

A Long Fought Battle:

Agent Orange, Soldiers' Rights, and the Government's Responsibility

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About five years ago, doctors diagnosed my grandfather, Irving Wilson, with Parkinson's disease associated with exposure to Agent Orange during the Vietnam War. My grandfather's experience led me to explore both the U.S. military's use of Agent Orange and the U.S. government's subsequent treatment of Veterans who suffered as a result of their exposure.¹

Many different types of sources aided my research. Secondary sources about Agent Orange, including academic articles and several books, provided insight into how Agent Orange has affected soldiers years after the Vietnam War. *Waiting For an Army to Die* by Fred A. Wilcox and *Toxic War: The Story of Agent Orange* by Peter Sills were particularly helpful, including their extensive bibliographies. Many primary sources, including lab reports, legal briefs, trial transcriptions, declassified memoranda to the president, and appellate decisions, provided insight into how Veterans, scientists, and the government viewed the use of Agent Orange before, during, and directly after the war. I also interviewed Dr. Stuart Perlik, a neurologist at the Jesse Brown VA Medical Center in Chicago, Illinois. This interview provided insight into the role of the U.S. Department of Veterans Affairs (VA) in Veterans' care. Also, it gave critical information on specific medical issues caused by Agent Orange. I spent hours searching for a document that clearly defined soldiers' legal rights to reasonable protection during war, only to learn that such a document does not exist in America.

This paper's historical argument is that during the Vietnam War, the American government violated soldiers' ethical right to be reasonably protected from harmful toxins. The government subsequently failed to uphold its ethical and legal responsibility to provide VA benefits to Veterans harmed by Agent Orange exposure. While the Agent Orange Act of 1991

¹ This paper will capitalize 'Veterans' as per VA guidelines.

partially vindicated Veterans' rights to care and benefits, additional legislation establishing soldiers' rights to reasonable care would prevent future injustices.

This topic is significant to history because the Vietnam Veterans' struggle helped redefine the relationship between soldiers' rights and the government's responsibility to them. Vietnam Veterans fought to vindicate their rights, and they helped pave the way for future generations of Veterans to receive VA benefits for ailments connected with chemical exposure. Veterans struggling with conditions caused by burn pits in Iraq, chemicals in Afghanistan, and toxic exposure during 9/11 all receive VA care as a result of legislation initially passed to protect Veterans exposed to Agent Orange.

Historical Paper

Introduction

In 1978, as he lay dying of cancer in Norwalk Hospital in Connecticut, Paul Reutershan told his mother, “I got killed in Vietnam and didn't know it.”² Reutershan’s experience was not unique: thousands of Vietnam Veterans came home and developed a host of deadly ailments. They were poisoned—not by the enemy—but by the U.S. military’s use of a chemical defoliant called Agent Orange.

Agent Orange posed serious health risks not only to the soldiers who sprayed it, but also to those stationed in contaminated areas, the local population, and even to the personnel who maintained the aircraft used in its deployment. Agent Orange contains 2,3,7,8-tetrachlorodibenzo-p-dioxin (“TCDD” or “dioxin”), a compound that harms both people exposed and their descendants. TCDD causes degenerative diseases, including Parkinson's disease and cancer. It also causes gene mutations and chromosomal aberrations that lead to congenital disabilities like spina bifida.³

During the Vietnam War, the American government violated soldiers’ ethical right to be reasonably protected from harmful toxins. The government subsequently failed to uphold its ethical and legal responsibility to provide VA benefits to Veterans harmed by Agent Orange exposure. While the Agent Orange Act of 1991 partially vindicated Veterans' rights to care and benefits, additional legislation establishing soldiers’ rights to reasonable care would prevent future injustices.

² Richard Severo, "Vietnam Veteran's Family Vows to Continue His Fight," The New York Times, December 19, 1978, sec. B, accessed December 31, 2024.

³Stuart Perlik, telephone interview by the author, Telephone, CT, December 24, 2024.

