

**FULL TEXT OF INTERNATIONAL INDEPENDENT AGENT ORANGE
NETWORK [NEW ZEALAND] DOCUMENT
4 August 1990**

by Victor R Johnson



- [Submission to NZ Parliament Health Select Committee Enquiring into Agent Orange, November 2003](#)
- [Report to Vietnam Veterans Association of New Zealand - 1994](#)

**SUBMISSION TO NEW ZEALAND GOVERNMENT FOREIGN
AFFAIRS AND DEFENCE SELECT COMMITTEE HEARING ON
THE VIETNAM VETERANS HEALTH [INQUIRY] BILL – 1990**

INTRODUCTION

The following submission was made in 1990, to a New Zealand Government Foreign Affairs and Defence Select Committee hearing on the Vietnam Veterans Health [Inquiry] Bill, a Bill that did not proceed into legislation. New Zealand Vietnam veterans remain without services equal to that of their peers in Australia and the United States of America.

It is often stated by successive Government ministers that New Zealand veterans already have available that which is provided for by the other nations. It is never stated that what is available is that which is provided to beneficiaries or superannuants, protection of income and quality of life for veterans is definitely not provided for, equal to a New Zealand citizen who suffers injury or disablement by occupation or accident.

Having been directly involved with the issues since 1981 in joining in the US Agent Orange Class Action Litigation Suit as National Secretary of the Korea and South East Forces Association through to founding President of the New Zealand Vietnam Veterans, the matter is one of sovereign obligation by a government to members of its armed forces.

DISCLAIMER

Being a descendant of Richard I, William [the Longsword] and Rollo as the Dukes of Normandy, and by such ancestry blood relationship to Emma Queen of England and King William of England [the Conqueror], and as a former member of the armed forces this site is not placed for personal or political purposes.

Such public domain information is to seek without fear of favour, rank or title that sovereign obligation be applied and upheld for injured and disabled members of armed forces.

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Dedicated to those Brothers-in-Arms who returned safely from war, ultimately not to survive for a quality of life with pleasure, profit and comfort as afforded those for whom defence was provided.

SUMMARY OF THE SUBMISSION THAT FOLLOWS

It seems that the issue of health damage among New Zealand veterans was previously influenced by the what this author describes as the **4MA** syndrome of **Attitude**, Male, Military, Money, and Malaise.

The response to a journal article [1990] about cervical cancer and women brought an instant response from Government in the form of an inquiry. It appears that as veterans are males, there is no concern with their health problems, in spite of the Crown's sovereign responsibility to attend to war injury.

The Vietnam era military image has been tarnished by politicians and minority groups so as to make it a distasteful topic in New Zealand society. The professionalism of New Zealand Vietnam veterans is acknowledged by General Nguyen Minh Ninh, a former commander of the Viet Cong D445 Battalion.

The general said recently that he had great respect for the fighting skills and tactics of the Australian and New Zealand forces (ANZAC's). He said that we caused him many sleepless nights trying to work out ways of defeating us. The greatest respect is held for the ANZAC's by the General because, in his opinion, we took the war to the soldier-not to the villages and people of Vietnam.

According to some, money appears to be the object of the veterans seeking compensation for health damage from exposure to chemicals. Veterans are seeking compensation and treatment from their former employer, the Crown, for diseases, in many cases rare, and debilitating health disorders.

Malaise exists amongst bureaucracy regarding the subject of Agent Orange because it appears as an intangible matter, unless one does a thorough research of scientific literature. There is no evidence of in-depth research having been done by New Zealand government agencies.

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 following statement was 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 crown has a sovereign responsibility in the diagnosis and treatment of non-traumatic or traumatic injury where the injury is a result of service. 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.

The importance of the proposed Vietnam War Veterans Health [Inquiry] Bill is not only relevant to the veterans of the Vietnam war but also for the future. Future wars are more likely to produce unconventional injuries such as those occurring from exposure to the defoliant chemicals. New Zealand does not have an adequate structure for the administration, treatment and compensation of veterans.

The present system involves a process of veterans filing war pension claims that are considered by a district panel. Where a claim is accepted, the veteran is advised and a war pension paid. There is no professional advisory service nor follow-up for veterans, they are left to their own devices within the community whereas combat, injury and other war experiences can be one of the most traumatic that can occur to an individual.

The USA and Australian Governments are compensating for non-Hodgkins lymphoma, with the USA also compensating for Soft-tissue sarcoma. No consideration is known to be given to New

Zealand veterans suffering those diseases. No structured organisation exists to do this; as a consequence veterans are disadvantaged by delayed justice. Justice delayed is justice denied. The summary of the submission is supported by the remaining sections of information.

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SUBMISSION TO FOREIGN AFFAIRS AND DEFENCE COMMITTEE HEARING ON THE VIETNAM VETERANS HEALTH [INQUIRY] BILL

1.0 INTRODUCTION

The International Independent Agent Orange Network [IIAON] consists of New Zealand members who make this submission contending that the Vietnam War Veterans Health [Commission of Inquiry] Bill is essential legislation in the interests of sovereign and natural justice.

Reliance has been placed on conclusions of the US Ranch Hand Studies, and the Australian Royal Commission on the Use and Effects of Chemical Agents on Australian Personnel in Vietnam, to deny cause and effect relationship exists between chemical defoliants in Vietnam and certain diseases and health disorders among Vietnam veterans. Both conclusions are seriously flawed due to fraudulent and manipulated studies.

IIAON's major role is researching the effects on the health of Vietnam veterans from exposure to chemicals while serving in South Vietnam during the war years from 1964 to 1975. Major factors have accumulated over a number of years on whether or not components of herbicides caused health disorders and disabilities among New Zealand Vietnam veterans. The factors are addressed in this submission.

The IIAON New Zealand members have extensively researched the subject of chemicals used as defoliants through international contact with medical, scientific and other experts. The members were previously established as the Vietnam Veterans Association of New Zealand for the primary role in the US Agent Orange Product Liability Litigation Suit that was settled out-of-court in 1984.

A substantive amount of research material has been collated by the network internationally, as well as evidence of wrong-doing, falsehoods and manipulation of study results among the manufacturers of herbicides supplied for defoliation purposes in Vietnam. This submission shall use the term Agent Orange to denote in general those herbicides used as defoliants in Vietnam.

It is concluded that current scientific research and other evidence substantiates Vietnam veterans claims that certain diseases and

health disorders are attributable to chemical exposure. There is no evidence that service personnel who served in Korea and other South-East Asian countries are suffering from adverse health disorders similar to that being experienced by Vietnam veterans. New Zealand has had military forces stationed in the South-East Asia region since 1955. The final withdrawal occurred in July 1989 with the departure of 1 RNZIR from Singapore.

Little recognition is given to New Zealand veterans in respect of their adverse health condition they claim to be attributable to Agent Orange exposure. This is qualified in the: REPORT OF THE FOREIGN AFFAIRS AND DEFENCE COMMITTEE REPORT: On the Inquiry Into the Manufacture of Agent Orange by Ivon-Watkins Dow in New Zealand During the Period of the Vietnam War. 1 Reported to the New Zealand House of Representatives, Second Session, Forty Second Parliament, 1990.

The report says,

in part: 6 ...Studies in the United States and in the Australia on the alleged effects of Agent Orange on Vietnam Veterans have failed to produce any conclusive links between Agent Orange and the health of Vietnam veterans or their children. This was also the conclusion of the Australian Royal Commission on Agent Orange [1985] under Mr Justice Evatt. The then New Zealand Minister of Defence Hon F D O'Flynn wrote to the Vietnam Veterans in January 1985 stating that *"there is no scientific evidence to support the contention that exposure to Agent Orange has caused any long-term health problems for veterans or their children"*.

7 In the Agent Orange class action suit in the United States an out-of-court settlement was made in 1984 in favour of United States, Australian and New Zealand veterans. This did not constitute an admission of liability by the seven chemical manufacturers who supplied Agent Orange to the United States armed forces. The companies made the settlement in order to resolve what they judged could otherwise be a long and costly court case. The conclusion of the presiding judge stated "the scientific data available to date makes it highly unlikely that except for those who have had chloracne [a skin complaint], any plaintiff could legally prove any causal relationship between Agent Orange and any other injury including birth defects '. 1

The report also comments that compensation is already available to

former servicemen for injuries and illness arising from war service through the War Pensions Board, Those who feel they have a claim, whether or not from Agent Orange, may request assistance from the Board.' 2

Evidence will be presented to a Commission of Inquiry that the above statement is deficient in relation to non-conventional war injuries such as those arising to exposure from chemicals.

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1.1 DISEASES AND HEALTH DISORDERS

It is contended that the New Zealand War Pensions Board does not acknowledge certain diseases and health disorders as being attributable to war service in Vietnam, namely:

- Non-hodgkins Lymphoma
- Soft Tissue Sarcoma
- Subclinical hepatotoxic effects
- Porphyria Cutanea Tarda
- Hodgkins Disease
- Neurological effects
- Reproductive and Developmental Effects
- Leukemias
- Cancer of the kidney
- Cancer of the testis
- Cancer of the stomach
- Cancer of the prostate
- Cancer of the colon
- Cancer of the hepatobiliary tract
- Cancer of the brain
- Psychological effects
- Immunological abnormalities.
 - Gastrointestinal ulcer.
 - Altered lipid metabolism.

The nineteen diseases and health disorders are expanded further by sound scientific reports that have carved away the falsehoods and manipulations of chemical industry and other study results. The United States Veterans Administration Department is now providing compensation for non-Hodgkins lymphoma and Soft-tissue Sarcoma. The Australian Government announced on 25 July, 1990, that non-Hodgkins lymphoma would be compensated for as a service-related disease.

In announcing the compensation for non-Hodgkins lymphoma, the Secretary for the US Veterans Administration Department, Mr E Derwinski, said that the decision was his with the support of President Bush and should not to be seen as a scientific decision. In concluding his announcement the Secretary also said: ' Those

veterans who will now be compensated are most deserving of our care and concern. It is my hope that this action will help to begin to mend the divisiveness and controversy that has surrounded this issue for many years.'

The US decision was made prior to the release of two major reports in May 1990, The Agent Orange Scientific Task Force report 2 and the report of Admiral E. Zumwalt, Jnr 3. Other diseases and health disorders as described above are also likely to become compensated for in the USA. Such approach has not been transferred to the treatment of New Zealand Vietnam veterans who are similarly affected.

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SUBMISSION TO FOREIGN AFFAIRS AND DEFENCE COMMITTEE HEARING ON THE VIETNAM VETERANS HEALTH [INQUIRY] BILL

1.2 Aim of Submission

The aim of this submission is to establish that it is essential for New Zealand to take an independent approach, by means of the aforesaid Bill, in its treatment of veterans. This submission will show that the New Zealand Parliament is one of the victims of lies, perjury and cover-ups, thereby creating an injustice to veterans who served in Vietnam.

World attention is now focused on this country for the truth about Agent Orange to be established without the influences and manipulations that occurred in the United States and Australia.

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SUBMISSION TO FOREIGN AFFAIRS AND DEFENCE COMMITTEE HEARING ON THE VIETNAM VETERANS HEALTH [INQUIRY] BILL

2.0 MAJOR FACTORS

The major factors in this submission include:

- Terms and definitions
- US Agent Orange Product Liability Litigation Suit MDL 381
- US Ranch Hand and Centers for Disease Control Studies
- Australian actions
- Kemner et. al. versus Monsanto Chemical Company, USA
- USA Agent Orange studies and reports
- Membership of Commission
- Recommendation of Legal Counsel to Commission of Inquiry
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**SUBMISSION TO FOREIGN AFFAIRS AND DEFENCE COMMITTEE HEARING
ON THE VIETNAM VETERANS HEALTH [INQUIRY] BILL**

3.0 TERMS AND DEFINITIONS

AGENT ORANGE	Mixture 1-124-1 by weight of the n-butyl esters of 2-4-5- trichlorophenoxy-acetic acid (2-4-5-T) and 2-4-dichlorophenoxyacetic acid (2,4-D).
CDC	Centers for Disease Control.
CHLORACNE	An adverse health condition from exposure to 2,4,5-T that consists of skin eruptions on the face, neck, and back. The condition can also include shortness of breath, intolerance to cold, palpable and tender liver, a loss of sensation in the extremities, damage to peripheral nerves, fatigue, nervousness, irritability, insomnia, loss of libido and vertigo.
HERB TAPES	Records of defoliant chemicals applied by the United States Air Force in South Vietnam.
OTA	Office of Technology and Assessment.
SOFT TISSUE SARCOMA	Cancer of the soft tissue or lymphatic system.
TCDD	A contaminant of 2,4,5-T which is an extremely toxic agent. The toxicity has a slow effect rate and diverse symptomatology including edema, necrotic changes of the liver, gastric hyperplasia and ulceration, hemmoroglus of gastrointestinal tract and other organs, thymus and other lymphoid organs and tissues. Symptoms appear later to lead to decreased immuno-responses.

