

(1) *Confirmed*: A confirmed infiltration unit/group is one which is accepted in SVN on the basis of information provided by a minimum of two PW's [Prisoners of War] or returnees (Hoi Chanh) from the unit/group, or two captured documents from the unit, or a combination of personnel and documents.

(2) *Probable*: A Probable infiltration unit/group is one which is accepted in SVN on the basis of information provided by one PW or returnee (Hoi Chanh) from the unit/group, or a captured document, supported by information from other sources which can be evaluated as probably true.

(b) *Possible Infiltration*: A possible infiltration unit/group is one which may be in SVN on the basis of information which can be evaluated as possibly true even though no PW, returnee (Hoi Chanh), or document is available to verify the reports. (JX 227, Annex F pp. 4-5)

The following examples show how collateral infiltration estimates improved over time. In February 1967, MACV might report 500 infiltrators for January 1967 based on identifying a single new NVA battalion through collateral sources. In March, captured prisoners and documents might demonstrate that two other NVA battalions (1000) and a platoon (50) amounting to 1,050 men had infiltrated into South Vietnam in January along with the 500 infiltrators in the battalion already identified, a rise in the infiltration total for January to 1,550. In April, more documents and prisoners might be captured that would show that in fact 1,000 replacements in small "packets" had infiltrated in January along with the three battalions and one company. Now the MACV OB would show the 2,550 infiltrators for January. In this way the total infiltrators for January might reach, say, 6,000 by July.

This is what was meant by statements that it took three to six months or more to come up with a reliable total for infiltration in the OB Summary. All recipients of the OB Summaries and Monthly Infiltration Reports were alerted to this in the respective documents.

Furthermore, the Honolulu Conference Report warned the intelligence community that future infiltration could not be projected based on previous infiltration reports, even though these reports were accurate reflections of past infiltration:

... average infiltration cannot be used to project infiltration trends . . . the changing character of the data base and possible variation in the stabilization period make a statistical analysis of infiltration trends a misleading proposition. (JX 227, p. 3)

CICV, the joint American-Vietnamese intelligence unit, provided the input for these "collateral" infiltration reports. (Hankins Dep. Tr. 31) MACV used other highly sensitive intelligence information in addition to the collateral source reports to estimate North Vietnamese infiltration into South Vietnam. This highly sensitive intelligence, "Source X" intelligence, came from Washington D.C., and was distributed from there to the President, CIA and MACV. (Peterson Aff. ¶¶ 17-18) It was not included in the Monthly Infiltration Report or the Monthly OB Summaries. (Hankins Dep. Tr. 29) Source X intelligence was received and used by the Current Intelligence Indications and Estimates Division ("CIIED") of MACV-J2, which was staffed exclusively with U.S. personnel with very high security clearances. Source X was part of "all source" intelligence and it was disseminated *from Washington*. It was impossible for MACV to suppress this intelligence. (Rostow Aff. ¶ 8; Peterson Aff. ¶¶ 17-18)

Infiltration estimates using Source X were disseminated outside of MACV through the Weekly Intelligence Estimate Update ("WIEU") and in Daily Intelligence Summaries ("DISUM"). CIIED produced the WIEU's. (Heon Aff. ¶¶ 2-3; Joyce Aff. ¶¶ 17-18)

The Broadcast charged that General Westmoreland suppressed reports of 25,000 enemy regular troops per month in September, October, November, December, and January. As of January 31, 1968 MACV's collateral estimates of infiltration for the months in issue were:

Sept. 1967	2,922
Oct. 1967.....	2,190
Nov. 1967	2,120
Dec. 1967	—
Jan. 1968.....	—

As of February 29, 1968, MACV's collateral estimates of infiltration for the months in issue were:

Sept. 1967	4,522
Oct. 1967.....	2,670
Nov. 1967	3,385
Dec. 1967.....	2,190
Jan. 1968.....	19,390

(JX 918)

As of August 31, 1968, MACV's collateral estimates of infiltration for the months in issue were:

Sept. 1967	6,300
Oct. 1967.....	4,300
Nov. 1967	5,900
Dec. 1967.....	5,300
Jan. 1968.....	21,000

(JX 390, Westmoreland letter to Crile and Wallace, Enclosure #3)

The entry of over two NVA divisions into South Vietnam caused the jump in January. The intelligence community, Defense Department, and the White House closely followed this enemy movement through Source X as it occurred, even before it got to South Vietnam. Most of it was around the area of Khe Sanh. Source X had informed the intelligence community, the White House and MACV of the first signs of its existence—a month or two earlier. (Rostow Aff. ¶ 8)

Many military and other personnel in this case have referred to the fact that units not listed in the OB Summaries were identified on maps hung in certain office areas. (See e.g. Daniel Aff. ¶ 8) In combat headquarters, or the areas cleared for all-source intelligence, units were identified based on all sources of intelligence, including Source X, not just the collateral sources used in making the OB Summaries. Certain known units would not be listed in the collateral OB Summaries if the collateral criteria for inclusion, i.e., documents, POW reports, etc., had not been met. (See JX 227)

When a field commander considered the size of the enemy facing him, he considered enemy identified from all sources, including Source X. (See Hankins Dep. Tr. 27) To him the enemy Order of Battle was the MACV OB

Summary plus additional intelligence from "all source" intelligence. There were highly classified daily and weekly supplements to the MACV OB. To the commander these were all official MACV Orders of Battle. MACV intelligence was used in conjunction with the commander's own observations in the field. (See Hankins Dep. Tr. p. 27)

Numerous people have given sworn statements explaining that the people in CICV, except a handful of senior staff officers, did not have substantial access to Source X. (See Heon Aff. ¶ 4; Joyce Aff. ¶ 4; Stewart Aff. ¶ 6; Caton Aff. ¶ 5) The CIIED officers sometimes gave sanitized versions of their data to CICV so it could meet its responsibilities such as publishing periodic summaries of enemy strength. (Overcash Aff. ¶ 2)

In the fall of 1967, Source X did not yet permit a precise count of enemy infiltrators, but it was far superior to anything CICV had access to. Accordingly, in 1967 and 1968 the most reliable real time intelligence on enemy infiltration came from a highly classified source located in the United States.

In the period late 1967 and early 1968, Col. Robert A. M. Storey was first Deputy Chief, then Chief of the Current Intelligence Branch of CIIED. In late 1979, he spoke at length to defendant Adams. He has executed two affidavits in this case, the second of which includes a discussion of the role of CICV, explaining that, with a few exceptions, they did not have substantial access to what has been called Source X and defining the role of CICV as being principally the "repository and analyzer of historical data":

The intelligence function at MACV was divided principally between MACV J-2 and CICV. MACV J-2 intelligence had access to all intelligence sources and was the organization responsible for providing COMUSMACV and his principal aides with current and relevant intelligence matters. MACV J-2 was divided into a number of divisions; two of the principal divisions were Current Intelligence (CI) and Estimates. The role of Current Intelligence was to provide a day-by-day analysis of intelligence matters, including enemy capabilities and anticipated activities. CI would brief COMUSMACV on a daily basis. Estimates dealt with the somewhat longer run and involved attempts to predict and counter what the enemy would do a week or a month in the future. CICV was composed of both South Vietnamese and Americans (unlike MACV J-2 which was solely American) and was principally the repository and analyzer of historical data. Their product, including the enemy Order of Battle Summary and long range studies such as the age distribution of infiltrators, were designed to be one tool among many utilized by CIIED.

During the time I was at MACV J-2 we had access to certain valuable intelligence. We received this intelligence from a source in the United States. This intelligence was transmitted to certain high level government officials in the United States as well as to MACV. No individual or staff in CICV would have received as much of this sensitive intelligence as our staff received; I and other CI members shared certain information with CICV analysts on a periodic basis to assist them in preparing their reports, including the Order of Battle Summaries, but we would not have given them all or even almost all of the information we received. We certainly would not have told CICV the nature of our sources, which would have been essential to making effective use of our information. The analysts at CICV operated primarily on the basis of what was known as collateral intelligence sources, such as captured documents and prisoner of war reports.

At MACV the Tank was the main operations room which was next to the briefing room and part of the secure area. It was a large room with a low ceiling with maps on the walls. There was, in addition, a room with a higher degree of security, run, I believe, by a Major Michalski. Very few people were cleared for that secure room and probably no more than two or three from CICV—the commander, his deputy and a CIIED liaison. A product was produced out of this high security area. Very few people had access to the product. For example, despite my fairly high position in CIIED, I had access to it only on a need to know basis and then only as to those portions of the product that it was necessary I review. I am not certain whether anybody who did not have access to the product even was aware of its existence. (Storey Aff. 4/21/84 ¶¶ 2, 3, 4)

Robert Heon, a Navy Commander stationed in Vietnam 1967 and 1968, served as the Chief of Current Intelligence in CIIED for most of 1967 and January 1968. Crile as well as Adams interviewed him. Heon told defendants:

I would rely on a variety of sources, including to a substantial extent what we called all-source or special intelligence, top-secret intelligence that was generally reliable. All-source or special intelligence provided most of our information concerning the infiltration of new units from North Vietnam into South Vietnam, as it occurred. We, along with other intelligence agencies, received much of this intelligence via Washington, D.C. Even within CI, there was compartmentalization of intelligence with specific clearances for specific intelligence sources.

CICV was responsible for publishing the OB Summaries. The OB Summary was largely an historical document based on the use of

lower classified, collateral (that is, not all-source or special) intelligence, such as captured documents and prisoner of war reports. The OB would sometimes contain units that had not been sighted for over a year. Different agencies had different estimates of the enemy OB. The biggest question was whom you counted. While useful as one type of intelligence for long-range planning, the CICV OB did not necessarily reflect the best up-to-date intelligence on the enemy and CICV did not get involved in assessing the current situation; CICV did not have access to all of the raw information necessary to make such an assessment. (Heon Aff. ¶ 3, 4)

Bobby Overcash, a Marine major in 1967 and 1968, was one of the analysts in Current Intelligence. He spoke to defendant Adams and also has given a sworn statement:

CICV was given only limited intelligence, carefully edited or sanitized to remove highly classified material because of the involvement and presence of South Vietnamese in CICV. This seriously limited the ability of CICV analysts to perform any intelligence functions of direct importance to the combat situation. CICV was not in the mainstream of the military's intelligence effort, but was primarily concerned with assembling and collating historical data that were many weeks or months old with POWs and captured documents as their primary source of information. (Overcash Aff. ¶ 2)

Many other former officers have said CICV officers had little or no access to Source X, or all source intelligence, including Col. Edward Caton, who under General McChristian supervised Current Intelligence (Caton Aff. ¶¶ 4-8); Col. Gains Hawkins (Dep. Tr. 46); Capt. John Stewart, an analyst from CIED (Stewart Aff. ¶¶ 11-14); Col. John Michalski, out of country current intelligence analyst. (Michalski Aff. ¶¶ 8-12)

As Heon, Storey and Overcash stated to defendants prior to the Broadcast, without knowledge of all source intelligence, including Source X, it was impossible to make an accurate contemporaneous estimate of infiltration. So said Captain John Stewart, now Colonel John Stewart, Commander of the 525th Military Intelligence Group, 18th Airborne Corps, Fort Bragg, North Carolina. A number of his colleagues praised Stewart to Adams as an able and conscientious officer who was in the forefront of MACV intelligence efforts during the period mid-1967 to mid-1968.²¹ Col. Stewart has stated:

²¹ Some of the people were: Mervin Brock (JX 74, p. 26605), Michael Delpercio (JX 83, p. 26793), Leon Goché (JX 94, p. 27005), Norman House (JX 109, p. 27600); Robert Heon (JX 106, p. 27531); Robert Stoney (JX 184, p. 30317).

I have read a transcript of the CBS Broadcast, "The Un-counted Enemy: A Vietnam Deception." Because of the fact they did not have access to all-source intelligence, it would have been impossible for CICV analysts to have come up with a reliable real-time study in the fall of 1967 showing infiltration of 20,000 or more per month. I recall no such study. However, if someone at CICV had produced something of that nature, we would have viewed it with considerable skepticism because CICV did not have the tools to do such a study. Such a study would have been reviewed in the light of our all-source intelligence, which would have been the decisive word on the subject. In practice, analysts at CICV wouldn't have the foggiest idea of the size of enemy infiltration. In fact, the number of infiltrators estimated at CICV was generally less for at least the first few months than we estimated because we had far superior sources. (Stewart Aff. ¶ 13)

Col. (then Major) Donald Press was identified to Adams as an officer who, from the fall of 1967 into early 1968, had the responsibility, "to the extent we were able to do so, of identifying enemy forces located in North Vietnam." He states:

In my opinion, in the fall of 1967 it would not have been possible for anyone at CICV to have made a reliable real-time estimate of enemy infiltration. The tools used by CICV to estimate enemy infiltration during that period were almost entirely so-called collateral sources, including captured documents and prisoner of war interview reports. It took CICV analysts many months to arrive at a reasonably approximate estimate of infiltration for a particular month. (Press Aff. ¶ 3).

