

response was that Allen was an old CIA hand and this would go no further. (Klein Aff. ¶ 21; PTX 51, Benjamin's notes of Klein and Hurwitz interview, p. 38480) Later, when it went further, senior CBS officials severely criticized Crile for this action. Benjamin cited both the "double interview" and "the screening of interviews for Allen" as "principal flaws." (PTX 2, p. 34511—Benjamin Report) Crile's statement to Benjamin that "Allen was caught in state of paralysis" and "he felt isolated as if he were a whistle blower" (PTX 2, p. 34470) was contradicted by Allen who said "Crile had in mind that my memory might be refreshed if I saw a bit of what others had to say at that point." (PTX 1, p. 11) Adams said that the second interview "made sense to me." (PTX 2, p. 34471—Benjamin Report) Zigman told Benjamin that they "showed Adams, McChristian, Hawkins and Hovey and then reinterviewed him." (PTX 76, Benjamin's notes of Zigman interview, p. 38566)

CBS executives agreed with Klein. The reinterview of Allen "upset" Colloff. (PTX 2, p. 34471—Benjamin Report) Lack agreed that it was not right if you do it because "you don't like the way it looks." (PTX 2, p. 34471—Benjamin Report)

Benjamin concluded:

The double interview and the screenings are a violation of CBS News Guidelines quoted previously, i.e. that interviews be "spontaneous and unrehearsed." (PTX 2, p. 34470—Benjamin Report)

Benjamin observed that, "[t]he interviews were shot in different locations but Allen was asked to wear the same suit". (PTX 2, p. 34469—Benjamin Report) Crile also gave Allen a couple of drinks during the second interview to help him relax. In fact, Allen was drinking scotch and water during the second interview. (Allen Dep. Tr. 420-21)

The Allen interview went better the second time, with considerable encouragement from Crile:

CRILE: George, you know... if... keep... keep on your... keep your enthusiasm. You're on the right side. (JX 7, Second Allen CBS interview Tr. 16)

* * *

ALLEN: No, I don't remember. Refresh me.

CRILE: I'll refresh you. The... you said... (JX 7, p. 11)

* * *

ALLEN: Is it really kosher to go over this?

CRILE: Oh, this what we do. (JX 7, p. 13)

Defendants, understandably, used the second interview in the Broadcast.

The second Allen interview completed the interviews supportive of defendants' thesis. The interviews did not proceed without Crile doing everything he could to encourage the friendly witnesses to strengthen their accounts and to portray the events in the most damaging light to General Westmoreland.

In his report Benjamin described this principal flaw as "the coddling of sympathetic witnesses." (PTX 2, p. 34511—Benjamin Report) The following excerpt from the Benjamin Report explains the basis for Benjamin's conclusions:

Joseph Hovey Interview

Crile, page 3: . . . you are 28 . . . You're probably the man in Vietnam who knows as much about the Vietcong as any other American

Crile, page 25: Well . . . you must be something of a hero at this point. You've predicted the biggest event of the Vietnam war. (PTX 2, p. 34474)

* * *

George Allen Interviews

First Interview

Crile, page 3A: George, let me—don't worry about it. I know exactly what you're doing as I recall the way you told it first . . .

Crile, page 4A: . . . If you were George Orwell trying to give a sense of how we went about thinking about the enemy in Vietnam, how would you characterize the thinking that went into our intelligence reporting?

Allen: . . . I'm not sure what you have in mind, George.

Crile, page 15A: George, would you please help your old protege, Sam Adams, here in some way . . . (PTX 2, p. 34474)

* * *

Allen, page 56A: Where am I? What do you want me to say, George?

Crile: It's not what I want you to say, but somewhere in here, George, you're sitting back with a sense of history.

Allen: Yeah.

Crile: And a conviction that a mistake was being made that might have far-ranging consequences, and after Tet you reach back into your memory and look at that September concession of your boss, George Carver, and you say it was the mistake of the century.

Crile, page 78A: . . . Come to the defense of your old protege, Sam Adams . . .

The Second Interview

Crile, page 5B: . . . going to keep at this until we get it right . . . until we feel comfortable

Crile, page 11B: There was more to it than that as you have explained it. Remember?

Allen: No, I don't remember. Refresh me.

Crile: I'll refresh you

Allen, page 13B: Is it really kosher to go over this?

Crile: Oh, this is what we do.

Crile, page 16B: George, you know . . . if . . . keep on on your . . . keep your enthusiasm. You're on the right side.

Allen: It's getting late. BACKGROUND LAUGHTER

Allen, page 30B: I'm sorry George, I don't know what you want me to say. I don't know what you're expecting me to say.

Allen, page 3C: Oh, George, I still don't have an answer for that one.

(Later, same page)

Allen: I'm going to have to come up for another interview, George. LAUGHTER. I've got to think about that.

The same or very similar questions were asked Allen over and over again with roughly the same answers. What required this repetition—his delivery or the substance of his remarks? His answers were consistently the same. Three times he is asked about Westmoreland's statement that irregulars were not a threat. Three times in the second interview he is asked to recount an anecdote involving General Graham.

The Sam Adam interview has a similar tone.

Interviewed by Wallace, he is told "This is perfect . . . this is gonna be good" (Transcript, 2C) ". . . We're saying this again and it doesn't have the same flavor . . . 'cause you never said

this before, Sam. I'll try and get it out of you in the same way (Transcript, 4C) After Adams says "I'm not doing this very well," Wallace replies: "Oh, no, no. You were perfect. Don't say that. You're doing it just right." (Transcript 17E)

There is also a repetition of questions. Four times Adams is asked about and tells how he came across enemy strength figures for Binh Dinh province. (PTX 2, pp. 34475-6)

This coddling of sympathetic witnesses distressed other CBS executives as well. Colloff said: "I don't think there's a difference in documentaries and a hard news interview." (PTX 2, p. 34477—Benjamin Report) Benjamin told Stringer that Crile had asked Allen the same question 11 times and told him "you can do better." Stringer's response: "Oh, shit." (PTX 70, Benjamin's notes of Stringer interview p. 38548)

Benjamin noted that Crile had been pressing Meacham on the use of the word "lying" in letters to his wife, which Meacham had repeatedly explained. Benjamin wrote:

None of the above made the broadcast. It can be argued that Crile is pressing Meacham here. But the question must be asked: Is he pressing him as an adversarial reporter or is he pressing him because the answers are not coming out to fit the overall story line? (PTX 2, p. 34474)

10. *The Westmoreland Interview*

Wallace interviewed General Westmoreland on May 16, 1982. Crile's letter to Wallace shortly before the Westmoreland interview reads:

Mike,

The Adams interview was not only a terrific interview. It looks beautiful. Now all you have to do is break General Westmoreland⁵⁷ and we have the whole thing aced.

* * *

I have the Adams transcript so you can use Sam's accusation against Westmoreland. That should work out well but beyond that I think that we should avoid at all costs casting the interview as a Westmoreland vs. Sam Adams affair.

⁵⁷ When he was deposed on April 11, 1983, Wallace testified that he "approached this project . . . with an open mind." (Wallace Sep. Dep. 24-5)

The strength of our case against General Westmoreland is not based on Adams' accusations, but on the accusations of General Westmoreland's own MACV intelligence officers

* * *

Having said that, here are the areas where Westy seems to be guilty as hell and where you should direct your energies.

The letter then describes four areas with a discussion of each. Two of the four areas were:

1. *Westmoreland's suppression of the reports of his intelligence chief, Gen. Joseph McChristian, and his Order of Battle Chief, Colonel Gains Hawkins.*

3. *The suppression of infiltration estimates prior to Tet.* (JX 911, pp. 24106-7)

Crile's letter makes it clear that Wallace must avoid alerting General Westmoreland to Adams' involvement in the enterprise until the last possible moment. In that way defendants could ambush him and hope he would make a mistake:

P.S. If you do break General Westmoreland at some point then I think its [sic] fine to fall back some on Adams but not until. (JX 911, p. 24107)

On May 11, 1981, Crile again wrote to Wallace, saying that he had spoken with General Westmoreland:

We have certainly covered our asses, technically, at least. But I am a bit worried that he just doesn't understand that we are going to be talking to him about American intelligence, military intelligence during the Vietnam war. I just don't want to have him sit down and refuse to answer questions on the grounds that he can't remember certain things and that we hadn't told him what we were up to. So I think I will give him another call later in the week and try to bring him a little further along without hitting him over the head with a sledge hammer. (JX 504, pp. 24658-9)

On the evening of May 15, 1981, the day before he was interviewed, Crile had delivered to General Westmoreland at his hotel in New York City, a letter vaguely describing the subject matter of his interview. (Klein Aff. ¶ 10) The letter read in part:

Using the Tet Offensive as a jumping off point we plan to explore the role of American intelligence in the Vietnam War: how well did we identify and report the intentions and capabilities of the enemy we were facing?

Among the questions we will be considering:

1. Did American intelligence adequately predict the Tet Offensive and the nature of the attack? Were those with a need to know adequately alerted? Were we surprised by the scope and timing of the attacks?
2. Was the Tet Offensive an American victory or defeat? Why did so many Americans consider it a defeat when most military men claimed it was a major victory? How should we think about this critical event?
3. Did the press present a reliable picture of the enemy we faced and the state of the war?
4. What about the controversy between CIA and the military over enemy strength estimates?
5. What about the differing views of the enemy and progress in the war as seen by Lyndon Johnson, Dean Rusk, Robert McNamara, Richard Helms, Walt Rostow, and of course General William C. Westmoreland? (JX 405, pp. 12665-6)

A central theme of the interview and the show were discreetly buried in the fourth paragraph, which could have, but didn't, mention the 1967 order of battle debate. The term "infiltration" was totally omitted from the letter.

Later, during his interview by Wallace, when the film was being changed, General Westmoreland angrily told Wallace, "You rattlesnaked me." (PTX 1, p. 10)⁵⁸ When Wallace pressed him on strength figures, General Westmoreland complained on camera: "I... I can't remember figures like that. You've... done some research. I haven't done any research. I'm just... just reflecting on my memory." (JX 349, p. 14541)

Adams, Alben and Klein also felt that General Westmoreland had been ambushed. Indeed, Alben told Crile that he wanted to be more explicit with General Westmoreland and he felt that Crile did not tell the General what was going to be covered. The letter, Alben says, "may have hidden [their] real goal a little." (PTX 22, p. 38229) Klein stated in his affidavit:

Soon after this screening Crile called General Westmoreland. However, the letter confirming the subject matter of his interview was only typed the day before the interview byCarolyn McDaniel, and then hand-delivered to General Westmoreland's

⁵⁸ When Benjamin asked Crile if Westmoreland had, in fact, said this, Crile responded, "Something like that." (PTX 37, p. 38389) Zigman also told Benjamin that Westmoreland had said "[y]ou rattlesnaked me." (PTX 76, p. 38566)

hotel in New York. I was concerned that it was unfair not to give General Westmoreland any more notice of the subject matter of the interview. I believe I discussed my concern at the time with Alex Alben. I wondered how useful to the project it could be to interview someone about details of 14 year old events, without giving him an opportunity to refresh his memory. I attempted to find Crile but could not locate him. (Klein Aff. ¶ 10)

Adams, however, was not bothered. "The fact that we ambushed him a little bit doesn't bother me." (PTX 15, p. 38188—Benjamin's notes of Adams' interview)

When he was interviewed by Benjamin for the CBS post-Broadcast investigation, Colloff told Benjamin that "if George was any more clear, it would have been a violation of standards." (PTX 2, p. 34480—Benjamin Report) Presumably, Colloff, CBS News Vice President for Public Affairs Broadcasting, didn't know about Crile's and Adams' lengthy sessions and correspondence with supportive witnesses.

Adams and Crile were evidently not concerned about violating the CBS Guidelines when they replied to General McChristian's request for advance information about the subject matter of his upcoming interview. They both wrote to him, carefully describing what they were going to ask about, before travelling to Florida to interview him.⁵⁹

Adams' letter to McChristian read, in part:

The documentary concerns American Intelligence during the Vietnam War. Its main focus is on the key months just before and just after the Communist Tet Offensive . . .

