E. R. ZUMWALT, JR.
ADMIRAL, U. S. NAVY (RET.)

August 4, 1993

The Honorable G.V. Montgomery
Chairman, Committee on Veterans' Affairs
U.S. House of Representatives
335 Cannon House Office Building
Washington, DC 20515

Dear Mr. Chairman:

In addition to my prepared statement, I submit herewith this letter containing information not available to me at the time of the preparation of my statement.

The Institute of Medicine Report fails to include any conclusions regarding the ability of dioxin to cause or be associated with an overall increase in the cancer rate (see page 8-12). The Environmental Protection Agency (EPA) recently reviewed the same studies on chemical production workers summarized by the IOM and came to a definite conclusion, as part of its ongoing effort to evaluate the risks of dioxin. After undergoing extensive public and expert review, and after open workshop meetings, the EPA's second draft report on human epidemiology (EPA Publication No. EPA/600/AP-92/001g, June, 1993) states:

> *Other TCDD related hormonal effects, including immune suppression, may result in multi-organ sensitivity and may contribute to the overall increased mortality from all malignancies combined seen in all four cohort production worker subcohorts with higher estimated TCDD exposures...These increased relative risks, while not large (10% to 70%) are consistent and are either statistically significant or of borderline significance. While no one tissue site can account for this observed increase, lung cancer is also increased in three of these.*

In view of this fact, I now recommend that the House Veterans' Affairs Committee amend existing legislation to authorize compensation to Vietnam veterans experiencing any form of cancer or to their families in the case of deceased Vietnam veterans.

As a separate matter, the Institute of Medicine did not list peripheral neuropathy as a disease associated with exposure to Agent Orange or other herbicides used in Vietnam.

Since the Committee on Environmental Hazards, before it was disestablished by Congressional statute, recommended to the Secretary of Veterans Affairs the addition of that disease as one for which there should be compensation, and in view of the fact that relatively modest number of veterans who are affected have been expecting that disease to be compensated in the near future, I strongly urge that it not be removed from the diseases for which the Vietnam veterans will be provided compensation.

Sincerely,

E R Zumwalt

Admiral E.R. Zumwalt, Jr., USN (Ret.)

c: The Honorable Jesse Brown, Secretary of Veterans Affairs

Testimony of
Admiral E.R. Zumwalt, Jr. USN (Ret.)
Chairman
Agent Orange Coordinating Council

Before the
House Veterans Affairs Committee

August 4, 1993

Mr. Chairman and members of the Committee:

I appreciate the invitation to appear before this Committee to discuss my views on the Report by the Institute of Medicine of the National Academy of Sciences concerning the health effects of Agent Orange and other herbicides.

I do so in three capacities: 1) as a former Commander of the U.S. Naval Forces, Vietnam (the "Brown Water" Navy) from September 1968 until May 1970, 2) as a former unpaid Special Assistant: Agent Orange Issues to the Secretary of Veterans Affairs, the Honorable Edward Derwinski from October 1989 until May 1990 and 3) as current Chairman of the Agent Orange Coordinating Council.

In the first of these capacities, as Commander of U.S. Naval Forces, Vietnam, I requested and obtained Agent Orange defoliation along the banks of major and minor rivers and canals in Vietnam. I did so at a time when our casualties were running at the rate of about 6% per month, which meant that the average young man had about a 70% chance of being killed or wounded during his year's tour in the naval craft. The defoliation rapidly reduced casualties to less than 1% per month. At that time, to the best of my knowledge, no one in the Vietnam theatre was aware that Agent Orange could have harmful health effects on humans. In the light of subsequent knowledge, I consider that I have a very special responsibility to the courageous young men who served under my command -- that is, to see that justice is done with regard to providing compensation for the ill-health effects of those Vietnam veterans who were exposed to Agent Orange and their families.

