MR. MASTRO: I would like to note one other thing. Is this -- or perhaps you can clarify it for me, Mr. Riese. Is this the document that also goes on to discuss Saigon and what is anticipated will occur in Saigon?

MR. RIESE: I am looking through it. I don't believe this is that document. This, unlike the other cables that you might be -- that you are familiar with, such as the December 20th cable, is typed differently and it's the type of cable that on the right-hand margin has all the blocks for local distribution and instead of -- also has at the bottom a place for signature, unlike the other cables, and the subject of this cable says, "Visit to observe first infantry division defensive positions."

MR. MASTRO: You have not been doing this as you have conducted your examination. Some of these documents, however, have been previously marked with some sort of identification as a plaintiff's exhibit or some sort of exhibit. If you are going to continue to refer to documents, especially since we don't have them here, it would be especially helpful if the record reflected what documents you are purporting to quote from, if there is such an exhibit designation previously.
MR. RIESE: What I can do is later on take a break and go down and try to find these. The copies of the documents that I have aren't marked, so I don't know offhand, other than the one that I did read on December 20th. I happened to notice the plaintiff's exhibit number on that.

MR. MASTRO: I do want you to get on with your examination. I did not realize you would be quoting bits and pieces from so many documents. We are somewhat at a disadvantage here, obviously, in Tucson, since you have chosen not to come out here and be with us. But why don't you proceed with your questioning and maybe we can expedite this thing.

Q. My last question for you, Colonel House, was whether or not the observations described and expressed in what I have read to you from this document comport with your recollection of the time.

A. Yes, it does reflect fairly well my recollection of what was happening at the time. I also recall that it was the general feeling of the MACV staff that this was sort of the last-ditch effort by the enemy for their -- to achieve their political objectives as to obtaining a more favorable and stronger position in the "upcoming peace talks" that we perceived that they would
do or the MACV staff perceived that they would do; and that this was their last-ditch effort and would, with this last effort, totally deplete their manpower and their resources, supplies to conduct any type of a major offensive.

And I think that this type of wordage in this document, combined with the others that you have read to me, totally reflects the absurd position that the MACV staff had taken, which was that the enemy was not capable of reinforcement, was not capable of bringing in new units, and for anything to sustain a war any further than just reaching this immediate objective of a political strength position and then they would sue for peace.

So that's -- all that did is reflect what their position was, that we have already won the war of attrition, because this was their last effort.

Q. Do you have an opinion as to who won the Tet Offensive as military -- from a military standpoint?

MR. MASTRO: Objection to form.

A. I would reflect back to General Giap's comments that even though they did not -- they did not perceive that they won militarily all the objectives that they had established, they did win the psychological and the political objectives. And I think
it's academic as to who won. Certainly the soldiers that died on the field did not win, and there were many, and there were still a lot of troops that were apparently unprepared and the strength reports that we were reporting were temporarily ignored.

And I believe had they not been arbitrarily ignored, had we, through our order of battle efforts, been able to recognize the build-up in strength, we would have been on a much higher alert when Tet started than we were.

Q. When you say higher alert, what kind of information would you have been given as a noncombat soldier concerning whether or not you were on alert?

A. Well, I certainly wouldn't have let the troops, of which I was one of them, feel that by lack of an alert order, by the lack of issuing of protective small arms, was evidence that there was no full alert.

Q. When would you have put the troops on alert, Colonel House?

A. Because I do not have or was not at that point privy to all the information from all the sources, I think it's difficult for me to speculate as to what I would have done had I been in General Westmoreland's position.

Q. Let me continue to read from paragraph two
now of the last document that I was reading from, the
January 9th, 1968 cable from General Westmoreland. It
states, "This change in enemy tactics places a premium
on good defense. It is obvious to me that we shall
suffer higher casualties in those positions where the
defense is not at maximum readiness status. The
implications are clear. It is incumbent on all
friendly forces to make sure they have the best
defensive positions possible, to include field
fortifications with adequate overhead cover, warning
devices, communications, an integrated fire support
plan, and reaction forces prepared to reinforce the
position being attacked, or to pursue the withdrawing
enemy following the attack."

Colonel House --

MR. MASTRO: Mr. Riese, before you proceed, I
do want to clarify, first of all, have all of the
documents you are reading from today been made available
to counsel for defendants previously?

MR. RIESE: Yes, they have.

MR. MASTRO: Again, let me state for the
record, we do not have this document here. Therefore,
neither I nor Colonel House has been able to read it in
its entirety. Therefore, I ask for a standing objection
to this entire line of questioning that would be based
on the document you are now reading from.

MR. RIESE: You have a standing objection.

Q. Let me first ask, on this document it says from COMMUS MACV and to VMAC, V as in Victor. Do you know what VMAC stands for, Colonel House?

