MR. MURRY: Back on the record.

Q Mr. Cooley, I'd like to go back to conversations that you had with Mr. Criel and Mr. Adams prior to the taping of your CBS interview and ask you: Do you recall, in speaking to Mr. Criel and Mr. Adams prior to your interview taping, if they stated to you in words or in substance that they had accumulated evidence of illegal actions within MACV that had taken place in 1967 or 1968?

A (Pause) I think it was made very clear to me and they desired my contribution to the fact that there had been a withholding of information, a blocking of information, a failure to allow official publication of factual infiltration and strength figures as we have referred to.

In the sense that your question relates to being illegal, I answer the question that way inasmuch as one might construe my answer to be illegal in terms of the Uniform Code of Military Justice, illegal categorically in terms of integrity, or illegal in a pure, civil or criminal law type of environment. I think there's a difference to all of those.

Q Yes, I agree with that. And let me ask you first of all: Did Mr. Criel or Mr. Adams indicate to you during your discussions prior to the taping that they had evidence of acts having been taken in MACV in 1967 or '68 that, in
your opinion, constituted a violation of the Uniform Code of Military Justice?

MR. BARON: Can I have that question back, please?

(Record replayed.)

THE WITNESS: To the best of my knowledge, there was no implication of an attempt to prove or disprove a legal principle. What was clearly presented to me -- again, as best as I recall -- was a study, a special broadcast that was to be put on relating what we've been discussing here for the past now into our third day as to in the narrow sense that I was involved, high infiltration figures to the tune of twenty, twenty-five thousand or a hundred thousand over this pre-Tet time frame previously described not being accepted, good faith not being shown, and allowing those to go forward nor reasons being given for that. That's the context in which it was presented to me.

MR. MURRY: Q Did Mr. Criel or Mr. Adams relate to you in these pre-taping conversations any discussions that they had had with other individuals who were familiar with enemy order of battle in Vietnam in 1967 or '68?

A Yes. The -- and I obviously had asked who they may have talked to before I jumped into this. They'd talked to Bernie -- Bernie Gattozzi, for the record. They had not talked to Mike Hankins. They stated they had Jim Meacham's letters or had obtained those letters. They may have
outlined a few other people that they were going to talk to. 

At that point, best as I can recall, they had not 
talked to a lot of people. I found out to my dismay, then, 
that, I believe, Colonel Weiler had died. Subsequent to 
this, I did not know that.

In fact, part of what they were looking for were 
names of other people that may be involved that I may come 
up with to assist in this that I had worked for.

I felt again, though, that they were well prepared 

enough that they knew what our structure was and knew most 
of the people involved at that time.

Q: (Pause) I'm not clear from your last two or three 
answers whether Mr. Criel and Mr. Adams approached you for 
additional information to confirm what others had told them 
about events in 1967 or '68 or whether they approached you 
to see if what others had told them was, in fact, 
substantiated by your experiences. And I ask you if you 
could clarify which of those statements is true or neither 
-- if neither one is accurate.

MR. BARON: Object to the form of the question. I 
don't understand the distinction you're drawing and -- maybe 
the witness does.

THE WITNESS: Restate it, please.

MR. MURRY: I'll restate it.

Could I have read back the witness' second to the
last answer?

(The following questions and answers were
replayed:

"Q  Did Mr. Criel or Mr. Adams indicate to you
during your discussions prior to the taping that
they had evidence of acts having having been taken
in MACV in 1967 or '68 that, in your opinion,
constituted a violation of the Uniform Code of
Military Justice?

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context in which it was presented to me.
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"A. Yes. The -- and I obviously had asked who they may have talked to before I jumped into this. They'd talked to Bernie -- Bernie Gattozzi, for the record. They had not talked to Mike Hankins. They stated they had Jim Meacham's letters or had obtained those letters. They may have outlined a few other people that they were going to talk to.

"At that point, best as I can recall, they had not talked to a lot of people. I found out to my dismay, then, that, I believe, Colonel Weiler had died. Subsequent to this, I did not know that.

"In fact, part of what they were looking for were names of other people that may be involved that I may come up with to assist in this that I had worked for.

"I felt again, though, that they were well prepared enough that they knew what our structure was and knew most of the people involved at that time.

"Q (Pause) I'm not clear from your last two
or three answers whether Mr. Criel and Mr. Adams approached you for additional information to confirm what others had told them about events in 1967 or '68 or whether they approached you to see if what others had told them was, in fact, substantiated by your experiences. And I ask you if you could clarify which of those statements is true or neither -- if neither one is accurate.

"MR. BARON: Object to the form of the question. I don't understand the distinction you're drawing and -- maybe the witness does.

"THE WITNESS: Restate it, please."

MR. MURRY: Are we back on?

THE REPORTER: Yes.

MR. MURRY: Okay.

Q Let me try to rephrase the question this way, Mr. Cooley. Other than looking for the names of persons who may have been in MACV intelligence or known something about MACV intelligence in 1967 and '68 which you mentioned in your previous answer Mr. Criel and Mr. Adams were seeking from you, what was it, as best you can recall, that Mr. Criel and Mr. Adams wanted from you in your pre-taping discussions?

A Mr. Criel and Mr. Adams came to me both as researchers putting together 15 -- putting together a
program that looked back 15 years into history. They obviously had talked to a certain number of people. I will add three other people to those names that I had given you before since we had replayed the question of people that they had talked to in addition to Gattozzi and the Jim Meacham letters, as we'll refer to them. I believe, as I recall now, some two years later, they spoke to Fraboni -- I believe it was Mike Fraboni and John O'Donnell and Lieutenant McArthur all within the organization that I belonged to.