A major factor in our failure [to win the war] was the misuse and politicization of intelligence.

* * *

With the quantum increase in information, J-2 in Vietnam and CIA in Washington were able to discover that our original estimates of enemy strength were far too low.

Using as its chief source interviews of the people involved, the documentary will describe the following sequence of events:

- The discoveries made by J-2 and CIA.
- The horrified reaction in Washington.
- The pressures to fudge the estimates downward.

⁵⁹ Crile stated in his deposition that he and Adams and Grace Diekhous met with McChristian the evening before his interview was filmed. (Crile Dep. Tr. 1436)

- The resistance within CIA and J-2.
- Your transfer on 1 June, 1967 (because, as an aide to Rostow told me, "McChristian was out of step. He had to be isolated or ignored.")
- The arrival in Saigon of the "New Team."
- The "New Team's" faking of the estimates, including:
 - a. The imposition of a 300,000 man ceiling on the OB.
 - b. The cutting of large numbers of individual units.
 - c. The removal of categories from the OB.
 - d. The lowering of infiltration and recruitment estimates.
 - e. and, the exclusion from the OB of new units.

(JX 910, pp. 21608-9)

Crile's letter, sent with Adams', added that:

Ultimately, the key question here is not whether the press and the public were in some way being deceived but whether the Commander in Chief was being told the full and true story as soon as it became known . . .

From everything I can gather, J2 was doing its job until June 1, 1967. After that time the nature of its intelligence reporting on the enemy changed dramatically and clearly for the worse.

* * *

The kinds of questions I can foresee asking you would involve the role your intelligence section played in the war. Did you feel it was possible to provide a reasonably accurate evaluation of the enemy's size and strength? How accurate was the reporting while you were in command? Were there any attempts to hold back any of your reports? Were there any political pressures to look for certain results instead of the facts as you found them? Were there any difficulties getting your information back to Washington? Finally, what were the circumstances, as you saw them, surrounding your transfer?

* * *

I hope this note is what you had in mind.

(JX 909, pp. 21606-7)

These two letters stand in strong contrast to the letter Crile sent to General Westmoreland, also at his request, ostensibly describing the subject matter of his forthcoming interview. (JX 405)

At the same time as they were giving scant warning of the subject matter of their interviews with persons expected to disagree with the anticipated Broadcast, Crile and Adams were also spending days and

sometimes weeks with persons whom they knew to be supportive. Thus, General Westmoreland, General Graham and Dr. Rostow went into the interviews with their 15-year-old recollections far less refreshed than persons like Hawkins, McArthur and McChristian, all of whom had at least several conversations with Crile or Adams. In fact, in several cases it is hard to tell whether it is the interviewee's or Adams' recollections that were recited. Certainly, that was the case with Colonel Hawkins who admittedly had an almost total "memory block" before Adams spent a number of weekends with him talking about events in Vietnam. (Hawkins Dep. Tr. 279, 283-4)

Two days after the interview of General Westmoreland, Crile sent another letter to Wallace:

Mike:

The interview was classic. It keeps growing in my mind. I don't think you could have possibly done a better job; I certainly know no one else could have. It was wonderful having you as our champion. Now for the reaction. I can't imagine Westie taking this lying down. (JX 505, p. 24660)

During his interview, General Westmoreland referred on a number of occasions to General Davidson, his chief of intelligence:

..... the politics involved was—was a non-issue . . . I was looking for accuracy; . . . and when General Davidson became the chief of intelligence, assisted by Colonel Daniel Graham, they sorted this thing out. (JX 349, Westmoreland CBS Interview Tr. 41)

* * *

Have you talked to—have you talked to General Davidson; have you talked to Colonel Graham . . . (JX 349, p. 48)

Wallace replied: "General Davidson is a very, very sick man: we want very much to talk to . . ." (JX 349, pp. 48-9)

In fact, General Davidson was, in Adams' words, as "healthy as a clam," and CBS knew it at least 5 weeks before the airing of the Broadcast. (Hamilton Aff. ¶ 4)

During Wallace's interrogation of General Westmoreland, the General emphasized that his immediate superiors were Ambassador Bunker and CINCPAC. (JX 349, p. 9)

On the subject of the MACV reporting, General Westmoreland said their "policy was to give to Washington the most honest, accurate reports that [they] could" (JX 349, p. 19); that he had "absolutely no recollection of putting any cap whatsoever on the intelligence people" (JX 349, p. 54); and that he was unaware of any pressure to come up with better news on the war. (JX 349, pp. 25-6) He stressed to Wallace that "it makes no sense at all for a commander who's having to fight an enemy on the battlefield to degrade his enemy," especially when the commander is asking for more troops. (JX 349, pp. 49, 59)

When Mike Wallace asked General Westmoreland about General McChristian's Report on the guerrilla, self-defense and secret self-defense, General Westmoreland told him that he recalled the report and that he had questioned at the time the military capabilities of some of the categories in the report:

WESTMORELAND: I—I do recall a session with Hawkins, yes. But—I was very, very suspicious of—of this particular estimate. The reason was that you—you came to a shade of grey; you get down at the hamlet level, and you've got teenagers and you've got old men who can be armed and can be useful to the enemy, and who are technically Viet Cong but they don't have any military capability of consequence.

* * *

They were not active, armed combatants So I—I did not—I did not tell them to juggle their figures; I said, and I think we have got to look at this in—in the light of military capability . . . but they had—but they had no offensive capability.

(JX 349, Westmoreland CBS Interview Tr. 32, 36)

General McChristian's Report described the self-defense, secret self-defense forces and the guerrillas as follows:

* * *

g. The self-defense and secret self defense forces (*Tu Ve* and *Tu Ve Bi Mat*), on the other hand, are predominantly concerned with village and hamlet defense. They are poorly armed and consist of both the old and the very young members (many of them women) of the village or hamlet. US and ARVN tactical unit commanders and intelligence personnel do not consider them an effective fighting force. They are included in MACV Order of Battle in order to present a complete picture of enemy strength, but with the notation that as a combat force they are only marginally effective.

4. Conclusions:

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

b. The strength estimate for self defense and secret self defense forces is not as well supported as the guerrilla strength estimate, and these forces do not constitute an aggressive enemy threat within SVN.

Nevertheless, CBS chose to portray Westmoreland as a liar when he answered Mr. Wallace's questions about General McChristian's Report:

WALLACE: What Westmoreland failed to tell us in our interview was that here at the Military Assistance Command, Vietnam—MACV as it was called—his intelligence chiefs had come to agree with the CIA's growing conviction that we were fighting a far larger enemy. They had been studying the captured enemy documents, and when Westmoreland returned to MACV headquarters, General McChristian and the military's leading expert on the Viet Cong, Colonel Gains Hawkins, presented him with the bad news. Hawkins began the briefing.

COLONEL GAINS HAWKINS (U.S. Army, Retired): The figures that I briefed on that particular occasion was the new strength figures on the Political Order of Battle, as we called it. This is the Viet Cong's political bureaucracy and the guerrilla strength.

WALLACE: Colonel Hawkins told us MACV intelligence had determined that there were a lot more VC out there than had previously been recognized. In fact, he says that these major intelligence reports pointed to a dramatic increase in enemy strength estimates. In fact, something on the order of 200,000 more VC. Do you remember that?

GENERAL WESTMORELAND: I remember such a report, yes.

COLONEL HAWKINS: I don't want to read anybody's mind, George, but there was a great deal of concern about the impact that this new figure would have. And General Westmoreland appeared to be very much surprised that—of the magnitude of the figure.

WALLACE: According to Colonel Hawkins, he said that the General seemed to be taken by surprise. He remembers your first words after listening to that briefing were, "What am I going to tell the press? What am I going to tell the Congress? What am I going to tell the President?" True?

GENERAL WESTMORELAND: I—I do recall a session with Hawkins, yes. But I was very, very suspicious of—of this particular estimate. And the reason was that you—you come to a shade of gray. You get down at the hamlet level, and you've got teenagers and you got old men who can be armed and can be useful to the enemy and who are technically Viet Cong, but they don't have any military capability of consequence. (JX 1, pp. 4-5)

General Westmoreland also pointed out in his interview that the enemy was surely defeated militarily at Tet (JX 349, p. 1); during the first week of the Tet offensive the enemy committed 84,000 and lost about 35,000 while the U.S. lost about 1,000 (JX 349, p. 3); and the press overreacted. (JX 349, p. 2)

General Westmoreland told Wallace not to use the three to one ratio of wounded in action to killed in action.

the three to one is not a precise calculation, and you cannot extrapolate that the way that you have. (JX 349, p. 5)

* * *

I think the three for one ratio is a very specious ratio . . . we just don't know what it is. That is one that has been used . . . that was not an official ratio that we adhered to. (JX 349, p. 78)

Although General Westmoreland also told Wallace that he recalled that infiltration from North Vietnam to South Vietnam reached 20,000 in the months before Tet he became unsure of his memory on this point as the interview went on. At the end of his interview General Westmoreland told Wallace that he would have to check the records before he could be sure of the infiltration figures.

WALLACE: You acknowledge yourself that you later found out that there were 20 to 25 thousand coming down.

WESTMORELAND: Well, sure . . . INDISTINCT

WALLACE: But you were feeding figures of 55 hundred to six thousand coming down and the Secretary of Defense, Robert McNamara, in January is still saying five, six thousand. Not 20, 25 thousand are coming down.

WESTMORELAND: INDISTINCT I don't know. But . . . That was the rate that took place during the summer. But it did pick up.

I would have to look at the reports before I could answer that question.

WALLACE: Okay. All right. I think we've got it. (JX 349, pp. 101-102)

11. *Wallace Interviews Graham and Rostow and Receives General Westmoreland's Correction Letter*

On June 5, 1981, Wallace interviewed retired General Daniel Graham, who had been a lieutenant colonel under General Davidson's command from July 1967 to June 1968 and an assistant to Colonel Charles Morris in charge of current intelligence. Graham had obtained an agreement from Wallace that his initial statement would be used in the Broadcast. In that statement Graham pointed out that "an argument has been brewing since . . . the Tet offensive that . . . somehow there was a big plot out in . . . MACV, refusing to take one guy's view that there were 600 thousand instead of about 300 thousand VC . . . The fact of the matter is that when Tet occurred, the biggest figure that anybody's ever estimated . . . was 84 thousand . . . And this meant that the MACV estimate . . . was too high." (JX 13, Graham CBS interview Tr. 1) In other words, Graham saw this as another round in Adams' quest. CBS did not use this statement.

In all major respects, Graham corroborated General Westmoreland's statements—except one. Graham told Wallace that infiltration in the months before Tet was not "upwards of twenty-five thousand a month" and that it was "simply untrue" that he blocked estimates of such infiltration. (JX 13, p. 48) When Wallace related that General Westmoreland "said that during the fall of 1967 the infiltration rate was 20 thousand," General Graham replied that "he misspoke himself if, in fact that is what the man said," and added, "you managed to confuse him, Mr. Wallace." (JX 13, pp. 50, 52) "Nobody blocked infiltration reports of 25,000 a month." (JX 13, pp. 48-56)

Graham, who, at the time, was head of the Current Intelligence, Indications and Estimates Division ("CIIED") of MACV, and so knew exactly what MACV's information on current intelligence, such is infiltration was, pointed out that the MACV field officers in Vietnam knew much better than the CIA how to count the enemy and that the enemy committed no more than 84,000 at Tet. (JX 13, pp. 1-2)

The subject of the killed to wounded ratio came up and Graham said it was about 1:1. (JX 13, p. 50) Of course, defendants knew that the ratio

developed by General McChristian in early 1967 and in general use for more than a year thereafter was 1.5:1 wounded to killed and .35 disabled or died of wounds to each enemy killed. (JX 227, p. 5—Honolulu Conference Report)

Graham flatly denied that there was a ceiling of 300,000, that "this business about somebody saying there's a three hundred thousand limit and so forth If anybody would have given such instruction, it would have been me. Not . . . Davidson, certainly didn't say that to me, nor Westmoreland or Abrams or anybody." (JX 13, p. 14) "Nobody told me that . . . there was some figure that I couldn't go over or under . . . it just isn't true that there was some order that you had to stay under a figure." (JX 13, p. 41)

By June 9, 1981, General Westmoreland had had a chance to look at the relevant reports, as he had told Wallace he would. He sent a letter to Wallace and Crile which explained that he had had a chance to review the reports and was enclosing some papers "that might be helpful to you":

The session with you in New York City on Saturday 16 May was interesting, but I must frankly say it turned out to be more of an inquisition than a rational interview.

