

1 THE COURT: All right, Mr. Dorsen, you may
2 proceed.

3 MR. DORSEN: Thank you, your honor.

4 Q. Ambassador Nitze, what is your present position?

5 MR. BOIES: May we approach the bench for a
6 moment?

7 THE COURT: Yes, you may.

8 (At the bench)

9 MR. BOIES: I don't have any objection to the
10 plaintiff inquiring of this witness as to his present
11 position. I do not want to get into the position that I
12 got into with General Graham when the plaintiff was able to
13 put in all sorts of testimony on direct as to what a high
14 position the witness had subsequent to the period in
15 question.

16 THE COURT: Previous to this period?

17 MR. BOIES: Subsequent to the period in question.

18 THE COURT: Subsequent to it, yes.

19 MR. BOIES: Then I was not permitted to examine
20 about some matters which I agreed were peripheral to the
21 substance or substantive issues of this lawsuit but I
22 thought went to the witness's credibility.

23 If we are going to get into Mr. Nitze's role as
24 arms control negotiator, then I think the only reason for
25 doing that is an attempt to enhance the witness's

1 credibility in the jury's mind. If that is the case, I
2 would expect to be able to examine this witness about
3 various positions taken by this witness on behalf of this
4 administration in the arms control negotiations going to
5 this witness's credibility.

6 I just want to make my position clear that I
7 don't think that they can have it both ways. I don't think
8 they can try to trot out his position as a arms control
9 negotiator to bolster his credibility and then inhibit me
10 from cross-examining on that issue of credibility.

11 THE COURT: Well, I think that that is always a
12 troublesome question to proponents, whether it is
13 plaintiffs or defendants, people who are offering proof.
14 And this is often done by defendants in criminal cases, and
15 also done by the government in criminal cases, that
16 frequently they put on witnesses and ask them questions
17 about how many cute little children they have and other
18 things that have no legitimate bearing on the issues in
19 question.

20 And then object to, properly object, I mean,
21 properly is put in question by what was done previously, if
22 the other side should try and impeach them by less
23 attractive aspects of their life history.

24 I think your point has some merit. I'm not sure that it
25 has merit of going as far as permitting impeachment on

1 positions taken with respect to nuclear dissarmament at
2 talks. I do not in the smallest degree retreat from my
3 ruling with respect to General Graham and the lilac bush.

4 But I do think that in general, the point that
5 you raise is an appropriate one, that when the plaintiff,
6 when any party introudces his witnesses by parading their
7 present titles, honors, offices and distinctions, by doing
8 so, you open the door pro tanto to impeachment of those
9 witnesses on inquiry that is not otherwise germane to the
10 lawsuit.

11 I can't say right now how far I would permit it.
12 I have given some indication but you are certainly opening
13 the door.

14 MR. BOIES: Let me just broach it this way to be
15 sure I preserve my record. I will object to that question.
16 I take back what I said before, I will object to it,
17 because I think maybe I have to in order to preserve my
18 right to go into what I wanted to go into, so I will object
19 to that question.

20 THE COURT: What --

21 MR. BOIES: I will object.

22 THE COURT: Let me hear from the plaintiff.

23 MR. DORSEN: I think it is highly relevant and
24 material for the witness to give his background and present
25 position before testifying. This man has held high

1 government office, he is known by the defendants, he was
2 known in 1981 by the defendants. I think it is customary
3 and, indeed, appropriate and helpful for the jury to hear a
4 description of what a person's career has has been so they
5 can properly evaluate his testimony.

6 MR. BOIES: What was his position when he was
7 interviewed by George Crile?

8 MR. DORSEN: I don't know offhand. But I think
9 certainly the present position of any witness, I have seen
10 it done countless times, is something that the jury can
11 properly evaluate and hear in evaluating whether they
12 should give credance to his testimony.

13 THE COURT: I should say in the case of this
14 particular witness, there is more than the usual amount of
15 relevance to his present position up to the date of the
16 conversation with George Crile, because since the relevance
17 of his testimony is whether George Crile should have been
18 warned by what he said, that Crile's thesis was a flawed
19 one, who he was at that time certainly has some legitimate
20 importance.