Historical Context

The United States began experimenting with tactical herbicides in the 1940s after Britain deployed a nearly identical herbicide to Agent Orange to destroy crops and effectively starve their enemies during the Malayan Emergency.⁴ Britain's strategy proved to the United States that tactical herbicides could serve as an effective weapon of war, and it convinced America, including Secretary of State Dean Rusk, that the world would likely not condemn the use of tactical herbicides as chemical warfare that violated the Geneva Convention.⁵ The U.S. military contracted chemical companies like Dow and Monsanto to produce the "Rainbow Herbicides," a group of tactical herbicides that contained slightly varying concentrations of 2,4,5-trichlorophenoxyacetic acid (2,4,5-T), which contained traces of TCDD.⁶

As the United States became involved in the Vietnam War to stop the spread of communism in Southeast Asia as part of its larger policy in the Cold War, it employed Agent Orange to support its mission.⁷ The United States began sending combat forces to Vietnam in 1965, but as early as 1962, it provided assistance and equipment that allowed the South Vietnamese to spray Agent Orange. This action was taken at the request of Vietnamese President

⁴ "Herbicide Tests and Storage in the US," U.S. Department of Veterans Affairs, accessed April 6, 2025, <https://www.publichealth.va.gov/exposures/agentorange/locations/tests-storage/usa.asp>; Pamela Sodhy, "The Malaysian Connection in the Vietnam War," *Contemporary Southeast Asia*, 9, no. 1 (1987): 44, JSTOR.

⁵ Papers of John F. Kennedy. Presidential Papers. National Security Files. Meetings and Memoranda. National Security Action Memoranda [NSAM]: NSAM 115, Defoliant Operations in Vietnam. JFKNSF-332-017. John F. Kennedy Presidential Library and Museum. 1.

⁶ "Agent Orange," Dow Chemical Company, accessed January 2, 2025. <https://corporate.dow.com/en-us/about-dow/company/issues/agent-orange.html>.

⁷ "Vietnam War 50th Year Commemoration," U.S. Army, accessed March 30, 2025, <https://www.army.mil/vietnamwar/history.html>.

Ngo Dinh Diem, who insisted that using herbicides to destroy the Viet-Cong's food supplies was critical to South Vietnam's victory.⁸ At first, the American government carefully supervised the use of Agent Orange and limited it to specific areas. In 1961, Deputy Secretary of Defense Roswell Gilpatrick advised President Kennedy that it should be a "selective and carefully controlled program... under no circumstances, in our judgment, should the use of this material be authorized in the discretion of the field."⁹

As the war went on, the government expanded its use of Agent Orange. The White House no longer reviewed each crop destruction mission starting in 1963.¹⁰ As more American military forces were deployed to Vietnam, they struggled to counter the Viet Cong's frequent and deadly ambushes within the thick jungle. The military thus shifted from mainly using Agent Orange to destroy crops to employing it primarily as a defoliant, converting the dense jungle into a traditional battlefield and potentially allowing the United States to turn the tide of the war and save itself from an embarrassing defeat.¹¹ Of the nineteen million gallons of Agent Orange sprayed in Vietnam, over sixteen million were sprayed between 1966 and 1969.¹²

⁸ National Security Action Memoranda [NSAM]: NSAM 115, Defoliant Operations in Vietnam. 1.

⁹ National Security Action Memoranda [NSAM]: NSAM 115, Defoliant Operations in Vietnam. 5.

¹⁰ Peter Sills, *Toxic War: The Story of Agent Orange* (Vanderbilt Press, 2014), 44, digital file.

¹¹ Evelyn Frances Krache Morris, "Into the Wind: The Kennedy Administration and the Use of Herbicides in South Vietnam" (PhD diss., Georgetown University), 6, accessed March 22, 2025, <https://repository.digital.georgetown.edu/handle/10822/557621>.

¹² "The U.S. Military and the Herbicide Program in Vietnam," in *Veterans and Agent Orange: Health Effects of Herbicides Used in Vietnam*. (1994), 3, accessed January 2, 2025, <https://www.ncbi.nlm.nih.gov/books/NBK236347/>.

