

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x  
4 GENERAL WILLIAM C. WESTMORELAND,  
5 Plaintiff,

6 v.

82 Civ. 7913 PNL

7 COLUMBIA BROADCASTING SYSTEM, INC.,  
8 GEORGE CRILE, MICHAEL WALLACE and  
9 SAMUEL A. ADAMS,

10 Defendants.  
11 -----x

12 November 13, 1984

13 10:05 a.m.  
14  
15

16 (Trial resumed)

17 (In open court; jury not present)

18 THE COURT: Good morning.

19 MR. BOIES: Good morning, your Honor.

20 MR. RIESE: Good morning, your Honor.

21 THE COURT: We are apparently short one juror.

22 While we are waiting for the juror let me place on the  
23 record something about the time expenditures.

24 The record should reflect, first of all, that on  
25 a more or less regular basis I have reviewed the time

1 expenditures with counsel, and is it correct to say that  
2 you have been in accord with the times that I have recorded?

3 MR. BURT: Yes, your Honor.

4 MR. BOIES: Yes, your Honor.

5 THE COURT: The cumulative total expenditures so  
6 far that I have -- I don't think I had reviewed with you  
7 the addition, but I think all the components have been  
8 reviewed as of our last conference -- show the plaintiff  
9 having expended 50 hours and 27 minutes, the defendant 33  
10 hours and 55 minutes, and with respect to interim  
11 summations I have the plaintiff having expended 52 minutes  
12 24 seconds, the defendant having expended 40 minutes and 8  
13 seconds.

14 Is that all consistent with your positions?

15 MR. BURT: Yes, your Honor.

16 MR. BOIES: Yes, your Honor.

17 THE COURT: Anything else that you wanted to  
18 raise while we are waiting for the juror to appear?

19 MR. BOIES: There is one matter that we might  
20 just advise the court of.

21 Yesterday Mr. Nitze's deposition was taken or at  
22 least was commenced. Neither Mr. Burt nor I were there and  
23 we do not yet have a transcript. I understand a transcript  
24 will be here later today.

25 My understanding of the record, your Honor, is

1 that Mr. Nitze indicated that he was not yet certain, as he  
2 has said a number of times in the past, whether or not he  
3 would come here to be a trial witness or not, and after two  
4 hours the attorney for Mr. Nitze terminated the deposition.

5 If Mr. Nitze is not going to be a trial witness,  
6 then we don't need discovery of him. But if he is going to  
7 be a trial witness we are going to need more than two hours  
8 of discovery. So what I would ask is that as soon as it is  
9 determined whether or not he is going to be a trial witness  
10 we be advised.

11 Now, Mr. Burt told me today that Mr. Nitze was  
12 going to be a trial witness and, indeed, was going to be a  
13 trial witness on Friday of this week. I find it difficult  
14 to believe that if that is so Mr. Nitze has not reached, as  
15 of yesterday, a decision one way or another as to whether  
16 or not he is going to come.

17 THE COURT: Is he beyond subpoena power?

18 MR. BOIES: Yes, your Honor.

19 THE COURT: Where does he hang out?

20 MR. BOIES: Washington, your Honor.

21 MR. BURT: Your Honor, may I reply? I was about  
22 to tell you that Mr. Nitze was going to come, but now I am  
23 not so sure that I want him.

24 In any event, I understand, though, again, I  
25 wasn't there, that Mr. Nitze is going to be a witness, he

1 will appear on Friday. I don't know what he said at his  
2 deposition with respect to not having made a determination,  
3 but I believe that he has made a determination he will  
4 appear. He said initially, prior to this deposition, that  
5 he wasn't certain, but he is certain that he will appear  
6 now.

7 We take the position that he has been on the  
8 plaintiff's witness list for some time and there was a  
9 rough, as I thought, understanding that if there had been  
10 someone on there for a long time and you hadn't gotten to  
11 him, we volunteered two hours with each of those people and  
12 cut it off at that. We didn't think we were required to  
13 give more. So that would be our position with respect to  
14 additional depositions of Mr. Nitze.

15 MR. BOIES: We can wait until we have the  
16 transcript, which we will today, your Honor, but I wanted  
17 to advise the court of the issue.

18 THE COURT: Last time we talked about the same  
19 kind of issue, the kind of issue being a witness who has  
20 not been deposed by reason of the fact that the adverse  
21 party has simply not taken steps to depose him, I suggested  
22 that you work, if possible, that you work out a general  
23 rule that would be applicable to both sides.

24 That's distinguishing it from a witness who was  
25 sought to be deposed or somehow the witness or somebody

1 asked that the deposition be adjourned. I still hope that  
2 you will try to work out a rule of general application.

3 MR. BOIES: We will, your Honor. I think this  
4 may be a little bit different than the usual situation,  
5 both because of the difficulty of scheduling days for Mr.  
6 Nitze in the past and the fact of the uncertainty of  
7 whether or not he would appear. But Mr. Burt and I will  
8 discuss it.

9 THE COURT: All right. Have you got a witness,  
10 Mr. Burt?

11 MR. BURT: Yes, your Honor.

12 THE COURT: How much longer for direct  
13 examination, do you think?

14 MR. BURT: Your Honor, one hour, I hope. There  
15 won't be much in the way of exhibits introduced today, and  
16 so that should go along fairly smartly.

17 THE COURT: Another point -- the jury will be in  
18 in a second -- I would like to schedule with you a  
19 substantial session, like a half a day or more, in which we  
20 review all outstanding evidence objections, so as to avoid  
21 interruptions and side bar conferences. I think that would  
22 be very useful to the progress of the trial.

