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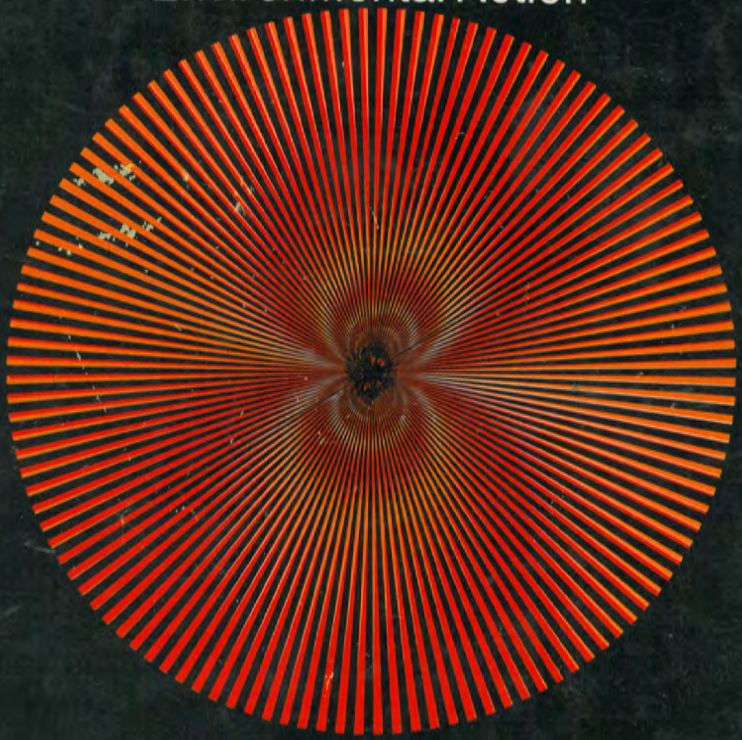
Earth Day— The Beginning

A Guide for Survival
Compiled and edited by the National Staff of Environmental Action



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Earth Day—The Beginning

A Guide for Survival

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Compiled and Edited by the National Staff of
Environmental Action

VICTOR J. YANNACONE

SUE THE BASTARDS

Michigan State University, East Lansing, Mich.
April 22

During the spring of 1968, the alumni of Yale Law School, who claim among their numbers half of the justices of the United States Supreme Court, 10 percent of the nation's law teachers, and any number of distinguished attorneys, held a reunion. The intellectual theme for that reunion weekend was "Law and the Urban Crisis."

Five prominent legal educators, deans at their respective law schools and distinguished urban legal scholars in their own right, were invited to address the alumni on this urgent question, but just as the proceedings were to begin, a group of black law students, together with members of New Haven's Black Coalition, entered the auditorium and began to address themselves to the all-white speakers platform and the all-white alumni audience:

"You just don't understand the problem at all," they said. "The problem is not 'Law AND the Urban Crisis;' law IS the urban crisis!"

And now when we look to the law for answers to many of our social and environmental problems, we do find that the law itself is the cause of many of those problems.

It is "the law" which zones the housing patterns which led to building too many highways for too many autos.

It is "the law" which expropriates public property for private profit.

It is "the law" which permits environmental degradation.

It is "the law" which asserts equal protection of that law for the corporate person—that fictional, bastard child of the law, endowed by the Supreme Court after the Civil War with all the God-given rights of a human being, but without soul to save or tail to kick.

It is "the law" which assures equal protection for the corporate person but denies it to the poor, the black, the Indian, the inarticulate, the politically weak or ineffective, women.

It is "the law" that forbids the public distribution of birth-control information in many states.

It is "the law" that denies women the freedom to determine the use to which their wombs will be put.

It is "the law" which created and maintains a tax system that encourages overpopulation and penalizes those who remain single or with few children.

Always it is "the law."

Most of our environmental problems stem from the misguided attempts of ecological Neanderthals to control the uncontrollable. Pesticide abuse is a classic example. Throughout the history of modern agricultural methods, agribusiness has ignored the potential value of integrated control techniques where specific chemical *bullets* are used to augment the armory of natural and biological insect controls. The indiscriminate use of broad-spectrum, long-presistent pesticides such as DDT, dieldrin, endrin, aldrin, toxaphene, and heptachlor have so altered the ecology of agricultural ecosystems that more resistant pest species have evolved and new species have become pests.

