

(Jury present)

BY MR. BOIES:

Q. Just before the break, Mr. Carver, we were talking about the decision not to quantify the self-defense forces.

A. Yes.

Q. I am correct, am I not, that you have described contemporaneously with making that decision in September of 1967, you described that decision as a major concession to MACV, did you not, sir?

A. Not quite. I used those words in a cable, but they were used for a purpose.

Q. They were used for a purpose?

A. That is correct.

Q. Let me see if I understand what you are saying. You are saying that you used the words that I just said but you used them for a particular purpose.

A. That is correct.

Q. Was that purpose that you used those words for, the purpose of conveying the actual meaning of those words?

A. Not quite.

Q. You wrote these words to Mr. Helms, did you not, sir?

A. I wrote these words in the cable to Mr. Helms, which I thought he would probably share with other senior

1 colleagues, including the chairman of the Board of National
2 Estimates and the chairman of this paper.

3 Q. Mr. Carver, do you recall direct examination
4 when both Mr. Burt and the Court asked you various
5 questions about these cables you wrote Mr. Helms in
6 September of 1967? Do you recall being asked whether you
7 tried to set forth matters accurately? Do you recall that?

8 A. I do.

9 Q. Do you recall saying that you were trying to set
10 forth matters accurately?

11 A. I do.

12 Q. Do you recall saying I think you had an
13 obligation to set forth things accurately?

14 A. I do.

15 Q. And this is one of those cables, correct, sir?

16 A. It is.

17 Q. Let me ask you some questions about the
18 definition of self-defense forces. We have used the term
19 "self-defense forces," and used that synonymous with
20 militia from time to time, at least if you include secret
21 self-defense forces; correct, sir?

22 A. Militia means self-defense, secret self-defense,
23 assault youth, and others of similar ilk, yes.

24 Q. Prior to the time that this order of battle
25 statistic problem, as you described it, in July of 1967

1 arose, the self-defense and secret self-defense forces were
2 described as guerrillas, were they not, sir?

3 A. No, I believe a more accurate way to put that is
4 that the self-defense, secret self-defense, the other known
5 as militia, were lumped with the guerrillas into a category
6 called irregulars, although sometimes the term "guerrilla"
7 was used in probably '66 in a way that encompassed the
8 entire class that subsequently came to be called irregulars,
9 of which the guerrillas were one component.

10 Q. Let me be sure I understand what you just said.
11 You just said that in 1966 the self-defense and secret
12 self-defense forces were included in a category that was
13 sometimes referred to as guerrillas? Is that what you said?

14 A. Mr. Boies, I am having a great deal of
15 difficulty remembering at what stage we defined categories
16 and used them during '66 and '67 with respect to our
17 understanding of the communist structure. There was a
18 catchall category known at various times as guerrillas,
19 irregulars, and militia. When it came to be used more
20 accurately, it was called irregulars, for a period during
21 the spring and early summer of '67, encompassing the
22 guerrillas, which were one component, and the self-defense,
23 secret self-defense, assault youth, were another.

24 Q. But prior to 1967 there had been a single
25 category for these forces; correct, sir?

1 A. There had, and I don't remember which label was
2 in use at that time.

3 Q. At least sometime the label of guerrilla or, I
4 think, as you have put it, the rubric of guerrilla, was
5 used to describe the overall category that included
6 self-defense and secret self-defense forces?

7 A. I believe that's correct, but I am not
8 absolutely positive.

9 Q. Indeed, at your deposition you described that as
10 happening traditionally; correct, sir?

11 A. I believe that's correct, yes.

12 Q. And you have described what happened in 1967 as
13 purging the self-defense and secret self-defense out of the
14 guerrilla figure; correct, sir?

15 A. I don't remember where I used that term, but
16 that sounds right.

17 Q. Page 495 of your deposition, for the record.

18 A. The same thing happens, as you notice, in the
19 July cable we were discussing about putting self-defense or
20 militia in the nonmilitary category and leaving the
21 guerrillas in the military category.

22 Q. And you have sometimes referred to -- I am not
23 sure exactly what you meant by that last answer. Can you
24 show me what you are pointing to?

25 A. Yes. As you will recall, in this cable --

1 Q. The July 10 cable.

2 A. The July 10. I made a proposal, which is
3 splitting the communist personnel into two major categories,
4 military and nonmilitary, leaving the guerrillas in the
5 military and putting the self-defense or militia in the
6 nonmilitary.