23 GEORGE CARVER resumed.

24 THE WITNESS: Good morning, your Honor.

25 THE COURT: Good morning.

1 I had expected to receive a list of all the  
2 objections together with the lists of evidence and I yet  
3 have never received any such list. But I hope that you  
4 have given consideration to it and will be in a position  
5 say maybe early next week or something to spend half a day  
6 discussing all of the outstanding exhibits and the  
7 objections to them so we can streamline the rest of it.

8 (Jury present)

9 THE COURT: Good morning, members of the jury.

10 JURORS: Good morning.

11 THE COURT: I hope you had a pleasant weekend.

12 I think I should comment that a juror, a  
13 particular juror, has been late three or four times to  
14 sessions of this court, and it is quite clear how  
15 inconsiderate that is to the other jurors and all the  
16 participants in the trial. I urge that it not happen again.

17 We will now continue with the direct examination  
18 of the witness George Carver.

19 Mr. Burt, you may proceed.

20 MR. BURT: Your Honor, there was one more  
21 housekeeping detail. Over the weekend we prepared typed  
22 copies of cables number 258 B, 259 and 260. These cables  
23 have been renumbered 258 E, 259 B and 260 B. I do not  
24 believe the defendants have any objections and I would like  
25 to offer these in evidence.

1 MR. BOIES: Your Honor, I don't have any  
2 objection to the introduction of these exhibits on the same  
3 basis that the underlying exhibits were introduced. I  
4 think I had an objection to one or more of the underlying  
5 exhibits that I would preserve. But these are, I take it,  
6 just better typed copies and I have no objection to those  
7 being substituted.

8 THE COURT: All right. The typed copies, 258 E,  
9 259 B and 260 B, are received in evidence on the same basis  
10 and to the same extent as the originals from which these  
11 copies were made.

12 (Exhibits 258 E, 259 B and 260 B for  
13 identification were received in evidence)

14 MR. BURT: Members of the jury.

15 DIRECT EXAMINATION CONTINUED

16 BY MR. BURT:

17 Q. Mr. Carver, at the close of court --

18 THE COURT: Just a question. Some of those  
19 exhibits were admitted only in part and there were  
20 deletions.

21 MR. BURT: Yes, your Honor.

22 THE COURT: When you have made these retypings  
23 do the retypings include the parts that were deleted --

24 MR. BURT: We have placed X's over the things  
25 that were excluded, your Honor, typed X's.

1 THE COURT: I see. Okay.

2 Q. Mr. Carver, at the close of court on Friday we  
3 were discussing the question of infiltration and you had  
4 given some testimony, I believe, as to whether or not CIA,  
5 and in particular SAVA, the special assistant for  
6 Vietnamese affairs office, was watching infiltration, was  
7 receiving infiltration reports and what types of reports  
8 they were, am I correct?

9 A. That is correct, yes.

10 Q. I would like to go back to that subject now, if  
11 I may. And you may have testified to some of this.

12 Mr. Carver, can you tell me how many people at  
13 CIA were monitoring infiltration in the fall of '67? And  
14 let me set up the time frame. The time frame I am  
15 interested in and will be discussing unless I tell you  
16 otherwise is from September 1967 through January of 1968,  
17 those five months.

18 Can you tell me, with respect to that period,  
19 the fall and early winter of '67 and '68, how many people  
20 at Langley were monitoring infiltration?

21 A. There would have been around or over a dozen  
22 such people who were keeping track of infiltration in  
23 connection with their other duties, scattered in various  
24 offices.

25 Q. And can you tell me how many people at SAVA, the

1 special assistant for Vietnamese affairs, of which you were  
2 the head, were monitoring infiltration in the fall and  
3 early winter '67-'68?

4 A. No one had that as his full time job, but with  
5 that caveat, there would have been about four people who  
6 devoted a great deal of time to keeping track of  
7 infiltration, including myself.

8 Q. I believe you testified on Friday, but correct  
9 me if I am wrong, that MACV was supplying intelligence  
10 information of the type described as captured notebooks and  
11 enemy documents, prisoner of war reports in the fall and  
12 early winter '67-'68, is that correct?

13 A. That is correct, yes.

14 Q. Did the flow of this intelligence information  
15 increase, decrease or stay the same in the time period we  
16 are talking about, September '67 through January '68?

17 A. Well, it never decreased. My recollection is  
18 that it continued to increase as more prisoners were  
19 captured and more documents became available.

20 Q. Are you familiar with the term collateral  
21 sources?

22 A. I am.

23 Q. And can you tell me whether the documents and  
24 prisoner of war reports would constitute collateral sources  
25 of information?

1 A. They would have been so considered, yes.

2 Q. And were they considered collateral sources of  
3 information with respect to infiltration?

4 A. Yes.

5 THE COURT: Perhaps you should ask the witness  
6 what he understands by that designation.

7 MR. BURT: Sure.

8 Q. Can you tell me what you understand by the term  
9 collateral sources of information?

10 A. Yes. Collateral in this context is a term of  
11 intelligence art. It means information other than that  
12 derived from communications intelligence.

13 Q. And did CIA receive information on enemy  
14 movements from the north towards the south from NSA in the  
15 time period we are discussing?

16 A. The time period being the fall of '67?

17 Q. Through January of '68.

18 A. Yes.

19 Q. And was this information from NSA considered  
20 collateral?

21 A. No. Collateral is information other than NSA  
22 information.

23 Q. Can you tell me whether in your opinion a person  
24 could use the collateral information with respect to  
25 infiltration to prepare a real-time estimate of

1 infiltration in a particular month, say September of '67?

2 A. Absolutely not.

3 MR. BOIES: Objection.

4 THE COURT: Just a second.

5 THE WITNESS: Sorry, sir.

6 MR. BOIES: Objection, your Honor.

7 THE COURT: On what ground?

8 MR. BOIES: On the grounds that it calls for an  
9 opinion without proper evidentiary foundation.

10 MR. BURT: Your Honor, I would submit that we  
11 have qualified this witness with respect to his  
12 capabilities, his job, his duties. I will go back through  
13 it if you wish.

