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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

31

3 -----x

4 GENERAL WILLIAM C. WESTMORELAND,  
5 Plaintiff,

6 v.

82 Civ. 7913 PNL

7 COLUMBIA BROADCASTING SYSTEM, INC.,  
8 GEORGE CRILE, MICHAEL WALLACE and  
9 SAMUEL A. ADAMS,

10 Defendants.

11 -----x

12 December 5, 1984

13 10:15 a.m.

14  
15  
16 (In open Court; jury not present)

17 MR. BURT: May we approach the bench, your Honor?

18 THE COURT: Yes.

19 (Discussion off the record)

20 THE COURT: All right. Call the jury, please.

21 (Jury present)

22 THE COURT: Good morning, members of the jury.

23 JURORS: Good morning.

24 THE COURT: I apologize to you that we have been  
25 a little slow getting started this morning. Counsel came

1 to see me in chambers to discuss certain scheduling matters  
2 and to argue about a few things, and I'm sorry that's  
3 delayed us a few minutes getting started.

4 I am going to proceed briefly this morning to  
5 ask General Westmoreland a few questions which you will  
6 hear in just a moment, and I want to advise the jury not to  
7 think that the fact that questions asked by the judge are  
8 more important than questions asked by anybody else, they  
9 are not.

10 I am not asking these questions because I think  
11 they are more important than questions asked by anybody  
12 else, I'm asking them only because I think that the answers  
13 to these questions may be useful in filling out certain  
14 parts of the record and assisting to the answers to certain  
15 questions that may arise.

16 Even more important than that, if I ever ask  
17 questions of any witness, which I have done from time to  
18 time, not very often, you are not to think that my asking  
19 questions indicates any partiality to one side or the other  
20 or any attitude on my part with respect to any issue in the  
21 case.

22 I ask questions only for the purpose of seeking  
23 to bring out, to bring out into the open something that I  
24 think that I may feel has not been sufficiently illuminated  
25 or talked about previously. And you should not think, you

1 must not interpret my questions as indicating any  
2 partiality on my part towards either party on any issue.

3 And futhermore, even if you thought that I was  
4 partial to some party on some issue, as to which you would  
5 be wrong, you shouldn't in any way be influenced by that  
6 because it is you who are the judges of the facts in the  
7 case and they are for you to decide in your own best  
8 judgment.

9 All right, the questions I have for General  
10 Westmoreland will be rather brief, I think.

11 General Westmoreland, I would like to ask you to  
12 tell me a little bit more about your position in the  
13 structure of the military and the United States Government  
14 when you held the position of COMUSMACV.

15 First of all, and I think you have testified  
16 previously on some of this, would you tell me what the  
17 chain of command was to the extent that it was over your  
18 head down to you within the military.

19 THE WITNESS: Yes, your Honor. May I ask your  
20 Honor in answering your questions, should I look in the  
21 direction of you or should I address the jury?

22 THE COURT: The jury.

23 THE WITNESS: The commander in chief of the  
24 armed forces is the President of the United States. Under  
25 him he has a number of secretaries, who include the

1 secretary of defense. The secretary of defense has a  
2 number of assistant secretaries that have functional  
3 responsibilities in international relations, interfacing  
4 with the State Department --

5 THE COURT: Louder, please.

6 THE WITNESS: And public information and the  
7 various functions for which the Department of Defense is  
8 responsible.

9 Under the secretary of defense is an  
10 organization called the Joint Chiefs of Staff. That was  
11 set up in 1950 by law but has been modified from time to  
12 time. The Joint Chiefs of Staff consists of a chairman and  
13 the heads of the armed services. The chief of the staff --  
14 the military heads of the armed services. The chief of  
15 staff of the army, the chief of staff of the air force, the  
16 chief of naval operations and the commandant of the marine  
17 Corp. There has been a recent change with respect to the  
18 function of the commandant --

19 THE COURT: I'm sorry, let me interrupt because  
20 my question, I didn't make this clear in my question but my  
21 question is directed to the period 1967-1968 and if it is  
22 different today, don't tell about that, it is not pertinent  
23 to what I am asking about. I'm asking about 1967-1968.

24 THE WITNESS: I understand, your Honor. That  
25 corporate group is known as the Joint Chiefs of Staff.

1 However, also under the secretary of defense is the  
2 secretary of the army, an appointed civilian, the secretary  
3 of the Navy, and the secretary of the air force.

4 Reporting to the secretary of defense  
5 technically but through the Joint Chiefs of Staff there are  
6 a number of unified commands; there is the European command,  
7 which is commanded by a four star army general, and he has  
8 under him an air force component and an army component.  
9 There is a commander in chief pacific, and under the  
10 commander in chief pacific, who is a four star Navy admiral,  
11 he has an air force component, a Navy component and an army  
12 component.

13 During my four and half years in Vietnam, most  
14 of that time, at least the last four years, Admiral Sharp  
15 was the commander in chief pacific, and he was my military  
16 boss and I reported to him, and he, in turn, reported to  
17 the Joint Chiefs of Staff, and the Joint Chiefs of Staff to  
18 the secretary of defense and thus to the President.

19 However, the law provides that any service chief,  
20 chief of staff of the army, Navy or the chief of staff of  
21 the army, air force or the CNO, the head of the Navy, has  
22 the prerogative of reporting directly to the commander in  
23 chief, the President, on issues that he thinks are  
24 important.

25 There are other unified commands, such as

1 specified command. The specified command is the strategic  
2 air command, which is an air force command associated with  
3 strategic bombing and now associated and then associated  
4 with ICBMs, intercontinental ballistic missiles. There is  
5 also an air defense command --

6 THE COURT: Let me just interrupt you to urge  
7 you to stick in your answer to facts that are pertinent to  
8 the chain of command leading from the President down to you.

9 THE WITNESS: I think I have covered that, and  
10 the reason, your Honor, I brought in the strategic air  
11 command, known as SAC, they did provide air support for me  
12 but they were not under my command and nor were they under  
13 the command of the commander in chief pacific. They  
14 provided support.

15 Likewise NSA provided support, likewise the army  
16 security agency provided support for my command and Admiral  
17 Sharp's command.

18 In summary, my military boss was the commander  
19 in chief pacific, Admiral Sharp, who reported to the  
20 secretary of defense, through the Joint Chiefs of Staff.

21 (Continued on next page)

1           THE COURT:    You mentioned in your answer "the  
2 Secretary of the Army." Did you mean to say that the  
3 Secretary of the Army is part of the chain of command?

