

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

GENERAL WILLIAM C. WESTMORELAND,  
*Plaintiff,*

v.

CBS, INC., *et al.*,  
*Defendants.*

82 Civ. 7913 (PNL)

PLAINTIFF GENERAL WILLIAM C. WESTMORELAND'S  
MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT  
CBS'S MOTION TO DISMISS AND FOR  
SUMMARY JUDGMENT

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## TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	1
II. WHAT THE BROADCAST SAID .....	4
III. FACTUAL STATEMENT OF VIETNAM INTELLIGENCE EVENTS.....	11
A. Summary of Vietnam Intelligence Events.....	11
1. 1965 .....	11
2. 1966 .....	11
3. 1967 .....	15
4. 1967—The Infiltration Story .....	25
5. 1968 Tet Offensive.....	27
B. Comparison of False Broadcast Statements with Actual Vietnam Intelligence Events .....	29
1. <b>BROADCAST:</b> MACV intelligence discovered evidence of a far larger enemy while General Westmoreland was in Washington in April 1967 ....	29
a. 1966—The intelligence community produces higher estimates.....	31
(1) CIA's estimates.....	31
(2) 1966—MACV Begins Studying the Irregulars and Political Cadre Cate- gories .....	33
(3) 1967—MACV Continues Its Study .....	34
b. The February 1967 Honolulu Conference .....	34
c. 1967—Post-Honolulu Conference Estimates...	37
2. <b>BROADCAST:</b> When General Westmoreland briefed the President in late April 1967 he gave mostly good news—that the Viet Cong army had leveled off at 285,000 men and the cross-over point had been reached .....	38
3. <b>BROADCAST:</b> General McChristian and Colonel Hawkins confronted General Westmoreland with the bad news of a far larger enemy at a single private briefing when he returned from Washing- ton. General Westmoreland suppressed this report and directed Colonel Hawkins to cut his estimates..	40
a. There were four meetings in May and June 1967 .....	40

	<u>Page</u>
b. There was no suppression .....	42
c. There was no reduction in MACV estimates in the summer of 1967.....	45
d. 1967—Higher estimates were widely dis- seminated in the late spring of 1967.....	45
e. Suppression of MACV evidence was impos- sible.....	48
4. <b>BROADCAST:</b> General Westmoreland trans- ferred General McChristian out of Vietnam in order to avoid taking to the President the higher guerrilla, SD, SSD and political cadre estimates on which his intelligence chiefs briefed him in May 1967 .....	49
5. <b>BROADCAST:</b> General Westmoreland's new in- telligence chief, General Phillip Davidson, refused to permit new units or accurate figures to be incorporated into the MACV Order of Battle esti- mates. Officer in the field complained about this to Lt. McArthur .....	50
6. <b>BROADCAST:</b> General Westmoreland ordered the intelligence officers representing MACV at the August SNIE not to allow the total to go over a 300,000 "ceiling".....	51
a. The June SNIE Meeting .....	51
b. MACV Prepares Its Revised Estimates for the SNIE .....	52
(1) MACV preparation for the August SNIE meeting.....	52
(2) Generals Davidson and Godding brief General Westmoreland.....	52
c. The MACV Estimate Presented at the August SNIE.....	53
7. <b>BROADCAST:</b> General Westmoreland pursued a new tactic to keep under the 300,000 "ceiling" when his representatives at the SNIE found the CIA's arguments for exceeding the ceiling too powerful to overcome—dropping the self-defense militia and treating them as if they did not exist.....	54
a. Recommendations to take the SD from the OB prior to the August SNIE.....	54

	<u>Page</u>
b. The positions of the conferees at the August SNIE Session .....	57
8. <b>BROADCAST:</b> General Westmoreland's representatives met in the Pentagon in the Summer of 1967, and arbitrarily slashed MACV's official estimates of Viet Cong units .....	63
9. <b>BROADCAST:</b> The CIA caved in to all of General Westmoreland's demands at the NIE: "the CIA finally accepted Westmoreland's figure as the official estimate to be sent to the President".....	65
a. In September 1967, Carver's proposal to General Westmoreland resolves OB dispute.....	65
b. The SD militia and SSD were removed from the OB only after a thorough review process ...	69
c. Defendants' recent focus on Administrative Services .....	72
d. The SNIE ended with a compromise .....	73
10. <b>BROADCAST:</b> The President was told in the fall of 1967 "that there were only 248,000 Viet Cong left" because General Westmoreland had removed the evidence of a larger enemy .....	74
a. Accurate accounts of the agreement reached in mid-September were promptly communicated to all relevant parties.....	75
b. The SNIE gave an honest and realistic view of the enemy in the Fall of 1967.....	80
c. President Johnson had access to the best available information.....	85
d. President Johnson did not pressure people to provide him with good news.....	87
11. <b>BROADCAST:</b> General Westmoreland lied to the press, the public and the Congress in late 1967 by telling them that there were only 248,000 Viet Cong left and that the enemy was all but defeated..	89
a. Drafting the OB Press Briefing .....	89
b. Press Briefings—mid-November 1967.....	90
(1) Westmoreland's November 11, 1967 Press Briefing.....	91
(2) The November 17 <i>Washington Daily News</i> Story .....	92

	<u>Page</u>
(3) November 19 "Meet the Press" Appearance .....	92
(4) November 21 National Press Club Appearance .....	93
(5) November 22 Pentagon Press Briefing ..	93
c. November 24, 1967 Press Briefing .....	94
d. News Coverage of the November 24 Press Briefing .....	96
e. General Westmoreland told the truth to Congress .....	97
12. <b>BROADCAST:</b> MACV suppressed reports that an additional 100,000-150,000 NVA Regulars had infiltrated into South Vietnam in the five months before the start of the Tet offensive on January 30, 1968 .....	100
13. <b>BROADCAST:</b> Lt. Col. Everette Parkins was fired because he tried to report infiltration of 25,000 per month.....	115
14. <b>BROADCAST:</b> The President and the American Army in Vietnam were caught totally unprepared for the size of the enemy attack during Tet because General Westmoreland suppressed intelligence .....	117
a. Washington Was Warned of the Coming Offensive .....	118
b. The Enemy Attack at Tet Confirmed the Accuracy of MACV Strength Holdings .....	123
15. <b>BROADCAST:</b> General Westmoreland lied when he said the Tet offensive was a military victory for the United States and South Vietnam .....	124
16. <b>BROADCAST:</b> MACV reported 50,000 enemy dead which, using a ratio of three wounded for every one killed, meant 150,000 wounded in the first five weeks of Tet. This showed that MACV's estimate of 224,000 total combined enemy strength had to be too low and that MACV must be falsifying enemy strength estimates.....	128
17. <b>BROADCAST:</b> MACV analyst Lt. Richard McArthur's guerrilla figures were arbitrarily and improperly reduced as part of MACV's efforts to try to demonstrate massive enemy losses, and Lt. McArthur was transferred when he protested.....	132

	<u>Page</u>
18. <b>BROADCAST:</b> Several weeks after the Tet offensive, MACV engaged in a coverup which included tampering with and erasing the MACV computer's data base.....	136
19. <b>BROADCAST:</b> General Westmoreland requested 206,000 additional troops after Tet to fight a "phantom enemy".....	141
20. <b>BROADCAST:</b> Commander Meacham's letters to his wife represented his true assessment of the situation in Vietnam, and he endorsed that assessment when CBS interviewed him .....	142
21. <b>BROADCAST:</b> At the end of March 1968, the intelligence community accepted Adams' estimates of enemy strength. The President's advisors—the so-called Wise Men—were told how many enemy there really were and this led to the President's decision not to run for re-election .....	146
a. The Briefing of the "Wise Men".....	146
b. Tet and LBJ's decision not to run .....	148
c. Defendants' Version of Post-Tet Intelligence Events .....	150
CONCLUSION.....	153
IV. PREPARATION OF THE BROADCAST.....	155
A. Pre-Broadcast Facts .....	155
1. Crile Picks a Documentary .....	155
2. Sam Adams Begins His Quest .....	156
3. The <i>Ellsberg</i> Trial.....	160
4. Adams' <i>Harper's</i> Article.....	160
5. The Pike Committee .....	161
6. Adams' Book .....	168
B. Making the Broadcast .....	173
1. Crile Tells the Story to CBS—the "Blue Sheet" .....	173
2. CBS Buys In.....	175
3. Adams' Prospects List.....	177
4. Production Begins .....	181
5. Crile and Adams Begin Interviewing .....	182
6. The Hawkins and McChristian Interviews.....	190

	<u>Page</u>
7. Spring 1981 .....	197
8. Interviewing Adams.....	200
9. Double Interview of Allen and "Coddling of Sympathetic Witnesses" .....	202
10. The Westmoreland Interview .....	207
11. Wallace Interviews Graham and Rostow and Receives General Westmoreland's Correction Letter ..	216
12. Editing of the Show Facts.....	222
13. Editing Fabrications.....	224
14. The Fall 1981 Screenings and the Charge of Conspiracy .....	238
15. Lack of Supervision of the Show .....	241
16. December 1981 Interviews .....	244
17. Last Minute Conversations .....	246
18. Doubts Expressed and Unexpressed .....	248
19. The Advertising for the Broadcast.....	256
C. Post-Broadcast.....	258
1. General Westmoreland's Press Conference .....	258
2. Other Statements on the Broadcast .....	261
3. The <i>TV Guide</i> Article .....	262
4. Benjamin's Investigation.....	264
5. The Benjamin Report .....	264
6. The Sauter Press Release .....	265

## ARGUMENT

I. DEFENDANTS ARE NOT ENTITLED TO SUMMARY JUDGMENT.....	267
A. Plaintiff Need Establish Only a Disputed Issue of Material Fact on the Issue of Actual Malice .....	268
1. First Amendment Considerations Do Not Apply in Summary Judgment Motions in Defamation Cases. ....	268
2. This Court Need Not Make an Independent Examination of the Entire Record at this Stage of the Proceeding.....	271

	<u>Page</u>
3. Summary Judgment Is Especially Inappropriate Because the Existence of Actual Malice is Uniquely a Question for the Jury.....	271
B. Plaintiff Need Establish Only a Disputed Issue of Material Fact on the Issue of Falsity.....	273
II. ACTUAL MALICE .....	275
A. Actual malice is the publication of a statement with knowledge that the statement was false or with reckless disregard for whether the statement was false or not .....	275
B. Twenty-seven indicia of actual malice are present in this case.....	278
1. Admissions of doubt regarding the truth of the Broadcast.....	278
2. Ignoring warnings that the statements are inaccurate.....	279
3. Fabricating events without evidentiary support .....	282
4. Making false statements of fact which the publisher knows to be false when he makes them.....	283
5. Disregard for evidence contradicting the story by those in the best position to know the truth.....	286
6. Reliance upon inherently unreliable sources .....	287
7. Publication of statements which do not reflect the actual interviews held or evidence gathered; omission and distortion.....	287
8. Use of the most damaging interpretation of ambiguous statements .....	289
9. Inherently improbable statements.....	290
10. Conforming story to predetermined outcome .....	290
11. Reliance on obviously biased sources .....	291
12. Failure to interview key witnesses, particularly after having been requested to do so.....	292
13. Common law malice, <i>i.e.</i> , spite and ill-will .....	292
14. Prior instances of an author or source making defamatory statement against the plaintiff.....	293
15. "Ambushing" hostile witnesses, or witnesses the reporter thinks may be hostile, in an attempt to have them say things which may be useful to the reporter's thesis.....	293

	<u>Page</u>
16. Rehearsing or coaching of favorable witnesses .....	294
17. Failure to ask critical questions of key witnesses .....	295
18. Reporter's false statements in interviews to elicit false or favorable responses to questions.....	295
19. Deficient journalistic practices in investigating, preparing, editing, and publishing a story.....	296
20. Distortion of source credentials .....	297
21. Taking inaccurate notes .....	298
22. Ignoring an interviewee's request for corrections ....	298
23. Failure to retract obviously false statements.....	299
24. Destruction of evidence of what the reporter was told .....	299
25. False exculpatory statements.....	299
26. Failure to investigate further where warranted by accusations of an especially serious nature or where substantial danger to reputation was apparent, especially where "hot news" is not involved .....	302
27. Persistent disregard of evidence which conflicts with the story the reporter is telling, particularly when the evidence consists of reliable and highly probative contemporaneous documents.....	304
III. CRITIQUE OF DEFENDANTS' WITNESSES .....	306
A. People Absent from the Events .....	307
B. People in the Periphery of Events.....	311
C. Present but Incompetent Witnesses .....	321
D. People Whose Competent Testimony Supports Plaintiff...	322
E. People Whose Competence to Testify is Uncertain .....	329
F. Inadmissible Conclusory and Opinion Statements .....	331
IV. OTHER LEGAL ISSUES .....	333
A. The Broadcast Is Not Absolutely Privileged and Defendants May Rely, at Most, on the Qualified Privilege Announced in <i>New York Times v. Sullivan</i> .....	333
1. CBS Is Only Entitled to Qualified Immunity on the Basis of General Westmoreland's Status as a Public Figure and Former Public Official .....	335
2. This Suit Is Not Tantamount to a Seditious Libel Prosecution .....	337