After 14 years (1967 to 1981) have gone by, I was unable to speak with precision on the details of items presented to you by your researchers. But now I have gone through my files in Washington and am enclosing several papers from my files that might be helpful to you. These are enclosed. As a general statement, it seems to me that your researchers perceive intelligence as a much more precise matter than it is in fact. (JX 390, p. 20944)

General Westmoreland included several enclosures and covering memos, explaining the way estimates of infiltration were developed:

Enclosure #2 shows the firm infiltration figures as reported by my intelligence staff. Although we all knew that enemy infiltration would pick up after the north east monsoon (mid May through mid October) and there were indications (not firm intelligence) that it had, the "accepted confirmed" criteria (refer to notes at right of chart, inclosure #2) involving a minimum of two prisoner of war reports or returnees (Hoi Chon) from the unit, group or two captured documents, or a combination of personnel and documents.

There was always a time lag of several months between actual infiltration and that confirmed by the MACV intelligence office. (JX 390, p. 20875)

Enclosure #2 was MACV's infiltration estimate prepared August 1, 1968, after General Westmoreland had left Vietnam. The figures listed for the five months preceding the Tet offensive showed that prior to January 1968, the largest figure was 6,300 for September 1967.

	CONFIRMED	PROBABLE	TOTAL	POSSIBLE	TOTAL
SEP 67	2,800	700	3,500	2,800	6,300
OCT 67	1,400	700	2,100	2,200	4,300
NOV 67	2,300	800	3,100	2,800	5,900
DEC 67	3,300	300	3,600	1,700	5,300
JAN 68	9,200	1,000	10,200	10,900	21,100

(JX 390 p. 20881)

General Westmoreland's letter stated:

If it is your purpose to be fair and objective during your quest which I must assume you intend to be, I suggest that you interview:

Ambassador Ellsworth Bunker
Mr. Robert Komer
Lt. General Daniel Graham
General Walter Kerwin, Jr.
Mr. George Carver (former CIA) and
Mr. William E. Colby

Another individual is a colonel who was associated with Col. Hawkins whose name I believe was Morris. General Graham may be of help in identifying him. (JX 390, P. 20944)

Crile's position seems to be that General Westmoreland did not label his letter a "correction letter" so he was free to ignore it. (PTX 37, Benjamin notes of Crile interview, p. 38389)

Crile's superiors disagreed. Benjamin asked Stringer: Would you consider that a correction? Stringer's response: "Yea." (PTX 70, p. 38547) Lack told Benjamin he would have mentioned the letter in the Broadcast and he believed Wallace agreed with him. Lack said that after the Broadcast he discussed the letter with Crile, who told him that it had been shown to Colloff. He "had some doubts about the way it was handled." (PTX 56, Benjamin's notes of Lack interview, p. 38506) Colloff denied seeing the letter. (PTX 33, Benjamin's notes of Colloff interview p. 38289)

There was also concern at CBS as to whether Crile had purposely withheld General Westmoreland's letter from his CBS superiors. Colloff told Benjamin that he did not know whether Crile "hid things." (PTX 33, Benjamin's notes of Colloff interview, p. 38289)

A few days after receiving the letter Crile sent a note to Wallace which showed that Crile did not consider Westmoreland's communication relevant:

A copy of my interview notes with McNamara and Westmoreland's letter. As far as I can make out Westmoreland doesn't bring anything to our attention that is particularly relevant. Certainly nothing that causes concern and requires a new look at anything we have been asserting. (JX 601, p. 35785)

On July 9, 1981, General Westmoreland wrote again to Crile, emphasizing that when he was in Vietnam he reported to Ambassador Bunker and to Admiral U.S. Grant Sharp, the Commander-in-Chief, Pacific. He urged Crile to speak to them and pointed out that he did not report directly to the President:

The "conventional view" that I reported to the President is a myth. The only direct contacts that I had with President Johnson were the several times that I was in his presence. (JX 391, p. 21093)

Meanwhile, Crile had contacted former Secretary of Defense McNamara, who agreed to an entirely off-the-record interview. (Crile Dep. Tr. 444) In an unauthorized tape recording—a portion of which Crile lost or reused (Crile Dep. Tr. 578, 597, 619)—Secretary McNamara told Crile that General Westmoreland was "not under stress to deliver good news on war . . ." (JX 784, p. 56959—7/2/81 Crile notes on McNamara interview) Crile destroyed much of the tape recording—as well as the tape recordings of other interviews—under circumstances related below.

Secretary McNamara, whom Adams believed was part of the conspiracy,⁶⁰ has filed an affidavit which summarizes his interview with Crile:

I told Mr. Crile that I knew nothing of faking of data—I do not believe it would have been possible for the military command in Vietnam to engage in an conspiracy to suppress or fake intelligence on enemy troop strength and, if such a conspiracy had existed I do not believe it could have been kept secret from myself or the President.

⁶⁰ See e.g., JX 589, p. 34771, Chapter 10 of Adams' unpublished book.

I told Mr. Crile that however it was resolved, the resolution of the dispute between MACV and the CIA in 1967 over the order of battle components or the size of these "irregular" components would not have influenced my thinking because I already felt there was no way to win the war militarily. (McNamara Aff. ¶¶ 6, 7)

Thus, Secretary McNamara told Crile that he did not believe that there was any conspiracy or that any conspiracy could have succeeded, and that the debate over the irregulars had no impact on the Secretary's thinking about the war. This apparently was the only interview given by Secretary McNamara between 1968 and the present on the subject of the Vietnam War. Crile has testified that he probably rerecorded over the interview. (Crile Dep. Tr. 578, 597, 619)

It turns out, however, that Crile and Wallace never really wanted to speak to Secretary McNamara and they have admitted that fact. Rather, they wanted Secretary McNamara to turn them down so they could use his refusal to buttress their case. Crile explained to Wallace:

The next thing I would propose is a call to McNamara. I'd like to talk this one over with you but it does seem to me that we might consider leveling with him to a certain extent. That is letting him know that we have found overwhelming evidence that MACV was faking its intelligence reports—that it happened on his watch—that we feel he along with the President may have been seriously misled. Then if he refuses us. . . is it not an admission of sorts? Anyway let's talk that one out and move on it as soon as possible. (JX 505, p. 24660)

Defendants' final on-camera interview for the Broadcast was Walt W. Rostow, President Johnson's Special Assistant for National Security Affairs. During the interview, while the recording equipment was turned off, Wallace told Rostow that "when you see the evidence we have collected you will be amazed, angered and convinced that you and the President were 'had'," (Rostow Aff. Ex. B, p. 2, Rostow 8/11/81 Memorandum; Ex. C, Rostow 1/25/82 Memorandum), believing, certainly correctly, that evidence of deception of the White House by General Westmoreland in time of war, would anger Rostow. As Rostow listened and answered questions he became increasingly concerned, finally telling Wallace: "you've really got to take this seriously, because you're going to do great damage to the country and you're going to get it wrong." (JX 14, Rostow CBS interview Tr. 68)

Presumably, Rostow was not reassured when Wallace told him in the middle of an answer to a question, that one of his answers would "wind up on the cutting room floor". (JX 14, Rostow CBS interview Tr. 103)

Rostow explained that the President saw and relied on a wide variety of intelligence, including Ambassador Bunker's weekly reports and information from Vietnam from CIA, AID and the foreign service as well as MACV. (JX 14, pp. 14-16) Rostow told Wallace that rather than shield the President from intelligence reporting he "widened it out." (JX 14, 15) Rostow flatly told Wallace: "There was no pressure on them [people in Saigon] to produce reports of good news." (JX 14, p. 24)

Regarding the differences between MACV and CIA on enemy strength figures Rostow said, "I don't even remember what was decided upon. But I do remember the debate. I remember the President was fully informed on it." (JX 14, p. 63) The President "did understand that . . . there was a debate and it was a debate essentially about whether they had underestimated in the past the scale of that category . . . that you just described to me . . . It was not a debate as to whether there had been a recent increase . . . in that category." (JX 14, p. 78)

Rostow also explained that the White House could not be fooled on infiltration. In his affidavit he stated, "among the points I made to Mr. Wallace and Mr. Crile were: . . . infiltration from the North; we had unimpeachable intelligence on the movement of North Vietnamese units. . ." (Rostow Aff. ¶ 14)

The Rostow interview also corroborated what Generals Westmoreland and Graham had said about the Tet offensive: President Johnson "knew . . . well before Tet . . . that the North Vietnamese were going to make a maximum effort with the VC. And he made preparations for that." (JX 14, p. 23) The enemy committed about 84,000 at Tet and Tet was an enormous military victory for us. (JX 14, pp. 31-32)

Rostow supplemented his interview statements with a number of memoranda and letters that he sent to Crile and Wallace. (Rostow Aff. Ex. A, B, C, E, G, K, M) Among the points that Rostow raised were the following:

1. He believed it was essential to talk to Ambassador Komer and Ambassador Bunker;
2. He urged Crile and Wallace to read Ambassador Bunker's cables to President Johnson;

3. The key variable in the Order of Battle was the substitution of North Vietnamese troops for the indigenous Viet Cong;

4. The Viet Cong lost control of about one million South Vietnamese during 1966-67 and lost control of two million more in 1968; and,

5. The Viet Cong never recovered from the losses at Tet; after Tet, the war in Vietnam became increasingly a conventional battle against the North Vietnamese. (Rostow Aff. Exhibit A, Rostow 7/27/81 letter)

Crile ignored all of Rostow's suggestions.

12. *Editing of the Show Starts*

With on-camera interviews complete, Crile, Klein and others turned to putting the Broadcast together. Normally, this is a collegial effort which consists of the producer, editor and others distilling a mass of information into a coherent broadcast in a limited amount of time. The process involves principally the producer and editor working closely together to tell a story consonant with the producer's viewpoint. Because editing is an important and highly technical job, it requires the editor immersing himself in the substance of the story and becoming knowledgeable about the available material.

Klein has explained in an affidavit how he proceeded to edit the Broadcast and how his doubts grew:

About mid-June I began reading the transcripts piecemeal. I was working very long hours at that time and did not have time to read the full transcripts in sequence. At that time I read parts of the interview transcripts of General Westmoreland, General McChristian, Colonel Hawkins, George Allen, Joe Hovey and Richard McArthur.

My working procedure is to read the full transcripts while screening the uncut film dailies of films I edit so that I can acquire a clear understanding of the thesis, which in turn enables me to collaborate effectively with the producer. However, in this case, the dailies had been cut up early-on so that Crile could make the rough cut screening for Colloff and Stringer in the spring.

