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*10 Widener L. Rev. 451***LENGTH:** 11823 words**PUBLIC INTEREST ENVIRONMENTAL LAWYERS – GLOBAL EXAMPLES AND PERSONAL REFLECTIONS**

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* Professor of Law, University of Oregon School of Law. I express my deep appreciation to the many lawyers, most of them members of the Environmental Law Alliance Worldwide (E-LAW), who answered my questions to provide information for this essay. They are recognized in the footnotes throughout.

SUMMARY:

... Law journals and textbooks are full of cases about environmental law, while little is written about the lawyers and law firms that actually bring the cases. ... Many of the members of the litigating and law reform public interest environmental law movement around the world have gathered together since 1991 in a worldwide network called the Environmental Law Alliance Worldwide, or E-LAW. E-LAW's members now comprise nearly 300 lawyers on all continents. ... In 1983, the first public interest environmental law conference was created by myself, my colleague Professor Michael Axline, and a number of law students at the University of Oregon. ... But the most dramatic event occurred when Meena asked whether we could learn anything about a scientist named Henry Wagner who was working as an advisor to the lawyers for the company. ... Lalanath went to work in government for a stint and then established the Public Interest Law Foundation (PILF), an NGO working in the "areas of environment, women and children's rights, rights of the differently-abled, and good governance. ... Environmental litigation and public interest environmental law firms have sprung up in several other parts of India as well. ... I was still working on Mehta at the 1993 Public Interest Environmental Law Conference in Oregon. ...

TEXT:

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Law journals and textbooks are full of cases about environmental law, while little is written about the lawyers and law firms that actually bring the cases. An incredibly rich and diverse worldwide movement of public interest environmental lawyers has grown in the past two decades.

Environmental law is being created and implemented from the forests of southern Chile to the Pacific islands off the coast of Far East Russia, from the highlands of Papua New Guinea to the high plains of Armenia in the shadow of Mount Ararat. Citizens are taking governments, polluters, and developers to court in Hebrew, Spanish, Tagalog, and Ukrainian. The public interest environmental lawyers of the world are passionate and dedicated people, encountering and surmounting remarkable obstacles. To know more about them is to be inspired to do more ourselves.

Having passion and dedication is hardly enough to be successful, of course. The work of public interest lawyers is often lonely and sometimes dangerous. Resources are hard to find. To help themselves overcome such problems, the

lawyers pioneering this work have come together in a remarkable network in recent years. The network allows them to share legal and scientific information with each other and reduce their isolation. This essay will portray some of the early events that helped lead to the world's public interest environmental lawyers finding one another.

I. What is Environmental Law and Who Are the Environmental Lawyers?

Some people believe that significant progress in "environmental law" takes place when new legislation is put onto the books in a country or when a Constitution has been adopted containing environmental rights. But such accomplishments are only on paper. In that form they remain only environmental policy. Only when implementation takes place can we truly say that environmental law is at work in a country. Implementation may take the form of regulations to carry out the legislation if there is also subsequent voluntary [*452] compliance with those regulations, n1 or it may take the form of court judgments that enforce the legislation or regulations when compliance is lacking.

Such litigation in the courts is widely understood as the ultimate test for whether environmental policy has truly become "law." Without enforcement, legislation is only aspiration. n2

Hundreds of public interest environmental lawyers around the world spend their lives primarily litigating or otherwise advocating on behalf of environmental groups, local communities, or individuals concerned about environmental problems. n3 At the end of the day, as night falls, and most environmental lawyers head for bed, one small group of activists with law degrees lies awake worrying. How are they going to pursue their case to save a beach, a forest, or a child injured by toxic pollution who is subsisting on an economic shoestring? How are they going to summon the courage tomorrow to continue the fight alone, in the face of dramatically unequal forces? This group, known as "public interest environmental lawyers" n4—or perhaps we should simply call them environmentalist lawyers—are the real trailblazers.

Such lawyers are hardly confined to the United States. The worldwide public interest environmental law movement is now ten, twenty, and even thirty years old in most countries. It includes lawyers working in public interest law firms, [*453] lawyers directing environmental law clinics, n5 and individual private public interest lawyers working alone or in small law offices. n6

The world's pioneering environmental lawyers generally filed their first lawsuits in the 1980s and 1990s, although some started in the 1970s. From Australia to Argentina and India to Europe, the first stirrings were heard from what would become a spreading movement of like-minded environmentalist lawyers. n7 They did not, however, know much about one another, except from occasional conferences, publications, or word-of-mouth. Having had no practical means to communicate with one another, they were often alone and isolated. The creation of a true network, which was conceived in the 1980s, has begun to provide a solution to these problems. n8 It is based on valuing local lawyers, the revolution in communications, and building of strong personal relationships through travel, exchanges, and regular meetings.