	<u>Page</u>
3. General Westmoreland's Presumed Ability to Respond to Criticism Does Not Justify Granting CBS Absolute Immunity.....	338
4. General Westmoreland's Presumed Assumption of the Risk of Criticism Does Not Entitle CBS to Absolute Immunity.....	339
5. The Status of the Issues Discussed by CBS Does Not Entitle It To Claim Absolute Immunity.....	340
B. Defendants Are Not Entitled to Absolute Immunity with Respect to the Few Statements They Characterize as Opinion .....	340
1. The Broadcast was a News Broadcast.....	341
2. The Broadcast Used the Term "Conspiracy" in Its Literal Sense .....	342
3. The Use of the Term Conspiracy Is Not Protected Opinion .....	344
a. The Broadcast Charged General Westmoreland With Criminal and Dishonest Conduct and Therefore Is Not Protected Opinion..	344
b. The Broadcast Relied on Undisclosed Facts and Is Therefore Not Protected Opinion.....	348
4. Count IV Should Not Be Dismissed .....	349
a. Defendants' Motion is Barred by the Doctrine of Law of the Case .....	349
b. Defendants' Motion Is Without Merit.....	350
C. The Libelous Publications Were "of and Concerning" General Westmoreland .....	351
1. The Publications.....	351
a. Pre-Publication Events.....	352
b. The first Three Publications: CBS Morning News, the Full-Page Newspaper Advertisements and the Broadcast.....	355
c. Post-Broadcast Events .....	356
d. The Sauter Memorandum.....	358
2. The Applicable Legal Principles .....	360

	<u>Page</u>
D. Defendants' Remaining Legal Arguments Are Without Merit .....	363
1. Defendants Are Not Entitled to Any Privilege Based on Neutral or Fair Reporting.....	363
2. Defendants Did Not Simply Repeat Previous Charges.....	363
3. Count V Should Not Be Dismissed .....	364
CONCLUSION.....	365

## TABLE OF AUTHORITIES

	<u>Page</u>
<i>Afro-American Publishing Co. v. Joffe</i> , 366 F.2d 649 (D.C. Cir. 1966).....	364
<i>Airlie Foundation, Inc. v. Evening Star Newspaper Co.</i> , 337 F. Supp. 421 (D.D.C. 1972) .....	278,286 288,290, 295
<i>Ali v. Playgirl Inc.</i> , 447 F. Supp. 723 (S.D.N.Y. 1978).....	360
<i>Alioto v. Cowles Communications, Inc.</i> , 430 F.Supp. 1363 (N.D. Cal. 1977), <i>aff'd</i> 623 F.2d 616 (9th Cir 1980), <i>cert. denied</i> 449 U.S. 1102 (1981).....	279, 286-87, 292
<i>American Benefit Life Insurance Co. v. McIntyre</i> , 375 So. 2d 239 (Ala. Sup. Ct. 1979).....	270
<i>Barr v. Matteo</i> 360 U.S. 564 (1959).....	336
<i>Bindrim v. Mitchell</i> , 92 Cal. App. 3d, 155 Cal. Rptr. 29, <i>cert. denied</i> , 444 U.S. 984 (1979) .....	279
<i>Bird Provision Co. v. Owens Country Sausage, Inc.</i> , 379 F.Supp. 744 (N.D. Tex. 1974), <i>aff'd</i> , 568 F.2d 369 (1978) .....	300
<i>Birnbaum v. U.S.</i> 588 F.2d 319 (2d Cir. 1978) .....	364
<i>Bohannon v. Pegelow</i> , 652 F.2d 729 (7th Cir. 1981) .....	312
<i>Bose Corp. v. Consumers Union of United States, Inc.</i> , 508 F.Supp. 1249, 692 F.2d 189 (1st Cir. 1982), <i>aff'd</i> , ____ U.S. ____, 80 L.Ed. 2d 502 (1984) .....	3,271-77, 341
<i>Brady v. Ohaway Newspapers, Inc.</i> , 84 App. Div. 2d 226, 445 N.Y.S. 2d 786 (2d Dept. 1981) .....	347,348
<i>Braig v. Field Communications</i> , 456 A.2d 1366, (Pa. Sup. Ct. 1983), <i>cert. denied</i> , 80 L.Ed. 2d 816 (1984) .....	270
<i>Brayton v. Crowell-Collier Publishing Co.</i> , 205 F.2d 644 (20 Cir. 1953).....	360
<i>Buckley v. Littell</i> , 539 F.2d 882 (2d Cir. 1976), <i>cert denied</i> 429 U.S. 1062 (1977).....	283,346
<i>Burns v. McGraw-Hill</i> , 659 P.2d 1351 (Col. 1983).....	292
<i>Butler v. Polk</i> , 592 F.2d 1293 (5th Cir. 1979) .....	312
<i>Calder v. Jones</i> , ____, U.S. ____, 104 S. Ct. 1482, 79 L.Ed. 2d 804 (1984).....	3,268 269,271, 335

	<u>Page</u>
<i>Cantrell v. Forest City Publishing Co.</i> , 419 U.S. 245 (1974) .....	282,286
<i>Cape Publications v. Teri's Health Studio</i> , 385 So. 2d 188 (Fla. App. 1980).....	299
<i>Carson v. Allied News Co.</i> 529 F.2d 206 (7th Cir. 1976) <i>on remand</i> , 482 F.Supp. 406 (N.D. Ill. 1979).....	283,288, 302
<i>Church of Scientology v. Dell Publishing Co.</i> , 362 F.Supp. 767 (N.D. Cal. 1973).....	279
<i>Church of Scientology v. Siegelman</i> , 475 F.Supp. 950 (S.D.N.Y. 1979), <i>rehearing denied</i> 481 F.Supp. 866.....	270
<i>Cianci v. New Times Publishing Co.</i> , 639 F.2d 54 (2d Cir. 1980)....	340,346 363
<i>Clark v. American Broadcasting Companies, Inc.</i> , 684 F.2d 1208 (6th Cir. 1982) <i>cert denied</i> 103 S. Ct. 1433 (1983) .....	270.
<i>Cochran v. Indianapolis Newspapers</i> , 175 Ind. App. 548, 372 N.E. 2d 1211 (Ind. App. 1978).....	292-93
<i>Corabi v. Curtis Publishing Co.</i> , 441 Pa. 432, 273 A.2d 899 (1971)	278,296
<i>Cummings v. Roberts</i> , 628 F.2d 1065 (8th Cir. 1980) .....	307
<i>Curtis Publishing Co. v. Butts</i> 388 U.S. 130 (1967).....	287,290 296,302 333,334
<i>Dallas County v. Commercial Union Assurance Co.</i> , 286 F.2d 388 (5th Cir. 1961) .....	332
<i>Davis v. High Society Magazine, Inc.</i> , 90 App. Div. 2d 374, 457 N.Y.S. 2d 308 (2d Dept. 1982) .....	270
<i>Davis v. Schuchat</i> , 510 F.2d 731 (D.C. Cir. 1975).....	287,293 295,299
<i>D.C. Comics, Inc. v. Powers</i> , 482 F.Supp. 494 (S.D.N.Y. 1979) .....	350
<i>DeLoach v. Beaufort Gazette</i> , 10 Med. L. Rep. 1733 (3.C. 1984)...	296,298 299
<i>DeRobert v. Gannett</i> , 83 F.R.D. 574 (D Harv. 1979) .....	270
<i>DiLorenzo v. New York Times</i> , 78 App. Div. 2d 669, 432 N.Y.S. 2d 483 (2d Dept. 1980) .....	292,299
<i>Dyer v. Mac Dougall</i> 201 F.2d 265 (2d Cir. 1952) .....	351
<i>Edwards v. National Audobon Society</i> , 556 F.2d 113 (2d Cir. 1977), <i>cert. denied</i> , 434 U.S. 1002 (1979) .....	363
<i>Embry v. Holly</i> , 293 Md. 128, 442 A.2d 966 (1982) .....	350
<i>Fawcett Publications, Inc. v. Morris</i> , 377 P.2d 42 (Okla. 1962), <i>cert. denied</i> 376 U.S. 513 (1964) .....	361

	<u>Page</u>
<i>Fetler v. Houghton-Mouffler Co.</i> , 364 F.2d 650 (2d Cir. 1966).....	360
<i>First National Bank of Boston v. Bellotti</i> 435 U.S. 765 (1978) .....	334
<i>Fitzgerald v. Penthouse International Ltd.</i> , 691 F.2d 666 (4th Cir. 1982), <i>cert. denied</i> , ____ U.S. ____, 103 S.Ct. 1277 (1983) .....	270
<i>Foltz v. News Syndicate Co.</i> , 114 F.Supp. 599 (S.D.N.Y. 1953).....	360
<i>Fulton v. Advertiser Co.</i> , 388 So., 2d 533 (Ala. 1980) <i>cert. denied</i> 449 U.S. 1131 (1981).....	270
<i>Garrison v. Louisiana</i> , 379 U.S. 64 (1964) .....	334,336 337
<i>Gatling v. Atlantic Richfield Co.</i> , 577 F.2d 185, (2d Cir.), <i>cert. denied</i> , 439 U.S. 861 (1978) .....	307
<i>Geisler v. Petrocelli</i> , 616 F.2d 636, (2d Cir. 1980) .....	364
<i>Gertz v. Robert Welch</i> , 418 U.S. 323 (1974) .....	333,334 339
<i>Gertz v. Robert Welch</i> , 680 F.2d 527 (1982) .....	302, 333
<i>Gluclesman v. Birns</i> , 398 F.Supp. 1343 (S.D.N.Y. 1975) .....	300
<i>Goldwater v. Ginzburg</i> , 414 F.2d 324 (2d Cir. 1969), <i>cert. denied</i> , 396 U.S. 1049 (1970).....	275-79, 282-83, 287, 289-92, 296,302, 304, 333
<i>Green v. Northern Publishing</i> , 655 P.2d 736 (Alaska 1982).....	304
<i>Greenbelt Cooperative Publishing Co. v. Bresler</i> , 398 U.S. 6 (1970)	343
<i>Greenberg v. CBS</i> , 69 App. Div. 20 693, 419 N.Y.S. 2d 988 (2d Dept. 1979) .....	270,292 302
<i>Greenwood Ranchers, Inc., v. Skie Constr. Co.</i> , 629 F.2d 518 (8th Cir. 1980).....	313
<i>Guam Federation of Teachers v. Ysrael</i> , 492 F.2d 438 (9th Cir. 1973), <i>cert. denied</i> , 419 U.S. 872 (1974) .....	283
<i>Handelman v. Hustler Magazine, Inc.</i> , 469 F.Supp. 1048 (S.D.N.Y. 1978) .....	360
<i>Hansen v. Stoll</i> , 130 Ariz. Ap. 454, 636 P.2d 1236 (Ariz. App. 1981).....	304
<i>Hargraves v. Scirner</i> , No A-1027 (July 2, 1984).....	269
<i>Harlow v. Fitzgerald</i> , 457 U.S. 800 (1982) .....	272,336, 337

