"Q. Did you agree with Sam Adams' approach?

"A. I did, and this is one of the reasons why I stayed with the, uh -- I felt that his judgment was valid, that it was understated based on the documentation or the captured enemy documents that we were receiving from MACV, and we began to do some systematic research and try and go through each category of forces and document the higher figure.

"Q. When you just said that it was understated, what were you referring to?

"A. The MACV order of battle.

"Q. When did you begin to do this systematic research that you just referred to?

"A. The systematic research began after the branch was formed, in late '67.

"Q. Mr. Gatterdam, could you please read paragraph 5 of your affidavit into the record?

"A. 'I do not believe that SNIE 14.3-67 presented the best estimate of the strength and effectiveness of the unconventional enemy the U.S. faced in South Vietnam. The estimate of enemy strength contained in SNIE 14.3-67 provided a narrow and conventional picture of enemy forces.'

"Q. You just testified that SNIE 14.3-67 did not give the best estimate of the strength and
effectiveness of the enemy. What did you mean by that?

"A. I meant that through discussions among ourselves in the agency, those analysts who were working on the preparation of the SNIE and who were working on Vietnam in general, I think there was a consensus that the MACV numbers understated the enemy threat and that the enemy actually proposed a much larger and more effective threat than was being reflected in SNIE 14.3-67, and it is -- personally, I felt that, uh, our efforts or our position or arguments and that Sam's efforts were overlooked or ignored at that time.

"Q. Based on your experiences as a CIA intelligence officer working on Vietnam intelligence, have you formed an opinion as to the accuracy of the enemy strength estimates stated in SNIE 14.3-67?

"A. Yes.

"Q. What is that opinion?

"A. My opinion is that the figures were too low and they did not provide a complete picture of the enemy threat in Vietnam, not a complete picture of what we were up against in terms of the effectiveness of the enemy.

"Q. Could you please read paragraph 7 of your affidavit of March 26th, 1984 into the record?

"A. Samuel Adams joined our branch soon after its formation. As our research in the South Vietnam branch
progressed, I found that Adams' methodology and estimates were sound. My research confirmed what Adams had been saying all along, that MACV enemy orders of battle, OBS, underestimated actual enemy strength and did not give an accurate picture of the total enemy threat we faced in Vietnam. In fact, certain MACV analysts admitted to me that they felt the MACV enemy orders of battle underestimated total enemy strength.

"Q. You say here that your research confirmed what Adams had been saying all along, that MACV enemy orders of battle understated actual enemy strength and did not give an accurate picture of the total enemy threat that we faced in Vietnam.

"What did you mean by the statement that the MACV enemy orders of battle 'did not give an accurate picture of the total enemy strength that we faced in Vietnam'?"

"A. It did not give an accurate picture because, one, the categories that were listed in the MACV order of battle were understated, and two, they did not include elements of the enemy forces that we believed should have been included in a threat analysis, and that is the secret self-defense and the self-defense forces and the political infrastructure.

"Q. Could you please read paragraph 14 of your
affidavit of March 24th, 1984 into the record?

"A. 'After Tet, CIA research showed that the
rate of enemy infiltration into South Vietnam rose
considerably in the several months leading up to the Tet
offensive and that this infiltration had helped supply the
manpower necessary for the enemy to mount an attack as
sweeping as Tet.'

"Q. Now, you say here that 'After Tet, CIA
research showed that the rate of enemy infiltration into
South Vietnam rose considerably in the several months
leading up to the Tet offensive.'

"Do you have any recollection of how much the
rate of infiltration had increased in the several months
before the Tet offensive?

"A. One of the things that -- after Tet a lot
of enemy documents were captured and as we reviewed these
we were able to determine that the rate of infiltration had
in fact increased to build up enemy forces in preparation
for Tet.

"In looking at these documents that showed the
enemy was in fact simply building up its forces and
supplies in preparation for Tet, the best estimate that I
recollect was that we felt that the flow of infiltration in
the late '67 period was on the order of about 20,000 per
month.
"Again, to the best of recollection, I think that the MACV order of battle was carrying somewhere on the order of 5000 per month, about a quarter of what was in fact coming into the country from the north.

"Q. Was this research on infiltration research that you conducted after Tet about the pre-Tet period?

"A. Yes, it was basically after Tet. Uh, there were a large number of enemy documents captured which indicated that there were a large number of infiltrators who had come down the trail in the late 1967 period to augment enemy forces in the south in preparation for the attack.

"Q. When you say that this infiltration occurred in the several months leading up to the Tet offensive, what months are you referring to specifically?

"A. Well, I am basically referring to the period of about -- since September '67 to January '68.

"Q. When you say that infiltration was occurring at the rate of 20,000 per month in late 1967, what months are you referring to?

"A. That is an average figure and it was an average used for the period of time roughly September through or into January '68.

"Q. Could you please read paragraph 9 of your affidavit of March 26th, 1984 into the record?
"A. 'In reviewing captured enemy documents in late 1967, I found the MACV enemy orders of battle failed to report the presence in country of many enemy units. Intelligence reports after the onset of the Tet offensive in late January 1968 confirmed my finding. Those reports showed conclusively that many enemy units which participated in the Tet offensive were not listed in the MACV enemy order of battle.'