A. I am sorry. I do not.

Q. Do you know that General Westmoreland on or about January 9th, 1968, advised these recipients of this cable that they should take the precautions that I have just read to you?

MR. MASTRO: Objection. Objection to form.

A. Could you enlighten me as to who the recipients were?

Q. My understanding of VMAC would be those people in the military assistance command. I am looking to see if there is some greater explanation. I don't want to represent something that I am not fully certain of at this time.

A. Well, since you are not aware as to who the recipients are, I think it's quite unfair to ask me if I am aware of if the recipients got the information.

Q. Let me ask you, have you ever heard General Westmoreland on or about January 9th, 1968 express the sentiments he states here in paragraph two of this cable?
MR. MASTRO: Objection. Objection to form.

A. No. I have not heard -- I did not hear him on or about the 9th of January, 1968 express such sentiments.

Q. Colonel House, had you ever had any discussions concerning the preparation for the Tet Offensive with General Westmoreland?

MR. MASTRO: Objection to form.

A. I would like to take that as a compliment, that General Westmoreland would -- that you perceived that General Westmoreland would ask me, as a Major, what my impressions were, but I can state precisely and exactly that I have never had a discussion personally with General Westmoreland at any time.

MR. MASTRO: Mr. Riese?

MR. RIESE: Yes.

MR. MASTRO: We have been going for a considerable length of time in this latest session. Where do you stand on your examination? It must be getting pretty late in New York, as well, or Washington, where you are now.

MR. RIESE: Let me just take a look at my notes here before I answer that.

I would say that I might have another area to cover. It may not take too long. But what I would
propose is, given the circumstance with respect to not
having the documents, as you have objected, before you,
so that the witness and yourself, Mr. Mastro, could
review them, I would want to leave the deposition open
for a continuation, at such time when these documents
might be shown to the witness and questions or
clarifications pursued at that time, and suggest that
that could occur should Mr. House come to the trial or
such earlier time as might be convenient to the parties.

MR. MASTRO: Mr. Riese, that is a totally
unacceptable solution. You have been allowed to proceed
with the questioning on the documents and to read Mr.
House the section of the documents you choose. As you
know, an objection is simply a reservation of my rights.
If, when I have a chance to review those documents, I
feel that you have done something out of context or
quoted something out of context, I have simply preserved
my rights. If you have not done that, as to my standing
objections, then clearly your questions will withstand
any objection.

You have been allowed to ask all the
questions you want. This was a procedure that you
people suggested and we want to conclude the deposition
now. If you only have one more area to get into, I
would suggest that you ask your questions in that one
area and we conclude. It sounds like you are very close
to concluding and you have had the opportunity to ask
all the questions you wish about these documents.

I would urge strongly that you finish the
deposition, since you were so concerned about how this
deposition would be done and completed. I appreciate if
you would complete it. We have gone for quite a length
of time and since you have indicated you have one more
area to go into, perhaps we could take a short break now
and then conclude this thing.

MR. RIESE: Well, I am willing to go ahead
with the short break. Again, I am not sure I can accept
representations as to whose suggestion this particular
procedure was, given, again, my understanding that it is
a compromise based on correspondence concerning the
objection about the scheduling of this deposition.

MR. MASTRO: You can't deny that you
recommended this approach during those discussions. You
recommended the approach that counsel for plaintiff
participate by phone during those discussions that you
have just mentioned. Isn't that correct?

MR. RIESE: I certainly don't have any
information to that effect personally.

MR. MASTRO: I suggest you ask Mr. Burke.

MR. RIESE: The fact that this is how we were
MR. MASTRO: You were instructed that this was how you were to proceed, I gather.

MR. RIESE: That is correct.

MR. MASTRO: Obviously it would be preferable to conclude the deposition, to conclude it this evening, if possible. And if your only reservation is because of standing objections that you granted me over reading documents, I would simply note that you have been allowed to ask all of your questions regarding those documents, and I would further note that you were welcome to get on a plane and come out here and join us tomorrow morning.

But we are anxious to conclude this thing. I want the record to reflect that we are prepared to conclude the deposition now, and I would assume that you would also want to conclude the deposition, if possible. Is that correct?

MR. RIESE: I would say it's possible, but I am reserving the possibility of keeping the deposition open.

MR. MASTRO: Well, you have stated on the record already that you only have one more area to cover. So I think there is a very strong possibility we can finish tonight. So why don't we take a short break
and then we will resume.

MR. RIESE: I will make a statement at the end of my examination and you can make a statement at the end of the examination, and we will just have to let the chips fall where they may in terms of what that all means in terms of whether or not the deposition is formally concluded.

MR. MASTRO: Are you now going to conclude your examination and then make a statement?

MR. RIESE: I am now going to proceed with the questions I can accomplish this evening under these circumstances.

MR. MASTRO: Mr. Riese, you can ask the witness any question you would like, referring to any document you would like. No competent attorney would not preserve his or her rights by objecting to such questioning until the attorney has a chance to review the document. That is not a reason not to conclude this deposition.

