



OPINION

A Chance to Put the Vietnam War Behind Us Impatient for Answers

PERSONAL PERSPECTIVE

By James Caccavo

Nguyen Thi Hoang Lang, or "Be Ba," is 10 years old and already a survivor of cancer. I first met her in 1992 in Ho Chi Minh City (Saigon), when she was 2 years old and had bright shining eyes. When I saw her again in 1994, she had lost her right eye to cancer at the age of 3. Since then, cerebral palsy has warped and deformed her limbs. It is questionable whether the dioxin in Agent Orange is responsible for her cerebral palsy, but it is highly probable that the tumor that took her right eye was caused by the residual of the defoliant during the Vietnam War. Be Ba and other Vietnamese children—and the offspring of affected U.S. veterans—are the most innocent of the innocent of a war that still affects us.

Fortunately, there are developments that may ease the suffering of future generations. The American Red Cross is exploring the possibility of a partnership with the Vietnam Red Cross to support a program providing assistance to disabled Vietnamese, including cases that may have resulted from exposure to Agent Orange. Similarly, the U.S. government is engaged in talks with Vietnam to start a joint research project on dioxins.

Between 1962 and 1971, the United States sprayed some 19 million gallons of herbicide, more than 10 million of which was Agent Orange, over much of South Vietnam, often in multiple operations. Ceased spraying the defoliant indicated a dramatic increase in miscarriages, cancer and birth defects among the inhabitants, and public pressure mounted. Chemicals found in Agent Orange—2,4-D and 2,4,5-T compounds—were already banned in the United States, except for carefully controlled use on non-cropland.

It had been believed that the chemicals in the soil and food chain would deteriorate over time, but Dr. Arnold Schecter



Judy Fellner's concern over the health of her children, from left, Christopher, 8; Billy, 6; and Betty, 11, and another daughter, Cathy, 14, has caused the Rock Island woman to question whether her late husband was exposed to Agent Orange. (Times photo)

mother fears child Agent Orange

says she has faced the question of asking state and federal officials if her children are being exposed to Agent Orange, and that her husband was exposed to Agent Orange.



the University of Texas, who has been studying the problem since 1981, has concluded, along with the Hatfield Consultants Ltd. of Canada, that Agent Orange has contaminated the soil and food chain in the sprayed areas of South Vietnam. In June of this year, the Environmental Protection Agency declared for the first time that dioxin is a carcinogen.

From 1968 to 1971, the U.S. sprayed 20,000 miles of Agent Orange in Vietnam, as well as in other areas of Southeast Asia. The U.S. government has applied the herbicide to the soil and food chain in the sprayed areas of South Vietnam. In June of this year, the Environmental Protection Agency declared for the first time that dioxin is a carcinogen.

But differences in the way the U.S. government has applied the herbicide to the soil and food chain in the sprayed areas of South Vietnam. In June of this year, the Environmental Protection Agency declared for the first time that dioxin is a carcinogen.

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LACAH IV

Agent Orange

VIETNAM'S DEADLY FOG



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SYNOPSIS

In mid-1961, the South Vietnamese President, Ngô Đình Diệm, requested that the United States begin a herbicidal warfare programme as part of the effort to combat the North Vietnamese communists. The following decade, between 1961 and 1971, saw extensive use of Agent Orange, a defoliant and herbicidal chemical. By 1971, 12 percent of the total area of South Vietnam had been sprayed with the chemical at an average concentration of 30 times the concentration recommended by the US Department of Agriculture. Over 80 million litres of Agent Orange were applied in total, defoliating over 3.1 million hectares of forest. The chemical's lingering effects also made reforestation difficult and precipitated a sharp reduction in animal diversity in

the affected areas.

Although disputed by the US Government, the government of Vietnam claims that up to four million people were exposed to Agent Orange, of which three million suffered illness because of the exposure. The Red Cross of Vietnam estimated that, as a result of the use of Agent Orange, up to a million people suffer from disability or other health issues.

However, the US Government has documented cases of various kinds of cancers in exposed military personnel and a study by the US Centres for Disease Control showed an increase in the rate of birth defects in the children of exposed veterans.

Acknowledgements:

Certain technical aspects of the case are referenced and modified from Peer Potential Mock Trial Association, including inspirations for case law, captain's form, special instructions, and stipulations.

WITNESSES

PROSECUTION

Tran To Nga
John F. Kennedy
[REDACTED]

DEFENCE

Ngô Đình Diệm
Lyman Lemnitzer
[REDACTED]

STIPULATIONS

1. Both parties fully comply with their discovery obligations. No pertinent information or evidence with withheld during discovery.
2. All parties and witnesses are of at least normal intelligence and none has ever suffered from mental conditions that would impact a person's perception, memory, or ability to respond on direct or cross examination.
3. The defendant, Ngô Đình Diệm, is tried on two counts: that of ecocide and that of extermination, a crime against humanity.
4. Both parties agree to the validity of the Environmental Modification Convention, passed on December 10th, 1976, and its continuously binding nature in a court of law.
5. The parties reserve the right to dispute any other legal or factual conclusions based on these items and to make objections to these items based on evidentiary issues.

CAPTAIN'S FORM

During pre-trial conference, teams must turn in one complete copy of this form.

Participants may not attempt to view the form for any trial in which their team does not compete. All selections are final and binding upon announcing.

Room Number: _____

Round: _____

Prosecution Team Number: _____

Defence Team Number: _____

The Captains' Meeting proceeds in the following order:

WITNESS SELECTION. Defence must call Ngô Đình Diệm

Prosecution circles **TWO** witnesses from the following list to call:

John F. Kennedy

Tran To Nga



Defence circles **ONE** witness from the following list to call:

Lyman Lemnitzer



CALL ORDER. Fill in the order in which the witnesses will testify:

PROSECUTION

DEFENCE

Witness Name	Call #	Witness Name	Call #

PRONOUNS. Historical figures will retain their original pronouns. Teams may share preferred pronouns of participating team members for use outside of trial.

EXHIBITS AND DEMONSTRATIVES. Teams planning to use any demonstrative aid must show those to the other team prior to the start of the trial. Failure to do so shall constitute an absolute bar on using that aid in any way during trial.