II. The Origins of the E-LAW Idea – Some Personal Reminiscences

Many of the members of the litigating and law reform public interest environmental law movement around the world have gathered together since 1991 in a worldwide network called the Environmental Law Alliance Worldwide, or E-LAW. E-LAW's members now comprise nearly 300 lawyers on all continents. n9 All are united in practicing a kind of environmental law that places [*454] the environment, social justice, and human rights at the top of their agendas. Whether helping build citizen enforcement in the United States or in other countries, the philosophy underlying this network deserves clear statement and attention. The "pre-history" that provided the background for its creation may also be of some historical interest. The reliance on both personal relationships and electronic communication have both been

central elements to the success of E-LAW and of the work of the lawyers comprising that network.

A. Localism and Networking

The environment can best be protected by local environmentalist lawyers, working in their own countries and even their own communities—not by environmental lawyers from another state or another part of the world. The local lawyer is protecting her own environment, where she is raising her family. The time horizon of her commitment to that particular place on Earth is likely to be for her next generation, and most likely for her grandchildren. Others can help a local lawyer, but the partnership must be carefully constructed. n10

In contrast, the expert from abroad—whether lawyer or other activist—will be moving on to another cause in another place in a few months or years after the current battle has been won or lost. Not only will his commitment be short-term, but the building of a locally committed and long-term environmental law movement in a country or state is likely to be undermined. The unintended meta-message to the local populace and local organizations of cases being handled by the foreign expert is that real expertise lies abroad. Thus the efforts to build public interest environmental law in a country can be set back by involvement of lawyers from elsewhere. The same is true for environmental efforts in general. Brazilian environmentalists have the term "parachutists"—environmentalists who figuratively parachute into the country from abroad and then depart, rather than working to help local activists establish themselves more deeply.

The need for localism means that environmentalist lawyers will be widely scattered, in the possession of only limited resources, often lonely, and potentially facing grave personal risks. The second prerequisite for effective legal protection for the environment is therefore networking across state and national borders and partnerships that do no harm. To help create this model has been a large part of my life work for the past 20 years. After I started teaching law, I had come to recognize not only that a significant expansion of public-interest environmental law should not depend on the well-known national environmental law firms, but that it could not. They could handle only a portion of the work that needed doing. If my law students were simply to compete with others from Yale, [*455] Harvard, or Stanford, they might not get the jobs and, if they did, they would simply displace another qualified young lawyer. How does one expand the pool and break down isolation?

In 1983, the first public interest environmental law conference was created by myself, my colleague Professor Michael Axline, and a number of law students at the University of Oregon. That first year we called it the "Pacific Northwest Public Interest Environmental Law Conference" and aimed to bring together lawyers working at the state and local level in our region who would benefit from getting to know one another. Law students could also get to know environmentalist lawyers, lawyers could find clients who needed their services, and activists would remind the lawyers why they got into this work in the first place. We started with fifteen lawyers making presentations on a few panels for one and a half days. Just sixty students and citizen activists attended. Year by year, however, the event grew, as more and more lawyers, citizen activists, and law students traveled to Eugene, Oregon each March for a few days of celebrating, learning, and strategizing together. The Conference soon became the "Western" Public Interest Environmental Law Conference, and by 1989 it was called the "International" Public Interest Environmental Law Conference. Dozens were on the panels, spreading over several days, with hundreds more attending. Today, twenty years later, the event is known throughout the U.S. and the world as simply the Public Interest Environmental Law Conference—with nearly 250 speakers in 125 panel discussions and 3,000 people participating. n11 As many as ten seminars are taking place in each one and a half hour block and the event spreads across the campus. n12 The halls are filled with activist tables, banners, nonprofit law firms, literature, and petitions. From informal encounters in this setting, a number of new initiatives have emerged. For instance, Earth First! made a decision to abandon tree-spiking in order to form alliances with organized labor. In addition, linkages between environmental lawyers and poverty lawyers led to new initiatives in environmental justice. An industry group sent notetakers to the early Conferences, reporting back breathlessly such information in the late 1980s as "John Bonine revealed that environmental lawyers are starting to use electronic mail to network with each other." n13

Indeed, e-mail has been a crucial component in strengthening many public interest environmental law practices. Electronic networking among researchers began on universities' mainframe computers in the late 1970s. Although the Internet as we know it today did not begin until the 1990s, n14 as soon as personal computers entered the scene, efforts to link them followed closely behind. In [*456] 1980, Derrick Bell became Dean of the University of Oregon School of Law, bringing with him passion and progressivism. Personal computers, he decided in 1982, would be an important aspect of the future of law practice and he bought several for the law faculty. We lugged our desktop computer to Portland in 1985-86 during the Gypsy Moth Litigation, n15 preparing extensive findings of fact that we submitted to the court on the final day of trial. More important, however, was the use of such computers for communications. By 1983 I was discovering networked electronic mail-through local "bulletin board systems" (BBS) linked as FidoNet, and through university networks such as UUCP and Bitnet. The possibility of working jointly on legal documents particularly fascinated me. In our Environmental Law Clinic I experimented in exchanging drafts of briefs with lawyers at the Sierra Club Legal Defense Fund office in Seattle.

