

1 at close range by people whom they couldn't see. We
2 had aircraft overhead who simply could not see the
3 trails below them, so we had a lot of forces, and
4 yet they were terribly vulnerable to just a few
5 people hidden in the jungle growth.

6 In that situation, the overriding
7 interest was to see whether or not the science and
8 technology that was available could be applied to
9 get rid of some of this cover. Now, that seems to
10 me like a very rational and reasonable action, even
11 in retrospect.

12 The use of herbicides is something that
13 had been used in this country by farmers for decades,
14 something with which we had a lot of experience, and
15 it seemed like a natural approach.

16 I had flown over Vietnam during those
17 years once or twice a year in regions below the DMZ,
18 and I remember seeing places where there was some
19 evidence that the defoliation effort was working,
20 particularly in the areas of the trails, but it
21 still was a terribly small area, a terribly small
22 fraction of the whole area, so my recollection is
23 that it was very selectively used and that it
24 probably saved a lot of our lives.

25 Now, in spite of the fact that we were

1 overwhelmingly convinced we were doing the right
2 thing to save lives, there were a few people in the
3 U. S. community, scientific community, who were
4 concerned about these long term effects, and under
5 the pressure of the war in Vietnam, I do recall that
6 we did what I felt was a very open-handed, even
7 approach to dealing with this matter. Now, it may
8 be that in another decade or two, someone will on
9 further research find out additional things, things
10 in addition to what we knew at that time, but at
11 that time I'm absolutely convinced we were doing the
12 right thing.

13 Q. Are you finished, Dr. Foster?

14 A. Yes.

15 MR. DEAN: Move that that portion of the
16 answer that is not responsive be stricken.

17 Q. Doctor, you indicated to us that
18 herbicides were something with which we had a lot of
19 experience.

20 MR. DEAN: Off the record.

21 (Discussion off the record.)

22 Q. Could you tell us whether or not your
23 department and those under you and those with whom
24 you conversed had any experience, prior experience
25 with the herbicide Agent Orange?

1 MS. MINTZER: Objection.

2 SPECIAL MASTER SCHREIBER: You may answer
3 if you recall.

4 A. I can't answer that because I perused this, I
5 have not read it.

6 MR. O'BRIEN: Thank you sir, I have no
7 further questions.

8 SPECIAL MASTER SCHREIBER: Mr. Matthews,
9 will you begin your cross-examination? Off the
10 record.

11 (Discussion off the record.)

12 (Short recess.)

13 SPECIAL MASTER SCHREIBER: We'll begin
14 the cross-examination now. Mr. Matthews will start
15 the examination.

16 CROSS-EXAMINATION

17 BY MR. MATTHEWS:

18 Q. General Westmoreland, did you consider
19 the Defoliation Program to be a weapon of war?

20 MR. O'BRIEN: Note my objection to the
21 question.

22 SPECIAL MASTER SCHREIBER: All right.
23 You may answer it, General.

24 A. I may answer it?

25 SPECIAL MASTER SCHREIBER: Yes, please.

1 A. It certainly was a battlefield weapon, which
2 was compatible with a rather unique battle
3 environment.

4 Q. Did you consider it an effective
5 battlefield weapon?

6 A. Well, yes.

7 MR. O'BRIEN: Note my objection to the
8 question, again.

9 A. You object?

10 SPECIAL MASTER SCHREIBER: You may answer.
11 General, if the objection is made and if I don't
12 stop you, you just -- you can go right ahead and
13 answer it. They're just posting the record for
14 subsequent --

15 A. Effective, I thought it was an effective weapon.

16 Q. Was the defoliation generally done in
17 areas remote from population centers?

18 A. Yes.

19 Q. And would this be true during the entire
20 period of time that you were the Commanding General
21 in Vietnam?

22 MR. O'BRIEN: Note my objection. Unless
23 the General can state that he was aware of every
24 single operation, I object to the question.

25 SPECIAL MASTER SCHREIBER: Counsel is

1 A. There was -- I did not get involved in the
2 details. I was aware of -- there was one called
3 Purple and one called Orange and that is my only
4 recollection.

5 Q. Do you know if there were any others used?

6 A. Not that I'm aware of, but this is not a
7 precise answer.

8 Q. General, you've indicated that you would
9 not be aware of the details of that type of
10 information. Were there others on your staff who
11 would have been aware of the details, those types of
12 details?

13 A. Well, I had chemical officers who were
14 commissioned in the Army Chemical Corps on my staff,
15 who were the ones that normally dealt with that,
16 along with the Air Force, who were, basically, the
17 delivery service.

18 But if I could elaborate, this was a
19 standard munition that was issued to us. It's like
20 a 105 shell or an M-16 rifle bullet and it was in
21 the stockpile and we felt it was appropriate to use
22 it in order to accomplish our military mission.

23 Q. Were you at any time, either prior to
24 your service as the Commander-in-Chief of the U.S.
25 forces in Vietnam or during that time involved in

1 MR. SABETTA: I just have a couple.

2 CROSS-EXAMINATION BY MR. SABETTA:

3 Q. Dr. Kissinger, at the time the decision
4 was made and announced to terminate the use of
5 herbicides in Vietnam, or in the process by which
6 that determination was made, did the White House, or
7 your office, receive any stated opposition from any
8 of the members of the United States Military to the
9 termination of the use of herbicides?