SPECIAL INSTRUCTIONS

1. Witnesses must acknowledge authorship of any document that purports to be authored by them and the authenticity of any signature that purports to be theirs. A witness whose affidavit, deposition, or report states that the witness is familiar with a particular document must acknowledge, if asked, that the witness is familiar with that document and that the referenced document is the same version as the corresponding document in the current case.
2. The only legal materials that competitors may mention, or judges may rely upon, for any purpose are those set forth in “LACAH Case Law.” All participants must acknowledge such if asked.
3. Any extra evidence outside of the official LACAH case packet must be submitted by the 20th of March for LACAH West and the 27th of March for LACAH East
4. No witness may refuse to answer any question—and no attorney may instruct a witness not to respond—based on the witness’s Fifth Amendment rights.
5. Stipulation 5 provides that “[a]ll parties and witnesses are of at least of normal intelligence and none has or ever has had a mental condition that would impact a person’s

perception, memory, or ability to respond to questions on cross examination.” It is a violation of that stipulation and of this special instruction to portray any witness in a manner that renders that witness unable or unwilling to respond to otherwise proper questions on cross examination.

6. While teams may employ distinctive accents/ speech characteristics to develop a character, teams may not use such accents/speech characteristics to invent material facts or to prove that a voice heard was or was not the voice of a specific person in the case. This Special Instruction does not prohibit asking a witness questions regarding the witness’s certainty of a voice identification or the circumstances in which the witness heard the voice in question. This Special Instruction applies both to examinations of witnesses and to opening statements/closing arguments.
7. Should a team wish to publish part or all of a document by reading it onto the record, the time spent reading shall be deducted from the publishing team’s total direct or cross time, depending on whether the reading occurs during the publisher’s case-in-chief or that of the other team. Publication may not occur before opening statements or after the defence team closes its case-in-chief.
8. The final power of ruling to any judicial discrepancies or technicalities of law is vested in the LCAH high court.

INDICTMENT

THE INTERNATIONAL CRIMINAL COURT

v.

NGÔ ĐÌNH DIỆM,

Defendant.

COUNT I

NGÔ ĐÌNH DIỆM committed the offense of ECOCIDE in that the said defendant

1. Committed unlawful or wanton acts with knowledge that there is a substantial likelihood of severe and widespread damage to the environment; and
2. Committed with such intention.

COUNT II

NGÔ ĐÌNH DIỆM committed the offense of EXTERMINATION in that the said defendant

1. Participated in a widespread or systematic killing; or
2. Subjected a widespread number of people or systematically subjected a number of people to conditions of living that would inevitably lead to death [actus reus]; and
3. Intended by his acts or omissions this result.

Burden of proof: the Prosecution must prove beyond a reasonable doubt that Ngô Đình Diệm is indeed guilty of Ecocide and/or Extermination

The Defendant NGÔ ĐÌNH DIỆM pleads NOT GUILTY on both charges

Nathan Chan - International Criminal Court Official

CASE LAW

Johnson v. Bird (1993)

Trial judges must ensure that any scientific testimony or evidence admitted is not only relevant but reliable. In determining reliability, judges should consider only the methods employed and the data relied upon, not the conclusions themselves. The proponent of the evidence has the burden of proving each section of Rule 702 by a preponderance of the evidence.

Tarot Readers Association of LACAH v. Merrell Dow (1994)

In assessing reliability under Rule 702(c), judges should consider whether the theory or technique has been or can be tested, whether it has been subjected to peer review and publication, whether it has a known error rate, and whether it has gained widespread acceptance within the field. These factors, while relevant, are not necessarily dispositive. For example, lack of publication does not automatically foreclose admission; sometimes well-grounded but innovative theories will not have been published. There is no definitive checklist. Judges must make such assessments based on the totality of the circumstances.

Harper v. Stockton (2012)

Pursuant to LACAH Rule of Evidence 104(a), when evaluating the admissibility of evidence, a trial court is permitted to rely on both admissible and inadmissible evidence. The use of underlying inadmissible evidence does not make that inadmissible evidence admissible. Instead, the court is merely permitted to consider the underlying inadmissible evidence in order to assess the admissibility of the offered evidence. In a jury trial, the jury may not always be privy to the underlying facts used to determine what evidence is admissible, but the court may hear it. Previous upheld examples of this in LACAH include using character evidence to make a ruling on hearsay exceptions, using hearsay to make a ruling on character evidence, and using hearsay to decide whether an expert has adequate foundation to testify.

Bruno Software Co. v. Mars Investigations (1998)

LACAH does not permit parties to use their experts as weapons in a trial by ambush or unfair surprise. Expert reports that are exchanged prior to trial must contain a complete statement of all opinions the expert will testify to and the basis and reasons for them, the facts or data considered by the expert in forming their opinions, and the expert's qualifications. Experts are strictly prohibited from testifying on direct or redirect examination about any opinions or conclusions not stated in their report, and such testimony must be excluded upon a timely objection from opposing counsel. For example, an expert may not testify on direct or redirect examination that they formed a conclusion based on evidence that came out during trial that the expert did not previously review. However, if an expert is asked during cross-examination about matters not contained in their report, the expert may freely answer the question as long as the answer is responsive.

Neo v. Morpheus (1988)

Pursuant to LACAH Rule of Evidence 104(a), courts may consider custodial documents, such as clerks' certifications or affidavits of records keepers, when determining the admissibility of other evidence without regard for the admissibility of the custodial document itself. The custodial document typically only addresses preliminary matters of admissibility and is not entered into evidence, and thus the court is not bound by the rules of evidence when considering it. However, if a party wishes to enter the custodial document itself into evidence, the proper foundation must be laid to establish its admissibility.

Richards v. Mississippi BBQ (1997)

LACAH Rule of Evidence 703 does not permit experts to testify or present a chart in a manner that simply summarizes inadmissible hearsay without first relating that hearsay to some specialized knowledge on the expert's part. The court must distinguish experts relying on otherwise inadmissible hearsay to form scientific conclusions from conduits who merely repeat what they are told. The testimony of the former is admissible; that of the latter is not. At the same time, statements that would otherwise be admissible are not inadmissible simply because they are offered by or through an expert witness.

