenth's operations spanned Germany, Italy, and Libya. In this position, General Lavelle commanded a versatile, combat-ready force equipped with supersonic jet fighters and tactical missiles with nuclear, conventional and air-to-air capabilities. Seventeenth Air Force is a NATO-committed major subcommand of USAFE, one of America's strongest overseas air arms and a primary instrument of Western defense.

In December 1967 General Lavelle was assigned to the Defense Communications Planning Group located at the Naval Observatory, Washington, D.C., where he served as the Deputy Director for Forces. In February 1968 he assumed duties as the Director of the Defense Communications Planning Group.

General Lavelle was assigned as Vice Commander in Chief, Pacific Air Forces (PACAF), with headquarters at Hickam Air Force Base, Hawaii, in September 1970. He served in that capacity until assuming command of Seventh Air Force on 1 August 1971.

He retired from active service 7 April 1972. His military decorations and awards include the Distinguished Service Medal, Legion of Merit with three oak leaf clusters, Air Medal with one oak leaf cluster and Air Force Commendation Medal with one oak leaf cluster.

General Lavelle is married to the former Mary McEllin. They have seven children: Mrs. Barbara A. Foster; Mrs. Geraldine M. Enloe; John D., Jr.; Patricia E.; Michael J.; Timothy W.; and Dennis K.

STATEMENT OF GEN. JOHN D. LAVELLE (USAF, RETIRED)

General LAVELLE. Mr. Chairman, it is a pleasure to appear before your subcommittee today, and to explain the circumstances surrounding my recent retirement. I was assigned, as General Ryan said, as commander of the 7th Air Force on August 1, 1971, just shortly before the start of the buildup of the North Vietnamese forces and their massive infiltration into Laos and South Vietnam which eventually resulted in the heavy fighting and eventual overrun of the Plain of Jars in Laos and the more recent invasion of South Vietnam. When I first took over, it was in the middle of the rainy season; however, starting in late September, as the rains subsided and the roads started to dry out, there was increased activity as the North Vietnamese infiltrations began. From this time, the infiltration, accompanied with the increased aggressiveness of the North Vietnamese, was constantly on the build.

I believe this committee has a good appreciation of the North Vietnamese increased aggressiveness this year, but to illustrate the point, I'd like to make some very rough comparisons. Considering the air war only, from the start of the dry season, which began November 1, through the end of February of this year, a period of 4 months, incursions into Laos or northern South Vietnam by NVN Mig's increased by a factor of about 15 over the same period for the previous year. Surface-to-air missile firings by a factor of about 10. The North Vietnamese had added new radar sites in the southern part of North Vietnam and had netted these with their missile radars to form a most sophisticated and complex air defense system. This meant that the

ground control intercept type heavy radars were netted with their surface-to-air missiles as one integrated system, therefore either the GCI radar or the missile radars could pass target information to the missile firing units. Another indication of the aggressiveness of the North Vietnamese was that on the day their ground forces launched their attacks in the Plain of Jars, a substantial number of enemy Mig's were airborne and several of them crossed into Laotian territory.

As you know, the air war in South Vietnam is tightly controlled and operated under quite specific rules of engagement. These rules of engagement had not changed substantively since we ceased bombing North Vietnam in 1968. However, the environment over there had changed considerably. I don't think there were any missile sites or radar controlled heavy antiaircraft artillery in the southern part of North Vietnam in 1968. In February of this year, in addition to the sophisticated air defense control system, there were many occupied surface-to-air missile sites, along with many radar controlled heavy anti-aircraft artillery. The North Vietnamese also used a new tactic which greatly reduced warning to our crews of missile launches.

The rules of engagement, although being fairly specific, also require some interpretation or judgment factor added. With this air defense buildup, increased aggressiveness of the North Vietnamese and the large number of North Vietnam regular army units that had infiltrated south or moved into position to move across the DMZ, I chose to make a very liberal interpretation of these rules of engagement. In certain instances against high priority military targets I made interpretations that were probably beyond the literal intention of the rules. I did this since the crews were operating in an environment of optimum enemy defense. It was these isolated instances reported as protective reaction strikes that resulted in General Ryan recalling me and questioning me on what we were doing.

Mr. Chairman, in view of the publicity of the last 2 days I would like to digress from the script, and point out that these protective reaction strikes that I am talking about were in the neighborhood of 20, probably less; they were four- or eight-airplane strikes, they were not massive raids. They were against missile sites, missiles on transporters, airfields, the 122- and 130-millimeter guns and radars. They were not "extensive raids."

From General Ryan's viewpoint in Washington, I had exceeded my authority. I can sit here now and understand his position, but at that time as the commander on the spot concerned with the safety of the crews and, at the same time trying to stop the buildup that was going on. I felt that these were justifiable actions.

I had previously let it be known to General Ryan that because of personal reasons, that if he did not have an assignment for me on the east coast this year, I would probably request retirement. So when he recalled me and questioned me on my conduct of the air war and informed me he intended to replace me as 7th Air Force commander, which is certainly his right and his responsibility, I elected to retire.

I was retired with a physical disability because of a heart murmur, emphysema, and a disc problem that causes aggravated pains in my hips and legs, particularly after heavy exercise or if I sit for a long while.

Thank you, Mr. Chairman.

Chairman HÉBERT. Thank you, General Ryan. Thank you, General Lavelle.

There are just two questions I want to try to establish as a basis, not to go into the examination, but to understand exactly what we are talking about.

General Ryan, in these alleged violations of operations agreements, how many different actions did you examine?

General RYAN. Mr. Chairman, I believe there were, between November 8 and March 8, some 28 missions.

Chairman HÉBERT. Twenty-eight missions?

General RYAN. Over that period of time.

Chairman HÉBERT. I don't know whether you understood what I said or not. Were 28 examined, or more than 28? In other words, I am trying to establish how many alleged violations did you find. Was it five, six, seven, eight, nine or 10?

General RYAN. Twenty-eight.

Chairman HÉBERT. A total of 28?

General RYAN. Were examined; yes, sir.

Chairman HÉBERT. Specific violations?

General RYAN. Right.

Chairman HÉBERT. Out of how many operations?

General RYAN. Something on the order of 25,000 sorties.

Chairman HÉBERT. Out of 25,000 sorties flown there were documented—

General RYAN. About 28 different missions which equated to about 147 sorties.

Chairman HÉBERT. Out of this vast number?

General RYAN. That is right.

Chairman HÉBERT. I wanted to establish what we are talking about, because the committee has asked for the particulars of each of these alleged violations, and I understood from previous conversations that this is one of the areas we cannot discuss in public. But we expect to discuss that in executive session.

General RYAN. Yes, sir.

Chairman HÉBERT. I am merely trying to lay the ground.

Second, in the area of what is a violation of the rules of engagement, I understand this is also highly sensitive. However—and I am not putting words in your mouth, but I am trying to establish what we are talking about, on a broad basis—the rules of engagement are in general thus:

That a commander cannot order an individual pilot or strike force to go in and strike at a target which has not previously been authorized under certain conditions.

General RYAN. That is right, Mr. Chairman.

Chairman HÉBERT. That is a fair statement?

General RYAN. That is a fair statement.

Chairman HÉBERT. And the last thing I want to establish before Mr. Pike asks questions is this: There has been much said about General Lavelle having a star taken away from him. He was a four-star general. What are the rules or procedures of these stars? Is this a star to the man or to the billet?

General RYAN. Mr. Chairman, it is a star to the billet. When General Lavelle retired, he retired as a major general. He was a four-star general.

It is incumbent upon the services, if they desire, to make a recommendation to the Secretary of Defense, to the President, who then sends it to Congress, that he be advanced on the retired list. Such recommendation was made that he be advanced on the retired list to a three-star general. That is pending in the Congress today.

Chairman HÉBERT. That has to be taken up by the Senate?

General RYAN. That is right.

Chairman HÉBERT. But with respect to reduction, in the general acceptance of the term "taking a star away," is not an accurate description, because it does not follow the man, but goes with the position?

General RYAN. That is right.

Chairman HÉBERT. So automatically when General Lavelle left that command he reverted to a two-star general, or whatever his rank was?

General RYAN. Two-star general was General Lavelle's permanent rank. Depending on the billet he was going into it could have been a three-star. But it is the billet.

Chairman HÉBERT. There was no punishment in removing a star?

General RYAN. Not in the strict sense of the term; no, sir.

Chairman HÉBERT. Mr. Pike, as I said, there will be no limitation on questioning by members of the committee and we are waiving the 5-minute rule. I ask the members to be within the bounds of reasonableness in the time they will take.

Mr. Pike is the one chiefly responsible for our being here today. He has persistently pursued this matter. When he requested a formal investigation, I, of course, immediately granted the request.

Mr. Pike.

Mr. PIKE. Thank you, Mr. Chairman. I would like to start along the line you were following at the close of your questions.

General RYAN, would you name any other four-star generals who reverted to their permanent rank upon retirement?

General RYAN. Mr. Pike, I know of no other four-star general who reverted to permanent—may I correct that?

Mr. PIKE. His permanent grade would have been two grades below; isn't that right?

General RYAN. May I correct that? They all revert.

Mr. PIKE. I am not interested in the technicalities or semantics of it. I am interested in what generals retire at. I am asking if you can name any other four-star generals who have been retired at a grade two grades below their temporary rank.

General RYAN. None that I am aware of, Mr. Pike.

Mr. PIKE. Do you know of any who have been retired at one grade below their temporary rank?

General RYAN. None that I know of, Mr. Pike.

Mr. PIKE. So it is not exactly a normal pro forma procedure that took place in this case?

General RYAN. That is correct.

Mr. PIKE. But you do not consider it to be a punishment?

General RYAN. In the strict sense of the word, yes. I think any man who has attained four-star rank and retires at two stars and is recommended for advancement to one grade higher, there is a semblance of loss there, if you take that in the strict sense of "punishment."

Mr. PIKE. But it is only in the strict sense that you have to interpret it in order to get that characterization of the retirement; is that it?

Don't you think, General Ryan, when it has never happened before to your knowledge that it is something more than just a technical punishment?

General RYAN. Yes. I told you, Mr. Pike, that I thought in the literal interpretation of "punishment," it certainly is going to affect the individual.

Mr. PIKE. All right.

Now, let us get on to these violations which you say took place over a period from November until March.

During that period did not the rules of engagement change in December?

General RYAN. There were changes in the operating authorities in December.

Mr. PIKE. In the month of December was there not a period during which the rules of engagement would have permitted that for which General Lavelle has been punished?

General RYAN. That is correct.

Mr. PIKE. Is it not also true that during the month of February the rules of engagement changed?

General RYAN. That is correct.

Mr. PIKE. And during the month of February they would also have permitted the types of missions which General Lavelle was punished for; would they not?

General RYAN. I don't believe I can answer that in open session, Mr. Pike.

Mr. PIKE. All right.

Mr. Chairman, at this point, and I address this as much to you as to General Ryan, I would like to know why the past rules of engagement, the rules of engagement that were ours from January, say to March, have to be so highly classified. Obviously, we have changed them since March, haven't we?

General RYAN. Oh, yes, sir.

Mr. PIKE. Everything General Lavelle did would be perfectly permissible at the present time, would it not?

General RYAN. As far as the rules of engagement, I believe that is substantially correct, Mr. Pike.

Mr. PIKE. To your knowledge, do we feel compelled to classify past rules of engagement and not talk about what our rules of engagement, that he is being punished for, were?

General RYAN. The rules of engagement are still classified by higher authority, and I am not free to discuss them in open session, Mr. Pike.

Mr. PIKE. Are you free to discuss them in closed session?

General RYAN. Yes, sir.

Mr. PIKE. Were the rules of engagement written?

General RYAN. Yes, sir.

Mr. PIKE. Has the committee been provided with a copy of the rules of engagement, Mr. Reddan?

Mr. REDDAN. No, sir.

Mr. PIKE. Has the committee requested a copy of the rules of engagement?

Mr. REDDAN. Yes, sir.

Mr. PIKE. Can you tell me why the committee has not been provided with a copy of the rules of engagement?

Mr. REDDAN. They supplied the committee with what they called a "summary" of the operating authorities, and said they could not supply the committee with the rules of engagement because of classification.

Mr. PIKE. It is too highly classified? The past rules of engagement are too highly classified for the members of the Armed Services Committee to see now? Is that it?

Mr. REDDAN. That is correct, sir.

Mr. PIKE. When the rules of engagement were changed in December, General Ryan, were those changes in writing?

General RYAN. Yes, sir.

Mr. PIKE. I beg your pardon?

General RYAN. Yes, sir.

Mr. PIKE. And when they were changed back again to the old rules of engagement, was that change in writing?

General RYAN. Yes, sir.

Mr. PIKE. That all took place in the month of December 1971, did it not?

General RYAN. You are correct, Mr. Pike.

Mr. PIKE. Are you telling this committee that we cannot see the writings which were in effect in the month of December 1971?

General RYAN. I am not telling the committee they cannot see it. I am merely saying—

Mr. PIKE. Your orders are such that you cannot tell us?

General RYAN. Exactly, Mr. Pike.

Mr. PIKE. General Lavelle, when did you graduate from West Point, or wherever you graduated from?

General LAVELLE. I never went to West Point, Mr. Pike.

Mr. PIKE. You came up through the ranks; is that right?

General LAVELLE. I graduated from John Carroll University in Cleveland, Ohio, then went into the flying cadet program and was commissioned second lieutenant from the flying cadet program.

Mr. PIKE. General Lavelle, as these rules of engagement changed from the beginning of December to the end of December, and then again in February and you got these—you did receive these writings; is that correct?