7 Q. Focusing on the word "militia," there were times
8 when the term "militia" was used to describe that overall
9 category, including self-defense, secret self-defense, and
10 what you in Exhibit 245B referred to as guerrillas.
11 Correct, sir?

12 A. I don't think you are accurate, though you may
13 be. I believe militia -- the term "irregular" was used to
14 encompass both guerrillas and the others. I think militia
15 was only used to encompass self-defense, secret
16 self-defense, and similars. I don't think it was ever used
17 to encompass guerrillas, though I may be wrong.

18 Q. We can check that and come back to it. My
19 recollection is that there may have been an order of battle
20 that we used here before, but we will pull that out and we
21 will come back to that.

22 A. You may well be correct. I just don't recall it
23 being used that way.

24 Q. After the September Saigon conference, did there
25 come a time when you -- and by "you," I mean you personally,

1 Mr. Carver -- began to question the decision that had been
2 made in September not to quantify the self-defense forces?

3 A. If by "began to question," you mean I thought it
4 ought to be reexamined, yes.

5 Q. When was that, sir?

6 A. That would have been in late January or --
7 actually it would have been about the middle of February,
8 1968, during the time of the Tet Offensive.

9 Q. Let me show you two documents that have been
10 previously marked as Exhibits 296A and 297A. I would ask
11 you whether those are cables with which you are familiar.

12 MR. BURT: Do you have an extra copy of those,
13 Mr. Boies?

14 A. I am. There are actually two of a series of
15 three documents, one going from Washington to Saigon, a
16 Saigon answer coming in requesting comments, and the second
17 document you gave me is the comments requested by Saigon.
18 The middle document is not included in these two.

19 Q. These are both cables that you sent from
20 Washington to Saigon in February of 1968; correct, sir?

21 A. Whether I actually drafted both of them doesn't
22 appear on these copies, but I certainly released them or
23 authorized them. In that sense I certainly sent them, yes.

24 Q. And they certainly represented your views in
25 February of 1968; correct, sir?

1 A. The first one clearly; the second one, 297A, I
2 believe was written by another office than mine, but I
3 certainly -- I concurred in it and hence did not register
4 any objections, so it reflected my views.

5 Q. Incidentally, when you say that Exhibit 297A was
6 drafted by an office other than yours, how do you tell that?

7 A. I have seen this cable in its original form.
8 You cannot tell from this copy, but in the original form I
9 believe it shows that it was drafted in the Office of
10 Economic Research. I would have to look at the -- I would
11 have to look at the copy from which this typed copy was
12 made, to tell for sure. But that is the best of my
13 recollection.

14 It also doesn't read like a document produced in
15 my office.

16 Q. Let me go first to --

17 MR. BOIES: Your Honor, I would offer both of
18 these exhibits.

19 MR. BURT: Objection, your Honor.

20 THE COURT: There is an objection?

21 MR. BURT: Yes, your Honor.

22 THE COURT: To both of them?

23 MR. BURT: Yes. May we approach side bar?

24 THE COURT: Yes. Will someone please show me
25 the documents.

1 (At the side bar)

2 THE COURT: What is the objection?

3 MR. BURT: The objection, your Honor, is that
4 these documents reflect evidence that became available
5 after the period of the events in the broadcast with
6 respect to the order of battle debate. The order of battle
7 debate was resolved with the SNIE, and the question is, was
8 that debate at that time a good-faith debate?

9 Secondly, if these are admitted to show that Mr.
10 Carver had second thoughts, we would want and I believe it
11 would be proper to show the consequences of his
12 reexamination. If we do that, we would introduce evidence
13 of a briefing that he personally gave Lyndon Johnson in
14 March, and we would want to have him testify as to exactly
15 what he told Johnson in that briefing. I think those
16 issues are irrelevant to the question of whether or not the
17 order of battle resolution was proper and had a proper
18 motive in November of '67, your Honor.

19 THE COURT: What are you offering these to show,
20 Mr. Boies? First of all, are you offering all of both
21 cables or are there certain portions?

22 MR. BOIES: No, I think I can narrow it down,
23 your Honor. I think that, with respect to 296A, I can
24 restrict the offer to the first paragraph. With respect to
25 297A, I can restrict it to the third, fifth, and fourteenth

1 paragraphs, and perhaps the sixteenth. But I can probably
2 get along without the sixteenth.