EVIDENCE

EXHIBIT A: "The extent and patterns of usage of Agent Orange and other herbicides in Vietnam"

PI-7: [click for link](#)

EXHIBIT B: *The History, Use, Disposition and Environmental Fate of Agent Orange*

P34: [click for link](#)

EXHIBIT C: "The Destruction of Indochina"

P36-40: [click for link](#)

EXHIBIT D: "this horrible natural experiment"

P34-35: [click for link](#)

EXHIBIT E: CDC IDHL values of Agent Orange chemicals

[click for link](#)

[click for link](#)

EXHIBIT F: "Agent Orange Linked To Skin Cancer Risk"

[click for link](#)

EXHIBIT G: "Association between Agent Orange and birth defects: systematic review and meta-analysis"

[click for link](#)

EXHIBIT H: "Human Health Effects Associated with Exposure to Herbicides and/or their Associated Contaminants - Chlorinated Dioxins"

[click for link](#)

Foreword

Since the dawn of powered flight, there has been debate about the uses of aviation in war. The air weapon could be, and has been, used for a variety of missions: to gain control of the skies, to bomb an enemy's population or war-making resources, to support armies and navies in battle, to interdict the flow of men and materiel to the battlefield, for observation, reconnaissance, the gathering of intelligence, to transport men and supplies, and for virtually every other aspect of modern combat.

One of aviation's more unusual military applications occurred in Southeast Asia, where American and Vietnamese planes sprayed large areas of Vietnam and Laos with herbicides in an effort to deny cover and concealment to the enemy, and to destroy his food supply.

Herbicides, or weed-killing chemicals, had long been used in American agriculture. After World War I, the military of various nations realized their potential for war and developed techniques to use them. Although the Italians had used lethal chemicals delivered from the air in Abyssinia in 1936, the Allies and Axis in World War II abstained from using the weapon either because of legal restrictions, or to avoid retaliation in kind. During the early 1950s, the British on a limited basis employed herbicides to destroy the crops of communist insurgents in Malaya.

In 1961, President Ngo Dinh Diem of South Vietnam asked the United States to conduct aerial herbicide spraying in his country. In August of that year, the South Vietnamese Air Force initiated herbicide operations with American help. But Diem's request launched a policy debate in the White House and the State and Defense Departments. On one side were those who viewed herbicides as an economical and efficient means of stripping the Viet Cong of their jungle cover and food. Others, however, doubted the effectiveness of such a tactic and worried that such operations would both alienate friendly Vietnamese and expose the United States to charges of barbarism for waging a form of chemical warfare. Both sides agreed upon the propaganda risks of the issue. At last, in November 1961, President Kennedy approved the use of herbicides, but only as a limited experiment requiring South Vietnamese participation and the mission-by-mission approval of the United States Embassy, the Military Assistance Command Vietnam, and South Vietnam's government.

Operation Ranch Hand, the designation for the program, began in January 1962. Gradually limitations were relaxed and the spraying became more frequent, and covered larger areas. By the time it ended nine years later, some eighteen million gallons of chemicals had been sprayed on an estimated twenty percent of South Vietnam's jungles, including thirty-six percent of its mangrove forests. The Air Force also carried out herbicide

operations in Laos from December 1965 to September 1969 with the permission of the Laotian government.

One of a series of books detailing the Air Force's involvement in the war in Southeast Asia, this volume was written by Major William A. Buckingham, Jr., while assigned to the Office of Air Force History. The author rightly emphasizes that the Air Force served as an instrument of national policy in conducting the herbicide spraying. The book is a model study of the process by which military policy was made in the Southeast Asia War. Major Buckingham relates the intense controversy, both within the government and among the public, over the military, political, and ecological effects of the program. He connects policy to the operations, showing how pressure from scientists and disagreements among government policymakers and military leaders imposed limitations on the spraying program. He explores the technical difficulties in using herbicides: the right chemical agents had to be delivered in sufficient quantity at the optimal time of the growing season, only against certain crops and categories of vegetation, and only in areas where the destruction provided harm to the enemy and no danger to friendly or neutral populations. And Major Buckingham pays tribute to the bravery of the Ranch Hand airmen who flew their planes "low and slow" over territory often heavily defended by the enemy. Remarkably, Ranch Hand's UC-123 Providers took more than seven thousand hits from ground fire, but lost only a few crews and aircraft. Indeed, the most celebrated of the planes, "Patches," survived over six-hundred hits.

The Ranch Hand operation was unique in the history of American arms, and may remain so. In April 1975, President Ford formally renounced the first use of herbicides by the United States in future wars. "As long as this policy stands," Major Buckingham writes, "no operation like Ranch Hand could happen again."

RICHARD H. KOHN
Chief, Office of Air Force History



EXHIBIT J: Map showing locations of U.S. Army aerial herbicide spray missions in South Vietnam taking place from 1965 to 1971.

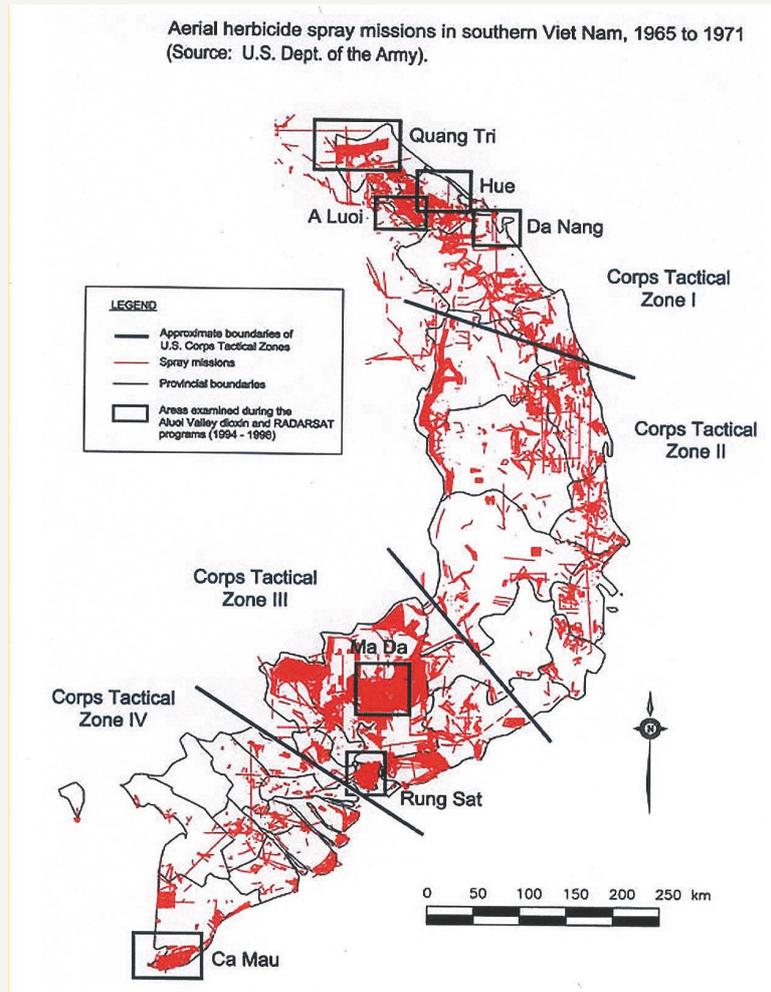


EXHIBIT K: U.S. Army armoured personnel carrier (APC) spraying Agent Orange over Vietnamese rice fields during the Vietnam War.



