AGENT ORANGE LITIGATION

Cooperation for Victory

By Victor John Yannacone, Jr.
W. Keith Kavenagh
and
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GENESIS

Reutershan, Paul

Address:	Mohegan Lake, New York.
DOB:	1950.
Enlistment:	1968, United States Army.
Serial No.:	One of 2.5 million servicemen.
Training:	Basic. Advanced: Helicopter.
Assignment:	Bien Hoa Air Base.
Duties:	Helicopter crew chief; Transport phenoxy herbicides to 20th Eng. Batt.; Use: defoliation of jungle, Ho Chi Minh Trail.
Discharge:	Honorable.
Status:	Deceased.
Cause of Death:	Vietnam Military Containment Action survivor/victim; Cancer.

In October 1977, shortly after Paul Reutershan took a job as a conductor for ConRail and became engaged to be married, he discovered he had a terminal cancer. His life expectancy was between two months and a year. When the doctors first told him of the cancer which eventually destroyed his abdomen, colon, and liver, Paul, a self-proclaimed "health nut" for years, could not understand how it could have happened to him.

Then he read a news item about Maude DeVictor, a Veterans Administration (VA) hospital employee who strongly suspected there was a link between the use of "Agent Orange" and an unusually large number of cancer cases among Vietnam veterans in Chicago. Paul became convinced he too was the victim of an unseen killer, Agent Orange, the defoliant through which he had flown so many times in Vietnam.

Maude DeVictor, a 38-year-old veteran herself and also a cancer victim, worked in the benefits division of the VA regional office in Chicago. She first heard of Agent Orange in 1977, when she took a random telephone call from the wife of a Vietnam veteran named Charles Owen who was dying of cancer. He blamed his disease on exposure to the defoliant used in Vietnam. Later, Ms. DeVictor received a second call from Mrs. Owen; her husband had died, and the VA had refused her claim for survivor's benefits.

By the second week of 1978, after Ms. DeVictor had assembled 53 cases, her supervisor at the VA insisted she stop gathering statistics on Agent Orange and veterans' illnesses. She turned to a local television news correspondent for help, and in March 1978, WBBM, a CBS television affiliate in Chicago, broadcast an hour-long documentary, "Agent Orange, the Deadly Fog." After the broadcast, The Dow Chemical Co., the largest supplier of the Agent Orange used in Southeast Asia, denied that use of the herbicide could be linked to the birth defects which some of the veterans had claimed during the documentary interview. Strangely, however, Dow's public statement ignored the program's suggestion of a connection between exposure to the defoliants and cancer.

Paul Reutershan, his close friend and fellow veteran Frank McCarthy, and a few other veterans and their family members founded Agent Orange Victims International (AOVI) in late 1977. In the little more than a year he had left to live, Paul fought through many levels of VA bureaucracy seeking an admission that Agent Orange was the cause of his cancer. Although he won the battle on December 11, 1978, when he finally received his first VA check for disability benefits, he lost his personal war. On December 14, 1978, Paul Reutershan died at the age of 28 of a cancer characteristic of men in their fifties and sixties.

Shortly before he died, Paul Reutershan brought an action in the New York State Supreme Court against Dow as manufacturer of Agent Orange. Dow attorneys promptly removed the action to the United States District Court for the Southern District of New York.

The Reutershan/AOVI Position

AOVI had definite goals and insisted that any lawsuits filed on behalf of Paul or any other veteran claiming illness or death from expo-

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sure to Agent Orange be brought for the benefit of all the other veterans who also might be victims. As the plaintiffs stated to the court in opposing the first of many motions to dismiss the complaint:

"The plaintiff veterans seek medical care and treatment of their own afflictions, but most cry out for medical care and treatment of the afflictions visited upon those of their children who have suffered developmental defects.

"They do not want to be recipients of public assistance.

"...[A]s tax payers, they do not believe that they and all the other tax payers in the United States should bear the burden of the cost of the medical care and treatment they require as a result of the toxic effects of contaminated phenoxy herbicides manufactured, formulated, advertised, marketed, promoted and sold by the corporate defendants.

"They seek to compel the corporate defendants to make restitution to the American people by reimbursing those federal and state agencies that have provided benefits, medical care and treatment...for conditions attributable to the toxic effects of contaminated phenoxy herbicides....