General LAVELLE. Yes, sir.

Mr. PIKE. Were they always clear?

General LAVELLE. Yes, sir.

Mr. PIKE. And there was no question in your mind about what they meant?

General LAVELLE. That is correct, sir.

Mr. PIKE. What do you mean, then, when you say, and I quote from page 3 of your statement, "The rules of engagement, although being fairly specific, also require some interpretation or judgment factor added"?

General LAVELLE. The specific changes which were authorized and, in fact, directed in December were quite clear, quite specific.

The standing rules that covered the rest of the normal operation I did believe, and I still believe require judgment on the part of the commander.

Mr. PIKE. So the specific ones covered a period of 5 days; is that correct?

General LAVELLE. Yes, sir.

Mr. PIKE. Were the ones that covered a period of 2 days in February also very specific?

General LAVELLE. Yes, sir.

Mr. PIKE. But all the rest of the time, in your judgment, the rules of engagement were subject to interpretation?

General LAVELLE. Yes, sir.

Mr. PIKE. General Lavelle, when your pilots went out on missions, they were given assigned targets, were they not?

General LAVELLE. Sometimes. There were specific missions of point targets, or assigned targets, that were reconnaissance-type missions, and there were missions of target-of-opportunity types.

Mr. PIKE. There were target-of-opportunity types?

General LAVELLE. Yes, sir.

Mr. PIKE. When the pilots returned from these missions did they not file reports stating what they had attacked, and where they had attacked?

General LAVELLE. Yes, sir. But let me come right up now, Mr. Pike, and say that there were occasions which I found out later, on which they did not—well, at least I know of a couple occasions, where they did not file the correct target.

Mr. PIKE. Had you ever told them not to file the correct target?

General LAVELLE. No, sir.

Mr. PIKE. Had you told them to file the correct target?

General LAVELLE. No, sir.

Mr. PIKE. So it was left up to the pilots as to whether they would file accurate reports of what they had been hitting; is that correct?

General LAVELLE. Oh, I think there isn't any question but that the system demands that they file accurate reports.

Mr. PIKE. You know of only a couple of occasions where the reports were not accurate; is that correct?

General LAVELLE. Of my personal knowledge; yes, sir.

Mr. PIKE. Have you looked into these 28 alleged missions involving 147 aircraft, or sorties, to see whether correct reports were filed on these missions?

General LAVELLE. No, sir.

Mr. PIKE. General Ryan, can you tell me whether correct reports were filed on any or all of those missions?

General RYAN. I can tell you correct reports were not filed on three of the missions.

Mr. PIKE. So out of the 28 missions, correct reports were filed on 25 of them?

General RYAN. I did not say that, Mr. Pike. You said that.

Mr. PIKE. That is what I am trying to find out. I am asking you whether correct reports were filed on any of those missions.

General RYAN. I cannot state whether correct reports were filed on any of those missions, Mr. Pike.

Mr. PIKE. Nobody has even looked at whether the reports were filed correctly on any except the three on which you know they were incorrect. Is that correct?

General RYAN. That is correct, sir.

Mr. PIKE. Now, is it not strange that you would look at three that were filed incorrectly and—did you look at the other 25? Did anybody look at the other 25 to see whether they were correct or not?

General RYAN. They did not correlate all 28. They correlated three, which gave me the information which showed that false reports were being filed, that the rules of engagement were being broken. That was sufficient.

Mr. PIKE. What was the date of this letter you received, General Ryan?

General RYAN. I received a copy of a letter that had been written to Senator Hughes by a noncommissioned officer, and Senator Hughes passed it to Senator Symington, who passed it to the Secretary of the Air Force. I received the letter on March 8.

Mr. PIKE. What was the date of the letter?

General RYAN. The date and the signature on the letter had been removed. Senator Symington's letter was dated March 6, 1972.

Mr. PIKE. General Lavelle, during the period that you were there, did your pilots continually fly reconnaissance missions over North Vietnam?

General LAVELLE. Yes, sir.

Mr. PIKE. As they flew these missions, did there come a time at which they reported sighting tanks to you in North Vietnam?

General LAVELLE. Yes, sir.

Mr. PIKE. Can you tell us when they first reported that?

General LAVELLE. Mr. Pike, I cannot tell you very accurately. I would say it was either—I would guess it was in the month of January.

Mr. PIKE. Did they report seeing Mig's at the three southern fields in North Vietnam, or any of those three fields?

General LAVELLE. Yes, sir.

Mr. PIKE. Did they report seeing 137-millimeter artillery?

General LAVELLE. 130-millimeter, yes, sir.

Mr. PIKE. 130-millimeter artillery?

General LAVELLE. Yes, sir.

Mr. PIKE. Did they report seeing POL stores, or depots?

General LAVELLE. Yes, sir.

Mr. PIKE. Did they report seeing a buildup in SAM sites?

General LAVELLE. Yes, sir.

Mr. PIKE. Did they report seeing a buildup in anti-aircraft artillery sites?

General LAVELLE. Yes, sir.

Mr. PIKE. Did they report seeing SAM's on transporters?

General LAVELLE. Yes, sir.

Mr. PIKE. Did they report seeing more than one kind of Soviet-built tank in southern North Vietnam?

General LAVELLE. Yes, sir.

Mr. PIKE. The T-54's?

General LAVELLE. Yes, sir.

Mr. PIKE. T-34's?

General LAVELLE. Yes, sir.

Mr. PIKE. T-35's?

General LAVELLE. I don't think so. They may have, but I don't remember.

Mr. PIKE. Did you report those findings to higher authority?

General LAVELLE. Yes, sir.

Mr. PIKE. Did you request permission to hit these targets?

General LAVELLE. Yes, sir.

Mr. PIKE. When did you do that, General Lavelle?

General LAVELLE. Mr. Pike, I would guess that I requested of MACV, my headquarters, these authorities in January and February, and I believe in December, but I am not sure.

Mr. PIKE. Was this request made in writing?

General LAVELLE. No, sir.

Mr. PIKE. Was this a written communication?

General LAVELLE. It was made in writing from MACV, but not from me to MACV.

Mr. PIKE. You made the request orally?

General LAVELLE. Yes, sir.

Mr. PIKE. To whom did you make the request?

General LAVELLE. To General Abrams.

Mr. PIKE. Was the request forwarded by General Abrams to Washington for a response, or did he respond to you at that time and place?

General LAVELLE. No, sir. It was forwarded to higher headquarters, requesting authority.

Mr. PIKE. Can you give us any idea of the scope of what you were reporting as to the enemy buildup? For example, how many tanks did your pilots see?

General LAVELLE. Sir, I think we photographed 55 to 60 in the Bat Lake area approximately 11 miles north of the DMZ.

Mr. PIKE. Was this toward the western end or toward the eastern end of the DMZ?

General LAVELLE. Toward the eastern end, 11 to 15 miles north of the DMZ.

Mr. PIKE. You said toward the eastern end. When the North Vietnamese offensive came, where did it come from? Toward the western end or toward the eastern end of the DMZ?

General LAVELLE. Toward the eastern end.

Mr. PIKE. Do you remember when you reported the tanks?

General LAVELLE. I believe it was in January, Mr. Pike. It may have been in February.

Mr. PIKE. Do you recall when you got your answer to your request that you be permitted to hit these targets?

General LAVELLE. Sir, the type of answer that we got was "Develop a plan and be prepared"; to be prepared to hit them when we received permission from higher headquarters.

The February raid you talked about was one of these raids which did come to us with permission to hit the 130-millimeter guns.

Mr. PIKE. Did you get permission to hit the tanks?

General LAVELLE. No, sir.

Mr. PIKE. You were allowed to hit the 130-millimeter artillery, but not the tanks.

Were you permitted to hit the POL stores?

General LAVELLE. The December permission that came authorized us to hit POL stores.

Mr. PIKE. That was during 5 days in December.

Mr. Chairman, I have been going on for a long time here. I would just as soon let somebody else ask questions, and I am sure they have some, while I take time to think.

Chairman HÉBERT. Mr. Gubser.

Mr. GUBSER. General Ryan, to your recollection, has any four-star Air Force general ever been retired for countermanding orders from higher authority?

General RYAN. Not to my knowledge, Mr. Gubser.

Mr. GUBSER. In other words, you don't know of another four-star general who has been retired for that reason?

General RYAN. No, sir.

Mr. GUBSER. Or asked to retire?

General RYAN. No, sir.

Mr. GUBSER. I am going to have to ask you to answer a hypothetical question. Let's assume that situation had occurred. Would you, as Chief of Staff of the Air Force, have recommended a reduction in rank?

General RYAN. I don't quite understand your question.

Mr. GUBSER. Assume that a man were asked to retire from the Air Force because he had countermanded orders from higher authority. Would you personally recommend a reduction in rank?

General RYAN. Well, in a general sense I think so, Mr. Gubser.

Mr. GUBSER. In other words, you would feel if a man did countermand orders from higher authority that punishment would be in order?

General RYAN. Well, I think he should be removed from a position of responsibility where he has a capability of countermanding those orders.

Mr. GUBSER. How about punishment?

General RYAN. And punishment in a sense.

Mr. GUBSER. Could reduction in rank be part of that punishment?

General RYAN. I think in the circumstance, yes, it is; or in a general sense.

Mr. GUBSER. I take it from your responses to Mr. Pike, General, there are facets and facts regarding this entire affair which you just simply cannot tell us in open session. Is that correct?

General RYAN. I cannot get into the specifics of the rules of engagement in open session, Mr. Gubser.

Mr. GUBSER. Is that not the crux of the entire matter?

General RYAN. That is part of the crux, Mr. Gubser. The other part of the crux is the reports.

Mr. GUBSER. The reports, yes.

General RYAN. Exactly.

Mr. GUBSER. In other words, before we publicly conclude that the Air Force has been derelict here and that the Air Force has meted punishment unjustifiably, certainly this committee ought to hear the rest of the story in executive session; is that correct?

Chairman HÉBERT. I will say for the Chair, Mr. Gubser, we are going to get the whole story in executive session.

If I may say, General Ryan did answer truthfully. You asked him did he know of any four-star general who has been reduced, and he answered you truthfully "no."

Mr. GUBSER. That is all I have. Thank you, General.

Chairman HÉBERT. Mr. Lennon.

Mr. LENNON. You stated that out of 28 reports that were filed, General, three of them were obviously a misstatement of fact and truth.

General RYAN. That is correct, Mr. Lennon.

Mr. LENNON. At this point in time, or since this disclosure was made, what action has been taken against, or to determine what happened in the offices of the flights, or to the pilots involved in these three missions in which you say clearly a false statement was made?

General RYAN. It was determined by my Inspector General that the impetus behind reporting falsely had come from General Lavelle.

Mr. LENNON. Will you be more definitive, that "the impetus" for filing that false statement by these officers had come from General Lavelle? Would you be more descriptive and definitive as to in what way the impetus came that caused an Air Force officer to sign a false report?

General RYAN. To fully explain I have to go into the rules of engagement in detail, which I am not authorized to do in an open session.

Mr. LENNON. Was that determination that the impetus was provided for by General Lavelle in causing these men to file false statements, did that become a factor in the decision that you made regarding the capability and the reliability of General Lavelle?

General RYAN. A very definite portion.

Mr. LENNON. A very definite portion?

General RYAN. Yes, sir.

Mr. LENNON. General Ryan, at the time you accepted the retirement of General Lavelle, which became effective April 7 of this year, you had not publicly, or did not publicly, make a statement that he was relieved of his command of the 7th Air Force by you because of irregularities in conduct of his command responsibilities.

General RYAN. That is correct, Mr. Lennon.

Mr. LENNON. It was the investigation order by Chairman Hébert through the Investigating Subcommittee which caused you to make that statement which you did make, I believe, on May 15 of this year.

General RYAN. You are correct, Mr. Lennon.

Mr. LENNON. Do you, for the record, at this time desire to indicate why it took a possibility of investigation, or the obvious fact that it was coming about, as justification for you to make a public statement related to the alleged irregularities and conduct of his command responsibilities, when you did not see the wisdom or the desirability of doing that before this point in time?

General RYAN. As I said in my statement, Mr. Lennon, General Lavelle applied for retirement, and when I was asked about his retirement I told them why he retired. I saw no reason for going public on why he was relieved.

There are two different actions here, there is retirement, there is relief.

Mr. LENNON. We get down to the gut issue, the relief from his command was not commented on at the time it was accepted. It was only after the fact that Chairman Hébert ordered the Investigating Subcommittee to make this investigation that the Air Force responded, through your statement, that he was relieved of his command because of irregularities in the conduct of his command responsibilities.

Now, I think it is very important, the way you responded to my question concerning the false statement which you categorically made, or with what you charged these men on this particular mission,

that that was inexorably related to the decision you made concerning the relieving of General Lavelle from his command. And you say that will have to be delineated and discussed in executive session?

General RYAN. Yes, sir.

Mr. LENNON. That is all, Mr. Chairman.

Chairman HÉBERT. Mr. Pirnie.

Mr. PIRNIE. No questions.

Chairman HÉBERT. Mr. Dickinson.

Mr. DICKINSON. Just a couple quick questions, if I may.

General Ryan, you said it was not you who made the decision to deny the House Armed Services Committee the copies of the rules of engagement and the subsequent changes. Who did make the decision? You don't have many people over you.

General RYAN. Well, I think you would have to ask the counsel, Mr. Dickinson. I don't know who made the decision.

Mr. DICKINSON. I see. You did not make the decision?

General RYAN. No.

Mr. DICKINSON. But you said you are proscribed, or prohibited from making them available.

General RYAN. I said I was proscribed from discussing them in open session.