I believe I had stated a day or two ago, also, that they impressed me with the knowledge -- the amount of research that they had done; again, trying to imagine my surprise some 15 years later of two individuals -- Criiel, I, obviously, had never met before, and Sam Adams, knowing him by his reputation and, as I think I've stated, possibly seeing him at a briefing or two but not ever having been on a by-name-basis-with-him relationship; my surprise at their tremendous familiarity with the subject; the fact that they had talked to the other individuals and making a comment to me that they had been, in essence, in their research coming across my name for some -- at least, Sam probably made this comment specifically -- for some three years he had been coming across my name and was very pleased and very happy to finally have met me in person.
That first evening was a dialogue kind of back and forth feeling me out to see how well I recalled things. There were certain cues given to me, as you would might expect, such as, "How well do you remember what was happening?" "Tell us what happened with the Parkins firing" is a good example.

How they used that in their context and how they wrote it up was their business. Why they asked it and their modus operandi of integrating of what I said with other text, I have no knowledge of. I do know that in that specific case of the Parkins firing what I said and the way it came out on the program was certainly not altered. It was, in fact, correct. I would feel very, very certain that they substantiated that either before or after with the Hankins -- Mike Hankins who was there at the time, and Bernie Gattozzi who was there at the time, such as myself during that incident.

The -- I think there's a shade of gray in here to say whether they were asking me questions along only one track or another track. They were in a research mode trying to gather facts, trying to assess my knowledge. I certainly, at that time, was open enough to say, "I have good memory of this" or "I'm sorry, I don't recall." You might expect that given the significant time that has elapsed since events of 1967-68 and just entering into a
discussion as you and I might trying to go back to early
college days or something -- and I'm using that figuratively
-- that it's going to jog some thoughts into my mind to say,
"Sure, I remember that and by the way let me tell you...."
Subsequent to the broadcast, I had probably come up with
several more things. We mentioned a name the other day of
Colonel Crysanowski (phonetic). That is a very new name. I
couldn't remember his name as taking Colonel Weiler's place
as Chief of the Order of Battle Branch.

I'm leaving that as the answer to your question.

Q When you said a moment ago that Hankins and
Gattozzi were there at the time in reference to the Parkins
firing, did you mean to say that Hankins and Gattozzi were
in the room where the confrontation between Morris and
Parkins took place?

A I'm saying that Hankins, Gattozzi, and myself were
in order of battle studies. At the time I answered that
question, I didn't know whether they were physically up with
Colonel Morris or in that vicinity or not. I honestly admit
to you since reading Mike Hankins' deposition, he claims he
was in that office --

Q Well, he claims he --

A -- during that confrontation.

Q -- claims he was outside of the room where it took
place.
A I stand corrected. To me, "inside the office"
meant inside the Director of Intelligence Productions
office. It contained within it Charlie Morris' office, his
deputy, and then a very large open area which had his
administrative officer, several clerks, filing people, and
the like -- a very large area. That's how I defined
"office" to it. But -- and I say, that's a some -- I
readily admit, I read that in the Mike Hankins deposition
that he claims he was there. Not -- that notwithstanding,
changes nothing to my -- as to my recollection of that
incident.

It, again, was an extremely powerful,
psychologically-affecting thing that one tends to remember
after 14 or so years have passed; especially for somebody
fairly new on board as myself. Gattozzi, Hankins, and
Parkins were very close; they'd worked very close together
for some period of time before I arrived. They worked
together very close on producing the strength figures --
Gattozzi and Hankins, the infiltration figures which went
hand to hand. In fact, the methodology have been referred
to and Bernie very respectfully refers to it and he probably
would to this day as the -- if Parkins -- or the Parkins
methodology for doing this.

The comment I made on the show of the impact I'll
stand on and elaborate here even further. To substantiate
information and I do state and have stated that while I was not in that office where this occurred, let me portray for you very, very clearly the office that I describe, the office of the Director of Intelligence Production, which contained Charlie Morris' office, his deputy, and a large area. The offices in which Charlie Morris were was in, along with his deputy, were of a very thin-wall construction. In today's parlance, it would be known as a "post-and-panel construction." They did not even reach the ceiling. There was a -- some sort of a mesh or a filigree type of woodwork at the top which allowed airflow through. Certainly sound attenuation was nil. It was -- you could hear most all of what went on in his office without having to quiet the room down to listen. During that particular incident, and here again we'll just refresh what -- to make sure we're talking about the same thing, this was the incident in November where Colonel Parkins brought into Charlie Morris a report containing figures of enemy strength and infiltration that Charlie Morris refused to accept. That confrontation ensued into a conflict leading to Colonel Parkins' firing, terminating, being relieved from his duties. This is something that hasn't happened or doesn't happen in military terms very often. When it does, you can be sure of the impact and how it travels.

I believe I stated in my interview that that
information came back to CICV before Colonel Parkins returned. There were numbers of people who had heard that outside of the office, phoned that back down. It literally traveled like wildfire. I find it inconceivable to say that didn't happen. There was too much evidence, whether you say it's circumstantial or I physically wasn't there, and I believe it would be beyond reasonable doubt to say that that just didn't happen.

Q May I interject, and I want you to finish your answer, but just let me interject.

I didn't mean to suggest that (a) it didn't happen, or (b) it didn't happen because you weren't there. I just wanted to be clear when you said "there at the time" what you mean by "there at the time."

Please, go ahead.

A I understand.

Q Did you want to continue, because I made that comment in the middle of what you were saying.

A I -- let me just reiterate it since we've had a break in thought pattern here.

I have been asked this several times. There is obviously some question as to whether it happened or not. You're representative, the attorney from your office, Miss Embrey, showed me very briefly some number of months ago an affidavit purported to be from Colonel Parkins. I stand
here today under oath and present this testimony that I feel that the probability of that not occurring in the manner in which I stated is so low that it's beyond reasonable doubt to assume that it didn't happen.

