AFTERNOON SESSION
1:45 p.m.
(In open court; jury not present)

PHILLIP BURFORD DAVIDSON, Jr., resumed.

THE COURT: Call the jury, please.

(Jury present)

THE COURT: All right. You may proceed.

MR. BURT: Thank you, your Honor.

DIRECT EXAMINATION CONTINUED
BY MR. BURT:

Q. General Davidson, are you ready, sir?
A. I am.

Q. When we broke for lunch I was asking questions about General Davidson's move, transfer, to MACV, and I would like to pick that up and ask a question or two that I already asked, sir, just to set the time frame and the place.

Can you tell me again, sir, when it was you went to become chief of intelligence at MACV?
A. It was either the 23rd or the 25th of May.

Q. Of May?
A. 1967.

Q. And how long did you remain chief of intelligence at MACV?
A. Till on or about the 4th of May 1969.
Q. So about two years?
A. Correct.
Q. And did you serve under General Westmoreland and General Abrams?
A. I did.
Q. Tell me, sir, if you can recall, what were your first tasks, first order of priority in terms of tasks, when you became chief of intelligence at MACV?
A. When I first got there General McChristian, whom I was replacing, told me that Secretary McNamara, the Secretary of Defense, was due to come into Vietnam on a visit, as I recall, about the 5th or 6th of June 1967, and since General McChristian would have departed the command by that time, my first priority was to get ready to brief Secretary McNamara.
Q. Can you tell me what other tasks you turned your attention to, if there were any, when you reached --
A. Basically, the rest of the tasks were orientation, getting to know the organization, getting various briefings, informational briefings, that sort of thing.
Q. Did there come a time after you arrived in MACV as the intelligence chief that you did brief Secretary McNamara?
A. Yes.
Q. Did you brief him more than once?
A. No.

Q. When did you brief him?
A. I briefed him the 6th of July 1967.

Q. And that was about six weeks after you went to MACV, is that correct?
A. Roughly, yes.

Q. Can you tell me what part of your time was spent in preparing for this briefing between the time you arrived at MACV and the time you actually briefed Secretary McNamara?
A. I would say 30 or 40 percent of my time.

Q. And the rest of it was taken up, was it, with administrative matters?
A. With normal staff duties, including orientation, briefings, the sort of thing that any new staff officer has to have in order to fit into the headquarters in which he is assigned.

Q. When you became chief of intelligence at MACV did you engage in any reorganization of the intelligence apparatus that you found there?
A. Mr. Burt, I have a vague memory of reorganization, but I don't remember any of the details.

Q. Can you tell me, while you were J-2, whether there were some aspects of intelligence that were more
important to you than other aspects of intelligence?

A. Yes, there were some aspects of more importance than others.

Q. Could you describe those to me, sir?

A. Well, I think the -- one of the critical aspects, particularly in the summer and early fall of 1967, was what was the enemy strategy, what was his change of strategy, because we began to get reports that there had been a meeting of the politburo in either March or April or May of '67, and in July the ambassadors were called in, which is always a sign with the North Vietnamese government that a major change is going to be made in some kind of a major policy. So this alerted us that there might be a major change of strategy in the offing. This was a number one matter.

There were a series, Mr. Burt, of continuing worries, continuing problems. For example, on the broadest scale, were the Chinese likely to get into this encounter, even in a way of maybe replacing North Vietnamese troops in North Vietnam, so that more North Vietnamese could come down the trail, were the North Vietnamese going to make major reinforcements to the troops in the south.

One of the things that I remember concerned us was had the Soviets given them surface to surface missiles, large surface to surface missiles, which could be fired
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into South Vietnam from Cambodia or Laos.

These prime problems, in addition to the normal operation and running of the staff section, the preparing of the briefing, these, as I recall, were the things that particularly occupied me as the J-2, in contrast to the subordinates in the J-2 section, which generally went about their normal duties.

Q. Let me ask you, if I may, sir, what your normal day, if there was a normal day, was like. What did you do, can you tell us, as J-2?

A. Well, the normal day was 13 or 14 hours. It started at 7 o'clock in the morning, seven days a week, with a J-2 briefing in which the various briefers from areas throughout South Vietnam, especially intelligence in these areas, would conduct a briefing, normally about 30 minutes.

From there on you began to deal with the normal problems incident to staff administration, preparing briefings for the commander, for example, all sorts of things that make up a brief. This went on seven days a week.