4           THE WITNESS:   Administratively, he is.  
5 Operationally, he is not.

6           THE COURT:    Does that mean --

7           THE WITNESS:   As far as tactical operations are  
8 concerned, the chain of command was from the Joint Chiefs  
9 of Staff to the unified command. But as far as the  
10 administration of the personnel involved, matters of  
11 discipline, matters of logistics, Secretary of the Army had  
12 a responsibility as did the Secretary of the Navy and the  
13 Secretary of the Air Force. But not with respect to  
14 tactical operations.

15          THE COURT:    Are you saying that the question  
16 whether the Secretary of the Army is or is not part of the  
17 chain of command turns on the nature of the issue that is  
18 being ordered down the chain of command?

19          THE WITNESS:   It's in accordance to the  
20 function. If the function involves the deployment of  
21 troops, the secretary of the services, in this case the  
22 Secretary of the Army, and the Secretary of the Navy, and  
23 the Secretary of the Air Force, do not have a  
24 responsibility. But when it comes to logistical support,  
25 the administrative support and the provision of men and

1 material, and what use of equipment, the secretaries of the  
2 services are in the chain of command and have that  
3 responsibility.

4 THE COURT: You are saying that if it is  
5 administrative --

6 THE WITNESS: Or logistic.

7 THE COURT: Administrative or logistical, then  
8 the Secretary of the Army is in the chain of command; if  
9 it's tactical he is not?

10 THE WITNESS: That's correct, sir.

11 THE COURT: Would you give a few examples of  
12 what is meant by "administrative." What would be examples  
13 of an administrative matters as to which the Secretary of  
14 the Army would be in the chain of command between the  
15 Secretary of Defense and the Joint Chiefs of Staff?

16 THE WITNESS: Well, an example would be a troop  
17 augmentation. The decision as to whether there would be a  
18 troop augmentation would be a matter that would be worked  
19 out by the Joint Chiefs of Staff with the Secretary of  
20 Defense.

21 Once a decision had been made with respect to a  
22 troop augmentation, the Secretary of the Army, and the  
23 Secretary of the Air Force, and the Secretary of the Navy,  
24 would have the responsibility of marshaling those troops,  
25 providing the funds to support them, providing the

1 facilities to train them, providing the logistics to ship  
2 them, in accordance with the schedule decided upon by the  
3 said Secretary of Defense.

4 THE COURT: Supposing that President Johnson  
5 had taken it to mind to issue an order to you, and let's  
6 suppose for the purposes of my example that there were no  
7 considerations of extreme urgency involved in the  
8 transmission of that order, other than the urgency that  
9 might attach to the fact that the President wanted to give  
10 you an order, and let's say his order related to a tactical  
11 matter.

12 Let's say the President decided -- whether this  
13 would be customary or not -- but let's say the President  
14 decided that he wanted an attack to be made on some city in  
15 the I Corps area, or he wanted the defenses of someplace in  
16 the I Corps area to be strengthened and to use some  
17 tactical device.

18 Describe, please, how that order would come down  
19 to you from the President. Who would the President speak  
20 to, to whom would he deliver a written message, how would  
21 it then follow down the chain in reaching you?

22 A. The Unification Act of, actually, 1947, modified  
23 in 1950, set up an organization called the National  
24 Security Council. The President is the chairman of that.  
25 His national security advisory acts as, in effect,

1 secretary, and the Secretary of Defense is a member, the  
2 Secretary of State and other officials are members of that  
3 National Security Council.

4 The chairman of the Joint Chiefs of Staff is not  
5 a member of that council, but he normally sits in and sits  
6 beside the Secretary of Defense.

7 The order that his Honor hypothesized could have  
8 been given at a meeting of the National Security Council.  
9 On the other hand, it could have been given at a meeting, a  
10 private meeting in the President's office with the  
11 Secretary of Defense and the Joint Chiefs of Staff present;  
12 or it could be given on the telephone from the President to  
13 the Secretary of Defense; or, if the secretary chose to do  
14 so, and President Johnson did from time to time -- I  
15 understand, he would call the chairman of the Joint Chiefs  
16 of Staff up and say, "I want thus and so."

17 THE COURT: I am assuming that the President of  
18 the United States can probably pick up a telephone and call  
19 anybody he wants to, and if they are part of somebody who  
20 is under his command, he can tell them to do something.

21 My question is directed more to the proposition  
22 that this would be done by the numbers. This would be done  
23 in the manner that touched all the bases that were  
24 appropriately touched under the legal chain of command.

25 Do I take it correctly that the order, in the

1 first instance, would be given by the President to the  
2 Secretary of Defense?

3 THE WITNESS: Or to the chairman of Joint  
4 Chiefs of Staff. Many presidents, Mr. Johnson included,  
5 was not always orthodox and playing by the numbers in that  
6 regard, but traditionally, the order would eventually be  
7 given either directly by the President to the chairman of  
8 Joint Chiefs of Staff, or through the Secretary of Defense.

9 If an order was given directly to the chairman  
10 of Joint Chiefs of Staff, the Joint Chiefs of Staff --  
11 chairman of the Joint Chiefs of Staff had the  
12 responsibility of notifying the secretary, which he would  
13 have done,, and if the secretary objected to that order, it  
14 would be incumbent upon him, the Secretary of Defense, to  
15 get back to the President and ask him to reconsider.

16 THE COURT: So the President would give his  
17 order either to the Secretary of Defense or to the chairman  
18 of the Joint Chiefs of Staff, who would notify the  
19 Secretary of Defense of the giving of that order; is that  
20 right?

21 THE WITNESS: Yes, your Honor.

22 THE COURT: And then what would happen going  
23 down the line?

24 THE WITNESS: The order would then be given to  
25 the unified command, in this case the Commander in Chief

1 Pacific; it would be sent by the chairman of the Joint  
2 Chiefs of Staff to the Commander in Chief Pacific.

3 Depending upon the nature of the order, an information copy  
4 of that order could be given to COMUSMACV, Commander U.S.  
5 Military Assistance Command Vietnam, a position that I held  
6 for over four years, but not necessarily.

7 The chain of command would be through the  
8 Commander in Chief Pacific, Admiral Sharp. I could get  
9 advance notice of that --

10 THE COURT: I'm not asking about notice. I am  
11 asking about the procedures for the delivery of the order.

12 THE WITNESS: As I have outlined, your Honor.

13 THE COURT: Now, supposing that the order  
14 pertained to a matter that was not tactical but pertained  
15 to something like the President wanted every soldier in  
16 your command to wear a certain emblem on his uniform to  
17 commemorate something or other, would that order be  
18 delivered in the same fashion or would the Secretary of the  
19 Army be interposed in the chain of command because of the  
20 administrative nature of the order, or would there be some  
21 other procedure?