Now, my question to you is, since the hour is late here and is late in Washington, are you going to conclude the questioning that you feel you have at this time?

MR. RIESE: I will conclude what I can accomplish at this time. And I will only say further,
Mr. Mastro, that the arrangements for the taking of this deposition were made in a compromise situation based on objections of plaintiff's counsel as to the timing of this with respect to other West Coast trips that were coming up. It was apparently agreed between counsel for the parties that we proceed today, rather than cancel this deposition for today, by my participation by telephone. There was nothing in any understanding that I have that waived plaintiff's counsel's ability to reserve the opportunity to question Colonel House in person at a time other than this date that was convenient to both parties.

Again, the question that has been raised was one of convenience of scheduling, given this week and the obligations of plaintiff's counsel, and this solution was arrived at in order to permit this procedure to go on today. I am simply reserving what I don't think was ever waived by plaintiff's counsel, and that was an ability at some time to face the deponent in person during deposition should counsel feel that necessary. I am not saying this is absolutely necessary. However, I have made my statement as to what I believe the state of this deposition will be at the conclusion of my questions this evening.
(A short recess was taken.)

MR. MASTRO: Mr. Riese, I just want to
clarify a few points before we proceed. Are you
indicating that it is your intention to keep this
deposition open until you can question Colonel House in
person? Is that what you are saying?

MR. RIESE: I am saying that I am reserving
the ability to close this at some future time upon a
decision as to whether or not it will be indeed
necessary to face Colonel House, since it is not my
understanding that plaintiff's counsel has waived that
opportunity.

MR. MASTRO: Mr. Riese, we will all be here
tomorrow. If you have further questions, I suggest you
come out here on a plane tomorrow and we will finish it
tomorrow. Are you prepared to do that?

MR. RIESE: I am not prepared to do that for
the same reasons that were stated in prior
correspondence concerning this deponent.

MR. MASTRO: Well, we had an agreement, as
you stated on the record, an agreement that I understand
was proposed by Mr. Burke that you would participate in
this deposition by phone. You have, in fact,
participated in this deposition by phone and we would at
this point expect you to conclude your examination, since you have had the opportunity to ask any questions you wish.

Are you telling me you are not prepared to conclude the deposition?

MR. RIESE: I am not prepared to close the examination and waive plaintiff's counsel's opportunity to examine Mr. House in person.

MR. MASTRO: You had the opportunity to examine Mr. House in person and you haven't shown up. You agreed to do the deposition by phone. Are you telling me that that agreement is no longer in effect?

MR. RIESE: I am telling you that that is not the nature of the agreement, is what I am telling you.

MR. MASTRO: What was the nature of the agreement?

MR. RIESE: The nature of the agreement was as a compromise to objections by plaintiff's counsel to the conduct of this deposition on this date for reasons that were outlined in correspondence between the parties. And that as such compromise, it was to afford defendant's counsel the opportunity to begin this deposition to afford plaintiff's counsel an opportunity to participate by phone, so that the deposition may, indeed, go forward. But at no time was there an
agreement, to the best of my understanding, that it waived a right or any opportunity that we might have in the future to see Mr. House under oath in deposition face to face and to reserve for that purpose that this deposition not be closed.

MR. NASTRO: Mr. Riese, given my understanding of the agreement between the parties, your statement is revisionist history. However, leaving that aside, I do want to continue. Will you conclude the questioning you have for today within the next hour?

MR. RIESE: Yes.

MR. NASTRO: You will? Let us conclude. If you have a statement to make at the end of that time, please do, and then I am sure that if you have such a statement, I may well want to make some comments myself. But why don't you proceed with your examination, as long as you can assure me that you will complete it within the next hour. Can you give me that assurance?

MR. RIESE: I give you that assurance, that I will complete my examination of questions that I have for this evening within the next hour; not, in saying that, prejudicing my earlier statements about reservation for the purposes I stated previously.

MR. NASTRO: Why don't you continue, so that we don't take up any more of the witness' time.
Q. (By Mr. Riese) Colonel House, did you have any responsibilities while you were officer in charge of the I Corps Ground Order of Battle to personally make any estimations of enemy infiltration?

A. I am trying to figure out precisely the question. Was this -- does this have to do with the numbers of infiltration, how they were getting there, or just could you elaborate, please, on the context of infiltration that you would like for me to respond to?

Q. Let me first ask you whether or not the term infiltration describes a definite type of enemy movement in your experience in Vietnam?

A. The context of infiltration that I perceive from your question has to do with the movement of replacement and the movement of new units intact from North Vietnam, generally through Laos, into South Vietnam.

Q. Did you ever make estimates of the number of troops, either replacements or units, being infiltrated into South Vietnam while you were I Corps Order of Battle, Ground Order of Battle officer in charge?

