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**NEW ZEALAND VIETNAM VETERANS**  
**AND**  
**DEFOLIANT CHEMICALS**

**INTRODUCTION**

*25 November 1986*

*The conclusion is inescapable that 2,4,5-T is associated with cancer in humans.*

**Theodor D Sterling,  
Professor**

Oral testimony heard and documents presented as evidence during a trial in the USA would seem to dispel argument that there is no cause and effect relationship between some herbicide chemicals and certain health diseases and disorders. The trial, begun in 1985 in the St Clair County of Illinois, related to a dioxin spill by Monsanto Chemical Company at a place called Sturgeon, Missouri. An award of 16 million dollars in punitive damages one dollar actual was made against the defendant, Monsanto Chemical Company, in late 1989.

Monsanto Chemical Company appealed against the damages that were awarded. A brief filed by the plaintiffs legal counsel in response to the appeal contains references to the evidence recorded during the original trial.

Evidence cited in the appellates briel indicates that for over thirty years Monsanto Chemical Company manipulated, falsified and concealed study results that showed 2,3,7,8 (Dioxin), a contaminant of 2,4,5-T manufacture, was and still is, harmful to human health. Dioxin is known as 2,3,7,8-TCCD and it arises within 2,4,5-T during the manufacturing process. Monsanto manufactured 2,4,5-T from 1948 to 1969 and supplied it to the US Defence Department as a component of Agent Orange and other defoliants during the war in South Vietnam.

On the basis of the evidence in the Sturgeon case it would appear that the United States Government was negligent in overseeing Monsanto Chemical Company's manufacture and supply of defoliant chemicals for use in South Vietnam from 1964 to 1975. Negligence is further qualified by a former USAF scientist stating in a letter to a Senator that the military scientists were aware of the potential for damage due to dioxin contamination in the herbicide.

The apparent admission of fraud by Monsanto has an impact world-wide due to reliance placed on the results of studies conducted on employees after an explosion in a plant at Nitro, West Virginia in 1949. The impacts, as far as they affect the New Zealand Vietnam veterans are on the:

- Conduct of hearings and final report of the Australian Royal Commission on The Use and Effects of Chemical Agents on Australian Personnel in Vietnam.
- Agent Orange Class Action Litigation Suit brought by Vietnam veterans against defoliant manufacturers.

- School of Computing Science, Faculty of Applied Science, Simon Fraser University, Burnaby, British Columbia.
- US Government.
- Australian Government.
- New Zealand Government.

The Royal Commission should be re-opened as perjury appears to have been committed by agents and employees of Monsanto Chemical Company. This is explained in further sections.

The Illinois case and its impact on others is described in the following sections:

- Monsanto Chemical Company and the Sturgeon Case.
- Australian Royal Commission on The Use and Effects of Chemical Agents on Australian Personnel in Vietnam.
- Agent Orange Product Liability Litigation Class Action Suit (MDL NO. 381).
- New Zealand Government.

### **Monsanto Chemical Company and the Sturgeon, Illinois Case**

The tenure of the plaintiffs-appellees brief is that testimony by Monsanto Chemical Company staff during the original trial drew admission that the Company had knowingly falsified and concealed true results of studies. Studies cited include examination of the incidence and causes of death amongst the employees in the Monsanto Nitro plant, West Virginia. Two Monsanto employees, Zack and Gaffey, undertook the study after an explosion at the plant in 1949. Other studies done by Monsanto as a consequence of the Nitro plant accident were also falsified. The results were falsified to show no cause and effect relationship existed between 2,4,5-T and soft tissue sarcoma cancer induced mortalities. The true results of studies in the Monsanto's Nitro plant, West Virginia, are:

- The overall death rate from cancer, 65% greater in the exposed population than expected.
- Death rate from lung cancer, 143% higher than expected.
- Death rate from genitourinary cancer, 108% higher than expected.
- Bladder cancer death rate, 809% higher.
- Lymphatic cancer death rate, 92% higher.
- Death from heart disease, 37% higher than expected.