	<u>Page</u>
<i>Hart v. Playboy Enterprises</i> , 5 Med. L. Rep. 1811 (D. Kan. 1979)..	270
<i>Hartman v. Time Inc.</i> 166 F.2d 127 (3d Cir. 1947) (cert. denied, 334 U.S. 838 (1948)).....	350
<i>Hellman v. McCarthy</i> , 10 Med. L. Rep. 1789 (N.Y. Sup. Ct. 1984)	293,346, 363,364
<i>Herbert v. Lando</i> , 441 U.S. 153 (1979).....	272, 275-77, 333,334 335,337 339
<i>Hicks v. Casablanca Records</i> , 464 F.Supp. 426 (S.D.N.Y. 1978) ...	360
<i>Hogan v. Herlad</i> , 84 App. Div. 2d 470, 446 N.Y.S. 2d 836 (4th Dept.), <i>aff'd</i> 8 N.Y. 2d 630, 458 N.Y.S. 2d 538, 444 N.E. 2d 1002 (1982).....	363
<i>Holmes v. Curtis Publishing Co.</i> , 303 F.Supp. 522 (D.S.C. 1969) ...	346,364
<i>Hotchener v. Castillo-Puche</i> , 404 F.Supp. 1041 (S.D.N.Y. 1975), <i>aff'd on other grounds</i> , 551 F.2d 910 (2d Cir.), <i>cert. denied</i> , 434 U.S. 834 (1977).....	292
<i>Hutchinson v. Proxmire</i> , 443 U.S. 153 (1979).....	3,269, 272,336 347
<i>Indianapolis Newspapers, Inc., v. Fields</i> , 254 Ind. 219, 259 N.E. 2d 651, <i>cert. denied</i> 400 U.S. 930 (1970).....	282,286 288,291, 293,304
<i>James v. Gannett Co., Inc.</i> , 40 N.Y. 2d 415, 386 N.Y.S. 2d 871, 353 N.E. 2d 834 (1976).....	304,360
<i>Jaroslauwuz v. Seidman</i> , 528 F.2d 727 (2d Cir. 1975).....	307
<i>Jarrett v. Madifari</i> , 67 App. Div. 2d 396, 415 N.Y.S. 2d 644 (1st Dept. 1979).....	300
<i>Jones v. Garner</i> , 250 S.C. 479, 158 S.E. 2d 909 (S.C. 1968).....	284
<i>Jones v. Sun Publishing Co.</i> , 278 S.C. 12, 292 S.E. 2d 23 (1982) ....	363
<i>Joy Mfg. Co. v. Sola Basic Ind., Inc.</i> , 697 F.2d 104 (3rd Cir. 1982)	312
<i>Julian v. American Business Consultants, Inc.</i> , 2 N.Y. 2d 1, 155 N.Y.S. 2d 1, 137 N.E. 2d 1 (1956).....	348
<i>Karaduman v. Newsday Inc.</i> , 51 N.Y. 2d 531, 435 N.Y.S. 2d 556 (1980).....	288
<i>Keeton v. Hustler Magazine, Inc.</i> , ___ U.S. ___, 79 L.Ed. 2d 790.....	268

	<u>Page</u>
<i>Kent v. City of Buffalo</i> , 29 N.Y. 2d 818, 327 N.Y.S. 2d 653, 277 N.E. 2d 669 (1971) .....	362
<i>Kerwick v. Orange County Publications</i> , 53 NY. 2d 625, 438 N.Y.S. 2d 778, 420 N.E. 2d 970 (1981) .....	292,299
<i>Kohkoff v. Community News</i> , 89 N.J. 82, 444 A.2d 1086 (N.J. 1982) .....	347
<i>Kuan Sing v. T. W. Wang, Inc.</i> , 86 App. Div. 2d 549 (1st Dept.) 446 N.Y.S. 2d 76, <i>aff'd</i> 58 N.Y. 2d 708, 458 N.Y.S. 2d 544, 444 N.E. 2d 1008 (1982) .....	291
<i>Kuhn v. Tribune Republican Publishing Co.</i> , 637 P.2d 315 (Col. 1981) .....	292
<i>Lawrence v. Bauer Publishing</i> , 89 N.J. 451, 446 A.2d 469 <i>cert. denied</i> , 459 U.S. 999 (1982) .....	276
<i>Lawrence v. Moss</i> , 639 F.2d 634 (10th Cir.), <i>cert. denied</i> , 451 U.S. 1031 (1981) .....	270,276
<i>Lesesene v. Willingham</i> , 83 F.Supp. 918 (E.D.S.C. 1949) .....	346
<i>Loeb v. New Times Communications Corp.</i> , 497 F.Supp. 85 (S.D.N.Y. 1980) .....	270
<i>Lorentz v. Westinghouse Electric Corp.</i> , 472 F.Supp. 946 (W.D. Pa. 1979) .....	364
<i>Lubbock Feed Lots, Inc. v. Iowa's Beef Processors, Inc.</i> 630 F.2d 250 (5th Cir. 1980) .....	313
<i>McCusker v. Valley News</i> , 121 N.H. 258, 428 A.2d 493, <i>cert. denied</i> , 454 U.S. 1017 (1981) .....	270
<i>McManus v. Doubleday &amp; Co.</i> , 513 F.Supp. 1383 (S.D.N.Y. 1981) .....	270,288, 300,363
<i>Maine Yankee v. Maine Nuclear Referendum Committee</i> , 9 Med. L. Rep. 1561 (Maine Sup. Ct. 1983) .....	270
<i>Mahnke v. Northwest Publications, Inc.</i> 280 Minn. 328, 160 N.W. 2d 1 (1968) .....	279,292, 296,299
<i>Maressa v. New Jersey Monthly</i> , 89 N.J. 176, 445 A.2d 376, <i>cert. denied</i> 49 U.S. 907 (1982) .....	278
<i>Martin v. Johnson Publishing Co.</i> , 157 N.Y.S. 2d 409 (N.Y. Cr. 1956) .....	283,362
<i>Mehau v. Gannett Pacific Corp.</i> 658 P.2d 312 (Hi. Sup. Ct. 1983) ..	270
<i>Metzger v. Dell Publishing Co.</i> , 207 Misc. 182, 136 N.Y.S. 2d 888 (N.Y. Co. 1955) .....	362

	<u>Page</u>
<i>Montgomery v. Baltimore &amp; Ohio Railroad Co.</i> , 22 F.2d 359 (6th Cir. 1927).....	296
<i>Nader v. De Toledano</i> , 408 A.2d 31 (D.C. App. 1979) <i>cert. denied</i> , 444 U.S. 1078 (1980).....	272
<i>Negri v. Schering Corp.</i> , 333 F.Supp. 101 (S.D.N.Y. 1971) .....	360
<i>Nevada Broadcasting v. Allen</i> , 664 P.2d 337 (Nev. 1983) .....	276
<i>New York Guardian Mortgage Corp. v. Cleland</i> , 473 F.Supp. 409 (S.D.N.Y. 1979) .....	350
<i>New York Times v. Sullivan</i> , 376 U.S. 254 (1964) .....	269,290 293,295 333,350, 361,362
<i>Nieman-Marcus v. Lait</i> , 13 F.R.D. 311 (S.D.N.Y. 1952).....	361,362
<i>November v. Time, Inc.</i> , 13 N.Y. 2d 175, 244 N.Y.S. 2d 309, 194 N.E. 2d 126 (1963) .....	346
<i>Old Dominion Branch No. 496, National Ass'n of Letter Carriers v. Austin</i> , 418 U.S. 264 (1974) .....	343
<i>Ollman v. Evans</i> 713 F.2d 838 (DC Cir. 1983).....	348
<i>Orr v. Argus-Press Co.</i> , 586 F.2d 1108, (6th Cir. 1976), <i>cert. denied</i> 440 U.S. 960 (1979) .....	276
<i>Pan Islamic Trade Corp. v. Exxon Corp.</i> , 632 F.2d 539 (5th Cir. 1980), <i>cert. denied</i> , 454 U.S. 927 (1981) .....	307,332
<i>Peay v. Curtis Publishing Co.</i> , 78 F.Supp. 305 (D.D.C. 1948).....	362,364
<i>Peisner v. Detroit Free Press</i> , 104 Mich. App. 59, 304 N.W. 2d, 814 (1981) .....	279,299
<i>People v. Davis</i> , 43 N.Y. 2d 17, 400 N.Y.S. 2d 735, 371 N.E. 2d 456, <i>cert. denied</i> , 435 U.S. 998 (1978) .....	300
<i>Pep v. Newsweek</i> , 553 F.Supp. 1000 (S.D.N.Y. 1983) .....	276
<i>Pickering v. Board of Education</i> , 391 U.S. 563 (1968).....	334
<i>Pierce v. Northwestern Mutual Life Insurance Co.</i> , 444 F.Supp. 1098 (D.C.S.C. 1978) .....	346,360
<i>Poller v. CBS</i> , 368 U.S. 464 (1962) .....	272
<i>Rebozo v. Washington Post Co.</i> , 637 F.2d 375 (5th Cir.) <i>cert. denied</i> , 454 U.S. 964 (1981) .....	270, 275-79, 289,292, 295
<i>Regan v. Sullivan</i> , 557 F.2d 300 (2d Cir. 1977) .....	361
<i>Reliance Ins. Co. v. Barron's</i> , 442 F.Supp. 1341 (S.D.N.Y. 1977) ..	297

	<u>Page</u>
<i>Rinaldi v. Holt, Reinhart &amp; Winston, Inc.</i> , 42 N.Y. 2d 369, 397 N.Y.S. 2d 943, 366 N.E. 2d 1299, <i>cert. denied</i> , 434 U.S. 969 (1977) .....	270,346 347,348
<i>Rinaldi v. Viking Penguin, Inc.</i> , 54 N.Y. 2d 422, 438 N.Y.S. 2d 496, 420 N.E. 2d 377 (1981) .....	270
<i>Rogers v. Doubleday</i> , 644 S.W. 2d 833, (Tex. Civ. App. 1982) .....	302
<i>Rosenblatt v. Baer</i> , 383 U.S. 75 (1966) .....	361
<i>Rosenbloom v. Metromedia</i> , 403 U.S. 29 (1971) .....	340
<i>Rosenfeld v. Curtis Publishing Co.</i> , 163 F.2d 660 (2d Cir. 1947) ....	362
<i>Rozhon v. Triangle Publishing, Inc.</i> , 230 F.2d 359 (7th Cir. 1956) .	364
<i>Schermerhorn v. Rosenberg</i> , 73 App. Div. 2d 276, 426 N.Y.S. 2d 274 (1980) .....	283
<i>Schultz v. Newsweek</i> , 668 F.2d 911 (6th Cir. 1982) .....	270
<i>Schuster v. U.S. News &amp; World Report, Inc.</i> , 602 F.2d 850 (8th Cir. 1979) .....	362
<i>Sharon v. Time, Inc.</i> , 575 F.Supp. 1162 (S.D.N.Y. 1983) .....	346
<i>Speake v. Tofte</i> , 327 F.Supp. 200 (D.D.C. 1971) .....	304
<i>Sprouse v. Clay Communications, Inc.</i> , 158 W. Va. 427, 211 S.E. 2d 674, <i>cert. denied</i> , 423 U.S. 882 (1975) .....	284,293, 296
<i>Steadman v. Lapensohn</i> , 408 Mich. 50, 288 N.W. 2d 580 (1980) ...	288
<i>St. Amant v. Thompson</i> , 390 U.S. 727 (1968) .....	275,283, 289,302, 333,334
<i>Stevens v. Sun Publishing Co.</i> , 270 S.C. 65, 240 S.E. 2d 812, <i>cert denied</i> , 426 U.S. 945 (1978) .....	279,291, 293,302
<i>Time v. Firestone</i> , 424 U.S. 448 (1976) .....	333,339, 340,347
<i>Time Inc. v. Hill</i> , 385 U.S. 374 (1967) .....	276,278, 292,296, 304,364
<i>Time Inc. v. Pape</i> , 401 U.S. 279 (1971) .....	287,347
<i>Time Inc. v. Ragano</i> , 427 F.2d 219 (5th Cir. 1970) .....	276,283, 296
<i>Torres v. Playboy Enterprises Inc.</i> , 7 Med. L. Rptr. 1182 (S.D. TEX 1980) .....	302
<i>Tracy v. Newsday, Inc.</i> , 5 N.Y. 2d 134, 182 N.Y.S. 2d 1, 155 N.E. 2d 853 (1959) .....	360