22 THE WITNESS: It would be handled differently.  
23 The President would contact the Secretary of Defense and  
24 say, "I would like this addition or this modification to  
25 the uniform" speaking hypothetically, and the Secretary of

1 Defense would notify the Secretary of the Army and the  
2 Secretary of the Army would then take action.

3 The order would go through army channels and  
4 would bypass, although the Commander in Chief Pacific would  
5 probably be informed as an information addressee, but on  
6 administrative matter like this, the Secretary of the Army  
7 would go directly to the army component of the Commander in  
8 Chief Pacific, who would in turn get in touch with the army  
9 component of the military command in Saigon.

10 As COMUSMACV I had three component commanders, I  
11 had an army component commander -- actually, I was  
12 technically -- I technically commanded the U.S. Army  
13 Vietnam as well as the joint command, but I had a deputy  
14 who spent full time on army matters, particularly  
15 administrative matters, and then I had an Air Force command  
16 that had tactical and administrative responsibility, and I  
17 had a Navy command that was primarily an advisory command,  
18 but they did have operational responsibilities also.

19 So in summary, matters of that type would be  
20 handled through service channels, Army channels, Navy  
21 channels or Air Force channels, depending upon the  
22 administrative problem or order.

23 THE COURT: I may have loaded my question in a  
24 way that I didn't want to when I said that the President  
25 wanted every soldier to wear a certain emblem. Let me

1 rephrase it by saying that he wanted every service man in  
2 the COMUSMACV command to wear this thing. Would that  
3 change your answer?

4 THE WITNESS: It would. It would broaden my  
5 answer. Under those circumstances, the President would  
6 tell the Secretary of Defense and he would notify the  
7 secretaries of the Army, Navy and the Air Force, and the  
8 secretaries would take it from there.

9 Q. To the Joint Chiefs of Staff?

10 THE WITNESS: The Joint Chiefs of Staff would  
11 be cognizant of it, but they would not be in the chain of  
12 command.

13 THE COURT: It would go from the Secretary of  
14 each of the services to the CINPAC?

15 THE WITNESS: It would go from the Secretary of  
16 the services to the service components of CINPAC, but  
17 CINPAC would be an information addressee. In other words,  
18 this would be an administrative matter which would be  
19 handled by in-service channels. It sounds a bit complex  
20 but it worked.

21 THE COURT: Now, let me change the question a  
22 little bit and suppose that what is involved is not an  
23 order from the President but a matter of reporting a piece  
24 of information through military service channels to the  
25 President.

1           Let us say there is some piece of information  
2 which starts with you and is reported midstream to the  
3 President, would you please tell exactly what steps that  
4 that report should go through in 1967 on its way from you  
5 to the President.

6           THE WITNESS:   If it was a tactical matter  
7 associated with fighting the war, requirement of troops,  
8 that information would go from my command, from the  
9 Military Assistance Command Vietnam, to the Commander in  
10 Chief Pacific and then to the Joint Chiefs of Staff and  
11 then to the President through the Secretary of Defense.

12           If it was an administrative matter, in other  
13 words, a matter associated with rations, food, a matter  
14 associated with clothing, it would go from my command -- it  
15 could go from my command to the Commander in Chief Pacific  
16 and then to the Joint Chiefs of Staff. But, normally,  
17 depending upon the nature of this particular request, this  
18 would be handled by the Army component commander in Vietnam,  
19 who would get in touch with the Army component commander  
20 under the Commander in Chief Pacific, and from there the  
21 Army component commander would go to the Chief of Staff of  
22 the Army and the Secretary of the Army, they being -- the  
23 Chief of Staff of the Army and Secretary of the Army have  
24 adjacent offices, and that administrative matter could go  
25 to the secretary directly, which would be the route of that

1 component matter, but normally it would go to the Chief of  
2 Staff, and it would be handled, as far as funding is  
3 concerned, procurement is concerned, it would be handled by  
4 the Secretary of the Army.

5 THE COURT: We never made it to the President.  
6 I think you got sidetracked along the way.

7 This was a piece of information that was being  
8 sent up through channels to the President.

9 THE WITNESS: Yes. In all cases it would be  
10 funneled through the Secretary of Defense to the President --  
11 it would go through the Secretary of Defense. But from a  
12 practical standpoint, your Honor, matters like that would  
13 never get to the President. I mean, the Secretary of  
14 Defense would handle those on his own.

15 THE COURT: What is the procedure by which,  
16 referring to the time of 1967 and 1968, one is appointed to  
17 the position of COMUSMACV, Commanding Officer Military  
18 Assistance Command Vietnam; how does that occur?

19 THE WITNESS: Since that is a joint command  
20 operating under the Secretary of Defense and the Joint  
21 Chiefs of Staff, those officers associated with joint  
22 commands are appointed by the President upon the advice of  
23 the Secretary of Defense.

24 THE COURT: You mean to say that the order of  
25 appointment to the position of COMUSMACV is an order made

1 by the President rather than by somebody in the military?

2 THE WITNESS: It's made by civilian authority.  
3 Technically, it's made by the Secretary of Defense, but  
4 depending upon the position, and in this case a unified  
5 commander, the President would have -- would have knowledge  
6 of it, and would probably approve it, but it would be --  
7 the appointment would be made by the Secretary of Defense.

8 THE COURT: Would the Secretary of Defense be  
9 the person who signed the order of appointment?

10 THE WITNESS: He would, yes.

11 THE COURT: Now, is it correct to say that a  
12 soldier or military person is under legal obligation, so  
13 far as you understand, to obey orders that are given to him?

14 THE WITNESS: Yes, your Honor.

15 THE COURT: Lawful orders given by an  
16 appropriate superior in the military chain of command?

17 THE WITNESS: When an officer is commissioned  
18 he takes an oath to carry out the orders of the Commander  
19 in Chief and those appointed under him.

20 THE COURT: Now, if a lieutenant is ordered to  
21 become the commanding officer of a company or a platoon, is  
22 that an order that that lieutenant may not lawfully refuse?

23 Does the lieutenant have the option of saying "I don't  
24 want to command that platoon. I think I'll turn that down.  
25 No thank you"?

1 THE WITNESS: I understand your question, your  
2 Honor. Technically he would have to carry out the order,  
3 but practically I don't think any responsible commanding  
4 officer would want to give a platoon in combat to an  
5 individual that did not want that command. It would be a  
6 display of lack of confidence in the ability of that young  
7 man in himself.

8 THE COURT: All right. But --

9 THE WITNESS: But technically he would have to  
10 carry the order out, yes.

11 THE COURT: I'm not asking about exercises of  
12 judgment by the person giving the command, I am asking  
13 about the responsibility of the person receiving the  
14 command.