Q You said a moment ago that in your discussions with Mr. Criel and Mr. Adams you were open enough to say whether you had a good memory about a certain event and open enough to say that you didn't recall a certain event, whichever was the case. Do you remember that?

A Yes.

Q Do you recall any events about which you told Mr. Criel and Mr. Adams you didn't have a very good recall?

A At this point, I cannot remember specifics. I'm sure there had to have been some areas getting into the technical details, getting into specific numbers, of some of the ground order of battle issues of which I have told you I not only don't have knowledge. That was not my responsibility, and I didn't have the time to get involved into that.

If I may jump ahead on your line of reasoning here, I again reiterate and would like to assure you that I feel comfortable, and I'm certainly not accustomed to having people put words into my mouth or suggest theses or topics or lines of discussion or a particular tack or tactic to take in answering questions.
I stand very strong on my integrity. I believe my record stands on that. To have been told what to say, how to couch it or otherwise, would violate that very seriously with me.

I'd like to also continue by saying, and I may or may not have said it at the beginning -- and I've been asked this and at times I've not been asked it. I offer this very straightforward.

Why did Russ Cooley go on that program -- a 20-year military career officer? And I told General Westmoreland this, and that's where I may have referred to it in this deposition. I did not do it to embarrass the United States Army or the United States of America. I did that as an act of integrity. I --

(Brief interruption.)

THE WITNESS: I did that as an act of loyalty. I did that as an issue that if I participated in a period of history that was -- that has been wrongly, inaccurately, and downright portrayed wrong in written documentation, I feel that I should come forward and state that.

That was a very major thing for me to do. I -- it's difficult to impart on -- either on tape or during this deposition, how powerful of an issue that was to me at the time to make that decision. I must admit to you, and I have in some of your previous testimony that I've received 99.999
percent support in this from former contemporaries in the military service going all the way back to former college classmates that I have not heard from for some 25 years on this.

I find it gratifying to even read in the Benjamin Report a number of testimony as to this program coming forth for the purpose of setting that record straight. I participated in a period of time where that wasn't correct. We felt very, very strong it wasn't being -- wasn't being reported correctly. I've stated here, and I'll state again: We felt history would never record this correctly. To be honest with you, we had gotten into a number of discussions questioning whether things going back to George Washington crossing the Potomac were ever reported correctly. Now, that may sound kind of a little bit of light humor, and I don't mean it in that sense at all. But, being part of something that was literally changed that we felt so positive and so strong about in what we were doing and not having it come out that way kind of shook a little bit of our roots in history.

MR. MURRY: Q I think -- let me ask you: Is it correct to say that, in sum, the events that took place during your tour in Vietnam had not been portrayed in what you considered an accurate manner?

MR. BARON: Object to the form of the question.
Are you going to specify --

MR. MURRY: Do you want a time frame?

MR. BARON: -- a time frame?

MR. MURRY: Specify a source.

Q Is it correct to say that you felt or you feel that the events that you participated in during your tour in Vietnam had not been, I think you used the phrase "accurately portrayed," in the documents or the official documents? Is that a fair summation of your views?

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

MR. MURRY: Q The only thing I want to find out from you, Mr. Cooley, is did you think prior to your interview with Mr. Criel and Mr. Wallace that the events of 1967 and 1968 in Vietnam had not been, to your knowledge, accurately presented to the public concerning Vietnam?

A I left that tour in Vietnam feeling that we may never be able to reconstruct accurately what happened pre-Tet in terms of what we were doing, and that is this enormous influx of some 100,000 North Vietnamese regulars, this order of battle or official documentation not limiting it to that showing considerably lower figures, that we may never reconstruct how the Tet offensive occurred. And I feel in my mind that there is no question -- no question of doubt in my mind that the Tet offensive occurred in great part, in great part, because these numbers were not
incorporated in official documentation where they should have been or could have been acted upon appropriately. I left Vietnam at that time with that feeling, with that disgust.

Q  And did you continue to feel that way even up to the time that Mr. Criel and Mr. Adams interviewed you for the CBS broadcast?

A  Let me put that in context. The mind never forgets some things. Some people say the mind never forgets anything. It's all there; it just has to be brought out.

I moved from there into an extremely dynamic environment, as I mentioned to you, into Thailand working the same problem but cross-border operations from, as I had stated, from the Thai side working with the Thais to set up their intelligence center, to work the insurgency in Northeast Thailand. I'm doing, per se, the same order of battle role following right on after this temporary duty I explained in November where I happened to see Gaines Hawkins. And that that particular temporary duty, which was a combat intelligence course, I happened to be -- happened to have 365 days of order of battle under my belt to be as well versed as the instructor and to be used on platform to do so for the younger officers in that program.

I moved into an extremely dynamic environment in Thailand coupled with its own frustrations, followed
immediately after some two weeks by the grace of the military system allowed me to bring -- to go back to the United States with my family, I went directly back into Vietnam into another extremely dynamic program. Those frustrations -- if you're asking me, did that stay with me and brood and brood and brood, it's there. It cooked there, but I didn't live with that, that didn't direct my life.

Q What I was really asking you was: Did you testify that when you left Vietnam you were of the opinion that the history of, let us say, intelligence, MACV intelligence, during your tour prior to Tet, had not been accurately reported as of the time you left Vietnam?

A I left with the feeling that not only was history not accurate but there was a deliberate action of blocking accuracy, of blocking the truth, that didn't get through. That's what made it distasteful. The word "disgust" amplifies those words. I can go over that and over that of my feelings of the -- what we did, we felt so strong. It was true. It was documented. We had the clearance. I opened with that this morning. We produced these numbers that were -- we were not told why these numbers were rejected -- these high, high, high infiltration numbers.

There were keystone people in that -- the Colonel Graham, the Colonel Morris, principally Colonel Graham. Why, in good faith, were those numbers not put into official
documentation? Why were they not in history? Why are they not now in history?