Q. General Davidson, do the initials CIIED mean anything to you?

A. Yes.

Q. Can you tell me what that means, sir?
Q. And can you tell us, sir, what the Current Intelligence Indications and Estimates Division was?

A. Yes. Current intelligence -- one of the breakdowns of this division which I just set forth deals on a day basis with intelligence. In other words, firsthand quick information. What's the enemy doing now, what's he going to be doing tomorrow? There is a constant flow.

I might say that they have access to all sources of intelligence, which some of the other people, most of the other people in the J-2 section, did not have.

Q. Can I interrupt you, please, sir. As you know, there is an agreement with respect to what you can testify to.

A. I understand.

Q. You can use the word NSA, but I would rather not have it go anywhere beyond that.

A. I think I prefer to stand by my statement, if I may.

Q. Sorry to interrupt you. Please continue, sir.

A. Now, the estimates division was a different thing. These are the people who were taking a long look at things. What's the enemy going to be doing a month from now or three months from now or six months from now?
And then there was one other office in this CIIED, which was called the special security office. It's just what the name implies. We were dealing in this particular section with highly classified and highly sensitive types of intelligence. So we had to secure it. They were in a secure area, locked doors, sometimes even guarded doors, and they performed the security duty.

Q. Do the initials —

THE COURT: Just a second, please.

Do I understand that you are saying that the initials CIIED stand for not one entity but several different entities doing different kinds of things?

THE WITNESS: Sir, the CIIED is the parent unit, the commanding unit, if I may use that term, over current intelligence estimates and the special security office. They are subordinate to CIIED and constitute integral parts of it.

Q. General Davidson, in a moment we are going to have a chart up here, and let me try and draw a few boxes for you. Maybe that will make it a little clearer for the jury, for all those interested in it.

MR. BURT: Your Honor, with your permission, it will take me a second.

I apologize in advance for my difficulty in drawing lines and boxes.
Q. General Davidson, I will try and ask you some questions about the structure of intelligence and reporting and I would like you to help me out.

At the top of MACV was COMUSMACV, the commander, is that correct, sir?

A. Correct.

Q. Where was the intelligence function placed beneath that commander, sir?

A. To be absolutely accurate in your chart, I am going to have to give you another box right off.

Q. Okay.

A. Below COMUSMACV draw a box entitled Chief of Staff.

Q. All right. There is the chief of staff. What do I do next, sir?

A. Because the joint staff officers, not only J-2, but the other joint staff officers, and these were generals, all reported to the commander through the chief of staff. The chief of staff was our boss.

Q. Would it be accurate to say, sir, that a line comes down from here and then a series of branches?

A. Yes.

Q. Do you know how many boxes there would be under this line?

A. If you're talking about the joint staff
organization --

Q. Yes, sir.
A. -- there would be at least seven.
Q. That's more boxes than I could ever draw. All right.

And where was the J-2, sir?
A. Well, he would be in the second box. J-1 would be in one, J-2, J-3.

Q. I see. So this would be the J-2?
A. Right.
Q. And that was you, was it not, sir?
A. Correct.
Q. I just asked you about CIIED. Where would that be, sir?
A. Under the J-2.
Q. Would it be directly under the J-2?
A. No. You have to draw another line, because the major subordinate elements of J-2 then are on another line.
Q. Okay. I will draw another line like that.
A. All right.
Q. Now what do I do?
A. As I recall, there were four major units. Put in one box and put an A in it and call it administration.
Q. All right. Admin. Next.
A. Next put in a box in and call it Deputy for
Q. Do you happen to recall who that person was while you were J-2 at MACV, or who they were, if there was more than one?

A. When I first got there and for a few days it was then Colonel later Brigadier General Godding. He was succeeded by Colonel Morris.

Q. Okay. Godding and then Morris were successively deputies for intelligence production?

A. Successively, yes.

Q. All right.

A. There were two other boxes, just to fill the chart in, but not concerned in this litigation. One was counterintelligence, because one of my functions was to try to prevent the enemy from getting intelligence about our forces.

Q. Okay.

A. And the other is collection. In other words, these are the people who controlled such things as patrols, side-looking airborne radar.

MR. BURT: Your Honor, may I approach the bench?

(At the side bar)

MR. BURT: Your Honor, I have never heard the term before, side-looking airborne radar, and I am going to, with your permission, if I hear something like that that I
think may trespass -- the witness may inadvertently mention one of these security things -- I am going to cut him off.