In July I read the full transcript of Gains Hawkins' interview. I noticed particularly that Hawkins said that he believed that Ambassador Komer who was present at some or all of the briefings Hawkins referred to, and was an intelligence specialist and Westmoreland's civilian deputy, was telling President Johnson everything. I asked Crile what he was doing about Komer,

i.e. whether he had spoken to him yet? Crile just said he was talking to Komer's assistant. I made the point to Crile that Hawkins' statement showed that LBJ had to know. Crile just ignored me. (Klein Aff. ¶¶ 26-8)

Klein also told Crile that General Westmoreland was unfairly being denied any opportunity to explain his actions as they related to the May 28, 1967 briefing by Hawkins of Westmoreland. Crile's response has been described by Klein:

Crile told me that he was the producer and had the right to make that decision. He said that General Westmoreland's comments were inaccurate and untrue, and as he, Crile, didn't believe Westmoreland, then his comments weren't going on the air. (Klein Aff. ¶ 24)

During August, Crile visited former Deputy Secretary of Defense Paul Nitze, an old friend of Crile's father, in Maine. Nitze was familiar with the dispute between the CIA and MACV which occurred during the summer of 1967, while he was Deputy Secretary of Defense, and knew that the estimate of irregulars was not crucial and was bound to be inexact. Ambassador Nitze has stated in an affidavit:

I have known George Crile for many years. During the summer of 1981 he told me of his plan to produce a television documentary on Vietnam. As described by Mr. Crile, that documentary was going to charge that there was a conspiracy and other misconduct in which General Westmoreland participated that prevented the President and his aides from obtaining accurate intelligence on the size and capabilities of the enemy in the months before Tet. I told Mr. Crile that I believed that his thesis was incorrect and tried to discourage him from doing the documentary. (Nitze Aff. ¶ 7)

Alben, the show's researcher, left CBS by September 1981 to go to law school. (Alben Aff. ¶ 1) Crile, apparently unconcerned about the loss of the Broadcast's researcher, did not attempt to replace him, but instead used his secretary, Carolyne McDaniel as a researcher from then on. Crile never told Colloff that Alben was not replaced. (PTX 33, Benjamin's notes of Colloff interview, p. 38288) In October, Joe Zigman, the associate producer, collapsed and was hospitalized. Crile did not replace him, either.

Meanwhile, Klein's doubts grew as he became more involved in reviewing transcripts:

By September I had begun to have serious doubts about the premise of the broadcast. These doubts were prompted primarily from reading the entire interview transcripts. They contained no

substantial evidence that Westmoreland was responsible for, or even a participant in, a conspiracy. In fact, I don't recall any interviewees telling Crile or Wallace that they believed a conspiracy had existed. I told Phyllis Hurwitz, Carolyne McDaniel and Joe Zigman that I believed the premise of the show was inaccurate and that the conspiracy theory could not be supported. I also told Zigman, when he was in my editing room, that Hawkins had stated in his interview that Komer reported back to the President, and therefore Johnson probably knew everything. Zigman told me not to get involved. (Klein Aff. ¶ 33)

At Klein's urging Crile hired an additional film editor, Joseph Fackovec, a long-time CBS employee, to help out with the last two acts of the show. (Klein Aff. ¶ 37)

13. *Editing Fabrications*

In the early Fall of 1981, Crile, Klein and Fackovec proceeded to put the Broadcast together. Crile worked alone with Klein and Fackovec to edit the Broadcast and continued to ban other people from the editing room. In addition to laboring to obtain selective interviews and coddling witnesses, to insure that the Broadcast would come out the way he wanted, Crile also tampered with the interview films to bolster his thesis.

Some of the editing fabrications⁶¹ were:

a. The Broadcast used a portion of General Westmoreland's interview dealing with feeding bad news to the President in order to make it appear that he admitted filtering out unfavorable news from intelligence given to the President. In fact, General Westmoreland emphasized that he told President Johnson both good and bad news. In his interview, when asked by Wallace whether "President Johnson was a difficult man to feed bad news to about the war," General Westmoreland replied:

Well, Mike, you know as well as I do that people in senior positions love good news. Politicians or leaders in countries are inclined to—to shoot the messenger that brings the bad news. Certainly he wanted bad news—like a hole in the head. He welcomed good news. But he—*he was given both the good and the bad*, but he was inclined to accentuate the positive. (JX 349, pp. 7-8) (emphasis added).

⁶¹ This discussion below of editing fabrications does not include evidence that defendants ignored, which was inconsistent with the Broadcast thesis but, instead, focuses on the distortions of the evidence which was relied on.

All that CBS used in the Broadcast was:

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

General Westmoreland's unequivocal statement that the President was given *all* the news, both good and bad, was cut out.

b. The Broadcast falsely charged that General Westmoreland lied to CBS by denying that his intelligence chiefs had told him that they believed that the enemy in all categories exceeded 300,000:

What Westmoreland failed to tell us in our interview was that here at the Military Assistance Command, Vietnam—MACV as it was called—his intelligence chiefs had come to agree with the CIA's growing conviction that we were fighting a far larger enemy. (JX 1, p. 4)

However, General Westmoreland did not lie to CBS concerning that circumstance, as defendants claimed in the Broadcast; rather, he told them forthrightly that General McChristian and Colonel Hawkins briefed him on higher numbers, and that he did not accept their briefing for the very reasons that were explained in his interview. (JX 349, pp. 35, 40-41)

c. Defendants knowingly falsified the events surrounding reports of larger SD and SSD figures to make it appear that there was one critical private meeting with no one present but General Westmoreland, General McChristian and Colonel Hawkins, at which both General McChristian and Colonel Hawkins briefed General Westmoreland on higher estimates. The Broadcast described, on pages 4-5, what purports to be a single meeting attended by Westmoreland, McChristian and Hawkins. Wallace introduced it:

[Westmoreland's intelligence chiefs] had been studying the captured enemy documents, and when Westmoreland returned to MACV headquarters, General McChristian and the military's leading expert on the Viet Cong, Colonel Gains Hawkins, presented him with the bad news. Hawkins began the briefing. (JX 1, p. 4)

In his report Benjamin concluded that, "there were clearly two meetings woven into one." (PTX 2, p. 34497) He explained:

An April 1967 meeting between Westmoreland, Hawkins, and possibly McChristian. (Hawkins is sure McChristian was there.)

McChristian recalls a similar meeting in the spring, but is not sure if it's the same one.) This may be the third meeting to which *TV Guide* refers.

On page 5 of the broadcast transcript, Hawkins is quoted as saying: "I don't want to read anybody's mind, George, but there was a great deal of concern about the impact that this new figure would have. And General Westmoreland appeared to be very much surprised that—of the magnitude of the figure." According to the unedited transcript, Hawkins is here referring to the April 1967 meeting

It appears from the broadcast transcript that Hawkins continues to talk about the April 1967 meeting. He, in fact, according to the unedited transcript, is now referring to the August 1967 briefing. (PTX 2, pp. 34497-8)

As discussed above, there were several meetings, the most important of which was a meeting attended by a substantial number of General Westmoreland's senior officers and was described in General Hendry's May 28, 1967 memorandum. (JX 670) Crile and Adams knew that there was more than one meeting.

d. Wallace stated on the Broadcast that Colonel Hawkins remembered what General *Westmoreland* had said 14 years earlier:

According to Colonel Hawkins, he said that the General [Westmoreland] seemed to be taken by surprise. He remembers your first words after listening to that briefing were, "What am I going to tell the press? What am I going to tell the Congress? What am I going to tell the President?" True? (JX 1, p. 5)

If one thing is clear from viewing Colonel Hawkins' entire CBS interview or even reading his interview transcript, it is that he did not remember General Westmoreland's first words. Crile asked him time after time if he recalled those as General Westmoreland's first words, and Colonel Hawkins told Crile he couldn't remember the exact words. Moreover, defendants knew that Hawkins' account was seriously flawed—General McChristian told defendants that he had discussed the same numbers two weeks earlier with General Westmoreland. (See Section III.B.3.a. above)

According to Adams, Colonel Hawkins told him the story about Westmoreland's reaction to the briefing in 1968. (Adams Dep. Tr. 44, 48) But, as noted above, the story is not mentioned in any memorandum by Adams either to an Inspector General or anyone else or in his *Ellsberg* trial

testimony. Adams offers the story for the first time at his 1975 Pike Committee appearance. Then he said: "I would . . . relate an anecdote I heard and it is really only that." (JX 311 A, p. 705) Adams made no notes of what he says Colonel Hawkins told him until 1972, or later, more than five years after the incident allegedly took place. (Adams Dep. Tr. 48) Whatever its significance, Colonel Hawkins testified at his deposition that his best recollection of General Westmoreland's first words were, "What am I going to tell Congress? What is the press going to do with this?" (Hawkins Dep. Tr. 136) That testimony occurred after a number of meetings between Hawkins and defendants' lawyers (Hawkins Dep. Tr. 283-4) and after defendants started taking the position that the Broadcast did not accuse General Westmoreland of deceiving the President.

e. Defendants edited the Broadcast to create the appearance of constraints on what General McChristian could report, imposed by General Westmoreland. However, General McChristian told Crile that there were no restrictions on what he could report. McChristian's unedited interview reads as follows; CBS deleted the italicized portion from the Broadcast:

CIRILE: Because you would not keep the . . . Because you would not keep the numbers down . . . the estimates

MCCHRISTIAN: *No, because nobody ever asked me that, because I reported it as I saw it and* evidently, people didn't like my reporting, because I was constantly showing that the enemy strength was increasing. I was constantly reporting that the North Vietnamese and the Viet Cong had the capability and the will to continue a protracted war of attrition at the same level of operations as were currently going on, for an indefinite period. And I personally wrote that paragraph in every estimate I sent in and insisted that that be known. Maybe there was objections to that.

CRILE: Sir, that was running strongly against the grain of popular wisdom at that time.

MCCHRISTIAN: But not against facts. (JX 10, pp. 29-30)

f. Defendants then improperly edited the Hawkins interview to state that Westmoreland would not allow his officers to report "higher numbers." His unedited transcript is reproduced with the portions deleted by defendants italicized:

HAWKINS: There was no mistaking the message.

CRILE: Which was?

HAWKINS: That there was great concern about the impact of these figures . . . about their being higher.

CRILE: They didn't want higher numbers.

HAWKINS: That was the message . . . that higher numbers were a great problem.

CRILE: *And you shouldn't report those any more?*

HAWKINS: *I didn't take it as not reporting. I continued to report what was there.* (JX 9, Hawkins CBS interview Tr. 20)

g. The Broadcast asserted that General Westmoreland transferred General McChristian out of Vietnam rather than "take the bad news to the President." (JX 1, p. 6) General McChristian knew two months before he submitted his cable to General Westmoreland that he was to be transferred from Vietnam to Fort Hood, Texas, to command an armor battalion, something he wanted to do. Defendants learned this was so from two people who had the facts. Not only did General McChristian tell Crile during his interview that General Westmoreland had asked him to stay on, but he also told Crile unambiguously that he left because he wanted to command a division in combat. (JX 10, McChristian CBS interview Tr. 25-6) In addition, before the Broadcast, Adams saw a letter from Colonel Hawkins to his wife dated March 21, 1967:

Did I tell you Gen. McC's leaving in June? He gets the 2d armored Div at Ft. Hood, Tex, I think. Glad he got his command. He wants that third star-and the fourth! He promised to buy me a drink—and that I'd have to buy him one—after this team left. (JX 213C)

h. Defendants took an event that Lt. Richard McArthur described as relating to April 1967 under General McChristian and simply transferred it to July 1967 under General Davidson. The Broadcast stated that in the "summer of 1967," after General McChristian left, MACV analysts, including McArthur, "*started to find* that when they identified enemy soldiers, even when they discovered entire new Viet Cong units, MACV's *new intelligence chiefs* were not including them all in their estimates of enemy strength." (JX 1, p. 7) (emphasis added) When McArthur went out to the field, "an angry colonel confronted McArthur, accusing him of changing the numbers." (*Id.*)

But, as McArthur told defendants, what actually occurred was that General McChristian and his staff did not make adjustments to estimates

that they should have made in April 1967. McArthur made this clear to defendants. He had given Adams his letter from Phu Yen Province, dated July 26, 1967, which stated:

I've managed to find that all the figures I have in one Corps. area are completely false and have to be changed within a few days when the Colonel goes to Washington to brief them. *Now all these figures were supposed to have been corrected at a big conference held here in April. . . .* (JX 246) (emphasis added)

i. Not only did defendants compress three briefings of General Westmoreland, on the guerrillas, self-defense and secret self-defense into one, they also compressed into one the three separate sessions of the 1967 SNIE conference—one in June, one in August and one in September. The cables in defendants' possession, plus the fact that defendant Adams had attended all three of these sessions, could have left no confusion in their minds that there were three, not one, critical meetings, with much debate and discussion among the participants. Nevertheless, defendants deliberately wove the three meetings into one and fabricated a single meeting in order to portray General Westmoreland as the central figure controlling the events of the SNIE conference.

j. Defendants simply ripped out of context a statement by Hawkins that he made about one set of numbers and applied it to an entirely different set, in order to make Hawkins appear to be condemning the MACV estimates that he prepared and defended at the August OB conference in Langley. In fact, Hawkins was talking about the old figures MACV had inherited years earlier from the South Vietnamese. The portions which defendants deleted from his statement are italicized:

Now prior to this when we had the old figures that we inherited from the South Vietnamese forces, there was never any reluctance on my part to tell Sam or anybody else who had a need to know that these figures were crap, they were history. They weren't—they weren't worth anything. (JX 9, Hawkins CBS interview Tr. 36)

The Broadcast, however, deleted the first clause in the sentence, to make it appear as if Hawkins was condemning the estimates taken to the SNIE conference in August 1967. In fact, what were taken to Langley were new, substantially higher estimates of approximately 420,000 which was not what Hawkins was describing. (JX 248) Thus, the Broadcast depicts Colonel

Hawkins' attitude toward his own estimates at the SNIE conference and then states:

ADAMS: And the problem was old Colonel Hawkins, whom I knew so well and whom I admired, looked sick, looked like he didn't believe what he was saying.

