Q. Did you interpret this theatrical choice of words to contain elements of exaggeration?

MR. BARON: Object to the form of the question.

Did you -- when you say did he interpret, when?

MR. MURRY: He heard -- he testified he had never seen or heard the letters until Mr. Crile read them to him.

MR. BARON: Can I ask you to indicate whether you mean, in general, whether you're referring to a general letter, a particular quote from a particular letter? Do you mean the letters in general? Do you mean --

MR. MURRY: Could you read the question back.

(Record read.)

MR. BARON: So you're referring to this choice of words?

MR. MURRY: I'll rephrase it.

Q. Did you interpret what you have described today as a theatrical choice of words as containing -- strike that.

Did you interpret what Mr. Crile read you, the excerpts from Meacham's letters that you've called his theatrical choice of words, indicated certain elements of exaggeration in the letter excerpts that Mr. Crile read to you?

MR. BARON: Object to the form of the question.

You have used the phrase "theatrical choice of words." He used it in his testimony, but it was a reference to a
particular letter.

MR. MURRY: Let him answer the question.

THE WITNESS: I think exaggeration is too strong of a word. I've read this, reread this, on a day-to-day basis. I probably knew Jim Meacham better than most people, and this is in the work environment. After the last hour of the day he went to a different quarters than I did, so I don't know. But on a day-to-day I sat next to him. We spent untold hours next to each other. Going into this, to say, that we need to look beyond what I'm saying or look beyond the flare of those words and a casual reader can't pick this up unless you were there and knew him and listened to him. He's a man expressing great, great frustration.

I mentioned before that I would write home, and I'm a different personality, about other issues than maybe what he did. Jim needed somebody to tell this to and, again, this is -- I'm giving a psychological portrayal here. I think he needed his wife to air this out on. This is how he chose to do it.

Look behind this. I think you'll see tremendous amounts of frustration, a man who's saying we can't seem to break through this whole issue. This isn't happening the way we want it to, that issue of frustration. I say, I think I would do him an injustice by saying, and I think it's too strong of a word, that is, this exaggeration. You
need to look behind the word. You have to psychologically
know Jim Meacham.

Q. Would you look at Page 56 and 57 of Plaintiff's
Exhibit 201, and, just to save a bit of time, why don't you
just read the question on the page first full question on
Page 56 that begins "Let me go a step further -- " and the
entire Page 57 to yourself. And you may read any more of it
that counsel for defendant thinks you ought to read for
clarity. But I just want you to read that first full
question on 56 and all of Page 57.

A. "Question -- " And we would assume this is George.

Q. You don't need to read it out loud. You can just
read it to yourself. I'll ask you questions about specific
portions of it.

MR. BARON: I think he should read it out loud.

MR. MURRY: Fine.

Q. I'd like you to read first full question on Page 56
which begins "Let me go a step further -- " and all of the
questions and answers on Page 57.

A. "Question: Let me go a step further
and see if I can trigger this from you
because I think that this is -- this is
Commander Meacham again. This is sort
of, dashes, almost acting as if he's in
the confessional when he's writing home
to his wife. This is near the end of his tour of duty. 'I must watch myself,' he writes, 'or I will tell the truth to one of the great Colonels in these 28 last days of my MACV career. We don't know what's happening, having become mesmerized by our own lies about winning the war.'

"And then he writes on the 22nd of June, 'Some day it may come out how we lied about these figures on the Cao Lanh. The types from DIA were here and they badgered me endlessly trying to pry the truth from my sealed lips. They know we're falsifying the figures, but they can't figure out which ones and how.'

"July first: 'I had a talk with the director today and I let them know the truth about the doctoring of the strength figures. Now my conscious is clear.'

"Third of July: Meacham writes home a long memo for the director on how the estimates bunch, as he puts it -- that's
the group directed by Colonel Graham -- 'has lied in the past on the strength figures. Does that ring a bell?'

"Man: Very definitely. Very definitely. I sat right next to Jim in the same office, again using the word, quote lie, end quote. There's 13 years to temper. That's been a long time. There's no question from where I sat, where we all sat, that the product of the enemy product of the enemy strength was very controlled. And it was controlled for most part by the estimates section of it. Following that period, that's in all capitals, the word, indistinct.

"Question: This is the organization run by Colonel Graham, question mark?

"Man: Yes. Now at the time it was perceived by Jim in this -- in this word using lie -- again, looking at it back from a number of years, I would find it hard to believe there was a deliberate lie in the system. Maybe not hard to believe, but I think there -- there was
rationale behind it. The rationale may have been based upon pure estimate, pure feel of the situation. It may be politically -- may have been politically driven to what, to reach that end. But our perception of it from our end was that we were really being worked over. These figures were being worked over. We knew that very, very clearly."

Q. There's a line in there that says "may have been politically driven to that to reach that end" whereas you said "driven to what to reach that end"? Do you agree?

A. I'm corrected as stated.

Q. Is it fair to say that in this series of questions and answers with Mr. Crile you were expressing reservations about flatly characterizing the actions taking place in MACV during the time period discussed here as lying?

A. My understanding that I was characterizing it as lying?

Q. No. My question is: Were you expressing reservations about the actions going on at that time, characterizing those actions as lying?
A. Look at what I just read. Place yourself in my shoes. I am on camera in an interview that's going to be on a -- some sort of a CBS nationally televised program. That's a very, very, very powerful issue to hit me with. What I'm doing is stating here, and keep in mind what this says. This says that. Okay. This was perceived as Jim as a lie. And I'm in a thought process. I'm thinking out loud or I say, "I find it hard to believe, but maybe not hard to believe." And that is the quote, "but maybe not hard to believe."

