Q. I would like you to look at a document, sir, which is in evidence, and it is numbered 1400.

(Pause)

Q. General Westmoreland, let me give you the copy I just gave you and let me take that one.

(Pause)

Q. Take a second, sir, and look at this document.

(Pause)

Q. And I will describe it. It says -- my copy is cut-off a little bit at the top. The xeroxing was cut-off.

It is the papers of someone, "McNaughton Notebook three drafts 1967, number B tab 11."

Do you see this document, sir?

A. Yes, I identified that document. I have it.

(Pause)

Q. Let me, I just had this cut-off portion identified more clearly and let me read it into the record.

It is papers of Paul Warnke, "McNaughton Notebook, 3 drafts 1967 and it is NK "-- that's all I can make out from reading.

MR. BOIES: That's all I can, too.

MR. BURT: It looks like tab 11 or tab 4, and it is headed: "Notes On Discussions With The President, 27 April, 1967."

Do you recall having met with the President on
or about April 27, 1967, General Westmoreland?

A. Yes, I do. I'm pretty sure that is the meeting that I referred to which is in the cabinet room of the White House.

C. Was anyone else present?

A. Yes. I think -- as a matter of fact, I recall that the Secretary of State was there, the Undersecretary of State was there, the Secretary of Defense was there, the Deputy Secretary of Defense was there, the Chairman of the Joint Chiefs was there.

Q. Do you recall whether Dr. Rostow was there?

A. Certainly Dr. Rostow was there. And there were others, but those are the only ones that come to mind.

Q. And what did you talk about?

A. At that time I had prepared two troop lists associated with augmenting the forces that I had under my command in Vietnam, all associated with an effort to carry out the strategy of the administration.

And let me hasten to say in a few words the strategy of the administration at that time, Mr. Johnson's administration, was to try to improve security in the South, support the South Vietnamese in the south and defeat the indigenous forces in the south, bomb the north, attempting to impede mineralization from the north to the south, and hurt the population through the bombing and through our efforts in the
Q. Can you recall where you met with the President on this day?

A. Yes. It was in the cabinet room of the White House.

Q. Was anyone else present?

A. Yes. I think -- as a matter of fact, I recall that the Secretary of State was there, the Undersecretary of State was there, the Secretary of Defense was there, the Deputy Secretary of Defense was there, the Chairman of the Joint Chiefs was there.

Q. Do you recall whether Dr. Rostow was there?

A. Certainly Dr. Rostow was there. And there were others, but those are the only ones that come to mind.

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And let me hasten to say in a few words the strategy of the administration at that time, Mr. Johnson's administration, was to try to improve security of the South Vietnamese in the south and defeat the indigenous forces in the south, bomb the north, attempting to impede infiltration from the north to the south, and hurt the enemy through the bombing and through our efforts in the
south to the point that he would feel constrained to come
to the conference table. The strategy was not to defeat
North Vietnam, it was not to unify the two Vietnams by
force.

Q. General Westmoreland, if I may interrupt just a
bit, and forgive me, sir, for doing so, but I would like to
direct your attention again to this question of what it was
that you talked about in this meeting.

A. It was in connection with troop augmentations,
and I had two troop lists. I had one that involved adding
about two and a third divisions to my force, which I called
the minimum essential force.

Q. How many is that, sir, two and a third divisions,
how many men?

A. I would say roughly 100,000.

Q. 100,000 men?

A. Yes.

Q. Let me pursue that for just a second. What was
the size at that time of a U.S. division? I can divide,
but I don't trust --

A. About 20,000.

Q. And can you recall what at that time was the
size of a North Vietnamese division, regular division?

A. I would say 7 to 10,000.

Q. They were about half the size?
A. In order of magnitude.

Q. And you said that you had a troop request for two and a third divisions?

A. Yes, but also there were some tactical air squadrons involved and there were some additional artillery and there were a number of support troops.

