

Battling an Agent of Tragedy

It now seems probable that the crucial legal battles of the 1980s will deal not with race or civil rights or any of the other great social issues that gave shape to American thought in the past two decades but will address themselves instead to the environment and the extent to which we allow, or refuse to allow, ourselves and our children to be poisoned, deformed in any of a hundred tragic ways or, conceivably, exterminated.

Already, the concern of the American people toward the destruction of the environment through chemicals or radiation is well advanced, if poorly organized, but a new alarm is plainly spreading through the populace that promises to rearrange the priorities of American life in the decade ahead and direct the nation's energies toward finding ways of defending itself against nuclear fallout, herbicidal poisoning and other dangers of an advanced technology that few fully understand.

A dark shadow

The nuclear crisis at Three Mile Island is only the latest, though surely one of the most dramatic, demonstrations of the enormous failures we are capable of as we strive to cope with the vast uncertainties of the technological era we now occupy in history. But there are others. And though it may be years before we perceive the dimension, much less measure the consequences, of the Three Mile Island disaster, there is another putative environmental tragedy of considerably more immediacy that has already cast its dark shadow across the breadth of the land. It is the so-called Agent Orange case, named for a defoliant used by the American military during the Vietnam war and allegedly responsible for causing terminal cancers, other internal maladies and horrible genetic damage to thousands who were exposed to its toxicity. Litigation in the form of a massive class action suit against six chemical companies has now begun its journey through the courts, where it will almost certainly result years from now in one of the landmark decisions of American environmental law.

The principal lawyer and the man acknowledged to be the supreme strategist for the plaintiffs in the case is 43-year-old Victor John Yannacone Jr. of Patchogue. Environ-

mental law, though still something of a wilderness in American jurisprudence, is his patch of ground. He is one of its greatly respected frontiersmen. And though he diffidently refers to himself as a simple country lawyer, he is in fact one of the environmental giant-killers of the age, having been responsible more than a decade ago for the litigation that ended the use in this country of the pesticide DDT.

Now, in the case of Agent Orange, he is in a sense trying to reprise his old triumph. He was discussing the broad aspects of the case the other day, restating his conviction that the horrors of thalidomide pale in comparison to the



Victor John Yannacone Jr.

damage caused by Agent Orange during much of the fighting in Vietnam, and specifically by the ferociously virulent chemical toxin it contained known as TDCC, or dioxin. Between January, 1962, and February, 1971, the U.S. Air Force sprayed approximately 44 million pounds of Agent Orange containing 368 pounds of dioxin over roughly 2.9 million acres of South Vietnam in order to deprive enemy forces of food crops and forest cover. During roughly the same period, moreover, some 70 million pounds of a more powerful herbicide similar to Agent Orange was marketed in the United States to industries and various municipalities and used generally for weed and brush control.

Altogether then, as Yannacone calculates it, more than 12 million people—4.2 million servicemen in Vietnam and roughly 8 million civilians in the United States—were ex-

posed to the herbicides, and Yannacone is, literally and symbolically, the lawyer for all of them in what may be the largest class action suit ever filed in this country's federal courts. He first became involved as an attorney for the late Paul Reutershan, a young war veteran who was exposed to large doses of Agent Orange in Vietnam and who died last Dec. 14 of abdominal cancer at the age of 28. Reutershan's estate filed suit against the Dow Chemical Company, which manufactured the herbicide, and Yannacone later amended the suit into a class action and added five more manufacturers as defendants. As the number of both defendants and plaintiffs increased, other class action suits followed and there were 30 pending in various jurisdictions at this writing, most and perhaps all of them to be consolidated into a single case that could be argued in federal court in Westbury since at least 300 defendants are from Long Island. Because there are so many plaintiffs, so many differing categories of complaints and so many defendants, the suit will surely go on for years.

A lawyer's conscience

"I really didn't want to get into anything so big," Yannacone was saying the other day. "I studied it. I talked to other environmental lawyers. None of them wanted to touch it. And I'd had my big moments years ago, especially the DDT case. That was in the courts for three years. So I really didn't need this. I feel like a washed-out heavyweight who's asked to go out and do it one more time. And I will. But if you ask why I took it on I'd have to say it's more than a social conscience. I don't know, I seem to have a compulsion to do what must be done. When people come to me in my law practice with a problem I feel a duty to fix it for them. I'm trapped in this duty idea."

Yannacone's father was a practicing lawyer for many years in Patchogue, "and he taught me the high value of litigation," says the son. "He taught me that litigation is the essence of civilization, that it is civilization. It's the alternative to revolution. "The law," he says, "is our heritage, and we must provide ways to meet the demands of society, to ameliorate the human ills and try to leave the world a better place than we found it." ○

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Cover: Ken Spencer took this aerial photo of the runners in last year's Newsday Long Island Marathon on a road in Eisenhower Park.

By John Pascal