

# American Legion Sues VA

## Arguments Heard In Agent Orange Case

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The American Legion, in its first-ever lawsuit against the U.S. government, last week charged in federal appeals court that the VA illegally terminated a congressionally mandated 1979 study of Agent Orange exposure during the Vietnam War.

The Legion is trying to force the VA to revive the study the department canceled on the grounds that it could lead to incorrect classification of some veterans as Agent Orange victims.

The case, heard before a three-judge panel at the U.S. Court of Appeals in Washington, DC, 2 Feb., is significant because it could potentially identify scores of veterans who suffered from dioxin poisoning and thus would be eligible for benefits.

Calling the cancelation "arbitrary and capricious," Gershon M. Ratner, general counsel of the National Veterans Legal Services Program, who argued the case on behalf of The American Legion, said

any potential misclassification would not be enough to invalidate the study.

Ratner said that despite the government's claim that individual soldiers could not be tracked with complete accuracy, meticulous records detailing spraying locations and those of troops and companies were sufficient evidence to deduce which soldiers were likely to have been exposed to Agent Orange and be suffering illnesses as a result.

Jonathan R. Siegel, who argued the case for the Justice Department, said the government legitimately terminated the study because it was unable to categorize soldiers into the two groups specified by the congressional directive—those who were likely exposed to Agent Orange and those who were not.

Citing a study conducted by the federal Centers for Disease Control (CDC), Siegel said correlations between dioxin levels in the blood and a soldier's chances of being exposed to Agent Orange were inconclusive.

See Arguments, Pg. 18

"We can't do a study to determine the likelihood of harm because those [veterans] with a low and high tendency for Agent Orange exposure register the same in dioxin-poisoning tests," said Siegel. "None of the records really tell us who was likely to be exposed and who was not."

In a challenge to the defense, Chief Judge Harry Edwards said the government was "assuming something about exposure and effects."

"I can't follow your argument at all," Edwards said.

For veterans, the case represents a long-awaited step in a 16-year battle to officially document the long-term adverse health effects of dioxin contamination.

In December 1979, Congress enacted a statute directing the VA to conduct an epidemiological study of veterans who were exposed to dioxin.

To facilitate the study, Congress in 1981 changed the wording of the enabling legislation. Instead of limiting the study to veterans who "were exposed," a more permissive standard was adopted, saying the study should attempt to track veterans who "may have been exposed" to dioxin. De-

spite the change, the CDC said it could not scientifically conduct the study without the possibility that final results would be overinclusive.

American Legion members said they could not afford to wait any longer for the study results, which could increase the number of illnesses tied to Agent Orange.

The government currently recognizes nine diseases related to dioxin poisoning caused by Agent Orange. The Legion claims that without the epidemiological study, untold numbers of veterans will continue to be denied benefits for Agent Orange-related illnesses.

"Right now, [veterans'] wives are penniless and their husbands are dead because of diseases that aren't on the books," said Dick Christian of The American Legion. "All we want is the answers, and the way you get them is to conduct a major epidemiological study."★

Stars + Stripes  
Pg. 1