Q. So it all added up to 100,000?

A. Approximately.

Q. Sorry to interrupt you. Would you continue with the second prong of that request?

A. Now, the second troop list I had was what I called the optimum, and that was about 200,000, roughly twice the minimum essential.

What I wanted to do was to give the President a choice, and I was asked during the course of this session if -- as a matter of fact, Mr. McNamara finally, after some discussion back and forth, asked me if I would hazard an estimate on the impact of the minimum essential force on the course of the war and the impact of the optimum force, and I said "Well, Mr. Secretary, there are too many imponderables to deal with this, but on the assumption that the bombing campaign will continue, I feel it's quite possible, with the optimum force, we can bring this war to some conclusion" -- and this again in the context of the strategy that I mentioned a minute ago -- "in about three
years. But," I said "with the minimum essential," I said, Mr. Secretary" -- and the President was there -- "it will take at least five years."

Q. Let's look at this document, if I may, sir, and point you to paragraph 12. Would you read that, sir? Read also paragraph 13 and 14.

THE COURT: You mean read it to himself?

MR. BURT: To himself.

Q. Please read --

A. To myself?

Q. Read paragraphs 12, 13 --

A. To myself?

Q. Yes, to yourself.

A. 12 and 13?

Q. Yes, General Westmoreland. I think you ought to read 14 and 15, 14.

A. Yes.

Q. I would like to ask you, sir, whether this refreshes your recollection in any way with respect to what you said at that meeting.

A. Well, in general, but not precisely.

Q. Let me ask you this, sir. Can you recall whether you might have said that with your minimum essential level the war would go on for three years rather than five?
A. I distinctly recall the five years as the minimum essential, yes.

Q. And that minimum essential was another 100,000 men?

A. Approximately, yes.

Q. Now, when you made this judgment as to the time that the war would go on with the minimum essential men were you relying to any extent on information supplied to you by your intelligence chief back in Vietnam?

A. I was.

Q. And that was General McChristian?

A. It was.

Q. Did the President make a decision at that April meeting with respect to whether you would be given your minimum essential troop request?

A. He did not make a decision.

Q. You're sure?

A. I'm positive.

Q. Did you withdraw the troop request --

THE COURT: You mean to say and to ask that he didn't declare or announce any decision?

MR. BURT: I was going on to that, your Honor, if I may.

THE COURT: Excuse me?

MR. BURT: I was going on to that.
THE COURT: The only question that General Westmoreland can answer is whether the President announced any decision. He can't testify as to what the President might have decided in his mind.

A. The President did not announce any decision during that time frame.

Q. And did you withdraw your troop request?

A. I did not.

Q. General Westmoreland, I would like you also -- you still have that document there?

A. I do.

Q. Look at the first page of that document, paragraph 5. You see that paragraph?

A. I see it.

Q. And did you tell the President in words or substance "In summary, with the troops now in country, we are not going to lose, but progress will be slowed down," and "This is not an encouraging outlook, but it is a realistic one"?

A. Yes, I transmitted that thought to the President and to the others present.

Q. General Westmoreland, you returned to Vietnam after meeting with the President, did you?

A. I did.

Q. And do you recall whether your troop request was
still pending? And we are talking about either the minimum --

well, let me ask you, did you withdraw the optimum request

after the meeting with the President?

A. I did not.

Q. So you had two requests pending?

A. Yes.

Q. One for a minimum essential and one for an

optimum?

A. Yes, there were two pending.

Q. Did you withdraw either of those requests in May

of 1967?

A. I did not.

Q. They were still pending?

A. They were still pending.

Q. And did the President make a decision, if you

know, did he announce a decision with respect --

A. He did not announce a decision during that time

frame. And as I understand your question, we are talking

about the time frame --

Q. May 1967.

A. -- of May.

Q. And were your troop requests still pending in

June of 1967?

A. They were.

Q. Did the President announce any decision with
Westmoreland - direct

respect to those two troop requests in June of 1967?