Q Did you see your interview with Mr. Criel and Mr. Wallace as an effort on your part to set the record straight as you saw it with respect to events in MACV intelligence in 1967 and 1968?

A Your question has a tone leading to martyrdom that I was a martyr. I just want to -- I just want to say by the -- no stretch of the imagination, I've already told you the impact, the great turmoil that this caused for me to even do that.

To answer your question: Yes, I felt that -- I felt that a duty, I felt that a responsibility to go on that program to assist. I never saw that program until it was aired. I even asked and was told, "Sorry, you can't."

I never knew how that would be put together. I put my trust in the George Criel of that program and that caused me some anxiety. Not because I didn't trust George Criel but because this was a very, very powerful decision, and it took what, some year and a half or longer before the program to even come out on the air.

Q Do you believe that in light of the fact that you say the record of events in MACV intelligence had not been accurately portrayed, at least in your view prior to your interview with CBS, did you feel that you had a
responsibility to make your comments as accurate as possible; that is to say, your comments to Mr. Crile and Mr. Wallace in the interest of setting the record straight?

A Categorically, I state that as I have answered questions in the three days of this deposition, to the best of my knowledge and with my integrity at stake, I answered those questions accordingly.

Q And you felt you had a responsibility to answer the questions accurately; is that correct?

A That is correct.

Q Do you recall reading the deposition of Bernard Gattozzi taken in this action?

A I have read that deposition very, very recently, just as of late, not any period of time ago.

Q Do you recall Mr. Gattozzi testifying about an incident in which there was a confrontation between Colonel Parkins and Colonel Morris?

MR. BARON: I will object to the form of the question.

MR. MURRY: You can answer if you can.

THE WITNESS: I recall reading in the deposition comments by Mr. Gattozzi relative to that same incident, that same Colonel Ev Parkins' firing. I can't quote you any unless we bring the document up, and we can go over those.
MR. MURRY: Q Do you recall Mr. Gattozzi testifying about a confrontation between Parkins and Morris other than the confrontation that, as you put it, led to Colonel Parkins being fired?

A Let me put it in its broadest sense. I can't be specific, again, as I stated before, I would highly expect Mr. Gattozzi or Bernie would say that Colonel Parkins and Colonel Morris had many confrontations. I suspect that I could say along with a number of people Colonel Morris had confrontations with a lot of people. Colonel Morris' basic nature was that of being very non -- he was a nonacceptive type of person. In fact, portrait -- portrait parlay of Colonel Morris, image relative to what I said yesterday -- and I want to make a point.

The point I said yesterday is: My philosophy as a professional intelligence officer for 20 years had been to always, always impart to my subordinates that I didn't know the answers. I needed their input. I relied on it. Never assume, because of my rank, I know more. When you're talking about intelligence -- and I'm obviously speaking aside from mature type of decision-making issues -- I think Colonel Morris portrayed the exact opposite of that. Colonel -- I would portray Colonel Morris as being very intimidating to a junior officer, intimidating to the point where it was downright uncomfortable to go up there and tell
him something different or something knew on it.

I sat in front of Colonel Morris before. I'm not -- maybe not as a principal, but I sure sat with Jim Meacham a number of times with him. Those were downright uncomfortable times. They were not conducive for good intelligence dialogue to express ideas or otherwise.

I -- back to your question. I suspect Bernie related and as I would, if you asked me, that there were probably a number of those. Colonel Parkins left shortly after I got there, after his relief (sic) -- being relieved from the position, so, I can't attest to anything more. I could attest in a hearsay sense that he sure tangled horns with Colonel Morris before that.

Q Do you know how long after you arrived in Vietnam Colonel Parkins left?

A Specifically, no. Shortly thereafter. Jim Meacham is basically who I remember as my boss.

Q Was --

A Jim Meacham fell right in behind Ev Parkins. My best guess of that it's typical is that they took Colonel Parkins, put him off into a "get your papers and things together," a little special projects office somewhere for a couple of weeks until they got him booked for an outbound flight out of country. I don't know that. I'm just saying that's probably what happened. He didn't sit in the office
with us. Certainly wasn't enough room, and I certainly
would have known that.

Q Did you happen to see Parkins, at any time, the
day before he left Vietnam?

A I don't recall. I may have. I do not recall.

What I do recall is great emotion around this -- emotion
because he was extremely well thought of. I know Bernie and
Mike Hankins were very disturbed about this -- very, very
upset. I don't know.

Q You said a moment ago that at Morris' office the
walls didn't go all the way up to the ceiling; is that
correct?

A That's correct.

Q And you could -- did you say you could hear what
was being said in Morris' office in an outer office without
the conversants in Morris' office even raising their voice?

MR. BARON: Object to the form of the question. I
don't think that's been testified to.

THE WITNESS: I think what I'd like to testify to
is that the walls were extremely thin, that there were no
acoustic qualities to them whatsoever, that -- and I don't
-- I couldn't get into a decibel transference issue with you
in technical terms. I'm saying that privacy was not what
the offices were designed for. They were designed to
shield, that's all. The acoustics were such that it was
very, very easy for sound to travel through these walls.

Q  It was fairly easy, was it not, for a person outside Morris' office to hear what was going on in Morris' office?

A  Absolutely.

MR. MURRY: Off the record.

(Brief recess taken.)

MR. MURRY: Q Mr. Cooley, I want to show you a document that's been previously marked as Defendants' Exhibit No. 39 (proferring document to witness). And I'd like you to take a minute to peruse that document and let me know when you have -- when you're done looking at it.

(Pause while witness complies.)

THE WITNESS: You don't want me to mark on this, I take it, do you?

MR. MURRY: It's already been entered.

