

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 December 4, 1984

13 10:00 a.m.
14 -----
15
16

17 (In open court.)

18 MR. BURT: Your Honor, if you have not
19 reconsidered the ruling with respect to exhibit 931, we
20 would -- we want that offer expanded to include the entire
21 cable, not just paragraph D. Obviously, we can't do it.

22 THE COURT: Is there any objection?

23 MR. BOIES: Not so long as the entire cable is
24 subject to the same restrictions, if any, that that are
25 applicable to paragraph D, your Honor.

1 THE COURT: I haven't read the rest of the cable.
2 I don't know what it's about. It is rather long.

3 MR. BURT: Your Honor, it is about the -- should
4 I summarize it?

5 MR. BOIES: I am not intending to use the
6 remainder of that cable now, your Honor. I only intend to
7 read in paragraph D, and given the discussion last night, I
8 don't intend to ask the witness questions about it, other
9 than does he recall having received the cable.

10 If Mr. Burt wishes to offer the remaining
11 portions of the paragraph --

12 THE COURT: Are you, Mr. Burt, also asking that
13 the remainder be received for the fact that it was received
14 by General Westmoreland?

15 MR. BURT: Correct, your Honor.

16 MR. BOIES: I have no objection to that offer,
17 your Honor.

18 THE COURT: Then there is no objection to that
19 and there is no problem.

20 MR. BURT: Thank you.

21 THE COURT: I would just add as a footnote to
22 our discussion last night, which for some reason I didn't
23 mention, but while you will were protesting Mr. Boies
24 offering comparison to the Carver cables to Helms and the
25 Godding cable to Peterson, those are scarcely hearsay at

1 all in view of the fact that the declarant is on the stand
2 available for cross-examination, and there are experts on
3 the subject who contend they shouldn't be considered
4 hearsay at all for that reason.

5 That is an important distinction between those
6 cables and the uses that I have barred of 931 here.

7 MR. BOIES: Perhaps I misspoke, your Honor, but
8 I had meant yesterday, and my recollection is from looking
9 at the transcript that I did, but in any event, I did mean
10 to refer to exhibits 670 and 893 A. If I didn't I
11 apologize.

12 THE COURT: 670 being what?

13 MR. BOIES: That being the so-called Hendry
14 memorandum, and 893 A being the document written by an
15 unidentified CIA person.

16 THE COURT: Which is not being received for the
17 truth of what it says in it.

18 MR. BOIES: I think it is being received, at
19 least with the freedom of the plaintiff to argue as to the
20 truth issue, which the plaintiff has done to the jury from
21 that specific document.

22 THE COURT: 931 is no longer limited to
23 paragraph D. It is the entire document now for the fact it
24 was sent and received.

25 All right. Call the jury, please.

1 MR. BOIES: Your Honor, with respect to
2 paragraph D, we discussed the appropriateness of admitting
3 various sentences in paragraph D for purposes other than
4 sent and received.

5 I take it that discussion is still applicable,
6 at least as to paragraph D? That is, when the court just
7 said admitted for purposes of showing sent and received,
8 that was not limiting the discussion we had last night, was
9 it?

10 THE COURT: Do we need to resolve that now for
11 your immediate examination?

12 MR. BOIES: No, your Honor, we don't.

13 THE COURT: My understanding is that you had
14 said for sent and received purposes was the offer that you
15 were accepting.

16 MR. BOIES: We don't need to resolve it right
17 now, but I had thought that the court had drawn a
18 distinction between the three --

19 THE COURT: We did discuss it. Let's discuss it
20 further afterwards.

21 (Jury present)

22 WILLIAM C. WESTMORELAND, resumed:

23 THE COURT: You may proceed, Mr. Boies.

24 Good morning, members of the jury.

25 MR. BOIES: Thank you, your Honor. Good

1 morning members of the jury. Good morning General
2 Westmoreland.

3 THE WITNESS: Good morning.

4 CROSS EXAMINATION

5 BY MR. BOIES: (Continuing)

6 Q. General Westmoreland, I would like to begin by
7 focusing on the three exhibits that we were talking about
8 just at the very end of yesterday. I two like to begin by
9 focusing on exhibit 403 A, which is a retyped version of an
10 April 22, 1968 cable from you to Admiral Sharp and General
11 Wheeler. Do you have that?