A. He did not.

Q. Were your troop requests pending in July of 1967?

A. They were.

Q. Did the President announce any decision with respect to those troop requests in July of 1967, if you can recall?

A. He made a decision during July, but I don't believe it was publicly announced until August. But I am not -- I can't be precise.

Q. How do you know the President made a decision in July if it wasn't announced, can you tell me?

A. Well, Mr. McNamara came out in July and he and I had a long discussion on this particular matter. It became very clear to me that the so-called optimum force would not be approved.

He asked me if there was any way I could reduce that, and I had anticipated that and we had done quite a bit of staff work and I had explored two courses of action, both of which I felt were practical and would reduce the troop request from about 100,000 to about 80,000, specifically to hire more indigenous people to handle the logistics associated with my command, in other words, hire South Vietnamese to do the work rather than American soldiers, and secondly, I could increase the fighting
strength of my unit by adding additional companies to
battalions and additional battalions to brigades and
additional brigades perhaps, but we didn't -- the latter we
did not consider feasible. That would give me more
fighting power with less overhead. Mr. McNamara was very
taken with this and he in effect told me that as my troop
request was modified that he would support it.

Now, in the meanwhile my mother died, on the
10th of July, and I flew back to bury her in Columbia,
South Carolina, before Mr. McNamara departed, but I
received a notice through my sister, who lived in Columbia,
from the secretary's office that the President wanted me to
come to Washington, and I, needless to say, carried out his
request, and I met with him and Mr. McNamara, and he told
me at that time that the modified minimum essential request
would be approved, but I don't believe it was announced
until August, but I feel insecure in this.

Q. And how many enemy troops were in the modified
minimum essential?

A. I think about 80,000.

Q. After you learned that you would get the
modified minimum essential, about 80,000, in July did you
withdraw your troop requests or did you still have one
pending?

A. No, that solved the problem. The President had
heard me out, he and Mr. McNamara had studied the matter, I conferred in great detail with Mr. McNamara, and the President made his decision, and that was that. We went on with our business.

Q. When you went back to the United States from Saigon in April of 1967 -- we covered this -- I just want to know, where did you stay when you were in Washington, do you recall?

A. I stayed at the White House.

Q. And was anyone with you? Was your wife with you?

A. Yes, my wife was with me.

Q. And can you recall, shifting your attention again to this period in July, when you came back to bury your mother, you came to Washington, I believe you said --

A. I did.

Q. -- can you tell me where you stayed at that time, if you can recall?

A. Well, initially I flew into Columbia, South Carolina for the funeral services of my mother, and the next day I flew to Washington. I think we -- my wife was with me and my baby daughter was with me, who at that time was about I guess five, five or six, and I think we stayed at the White House on that occasion, but I am not sure.

Q. General Westmoreland, at the end of April or sometime in April you met with the President in Washington.
Did you address the Congress at that time when you were back, if you recall?

A. I did.

Q. Okay.

A. Can I elaborate a bit?

Q. No, not really. Let me just carry on.

A. All right.

Q. You then went back to South Vietnam, am I correct?

A. I went home, which was in Saigon at that time, yes.

Q. I would like to ask you some questions now about what transpired when you went back to South Vietnam.

I think you referred earlier to a man named General Joseph McChristian, and I believe he was your J-2 or chief of intelligence in May of 1967, am I correct, sir?

A. He was, yes.

Q. Do you recall whether prior to going back to Washington, D.C. in April you knew whether General McChristian was being given a new command or not?

A. I believe so. I know there was an exchange of correspondence between me and the chief of staff of the Army, who was a General Harold Johnson at the time, on General McChristian's assignment after he had finished his two years in Vietnam as my intelligence chief. I am not
quite sure the month that this took place, but I would
suspect it was in July, but I am not sure.

Q. We were talking, sir, about April and whether
you recall, prior to going back to --

A. Oh, going back to April, if that was a subject?

Q. Yes, General Westmoreland. Let me rephrase my
question.

You went back to Washington in April of 1967, am
I correct, sir?

