

support such figures and that advocating their inclusion indicated to MACV "a lack of detailed understanding of the various categories making up enemy strength." *General Westmoreland* recommended that a team from the Washington intelligence agencies come to MACV and review MACV's evidence in order "to develop a common and valid set of enemy strength statistics." (JX 776)

On August 26, Admiral Sharp cabled General Wheeler that he was "in accord with Westy's position" on the SNIE. He rejected inclusion of the SD and SSD in a "discussion of order of battle." (JX 777, 8/26/67 cable, Sharp to Wheeler)

The same day, CINCPAC J2 General Peterson cabled DIA that the proposal to add 120,000 SD and SSD to the order of battle made "no sense at all" to him. He went on to say that "decisions are apparently being based on other agency inflations that come from outdated estimates which MACV has no intelligence to support." (JX 778, Peterson 8/26/67 cable to Brown)

About August 29, Ambassador Bunker sent a cable to Walt Rostow in which he stated that he and Komer wanted to bring to Rostow's attention a "potentially serious problem created by the new NIE" namely, that the CIA insisted on showing enemy strength in the 430-490,000 range:

AMB BUNKER SAIGON

THE WHITE HOUSE, EYES ONLY WALT ROSTOW

Bob Komer and I wish to bring to your attention potentially serious problem created by new NIE now on verge of completion.

Despite thorough re-analysis by now massive MACV intelligence machine which has brought MACV position much closer to that of CIA, the latter's experts appear insistent on bringing out an estimate which will make enemy strength 430-490,000 instead of the range centering on 298,000 developed by MACV.

CIA does this chiefly by adding to strength figures some 125,000 so-called self-defense and secret self-defense forces, which are not organized military units at all but rather a shadowy, mostly unarmed part-time hamlet defense element of women, children, and old men on which we have very little evidence and which is so inconsequential and rarely encountered by us as not to warrant inclusion in enemy strength. In last analysis only armed men plus structure controlling and supporting them should validly be included.

I need hardly mention the devastating impact if it should leak out (as these things so often do) that despite all our success in

grinding down VC/NVA here, CIA figures are used to show that they are really much stronger than ever. Despite all caveats, this is inevitable conclusion which most of press would reach.

Westy has gone back hard at Buss Wheeler on this and I intend to mention it to the President in my coming weekly. The credibility gap created would be enormous, and is quite consistent with all the hard evidence we have about growing enemy losses, declining VC recruiting and the like. (JX 896, Bunker 8/29/67 cable to Rostow)

On August 29, George Carver cabled the CIA station in Saigon that the discussions over the SNIE has produced considerable debate and "more heat than light since major differences lie in conceptual and presentational methodology rather than . . . substantive facts." He stated that CIA did not advocate the inclusion of the SD and SSD in "full-time military force strength figures." (JX 540)

By the end of August, contemporaneous documents show that the following people knew, in detail, the nature of the dispute between the CIA and MACV: Walt Rostow, Robert Komer, CIA Director Helms, Ambassador Bunker, JCS Chairman General Wheeler and CINCPAC Admiral Sharp.

Secretary of Defense Robert McNamara has sworn:

I told Mr. Crile that I knew, in 1967, that CIA and MACV were involved in a dispute over enemy strength figures and that this dispute revolved primarily around who was considered a true "military threat". I was briefed regularly at the time by representatives of the military, and also on a weekly basis by Mr. George Carver of the CIA, who specifically briefed me in 1967 on the intelligence analysts' order of battle debate. I received other briefings from the CIA in 1966 and 1967 on the enemy order of battle. (McNamara Aff. ¶ 4)

Other former senior Administration figures who have made similar sworn statements include: Secretary of State Dean Rusk (Rusk Aff. ¶ 10); Deputy Secretary of Defense Paul Nitze (Nitze Aff. ¶ 3); and, the Senior Advisor to the Secretary of State Philip Habib (Habib Aff. ¶ 1).

The President also knew. During his taped CBS interview Walt Rostow told defendants that President Johnson was "fully briefed" on the order of battle debate in 1967. (JX 14, Rostow CBS Interview Tr. 77-78)

BROADCAST:

General Westmoreland's representatives met in the Pentagon in the Summer of 1967, and arbitrarily slashed MACV's official estimates of Viet Cong units. (JX 1, p. 14)

FACTS

Defendants claim MACV officers participated in the arbitrary slashing of "MACV's own official estimates of Viet Cong units" though they do not identify the units allegedly cut or even the *category* of enemy supposedly cut:

[I]n the midst of the National Intelligence Estimate, General Westmoreland's representatives met here at the Pentagon and commenced arbitrarily to slash MACV's own official estimates of Viet Cong units. It may be that Westmoreland knew nothing about these specific cuts, but they were carried out by his officers, who were attempting to keep the total at the level dictated by their commander. (JX 1, p. 14)

CINCPAC representative Col. George Hamscher was falsely identified on the Broadcast as the head of MACV's delegation to the SNIE meeting. (See JX 1, p. 11; PX 30, p. 47)

CRILE: You were a light colonel with a lot responsibility in a time of war.

COLONEL HAMSCHER: Yeah.

CRILE: in a small room in the Pentagon.

COLONEL HAMSCHER: Yeah.

CRILE: And you were sitting there with five people who were trying to provide the President with accurate intelligence on the enemy.

Now defendants can only identify a total of three people, rather than six, that they claim were in the room: Lt. Colonel Graham (subsequently promoted to General), Lt. Colonel Hamscher of CINCPAC, and Major Williams of DIA. (Adams Dep. Tr. 322, 323).

General Graham denies that he participated in such a meeting. Hamscher and Williams conflict as to whether General Graham was even in the United States during this period. Hamscher has testified that Graham

was taking the lead on behalf of MACV at the August session of the SNIE in Langley, Virginia. (Hamscher Dep. Tr. 117-18) Williams, however, told CBS's Burton Benjamin that Godding was telephoning Saigon every day and "spoke to either Graham or Davidson." (PTX Benjamin Notes, Williams p. 38567) Colonel Hawkins has said that he does not recall any contact with Graham. (Hawkins Dep. Tr. 445) Colonel David Morgan, who was Deputy chief of the Order of Battle Branch, testified that Graham had no responsibility for ground order of battle in the summer of 1967. (Morgan Dep. Tr. 21)

Adams book says that Graham was not at the August session of the SNIE. (JX 587, Adams Manuscript, p. 34) That leaves Hamscher and Williams, two rather than six, and no one from MACV at the alleged August 1967 meeting in the Pentagon.

Defendants have taken inconsistent positions under oath as to what category of enemy was supposedly cut. In sworn answers to interrogatories, they said it was "Regular" (also known as main and local) forces. (Defendants' Response to plaintiff's Interrogatory No. 3, pp. 95-97) But Hawkins told Crile that main forces were never cut, "And", he said, "I was the man who had the pencil." (JX 9, Hawkins CBS Interview Tr. 40-42) Adams now says that Colonel David Morgan told him that local force and administrative service units were cut. (Adams Dep. Tr. 308-11) Morgan testified under oath that local force units were not cut, (Morgan Dep. Tr. 41-57) and that he never told Adams local force units were cut. (*Id.* 57) At his deposition, Adams claimed that "rear [administrative] service groups" 80-86, and in particular rear service group 83 were cut in August or early September." (Adams Dep. Tr. p. 308) There was no "rear service group 80" carried in the MACV OB, and the strength figures for rear service groups 81-86 stay the same in the August 31 and September 30 MACV OB Summaries. (Cf. JX 917A, excerpt from MACV 8/31/67 OB Summary p. IV-31 with JX 917B, excerpt from MACV 9/30/67 OB Summary pp. IV-30 and -31) MACV estimates in the administrative services category *rose* between August and September 1967, and every other category of enemy *rose* or remained constant for the two months at issue. (See JX 198P and JX 198Q)

Adams now says it was "not significantly important" when the alleged incident occurred, and that it might have happened as late as January 1968. (Adams Dep Tr. 329-30)

BROADCAST:

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." (JX 1, p. 15)

FACTS

a. *In September 1967, Carver's proposal to General Westmoreland resolves OB dispute.*

When the Washington delegation arrived on September 8, 1967 General Westmoreland was in the Philippines. (JX 256, Carver 9/11/67 cable to Helms) The MACV team "had developed an estimate of enemy strength that [they] felt was the best estimate available, although no agency could 'prove' beyond any question that a given set of figures was absolutely correct." (Ponder Aff. ¶ 9) Except for the category of combat forces, "the personnel and functions [of the VC] tended to overlap and duplicate." Thus, "it was very difficult to assign levels of strength to the remaining categories with any degree of accuracy" and "there was plenty of room for professional disagreement as to how these soft categories should be handled." (Ponder Aff. ¶ 8).

MACV was willing to change its figures if shown the evidence to justify the change (*Id.* ¶ 9). CIA did persuade MACV to revise its figures upwards. (*Id.*; JX 258A, Carver 9/12/67 cable to Helms)

General Davidson was not inclined to make substantial changes in MACV's position without the approval of his commander, who was out of South Vietnam. Carver sent an angry cable to director Helms, stating the nature of the MACV-CIA conflict, and accusing the MACV delegation of acting in bad faith on orders from General Westmoreland. However, Carver had not talked to General Westmoreland; once he did, the dispute was quickly resolved. (JX 259 and 260 Carver 9/13/67 and 9/14/67 cables to Helms, JX 912, Westmoreland History Notes 9/13/67)

Carver cabled Director Helms on September 11 asking for advice on how to deal with the MACV-CIA disagreement. Director Helms replied:

Agree you should remain until you have session with both Westmoreland and Komer. Please let me know outcome, and

please clear with me your departure from Saigon. In other words, team should not repeat not leave for Washington until we give approval. (JX 257 Helms 9/11/67 cable to Carver)

The next day, September 12, Carver again cabled Helms. Carver reported on the ongoing negotiations, pointed out that MACV had accepted some of CIA's figures, but not others, sharply criticized MACV's case on administrative services, and noted that the parties "were very close" on figures for the political cadre. (JX 258A).

Subsequently, Carver met with Ambassador Komer, General Westmoreland's Civilian Deputy for CORDS, General Davidson, General Godding and the head of the DIA delegation, Col. Jack Lanterman. Komer criticized the SNIE draft from its analysis to its prose, and said that he had more faith in MACV's numbers than those of the CIA. (JX 258A). After the meeting, MACV reviewed its estimates and agreed to raise its figures again. Carver did not find the new position fully acceptable, so he worked with the other representatives from Washington agencies for six hours, to come up with a position with which the Washington agencies could agree. (JX 258B)

On September 13, Carver met privately with General Westmoreland. Back in August General Davidson had told Col. Godding he was "sure" a strength figure higher than that carried by the press would be unacceptable. He then wrote: "Let me make this clear that this is my view of General Westmoreland's sentiments. I have not discussed this with him but I am 100% sure of his reaction." (JX 251)

General Davidson was wrong then about General Westmoreland's "sentiments", and he was wrong again when he told George Carver before Carver went to see General Westmoreland about the SNIE figures that General Westmoreland would not accept the CIA's views. (JX 259, Carver 9/13/67 cable to Helms) He told Carver that he knew General Westmoreland's position and that General Westmoreland would not resolve the impasse between General Davidson and Carver. But General Westmoreland overruled his J2.

As matters turned out, Carver asked General Westmoreland whether there was a limit on what MACV would accept, and "Westmoreland immediately said 'There is no such total. I have never given any such instructions and if anybody thinks that I have . . . is completely mistaken'" (Carver Dep. Tr. 663-64). Carver proposed a military OB, a political order of battle, spreads for the softer figures, and non-quantification of the SD and SSD.

Carver cabled Director Helms on September 13:

3. *On Morning 13 September, General Davidson advised me Westmoreland meeting would do nothing but formalize our impasse, since Westmoreland would never accept our position.* When meeting convened with Abrams, Komer, General Sidle (PIO) and INR. reps attending Davidson gave rather biased account of proceedings noting our impasse on figures saying he thought our paragraph written to avoid quantifying irregulars (last Para Ref A) unacceptable and outlining his draft cable by which General Westmoreland could advise General Wheeler of our inability to agree. Komer weighed in with replay of his thesis, recommends acceptance MACV position but acknowledging logic in some of Washington views. I then reviewed history and context whole estimate, the Saigon discussions, and the rationale behind each of the joint Washington representatives figures, and (as tactfully as possible) the way the procedure through which national estimates produced reduced our negotiating latitude. I also took up "quantification paragraph," indicating Davidson had quoted out of context and showing why we thought it met both Washington and MACV needs. I concluded with general remarks tracing history of U.S. Military estimates on Vietnam since 1955, noting that consistent record of underestimating—recent (i.e. McChristian) methodology which required constant retroactive juggling had contributed mightily to our credibility problems. That we needed baseline which would not have to be adjusted again, and that when in doubt as well advised from all angles, to err on side of caution rather than optimism. (JX 259, Carver 9/13/67 cable to Helms) (emphasis added).

The same cable discussed what happened when Carver met with General Westmoreland:

4. Westmoreland most cordial and receptive. Said he agreed with most of my observations and could see the clear logic behind both sets of figures, which were really not that far apart. He also saw the rationale behind our irregular quantification paragraph and had no problems with it, though he would want to take a final look at it in writing. He asked if I would convene both the Washington and MACV analysts to review the evidence once again and see if we could resolve our differences.