In my capacity as Special Assistant to the Secretary of Veterans Affairs (at his request), I conducted a review of the hundreds of available studies and other government documents relating to this issue. I am submitting, separate from this testimony, a copy of that report. In it you will note that I concluded that there were 31 health effects that, as of May 1990, meet the required test that they are "as likely as not" the result of exposure to Agent Orange. Since that time, additional studies have convinced me that at least one other disease, diabetes, should be added to that list. One of the things that I learned in the course of this review is the unfairness of the requirement that the "as likely as not" decision be based on scientific studies. That unfairness results from the following factors:

1) It was the deliberate policy at the bureaucratic level of our government for many years to seek to avoid any conclusion that the use of Agent Orange and related herbicides could cause undesirable health effects. Hearings by the Human Resources and Intergovernmental Relations Subcommittee of the Committee on Government Operations in the House of Representatives conclusively proved that the government

maneuvered to evade its responsibility to be objective in determining possible health effects of defoliants used in Vietnam. Those hearings are the following:

June 26, 1990: Links Between Agent Orange, Herbicides, and Rare Diseases
July 11, 1989: Oversight Review of CDC's Agent Orange Study
July 26, 1990: CDC Interference in Dioxin Water Standards
June 10, 1992: Health Risks of Dioxin
Twelfth Report: The Agent Orange Coverup: A Case of Flawed Science and Political Manipulation

The results of the manipulated studies were made to be inconclusive. Therefore, any reviewing panel examining all available studies found the overall weight-of-evidence less conclusive than is the true case because of the consideration still given to the manipulated studies and thus, the dilution of the accurately done studies.

2) Anecdotal evidence, which in some cases ought to be sufficient for establishing the "as likely as not" relationship are disregarded in the scientific method. Let me give a specific example. In 1977, 47 railroad workers were exposed to dioxin while cleaning up spillage of dioxin-containing fluid from a railroad tank car in St. Louis. Within a relatively short time, among that group, there were 2 suicides, 41 cases of continuous fatigue, 23 cases of continuous muscle aching and 22 of the 45 living workers suffered cognitive impairment, among other effects. This was considered sufficiently determinative that in August, 1982, an Illinois jury ordered $5.8 million to the disadvantaged civilian workers. Numerous scientific studies give evidence of similar symptoms among other people exposed to dioxin, yet, to date, none of those difficulties survive the so-called scientific method to provide compensation for Vietnam veterans who show similar problems.

3) In addition to the manipulated government studies, some of the studies sponsored by chemical companies have been similarly manipulated.

I was able to recommend to Secretary Derwinski that the many diseases mentioned in my report should be approved for compensation because I, as a non-scientist, did what I believe the law allows the Secretary of Veterans Affairs to do, i.e., to discount the proven manipulated studies.

In my capacity as Chairman of the Agent Orange Coordinating Council, I believe I speak for the member organizations, although the sudden requirement for me to appear before this Committee has not made it possible for me to check definitively in that regard. The Agent Orange Coordinating Council includes approximately twenty veterans' and veterans' services organizations and are listed in an attachment to this testimony.

With that background, let me comment as follows on the Report which is the subject of today's hearing:

1) I consider it the first objective and honest report on the Agent Orange issue emanating from government or quasi-government sources.

2) The fact that the Committee affirmatively links five diseases, including two that have not previously been approved as capable of being caused by exposure to Agent Orange and other defoliants, is a significant step forward. This association confirms the frequently stated views of those members of Congress in both Houses who have looked into the issue in depth, as well as those of us on the outside who have done

so. That the report calls for additional studies due to the continuous accumulation of scientific information, reinforces the views of those of us who believe that a number of additional health effects should be added.

