

1 (Recess)

2 (Jury not present)

3 THE COURT: Let me just add a word to the
4 colloquy at the side bar. The rule that we were talking
5 about, the rule that as to impeachment on collateral matter
6 the examiner is bound by the witness' answer, is a rule
7 that is generally for the purpose of preventing the trial
8 from getting sidetracked into subtrials of peripheral
9 issues that might both expand the scope of the trial in an
10 unhelpful way, be time-consuming, and be distracting to the
11 jury.

12 Where the issue, however, is nothing more than
13 whether the words were spoken in a conversation, that does
14 not have a very large capacity to expand the trial. If the
15 question is, "Did he say something in your talk or not?"
16 that does not have much capacity to expand the scope of the
17 trial by calling other participants in that same
18 conversation who will be asked nothing more than: "Were
19 these words spoken?" I think that when that kind of issue
20 arises, I would be much more likely to admit collateral
21 impeaching proof beyond the witness' answer.

22 I think your last argument, Mr. Boies, was that
23 the present testimony being elicited from Mr. Carver, if it
24 is seen as impeachment of testimony by Crile not yet given,
25 violates that rule by bringing external evidence in. I am

1 not sure that it does, but even if it does, it goes only so
2 slightly beyond that I think that the participants in the
3 conversation will generally be heard to contradict what
4 somebody else says about what was said in that conversation.
5 It doesn't follow that one can go on to prove the whole
6 underlying background of the truth of what was said in the
7 conversation to support the proposition that such a thing
8 was said or wasn't said.

9 Call the jury, please.

10 (Jury present)

11 THE COURT: You may proceed.

12 MR. BURT: Thank you, your Honor.

13 BY MR. BURT:

14 Q. Mr. Carver, prior to the break I was asking you
15 some questions about certain notes that were typed up by
16 defendant Crile. I would like you to turn now to a
17 document known as 16A.

18 A. 16A?

19 Q. A, as in apple. I will be asking you some
20 questions. I will not be reading the actual statements,
21 but I will identify them for you and ask you some questions
22 with respect to them.

23 A. Excuse me, I don't think I have 16A. I have B,
24 C and D, but I don't believe I have A.

25 Q. Here is another copy, sir.

1 A. Thank you.

2 Q. Do you have that document in front of you, sir?

3 A. I do.

4 Q. I would like you to look to the last full
5 sentence in the paragraph numbered 1, beginning with the
6 word "Carver," ending with the word "agreement," and
7 followed by a colon. Do you see that sentence, sir?

8 A. Yes.

9 Q. Did you tell that in words or substance to Mr.
10 Crile?

11 A. Never. That statement is false. I was never
12 under any such instructions.

13 Q. Thank you. I don't want any specific answer,
14 sir. I would like you to turn now and look down the page
15 to the next flush language, beginning with the word "Carver"
16 and ending on the next line with the word "figures."

17 THE COURT: Just a second. It seems to me that
18 you must ask him whether he said in words or in substance
19 the words in quotation marks immediately following that
20 sentence. Don't you request that, Mr. Boies?

21 MR. BOIES: Yes, your Honor, I do.

22 THE COURT: The next question is, if you look
23 immediately after the word "agreement," six lines or so
24 that that are indented and surrounded by quotation marks,
25 did you say that in words or in substance to Mr. Crile

1 during the interview?

2 Please try, if you can, to answer yes or no. If
3 it requires further elaboration, please state that it
4 requires further elaboration.

5 THE WITNESS: It does, your Honor, require
6 further elaboration, because this is a twisting distortion
7 of what I said.

8 THE COURT: Just say that it requires further
9 elaboration. The jury will disregard the balance of the
10 witness' comments.

11 Q. Will you please explain for me what you did say
12 with respect to the five lines which are indented and put
13 in quotes?

14 THE COURT: Let me restate that question
15 slightly. Please do not characterize in any way what is in
16 the quotation marks here.

17 THE WITNESS: Yes, sir.

18 THE COURT: The question is simply: Seeing what
19 is in the quotation marks here, if you said something on
20 this subject to Mr. Crile, tell what it was that you said.
21 Don't compare it to this quotation, but simply tell in your
22 own words, to the best that you could recollect, as
23 precisely as possible, what you said to Mr. Crile on this
24 subject.

25 THE WITNESS: Yes, your Honor. I said that the

1 President, Lyndon Johnson, found it difficult to understand
2 why there were such sharp disagreements within the
3 intelligence community, all of whose members were dealing
4 off the same body of evidence, and that Mr. Helms as
5 Director of Central Intelligence was frequently taxed or
6 queried by the President on this point. And in that
7 context, Mr. Helms would have preferred for there to be
8 agreement. But I never said that Helms --

9 THE COURT: No, no. The question is what you
10 did say.

11 THE WITNESS: That is what I did say.

12 Q. Did you say anything else on that subject?

13 A. I said that Helms wanted most of all, however,
14 for the intelligence community to give its best
15 appreciation and interpretation of the facts as they stood,
16 regardless of what the conclusions might be.

17 Q. Looking down, the next flush line beginning with
18 the word "Carver" and ending on the next line with the word
19 "figures" after which there is a period. Do you see that
20 language, sir?

21 A. "Carver explains that there was an enormous" --

22 Q. No, don't read.

23 A. "Carver explains," down to "figures." Is that
24 the two lines you are talking about?

25 Q. That's right. Do you see that, sir?

1 A. I do.

2 Q. Did you say that to Mr. Crile in words or
3 substance?

4 A. I did not.

5 Q. That is all I want.

6 Now reading the next indented language,
7 beginning with the word in quotes "Finally" and ending
8 three lines down with the word "it," did you say that to
9 Mr. Crile?