In his interview with Wallace, Rostow told him that the White House received unimpeachable intelligence on enemy infiltration from a highly classified source. (JX 14 Rostow CBS interview Tr. 29, 47, 71-72, 99) When Wallace ignored that, Rostow said to Wallace:

Well, I'll tell you what was not suppressed. I don't . . . and this is what governed President Johnson's view. We had report after report the enemy was going to make a maximum effort and try to win the war in the winter-spring offensive of '67-'68. We followed through intelligence . . . *of an unimpeachable kind, the coming in of one unit after another of the North Vietnamese order of battle.* It was evident they were really stripping their forces in the North to send them South. We knew of these two divisions coming down in December. . . .

... President Johnson was not following this simply by numbers. *He was following the number of the particular North Vietnamese units that were coming down, which he got straight from communications intelligence.* (JX 14, Rostow CBS Interview Tr. pp. 29-30, 47 emphasis added)

In the fall and winter of 1967-68, the structure of the Current Intelligence Branch of CIIED was as follows:

1) The head of CIIED was Col. Graham;

2) Chiefs or Deputy Chiefs of CI included:

Cdmr. Robert Heon

Col. Jean Joyce

Col. Robert Storey

3) CI analysts responsible for monitoring enemy activity including infiltration included:

Capt. John Stewart

Capt. (USN) Michael Delpercio

Maj. Bobby Overcash

Col. Donald Press

Col. John Michalski.

Every single person listed above has provided an affidavit or testified that infiltration was reported honestly, accurately, and to the best of everyone's ability, and that there was no enemy infiltration of 20,000 to 25,000 per month in the five months prior to Tet. (Graham Dep. Tr. 102-106; Heon Aff. ¶ 16; Joyce Aff. ¶ 11; Storey 4/21/84 Aff. ¶ 5; Stewart Aff. ¶ 14; Delpercio Aff. ¶ 6; Overcash Aff. ¶ 5; Press Aff. ¶ 4; Michalski Aff. ¶ 12)

The other known chief of current intelligence during late 1967 early 1968 was Robert Leverone. Leverone is listed as a trial witness for plaintiff.

Capt. John Stewart's affidavit reads:

No infiltration of the magnitude portrayed in the Broadcast occurred. No intelligence on infiltration was suppressed. Nobody familiar with how MACV's intelligence operation worked would make such a charge.

* * *

The key people at MACV intelligence for the majority of my first tour were General Davidson, Col. Morris and Col. Graham. I have high regard for the ability and integrity of each. (Stewart Aff. ¶¶ 14, 17)

Major Press, a CIIED officer who was responsible for monitoring out-of-country enemy activity, states:

I know of no suppression or manipulation of data or intelligence relating to enemy infiltration during the period I was in Vietnam. We were never told we could not report the most accurate data and intelligence we could develop. I have no reason to believe that MACV's estimates of enemy infiltration were not honest, or that we reported any other than the best intelligence we had.

I recall that George Crile telephoned me about two and one-half years ago. I never told him that there was any suppression or manipulation of intelligence relating to enemy infiltration. (Press Aff. ¶¶ 4-5)

Major General Kenneth Houghton, a Marine, in late 1967 and early 1968 was G2 of the Third Marine Amphibious Force which operated in the five northernmost provinces of South Vietnam. He was in charge of intelligence for the Force and had access to all source intelligence. He made his own independent intelligence assessments which he could compare with MACV's. (Houghton Aff. ¶¶ 4, 7-8) He states:

I saw the CBS broadcast "The Uncounted Enemy: A Vietnam Deception" when it was aired in January 1982. I recall that some individuals claimed that in the five months prior to the Tet Offensive in 1968, infiltration was over 25,000 men per month, and that infiltration was never reported. I am sure that infiltration of that magnitude or anywhere near it did not take place prior to the Tet Offensive in the III MAF area of operations. I would have been aware in 1967 of such infiltration had it occurred; it did not occur.

I find ridiculous the assertion that 100,000 North Vietnamese troops could enter South Vietnam and never be found or reported during the entire time the United States armed forces were fighting in Vietnam—a period of several years. There were too many sources of intelligence and, too many checks and balances in the system of intelligence reporting, for 100,000 North Vietnamese troops to be "hidden" from persons with a need and right to know such information. (Houghton Aff. ¶¶ 10-11)

Defendants relied directly or indirectly on three junior CICV officers for their infiltration story: Maj. Russell Cooley, Lt. Bernard Gattozzi and Lt.

Michael Hankins. Hankins and Gattozzi reported to Maj. Cooley. Cooley reported first to Lt. Col. Parkins then Lt. Col. Meacham. Their superiors were Lt. Col. Morgan and Lt. Col. Weiler (deceased). The superiors of Morgan and Weiler were Col. Ponder and Col. Ed Halpin who, in turn, reported to Col. Morris, who reported to General Davidson. *Every single living superior* of Major Cooley mentioned except Morgan and Halpin—Davidson, Morris, Ponder, Meacham and Parkins—says that infiltration of 100,000 North Vietnamese troops in the five months prior to Tet just never occurred. (Davidson Dep. Tr. 194; Morris Dep. Tr. 22; Ponder Aff. ¶ 3; Meacham Aff. ¶ 36; Parkins Aff. ¶ 7) Morgan has not committed himself to a figure for infiltration. (Morgan Aff. ¶ 6). Halpin has not been located.

The intelligence that came from Source X in Washington was sent from there to the Defense Department, JCS, CIA, White House, CINCPAC and MACV, among other places. General Westmoreland could not possibly have suppressed this intelligence. The following people, who were not in MACV, confirm that fact in affidavits or testimony in this case:

Secretary of Defense Robert McNamara (McNamara Dep. Tr. 7);
 Assistant Secretary of State William Bundy (Bundy Aff. ¶ 12);
 Senior Advisor to the Secretary of State Phillip Habib (Habib Aff. ¶ 5);
 Ambassador Ellsworth Bunker (Bunker Aff. ¶ 13);
 CIA's George Carver (Dep. Tr. 878-79);
 CIA Deputy to the SAVA George Allen (Dep. Tr. 338-39);
 General Chesley Peterson, CINCPAC J2 (Peterson Aff. ¶ 17)

Prof. Roger Hilsman of Columbia University was Director of the Bureau of Intelligence and Research at the State Department between 1961 and 1963, and in 1963 and 1964 was Assistant Secretary of State for Far Eastern Affairs of the Department of State. (Hilsman Aff. ¶ 6) He explains:

I was also disturbed by CBS's exclusive reliance on statements in February 1968 as the basis for their evaluation of the Tet offensive. It is obvious to any scholar that considerable evidence has been developed since then concerning the Vietnam War including, for example, an entirely different picture of the Tet offensive than that portrayed by CBS.

I also was disturbed by the totally inadequate evidence presented by CBS that there were 100,000 to 150,000 regular North Vietnamese troops in South Vietnam at the time of the Tet offensive, the existence of whom had never been made public until the CBS Broadcast. Based upon my knowledge of South Vietnam,

Pike Committee, he believed that the estimates of NVA infiltration were accurate:

There is a political reason for that. At various times various administrations had been trying to portray the war as an aggression from the North, from North Vietnam, so there was a tendency, I believe, to be more honest in counting the guys coming down from the north than there was of counting southern born rebels. (JX 311 B, Adams Pike Committee testimony, p. 718)

Second, General Westmoreland could hardly hope to conceal the existence of 100,000 to 150,000 of some of the best troops in the world. Somebody was bound to notice.

Defendants have never produced or identified any document by the CIA (or any other agency) that shows 100,000 infiltrators into South Vietnam in the five months prior to Tet. No such claim was made at the April 1968 CIA-sponsored order of battle conference. (JX 715, 1968 OB Conference Report)

Two years after the Tet offensive, under a new J2 and a new COMUSMACV, a study was made of NVA infiltration. This study showed that infiltration was about 8,000 men per month for September through December 1967, and never reached the level in the fall claimed by CBS. (JX 650, North Vietnam Personnel Infiltration Into RVN, p. 60) The study demonstrates that the estimates of infiltration General Westmoreland set forth in 1967 indeed were "generally correct". (JX 390)

13.

BROADCAST:

Lt. Col. Everette Parkins was fired because he tried to report infiltration of 25,000 per month. (JX 1, p. 18)

FACTS:

Five people were present at the so-called "firing" of Lt. Col. Everette Parkins: Col. Charles Morris, Col. Karl Liewer, Col. Edward Halpin, Col. Lewington Ponder, and Parkins himself. Defendants talked to three of them before the Broadcast; Morris, Liewer and Parkins. None confirmed the story presented on the Broadcast. (See JX 37 A and B, Crile's notes on Morris; JX 128, Adams' notes on Liewer; JX 158 A-E, notes on Parkins)

Three of the five have provided affidavits or testified under oath on the matters:

Col. Ponder recalls that:

Col. Morris asked Parkins in the presence of Col. Ponder to prepare a study on how to reliably produce estimates of infiltration in less than six months. Parkins refused to carry out this order and said it was a waste of effort. Morris ordered that Parkins be relieved. (Ponder Aff. ¶ 4)

Col. Morris gave a very similar account, (1) to Crile in December 1981 (JX 374), (2) at a press conference called by General Westmoreland on January 26, 1982 (JX 600), and (3) again at his deposition in 1983. Morris said that he asked for a study on the wounded-to-killed ratio; Parkins told him it was a waste of time and refused to even try to do the study. (Morris Dep. Tr. 164-68) As Col. Morris testified, "No officer in wartime tells me he won't even try [to carry out an order]."

Lt. Col. Parkins' recollection differs from Morris' and Ponder's; but he, too, rejects the Broadcast's claim that he was fired because he insisted on reporting 20,000 to 25,000 infiltrators per month:

In November or December 1967, I took a study that had been prepared by my unit to the office of the Director of Intelligence Production. I chose to deliver that study myself, because the office of the Director of Intelligence Production was on the way to the Post Exchange, to which I was headed at that time. I did not and do not know what person or agency requested the study. I did not and do not know where or to whom the study was to be sent. I do not recall the precise subject matter or content of the study, but it probably contained data about enemy infiltration. I do not believe that the study stated that North Vietnamese infiltration was on the order of 20,000 to 25,000 men per month in the Fall of 1967, because I do not remember such an estimate. (Parkins Aff. ¶ 7)

An argument between the two ensued and Lt. Col. Parkins left Col. Morris' office. Lt. Col. Parkins said that the portions of the Broadcast that related to him "are not true":

I am aware of the statements in the CBS documentary "The Uncounted Enemy: A Vietnam Deception" that I was "fired" from my assignment at CICV because I had discovered massive enemy infiltration in the Fall of 1967, and that my superiors refused to send this information forward, and that I became so incensed over this matter that I shouted at one of my superiors. *These statements are not true.*

* * *

While I was in CICV, there were questions raised from time to time by my superiors about the accuracy of the methods used by my unit to estimate enemy infiltration. This is normal and proper because intelligence is not a precise science. *I was not pressured to lower my estimates of enemy infiltration I did not have reports with estimates of enemy infiltration sent back to me with orders to use different numbers. I never stated to anyone that such things had occurred.*

I watched the CBS broadcast "The Uncounted Enemy: A Vietnam Deception" when it was aired. I know that the *CBS broadcast inaccurately portrayed the events that related to myself.* I believed the CBS broadcast was slur on General Westmoreland. I do not find credible the assertion that there was a conspiracy within MACV to suppress or falsify intelligence. It is my belief that there was no conspiracy.

I have spoken once in person with Mr. Sam Adams, in 1980, and two or three times over the telephone. Since the Broadcast, I have no recollection of talking to Sam Adams. *I told him in words or substance what I have stated in paragraphs 1 through 10 of this affidavit.*

* * *

I spoke to George Crile of CBS on at least one occasion, and perhaps more than once. The conversation or conversations took place over the telephone. *I do not recall whether Mr. Crile asked me about enemy infiltration in the Fall of 1967. I told Mr. Crile that I did not believe that there had been a conspiracy at MACV to suppress intelligence. (Id., ¶¶ 5, 10-12, 14; emphasis added)*

14.