**SUBMISSION TO FOREIGN AFFAIRS AND DEFENCE COMMITTEE HEARING
ON THE VIETNAM VETERANS HEALTH [INQUIRY] BILL**

**4.0 US AGENT ORANGE PRODUCT LIABILITY LITIGATION SUIT
MDL 381**

In the United States District Court, for the Eastern District of New York, The Honourable Chief Judge Jack B. Weinstein, presided over the Agent Orange Product Liability Litigation lawsuit, **4** brought as a class action on behalf of persons who were in the United States, New Zealand, or Australian Armed Forces in Vietnam at any time from 1961 to 1972.

In May 1984, attorneys' for the plaintiff class members accepted an amount of US \$180 million dollars in an out-of-court settlement. The seven defendant chemical companies [Dow Chemical Company, Monsanto Company, Diamond Shamrock Chemicals Company, T & H Agriculture & Nutrition Company, Inc., Uniroyal, Inc., Hercules Incorporated and Thompson Chemical Corporation.], accepted no responsibility for alleged injuries suffered by the Vietnam veterans or their families, stating only that the settlement represented so-called nuisance money, indicating it was determined that this course of action would be less costly than pursuing total vindication in a jury trial.

It is common practice for defendant companies in litigation trials to settle out-of-court where it is likely that evidence submitted during examination can become public domain and used in further litigation suits by other injured parties.

When there is a dispute to scientific studies, or embattled experts, it is for the jury to weigh the evidence. A judge is a lay person regarding scientific and medical matters, and, when methodology is acceptable, he should not decide that one side's proof is not as "scientifically sound" as the other's is therefore insufficient, and thus summarily dismiss the case. That proof should be admitted for the jury to weigh as long as there is a genuine issue of fact in dispute.

Pre-trial discovery of documents produced evidence that the defendants knew of the dangers to human health from exposure to herbicides used as defoliants as early as 1965, and prior to the

commencement of the Vietnam defoliation programme. The documents were sealed by order of the court. US Vietnam veterans obtained the release of these documents by court order in early 1990. These documents show that the chemical companies conspired to conceal the fact that the herbicides they manufactured with the contaminant 2,3,7,8-TCDD were a danger to human health.

In the early 1960's, Dow Chemical Company, [a major supplier of defoliant herbicides], had a serious 2,3,7,8-TCDD contamination situation in its operating plant. 2,3,7,8-TCDD is exceptionally toxic with a tremendous potential for producing chloracne and systemic injury. This was disclosed in letter addressed by Dow Chemical's US Company to the manager of Dow Chemical Canada, Mr Ross Mulholland, on June 24, 1965 ⁵. The company was attempting to do everything possible, according to the letter, to avoid the possible occurrence of chloracne in any applications involving the handling or use of the chemicals. Another concern was to avoid the occurrence of chloracne in consumers, particularly within persons such as [spray] operators who were handling the chemicals on a repeated daily basis.

The letter's author, Mr V K Rowe of Dow's Biochemical Research Laboratory, was concerned that if acne occurred among consumers the whole 2,4,5-T industry could be hard hit and that restrictive legislation could be expected, either barring the material or putting rigid controls on it. Dow's main concern was to clean up its own house from within, rather than have someone from without, do it for them. In this way, according to Mr Rowe, they could approach the problem in an orderly manner.

It was considered that there was no reason why Dow could not get the problem under strict control and hopefully avoid restrictive legislation, if producers and handlers of the material co-operated. "In other, words let us practice good citizenship", Mr Rowe said.

In 1965, Dow was of the opinion that material containing no TCDD, with a certainty of 1 part per million, did not present an appreciable risk to consumers. Nor did they believe that the material posed a significant hazard to people working in the Phenol, T Acid, or T Acid Ester plant.

Mr Rowe emphasised in his letter that, "We are not in any way attempting to hide our problem under a heap of sand, but we

certainly do not want to have any situation arise which will cause regulatory agencies to become more restrictive. Our primary objective is to avoid this". The letter concluded with the foot note, *"Under no circumstances may this letter be reproduced, shown, or sent to anyone outside Dow"*.

A Dow Chemical Company memorandum, March 10, 1965, on the hazards of Monsanto T Acid, said that rabbit ear tests on twelve lots of Monsanto 2,4,5-T acid had shown moderate to severe in eight cases at ten percent concentration of ethanol. This confirmed VPC analysis of 2,3,7,8-TCDD which was found in concentrations averaging about 10 ppm.

This presented a definite hazard which would require all precautions used in buildings 199 and 349 to prevent injury, if it was processed at building 257. Concern was expressed at Dow's involvement in shipping the Monsanto material to Riverdale and Woodbury. The memorandum said that there was a definite risk to the employees at Riverdale and Woodbury, especially since they were probably unaware of the problem and were probably taking no precautions.

Dow's memorandum also said that there was no assurance that Monsanto's products would be free of contamination, the evidence available pointed to the opposite. The memorandum concluded that Monsanto products should not be sold by Dow until animal tests showed that the products were free of the significant TCDD hazard and related materials 6.

On the basis of this, and other information, the New Zealand Government must inquire into facts concealed by chemical companies.

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**5.0 US RANCH HAND AND CENTERS FOR DISEASE CONTROL
STUDIES**

In 1987, an unpublished report of the morbidity study stated a doubling of birth defects in the off-spring of the veteran study group. This data had been deleted in the final report. It had been either fudged or manipulated to delete the finding of birth defects. The draft report had read; 'It is incorrect to interpret this base line study as negative'. A ratio difference of 5 to 1 existed for illness between the study group and the control group, and there was an 'overwhelming directionality of results'. The Air Force scientists also confirmed:

- An increase in skin cancers
- Mis-classification in the study was far reaching with the potential to hide other problems
- Air Force and White House management representatives became involved in scientific decisions in spite of the study's protocol's banning such involvement.

A mortality study of Vietnam veterans was released in 1987 by the Department of Veterans Affairs, but, only after a copy had been leaked to the New York Times. The study involved marines who had served in heavily sprayed areas of Vietnam and the results indicated:

- 110% increase in non-hodgkins lymphoma
- 58% higher increase in lung cancer

A Washington State study, also released in 1987, verified increases in soft tissue sarcoma and non-hodgkins lymphoma. In the same year, a Veterans Affairs study found an eight-fold increase in soft tissue sarcoma among veterans most likely to have been heavily exposed.

In 1987, another study was published by the Center for Diseases Control on the result of its 'Vietnam Experience Study'. 8 The report stated in the mortality section that there was no particular increase in cancer. A version released later, based on more complete research, showed an excess risk of non-Hodgkins lymphoma. A six-fold increase was admitted to have always been a result but no press release or public announcement was made of that factor. Other results included:

- Increased psychological problems
- 15% of the study group with PTSD.
- Potential heart disease
- Hearing loss
- Abnormal findings of enzymes
- Low sperm counts
- Increased birth defect and miscarriage rates
- Increased complaints of hypertension
- Benign growths
- Skin conditions
- Ulcers
- Hepatitis
- Liver ailments.
- Urinary tract problems.

One medical researcher said that it was impossible to tell from the Center for Diseases Control study whether the health problems are related to combat or to a herbicide exposure. This section explains:

- US Congressional record of 21 November 1989
- US Congressional hearings in part

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5.1 US Congressional Record 21 November 1989

Senator, Thomas Daschle, in November 1989, highlighted the findings of a decade of US Agent Orange studies, and questioned both the competence and intentions of those who conducted and evaluated much of the research. The following remarks were delivered by Senator Thomas Daschle in the US Senate on 21 November 1989, and are excerpted from the 'Congressional Record'. 10

"It is my fundamental belief that Agent Orange victims, for whatever reason, have been singled out and have not received the care, have not received the attention, have not been given the kind of priority that virtually every other class of veteran suffering from a service-connected disability, or what he or she claims to be a service connected disability, has received.

Fifty four diseases are currently on the VA's list of presumptive disabilities. These presumptions were made, some by Congress and some by the VA, because it was determined that they were just as connected to military service as a wound from a bullet, bomb or grenade. That is what we are saying about diseases associated with exposure to Agent Orange.

Several presumptive disabilities have far less evidence associating them with military service than do diseases associated with Agent Orange, such as soft tissue sarcoma, non-Hodgkins lymphoma, skin cancer, chloracne, birth defects in veterans' children, and other disabilities.

I am not here to object to those presumptions. Those veterans also deserve the benefit of the doubt. But it is important to point out that in many cases the scientific evidence is not as strong as the evidence supporting Agent Orange compensation, so you cannot help but sympathise with veterans suffering as a result of their exposure to Agent Orange who ask of us, why them and not us? Why give them the benefit of the doubt and not us?

This struggle has been going on for over 10 years. In fact, it started even before the Vietnam War began. It is becoming

increasing clear that almost 20 years ago chemical companies and military scientists knew that Agent Orange was at least potentially harmful to humans.

In New Jersey, insurance companies are now suing chemical companies and uncovering evidence that chemical companies knew in the 1950's, over thirty years ago, that Agent Orange was harmful.

I have a letter from Dr. James Clary, an Air Force scientist who served in Vietnam, saying that he and others involved in writing the history of Operation Ranch, the operation that involved the actual spraying of Agent Orange, knew that Agent Orange was harmful.

Dr. Clary, in a letter to me dated Sept. 9, 1988, states: "As time progresses, and additional evidence is forthcoming, it will be increasingly difficult for anyone to deny the relationship between dioxin exposure and non-Hodgkins lymphoma and soft-tissue sarcoma.

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' formula had a higher dioxin 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."

If this is true, then several agencies of the federal government have spent decades trying to keep the truth about Agent Orange from the general public.

In spite of government efforts to obfuscate and manage the science, the truth has been leaking out very slowly over the years. And yet, there are those in this Congress, in the administration, and throughout the country who continue to claim that there is not

enough evidence to support compensation. No evidence, some say. For some, hiding the truth seems to be a full-fledged obsession.

The first studies of human reaction to Agent Orange were conducted from 1974 to 1983. As concerns grew, the Congress commissioned a large-scale epidemiological study, to be performed through the VA, of ground troops' exposure to Agent Orange and potential health effects.

After a series of revelations that the VA was being less than evenhanded with the study, there was a general consensus that the study should be transferred from the VA to the Centers for Disease Control. We later learned that was a mistake.

Later in 1984, the Air Force published its first morbidity report on the health status of those involved in Operation Ranch Hand. The February 1984 Baseline Morbidity Report concluded that its results should be viewed as "reassuring".

During a February 1984 press conference, the Air Force emphasised that the study was "negative" and that the results, were, again, "reassuring". The word "reassuring" has become very familiar, and it seems to be the only one the Air Force is willing to use to describe its findings, regardless of what the findings are. Rest assured, no matter what the study shows, it will be "reassuring". Sometimes, the evidence points to a serious problem, and yet, the Air Force statement is, "It is reassuring".

At the same February press conference, one of the Air Force scientists—a principal investigator, chief statistician, and designer of the study, added some simple words of caution: that further study was required and that some concerns remained. For having said that he was taken off the project.

Later in 1984, we finally passed P.L. [Public Law] 98-542, compensation legislation that codified the benefit of the reasonable doubt standard, provided for soft-tissue sarcoma compensation, and required the VA to establish standards for general Agent Orange and atomic radiation compensation.

For the first time, the Congress addressed in somewhat of a comprehensive manner exposure to Agent Orange and what we ought to do about it. And yet, in all those years, having passed that legislation more than six years ago, not a single veteran was ever

compensated for soft-tissue sarcoma, and to this date, only a handful of veterans have received compensation for chloracne, a disease acknowledged by virtually everyone to be associated with Agent Orange exposure.

Although it was clear that the Veterans Administration did not want to provide compensation, P.L. 98-542, at least in theory, established for the first time the reasonable standard doubt principle that might have prevented the need for further legislation had it been followed, and had the federal government acted in good faith with its scientific efforts.

Since 1984, P.L. 98-542 has been virtually ignored. In spite of the intent of Congress, in spite of the efforts of everyone involved in the writing of that law, in spite of our promises to veterans at that time that at long last, after all these years, they would be given the benefit of the doubt, not one veteran in this country has been compensated for any disease other than chloracne.