"They seek a resolution of the scientific controversy over the toxic effects of phenoxy herbicides contaminated with toxic synthetic organic chemicals such as the polychlorinated dibenzo-p-dioxins (PCDDs) and the polychlorinated dibenzo furans (PCDFs) fomented by the promotional efforts of the corporate defendants....

"They seek to challenge the continuing claims of those corporate defendants still actively involved in the advertising, promotion, marketing and sale of phenoxy herbicides known to be contaminated...that such contaminated phenoxy herbicides are safe.

"They seek to test those safety claims of the corporate defendants in the crucible of cross-examination before this Court of Equity not in administrative proceedings which have been dragging on for almost a decade since the Department of Defense recognized the danger inherent in contaminated phenoxy herbicides and discontinued their use as defoliants in Southeast Asia.

"The plaintiff veterans who served our Country in Southeast Asia assert that the corporate defendants owed them a non-delegable fiduciary duty of care.

"They seek punitive damages against the corporate defendants responsible for the advertising, promotion, marketing and sale of phenoxy herbicides contaminated with toxic synthetic organic chemicals...in an amount sufficient to convince corporate management they serve as trustees of the public health, safety and welfare to an extent commensurate with the economic power and technological resources of the corporations they manage."

Reutershan and McCarthy were already aware that:

"2,400,000 veterans are not a statistically insignificant sample of the American population, considering that all of them were certified to be in good health when they left this country for service in Southeast Asia and those who came home without direct traumatic injury from that service are now suffering many clinical and subclinical effects attributable to the chemical toxicants to which they were exposed.

"The...veterans are in a unique position at risk as a result of their already significant exposure to phenoxy herbicides contaminated with polychlorinated dibenzo-p-dioxins (PCDDs) and polychlorinated dibenzo furans (PCDFs) and the bioaccumulative nature of the toxic effects associated with such exposure.

"...[O]ther widely used products such as...pentachlorophenol (PCP) and its salts are also contaminated with polychlorinated dibenzo-p-dioxins (PCDDs) and polychlorinated dibenzo furans (PCDFs) and may represent significant additional risk...."[1]

Reutershan lived just long enough after discovering the cause of his illness to become appalled at the lack of concern by federal regulatory agencies for the unique position of the Vietnam combat veterans as a population already exposed to contaminated phenoxy herbicides and manifesting clinically ascertainable symptoms of such exposure. Today an action is also pending against the VA to compel it to conduct a scientifically valid study of the Vietnam combat veterans.

During the last week of 1978 an investigation revealed that there may have been as many as 40 veterans who died of cancers relatively uncommon to their age group. Therefore, the original complaint was amended and refiled as a class action on January 8, 1979. By the end of that week more than 100 veterans or their widows had come forward to be named members of the class. Today there are more than 15,000 identified plaintiffs, and it is estimated that the eventual class will contain as many as 45,000.

Drafting the Complaint

The tragic circumstances surrounding the American military presence in Southeast Asia make the Agent Orange litigation unique in the history of American jurisprudence.

"More than two million and less than five million American servicemen depending on which estimate from which federal agency is accepted as accurate, served in Southeast Asia during the period February 1962 through February 1971 when various combinations of phenoxy herbicides such as the 2,4,5-trichlorophenoxy aliphatics [were used as defoliants]. These herbicides were manufactured, formulated, advertised, marketed, promoted and sold by the corporate defendants although known to be contaminated with toxic synthetic organic chemicals such as 2,3,7,8-tetrachloro dibenzo p-dioxin (TCDD or Dioxin)."[2]

By February 1979, it became apparent that the children of some of these veterans may have suffered catastrophic developmental damage as a result of genetic damages sustained by their fathers. There was also the likelihood that some of these children could have suffered genetic damage not yet manifest. Even before public attention began to focus on the children, it had become obvious that these young American servicemen, a greater proportion of whom had volunteered for combat service in Vietnam than in any other armed conflict in American history, were the victims of a mass toxic tort perpetrated by the corporate defendant war contractors. Hundreds certainly, and eventually perhaps tens of thousands, of individual American servicemen who served in Vietnam and were exposed to contaminated phenoxy herbicides have suffered serious, permanent, and probably irreparable injury to their physiologic and genetic systems.