"Q. You say here that reports which you saw after the Tet offensive began 'showed conclusively that many enemy units which participated in the Tet offensive were not listed in the MACV enemy order of battle.'

"How many of these enemy units not listed in the MACV enemy order of battle did you learn about after the Tet offensive had begun?

"A. I can't recall a specific figure. David Shields and I worked on the preparation of the, uh, intelligence report to identify those units who had participated in the attack on Saigon and we listed out the units, again, based on captured enemy documents, and found that in comparing those units we identified with what was carried in the order of battle that there were a number that were not included in MACV's listings. Now, specifically how many, I just don't recall.

"Q. Was it a significant number of units?
"A. Uh, it was a significant -- we were dealing here primarily with main and local forces. There obviously had to be large support structure behind this and there were obviously guerrillas, but we didn't deal with these in that particular document, to my recollection.

"We were concerned only with the main and local forces. This was done simply for the Saigon area. Later on this same pattern, that is, that there were more units involved in the attacks on the countrywide basis than was reflected in the order of battle, this same pattern held true for other areas of the country, but I am merely giving you the example of the finished intelligence piece that Mr. Shields and I produced in early '68 after the offensive began.

"This, again, was one of the impetus behind our trying to document our research more thoroughly in preparation for presenting our position at the April conference, and the work that we did in drafting this finished intelligence piece went into our analysis, our main and local forces, for the April conference.

"Q. Mr. Gatterdam, would you please read paragraphs 15 and 16 of your affidavit of March 26th, 1984 into the record?

"A. '15. After Tet, CIA also stepped up efforts to systematically reevaluate MACV's enemy strength
"Gatterdam

estimates. My branch argued for quantification and
inclusion of all categories, including self-defense militia
forces and political cadres, in estimates of total enemy
strength. Moreover, we argued for higher estimates than
MACV was then officially reporting in every category of
enemy strength.

"16. Those of us in the South Vietnam branch
felt that it was important to quantify all categories of
enemy strength if one was to appreciate the total base of
enemy support. All of these categories worked together and
contributed to the enemy's war effort. To exclude one
category was to ignore the enemy's carefully integrated
military and political organization.'

"Q. Was there any change in the activities of
the South Vietnam branch after the enemy launched the Tet
offensive in January 1968?

"A. Very definitely there was a change.
Basically, uh, in my judgment, at least unofficially, if
not officially, we were given the charter by our management
to do military analysis on the enemy threats in Vietnam and
we were directed to step up efforts to systematically
reevaluate the MACV enemy strength estimates and to prepare
papers to quantify and include all categories of forces in
an estimate of total enemy strength. These figures,
basically, were higher than those being officially reported
"We -- it was the opinion of the branch, in our immediate management, that it was important to quantify all categories of the enemy's strength because it was important to have a complete understanding of how the enemy was integrated, militarily and politically, to be able to launch such an attack as Tet, and then also to follow that up with additional attacks in March.

"So our effort to do enemy order of battle analysis was stepped up considerably at that point in time and continued throughout '68 and for a later period as well.

"Q. Could you please read paragraph 17 of your affidavit of March 26th, 1984 into the record?

"A. 'In April 1968 an order of battle conference was held at CIA headquarters in Langley, Virginia. I attended that conference. Lieutenant General, then Colonel, Daniel O. Graham represented MACV at that conference. He attacked the CIA's position on every aspect of enemy strength and argued vehemently for MACV's order of battle figures, despite the growing evidence that its numbers were too low.'

"Q. Did you attend the April 1968 order of battle conference?

"A. I did attend as one of a number of representatives of the branch who were involved in the
preparation of the papers that were presented from CIA on what we believed the enemy force structure was in South Vietnam.

"Q. What was the position on enemy strength that CIA presented at the April 1968 order of battle conference?

"A. Basically, CIA put forth papers which indicated with documentation that the enemy force levels for every category were considerably higher than that carried by MACV. We also included those categories not carried by MACV, namely, the self-defense and secret self-defense forces and the political infrastructure.

"Q. Could you please read paragraph 19 of your affidavit of March 26th, 1984 into the record?

"A. 'In late 1968, a study was done by the South Vietnam branch of the, uh, accuracy of estimates of enemy battalion strength reported in the MACV enemy orders of battle in 1967 and 1968. It compared the MACV enemy order of battle estimates with strength figures cited in captured enemy documents and POW reports, which were the most reliable sources of information we had about the enemy.

"'For the first half of 1967, the estimates of enemy battalion strength reported in MACV enemy orders of battle were consistent with the figures found in captured enemy documents. For the latter half of 1967 and the first
half of 1968, the estimates of enemy battalion strength reported in the MACV enemy orders of battle were significantly lower than the figures found in captured enemy documents.

"'In my judgment, the MACV enemy orders of battle during the latter half of 1967 and the first half of 1968 underestimated enemy battalion strengths despite evidence to the contrary. A copy of this study on enemy battalion strength estimates is attached to this affidavit as Exhibit 1.'

"Q. I would like to ask you some questions about the study referred to in paragraph 19 of your affidavit, which is attached to your affidavit as Exhibit 1, and which has been marked in this litigation as Exhibit 462. If you could please take a moment to review that document, I will then ask you some questions about it.