In the summer of 1986, the House Veterans' Affairs Sub-committee on Hospitals and Health Care hearing called witnesses from the Office of Technology and Assessment, the Centers for Disease Control and others, to come before the Congress to explain what had happened with the CDC Agent Orange exposure study in recent years. OTA reported that the Centers for Disease Control had changed the protocol for the study without authorization. OTA also reported at the particular hearing that petty arguments at CDC were interfering with the study's progress and that progress had virtually come to a standstill.

After spending millions of dollars on the study protocol, the Centers for Disease Control suggested that a valid ground troop study could not even be done. They said there was no way to determine exposure and that military records were inadequate. They reported the last resort would be to explore blood tests for validating exposure.

The military records experts from the Army-Joint Services Environmental Support Group, led by Richard Christian, testified that military records were adequate and that, in his judgment, the Centers for Disease Control could do a valid study if they wanted to. DoD officials altered his follow-up testimony before it was sent to the Hill, deleting his information that challenged CDC's claims.

In September 1986, the New Jersey Agent Orange Commission announced it had tested several veterans suspected to have high levels of dioxin exposure. It cautioned that, because of the half-life of dioxin and the fact 20 years had passed, the blood test would drastically underestimate exposure. At the same time, the House Energy and Commerce Committee uncovered an OMB effort to stop all dioxin research. It blasted OMB at the time for OMB's claim that there had been "enough" dioxin research and that the federal government should stop worrying about it.

In 1986, there was a key study involving Kansas farmers completed at the National Cancer Institute. That study indicated a sixfold increase in non-Hodgkin's lymphoma among Kansas farmers exposed to 2,4-D, a primary ingredient of Agent Orange.

Notice the progression of evidence here. OTA announced that CDC changed its protocol. The Army-Joint Services Environment Support Group reported that CDC was studying the wrong people and denying the usefulness of the military records that, by the way, have since been shown to be amazingly useful.

The New Jersey Agent Orange Commission came forth, and through its blood-testing capability provided a major scientific breakthrough. And then the NCI study of Kansas farmers, completely independent, indicated once again a dramatic increase in the number of farmers experiencing a terminal cancer as a result of exposure to a prime ingredient of Agent Orange.

How much more evidence is needed? How much further does one have to go to draw the comparison to other presumptions, to acknowledge that relationship, to do what we have said we were going to do in 1984, simply to provide the benefit of the doubt to the veteran? Not to the chemical companies, not to the government, but to the veteran.

But the incoming tide of evidence did not stop in 1986. In 1987, a VA mortality study was released-only after being leaked to The New York Times. The Times reported that the study indicated a serious problem in Vietnam veterans who were likely to be exposed to Agent Orange.

That study, titled "Proportionate Mortality Study of Army and Marine Corps Veterans of the Vietnam War". a Veterans Administration study, indicated a 110 percent higher rate of non-

Hodgkin's lymphoma in Marines who served in heavily sprayed areas as compared with those who served in areas that were not sprayed. The VA study also found a 58 percent higher rate of lung cancer. And yet, with that release of new data, the VA tried to discredit the study and tried to say that there was still some doubts about its validity, which was supported by independent scientists.

Increases in soft-tissue sarcoma and non-Hodgkin's lymphoma are found in veterans throughout the country. A Washington State study again verified that in 1987. Another VA study found an eightfold increase in soft-tissue sarcoma among veterans most likely to have been exposed to Agent Orange. This was of borderline statistical significance, but the findings were nevertheless remarkable. Meanwhile, the Centers for Disease Control released its "findings" that the Agent Orange exposure study could not be done validly.

CDC based that announcement on a small group of veterans' blood tests, saying the people it chose for the blood tests did not have enough dioxin in their blood, and concluding that military records, therefore, could not be used. Furthermore, CDC argues that because these few tests were "negative", the "study", which was never conducted, proves that there is no problem at all. Scientists, veterans groups and military records experts all challenge the CDC claims and called the CDC decision scientifically insupportable and medically irresponsible. Some of the people within CDC itself have since hinted that they disagreed with the decision. But there it was.

Returning to Ranch Hand, in 1987, I began my own investigation and discovered that those who have insisted that the Ranch Hand study is negative were wrong. Compensation opponents insisted that Ranch Hand offered irrefutable proof that Agent Orange is not a problem at all-their theory being that Ranch Handlers were the most heavily exposed veterans and that they had no problems, proving that no veterans have problems relating to their exposure to Agent Orange.

And yet, when we pressed the Ranch Hand scientists about much of this, we found there were important discrepancies between a 1984 draft and the Final February 1984 Ranch Hand report. We found that Air Force statements and Air Force facts were not the same. The facts, which had become known to the Air Force by late 1984, still had not been released.

We learned that there was an unpublished report showing a doubling of birth defects in Ranch Hand children. That was never released or discussed publicly. The January 1984 draft Ranch Hand morbidity report stated, "It is incorrect to interpret this base line study as "negative". The draft also reported that the Ranch Handlers were less well than the controls by a ratio that was 5-to-1 and "overwhelming directionality of results".

The reason I say remember those words is because they were never released in the Ranch Hand report. The Air Force chose for some reason to delete those words in the report. It was "reassuring" they said. It is reassuring if you delete some of the most damaging, the most critical information suggesting a relationship between Agent Orange and some of the diseases. The Air Force deleted these findings at the suggestion of a Ranch Hand Advisory Committee set up by the White House Agent Orange Working Group.

The Air Force also chose to dismiss the increased birth defects in the Ranch Hand children. That was not discussed at the 1984 press conference. In 1987, Air Force scientists confirmed to me that birth defects in the Ranch Hand children are double those of children of the controls and are not "minor" as originally reported in the 1984 report.

These are Air Force scientists who are confirming Ranch Hand information that was deleted from the 1984 report. And they also confirm that they had completed a draft report on birth defects in the Ranch Hand children in December 1984, in follow-up to the February 1984 Ranch Hand morbidity report. That birth defects report has never been released.

Why was it not released? Why did scientists who worked on the Ranch Hand report not want this information to get out? Why was there a cover-up? The Ranch Hand Advisory Committee under the White House Agent Orange Working Group told these scientists not to finish it. Later the advisory committee told them to do more work-to check some data.

Five years later, there is still no report. It took 10 months to write the draft, and so far it has taken five years to check the data. Five years later there is still no public acknowledgement-other than what I have reported-of some of this information left out of the original report. There are several other findings that I think are

very interesting.

Air Force scientists confirmed that there is an increase in skin cancers in the Ranch Hand group and that skin cancers are not related to over exposure to the sun, as was suggested in the 1984 report. They confirmed that misclassification in the Ranch Hand exposure index is far reaching and has the potential to hide other problems in the Ranch Hand group.

They admitted that Air Force and White House management representative became involved in scientific decisions at Ranch in spite of the study protocol's ban on such involvement. The Air Force admitted that veterans are not represented on the Ranch Hand Advisory Committee in spite of a protocol requirement that they be represented.

Yet another inconsistency was discovered through two different responses to my inquiries. We learned that there are two versions of the minutes of a February 1984 Advisory Committee meeting advising the Air Force scientists to change the conclusions in the 1984 Ranch Hand report.

The scientists made their report and at the very last minute, they were told by a White House advisory committee: "We do not care what you are telling us, what your conclusions may be. We want you to change the report, delete those conclusions, delete that table, minimise the relationships you are talking about".

The version of the minutes the Air Force scientists received and sent to me clearly directed the Air Force scientists to "rephrase the statement. This base line report is not negative", and to take out the table and language showing Ranch Handlers were less healthy than the controls by a 5-to-1 ratio. The version I received from the Agent Orange Working Group dated two days later did not contain that language, though it was identical in every other way.

None of these findings were made public. By this time it was January 1988, and the public and the veterans had had no update on Agent Orange since 1984 in spite of these findings. So you cannot help but understand why somebody, in response to our desire on the basis of scientific information to provide compensation to veterans afflicted by Agent Orange, would point to the Ranch Hand report and say, there is no relationship, the Ranch

Hand report clearly says so.

It says so alright, but why it says so ought to be investigated by both the veteran's committees, and by everyone else interested in good government and how decisions are made in this town, because what happened there was a fraud perpetrated by people whose names we still do not know.

On May 12, 1988, the Senate Veterans' Affairs Committee held a hearing. The CDC released its Agent Orange Exposure Study findings again and announced that it would terminate the study, that a study could not be done. This, however, did not stop CDC from continuing to speak about the study as if it was proof that Agent Orange was not a problem-that no one was exposed. Yet, the testimony contradicted the CDC's published study results.

CDC also released its Vietnam Experience Study findings with great fanfare, saying that it, too, showed there is no problem. Yet the testimony did not even mention an increase in non-Hodgkins lymphoma found in the study results, and CDC later suggested that the increase was not verified. In the same hearing, the Air Force officials tried to distance themselves from the February report on Ranch Hand and to belittle its importance, but admitted under questioning that it was technically correct and that all three scientists wrote it.

The Air Force admitted at this hearing that veterans were not represented on the Ranch Hand Advisory Committee, and they had no explanation for this violation of the study protocol. The Air Force officials denied there was any government interference in the Ranch Hand study in spite of the fact they had acknowledged such interference in writing to me and in a personal meeting.

For this part, the VA testified that there was not a "shred" of evidence that Agent Orange is associated with veterans' disabilities. When asked what would constitute a "shred" or "reasonable doubt", the Deputy Director refused to answer, saying we should stop worrying about Agent Orange. He suggested that the entire problem was nothing more than a figment of veterans' imagination.

Several days after the May 12 hearing, however, CDC acknowledged in a letter to the chairman and ranking minority member of the committee that the increase in non-Hodgkin's

lymphoma was real and bigger than first thought. A sixfold increase, it said. And yet there was no press release from CDC, no public information.

Can you blame veterans for wondering what is going on? Can you blame their families who continue to watch all this unfold, and not share their sense of frustration, their sense of indignation at the conflicting comments, the duplicity, the obfuscation that occurs time and time again when government officials at the highest level are being called upon to inform the public, but they cover up information instead?

Late in 1988, CDC released its Agent Orange Exposure Study "findings" yet again in the press, and again argued that no one was exposed in spite of the fact that the study was never actually conducted.

The National Cancer Institute replicated its study of Kansas farmers in Nebraska, providing further evidence of a link between Agent Orange and non-Hodgkin's lymphoma. Dr Hardell in Sweden replicated his earlier study of pesticide workers and soft-tissue sarcoma. A Massachusetts mortality study showed a fivefold increase in Vietnam veterans with soft-tissue sarcoma.

Agent Orange compensation opponents, whose strategy seems to hinge on endless waiting, began to argue that we should wait for the "next" study. Congress should not act until the CDC Selected Cancers Study is concluded. They argued that the study will be the "definitive word" on Agent Orange. I was told that a couple of days ago: "Let us not act until the Centers for Diseases Control provides the "definitive word".

Yet, Agent Orange victims say there are other veterans afflicted with 54 presumptive disabilities who never had to wait for the "definitive word". There are victims of radiation exposure who are eligible for compensation for 13 different diseases who did not have to wait-for too long-until Congress finally decided that the "definitive word" might never come. We must not make that mistake again.

The Selected Cancers Study, even if it were the definitive word, which it will not be, is not an Agent Orange study. It does not even attempt to determine exposure. How can it be the definitive word on Agent Orange if it does not even focus specifically on veterans

affected by Agent Orange?

The CDC protocol acknowledges that the study does not have sufficient statistical power to detect substantial increases in rare cancers, such as soft-tissue sarcoma and non-Hodgkins lymphoma, and that the problem of mis-classification inherent in the study will further hinder the study's ability to detect increases. Furthermore, CDC's general handling of the Agent Orange Exposure Study and the Vietnam Experience Study calls into question the integrity of the Selected Cancers Study.

You cannot blame those of us who have watched CDC for the last five or six years for being sceptical about whether this definitive study is going to provide any new evidence that we have not had before, much less anything definitive. And so while we ask these veterans once more to wait, to let us get the final word next spring, they shake their heads and say, "Its funny, the double standards between those other veterans and us, between the criteria that the government has set for virtually every other group and us."

Last year, the Senate was again called upon to do what it has done on several different occasions: to pass Agent Orange compensation legislation both independently as well as an amendment to the compensation bill. The House sent it back in the last of couple of days of the 100th Congress indicating there would be no legislation on Agent Orange.