AFFIDAVIT OF TRAN TO NGA

PROSECUTION WITNESS AFFIDAVIT

After being duly sworn upon oath, Tran To Nga hereby states as follows: I am over 18 and competent to make this affidavit. I am testifying voluntarily and was not subpoenaed or compelled to testify.

1 **My name is Tran To Nga, and I am a Franco-Vietnamese journalist, resistance fighter and activist.** I was born into a wealthy family that favoured independence from France. I obtained my university degree in Chemistry in 1965, in the midst of the Vietnam War, and I joined the movement of the National Front
5 for the Liberation of South Vietnam the same evening. I travelled on foot for four months, notably on the Ho Chi Minh trail, and joined the maquis in the South. While covering the events as a journalist, I was contaminated by Agent Orange. **I worked in some of the most heavily AO/Dioxin affected areas in southern**
10 **Vietnam. As a journalist and activist, I intend to tell the world about Agent Orange's effects and to see that people involved in its use be brought to justice.**

15 **If President Diem is found guilty, justice be served. I will also receive a large compensation from the companies involved. I, however, am not being paid to testify and I am here to tell the truth and tell everyone about how horrible Agent Orange's effects are and to make sure that this shall never happen again.**

20 One day in the mid-1960s, I heard an airplane circling over my group's hideout, and left the shelter to check what was going on. I saw a white cloud that rapidly sank to the ground. It enveloped me and I was completely covered with a sticky liquid, I almost suffocated.

 I immediately washed it off, but it took years before I realized what had happened to me and so many other people in Vietnam: **we were covered with the highly toxic herbicide by the name of Agent Orange.**

25 About two years later, my daughter, Viet Hai, was born with a serious heart defect. **She died when she was 17 months old.** I always blamed myself for being a bad mother because I couldn't protect my child. But what could I have done? I didn't know what I could do. It was so helpless, seeing my child die in my arms like that.

30 **I am certain that Agent Orange was responsible for my child's illness and death. My other two daughters also have severe health problems and I am currently being treated for diabetes and cancer, both linked to the effects of Agent Orange. The manufacturers and users of that horrible chemical should take responsibility for my suffering and that of many millions of people in my**

home country.

35 I am not familiar with how countries are governed. However, I know that
if I was in government, I would have done everything in my power to prevent
such a terrible form of warfare from being unleashed on a people. But Agent
Orange has already been used and it is time to bring those responsible to justice:
the governments involved and the manufacturers must pay for what they have
40 done. **Although I do not have concrete evidence linking the defendant to the
crimes he is accused of, I have much circumstantial evidence that is sure to
incriminate him. Back when I was a guerrilla, our leaders would keep us up
to date with the situation. We were told that President Diem, that imperialist,
capitalist bastard, and the American enemy were collaborating to use these
45 most terrible weapons on us to try subjugate us and subject us to their
tyranny.**

I have made it very clear that I am not fighting this battle for myself, but for
the all the victims of the use of Agent Orange. Although I have not been visibly
disfigured, many others have lost their legs, their feet, their arms, and have to bear
50 horrendous scars. Many have severe disabilities — but they are brave, very brave.
All they want to do is live in dignity. A dignity that was stripped from them by
the defendant's use of Agent Orange. In all, there were 4 million victims of Agent
Orange. Think about that. **There were 4 million victims. 4 million victims of a
barbaric, indiscriminate weapon. In the face of such suffering, is it not a grave
55 injustice if the perpetrators go unpunished?**

I have done my research and I am a chemist. Agent Orange caused all this
suffering. That is what the science and the facts say.

**The spraying program led some 3 million Vietnamese to suffer health
problems caused by exposure to Agent Orange, including a million birth
60 defects.** Additionally, the toll on members of the U.S. military who handled the
chemicals or were deployed in and around the targeted drop zone areas during
the war caused another 2.8 million personnel and their offspring to suffer from its
long-term effects: chiefly, various cancerous conditions. This isn't just about the
people of Vietnam; this is about everyone in the world.

65 In the spring of 2014, I sued 26 multinationals in the American agrochemical
industry that had manufactured or supplied Agent Orange, including Monsanto
and Dow Chemical. The Agent Orange dumped on the lands of South Vietnam,
Cambodia, and Laos, in particular to defoliate the Ho Chi Minh trail, contained
dioxin (TCDD), a toxic manufacturing residue. Alongside me are the support
70 committee for the Vietnam Dioxin collective, the Stop Monsanto-Bayer collective
and agrochemicals, as well as many other political figures and environmental and
solidarity associations: the collective zero chlordecone zero poison, MEP Marie
Toussaint, jurist Valérie Cabanes, etc. These people fight with me in the process of
getting justice.

75 **If we win, I will be compensated, but that is not my motive. And I do**
not want apologies from the companies and governments. I want the roles
of the US government, South Vietnamese government, and the companies in
producing these catastrophic, long-term human tragedies recognized. I want
80 **to see them not only pay for their crimes but work to help the victims have a**
better life.

I swear or affirm the truthfulness of everything stated in this affidavit. Before
giving this statement, I was told I should include everything that I know may be
relevant to my testimony, and I followed those instructions. I know that I can and
must update this affidavit if anything new occurs to me until the moment before
85 opening statements begin in this case.

I am familiar for all exhibits in the case that pertain to my role as a journalist,
Viet Cong fighter, and other roles described in my affidavit. I am familiar with
almost all public records of agent orange that do not go into a professional level. I
purposely and willingly waive my fifth amendment as a journalist in order to give
90 the court a whole and true testimony.

All the information presented here is true and all documents that offer a
difference in narrative can be explained through a different degree of information
and should be taken into account the information I receive, yet can still be used as
solid points of contention against me, in terms of legal disputes.

Signed:

Tran Tongga

Subscribed and sworn to me on this 20th day of September 2021:

Joshua Zhang
Notary Public



AFFIDAVIT OF JOHN F. KENNEDY

PROSECUTION WITNESS AFFIDAVIT

After being duly sworn upon oath, John Fitzgerald Kennedy hereby states as follows: I am over 18 and competent to make this affidavit. I am testifying voluntarily and was not subpoenaed or compelled to testify.

