

COURTS, CONSTITUTION AND CONSERVATION

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It is not true, a history professor of mine once asserted, that judges necessarily squint at every dotted "i" and crossed "t" of the law when making their decisions. They can have their ears open too and detect the ripples of new breezes moving through the climate of public opinion even before the public is greatly conscious of it. The courts—particularly the higher courts—often have the uncanny acumen to swing their legal sails out in front of these freshening currents. When newspapers see these decisions by the captains of our jurisprudence they blow up streaming headlines that stir the ripples into waves of public opinion, many of which finally wash over the land as new laws.

It was just a year ago that the U.S. Court of Appeals in effect told the Federal Power Commission that it must do its homework completely before allowing Consolidated Edison Company to impose its hydroelectric pump storage operation on top and bottom of scenic Storm King Mountain that stood dramatically above the Hudson River during the days when the Americans and British were struggling along its shores in the Revolution. The court handed the approval back to the FPC and told the Commission to hold hearings where the scenic and natural interests would be given just as much consideration as someone getting cheaper power or a town gaining more jobs.

This decision was like one of those sudden puffs that makes a boat, with its sails unfurled enough, to start zipping over the waters. The momentum of the individuals and organizations fighting for saving Storm King and the Hudson carried through Congress and onto the law books last summer Rep. Richard Ottinger's bill establishing a three-way Hudson River compact between New York, New Jersey and the Federal Government.

In giving the Secretary of the Interior the right to participate in negotiations among the three, the bill implements the court's assertion that scenic, historic and conservation interests must be equally heard; also, the Secretary has the right to review any proposed construction affecting the river and its shores. However, the Secretary was not given veto power as many conservationists had wished.

Is there, then, a close relation between a court decision and subsequent legislation when both the judiciary and legislative are caught in the swirl of public momentum. Would the Court of Appeals have made this decision a few years ago when conservation was still a ripple on the national scene?

For example, nine years ago an effort led by Dr. Robert Cushman Murphy was unable to win a court injunction against DDT aerial spraying on Long Island, despite the fight being taken to the Supreme Court

where it had the support of the conservationist-jurist, William O. Douglas. Yet evidence was incriminating that DDT was killing wildlife.

This stubborn, persistent chlorinated hydrocarbon has been greatly blamed for reducing the world's largest osprey breeding area—Gardiner's Island on western Long Island—to a few surviving stragglers. Dennis Puleston of Bellport said, according to a news report, that some 300 nests there in 1941 had been reduced to 48 this year, and only three young were found. He has discovered traces of DDT in the eggs and plans now to investigate eggs of other fish eaters like terns and gulls.

But now a court has ruled against the use of DDT in a suit brought by a Patchogue house wife, Mrs. Victor Yannacone, Jr., against the Suffolk County Mosquito Control Commission. The Federation at its meeting last spring passed a resolution urging that the Commission cease its use of DDT despite the assertion of its director, Christian T. Williamson, that "We have no record of its ever causing damage to animal life in our controlled program." The State Supreme Court issued a restraining order against the public agency's use of DDT and other chlorinated hydrocarbons.

Why this year—and not nine years ago? Is it because of a rising conservationist public opinion? Perhaps yes. Possibly it also fits into an even wider perspective—the tremendously increased court activity in new sometimes startling decisions. Whether one agrees with them or not, the courts have been making bold, new decisions across the spectrum of American life—through civil rights to legislative apportionment. Now, is conservation—the right to enjoy a hike in an unspoiled woods or to benefit from the water or fish from natural environs—becoming part of this spectrum?

The possible use of the courts, particularly under certain effective conditions of public momentum and fervent court activity, makes it imperative that we have as much protection in our state constitution as possible for a bolster in conservation threats of the future.

The delegates elected this November are supposed to convene in April for the Constitutional Convention. They will review and possibly revise the state constitution and submit the proposals to the public.

It is vital that Article 14, Sections 1 and 4 be retained to protect the Forest Preserve as 'forever wild.' It is imperative even that the 'forever wild' be extended to other natural areas that could be included under this protection if the local communities could be so persuaded.

It is even possible for this convention to involve pollution problems in the constitution.

Indeed, this could be known as the conservationist state constitution as well as being known for its encompassing of other vital concerns of our people.

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