Management personnel and employees of Monsanto Chemical Company are cited in the brief of having admitted to the Illinois State Court that falsehoods and fraud were involved in the Nitro plant studies. Some of the Monsanto defendant witnesses made major oral and written submissions to the Australian Royal Commission hearing on the Nitro studies. The conclusion of the Commission on the Nitro studies was:

*'...negative in relation to soft tissue sarcoma and malignant lymphoma and for cancer generally, except in relation to PAB related bladder cancer. They certainly provide no support for the claim by the VVAA (Vietnam Veterans Association of Australia) that exposure to Agent Orange results in an undue prevalence in deaths from cancer generally or from soft tissue sarcoma or malignant lymphoma in particular.*

The following is an extract from the response filed to Monsanto's appeal against the damages awarded. The exhibits are identified in the original trial that substantiate the claim of fraud in the Nitro plant studies.

The studies that are relied on and quoted as evidence world-wide to deny relationship between certain chemicals and certain diseases within humans exposed to those chemicals:

*Zack and Gaffey deliberately and knowingly omitted 5 deaths from the exposed group and took four workers who had been exposed and put these workers in the unexposed group serving, of course, to decrease the death rate in the exposed group and increase the death rate of the unexposed group. The exposed group, in fact, had 18 cancer deaths instead of the reported 9 deaths (Pl. Ex. 1644) with the result that the death rate in the exposed group was 65% higher than expected. Consider what the medical community would believe about Dioxin, if these facts were known outside the confines of the case!! The Plaintiffs, in cross examining the Medical Director of Monsanto, Dr Roush, clearly established the fraud that took place. The cross-examination not only revealed the overall death rate from cancer was 65% greater in the exposed population than expected, but that the death rate from lung cancer was 143% higher than expected, the death rate from genitourinary cancer was 108% higher than expected, the bladder cancer death rate was 809% higher and lymphatic cancer death rate was 92% higher. Death from heart disease was 37% higher than expected.*

*To further confound and mislead the medical community and the World at large, a later study of the reported cases of cancer comparing cancers in the living exposed-to-Dioxin workers with living unexposed workers was undertaken by Dr Suskind in the so-called Suskind-Hertzberg study. It was also fraudulent and published in the Journal of American Medical Association just three months after the trial of this case was started. This published study of the workers exposed in the 1949 accident reported only 14 cancers in the exposed group and 6 in the unexposed group (a smaller cohort). However, the medical records produced to the Plaintiffs conclusively proved gross mis-classification and omissions. The correct classification and inclusion of known cancers revealed 28 cancers in the unexposed group group as compared to only 2 in the unexposed group. (Pl.Ex. 1473) There were 17 skin cancers in the exposed group as compared to only 2 in the unexposed group. There were 11 cancers at other sites in the exposed group compared with no cancers whatsoever at other sites in the unexposed group. Thus there were 28 cancers in the group that had been exposed to Dioxins in 1949 as opposed to only 2 cancers in the unexposed group.*

*The background of these two fraudulent reports was demonstrated and delineated clearly during the cross-examination of Dr. Roush, the Medical Director of Monsanto, which took place on the 8th, 9th and 10th of July, 1985. The conclusion reached in these exhibits and in the examination of Dr. Roush stood throughout the trial without any serious challenge. Dr. Suskind attempted a half-hearted defense of Monsanto, but even that attempt was abandoned by Monsanto after Dr. Suskind was cross-examined and shown to be such a fraud that he refused to return to the State of Illinois for completion of his cross-examination.*

*Of great concern to the plaintiffs is that no publication of the truth has ever taken place and the world still believes that the occurrence of cancer and the cancer death rate is the same for the person exposed to Dioxin as it is for the person unexposed, even though greater significant statistical differences exist.*

*Earlier, at Monsanto's request, Dr. Suskind had examined exposed workers in 1953 to determine whether any adverse health effects resulted from the exposure. In 1955, a Dr. John Nestmann examined many of the exposed Nitro workers and found that most of them had severe psychoneuroses. (Pl. Ex. 1779) Some of the workers filed claims under the West Virginia Workers Compensation Act. In November of 1955, Dr. Suskind, would delete any reference to Nestmann's*