3 THE COURT: What are you offering those excerpts
4 to show?

5 MR. BOIES: I am offering the excerpts to show
6 that, first, the order of battle, as of January 30, 1968,
7 that is, at the commencement of the Tet Offensive, was in
8 this witness' view too long; that --

9 THE COURT: Let me interrupt you for a moment.
10 Do you mean by that that it is in the nature of impeachment
11 of his testimony as to the validity in his own mind of the
12 NIE compromise?

13 MR. BOIES: It is in part offered for that, your
14 Honor. I am offering it to show that categories of the
15 enemy that this witness agreed to, as he put it, write out
16 of the record on the grounds that they have no military
17 significance were recognized by this witness as having
18 military significance.

19 THE COURT: Again, that is in the nature of
20 impeachment?

21 MR. BOIES: Again, it is in the nature of
22 impeachment. I think it also goes to the nature of those
23 forces. That is, I think it is evidence as to the actual
24 nature of those forces. But I think it is offered also for
25 impeachment here.

1 THE COURT: To the extent that it is evidence of
2 the nature of those forces, wouldn't you agree that, apart
3 from the question of whether you can introduce it for that,
4 that since it is afterwards-acquired evidence that it
5 doesn't bear directly on what the nature of those forces
6 was in September, and that the issue is the currently
7 available intelligence information as of the time that the
8 OB's and the NIE's were being drafted?

9 MR. BOIES: I think that's right. There is a
10 distinction. Nature of the forces is ambiguous. There is
11 an issue as to what the number is, and there is an issue as
12 to what those forces do.

13 THE COURT: But you argue that there is at least
14 an ambiguity in these documents. To the extent that this
15 witness seems to be suggesting that the OB was too low and
16 that the militia was armed and capable, the plaintiff might
17 argue that those were conclusions based on new evidence
18 available after Tet. But you might argue that that is
19 evidence that the pre-Tet NIE compromise was a dishonest
20 one on this witness' part, and this doesn't represent a
21 change of view so much as an acknowledgment that the
22 attempts to reach an invalid conclusion pre-Tet have blown
23 up in their face and now must be acknowledged or
24 compensated for.

25 MR. BOIES: Yes, your Honor.

1 MR. BURT: May I?

2 THE COURT: Yes.

3 MR. BURT: Logically, your Honor, there is no
4 connection between the information that became available
5 post-Tet and the information that was available pre-Tet.
6 There is nothing in these cables, I would submit, that
7 shows that there was any improper motive with respect to
8 the prior estimate. Tet was simply an all-out attack by
9 the enemy.

10 THE COURT: There is a line here that appears to
11 be written caustically, arguably so, where he says, "Other
12 elements currently written out of the record by J-2 MACV on
13 the ground that they 'have no military significance.'"

14 There is another point about this that I don't
15 think I adverted to before, which is that where he says
16 "Written out of the record by J-2 MACV, doesn't that have a
17 tendency to undermine his previous testimony that he and
18 MACV were in complete accord on writing militia-type
19 personnel out of the military component of the OB?

20 MR. BURT: Your Honor, it is just as easily
21 argued that he agreed with the proposal put forth by J-2
22 MACV and now has had second thoughts.

23 THE COURT: I don't disagree with that. But
24 when something is just as easily argued two different ways,
25 generally speaking both sides are entitled to have a crack

1 at it.

2 MR. BURT: May I continue, your Honor? There is
3 a second major point. I am familiar with additional
4 documentation and have some idea of what the witness will
5 testify on this. To date I don't believe we have opened
6 the door to any testimony with respect to how the post-Tet
7 reevaluation affected, if it did affect, any judgments
8 reached pre-Tet with respect to the SNIE, the infiltration
9 being a separate issue. There we dealt with the question
10 of whether there was confirmation of the estimates at the
11 time.

12 If your Honor admits this, there is substantial
13 testimony, I am sure, of Mr. Carver alone, and there is
14 some documentary evidence, if I remember correctly, as to
15 what Carver came up with, in particular --

16 THE COURT: As to what?

17 MR. BURT: As to what Carver's judgment finally
18 was. He did look at it again, and after he looked at it
19 again, I believe he came out very much the same way.