Unfortunately for the victims,

however much it might complicate the work of their attorneys, the damages do not become apparent in many cases until years after the actual toxic insult.

If, in fact, there are as many as 45,000 victims whose personal injuries and damages are as great as those sustained by the named plaintiffs, then it would not be unreasonable to assume that if the liability of the corporate defendants could be established, reasonable juries might award damages which could range from as little as $10,000 to $100,000 for chloracne, coupled with an increased risk of contracting cancer, to as much as $1 million to $10 million for children of normal or superior intelligence with reasonable life expectancy suffering from catastrophic polygenetic congenital defects.

The potential damages provable by the class of veteran victims and their families could range from $4 billion to $400 billion, and far exceed the net worth of all the corporate defendants collectively, and perhaps even the net worth of the entire herbicide industry. The damage issue is complicated by the serious question whether any products liability "completed operations" insurance even existed, much less whether it would cover injuries which occurred in a war zone during combat.

A number of attorneys who first considered and then rejected the Reutershan case suggested that veterans make their own personal claims individually in their own local courts. If that had occurred and the 7000 identified victims had filed conventional products liability actions in their local state or federal courts, each with the hope of recovering as much as possible ahead of every other plaintiff, there would have been the kind of unseemly race among plaintiffs' counsel that generally accompanies a major airplane disaster, paralleled only by the race for a friendly courthouse run by corporate counsel shopping for a forum most inconvenient for government regulators and private citizens.

That such a race did not develop is a tribute to each individual veteran and the wisdom and concern of the more than 250 attorneys now actively associated in the case designated *in re "Agent Orange" Product Liability Litigation* (MDL 381) by the Judicial Panel on Multidistrict Litigation.

During the week following the filing of the amended complaint in January 1979, media attention, unsolicited by the veterans or their counsel, focused on the rather unconventional form of the complaint and the unique elements of the prayer for relief.

Unlike conventional products liability actions which largely depend on the substantive common law of the state in which the action is brought, and to a lesser extent upon such statutory rules as relate to the forms of pleading and practice, the Agent Orange claims were scattered throughout the 50 states. They originated in military action during an undeclared war in Southeast Asia that was largely conducted under a treaty (SEATO) and pursuant to a Congressional Resolution, neither of which provided a clearcut method of resolving questions of civil liability for personal injuries sustained by members of the US Armed Forces through the negligence, carelessness, or intentional wrongdoing of third party war contractors. Because there was no clearly defined, generally acceptable cause of action in tort upon which to base the veterans' claims, counsel turned to the traditional equity principles rooted in the natural law tradition of social justice.

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The Fiduciary Claims

To the extent that the corporate defendants had actual knowledge, or, with the exercise of reasonable care and concern for the public health, safety, and welfare, should have had actual knowledge that the phenoxy herbicides they manufactured, formulated, advertised, marketed, promoted, and sold were contaminated with toxic synthetic organic chemicals such as PCDDs and were thereby inherently dangerous, the complaint alleged as the underlying basis of the veterans' equity claim that the manufacturers were under a nondelegable fiduciary obligation to inform and protect all those who might use or be affected by the use of those products.

It was conceded that the courts might not be willing to impose, nor the American consumers willing to accept, vicarious liability upon mere formulators or distributors of otherwise useful products that might also be deemed inherently dangerous materials under certain circumstances of use. Therefore the amended complaint set forth (in almost 100 pages perhaps more suitable to a complaint in a government antitrust suit than a products liability action) the corporate history, organization, structure, and operations of each of the war contractors, clearly establishing that the veterans' claims were addressed to multinational conglomerate corporations with operating budgets as large as or larger than the federal agencies which Congress intended should regulate their actions.

By reason of the economic power and technological resources of the essentially stateless, transnational defendant corporations, the complaint alleged, they are trustees of the public health, safety, and welfare, at least to an extent commensurate with their advertising, promotion, and marketing efforts. It was this "trust" theory that the corporate defendants attacked most vigorously during the early motions to dismiss the complaint.

