AFTERNOON SESSION

(1:32 p.m.)

MR. BURT: On the record.

MS. SMITH: Are we on the record now?

I would like to request copies of any documents which you will be directing questions to Mr. Smith from or about, for purposes of perusal.

MR. BURT: We will give you copies of any documents that we ask Mr. Smith to read and answer.

(Pause.)

Whereupon,

RONALD L. SMITH

the deponent testifying at the time of the recess, having been duly previously sworn by the Notary Public, was further examined and testified as follows:

EXAMINATION ON BEHALF OF PLAINTIFF - RESUMED

BY MR. BURT: (Resuming)

Q Mr. Smith, can you tell me whether you have seen the broadcast you refer to in paragraph 37 of your affidavit, the CBS documentary, more than once?

A I have seen it only once, the original time that it played.
1 Q Have you read a transcript of the text of the
documentary since that time?
2 A No, I have not.
3 Q When you answer questions -- I will rephrase
that. Your comments with respect to the documentary are
based on only the one time you viewed it?
4 A That's correct.
5 Q Did you recall the documentary clearly when
you commented upon it in your affidavit?
6 MR. MASTRO: Objection to form.
7 THE WITNESS: I recalled it.
8 BY MR. BURT: (Resuming)
9 Q Did you recall it clearly or not?
10 A I recalled it well enough to make the comments
that I think I've made -- that I've made in my
11 affidavit.
12 Q When was it broadcast?
13 A My recollection is a year and a half ago or
14 more. It's been some time.
15 Q Could it have been broadcast in January of
16 1982?
17 A It could have. I don't recall the date.
Q I will represent to you that it was broadcast on January 23, 1982. That's more than two years ago, isn't it, sir?

A That's what we -- I thought it might be, yes.

Q Did you have any trouble recalling it adequately, or with sufficient clarity to give this affidavit?

A I had no difficulty in recalling it with sufficient clarity to compose this affidavit.

Q Did Mr. Adams come to work for you when you were at the CIA?

A Yes, he did.

Q When did that take place, sir?

A As I recall, we were working together upon his return from Saigon, but I don't believe that the paperwork caught up with him joining my branch until early in '68.

Q And how long did Mr. Adams work for you?

A As I recall, a year or so.

Q When Mr. Adams joined your branch, did he discuss the events of SNIE 13.4 that occurred in Saigon?
Yes, the --

MR. MASTRO: That's 14.3

MR. BURT: 14.3. Thank you.


BY MR. BURT: (Resuming)

Q Right.

A If -- As a matter of fact, the estimate and
the conference in Saigon that led to its conclusion were
a rather widely discussed affair amongst those of us who
had worked on it and were then working on it, because it
was the prime focus.

The people, as I think I indicated before, all
the people who had been associated with the analysis
previously were outraged at the capitulation. I have
expressed to you earlier why I have a certain amount of
feeling or understanding for the way the DCI handled it,
but that doesn't mean that all the other participants
didn't feel very strongly that it was a serious problem
in estimating, having dealt with the stonewalling and
the deliberate reduction in these estimates during the
summer and then again in the Saigon conference.

So, yes, I discussed these matters at length
1 with Adams and everyone else who worked with me.
2 Q Did you go to lunch with Mr. Mastro?
3 A Yes, I did.
4 Q What did you discuss with Mr. Mastro at lunch?
5 A We discussed, amongst other things, Sam Adams.
6 Q Did he tell you what to say about Sam Adams?
7 A No, he did not tell me what to say about Sam Adams.
8 Q Why did you discuss --
9 A He asked --
10 Q -- Mr. Adams at lunch, sir?
11 A Because he said he wasn't certain -- in fact,
12 I think he said to my counsel, and I overheard him, that
13 he wasn't certain that my estimate of Sam Adams had come
14 through in your questioning.
15 Q Where was Mr. --
16 A And, for the record, my estimate of Sam Adams,
17 of course, is that he was a first-rate analyst. And we
18 were -- this goes back to the point where we were
19 discussing him and Bobby Layton and that sort of thing,
20 and you were asking me to make comparisons.
21 Q Where was Mr. Mastro in relation to your
counsel when you may have overheard him say that -- I
believe you testified -- your estimate of Mr. Adams
didn't come across, or words to that effect?

A. Either walking --

MR. MASTRO: Objection to form.

THE WITNESS: -- Either walking down the
street or at the lunch table.