I think there was a rationale behind it. It may -- it may have been politically driven. I don't know what that rationale is. It may be political. I'm fishing here in terms of a very, very powerful question. That's a very, very powerful answer. I in no way could have sat there and said absolutely beyond a shackle of a doubt. I had to put a philosophy into it, a thinking out loud, to say that. Here I am now 15 years later. I look at that; I look at what was said; and I can understand how he said that. True, yes, maybe not.

Q. You mentioned here in the first full answer on Page 57, you say, again using the word, quote, "lie," unquote, "There's 13 years to temper what goes on at that time."

Could you tell me what the fact that 13 years had
passed has to do with the use of that word lie. What difference did 13 years make in your mind?

A. Mr. Murry, being in the legal profession, and to answer the question very clearly is if I had witnessed a very severe, very gory automobile accident and that didn't go to trial until 13 or more years later.

Wouldn't you say that 13 years would have tempered in my mind some of that immediate inkling of what I had seen in imaging, in loss of life or hurting. I am using that as an example to say 13 years has got to, just from a memory point of view.

At the time there was anger. I've stated that Jim's letters that were written show anger in them. Thirteen years later I don't know. If Jim were sitting in the room here now -- he probably would not be as angry as he was when I saw him walking the halls for the same word that I use, that it's been tempered by time. Ideally, this entire issue, had it taken place during or following this, we would have had an entire different perceptive -- perception of how people felt, what angers were there, what feelings were there. I must -- may I continue?

I must say parts of this -- you must have detected -- rekindle that anger in me. It rekindles that frustration, that feeling, that emotion. Moreover, the tape that your Legal Foundation sent me of the General
Westmoreland Press Interview of January 1982, which I believe, immediately follows that interview, during that press conference, towards the latter part of it, we, the group of us on their program, the Meachums, the Cooley, the Parkins, the Hankins, et al, were described as a group of lower rank malcontent Colonels -- malcontent! I take phenomenal exception to that. I am so incensed by that characterization that I would insist a jury, a judge, or a legal body examining this go into the character of the people involved to set the record straight as to malcontents. Unbelievable. Unbelievable.

Q. Do you think that your perception of the given event changes -- and this is a hypothetical --as you acquire more experience?

MR. BARON: Object to the form of the question.

THE WITNESS: I'm not sure if you put that as I gained more or as I will gain more.

BY MR. MURRY: (Resuming)

Q. In general, as one gains more experience, does one's perception of given events in the past tend to change?

A. The only change that's taken place with me is that it has rekindled this entire time frame. While I've gone through emotional shifts about how I feel about all of this, I return back to the point of, again, I feel
strong. What we did was good; what we did was honorable; what we did was truth. I still feel that for the lack of what we had in our possession we very possibly lost lives, that the course of the war was not, in fact, correctly
steered.

One of the things I just reread prior to coming here for this deposition was an article by William F. Buckley, Jr, where he states, and I can reach in and pull it out, and quote for you if you would like. He states that basically, in substance, that Lord knows how many lives we might have saved or in fact how many were lost. Maybe we, the Congress, the President of the United States, would have chosen not to continue this war had we known this. He is quoting that and relating that in his article, directly relating to this broadcast. I feel that way, Mr. Murry. I do. I lost contemporaries over there.

Q. I understand that. And I at no point want to belittle or minimize or make light of that at all. But I want to ask you even if General Westmoreland was wrong in his decisions about the war, that is not the same thing as saying General Westmoreland knowingly and willingly misled people about the war, is it?

A. Literally answering that question -- literally answering that question, no.

Q. And would you agree that if General Westmoreland
and his conduct of the war made his best good faith effort
to conduct the war properly even if he -- if he was wrong,
ultimately he should not be held liable for
misrepresenting the facts?

MR. BARON: Object to the form of the question.

MR. MURRY: You can answer it.

THE WITNESS: I don't mind answering the question
because your question is almost exactly what General
Westmoreland asked me. General Westmoreland called me a
minimum of two times because I have people that were there
during the occasion, and I would say four times. It may
have been three and it may have been five, very, very long
discussions, several of these. General Westmoreland said
that. He asked that same question.

He said, "Cooley, I couldn't be all of these
places all of the time. I had no direct means, if that
was happening, of knowing that. I tried to spend my time
in the field. How would you expect me -- " and this was
obviously in follow-up to some prior discussion.

My answer, which I will answer you to your
question, was, "General, I, of all people, should not
remind you that in a military organization or a structured
organization, especially the military, the man at the top
is responsible. It was yourself; you are the Commander;
you were the Commander in Chief, Military Assistance
Command, Vietnam, COMUSMACV yourself. You hold that responsibility.

"If there is one thing I learned as a very young officer, you are responsible for your actions. The answer to how do you, if you can't be in those places? You surround yourself with the best people possible. You surround yourself with people that will do that for you, your eyes and ears."

I further told him, I said, "I am many years later. I'm telling you something very, very candidly that I, along with my contemporaries, felt that you were so -- you were buffered. You were so buffered, you didn't know what was going on around you." That was my answer.

Would you like to ask me what I mean by "buffering" and that it relates back to this horrendous group of Colonels. These Colonels were doing what the old man wanted. I didn't know if that's what the General wanted; I didn't know if that's what another Colonel wanted. They were acting in, quote, "his interests on it."

Again, relating back to that, "If it was wrong, why didn't you come to see me?" Ludicrous. That's like you and I trying to walk into the President's office without telling people in the outer office what you wanted to see him about.
Mr. Murry, that conversation took place with the
General. That was my answer to him on that.

BY MR. MURRY: (Resuming)

Q. Let me ask you this, referring again to Page 57
of Plaintiff's Exhibit 201. When you said to Mr. Crile,
again using the word, quote unquote, "lie," "There's 13
years to temper as what's gone on at that time."