I just wanted you to know that before I did it.

I don't know what that is and I don't want to hear any more about it.

Mr. Boies, do you have any problem with it?

MR. BOIES: I don't have any problem with it here. I don't think there is any security problem with side-looking airborne radar, but I don't care whether you pursue it or not.

MR. BURT: Thank you.

(In open court)

BY MR. BURT:

Q. General Davidson, I was asking you about the intelligence structure and you were telling me a bit about collections. Can you tell me any more about what collections did, sir?

A. Very quickly, it also controlled prisoner of war interrogation, document interpretation, any other sources of raw intelligence.

Q. Did raw intelligence come only to collections or did it go somewhere else?

A. Raw intelligence came through the units which collection controlled. They were separate units.

Collection was a management tool. They didn't
do it themselves. They prescribed the policies and
analyzed the results.

Q. And when you say raw intelligence, what do you
mean?

A. That's before -- those are just facts. That's
before it's been processed by analysts to try to determine
the meaning of it.

Q. So raw intelligence equals facts, is that
correct, sir?

A. I think a better explanation, Mr. Burt, would be
that it's information, misinformation and disinformation.
There is nothing there that when you pick up a prisoner of
war that you have any assurance that he is not lying to you.

Q. Okay. Now, did collections disseminate the raw
intelligence?

A. Yes.

Q. And to whom did it disseminate it, can you tell
me, sir?

A. It went throughout the intelligence organization,
to those people who had some need for it. For example, it
went to an agency called Combined Intelligence Center
Vietnam.

Q. Can you tell me where on this chart that
Combined Intelligence Center Vietnam would be, if it would
be on that chart?
A. It would be another line under the J-2 on about
the same line with the major staff sections.

Q. Like over here, you mean?

A. Yes.

Q. Combined Intelligence Center Vietnam, is that
correct, sir?

A. That's correct.

Q. Was this raw intelligence assembled by
collections distributed outside of MACV?

A. Yes.

Q. Do you know how widely that intelligence was
distributed?

A. I know that it was distributed in scores if not
hundreds of copies. I cannot answer your question
specifically.

Q. Let me ask you another question. Would you look
at the board over there, the blue board with the little
velcro things attached to it.

Do you know whether the raw intelligence
collections was distributed through COMUSMACV to CINCPAC,
for example?

A. Yes.

Q. Was the raw intelligence distributed, if you
know, from CINCPAC to the Joint Chiefs?

A. Not normally, no.
Q. You do know it went to CINCPAC?
A. I do.
Q. Did it go to DIA?
A. It did.
Q. Do you know whether any of it went to Special Assistant for National Security Affairs?
A. Not from my own personal knowledge at the time.
Q. Now, can you tell me where on this chart, if any place on this chart, you would put CIIED, current intelligence?
A. That's a section under the deputy for intelligence production.
Q. Now, CIIED, did it have more than one unit, which was his Honor's question?
A. It had three.
Q. And would you tell me once again what they were, sir?
A. Current intelligence.
Q. All right.
A. Estimates.
Q. Right.
A. And SSO, which is an acronym for special security officer.
Q. Special security officer.
A. Now, to make your chart accurate you should draw
a line from the deputy for intelligence production to CICV, because he also exercised operational control over that unit.

Q. Okay. I am going to draw an arrow.
A. Yes.

Q. Exercised operational control over CICV?
A. Yes.

Q. Did CIIED have separate offices or a defined area where its people sat?
A. Yes.

Q. Did you ever visit those offices?
A. I visited those offices on an average of five or six times a day.

Q. A day?
A. Yes.

Q. Seven days a week?
A. Seven days a week.

Q. Can you tell me once again what CICV was, please?
A. Combined Intelligence Center Vietnam. It contained both U.S. personnel and South Vietnamese personnel.

THE COURT: What were you talking about when you just said that you visited five to six times per day? Were you talking about CICV or CIIED?