1 My name is John Fitzgerald Kennedy, often referred to as JFK, and **I was the 35th president of the United States**. I had many responsibilities and details of my responsibilities is beyond the scope of the affidavit. Thus, I will be selective in my testimony.

5 I graduated from Harvard University in 1940 before joining the U.S. Naval Reserve the following year. During World War II, I commanded a series of PT boats in the Pacific theater. Surviving the sinking of PT-109 and rescuing my fellow sailors earned me the Navy and Marine Corps Medal, but left me with serious injuries. After a brief stint in journalism, I represented a working-
10 class Boston district in the U.S. House of Representatives from 1947 to 1953. Subsequently, I was elected to the U.S. Senate and served as the junior senator for Massachusetts from 1953 to 1960. While in the Senate, I published my book, Profiles in Courage, which won a Pulitzer Prize. In the 1960 presidential election, I narrowly defeated Republican opponent Richard Nixon.

15 **My relationship with the Soviet Union was not good**. To understand my stance on Vietnam, you must first realize how high the tensions were during the Cold War. In 1961, I, only recently inaugurated, was anxiously anticipating a summit with Soviet Premier Nikita Khrushchev. I started off on the wrong foot by reacting aggressively to a routine Khrushchev speech on Cold War confrontation in
20 early 1961. The speech was intended for domestic audiences in the Soviet Union, but I interpreted it as a personal challenge. My mistake raised tensions going into the Vienna summit of June 1961. On June 4, 1961, I met with Khrushchev again in Vienna. I conveyed to Khrushchev our bottom line on the most sensitive issue before us, a proposed treaty between Moscow and East Berlin. I made it clear that
25 any treaty interfering with U.S. access rights in West Berlin would be regarded as an act of war. Shortly after I returned home, the U.S.S.R. announced its plan to sign a treaty with East Berlin, abrogating any third-party occupation rights in either sector of the city. Depressed and angry, I assumed that my only option was to prepare the country for nuclear war, which he personally thought had a one-in-five
30 chance of occurring.

That led me to of course, fear of the communist regimes and strengthened my will to fight the spread of communism. That did not help when the Bay of Pigs Invasion went poorly. The incident made Castro feel wary of the

35 U.S. and led him to believe that another invasion would take place. **I was mad, of course, and swore that that could never happen again.**

I realized that I needed to take a stronger posture combating communism: it was up to me to combat communism. However, in the case of the use of Agent Orange, it was not me, but Ngo Dinh Diem, that requested that it be used.

40 In late 1961, I sent Roger Hilsman, then director of the State Department's Bureau of Intelligence and Research, to assess the situation in Vietnam. There, Hilsman met Sir Robert Grainger Ker Thompson, head of the British Advisory Mission to South Vietnam, and the Strategic Hamlet Program was formed. It was approved by me and South Vietnam President Ngo Dinh Diem
45 together. However, I must say that President Diem was rather enthusiastic to get it passed. It was implemented in early 1962 and involved some forced relocation, village internment, and segregation of rural South Vietnamese into new communities where the peasantry would be isolated from Communist insurgents.

In early 1962, Operation Ranch Hand, a large-scale aerial defoliation effort, began in South Vietnam. Depending on which assessment I accepted, that of the State Department or Department of Defence, there had been zero or modest progress in countering the increased communist aggression in return for an increased U.S. presence. **And there was evidence that the communist aggression was, in fact, getting a lot more serious.**

55 **But it was actually President Diem that convinced me. The members of my cabinet and my advisors had conflicting stories that made me question their competence.** A meeting at the White House in September was indicative of the different appraisals of the situation. There, I received updated assessments after personal inspections on the ground by the Departments of Defence from
60 General Victor Krulak and the State Department from Joseph Mendenhall. Krulak said that the fight against the communists was progressing well, while Mendenhall stated that the country was lost to any U.S. influence, that we had no influence in South Vietnam at all. I asked if they went to the same country. I was unaware that both men were so much at odds that they didn't even talk on the return flight!
65 How could I trust the professional judgement of my men if they cannot reach a consensus?

I would like to make a point. I approved the use of herbicides, but only as a limited experiment requiring South Vietnamese participation and the mission-by-mission approval of the United States Embassy, the Military Assistance Command
70 Vietnam, and South Vietnam's government. **So, in other words, President Diem approved every single one of the missions.**

We also tested everything before we began the operation. A South Vietnamese Air Force H-34 helicopter equipped with a HIDAL spray system flew the first defoliation test mission in South Vietnam along a road north of Kontum on

75 August 10, 1961. This information came from President Diem himself. Exactly two weeks later, a VNAF C-47 flew the first fixed-wing spray mission. Both missions dispersed the herbicide Dinoxol. President Diem personally selected the target for the C-47 mission on Augst 24. He was deeply involved in Operation Ranch Hand since the testing phase.

80 The aims of the defoliation were to assist the G.V.N., to help with aerial surveillance over the entire frontier area, and to develop new techniques against the Viet Cong forces. It is worth noting that these proposals were written by me in a letter to President Diem and they were publicly accepted. After a few weeks of the first test, President Diem discussed the use of herbicides with a different type
85 of target in mind. He met with an American delegation with the Chief of MAGG, and some US military officials. He proposed that immediate efforts should be made to destroy communist crops before they could be harvested. President Diem stated that he had “heard of a powder” which could be used to destroy the rice, but that I would first have to authorize its use. **We thought he was proposing that we use
90 chemical weapons. Nevertheless, President Diem stated that he did not care what was used as long as the Viet Cong could be denied access to the crops in these remote areas. He was quite firm on his stance and pushed indeed for the active deployment of the crops.**

The programme involved the spraying of an estimated 20 million gallons
95 of powerful herbicides over rural South Vietnam to deprive Viet Cong insurgents aligned with the communist government in Hanoi of food and vegetation trail cover. To a lesser extent, areas of Cambodia and Laos were also sprayed. During the decade of spraying, more than 5 million acres of forest and 500,000 acres of crops were heavily damaged or destroyed. Some one-fifth of South Vietnam’s
100 forests were sprayed at least once — at up to 50 times the concentration that would be deployed for normal agricultural use. The U.S. Air Force flew nearly 20,000 spraying sorties from 1961 to 1971. I was tentative, Dean Rusk, the secretary of State, had told me on Nov. 24, 1961, that “[t]he use of defoliant does not violate any rule of international law concerning the conduct of chemical warfare and is
105 an accepted tactic of war. Precedent has been established by the British during the emergency in Malaya in their use of aircraft for destroying crops by chemical spraying.” So, I was convinced and approved the operation. **However, it must be made clear that President Diem was in every part of the process, from suggesting the program to testing it to operating it out.**

110 I swear or affirm the truthfulness of everything stated in this affidavit. Before giving this statement, I was told I should include everything that I know may be relevant to my testimony, and I followed those instructions. I know that I can and must update this affidavit if anything new occurs to me until the moment before opening statements begin in this case.