*finding of psychoneuroses. (Id.) Monsanto succeeded in concealing Nestmann's findings from the Workers Compensation Commission. (R. 3/6/86) Dr Suskind made no mention of these psychoneuroses in his later reports published on the Nitro workers (id. at p.185), and had no knowledge that the world was ever told of Dr. Nestmann's findings. (id. at p.191) By concealing these psychoneuroses, Monsanto was able to maintain its position that chloracne is the only long-term health effect of chronic Dioxin exposure.*

*In his 1980 and 1984 reports, Suskind indicated that "except for a few cases," the workers' nervous systems problems and liver problems had disappeared by 1953 (R.2/19/86, p.87), although Suskind knew that 27 of 29 workers out of 36 workers studied continued to have the same problems in 1953 as they had originally in 1949. (id. at p. 175) Suskind said that he had intended to make the world think that only a few of the workers continued to have problems in 1953. (R. 3/3/86, p.17) Suskind's studies are misleading and cannot be relied on. (R. 11/19/85, p. 128) Monsanto's Dr. Roush testified that Suskind's studies were "joint studies" between Suskind and Monsanto (R. 7/18/85, p. 79) - - that the studies were really Monsanto's studies.*

The appeal response contains reference to testimony by Dr Frank Dost, Monsanto's Toxicologist, and other Monsanto staff. They testified that Monsanto management had untruthfully stated to its workers and the public that Monsanto had failed to confirm a finding of the Occupational Safety and Health Administration (OSHA) in its Krummrich Plant. This related to findings of 2,3,7,8 (Dioxin) shortly after a chlorophenol spill at the plant in February of 1979. The OSHA had found 2,3,7,8 in samples taken from the walls in one Department. Monsanto conducted its own tests and found 2,3,7,8 at even higher levels than what OSHA had found. Monsanto had issued a newsletter to its Krummrich Plant personnel saying that it had not confirmed the OSHA findings. A public press statement was also made to that effect. Monsanto removed measures imposed by OSHA without even knowing whether the Department had been cleaned of 2,3,7,8. (R. 3/26/85)

**Australian Royal Commission on The Use and Effects of Chemical Agents on Australian Personnel in Vietnam.**

World reliance on Monsanto's studies is demonstrated in the Final Report of the Australian Royal Commission on the Use and Effects of Chemical Agents on Australian Personnel in Vietnam. Monsanto witnesses in the State of Illinois case made major oral and written submissions on behalf of Monsanto Chemical Company to the Commission's hearings, and the Nitro plant studies in particular. *Volume 9: Exhibits List and Bibliography* of the Commission's Final Report, July 1985, has the Monsanto studies, agents and employees listed. (Dost F, statement p. A-168; Suskind R R p. A-246; Zack J A and Gaffey W R, Zack and Suskind R R p. A-275).

Volumes 2 and 4 of the Final Report show the reliance placed on the Monsanto study results by the Australian Royal Commission. The Commissioner gave great weight to the submissions and the Nitro plant study results throughout the Final Report, July 1985. The witnesses must have committed perjury in their submissions and replies to questions during hearings if the evidence submitted to the State of Illinois Court is correct.

Dr Frank Dost is referred to and quoted in *Volume 2: Toxicology and General Health*, p. V-24, and, *Volume 4: Cancer*, pp. VIII-9 to VIII-10 of the report. The Monsanto Nitro plant study conducted by Dr R Suskind is included in *Volume 4: Cancer* (Table F, p. VI-173). The commission writes on page VI-174 of *Volume 4* that:

*In each of the instances referred to in Table F above either acute high level exposure, chronic high level exposure or exposure over a substantial period was involved. It is sufficient for this section of the Report to say that in the absence of immediate and dramatic toxic consequences no term health effects have been established other than persistent chloracne with early (within weeks) onset.*

*The commission had a lengthy consultation with Dr Ray Suskind of the University of Cincinnati in October 1984. His thirty year follow up of the workers heavily exposed to TCCD in the accident at the Nitro West Virginia satisfies the commission that the proposition set out in the preceding paragraph is correct and the commission finds accordingly.*

## **OCCUPATIONAL EVIDENCE-APPLICATORS**

Section E in Volume 4 of the final report is about OCCUPATIONAL EVIDENCE-APPLICATORS in which there are five major topics. One of the topics includes studies done by Professor O Axelson and Dr L Hardell in Sweden during the 1970's .