5. When the analyst meeting was convened (with Davidson represented by his deputy) I took Westmoreland at his word, usurped the chair, and announced that all constraints on totals were off and we could settle down to serious discussion of evidence and issues. During about four hours or brisk discussion we hammered out the following set of agreed figures, which

General Westmoreland has already endorsed: main and local force 119,000, admin services 35,000-40,000, guerrillas 70,000-90,000 for military total spread of 224,000-249,000. Political 75,000 to 85,000. (*Id.*)

In sum, what happened was that certain members of General Westmoreland's staff assumed that he was wedded to a position which he would not compromise. But this simply was not the fact. Carver, both at the time and subsequently, credited General Westmoreland with successfully resolving the dispute. In his September 13, 1967 cable, Carver had told Director Helms:

1. Circle now squared, chiefly as a result of Westmoreland session (and perhaps Komer dinner). We now have agreed set of figures Westmoreland endorses. Mission seems on verge of successful conclusion, though final T's to be crossed tomorrow. (JX 259) (*See also*, Carver Dep. Tr. 565-67)

The affidavit of CIA Director Richard Helms states:

I never received any instructions or pressure, either overt or covert, from President Johnson, from members of his staff, or from anyone else to present optimistic reports on the conflict in Vietnam or to present reports which were in any way inconsistent with my evaluation of the intelligence information available to me.

I never was given any instructions from President Johnson or from anyone else in his Administration to "cave in" or capitulate to any estimate by military intelligence analysts or to use the military's estimates of the strength of the South Vietnamese Communists in South Vietnam in Special National Intelligence Estimate (S.N.I.E.) 14.3-67.

* * *

I do not recall any pressure from the military, or from any other source, to accept the military's or MACV's estimates for S.N.I.E. 14.3-67. As Director of Central Intelligence, I was responsible to no one except the President. I did not feel threatened or pressured to concede anything to the military or to anyone else about S.N.I.E. 14.3-67.

I do not recall instructing Mr. Carver before he departed for Saigon, or while he was in Saigon, in September 1967, to agree to the estimates or set of numbers proposed by the military. I would not have given such instructions to Mr. Carver or to anyone else because I regarded the lack of consensus about the S.N.I.E. 14.3-67 as a bureaucratic matter, as to which there was no incentive to agree with the military or with any other member of the in-

telligence community. Although I hoped that consensus among the members of the intelligence community would be reached, I had no objection to MACV or any other participant in the conference presenting its or their own estimates of the strength and capabilities of the South Vietnamese Communists in South Vietnam. (Helms Aff. ¶¶ 4, 5, 12, 13).

George Carver has similarly testified there was no "cave in" or order to "cave in." (Carver Dep. Tr. 627)

The CIA has not found any cable from Director Helms to Carver ordering him to "cave in" or words to that effect. (Kovar Dep. Tr. 95)

b. *The SD militia and SSD were removed from the OB only after a thorough review process.*

A large part of the intelligence community believed the SD had no place in a military order of battle. The intelligence community excluded them from the military order of battle following an open debate on the subject.

General Grover C. Brown, Assistant Director for Intelligence Production of the Defense Intelligence Agency explains:

I have no doubt that some analysts within every headquarters felt that the SD types were fairly significant, while others thought they were insignificant. Such a disagreement is not unusual in the intelligence business; in fact, debate and conflicting views help produce good intelligence. (Brown Aff. ¶ 4)

In his report sent to Ambassador Robert Komer on May 21, 1967, General McChristian contrasted the role and importance of the self defense militia with the far more militarily important guerrillas:

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 693, p. 3)

It was extremely difficult to estimate the number of SD. The CIA comments on the McChristian report stated there was a margin of error of -50% to +100%. (JX 693 A, p. 2). Thus, with an estimate of 100,000, the margin of error put the possible size of the SD between 50,000 and 200,000.

In early 1968, George Allen of the CIA made an estimate of self defense militia of his own. (DX 63) He stated that "while the available evidence is fragmentary, we believe an estimate of at least 100,000 can be supported." (*Id.* at 10) He prepared three models "which might be termed" worst (269,000), median (168,422) and best (99,188) case. (*Id.* at 6) This works out to a margin of +/- 60%.

There was a broad consensus on the difficulty of estimating the number of SD. For example, Ambassador Komer, Westmoreland's civilian Deputy for CORDS, has explained:

I believe that MACV's techniques for intelligence gathering and analysis of the communists' regular military units became very good. These techniques were less effective in analyzing VCI, Guerrilla, or front group strength because the Guerrillas were generally less organized and the VCI were clandestine. These techniques were relatively ineffective in dealing with the SD and SSD forces because, as I stated above, they were generally nonuniformed, part-time, unarmed, and did not travel and operate in organized units. In addition, the loyalties of the persons comprising the SD and SSD forces were often tenuous, shifting and often dependent upon whether the GVN or the communists controlled the areas where they lived. (Komer Aff. ¶ 12)

Capt. Joseph Price was the analyst at CICV in charge of estimating irregulars until July 10, 1967. He said in his affidavit:

While at CICV my duties included analyzing and estimating the size of the enemy's so-called irregular forces. We attempted to do the best job we could and reported the best estimates of the size of the enemy we could come up with. However, our data were uneven. We relied on captured documents and reports from the field. The information and reports varied considerably in quality and estimates of size of the enemy elements in some provinces were much better than in others. Because of the incompleteness of our information, we had to rely on extrapolation to come up with many of our estimates. I believe, therefore, that despite our efforts, there was the possibility of a substantial margin of error in our estimates of the number of enemy. (Price Aff. ¶ 2)

The following people believed that it would have been an error to include the SD as part of an overall estimate of the enemy's military capability: General William C. Westmoreland, Commander, U.S. Military Assistance Command, Vietnam (Westmoreland Dep. Tr. 417, 418, 428); Walt W. Rostow, Special Assistant to President Johnson for National Security Affairs (Rostow Aff. ¶ 7); Ambassador Ellsworth Bunker, United States Ambassador to Vietnam (Bunker Aff. ¶ 5); Admiral Ulysses S. Grant

Commander-in-Chief—Pacific (Grant Aff. ¶ 8); General Grover Cleveland Brown, J-2 CINCPAC and Assistant Director for Intelligence Production, DIA (Brown Aff. ¶ 3); General Chesley Peterson, J-2 CINCPAC (Peterson Aff. ¶ 15); Ambassador Robert Komer, Civilian Deputy for CORDS (Komer Aff. ¶¶ 10, 14, 18-19); William Colby, Chief of the Far East Division and later Director of the CIA, (Colby Aff. ¶ 8); and General Phillip Davidson, MACV J-2 (Westmoreland Dep. Tr. 429) ¹⁴

Numerous people in middle level positions agreed that the SD's and SSD's did not belong in the military OB: Lt. Col. Daniel Graham, head of CIIED, MACV J2 (JX 311 A, Pike Committee Testimony, pp. 1662,1664);¹⁵ Paul Walsh, Deputy Director, CIA Office of Economic Research (Walsh Aff. ¶ 6); Bobby Layton, primary drafter of the SNIE (Layton Aff. 3/5/84 ¶¶ 6, 9); James Ogle, member, Research and Analysis Branch, CIA Saigon Station, (Ogle Aff. ¶ 13); Colonel Edward Caton, Chief of MACV J2 Estimates Division until June 1967 (Caton Aff. ¶ 11); John Stewart, Corps. Analyst in MACV J2 (Stewart Aff. ¶ 15).

Roger Hilsman is a professor at Columbia University. He was the Director of the Bureau of Intelligence and Research for the State Department and Assistant Secretary of State for Far Eastern Affairs in 1961-65. He says of the order of battle dispute:

I was against the United States policy in Vietnam long before the Tet offensive. Therefore, I was sympathetic to the anti-War sentiment behind the CBS documentary "The Uncounted Enemy: A Vietnam Deception." However, I regarded that effort as irresponsible, inept and misleading.

My views on the Broadcast are accurately summarized in a letter I mailed on January 28, 1982 to CBS News. I attach a copy of that letter to this affidavit. My letter states in part:

I was no longer in government at the time in question, but even moderately careful research by an outsider shows that the disagreement over enemy strength was an honest argument over whether or not to count political cadre, militia, and so on in with

¹⁴ "Assault youth" were mentioned in some captured enemy documents as youthful logistic support for the VC. (JX 922, CICV 7/1/67 Study, Assault Youth). One captured member of the VCI spoke disparagingly of them as "baby soldiers." NVA Col. Tran Van Dac told his U.S. interrogators that "he had never heard of [them]". (JX 678) While Adams and some members of the CIA OB team argued that they should be included in the OB as part of the insurgency base, Col. Hawkins testified that he was against including them in the MACV OB. (Hawkins Dep. Tr. 237)

¹⁵ See p. 16, *supra*.

main-line, regular Viet Cong troops. This kind of disagreement occurs all the time. It happened in World War II over German "home guard" troops. It is happening right now over Soviet first-line and reserve divisions.

I also wrote a letter to the New York Times on January 28, 1982, and attach a copy of that letter.

I believe that there were available to CBS countless former government officials and scholars who would have told CBS that their Broadcast was wrong. It was clear to me from reviewing the Broadcast that CBS had escalated into sensational journalism an honest disagreement that regularly took place within the government, namely, how to characterize particular elements of the enemy manpower base and was giving an importance to that disagreement that was all out of proportion to reality. (Hilsman Aff. ¶¶ 10, 11, 12)

c. Defendants' recent focus on Administrative Services

The Broadcast did not mention the category of Administrative Service personnel, but defendants raise it in their Memorandum. This category, which was not well-defined, included medical, logistical, signal and support personnel, as well as at times mail carriers and porters. A June 1967 cable from General Westmoreland to Admiral Sharp cautioned against the erroneous inclusion of porters and the like as part of the OB.

The proposed SNIE figures for administrative services is higher than the figure we expect to find since we are being very careful in our analysis to exclude porters and other personnel who are not a part of the enemy's organizational structure. (JX 243, Westmoreland 6/14/67 cable to Sharp).

An early 1968 CIA memo said that there was a small number of cooks and washerwomen listed as administrative services whom the CIA cautiously said "may be unworthy of being carried in the military OB." (Stumpf Aff. Exhibit A, p. 5).

The CIA and MACV disagreed at the SNIE over methodology for estimating the Administrative Services, as well as who should be included. (See JX 198M) At the February Honolulu conference, General McChristian had successfully urged that the same strict criteria required for acceptance for other units be used for acceptance of administrative services. Using General McChristian's criteria, MACV had identified about 23,000 administrative services personnel in South Vietnam by May 1967. (See JX 198M).

CIA took a less rigorous approach. Adams wrote in his summary of the June 23, 1967, session of the NIE:

He [Adams] said he felt that a one to one ratio of administrative services to combatants personnel was unfortunately supported by only a limited number of documents. . . . He [Adams] admitted his case was none too good, but that it seemed obvious nevertheless that the MACV Order of Battle was far too low for the category. (JX 421, Adam 6/23/67 Memorandum)

Adams' notes admit that his administrative service estimate was "largely guess" based on what he saw as the "logical" ratios. (JX 625, 39426)

d. *The SNIE ended with a compromise.*

A comparison of the August CIA position, initial MACV position and the agreed SNIE results demonstrate that the outcome was simply a compromise.

	<u>CIA August Draft Of SNIE</u>	<u>MACV August SNIE Position</u>	<u>AGREED September</u>
MAIN & LOCAL....	121,000	119,000	119,000
ADMIN. SERVICES	40,000- 60,000	17,000- 35,000	at least 35,000- 40,000
GUERRILLAS	60,000- 100,000	60,000 70,000	70,000- 90,000
POL. CADRES	90,000	83,000- 92,000	75,000- 85,000
MILITIA	125,000	117,850	(described in SNIE text)

There was no material dispute over regular troops (main and local forces), and none of consequence over political cadre. The estimate for administrative services was right in the middle of the MACV and CIA estimates, tilting towards the latter with the use of "at least." The guerrilla figure of 70,000 to 90,000 was in the middle of and had the same mean as the CIA range. The *low end* of the spread was 10,000 higher than the McChristian figure and 5,000 higher than General Davidson's.

While the SD and SSD were not quantified in the tables, they were discussed in the text. The figure stated in the text—"150,000 SD and SSD sometime in 1966"—was in accord with the known facts. There were no usable recent documents. General McChristian's May 18, 1967 report described the pertinent documents as being as old as late 1965. The report

said the captured documents, even if accepted as accurate at the time, could not be accepted in May 1967:

3. A province by province estimate based on the best intelligence sources and agencies available to both ARVN and MACV simply does not support the higher figures contained in the captured VC documents. There are several possible explanations for this.

a. The information contained in the VC Documents is dated—at least two of the strength figures are over a year old. Also these figures have to be collected and reported through the VC chain of command until they finally reach COSVN and it is not unreasonable to assume that this takes some time; thus, the figures may even be older than they appear at first glance. Much has happened since these figures were promulgated: allied military pressure has been greatly increased and expanded; VC casualties have soared; recruiting new replacements had become increasingly difficult for the VC; upgrading of Irregulars to local and main force units has been taking place on a wide scale. All of these factors have been a great drain on Irregular strength. (JX 893, McChristian Report, p. 12)

Both Director Helms, who supposedly ordered Carver to “cave-in” and Carver, who supposedly received this order to “cave-in” deny any such thing occurred.

10.