Isn't it true, Mr. Cooley, that what you were
saying to Mr. Crile, in substance, was that perhaps
looking back, the word "lie" was too strong a word to
accurately describe what had taken place at that time.

MR. BARON: Object to the form of the question.

THE WITNESS: I don't know. Your question leads
me to the issue of how often do you beat your wife. If I
answer that the implication is that I'm addressing a lie.
I'm sorry if I haven't made that clear. You're asking me
a question, the classic.

BY MR. MURRY: (Resuming)

Q. I don't understand.

A. Textbook way of leading says the example they use
is: How often did you beat your wife, three times a week
or four times a week? You're forcing me to say, two times
a week. The fact is maybe I never beat my wife. You
certainly know the analogy I'm trying to portray.

Q. Yes. I know and the answer is I never beat me
wife.

A. Obviously, you're trying to lead me into answer
the word lie relative to that situation. I don't know.

Q. Well, you answered Mr. Crile's question and you
pointed out to him using the word lie which is 14 years to
temper what is going on. At that time you said that you
pointed that out to him, and I'm asking you, isn't it true
that what you were attempting to point out to Mr. Crile is
in looking back, perhaps that word lie was too strong to
accurately describe what was going on?

MR. BARON: Object to the form of the question
and the speech. He also, the same page said a number of
other things on the question.

MR. MURRY: You can ask him about those other
things. I want to ask him whether he meant what I
suggested he meant right here.

MR. BARON: I thought you were here to ask
questions.

THE WITNESS: I have two years since the
interview. If you're giving me the word that you use, is
it possible. It may be possible. It may have been
possible. We would have to, as Mr. Baron points out, put
that in context with a lot of other words in here.

BY MR. MURRY: (Resuming)

Q. Let me see if I understand your testimony. Are
you saying that it's possible in this particular passage
we've been referring to, you were pointing out to Mr.
Crile that looking back the word "lie" may have been too
strong, but you're just not sure?

MR. BARON: Object to the form of the question.

THE WITNESS: Given the caveats I've expressed up
to this point, that is possible that I was imparting that.
Relative to the time in which Jim Meacham wrote it,
relative to his feelings then and my thoughts now, not
necessarily my thoughts then, but my thoughts now.

BY MR. MURRY: (Resuming)

Q. We talked yesterday about the Monthly Order of
Battle Summary being a collateral.

MR. BARON: Can I — excuse me. If you're
starting a new subject, let's break for lunch.

MR. MURRY: I am. Fine. All right.

(Whereupon, the lunch recess was taken.)

BY MR. MURRY: (Resuming)

Q. Mr. Cooley, before our luncheon break we started
to talk about Collateral Order of Battle, and I believe
you testified yesterday that the MACV Monthly Order of
Battle Summary was a Collateral Order of Battle; is that
correct?

MR. BARON: Object to the form of the question.

THE WITNESS: We discussed yesterday a number of
things about the Order of Battle document itself. The classification of that document was not special intelligence. That's what I'll stand on.

BY MR. MURRY: (Resuming)

Q. Now --

A. May I make a point before we get too far past the lunch point? I -- during lunch hour -- I raised some discussion with counsel for CBS, expressing some extreme reservation as to something that hasn't come across clear with a question that was worded very difficult for me to understand.

And this had to do with the blocking situation, of figures going up. You presented a number of hypothetical situations. I feel it's imperative, and before I continue with that -- there was a statement. And if you desire to go back and pull it verbatim do so, but in substance it said, and as this is very, very fuzzy with me, you asked me a question as to if these people or a group of people were to receive some information and withheld it knowingly versus not knowingly passing it forward, whether one would be right or wrong on it. Do you recall that?

Q. What I asked you, I think, was whether when you use the word "blocking of" with Mr. Crile in your taped interview, whether you meant by that that persons above
you in the chain of command, in substance, knew that the
figures that your strike team had produced were accurate.
And despite knowing that they were accurate refused to
send them forth. And I meant to contrast that with a
situation where there is disagreement as to the accuracy?

A. Please let it be shown that this is important
since there were a lot of hypothetical -- we got wrapped
into hypothetical situations that this issue in its macro
sense, and I used some examples to support it in previous
questioning, and the word "lie" tied into this in prior
discussion with it. The macro issue that I stand on is
that what we were producing in OB Studies in strength and
infiltration we felt was accurate. Beyond our doubt and
beyond anybody telling us we were wrong or showing us we
were wrong.

We submitted this through the procedure we
discussed both yesterday and today. The individuals
receiving that, the principals being Morris and Graham,
whether they knew that to be correct and accurate and
refused it, or didn't feel it was correct and accurate, I
don't know, short of sitting with them at this table or
being inside in mind at that time.

The fact that they weren't public. They did not
go forward; they did not show in the MACV Order of Battle
Summary regardless of the fact of how we felt. Here the
image is, we felt very strong it was justified; it was
supported. Nobody contradicted our methodology or our
sources. Other analysts supported us, or if they didn't,
they didn't come forward. Through this procedure of
putting that forward, right or wrong, those were not
published. And this is where I continued by saying that
decisions were made in the course of the war.

I want to read for the record, if I may. I
referred to Buckley. I feel strong that I need to get
this in.

Q. I'm going to have to object to that because I've
got a lot of questions to ask and I would respectfully
request, sir, that if you want to read the Buckley
article, you wait until Mr. Baron does his
cross-examination, if he is willing to ask you about that.
But I just have a problem with that because I'm concerned
about, in the time we have left, getting what you can see
are a number of questions. Getting through all of that.

MR. BARON: Are you telling the witness he can't
clarify testimony that he gave earlier despite the fact
that he has indicated he wished to do that?

