Q. IN BETWEEN THOSE TWO REPORTS NIE 14.3-67 WAS PUBLISHED.
A. THAT IS CORRECT.
Q. AND NIE 14.3-67 MADE NO MENTION OF THESE "KHE SANH DIVISIONS", AS YOU REFER TO THEM.
A. THAT IS CORRECT.
Q. DO YOU RECALL WHAT THOSE DIVISIONS WERE? I THINK THAT WE HAVE IDENTIFIED ONE OF THEM AS THE 320TH. DO YOU RECALL ANY OF THE OTHER ONES?
A. I HONESTLY DON'T. I THINK THAT ONE OF THE OTHERS MAY HAVE BEEN THE 304TH, BUT I JUST SIMPLY DON'T REMEMBER. BUT MAY I --? WELL, GO AHEAD.
Q. NO, GO AHEAD. IF YOU HAVE GOT SOMETHING TO CLARIFY, GO AHEAD.
A. I THINK SOMETHING THAT CAN CLARIFY IT.
A, AS I TOLD YOU, NIE IS NOT SUPPOSED TO TRY TO CHECK UP WITH THE LATEST DEVELOPMENT THAT HAS BEEN HAPPENING UP UNTIL THE ACTUAL MOMENT THAT IT IS PUBLISHED. BECAUSE IF IT WERE CAST IN THAT FORM IT WOULD RUN THE RISK OF BEING OUTDATED SIX HOURS AFTER IT HITS THE STREETS.
SECONDLY, YOU DO HAVE THE KIND OF JUDGMENT THAT HAS TO BE MADE, AND IT IS MADE BY IMPERFECT HUMAN BEINGS, ABOUT WHAT YOU CAN DO WITH THE DOCUMENT AND HOW YOU CAN CLASSIFY IT. AS YOU WILL NOTICE,
THE NIE IS CLASSIFIED "TOP SECRET". BUT, AS YOU
WILL ALSO NOTICE, IT DOES NOT BEAR A
COMMUNICATIONS INTELLIGENCE RESTRICTION.
THEFORE, IN THE PREPARATION OF THIS TOP SECRET
DOCUMENT, WHEN YOU HAVE HARD INFORMATION DERIVED
FROM COMMUNICATIONS INTELLIGENCE, YOU HAVE TO
ROUND IT, ADJUST IT, FUZZ IT --- IF YOU WILL, IN
THIS LIMITED CONTEXT, -- SO THAT YOU DO NOT
INADVERTENTLY BETRAY THE SOURCE. NOW, IF YOU WERE
TO -- THE MOVEMENT OF DIVISIONS THAT WAS KNOWN TO
HAVE HAPPENED BETWEEN THE TIME THAT WE HAD THESE
SAIGON CONFERENCES IN 1967 AND THE TIME THAT THE
NIE WAS PUBLISHED ON THE 10TH OR 13TH OF NOVEMBER,
WE HAD NO, WHAT IS CALLED IN THE TRADE,
"COLLATERAL" INFORMATION, OR NONE OF ANY
CONSEQUENCE. BY "COLLATERAL" INFORMATION, I MEAN
DOCUMENTS, PRISONERS, NON-COMMUNICATIONS
INTELLIGENCE INFORMATION.
IF WE HAD INCLUDED IN THIS NIE A SPECIFIC
REFERENCE TO THE SIGNS OF AN AUGMENTATION OR
BUILDUP, WE WOULD HAVE HAD TO HAVE PUBLISHED THE
NIE WITH A "COMMENT" CLASSIFICATION, WHICH WOULD
HAVE GREATLY RESTRICTED ITS UTILITY BECAUSE NOT
ONLY WOULD WE HAVE HAD TO HAVE RESTRICTED THE
CIRCULATION OF IT BUT THOSE OFFICES WHICH RECEIVED
I WOULD HAVE HAD TO LOG IT, WOULD HAVE HAD TO
HAVE KEEP IT IN SAFES AND WOULD HAVE FOUND IT MUCH
MORE DIFFICULT TO DEAL WITH. SO IT IS, NOT TO MY
MIND -- KNOWING HOW THE SYSTEM WORKED AND IT WAS
FELT HAD TO WORK, -- I SEE NO CONTRADICTION OR NO
DIFFICULTY IN THE PUBLICATION IN NOVEMBER OF A
NATIONAL INTELLIGENCE ESTIMATE DRAWING AN AGREED
BASELINE FIGURE DEVELOPED IN SEPTEMBER WITHOUT
REFLECTING CERTAIN FLUID DYNAMIC CHANGES THAT WERE
THEN KNOWN OR THOUGHT TO BE OCCURRING, THE
INFORMATION ON WHICH WAS SOLELY DERIVED FROM,
OR PRIMARILY DERIVED FROM COMMUNICATIONS
INTELLIGENCE.

Q. ARE YOU SAYING THAT COMMUNICATIONS INTELLIGENCE
WAS NOT USED IN THE PREPARATION OF 14.3-67?
A. I AM NOT SAYING THAT AT ALL. I AM SAYING THAT THE
PROSE PUBLISHED IN 14.3-67 WAS DELIBERATELY
WRITTEN SO AS NOT TO COMPROMISE ANY INTELLIGENCE
SOURCE OR METHOD, INCLUDING COMMUNICATIONS
INTELLIGENCE.

Q. WHAT ABOUT THE NUMBERS INCLUDED IN 14.3-67? WERE
THE NUMBERS THAT WERE INCLUDED IN 14.3-67 AFFECTED
AT ALL BY A DESIRE NOT TO, IN YOUR WORDS,
"COMPROMISE" COMMUNICATIONS INTELLIGENCE?
A. WELL, IN A SENSE, YES, AS WE DISCUSSED EARLIER.
I insisted -- although others readily agreed with me, and as you will observe if you look at the document -- every one of them, -- I don't think that there is a number in here -- well, I am not talking -- there is not a troop number in here or a strength number in here in which the last three digits are anything other than zero. And we talk about various echelons of the force structure. In fact, even when we talk about the 118,000, we say, "we are reasonably confident that communist regular forces in South Vietnam now total about 118,000 troops who are generally well-armed." Now, we might know as of the actual date that that estimate was signed off on that the actual total of communist forces that were physically inside the territory of South Vietnam -- I am making a number up here -- was '118,756'. If you had used that level of precision, eyebrows would have gone up. Or it would have been clear that you were basing it on something and -- whereas, if you say, 'now total about 118,000', you were telling the president and secretary of defendant what, for the purpose of a national intelligence estimate, they need to know but you are doing so in a fashion that enables you to keep this document at a top
SECRET CLASSIFICATION WITHOUT HAVING TO PUT A
COMMUNICATIONS CLASSIFICATION ON IT.

Q. I UNDERSTAND WHY YOU WANTED TO ROUND THE NUMBERS.
OKAY.

A. RIGHT.

Q. WAS THERE ANYTHING THAT LIMITED YOUR USE OF
NUMBERS IN NIE 14.3-67 OTHER THAN A DESIRE TO
ROUND THE NUMBERS?

A. WELL, THE STANDARD LIMITATION THAT IF YOU WERE
GOING TO PUBLISH A DOCUMENT WITH A TOP SECRET
CLASSIFICATION YOU HAVE TO BE SURE THAT THERE IS
NO PROSE OR NO DATA IN IT THAT WOULD REQUIRE A
MORE RESTRICTED CLASSIFICATION.

Q. AND WAS THAT A FACTOR IN DRAFTING 14.3-67?

A. IT WAS A FACTOR IN DRAFTING IT, YES.

Q. BECAUSE -- I MEAN, I FRANKLY COULDN'T CARE LESS AT
THIS POINT WHETHER THE NUMBER IS 118,000, EVEN, OR
118,122.

BUT WHEN YOU ARE TALKING ABOUT THE KHE SANH
DIVISIONS YOU ARE TALKING ABOUT THOUSANDS OF
TROOPS. AND WHAT I WANT TO FOCUS ON IS WHETHER
THERE WAS ANY INHIBITION ON INCLUDING THOSE
THOUSANDS OF TROOPS IN THE ESTIMATES THAT WERE
INCLUDED IN 14.3-67 BECAUSE YOUR INFORMATION ABOUT
THOSE TROOPS CAME FROM COMMUNICATIONS
INTELLIGENCE.