15 Is it correct to say that a lieutenant who is  
16 ordered to take the command of a platoon has a legal  
17 obligation to do so and can be held accountable for  
18 violation of law if he refuses the order?

19 THE WITNESS: If a direct order is given to a  
20 lieutenant to do thus and so, he has to carry it out.  
21 However, he can reclaim that order. He can go to the  
22 Inspector General if he feels that the order is unfair.

23 THE COURT: Let's take a different order, let's  
24 take the order appointing X to assume the position of  
25 COMUSMACV. Does that order stand in the same kind of a

1 footing? Is that an order which the recipient of the order  
2 may not lawfully refuse, or is it an order of a different  
3 category? Let me preface my question by saying that I am  
4 not asking about peoples' exercise of judgment, I'm not  
5 asking whether it would be a wise or a foolish thing for  
6 the President or the Secretary of Defense to decide to give  
7 that position to someone who didn't want it. I am also not  
8 asking whether the recipient of the order would have the  
9 opportunity to contest the lawfulness of the order through  
10 lawful challenges.

11 Assuming that the order was given in a lawful  
12 fashion, is that an order which the recipient has the  
13 obligation to obey or is it a message or offer that he is  
14 free to decline?

15 THE WITNESS: Technically, he has an obligation  
16 to obey.

17 THE COURT: let me just put it in a slightly  
18 different context. If the President says to someone, "I  
19 want you to become my Secretary of Defense; indeed, I order  
20 you to become my Secretary of Defense." assuming for the  
21 moment that the person is a civilian -- I'm not sure that  
22 affects the answer, but let's just assume it -- that person  
23 may say either, "Thank you very much, Mr. President.  
24 That's a great honor. When do I start?" Or he may say to  
25 the President, "I appreciate your offer, but I don't want

1 to be Secretary of Defense and my answer is no."

2 Is that correct? So far as you understand it;  
3 is that correct?

4 THE WITNESS: Well, the Commander in Chief does  
5 not have the same authority over civilians that he has  
6 over people in uniform.

7 (Continued on next page)

8 "I order you to become secretary of defense  
9 beginning Monday," that civilian would have the right to  
10 decline, I don't want to do that, that's not a job  
11 I'm looking for or interested in and I'm not taking it?"

12 THE WITNESS: You are absolutely correct, your  
13 Honor.

14 THE COURT: All right. Now, my next question is,  
15 on the one hand an order by the by the President to  
16 a civilian to be secretary of defense, and the civilian is  
17 free under law to say, "No, I'm not taking that job."

18 On the other extreme, we have an order given by  
19 a military authority to a lieutenant that says, "You are to  
20 be in charge of a platoon beginning right now," and that  
21 lieutenant may not refuse that order, he is required under  
22 law to follow that order, correct?

23 THE WITNESS: You are correct, your Honor.

24 THE COURT: Now, my question is where does the  
25 order to engage the command of MACV, the order to become

1  
2 THE COURT: Well, stick to my question. Do you  
3 understand me to be correct --

4 THE WITNESS: I'm not quite clear on your  
5 question, your Honor.

6 THE COURT: My question is, isn't it correct in  
7 your understanding that if the President said to some  
8 civilian, "I order you to become secretary of defense  
9 beginning Monday," that civilian would have the right to  
10 say, "I decline, I don't want to do that, that's not a job  
11 I am looking for or interested in and I'm not taking it"?

12 THE WITNESS: You are absolutely correct, your  
13 Honor.

14 THE COURT: All right. Now, my next question is,  
15 we have on the one hand an order by the by the President to  
16 a civilian to be secretary of defense, and the civilian is  
17 free under law to say, "No, I'm not taking that job."

18 On the other extreme, we have an order given by  
19 a military authority to a lieutenant that says, "You are to  
20 be in charge of a platoon beginning right now," and that  
21 lieutenant may not refuse that order, he is required under  
22 law to follow that order, correct?

23 THE WITNESS: You are correct, your Honor.

24 THE COURT: Now, my question is: Where does the  
25 order to assume the command of MACV, the order to become

1 COMUSMACV fall in between those two? Is it an order which  
2 a person may say, may lawfully say, "No, sir, I'm not  
3 taking that job, I refuse to do it," or is it an order like  
4 the order to the lieutenant which the person is legally  
5 obliged, assuming it is a military person, assuming it is a  
6 general in the United States Army, is it an order which  
7 that general is legally obliged to obey or is it something  
8 else?

9 THE WITNESS: The commander in chief has that  
10 authority to order an officer to any particular assignment.  
11 However, your Honor, there is an escape route with respect  
12 to a senior officer.

13 THE COURT: What is that?

14 THE WITNESS: You can resign.

15 THE COURT: I'm sorry?

16 THE WITNESS: He can resign.

17 THE COURT: He can resign from the military?

18 THE WITNESS: Yes, your Honor.

19 THE COURT: And would that be his only escape  
20 valve? He could not, there is nothing short of resigning  
21 by which he could refuse the order?

22 THE WITNESS: Well, the seniority of the hypothetical  
23 hypothetical case that you have outlined is substantial.  
24 An officer can retire after 20 years of service. And in  
25 the category that you have hypothesized, the officer would

1 certainly have over 20 years of service, so he could retire.

2 THE COURT: You mean to say, that's assuming  
3 that he has 20 years of service?

4 THE WITNESS: Assuming he has 20 years of  
5 service or more, he can say, "Thank you very much, Mr.  
6 President, but I choose to retire."

7 THE COURT: If he doesn't have the 20 years of  
8 service, that is not an option open to him, is it?

9 THE WITNESS: He could submit his resignation  
10 and the resignation would be accepted, but he would get no  
11 retirement benefit.

12 THE COURT: So if General X is ordered by the  
13 secretary of defense to assume the position of COMUSMACV,  
14 his options are either to resign from the military, to  
15 retire, if he has sufficient seniority to permit retirement,  
16 or to obey the order leaving out, I guess, certain more  
17 extreme steps he could take if he really wanted to avoid  
18 that?

19 THE WITNESS: Well, I think there is a third  
20 option, too, your Honor; he could ask for reconsideration.

21 THE COURT: Let's say he asks for  
22 reconsideration, and he is granted reconsideration but upon  
23 reconsideration the order is reaffirmed?

24 THE WITNESS: Well, that route is then closed.

25 THE COURT: But does that completely describe

1 the options that are open to the person?

2 THE WITNESS: It does in a theoretical way, your  
3 Honor.

4 THE COURT: And I assume what you mean by that  
5 is, as a practical matter, the Secretary of Defense and the  
6 President are likely to reconsider the order with respect  
7 to somebody who is absolutely committed not to assume that  
8 post?