14 THE COURT: I think that you might ask some  
15 questions that are more pointedly directed to his  
16 competence to answer this particular question, to offer an  
17 opinion on this particular question.

18 And also, when you restate the question, I think  
19 it would be useful first to elicit from this witness his  
20 understanding of the meaning of the term real-time estimate.

21 MR. BURT: Sure.

22 BY MR. BURT:

23 Q. Mr. Carver, did your duties in the time period  
24 we are discussing, the five months, include monitoring  
25 infiltration into South Vietnam?

1           A.     They included monitoring it and being --  
2 insuring that it was properly monitored throughout the  
3 agency, yes.

4           Q.     Did you take any steps to insure that it was  
5 properly monitored throughout the agency?

6           A.     Yes.

7           Q.     Can you tell me what those steps were?

8           A.     I asked several people in my own staff,  
9 including Mr. Adams and then Major Blascak, to keep a close  
10 eye on it, and I discussed with my other colleagues,  
11 particularly the analysis directorate and the office heads  
12 of the various components of the analysis directorate, to  
13 be sure that they were also keeping an eye on infiltration  
14 and keeping aware of the flow of evidence and the  
15 interpretations being made of that flow by various portions  
16 of the intelligence community.

17          Q.     Did these subordinates report to you from time  
18 to time with respect to the magnitude of infiltration in  
19 the period we are talking about?

20          A.     It was a continuing subject of discussion  
21 throughout the period that you are talking about, yes.

22          Q.     When you say continuing subject of discussion,  
23 can you tell me how regularly this subject was discussed by  
24 you with your subordinates?

25          A.     I have no positive recollection of the absolute

1 number, but it was something that we would talk about three  
2 or four times a week or -- it was one of the staple items  
3 of discussion among all of us who were concerned with the  
4 situation in Indochina.

5 Q. Do you recall whether during this period you  
6 discussed the subject of infiltration -- let me rephrase  
7 that -- discussed the magnitude of infiltration into South  
8 Vietnam with Mr. Adams?

9 A. On almost a daily basis.

10 Q. Did you receive reports, collateral intelligence  
11 information on infiltration, in the fall of '67, you  
12 personally?

13 A. Yes. I did not look at every such report, but  
14 summaries of them and certain individual reports were  
15 placed on my desk, chiefly by Mr. Adams, for my personal  
16 inspection.

17 Q. Did you ever report or did there ever come a  
18 time when you reported on infiltration into South Vietnam  
19 in the period we are talking about to anyone above you, to  
20 one of your superiors?

21 A. From time to time I discussed this with the  
22 Director of Central Intelligence and his other senior  
23 colleagues at various meetings that we had together.

24 Q. Can you recall how frequently you had these  
25 discussions in the time period we are talking about?

1           A.     How frequently we specifically discussed  
2 infiltration, I cannot recall, but the conversations and  
3 discussions about what was going on in Vietnam were a  
4 matter of daily discussion, and at various meetings, as we  
5 would go around the table, I would be asked to give a quick  
6 30-second, one-minute, two-minute, depending on what had  
7 happened, overview of the situation in Vietnam, recent  
8 developments therein, and where infiltration was  
9 significant I would always make a point of mentioning it.

10          Q.     Did you receive reports from MACV on  
11 infiltration in the time period we are talking about?

12          A.     There was a constant stream of such reports  
13 coming into the agency and the key ones were flagged to my  
14 personal attention, yes.

15          Q.     And can you recall whether MACV submitted  
16 reports based on collateral source information?

17          A.     MACV's reports were all based on collateral  
18 information.

19          Q.     Did you ever read any of those reports in the  
20 time period we are talking about?

21          A.     I read some of them, yes.

22          Q.     Did you know the information that was used to  
23 compile those reports?

24          A.     Yes.

25          Q.     Did you have an opinion with respect to the

1 usefulness of those reports in determining infiltration in  
2 any particular month?

3 A. Yes.

4 Q. During this period did you receive reports from  
5 NSA with respect to movement of enemy troops from the north  
6 towards the south?

7 A. Yes.

8 Q. Did you receive them regularly?

9 A. As regularly as there was something to report,  
10 yes.

11 Q. Can you tell me with what frequency you received  
12 these reports?

13 A. At approximately at least weekly intervals, if  
14 not more so. But they were not keyed to an absolute  
15 regular rhythm, as I can recall.

16 Q. Can you tell me what they were keyed to?

17 A. They were keyed to the development of new data  
18 and the development of new information that required  
19 circulation and dissemination throughout appropriately  
20 cleared components of the intelligence community.

21 Q. Were these reports from NSA given in oral or  
22 written form?

23 A. The reports themselves were given in written  
24 form. There was continuing discussion within the  
25 Washington intelligence community among the people

1 concerned with Indochina and when we would meet in various  
2 sessions with colleagues from NSA they would be also  
3 discussed orally.

4 Q. Do you know whether Mr. Adams in the time period  
5 we are talking about saw any of these NSA reports?

6 A. He saw all of them that came to my office,  
7 because bringing them was part of his responsibility.

8 Q. Now, Mr. Carver --

9 THE COURT: When you say "When he came to my  
10 office" you mean by that when he joined your staff?

11 THE WITNESS: No. Excuse me, your Honor. I  
12 said that Mr. Adams saw all of these reports that came into  
13 my office because screening them and flagging the ones that  
14 I needed to look at was one part of his duties.

15 THE COURT: Thank you.

16 Q. Now, Mr. Carver, I used the term real time a few  
17 moments ago. When I used that word did you have an  
18 understanding of what the phrase real time meant?