	<u>Page</u>
<i>United Medical Labs, Inc. v. CBS</i> , 404 F.2d 706 (9th Cir. 1968), <i>cert. denied</i> , 394 U.S. 921 (1969) .....	360
<i>United States v. Butcher</i> , 557 F.2d 666 (9th Cir. 1977) .....	312
<i>United States v. Diebold</i> , 369 U.S. 654 (1982) .....	267
<i>United States v. International Business Machines</i> , 79 F.R.D. 412 (S.D.N.Y. 1978) .....	350
<i>United States v. Jackson</i> , 569 F.2d 1003 (7th Cir.), <i>cert. denied</i> , 437 U.S. 907 (1978) .....	312
<i>United States v. N.V. Nederlandsche Combinatie Voor Chemische Industrie</i> , 75 F.R.D. 473 (S.D.N.Y. 1977) .....	350
<i>Vandenburg v. Newsweek, Inc.</i> , 507 F.2d 1024, (5th Cir. 1975) .....	302
<i>Varnish v. Best Medium Publishing Co., Inc.</i> , 405 F.2d 608 (2d Cir. 1968), <i>cert. denied</i> , 394 U.S. 987 .....	288,304
<i>Walker v. Associated Press</i> , 388 U.S. 130 (1967) .....	335,336
<i>Warner Barnes Co. v. Kokosai Kisen Kabushiki Kaisha</i> , 102 F.2d 450 (2d Cir. 1939) .....	299
<i>Washington Post v. Keogh</i> , 365 F.2d 965 (D.C. Cir. 1966), <i>cert. denied</i> , 386 U.S. 1011 (1967) .....	308
<i>Wassermann v. Time, Inc.</i> , 424 F.2d 920 (D.C. Cir.), <i>cert. denied</i> , 398 U.S. 940 (1970) .....	287
<i>Widener v. Pacific Gas &amp; Electric Corp.</i> , 75 Cal. App. 3d 415, 142 Cal. Rptr. 304 (1977), <i>cert. denied</i> , 436 U.S. 918 (1978) .....	290,302
<i>Wilson v. United States</i> , 162 U.S. 613 (1896) .....	299
<i>Wise v. Dallas South West Media Corp.</i> , 596 S.W. 2d 553 (Tex. Cir. App. 1979) .....	270
<i>Wolston v. Reader's Digest Association</i> , 443 U.S. 157 (1979) .....	337,340
<i>Yiamouyannus v. Consumers Union of the United States Inc.</i> , 619 F.2d 932 (2d Cir.) <i>cert. denied</i> , 449 U.S. 839 (1980) .....	269,271, 296
<i>Young v. Illinois Central Brief R.R.</i> , 618 F.2d 332 (5th Cir. 1980).	313
 <b>STATUTES AND RULES</b>	
10 U.S.C. § 881 .....	345
10 U.S.C. § 856 .....	345
10 U.S.C. § 892 .....	345
10 U.S.C. § 907 .....	345
18 U.S.C. § 2388 .....	344,362

	<u>Page</u>
Rule 56, Federal Rules of Civil Procedure .....	267,271, 306,307, 323,331, 332
Rule 701, Federal Rules of Evidence .....	311,312, 331,332
 <b>OTHER AUTHORITY</b>	
Restatement 2d of Torts .....	364
Moore's Federal Practice .....	307,312, 332

## GLOSSARY

## A. Description of Relevant Entities

1. The *U.S. Mission* in Saigon, also known as the "Country Team," consisted of all the United States agencies with representatives in South Vietnam. The Country Team included advisors from the State Department, the Central Intelligence Agency, the Agency for International Development, the Joint U.S. Public Affairs Office, and the Military Assistance Command Vietnam. (JX 328, *A Soldier Reports*, p. 75) The head of the U.S. Mission was the U.S. Ambassador to South Vietnam who, as "the President's personal representative, . . . was charged with over-all responsibility for the coordination and supervision of U.S. activities in Vietnam." (JX 920, *Command and Control*, p. 24) In 1967 and 1968, the U.S. Ambassador to South Vietnam was Ellsworth Bunker. (Bunker Aff. ¶ 1)

2. The *Mission Council* was a body composed of the "senior officials of the civil and military elements of the U.S. Mission meeting together on a weekly basis." (JX 920 *Command and Control*, p. 48) The Mission Council was chaired by the Ambassador (*Id.*) and membership included the Ambassador's deputy, "the embassy's political and economic counselors, and the heads of the other American agencies, including the military commander." (JX 637, Scoville, *Reorganizing For Pacification Support*, p.9).

3. The United States Pacific Command (PACCOM) was a unified or joint command, whose head, the Commander in Chief Pacific (CINCPAC) was in charge of all U.S. air, naval and ground forces in the Pacific, an area that extended "from the west coast of the United States to the Indian Ocean" and which included Vietnam. (JX 635, Sharp, *Strategy for Defeat*, p. xv). A joint command is a force with personnel from two or more branches of the armed forces "under a single commander, constituted and designated by the Joint Chiefs of Staff." (JX 920, *Command and Control*, pp. 3-4).

The U.S. Pacific Command had three components: the Pacific Air Force (PACAF), the Pacific Fleet (PACFLT) and U.S. Army, Pacific (USARPAC). (JX 635, *Strategy for the Defeat*, p. 27) Often, the Pacific Command was referred to in official communications by the title of its chief, the CINCPAC.

4. On February 8, 1982, President Kennedy and Secretary of Defense McNamara approved the establishment of the United States Military

Assistance Command, Vietnam (MACV) under Lieutenant General Paul Harkins. (JX 920, *Command and Control*, p. 27) MACV was also a joint or unified command. MACV was responsible for U.S. operations within the borders of South Vietnam. (JX 328, *A Soldier Reports*, pp. 75-76) General Westmoreland took over as Commander, U.S. MACV (COMUSMACV) in June, 1964. (JX 642, *Report On The War In Vietnam* p. 85). Westmoreland's military chain of command was to Admiral Sharp, the CINC-PAC; he and Sharp reported in turn to the Joint Chiefs of Staff. (JX 328, *A Soldier Reports*, pp. 75-76). The Joint Chiefs reported to the Secretary of Defense and the President.

As of May 1967, and continuing through June 1968, General Westmoreland had two deputies: General Creighton Abrams, and a civilian, Mr. Robert Komer. (JX 642, p. 154) Komer had been a Special Assistant to the President and an Ambassador before coming to Vietnam. (Komer Aff. 2) His job in Vietnam was to take charge of the "other war"—the pacification program, which aimed at helping South Vietnam build a nation (Komer Aff. ¶¶ 6-7). Under COMUSMACV and his deputies, Westmoreland had a Chief of Staff and seven Assistant Chiefs of Staff. These officers were designated with a "J", (for example, "J-1") because MACV was a joint command. The J-1 was the Assistant Chief of Staff for personnel; the J-2, for Intelligence; the J-3, for Operations; the J-4, for Logistics; the J-5, for Plans, the J-6 for Communications-Electronics, the J-7, for CORDS. (JX 921 MACV Staff Chart)

5. The Republic of Vietnam or "RVN" (the South Vietnamese government) was defended by the Republic of Vietnam Armed Forces (RVNAF). The South Vietnamese had a small Air Force and Navy, but the bulk of their manpower belonged to the Army of the Republic of Vietnam (ARVN). (JX 642, pp. 216-19) General Westmoreland's staff coordinated their actions with the Republic of Vietnam Joint General Staff (JGS). (JX 920, p. 60)

## **B. The Intelligence Community**

1. Responsibility for the collection, analysis and production of intelligence on Vietnam was shared by several agencies of the government. MACV, of course, had its own intelligence directorate, the Office of the Assistant Chief of Staff for Intelligence ("J-2 MACV"). Raw intelligence was gathered by the soldiers in the field on combat missions, in the form of documents taken from the enemy, the results of interrogations of prisoners,

by obtaining information from defectors and agents, and from observing enemy activity. (JX 638, McChristian, *Role of Military Intelligence*, p. 94); each combat unit of company size or larger had its own intelligence officer. (Hankins Dep. Tr. 27). Combat units *collected* raw intelligence and were *consumers* of finished intelligence *produced* by more specialized elements such as J-2 MACV. (See generally, JX 638, pp. 94-125)

2. CINCPAC maintained its own intelligence analysis and production elements, as did each of the components under the command of CINCPAC (US Army Pacific, the Pacific Fleet and the Pacific Air Force). CINCPAC and the component commands received the reports, estimates, studies and documents produced by MACV. (See JX 227, Annex C; JX 638)

3. The Defense Intelligence Agency (DIA) was the intelligence arm of the Joint Chiefs of Staff (Williams Dep. Tr. 16). DIA monitored intelligence matters world-wide for the Joint Chiefs, and produced finished intelligence for the Chiefs and others (*Id.*) In addition to receiving the same reports, studies, estimates and documents as CIA and CINCPAC, DIA from time to time sent teams of analysts to Vietnam to review MACV's intelligence data and methods. (JX 227, Annex C; Brown Aff. ¶ 6)

4. Each of the Armed Services maintained an intelligence element. For example, the Chief of Staff of the Army had a general officer serve as his Assistant Chief of Staff for Intelligence (or ACSI). The services were on the distribution list for documents, reports, studies and estimates collected and produced by MACV. (McChristian 12/21/83 Aff. ¶ 4)

5. An agency referred to in this litigation as "Source X" maintained a highly sensitive collection effort in Vietnam that was coordinated and controlled in Washington, D.C. Source X was a consumer of MACV intelligence; additionally, MACV was a consumer of Source X-produced intelligence. Senior individuals in each agency mentioned herein also received this extraordinarily highly classified intelligence.

6. The Department of Defense maintained the capability to estimate the course of the war through its Office of International Security Affairs and the Systems Analysis Branch. (See JX 317, *The Pentagon Papers*)

7. The Central Intelligence Agency had its own sources for the collection and production of intelligence in Vietnam, as well as the capability for intelligence production at CIA headquarters in Washington. (Carver Dep. Tr. 310) Additionally, CIA was on the distribution list for the periodic

reports, studies and estimates produced by MACV. (*Id.*; JX 227, Honolulu Conference Report, Annex C)

8. The State Department and its Bureau of Intelligence and Research (INR) gathered and analyzed intelligence through the Department's representatives in Saigon and in Washington. State was a recipient of MACV's intelligence as well. (*See* JX 227)

9. The White House, of course, had access to all of the intelligence collected and produced by the respective agencies, and according to President Johnson's Special Assistant for National Security Affairs Walt Rostow, the President read such intelligence reporting "voraciously." (Rostow Aff. ¶ 2)

### C. The Structure of MACV Intelligence

Although MACV came into existence in 1962, it did not begin to acquire a large and sophisticated intelligence capability until 1965-66. (McChristian Aff. 3/3/83, ¶ 7) In July 1965, General Joseph McChristian, in response to a request by Defense Secretary McNamara, compiled a "shopping list of men and material needed for a MACV intelligence organization." (JX 638 *Role of Military Intelligence* pp. 4-5)

In addition to some fairly standard intelligence components (such as a Counterintelligence Division, a Plans and Training Division, and a Management Division) McChristian established a number of elements in which American and Vietnamese intelligence officers worked side by side. McChristian called this "combined intelligence." (JX 638 pp. 21-24)

1. The Combined Military Interrogation Center (CMIC) was a central facility for obtaining information from prisoners of war and defectors. CMIC published bulletins with summaries of the relevant data gotten from the persons interrogated. (*Id.* pp. 26-32)

2. The Combined Document Exploitation Center (CDEC) was the recipient of enemy documents that were captured by U.S. troops. At CDEC, Vietnamese translators who had been given guidelines on what types of information the intelligence community needed scanned all documents. Summaries were prepared of the documents that appeared to have value. These summaries were distributed throughout the intelligence community on a regular basis. A recipient of a summary could request a full translation of any document that was summarized. When this occurred, the full translation was sent to all recipients of the original summary. (*Id.*, pp. 32-40)

3. The Combined Material Exploitation Center (CMEC) examined, identified, analyzed and evaluated captured enemy weapons, ammunition, medical equipment, rations, communications equipment, and logistical equipment. (*Id.*, pp. 40-44)
4. The Combined Intelligence Center Vietnam (CICV) was designed to be a facility that would produce intelligence jointly with the South Vietnamese on order of battle (enemy composition, disposition, strength, tactics, logistics, and combat effectiveness); area analysis (enemy transportation, communication and military geography); technical intelligence (capabilities and weakness of enemy equipment); imagery interpretation (analysis of enemy activity based on photographic and radar contacts); research and analysis (the economic, political, sociological and psychological characteristics of the enemy's military and political forces); and targets (location of the enemy). (JX 638, pp. 45-64)
5. The Current Intelligence Indications and Estimates Division (CIIED) gave the commander of MACV and his senior staff significant intelligence on current enemy activity using all sources of intelligence including sensitive information that could not be released to other nationalities. (Heon Aff. ¶¶ 2-3) CIIED produced a daily briefing for COMUSMACV, the Weekly Intelligence Estimate Update (WIEU), and studies and reports that could not be produced at CICV because they required the use of certain highly classified intelligence sources. (*Id.*; JX 638 *Role of Military Intelligence*, p. 127)
6. CICV and CIIED were elements of the Production Division of MACV J-2. Production elements were responsible for the production of finished intelligence. While CICV was a combined (U.S.-Vietnamese) intelligence effort, CIIED was staffed solely by Americans. CIIED regularly utilized intelligence and information that was considered too sensitive to disseminate to CICV, due to the high risk of security breaches in the combined operations. (JX 638, p. 127; Heon Aff. ¶¶ 1-2; Joyce Aff. ¶ 4)
7. "The most important part" of the production element "was the Estimates Branch." (JX 638, p. 129) Estimates was a "small, highly specialized group" that provided medium- to long-term assessments of the enemy's capabilities, vulnerabilities, intentions, and the quantity and quality of the enemy's available manpower. (*Id.*)
8. The Order of Battle Branch at CICV produced the MACV/JGS Monthly Order of Battle Summary, a large, printed document that compiled

intelligence on the enemy's current and past organization, size and location. (JX 638, p. 50) The Order of Battle Branch had three sections: (1) Ground Order of Battle, which maintained collateral intelligence files on enemy Main Force, Local Force and Administrative Service Units; (2) Strategic Research and Analysis, which produced studies and analyses on the political, economic and social situation in South Vietnam; a subpart of this branch maintained intelligence of the Viet Cong Political Infrastructure; and (3) Order of Battle Studies, which produced studies and some reports containing numerical compilations of documentable enemy strength. (*Id.*; JX 579, CIA Saigon 1/2/68 cable)

9. The Order of Battle Studies section was divided into four "teams": (1) an enemy logistics team; (2) an enemy combat effectiveness team; (3) an enemy tactics, training and miscellaneous data team; (4) an enemy strength, composition, and disposition team. (JX 638, p. 50)

#### D. MACV's Reports On The Enemy

Throughout the CBS Broadcast, in defendant's affidavits, and in Defendants' Motion for Summary Judgment, the terms "Order of Battle," "The Order of Battle Summary," "MACV official reports," and "estimates of enemy strength" are interchanged. While these terms are all related, they represent independent concepts and in the context of particular discussions the difference between them can be significant.