9 THE WITNESS: Very definitely they would be  
10 inclined to reconsider the order.

11 THE COURT: But if they adhered to the order, it  
12 would be a lawful order which the general would be required  
13 to obey in the same manner as the lieutenant when ordered  
14 to assume command of a platoon. Is that right?

15 THE WITNESS: Yes, your Honor, in the context of  
16 our broad discussion.

17 THE COURT: All right. I have no further  
18 questions on that subject.

19 Let me say a couple more words to the jury about  
20 the questions I have been asking. You may be wondering why  
21 I asked those questions, and you may feel that it does not  
22 particularly illuminate anything that you understand as  
23 being before you, and if that is your feeling, that's fine,  
24 I would not suggest to the contrary.

25 I was asking those questions primarily with

1 respect to matters of law that are more my concern than  
2 yours. So I repeat, that you are not to consider those  
3 questions as being of special importance because they were  
4 asked by the judge. There are certain rulings of law which  
5 I am called upon to make in this or in any case, and the  
6 questions I was asking were more because of concern for  
7 some issues of law that I may be required to rule upon.

8 So don't be thinking that the questions asked by  
9 the judge must be of great importance and concern to you, I  
10 do not believe that they are of any greater importance to  
11 you than any other questions and, indeed, I think that for  
12 your job they are probably of much less importance than  
13 most of the questions that have been asked by counsel to  
14 the witnesses.

15 Now, do either counsel have any questions that  
16 you wish to address to General Westmoreland, restricted to  
17 the subject matter of my questions?

18 MR. BURT: I have no questions, your Honor.

19 MR. BOIES: I have none, your Honor.

20 THE COURT: All right. You may step down.

21 Thank you.

22 Come to the side bar, please.

23 (At the side bar)

24 THE COURT: I just want to be sure, is there is  
25 anything you want to ask me or say with respect to those

1 questions?

2 MR. BURT: Yes, I will bite the bullet. Why? I  
3 ask that on behalf of both counsel.

4 MR. BOIES: He does, your Honor.

5 THE COURT: I have no reluctance to tell you,  
6 and the reason I called you to the side bar is to make sure  
7 that if you feel there are some questions that you wanted  
8 to ask the witness on this point, that you have your eyes  
9 fully open to what was on my mind.

10 One of the motions that was made pretrial was  
11 CBS's motion to the effect that there should be an absolute  
12 privilege to media organizations to say whatever they want  
13 about officials, public officials in sufficiently high  
14 office with respect to the performance of the duties of  
15 those offices.

16 And one of the arguments that CBS made was that  
17 the Court need not trouble itself with the problems of line  
18 drawing because that wherever the line should properly be  
19 drawn, General Westmoreland is certainly on the top side of  
20 the line.

21 You will recall that when I ruled on CBS's  
22 motion, my ruling with respect to that motion was that it  
23 would be premature to adopt a position that so radically  
24 changed the law without the benefit of a full trial record.  
25 And it has occurred to me, I must say this was not a

1 question I was thinking about so much at the time that I  
2 made that ruling or non-ruling, but it has occurred to me  
3 more since that time during the testimony, that I'm not so  
4 sure that CBS is correct that General Westmoreland is high  
5 enough if such a line drawing proposition were to be made.

6 His office was certainly one that was very much  
7 in the public eye. It was one to which public attention  
8 was very, very strongly directed. But in terms of where he  
9 stood on a ladder of rang, there are certainly many, many  
10 public servants who stand in higher positions.

11 Secondly, CBS also made an argument of a type  
12 that is generally made with respect to the issues of public  
13 figure libel cases, that General Westmoreland had  
14 voluntarily put himself in the position of this office, and  
15 as a result had some kind of obligation to bear the  
16 vicissitudes that might come from public press commentary  
17 on his performance of the office.

18 And that's why I was asking the questions with  
19 respect to exploring as a legal matter and as a practical  
20 matter, what degree of choice one has in accepting that  
21 kind of military assignment.

22 The Secretary of Defense, I think unquestionably,  
23 has the right to refuse the President's desire that he take  
24 that position; the commanding officer of MACV, I think  
25 General Westmoreland said, would probably very likely not

1 be appointed if he strongly indicated that he had no  
2 stomach for the job or no desire to take it, but if he were  
3 ordered to do so, I understood his answers to be that he  
4 had a legal obligation to take it.

5 And I was just asking those questions because  
6 conceivably they might bear on the reassertion of those  
7 points by CBS after trial if there is a verdict in favor of  
8 General Westmoreland.

9 MR. BURT: Thank you.

10 MR. BOIES: We could certainly intend to  
11 reassert those points, your Honor. I am a little bit at a  
12 loss now to know exactly how to proceed with this  
13 particular witness given the Court's questions. I don't  
14 think it was ever our argument that the significance of  
15 General Westmoreland's position was determined by how many  
16 people might consider questions like the questions that the  
17 Court was putting to General Westmoreland.

18 THE COURT: By how many people?

19 MR. BOIES: Would consider the kind of questions,  
20 like the emblem to be worn on the uniforms and the like.

21 THE COURT: I asked him also about tactical  
22 matters.

23 MR. BOIES: Yes, but the Court will forgive me  
24 for just a moment?

25 THE COURT: Yes.

1 MR. BOIES: Or how the formal procedure was set  
2 up. A couple of times General Westmoreland sort of  
3 interrupted to say, well, this is the way theoretically it  
4 would work.

5 THE COURT: Yes.

6 MR. BOIES: My own view is that the record is  
7 already clear enough with respect to the personal  
8 relationships between President Johnson and General  
9 Westmoreland to satisfy the point. However, given the fact  
10 that the Court has sort of reached out for that particular  
11 line of examination with this particular witness, and given  
12 the nature of that examination, which was cast in terms of  
13 sort of technical procedures --

14 THE COURT: Yes?

15 MR. BOIES: -- I guess mostly I'm concerned not  
16 with the state of the record but with the state of the  
17 Court's thinking about the issue.

18 THE COURT: Oh, no. Let me just clarify that.  
19 I am not representing to you that I think the questions I  
20 asked are the only questions or the derterminative  
21 questions. It occurred to me after hearing testimony in  
22 this trial, while I must say when I read your briefs and  
23 you said this person, General Westmoreland, is high enough  
24 to be above the line no matter where it is reasonably drawn,  
25 I didn't think too much about that. I didn't question it

1 too much and it seemed to me to make sense.

2 Of course, I didn't really explore the question  
3 fully. I deferred it, talking about the preferability of  
4 having the complete trial record. When I heard his trial  
5 testimony and the testimony of others talking about the  
6 chain of command, questions that were asked more for  
7 different reasons, more because they had to do with the  
8 issue of deceiving the President or efforts to deceive the  
9 President, it occurred to me that if one counted the steps  
10 down the line from the President to COMUSMACV and one made,  
11 one compared them to that number of steps down another  
12 department of government, any civilian department, you are  
13 not talking about somebody who is at the very highest level  
14 of government.