21 MR. BOIES: That's why I asked the question,
22 your Honor.

23 THE COURT: Can you restrict it to the time of
24 Crile without going into more recent history? I think he
25 already had on more than one occasion held the position of

1 arms negotiator.

2 MR. DORSEN: Let me do that. I think just so it
3 is clear that this is Mr. Boies's request.

4 THE COURT: All right.

5 MR. BOIES: Excuse me, wait a minute, David.

6 When you said just at the end so it is clear
7 that it is Mr. Boies's request --

8 THE COURT: It wasn't at Mr. Boies's request.
9 It was at my suggestion after Mr. Boies had asked about his
10 position at that time, at the time of the Crile interview.

11 (In open court)

12 BY MR. DORSEN:

13 Q. Ambassador Nitze, when did you graduate from
14 college?

15 A. 1928.

16 Q. At which college did you graduate from?

17 A. Harvard.

18 Q. Could you please summarize the positions you
19 held and what those positions involved briefly up until the
20 time you met with Mr. Crile in August of 1981.

21 A. In 1928 I started to work at a paper mill in
22 Philadelphia, then at a box factory in Bridgeport and then
23 in Germany. And then I came back and worked for a number
24 of companies, including Dillon Reed and Company, operating
25 as Paul H. Nitze and Company, Inc. for a period of time,

1 and back to Dillon Reed and Company.

2 I was one of the could founders of the company
3 called the US Vitamin and Pharmaceutical Company and a
4 director thereof. I was the co-founder of the Aspen Skiing
5 Corporation, and for 35 years I was chairman of the board
6 of directors of the Aspen Skiing Corporation.

7 Q. And what did you next do, sir?

8 A. I next came down to Washington with James
9 Forestall, who had been a partner of mine at Dillon Reed
10 and Company. He was assistant to the President in the
11 White House in 1940.

12 Q. And what did you do in that position?

13 A. Tried to help him.

14 Q. How long did that continue, sir?

15 A. That was a short period of time, and then I
16 worked for General Marshal and then for the coordinator of
17 Interamerican Affairs and then for Henry Wallace and the
18 Board of Economic warfare. And then for the Foreign
19 Economic Administration in charge of overseas procurement of
20 strategic materials. And then was a director of the U S
21 Strategic Bombing Survey which worked for the President.

22 Q. What period of time did that cover?

23 A. That covered through the year 1946.

24 Q. And during that period that, did you have any
25 contact with any matters relating to intelligence?

1 A. In the US Strategic Bombing Survey, I did. I
2 went over to Europe and it was necessary to go into all the
3 intelligence sources which were used in connection with the
4 selection of targets for the strategic war attack, and then
5 subsequently we investigated the effectiveness of that
6 attack and had some chance to assess the reality against
7 the best estimates that one could arrive at on the basis of
8 a complicated set of intelligence inputs.

9 Q. Is there anything else that you did of note in
10 the war period during World War II?

11 A. Well, in connection with the pacific part of the
12 US Strategic Bombing Survey, we were asked by the President
13 to take on some additional tasks. One of them was to
14 assess the effect of the nuclear weapons at Hiroshima and
15 Nagasaki, and another was to assess the claims of the
16 various services as to ships sunk during the war.

17 And this again got us into assessing estimates
18 made during the war time situation, with the evidence after
19 that, because we then had available to us the Japanese
20 records as to where they thought they had lost various
21 ships, what ships they had, and where they lost them, and
22 it was possible to put together, I think, a very accurate
23 report as to what actually had happened.

24 As it turned out, the estimates by the
25 submariners were underestimates as to the ships they had

1 sunk, while the estimates by the air force were
2 substantially in excess of what they actually sunk.

3 Q. What did you do in the immediate post-war period,
4 sir?

5 A. I then worked for the State Department.

6 Q. And what did you do there, sir?

7 A. Initially I was dealt with economic trade policy
8 and then became assistant secretary for deputy assistant
9 secretary for economic affairs and then director of the
10 policy planning staff.

