

# THE NATIONAL OBSERVER

Page 8

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## Environmental Defense Fund

### Lawyer Drags Conservation Causes Into Court

ISLIP, N.Y.

Victor J. Yannacone, Jr., hardly rated as the most promising '59 graduate of Brooklyn Law School. He skipped class incessantly, then graduated with "the lowest average of anyone in the history of the law school," he recalls. He joined his father in a law practice specializing in workmen's compensation cases.

Yet Vic Yannacone, 32, may have a major impact on the law and the nation's environment. As a no-fee avocation, he's hauling polluters into court. With a technique honed in several court tests over pesticide used here on Long Island and in Michigan, Mr. Yannacone this spring expects to file a broader suit in the Federal District Court in Manhattan. The suit, a simple page or two of complaint with documenting medical studies stapled to it, would seek to stop electric, petroleum, chemical, and other industries from pouring pollutants into the city air.

His argument: "Equity allows no wrong to be without a remedy," an old maxim of common law. His evidence: studies that he says show that air pollution contributes to 10,000 deaths yearly in New York City. His demand: an injunction directing the companies to sanitize their smoke or close down.

#### Wins Legal Delays

This direct approach has not yet won Mr. Yannacone and his Environmental Defense Fund, Inc. (EDF), any court victories or legal precedents. But it has won some legal delays, built some favorable public support, and fostered interest in the courts as a new forum for conservation causes.

Traditionally, conservationists have shunned the courts in favor of educational and lobbying programs. "I guess we were too conservative; we thought we shouldn't go into the courts for a program that is basically educational," says an official of the National Audubon Society. "Vic has gotten us to think in terms of legal action."

For example, the Audubon Society discussed with Mr. Yannacone various ways to fight an Army Corps of Engineers plan to divert fresh water from the Everglades National Park in Florida. Last year, as a consequence of the discussions, it filed suit to halt the diversion. The society says this was the first time it had taken a major cause to court. The suit is pending.

The Conservation Law Society, a San Francisco group representing the legal interests of several conservation organizations including the Sierra Club, admires EDF's success in using the courts to galvanize public opinion. But Robert W. Jasperson, general counsel of the society, calls EDF's implication that man has a Constitutional right to a pollution-free environment "just too farfetched."

EDF developed by accident. Workmen two years ago dumped DDT into a Long Island pond, killing its fish. The lake was near the childhood home of Mr. Yannacone's wife, Carol. "My wife badgered me to do something about it," Mr. Yannacone recalls, "so I drew up a suit to halt the use of DDT." Four days after he filed the suit



—Harold Brayman

Mr. Yannacone: 'I guess we're doing the same thing the NAACP did.'

against the Suffolk County Mosquito Control Commission, a local paper ran a letter disparaging DDT. The author was Charles F. Wurster, an assistant professor of biological sciences at the nearby Stony Brook campus of the State University of New York. Mr. Yannacone asked Mr. Wurster to testify in his case, which resulted in a temporary injunction against the use of DDT by the commission. The injunction is still in effect.

The two men began rounding up other experts, who began to get together to hash over broader problems of the environment. Explains Anthony S. Taormina, an official of the State Department of Conservation: "We are afraid for our survival and that of our children. If we, the experts who know more about this, don't do anything, who's going to do it?"

Another group of concerned citizens might have channeled their efforts into lobbying in the county. Mr. Yannacone advocated a legal approach for two reasons, speed and the nature of pollution evidence. It may take a few minutes to get a court injunction against a polluter; it may take years to win a legislative or administrative victory. Too, many pollutants leave no residue that can be proved harmful. "Maybe we can't prove a direct causal relationship in a pollution case, but we say

the circumstantial evidence is overwhelming, and the burden should be on the applicator to prove it's not harmful," Mr. Yannacone contends. "The court is the only place where circumstantial evidence is evaluated dispassionately."

Still small and brash, EDF moves fast. "We can put together a full-blown lawsuit in 24 hours," Mr. Yannacone boasts. It did so when it went into Michigan last fall. A supporter called to say the state's department of agriculture planned to spray from planes 5,600 pounds of the pesticide dieldrin to fight an infestation of Japanese beetles.

#### For 300 Beetles

Over the week end, EDF drew up a suit and filed it, winning a temporary injunction against the use of dieldrin until the case was settled. Testimony showed the "infestation" for which nearly three tons of dieldrin had been allocated was an estimated 300 beetles. Snapped Mr. Wurster: "That much dieldrin would have killed 10 to 80 times as many animals as beetles."

EDF eventually lost the Michigan case, but the controversy caused the state to replace its original plan with a modest one to hand-spray 320 pounds of dieldrin on 160 infested acres. Such results have encouraged EDF to expand into other environmental areas in search of a landmark case it can carry to the Supreme Court.

"We're ready to move out of pesticides; we're just waiting for money," says Mr. Yannacone. EDF remains very much an avocation. It has no paid staff, phone listing, or fees for attorneys or witnesses. Its bank account is \$2,500; its asset a mailing list of 150 scientists who promise to testify on cases involving their specialty.

EDF has applied for a Ford Foundation grant of \$175,000 to finance an office staff and expenses for five major lawsuits a year. If Ford rejects EDF, Mr. Yannacone expects to petition other foundations and individuals for support. If that fails, EDF will settle down to battling Long Island cases, holding off the New York City air-pollution case until it gains support somewhere.

Whatever route EDF takes now, it has left a mark. It has shown conservation groups a new route for their complaints, a route that could prove very effective in combination with the weight of scientific data concerning the harm of environmental pollution. Not a bad record for a man who came in last in his law class.