This year has also produced evidence and new developments with regard to the case of Agent Orange compensation. It began when a federal judge in a law suit that VA's Agent Orange rules under P.L. 98-542, the very act we passed in 1984, are too strict and do not give veterans the statutorily required benefit of the doubt. It has be a little embarrassing for the VA, the so-called advocate for veterans, to be told by a judge somewhere in California that you are not doing what the law says you are supposed to do, that you are not giving the veterans the benefit of the doubt.

This is where a new Secretary stepped in. Secretary Derwinski had a lot of options. He could have said, "We are going to appeal that decision because, for whatever reason, we have decided that the judge is wrong." But for the first time someone in the VA did what he was supposed to do. For the first time someone in the VA put all politics aside and did what the law required. He gave the benefit of

the doubt to the veteran. He said-and I might add he got in a lot of hot water for saying this-we are going to give the benefit of the doubt. We are not going to appeal the judge's decision.

The House Government Operations Subcommittee on Human Resources held a hearing not long ago. It concluded as a result of all the testimony received during the hearing that the Centers for Disease Control had badly bungled the study. Recently, the VA Advisory Committee on Environmental Hazards, the same committee that said that veterans who were exposed to atomic radiation were not harmed by atomic radiation, said that veterans were not exposed to Agent Orange either.

That brings us to where we are today. The House has chosen again not to consider legislation dealing with Agent Orange. In spite of the wealth of evidence from scientists all over this country- scientists from virtually every field of study have come to the same conclusion: That there is a relationship between Agent Orange and both soft-tissue sarcoma and non-hodgkins lymphoma; that we ought to give the benefit of the doubt to the veterans, as they so richly deserve.

Yet, we are put in the difficult position of telling these veterans once more that they have to wait. I do not know how much longer this wait will be. But I do know this: We are not going to quit. We are going to continue to press this issue. It is not going to go away. We are going to find a way to pass this legislation."

Events subsequent to Senator Daschle's statement in Congress have been hearings by the House Veterans Affairs Sub-committee on Oversight and Investigations into the CDC studies and the personnel involved.

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5.2 US Congressional Hearings

Congressional Oversight and Investigation committees have been conducting inquiries into the performance of various government agencies and staff in respect of Agent Orange studies. Senator Daschle addressed most of the aspects in Congress into which inquiries are being held, including the Centers for Disease Control.

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5.2.1 Centre for Disease Control

A significant factor in the Agent Orange and veterans health issue is the Center for Disease Control release of the Selected Cancers Study data. The CDC failed to inform the public of all the facts, a matter which was inquired into by Congress in April 1990. The Australian actions in July, 1990, show use of the manipulated studies, which demonstrates lack of research on their part.

Critic's claim that the CDC, and the US Assistant Surgeon General, Dr Vernon N. Houk, M.D., sabotaged an investigation of Agent Orange's effects on veterans. It was reported in the *TIME International* magazine [July 23, 1990, pp34-35] that Dr Houk helped scuttle a US\$63 million study that might have determined once and for all whether US soldiers suffered serious damage to their health from exposure.

There is evidence, according to the article, that the CDC suppressed reports from the National Academy of Sciences that directly challenged CDC's position, and spurned extensive help from the Pentagon, leading the White House to kill the project.

At the White House, a science panel of the Agent Orange Working Group supervised the CDC's investigation. In 1986, the Pentagon assigned its Environmental Support Group to provide the CDC with Agent Orange spraying records and those of the deployment of soldiers who may have been exposed.

The CDC refused to use those resources and other records. Unknown to the White House, the Institute of Medicine submitted a contracted consultants' report to the CDC on the Agent Orange study.

It concluded that the Pentagon group was fully capable of "determining locations and filling gaps" in the troop movements. The report criticised the CDC's study for excluding many of the veterans most likely to have been exposed. The Institute's report was not submitted by CDC to the White House.

In 1987, the Institute of Medicine wrote a blistering review of the

CDC's work, the TIME article said. The Institute urged that each of the agency's major conclusions be deleted because they were not supported by CDC's evidence. The White House never received this devastating report. 11

On 26 July 1990, Dr Houk gave testimony before the US Congress, House of Representatives, Subcommittee on Human Resources and Intergovernmental Relations Committee on Government Operations. 12 In his testimony, Dr Houk said:

'...Since 1983, there has been a large body of human data accumulated that indicate, in my opinion, that man is not susceptible to the consequences of dioxin exposure as many of the animal species studied to date. These data come primarily from several populations, who had dioxin levels measures and/or exhibited chloracne, a clinical indicator of exposure to dioxin similar to polyhalogenated compounds.'

'Higher than background levels of dioxin are known to be common in four reasonably well defined populations. These are [1] the Ranch Hand or Air Force personnel who sprayed 90 percent of Agent Orange used in Vietnam, [2] some American workers who manufactured 2,4,5-T or other dioxin contaminated chemicals, [3] some German and other European workers engaged in the same kind of work, and [4] the population of Seveso, Italy, which was exposed to dioxin as a result of an explosion in a 2,4,5-TCP plant.'

'The most consistent physical marker of high level human exposure to dioxin has been chloracne. Chloracne is not peculiar to dioxin exposure but occurs after exposure to other chemicals, such as polychlorophenaphthalenes, which are not known to contain dioxins.'

Over 450 cases of chloracne have been recorded in workers involved in eight "accidents" in trichlorophenol [TCP] plants that occurred between 1949 and 1968 in Czechoslovakia, England, France, Germany, the Netherlands, and the United States. Hundreds of other cases have occurred in chemical plant workers that are exposed to routine leaks and spills.

Especially heavy exposures, usually stemming from production "accidents" that contaminate workers with 2,4,5-t, dioxin, and other chemicals have been related to transient neurologic and liver effects, which in almost all cases disappeared with the passage of

time. No excess of any particular disease [I will discuss cancer in a moment] and no excess mortality have been consistently linked to dioxin exposure of exposed chemical workers.

Possible associations between exposure to dioxin and dioxin-containing phenoxy herbicides with various adverse reproductive health effects, including miscarriages and birth defects, have been investigated in chemical plant workers and their wives, and no association has been confirmed. No convincing data exist for the association of dioxin exposure in humans with chronic liver disease, immune disease, cardiovascular disease, or other diseases excluding cancers.'

The authors of this submission are neither scientists nor doctors, however, our research and information from the IIAON clearly indicate that Dr Houk is holding a position which is not upheld by current scientific literature reviews. He knew of the many factors that have emerged during 1990 that have destroyed the soundness of his 'facts' His testimony is at variance with:

- Testimony in the Kemner et. al. versus Monsanto Chemical Company trial
- Review of scientific literature and conclusions in the Agent Orange Scientific Task Force report
- Report to the Secretary of the Veterans Administration Department by Admiral Zumwalt
- Re-analysis of the BASF studies Review of Penoxo-acetic Herbicides by Professors' Arundel and Sterling.

One of Dr Houk's CDC staff, Dr Renate Kimbrough, was assigned by him to testify as an expert witness for the defendants in the Kemner et. al. versus Monsanto Chemical Company trial. Dr Kimbrough was also involved in the Australian Royal Commission as an expert witness.

CDC actions had not escaped the attention of Veteran organisations. J. Thomas Birch Jnr., Chairman of the National Vietnam Veterans Coalition, spoke about the controversy surrounding Agent Orange studies before the House Committee on Veterans Affairs subcommittee on Compensation, Pension and Insurance, May 2, 1990.

Mr Burch said that much of scientific establishment resistance is built around the CDC studies and veterans were puzzled by the

need for such elaborate scientific studies. "Let us be objective for a moment." Mr Burch said, "One can contend that the CDC studies and Ranch Hand studies.

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5.2.2 Submission of V R Johnson to Congressional Hearings

Mr V R Johnson, a New Zealand Vietnam veteran, made a submission to one of the hearings held June 2, 1990. 13 The submission was directed at the ineptitude of US government agencies in handling the issue. The submission reads:

International Independent Agent Orange Network [New Zealand]
21 May 1990

The House Veterans Affairs Subcommittee
On Oversight and Investigations,
The Honourable Lane Evans
Chairman

For: SUBCOMMITTEE HEARINGS
JUNE 2, 1990, GAISER HALL
WASHINGTON

Re: Written Testimony of Mr Victor R Johnson, New Zealand
Vietnam Veteran.

1.0 INTRODUCTION

Mr Chairman and distinguished committee members I am taking the opportunity of this Subcommittee's hearings to present the New Zealand Vietnam veterans perspective on exposure to Agent Orange after having attended the Subcommittee on Compensation and Pensions of the House Veterans Affairs' Committee hearings on 2 May 1990. I seek your leave to present this written submission accordingly.

Firstly, the following is the biography of my involvement in the matters of chemical agents in Vietnam over the past ten years. I served in the New Zealand Army from 1963 to 1972 with service in Malaya 1963 to 1965, 1967 to 1969 during which time a period of

service was undertaken in Vietnam from 1968 to 1969. During service in Vietnam I was in V3 Company as part of the 2RAR/NZ (ANZAC) and 4RAR/NZ (ANZAC) Battalions.

I have been actively researching the subject of chemical agents for the past ten years although I consider that I am not suffering any disease or health disorder from exposure. I was the initiator for New Zealand Vietnam veterans becoming class members in the Agent Orange Product Liability Class Action Suit, settled out-of-court in 1984. I am a member of the New Zealand Agent Orange Trust Board that administers the settlement funds.

I am a contributor of research work to the International Independent Agent Orange Network. Two weeks were spent in the USA during May 1990 in an independent consulting and advisory role at the request of concerned groups for purposes that included:

- The release of the Agent Orange Task Force Review of Scientific Literature on Human Health Effects associated with Exposure to Herbicides and/or Their Associated Contaminants-Chlorinated Dioxins on May 1st, 1990
- Attending the SUBCOMMITTEE ON COMPENSATION, PENSION AND INSURANCE OF THE COMMITTEE OF VETERANS AFFAIRS, U.S. HOUSE OF REPRESENTATIVES on May 2nd, 1990
- To read the sworn testimony of Dr Raymond Suskind in the US District Court, Southern District of West Virginia at Charleston given in a jury trial from February 27 1985 to March 13 1985 in a civil action by seven plaintiffs against Monsanto Chemical Company.
- To read the sworn testimony Dr George Roush in the Circuit Court, Twentieth Judicial Circuit of Illinois, St Clair County given in a jury trial on July 8 1985 and July 9 1985.

The main force of New Zealand infantry and artillery units were based in Phuoc Tuy Province under direct command of Australia. The artillery battery was originally based at Bien Hoa and moved to Phouc Tuy Province in 1966 under the direct command of the 1st Australian Task Force.

An Infantry Company joined the Task Force in 1967 to form an ANZAC Battalion. A further Infantry Company was posted to the

Task Force in 1968. Withdrawal of major units operational units was completed in 1971. Approximately 3400 New Zealanders served in Vietnam and my research establishes that about 2400 personnel would most likely have been the most heavily exposed to defoliants.

A major factor in the US Center for Diseases Control study on selected cancers among Vietnam veterans is that troops who served in the zone formerly known as III Corp in South Vietnam were selected as the study group because III Corp was considered to be the most heavily sprayed region. Phuoc Tuy Province is in the III Corp region where ANZAC troops were based. The troops operated in other provinces adjoining Phuoc Tuy, particularly Long Khanh and Bien Hoa.

The major concern from the New Zealand veterans perspective on the subject of Agent Orange exposure and certain diseases and health disorders relates to the New Zealand Government's opinion being influenced by apparent inept conduct in some US agencies and wrong-doing by Monsanto Chemical Company.

2.0 INEPTITUDE OF US GOVERNMENT AGENCIES

The ineptitude is associated with the conduct of the Ranch Hand studies and subsequent events, and, more recently, the Center for Diseases Control Selected Cancers study. The wrong-doing of Monsanto Chemical Company is associated with the manipulation and falsification of study results that led the world to believe that the only effect on health from exposure to 2,4,5-T and/or its contaminant 2,3,7,8-TCDD was chloracne.

For many years the New Zealand Government has continually denied that there is any link between Agent Orange exposure and the types of diseases and health disorders reported among the veteran population. I contend that this denial is influenced by the inept conduct and wrong-doing described above. A consequence of the influence has been denial of sovereign and natural justice to New Zealand Vietnam veterans.

New Zealand Members of Parliament have been communicated with over many years on the subject of certain diseases and health disorders among New Zealand Vietnam veterans and the alleged

association with exposure to chemicals during service in Vietnam. Numerous ministers in various portfolios have replied that there is no scientific evidence of cause and effect relationships.

