

Busby Opens for Battersby and Smith

Royal Courts of Justice London

Court 25

Opening submissions by DR BUSBY on 13th June 2016

DR BUSBY:

I propose to open by just giving a brief account of what our case is and a short history of how we came here. I will try not to be very long. There is going to be some record of this so I would like to see this in the record. That's why I'm doing this.

I've been an expert in these cases since 2004 in the UK and more recently in Australia. All the appeals I was expert witness in were successful. Then I was "locked out" following the Upper Tier hearing and the representations of the Ministry of Defence and the Secretary of State and the cases in which I was not an expert witness mostly failed. But one thing the Upper Tier judge did was allow the appeal and remit the cases to this Tribunal and here I'm the representative of two of the veterans, one each from Australia and from Christmas Island.

Now all of my expert evidence when I was an expert was based on the proofs that were successfully argued in six cases plus two in Australia that the current radiation risk model of the International Commission on Radiological Protection is unsafe when applied to the kind of exposures that occurred at the nuclear test sites, principally internal exposures to elements uranium and tritium, neither of which we're told by the Ministry of Defence they measured and indeed probably quite difficult to measure them for various technical reasons.

But throughout the current appeal, and also up until the current appeal the Ministry of Defence continually and consistently withheld evidence, denied its existence and when it was demonstrated to exist outlawed it with spurious claims about secrecy. Myself and my colleagues have been threatened with the Official Secrets Act and it has been extremely difficult to conduct and very stressful to continue with these appeals over such a long period of time, and indeed the stresses are so great that I think probably they did contribute to my friend Andrew Ades' heart attack. And I myself have recently developed diabetes and so I have an apple here, and so if it does come to it you may see me grab an apple and start to eat it in some sort of desperate way.

MR JUSTICE BLAKE: I hope not desperate.

DR BUSBY: Yes.

The appeal to the Upper Tier succeeded but I was excluded as an expert and now I'm back here as a representative. It seems to me that as a result of that, and particularly the recent ruling which your Lordship has made [*excluding all scientific peer review papers with Busby's name as even a part author*] certain facts are going to have to be excluded from -- what I would call facts and what are facts are going to be excluded from consideration by this Tribunal.

Now, our appellants, Mr Battersby and Mr Smith, are dead. They both died from a rare cancer, pancreatic cancer, which two other veterans, Mr Williams and recently Mr Butler both died from. The Tribunal may ask whether this extraordinarily improbable event, four

vets dying from the same cancer, itself may prove that they shared a common event, a common cause, and there's only one thing that they shared and that was the exposure to radioactive particulates at the test site.

Now they were young men. They were not asked to go, they were sent; they could not refuse. But when they fell ill, the Ministry of Defence abandoned them. Worse, it denied what science has now shown clearly to be the case, that these low doses of internal particles of uranium and other radioactive substances caused massive genetic damage which shows itself as congenital malformations in their children and cancer and other diseases in them. Our experts have shown this and will present this evidence in the witness box.

You may ask why we four old men, and one of us now in hospital, are bothering to engage in this extraordinarily stressful and unpaid process, and the answer is because the case goes beyond the appellants Battersby and Smith, it goes to an extraordinarily important issue relating to public health. This is why, I guess, it will be argued that the experts that we have called may be considered to be part of some sort of crazy cabal of individuals who are drawing attention to this public health issue, a public health issue which goes far beyond the test veterans themselves and the appellants in this case. It goes to the fact that we are all of us test veterans, all of us. These tests caused atmospheric contamination in the northern hemisphere and led to increases in cancer and congenital malformation in global populations and this is evidence that will be given by the witnesses which we have called.

We were going to call the ex-Minister of the Environment, Mr Michael Meacher, who unfortunately died before we could arrange to call him. Mr Meacher was made aware of this problem in 2001, and he brought into existence a committee to examine this issue, an oppositional committee. That is to say rather than considering, like in the case of the Ikarian Reefer, [*the case law that was used to keep Busby out as an expert*] and in the court, that people might be biased, scientists might be biased, he accepted that scientists were biased, that all scientists are biased, all experts are biased by their interpretation of the facts, and also I have to say by their employment or by their culture.