MR. BARON: This is the document that was introduced at the Gattozzi deposition and --

MR. MURRY: It is a photocopy of the exhibit that was entered at the Gattozzi deposition, and --

MR. BARON: Well, in that case, he's not using the --

MR. MURRY: That's right.

MR. BARON: -- original and --

MR. MURRY: I, frankly, have no objection --

MR. BARON: -- if you have no problem --
THE WITNESS: Just for my -- it's --

MR. BARON: -- then you may mark on it.

THE WITNESS: -- 'cause it's so fuzzy, that's all.

MR. MURRY: Yes. You can mark on it if you like.

(Pause in proceedings while witness peruses document.)

THE WITNESS: Okay.

MR. MURRY: Q Have you ever seen a document of this type prior to today?

A I most likely have.

Q Is there a title name for this type of document that you're familiar with?

A I'm not -- I don't recall any familiar one. I'm sure there were a series of infiltration reports that went out with various titles and names.

Q If you'd look at the first page of the document on the left-hand side, do you see a column -- I think it's fair to say -- "acronyms"?

A If you're talking to the addressee as to who they would be going to?

Q That's my next question.

Is this list of acronyms the addressees of the report --

A Yes.

Q -- as best as you can --

A May I ask you, Mr. Murry, on the second page,
there appears to be an inconsistency -- not consistent with this document or the MACV order of battle summary that you showed me. I refer to Paragraph 2, Subparagraph B.

And you may clear this up for me. The way I read this document. Starting with the second line, "The accepted category includes one confirmed," and it defines that. Continues on with two probable, those personnel, and continues on.

Then it says, "The second category possible includes personnel who may be in," and it defines that.

Q Uh-hmm.

A Seems like we're saying there's two categories, yet they're listing -- they're listing two and then saying "second category."

That's not consistent with what we read the other day in the front of the order of battle. I -- and maybe it's just my memory at this point whether it's pertinent to the issue. We may want to open the first page of that up and go through those definitions; and if you're making a point of numbers in here, that may have pertinency as to how these are computed.

Q I'm not making a point of numbers yet, but if I can direct your attention to Paragraph B -- let me do this: Let me direct your attention, instead, to -- do you see Paragraph 3 on the document which is -- it begins with the
sentence, "Keeping the above limitations in mind, the current figures are..." Just before the numbers.

Q Okay. And then, do you see the line "NVN infiltration into SVN"?

Q And then the next line has "accepted"?

Q Well, I'm asking, do you see --

Q -- "accepted"?

A -- yes.

Q And then below "accepted," do you see "confirmed," and the word "probable"?

Q And then do you see there's a total?

Q And then continuing over to the right, there's another column for "possible"; do you see that?

Q And then there's another total.

Q Yes. Now --

Q I'm just going back to the definitions as is being, on the surface, inconsistent with the way they're
listed in the front of the order of battle summary.

I'm talking about in keeping with the above limitations, this is -- the amount of limitations are unbelievable in the document; incomplete, totally inadequate for determining trends. We emphasize it. It's the only information available at this time. It's probable they reflect only a part of -- this cannot be used as a basis for making valid projections -- this document, I'm not sure what you are trying to say. My God! If I had to make a decision on this document, I'd be in trouble.

Q (Nodding) You don't think that particular document is very useful for making --

A I think --

Q -- timely decisions or --

A I think the document is typical of what I've been pointing out to for three days, and that is, we're not getting what's happening into documentation. Why have we waffle-worded this thing so much. Why didn't we put in what we were producing? I don't see, regardless of our definition discussion right now, I don't see for the months in question of September -- or excuse me, October through December of 1967 those figures. These are the ones that are in contention right now. They don't read 20,000 or anything near that in those columns.

Q Let me direct your attention, again, to Paragraph
B. It's actually Paragraph 2-B, where there's a discussion of the accepted category versus the confirmed and the probable category. Do you see all that?

A Yes.

Q Okay.

A Are those the same words, the same definitions, that are used in the order of battle summary? I'm just going back to that again. I may be wrong, but maybe we should look at that.

Q Yeah. Maybe we should just -- let me show you Plaintiff's Exhibit 106 (moving around table to witness to proffer document), Page 4.

And under Page 4, there is a small letter "i" with the title "Accepted Infiltration," and I'll let you compare for yourself those definitions with the definitions in Defendants' Exhibit 39.

(After being reseated) But, I'd ask you, sir, not to write on that.

A I can appreciate that.

(Pause while witness peruses document.)

THE WITNESS: I --

MR. MURRY: Have you compared the --

A I have compared --

Q -- two definitions?

A -- two. There just appears to be some minor or --
let me just say, there is a discrepancy in wording between
"probable" as listed in the order of battle and "probable"
in the -- this particular message we're looking at.

Q Okay.
A I would say I feel that may not materially change
the definition, but there is a difference in wording on it.
That is not a verbatim word description of that at all.

Q Yes. The language used to define "probable" in
Defendants' Exhibit 39 is not verbatim the language used in
Plaintiff's Exhibit 106, but do you feel they're material --

A Materially --

Q -- the two definitions are materially the same?
A -- materially correct. Let it be known that the
order of battle summary says that other sources, and I
quote: "...from other sources which can be evaluated as
probably true."

Q Uh-hmm.
A This document ends by saying "...and supported by
other probable evidence."

Q Uh-hmm. As a former intelligence officer, do you
think it makes sense for an infiltration message such as
Defendants' Exhibit 39 to require the evidence for
acceptance of infiltration units set forth in Paragraph 2-B?

MR. BARON: Could I have the question read back, please?
MR. BARON: Object to the form of the question.

THE WITNESS: If I understood the question correctly, do I think it's appropriate that this document list the criteria for evidence? Is that how you --

MR. MURRY: No. That wasn't --

THE WITNESS: -- stated that?