Utilizing our water resources for waste disposal is still another example. Oceans, and rivers, lakes, and streams, are just like any other sink—they have a finite capacity for waste, after which they back up. Moreover, they fight back as algae blooms quickly decay into sulfurous miasmas. Our atmosphere is not a limitless sink into which we can pour countless tons of noxious gases and poisonous particulates. The atmosphere too has a finite capacity for waste, and we are reaching that limit today.

Our high-speed air transportation system has begun to alter our weather patterns and climatological cycles. High-altitude clouds from commercial jet contrails have begun to reduce the amount of incident solar radiation received by green plants on the ground.

It ought to be obvious that man's apparent dominion over the environment is but a license from nature with the fee yet to be paid. We should have learned from the disastrous effect of radionuclide fallout that what we sow we must also reap, yet the fallout of lead and other heavy

metals, chlorinated hydrocarbons and other toxicants continues at an increasing rate. Mankind has ears, yet does not hear the warnings shouted from the environment all around him. More and more noise is tolerated, increasing the toxic environmental stresses already imposed on urban and ghetto dwellers throughout the nation. We now even have a new unit for the measure of noise, the Perceived Noise decibel—PNdb, and the noise standard makers have now decided that the noise level of a four-engine jet transport at takeoff, as heard from 1,500 feet away, is tolerable, and of course, any noise of less intensity is even more tolerable. We are proceeding to develop a supersonic commercial jet transport, even though it has already been demonstrated that continued random awakenings can produce transient psychoses.

There is a legend found in the folk history of most cultures about the young man who made a pact with death where death agreed to give three warnings before the end.

After many years, as the man lay dying, he demanded that death honor the bargain and give warning. Death told the man that the bargain had been kept, but that the man had ignored the warnings hidden in the miraculous recovery, the narrow escape, and the inexorable passage of time.

Mankind has been warned, and mankind has been given a rare choice among all those animals headed for extinction as a result of mankind's attempt to act as lord and master of the environment, rather than conservatively manage its limited natural resources. We can either drown in our own sewage, die buried under our own garbage, choke to death on unbreathable air, or be driven to homicide and suicide by the noise around us.

There are four conventional appeals to law for protection of environment: The first, and deceptively the simplest approach, is through the legislatures of the several states and the Congress of the United States. If this approach is successful, there will be, of course, no need for other than occasional interpretive litigation. The ways of the legislature, however, are slow and ponderous, and many of our national natural resource treasures are in immediate danger of serious, permanent and irreparable damage.

The Florissant fossil beds represent a classic example of legislative ineffectiveness in a crisis situation. At stake were

the unique and irreplaceable Florissant fossil beds, a 6000,-acre area thirty-five miles west of Colorado Springs, where seeds, leaves, insects, and plants from the Oligocene period 34 million years ago are remarkably preserved in paper-thin layers of shale. These fossils, studied by scientists from all over the world, are the richest of their kind anywhere on earth. A hundred and forty-four different plant species and more than 60,000 insect fossil specimens have already been found. The Florissant fossils are considered by many scientists to hold the key to determining the ultimate effects of air pollution on climate, since the air pollution from the volcanic activity that preserved the Florissant specimens was associated with a sharply cooling climate in Colorado.

Following a subcommittee hearing at Colorado Springs on May 29, 1969, the United States Senate unanimously passed a bill establishing the Florissant Fossil Beds National Monument. But while the Congress was deliberating, four land speculators purchased over half the land to be included within the national monument and announced that they intended to begin bulldozer excavation of roads to open the land for development immediately, unless the land was purchased by government or private groups.

The Defenders of Florissant, an ad hoc organization of scientists and citizens dedicated to protection of the fossil beds, finally turned to the courts, filing suit

> On behalf of all the people of this generation and those generations yet unborn who might be entitled to the full benefit, use and enjoyment of that unique national natural resource treasure, the Florissant fossil beds,

demanding a temporary restraining order prohibiting disturbance of the fossil shales by the speculators until such time as Congress had completed its deliberations.

On July 9, 1969, the United States District Court for Colorado held that no federal court could interfere with the absolute right of private property ownership and the only way to save the fossil beds would be to buy them, at whatever price the speculators demanded.