It was not as if the veterans were not claiming damages of the corporate defendant war contractors; they were claiming all kinds of damages—special damages, compensatory damages, general damages, and punitive damages—on a number of theories sounding in tort but rooted in equity. It was just, the veterans pleaded, to conduct such a unique mass tort litigation under the broad ambit of the equity jurisdiction of the US courts.

If left to the vagaries of differing state laws, courts, and juries, the outcome for both sides would be predictably chaotic and patently unjust, sometimes for the veteran, sometimes for the chemical companies. The federal courts are the most appropriate forum when one considers the claim is for damages attributable to the toxic effects of chemical biocides contaminating otherwise harmless war

materials, where the evidence is essentially epidemiological and the damages potentially catastrophic—in a personal sense to the plaintiffs and in an economic sense to the corporate defendants.

The veterans' action sought a declaratory judgment in the first instance imposing a constructive or resulting trust upon the corporate defendants and holding them to fiduciary obligations as trustees of the public health, safety, and welfare. In an effort to move the case to an early trial, the plaintiffs sought an injunction restraining the corporate defendants from continuing the advertising, promotion, marketing, and sale of the contaminated phenoxy herbicides, but that action was stayed at the insistence of Dow pending the determination by the US Environmental Protection Agency (EPA) whether to suspend commercial use of the herbicides.

Other than the Price-Anderson nuclear liability damage claim limitation, there has been no consideration by Congress or the courts of a mass disaster affecting so many people so many years after the event as in the Agent Orange cases. The law of torts in recent years has been concerned primarily with the rights of individual victims rather than entire populations of victims. In both the philosophical and mathematical sense the law of torts has evolved in a deterministic rather than a probabilistic fashion.

Nevertheless, the law has long since recognized that even issues of "fact" must be determined in accordance with probabilistic considerations: "reasonable doubt" in criminal actions, and "substantial evidence" in civil actions such as the Agent Orange litigation. Much to the discomfort of large portions of both the plaintiffs' and defendants' bars, the amended Reutershan complaint broke with convention. It directly stated what has been the concern of many enlightened legal scholars, legislators, and jurists since the end of World War II when a few perceptive scientists began to warn of the ticking toxic time bomb that had been started with the marketing of inadequately tested consumer products spawned by the research advances of the American chemical industry during the war, and nurtured on the enormous overcapacity developed by that industry as the war ended.

Ever mindful of the possible effect on the American economy, the entire future course of tort litigation, and the recovery of damages for personal injury and wrongful death that any determination of the Agent Orange cases would have, the veterans' counsel recognized the need to call for the equitable remedy of restitution. It further invoked the equitable power of the courts to appoint a conservator or trustee of the income of the corporate defendants to the extent necessary to accumulate, manage, and administer a fund against which the successful claims of the veterans and their families eventually could be paid from the current earnings rather than the capital assets of the corporate defendants.

It was apparent that the plaintiff veterans as representatives of all their comrades in arms were proceeding as private attorneys general under what is the least controversial aspect of that doctrine. They were simply giving notice to the corporate defendants that the veterans and their families were entitled to benefits from government agencies such as the VA and the Social Security Administration as a result of the wrongful acts of the corporate defendants; and unless the Attorney General of the United States intervened for the purpose of asserting the rights of the American taxpayers to recover those funds, the plaintiff veterans would assert the claim for restitution and reimbursement of their fellow Americans against the corporate defendants.

The Defendants Attack the Complaint

Each of the defendants commented negatively on the complaint by way of various motions to dismiss. The anguished lament most often asserted was that its very length was an affront to the Federal Rules of Civil Procedure. If the court were to accept the corporate defendants' suggestions as to how the veterans' claims should be pleaded, a nightmare of court administration would begin that would make the present disastrous state of affairs in the asbestos cases look like good management. If the corporate defendants had their way:

1) Each individual plaintiff would file and serve a short document alleging that he was an American serviceman who spent some time in Southeast Asia and was there exposed to phenoxy herbicides such as 2,4,5-trichlorophenoxy aliphatics which were manufactured, formulated, advertised, marketed, promoted, and sold by certain clearly identified subsidiary corporations of certain multinational conglomerates although known to be contaminated with toxic synthetic organic chemicals.

2) Each individual plaintiff would then proceed to claim that as a result of such exposure he has contracted cancer or some other malady, has become ill, or in the appropriate case has suffered genetic damage manifest in the form of a child who suffers developmental defects and who in turn should file an individual claim.