10 A. Not quite.

11 Q. Would you explain, not what is here, but what
12 you actually said to Mr. Crile with respect to what is in
13 the corpus, without characterizing it?

14 A. Precisely. I cabled Mr. Helms, in cables we had
15 discussed that we seemed to be at an impasse; that I had
16 not yet seen General Westmoreland; that if I could not
17 resolve the impasse directly with General Westmoreland,
18 then the impasse would remain. That is what I said, not
19 using the words that appear here.

20 Q. I would like you to turn to page 2 of the
21 document you have in front of you. Do you see one single
22 paragraph on that page, sir?

23 A. I do.

24 Q. If you will count down four lines, do you see a
25 sentence beginning in the middle of that page with the word

1 "He"?

2 A. Yes.

3 Q. And ending, I believe, five lines down with a
4 parenthesis, and before the end parenthesis is the word
5 "that" and then there is a period after the parenthesis.

6 Do you see that sentence?

7 A. Beginning "He did not offer" --

8 Q. Do not read it, sir.

9 A. I just wanted to be sure I got the same sentence.
10 Beginning with "He did," and ending with that parenthesis
11 and a period.

12 Q. Correct.

13 A. I see the sentence, yes.

14 Q. You have read that sentence?

15 A. I have.

16 Q. Did you say in words or substance what is set
17 forth in that sentence?

18 A. Absolutely not.

19 Q. Would you tell me, without characterizing what
20 is in the sentence, what you did say to Mr. Crile with
21 respect to the subject dealt with in that sentence?

22 THE COURT: If anything.

23 Q. If anything.

24 A. I rather emphatically stressed that we had all
25 been dealing off the same pool of evidence. I emphatically

1 stressed that the estimate had been difficult to draft
2 because of the complexities of the issues. And I
3 emphatically stressed that if the estimate as actually
4 published were read it would still look good seventeen
5 years after the fact.

6 I also said that General Westmoreland had been
7 extremely cooperative and had readily agreed to what I had
8 suggested but had made no suggestions of his own.

9 Q. Mr. Carver, I believe you testified that your
10 conversation with Mr. Crile took place on the 12th of
11 January, 1982; am I correct?

12 A. That is correct.

13 Q. At any time prior to January 12, 1984, did Mr.
14 Crile contact you, that you know of?

15 A. As I mentioned earlier, he made a telephone call
16 to set up the meeting. I don't remember whether that phone
17 call was made early in the morning of the 12th or late in
18 the afternoon of the 11th. But apart from that phone call
19 to set up the meeting on the 12th, I never had any contact
20 with Mr. Crile prior to the meeting.

21 Q. Did you have any letters from CBS prior to the
22 meeting with him?

23 A. None whatsoever.

24 Q. Did anyone from defendants ask you for an
25 interview for the broadcast prior to the time you met with

1 Mr. Crile on January 12, 1982?

2 A. No.

3 Q. Did you refuse to see Mr. Crile when he called
4 you on the interview?

5 A. No, I immediately suggested the first mutually
6 convenient time.

7 Q. Do you recall whether you discussed with Mr.
8 Crile the state of the broadcast at that time, whether it
9 was completed, nearly completed, in process or what?

10 A. Mr. Crile mentioned that the broadcast was going
11 to be aired a week from the following Saturday, and I did
12 say that our interview seemed rather pointless since any
13 conversations we had could hardly affect the content of the
14 broadcast at that point. I believe I used the phrase that
15 it must by now be in the can.

16 Q. Did Mr. Crile reply to your statement "it must
17 now be in the can"?

18 A. He didn't disagree, no.

19 Q. I would like you to look at a page of the
20 broadcast. I would ask you about one statement in it.

21 MR. BURT: Does your Honor need a copy?

22 THE COURT: No. What page?

23 MR. BURT: I will tell you in just a second,
24 your Honor.

25 Page 16, your Honor.

1 Q. Mr. Carver, did you see the broadcast when it
2 was aired?

3 A. Yes.

4 Q. You saw it the night it was aired?

5 A. The night it was aired.

6 Q. I would like you to look at a copy of the
7 broadcast transcript, page 16. Do you have that, sir?

8 A. I do.

9 Q. Do you see the second paragraph down?

10 A. Yes. The one beginning "General Westmoreland"?

11 Q. Spoken by Mr. Wallace. And I will read that
12 into the record. I believe this refers to the SNIE process,
13 which has been discussed before.

14 "Wallace: General Westmoreland had now won the
15 intelligence war. And so, instead of being told of an
16 enemy army of more than half a million, the President, the
17 Congress and the American public were told there were only
18 248,000 Vietcong left; that the enemy was running out of
19 men."

20 Do you have an opinion, based on your experience
21 of the period of '67, as to whether that statement is true
22 or false?

23 A. That statement is a lie.

24 THE COURT: Just a second, please. The jury
25 will disregard that. And, Mr. Carver, when you see counsel

1 rising to make an objection, please wait to answer the
2 question until I have had a chance to rule on the objection.

3 What is the basis of the objection?

4 MR. BOIES: I was going to ask, before the
5 witness tried to get it out earlier, for a yes or no answer
6 to that question, which is what it calls for. I assume the
7 answer is going to be yes. I will then object to his
8 giving the opinion, on the grounds of both relevance and
9 competency, your Honor.

10 THE COURT: You are asking for his present
11 opinion about the accuracy of the statements made in a
12 fashion -- come up to the side bar.