20 THE COURT: The same way as what?

21 MR. BURT: As he had prior to Tet with respect
22 to the military order of battle and the nonmilitary order
23 of battle and the size thereof.

24 MR. BOIES: If you have such a document, I will
25 be happy to put that document in front of the witness.

1 MR. BURT: I think he is going to testify as to
2 what he told President Johnson in a briefing at which this
3 very issue is taken up in March of 1968. We would submit
4 that we are entitled to have that testimony heard by the
5 jury if in fact these documents are admitted, because then
6 I think you have to play out the whole scenario. They came
7 in, took a relook, and this is what he came up with.

8 THE COURT: No, you don't necessarily have to
9 play out the whole scenario. You can deal with these other
10 offers as they come up.

11 First of all, as to paragraph 1 of 296A, I think
12 that the arguable inference that the author of the cable,
13 the witness, is trying to put responsibility on MACV for
14 the deletion of these categories from the order of battle
15 is something which can be used to impeach his direct
16 testimony that that was his idea and that he concurred in
17 it. That disposes of 296A. That is the only point that is
18 offered on that.

19 What was the relationship between the MACV order
20 of battle as of January 30, 1968, and the NIE that was
21 finally agreed to and published in November? Do you know
22 the answer to that?

23 MR. BURT: The NIE was a one-time document.

24 THE COURT: I know. I mean the number
25 relationship. How did the numbers compare?

1 MR. BURT: I think they are pretty much the same.
2 There wasn't a lot of change between January and November,
3 October, of 1967.

4 MR. BOIES: I think that's right. Certainly the
5 January 30 numbers were derivative of the November numbers,
6 and I think not a great change.

7 MR. BURT: I think that is correct.

8 THE COURT: I am inclined to think that
9 paragraph 3 may be received as impeachment of his
10 subscription to the NIE. I recognize that it has another,
11 completely different possible explanation. It may be that
12 his position would be that subsequently acquired
13 information would now cast in doubt what he in good faith
14 subscribed to several months earlier. But I think there is
15 also the possible inference that what he is saying is that
16 back in September we let MACV call the shots on this and
17 allowed their view to prevail against our better judgment,
18 and now the more recent events of Tet have forced us to
19 confront the fact that we were wrong and we have to make
20 compensation for it.

21 I would admit paragraph 3.

22 MR. BOIES: With respect to 14, the only portion
23 of that that I am interested in is the acknowledgment that
24 the enemy was stronger.

25 THE COURT: Would you break it off at "short-term

1 problems?"

2 MR. BOIES: Yes, that would be fine.

3 MR. BURT: However, your Honor, we will withdraw
4 our objection to 14, because we believe the rest of it is
5 important for context, the rest of that sentence "because a
6 relatively high proportion of his better soldiers were
7 among the casualties."

8 THE COURT: I would have to conclude that those
9 three paragraphs may be read.

10 Another thing that I haven't mentioned as yet in
11 this discussion is that I think it is too bad but the
12 plaintiff introduced a great deal of evidence through
13 numerous witnesses concerning what Tet showed about prior
14 estimating. Plaintiff introduced a lot of testimony of
15 witnesses about what the Tet experience, what information
16 it revealed about the size, shape, and so forth, of the
17 enemy.

18 I think there is a significant problem of
19 fairness of having the plaintiff's evidence on those
20 matters in the record and not permitting the defendants to
21 offer contrary evidence, even if I would instruct the jury
22 that all of that evidence is not part of what is relevant
23 to the issues surrounding the July through November
24 positions taken by MACV.

25 I don't think I really have to reach that to

1 make the rulings that are raised by this offer, because I
2 think that this offer is justified by the impeachment
3 capacities of these two cables in a way that just doesn't
4 need to get into the other question.

5 Objection is overruled

6 (In open court)

7 BY MR. BOIES:

8 Q. Let me begin, Mr. Carver, with Exhibit 296A. I
9 would like to direct your attention to the first paragraph
10 of this, Mr. Carver, which is the only paragraph that has
11 been admitted into evidence, which is why Mr. Burt and I
12 went through that process.

13 There you write that: "Recent events indicate
14 that we should reopen the question of excluding from
15 numerical military order of battle holdings all communist
16 components other than main and local force, administrative
17 service and guerrillas, strictly defined."