BROADCAST

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. (JX1, 16)

FACTS:

The entire upper echelons of the Government and the intelligence community knew by mid-September that the MACV Order of Battle Summary was being revised and that the new format did not include the VCI or SD and SSD. [see supra III.B.]

a. *Accurate accounts of the agreement reached in mid-September were promptly communicated to all relevant parties.*

On September 14, 1967, Carver briefed Ambassador Bunker on the agreement with MACV, and gave him a memorandum on the agreement which described the discussions as "lively but most beneficial to all parties involved." (JX 261) Ambassador Bunker reviewed their agreed upon figures and the draft paragraph regarding the Self-Defense and Secret Self-Defense. Carver reported that Ambassador Bunker "endorsed them without reservation." The Ambassador was "pleased that Washington and Saigon could now speak with one voice [and] was very complimentary." (JX 260) Carver pointed out that the "only remaining task is mending of personal fences with General Davidson. He is able officer with whom station must deal closely and with whom Washington should maintain reciprocally useful communication. Davidson and I meeting for drinks on 15 September." (JX 260)

Carver used this memorandum to brief Admiral Sharp, CINCPAC, on September 16 and he then gave a copy of the memo to CIA Director Helms on September 18, 1967. (JX 435). Bunker, Sharp and Helms all were given a draft of the proposed narrative treatment of the SD that would appear in the text of SNIE 14.3-67. (See JX 435)

The SNIE itself went through a number of drafts and reviews. It was signed by CIA Director Helms on November 13, 1967. (JX 273, SNIE 14.3-67) The section entitled "Communist Force" explains the change in the format of the OB and the composition of the revised military OB.

24. We believe that, with the exception of the Regular forces, we have previously underestimated the strength of these elements. The figures carried in this estimate for these elements reflect new information and analysis rather than an increase in actual Communist strength. Furthermore, our information on the strength and organization of the different elements varies widely. For the Regular forces it is good; for other components it is much less reliable, less current, and less detailed. The resulting uncertainties are explained in the following paragraphs and are reflected by the use of ranges in the estimates we present.

* * *

30. Information from captured documents leads us to believe that we have previously underestimated the guerrilla strength. Certain Communist documents which date from early 1966 assert that there were then about 170,000 — 180,000 guerrillas. This figure was almost certainly exaggerated. There is evidence which

suggests that the Communists sometimes consider other groups part of the guerrilla force and therefore carry a larger number of guerrillas on their rolls. There is also considerable uncertainty over the accuracy of VC reporting at the lower levels. We believe that guerrilla strength has declined over the past year or so.

* * *

32. Other Communist Organizations. The communists make a deliberate effort to organize most of the people under their control into various work forces and semimilitary organizations. Among the more significant of these organizations are the self-defense forces, secret self-defense forces, and groups such as the 'Assault Youth.' Moreover, when occasion demands, almost every able bodied person under VC control may be called upon to support the war effort.

33. The self-defense force is described by the Communists as a military organization. It is clear, however, that its organization and mission differ from that of village and hamlet guerrillas. Self-defense forces include people of all ages and a substantial percentage of them are females. They are largely unarmed and only partially trained. . . .

* * *

36. Our current evidence does not enable us to estimate the present size of these groups (self-defense, secret self-defense, the "Assault Youth" or other similar VC organizations) with any measure of confidence. Some documents suggest that in early 1966 the aggregate size of the self-defense force was on the order of 150,000. This force and the other groups, however, have unquestionably suffered substantial attrition since that time, as well as an appreciable decline in quality, because of losses, recruiting of some their members into the guerrillas or other VC military components and, particularly, the shrinkage in VC control of populated areas. Though in aggregate numbers these groups are still large and constitute a part of the overall Communist effort, they are not offensive military forces. Hence, they are not included in the military order of battle total. Nevertheless, some of their members account for a part of the total Communist military losses.

The Broadcast charged General Westmoreland with deceiving the President by telling him "there were only 248,000 Viet Cong left." Dr. Rostow and John Roche have sworn the President was fully informed of the decisions on the OB concerning the SNIE. (Rostow Aff. ¶ 14(1); Roche Aff. ¶ 3) George Carver drafted a CIA memorandum on the SNIE dated November 15, 1967, the first copy of which was addressed to the President. (JX 711, Carver 11/15/67 memo) (See Plates 9A-B)

This memorandum, entitled "Potentially Controversial Judgements on Data Holding Changes in 14.3-67," discusses the revisions in the Order of Battle in detail. This memorandum states that the figure for main and local forces, listed as 118,000, "fluctuates constantly. The discrepancy between MACV's figures [116,703] and the SNIE does not reflect a controversy." It continued:

- b. *Administrative Services*: These (also called Support personnel) are now carried at 25,653.

The estimate (para 27) raises this holding to "at least 35-40,000 Administrative Service personnel in South Vietnam." This does not include Support personnel in Laos, Cambodia or immediately north of the DMZ. Furthermore, as indicated by the "at least," this figure in the estimate is a floor threshold, not an encompassing range. This has been an area of controversy.

- c. *Guerrillas and Other Paramilitary Elements*: The current MACV holdings carry an "irregular" figure of 112,760, which was carried in 14.3-66. This figure includes both guerrillas and other irregular elements (Self-Defense and Secret Self-Defense). The figure has been assumed to be made up of 1/3 guerrillas and 2/3 "other," i.e., the actual implied holdings have been:

Guerrillas: 33,333—40,000

Others: 56,667—80,000

14.3-67 carries (para 30) a range estimate of 70-90,000 for the *guerrillas* only. It does not quantify any current estimate for the others, though it does say (para 36) that some documents suggest that in early 1966 the Self-Defense forces (alone) were on the order of 150,000. (The full text of para 36 is attached hereto.) MACV explicitly did not want any quantified estimate of these "other" paramilitary elements' current size. We attempted to evolve a compromise which avoided a specific current number, but indicated that the reader should be thinking in six digits.

This guerrilla/irregular estimate is another major source of potential controversy. Note particularly that the new guerrilla figure (70-90,000) is not a *reduction* of the old "paramilitary" figure (112,760) but, instead, an increase in that figure's guerrilla component (33,333—40,000).

- d. *Political Cadre*: Old estimates (i.e., current MACV holdings): 39,175, (SNIE 14.3-66 said 40,000.) This is based on an old, out-dated and never accurate GVN figure.

15 November 1967

MEMORANDUM

SUBJECT: Potentially Controversial Judgments of Data Holding Changes in 14-3-67

1. Infiltration:

Agreed figures for CY 1966 are:

Accepted:	55,000
Possible:	<u>31,000</u>
Total	86,000

Thus far in CY 1967 (through 30 September) agreed totals are:

Accepted:	23,000
Possible:	<u>12,000</u>
Total	35,000

Judgment made in estimate (paragraph 12) is that:

"Infiltration thus far in 1967 totals about 35,000 in all categories (accepted and possible). Allowing for the probability that later information will raise these figures, and extrapolating, it now appears that total infiltration for 1967 will be no more than last year's and possibly somewhat less. We estimate that some 65 to 75 percent of the infiltration will probably consist of replacement personnel for existing units. The remainder will probably include seven to nine organized regiments which will add to the Communist force structure but not necessarily their total military strength, because losses have resulted in generally lower unit strengths. There still appears to be no clear-cut seasonal pattern in infiltration or any significant indication that Hanoi is unwilling to dispatch additional men and units to South Vietnam."

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There is no major controversy here, but individual infiltration is becoming more difficult to count, particularly in units that move back and forth across the DMZ.

2. Current Strengths:

14.3 changes both the figures and the format of current holdings. A copy of MACV's current (30 October) OB is attached. The estimate's changes are outlined below:

a. Regular (Main and Local) Forces: MACV holds 116,700 as of 30 October. Estimate says (para 25 and Table 3):

NVA	54,000
VC Main and Local	<u>64,000</u>
Total	118,000

This figure fluctuates constantly. The discrepancy between MACV's figure and the NIE does not reflect a controversy.

b. Administrative Services: These (also called Support personnel) are now carried at 25,653

The estimate (para 27) raises this holding to "at least 35-40,000 Administrative Service personnel in South Vietnam." This does not include Support personnel in Laos, Cambodia or immediately north of the DMZ. Furthermore, as indicated by the "at least," this figure in the estimate is a floor threshold, not an encompassing range. This has been an area of controversy.

c. Guerrillas and Other Paramilitary Elements: The current MACV holdings carry an "irregular" figure of 112,760, which was encompassed by the old range of 100-120,000, carried in 14-3-66. This figure includes both guerrillas and other irregular elements (Self Defense and Secret Self Defense). The figure has been assumed to be

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made up of 1/3 guerrillas and 2/3 "others" ... the actual implied holdings have been

Guerrillas	33,333 - 40,000
Others	66,667 - 80,000

14-3-67 carries (para 10) a range estimate of 70-90,000 for the guerrillas only. It does not quantify any current estimate for the others, though it does say (para 36) that some documents suggest that in early 1966 the Self Defense forces (alone) were on the order of 150,000. (The full text of para 36 is attached hereto.) MACV explicitly did not want any quantified estimate of these "other" paramilitary elements' current size. We attempted to evolve a compromise which avoided a specific current number, but indicated that the reader should be thinking in six digits.

This guerrilla/irregular estimate is another major source of potential controversy. Note particularly that the new guerrilla figure (70-90,000) is not a reduction of the old "paramilitary" figure (112,760) but, instead, an increase in that figure's guerrilla component (33,333 - 40,000).

d. Political Cadre: CIE estimate (i.e., current MACV holding) 39,000. NIE 14-3-67 said 40,000. This is based on an old, out-dated and never accurate CVN figure.

14-3-67 on the political organization says "Its numbers are large -- with a hard core estimated at about 75,000 - 85,000 -- but more important is the wide geographic extent of its power and the dedication and effectiveness of its personnel." We regard the 75-85,000 figure a distinct improvement over the CIE figure but consider it subject to further analysis and refinement. The term "hard core" is intended to suggest that there are others who do not appear in this figure.

3. Communist Losses:

No controversy in this area. For 1966 all losses estimated at 103,000, and for 1967 we estimate comparable figure will be 170,000. (Table 5)

Problem area is that these totals cannot be applied to individual components, i.e., regular forces, guerrillas, etc.

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4. VC Manpower Inputs:

Some controversy over recruitment level for this year. NIE's estimate of what recruitment was last year -- 7,000 per month -- agreed to by MACV.

MACV estimates 3,500 per month for first half of 1967, and is revising downward for last half. NIE estimates recruitment between 3,000 and 5,000 per month for all of 1967. This is based on our evaluation of the MACV study.

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Copy No. 1

15 November 1967

MEMORANDUM

SUBJECT: Potentially Controversial Judgments or Data Holding Changes in 14.3-67

* * * * *

b. **Administrative Services:** These (also called Support personnel) are now carried at 25,653.

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Guerrillas:	33,333 - 40,000
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d. **Political Cadre:** Old estimate (i.e., current MACV holding): 39,175. (NIE 14.3-66 said 40,000.) This is based on an old, out-dated and never accurate GVN figure.

14.3-67, on the political organization, says: "Its numbers are large — with a *hard core* estimated at about 75,000 - 85,000 — but more important is the wide geographical extent of its power and the dedication and effectiveness of its personnel." We regard the 75-85,000 figure a distinct improvement over the old figure but consider it subject to further analysis and refinement. The term "hard core" is intended to suggest that there are others who do not appear in this figure.

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Attached to the memorandum was the text of paragraph 36 of SNIE 14.3-67, quoted above.¹⁶

The Department of Defense regularly published a report called Southeast Asia Analysis Report and gave it wide distribution within the government. (Thayer Aff. ¶ 4) The Report for December 1967 clearly explained the changes in the OB. A portion of the Analysis Report, including Table 1, footnotes and a portion of the text, is reproduced below:

TABLE 1
Total and Military Enemy OB Compared

	Old Estimate(a) <u>Total OB</u>	New Estimate(c) <u>Military OB</u>	New Estimate(b) <u>Total OB</u>
Combat Strength(f)			
VC	62,852	62,852	62,852
NVA.....	<u>53,700</u>	<u>53,700</u>	<u>53,700</u>
Total	116,552	116,552	116,552
Administrative Service	25,753	38,000	38,000
Irregulars(d)			
Guerrillas	37,587	81,300	81,300
Self Defense and Secret Self Defense ..	75,173	(e)	75,173-162,600
Total	112,760		156,473-243,900
Political Cadre (VC Infrastructure).....	<u>39,175</u>	(f)	<u>84,000</u>
Total All Cate- gories	294,240	235,852	395,025-482,452

¹⁶ See p. 76.

- (a) The presentation and strength estimates used by MACV before 31 October 1967.
- (b) The pre 31 October 1967 total OB presentation with the new estimates of administrative service, guerrilla and political cadre strengths.
- (c) MACV's new presentation, without self-defense, secret self-defense, and political cadre and his new strength estimates of administrative service and guerrilla strengths.
- (d) "The old data divided the 100,000 to 120,000 irregulars, roughly putting one-third of them into the guerrilla and the other two-thirds into self-defense and/or secret self-defense personnel." —MACV briefing on Enemy Order of Battle, 24 Nov. 67.
- (e) The self-defense forces provide a base for recruitment as well as for political and logistical support, but are not a fighting force comparable to the guerrillas. Although secret self-defense forces cause some casualties and damage, they do not represent a continual or dependable force and do not form a valid part of the enemy's military force. The political cadre (infrastructure) has no military function. —MACV briefing on Enemy Order of Battle, 24 Nov. 67.
- (f) Includes confirmed, probable and possible.

Recent captured documents indicate that the *guerrilla forces* may be larger than previously estimated.^a MACV estimates that their current strength ranges from 70,000 to 90,000, much larger than its previous estimate of 33,000 to 40,000.^b Table 2 and Graph 1 show strength increasing steadily from December 1964 through December 1966, peaking at 126,200 and then declining sharply to 81,300 by October 1967. While this new estimate is an improvement over previous numbers, additional data in the future can be expected to modify it.

The old MACV estimate of 39,175 *political cadre* was based on an early GVN study. Although MACV has dropped this category from its military OB, it now estimates that political cadre have numbered between 75,000 and 85,000 since December 1964. (Its best estimate is 84,000.)