BROADCAST:

The President and the American Army in Vietnam were caught totally unprepared for the size of the enemy attack during Tet because General Westmoreland suppressed intelligence. (JX 1, p. 21)

FACTS:

The North Vietnamese and Viet Cong radically changed their military strategy in mid-1967, from protracted war to conventional warfare, because the war was not going well for them.

As Herbert Schandler put it:

*By July of 1967 the North Vietnamese had decided upon a major revision in strategy from that of protracted war to what came to be known as "general offensive, general uprising." From Hanoi's standpoint, the war in the South was not going well. Their forces had not won a significant battle in two years. United States firepower had destroyed much of their reserves of men and supplies. (JX 322, *The Unmaking of a President*, p. 66 (emphasis added) See also JX 639, Oberdorfer, *Tet*, p. 45).*

a. *Washington Was Warned of the Coming Offensive.*

The results of the enemy's change in military strategy were not seen until the Fall of 1967. In late September, the NVA intensified the rocket and artillery attacks at the town of Con Thien. (JX 328, *A Soldier Reports*, p. 203) In late October, a VC regiment attacked Loc Ninh, a town near the Cambodian border. (JX 642, *Report on the War in Vietnam*, p. 155)

In early November, fighting began between allied and enemy forces at the remote outpost of Dak To. (JX 642, *Report on the War* p. 155) A document captured nearby stated that the enemy would launch large-scale coordinated attacks during the 1967-1968 Winter/Spring Offensive. (JX 656, Abrams 11/15/67 cable to Westmoreland) This document was released to the press at the time. (JX 281, *New York Times* 11/23/67 article "Westmoreland Sure of Victory")

By mid-November, MACV intelligence showed that the North Vietnamese were positioning large units in the vicinity of Khe Sanh and the Demilitarized Zone. (Morris Dep. Tr. 22) The exact size, location and objective of the units were not known. (*Id.*)

Use of the infiltration and intelligence methodologies described above (see Sec. III.B.12), the intelligence community kept MACV and the government abreast of all credible intelligence. (Rostow Aff. ¶ 8; Heon Aff. ¶ 10)

In December, the President sent 10,000 American troops to Vietnam, advancing their departure date so that they left before Christmas, in anticipation of massive enemy action. No other troops were combat ready. (JX 14, Rostow CBS Interview Tr. 26)

On December 18, 1967, Chairman of the Joint Chiefs of Staff General Earle Wheeler said, in a public speech:

As far as the future is concerned, however, I must point out that the North Vietnamese are not yet at the end of their military rope.

Although North Vietnam—as well as the Vietcong—is feeling a manpower pinch, they still have the ability to send additional troops south. Thus, there is still some heavy fighting ahead—it is entirely possible that there may be a communist thrust similar to the desperate effort of the Germans in the Battle of the Bulge in World War II. (JX 697)

On December 20, 1967, General Westmoreland told General Wheeler:

I believe that the enemy has already made a crucial decision concerning the conduct of the war. In late September, the enemy decided that prolongation of his past policies for conducting the war would lead to his defeat, and that he would have to make a major effort to reverse the downward trend. The enemy was forced to this grave decision by the deterioration of his position over the last six months . . . his decision therefore was to undertake an intensified country-wide effort, perhaps a maximum effort, over a relatively short period In short, I believe that the enemy has already made a crucial decision to make a maximum effort. (JX 384, Westmoreland 12/20/67 cable to Wheeler)

Late in December, General George Godding, formerly the MACV Deputy J2, sent additional analysts from United States Army, Pacific to MACV in order to expand upon the intelligence provided through Source X. Godding did this because "People had a gut feeling that something was going to happen [around the time of Tet.]" (Godding Dep. Tr. 132)

On January 12, 1968, journalist Don Oberdorfer reported a conversation he had had with Lt. General Fredrick Weyand, U.S. Commander of the Third Corps Tactical Zone, which included Saigon. Weyand told Oberdorfer he had noticed that the enemy was massing for an attack. Weyand predicted a big enemy attack, and described "the upsurge in enemy activity" as a "tremendous one-shot affair." (JX 762, Oberdorfer, "New Hanoi Goal: Force Coalition 'Deal'?", *Miami Herald*, 1/12/68)

On January 13, 1968, General Westmoreland cancelled military operations that had been scheduled for the first Corps Tactical Zone (CTZ) and moved troops farther north into Thua Thien province in order to meet an anticipated enemy attack in that area. General Westmoreland also began to move American troops to the vicinity of Saigon or "along the corridors leading toward the Capital from the [Cambodian and Laotian] border sanctuaries." (JX 328, *A Soldier Reports*, p. 318)

On January 15, General Westmoreland briefed the U.S. Mission Council with General Davidson. (*Id.*) General Westmoreland said he saw a 60 to 40 chance that the enemy would launch his assault before Tet,

probably on January 25. General Davidson said that he believed the chances were 40 to 60 that the enemy would "maneuver during the cease fire and then strike after Tet." Neither "saw a high probability of an attack on the day of Tet, so harsh and disaffecting would the psychological impact be on the very people (the South Vietnamese) the enemy was trying to rally to his side." (*Id.*)

On January 20, 1968, General Westmoreland sent a cable to General Wheeler and Admiral Sharp in which he noted that "the enemy is presently developing a threatening posture in several areas and borders to seek victories essential to achieve prestige and bargaining power. He may exercise his initiatives prior to, during or after Tet." (JX 425, Westmoreland cable to Wheeler and Sharp)

On January 22, General Westmoreland was interviewed by Howard Tuckner of NBC. General Westmoreland spoke against a temporary bombing halt and said "I think [the enemy] plans concern a major effort to win a spectacular battlefield success on the eve of the Tet festival next Monday." (JX 328, *A Soldier Reports*, p. 318)

On January 22, General Westmoreland cabled Wheeler that he thought the enemy would launch a multi-battalion attack against Hue and Quang Tri City and that "the enemy would attempt a country-wide show of strength just prior to Tet." (JX 328, *A Soldier Reports*, p. 320)

On January 27, MACV J2 Davidson predicted major country-wide attacks and specifically named Kontum and Pleiku as targets. This information was put into the Weekly Intelligence Estimate Update that was transmitted to Washington. (See JX 328, *A Soldier Reports*, p. 320)

President Johnson said in his memoir, *The Vantage Point*:

More than a week before the enemy's offensive began Westmoreland sent us a detailed estimate of enemy intentions. He said the Communists were displaying "a very unusual sense of urgency" in planning what they called "this decisive campaign." Viet Cong headquarters was promising its followers "final victory." Westmoreland reported that the threat in northern I Corps was the most serious of the war. He also noted new intensity in enemy activity in other areas, especially in III Corps, where Saigon is located. He thought that the North Vietnamese saw a similarity between the allied base at Khe Sanh and the base at Dien Bien Phu, where the French had suffered a disastrous defeat in 1954. Westmoreland anticipated that the enemy would make "a major effort for a short period of time in order to gain

exploitable victories for political purposes." He had uncovered evidence that the North Vietnamese planned a multi-battalion attack on the city of Hue. He also had information that the cities of Quang Tri and Danang were likely targets.

"The two-week general lull in countrywide activity that was interrupted on the 20th indicates preparations for a widespread effort," he reported. "I believe that the enemy will attempt a countrywide show of strength just prior to Tet." (JX 326, p. 381)

Walt Rostow told CBS prior to the Broadcast that the President knew in advance of Tet, towards the end of November or early December 1967, that the communists were going to make an all-out effort that he made preparations for that, including advancing the date of troop movement to Vietnam, and that President Johnson "knew the extent of infiltration from the North." (Rostow Aff. ¶ 14; see also JX 14, Rostow CBS Interview Tr. 23-32, 47, 69-71, 109)

In addition to shifting American units closer to Saigon, rearranging of other U.S. forces, and cancelling of certain operations, General Westmoreland also attempted to persuade the Government of Vietnam to cancel the Tet leaves for the ARVN troops. (JX 639, Oberdorfer, *Tet*, pp. 132-33) General Westmoreland and Ambassador Bunker spoke to President Thieu about this but were only partially successful in having the Tet truce cancelled. (*Id.*) General Westmoreland did, however, place all American units on a full alert prior to the start of the Tet offensive. (JX 397, Intelligence Warning of the Tet Offensive, p. 5) The highest level of alert even extended to Saigon, an unlikely target. (JX 2, McArthur CBS Interview Tr. 28; See also, e.g., JX 311, Pike Committee Testimony of William Colby, p. 1716)

Understandably, the people who had access to all or substantially all intelligence at the time do not say that the launching of the Tet offensive was a major surprise. What they do say is that the enemy achieved some tactical surprise, because the attack occurred on the holiday of Tet and in a large number of cities simultaneously. For example, General Peterson, J2 of CINCPAC, has stated:

I was aware in the late fall of 1967 that the North Vietnamese and Viet Cong were planning or at least threatening a major assault around the general time frame of the Vietnamese Tet holiday. I know from the cable traffic that I received at CINCPAC that MACV and the Joint Chiefs also were aware that such an assault was intended. The U.S. and ARVN intelligence communities did

not anticipate that the VC would flagrantly violate Vietnamese tradition by attacking during Tet and during a diplomatically arranged truce. However, U.S. intelligence, and in particular MACV J2, accurately estimated the size and strength of the total enemy force at the time of the Tet offensive. (Peterson Aff. ¶ 20)

Ambassador Bunker stated that while a major attack was anticipated, "We did not believe that the enemy would attack a large number of cities, something that we felt would be a serious tactical error for them." (Bunker Aff. ¶ 8)

Admiral Sharp, CINCPAC, makes a similar assessment:

I was not surprised by the fact that the Communist forces launched an attack during the period of the Tet holidays. Nor was I surprised by the size of the enemy force involved in the Tet offensive. The offensive itself was consistent with the estimates of enemy strength accepted by MACV. We anticipated that the Communists might violate the Tet cease-fire agreement. I was surprised that they were so foolhardy as to attack the cities of Vietnam, because by doing so they exposed themselves to the full force of American firepower; as a result their forces were decimated. (Sharp Aff. ¶ 11)

Defendants' witness George Allen says:

We had accurately predicted the relative scale and general timing of the offensive but we had fallen down on the scope and exact date. The fact that we had predicted a massive offensive throughout South Vietnam on an unprecedented scale for late January, however, and that American and Vietnamese commanders had been warned of its imminence and were planning to meet the anticipated offensive is seldom noted. (JX 313, Allen Monograph *Indochina Wars—1950-1975*, p. 320; *Accord*, Allen Dep. Tr. 291-2)

General Maxwell Taylor, former Chairman of the Joint Chiefs of Staff, Ambassador to South Vietnam, in his capacity as Chairman of the President's Intelligence Advisory Board conducted an investigation of whether the Tet offensive had come as an intelligence "surprise" to U.S. leadership in Saigon and Washington. He wrote in his autobiography, *Swords and Plowshares*:

In the midst of this hubbub, President Johnson directed the President's Foreign Intelligence Advisory Board of which I was chairman to investigate the charges that American forces had been surprised by the Tet offensive. After going over the available documentary evidence and talking to many officials, we concluded

that there was nothing to indicate a lack of information had caused any American unit to fail to carry out its assigned mission at the time of the enemy attack. That did not mean, of course, that our commanders knew in advance the time, place, and intensity of every attack made. Intelligence is rarely if ever that explicit and, in this case, the indicators had pointed to the period just before the Tet holidays or just after Tet as the most probable times of attack. But a competent commander does not need a precise warning to be ready for an enemy who is known to be poised to attack, and fortunately our commanders in Vietnam were competent. (JX 643, Taylor, *Swords and Plowshares*, pp. 383-84)

b. *The Enemy Attack at Tet Confirmed the Accuracy of MACV Strength Holdings.*

Every responsible intelligence estimate of the size of the enemy force that attacked at Tet places the number at between 55,000 and 85,000. (See e.g., JX 642, "Report on the War," p. 161; JX 713, CIA Memorandum "Enemy Units Participating in the Tet Offensive;" JX 898, CIA Memorandum, "The Communists' Capability to Recoup Their Losses;" JX 639, Oberdorfer, *Tet*, p. 116) The 85,000 figure was derived from an estimate of 67,000, increased to take into account a possible margin of error of 25 percent. (JX 408, Adams' *Ellsberg* Testimony p. 14622)

The combat force of over 200,000 listed in the MACV OB was capable of launching an attack using 85,000 troops. No one disputes that the enemy launched an all-out attack. (JX 1, p. 16; JX 311, Graham Pike Committee Testimony, p. 1661; Walsh Aff. ¶ 13)

According to a study by the Chairman of the Joint Chiefs of Staff published on February 28, 1968, only two new VC units, totalling fewer than 600 men, surfaced during the Tet offensive. These two units were formed from guards and administrative units that were in existence prior to Tet. All other units for which reliable evidence of their existence could be found were known to MACV before the offensive. The Chairman of the JCS also noted that two VC units that were carried in the OB at the time of Tet probably did not exist. (JX 693, Report of Chairman, Joint Chiefs of Staff, on situation in Vietnam and MACV Force Requirements, Enclosure 1, p. 1)

Several other affiants have affirmed the consistency between MACV's Order of Battle Summary strength estimates and the enemy effort at the Tet offensive. See e.g., Bunker Aff. ¶ 9; Bundy Aff. ¶ 12; Colby Aff. ¶ 9; Ogle Aff. ¶ 9; Palmer Aff. ¶ 6; Sharp Aff. ¶ 11; Peterson ¶ 20; Walsh Aff. ¶ 13.