115 I am familiar for all exhibits in the case that pertain to my role and rank

as a military official and government official described in my affidavit. I am familiar with most inside documents of the American Military or government to a professional level and also familiar of all public records of agent orange that do not go into a professional level, I am familiar with all the responsibilities that a president should be and is able to carry out as well as such presidential documents. I purposely and willingly waive my presidential privilege for the possession and knowledge of documents that are bound to secrecy and national security procedures and can testify anything that the president of the United States has knowledge and access to.

All the information presented here is true and all documents that offer a difference in narrative can be explained using presidential privilege, yet can still be used as solid points of contention against me, in terms of legal disputes.

Signed:



Subscribed and sworn to me on this 23rd day of February 2021:



Joshua Zhang
Notary Public

AFFIDAVIT OF



PROSECUTION WITNESS AFFIDAVIT

CLASSIFIED INFORMATION
[REDACTED]



AFFIDAVIT OF NGÔ ĐÌNH DIỆM

DEFENCE WITNESS AFFIDAVIT

After being duly sworn upon oath, Ngo Dinh Diem hereby states as follows: I am over 18 and competent to make this affidavit. I have not been coerced and am testifying out of my own will.

1 **My name is Ngo Dinh Diem, the President of South Vietnam.** I was the
son of a high-ranking civil servant and educated in French-speaking schools. With
that education and my family background, I progressed rapidly in the court of
Emperor Bao Dai, becoming governor of Bing Thuan Province in 1929 and interior
5 minister in 1933. However, I quit my job as interior minister after three months and
publicly denounced the emperor as he was obviously a tool of the French regime.
And being a man who has always disliked imperialism, I took action. In 1945, I
was captured by the forces of the communist leader Ho Chi Minh, who invited me
to join his independent government in the newly declared Democratic Republic of
10 Vietnam (North Vietnam), hoping that my presence would win Catholic support. I
rejected the proposal, however, and went into self-imposed exile, living abroad for
most of the next decade.

 When I returned home in July 1954 and was appointed prime minister by
Bao Dai, the head of the Western-backed State of Vietnam. **As prime minister,**
15 **I did some great things. For example, the Geneva accords were signed soon**
after I took office, formally partitioning Vietnam along the 17th parallel. Due
to my support of Vietnamese nationalism and anti-communist views, several
western liberal democracies, especially the United States, provided South
Vietnam with support, aid, and recognition, benefitting our side of the war
20 **greatly.**

 In my youth, my father, a senior civil servant, frequently read to me his
idea of a bedtime story: The Prince by Nicola Machiavelli. The infamous quote
in it, “the ends justify the means” has influenced me ever since childhood. In the
atmosphere of high academic pressure my father cultivated, there was no time to
25 relax; the only entertainment available to a young boy like me was smuggled, black
and white American magazines. They introduced me to a magnificent and complex
world and I was drawn to it. **Everyone around me knew that I loved America**
and the great ideals it represented. These liberal, democratic ideals influenced
me greatly during my rise to power.

30 **So, when the Vietnam war began, my anti-communist stance and my**
position as the direct opposition to the North Vietnamese government made
me a desirable ally for the Americans to have. I was invited to meet with chief
of staff Lyman Lemnitzer. I flew to Washington D.C, to affirm the peace and

35 **partnership of our two states. While there, I was astounded by the glamour**
and prosperity of America; I thought that this was a country that knew what
it was doing. We came to a verbal agreement that the US would support
South Vietnam militarily against the North and with infrastructure and socio-
economically. He confided to me that this has been approved by the president,
40 **John F. Kennedy. No one else was in the room where it happened and the**
treaty was signed in secrecy and without oversight.

There was no one that hated the North Vietnamese communists more than I did. The Americans only started to contain communism after World War Two. I, however, have held these anti-communist ideals for way longer. However, I am not a man of violence. **Yes, I wanted to win the Vietnam war, but the use of agent**
45 **orange and how the United States military deployed such weapons was beyond**
my imagination and conception of how warfare should be conducted.

The biggest help came through the Military Assistance Advisory Group (MAAG). The group's influence increased in my country over time. **Before**
50 **the war, American advisors were not put in high-ranking positions and I was**
reluctant to allow American advisors into Vietnamese tactical units as I was
afraid that the United States would gain control or influence over my forces. My position, however, was started to shift in 1960, when the number of official US military advisors in the country was increased from 327 to 685 at the request of the South Vietnamese government. By then, communist guérillas were becoming
55 stronger and more active. **At this point, I was also under pressure from US**
authorities to liberalize my government and implement reforms. MAAG Vietnam played a significant role in advocating for a greater US presence in the country. **Throughout this period relations between the MAAG Vietnam and I**
were described as “excellent” by the media.

60 Initially, the MAAG did not provide much military support. However, when President Kennedy was elected things started to change. He agreed with MAAG Vietnam's calls for Army of the Republic of Vietnam (ARVN) personnel increases and greater U.S. military involvement. In response, he provided \$28.4 million in funding for the ARVN and overall military aid increased from \$50 million per year
65 to \$144 million in 1961.

As the war intensified, the alliance between South Vietnam and America strengthened. The US government, as promised, equipped our soldiers and sent their own troops to help, mostly through MAAG. However, the other part of my agreement with Lyman regarding the social-economic development of South
70 Vietnam seemed to be neglected in a state of war. There were attempts by the US to assist us economically but they were token gestures. Nonetheless, America quickly brought South Vietnam into her sphere of influence.

I had several meetings with other US cabinet and MAAG officials and my stance did not change: I was all for this military intervention. With the

75 American help, defeating North Vietnam and uniting Vietnam would have been easier. I hardly see accepting help to bring peace to Vietnam constitutes a crime. Is it unjust to try to reunite a country? To reunite families and friends?