THE WITNESS: CIIED, your Honor.
Q. Now, can you tell me whether CICV had offices of its own?
A. Yes.
Q. Were they physically separate from the offices of CIIED?
A. Yes.
Q. Can you tell me where they were located in relation to the offices of CIIED?
A. CIIED was in the Military Assistance Command Vietnam headquarters.
Q. Okay.
A. CICV was located in a special building in the joint general staff compound, about three blocks, as I recall it, from the headquarters of the Military Assistance Command.
Q. Was there any reason that CICV was physically separated from the CIIED offices?
A. Yes, there was one predominant reason. The predominant reason was one of security.
Q. Could you explain that for me, please?
A. Well, we had not only U.S. personnel working in CICV, but we had South Vietnamese personnel also, people that could not be subjected to our security standards and controls and investigation. So they were put off separately from the CIIED, all of whom were Americans and
all of whom had very high sensitive security clearances.

Also, you needed a great big building for CICV
because, as I recall, there were several hundred people at
work there.

Q. Did you visit the CICV offices from time to time?
A. Yes.

Q. Can you tell me how regularly, if you did visit
regularly?
A. After the first or second orientation I would
probably visit CICV on the order of two or three times a
month.

Q. Two or three times a week?
A. A month.

Q. Sorry. I didn't hear you, sir. And how much
time did you spend at CICV, if you did spend a normal
amount of time, when you went there?
A. I think perhaps an hour, walking around, looking
at the various people that were working there, being seen
by the people who worked there, showing some interest in
their activities.

Q. General Davidson, you testified a little earlier
that you visited CIIED five or so times a day, I believe.
A. At least.

Q. At least. Can you tell me how much time each
day on the average you spent at CIIED, current intelligence?
A. Well, not counting the morning briefing, which was in that secure area, but not counting that, I would say I would spend normally 30 minutes to an hour in that area daily.

Q. Thank you. When you went to Vietnam in 1967 to become chief of intelligence did you meet a man named Colonel Gains Hawkins?

A. Yes.

Q. Had you met Colonel Hawkins prior to becoming chief of intelligence?

A. Not to my memory.

Q. Do you recall where Colonel Hawkins worked?

A. He was chief of the order of battle section.

Q. And do you know where that order of battle section would be placed on this rather confused chart?

A. When I arrived the order of battle section would have been a part of the office of the deputy for intelligence production.

Q. Right.

A. It's my memory now that that office was transferred to CICV, but I am not sure that Colonel Hawkins had not departed the command before that reorganization took place.

Q. Can you tell me whether you worked with -- let me rephrase that.
Did CICV produce a monthly order of battle summary?

A. Yes.

Q. Did you ever see that summary?

A. Yes.

Q. Was that summary of use to you?

A. Yes, it was of some use, particularly the summary page which accompanied it, giving the enemy strengths as of the end of each month in the various categories of the enemy which we faced.

Q. Can you tell me what use you made of it, if any?

A. Other than the summary page, very little, because it was a document about two inches thick, with a vast amount of detail about units, individual units, replacements, infiltration and the like.

Q. Was the CICV monthly order of battle summary of use for current purposes?

Am I clear?

A. Yes. It was of limited usefulness.

Q. Can you tell me why it was of limited usefulness?

A. Well, because most of the data in there was in detail and was historical in nature, at least sometimes a month old, sometimes older.

Q. Could you distinguish for me between the information produced by CIIEE and the information produced
by CICV?

THE COURT: Sustained as to form.

Q. General Davidson --

THE COURT: I believe he testified -- correct me if I am wrong -- that the order of battle section in which Colonel Hawkins worked was not transferred to CICV until after Hawkins' departure.

Is that right?

THE WITNESS: That's my memory, sir.

THE COURT: I just didn't want your question to obliteraate that thinking.

MR. BURT: Thank you, your Honor.

(Continued on next page)
BY MR. BURT:

Q. Let me rephrase the question.

Can you distinguish for me between the order of battle summaries -- between the use made of the order of battle summaries and the use of information produced by CIIEI? I believe you have testified that prior to a reorganization the order of battle section was under the deputy for intelligence production and I had assumed -- and correct me if I am wrong -- that that order of battle section was not part of CIIEI?

A. It was not.

Q. Can you answer my question now?

A. Yes.

There were two differences between the information produced by CICV and the the produced by CIIEI. In the first place a great part of the CICV information, as the order of battle summaries, was to a large extent historical in nature, whereas the intelligence produced by CIIEI was current in nature, there was one other difference, let me retract that and start again.

CICV produced information classified not higher than secret, whereas CIIEI produced information to the highest sensitive classification that we had.

THE COURT: I'm afraid I think the answer leaves unclear just the problem that I was directing you to.
Perhaps you could clear it up by your question.

MR. BURT: Yes, your Honor.