And as Colonel Edward Halpin, the chief of CICV, pointed out in a February 20, 1968, memo:

[N]ot one prisoner thus far upon questioning has admitted to being a member of a self-defense, secret self-defense, or assault youth; on the other hand many prisoners maintain that they had no affiliation with the VC before their impressment prior to the offensive. It appears unlikely, if the enemy had a large ready reservoir of semi-trained personnel, that he would impress unskilled personnel to fill his ranks. (JX 382, p. 2)

In an affidavit, James Ogle of the CIA states:

Even if Mr. Adams' claims of an enemy force of 600,000 were correct, this would be irrelevant to the Tet offensive because nowhere near that number of persons surfaced. Since the Tet offensive was an all-out Communist effort, if such forces had existed, I am confident that they would have been used. (Ogle Aff. ¶ 9)

The Tet offensive corroborates the general accuracy of the MACV OB. The U.S. military victory at Tet is hard to conceive if defendants are correct that, in addition to the MACV total of about 250,000 combat troops, 200,000 to 250,000 militia and political cadre and 100,000 to 150,000 NVA regulars, for a total of 550,000 to 650,000 enemy combat personnel staged an all-out surprise attack at Tet. It is also hard to conceive, if defendants are correct, why the enemy lost about 32,000 men between January 29 and February 11, 1968 while the U.S. lost about 1,000 and the South Vietnamese and allies lost about 2,000. (JX 328, *A Soldier Reports*, p. 332) Had General Westmoreland been suppressing information about the strength of the enemy, the strength of the enemy all-out attack at Tet would have made that clear.

15.

BROADCAST

General Westmoreland lied when he said the Tet offensive was a military victory for the United States and South Vietnam. (JX 1, pp. 21-23)

FACTS:

The Tet offensive was a disastrous military defeat for the North Vietnamese and, especially, the Viet Cong. (See JX 326, *The Vantage*

Point, pp. 282-4; JX 643 Taylor, *Swords and Plowshares*, pp. 382-3; Rusk Aff. ¶ 8; Rostow Aff. ¶ 11; Colby Aff. ¶ 10; Sharp Aff. ¶ 11; Peterson Aff. ¶ 21; Hawkins Dep. Tr. 441; Heon Aff. ¶ 11, Bunker Aff. ¶ 10; Ogle Aff. ¶ 7) In the period January 29, 1968 to February 11, 1968, the enemy "lost some 32,000 men killed and 5,800 detained" as prisoners. (JX 642 Sharp and Westmoreland's *Report On The War In Vietnam*, p. 161) By comparison, about 1,000 U.S. and about 2,000 South Vietnamese and other Allied servicemen were lost in the same period. (*Id.*)

The consequences of Tet for the enemy were stated succinctly in General Palmer's two books. In his *Readings in Current Military History* General Palmer observes:

Except in a handful of instances, the invaders failed to carve out a defensible niche in the towns. Bloodily repulsed, the would-be conquerors withdrew to the hinterland just days after the offensive began. At Hue die-hard Communists clung to the ancient citadel until 25 February, forcing South Vietnam and American troops to conduct some of the fiercest city fighting seen since WW II. Dalat remained in hostile hands for about three weeks, while other Reds, isolated in the Cholon section of Saigon, were not eliminated until 21 February. Sporadic ground attacks and mortar barrages continued throughout the country during most of the month, but by the time Hue was cleared, it was evident to all that the Tet offensive had run its course. Free-World technology and tenacity had overcome communist surprise and offensive spirit. By blowing the initial timing, Hanoi's forces had lost what slim chance they might have had for military success. (JX 327, p. 106)

General Palmer's later book, *Summons of the Trumpet*, reads:

In all, *the Allied response to the Tet offensive was a military feat of the first order.*

Most significantly, however, Giap's general offensive failed because his two initial assumptions about the South Vietnamese proved to be erroneous—the people were not on the verge of a general uprising, and Saigon's armed forces refused to fold. The citizens of the South, however apathetic they may have appeared toward their own government, turned out to be overwhelmingly anti-communist, while the army of the South totally reversed its previously flaccid image by a courageous, tenacious stand. In all it was South Vietnam's proudest hour.

Another widespread flurry of attacks on 18 February, mostly by fire, raised fears again but that second surge was nothing more

than the convulsive tremor of a dying offensive. By the end of February, the battles of Tet were over. A total of about eighty-five thousand Viet Cong and North Vietnamese troops had participated in the initial onslaughts and the follow-up attacks. Maybe half or more had been slain. The general offensive had run its course; the general uprising was evidently not going to happen. (JX 634, p. 200) (emphasis added)

General Maxwell Taylor says in his autobiography, *Swords and Plowshares*:

In the course of two days they hit five cities, thirty-nine provincial capitals, and many smaller towns. While they secured no lodgment except in Hue, they created scenes of death, fire, and destruction which, as recorded on American TV screens and reported in gory headlines in the American press, scared much of the American public and some of our officials into a funk from which recovery was slow and, in some cases, never complete.

At the time, American military men both in Vietnam and in the United States commented on the analogy between the Tet offensive and the Battle of the Bulge in World War II. Just as Hitler had lost the last of his combat-worthy divisions in the Ardennes, Ho Chi Minh lost the flower of his forces in the Tet offensive and the subsequent operations of 1968. Out of the 84,000 men who, we estimated, were committed to the immediate Tet offensive, over 30,000 were killed in the first two weeks of the fighting. In the first six months of the year, the number of enemy killed in action approached 120,000.

While the enemy was losing the war on the battlefield, he was gaining a valuable psychological victory in the United States and in large parts of the world. The general public was shocked by the unexpected vitality shown by an enemy whom many had supposed to be on his last legs. Convinced that there had been a disaster in spite of official claims to the contrary, politicians, war critics, and news media raised the cry that we had been betrayed. The culprits were presumably the civilian leaders who had concealed the true state of things in Vietnam together with the military leaders who, lulled into a false sense of security by their notorious optimism, had allowed themselves to be surprised. Also sharing the blame were our impotent Vietnamese allies who were incapable of securing even their principal centers of population. Official after-action reports from Vietnam which should have dispelled these misapprehensions were disbelieved, denounced as a cover-up by the guilty, or simply ignored. (JX 643, p. 383) (emphasis added)

Don Oberdorfer, author of *Tet!* (JX 639), wrote an article for the *Washington Post Magazine* on January 29, 1978, entitled, "Tet: The Turning Point—How a 'Big' Event on Television Can Change Our Minds":

The attack on the embassy was repulsed in six and one-half hours, with all the attackers killed or captured, and nearly all the much larger attacks elsewhere in the country were repulsed within a few days. Except in the former capital of Hue, where dug-in North Vietnamese troops held out for twenty-five days, the vaunted "General Offensive and General Uprising" turned out to be a series of shortlived raids which failed. Contrary to Vietnamese Communist doctrine, little or no support for the revolutionary forces surfaced in the cities, and there was no sign of a popular uprising. Communist losses were extremely high, including the best of a generation of Southern-bred resistance fighters. After Tet, increasing numbers of North Vietnamese troops had to be sent to battle in the South; the struggle became less an insurgency and increasingly a conventional fight of main force units.

* * *

By every standard and almost every account, the Tet Offensive was among the great events of the 1960s and possibly one of the great events of our time. It is also among the most paradoxical and seemingly inexplicable. Ten years later, it remains a puzzle to historians and the subject of debate among that portion of the public which still cares.

How to explain the connection and seeming disconnection between events in the war zone on the one hand, and the consequences of those events at home on the other? How could the same engagement have been, as Prof. Russell H. Fifield of the University of Michigan phrased the historical consensus, "a military disaster for the North Vietnamese and the Viet Cong" and yet, "a political victory for Hanoi comparable to its military and political victory at Dien Bien Phu in the First Indochinese War?" How, in other words, could Tet have been both a defeat for the attacker abroad and a defeat for the government at home?

It is unsurprising that attention has focused on the transmission mechanism between events in the field and perceptions at home—the American Press. Debate about the press role was rekindled within recent weeks by the publication of Peter Braestrup's monumental two-volume work, *Big Story: How the American Press and Television Reported and Interpreted the Crisis of Tet 1968 in Vietnam and Washington . . .*

The basic conclusion of Braestrup, a Vietnam correspondent for both the Washington Post and the New York Times and now editor

of the Wilson Quarterly, is that Tet was misreported. Calling it "an extreme case," Braestrup wrote that "rarely has contemporary crisis journalism turned out, in retrospect, to have veered so widely from reality." (JX 413, p. 11) (emphasis added)

Defendants' witness, Lt. McArthur, wrote to his family from Saigon on February 16, 1968, two and a half weeks after the Tet offensive broke:

Now its [sic] back in Saigon—the curfews [sic] still on military off the streets before 8 a.m. and after 7 p.m. so we're taking it easy—myself reading in my room at night, watching TV in the lobby, and eating some of the candy and cookies you sent me. Don't know how long this thing will last, but things are pretty quiet in town and it saves money. Everyone walking or I should say riding around with armed guards and pistols. I guess you've seen the pictures in Time and Newsweek magazines—make the thing sound and look a lot worse than it really was. (JX 247I)

McArthur wrote again on February 28, 1968:

Apparently your [sic] being exposed to a lot of nonsense concerning the situation here. One of the men's wives taped part of stateside newsreel (newscast) and sent it to him. I want to make two things clear after hearing the tape.

1. All this nonsense about an all out attack on Saigon is just that—*nonsense* (I could make it stronger). Yes, there is fighting in certain places miles from the city—but this always goes on.
2. Approximately two blocks of the section of Saigon known as Cholon were just about leveled two weeks ago during the initial fighting. This is true. But it is also true that newsreels—both here and in the states—have been playing films of *these same two blocks* over and over again for the past two weeks and making it appear that this was going on throughout the city.

So please don't take any of these "starved for news" company's reports with more than a grain of salt. Things have been so quiet here lately that we're just bored stiff. (JX 247K)

16.

BROADCAST:

MACV reported 50,000 enemy dead which, using a ratio of three wounded for every one killed, meant 150,000 wounded in the first five weeks of

Tet. This showed that MACV's estimate of 224,000 total combined enemy strength had to be too low and that MACV must be falsifying enemy strength estimates. (JX 1, p. 23)

FACTS:

Defendants presented "wounded in action" ("WIA") to "killed in action" ("KIA") calculations based on a WIA to KIA ratio of 3:1 to demonstrate that MACV's OB figures before the Tet offensive were "unbelievable." (JX 1, p. 24) Defendants gave an estimate of 50,000 for the enemy killed by March 7, 1968. They then applied the ratio of three wounded to one killed and concluded that MACV was saying that there were 200,000 "taken out of action." "[T]he bottom line figure just didn't make sense." (JX 1, p. 23)

In the normal course of combat, some individuals are wounded but not killed on the field of battle. Of the wounded, some will die later; others will return to action. Based on a review of collateral intelligence sources, General McChristian and his staff developed an *estimate* of how many soldiers were likely to be wounded, and how many would die of their wounds, if a given number of enemy soldiers were killed in an engagement. General McChristian expressed this *estimate* as a *ratio*: for every 100 enemy killed, 150 are wounded; of the 150 wounded, 35 will die of their wounds or be permanently disabled. MACV's official ratio for WIA to KIA then was 1.5 to 1. Numerous documents used these ratios. (JX 227, Honolulu Conference Report p. 5; JX 767, Williams Trip Report, Tab I; JX 273, SNIE 14.3-67; JX 382, Halpin Strength Memo p. 3, Note 1; JX 558, CIA Saigon 4/2/68 cable to Director, p. 7) (See Plates 12 and 13)

General McChristian's Order of Battle Manual, which was reviewed and readily accepted by all conferees at the February 1967 Honolulu Conference (JX 638, McChristian, *Role of Military Intelligence*, p. 128) stated that:

The adjusted loss rates indicate that the best estimate of the WIA to KIA ratio is 1.44 to 1. For analysis purposes, a figure of 1.5 to 1 is used. This analysis does not indicate the existence of any deserters other than those who are Hoi Chanh.