The Defenders of Florissant appealed to the United States Court of Appeals for the Tenth Circuit that same afternoon, but the court questioned its own power to grant a temporary restraining order and demanded to know what

law the speculators had violated. We had to concede that Congress in its infinite wisdom had never seen fit to pass a law protecting fossils, so the Court of Appeals then demanded to know what right they had to interfere with an individual's use of his own land so long as the use didn't violate any statute law.

All that was left to do was to point to a fossil palm leaf that had been discovered at Florissant and plead:

> The Florissant fossil beds are to geology, paleontology, paleobotany, palynology, and evolution what the Rosetta stone was to Egyptology. To sacrifice this 34-million-year-old geologic record, a record you might say written by the mighty hand of God, for thirty-year mortgages and the basements for the A frame ghettos of the seventies is like wrapping fish with the Dead Sea Scrolls.

In a precedent setting ruling, the Court of Appeals restrained the speculators from disturbing the fossil beds, but the temporary restraining order terminated on July 29, 1969, and on that day the District Court heard testimony and argument for a preliminary injunction.

Meanwhile, Congress had cleared the bill through a subcommittee of the Committee of Interior and Insular Affairs and now the bill was pending before the entire committee prior to release to the House floor for action. Nevertheless the District Court again held that there is nothing in the Constitution to prevent a landowner from making whatever use of his property he chooses, and if the fossils were to be saved they had to be purchased at the speculators' price.

Again it was necessary to appeal to the Tenth Circuit Court of Appeals, and at the hearing the speculators contended that they only intended to scrape off the top layer of the fossil shales and that would still leave more than sixteen feet of fossils remaining. We told the court, "You could just as well say scraping the paint off the Mona Lisa would cause no real damage because the canvas was left." And again the 34-million-year-old fossils were rescued by a last-minute court order. A preliminary injunction was granted by the Court of Appeals just as the bulldozers were poised at the boundary of the national monument.

Although Congress finally passed the bill, the difficulty

with the legislative approach to environmental protection is best summed up in the words of the clerk of the Court of Appeals: "Will you please get that bill through Congress soon and give us some rest."

Many legislatures, recognizing the delay inherent in the legislative process, attempted to meet the needs of modern technological society by creating administrative agencies, to which they ceded some of the powers of the legislative, executive, and judicial branches of government in order to give speedy effect to the will of the people as manifest by act of Congress.

Unfortunately, the administrative approach carried within itself the seeds of its own abuse. Any administrative agency, no matter how well intentioned, is not a court, it is a star chamber—judge, jury, and executioner. All in the public interest, of course. The narrow jurisdiction and mission-oriented viewpoint of administrative agencies, particularly those charged with industry regulation, make them inherently incapable of considering environmental matters with the requisite degree of ecological sophistication.

The *Scenic Hudson Preservation* case [354 F.2d 608 (2 Cir., 1965)] marked the fork in the road for those concerned with the protection of our environment and the legal defense of the biosphere. The Second Circuit Court of Appeals held that the Federal Power Commission should hear evidence on natural values in addition to the economics of electric power generation and distribution.

The tragedy of the *Scenic Hudson Preservation* case occurred when the Scenic Hudson Preservation Committee yielded to the Federal Power Commission jurisdiction of the natural resource aspects of the Consolidated Edison application, cloaking the FPC with a mantle of ecological competence it does not possess and cannot attain within the limits of its statutory mission. The old-guard, reactionary, established preservationist-conservationists, in their all-consuming desire to avoid challenging established bureaucracy, yielded to the Federal Power Commission the ultimate power to make ecological judgments binding on generations yet unborn. . . .

If we have to find a common denominator for the serious environmental crises facing all technologically developed

countries regardless of their nominal form of government, it would have to be entrenched bureaucracies which are essentially immune from criticism or public action.

These self-perpetuating, self-sufficient, self-serving bureaus are power sources unto themselves, effectively insulated from the people and responsible to no one but themselves. . . .

We must carefully examine the real sources of political and administrative authority before we can evaluate the extent to which the real government of the people approaches the totalitarian.

