

1 THE COURT: Members of the jury, before Mr. Bois
2 proceeds, I want to haul out the old X chart and remind you
3 of some of its principles as they affect the testimony of
4 this witness.

5 The testimony of this witness is offered and
6 received solely over here in this part of the quadrant with
7 respect to the defendant's state of mind. He has been
8 examined only on the subject of a conversation that he
9 testified that he had with George Crile, prior to the
10 presentation of the broadcast, in August of 1981.

11 So his testimony is pertinent for you only
12 insofar as it bears on whether the defendants published a
13 broadcast which they knew to be false, or as to which they
14 were reckless on the subject of its truth or falsity.
15 That's the only purpose of his testimony.

16 All right. You may proceed.

17 BY MR. BOIES:

18 Q. Do you have the pending question in mind, Mr.
19 Nitze?

20 A. I beg your pardon?

21 MR. DORSEN: Your Honor, I would -- therefore it

22 Q. Do you have the pending question in mind or
23 would you like me to restate it.

24 MR. DORSEN: I object if it is pursued this way.
25 I think it should be pursued from the standpoint of the

1 conversation that we had. In the Viet Nam War

2 THE COURT: Could the reporter read back the
3 question. THE COURT: In this part of the second line of

4 inquiry. Maybe it is easier if you simply rephrase it.

5 MR. BOIES: Certainly, your Honor.

6 Q. Is it the case, sir, that the primary role of
7 the self-defense forces was the terrorist role in Viet Nam?

8 MR. DORSEN: Objection, your Honor.

9 THE COURT: I will permit it. at your discretion.

10 A. I'm not sure, because, as I say, I think this
11 self defense and secret self-defense categorization was a
12 categorization developed on the U.S. side.

13 You are asking me what the real purpose of these
14 forces were from the Vietmanese standpoint, and there I
15 think this was part of the difficulty that I'm talking
16 about. MR. BOIES: This goes directly to the second

17 line of inquiry. We didn't really know that much about how the
18 Vietmanese -- the North Vietnamese and the Viet Cong knew
19 better. Some of the forces that we thought might be and you
20 guerrilla forces or political cadres could one day be those
21 things and the next day be something else, and therefore it
22 is a very difficult question to be certain as to what
23 forces should correctly be designated by U.S.
24 categorization. COURT: All right.

25 Q. Do you have a view as to what role the

1 self-defense forces played in the Viet Nam war?

2 MR. DORSEN: Objection, your Honor.

3 THE COURT: Is this part of the second line of
4 inquiry that you said you wanted to pursue at the sidebar?

5 MR. BOIES: No, your Honor.

6 THE COURT: If it is not part of that second
7 line of inquiry I will sustain the objection as to form.

8 MR. BOIES: All right.

9 Q. Let me ask you, sir, to look at your deposition.

10 A. Yes.

11 Q. On page 62. Look at line 7 in particular, sir
12 and going down to line 18.

13 A. Yes.

14 MR. DORSEN: I object, your Honor. It is
15 irrelevant.

16 MR. BOIES: This goes directly to the second
17 line of inquiry, your Honor.

18 THE COURT: That's why I asked you whether you
19 were addressing this to the second line of inquiry, and you
20 said no.

21 MR. BOIES: This does, this examination from
22 the deposition does, your Honor, particularly in light of
23 what the witness has testified to.

24 THE COURT: All right.

25 Q. Let me direct your attention, Mr. Nitze, to line

1 7 through line 18 on page 62, do you see that, sir?

2 A. Yes.

3 Q. Do you recall what role self-defense forces
4 played in the Viet Nam war, if any?

5 A. I was thoroughly conscious of that.

6 Q. And what was that role, as you recall it?

7 A. I thought their primary role was a South
8 terrorist role of maintaining control over those villages
9 that were in -- where the South Vietnamese and the United
10 States forces could not provide adequate security; that the
11 practice of the Viet Cong was to murder the village chief
12 and murder anybody who would not obey commands. You needed
13 terrorists of this kind to maintain discipline and order."

14 Q. Do you see that, sir?

15 A. I do.

16 Q. Did you give those answers to those questions at
17 your deposition?

18 A. I did.

19 Q. And did they represent your best testimony at
20 that time?

21 A. They did.

22 Q. And do they represent your best views today?

23 A. Well, as I have just said, I think it's very
24 difficult to be sure as to what the role of the given
25 Vietmanese forces was.