"Mr. Gatterdam, did the South Vietnam branch prepare this memorandum which is attached to your affidavit as Exhibit 1 and which has been marked in this litigation as Exhibit 462?

"A. What is the title on the -- that you have there? This is the average battalion strength, documentary evidence, versus MACV's --

Q. That's right.

A. Okay. This was produced by the South Vietnam.
branch and I was involved in its preparation.

"Q. Can you briefly describe what the purpose of this study was?

"A. The purpose of it, again, was to systematically try to show from captured enemy documents that the MACV order of battle understated the enemy threat for -- even for the category such as main and local forces, which is the most important one confronting U.S. forces in the field.

"What we attempted to do was to look at all of the documents that we had received from the time frames indicated here, beginning in the first half of '67, the second half of '67 and the first half of '68, and to compare what the average battalion strengths were from captured enemy documents and compare that with what MACV was carrying in their order of battle.

"I think this type of memo shows the extent and the systematic effort that we were going to to try and convince the military that their figures were far below what they should be, and in this case I think we, to my satisfaction, documented our case very well, that, uh, certainly by the first half of '68, that the average battalion strength throughout the country was running at about 50 men per battalion less what was being carried in the MACV order of battle. When you spread this out on a
countrywide basis, that's a fairly large number of people
that you're leaving out of your forces.

"And I think the important thing to note here is
the fact that during the first half of '67 that the MACV
order of battle and the average strength shown from
documents was very close, there seemed to be a consistency
there. Beginning in '67 and in the second half of '67 the
number began to diverge, and again in the first half of '68
they continued to diverge, that is, the documents showing
that the enemy's strengths were considerably higher than
what was being carried in the MACV order of battle.

"What it tells me is that the MACV order of
battle was attriting enemy forces at a higher level than
was the case, they were not allowing for replenishment,
which was obviously going on based on the documents we were
receiving on enemy infiltration. So while you were
attriting on one half, you weren't allowing for
replenishment on the other, and therefore there is a
natural downward bias in the MACV data, and we were
attempting to prove this as part of our argument to
convince the military to raise their figures as well as to
include additional units.

"Q. You just testified that in the first half
of 1967 the MACV order of battle summaries were more
accurate in their assessment of the average battalion
strength, is that correct?

"A. That is correct.

"Q. And that thereafter, in the second half of 1967 and the first half of 1968, that divergence occurred between the MACV order of battle estimates and the strengths for average battalions shown in captured enemy documents, is that correct?

"A. That's what the data shows very clearly.

"Q. Do you know who was the MACV J-2 in the first half of 1967?

"A. General McChristian.

"Q. Do you know who was the MACV J-2 from mid-1967 on?

"A. Well, in mid-67 General Davidson replaced McChristian.

"Q. I believe you testified earlier that there was a difference of approximately 50 men per battalion, more men in the captured enemy documents, than was reflected in the MACV order of battle summaries in the period from mid-67 to mid-68, is that correct?

"A. That is correct.

"Q. Did you form an opinion during late 1967 and 1968 about the accuracy of MACV's official order of battle reports as they related to enemy battalion strengths?

"A. Yes, we felt that the strengths were
understated, but it was really after Tet and the March
offensive by the enemy that we got a large sample that we
could, in our judgment, conclusively document the extent to
which the MACV order of battle was understated for main and
local forces, for the average battalion strength of main
and local forces.

"The -- we had formed this opinion earlier, but
as the evidence came in, as I said, we were able to
document this more thoroughly and systematically than we
had previously.

"Q. Based on your experience as a CIA
intelligence officer working in Vietnam intelligence, have
you formed an opinion about the accuracy of the estimates
of total enemy strength reported in the official MACV enemy
order of battle summaries in late 1967?

"A. Yes. In my judgment, the MACV order of
battle estimates that appeared in late '67 and even into '68
were understated for the categories listed and were
incomplete for the categories omitted, namely, the
self-defense, secret self-defense and the political
infrastructure.

"Q. When you say that the MACV official enemy
order of battle summaries were underestimated for the
categories included, what categories are you referring to?

"A. These are the main and local forces, the
"Q. How significant was this understatement?

"A. In my judgment, the understatement was probably -- was on the order of, to the best of my recollection, several hundred thousand, 200,000 people, 150,000 to 200,000 people, as I recall.

"Q. Could you please read paragraph 20 of your affidavit of March 26th, 1984 into the record?

"A. I worked closely with Sam Adams in the South Vietnam branch. I considered Adams to be an expert on the enemy's force structure in Vietnam. I found him to be an excellent analyst, thorough, meticulous, industrious, perceptive, and highly competent. I was among many analysts at CIA who respected Adams' abilities as an analyst and believed that he was right about the numbers dispute with MACV.'

"Q. Did you work with Sam Adams while you were doing intelligence analysis relating to the Vietnam War?

"A. I worked closely with Sam while he was in the Vietnam branch. Basically, since he had been the one who had dealt with the enemy order of battle problems on a fully time basis prior to the branch's formation, it was largely his methodology and approach that we adopted and followed in trying to document the higher enemy force levels. We felt that his methodology was sound, that there
was good basis for accepting that methodology.