In this country, we need look no further than the Division of Pesticide Registration of the United States Department of Agriculture. The means of investigation was environmental litigation—not the conventional "Wall Street lawyer" approach of the Scenic Hudson Preservation Committee, but the no-holds-barred frontal assault of Equity.

In 1966, a citizen sought equitable relief from a toxic insult to the community ecosystem and sued not just a local mosquito commission using DDT, but DDT itself (*Yannacone* v. *Dennison, et al.,* 55 Misc.2d 468, 285 Supp. 2d 53).

Finally, in a New York court of equity, the full weight of scientific evidence against DDT was presented to the social conscience of the community in a forum protected from the political, economic, and bureaucratic pressures that for twenty years had successfully suppressed the evidence of DDT's worldwide damage to the environment. At long last the agrichemical-political complex was forced to put its propaganda to the test in the crucible of cross-examination.

Three years later, at Madison, Wisconsin, in another courtroom challenge of DDT, Dr. Harry W. Hays, director of the Division of Pesticides Registration of the United States of Agriculture, testified: "If the data appear to us . . . to be adequate . . . the product is registered. We look at the data furnished by the manufacturer . . . but we don't look at it analytically . . . We don't check it by the laboratory method."

At long last the people were told that the Department of Agriculture relies entirely upon data furnished by the pesticide manufacturers and does not do any independent

tests of its own. The incredible lack of concern for the safety of the American people became apparent on further cross-examination when Dr. Hays admitted that if a pesticide was checked at all, it was checked by an entomologist only for its effectiveness against the target insect and not for its effect on beneficial insects or fish and wildlife. "We don't assume that the intended use will cause any damage," he explained.

Moreover, Dr. Hays further admitted that although he had personal knowledge of published scientific studies showing damage to fish and wildlife from DDT, the Division of Pesticide Registration is not doing anything about possible environmental hazards from the pesticide.

Dr. Hays had proudly testified previously, on behalf of the Industry Task Force for DDT of the National Agricultural Chemicals Association, that the United States Department of Agriculture is solely responsible for the registration of pesticides and for determining whether they may be shipped in interstate commerce. He also testified that these determinations are not subject to review except on appeal by the pesticide manufacturers, and then Dr. Hays reluctantly admitted that the public had no access to USDA records of pesticide registration.

Only in an adversary judicial proceeding was it finally demonstrated that the United States Department of Agriculture is really serving the agrichemical industry and not the American people, while remaining at the same time essentially immune from responsibility to the American people.

Conventional tort litigation suits for money damages on behalf of private citizens represent another avenue of appeal to the law on behalf of the environment, yet this avenue also leads inevitably to questions without answers.

What do you do about a toxicant like DDE—that metabolite of DDT—which is ubiquitously distributed throughout the lipid tissues of every living element of the biosphere? What do you do about a toxicant whose toxic effects cannot be demonstrated as the proximate cause of any particular personal injury or disease?

In the struggle to protect natural resources against the depredations of such shortsighted, limited-vision, governmental agencies as the Corps of Engineers and the Department of Agriculture, any attack upon agency decisions

must *not* be based on damage to a particular private economic interest.

The Everglades cannot be saved from the army engineers by showing the potential loss of income to hot-dog vendors in the Everglades National Park as the National Audubon Society attempted to do in the *C–111* case. Nor could the Florissant fossils have been saved by any unscientific appeal to aesthetic sensibilities.

The futility of the attempt to protect the environment by alleging private damage is best described in the history of the rape of Pennsylvania by the coal industry during the nineteenth century. Again the story was told not in the school, or in the press, but in the dry words of the courts:

> . . . in Pennsylvania, one operating a coal mine . . . may . . . drain or pump the water that percolates into his mine into a stream . . . although the quantity of water may thereby be increased and its quality so affected as to render it totally unfit for domestic purposes by the lower riparian owners. (*Pennsylvania Coal Company* v. *Sanderson,* 113 Penn. St. 126)
>
> That case had a varied history and it was not until it came before the court for the fourth time that, influenced by the necessities of a great industry, the rule was laid down as indicated.
>
> The case was first considered in 1878, when the claim of the lower riparian owner was sustained upon the principle of sic utere tuo, ut alienum non laedus.

(So use your own property as not to injure that of another.)