18 Do you see that?

19 A. I do.

20 Q. When you talk about "excluding from numerical
21 military order of battle holdings," are you talking about
22 excluding from the MACV order of battle?

23 A. I simply don't recall. I probably was, but I am
24 not sure.

25 Q. Are you talking about excluding from estimates

1 such as SNIE 14.3-67?

2 A. Again I may have been. I don't remember
3 precisely what I was referring to.

4 Q. When you talk about numerical military order of
5 battle holdings, are you referring to what you referred to
6 as numerical illustrations or numerical estimates for the
7 size of various components?

8 A. I believe I was, yes.

9 Q. And you then go on to say: "We strongly suspect
10 that much of the recent urban excitement" -- let me stop
11 there. When you talk about "the recent urban excitement,"
12 you are talking about the Tet Offensive, are you not, sir?

13 A. Yes, this was the 18th of February. The Tet
14 Offensive had started on the 30th of January. So I am
15 talking about the activities in the first couple of weeks
16 of the Tet Offensive.

17 Q. And you say that you suspect that much of that
18 urban excitement of the Tet Offensive "was caused by
19 personnel drawn from secret self-defense components,
20 perhaps the assault youth, and other elements currently
21 written out of the record by J-2 MACV on the ground that
22 they 'have no military significance.'" Do you see that,
23 sir?

24 A. I do.

25 Q. When you referred here to certain elements,

1 including the self-defense elements, being written out of
2 the record by J-2 MACV on the ground that they 'have no
3 military significance,' what were you referring to?

4 A. Would you repeat that question, please? I lost
5 your thread.

6 THE COURT: I think you had better alter the
7 question. It is not clear what part of it you are asking
8 about.

9 MR. BOIES: All right, your Honor. I am sorry.

10 Q. Here you talk about certain elements being
11 written out of the record by J-2 MACV on the ground that
12 those elements, including the self-defense components, 'have
13 no military significance.'

14 My question is: When were these elements
15 written out of the record, as you put it?

16 A. This is a slightly purple sentence, more purple
17 than probably it should have been, and I don't know
18 precisely what it is supposed to refer to. I assume that
19 this is inference that we are talking about the kind of
20 breakout of the forces that was adopted in 14.3-67 and used
21 for the first two or three months thereafter.

22 Q. The SNIE 14.3-67?

23 A. That's correct.

24 Q. And you describe, as to what was done in 14.3-67
25 with respect to the self-defense components, you say that

1 those elements were written out of the record by J-2 MACV.
2 Do you see that?

3 A. I do.

4 Q. And do you believe that that was an accurate way
5 to describe what happened in the SNIE negotiations or
6 discussions?

7 A. I think it involves a degree of poetic license,
8 but it is essentially accurate.

9 Q. This clearly states that these elements were
10 written out of the record by J-2 MACV rather than by you,
11 does it not, sir?

12 A. It does.

13 Q. And it says that they were written out of the
14 record by J-2 MACV on the ground that they 'have no
15 military significance.'

16 A. Yes.

17 Q. I would now like to turn to Exhibit 297A.

18 I would like to begin, Mr. Carver, by directing
19 your attention to paragraph 3 of Exhibit 297A, in which you
20 write, or in which the author writes in this cable that you
21 were the authenticating officer for and about which you
22 have testified: "We believe overall base of MACV order of
23 battle as of 30 January 1968 was too low." Do you see that?

24 A. I do.

25 Q. Do you recall believing, in or about February of

1 1968, that the MACV order of battle as of 30 January 1968
2 was too low?

3 A. As of the 20th of February, I recall believing
4 that it may well have been. Later months and later
5 evidence indicated that that belief may have been unfounded,
6 just as in the earlier cable we strongly suspect that much
7 excitement may be caused by these. Later evidence
8 indicated that our suspicions were also unfounded.

9 MR. BOIES: Your Honor, I move to strike the
10 second portion of the witness' answer when he goes beyond
11 the time period that we are dealing with in the question.

12 THE COURT: I will grant your request as to the
13 last portion of his answer that addressed a subject
14 different from whether the order of battle was too low.