15 He was talking as to somebody as to whom there  
16 is quite a number of steps between him and the President.  
17 If you go down that number of steps in the civilian part of  
18 the Defense Department, if you go down that many steps in  
19 the State Department, you are likely talking about people  
20 whose names are pretty much unknown. General Westmoreland's  
21 name was very much known, but that had more to do with the  
22 high public visibility of the particular office he was  
23 performing than it had to do with how high his office was  
24 on a structural chart of governmental responsibility and  
25 command.

1 Now, I simply wanted to ask a few questions to  
2 make more clear the record in that respect. I also wanted  
3 to hear, I didn't know what his answers were, although I  
4 kind of suspected what they would be, on the issue of the  
5 lawfulness, the obligatory quality of an order to assume  
6 that job.

7 I wanted the record to reflect whether that is  
8 an office which a general who receives an order to step  
9 into that job must obey or has the legal right to simply  
10 decline. Now, I'm not saying that those questions have  
11 determined my answer to that issue, should it ever again  
12 arise, which, of course, it won't if the defendant wins the  
13 jury verdict. But those are questions which I think  
14 amplify the record in a fashion that is arguably useful and  
15 that's it.

16 MR. BOIES: It is probably too late to do so,  
17 although I'm not sure, but if I had understood the point  
18 and purpose of the Court's questions, I think I would have  
19 objected to the question on relevance grounds n that I  
20 would respectfully submit --

21 THE COURT: You are still free to do so.

22 MR. BOIES: I guess I would make that objection  
23 because I would respectfully submit those are the wrong  
24 questions, that is with respect to how many, as the Court  
25 put it, layers or levels there are; that the right

1 questions are not what is the theoretical way to approach  
2 it, but, in fact, how those things actually operate.

3 THE COURT: Like every other issue in the trial,  
4 you are free to put questions, if you want to. I have  
5 offered you the opportunity, and, futhermore, I have called  
6 you to the side bar to explain to you what I thought the  
7 relevance of the questions was and to give you the  
8 opportunity to ask further questions.

9 I might add further, if you wish to ask further  
10 questions outside the presence of the jury, since they  
11 really related to a matter that is not the jury's concern,  
12 I have no objection to a proceeding being scheduled, it  
13 doesn't even need to be in my presence necessarily. It  
14 could be by deposition where you would ask further  
15 questions.

16 MR. BOIES: Thank you.

17 MR. BURT: In view of Mr. Boies's answers and in  
18 view of the fact that the witness has been on a long time  
19 and I want to end this one way or the other, I would like  
20 to, I think we ought to bring General Westmoreland back and  
21 let him answer more questions on the practicality, how did  
22 things operate on a daily basis. Because I am concerned  
23 about seeing this argument at some later date from a very  
24 incomplete record perhaps on this point, and I don't want  
25 there to be any question about it.

1 MR. BOIES: All I can say is that whatever the  
2 record --

3 MR. BURT: But you object to the relevancy.

4 MR. BOIES: No, whatever the record is, you left  
5 the record that way without even the benefit of the Court's  
6 questions.

7 MR. BURT: Your Honor has offered us, I believe,  
8 the opportunity to put questions on this point to the  
9 witness and I would take that opportunity to do so now if I  
10 may.

11 THE COURT: All right.

12 MR. BURT: Can I go find the witness? Perhaps  
13 we can take a 5 minute break?

14 MR. BOIES: I would ask this be outside the  
15 present of the jury.

16 THE COURT: Do you have any objection?

17 MR. BURT: No objection.

18 THE COURT: Do you require it be done now?  
19 Shouldn't we proceed with things --

20 MR. BURT: Since you have asked the questions in  
21 the presence of the jury, I have no objection to that.

22 THE COURT: I don't care, I think they are  
23 properly part of the trial record, I think they may be  
24 asked in the presence of the jury and I would also permit  
25 you to ask them outside the presence of the jury if you

1 feel that the questions have no pertinence to the jury's  
2 consideration but you wanted them explored further for the  
3 purpose of --

4 MR. BURT: I would like to put them in front of  
5 the jury. I think we should explore just how things  
6 operated in MACV on a daily basis, who reported to whom and  
7 who ordered whom.

8 MR. BOIES: I will object both on grounds of  
9 relevance and on grounds outside the scope of the  
10 recross-examination.

11 THE COURT: Outside the scope of my examination?

12 MR. BOIES: No, my recross-examination.

13 THE COURT: Well, I think the only appropriate  
14 questioning, the only appropriate further questioning of  
15 this witness is as cross-examination to my questions. It  
16 has been closed other than that.

17 MR. BOIES: What I am saying, your Honor, is as  
18 I apprehend plaintiff's intended scope, it is not in the  
19 form of cross-examination, but in the form of elaboration.  
20 I think that the examination that the plaintiff intends is  
21 outside the scope of the recross-examination, and I think  
22 it is objectionable.

23 THE COURT: Well --

24 MR. BURT: It has two considerations, your Honor.  
25 One, I am most concerned that we do not continue deposing

1 this witness, etc. If there is some more to be done with  
2 him, I strongly urge we do it now so that we don't leave an  
3 open thing hanging over him. He has been on a very long  
4 time, I think it has to stop.

5 I am not terribly concerned about taking him  
6 back to the practicalities, but since there has been an  
7 inference raised that what was was not what technically,  
8 the chains of command would show, I think we should clarify  
9 that at point. I would have no objections to the Court  
10 pursuing additional questions with respect to the  
11 practicality of reporting at this time and that eliminates  
12 the question of outside the scope.

13 THE COURT: Do you want to ask him a couple more  
14 questions?

15 MR. BOIES: I will object to the line on grounds  
16 of relevance.

17 MR. BURT: I would like you to ask those  
18 questions, your Honor.

19 THE COURT: Why do you want the questions -- I  
20 don't understand what you want the questions asked for?

21 MR. BURT: My concern is that if in the unlikely  
22 event that we win a verdict, that the issue, the point  
23 would be argued that General Westmoreland as a practical  
24 matter was next door to Lyndon Johnson everyday; he stayed  
25 at the White House; his wife had friends there, and no

1 matter what the chain of command was, in point of fact he  
2 was Lyndon Johnson's righthand man and they spoke on the  
3 phone every day as evidenced by the fact that Westmoreland  
4 stayed at the White House and that is --

5 THE COURT: May I suggest that we just proceed  
6 to trial and that you both think further about whether you  
7 think any further examination is warranted and whether it  
8 be in or out of the presence of the jury.