BY Mr. BURT: (Resuming)

Q. Is it more likely that it was at the lunch
table than walking down the street?

A. I'm not certain at all. We spent more time on
the street than at the lunch table, it being a nice day
out.

Q. Was Mr. Mastro preparing you to answer the
questions that you'd been asked in part this morning?

A. I wouldn't say so in particular.

Q. What else did Mr. Mastro --

A. As a matter of fact, I was talking to my wife
most of the time.

Q. What else did Mr. Mastro discuss, other than
Mr. Adams?

MR. MASTRO: Objection to form.
THE WITNESS: I discussed with my counsel a little more the nature of depositions, and to the extent to which Mr. Mastro participated in that, he participated in that to some extent.

BY MR. BURT: (Resuming)

Q Did Mr. Mastro tell you to say that you thought Mr. Adams was a good analyst?

A No, he did not. I believe -- as a matter of fact, I believe my counsel may have told me that, since she knows I believe that and wonders why I didn't say it -- she wondered aloud why I didn't say that before. And I explained that I was bending over backwards to do the opposite.

MR. BURT: Do you want to discuss anything with your client before I continue?

MS. SMITH: Yes.

(The witness and his counsel confer.)

BY MR. BURT: (Resuming)

Q Do you agree with Mr. Mastro that your estimate of Mr. Adams hadn't come across in the questioning this morning?

A I don't think it was a matter of agreeing with
Mr. Mastro. As I just indicated, it was a three-part conversation. It wasn't a matter of anybody agreeing with anyone. And I do believe, in answer to the question, the substance of the question --

Q  What question?

A  The question you just asked. The question you implied. Do you want an answer to the question or don't you?

Q  Carry on. You can answer.

A  I believe your -- No, as a matter of fact, I'm not going to carry on. You ask a question. I'm not being responsive to a question, obviously, so you phrase one.

Q  Did you testify this morning that you did not discuss the events that took place in Saigon respecting SNIE 14.3 with Mr. Adams in 1967, if you recall?

MR. MASTRO: I object to the form and the characterization of what he testified to.

MR. BURT: Mr. Smith?

MS. SMITH: Mr. Smith, would you like to have the question and answer read back, if you don't recall?

BY MR. BURT: (Resuming)
Q. Do you recall, Mr. Smith?

A. I recall, in answering that question of that nature, of indicating a minimal discussion. My purpose was to emphasize the positive analytical side, and not the narrow modalities of agreement or disagreement.

Q. Did you testify a few moments ago in words or substance that Mr. Adams was, shall we say, exorcised about what happened in Saigon with respect to 14.367?

A. I think it's fair to say, as I think I said a few moments ago, that all of the participants from CIA, of which Mr. Adams was one, were exorcised about the outcome of that meeting.

Q. Was Mr. Adams exorcised about the outcome of that meeting?

A. Yes.

Q. And did you -- Did Mr. Adams speak bluntly about his feelings about that meeting with you in '67?

A. I believe that at one time or another, all the participants of that meeting and all my analysts who listened to them spoke bluntly about that proceeding.

Q. You weren't at that meeting, were you, sir, in Saigon in '67?
1. A That's correct.
2. Q Why not?
3. A My recollection were that out of upwards of 30 or 40 people that were working on the estimate, this sort of thing, some 5 or 6 were sent by the DCI to that meeting.
4. Q How did the DCI choose to send those people?
5. MR. LAPRADE: If he knows.
6. MR. BURT: If he knows.
7. MR. MASTRE: Objection. Objection to form.
8. THE WITNESS: Thanks, guys. Obviously, I don't know.
9. BY MR. BURT: (Resuming)
10. Q Were you not sent because you were unimportant with respect to the issues discussed?
11. MR. MASTRE: Objection to form.
12. THE WITNESS: This is to say that everybody who is not sent on any mission in the world is therefore unimportant? That's absurd.
13. BY MR. BURT: (Resuming)
14. Q Can you answer my question?
15. A I answered your question.
Q Can you recall who was sent from CIA?
A I believe George Carver, George Allen, Sam Adams. I could be wrong about a couple of these. It's been a long time.
Q Who else?
A Dean Moore. Probably Jim Graham, but I'm not sure.
Q Who else? Anyone else?
A That's a good list.
Q Did you discuss the events that took place in Saigon with respect to 14.367 with Mr. Allen in the fall of 1967?
A I don't recall, because the events were widely discussed, again not the -- I had little interest in who struck John in the discussions. I had interest in the outcome, because I was trying to perform an analytical -- get on with the business of performing the analytical task that had been assigned to me.
Q Have you ever been to Mr. Adams' residence in Virginia?
A Yes.
Q When?
A Sometime during the time he worked for me, which was only about one year. Sometime during the good weather months of that year, I recall a group of us going canoeing on the river and gathering by there, my sons and I and some other people. That was the only occasion on which I was at Adams' household.