* * *

A. *Permanent Disability and Death from Wounds*: Captured documents and interrogation reports have also been examined in

order to determine the number of wounded VC/NVA personnel who are permanently disabled or die from their wounds. Table II shows results of this analysis.

TABLE II
Losses from Wounds

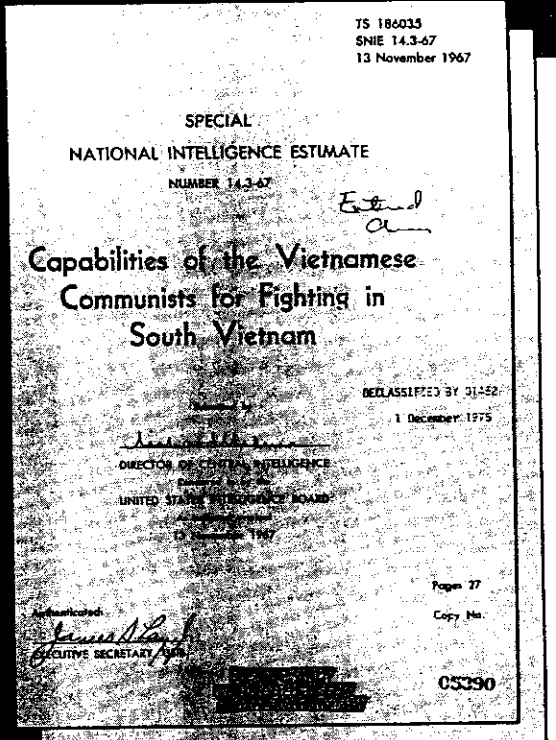
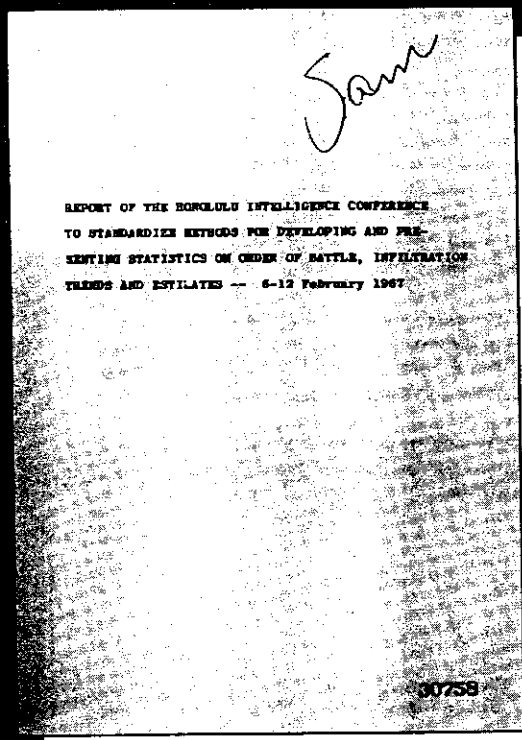
<u>Disposition</u>	<u>Per Cent</u>
Die during evacuation from the battlefield.....	10%
Die at the hospital (after evacuation)	2%
Permanently Disabled because of wounds (in hospital).	13%

These figures together with the WIA to KIA ratio developed in the previous paragraph allow for calculation of the number of personnel who die of wounds or are permanently disabled. Chart I shows the method.

Chart I

1. Let KIA = 100 men.
2. Then WIA = 150 men.
3. Of the WIA, 10% die during evacuation from the battlefield. Therefore, 15 men die and 135 reach the hospital.
4. Of the WIA who reach the hospital, 2% will die of their wounds, thus, 3 men of 135 who reach the hospital will die.
5. Of the remaining 132 men, 13% or 17 men will be permanently disabled.
6. Total additional losses are $15 + 3 + 17 = 35$ men.
7. Thus every 100 KIA imply 35 additional permanent losses.

This analysis leads to the conclusion that enemy losses from permanent disability and death from wounds are equivalent to 35% of the killed in action by body count. This factor was used to calculate the figures in the fifth column of Table 9. An analysis of this type is made at the end of each calendar quarter. (JX 227, Annex F, p. 17-19)



At page 5 of the Honolulu Conference Report under "F. Enemy Losses" item 2 reads as follows:

With regard to enemy killed in action (KIA), the conference agreed that body count statistics provide the only reasonably accurate basis at present for determining KIA. The conference also agreed on the use of a wounded in action (WIA) to killed in action (KIA) ratio of 1.5 to 1. This was done after considering various WIA to KIA ratios which were considered relevant in South Vietnam, including a MACV study based on documentary evidence. The conference also reviewed the methodology in this study for estimating the number of enemy who died of wounds (DOW) or were permanently disabled. The conference accepted that there are 35 DOW for every 100 KIA. This 35 percent figure will be used until amended by additional amplifying data.

At page 20 of S.N.I.E. 14.3-67 under Item "49. Communist Losses" the report reads as follows:

Communist Losses. Total Communist losses have been rising sharply over the past 2 years. On the basis of the latest data, we estimate that total losses for 1967 will amount to about 170,000 — an increase of about two-thirds compared with 1966. The bulk of these losses are killed-in-action as reported from body count. Our estimate of permanent losses from wounds is based on evidence indicating that for every 100 killed there would probably be 150 wounded, and that, of these, at least 35 die or are permanently disabled. Obviously, these figures involve a margin for error, but since they cannot take into account all casualties from air attacks or from artillery fire, or losses from sickness and accident, the killed and wounded estimates are probably not overstated. Figures for military returnees and prisoners are firm. But the number of deserters is an estimate based on a study that suggests there is likely to be one permanent desertion for every military returnee. If the overall totals do err, it is likely to be on the low side.

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As of 20 February 1968

Prior to the TEF offensive, the enemy's combat strength was carried at 115,016. This total does not include the 304th Division (10,000), 320th Division (7,600), and the 31st SVA Regiment (1,790). Including these units, the total combat strength would be 133,906. The total enemy armed forces strength, however, was not increased by 18,890 inasmuch as 6,590 of this increase had already been added to the total enemy strength through estimated but unconfirmed infiltration over the past several months. Total enemy armed forces strength shown in the 31 January 1968 CB Summary is 223,346. Adding the 320th and 304th Divisions and the 31st Regiment to CB holdings increases the total to 237,446. Retrospective correction to enemy losses during the 28 - 31 January period brings this total to 232,331. Net enemy losses, based on COC Log reports from 1 - 16 February, amounted to 38,454. This included 29,730 KIA, 5,203 DOW/DIS (Note 1), 2,500 POW (Note 2), 21 Hoi Chanh, and 1,000 non-battle losses. Enemy gains during this half-month period are estimated to be 3,500 by infiltration and 1,750 by recruitment. It is estimated that 3,000 of the enemy TEF offensive losses can be attributed to the infrastructure and 5,000 to civilians and laborers impressed into service immediately prior to the offensive. Of the balance of 23,206 February enemy losses, and the 5,299 extra January losses 16,907 could be ascribed to enemy main and local force combat units, 4,000 to admin service forces, and 7,600 to guerrillas. The estimate total enemy combat force, as of 16 February to be approximately 209,000.

The DIA brief's estimate of 100,000 guerrillas is not considered supportable in view of the 31 December 1967 RITE Report which totals 64,000.

In the September 1967 CIA/DIA/MACV Conference it was agreed that Self Defense, Secret Self Defense, and other like personnel were not a part of

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The enemy military forces any more than GVN supporters are considered a part of SWAF. There has been no subsequent evidence to support a charge to this agreement.

It is possible that some of these persons were included among the individuals impressed prior to the TEF offensive. It is of interest, however, that not one prisoner thus far upon questioning has admitted to being a member of a self defense, secret self defense, or assault youth; on the other hand many prisoners maintain that they had no affiliation with the VC before their impressment prior to the offensive. It appears unlikely, if the enemy had a large ready reservoir of semi-trained personnel, that he would impress unskilled personnel to fill his ranks.

Note 1. Inasmuch as approximately half of the KIA were suffered in urban fighting the .35 died of wounds/permanently disabled factor was not applied to one half of the KIA figure. It was felt that, during the urban fighting, enemy personnel who were seriously wounded could not be evacuated and either died or were captured.

Note 2. Although the COC Log showed over 3,000 detainees during this period, it was estimated that no more than one half of these will ultimately be classified as prisoners of war.

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MEMO ROUTING SLIP		NEVER USE FOR APPROVAL, DISAPPROVAL, CONCURRENCE, OR SIMILAR ACTION		INITIALS	CHECKLIST
TO		Dir, Intel Pdn		DATE	COORDINATION
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				NOTE AND RETURN	
				SEE COM. VERIFICATION	
				SEE ME	
				SIGNATURE	
REMARKS					
<p>1. Per request of M Gen Brown, are attached a current MACV strength briefing, and comments and corrections on a DIA brief.</p> <p>2. This has been coordinated with and concurred with by CIIED.</p>					
FROM				DATE	
<p><i>Edward V. Halpin</i></p> EDWARD V. HALPIN, Colonel, USAF U.S. Director, CICV				24 FEB 1966	

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Note 1. Inasmuch as approximately half of the KIA were suffered in urban fighting the .35 died of wounds/permanently disabled factor was not applied to one half of the KIA figure. It was felt that, during the urban fighting, enemy personnel who were seriously wounded could not be evacuated and either died or were captured.

SNIE 14.3-67 stated:

Our estimate of permanent losses from wounds is based on evidence indicating that for every 100 killed there would probably be 150 wounded, and that, of these, at least 35 die or are permanently disabled. (JX 273, p. 20)

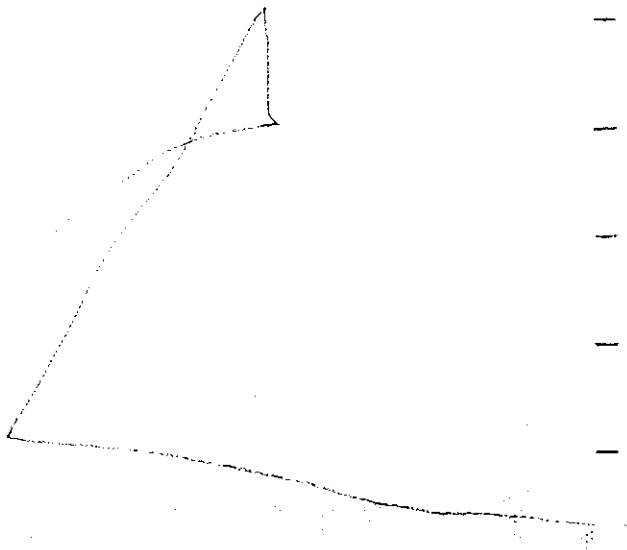
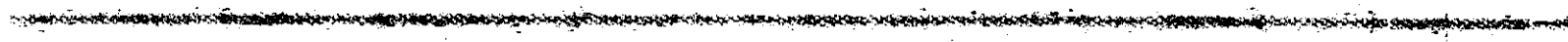
The Department of Defense Southeast Asia Statistical Tables for August 1967 and August 1968 both report that MACV calculated the number of personnel who die of wounds or are permanently disabled by multiplying .35 times the figure for personnel killed in action. (JX 900A and 900B)

But MACV did not apply the .35 DOW factor after Tet when it calculated enemy losses. A MACV briefing to the Mission Council states how MACV calculated losses after the Tet offensive:

Total February KIA figures would be 37,000. Of this number, we deducted 10,000 from further calculations inasmuch as this number was estimated to be laborers, political cadre, and recently impressed persons who were never carried in order of battle figures. Our next loss was the DOW/DIS factor. As you can see, *the approved .35 factor* was not applied to the total enemy KIA figure. It was agreed the factor would not be applied to enemy killed in city fighting during the initial phases of the Tet offensive. In those cases, we felt that enemy evacuation of his seriously wounded was not possible and such persons either died and were included in the body count or were captured by our forces. Other losses are the estimated Hoi Chanh, prisoner of war, and non-battle losses. (JX 558, CIA Saigon 4/2/68 Cable to Director p. 7)

Soon after the Tet offensive began, MACV sent out a number of messages and cables containing its estimates of enemy casualties and the number of persons who died of wounds or were permanently disabled. For example, on February 20, 1968, CICV Director Col. Edward Halpin wrote the following memorandum for DIA:

Total enemy armed forces strength shown in the 31 January 1968 OB Summary is 225,346. Adding the 320th and 340th Divisions and the 31st Regiment to OB holdings increases the total to 237,646. Retroactive correction to enemy losses during the 28-31 January period brings this total to 232,351. Net enemy losses, based on COC Log reports from 1-16 February, amounted to 38,454. This included 29,730 KIA, 5,203 DOW/DIS (Note 1), 2,500 POW (Note 2), 21 Hoi Chanh, and 1,000 non-battle losses.