MR. MURRY: I'm telling him I have strong
reservations about him reading excerpts from a newspaper
article not in response to the question.

MR. BARON: He referred to the newspaper earlier
in response to a question, didn't he?

MR. MURRY: I know he referred to it earlier and I have reservations about him, during my examination, reading the newspaper article into the record.

THE WITNESS: Mr. Murry, it is my desire to read this in. We're talking lines, approximately 20 seconds worth of your time.

BY MR. MURRY: (Resuming)

Q. Let me ask you this, Mr. Cooley, can I ask you about two to three questions pertaining to what you've just said, and if I can do that, then I'd be perfectly happy to let you read in as much as the article as you like?

A. I will address those after you let me read this article in.

Q. Well, I'll tell you this. If you read the article in at this time, I'm going to move to strike it, and if you insist on reading it, I cannot stop you. But I don't think it's proper and I will move to strike it.

A. Mr. Murry, you're welcome to move to strike it. I've felt a number of things you asked me are not proper and those may or may not be stricken, I don't know. I quote from the daily newspaper, January 28, 1982, William F. Buckley, Jr.

"In 1966 General Westmoreland became
committed to the estimate that he was fighting a quarter of a million of Vietcong. Military estimates were accordingly made on that assumption, but then intelligence estimates began to come in, including one of those captured enemy documents everyone used to laugh at which indicated that the enemy's strength was twice that. And that, therefore, at the rate at which we were uprooting the enemy, we were, roughly speaking, getting nowhere. What, then, if we had known the truth in '67 or 1968, might we have done? "We might have abandoned the war on the grounds that enemy effort required to defeat such an enemy on the ground was more than the United States could or would put forward. Or we might have completely altered the strategy. "The President might have approached Congress to say the war cannot be won by such measures as we have been using. We need to get to the heart of the problem and the heart of the problem is Hanoi."
Instead, President Johnson and William Westmoreland kept assuring us all that we were winning."

Q. Do you remember yesterday, Mr. Cooley, that you made a remark about intelligence becoming synergistic?

A. I do.

Q. Does Mr. Buckley cite any independent sources of knowledge for his comments in that article?

A. No.

Q. He relies to the CBS broadcast in that article, does he not?

A. I do not know the answer to that.

Q. You don't know whether he relied on the CBS broadcast in an article?

A. I certainly do not.

Q. Doesn't he say in substance in that article, after seeing the CBS broadcast, he came to the conclusion set forth in this article?

MR. BARON: Object to the form of the question.

MR. MURRY: I said in substance, Bob.

MR. BARON: I think you said "in substance" earlier, I think.

MR. MURRY: I'll rephrase it.

Q. Doesn't Mr. Buckley say, in substance, that after seeing the CBS broadcast he came to the conclusions set
forth in the article?

A. He uses -- he states the CBS documentary, but that's not the entire basis of the article.

Q. May I see the article, sir?

A. Certainly. If you read the beginning paragraph it says in words that this has been controversial before the CBS documentary. Mr. Buckley had been writing on the war for sometime. His credibility certainly isn't in question.

Q. What was controversial before the CBS documentary?

A. Would you like me to read the beginning?

Q. I wanted to know what was controversial.

A. I'm stating that, in answer to your question, whether this entire article was based on the entire documentary. The answer is, I don't know.

Q. Can you identify for me, in this article, any source for the conclusions in the article other than the CBS documentary?

MR. BARON: Object to the form of the question.

THE WITNESS: I'm going to stand on my answer that I do not know if there were other sources. I cannot state for Mr. Buckley.

BY MR. MURRY: (Resuming)

Q. That's not what I asked you. I asked you, can
you identify in the article any sources other than the CBS documentary?

A. Journalism incorporates many many sources. The program may have triggered off this article coupled with considerable documentation, or whatever Mr. Buckley may have had at his disposal. I stand on my answer that I do not know if other documents were used in this article.

Q. I understand you don't know. But I'm asking you, can you identify, by looking at the article, any other documents or sources that have been used.

MR. BARON: Object to the form of the question.

THE WITNESS: As an example, to support my previous answer that other sources are often contained with journalism other than what may ostensibly be stated, the last paragraph refers to a telegram sent to General Westmoreland by Gains Hawkins.

BY MR. MURRY: (Resuming)

Q. Why don't you read the paragraph into the record?

A. "General Westmoreland has been busy trying to get witnesses who testified on the Wallace documentary to repudiate their appearances." That sentence alone implies that he's got other source material he's dealing with. That certainly wasn't -- next sentence, "One of them Gains Hawkins, a retired intelligence Colonel, sent General Westmoreland a very pleasant telegram." But the first
sentence in it read "He's seen it." Quote, "I do not, repeat do not, consider I was quoted out of context." Seems to me as that's a minimum of two source documents just in that paragraph alone.

Q. Let me go back to something else that you've mentioned and -- well, before I do that.

You started off talking about some questions that I asked that you thought were unclear. Had you finished, or do you want to say anything more about that?

A. I feel there was ambiguity in that context of which we discussed. I left very uncomfortable. I wanted to take that and put it in a -- as I had mentioned -- a macro context to understand how I feel about that thing, that line of questioning that you had from its start to finish. My intent is to use Mr. Buckley, as I referred to, to put that on record as opposed to just saying I have it next to me.

Q. But the fact remains, does it not, Mr. Cooley, that you do not know that the persons who refused to accept your team's estimates in the fall of 1967 did so in lack of good faith; is that correct?

MR. BARON: Object to the form of the question.

Specify what you mean by good faith.

BY MR. MURRY: (Resuming)

Q. No. I'm just asking you, do you know?
A. I will repeat my answer that I gave to that
moments ago. I do not know what went on in their head at
the time, nor I do not know what went on in their head at
that time.