I applaud the prompt decision of the current Secretary of Veterans Affairs to initiate rules to add PCT and Hodgkin's disease to the list of compensable diseases and recommend that Congress add them by statute. It is my view that the diseases listed under the Report's category "limited/suggestive evidence" (namely, respiratory cancers, prostate cancer, and multiple myeloma) should also be added by statute to those currently listed. I believe it is the reasonable conclusion (particularly because of the dilution problem that this objective panel faced having to consider the manipulated studies along with the honestly done studies) that it is "as likely as not" that the diseases listed under "limited/suggestive evidence" are the direct result of exposure to Agent Orange.

For the same reason, it is my view that Congressional guidance should be given to the National Academy of Sciences that, in doing future reviews, those studies which have been proven by Congressional investigation to have been manipulated, should be suitably discounted so that a more objective weight-of-evidence conclusion could be reached. In future reviews, a significant number of the diseases for which the IOM panel could not find sufficient evidence at this time, will emerge as much more significantly related to exposure to defoliants.

I strongly endorse the IOM panel's recommendations for future research. It is significant and will be helpful in guarding against future government manipulation that the IOM panel recommends: an independent, nongovernmental scientific panel to review and approve a new, expanded research protocol and to commission and direct common analysis of the results in future Ranch Hand/Army Chemical Corps studies; a nongovernmental organization to develop and test models of herbicide exposure; evaluation of such models by independent, nongovernmental scientific panel.

Finally, there is another aspect of this issue I would like to address that should interest members of this committee concerned about justice for those Vietnam veterans who were injured by Agent Orange. It may not concern you as members of this particular Committee, but I earnestly solicit that each of you consider becoming sponsors, in your individual capacities, of a bill which I shall discuss. I am speaking of the federal Courts' repeated invention of any new law necessary to deny veterans the opportunity to place before a jury their personal injury claims against the Agent Orange manufacturers.

We have probably all heard of the general dissatisfaction of veterans with the 1984 class action settlement in which the veterans had little or no say, but whereby the lawyers nominally representing the "class" took more than $13 million in fees, and Judge Weinstein became the head of a $52 million foundation. As a result of that settlement, only veterans with death or total disability claims received anything, and that was, on average, a mere $3200 each. In the case of Ivy v. Diamond Shamrock, veterans whose injuries arose after the 1984 settlement have had their search for a fair trial of their claims similarly short-circuited by the federal courts. The federal courts removed the case from Texas state court over the opposition of 21 State Attorneys General who in their legal brief in Ivy called the court's action, and I quote, "an illegitimate judicial amendment of Congress' removal statute, ... an invasion of state judicial independence and an insult to state courts throughout the nation." The federal courts then compounded the problem by transferring Ivy directly to Judge Weinstein on

legal grounds that were also unprecedented and again seemed to defy the intent of Congress.

The reason for the federal courts' invasion of states' rights in order to have only Judge Weinstein hear Ivy was clear. Both Judge Weinstein and the federal Court of Appeals proceeded to make unprecedented decisions holding that the 1984 settlement included veterans' claims that did not exist in 1984 (since they had no injury at that time) even though these veterans had no notice or knowledge of the 1984 case and were not separately represented by any lawyer who agreed to such a settlement. By the federal courts' invention of a class settlement of these "future" claims that did not even exist at the time, their violation of all existing law concerning participation in and settlement of class actions, and, most importantly, their exercise of extraordinary powers to deny to the state courts their ordinary authority to hear such claims, the federal courts have destroyed the veterans' claims which are now worth far more than the average $3200 some of them might be able to get from Judge Weinstein. Judge Van Graafeiland of the Court of Appeals for the Second Circuit on June 24, 1993, justified these unprecedented and even bizarre rulings denying the veterans a jury trial in an unbiased state forum, on the grounds that, in his view, "despite continuing research, the crucial issue of 'general causation', i.e., whether any injuries are attributable to Agent Orange, remains unsettled." My understanding, in accordance with the constitutional right to jury trial, is that juries are supposed to make such findings of causation, not judges. Here federal judges are making scientific findings that directly contradict the NAS study which has now found that there is "sufficient evidence of an association" between Agent Orange and a number of the kinds of diseases experienced by Vietnam veterans exposed to Agent Orange.

