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CIA Documents Set Off Storm in Westmoreland Suit Against CBS

By Murrey Marder
Washington Post Staff Writer

Vietnam war documents from files of the CIA have set off a storm of cross-claims in retired Gen. William C. Westmoreland's \$120 million libel suit over the 1982 CBS News television documentary, "The Uncounted Enemy: A Vietnam Deception."

CBS attorney David Boies claims that the declassified records include "a classic 'smoking gun' document" that he said "proves that the thesis of the broadcast was correct." Westmoreland's attorney, Dan M. Burt of the Capital Legal Foundation, makes just the opposite claim, saying that other cables in the same sequence show that the conspiracy accusation in the broadcast was "a fake."

In the last two weeks, "400 to 500 documents" have been released by the CIA in response to subpoenas, CBS attorneys said, as part of a sweeping search of wartime records for the case.

Westmoreland, Vietnam field commander from 1964 to 1968, contends he was libeled by the CBS broadcast, which reported "a conspiracy at the highest levels of American military intelligence—to suppress and alter critical intelligence on the enemy" in 1967.

CBS attorneys focused their attention on a cable that they made available, sent from Saigon on Sept. 10, 1967, by George Carver, then special assistant to CIA chief Richard Helms.

Boies called it "the essence of the lawsuit" and said "I think it is just devastating to the Westmoreland presentation." The cable shows, Boies contended, that the military command in Saigon did impose an

arbitrary "ceiling" on counting enemy strength, in order to make it appear that the war was being won.

This cable from Carver says, in part:

"Variety of circumstantial indicators—MACV [Military Assistance Command, Vietnam] juggling of figures its own analysts presented during August discussions in Washington, MACV behavior, and tacit or oblique lunchtime and corridor admissions by MACV officers... all point to inescapable conclusion that Gen. Westmoreland (with Komer's encouragement) [Robert W. Komer, deputy commander for pacification] has given instruction tantamount to direct order that VC [Viet Cong] strength total will not exceed 300,000 ceiling. Rationale seems to be that any higher figure would not be sufficiently optimistic and would generate unacceptable level of criticism from the press.

"This order obviously makes it impossible for MACV to engage in serious or meaningful discussion of evidence or our real substantive disagreements, which I strongly suspect are negligible. I hope to see Komer and Westmoreland tomorrow... and will endeavor to loosen this strait-jacket. Unless I can we are wasting our time...."

Carver headed an interagency team from Washington sent to resolve a running dispute between the CIA and MACV over counting enemy strength. Both the CIA and MACV's own analysts had concluded that earlier assessments, especially on irregular forces, were seriously underestimated. That produced prolonged dispute about the numbers, and about the categories

that should be counted as combat forces.

The CBS News documentary reported allegations by military analysts that they were directed to hold their figures on enemy strength below a 300,000 total. Westmoreland denies imposing any "ceiling." The CIA's own total count on enemy

strength was in the "half-million range." Admitting such a figure would have confounded the Johnson administration's determination to display progress in the war.

Westmoreland has testified in pre-trial depositions that his command inherited from the South Vietnamese a "deceptive" and "erroneous breakdown" for counting enemy strength. When it was found that "we had underestimated the political cadre and underestimated the part-time irregulars," Westmoreland said, "I didn't tell them to change any numbers... I said 'I want the matter reviewed.'"

"It became evident," Westmoreland said, "that we should come up with a different format that would isolate the order of battle from the political cadre and from the home-guard types."

His objective, Westmoreland said, was "to purify the order of battle so that we had a better fix on precisely who we were fighting...." To combine the figures on enemy strength, he said, would have given a false impression "that suddenly we were fighting more people than we were before...." Moreover, Westmoreland said, it would have given ammunition to those "who were grasping at... every item that they could lay their hands on to embarrass the administration."

A breakdown of the figures into separate categories, said Westmoreland's attorney, Burt, is what did evolve, as shown by other cables from Carver that he made available. But it was wrong and irresponsible, Burt said Monday, to label that "a conspiracy."

"I believe that the entire set of cables, as well as Mr. Carver's testimony, will make it very clear that the [CBS] broadcast was as many people believe—fake," Burt said.

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Subsequent cables, Burt said, show that Carver, after meeting with Westmoreland, "corrects his initial impression" that Westmoreland had imposed a ceiling on enemy strength numbers. Burt said Carver cabled back to Washington to say "everything was resolved and Westmoreland was responsive to my position."

Carver on Monday said he agrees with that interpretation, and disagrees with the weight attached to his Sept. 10, 1967, cable by the CBS attorneys.

When asked if he was retracting what that cable reported, Carver said, "No, I'm not retracting." In talking first with Westmoreland's subordinates, he said, "they had acted in what seemed to me to be some kind of constraint" and perhaps "in deference to what they thought were his command intentions."

But Westmoreland, he said, stated that a "ceiling" order "had never come from him," and he "gave no evidence of having given an order for . . . or of wanting, to stick to a ceiling."

A Sept. 12, 1967, cable made available by Burt reported that "Komer . . . launched into an hour-plus monologue, reviewing his and Westmoreland's problems with the press, their frustrating inability to convince the press (hence the public) of the great progress being made, and the paramount importance of saying nothing that would detract from the image of progress . . ."

Carver went on in that cable to say that Komer challenged the CIA estimates, saying "he had much more faith in MACV's figures than ours (though he thought MACV's too high) and would hence recommend to Westmoreland that ours be rejected."

"He did say, however, that he agreed that the 298,000 total [used by MACV] had to be changed (for public relations reasons) and agreed with me that the final estimate should show ranges rather than single figures."

This cable continued, "He [Komer] was adamant, however, in insisting that [there] . . . must not be any quantification of the irregular forces on the grounds that the press

would add all the figures together and hence quantifying the irregulars would produce a politically unacceptable total over 400,000."

In bargaining over the figures, Carver reported to his CIA superiors, "You will note I have made a major concession in not quantifying the irregulars."

When he finally met with Westmoreland, Carver reported on Sept. 13, 1967, he found him "most cordial and receptive," and in a meeting of both staffs "I took Westmoreland at his word, usurped the chair, and announced that all constraints on totals were off" Carver reported that "during about four hours of

brisk discussion we hammered out the following agreement on numbers:

"Viet Cong Military Force: Main and Local Forces—119,000; Administrative Services—35,000-45,000; Guerrillas—75,000-95,000; Total—229,000-259,000. In addition, the compromise estimated that "the present strength of the Viet Cong political cadre is in the 53,000 (?) to 90,000 (?) range." That put the total personnel counted in the 282,000 to 349,000 range.

An accompanying memorandum, said the so-called "irregulars"—"self-defense forces, secret self-defense forces," and related groups—reported in 1965 to number "on the order of 150,000," but since depleted—would not be counted because "they are not offensive military forces" and "current evidence does not enable us to estimate the present size of these groups with any measure of confidence."

Carver, now a senior fellow at Georgetown University's Center for Strategic and International Studies, said this was a compromise along lines he had proposed the previous July, for dividing communist personnel into "military and non-military" categories.

CBS attorneys strongly dispute the contention that this disposes of the question of whether there was a "ceiling" on enemy strength figures.

The cables show, Boies said, that after months of stalemate over the impasse on the numbers, "lo and behold, the number they come out with was the number that MACV was insisting on." Attorney Burt disagreed, saying the figures that emerged show there was "no 300,000 ceiling."