Professor Axelson had undertaken a study of cancer mortality among Swedish railroad workers exposed to 2,4,5-T, amitrole, diuron, monuron and/or a number of other herbicides from 1951 to 1972. The herbicide 2,4,5-T had never been used by the Swedish Railways prior to 1963. The study results showed no significant increase in tumours from the number expected. On re-analysis of data in the cancer mortality study, Professor Axelson made assumption that phenoxy acids may be implicated in excess tumour mortality.

Dr Hardell conducted a study in North Sweden on soft tissue sarcoma and its possible relationship with exposure to herbicides. He reported that there was a definitely increased risk of malignant mesenchymal soft tissue tumours in subjects handling phenoxy acids or chlorophenols and that phenoxy acids may constitute a risk factor but assessment of the effects of the individual chemical substances may be impossible. Dr Hardell reported on a subsequent study he conducted in South Sweden. He indicated that exposure to phenoxy herbicides may constitute a risk factor in the development of soft tissue sarcomas. The Royal Commissioner noted that there was not, nor on data available, could there be, any singling out of phenoxy acids in these studies.

Dr Hardell conducted a study on malignant lymphoma . He concluded that the investigation suggested that exposure to organic solvents, chlorophenols and/or phenoxy acids constitutes a risk factor for the incidence of malignant lymphoma.

Re-analysis and update of studies by Professor Axelson, and the subsequent change in outcomes, drew the attention of the Royal Commission. The Commissioner undertook examination of the studies on the basis of suggestion that the outcomes in Professor Axelson's studies supported the outcomes of Dr Hardell's studies. The Commission decided to look at:

- Epidemiology and its purposes.
- Lack of expertise of those engaged in Axelson's study.
- Inaccuracy or uncertainty of data involving problems in selection of the cohort, in determination of exposure and arising from wrong diagnoses.
- The weakness of conclusions.
- Inconsistency between results obtained by Professor Axelson and those obtained by Dr Hardell.

The Commission's findings conflict with what Dr Clary stated in his letter to Senator Daschle in respect of the Axelson/Hardell studies. The Commission was satisfied that Professor Axelson's doubtful positive conclusions should be given little or no weight, and wrote accordingly in the final report. The Commission also did not accept the Hardell studies as proving, on the balance of probabilities, any causal association between soft tissue sarcoma and lymphoma and exposure to 2,4,5-T, 2,4-D and TCDD.

After the examination the Commission was of the opinion that differences existing between the Axelson and Hardell studies showed that the studies did not support each other. According to the examination, Professor Axelson obtained results from a small cohort study while Dr Hardell's results were by case control studies.

The Commissioner was also of the view that the Hardell studies were '*widely recognised as flawed*', .... '*unacceptable as proof of the results claimed*' and such '*that they cannot be taken at face value*' but that the examination clearly demonstrated the flaws. The Commission says in its report that the Hardell studies were contrary to a large body of soundly based opinion and results of a number of well conducted studies. The results of Hardell's studies had not been replicated, according to the Commissioner.

## **INDUSTRIAL EVIDENCE**

The Commission's hearings included ***Industrial Evidence***. The Commission considered it was necessary to examine in detail results of studies from industrial accidents that revealed some evidence of cancer amongst exposed employees or the public. The studies subjected to examination were from Monsanto's Nitro plant, Dow's Midland plant and BASF's plant at Ludwigshafen. Evidence also included the Seveso plant accident in Italy that occurred in 1976, and which the Commissioner acknowledged as being less than ten years before-hand. The short time frame would have a bearing on latent cancers for example, if any, to have become apparent .

There were four studies from the Monsanto Nitro plant. They were:

- Zack and Suskind; Incidence and causes of death amongst a cohort of workers who had developed chloracne following the accident in 1949.
- Zack and Gaffey; Incidence and causes of death amongst a cohort of workers employed for one or more years between 1 January 1955 and 31 December 1977.
- Moses et al; Cross sectional survey of workers who had been involved in the manufacture of 2,4,5-T at Nitro some time between 1948 and 1969.
- Suskind and Hertzberg; Long term effects of work-place exposure to the processes involved in the manufacture of 2,4,5-T.