13 (At the side bar)

14 THE COURT: It seems to me that there are
15 questions that you could ask, but I am not sure that the
16 question you asked is relevant, because it brings into
17 focus the issue that we have discussed as the Martian
18 photograph or the testimony of the newly available
19 information from a North Vietnamese general.

20 There are several problems. The one I am
21 talking about now is, I don't think it matters what his
22 present opinion is as to how many enemy there were at that
23 time. A second, much smaller problem, is that you are
24 asking him for the truth or falsity of a paragraph that
25 contains anywhere from three to eleven statements. But if

1 what you want to ask him is whether at the time there was
2 intelligence information supporting the existing of an army
3 of half a million -- "at the time" being during '67 or
4 possibly any time up to the events that involve the
5 accusation of erasing the computer memory -- I think that
6 would be a proper question. Would you object to that
7 question, Mr. Boies?

8 MR. BOIES: If he asks the size of the enemy,
9 what his view was of the size of the enemy at that time?

10 THE COURT: If he asks either what his view was
11 of the size of the enemy or whether there was intelligence
12 information in existence at that time that supported the
13 existence of an army of half a million.

14 MR. BOIES: If he wishes to ask that question, I
15 won't object to that, your Honor.

16 THE COURT: I think either of those is OK.

17 MR. BURT: I would also want to ask whether,
18 since he has personal knowledge, we have connected him with
19 General Westmoreland, whether the President was told -- and
20 this goes not to the size but what the President was told --
21 that there were only 248,000 Vietcong left.

22 MR. BOIES: Wait a minute. What is his personal
23 knowledge of what the President was told? Excuse me, your
24 Honor, I don't mean to ask --

25 MR. BURT: He worked on the NSIE and he knew

1 where that NSIE was sent. We have established before that
2 he prepared a memorandum for Helms that was supposedly
3 discussed at the lunch. I can elicit whether he knew
4 whether the SNIE went to the President, if we want to get
5 into that.

6 MR. BOIES: He doesn't know whether the SNIE
7 went to the President. Even if he did know that, I think
8 his only basis for knowing that is hearsay, but even if he
9 did know that, then all Mr. Burt is asking him to do is to
10 characterize what is in the SNIE.

11 If we are going to get into the issue of what
12 the President was told, I have said a number of times I am
13 prepared to do that, I have a lot of evidence on that.

14 THE COURT: I don't think anybody is in
15 disagreement that the SNIE, after it was finalized, was
16 something available to the President. There is no dispute
17 about that, is there?

18 MR. BURT: Not that I know of.

19 THE COURT: You agree with that, don't you?

20 MR. BOIES: I think what he actually got was a
21 summary, but I don't think that the summary was materially
22 different. We have what the President was given available
23 together with a cover note both from Dr. Rostow and from
24 Mr. Helms.

25 MR. BURT: Your Honor, to move this along --

1 THE COURT: It seems to me that the position
2 should be that there is no disagreement that the SNIE with
3 its text was available to the President, but if what you
4 mean to ask him is whether the President received through
5 any other channels information that contradicts the thrust
6 of this sentence, I think you are getting into an area that
7 is not what this trial is about.

8 MR. BURT: I will take him back just with the
9 SNIE. That will clear that difficulty, I believe. Simply,
10 did the SNIE say there were only 248,000 Vietcong left?

11 THE COURT: You don't have to ask him. The SNIE
12 is here for the jury to read and to interpret. That is not
13 a question for him.

14 MR. BURT: All right.

15 (In open court)

16 BY MR. BURT:

17 Q. Mr. Carver, I would like you to look at the
18 sentence that I read to you a moment or two ago, beginning
19 with:

20 "Mr. Wallace: General Westmoreland had now won
21 the intelligence war. And so, instead of being told of an
22 enemy army of more than half a million, the President, the
23 Congress and the American public were told there were only
24 248,000 Vietcong left; that the enemy was running out of
25 men."

1 I would like you to focus on the phrase "enemy
2 army of more than half a million."

3 Did you have any information, in the period up
4 to and including January 30, 1968, that there was an enemy
5 army in Vietnam of more than half a million?

6 A. No. There never was.

7 MR. BURT: I have no further questions at this
8 time, your Honor.

9 THE COURT: Come up just for a second.

10 (Conference at the bench off the record)

11 (In open court)

12 THE COURT: Does that conclude the examination?

13 MR. BURT: Yes, your Honor.

14 THE COURT: Do you want to go directly into
15 cross-examination or do you want a break for lunch first?

16 MR. BOIES: Perhaps I could just spend ten
17 minutes to follow up, your Honor.

18 THE COURT: It is up to you.

19 CROSS-EXAMINATION

20 BY MR. BOIES:

21 Q. Mr. Carver, I think I just heard you say that
22 there never was an enemy army of half a million men.

23 A. That is quite correct, Mr. Boies.

24 Q. Did you ever believe that there was an enemy
25 army of half a million men?

1 A. Never an enemy army. They had an army, if you
2 want to call it that, of approximately 240,000, 250,000,
3 backed up by political direction and support base of
4 approximately 200,000, for a total quasi-organized manpower
5 base in the 400,000 range. But they never had an army in
6 the field of 500,000, or even more than half of that.

7 Q. Is the purpose of an order of battle to estimate
8 the enemy's army in the field, sir?

9 A. Of an order of battle, strictly defined, yes.
10 But that is not the purpose of a national intelligence
11 estimate.

12 Q. I didn't ask you about a national intelligence
13 estimate, sir. I asked you about an order of battle. And
14 you just told me that the purpose of an enemy order of
15 battle is to estimate the enemy's army.