12 A. I have it in front of me, yes.

13 Q. Have you had an opportunity to read this cable,
14 sir?

15 A. I have, yes.

16 Q. Did you have an opportunity to look at these
17 cables last night at all?

18 A. I read this cable this morning, I believe it was.

19 Q. Have you had an opportunity to discuss these
20 cables with anyone since your examination yesterday
21 afternoon?

22 A. I have discussed this cable with my attorneys.

23 Q. This particular cable, 403 A, sir?

24 A. I have discussed it with my attorneys over a
25 period of the last --

1 MR. BURT: Objection.

2 A. -- well, within the last two weeks.

3 Q. Did you discuss it with them last night, sir?

4 MR. BURT: Objection.

5 THE COURT: Sustained.

6 Q. Do you recall sending this cable on or about
7 April 22, 1968?

8 A. I do not recall sending it, but quite obviously
9 I did.

10 Q. Were you aware in April of 19 state that the CIA
11 had prepared an estimate of total enemy strength, including
12 political infrastructure of 480,000 to 615,000, about twice
13 the previously agreed figures?

14 A. I'm sure that I was aware of it at that time,
15 but it is not a matter that I can recall without refreshing
16 my memory through looking at this cable.

17 Q. And in April of 1968 was it your belief that the
18 CIA based that estimate on essentially the same evidence
19 and arguments which had been involved in the SNIE 14.3-67
20 debates of 1967?

21 MR. BURT: Objection. Calls for speculation on
22 something the witness can't know.

23 MR. BOIES: I am asking for the witness'
24 understanding, your Honor.

25 THE COURT: It may be received as to what the

1 witness' belief was when he wrote this cable.

2 You may answer the question.

3 A. Well, I note in the first sentence that this was
4 based on a leak through the media to the New York Times of
5 figures by CIA, than and when I wrote this, or when I
6 signed this cable, it being prepared for me by my staff, I
7 am quite confident that it was an exercise to rehash a
8 discussion that had taken place in 1967.

9 Q. Let me be sure we understand what you just said,
10 General Westmoreland. There had been a leak of CIA figures,
11 and after that leak had taken place there had been a
12 meeting of MACV and CINPAC representatives with the CIA in
13 Washington, correct, sir?

14 A. That's correct.

15 Q. And you are writing this cable on April 22, 1968,
16 this cable that has been marked as exhibit 403 A, after
17 that meeting, or during that meeting between MACV and
18 CINPAC representatives in Washington and the CIA
19 representatives, correct, sir?

20 A. Yes, that's correct.

21 Q. And at that time, that is on or about April 22,
22 1968, was it your understanding that the CIA estimate of
23 480,000 to 615,000 for total enemy strength, including
24 political infrastructure, was based on essentially the same
25 evidence and arguments which the CIA had put forward in

1 1967 in conjunction with the 14.3-67 SNIE debate?

2 A. Well, I actually didn't have that much detail
3 because the information came from the MACV and CINPAC
4 representatives that were in Washington discussing this
5 matter.

6 Q. Well, sir, when you wrote this cable you
7 believed that the CIA estimate 480,000 to 615,000 in April
8 of 1968 was based on essentially the same evidence and
9 arguments which the CIA had put forward in 1967 in
10 conjunction with SNIE 14.3-67, correct, sir?

11 A. Not necessarily, because there may have been new
12 factors to be added, and that was the purpose of the
13 meeting, to thrash this out so that all parties associated
14 with intelligence could put forth their views.

15 The purpose of this cable was to make known to
16 Admiral Sharp and General Wheeler my views at that time.

17 Q. Let me read to you the third sentence of this
18 cable of yours, sir. This immediately follows your
19 reference to the estimate that we have just mentioned,
20 which was an estimate of 480,000 to 615,000 for total enemy
21 strength including political infrastructure, which you say
22 the CIA representatives are about to forward to Mr. Helms.

23 In the very next sentence you say "they" and "they"
24 refers to the CIA representatives, correct, sir?

25 A. Let me see if I can find that. Oh, yes, the

1 first word of the second sentence. I have it "they" yes.