MR. MURRY: -- the question.

Q The question was: Do you think that it is, as a former intelligence officer, it is a sound practice to require that the criteria set forth in Paragraph 2-B of this message, Defendants' Exhibit 39, be met before an enemy grouping is listed in the total of enemy infiltration?

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

When you say "total," there are two total listings in that monthly infiltration report message. Are you referring to a total including possible or --

MR. MURRY: Either or both.

MR. BARON: -- total accepted?

MR. MURRY: Either or both.

Q As I understand it -- maybe this will clarify. As I understand it, Mr. Cooley, in order for an enemy unit or group to be included in Defendants' Exhibit 39, the criteria set forth in Paragraph 2-B have to be met in some degree.

In order for this unit or grouping to be included in the
possible category, there as to be, as I read the document, has to be at least a report that can be evaluated as possibly true. In order for a unit to be included in the probable category, there has to be at least one source from the unit or group and it has to be -- that one source has to be supported by other probable evidence, and so on.

And what I'm asking you, is it, in your opinion as a former intelligence officer, a sound practice to require this type of evidence before infiltration units or groups are included in a message such as Defendants' Exhibit 39?

A Let me answer that bringing us back to the time frame in question, back to the war in Vietnam, back to the time that I was there, and back to the time that I was assigned to this task.

I've said this in several other ways, and I'm going to say it again that it's not correct if you allow the tail to wag the dog. If the criteria wags the dog, if the criteria wags the end result, if the criteria drives the end result beyond where your analysts are saying, it is not right.

How can you get so trapped into a set of rules and parameters that don't allow you to get what your people are saying through? This is a, I think, a major point in the theme of what I'm saying here. Why have we gotten so, so tightly surrounded for reasons that I've told you on and
over and over and over again that we don't know, okay, that
you can't get it through.

Now, I'm answering that in a broad sense, in a
macro sense. I'm going to couple it to the fact that, during
that time frame, I related to Mr. Hankins -- or Mike Hankins
had the evidence to justify what he was saying. I can't sit
here and tell you today whether we had one of this and two
of that. I'm not sure Mike could do that, either. But what
he had who -- we would tell people. He couldn't get that
through.

Do you know that maybe there's other things that
could be in within this category? A rational, reasonable
person could say, "These are guidelines." Good Lord! If
you've come up with something that says: This isn't a
captured document and this is not a PW report. But look!
Look at it. I'm being facetious. It's an inscription on a
tree that concludes or supports it, you've got to accept
that.

Maybe we got caught up in some of -- some of these
problems and that's what I'm caught up in the sense that why
aren't people accepting it? There's got to be some
unexplained but extremely deliberate act of this is not
getting through. We felt strong. Mike felt that. I can't
tell you. Rules are guidelines. Army regulations are
guidelines. Laws? Guidelines, for most part. Okay? And I
don't want to get into that, that side of it. That's not
what I'm trying to aim at in the point here on it.

You're asking me if it's fair.

Q No. No, I'm asking you --
A Don't -- no. I'm asking you -- you said, do you
think it's right to establish those?

Q Sound intelligence practice to require that --
A That's the problem with a lot of this whole
intelligence bit, okay, is what is sound. Intelligence, the
whole art of analysis, the entire concept of analysis is
you've got to listen to people. You've got to talk back and
forth. You can't have some arbitrary bureaucrat sitting in
a totalitarian position that says, "I don't believe it, and
it ain't going through." And then tell you it's not only
not going through but drop it down. And that's what was
happening.

I've gone over and over that. This is -- I make
it sound strong, because I feel strong about this. That's
fact, that's what happened during this time frame.

Let me bring in one other thing. Maybe we touched
on it.

The other day you asked about -- and I questioned
you back whether you thought -- whether I knew of anybody
else doing some other work in this area.

And I raised that issue -- infiltration analysts
and the like.

You asked me in South Vietnam -- infiltration into South Vietnam, and I came back and I said, "in South Vietnam?" question.

You said, "Yes."

It was another group. This was out country order of battle. That particular group had Colonel Don Press in it -- Colonel Donald Press. I've known him. Before my retirement, he and I worked together. We are near contemporaries and less than a year apart. As far as I know, he's holding an extremely high position in the intelligence community right now. I dealt with him every day.

There was a lieutenant commander sitting next to him and Lord knows, if Colonel Press doesn't come forward as an honorable man to say what was going on, maybe you can find that lieutenant commander that will.

Q Do you remember his name?

A I don't know his name. There was another captain, Talbott, that was in the office. Talbott was more contemporary with Gattozzi and Hankins, but I dealt with Press. I dealt with that Navy lieutenant commander. Why is that pertinent? Doesn't change anything that I'm saying, but it should substantiate this out country -- what was coming down that would -- that should be a very if -- I say,
if they're, and in my words -- terms, honorable men and Lord
help us, if they remember that time frame back there, it'll
support this.

If Colonel Press reads this deposition by Russell
Cooley, I encourage him as an honorable man to support this
issue.

Q Let me focus your attention once again on
Plaintiff's Exhibit 106, the November/December order of
battle summary.

Do you know whether the monthly order of battle
summary had wide distribution among United States government
agencies during your tenure at MACV?

A Objectively, I don't know the answer to that. I
notice from the cover of this that you retrieved it from the
library of the Army War College periodicals. Army War
College usually retains documents of some magnitude and
significance. I don't know what the distribution -- I
didn't ever see a cover letter, or at least that I can
remember, of this document going out. This certainly would
represent the official, and it has been referred in this
deposition from Day One as the official MACV order of
battle. I pointed out to you at that time, the other symbol
on the left-hand part of the page which was -- don't ever
forget that this was also the official order of battle of
the Armed Forces of the Republic of Vietnam.
Q. Do you know whether, let us say, division level commanders, combat units, in 1967 and '68 received copies on a monthly basis of that order of battle summary? And when I say "that order of battle summary," I mean the MACV/JGS monthly order of battle summary.