Q After Mr. Adams ceased to work for you, did you have any conversations with him prior to January 23, 1982, if you can remember?

A I have not had any conversation with Mr. Adams since the time he ceased working for me.

Q Not a single one?

A Not a single one.

Q Would Mr. Adams have any way of knowing whether your views on the SNIE 14.367 had changed from 1967 through January 23, 1982?

A Since he's been engaged -- first of all, I don't believe my views have changed.

Q I didn't ask that.

A Please rephrase your question.

MR. BURT: Read the question back, please.

REPORTER: "Question: Would Mr. Adams have
any way of knowing whether your views on the SNIE 14.367 had changed from 1967 through January 23, 1982?"

MR. MASTRO: And please repeat the answer that he gave to that question.

THE REPORTER: "Answer: Since he's been engaged -- first of all, I don't believe my views have changed.

"Question: I didn't ask that."

MR. MASTRO: Objection to the form of the question.

BY MR. BURT: (Resuming)

Q Can you answer my question, sir?

A I would have no way of knowing if Sam Adams knew anything about any change of views that I might have had on anything over that period of time.

Q Would you please turn to page 21 of the affidavit that you gave Mr. Adams' counsel? Do you have that in front of you, sir?

A I have 21. Then I didn't hear what you said.

Q I would like you to direct your attention to paragraph 36 which you may read for context if you wish.

A I wish.
(Witness reads document.)

(Pause.)

Q Have you read that, sir?

A I've read the paragraph, yes.

Q Can you tell me whether you -- whether the sentence, "As his first line supervisor while he was in the South Vietnam Branch, I came to regard Sam as a mixed blessing" was in the first draft of the affidavit that you received?

A Oh, I doubt very much. I took pains to put this whole matter in myself.

Q Why did you take pains to put this matter in yourself, sir?

A Because I requested -- when I requested another affidavit -- I mean another -- yes, another affidavit -- I think it was Walsh affidavit -- I thought there was a confusion between Adams as an analyst and any administrative difficulties I may have had with him, and I wanted to put -- I noted that that wasn't expressed the way I would express it, so I wanted to put it in mine.

Q How did you know Mr. Walsh gave an affidavit,
1 sir?
2 A. I asked if he had, and requested it.
3 Q Did you reach Mr. Walsh's affidavit before you
4 wrote this?
5 A I believe so.
6 Q Were you trying to answer Mr. Walsh's
7 affidavit?
8 A I wouldn't say -- think so.
9 Q Why did you want to read Mr. Walsh's
10 affidavit?
11 A Obviously, I have a great deal of curiosity
12 about what all kinds of people have to say about this.
13 Q Why did you -- Did want to read his affidavit
14 before you wrote your affidavit?
15 A Not particularly. I simply asked if he had
16 given one and asked for it and received it.
17 Q Did you read it before you wrote your
18 affidavit?
19 A I just explained that I did. And since I was
20 Sam Adams' supervisor, the issue of Sam as an analyst
21 who made a major contribution in all respects to this
22 analysis and anything anyone might have felt about him
or any difficulty that he may have caused me administratively as a result of the fact that he was going off on other issues besides our work, I wanted to put down in my own words.

Q. Did Mr. Mastro help you write the words in paragraph 36?

A. I don't think Mr. Mastro had any -- did any drafting about this, on this subject at all.

Q. Did you ask Mr. Mastro --

A. Even though he and I had discussed it, and therefore it could be in the draft since his draft would purport to be a reflection of the things he and I had discussed, but I don't think it was in there.

Q. Why did you discuss Mr. Adams and Mr. Walsh, if that's your testimony, with Mr. Mastro?

MS. SMITH: Objection.

THE WITNESS: I didn't say I did.

BY MR. BURT: (Resuming)

Q. Did you, sir?

A. Not that I recall.

Q. You never discussed Mr. Adams with Mr. Mastro?

A. I said that I did not recall discussing Mr.
Adams and Mr. Walsh. I don't recall discussing that at all, because that's not a substantive issue.

Q Can you think of any other affidavits you may have asked for from Mr. Mastro, other than as you've already testified today?

A I don't know. I don't recall anything else, other than the ones we listed earlier in the proceeding.

Q Did you read the affidavits that have been listed earlier in the proceeding before you wrote your affidavit?

A Since I have not received any affidavits subsequent to finishing my own, any affidavit that I read, I read before I wrote my own.

Q Why did you read them first?