2 Q. And that refers to the CIA, sir, right, when
3 they say, "They base these figures"?

4 A. I've got the wrong "they." All right. "They base"
5 and that refers to my understanding of the CIA position,
6 yes.

7 Q. And you say, "They" that is the CIA, "base these
8 figures" and "these figures" are the 480,000 to 600 50,000
9 total enemy strength estimate, correct, sir?

10 A. Yes.

11 Q. So you say, "The CIA base the 480,000 to 615,000
12 total enemy strength estimate figures on essentially the
13 same evidence and argumentation which were reflected by
14 USIB in the formulation of SNIE 14.3-67"; do you see that,
15 sir?

16 A. Yes.

17 Q. Was that your view at the time?

18 A. That was obviously based on the information I
19 had received from general Davidson's representatives at the
20 meeting.

21 Q. And you didn't have any reason to doubt that
22 information, did you?

23 A. I accepted that.

24 Q. And you don't have any reason to doubt that
25 today, do you, sir?

1 A. No. But there could be other factors involved
2 because this is --

3 THE COURT: Just a second. The jury will
4 disregard that question. It is irrelevant what his opinion
5 is today on that subject, and General Westmoreland did not
6 have knowledge of what the CIA's thinking was at the time.

7 You were asking him what his assumption or
8 belief was at the time, which is a relevant subject.

9 Q. General Westmoreland, you received a reply to
10 your cable of April 22, 1968, correct, sir?

11 A. I am sure that I did.

12 Q. Do you recall that reply, sir?

13 A. Yes. That is one of the exhibits. I assume you
14 are referring to the 4 May cable from General Wheeler.

15 Q. That is the May 4, 1968 cable from General
16 Wheeler to you and Admiral Sharp that has been marked as
17 exhibit 931, correct, sir?

18 A. I have that in front of me, yes.

19 Q. And that was a reply to your cable of April 22,
20 1968, correct, sir?

21 A. It was.

22 Q. In your cable of April 22, 1968 you had argued
23 against quantifying the self defense and secret
24 self-defense forces, had not, sir?

25 A. Well, not exactly. I think I have explained

1 this before.

2 The military intelligence people, General
3 Davidson, CINPAC intelligence people, and the defense
4 intelligence people, felt that if these were quantified --
5 and they realized it was very difficult to do it because it
6 was spread all over the country, and our intelligence was
7 not adequate in order to be precise in any degree -- and if
8 a number were attached to them, there would be a tendency
9 to add this to the military elements and an exaggerated
10 figure would be made available that would suggest that we
11 were fighting a military force consisting not only of
12 military elements but the self defense and secret
13 self-defense.

14 They were considered as a part of the enemy
15 organization, and an agreement was reached in September in
16 Saigon between George Carver and myself that they would be
17 identified in the SNIE, and an order of magnitude figure,
18 which was 150,000, would be put forth in that particular
19 document, as an order of magnitude of those that we thought
20 that figure -- we thought that figure was representative of
21 the number a year previous, which was based on some
22 intelligence suggesting that there could have been as large
23 as 150,000 in 1966.

24 So they were quantified in order of magnitude in
25 that regard, but there was a resistance.

1 THE COURT: General Westmoreland, the question,
2 I think, related to your cable of April 22, 1968. The
3 question is whether in that cable, in April of 1968, you
4 were arguing against quantification of the SD and the SSD,
5 and I call your attention to this portion of the cable.

6 You are not being asked about the whole history
7 of this cable. You are being asked about this cable.

8 A. Yes. This cable says that we stand by what was
9 agreed upon in the SNIE, not for further quantification.

10 This cable spells that out and it explains why.

11 Q. Indeed, it spells out what you refer to in this
12 cable as your refusal to quantify, correct, sir?

13 A. Any further than we did in the SNIE, yes.

14 Q. It doesn't say "any further than we did in the
15 SNIE," does it, sir?

16 A. Well, I think it is implicit, because it was in
17 the SNIE in order of magnitude, and in subsequent
18 correspondence that was made very clear that we felt that
19 that was adequate quantification.