Summary Effects of the Changes

Column 3 of the Table 1 shows what happens when we place the new strength estimates into MACV's old format. If we assume that the self-defense and secret self-defense estimates have not changed (MACV did not revise the figures) we get a total strength of 395,852, about 100,000 greater than the old estimate and about 160,000 greater than the new estimate. If we assume

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Southeast Asia ANALYSIS REPORT

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By NADA, Date 3-3-82

DECEMBER 1967

PREPARED BY
OASD (SA) - SEA PROGRAMS DIVISION
ASD/SA CONTROL NO. 6-811

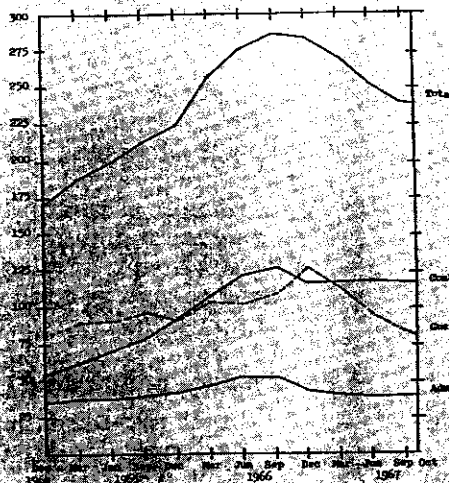
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GRAPH #1
NEW RETROSPECTIVE ESTIMATES
OF VC/NVA ORDER OF BATTLE STRENGTH



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TABLE 1. TOTAL AND MILITARY ENEMY OB COMPARED

	1 OLD ESTIMATE ^a TOTAL OB	2 NEW ESTIMATE ^c MILITARY OB	3 NEW ESTIMATE ^b TOTAL OB
Combat Strength ^f			
VC	62,852	62,852	62,852
NVA	53,700	53,700	53,700
Total	116,552	116,552	116,552
Administrative Services	25,753	38,000	38,000
Irregular ^d			
Guerrillas	37,587	81,300	81,300
Self Defense and Secret Self Defense	75,173	e	75,173-162,600
Total	112,760		156,473-243,900
Political Cadre (VC Infrastructure)	39,175	e	84,000
Total All Categories	294,240	235,852	395,025-482,452

a The presentation and strength estimates used by MACV before 31 October 1967.

b The pre 31 October 1967 total OB presentation with the new estimates of administrative service, guerrilla and political cadre strengths.

c MACV's new presentation, without self defense, secret self-defense, and political cadre and his new strength estimates of administrative service and guerrilla strengths.

d "The old data divided the 100,000 to 120,000 irregulars, roughly putting one-third of them into the guerrilla and the other two-thirds into self-defense and/or secret self-defense personnel." - MACV briefing on Enemy Order of Battle, 24 Nov 67.

e The self-defense forces provide a base for recruitment as well as for political and logistical support, but are not a fighting force comparable to the guerrillas. Although secret self-defense forces cause some casualties and damage, they do not represent a continual or dependable force and do not form a valid part of the enemy's military force. The political cadre (infrastructure) has no military function. - MACV briefing on Enemy Order of Battle, 24 Nov 67.

f Includes confirmed, probable, and possible.

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Recent captured documents indicate that the guerrilla forces may be larger than previously estimated.^{a/} MACV estimates that their current strength ranges from 70,000 to 90,000, much larger than its previous estimate of 33,000 to 40,000.^{b/} Table 2 and Graph 1 show strength increasing steadily from December 1964 through December 1966, peaking at 125,200 and then declining sharply to 81,300 by October 1967. While this new estimate is an improvement over previous numbers, additional data in the future can be expected to modify it.

The old MACV estimate of 39,175 political cadre was based on an early GVN study. Although MACV has dropped this category from its military OB, it now estimates that political cadre have numbered between 75,000 and 85,000 since December 1964. (Its best estimate is 84,000.)

Summary Effects of the Changes

Column 3 of the Table 1 shows what happens when we place the new strength estimates into MACV's old format. If we assume that the self-defense and secret self-defense estimates have not changed (MACV did not revise the figures) we get a total strength of 395,852, about 100,000 greater than the old estimate and about 160,000 greater than the new estimate. If we assume that secret self-defense and self-defense forces still constitute two-thirds of the irregular forces^{c/}, we get an estimate of about 480,000 VC/NVA, or twice the new military OB estimate. Thus the new estimate is 395,000 - 480,000 on a basis comparable to the old 294,000. The computations do not show that enemy strength has increased, but that previous estimates of enemy strength were too low.

The new MACV retrospective estimates of VC/NVA strength are presented above in Table 2 and Graph 1. They show a peak VC/NVA military strength of about 284,000 in December 1966 on a quarterly basis (strength actually peaked in October 1966 at 288,000) sharply declining to about 236,000 by October 1967, an average of 4800 net losses per month. The 45,000 guerrilla decline accounts for 94% of the total reported drop of 48,000. We note, however, that the Hamlet Evaluation System, from March to August 1967, reports a net increase of only five hamlets where the guerrilla's military control has been broken.

Definitions

MACV's definitions of the enemy's forces included in the old and new estimates are provided below.

- a/ For example, enemy documents (CDEC Log 01-2552-67, 02-1846-67 and 05-1704-67) captured in January and May 1967 suggest that guerrilla strength was between 150,000 and 180,000 at the outset of 1966.
- b/ "The old data divided the 100,000 to 120,000 irregulars, roughly putting one-third of them into the guerrillas and the other two-thirds into self-defense and secret self-defense personnel." - MACV briefing on Enemy Order of Battle, 24 November 1967.
- c/ See footnote d/, Table 2.

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that secret self-defense and self-defense forces still constitute two-thirds of the irregular forces, we get an estimate of about 480,000 VC/NVA, or twice the new military OB estimate. Thus the new estimate is 395,000-480,000 on a basis comparable to the old 294,000. The computations do not show that enemy strength has increased, but that previous estimates of enemy strength were too low (JX 692)

One witness explained the extent of the distribution of this Report:

"Three hundred and fifty copies of the [Southeast Asia Analysis Report] report were distributed each month to the White House, State Department, America's delegation to the Paris Peace Conference, Military Departments, CINCPAC, CIA and Saigon, as well as other offices within the Defense Department." (Thayer Aff. ¶ 4.)

b. *The SNIE gave an honest and realistic view of the enemy in the Fall of 1967.*

The purpose of the intelligence conferences in the summer of 1967 was to produce a Special National Intelligence Estimate. This was published in November 1967, after the agreements reached in Saigon were reviewed by the Board of National Estimates and the United States Intelligence Board. (JX 273)

The size of the enemy forces in South Vietnam was only one aspect of the intelligence community's "estimate" (i.e. "appraisal of the situation") that was embodied in SNIE 14.3-67. The SNIE, drafted and approved by the Board of National Estimates, stated seven conclusions at the start of its 25 pages of text. (JX 273, pp. 2-3) The overall tone of the SNIE was balanced and did not suggest that victory was "just around the corner." Among its conclusions were the following:

Manpower is a major problem confronting the communists Despite heavy infiltration from North Vietnam, the strength of Communist military forces and political organizations in South Vietnam declined in the last year.

. . . . In particular the guerrillas, now estimated to total some 70,000-90,000, have suffered a substantial reduction since the estimated peak of about early 1966.

. . . . we believe there is a fairly good chance that the overall strength and effectiveness of the military forces and the political infrastructure will continue to decline.

Communist strategy is to sustain a protracted war of attrition Our judgment is that the communists still retain adequate capabilities to support this strategy for at least another year. (JX 273, pp. 2-3)

The section on "Communist Forces" explained the estimate in detail. It explained the various categories and stated, "The contribution of these diverse elements to the Communist effort in South Vietnam differs widely in value." It pointed out that, "with the exception of the Regular forces, we have previously underestimated the strength of these elements." It summarized its conclusions on Enemy Forces:

37. In sum, the Communist military and political organization is complex, and its aggregate numerical size cannot be estimated with confidence. Moreover, any such aggregate total would be misleading since it would involve adding components that have widely different missions and degrees of skill or dedication. The VC/NVA Military Force (Main and Local forces, administrative service elements and guerrilla) can be meaningfully presented in numerical totals and, as indicated above, we estimate that this Military Force is now at least 223,000-248,000. It must be recognized, however, that this Military Force constitutes but one component of the total Communist organization. Any comprehensive judgment of Communist capabilities in South Vietnam must embrace the effectiveness of all the elements which comprise that organization, the total size of which is of course considerably greater than the figure given for the Military Force. (JX 273, SNIE 14.3-67, ¶¶ 23-24, 37)

The SNIE was reviewed by a wide range of members of the Administration and intelligence community who believed that it represented an accurate view of the situation in Vietnam.

Among the people who were satisfied with SNIE 14.3-67 were:

Richard Helms, CIA Director; (Helms Aff. ¶¶ 6, 11)

William E. Colby, the Chief of the Far East Division of the CIA; (Colby Aff. ¶ 14)

George Carver, Special Assistant for Vietnamese Affairs to the Director of Central Intelligence (Carver Dep. Tr, 598);

Paul V. Walsh, the Deputy Director in the CIA's Office of Economic Research (OER); (Walsh Aff. ¶¶ 3, 8)

Bobby Layton, analyst with the CIA's Office of National Estimates; (Layton Aff. 3/5/84 ¶ 10)

Col. Charles Morris, the MACV Director of Intelligence Production; (Morris Dep. Tr. 311)

Lt. Col. Daniel Graham, chief of MACV Current Intelligence Indications and Estimates Division; (JX 312, CINCPAC/MACV Dissent to the CIA OB Analysis, South Vietnam);

Colonel Lewington S. Ponder, Deputy Director, CICV; (Ponder Aff. ¶ 8) and

Col. Edward S. Caton, between June 1966 and June 1967, Chief, MACV Joint Intelligence Branch. (Caton Aff. ¶ 8)

CIA Director Helms has stated:

I signed SNIE 14.3-67 in my capacity as Director of Central Intelligence. I believed at that time, and I still believe, that it represented the best judgment of the members of the intelligence community, using the best available intelligence information, of the strength and capabilities of the South Vietnamese Communists in South Vietnam. (Helms Aff. ¶ 6).

Col. Lewington Ponder attended the Saigon session of the SNIE. When the CIA published the SNIE in November 1967, Ponder was Deputy Chief of CICV, which was the entity to which the various CICV lieutenants on whom defendants rely belonged. Ponder has given a sworn statement which reads:

I was present during some of the SNIE conference sessions in Saigon in September 1967. My recollection of that conference is that MACV had as good, or better, a handle on the overall total of enemy forces as anyone but beyond the category of main and local forces it was very difficult to assign levels of strength to the remaining categories with any degree of accuracy. Further, the personnel and functions of the persons in the OB categories other than main and local forces tended to overlap and duplicate. Thus, there was plenty of room for professional disagreement as to how these soft categories should be handled. Based on my experience and knowledge, I believe that the estimate of enemy strength agreed upon at the September 1967 Saigon conference was as good and reliable an estimate as the data would permit. In my opinion the facts and evidence did not support a vastly larger estimate of enemy strength. (Ponder Aff. ¶ 8)

People who did not fully agree with MACV's position and who had reservations about certain aspects of the SNIE nevertheless believed it was a satisfactory document, honestly produced, which accurately characterized the nature of the enemy threat. That, after all, was the main purpose of the SNIE. For example, Paul Walsh felt that in the SNIE 14.3-67 "the so-called

self-defense forces were accurately characterized" although "more effort should have been made to quantify them." (Walsh Aff. ¶¶ 5, 6) His affidavit continues:

The important issue in the SNIE 14.3-67 was not the size of the enemy force structure but whether the enemy had the capability to withstand the losses it was experiencing and to continue with the war. I believe that the SNIE 14.3-67 accurately and properly stated that the Communists had the capability to support a protracted war of attrition for at least another year. The SNIE 14.3-67 did not state and, in my opinion, cannot be reasonably interpreted as stating that the Communist forces were running out of men or were not able to continue the war.

The SNIE 14.3-67 represented a compromise among the various members of the intelligence community. In my experience in intelligence work, the nature of the intelligence estimative process—whether for Vietnam or for most other subjects—is to discuss differences and attempt to agree on language and judgments acceptable to all. Because of the frequently imprecise nature and the sketchiness of available intelligence information and because of differences in perspective and analysis among various member agencies of the intelligence community, there is generally a need for negotiation and compromise in the intelligence estimative process.

In my opinion, the debates about SNIE 14.3-67 among the various members of the intelligence community, including MACV and CIA, reflected a good measure of honest disagreement about methodology and approach. This is not to say that agency views were not expressed vigorously and defended doggedly. (Walsh Aff. ¶¶ 8, 9, 10)

Bobby Layton, the primary author of the SNIE, agrees. He, like Walsh, recognized the evidence on the enemy was sparse and imprecise:

The SNIE 14.3-67 was intended to provide the best estimate of the capabilities of the communists in South Vietnam. It represented an effort to arrive at an order of magnitude for communist strength and capabilities. Because the evidence on the numbers of persons in each category of the communists' military and political structure was sparse and "soft", there was a considerable margin for error in the ranges provided for the various components. The important conclusion of the SNIE 14.3-67 was that the communists had the ability to continue the war. That conclusion was quite apparent from the language of the SNIE 14.3-67. (Layton Aff. 3/5/84 ¶ 10)

The Pike Committee, also, described the results of the SNIE as a compromise:

According to Mr. Colby, the CIA had been suspicious of MACV's numerical estimate of the Vietnamese enemy since at least mid-1966. At an Order of Battle conference held in Saigon in September 1967, the differences between Washington and the field, and between CIA and MACV, were thrashed out; but according to Mr. Colby, to neither's satisfaction.