1 This was what my view of it was, yes, that their
2 primary role was a terrorist role, but it could be that
3 their role was also, their title in fact suggests, that in
4 the event that our forces were to come into that village
5 they would attempt to defend against our forces coming into
6 that village.

7 Q. That is if the American forces or allied South
8 Vietnamese forces attempted to come into the village the
9 self-defense forces would defend that village against us?

10 A. Exactly, yes.

11 Q. Did you discuss the substance of what you have
12 just testified about concerning the self-defense forces
13 with Mr. Crile in your conversation with him in August of
14 1981, if you recall?

15 A. I don't recollect so doing.

16 Q. Did you discuss the self defense and secret
17 self-defense forces at all with Mr. Crile in your
18 conversation with him in August of 1981, if you recall?

19 A. At the moment I don't remember it. I may have
20 brought it up in connection with my concern with the nonregular
21 forces; certainly in '65, that question of what was going
22 on in that part of the countryside that we could not
23 provide adequate security for was of deep concern, and I
24 thought that's where our -- I couldn't make a reasonable
25 estimate as to what those forces were. They were not

1 comparable to the other ones.

2 Q. I believe that you testified that you had told
3 Mr. Crile that you believed that certain figures were high
4 at the time, do you recall that generally?

5 A. I do indeed.

6 Q. And what was the time that you were referring to
7 there?

8 A. I was referring, I think, primarily to '65, and
9 secondarily to '66, and the forces that I had in mind were
10 the regular forces of the North Vietnamese and the Viet
11 Cong, because those are the particular ones that were most
12 concerned in a certain way to others.

13 What was equally of concern to me was the
14 political situation in South Viet Nam on the whole and the
15 degree to which the Viet Cong controlled the countryside,
16 and certainly in the I Corps area the Viet Cong controlled
17 most of the countryside, and one couldn't really tell what
18 was going on in that countryside. They controlled the area
19 where most of the population lived.

20 I don't remember saying those things to George
21 at the time, but I may very well have.

22 Q. And what were the forces that the Viet Cong used
23 to control the countryside in the I Corps or I Corps area?

24 MR. DORSEN: Objection, your Honor.

25 THE COURT: Sustained.

1 Q. Do you recall, sir, what the forces were that
2 the enemy used to control the countryside, as you put it,
3 in the I Corps area?

4 MR. DORSEN: Objection, your Honor.
5 THE COURT: Sustained.

6 Q. Did you testify a moment ago that the Viet Cong
7 controlled most of the countryside in I Corps?

8 A. What I said was, initially was that we were
9 unable to give adequate security in most of I Corps.
10 That's a little bit different than saying "they controlled
11 it" because much of the area they controlled at night and
12 we controlled it in the daytime, and therefore when you say
13 "Who controlled the countryside?" it's inherently an
14 ambiguous question.

15 Q. Let me take your formulation. To the extent
16 that the enemy controlled the countryside at night, what
17 were the forces that they used to do that?

18 MR. DORSEN: Objection, your Honor.

19 THE COURT: Sustained.

20 MR. BOIES: May we approach the sidebar, your
21 Honor?

22 THE COURT: If you think it's necessary.

23 (At the sidebar.)

24 MR. BOIES: May I inquire of the court whether
25 the court's problem with my question is a problem of form?

1 THE COURT: It's a problem, I suppose, it is
2 hard to say whether it is a problem of form or relevance.

3 The problem is that your question is not
4 directed to any issue to which this witness' testimony is
5 directed.

6 You may cross examine him on his conversation
7 with Crile or you may seek to impeach him with respect to
8 that conversation by showing bias, animosity or something
9 like that, but your questions repeatedly go back to making
10 him a fact witness concerning the intelligence issues in
11 Viet Nam in 1967.

12 MR. BOIES: With respect, your Honor, I would
13 suggest that it is relevant in two respects: First, what
14 this witness believed I believe is relevant to what he told
15 Mr. Crile, because he doesn't remember what he told Mr.
16 Crile. He doesn't remember, he has said a number of times,
17 not only the words that he doesn't remember, but as he said
18 just a few moments ago on cross, he doesn't remember
19 whether he discussed something with Mr. Crile concerning
20 the self-defense forces. He says "I don't recall. Perhaps
21 I did."