19 A. I did.

20 Q. Can you explain to me what your understanding of  
21 that word or that term was?

22 A. It was another technical term of intelligence  
23 art. Real time means that you get the information almost  
24 at the time that the incident or situation or development  
25 which is being reported on happened.

1 In other words, you get it within -- technically  
2 real time means precisely that. As soon as it happens  
3 you're aware of it. Practically it means that the  
4 information that is considered real time is coming in at  
5 the same time that the events being reported on are  
6 happening, and you may get -- if you get a report on  
7 something that happened two days ago that's classed as real  
8 time if the acquisition report was instantaneous with the  
9 occurrence of the event.

10 Q. Let me ask you a hypothetical to try and see if  
11 I can understand that term a bit more clearly.

12 Let us assume that a unit breaks camp somewhere  
13 in North Vietnam and moves towards the south. What would  
14 be a real-time report on that unit's breaking camp and  
15 moving toward the south?

16 A. Well, real time report would be -- I have to be  
17 a little bit careful not to break classification.

18 As the unit communicated to its superior echelon --

19 Q. Forgive me. Let me interrupt you, sir. All I  
20 am looking for is how soon would you have to receive a  
21 report of that unit's breaking camp and moving, your report,  
22 to be considered a real time report?

23 A. Within hours if not in some cases minutes.

24 Q. Now, I believe you testified earlier that you  
25 received reports from MACV on infiltration based on

1 collateral sources in the period we are talking about, the  
2 five months beginning September '67 through January '68, am  
3 I correct, sir?

4 A. That is correct.

5 Q. Can you tell me whether in your opinion those  
6 MACV reports based on collateral sources of information  
7 could provide a real-time estimate of infiltration into  
8 South Vietnam in the period for which they were issued,  
9 September through January '68?

10 A. Absolutely not.

11 Q. Can you tell me why not?

12 A. The collateral information that MACV provided  
13 was based, as we have discussed, on the interrogations of  
14 captured prisoners, the inspection of captured documents,  
15 some of which were taken off of bodies killed in the  
16 battlefield, some of which were captured when headquarters  
17 were over run, and there was always a built-in delay. I  
18 mean, for example, prisoners were seldom courteous enough  
19 or thoughtful enough to allow themselves to be captured  
20 within hours of their arrival in Vietnam. It would be  
21 anywhere from a few days to a few weeks to a few months.

22 Similarly, when you got hold of documents when  
23 you overran a headquarters the documents that were captured  
24 would be reporting or internally bureaucratically reporting  
25 things that had happened in the preceding weeks and months,

1 and furthermore, the documents would be captured off in the  
2 jungle somewhere, they would be in Vietnamese, they would  
3 have to be transported to Saigon, they would then have to  
4 be screened, they would have to be translated.

5 So there was always a time lag measured at least  
6 in weeks, if not in months, between the actual events which  
7 collateral reporting was concerned with and the time that  
8 collateral reports were received.

9 Q. Did you have an opinion in the time period we  
10 are talking about, the five months beginning September '67,  
11 ending January '68, as to whether the MACV collateral  
12 source infiltration reports could provide a real-time  
13 estimate of infiltration into South Vietnam?

14 A. I had a very strong opinion they couldn't.

15 Q. Is your opinion today any different with respect  
16 to the question of the MACV collateral infiltration reports,  
17 any different today than it was in 1967?

18 A. No, it's equally strong.

19 Q. Mr. Carver, did the CIA have personnel in South  
20 Vietnam in the period of 1967 through January 1968 that we  
21 are talking about?

22 A. Yes.

23 Q. Can you tell me roughly how many were there?

24 A. This removed, no, but it was well over a hundred.

25 Q. Do you know whether any of these people in South

1 Vietnam monitored enemy infiltration into South Vietnam in  
2 the period September '67 through January '68?

3 A. Yes.

4 Q. Can you tell me what they used to monitor this  
5 infiltration?

6 A. They used the raw data that was provided by MACV,  
7 people tasked with this particular duty kept in constant  
8 contact and discussion with the MACV J-2 analysts who were  
9 screening infiltration, material information, and they also  
10 used whatever supplementary intelligence could be gleaned  
11 from the agency's own collection activities, and those who  
12 were appropriately cleared, of course, also had access to  
13 the NSA material.

14 Q. Do you know whether in the period we are talking  
15 about, '67 and the first month of '68, the CIA personnel in  
16 Vietnam ever checked the MACV infiltration reports that  
17 they received against information that they had in their  
18 possession?

19 A. Yes, in the sense that they would screen the  
20 same raw data and ascertain if they came up with  
21 essentially the same conclusions.

22 Q. Do you have an opinion as to whether MACV could  
23 have suppressed reports of infiltration --

24 THE COURT: I am sorry.

25 Q. Do you have an opinion --

1 THE COURT: Don't answer the question other than  
2 yes or no.

3 Q. Do you have an opinion as to whether MACV could  
4 have suppressed reports of infiltration in the range of  
5 25,000 a month beginning in September '67 and going through  
6 January of 1968?

7 A. Yes.

8 Q. Can you tell me --

9 THE COURT: Just wait.

10 MR. BOIES: I would object if he asks for that  
11 opinion, your Honor.

12 THE COURT: All right.

13 MR. BURT: That's the next question.

14 THE COURT: When you say whether MACV could have  
15 you are asking for this witness' opinion whether it would  
16 have been possible for MACV to suppress such information?

17 MR. BURT: Yes, based on his experience at CIA,  
18 his knowledge of the various processes. If we go any  
19 further I would like to go to the side bar to discuss it.

20 THE COURT: What is the basis of the objection?

21 MR. BOIES: Both lack of qualifications for the  
22 opinion and relevance, your Honor.

23 MR. BURT: May we approach the side bar, your  
24 Honor?

25 THE COURT: Overruled.

1 Q. Mr. Carver, I ask you now could MACV have  
2 suppressed reports of infiltration in the range of 25,000 a  
3 month beginning in September of 1967, ending in January of  
4 1968.