16 Did you ever believe, sir, that the order of
17 battle should show a total of over half a million men?

18 A. I felt that the order of battle, properly
19 interpreted, should reflect more than a traditional
20 conventional order of battle, and that the policymakers
21 should be aware that the Vietnamese communists were drawing
22 on a total organized pool in the 400,000 range. But I
23 never believed that they had an army in excess of 250-odd
24 thousand.

25 Q. Did you ever believe, sir, that the MACV order

1 of battle should show an enemy army or should show a total
2 enemy of over half a million men?

3 A. Those are two quite different questions.

4 Q. Sir, you told me just a moment ago that the
5 purpose of an order of battle was to estimate the strength
6 of the enemy's army in the field. You told me that, did
7 you not, sir?

8 A. I said that was the purpose of a conventional
9 order of battle, not of a national intelligence estimate.

10 Q. I am not talking about a national intelligence
11 estimate. I am talking about an enemy order of battle.
12 What I am asking you is, did you ever believe that MACV's
13 order of battle should show a strength of more than half a
14 million men?

15 A. I am not sure, because it depends on how
16 precisely you want to define order of battle.

17 Q. As precisely as you used that term in 1967, sir.

18 A. I felt very strongly in 1967 that there should
19 be a reflection of a total organized -- quasi-organized
20 pool in the 400,000 range. Whether it was so described in
21 the document technically known as an order of battle or in
22 some other fashion was a matter of essential indifference
23 to me.

24 Q. Sir, my question is not about an organized
25 manpower force, it is not about the SNIE, it is not about a

1 national intelligence estimate. It is a very simple
2 question. Did you believe in 1967 that MACV's order of
3 battle should show total strength of more than half a
4 million men?

5 A. I always thought that the order of battle as
6 MACV interpreted was too restrictive and, in that sense,
7 yes.

8 Q. That it should have shown more than half a
9 million men?

10 A. No, not more than half a million. It should
11 have shown a total manpower pool somewhere in the half
12 million range.

13 Q. Didn't you write on January 11, 1967, sir:

14 "We believe the MACV order of battle of
15 communist ground forces in South Vietnam, which on 3
16 January carried the number of confirmed Vietcong, including
17 North Vietnamese, at 277,150, is far too low and should be
18 raised, perhaps doubled"? Did you write those words, sir?

19 MR. BURT: Objection. Your Honor, that is not
20 in evidence yet.

21 THE COURT: What is the exhibit number, please?

22 MR. BURT: 226A.

23 THE COURT: What is the exhibit number?

24 MR. BOIES: 226, your Honor.

25 MR. BURT: It is not in evidence.

1 MR. BOIES: I believe it was used by Mr. Burt in
2 his examination. If it is not in evidence, I would offer
3 it, your Honor.

4 MR. BURT: I didn't use it.

5 MR. BOIES: I would offer the exhibit, your
6 Honor.

7 THE COURT: Is there any objection?

8 MR. BURT: If I may take a moment, your Honor,
9 to look at it.

10 (Pause)

11 MR. BOIES: This is the document that Mr. Carver
12 referred to on his direct examination, your Honor.

13 THE COURT: In any event, whether you object or
14 don't object, there is no objection to the question that
15 was asked, which is whether the witness ever made this
16 statement that was contained in Mr. Boies' question.

17 MR. BURT: We have no objection to that question.

18 THE COURT: No objection to what, to the
19 question?

20 MR. BURT: To the evidence or the question.

21 THE COURT: You have no objection to the exhibit.

22 MR. BURT: That is correct.

23 THE COURT: 226A is received.

24 (Defendants' Exhibit 226A was received in
25 evidence.)

1 A. May I take a moment to look at the document, Mr.
2 Boies?

3 Q. Yes, Mr. Carver.

4 A. Excuse me.

5 Q. Do you recall during your direct examination --

6 THE COURT: The witness just asked for a moment
7 to look at the document.

8 MR. BOIES: I just want to refresh his
9 recollection about his direct examination, your Honor.

10 Q. Do you recall referring to a document written on
11 January 11, 1967, in your direct examination?

12 A. Off the top of my head, no.

13 THE COURT: Do you have another copy of that
14 document, Mr. Boies?

15 MR. BOIES: Yes, your Honor.

16 A. Yes. Go ahead.

17 Q. Just to perhaps refresh your recollection, let
18 me direct your attention to page 2752 of your trial
19 testimony, your direct examination, where you refer to a
20 memorandum dated 11 January. Do you see that, sir (handing)?

21 A. Yes, I do.

22 Q. Is this that memorandum, sir?

23 A. I believe it is, yes.

24 Q. And did you believe at that time that the MACV
25 order of battle of communist ground forces in South Vietnam

1 was far too low and should be raised, perhaps doubled?

2 A. You are taking that sentence out of context, Mr.
3 Boies. If you will read the entire memorandum, which Mr.
4 Adams drafted and which I signed, you will see, for example,
5 in paragraph 4 that one of the components of the order of
6 battle which he specifically lists is the armed political
7 cadre. The memorandum says:

8 "Who the armed political cadre are is murky, so
9 it is impossible to estimate their numbers. That they
10 belong in a military OB at all is questionable."

11 You are taking one sentence out of the memo on a
12 complicated subject that said we should relook the question
13 of communist forces and communist strengths. It also was
14 an internal working memorandum within the agency and was
15 not an externally promulgated agency position.