Q General Davidson, was the information produced by the order of battle section when it was part of the organization of the deputy for intelligence production any different from the information produced by that order of battle section after it was transferred to CICV? Is my question clear, sir?

A. Yes. To the best of my memory, there was no difference.

MR. BURT: Your Honor, does that --

THE COURT: You may proceed.

MR. BURT: Thank you.

Q General Davidson, when you arrived in Vietnam, was MACV preparing an enemy order of battle?

A. Yes.

Q. And you have testified I believe that the order of battle section prepared a summary of the enemy order of battle, is that correct?

A. That's correct.

Q. General Davidson, do you recall in the summary order of battle what the categories were when you arrived?

A. Yes.

Q. Were there any differences in the degree of certainty, in your mind, with respect to the numbers in
those categories?
A. You mean the validity of the numbers, Mr. Burt?
Q. Sure.
A. I don't understand your question.
Q. Let me rephrase my question.
Were one of the categories in the summary produced by CICV main forces?
A. Main and local forces.
THE COURT: Just a second, please.
MR. BOIES: Objection.
THE COURT: You are going right back into it.
First of all, I think you better make your question clear as to the time that you're asking about. Your original question on this subject asked I think about when the general first arrived in Vietnam. Make it clear exactly when you are asking about because I don't think that your last question was consistent with the first as to the time frame.
BY MR. BURT:
Q. Let me put a time frame on my questions.
Did the order of battle section, whether it was under the deputy for intelligence production or CICV, prepare an enemy order of battle summary while you were J-2?
A. Yes.
Q. Were there categories of the enemy contained in
that order of battle summary while you were J-2?

A. Yes.

Q. Can you list for me what those categories were when you became J-2, if you can recall?

A. I'm not sure I can recall the exact nomenclature. I can certainly recall the type units and type of categories we're talking about.

Q. Okay.

A. The first category were main and local forces, in effect, the enemy's regular troops.

Q. Okay. Can you continue, sir?

A. Shall I continue, Mr. Burt?

Q. Can you, please.

A. The second category would be administrative services. These are the people who manned the hospitals, logistics people, truck drivers and things like that.

The third category, when I got there, it would be a category called irregulars.

As I recall, the fourth category was one called Vietcong infrastructure, political infrastructure was another name.

Q. Can you tell me, sir, whether this category had components to it?

A. It did.

Q. When you arrived in Vietnam?
A. Yes.

Q. Can you tell me what those components were it?

A. There were three components. First, guerrillas; second self-defense forces and, third, secret self-defense forces.

Q. Can you tell me, if you know, what these various subcategories of the irregular category did?

A. Well, guerrillas were organized units, generally, fully armed, who operated in either hamlet units -- which a hamlet is a small part of a village -- or village units. They were fully armed, combat effective and conducted raids occasionally, blew up bridges and that sort of thing.

The self-defense forces were people who were organized around the given village or hamlet and they dug fortifications, conducted propaganda and they may have had other functions such as putting in some kinds of mines and booby traps.

Q. Okay.

A. The secret self-defense operated in that area controlled by the South Vietnamese government, therefore, the same secret.

Q. What did they do, sir?

A. They conducted propaganda. They also acted on occasion as a reconnaissance agents for the Vietcong.
Q. Now, again, I'm asking you about the time when
you first arrived in South Vietnam, say the first month, if
you will.

What was your degree of certitude, if any, with
respect to your estimate of the main and local force
numbers?

A. We were very confident of it.

Q. Can you tell me why?

A. Yes. Because we were contacting these troops in
the field, we were getting prisoners of war, we were
getting documents, we were getting deserters and defectors.

So we were able to keep a running count and a running
handle on these particular units. We were confident within
perhaps one or two percent of our strength of those units.

Q. General Davidson, can you tell me what degree of
certitude you had with respect to the number of
administrative services?

A. Much less.

Q. Can you tell me why?

A. Administrative services by their very nature are
in the rear areas. It's not exactly the term you were able
to use in Vietnam. They were basically in base areas, in
logistic situations and in logistic setups so that you
didn't contact them too often and so that you could get
prisoners of war or documents or the other kinds of
intelligence.

So we had a much less confidence in that category.

Q. General Davidson, can you tell me how you defined what an administrative service person was? Is my question clear, sir?

A. No, it is not.

Q. Could you tell me how did you decide whether a person was an administrative service person; what tests would have to be performed?