COLONEL HAWKINS: There was never any reluctance on my part to tell Sam or anybody else who had a need to know that these figures were crap, they were history, they weren't wor—they weren't worth anything. (JX 1, p. 10)

k. The Broadcast falsely led the viewer to believe that Hamscher, not Godding was the head of the MACV delegation to the session of the SNIE conference in Langley, Virginia:

WALLACE: CBS Reports has learned that Colonel Hawkins was in fact carrying out orders that originated from General Westmoreland. Westmoreland says he doesn't recall these orders. But the head of MACV's delegation told us that General Westmoreland had, in fact, personally instructed him not to allow the total to go over 300,000.

CRILE: Wasn't there a ceiling put on the estimates by General Westmoreland? Weren't your colleagues instructed, ordered, not to let those estimates exceed a certain amount?

COLONEL GEORGE HAMSCHER: "We can't live with a figure higher than so and so"—

CIRCLE: Three hundred thousand.

COLONEL HAMSCHER: —is the messa—is the message we got.

WALLACE: Colonel George Hamscher was one of several members of the military delegation troubled by having to carry out General Westmoreland's command position. (JX 1, p. 11)

In his post-Broadcast report, Benjamin commented on this editorial violation:

The juxtaposition of the lead and then Hamscher coming up on screen gives the impression that he is the head of MACV. Crile says . . . that Wallace's bridging narration line: "Col. George Hamscher was one of several members of the military delegation . . ." takes care of this. "Eight seconds later," Crile says, "Hamscher is identified as one of the troubled members of the MACV delegation."

The question should be asked: Would not the head of the delegation also be one of the members?

Hamscher was a light colonel stationed in Hawaii. He was not even a part of MACV. He calls himself an "elbow man" (transcript page 5), "not that moving force" (page 19) and a junior officer (page 30) (PTX 2, pp. 34501-2—Benjamin Report)

General Godding had refused to confirm any numbers in his pre-Broadcast interview with Crile, so defendants simply showed someone on the Broadcast who would. The Benjamin Report explains:

He [Godding] spoke with Crile four or five times but never quoted any number to him, and he would not quote any number to us. He said before leaving Saigon he explained his numbers to Westmoreland and Davidson who felt Godding had justified them and they "were the best we had." Westmoreland told Godding he could present those numbers (plural) to the NIE meeting. (PTX 2, p. 34503—Benjamin Report)

1. The Broadcast falsely stated that "the head of MACV's delegation told us that General Westmoreland had, in fact, personally instructed him not to allow the total to go over 300,000 'You're not to go above 300,000'." (JX 1, p. 16489). As noted, the head of the MACV delegation was General Godding, who told Benjamin that he never used numbers with Crile. Crile admitted that to Benjamin. Significantly, before Crile even talked to General Godding, he had put in his Blue Sheet a supposed quote from Godding, whom he correctly identified as the head of the MACV delegation, regarding what General Westmoreland supposedly told Generals Davidson and Godding:

"I don't care how you do it. Use any number you want but don't let the total go over 300,000 VC." (JX 375, p. 24086)

Since Crile hadn't yet spoken to General Godding, this quote could only have come from Adams. But Adams' notes of his conversations with General Godding likewise contain no numbers. Instead, they state that General Godding told Crile: that "the parameters were established in May." Adams' notes also say: "Our figures were solid." (JX 92, pp. 26969-70)

As discussed above, the briefing Colonel Hawkins gave to General Westmoreland, based on General McChristian's May 18, 1967 report, included a total of at least 420,000 enemy. Wallace never asked General Westmoreland about that briefing.

Moreover, in Hawkins' May 9, 1981 interview when Crile described General Westmoreland's alleged instruction to General Godding not to go over 300,000, Colonel Hawkins' response was: "I'm not familiar with that instruction." (JX 9, p. 26) It is inconceivable that if there were such an instruction Hawkins would not know about it.

m. The Broadcast took out of context a statement by General Westmoreland, portraying his answer as reacting to a meeting at the Pentagon when actually he was responding to a question about another meeting that took place in Saigon. This was part of defendants' effort to merge three separate meetings, where different positions were taken, into a single meeting. This was one of the charges *TV Guide* made which was dealt with in the Benjamin Report. The Benjamin Report confirmed *TV Guide's* charge:

A reading of the unedited transcript confirms the charge. On the broadcast (page 14) Wallace's narration is about an August 1967 National Intelligence Estimate meeting at the Pentagon. He interviews Colonel Hamscher about this. Then we come to General Westmoreland on the next page. He is responding to a question about another meeting—an order-of-battle meeting in Saigon in September 1967 (unedited transcript, pages 57 and 58). Cut into this sequence, the General's answer is not about the same meeting the broadcast has been dealing with. Crile disagrees, calls the questions "generic" about a "pattern of misconduct." (PTX 2, p. 34505—Benjamin Report)

n. Defendants edited the Broadcast to make it appear that General McChristian was specifically calling General Westmoreland's actions dishonorable:

WALLACE: Colonel Hawkins assumes full responsibility for his actions. But we went to General McChristian, his old intelligence chief, to ask what we should think of General Westmoreland's instructions.

CRILE: To put a ceiling on enemy strength estimates, to tell an intelligence operation that it is not permitted to report enemy strength estimates over a certain number—

GENERAL MCCHRISTIAN: Uh-hmm.

CRILE: —What does that constitute, sir?

GENERAL MCCHRISTIAN: From my point of view, that is falsification of the facts. (JX 1, p. 11)

General McChristian, however, had not been asked about General Westmoreland's actions but a series of hypothetical questions about some unspecified conduct that began as follows:

CRILE: If I could ask you to be what amounts to an expert witness here as to procedures, and this did not happen under your regime, under your command, but if you had been the chief of MACV intelligence, and if a commanding officer had come to you ... (JX 10, McChristian CBS interview Tr. 8)

Benjamin condemns the editing in the following terms:

This comes from the unedited transcript, pages 11 and 12. It is in answer to a hypothetical question continuing a whole series of hypothetical questions which begin on page 8. It is not in answer to a specific question about a specific action. (PTX 2, p. 34500—Benjamin Report)

McChristian himself called this editing "improper". (McChristian Aff., 12/21/83, ¶ 17) He added in a later affidavit that he "had reservations about [the] use of an answer which I had given to a hypothetical question ... I did not intend my answers to refer to General Westmoreland" (McChristian Aff., 4/20/84, ¶ 55)

o. On the Broadcast Mike Wallace refers to and quotes an August 20, 1967, cable (JX 252) on the order of battle dispute, and refers to it as General Westmoreland's cable, although he knew it was sent by General Abrams, Westmoreland's deputy:

WALLACE: Didn't you make this clear in your August 20th cable?

GENERAL WESTMORELAND: No, no. Yeah. No.

WALLACE: I have a copy of your August cable—

GENERAL WESTMORELAND: Well, sure. Okay, okay. All right, all right.

WALLACE: —spelling out the command position on the self-defense controversy.

GENERAL WESTMORELAND: Yeah.

WALLACE: As you put it in the cable, you say the principal reason why the self-defense militia must go, quote, was "press reaction."

That cable, dated August 20th, 1967, spelled out General Westmoreland's predicament: "We have been projecting an image of

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

The cable was sent by General Creighton Abrams from Saigon, not by General Westmoreland. General Westmoreland was in the Philippines at the time, so obviously had no part in drafting the language. He sent his own cable which said that he agreed with the General Abrams' cable. The cable was always known as the "Abrams cable" and Wallace so described it to Rostow. (JX 14, p. 63) Calling it General Westmoreland's cable was another instance of focusing the accusations on him.

p. The Abrams cable in fact read as follows: (In the Broadcast CBS deleted the italicized words)

(S) The press reaction to these inflated figures is of much greater concern. We have been projecting an image of success over the recent months and properly so. Now, when we release the figure of 420-431,000, the newsmen will immediately seize on the point that the enemy force has increased about 120-130,000, all available caveats and explanations will not prevent the press from drawing an erroneous and gloomy conclusion as to the meaning of the increase. All those who have an incorrect view of the war will be reenforced and the task will become more difficult. (JX 252, p. 2)

Thus, even in their private, classified communications the military was saying what they believed — that they were making progress. Defendants apparently felt that recognizing that fact would give too much credence to the military's assertions that they were making progress—so they simply deleted the words. Wallace, in retrospect, has admitted that leaving out the words "and properly so" was "wrong." (PTX 75, p. 38564—Benjamin's notes of Wallace interview)

q. The Broadcast described a meeting that allegedly took place in late August 1967 in the Pentagon at which MACV's official estimates were supposedly arbitrarily cut. The Broadcast has Colonel Hamscher describe the meeting:

HAMSCHER: . . . it was a group grope . . . to arrive at a set of figures that MACV could live with.
CRILE: To fake intelligence estimates.

HAMSCHER: (sighs): That's your characterization, and that's too strong for me.

* * *

HAMSCHER: It was lousy strength estimation. It was shoddy. But we did it. (JX 1, pp. 14-15)

The Broadcast left out parts of Colonel Hamscher's description of that meeting:

HAMSCHER . . . I am not prepared to say it was a dishonest effort. (JX 5, p. 21)

CRILE: It . . . you'll have to pardon me, Colonel, but it sounds like a full-fledged conspiracy to fake intelligence reporting.

HAMSCHER: Well . . . this . . . well, faking intelligence reporting is a different thing entirely

CRILE: Sir, it sounds like a full-fledged conspiracy.

HAMSCHER: If it were a conspiracy—which I . . . I don't think it was—it . . . it probably had a good purpose (JX 5, pp. 27-28)

Hamscher repeatedly told Crile it was not a moral issue.⁶²

r. The Broadcast quotes General Westmoreland as stating on *Meet the Press* in November 1967 that infiltration was:

I would estimate between 5,500 and 6,000 a month. (JX 1, p. 17)

In fact, what General Westmoreland said on *Meet the Press* was:

I would estimate between 5,500 and 6,000 a month, *but they do have the capability of stepping this up.* (JX 276 p. 18)

Crile simply deleted the italicized portion of the sentence. He did this presumably to prevent the viewer from realizing that General Westmoreland, like General McChristian, was being very cautious in making assessments of the enemy capabilities and was leaving open the possibility that circumstances could change.

⁶² Hamscher also told Crile about MACV that "I think they presented a case that they could justify, that they could live with 'comfortably' (JX 5, p. 6); "I had no reason to question the honesty of the people at MACV (JX 5, p. 7); "this is not a moral issue" (JX 5, p. 8); "I am not prepared to say that it was a dishonest effort" (JX 5, p. 21); "this was the kind of . . . not casual but . . . nonconspiratorial atmosphere that it was." (JX 5, p. 27)

s. The Broadcast quoted General Westmoreland on the ratio of enemy wounded to killed, relying on his statements to support the supposed ratio of three wounded to each one killed when he went to great pains to tell Wallace that CBS should not use that ratio. The Broadcast states:

WALLACE: But as we shall see, after Tet there was nothing logical about MACV's statistics on the enemy.