3) Each veteran's wife or widow and/or each parent of a veteran's child suffering from developmental defects would also have to file an individual claim against the defendants.

Each of the individual plaintiffs would then claim money damages in an amount ranging from $10 million to $100 million. The amount would depend on the age of the plaintiff veteran and the loss to his family or, in the appropriate case, the extent of the loss of services and developmental damage claims.

Most of the defendants, particularly Monsanto Co., preferred that each individual claim be filed and served in the home jurisdiction of the plaintiff with federal jurisdiction, if any, based on diversity.

Plaintiffs Win the First Battle

On November 22, 1979, District Judge George C. Pratt, to whom the Multidistrict Litigation Panel assigned the cases at Dow's request, denied the collective motions to dismiss the complaint and grant summary judgment in favor of the defendant war contractors. He accepted jurisdiction as a federal question under 28 U.S.C. § 1331 and held that some federal common law rule would be applied uniformly to the claims of all the veterans regardless of the state in which each action may have originated.[3]

The chemical companies appealed, arguing that the case lacked substantial federal interest because the US was not a party. They continued to argue that the Agent Orange claims were nothing more than a group of uncomplicated disputes between private parties amenable to determination on a case-by-case, state-by-state

basis under federal diversity jurisdiction.

On November 24, 1980, the Second Circuit Court of Appeals reversed Judge Pratt by holding in a two-to-one decision that there was no clearly identifiable federal or national interest in the outcome of the veterans' claims sufficient to concern the federal courts as "federal" questions. Chief Judge Feinberg, in a lengthy and learned dissent, set the stage for a *certiorari* petition to the US Supreme Court, which caused that Court to invite the Solicitor General of the US to brief the question of national interest.

On December 29, 1980, Judge Pratt ordered all the Agent Orange cases before him treated as "diversity" cases under 28 U.S.C. § 1332 until the Supreme Court resolved the issue of "federal question" jurisdiction. He also granted the veterans' motion for class certification; denied the motion of the corporate defendants to dismiss the veterans' claims based on derivative sovereign immunity; granted the US motion to dismiss the war contractors' third-party complaints seeking indemnification by reaffirming the Supreme Court's interpretation of sovereign immunity enunciated in the *Feres* case; held that the veterans' families were not entitled to proceed in claims for damages against the US under the Federal Tort Claims Act because Title 38 of the US Code is supposed to provide a comprehensive benefit program for veterans suffering service-connected injury, disability, or death and continues such benefits for their families; designated Yannacone and Associates as lead counsel for the plaintiffs; and conditionally accepted the suggestion of plaintiffs' counsel that the case be tried serially with discovery limited to the issues of each phase.[4]

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Furthermore, the court ruled that the first trial would be confined to the "government contract immunity" defense raised by the corporate defendants as war contractors. This defense, with overtones of Nuremburg at the close of World War II, places the burden on the chemical companies to establish that they actually did warn the Department of Defense during the war in Vietnam of the toxicity of the herbicides. Should the defendants fail to establish affirmatively their government contractor defense, the next trial will resolve the issue of fault as the basic element of liability. Successive trials would consider generic causation or "cause-in-fact." Eventually, should the veterans prevail, the individual claims would return to their local courts of origin for proof of proximate cause and assessment of damages.

The Consortium Emerges

Within a month after the class action was filed, more than 400 "Agent Orange" veterans joined the suit. A new class also surfaced—the veterans' children. By May it seemed likely that there would be at least 4000 claims and possibly more. The question of how the litigation was to be managed became as important to counsel for the plaintiffs as the more immediate problem of defeating the defendants' motions to dismiss the complaint.

One of the earliest problems to be resolved was whether or not to file in the federal courts of each state to protect the interests of the veterans locally until the class of all Vietnam combat veterans and their families had been certified. Shortly after the Reutershan action was refiled as a class action, the plaintiffs' attorney began receiving calls nationwide from veterans and their widows seeking advice and, in most cases, asking to join the action. A decision had to be made at once about how the initial claims were to be handled; the opportunity was present to rethink the entire practice of referrals among plaintiffs' attorneys at the personal injury bar. When the first news reporter asked for a short statement "advising" veterans with claims what to do, they were told that veterans should visit their family attorneys, tell them about the possible claim, and ask their family lawyers to contact the attorneys who filed the class action.