Mr. DICKINSON. I see. But can you make them available to the committee? And will you make them available to the committee?

General RYAN. I will discuss the rules of engagement with the committee in executive session.

Mr. DICKINSON. Well, I think it would be beneficial—I don't know what is in them. But I would think it would be beneficial if we had the actual printed copies of whatever the rules were, whatever orders were issued, and the changes.

From what I understood you to say, you do not have the authority—or do you have the authority to make these available to us?

General RYAN. I do not have the authority to make these available. You would have to go to the Department of Defense for those.

Mr. DICKINSON. We would have to get those from the Secretary of Defense, as far as you know?

General RYAN. I imagine that is the administrative way.

Mr. DICKINSON. And not from the JCS.

General RYAN. That is correct, sir.

Mr. DICKINSON. When General Lavelle made his request to hit the targets that he has identified as being in North Vietnam, orally to General Abrams, what is the line of command then for General Abrams to be able to authorize such a request? Would he go to CINCPAC or would he go directly to you, or to JCS?

General RYAN. Go to CINCPAC. CINCPAC would normally then come to the JCS and the Secretary of Defense.

Mr. DICKINSON. Is that what happened, or do you know?

General RYAN. I cannot address myself to a specific request. But there have been requests that followed that chain.

Mr. DICKINSON. It is my recollection, and I would like you to correct me if I am wrong, that much of the communications and requests and direction of operation of the air war, and the ground war, too, in Vietnam, do not necessarily go through CINCPAC. They are quite often just given information copies, but it is directly from the Penta-

gon and from Washington to MACV without necessarily having to get permission and go through CINCPAC.

Is that right or wrong?

General RYAN. I don't believe I am in a position to comment on that.

Mr. DICKINSON. You don't know?

General RYAN. I don't know. The messages I have seen going out were sent through CINCPAC. I am not saying there are no other messages.

Mr. DICKINSON. It is my recollection that quite often CINCPAC is sort of cut out of the loop there, and MACV has direct communication between Washington and MACV so far as the operation of the war in Vietnam, whether it be air war, ground war, or at sea. You don't know whether this is so or not, or you think it is not so?

General RYAN. To my knowledge things have gone through CINCPAC, Mr. Dickinson.

Mr. DICKINSON. That is all I have, Mr. Chairman. Thank you.

Chairman HÉBERT. Mr. Daniel?

Mr. DANIEL. General Ryan, in World War II General Spaatz ordered the Dresden and Leipzig raids, which were outside the bombing policy at that time, now the rules of engagement.

As I recall, General Marshall was quite upset and sent a stern wire directing such raids be discontinued. Was any such wire or information or order sent to General Lavelle?

General RYAN. No. When I received the investigation—when I found out about it, I ordered General Lavelle to Washington. I then notified the people out there that there would be no more of this type of activity.

Mr. DANIEL. Thank you, Mr. Chairman.

Mr. HÉBERT. Mr. Hunt.

Mr. HUNT. Thank you, Mr. Chairman.

General Lavelle, it would appear that we are discussing, in the final analysis, 28 violations. Is this correct?

General LAVELLE. I don't believe that the number is correct. I believe if we got down to looking at them, it would be less than 20. But we are in the ball park.

Mr. HUNT. The strikes that were conducted here in question, as I understand, were just north of the DMZ on concentrations of their 130 millimeters and other concentrations of POL?

General LAVELLE. Sir, they were on airfields, radars, missile sites, missiles on transporters, and equipment that was with the missiles on the transporters, on the heavy guns.

Mr. HUNT. At that time you considered the North Vietnamese to be the enemy to be attacked?

General LAVELLE. Yes, sir.

Mr. HUNT. Were your strikes successful?

General LAVELLE. Very.

Mr. HUNT. What you did was attack the enemy with successful strikes?

General LAVELLE. Yes, sir.

Chairman HÉBERT. Mr. Mollohan.

Mr. MOLLOHAN. Thank you, Mr. Chairman.

General, there is one area on which I am not quite clear, as to assignment of a general from a lesser grade or billet and upon assignment to a higher grade or a billet that carried four stars, he would be immediately elevated to an appropriate grade for that assignment.

I understand, in other words, if we have a two-star general in a certain place, to be transferred to command of the 7th Air Force, he is automatically elevated on a temporary basis to four-star rank?

General RYAN. Not automatically, sir. The service which nominates, say in this case, will nominate through the JCS, through the Secretary of Defense, who sends it to the President recommending that this officer be promoted to three or four stars. The President then sends it to Congress, if he concurs, and Congress, the Senate Armed Services Committee, rules on the elevation to that post.

Mr. MOLLOHAN. But it is customary for a commander of the 7th Air Force to carry the temporary rank of four-star general.

Is this not also customary when that temporary four-star general has been relieved of that assignment and reverts to another assignment which would carry lesser rank, would he not automatically drop back to that lesser rank?

General RYAN. Yes, sir. According to procedure, that is correct. When he comes out of that billet he automatically reverts to his permanent grade, because all three- and four-star billets are so designated.

How, in practice, Mr. Mollohan—I do not mean to confuse you—we transfer, say—well, a good example would be General Wade who came from Chief of Staff, SHAPE, a four-star billet, and came in as my Vice Chief of Staff, another four-star billet.

Mr. MOLLOHAN. Has that been the pattern in the past, that you have had up to this point in time?

General RYAN. I would say that has been the pattern in the past.

Mr. MOLLOHAN. Have we had any situations where this did not prevail, where we did not have a four-star billet available and it was necessary to assign the man, the general, or temporary rank, to a lesser assignment?

General RYAN. I personally do not know of any four-star, Mr. Mollohan. I know personally of a three-star to which that happened a number of years ago.

Mr. MOLLOHAN. Then the fact that General Lavelle dropped back to the two star when he was relieved of his assignment there was not in substance a penalty; this was a matter of procedure which would be expected if he were relieved of that particular command?

General RYAN. Yes, sir.

Mr. MOLLOHAN. That is all, Mr. Chairman.

Chairman HÉBERT. Dr. Hall.

Mr. HALL. Mr. Chairman, I think I understand the personnel situation and the difference in the requirements of the code for serving in specified positions as designated by the President and approved by the Senate, as they advise and consent, having been in that position; and, simply stated, it is just the difference between the exigencies of the service, carrying Air-Force-of-the-United-States rank for a specific tour of duty, and being a "regular file," and what rank is carried there, and whether or not when reassigned there are enough vacancies to carry them or not, unless there is what we in the legislative halls would call malfeasance in office, or other reasons for action.

I think that has been well clarified. All you need to do is to read the Congressional Record any day to learn that recommendations are made for specific assignments to see that it carries out the intent of the statutes, as the Senate advise and consent.

Mr. Chairman, I have also re-read the Constitution of the United States concerning these hearings, and satisfied myself that we are right and proper to be having such a hearing, as of course you would know in your wisdom, otherwise you would not have arranged for it.

The duties of the Congress are very specific in this regard. There is no question about that, albeit we seldom tell the executive branch, or even the armed services, how to accomplish their mission, having once raised that service, supported it, and determined general policy.

Finally, I would have no questions in open session that would be of benefit to the country; that is, in addition to what has already been brought out, unless it is to possibly reemphasize the forthrightness of both General Ryan's and General Lavelle's statements, and thereby bring attention to the question of physical injury or personal desire within the rights of retirement.

It would seem to me that General Lavelle, because of a personal and domestic situation in addition to all of these allegations which we are going to investigate in closed session, has good and ample reason for physical retirement, and probably is wise to have requested same.

General, I will ask you, therefore, only one question.

In view of your slipped disc, in view of your other physical disabilities, in view of your personal family domestic situation, which you thought would make it appropriate for you to be along the east coast somewhere, in your mind and after due time for consideration, do you think your physical—by that, I, as a physician and a surgeon, therefore perhaps feel justified in bringing this out—I include mental attitude as part of the physique—did you upon proper reflection think there was anything in your physical status that might have influenced your judgment?

General LAVELLE. Influenced my judgment to retire?

Mr. HALL. No, sir. Your judgment in interpreting directives, rules of engagement, the reasons for individual interpretation, as you mention in your statement, and so forth?

General LAVELLE. No, sir.

Mr. HALL. You at no time had suffered what in the old days we would have called "battle fatigue," or claustrophobia, or any other situation, along with a slipped disc, leaky heart valve, the other things that you are retired for, that might have affected your judgment?

General LAVELLE. No, sir.

Mr. HALL. That is all, thank you, Mr. Chairman.

Chairman HÉBERT. Mr. Randall.

Mr. RANDALL. I note on page 3 of your statement you concede that you chose to make this liberal interpretation of the rules of engagement, then you use the words: "probably beyond the literal intention of the rules."

In the rest of your statement you say because of what you call "protective reaction."

I have read the account in the New York Times, and the others. Would you define for us "protective reaction," in your own mind, what

you believed you were doing? Does it have something to do with the testimony here a few moments ago, opportunity targets, or something of the kind, or is it more than that, beyond that?

General LAVELLE. I don't believe, Mr. Randall, that in open session I am going to give you a worthwhile answer. I can try.

Mr. RANDALL. All right. Maybe you can do this:

On page 2 of General Ryan's statement, this discussion of your physical condition at your retirement on March 31, the options presented to you at that time, in that discussion, that conversation as you recall it, was there any urging as to which option to take?

In other words, were you urged to retire? Was there any discussion about this new assignment rather than retiring, or do you recall that?

General LAVELLE. No, sir, there wasn't any.

Mr. RANDALL. No discussion at that time?

General LAVELLE. It was a matter that General Ryan was dissatisfied with my operation and was going to replace me. So I said I would prefer to retire.

Mr. RANDALL. That is about the size of it at that time?

General LAVELLE. Yes, sir.

Mr. RANDALL. Thank you, Mr. Chairman.

Chairman HÉBERT. Mr. Pike, do you have further questions?

Mr. PIKE. Yes, sir.

Mr. LENNON. May I ask one question?

Mr. PIKE. Go ahead.

Mr. LENNON. Mr. Chairman, the question I am about to ask, you may rule should be answered in executive session. I will get it on the record and not ask the gentleman to respond until after you rule.

General Lavelle, General Ryan has just stated that it is now conclusively proven that three of the reports were false and that your intervention and your participation in the filing of those alleged false reports was a factor in his decision and his reporting the decision on up to the Secretary of Defense in your chain of command.

Do you want to comment on that?

Chairman HÉBERT. You may comment.

General LAVELLE. Yes, sir. I believe General Ryan used the term that the "impetus" came from higher level.

Mr. LENNON. He said it was a "factor" in his decision to relieve you of your command.

Will you respond both ways, please?

General LAVELLE. Yes, sir. I believe the date is the 9th of March, and I don't have records, but—and the 9th of March General Wilson, the inspector, showed me these same reports which he eventually showed General Ryan.

I could not believe them, and went into the details to find out what had been reported.

As of that day I stopped all of these strikes, when I found out of this detailed inaccurate reporting, no more strikes were made from the day I found out about it.

Mr. LENNON. And you are not under oath, but you are saying here now that you had nothing whatever to do, to any degree, or in any manner, in causing those three now-established false reports to be entered?

General LAVELLE. No, sir. If I left that impression I did not mean to.

Mr. LENNON. What explanation did they give to you as to how these false reports were related to your change in command, by either General Ryan and/or General Wilson, or anyone else who has been involved in this matter?

General LAVELLE. I discussed and admitted to General Ryan, and to this committee, that I told our people we could not report "no enemy action."

Mr. LENNON. Were these false reports? You read them, you saw them. Were they false reports?

General LAVELLE. Yes, sir.

Mr. LENNON. What action has been taken against these individuals who signed these false reports?

General LAVELLE. Sir, when this was brought to me—

Mr. LENNON. Yes, or no, and then explain it. What action, if any, has been taken against these individuals who have now been conclusively shown to have signed these false reports?

General LAVELLE. None.

May I explain?

Mr. LENNON. Of course.

General LAVELLE. These were not signed reports, they are the kind of low-level reports by rote. You fill out A, B, C, D, through FF. When that same question was asked of me by General Ryan I told him then, I am the commander and the buck stops here.

Mr. LENNON. These individuals have not been confronted with what you say and what General Ryan now says conclusively are false reports; no confrontation?

General LAVELLE. In my opinion, these are hard-working, wonderful Air Force people who made their interpretation of what they thought we wanted. And I accepted responsibility for it, even though I did not do it and did not have knowledge of the detail. It was my command and I should have known.

Mr. LENNON. I got the impression from General Ryan's statement that the inference was that you had covered up these reports, that you participated in and approved of them. Perhaps I am wrong.

General LAVELLE. I told—

Mr. LENNON. If you want to go ahead, go ahead.

General LAVELLE. I told my staff that we could not report "no enemy action."

Mr. LENNON. You are saying then, that in your judgment at least your relationship to these alleged false reports, now established false reports, had nothing to do with your relief from your command?

General LAVELLE. No; quite the contrary. I am sure they did.

General Ryan told me that at that time, as you have been told that this morning.

Mr. LENNON. Would you verify what General Lavelle just stated, General Ryan?

General RYAN. That I discussed the false reports with General Lavelle?

Mr. LENNON. Yes.

General RYAN. Indeed I did, Mr. Lennon.

Mr. LENNON. What did you mean by your earlier inference that was related and was a factor in your decision?

General RYAN. General Lavelle just answered your question, that he directed that they would not report "No enemy reaction."

Mr. LENNON. Is that a false statement?

General LAVELLE. Sir, we are going to have to get into executive session.

Mr. LENNON. I see. That is right. Thank you, Mr. Pike.