How many troops did he lose, General?

GENERAL WESTMORELAND: Well, in the first week, out of a commitment, according to our intelligence, of about 84,000 that were committed in the—the early days of the Tet offensive, he lost 35,000.

WALLACE: Killed.

GENERAL WESTMORELAND: Killed.

WALLACE: And how many wounded?

GENERAL WESTMORELAND: Well, I—we have no way of knowing that, but usu—usually the ratio is about three-to-one, three wounded for one that is killed.

WALLACE: If you take General Westmoreland at his word, here is the logical problem you run into. It begins with MACV's official estimate of total combined enemy strength in the South just before Tet—224,000. Five weeks later, on March 7th, Westmoreland reported 50,000 of those enemy had been killed. Now according to his own standard ratio, for every one killed three were wounded. So, even disregarding the enemy soldiers who defected or were captured, the bottom line figure just didn't make sense. (JX I, p. 23)

In fact, as defendants knew, the ratio used was 1.5 wounded for every one enemy killed and only .35 were permanently disabled or died of wounds for each one killed. The balance of the wounded returned to action.

Equally significant, however, is the fact that General Westmoreland expanded on this and then told Wallace that he should not use a three-to-one ratio:

WALLACE: You say that 35 to 40-thousand of them were killed, of the VC, North Vietnamese were killed in the first few weeks of the Tet Offensive.

WESTMORELAND: Yes. In accordance with—

WALLACE: And how many wounded?

WESTMORELAND: Well—we have no way of knowing that. But (Q overlapping Indistinct)—usually the ratio is about three to one: three wounded for one that is killed.

WALLACE: So if you have 34, 40 killed, then conceivably you would have as many as a hundred thousand more wounded.

WESTMORELAND: Well, conceivable, but I—I think that's probably an overstatement. Probably an *overstatement*.

WALLACE: At three to one, it's an *understatement*.

WESTMORELAND: Well, the three to one is not a precise calculation, and *you cannot extrapolate that the way that you have.* (JX 349, Westmoreland CBS interview Tr. 4) (emphasis added.)

Later in the interview the subject came up again:

WESTMORELAND: But the fact remains that the Vietcong, the military force, was virtually destroyed as an effective force . . . at Tet.

WALLACE: In . . . at Tet.

WESTMORELAND: And the North Vietnamese will tell you that today. Now, whether . . . I don't. . . I don't go for those numbers, no. *I think the three for one ratio is a very specious ratio, as I mentioned to you in the other part of this . . .* I mean, we just don't know what it is. That is one that has been used, yes.

WALLACE: It's used all the time as a matter of fact. Kill one, wound three.

WESTMORELAND: Well, we . . . we did not . . . *that was not an official ratio* that we adhere to.

WALLACE: You say the enemy is running out of men. Then 80,000 of them are killed around the time of Tet. Let's just say that two are wounded instead of three are wounded. Chances are that you're going to have no enemy left whatsoever. The question is—as I believe that . . . I believe that Arthur Goldberg asked that very question when the old . . . when the Wise Men sat down to talk to with the President. Who in the dickens are we fighting!

WESTMORELAND: I don't . . . *I don't recall our ever making any official estimates that there were three men knocked out of action for every one killed.* I mean . . .

WALLACE: It was even higher for U.S. troops.

WESTMORELAND: *But . . . I have no feel of that whatsoever.* (JX 349, pp. 78-9) (emphasis added.)

t. Several other editorial fabrications are described in the Benjamin report and are not repeated here. (*See, e.g.*, PTX 2, pp. 34480-6)

Taken together, these fabrications constitute a major rewriting of the evidence defendants utilized in the Broadcast. The extent of these violations compels the conclusion that defendants knew they did not have the evidence, however obtained, to support the charges they were making and felt it necessary to fabricate evidence to lend support to their thesis.

14. *The Fall 1981 Screenings and the Charge of Conspiracy*

In September and October, Klein was worried about Crile's neglect of the show and told him so. Klein went to Crile and told him that he "felt the investigation so far was inadequate given the seriousness of the charges," reminding him that he had not spoken to Ambassador Robert Komer and that there were still many other loopholes in the story. Crile refused to go along with Klein's suggestion that he should ask for more time. (Klein Aff. ¶¶ 37, 46)

The black mood and confusion surrounding the Broadcast at CBS Reports in the early Fall of 1981 was summed up in a letter Carolyne McDaniel, Crile's secretary and fill-in researcher, wrote to Alex Alben, the Broadcast's former researcher, at Stanford Law School:

Thanks for the letter. It was probably the first encouraging note I've heard in this symphony of confusion. George is down in Miami hunting down Cuban drug traffickers. We took up a collection here at Reports and have put out a contract on him (not homicide, just a little kneecapping). His office has been boarded up until further notice by the health department. Perhaps he can get on with the Miami Bureau but since he has been down there already, they may be onto him. In any case, if his stint as a correspondent doesn't work out, he has excellent possibilities as a future junky.

Hope things are going well out there. Ira and Phyllis were finally able to get some sleep (at home, not on the job). Sam Adams is going crazy setting up lecture dates and Joe Zigman is still his "wild and crazy" self. Joe Fackovec is still stumbling around asking where George is. And George is still stumbling around asking where everybody is. George has tried to placate everyone by giving them gourds. They immediately ended up in the trash can. A noble gesture, but not well received. Spivak called me up to tell me what a slob I worked for (George had not sent a proper thank you note for his help). Besides, he thinks I don't know? (PTX 4, p. 12170)

Alben agreed. As he later told Benjamin, "some would say there was dissent in the ranks." (PTX 22, p. 38229)

Carolyn McDaniel's letter and Alben's candid comments to Benjamin should be contrasted with the glowing picture painted in McDaniel's affidavit prepared for use in this litigation brought against her employer:

During most of the period of production of the documentary, the mood of the entire production team was one of pride, cooperation and creative exhilaration, in an atmosphere in which frank discussion of the unfolding documentary was not only allowed but encouraged by producer Crile. (McDaniel Aff. ¶ 7)

Several screenings were conducted in October, one for Stringer, another for Stringer and Lack, who was to become Senior Producer in November and Executive Producer in December when Stringer left CBS Reports, and one for Colloff. (Klein Aff. ¶¶ 41, 42) During one of the last screenings:

Colloff expressed serious doubts about whether the events, portrayed in the last section of the show, related to an alteration of the OB computer data base, did and could have occurred. (Klein Aff. ¶ 42)

Following the screening for Leonard in early November, Crile left New York to work on a project concerning drug dealers in Miami. He did not return to the CBS offices until December. (Klein Aff. ¶ 47)

The last part of the Broadcast to be filmed was the "tease," the initial portion of the documentary, in this case narrated by Wallace, designed to summarize what follows and attract the viewer's attention. (Klein Aff. ¶ 45) In the tease, Wallace stated that CBS believed that there was "a conspiracy at the highest levels of American military intelligence—to suppress and alter critical intelligence on the enemy" and offered CBS's explanation for "why for so long our government apparently believed, and wanted all of us to believe, that we were winning the war." (JX 1, p. 1) CBS chose this tease over at least two others (JX 455, 9/15/81 memo from Zigman to Crile, p. 13798), neither of which used the word "conspiracy." The one drafted by Wallace described the events as a "mystery story." (PTX 75, Benjamin's notes of Wallace interview p. 38564)

There was serious disagreement over the use of the word "conspiracy." Adams, the consultant to the Broadcast, and Alben, the researcher, agreed that it was not appropriate. Adams did not intend to use the word in his book. "I thought early on that conspiracy was too strong a word" (PTX 17, Benjamin's notes of Adams interview p. 38193) Alben similarly stated: "In

retrospect it was a mistake to use the word." (PTX 22, p. 38230) Stringer, the Executive Producer, told Benjamin that he was opposed to using the term "conspiracy." (PTX 70, p. 38546) Thus, several of the people who made the Broadcast have expressed doubts as to the appropriateness of the use of the word "conspiracy."

The final screenings for CBS News executives were held in December. The last one was held for Van Gordon Sauter, who was scheduled to replace Bill Leonard as President of CBS News in early 1982. (Klein Aff. ¶ 49; Sauter Dep. Tr. 11, 14)

That screening demonstrated the lengths to which Crile would go to eliminate contradictory evidence. General Westmoreland's statement on infiltration on "Meet the Press" was:

I would estimate [infiltration is] between 5,500 and 6,000 a month, but they do have the capability of stepping this up. (JX 276, p. 18)

This entire sentence was included in the language Crile had specifically asked Lawrence Spivak of NBC for permission to use and was reiterated and underlined by General Westmoreland in his June 9, 1981, correction letter to Wallace and Crile. (JX 390, p. 20876) However, Crile did not want to use, and did not want Sauter and the other senior CBS News executives present, Ed Joyce and Roger Colloff, to hear General Westmoreland's qualifying statement "but they do have the capability of stepping this up." For one thing, that statement was strikingly similar to the language used by General McChristian earlier in the Broadcast to show he was prepared to convey all the facts to Washington:

I was constantly reporting that the North Vietnamese and the Viet Cong had the capability and the will to continue a protracted war of attrition at the same level of operations that were currently going on for an indefinite period. And I personally wrote that paragraph in every estimate I sent in and insisted that that be known. Maybe there was objections to that. (JX 1, p. 6)

Crile learned just before the Sauter screening that, contrary to his instructions to Klein, the sound track of General Westmoreland's "Meet the Press" interview still included the last clause. To prevent its being heard, Crile told Klein that, when he signaled by raising his hand, Klein was to cut off the "Meet the Press" sound track and turn up another sound track. Klein complied. (Klein Aff. ¶ 49)

At his deposition, Crile confirmed the incident (Crile Dep. Tr. 175-6) but explained it by saying the last clause was irrelevant to his point.⁶³ To Benjamin, Crile said he deleted the last clause because:

it was contradicted by the page before in the full 'Meet the Press' transcript. He did not respond when we asked: if it was contradicted on the page before, how did you know which statement was correct? (PTX 2, p. 34482 Benjamin Report)

15. *Lack of Supervision of the Show*

Aside from attending a series of screenings, Crile's superiors Wallace, Stringer, Lack, Colloff, Chandler, Leonard and Sauter—did remarkably little in the way of supervising Crile and his crew. Thus, Adams saw Wallace only twice during his year-long involvement on the project. The first time was "for five minutes to meet him" (PTX 12A, Tape 4, pp. 4-5). The second and last was when Wallace interviewed him on camera. Adams saw Colloff only once and, while he saw Stringer on occasion, it was social, not professional. (PTX 17, Benjamin's notes of Adams interview p. 38193)

Following his interview with Lynn, Wallace had no contact with the project until shortly before he interviewed Adams. As was the case with all Wallace's interviews, Crile drafted the questions. (Klein Aff. ¶ 18; PTX 37, Benjamin's note of Crile interview p. 38372; Crile Dep. Tr. 986) Wallace conducted the interviews from Crile's notes, which even contained follow-up questions.

When General Westmoreland sent his correction letter, Wallace did not stop to read it, but turned it over to Crile, who, as noted above, told Wallace that it was nothing of significance. (Klein Aff. ¶ 74) In fact, when Klein showed Wallace the letter after General Westmoreland's press conference, Wallace said his role was "just cosmetic." (Klein Aff. ¶ 74) Wallace has admitted to Benjamin that he is not "entirely blameless". Wallace told Benjamin that he had made some notes before the Adams interview, but told Crile, "I'm up to my ass, you have to fill me in." (PTX 75, Benjamin's notes of Wallace interview, p. 38563) Several of Wallace's colleagues agreed with him that leading correspondents were spread too thin and Lack added that Wallace should have known more about the subject and that being busy is no excuse. (PTX 54, Benjamin's notes of Lack interview p. 38501)

⁶³ Crile said, "... I think that that addition has nothing to do with Mr. Spivak's question, nor did it have to do with the question we were addressing in the documentary." (Crile Dep. Tr. 176)

Stringer, the show's executive producer until November 1981, told Benjamin that he had very little time because of the defense series (PTX 70, Benjamin notes of Stringer interview, p. 38544), a CBS Reports series on the Defense Department, and that he left CBS Reports to become executive producer of the CBS Evening News in early December 1981, and "never crossed the street again." (PTX 70, p. 38545) He said he screened bits and pieces of the show at various times.