Q. Do you recall that in order for an enemy unit to
be listed in the MACV Order of Battle certain criteria,
identifying that you needed to be satisfied?

A. That was not my job nor my specialty, but in
answer to your question Ground Order of Battle, as our
work in studies, had to be substantiated through sound
methodologies, through sound analysis.

Q. Would you look at Pages 35 and 36 and 37,
Plaintiff's Exhibit 201. I'm interested in a particular
in the series of questions and answers that begins with
the second question on the page and that question starts
"So from September through late January -- " See what I'm
referring to? I'm interested in the whole series of
questions and answers that follow on 35 and 36 and down to
your last answer on 37. I would suggest, in the interest
of time, that you read them to yourselves, but I will ask
you to read them into the record if counsel for CBS thinks
that that's a good idea.

MR. BARON: Much as I hesitate to take the time,
I'm afraid I do think it's a good idea so that the whole
substance of the testimony will be -- pardon me -- of the
prior statement would be in the record.

MR. MURRY: Okay.

Q. Mr. Cooley, when you're done perusing your affidavits --

THE WITNESS: "Question: So from September through late January when the Tet offensive erupts, there are over 100,000 North Vietnamese regulars that have come into the South that have not been reported. "Man: That's basically correct. I think the Tet offensive bore that out very clearly." The assumption that word is out. It's not terribly clear. "I think the overall strength picture, and I know you're focusing in on the infiltration side of it. But if I can just put that in perspective, the entire strength picture bears a little bit of explanation because we were also producing figures, and I say producing. It's from other elements within our organization who are studying enemy units
in-country and what their strength was and how they were losing through capture, or those being killed, and the like. All of this was going into a strength picture. But they were suffering a lot of frustrations in their own right as to the numbers of actual enemy in-country. And the reason of that is that there were very very strict and rigid criteria established as to when you could carry -- carry a unit as actually existing in-country. Example, the categories of being probable and possible and confirmed were all dependent upon how many captured documents you could support it with or how many combinations of captured documents and interrogation reports. And many of those analysts had it in their mind very, very well supported information." Let me go back and state that sentence again please.
"And many of those analysts had in their mind very very well supported information that the units existed in large numbers, but they couldn't carry them on their strength figures because they couldn't come up with this magic number of three of this and two of this or whatever that combination may have been.

"Question: You mean the demands for documentation were so extreme in your opinion --

"Man: Overlapping. Absolutely. They were. They were.

"Question: -- that the analysts in the other areas of estimating enemy strength were not really able to do their job? Is that what you're suggesting?

"Man: They weren't able to do their job in the terms of being able to produce a good seat in the pants subjective estimate, and I feel very strong about that. The attempt to quantify everything was
very very prevalent. You had to have hard documentation on it. It must be quantified right down to the gnat's eyebrow as to where the figures came from. Now that's a little understandable because the entire strength picture had come into extreme controversy. It had been picked up in all of the news media as to where we were getting these figures and where were they inflated. And now the issues started to -- to unfold. That maybe the figures were -- were high because we wanted to bring more U.S. troops into the CON, space, into the country. So now almost a paranoia set in that said these figures must be absolutely rock hard.

"Question: You are suggesting something else earlier which was that" -- that word is unreadable -- "a time when higher estimates were not only frowned upon. They were
down right discouraged. Was that same, space. Space, part of this same process as you saw it, space space, the new criteria which made it more difficult to increase the enemy strength estimates?

"Man: Oh, I could easily say that, that to get a higher estimate through you, space space, you had to have absolute un -- space, unquestioned documentation to that, space, in unit holdings. It would take, space, months, space, months for some of that to ever, space, ever get carried in holdings."

MR. BARON: I would just ask that the next question and answer be read. I would ask that the next question and answer bottom of Page 37 to Page 38 of Plaintiff's Exhibit 201 be read as well since I think they relate to the same subject.

MR. MURRY: I have no objection.

THE WITNESS: "Question: So it really was almost a process which made it impossible to, space, to estimate enemy strength.

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"Man: Overlapping. It was very burdensome. It wasn't very timely processed."

BY MR. MURRY: (Resuming)

Q. Mr. Cooley, could you tell me what analyst, by that I mean, what section of MACVJ2 you were referring to on Page 36 when you said, in part, many of these analysts had well-supported information that units existed in large numbers, but they couldn't carry them on their strength figures because they couldn't come up with this magic number of three of this and two of this?

A. In the CICV, as we stated during day one, the Ground Order of Battle was a parallel organization under the Order of Battle Branch. That Ground Order of Battle had corps analysts. Those corps analysts, at least two of them generally, they were Major positions. At that time two of those analysts were military intelligence advance corps classmates of mine. We arrived in South Vietnam very close to each other. One was a Major Norman House and the other was Frank Harrada. H-e-r- -- or H-a-r-r-a-d-a, I'm not sure right now. The three of us were contemporaries. They were around the corner physically from where we were located in that building. I had reasonable degree, at least as work would let it be accomplished, interface with them, and, as you
might expect during the professional analysis we were
going through, we had a relationship there as an
analyst-to-analyst position. Those are two. The others
I'm sure I knew at that time also. I don't recall their
names. They may have been Captains or otherwise at the
time.

Q. Do you know how long the -- what you describe at
the top of Page 36 as the criteria established as to when
you could carry a unit as actually existing in-country?

How long had those criteria been in effect at MACVJ2?

A. I have no idea.

Q. Do you know if they were in effect before you
arrived at MACVJ2?

A. I do not know.

Q. Do you recall whether you ever asked Major House
when those criteria went into effect?

A. I do not recall asking him that.

Q. In the middle of Page 37 Mr. Crile says, "Was
that same part of this same process as you saw it the new
criteria which made it more difficult to increase the
enemy strength estimates?"