Mr. PIKE. Thank you.

Had you ever discussed the rules of engagement with General Ryan before you were called back to Washington, General Lavelle?

General LAVELLE. No, sir.

Mr. PIKE. Had you discussed them with General Abrams?

General LAVELLE. Yes, sir.

Mr. PIKE. Aside from the time that you requested permission to hit some of these targets which you saw in the buildup, did you ever discuss the rules of engagement with General Abrams?

General LAVELLE. Specifically no, Mr. Pike. But it was constantly something we were concerned with and discussed, or commented on, from time to time. But no specific general discussion.

Mr. PIKE. Did you believe that your superiors were aware of what you were doing?

General LAVELLE. As far as the targets that we were hitting and knocking out, yes, sir.

Mr. PIKE. Did you ever ask a pilot to falsify a report?

General LAVELLE. No, sir.

Mr. PIKE. Did you ever know prior to the arrival of the inspector general and his examination that any of these reports had been falsified?

General LAVELLE. Sir, I would like to answer that in executive session.

Mr. PIKE. When did you slip your disc, General Lavelle?

General LAVELLE. Well, I have had a waiver for back and hip problems, for flying, for, I would guess, the last 8 or 10 years.

Mr. PIKE. So that is not the reason you retired?

General LAVELLE. I found over in Vietnam that flying in a fighter was pretty painful, and it was very disturbing.

Mr. PIKE. Did your command responsibilities require you to fly in a fighter, General Lavelle?

General LAVELLE. I believe any commander over there ought to know what his troops are—

Mr. PIKE. That is not what I asked you. I asked you whether your command responsibilities required you to fly in a fighter.

General LAVELLE. I don't think I would have been a good commander if I hadn't.

Mr. PIKE. Did your job require you to do it?

General LAVELLE. No, sir.

Mr. PIKE. Can you tell me anything which would reinforce your statement that you believed that your superiors knew what you were doing? Did you believe this as a result of conversations you had with them?

General LAVELLE. Mr. Pike, first of all, I had a lot of superiors. And I am not saying they all knew, by any stretch of the imagination. But—

Mr. PIKE. Are you saying that some of them knew?

General LAVELLE. Yes, sir.

Mr. PIKE. Can you name any superiors who knew of what you were doing?

General LAVELLE. I reported to MACV.

Mr. PIKE. And the reports were accurate, is that correct? What you reported to MACV?

General LAVELLE. What I personally reported to MACV?

Mr. PIKE. Yes.

General LAVELLE. Yes, sir.

Mr. PIKE. To whom did you report? Was that General Abrams?

General LAVELLE. Yes, sir.

Mr. PIKE. And you believe that he knew what you were doing?

General LAVELLE. I think General Abrams knew what I was doing. I am positive General Abrams in his position at his level has no idea what the reporting requirements were. He never saw a report, at his level.

I also believe that at General Abrams' level and with his vast responsibilities, that he never concerned himself on a particular strike when we got a missile site, or an airfield, that he sat down and debated over the rules of engagement before we did it.

Mr. PIKE. General Lavelle, what was the first inkling that you had that your conduct of your command responsibilities was under question?

General LAVELLE. When General Wilson came out.

Mr. PIKE. Not until he arrived?

General LAVELLE. That is correct, sir.

Mr. PIKE. General Ryan, you received this letter on the 8th day of March from this NCO through Senator Hughes, I think you said.

General RYAN. Senator Symington.

Mr. PIKE. Through Senator Symington?

General RYAN. That is correct, Mr. Pike.

Mr. PIKE. Do you recall, General Ryan, who Col. Philip Stevens in the U.S. command office in Saigon was?

General RYAN. Who, Mr. Pike?

Mr. PIKE. Col. Philip Stevens?

General RYAN. The name does not ring a bell with me, Mr. Pike.

Mr. PIKE. Are you aware that on the same day, March 8, there was a report in the press to the effect that that Col. Philip Stevens, the Chief of the U.S. Command's Information Office, said he would no longer disclose information on the number of missions flown on protective reaction raids or disclose the number of planes on those raids?

General RYAN. No, I was not aware of that, Mr. Pike.

Mr. PIKE. Do you think it is pure coincidence that this took place in Saigon on the day that you got this letter?

General RYAN. Well, I had no knowledge of the other report, if that is what you are getting at, Mr. Pike.

Mr. PIKE. When you got this report, did you talk to your superiors about it?

General RYAN. Yes, sir.

Mr. PIKE. The same day?

General RYAN. Yes, sir.

Mr. PIKE. General Lavelle, you have been quoted, I think, in the paper, or somewhere, as saying that given the information that you

had, the intelligence you had received, if you had it all to do over again, you would do it the same way again. Is that an accurate statement?

General LAVELLE. Sir, I hope it is not a quote.

Mr. PIKE. Maybe it is not a quote.

General LAVELLE. If I had it to do over again, I would do the same thing, but I would look into and understand the reporting system, so that that would not have happened.

Mr. PIKE. But as far as the missions which were conducted, you believed that they were that necessary to be conducted, is that correct?

General LAVELLE. Yes, sir. And I believe also that they were within an intepretation of the rules of engagement that as the commander on the spot, seeing them, I could make.

Mr. PIKE. Do you believe that if the rules of engagement had been when you were there, General Lavelle, what they are today, you might have prevented the North Vietnamese offensive?

General LAVELLE. No, sir. I don't think we would have prevented it. We would have made it more costly, but I don't think we would have prevented it.

Mr. PIKE. General Ryan, do you think that if the rules of engagement in January, February, and March were what they are today, and we had the same assets out there, the North Vietnamese offensive could have been prevented?

General RYAN. It is purely conjecture on my part, Mr. Pike—I don't know. I don't know.

Mr. PIKE. Mr. Chairman, I am almost through. But I think we are going to wind up with this situation: We are going to wind up with a situation under which General Lavelle feels that he legitimately interpreted the rules of engagement properly in the conduct of his job as commander of the 7th Air Force. We are going to wind up not with a copy of the rules of engagement, but with somebody else's interpretation of the rules of engagement.

And I think we are just playing games with ourselves here if we are getting one side's interpretation of the rules of engagement and not the other side—well, we have gotten General Lavelle's statement that he believed he interpreted them properly. But I think that it is ridiculous for us to try to resolve this without ever getting a copy of the rules of engagement. And I think it is even more ridiculous when you realize those rules of engagement became obsolete about a week after General Lavelle retired.

One last question, General Ryan: When was General Lavelle's successor named?

General RYAN. General Vogt was selected on April 6 and the selection was announced on April 7.

Mr. PIKE. When was he made a four-star general?

General RYAN. When the orders were cut assigning him to the 7th Air Force on April 7, 1972. He had been nominated for another four-star slot.

Mr. PIKE. General Ryan, you said that you offered General Lavelle the option of retirement, or an assignment at a grade two grades below his temporary grade.

In your opinion was General Lavelle's health such that he could carry out the duties of a major general?

General RYAN. In my opinion, yes, Mr. Pike. This was before his physical examination was completed.

Mr. PIKE. In your opinion, was General Lavelle of such character and moral stature that he could properly do the job of an Air Force major general?

General RYAN. In my opinion he could.

Mr. PIKE. General Ryan, do our pilots have to be familiar with the rules of engagement?

General RYAN. Yes, sir.

Mr. PIKE. Do they see the rules of engagement?

General RYAN. I cannot factually answer that, Mr. Pike. But I would say—

Mr. PIKE. Are they supposed to see the rules of engagement?

General RYAN. I would say they are briefed on the rules of engagement, Mr. Pike.

Mr. PIKE. Do they see the language of the rules of engagement?

General RYAN. I cannot answer such a broad statement. No, I don't believe the rules of engagement, Mr. Pike, are taken down by each individual pilot, like the old PIF, that we had initials on them, the original copy.

Mr. PIKE. General, I don't know whether or not they initial them. But I am not Chief of Staff of the Air Force. I am trying to find out whether the pilots see the language.

General RYAN. Mr. Pike, I answered your question. I said the pilots are familiar with the rules of engagement.

Mr. PIKE. You said they are briefed on them. You are prepared to brief us on them. I am trying to find out whether they see the language of the rules of engagement.

General RYAN. I cannot say whether they see the language of the rules of engagement, Mr. Pike.

Mr. PIKE. That is all. Thank you, Mr. Chairman.

Chairman HÉBERT. Dr. Hall?

Mr. HALL. I think it would be appropriate, Mr. Chairman, to put into the record Title 10, United States Code, section 1372, which has to do with grade on retirement for physical disability; section 8962, the higher grade for service in special positions, that is the one that requires the advice and consent of the Senate; section 8066, general and lieutenant general rank also requiring confirmation; and section 8281, commissioned officer grades.

These are the pertinent existing statutes affecting this situation; they need not all be reprinted in the record, but simply referred to.

Thank you, Mr. Chairman.

Chairman HÉBERT. Mr. Gubser.

Mr. GUBSER. General Ryan, was General Lavelle's health or his physical condition any factor at all in any decision you made regarding this matter? Or is it only significant as a factor in General Lavelle's decision to retire instead of accepting a new assignment?

General RYAN. It was not a factor in my consideration, Mr. Gubser, since it was before his physical.

Mr. GUBSER. May I ask the second half of that question of General Lavelle?

Was your physical condition and the fact that you had previously discussed with General Ryan the possibility of personal matters, re-

ferring to an assignment on the east coast—did this health factor ever enter into your decision as to whether or not you wanted to accept a new assignment or retire?

General LAVELLE. Yes, sir. I realized that I would be better off retiring than to be assigned again somewhere in the world. I had 32½ years, was entitled to full retirement, and I determined to retire rather than get another assignment elsewhere.

Mr. GUBSER. Is it possible that had you not had this back problem that had been with you for 7 or 8 years, and you had been in completely perfect health, that you might have made another decision?

General LAVELLE. Sir, I received a letter—let me correct that, the surgeon at 7th Air Force received a letter which he brought to my attention, saying that my next physical would have to be in a—this is not the proper term—but a central, general Air Force hospital, because they would no longer accept a local hospital examination because of all the waivers.

Mr. GUBSER. That is good testimony to the effect that you did have a physical problem.

But let me repeat my last question: Can you conjecture for me as to whether, if you had perfect health and did not have this back problem, and this letter from the Surgeon General had not been in the files, and you had been presented with the same alternative, do you think you might have accepted another assignment rather than take retirement?

General LAVELLE. No, sir. I would have retired.

Mr. GUBSER. In other words—and I am not trying to put words in your mouth, and want you to correct me if I misstate it—your health problem was the most significant factor in your decision to make retirement?

General LAVELLE. I don't believe so. I think I answered the previous question.

Mr. GUBSER. Let's back up a bit. You just told me if you had not had this health problem that you would have accepted another assignment instead of retiring. You just said that. Would you like to strike that in the record?

(Calls of "No, No.")

Mr. DICKINSON. That is not what he said.

General LAVELLE. I don't believe I said that.

Mr. GUBSER. I am glad to be corrected. I don't want to put words in your mouth.

General LAVELLE. I believe, Mr. Gubser, that I said I would have retired anyhow.

Mr. GUBSER. You would have retired anyhow, instead of accepting a new assignment, had you been in perfect health?

General LAVELLE. Yes, sir. Yes, sir.

Mr. GUBSER. Would you agree to this, then, that health was a very significant factor, we won't say whether it was the significant one or not, but it was a very compelling factor in your decision?

General LAVELLE. No, sir. When General Ryan told me he was going to replace me, and no four-star general likes to be replaced, and moved. I said I would prefer to retire.

Mr. GUBSER. I am trying to find out whether it was the possibility of demotion in rank that was the main, compelling reason for your decision to retire, or did health have anything to do with it.

General LAVELLE. Demotion, sir.

Mr. GUBSER. Thank you.

Now I want to go back to this question which Mr. Pike raised as to whether or not you were bound by regulations to fly in the billet which you occupied. I think we all agree that you certainly were not bound by regulations. But do you know of any commander in a comparable area of responsibility who does not for morale purposes and other purposes go out and fly occasionally?

General LAVELLE. No, sir. I think——

Mr. GUBSER. In other words, it may not be in the regulations, but it certainly is a requirement of a good commander. Is that correct?

General LAVELLE. Yes, sir.

Mr. GUBSER. And you accepted that responsibility.

A moment ago, General Ryan, I used the word "countermand" in a question I asked of you. I believe I asked if you ever have known of a four-star general who was demoted or punished for countermanding an order. I am informed I should have used the word "violating" an order. Would you change your answer any?

General RYAN. I know of no other such four-star Air Force officer.

Mr. GUBSER. Do you know of any general officer in the Air Force?

General RYAN. No, sir.

Mr. GUBSER. Have you ever in your career run into a situation of officers being relieved for violating an order from higher authority?

General RYAN. Yes, sir.

Mr. GUBSER. Or punished?

General RYAN. Yes, sir.

Mr. GUBSER. Is it traditional that a reduction in rank is one of the punishments?

General RYAN. Well, it depends. You have to investigate and see what the circumstances are, see if reduction in rank is appropriate.

Mr. GUBSER. Is it uncommon? Is it uncommon for a reduction in rank to be part of the punishment? I think "traditional" is a bad word.

General RYAN. I have known cases where people have been reduced in rank, Mr. Gubser. I cannot say whether it is uncommon or not. We don't have that many.

Mr. GUBSER. Thank you very much.

Chairman HÉBERT. Mr. Pirnie.

Mr. PIRNIE. Thank you, Mr. Chairman.

As I understood your testimony, it is considered by you serious to have a violation of orders, and you felt it was incumbent upon you to take appropriate action; is that correct?