16 Q. Let me take each of those comments one by one.

17 A. Certainly.

18 Q. First of all, when you wrote this document --

19 A. I didn't write it. I signed it.

20 Q. You signed it?

21 A. Mr. Adams drafted it.

22 Q. And when you signed it you believed it was true,
23 didn't you, sir?

24 A. I did believe it was essentially true, yes.

25 Q. Or you wouldn't have signed it?

1 A. Otherwise I would not have sent it forward to
2 the Deputy Director for Intelligence. But I did not take
3 the precision and care with every sentence on an internal
4 working document that I would have, for example, in a
5 national intelligence estimate.

6 Q. When you wrote this document, you didn't say we
7 ought to look at something. You said we believe the MACV
8 order of battle of communist ground forces is far too low
9 and should be raised, perhaps doubled. That is what this
10 memorandum says?

11 A. That is what the first sentence in the
12 memorandum says.

13 Q. Did you believe that in January of 1967?

14 A. I believed that the order of battle by itself
15 gave an inaccurate depiction of communist strength and in
16 that sense it should be raised.

17 Q. You don't say here that the order of battle
18 needs to be changed or that the categories need to be
19 changed?

20 A. That is said in paragraphs 2, 3, and
21 particularly 4 of same memorandum, Mr. Boies.

22 Q. Where you talk about paragraph 4, you talk about
23 the armed political cadre. How many people did that
24 involve, sir?

25 A. I don't remember what the figure was being

1 carried at the time.

2 Q. Less than 40,000, correct, sir?

3 A. Just under 40,000.

4 Q. Yes.

5 A. But the second paragraph of this divides the
6 then current OB into its four component parts: the main
7 force/local force (carried at 106,562), and it says it is
8 as nearly accurate as the massaging of several hundred OB
9 analysts in Vietnam and Washington can make it. Part 2,
10 the strength of Vietcong irregulars (carried at 112,670) is
11 as yet unpublished CIA study and is also being reviewed at
12 MACV. Part 3, the strength of the combat support (18,653),
13 and Part 4, the strength of the political apparatus, also
14 called armed political cadre (39,175), were arrived at
15 rather airily some years ago and have been neglected ever
16 since. We recommend that Parts 3 and 4 be reviewed.

17 This memorandum then focuses on a review, the
18 necessity, particular necessity for review of the combat
19 support figure and for the armed political cadre and then
20 goes on to say that whether the armed political cadre
21 belong in a military order of battle at all is questionable.

22 Q. And if you took the armed political cadre out of
23 the order of battle, you would subtract about 40,000.

24 Correct, sir?

25 A. That is correct.

1 Q. And --

2 A. Well, excuse me. One of our problems was with
3 the 40,000 number, the definitions that led to it and
4 whether it was an accurate number or needed to be
5 significantly raised.

6 Q. Well, sir, you didn't say in this sentence "We believe
7 the MACV order of battle only including certain categories
8 should be doubled." You said "the MACV Order of battle of
9 communist ground forces" was far too low and should perhaps
10 be doubled.

11 A. But you are taking that sentence out of context,
12 Mr. Boies. The memorandum then goes on to say that the
13 order of battle is divided into four parts. It expresses
14 essential support of Part 1, the strength of the main force/
15 local force. It says, Part 2, the strength of the Vietcong
16 irregulars is the subject of a detailed but as yet
17 unpublished CIA study and is also being reviewed by MACV.
18 And then focuses on the work that needs to be done on Parts
19 3, the strength of the combat support, and part 4, the
20 strength of the political apparatus. Then it goes on to
21 say that, of course, it is a judgment call as to whether
22 the political apparatus belongs in a military order of
23 battle at all.

24 What we were saying is that the whole question
25 of how the communist forces are depicted, what their total

1 overall strength is, should be looked at, which is what we
2 spent a good deal of 1967 doing.

3 Q. Sir, you said more than "should be looked at,"
4 didn't you? Didn't you say that 277,150 is far too low and
5 should be raised, perhaps doubled? That is, you didn't
6 just say you wanted to begin looking at it. You said, at
7 least in January, that you believed that this total of
8 277,000 was far too low and should be raised, perhaps
9 doubled.

10 A. In January I signed an internal memorandum, of
11 which that is the first sentence, which the balance of the
12 memorandum goes on to amplify and explain.

13 Q. But you are not suggesting that anything in this
14 memorandum says that that first sentence is inaccurate, are
15 you, sir?

16 A. The balance of this memorandum goes on to
17 amplify the sentence, and part of the amplification is as
18 to whether the whole concept of what belongs in the
19 military order of battle shouldn't perhaps be looked at.

20 Q. But even after you have taken out whatever you
21 say ought to be taken out, and I leave that for you to
22 explain, you still wanted to raise, raise substantially,
23 and perhaps double, what was left in the MACV order of
24 battle, didn't you, sir?

25 A. Not necessarily, Mr. Boies.

1 Q. That is what you said, isn't it?

2 A. That is what the first sentence says, then
3 modified by the balance of the memorandum. What we felt
4 was that every category in the order of battle should be
5 examined, several of the categories should be raised -- we
6 specifically say that the main and local force seems to be
7 about all right, the irregulars need scrubbing but are in
8 the process of being scrubbed, the combat support needs to
9 be looked at and fisheyed, and so do the combat support and
10 armed political cadre, because the combat support and armed
11 political cadre figures were inherited from some years ago
12 and were never particularly constructed in the first
13 instance.

14 And then we specifically go on -- Mr. Adams
15 specifically goes on to say in the memorandum that I signed
16 that there is a question as to whether the armed political
17 cadre belonged in the order of military battle at all.

18 We were talking about how to describe the
19 communist apparatus and its total strength. We were not
20 hung up on the concept of a military order of battle.