"But Sam couldn't do it alone. The problem was
too big. He was brought into the branch and the task was
assigned to various analysts to look into the different
aspects of the problem, that is, the main and local force
problem, the administrative services problem, the
guerrillas, self-defense, secret self-defense and political
infrastructure. Each of us were charged with reviewing all
the documents that we could get our hands on and to try to
build a systematic data base such as we have indicated in
this memo on the average battalion strength to prove
conclusively that the MACV figures were understated and
incomplete.

"Q. What did your subsequent research show
about the accuracy of Sam Adams' earlier estimates on total
enemy strength?

"A. It basically showed that Sam's conclusions
that the MACV figures were understated were sound and that
there was good basis for his arguments. Basically, Sam was
a very thorough, meticulous and, in my judgment, highly
competent analyst, very dedicated to a problem, and
unswerving in his commitment to prove conclusively that
MACV's figures did not represent an accurate picture of the
enemy threat in Vietnam.

"As we became more involved and more familiar.
with the documentation we found, as I said, his judgments
to be -- to be valid, and it was based on -- largely on his
direction, not in the sense of a managerial point of view
but in the terms of his approach on how to analyze the
problem.

"It was largely as a result of his efforts that
we documented and prepared the various position papers, the
CIA position papers, for the April '68 conference.

"Q. Based on your experiences working with Sam
Adams on Vietnam intelligence, have you formed an opinion
about Sam Adams' ability as an intelligence analyst?

"A. Yes, I have. I felt that Sam was a good
intelligence analyst, an exceptional researcher, very
thorough. He was not one to leave any stone unturned. I
felt that he was very honest in the sense that he didn't
try to misuse the data but to aggregate it and document it
to show that the enemy, the various categories of enemy
forces, were considerably higher than reflected in the MACV
order of battle.

"Q. Can you think of anything that you've
tested to here today that you did not discuss with Sam
Adams when the two of you were working together in the
South Vietnam branch?

"A. Well, certainly I am not aware that Sam
has seen my affidavit, but he certainly knows that I feel
strongly that MACV estimates were understated and he is aware of my beliefs that MACV did ignore a lot of documentary evidence in their order of battle listing.

"So in terms of the substance that we've discussed, Sam is aware of my views and much of what we've talked about has in fact been talked -- been discussed between us while we were preparing the estimates in late '67 and '68.

"Q. Did you ever discuss with Sam Adams your opinions about the accuracy of the enemy strength estimates in SNIE 14.3-67?

"A. In general terms, yes, that I --

"Q. What did you tell him?

"A. He presented his findings of why he thought the enemy force structure was higher based on his research. He was, as I said, the only full-time analyst working on enemy order of battle in the agency at the time that I can recall. And based on what he told me as to why he believed that it was higher and in looking at the evidence that he had pulled together, I concurred in his judgment.

"Q. Were these discussions you had before 1982?

"A. Yes, they were before 1982.

"Q. Did you discuss with Sam Adams in 1968 your views about the accuracy of the enemy strength
estimates in SNIE 14.3-67?

"A. Yes. Basically, Sam and I and other analysts in the branch talked daily about the problem on the MACV order of battle figures being under strength, and of course the driving factor was what was published in SNIE 14.3-67, and that was the starting point. We were trying to get those numbers increased to reflect the more accurate picture of what the enemies threat was. So we did discuss in general terms the inadequacy of the figures that were in SNIE 14.3-67.

"Q. When you and Sam Adams were working together on Vietnam intelligence in 1967 and 1968, did you discuss with Sam Adams the Saigon conference which was held in September of 1967?

"A. Yes.

"Q. What did you tell Sam Adams in your discussions with him about the Saigon conference in September of 1967?

"A. Okay. I did not speak with Sam, to my recollection, about the conference in September of '67. It occurred at a later date, when he came to the branch. He merely informed me of what had transpired, uh, with his presence at that conference.

"Q. Did you discuss with Sam Adams when you had these discussions after the Saigon conference your
reactions to what transpired at that conference?

"A. Yes. I basically expressed my concern that I felt that the delegation that went had caved in in terms of presenting the CIA position and getting MACV to accept a higher level of numbers.

"Q. To whom had the CIA delegation caved in?

"A. In my judgment, the CIA delegation caved in to the MACV people with whom they were discussing the CIA numbers and trying to get the MACV people to raise their order of battle estimates.

"Q. Did you have these discussions with Sam Adams before 1982?

"A. These discussions took place before 1982.

"Q. You testified earlier today that the Saigon conference was, as you put it, a 'fiasco.' Did you discuss that with Sam Adams before 1982?

"A. I discussed that with Sam Adams before 1982 and I expressed my disappointment that it had not been more successful and that I was unclear as to why the CIA delegation had not put forth a stronger position in insisting on at least getting a CIA footnote into the SNIE reflecting that the CIA believed that the numbers were considerably higher than those that were actually used in the estimate that were MACV order of battle figures.

"Q. You testified earlier today that you
perceived that MACV was attempting to maintain, as you put it, an 'arbitrary ceiling' on the enemy order of battle in the fall and winter of 1967. Did you discuss that with Sam Adams before 1982?