22 I believe that it is therefore relevant in
23 assessing what he may have told Mr. Crile to know what his
24 belief is, whether or not he now recalls or says he now
25 recalls having told that to Mr. Crile.

1 Inquiry, Second, I believe that --

2 THE COURT: Say that again, you are saying that
3 his present beliefs now on the witness stand as to what the
4 facts were in 1967 are relevant, I guess, along the lines
5 that they might suggest to him certain things that he did
6 say to Mr. Crile that he previously didn't remember or
7 might contradict other things that he says he told Mr.
8 Crile?

9 MR. BOIES: Yes, your Honor. It is also the
10 case that when Mr. Crile gets on the stand and says Mr.
11 Nitze told me these things, I think it is relevant to know
12 that even though Mr. Nitze doesn't remember, perhaps,
13 saying those things, that he concedes that those did
14 represent his views.

15 THE COURT: Are you saying that this examination
16 is limited in its subject matter to things that Crile
17 contends were told to him by Nitze? In other words, that
18 you are only asking him about things that Crile has told
19 you that he, Crile, says were said by him and you want to
20 ask him whether he believes them to be true, to support the
21 proposition that they were said by him, since the two
22 elements being that Crile says he said them and he agrees
23 that he believes them?

24 MR. BOIES: That is the first point that I am
25 making. That is the first justification for this line of

1 inquiry, your Honor.

2 There is a second justification for this line of
3 inquiry, a justification that I believe justifies
4 additional inquiries into what the court would refer to as
5 fact issues, even though Mr. Crile does not contend that
6 Mr. Nitze, or may not contend that Mr. Nitze told him about
7 that.

8 THE COURT: What is that?

9 MR. BOIES: That is what I said before, which
10 is that I believe that to show that this witness knew the
11 misleading character of some of the figures, or the
12 potentially misleading character of the figures, or now
13 recognizes the potentially misleading character of the
14 figures, and knows that he played a role in purveying those
15 figures, that gives him an incentive to bias his testimony
16 in this case in favor of General Westmoreland.

17 I think that these issues, as I said to the
18 court before, go to the credibility and bias of this
19 witness.

20 THE COURT: It is very hard for me to judge
21 because I think that the theory that you argue is a
22 reasonable theory, that if what you're showing by some of
23 these questions is a motive on the part of this witness to
24 have fabricated testimony of his conversation.

25 As long as the question is properly addressed to

1 that, that's an acceptable theory and one which I would
2 permit.

3 It is hard for me to tell in advance, hearing
4 questions that are phrased simply as history questions
5 about what was happening in Viet Nam.

6 Why don't you proceed, but I am going to
7 instruct the jury regularly that this is not a fact witness;
8 that these questions are being asked with respect to his
9 credibility, his credibility as to the conversation that
10 occurred, because the plaintiff has not had a crack at
11 examining him on everything that he would say about what
12 was going on.

13 He said a moment ago, for example, that -- he
14 said something about the SD defending hamlets. Now, your
15 point about that is that -- is what?

16 MR. BOIES: He then went on to say, I think,
17 and I am just operating from my memory, but he then went on
18 to say that he doesn't recall telling Mr. Crile that but he
19 might have.

20 I think that is quite relevant. I also think

21 that --
22 THE COURT: No. I mean on the credibility issue,
23 how is that relevant? Are you arguing that that is part of
24 an impeachment examination? That is a view of the SD that
25 favors the defendants' side of the case and is contrary to

1 the plaintiff's side of the case, and if he were a fact
2 witness it would be perfectly appropriate to examine him on
3 that.

4 How is that related to his credibility, if it is?
5 Are you arguing that it is?

6 MR. BOIES: Well, I think that -- as I said to
7 the court before, the reason that I went into that
8 particular line of questioning was because I thought it
9 related to his conversation with Mr. Crile and I think that
10 that is now indicated in the record.

11 I believe, also, that his views about these
12 subjects, that he knows are involved in this litigation,
13 are views that are relevant to understanding his bias and
14 credibility.