And in your answer you say that you had to have
"unquestioned documentation in unit holdings." Did you
really mean to say unquestioned documentation?

MR. BARON: Object to the form of the question.
THE WITNESS: I would believe I'm referring there, the word unquestioned, to the earlier comment of the criteria established for that. That the criteria established that those were the rules. If you didn't meet the rules you didn't make the scene. I don't mean to be so colloquial with that. If the rules weren't met then that issue, whether it be a ground unit or what, they were dealing with in Ground Order of Battle, then it was not accepted on their part.

BY MR. MURRY: (Resuming)

Q. Do you know if these rules as you put them for the acceptance of units as actually existing in-country were published anywhere? That is to say, did they exist in written form anywhere within that -- I'm sorry. Why don't I strike that and try to start over.

Do you know whether the rules that you've described on Page 36, the criteria for establishing when a unit could be carried is actually existing in-country, were they published in written form anywhere to your knowledge?

A. I feel that they were.

Q. Do you know where they were published?

A. The title of a document I do not know right now.

Q. Let me show you a document that I previously marked as Plaintiff's Exhibit 106.
MR. BARON: Just for the record, since I won't --
just for the record, since I was not at the deposition in
which this Exhibit was introduced. We represent that it
is a complete Order of Battle Summary for the months 1
November through 31 December 1967.

MR. MURRY: I will represent that.

MR. BARON: Thank you.

BY MR. MURRY: (Resuming)

Q. Mr. Cooley, would you look at Page 3 at the
bottom. Let me say this. Take as long as you want to
peruse the document.

A. Been a long time since I've seen one of these
babies.

Q. I want to, essentially, bring your attention to
Page 3, but take your time?

(Whereupon, a brief recess was taken.)

BY MR. MURRY: (Resuming)

Q. Do you see Item F on Page 3?

A. I do.

Q. And item F says Criteria for Order of Battle
Acceptance; does it not?

A. Correct.

Q. Would you take a minute and look over the items
numbered one, two, three and four, under the heading
Criteria for Order of Battle Acceptance?
Are these Criteria for Order of Battle Acceptance the criteria you were referring to in your discussion on Page 36 with Mr. Crile? That's Page 36 of Plaintiff's Exhibit 201.

A. Yes, most likely that it is.

Q. Now, isn't it true that —

A. May I just — when I said most likely. It is also very possible since this is a very large document for broad dissemination at the analyst's level, they may have had a more detailed break out of this. In other words, it may have said this with a lot more intelligence detail. I don't know, but that's a valid assessment on my part in my answer.

Q. Do you know whether enemy units that did not meet the Criteria for Order of Battle Acceptance listed in Plaintiff's Exhibit 106, but were known to be or believed to be in South Vietnam, were kept track of in the Tank?

MR. BARON: Could I have that back?

(Record read.)

THE WITNESS: I don't know the answer to that.

BY MR. MURRY: (Resuming)

Q. Do you know if units that were believed to be in South Vietnam, but did not meet the Criteria Battle Acceptance as set forth in Plaintiff's Exhibit 106, were kept track of in any other place within MACVJ2?
A. In South Vietnam being key words, I am not aware of any of those.

Q. The bottom of Page 36 of your interview with Mr. Crile, you say that they weren't able to do their job in terms of being able to produce a good seat of the pants subjective estimate.

Is it correct that the "they" in that sentence refers to the analysts and Ground Order of Battle we've just been discussing?

A. That is correct.

Q. Was it the assigned task of the Ground Order of Battle analyst to produce good seat of the pants subjective estimates?

A. It is the task of an intelligence analyst to take all of the information at hand, to put it together, to digest it, and I'm using putting together, to digest, to analyze in the same context I use this word seat of the pants. There's no -- and certainly on your Page 36 -- reference trying to suggest that this would be a fluke-type of a -- I think type of answer.

I am talking about analytical processes where the analyst puts together all of the information, calls in his boss or other analysts and says, "What do you think? Look at it. I think we've got something here," and they support it. They put it together, hash it over hour after
hour. Is this what was going on? See, I didn't work in
that shop. I do know what they were going through in
their frustration. I know what they would relate to me.
We had similar type of a problem between us, if you will,
in trying to do our job, to tell it like it was that what
was there, this is what's happening.

Q. And was that problem, that frustration you've
described, caused in large measure by these criteria for
acceptance that you've talked about on Page 36 of your
interview with Mr. Crile?

A. My answer is that it went way beyond just the
criteria.

Q. Were the criteria a part of the frustration?

A. Yes.

Q. I didn't mean to suggest that. I thought you
were saying that in your answer on the bottom of 36 that
the Ground OB analysts were engaged in any kind of less
than professional analysis.

What I was really asking you was, isn't it true
that Ground Order of Battle analysts were specifically
tasked with compelling evidence on enemy units in South
Vietnam, and following the criteria set forth in
Plaintiff's Exhibit 106? Was my question clear?

A. No.

Q. Maybe I would rephrase it.
Is it correct that the Ground Order of Battle analysts were required to follow the criteria that you described in the first part of your answer on Page 36 in your interview with Mr. Cril in the course of getting units accepted as being actually in-country?

A. I honestly don't know, nor did I have the time to sit down with them to go over their tasking and the detail that you're asking, to sit down for them to explain to me all the little nuts and bolts. I do know, and what I have stated is, they felt there were more enemy there in-country than they were allowed to put into the Order of Battle Summary. They felt strong that this wasn't a one time -- this didn't just happen one day and then it went away. That was continuing.