A I think I answered that. Logistically, it would have been impossible. I just finished mine. I didn't seek to read anything first. I read them as they came, after having requested them.

Q Did you modify anything in the draft of the affidavit you had, based on what you read in the documents that were furnished to you?
A I did not. That was very quick turnaround.

There would not have been time.

Q Do you recall when you first got this affidavit, then? First draft.

A Why don't we go back to what I answered before? There has been a compression of times and schedules, and I don't know the precise date. It was very quickly -- not more than a week or ten days before the date that is on this one.

Q When did you first meet Mr. Mastro?

THE WITNESS: May we could go off the record.

MR. BURT: No.

MR. MASTRO: If the witness wishes to go off the record --

THE WITNESS: I want to ask you a question.

MS. SMITH: All right. Off the record.

MR. BURT: Let the record show that the witness wishes to consult with his attorney.

(Discussion off the record.)
MR. BURT: Please read the last question back
and the answer so we can get this back in context.

THE REPORTER: "Question: When did you first
meet Mr. Mastro?" And then he asked to go off the
record.

BY MR. BURT: (Resuming)

Q Mr. Smith?

A I first met Mr. Mastro -- I think we narrowed
it down to three or four months ago when he called me to
discuss this with me.

Q Thank you.

Did Mr. Adams do anything that might be
illegal while he was at CIA, to the best of your
knowledge?

MR. MASTRO: Objection to form. Objection.

BY MR. BURT: (Resuming)

Q Mr. Smith?

A To the best of my knowledge, he didn’t do
anything illegal.

Q Do you know whether Mr. Adams ever took any
classified documents to his home without permission?

A I don’t know of any such documents, no.
1  Q Did Mr. Adams ever tell you that he took
documents to his home?

2  MR. MASTRO: Objection

3  THE WITNESS: No, he did not.

4  BY MR. BURT: (Resuming)

5  Q Do you believe Mr. Adams would take classified
documents from the agency without permission?

6  MR. MASTRO: Objection.

7  THE WITNESS: I don't really care to speculate
on that.

8  BY MR. BURT: (Resuming)

9  Q Do you know whether Mr. Adams took any
classified documents from the agency without
permission?

10  MR. MASTRO: Objection.

11  THE WITNESS: No, I don't.

12  BY MR. BURT: (Resuming)

13  Q Are you sure?

14  A I've heard that from other testimony, that he
has said that he did.

15  Q You heard from other testimony?

16  A Not testimony. Someone who knew something
about the Pike Committee discussing this with him at an earlier time told me that Adams said that he had taken documents and, in fact, the reason for telling me the story is that he was insisting upon protecting the documents just the same, but I don't know who told me this. It was some time ago.

Q Can you recall who it was who told you?
A No, I just don't know.
Q Who was insisting on protecting the documents just the same?
A This is the story that Adams, when asked by the committee--
Q I don't understand you. Was it Mr. Adams who was protecting the documents?
MR. MASTRO: Can I have a standing objection to this whole line of questioning about Sam Adams?
MR. BURT: No. Just make your objections.
MR. MASTRO: Objection.
BY MR. BURT: (Resuming)
Q Mr. Smith?
A As I have already said, I was told that when Adams was testifying to the Pike Committee, he --
according to what I have heard second-hand, and I don't
even recall who said it — said that he did have some
documents, but when the committee asked for them, he
insisted that they be protected by going through the
ter.

Q Did you form an opinion as to whether that
story was true?

A No, I really didn't.

MR. MASTRO: Objection.

BY MR. BURT: (Resuming)

Q Would it disturb you if Mr. Adams had taken
classified documents from the agency without
permission?

MR. MASTRO: Objection.

THE WITNESS: It would disturb me if anyone
did. On the other hand, I have.

BY MR. BURT: (Resuming)

Q I beg your pardon?

A A lot of people have taken classified
documents from the agency. You have to take them in the
normal course of your work.

Q I said without permission, sir.
MR. MASTRO: Objection. Is that a question?
MR. BURT: Yes.
MR. MASTRO: What's the question?
MR. BURT: Can you answer the question?
The Witness: Please restate the question.
MR. BURT: I'll state it again.

Q Have you taken classified documents from the agency without permission?

MR. MASTRO: Objection.
The Witness: That's a new question. That's not the question you asked.

MR. MASTRO: Objection.

BY MR. BURT: (Resuming)

Q Can you answer the question?

A No, I have not.

Q Did Mr. Adams ever tell you that he had taken classified document and put them in a leaf bag, put the leaf bag in a box, and buried it in his yard?

MR. MASTRO: Objection. Objection to form.