A. THERE WERE TWO LEVELS OF INHIBITIONS, MR. BOIES.
WE WERE TRYING TO STICK WITH A SORT OF BASELINE
DEPICTION OF COMMUNIST STRENGTH THAT HAD BEEN
HAMMERED OUT IN A SERIES OF VERY DIFFICULT,
stressful negotiations. Secondly, as I mentioned
just a few minutes before, we were not attempting
to do a current intelligence job. And of course
those who sat down in the final drafting and
coordination of NIE 14.3-67, or with most of them,
the ones with the requisite clearances, were aware
of the signs of an incipient buildup beginning
around Khe Sanh. But that was not folded into
this estimate because you could not have folded it
in without changing the nature of it and without
changing the classification and hence diminishing
its utility for the purposes for which it was
commissioned.

I think that if you will go back -- and I will, --
you know, I cannot possibly recall any document,
but I will lay you a fairly large sum of money on
even odds, and if you could get our colleagues on
our right (indicating CIA representatives
attending) to permit you to do so, if you would
review the output of the CIA that went to the NSC
AND WENT TO THE SECRETARY OF DEFENSE DURING THESE
THREE MONTHS IN QUESTION, YOU WOULD FIND MANY
REFERENCES TO THE SIGNS OF HARDENING EVIDENCE OF
A DEMONSTRATED FACT OF A KHE SANH BUILDUP.

Q. WE HAVE BEEN TRYING TO GET THOSE PEOPLE TO GIVE US
THE DOCUMENTS.
A. I DON'T THINK THAT YOU WILL SUCCEED, AND IF I WERE
SITTING IN THEIR CHAIR, YOU WOULDN'T SUCCEED
EITHER.

Q. MY UNDERSTANDING OF THEIR POSITION IS NOT THAT
THEY WON'T GIVE US THE DOCUMENTS BUT THAT THERE
AREN'T ANY DOCUMENTS LIKE THAT, THAT THEY HAVEN'T
GIVEN US.
AND WE CAN OBVIOUSLY PURSUE THAT WITH THEM
SEPARATELY.
BUT WHAT I NEED TO UNDERSTAND FROM YOU IS --

A. RIGHT.

Q. --- WHETHER THERE WERE DOCUMENTS -- AND LET'S
LAST FOUR MONTHS OF 1967 -- WHETHER THERE WERE
DOCUMENTS DURING THAT PERIOD THAT REFLECTED THE
TOTAL ORDER OF BATTLE, NOT JUST FROM WHAT YOU HAVE
REFERRED TO AS "COLLATERAL" SOURCES, SUCH AS WERE
USED TO PREPARE DEFENDANTS' EXHIBITS 130, WHAT --
WHICH WERE USED IN PREPARING ALL SOURCE ESTIMATES?
Mr. Boies, I will do the best that I can to answer your question. And without wanting to be contentious or take issue, you have phrased it in a way that does not run with the grain of the way that business was done. You would have used something like NIE 14.3-67 as a recently agreed baseline, and then you would have -- to those with the requisite clearances and interest in such matters -- you would have done memoranda saying that 'on top of what is referring to there, there are these movements of "X" divisions and there is this buildup going on.'

Now, I do not know that periodically people pulled together a table, but those who did have the requisite clearances and were interested, -- for example, Walt Rostow, just to cite as a case in point, he was quite up on the problem. And he needed to be apprised of the changes in it. And therefore there is no point, except periodically or if he requested, in sending him a summary table if you could send him a memorandum saying, 'you know what the NIE says but there have been these new developments in the last few weeks.' And you are asking for -- excuse me, I don't mean to be difficult, -- you are suggesting a kind of
PROCURSTIAN DOCUMENTARY MOLD THAT DIDN'T
NECESSARILY EXIST. BUT BECAUSE IT DIDN'T EXIST IT
DID NOT MEAN THAT THERE WERE NOT DOCUMENTS
DISCUSSING THESE NEW DEVELOPMENTS BECAUSE THERE
WERE A PLATTER OF.
Q. HAVE YOU SEEN ANY OF THOSE DOCUMENTS IN WHAT MR.
BURT HAS SHOWN YOU?
A. NO.
Q. WHEN ---
A. BUT, -- EXCUSE ME.
Q. LET ME JUST ---
A. RIGHT.
Q. --- TIE SOMETHING DOWN. ARE YOU SAYING THAT THE
REASON THAT THESE MOVEMENTS OF DIVISIONS THAT YOU
IDENTIFIED TO THE COMMUNICATIONS INTELLIGENCE WERE
NOT IDENTIFIED IN THE MACV MONTHLY ORDER OF BATTLE
SUMMARIES, EXAMPLES OF WHICH ARE ---
A. THE TWO DEFENDANTS' EXHIBITS THAT I HAVE, SURE.
Q. --- DEFENDANTS' EXHIBIT 130S AND RELATED EXHIBITS,
HAD TO DO WITH THE FACT THAT COMMUNICATIONS
INTELLIGENCE WAS MUCH MORE HIGHLY CLASSIFIED THAN
THE CLASSIFICATION OF THESE MONTHLY ORDER OF
BATTLE SUMMARIES?
A. THAT IS CORRECT.
Q. DID THERE COME A TIME WHEN, IN THE COURSE OF THE
DEBATE WHICH WAS AN EXTENSIVE DEBATE THAT PRECEDED NIE 14.3-67, YOU OR ANYONE POINTED OUT THE FACT THAT PART OF THE PROBLEM MIGHT HAVE BEEN THE LEVEL OF CLASSIFICATION OF THE DOCUMENTS?

A. NO, FOR A VERY SIMPLY REASON. AT THE TIME THAT WE HAD THE DEBATE IN SEPTEMBER, THE 118,000 MAIN AND LOCAL FORCE FIGURE WAS A REASONABLY GOOD FIGURE. THIS WAS --

Q. WELL, LET ME JUST "PUSH" YOU ON THAT A LITTLE BIT, SIR. EARLIER TODAY YOU SAID THAT THE DIVISIONS MIGHT HAVE STARTED TO COME IN AS EARLY AS THE SUMMER, AND THEN I THINK THAT WE REFINED THAT A LITTLE BIT, TO AUGUST OF 1967. AND IF THAT WERE THE CASE YOU WOULD HAVE KNOWN ABOUT THAT IN SEPTEMBER, CORRECT, SIR?

A. WE WOULD HAVE KNOWN ABOUT IT IN EARLY SEPTEMBER, BUT AS I THINK I FLAGGED AT THE TIME -- IF NOT, I WAS REMISS IN NOT DOING SO -- DON'T HOLD ME TO THE AUGUST 8TH, BECAUSE I DON'T REMEMBER WHEN THEY CAME IN.

Q. I THINK THAT YOU DID SAY THAT YOU DIDN'T RECALL WHETHER THEY CAME IN IN AUGUST, SEPTEMBER OR OCTOBER; THAT IS WAS IN THAT RANGE. WHAT I AM SAYING IS THAT IF THEY DID COME IN IN AUGUST, AND I THINK THAT IN DEFENDANTS' EXHIBIT
71-A ---

A. WHICH IS DEFENDANTS' 71-A, EXCUSE ME?

Q. THAT IS THE MACV MONTHLY ORDER OF BATTLE FOR FEBRUARY OF 1867. THERE IS AT LEAST SOME INDICATION THAT AT LEAST SOME OF THE DIVISIONS THAT WE ARE TALKING ABOUT DID IN FACT COME DOWN IN AUGUST OF 1967.

A. YEAH.

Q. (PAUSE)

A. EXCUSE ME -- THIS IS A FEBRUARY '68.

Q. YES, EXACTLY.

A. WHERE IS THERE A REFLECTION OF -- SORRY, MR. BOIES. I ---

Q. IN THE MATERIALS THAT YOU WENT THROUGH EARLIER, ---

A. WOULD YOU SHOW ME WHAT YOU ARE REFERRING TO, BECAUSE I AM AFRAID THAT I DON'T REMEMBER IT.

Q. OKAY, -- IN THE MATERIALS THAT YOU WENT THROUGH BEFORE, WHICH REFLECTED WHAT ENEMY UNITS WERE IN SOUTH VIETNAM, THERE WAS ALSO A REFLECTION OF WHEN THOSE UNITS ARRIVED IN SOUTH VIETNAM, CORRECT?

A. I AM NOT SURE THAT THERE WAS. THERE WAS A REFLECTION WHEN VARIOUS GROUPS ARRIVED. I AM NOT SURE THAT THERE WAS A REFLECTION WHEN UNITS ARRIVED. YOU MAY INDEED BE CORRECT, BUT SINCE
PRECISION IS IMPORTANT, IF YOU CAN FIND WHAT YOU
ARE REFERRING TO, I WOULD APPRECIATE IT.