Enemy gains during this half-month period are estimated to be 3,500 by infiltration and 1,750 by recruitment. It is estimated that 5,000 of the enemy Tet offensive losses can be attributed to the infrastructure and 5,000 to civilians and laborers impressed into service immediately prior to the offensive.

Note 1. Inasmuch as approximately half of the KIA were suffered in urban fighting the .35 died of wounds/permanently disabled factor was not applied to one half of the KIA figure. It was felt that, during the urban fighting, enemy personnel who were seriously wounded could not be evacuated and either died or were captured. (JX 382) (emphasis added)

Based on these contemporaneous memoranda, MACV was deducting 30% of KIA for civilians, political cadre and others not in the OB, leaving 35,000 of the 50,000 KIA to be subtracted from the OB. The factor of .35 would have been applied to half the KIA and the factor .17 would have been applied to the other half for disabled and died of wounds, adding about 10,000 more put out of action. Based on Col. Halpin's February 20, 1968 memorandum (JX 382), there might have been another 5,000 POW's and deserters. This would mean the total that should have been subtracted from the OB was 50,000, not 200,000, the figure used in the Broadcast.

No contemporaneous documents or evidence support an assertion that MACV ran out of enemy "on paper." (CBS Mem. 176-77)

17.

BROADCAST:

MACV analyst Lt. Richard McArthur's guerrilla figures were arbitrarily and improperly reduced as part of MACV's efforts to try to demonstrate massive enemy losses, and Lt. McArthur was transferred when he protested. (JX 1, pp. 22-23)

FACTS:

The reductions in Lt. McArthur's guerrilla figures were a result of the cumbersome convention MACV used to attempt to assign gains (infiltration and recruitment) and losses (KIA, desertions, etc.) to particular units in the collateral OB. The enemy losses which could not be identified, (e.g. no identification papers, advanced state of decomposition), were arbitrarily

assigned to the guerrilla category. When MACV learned in which unit or category an enemy casualty belonged, he would be retroactively "transferred," if appropriate, from the guerrilla loss column and subtracted from the identified unit. For this reason the guerrillas were referred to as a "slop factor."

The Tet offensive produced many casualties that MACV could not initially assign to particular units, even though these units were almost all in the Order of Battle. (JX 661, COMUSMACV 4/4/68 cable to RUEPJS/NMCC; JX 693, Report of Chairman, Joint Chiefs of Staff, on Situation in Vietnam and MACV Force Requirements, Enclosure 1) Therefore, MACV followed its standard procedure and added unidentified gains and losses to the guerrilla figures. Because of the number of enemy casualties at Tet, the system produced a temporary radical drop in guerrillas. Commander James Meacham was the MACV intelligence officer responsible for reducing Lt. McArthur's figures. Commander Meacham told defendant Crile the reasoning behind the reduction was that the guerrillas were an overflow category.

CRILE: At one point, around—In February, early February, after the—after the Tet offensive, there are orders that come down to drop the estimates by 24-thousand; and your boss, Colonel Wyler is told that he's to bring the strength totals down, and to take those soldiers from any category that you all wanted to. You chose guerrillas. Correct? Was there any specific documentation to justify that?

MEACHAM: No. It was my decision; it was—at the time, but it was the—the decision we had always made. In this complicated bookkeeping system we had, the guerrillas were the soft figure.

CRILE: You mean, if there were—Pardon me, but—you mean if there were orders from on high to reduce the . . . ?

MEACHAM: No, no no no. I mean, if—if we had so many casualties, for example, that we had to assess against our—our grand total number, and we couldn't—where there'd be some we could attribute to the 325th division, there'd be some we could attribute to another division, and at the end you have a big bunch left over, and you just take these out of guerrillas. This seems arbitrary, and of course it is arbitrary, but it's not inconsistent with the way things actually happened, because—after big losses they tend to upgrade guerrillas in to the regular forces. (JX 8, Meacham CBS Interview Tr. 22-23)

Meacham explained the process in more detail in his affidavit:

When we could, we attributed reported losses and gains to specific units and categories.

If we received reports of enemy casualties to a maneuver element of some type but we could not attribute these losses to an identified unit, we would attribute the losses to the category of guerrillas until the maneuver unit was identified. When the unit was identified and accepted in the Order of Battle, we would correct our current holdings and retroactively adjust a listing of previous holdings (which appeared in each monthly Order of Battle Summary). In similar fashion, additions which could not be attributed to specific units were added to the guerrilla total.

The process I have described above led to the category of guerrillas being referred to as "the slop factor", by myself among others. While the process had its defects, I believe it did tend to reflect reality, because when maneuver units suffered losses, the enemy usually went to the guerrillas and "promoted" a number of them to the maneuver forces. Conversely, when losses were low and infiltration was high, recruitment tended to swell the ranks of the guerrillas.

The process I have described worked well as long as there were no dramatic shifts in the flow of inputs or outputs. When there was a dramatic shift, such as an inordinate number of casualties in one month, the process produced figures which could appear to someone who does not know the system to be very inaccurate. The reason was that the losses were subtracted at once but the month's infiltration might not be fully known for six months. However, the process corrected itself over time as the infiltration became clearly known.

At the Tet Offensive in 1968, the enemy suffered massive casualties over a very short period of time. It was very difficult to attribute most of these losses to specific maneuver units at that time. In keeping with past practice, OB Studies attributed a large portion of the losses to the guerrilla category. The enemy losses were so high that the total we carried for guerrillas dropped substantially. In later months, as we began to pick up infiltrators for the Tet period and attribute losses to specific main force units, our guerrilla holdings rose accordingly.

I was never ordered by any of my superiors to produce a pre-ordained total figure for enemy strength. Each month's total figure was determined by the gain-loss method. No one distorted or altered the total enemy strength figures OB Studies produced. The heavy enemy casualties at Tet caused a distortion because of the difficulty in the apportioning of losses to specific categories of enemy elements and because the infiltration for the period had not all been taken up in the figures.

The gain-loss system was a kind of bookkeeping or accounting system and it was very complex. It was difficult to understand, and anyone not highly familiar with it would have a difficult time explaining it to others.

* * *

I also recall that the CBS broadcast said or implied that Lt. Richard McArthur was transferred because his guerrilla figures were wrongfully changed and he would not go along with the changes. Those assertions by CBS are false. (Meacham Aff. ¶¶ 12-18, 33)

McArthur told the Pike Committee in 1975 that he had "no actual proof these figures were falsified by any certain individuals." (JX 311D, McArthur Pike Committee Testimony, Part 5, p. 1669)

MACV also explained this methodology in detail in at least three post-Tet cables or memos.

One of the three was a classified cable dated April 2, 1968 from CIA Saigon to the CIA Director. Adams took it from the CIA files and defendants had it in their possession in 1981. (JX 558) The second was an April 4, 1968 cable from MACV to NMCC and CINCPAC. (JX 661) The third was a memorandum dated April 5, 1968, signed by Adams' immediate superior, Ronald Smith. (JX 714)

The April 2, 1968 cable discusses gains and losses in enemy strength in the first two months of 1968. It says in part:

The net change to enemy forces was then applied to the 31 January corrected total to arrive at our 29 February military order of battle figures. As you can see, hard source intelligence allowed us to ascribe some of the enemy losses to specific enemy units thereby causing changes to the various categories making up the total. After applying all the losses we could based on hard intelligence, we still had known losses that we could not ascribe to any specific unit. We then estimated what portions of these known but unascrivable losses would be assessed against enemy administrative services and guerrilla forces. At a later date, should we receive intelligence that some of these losses had actually been incurred by specific main or local force units, a simple retroactive adjustment can be made. (JX 558, pp. 7-8)

Lt. McArthur kept figures derived from his RITZ Reports and other collateral sources, province by province, on a tote board in his office and in an identical hard-copy record. (McArthur Dep. Tr. 122-23) While

McArthur was on R & R in Bangkok for a five-day period beginning about a week after Tet (*Id.* 140), MACV followed its standard procedure for computing enemy gains and losses. The net result was an appreciable drop in guerrillas. In his absence, someone conformed McArthur's tote board figures to the strength figures produced by MACV's methodology. (McArthur Dep. Tr. 141) No one changed McArthur's hard copy nor past MACV OB summaries. (Gattozzi Dep. Tr. 77)

McArthur was obviously upset that his work had been touched without his consultation, and complained to his superior. McArthur claims that Lt. Col. Paul Weiler told him to "lie a little." (McArthur Dep. Tr. 142) However, no one else heard this alleged remark and Weiler is dead.

18.

BROADCAST

Several weeks after the Tet offensive, MACV engaged in a coverup which included tampering with and erasing the MACV computer's data base. (JX 1, p. 24)

FACTS:

The Broadcast says:

WALLACE: According to Colonel Cooley, there was a general agreement at this time that something had to be done. Cooley and another senior intelligence officer, Commander James Meacham, have told CBS REPORTS that several weeks after Tet, Colonel Daniel Graham, General Westmoreland's chief of estimates, asked them to alter MACV's historical record. *In effect, they then accused Graham of personally engineering a cover-up.* (JX 1, p. 24) (emphasis added)

Defendants now say:

MACV's enemy strength figures were *reshuffled* after Tet to reconstitute an enemy on paper. (CBS Mem. 177) (emphasis added)

No one other than defendant Adams told Wallace or Crile that anyone at MACV tampered with the MACV computer.

In May 1968, over three months after the Tet offensive, General Davidson and his executive officer, Colonel Roberts, met with Colonel Graham, Lt. Col. Weiler, Commander Meacham and perhaps a dozen others to discuss MACV's enemy strength holdings. Meacham recalls that the purpose was to decide how to make corrections in OB holdings caused by CICV's inability to assign losses to specific units at Tet. (Meacham Aff. ¶ 27)

Col. Graham wanted to show a gradual change. Commander Meacham thought that left alone, the system would work itself out in the long run. The question of whose system to use was presented to General Davidson at the meeting. It is not clear as of this date whether Col. Graham's proposal was effectuated. (Meacham Aff. ¶ 31; Graham Dep. Tr. 270-71)

During their interviews both Meacham and Cooley disagreed with Crile's suggestion that something improper was done.

CRILE: Was the equivalent of burning government records?

MEACHAM: No, no. Not at all. It's—wasn't equivalent of burning anything. All . . .

CRILE: Destroying . . .

MEACHAM: No. I wouldn't say it was equivalent destroying anything at all . . . (JX 8, Meacham CBS Interview Tr. 29)

Meacham went on to explain that following a meeting, there was a decision made to adjust the data base. "It was certainly not falsification of official records, if that's what you're asking." (*Id.*, p. 33) "I think we could have lost an argument before an objective jury on this." (*Id.*, p. 34) "We didn't challenge that he [Graham] thought he had good reasons, we just thought we had better ones for him not to . . ." (*Id.*, p. 44)

Crile read Cooley a portion of Meacham's interview.

CRILE: And in the process, he would—would he be calling for erasing the historical memory of—of what was done way back then?

COOLEY: I didn't—I don't believe that—to—to erase it out of—out of the computers . . .

CRILE: Let me read this to you again, from—from . . .

COOLEY: . . . storage, I don't think was—was being requested at all. And I don't think that's what Jim Meacham was talking about. (JX 11, p. 72)

Meacham, now the military correspondent for the *Economist*, has explained what happened in an affidavit. He first states:

Based on my knowledge, the CBS Broadcast "*The Uncounted Enemy: A Vietnam Deception*" falsely portrays my actions at MACV J2. In particular, the broadcast's version of events after the Tet Offensive does not square with my memory, and before the broadcast I told George Crile and Sam Adams that their versions of those events were untrue.

The Broadcast, as I recall, states that after Tet, the Chief of Current Intelligence and Estimates, Daniel Graham, altered the records or memory of the computer we used in OB Studies. *This is nonsense for several reasons*, not the least of which is that Graham was not in the chain of command of myself or my subordinates, and could not order us to do anything with the computer. Moreover, *OB Studies printed out on paper a copy of its OB holdings each month and immediately sent that to a long list of persons in Vietnam, Washington, the Pacific Command (MACV's Superiors), and elsewhere. These "hard copies" of the Order of Battle were always available for comparison at any point in time.* Also, the composition of the "data base" had nothing to do with the method by which MACV derived its enemy strength figures before or after Tet.