A. Yes.

Q. And prior to going back --

A. Well, I think the correspondence on General
McChristian's new assignment was before April. I am quite
sure it was in the March time frame, as I concentrate on
this now.

Q. Okay. If you don't hear a question just
interrupt me and --

A. Yes. I am having some problem hearing you, but
I will remind you every time.

Q. Perhaps I don't have a command voice. That's
the problem.

Can you recall whether prior to going back to
Washington in April you knew where General McChristian was
being assigned to?

A. I am quite sure I did, but I don't remember the
Q. But as you sit here now, do you recall whether or not he had already been notified that he was going to be transferred to another command?

A. I believe so; I believe so. I remember the details of my correspondence with General Johnson, the chief of staff, on the matter.

Q. Did you say you remember the details?

A. I remember the correspondence I had with General Harold Johnson.

Q. Do you remember the substance of the correspondence or just the fact that the correspondence took place?

A. The substance.

Q. Can you tell me what it was?

A. Well, General McChristian, he wanted a command. Frankly, he wanted a command in Vietnam. He was an armored officer and we had no armored divisions in Vietnam. And I corresponded with General Johnson and told him that General McChristian was finishing his full tour, which was a two-year tour for one in General McChristian's position, and I asked General Johnson if he could find -- if he could put General McChristian in command of an armored division, and I did receive notice that he would be reassigned to Fort Hood, Texas and given command of an armored division.
Q. Who was General Johnson?
A. He was the chief of staff of the Army, General Harold Johnson.

Q. Were you ever chief of staff of the Army?
A. Yes, I was, for four years.

Q. When was that, sir?
A. After I left Vietnam.

Q. Let me return your attention again now to the period late April-May of 1967, focus on that time, and let me ask you whether prior to May of 1967 you can recall ever having been briefed by your intelligence officers on a category of the enemy called self-defense or, abbreviated, SD.

A. I recall no such briefing on that subject prior to mid-May.

Q. And prior to mid-May can you recall whether there was a briefing by your intelligence officers on the secret self-defense or SSD?
A. I recall no such briefing. I am quite confident I had no such briefing.

Q. Prior to May of 1967 can you recall whether your intelligence officers ever briefed you on a category of enemy called political cadre?
A. I recall no special briefing on that subject in that time frame.
Q. But were you cognizant of what the political cadre category was in mid-May of 1967?
A. Yes, definitely.
Q. Why was that so?
A. Because they had been carried as a line item in the so-called order of battle.
Q. And can you tell me any more about that?
A. Well, the embassy had cognizance over that particular matter until the conference in Guam in February of 1967, at which time the pacification function was given to COMUSMACV, to the military, and at which time Mr. Robert Komer was assigned to my staff in order to carry out that function.
Q. Who was present at this conference in Guam you just referred to?
A. The President was there, the Secretary of Defense was there, the Secretary of State was there, Mr. Dean Rusk, Admiral Sharp was there, General Wheeler was there. Those were the principals, but there were a number of others.
Q. Now, I believe you have testified that you traveled in the field on a regular basis.
A. Yes.
Q. And prior to May, mid-May of 1967, can you recall ever having discussed the SD with any of the people
you met in the field?

A. Everywhere I went in Vietnam I was given a briefing by the Vietnamese commander or his American adviser or both, by the American commanders, all the way down to battalion and sometimes company, by province chiefs and district chiefs, all of which were Vietnamese, and each had an American adviser. I don't ever recall the word self-defense and secret self-defense ever coming forth in those briefings.

The people in the field were not acquainted with them in any great detail and, frankly, didn't pay much attention to them, even if they knew that theoretically they were a part of the communist organization.

Q. I would like to focus your attention now --

MR. BURT: Your Honor, I realize this is a short period, but my next line of questions is going to take me well beyond what I would like to do. Can we have one more brief recess, your Honor?

THE COURT: Yes. We will take a short break. The jury may go in the jury room.