A. If you caught him driving a truck or cooking or working in the hospital, he performed the test. If you caught him out on the road, I doubt that you would be able to identify him.

Q. Let me ask you with respect to the subcategories here, the questions I have been asking with respect to the main and local forces. Can you tell me what degree of certitude you had as to the number of guerrillas that there were?

A. Well, we were more confident in our guerrilla strength figures than we were in our administrative services, but a good deal less than in our main and local forces. But ourselves, our troops and the South Vietnamese, were contacting guerrillas from time to time. So we were able to get some prisoners, some documents, where we could
get some idea of their strength and activities.

Q. Can you tell me what degree of certitude you had with respect to the estimate of the self-defense forces?

A. Very little.

Q. Can you tell me why, sir?

A. Well, by their very nature they were people who stayed in their villages. They were civilians, dressed as civilians, many of them were women, older men, sometimes even children. You very seldom contacted them in any kind of a combat operation. They had little or no organization, so there was no way of getting your hand on them through an organization. So we had very little confidence in any figures for those two -- for the self-defense category.

Q. I would ask my question again: What degree of certitude do you have with respect to the estimates of the secret self-defense forces?

A. Very little.

Q. Was there any difference with respect to -- let me take that question back and let me just carry on.

Can you tell me what degree of certitude you had, if any, with respect to the estimate of the number of Vietcong in the infrastructure or the Vietcong political?

A. Probably about the same degree of confidence that we had in guerrillas. The Vietcong infrastructure did have an organization of sorts, although they were and have
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been characterized as a shadow government. By their nature in South Vietnam, they were clandestine and covert. Nevertheless, we were able to gain some intelligence on them.

So that although we would give them about the same degree of reliability as we would the guerrillas.

Q. General McChristian -- I'm sorry -- General Davidson, when you arrived in Vietnam did you attend -- and we're talking about May of 1967 -- did you intend something called a weekly intelligence update?

A. Yes.

Q. Can you recall whether you ever attended a weekly intelligence update or WIEU at which General McChristian was present?

A. I have a memory that General McChristian attended the first WIEU I attended.

Q. Do you have any idea of when that WIEU was?

A. It should have been the Saturday after the 23rd or 25th. The WIEU's were held every Saturday morning at 8 o'clock. I have seen a contemporary document which indicates that it was held on the 29th of May that time and which was a Sunday.

Q. General Davidson, do you recall whether at the WIEU you were at, where McChristian was present, according to your testimony, there was any briefing of estimates of
self-defense and secret self-defense and guerrillas?

A. I recall no such briefing.

Q. General Davidson --

THE COURT: Just a second. I don't know what that answer means.

Are you saying that you simply don't recall whether or not there was such a discussion or such a briefing at that particular WIEU or are you saying that you believe from your recollection that there was no such briefing at that WIEU?

THE WITNESS: I'm saying, your Honor, that I cannot recall any such briefing at that WIEU.

THE COURT: Well, do you remember what I just asked you a minute ago?

THE WITNESS: Yes.

THE COURT: I ask it again. Are you saying it is your belief based on your recollection that there was no such briefing at that WIEU or are you saying that there may have been but you just are not sufficiently clear in your recollection of the meeting to be able to express any opinion as to whether there was or wasn't?

THE WITNESS: It's the latter, your Honor.

THE COURT: You just don't recall?

THE WITNESS: I just don't recall.
Q. General Davidson, I would like you to look at a document numbered Exhibit 1501. Do you have a copy of that document, sir; do you have that in your hand?

A. I do.

Q. Would you take a second to glance over it, sir, and I would like to ask you a question or two about it.

Who sent this document, sir?

A. I did.

Q. You sent it to whom, sir?

A. Major General Peterson, the J-2 or the chief intelligence officer of CINCPAC.

MR. BOIES: Your Honor, may we understand whether the witness is testifying from his recollection or whether he's merely reading the document?

MR. BURT: That was my next question.

Q General Davidson, do you recall having drafted this document or sent this document?