The ministers refer to the findings of the Australian Royal Commission on the Use and Effects of Chemical Agents on Australian Personnel and the Agent Product Liability Class Action Suit and the US Ranch Hand studies. An example of the situation outlined is contained in a statement by the Hon Mike Moore in a press release dated 5 April 1989. Extracts from the press statement include:

'Studies in the United States and in Vietnam veterans have failed to produce any conclusive links between Agent Orange and the health of the veterans or their children. This was also the conclusion of the Australian Royal Commission on Agent Orange and the health of the veterans or their children.

The then New Zealand Minister of Defence Hon F D O'Flynn wrote to the Vietnam veterans in January 1985 stating "that there is no scientific evidence to support the contention that exposure to Agent Orange has caused any long-term health problems for veterans or their children." '.

The minister further says of the Agent Orange Product Liability Litigation Suit, settled out-of-court 7 May 1984, that:'

The conclusion of the presiding judge stated "the scientific data available to date makes it highly unlikely that except for those who have had chloracne (a skin complaint), any plaintiff could legally prove any causal relationship between Agent Orange and any other injury including birth defects.'

Ineptitude within US Agencies is clearly demonstrated in the oversight or ignorance of a review of phenoxy herbicides by Professors' Theodor Sterling, PhD and Anthony Arundel, BA, Simon Fraser University, Burnaby, BC, Canada [Health effects of phenoxy herbicides: A review; Scand J Work Environ Health 12 (1986) 161-173]. The review included:

- Cancer: Exposure to Phenoxy herbicides in Vietnam
- Unfavourable outcomes of pregnancy: Paternal exposure to 2,4,5-T in Vietnam.

The discussion and conclusions in the review summarise in part that:

'The differences in the results of the epidemiologic studies on phenoxy herbicides have led some investigators to conclude that exposure does not cause long term health problems other than chloracne or that the risk from exposure must be very low. This conclusion is not justified. A review of the available studies indicates that there is an increased risk for cancer.' pp 170.

The significant factor is that the Agent Orange Task Force Review of Scientific Literature, April 1990, on Human Health Effects Associated with Exposure to Herbicides and/or Their Contaminants-Chlorinated Dioxins uphold the conclusions of the above review.

Any US government agency with resources such as those existing in the Veterans Affairs Department and the Center for Diseases Control could, and should have, arrived at the same conclusions at far less cost than what has been expended by them on the Agent Orange subject to date.

Failure to arrive at conclusions favourable to veterans appears to have been an intent for no discernible reason other than to deny sovereign responsibility for attending to the health and welfare of veterans injured with unconventional war wounds. Perpetrators of such denial must be held to account if proved that intent of denial existed, or still does exist, where evidence to the contrary did exist.

3.0 MONSANTO CHEMICAL COMPANY

Evidence and claims that studies were falsified and manipulated by Monsanto Chemical Company impacts on the scientific community world-wide. The studies have been relied upon as evidence that no cause and effect relationship, other than chloracne, exists between the Agent Orange components 2,4,5-T/2,3,7,8-TCDD and health effects. Monsanto Chemical Company was a major supplier to the US Defence Department of herbicides that were components of

Agent Orange.

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. 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 TCDD 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.

There is evidence that the chemical 2,4-Di was known by Monsanto Chemical Company to contain the contaminant 2,3,7,8-TCDD. This was not made known to the Canadian Department of Health and Welfare in September 1981 in response to its enquiry regarding the product Santophen and Dioxin. [In the Circuit Court, Twentieth

Judicial Circuit Court of Illinois, St Clair County; Frances E Kemner, et al., Plaintiffs vs Monsanto Company, Defendant; No. 80-L-970; Report of proceedings before the Hon. Richard P. Goldenhersh; Jury Trial, May 10 1985; sworn testimony of Dr James Wilson; Plaintiffs exhibit No. 1364.]

4.0 SUMMARY

For the purposes of present and future records any wrong-doing and oversights that have occurred within Agent Orange investigations and studies must be amended and falsehoods corrected. False records will continue to impact on veterans as evidence to deny natural and sovereign justice.

Victor R Johnson

The New Zealand Government must inquire into the outcomes of US Congressional hearings that have been conducted on US agencies and personnel involved in the Agent Orange studies.

The New Zealand Government must also inquire into the facts of the Ranch Hand and other US studies on Agent Orange, in the interests of natural and sovereign justice.

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6.0 AUSTRALIAN ACTIONS

Actions in Australia on the Agent Orange saga indicate that officials are continuing to blind themselves from the fact of fraud and manipulated studies. They continue to uphold the conclusions of the Australian Royal Commission on the Use and Effects of Chemical Agents on Australian Personnel in Vietnam. They also emulate the USA but do not take account of issues as addressed by Senator Daschle. This attitude mocks veterans who know that fraud and manipulations have occurred, as does the rest of the world.

The information in this section explains:

- Australian Royal Commission on the Use and Effects of Chemical Agents on Australian Personnel in Vietnam
- Australian birth defects study admission of compensation for non-Hodgkins lymphoma
- Repatriation Commission Appeal cases

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6.1 Australian Royal Commission on the Use and Effects of Chemical Agents on Australian Personnel in Vietnam

A Royal Commission inquired into the effects of chemicals on Australian personnel in Vietnam.¹⁴ The Commission's final report was released in July 1985. The Commissioner was the Honourable Justice Philip Evatt and a major conclusion was that "there was no causal relationship between exposure to Agent Orange and health disorders including cancers." A matter for great rejoicing according to the report. On the release of the Commission's report Justice Evatt said:

' So Agent Orange is not guilty . . . no-one lost; this is not a matter for regret but for rejoicing. Veterans have not been poisoned. This is good news and it is the commission's fervent hope that it will be shouted from the rooftops.'

The Royal Commission was convened at the direction of the Australian Government in response to concerns expressed by the Vietnam Veterans Association of Australia [VVAA]. A Senate Standing Committee on Science and the Environment had conducted an inquiry into the subject and issued a report in November 1982. This did not satisfy the VVAA who had been lobbying for a Royal Commission.

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ON THE VIETNAM VETERANS HEALTH [INQUIRY] BILL

6.1.1 Letters Patent

A Letters Patent was issued on May 13, 1983, appointing the Hon Justice P Evatt as Commissioner to inquire into the use and effects of chemical agents on Australian personnel in Vietnam. The following is the text:

ELIZABETH THE SECOND, By the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth:
TO
THE HONOURABLE PHILLIP GEORGE EVATT DSC, LL.B.

GREETING:

WE DO by these Our Letters Patent issued in Our name by Our Governor-General of the Commonwealth of Australia on the advice of the Federal Executive Council and in pursuance of the Constitution of the Commonwealth of Australia, the Royal Commissions Act 1902 and other enabling powers, appoint you to be Commissioner to inquire, for the purposes of the exercise and performance of the powers and functions of the Parliament and Government of the Commonwealth, into the following matters, namely -

[a] the use of chemical agents in the course of hostilities in Vietnam during the period commencing 31 July 1962 and ending at the expiration of 11 January 1973, insofar as they may have affected Australian personnel;

[b] the effects on Australian personnel of exposure to the chemical agents used; and

[c] the operation and administration of the Repatriation Act 1920, and Repatriation [Special Overseas Service] Act 1962 and any other relevant Acts, as applicable to claims by Australian personnel of chemical-caused disabilities:

AND, without restricting the scope of your inquiry, We direct you to inquire particularly into the following matters, namely -

[d] the conditions in which Australian personnel served in Vietnam;

[e] the nature, scale, purpose and manner of use of chemical agents;

[f] the periods during which chemical agents were used, the locations of use, their subsequent spread and location from time to time of Australian personnel;

[g] the extent to which adequate safety precautions were taken and the extent to which adequate action was taken when any possible harmful effect of chemical agents became known;

[h] the toxic properties, resulting from use separately or in combination, in relation to humans of each chemical agents used, with particular emphasis on but not limited to, any direct or indirect carcinogenic, mutagenic, teratogenic or neurotoxic properties and the extent and duration of exposure necessary to affect humans;

[i] evidence relating to the effects of any exposure to chemical agents on the mental and physical health and well-being of Australian personnel and any effects on the mental and physical health and well-being of their spouses;

[j] evidence relating to the extent to which exposure to the chemical agents used has resulted in congenital anomalies among the children of Australian personnel;

[k] notwithstanding any limitations contained in paragraph [a], the nature and extent of the safety precautions taken, during the disposal at any time by or on behalf of Australia of any surplus chemical agents that were in Vietnam during the period commencing on 31 July 1962 and ending at the expiration of 11 January 1973:

AND We declare that in these Our Letters Patent -

[l] the expression "Australian personnel" means any persons, including members of the Australian Defence Force, who were engaged in performing defence service or any other function for on behalf of Australia in Vietnam, whether as employees or otherwise;

[m] the expression "chemical agents" includes any herbicides [including defoliants], insecticides or chemical irritants; and

[n] the expression "Vietnam" means the areas specified in the First

and Fifth schedules to the Repatriation [Special Areas] Regulations in force under the Repatriation [Special Overseas Service] Act 1962:

AND We require you to make such recommendations arising out of your inquiry as you think appropriate, including recommendations regarding the legislative or administrative changes, if any, that are necessary or desirable and the adequacy of present assistance available to Australian personnel:

AND, in particular, we require you to make such recommendations as you consider appropriate in relation to assistance which any Government Department may be able to give relating to the health problems of Australian personnel and the power of a Department to grant, and the adequacy of the present method of granting, assistance, with a view to ensuring that Australian Personnel receive the full benefit of all available assistance:

AND We direct that, in making your inquiry, you have regard to any other matters that may appear to you to be relevant to any of paragraphs [a] to [k] [inclusive]:

AND We further direct that, in making your inquiry, you have regard to the records kept by the Defence Force and to published studies and reports relating to the issue and effects of chemical agents:

AND We require you as expeditiously as possible to make your inquiry and, not later than 30 June 1984 or such later date as We may be pleased to fix, to furnish to Our Governor-General of the Commonwealth of Australia a report of the results of your inquiry and your recommendations.

WITNESS His Excellency the Right Honourable Sir Ninian Martin Stephen, a member of Her Majesty's Most Honourable Privy Council, Knight of the Order of Australia, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Knight Grand Cross of the Royal Victorian Order of the British Empire, Knight of the Most Venerable Order of the Hospital of Saint John of Jerusalem, Governor-General of the Commonwealth of Australia and Commander-in-Chief of the Defence Force

Dated this thirteenth day of May 1983.

[Signed]
Governor-General

By His Excellency's Command,
[Signed]
Prime Minister

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6.1.2 Scope of Royal Commission

The scope of the Royal Commission required the report date to be extended on two separate occasions. The Commission's final report was submitted on 31 July , 1985.

Various parties were granted leave to be represented by Counsel and Solicitors. The parties included the VVAA, four hundred veterans from Western Australia, Dow Chemical Company of Australia and the U.S.A., Monsanto Australia Limited, ICI Australia Limited and Imperial Chemical Industries PLC [London]. During October 1983, Dow Chemical Company withdrew from active participation in the proceedings. The company did, however, furnish some documents at a later date associated with the development of Tordon and, a Propellant Combustion report.

Extensive literature review and world travel was undertaken by Commission representatives. The Commission made use of "Medline" [the world-wide computerised medical data service], it contacted the World Health Organisation, and made use of organisations in the U.S.A., Canada, United Kingdom, Sweden and New Zealand. The U.S. Agent Orange Working Group and its full resources were made available to the Commission by the United States Government. Documentation from plaintiffs [veterans] in the Liability Suit were obtained from the US Justice Department after the plaintiffs lawyers had refused a request for the material.

World travel included the U.S.A., Vietnam, England, Switzerland and Italy. The travel was necessary to interview or receive submissions from experts who were unable to travel to Australia. The United States Government does not permit employees to give public evidence so they were consulted, as like Dr Alvin Young , by the Commission in the U.S.A. Dr Young was a senior part-time consultant as background adviser to the Commission.

The Commission decided to send one of the Counsel assisting to Vietnam because of the significance of studies. An international symposium in Ho Chi Minh City on January 1983 had consisted of many of scientists who reviewed the many Vietnamese studies. The Commission noted attendance had included Dr Samuel Epstein and

Dr John Constable, who, according to the Commission, had been '...most active politically in the Agent Orange controversy in the United States...'. Both scientists were to later participate in the Agent Orange Scientific Task Force that published a literature review, May 1990.