Known Risks Ignored

Gilpatric maintained in a 1961 memorandum about Agent Orange to President John F. Kennedy that “the agents have no harmful effects on humans, livestock or soil.”¹³ However, by 1963 concerns in the government and military began to emerge about the safety of Agent Orange.¹⁴ Proponents of utilizing Agent Orange argued that because substances similar to Agent Orange existed in the commercial sector, it was obviously safe.¹⁵ Conversely, other government officials and scientists argued that Agent Orange had not been sufficiently studied to classify it as harmless and pointed to research suggesting harmful side effects and potential toxicity.¹⁶

By the time Agent Orange was widely deployed in Vietnam around 1966, most government figures and scientists were at least partially aware of the risks it posed. The government commissioned a study from 1963 through 1969 by the Bionetics Research Laboratories, in which researchers concluded that any commercial pesticide that utilized any 2,4,5-T should be immediately restricted to prevent human exposure, as its manufacturing produced TCDD. The study found that it was impossible to give rodents a dose small enough not to result in congenital disabilities, and its results were made available to the government well before 1969.¹⁷ Dr. Benard McNamara, Chief of the Toxicology Division at the Chemical Research and Development Laboratories, knew that manufacturing 2,4,5-T created TCDD. He,

¹³ National Security Action Memoranda [NSAM]: NSAM 115, Defoliant Operations in Vietnam. 2.

¹⁴ Sills, *Toxic War*, 42

¹⁵ Sills, *Toxic War*, 22.

¹⁶ Sills, *Toxic War*, 48.

¹⁷ Samuel S. Epstein, STATEMENT OF DR. SAMUEL S. EPSTEIN ON THE REPORT OF THE ADVISORY COMMITTEE ON 2,4,5-T TO THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY, 3, July 14, 1971, accessed December 25, 2024, https://projects.iq.harvard.edu/files/meselsonarchive/files/1971_g20_epsteins.childrenscancer.20jul.1971.pdf.

along with many other government scientists, relayed this information in 1963 to President Kennedy.¹⁸ Dr. Bernard Jandorf, Chief of the Army Chemical Research Laboratory, wrote that his group had “been acquainted with the high toxicity of dioxin since the 1950s” and that it was “common knowledge” that TCDD was deadly.¹⁹

However, the government chose not to acknowledge the risks of Agent Orange. Communist countries across the globe had seized on Agent Orange as a propaganda tool, accusing the United States of waging chemical warfare against the Vietnamese in blatant violation of the Geneva Convention.²⁰ The U.S. vigorously denied such allegations. If they acknowledged Agent Orange’s health risks, it would prove the communist propaganda right and expose them to international condemnation.²¹

Irresponsible Use in Vietnam

Not only was Agent Orange inherently dangerous, but the military compounded the risk by using it irresponsibly. While manufacturers recommended that commercial herbicides be applied at a rate of one gallon per acre domestically, the military applied three gallons per acre in Vietnam.²² Furthermore, Agent Orange had a much higher concentration of active ingredients than its commercial counterparts. In 1974, domestic manufacturing standards for 2,4,5-T required that TCDD not be present at more than 0.05 parts per million (ppm) because of its toxicity. Researchers have concluded that TCDD was probably present in approximately 3 ppm

¹⁸ Andrew L. Frey, "Brief for Defendants-Appellees on the Government Contractor Defense," Mayer Brown, last modified May 10, 2006, accessed January 2, 2025, https://www.appellate.net/wp-content/uploads/2014/11/Stephenson_BriefforAppellees.pdf. (33).

¹⁹ Frey, "Brief for Defendants-Appellees," Mayer Brown (35).

²⁰ Sills, *Toxic War*, 22.

²¹ Sills, *Toxic War*, 71.

²² In re “Agent Orange” Product Liability Litigation (776).

in Agent Orange, 60 times higher than its commercial counterparts.²³ The military did not follow its protocols to warn soldiers in sprayed areas to avoid contact with vegetation, drinking or bathing in contaminated water, or eating contaminated food. It failed to wait for the proper time period for Agent Orange to dissipate before sending soldiers into sprayed areas, and it did not provide those exposed with sanitary precautions such as showers, fresh clothing, and medical attention.²⁴

Additionally, the government deliberately hid the dangers of Agent Orange from the soldiers exposed to it, thus preventing them from attempting to protect themselves. Whereas regulations required the weaker commercial versions to have warning labels detailing instructions for safe use and potential harmful side effects, the U.S. military forbade manufacturers from putting warnings on Agent Orange barrels.²⁵ “I really didn't know what they were spraying,” said John Green, a Vietnam Veteran who served as a medic in the Army. “Did we drink the water? Of course we did... Some of our food was undoubtedly sprayed with Agent Orange. But how were we to know? The Army told U.S. the stuff was harmless.”²⁶

Government Evasion of Responsibility

Following the military's failure to protect its soldiers from Agent Orange, Veterans who tried to file a class-action lawsuit found that American soldiers do not have any clearly defined legal rights to reasonable care. “There is little public discourse, and hardly any legal scholarship,

²³ The U.S. Military and the Herbicide Program in Vietnam (112).