Q. LET ME BEGIN BY FOCUSING YOUR ATTENTION ON PAGE
1410 OF DEFENDANTS' EXHIBIT 71-A, WHICH IS THE PAGE
THAT YOU HAD IN FRONT OF YOU AT ONE POINT
PREVIOUSLY. AND YOU WILL SEE THAT THERE IS A
COLUMN FOR "DATE OF ARRIVAL" THERE.

A. YES.

Q. AND THE DIVISIONS THAT HAPPEN TO BE REFLECTED ON
THAT PAGE ARE DIVISIONS THAT WERE ARRIVING IN
JANUARY OF 1968, CORRECT?

A. I BELIEVE SO. IT DOESN'T -- UH, -- DATE, DATE OF
ARRIVAL -- NOW, -- IT SAYS, "DATE, D-A-T, A, A-R-
R, SDN, SOUTH VIETNAM, OP -- PRESUMABLY
"OPERATIONAL" -- AREA." NOW, I DON'T KNOW HOW
THEM DEFINED THE SOUTH VIETNAM OPERATIONAL AREA,
BUT I SUSPECT THAT IT WAS RATHER RIGIDLY CONFINED
TO SOUTH VIETNAM. AND THE -- ON THIS PARTICULAR
PAGE THERE ARE ONLY THREE DATE REFERENCES IN THAT
COLUMN. ALL OF THEM ARE IN JANUARY 1968. THEY
REFER TO THE HEADQUARTERS AND SUPPORT UNITS OF THE
320TH NVA, 900 MEN. THE 48TH NVA INFANTRY
REGIMENT OF 1,550. AND THE 52ND NVA INFANTRY
REGIMENT OF 1,900 MEN. ALL OF WHOM HAD ARRIVED IN
JANUARY. THERE IS NO REFLECTION OF ANY 1967
ARRIVAL ON THIS TABLE.

Q. I THINK THAT IS WHAT I JUST SAID.
A. YEAH.

Q. AND BY "THIS TABLE", I THINK YOU DON'T MEAN TABLE.
   I THINK THAT YOU MEAN THAT PARTICULAR PAGE.
A. I MEANT PAGE 1410, RIGHT.

Q. NOW, WOULD YOU TURN TO THE FOLLOWING PAGE AND ---
A. SURE.

Q. --- SEE IF THERE ARE ANY DIVISIONS THAT ARRIVED IN
   SOUTH VIETNAM IN AUGUST OR DURING THE SUMMER OF
   1967?
A. OKAY, IN THE INTEREST OF BOTH TIME -- I WILL
   COMMENT AS I GO ALONG, OKAY?

Q. WHY DON'T YOU JUST IDENTIFY THE PAGES WHERE THERE
   IS A REFLECTION OF THE ARRIVAL OF A NORTH
   VIETNAMESE DIVISION IN SOUTH VIETNAM IN THE SUMMER
   OF 1967?
A. I FOUND NONE ON 1410.

Q. ALL YOU HAVE TO DO IS TELL US WHERE YOU DO FIND
   IT, THAT WILL SPEED THINGS ALONG.
A. (UPON REVIEW), THE FIRST REFERENCE TO '67 THAT I
   FIND IS ON PAGE 1413, WHERE IT REFERS TO THE 812TH
   INFANTRY REGIMENT OF THE 324B DIVISION, DIVISIONS
   SOMETIMES SPUN OFF A SECOND, AND REFERS TO IT AS
   HAVING ARRIVED IN JUNE OF '67.
AND THEN IT REFERS TO ONE OTHER ON THE NEXT PAGE, 1417, 90TH NVA INFANTRY REGIMENT, ALSO A PART OF THE 324B DIVISION. THAT WAS ARRIVED IN JUNE OF '67.

IT REFERS TO THE 95C NVA INFANTRY REGIMENT AS PART OF THE 3-- -- UH, THIS IS ON PAGE 1418, EXCUSE ME -- INFANTRY REGIMENT OF THE 325C NVA DIVISION -- THEY MUST HAVE SPUN OFF TWICE -- AS HAVING ARRIVED IN APRIL.

I HAVE GONE ALL THROUGH THESE TABLES AND I SEE NO REFLECTION OF ANY ARRIVAL IN AUGUST. I SEE NONE LATER THAN JUNE OF '67 UNTIL THE '68'S.

Q. 324B WAS ONE OF THE "KHE SANH" DIVISIONS, WAS IT NOT, SIR?

A. I DO NOT RECALL. I THINK THAT IT WAS BUT I AM NOT SURE.

Q. AGAIN, IF YOU NEED TO CHECK THAT, YOU CAN CHECK IT THE SAME WAY THAT YOU CHECKED THAT KIND OF FACT BEFORE, BY LOOKING UP WHERE IT IS LOCATED, THAT IS IN WHICH OF THE CORPS THAT IT WAS LOCATED.

A. GIVE ME JUST ONE SECOND. DO YOU REMEMBER THE DATE ON 324B?

Q. (NO VERBAL)

A. IT HAS LOCATION -- THIS PARTICULAR CASE FOR THE 812ND NVA INFANTRY OF THE 324B, IT GIVES NO --
THAT -- FOR THAT, NO LOCATION IS SPECIFIED.

Q. WHAT CORPS IS IT IN?

A. IT DOESN'T SAY. IT SAYS, "TYPE UNIT: M;
C CATEGORY: C" -- WHATEVER THAT MEANS -- "DATE OF
ARRIVAL, SOUTH VIETNAM OP AREA: 23 JUNE 67".
THEN "LOCATION:" -- LAST CONTACT IS BLANK AND
DATE LAST CONTACT IS BLANK, CURRENT PROBABLE LOCA-
TION IS BLANK AND THE DATE OF INFIL IS BLANK.

Q. SO YOU, IT IS YOUR TESTIMONY THAT YOU CAN'T TELL
WHAT LOCATION THAT IS IN?

A. NO, I CAN'T FROM THIS.

Q. WOULD YOU HAND ME THE DOCUMENT, PLEASE?

A. (TENDERS).

BY MR. STONE:

MR. BOIES, LET THE RECORD REFLECT THAT MR. CARVER
HAS SIMPLY BEEN READING HIS -- WHAT YOU HAVE
CHARACTERIZED AS HIS TESTIMONY IS HIS READING OF
THIS DOCUMENT, NOT HIS ADOPTION OF ANY NUMBERS. I
THINK THAT IS CLEAR TO EVERYONE BUT I WANT ---

BY MR. BOIES:

THAT IS NOT CLEAR TO ME. I THINK THAT THE RECORD
WILL SHOW WHAT IT WILL SHOW.

EXAMINATION CONTINUED BY MR. BOIES:

Q. MR. CARVER, LET ME ASK YOU TO LOOK AT THE TOP OF
THE PAGE THAT YOU WERE JUST LOOKING AT, WHICH I
THINK IS PAGE 1416.

A. (COMPLIES).

Q. I WILL ASK YOU AGAIN WHETHER YOU CAN TELL ME WHAT CORP THOSE DIVISIONS ARE LOCATED IN?

A. OH, EXCUSE ME, I WAS NOT LOOKING IN THE RIGHT PLACE. THIS SAYS "FIRST CORPS TACTICAL ZONE, COMBAT AND ADMINISTRATIVE SERVICES", SO IT MUST HAVE BEEN IN THE FIRST CORPS, SOMEWHERE.

Q. AND FIRST CORPS WAS WHERE, SIR?

A. THE FIRST CORPS CONSISTED OF THE FIVE NORTHERNMOST PROVINCES IN SOUTH VIETNAM.

Q. NOW WE HAVE IDENTIFIED THE 324B DIVISION AS COMING IN IN JUNE.

A. UM HUMM.

Q. WE HAVE IDENTIFIED THE 320 AND THE 3D4 DIVISIONS AS COMING IN AS OF JANUARY, CORRECT, SIR?

A. I BELIEVE SO, YES; EXCEPT THAT THEY WERE ACTUALLY THERE BEFORE JANUARY, BUT THIS IS BASED ON NON-COMMUNICATIONS INTELLIGENCE.

Q. WOULD YOU SAY THAT AGAIN, PLEASE?

A. IF I REMEMBER CORRECTLY, WE IDENTIFIED THE 304TH -- AND THIS IS A VERY CLEAR POINT THAT I WAS TRYING TO MAKE -- ON PAGE 1411, THERE IS A REFERENCE TO THE 64TH NVA IN--, ---

BY MR. STONE:
MR. BOIES, CAN WE STOP RIGHT HERE? WE ARE GOING TO HAVE TO OBJECT TO THE IDENTIFICATION OF UNITS, PER THE CIA COUNSEL'S REQUEST.