"A. Yes, I -- that matter was discussed with Sam Adams before 1982. It was part of -- as we were preparing for the conference and so on for the -- in April of 1968 I had heard that information from then Major Barrie Williams at DIA, that there was a ceiling. We had discussed this with Sam. Also, he was aware of this, as was other members of the branch.

"We had daily open discussions among all of us as to what was going on. It was an integrated analysis being done. We were putting out one product, so we discussed all the problems within the branch.

"Q. Did you discuss with Sam Adams before 1982 your views on the accuracy of the enemy strength estimates reported in the official MACV enemy order of battle summaries in late 1967?

"A. Yes, I discussed very thoroughly the shortcomings in the MACV order of battle in late '67 and '68 with Sam.

"Q. What did you tell Sam Adams about that subject in your discussions with him?

"A. Based on the research that I was doing on
main and local forces and the admin service structure, I confirmed his basic judgment that the MACV figures were under strength.

"Q. Did your discussions with Sam Adams before 1982 on the subject of whether a ceiling existed on the total enemy strength figure that was being officially reported in the official MACV enemy order of battle summaries in late 1967?

"A. Yes, we discussed what we believed, that MACV had put a ceiling on enemy order of battle strengths of around 300,000, and that while the strength estimates of the various categories carried in the order of battle could vary, the total for the three categories could not exceed 300,000. We'd discussed that.

"Q. Before 1982 did you ever discuss the Tet offensive with Sam Adams?

"A. Very extensively.

"Q. What did you tell Sam Adams during those discussions before 1982 about the Tet offensive?

"A. We basically discussed the significance of the Tet offensive, what it meant for the CIA estimates, and we set about to, uh, systematically identify the forces that participated and compare those with the MACV order of battle to see what units had been omitted.

"We also took a look and reassessed the strength —
the overall strength of the enemy forces and their
effectiveness, their ability to carry out a systematic,
coordinated countrywide offensive, which seemed to further
reinforce the CIA position that the enemy forces were at a
much higher level than reflected in the MACV order of
battle.

"Q. Did you ever discuss with Sam Adams before
1982 the enemy buildup before Tet?

"A. Yes, we did. It was part of the -- of our
overall research effort to analyze what the actual force
levels were and their ability to replace, to build up their
forces and to replace any losses that occurred.

"Q. Did you ever discuss with Sam Adams before
1982 the April 1968 order of battle conference?

"A. Yes. We were part of a team effort to
prepare selected papers for presenting to the community for
acceptance as to the actual size of the enemy threat in
Vietnam.

"Q. What did you tell Sam Adams in your
discussions with him before 1982 about the April 1968 order
of battle conference?

"A. I told him, based on my research, that --
on main and local forces and the support structure, that
there were considerably more forces there than was being
carried in the MACV order of battle based on my review of
the documentary evidence.

"Q. Did you discuss with Sam Adams before 1982 the position which Colonel Graham took at the April 1968 order of battle conference?

"A. Yes. We -- the whole branch basically reviewed and discussed Colonel Graham's hard-line position at the conference, and it was the consensus that he in fact had not come prepared to negotiate any new set of figures for enemy strength.

"Q. Did you discuss with Sam Adams before 1982 your opinions on whether or not the enemy's self-defense and secret self-defense forces should have been included in the enemy order of battle?

"A. Sam knew my views, that I thought that they should be included. I really didn't work on the self-defense and secret self-defense forces per se. My research was in, as I said, main and local forces and the support structure. But he knew that I felt that they also should be included as part of the total enemy threat.

"Q. What did you tell Sam Adams about the subject of MACV's enemy strength estimates?

"A. Well, based on some of the average battalion strength figures that we -- analysis that I was involved in doing, it was clear that -- to at least the analysts in the South Vietnam branch -- that beginning in
the second half of '67 and early '68 that MACV was trying
to show progress and indicated that the enemy was losing
more forces than they were replacing and that there was
improvement through the pacification effort and what have
you, when in fact, in hindsight, the enemy obviously was
hunkering down, rebuilding and building up supplies,
replenishing their forces in preparation for the Tet
offensive, and therefore what appeared to MACV to be
improvement was in fact that the enemy was just simply
gearing up and building up their forces for the Tet
offensive and subsequently the spring offensive."

THE COURT: Let me interrupt to instruct the
jury briefly.

Members of the jury, the questions that have
been asked over the last ten minutes or so in most cases
were asking the witness whether he had had certain
discussions with Sam Adams prior to 1982, and of course I
am sure you are aware the significance of its being prior
to 1982 is that January of 1982 was the time or the date
when the broadcast was aired.

Now, several of the subjects that the witness
Dwain Gatterdam was asked about concerning his discussions
with Sam Adams were subjects as to which he would not have
been under law a competent witness if he were asked simply
his opinion on those subjects.
I will give you some examples. Among his discussions with Sam Adams that he testified to were discussions concerning whether or not the CIA had caved in at the September 1968 Saigon conference. Gatterdam was not present in Saigon at the September 1968 CIA conference and Gatterdam would not have been permitted to testify simply as to what his belief was as to what actions the CIA took at the Saigon conference.