²⁴ In re "AGENT ORANGE" PRODUCT LIABILITY LITIGATION 597 F. Supp. 740 (E.D.N.Y. 1984) pg 819.

²⁵ Frey, "Brief for Defendants-Appellees," Mayer Brown (26).

²⁶ Fred A. Wilcox, *Waiting for an Army to Die* (Seven Stories Press, 1989), 4.

on the U.S. government’s obligations to adequately protect soldiers—despite an urgent need for it,” writes U.C. Berkeley professor and researcher Saira Mohamed. “Soldiers have virtually no legal right to protection or care, providing them with no method of holding the government responsible.”²⁷ The 1950 Supreme Court case *Feres v. United States* found that “[t]he United States is not liable under the Federal Tort Claims Act for injuries to members of the armed forces sustained while on active duty and not on furlough and resulting from the negligence of others in the armed forces,” thus establishing sovereign immunity for the U.S. government in all cases that involve the armed forces (recently altered to exclude cases of medical malpractice).²⁸ Sovereign immunity means that citizens cannot sue the government without the government's consent. This distinctly un-American concept stems from the medieval principle that the king or government is infallible and should have absolute power.²⁹

Soldiers, by definition, have risky jobs and give up many of their rights, but the government has a moral responsibility to try to protect them to the extent possible without compromising its mission. Professor Jackson Smith, a major in the United States Army, writes, “...while the nature of the profession can inherently be dangerous, it does not follow that its members be placed at undue excess risk if that risk can be reasonably avoided or reduced.”³⁰

Given the right of the government to force citizens to serve in such a dangerous job, the

²⁷ Saira Mohamed, "Cannon Fodder, or a Soldier's Right to Life," *Southern California Law Review* 95, no. 5: 1043, accessed January 19, 2025, https://southerncalifornialawreview.com/wp-content/uploads/2023/02/Mohamed_Final.pdf.

²⁸ *Feres v. United States*, 340 U.S. 135 (1950).

²⁹ "rex non potest peccare," Legal Information Institute, last modified May 2022, accessed December 31, 2024,

https://www.law.cornell.edu/wex/rex_non_potest_peccare#:~:text=Rex%20non%20potest%20peccare%20is,cannot%20commit%20a%20legal%20wrong.

³⁰ Hunter Jackson Smith, "Ethical Responsibilities of a Military to the Social Determinants of Health of its Service Members," *MILITARY MEDICINE* 187, nos. 9-10 (2022): 253, accessed December 31, 2024, <https://academic.oup.com/milmed/article/187/9-10/252/6564666>.

government has an even greater responsibility to exercise care and reduce risks to the greatest extent possible. In the Vietnam War, the government exercised its right to draft soldiers but did not uphold its ethical responsibility to take reasonable care of them.

In other countries, like Great Britain, soldiers have a legal right to government protection. As per the 2013 decision *Smith v. Ministry of Defence*, the British government has an obligation under human rights law to protect the lives of service members: “The government owes a duty of care to the soldier even while the soldier takes on the significant risks inevitably imposed by the position.”³¹ The United States should adopt a similar system.

After the war, the government continued to neglect its responsibility. It withheld assistance from Veterans suffering from Agent Orange exposure because they could not prove that the chemical directly caused their illnesses.³² The VA has a legal responsibility to provide compensation and free or lower-cost medical care to Veterans with service-connected disabilities or ailments.³³ Dr. Stuart Perlik, a neurologist at Jesse Brown VA Medical Center, explains, “The Department of Veterans Affairs has a contract [with] those people who have served, and those who have suffered consequences.”³⁴ However, proving causation for an Agent Orange-related disease is nearly impossible as many Veterans begin to present symptoms years or even decades after exposure, and their symptoms are virtually indistinguishable from diseases occurring for other reasons.³⁵

³¹ [2013] UKSC 41 Mohamed, "Cannon Fodder," 1042.