20 Q. Well, sir, let me direct your attention to the
21 sentence that begins at the very bottom of the first page
22 of this cable of yours in which you say, "The MACV position
23 is that quantification is not possible"; do you see that,
24 sir?

25 A. Yes.

1 Q. Was that the MACV position on April 22, 1968?

2 A. Yes. But, of course, it is assumed that the
3 order of magnitude quantification was in the SNIE and a
4 "further quantification" would have been better language in
5 that regard.

6 Q. You didn't use the words "further quantification"?

7 A. No, it was not used, no, but that was I think
8 implicit, and I think anybody who understood the situation
9 realized that it had been quantified in order of magnitude
10 in the SNIE.

11 Q. Have you discussed this cable with your
12 attorneys, sir?

13 A. I have not.

14 MR. BURT: Objection.

15 THE COURT: Come to the sidebar, please.

16 (At the sidebar)

17 THE COURT: I really think that that line of
18 examination has been rather abused. I have not absolutely
19 cut it off where there is a basis for some possible
20 suggestion that the witness' answers have been dictated to
21 him by his attorneys, or whatever.

22 It is difficult to estimate where the
23 attorney-client privilege should leave off because I think
24 counsel should have some opportunity to bring out to the
25 jury a likelihood that the witness' answers have been given

1 to him, but in some cases you have simply adopted a
2 practice on every subject of asking him whether he has
3 discussed it with his attorneys, and now you've asked it
4 three or four times this morning.

5 I think it is a safe assumption that every
6 client has discussed every proposition of his testimony
7 with his attorneys, and the fact--

8 MR. BOIES: I should have asked him last night,
9 your Honor, that's what I really plenty to do.

10 THE COURT: But you have already asked it
11 several times this morning.

12 MR. BOIES: Not about this document.

13 MR. BURT: Your Honor, I asked for a standing
14 objection when this line of questioning began four days ago,
15 anticipating that this would happen.

16 Can I get an instruction to the jury now that it
17 is customary for clients to speak to their attorneys about
18 issues that are the subject of litigation, and that no
19 adverse inference should be drawn therefrom?

20 MR. BOIES: Your Honor, I respectfully suggest
21 that it is not customary practice in the middle of
22 cross-examination for documents to be discussed, at least
23 to the extent to which this witness has discussed them, or
24 apparently has discussed them, with his attorney. I think
25 that is an inappropriate instruction unless we have an

1 exploration --

2 THE COURT: Mr. Boies, you have not asked for an
3 order barring him from discussing it with the attorneys.
4 If you had asked for such an instruction then we would have
5 considered the issue whether such an instruction should be
6 given or not.

7 You certainly would get such an instruction with
8 respect to plaintiff's witnesses, that they are not to talk
9 to anybody about the subject of their examination during
10 their cross-examination. I have never been asked to give
11 that instruction.

12 You would not necessarily get the same
13 instruction with respect to the party, barring him from
14 talking to his own lawyers. The same thing is true on your
15 side of the case.

16 MR. BOIES: Your Honor, if I may, all I'm doing
17 now is attempting to probe the extent of the conversations.
18 I think the issue as to whether I can ask about those is a
19 different issue from the issue as to whether or not those
20 conversations can go on.

21 THE COURT: Yes. But you just made an assertion,
22 I don't know what on earth your basis for it was, that it
23 is not customary for a plaintiff in a lawsuit to talk to
24 his attorneys about documents during his cross-examination.
25 I think you are far from the mark on that and I certainly

1 assume that unless you are instructed otherwise you will
2 talk to your clients about their testimony during their
3 cross-examination.

4 I have never known an attorney not to do it
5 unless there was some instruction that it shouldn't be done.
6 But by repeatedly asking "Have you talked to your attorney?
7 Have you talked to your attorney?" you are suggesting to
8 the jury that there is something improper about his talking
9 to his attorney. He has not been instructed not to do it.

10 MR. BOIES: Your Honor, with respect, I have
11 not repeatedly done that where there has not been some
12 indication that there were conversations with the attorney
13 that were affecting this witness' testimony.

14 I have covered literally dozens- --

15 THE COURT: What is the indication? Affecting
16 his testimony in an improper fashion?

17 MR. BOIES: Your Honor, without asking some
18 questions I can't tell whether it is an improper fashion or
19 not. This document, these three documents were given to
20 the witness at about three thirty yesterday afternoon.