In reply to the argument of counsel that the law must be adjusted to our great industrial interests, the court said:

> In reply to the argument of counsel that the law must be adjusted to our great industrial interests, the court said: In the argument here the ground was distinctly taken that immense public and private interests demand that the right which the defendants exercised in ejecting the water from their mine should have recognition and be established. It was said that in more than a thousand collieries in the anthracite regions of the state the mining of coal can only be carried on by pumping out the percolating water which accumulates in every tunnel, slope and shaft,

and which, when brought to the surface, must find its way by a natural flow to some surface stream. It was urged that the law should be adjusted to the exigencies of the great industrial interests of the Commonwealth and that the production of an indispensable mineral reaching to the annual extent of twenty millions of tons, should not be crippled and endangered by adopting a rule that would make colliers answerable in damages for corrupting a stream into which mine water would naturally run. * * * The consequences that would flow from the adoption of the doctrine contended for could be readily foretold. Relaxation of legal liabilities and remission of legal duties to meet the current needs of great business organizations, in one direction would logically be followed by the same relaxation and remission, on the same grounds, in all other directions. One invasion of individual rights would follow another, and it might be only a question of time, when, under the operations of even a single colliery, a whole countryside would be populated.

In 1880, the case was reviewed a second time and it was again urged that the rights of the riparian owners should yield to the immense public interest involved. The court, however, reaffirmed its former decision and, among other things, said:

> The mining interests of the defendant do not involve the public interest, but are conducted solely for the purposes of private gain. Incidentally, all lawful industries result in the general good; they are, however, not the less instituted and conducted for private gain, and are used and enjoyed as private rights over which the public has no control. It follows that none of them, however important, can justly claim the right to take and use the property of the citizen without compensation. *(Pennsylvania Coal Co.* v. *Sanderson,* 94 Penn. St. 302)

In 1883, the court heard the case for the third time with the same result, but on the last review in 1886, by a vote of 4 to 3, it reversed its previous decisions and held:

> . . . the use and enjoyment of a stream by the lower riparian owners, who purchased their land, built their houses and laid out their grounds before the opening of

the coal mine, the acidulated waters from which rendered the stream entirely useless for domestic purposes, must *ex necessitate* give way to the interests of the community in order to permit the development of the natural resources of the country and to make possible the prosecution of the lawful business of mining coal.

The extensive coal mines of the state of Pennsylvania were regarded as of sufficient importance to warrant the court in departing from the law as previously laid down by itself in the same case, as well as from the rule which prevails in England and in this country, except in some states where mining is extensively carried on. . . .

Now in spite of the lessons of more than fifty years of nuisance law development, timid lawyers and timid conservationists are still hoping that

> through conventional damage suits, such as those downstream property owners might bring against upstream polluters, what amounts to a citizen's right to a clean environment may be established.

The Court of Appeals in the state of New York has put that idea to rest recently by affirming the decision of a lower court in an action against a cement plant and quarry near Albany, the New York State capitol.

> . . . The relief sought in these actions was an injunction restraining defendant from emitting dust and other raw materials and conducting excessive blasting operations in such a manner as to create a nuisance and the recovery of damages sustained as a result of the nuisance so created.
>
> Despite its conclusion that the defendant in the operation of its plant had, in fact, created a nuisance with respect to plaintiffs' properties, the trial court refused to issue an injunction. In reaching its decision on the propriety of granting the injunctive relief sought, the court carefully considered, weighed and evaluated the respective equities, relative hardship and interests of the parties to this dispute and the public at large. Re-examining the record, we note the zoning of the area, the large number of persons employed by the defendant, its extensive business operations and substantial investment in plant and equipment, its use of the most modern and efficient de-

vices to prevent offensive emissions and discharges, and its payment of substantial sums of real property and school taxes. After giving due consideration to all of these relevant factors, the trial court struck the balance in defendant's favor and we find no reason to disturb that determination.

The trial court did award damages based upon the loss of usable value sustained.

The damages awarded now amount to a license fee to the cement company to continue its pollution. This is the same effect that the proposed $10,000-per-day fine to be levied on polluters of Lake Michigan would have. For the sum of 3.65 million dollars per year, an industry with gross sales in excess of $2 *billion* would have a license to pollute Lake Michigan, which already hangs like a festering appendix on the great bowel of Midwest civilization. The time has come to forgo such puerile attempts to torture empty legal formalism into environmental protection.