³² Sidath Viranga Panangala, Daniel T. Shedd, and Umar Moulta-Ali, Veterans Affairs: Presumptive Service Connection and Disability Compensation, 10, November 18, 2014, accessed December 31, 2024, <https://sgp.fas.org/crs/misc/R41405.pdf>.

³³ "VA Priority Groups," U.S. Department of Veterans Affairs, last modified April 3, 2024, accessed January 24, 2025, <https://www.va.gov/health-care/eligibility/priority-groups/>.

³⁴ Perlik, telephone interview by the author.

³⁵ Perlik, telephone interview by the author.

The Fight for Justice

Unable to sue the government for violating their rights, Veterans pursued other avenues. They turned towards the chemical manufacturers the government had contracted to make Agent Orange, most notably Dow Chemical and Monsanto. The manufacturers claimed and continue to claim that they were simply manufacturing the product that the government contracted them to make, and the government, therefore, bears responsibility for any damages.³⁶ Nevertheless, Veterans initiated a class action lawsuit that settled out of court for \$180 million.³⁷ Funds were distributed among the class, splitting the estimated ten million-person class into two groups: a payment program providing cash compensation to totally disabled Veterans and family members of deceased Veterans, and a class assistance program providing funds for social services for the benefit of the class as a whole. Veterans could only apply for compensation if their disability presented before December 31, 1994, even though many presented symptoms later in life. The payment program operated for six years and closed on September 27, 1997.³⁸

This conclusion dissatisfied Veterans who desired an opportunity to plead their case. One Veteran testified, “I have come here to plead with you not to accept this offer, to give U.S. our day in court. I have heard some say this settlement is fair and I ask them... What price do you put on my suffering? We started this lawsuit to bring those responsible to trial and find them guilty. We can't stop now.”³⁹ Veterans wanted the opportunity to vindicate their rights.

³⁶ "Agent Orange," Dow Chemical Company, accessed January 2, 2025, <https://corporate.dow.com/en-us/about-dow/company/issues/agent-orange.html>.

³⁷ "Agent Orange Settlement Fund," U.S. Department of Veterans Affairs, accessed December 31, 2024, https://www.benefits.va.gov/compensation/claims-postservice-agent_orange-settlement-settlementFund.asp#:~:text=The%20class%20action%20case%20was,District%20Court%20Judge%20Jack%20B.

³⁸ "Agent Orange," U.S. Department of Veterans Affairs.

³⁹ In re “Agent Orange” Product Liability Litigation (776).

A public awareness campaign that started shortly after the war eventually led to legislation vindicating Veterans' rights to care and compensation. Maude DeVictor, a VA caseworker, researched the alleged connection between Veterans' health problems and their exposure to Agent Orange. She took her findings to Bill Kurtis, an investigative reporter for CBS. He aired the documentary "Agent Orange: Vietnam's Deadly Fog" in 1978, which demonstrated the adverse health effects of Agent Orange.⁴⁰ After viewing this documentary, a 28-year-old veteran and self-described "health nut" named Paul Reutershan became sure that exposure to Agent Orange caused his chloracne and abdominal cancer.⁴¹ He connected with other Veterans who had similar afflictions, eventually forming the advocacy organization, Agent Orange Victims International. Before he died in 1978, he told his family and friends to carry on his mission.⁴² Major outlets around the country began running stories on Agent Orange, placing it in the national spotlight and exerting significant pressure on the government to correct its previous injustice.⁴³ In 1984, the growing pressure prompted the government to conduct additional studies, which confirmed that Agent Orange was responsible for causing various diseases.⁴⁴

The Veterans' advocacy culminated in the passage of the Agent Orange Act of 1991, which represented a significant shift in VA policy towards Veterans exposed to Agent Orange.

⁴⁰ "The Legal Battles: U.S. Veterans Lawsuit," Agent Orange Record, accessed December 25, 2024, <https://www.agentorangerecord.org/the-us-lawsuit>.

⁴¹ Severo, "Vietnam Veteran's Family," sec. B. <https://www.nytimes.com/1978/12/19/archives/vietnam-Veterans-family-vows-to-continue-his-fight-friends-pledge.html?login=smartlock&auth=login-smartlock>.