A. We did not make studies of ground order of battle infiltration. That was done by the Infiltration Order of Battle studies branch at CICV. We did, however, determine what units and infiltration troops
entered the I Corps order of battle as it affected the
ground order of battle posture of the enemy in I Corps.

Q. Let me read to you from another document that
has been marked as Defendant's Exhibit Number 102, which
was marked in the Davidson deposition, and it is
entitled Intelligence Warning of the Tet Offensive in
South Vietnam. It is a document of nine pages in length
and the first page states under the heading Procedures
in paragraph one the following:

MR. MASTRO: Mr. Riese, before you continue,
who wrote the document and to whom was it sent?

Q. The document, as I have testified, marked as
a Defendant's Exhibit, does not show any routing, nor
does it show any kind of signature. However, the first
paragraph, I believe, will describe the nature of the
report and that's what I would read into the record now.

MR. MASTRO: What is the date of the
document?

MR. RIESE: There is also no date on this
document, as marked.

MR. MASTRO: Reading the document in its
entirety, can you make a representation to the witness
as to whether the document is a pre-Tet document or a
post-Tet document?

MR. RIESE: It is definitely a post-Tet
MR. NASTRO: Are you able to make any representation as to how much later after the Tet Offensive the document was produced or written?

MR. RIESE: Let me see if I can, paging through.

Yes. In paragraph two it says, "Representatives of the group from CIA, DIA and the Joint Staff visited Vietnam from 16 to 23 March." It then goes on to describe several other actions, so it would be my representation that this report was prepared after the 23rd of March, 1968.

MR. NASTRO: Why don't you proceed?

Q. The first paragraph states, "A working group has been formed under the chairmanship of R. J. Smith, on which CIA, DIA, INR, NSA, and the Joint Staff are represented. This group has compiled dossiers on the raw intelligence information and intelligence summaries and judgements received in various U.S. headquarters before Tet, with emphasis on the period 15 -- 30, January, 1968, and on the finished intelligence disseminated to senior officers of the government as a result."

In the second paragraph, which I have already read the first sentence, but I will read again,
"Representatives of the group from CIA, DIA, and the Joint Staff visited Vietnam from 16 to 23 March. They were joined there by observer's from CICPAC, MACV and the CIA station in Saigon. In addition to collecting a large quantity of pertinent documents, the delegation received briefings and conducted interviews, both in Saigon and the field, with many senior officials, U.S. and Vietnamese. On the U.S. side, members of the delegation talked to Ambassador Bunker, General Westmoreland, General Abrams, Ambassador Comer, Lieutenant General Cushman and General Rossan, Major General Peers, Major General Eckhardt, and the commanding generals of the First Marine Division and Fourth Infantry Division. They also interviewed the G-2s of I and II, field forces and the G-w of III Marine Amphibious force and the G-2 advisors and the CIA regional officers in all four corps tactical zones."

It continues in that paragraph. I will skip on to read paragraph 10 of this document appearing on page five thereof.

Under the heading D, Response to Warnings, paragraph 10 states, "Nevertheless, Washington and Saigon were, as stated earlier, fully aware that the enemy planned a major offensive, probably coordinated attacks in northern I Corps" -- or in this instance
being abbreviated CTZ, so really meaning corps tactical
zone — "at Docto in the highlands of II CTZ, and
towards Saigon from virtually all sides in III CTZ. As
early as 10 January, General Westmoreland had canceled
certain planned operations in northern III CTZ in order
to reposition U.S. forces nearer to Saigon. Subsequent
days he issued a series of warnings to his commanders,
and to the U.S. mission, that the enemy was preparing to
attack. Although he had not originally expected attacks
during Tet, he recognized the significance of the
premature attacks in MR5 and on 30 January notified all
his commanders to expect attacks that night. As a
result, all U.S. units were fully alerted, although in
most cases they did not have time or information to take
offensive measures against the enemy prior to the actual
attack. All Seventh Air Force bases were put on maximum
state of alert, and the Seventh AF director of
intelligence testified that this step, 'Saved Tan Son
Nhut.'" The paragraph continues as follows: "Perhaps
the best evidence that KOMES MACV's measures were
effective and that the enemy's strategic intelligence
was faulty is that, with the exception of Hue, the enemy
failed to hold any of his major military objectives for
a significant period of time."

My question, Colonel House --
NR. MASTRO: Mr. Riese, again, can I have a standing objection to any questions based on this document, given that we do not have the document here in Tucson and, therefore, cannot evaluate whether these comments are in proper context at this time?

MR. RIESE: You have your standing objection.

MR. MASTRO: I would also like to note for the record, to clarify, that this is just a reservation of my rights and you, of course, are free to ask all questions you feel are necessary relating to this document and you are free to ask them now and today. Please proceed.