A. No.

Q. That is, you have no present recollection, is that correct?

A. That's correct.

Q. Do you have any reason to believe that this document was not sent in the form as shown here?

A. No.

MR. BURT: Your Honor, we would like to offer
1 this in evidence.
2
3 MR. BOIES: May we know the purpose for which it
4 is being offered.
5
6 MR. BURT: To show that it was sent and received
7 and to refresh the witness' recollection.
8
9 MR. BOIES: If that is the only purpose, your
10 Honor, we would have no objection to it.
11
12 MR. BURT: And for the fact that this is what
13 was communicated.
14
15 MR. BOIES: That is for the fact that it was
16 sent and received.
17
18 MR. BURT: I didn't distinguish. In any event,
19 yes.
20
21 MR. BOIES: I take it this is not being offered
22 on the state of mind issue.
23
24 MR. BURT: No, certainly not.
25
26 MR. BOIES: No objection to that offer, your
27 Honor.
28
29 THE COURT: You are saying it's not offered with
30 respect to CBS's state of mind?
31
32 MR. BURT: Correct.
33
34 THE COURT: All right. This Exhibit 1501 is
35 received in evidence and the jury will understand that it
36 is not offered as relating in any way to the issue of CBS'
state of mind. The plaintiff says there is no contention that CBS had this document when they prepared their documentary.

(Exhibit 1501 for identification was received in evidence)

Q. General Davidson, can you tell me, having read this document, what the first sentence refers to when it refers to "OB strength figures"?

A. I cannot, from my own memory, define the term "OB strength figures."

Q. Can you tell me from any other basis, other than your memory?

MR. BOIES: Objection.

Q. General Davidson, you were Chief of Intelligence, were you not?

A. Yes.

Q. And were you familiar with the OB, the order of battle, that was prepared by the order of battle section that we have discussed a few minutes ago?

A. Yes.

Q. Did you meet with any of the people who prepared that order of battle that was prepared by the order of battle section while you were intelligence chief?

A. Yes, I met with them.

Q. Can you tell me from your past experience
whether you can give me your opinion as to what the phrase
"OB strength figures" refers to?

MR. BOIES: May we inquire whether he means "OB
strength figures" in this particular document?

MR. BURT: In this particular document, which he
sent, although he has no present recollection.

MR. BOIES: Objection, your Honor.

THE COURT: Do you wish to conduct voir dire?

MR. BOIES: Perhaps just a couple of questions,
your Honor.

THE COURT: Go ahead.

VOIR DIRE EXAMINATION

BY MR. BOIES:

Q. General Davidson, with respect to the term "OB
strength figures" is that a term that was a term of art
that you understood as meaning a particular thing every
time it was used?

A. Not necessarily, Mr. Boies.

Q. Do you have any personal recollection or memory
as to how this phrase was used in this particular document?

A. I do not.

MR. BOIES: That's all I have, your Honor.

MR. BURT: May I ask another question at this
point, your Honor?

THE COURT: Yes.
BY MR. BURT:

Q. General Davidson, is there anything from the context of this document that would tell you what the phrase "OB strength figures" refers to?

A. No.

Q. General Davidson, did there come a time in July of 1967 when you met with a man named George Carver?

A. I have no personal recollection of meeting with Mr. Carver in July of 1967.

Q. General Davidson, does the phrase -- do the initials SNIE mean anything to you?

A. Yes.

Q. Can you tell us what that is?

A. It's a Special National Intelligence Estimate.

Q. Did there come a time in 1967 when you learned about a Special National Intelligence Estimate?

A. Yes.

Q. Can you describe for me when you learned about it and what you learned about it, if anything?

A. I can't recall the date that I learned that there was a revision of the 1966 SNIE. It would have been sometime in the summer of 1967.

Q. And can you tell me what, if anything, you learned about that?

A. No, I can't tell you anything that I learned
about that.

Q. Do you recall what the subject of this SNIE was?
A. It was Vietnam and the war there.

Q. Did there come a time when MACV participated in deliberations with respect to this SNIE?
A. Yes.

Q. And can you recall when that was?
A. The first participation would have been around the middle of August 1967.

Q. Can you describe for me how MACV participated in that, if you know?
A. We sent a team to a conference which had been convened at CIA headquarters at Langley, Virginia, to work on the strength figures to be contained in the SNIE.

Q. Did MACV prepare a position with respect to the strength figures to take to this August meeting?
A. Yes.

Q. General Davidson, I would like you to look at a document which is Exhibit 252, which is in evidence; let me show it to you.

Do you have that document in front of you, sir?
Let me give you a clean copy. That copy is mine.

Do you have Exhibit 252 in front of you, sir?
A. Yes.

Q. And have you glanced through it? Do you want to
glance through it and look at it?

You have reviewed it, sir?