9 MR. BURT: Okay.

10 MR. BOIES: We will do that, your Honor.

11 MR. BURT: Should we take our morning break?

12 THE COURT: All right.

13 (In open Court)

14 THE COURT: Let's take the customary mid-morning  
15 break and the jury can go in the jury room for 10 minutes.

16 (Jury excused)

17 (Recess)

18 (In Open Court; jury not present)

19 (Pause)

20 THE COURT: Ready to proceed?

21 MR. BURT: Yes, your Honor.

22 THE COURT: Call the jury, please.

23 What is the next order of business?

24 MR. BURT: We will do a brief interim summation,  
25 your Honor, and then we are going to play the rest of the

1 Westmoreland outtakes.

2 THE COURT: Will you be giving an interim  
3 summation also, Mr. Boies?

4 MR. BOIES: I will, your Honor.

5 THE COURT: All right.

6 MR. BOIES: Your Honor, my interim summation  
7 will be after the playing of the outtakes.

8 THE COURT: All right.

9 MR. BURT: At least we have a separation.

10 (Jury present)

11 (Pause)

12 THE COURT: All right, members of the jury, Mr.  
13 Burt will now address the jury.

14 MR. BURT: Your Honor, members of the jury, I am  
15 going to take a moment to give you one of those interim  
16 summations that the Court has permitted us to present to  
17 you.

18 Eight weeks or thereabouts have passed in this  
19 trial. You have seen 16 men testify about the events  
20 related to the defendant's broadcast. You have seen Walt  
21 Rostow, the President's National Security Advisor. You  
22 have seen Robert Komer, the President's Ambassador for  
23 Pacification in South Vietnam in 1967 and 1968, you have  
24 seen General Phillip Davidson, who was General Westmoreland's  
25 J-2 from June of '67 through the time General Westmoreland

1 left in 1968.

2 You have seen General George Godding who was the  
3 head of the MACV delegation to the SNIE. You may recall  
4 having heard and seen Colonel John Stewart, who was a  
5 highly regarded intelligence analyst for Current  
6 Intelligence in 1967 and is now the chief of the special  
7 forces center in Fort Bragg.

8 You have seen George Carver, who in '67 was  
9 Director Helm's special assistant for Vietnamese affairs in  
10 the CIA and the head of the Washington intelligence  
11 community delegation to the fall meeting of the SNIE, a  
12 phrase I think you are all familiar with.

13 You have also seen general William C. Vietnam,  
14 Westmoreland, US Commander in Vietnam in 1967 and several  
15 years before that and in 1968. And you have heard him  
16 testify at length both on direct-examination and on  
17 cross-examination and, indeed, in answer to some questions  
18 put by the Court.

19 And lastly yesterday you saw and heard  
20 Ambassador Paul Nitze, who in 1967 was Deputy Secretary of  
21 Defense. All of these men and the other senior  
22 intelligence officers that you saw and heard who were  
23 officers in 1967 out at MACV, have demonstrated through  
24 their testimony that the CBS broadcast is untrue, that  
25 General Westmoreland did not suppress information from his

1 superiors; General Westmoreland did not alter intelligence  
2 estimates that went to those superiors.

3 Take a minute and reflect on the CBS broadcast  
4 that we showed you in parts and on the testimony you have  
5 heard here. The premise of the CBS broadcast springs from  
6 one alleged event. The broadcast claims that General  
7 Westmoreland suppressed General McChristian's report on the  
8 results of the RITZ and Corrals study, the study on the  
9 irregulars and political cadre, and that after he  
10 suppressed this report from his superiors, he and other  
11 members of his command engaged in a series of acts of  
12 suppression in order to keep his superiors in the dark as  
13 to the size of the enemy we were facing in South Vietnam.

14 You have now heard General Westmoreland testify  
15 that sometime in mid-May before May 19th, General  
16 McChristian brought him a draft cable, one page summarizing  
17 revised higher estimates of irregulars and of the political  
18 cadre. General Westmoreland testified that he asked for a  
19 briefing on those higher numbers; that he was concerned  
20 that sending off the cable without knowing exactly what it  
21 might be and in the form that it was, a single page,  
22 summing up long reports, might be misleading, so he asked  
23 for a briefing on the studies that were the basis for that  
24 summary table, and he got that briefing.

25 Yesterday you saw the record of the meeting at

1 which General Westmoreland was briefed for the first time  
2 on the revised irregular and political cadre estimates.  
3 You saw the record of that meeting, that was the May 19th  
4 memorandum which is Exhibit 1519. You saw that record, the  
5 briefing of the revised Vietcong irregular and political  
6 order of battle estimates.

7 You read the paragraph, paragraph A, that  
8 confirmed what General Westmoreland had testified before  
9 you, confirmed that when he was given the briefing he asked  
10 that it be reviewed in a presentation, and that the armed  
11 fighters be separated from the unarmed fighters. And you  
12 saw the contemporaneous document of that event.

13 Now, the broadcast alleged that the report of  
14 those estimates, and that is the word that is used in the  
15 broadcast, report, was suppressed from General Westmoreland's  
16 superiors, but you now know that Admiral Sharp, General  
17 Westmoreland's immediate military superior at CINCPAC,  
18 Commander Chief Pacific, was present at the briefing on May  
19 19 when General Westmoreland was briefed for the first time  
20 on the higher estimates.

21 You heard General Westmoreland testify that  
22 Admiral Sharp was present. Admiral Sharp saw and heard the  
23 briefing of these revised irregular and political cadre  
24 numbers. You heard Ambassador Komer testify that he was  
25 present at the briefing. Ambassador Komer was the

1 President's Ambassador to Vietnam For Pacification, and one  
2 of the men who Saturday on the Mission Council. You have

3 The Mission Council was chaired by Elsworth  
4 Bunker, and Komer was there when the higher numbers were  
5 briefed; he saw them, he heard them. Sharp was briefed

6 Now, the testimony that you heard from General  
7 Westmoreland and others and the documents you have seen of  
8 that May 19 CIIC Memorandum for The Record show that  
9 General Westmoreland did inform his superiors about the  
10 revised SD, SSD and political cadre estimates contained in  
11 the RITZ and Corrals reports that General McChristian  
12 developed.

13 (Continued on next page)

1           The defendants would have you believe that their  
2 broadcast was true. That is simply ridiculous. You have  
3 seen the minutes of the meeting at which Admiral Sharp sat  
4 in, at which the higher figures were briefed. Isn't it  
5 ridiculous to assert that after Admiral Sharp was briefed  
6 on these numbers, General Westmoreland would then spend  
7 nine months trying to suppress from his superiors what they  
8 already knew about?