A. I don't know the answer to that, but I would like to state a personal subjective comment here. If they did, they probably thought it to be absolutely ludicrous.

Why am I saying that even if it's subjectively? Because I did have contemporaries, either at that time that I saw or otherwise, that felt a lot of this was plain old hogwash. I -- well, I can't give you specifics and names, some of this I would have it -- told me back and this probably -- Norm House and Heratta (phonetic) got into this a heck of a lot more than I did on it as to saying, "Are you guys crazy? I'm out there. You tell me that there's --" and I'll just very, very hypothetically say, "You're telling me there's 200 of them out there? Last night we carted that many off the barbed wire of the compound dead, and they're still coming tonight."

I'm saying that hypothetically, but that type of conversation happened, and I want to use that to illustrate a little of the answer to the question. I think there was a very general feeling that these figures were low. I sincerely mean that.
I didn't envy Frank and Norm. They had to put up with this on a daily basis. I guess they traveled around quite a bit. They had to face the people and tell them what was being held officially and the holdings on it.

Q Did you ever talk to a division level combat commander for the purpose of asking them what use they made of reports like that monthly order of battle summary?

A No, I did not. I was not a contemporary with the division level commander. I was contemporary with other division level friends and while we're talking I remember one which at the time was Captain Dan Larsen with the 25th Infantry Division in Cochin at the time. He wasn't a contemporary. He was captain -- we were maybe a year, year and a half apart. And that -- I'll put that name in. I haven't ever talked to him since or if it was, it was so long ago, no idea where he was.

That's the type of interface that I would have with people, either on a friend basis, social basis. The nature of my job, particularly, wasn't to go out and travel around the country during this tour.

Q Is it your testimony that, based on your experience and your conversations with people with whom you served in Vietnam, that the order of battle summary was not considered a reliable indicator of the level of enemy strength in South Vietnam?
Very frankly, the point you're relating to this document relative to its importance or its image with my contemporaries or lower in South Vietnam is insignificant compared to the impact that it had on decision-makers to superiors ahead of me, maybe to the President of the United States.

Are you telling me these figures didn't go up to the President of the United States or CINCPAC? We just looked at a list of distribution that, my Lord, says the top one is State Department Defense Intelligence Agency, CIA, Office the Chief of Staff, First Assistant Chief of Staff, Intelligence Department of the Army, on and on and -- there must be 30 of them on this list.

That's the danger of the document in the major context of what we're talking about is the decision-makers looking at this.

Q The major document is not with respect to the commandant in the field; is that --

A Well, don't take what I said out of context. I'm saying that we've substantiated there's controversy about the figures here. This was part of the theme of the program.

Q But didn't you just testify in substance that the -- from what you knew, the people out in the field didn't rely on that order of battle?
A No, I did not testify to that. I testified (a) I did not know if this was distributed down below to the levels that you defined of field commanders or not. I said if it was, and they saw that document, I gave you a picture of how they would react to it.

Q Okay.

A I did not affirm that, in fact, that had been distributed down to those levels.

Q And just so I'm clear, how would you predict that they would react to that document?

A I told you how they would react to that document. One of the largest issues, and still remains to this day, was the old body count issue, the losses issue on it. That gets into people that could give you some details that would be chilling. It would make some of today's movie -- have some phenomenal impact to it. I'm saying that there is a -- there was the field level portrayal of this was that they felt consistently that there was more enemy out there. They felt it. They didn't have to feel it. They're the guys living with it. They're the guys that are dying with it out there.

I don't mean to sound so dramatic about that. I mean that seriously. Fifteen years later, it's difficult not to let some of that creep into this.

I relate to that issue several friends of mine
and the like that were at the division and were at the combat level. I think if you want to get a good assessment of that, get some of them and talk to them.

Q During your discussions with Mr. Criel and Mr. Adams prior to the CBS interview taping, do you recall if Mr. Adams took notes?

A Prior to the taping?

Q Yes, in -- I think you testified that you had at least one discussion with Mr. Criel and Mr. Adams before you were taped.

A I would suspect that he did. I don't remember, but I would highly suspect he did.

Remember now, we were at dinner at Rickey's Hyatt House as I corrected myself in memory, the Rickey's Hyatt House table doesn't lend itself to laying out as we have here 9 yards of documents and papers and the like. And I'm stating that to image that this wasn't a grandiose display of hundreds of thousands of documents and big note pads. And I'm saying that it may be very probable, and probably was, that he took some notes.

Q Let me show you again Plaintiff's Exhibit 200, which we previously identified as, I think we can agree, notes written by Mr. Adams either relating a conversation with you or notes to himself or possibly conversations with other people (proffering document to witness).
And I suspect Mr. Baron is going to want to have you read more than I'm interested in; but what I'm interested in on this page is two notes that appear in the upper right-hand corner of the page which is Page 266 -- 36.

A  Would you like me to read that --
Q  Yes, please.
A  -- as best I can?
Q  As best you can.
A  "RC," I believe that word may be recall or re-all. The next symbol is either a three or a B, followed by either a 0, possibly an O, and then what appears to be an M with a line through it. Below that -- well, it's very difficult -- it's either often or after, and that's underlined; and my best assessment of the next word is Tet, T-e something, and I would, reading through it, it would be Tet.
Q  Okay. And could you read the other note, as best you can?
A  Below it?
Q  Yes.
A  Thirty, comma, there's one zero with something else following that, with a circle; it appears to be an O continuing into a letter that might be an F, continuing in script to a T, R, and the last could be an N, but there's certainly no drop in the center of that. It could be T, R, R, Tet.
From the first part of what I mentioned prior to the word "Tet," there's an underline and below it is 30 M, and there's a line through it.