General RYAN. That is correct, Mr. Pirnie.

Mr. PIRNIE. It did not in any sense imply that departure from the orders was for any wrong motive?

General RYAN. No wrong motive; no, sir.

Mr. PIRNIE. And neither did it imply that you would personally disagree with what was done, except that it was a violation of orders.

General RYAN. That states it.

Mr. PIRNIE. And you felt you had to maintain the integrity of command because you, in turn, were responsible to higher authority?

General RYAN. Yes, sir.

Mr. PIRNIE. And they were looking to you to carry out these rules according to the interpretation as you understood it to be?

General RYAN. That is correct, Mr. Pirnie.

Mr. PIRNIE. That factor doubtless entered into your determination that the General was a proper person for reassignment?

General RYAN. That is correct, Mr. Pirnie.

Mr. PIRNIE. You did not question the integrity of his motives nor his capability as a commander?

General RYAN. I have the highest respect for General Lavelle as a commander. In fact it was upon my recommendation that he was promoted to four stars.

Mr. PIRNIE. General Lavelle, reference has been made to this question of flying. Am I correct in concluding that you felt if you were to carry out all of the aspects of leadership according to your standards that you should be in a flying status and be able to fly as the occasion might require. Is that correct?

General LAVELLE. Yes, sir; I would go further and say that is pretty much the tradition of the Air Force, too.

Mr. PIRNIE. You felt that you would be a lesser commander than your personal standard demanded if you did not do so, is that correct?

General LAVELLE. Yes; sir; as a commander I did not fly every day. I did not fly like the pilots.

Mr. PIRNIE. That is why I said the capability to fly.

General LAVELLE. I probably did not fly as much as some of my predecessors.

Mr. PIRNIE. You had reached the conclusion, as I recall your testimony, that flying in a fighter occasioned such physical pain that it was unwise for you to do so, is that correct?

General LAVELLE. I reached the conclusion that it was painful enough that I almost dreaded doing it, sometimes.

Mr. PIRNIE. That would create the wrong psychological state for you to participate as a flier, is that not correct, if you dreaded it?

General LAVELLE. Yes, sir.

Mr. PIRNIE. So I might conclude that it was a rather important factor in reaching your decision?

General LAVELLE. Sir, I would have to state, as I did to Mr. Gubser, that when General Ryan told me he was going to replace me, even were I in good physical condition, I would have requested retirement.

Mr. PIRNIE. That is because, you said, you had 32 years.

General LAVELLE. Yes, sir.

Mr. PIRNIE. And you were able to draw full retirement, and you felt that it would be less than satisfactory to move from a position of full responsibility to some lesser assignment?

General LAVELLE. That is correct, sir.

Mr. PIRNIE. It might be somewhat embarrassing and detract from your own effectiveness.

General LAVELLE. Yes, sir.

Mr. PIRNIE. At least in your own state of mind? Is that correct?

General LAVELLE. Yes, sir.

Mr. PIRNIE. If I understand your testimony correctly, General, you maintain that you at no time directed any falsification with respect to reports, and that you merely accepted responsibility because you said it was the duty of the commander to know, and that the buck stopped there. Is that correct?

General LAVELLE. Sir, it was as a result of my stating that we could not report "no enemy action", that as this went down through the myr-

iad of people in the chain of command, it was the result of my stating that, that there were inaccurate reports submitted.

Mr. PIRNIE. That is why you accepted the responsibility for their action?

General LAVELLE. Yes, sir.

Mr. PIRNIE. It is your belief that they thought what they did was in concurrence with your wishes?

General LAVELLE. I didn't think of it occurring, as a matter of fact, but it happened.

Mr. PIRNIE. Is that the reason you did not proceed against them, because you thought that it might be explained on that ground?

General LAVELLE. Yes, sir. As far as I am concerned the people over there, I think you know, are working 15 hours a day, 7 days a week, trying to do the job the best they can. I believe somebody, someplace, some people, got overeager in trying to report—and I have been shown reports that were definitely wrong. As I mentioned before, I believe it was March 9 or 10 that I was shown this by General Wilson, and we stopped these strikes that day.

I will say further, Mr. Pirnie, in pointing out that when we stopped, that very day I assigned a group of three men to find out how we could continue what we were doing, but report it accurately. But the reports were in such detail, we were not able to find a way where we could accurately report what we were doing.

Mr. PIRNIE. It was for that reason that it was stopped? Not because what was being accomplished was contrary to the basic mission of protection of the forces and stopping the enemy buildup?

General LAVELLE. That is correct, sir.

Mr. PIRNIE. But merely because, as of that time, authority was not granted for carrying out those actions without fulfilling the reporting requirements?

General LAVELLE. That is correct, sir.

Mr. PIRNIE. That is all.

Chairman HÉBERT. Mr. Randall.

Mr. RANDALL. Thank you, Mr. Chairman.

General Lavelle, you made the comment a moment ago that you had several superiors. I think you said that you talked at one time about the liberal interpretation of the rules of engagement with General Abrams. At any time did any other of your superiors, prior to the time General Wilson came out, tell you to stop this sort of thing, and if you did not you would be censured?

General LAVELLE. No, sir.

Mr. RANDALL. No one told you until General Wilson came out?

General LAVELLE. Yes, sir.

Mr. RANDALL. That is all. Thank you.

Chairman HÉBERT. Mr. Dickinson.

Mr. DICKINSON. I don't want to belabor it. I will recap. Technically speaking, General Lavelle was relieved but not demoted. But under the normal course of events in the Air Force, he would have been assigned to another billet carrying the same rank, normally?

General RYAN. That is right, normally.

Mr. DICKINSON. And in that instance he was not offered one carrying any more than a two-star, so while it was not technically a demotion, in effect what resulted was a reprimand?

General RYAN. That is right.

Mr. DICKINSON. That is all.

Thank you, Mr. Chairman.

Chairman HÉBERT. Mr. Hunt.

Mr. HUNT. Thank you, Mr. Chairman.

General, I would like to get a little clarification on dissemination of the rules of engagement. I note you flew in Italy during World War II. So did I. Are the rules of engagement still disseminated to the flying personnel in the same manner they were then, down from headquarters to the wing in writing, from the wing to the group commander in writing, along with the rules of the Geneva Conference, and then disseminated to the pilots at the squadron briefings? Is this the way the rules of engagement are generally called out in Vietnam?

General RYAN. Generally this is true. But I cannot sit here and say that the original document with the original wording is passed down to the pilot and the pilot sits there and reads it.

Mr. HUNT. Yes. But specifically the rules of engagement in all combat units, the Geneva Conference rules are in writing and thoroughly explained to everyone in the combat role, every pilot.

General RYAN. The same thing with the rules of engagement here.

Mr. HUNT. So in the rules of engagement, they are briefed specifically at the level of pilot briefing.

General RYAN. That is correct.

Mr. HUNT. So they understand it.

General Lavelle, would that be your understanding also? Do you have any copy in your possession of the so-called rules of engagement as we are discussing them now, in total? Or would you have received, as we usually receive, the abbreviation, or the interpretation, of the regulations?

General LAVELLE. May I explain rather than a yes or no?

Mr. HUNT. Surely.

General LAVELLE. The rules of engagement have probably been interpreted here as being a nice book that was prepared and sent out.

Mr. HUNT. That is what I am getting to.

General LAVELLE. It really wasn't. It was a compilation of a lot of wires, messages, directives. We in the 7th Air Force took all of these several messages from time to time, and we consolidated them into a manual which we called our "Operating Authorities." This consolidated manual was then sent to the wings, and the pilots in the wings were required to read it and they did get briefings on it.

But I don't think any pilot ever saw the message that came from JCS, as General Ryan tried to point out, in the exact words. In between there was CINCPAC, MACV, and their messages, wires; it is not a neat glossary or binding. It is a lot of wires, rules, regulations, that have built up over the years. We did attempt to maintain these current in 7th Air Force and we did publish them in 7th Air Force, including all of the amendments, additions, et cetera, that came from each of the higher headquarters, and put out what I think we called our "Operating Authorities."

Mr. HUNT. In other words, it is basically the same procedure we followed in World War II; as the changes came in, we posted them and made them available to the wing commanders. Initially I had the

job of posting these for several months there. But it was always disseminated to the lower levels as it went along. And I would assume that you, likewise, were in combat status in World War II.

General LAVELLE. Yes, sir.

Mr. HUNT. I did not find your résumé there. I know the General was in Italy when I was there. You know we digressed a little from the established pattern.

General LAVELLE. Yes, sir.

Mr. HUNT. If the general recalls, we digressed considerably from that pattern at one time on the Swiss international border in the 15th Air Force. General Ryan, I do not recall their demoting General Entwistle or General Twining over that one. I was wondering whether we have two standards or not.

General RYAN. I cannot comment on that particular time, Mr. Hunt.

Mr. HUNT. Thank you.

Chairman HÉBERT. As of now, your position, General Lavelle, is that your retirement request is before the Senate Armed Services Committee, is that correct, with the recommendation that you be retired as a three-star General? Is that correct?

General LAVELLE. No, sir, I don't think so.

Chairman HÉBERT. What is the status? I am trying to find out where your papers are, in connection with Dr. Hall's questions.

General LAVELLE. My retirement has been accepted, approved, I am retired. The recommendation from the Air Force to advance me to three stars on the retirement list is pending before the Senate.

Chairman HÉBERT. Now, in the event that that is granted by the Senate, I am getting down to the monetary clause. As I understand it, perhaps I am in error, your pay, or whatever goes with retirement, is based on four stars, which is the highest rank you held? Is that right?

General LAVELLE. By the statute, sir—

Chairman HÉBERT. That is what we are talking about. That is why it was put in the statute.

General LAVELLE. Pay is dependent on the rank you held at the time of retirement.

Chairman HÉBERT. And you retired as a four-star general?

General LAVELLE. That is correct, sir.

Chairman HÉBERT. Suppose we are rejected by the Senate as a three star, do you still get the four-star pay?

General LAVELLE. That is correct.

General RYAN. That is correct, Mr. Chairman.

Chairman HÉBERT. The committee will recess until 2 o'clock, at which time we will go into executive session.

(Whereupon, at 11:55 a.m., a recess was taken until 2 p.m. of the same day.)

EXECUTIVE SESSION

(The deletions indicated herein were made by the Department of Defense for security reasons.)

Chairman HÉBERT. The committee will be in order.

Members of the committee, we are sitting in executive session. We will be able to sit as long as we don't have votes on our own bill, and the drug bill, which is up for vote right now. If we do have votes, we will have to leave, and will recess subject to the call of the Chair.

General RYAN, when we recessed this morning we had asked you for the rules of engagement. Do you have them with you?

General RYAN. I have the appropriate ones that pertain to this particular set of circumstances, Mr. Chairman.

Chairman HÉBERT. Yes, sir.

General RYAN. With your permission—

Chairman HÉBERT. Please read them.

General RYAN. JCS in their message of June 29, 1970 restated the authority as fighter aircraft, including Iron Hand, were authorized to strike any SAM antiaircraft artillery site in North Vietnam below 20 degrees north which fired at or was activated against U.S. aircraft conducting missions over Laos or North Vietnam. This authority was limited to immediate protective reaction, no subsequent retaliation was authorized.

If I may explain a minute here, an Iron Hand aircraft is our anti-radiation missile-carrying aircraft, the F-105's that carry the Shrike and the Standard Arm, so if a Fan Song radar came up they were authorized to fire the antiradiation missile.

Later, on the 26th of January 1972, authorization was given to employ antiradar missiles against primary GCI sites, ground control intercept sites, which direct the enemy fighters, such as Bar Lock, Big Bar, and associated height finders outside of Route Pack 6 when MIG's were airborne and indicated hostile intent. "Route Pack 6" is the designation of the area generally north of the parallel running through Hanoi.

As I said, outside of Route Pack 6, when Mig's were airborne and indicated hostile intent.

Those were the rules of engagement which pertained to these particular strikes.

A RECCE airplane going over to take pictures of an objective would be escorted by fighter aircraft. If the RECCE airplane was fired at, the fighter aircraft could roll in and destroy the ack-ack or the SAM site.

The Iron Hand aircraft could launch their missile against a Fan Song. They have an indicator in their cockpit which shows that the Fan Song is tracking them, and they can swing around, head into that site and launch their missile.

Those are the pertinent rules of engagement to these incidents, particular incidents.

Chairman HÉBERT. Those are the original basic rules?

General RYAN. Yes, sir.

Chairman HÉBERT. And these are the ones which were changed from time to time?

General RYAN. Yes, sir.

However, the changes have been minor in this category, as far as what we can do on protective reaction strikes, Mr. Chairman. They were publicized in the beginning, about in 1969. But in essence the rules of engagement have been constant that on our protective reaction strikes, escorting our reconnaissance aircraft, that they would be fired on before you took offensive action against that site.

Chairman HÉBERT. Mr. Pike, do you want to pursue this line of questioning as to the implementation and alleged violations?

Mr. PIKE. Yes, sir.

kind of situation, there is an interpretation of "or activated against you."

Mr. PIKE. In your opinion the SAM's were activated, as far as your pilots were concerned, any time you were over North Vietnam?

General LAVELLE. Yes, Mr. Pike.

Mr. PIKE. And the radars and the anti-aircraft artillery.

General RYAN, would you now give us the language by which this basic guideline was modified on the 17th and the 18th of February?

General RYAN. The 17th and 18th of February? Talking about the strikes authorized north of the DMZ versus the 130-millimeter guns?