The US sent ships, planes, and armored vehicles, and set up military bases and outposts, shifting power dynamic in the region to America and establishing it
80 as the hegemon. Frankly, this was one of my worst fears. However, I did not realize this until it was too late. By then, hundreds of thousands of American troops were already in the country and my power as president was diminished significantly. I had to convince myself to think differently. I taught myself to believe that America's motives were clear: to quickly defeat North Vietnam. Their agenda was
85 to combat communism and I had a long life in front of me to enact my plans for Vietnam. I thought that once the war was over, not only will we have established a great relationship with the US, but we will also have united Vietnam.

I did feel weak sometimes: I was a president with no authority or power to control anything. Military orders were given by Americans.

90 One of the major problems of the war was the geography of Vietnam. Long stretches dense vegetation gave North Vietnamese soldiers a safe haven for guerrilla warfare and secret ambushes. We were taking heavy casualties and I was deeply disturbed by this. Seeing the serious nature of the problem, I flew to Washington to meet senior military officials, amongst then Lyman, officers of
95 MAAG, and President Kennedy. I asked for assistance and described the situation to them. The men in the room started mumbling to each other. Agent Orange was mentioned and the US officials referred to it with a certain degree of reservation. Of course, I did not know who Agent Orange was. However, they asked me to leave the room for a while. The "while" stretched into hours waiting in their
100 luxurious suite for foreign guests. I didn't mind waiting but I was quite confused. I was invited back in again, late at night, after my fifth cup of coffee. This time I was addressed directly by President Kennedy. They talked about a herbicide called Agent Orange and how it could remove the offending vegetation. They said that Agent Orange was indeed dangerous but would be effective in removing
105 vegetation, helping us win the war faster. **I, of course, stated my reservations and concerns towards the program. The Americans were simply guests in our country: after they won the war and left, I was the one that needed to maintain the ecosystem and well-being of Vietnam.** I asked what the impacts of Agent Orange would be long-term and whether it would cause detrimental effects to the
110 population. They did give an answer but it was vague and ambiguous. However, I wasn't given much choice. **Lyman told me that planes will be provided to the South Vietnamese air force to conduct the herbicidal warfare operation.** He assured me that the side effects would be mitigated to the best of the United States' ability. I had to believe him, what other choice did I have? The chemical
115 weapon was already ready to go and the United States really was not asking for an opinion. Military power has always been the ultimate factor of control. At that

time the United States was simply informing me of this decision and I did not have any leverage to bargain against it. To speak out and oppose such a plan that clearly could have won the war faster could possibly sever the alliance between us and the
120 United States. That was not something I wanted to see. If I went with the plan, I hoped that the war would be over sooner. I was aware that there was debate within the US government but that was none of my concern. **The decision of the US government was final. I had no idea of the inside conversations or the internal concerns of the US government as that is out of the scope of my knowledge.**
125 **However, President Kennedy approved the operation and all I had to do was to help carry it out.**

I saw President Kennedy issue the order for the US military to deploy agent orange. But frankly, I could absolutely do nothing about it. Furthermore, from all the information I was privy to, Agent Orange seemed like a valid solution to stop
130 our ever-rising casualty count. Admittedly, I was the one who sought assistance from the United States in battling the North Vietnamese. Now, I realize that it was a mistake. **I did not understand the full extent of the destruction that Agent Orange would bring to Vietnam. I regret my decision to ask for help but I did not directly order the use the use of Agent Orange.**

135 **I am aware of the damage that Agent Orange has caused my country and my people. I have seen the statistics of the destruction. However, I am simply not the one to blame as I couldn't stop it even if I wanted to.**

I swear or affirm the truthfulness of everything stated in this affidavit. Before giving this statement, I was told I should include everything that I know may be
140 relevant to my testimony, and I followed those instructions. I know that I can and must update this affidavit if anything new occurs to me until the moment before opening statements begin in this case.

I am familiar for all exhibits in the case that pertain to my role as the South Vietnamese president. However, I am not familiar with classified documents of
145 the United States military and government but I am familiar of all public records pertaining to the use Agent Orange.

Signed:



Subscribed and sworn to me on this 1st day of February 2021:

Joshua Zhang
Notary Public

AFFIDAVIT OF LYMAN LEMNITZER

DEFENCE WITNESS AFFIDAVIT

After being duly sworn upon oath, Lyman Lemnitzer hereby states as follows: I am over 18 and competent to make this affidavit. I am testifying voluntarily and was not subpoenaed or compelled to testify.

1 My full name is Lyman Louis Lemnitzer, U.S. Army general, commander of the United Nations forces in the Korean War between 1955–57, Chairman of the Joint Chiefs of Staff between 1960–62, and Supreme Allied Commander in Europe between 1963–69. **Needless to say, I am one of the highest-ranking officials in the US military.**

5 I was born in Honesdale, Pennsylvania, on 29th August, 1899. Graduating from West Point in 1920, I rose up the ranks. I was promoted to brigadier general in June 1942 and assigned to General Eisenhower’s staff shortly thereafter. After helping form the plans for the invasions of North Africa and Sicily, I was promoted to major general in November 1944. In 1950, I took parachute training
10 and was subsequently placed in command of the 11th Airborne Division. Then, I was assigned to Korea in command of the 7th Infantry Division in November 1951 and was promoted to lieutenant general in August 1952. After that, I was promoted to the rank of general and named commander of U.S. Army forces in the Far East and of the Eighth Army in March 1955. I was named Chief of Staff of the Army
15 in July 1957 and appointed Chairman of the Joint Chiefs of Staff in September 1960. As Chairman, I weathered the Bay of Pigs crisis and the early years of our involvement in Vietnam.

**I have considerable experience in the fighting of wars and Vietnam was one of the many conflicts that I was directly involved in. I was directly
20 affiliated with the deployment in the plan of deployment of the chemical weapon that is now known as Agent Orange. I believe I am qualified to testify here today about the truth of what has happened.**

I must also say that I consider the defendant, Ngo Dinh Diem, a friend. His charisma has fascinated me and we have become acquainted throughout the years.
25 However, this will not affect my professional opinion on the case and prevent me from recounting the events as they happened.