I am submitting with this testimony a draft law which I support to correct this systematic denial of justice by the New York federal courts. This new law would not really change current law so much as give clear instructions to these courts to enforce existing law and to keep the New York federal judges' obviously biased hands off the Agent Orange litigation so that the Ivy case may go to trial. Our veterans are entitled to a better quality of justice than they have received from the federal courts in the course of the Agent Orange litigation. The courts have done sufficient damage by inventing their own rules to apply to Vietnam veterans. It is now up to Congress, by passing the law I propose, to insist that the Courts enforce the laws written by Congress and the Constitution. Otherwise this episode will go down as one of the most egregious denials of justice by the federal courts in our national history, and a shameful betrayal by federal institutions of those who fought and sacrificed for this country.

In conclusion, I believe the IOM panel's study has given the Vietnam veterans and their families the first significant scientific support for the condition of ill-health effects due to Agent Orange. This report confirms the wisdom of Congress in its decision last year to authorize by statute the compensation for three of these ill-health effects. I hope this report will lead the Secretary of Veterans Affairs to authorize compensation for respiratory cancers, prostate cancer, and multiple myeloma and that Congress do so statutorily. I hope that future review panels will be instructed to discount manipulated studies. I urge the implementation of the IOM recommendations so that the additional diseases concluded in my report can be added for compensation as soon as possible.

Attachments

AGENT ORANGE JUDICIAL EFORM ACT OF 1993

SECTION 1. The immunity from ıbility known as the Government Con- ıctor Defense, which has been extended private parties by judicial interpretation "federal common law," is hereby abol- hed.

SECTION 2. Section 1407(a) of Title of the United States Code, first sen- nce, shall be amended by adding the ord "simultaneously" before the word nding."

SECTION 3. Section 1407(e) of Title of the United States Code shall be nended by adding the following sen- nce: "The Court of Appeals shall issue a andamus when necessary to confine the unel to a lawful exercise of its prescribed risdiction."

SECTION 4. Section 1407(f) of Title 8 of the United States Code shall be nended by adding the following sen- nce: "No proceedings for transfer shall initiated unless an Act of Congress has nferred jurisdiction of the action upon e District Courts."

COMMENT

A) Section 1 is intended to reverse oyle and other cases which have created "federal common law" defense which preempts or "displaces" substantive state law under certain circumstances, Congress has not delegated such law-making authority to the federal courts, and has expressed no intent to make such wholesale changes in, the common law tort remedies traditionally provided under state law for regulating private conduct in matters raising no question under the Constitution, or under any Act of Congress.

B) Sections 2, 3 and 4 are intended to reverse rulings in Ivy v. Diamond Shamrock Chemical Co., 901 F.2d 7 (2d Cir. 1990) pertaining to the jurisdiction of the multidistrict litigation panel.

Section 2 provides that the transfer of a prior case that is no longer pending or in pretrial proceedings shall not be grounds for transferring a subsequent pending case. This section clarifies the intent of Congress that there must be two or more pending actions, in pretrial proceedings, and arising in different districts, in order to justify a transfer of one of the cases for the purpose of achieving the convenience and efficiency of "coordinated" conduct of such actions.

Section 3 provides that the Court of Appeals shall exercise its powers of review by extraordinary writ under Section 1407(e) in conformity with the Supreme Court's definition of "[t]he traditional use of the writ ... to confine an inferior court to a lawful exercise of its prescribed jurisdiction." Roche v. Evaporated Milk Ass'n. 319 U.S. 21, 26 (1943)

Section 4 provides that the multidistrict litigation panel is subject to the same jurisdictional constraints as other inferior federal courts, and possesses no jurisdictional powers other than those granted by an Act of Congress.