Monsanto Chemical Company manufactured 2,4,5-T from 1948 to 1969 and was a supplier of Agent Orange components. The Company was also a defendant in the Liability Suit. The Commissioner traveled to the U.S.A. and, among other things, spoke to Monsanto employees and former agents.

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6.1.3 Standard of Proof

In relation to the Royal Commission's standard of proof for the inquiry, Justice Evatt said:

'The Commission holds that the standard of proof of any fact in this Inquiry is the normal civil standard. It must feel, as Dixon J. put it, "An actual persuasion of its occurrence or existence before it can be found" The affirmative of an allegation must be made out to the Commission's reasonable satisfaction.'

'That the great common lawyer continued, "But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the Tribunal. In such matters, 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences.'."

'Later His Honour said', "It is often said that such an issue as fraud must be proved 'clearly', 'unequivocally', 'strictly' or with 'certainty'... This does not mean that some standard of persuasion is fixed intermediate between the satisfaction beyond reasonable doubt required upon a criminal inquest and the reasonable satisfaction in which a civil issue may, not must, be based upon a preponderance of probability. It means that the nature of the issue necessarily affects the process by which reasonable satisfaction is attained.".'

'It will be seen that the Commission regards the civil standard as having some flexibility and it will apply the principles set out above in deciding all questions of fact in this inquiry.'

The Commission's final conclusions were based on the material available and the evidence placed before it at the time of its inquiry. As Justice P Evatt said '...science is a progressing

discipline'.

The conduct of the Vietnam Veterans Association of Australia submissions during the Royal Commission was such that it seemed they were prepared to rely on the speculative nature of the Agent Orange claims. It does not appear that an objective approach was taken in the preparation of submissions to substantiate claims of certain health diseases and disorders with exposure to chemicals.

This was an issue raised by the Commissioner with the Veterans legal representatives. However, the Association's local veteran groups in some parts of Australia were of assistance, a fact the Commission commented on. In 1984, there was less known about the problems from exposure to chemicals than what is known now.

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6.1.4 Overview of Industrial Events

In addressing the Agent Orange controversy in the United States, the Commission's report includes a brief overview of major industrial events. Two major industrial studies were conducted after explosions at Monsanto's US Nitro plant, 15 and the BASF plant in Germany, where employees were exposed to 2,4,5-T and dioxin. 16

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. 3 The hallmark of exposure to TCDD [dioxin] is supposedly chloracne, a quite distinctive skin disorder. This was the reported result of studies performed at the Nitro plant by Dr Raymond Suskind, and Messrs Zack and Gaffey. 17, 18 Dr Suskind's first study was concluded in 1953, later published in the Journal of the American Medical Association.

Monsanto's study results have been used by scientists world-wide as evidence that chloracne is the only effect from exposure to 2,4,5-T/2,3,7,8-TCDD. 14 The Nitro plant study data had been under the control of Monsanto until released to plaintiffs counsel in the Kemner et al. court case during the pre-trial discovery process. 19

The BASF plant studies were also manipulated to show no cause and effect from exposure to 2,4,5-T/2,3,7,8-TCDD.

Studies from both industrial events were scrutinised by the Commission. Referring to Dr Suskind's study's, the Commission reported there were no long term health effects from exposure to TCDD, other than chloracne, although initial symptoms of fatigue, irritability, loss of libido and appetite and some liver function test anomalies appeared. The Commission also reported that little was commonly known about the aftermath following the BASF accident.

6.1.5 Fraudulent Studies Accepted as Valid by Royal Commission

The Royal Commission accepted Monsanto Chemical Company's studies as valid. In referring to one of Monsanto's Nitro studies, the Commission made the following report: 21

'In each of the instances referred to in Table F [from one of Monsanto's studies] 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.'

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.'

Controversy erupted over the role of Monsanto's Counsel in the Commission as well as the Commissioner's treatment of some epidemiological scientists who made submissions. The controversy was re-ignited in 1990 by evidence of sworn testimony in the Kemner et al. court case in which Monsanto was defendant. The case was the longest jury trial in US legal history, started in the St Clair County of Illinois during 1984.

An award of \$16.25 million punitive damages was made against Monsanto. Dr Frank Dost, Monsanto's Toxicologist in the United

States, who testified during the trial, assisted the Australian Royal Commission as a part time consultant.

The trial related to a chemical spill by Monsanto at Sturgeon, Missouri. The plaintiffs lawyers tendered evidence, confirmed in cross-examination, showing Monsanto had falsified, manipulated and concealed study results. Evidence also showed the company had been selling dioxin-contaminated chlorophenol products for nearly 30 years. Sworn testimony during the Illinois trial indicates that for over thirty years Monsanto Chemical Company manipulated, falsified and concealed study results that showed 2,3,7,8-TCDD, a contaminant of 2,4,5-T manufacture, is harmful to human health. Analysis of data from one of the Monsanto study's showed: 19

- Cancer deaths, **65%** higher than expected
- Lung cancer deaths, **143%** higher than expected.
- Genitourinary cancer deaths, **108%** Bladder cancer death rate, **809%**
- Lymphatic cancer death rate, **92%**
- Death from heart disease, **37%**

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6.1.6 Canadian Government Concerns

Reception of Monsanto Chemical Company's study results and testimony in Canada was the opposite to that of Australia. Questioned over lying to the Canadian Government in 1981 about dioxin in Santophen during examination by Mr Rex Carr, plaintiffs counsel, Dr James D Wilson, Monsanto's Research and Development Manager, said: 22

'Q. [Plaintiffs counsel] That is not is what I said. I am using much stronger words than that. I am using words equivalent to that you are lying to the Canadian Government. You are not telling the truth to the Canadian Government just the same way you haven't told the truth to anybody else that you responded to. That is what I am suggesting to you, Dr Wilson. And I want you to tell me how, if you can say that you were not lying, sir, when you said that none contained it [Dioxin].

A. [Witness] Because by lying requires the intent to deceive.

Q. Yes, it does indeed.

A. I was mistaken obviously in writing that sentence. But there was no intent to deceive.'

Mr Jim Fulton, a member of the Canadian Federal Parliament, incensed at the cover-up by Monsanto, requested the Canadian Solicitor General to launch a full scale investigation by the Commercial Crime Squad into Monsanto's activities in Canada. Mr Fulton said in his June 27, 1990, letter to the Solicitor General, the Hon. Pierre Cadieux: 23

Dear Mr Cadieux:

Further to your letter of 12/90 regarding Monsanto.

Minister I believe this is a matter deserving of a full scale investigation by the Commercial Crime Squad.

I believe the evidence given to the RCMP by an informant in Western Canada is sufficient to warrant an investigation of what Monsanto knew when they began to cover-up known human carcinogen use.

Minister taking no action and to withhold vital information which resulted in sickness and death falls clearly in the criminal code. It is conspiracy.

I suggest a full investigation is in order. The scope of the investigation will be determined by what is found.

I look forward to your support.

Sincerely

Jim Fulton, MP
Skeena


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6.1.7 Scientists Criticism of Royal Commission

The commission's conclusions were criticised by eminent epidemiological scientists who made submissions at the commission's request. The credibility of Professor Olav Axelson and Dr Lennart Hardell's separate epidemiological studies are adversely mentioned in the report. Both Swedish scientists responded by writing a rebuttal to the Australian Governor General. In his rebuttal of 26 January 1986 Professor Axelson wrote:

'...To the extent that the report of this Commission achieves appreciation and its viewpoints become the "truth" in Australia, I am afraid that also the mid-1980's might go to the history of science as the time, when a Royal Commission's report became the sort of modern substitute for the stake as a counter-argument. Its flaming lies may cast shades on Royal Commissions.'

Dr Hardell said in a letter to the Australian Governor General on 15 January 1986:

'...In conclusion(,) the criticism by the Commission of my studies is not valid. Several statements by the Commission in this respect are not based upon facts but are falsifications of published data as described above.'

Both Professor Axelson and Dr Hardell said in a journal article rebutting the Royal Commission: 2

'...When a "verbal inspiration" in the form of this kind of a report can be posed upon a Royal Commissioner and his assistants, then a difficult and unacceptable situation has emerged for epidemiology [and presumably for the jurisdiction of Australia as well]. The scientific community should be aware of the forces, Royal or other, that may try and rule the world in public health.'

The Commission was also challenged by the Australian Vietnam Veterans Association for writing over 150 pages of Monsanto submissions, unaltered, into its report. Responding to the veterans press statement in May 1990, Justice Evatt said:

'A Judge does that in virtually any case anywhere ...if there's nothing wrong with the submissions you adopt them. That's from time immemorial.'

Justice Evatt said in the Commission's final report that the unequivocal finding of Agent Orange 'not guilty', and in finding no link to health problems, had provided for pensions based on stress disorders.

When the facts of sworn testimony became known about Monsanto's studies, a new scenario developed. Dr Cate Jenkins, of the US Environmental Protection Agency, said in a memorandum, 23 February 1990,²⁴ to the Chairman Science Advisory Board Executive Committee, Office of the Administrator:

'...It was alleged that in November 1955 Dr Suskind colluded with Monsanto to conceal findings of psychoneurosis in the exposed workers from the Workers Compensation Commission. Dr Suskind was alleged to have falsely stated that workers' nervous system and liver problems had disappeared by 1953, with the stated intention by Suskind to make the world believe that only a few of the workers continued to have problems. Dr Suskind was reported as acknowledging to the Court that the world, and the scientific community were intended to, and indeed had, relied upon his reports of no adverse cancer effects from human exposure to dioxins...'

On learning of the Monsanto's court testimony, Hon. Justice Evatt said he was very, very upset more evidence supporting veterans was not produced, but that he could not produce it. He said he could only rule on what was before him.²⁵

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6.1.8 Industry Self-study and Biased Results

An explosion in BASF plant, Ludwigshafen, Germany, 1953 caused 74 workers to be exposed to 2,4,5-T and dioxin. 16 Three epidemiological studies were published together with several case reports. The Royal Commission concluded: 26

' The BASF studies do not support the claims of VVAA [Vietnam Veterans of Australia] in relation to soft tissue sarcoma and malignant lymphoma, nor in relation to cancer generally. '17

A Dr Friedman Rohleder became involved with the BASF studies as independent expert for a Workers Compensation Court in Germany. The chemical industry claimed dioxins, and especially 2,4,5-T, did not cause human malignancies. Dr Rohleder stated that suspicion was patent, someone had tried to dilute the effects of dioxin. His re-analysis of a BASF study showed there were 8 cancer deaths, where only 3.2 were expected.

Dr Rohleder also stated that this is an organ-specific excess of death and increases the probability that there is an association between dioxin exposure and human malignancy. He pointed out the problems associated with any industry studying itself and the outcome of biased results. 20

6.2 AUSTRALIAN BIRTH DEFECTS STUDY

In the early 1980's it became increasingly apparent that New Zealand Vietnam veterans were not only struck with the same medical problems as their peers overseas, the problems were severe. The problems are in far greater depth and complexity than at first realised. Individuals are stricken with cancers, tumours, severe nervous disorders, skin diseases, effects on the senses, and deformities among children.

Various Ministers of two New Zealand Governments have continually stated they prefer to await results of overseas studies. The New Zealand Veteran population was too small to enable a study to be effectively carried out within New Zealand they claim. A private members Bill sought to provide for a health inquiry among New Zealand Veterans. It was put before the House of Parliament in April 1983, by Mr Geoff Braybrooke, a member of the opposition.²⁷

An Australian veterans study on Congenital Abnormalities at Birth was referred to by a member of the Government in speaking against the Bills introduction. The study had only just been released by Australian authorities. Every study is measured for its methodology to determine validity of results and findings. The results, and measures of validity, are used by supporters and opponents to the claims of alleged health effects in persuading others to accept their particular stand.

The Hon D Thomson, then Minister in Charge of War Pensions, referred to the Australian Study on Congenital Abnormalities during the Bill's debate. He said that: '... (the report) concludes there is no evidence that Army Service has increased the risk of birth of a child with an anomaly (birth defect) ...'. The Minister continued: '... I am delighted that is so, because at least it puts away the false hope that many such fathers hold - that their service in Vietnam might be the cause of their babies abnormality ...'.

The Minister said that he did not just accept the report, he had given instructions to the effect that official advisers from the Ministry of Defence, the Department of Health, and the War

Pensions division of the Department of Social Welfare should study the report and obtain opinion of our scientists as to whether it is scientifically valid? 24 The Bill was defeated by one vote.

Using the Australian study in this debate was persuasive because the report had not been measured for validity. In 1984, two Canadian statistical scientists, Professor T Sterling and Professor A Arundel, statistically measured the report's study data and found it invalid. 28 Their measure of the study highlighted design flaws. They stated the report was deserving of special attention.