Mr. PIKE. That is right. Would you give us the language? We have been very precise so far about the language of the basic regulation. Now let's hear the language when they modified it on the 17th and 18th of February.

General RYAN. I don't believe I have it with me, Mr. Pike.

Mr. PIKE. Do you have the language by which it was modified on the 26th of December 1971?

General RYAN. December 26, 1971?

Mr. PIKE. Yes.

General RYAN. May I interpose? These were on preplanned strikes, such as were flown against the 130-millimeter across the DMZ, and under the Proud Deep targets in December, where specific missions were authorized by higher authority, which said "Here is what you can do during these periods."

Mr. PIKE. Well, the—

General RYAN. To get this in context a little bit more, Mr. Pike, under the rules of engagement General Lavelle discussed, and talked about the radars, he is absolutely correct. They have used many different methods of trying to make their SAM's more effective up there.

But on these strikes that we are talking about, protective reaction strikes, they were not protective reaction strikes, they were briefed before those pilots ever took off, to go and hit a target, whether any reaction came or not.

Mr. PIKE. Briefed by whom?

General RYAN. Briefed by their wing commander, upon the direction from 7th Air Force. The targets were preselected, and were not always Fan Song radars or ack-ack.

Mr. PIKE. What were they when they were not Fan Song radars or ack-ack?

General RYAN. Route reconnaissance, armed reconnaissance on a route, trucks.

In addition—in addition—as I brought out this morning and as General Lavelle testified this morning, there is another facet. And that is the false reports that were rendered.

Mr. PIKE. Wait a minute. Let's take one thing at a time.

You have given us a list of 28 of these so-called instances in which improper attacks were made. I don't see one that refers to trucks.

General RYAN. That what?

Mr. PIKE. That refers to trucks?

General RYAN. I don't know what poopsheet you have, Mr. Pike.

Mr. PIKE. I have the one provided the committee, which lists 28, the 28 incidents you referred to in your testimony this morning.

Would you show me the one that is labeled "Trucks"?

General RYAN. Yes, sir, if I may. The Mig's on February 25, 1972.

Mr. PIKE. On the sheet you provided this committee, stamped Secret, it says "Triple A"——

General RYAN. Mr. Pike, I would have to take a look at that sheet.

(Document is handed to General Ryan.)

General RYAN. I am not familiar with this particular piece of paper.

Mr. PIKE. Mr. Reddan, where did that piece of paper come from?

Mr. REDDAN. It was provided to the committee by Mr. Buzhardt, counsel for the Department of Defense. I had asked him for the material which the general now says he has before him, and he said that it was in Vietnam; he was sending for it.

General RYAN. From glancing at this, Mr. Pike, I would say that these were the targets that were reported falsely as having been hit.

Mr. PIKE. Why don't you give us a list of the targets that were actually hit? How many were there altogether? You said this morning there were three that you knew were reported falsely. But how many were there altogether that were really hit?

General RYAN. I know of four in which the results were not as reported on the Op Rep 3s and the Op Rep 4s that were submitted.

Mr. PIKE. May I have back that list that was submitted to the committee, please?

(Document is returned to Mr. Pike.)

Mr. PIKE. What were the dates of the truck incidents you just gave me?

General RYAN. One on February 25, 1972, four F-4s, another on February 25, 1972, eight F-4s. Another on February 25, 1972, five F-4s.

Mr. PIKE. Three, all on February 25?

General RYAN. One on March 4, 1972, nine F-4s.

Mr. PIKE. What in fact was hit on February 25, where the report said "Triple A Site"? There are two of them.

General RYAN. That is right. Both of them expended on trucks. All three of them expended on trucks.

Mr. PIKE. Trucks. All three on trucks.

Would you give us the location, the coordinates of that strike on the trucks?

General RYAN. I would have to submit that for the record, Mr. Pike. (The information follows:)

Mr. PIKE. General Lavelle, can you help us with that? Can you tell us where those strikes on the trucks were?

General LAVELLE. Yes, sir, I believe so.

Mr. REDDAN. General, if you want to make reference to the map, please feel free to do so. There is a pointer there if that will help you.

General LAVELLE. I believe, Mr. Pike, that those were on Highway 15, and at the Ban Karai Pass.

Mr. PIKE. If they had been on the Laos side of the pass, would that have been proper?

General LAVELLE. Yes, sir.

Mr. PIKE. Do you agree with that, General Ryan?

General RYAN. Yes, sir.

Mr. PIKE. There would have been no inhibition if it had been on the Laos side of the pass.

How far on the North Vietnam side of the pass was it?

General LAVELLE. Mr. Pike, I would have to guess. I would say from the border in, 7 to 10 miles. That is not a very accurate answer, and I don't know an accurate answer.

Mr. PIKE. I understand, General, I have done enough of this personally to know that they don't have road signs up saying "You are now leaving the friendly territory of Laos and entering the prohibited area."

What was the fourth one?

General RYAN. SA-2 transporter and POL drums.

Mr. PIKE. What was the date?

General RYAN. March 4, 1972.

Mr. PIKE. And that was reported as a triple A site; is that correct?

General RYAN. That is correct, sir.

Mr. PIKE. Was this determined from reading the pilot's reports by the inspector general, as to how they had been reported?

General RYAN. Can I amplify?

Mr. PIKE. Yes. But I would like to amplify on that. I would like to know who told you, in addition to this letter you got from Senator Symington, who told you these reports were improper?

General RYAN. Op Rep 3's and 4's, the normal reports submitted after a strike, contained the list of targets you have there, AAA's. The wing commander later submitted on this type of strike a Specat, a special message to 7th Air Force, and said, "This is what we really hit."

Mr. PIKE. The wing commander subsequently submitted to 7th Air Force a statement saying "This is what we really hit"?

General RYAN. That is correct, Mr. Pike.

Mr. PIKE. Was this statement a normal transmission form?

General RYAN. It was a special, what we call, "Specat eyes only"; in other words, a message that does not come to the normal distribution centers.

Mr. PIKE. To whom did that message go?

General RYAN. To General Lavelle's headquarters.

Mr. PIKE. Did it go to MACV?

General RYAN. To General Slay.

Mr. PIKE. Did it go to MACV?

General RYAN. No, sir. It went to no one but 7th Air Force.

Mr. PIKE. When was that message sent?

General RYAN. It was generally sent the same day as the strike.

Mr. PIKE. Are you talking now about the incident of March 4 or the incidents of February 25?

General RYAN. In general the same procedure was followed on all of them, on all three of those—all four of those.

Mr. PIKE. I am asking you specifically which you are talking about here now?

General RYAN. All four of them, sir.

Mr. PIKE. All four of them, the message was sent the same day?

General RYAN. I would have to research whether it was the same day. It was within, say 24 hours. I cannot sit here and tell you.

Mr. PIKE. General Lavelle, would you agree that this is what happened on these four instances; that is, a message came through saying, "No, we did not hit what we reported, this is what we really hit"?

General LAVELLE. Mr. Pike, I said when we hit these targets and those specific targets happened to be missiles and missile-associated equipment and the trucks with them, I said "We have to be sure that we get the damage in the data base." I was advised by my Ops officer that he was getting a special report to include this data in the data base. And I was also told of these reports by General Wilson.

Mr. PIKE. Did you see these reports as they came in?

General LAVELLE. No, sir. I have never seen one.

Mr. PIKE. They went to whom?

General LAVELLE. I don't know. They either went to my director of operations or his report section, one or the other.

Mr. PIKE. Were you aware of these reports as they came in?

General LAVELLE. I was aware that he was getting special reports that included the actual bomb damage that was being done.

Mr. PIKE. Were you concerned that the bomb damage report showed damage to trucks or a SAM transporter or to POL, rather than to something that you were allowed to hit?

General LAVELLE. No, sir.

Mr. PIKE. Tell us why. You said they were missile-related equipment. Is that it?

General LAVELLE. Yes, sir.

Mr. PIKE. Did you feel that under the rules of engagement, as you interpreted them, your right to attack missiles would include a missile on a transporter?

General LAVELLE. Yes, sir.

Mr. PIKE. When you say these trucks were missile-related equipment, how were they missile-related equipment?

General LAVELLE. We had picked up, or identified by reconnaissance, missiles on transporters parked alongside the road, waiting for the bad weather, to come through the pass, to come into Laos. They were never alone. The missiles had associated equipment, generator, vans, fuel, or just equipment for the personnel. But we never found a missile on a transporter by itself. We found missiles and trucks with them.

Mr. PIKE. General Lavelle, as to these three incidents on the 25th of February, how did you establish that this took place 7 miles on the wrong side of the border instead of 7 miles on the right side of the border?

General LAVELLE. Photographs, sir.

Mr. PIKE. The photographs showed the trucks still there; is that it?

General LAVELLE. No, sir. When the photographs were brought to my attention, they showed the missiles and trucks there waiting to come into Laos. I directed that we go hit those missiles and trucks.

Mr. PIKE. All right.

General LAVELLE. Mr. Pike, I would like to add, if I may, a few more points here.

In December and January, before we made these strikes, there were four missile firings from Laos, two of them at gunships and two of them at fighters. We expended a tremendous amount of effort attempting to find and destroy those missile sites in Laos.

First of all, they never fired at our aircraft unless it was through the weather or at night. I think I am correct in saying they were all fired through the weather, so we couldn't locate them after they fired.

Secondly, when the weather broke in one instance, I flooded the area with reconnaissance aircraft, trying to find the missiles. We took a picture at 12:10 p.m. of a road intersection, by one reconnaissance aircraft, perfectly clear. A second reconnaissance aircraft came by at 12:30 and photographed a missile on a launcher, 20 minutes later.

Now, when they got in the jungle we just couldn't find them. And when these missiles and associated equipment were lined up waiting for bad weather to come into Laos, this is when we hit them.

Mr. PIKE. Would it have been permissible for you to have hit those targets between the 26th and the 31st of December?

General LAVELLE. 26th and 31st; yes, sir.

Mr. PIKE. Would it have been permissible for you to have hit those targets on the 17th and 18th of February?

General LAVELLE. No, sir—because of their location, Mr. Pike.

Mr. PIKE. Because they were too far north?

General LAVELLE. Yes, sir.

Mr. PIKE. When you reported this—well, you got back the message from your wing commander saying the actual target was three trucks. What did you do with the message?

General LAVELLE. I think I can only tell you what caused it. As I mentioned before, I wanted to assure—

Mr. PIKE. The actual bomb damage assessment.

General LAVELLE. It was used, I believe—I know—to put the correct data in the computer reports, or computer base; and that is all.

Mr. PIKE. Was the information as to what you had hit forwarded on to anybody except a computer?

General LAVELLE. No, sir. It would have been almost impossible for them to dig it out of the computer totals.

Mr. PIKE. We have talked about four strikes, three of them on one day and another one on another day, in which reports were filed showing attacks on AA sites, or guns, which were not in fact made. Out of these 28 instances, were there any more in which that was the case?

General LAVELLE. Mr. Pike, and Mr. Chairman, if the committee would allow me I would like to (1) give you a background—

Mr. PIKE. I wish you would.

General LAVELLE (continuing). And tell you exactly, on the first one.

First of all, I don't believe that there were 28 of these, as I mentioned this morning. However, that is a nitpick because there were some, approximately 20.

If I may give you background: In late November a Mig fired three missiles at a flight of B-52's. The Mig missed, but we had not done anything to stop that Mig. This bothered me, because we had been telling people that with our radar system, over his territory—we did not have radar coverage, it was inadequate, and they had the capability to come up off the field and strike before we could intercept them.

After that strike, about 3 or 4 days later it was _____

took off and attacked the B-52's.

We set about examining how this could happen. We said now that we know it happened, and we have all the clues—had we known this, were there clues that should have alerted us to this? And we developed a series of clues, _____

_____ that could then tell us this pattern.

So I developed a plan, and I called it quick check RECCE. I said "The next time _____

under the guise of a protective reaction reconnaissance _____ we are going to try to get him _____.

As a matter of fact, this happened on the _____ of January. When the intelligence personnel came in to me and showed me that they had enough data that they had picked up to indicate that _____ we immediately looked at possible targets. We had two B-52 cells that night that would have been vulnerable, and we had the RC-135 with approximately 20 people on board. There had been two attempts to get the RC-135 and two attempts to get B-52's, prior to that time.

Based on this I put the plan quick check RECCE on alert waiting for _____

The weather started to deteriorate. It wasn't bad enough to prohibit _____.

So I ordered the execution of the strike _____

That strike went off extremely well, so well that the report came in and said, and I was in the control room running it myself, from the lead pilot—we used code words, but in effect his code word said, "Mission successful. Target hit, did expend, no enemy reaction." That is, we got in and got out before they were awake.

At that point I said, "We cannot report 'No reaction.'" Our authority was protective reaction, so we had to report there was some enemy action.

To go further with the full story here, it was later on, when General Wilson made his examination, he showed me that although in the Op Rep 3 the wing reported enemy reaction, in the detail report that followed it up it was reported, "Enemy reaction and triple A firing."

Now, that was really the first of these missions when we planned and reported this as "Protective reaction." There were others before that that were planned, they were reported properly, and a couple raised questions, on a couple nothing was said. I think there were only two before this.

Mr. PIKE. I do not want to interrupt you. But if you are through, did there come a time when you hit a GCI station before you were permitted to hit GCI stations?

General LAVELLE. Yes, sir.

Mr. PIKE. Can you tell us when that was?

General LAVELLE. I think it was late December.

Mr. PIKE. Late December.

How was that reported, General Lavelle?

General LAVELLE. It was reported that we hit the GCI station.

Mr. PIKE. It was accurately reported?

General LAVELLE. Yes, sir.