### ***Zack and Suskind Study***

The commission concluded that the Zack and Suskind study showed that there was no indication of excess deaths due to malignant neoplasms among the 121 workers exposed to 2,4,5-T. The commission expressed the view that the extent of follow-up was complete and the follow-up period longer than in any previous studies, although the cohort was relatively small. The Commission considered the study results to be a negative conclusion in the relationship between 2,4,5-T and soft tissue sarcoma. The Commission said that the study represented the best opportunity at that time to study the long term effects of TCDD on mortality and consistent with other negative results.

Dr Suskind is described in the Commission's final report as '*...a dignified and scholarly researcher whose work is of the highest quality, was good enough to share his raw data with the Commission and its advisors in Cincinnati, Ohio. He freely gave two days of his time so as to permit close analysis.*'

### **Zack and Gaffey Study**

The Zack and Gaffey study conclusion was that the mortality ratios for malignant neoplasms amongst those exposed to 2,4,5-T indicated no unusual patterns of mortality. The results were compared by the authors against Suskind's mortality study in relation to the study groups resulting in their observation that neither study showed an excess in deaths from either site among the malignant neoplasms.

### **Moses et al Study**

The Moses et al study did not detect any cancers, either systematic or of the skin. The study concluded that it is unlikely that permanent, severe and debilitating toxicological sequelae are inevitable after exposure to TCCD sufficient to produce chloracne.

### **Suskind and Hertzberg Study**

The Suskind and Hertzberg study consisted of two cohort groups. One group had been exposed to 2,4,5-T and its contaminants, the other group had not. The study reported that no excess of cancer of all sites, nor increased prevalence of it, nor cancer of the liver had been observed in the study population.

The Commission states in Volume 4 of its final report that this study had provided negative results in relation to cancer generally, and soft tissue sarcomas and malignant lymphomas as a sub-group.

The conclusion of the Commission was that the Nitro studies were:

*'...negative in relation to soft tissue sarcoma and malignant lymphoma and for cancer generally, except in relation to PAB related bladder cancer. They certainly provide no support for the claim by the VVAA (Vietnam Veterans Association of Australia) that exposure to Agent Orange results in an undue prevalence in deaths from cancer generally or from soft tissue sarcoma or malignant lymphoma in particular.*

The conclusion should be expurgated from the Commissions records if the claims of fraud and manipulation of study results by Monsanto Chemical Company are correct.

### **AGENT ORANGE PRODUCT LIABILITY LITIGATION CLASS ACTION SUIT (MDL No. 381)**

Monsanto Chemical Company was one of the seven defendants in the 'Agent Orange Product Liability Litigation Class Action Suit (MDL No. 381) to which New Zealand Vietnam veterans were a plaintiff party. The Australian Royal Commission delved into this case during the course of its hearings. The case was settled out-of-court in May 1984 for a sum of \$180 million dollars. Records obtained from defendants during *Discovery of Documents* were returned sealed to the defendants. The plaintiffs are denied access to those records that were submitted during the course of pre-trial hearings and discovery of documents.

The following is an extract on the Class Action Suit by the Australian Royal Commissioner in Volume 6 of the Final Report:

*Judge Pratt had ruled that plaintiffs could not take an action against the United States Government directly. The premise of the ruling seems to have been based on what is known as the Feres-Stencel doctrine which prevents servicemen bringing lawsuits against the Government in respect of its conduct of wartime operations.*

*Chief Judge Jack Weinstein presided over the pre-trial hearings ( from about May/June 1983) when Judge Pratt requested to be relieved of the case because of appointment to the Second Circuit Court of Appeals.*

*The chemical company defendants issued a third party complaint against the US Government seeking indemnification or contribution for any amount ordered to be paid by the defendants in respect of the plaintiffs claims. The Government sought for the claims to be dismissed on the basis of the Feres-Stencel doctrine. On 16 February 1984 the US Government application was successful in respect of the claims of Vietnam veterans and the associated claims of their family members but not in respect of the independent claims of the veterans' wives and children. These continuing claims were not part of the Class Action Suit.*