A resulting compromise represented the best resolution of MACV's preoccupation with viewing the order of battle in the classic military sense and CIA's assessment of enemy capabilities as a much broader people's war. The Special National Intelligence Estimate that emerged from this conference quantified the order of battle in MACV terms, and merely described other potential enemy forces. Categories now proposed from previous estimates of order of battle detailed as much as 200,000 irregular personnel, self [defense,] secret self-defense forces, assault [youth] and political cadre. (JX 381, Pike Committee Report, p. 18)

George Allen, Adams' mentor agreed. He told Crile in his interview that the SNIE was a "partial compromise." In a remarkable statement, Allen testified that he described the outcome as a "compromise" in a monograph he wrote for *U.S. News & World Reports* and in drafts which he prepared of an affidavit. Yet the final version of the affidavit does not call the SNIE a compromise but a "surrender". He testified that he changed his statement because defendants' lawyers persuaded him it was a surrender. (Allen Dep. Tr. 796-97)

c. President Johnson had access to the best available information.

Dr. Rostow told Wallace in his interview that rather than narrow the flow of information which the President received, he "widened out" the flow. (JX 14, Rostow CBS Interview Tr. 51) Rostow detailed the President's sources of information:

By 1967, President Johnson was receiving a voluminous flow of materials on the subject of Vietnam. These included not only analytic reports and summaries from South-East Asia, Honolulu and agencies in Washington but also cables, internal government memoranda from Saigon and Washington, captured documents and other raw data. Among the materials he received were weekly detailed cables from Ambassador Ellsworth Bunker in Saigon, which we considered then, and I consider now, to be remarkably accurate and reliable accounts of what occurred. The cables included personal over-all evaluation by the Ambassador plus analyses by the country team as a whole of political, economic and diplomatic affairs as well as the state of the war. President Johnson read these materials voraciously. For example, it was his practice to retire to his room at about 11:00 p.m. and read until 2:00 or 3:00 in the morning. His night reading usually included Vietnam materials. (Rostow Aff. ¶ 2)¹⁷

Rostow said the MACV Order of Battle Summaries were only one of many documents on which he and the President relied for information on enemy capabilities.

Among the enormous number of documents that President Johnson and I would receive were the MACV Order of Battle Summaries. This document was one of a large number of documents that related to the enemy and its capability. To my knowledge the President—and I—did not rely on any single type of document in our analysis of the war. We relied on the vast number of reports and other documents that we were receiving, paying particular attention to changes in the trends reflected by the documents. We understood and recognized that the Order of Battle Summary was essentially a bookkeeping document that utilized only a portion of the intelligence sources available to us. In addition, we recognized that the Order of Battle Summary had an inherent time lag because its rigorous method of compilation required the accumulation of certain types of data (such as captured enemy documents, prisoners of war, etc.) before an enemy unit could be included. (Rostow Aff. ¶ 5)

¹⁷ See pp. 220-22.

Enemy strength figures played a relatively minor role in the President's decision-making. He formed his view on the war by observing how a great many indicators, no one of which was decisive, were moving. (Rostow Aff. ¶¶ 2, 5)

Professor Roche, Special Consultant to the President and another of the handful of people who worked very closely with the President, called the idea that the President could be deceived "preposterous." (Roche Affidavit ¶ 5) He has also spoken out on the subject of the 1967 order of battle controversy:

I read carefully the transcript of "The Uncounted Enemy" and found it on the basis of my personal knowledge, to be essentially fictitious.

* * *

I and others in the White House and Executive branch were familiar with the order of battle controversy in mid to late 1967. There was an arcane quality about much of it which reminded me of the disputes among 13th Century Scholastics: how does one count the guerrillas child, who once a month goes out to plant punji sticks? The American taste for exactitude led to esoteric efforts to quantify the unquantifiable. But the point must be emphasized that this was not deceitful in purpose: the inventors of the Hamlet Evaluation Scale (HES) actually believed their own press releases. My views on these exercises, often pungent, were well known to the President, Walt Rostow, William P. Bundy and, *a fortiori*, to the numbers-worshippers at the Department of Defense. The President, in fact, encouraged me to invigorate the workings of the bureaucracy to help ensure that he was not being short-circuited.

Looked at in perspective the differences were not crucial. After all, the SNIE estimate for current strength of NVA and VC main and local force regulars was 1300 higher than MACV's (as of October 30, 1967). These trained fighters were the heart of the matter—not the number of Vietnamese who might be changing tires on the Ho Chi Minh Trail. From my viewpoint, the most important question was that one set of criteria with common base-points be employed by all hands. Only in this fashion could the President get meaningful data, and be protected from the charge of "cooking the figures" because some bureaucrats considered, say, kids planting punji sticks comparable to PAVN sappers. (I recall we got savaged by the press on one occasion because the figure for combat aircraft in Vietnam provided by DoD included only fixed-wing planes. It was not deliberate—DoD was not out to sandbag the Commander-in-Chief—but it exacerbated the "credibility" problem.) (Roche Aff. ¶¶ 4, 6-7)

d. *President Johnson did not pressure people to provide him with good news.*

The Broadcast said that President Johnson placed pressure on General Westmoreland to report good news.

WALLACE: Was President Johnson a difficult man to feed bad news about the war?

GENERAL WESTMORELAND: Well, Mike, you know as well as I do that people in senior positions love good news. Politicians or leaders in countries are inclined to—to shoot the messenger that brings the bad news. Certainly he wanted bad news—like a hole in the head. (JX 1, p.3).

When Wallace interviewed Rostow he asked him “how much” pressure there was on people in Saigon “to produce good news or reports of good news,” Rostow answered:

There was no pressure on them to produce reports of good news. (JX 14, Rostow CBS Interview Tr. p. 24)

According to Crile's interview notes, Secretary McNamara told him:

W [Westmoreland] not under pressure to report good news on war. (JX 784 Crile 7/2/81 notes of interview with McNamara)

Secretary McNamara's affidavit similarly states:

I told Mr. Crile that General Westmoreland was not under any pressure to deliver good news on the war. (McNamara Aff. ¶ 8)

John P. Roche reported directly to the President. Professor Roche had been Professor of History at Brandeis University and National Chairman of the Americans for Democratic Action before he served in the White House. Professor Roche has submitted an affidavit which quotes from a pre-Broadcast article of his that debunks the idea that the President wanted to be fed “good news”:

As indicated in # 3 above, the premise of the program was simply preposterous, namely, that President Johnson could be blind-sided on a subject of overpowering concern to him. He constantly sought new viewpoints and, in candor, was a prime security risk: he was quite capable of asking the opinion of the White House barber on some “Top Secret” project. My views are summarized in an article I wrote for the *New York Times*, reprinted in my book, *Sentenced to Life*, at pages 86-87.

Several chroniclers emphasize President Johnson's “isolation” and the extent to which his “courtiers” protected him from reality. Translated, this means, “Why didn't Lyndon talk to me?” Sim-

ilarly, we are told that no one dared to challenge the President on his Vietnam policies, that he went up in smoke if anyone suggested a bombing halt. Translated, this means, "I didn't dare argue because he might have fired me."

Now it so happens that I opposed the bombing strategy against North Vietnam from the day it was inaugurated, wrote an article condemning it which appeared in the spring of 1965 in the *Washington Post* and elsewhere, and never changed my views. Note my formulation: I supported the defense of South Vietnam but opposed the whole notion of a cut-rate, airpower war. (I did not see it as a moral issue: sending bombs by air mail is no less moral than employing parcel post, as the North Vietnamese did.) President Johnson was fully aware of my position, which I called to his attention about once a month in various contexts. Indeed, on several occasions he asked me to send copies of my memorandums to Secretary of State Dean Rusk and Secretary of Defense Robert S. McNamara. As a courtesy I always sent copies to Walt Rostow, but since I neglected to send any to the *New York Times*, (I was not working for them), it was officially true that nobody in the administration ever questioned the President's policies. (Roche Aff. ¶ 5)¹⁸

The two sources for defendants' statement that the President pressured General Westmoreland for good news were Major Cooley and, it was made to appear, General Westmoreland himself. Major Cooley conceded in his deposition that what General Westmoreland actually said in his November 21, 1967 speech did not agree with what Cooley said on the Broadcast (Cooley Dep. Tr. 211), that he does not know where he got the statement he made on the Broadcast, and that in his CBS interview he had just "imaged a feeling" (*sic*) that he had in 1967. (*Id.*, p. 211)

Defendants fabricated General Westmoreland's statement by simply editing out the end of it:

GENERAL WESTMORELAND: Well, Mike, you know as well as I do that people in senior positions love good news, and they don't like bad news, and after all, it's well recognized that's so—politicians or leaders in countries are inclined to—to shoot the messenger that brings the bad news. Certainly he wanted bad news—like a hole in the head. *He welcomed good news. But he—he was given both the good and the bad, but he was inclined to accentuate the positive.* (JX 349, Westmoreland CBS Interview Tr. pp. 7-8).

The italicized portions did not appear in the Broadcast.

¹⁸ The exhibits in this case include the Bunker cables immediately preceding his visit to Washington in November 1967 and General Westmoreland's monthly reports that have been located. They consist of ones from the second half of 1967. They give both "good news" and "bad news." They do not mention overall OB totals.

11.

BROADCAST

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. (JX 1, p. 16)

Defendants admit the media were briefed on the enemy Order of Battle in a number of press conferences beginning in the late Fall of 1967. (CBS Mem. pp. 134-39)

a. *Drafting the OB Press Briefing.*

After MACV and the CIA agreed on the SNIE, Carver briefed Ambassador Bunker and CINCPAC and returned to Washington, where he briefed Director Helms. Ambassador Bunker cabled Washington the day after Carver briefed him:

1. It is true that after very constructive discussions and study here, Washington and Saigon have reconciled enemy Order of Battle figures. Westy and I are both happy with the results and believe that this have [sic] been a most successful and useful exercise.

2. We also agree with you absolutely that no backgrounder would be appropriate until you, Bob McNamara, Dick Helms, and others there have had an opportunity to go over the figures and to make sure that we are all on the same wave length. It is my opinion that we should take extreme care in the preparation of background material and that we should both agreed [sic] as to content and timing before any public presentation of figures is made. (JX 698, Bunker 9/16/67 cable to White House)

The Department of Defense—not MACV—prepared the initial draft of the proposed press briefing. (Henkin Aff. ¶ 4) The Defense Department public affairs office sent a first draft dated September 27, 1967, to MACV, George Carver, DIA, the State Department and CINCPAC. An October 10 draft of the press briefing was sent to DIA, CIA and MACV. (Henkin Aff. ¶ 5)

Some people in CIA, especially Paul Walsh, Deputy Director of the Office of Economic Research, objected to the way the draft briefing described the SD and SSD. His affidavit explains:

In an October 11, 1967 memo to George Carver, I referred to a draft statement of a proposed MACV press briefing as "one of the

greatest snow jobs since Potemkin constructed his village." That statement was hyperbolic and was intended to convey my concern and frustration with the way MACV was handling the subject of enemy strengths. My concern with the proposed press briefing was the way in which the category for self-defense or militia forces was described. I was not concerned that the category for self-defense or militia forces was not included in the military order of battle because that category was accurately described in the SNIE 14.3-67 as part of the entire Communist threat, which encompassed the military and political apparatus. (Walsh Aff. ¶ 12)

A later draft met most, if not all, of Walsh's objections. His October 23, 1967, memo stated:

1. I have reviewed the revised DOD briefing and find it a distinct improvement over the first effort. *Most* of the CIA reactions to the first draft have been adequately met. There are, however, some respects in which the briefing could be further improved.
2. The tone of the briefing still implies a degree of confidence and certainty about OB numbers that is not justified. I believe the briefing, if it is given, should be more forthright, in acknowledging that the numbers presented are highly perishable and that they will be subjected to continuous review and frequent changes.
3. The explanation of the derivation of the political cadres is still the same as that objected to in our consideration of the first draft.
4. The treatment of irregular forces is still unsatisfactory and we should encourage a return to the characterization of these forces as agreed at Saigon. This seems more important—and judicious—now that we have received some reports of the possible meshing of guerrilla and self-defense forces.
5. Finally, in view of the vulnerability of almost all of the OB figures, I would recommend that the Agency continue to disassociate itself from the briefing. (JX 546) (emphasis added)

The press document went through a number of additional drafts before November 24, 1967. The final version was the only one briefed.

(b) *Press Briefings—mid-November 1967.*

Defendants cite a number of news stories from mid-November 1967 which they claim are wrong and accuse General Westmoreland of lying to the press without addressing whether the press reported General Westmoreland's statements accurately. (See CBS Mem. 136-39)

The most important press briefing on the SNIE, however, was held simultaneously in Saigon and at the Pentagon on November 24, 1967. Defendant Adams called the November 24, 1967 press briefing accurate—"a relatively straight fwd [forward] reflection of [NIE] 14.3." (JX 626, Adams' notes, p. 39475) News reports accurately reflected the press briefings, including one in *The New Republic* (JX 287, 12/16/67), and another on the front page of the *New York Times* (JX 387, 12/20/67) One of defendants' witnesses, Greg Rushford, a Pike Committee investigator, praised these stories as accurate. (Rushford Dep. Tr. 283-85) Defendant Adams helped the author of *The New Republic* article to write it. (JX 626, Adams' notes, p. 39475).