Firstly because it was an example of inappropriate study design, and secondly because it was being used as evidence for a lack of relationship between birth defects and paternal exposure to herbicides. The scientists said that the comparisons used for the study was an invalid test of the relationship between herbicide exposure and birth defects.

Fortunately, the scientists said, sufficient data was contained in the study report to enable a comparison. In their analysis of data, the observed number of malformations among Vietnam Veterans offspring was 25% greater than the expected number of malformations based on the population adjusted rate of malformations among Veterans without Vietnam Service.

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6.3 ACCEPTANCE OF NON-HODGKINS LYMPHOMA FOR COMPENSATION

The Australian Repatriation Commission began accepting claims from veterans for non-Hodgkins Lymphoma [NHL] on 25 July 1990. A repatriation commissioner, Admiral Neil Ralph, told a reporter from *THE AUSTRALIAN* newspaper that the commission accepted that a 50 percent greater risk among Vietnam veterans contracting non-Hodgkins lymphoma was caused by 'factor X'-which was probably multi-factorial. 29 Ralph went on to say that:

" The scientists who undertook the study in the US, which our experts accept, could not put their finger on it. Perhaps one day someone will. The reasons remain obscure".

The decision to grant claims for non-Hodgkins lymphoma was based on an evaluation of the first of new material gathered in the US by a team of Australian officials from the Veterans Administration Department. The team of was sent to the U.S.A. after Mr Johnson had brought the matter of fraudulent studies and other information to the attention of the Australian Minister of Veterans Affairs, Mr Ben Humphrey. A team is continuing to evaluate other studies, which Admiral Ralph said could not be ignored.

Australian veterans had previously to prove a link between service in Vietnam and NHL. To gain a pension now all that is required of a veteran is service in Vietnam and proof of service.

The Australian acceptance of non-Hodgkins lymphoma was based on the CDC's Selected Cancers Study which has been scathingly criticised resulting in a Congressional investigation of CDC. Australian officials had the opportunity to be bold and go further in acceptance of the disease but, they demurred for reasons best known to themselves, casting a demeaning dispersion upon veterans who advised the Australian Government where the evidence and facts could be found.

This is qualified in a patronising statement made by the president of the Repatriation Commission who said:

"Although the US study found the cause of NHL was 'multi-factorial'. it did not rule out a relationship with Agent Orange, we simply do not know".²⁹

The CDC Selected Cancers Study was never designed to show a relationship between Agent Orange exposure and certain cancers. It was a fudged study and the principal architects are undergoing examination by Congress for their conduct. The manner in which the Australian's accepted the study results highlights that bureaucracy is adept at upholding fraud to suit a purpose. Australian officials should be held to account for their failure to acknowledge facts. This submission contends that:

Failure to arrive at conclusions favourable to veterans appears to be an intent for no discernible reason other than to deny sovereign responsibility for attending to the health and welfare of veterans injured with unconventional war wounds. Perpetrators of such denial must be held to account if proved that intent of denial existed, or still does exist, where evidence to the contrary did exist.

The authors of this submission contend that evidence existed for Australia to attend to the health and welfare of veterans injured by unconventional war wounds resulting from chemical exposure.


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6.4 REPATRIATION COMMISSION APPEAL CASES

Two Repatriation Commission appeals against awards of compensation to veterans for cancers have been disallowed by the Australian Administrative Appeals Tribunal in July, 1990. 30 In the most recent case the Australian Government tendered the complete report of the Australian Royal Commission on the Use and Effects of Chemical Agents on Australian Personnel in Vietnam as evidence for no cause and effect between chemical exposure and ill-health.

The report was withdrawn after Legal Counsel challenged the scientific validity of the report, including the bibliography. The veteran's pension claim was upheld. It is understood at the time of writing that the Commonwealth of Australia will not appeal the Federal Court decision.

It is essential that the New Zealand Government inquire into events within Australia, including the Royal Commission's conclusions.

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7.0 KEMNER et al versus MONSANTO CHEMICAL COMPANY

Oral testimony heard and documents presented as evidence in the case of Kemner et. al. versus Monsanto Chemical Company dispels argument that there is no cause and effect relationship between certain herbicide chemicals and certain health diseases and disorders. Monsanto appealed against the jury award of \$1.00 actual and \$16.25 million punitive damages. 19

Evidence during the trial proved that Monsanto's study results were massaged to show 2,3,7,8-TCDD was not harmful to human health. The tenure of the plaintiffs-appellees brief was that Monsanto Chemical Company staff testified during the original trial 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 for Monsanto by Dr R Suskind over 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 following is an extract from the Appellates response filed to Monsanto's appeal. Exhibits substantiate the claim of fraud in the Nitro plant studies:

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 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 legal counsel for Kemner et. al., Mr Rex Carr wrote to Mr John Moller explaining Monsanto Chemical Company's response in the Appellate Court. Mr Carr, of Carr, Korein, Tillery, Kunin, Montroy, Glass & Bogard, Attorneys at Law, Louis, Illinois, said: 31

'...I was surprised to read in the letters written by the New Zealand Monsanto representative that my charges have already been rejected by the court and are not supported by the scientific evidence.

This is another lie which joins the long list of lies to which we have been subjected by Monsanto. No court has ever rejected the charges and Monsanto, itself, was unable to respond to any of the charges in court although Monsanto had a year and a half in which so to do.

The charges which I made in court and which are supported by the documentary evidence and sworn testimony of Dr. Roush have never been rebutted. In point of fact, the Appellate Court case was recently argued before a panel of three judges and I repeated the same charges of fraud in the course of the argument. Monsanto's attorney made absolutely no effort to defend Monsanto against these charges.

The jury in the original trial did obviously find that my clients had been unable to prove that their health was jeopardized by the dioxin exposure because of the very low levels of dioxin involved in the chemical. However, the \$16,250,000 punitive verdict was a direct finding of the jury that Monsanto had committed fraud.

It may be that for several technical reasons, the Appellate Court will some day reverse the punitive damage verdict, the effect of that verdict cannot be reversed. In a long and hotly contested trial, a jury of twelve American citizens found that Monsanto had lied and had willfully failed to remove dioxins from its chemical and that it should be punished for so doing.'

Monsanto Chemical Company has not rebutted the charges of fraud since since February, 1990, when they became widely reported by many sources.

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8.0 INDEPENDANT US AGENT ORANGE STUDIES AND REPORTS

In addressing Congress on 21 November 1989, Senator T Daschle encompassed a number Agent Orange studies and reports from US Government agencies and other independent sources. Other studies and reports have since been released.

US studies and reports on Agent Orange, independent of government agencies, are virtually parallel in their conclusions on the effects of combat and Agent Orange exposure.

There are advocates who claim the only problem veterans suffer is Post Traumatic Stress Disorder[PTSD], a disorder arising from service in Vietnam. PTSD is a factor in veterans health that is separate to the effects of chemicals. The United States and Australian Governments provide counseling services to veterans in order to enable veterans to re-adjust to normal life. No such service exists in New Zealand and it is considered that such a service is essential.

The information in this section explains the:

- Stellman and Stellman studies
- Report to US Secretary for Veterans Administration Department
- Agent Orange Scientific Task Force report

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8.1 Stellman and Stellman Studies

The Stellman and Stellman study, *New Light on Health of Vietnam Veterans*, consists of five papers published in the *Environmental Research Journal* Vol 47, Number 2 December 1988. 32 The research represents a landmark in veteran health research. The subject of each paper is:

- Combat and Herbicide Exposures in Vietnam.
Steven D Stellman, Jeanne Mager Stellman, John F Sommer Jr.
- Social and Behavioural Consequences of the Vietnam Experience among American Legionnaires.
Jeanne Mager Stellman, Steven D Stellman, John F Sommer Jr.
- Health and Reproductive Outcomes among American Legionnaires in Relation to Combat and Herbicide Exposure in Vietnam.
Steven D Stellman, Jeanne Mager Stellman, John F Sommer Jr.
- Post-Traumatic Stress Disorder among American Legionnaires in Relation to Combat Experience in Vietnam: Associated and Contributing Factors.
Barry R Snow, Jeanne Mager Stellman, Steven D Stellman, John F Sommer Jr.
- Utilisation, Attitudes, and Experiences of Vietnam Era Veterans with Veterans Administration Health Facilities: The American Legion Experience.
Jeanne Mager Stellman, Steven D Stellman, John F Sommer J

8.1.1 Combat and Herbicides Exposures in Vietnam

Herbicide spray missions were documented on the HERBS tapes. The tapes were considered to accurately detail each mission. However, exhaustive review of the tapes by the US Army and Joint Services Environmental Support Group added an additional 1507 missions that dispersed 1.6 million gallons of herbicides. This represents a 9% increase over previous records.

Authors of the studies concluded there are numbers of veterans available and identifiable to conduct an epidemiological study of herbicide effects.

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8.1.2 Social and Behavioural Consequences of the Vietnam Experience among American Legionnaires

Wide-ranging adverse social and behavioural effects are an outcome of combat experience in South East Asia. Men who were involved in high levels of combat intensity are at a greater risk for divorce. They are generally less happy and satisfied with their lives, marriages, their role as fathers, and as sexual human beings. Although they have reached a high level of education they earn significantly less money than their peers of the same age and educational attainment. Anxiety and physical signs of depression were the psychological effects for which Agent Orange exposure was a significant predictor.

Veterans with combat experience exhibit higher levels of behavioural disturbances and the effects are enduring. For most veterans it is 15 years since the combat experiences.

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8.1.3 Health and Reproductive Outcomes among American Legionnaires in Relation to Combat and Herbicide Exposure in Vietnam.

A significant relationship was found between herbicide exposure and development of skin conditions such as rashes and change in skin colour. A significant excess of fatty benign tumours was also observed. A significant relationship was determined between combat and high blood pressure, ulcers, arthritis and hepatitis.

A correlation was found between veterans exposed to Agent Orange herbicide and a dose-related risk for miscarriages among their wives. Relative frequencies of outcomes fell into an order which was consistent with the authors hypothesis. The order is:

- Medical and reproductive conditions would be higher in Vietnam veterans than in controls.
- Stress related conditions would increase with increased exposure to combat.
- Herbicide related conditions would rise in a dose related way with the greatest frequency among herbicide handlers.
- A weak but statistically significant dependence of increased nervous system disease on both combat and herbicide exposure was found.
- This was consistent with both experimental and clinical studies, noted as deserving further investigation.
- Skin conditions such as chloracne are not an inevitable outcome of exposure, even among the heavily exposed.
- The physical and reproductive health findings are consistent and reinforce the conclusions of the other papers about the pervasive effects of combat and herbicide exposure on the lives of Vietnam veterans.

8.1.4 Post-Traumatic Stress Disorder among American Legionnaires in Relation to Combat Experience in Vietnam: Associated and Contributing Factors.

There is strong evidence that PTSD exists in a large number of veterans. Veterans with high levels of traumatic combat experience were affected with symptoms intruding on their daily lives today. Depression or other abnormal behaviour could be triggered by exposure to a certain level of traumatic stress. This depends on the severity and frequency of exposure to the trauma. Veterans pre-service physical or mental health was ruled out as a likely contributing factor to the PTSD condition.

It is considered that the symptoms of PTSD persist without treatment well beyond the combat experience and into the veterans civilian life.

Greater clinical sensitivity to the potential variety of PTSD symptoms can assist in the identification of affected veterans and the design of intervention programmes.

8.1.5 Utilisation, Attitudes, and Experiences of Vietnam Era Veterans with Veterans Administration Health Facilities: The American Legion Experience.

In the United States the Veterans Administration (VA) operates the largest federally funded health care system, as well as the most extensive health care system run under a unified management. The Administration has been found as being inadequate in its obligatory performance for veterans.

There is no systematic approach to taking medical and military histories of veterans seeking mental health help. Examining physicians do not take into account the combat experiences. Veterans would have had far greater likelihood of having been in combat or other life-threatening situations than civilians.

A study on attitudes and perceptions toward the administration's service found dissatisfaction among veterans was related to combat exposure. The higher the combat exposure, the higher the dissatisfaction. The study found a relationship between the dissatisfied veterans combat experiences and their alienation from political and social processes.

Professor Theodor Sterling, statistical scientist of Simon Fraser University, Burnaby, British Columbia, Canada, said in a letter [April 5, 1990] to Mr Victor R Johnson that: 33 *"The Stellman article about which you write is sound. It is a good review."*

There is no evidence that New Zealand government agencies have taken account of the Stellman and Stellman studies. This is in spite of assurances from the Minister of Health that the Health Department is monitoring overseas.