A further subject on which he was asked was whether he believed that MACV had placed an arbitrary ceiling on the enemy strength count, and Gatterdam was not a part of the MACV command, he was a CIA man, and he would not be a competent witness in a legal sense to testify as to whether MACV had placed an arbitrary ceiling on the count.

Furthermore, his conversations with Adams that Mr. Boies or that the questioner asked him about that Mr. Boies read into the record had to do with whether Colonel Graham had taken a hard-line, inflexible position with respect to the negotiations at the April 1968 order of battle conference, and Gatterdam, although I think he was to some extent a participant -- I think he said he was present, was he not -- nonetheless, he would not be competent to testify to what the internal workings of General Graham's mind were.
Referring for a moment to the T chart, the statements which Gatterdam testified that he made to Adams on those subjects are not being received in evidence to show the truth of what Gatterdam said to Adams. Gatterdam is not eligible to testify as to the truth of those subject matters.

Nonetheless, the reason why that testimony was received in evidence was because Gatterdam could, nonetheless, have an opinion on the subject, and that testimony was received to show the fact of a discussion, the fact that Gatterdam said those things to Adams, because Adams was one of the persons involved in the CBS effort in the preparation of this broadcast, and I have instructed you at length on the issue of the defendants' state of mind.

And so you are to consider Gatterdam's testimony on all those subjects solely for the fact that he testifies that he had those conversations with Adams and Adams was entitled to take into account Gatterdam's opinions on those subjects in formulating his own state of mind, by which he is to be judged as a defendant, and the other CBS defendants which had access to Adams' information by virtue of Adams being a participant with them were entitled to take it into account also.

And so with reference to the X chart, that segment of Gatterdam's testimony is not received and not to
be considered by you on the issue of the truth or falsity of the broadcast, but is properly to be considered by you as persons involved in the CBS effort in the preparation of this broadcast, and I have instructed you at length on the issue of the defendants' state of mind.

And so you are to consider Gatterdam's testimony on all those subjects solely for the fact that he testifies that he had those conversations with Adams and Adams was entitled to take into account Gatterdam's opinions on those subjects in formulating his own state of mind, by which he is to be judged as a defendant, and the other CBS defendants which had access to Adams' information by virtue of Adams being a participant with them were entitled to take it into account also.

And so with reference to the X chart, that segment of Gatterdam's testimony is not received and not to be considered by you on the issue of the truth or falsity of the broadcast, but is properly to be considered by you as evidence which reflects a bearing on the defendants' state of mind.

MR. BOIES: May we approach the bench just for a moment, your Honor?

THE COURT: Yes.

(At the)

MR. BOIES: Would the court be prepared to make
clear to the jury that the remarks that the court has just instructed the jury on concerning state of mind refer only to the last few pages?

THE COURT: Yes. I thought I had said that.

MR. BOIES: It wasn't clear to me. Most of the preceding was on truth.

THE COURT: All right.

(In open court)

THE COURT: Mr. Boies wanted me to make clear to you something that I think I did make clear to you, but I want to be sure you understand it.

The remarks that I just made as to the limitations on your consideration of Gatterdam's testimony applied only to about the last ten minutes of the questions and only to about the last ten or twelve pages. You don't have those pages in front of you, but really, so you don't have to worry about how many minutes it was, it was the subjects that I mentioned to you.

I said to you that it was the issue of whether the CIA had caved in or not at Saigon in September 1967, whether MACV had placed an arbitrary ceiling on the troop count, whether Graham had a hard-line inflexible position in the April 1968 conference.

Those are the subjects upon which Gatterdam is not a proper witness as to the truth or falsity of those:
issues, and Mr. Boies wanted me to point out, quite accurately, that the preceding parts of Gatterdam's testimony, most of what has been read to you, was matter that was received for the truth of what Gatterdam was saying in his testimony, and most of it, furthermore, was on the issue of the truth or falsity of the broadcast. My remarks related only to the immediately preceding portion, which had to do with his conversations with Adams on those specific subjects.

MR. BOIES: Thank you, your Honor.

Continuing with Mr. Gatterdam's testimony, we are now going to read questions and answers that were initially asked by counsel for the plaintiff.

"Q. Mr. Gatterdam, you have mentioned your assignment to the collation branch in Saigon in October of 1964?

"A. That is correct.

"Q. How long did you remain in that position, sir?

"A. I was a member of the collation branch from November of '67 until June of '66.

"Q. Did you personally have any responsibility for identifying these political infrastructure people?

"A. I personally did not.

"Q. After your assignment with the collation
branch in June of 1966 am I correct that you were then
assigned to the office of economic research at the CIA?

"A. That was my parent office, that is correct.

"Q. On your return from Saigon you stated that
your duties were primarily economic matters. Can you
explain further what you meant by that?

"A. Basically, I was working on, again,
support, economic support to the Vietnamese communist,
where their support was coming from. I was also --
continued my efforts in dealing with items relating to
economic warfare issue, which again I would like to stay
away from since it does not deal with the order of battle
question per se.

"Q. Aside from the economic warfare issues,
can you be a little more specific in helping me to
understand what you were studying when you talk about
economic support?