Just so that we understand each other from this point on, I must tell you that I believe the lawyer is an advocate. Some lawyers advocate in the courtroom. Some lawyers advocate in the classroom. Some lawyers advocate in the halls of government. Some lawyers advocate in the smoke-filled rooms behind the halls of government.

But when a lawyer tells you that he is above or beyond advocacy; or that he is only interested in seeing to it that the formalities of legal precedent are observed, flee from him! Law is the framework of civilization and litigation is the civilized answer to trial by combat. The courtroom is the arena. Lawyers are your champions. The rules of evidence are the articles of war.

Litigation is not a game and the courtroom is no longer the playground of dandy gentlemen. Lawyers are not disinterested observers exercising their wit and erudition before a disinterested judge, for in every lawsuit someone must win and someone must lose. Although on any given set of facts the winner and loser might be different at different times in history or in the context of different civilizations, nevertheless, rest assured, a winner and a loser there will be.

Great industries will never lack for advocates!

Government will never lack for advocates!

Political organizations will never lack for advocates, and the established institutions of the political-industrial-military-power-structure, in their rape of our human and natural resources and their prostitution of the legal profession, need no more advocates.

PEOPLE need advocates!

PEOPLE need champions!

But now a warning to all of you who would go forth as champions of the people in defense of the environment. Defending the environment is like defending an indigent. If you are a wealthy, well-established practitioner with a large law firm to support your efforts, and if the case is of sufficient community or national significance, then the defense of an indigent can be euphemistically described as a privilege reserved only for members of the legal profession.

If on the other hand, however, you lack these emoluments, the defense of the indigent becomes an obligation at best, and more often than not an onerous duty, and since the environment belongs to all of us, it appears that no individual is willing to pay for its protection or defense.

Throughout the country, you hear the people who ought to know better pleading for the attorney general or some other governmental official to clean up the country. Yes, indeed it would be a boon to all the people if each and every state and federal official was willing and able to take action to protect our national natural resources, but even the best efforts of well-meaning government officials have been thwarted to date, and there is no evidence that new laws will improve the situation.

Just what is a natural resource? Is it something that can be taken from the earth, then wasted, squandered, or used as the source of private fortune, or is it something that belongs to each of us as trustees for future generations, to be used wisely by whomever might hold nominal title at any particular time? How do you balance the need for advancement of aviation, represented by the development of supersonic commercial transports, against the needs of the general population for privacy and freedom from the shock effects of sonic boom?

What do you do when a municipality decides that the highest and best use of a mighty river is an open sewer?

What do you do when the Army Corps of Engineers or the Bureau of Reclamation decides to drown the Grand Canyon or most of central Alaska, or insists upon destroying the delicate ecological balance of an entire state like Florida?

Just what can you do?

SUE THE BASTARDS!

We must knock on the door of courthouses throughout this nation and seek equitable protection for our environment. We must not wait for Congress or state legislatures or local government to pass laws, we must assert the centuries-old fundamental doctrine of equitable jurisprudence —a doctrine as old as civilization, a doctrine as old as the Talmud, or the New Testament, or the Roman law, or the Middle Ages—a doctrine as new as today and as advanced as tomorrow: Let each person—human person or corporate person—so use his own property as not to injure that of another, particularly so as not to injure that which is the common property of all mankind—the air and the water.

At this time, the environmental interests of civilization can only be protected by direct legal attack upon those actions which can cause serious, permanent, and irreparable damage to our natural resources. Only by asserting the fundamental constitutional right of all the people to the cleanest environment modern technology can provide, and asserting this right on behalf of all the people in courts of equity throughout the nation, can we defend the environment.

The time has come to housebreak industry. The time has come to establish, once and for all time, as a fundamental principle of American justice, that industry owes the American people the cleanest air and the cleanest water that the existing state of the art in pollution control can secure. . . .

Today a great many young people feel alienated and unable to communicate their feelings, concerns and suggestions to industry and government. Students, there are two ways to tell your story to the people:

You can lie on your back in a pool of blood in the gutter holding a picket sign up for thirty seconds of late-night TV news, or you can sit on a witness chair in a courtroom and tell it like it is. . . .

