Q Is Mr. Helms' affidavit in that?
A I don't believe so, no.
Q Is Mr. Walsh's affidavit in there?
A No.
Q I will represent to you that Mr. Colby, Mr. Helms, Mr. Walsh have indeed given affidavits in this case.
A All right.
Q Is Mr. Brosse's affidavit --
A Brosse.
Q John Brosse.
A I do not believe so.
Q He also gave an affidavit.
Q What about Mr. Lyman Hart, John Lyman Hart?
A John --
Q Lyman Hart.
A John Lyman Hart. It's not in here.
Q Station chief in Saigon.
A John Hart.
Q What about Mr. Houston's?
A Larry Houston?
Q Yes.
No.

That's not in there, either?

No.

Would you like to see those affidavits?

Yes, in an academic sense I would like to see it, and if they would be useful in my responses, yes, I would like to see them.

Why don't we give you all the CIA affidavits and Mr. McNamara's affidavit.

I would love to see Mr. McNamara's affidavit.

No problem. Actually, why don't we --

I have seen quotations from Mr. McNamara's affidavit.

It's probably from Mr. McNamara's deposition, which was possibly excerpted.

We won't give you the McNamara deposition yet, unless it's been released.

Has it been released?

There is a pending motion, as far as I know, about having things filed with the Court.

We will give you all the affidavits. I think
that's the easiest thing to do, and you'll have them before you go home today.

A I would appreciate it.

(Pause.)

Q I'm sorry, I didn't mean to interrupt.

A Where were we?

Q We were talking about 1963.

A To summarize, in 1963 our intelligence on Vietnam was inadequate. From 1963 to 1967 it improved. But even in 1967, I and numerous -- all of my colleagues dealing with Vietnam were not always satisfied that the intelligence was being absorbed or accepted or used in the fullest possible way.

In '67 in particular, a problem that had -- a problem came to a head, something that had been a problem almost from the outset came to a head, and that was the disparity between the conclusions of CIA analysts working from the same materials as DIA analysts and MACV analysts and arriving at conclusions that were at such variance that the results were not useful.

Were you fighting this big an enemy or were you fighting that big of an enemy? Were you fighting...
this kind of an enemy or that kind of an enemy?

Q. Did the difference in -- let me rephrase that, if I may. You said, I think, something to the effect a
minute ago that disagreement -- can I call it
disagreement? -- between some analysts and other
analysts --

A. Not just between analysts but between
institutions.

Q. Had existed almost from the outset.

A. There was a problem from the outset in that --
let me give you an example. Starting in I believe '63,
I was charged with publishing a weekly report on Vietnam
-- this too by the way was responsive to Mr. McNamara's
requirements -- in which we tried to summarize the
salient reporting from Vietnam.

It is what we would call a current
intelligence publication, and that report was
contributed to by various elements of the CIA, by the
State Department, and by the Department of Defense. We
had inputs from the collecting arms of all those
agencies.

And we analysts, or the analysts under my
supervision, took that reporting and highlighted it, summarized it in a printed, illustrated report. We had a frequent problem when reporting that we wanted to use in that publication was at variance with MACV reporting, because the DIA representative would then in effect veto the conclusion of any reporting or conclusions that he considered to be at variance with the field command's position.

Initially I tried to object to that. I said, this is an inter-agency publication, it's supposed to include anything. By various means it was made clear that I was not able to object to that, that I had to accept this procedure.

Q This was back in '63?
A This was back in '63.

All right, so the pattern was set for me, at least, that far back. Now, I can't tell you what what year that I gave over the publication of that weekly to another staff or office. But I continued to monitor and I was aware that that problem persisted.

It then came to my attention, it then became clear, that it was not just in the current intelligence
that this was a problem, but in periodic assessments that were done. And particularly it became true in the various special national intelligence estimates, known as SNIE's, in which again there would be inter-agency representation and efforts would be made to quantify, to summarize, to interpret, even forecast, which is the function of an estimate, the immediate future. There too in the estimates process, the problem of a MACV veto, which was exercised in the absence of MACV representatives by DIA, was a constant, persistent problem.

By 1967 the disparity between CIA's conclusions about the enemy in Vietnam had become so wide that Mr. Helms directed that in the annual, as I recall, in the preparation of the annual national intelligence estimate, known as 14.3 or 14-3, it would not -- that we had to come to a conclusion -- as I recall, it would be an un-footnoted conclusion -- about the strength of the enemy in Vietnam.

Q Mr. Helms directed that?

A Mr. Helms appealed, as I recall, to the people managing the national intelligence estimate to come to a
1 joint conclusion, to a genuine synthesis. This is what
2 an NIE was supposed to be for. It was supposed to
3 represent the best judgment of the intelligence
4 community in a particular matter, in this case the best
5 judgment of the intelligence situation on prospects in
6 Vietnam.
7 Q If I may, before we continue this line I would
8 like to try to understand something that's a little
9 unclear to me. Is it true that the CIA, DIA, and MACV
10 all worked from the same intelligence pool with respect
11 to the enemy in Vietnam?
12 A As of early 1967, I believe that -- I believed
13 at the time, I believed that to be true.
14 Q Do you believe differently today?
15 A I still assume it to be true.
16 Q I believe we have had testimony here, which we
17 can show you --
18 A In one --
19 Q Carry on.
20 A We're talking about the raw data. I believed
21 it to be a fact that we had essentially the same raw
22 data available. When I talk about raw data, I am
talking about prisoner of war interrogations, document

descriptions, that kind of thing.

Q Could you list the raw data you did have

available in 1967?

A It would include Agency X material, it would

include prisoner of war interrogations, defector

reports, reports from province advisers.

I don't know whether in Washington it would

include MACV corps headquarters intelligence. I don't

know that and I can't recall whether I assumed that was

true at the time or not.

Q Could CIA have had access to this corps

material if it wanted to?

A I don't know now or I don't recall now enough

about the situation in '67 to know exactly what would

have been available from corps headquarters.

Documents, captured documents, were another

source of information. Agent reporting would have been

another source. All of the major agencies and

departments had people -- by '67 had people out in the

provinces.

Because I was not running that weekly at the
time, I wouldn't be able to specify precisely what came into Washington. But it is my belief that corps/province/district reporting would have been available to the very large CIA contingent in Saigon, and by that means would be available to CIA headquarters in Washington.

Q Do you believe that CIA in '67 had adequate raw data?

A It's my belief we did, yes.

Q You don't -- do you have any question about that?

A No.

Q Now let me take you back to '63, if I can.

A Okay.

Q I'm sorry to take so much time on this. I worked in the Government very briefly.

In '63, were there disagreements between CIA and MACV about intelligence on the enemy in Vietnam?

A As institutions, I don't know.

Q What about --

A As analysts, even then from time to time I would have to adjudicate or by presentation gloss over
disagreements from one agency to another.

Q Can you tell me what the nature of the
disagreements were? Let me put it in context.

A Let me -- I have to really put myself in that
place.

Q I can be more specific. You've testified and
others have testified and submitted affidavits that the
evidence or raw data was available to everyone.

A Yes.

Q And you say in your affidavit, I believe, that
eventually improvement -- this is on page 6 --
"Eventually improvements were made in the field." I'll
start at the beginning, paragraph 9:

"At the same time, we pleaded for better
information and more people to deal with it. Eventually
improvements were made in the field, with the result
that Saigon was producing more data on ground level and
reporting prisoner interrogations and the like than
could be evaluated, correlated and analyzed by the
people who fed our working group in" --

A I'll tell you some of the things I was
referring to specifically in there. General McChristian
set up a very conservative collection, reporting and analysis system, particularly on enemy strength. It used the classic military requirements for validating information, something like you had to have two prisoner of war reports or two documents or a combination of the two.

I can recall in fact that it was so -- that some of us less, at the time less familiar with this military validation system, thought that it was maybe too conservative. I mean, we would be getting reports from say a province chief: There are one hell of a lot of Vietnamese out there running around the woods.

Q Beaucoup VC.
A Exactly. It had a whole range of stuff: good, not so good, and probably not so good at all.
Q Right.
A And you had to weigh these. You had to say, okay, what does that mean? How much weight do we put on that? Well, at the time the military people said no weight at all: No two POW's, no two documents, no troops.
Q Was it McChristian who set this up?
A General McChristian had set up those criteria.

Q Right, right.

A I came to understand, however, that particularly in military terms, this is a tried and true way of getting a hard core estimate of what you are facing.

Q I see. You didn't think there was anything wrong with it?

A What I'm really trying to say is, we came to appreciate what MACV had set up at that time.

Q Did you think it was a good system MACV had set up?

A We came to trust it, knowing what it -- knowing what its parameters were. We did not assume that the order of battle, the official order of battle in say 1963, we did not assume that that was the totality of the people. We came to learn that that was the order of battle that could be confirmed by this fairly rigid, fairly conservative system, and that a prudent -- that a prudent analyst took that as a base.

Q And you knew this in 1967?
I knew that was the way it was supposed to work in 1967.

Let me return, then, to my question.

But General McChristian was not in Saigon by 1967.

Are you sure?

To the best of my knowledge he was -- my recollection is, by that time it would have been General Davidson. Am I in error?

Would you like me to refresh your recollection?

Yes.

We will represent to you that General McChristian left Saigon on June 1, 1967.

'67, it was that late?

Yes.

Did you see General McChristian's affidavit in this volume?

Yes.

All three of them are in here. You might want to read back.

We're talking about 20 years ago.
1 Q I understand.
2 My question is, in 1963 there was a MACV order
3 of battle, I assume; is that correct?
4 A I assume so, although I cannot consciously
5 recall knowing that there was a MACV order of battle in
6 '63.
7 Q CIA and MACV certainly by '67 were working
8 from the same information?
9 A That was my belief at the time.
10 Q And your belief has not changed?
11 A I don't know what to believe at the time.
12 That is part of what is at issue here, I understand, or
13 what may be at issue, is it not?
14 Q Could you explain that a little more fully?
15 A I have come to -- there is at least one
16 affidavit, I think there are several affidavits in this
17 book, in which it is stated that late in '67 officers in
18 MACV were cutting infiltration figures from the CB.
19 Now, what I don't know is was that cutting process --
20 was it actually removing the reports, the data? I don't
21 know that.
22 Q Which affidavits are these?
A I'm sorry, I don't recall the names of the officers. But my recollection is that Colonel Graham, perhaps someone else, was instructing that infiltration reports or infiltration figures not be applied to the order of battle.

That is why my hesitance about saying what information was available.

Q Prior to reading those affidavits, did you have any question about the information that was available?

A I'm afraid I simply assumed that we were all getting the same stuff in '67.

Q Even assuming those affidavits --

A Certainly I knew we had in headquarters, we had captured documents which --

MR. BARON: Would you specify, when you're talking about information here, whether you're talking about raw information in the sense that Mr. Kovar has identified?

MR. BURT: Sure.

THE WITNESS: I assumed we were talking about raw information.
1 BY MR. BURT: (Resuming)
2 Q We're talking about raw information, no
3 question. You'll have to review those affidavits. I
4 believe they go to the question of estimates.
5 A Estimates.
6 Q But you'll have to take a look at those.
7 There is testimony on this, and in fact if you
8 are interested we will provide it to you. That would be
9 the deposition of a Mr. Michael Henkins, and this will
10 be covered in some of the affidavits.
11 You should look for an affidavit of Commander
12 James Meachem. He appeared, as you may recall, in the
13 broadcast and he's given an affidavit on the events.
14 Just -- we've been sidetracked for a minute.
15 MR. BARON: You also intend to provide him
16 with the depositions of Mr. Catazi and Mr. Coolie?
17 MR. BURT: Yes, I think we can provide him
18 with anything he wants.
19 BY MR. BURT: (Resuming)
20 Q Now, the information on infiltration came at
21 least in part from Agency X, did it not?
22 A I assume so, yes. I assume, yes, it would.
Q There is no way that anyone could have cut that information, was there?
A No, not that I can think of.
Q I can't think of any either.
Q Do you know of any problems with respect to information on order of battle raw data coming in?
A Any problems?
Q The raw data used for estimating.
A I assumed at the time, and I think I still assume, that in 1967 the analysts were still working from essentially the same data base.
Q So your only reservation with respect to raw data goes to infiltration estimates as described?
A Yes.
Q In two affidavits.
A I have a question.
Q The question is a result of having read these one or two affidavits, whatever they were?
A That's right, that is correct.
Q And it is your testimony, is it not, that with respect to Agency X information on infiltration --
A That was supposed to be available to everybody.
with clearances.

-- MACV didn't have any ability to control the dissemination of that information, did they?

They should not have. I can't imagine that they would have.

Do you know of any way in which they could?

Object to the form of the question.

I would have to go into the nature of that material to speculate how it could be done.

BY MR. BURT: (Resuming)

Do you know whether Agency X material was disseminated from Agency X to MACV and the CIA?

It's --

Are you specifying the sequence of those events, Mr. Burt?

BY MR. BURT: (Resuming)

Do you understand my question?

Object to the form of the question.

The nature of Agency X
collection is such that there could have been MACV units or people collecting on behalf of Agency X, and that's what I am responding. If you ask me, could it be or was I aware, yes. Theoretically, it could be that the very raw, what you would call the most original form of Agency X intelligence could have been stopped at a point and not -- in such a way that it would not get general dissemination.

Q What about the Agency X information that was collected in one way or another directly by Agency X?

A Unless there was some agreement between the command and Agency X that a particular -- that particular categories of information -- and this would normally have to do with the sensitivity. Unless there was such an agreement, of which I am not aware, then Agency X material was supposed to be disseminated to all agencies, to people in all agencies who had the clearance for that material.

Q Has anyone ever told you that there was any agreement between MACV and Agency X not to disseminate?

A Nobody has ever told me that, but I do know of cases in unrelated areas where disagreements existed.
Q But not with respect to information about Vietnam in '67; is that correct?

A That's correct.

MR. BURT: Off the record.

(Discussion off the record.)

MR. BURT: Back on the record.

BY MR. BURT: (Resuming)

Q Is it your testimony that, other than the affidavits you read in this volume provided to you by CBS, you have not -- you have no knowledge of anyone claiming that Agency X -- sorry --

A No.

Q -- that information on infiltration was ever blocked or suppressed? Raw data we're talking about.

A Let me just, let me think. Let me just try to put myself back in 1967. You have to understand that we in the CIA were very concerned by 1967 at our problems with MACV reporting. It was a burning issue. And it is conceivable that I would have heard people more knowledgeable than I say that. It's conceivable. I cannot recall.

Q But you can't recall as you sit here?
I can't at this moment recall, but it is conceivable that I could have been told that, for instance, that, hell, MACV is even holding back on reporting.

Q: Raw data?
A: Raw data. It's conceivable.

Q: But you cannot recall?
A: But I cannot recall that being the case.

Q: And when you refer to a problem with MACV reporting, you are referring to their estimates rather than the raw data, are you not, sir?
A: That was certainly the case in '67, yes.

Q: Right. So we have distinguished --
A: Between estimates and reporting.

Q: And the estimates.
A: The problem that was uppermost was the question of quantifying enemy strength in Vietnam.

Q: And was the problem of quantifying enemy strength in Vietnam a problem between MACV and CIA in '66?
A: I'm casting -- I'm trying to distinguish between years, when in fact we are talking about a
Sure. If you can't answer it, that's okay.

Certainly it is not -- if there was -- the problem must not have been as acute or I was not aware of it being as acute. If such a problem existed in '66, I am not now aware that it was as acute as it certainly was in 1967.

One reason, one thing that brought it to a head was the insistence that 14.367 address the problem head-on. The problem, which as I said had been a continuing one, of MACV vetoes on what you could and could not say about the enemy, was such that in 1967 it was directed or required or requested that 14.3 address that question head-on.

And I believe you testified earlier that the problem with MACV reporting existed in one way or another as early as '63.

Okay. I said reporting. What I more properly might say is the problem of dealing with reporting, that MACV was a problem in dealing with reporting. And I specified that the problem was that DIA, representing MACV, would tell me or CIA or a State Department
analyist, no, we can't say that because it doesn't --
because either it doesn't agree with MACV reporting or
it has not been addressed in MACV reporting.

And by "reporting," more often they meant
summary reporting, not raw reporting.

Q I see. That's what I'm trying to get to, the
nature of this problem.

A MACV hasn't reported on it, MACV has reported
differently on it.

Q The reporting you're referring to is not the
reporting of raw data, but the reporting of --

A Not necessarily estimates, not exclusively
estimates.

Q I understand.

A If we had a body of reports that said, for
instance, things are dicey in Quang Tri province --
Q-u-a-n-g T-r-i -- because peasants are getting killed,
peasants are disappearing, the roads aren't safe at
night, the administrators don't stay in the villages at
night, we are losing Quang Tri province, for instance,
that may be too gross an area, but we couldn't say that
if there were not MACV reporting to that effect.
If MACV -- and if in fact a MACV report said things are great in Quang Tri province, we couldn't say they weren't.

Q You couldn't say?

A Not in my weekly report, we couldn't say that.

Q Even if you believed that to be the case?

A Even if we believed that to be the case.

Q This was back in '63?

A I believe that to be true in '63; certainly by say early '64.

Q You're sure?

A My problem is that I don't recall the beginning and the ending. I began that weekly, I'm almost certain, in 1963.

Q And it was just vetoed?

A The DIA representative, whoever he might be -- and they changed -- would simply say: We can't address that because either it's not what MACV says or MACV hasn't said it.

Q Did this happen in '64?

A It happened less and less, because we became
accustomed to knowing what we could and couldn't do.  

Q I see, but it did happen?  

A It must have happened in '64.  

Q Did you ask the DIA representative why you couldn't report what you believed to be the case?  

A Because, in his words, you don't second-guess the field command.  

Q Did they give you a reason for that?  

A That was doctrine.  

Q Doctrine?  

A That was doctrine. That's the way I understood it. It was the way things were. That was the system. You don't second-guess the field command.  

Q You referred earlier to a system of -- I'm looking for the word. General McChristian introduced a system for identifying --  

A When I say "introduced," I shouldn't. My knowledge of military intelligence procedure at that time was not -- I hadn't read a manual, I had not been in military intelligence. But I now believe this is supposed to be standard military procedure, particularly in battlefront situations.
When I said he introduced that, I understood even then, not simply as a result of reading an affidavit, that he had instituted or he had simply made it a very firm policy that these procedures were to be followed. They were rigid, they were conservative, and to a person like myself who was unfamiliar with that thing it seemed to me at the time -- my initial reaction was: well, gee, that means all this good reporting that we have from other than POW's and documents and captured documents has to be ignored. And I bridled at that.

Q When was this, sir?
A I would say late '63 or late '64.

Q All right.
A But you now tell me General McChristian may not have been there at the time, so I may be incorrect in attributing that system to General McChristian.

Let me try to put some more -- it was even, as I recall, George Allen who at some time over this span explained to me the military system and may have used and almost certainly did use General McChristian as the exemplar of it. It's possible that my time in describing when General McChristian did this is in error.
But it is clear to me that George Allen mentioned General McChristian as the exemplar of this system and although describing General McChristian, as I recall, as a real son of a bitch in terms of imposing this, it was a kind of admiring statement about how McChristian -- and therefore, as Allen explained it to me, you could rely, knowing the parameters, knowing the system, you could rely very firmly on what you were getting.

Q Did that system tend to widen the disagreement between MACV and CIA as more information was collected from '63 through '67?

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

THE WITNESS: Did that system tend to widen?

BY MR. BURT: (Resuming)

Q Did it tend to cause a widening of the disagreement between MACV and the CIA?

A I don't think so. If I understand the question correctly, I don't think it did.

Q Why not?
Because we -- as I'd understand it, we were all working, not just from the same data, but we were acknowledging that these were the rubrics for how you dealt with information. Our people were using the same methods.

Now, yes, we also -- we collected and received and analyzed information of kinds other than were cranked into the POW reports, captured documents, and we used those as a -- to get a feel for things. But I think we were all playing by those rules of how you add figures to an OB.

But did the CIA in '66, let's say, rely on information in preparing its estimates, I'd like to call them if I can, that were allowing more information in preparing its estimates for an OB than MACV did?

MR. BARON: Read back the question.

MR. BURT: Let me restate the question.

BY MR. BURT: (Resuming)

Did CIA, let us say, in 1966 use more information than MACV --

No.

-- in coming to an estimate?
We, as far as I know, we used the same rigid criteria for evaluating reports specifically with regard to OR as did the MACV system. I say the MACV system because, as I told you, I am a little vague about when that system may have changed.

And as far as I know, the OR work that our agency did was respected and accepted, because it was comparable. It was comparable to the OR analysis and estimating that was done everywhere else. But that really was essential to the process, that everybody be using the same methods and everybody be rigid and careful in their evaluation.

Q And yet, from 1963 through '67, I believe it is your testimony a disagreement with respect to estimates of enemy in Vietnam developed between CIA --

A I don't think I said estimates, because in truth I do not recall what the situation was with the estimates between say '63 and '66. '67 sticks out in everybody's mind because that is when it came to a head.

Q Right, I see.

A I should say that there were, in the early
part of the sixties there were frequent special national intelligence estimates in which we attempted to forecast, as I recall, six months out. We were looking -- the estimates in effect were looking for, is there light at the end of the tunnel, is there not? Where are we going to be six months out from now.

I do not know whether those estimates -- I would simply have to go back and look at them, if they are available. I simply do not know whether those special national intelligence estimates used a formal OB figure. So I don't know whether -- I don't know how much of a problem, if there was a problem, OB was in those years.

Was Mr. Allen intimately involved in this OB problem?

George Allen was the most knowledgeable person on the whole subject, the military aspect of Vietnam starting with the French, of anybody in the United States Government. So I would assume that he was intimately involved.

Did you know whether he was intimately involved?
In 19... let me try to cast up some of the things I knew in 1967. I knew the estimate was addressing the OB problem. I knew Paul Walsh was involved in it. I knew Sam Adams was involved in it. I do not know at this time whether I knew... I would have assumed that George Allen was... he was by that time Deputy SAVA, I believe.

But you don't know if he was directly involved?

I don't know.

Prior to 1967, can you recall whether there was a difference of opinion between MACV and CIA on the nature of the enemy we were fighting in Vietnam?

Disagreement or difference of opinion?

Difference of... was there a difference between the CIA and MACV on the definition of the "enemy" that we were fighting in Vietnam?

In the formal sense, I don't know. I don't know.
know if there was a formal difference of opinion.

But in terms of an informal sense?

Let me tell you, I'll make it very personal. It was my belief, and I'm sure it must have been the belief if many other people, that we had not yet found -- we had not yet come to grips with the kind of war we were fighting in Vietnam, that we did not yet as a Government, as a nation, as a command, we had not yet got the key.

By '66 certainly this must have been, not a national debate, but it must certainly have been a common difference of opinion among people, among citizens.

Could you state what the difference of opinion was?

Could you defeat a Chinese model, Chinese revolution model guerrilla force with an essentially conventional western military organization? That was the question, could you do it.

And did this question have any effect on the debate between MACV and CIA on the order of battle in '67?
MR. BARON: Object to the form of the question.

THE WITNESS: I truly could not say what the motives of people were, but I don't quite -- I truly don't see the connection.

BY MR. BURT: (Resuming)

Q Sure. Let me see if I can rephrase that.

A Let me put it this way. MACV was out there fighting these people. MACV certainly knew who was killing its people, all right. So there was no -- if you're saying was there any dispute about that, it doesn't seem to me as if there could have been much of a dispute.

Q But was there a dispute between whether, for example, the -- are you familiar with the term "secret self-defense mission"?

A Yes. This was one of the categories or one of the descriptive categories we had for components of the enemy.

Q Was there a dispute in 1967 over whether --

A I'll tell you this. I don't think there was a dispute among analysts. I think by '67 we all knew, the
working analysts, knew what they were dealing with out there. There was no dispute about who these people were or how you categorized them. Is that what you're asking?

Q Not exactly. My question is, was there a disagreement at some level between MACV and the CIA over whether these people, SD for example, belonged in an order of battle?

A They had always been in the order of battle.

Q I understand that. But was there a dispute in '67 about whether they should be in the order of battle?

MR. BARON: Objection to form. At first you said at some level, then you said among intelligence analysts.

BY MR. BURT: (Resuming)

Q Please answer, Mr. Kovar.

A There was -- all right, I have said these people were always in the order of battle. In '67, in the course of 1967 -- and I believe as a direct result, but I could be wrong again in the sequence of it, but I believe as a direct result of the focus on 14.367, these
people and other categories were removed from the official order of battle.

In the opinion of CIA analysts, that was an arbitrary removal. It had no -- it did not derive from any physical or -- it did not derive from any physical change in the situation.

Q Could you be any more specific as to why you thought it was an arbitrary -- did you think it was an arbitrary removal yourself?

A Indeed. This was a common -- it was a principal subject of discussion among those analysts that I've dealt with, and Paul Walsh, who perhaps you don't consider an analyst, but was a supervisor and a manager.

Q Was this a point of bitter disagreement between the CIA analysts?

A I was not in -- I did not attend sessions in '67 at which this matter was debated directly between CIA, MACV and DIA analysts. What I got was kind of what you would call corridor talk. I had people who would come into my office and sit and talk about the experience. I saw memoranda, buck slips, that kind of
thing, that referred to the problem going back and forth.

Q So you had no first-hand knowledge?

A I had no first-hand knowledge. I did not sit in on the discussions.

Q Is it your own opinion that in 1967 the removal of the SD was arbitrary?

A Yes, it was at that time. It is now.

Q Can you be specific as to why it was arbitrary?

A Because nothing had changed. There had been no physical change. These people were still out there. Our -- if anything, our evaluation, our information of them, was better, it was harder. And yet they were being removed, and they were still out there killing people.

Q And to the best of your knowledge, whatever that knowledge is based on, was this removal of the SD a major source of friction between MACV and CIA in '67?

A It was a major source of friction in 1967. It was a major bone of contention.

Q Was it the biggest bone of contention with
A It's what I heard about most frequently.

MR. BURT: Fine. Let's take a break for lunch right now. How much time do you want to spend? 2:00 o'clock, is that all right, because I don't need a lot of time? 2:00 o'clock?

(Whereupon, at 1:25 p.m., the taking of the instant deposition was recessed, to reconvene at 2:00 p.m. the same day.)
AFTERNOON SESSION

(2:15 p.m.)

Whereupon,

RICHARD DAVID KOVAR,

the witness at the time of recess, was resumed and,

having been previously duly sworn, was examined and

testified further as follows:

EXAMINATION BY COUNSEL

FOR PLAINTIFF - RESUMED

BY MR. BURT:

Q Mr. Kovar, when we broke for lunch we were
discussing, we had begun discussing the -- we referred
to the NIE.

A Specifically NIE 14.367.

Q Yes. I had never heard of "NIE" before, I'll
never hear about it again, but I have sure heard a lot
about it in the last two weeks.

It's SNIE?

A Was it an SNIE?

MR. MARR: Yes, sir.

Q Do you know what an SNIE is?

A It's just a special national intelligence
estimate, for a special purpose. The reason it was done
was it more than any other NIE or SNIE that I can
remember, it was flawed and it was taken out of the
hands of the -- ONE was still in business in '67. It
was taken out of the hands of the Office of National
Estimates.

Q  Could you explain what you mean?
A  Okay. The Office of National Estimates at
that time was the staff, along with an analysis group,
through which the intelligence community produced
national intelligence estimates. This was a function of
the system that goes back to the National Intelligence
Act, National Security Act.

This was the first time that I know of when I
-- I should qualify. An estimate is an intelligence
community product. It's not a CIA product; it's an
intelligence community product. The Director in this
sense is head of the community and he is responsible for
-- he and what was then called the United States
Intelligence Board, the estimate then becomes their
product, their report to the President, in effect, or to
the United States Government.
This was the first time that I can recall, that I know of, when something other than the Office of National Estimates managed an estimate. It was managed by that office up to a point, but then it was given to Carver. The resolution or the vital part of the estimate was given to Carver to go off and sort of negotiate outside of the context of the usual process.

So it was remarkable in any number of ways, not the least of which was that it was one of the more flawed estimates produced over the whole span of the intelligence community's career.

Q Were the members of the National Intelligence Estimate's Board briefed on the CIA's position with respect to the order of battle and SNIE 14.367?

MR. BARON: Could I ask you to qualify what you mean by "National Intelligence Estimate Board"?

THE WITNESS: I think you mean the Office of National Estimates. There is also a Board of National Estimates.

BY MR. BURT: (Resuming)

Q There's a Board of National Estimates?

A The Board of National Estimates was a group of
wise men who at that time signed off on an estimate
before it went to the United States Intelligence Board.
So yes, by the time when it was ready to go to the
Director, the Board would meet formally on it. Whether
they met earlier on it during an interim stage or not, I
wouldn't know about it.

Q Did CIA make its position known?
A To the full board?
Q Yes.
A As a result of this treaty produced in Saigon,
it may well have been that the board was barred from
knowing, in effect, the legislative history. But I
don't know.
Q You don't have any personal knowledge, then?
A I do not know personally whether the full
board was briefed fully on what led up to it. But it
would have been hard for them not to learn about it.
Q But you don't know?
A I don't know.
Q Did you attend the Langley order of battle
conference?
A No, I did not.
Okay. There were two.

Okay. There were order of battle conferences by order of battle experts.

One in Langley in '67; did you attend that one?

I did not attend the order of battle conference in Langley in '67. This was conducted by mostly order of battle experts, with representatives, as I recall, from DIA. Whether that particular conference had MACV people I don't recall. I don't recall. But MACV and DIA were the same thing at that point in the proceeding. It was a solid stone front.

And did you attend the conference in Saigon?

I didn't attend that conference either, but it was a similar process, very well reported to everyone concerned, and it was a repetition of the Langley conference and -- it was a repetition of the Langley conference, as I understand.

Who was there?

We're talking about the one that George Carver represented the agency?

In September '67.
A I read Carver's cables reporting on the progress of the conference. There was more than one. I recall more than one. He reported on the stages of the proceeding, in my recollection.

Q Give me just a second here.

(Pause.)

Q Yeah, in your affidavit you refer on page 11 to one cable.

A That was the crucial one. That was when Carver had reported that he had gone as far as his instructions up to that point would carry him.

Q Is that what he said?

A My recollection is he said, we have explored every avenue of compromise and are still running into a stone wall. At this point -- and remember, this is recollection.

Q Sure.

A At this point I can try again with COMUS MACV, meaning General Westmoreland himself, or I can take what we've been offered. It seemed to me he made it very clear that he had done all he could to carry out Helms' instruction to get an agreement to that point and he was
now coming back to Helms and saying: I've gone as far as I can. You must now choose. Do I take what I can get or do I come back, mission unaccomplished?

Q And what did Helms reply, do you know?

A All right. I do not now recall whether I actually saw Helms' reply, but it was general knowledge among the Vietnam specialists that I talked to that Helms instructed Carver to take what he could get.

Carver had said -- as I say, he had given him two options. It was very clear which option Helms had picked, and as I put it, the expression was, Helms's plan.

Q Can you recall who told you it was Helms's plan?

A I recall the phrase very well. I can't tell you who specifically used that term.

Q Could it have been Sam Adams?

A No, because I was not -- I don't think I was in contact with Sam Adams at any time during the NIE discussions.

Q Could it have been George Allen?

A Conceivably it could have been George Allen,
but I don't -- what I'm saying is it wasn't just one person. This was general knowledge.

Q General knowledge?

A General knowledge among Vietnam specialists.

Q Is there any question about what people knew at the time?

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

THE WITNESS: Was there any question about what people knew?

BY MR. BURT: (Resuming)

Q When you say general knowledge, what do you mean?

A Everybody I knew who was concerned with the resolution of the OB problem being addressed by the estimate, everyone involved with that was -- came to the conclusion that Helms's reply to Carver was, take what you can get. And as I say, somebody used the term, Helms punked it.

Q Helms said in words or substance, take what you can get?

A As I recall, Carver spelled out the options...
quite clearly, saying either I accept what MACV is offering, and it has not changed, nothing has changed, or I come back and you do something, you Mr. Helms do something. So the options were take what you can get or quit, stop, come back with the problem unresolved.

Q And Helms replied?
A Well, the published estimate itself it seems to me in time bore out what, as I say, was common knowledge.

Q And that was?
A Helms told him to take what you can get, option A, if you want to put it in that terms.

Q Helms told him that in a cable?
A That's the only way I know Helms could have communicated with him.

Q Why was that, sir?
A In those days we did not normally use telephonic communication.

Q So there couldn't have been any telephonic communications between Helms and Carver, could there have been?
A I couldn't say there couldn't have been. The
normal way of replying would have been by a cable.

Q Was that because the telephonic communication was not at that time secure?

A We had -- I would think the technology was such that we had secure communications. You are raising a possibility that I didn't think of at that time, but if you are saying, is it possible that there was a telephone conversation, yes, it's possible there was a telephone conversation.

Q But that --

A That would not have occurred to me. I didn't hear of any telephone conversations.

Q Was there a general knowledge that there was a cable sent from Helms telling him in words or substance to punt?

A That was the general assumption.

Q Has anyone told you whether or not Mr. Helms' cables to Mr. Carver at this time have been discovered by CIA?

A I just asked Paul Marr was there a --

MR. SCHILLING: Let's go off the record a minute.