BY MR. MARR:

IF HE WILL REPRESS THE UNITS FROM COLLATERAL, THAT IS FINE. BUT I DON'T WANT HIM IDENTIFYING THOSE SAME UNITS AT A PARTICULAR TIME THROUGH COMMUNICATIONS INTELLIGENCE AS ARRIVING OR NOT ARRIVING.

BY MR. BOIES:

WELL, THE DOCUMENT THAT HE HAS IN FRONT OF HIM CAN'T -- IT HAS BEEN A CLEARED DOCUMENT.

BY MR. MARR:

THAT'S FINE. BUT HIS NEXT STATEMENT WAS 'BUT WE KNEW THAT THEY WERE THERE BEFORE THROUGH COMMUNICATIONS INTELLIGENCE', AND I DON'T WANT HIM TO GET INTO THE PRECISE TIME THAT THEY KNEW THAT THEY WERE THERE BEFORE THE DATE THAT THEY ARE LISTED IN THAT DOCUMENT.

BY MR. STONE:

I MOVE TO STRIKE THE RESPONSES THAT HAVE BEEN OBJECTED TO BY THE CIA FROM THE RECORD.

BY MR. BOIES:

YOU CAN'T MOVE TO STRIKE ANYTHING. YOU ARE NOT A PARTY.
BY MR. STONE:
ON BEHALF OF, TO PROTECT MY CLIENT, MR. CARVER'S
RIGHTS.

BY MR. BOIES:
YOU CAN'T MOVE TO STRIKE. I MEAN, ---

BY DEPONENT:
IF HE ---

BY MR. STONE:
THEN I WILL RESERVE THE, WHATEVER RIGHTS WE HAVE
TO ---

BY MR. BOIES:
WHATEVER RIGHTS YOU HAVE, YOU HAVE; BUT MOVING TO
STRIKE DOES NOT EXTEND TO NONPARTIES.

BY DEPONENT:
IS MY COUNSEL NOT A PARTY?

BY MR. BOIES:
NO, HE IS NOT.

BY DEPONENT:
GEE, DON'T I HAVE ANY PROTECTION?

BY MR. BOIES:
YOU HAVE LOTS OF PROTECTION, AS I THINK THE RECORD
OF THIS DEPOSITION WILL EVIDENCE.

EXAMINATION RESUMED BY MR. BOIES:

Q. WELL, I GUESS THAT THE FIRST QUESTION THAT I HAD
---
A. EXCUSE ME, -- I HAVE TO DEFER TO CIA'S THING. I
THINK THAT I CAN GIVE A FORMULATION -- OBJECT
INSTANTANEOUSLY (DIRECTED TO CIA REPRESENTATIVES
ATTENDING), IF YOU DO.
THE FIRST REFLECTION, WHICH IS A COLLATERAL
REFLECTION, OF ARRIVAL IN SOUTH VIETNAM AREA IS OF
THE 64TH INFANTRY REGIMENT OF THE 320 NVA IS
JANUARY, '68.
AS WE HAVE BOTH AGREED, OR AT LEAST AS WE BOTH
THINK WAS THE CASE AND I BELIEVE THAT WE ARE BOTH
RIGHT, THE 320TH WAS INVOLVED IN THE PRESSURE ON
KHE SANH. THAT PRESSURE BEGAN CONSIDERABLY BEFORE
JANUARY '68, THEREFORE WE MUST HAVE KNOWN
SOMETHING ABOUT THAT DIVISION FROM NON-COLLATERAL
SOURCES BEFORE THAT DATE, WHICH ILLUSTRATES THE
POINT THAT I WAS TRYING TO MAKE.
Q. I SUGGEST TO YOU, NOT NECESSARily, SIR, BECAUSE I
THINK THAT IT IS THE CASE -- AS YOU HAVE ALREADY
TESTIFIED -- THAT THE NUMBER OF NORTH VIETNAMESE
DIVISIONS INVOLVED IN WHAT YOU CHARACTERIZE AS THE
PRESSURE ON KHE SANH INCREASED OVER TIME; CORRECT?
A. YEAH. THAT TIME PERIOD WENT FROM SOME POINT IN
EARLY OR MID FALL OF '67 THROUGH MID, LATE
FEBRUARY 1968.
Q. RIGHT. AND WHAT I AM NOW ASKING IS WHETHER YOU
KNOW PERSONALLY WHETHER THE 320 AND THE 304
DIVISIONS, -- I AM NOT ASKING YOU WHAT THE ANSWER
IS, BUT I AM ASKING YOU WHETHER YOU KNOW
PERSONALLY WHETHER THOSE TWO DIVISIONS CAME INTO
SOUTH VIETNAM PRIOR TO JANUARY OR FEBRUARY OF
1968?
A. NOW, AGAIN, INTERRUPT, AS I WILL PHRASE MY ANSWER
VERY CAREFULLY, -- TO THE BEST OF MY RECOLLECTION,
WHICH YOU ALSO SHARE, BOTH OF THEM WERE INVOLVED
IN THE KHE SANH PRESSURE. I MEAN, -- CAN WE TAKE
THAT AS AGREED BETWEEN US FOR THE MOMENT?
Q. YES, I AGREE THAT THEY WERE BOTH WHAT YOU REFER TO
AS KHE SANH DIVISIONS.
A. OKAY, FINE.
Q. BUT, SEE, MY POINT IS A LITTLE BIT DIFFERENT.
A. NO, NO, NO, AND I THINK I KNOW YOUR POINT. I AM
TRYING TO ---
Q. LET ME JUST BE SURE THAT IT IS CLEAR FOR THE
RECORD, OKAY?
A. OKAY.
Q. YOU'VE SAID THAT THE DIVISIONS THAT WERE INVOLVED
IN THE KHE SANH PRESSURE INCREASED OVER TIME AND
THAT THOSE DIVISIONS ARRIVED SOMETIME IN 1967
UNTIL JANUARY OF FEBRUARY OF 1968.
A. THAT IS NOT QUITE WHAT I SAID.
Q. I BELIEVE THE RECORD WILL SHOW WHAT YOU SAID.
A. BUT -- BECAUSE WE ARE DEALING WITH A FAIRLY
   COMPLEX SUBJECT, I BELIEVE THAT I EXPLAINED IT
   THIS WAY. THERE WAS A BUILDUP OF AN APPROXIMATELY
   FOUR DIVISION SIZE, AND WE BOTH AGREED THAT
   NEITHER OF US REMEMBER THE PRECISE NUMBER BUT WE
   BOTH THINK THAT THAT IS THE RIGHT ORDER OF
   MAGNITUDE, AROUND KHE SANH. NOW, TO THE BEST OF
   MY RECOLLECTION, OF THOSE FOUR DIVISIONS THAT WERE
   GROUPED AROUND KHE SANH, TWO WERE SORT OF
   LATERALLY DEPLOYED WESTWARDS -- AND I DO NOT
   REMEMBER WHICH TWO. AND TWO -- AND THEY WERE
   JOINED BY TWO FURTHER DIVISIONS, AND I DON'T
   REMEMBER WHICH TWO, WHICH WERE DEPLOYED OUT OF
   NORTH VIETNAM. NOW, WHAT I AM TRYING TO SAY ABOUT
   THE 328TH IS, I DO NOT RECALL -- WAS IT THE 3--?
   -- WHATEVER THE HELL DIVISION THAT WE ARE TALKING
   ABOUT -- WAS THE 328TH?
Q. THERE WAS A 320 DIVISION, A 304 DIVISION, ---
A. 320. 320, THE ONE THAT SHOWED ---
Q. --- AND A 324B DIVISION.
A. NO. WE ARE TALKING ABOUT THE ONE THAT WE WERE
   JUST DISCUSSING, FOR WHICH THERE IS THE JANUARY
   '68 REFLECTION.
   I DON'T REMEMBER, AND IF I COULD AND THE
COLLEAGUES ON MY RIGHT WOULDN'T LET ME SAY,
WHETHER IT MOVED THROUGH SOUTH VIETNAM TOWARDS KHE
SANH OR HOOKED AROUND THROUGH LAOS AND CAME IN THE
OTHER WAY. DO YOU FOLLOW ME?

Q. I DON'T FOLLOW HOW THAT IS RESPONSIVE TO MY
QUESTION, WHICH HAD NOT TO DO SO MUCH WITH WHAT
PATH THEY TOOK WHEN THEY ARRIVED.