Q. Colonel House, have you ever been made aware that a working group composed of representatives from the CIA, DIA, INR, NSA and the Joint Staff issued a report which contained the statement in paragraph 10 that I just read to you?

NR. MASTRO: Objection. Objection to form.

A. No, I was not aware of such a study group. And understanding that this is a post-Tet Offensive study group, and I have not been privy to the entire document, which is undated, which is -- which seems very strange to me that any summary document of this importance would not be dated, gives me a little question as to its credibility.
I would like to respond, however, that their emphasis is on the warning and the timeliness of the warnings of the Tet Offensive. And they completely ignore in this paragraph the built-up strength that the enemy had, the new units that were in place in country that are true, the psychological victory that the enemy obtained. And, I believe, if I recall, in the first part of the paragraph you talk about, you read to me that there was senior officials from these various groups. And I would state that that reflects nothing more to me than a whitewashing, that they all sit around and tell each other that it was okay, that they really had done something, when they really had not.

It just supports my strong feeling that something very definitely was wrong in the senior MACV staff and that they had to come up with the right type of words after the offensive to clean their record for being blatant and criminal in their ignoring of the vast amount of evidence that was available and briefed to them and provided to them, as to the strength of the enemy prior to at the time.

Q. Can you tell me, Colonel House, why the CIA, DIA, INR -- do you know what the INR is?

A. Would you tell me, please?

Q. It's an intelligence arm within the State
Q. And the NSA, do you recognize the NSA?
Q. Do you know why those agencies would participate in what you have just described as a "whitewash"?
A. Well, if these were senior officials, they were only -- they only obviously were privy to documentation and evidence that was provided to them by the senior MACV staff. And the credibility of this document I would certainly question and I hope that others have. But that's just my feeling on it. It seems very suspicious to me.

Let me add that they did not ask me -- they did not, to my knowledge -- and I was in Phu Bai at the time -- and it was -- to my knowledge, they did not ask any of the working analysts in Phu Bai to make input to this blue ribbon panel.

Q. Would any of the working level analysts at Phu Bai have known what warnings General Westmoreland would have sent to his commanders in the field?
A. Probably they would not know of the warnings, but they certainly were aware of the lack of acknowledgement by the J-2 staff as to the strength of
the enemy.

Q. When you say the strength of the enemy --
strike that. You spoke in your testimony earlier today
about information received from electronic sensors along
the trail. What trail were you speaking of?

A. I was speaking of the Ho Chi Minh Trail.

Q. Do you know when those electronic -- can you
describe what those electronic sensors picked up?

A. I have never seen the electronic sensors. I
was just privy to summary briefings in the Tank as to
the results of the sensors. But the -- as I recall, the
sensors picked up vibrations in the earth as that would
be produced by the movement of people or trucks or even
animals. And it was -- when these reports were provided
in the briefings, as to an estimate of the movement of
people past the sensors, the automatic disregard for
this type of information was attributed that obviously a
large percent of these sensor-derived reports were
produced by animals.

So if the report showed that there could have
been a movement of "a thousand people," they would say,
"Well, it's probably only 200, because you had all these
animals that were moving around on the trail at the same
time. Of course, obviously, you would not have a
thousand people moving." And this was just another
means of excusing by the MACV staff of indications that were available to them as to the build-up in South Vietnam of the strength which, in fact, was proven during and after the Tet Offensive.

So the indications were there, the means were there to support the build-up, which, in fact, happened and were proven after the Tet Offensive. But these indications and reports and studies were ignored by the senior MACV staff.

Q. When you say proven by the Tet Offensive, Colonel House, are you saying that after the Tet Offensive there was evidence in captured documents as to this build-up, to use your term?

MR. MASTRO: Objection to form.

A. Yes. The evidence, not only captured documents, but POWs and in their interrogations substantiated the strength build-up, which supported the offense in its entirety, and over the length of time that the MACV command staff did not recognize prior to Tet.

Q. Do you know whether or not these captured documents and POW reports after the Tet Offensive were ever used to update MACV infiltration figures for the if all of 1967?

A. Since I was in Phu Bai at the time and very
busy on studies that affected I Corps only, I cannot
state as to what was done by MACV after the Tet
Offensive to rewrite the ground order of battle summary.

MR. RIESE: I strike the answer as
nonresponsive to the question.
I am pausing for a second, because I just
lost my train of thought.

Q. Do you know when these electronic sensors
were placed?
A. No, I am not aware of the length and depth of
the study and when and as to the placement of the
sensors and for what length of time.

Q. Do you have a specific recollection as to
when information from these electronic sensors was made
available to you, I Corps?
A. It was prior to the Tet Offensive, and that's
-- that's the only recollection that I have.

Q. Have you ever heard of Task Force Alfa in
connection with your Vietnam experience?
A. Not to my knowledge.

Q. Are you familiar with an Air Force Major
General named Willy T. McBride?
A. No, I am not familiar with Major General
McBride.