(Recess)

(At the side bar)

MR. BURT: Your Honor, the first document, marked Exhibit 1511, is a copy of plaintiff's schedule of events. I believe the plaintiff will testify that this
document contains all or almost all of the people he met with on a daily basis in his office or meetings he had outside of his office, that the document was prepared by his secretary, that it was prepared on a daily basis by the secretary.

THE COURT: Why are we doing this out of the presence of the jury?

MR. BURT: Mr. Boies suggested it and I said fine.

MR. BOIES: All I wanted to know is if you are going to offer the exhibit now, and if so, what the basis of it is.

MR. BURT: I told you certainly this morning we were going to offer it now, and what it's being offered for, your Honor, is to show that Admiral Sharp was present when the first briefing of General Westmoreland occurred and that he was in the room, and General Westmoreland can testify as to whether Admiral Sharp heard the briefing on the higher estimates.

THE COURT: All right. It sounds to me like a business record.

MR. BURT: It sounds like it to me. And we have after that General Westmoreland's notes. These were prepared --

THE COURT: What's this, a different number?
MR. BURT: Yes. This is 974, your Honor. These were prepared by the general, dictated to his secretary within a week or ten days of the events described therein, and they were prepared from the schedule of events.

Both of these documents were sent by the general at the close of his tour in Vietnam I believe to the Center for Military History, among others.

Mr. Boies said he had some objections.

MR. BOIES: I don't think either of these documents are business records. I think that 974 -- is that the small one you're offering?

MR. BURT: Yes, the history notes.

MR. BOIES: The history notes is 974?

MR. BURT: Yes.

MR. BOIES: I think the history notes are even less of a business record. The history notes are history notes, General Westmoreland's own notes. I don't think that is any more of a business record than some of these diary --

THE COURT: I never said it was a business record. 1511 seems to me to be a business record. I haven't heard the foundation, but it sounds to me like something kept by his secretary on a more or less automatic basis, recording what his appointments were and who they were with. I don't know why that isn't a business record.
MR. BOIES: One of the things, your Honor, that was not clear is whether that is a list of appointments made or appointments kept or some combination.

THE COURT: Either one, that wouldn't diminish its being a business record. It might diminish its clarity or usefulness or a lot of other things. But as long as it was a regular practice to write these things down, recording either who the appointments were made with or who was at it, either one is something that's admissible in evidence.

MR. BOIES: My point is that with respect to a business record there is certain foundation testimony that has to be given for a business record.

THE COURT: Right.

MR. BOIES: That is not foundation testimony that anybody has attempted to develop during the course of discovery. I don't think General Westmoreland is going to be in a position to give that foundation, because I don't think he knows with respect to what is in here what the basis was that his secretary had for the various entries.

I am not saying this could not have been qualified as a business record.

THE COURT: He doesn't have to know what the basis was for the entries. All he has to know is whether they were prepared routinely in the usual course of
business and regularly maintained as part of the regular
operation of his headquarters.

MR. BOIES: With respect, your Honor, I would
think ordinarily there would have to be testimony as to the
basis for the entries, that is, what the entries meant,
what they were intended to convey, before the document
could be admitted.

I think, for example, it makes a difference what
these entries are designed to be. Some of them are
handwritten, as the court will see from looking at that
particular page.

THE COURT: I certainly agree that it makes a
difference, and I certainly agree that at least in my
presence there hasn't been any foundation laid.

What about 974, which seems to me a little more
controversial?

MR. BURT: 974 was prepared by the general by
dictating to his secretary within a week to ten days. It
was based upon reading the schedule of events and he went
back and dictated exactly what happened.

THE COURT: Are you offering the whole thing or
just pertinent entries?

MR. BURT: We are offering page 18, where there
is a tab, your Honor, and just the sentence "Admiral Sharp
sat in at the CIIB meeting and I believe this of benefit to
him," and the sentence at the bottom of page 19, "Having received Admiral Sharp's approval, I called Ambassador Bunker and received his concurrence on going to Clark to spend the weekend with my family."

THE COURT: Those are the only two sentences that you are offering?