A. WELL, THE QUESTION OF WHEN THEY ARRIVED ON THE
PHYSICAL TERRITORY OF SOUTH VIETNAM WOULD BE
AFFECTED BY THE PATH, BECAUSE IF THEY CAME OVER
THE, AROUND, -- IF THEY FLANKED THE DMZ ON THE
WEST AND CAME DOWN THROUGH LAOS, THEN THEY MIGHT
NOT HAVE COME INTO SOUTH VIETNAM UNTIL JANUARY OF
'68. BUT IF THEY CAME ACROSS THE WESTERN EDGE OF
THE DMZ, ANGLING THROUGH THE WESTERN PORTION OF
QUANG TRI PROVINCE, THEN THEY WOULD HAVE ARRIVED
IN VIETNAM EARLIER. THAT IS WHY I SAY THAT THE
PATH IS MATERIAL.

Q. WELL, -- THE 324B WAS CLEARLY IN SOUTH VIETNAM IN

A. THAT IS CORRECT.

Q. IT IS YOUR TESTIMONY AND THIS REFLECTS WHAT I
THINK THE FACTS ARE AS WELL THAT ADDITIONAL NORTH
VIETNAMESE DIVISIONS ARRIVED IN SOUTH VIETNAM
SUBSEQUENT TO THAT TIME, TO THREATEN KHE SANH.
A. UM HUMM.

Q. NOW, MY QUESTION IS, WITH RESPECT TO THE 320 AND THE 304, THOSE TWO DIVISIONS ARE INDICATED IN A MACV ENEMY ORDER OF BATTLE SUMMARY FOR FEBRUARY OF 1967 AS HAVING ARRIVED ---

A. FEBRUARY OF '68, I THINK YOU MEAN.

Q. YOU ARE QUITE CORRECT, IT IS FEBRUARY OF 1968. AS HAVING ARRIVED IN SOUTH VIETNAM IN JANUARY OF 1968.

A. EXCUSE ME, -- BECAUSE IT IS IMPORTANT TO BE PRECISE. CERTAIN REGIMENTS OF THOSE DIVISIONS ARE IDENTIFIED. I MEAN, THE PARTICULAR REFERENCE THAT WE -- LORD, DAVID, DO YOU REMEMBER WHAT PAGE IT WAS ON?

Q. PAGE 1410 FOR THE 320, AND PAGE 1412 FOR THE 304.

A. AGAIN, I AM NOT TRYING TO NIT PICK. I AM TRYING TO BE HELPFUL. 1410, YOU SAY?

Q. IT IS NOT ENTIRELY CLEAR TO ME WHAT YOU WANT TO LOOK AT. I AM NOT ENTIRELY SURE WHETHER I AM GIVING YOU THE RIGHT PAGE NUMBER.

A. OKAY, -- LOOK, -- UH, -- NORMALLY, THE NORMAL NORTH VIETNAMESE INFANTRY DIVISION, TO THE BEST OF MY RECOLLECTION, HAD ASSOCIATED WITH IT THREE REGIMENTS AND VARIOUS HEADQUARTERS ELEMENTS, COMMUNICATIONS ELEMENTS, SOMETIMES ARTILLERY, ETC.
OKAY? THEIR DIVISIONS SOMETIMES MOVED IN BLOCK, SOMETIMES ONE REGIMENT WOULD GO IN ADVANCE OF THE OTHERS, OR THE THREE OF THEM WOULD MOVE MORE OR LESS IN THE SAME TIMEFRAME BUT BY SLIGHT DIFFERENT ROUTES OR SOMETIMES BY RELATIVELY DRAGGED, QUITE DIFFERENT ROUTES, DEPENDING ON THE TRAIL NET AND, YOU KNOW, LOTS OF OTHER FACTORS.

THIS -- THIS IDENTIFIES HERE (INDICATING), FROM COLLATERAL, AS HEADQUARTERS AND SUPPORT UNITS OF THE 320ND NVA OF 900 PEOPLE AS HAVING ARRIVED IN JANUARY OF 1968. THE 48TH REGIMENT OF THE 320TH AS HAVING ARRIVED IN JANUARY OF '68. AND THE 52ND REGIMENT AS HAVING ARRIVED IN JANUARY '68. AND ALSO THE 64TH. SO, OKAY, ALL THREE REGIMENTS WOULD HAVE ARRIVED IN JANUARY '68, ON THE BASIS OF COLLATERAL INTELLIGENCE.

Q. NOW, THAT IS ---
A. DO I MAKE MYSELF ---
Q. --- 1410 ---
A. DO YOU KNOW WHAT I MEAN BY COLLATERAL INTELLIGENCE?
Q. WHY DON'T YOU EXPLAIN FOR THE RECORD WHAT YOU MEAN BY COLLATERAL INTELLIGENCE?
A. COLLATERAL INTELLIGENCE, IN THIS CONTEXT IS -- I AM OVERSIMPLIFYING SLIGHTLY, BUT THIS IS SUFFICIENTLY ACCURATE FOR OUR PURPOSES -- IS INTELLIGENCE OTHER THAN THAT DERIVED FROM COMMUNICATIONS INTELLIGENCE. IN OTHER WORDS, A PRISONER REPORT.

Q. WELL, LET'S -- I GUESS WE ARE GOING TO HAVE TO PURSUE THAT A LITTLE BIT, BECAUSE, AS I HAD UNDERSTOOD WHAT YOU SAID EARLIER, COLLATERAL INTELLIGENCE CONSISTED OF CAPTURED DOCUMENTS, PRISONER OF WAR INTERROGATION REPORTS, PHYSICAL SIGHTINGS OR COMBAT CONTACT AND THINGS LIKE THAT.

A. THAT'S RIGHT.

Q. AND THAT IN ADDITION TO COLLATERAL INTELLIGENCE THERE WOULD BE MORE SENSITIVE INTELLIGENCE, THE MOST IMPORTANT ASPECT OF WHICH WAS COMMUNICATIONS OR SIGNAL INTELLIGENCE.

A. IN THIS CONTEXT, YES.

Q. BUT NOT THE ONLY ONE. THAT IS, THERE WOULD BE OTHER FORMS OF SENSITIVE INTELLIGENCE THAT YOU WOULD PERIODICALLY HAVE ACCESS TO AND RECEIVE INFORMATION FROM?

A. THAT IS CORRECT. BUT IN THIS PARTICULAR CONTEXT THAT WE ARE TALKING ABOUT, EVEN SENSITIVE AGENT REPORTS WOULD BE CONSIDERED, WOULD BE TALKED OF AS
COLLATERAL INTELLIGENCE, NOT AS -- IN OTHER WORDS, 
THE DISTINCTION THAT YOU ARE DRAWING HERE IS 
BETWEEN COMMUNICATIONS INTELLIGENCE AND COLLATERAL 
INTELLIGENCE.
Q. ARE YOU SAYING THAT SENSITIVE AGENT REPORTS WOULD 
BE INCLUDED OR THAT THE INFORMATION FROM SENSITIVE 
AGENT REPORTS WOULD BE INCLUDED IN A DOCUMENT WITH 
A CLASSIFICATION OF CONFIDENTIAL?
A. OH, GOOD, GOD, NO. NO. YOU DO NOT INCLUDE IN A 
DOCUMENT, DAVID, A DISTRIBUTED DOCUMENT -- AND 
THIS IS WHY THE CLASSIFICATION OF DOCUMENTS GET 
VERY TRICKY WHEN YOU ARE DRAWING ON ALL SOURCE 
INTELLIGENCE -- YOU DON'T INCLUDE -- THE DOCUMENT 
MUST BEAR THE CLASSIFICATION OF THE HIGHEST 
IDENTIFIABLE INPUT TO IT.
Q. I UNDERSTAND THAT. THAT IS WHAT IS CONFUSING ME 
ABOUT WHAT YOU JUST SAID. YOU SAID THAT 
DEFENDANTS' EXHIBIT 71-A ---
A. RIGHT.
Q. --- INCLUDES COLLATERAL INTELLIGENCE ---
A. NO. 71-A IS YOUR CONFIDENTIAL ORDER OF BATTLE 
SUMMARY. IT WOULD HAVE INCLUDED NOTHING BUT 
COLLATERAL INTELLIGENCE. AND NOT ALL COLLATERAL 
INTELLIGENCE. IT WOULD HAVE INCLUDED COLLATERAL 
INTELLIGENCE THAT COULD BE, THAT COULD BE
PUBLISHED AND DISTRIBUTED IN A CONFIDENTIAL LEVEL DOCUMENT.