(1) *Westmoreland's November 11, 1967 Press Briefing.*

On November 11, 1967, General Westmoreland spoke to newsmen in Saigon along with his J2, General Phillip Davidson, John Chaisson, the head of the MACV Combat Operations Center, and Lieutenant Colonel Benedict, the G2 (intelligence officer) of the 1st Infantry Division. (JX 915) The briefing and the questions and answers that followed ranged over many topics. In the main, the questions were directed to operational matters, *i.e.*, the enemy's likely course of action and U.S. combat plans. General Westmoreland's staff had given him a chart which showed enemy strength in four categories from 1965 through 1967; NVA regulars, VC regulars, administrative services and *guerrillas*. A version of the chart appears on page 140 of the CBS Memorandum. It was prepared by DIA to portray what the enemy would have been in the four categories one and two years earlier. None of the totals included SDs, SSDs or VCI. Defendants' claim is simply false. (CBS Mem. 140-41) General Westmoreland referred to the chart, but at no time during the session did General Westmoreland use or refer to "irregulars," a category well-known to be comprised of *guerrillas*, and SD/SSD; he limited himself to comments on "*guerrillas*." He also stated at the session that the figures he was using "do not include the political infrastructure." (JX 915, p. 7)

General Westmoreland did not suggest an American victory was on the horizon. At the end of the session, a reporter asked General Westmoreland the following questions and he gave the following responses:

- Q. General, do you see a time within a year when it would not hurt our military effort to reduce the number of troops we have in Vietnam?
- A. Do I foresee this at any specific time in the future?

Q. Yes within a year. Do you see it at any time?

A. I would say it is theoretically possible, of course, if this was an objective; but as to when this will occur, I will refrain from speculating. Thank you gentlemen. (JX 915, pp. 21-22)

(2) *The November 18 Washington Daily News Story.*

General Westmoreland gave an interview to a now-deceased reporter in Washington on November 17, for the now-defunct newspaper, the *Washington Daily News*. General Westmoreland did not use figures in discussing the state of the Vietnam war. The article, which bore the headline, "Westy says: The Enemy Is Running Out of Men", stated that General Westmoreland had "reportedly told Congress that it might be possible to start phasing out American forces within two years." "Actually," the story went on, "General Westmoreland used the term 'phasing down', rather than 'phasing out.'" (JX 274)

General Westmoreland has testified that he did not say "the enemy is running out of men." (Westmoreland Dep. Tr. 615-17). The phrase is quite different in tone than any other statement he made during the period, and the the phrase is inconsistent with General Westmoreland's remark reported in the same article that it "*might be possible* to start phasing down American forces within two years." Defendants chose the *Washington Daily News* headline to portray General Westmoreland's position. General Westmoreland did not write the headline.

(3) *November 19 "Meet the Press" Appearance.*

On November 19, 1967, General Westmoreland appeared on "Meet the Press" with Ambassador Bunker. General Westmoreland made the statement, among others, that the U.S. was winning a war of attrition. When asked to explain, Westmoreland said:

We have evidence through our intelligence that the enemy has *very serious manpower problems in the South*. He is unable to recruit the guerrillas that he needs. *He is having destroyed on the battlefield literally thousands of guerrillas on a monthly basis*. This manpower cannot be replaced. He has therefore had to resort to moving men down from North Vietnam, and we have intelligence that he's having manpower problems now in the north. . . . (JX 276, transcript of "Meet the Press") (emphasis added)

All of these statements were in accordance with the SNIE's conclusions (see JX 273, pp. 2-3) and the belief, shared by Adams, that the Viet Cong guerrillas were declining. (Adams Dep. Tr. 290)

(4) *November 21 National Press Club Appearance.*

At the National Press Club on November 21, 1967, General Westmoreland gave an address cited both by CBS and some of its witnesses for the proposition that General Westmoreland was unduly optimistic in the Fall of 1967. In this address, General Westmoreland divided the war into four Phases. General Westmoreland noted that the U.S. had completed Phases I and II, and begun parts of Phase III, but the Phase III objective would be attained in 1968. Only sometime *after* 1968, would the war enter Phase IV.

Now for Phase 4, the final phase. That period will see the conclusion of our plan to weaken the enemy and strengthen our friends until we become superfluous. The object will be assuring the world that guerrilla warfare and invasion do not pay as a new means for communist aggression. (JX 360, Westmoreland 11/21/67 National Press Club Speech, p. 7)

A question and answer session followed. General Westmoreland expanded on his concept of a four phase war:

My statement is to the effect, that it is *conceivable* to me that within two years or less it will be possible for us to phase down our level of commitment and turn more of the burden of the war over to the Vietnamese armed forces who are improving and who, I believe, will be prepared to assume this greater burden. Now, I may point out that at the outset this may be token, but hopefully progressive and certainly we are preparing our plans to make it progressive. (JX 360, p. 9)

General Westmoreland did *not* give specific enemy strength figures.

(5) *November 22 Pentagon Press Briefing.*

On November 22, 1967, General Westmoreland held a press conference in the Pentagon. The next day, the *New York Times* headline stated "Westmoreland Sure of Victory, Calls Dak To Battle Start of 'Great Defeat' For Foe." The text of the article shows that General Westmoreland was confident about the results of the battle at Dak To but was not commenting on the war as a whole. (JX 360A *New York Times* 11/23/67 article)

General Westmoreland again used the term "guerrillas", not "irregulars," and pointed out that figures he was using did not include the political infrastructure. General Westmoreland again made no more than a claim

that steady, unspectacular and slow progress was being made and refused to hold out any higher expectations.

The chart that General Westmoreland used to show how enemy strength had risen from August 1965 through August 1966 and had declined from August 1966 through November 1967 had the following categories: NVA Main Force, VC Main and Local, a Sub-total, Administrative Services and Guerrillas.

As a CIA memorandum of November 22, 1967 observed, when referring to 242,000 enemy, General Westmoreland "was talking about the combat elements of the enemy" not the political infrastructure. The estimates that were listed for earlier periods in the war were for the same categories of enemy as referred to in the 242,000 estimate. (JX 615) At the press conference, General Westmoreland also said "there is a study under way, not yet fully complete, in an attempt to assess enemy strength more accurately." (JX277A, Press Item for the DCI, 11/22/67) The separation of combat elements from noncombatants such as the SD and SSD was a guiding principle in MACV's revision of the order of battle.

c. November 24, 1967 Press Briefing

On November 24, 1967, the Pentagon and MACV simultaneously released a press statement and provided a press briefing on the change in the format and estimates in the OB. Later drafts of this briefing were circulated widely within the Government, including the White House. Assistant Secretary of State William Bundy made comments on a November 6 draft. A copy of the November 6 draft is in the archives of the Lyndon Baines Johnson Library in Austin, Texas. (See JX 277 and 878).

Defendants barely mention this briefing in their 379-page memorandum. They focus on superceded drafts.

The press briefing made the following points:

The new figures we are releasing today cannot and should not be compared with other than the previously issued figures for main and local forces since there is now a new expanded intelligence base.

We currently estimate a total of 118,000 regular forces opposing us.

[We have] uncovered documentation of larger numbers of these non-combat military people [administrative services] . . . [W]e had no record of many of these. The old data indicated an estimated 25,000 in this category; our new estimates show that there are at least 35,000 to 40,000 full-time personnel.

The old data divided the 100,000 to 120,000 irregulars roughly putting one-third of them into the guerrilla subdivision and the other two thirds into self-defense and/or secret self-defense personnel. . . . [Guerrillas] probably totalled well over 100,000 a year ago and some captured VC documents suggest that the early 1966 guerrilla strength was in the 150,000 range. Our recent studies put the probable guerrilla strength today between 70,000 and 90,000.

Self-defense elements, operating at all levels from village to region, are home guards, primarily for the control and light defense of VC-held areas. They are fixed; they perform most of their duties part time; they include personnel of all ages; and they have a high percentage of females. Some are lightly armed; many are not armed at all Although they cause some casualties and some damage, they do not represent a continual or dependable force and do not form a valid part of the enemy's military force. We have, therefore, removed them from the Order of Battle.

The political cadre were previously included in the total enemy strength figures. From now on we will carry an estimate of these cadres, but they will not be carried as part of the total military strength. . . . For a long time we have carried a figure of 39,000-40,000 for this political infrastructure. . . . Our increased intelligence now permits us to focus on the infrastructure in much more detail and we have modified that GVN estimate to a figure of 75,000 to 85,000. . . . The function of the political cadre is not military. Therefore, we will no longer carry them in our military Order of Battle. (JX 277)

General Winant Sidle, who was on Adams' list of prospective witnesses but to whom defendants did not speak until 24 hours before the Broadcast when he called CBS, gave the press briefing in Saigon. His affidavit reads:

By the time I briefed the press on November 24, 1967, I believed the briefing accurately conveyed what had taken place with respect to the change in categories of the enemy and estimates of the number of enemy within the various categories. In addition, I had spoken on "background" with various members of the Saigon press corps about the enemy order of battle on several occasions, and a number of members of the media appeared to understand and agree with the overall concept.

I gave the press briefing and answered questions. I tried to explain the changes in the format of the OB reports. While I do not recall individual questions at this point more than 16 years afterward, I remember that I answered questions and that I felt that many of the media representatives who attended the briefing understood what changes were made in the order of battle reports and why.

I strongly believe there was no conspiracy or effort to deceive the press. We made a persistent effort—not always successful—to convey to the media our genuinely held views on the overall progress we felt we were making during the time I served in Vietnam. (Sidle Aff. ¶¶ 6, 7, 8)

Thus, on November 24, 1967, eleven days after CIA Director Helms signed the SNIE, and ten weeks before the Tet offensive, our government issued a press release summarizing portions of this highly classified document. When this briefing had been cleared by the Administration, General Westmoreland's staff released the new figures; they could not do so before. (Westmoreland Dep. Tr. 412; JX 832, 10/23-10/25/67 MACV briefing to Preparedness Investigating Subcommittee representative).

d. *News Coverage of the November 24 Press Briefing.*

Defendants cite two articles which appeared after the November 24 press briefing in which reporters got the briefing's facts wrong, and then argue that the press briefing was misleading. Other reporters covering the story got their facts right, including reporters for the *Washington Post* on November 25, 1967 (JX 835), *The New Republic* dated December 16, 1967 (JX 287), and the *New York Times* in a front page story on December 20, 1967. (JX 387)

The *New Republic* article, written by Andrew Hamilton, is particularly noteworthy. Adams helped Hamilton write the story, although Adams testified at his deposition that he did not have to tell Hamilton anything that was not in MACV's straight-forward press briefing. (Adams Dep. Tr 157-59)

Set forth at some length below is Hamilton's account of the MACV briefing.

The US command in Saigon made public some results of the study, repeating the claim that communist "armed strength" in the South had declined by over 40,000 in the past year. *But the study also made it clear that the total number of communist troops, militia and agents in the South is much larger than previously suspected. It could be over 400,000 at present.*

The new study was based in large part on communist documents captured in the past two years. It made the largest changes in the estimated number of guerrillas and political cadre. *The old figures placed the number of local and regional guerrillas at somewhere between 33,000 and 40,000. The new study puts the number between 70,000 and 90,000, adding that the guerrillas*

"probably numbered well over 100,000 a year ago." The old figures placed the size of the communist political cadre in the South—what Saigon calls the "infrastructure" or the "shadow government"—at about 40,000. The new study estimates that these are 75,000 to 85,000.

Further, the old figures put the number of North Vietnamese and Viet Cong combat troops in the "main force" communist battalions and regiments at about 113,000 men. The new study says this number was actually as high as 127,000 men in 1966, and is now about 118,000. *The old figure estimated that the communists had 25,000 administrative and support troops. The new study says the number is actually between 35,000 and 40,000.*

In citing a figure for "armed strength of the Viet Cong and North Vietnamese," the new study includes main force troops, guerrillas and administrative personnel, but not political cadre. *The new study drops altogether the estimates for two other groups of personnel that, along with the political cadre, were part of the old overall figure for communist strength of 297,000. These are the "self-defense forces" and the "secret self-defense forces." The former were described as "operating at all levels from village to region" as "home guards, primarily for the control and light defense of VC-held areas." They were said to include "personnel of all ages" and to have "a higher percentage of females." The latter category was described as "essentially low-level fifth columnists," used for "information collection." Although dismissing these groups from the official "order of battle," the study noted that "they cause casualties and some damage" and form an intelligence network and a "base for recruitment as well as for political and logistical support work." The old estimates set the number of these harassing agents and home guards somewhat arbitrarily, at up to 80,000. The odds are strong that the actual number is much higher. But even if one accepts the old number and adds in the new estimates for the other components of communist strength in South Vietnam, the total comes to over 400,000 even after subtracting the losses cited by Westmoreland. This is 30 percent higher than the old estimate. (JX 287, 12/16/67, The New Republic) (emphasis added)*

e. General Westmoreland told the truth to Congress

Congress had numerous sources of information in addition to General Westmoreland. The record reflects the following:

(1) MACV J2 briefed visiting Congressmen with preliminary higher estimates for political cadre as early as January 1967, according to defendant Adams' notes. Adams' notes show that MACV J2 briefed them with estimates of 90,000 to 120,000 political cadre. (JX 916, Adams Political Order of Battle Chron.)