21 Q. I understand that there were a lot of issues
22 with respect to to what you refer to as the communist
23 apparatus.

24 A. Right.

25 Q. That is not what I am talking about now. I am

1 only talking about --

2 A. It is what you should be talking about.

3 Q. I am talking about what you are talking about,
4 sir, in this memorandum, which you didn't call the
5 communist apparatus, you called the MACV order of battle of
6 communist ground forces. With respect to that, you said
7 that ought to be substantially increased and perhaps
8 doubled. Correct, sir?

9 A. This is a five-paragraph memorandum, making a
10 suggestion that other officers and components of the agency,
11 specifically intelligence directorate, do some work. You
12 were focusing entirely on the first sentence, which perhaps
13 was not as carefully drafted as it should have been, but my
14 object was to get the work done, not to worry about the
15 phraseology of one particular sentence in an internal
16 memorandum. And I think that is made quite clear by the
17 balance of the text.

18 Q. Sir, is there any place in the balance of the
19 text that you say that the MACV order of battle should not
20 be raised?

21 A. There was no place where we say it should not be
22 raised. There is specifically in paragraph 4 a raising of
23 the question as to whether the order of battle concept is
24 appropriate for the kind of struggle we are dealing with,
25 because there is a very important category then included in

1 the order of battle, which perhaps, as Mr. Adams drafted
2 and I certainly agree with him, should not be in a military
3 order of battle at all.

4 Q. Let's read that paragraph in.

5 A. Certainly.

6 Q. Why don't you read the whole paragraph,
7 paragraph 4.

8 A. The paragraph tracks off of paragraph 2, as I
9 think we can agree, which talks about the four components
10 of the order of battle. And the paragraph says:

11 "Who the armed political cadre are is murky, so
12 it is impossible even to estimate their numbers. That they
13 belong in a military OB at all is questionable. We
14 recommend that criteria be devised to determine who should
15 belong in a 'political' OB, and that such an OB be drawn up
16 as rapidly as possible and maintained thereafter. It might
17 include, for example, the Armed Public Security Forces, who
18 apparently serve as the Vietcong secret police and who are
19 controlled directly from Hanoi."

20 And the whole thrust of the paragraph is to read
21 the Procrustean, the iron mold, of the military OB and see
22 if it should not be split up to give us a better depiction
23 of what we were dealing with.

24 Q. And if you took those 40,000 out --

25 THE COURT: Sustained as to form.

1 MR. BOIES: What?

2 THE COURT: Sustained as to form.

3 Q. The armed political cadre represented somewhat
4 under 40,000, correct, Mr. Carver?

5 A. Mr. Boies --

6 MR. BURT: Objection.

7 Q. You said 39,175 earlier.

8 A. This was one of the categories that might need
9 raising. We eventually came up with a figure almost double
10 that in pointing out that that was the hard-core alone.

11 Q. Of 80,000.

12 A. We specifically said, I believe it was between
13 75 and 85, but we specifically said that that included only
14 the hard-core, and we also said in the memorandum that I
15 gave to Ambassador Bunker on the 15th of September that the
16 whole question of definition of who should be counted under
17 that rubric needed examination. And therefore you can't
18 say you are only subtracting 40,000, because under the
19 armed political cadre rubric, which Mr. Adams suggested
20 might belong in some different order of battle altogether,
21 could easily have been 100,000 or 120,000 people, depending
22 on how you wanted to define it.

23 (continued on next page)

1 Q. Did you ever see any estimates of the armed
2 political cadre of 100 to 120,000 people, sir?

3 A. I saw estimates -- armed political cadre was a
4 term covering a component of the communist organization
5 that went under a variety of labels at various times. It
6 was called the armed political cadre, it was called the
7 political cadre, it ultimately came to be called the
8 infrastructure.

9 The question of how to size it, how to describe
10 it, whether in using numbers you should refer only to the
11 core full-time directing personnel or whether you should
12 include everybody who was brought in even on a part-time
13 basis to perform essentially political functions, including
14 collecting taxes, was a subject of continuing debate during
15 '67, '68, and the years beyond that, and this was the kind
16 of conceptual look at the problem that we were trying to
17 get our colleagues in the intelligence directorate to
18 undertake when that memorandum was written on the 11th of
19 January '67.

20 Q. My question to you, sir, was only did you ever
21 see any estimates of the armed political cadre in the range
22 of 100 to 120,000.

23 A. The armed political cadre, as I told you, was a
24 label for a component of structure and the label shifted.
25 I believe I saw some notes from Mr. Adams during that

1 summer about the political cadre where he felt that they
2 should be in the 100-120,000 range. He may have had an
3 argument. I didn't particularly discuss it with him.

4 The armed political cadre terminology or phrase
5 tended to drop out of use in early '67, if my memory is
6 accurate, was replaced by a rubric just called political,
7 and was eventually replaced by something called -- the
8 terminology eventually adopted was Vietcong infrastructure
9 or VCI.

10 Q. I want to come to why the term armed political
11 cadre was dropped, but the question I want to focus on
12 right now is did you ever see any estimates for a category
13 called the armed political cadre in the range of 100 to
14 120,000.

15 A. In the technical sense, Mr. Boies, no, because
16 by the time that component of the force structure was
17 focused on by, among others, Mr. Adams several months later
18 it was called by a different name. But we are talking
19 about the same people performing essentially the same
20 functions.

21 Q. That is, the same people performing the same
22 functions were the armed political cadre and later were
23 called the VCI or Vietcong infrastructure?