*A motion of the plaintiffs to have these claims certified as a Class Action was refused for a number of reasons, the major one being the almost non-existent possibility of recovery against the Government on the merits. This aspect rendered the enormous cost of notifying potential class members unjustified. With scientific studies continuing in this area, the effect of granting class action status as sought would have been to dismiss once and for all these claims due to lack of current available evidence to support them.*

*On 8 February 1985, the US Government moved to have the claims dismissed and the application was granted. The plaintiffs relied upon the Federal Tort Claims Act which waives Governmental immunity from such proceedings with certain exceptions. One such exception derives from the decision in Feres v United States (1950) 340 US 135 and is based upon factors such as the existence of a compensation scheme for members of the Armed Forces and the adverse pact of military discipline and effectiveness if service people were permitted to sue their Government. In an effort to overcome this bar the plaintiffs unsuccessfully alleged that the relevant conduct of the Government occurred prior to enlistment or, alternatively, following discharge in that there was a failure to take precautions, warn, treat or compensate the plaintiffs. The policy considerations which underly the Feres-Stencel doctrine were also considered to be a sufficient answer to the plaintiffs' claim based on intentional tort.*

*Hence, summary judgement was granted against all claims of the veterans, their wives and all of the children's derivative claims against the Government. The direct claims by the children were dismissed without prejudice, i.e. the dismissal does not operate to preclude such claims being brought in the future should the evidence to support the claim become available.*

The question arises as to whether the Feres-Stencel doctrine is applicable to members of foreign military forces such as New Zealanders to whom the laws of the United States of America are not applicable. Law suit action cannot be taken against Monsanto Chemical Company as it was a defendant in the 'Agent Orange' Product Liability Litigation Class Action Suit (MDL No. 381).

## **US GOVERNMENT AND DEFOLIANT CHEMICALS**



Senator Thomas Daschle, on 21 November 1989, cited excerpts from a letter in the US Congress from Dr James Clary, a former United States Air Force scientist. Dr Clary had wrote the letter to Senator Daschle on the 9th of September 1988 revealing more facts on chemicals used for defoliation. He was responding to critical comments from a Dr Brian MacMahon concerning literature on Non-Hodgkins Lymphoma (NHL) and Sarcoma of the Soft Tissue (STS) and the causative effect of dioxins. Military scientists in the United States of America, according to Dr Clary, knew that the defoliant chemicals to be used in Vietnam were dangerous to human health.

Dr Clary is a former government scientist in the Chemical Weapons Branch, BW/CW Division, Air Force Armament Development Laboratory, Eglin AFB, Florida. He was instrumental in writing specifications for a defoliation spray tank and is quite familiar with the early and recent research on Agents Orange/White and dioxin. Dr Clary was the scientist who prepared the final report on ***Ranch Hand: Herbicides Operations in South East Asia*** in July 1971 while he was assigned to the Department of Life Sciences, USAF. This task was undertaken after he had completed his work in Vietnam.

Dr Clary was of the opinion that the scientific literature Senator Daschle had presented in support of a Senate Bill earlier in 1989 reasonably and accurately represented the facts as they existed at that time. It was pointed out by Dr Clary that it is generally recognised that all epidemiological evidence is vulnerable to criticism, especially if ones mind is set in that direction. He also expressed the view that there are few absolute truths in the epidemiological field, only a preponderance of evidence to corroborate reasonable hypothesis.

Another point Dr Clary made was that even as evidence mounts condemning dioxins as having a causative effect with respect to Non-Hodgkins Lymphoma and Soft Tissue Sarcoma, there will be those who support a parochial (vested-interest) position, supported in the same way the tobacco industry's position had been that cigarettes were not linked to a certain variety of human diseases. Dr Clary also wrote that:

*The current literature on dioxins and NHL/STS can be characterised by the following:*

- 1. It underestimates (reduced risk estimates) the effects of dioxins on human tissue systems. As additional studies are completed we can expect to see even stronger correlations of dioxin exposure and NHL/STS.*
- 2. Previous studies were not sensitive enough to detect small, but statistically significant increases in NHL/STS. I believe that analysis of previous studies with newer, more sensitive statistical procedures, will demonstrate those significant increases. In addition, current studies with more refined techniques, will show an even stronger relationship between dioxin exposure and NHL/STS than previously encountered.*