5 THE COURT: The meaning of the question is in  
6 your opinion, given your knowledge of the methods by which  
7 infiltration intelligence information is collected or was  
8 collected at the time and the way it was disseminated in  
9 the intelligence community, would it have been possible for  
10 such a suppression to occur.

11 THE WITNESS: In my opinion, your Honor,  
12 absolutely not.

13 Q. Can you explain what the basis for your opinion  
14 is?

15 A. Yes. We were all dealing off the same pool of  
16 raw data, which was very widely circulated. The  
17 intelligence community in Vietnam and also in Washington  
18 utilizing, screening that raw data, reviewing and arguing  
19 about analyses, interpretations and judgments based thereon,  
20 was so large that any attempt to suppress it would have  
21 been known by a large number of people and word of it would  
22 have spread throughout the community with great speed and I  
23 do not think that it would have been possible to conceal or  
24 withhold information about infiltration of that order of  
25 magnitude.

1 Q. Mr. Carver, I may have asked this question. I  
2 don't recall having done so. If I have, bear with me.

3 THE COURT: Just one further elaboration of that  
4 question. When you used the word conceal, it would not  
5 have been possible in your opinion to conceal or withhold  
6 information of that type, you implied by your answer  
7 concealing from certain classes of people and entities.  
8 Who did you mean, that it would not have been possible to  
9 conceal such information from whom?

10 THE WITNESS: Yes, your Honor. If any component  
11 of the U.S. intelligence community, military or civilian,  
12 had acquired information about infiltration on this order  
13 of magnitude, keeping that data, that evidence from the  
14 other members of the intelligence community or keeping the  
15 other members of the intelligence community ignorant of the  
16 fact that such data and evidence existed would, in my  
17 opinion, have been virtually impossible.

18 THE COURT: Proceed.

19 MR. BURT: Thank you.

20 Q. Mr. Carver, do you know whether there was any  
21 information that you received -- and when I say information  
22 I am talking about intelligence information that you  
23 discussed at the beginning of your testimony -- that was  
24 not seen -- let me rephrase that -- that was unavailable to  
25 Mr. Adams for reason of classification or for some other

1 reason?

2 A. No.

3 Q. How do you know that, sir?

4 A. One of Mr. Adams' primary duties for me was  
5 reviewing and screening data, analyses, raw information,  
6 bearing on the infiltration question, and Mr. Adams had all  
7 the requisite clearances necessary to give him access to  
8 all information intelligence bearing on this particular  
9 subject collected by the U.S. government through any  
10 channel.

11 Q. Mr. Carver, I would like to turn now to another  
12 subject, and that is the SNIE, Special National  
13 Intelligence Estimate, 14.3-67.

14 MR. BURT: Your Honor, this document is in  
15 evidence and at this time I would like to give copies to  
16 the jury.

17 THE COURT: What is the document number?

18 MR. BURT: Document number 273, your Honor.

19 Q. Mr. Carver, I will give you a copy.

20 A. Thank you.

21 Q. Mr. Carver, have you seen this document before?

22 A. Yes.

23 Q. When was that, sir?

24 A. I saw it in the fall of 1967, in November, when  
25 it was issued, and have seen it many times since.

1 Q. Did you play any role in the preparation of this  
2 document, sir?

3 A. Yes.

4 Q. Can you describe for me briefly what role that  
5 was?

6 A. I played several roles. First, of course, it  
7 was I who was asked by the Director of Central Intelligence  
8 to be the chairman of the Washington intelligence community  
9 delegation that went to Saigon in September of 1967 to  
10 discuss still unresolved issues relating to the description  
11 and depiction of the communist forces in Vietnam that were  
12 going to be treated in the national intelligence estimate,  
13 it was I who in concert with General Westmoreland worked  
14 out the agreement on how these matters were to be handled,  
15 and then from the time of my return to Washington on or  
16 about the 19th or the 20th of September I played an active  
17 role in the final preparation of SNIE 14.3-67, partly  
18 because the director asked me to and partly because I  
19 wanted to insure that the agreement that we had struck in  
20 Saigon, and all of its ramifications and nuances, was  
21 properly reflected in the estimate text as actually  
22 officially published and issued.

23 Q. Did you read the document in front of you in  
24 draft form before it was issued?

25 A. I did.

1 Q. Did you make any comments on the document when  
2 it was shown to you in draft form?

3 A. I made a number of comments during the final  
4 stages of its preparation and during its final drafting  
5 period, yes.

6 Q. Did you read the document in draft form more  
7 than once, if you can recall?

8 A. I read the document in draft form several times.  
9 Precisely how many, I cannot recall.

10 Q. Can you recall any of the people with whom you  
11 discussed the draft SNIE in front of you?

12 A. Within my own staff, I discussed it at  
13 considerable length with Mr. Allen and Mr. Adams, as well  
14 as I think one or two others. I also discussed it at  
15 considerable length with Dr. Sherman Kent, the chairman of  
16 the Board of National Estimates, with Mr. Abbott Smith, his  
17 principal deputy, with Mr. James Graham, a member of the  
18 Board of National Estimates, who was the chairman of this  
19 particular estimate, and with the members of the Office of  
20 National Estimates, the Far East staff, who were concerned  
21 with this estimate, Mr. William Hyland, who had accompanied  
22 me to Saigon, Mr. Bobby Layton of the staff and Mr. David  
23 Laux of the staff, who had a hand in doing the initial  
24 drafting of the estimate in question.

25 Q. When this document was published, the SNIE

1 14.3-67, did you have any objections to any part of the  
2 contents?