Soon after the litigation was publicized, the first "consortium association agreements" were made, consisting of simple "handshakes" destined to become unique in the history of personal injury disaster litigation. Due to the complex nature of the litigation, it was assumed that the case would be bifurcated for trial and that, even if class certification was denied, most of the liability issues and affirmative defenses would be consolidated in a common trial.

It was decided that counsel in New York would manage the liability aspects of the litigation through and including establishing cause-in-fact or generic causation; local counsel would handle the personal injury damage aspects of the claim, including proof of proximate cause. In the latter stage, the veteran plaintiffs would be very little different from any other products liability clients. Each of the associated attorneys would advance their own disbursements, and any fee earned would be shared equally after reimbursement of expenses actually incurred.

Although similar arrangements are not unknown to the personal injury bar, the remaining terms of the agreement mark a break with the practices of the past and should serve as a model for handling mass toxic tort or common disaster litigation in the future.

Each associating attorney agreed that regardless of local state practice or rules, the contingent retainer agreement would limit fees to one-third of any net recovery, subject to supervision by the court in the event of settlement or other termination of the litigation prior to trial.

In addition, each referring attorney was asked to complete an "affidavit of no solicitation" similar to that required by the US District Court for the Northern District of Illinois. Both the "no solicitation" affidavit and the retainer agreement, as well as the letter agreement between counsel, were to be filed with the court.

By June 1979, the inevitable problems of case management in complex litigation were evident. After extensive consultations with a number of law firms on Long Island, a joint venture was organized to manage the liability phase of the action. Most of the attorneys had been successful litigators for 20 years or more and

represented diverse backgrounds ranging from those principally representing plaintiffs in personal injury claims to those primarily defending such claims. There were members with special experience in medical malpractice, products liability, workers' compensation, and litigation management as well.

Yannacone and Associates, as the venture came to be known, became lead counsel in December 1980, upon certification of the class of all veterans and their families. This consortium of lawyers banded together for purposes of this lawsuit under the leadership of Victor Yannacone Jr., who brought the initial actions and who was designated as lead counsel for the plaintiffs shortly after the cases were transferred to the district court. Some members of the consortium represent plaintiffs in one or more of the component Agent Orange actions; others were brought in because of special expertise and experience.

Slowly but surely, as often by design as by "Topsy" growth, form followed function, and the outlines of a plaintiffs' megafirm began to emerge. The lack of government cooperation in conducting epidemiological studies and the need to process voluminous records from thousands of plaintiffs mandated computer assistance. Lacking the resources of the chemical giants, plaintiffs' counsel began to plan for and achieve efficiencies of operation on a scale never before contemplated in personal injury litigation.

The member firms of Yannacone and Associates and their individual partners and associates advance the funds to cover the disbursements of the litigation because the vast majority of the plaintiffs are impecunious at best, while many are destitute. There has been no financial support from the major veterans organizations at the national level, although a number of local posts have helped. Overall daily management has been the responsibility of the law firm of Yannacone and Yannacone; the standing committees include legal research and trial strategy. Frequent strategy meetings were and are continually held in which topical issues are resolved. Long-range planning includes the preparation of position memorandums anticipating the defendants' moves and continuing education of all the trial attorneys in the scientific issues of the case. Because much of the scientific expertise in the subject matter of the litigation is controlled by the defendant chemical companies and certain uncooperative government agencies, it has been necessary to develop the case from academic sources generally unfamiliar with litigation and often reluctant to participate. The plaintiffs' trial strategy is no secret; the case will be proved just as the case against DDT was established from 1966 to 1970.

...each and every attorney can call other counsel in the system for advice, to refer a case, or to consult.