*The inaccurate criticisms of many of the pioneer effort (conducted by Drs. Hardell, Erickson, Zahm and others) must be frustrating to them, as well as those who wish to make the proper decisions concerning the Agent Orange Issue. Dr. Hardell's and Dr. Erikson's recent paper (Cancer 62:652-656, 1988) satisfactorily addresses the criticism of their earlier work (1979), and may well become a classic in the field. And, Dr. Zahm's recent paper (Herbicides and Cancer: A Review and Discussion of Methodologic. Issues) presented the International Symposium on Occupational Cancer Epidemiology, June 1988) points out the necessity for more rigid protocols in future studies; but, confirms that the previous scientific studies demonstrate a positive relationship dioxin exposure and NHL/STS.*

*As time progresses, and additional evidence is forthcoming, it will be increasingly difficult for anyone to deny relationship between dioxin exposure and NHL/STS.*

*When we ( military scientists) initiated the herbicide program in the 1960's, we were aware of the potential for damage due to dioxin contamination in the herbicide. We were even aware that the "military" formulation had a higher concentration than the civilian version, due to the lower cost and speed of manufacture. However, because the material was to be used on the "enemy", none of us were overly concerned. We never considered a scenario in which our own personnel would become contaminated with the herbicide. And, if we had, we would have expected our own government to give assistance to veterans so contaminated. We sprayed over 14,000,000 gallons of herbicide in SEA (South East Asia), with large quantities being dispensed in War Zones C and D as well as I Corps (garrisoned mainly by marines).*

It appears therefore, that the US Government and Defence Department neglected to take adequate precautions to prevent health damage occurring to New Zealanders and Australian military personnel through exposure to the defoliant chemicals.

### **The Crown Responsibility of the New Zealand Government to Service Personnell**

The duty of the New Zealand Government is to its former military servicemen rather than continue citing the Australian Royal Commission findings as grounds that there is no cause and effect relationship between exposure to defoliant chemicals and certain diseases/disorders.

New Zealand Vietnam war veterans are suffering certain diseases and disorders that are consistent with exposure to defoliant chemicals. A significant number are recorded with the New Zealand Agent Orange Trust Board. The Trust Board was established to administer the Class Action Suit settlement monies to claimants.

The Australian Royal Commission report is now questionable due to the alleged actions of Monsanto Chemical Company in falsifying and manipulating study results. The Commissions report can no longer be relied upon. Ministers of the New Zealand Government have consistently quoted the Australian Royal Commission and the Class Action Suit as denial of any relationship between exposure to defoliating agents in Vietnam and health problems among New Zealand Vietnam war veterans. A consequence of the Governemts stance is that veterans are not being treated adequately or fairly in accordance with the Crown responsibility of the Government.

Common law does not allow a New Zealand servicemen to take a suit against the Crown for injuries suffered in the course of service. The reasons are amplified in the following statement made by an Australian solicitor to members of an Australian Senate Inquiry Committee in 1981 on the subject of servicemens rights by common law.

*"English courts for nearly two hundred years have said that to allow a member of the armed forces to bring an action against another member for an act done in the course of duty would be destructive of the morale, discipline and efficiency of the service, and for that reason common law does not give remedy even if the conduct complained of were malicious." The solicitor qualified this statement with the observation ..... "It seems impossible to impart the concepts of the law of negligence of safe systems of work and so forth into such situations."*

Because of common law denial to servicemen for remedy in cases of injury the New Zealand Government as representative of the Crown has a sovereign responsibility in the diagnosis and treatment of non-traumatic or traumatic injury where the injury is a result of service, irrespective of the cause. It can be likened to an insurance policy. While servicemen are defending the country the civil population can go about its lawful business resulting in profit and prosperity. The insurance factor is that the country must be prepared to attend to and compensate servicemen for injuries sustained whilst doing their duty enabling their fellow countrymen to profit and prosper.

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22 March 1990