The fact of the matter is, it's a difficult situation I'm in. Even though the show was finally screened by Roger. I would have needed three weeks to screen. I could use the evening news as an excuse. The fact of the matter is I put it off . . . My particular level of responsibility—I took the show at face value . . . [I]t's not really Roger's fault . . . I had told Roger I'd go over the transcripts, but I never did. I never crossed the street again. (PTX 70, Benjamin's notes of Stringer interview p. 38545)

In other words, Stringer never even went back to the building where Crile, Klein and the others were working on the Broadcast. Stringer explained to Benjamin that he "almost didn't have [his] name on the broadcast because [he] didn't finish it off as [he] should have." (PTX 70, Benjamin's notes of Stringer interview p. 38548)

Stringer was even more candid with Kowet:

[W]ithout trying to let myself off the hook—the last two months of this period—the last month or so before this went on the air and the last part of it, I did not give this broadcast the attention I should have . . . [Crile] didn't get a lot of help from us in this period. Even though we screened rushes, which we don't always do. (PTX 11, p. 13)

Why Stringer "took the show at face value," "never crossed the street again" and "did not give this broadcast the attention I should have," could be that, as he freely admitted to Kowet:

- He doesn't "believe generals as a matter of course, having worked for them . . ."
- Westmoreland's "reputation is intact out of all proportion to his failures."
- He doesn't "feel desperately sorry . . . because [he] think[s] Westmoreland should have been fired . . ." (PTX 11, pp. 14, 30-31)

Lack was also of little help, although he knew the Broadcast was controversial. Lack admitted that he made no effort to read transcripts, because "the responsibility was moved to a higher level." He admitted that he did not play a supervisory role (PTX 56, Benjamin's notes of Lack interview p. 38508) He added, "[i]n a broadcast like this one you have to examine transcripts carefully . . . seems to me de rigueur to examine." (PTX 56, pp. 38505, 38509) Lack explained that the customary careful review conducted by the executive producer did not take place. He admitted to Benjamin: "I don't know why":

[M]ost executive producers take the last 3 weeks as time where you can stop a runaway locomotive. You turn the editing room upside down. Clearly this didn't occur. I don't know why. Whether everyone thought Roger was doing what Howard was and vice versa. Maybe there wasn't enough communication between them . . . Stringer and Colloff both knew nobody was doing it but them. (PTX 54, pp. 38499-500)

One of the two people responsible, Stringer, may have been busy elsewhere. When Benjamin asked Lack whether the other, Colloff, was qualified to go through the transcripts, Lack said "no." (PTX 54, p. 38500)

Colloff did not dispute the unanimous indictment of the supervisory process that CBS was supposed to have. He agreed that the show "didn't have the second echelon support due to what was happening at CBS." (PTX 33, Benjamin's notes of Colloff interview p. 38294)

In a letter to Wallace, written during the Benjamin investigation, Crile said:

It was my understanding from the beginning that we were all in this together—that it was different from any other show—that questions might be asked—transcripts reviewed in ways that ordinarily wouldn't happen. Presumably this is what Stringer and Lack were supposed to have done. They, of course, didn't. (PTX 3, p. 37222)

* * *

As far as I'm concerned everyone did their job on this show, except Howard. And I think you ought to tell Bud that if he has criticisms about the documentary that the person who is primarily responsible for overseeing the show and making sure it was both fair and accurate was Stringer. (PTX 3, p. 37225)

* * *

If there were failings here . . . the man who was supposed to protect all of us and watch out for the reputation of the news division was Howard Stringer. And he is bad-mouthing the show . . . (PTX 3, p. 37225-6)

16. *December 1981 Interviews*

By mid-December, the Broadcast had been screened for the President of CBS News and was essentially in final form. Nevertheless, on December 11, 1981, Crile spoke to Colonel Charles Morris for the first time, by telephone. (Defendants' Response to Plaintiff's First Set of Interrogatories, p. 30)

Colonel Morris was the immediate superior of then Lt. Colonel Graham, and was the person who had fired Lt. Colonel Everette Parkins. General Westmoreland had listed him on June 9, 1981, six months earlier, as an individual whom CBS ought to interview. (JX 390, p. 20944)

In his deposition, when asked about the December 11, 1981 phone conversation Morris said that Crile treated him dishonorably and nonobjectively. (Morris Dep. Tr., November 9, 1982, 222) He considered Crile's notes to be a "grossly incomplete" record of their conversation. (*Id.* at 217) Despite repeated warnings by Morris of the imprecision of his fifteen-year-old memory and his refusal to be held to any specific dates or figures, these caveats appear nowhere in Crile's notes. (*Id.* at 219) Quotes attributed to Morris are often only partial references to what he actually told Crile and are frequently pulled substantially out of context. (*Id.* at 235, 236) He also testified that in many instances the wording and terminology of the notes appeared to be Crile's rather than his own. (*Id.* at 223, 224, 236) He felt these partial and out of context references, as well as Crile's use of his own phrasing in place of Morris', resulted in implications "significantly different" from the thrust of what he said to Crile. (*Id.* at 240)

Morris vehemently denied the notes' implication that General Graham, in November of 1967, would not accept reports with higher numbers and tried to "shoot down" the work of Morris' special study group. (*Id.* at 235, 236, 237) Crile, Morris said, was "... going after Danny Graham ... shooting at Danny as a target," so he tried to explain what he thought might be misleading Crile. (*Id.* at 226-7) Morris said he pointed out to Crile that Graham had certain "weaknesses", including a slowness in changing a known command position before it was "... prove[n] to him beyond a shadow of a doubt ..." that it was invalid. (*Id.* at 228, 230) While Morris told Crile that Graham—because of this desire for certainty—would not

initially accept the higher figures he characterizes as "... a poor choice of words..." Crile's assertion that Graham was "fighting" Morris and his analysts and blocking higher estimates. (*Id.* at 235)

On December 15, 1981, Adams spoke to retired Lt. Colonel Edward Hamilton, whom he met by chance at a luncheon. Adams' own notes of the interview show that Colonel Hamilton told Adams that General Davidson was in fine health:

Davidson, Gen'l Phil B.
Saw him in Sept.

Doing fine
re-married
living down in Texas

Down at Myrtle Beach
In same company as well as same class.

He's writing a book on Giap
He looked pretty good
He had cancer of prostate
He's retired. (JX 100)

Adams' notes show General Davidson's address. Lt. Colonel Hamilton confirmed the conversation in an affidavit.⁶⁴ (Hamilton Aff. ¶ 4)

Adams says he told Crile that he had learned that General Davidson, the MACV Chief of Intelligence during the alleged conspiracy, was alive and well before the Broadcast, as he later was to tell Benjamin:

B: When did you find out that Davidson was not ill?

ADAMS: Well before the broadcast around December.

B: Told Crile?

⁶⁴ Carolyn McDaniel has put in a sworn statement that "during 1981 I made repeated efforts to contact General Philip Davidson by telephone. All of these attempts were unsuccessful." (McDaniel Aff. ¶ 6) McDaniel's statement to Benjamin was somewhat narrower: "Davidson calls were probably made in early Oct." (PTX 61, p. 38521) That would have placed it *after* the screening for Executive Producer Stringer which occurred around October 1. (Klein Aff. ¶ 41) However, Crile told General Winant Sidle in a telephone conversation on January 22, 1982, after asking if Davidson is "dead now," that: "when we were in the midst of it, he was supposedly not receiving calls. One call went in, but he was in the hospital, and I thought he was either on the edge of death or whatever." (JX 744, p. 15)

ADAMS: I told George, Holy Cow. I don't know if he tried to get hold of Davidson.

(PTX 15, Benjamin's notes of Adams interview p. 38184)

Crile also learned of General Davidson's good health from another source, Ira Klein, before the Broadcast. Klein told Crile on January 14, 1982, that Adams had learned that General Davidson was in good health. (Klein Aff. ¶ 58) Nevertheless, Crile claimed at his deposition that he did not know before the show that General Davidson was well. (Crile Dep. Tr. 1024-5)

Adams had included General Davidson in his Prospects list as someone he felt should be interviewed and someone he planned to interview before his book was finished. (JX 881, p. 4713) Nevertheless, Adams told Benjamin that they shouldn't have interviewed him in any event. "We had so many people, he was just another." (PTX 17, p. 38259) Adams did not make it clear to what "others" he was referring.

Stringer believed that Crile should have interviewed General Davidson and used the interview in the Broadcast. He told Benjamin that not getting Davidson was an example of "bad reporting." (PTX 70, Benjamin's notes of Stringer interview p. 38546,) When he talked to *TV Guide's* Don Kowet, Stringer said simply, "if George had done his job right, he should've interviewed that guy [Davidson] and it should have been included." (PTX 11, p. 22) In his deposition, Stringer said, "I don't know what General Davidson would have said, but I believe it might have been important." (Stringer Dep. Tr. 219) Ed Joyce, Sauter's assistant at the time of the Broadcast, and now President of CBS News, said, "I believe it would have been a better broadcast if it had been included In retrospect, I wish a greater effort had been made to locate General Davidson." (Joyce Dep. Tr. 66-7)

17. *Last Minute Conversations*

In the two weeks before the airing of the Broadcast, after it was in final form, the defendants made contact for the first time with three very important figures involved in the events portrayed in the Broadcast.

First, on January 11, 1982, Crile interviewed, in person, George Carver, the CIA's number one expert on Vietnam, Special Assistant to the Director on Vietnam, George Allen's superior and the man who briefed Secretary McNamara on a regular basis (McNamara Aff. ¶ 4), briefed the "Wise Men" and briefed the President on Vietnam. Carver told Crile that he had serious problems with Crile's thesis. (JX 16B, p. 21161)

Later, Adams gave Benjamin his evaluation of Carver:

"Probably the best single guy. He presented the most persuasive case. I like Carver. He has intellectual honesty." (PTX 17, p. 38195)

However, according to Adams, he finally decided not to interview Carver because he was loyal to Carver and "it would make him look bad." (PTX 15, Benjamin's notes of Adams interview p. 38184.)