⁴² Severo, "Vietnam Veteran's Family," sec. B.

⁴³ Milena Jovanovitch, "Agent Orange Suit: A Veteran's Legacy," *The New York Times* (New York), August 21, 1988, accessed January 7, 2025.

⁴⁴ Richard D. Lyons, "US EMBARKS ON \$100 MILLION STUDY OF AGENT ORANGE," *The New York Times* (New York, NY), September 26, 1984, accessed January 7, 2025, <https://www.nytimes.com/1984/09/25/science/us-embarks-on-100-million-study-of-agent-orange.html>.

Sponsored by World War II Veteran Senator Sonny Montgomery, it had 71 co-sponsors on both sides of the political spectrum, demonstrating its widespread appeal.⁴⁵ For the first time, it stated the presumption of a connection for herbicide-related diseases.⁴⁶ Veterans seeking VA benefits now only needed to prove that they had specific diseases and that they had served in an area exposed to Agent Orange. This act significantly increased the number of Veterans eligible for care. The VA has granted compensation for Agent Orange exposure to over 650,000 Veterans and their children, and the number continues to grow.⁴⁷

Conclusion

The U.S. government violated soldiers' rights when it exposed them to Agent Orange during the Vietnam War. These actions were only considered lawful because soldiers' rights are not legally protected. The government also neglected its responsibility to provide VA benefits after the war by requiring affected Veterans to prove causation when that was essentially impossible. Eventually, Veterans forced the government to uphold its responsibility through a public awareness campaign that led to the passage of the Agent Orange Act of 1991, which has led to thousands of Veterans receiving benefits and care. Veterans who served in Iraq, in Afghanistan, and as first responders on 9/11 qualify for VA benefits for their conditions via presumption of service connection, based on the Agent Orange Act. However, American soldiers

⁴⁵ Congress.gov. "Cosponsors - H.R.556 - 102nd Congress (1991-1992): Agent Orange Act of 1991." February 6, 1991.

<https://www.congress.gov/bill/102nd-congress/house-bill/556/cosponsors>.

⁴⁶ Panangala, Shedd, and Moulta-Ali, Veterans Affairs, 14.

⁴⁷ Charles Ornstein, "Agent Orange Act Was Supposed to Help Vietnam Veterans — But Many Still Don't Qualify," ProPublica.org, last modified July 17, 2015, accessed January 24, 2025, <https://www.propublica.org/article/agent-orange-act-was-supposed-to-help-vietnam-veterans-but-many-still-dont-#:~:text=Those%20Who%20Served%20in%20Vietnam,keep%20data%20prior%20to%20then.>

still lack legal protection from undue excess risk. The United States should adopt legislation establishing soldiers' rights during combat and allowing them to hold the government responsible for potential abuses.

Annotated Bibliography

Primary Sources:

Epstein, Samuel S. Letter to Matthew Meselson, July 20, 1971. Accessed December 25, 2024. https://projects.iq.harvard.edu/files/meselsonarchive/files/1971_g20_epsteins.childrensca ncer.20jul.1971.pdf.

This was a correspondence between two researchers about the effect of dioxin on the body. I used it to help me understand the health risks associated with Agent Orange. It also gave me primary insight into the studies conducted on dioxin and their conclusions.

Epstein, Samuel S. *STATEMENT OF DR. SAMUEL S. EPSTEIN ON THE REPORT OF THE ADVISORY COMMITTEE ON 2,4,5-T TO THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY*. July 14, 1971. Accessed December 25, 2024. https://projects.iq.harvard.edu/files/meselsonarchive/files/1971_g20_epsteins.childrensca ncer.20jul.1971.pdf.

This is an analysis of a researcher's report on the effects of dioxin and herbicides. I used his findings and analysis of the report to help form my argument about the dangers presented by Agent Orange and as evidence for governmental knowledge regarding Agent Orange.

Feres v. United States, 340 U.S. 135 (1950)

This was the court case that established sovereign immunity for the government against tort claims by soldiers. I used this source to explain sovereign immunity and why soldiers are not allowed to sue the government.

Frey, Andrew L. "Brief for Defendants-Appellees on the Government Contractor Defense." Mayer Brown. Last modified May 10, 2006. Accessed January 2, 2025. https://www.appellate.net/wp-content/uploads/2014/11/Stephenson_BriefforAppellees.pdf.

