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Bitter Clash in CBS Trial Testimony

By M. A. FARBER

Gen. William C. Westmoreland and CBS lawyers clashed sharply in court yesterday, as the general stabbed the air with his glasses and asserted his prerogatives as a commander and the CBS lawyers, catching him in various discrepancies, suggested that he couldn't get straight his decisions in 1967 or his testimony now.

Typical of the day's proceedings at the general's seven-week-old libel trial against the network was an angry exchange over General Westmoreland's decision in the summer of 1967 to remove the Vietcong's self-defense forces from the official military listing of enemy strength known as the order of battle.

"You were then the commander of American forces in Vietnam, weren't you, sir?" said David Boies, who, as the principal attorney for CBS, was cross-examining the witness in Federal Court in Manhattan.

"C'mon, Mr. Boies, you know that," the general shot back.

"Yes," said Mr. Boies, his voice amplified by a microphone on a lectern, "but I sometimes wonder whether you forget it, sir."

"Objection," shouted Dan M. Burt, General Westmoreland's lawyer, as Judge Pierre N. Leval interrupted a series of rapid-fire questions from Mr. Boies.

"You didn't call the order of battle 'so-called' back in 1967, did you, sir?" Mr. Boies pressed the witness, who has

insisted that the listing needed revision. "Did you call it 'so-called' when you were interviewed by Mike Wallace?"

The general had not.

But General Westmoreland told the jury that the deletion of the self-defense forces from the order of battle, against the recommendation of his intelligence chief, Maj. Gen. Joseph A. McChristian, was his "prerogative."

"I exercised it," he said.

Arbitrary 'Ceiling'

The general's \$120 million suit stems from a 1982 CBS Reports documentary titled: "The Uncounted Enemy: A Vietnam Deception," for which Mr. Wallace was "chief correspondent" and narrator.

Mr. Wallace, who is also a defendant in this case, interviewed General Westmoreland in May 1981 for the documentary, which alleged a "conspiracy" at the "highest levels" of military intelligence to minimize the strength of the enemy in South Vietnam in 1967 to make it appear that America was winning the war.

General Westmoreland, according to the broadcast, arbitrarily set a "ceiling" of 300,000 for the order of battle. Another "tactic" of the general, Mr. Wallace said on the documentary, was to order the removal of the part-time, hamlet-based self-defense forces. These units had been carried in the order of battle at 70,000. But, as the result of new studies in early 1967, General McChristian estimated their number at 117,000.

On May 11, 1967, according to General Westmoreland, General McChristian gave him a draft cable for Washington containing the higher figures for self-defense forces, plus higher figures for an enemy category called political cadre.

During his direct testimony last week, General Westmoreland testified that he had deferred transmission of the cable and asked General McChristian for a full briefing later. He denied telling his intelligence chief — contrary to General McChristian's recollection — that the figures in the cable would be a "political bombshell," a phrase General Westmoreland said "is not in my lexicon."

Yesterday, Mr. Boies came back to this subject.

Mr. Boies showed the witness a copy of his pre-trial deposition last January in which he said that General McChristian's new figures represented a previous "underestimate" of enemy strength and that, without a "re-ordering" of the order of battle, the total figure for the enemy "would have been a real bombshell."

"That's not inconsistent with what I said before," the general explained, saying that, during 14 days of being deposed, the word "bombshell" had been "thrown around so much."

"You just thrust it right into my lexicon, Mr. Boies," he said.

Although laughter swept the courtroom, Mr. Boies was unsmiling. He suggested that the witness review the 1,642 previous pages of his deposition to see "just how recently this was thrown into your lexicon."

"All 1,642?" asked Judge Leval.

"Yes, I'd like to know," said Mr. Boies, as General Westmoreland leafed casually through the pages without finding another reference.

Q. Did you ever say to Mr. Wallace or to me that "bombshell" was not part of your lexicon?

A. No, but I guess I could have.

"Let me make it clear," the general said, turning, red-faced, to the jury and waving his black-rimmed reading glasses. "If the cable had gone out without explanation, it would have created a major public relations problem." He also termed the problem a "political" one.

General Westmoreland's decision to exclude the self-defense forces from the order of battle and to assign no numbers to them — as well as a related decision he made to place 75,000 to 85,000 political cadre in a separate category outside the listing of enemy strength — was taken after a fuller briefing on May 19 or May 20, 1967.

Yesterday, the general repeatedly sought to emphasize the relative importance of those decisions as against what he said was the "insignificance" of his May 11 meeting with General McChristian.

At the same time, he complained about the prominence that CBS had at-

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tached to the whole matter of the self-defense forces, whom he said were comprised of "old women and young boys."

"I mean, it's ridiculous," he said, nearly shouting. "I was four and a half years in that country. Nobody knew more about it than I did. And it's ludicrous to put such emphasis on this organization."

General Westmoreland said that what General McChristian believed "was one thing. What I believed was another. I happened to be the commander. It was my responsibility."

The general lowered his voice.

Meeting Not Recorded

"You know that, Mr. Boies," he said.

"I don't know that," said the defense lawyer, who is expected to call witnesses later in the case to dispute not only General Westmoreland's intentions and chronology of events but also

his opinion regarding the threat posed by the self-defense forces.

Mr. Boies, his hand on his hip and a sheaf of papers on his lectern, asked the witness whether he had spoken to General McChristian after the CBS documentary was aired in January 1982. General Westmoreland said he might have.

Q. Do you recall calling General McChristian at or about the time of the broadcast and saying that your conversation [on May 11, 1982] was a private matter between West Pointers and should not be revealed publicly?

A. I do not recall that conversation.

Mr. Boies, drawing on "historical notes" General Westmoreland had kept in 1967, asked the witness why he had not recorded his meeting with General McChristian about the higher enemy figures.

A. I didn't put everything in my notes.

Q. But you put a lot of things in your notes, didn't you?

A. The meeting was inconsequential.

Q. Well, you put in your notes that you had arranged for your surgeon to look at a visiting Congressional aide who had a head cold.

"That," said the general, grinning, "was a human interest item."

Mr. Boies went on to emphasize the difference between General Westmoreland's "problem" with the new estimates produced by General McChristian in May 1967 and the witness's acceptance of earlier figures by his intelligence chief — including figures that were apparently shown to President Johnson in April 1967.

The CBS lawyer also noted that General Westmoreland had quickly approved enemy strength figures compiled by Gen. Phillip B. Davidson Jr., who succeeded General McChristian on June 1, 1967.