21 MR. BURT: That's not true. He didn't get them,
22 your Honor, until early this morning, because I dropped
23 them off at his apartment when I ran by.

24 MR. BOIES: Come on. I gave these documents to
25 the witness yesterday. I gave them to him yesterday on the

1 stand.

2 THE COURT: Didn't he just say something about
3 having discussed them with his attorneys over two weeks?
4 Was he talking about one of these documents?

5 MR. BOIES: He was.

6 MR. BURT: It may have been two weeks ago, I
7 don't know, but this morning he read them and we talked
8 about them, without waiving my privilege, for a couple of
9 minutes, and that was it, and I don't think this whole line
10 is proper. I am free to talk to my client.

11 MR. BOIES: I will desist from those questions.
12 In the last two and a half hours this witness has been on
13 the stand I have put about twenty minutes of questions. I
14 will simply desist from this line of questions.

15 MR. BURT: May I have that instruction, your
16 Honor.

17 MR. BOIES: I would oppose that instruction,
18 your Honor, I would oppose it most strongly, under the
19 circumstances.

20 THE COURT: If there are not going to be further
21 questions of that sort I won't do it now.

22 (Open court.)

23 BY MR. BOIES:

24 Q. General Westmoreland, we were talking about the
25 statement at the very bottom of the first page of exhibit

1 403 A which says the MACV position is that quantification
2 is not possible.

3 A. Yes.

4 Q. You then go on to give a reason for that in
5 which you say, "And that it gives the enemy credit for
6 thousands of people who exert no military effect." Do you
7 see that, sir?

8 A. Yes.

9 Q. The next sentence says "the DIA position, as I
10 understand it, is somewhere between the CIA and CINPAC/MACV
11 positions in that DIA holds that some quantification of the
12 insurgency base is possible"

13 Do you see that, sir?

14 A. That's on page 2, what paragraph?

15 Q. It's the very next sentence, sir, very next
16 sentence from what I just read.

17 The first sentence that we read starts at the
18 bottom of the first page, it says "The MACV position is
19 that quantification is not possible, and that it gives the
20 enemy credit for thousands of people who exert no military
21 effect."

22 Do you see that?

23 A. Yes.

24 Q. The very next sentence says "The DIA position,
25 as I understand it, is somewhere between the CIA and

1 CINPAC/MACV positions in that DIA holds that some
2 quantification of the insurgency base is possible."

3 A. I see that.

4 Q. You then go on to say "We base our refusal to
5 quantify the insurgency base on the following factors";
6 correct?

7 A. Yes.

8 Q. Nowhere in here do you talk about giving an
9 order of magnitude for the self defense and secret
10 self-defense forces, correct, sir?

11 A. Quite correct. But, of course, the agreed
12 position by the entire intelligence community was put forth
13 in the SNIE, and there was no suggestion that the SNIE be
14 changed, the language of the SNIE, which was referred to in
15 a subsequent cable.

16 My intelligence chief thought it was adequate in
17 order to describe the order of magnitude of this particular
18 group.

19 Q. Sir, you don't really mean that there was no
20 suggestion that the SNIE would change, do you?

21 A. There is no language here suggesting that the
22 SNIE be changed.

23 Q. Sir, the CIA was clearly suggesting that the
24 SNIE 14.3-67 estimates be changed, correct, sir, and you
25 knew it at the time?

1 A. Yes. Well, that was reported by the MACV
2 representatives.

3 Q. Reported to you?

4 A. Reported by a cable to me, which I don't have,
5 and this, particularly 22 April, 1968 cable, is in response
6 to one that apparently was received by my headquarters from
7 my representatives in Washington.

8 Q. And you didn't have any reason at that time to
9 believe that that report to you from your representatives,
10 that the CIA was suggesting this change, was in any way
11 inaccurate, did you, sir?

12 A. No. My interpretation was that the CIA felt
13 there should be more precise quantification of this
14 particular group than spelled out in the SNIE.

15 Q. What you say in this cable is that the CIA is
16 arguing for an estimate of 480,000 to 615,000, about twice
17 the previously agreed figures, correct, sir?