I have stated that in my affidavit from the beginning of my tour in Vietnam and continuing until well after Tet. Ground OB analysts related to me, signed a CICV. They attempted to add these to the Order of Battle that they had tried to change the strength of the units listed in the OB, that the MACVJ2 frequently refused to permit additions of new units or increase the strength of units already carried in the Order of Battle despite the strong belief of these analysts.

Q. Are you reading from the affidavit you signed on behalf of CBS, right?
A. I am.

Q. You're reading from paragraph 22 of that question?

A. Twenty-three.

MR. BARON: Object to the form of the question.

BY MR. MURRY: (Resuming)

Q. When you say there that the analysts felt that --

I'm sorry. I don't see here exactly what you said. But leaving that aside, isn't it a fact these analysts felt that there were more enemy in South Vietnam than they could document, using the criteria set forth in Plaintiff's Exhibit 106?

A. I am not saying that. I am saying that they felt there were more enemy in-country than they were allowed or permitted to put into the Order of Battle.

Q. Yes. And they --

A. You're asking --

Q. Aren't you also saying that they weren't permitted to put them in on the Order of Battle Summary because there were these criteria which we have discussed?

A. I am not saying that. I used the criteria only as one example, and I stated before that that is only -- could only be part of many more things.

Q. Now, I'm unclear. Are you saying that analysts in Ground Order of Battle told you that they had forgiven
units?

A. Had what please?

Q. That they had forgiven units of enemy, all the
documentation that they needed for that unit to meet the
Criteria for Acceptance in the Order of Battle? And
nevertheless, these units were for months not accepted
into the Order of Battle?

A. I am not saying that. I am saying that these are
Majors, my contemporaries. They were in charge of --
those corps Order of Battle analyst teams were telling me
that they felt very strong that they had units that they
could not add. They were not allowed to add that they
couldn't get J2-MACV to allow them to add to the Order of
Battle. That's what I'm saying.

Q. Did those analysts tell you why they couldn't get
J2-MACV to allow them to add these units to the Order of
Battle? First, I'm just asking you, did they tell you
why?

A. I don't recall if they did. I reiterate. I did
not of the time, given the nature of my duty and the
magnitude of what we were doing, to get into that type of
dialogue with them. I would direct you to the Norman
Houses and the Frank Harradas for that answer.

Q. Can you tell me, briefly, what the Estimates
Division of the -- I'm sorry -- the Estimates Branch of
the Current Intelligence Indication and Estimates Division was charged with doing, understanding that you didn't work there, but just based on your experience and understanding, generally what they were supposed to do?

A. We've established the estimates was the principal occupant within this area known as the Tank which was a special intelligence environment. Within that numbers of people obviously handled the security aspects of that type of documentation. The managing of the facility itself comes under some very, very strict rules. They were responsible for, in broad terms, dealing with their portions of this type of information as it came in. Obviously insuring that such people as Hankins and Gattozzi got it, that they knew who to go to to talk to to find that information.

And, to be honest with you, this is now 15 years, 16 years later. One of the largest things that that group did stands in my mind is this thing called the WIEU, which is the Weekly Intelligence Update. I'm close to it — is WIEU stands in my mind. Why does that stand in my mind? And I told this to General Westmoreland in the phone call number whatever it was with him. The production of that WIEU was nominal to describe that. How much time it took and how many people involved with it, I'll do it by relating to the way -- my point to General Westmoreland
I asked, do you remember the WIEU? It was the weekly -- he said, "Now, I'm not going to be pinned down to plus or minus a few days," but I said the information, the intelligence, that was produced for that WIEU which he participated in weekly, this was a very high level briefing. This was, you would expect the J2, the J3, the COMUSMACV, General Westmoreland, the principals, the information for that briefing was cut-off. There was a cut-off period of approximately a week to a week and a half before the briefing.

Why was there a cut-off period? Because they prepared slides, 35 mm. slides. The briefing officer, the number of briefings that were given to the assistant J3, the J3, the desk log was unequivocal. I had sat in on some of the prebriefings. I have sat in on the WIEU. The staging of that was extremely well done. I'm not saying that. I am saying that the amount of effort that went into it was staggering with number of people the resources required to do that.

The briefing officer, I can remember, would be standing -- and this is just to illustrate my point -- while waiting to go on, would be standing in his best starched uniform with another person fixing the cuffs that were, as we called bloused, tucked into the top of his
boots so that not a wrinkle would be shown, briefing.

Officers were relieved and fired for mispronunciation or for not having some very quick responses. That was the most undesirable job, I'm sure, in that entire country. I'm answering your question by saying beyond that I'm not -- I don't know.

Q. The word estimate is a term of art within military intelligence, is it not?

A. (Witness nods head.)

MR. BARON: Object to the form of the question.

Maybe you'll withdraw it, if I ask you to explain what you mean by term of art.

MR. MURRY: No. I decline to withdraw the question.

MR. BARON: I'm not asking you to withdraw the question. I'm asking if you will explain what term of art means.

MR. MURRY: No. I think --

MR. BARON: I don't think that term of art --

BY MR. MURRY: (Resuming)

Q. Are you familiar, when I say estimates is a term of art; do you understand what I am saying?

A. Would you rephrase? Just ask me the question again please.

Q. The word "estimates" is a term of art within the
discipline of military intelligence; is it not?
A. I can't concur with that, no.
Q. Okay. Is there a meaning within the discipline
of military intelligence that is applied to the word
estimate that differs from the everyday layman's
understanding of what the word estimate means?
A. I certainly believe that there is.
Q. What is that different meaning that's implied to
the word estimate in the disciplining of military
intelligence?
A. Intelligence estimates of a key word surrounding
them. And that is professionalism supported with
analysis, with mature intuitiveness. They are done in the
broadest sense by examining all information and all
intelligence available. They are done with a strict code
of honesty. I'll leave it at that.
Q. Let me ask you one more question and then I'm
going to go to a new area, so perhaps it would be a good
time to take a break.