Q. Colonel House, you stated earlier that you
have not seen the broadcast of the CBS program that is
being litigated over in this case and that you have not
read a transcript of that broadcast. Is that correct?
A. That's correct.
Q. Have you read any portions of a transcript of
the CBS broadcast?
A. No, I have not.
Q. Has anyone described to you what the
broadcast was about?
A. No.
Q. Do you have an opinion as to what the
broadcast was about?
A. MR. MASTRO: Objection.
A. I have read some newspaper articles as to the
general context of the -- of the broadcast.
Q. From that, what do you understand the
broadcast to have been about?
A. The broadcast is about the pre-Tet
intelligence gathering systems and the building up of
the enemy strength prior to Tet, and the ignoring of
intelligence which purportedly brought the enemy's
strength up considerably and the devastating effort that
that has had on our Allied posture in South Vietnam.
Q. When you talk about the enemy strength with
respect to the program, do you know whether or not the
program made a statement as to the size of the enemy
prior to Tet?

A. I am not aware of that, no.

Q. Do you have any other understanding about the
program other than you have just stated?

A. No. Or yes, I have no other opinion.

MR. RIESE: At this time I would state that I
have no further questions that I am capable of asking
the witness at this time; that I would conclude my
examination for the day. But, keeping with my prior
statements, I would not state and would explicitly -- I
would not state that the deposition is at this point
closed, but will explicitly reserve that the deposition
be opened for the reason that plaintiff has not waived a
right or opportunity or privilege to examine the
deponent in person and that such was not, in my
understanding, the nature of the agreement in proceeding
as we have been by telephone today; but, as I have
stated earlier, this procedure was one arrived at in
compromise of plaintiff's objections of the deposition
proceeding at all on this date in Arizona; and that,
therefore, plaintiff's counsel requests that the
deposition remain open until such time as it may be
possible to examine Colonel House in person at the
mutual convenience of the parties or as that opportunity
may be later expressly waived by plaintiff's counsel.

That's the end of my statement.

MR. MASTRO: I will proceed with my redirect at this time, assuming counsel for plaintiff has no objection.

MR. RIESE: I have no objection to you proceeding to redirect the witness.

MR. MASTRO: I would like to make a statement and ask a few questions of you before we proceed with the redirect. Then at the conclusion of the redirect, I will have an additional statement to make.

Let me say on behalf of defendants it is our understanding that this deposition was to be conducted with plaintiff's counsel participating by phone; that this was done at plaintiff's counsel's request; and that we were going to attempt to conclude the deposition today, which apparently you have been able to do, although you want to reserve certain rights to keep the deposition open, because you say that you need to ask certain things in person. I would like to ask you what questions there are that you haven't been able to ask the witness today that require you to be here in person.

MR. RIESE: Mr. Mastro, I am not going to state on the record at this time a listing of those questions or not.
MR. MASTRO: Do you feel you have been precluded --

MR. RIESE: The statement -- I believe I have made my statement as to my understanding, again, the reason for the deposition being open.

MR. MASTRO: I, of course, have stated on the record that I don't think that what you have expressed is an accurate presentation of what the parties agreed to before this deposition started today. The parties agreed to conduct the deposition with plaintiff's counsel participating by phone and that was done at plaintiff's request.

Let me ask you, do you feel you have been precluded from asking any questions because you were not here in person?

MR. RIESE: Mr. Mastro, I am not on deposition and I will not answer your question.

MR. MASTRO: Well, it would be helpful to clarify this at this time. You did raise certain questions about this deposition with the court once before and I am sure the court would prefer to see us resolve this now, rather than having to take up the court's time with further discussion about why we didn't or did conclude this deposition. I am prepared to conclude it right now and you have been allowed, I
believe, to ask any question you wish over the phone. It has been an impediment to some extent for counsel for defendants, because we have not had all documents on which the deponent has been questioned here for us to review. But, nevertheless, you have been allowed to proceed with questions on those documents.

You indicated at the outset of the deposition that you felt there were certain problem areas, since you weren't here. You have stated a position at the outset of the deposition on how you wanted it to proceed. That procedure has been followed to the letter. Therefore, it's not clear to me what exactly is the problem in concluding the deposition.

MR. RIESE: I will offer a stipulation to the effect that neither one of us were present when the agreement concerning this deposition was made, nor were we present at the status conference before the court yesterday. That is the stipulation I am prepared to offer.

MR. MASTRO: I feel that I was fully briefed by counsel for defendants, who were present at the status conference and who participated in discussions with, I believe, Mr. Burke from your firm about how this deposition would proceed. I can assure you that it is our understanding that you proposed and we agreed that
you would participate in this deposition by phone and
that we would endeavor to take the deposition and
conclude the deposition.