THE WITNESS: Since Mr. Adams, as I have already said, never talked to me about taking any
classified documents, how could he have talked to me
about putting documents in a leaf bag?

BY MR. BURT: (Resuming)

Q Did Mr. Adams tell you at any time that he was
concerned that the agency might destroy documents
related to the order of battle controversy?

MR. MASTRO: Objection. Objection to form.

BY MR. BURT: (Resuming)

Q Mr. Smith?

A No. Mr. Adams never talked to me about any
matter of that nature at all.

Q To the best of your knowledge, has the agency
ever improperly destroyed any documents related to this
issue?

MR. MASTRO: Objection. Objection to form.

THE WITNESS: Since I don't know of any
document destruction at all, I couldn't have any opinion
on that.

BY MR. BURT: (Resuming)

Q Can you tell me what you mean when you said in
your affidavit at page 21, "As his first line supervisor
while he was in the South Vietnam Branch, I came to
1 regard Sam as a mixed blessing." What did you mean when
2 you said "I came to regard Sam as a mixed blessing"?
3 A I explained, or I meant to explain the precise
4 meaning of that in the subsequent words that I wrote;
5 that, despite his considerable contribution, it took
6 time out of my schedule to deal with him, and I gave him
7 a lot of personal counsel on the two issues that I
8 discussed here next. One was his consideration of
9 taking this issue seriously to the President-Elect, and
10 secondly, after that, of causing an IG inspection to be
11 done on the DCI.
12 Obviously, from an administrative,
13 bureaucratic point of view, the existence of these two
14 phenomena took my time. They detracted from the good
15 work that Sam was doing. And Sam, I must say, he's an
16 energetic fellow. He pursued these things, while
17 simultaneously pulling his weight and then some in
18 helping me train and organize a new branch of people and
19 making a major contribution to the analytical effort
20 that we had underway.
21 Q You say "I advised him"-- That's Mr. Adams, is
22 it?
A: That's correct.

Q: "not to try to take the manpower issue to President-Elect Nixon after the 1968 election, as he discussed with me and others." What were your reasons for advising him not to try to take the manpower issue to President-Elect Nixon after the '68 election?

A: It was personal. I thought that the President-Elect, in his own due time, would deal with the kind of intelligence he needed, and that me being a little more conservative about this sort of thing bureaucratically than Sam, that he didn't need individuals volunteering. It's just a procedural matter.

But as far as the weight of the issue and its significance, I understood why Sam wanted to do it.

Q: Did you think he was right to do it?

MR. MASTRO: Objection. Objection to form.

THE WITNESS: As my statement here says, I advised him as a friend and colleague not to do it. I wouldn't have done it, for the reasons stated; that it's too far cut of channels for my taste, and that the President-Elect will have his own methods of using the
BY MR. BURT: (Resuming)

Q You say that -- but other than the fact that
it was too far out of channels, did you have any reason
for advising Mr. Adams not to take the manpower issue to
President-Elect Nixon?

A None whatsoever. I thought Sam was an expert
on the subject. His views were correct; I supported
them. You could find everything he would have taken to
the President-Elect being worked on analytically in the
agency. I had no problem with the substance.

Q Did you believe Sam had sufficient evidence
for the positions that he took in 1967 with respect to
the manpower issue?

MR. MASTRAC: This is Sam Adams you're
referring to?

MR. BURT: Yes.

THE WITNESS: Yes. Sam and a large number of
other people, a considerable number, whatever is
appropriate, in fact, everyone I knew who worked on the
subject who was not restrained in some way, such as
people who worked at MACV who were then in the military
the people to whom this task was -- the responsibility was given in MACV.

Q Did you believe at the time that they had adequate evidence from which to form opinions?

A Yes. All analysts, CIA analysts, had the same base of evidence that MACV had. It was a matter of organizing, organizing people and the process of evaluating it and coming to conclusions.

Q Are you sure?

A I am sure.

Q Is it your testimony that the CIA had all the information with respect to the manpower issues that you have discussed in your affidavit that MACV had?

MR. MASTR: Objection to form.

THE WITNESS: There is no privileged intelligence information in the community. Anything collected by any intelligence organization, whether it be the document center in Saigon, or [Agency X] --

MR. LAPRADE: Stay out of that.

MR. MASTR: Hold on.

MR. LAPRADE: I'm going to interrupt. We have the same problem in New York. We keep pursuing that,
Dan, and I'm getting upset about it.

The one thing we had -- and I thought we had an agreement -- then we keep switching lawyers -- is we're not going to get into that.

MR. MASTRO: Do you want to discuss it with him?