The purpose of these changes is to assure that the transfer statute is not abused to assign particular cases to particular judges whose views are known, and to clarify that jurisdictional issues should be addressed at the earliest opportunity in order to avoid litigation over transfer issues where federal jurisdiction is lacking.

SECTION 5. Section 1442(a)(1) of Title 28 of the United States Code shall be amended by adding the word "natural" before the word "person.

Section 5 provides that the protection accorded officers of the federal government and persons acting under them, by allowing removal of cases brought against them in state court to a federal court, is limited to natural persons and shall not be extended to include fictitious "persons" such as private corporations. This amendment is required to avoid removal under this provision to the federal courts of civil suits brought against Government contractors who claim to be "acting under" a federal officer. This will restore the original purpose of the statute which was to accord individual federal officers and agents acting under them the protection of a federal forum for presentation of any defense of official immunity from suit for acts taken under color of federal office. The Supreme Court has unanimously interpreted this statute to exclude government agencies, corporations and other entities from this protection. See International Primate Protection League v. Administrators of Tulane Educational Fund. U.S. (May 20, 1991). The Amendment clarifies that such protection, and therefore removal from state court, found unnecessary for private institutions.

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Federal Courts have made inconsistent interpretations of this provision, resulting in an unintended, unnecessary and anomalous expansion of the jurisdiction of the federal courts over certain private corporations. The amendment would accordingly restrict federal jurisdiction by adopting the reasoning of such cases as C.H. v. American Red Cross 684, F.. Supp. 1018, 1023 (E.D. Mo. 1987) (rejecting the theory that the persons acting under him" who can also invoke "Section 1442(a)(1) includes entities other than natural persons"). Although "the majority of those courts that addressed the issue explicitly and rendered a reasoned decision of law decided that Section 1442 authorizes only natural persons to remove," Roche v. American Red Cross. 680 F. Supp. 449, 454 (D. Mass. 1988), any remaining ambiguity in the law is now resolved by Congress to avoid further uncertainty and litigation over the issue.

SECTION 6. A new Chapter 160 titled "Class Actions" shall be added to Title 28 of the United States Code.

SECTION 7. A new Section 2371 shall be added to Chapter 160 of Title 28 of the United States Code which shall be as follows:

Dismissal or Compromise of Class Action Suit.

(a) Any compromise or stipulated dismissal of a class action suit shall be by agreement of the parties that is reasonably precise and shall not delegate to the judge who approves the dismissal or compr mise any authority to add additional ter to the agreement.

(b) No action to interpret, arbitrate otherwise enforce such an agreement m be brought before a judge who has a proved the dismissal or compromise.

(c) No member of a class shall subsequently bound or held to have ha claim adjudicated by a compromise w has not received actual notice of the prec terms of the compromise, and of the right reject the compromise, or who timely ex cises such right after notice thereof.

COMMENT

(A) A new Chapter 160 is added regulate the class action litigation practic of certain judges under F.R.Civ.P., R 23(e), which are inconsistent with 28 U.S. ss 2072. The latter provision, referring the federal rules, requires that;

Such rules shall not abridge, enla or modify any substantive right and sh preserve the right of trial by jury as common law and as declared by the Se enth Amendment of the Constitution.

(B) Section 7 adds new Section 23 to Chapter 160 of Title 28 of the Uni States Code to modify class action set ment practices under F.R.Civ.P., Rule 23 by which certain federal judges have ceeded the authority granted by Congr to the prejudice of the due process right litigants.

In the Agent Orange litigation a cl was certified that, according to the pre ing judge, included both veterans who claims for injuries allegedly caused Agent Orange, and other absent pers who had no such injuries, and therefor claims that could be adjudicated at the t

of the settlement. These persons, present and absent, were lumped together as "class members" and their existing and non-existing claims were, according to the presiding judge, settled by attorneys representing both groups of veterans, and their families. These attorneys were found by the Court of Appeals to have had fee arrangements that presented a conflict of interest inducing them to settle all claims early and cheaply. It was against the interest of persons who had not manifested injuries to prematurely settle their potential claims, which could become valuable claims as time passed and statistical evidence proving the causation of their injuries became available.