MR. BURT: That's correct, your Honor. I suggest that these are confirmed, that certainly Admiral Sharp was present and there was a CIIB meeting. There was a different briefing for Admiral Sharp.

THE COURT: What is the significance of the presence of Admiral Sharp?

MR. BURT: Admiral Sharp was plaintiff's immediate superior officer and he heard the first briefing on the higher numbers.

THE COURT: I see. You object to this?

MR. BOIES: I do, your Honor.

THE COURT: It seems to me to have two different bases that could make it admissible. One would theoretically require that General Westmoreland not be able to recall what's included to lay the classic foundation for past recollection recorded, but I think, without reaching that, although technically it's hearsay, it seems to me to be a contemporaneous memorandum made by him which is admissible to rebut the inference of recent fabrication.
I suspect that the defendants' approach to General Westmoreland will be to contest the accuracy of many aspects of his testimony and to suggest that many of those aspects are either conscious fabrications or unconscious fabrications generated by the need or the desirability of producing evidence favorable to his side at this trial.

I think the fact that he dictated to his secretary, however this happened, contemporaneous, more or less, minutes, noting the presence of Admiral Sharp at a meeting at a time when he could not possibly have had in mind the kind of motive to fabricate that might arise out of the CBS broadcast at this trial, I think that makes these entries admissible.

MR. BOIES: Your Honor, I would suggest that that at a minimum requires us to have raised the issue of recent fabrication, which we certainly have not done now with respect to this subject. I think we will be raising a number of issues of fabrication. I am not sure we will be raising issues of recent fabrication.

THE COURT: Recent meaning since the controversy arose over accusations, the subject matter of the trial.

MR. BOIES: What I meant was fabrications that had their genesis in the period after 1967 and 1968. We may do that with respect to certain areas, but we certainly
have not done that with respect to the presence or absence
of Admiral Sharp at a particular meeting.

THE COURT: I think your choice is either to
stipulate his presence, stipulate the accuracy of his
testimony in that regard, or to face the admission of these
documents.

If what you're telling me is that you're not
going to contest that and that you're going to accept
General Westmoreland's testimony to the effect that Admiral
Sharp was there, that's fine, I think that would take the
issue out of the case. But if you're going to attack
General Westmoreland's credibility I don't think it's
limited to attacking his credibility raising this
particular item. If you attack his credibility in a
general sense it encompasses all the aspects of his
testimony that favor his side.

I don't see any reason why a contemporaneous
memorandum of this sort should not be received. You have
General Westmoreland on the stand. It's not as if it was
hearsay, where the declarant is somebody you can't
cross-examine. You have him on the stand. So a lot of the
purpose of the hearsay rule is obviated by your ability to
cross-examine him.

I think there is an excellent reason why he, his
counsel, should be able to substantiate his present
Westmoreland - direct

1 testimony as to the presence of Admiral Sharp by showing
2 that he made a contemporaneous note reflecting that fact.

MR. BOIES: I, with respect, don't agree with
the court that my options are to stipulate his presence or
agree to the hearsay admissibility of a hearsay document.

THE COURT: No, I didn't mean that it was your
option to agree to one or the other. I am telling you that
it's your option with respect to the rulings that I am
going to make. Whether you agree with them or not is
entirely your business.

What I am saying, what I meant by that, is that
my ruling is that unless you are prepared to stipulate that
you will accept his testimony as establishing an
uncontested fact as to the presence of Admiral Sharp at the
meeting in question, my ruling is going to be that I am
going to admit the two sentences from this document that
Mr. Burt said he was offering for the reasons that I
explained.

MR. BOIES: I am not prepared to make that
stipulation, your Honor.

THE COURT: All right. I do, though, object to
the document.

THE COURT: Okay. Of course, my ruling is
dependent on certain foundation questions showing that it
comes within the reasoning that I described. If it should
Westmoreland - direct

turn out from those foundation questions that all of this
was written two weeks ago my ruling would be different.

MR. BURT: I understand.

(Continued on next page)