10 MR. DEAN: Object to form.

11 SPECIAL MASTER SCHREIBER: You may answer.

12 A. Yes. My recollection is that the Military
13 objected to it.

14 Q. On what grounds?

15 A. They seemed to think that it would make the
16 defense of the perimeters of their camps, more
17 difficult, and they were particularly -- they were
18 particularly concerned that they retain the right to
19 use, to continue to have that right to use
20 herbicides in the area around their camps.

21 Q. Which Military figures expressed such
22 views?

23 A. I can't identify the individuals, but I
24 associate it with the Joint Chiefs of Staff, and
25 probably the -- and almost certainly the Saigon

1 Command.

2 Q. Was that opposition on the part of the
3 Military scrutinized by your office in the
4 determination to recommend to the President the
5 termination of the use of herbicides. Was it
6 weighed and evaluated?

7 A. It was weighed, yes.

8 Q. Did your office conclude -- did your
9 office conclude in the course of this assessment
10 that there was, indeed, a very substantial military
11 benefit that had been and was being derived from the
12 use of herbicides in Vietnam?

13 MR. O'BRIEN: Objection.

14 MR. DEAN: Object to the form.

15 A. We -- the Military certainly felt strongly
16 about the fact that there was a military benefit.
17 We had to weigh it against the overall foreign and
18 domestic policy we were considering, and so we
19 decided to overrule the Military without necessarily
20 questioning their military judgment.

21 Q. You say without necessarily questioning.
22 Do you recall whether your office, in fact, acceded
23 to or agreed with the Military's assessment of the
24 military benefit that was being derived from the use
25 of the product?

1 A. Yes, it refreshes my memory on some of the
2 discussions that we had at that time concerning
3 restrictions on the use of herbicides.

4 Q. Specifically, when you say it refreshes
5 your recollection, we're referring to -- are you
6 referring, sir, to Westmoreland Exhibits 10 and 12,
7 sir, and 13?

8 A. Let's see, I've gotten, 12 --

9 SPECIAL MASTER SCHREIBER: 13 was the one
10 that has just been marked -- it's the last one I
11 gave you.

12 MR. O'BRIEN: 14 May 1970?

13 SPECIAL MASTER SCHREIBER: In the upper
14 right-hand corner there should be a stamp.

15 A. I've got 10 and 12 and 13. All right. Now, 10
16 is Subject: Policy Regarding Use of Herbicides in
17 Vietnam and this is 18 December, 1970, memorandum
18 from the Secretary of Defense signed by the Chairman
19 of the Joint Chiefs of Staff and number 12 is dated
20 21 --

21 MR. O'BRIEN: Looks like December.

22 A. -- I guess that's December, 1970, Subject:
23 Herbicide Use in Vietnam, to the Secretary of
24 Defense signed by T. H. Moorer, Joint Chiefs of
25 Staff, and number 13, also memorandum to the

1 Secretary of Defense, Use of Herbicides in Vietnam
2 dated 14 May 1970, again, signed by General Moorer.
3 So I have noted those.

4 Q. And do those documents, sir, reflect the
5 views of the Joint Chiefs of Staff on the
6 Defoliation Program?

7 MR. O'BRIEN: I object to the form of the
8 question, unless counsel -- I'll stipulate or have
9 all three go into evidence and--

10 SPECIAL MASTER SCHREIBER: I'm sure all
11 are going into evidence. I don't think either side
12 is going to object. Am I correct in that? Is
13 anyone on the Defendants' side going to object to
14 these documents going into evidence? Hearing no
15 objection, and I assume Mr. O'Brien, you're not
16 going to object, either.

17 MR. O'BRIEN: No, sir, I'll offer them
18 right now.

19 SPECIAL MASTER SCHREIBER: No, no, you
20 don't have to offer them right now. They're going
21 to go into evidence. You've asked the witness
22 whether these documents have refreshed his
23 recollection. He's indicated yes, so I think you
24 ought to ask him, if you wish to, what is his
25 recollection, now that it's been refreshed, as to

1 what the Joint Chiefs of Staffs' position was.

2 BY MR. MATTHEWS:

3 Q. General, sir, what was the position of
4 the Joint Chiefs of Staff on the decision to curtail
5 the Defoliation Program?

6 A. As reflected in those three documents.

7 Q. And did you concur in that position, sir?

8 A. I did.

9 Q. Was that position arrived at solely by
10 the members of the Joint Chiefs of Staff?

11 A. It was, I assume, one of the many many items
12 that we had on the agenda when we met usually twice
13 a week, so I must assume it was an agenda item and
14 if a member of the Joint Chiefs of Staff had
15 dissented, it would have been so indicated.

16 Q. In arriving at the positions or the
17 position as set forth in these memorandums, did the
18 Joint Chiefs of Staff have input from the members of
19 their staffs?

20 A. They did, and they also had the benefit of the
21 Commander, American Commander in Vietnam, General
22 Abrams.

23 Q. General Westmoreland, I would ask you, if
24 you would, sir, I would like to direct your
25 attention to what has been marked as Westmoreland