MR. RIESE: Mr. Mastro, you have your
understanding. I do not dispute the fact that there was
at some point an agreement for us to participate by
phone. But further implications as to the extent of
that agreement and what it may or may not have waived in
counsel's right to be present at some time when this can
be concluded to the mutual convenience of the parties
and the witness, I cannot further represent other than I
have already on the record.

MR. MASTRO: If you could give some
indication as to why you feel you can't conclude the
deposition now, I think that would be helpful for
purposes of the record.

MR. RIESE: My statement is simply that, by
agreeing to participate, we have never waived -- excuse
me -- by agreeing to participate by telephone today,
plaintiff's counsel has never waived its right to face
the deponent and, as we have been put on the record,
there are certain obstacles, given the shortness of
time, in participating in this way and how we were able
to conduct the examination at this distance. And I
simply have to say that I am reserving for plaintiff's
counsel that the deposition remain open until such time as it can be concluded with all counsel present at a mutual time and place of convenience for all parties and the witness, or that plaintiff's counsel expressly waives the need for such continuance.

MR. MASTRO: I want to clarify, I did not refer to obstacles. I did indicate that whatever problems you felt there were with this format, you made a statement at the beginning of the deposition as to how you wanted this to proceed and the deposition has proceeded in that manner. So it was my impression that you had indicated whatever problem areas you thought there were in this area as to how we would proceed with you participating by phone at your request and that we proceeded in that manner.

As to my own expression of difficulty at participating in a deposition in this way, I have noted objections for the record where I thought necessary and have allowed you to ask all questions, simply preserving my rights with objections. So I see no reason for my end why this cannot conclude. But I will continue with my redirect, which you have indicated I can do. Let's do that. And then I will have one final statement to make at the conclusion of the redirect.

MR. MASTRO: We need a short break and then
we will reconvene.

(A short recess was taken.)

MR. MASTRO: Before we resume, I would like to clarify one thing for the record. Has there been anyone else listening to the deposition today with you on behalf of Capital Legal?

MR. RIESE: No, there has not been.

MR. MASTRO: There has been no one else who listened to any part of the deposition at any point in time?

MR. RIESE: That is correct.

MR. MASTRO: Then I will start my redirect examination.

RE-EXAMINATION

BY MR. MASTRO:

Q. Colonel House, were you contacted by any lawyers representing General Westmoreland before this deposition today?

A. Tony Murray contacted me last Saturday, September -- do you have a calendar in front of you? I don't have one here.

MR. RIESE: Saturday was September the 8th.
A. He contacted me on the afternoon of September the 8th.

Thank you.

Q. I believe you were referring to the 15th, last Saturday.

A. Yes. Last Saturday.

MR. RIESE: I am sorry. Yes. 15th.

A. On the 15th.

Q. How long did you talk with Mr. Murray?

A. Between an hour and 15 minutes and an hour and a half.

Q. What did you and Mr. Murray discuss in that hour and a half conversation on Saturday, September 15th?

A. Essentially, I think, we covered almost all aspects of what I had given in my affidavit.

Q. Did Mr. Murray ask you any questions about General Westmoreland during your conversation?

A. I remember one specific question that Mr. Murray asked which kind of took a little thought. And he asked, "Well, why, with all this information, would General Westmoreland ignore the build-up that was being reported prior to Tet?" And my response was, I had no idea why General Westmoreland ignored the obvious or why his senior staff people ignored the obvious. But
something was wrong, because it was ignored.

That's the only direct question that I recall now that Mr. Murray asked me in reference to General Westmoreland.

Q. Colonel House, can you tell me how it came about that you signed the affidavit of August 25th, 1983 in connection with this litigation?

A. Well, I signed the affidavit after I had met with you, Mr. Mastro, and Mr. Adams in Tucson. Since I didn't have a secretary with me and I didn't feel like taking down a summary of what we had discussed, I asked that you prepare a -- "you" being Mr. Mastro -- prepare a draft for me to review, which you did. Which I, after receiving the draft, I changed quite a bit, so that it truly reflected my words and my recollection of what had happened, sent the draft back for you. It was typed in final form, sent to me, and I signed it.

Q. When you spoke with Sam Adams the latter part of 1981, did you discuss substantially what you have testified here today with Mr. Adams?

MR. RIESE: Objection to form.

A. Yes.

Q. Colonel House, when you were transferred from the estimates branch of CIIED to CICV in October, 1967, did you have any animosity over the transfer?
A. No. Not at all. In fact, I felt relieved that I was getting out of such a politically oriented atmosphere, even though it was considered the elite group. I had my career to think of and I knew that instinctively that I was not the type of person that was going to be maneuvered into doing analytical work that would serve a predisposed position. And if that first study was any indication at all as to what would lie ahead for me for the next year, I welcomed the opportunity for the transfer.

Q. When you testified earlier today about the "MACV command" or "MACV command staff", did that group include General Westmoreland?