1. *Order of Battle*: "order of battle" is a generic term which means the composition, [or organization], disposition [location and deployment], numerical strength, training, tactics, logistics, combat effectiveness, and miscellaneous characteristics of enemy units.

2. *The MACV Order of Battle Summary*: The Order of Battle Summary was a periodic report issued by MACV generally on a monthly basis. The first Order of Battle Summary was published on January 21, 1966. (JX 638, *Role of the Military Intelligence*, p. 129) The Order of Battle Summary was a joint product of MACV and Vietnamese Joint General Staff. It was produced primarily by the combined efforts of Americans and Vietnamese at CICV. The data in the Order of Battle Summary was then coordinated to the extent possible by personnel in MACV J-2. In 1966 through 1968 the MACV Order of Battle Summary was a collateral order of battle. This means that no enemy unit of whatever size could be listed in the document unless there was some collateral evidence of existence available to CICV. (JX 227, Annex F) Collateral sources are things such as statements by

prisoners of war, statements by agents friendly to the allied effort, statements by defectors to the allies, and captured enemy documents. The reason that the MACV order of battle summary included only units that could be identified by collateral sources were twofold: (1) other intelligence sources were considered too sensitive to release to other nationalities, and in order to preserve these sources information obtained from them was not included in this particular report by MACV (JX 638); (2) General McChristian made a decision to sacrifice a degree of timeliness in exchange for a certain degree of firmness in order of battle holdings. General McChristian established the criteria which required collateral evidence of a unit's existence before acceptance of the unit into the Order of Battle Summary. (JX 227) General McChristian's requirement of collateral evidence remained in effect under his successor, General Phillip Davidson.

Particularly after the 1968 Tet Offensive, the CIA and defendant Adams increasingly expressed criticism of the criteria for unit acceptance used in the Order of Battle Summary. (See JX 715, 1968 Order of Battle Conference Report) Defendants decline to point out that these criteria had been put in place by General McChristian as early as January 1966.

3. *Estimates of Enemy Strength:* An "estimate" is an assessment of the enemy's current and future capabilities, vulnerabilities, intentions and likely courses of action. Manpower available to the enemy is an important consideration, as are matters such as the stability of the enemy's political system, his relations with his allies, materiel available to carry out the enemy's desired courses of action, and a host of other factors. (See JX 273, SNIE 14.3-67)

The word "estimate" is also used to mean assigning a number to, e.g. the size of an enemy force.

4. *MACV's official reports.* Contrary to the impression assiduously fostered by the defendants, the MACV Order of Battle Summary was not *the* "official MACV report" on enemy strength. The MACV Order of Battle Summary stated explicitly at the beginning of the document that it was limited to a listing of enemy that could be identified through collateral sources. (See JX 227 Annex C) Specified persons in headquarters other than MACV had access to all sources of intelligence, which could modify and refine the conclusions reached by analysts working on strictly collateral evidence.

By March 1967 MACV was producing at least 15 periodic official reports that contained or made reference to estimates of enemy strength in South Vietnam. (See JX 227, Annex C) Certain of these reports contained all source intelligence, whereas others used only collateral intelligence. (Heon Aff. ¶¶ 1-4) In order to get a full picture of MACV's view of the enemy (including enemy strength) it was necessary to combine the information contained in the purely collateral reports with the information contained in those reports using all source information. However, the MACV Order of Battle Summary was designed to be and explicitly was limited to collateral sources. (*Id.*; Joyce Aff. ¶¶ 4-5)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

GENERAL WILLIAM C. WESTMORELAND,  
*Plaintiff,*

v.

CBS, INC., *et al.*,  
*Defendants.*

82 Civ. 7913 (PNL)

PLAINTIFF GENERAL WILLIAM C. WESTMORELAND'S  
MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT  
CBS'S MOTION TO DISMISS AND FOR  
SUMMARY JUDGMENT

I. INTRODUCTION

On January 23, 1982, defendants broadcast "The Uncounted Enemy: A Vietnam Deception" ("Broadcast"), a 90-minute documentary report by the CBS Reports unit of CBS News. The Broadcast said that the plaintiff, General William C. Westmoreland, engaged in "a conspiracy . . . to suppress and alter critical intelligence on the enemy in the year leading up to the Tet offensive." (JX 1, Broadcast, p. 1) The Broadcast charged that plaintiff "chose not to inform the Congress, the President, not even the Joint Chiefs of Staff of the evidence of a larger enemy" than his command was reporting. In sum, defendants CBS, Mike Wallace, George Crile, Sam Adams and Van Gordon Sauter in the Broadcast and in a July 15, 1982 press release told millions of Americans that General Westmoreland lied to "our government" and to us.

CBS charged General Westmoreland with failing to report evidence of greater enemy strength; with forcing his intelligence officers to arbitrarily cut their intelligence estimates and falsify their intelligence reports; with prevailing upon the Central Intelligence Agency ("CIA") to remove categories of the enemy in order to stay below a predetermined ceiling; with suppressing reports of infiltration of 25,000 to 30,000 enemy regular troops per month for the five months preceding the Tet offensive; with leaving his troops and the American public unprepared for the Tet offensive; and with engaging in a "cover-up" involving the destruction of official records in order to hide the evidence that he had been falsifying and suppressing intelligence reports.

After General Westmoreland's requests for an apology were summarily refused, he brought suit on September 13, 1982. Discovery commenced shortly thereafter and will continue until August 31, 1984.

On May 23, 1984, defendants filed a "Motion to Dismiss and for Summary Judgment," along with a 379-page "Memorandum in Support" of that motion ("Memorandum"); two appendices containing affidavits procured by defendants; a chronology of the events that the Broadcast says took place; a list of the persons identified in the affidavits; and a statement of defendants' uncontested material facts.

The plaintiff's brief is organized in the following way. First, plaintiff sets forth what the Broadcast says, a topic to which defendants devote only two paragraphs in their 379-page Memorandum.

Plaintiff then gives a summary factual statement of intelligence events during the relevant period of the Vietnam War. This is followed by an expanded description of the facts relating to events during the Vietnam War and a detailed comparison between what the Broadcast said those facts were, and what they actually were. These statements of fact rely on contemporaneous documentation produced by, among others, the U.S. Army, the CIA, and the LBJ Library, as well as affidavits and testimony under oath at depositions of participants in the intelligence events. (*See, e.g.,* Argument Section II. B. 27.) Plaintiff's evidence supporting his opposition to defendants' motion includes affidavits and/or sworn testimony at depositions from Secretary of Defense Robert S. McNamara, Secretary of State Dean Rusk, CIA Directors William Colby and Richard Helms, Generals William C. Westmoreland, Phillip B. Davidson, Joseph A. McChristian and many, many more. Plaintiff believes this evidence irrefutably shows that General Westmoreland did not deceive or attempt to deceive anyone concerning intelligence on the enemy in Vietnam.

Plaintiff also sets forth below, again in some detail, a statement of how the Broadcast was produced, which includes admissions by CBS executives written down by Burton Benjamin, who investigated the Broadcast; memoranda, letters, interview transcripts, affidavits and testimony from depositions of the people who actually made the Broadcast; tape recordings of conversations with the producer, executive producer, researcher, consultant, and various persons who appeared on the Broadcast made by a reporter several weeks after the Broadcast was aired; the report of the internal study of the Broadcast—the Benjamin Report—which show clearly that defendants not only libeled the plaintiff, but that they did so with actual malice, *i.e.*, they “realized [that what they published] was false or [they] subjectively entertained serious doubts as to the truth of [their] statement[s].” *Bose Corporation v. Consumers Union of the United States, Inc.*, 52 U.S.L.W. 4513 (1984)

Plaintiff sets out the applicable law on which he relies in opposing defendants’ Motion for Summary Judgment, including the recent Supreme Court decisions in *Calder v. Jones*, \_\_\_ U.S. \_\_\_, 104 S. Ct. 1482 (1984), and *Hutchinson v. Proxmire*, 443 U.S. 111, 120, n. 9 (1979), which emphasize that motions for summary judgment in a public figure libel case must be treated no differently than motions for summary judgment in any other type of case.

Plaintiff also includes a discussion of defendants’ actual malice and an analysis of the background and activities of the persons upon whom defendants rely for evidence that what they said was true, which shows that much of that testimony is either inadmissible or unreliable.

Finally, plaintiff encloses a ¾” videotape cassette of the Broadcast as televised.

## II. WHAT THE BROADCAST SAID

In their Memorandum, defendants misrepresent what the Broadcast said by pretending it made only the most general statement about a U.S. intelligence failure in Vietnam.

The CBS broadcast reported charges by a number of intelligence officers that in the months preceding the enemy's Tet Offensive of January 1968 the American military command in Vietnam (MACV) misled the American people about the actual strength of the enemy we were fighting in an attempt to make it appear that progress was being made, that the war was winnable, and that (as plaintiff put it in a November 1967 cable) there was "some light at the end of the tunnel." (JX 285) (CBS Mem. 4)

A true summary of what the Broadcast said is:

a. General Westmoreland led a "conspiracy . . . to suppress and alter critical intelligence on the enemy in the year leading up to the Tet Offensive." (JX 1, p.1)

b. General Westmoreland deceived "our government, the Congress, the President . . . even the Joint Chiefs of Staff . . . and the American people about the evidence . . . which indicated a far larger enemy." (JX 1, pp. 1, 6)

c. General Westmoreland suppressed and falsified intelligence of a far larger enemy in order to present an optimistic picture of the war in Vietnam and help President Lyndon B. Johnson get reelected. (JX 1, pp. 13, 14)

d. "[T]he mighty American army, half a million strong, [were caught] . . . unprepared" for the Tet offensive, and American troops died, because General William C. Westmoreland lied about the enemy's strength. (JX 1, p. 1)

A more detailed recital of what the Broadcast said, beginning with the "tease"<sup>1</sup> and ending five "acts" and 90 minutes later, is:

### Tease

Tet caught the American "government" and public by surprise. The Communists "had greater numbers and military strength than we had been led to believe". (JX 1, p. 1) The military lied to "our government" and our people, pretending we were winning the war, when we were not. "[T]onight

<sup>1</sup> The "tease" is the very first bit of a documentary which appears before the first commercial, and aims to arouse or "tease" the viewers' interest so they will stay tuned.

we shall offer an explanation for one of the great mysteries of the war—why for so long our government apparently believed, and wanted all of us to believe, that we were winning the war.” (JX 1, p. 1) The explanation defendants offered was that there “was a conscious effort—indeed, a conspiracy at the highest levels of American military intelligence—to suppress and alter critical intelligence on the enemy in the year leading up to the Tet offensive.” (JX 1, p. 1)