3 A. Excuse me.

4 Q. Did you object to any part of its contents?

5 A. I did not.

6 Q. Did you disagree with any part of its contents?

7 A. I did not. There were some sentences that I  
8 might have written slightly differently, but I did not  
9 disagree at all.

10 Q. Was there any member of the intelligence  
11 community -- and by that word I mean any entity in the  
12 intelligence community -- that took exception to the  
13 document SNIE 14.3-67?

14 THE COURT: To your knowledge.

15 Q. To your knowledge.

16 A. To my knowledge? No. In fact, quite absolutely  
17 no. The document was discussed, in keeping with the  
18 standard procedure, at a formal meeting of the United  
19 States Intelligence Board attended by the heads of all the  
20 separate intelligence entities who collectively comprised  
21 the United States Intelligence Board. All of these  
22 separate entities had had several days in which to review  
23 the final draft.

24 The estimate was discussed at some length at a  
25 United States Intelligence Board meeting and no member of

1 the intelligence community, including the director of the  
2 Defense Intelligence Agency, the director of the National  
3 Security Agency, the director of the Department of State's  
4 Bureau of Intelligence and Research, took any formal  
5 dissent or expressed any formal reservation with the  
6 language of SNIE 14.3-67 as it was issued.

7 Q. I would like you to turn to page 1 of the  
8 document and look at the first paragraph below the  
9 bold-faced type Introductory Note, and I will read that  
10 into the record.

11 "Our earlier understanding of overall communist  
12 capabilities in Vietnam had, of necessity, to rely heavily  
13 on data provided by the GVN."

14 That's government of Vietnam, is it not?

15 A. That is correct, meaning the government of South  
16 Vietnam.

17 Q. "Much of this turned out to be unreliable, and  
18 in many instances our numerical estimates of communist  
19 forces, other than for the regular units, were too low.  
20 Our information has improved substantially in the past year  
21 or two, but the unconventional nature of the war poses  
22 difficult intelligence problems, the more so in a social  
23 environment where basic data is incomplete and often  
24 untrustworthy."

25 Mr. Carver, do you recall having seen that

1 paragraph prior to the issuance of this intelligence  
2 estimate in 1967?

3 A. Vividly.

4 Q. Did you play any role in the drafting of the  
5 words in that paragraph?

6 A. I did.

7 Q. Can you tell me what that role was?

8 A. I don't remember whether I actually drafted this  
9 paragraph myself, but I was of the very strong opinion that  
10 a paragraph of this nature should be in the estimate and in  
11 fact should be right at the beginning of the estimate. My  
12 colleagues, including Mr. Graham, the chairman of the paper,  
13 Mr. Hyland of the Far East staff, the Office of National  
14 Estimates, and Mr. Adams and Mr. Allen of my own staff,  
15 were all in complete agreement.

16 So I don't want to suggest there was any great  
17 argument or discussion, but we all felt that the fact that  
18 we had previously -- our previous numerical estimates had  
19 been too low, that we were dealing with a very complex  
20 problem of interpretation of data that was often not easy  
21 to interpret, should be highlighted and flagged right at  
22 the beginning of the estimate, so that there be no  
23 misunderstanding or -- on this score by any of its readers.

24 THE COURT: Please limit yourself to answering  
25 the question that's put to you.

1 THE WITNESS: Yes, sir.

2 THE COURT: That question asked for your role in  
3 the preparation. Don't go beyond to say who agreed or  
4 disagreed.

5 THE WITNESS: Yes, sir.

6 Q. I would like you to turn now to page 10 of the  
7 document in front of you. I direct your attention to  
8 paragraph 24. And I will read that into the record. It's  
9 under the bold-faced heading "A. Communist Forces,"  
10 paragraph 23, and then paragraph 24.

11 "We believe that, with the exception of the  
12 regular forces, we have previously underestimated the  
13 strength of these elements. The figures carried in this  
14 estimate for these elements reflect new information and  
15 analysis rather than an increase in actual communist  
16 strength. Furthermore, our information on the strength and  
17 organization of the different elements varies widely. For  
18 the regular forces it is good; for other components it is  
19 much less reliable, less current, and less detailed. The  
20 resulting uncertainties are explained in the following  
21 paragraphs and are reflected by the use of ranges in the  
22 estimates we present."

23 Did you read that prior to the issuance of this  
24 document in 1967?

25 A. Yes, very carefully.

1 Q. Did you play any role in the drafting of  
2 paragraph 24?

3 A. Yes.

4 Q. Can you tell me what your role was?

5 A. Very similar to my role in the drafting of the  
6 introductory note. I insisted that this type of language  
7 be in and did not concur in the estimates going forward  
8 even to the Director of Central Intelligence until I was  
9 satisfied with the language of this paragraph.

10 Q. Can you tell me whether there was anything in  
11 particular that you wished to have in this paragraph when  
12 you reviewed the drafts?

13 A. I wanted what here appears. I wanted it very  
14 clearly emphasized that we had previously underestimated  
15 the strength of all elements of the communist structure,  
16 with the exception of the regular forces, I wanted it made  
17 very clear that we were not talking about a recent increase  
18 in actual strength but with a better understanding --  
19 talking about a better understanding of what long existed,  
20 because we had new information and improved analysis.

21 I also thought it essential that we make it very  
22 clear that our information on the strength and organization  
23 and functions of the various elements of the communist  
24 structure varied widely, that it was good for the regular  
25 forces, and as said here, for the other components much

1 less reliable in detail, and I wanted to highlight the fact  
2 that because it was for the other nonregular elements and  
3 the forces less current in detail that there were  
4 uncertainties which required the use of ranges and also  
5 textual descriptions to explain what our numbers meant.