9           After Admiral Sharp was briefed on higher  
10 numbers there was nothing to suppress. Once Admiral Sharp  
11 knew about the revised estimates, General Westmoreland  
12 couldn't have suppressed anything if he wanted to.

13           Thank you.

14           MR. BOIES: Members of the jury:

15           I would like to respond to just two of the  
16 central points that Mr. Burt addressed. First, Mr. Burt  
17 told you that you have heard a number of witnesses. You in  
18 fact have heard a number of witnesses. Those, of course,  
19 have been the witnesses selected by plaintiff, and you will  
20 hear in the coming weeks the witnesses that the defendants  
21 will bring forth.

22           But even as to the witnesses that plaintiff has  
23 selected, Mr. Burt doesn't tell you what those witnesses  
24 have said. He doesn't tell you about the contradictions  
25 that you have heard between what his own witnesses have

bs4  
1 said and what General Westmoreland said.

2 You will recall, Mr. Komer and Dr. Rostow and  
3 George Godding testified about the MACV command position.  
4 When General Westmoreland came on he said, "Well, they had  
5 the command position wrong. These people didn't understand  
6 it."

7 You heard Mr. Rostow come and testify what the  
8 President had been told by General Westmoreland in November  
9 of 1967. Remember that misleading bar chart that compares  
10 1966 and 1967 with different categories in the two years?  
11 General Westmoreland comes on the stand and says "Well, Dr.  
12 Rostow didn't understand what that chart was."

13 You will recall that you heard General Westmoreland  
14 Westmoreland on the videotape in his interview with Mr.  
15 Wallace and at his deposition earlier, after the law suit  
16 started, testify how he learned about increased  
17 infiltration or movement of troops -- he called it  
18 "infiltration" in his interview with Mike Wallace and  
19 "movement of troops" in his deposition -- at the time that  
20 he was asking for reinforcements from the 101 Airborne  
21 Division.

22 That happened in September. At trial he says "Well,  
23 that may have happened in September, but I didn't find out  
24 about the infiltration or the movement of troops until late  
25 November."

1           You have seen contradictions not only between  
2 General Westmoreland but in General Westmoreland's own  
3 testimony here at trial, contradictions between what he has  
4 testified here at trial, what he wrote in his book, what he  
5 told Mike Wallace, what his deputy and chief intelligence  
6 officer have said, what he testified on direct and  
7 cross-examination, a whole series of contradictions.

8           Could he have been wrong? Of course he could,  
9 once, twice, perhaps three or four times, but not the  
10 twenty or twenty five times that you heard him say, "Well,  
11 those words of mine were wrong. I misspoke. I didn't  
12 remember. I had not concentrated."

13           You heard those kind of contradictions not only  
14 between the plaintiff and his own witnesses but within the  
15 plaintiff's own statements.

16           There is a second point that I want to address  
17 and those goes back to the court's X chart. The court has  
18 told you that among the two issues that you have to focus  
19 on is both whether the broadcast was false and whether CBS  
20 knew it was false, or was reckless as to whether or not it  
21 was false, at the time that the broadcast was made.

22           In order to prevail, the plaintiff must prove  
23 not only that the broadcast was false, and we think he has  
24 failed to do that, and, indeed, we think that the witnesses  
25 that will come on throughout this trial will demonstrate

1 that the broadcast was true. But aside from that issue, he  
2 must prove, in order to prevail, that CBS, at the time the  
3 broadcast was put on, knew that that broadcast was false,  
4 or was reckless about it.

5 Even if you were to assume, and I think that  
6 would be a hard assumption, but even if you were to assume  
7 that the story that the plaintiff tells for the first time  
8 here at trial, a story different than what he told Mike  
9 Wallace, a story different than what his own witnesses have  
10 told, a story different than what he told me at the  
11 deposition, even if you were to assume that that story,  
12 told by the plaintiff for the first time here at trial, was  
13 true, there is no way CBS could be charged with predicting  
14 that what the plaintiff had said at his interview, said at  
15 his deposition and what other people had said was not true.

16 Even if you assume that this story that he tells  
17 for the first time here at trial was right, that story  
18 doesn't go to what CBS's state of mind was at the time of  
19 the broadcast, because at that time CBS had to go with the  
20 information that it then had, the testimony of the various  
21 people that it had, the Pike Committee report, the report  
22 of Congress that had looked at this issue, and what the  
23 plaintiff's own statements had been. Thank you.

24 Excuse me, let me go on for just one more moment,  
25 your Honor.

1 I neglected to draw the jury's attention to  
2 something that I wanted to do, and that is Mr. Burt says  
3 that Admiral Sharp was present at the CIIC meeting on May  
4 19, and he refers to exhibit 1519, which he says you read.

5 I want to be sure that you recall this exhibit.  
6 This exhibit sets forth various instructions that COMUSMACV,  
7 General Westmoreland, is said to have made. I want you to  
8 be sure that you remember -- you did see this exhibit  
9 yesterday, I believe, but I want you to be sure that you  
10 remember that those instructions were given following the  
11 subject meeting.

12 These instructions were given by General  
13 Westmoreland, not at the meeting, but this memorandum  
14 confirms the oral guidance, the "oral guidance" issued by  
15 COMUSMACV following the subject meeting. And there's not  
16 one shred of evidence that Admiral Sharp was there at that  
17 time.

18 In addition, if Admiral Sharp knew all about it,  
19 why would add was Admiral Sharp writing in June asking "What  
20 are the new figures?" And if Admiral Sharp knew about it,  
21 why was General Westmoreland writing back in cables on June  
22 14, 1967, that has been marked as exhibit 243, and June 27,  
23 1967, an exhibit that has been marked as exhibit 674 --  
24 actually it is June 29, 1967 that has been marked as  
25 exhibit 674 -- why did General Westmoreland write back,

1 over a month after Admiral Sharp was supposedly told,  
2 saying "You can't have it yet. It's not ready"?

3 Thank you. (Jury present)

4 MR. BURT: Members of the jury, you will now see --

5 THE COURT: Just a second, please.

6 MR. BURT: Sorry.

7 (Pause) (Action, please.)

8 MR. BURT: We will now see the remaining portion  
9 of the interview that Mike Wallace, one of the defendants,  
10 had with General Westmoreland, I guess nearly three years  
11 ago, maybe a little bit more than three years ago.

12 (Tape played)

13 MR. BURT: Sorry, your Honor. We are having a  
14 problem with the machine.

15 THE COURT: Members of the jury, apparently the  
16 equipment is not working properly. We will break for an  
17 early and an unusually long lunch break. We will will  
18 resume at 1:40. You are excused.

19 (Luncheon recess)

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