(2) On April 27, 1967, General Westmoreland addressed a joint session of Congress. His remarks are a matter of public record; they do not reflect any numerical estimate of enemy manpower or reference to killing more enemy than the enemy was replacing.¹⁹ Rather, General Westmoreland said: "Backed at home by resolve, confidence, patience, determination and continued support, we will prevail in Vietnam over the Communist aggressor."²⁰ (JX 236, Westmoreland 4/28/67 address to Congress, p. 6; JX 1, p. 3)

(3) On June 28, 1967, General Davidson, assisted by Col. Hawkins and Col. Morris, briefed the Minority Counsel and Chief Investigator of the Senate Armed Services Committee's Preparedness Subcommittee in Saigon. MACV told them that the estimates of combat troops were the only ones that had periodically changed and that the estimates of irregulars and political cadre "will not change until we complete a new study on them." (JX 651)

(4) On September 15, 1967, General Westmoreland met with Senator Stuart Symington, a member of the Senate Foreign Relations Committee, and told him "it was not realistic to expect the enemy to roll over and play dead after one year of pressure." (JX 912 Westmoreland History Notes, 9/15/67)

(5) On October 23 and 25, 1967, MACV J2 briefed staff members of the Preparedness Investigating Subcommittee, Senate Committee on Armed Forces, and stated, "We have been conducting a detailed review of the overall strength of enemy forces, and the results should become available soon." (JX 832, p. 3) General Davidson added "... the new figures are significant departures from these. We can't release the new figures until they have been cleared in Washington That is why we held off." (JX 832, Summary of Questions and Answers, p. 2) In October 1967, the CIA briefed Congress telling it that the enemy militia force might have numbered 150,000 in 1966. (JX 311F, William Colby Pike Committee Testimony, p. 1696)

(6) On and about November 20, 1967, General Westmoreland briefed the President, the Secretary of Defense, Joint Chiefs of Staff and the House Armed Services Committee. General Westmoreland's notes for this briefing read in part:

7. Impact of our strategy on enemy to date:
 - Guerrilla serious attrition. Recruits are hard to come by (Note recruiting difficulties in Vinh Long).

¹⁹ The LBJ Library voluntarily supplied this document upon request.

²⁰ Defendants do not cite the official transcript of General Westmoreland's remarks, but instead an affidavit by writer David Halberstam who swore:

We have finally reached the crossover point, Westmoreland claimed, we are killing more men than the enemy could replace (CBS Memo 42)

That language does not appear in the transcript of his remarks.

- Food is a problem. (He has had to buy from Cambodia).
- Main forces are being driven into border areas without seriously weakening our military forces in populated areas.
- Major infiltration by sea has been denied (Market Time), forcing him to use the long land route through Laos.
- Large quantities of supplies are being destroyed by our air campaign and ground operations into his base areas.
- North Vietnam has been force[d] to take on more and more of the war and to supply unexpected quantities of manpower to keep her ranks filled, her lines of communication open, and to man her elaborate air defense System. There is evidence of a manpower problem (POW interrogations—Loc Ninh—Binh Dinh—refer to special cards).
- Roads are being opened—commerce is beginning to flow.
- Vietnamese Armed Forces are steadily becoming more professional, self-confident, and effective.
- Political progress has been made—some initial steps have been taken to achieve social reforms.
- In summary, for the enemy—his planned cheap war of so-called “National Liberation” is now enormously expensive—although we have had real pressure on the enemy for little more than one year.

8. Prospects for the future:

- Present trends should continue at an accelerated rate, providing we keep up the pressure, to include the bombing of the North.
- In approximately two years or less the Vietnamese Armed Forces should be ready to take over an increasing share of the war thereby permitting us to start phasing down the level of our effort.
- In summary, we have the capacity to progressively weaken the enemy and strengthen the GVN so that our commitment can be gradually reduced. (JX 283, Westmoreland's Notes for Talk with the President, November 1967)

Plaintiff does not know which of the other documents that explained the changes in the MACV OB were supplied to Congress—the SNIE itself, the November 24, 1967 MACV-DOD press briefing, the December 1967 Southeast Asia Analysis Report. Presumably, some members of Congress read the November 25, 1967 *Washington Post*, December 16, 1967 *New Republic*, or the December 20, 1967 *New York Times* stories on the changes in the OB. (See Plates 11 A-D).

Some certainly read the 1967 Congressional Quarterly Almanac, which read in part:

"Communists Forces. The U.S. Military Assistance Command in Viet Nam (MACV) estimated in November that the Communist 'Order of Battle' in South Viet Nam in 1967 consisted of up to 248,000 full-time soldiers and guerrillas and nearly an equal number of political agents, fifth columnists, militia and other paramilitary resources. This estimate, based on new information, put Communist strength 40 percent to 60 percent higher than the 300,000 previously ascribed to the other side. The new estimates nearly doubled the guerrilla and para-military manpower credited to the Viet Cong. This variance and the wide range in the new estimates (418,000 to 483,000) underlined the uncertainty of the intelligence process in Viet Nam, an uncertainty which hampered allied operations. The MACV estimates broke down as follows: 118,000 regular 'main force' troops, organized by regiments and divisions, over half of whom were North Vietnamese; 70,000 to 90,000 well-armed full-time guerrillas, organized into local squads and platoons, district companies and provincial battallions; 35,000 to 40,000 full-time administrative and logistics troops; 75,000 to 85,000 full-time political cadres; and 120,000 to 150,000 'self-defense' and 'secret self-defense' personnel, local militia, fifth columnists and other part-time help, some armed and some not." (JX 834, p. 920)

12.

BROADCAST:

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. (JX 1, pp. 16-19)

FACTS:

Defendants relied for this claim on misstatements General Westmoreland made at his interview (which he corrected in a letter to defendant Wallace soon after), and on certain junior officers.

The Honolulu Conference Report defined infiltration to mean the entry of North Vietnamese soldiers in units or as replacement personnel for units already located in South Vietnam. (JX 227, Honolulu Conference Report, p. B-7) However, the term was sometimes restricted to enemy entering South Vietnam as replacement personnel for enemy units already in the

	CIA JUNE DRAFT OF SNIE	EARLY 8/67 MACV POSITION	SNIE	OASD (SA) NEW ESTIMATE "TOTAL OB"	NYT 12/20/67
MAIN & LOCAL	120,000	120,000	120,000	116,552	118,000
ADMINISTRATIVE SERVICES	10,000 to 100,000	17,000 to 35,000	15,000 to 40,000	38,000	35,000 to 40,000
GUERRILLAS	50,000 to 100,000	65,200	60,000 to 90,000	81,300	70,000 to 90,000
POLITICAL CADRE	10,000 to 20,000	83,000 to 92,000	75,000 to 85,000	84,000	75,000 to 85,000
SELF-DEFENSE & SECRET SELF-DEFENSE	10,000 to 125,000	17,900	17,900	75,173 to 162,600	120,000 to 150,000

KEY

Initial CIA position—Reflected in the June draft of SNIE 14.3-67. (JX 244)

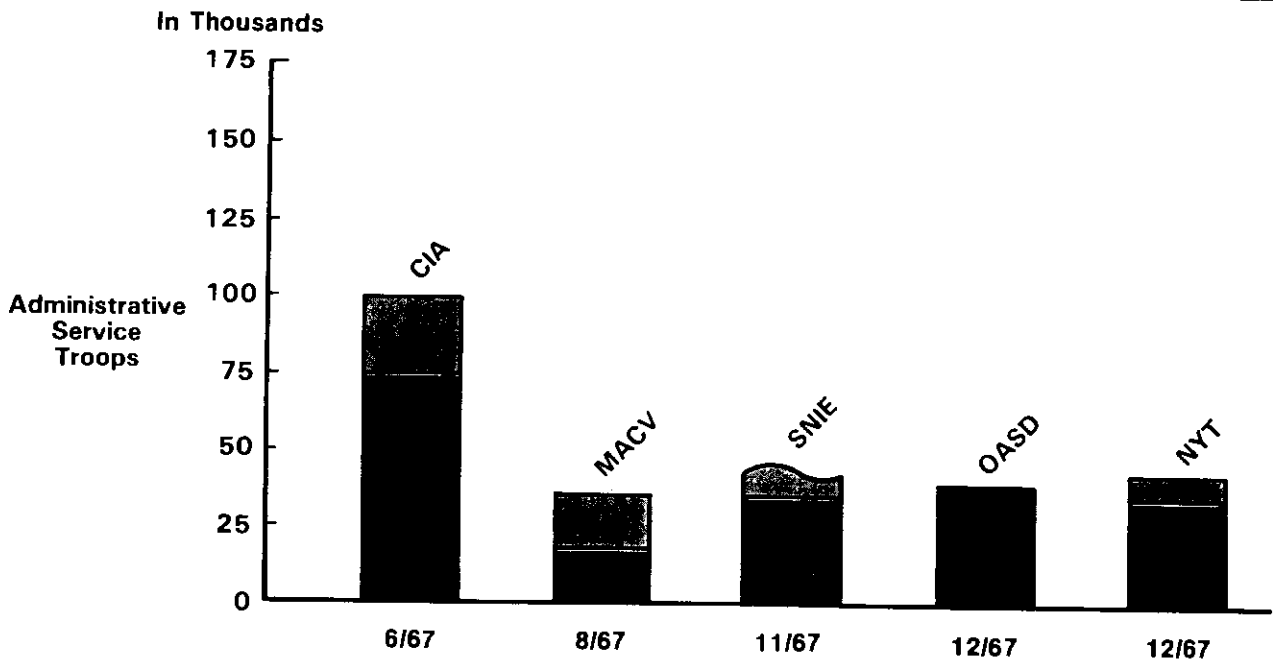
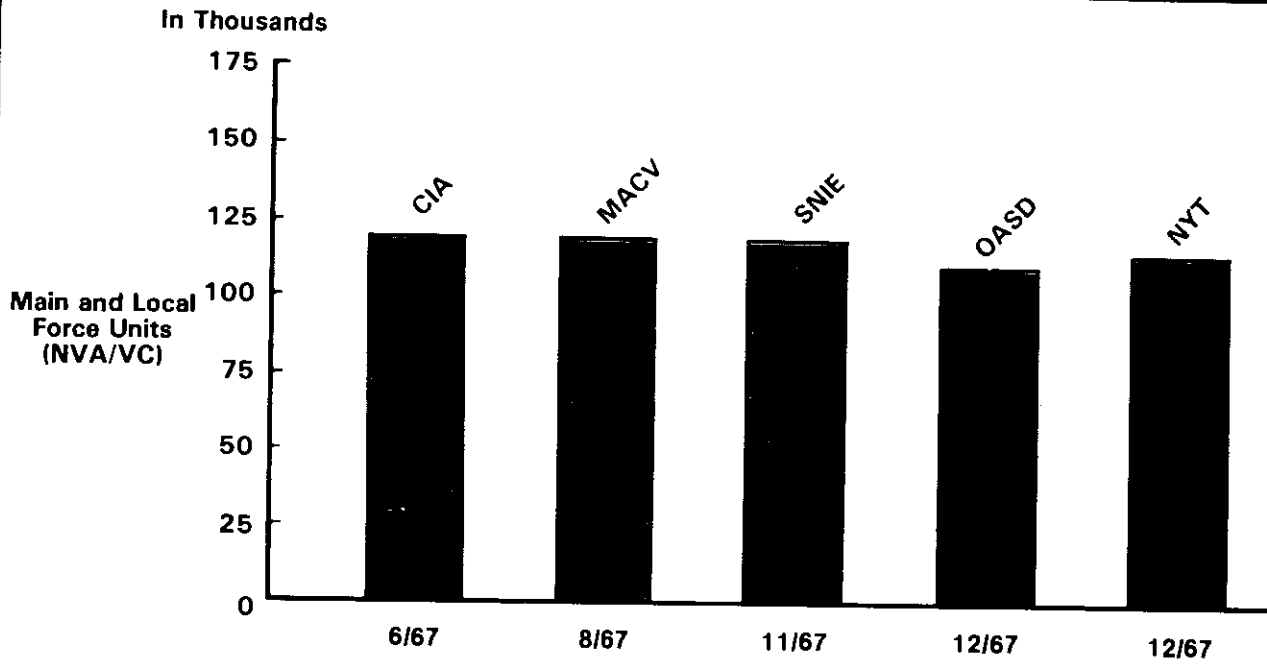
Early MACV position—Reflected in the Hawkins Vu-Graphs presented at August 1967 Langley session of SNIE 14.3-67. (JX 248)