24 A. In late '66, early '67 it was called -- slightly
25 a misnomer even then -- armed political cadre, came to be

1 called just political, political cadre, and ultimately came
2 to be called Vietcong infrastructure.

3 Q. And when did that change in name happen, sir?

4 A. I don't remember with precision. It happened
5 over the course of 1967 and '68. By '68 I believe the term
6 VCI was in fairly common use and armed political cadre was
7 not being used. When precisely the shifts occurred -- you
8 know, there was never a formal meeting saying as of
9 tomorrow we will change nomenclature. People just began
10 adopting different terms for essentially the same subject.

11 Q. Do you know when that change in nomenclature, as
12 you call it, began?

13 A. Well, it began, to the best of my recollection,
14 which 17 years after the fact is a little hazy -- I don't
15 recall the term armed political cadre being in very great
16 currency or use past the early months of '67. I could be
17 inaccurate.

18 Q. Was it your view that the categories properly
19 included in the MACV order of battle of communist ground
20 forces were too low in January of 1967, sir, if you recall?

21 A. Some of them, yes. But the question of what
22 should be included in an order of battle, as is spelled out
23 in this very memorandum, was one of the questions that we
24 had to address.

25 Q. Which of the categories properly included in the

1 MACV order of battle of communist ground forces in South
2 Vietnam did you in January of 1967 believe were too low?

3 A. What was at that point called the irregulars
4 seemed to me probably too low, although there was a
5 considerable debate going on even then. In those days the
6 so-called irregular category included both the guerrillas
7 and the other elements of the structure, such as the
8 self-defense, secret self-defense, assault youth, et cetera,
9 and there was a continuing argument developing in '66 --
10 you have got to understand, Mr. Boies, that during '66 and
11 '67 we began to improve our understanding of the communist
12 structure, largely as a result of the intelligence hauls
13 and acquisitions of 1966, particularly the documents that
14 were captured.

15 There was a continuing discussion as to whether
16 the irregular figure, as was being used in early '67,
17 should not be split out, with the guerrillas separated from
18 the other components, such as the self-defense, secret
19 self-defense, et cetera, and ultimately I felt they should,
20 and so did Mr. Allen, and so at times did Mr. Adams. We
21 felt that that should be looked at, but it was already
22 being looked at.

23 We also felt that the whole question of combat
24 support, what ultimately came to be called administrative
25 services, should be looked at. Again, you have a

1 definitional question; should you focus on the ones serving
2 full time or include part-timers, should you focus on the
3 ones serving in South Vietnam only or include the ones
4 serving outside Vietnam, either in Laos or Cambodia, and we
5 felt the whole question of which elements of the political
6 leadership that was providing direction to the war should
7 be included, how should they be counted, how should they be
8 defined.

9 There was a whole range of intelligence
10 questions that needed to be addressed during 1967, and the
11 purpose of this memorandum was to encourage the
12 intelligence directorate to get started on at least some
13 parts of the problem, particularly on the two parts flagged
14 in paragraph 2, to wit, in addition to the work already
15 being done on the irregular component, to focus in more
16 carefully on the combat support component and on what was
17 then called the armed political cadre.

18 Q. Mr. Carver, do you still have Exhibit 16 B in
19 front of you?

20 A. I don't know if I do. Tell me what 16 B is.

21 Q. Those were a typed version of Mr. Crile's notes
22 of his interview with you.

23 A. Yes, I think I do. The B is hard -- yes. Okay,
24 fine.

25 Q. I would like to direct your attention to the

1 first sentence of the second paragraph on that page.

2 A. Yes. The first sentence of the second paragraph?

3 Q. Right, which reads "Carver is very agreeable
4 about the inquiry and at first attempts to sidestep the
5 central issues with artful filibusters."

6 Do you see that?

7 A. I do.

8 Q. Do you think that was an accurate description of
9 your conversation with Mr. Crile?

10 THE COURT: Come to the side bar, please.

11 The jury will disregard the question.

12 (At the side bar)

13 THE COURT: Is that question objected to?

14 MR. BURT: Obviously. Yes, your Honor.

15 THE COURT: I don't think that's a proper
16 question. Why should you be permitted to ask a question
17 like that? If Crile took the stand would he be even
18 permitted to say that on the stand?

19 MR. BURT: I believe this has been ruled on
20 before with respect to characterization of people's
21 testimony. Carver was not permitted to testify as to what,
22 for example, the meeting was like, whether it was friendly
23 or unfriendly or something of the sort.

24 MR. BOIES: Are you objecting to the word artful
25 or are you objecting to the word filibuster?

1 MR. BURT: I am objecting to the entire sentence.

2 MR. BOIES: I think artful probably is a
3 characterization.

4 THE COURT: What about attempts to sidestep?

5 MR. BURT: You can ask him what he said, you can
6 ask him what Crile said. That's all I asked.

7 THE COURT: You can ask him --

8 MR. BOIES: I think --

9 THE COURT: Just a second. You can ask him a
10 lot more things than that. I would see no problem with
11 your asking him, so long as you didn't convey by the form
12 of the question that this was what was contained in Crile's
13 report -- you could say to him simply "When you were
14 talking to Crile did you attempt to sidestep the central
15 issues, did you filibuster?"

16 MR. BOIES: I will ask it that way, your Honor.

17 THE COURT: I think it's too late now. Well, I
18 don't know. They have heard the question. I guess it
19 really doesn't matter. You have already conveyed that this
20 is in Crile's notes.