6 Q. Would you turn to page 16, please, and look for  
7 a moment at paragraph 37.

8 Can you tell me, sir, whether you recall having  
9 read that paragraph in draft prior to the issuance of SNIE  
10 14.3-67?

11 A. Yes.

12 Q. Let me read that into the record, sir.

13 "In sum, the communist military and political  
14 organization is complex, and its aggregate numerical size  
15 cannot be estimated with confidence. Moreover, any such  
16 aggregate total would be misleading since it would involve  
17 adding components that have widely different missions and  
18 degrees of skill or dedication. The VC/NVA military force  
19 (main and local forces, administrative service elements and  
20 guerrillas) can be meaningfully presented in numerical  
21 totals and, as indicated above, we estimate that this  
22 military force is now at least 223,000-248,000. It must be  
23 recognized, however, that this military force constitutes  
24 but one component of the total communist organization. Any  
25 comprehensive judgment of communist capabilities in South

1 Vietnam must embrace the effectiveness of all the elements  
2 which comprise that organization, the total size of which  
3 is of course considerably greater than the figure given for  
4 the military force."

5 Did you play any role in the drafting of that  
6 paragraph?

7 A. Yes, I drafted it myself.

8 Q. Can you tell me when?

9 A. In late September, early October of 1967.

10 Q. Where did you draft it?

11 A. In Langley, in my Washington office.

12 Q. I would like you to look at a document which is  
13 in evidence. It's 258 E, which is a retyped version of a  
14 cable, 258 B.

15 Have you seen this document before, sir?

16 A. Yes.

17 Q. You have testified as to its provenance, but  
18 would you tell us, please, if you know, how this document  
19 came to be prepared?

20 A. I do know. This document was prepared on the  
21 12th of September. It is a statement that was prepared in  
22 Saigon in MACV headquarters. It is a statement of the  
23 Washington intelligence community delegation's position on  
24 communist strength issues to be treated in NIE 14.3-67, and  
25 it was hammered out in the course of practically a full

1 working day of over six hours of discussion by, between and  
2 among all members of the Washington delegation, of which I  
3 was chairman.

4 I did the first draft of it personally and then  
5 went over it with my colleagues in the delegation line by  
6 line, sentence by sentence, paragraph by paragraph, and it  
7 emerged as a joint delegation product.

8 Q. Was Mr. Adams -- and I know you testified to  
9 this, but let me go over it one more time --

10 MR. BURT: Your Honor, with your permission, I  
11 would like to pass out 258 E to the jury.

12 THE COURT: All right.

13 MR. BURT: Thank you, your Honor.

14 Q. Mr. Carver, I believe you testified to this, but  
15 let me ask you again, if I may. Was Mr. Adams present when  
16 the document 258 E was hammered out, I believe you said, in  
17 Saigon, physically present?

18 A. He was physically present throughout the entire  
19 course of hammering it out and an active participant in the  
20 process.

21 Q. Was the document hammered out in a room?

22 A. The document was hammered out in a MACV  
23 conference room.

24 Q. Were you in that room?

25 A. I was.

1 Q. Did you see Mr. Adams?

2 A. I did see Mr. Adams.

3 Q. Do you know whether Mr. Adams physically wrote  
4 any part of the words in the document you have in front of  
5 you?

6 A. I cannot, this removed, recall whose actual  
7 prose emerged in which sentence, but every member of the  
8 delegation expressed his views on every sentence in it and  
9 various members at various times would write out alternate  
10 suggestions for improvements in phrases or sentences or  
11 even whole paragraphs.

12 Q. Mr. Carver, I would like you to turn to  
13 paragraph 36 of the SNIE and to the last page of Exhibit  
14 258 E, which you have in front of you, and place them side  
15 by side, if you will. We will take a moment, sir, until  
16 you get that clearly in front of you.

17 I would like you to address your attention to  
18 the last paragraph of the document 258 E as well as  
19 paragraph 36. Do you have that, sir?

20 A. I do.

21 Q. Why don't you look back for just a moment at the  
22 two full paragraphs on the prior page for context, and then  
23 I will ask you some questions about the last paragraph on  
24 258 E and paragraph 36. Tell me when you have scanned  
25 those, sir.

1 A. Did you say two or three paragraphs prior?

2 Q. The two full paragraphs on the prior page.

3 A. Yes.

4 Q. Now, the paragraph beginning -- and this is on  
5 the last page of 258 E -- "Our current evidence," does that  
6 refer to the SD and SSD?

7 A. Yes, it does, and also the assault youth.

8 Q. And the assault youth. Could you tell me what  
9 the assault youth are, sir, or were?

10 A. Well, we were never entirely sure, but they were  
11 a group whose existence was reported in various communist  
12 documents of a sort of paramilitary armed boy scout, if you  
13 will, type of organization, where the communists were  
14 trying to bring young people into their structure, give  
15 them some form of military training, and use them from time  
16 to time on military-related missions.

17 Q. Now, sir, I would like to ask you whether  
18 paragraph 36 is based in whole or in part on the paragraph  
19 beginning "Our current evidence does not enable us," if you  
20 know.

21 A. It is based entirely on the paragraph -- the  
22 last paragraph of document 258 E. This was the paragraph  
23 that we drafted in Saigon, reflecting the Washington  
24 delegation's recommendation as to how to handle the  
25 so-called irregular components of the force structure in

1 prose rather than using any single number or even a  
2 numerical range.

3 This was a key element of our agreement, the  
4 solution to the disagreement that I suggested to General  
5 Westmoreland, and this language appeared almost exactly as  
6 we wrote it in Saigon in the final published version of the  
7 estimate, with a few very minor editorial eliminations or  
8 improvements, as you will see if you do a line by line  
9 comparison.