15 I don't mean to be not responsive, but there are
16 two different strains that are --

17 THE COURT: I think I understand the two strains.
18 You have described the two to me. One of them is that
19 Crile represents that certain things were said and you
20 think that you should be allowed to ask him whether he
21 believes those things, which would support Crile's
22 testimony that those things were said.

23 The second one is, you argue that he, by virtue
24 of his participation in these events in 1967, is committed
25 to certain views, and I think you said to the -- that he

1 essentially agrees with the broadcast in his heart, and is
2 prone to lie and fabricate anti-CBS because he feels that
3 he has allied himself with a dishonest and improper cause,
4 and that's a motivation for him to fabricate anti-Crile
5 anti-CBS testimony, is that the substance of what you said?

6 MR. BOIES: That may put it somewhat more
7 extreme and dramatic than I would, but I think that is the
8 direction. that subject.

9 THE COURT: All right.

10 I will instruct the jury again.

11 (Open court.)

12 THE COURT: Members of the jury, I want to
13 apologize to you for the frequency of these interruptions
14 and their duration, and I want to explain to you a little
15 bit why that is.

16 In court certain things are done in a somewhat
17 artificial manner, and you may have observed that the
18 questions that were asked of this witness are no different
19 from questions asked of other witnesses, as to which they
20 went on and testified freely, but when they were asked of
21 this witness "Objection. Go to the sidebar." A lengthy
22 discussion.

23 The reason that that takes place with this
24 witness is what I told you a moment ago. This witness has
25 not been called to the stand as a fact witness with respect

1 to what went on in Viet Nam in 1967. He is not testifying
2 on the subject over here on this side of the X, on the
3 truth or falsity of the broadcast. The plaintiff did not
4 ask him questions of that sort. If the plaintiff had,
5 presumably his testimony would have gone on for a very long
6 time and we do not know what he would have said.

7 Those questions were not asked. He didn't
8 testify on that subject.

9 Accordingly, the rules of evidence, and of law
10 with respect to a trial, are that he may be cross-examined
11 only on the same subject for which he was offered by the
12 side that offered him.

13 He may be cross-examined only with respect to
14 his conversation with Mr. Crile before the preparation of
15 the broadcast.

16 Now, that subject, the subject of
17 cross-examining him as to that conversation, may be
18 somewhat broader than seems at first blush because the
19 defendant has the right to inquire into his credibility
20 with respect to that conversation.

21 The defendant has the right to probe, to try to
22 ask about issues that the defendant might contend to you,
23 the jury, give you reason to doubt the accuracy of his
24 account of his conversation with Mr. Crile, and some of the
25 questions, which sound as if they are questions about who

1 was who and what was what in Viet Nam in 1967 and 1968, may
2 appropriately be asked if they are asked not for the
3 purpose of establishing the facts back in Viet Nam in '67
4 and '68, but for probing whether this witness has some
5 reason to fabricate or testify untruthfully as to his
6 conversation with Mr. Crile.

7 So the issues that are properly before you as to
8 his testimony are what was said between him and George
9 Crile in that conversation, insofar as that conversation
10 may bear on the defendant's state of mind, and, secondly,
11 as is always true with any witness who takes the stand, the
12 second issue that is before you is whether this is a
13 witness that you should believe as to his testimony: Is he
14 testifying honestly on that subject?

15 That is a question that is always before you
16 whenever there is a witness on the stand, and that is an
17 issue to which Mr. Bois may direct his questions.

18 All right. You may proceed.

19 BY MR. BOIES:

20 Q. Mr. Nitze, I don't recall exactly what my
21 pending question was, but it had something to do with
22 self-defense forces and secret self-defense forces.

23 THE COURT: Whether they were the ones who
24 controlled at night in the I Corps province.

25 A. I would think the situation is more complex than

1 that. It was controlled by the Viet Cong, areas that were
2 not controlled by the South Vietnamese and by us, it was
3 basically done politically. They tried to do it
4 politically. They tried to get people to believe that they
5 were right and that we were wrong, and so the main effort
6 at control was a political effort at control, and this was
7 backed up by an organization which could carry out terror
8 activities against the school teachers or the judges of the
9 village, the leaders; this, that and the other thing, who
10 differed with the Viet Cong point of view.