MR. BURT: No I don't want you to break this line of questioning.

MR. MASTRO: If the CIA wishes to discuss it with him, the CIA can discuss it.

MR. BURT: I can discuss it with the CIA first, sir. I believe the issue, the answer is -- Off the record here.

(Discussion off the record.)

MR. BURT: On the record.

The CIA expressed an objection on the grounds of national security with respect to a portion of the statement made by the deponent.

Counsel for the Plaintiff agrees that that portion of the statement which has been identified off the record should be excised from the transcript and substituted therefor the phrase, "Agency X."
Furthermore, the record copy of the tape shall either be sealed or, upon order of the Court, have the portion related to the national security matter excised. And counsel for the Plaintiff is happy to do anything the CIA wants on this point.

MR. MASTRO: Counsel for Defendant is under the impression that an agreement on this particular use of "Agency X" was reached during the Sam Adams deposition which occurred earlier this week. Since a different representative of counsel for Defendants was present at those sessions, and I was not present at those sessions, while it is my understanding that what Mr. Burt has just stated into the record was the result of that agreement, I must confer with my other co-counsel, Mr. David Poies, to ensure that that was his understanding of the situation, and assuming that is his understanding of the situation, we will either agree with that or not agree. And I will get back on the record as soon as possible as to that arrangement.

MR. BURT: Finished?

(Discussion off the record.)

THE WITNESS: You would like me to continue?
BY MR. BURT: (Resuming)

Q. Mr. Smith?

A. Would you like me to continue with my answer to my question?

Q. Do you have the question clearly in mind?

MR. MASTRCS: I would like to have the question read back, please, because I don't recall what it was.

THE REPORTER: "Question: Is it your testimony that the CIA had all the information with respect to the manpower issues that you have discussed in your affidavit that MACV had?"

BY MR. BURT: (Resuming).

Q. Mr. Smith, would you continue, please.

A. To continue, the way the community is structured, all producers of intelligence, provide this intelligence to -- all producers of intelligence, raw intelligence, provide this into, in effect, a common pool. While it's not physically pooled, it's pooled as a matter in terms of using it.

So that if any analytical arm, as opposed to a collection arm, doesn't have some stream of intelligence
information, it is because of human error or they didn't ask for it, they didn't know it existed.

Furthermore, on this score -- and I think this is important and goes to your question -- CIA analysts' problems with MACV and mine, both during the proceedings of 14.367, the Saigon Conference, and from my point of view for the next 18 months or more, had nothing to do with the availability of information. It had to do with the suppression of analysis and the distortion of the meaning of analysis.

Q Is it your testimony that the suppression of analysis continued for 18 months from a period beginning in late 1967?

A I don't really know how to put an end on it. There was a distortion that came in -- there is always a distortion on the manpower evaluation question. It existed before '67. It existed during '67. It had a critical phase during the latter part of '67, both because there was an estimate and because MACV was using it in a heightened way in press briefings, but it was a problem for me, as a manager of this kind of an analysis, for months thereafter.
And when I use the term 18 months, I mean at least 18 months.

Q At least 18 months.

A The reason this was critically important, or the reason that it caused me a great deal of difficulty is because it not only distorted a critically important national intelligence estimate, cleaning up behind it made it difficult to get on with other crucial work such as trend analysis and this sort of thing.

Q And was it a problem for you in 1969?

A Yes.

Q Still a problem?


Q Was MACV distorting in 1969?

A MACV's analysts had, either through some combination of overly rigid consideration of information, had put so many constraints and caps on the way people did their work -- perfectly bright, well-trained officers -- that they didn't know whether they were coming or going.

Q I see.
A And so it was this all -- they didn't know whether they were coming or going in the use of information, because they didn't know what they would be allowed to say, how they would be allowed to put it together.

So the question becomes murky as to where incompetent -- bureaucratic, incompetence and inertia end, and where suppression picks up, although I would say back in '67 and way into '68, suppression was the dominant problem.

Q Was it the dominant problem -- suppression, that is -- in the fall of '68? You said way into '68, sir.

MR. MASTRO: Was what the dominant problem?

Objection to form.

THE WITNESS: Suppression. The question was, was suppression the dominant problem way into the fall of '68.

MR. MASTRO: Objection to form.

BY MR. BURT: (Resuming)

Q (Nods in the affirmative.)

A Yes.
Q: Thank you.