15 MR. BOIES: Yes.

16 THE COURT: The jury will disregard that portion
17 of the answer as not responsive to the question.

18 Q. I would like to go back for a moment to Exhibit
19 226A.

20 A. Excuse me, which one is 226A?

21 Q. 226A is the memorandum which you wrote a year
22 earlier or thirteen months earlier.

23 A. I am going to have to find it.

24 THE COURT: Here (handing).

25 THE WITNESS: Thank you, your Honor.

1 Q. This, you will recall, is the memorandum that
2 you wrote on January 11, 1967?

3 A. That Mr. Adams wrote and I signed, yes.

4 Q. Yes, that you signed.

5 A. That's right.

6 Q. In which you began "We believe the MACV order of
7 battle of communist ground forces in South Vietnam 3
8 January carrying the number of confirmed Vietnam, including
9 the North Vietnamese, at 277,150 is far too low and should
10 be raised, perhaps doubled."

11 In January of 1967 you believed that the order
12 of battle was too low; correct, sir?

13 A. I did.

14 Q. And then after the Tet Offensive, in February of
15 1968, at that time you again believed the MACV order of
16 battle was too low. Did you not, sir?

17 A. In January '67 I believed that the MACV order of
18 battle as carried in January of '67 was too low. On the
19 20th of February, 1968, I was of the belief on that day
20 that the 30 January 1968 MACV order of battle was too low.
21 I did not necessarily sustain that belief over the ensuing
22 weeks and months.

23 Q. I understand. You sustained that belief until
24 September of 1967, did you not, sir?

25 A. Excuse me, which belief are we talking about now?

1 Q. That the MACV order of battle was too low.

2 MR. BURT: Objection.

3 THE COURT: Sustained as to form.

4 Q. You said you believed in January of 1967 that
5 the MACV order of battle was too low. You continued to
6 believe that, did you not, until at least September of 1967?

7 A. That's a very hard question to give a yes or no
8 answer to, because the concept of order of battle, what was
9 included in it, how it ought to be included, all evolved
10 during this period of time. I felt that MACV's order of
11 battle, in January of '67, was not an adequate total
12 depiction of the communist force structure. I also felt
13 that in the summer of '67. But we are not talking about
14 the same orders of battle.

15 Q. We are talking about the same order of battle in
16 August of 1967 as we have been talking about in January of
17 1967. Correct, sir?

18 A. Not necessarily. I think the numbers may have
19 been different and I think the definitions of the
20 categories may have modified. I just simply don't recall.

21 Q. When you say you don't recall, do you recall any
22 change in the categories of the MACV order of battle
23 between January and August or September of 1967?

24 A. There was an order of battle conference in
25 Honolulu in February of '67, during which there was a great

1 deal of discussion about how the various categories should
2 be defined and used. I cannot recall whether the category
3 definitions employed in January of '67 were the same as
4 those employed in August of '67, because I don't remember
5 what changes were made during the February '67 order of
6 battle conference.

7 Q. Do you remember whether there were any changes
8 at all made?

9 A. I know that there was a great deal of discussion
10 about definition. I do not recall exactly how the
11 discussions came out, no.

12 Q. Without remembering exactly how the discussions
13 came out, do you recall any change at all in the categories
14 or the definition of the categories of the MACV order of
15 battle between January and September of 1967?

16 A. The same labels were used. Whether the labels
17 had the same meaning in August as they did in January, as I
18 said, I do not recall.

19 Q. I now want to go to paragraph 5 of Exhibit 297,
20 sir.

21 A. Which is 297?

22 Q. 297 is the February 20 cable.

23 A. Yes.

24 Q. Paragraph 5 begins: "Our belief that MACV OB
25 too low founded in part on several reasons." Do you see

1 that, sir?

2 A. I do.

3 Q. And the first reason that is given here is that:
4 "Large numbers of small specialist units" -- and you say --
5 "(sapper, special action) which undoubtedly participated in
6 attack were certain almost certainly absent from MF/LF OB" --
7 and that stands for main force/local force order of battle
8 category; correct, sir?

9 A. It does.

10 Q. You then say: "Second, city units (which almost
11 certainly involved in urban offensive) are by and large
12 missing from OB." Do you see that?

13 A. I do.

14 Q. And were you of both of those beliefs in
15 February of 1967, sir?

16 A. In February I was. By the end of March and
17 April, I realized an intelligence officer should never use
18 words like "undoubtedly" because the situation was more
19 complicated than we had realized in February. Relatively
20 few of these units that we thought had participated or
21 these personnel in fact had.