I recall the events that the CBS broadcast describes as a "cover-up" after Tet, but the actual events were quite different from what was shown on the broadcast. What happened, as I recall, is set forth in paragraphs 26 through 32 below. (Meacham Aff. ¶ 23-25) (emphasis added)

The accuracy of estimates was debated in April 1968 between the CIA and MACV:

In the gain-loss system, gains were added and losses were subtracted from a base set of enemy strength estimates which had been settled on by MACV as the most accurate before I took over OB Studies.

After the Tet Offensive, the CIA challenged the accuracy of MACV's estimates of enemy strength. A conference was held in April 1968, at which I was present, and at which MACV defended its estimates. It was our belief and judgment that our estimates were more nearly correct than CIA's. It was true that our holdings for guerrillas appeared on paper to be very low, but this was because they had sustained enormous casualties and partly due to the time lag in estimating infiltrators, recruitment, and in ascribing losses to specific enemy units. We believed that in time the gain-loss system would sort the estimates out in a satisfactory way.

After the April Conference, and therefore well after the Tet Offensive, Col. Graham advocated the use of a different base set of enemy strength estimates in a meeting attended by a number of people including the MACV J2, Gen. Phillip Davidson. (Meacham Aff. ¶¶ 26-28)

The decision was not made surreptitiously but was debated at a large staff meeting attended by 10 to 20 officers:

The meeting centered on a methodological dispute about Order of Battle computations. Col. Graham wanted to introduce into our computations what he felt was a more accurate base estimate of enemy strength based on current information and analysis. The analysis generated its own estimates of enemy strength for each month in our computer program. It was not a dispute over current total levels of enemy strength, but over how those totals were to be derived. It would have affected future results however because we would be using new base figures. Whether the future figures went up or down each month would depend on the gains and losses for that future month.

I argued against the Graham proposal because I felt that the information we had in prior years was the best information available. Also, the gain-loss-formula would yield about the same result as the new analysis in the short term, but it would be vulnerable to criticism in the future as we would have changed own base figures. Col. Graham's analysis would not have affected the current total level of enemy strength, and it had little to do with the actual level of enemy strength before or immediately after Tet. I believe that Col. Graham had wanted to introduce this analysis even before Tet.

At the meeting in which Col. Graham made his proposal, between fifteen and twenty officers were present, with ranks from brigadier general to lieutenant. Graham made his arguments, and I made mine. As I recall, Gen. Davidson told Graham to go ahead and try to do what he wanted to do. I told one of my officers, Lt. Bernard Gattozzi, to assist Graham. *I do not know for a fact whether the changes Graham advocated were ever made.* If they were made it was after I left Vietnam, because when I left, Gattozzi was still running trial programs. I remember Gattozzi coming back to me with results of the trial runs, but I do not know whether trials were ever finalized and used by MACV. (Meacham Aff. ¶ 29-31) (emphasis added)

Meacham told Crile that there was nothing illegal or unethical in what took place:

I do know that what Col. Graham proposed was neither illegal nor unethical. The best estimates available should always be used,

and it was Graham's position that he had a better estimate than what was then in use. *I never accused Graham of proposing anything illegal or unethical.* I pointed out to George Crile that Graham was not proposing destroying official records or anything of the sort. *Also, there was nothing in the computer that did not already exist on paper.* The computer merely processed this data more rapidly. (Meacham Aff. ¶ 32) (emphasis added)

Col. Graham told CBS that nothing improper happened. (JX 13, Graham Interview Tr. pp. 114-115)

Defendants rely on Lt. Gattozzi to support their version of this incident. (CBS Mem. 177) However, Gattozzi has always maintained he's "managed to block most of that out of my head." (Gattozzi Dep. Tr. 107, 231, 329) Crile told Cooley that Gattozzi had problems recalling this incident. (JX 742, Crile-Cooley 4/21/81 Telephone Interview Tr., 1-3, 22)

Crile told Meacham that "Bernie Gattozzi, who has been very helpful, draws a blank when it comes to that." (JX 145, Crile-Cooley 3/20/81 Telephone Interview Tr., 29089)

Adams noted in December 1979:

Don't recall "erase computer" [ie, the story wh Meacham tells SA] (JX 91, Adams notes on Gattozzi, p. 26896)

On April 21, 1981, Crile asked Gattozzi about the story in a telephone call which Crile surreptitiously recorded. Gattozzi said:

I've talked with some people that will remain nameless, and I've asked them point blank if they remember it, and they were in a position to remember something like that, and they come up dry, and *I came up dry.* (JX 743, Crile audiotape of Gattozzi interview, p. 21) (emphasis added)

Again, one year later, on June 18, 1982, Gattozzi spoke to Benjamin:

I can't come up with that. A base change is not as bas (sic) as it sounds. . . .

If Graham had asked me to change the computer base, *that is something that would stand out in my mind.*

We all got the feeling that Graham was doing something. We at the Lt. level talked about it all the time, *but we just didn't know.* (PTX 79, Benjamin Notes of Gattozzi Inter., p. 38572) (emphasis added)

The MACV computer "data base" contained the monthly MACV OB Summaries and related documents. (Ponder Aff. ¶ 10; Meacham Aff. ¶ 24) Hundreds of these reports were distributed each month around the world.

No one suggests there was any attempt to destroy or recall these hard copies as part of the "cover-up." (See, JX 638, McChristian, *Role of Military Intelligence*, p. 131; Ponder Aff. ¶ 10; JX 198M)

19.

BROADCAST

General Westmoreland requested 206,000 additional troops after Tet to fight a "phantom enemy." (JX 1, p. 25)

FACTS:

Defendants say "General Westmoreland had requested 206,000 additional troops" after Tet, which "seemed to be an admission that the half-million American soldiers already in Vietnam couldn't cope with the enemy." (JX 1, p. 25) This request showed that "something was terribly wrong with MACV's reports on the enemy."

On March 10, 1968, the *New York Times* published a story that General Westmoreland requested 206,000 more men for Vietnam. (JX 919) This account is inaccurate. Herbert Schandler's 1971 book, *Unmaking of a President* (JX 322), explained that General Wheeler flew to Saigon in February 1968, and solicited a troop request from General Westmoreland on the representation that the Administration was considering a range of alternative strategies including expansion of the ground war beyond the borders of South Vietnam. (JX 322, pp. 105-06) "The troop request that Westmoreland and Wheeler came up with [in Saigon] was designed to meet both global and local interests." (*Id.*, at 109) Schandler continued:

In his report to Washington, General Wheeler emphasized the gravity of the situation in South Vietnam and said nothing about a new strategy, about contingencies that would determine the level of forces required there, or about reconstituting the strategic reserve for possible use independent of Vietnam.

* * *

The troop list developed in Vietnam by the two military leaders had been designed to serve many purposes. Under the best possible circumstances, it would provide some additional troops to the Vietnam commander, but most importantly, it would allow reconstitution of the *strategic reserve*. These forces would, of

course, be available to the United States commander in Vietnam if a political decision were made to adopt a new strategy of expanding the war. In the worst possible case, the collapse of the GVN, the troop list would provide for further Americanization of the war.

But in his report to the president, General Wheeler did not mention the best contingency, a stabilization of the situation in Vietnam with few additional forces required. Neither did he mention reconstitution of the strategic reserve, the possibility of an expanded strategy, or the fact that all three troop increments would be needed in Vietnam only with an expanded strategy. Wheeler put the worst possible case forward as though it represented the current situation in South Vietnam. (JX 322, pp. 111, 115) (emphasis added)

There are many similar accounts. (See e.g., JX 646, John B. Henry, "February 1968" in *Foreign Policy*, (pp. 12-24) In his autobiography, *A Soldier Reports*, General Westmoreland described the incident in detail. (JX 328, pp. 354-59) Former Special Consultant to the President John Roche similarly explained it in an essay entitled, "The Impact of Dissent on Foreign Policy: Past and Future," printed in Anthony Lake (ed.), *The Vietnam Legacy* (1976). (See Roche Aff. ¶ 8) General Wheeler gave a similar account to the LBJ Library, which the Library supplied to the parties to this litigation on request. (JX 872)

20.

BROADCAST:

Commander Meacham's letters to his wife represented his true assessment of the situation in Vietnam, and he endorsed that assessment when CBS interviewed him. (JX 1, pp. 24-25)

FACTS:

Defendants' Broadcast showed excerpts from three letters Commander Meacham had written from Vietnam to his wife during the first half of 1968. All were from the period after Tet, i.e., after the alleged suppression had taken place. Defendants portrayed these as Commander Meacham's accurate assessment of MACV intelligence, a conclusion Meacham's presence on the Broadcast seemed to reinforce.

But Meacham had told defendants that he did not know what many of the letters referred to, that they were hyperbolic, and should not be taken at face value. (JX 8, Meacham CBS Interview Tr. 3, 9, 24; Meacham Aff. ¶¶ 39-40)

Colonel Cooley, defendants' witness, Meacham's deputy and the person who probably worked most closely with Meacham, confirmed Meacham's tendency to hyperbole. Cooley told Crile in their interview that the wording in Meacham's letters "was typical of Jim's daily discussion where he took on a Shakespearean role . . . and I'm sure his wife was picking up on it. There's subtle humor in what he's saying, in his choice of words." (JX 11, Cooley CBS Interview Tr. 59) Reading the letters in the context of all of the letters Meacham wrote his wife reveals that Meacham simply was dissatisfied and frustrated by his assignments and was expressing his frustration to his wife. (JX 214A-VV)

Meacham repeatedly told Crile that the letters were not factual and that there was no faking of intelligence, when Crile asked him about his letters in a filmed interview before the Broadcast.

Well, I think everyone wanted to do his job as he saw it, but they're a lot of frustrations in that sort of operation, particularly one where the—the staff is so heavily over-staffed and there's so many people chasing such few jobs. (JX 8, p. 6)

* * *

Each day is the most important day when you're living through it, of course. And if you're writing a letter each day, well, you get a series of photographs; you don't get a clear—a clear narrative. (JX 8, p. 9)

Crile read to Meacham a number of letters in which he used the word "lie," including "Someday, it may come out about how we lied about these figures." Crile then asked:

It sounds to me like you were talking about being put into a position where you were asked to participate in the faking of intelligence. How else can—can we look at it?

MEACHAM: Well, I mean, you can look at it that way if you want to. We certainly weren't faking any intelligence; we were trying to come up with conclusions based on intelligence.

* * *

CRILE: But—today—the way you present it, it sounds as if this was an—argument over methodology, but these are your words from that time, and they are words that are specific; they're about lying. They're your words.

MEACHAM: Well—well, I mean—so what—what do you want me to say about them?

CRILE: Well, I was trying to have you put some light on it (*Id.*, pp. 26-27)

Crile kept pressing Meacham to say that the letters were factual and Meacham kept refusing to do so:

CRILE: Can I express a certain amount of wonderment. You're now a reporter. You were then an intelligence analyst. You were writing home to your wife. . .

MEACHAM: Yeah.

CRILE: . . . very clear-cut language. "I'm not talking about the confusion and inefficiency, which to a certain extent are products of all wars." You said that you were "talking about cover-your-ass orders, lies, from the very highest levels." Your letters are filled with talk of lying. Isn't it clear that something stronger, questionable was happening than you are now allowing your self to (WORD)?

MEACHAM: Well, it's not all clear that—that—that these particular sentiments were applying specifically to these sets of numbers that we're talking about. It's not clear in my mind even that—that that's what I was talking about. We were all disillusioned with the way we had to operate in that war out there. And—and we didn't like it.

CRILE: You know, let me read you another section: "We shall see if I can make the computer sort out the losses since the Tet Offensive began in such a manner as to prove we are winning the war. If I can't, we shall, of course, jack the figures around until we do show progress." You wrote that.

MEACHAM: Well, so what?

CRILE: So, aren't you saying that you were manipulating figures to come out with preconceived notions as to what the estimates should be? Faking intelligence.

MEACHAM: No, no. I'm not saying that at all.

CRILE: You say, anyhow, "We are winning the war, and now I can prove it, having received sufficient, adequate guidance from my leaders."

MEACHAM: (INDISTINCT) Well,—*we certainly weren't faking any intelligence.* Nobody that I have any connection with ever faked any intelligence. (*Id.*, pp. 35-36)

* * *

CRILE: Gee, I hate to do this: this is you again, to your ex-wife: "Dear Dorothy: You should've seen the antics my people and I had to go through with our computer calculations to make the February strength calculations come out the way the general wanted them to. We started with the answer and plugged in all sorts of figures until we found a combination which the machine could digest. And then we wrote all sorts of estimates showing why the figures were right. And we continue to win the war." What could be clearer than that? You're not producing honest intelligence reports.