Men in positions of power, such as I, always have detractors. In my case, my detractor was President Kennedy. Because I was appointed by President Eisenhower to be the Chairman of the Joint Chiefs and had served in the army
30 for many years, people had great respect for me. **Despite my prestige, President Kennedy chose to publicly voice his dislike of me.**

One of the first major events in the Kennedy presidency, back in 1961, was the Bay of Pigs operation. The failure of the operation caused him to question my judgment as I was in charge of the operation. During the operation, a brigade of anti-communist exiles, trained and directed by our Central Intelligence Agency (CIA), landed in Cuba at the Bay of Pigs but was quickly overwhelmed by Cuban Premier Fidel Castro's forces. President Kennedy believed that I had failed to review the CIA's plan thoroughly and express their own reservations forthrightly. The President directed that, henceforth, the Joint Chiefs must be "more than military men" and supply "dynamic and imaginative leadership" in Cold War operations. I was, of course, utterly insulted by his comments. How dare he question my professionalism? I am a veteran and I do not deserve better than to have my good name besmirched in such a backhanded manner. I considered the President's criticisms unfair. The Chiefs, I maintained, had never given the plan their "approval"; they simply had rendered an "appraisal" that, given surprise and air supremacy, the brigade could establish itself ashore. Yet, without consulting me, President Kennedy had changed the landing site and cancelled a strike by the exiles' aircraft. **Nevertheless, this military setback early in the Kennedy presidency damaged my relationship with the president. However, that does not preclude me from providing a fair account of the circumstances around Agent Orange's use as I still had a duty to our commander in chief and because I was heavily involved in decision's regarding Agent Orange.**

To elaborate on my experiences in South East Asia, my plans there saw much more success. Friendly regimes in Southeast Asia were foundering. By late April in 1961 in Laos, the communist Pathet Lao had advanced so rapidly that US-backed forces there seemed about to disintegrate. **I urged intervention by Southeast Asia Treaty Organization forces, not by the United States alone. I also favoured a deployment of US combat forces to bolster the government of South Vietnam, which was struggling with a growing communist insurgency.** President Kennedy decided against military intervention in Laos and, instead of deploying combat forces to South Vietnam, gradually increased the number of American advisors there. I found his lack of deference to my advice frequently frustrating. However, in the case of Agent Orange, we reached a consensus: we agreed that we needed a stronger approach, involving the use of hard power, to liberate South East Asia and back up the anti-communist ideals that we were spreading.

Let me begin by stating that there was much debate regarding Agent Orange's use in Vietnam. **I believe I was in the majority which pushed for the usage of Agent Orange.**

For some of us in the war cabinet, President Diem's request for help was the first they heard about the thick vegetation that killed so many South Vietnamese soldiers. President Diem's request launched a debate in the White House, State Department and Department of Defence. On one side, there were those who viewed

75 herbicides as an economical means of stripping the Viet Cong-infested jungle of
cover and food. Others doubted the effectiveness of such a tactic and worried that
such operations would both alienate friendly Vietnamese and expose the United
States to accusations of engaging in chemical warfare. Both sides had valid
points; but **it was under my advice did President Kennedy decide to aid the
South Vietnamese in the defoliation process.** Let me explain the rationale of our
80 decision.

I knew that the deployment of Agent Orange was inevitable because, as the
Chair of the Joint Chiefs, I had access to privileged information and judged that
there was no alternative than using that ungodly herbicide to flush out the Viet
Cong.

85 As Chairman of the Joint Chiefs, I had the responsibility to advise the
President how to best further the security of the US and her allies. I have taken an
oath to that effect and all my actions and decisions were in keeping with that oath
to serve and protect.

90 I know what war is like: I am a military man. Our military aid to the South
Vietnamese was for the purpose of stopping suffering, not causing it.

I am not saying that what we did is right, but I believe it was the lesser
of two evils. President Diem and our MAAG advisors sent telegrams to the war
cabinet describing how the North Vietnamese soldiers kept fighting: President
Diem described the North Vietnamese aggression as vicious and unrelenting. **Of
95 course, we were not there to witness these horrors personally but, seeing he
was an ally of ours, we took him at his word. In the face of such horrors and
deaths on both sides, the use of Agent Orange to help us end the war was the
only choice: it was a military necessity.**

100 Furthermore, the use of Agent Orange was not without precedent. Britain
has a history of using herbicides to deal with conflicts in South East Asia as well.
In the 1950s, the British, under the command of Sir Harold Briggs, started looking
into the use of herbicides to remove the foliage communist insurgents hid in.
Previously, the job had been done by manual labourers trimming it three times
a year. Herbicides were supposed to cut the labour costs. On recommendation
105 by Imperial Chemical Industries (ICI), they decided to use Trioxone as well as
another herbicide called sodium trichloroacetate (STCA). These were mixed with
water and sprayed along roadsides using a convoy of modified fire trucks.

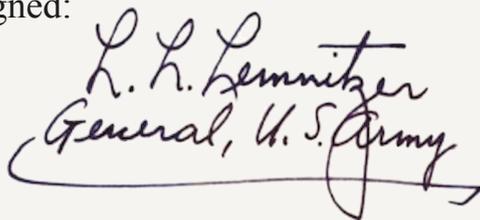
**We never heard of any concomitant issues in Malaya stemming from
the use of herbicides: there were no evident side effects. We used a lot of the
110 strategies the British used into Vietnam.** Back then, Trioxone was seen as just
a new herbicide and not much else, having been used for non-combat purposes in
the US and the UK. In fact, Trioxone was so uncontroversial, it was suggested as
a cover story to hide the British's plans to use tear gas, which was more likely to
get them in trouble instead of Trioxone, against the communist insurgents. I was

115 acquainted with the High Commissioner of Malaya, Gerald Templer at the time.
And this is what he told me and everyone else who was willing to listen: "...only
adapted to the circumstances, namely that another chemical preparation is being
tested for use against jungle cultivation... it gains plausibility since I am spraying
jungle crops with trioxone." Clearly, he didn't think Trioxone was much of a threat
120 and therefore used it to cover up chemical warfare. **Seeing how Agent Orange had
many similarities in terms of chemical toxicity and composition and that the
British had reported no side-effects in Malaya, we knew that Agent Orange
was safe to use.**

I swear or affirm the truthfulness of everything stated in this affidavit. Before
125 giving this statement, I was told I should include everything that I know may be
relevant to my testimony, and I followed those instructions. I know that I can and
must update this affidavit if anything new occurs to me until the moment before
opening statements begin in this case.

I am familiar for all exhibits in the case that pertain to my role and rank
130 as a military official and government official described in my affidavit. I am
familiar with most inside documents of the American Military or government to
a professional level and also familiar of all public records of agent orange that do
not go into a professional level, I am familiar with most documents of the British
Operations in Malaya that are open to the public and can testify upon most military
135 operations within my experiences as aforementioned.

Signed:



Subscribed and sworn to me on this 8th day of August 2021:

Joshua Zhang
Notary Public



AFFIDAVIT OF



DEFENCE WITNESS AFFIDAVIT

CLASSIFIED INFORMATION
[REDACTED]