22 MR. BOIES: I will move to strike, your Honor,
23 the comments about March.

24 THE COURT: Denied.

25 Q. Mr. Carver, you say you went into something in

1 March of 1968. Did you prepare any written cable about this
2 conclusion you say you reached in March of 1968?

3 A. I don't recall doing so, but I do recall that
4 not one prisoner ever identified himself or herself as
5 being from, say, the assault youth or self-defense.

6 Q. Identified to you, sir?

7 A. Well, identified -- I saw no prison reports
8 where people identified themselves as belonging to such
9 units.

10 Q. You didn't talk any of the prisoners yourself?

11 A. No, I was in Washington.

12 Q. Did you have anybody who was working for you in
13 Washington at this time, that is, March of 1968, who was
14 reading the prisoner-of-war reports?

15 A. I had no one working on my immediate staff who
16 was. There were people in the agency, both in headquarters
17 and in Saigon, who were, and the fruits of their research
18 was made available to my staff.

19 Q. Who were the people that you say were working on
20 this, sir, in the CIA?

21 A. There were people in the collation branch of
22 Saigon station, the analytic component. I cannot remember
23 their names.

24 Q. Can you remember the names of any of them that
25 were working on this, that is, were working on the prisoner-

1 of-war reports in March of 1968 that you say formed the
2 basis of the opinion that you just expressed?

3 A. Mr. Sandine and his associates in the collation
4 branch were sifting every piece of available evidence that
5 bore on what had gone into the Tet Offensive and the units
6 used therein. This was an active subject of review by Mr.
7 Walsh and his staff in the Office of Economic Research and
8 by Mr. Moore and his staff in the Office of Current
9 Intelligence. Precisely which of their subordinates were
10 doing what tasks I do not recall.

11 Q. Do you recall what the view was of either Mr.
12 Sandine or Mr. Walsh or Mr. Moore as to whether large
13 numbers of sapper units participated in the Tet Offensive
14 which were absent from the order of battle?

15 THE COURT: You are asking what their views were
16 as of what time?

17 MR. BOIES: As of March of 1968, your Honor,
18 when the witness has discussed arriving at a conclusion of
19 his.

20 A. There was done in the latter part of February,
21 Mr. Boies, a consolidated CIA study on the forces used in
22 the Tet Offensive, which was sent to the White House but
23 which I do not have total recall. But it made the point
24 that far fewer of the lower echelon forces had been
25 employed than had initially been thought or suspected.

1 Q. Have you seen a copy of that report recently,
2 sir?

3 A. I have seen it within the last couple of days.

4 Q. And who participated in the preparation of that
5 report, sir?

6 A. It was prepared under the supervision of Mr.
7 Paul Walsh in the office of economic research and it was
8 issued as a CIA document. The format and typography used
9 doesn't identify the issuing office on the document, but
10 the format and typography was that used in formal memoranda
11 issued by the deputy directorate of intelligence, the
12 analytic component of the agency. It was I think dated 21
13 February.

14 Q. And this study that was dated the 21st of
15 February of 1968, is it your testimony that this was based
16 on the review of prisoner of war interrogations and
17 captured enemy documents?

18 A. It was based on a review of all evidence
19 available at that time, including such prisoner of war
20 interrogations and captured documents as were then
21 available.

22 Q. And do you have an understanding one way or the
23 other about how many captured enemy documents and prisoner
24 of war interrogations were available to Mr. Walsh and his
25 staff from the Tet offensive up to February 21 of 1968?

1 A. I have no recollection of the number at this
2 stage, no. I know there --

3 Q. Any recollection at all as to the approximate
4 number?

5 A. At this stage, no. They were very conscientious
6 about reviewing all data available. What they had to
7 review, I don't remember, since I didn't do the initial
8 review myself.

9 Q. And indeed, neither you nor any member of your
10 staff did that review, correct, sir?

11 A. That is correct.

12 Q. The third --

13 THE COURT: Let me just remind the witness once
14 again to please confine yourself to answering what is asked
15 and don't go beyond the answer to what is asked.

16 THE WITNESS: Yes, your Honor.

17 THE COURT: If I can make it anything of an
18 inducement, I can tell you that when you go beyond you may
19 be extending your time on the stand very substantially.

20 THE WITNESS: That's a very strong inducement,
21 your Honor.

22 Q. The third point that is made in this February 20
23 cable is "Some larger units identified in attack apparently
24 not in OB." Do you see that, sir?