8.2 Agent Orange Task Force Report

A US Agent Orange Scientific Task Force report found effects on human health as a result of exposure to Agent Orange components and listed many health diseases and disorders.³⁴

The task force was established conjointly by the American Veterans Legion, Vietnam Veterans of America and the National Veterans Legal Services Project. The seven member team was made up of independent scientists led by Dr Sam Epstein. The scientists voluntarily reviewed all scientific literature on human health effects associated with exposure to herbicides and/or their associated contaminants, chlorinated dioxins. Publication of conclusions that a link did exist added further turmoil into the science field.

Three categories of health effects were identified with adverse diseases and disorders grouped in each category. The categories are:

- A significant statistical association
- A statistical association at least as strong as the evidence of a lack of association
- Sound scientific association but not reaching the level of formal statistical association.

The task force did not consider the US Veterans Affairs Department's standard of proof as appropriate to base decisions on. The report said:

'The aggregate of all evidence derived from the available relevant epidemiological studies establishes a causal relationship between Agent Orange and a range of excess cancers.'

This report also says of the Monsanto studies:

The EPA has apparently called for reassessment of Monsanto data with the goal of correcting the erroneous estimate of risk of cancer by properly classifying the exposure status of the decedents. Until this this is done, this study should not be relied upon and any positions which relied upon the original results should be

reconsidered.'

The task force was assembled because US veteran organisations were dissatisfied with the VA's handling of the issue. The VA constantly asserted there was not enough scientific evidence to show a link to health diseases and disorders, other than chloracne. Similar assertions are stated by the Governments in Australia and New Zealand.

All studies and publications previously reviewed by the Veterans Affairs Advisory Committee on Environmental Hazards were reviewed, as well as additional pertinent studies not reviewed. Studies included those on herbicide users such as farmers, and the Report of the Royal Commission on the Use and Effects of Chemical Agents on Australian Personnel in Vietnam [1985]. Studies not considered by the VA Department were reviewed by the task force.

The epidemiological evidence linking adverse health effects to Agent Orange is strongly supported by a wide range of animal experimental data. Experimental animal studies were not reviewed by the VA's advisory committee.

The task force was limited to showing only a statistical association between the adverse health effects and exposure to phonyx-acetic herbicides, a standard used by the Veterans' Administration.

The following sections explain the adverse health results on association with Agent Orange.

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8.2.1 A Significant Statistical Association between Exposure to Agent Orange and Adverse Health Effects

The report's first category lists the following group of diseases and health disorders as having a significant statistical association with exposure to Agent Orange:

- Non-hodgkins Lymphoma
- Soft Tissue Lymphoma
- Skin disorders/chloracne
- Subclinical hepatotoxic effects
- Porphyria Cutanea Tarda

Dr Suskind, in his testimony in the Illinois Court, described chloracne as a skin rash, folliculitus, dermatitus and such like.

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8.2.2 A Statistical Association between Exposure to Agent Orange and Adverse Health Effects

The second category lists the following group of diseases and health disorders as having a statistical association with exposure to Agent Orange:

- Hodgkins Disease
- Neurological effects
- Reproductive and Developmental Effects

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8.2.3 Sound Scientific Evidence of an Association with Exposure to Agent Orange and Adverse Health Effects

The third category has the following group of diseases and health disorders as sound scientific association with exposure to Agent Orange, but the evidence does not reach the level of formal statistical significance association [as required by the VA Department]:

- Leukemias
- Cancer of the kidney
- Cancer of the testis
- Cancer of the stomach
- Cancer of the prostate
- Cancer of the colon
- Cancer of the hepatobiliary tract
- Cancer of the brain
- Psychological effects
- Immunological abnormalities
- Gastrointestinal ulcer
- Altered lipid metabolism

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**8.3 REPORT FOR SECRETARY OF THE DEPARTMENT OF VETERANS
AFFAIRS ON THE ASSOCIATION BETWEEN ADVERSE HEALTH
EFFECTS AND EXPOSURE TO AGENT ORANGE**

Admiral Elmo R Zumwalt Jr, former Chief of Naval Operations and officer who ordered the defoliation programme, carried out a study as Special Assistant to the Secretary of the Veterans Affairs Department. 35 The report released May 5, 1990, lists 24 health diseases and disorders as attributable to Agent Orange exposure.

Zumwalt assisted in determining whether it was at least as likely as not that there is a statistical association between exposure to Agent Orange and a specific adverse health effect. He has a science background and was assisted by independent scientists. Zumwalt's report paralleled the Agent Orange Scientific Task Force report.

Comments by independent reviewers of the Veterans Advisory Committee on Environmental Hazards are summarised in the report. One summary includes comments on VA staff:

'As these various reviewers suggest, the advisory Committee's conclusions on the relationship between exposure to Agent Orange and non-hodgkins lymphoma [NHL] were woefully understated in light of the clear evidence demonstrating a significant statistical association between NHL and exposure to phenoxy acid herbicides such as Agent Orange.'

'Perhaps more significant than the Committee's failure to make such obvious findings is the distressing conclusion of the independent reviewers that the Committee's process is so flawed as to be useless to the Secretary in making any determination on the effects of Agent Orange. From a mere reading of Committee transcripts, these reviewers detected overt bias in the Committee's evaluation of certain studies.

In fact, some members of the Advisory Committee and other VA officials have, even before reviewing the evidence, publicly denied the existence of a correlation between exposure to dioxins and adverse health effects. This blatant lack of impartiality lends credence to the suspicion that certain individuals may have been

unduly influenced in their evaluation of various studies.'

The Center for Diseases Control handling of the Ranch Hand and other studies was also adversely commented on, leading with the statement:

'Were the faulty conclusions, flawed methodology and noticeable bias of the Advisory Committee an isolated problem, correcting the misdirection would be more manageable. But, experience with other government agencies responsible for specifically analysing and studying the effects of exposure to Agent Orange strongly hints at a discernible pattern, if not outright governmental collaboration, to deny compensation to Vietnam veterans for disabilities associated with exposure to dioxin.'

Numerous epidemiological and animal studies were reviewed with independent scientific experts to evaluate the validity of reported results associated with exposure to Agent Orange and herbicides containing 2,3,7,8-TCDD [Dioxin]. The protocol and standards employed by US government sponsored studies were reviewed and evaluated. Each study was assessed for its fairness, consistency and credibility against generally accepted scientific practices.

Included in Zumwalt's report is the statement:

'...that it is at least as likely as not that there is a relationship between exposure to Agent Orange and the following health problems. '

There are 13 health diseases and disorders in the 'at least as likely as not that they are caused by human exposure to TCDD' category:

- Non-hodgkins lymphoma
- Chloracne and other skin disorders
- Lip cancer
- Bone cancer
- Soft tissue sarcoma
- Birth defects
- Skin cancer
- Porphyria cutanea tarda and other liver disorders
- Hodgkins disease
- Hematopoietic diseases
- Multiple myeloma
- Neurological defects

- Auto-immune diseases and disorders

There are 11 health diseases and disorders in the ' at least as likely as not that they are service connected ' category for Vietnam veterans:

- Leukemia
- Lung cancer
- Kidney cancer
- Malignant melanoma
- Pancreatic cancer
- Stomach cancer
- Colon cancer
- Nasal/pharyngeal/esophageal cancers
- Prostrate cancer
- Psychosocial effects
- Gastrointestinal diseases

There is no evidence that New Zealand government agencies have taken account of the Zumwalt report. This is in spite of assurances from the Minister of Health that the Health Department is monitoring overseas research.

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9.0 MEMBERSHIP OF COMMISSION

The membership proposed for the Commission to include a Vietnam veteran through nomination of a New Zealand member of the International Independent Agent Orange network provides balance. The nominee would provide the sources of many scientific and other studies in existence and contact various groups outside New Zealand who can make a contribution to the inquiry.

The nominee would also be representative of the peer group, veterans directly affected by the proposed Vietnam War Veterans Health [Inquiry] Bill.

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**SUBMISSION TO FOREIGN AFFAIRS AND DEFENCE COMMITTEE HEARING
ON THE VIETNAM VETERANS HEALTH [INQUIRY] BILL**

**10.0 RECOMMENDATION OF LEGAL COUNSEL APPOINTMENT TO
COMMISSION OF INQUIRY**

Mr Roger MacLaren, Barrister, Auckland, is recommended by the authors of this submission for appointment as Legal Counsel to the Commission of Inquiry for its full term.

Mr MacLaren has many years of legal experience in the matters that are most likely to be addressed by the Commission of Inquiry as set out in the Vietnam War Veterans Health [Inquiry] Bill.

As a Barrister for the past 10 years, Mr MacLaren has judicious experience as Legal Counsel for the:

- Thalidomide victims
- Arthur Allan Thomas in claiming compensation
- Air New Zealand co-pilot in the Erebus case.
- New Zealand Vietnam veterans in the Agent Orange Product Liability Litigation Suit, MDL 381
- New Zealand Agent Orange Trust Board.

Mr MacLaren is a member of the following:

- Panel that prosecutes for the Crown
- American Bar Association
- Thalidomide support group.

Mr MacLaren has been instrumental in:

- facilitating the Agent Orange Product Liability Litigation Suit, MDL 381 out-of-court settlement together with United States legal counsel.

- Obtaining legislated taxation exemption for the New Zealand Agent Orange Trust Board out-of-court settlement funds
- Structure of the deed for the New Zealand Agent Orange Trust Board
- Representing plaintiffs in a case against the Accident Compensation Corporation on compensation for occupational exposure to 2,4,5-T poisoning.

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11.0 SUMMARY

It seems that the issue of health damage among New Zealand veterans was previously influenced by the what the authors describe as the **4MA** syndrome. 4MA is the **4 M's Attitude**, *Male, Military, Money, and Malaise*.

The response to a journal article about cervical cancer and women brought an instant response from Government in the form of an inquiry. It appears that as veterans are males, there is no concern with their health problems, in spite of the Crown's sovereign responsibility to attend to war injury.

The Vietnam era military image has been tarnished by politicians and minority groups so as to make it a distasteful topic in New Zealand society. The professionalism of New Zealand Vietnam veterans is acknowledged by General Nguyen Minh Ninh, a former commander of the Viet Cong D445 Battalion.

The general said recently that he had great respect for the fighting skills and tactics of the Australian and New Zealand forces (ANZAC's). He said that we caused him many sleepless nights trying to work out ways of defeating us. The greatest respect is held for the ANZAC's by the General because, in his opinion, we took the war to the soldier-not to the villages and people of Vietnam.

According to some, money appears to be the object of the veterans seeking compensation for health damage from exposure to chemicals. Veterans are seeking compensation and treatment from their former employer, the Crown, for diseases, in many cases

rare, and debilitating health disorders.

Malaise exists amongst bureaucracy regarding the subject of Agent Orange because it appears as an intangible matter, unless one does a thorough research of scientific literature.

There is no evidence of in-depth research having been done by New Zealand government agencies.

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11.1 General

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 following statement was 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 crown has a sovereign responsibility in the diagnosis and treatment of non-traumatic or traumatic injury where the injury is a result of service. 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.

The importance of the proposed Vietnam War Veterans Health [Inquiry] Bill is not only relevant to the veterans of the Vietnam war but also for the future. Future wars are more likely to produce unconventional injuries such as those occurring from exposure to the defoliant chemicals.

New Zealand does not have an adequate structure for the administration, treatment and compensation of veterans. The present system involves a process of veterans filing war pension

claims that are considered by a district panel. Where a claim is accepted, the veteran is advised and a war pension paid.

There is no professional advisory service nor followup for veterans, they are left to their own devices within the community whereas combat, injury and other war experiences can be one of the most traumatic that can occur to an individual.

The USA and Australian Governments are compensating for non-Hodgkins lymphoma, with the USA also compensating for Soft-tissue sarcoma. No consideration is known to be given to New Zealand veterans suffering those diseases. No structured organisation exists to do this; as a consequence veterans are disadvantaged by delayed justice. Justice delayed is justice denied.

We thank the Member of Napier, Mr Geoff Braybrooke, for introducing the Vietnam War Veterans Health [Inquiry] Bill. This is indicative of good citizenship.

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**11.2 RECOMMENDATION FOR IMMEDIATE COMPENSATION TO
NEW ZEALAND VIETNAM VETERANS**

It is recommended that New Zealand Vietnam veterans with non-Hodgkins lymphoma and Soft-tissue cancers be immediately treated and compensated under the provisions of the New Zealand War Pensions Act.

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