11 Q. Is there any particular areas you worked on?

12 A. Oh, a number of areas. Initially economic areas,
13 international financial problems, stabilization of the Mark,
14 stabilization of the Yen, and then the Marshal Plan,
15 converting that from a concept into a plan.

16 Q. What did you have to do with the Marshal Plan,
17 Ambassador Nitze?

18 A. Well, after Secretary Marshal made his famous
19 speech at Harvard, nobody really had a plan. So somebody
20 had to put together an organization to work out the
21 detailed plan and Colonel Bunsteil and I were assigned that
22 task. I was responsible for getting the authorization
23 legislation through the Congress and the appropriations
24 through the Congress.

25 Q. What did you next do, Ambassador Nitze?

1 A. This takes us to 1953, I guess. At that time I
2 resigned from the government and dealt with the school
3 called the School for Advanced International Studies. Of
4 which I was the chairman of the advisory committee and also
5 taught and lectured there

6 Q. What did you teach and lecture on?

7 A. On the theory of politics, international
8 politics and other subjects related thereto.

9 Q. How long did you do that, approximately?

10 A. Until 1961.

11 Q. What did you do starting 1961?

12 A. I joined the Kennedy administration as assistant
13 secretary of defense for international security affairs.

14 Q. What did that involve?

15 A. That was, that dealt with the interface between
16 military policy and foreign policy from the standpoint of
17 the Pentagon. It dealt with all the political issues which
18 interfaced with military preparations.

19 Q. How long did you hold that position?

20 A. To the fall of 1963 when Mr. Kennedy asked me
21 whether I would be willing to become secretary of the Navy

22 Q. Did you become secretary of the Navy?

23 A. I did after Mr. Kennedy's assassination I was
24 renominated for the post by President Johnson.

25 Q. What were the duties of the secretary of Navy?

1 A. At that time the secretary of the Navy was
2 primarily responsible for the training and equipment of
3 naval forces and marine forces. In fact, all those bureaus
4 that dealt with personnel with research and development,
5 the procurement of aircraft and ships reported directly to
6 the secretary.

7 The secretary was not involved in the chain of
8 command of the actual fighting forces overseas, but it was
9 involved with their training, their health and well-being.

10 Q. How long did you hold the position of secretary
11 of the Navy?

12 A. Four and half years.

13 Q. What was the next position you hold, sir?

14 A. Deputy secretary of defense.

15 Q. When did you assume the position of deputy
16 secretary of defense?

17 A. In June, the end of June 1967.

18 Q. How long did you hold that position?

19 A. Until January 20th, 1969.

20 Q. What were the duties and responsibilities of the
21 deputy secretary of defense?

22 A. Well, in the beginning under Mr. McNamara, it
23 was his practice to consider the deputy secretary of
24 defense as his alter ego with powers equal to his own and
25 free to act whenever he did not act. And we used to have

1 lunch everyday, in fact, in order to be sure that we acted
2 as a team.

3 Later when he was offered the job as president
4 of the world bank, he addressed himself more to high policy
5 matters and to preparation for his new job and left much of
6 the job of running the Pentagon to me.

7 Q. After your tenure as deputy secretary of defense,
8 what did you next do, Ambassador Nitze?

9 A. Shortly after the change of administration in '69,
10 I was asked by President Nixon to become a member of the US
11 delegation negotiating with the Russians for control of
12 strategic weapons, the Salt negotiations.

13 Q. How long did you do that, sir?

14 A. From '69 until '74.

15 Q. And what did you do after 1974?

16 A. For a while I returned to private life.

17 Q. And then?

18 A. And then in, I guess it was 1981 I was asked to
19 become --

20 Q. When in 1981 did this happen?

21 A. I think it was in July '81, I was asked to
22 become head of the US delegation negotiating with the
23 Russians for the control of the limitation of intermediate
24 range nuclear forces.

25 Q. Have you received any honorary degrees or awards,

1 sir?