MEACHAM: Well, there isn't such a thing as an honest intelligence report; there's my view and somebody else's. *We quite clearly didn't agree with the figures that we were having to use, but it's not a question of honesty or dishonesty, and I think it's wrong of you to try to use those words.* (*Id.*, pp 36-37) (emphasis added)

* * *

Finally, Crile asked Meacham directly whether what Adams and he were trying to portray was accurate:

CRILE: Do you understand that the—I mean, what Sam and I are both trying to say right now.

MEACHAM: I understand perfectly well what you're trying to say.

CRILE: And . . . ?

MEACHAM: *I don't agree with it.* (*Id.*, pp. 3940) (emphasis added)

Meacham explained further in his affidavit:

Mr. Crile also made much of certain words and phrases I used in letters I wrote home to my ex-wife. Mr. Crile has these letters because I freely gave them to Mr. Adams (through my ex-wife). I freely gave the letters to Mr. Adams because I had no sense of having done anything wrong during my tour at MACV. I had nothing to hide. . . . I later spoke to Mr. Adams and Mr. Crile willingly not as part of any painful confession. My letters expressed my frustration at having to do work (such as some of our studies) that I felt were silly, or a waste of time; they expressed my pessimism about the war; they expressed my personal dislike for some of my superiors. Usually, I did not even refer to the subject matter of the CBS Broadcast, i.e. strength estimates, but to the conclusions being drawn from the estimates. I never intended that the harsh language in those letters be taken literally. (Meacham Aff. ¶ 39)

BROADCAST:

At the end of March 1968, the intelligence community accepted Adams' estimates of enemy strength. The President's advisors—the so-called Wise Men—were told how many enemy there really were and this led to the President's decision not to run for re-election. (JX 1, pp. 25-26)

FACTS:

Adams claimed his higher estimate altered the course of history:

I was asked to bring together a—an estimate of how many enemy there were. And I said there were about 600,000. And I understand it was used to brief the so-called Wise Men, Lyndon Johnson's senior advisers.

WALLACE: Who are we talking about?

ADAMS: They included Dean Acheson, George Ball, Arthur Goldberg, Maxwell Taylor and so forth.

WALLACE: What had happened is that after Tet the CIA had regained the courage of its convictions, and among other things, they told the Wise Men of the CIA's belief that we were fighting a dramatically larger enemy. That was at least one of the reasons why Lyndon Johnson's advisors concluded that despite the military's insistence that we were winning, the enemy could not in fact be defeated at any acceptable cost. The Wise Men then stunned the President by urging him to begin pulling out of the war. (JX 1, pp. 25-26)

The Broadcast observed that five days after George Carver of the CIA briefed the Wise Men "a sobered Lyndon Johnson addressed the nation" (JX 1, p. 26), suggesting a direct connection between Adams' estimates and President Johnson's decision not to run for reelection.

a. *The Briefing of the "Wise Men".*

McGeorge Bundy, Professor of History at New York University, former President of the Ford Foundation, Rostow's predecessor as Special Assistant to the President for National Security Affairs, and the spokesman of the "Wise Men" in their subsequent meeting with the President, supplied an affidavit which describes the meetings involving the "Wise Men":

In November 1967 and March 1968, President Johnson called upon me and a number of former government officials (known as the Senior Advisory Group on Vietnam or, more colloquially, the "Wise Men") to review American policy in Vietnam.

The second meeting of the Group began on March 25, 1968. We reviewed a number of background papers, had discussions with certain cabinet officers and heard briefings from Philip Habib of the State Department, George Carver of the CIA and Major General William DePuy. The briefings by Habib and Carver were particularly helpful to the Advisory Group. I believe both to be extraordinarily able and conscientious public officials.

During our briefings and discussions, which went well into the evening, we reviewed the American policy toward Vietnam, including its implications within the United States. Among the principal subjects discussed were the Tet offensive, including in particular its demonstration of the determination and capabilities of the enemy and the disruption of the pacification effort it had caused; the bombing of North Vietnam, including its effectiveness and impact on world opinion; and the attitude of the American people toward the war, with emphasis on the degree of American readiness to support the level of effort that would be required for an American military victory on the ground.

I recall no discussion of any change in intelligence estimates of enemy forces, and no discussion of the particular question of numbers of irregular or nonuniformed enemy personnel. Instead the discussion focused on the matters referred to in paragraph 4.

The majority, but not all, of those present came to the conclusion that there should be a substantial change in our approach to the Vietnam war, basing this judgment mainly on the mismatch between what would be required for victory and what the American people would support. While a minority held that we should continue to meet the requests of military commanders, a majority disagreed, and it concluded specifically that it would advise against a substantial additional troop deployment.

The next day, March 26, the advisory group met with the President, and at the request of the members of the group I presented an account of our views. I told the President that there was a significant shift from the hopeful views we had expressed in November. We had then hoped that there would be slow but steady progress, but now we did not find the picture so hopeful, especially in the countryside. The majority of us were in agreement with Dean Acheson that we could no longer do the job we set out to do in the time that American opinion would permit us, so that we must begin to take steps to disengage. I reported

the differing views of others, and individual members then made their own additional comments, so that I believe the President got a fair view of our opinions. (Bundy Aff. ¶¶ 2-7)

Defendants filmed only one of the "Wise Men," Walt Rostow. Defendants did not question him on this subject. (JX 14, Rostow CBS Interview Tr.)

George Carver testified at his deposition that he did not use enemy strength figures in his briefing of the "Wise Men." (Carver Dep. Tr. 692-93)

Adams had been told that Carver did not present a comparison of strength estimates to the President. (JX 630, Adams Tet chron., p. 39544)

b. *Tet and LBJ's decision not to run.*

There was no connection between the Tet offensive and the President's decision not to run. Rostow explained this to Wallace in his filmed interview:

WALLACE: And you just couldn't get that story across to the American public, therefore, Lyndon Johnson decided that discretion was the better part of valor and he pulled out of the election.

ROSTOW: That had nothing to do with the . . . his pulling out of the election.

WALLACE: What . . . the Vietnam war had nothing to do . . .

ROSTOW: Tet certainly did not. I'll tell you about that. When I came in in '66, incidentally, in giving me my instruction, April first, 1966, his instructions to me were to build a staff of which we could be proud so that when we left in three years, that was the first inkling that I had . . . When Westmoreland and Bunker were back in November of '67, he called in Westmoreland and asked him if the morale of the troops in the field would be affected adversely if he did not run.

WALLACE: This was when?

ROSTOW: November of '67.

WALLACE: Mm-hm.

ROSTOW: Earlier . . .

WALLACE: Why would a man in charge of a victory and then a victory confirmed at Tet, why would he pull out?

ROSTOW: He'd never intended to run in . . . in '68.

WALLACE: Because . . . ?

ROSTOW: Because, I . . . two reasons, I think. One, his health. He had a history of stroke in the family. And he told me and he's written in his book that he never walked past the picture of Woodrow Wilson without thinking of the terrible dangers that would come to the country—not if the President died. He was quite confident of his Vice President. But if he were incapacitated. In a nuclear age, you could not have the ambiguity we had at that period. The second reason was, as he told Robert Kennedy when he came in to talk to the President, the last time they talked on the fourth of April, he said, I've used up my capital. The next president is going to have a hard time getting things from the Congress and I think a new man could better unite the country. (JX 14, Rostow CBS Interview Tr. 48-50)

Wallace then gave his evidence for disputing Rostow's account:

WALLACE: Oh, conceivably so. But . . . but . . . but at the center of that decision, one would imagine, would be Tet, Vietnam,

ROSTOW: That's what *you* imagine, Mike. But . . . but that doesn't make it true.

WALLACE: It's not just . . . of course, it doesn't make it . . .

ROSTOW: Because . . .

WALLACE: . . . true because I imagine it. I think that that was the conventional wisdom.

ROSTOW: That is the conventional wisdom, but it's wrong. Let me give you another example. Before Tet he was . . .

WALLACE: Well, if he . . . if he had a history of stroke in the family . . . if I may, why did he run again in . . .

ROSTOW: Mrs. Johnson persuaded him . . .

WALLACE: . . . 1964?

ROSTOW: Mrs. Johnson persuaded him. He didn't want to. There is an extraordinary letter of hers . . . But let me just tell you, for example. The State of the Union message in January of '68 before Tet. He had in his pocket the announcement that he wasn't going to run.

WALLACE: No, I . . . I've heard about . . .

ROSTOW: And . . . this is true . . . (*Id.*, pp. 50-51)

The President told General Westmoreland of his decision not to run on November 20, 1967, as related in General Westmoreland's book, *A Soldier Reports*:

The President suddenly became intensely serious. What would my men in Vietnam think, he asked, if he failed to run for re-election in 1968? Would they consider that their Commander in Chief had let them down?

Although taken aback, I responded that if the troops knew why he made such a decision, I was certain they would understand. His health, he said, was "not good," and he was weary. Lady Bird and his two daughters wanted him to retire.

They had discussed the possibility of four more years in the White House at length and were against it. Noting that the Constitution made no provision for an invalid president, he alluded to the illnesses of Presidents Woodrow Wilson and Eisenhower.

Those were not the words of a man feeling his way, using his companion as a sounding board before making his decision, as some who would claim to have driven him from the White House would later profess. The President was tired; his wife was tired; he was concerned about his health. He had obviously made up his mind. (JX 328, p. 233)

See also (JX 322, Schandler, *The Unmaking of a President*, pp. 268-69)

c. *Defendants' Version of Post-Tet Intelligence Events.*

In their Memorandum, defendants present a discussion (CBS Mem. 182) of a multi-agency intelligence conference in April 1968 (after Tet and the President's speech), at which MACV and CINCPAC again refused to accept at face value the CIA's far higher estimates of enemy strength. The Broadcast did not refer to that conference.

Disagreement over the estimates of enemy strength continued after the Tet offensive. The root of the argument was: (1) whether the McChristian collateral order of battle methodology gave a sufficiently accurate portrayal of the enemy threat in and to South Vietnam; and (2) whether the political cadre and low-level irregular groups (such as the SD, SSD and "assault youth") should be included in an order of battle. (See JX 715)

The CIA convened the conference in the hopes of getting a consensus in the intelligence community on an estimate that was closer to the CIA's views. The thrust of the CIA's post-Tet views was that the collateral military order of battle ought to be abandoned in favor of an estimation of the

military threat and the nonmilitary elements, *i.e.* the "insurgency base". This included trained and untrained, full-time and part-time, armed and unarmed personnel; it included enemy forces *near* South Vietnam, not only *in* South Vietnam. (JX 715, p. 1; JX 379, Adams 1/16/68 Memorandum for the Record)

As the CIA's Deputy Director for Economic Research wrote in his report on the conference to the Director "Much of the criticism [of CIA's views] was constructive and beneficial, enabling the CIA delegation to make several changes in its estimate." (JX 715, p.1)

An analysis of the final positions of the conferees which CIA described as its "best estimate" demonstrate the analytical and theoretical bases for the disagreements between CIA and MACV.

Combat Forces. CIA argued that certain units that had been learned of from all-source intelligence, but had not met the McChristian criteria for inclusion in the order of battle should nonetheless be included. MACV agreed to this. MACV demonstrated that: 1) the CIA's "estimate" of persons in small, specialized units (such as "sapper" squads) might have been inflated by 100%; 2) the CIA did not understand that MACV carried units at assigned (rather than "present for duty") strength (the former is what CIA wanted); and 3) many of the small, specialized units that CIA claimed were omitted from the order of battle in fact were carried in the order of battle summary, but under a different designation than the unit designations identified by CIA. (JX 715, pp. 17-18)

Administrative Services. At the April 1968 conference, CIA renewed its 1967 claim that a standard ratio of administrative service troops to main and local force troops was applicable throughout South Vietnam. "The CIA estimate also included a number of troops serving out-of-country but subordinate to headquarters elements operating in the south." As the report of the CIA delegation itself states, "a case was made that CIA might well have used too high a ratio of administrative service forces to combat forces." The MACV representatives pointed out in their report not only that CIA's ratio was possibly too high, but the notion that a standard ratio applied throughout South Vietnam was in all likelihood specious. (JX 715, pp. 11, 19-20)

Guerrillas. CIA gave an estimate for guerrillas of 90,000 to 110,000 as of March 31, 1968. MACV criticized this estimate on the grounds that it failed to take into account the attrition of guerrillas in the Tet offensive both through losses sustained in combat and demands on the guerrilla forces for