Immediately after this “tease”, an image of General Westmoreland and President Johnson appear for the first of eight times before and after each commercial, saluting an American flag across which is printed the Broadcast’s title, *The Uncounted Enemy: A Vietnam Deception*. The name of General Westmoreland is heard for the first of 58 times right after the first commercial: “Vietnam was Lyndon Johnson’s war, but from the beginning of the American buildup the President placed his faith in victory in one man, General William Westmoreland.” (JX 1, p. 1)

#### ACT I

In the Fall of 1966, defendant Sam Adams, then a CIA analyst, concluded from reviewing captured enemy documents that General Westmoreland’s command, the Military Assistance Command, Vietnam (“MACV”) had been substantially underestimating the number of enemy in South Vietnam. (JX 1, p. 2)

In April 1967, President Johnson summoned General Westmoreland back to the United States “to reassure the American public that the President’s policy was sound, that we were in fact winning the war.” (JX 1, p. 3) General Westmoreland dutifully told the President that “the Viet-Cong’s army . . . had leveled off at 285,000 men.” (JX 1, p. 3) The Broadcast shows General Westmoreland apparently telling CBS he was reluctant to give bad news to the President. (JX 1, p. 3)

While in the United States, General Westmoreland did not know “that his intelligence chiefs back in Vietnam had just discovered evidence that confirmed the CIA estimates of a far larger enemy.” (JX 1, p. 3) General Joseph McChristian, General Westmoreland’s chief of intelligence, and Colonel Gains Hawkins, an aide to General McChristian, “presented him with the bad news” at a briefing after his return. (JX 1, p. 4) General McChristian and Colonel Hawkins told General Westmoreland that “we have been wrong. There are twice as many people out there.” (JX 1, p. 5)

General Westmoreland expressed surprise over the "magnitude of the figure" and his "first words after listening to that briefing were, 'What am I going to tell the press? What am I going to tell the Congress? What am I going to tell the President?'" (JX 1, p. 5) According to CBS, General Westmoreland "didn't accept" the briefing because he disagreed with General McChristian and because neither the "people in Washington" nor the media were "sophisticated enough to understand this thing." (JX 1, p. 6) Mr. Wallace then stated:

We underscore what General Westmoreland just said about his decision. He chose not to inform the Congress, the President, not even the Joint Chiefs of Staff of the evidence collected by his intelligence chief, evidence which indicated a far larger enemy. (JX 1, p. 6)

Faced with the dilemma of taking "the bad news to the President" or "deal[ing] with" General McChristian, General Westmoreland "suppressed his intelligence chief's report" and "transferred [him] out of Vietnam." (JX 1, p. 6)

## ACT II

MACV's intelligence was discovering "more and more of the Viet Cong's elusive guerrilla army" by the summer of 1967. But MACV's new intelligence chief, General Phillip Davidson, was reducing estimates of enemy strength and not including "entire Viet Cong units . . . in their [MACV's] estimates of enemy strength." (JX 1, p. 7)

Meanwhile, in the CIA headquarters in Langley, Virginia, CIA and MACV confronted each other over the number of enemy before the National Intelligence Estimate Board, "the Supreme Court of the CIA" in the course of preparing a Special National Intelligence Estimate. (JX 1, p. 8) MACV was represented by Colonel Hawkins, who had privately "agree[d] [with Sam Adams] that the numbers are way higher." But MACV held to its old estimates, despite Colonel Hawkins' belief "that the official estimates needed to be dramatically increased." (JX 1, p. 9) Colonel Hawkins recognized that if Adams was right, and Colonel Hawkins acknowledged that Adams was right, "a lot of American troops are going to have to face a much larger enemy than they're being told . . . [and] a lot of them are going to get slaughtered." (JX 1, p.10)

According to Adams, "obviously, he was under orders somehow." (JX 1, p. 10) Wallace continued:

CBS REPORTS has learned that Colonel Hawkins was in fact carrying out orders that originated from General Westmoreland. Westmoreland says he doesn't recall these orders. But the head of MACV's delegation told us that General Westmoreland had, in fact, personally instructed him not to allow the total to go over 300,000 . . . 'You're not to go above 300,000'. . . . (JX 1, p. 11)

CBS asked General McChristian "what we should think of General Westmoreland's instructions." In response General McChristian said, "that is falsification of the facts . . . It's dishonorable." (JX 1, pp. 11-12)

### ACT III

In the summer of 1967, the Special National Intelligence Estimate proceedings continued. In that "invisible war,"

General Westmoreland's officers were in trouble. They had been instructed to argue for estimates far lower than they believed to be true, and they were still finding it next to impossible to keep the enemy strength totals under 300,000. It was at this point that General Westmoreland pursued a new tactic. He proposed that an entire category of the Viet Cong Army—the self-defense militia, a force of more [than] 70,000—simply be dropped from the Order of Battle. Those Viet Cong had been included in the military's estimate of enemy strength ever since the beginning of the war. Westmoreland had included them in his briefing to the President. But now he was suddenly saying they no longer posed a military threat and henceforth should be treated as if they didn't exist. (JX 1, p. 12)

General Westmoreland told CBS that "these village defenders had a—a minimum to do with the outcome of the war" and although people were hurt by booby traps they planted, "they had no offensive capabilities." (JX 1, pp. 12-13) However, according to CIA personnel, including Adams, the self-defense militia "were an integral part of the military potential of the Communist forces in South Vietnam . . ." They "did engage in . . . activities which did inflict losses on U.S. forces." Also, Adams stated, they were counted as casualties when they defected or were killed. (JX 1, pp. 12-13) "By excluding . . . the militia . . . from the Order of Battle . . . we were not acknowledging that indeed there was an important indigenous South Vietnamese component; that indeed, it was a civil war." (JX 1, p. 13)

Wallace said General Westmoreland's August 20, 1967, cable to Washington spelled out "the command position on the self-defense controversy." Wallace quoted the cable as follows:

We have been projecting an image of success over the recent months. The self-defense militia must be removed [the cable explained] or the newsmen will immediately seize on the point that the enemy force has increased. . . . No explanation could then prevent the press from drawing an erroneous and gloomy conclusion. (JX 1, p. 14)

Then "General Westmoreland's representatives met here at the Pentagon and commenced arbitrarily to slash MACV's own official estimates of Viet Cong units" (JX 1, p. 14) in the midst of the National Intelligence Estimate. A handful of people in a small room in the Pentagon "got together and went unit by unit and arbitrarily decided to reduce the numbers of VC enemy in those categories." (JX 1, p. 15)

"In the end, the CIA suddenly, without explanation, reversed its position and gave in to all of General Westmoreland's demands. . . . General Westmoreland had now won the intelligence war" after weeks of battle between MACV and the CIA. (JX 1, pp. 15-16) The CIA gave in because "it was a political problem." The Broadcast explained:

But now the CIA had capitulated, and instead of a re-evaluation, the Administration launched a week-long public relations campaign to convince the American public once and for all that we were winning the war. (JX 1, p. 16)

#### ACT IV

"Westmoreland's infiltration analysts" had been reporting more than 25,000 NVA infiltrators per month in the five months leading up to the January 1968 Tet offensive. However, "those reports of a dramatically increased infiltration were systematically blocked" and "never got past the higher headquarters." (JX 1, p. 17) Instead, "Westmoreland's reports never indicated an infiltration rate higher than 8,000 per month" (JX 1, p. 17) "So, from September through late January when the Tet offensive erupts, there are over a hundred thousand North Vietnamese regulars that have come into the South that have not been reported." (JX 1, p. 20) Wallace stated that: "the question he [General Westmoreland] could not answer for us: Why didn't MACV alert Washington?" (JX 1, p. 17)

On the same day in November 1967 that General Westmoreland left Saigon for Washington, Lt. Colonel Everette Parkins "had become so incensed by MACV's refusal to send on the reports of an enemy infiltration of 25,000 a month that he lost his temper and shouted at his superior." (JX 1, p. 18) Lt. Colonel Parkins was "fired" from his position "and the estimates didn't go through." (JX 1, p. 18)

Thus, while the CIA "predicted the Tet offensive," the CIA "was not told about the increased enemy infiltration." Similarly, the CIA's report to the White House "didn't mention the fact that there were twice as many guys out there." (JX 1, p. 19) MACV blocked the reports because it was under pressure to report good news, "[N]o one did feel the need to alert the President to the fact that ... the enemy had a considerably greater capability than we imagined." (JX 1, p. 20)

[T]he President of the United States, the American Army in Vietnam and the American public back home were destined to be caught totally unprepared for the size of the attack that was coming the following month. The President had been alerted to the enemy's intentions, but no one had been able or willing to inform him of the enemy's capability. (JX 1, p. 21)

#### ACT V

The Communists attacked on the morning of January 30, 1968. Although General Westmoreland proclaimed that the enemy had exposed itself and suffered great casualties, "everywhere in South Vietnam, American soldiers were on the defensive ... Tet was a devastating setback ... [and] General Westmoreland's pronouncements of an enemy on the run were now being questioned." (JX 1, pp. 21-22)

"[T]hings began to careen out of control at MACV intelligence" in the weeks after Tet. Despite guerrilla analyst Richard McArthur's effort "to defend the integrity of his figures," they were "reduced by half without [his] okay" and he was told to lie about it. (JX 1, p. 22) He refused. Shortly after McArthur protested, he was transferred. (JX 1, p. 23)

"[O]n March 7th, Westmoreland reported 50,000 of those enemy had been killed" since the start of the Tet offensive. Since MACV estimated 224,000 enemy just before Tet and "for every one killed three were wounded ... the bottom line figure didn't make sense." (JX 1, p. 23)

Because of the problem created by the number of enemy casualties compared to the estimated size of the enemy, "there was a general agreement at this time that something had to be done." (JX 1, pp. 23-24) So, General Daniel Graham, "General Westmoreland's chief of estimates" got analysts "to alter MACV's historical record" and engage in "a cover-up." (JX 1, p. 24) Wallace said as a result of "falsifying the figures . . . we may never be able to go back and understand exactly what happened." (JX 1, pp. 24-25)

Clearly, something was terribly wrong with MACV's reports on the enemy. Nevertheless, in the weeks after the Tet Offensive began, President Johnson continued to rely on General Westmoreland's assurances that we were winning. (JX 1, p. 25)

[O]n March the 25th, [President Johnson] summoned a council of trusted advisors, the so-called 'wise men'. (JX 1, p. 25)

What had happened is that after Tet the CIA had regained the courage of its convictions, and among other things, they told the wise men of the CIA's belief that we were fighting a dramatically larger enemy. That was at least one of the reasons why Lyndon Johnson's advisers concluded that despite the military's insistence that we were winning, the enemy could not in fact be defeated at any acceptable cost. The wise men then stunned the President by urging him to begin pulling out of the war. (JX 1, p. 26)

Five days later, President Johnson announced that he would not run for re-election. Two months later, General Westmoreland was promoted to Army Chief of Staff. "[O]n April 30th, 1975, that same enemy entered Saigon once again, only this time it was called Ho Chi Minh City." (JX 1, p. 26)

### III. FACTUAL STATEMENT OF VIETNAM INTELLIGENCE EVENTS

#### A. Summary of Vietnam Intelligence Events

##### 1. 1965

When General William C. Westmoreland was commander of the Military Assistance Command Vietnam ("MACV") he reported directly to two people, the U.S. Ambassador in Saigon,<sup>2</sup> who was the President's personal representative in Saigon, and Admiral U. S. Grant Sharp, Commander-in-Chief Pacific ("CINCPAC"), his military commander in Honolulu. (JX 349, Westmoreland CBS Interview Tr. 9) Before this, the U.S. Military Assistance Command Vietnam—MACV in military terms—had no substantial independent military intelligence capability (McChristian Aff. 3/3/83 ¶ 6), and relied primarily on estimates of enemy strength provided by its South Vietnamese allies. (McChristian Aff. 4/20/84 ¶ 11) MACV intelligence officers did not place great faith in these estimates. (McChristian Aff. 12/20/83 ¶ 6)

When General Joseph A. McChristian joined General Westmoreland in Vietnam on July 13, 1965, as J2, or head of MACV intelligence, he set himself two immediate tasks: 1) to build the U.S. intelligence apparatus in Vietnam, including a joint U.S.-South Vietnamese intelligence effort known as the Combined Intelligence Center, Vietnam ("CICV") (McChristian Aff. 4/20/84 ¶ 15); and 2) to estimate the size of the regular enemy forces, i.e., the armed, trained, supplied and disciplined Viet Cong and North Vietnamese main and local force troops in South Vietnam, who were a serious military threat to MACV, and who in 1965 were threatening to defeat the Government of South Vietnam. (JX 893, McChristian Report, p. 13)

##### 2. 1966

On January 21, 1966, six months after General McChristian became MACV J2, he published his first collateral-source Order of Battle ("OB") Summary.