Q. AND THAT WOULD NOT INCLUDE SENSITIVE AGENTS?
A. THAT IS RIGHT.

Q. OKAY. I CAN'T FRANKLY REMEMBER WHETHER YOU WERE MAKING A STATEMENT WHEN WE GOT OFF ON THIS. IF YOU HAVE SOME STATEMENT TO MAKE, YOU CAN FINISH IT. OTHERWISE, I WILL GO ON WITH MY QUESTIONS.
A. OKAY. ALL I WAS SIMPLY TRYING TO SAY, AND I WILL COUCH MY LANGUAGE VERY CAREFULLY, IS, WE BEGAN TRACKING THE BUILDUP AROUND KHE SANH FROM ALMOST AS SOON AS IT BEGAN OCCURRING, IN WHenever THAT WAS, IN THE FALL OF '67. IT BEGAN WELL BEFORE JANUARY OF '68 AND THEREFORE WE WERE CERTAINLY PAYING ATTENTION TO THE 320TH DIVISION -- IF THAT IS THE DIVISION THAT WE ARE DISCUSSING -- WELL BEFORE JANUARY OF '68.

Q. MY QUESTION TO YOU IS, I THINK, A SIMPLER QUESTION. AND THAT IS, DO YOU KNOW -- AND IN DEFERENCE TO THE CIA, I SUGGEST A "YES" OR "NO" ANSWER TO THE QUESTION -- WHETHER THE 320TH DIVISION ARRIVED IN SOUTH VIETNAM PRIOR TO JANUARY OF 1968?
A. THE ANSWER IS THAT I DON'T KNOW, BECAUSE I DON'T REMEMBER WHICH ROUTE THAT IT TOOK GETTING THERE.
Q. OKAY. AND WOULD YOUR ANSWER BE THE SAME FOR THE 304?
A. YES, IT WOULD BECAUSE I SIMPLY DON'T CARRY THAT LEVEL OF DETAIL IN MY HEAD FOR THIS MANY YEARS.
AND, AS I EXPLAINED, YOU HAD A PINCER ARC'ING MOVEMENT DEPLOYED OUT OF SOUTHERN VIETNAM. SOME CAME THROUGH WESTERN QUANG TRI. SOME CAME AROUND THE WESTERN EDGE OF THE DMZ, THROUGH LAOS. I DON'T REMEMBER WHO MOVED HOW.
Q. HAVE YOU FINISHED?
A. OKAY. NO.
Q. I SAID, HAVE YOU FINISHED?
A. I HAVE FINISHED. AND I WOULD LIKE TO BE EXCUSED FOR JUST A MOMENT.
Q. OKAY.
(BRIEF RECESS)
EXAMINATION RESUMED BY MR. BOIES:
Q. DID THE ALL SOURCE ORDER OF BATTLE SUMMARIES OR TABLES THAT WERE IN EXISTENCE IN OR ABOUT JANUARY OF 1968 INCLUDE THESE SO-CALLED KHE SANH DIVISIONS?
A. TO THE BEST OF MY RECOLLECTION, YES.
Q. DID THE ALL SOURCE ORDER OF BATTLE TABLES THAT WERE IN EXISTENCE IN OR ABOUT JANUARY OF 1968, TO YOUR RECOLLECTION, INCLUDE ENEMY TROOPS THAT WERE NOT
INCLUDED IN THE MACV MONTHLY ORDER OF BATTLE
SUMMARIES IN ADDITION TO THE SO-CALLED KHE SANH
DIVISIONS?
A. THAT I STILL DON'T, CAN'T ANSWER, BECAUSE MY
RECOLLECTION IS LESS THAN TOTAL. IF THERE HAD
BEEN MOVEMENT OTHER THAN KHE SANH INTO SOUTH
VIETNAM THAT WAS NOT KNOWN BY OTHER THAN
COLLATERAL EVIDENCE, THEY WOULD HAVE -- THE
ATTEMPT, DAVID, WAS TO MAKE THAT ORDER OF SUMMARY
AS USEFUL AS POSSIBLE WITHOUT COMPROMISING
SOURCES. AND PARTICULARLY, IN VIEW OF THE WIDE
DISTRIBUTION TO NON U.S., IT CONTAINED ONLY A
FRACTION OF THAT WHICH THE U.S. GOVERNMENT --,
BECAUSE, IN THE INTELLIGENCE BUSINESS, MANY TIMES
EXPLICITLY ACKNOWLEDGING THAT YOU KNOW SOMETHING
RUNS THE RISK OF COMPROMISING HOW YOU MUST HAVE
KNOWN IT OR FOUND OUT ABOUT IT.
Q. WHEN IN YOUR LAST ANSWER YOU SAID "IT" CONTAINED
ONLY A FRACTION OF THE INFORMATION KNOWN TO THE
U.S. GOVERNMENT, ---
A. I MEAN THE CONFIDENTIAL LEVEL MACV ORDER OF BATTLE
SUMMARIES, OR ANY OTHER DOCUMENT ABOUT VIETNAM
WITH THE CLASSIFICATION OF NO HIGHER THAN
CONFIDENTIAL SPECIFICALLY AUTHORIZED FOR RELEASE
TO FOREIGN NATIONALS. IN FACT, EVEN BEFORE YOU
GET IN "COMMENT", AS YOU WILL SEE, AS YOU PROBABLY
HAVE, IN YOUR DOCUMENT RESEARCH, "NO FOR" -- WHICH
DOES NOT MEAN NO FORNICATION. IT HAS NOTHING TO
DO WITH PERSONAL BEHAVIOR. -- IT MEANS THAT IT IS
NOT TO GO TO ANY FOREIGNERS.

Q. DO YOU RECALL APPROXIMATELY WHAT THE MAIN AND
LOCAL FORCES ESTIMATE WAS IN OR ABOUT JANUARY OF
1968 IN THE ALL SOURCE ORDER OF BATTLE TABLE?

A. WELL, IF YOU CAN FREE ME FROM THE WORD "TABLE",
BECAUSE, AS I SAY, I HAVE NO VISUAL RECOLLECTION
OF ANY GIVEN TABLE, YOU WOULD HAVE BEEN --
PROBABLY -- I AM JUST GUESSING -- BUT IF YOU FIGURE
SOME TWENTY-FIVE-ODD AROUND KHE SANH OVER WHAT WAS
THERE, IT PROBABLY WOULD HAVE BEEN SOMEWHERE --
FOR WHAT THAT PARTICULAR PERIOD OF TIME -- UP IN
THE 140-145 RANGE.

Q. LET ME JUST PURSUE THAT A LITTLE BIT. IN THE --

A. BUT, NOW, AGAIN --- GET -- THIS DAMN THING GETS SO
COMPLICATED. YOU'VE GOT TO BE CAREFUL ABOUT
WHETHER YOU MEAN "IN" SOUTH VIETNAM OR WHETHER YOU
MEAN "IMMEDIATELY ADJACENT" TO SOUTH VIETNAM AND
BY REASONABLE CANON OF ANALYSIS SHOULD BE INCLUDED
AS PART OF THE THREAT THAT GENERAL WESTMORELAND
HAD TO COPE WITH IMMEDIATELY, OR THAT THE UNITED
STATES MILITARY ASSISTANCE COMMAND HAD TO COPE
WITH. BECAUSE, Uh, -- I can't pinpoint with any
recollection who was precisely where, whether they
were immediately over the Laotian border or
whether they were immediately north of the DMZ.

Q. When you say or refer to troops that General
Westmoreland had to cope with immediately, what
are you referring to there?

A. Well, the U.S. Military Assistance Command in
Vietnam, in conjunction with the South Vietnamese
Army and the other allied, had to cope with a
Vietnamese Communist military threat. That threat
had various dimensions, of course. But their
immediate threat was the Communist troops deployed
in South Vietnam or so close to South Vietnam that
they could be deployed into the territory of the
Republic within a matter of hours or even days
without further warning or indication.

Now, there was, of course, a large scale threat of
North Vietnamese divisions that were, say, up in
the Red River Delta, -- Uh, -- who you had to keep
an eye on and if they started southern movement,
then you had to track that movement very
carefully. But what I am talking about is those
forces deployed for combat either in the territory
of South Vietnam itself or in the immediately
ADJACENT PORTIONS OF NORTH VIETNAM, LAOS AND CAMBODIA.