18 A. Yes. And we did not agree with that.

19 (Continued on next page)

1
2 Q. And by we, you mean, your command?

3 A. My command, yes.

4 Q. Now --

5 A. And CINCPAC.

6 Q. Now, Exhibit 931, is General Wheeler's reply to
7 the cable, is it not, sir?

8 A. It is.

9 Q. And you recall receiving this cable, sir?

10 A. I do not recall specifically receiving it. I
11 recall very vaguely correspondence on that subject and, of
12 course, my memory has been refreshed by the reading of the
13 4 May, 1968 cable.

14 Q. Let me ask you to look at the last page of this
15 cable, sir, and in particular, the paragraph lettered D.

16 A. All right, I have that, yes.

17 Q. The heading of that paragraph is "Self-defense
18 and Assault Youth," correct?

19 A. Yes.

20 Q. This paragraph which is a cable from General
21 Wheeler to you reads:

22 "Self-defense and Assault Youth. I appreciate
23 your views on the quantification of the self-defense and
24 assault youth elements and agree that these do not
25 constitute a purely military threat. However, the highest

1 authority has specifically requested an estimate of those
2 elements of the so-called insurgency base that had been
3 repeatedly identified in the press and official discussions
4 of the overall enemy threat.

5 "The feeling at high levels is that orders of
6 magnitude of the various elements should be estimated in an
7 effort to provide a better appreciation for overall
8 planning not only of the military --

9 THE COURT: Not only for."

10 Q. "Not only for the military war in Vietnam, but
11 also for the pacification programs and police actions that
12 are required. I will undertake to insure that such
13 quantifications are realistically described and that full
14 consideration is given as to the manner in which the
15 numbers are handled."

16 Do you recall General Wheeler cabled you this,
17 sir?

18 A. Well, my memory has been refreshed by this cable,
19 yes.

20 Q. You don't have any doubt that you received this
21 cable, do you?

22 A. I have none.

23 Q. Do you have any present recollection of
24 receiving this cable other than the fact that you see it
25 and assume that you must have?

1 A. I have no clear recollection of receiving the
2 cable. My memory having been refreshed by reading the
3 cable, I do recall that there was, after the Tet offensive,
4 there was considerable discussion apropos of the impact of
5 the Tet offensive on the enemy's capability in South
6 Vietnam.

7 Q. Let me ask you to look the at third exhibit that
8 you have in front of you, which is been marked as Exhibit
9 306. This is an April 27, 1968 cable from you to General
10 Wheeler and Admiral Sharp.

11 A. I see that.

12 Q. And that references a message that you had
13 previously sent, correct, sir?

14 A. It does, yes, it does.

15 Q. And you cable to General Wheeler and Admiral
16 Sharp: "I wish to withdraw referenced message and destroy
17 all file copies in this headquarters and request that you
18 do likewise."

19 Do you see that, sir?

20 A. I see that.

21 Q. Do you recall sending this cable?

22 A. I do not.

23 Q. Do you recall what the subject of this
24 referenced message was?

25 A. I do not. I wracked my brain to try to reflect

1 on what this was all about and I just don't know. I have
2 no recollection of it.

3 Q. This cable was shown you some months ago at your
4 deposition, was it not?

5 A. It was.

6 Q. And since that time, have you tried to, as you
7 put it, in every context, tried to concentrate on this and
8 recall what this was about?

9 A. I have.

10 Q. And you have been wholly unsuccessful?

11 A. I have been totally unsuccessful.

12 Q. All right, sir. Let me ask you to look at page
13 1172 of your deposition, sir.

14 (Pause)

15 Q. And I am now moving to a different subject.
16 This does not relate to the cable that we have been looking
17 at.

18 It doesn't relate to the cable we just were
19 looking at, 306, it may relate to one of the previous
20 cables that we were looking at.

21 Let me begin at the bottom of page 1171 at line
22 24, General Westmoreland.

23 A. I have it.

24 Q. "Q. And then you indicate that MACV's position
25 is that quantification is not possible, correct, sir?

1 "A. Not feasible, yes.

2 "Q. And you indicate that DIA is somewhere in
3 between CIA and MACV, correct, sir?