A: I would illustrate that with the fact that the -- and this is with regard to the 300,000 cap. One, even after all of the collateral information was in a year later on the large surge in NVA infiltration during the six months prior to the beginning of the Tet offensive which amounted, based on collateral information, to some 130- to 150,000 people, the MACV order of battle, which always had a retroactive activity to it, never allowed the 300,000 -- magic 300,000 number to be breached in December '67 or January '68, even a year or a year and a half later when the collateral, ample collateral evidence was available.

BY MR. BURT: (Resuming)

Q: And do you know whether anyone imposed this rule that the magic number shouldn't be breached in the fall of 1960?

MR. MASTRO: Could you please read back the question.

THE REPORTER: I heard you say the fall of 1960?

MR. BURT: The fall of 1968.
MR. MASTRO: You said the fall of 1968?

MR. BURT: I swallowed that last syllable.

I'm sorry.

THE REPORTER: "Question: And do you know whether anyone imposed this rule that the magic number shouldn't be breached in the fall of 1968?"

MR. MASTRO: Objection to form.

BY MR. BURT:

Q Mr. Smith?

A I don't know how often the rules of how to manage this problem were restated, since to my knowledge they are never even written down anywhere. But it was clear to me when I came to work on this subject in the spring and summer of '67, that this was the case from both the behavior -- from the behavior of the MACV delegation during '67 on the estimate, and in my constant dealings with them and with the Defense Intelligence Agency over the next months. And I characterized it earlier as 18 months, simply because I'm not sure that as late as '72, this was still my dominant concern. But it was my dominant concern and it interrupted the analytical work for a very long time.
BY MR. BURT: (Resuming)

Q And can you tell me with any precision when, in the spring of '67, you began to work on the Vietnam manpower problems?

A The only -- I do not know when I was first apprised of the fact that I was going to be put onto this. It was early -- my recollection was that it was early in the spring, and because I was able to -- I had given up my former duties and devoted myself full-time in a personal way to begin thinking about the tasks at hand and the analysis.

Q Could it have been in March of '67?

A It might very well have been. I just don't know.

Q Is it more likely to have been in March than in April of '67?

MR. MASTRO: Objection to form.

THE WITNESS: It's no more likely in my mind to have been one or the other. In fact, that's a good time frame, either March or April, probably not earlier, probably not later.

BY MR. BURT: (Resuming)
Q Can you tell me whether you began the work on this problem before May of 1967?
A I believe I did.
Q I believe you have testified that when you began to work on the problem, you realized there was a cap or a limit -- call it what you will -- and that was a dominant problem for you. If I have mischaracterized your testimony, I'll let you characterize it.
What I want to know is, when was the first time that you became aware that there was a cap, which I believe you have used, on the enemy manpower estimates coming out of --
A The first discussion of that was --
THE REPORTER: Coming out of?
BY MR. BURT:
Q -- coming out of MACV.
A -- when I read the draft estimate again, available sometime either when I started work on the subject or soon thereafter, and discussed that draft estimate with colleagues, I was told -- I don't recall who the first person who engaged me on this was, but we had a number -- there were a number of knowledgeable
analysts who were also reading it. It was the common
knowledge kind of thing that MACV is never going to
accept this estimate, that the numbers are too high, the
concept is too high. MACV had already begun briefing
the press, using its collateral estimate, and the
numbers were -- the gap was gargantuan.
The estimate was saying that the organized
insurgency based manpower within South Vietnam was more
than double the size that MACV was briefing, and in
addition to the absolute level problem, MACV had already
begun a regular routine of insisting that -- showing
that every month's estimate, every month's order of
battle, was less than the previous month's. So it was a
general impression of the old hands, so to speak, at
that time that this estimate was in for trouble.

Q Can you recall who these old hands were that
you spoke to?

A Yes.

Q Tell me, please.

A George Allen.

Q George Allen.

A Dean Moore. Bobby Layton.
Q Bobby Layton.

A I don't believe I talked to Sam at that time.

A I don't think I had met him. People of that nature.

A There are a fair number of people. Those are the names I recall right at the moment.

Q So your judgment with respect to the cap --

A No, that's --

Q Let me rephrase that.

A Go ahead. Finish your question.

Q Carry on.

A No. I interrupted your question.

Q Was your judgment with respect to the cap based, first, on what you were told by the men you just referred to?

A My judgment with respect to the cap -- my information that there would be a problem because of the existence of such a cap, was based on statements from my colleagues, because I was just beginning. As soon I delved into the MACV reporting and began looking at the evidence base, documentary evidence base for both their and the CIA developing numbers, I began to develop my own judgment as to the difference.
I had no judgment, I really had no personal judgment until the MACV team arrived in Washington in August as to how they would view this matter.