Mr. PIKE. Was that report forwarded to MACV?

General LAVELLE. Yes, sir.

Mr. PIKE. And subsequent to that forwarding to MACV the rules were changed to permit you to hit GCI stations; is that correct?

General LAVELLE. About a month later; yes, sir.

Mr. PIKE. Did anyone criticize you for having hit a target which you were not permitted to hit, in December?

General LAVELLE. Mr. Pike, we received a wire from JCS asking us our authority. We responded to the effect that we were authorized to hit radars controlling missiles that were fired at us, we were authorized to hit radars controlling triple A that was fired at us. And we had hit a GCI station that was controlling Mig's that were firing missiles, and this particular GCI station was responsible for loss of _____ aircraft.

Mr. PIKE. Did they repond to your response?

General LAVELLE. Yes, sir. The answer came back and said, "We are sympathetic, but you have no authority. Don't do it again."

Mr. PIKE. And they were sufficiently sympathetic so that they changed the rules to permit you to do it about a month later; is that correct?

General LAVELLE. About 1 month later the rules were changed to allow us to hit a GCI radar when a Mig was airborne and has been declared hostile by competent authority.

Mr. PIKE. Who declared an airborne Mig over North Vietnam hostile?

General LAVELLE. The air defense system _____

Mr. PIKE. But you could not hit the GCI station unless you first found that there was a Mig airborne and then you got word from the ground that the Mig was after you; is that correct?

General LAVELLE. No, sir. The Mig just had to be declared hostile.

Mr. PIKE. What was the criterion by which a Mig became hostile?

General LAVELLE. Sir, I passed out the word that any Mig airborne below 20° north was hostile.

Mr. DICKINSON. Would you yield?

Mr. PIKE. Certainly. Of course I will.

Mr. DICKINSON. What is a friendly Mig?

General LAVELLE. I don't know of one, sir.

Mr. DICKINSON. How can a Mig not be hostile? I do not understand it.

General LAVELLE. The Mig's were sometimes just doing practice flying. I guess the word is "hostile intent." If the Mig's were not up on a practice flight but were heading south or coming into Laos or Vietnam.

It is a difficult decision to make. That is why I told my people that our definition was anything airborne below 20° was hostile.

Mr. DICKINSON. What does that mean, "below 20°"? Are you talking about latitude?

General LAVELLE. Yes, sir.

This is the 20° line. This is Baithong, over here is Thanh Hoa, and this is the 20° line.

Chairman HÉBERT. Mr. Pirnie.

Mr. PIRNIE. Thank you.

General, I can see that that is a relatively helpful definition. What other definition would be used? How could you react if it was just required to demonstrate to someone else that hostile intent was being manifested? Wouldn't that be too late to react?

General LAVELLE. I think so. Yes, sir.

Chairman HÉBERT. Mr. Lennon.

Mr. LENNON. Thank you, Mr. Chairman.

General, I want to express my admiration for what I believe is candor and honesty and complete integrity, at this point in time.

Did you have an opportunity to read the article that appeared in the New York Times of yesterday, entitled "General Bombed North Before Ordered by Nixon"?

General LAVELLE. Yes, sir; I read it.

Mr. LENNON. I would like to ask you to comment:

* * * Military and congressional sources close to General Lavelle said that * * * the general was consistently reporting the buildup to the Military Assistance Command in Vietnam, the headquarters superior to his in the chain of command, but became frustrated when his reports "weren't listened to" and when many targets remained on the banned targets list of the Joint Chiefs of Staff.

Would you comment on that as to whether or not you were constantly reporting these buildups and asking for authority to strike the targets that you have now been relieved of your command for?

General LAVELLE. Sir, we reported them, and rather specifically MACV Headquarters reported them. MACV asked for the authority back here, not I. I went to MACV and asked for it.

There are two things here:

(1) I don't know where they got the words that I was "constantly frustrated," because I don't believe that is accurate.

(2) An interpretation of "constantly reporting," General Abrams did send in word of the buildup, did ask authority, as I said this morning, Joint Chiefs of Staff did tell us to develop plans to hit them and we complied. They were not all approved or released, but this did not "frustrate" us. We understood this.

Mr. LENNON. The article says that you knew your superiors in headquarters in Saigon were aware of these bombing attacks but nonetheless accepted your reports of protective reaction strikes at face value.

Would you comment on that?

General LAVELLE. Yes, sir.

I believe I said this morning, and I can say it more definitely here in closed session, that General Abrams was aware of this air defense buildup. He was aware that in preparation for this invasion they had brought down ——— missile sites into this area. He was aware that they had netted their radars with the missiles. He was aware that there was radar-guided and electrooptically-guided—which I did not mention this morning—triple A down there. He was aware that I told him in that kind of environment if we are going to get these targets we have to plan, we can't go in and hope we get them.

Now, as far as being aware of each one specifically, I don't think so, sir. As to his having any knowledge of the reports, that is way below the detail he would get in on. I am positive he had no knowledge of any reports.

Did I answer your question, sir?

Mr. LENNON. Yes.

Then it cannot be accurately stated that your superiors either at Saigon or anywhere else knew that you were authorizing, at least giving your approval to, bombing missions that were not authorized by the definitive language read by General Ryan. Is that a fair statement?

General LAVELLE. Some of these strikes my superior absolutely knew. I just don't want to say to you, Mr. Lennon, that he knew on all of them.

Mr. LENNON. Whether we agree at all with the language of this article, nevertheless it is going to be a matter of concern to a lot of Americans that they raise this question that they do raise.

Is it possible for a battlefield commander to grossly violate operational orders and not be detected for a period of 3 months?

Now, that is a summation of this writeup by Mr. Seymour Hersh, I believe it is. Is there anything for the American people to believe from this article, sir, that it could possibly be true that a commander such as you could allegedly or actually violate rules or regulations, even related to your interpretation, as to whether this could happen? That is the only thing that gives me concern.

General LAVELLE. The article is unfortunate. I think that I would like to see something that would show that there wasn't any large number of strikes. I would like to get back to specific targets. One I have already covered.

Another one, we struck a radar, a third, we hit Dong Hoi again. A fourth and fifth one, they tried to build missile sites at the DMZ, that we hit.

The targets that we hit under my interpretation that this system was being activated all the time, they were moving further south. This was a most sophisticated and complex system, just north of the DMZ, established for the sole purpose of shooting down our aircraft. And we went in after these targets, contrary to that article, not the ones that would hurt us, but the ones that would hurt the enemy's defense system, so that we could operate. That is all we did, Mr. Lennon.

Now, I will give you a good example: We saw those tanks, we wanted to hit those tanks. But this was outside of any authority. However liberally I wanted to interpret those rules, I could not interpret them to hit those tanks. I had to hold my men back. They said "Let's get those tanks before they come down." I said, "There is just

no way we can make any liberalized interpretation that would authorize that strike."

Mr. LENNON. On page 4 you say, "seen from this viewpoint"—meaning General Ryan—"sitting here in Washington, I had exceeded my authority. I can sit here now in retrospect and understand his position, but at that time as the commander on the spot concerned with the safety," and so forth—I think that is all, Mr. Chairman.

Chairman HÉBERT. Mr. Pirnie.

Mr. PIRNIE. I would just like to comment, General, with respect to one observation, a distinction you drew between the tanks which were clearly an aggravation, and the other type of target which was attacked. I will ask, for my enlightenment, did you actually have to discover that you were being fired upon, to characterize an action as a protective reaction? Is that correct?

General LAVELLE. I am sure that was the intent.

Mr. PIRNIE. If you were flying in bad weather that test was pretty difficult, was it not?

General LAVELLE. Before the Vietnamese netted their ground control radar they had no capability of firing at you expect under control of their missile control radar. These showed up on the radar homing and warning gear.

Mr. PIRNIE. They locked in on you?

General LAVELLE. And a pilot could tell whether he was in weather or not. But once they got into this total netted system we had less chance.

Mr. PIRNIE. When was the point of time when you were convinced that they had acquired accuracy?

General LAVELLE. It was in November or December that I was personally convinced they were using their Bar Lock radars for this purpose. But internally within my own headquarters staff I was getting arguments from my people saying the

Subsequently on a reconnaissance flight we found

In my opinion that is when the tactic changed from the

Mr. PIRNIE. When you became reasonably convinced that that was true, your opinion was transmitted to higher authority; was it not?

General LAVELLE. No, sir.

Mr. PIRNIE. It was not?

General LAVELLE. It was discussed with my boss in the theater. We both knew of this environment, we both knew what was going on.

Mr. PIRNIE. I am wondering whether this had been brought into sharp perspective so as to make clear that interpretation should be expected?

General LAVELLE. Mr. Pirnie, I did not give you a proper answer. I did not understand the question.

Yes; the netting of the system with the air defense radars and the firing with little or no warning was sent forward to our higher headquarters. They did know this.

Mr. PIRNIE. So they were aware that you were operating under new and more critical conditions? Is that correct?

General LAVELLE. I would assume so. I don't know.

Mr. PIRNIE. General Ryan, is that true?

General RYAN. I would say the conditions in the months of November, December, and January were much more critical just north of the DMZ than previously. They moved in a hell of a bunch of SAM's.

Mr. PIRNIE. As far as their capability and threat on our craft, had it been evaluated?

General RYAN. Yes.

Mr. PIRNIE. Did that suggest that there should be some change? Is that the reason why ultimately there was a change?

General RYAN. Yes, sir.

Mr. PIRNIE. Then what we are discussing here is this interval between the time of the report and the time of the reaction to it?

General RYAN. I think, Mr. Pirnie, we are talking about a specific on a GCI radar here, which the authority was expanded to, which allowed you to fire antiradiation missiles at a GCI radar when a Mig was airborne. And that was the expansion of the rules of engagement.

Mr. PIRNIE. Might I ask this: Is there an area in which reaction should be permitted which has not been recognized at the present time? Is there a limitation imposed which might have been involved in these activities?

General RYAN. Not at the present time, Mr. Pirnie.

Mr. PIRNIE. In other words, all of the actions that were taken under the present rules would be acceptable?

General RYAN. That is correct, Mr. Pirnie.

Chairman HÉBERT. Further questions, anybody?

Mr. Dickinson?

Mr. DICKINSON. Thank you, Mr. Chairman.

Let me say first that I very much am impressed with the testimony given by both of you as the witnesses here. I very much respect both of you and the jobs that you have done.

I am really not sure why we are here today. But I think if I had been in your position, from what you have told us here today, I would have done exactly what you did. I think you would be less than a man if you were not trying to do all you could, and if stretching the rules is part of it, then good for you.

I can certainly understand General Ryan's position. He did not make the rules, but it is his job as the highest ranking Air Force officer to carry out these crazy rules for this crazy war which has no parallel or anything to compare with it.

It is unfortunate that you were caught in the situation where you were. I cannot see that there is any fault or any blame, except just a combination of circumstances that brought it about and made it unfortunate.

I would like to ask you one question about the invasion, though. We saw the buildup of supplies and deployment of sophisticated SAM sites, we saw the tanks on the eastern edge of the DMZ. I think 55 was the figure mentioned, about 55 tanks. Did we expect the invasion to go across the DMZ? Did you?

General LAVELLE. Yes, sir.

Mr. DICKINSON. Did you, General Ryan? It did not come as a surprise to you, did it?

General RYAN. It did not come as any surprise, no, sir.

Mr. DICKINSON. I am really getting afield from our present scope of inquiry, but we have some conflicting reports on this one point from some rather highly placed people as to what we expected and why we were surprised.

General RYAN. Let me put it this way: We know he had the capability. Whether he would use it—

Mr. DICKINSON. We knew he had the capability, we knew the tanks were there, and I don't know why we got caught, as one witness said, with our pants down. The tanks came across about where we saw them, on the eastern edge, is that correct, General?

General LAVELLE. Yes, sir.

Mr. Dickinson, I felt over there, like most of us, from reading the intelligence reports, that actually his main thrust and main attack was going to be against the Kontum area, in the highlands. I felt that the attack that was coming across the DMZ or in military region 1 in the north would not be as big as it was. I thought it would be less of an attack and the main force would be down in MR-2 and 3.

Mr. DICKINSON. Am I stating it correctly to say, though, when they developed SAM missiles as close to the DMZ as they did, brought down the newer, more sophisticated types, this would be an indication that it was not, completely at least, for an end run, but would be completely across the DMZ?

General LAVELLE. It was absolutely certain they were going that way; they built three new roads across there for that purpose.

Mr. DICKINSON. Mr. Chairman, I am getting afield, but I think this is something we should develop at the same time. I will yield back.

Chairman HÉBERT. Mr. Daniel.

Mr. DANIEL. Thank you, Mr. Chairman.

General Lavelle, in continuation of Mr. Lennon's interrogation with respect to the New York Times article, are you now in a position to set the record straight as far as that article is concerned? And, if so, do you intend to do so?

General LAVELLE. Sir, I have not talked to the press at any time.

Mr. DANIEL. I am not suggesting you do. I wondered what your feeling was about it.

General LAVELLE. I planned not to do anything about it until after this hearing, and I told Mr. Hébert I would not.

Mr. DANIEL. Who was the prime selector of the targets during the time that has been discussed here today? Who selected the targets that you could hit?

General RYAN. The Secretary of Defense.

Mr. DANIEL. Mr. Chairman, like Mr. Dickinson, I want to commend both the witnesses. I think they have stated their positions well. I can certainly understand why each of them acted the way he did. I can also understand why so much frustration has come out of this war, and which you people have told us here today.

Mr. PIKE. General Lavelle has testified, General Ryan, that he reported this buildup to MACV and MACV reported this buildup back to Washington and requested permission to hit some of these targets. Did this recommendation get to the Joint Chiefs?