This legal brief concerns an appeal to the class-action lawsuit against the chemical companies. It outlines the plaintiff's case and presents the argument in favor of the class-action lawsuit. I use a lot of its findings as evidence throughout the paper.

In re "AGENT ORANGE" PRODUCT LIABILITY LITIGATION 597 F. Supp. 740 (E.D.N.Y. 1984)

This is the district court decision regarding the class action lawsuit. I used it to better understand the arguments of both parties.

Papers of John F. Kennedy. Presidential Papers. National Security Files. Meetings and Memoranda. National Security Action Memoranda [NSAM]: NSAM 115, Defoliant

Operations in Vietnam. JFKNSF-332-017. John F. Kennedy Presidential Library and Museum.

This declassified memorandum outlining the pros and cons of using herbicides in Vietnam helped me understand the government's perspective on the whole ordeal. It showed me what they viewed to be the benefits and drawbacks of using Agent Orange.

Severo, Richard. "Vietnam Veteran's Family Vows to Continue His Fight." *The New York Times*, December 19, 1978, sec. B. Accessed December 31, 2024.
<https://www.nytimes.com/1978/12/19/archives/vietnam-Veterans-family-vows-to-continue-his-fight-friends-pledge.html?login=smartlock&auth=login-smartlock>.

I used this article to learn more about Paul Reutershan and his fight. From this source, I learned a lot about his lobbying efforts and his work.

Secondary Sources

"Agent Orange." Dow Chemical Company. Accessed January 2, 2025.
<https://corporate.dow.com/en-us/about-dow/company/issues/agent-orange.html>.

I used this source to find Dow's official stance on Agent Orange. I used their official stance to argue that Dow is not taking responsibility for the catastrophe.

"Agent Orange Settlement Fund." U.S. Department of Veterans Affairs. Accessed December 31, 2024.
https://www.benefits.va.gov/compensation/claims-postservice-agent_orange-settlement-settlementFund.asp#:~:text=The%20class%20action%20case%20was,District%20Court%20Judge%20Jack%20B.

I used this source to describe the lawsuit settlement with the chemical companies. It detailed the plan for distributing the funds.

"Herbicide Tests and Storage in the US" U.S. Department of Veterans Affairs. Accessed April 6, 2025.
<https://www.publichealth.va.gov/exposures/agentorange/locations/tests-storage/usa.asp>.
 I used this source to discover when the United States started experimenting and working with tactical herbicides.

"The Legal Battles: U.S. Veterans Lawsuit." Agent Orange Record. Accessed December 25, 2024. <https://www.agentorangerecord.org/the-us-lawsuit>.

I used this source to learn more about Paul Reutershan and the CBS documentary about Agent Orange.

Mohamed, Saira. "Cannon Fodder, or a Soldier's Right to Life." *Southern California Law Review* 95, no. 5: 1040-50. Accessed January 19, 2025.

https://southern-california-law-review.com/wp-content/uploads/2023/02/Mohamed_Final.pdf.

I used this article to support my arguments about soldiers' ethical and legal rights. I also used it to gather information about differences between the U.S. and British systems.

Morris, Evelyn Frances Krache. "Into the Wind: The Kennedy Administration and the Use of Herbicides in South Vietnam." PhD diss., Georgetown University. Accessed March 22, 2025. <https://repository.digital.georgetown.edu/handle/10822/557621>.

I used this dissertation to learn more about the decision to use Agent Orange. It helped me understand the government's perspective and its calculus.

Ornstein, Charles. "Agent Orange Act Was Supposed to Help Vietnam Veterans — But Many Still Don't Qualify." ProPublica.org. Last modified July 17, 2015. Accessed January 24, 2025. <https://www.propublica.org/article/agent-orange-act-was-supposed-to-help-vietnam-veterans-but-many-still-dont-#:~:text=Those%20Who%20Served%20in%20Vietnam,keep%20data%20prior%20to%20then.>)

I used this source to learn how many Veterans have received benefits due to the Agent Orange Act of 1991.

Panangala, Sidath Viranga, Daniel T. Shedd, and Umar Moulta-Ali. *Veterans Affairs: Presumptive Service Connection and Disability Compensation*. November 18, 2014. Accessed December 31, 2024. <https://sgp.fas.org/crs/misc/R41405.pdf>.