21 But if you want to bring out -- I really don't
22 know what the purpose of this is.

23 MR. BOIES: I will tell the court what the
24 purpose is. I think that one of the things that Mr. Carver
25 was doing with Mr. Crile and I think one of the things that

1 Mr. Carver is doing with me right now is filibustering, and
2 I think that it goes to the credibility of Mr. Crile's
3 notes to show that Mr. Crile thought he was filibustering
4 and to show it in the context when the jury will recognize,
5 as I think the jury will, that that is what he is doing
6 right now.

7 I think that that helps to substantiate in a
8 material way the credibility of Mr. Crile's notes of this
9 conversation with this person and I think it is valid
10 cross-examination for that purpose.

11 THE COURT: I don't see how it's
12 cross-examination at all to bring out that Crile wrote in
13 some notes that he thought this witness was dishonest and
14 filibustering and artful in attempts to avoid the issue.

15 I have little doubt at present, without having
16 heard argument on the subject, that you could properly ask
17 Crile questions calling for those conclusions on a
18 different issue. You could properly ask Crile whether he
19 formed the belief that Carver was not to be believed and
20 was filibustering in Crile's efforts to explain why he
21 credited certain witnesses and didn't credit others. I
22 think that Crile could testify to the operation of his own
23 mind where the operation of his own mind is an issue that
24 is in contention in this case.

25 And I would further think that perhaps at that

1 time and in that context you might even bring out that
2 Crile wrote that in this memo as an effort to rebut the
3 possible argument of recent fabrication, to show that not
4 only does he say he thought that now in self-justification,
5 but that he thought so and wrote it at the time, to show
6 that was an opinion he formed at the time. But I think
7 this is a completely improper use of what may be proper
8 evidence used in a very different context.

9 MR. BOIES: All right. I think that the image
10 that the jury has of this witness right now is the image
11 that I want the jury to have when they focus on the
12 accuracy of this part of Mr. Crile's notes, which is why I
13 tried to do it now. But I will obviously abide the court's
14 instructions.

15 THE COURT: It's like saying to a witness "Do you
16 agree with the 14 people who have said in private
17 conversations with me or in memoranda that you are a liar?"

18 MR. BOIES: Your Honor, with respect, I didn't
19 put this into evidence. I wasn't the one that offered this
20 in evidence. All I am doing is reading in something that
21 was offered into evidence.

22 THE COURT: I know that. But you reserved the
23 right and I said that you reserved the right to object to
24 any portions of it coming in, and it was brought into
25 evidence --

1 MR. BOIES: This is B, this is 16 B.

2 THE COURT: Yes. All these four 16 exhibits
3 were brought into evidence as matters limited to the
4 subject of Crile's state of mind and Crile's credibility,
5 and you are now seeking to use it in a completely
6 unorthodox fashion on Carver's credibility, reading to him
7 statements that somebody else thought he was an artful
8 filibusterer.

9 MR. BOIES: Just so my position is clear, I
10 think this goes to Crile's credibility, because I believe
11 that if they conclude that Mr. Carver was filibustering
12 that in a material way supports Mr. Crile's credibility in
13 these notes.

14 THE COURT: All right.

15 MR. BOIES: Which is why I wanted to do it now,
16 because I don't think I can adequately do it when Mr.
17 Carver is gone and the image that he has created has
18 evaporated.

19 THE COURT: Yes, but let me remind you of
20 something. When Mr. Burt conducted the examination, to the
21 extent that his examination was justified as bearing on
22 Crile's credibility, the form that I required of him was a
23 form in which he did not read to the jury the pertinent
24 statements of the document. That's distinguishing it from
25 the statements that were introduced on Crile's state of

1 mind. I think it's appropriate for you to follow the same
2 pattern.

3 I think you can either ask him in a manner that
4 doesn't show that it's in this document whether he
5 filibustered and whether he artfully dodged or you can
6 point his attention to the first sentence at the top of the
7 paragraph and ask him whether that first sentence
8 accurately describes his conduct in the interview in a
9 fashion that doesn't convey it to the jury, and then
10 subsequently, at a time when Crile's credibility becomes in
11 issue as a result of his taking the stand, I think you can
12 develop it fully. But I don't think that lambasting him
13 with a lot of pejorative characterizations by Crile at this
14 point is proper cross-examination of this witness.

15 MR. BOIES: We are at about the luncheon recess
16 in any event. I would ask when we return that the court
17 instruct the witness to listen to the question, to try to
18 be as responsive to the question as he can.

19 I think there were some of my questions which
20 properly required an explanation. I think some of my
21 questions, including the last one --

22 THE COURT: Which last one?

23 MR. BOIES: The last question I asked to the
24 witness before the filibuster question was a question that
25 I think said "What were the categories properly included in

1 the MACV order of battle which you believed in January of
2 1967 should be raised?" The answer to that question, which
3 roamed all over the field, which took a great deal of time,
4 I think was basically not responsive to the question.

5 THE COURT: I will instruct him when we resume
6 to listen closely to the question and answer only the
7 question, and as I have instructed several of the
8 plaintiff's witnesses previously, not to regard it as a
9 debate, but as an exercise in answering questions.

10 MR. BOIES: Thank you, your Honor.

11 (In open court)

12 THE COURT: We will recess for lunch and we will
13 resume at quarter past 2. The jury is excused.

14 (Luncheon recess)

15 following exhibits, I think without objection: Exhibit 235
16 A, which is a document in which designations have been
17 made of various CIA departments that had been blocked out
18 of the original cable by the government --

19 THE COURT: If there is no objection I won't
20 really have to hear about it.

21 MR. BURT: No objection to 235 A.

22 MR. BOIES: The others are 235 B, which is a
23 revised version of that --

24 THE COURT: My objection to B?

25 MR. BURT: No, your Honor.