Q. NOW, THE MACV MONTHLY ORDER OF BATTLE SUMMARY FOR SEPTEMBER OF 1967 ---
A. THAT IS THIS ONE HERE?
Q. WELL, YOU HAVE IT IN FRONT OF YOU.
A. LET'S TAKE A LOOK, QUICKLY. ENGLISH EDITION ---
30 SEPTEMBER 67; YES.
Q. --- SHOWED MAIN AND LOCAL FORCES OF APPROXIMATELY 118,000.
A. THAT IS CORRECT.
Q. AND THE MACV ORDER OF BATTLE SUMMARY FOR DECEMBER OF 1967 SHOWED ENEMY MAIN AND LOCAL FORCES OF APPROXIMATELY 115,000, CORRECT?
A. CORRECT.
Q. WOULD YOU LOOK AT THE MACV MONTHLY ENEMY ORDER OF BATTLE SUMMARY FOR FEBRUARY 1968 AND TELL ME WHAT THE MAIN AND LOCAL FORCES WERE SHOWN AS THERE?
A. DO YOU HAVE WHAT PAGE OR WHAT AREA OF THE ---
Q. I CAN TRY TO FIND IT.
A. (TENDERS), YEAH. YOU ARE MORE FAMILIAR WITH THAT DOCUMENT THAT I. YOU CAN SEE WHY I DIDN'T SPEND MY PERSONAL TIME MUCH WITH THESE DOCUMENTS. THEY ARE AWFULLY HARD TO WORK WITH.
Q. I SHOW YOU WHAT HAS BEEN MARKED IN THE TOP
RIGHHAND CORNER AS PAGE 1334 AND BEARS DOWN AT
THE BOTTOM PAGE NUMBER "1-1" AND IS HEADED
"RECAPITULATION: ACCEPTED ENEMY ORDER OF BATTLE
IN RVN". AND I WOULD ASK YOU IF THAT INDICATES
THAT THE MAIN AND LOCAL FORCES OF THE ENEMY IN
VIETNAM IN FEBRUARY OF 1968 WERE ABOUT A 123,000?
A. YEAH, JUST UNDER A 123.
Q. NOW, IS IT YOUR TESTIMONY THAT THE ALL SOURCE
ENEMY ORDER OF BATTLE FOR, SAY, FEBRUARY OF 1967
WOULD HAVE -- EXCUSE ME, FEBRUARY OF 1968 -- WOULD
HAVE BEEN SIGNIFICANTLY IN EXCESS OF THE 123,000
NUMBER FOR MAIN AND LOCAL FORCES?
A. I WILL HAVE TO GIVE YOU A SLIGHTLY CONDITIONAL
ANSWER BECAUSE I CANNOT REMEMBER PRECISELY HOW
LONG THE KHE SANH CONCENTRATION LASTED AND WHEN
THEY BEGAN TO DISPERSE. THE KHE SANH
CONCENTRATION WAS STILL IN BEING, AS I THINK IT
WAS AT THAT TIME, I THINK THAT IT WOULD HAVE BEEN
PERCEPTIBLY HIGHER. IF THEY HAD STARTED DISPERING
BACK AND WITHDRAWING SOME OF THE UNITS BACK FOR
REST AND REFIT IN NORTH VIETNAM THEY WOULD NOT
HAVE BEEN.
Q. A NUMBER OF THE SO-CALLED KHE SANH DIVISIONS WERE
REFLECTED IN THE ENEMY ORDER OF BATTLE THAT HAS
BEEN MARKED AS DEFENDANTS' EXHIBIT 71-A, CORRECT?
A. Uh, -- well, at least two of them that we are sure of.

Q. Well, at least three of them.

A. Possibly a third, yes.

Q. 324-B, 320 and the 304.

A. I think all three of those were deployed at Khe Sanh. I am not absolutely certain and that is why I want to be absolutely certain. And that is why I want to be careful because I don't want to make an inadvertent misstatement.

Q. It is clear, is it not, that the MACV monthly order of battle summary would include all of the North Vietnamese divisions in South Vietnam, whether they were so-called permanent or so-called rotating, so long as there was or were collateral intelligence that established the existence of those divisions?

A. Yeah, -- and only, -- I mean, in that document only -- in that document -- by "that document" I mean the one that was we were just referring to, the MACV monthly order of battle summary, there is a piece of boilerplate -- is boilerplate an acceptable term? -- which defines the, it defines what they mean by "accepted", by "probable" and by "possible" or what are the evidentiary
REQUIREMENTS. AND THE ONLY -- THE THINGS THAT
WOULD BE REFLECTED IN THESE MONTHS CONFIDENTIAL
LEVEL ORDER OF BATTLE SUMMARIES WOULD HAVE TO
(A) MEET THE TEST; AND
(B) MEET THEM OUT OF PURELY COLLATERAL EVIDENCE.
Q. BUT IF THEY DID MEET THE TEST BY COLLATERAL
EVIDENCE, ---
A. THEY WOULD BE INCLUDED.
Q. THEY WOULD BE INCLUDED?
A. RIGHT.
Q. AND THAT WOULD BE SO WHETHER THOSE DIVISIONS WERE
THE SO-CALLED ROTATING DIVISIONS OR WHETHER THEY
WERE PERMANENTLY ASSIGNED DIVISIONS?
A. PARTICULARLY ON MONTHLY, ON A DOCUMENT THAT IS
UPDATED MONTHLY, BECAUSE WHAT THEY ARE TRYING -- I
MEAN, THESE MONTHLY ORDER OF BATTLE SUMMARIES, AS
YOU WILL NOTICE, COME OUT AT THE END OF EVERY
MONTH, AND THEY WOULD GIVE A PICTURE OF WHAT THE
FORCE STRUCTURE HAD BEEN DURING THE MONTH THAT
THEY COVERED.
NOW, WHEN YOU DID ALL SOURCE ANALYSIS BASED ON
LONGER PERIODS OF TIME OR TRIED TO SUMMARIZE
THREATS THAT WERE NOT, -- IN OTHER WORDS, IF I AM
DOING A PIECE OF PAPER THAT ISN'T GOING TO BE
UPDATED IN THREE WEEKS, THEN I WOULD BE MORE
DISCRIMINATING ABOUT MY BREAKOUT OF WHAT I AM TALKING ABOUT.

Q. I AM NOT ENTIRELY SURE THAT I UNDERSTOOD THAT.

A. OKAY.

Q. LET ME TRY TO BREAK IT DOWN INTO ITS COMPONENT PARTS.

IN THE MONTHLY MACV ORDER OF BATTLE SUMMARIES SUCH AS HAVE BEEN MARKED AS DEFENDANTS' EXHIBIT 71-A, THE ONLY ENEMY TROOPS THAT WOULD BE INCLUDED IN THOSE NUMBERS WERE THE ENEMY TROOPS THAT HAD BEEN IDENTIFIED BY COLLATERAL INTELLIGENCE AND INDEED BY COLLATERAL INTELLIGENCE WITH A CLASSIFICATION NO HIGHER THAN CONFIDENTIAL.

A. THAT IS CORRECT. AND ENOUGH COLLATERAL INTELLIGENCE TO MEET WHATEVER THEIR STIPULATED CRITERIA ARE FOR -- WHAT CLASS IS "ACCEPTED", WHAT CLASS IS "POSSIBLE", WHAT CLASS IS "PROBABLE". YEAH.

Q. IF YOU HAD A NORTH VIETNAMESE DIVISION THAT WAS IDENTIFIED AS BEING IN SOUTH VIETNAM BY ENOUGH COLLATERAL INTELLIGENCE TO MEET THE TESTS SET OUT IN THE DOCUMENT, THEN THAT DIVISION WOULD BE INCLUDED IN THE STATISTICS INCLUDED IN THE MACV MONTHLY ORDER OF BATTLE SUMMARY WHETHER OR NOT THAT DIVISION WAS A SO-CALLED ROTATING DIVISION OR
WAS PERMANENTLY ASSIGNED TO SOUTH VIETNAM?

A. THAT'S CORRECT, YES.

Q. AND WOULD BE INCLUDED IRRESPECTIVE OF WHETHER IT STAYED UNDER THE COMMAND OF WHAT WE REFERRED TO EARLIER AS VINH, REFERRING TO A NORTH VIETNAMESE COMMAND, OR WHETHER IT WAS ASSIGNED TO THE CENTRAL OFFICE FOR SOUTH VIETNAM?

A. CORRECT, BECAUSE WHERE IT WAS IN SOUTH VIETNAM -- AS LONG AS IT WAS IN SOUTH VIETNAM -- WOULD BE IMMATERIAL.

Q. WITH RESPECT TO THE ALL SOURCE ENEMY ORDER OF BATTLES THAT WERE PREPARED BY PEOPLE, WAS THERE ANY DIFFERENCE BETWEEN THE WAY THE ALL SOURCE NUMBERS WERE ARRIVED AT, THE WAY THAT THE NUMBERS WERE ARRIVED AT IN THE OFFICIAL MACV MONTHLY ORDER OF BATTLE SUMMARIES OTHER THAN THE USE OF ALL SOURCE INTELLIGENCE?