11 In addition to that, they had to defend
12 themselves and their principal cadres against the U.S.
13 forces and the South Vietnamese forces which were trying to
14 prevent the subversion of the countryside.

15 So you had a lot of different things going on,
16 all of which bore upon who controlled the mind and hearts
17 of the people in South Viet Nam.

18 To say that it just rested upon these
19 self-defense forces, I would suggest that that is incorrect.

20 (Continued on next page)

1
2 Q. What were the forces upon which it rested?

3 A. I tried to explain to you, that it was basically
4 political, it was an attempt to be basically political,
5 reinforced by various types of people in their organization
6 who were prepared to undertake violent action.

7 Q. And by "violent action," you mean the same
8 things as you were talking about before when you referred
9 to terrorism and defense?

10 A. Terrorism, defense, whatever was necessary. And
11 how many of those there were was very difficult to

12 categorize. That isn't -- I don't recall that precisely but

13 Q. Did you discuss the substance of any of what you
14 just said with Mr. Crile in August of 1981, if you recall?

15 A. I don't believe that I did. I don't recollect
16 having done so, but certainly it would have been in the

17 back of my mind. The regular forces, it should be treated

18 Q. In 1967, if you can recall, were you aware of an
19 enemy strength debate that related to what forces should or
20 should not be quantified and what the estimates for those
21 forces should be? Take the first of those issues first. Do

22 A. I was aware of that. I was with respect to that

23 Q. Do you remember what the CIA's position was as
24 to whether the self-defense and secret self-defense forces
25 should be quantified? I think I think prejudices my

1 MR. DORSEN: Objection, your Honor.

2 THE COURT: Well, this is being received, as I
3 instructed the jury, solely on the issue of the witness's
4 credibility with respect to his conversation with Mr. Crile.

5 The objection is overruled.

6 A. Could the question be repeated?

7 Q. Certainly. One of the issues between MACV and
8 the CIA in 1967 was whether or not the self-defense and
9 secret self-defense forces should be quantified, and if so
10 whether they should be recorded separately or not, correct,
11 sir, if you recall?

12 A. That isn't -- I don't recall that precisely but
13 that doesn't affect what I recall imprecisely. What I
14 recall imprecisely was that there was an argument about,
15 well, A, as to whether or not the non-regular forces, how
16 they should be handled and whether they should be
17 aggregated with the regular forces, it should be treated
18 as the equivalent of regular forces.

19 And the second one was how many were there who
20 were in the non-regular forces.

21 Q. Let me take the first of those issues first. Do
22 you recall what the CIA's position was with respect to that
23 issue?

24 A. I don't recall it that well. My trouble is that
25 I have read things since which I think prejudices my

1 current view. I have read things since which cause me to
2 believe that the CIA did wish to have non-regular forces
3 included in the aggregate of all forces up to a given point.
4 I think that was my recollection. My current recollection
5 is that that's what the CIA position was.

6 Q. When you say you have read things since, do you
7 mean since when?

8 A. Oh, since '81.

9 Q. In 1981, August of 1981, were you aware at that
10 time what the CIA's position had been or what MACV's
11 position had been with respect to this enemy strength?

12 THE COURT: I'm sorry, I think that as to both
13 this question and the previous one you have to make clear
14 what the date is that you are asking about; whether you are
15 asking about the CIA's position in 1967, whether you are
16 asking about the CIA's position in 1968 or any other year.
17 In fact, more than just a year, I think you have to be more
18 precise as to the month.

19 BY MR. BOIES:

20 Q. In 1981, in August of 1981 when you met with Mr.
21 Crile, were you aware at that time as to whether or not the
22 CIA's position with respect to how enemy strength should be
23 estimated, what those estimates should be, had changed at
24 all during 1967?

25 A. Well, I recollected in 1981, and I'm not sure

1 that I discussed this with George at all, but it may have
2 been in the back of my mind, and I take it that is what you
3 are asking me for. In the back of back of my mind is a
4 recollection that I had had weekly meetings with George
5 Allen -- I mean George Crile --

6 THE COURT: You said George Crile?

7 THE WITNESS: I meant with George Carver, I
8 misspoke, with George Carver and sometimes with George
9 Allen, or both of them together, in which they would go
10 over everything that bore upon the issues that were facing
11 them.

12 And in '81 I was cognizant of the fact that one
13 of those issues had been the figures with respect to
14 self-defense and secret self-defense and political cadres,
15 etc., etc., etc., and another issue had been whether it was
16 fair to aggregate those with the regular forces because of
17 the fact that this would, in fact, be adding elephants and
18 flies as far as military capability went.

19 When you aggregate elephants and flies, you get
20 nonsense. So insofar as there was any merit to this thing,
21 my opinion in '67 was that they should not be aggregated.
22 That's my recollection of what I thought in 1981, my
23 recollection in '81 of what I thought in '67, that is the
24 best that I can remember. Does that answer your question?

25 Q. I'm not sure. Let me try to pursue it, Mr.

1 Nitze.

2 Did you discuss with Mr. Crile in August of 1981
3 your weekly meeting with George Carver and George Allen or
4 sometimes both?

5 A. I don't remember that I did.

6 Q. Do you remember whether or not you did?

7 A. I say I don't remember whether or not I did. It
8 just might have been in the back of my mind.

9 Q. Did you discuss with Mr. Crile in August of 1981
10 either your position or the CIA's position or MACV's
11 position with respect to whether particular enemy forces
12 should be aggregated or not, if you can recall?

13 A. I don't remember discussing that. I think I did
14 say to George that there were, to my knowledge, serious
15 debates within the intelligence community, both in Vietnam
16 and in Washington as to how these figures should be put
17 together and what the figures should be. And I can
18 remember distinctly feeling that we were under pressure
19 from the press and from the Congress to come forward with
20 specific figures.

21 It is regrettable that we had to come forward
22 with specific figures in '67. The figures that we came
23 forward with one couldn't have that much confidence in.
24 And I think I did say to George that the figures were,
25 in '67-'68, one couldn't have high confidence in and I could

1 quite understand why people would have violent
2 disagreements with those figures. This is my recollection
3 of what I told George.

4 Q. Let me just follow up what you said about
5 pressure to come up with numbers, if I may, sir.

6 Let me ask to you look at Exhibits 293 and 294,
7 sir.

8 MR. DORSEN: I would ask that you look at the
9 exhibits and I object to any examination beyond the scope
10 of the direct and beyond the issues that your Honor
11 identified.

12 (Pause)

13 THE COURT: You represent this examination will
14 be limited to the conversation and the credibility of the
15 witness?

16 MR. BOIES: Yes, your Honor.

17 THE COURT: I will hear the question.

18 MR. BOIES: As outlined at the side bar.

19 THE COURT: Yes.

20 BY MR. BOIES:

21 Q. Mr. Nitze, let me ask you to look first at
22 Exhibit 293, which purports to be a letter to Secretary
23 Robert McNamara dated February 9, 1968.

24 A. Yes.

25 Q. Do you have that, sir?

1 A. I have it but I have not read it. Do you want
2 me to read it entirely?

3 Q. Is this a document that has been shown to you
4 before, sir?

5 A. It was shown to me during the course of Mr.
6 Baron's deposition, I think, but I did not really read it
7 at that time.

8 Q. Do you have a recollection of seeing this letter
9 in or about February of 1968, sir?

10 A. Not really, no.

11 Q. Did you tell Mr. Baron that this letter
12 illustrated the pressure upon the Defense Department for
13 coming up with aggregates and tabulations of numbers?

14 A. I did, indeed, yes. I have seen it when Mr.
15 Baron showed it to me.

16 Q. Let me ask to you look at Exhibit 294, and I
17 would ask you, is that a letter from you to Mr. Fulbright?

18 A. A letter signed by me to to Mr. Fulbright,
19 that's correct.

20 Q. And the first sentence of that letter indicates
21 that your letter is a reply to a letter from Mr. Fulbright,
22 correct, sir?

23 A. That's correct.

24 Q. A letter from Mr. Fulbright dated February 9,
25 1968, correct, sir?

1 A. That's correct.

2 Q. And have you had an opportunity to see Exhibit
3 294 prior to today?

4 A. At the time that Mr. Baron took my deposition,
5 yes.

6 Q. Mr. Duker says he wants credit for that.

7 A. I mean Mr. Duker. He is entitled to credit.

8 Q. Do you recall this letter that has been marked
9 as Exhibit 294 from the period of 1968, sir?

10 A. I recall it from the fact that it was shown to
11 me at the time at Mr. Duker's taking my deposition, I do,
12 indeed.

13 Q. Other than having seen this is your letter and
14 seen that it is here, do you have any recollection at all
15 of the letter or its preparation?

16 A. Not very precise, really not good at all. I'm
17 sure I signed the letter but I really don't remember. I'm
18 sure it was prepared by my staff in the Defense Department
19 and that I went over it to be sure that it was proper at
20 the time; that I went over lots of things at that time.

21 Q. Let me ask you to look at Exhibit 299 which
22 purports to be an internal CIA memorandum dated March 18,
23 1968. And all I am focusing on is the first exhibit that
24 is here which is a one page memorandum that has been marked
25 as Exhibit 299.

1 Is that an exhibit that you saw in or about
2 March of 1968, sir?

3 A. I don't recollect having seen this. I may have,
4 but I don't recollect it. I take it what is he referring
5 to in the first paragraph --

6 MR. DORSEN: Your Honor, could I --

7 THE COURT: Answer only whether you recall
8 having seen it.

9 A. I don't recollect having seen it.

10 Q. Do you recall whether anyone conveyed to you in
11 words or substance the comments that are included in
12 paragraph 1 of this CIA memorandum in or about March of
13 1968?

14 A. I don't recollect it. It may well have taken
15 place in the discussions between George Carver and myself,
16 but I don't recollect it.

17 Q. Was this a document that you saw at your
18 deposition, sir?

19 A. I don't remember that I did, no.

20 Q. Did you ever have any conversations with Admiral
21 Taylor concerning enemy strength estimates in 1968?

22 A. I don't remember doing so. Admiral Taylor was
23 one of my very close friends, and he had served in the Navy
24 when I was secretary of the Navy, and I had a very high
25 regard for him.

1 Q. Did Admiral Taylor ever convey to you in words
2 or substance the comments that he includes in paragraph 1
3 of this memorandum?

4 A. I don't recollect it.

5 Q. In your conversations with George Crile in
6 August of 1981 did you discuss the enemy strength figures
7 that you had conveyed to Congress?

8 A. I believe not.

9 Q. Did either Mr. Crile or you, to your
10 recollection, raise the question of what figures Congress
11 was being given?

12 A. I don't remember that it was raised by either.

13 Q. Do you recall either you or Mr. Crile raising
14 the issue of what enemy strength figures were being given
15 to the public in 1967 and 1968?

16 A. I do have a vague recollection, not a certain
17 recollection, of the question of figures being given to the
18 public and whether they were correct or not. And it is my
19 vague recollection that I may have said that this was the
20 problem, it wasn't a problem in MACV, it was a problem
21 primarily in Washington.

22 Q. Do you recall whether that was part of the
23 conversation with Mr. Crile?

24 A. What?

25 Q. Do you recall whether that was part of the

1 conversation with Mr. Crile?

2 A. I'm saying it may have been, I don't have a high
3 confidence in that.

4 Q. Let me ask you to look at page 61 of your
5 deposition, sir.

6 A. Which line would you like me to start with?

7 Q. Let me start at line 4, if I can:

8 "Q. Do you recall whether or not MACV wanted
9 to include the SD and SSD in any aggregate of enemy
10 strength that was presented?

11 "A. I don't remember.

12 "Q. Do you remember whether CIA wanted to
13 include SD and SSD in any aggregate enemy strength figure?

14 "A. I don't remember."

15 A. Do you see that, sir?

16 A. I do.

17 Q. And that was your best testimony at the time
18 your deposition was given, was it not, sir?

19 A. Correct.

20 Q. And was that the state of your recollection in
21 August of 1981?

22 A. I believe so.

23 Q. Let me ask you to look next at page 62 of your
24 deposition, the next page.

25 MR. DORSEN: Your Honor, I object to the

1 procedure that's being followed. He should ask him
2 questions first.

3 THE COURT: Well, with a witness, your use of
4 his deposition should be limited to either refreshing his
5 recollection or impeaching him by contrary statements
6 previously made. Is that what you are going to do?