25 A. The third point made in this paragraph, yes.

1 Q. Do you know what those larger units were?

2 A. No, I don't recall, this removed, precisely what
3 that sentence is intended to refer to.

4 Q. Do you know whether this referred to North
5 Vietnamese units or Vietcong main and local force units or
6 both?

7 A. I simply don't remember, Mr. Boies. It could
8 have been either/or it could have been both.

9 Q. The fourth point is "a review of recent evidence
10 indicates enemy made large scale recruitment drive prior to
11 offensive," and then the cable, in which you concurred,
12 goes on to say "And finally, certain classes of enemy
13 manpower, who probably in attack, not in OB at all -- for
14 example, secret guerrillas, secret self-defense and assault
15 youths." Do you see that?

16 A. I do.

17 Q. When you refer to secret or when this cable
18 refers to secret guerrillas, is that different than the
19 self-defense forces?

20 A. I believe it is. I don't recall what secret
21 guerrillas is intended to refer to. Secret self-defense --
22 the distinction between self-defense and secret
23 self-defense is that the self-defense force operated in
24 communist controlled areas, the secret self-defense in
25 government controlled areas. What secret guerrillas refers

1 to I do not, this removed, remember.

2 Q. Let me ask you to turn to paragraph 14 of this
3 exhibit. The paragraph I am interested in is now this
4 paragraph 14. This is obviously a paragraph that comes on
5 a different page, but it is this paragraph that has been
6 admitted on this page.

7 A. I can't see from here. Is that the same thing
8 that appears as paragraph 14 --

9 Q. Yes, paragraph 14, where it begins "Our
10 assessment of the situation is that the enemy, who was
11 stronger than we acknowledged prior to the Tet offensive,"
12 and then I will read the rest for context, but I want to
13 come back to that phrase because that's the phrase I am
14 interested in, "may have some short-term problems because a
15 relatively high proportion of his better soldiers were
16 among the casualties, but that in the long run, barring
17 major setbacks for him in the countryside, he has
18 capability to continue main force warfare."

19 Let me come back to the phrase there "who was
20 stronger than we acknowledged prior to the Tet offensive."
21 Do you see that, sir?

22 A. I do.

23 Q. Do you know what the basis was of that statement
24 at the time it was made?

25 A. In detail, no.

1 Q. Do you know in general what the basis was for
2 the statement that is here that the enemy was stronger than
3 we acknowledged prior to the Tet offensive?

4 A. I think it was a judgment based on such evidence
5 as was available as of the 20th of February, and in that
6 sense a preliminary judgment.

7 Q. Do you know, when reference is made to stronger
8 than we acknowledged, what is being referred to? That is,
9 is that stronger than we acknowledged in MACV's order of
10 battle or stronger than we acknowledged in SNIE 14.3-67 or
11 both of those or something else?

12 MR. BURT: Objection.

13 THE COURT: Overruled.

14 A. I simply do not know to what that phrase is
15 specifically supposed to refer. It says "Our assessment,"
16 which would mean in the context of this cable the
17 Washington agency headquarter's assessment was that the
18 enemy was stronger than we acknowledged.

19 Now, the antecedent of "we" is not clear and I
20 can't remember now precisely what the antecedent was
21 intended to be. I think it meant the authors of the cable
22 in the headquarters analytic component, but I am not
23 positive.

24 MR. BOIES: Your Honor, is this a convenient
25 time for the evening recess?

1 THE COURT: All right. Do you have an idea how
2 much more cross-examination you have of this witness?

3 MR. BOIES: I think the cross-examination will
4 continue through the morning and into the early afternoon,
5 your Honor. I think I will finish perhaps at the end of
6 the morning, perhaps early afternoon.

7 THE COURT: All right. Perhaps it would be
8 useful to spend a few minutes now, if there are going to be
9 any disputes as to the admissibility of any documents that
10 you intend to offer during that examination. We can do
11 that off the record in the robing room.

12 MR. BOIES: Thank you, your Honor.

13 THE COURT: Members of the jury, you are excused.
14 We will resume at 10 o'clock in the morning.

15 Please remember that you are not under any
16 circumstances to discuss the case and please remember not
17 to permit yourself to be influenced in any fashion by
18 anything that may appear in the press.

19 You are excused. Good evening.

20 (Adjourned to 10 a.m., November 14, 1984)