Q. Did the people you discussed the draft SNIE with, which I believe was prepared sometime in early June of 1967, state that the problem with respect to acceptance of the CIA position had existed in early '67?

MR. MASTEC: Objection to form. And I want to add that I'm not sure that that date is correct on the draft SNIE. But objection to form.

(Pause.)

THE WITNESS: I'm hesitating because I don't understand what the issue is. You just cited June, and then you say early '67. I'm not sure what the difference between June and early '67 is in this case.

BY MR. BURT: (Resuming)

Q. Let me try and rephrase it. I may be getting a little foggy.

A. Yes.

Q. I believe I heard you testify that when you read -- in words or substance -- but when you read or
reviewed the draft SNIE -- I'll tell you what let's do
to make it simple. Let me introduce as -- let me show
you what is already introduced as Defendants' Exhibit
No. 37, which is the only copy that we know of of the
draft SNIE.

This was provided by Mr. Adams, I believe.

MR. MASTRE: Objection. There is nothing to
indicate that that was provided by Mr. Adams.

MR. BURT: I will represent to you, sir, that
it was provided by Mr. Adams.

MR. MASTRE: With that representation, it has
never been shown to be the case.

BY MR. BURT: (Resuming)

Q Does that look familiar to you, Mr. Smith?

(The witness peruses the document.)

A I'm looking at it for two reasons. One, it's
either the real thing or a very good fabrication in the
sense of an art form. Whether the actual words, text,
and all that are the first draft, I would really have no
way of knowing.

As a matter of fact, just flipping through it
casually, I can see certain similarities between its
format and the way the estimate came out. So it does appear, therefore, that it might very well be the first draft estimate.

MR. MASTRO: Mr. Burt, are you willing to represent that this is an authentic draft of the National -- ?

MR. BURT: I am willing to represent that that is what we received --

THE WITNESS: 14 June.

MR. BURT: -- from the Defendant Sam Adams or CBS, that the numbers at the bottom of that page, which the witness is looking at, 30 -- What is the rest of that, sir?

THE WITNESS: 30889.

Mr. BURT: -- are document production numbers called Bates numbers in the trade which were put on by CBS, and that to the extent that we know, the CIA has been unable to find a draft copy of SNIE; and finally, of course, that the document speaks for itself.

MR. MASTRO: Wait a second, Mr. Burt. If you're willing to represent that this is an authentic draft of the NIE, you may ask Mr. Smith questions about
this being a draft NIE. But if you are only going to represent that this is a document that CBS produced, how is he supposed to comment on the document when you are not willing to say that it is an authentic draft of the NIE?

MR. PUPT: If you have an objection, sir, you raise it. You're not this man's counsel.

MR. MASTEC: Can I have a standing objection to any questions about this document?

MR. BURT: You just keep making your objections.

MR. MASTEC: Before we begin the questions, Mr. Burt has made several representations regarding this document, and I would like you to read back what those representations have been, exactly.

MR. LAFRADE: I would to talk to him.

MR. MASTRO: Okay. Let's take a break. Find the place where he started making representations about this document, and then we can continue. But we will take a break right now. Counsel for CIA has requested that we take a break because counsel for CIA wishes to discuss something with me. Therefore, we will take a
break.

(Discussion off the record.)

MR. BURT: Back on the record. Would you read back --

MASTRO: Off the record.

(Discussion off the record.)

MR. BURT: Read it back.

MR. MASTRO: Please read the sections that I requested, and I will object every time.

THE REPORTER: "Mr. Burt: I am willing to represent that that is what we received from the Defendant Sam Adams and CBS, that the numbers at the bottom of the page the witness is looking at, 03889, are document production numbers called Pates numbers in the trade which were put on by CBS, and that to the extent that we know the CIA had not been able to find a draft copy of the SNIF, and finally of course that the document speaks for itself.

MR. BURT: I would also note for the record that Defendant introduced this as their Exhibit No. 37.

MR. MASTRO: That's absolutely right. I believe there was an earlier representation about this
document when the line of questioning began, and that
was the second representation. I would like you to go
back --

MR. BURT: Would you go back and get the
earlier representation?

MR. MASTRO: -- and get the earlier
representation.

THE REPORTER: "Mr. Burt: I will represent to
you, sir, that it was provided by Mr. Adams.

"Mr. Mastro: With that representation, it has
never been shown to be the case."

"Question: Does that look familiar to you,
Mr. Smith?"

Did you want more?

MR. BURT: No, I think that is what he wanted,
but I can't answer.

MR. MASTRO: That's the rest of it.

THE REPORTER: Just one moment.

(Fause.)