2 A. I believe so, from Johns Hopkins University and
3 from The New School of Social Research and from the Pratt
4 Institute.

5 Q. You know General William Westmoreland?

6 A. I do, yes.

7 Q. How long have you known him?

8 A. I first came to know General Westmoreland when
9 he was commandant of the academy at Westpoint.

10 Q. Did there come a time when you saw General
11 Westmoreland on a regular basis?

12 A. Yes, there did, indeed, when I was deputy
13 secretary of defense I saw him regularly because he was
14 then chief of staff of the army. So that I regularly saw
15 him. Stanley Resor, the secretary of the army, generally
16 had General Westmoreland with him at that time.

17 Q. During the period of June 1967 through early
18 1968, what sources of intelligence did you as deputy
19 secretary of defense have access to and receive?

20 A. I believe I had access to every source of
21 intelligence that was available.

22 Q. And could you name some of them?

23 A. Well, of course the principal people that I
24 relied upon were the CIA and I tended to rely more upon the
25 individuals that I had confidence in than I did upon

1 documents. And where did that take place?

2 Q. Which individuals are you referring to?

3 A. I was weekly briefed by George Carver or his
4 assistant George Allen, and I also participated in the
5 meetings with the secretary of defense, with the Joint
6 Chiefs of staff which we were briefed by the Defense
7 Intelligence Agency, and then I think we had access to
8 other sources of intelligence from the services directly.

9 Q. Do you know George Crile?

10 A. I do know George Crile.

11 Q. How long have you known George Crile?

12 A. I think since his marriage to Ann Patton

13 Q. Do you recall approximately when that was?

14 A. I think it was in the late 70s.

15 Q. How did you come to get to know George Crile?

16 A. Because of the fact that I was very fond of Ann
17 Patton. Her father had been one of my close friends at
18 college. Her mother had been one of my wife's close
19 friends and Bill Patton and his father had been an
20 associate of mine, a close associate of mine in my years in
21 the State Department.

22 Q. I would like to direct your attention to August
23 of 1981. Did you have a conversation with George Crile in
24 August of 1981?

25 A. I did, indeed.

1 Q. And where did that take place?

2 A. It took place in our house at Northeast Harbor,
3 Maine.

4 Q. Was anyone else present for all or a portion of
5 that conversation?

6 A. I'm not certain that anybody was present at any
7 of the conversation. I believe it is possible that my
8 son-in-law Scott Thompson was present at part of the
9 conversation. I feel confident that he was not present at
10 all at the conversation.

11 Q. You referred to your son-in-law, Scott Thompson.
12 What is your present relationship with Scott Thompson?

13 A. I believe technically he is still my son-in-law
14 but my daughter and he are involved in a very bitter
15 divorce action and he has appealed the decision also of the
16 probate Court and proposes to continue his legal actions
17 against her.

18 Q. Could you tell the Court and jury, Ambassador
19 Nitze, to the best of your recollection what you said and
20 what George Crile said in August of 1981?

21 A. I can't remember what happened verbatim, but I
22 can remember very distinctly the major points that I
23 believe George Crile made and the major points that I made.
24 I believe that George described the project that he was
25 engaged in, this documentary, and I then, as he described

1 it, I became, I was trying to help George as much as I
2 could. After all he was a friend.

3 I had done many, a number of things with him,
4 such as play tennis with him, and my recollection is that I
5 made two major points after hearing his description of the
6 program that he was designing.

7 Q. Could you first tell us your recollection of the
8 program Mr. Crile described to you.

9 A. My recollection is that he described it as a
10 program in which he would demonstrate that there was great
11 uncertainty, in fact, error in the figures which had been
12 prepared as to enemy strength in Vietnam. And that these
13 figures, that he had evidence that these figures, in fact,
14 had been put together in a way in which, in a conspiracy to
15 influence or deceive the President or his advisers and or
16 his advisers in Washington.