Q Do you recall telling Mr. Adams or Mr. Criel -- I don't need you to refer to the document at this point. I just want to ask you a question independent of the document. Do you recall prior to your taping for CBS telling Mr. Criel and Mr. Adams that you recall 30,000-a-month infiltration after Tet?

A May I make that very clear. I stated during this deposition and showed you the document which was a Time magazine page contained in my scrapbook dated April -- we'll find the date here, maybe we should.

No, don't have the scrapbook.

Q It's not necessary for my purposes. I --

A It's April 1968. In my scrapbook is an article that relates to infiltration at 30,000 a month. I -- as we've already stipulated show -- shown -- have shown that scrapbook to Mr. Adams and Mr. Criel and that sticks in my mind. It sticks in my mind because, as I mentioned, it's so
uncanny that before Tet, we're screaming and hollering but we were -- what, again, I'm saying is the truth. Twenty thousand a month, plus or minus in there, but I'm standing on that 20,000 -- those high figures relative to what we're looking at as official and voila! After Tet, all of a sudden, the whole world is told there are 30,000 a month.

That's significant to us because we thought: My Lord, where have we gone? That's just a little bit of overreaction.

You know what? We thought 30,000 might have been a little high then. Might have been a little high to show a spike and in one month relative to what was happening before that. I don't know why somebody in the press didn't pick up on that and say, "Good Lord, people! What's happened during -- down the infiltration trail? You're telling us you won the war." This was a last-ditch stand. He's done it. He shot his wad. Those are quotes out of things we've read -- we've talked about.

Thirty thousand a month down the trail. Why didn't we stop the trail? Why didn't we?

One of the documents General Westmoreland or you sent me -- your legal organization sends me is General Westmoreland's press conference January 26, 1982. Quote: He's talking to Ambassador Bunker when he meets him in Guam in May 1967.
"Mr. President, I says," I quote, "if we do not
cut the Ho Chi Minh Trail and stop the flow of men and
material down the Ho Chi Minh Trail through Laos, this war
can go on indefinitely."

(Off the record.)

(Record replayed.)

THE WITNESS: I want to continue that by saying
the war didn't go on indefinitely. Why didn't it go on
indefinitely? Not because we didn't stop the flow down the
trail, because we chose to leave that country. And if --
you and I have probably seen pictures of that trail
afterwards. The extent of what that trail was allowed to
come down there certainly supports and, in my mind in
retrospect, very, very clearly a magnitude of 20,000.
Trail, my Lord, what a horrible, misleading word. The thing
was an interstate highway. It met and exceeded any of our
worst imaginations. Once we started receiving some of the
information that came from the North Vietmanese themselves
saying, "Look guys, this is what we were doing to you and
this is how it happened."

Okay. You can go off the record here if you want
on that point.

MR. MURRY: Off the record a minute.

(Discussion off the record.)

MR. MURRY: Q Did Mr. Adams or Mr. Criel, as best
you can recall, indicate any surprise when you mentioned to
them that you recalled 30,000 or more infiltration after Tet?

A Not to my knowledge.

Q Do you recollect one way or the other?

A I don't. I don't. Best answer I can give to my
recollection is that they didn't express surprise.

Q Do you recollect clearly discussing with them the
magnitude of enemy infiltration after Tet?

A I recollect, and I clearly recollect discussing
with them the Time magazine article and then subsequently
showing that to them.

Q Do you remember in your discussion with Mr. Criel
and Mr. Adams discussing the subject of Charles Morris'
position in MACV -- in the MACV organization?

A Not really. It's possible but I -- there's
nothing significant about it that stays in my mind. It's
possible.

Q Do you recall whether Mr. Criel seemed, in your
opinion, knowledgeable at the time of your pre-taping
discussions as to what position Charles Morris had held in
1967 at MACV?

A I certainly would say that, yes.

Q Your recollection is he -- Mr. Criel seemed
knowledgeable about that?
A My recollection is that Mr. Criel was very knowledgeable of the topic he was dealing with.

Q But I --

A He had done a considerable amount of research.

You're asking me for a subjective judgment on him, and I gave you that while I don't remember a specific discussion on it. My best answer as I gave you before is -- my best answer is: I feel he knew what Colonel Morris' position was within the structure, yes.

Q Did you feel Mr. Adams knew what Colonel Morris' position was --

A I do.

Q -- within the structure?

MR. MURRY: Let's go off the record.

(Discussion off the record.)

MR. MURRY: Let the record reflect that counsel for plaintiff has concluded his questioning for today. And let the record also reflect that, as Mr. Cooley stated earlier, due to the terms of the stipulation he signed and counsel for plaintiff signed and because of his own personal commitments, we will not be able to continue the deposition tomorrow.

Let me further state that counsel for plaintiff has not concluded his questioning and the deposition will be rescheduled with every effort made to choose a time and
location that is most convenient for Mr. Cooley.

(Whereupon, at 3:15 p.m., the deposition was continued sine die.)

---oo0o---

RUSSELL E. COOLEY

SUBSCRIBED AND SWORN to before me this__________ day of

_________________, 19______.

NOTARY PUBLIC

My Commission expires____________________.
STATE OF CALIFORNIA ) ss.
COUNTY OF SAN MATEO )

I, ANN L. MOON, a Notary Public in the State of California, hereby certify that the witness in the foregoing deposition was previously duly sworn to testify the truth, the whole truth and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and place therein stated; that the testimony of the said witness was reported by me and was thereafter transcribed by me into typewriting; that the foregoing is a full, complete and true record of said testimony.

I further certify that I am not of counsel or attorney for either or any of the parties in the foregoing deposition and caption named, or in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 21st day of [Legible handwriting], 1984.

Notary Public in and for the County of San Mateo, State of California