An Order of Battle ("OB") is a description of the enemy military force. (Finkelstein Aff., Exhibit A, p. 2) The MACV Order of Battle Summary published by the MACV J2 from 1966 through 1968 was a collateral-source Order of Battle, i.e., its estimates of enemy strength categories were based on hard evidence such as prisoner of war interrogations, ralliers, uniform

<sup>2</sup> Ellsworth Bunker was U.S. Ambassador in Saigon in 1967 and 1968.

identifications, identification papers, and captured documents. (JX 227, Honolulu Conference Report; Hawkins Dep. Tr. 43-44) The MACV collateral OB's were only one of a number of intelligence reports on enemy strength which included the Daily Intelligence Summary ("DISUM") and the Weekly Intelligence Estimate Update ("WIEU"). (JX 227, Honolulu Conference Report, Annex C) By the Tet offensive, these latter two reports contained intelligence from "Source X,"<sup>3</sup> a reliable intelligence source about the enemy so designated because it is still classified. (Heon Aff. ¶¶ 2-3)

The DISUM's and WIEU's provided the best intelligence by far of current enemy strengths and intentions. The MACV Order of Battle Summaries were much more in the nature of a historical record of enemy strength in the months prior to the publication of each Order of Battle Summary. (Heon Aff. ¶ 4; Joyce Aff. ¶ 5) Therefore, people who needed current intelligence on enemy strength tended to rely very heavily on the DISUM's and WIEU's, rather than on the OB Summaries. (*Id.*) (See *Glossary, supra*)

This first OB Summary included only regular enemy forces. (JX 638, *The Role of Military Intelligence*, p. 129) Between January 1966 and May 1967, General McChristian added three categories—irregulars, political cadre and administrative services<sup>4</sup>—to the MACV enemy OB. Thus by May 1967, MACV's enemy OB carried the following enemy categories:

- 1) Regular forces—well armed fighters organized in regular units;
- 2) Administrative Services—staff and supply personnel for the regular forces;
- 3) Irregulars—this category itself contained three distinct categories then lumped together in the OB:
  - a) Guerrillas—armed non-uniformed men in small bands who emphasized hit-and-run attacks;
  - b) Self-Defense Forces ("SD")—part-time, poorly armed or unarmed, untrained or partially untrained villagers in Viet Cong-

<sup>3</sup> For reasons of national security, the parties have agreed to substitute the words "Source X" for the name of a particular sensitive source of intelligence information from Washington.

<sup>4</sup> General McChristian added a fourth category during this time—combat support—but included it within the regular forces category.

controlled or contested areas who, to a greater or lesser degree, sympathized with the Viet Cong, and who might help defend Viet Cong-controlled hamlets from allied attacks;

c) Secret Self-Defense Forces ("SSD")—persons with the same sympathies as the SD but living in Government of Vietnam-controlled areas; and

4) Viet Cong Infrastructure or political cadre—the Viet Cong political personnel who ran the Viet Cong political apparatus and propaganda machine. (JX 238, May 1967 MACV Order of Battle Summary)

McChristian initially obtained his numerical estimates of the irregulars and political cadre from the South Vietnamese. (McChristian Aff. 4/20/84 ¶ 25)

MACV intelligence was not confident of its estimate of the size of the enemy regular forces until the summer of 1966 when it listed them at about 119,000. (See JX 198A-198Q, Excerpts from MACV OB Summaries) This done, MACV was in a position to consider the novel elements in the OB, *i.e.*, the irregulars—guerrillas, SD, SSD and other paramilitary forces—and the political cadre. (McChristian Aff. 4/20/84 ¶ 25)

The MACV OB had been reporting the political cadre at 39,000 since March 1966, and the irregulars at 112,760 since at least May 1966, and continued to do so until after General McChristian left MACV on June 1, 1967. (*Cf.* JX 198A and 198M) General McChristian told the intelligence community in February 1967 that the irregulars—guerrillas, SD, and SSD—and political cadre numbers were going to be revised upwards. (JX 227, Honolulu Conference Report, pp. 10-11)

However, the irregulars—guerrillas, SD, and SSD, especially the SD and SSD—proved the most difficult of the categories to estimate with any certainty. Unlike the guerrillas, the SD and SSD were part-time, generally unarmed, untrained, and posed no significant military threat. (JX 893, pp. 2-3, 18 May 1967 USMACV-J2 RVNAF Estimate of the Strength of Viet Cong Irregular Forces in SVN, hereafter the "McChristian Report"; Komer Aff. ¶ 10) Accordingly, allied forces rarely encountered them, and hence MACV J2 had to rely on captured enemy documents for confirmation.

The political cadre were by nature political rather than military, and the real question with respect to them was what types of VC functionaries to

include as cadre. (JX 408, Trial Tr., *People v. Russo*, Testimony of Samuel A. Adams [the *Ellsberg* Trial] pp. 14921-22)

While MACV intelligence focused in 1965 and 1966 on the traditional OB elements—the VC/NVA main and local forces, *i.e.*, the regulars—its growing intelligence collection apparatus began distributing to all interested U.S. agencies in South Vietnam and Washington all the evidence it collected on all the various categories in the OB, including translations of captured enemy documents. General McChristian has sworn that he “made a conscientious effort to keep all higher headquarters (DOD, CIA, DIA, CINCPAC) accurately, timely and adequately informed of all intelligence in which each was interested.” (McChristian Aff. 12/21/83 ¶ 4)

In his deposition testimony, George Carver, Special Assistant for Vietnamese Affairs to Director of Central Intelligence Richard Helms (“SAVA”), confirms that the Central Intelligence Agency (“CIA”) received the same raw data as MACV:

We were all dealing off essentially the same body of raw data, which consists of—a whole variety of things, but the basic inputs to it were, . . . documents that were captured, usually by U.S. military forces, sometimes by Vietnamese military forces; prisoner interrogations, about [*sic*] both U.S. and Vietnamese; . . . Central Intelligence Agency field dissemination, based on agent reports to some extent; National Security Agency [intelligence], about which I don't want to talk too much in an unclassified gathering; and,—we didn't always share our analyses, but everybody was dealing off the same body of evidence. (Carver Dep. Tr. 81-82)

Sam Adams, a young CIA analyst newly assigned to Vietnamese affairs at CIA offices in Langley, Virginia, used some of these captured enemy documents MACV distributed to argue in the Fall of 1966 that the estimate of the irregulars in the MACV OB was too low. (JX 501, Adams 9/8/66 draft memorandum “The Strength of the Viet Cong Irregulars”) Special Assistant to the Director of Central Intelligence for Vietnamese Affairs George Carver told Walt Rostow, then the President's Special Assistant for National Security Affairs, about Adams' thesis on the irregulars in December 1966. (Rostow Aff. ¶ 3) Rostow asked General Earle Wheeler, Chairman of the Joint Chiefs of Staff (“JCS”), to convene an intelligence community conference to resolve the differences between the various agencies' methodologies and estimates of all the components of the MACV Order of Battle. (*Id.*)

## 3. 1967

The conference took place in Honolulu under the auspices of the Pacific Command, on February 6-12, 1967. All major intelligence agencies sent representatives. The conference led to:

1) Agreement by the intelligency community on very conservative criteria for accepting new units into the OB; and

2) Acknowledgement that the irregulars—guerrilla, SD, and SSD—and political cadre categories carried unchanged at, respectively, 112,000 and 39,000 since May 1966, had been too low and would have to be revised upward. (JX 227, Honolulu Conference Report, pp. 1, 8-11)

At the Honolulu Conference, General McChristian had won acceptance for the inclusion in the Order of Battle Summary of a new category, the administrative service troops. The introduction of this new category into the OB, which General Westmoreland approved, had the immediate effect of raising the MACV estimates of enemy strength. (See JX 227, Honolulu Conference Report, p. 11; JX 198E, Extract from July 1-July 31, 1966 OB Summary, and JX 198M, Extract from May 1-May 31, 1967 OB Summary)

The entire intelligence community received the classified report of the Honolulu Conference. Everyone in the U.S. government with the low "Confidential" clearance knew or could have learned in *February* of 1967 that the estimates of the irregulars and political cadre published in the MACV OB were transitional and too low. (JX 638, *The Role of Military Intelligence*, pp. 128-29)

General McChristian proceeded to release his tentative estimates to the intelligence community, which in the early spring were approximately 198,000 for irregulars and approximately 88,000 for VCI. It was not until May 1967, however, that General McChristian felt able to commit himself to an estimate of the irregulars and political cadre. (See JX 893; JX 767, Williams 4/10/67 Trip Report; JX 229, McChristian 3/23/67 Memo to Sandine; McChristian Aff. 3/3/83 Exhibit A)

A copy of General McChristian's Report on the irregulars, dated May 18, 1967 and addressed to Ambassador Komer, was produced pursuant to a Freedom of Information Act request from the CORDS files.<sup>5</sup> Ambassador Komer had just been appointed civilian Deputy COMUSMACV on the

<sup>5</sup> "CORDS", was an acronym for Civilian Operations and Rural Development Support, the pacification program.

nomination of President Johnson. Komer, a former Special Assistant to President Johnson, reported both to Ambassador Bunker and General Westmoreland. (Komer Aff. ¶¶ 3, 6) Ambassador Komer received a copy of the Report on May 21, 1967.

The figures contained in General McChristian's revised strength estimate report were:

- 1) guerrillas—60,750
- 2) SD—101,150
- 3) SSD—23,400
- 4) Total—185,300

(JX 893, McChristian Report, p. 7)

Contrasting SDs and SSDs with guerrillas, McChristian Report says:

g. The self defense and secret self defense forces (*Tu Ve* and *Tu Ve Bi Mat*), on the other hand, are predominantly concerned with village and hamlet defense. They are poorly led and consist of both the old and the very young members (many of them women) of the village or hamlet. *US and ARVN tactical unit commanders and intelligence personnel do not consider them an effective fighting force.*

4. *Conclusions.*

a. *The strength estimate for guerrillas is valid, and these forces are the only category of VC irregulars which constitute a real military threat in SVN.*

b. *The strength estimate for self defense and secret self defense forces is not as well supported as the guerrilla strength estimate, and these forces do not constitute an aggressive enemy threat within SVN.* (JX 893, McChristian Report, pp. 2-3) (emphasis added)

General McChristian, the CIA in Saigon, and many others including General Westmoreland had doubts about the accuracy of the SD and SSD estimates, as well as the military capabilities of these groups, and recommended separating them from the fighters in the enemy OB. (JX 893A; JX 893, McChristian Report, pp. 2-3; Cf. Westmoreland Dep. Tr. 409-10, 858-59)

Apparently, General McChristian informed General Westmoreland sometime between the 10th and 15th of May of the revised irregulars estimates. (McChristian Aff. 12/21/83 ¶ 6) General Westmoreland, who

had not been briefed on these estimates by General McChristian, requested a briefing on them. Although General Westmoreland received a short briefing on General McChristian's revised estimates on May 19, he did not receive a full briefing on all the categories including the irregulars until May 28. (JX 670, Hendry 5/28/67 Memo)

At the end of the full briefing on May 28, given by Lt. Colonel Hawkins, General McChristian's Order of Battle Chief, General Westmoreland immediately ordered his J2 to brief the Mission Council in Saigon, consisting of the U.S. Ambassador, the senior Embassy deputy, and the heads of all independent U.S. agencies in South Vietnam. (JX 670) <sup>6</sup> On May 30, Lt. Colonel Hawkins briefed Mr. Barry Zorthian, the Ambassador's representative, and a member of the Mission Council (Zorthian Aff. ¶ 3), on the new estimates. (JX 894, Hawkins 5/30/67 letter)

As of June 1, 1967, the Embassy Mission Council, which consisted of the senior U.S. officials in Saigon, as well as the CIA, DIA, and CINCPAC,<sup>7</sup> *i.e.*, the entire U.S. intelligence community, the President's representative in Saigon, and Westmoreland's senior command knew the revised MACV estimate for guerrillas, SD, SSD and political cadre, and knew the total estimate for all categories—regulars, administrative services, guerrillas, SD, SSD and political cadre—was 416,000 to 429,000. (McChristian Aff. 12/21/83 ¶ 12; JX 893, McChristian Report, p. 9) They also knew that this estimate did not represent an increase in the size of the enemy, but only better evidence of who had been present all along:

The new MACV estimate of the strength of Irregular forces is higher than the figures presently carried in the Order of Battle summary. This is not an indication that the strength of Irregular forces has increased, but only that intelligence knowledge of irregulars has been greatly expanded and refined. (JX 227, Honolulu Conference Report, pp. 10-11)

Faced with the McChristian Report's repeated caveats about the reliability of the SD and SSD estimates, the doubts of the field commanders, CIA, CINCPAC and DIA, and his own experience in the field, General

<sup>6</sup> The Mission Council was chaired by U.S. Ambassador Ellsworth Bunker, the President's representative and head of the U.S. Mission to South Vietnam, and included, among others, senior staff of MACV, the U.S. Information Agency, and the CIA.