17 Q. And what did you say?

18 A. What I said was, I think I began by relating my
19 own experiences with intelligence in Vietnam.

20 Q. What did you say to Mr. Crile, just as best you
21 can recall?

22 A. My recollection is that I recalled my meeting in
23 1965 with General, at General Westmoreland's headquarters,
24 after I had first been to the I Corps area, the northern
25 part of South Vietnam where the Marines were responsible

1 for the security of carrying out of our military policies.

2 And after having spent some days with them in I
3 Coprs, I went down South and saw something of what was
4 going on in the southern part of the country. And then I
5 spent the night, as I remember, in General Westmoreland's
6 headquarters and went to his morning briefing the day after.

7 And at that briefing I had trouble with the
8 intelligence briefing. I thought that the briefer was much
9 too positive about North Vietnamese and Vietcong organized
10 strength on the basis of what I thought was insufficient
11 evidence for such certainty.

12 THE COURT: What is the year in which this
13 occurred?

14 THE WITNESS: In June, June 1965. I think I
15 also told him it was my impression at the time that the
16 estimates were high as to the organized North Vietnamese
17 and Vietcong strength. I may have, I'm not sure that I
18 said a further point that was very much in my mind, and
19 that was that at that time I felt deeply that the principal
20 problem in South Vietnam was a political problem, that the
21 area under control by the Marines and the I Coprs area
22 where they could give adequate, and South Vietnamese forces,
23 could give adequate security was a very small area, indeed.

24 And that the population that we could give
25 adequate protection to was, I think not more than a few

1 hundred thousand out of 3 million people in the area. And
2 it was very difficult to know what was going on in that
3 area under Vietcong control which was most of the I Coprs
4 area. But the problem really wasn't that, the organized
5 forces, the problem was a political problem with respect to
6 the others in south Vietnam.

7 Q. Please continue with what you said to Mr. Crile
8 in August of 1981.

9 A. I then said that I also had been in Vietnam in
10 1966 and had been deeply impressed by the improvement of
11 the military situation, particularly in I Coprs, between
12 what I had seen in '65 and what I saw in '66. That frankly
13 I thought then that the military had done a much better job
14 than I anticipated they would be able to do in 1965.

15 But that again I thought that I was briefed on
16 the intelligence estimates, and again felt that the briefer
17 was giving, was giving these estimates with a degree of
18 confidence and precision that I thought the basic in-puts
19 did not justify.

20 (Continued on next page)

1
2 Q. All right.

3 A. I knew that the commanding officers of the
4 Marine Corp, both in Viet Nam and in Honolulu, thought that
5 the estimates as to the organized North Vietnamese and Viet
6 Cong forces were too high, and I wasn't -- didn't think
7 that the evidence in the intelligence section was
8 sufficiently firm to take a different view.

9 Q. Could you please continue with what you told Mr.
10 Crile.

11 A. I think I probably also told him, because I
12 think he told me about a number of people who were prepared
13 to testify that they had deep disagreement with the
14 estimates being propounded in 67-68, and I said -- I recall
15 having said that I wasn't surprised by that. Again, I
16 thought that it was extremely difficult to have -- to be
17 certain about intelligence estimates in a war of that
18 complexity, where in part it was a war between main force
19 units, and where it was a war between -- to contain the
20 guerrilla forces, and in part it was a terrorist war, in
21 part it was a psychological war and a political war.

22 And in a war of that kind, where you had
23 different kinds of forces with different kinds of threats,
24 to come up with aggregate figures and have a reasonable
25 degree of confidence in them was difficult, and that many

1 people had differing views as to what the intelligence --
2 what the right numbers were, and I think I then went on to --
3 in fact, I do remember going on to say that I had known
4 Westy from the days when he was thje Commandant at West
5 Point, and I had seen him at least twice in Viet Nam, but
6 that I had seen him often thereafter in the period when he
7 had been replaced as the Commanding General in MACV and was
8 back in Washington as Chief of Staff of the Army, and I had
9 come to think that I had a deep knowledge of his character,
10 and that I was confident that General Westmoreland could
11 not have been engaged in any kind of an operation to
12 deceive the President or his advisors in Washington.

13 Q. Do you recall anything else that you and Mr.
14 Crile discussed in August of 1981?

15 A. I don't.

16 Q. Now, in 1965, '66 and 1967, were you familiar
17 with the duties of General Westmoreland?

18 A. Yes, I was.

19 Q. And what were his duties?

20 A. He was Commander in Chief of MACV, the Military
21 Advisory Forces in Viet Nam, and this included those units
22 of the army and those units of the Marine Corp and of the
23 Air Force which were stationed in Viet Nam, and those -- it
24 did not include the naval in off-shore Viet Nam and it did
25 not include the air forces at Guam or outside of Viet Nam.

1 Those forces were commanded by their component commanders
2 in coordination in chief with CINPAC in Honolulu.

3 Q. Did General Westmoreland have any nonmilitary
4 duties or responsibilities?

5 A. Yes, he did. For instance, with respect to the
6 press, Barry Zorthian, as I remember it, was in charge of
7 briefing the press, but there had to be somebody from the
8 military who briefed on specific military figures, and I
9 think that function was the responsibility of General
10 Westmoreland.

11 MR. DORSEN: I have no further questions, your
12 Honor. Cross.

13 THE COURT: Unless you want to begin, maybe it
14 would be a a good time for a break.

15 MR. BOIES: Certainly, your Honor.

16 THE COURT: The jury may go into the jury room.

17 (Jury excused.)

18 (Jury present.)

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

20 CROSS EXAMINATION BY MR. BOIES:

21 Q. Good morning, Mr. Nitze, my name is David Boies.
22 I represent the defendants in this action. We have not met.
23 It is good to meet you.

24 You had a conversation, you testified, with Mr.
25 Crile in August of 1981, correct, sir?

1 A. Correct.

2 Q. Is your recollection of that conversation a good
3 one, sir, or a vague one, or somewhere in between?

4 A. I think it's a good one, with respect to the
5 major points.

6 Q. It is the case, is it not, that shortly after
7 your deposition was noticed in connection with this matter
8 you felt that your recollection was sufficiently vague so
9 that you had to call someone to find out where the
10 conversation had taken place?

11 A. I think that is incorrect. I think I called in
12 order to ascertain how it came about that the conversation
13 took place.

14 Q. You testified that the conversation took place
15 at the Nitze home up in Maine?

16 A. That's correct.

17 Q. And were you certain of that before you called
18 this person that you called?

19 A. Yes, I was.

20 Q. You were certain of that?

21 A. I believe so. I have no doubt about it. I may
22 be wrong, but I think that's correct.

23 Q. Would you state again what the purpose of making
24 this call was, and to whom did you make this call?

25 A. I made the call to Susan Mary Alsop, Anne

1 Crile's mother. The location of the conversation?

2 Q. When you refer to Anne Crile, was that the Ann
3 Patton that you referred to that you were very fond of,
4 both her and her family? Did you check that answer?

5 A. That's correct. It with Susan Mary Alsup."

6 Q. And you referred to her as Anne Crile just now,
7 did you not? Now that, yes.

8 A. Yes, indeed, because she was married to George
9 Crile. It necessary to check with Susan Mary Alsup as to the

10 location. Q. Is she still married to George Crile, sir?

11 A. I believe not.

12 Q. When did she cease being married to George Crile,
13 as you understand it, sir? Susan Mary Alsup to check with her

14 as to A. I don't know. She had thought that she had

15 called Q. Do you know approximately? Crile, and with

16 respect A. No. Determining whether that was correct or not, I

17 called Q. Let me ask you to look at your deposition, sir,
18 which is in front of you in that red binder. In Northeast

19 A. Yes. Let me ask you to look at the bottom of
20 page 32, in particular starting at line 23 there. -- when

21 was that on "Q. Do you recall where that conversation took
22 place? I forget exactly when. It was some days prior

23 to the depo. "A. Nitze house in Northeast Harbor, Maine?"

24 A. Correct. deposition was a little less than a

25 Q. "Q. Are you certain about that, are you

1 certain about the location of the conversation?