General RYAN. Yes, Mr. Pike; it did.

Mr. PIKE. Did the Joint Chiefs recommend that these targets be hit?

General RYAN. They did, Mr. Pike.

Mr. PIKE. General Lavelle, you have testified that you are sure that your superiors knew about some of these incidents. Did you have more than one superior over there?

General LAVELLE. No, sir.

Mr. PIKE. So you are talking, then, about General Abrams; is that correct?

General LAVELLE. Yes, sir.

Mr. PIKE. Can you tell us any specific missions that we have been discussing here that you know that General Abrams was aware of?

General LAVELLE. Yes, sir. The one to get Dong Hoi airfield _____ . Actually there were two of those at two different times that that happened.

Mr. DICKINSON. Excuse me.

Did you get him?

General LAVELLE. No, sir. We got the airfield so _____

When we went for the missiles and the associated equipment—trucks, vans, we had the pictures of them, Mr. Pike. Once they got in I knew I was going to lose a gunship eventually if I let them in. I told him I was going to have to get them.

Mr. PIKE. You talked to General Abrams about it?

General LAVELLE. Yes. As I mentioned before, on some of these missions I definitely talked to him about it.

Mr. PIKE. Sure.

When you were brought back to the States, General Lavelle, did you point out to General Ryan in your discussions with him that for heaven's sake, you are punishing me for this, but General Abrams was aware of it?

General LAVELLE. I mentioned to General Ryan that at least in some of them General Abrams was aware of them.

Mr. PIKE. General Ryan, was the treatment given to General Lavelle recommended by you?

General RYAN. Yes, sir.

Mr. PIKE. Did you ever mention to the Secretary of Defense that General Abrams was also aware of these incidents?

General RYAN. Yes, sir.

Mr. PIKE. And—

General RYAN. Well, I told the Secretary of Defense that General Lavelle had told me General Abrams was aware.

Mr. PIKE. Did you ever discuss it with General Abrams?

General RYAN. No, sir.

Mr. PIKE. Is there any question in your mind about the veracity of what General Lavelle has just said, about his statement that he talked to General Abrams about it?

General RYAN. I have his statement for it. I have the Secretary of Defense's statement. I have the Secretary of Defense's statement that General Abrams told him he had not given him the authority to strike.

Mr. PIKE. That is not the question. The question was not whether he had given him authority to strike, the question was whether he had been made aware in advance of the strike that this was going to take place.

General RYAN. I cannot answer that question, Mr. Pike, because I did not talk to General Abrams.

Mr. PIKE. General Lavelle, did you ever lose any pilots in any of these missions which you undertook which you have been told exceeded your authority?

General LAVELLE. No, sir.

Mr. PIKE. In your judgment, did you ever save any pilots as a result of the missions you undertook which you were told exceeded your authority?

General LAVELLE. Yes, sir.

Mr. PIKE. That is all I have, Mr. Chairman.

Chairman HÉBERT. I would like to make a comment here. It is my personal feeling, I don't know what the committee will do or say. I certainly have the greatest admiration for both of the two generals who are here. General Ryan I have known for years, a long time; I have been one of his greatest admirers and still place myself in that category. General Lavelle I have just met recently to discuss this matter with him. I have the greatest respect for his judgment and integrity and desire of what he wanted to do.

There is just one difference here that seems to have slipped. Both men did what they were doing—I am merely expressing an opinion at the moment. I don't know what the future will develop in these hearings, but the difference, bringing in General Abrams also, the one key thing is that General Lavelle did what he thought was right to do, and in his conversation with General Ryan he admitted that he gave the instructions to falsify the record and there was no alternative for General Ryan but to take the action he took. Now, nobody has ever asked General Abrams whether he told him to falsify the records or not. If General Lavelle had never admitted, in the bloom of his honesty and integrity—had never admitted that he told the records to be falsified—well, "falsification" is a hard word and I don't like to use it. But when General Ryan is in the position of his officer having admitted he committed this action, then General Ryan is in the position of enforcing what he considered to be his duty and his job.

We are caught here in a very peculiar position between two excellent officers and two fine gentlemen. I don't know where we go from here. We will talk in the committee, naturally, and the committee will come to its own conclusions. But I think we have a full picture, and we would not have a full picture if it hadn't been for the honesty and candor of you, General Ryan, and you, General Lavelle.

General LAVELLE. May I make a comment, Mr. Chairman?

Chairman HÉBERT. Yes.

General LAVELLE. Two of them. I think your words were a little harsh.

Chairman HÉBERT. I said they were harsh.

General LAVELLE. I want to repeat a statement I made before. I don't believe there is any way General Abrams would have any knowledge of what was reported. There is no way for him to know that. So even to imply possibly he might is not fair to him. I don't think it is possible that he would know.

The second point is that we are dealing with a rather complex reporting system. The detailed Op Rep 4 report that has this misinformation is something that in my position I never saw. I did not know what was in it until the inspector came out there. When I found out, as of that day I stopped it. But the impetus for what went into that report stems from me by my stating that we could not report "no reaction."

Now, there is a difference here between that and a false report. Sir, I would not make a false report. I could report enemy reaction, because we were reacted upon, all the time.

Chairman HÉBERT. I can understand your explanation. You say it in nicer terms than I did, I am not given to nice language. The ultimate net result was the same.

General LAVELLE. I plead guilty, sir.

Chairman HÉBERT. The net result was the same. I am not faulting you for it. In our profession up here, if they threw one of us out of office every time one of us told a lie we would have no Congressmen. So I am purely sympathetic to the situation. That is the only way I can put it. I wanted to express the observation I have made, because I think all of us on this committee have been around a long time in an investigatory capacity, and I do not recall any time in my experience on this committee, all the years I have been here and the other members have been here, when they have had two individuals who have demonstrated such a high order of integrity and honesty and candor as General Ryan and you have expressed and reflected also. I think this has been very rewarding to us. And it gives us an opportunity to try to set the record straight.

Mr. Pirnie.

Mr. PIRNIE. I am glad you just made the comment that you have. Mr. Chairman, if I might add this one observation: When we like to have people in the United States have the respect for leadership in uniform, it has to be respect that is founded on something more than professional skill. It is for that reason that I certainly heartily endorse what the chairman has said. If people could have witnessed what we have here today, it would show that men adhere to what they believe, and have taken positions and do not apologize for them if they thought they were doing what was right. If only we could have courage and integrity, I am confident we can adjust the areas in which there may be at least a tentative collision. At least it would be our hope.

All I would like to assure ourselves is that we can continue to have this type of strength in leadership, because it is certainly needed, and it ought to be appreciated.

Chairman HÉBERT. Are there any further questions?

Mr. Lennon.

Mr. LENNON. General, on March 8, this year, you received a copy of a letter from the Air Force NCO making these allegations. On the following day, the 9th of March, you dispatched to Southeastern Asia to investigate these charges the Air Force Inspector General.

Who transmitted that letter to you, sir?

General RYAN. The letter was written, as I recall, to Senator Hughes, who sent it to Senator Symington, who sent it to the Secretary of the Air Force.

Mr. LENNON. Who then referred it to you.

General RYAN. Yes, sir.

Mr. LENNON. Does the counsel have a copy of that letter in which the rules of engagement were alleged to have been violated and alleging irregularities in the reports rendered?

Mr. REDDAN. No, sir. We asked for it. We did not get it.

Mr. LENNON. Would it not be helpful, General, to the counsel of this committee, and the chairman, to take that letter, just as you have done, and study it and relate it to your testimony and the testimony of General Lavelle? And can you give me at this time any reason why, in a confidential relationship, our chairman and at least the counsel should not see that letter and relate it to your testimony and to his testimony?

General RYAN. I have no objection to it. It will have to be cleared through the legislative liaison and the DOD, Mr. Lennon.

Mr. LENNON. You are saying now that you would have no objection, in spite of the fact that we have asked for it and not been able to get consent to get it here? May we quote you as saying you would not object to it being delivered to our counsel?

General RYAN. Yes, sir.

Mr. LENNON. I insist, Mr. Chairman, that counsel, through you, call on the Secretary of Defense for this letter so you and the counsel can relate it to this testimony. To me that would be important.

Chairman HÉBERT. It will be done.

Mr. LENNON. Thank you.

Chairman HÉBERT. Mr. Hunt.

Mr. HUNT. General Lavelle, I heard a little this morning and a little this afternoon. I want to say for the record that you did what you thought was right. If we had a few more like you we might be in a little different status down there.

I keep coming back to trying to find out what you could do and what you could not do under these so-called rules of engagement. You could do things even under the rules of engagement if it constituted protective reaction. Mr. Hébert says that included individual action by an aircraft, attack by triple A, a response to electronic contact, or SAM, in other words.

We could not talk about this protective reaction this morning. In other words, you could not do anything unless it was protective reaction under certain guidelines of these rules of engagement; is that what you are telling us?

General LAVELLE. Yes, sir. We could fly reconnaissance flights over North Vietnam. We escorted our reconnaissance aircraft with fighters, loaded. If the enemy fired at the reconnaissance aircraft or if the system was activated against it, we had the authority then for the fighters to expend.

Let me clarify it a little further, because it will help: As we flew across the Ban Karai Pass with reconnaissance aircraft and saw these missiles and associated trucks sitting there waiting for bad weather, to come into Laos, they would not fire at us.

Mr. HUNT. Therefore you could not do anything.

General LAVELLE. That is the one place where I was frustrated.

Mr. HUNT. I understand. That is very, very clear.

This author apparently draws the distinction between "protective reaction" and "self-protective reaction." He says the latter is an extremely serious act of war. I thought all of these were acts of war. But what is the difference between protective reaction and self-protective reaction? Do you know of any difference?

General LAVELLE. It does not ring a bell with me, sir.

Mr. HUNT. The chairman this morning referred to "briefing system," and "rules of engagement" and all this other kind of junk—and I use that term advisedly. Apparently all these were promulgated, according to the author here, because we were going to disturb some kind of negotiations in Paris, we reduce our credibility with the enemy which is already "very low," and this unauthorized bombing would undermine the U.S. protest against Hanoi.

During any of these briefings, at any time did you ever tell these fellows, "We want to try to win the war. You can't do that because of this reason?" Did you explain to them anything in briefing, or just say "You can't do it?"

General LAVELLE. No, sir. The pilots—as General Ryan pointed out this morning, these rules of engagement are wires, TWX's, letters, things issued through the years, from JCS, Defense Department, CINCPAC.

Mr. HUNT. They kind of add up and make a big pyramid, or something?

General LAVELLE. We put them into a book we call our operating authorities. The pilots have to read them and take an exam on them, to fly in Southeast Asia.

Mr. HUNT. And they are never told why they are issued, or the reasoning or rationale back of them—if any?

General LAVELLE. No.

May I go off the record a moment?

Chairman HÉBERT. Yes.

(Discussion off the record.)

General LAVELLE. We have a saying we used in Vietnam, that we finally found out why there are two crew members in the F-4. One is to fly the airplane and one is to carry the briefcase full of the rules of engagement. [Laughter.] We are joking of course.

Chairman HÉBERT. Mr. Mollohan.

Mr. MOLLOHAN. As has been indicated earlier, a great many of us have been unhappy—I think is the word—with the amount of restriction and limitations placed on our armed services, both by the administration and others in a political or civilian sense as to just how this war should be fought.

In this set of circumstances we have here we find that a letter from an NCO comes to a member of the U.S. Senate, who sends it on to another member and he, in turn, sends it to our civilian Secretary of Defense and it comes down to the Secretary of the Air Force, and then you are the first military man that has contact with it.

Now, this was received by you on March 8 and you promptly dispatched the Inspector General on March 9 to investigate the circumstances outlined. This is a rather unusual and extremely prompt ac-

tion on an item of this sort, it seems to me. Were you advised to take prompt action on this?

General RYAN. Advised by no one.

Mr. MOLLOHAN. The manner in which this act was taken was strictly your own judgment?

General RYAN. Strictly my own.

Mr. MOLLOHAN. You have indicated you had consultation with the Secretary of the Navy, possibly the Secretary of Defense, Joint Chiefs of Staff, as well.

Was the decision to relieve General Lavelle of his duty as commanding officer of the 7th Air Force your own sole authority and responsibility? And did you take that without direction of any sort from anyone?

General RYAN. I made the determination without any direction or recommendation from anyone, that he be relieved.

Mr. MOLLOHAN. That is exactly the sort of conclusion you would have arrived at if this information had been given to you from any source and you investigated? This is the situation you would have arrived at regardless of the influences that might be implied by the channels through which you received the information?

General RYAN. Exactly the same determination. It is my own.

Chairman HÉBERT. Thank you. Thank you, General.

I thank you two gentlemen very much.

Mr. Reddan, you will inform the Secretary of Defense that we would like a copy of the document referred to, and that General Ryan said he had no objection. The very difficulty we have had during these many weeks has been the inability to get certain documents to develop in 1 day what would have been settled weeks and months ago.

In retrospect I think maybe it is a good thing we had the problems we had and it had to come to this forum here. Because I certainly have a better feeling and it has strengthened my defense of the man in uniform. It is something we all should be proud of.

I think one of the most significant things you each did, General Lavelle, General Ryan stood his ground; you stood yours. You admitted General Ryan is a fine officer, and he is the man who gave you the four stars.

And you, General Ryan, recognized he acted within the authority he thought was right. This is a refreshing experience.

I thank you, gentlemen.

The committee will stand in recess, subject to the call of the Chair.

(Whereupon, at 4 p.m., the subcommittee adjourned subject to the call of the Chair.)