I used this source as evidence for my argument that the Agent Orange Act of 1991 was the first time that presumption of service connection was assumed for those who had certain conditions and served in areas that used Agent Orange.

Perlik, Stuart. Telephone interview by the author. Telephone, CT. December 24, 2024.

This interview with Dr. Stuart Perlik helped me understand the social contract between the VA and the soldiers who served. I use it to argue that the VA should have given benefits to soldiers exposed to Agent Orange. He also explained to me some of the health effects of Agent Orange and gave me a VA perspective on the whole ordeal.

"*rex non potest peccare*." Legal Information Institute. Last modified May 2022. Accessed December 31, 2024. https://www.law.cornell.edu/wex/rex_non_potest_peccare#:~:text=Rex%20non%20potest%20peccare%20is,cannot%20commit%20a%20legal%20wrong.

I used this source to argue that sovereign immunity derives from *rex non potest peccare*, which originated from English Common Law and means "the king can do no wrong."

Sills, Peter. *Toxic War: The Story of Agent Orange*. Vanderbilt Press, 2014. Digital file.

I used this book to learn more about the government's perspective. This book provided critical insight into the process that led to the decision to use Agent Orange, as well as the history of Agent Orange.

Smith, Hunter Jackson. "Ethical Responsibilities of a Military to the Social Determinants of Health of its Service Members." *MILITARY MEDICINE* 187, nos. 9-10 (2022): 252-56. Accessed December 31, 2024.
<https://academic.oup.com/milmed/article/187/9-10/252/6564666>.

This academic article provided valuable insight into military ethics. It supported my argument that the military was responsible for taking reasonable care of soldiers.

Sodhy, Pamela. "The Malaysian Connection in the Vietnam War." *Contemporary Southeast Asia* 9, no. 1 (1987): 38-53. JSTOR.

I used this source to learn about the first uses of tactical herbicides.

"The U.S. Military and the Herbicide Program in Vietnam." In *Veterans and Agent Orange: Health Effects of Herbicides Used in Vietnam*. 1994. Accessed January 2, 2025.
<https://www.ncbi.nlm.nih.gov/books/NBK236347/>.

I used this source to find a lot of evidence and statistics surrounding the use of herbicides.

"VA Priority Groups." U.S. Department of Veterans Affairs. Last modified April 3, 2024. Accessed January 24, 2025. <https://www.va.gov/health-care/eligibility/priority-groups/>.

I used this source to analyze how the Agent Orange Act of 1991 influenced the compensation and benefits received by Veterans exposed to Agent Orange. This source helped me understand the system of priority groups that control benefits for Veterans.

"Vietnam War 50th Year Commemoration." U.S. Army. Accessed March 30, 2025.
<https://www.army.mil/vietnamwar/history.html>.

I used this source to find the years that the United States had troops in Vietnam.

Walters, Mary. "DOCTRINE OF SOVEREIGN IMMUNITY—STATUTE —MUNICIPAL TORT LIABILITY." *Natural Resources Journal*, vol. 2, no. 1, 1962, pp. 170–75. JSTOR, <http://www.jstor.org/stable/24879223>. Accessed 25 Dec. 2024.

I used this source to help myself understand the history and legacy of sovereign immunity.

Wilcox, Fred A. *Waiting for an Army to Die*. Seven Stories Press, 1989.

This book guided much of my research. I mainly used it to describe how Veterans felt about the whole affair.

Young, Alvin L. *Final Report Agent Orange: A History of Its Use, Disposition, and Environmental Fate*. 2008. Accessed December 1, 2024.
https://home.army.mil/detrick/application/files/8715/8031/4270/Agent_Orange_A_History_of_its_Use_Disposition_and_Environmental_Fate_Final_Report_30_Jun_08.pdf.

I used this report to learn about Agent Orange's use in Vietnam to broaden my understanding of the context in which it was used.

Young, Alvin L. *The History of the U.S. Department of Defense Programs for the Testing, Evaluation, and Storage of Tactical Herbicides*. 2006. Accessed December 1, 2024.
<https://apps.dtic.mil/sti/pdfs/ADA534602.pdf>.

I used this source to learn about the development of Agent Orange and to understand its background.