A. I have read it.

Q. Can you tell me whether you know who drafted this cable?

A. Yes.

Q. Who did, sir?

A. I did.

Q. I would like you to look at paragraph 2, which as has the parenthesis (S). I believe that's a classification of that particular paragraph?

A. Correct.

Q. It says: "If SD and SSD strength figures are included in the overall enemy strength figure, the figure will total 420,000 to 431,000, depending on minor variations. This is in sharp contrast to the current overall strength figure of about 299,000 given to the press here."

Did you draft that paragraph, sir?

A. To the best of my memory, I did.

Q. Where did the figure 420,000 to 431,000 come from?

A. If I didn't have it in my head at the time, it came from somebody in my J-2 section.

Q. Someone on your staff?
A. Somebody on the J-2 staff, yes.
Q. Did you know, if you can recall when you drafted it, to whom this cable was being sent?
Q. Who is General Wheeler?
A. General Wheeler is the Chairman of the Joint Chiefs of Staff.
Q. That box on the board Joint Chiefs of Staff?
A. Yes.
Q. He's the chairman of that?
A. He was the chairman.
Q. Did you know that at the time?
A. Yes, indeed.
Q. Could you show me what box Admiral Sharp would be in, if there is a box on that board he would be in?
A. On that chart, CINCPAC, Commander in Chief Pacific.
Q. Did you know who Admiral Sharp was at the time?
A. Yes.
Q. Had you ever met Admiral Sharp?
A. Yes.
Q. Had you ever met General Wheeler?
A. Yes.
Q. Can you tell me who General Abrams was at the
time you sent this cable -- sorry -- at the time you
drafted this cable?

A. General Abrams was the deputy commander, the
U.S. Military Assistance Command Vietnam, but in this
instance he was the acting commander.

Q. Why was that, sir?

A. Because General Westmoreland is an addressee on
the cable, indicating he was not in the headquarters.

Q. I would like you to turn to paragraph 5 and you
may read any part of this for context, if you wish, and
note that there's (C), that refers to security
classification?

A. Yes.

Q. And read into the record: "In our view the
strength figures for the SD and SSD should be omitted
entirely from the enemy strength tables in the forthcoming
NIE. This will prevent the possibility that they can be
added to the valid figures and an erroneous conclusion
drawn as to an enemy strength increase."

Did you draft that paragraph, sir?

A. To the best of my knowledge, I did.

Q. Did you believe what you wrote when you drafted
it?

A. Yes, sir.

Q. Did anyone order you to draft that paragraph?
MR. BURT: Your Honor, can we take a break right now for about 10 minutes?

THE COURT: All right. Ten minute break.

MR. BURT: Thank you very much, your Honor.

(Recess taken)

THE COURT: Call the jury, please.

(Jury present)

THE COURT: You may proceed.

MR. BURT: Thank you, your Honor.

BY MR. BURT:

Q. General Davidson, at the break we were talking about the cable that you drafted and in the time frame of late August, 1967 and if I may take a minute to check that cable, it refers to the draft NIE 14.3-67 in part in the first paragraph. I would like to ask you some more questions at this time, if I may, about the NIE or SNIE as it has been referred to in the course of these proceedings.

Did there come a time when a session of the SNIE met in Saigon in 1967?

A. Yes.

Q. Can you recall when that was, sir?

A. It was on or about the 11th September 1967.

Q. Can you recall who the participants were in that meeting, all or some?
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A. I can recall I believe all the agencies represented without being able to recall all of the individual participants.

Q. Could you tell me the agencies represented?

A. The agencies as I remember them were, from Central Intelligence Agency, from the Intelligence Office of the Secretary of State Department -- State Department -- there was a delegation from the Defense Intelligence Agency, another delegation from Admiral Sharp's headquarters, Pacific Command and then there were the Military Assistance Command Vietnam delegation.

Q. Can you recall whether there was a head of any of these delegations and, if so, who it or they were?

A. I can recall the head of the CIA delegation, who was Mr. George Carver and acted initially at least as the head of the MACV delegation.

I have no memory of the delegation chiefs of the other agencies.

Q. Do you recall if Mr. Carver?

A. Yes.

Q. Could you describe him physically for us?

A. He's a man about five foot six, must weigh around 160 pounds, has thick glasses. He had at that time blond hair. I suspect it's gray now. That's about the best physical description I can give you.