7 MR. BOIES: Yes, your Honor, although I will
8 proceed in the way Mr. Dorsen requests.

9 Q. Mr. Nitze, do you remember what the MACV
10 estimate was for the self-defense and secret self-defense
11 forces in the fall of 1967?

12 A. I don't remember.

13 Q. Do you remember what the CIA's estimate was for
14 those forces in the fall of 1967?

15 A. I don't remember.

16 Q. Did you remember either of those estimates in
17 August of 1981?

18 A. I don't believe I did.

19 Q. Did you discuss with Mr. Crile in August of 1981,
20 if you recall, your recollection or lack of recollection
21 concerning what MACV's estimate was or what the CIA's
22 estimate was or what MACV's position on aggregation was
23 and what the CIA's position on aggregation was?

24 A. I don't remember so doing.

25 Q. Do you recall whether the self-defense and

1 secret self-defense forces were included in the MACV body
2 count figures?

3 MR. DORSEN: Objection, your Honor, on the
4 grounds of relevance.

5 THE COURT: Well, once again, the jury is
6 instructed that this question is being asked only with
7 respect to the question of the witness's credibility as to
8 his account of his conversation with Mr. Crile.

9 And on that understanding, you may answer.

10 A. My recollection is that I had a persistent
11 concern about body count figures, and one of my concerns
12 was it was hard to reconcile the body counts with the
13 categories of forces and cadres which were in order of
14 battle estimates.

15 Q. Do you recall discussing that in substance with
16 Mr. Crile in August of 1981?

17 A. I think I may very well have so done.

18 Q. Do you recall whether the self-defense and
19 secret self-defense forces participated in the Tet
20 offensive?

21 A. My recollection is they did.

22 Q. Did you discuss that with Mr. Crile in August of
23 1981, if you recall?

24 A. I don't remember if that came up.

25 Q. Do you remember whether or not it came up?

1 A. I don't remember, no.

2 Q. Were you aware in the summer of 1967 that
3 General McChristian had presented General Westmoreland with
4 a revised estimate of irregular and political cadre
5 strengths in or about May of 1967?

6 MR. DORSEN: Your Honor, I object.

7 THE COURT: Overruled.

8 A. I don't remember being so informed.

9 Q. Did you discuss that, if you recall, with Mr.
10 Crile in August of 1981?

11 A. I don't believe I did.

12 Q. Do you recall whether any estimate of General
13 McChristian concerning irregular and political cadre
14 strengths was raised either by you or Mr. Crile in your
15 August 1981 conversation?

16 A. It may have been raised by Mr. Crile, but I
17 don't believe I raised it.

18 THE COURT: When you say, "it may have been
19 raised," are you saying that you have something of a
20 recollection that he might have done so or are you simply
21 saying that you have no recollection?

22 THE WITNESS: Rather halfway between, your Honor.
23 BY MR. BOIES:

24 Q. You are aware, are you not, that the broadcast
25 that Mr. Crile was working on was ultimately broadcast?

1 A. Yes, I am. SESSION,

2 Q. Have you seen that broadcast, sir?

3 A. I have not.

4 Q. Have you read a transcript of that broadcast?

5 A. Only recently. Counsel, let me just ask a question

6 Q. When you say "only recently," is that since your
7 deposition?

8 A. Since my deposition.

9 MR. BOIES: Your Honor, is this a convenient
10 time for the luncheon recess?

11 THE COURT: All right. You were saying, and I'm not

12 sure we're Let's resume at quarter to 2:00, please. You were

13 saying that The jury is excused. been relevant to portions

14 of the broadcast (Jury excused) are not relevant to those portions

15 of the broadcast (Luncheon recess) in dispute in the lawsuit.

16 (Continued on next page)

17 MR. BOIES: Yes, your Honor. I think it was
18 two steps. I think there are portions that are not
19 relevant at all to the broadcast. I think there are other
20 portions that are arguably relevant to portions of the
21 broadcast but not to portions that are in dispute.

22 THE COURT: Well, the question I wanted to raise
23 before putting too much effort into reviewing all these
24 many-objected-to segments is, you told me, I think, a few
25 days ago that the defendants, individual defendants, would