Nothing in current law prevented the presiding judge from first grouping these claims for a settlement by which weak claims worth little or nothing would obtain a small "nuisance value" amount of damages and potentially strong claims would receive nothing, and then imposing this settlement on attorneys appointed by the judge, whose fees were awarded by the same judge. The same judge then approved the settlement as reasonable to the "class" although it was opposed by most veterans with claims who were able to present their views. The views of the persons whose claims were settled before they arose, and who lacked any knowledge of the suit or the settlement, and who were most prejudiced by the settlement could not be heard.

The presiding judge, who was directly engaged in developing the terms of the settlement agreement, was authorized by the settlement to determine who among the plaintiffs would receive any part of the settlement, and also acquired authority to directly supervise a $50 million foundation having broad discretionary goals that was created with a large portion of the settlement funds.

Because the judge set a time for opting out of the class action one week prior to the settlement agreement, no class member had an opportunity to reject the terms of the settlement. If they had, the judge's powers to alter the agreement, and determine who would receive any of the damages, meant that they would have purchased a "pig in the poke."

Subsequently, persons who had received no notice of the earlier case, or of the settlement, and had no opportunity to opt out, claimed that the actual settlement agreement did not by its terms include their claims. Alternatively they argued that if it did purport to settle their claims they were not adequately represented by counsel who approved such an agreement, because such a settlement was clearly against their interest in preserving their right to sue until their claims arose and were provable. However these persons were not permitted to litigate these issues other than before the same presiding judge who imposed the settlement.

This case illustrates the dangers of investing federal judges with powers free of the usual restraints of juries, the adversarial system, and actual consent of litigants. One judge should neither exercise such unstructured powers through the device of class action "settlement," nor monopolize litigation of all issues in a case affecting important interests of thousands of litigants.

Section 7 would prohibit the use of Rule 23 for the settlement of claims without the consent of the party purportedly settling the claim, a practice which violates traditional notions of due process. It would also prevent the abuse of powers exercised by a federal judge over the appointment and compensation of class action attorneys, which are extraordinary in our adversary system of justice, so as to secure from those attorneys a settlement inconsistent with the interests of their purported clients, to obtain a delegation of powers to adjudicate issues without a jury trial, and to grant the judge powers that are not provided by law and would not result from the normal course of litigation.

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Finally this section would prevent insulating such an agreement from the interpretation of courts other than the judge who approved such a settlement. This would prevent alteration of the terms through subsequent interpretation or monopolizing all litigation with respect to the agreement or related claims, Requiring judges other than the one approving the agreement to determine such matters as its validity, application to third parties who are strangers to the agreement, adequacy of representation, interpretation of its terms in subsequent litigation, and other enforcement matters will help limit the potential for abuse of the enormous unstructured power assumed by the federal courts under Rule 23. Otherwise Rule 23 will continue to be used to subvert the Seventh Amendment right to jury trial, as it has been used against Agent Orange veterans.

SECTION 8. Section 1445 of Title 28 of the United States Code shall be amended by adding a new subsection (d), as follows:

(d) A civil action in state court, brought by a member or veteran of the armed forces of the United States, and alleging claims arising under state law shall not be removed to any District Court of the United States, irrespective of whether the same civil action was adjudicated or settled, or is pending, in a federal court.

COMMENT

Section 8 reconfirms the "well pleaded complaint" doctrine in the context of the Agent Orange litigation. In Ivy v. Diamond Shamrock a previous class action settlement in a New York federal court was held to provide a "federal question" for removal of the case from Texas state court, although the plaintiffs' claims arose exclusively under state law and contained no substantial element of federal law. The Ivy plaintiffs alleged that their claims did not exist at the time of the previous settlement and that the New York court lacked jurisdiction over the Ivy plaintiffs.