"A. We were trying to determine the ability of
the Vietnamese communist to support their forces in the
south. Where was the support coming from? Was it coming
primarily from the local population in the south? Was it
coming from the north? Where were they getting the arms?
Where were they getting the rice? Where were they getting
all the necessary material that goes to support a guerrilla
effort such as this?
"Q. Did you work as an analyst on military matters prior to your assignment to the newly created South Vietnam branch of OER in the fall of 1967?

"A. Not directly, no. That is, in terms of trying to estimate the size of the enemy forces.

"Q. During the period 1967, the entire calendar year, did you have any direct communications with members of the MACV staff?

"A. I do not -- up until the formation of the branch in November '67, I do not believe that I had any direct contact with MACV officials. After that period, I am uncertain, because, again, we, uh, had numerous discussions within the agency and within different offices.

"Let me explain that OER was doing order of battle work but we had an office of current intelligence who was doing more current type things for our publications.

"We also had Mr. Carver's office, who were overseeing and coordinating the agency's efforts, and we were all discussing and there were meetings that took place and I was present at some meetings, and there were various officials from the military who came through Mr. Carver's office for briefing or debriefings at which I was present, but I cannot recall a specific person.

"Q. Do I understand you to say that you also cannot recall specifically whether or not these military
people were from MACV or from some other military assignment?

"A. I did meet with MACV people. I am trying -- I cannot recall whether it was in the November to December 1967 time frame or it was early '68. I do know that I met with Colonel Hawkins in '68 when he came down to the agency from Fort Hollibert.

"I also met in Mr. Carver's office some field commander -- let me categorize that -- some military officers who had returned from the field, in Mr. Carver's office, and, you know, we discussed with them the enemy situation and so on. I cannot give you specific times and places on these people but it more than likely occurred in early '68.

"Q. Do you know to whom General Westmoreland reported?

"A. I know that General Westmoreland reported to the chiefs of staff and he also reported to the President.

"Q. Between General Westmoreland and the President, are you aware of any intermediate office to which General Westmoreland reported?

"A. I am not privy to how General Westmoreland communicated with his superiors. I do know, as I indicated, that he did talk with CINCPAC and that he talked with Joint
Chiefs of Staff, but, uh, he may also have had other communications with other high level military officers. As I said, there are certainly back channel communications which he has access to which I am unaware of.

"Q. You stated that the what you called the formal coordination meeting was, in your understanding, the meeting that occurred at Langley in August of 1967, is that correct?

"A. Yes.

"Q. Did you attend the formal coordination meeting of SNIE 14.3-67?

"A. I did not. My branch chief attended as the branch representative.

"Q. And who was that?

"A. Ron Smith.

"Q. When did you develop your retroactive estimate of what main force and local force strength was when Tet began?

"A. We would have done our retroactive estimates after the Tet offensive, when we, you know -- as new document and evidence came in and we began, you know, to clearly recognize that, look, even the main and local forces, where the differences were probably the smallest compared to the other categories, we began to say, hey, the differences are even greater than we had suspected before,
greater than what had been submitted for SNIE 14.3-67, that
they were much larger even for this category of forces.

"Q. In paragraph 14 of your affidavit you
state that after Tet CIA research showed that the rate of
enemy infiltration in South Vietnam was considerable in
several months leading up to the Tet offensive.

"The CIA research that occurred after Tet, did
that involve intelligence from collateral sources?

"A. In terms of infiltration or in terms of
the --

"Q. Yes, in terms of the infiltration.

"A. In terms of infiltration it involved
captured documents, but the bulk of the information in fact
came from technical collection, and much of that
information was put out by another office, OCI, which I
discussed with you earlier, that talked about current
things, the office of current intelligence.

"We took the data and then we integrated it into
our products in terms of the enemy's ability to replenish
its forces and to take a look at the buildup of forces
prior to Tet.

"Q. You state further in paragraph 14 that
'This infiltration had helped supply the manpower necessary
for the enemy to mount an attack as sweeping as Tet.'

"Into what categories did the infiltration
element go to supply 'manpower necessary for the enemy to
mount an attack as sweeping as Tet'?

"A. The bulk of it went into the main -- well, into the main forces.

"Q. And that portion which was not the bulk of it, where did that go?

"A. I -- to the best of my recollection, there was also a buildup of the administrative services to
support the larger force structure in the south."

THE COURT: May I interrupt for a second. I just want to add a part of the transcript to a previous answer.

On page 122, so counsel is aware of what I am putting in, I believe the material set forth on page 122 on lines 22 through 24, the answer on lines 22 through 24, should be added to the answer that was read on line 7.

MR. BOIES: Shall I just read that question and answer now?

THE COURT: Why don't I just read the question and the first sentence of the answer plus the material on 22 to 24 -- unless you have an objection to it.

MR. BURT: No objection, your Honor.

MR. BOIES: I don't have an objection. I am not sure what's being read, but whatever the court wants to read --
THE COURT: I am saying that to the first sentence of the answer on lines 7 and 8 I believe it is of value to add the continued answer on lines 22 through 24.

MR. BOIES: Yes, I agree with that, your Honor. I agree with that.

THE COURT: The question was -- and I am only going to read part of this question and answer -- the question was:

"Q. When did you develop your retroactive estimate of what main force and local force strength was when Tet began?