<sup>7</sup> A June 10, 1967 cable from Admiral Sharp at CINCPAC inquiring into the status of the joint MACV/CIA irregular forces study, as well as the affidavit of General Chesley Peterson, the J-2 of CINCPAC, demonstrate that CINCPAC had been told of the new estimates. (JX 242; Peterson Aff. ¶¶ 12, 13)

Westmoreland decided not to accept the prepared presentation of the SD and SSD. General Westmoreland was concerned that publishing General McChristian's irregulars estimate in the military OB format would mislead some readers by making the enemy appear larger than it was and, hence, inflate the enemy threat. (Westmoreland Dep. Tr. 1644) Instead, he chose to expand on General McChristian's suggestion to list the SD and SSD separately in the OB, with a notation as to their lack of offensive capability (Westmoreland Dep. Tr. 409-10), and not list the SD and SSD in Table I-1 of the enemy military OB, the summarization of the enemy's military capability. (*Id.*; JX 893, McChristian Report, p. 4)

In any event, the "evidence" of the number of irregulars had been distributed by General McChristian, and General Westmoreland distributed it further. (See, JX 670, Hendry 5/28/67 Memo; JX 894, Hawkins 5/30/67 Letter; JX 893A, J-2 Estimate—Comments) General Westmoreland and the new J2, General Phillip Davidson, reviewed the revised figures for irregulars and shortly produced an estimate that included a higher number for guerrillas, and largely accepted General McChristian's SD, SSD and political cadre estimates. (Compare JX 198A, March 1966 MACV OB Summary with JX 893, McChristian Report, and JX 248, MACV Vu-Graph Slides) What General Westmoreland did not do was agree with General McChristian's recommendation as to how the non-fighting elements of the Viet Cong organization (the SD and SSD) should be presented. (See Westmoreland Dep. Tr. 417-19)

Not only did General Westmoreland pass on the "evidence collected by his intelligence chief" but he had his position on the presentation of the SD and SSD explained to: the U.S. Ambassador in Saigon and the Mission Council; (JX 894, Hawkins 5/30/67 letter); CINCPAC, (JX 252, Abrams 8/20/67 cable to Sharp and Wheeler; JX 681, Sharp 8/24/67 cable to Wheeler); the JCS (JX 251, Godding 8/24/67 cable to Davidson; JX 252); and CIA (JX 248, MACV Vu-Graph Slides; JX 252). All of the parties named above agreed with General Westmoreland that the inclusion of the revised higher SD and SSD figures in the Order of Battle would present a misleading, inflated picture of the enemy.

On June 2, 1967, five days after General Westmoreland received his full briefing, a CIA cable drafted by Sam Adams strenuously protested the exclusion from the OB of the SD and SSD. (JX 239, Adams 6/2/67 cable to CIA Saigon) This cable shows that by June 2, Sam Adams, CBS' consultant, knew the contents of the May 18 McChristian Report (JX 893), since in his

cable Adams gives MACV's "new figure of 60,750" for guerrillas, precisely the same figure for this category that appears for the first time in General McChristian's Report. (JX 893)

And so the "great OB debate" began: a debate Adams lost. But whatever the merits of the debate, and regardless of whether it mattered—and many, like Secretary McNamara, thought it did not (McNamara Dep. Tr. 77)—one thing was clear when the debate began; everyone in the U.S. government who needed to know, knew, or could easily learn, that MACV intelligence by June 1967 estimated regular forces, administrative service, guerrillas, SD, SSD and the Vietcong political cadre at a total ranging from approximately 416,000 to 429,000. (McChristian Aff. 12/21/83 ¶¶ 4, 12, 13; JX 893) Disagreement about how many people were in the more diaphanous categories, and how, if at all, they should be portrayed in the enemy OB, was based on, and stemmed from, evidence collected by MACV and fully disseminated throughout the intelligence community. (Kovar Dept. Tr. 53-54; Smith Dep. Tr. 122, 125; Carver Dep. Tr. 310)

In March 1967, General McChristian welcomed news of a new posting to a command he coveted, the 2d Armored Division at Fort Hood. (See JX 213C, Hawkins 3/21/67 letter) General McChristian left Saigon on June 1, 1967. (Westmoreland Dep. Tr. 406) General McChristian's successor, General Phillip Davidson, arrived in Saigon on May 25, 1967. (JX 213I, Hawkins 5/25/67 letter) In June, he was learning his new job and concentrating on his preparation for briefing Secretary McNamara who was to visit Vietnam in July. (Morris Dep. Tr. 8) Thus, Col. Hawkins did not brief General Davidson on the SD, SSD, and political cadre until June 10. (JX 213K, Hawkins 6/10/67 letter; see JX 245, Carver 7/10/67 cable to Helms)

By this time however, the issue over whether to present the SD and SSD in the OB had become part of the discussions at the Special National Intelligence Estimate 14.3-67 ("SNIE") sessions, which were then in progress. (JX 392, CIA 6/14/67 Memo re SNIE draft) Since MACV was committed to not publishing its revised OB figures without the comments and consensus of the intelligence community (see JX 242, 6/10/67 Sharp cable to Westmoreland; JX 767, Williams 4/10/67 Trip Report), and since the White House had admonished JCS Chairman Wheeler to coordinate military intelligence estimates with the rest of the intelligence community (see JX 227, Honolulu Conference Report), General Davidson could not

change the June OB when he published it on June 30, 1967, as General McChristian had proposed. Instead, he left the OB unchanged with respect to the guerrillas, SD, SSD and political cadre, as General McChristian had since August of 1966, pending MACV's discussions with the CIA during the second SNIE session, scheduled to commence at the CIA offices in Langley, Virginia on August 9, 1967. (JX 245, Carver 7/10/67 cable to Helms)

General George Godding headed the MACV delegation to this meeting, which Col. Hawkins also attended. MACV presented to the intelligence analysts at the meeting its revised guerrilla, SD, SSD, and political cadre estimates which had been briefed in May (JX 47, Adams Order of Battle Chron., p. 04160), as well as the other categories then part of the OB. These added up to a total ranging from 402,700-429,700 personnel for all categories. (See JX 248, MACV Vu-Graph slides) MACV adopted the proposal of separating the political cadre from the fighters in the OB, and excluding the SD and SSD from the OB. (*Id.*) Indeed, the Vu-Graphs Col. Hawkins used to brief the analysts at this SNIE meeting separated these categories, and presented them in two separate charts. (*Id.*)

Contemporaneous documents show that the estimates of the people in the categories MACV took to the Langley SNIE meeting were virtually identical to the total in the same categories that General McChristian had said were MACV's best estimate in May 1967:

	<u>McChristian Estimate (May 1967)</u>	<u>Davidson Estimate (August 1967)</u>
Regulars.....	118,357	120,400
Administrative Services.....	24,813	17,000 to 35,000
Guerrillas.....	60,750	65,200
SD.....	101,150	95,075
SSD.....	23,400	22,025
Infrastructure.....	<u>88,000</u>	<u>83,000 to 92,000</u>
Total .....	416,470	402,700 to 429,700

(JX 198M; JX 893, McChristian Report, p. 9; McChristian Aff., 12/21/83, ¶ 12; JX 248, MACV Vu-Graph Slides)

These documents demonstrate that no one at MACV arbitrarily "cut" or reduced any figures in any categories between the time General McChristian left Saigon and the SNIE meeting at Langley, since MACV

carried a higher total for all categories—429,700 maximum versus 416,470—to Langley than General McChristian had accepted.<sup>8</sup>

Delegation head General Godding testified that he presented MACV's best estimate at the SNIE. (Godding Dep. Tr. 85) Delegation member Col. Hawkins told Crile before the Broadcast that he was given "no specific instructions" except to "defend the figures. *These are our figures. Defend them.*" (JX 9, Hawkins CBS Interview Tr. 25) (emphasis added) MACV delegation member Lt. Kelly Robinson said under oath "It is my opinion that MACV went to SNIE 14.3-67 with its best estimate of enemy strength." (Robinson Aff. 7/25/83 ¶ 10; See also Parkins Aff. 8/3/83 ¶ 16; Ponder Aff. ¶ 9)

During this same trip, on August 18, General Godding briefed the JCS in person on MACV's conclusions with respect to enemy strength and its suggestion on how enemy strength should be represented in the SNIE and the OB. (JX 769, Godding 8/19/67 cable to Peterson and Davidson) The JCS agreed with MACV that the SD and SSD should not be carried in the OB. CIA did not. (*Id.*; JX 254, Godding 8/24/67 cable to Davidson)

It is not uncommon that intelligence disputes among analysts often grow very bitter. (Parkins Aff. ¶ 16; Rostow Aff. Exhibit C) This happened at Langley in August 1967, over the dispute on presenting the SD and SSD categories in the SNIE. Although CIA and MACV had no real differences over the number of enemy regular forces, their differences increased as they moved on to categories less well organized and defined, *i.e.*, the administrative services, SD, and SSD categories. (See JX 254, Godding 8/24/67 cable to Peterson and Davidson; Carver Dep. Tr. 289-290)

The long and the short of the "great OB debate" was that Sam Adams and some other analysts disagreed with the proposal to exclude the SD and SSD from the enemy order of battle. Their objections were based on the theory that the Vietnam War in the summer of 1967 was an insurrection, as opposed to an attack by one country on another. (JX 1, p. 13) Since it was an insurrection, so their theory went, one had to count all of the insurgents, which in this case meant, to them, nearly the entire population under Viet Cong control. (See JX 312, CINCPAC/MACV Dissent to CIA OB Analysis SVN, pp. 1, 22)

<sup>8</sup> Without the benefit of his May 18, 1967 Report (JX 893), General McChristian's best recollection was that his last irregulars estimate was 198,000 (McChristian Aff. 12/21/83 ¶ 6) As the May 18 Report shows, General McChristian was slightly in error, which is understandable after 15 years.

Many military and civilian officials in Saigon and Washington disagreed with this position on the grounds that an enemy military order of battle should include only the enemy which posed a real offensive military threat. (Westmoreland Dep. Tr. 410, 428; JX 312) They believed that it was misleading to include elements in the OB and SNIE which, in General McChristian's words, "did not constitute an aggressive enemy threat within SVN." (JX 893, McChristian Report, p. 3; *Accord Rostow Aff.* ¶ 78; *Komer Aff.* ¶¶ 10, 14; *Colby Aff.* ¶ 8; *Caton Aff.* ¶ 11)

Ambassador Bunker cabled Special Assistant for National Security Affairs Walt Rostow, to express his concern that including the SD and SSD in the military Order of Battle would be misleading. (JX 896, Bunker 8/29/67 cable to Rostow)

Ambassador Komer also supported the MACV position on the SD and SSD and said so in a cable to the CIA's George Carver on August 19, 1967. This cable states:

1. Understand from MACV that O/NE [Office of National Estimates] insisting on inclusion 120,000 SDF and SSDF in new NIE figures, thus giving total of 435,000 for enemy O/B.
2. You are familiar with new MACV figures which represent major step forward toward sounder analysis. I cannot see case for including vague estimates of low grade part-time hamlet self-defense groups, mostly weaponless, in new O/B. (JX 250, p. 1)

Moreover, the nature of the war, if it ever had been an insurrection, had been rapidly changing, and in the summer of 1967 the war was becoming "basically a conventional war without a fixed front", pitting invaders from the North and the well-armed among the Viet Cong against the forces supporting the Government of South Vietnam. (Caton Aff. ¶ 11; see Hart Aff. ¶ 4)

In sum, the soldiers in the field, the CIA's senior civilian and military personnel in Saigon, and the Joint Chiefs of Staff all favored treating the SD and the SSD for the SNIE and OB in a fashion with which some of the CIA "insurgency base" theorists disagreed.

MACV and CIA did not reach an agreement on the SNIE at Langley, and so General Westmoreland suggested another session in Saigon in September to try to resolve this controversy:

This command cannot support these latest NIE figures with the intelligence at hand. The submission and advocacy of such figures