And in America, where I do a lot of expert witness work, or have done in the past, it's generally accepted that each side in any case brings their own expert witnesses and those expert witnesses interpret the facts differently and the whole thing is argued out in a sort of oppositional sense. Mr Meacher recognised this and he set up the Committee Examining Radiation Risk from Internal Emitters as an oppositional committee. The intention was to provide, if you like, grounds where everybody agreed on issues that were agreed but also then wrote separate reports or discussed the issues that were not agreed so that some research effort might be aimed at determining who was right. Unfortunately that committee failed, and Mr Meacher is not here to tell us about how it failed but we do have a member of the committee, Mr Bramhall, that I have asked to give evidence and will be giving evidence next to discuss this issue.

So we will be basing our case on the following points and then I will leave it at that. The radiation risk model of the ICRP, as I have said, the current radiation risk model on which all the pension appeals refusals have been based, is unsafe for the purposes of assessing harm from internal exposure to certain fission products and residual radioactive products during the weapons tests. And of course Mr Hallard and Mr Haylock, who are giving evidence for the Secretary of State, have not addressed this issue at all, and indeed the Secretary of State has not addressed our arguments in our Statement of Case despite having

been Directed by your Lordship so to do.

So we have no response from the Secretary of State on these extraordinarily important and key issues. We have said that this risk model is unsafe. The Secretary of State has called Mr Hallard to just account for the doses on the basis of the conventional risk model and so he has come up with some numbers which following some questions he had to change into different numbers, but at no point did any question get responded to regarding whether or not those numbers were meaningful at all in terms of the health effects of the radiation of the exposures that these servicemen had suffered. In particular, these problems applied to the element uranium which was main component of all the tests in terms of mass. The Grapple Y bomb dispersed 3 tonnes of uranium nanoparticles over Christmas Island and the sea nearby which of course brought the particles on shore as one of our experts will say. The residual radioactive material, tritium, which is another element which was not apparently measured, or at least the Secretary of State tells us there is no documentary evidence that they measured it, nevertheless it was in the drinking water at Christmas Island: this exposure cannot be quantified. New scientific research has shown that uranium has an unusual and serious capacity for genetic damage because it binds chemically to DNA and it amplifies natural background radiation effects as our witnesses Professor Howard and Professor Hooper will say.

Now, the effects of these genetic damages to the DNA would be to cause increases in cancer, and this is of course what these appeals are about, but also in the genetic effects in the offspring, and your Lordship did make a disclosure order to obtain data from the British nuclear test veterans' questionnaires from the University of Dundee, and although there wasn't a lot of time to do it we have analysed, or our experts have analysed these data and shown a tenfold excess of genetic damage in the offspring --

MR JUSTICE BLAKE: That's the Rabbett Roth questionnaires?

DR BUSBY: The Rabbett Roff questionnaires. That's right, my Lord.

And high levels of congenital malformations in children and grandchildren. Also in other scientific papers in the peer review literature which may or may not be in journals which your Lordship considers to be sufficiently important to believe.

Now in addition we see genetic damage in a sample of New Zealand veterans who have shown a significant excess of chromosome aberration damage which is an indicator of prior exposure of radiation.

So finally let me just conclude by returning to what I consider to be the most persuasive evidence and we will put this to Mr Haylock -- Dr Haylock, I'm afraid, I'm sorry -- Dr Haylock, who is a statistician and a mathematician, as I understand, and we will ask him what the probability is of four of the veterans, four of the appellants in this case all dying of pancreatic cancer given that the background rate of pancreatic cancer as a proportion of all cancers is about 2 per cent. I could anticipate his answer at least by saying that it's extremely small and it's certainly much smaller than the normal key value which is used in medical epidemiology to decide whether or not there is a case to answer with regard to the particular question that is being asked.

So basically that is an outline of where we are now. As I said before and finally: this is a very important case because since we are all exposed to these weapon fallouts in the '60s and in the milk.

We are all of us test veterans, everyone here.

Thank you for your patience, my Lord.