4 "A. That is so indicated.

5 "Q. And it is so indicated by your cable, by
6 you in this cable?

7 "A. In this cable, yes."

8 THE COURT: Let me just interrupt, I think it
9 should be clarified, is this making reference to the very
10 same cable?

11 MR. BOIES: It is making reference, your Honor,
12 not to the cable we just looked at which was 306.

13 THE COURT: To a different cable?

14 MR. BOIES: But to cable 403 A.

15 THE COURT: That's what I meant. Is it
16 referring to 403 A?

17 MR. BOIES: Yes, your Honor, it is my
18 understanding.

19 Let me just check because it goes back. It has
20 to do with a cable in April of 1968

21 THE COURT: On 1168, page 1168, you will see
22 some quotations from the cable. If that matches up -- I
23 think it does.

24 MR. BOIES: Yes, your Honor, I think it does.

25 (Pause)

1 MR. BOIES: Yes, that was the document that had
2 been marked as Exhibit for deposition 125 which is now 403
3 A.

4 THE COURT: All right, the cable referenced to
5 in the deposition is the same one, which it is.

6 MR. BOIES: So t he record is clear, we are now
7 talking about in in deposition, your cable that has been
8 marked at trial as Exhibit 403 A. Your April 22, 1968
9 cable.

10 THE COURT: The newly typed one.

11 THE WITNESS: Yes, I have it.

12 Q. "Q. And then you indicate that MACV's position
13 is that quantification is not possible, correct, sir?

14 "A. Not feasible, yes.

15 "Q. And you indicate that DIA is somewhere in
16 between CIA and MACV, correct, sir?

17 "A. That is so indicated.

18 "Q. And it is so indicated by you in this
19 cable?

20 "A. In this cable, yes.

21 "Q. And then you go forward to set forth your
22 reasons to your superiors why you believe the MACV position
23 is correct?

24 "A. That's correct.

25 "Q. Now, at any point in this cable or in any

1 other communication that you gave to General Wheeler or
2 Admiral Sharp, did you tell them that there were
3 intelligence officers in your command that believed that
4 the self-defense and secret self-defense forces should be
5 quantified?

6 "A. I did not. And I am not aware that there
7 were such officers.

8 "Q. When you say that you were not aware that
9 there were such officers, you mean that you were not aware
10 in April of 1968 or that you are not aware today?

11 "A. I am not aware today and as I reflect back,
12 I am unaware of it.

13 "Q. But in any event, you never told Admiral
14 Sharp or General Wheeler that there were any intelligence
15 officers in your command that believed that the SD or SSD
16 should be quantified? Is that correct?

17 "A. I did not."

18 Did you give those answers to those questions at
19 your deposition?

20 A. Yes, I obviously did.

21 Q. And did that reflect your best testimony at that
22 time?

23 A. Yes, it did, it does.

24 Q. That is, it did and it does?

25 A. It did and it does, yes.

1 MR. BOIES: Thank you, I have no more questions,
2 your Honor.

3 MR. BURT: Before beginning the redirect, may we
4 have a two or three minute recess and bring on the next
5 witness we discussed? .May we approach the bench for a

6 THE COURT: All right. You want to take a recess?

7 MR. BURT: It shouldn't take more than two
8 minutes. If you want to sit here we can get the next
9 witness? MR. BOIES: I don't have any objection to the

10 THE COURT: All right. as he is his present

11 Members of the jury, the redirect examination by
12 General Westmoreland -- let me start that again. The
13 redirect examination of General Westmoreland by his counsel
14 will not take place now. It will be deferred and instead
15 we are going to hear another witness.

16 This is only for calendar reasons because of the
17 convenience of the schedule of the other witness. a question

18 So you may step down. to it, yes.

19 PAUL H. NITZE, witness: Then I was not permitted to examine

20 called as a witness by the plaintiff (phural to the
21 having been duly sworn, testified as follows:

22 THE COURT: Mr. Boies, can I just return these
23 items to you. we are going to get into Mr. Nitze's role as

24 DIRECT EXAMINATION Nitze, then I think the only reason for

25 BY MR. DORSEN: as witness to enhance the witness's