Industry and government can ignore your protests, ignore your picket signs, and certainly they can repress your demonstrations. But no one in industry or government ignores that scrap of legal cap that begins:

YOU ARE HEREBY SUMMONED TO ANSWER THE ALLEGATIONS OF THE COMPLAINT ANNEXED HERETO WITHIN TWENTY DAYS OR JUDGMENT WILL BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED.

No one in industry or government ignores a summons and complaint.

Rest assured that the corporation president reads it. The chairman of the board reads it. Their lawyers read it, and their lawyers' lawyers read it. And they *must* answer it. Not in the press, where all their flackmen can distort the issues. Not in the marketplace, where all their financial might can overrule the facts. Not in any place where their lawyers or flackmen or marketing experts or anyone else can really help them, but in a courtroom where, as far as the facts are concerned, you the individual are the equal of any man or any corporation.

A court once asked me for the legal precedent on which I based my argument that industry owes us the cleanest effluent that the existing state of the art in pollution control applicable to that industry could provide. I told the court that I asserted this right as one of the fundamental unenumerated rights guaranteed by the Ninth Amendment to the Constitution of the United States, which says:

> The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

and protected under the due process clause of the Fifth Amendment to the Constitution of the United States:

> . . . nor shall any person . . . be deprived of life, liberty or property, without due process of the law . . .

and under the due process and equal protection clauses of the Fourteenth Amendment of the Constitution of the United States,

> No State shall make or enforce any law which shall abridge the privileges of immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

I reminded the court that among these unenumerated rights were the right to life, liberty, and the pursuit of happiness asserted as among the inalienable rights of man endowed by the Creator, and then I asked the court to take judicial notice that the rights set forth as inalienable in the Declaration of Independence were those won on that plain in Runnymede during the thirteenth century, and finally I appealed to the court to take judicial notice that the rights and obligations set forth in Magna Charta are simply a medieval restatement of the fundamental rights and obligations of all mankind given on that mount in Sinai at the dawn of history, the Ten Commandments. That was all the precedent the court needed to let us proceed with the case.

The men who cared so much for the future, who were so concerned about the establishment of rights against infringement by government or individual, these visionary men *forgot* to establish your right to breathe clean air or drink potable water.

For more than 180 years, each of the citizens of the United States has been breathing without a permit. Each of the more than 200 million citizens of this country today is breathing without a constitutional provision establishing that right.

All right, all of you who believe now that we need a constitutional amendment to establish our right to breathe, stop breathing! . . .

Experience has shown that litigation is the only nonviolent, civilized way to secure immediate consideration of basic questions of human rights. Litigation seems to be the only rational way to focus the attention of our legislators on the basic problems of human existence. The only way, that is, short of bloody revolution.

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owned utility company; this land does not belong to Penn-Central, B & O, C & O, Union Pacific, Southern Pacific, or any other railroad; this land does not belong to American Airlines, United Airlines, TWA, or any other common carrier; this land does not belong to Minnesota Mining & Manufacturing Company, Minneapolis Honeywell, IBM, Xerox, Eastman Kodak, Polaroid, or any other company marketing technological marvels; this land does not belong to International Paper Company, Scott Paper, Boise Cascade, Weyerhauser, Crown Zellerbach, or any other paper products company; this land does not belong to United States Steel, Bethlehem Steel, Inland Steel, Crucible Steel, or any other steel company; this land does not belong to Anaconda, Kennecott, Alcoa, or any other nonferous metal company; this land does not belong to any soulless corporation!

This land does not belong to the ICC, FPC, FCC, AEC, TVA, FDA, USDA, BLM, Forest Service, Fish and Wildlife Service, or any other federal or state alphabet agency!

This land does not belong to the president of the United States, the Congress of the United States, the governor of any state, or the legislatures of the fifty states. This land belongs to its people. This land belongs to you and this land belongs to me.

Don't just sit there like lambs waiting for the slaughter, or canaries waiting to see if the mine shaft is really safe. Don't just sit around talking about the environmental crisis, or worse yet, just listening to others talk about it.

Don't just sit there and bitch. Sue somebody!

VICTOR YANNACONE, a partner of Yannacone & Yannacone, represents the environmental section of the American Trial Lawyers Association.