Crile's stated reasons for not interviewing Carver were different, if less clear. He gave Benjamin two. On the one hand he said that Carver's position "was firmly etched in documents in [his] file." On the other hand, he said Carver's position "flip-flopped." (PTX 37, Benjamin's notes of Crile interview, p. 38385) Crile offered a third explanation to Carver's deputy, George Allen, telling him that Carver "had so dissembled that he didn't think it would have been useful to have taped an interview." (Allen Dep. Tr. 864)

Second, on January 19, 1982, Adams contacted Robert Komer, General Westmoreland's deputy for pacification and a former White House aide. Ambassador Komer agreed in principle to be interviewed and asked Adams to write him a letter summarizing the areas of interest, which Adams did. However, it was in March 1981, ten months earlier, that Hawkins had told Crile that Ambassador Komer reported all relevant events to the President. (JX 9, Hawkins CBS interview Tr. 52-3) Adams' Prospects list showed that Adams believed that Ambassador Komer, as General Westmoreland's deputy with the rank of Ambassador, was intimately involved in all events relevant to the Order of Battle debate. (JX 881, p. 04739) Moreover, in June 1981, in his correction letter, General Westmoreland recommended that Crile speak to Ambassador Komer. (JX 390, p. 20944) Crile, however, did not contact Komer before the Broadcast aired, despite General Westmoreland's recommendation, and Crile's representation to General McChristian, that he would interview Komer. (JX 909, p. 21606—Crile's February 10, 1981, letter to General McChristian) When Crile ultimately did contact Ambassador Komer in late March 1982, Komer told Crile among other things:

that the broadcast was outrageous, that there had been no 'conspiracy,' and that he had impugned the honor of a thoroughly decent man. (Komer Aff. ¶ 29)

Adams also had his reasons for not wanting to interview Komer on-camera. As he told Crile in his Prospects list:

Watch out! Half the audience would believe him. (JX 881, p. 4740)

Third, on January 22, 1982, General Winant Sidle, who was the MACV Chief of Information from August 1967 to March 1969, telephoned Crile. Crile had not contacted him during the preparation of the show, but General Sidle had seen CBS's advertisement. Crile called him back and surreptitiously recorded the conversation. Among other things, General Sidle told Crile that the changes in the MACV order of battle had been announced to the press in a November 24, 1967, press briefing. Crile told General Sidle that he had "only seen the news accounts of that" (JX 744, pp. 2, 17)—although he had a copy (Amended Response of Defendants to Plaintiff's Third Set of Interrogatories, No. 113)—and General Sidle read most of the document to him. General Sidle also explained that it was "absolutely not true" that there was a conspiracy (JX 744, p. 18) and that MACV could not have explained the changes in the OB earlier than it did, because prior Pentagon clearance was required. (JX 744, p. 16)

Adams did not want Crile to talk to General Sidle, either. On May 13, 1975, General Sidle, then Deputy Assistant Secretary of Defense, wrote a letter to the editor of *Harper's* magazine, with a copy to Adams, in which he explained his background in intelligence and that "the MACV estimates were based on more current and more detailed information than Adams'" and that the size of the attacking force at Tet demonstrated that MACV's estimates were correct. (JX 510, pp. 30208-9)

18. *Doubts Expressed and Unexpressed*

In late December 1981 or early January 1982, Sauter, Joyce and Chandler met with representatives of the advertising department to discuss print advertising for the show. (Joyce Dep. Tr. 10) Sauter rejected the first draft because it wasn't strong enough. When the ad was resubmitted to management, the advertising department had added the word "CONSPIRACY" in large letters across the page. The advertising department wanted to photograph a group of men in uniform around a table but Robert Chandler objected on the ground that they did not know if such a meeting had ever taken place. So they used a drawing of military officers sitting around a table instead. (PTX 23, Benjamin's notes of Chandler interview, p. 38236) Chandler has yet to explain why a reader would not conclude from seeing a drawing instead of a photograph that the depicted meeting was not supposed to have taken place.

Thus, hundreds of thousands if not millions of people who saw the Broadcast had in their minds CBS's view of a conspiracy—a group of officers sitting around a table plotting.

The people involved on a senior level with the completion of the Broadcast were unhappy with the newspaper advertisement. (PTX 23, p. 38236), but nevertheless, CBS ran it in several major newspapers such as the *New York Times*, the *Los Angeles Times*, the *Chicago Tribune* and the *Washington Post*.

Even after a drawing was substituted for a photograph, Chandler still didn't like the advertisement because it looked too real. (PTX 27, Benjamin's notes of Chandler interview p. 38253). He also thought that the word "conspiracy" in the headline may have been too strong at the time. (PTX 25, Benjamin's notes of Chandler interview p. 38247) Colloff told Benjamin that the advertisement had given him trouble and he had said so. (PTX 33 p. 38290) Wallace, too, said he had problems with the advertising for the show. (PTX 75, p. 38563) Crile, who did not see the advertisement before the show aired, didn't like it either. (PTX 37, p. 38367) Adams told Benjamin: "The ad was overblown" (PTX 15, p. 38179) Adams elaborated to Kowet: "I was uneasy with the word conspiracy in the sense that you have a bunch of villains sitting around a table conspiring together." (PTX 12A, Tape 1, p. 11) That, of course, was precisely what CBS depicted in its newspaper advertisement.

When Adams visited CBS in mid-January for a final review of the Broadcast script, Crile was out of town. Adams told McDaniel that he had found two errors, an incorrect reference to General Davidson in a Meacham letter Wallace purported to quote from, and an incorrect reference to General Graham. (Klein Aff. ¶ 53; JX 366, Adams' 1/13/82 letter to Crile)

Klein discussed the misquotes with Crile when he returned. Crile told Klein that he had discussed both incorrect references with Colloff and that they didn't have to change the Graham error. Crile suggested changing the visual portion of the show by putting in a cut-away shot of General Westmoreland to distract viewers, but Klein refused to make what he felt was a cosmetic cut. A few days later, Klein encountered Lack, who told him that Crile had checked only one of the errors with Colloff. (Klein Aff. ¶¶ 55, 56)

At around the same date, about a week before the Broadcast, Klein and Crile transferred the film of the show to videotape for broadcasting. Klein also corrected the two errors, a difficult technical task at that late stage. (Klein Aff. ¶ 59)

It was at this point that CBS consultant Adams wrote two very dissimilar letters. To Crile, who was in a position to stop the airing of the show, he wrote on January 13, 1982, that the Broadcast was "superb." (JX 366) On January 20, 1982, he expressed some serious doubts regarding the truth of the show, to his former colleague, Colonel Gains Hawkins:

I hope this gets to you before Saturday. It's the penultimate version of the script—the one handed out as a press release about a week ago, with an embargo date of 20 January 1982.

* * *

I'd appreciate any comments you have on the documentary. Overall, I think it's reasonably good, but, as I mentioned before, there's a major problem: the documentary seems to pin the rap on General Westmoreland, when it probably belongs higher than that. (JX 380, p. 2)

In other words, Adams told Colonel Hawkins that he did not believe the major thesis of the Broadcast that General Westmoreland deceived his superiors, including the White House. Rather, he was saying that he believed that General Westmoreland *and his superiors*, to whom he reported truthfully, together deceived the American people and their representatives. That, indeed, was a major problem.

It seems, moreover, that Colonel Hawkins was not the only person to whom Adams had mentioned a major problem with the Broadcast. Adams told Benjamin that he had said "a million times" that the emphasis should have been higher, but "[w]e never had the goods on who gave the orders to Westmoreland." Now, however, Adams was convinced: "From the Rostow memo we now know LBJ knew". (PTX 15, Benjamin's notes of Adams interview pp. 38183-4) In sum, Adams believed there was no conspiracy to deceive the President.

Adams kept it no secret that he disagreed with Crile over the main thesis of the show. After the Westmoreland press conference, Adams entered the editing room where Klein, Hurwitz and CBS producer Kent Garrett were working on another project. Klein explained in his sworn affidavit:

Adams came in and said, "We have to come clean, we have to make a statement that the premise of the show is inaccurate. LBJ

had to know." Phyllis rolled her eyes and left the room. I replied to Adams, "Sam, isn't it a little late? Why weren't you telling George about this all along?" Sam said that he had been trying to tell Crile all along. (Klein Aff. ¶ 64)⁶⁵

Phyllis Hurwitz confirms Klein's description in her affidavit:

Shortly after General Westmoreland's January 26, 1982 press conference, I was in Ira Klein's cutting room with Mr. Klein and Mr. Kent Garrett. Mr. Klein was seated, and Mr. Garrett was in a corner of the room, and I was standing by the door. Mr. Adams came into the room and turned around and faced me, Mr. Klein and Mr. Garrett and said, "We have to come clean. The premise of the Show is inaccurate". (Hurwitz Aff. ¶ 16)

Adams also told Kowet that he and Crile disagreed on the critical question of whether General Westmoreland was deceiving the White House:

ADAMS: Premise Number 3. Did Westy do it on his own accord or did he get orders from on high? Here is where I had a parting of the ways. And, and you have to make the parting of the ways before the documentary and after the documentary. The parting of the ways before the documentary mostly involved a matter of degree.

KOWET: Right.

ADAMS: *I felt that the White House was very much more involved in it than the documentary implied.*

KOWET: Right.

ADAMS: However, I had to agree that the evidence pinning it on the White House was no where near as good as the evidence which pinned it on Westmoreland.

KOWET: Right.

ADAMS: *I told George that had I been writing the script, I would have been a lot stronger on that.*

KOWET: On what, Sam?

⁶⁵ Klein told this to Benjamin during his investigation. Benjamin's notes say:

... Jan. 27, Adams came into [Klein's] room, "We have to come clean. The premise is not accurate. Westy is over burdened in his role in the film." [Klein]: Didn't you discuss this with Crile? ADAMS: Yes, I discussed it with him all along. We are involved in a cover-up while we are accusing others of a cover-up." (PTX 49, p. 38477)

ADAMS: *A lot stronger on pointing the finger at the likelihood that the White House was involved. And that in other words, Westmoreland was acting as a go-between rather than as the, you know, the . . .*

KOWET: *The instigator.*

ADAMS: Yeah, right, in other words he was a deputy sinner rather than chief sinner.

KOWET: Okay.

ADAMS: Since the documentary I think my feelings on that score have been, have been substantiated.
(PTX 12A, Tape 5, pp. 31-33)

Adams also told Kowet:

I had problems with the documentary and what I'm telling you is exactly what I was saying to George at the time

I didn't have the smoking-gun evidence and when *George presented me with the draft of the documentary I ended up say, well, shit, you know. George I really believe that the, that this thing originated in the White House*

I was telling George that I thought well, you know, I think it's, we ought to be careful not to lay too much on Westy because I think it came up, it went up to the, through the White House as well

I believe in my heart of hearts that LBJ knew probably 90% of what happened (PTX 12 A, Tape 1, pp. 16, 21) (emphasis added)

That statement could be a definition of legal malice.

Andrew Lack, the executive producer as of the date of the Broadcast, told Benjamin that when he first saw the Broadcast in late 1981 he did not find it fair and balanced. (PTX 56, Benjamin's notes of Lack interview, p. 38503)

Alex Alben also had doubts about the thesis of the Broadcast. He told Kowet:

And you could have gone into the White House . . . my feeling is this wasn't a conspiracy directed by Westmoreland up It was a conspiracy directed by Rostow, and the National Security staff, with heavy pressure from Johnson to show progress down . . . in a historical sense I think, you know, by just showing one side, our documentary was a, you know, had it out of focus . . . Not that it didn't, wasn't truthful about what it said . . . About suppression took place but no, it wasn't generated by Westmoreland. (PTX 102, Kowet interview of Alben pp. 31-32)

In other words, General Westmoreland wasn't fooling his superiors. Alben told Kowet that "on TV you focus on the dramatic . . . [and] the appearance of guilt . . . is sometimes more important . . . than the objective proof . . ." (PTX 102, Kowet interview of Alben, p. 30)

When it happens on TV you focus on the dramatic, and if you get an interview the way you got with Westmoreland . . . you use it, because the appearance of guilt, you know, is sometimes more important, you know, than the objective proof. I think we had objective proof, but certainly what was, you know, used was very uncomfortable and dramatic an interview. (PTX 102, Kowet interview of Alben, p. 30)

A fourth person connected with the Broadcast who had problems with it was Ira Klein, the film editor. He had concluded that there was no evidence of any kind of conspiracy:

By September I had begun to have serious doubts about the premise of the broadcast. These doubts were prompted primarily from reading the entire interview transcripts. They contained no substantial evidence that Westmoreland was responsible for, or even a participant in, a conspiracy. In fact, I don't recall any interviewees telling Crile or Wallace that they believe a conspiracy had existed. (Klein Aff. ¶ 33)

Howard Stringer shared the reservations of his colleagues, but with one additional comment. He told Kowet that "I should have known I wouldn't get fair journalism off of him." Stringer added:

I had the sneaking feeling that at the end of the broadcast I always did have the sneaking feeling that Westmoreland would cover for somebody else. If Westmoreland was involved in the conspiracy, the real question is, would he really have the nerve to defy Washington? The chances are there would be a coverup there too. You could go on with that indefinitely. But George is a conspiracy thinker. (PTX 11, Kowet interview of Stringer p. 33)

Stringer said that not only he, but also Colloff, had doubts about the truth of the Broadcast.

. . . we screened rushes, which we don't always do . . . a lot of the time, because we were suspicious, both Roger and I." (PTX 11, p. 29)

Crile and McDaniel are the sixth and seventh people involved in the production of the Broadcast who entertained doubts about its thesis. These doubts are reflected in Benjamin's notes of his interview of McDaniel: