Do you recall documents called Southeast Asia Statistical Surveys that were published in 1967?

During this whole period, we the intelligence community, or various elements of it, published all kinds of statistical surveys.

The publication I referred to earlier, which I began in 1963, it had the purpose. By '67, everybody was publishing statistics on Vietnam. I think there was a whole office under an Assistant Secretary of Defense that did nothing but publish statistical surveys on Southeast Asia in an effort to measure progress in the war.

So what you referred to may well have been a publication of that kind.

I am going to get the document which I may have with me, actually, if you will give me just a minute. I don't know if I have it. It is called -- I believe it was published by the Department of Defense, Department of Defense or State.

Do you recall it, sir?

As I said, I don't know, I don't recognize the specific title, but all three agencies, CIA, State,
Defense, were publishing such statistics at that time.

Q Do you recall whether any of these statistics
that you referred to being published at that time
were -- not were, but ever explicitly described the
order of battle strength changes that we are talking
about?

A My recollection is that we were forbidden to
discuss or report outside of internal channels any
strength figures that were not compatible with the
figures cited in the NIE and in the agreement with
MACV.

Q So is it your testimony that there was no way
that, say, the Secretary of Defense --

A No, I'm not saying there was no way. I'm
saying that that was the way things were supposed to
be.

I would like to believe that somebody was
brave enough and bold enough to furnish some real
statistics to the Secretary of Defense.

Has your opinion of this question of the order
of battle controversy in 1967 developed over the years
since that controversy?
A Has my opinion developed, changed?

Q Has your opinion changed, has your understanding of it deepened?

A My opinion about it hasn't changed. But my attitude toward it has changed.

Q Did your attitude change after you saw the broadcast, which I believe you said you did see?

A Yes.

Q Can you explain that?

A The broadcast brought home to me that I and everyone else who had agreed, acquiesced in or done nothing about the arbitrary change in the enemy strength figures had been wrong, that we should have resisted that compromise with -- that it was our duty to resist that compromise, and that is what the broadcast did for me.

Q Did the broadcast cause you to feel guilty about your role in that dispute in 1967?

A It revived my sense of guilt.

Q I see.

And did the broadcast in your opinion state that the President had been deceived with respect to the
strength figures?
A I can't recall what the broadcast said at this time. I saw the broadcast at the time it was made. I have not seen any repeats of it, I have not seen any transcript.
Q And you did just testify that you believe the President was deluded?
A I now believe the President was deluded. That is on the basis of some of the testimony I have read.
Q Do you remember anything in the broadcast inconsistent with the proposition, with the things you have read and the other material? We are referring to the book of affidavits.
MR. BARON: Could I have the question read back?
MR. BURT: I will withdraw that question if it is too broad.
BY MR. BURT: (Resuming)
Q You saw the broadcast when it was aired?
A When it was aired.
Q Did you believe it was -- did it have a powerful impact on your feelings?
The broadcast had a very powerful impact upon my feelings. I was sitting and watching it with my wife, who was aware of my previous involvement in Vietnam. I heard for the first time concrete evidence of how MACV had — how MACV intelligence officers had either taken the initiative or required their subordinates to change vital intelligence for purposes which had nothing to do with fighting the war.

I was — what that testimony made reality of what up to then I had only been surmising on my part, that there had been a deliberate effort to manipulate strength figures in a terribly detrimental way.

As a result of this revelation, I bounced around in my chair, I said ch my -- I was just commenting aloud, and I can recall saying to myself, my God, what Westmoreland is sitting right there saying not only that it happened but that he did it because up to that point I had never really worked out in my mind how this all came to be. I tended to think of MACV as an entity, not so much of General Westmoreland as being COMUS, but MACV was a thing out there.

I had separated my feelings about General
Westmoreland as a commander from my feelings about MACV as an organization. I had disgust and contempt for MACV, what MACV's intelligence officers had done. I had not consciously related that to General Westmoreland.

Q After the broadcast?

A When I saw General Westmoreland saying yes, all of this had happened, and realizing that he was taking on himself the blame and the onus for that, curiously, to me, I felt pity for General Westmoreland because it seemed to me that he was making a -- well, I felt pity for a man that I had had great respect and sympathy for, and for whom I still have great respect and sympathy for. I don't believe that General Westmoreland is a villain, and certainly not the villain in this dispute.

Q Who do you think the villain is?

A I'll tell you who my villain in this is.

Q Who is it?

A I surmised at the time, and I know now from testimony, that General Danny Graham must have been at the center of this, and it seems to me that General Graham, instead of associating himself with this suit
and defending himself, and that is who -- this case to
me seems to be reversed. I have to keep reminding
myself that it is CBS that is the Defendant, when the
real defendants in this whole thing are General Graham,
General Davidson and any other officers who willingly
participated in this -- I don't want to use too strong a
term -- who participated in this perversion of
intelligence and then covered it up.

Those are the people who need to be, in my
view, ought to stand up and defend themselves in this
and not hide behind General Westmoreland.

Q Did the CBS broadcast, if you can recall, show
General Davidson on the screen?
A The CBS broadcast did not show General
Davidson. But General Graham was certainly high enough
in the order that I would think that he spoke for
General Davidson.

Q Do you believe the CBS broadcast focused on
the wrong person, i.e., Westmoreland rather than
Graham?
A Focused on. I wasn't aware of a particular
focus. One of the things that I thought was so well
done about the CBS broadcast was that it was integrated, that it established a chain of events, and it related those events logically, and that it illustrated the events with the testimony of the people who participated in it.

Q Including General Westmoreland, is that correct?

A I was frankly surprised at General Westmoreland's candor, but I wasn't aware that he was on screen for any larger proportion of time than anyone else. He was, after all, the commander, and if there was a focus on General Westmoreland, that seems to me proper.

Q And the broadcast did focus on Westmoreland, did it not?

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

THE WITNESS: My recollection is it did not focus on General Westmoreland. It focused on the problem, and my recollection is also that what it was indicting was not General Westmoreland but military intelligence officers, which was precisely my view, that
the people at fault were military intelligence officers. That is why I have come forward to participate in this, because this is my profession, and I feel that military intelligence officers have perverted that profession.

I have even now, even now with General Westmoreland's testimony, I have no ill will toward General Westmoreland. I feel it is unfortunate that no man, certainly no general likes to be pitied, but I repeat that my emotion toward General Westmoreland is pity.

BY MR. BURT: (Resuming) You testified in the last hour, I believe, but check me if I am wrong, that you believed General Westmoreland had been either deluded or deceived. I don't recall the word.

A I think General Westmoreland succeeded in deluding himself by establishing this arbitrary ceiling. I question, frankly, whether General Westmoreland was aware that as a result of that ceiling his military intelligence officers, and particularly Colonel Danny Graham, was arbitrarily cutting out hard
data from infiltration figures. The most significant element of enemy strength, regular North Vietnamese regiments, coming down the Ho Chi Minh Thail and being wiped right off the OB in order to maintain that artificial level, and I sincerely do question whether General Westmoreland absorbed the enormity of that fact.

Certainly he seemed to be totally confused afterward as to whether there were 12,000 a month coming down or 60,000 or whatever the figure was, and if the commander was that confused about what enemy regular force he was facing. That to me just seems to be the wrong kind of way to fight a war, and I believe, as I have said, that that kind of delusion led to the total lack of preparation that MACV seems to have found itself in when the Tet offensive of 1967 came.

And I want to make this point. Much has been said that, well, we were warned about the 1967 Tet offensive coming. Every Tet we warned that there would be an offensive. There was always an offensive before or after Tet. It was the traditional time for renewed effort by the Viet Cong, North Vietnamese army. There
was a holiday. It is the New Year holiday in South Vietnam, and there would be a cease fire of sorts, but the forces used that cease fire to position themselves for a renewed offensive. So every year we said there will be an offensive at Tet before, after, during, whatever.

So to say that, oh, it didn't make any difference because we warned the President there would be an offensive didn't make any difference. If President Johnson or Walt Rostow said yes, we knew there was an offensive coming, we just weren't quite prepared for the magnitude of it, that is simply irrelevant. Nobody -- I can't -- there are few analysts who were paying attention to those real figures and not able to do anything with it. A few analysts were saying I understand that holy smokes, they are really coming down the pike, and it is going to be a big one this time.

But none of that ever got to the levels where anybody could do anything about it.

Q Do you believe that General Graham deceived Westmoreland in '67?

A He was perfectly capable of deceiving General
Westmoreland.

Q Did anyone tell you he did? Do you recall?
A No, I can't recall anybody telling me that he did.

Q Were the Joint Chiefs of Staff, to the best of your knowledge, did they know of changes in category in the OB as part of the SWIE in 1967?
A I have seen reference to a cable from General Wheeler, I believe, in which he seemed to be aware of the intention of General McChristian to add the new data, and if I recall, he expressed concern.

Q Where did you see that reference, sir?
A That would have been in something I have seen in the briefs or the material prepared for --

Q By?
A By CBS.

Q Was that also in the broadcast, a reference to this cable?
A I don't recall any reference to that in the broadcast, no.

Q Do you have any other knowledge that the Joint Chiefs of Staff were aware of the change in the
categories in the order of battle, i.e., that some are
going to be taken out?

A  No, I don't think I did.

Q  Do you know whether they knew in advance of
the agreement on the SNIE 14.3-67 categories that some
would be affected in some way?

A  I have no knowledge of that. General Wheeler,
as Chairman of the Joint Chiefs and as an Army general
presumably was in regular communication with his field
commander. That is about all I have to say on that.

Q  Do you believe General Wheeler was deluded
with respect to that?

A  I believe that General Wheeler and everybody
above COMUS MACV was either deluded or self-deluded by
the results of the exercise. They may have been
consciously aware, as we all were, as anybody familiar
with the dispute was, that adjustments had been made,
cosmetic adjustments had been made, but I submit that
with the official figures thereafter, and the official
reporting, the official estimates, day to day, week to
week, month to month estimates continued to use that
figure, that there was a cumulative effect whereby
people came to believe, came to make reality out of
fiction.

Q When did the change take place?

A The change in the OB figures?

Q Yes.

A I can't call to mind the exact month, but I
tend to think of it in terms of this all having been a
sort of mid-year watershed and it was toward, I would
think, toward the fall of '67.

Q It was November, was it not, sir?

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

THE WITNESS: I would have to look at the
record.

Q Do you recall having reread the SNIE 14.3-67
at or about the time it was published?

A I did not read the final published SNIE
14.3-67.

Q Did you read any drafts?

A I had read most of the drafts up to the time
Carver went to Washington -- went to Saigon.

Q Went to Saigon in '67, did he not?
A I had read all the drafts up to the point where Carver went to Saigon in '67.

Q So the order of battle category couldn't have changed before Carver went to Saigon, could it?

A I would almost certainly -- I would have bet -- I would bet now, excuse me, that the order of battle totals would have been put in abeyance during the period of the effort to come to some rational conclusion.

Q Would it have been proper to put them in abeyance during the process of coming to a rational conclusion about them?

A If I had been King of America and running the thing, I would have said, all right, everybody use your own figures in such a way that we, with an asterisk or saying under discussion, or in the process of being adjudicated or whatever, but I don't know what they actually did.

Q But was there anything wrong with holding them in abeyance if in fact that is what they did during the course of the debate over this?

A If there were some kind of warning notice that
said these figures are under discussion, but the people who are keeping OB data certainly should have continued working to the established criteria and publishing the accretions to those levels which would have inevitably have had to rise above 300,000. I do not now recall what was actually done.

Q Do you recall when the press briefing on the changes in the order of battle which were part of the SNIE were given in '67?

A Do I recall what date or what month?

Q What month, let's say?

A When did Carver come back from Saigon?

Q Carver came back, and I will represent this to you, in September. If it will help, I will refresh your recollection.

A I do need this refreshing.

Q This, the month of November from the press briefing --

A My recollection is it came, my impression at this remove, had come, the press briefing controversy followed rather more quickly on the heels of the thing, but if you tell me it was November, I of course accept
Q And Tet came when?
A January of '68.
Q Do you recall when in January?
A I was out of Washington at the time. I don't recall the exact date at this point.
Q Do you believe all the people above COMUS MACV could have been deluded with respect to the strength of the enemy as a result of the change that had occurred in November?
MR. BARON: Object to the form of the question.
THE WITNESS: I am not sure I even understand the question.
BY MR. BURT: (Resuming)
Q The press briefing announcing the change in the order of battle --
A It didn't announce a change in the order of battle. What the press briefing said was we are now facing this number of enemy.
Q I see.
A We were facing this number of enemy. We have
killed so many of them that we are winning. That's what
the press briefing said. It did not refer to -- it gave
no clue, as I recall, that there had been any conference
or discussion or whatever. It made out as if, as a
result of U.S. actions, we have beaten back and
decimated and attributed the enemy, and it gave every
allusion that we had passed the hump, we were coming out
of the tunnel, we were winning, and it was intended and
it did succeed in reassuring people that all was going
well and getting better in Vietnam.

Q Let me ask you with more specificity about the
report I referred to earlier.

A That is such a general --

Q Or statistical analysis?

A I was aware that the ASD produced such
reports.

Q You were aware?

A I was aware they did produce such reports. I
1 could not say that I saw a specific such report.
2 Q Were you aware of the frequency of the
3 reports, if there was a frequency to them?
4 A I think I would have assumed they were weekly
5 because that, as I recall, was an outgrowth of this
6 weekly tabulation that we had begun back in '63.
7 Q Do you recall ever having seen a report
8 prepared by -- Southeast Asia Analysis Reporty in '67
9 which set forth the order of battle and the changes in
10 the order of battle that occurred as a result of the
11 SNIE 14.3-67?
12 A I don't ever recall having seen that. What
13 that sounds like to me, and I could be wrong, was that
14 this was some kind of a working level compilation.
15 Again, if I am correct in surmising that this
16 was an outgrowth of what I myself had worked on in the
17 early '60s, its purpose was to keep a running
18 tabulation. Its purpose would be to keep a running
19 tabulation, and if it was published in Washington, it
20 would be for the purpose of keeping analysts in the same
21 ballpark.
22 Q And --
A But I'm only surmising. I cannot way I have seen this particular report or even that it would have been familiar by late '67 in this periodic report, if that is what it was.

Q Let's turn to your affidavit again, if we may, sir.

Will you refer -- before we do that, you referred to Mr. Walsh, Paul Walsh?

A Paul Walsh.

Q From time to time.

Let me ask you, did you know Mr. Walsh?

A I knew Mr. Walsh very well.

Q You know him well?

A I knew him before that, I have known him since then.

Q Do you know him now?

A I haven't seen him for some time. He is retired.

Q What do you think of Mr. Walsh's integrity as an analyst?

A As an analyst?

Q Yes.
A I think very highly of his integrity as an analyst. He put his integrity as an analyst on the line many times, including a confrontation with Mr. Rostow at one point.

Q What about his integrity in general, to the extent you know about it?

A In general, his integrity is of the highest.

Q Do you have a high regard for Mr. Walsh?

A With one gross exception I have high regard for Mr. Walsh. I assume you are going to continue this line.

Go ahead

Q Why don't you continue, if you wish.

A All right.

A I have been told by people other than Sam Adams that Paul Walsh directed that a negative fitness report be prepared on Sam as a -- simply that a negative fitness report was prepared on Sam Adams, a directed negative fitness report. In other words, Sam's immediate supervisor was told you write a bad fitness report on Sam Adams.

Q Can you tell me who Sam Adams' immediate
A superv isor was?

A I don't know. At this point I don't know who
the supervisor was at that point.

Q Can you tell me who told you about it?

A All right, Sam was first to tell me about it,
and I then questioned people and I sincerely tell you I
cannot recall who I questioned.

Q When did Sam tell you.

A But there was more than one person. It would
have been sometime in '68 or later.

Q Was it --

A This was after Sam had been moved around in
the DDI from one job to another, and an effort made to
shove him off into corners, and indeed, to -- it was, it
appeared to me, where a deliberate effort was made to
get Sam to resign.

Q But Sam told you about this first?

A Sam told me about the negative fitness
report.

Q I see.

Q Do you know a man named Ronald L. Smith?

A I knew Ron Smith at the time, yes.
1 Q Have you ever discussed the question of Mr. Adams' fitness report with Ron Smith?
2 A Ron Smith might have been a person I talked with at times. I sincerely do not recall the people I talked to.
3 Q Other than the incident with Mr. Adams, however, you have no reservations about Mr. Walsh's integrity?
4 A No, I do not.
5 Q Thank you.
6 Now, let's turn to your affidavit. One more point. Did you ever ask Mr. Walsh about --
7 A I'm glad you asked.
8 Q No, I didn't.
9 A Why not?
10 A Because it was -- it would have hurt too much. I liked Paul, I like Paul. This action of his, this reported action of his was so much out of character for him that it was simply painful for me.
11 Q Now, I did discuss Sam Adams with Paul Walsh on many occasions, and we simply agreed to disagree
about it. We found that we had -- we simply had very few points of reference on the thing. We did discuss Sam, but I could never bring myself to say, Paul, did you direct a negative fitness report to be written on Sam? I couldn't bring myself to ask him that.

Q So with respect to Mr. Adams' fitness report and Mr. Walsh's role in it, you have no direct knowledge of that, do you?

A I do not have direct knowledge of that. I should add here, another reason I possibly was diffident about asking Paul was that in this later period he was always my superior. By that time he had become the Assistant Deputy Director for Intelligence, perhaps -- and that certainly may have been a factor in my diffidence about confronting him. I am sure if Paul's problem -- and that's what I believe it was -- was that he viewed Sam as insubordinate, that he was punishing him for being insubordinate, it seemed to me that my confronting him, my confronting Paul over the issue could likewise be regarded as insubordination, and if that was his attitude toward insubordination, I was simply being cowardly and not willing to risk it.
I see.

Now, let's turn to your affidavit, sir. Let's look at page 10, paragraph 14, in the second sentence you say there is no suggestion that the military representatives had better estimates based on superior analysis or more extensive intelligence source material.

Can you recall whether anyone told you that, because we know you weren't there.

A I recall many people telling me that. The people who were participating in these conferences.

Q Not the military people, though.

A I don't think I ever talked to any of the military people directly, no, I did not.

Q So the only people you talked to were the CIA people?

A That's right.

Q Can you recall, as you sit here now, who it was who was at that conference for the CIA?

A If you are asking was this Sam Adams, I can tell you categorically it was not. I was really not talking to Sam at that time. It would have been people
the next level above Sam and all the way up to Paul Walsh, and Paul would have been one of the people who told me that.

Q: I see. Was Paul --

A: Paul Walsh.

Q: Very unhappy with 14.3-67?

A: Mr. Walsh was unhappy almost from the beginning of this exercise because the military performance was solid and unchanging throughout that.

Q: And Mr. Walsh told you that?

A: Yes, he did, and he told other people in my presence that. I believe he committed some of it to memorandum. In fact, I would say he almost certainly committed some of that to reports on the process.

Q: Could you be referring to the reaction to a press conference?

A: No, I'm talking about reports during the SNIE process.

Q: You say that you recall, on page 12 of your affidavit, paragraph 18, that sometime later I learned that Sam Adams had gone to the CIA’s Inspector General to protest the debasements of the intelligence process
which culminated in SNIE 14.3-67, and I was questioned
by the IG about the extent to which the DDI had been
involved in that process.

Can you tell me a little bit about what you
know about how this complaint developed?

A No, I --

MR. LAPRADE: Hold it. We went through that,
and Judge Jackson said that was out of bounds, so I am
going to direct the witness not to answer any questions
about the IG, period.

If you want to go test it, you can test it.

MR. BURT: You will not let him answer any
questions about his personal experience with the IG?

MR. LAPRADE: Right. What went on in the IG
investigation was the subject of our motion for
protective order, and we prevailed, and at that
point --

MR. BURT: I believe the subject of the IG
investigation was whether we could get his report, not
whether we could ask people who participated in it, ask
any questions.

MR. LAPRADE: I am taking the position you
cannot ask people questions about it because what you are going to be doing is getting the same information.

MR. BURT: Fine, we will go to Jackson on that.

(Pause)

MR. BURT: Do you have any questions?
One, the CIA produced for us Mr. Adams' memorandum.

MR. LAPRADE: No, he didn't.

MR. BURT: I beg your pardon.

MR. LAPRADE: Mr. Adams' memorandum was not produced -- well, it was produced.

MR. BURT: Mr. Laprade, I have it here. It was approved for release on July 28, 1983.

MR. LAPRADE: It was declassified.

MR. BURT: I intend to ask questions about Mr. Adams' memorandum, not about the IG report. Surely you have no objections to that.

It is your memorandum. You released the memorandum.

MR. LAPRADE: Circumstances surrounding that memorandum -- Sam Adams took that memorandum with him
without permission or authorization of the CIA. It was
turned over to CBS. CBS sent the documents in to us,
and the document was declassified and released.

MR. BURT: Yes, CIA released it.

MR. LAPRADE: If you want to ask him did he
know if Sam Adams filed a complaint with the IG, I have
no complaint about that.

MR. BURT: No, I want to question him about
the items in the memorandum, not about the IG’s report.

MR. LAPRADE: The questions about the facts
that are in the memorandum were the subject of the IG’s
investigations, and Judge Jackson’s order was much
broader than just the IG report. It related to our
motion for protective order, included the IG’s report,
all the witnesses that were questioned in there and
everything else, and that, I take it from that order
Judge Jackson protected going into those events.

I don’t know what it is --

MR. BURT: Look, you released this report.

Having released it, I am entitled to question about it.

I didn’t get this from CBS, and I didn’t get
it from Sam Adams.
Now, once you have released it I have to be able to question about it or I am simply stuck with the report in front of me.

Also, Mr. Kovar refers to the report in his affidavit.

Did you clear this affidavit?

Did the CIA review Mr. Kovar's affidavit?

MR. BARON: This affidavit was submitted for publications review, and it certainly was cleared by publications review. It says so in the last --

MR. BURT: Paragraph 23, this affidavit has been reviewed by the CIA to assist the affiant in eliminating classified information.

Now, I submit to you that having released Mr. Adams' memorandum to the Inspector General without court order, and secondly, having reviewed the affidavit in which Mr. Kovar refers to it, I am entitled to examine the witness with respect to A, the memorandum, and anything I want.

I am not referring to the Inspector General's report, and I am not referring to what he told the Inspector General. I will limit my questions --
MR. LAPRADE: Why don't we try it on a question by question basis?

MR. BURT: Otherwise, if we have to go to Jackson, we will go with him.

MR. LAPRADE: If you approach it on a question by question basis, Mr. Burt, then we will --

BY MR. BURT: (Resuming)

Q: Mr. Kovar, I will ask you some questions about the memorandum. If there are objections, Mr. Laprade, please just object. If there are objections we will go to Jackson.

A: Will it be--

Q: In the event there are continuing objections by the CIA, and in fact, based on their objections so far, we will have to move Judge Jackson to compel the CIA to compel you to answer since you are responding to the CIA's -- you are respondent to the CIA's assertion of a privilege, and therefore we may have to call you back. We can't do anything about that.

MR. LAPRADE: You are going to go ahead and ask your questions.

THE WITNESS: Could I examine the document?
MR. BURT: Yes. We will give it all to you.

I would like to introduce for the record

Plaintiff's Exhibit 237, which will be a joint

exhibit -- 238, which will be a joint exhibit.

This is a copy of the memorandum which is

numbered 2007 on the bottom left hand corner and runs to

2015, written by Mr. Adams on 27 May 1968, to the

Inspector General, CIA. It is CIA document No. 230.

The reference is to complaints about I believe it is

research, although the labeling is obscured on it.

Why don't you take the exhibit itself, sir,

and take a look at it.

(The document referred to

was marked Plaintiff's Joint

Exhibit No. 238 for

identification.)