10 Q. Have you looked at these two documents recently,  
11 sir?

12 A. Yes.

13 Q. Is there in your opinion any material difference  
14 between those two paragraphs?

15 MR. BOIES: Objection.

16 THE COURT: I will permit him to answer.

17 Q. Mr. Carver.

18 A. In my opinion, there is no material difference,  
19 and the final estimate paragraph was deliberately written  
20 so that there would be no material difference.

21 Q. Thank you, Mr. Carver.

22 MR. BURT: Your Honor, we would like to offer in  
23 evidence now Exhibits 16 A through 16 D.

24 MR. BOIES: May we approach the side bar, your  
25 Honor?

1 THE COURT: Yes.

2 (At the side bar)

3 MR. BURT: Your Honor, these are notes Mr. Crile  
4 made, handwritten and then typewritten, of an interview  
5 with Mr. Carver. 16 A appears to us to be -- we don't know  
6 what it is. It's either an additional set of notes or a  
7 memo that Mr. Crile sent to somebody. 16 B is Mr. Crile's  
8 typed up notes of his interview, as best we can determine.  
9 16 C is a second version of the same set of notes typed up,  
10 with underlinings. We don't know whose they are, I don't  
11 believe. And 16 D are Mr. Crile's holographic notes of the  
12 handwritten notes of his interview with Mr. Carver pre  
13 broadcast. The date January 11 I believe is incorrect. It  
14 should be January 12. But we can establish that with  
15 testimony.

16 THE COURT: What's the objection?

17 MR. BOIES: Your Honor, I don't object to these  
18 being admitted on state of mind.

19 THE COURT: Are they offered for anything else?

20 MR. BURT: No, your Honor.

21 THE COURT: Then there is no discussion.

22 MR. BOIES: I think there are two things I ought  
23 to point out to the court.

24 THE COURT: Okay.

25 MR. BOIES: One is I believe that 16 A is

1 something that was written after the broadcast, and I think  
2 that is clear from the context, some misstatements that are  
3 made in it which refer to a Westmoreland press conference.  
4 I don't think that that makes it inadmissible, but I want  
5 to draw the court's attention to that.

6 Second, with respect to these handwritten notes --

7 THE COURT: Let me just interrupt for a second.  
8 Do you agree, Mr. Burt, that 16 A is a post broadcast  
9 document?

10 MR. BURT: I think that's probably true, yes.

11 MR. BOIES: And I think that while it is  
12 probably true that a post broadcast document like this  
13 could be admitted for state of mind, I think once we start  
14 admitting comments about press conferences and the like  
15 that occurred after the broadcast we may simply open up  
16 some additional issues.

17 I don't suggest that that is an enormous problem,  
18 but I thought I ought to point that out to the court.

19 THE COURT: A post broadcast admission of an  
20 individual defendant is certainly theoretically possibly  
21 receivable on that defendant's state of mind. But like any  
22 other piece of evidence, it would have to be shown that it  
23 has some relevance to an issue. The mere fact that it's  
24 something typed by a defendant doesn't make it admissible  
25 evidence.

1 MR. BOIES: The handwritten notes that are here  
2 I am not sure -- I simply haven't had a chance to check --  
3 they may all relate to Carver or they may not or these may  
4 be all of the handwritten notes of the Carver interview or  
5 they may not.

6 I don't think that affects the admissibility on  
7 the state of mind issue because these are Mr. Crile's notes  
8 prepared in the course of the broadcast. But I thought I  
9 ought to point that out.

10 The other thing is that the substance of these  
11 notes go primarily to issues -- in terms of positions the  
12 plaintiff has taken previously, are not relevant to the  
13 issues in this litigation. They go to aspects of the  
14 broadcast, but most of them, that is, most of the  
15 statements in these notes, go to issues that the plaintiff  
16 has previously taken the position are not relevant to this  
17 litigation.

18 Again, if the plaintiff wants to introduce these  
19 I don't think I have an objection to it, but I want to  
20 point out to the court the nature of the subject matter of  
21 what is going in, because I am going to have to be in a  
22 position of meeting the kinds of statements that are in  
23 here and dealing with these kinds of statements.

24 THE COURT: If I understand what you're saying,  
25 first of all, you say that these things, being statements

1 of Carver, memoranda prepared by -- I didn't mean Carver; I  
2 mean Crile -- they are potentially admissions of the  
3 defendant Crile and potentially admissions of the defendant  
4 CBS. You're not objecting to their being received as  
5 having that status.

6 Now, then you're adding a caveat in which you  
7 say that there may be portions of them that are not  
8 relevant because they don't relate to issues that are in  
9 dispute because they deal with matters that are outside the  
10 scope of the lawsuit.

11 Now, I understand your position, but it seems to  
12 me that if there is a portion that you are taking the  
13 position is irrelevant or if there is a portion that is  
14 irrelevant you should point it out and we shouldn't get  
15 into that, because we don't want to expand the scope of the  
16 lawsuit to encompass everything that's in any note that  
17 Crile took.

18 MR. BURT: Your Honor, may I --

19 THE COURT: Maybe Mr. Burt is not planning to  
20 read all of these documents.

21 MR. BURT: Your Honor, one, the documents were  
22 furnished to the defendant sometime ago, at least eight  
23 days. Two, I am not planning to read all the documents.  
24 Although I have not specified in my offer the portions that  
25 I am going to read, I only intend to read those items that

1 are relevant, as that term has come to be understood by  
2 both parties.

3 THE COURT: Look, in the interests of moving  
4 ahead, can we do it this way, that these documents are  
5 received in evidence with the reservation that defendant  
6 may have an objection to specific portions for relevance  
7 purposes, and before you read them to the jury you will  
8 point out to Mr. Boies which portion you're going to read,  
9 and he would then make his objection known if there is one.

10 MR. BURT: Agreed, your Honor.

11 THE COURT: Okay.

12 MR. BURT: Thank you.

13 (Continued on next page)