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# Westmoreland-CBS Trial, a Running Battle Over Statistics and Credibility

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Like the Vietnam war itself, the Westmoreland-CBS libel trial has been pitted in a running battle over statistics, particularly with regard to estimates of enemy strength in South Vietnam in the year before the Tet offensive of January 1968.

But this week, perhaps more than at any time during the eight-week trial in Federal Court in Manhattan, the paper war has been moved to the front line in what appears to be a major — and unanticipated — engagement between Gen. William C. Westmoreland and David Boies, the CBS lawyer who is cross-examining the 70-year-old general in his \$120 million suit against the network.

The latest conflict began Monday and is expected to resume on Thursday, if General Westmoreland returns to the stand then. The general, who began his testimony on Nov. 15, complained of back pain on Monday night and was excused from testifying yesterday or today.

Ostensibly, the new conflict revolves around a set of three numbers for enemy strength that General Westmoreland provided President Johnson in November 1967. But more than the numbers themselves — how they were arrived at and what they revealed or obscured — the issue is General Westmoreland's credibility.

To the general, who commanded American troops in Vietnam from 1964 to 1968, the numbers reflected his command's best estimate of the size of the North Vietnamese and Vietcong forces in South Vietnam. And if they seemed unusually low, in relation to other figures gathered previously by the command, that was only "coincidence."

To Mr. Boies, who suggested that the numbers supplied President Johnson were deliberately misleading, the general's explanation was another obfuscation; another example of how statistics were manipulated in Saigon to put a better face on the course of the war.

Whatever the case, General Westmoreland gave testimony that was in sharp contrast to the testimony of the first witness on his behalf — Walt W. Rostow, President Johnson's special assistant for national security affairs. And Mr. Boies, who on other occasions has snared the general in discrepancies between his testimony and earlier statements by him, was making the most of the development.

But whether the new conflict will be resolved for the jury, or the public, remains to be seen. Perhaps the one person who could do most to support, or undermine, General Westmoreland's testimony — his former military intelligence chief, Maj. Gen. Phillip B. Davidson Jr. — has already appeared on the stand, and was not questioned about the figures that went to President

Johnson. It is considered unlikely that he will be recalled.

Another person who might have helped clarify the matter was Ellsworth Bunker, the United States Ambassador in Saigon in 1967. But Mr. Bunker died last September.

General Westmoreland contends CBS defamed him in a 1982 CBS Reports documentary, "The Uncounted Enemy: A Vietnam Deception," by saying that he had deceived the President and the Joint Chiefs of Staff about the size and nature of the enemy in South Vietnam in 1967. CBS says the broadcast was true.

The documentary alleged a "conspiracy" at the "highest levels" of military intelligence to minimize enemy strength to make it appear that America was winning the war. A "tactic" of General Westmoreland, it said, was to insist, in mid-1967, on the removal of the Vietcong's self-defense forces from the official listing of enemy strength known as the order of battle.

The general has testified that he favored the deletion of the self-defense forces because they posed no offensive military threat.

In mid-November 1967 General Westmoreland was called home by President Johnson. He was accompanied to Washington by Ambassador Bunker.

At a White House briefing, the President was shown three figures that represented the general's estimate of

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total enemy strength in South Vietnam for the third quarters of 1965, 1966 and 1967. The number for 1965 was 207,000; for 1966, 285,000; and for 1967, 242,000.

When Mr. Rostow testified on Oct. 16, he was asked by Mr. Boies whether the figure of 285,000 for 1966 included the self-defense forces. Mr. Rostow said it did. And he said it was his "understanding" that the figure of 242,000 for 1967 was reached by not counting those units, which, by then, had been removed from the order of battle. "The President," Mr. Rostow testified, "was aware of that."

General Westmoreland, however, testified on Monday that the self-defense forces had been taken out of the totals for 1965 and 1966. Added into the figures for 1965 and 1966 was another category of enemy strength — administrative service troops — that, he said, was not included in the order of battle before 1967.

General Westmoreland said it was all part of a "retroactive adjustment" done by General Davidson before he and Ambassador Bunker left for Washington. Mr. Rostow, he said, had testified "inaccurately" and Mr. Boies simply "didn't understand" the figures.

When Mr. Boies noted that another intelligence estimate made by General Westmoreland's command in August 1966 placed total enemy strength at 282,452 — including the self-defense forces — the general said the similarity

between that figure and the figure given President Johnson for 1966 was "strictly coincidental."

At his pre-trial deposition, General Westmoreland said he could not recall ever discussing enemy strength estimates with President Johnson. General Davidson was not asked at his deposition, or at the trial, about the figures given Mr. Johnson because, until General Westmoreland's testimony, lawyers for CBS were unaware of any supposed involvement by the former military intelligence chief.

While it may be a matter of semantics, the "administrative service" forces that General Westmoreland referred to on the stand appear to be the same forces as a "combat support" category that was, indeed, included in the order of battle in 1966. General Westmoreland himself, in 1966, mentioned that category when estimating enemy strength.

Moreover, Mr. Rostow said in his pre-trial deposition that General Westmoreland's command in 1967 had been unable to perform the kind of "retrospective" analysis that General Westmoreland now attributes to General Davidson.

"You know," Mr. Rostow told Mr. Boies in the deposition on Oct. 13, "they did not do a retrospective estimate. They said it was impossible."

Q. MACV [General Westmoreland's command] said it was impossible?

A. MACV said it was impossible.

It was unclear, however, whether Mr. Rostow's statement comported with two memorandums he wrote President Johnson in November 1967.

In the first, dated Nov. 15, Mr. Rostow said he had urged either the C.I.A. or the "intelligence community" at large to "do a retrospective estimate," at least with regard to the "decline" in guerrilla strength. "They say they cannot do it," he told the President.

But on Nov. 21 Mr. Rostow advised President Johnson that General Westmoreland's command was completing a "retrospective estimate" of the order of battle, "including previous underestimate of guerrilla forces."

Inexplicably General Westmoreland had arrived in Washington with his "retrospective analysis" a week before that memo was written. By his own testimony, General Davidson had briefed him on the figures while he was still in Saigon.

Whether the conflict over the enemy strength estimates is eventually resolved — at the trial any more than it was during the war — it serves as an example of the intricacies confronting a jury that has already had a plethora of statistical evidence laid before it. Yet in this instance, as in some others where corroborative evidence is absent, the impression made by a witness may count for substantially more than old data that is often ambiguous.