A. WELL, THE -- THAT'S ALMOST LIKE SAYING, 'ASIDE FROM THAT, MRS. LINCOLN, HOW WAS THE PLAY?' THE ---

Q. WELL, LET ME EXPLAIN WHAT I AM TRYING TO GET AT. IN ADDITION TO THE MACV MONTHLY ORDER OF BATTLE SUMMARIES, THERE WERE ALL SOURCE ORDER OF BATTLE SUMMARIES ---

A. YEAH.
Q. --- THAT WERE PREPARED BY VARIOUS PEOPLE.
A. YEAH, BUT --- GO AHEAD.
Q. CORRECT?
A. THAT IS CORRECT. BUT ---
Q. AND ---
A. --- WHOA!, I AM NOT SURE THAT IT IS CORRECT
BECAUSE I DO NOT REMEMBER PRECISELY WHAT TABULAR
FORM, FORMAT, WHAT THE REPORTING RHYTHM WAS ON ALL
SOURCE SUMMARIES.
Q. BUT YOU DO REMEMBER THAT THERE WERE SUCH
SUMMARIES?
A. THAT IS CORRECT, YES, I DO.
Q. NOT NECESSARILY IN EXACTLY THE SAME FORMAT.
A. YEAH.
Q. BUT THERE WERE SUCH ALL SOURCE SUMMARIES?
A. YEAH.
Q. AND OBVIOUSLY THOSE ALL SOURCE OB SUMMARIES WOULD
DIFFER FROM THE MACV ORDER OF BATTLE SUMMARIES IN
THAT THE ALL SOURCE ORDER OF BATTLE SUMMARIES
WOULD, BY DEFINITION, BE BASED ON ALL SOURCES OF
INTELLIGENCE, CORRECT?
A. YEAH.
Q. NOW, MY QUESTION IS, IS THAT THE ONLY DIFFERENCE?
AND THE REASON THAT I ASK THAT QUESTION IS WHETHER
WHAT YOU WERE MEASURING WAS ANY DIFFERENT, AS
OPPOSED TO THE INTELLIGENCE THAT YOU USED TO
MEASURE. DO YOU UNDERSTAND THE DISTINCTION?

A. OH, I UNDERSTAND THE DISTINCTION, BUT, WITH ALL DUE
RESPECT, I DON'T THINK THAT IT IS QUITE THE RIGHT
DISTINCTION. THEY WOULD NOT NECESSARILY ---

Q. I AM NOT SUGGESTING THAT IT IS THE RIGHT
DISTINCTION. I AM JUST ASKING WHETHER, WHETHER
THAT WAS A DISTINCTION.

A. BECAUSE THEY WOULD NOT NECESSARILY LOOK LIKE THIS
AT ALL BECAUSE THEY WOULD GO AT THE PROBLEM A
DIFFERENT WAY. THEY COULD MUCH MORE SPECIFIC ON
WHO WAS WERE AND THEY COULD BE MUCH MORE SPECIFIC
ABOUT WHETHER OR NOT A GIVEN UNIT WAS THOUGHT TO
BE EARMARKED FOR INDETERMINATE ASSIGNMENT OR WAS
LIABLE TO BE PULLED OUT IN THE REASONABLY NEAR
FUTURE.

Q. LET ME ASK THE QUESTION THIS WAY BECAUSE WE ARE
GETTING CLOSE TO WHEN I KNOW THAT YOU WANT TO GO.

A. YEAH.

Q. IF -- AND I KNOW THAT THIS WOULD NOT BE THE CASE
-- BUT IF YOU HAD A TIME IN WHICH YOUR COLLATERAL
INTELLIGENCE WAS JUST AS GOOD, IN EVERY RESPECT,
AS YOUR RAW SOURCE INTELLIGENCE, WOULD THE NUMBERS
CONTAINED -- NOT NECESSARILY THE LOCATIONS OF THE
UNITS -- BUT WOULD THE NUMBERS CONTAINED IN THE
MACV ORDER OF BATTLE SUMMARY BE THE SAME AS THE NUMBERS CONTAINED IN WHAT YOU HAVE REFERRED TO AS THE ALL SOURCE ORDER OF BATTLE SUMMARIES?

A. WELL, PROBABLY, BUT I CANNOT ENVISAGE A PRACTICAL SITUATION WHERE THAT WOULD PERTAIN.

Q. I UNDERSTAND THAT YOU CAN'T ENVISION WHERE IT OBTAIN (SIC), BUT THE REASON FOR MY ASKING THE QUESTION IS TO BE SURE THAT BOTH THE ALL SOURCE ORDER OF BATTLE SUMMARIES AND THE MACV MONTHLY ORDER OF BATTLE SUMMARIES WERE TRYING TO MEASURE THE SAME THING. I UNDERSTAND THAT THE ALL SOURCE WOULD DO IT BETTER AND IN GREATER DETAIL, BUT WHAT I WANT TO BE SURE OF IS THAT THEY WERE TRYING, AS BEST THEY COULD WITHIN THE CONSTRAINTS, TO MEASURE THE SAME THING?

A. YES, AS BEST THEY COULD WITHIN THE CONSTRAINTS, THEY WERE TRYING TO MEASURE -- BUT THERE WERE TWO TYPES OF CONSTRAINTS. ONE IS THE DATA CONSTRAINT. IN OTHER WORDS, THE RAW DATA THAT YOU COULD USE TO BUILD THESE TABLES ON.

W. WHAT KIND OF INTELLIGENCE THAT YOU COULD USE?

A. THAT'S RIGHT. THE OTHER, THE SECOND CONSTRAINT, IS THE FOCUS ON WHAT IS IN THE REPUBLIC OF VIETNAM AS OPPOSED TO EXTENDING THE PENUMBRA ABOUT WHAT IS
IMMEDIATELY ADJACENT TO VIETNAM OR IS SHOWING A
MOVEMENT TO PATTERN THAT MEANS THAT IT IS LIKELY
TO BE ARRIVING IN THE VERY NEAR FUTURE.
Q. ARE YOU SAYING THAT THE ALL SOURCE ORDER OF BATTLE
SUMMARIES INCLUDED NUMBERS FOR PEOPLE WHO WERE
OUTSIDE OF THE TERRITORY OF SOUTH VIETNAM?
A. CAN I BREAK AWAY FOR A MOMENT FROM THAT PHRASE
"ALL SOURCE ORDER OF BATTLE SUMMARIES" AND OFFER A
SUBSTITUTE?
ALL SOURCE DISCUSSIONS OF THE MILITARY THREAT TO
SOUTH VIETNAM --
Q. BUT WHAT I WANT, WHAT I WANT TO FOCUS ON ARE
ESTIMATES OF -- IT MAY BE THE SAME THING ---
A. YEAH.
Q. --- BUT ESTIMATES OF ENEMY STRENGTH, NUMERICAL
ESTIMATES OF ENEMY STRENGTH.
Q. YEAH, BUT THEY WOULD BE SELDOM -- EXCUSE ME. AN
ALL SOURCE ASSESSMENT OF ENEMY STRENGTH WOULD NOT
CONFINE ITSELF TO AN UNAMPLIFIED TABLE.
Q. I UNDERSTAND THAT, ---
A. AND THEREFORE --
Q. --- BUT THAT, THAT'S NOT MY POINT.
THE ALL SOURCE ASSESSMENT OF ENEMY STRENGTH WOULD
INCLUDE A NUMBER AS WELL AS ADDITIONAL
INFORMATION, RIGHT?
A. IT WOULD INCLUDE SEVERAL NUMBERS PLUS ADDITIONAL INFORMATION.

Q. OKAY, NOW, ---

A. AND THEY WOULD NOT BE THE SAME NUMBERS EITHER IN -- NORMALLY. I MEAN, EXCEPT IN THE HYPOTHETICAL SITUATION WHICH I CAN'T ENVISAGE HAPPENING -- WOULD NOT BE THE SAME NUMBERS, GROSS, NOR WOULD THEY BE THE SAME SUB, BECAUSE YOU WOULD HAVE DIFFERENT CATEGORIZATION OF WHAT IS PROBABLY, WHAT IS POSSIBLE, WHAT IS CONFIRMED. ALSO, BEARING IN MIND THERE IS AN INPUT TO ALL SOURCE INTELLIGENCE THAT IS NECESSARILY COMMUNICATIONS INTELLIGENCE.

BY MR. BOIES:

WE ARE OUT OF TAPE.

(ADJOURNED UNTIL JANUARY 125, 1983 AT 10:00 A.M.)

(CONTINUED NEXT PAGE)