Cooperation among the more than 250 firms associated in the Agent Orange litigation, distributed as they are in almost every state, has led to the appointment of regional counsel. The sharing of fees, distribution of workload, and the "no-solicitation" affidavit so clearly defined in the association agreements discourage competition for clients among counsel. This is particularly evident in those metropolitan areas where a number of firms represent Agent Orange victims and the cases have been pooled so as to distribute the workload more evenly. Eventually there will be at least one regional counsel for each of the federal circuits. However, because of unbalanced distribution of identified victims throughout the country (reflective of the same imbalance among the troops who saw combat in Southeast Asia), some circuits have more than one regional counsel while other counsel represent more than a single circuit. Local counsel are referred to the appropriate regional counsel, who are generally responsible for distributing information and communications from lead counsel and assisting local counsel as required.

"Spin-offs"

An unexpected "spin-off" from this unique association among plaintiffs' counsel is that the need to regularly search the scientific literature as well as the more traditional medical journals has alerted attorneys in every state to the potential for further toxic tort litigation and the opportunity to attack the cause of what has come to be known among epidemiologists as the "community cancer problem." The maintenance of a central toxicological data base has saved countless hours of unproductive research by attorneys throughout the country.

Another unforeseen benefit is that each and every attorney can call other counsel in the system for advice, to refer a case, or to consult. Thus, experts and successful practitioners in many areas of the law become available to each other in furtherance of their own practices, in addition to the common bond of the Agent Orange litigation.T

(see References, p. 77)

Cancer

With the exception of recent Swedish studies, the epidemiological literature on cancer rates in workers occupationally exposed to TCDD is inadequate to sustain valid negative inferences. Cohorts and the duration of follow-up are too short. However, there are some interesting cohort studies which provide suggestive evidence of an excess in stomach cancer, lung cancer, and soft-tissue sarcomas.

Emotional disorders, including depression, anxiety, problems with concentration and memory, marked personality change, and other neuropsychiatric syndromes, have been associated with dioxin exposure. Neurobehavioral testing may show subclinical abnormalities and support clinical observations.

As one scientist expressed his concern, "We may have stumbled on a cause for the rise in suburban cancer." Now as we look among the people who live along heavily defoliated rights-of-way, and near highways with active chemical weed control programs, we are beginning to see the same panoply of multisystem disease that characterizes so many of the Vietnam combat veterans. It has become apparent that the time has come for the plaintiffs' trial bar to extend the concept of the "product liability information exchange" to development of a national data base on the victims of toxic torts. The victims of dangerous products designed and manufactured by careless technocrats and advertised and promoted by the unconcerned disciples of applied behaviorism salesmanship and selling cannot wait for government studies inferring some association between a product and a disease syndrome. The early warning in this litigious society can and should be sounded by the personal injury trial bar.T

(see References, p. 67)

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[1] This article has been adopted from facts alleged in the original class action complaint of the Vietnam combat veterans filed on behalf of the late Paul Reutershan in January 1979, much of which has been detailed in the investigations of retired Col. Bruce F. Meyers, U.S.M.C., former Regimental Commander of the 26th Marine Regiment at Khesanh in 1968, and at present associate dean of the University of Puget Sound Law School. (*See, Soldier of Orange: The Administrative, Diplomatic, Legislative and Litigatory Impact of Herbicide Agent Orange in South Vietnam,* 8 BOSTON COLLEGE ENVIRONMENTAL AFFAIRS LAW REVIEW 159-178 (1979).) Additional information came from the direct testimony of Dr. Susan M. Daum in the matter of *Shoecraft, et al. v. Dow,* which was settled in March 1981 for more than $1 million, and the testimony of Dr. Samuel S. Epstein before the subcommittee on medical facilities and benefits of the Committee on Veterans' Affairs of the US House of Representatives.

[2] G.H. Pfeiffer and E.W. Orians, MILITARY USE OF HERBICIDES IN VIETNAM, New York: Free Press (1972), pp. 117-176.

[3] Tschirley. RESPONSES OF TROPICAL AND SUBTROPICAL WOODY PLANTS TO CHEMICAL TREATMENT. Res. Rept. Ars. USDA. ARPA Order No. 424. Adv. Res. Proj. Agency USDD CR-13-67, p. 197.

Yannacone, Kavenagh, Searcy, p. 44

[1] Memo supporting plaintiffs amended verified complaint 20 June 1979, Doc. 33, *In re Agent Orange* Product Liability. MDL 381 (E.D.N.Y.).

[2] *Id.*

[3] 560 F. Supp. 756 *et seq.* (E.D.N.Y. 1980).

[4] *Id*