2 "A. I wasn't, but I am now because I have
3 checked it with various people.

4 "Q. With whom did you check that answer?

5 "A. I checked it with Susan Mary Alsop."

6 "Q. Do you see that, sir? at the portion at the

7 "A. I see that, yes. top of page 11.

8 "Q. Does that refresh your recollection that you
9 felt it necessary to check with Susan Mary Alsop as to the
10 location of the conversation with Mr. Crile?

11 "A. That's incorrect. about that? Are you certain

12 "Q. That is incorrect? conversation?" And you answer, "I

13 "A. No. I called Susan Mary Alsop to check with her
14 as to -- I had heard that she had thought that she had
15 called me and asked me to see George Crile, and with
16 respect to ascertaining whether that was correct or not, I
17 called Susan Alsop, and as part of that, it also confirmed
18 the fact that the discussion was at our house in Northeast
19 Harbor, but that wasn't the purpose of my call to Susan.

20 "Q. Prior to your call with Susan Mary Alsop -- when
21 was that call, sir? I have a copy.

22 "A. I forget exactly when. It was some days prior
23 to the deposition, as I remember it. could give you the

24 "Q. And this deposition was a little less than a
25 month ago, correct, sir? Thank you.

1 A. That's correct.

2 Q. Prior to calling Susan Mary Alsop about a month
3 ago, is it the case that you were not sure even of the
4 location of the conversation with Mr. Crile?

5 A. That is not correct.

6 Q. Let me ask you to look at the portion at the
7 bottom of page 32, sir, the top of page 33.

8 MR. DORSEN: Your Honor, I would ask that the
9 witness also be asked to look in the middle of page 34.

10 Q. At the bottom of page 25 you are asked a
11 question "Are you certain about that? Are you certain
12 about the location of the conversation?" And you answer, "I
13 wasn't."

14 A. Do you see that, sir.

15 MR. DORSEN: I object to the emphasis that Mr.
16 Boies is placing on the "I," because later on it clarifies
17 what the witness is talking about.

18 THE COURT: I don't know whether this deposition
19 was filed. I know it was taken recently and perhaps I
20 never was given a copy. Does anyone have a spare copy?

21 THE WITNESS: I have a copy.

22 THE COURT: I was asking counsel.

23 MR. BOIES: Perhaps I could give you the
24 witness' copy and he could use his copy.

25 THE COURT: Thank you.

1 THE COURT: Is there a pending question?

2 MR. BOIES: Yes, your Honor.

3 Q. Top of page 33, where you are asked "Are you
4 certain about the location of the conversation?" And you
5 answer "I wasn't." Was that your best recollection at the
6 time that the deposition was taken, sir?

7 A. Yes. But I would like to emphasize that there
8 is a difference between thinking that something is so and
9 being certain of it.

10 Q. All right, sir. Let me turn to the conversation
11 that you had with Mr. Crile in August of 1981. Did you
12 tell Mr. Crile at that time that in your view the Viet Nam
13 war was a four-pronged war?

14 A. I believe I did.

15 Q. And would you describe what the four parts of
16 the Viet Nam war were, as you described it to Mr. Crile.

17 A. The engagement between the main organized forces
18 of the North Vietnamese and the Viet Cong; the part of it
19 which was a defense against the guerrilla forces of the
20 Viet Cong; and the defense against the terror operations
21 which were terrorizing the countryside and intimidating the
22 population of Viet Nam, and the psychological warfare-political
23 warfare part of it. And that is my recollection.

24 As I said earlier, I am not certain about the
25 exact words that I used, but I am confident of the major

1 points that I was trying to make.

2 Q. Is it fair to say that you do not recall the
3 precise words that either you or Mr. Crile used, but you do
4 recall the substance of at least what you have testified to?

5 A. That's correct.

6 Q. And I want to be sure that the four aspects of
7 the Viet Nam war which you explained to Mr. Crile are clear.

8 The first part was the main and mobile force war,
9 the organized military unit war; the second part was the
10 guerrilla war; the third part was the terrorist campaign;
11 and the fourth part was the political or psychological
12 warfare; is that correct, sir?