On Page 37 of your interview with Mr. Crile, when
you say to Mr. Crile, and I quote, "You had to have
absolute unquestioned documentation to that in unit
holdings." Your phrase "absolute unquestioned
documentation" is a bit of an overstatement; is it not?

MR. BARON: Object to the form of the question.
THE WITNESS: You're taking the word out of context. In pages before it the conversation leads me to
give -- leads me into discussion where I use examples,
where I am stating some of the things that they would be
dealing with. The word example in that. I refer to such
words as -- or what I'm referring to -- some
documentation. I refer to whatever that combination may
have been.

BY MR. MURRY: (Resuming)

Q. So, I take it from your last answer that you
would not think -- you would not want someone to hold you
to the statement as a statement of fact that analysts in
MACV had to have absolute unquestioned documentation?

MR. BARON: Are you through with your question?

THE WITNESS: Would you repeat it please.

BY MR. MURRY: (Resuming)

Q. Is it correct, then, from what you've just
testified, that you would not want to be held as a
statement of fact to the assertion that analysts in MACV
had to have absolute unquestioned documentation to have a
unit accepted into the Order of Battle?

MR. BARON: Object to the form of the question.

THE WITNESS: The question is out of context. I
stand on my basic answer. The question of documentation
we accredited to the Order of Battle Summary, I
acknowledged that was written criteria. Statement of fact, my affidavit, my testimony states that the analysts for whatever reasons, and I don't know all of those reasons, could not get their work accepted to carry a unit, to increase the strength, whether they -- it's a moot point to what I am saying here. It's not moot to the issue, but to -- my point is, I'm saying fact, their talk with them frustration. We can't -- we feel they're -- it's not being accepted. It's not going forward.

BY MR. MURRY: (Resuming)

Q. I understand all of that, but you did say to Mr. Crile, quote, that to get a higher estimate through you had to have absolute unquestioned documentation to that in unit holdings. You did say that, did you not?

A. Stand on my former answer that it's out of context.

Q. I'm not asking you to explain it just now. I'm only asking you whether you in fact said that?

A. I stand on my previous answer. It's out of context.

Q. You don't of any doubt that you said what's written on this page, do you?

A. I have doubt as to the interpretation of your question.

Q. Well, we can get to the interpretation, but I'd
like to go one step at a time. You don't really of any

doubt that you said that to get a higher estimate through

you, you had to have absolute unquestioned documentation

to that in unit holdings?

A. What I said in context is, that you had to have

unquestioned documentation and you had to have other

things that I was not -- there may have been other

requirements, other documentation, other requirements that

I'm not familiar with, not being in that shop. I said

that throughout this particular part of the transcript of

that broadcast.

Q. But you didn't say all that here on Page 37 in

this particular answer, did you?

MR. BARON: Object to the form of the question.

THE WITNESS: I of answered. I feel I have

answered your question clearly.

MR. MURRY: I think you have too. Let's take a

break.

(Whereupon, a brief recess was taken.)

BY MR. MURRY: (Resuming)

Q. Mr. Cooley, would you turn to Page 31 of

Plaintiff's Exhibit 201, your transcript of your interview

with George Crile. And I'd like you to read into the

record your statement that begins middle of the page that

starts "If I can just go back to this point we
mentioned -- " And for my purposes, you can just read the
totality of your statement which continues and finishes
off on the top of Page 32. And I am satisfied with that
and after you finish reading --

MR. BARON: Up to the top of Page 32 or the
bottom of Page 32.

MR. MURRY: The top of Page 32 is all I wanted.

Why don't I ask you now if you want him to read more so
that he can just do it.

MR. BARON: For present purposes I don't need
anymore. Depending on where your questions are going I
can ask for more.

THE WITNESS: "Man: If I can just go
back to this point that we mentioned.

Figures being blocked and the
individual -- name -- Danny Graham that
was mentioned. From our perspective we
perceived Danny as that individual.

Looking back after a number of years and
maybe putting that a little -- in a
little different perspective that
headquarters itself was under very, very,
very strong pressures. Very strong
pressures of General Westmoreland who had
publicly announced that we were entering
into what he termed Phase IV. The light is at the end of the tunnel we're -- we're about to wrap this up and we're all going to be home for Christmas type of logic. All of a sudden now you have an element, bringing in higher figures into a system that is so wound up that says we're winning. You -- it was a dichotomy here that couldn't exist -- in the system. So there was a tremendous amount of measures and our higher headquarters was a headquarters dealing with the CIA team who was producing a set of figures and that was -- that was open hostility in terms of that we never did agree on our own figures except for the possibility later in the '68 time frame, a very short frame. Very short time -- excuse me."

Q. Now, I believe you said in your testimony yesterday, at some point, that General Westmoreland had publicly announced prior to the Tet offensive that we were entering into Phase IV. Do you recall that?

A. Yes.

Q. And who's the "we" that is entering into Phase IV
as you understood it?

A. We, the United States involvement in South Vietnam.

Q. Now, General Westmoreland sent you a number of documents after the CBS broadcast; is that correct?

A. Yes.

Q. And one of these documents was a transcript of a speech that he gave in November of 1967; is that correct?

A. Documents -- the two documents General Westmoreland gave me is an undated document -- excuse me. I take that back, entitled, "Notes for Talk with the President." Below that also used in briefing the General at House Armed Services Committee, November 1967.


MR. MURRY: Off the record.

(Brief discussion off the record.)

MR. MURRY: I'd like to have marked as Plaintiff's Exhibit 203, the News Release that Colonel Cooley just mentioned and described on the records as being issued by the office of the Assistant Secretary of Defense of Public Affairs.