"A. We would have done our retroactive estimates after the Tet offensive. Roughly, it would have had to have been in the February to March time frame. I can't recall specifically."

All right. You may proceed.

MR. BOIES: Thank you, your Honor.

"Q. During your testimony in response to examination by Mr. Mastro you gave an estimate of infiltration in the late fall of 1967 on the order of magnitude of 20,000 per month."

Then there is a statement by Mr. Mastro:

"I believe he testified it was from September of 1967 to January 1968."

Then the question continues:
"Q. Is that true, is that the period of time that the order of magnitude of infiltration were 20,000 a month?

"A. Yes, we were talking about the period from September through January or into January.

"Q. And when did you come to be able to make an estimate that that was the figure for those months?

"A. To my recollection, those figures were derived in early '68.

"Q. And what enabled you in early 1968 to come up with that figure for the months of September through January of 1968, on the order of 20,000 per month?

"A. Basically, that we, through special or technical collection means, had a much more complete handle on what was coming down from the north, and this, along with the captured documents which confirmed the flow, allowed us to be very confident that the level was somewhere on the order of about four times higher than what MACV had been saying for the same time period.

"Q. And is it your recollection that this post Tet analysis allowed you to estimate a figure of 20,000 a month for September of 1967?

"A. I cannot tell you that the number of infiltrators was 20,000 in September. We're talking about an average figure that during this time period reached
20,000 per month. It was a buildup. I can't -- I don't recall whether we ever said the figure for September was 20,000. We were talking about an average.

"Q. I believe you testified earlier today that after the Tet offensive your branch was, in effect, given a charter to review enemy order of battle matters. Is that reasonably accurate?

"A. That is correct.

"Q. At the April of 1968 order of battle conference whose estimate for total strength for the enemy's main and local forces was greater, CIA's or MACV's?

"A. CIA's was considerably greater than MACV's."

We are now back at questions initially asked by counsel for the defendants.

"Q. How much greater was it?

"A. Basically, on the order of about 200,000 greater, I believe, was our estimate.

"Q. I asked you for --

"A. All the forces. Now we're including main and local, admin services, guerrillas, self-defense, secret self-defense and political infrastructure. In other words, our figures for each category were higher than MACV's.

"Q. Do you recall how much greater CIA's figure was than MACV's, just as to the main and local
forces?

"A. To the best of my recollection, we were proposing a figure that was on the order of 30 to 50,000 higher for the main and local forces than what MACV was carrying.

"Q. At the April 1968 order of battle conference whose estimate for total enemy strength for the enemy's administrative services was greater, CIA's or MACV's?

"A. The CIA's was higher.

"Q. How much higher was CIA's estimate for total strength for the enemy's administrative services at the April 1968 order of battle conference?

"A. The CIA's was considerably higher than the MACV figure. It was -- to the best of my recollection, I think we were talking in numbers somewhere on the order of, initially, of 75 to 100,000. I think that was subsequently reduced slightly, but it was still more than double the MACV number.

"Q. Mr. Riese asked you a series of questions about infiltration estimates for the pre-Tet period that you arrived at after the Tet offensive began. Do you recall those questions?

"A. Yes.

"Q. I believe that you testified that the
average monthly rate of enemy infiltration in the period from September 1967 through January 1968 was 20,000 men per month. Is that correct?

"A. That's a correct statement.

"Q. And was this an estimate that you arrived at after the Tet offensive had begun?

"A. That is correct.

"Q. I'd like to return for a minute to the document which was attached to your affidavit as Exhibit 1 and which has been marked as Exhibit 462 in connection with this litigation. It is the document entitled 'Average battalion strength, documentary evidence versus MACV's OB,' and it is dated 20 September 1968.

"Now, in this document you were comparing the MACV order of battle figures for enemy battalion strength with the figures cited for battalion in captured enemy documents, is that correct?

"A. That is correct.

"Q. And what were your conclusions in comparing these documents for the first half of 1967?

"A. For the first half of 1967 the MACV order of battle and the strengths reflected in captured enemy documents were very, very close, indicating that the main and local forces were fairly accurate in the MACV order of battle for the first half of 1967. After that period there
was a considerable divergence. The average battalion strength carried in the MACV order of battle declined appreciably, both for the second half of '67 and the first half of '68, while the documentary evidence pointed to the contrary, that the enemy, through infiltration, had been able to build back up its force levels or to build up its force levels.

"Q. How large was the divergence between the total figures cited in captured army documents and the figures cited in the MACV order of battle during the second half of 1967 and the first half of 1968?

"A. On the average, there was a difference of about -- the documents showed that the average battalion strength was about 50 men per battalion higher than that carried in the MACV order of battle. And when this is applied to all the battalions listed, even in MACV's order of battle, it is a very considerable number of troops."

Your Honor, that completes the testimony from Dwain Gatterdam.

THE COURT: All right. Is this where you want to adjourn for the day?

MR. BOIES: Yes, your Honor, if that is possible.

THE COURT: 10 o'clock tomorrow morning, members of the jury. Don't discuss the case. You are excused.

(Jury excused)
THE COURT: I will see counsel briefly. Why don't you come up to the side bar. I don't need the reporter.

(Adjourned to 10 a.m., January 9, 1985)
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