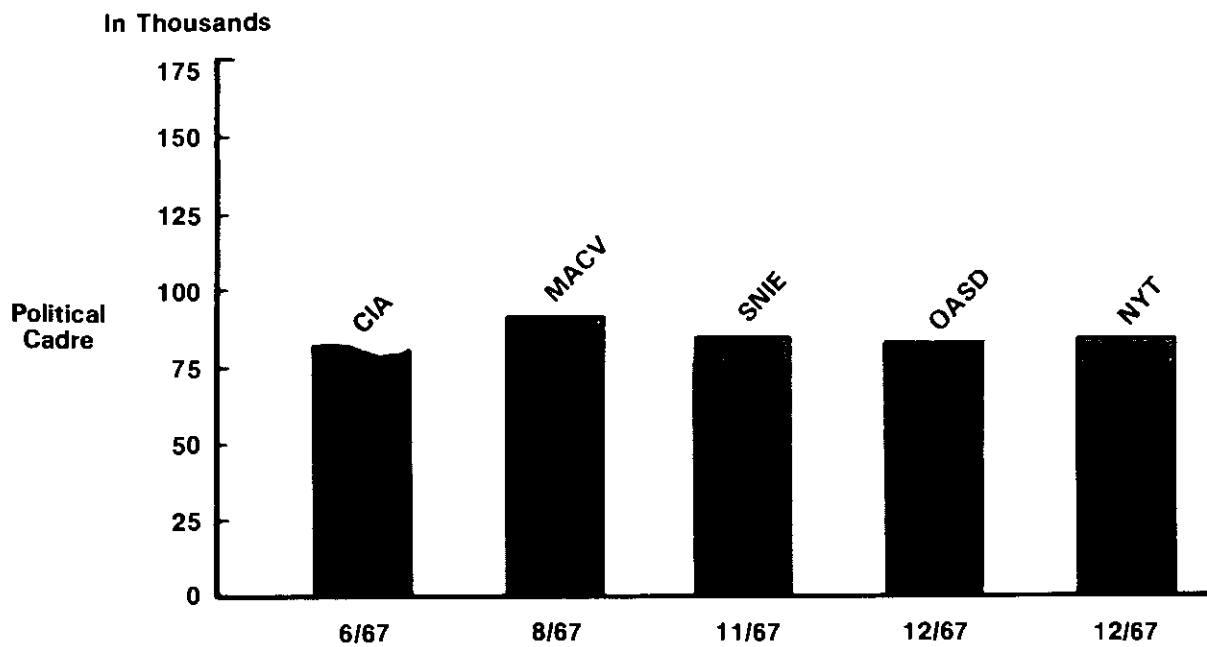
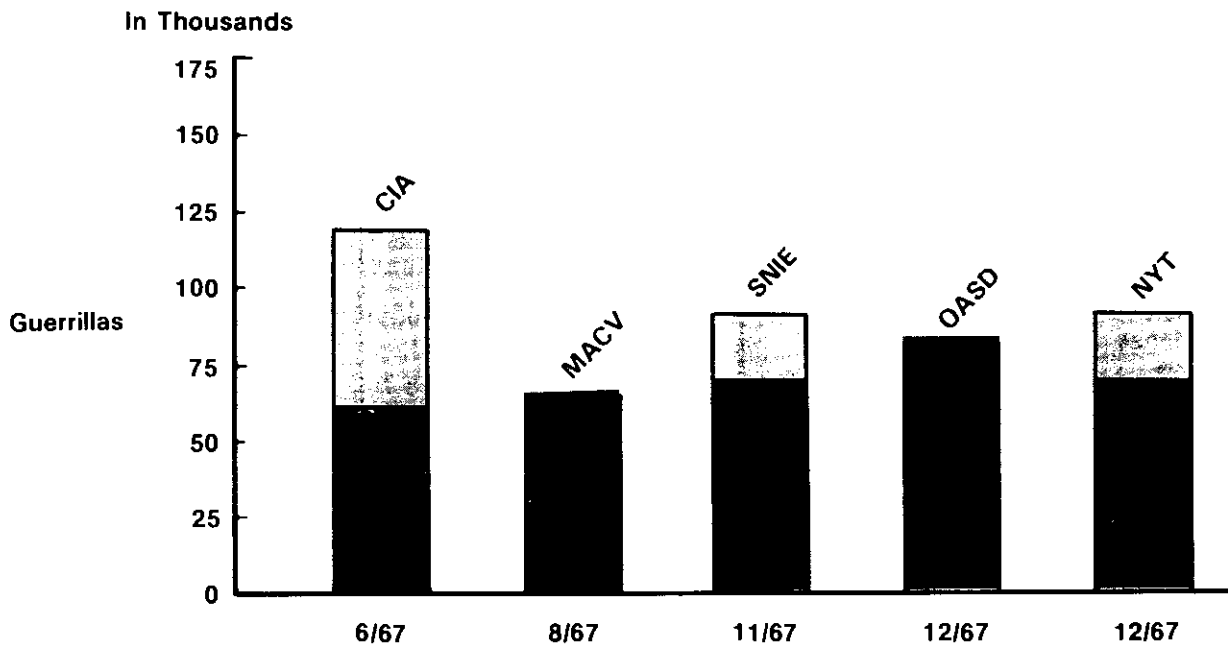
SNIE—Estimates contained in SNIE 14.3-67 (see footnote on self-defense forces) dated November 13, 1967. (JX 273)

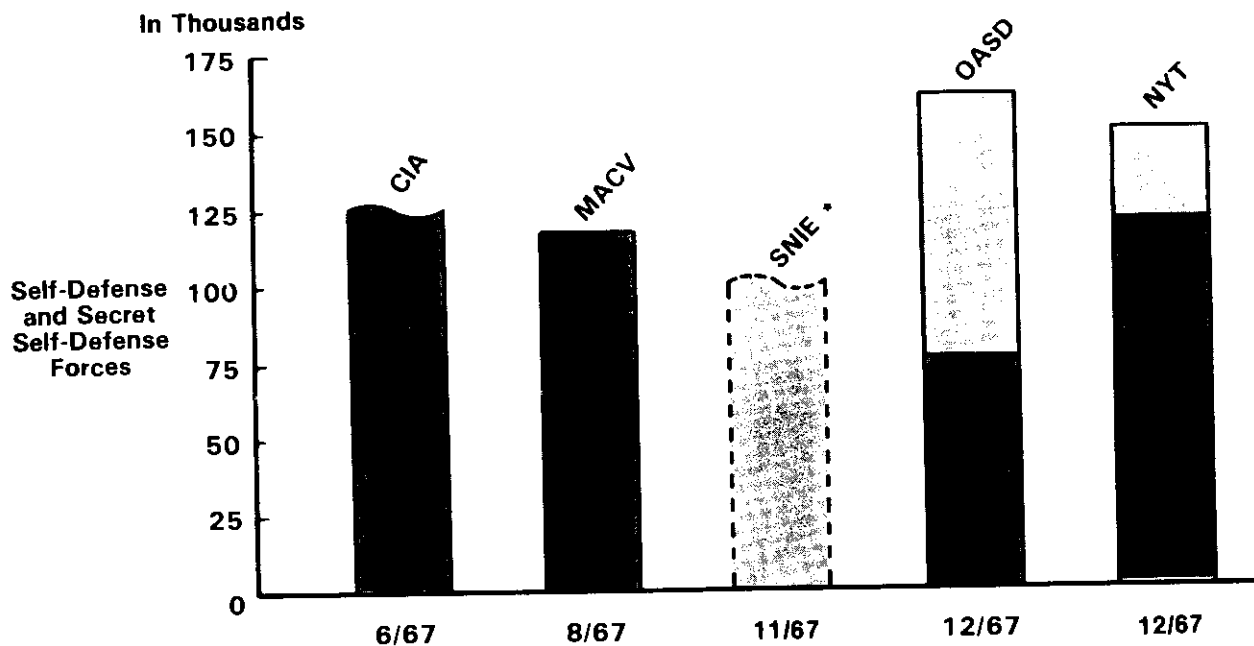
OASD—Reported in December 1967 Southeast Asia Analysis Report produced by OASD (SA). Southeast Asia Programs as "New Estimate—Total OB." (JX 692)

NYT—Estimates reported in New York Times front page article dated December 20, 1967. (JX 387)

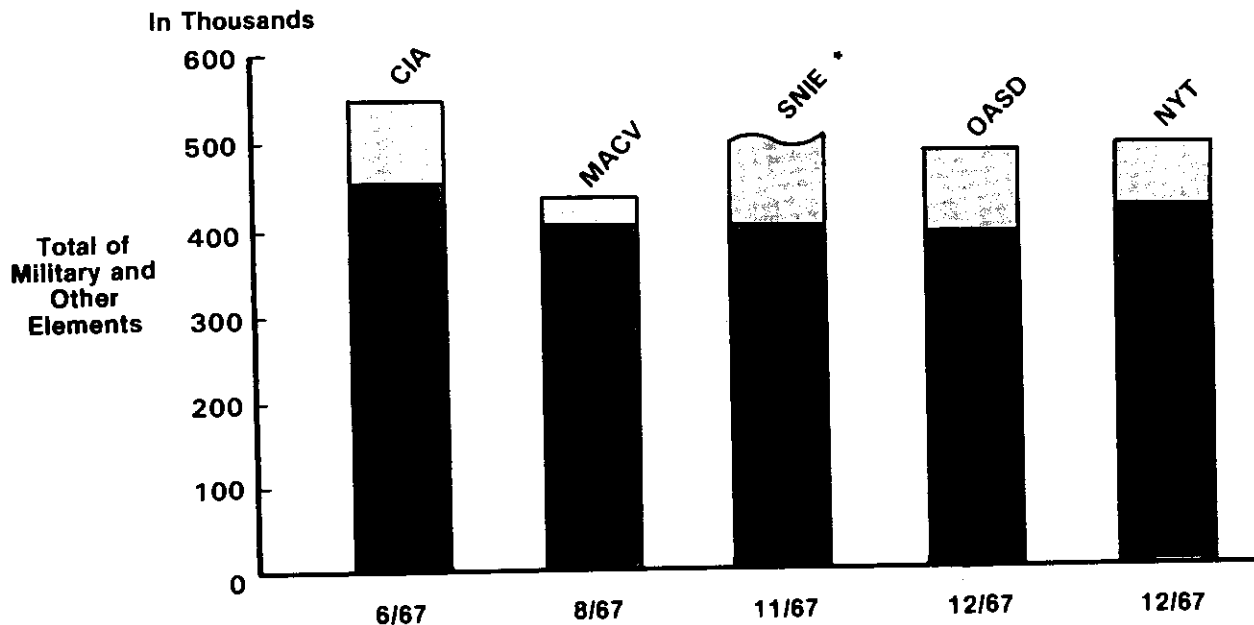
* The November 15, 1967 Memorandum for the Record called "Potentially Controversial Judgments or Data Holding Changes in 14.3-67," JX 711, notes that no current estimate for self-defense and secret self-defense can be given with confidence, but the impression intended in drafting the SNIE was to have the reader thinking in six digits.







*Based on "Controversial Judgments" Memorandum, JX 711, see Plates 9A-B



*George Carver testified at his deposition (Tr. 627) as follows:

"This was a deliberate device [i.e., inserting the 1966 figure of 150,000 for the SD in the SNIE] to indicate to our readers that, although we did not know what the current number was and hence we are not giving him one, this was the range or size of number that we were thinking about. And this is what Mr. Rostow and Mr. McNamara both immediately picked up with me after they had read the estimate, and said, 'You're talking about something in the six digit range.' I said, 'That's correct.' 'And, hence, you are talking about an organized manpower pool in the 400 to half million range?' I said, 'That's absolutely correct.'"

South. (See e.g., Carver Dep. Tr. 854-55) The word "infiltration" also was used to describe the movement of enemy troops or units from one portion of North Vietnam or Laos toward South Vietnam. (See e.g., Hankins Dep. Tr. 83-84) The estimate for "enemy infiltration" in Vietnam varied depending on the definition that the speaker was using when he gave his estimate. Thus, variations in this meaning of the word could be confusing. Anyone using the term had to be precise in order to communicate.

At the Honolulu Conference in February 1967, the entire intelligence community agreed that General McChristian would publish a monthly infiltration report based on collateral sources. Collateral sources were such things as prisoner of war reports, agent reports, and captured enemy documents of all kinds, including propaganda documents. (JX 227, Honolulu Conference Report, p. B-7) Collateral sources did not include intelligence gathered from electronic sources. (*Id.*) The Monthly MACV Infiltration Report and the Order of Battle Summary were "collateral" infiltration reports because they were not based on "all sources" of intelligence. Thus they were of practically no use in estimating current or recent enemy infiltration.

The parties to the Honolulu Conference understood that these two infiltration reports would show what infiltration had been up to four to six months before the publication of the report, not what it was in the month or two immediately preceding the report's publication. The cause of this lag was the time that customarily elapsed between the entry of North Vietnamese soldiers into South Vietnam and the time when allied troops made contact with them and gathered the collateral information—from captured documents, etc.—needed to confirm their presence in South Vietnam.

The MACV collateral Monthly Infiltration Report stated at the beginning of the document:

2. (C) In accordance with conclusions and recommendations of representatives from DIA, CIA, NSA, CINCPAC and MACV at the CINCPAC intelligence conference, held during the period 6-12 February 1967, it is requested that consumers use the J2 MACV comments in para 3 below as appropriate for background explanation of validity, completeness and interpretation of the data.

3. (C) J2 MACV comments:

A. The statistical data on the infiltration of North Vietnamese personnel into South Vietnam are computed for the period from 1 October 1965 to 30 September 1967. This period is considered

most valid since it coincides with a period of substantial increase in infiltration.

B. The nature of the enemy's infiltration of personnel is such that it is difficult to detect many groups of personnel until after they have been in South Vietnam for as long as six months or even longer. Therefore, the figures currently known for the period from 1 April 1967 to 30 September 1967 are considered to be incomplete.

For this reason, the infiltration data are subject to continuing reevaluation due to receipt of updating information. The data for recent months are totally inadequate for determining trends. It is emphasized that these data represent the only valid information available at this time on infiltration and that the data reflect only a part of the infiltration which is believed to have taken place. (JX 197F, MACV Monthly Infiltration Report, 21 October 1967)

The collateral Monthly Infiltration Report defined infiltration as follows:

C. Infiltration data are computed under two categories. The "accepted" category includes (1) "confirmed"—those personnel whose presence in South Vietnam has been confirmed, and (2) "probable"—those personnel whose presence is accepted on the basis of information evaluated as probably true. A second category of "possible" includes personnel who may have infiltrated into South Vietnam on the basis of information evaluated as possibly true.

D. In addition to the infiltrators falling into the confirmed, probable and possible categories, other units or groups have been mentioned in reports, captured documents, interrogation [sic] reports or sightings by friendly forces. Based upon the application of consistent criteria and the professional judgment of analysts, [sic] this information has been evaluated as insufficient to warrant placement into one of the two categories.

E. Infiltration data for the past months cannot be used as a basis for making valid projections of future infiltration rates. In short, these figures do not tell us what the enemy intends to do. (*Id.*)

The MACV Order of Battle Manual defined "accepted" "confirmed" "probable" and "possible", as follows:

Criteria for Infiltration Acceptance.

(a) *Accepted Infiltration:* Those NVA personnel, groups, and units which have entered SVN and are carried either in the confirmed or probable categories.