13 A. That's correct.

14 Q. You are familiar, are you not, with the self
15 defense and secret self-defense forces, at least generally?

16 A. Yes.

17 Q. And those were the self defense and secret
18 self-defense forces of the enemy, correct, sir?

19 A. That was a category which was used at one time
20 to identify certain of the people involved, yes.

21 Q. And the primary role, as you understood it, of
22 the self-defense forces, was a terrorist role, correct, sir?

23 THE COURT: Is this objected to?

24 MR. DORSEN: Objection, your Honor.

25 THE COURT: Come to the sidebar.

1 (At the sidebar).

2 MR. DORSEN: Maybe I was slow in objecting, your
3 Honor, but --

4 THE COURT: Slow ain't the word for it.

5 MR. DORSEN: I thought he was -- the question
6 was directed towards what he told Mr. Crile, and when your
7 Honor made the statement, I realized that the question was
8 not so directed, and I would object to anything beyond the
9 conversation with Mr. Crile.

10 THE COURT: Are you intending to ask otherwise
11 than about the conversation with Mr. Crile? It sounded to
12 me as if your question was going into making him a fact
13 witness, which he didn't testify to, other than as to his
14 conversation with Mr. Crile.

15 Although I have not been asked to, it seems to
16 me that I should instruct the jury that his evidence is
17 being received solely with the X chart on the defendants'
18 state of mind and not with respect to the merits of the
19 truth or falsity of the testimony.

20 MR. BOIES: Your Honor, once I had an answer to
21 this question I would have asked him whether he told Mr.
22 Crile that.

23 My judgment was that it was more effective to
24 approach it first by asking him what the fact was, and
25 second whether he told Mr. Crile that.

1 I should say --

2 THE COURT: If the examination is really
3 confined to an examination of what he told Mr. Crile, and
4 you are simply using a device of refreshing his
5 recollection in that fashion, that's all right. But if it
6 goes beyond into being a full-fledged examination on what
7 happened in 1967 and 1968, which the plaintiff has not
8 inquired into, and it's merely interspersed with an
9 occasional salt and pepperings of "Did you tell Mr. Crile
10 that?" then I think it would be inappropriate.

11 The plaintiff has not conducted a full-fledged
12 examination, indeed, any examination of this witness on the
13 basis of his thinking, his reasons, his opportunity to
14 observe, and all that stuff. They asked him only what he
15 told Crile. His answer has been limited to what he said to
16 Crile.

17 MR. BOIES: Your Honor, while we are at the
18 sidebar, and since the court raised it, I do intend,
19 although this is not what I was attempting to do right at
20 the moment particularly, but I do intend to examine the
21 witness about various documents that the witness wrote in
22 1967.

23 I do so because I think that that has a
24 significant bearing on the credibility of this witness. I
25 think this witness, like a number of other witnesses that

1 the plaintiff has brought on, has a natural incentive
2 attempting to maintain that the war that they participated
3 in managing was managed well, and I want to show that this
4 witness had a role to play, not only in the role in the war
5 generally, but also with respect to purveying these enemy
6 strength estimates. I think that goes to an issue of
7 credibility.

8 While I have not done it now, and I'm not really
9 intending to do that right at the moment, I am certainly
10 going to come in what I think will be a fairly short time,
11 because I anticipate a fairly short examination of this
12 witness, to that issue.

13 THE COURT: All right. As long as it is
14 properly a credibility examination. If your purpose is to
15 show bias of a nature that would affect his credibility
16 with respect to the subject of his testimony today on the
17 conversation -- in other words, if all you're showing is
18 that his view that he expressed to Crile was a biased,
19 pro-military view, that is irrelevant.

20 The only relevance would be to the extent to
21 which you are contending that he is lying in reporting the
22 substance of his conversation, which I gather is at least a
23 potentially disputed issue.

24 MR. BOIES: Yes.

25 (Open court)