A. In some instances --

MR. RIESE: Objection to form.

A. In some instances it did include General Westmoreland and in some contexts of the question it did not. For example, when I was referring to the requirement to get MACV staff approval for the submission of new units into the ground order of battle summary, I would certainly not include General Westmoreland, because the decisions obviously would be at a level less than General Westmoreland.

So in some cases I would include General Westmoreland as into the MACV command staff and in some
cases I would not. Generally I would include him, yes.

Q. Mr. Riese asked you questions about a number of documents during his cross-examination and he read excerpts from those documents. Did you feel that any of the excerpts that Mr. Riese read to you from documents predicted the Tet Offensive?

A. I did not get the impression that they predicted the Tet Offensive in the manner that the Tet Offensive actually came about. I felt that there was a prediction that something was going on, but it was more for show than in force and none of the excerpts that I was --

(A problem was had with the telephone connection.)

MR. NASTRO: Now we will go back on the record.

(The pending answer was read by the court reporter.)

MR. RIESE: I will object to form.

(The pending question and answer were
A. -- that was read to me would I interpret as being a prediction of the Tet Offensive, with perhaps the one, in looking over my notes, was the General in the Atlanta --

Q. That was the Miami Herald?

A. Miami Herald. That, I felt, was significant, because it talked about enemy strength repositioned around Saigon. The others from General -- that General Westmoreland sent out did not seem to me to predict a Tet Offensive, but just as to what the enemy was doing at that time and why they were doing it; not in what strength they were doing it.

Q. When you testified earlier today about the "party line" of the MACV command, were you including General Westmoreland in the MACV command?

A. Yes, I was, because that party line was so solid, was so unbreakable that I cannot conceive that General Westmoreland was not privy and orchestrated and supported that party line.

MR. MASTRO: No further questions.

Mr. Riese, do you have any recross-examination at this time?

MR. RIESE: Yes, I do at this time.
RE-EXAMINATION

BY MR. RIESE:

Q. Colonel House, you said earlier in your redirect that General Westmoreland ignored this evidence of the offensive that you were observing that became the Tet Offensive. How is it that you know General Westmoreland ignored that evidence?

A. Because, I think, the evidence is clear that we were caught by surprise as to the strength and number of units, enemy units, that were in South Vietnam when the Tet Offensive broke open. Somebody had to ignore the strength levels. And that's why I felt that, since he was the Commander in Chief of the forces, that he was responsible for this ignoring.

Q. What do you mean by "ignoring"?

A. From the standpoint that we were unable to increase the strength figures in the order of battle summary to properly reflect the enemy's strength both in numbers in known units and the presence of new units, that is my definition of ignoring hard intelligence data.

Q. Do you know of your own personal knowledge whether or not anyone above General Westmoreland subscribed to what you have testified today as "party
A. No, I do not.

Q. Why did you testify that General Westmoreland orchestrated such a party line?

A. Because I cannot conceive of a commander with his experience allowing his senior staff officials to perpetrate such a scenario without him being totally knowledgeable of that predisposed position.

Q. Isn't there a difference between orchestration and knowledge?

A. Perhaps.

MR. RIESE: I have no further questions that I would proceed to take at this point.

Could you hold just a second? I am being buzzed on another line.

MR. RIESE: At this time I would simply reiterate my earlier reservations about the closing of this deposition for the reasons earlier given.

MR. NASTRO: I would like to indicate on behalf of defendants that we have proceeded in a manner which plaintiff recommended, although plaintiff was invited to come out here and given ample notice of deposition and had ample opportunity to come out here to be here in person, and defendants consider this deposition closed, since plaintiff's counsel has had an
opportunity to ask any and all questions in a procedure which plaintiff's counsel had recommended.

Thank you, Colonel House.

MR. RIESE: I, of course, would not subscribe to those representatives of counsel, but he is free to make them.

MR. MASTRO: Thank you, Colonel House.

MR. RIESE: Thank you, Colonel House.

(The deposition was concluded.)
STATE OF ARIZONA) SS:
COUNTY OF PIMA)

BE IT KNOWN that I, Sarah C. Thomas, took the foregoing deposition pursuant to notice at the time and place stated in the caption hereto; that I was then and there a Notary Public in and for the State of Arizona; that by virtue thereof I was authorized to administer an oath; that the witness, NORMAN R. HOUSE, before testifying was first duly sworn to state the truth, the whole truth and nothing but the truth; that the testimony of said witness was reduced to writing under my direction; and that the foregoing 177 pages contain a full, true and accurate transcription of my notes of said deposition.

I FURTHER CERTIFY that I am not of counsel nor attorney for either or any of the parties to said cause or otherwise interested in the event thereof; and that I am not related to either or any of the parties to said action.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my seal of office this 25th day of September, 1984.

\[Signature\]
NOTARY PUBLIC

My Commission Expires: 9/24/85