Section 8 confirms that a res judicata defense is no ground for removing a case from state court, and that a class action settlement may be collaterally attacked in state court by raising questions whether the court which settled the first case had jurisdiction over the plaintiffs and their claims in the previous action. No single judge should have a monopoly over interpretation of the law with respect to the claims of Armed Forces personnel. Limitation of this section to armed forces personnel carries no implication for the propriety of removal of any cases brought by other persons under similar circumstances. It is intended to expressly assure the availability of a non-federal forum for Agent Orange victims to pursue their state claims, and to bar any removal to federal court of any civil action that alleges such claim irrespective of any prior or ongoing litig tion in federal court.

Section 8 would provide to membe and veterans of the Armed Forces a simi right to choose a convenient forum for th claims as has been extended to seam under the Jones Act. See Pate v. Stand Dredging Corp., 193 F.2d 498 (5th C 1952).

SECTION 9. Section 1445 of Ti 28 of the United States Code shall amended by adding a new subsection (as follows:

(e) No case shall be removed Fr state court except in accordance with l enacted by Congress and codified in t Chapter. No case may be removed by a decree, writ or other order in equity.

COMMENT

Section 9 adds new subsection (e) Section 1455 of Chapter 89 of Title 28 the United States Code to clarify that th are no inherent judicial powers included the All Writs Act to remove a case fr state court. In this sensitive area of re tions between state and federal gove ments all powers of removal are provid by an express enactment of Congress. Ivy v. Diamond Shamrock, a previous cl action settlement in a New York fede court was held to provide grounds, un the All Writs Act, for removal of a Te class action based exclusively upon s law. This was an unwarranted intrusion the powers of state courts to adjudicate state based claims in state courts exc where specifically provided otherwise Congress. This provision makes clear t Congress intends to limit the powers removal to the express grounds enacted Congress and that no writ under the Writs Act can be used to create jurisdict

in a federal court which does not exist under an express grant of power by Congress.

SECTION 10. Section 445(d) of Title 28 of the United States Code is amended to add the following provisions:

(5) "interest" includes any interest, whether or not it arises from judicial activity.

Section 10 adds a new provision to subsection (d) of Section 455 of Title 28 of the United States Code to clarify that a conflict of interest is grounds for disqualification irrespective of whether the conflicting interest arose out of judicial activity. In Ivy v. Diamond Shamrock, District Judge Jack B. Weinstein declined to disqualify himself from hearing Ivy after a conflict was revealed between that case and his role as a fiduciary in a foundation set up as a result of a previous class action settlement. In Liljeberg v. Health Services Acquisition Corp., U.S. 108 S. Ct. 2194, 2202 (1988) a similar conflict was described as "obvious" by the Supreme Court, which compelled the district judge's disqualification and also vacated his orders. Judge Weinstein declined to follow the rule in Liljeberg on the grounds that his role as fiduciary for the foundation was a result of judicial action. Under ss 455(b) a conflict of interest disqualifies a judge irrespective of whether the conflict actually causes partiality, and irrespective of the circumstances under which the conflict arises. This amendment clarifies this rule.

For further information please contact:
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AGENT ORANGE COORDINATING COUNCIL
MEMBER ORGANIZATIONS:

Agent Orange Victims & Widows Support Network
Air Force Sergeants Association
American Ex-Prisoners of War
American Legion
Blinded Veterans Association
BRAVO
Catholic War Veterans, USA
Fleet Reserve Association
Jewish War Veterans of USA
Marine Corps League
Military Order of Purple Heart
National Association of Military Widows
National Vietnam Veterans Coalition
New Jersey Agent Orange Commission
Oklahoma Agent Orange Foundation
Polish Legion of American Veterans, USA
The Retired Officers Association
Veterans of Foreign Wars of US
Veterans of the Vietnam War
Vietnam Veteran Agent Orange Health Study
Vietnam Veterans of America