B. Kindred Spirits and Communications

In 1987 I decided to make an extended sabbatical trip through Europe, Africa, and Asia. I resolved to discover what kind of environmental law activities were taking place in other parts of the world and what might be happening in terms of electronic networking. I had learned from Professor Murray Rankin at the University of Victoria Law School in Canada that he was already collaborating through e-mail with a colleague in Bonn, Germany, on an article on trans-border information flow. My first stop was Bonn, where I could meet with Murray's distant colleague and also with the Environmental Law Center of the International Union for the Conservation of Nature and Natural Resources (IUCN). Professor Nicholas Robinson of Pace Law School had previously told me that Wolfgang Burhenne of IUCN was "the world's great environmental law entrepreneur." In Bonn the IUCN's Francois Guilman-Burhenne showed me through the shelves upon shelves of the Environmental Law Center's library, which held environmental legislation from around the world. While the collection was impressive, the methods for collecting environmental legislation consisted largely of trips by Wolfgang, Francois, and others that included picking up whatever could be found in a particular country and shipping it back to the Center in Bonn. Surely another method was needed as the computer age gathered steam.

All of these influences-seeing a library full of national environmental laws, experience with e-mail networking, and the knowledge that a public interest environmental law movement needed not only local expertise, but also the isolation-fighting features of international networking-helped shape my thoughts as my sabbatical trip proceeded. During this trip, I first encountered some of the pioneering lawyers who were creating public interest environmental [*457] law movements in their countries. I also had a glimpse at the possibilities of using electronic mail for social action networking. At a meeting in Penang, Malaysia, I heard of the work of the Asia Monitor Resource Center in Hong Kong, which worked to help labor movements in different countries keep in touch with one another through electronic mail. n16 I gave a lecture on the use of the U.S. Freedom of Information Act by activists in other countries. n17 I was starting to think about how obtaining information across borders could empower local activists and lawyers, and so I walked the assembled activists through the steps of filing an FOIA request with a U.S. government body, such as the State Department or Treasury Department for copies of World Bank documents. I advised them to put at the bottom, "In case of any question, contact my lawyer, Professor Michael Axline of the Environmental Law Clinic, Eugene, Oregon." I forgot to mention this to Mike, who started receiving inquiries in the coming weeks. The idea of cross-border assistance to local work was growing.

The next year, Professor Axline and I made a trip to Australia where we met the small staff of the Environmental Defenders Office in Sydney, a nonprofit legal aid office dedicated to the environment. Nicola Pain (now a judge) and Elena Kirillova (now working in London) were enthusiastic advocates of using law to protect the environment. Each subsequently came to Oregon and spent a few weeks at our law school, which included working with our Environmental Law Clinic. We knew Professors Ben Boer and Rob Fowler from previous encounters and Barrister Brian Baillie had taken my house and office in Eugene while I was on sabbatical in 1987. In Hobart, Tasmania, we stayed with Professor

Gerry Bates, who was also sitting as a green independent member of the Tasmanian Parliament, along with Dr. Bob Brown and others. Upon arrival, we learned that they were in the midst of a massive political battle against a planned pulp and paper mill. We also had started to work on issues involving pulp and paper pollution in Oregon, and knew that a former student and his wife, Paul Merrell and Carol Van Strum, had just completed a study on dioxin for Greenpeace. n18 As it happened, we had also just bought a fax machine for our Environmental Law Clinic—the first one in the law school and one of the few in the University. Fortunately, Australia had been used as a test-marketing area for the new generation of high-speed fax machines and they were as common there as kangaroos. Since the two legislators, Bates and Brown, had a copy of a draft environmental impact assessment (EIA) for the proposed pulp mill, I [*458] looked through it and discovered that it failed to address questions about the risks of dioxin. We went to the telephone and called Paul and Carol in Oregon: could they take their study to our office in Eugene and fax the entire document to Tasmania? As the pages rolled off the fax machine in Bob's office, we put together a critique of the EIA and, when the final EIA was released just before we were to leave Tasmania, our hosts scheduled a press conference in the Parliament building. "Foreign Experts Charge Dioxin Coverup" led the news across Australia that evening—rather than the news coverage that the pulp company had been planning. Once again, cross-border transfer of information could prove important for environmental campaigns.

While we were in Australia, events in Malaysia were heading in a fateful direction. Against a background of political unrest and tension between politicians representing the more populous Malay population and the more economically dominant Chinese population, as well as two environmental disputes that were embarrassing the government, a sudden sweep of arrests took place under Malaysia's colonial-era Internal Security Act. Among those arrested were Harrison Ngau of Sahabat Alam Malaysia (Friends of the Earth Malaysia), in the island state of Sarawak, and Meenakshi (Meena) Raman of the Consumer Association of Penang. Meena was one of the persons whom I had met the previous year during my sabbatical trip. She was part of a legal team headed by Gurdial Singh Nijar and Mohideen Abdul Kader that was engaged in litigation against the Asian Rare Earth Company, a subsidiary of Mitsubishi Corporation and the Malaysian government. She was put into solitary confinement without charges or the right to see a lawyer. Upon her release, she immediately returned to working on the case. We invited her to the March 1989 Public Interest Environmental Law Conference at the University of Oregon—in part to give her whatever degree of protection international recognition could bring.

At that 1989 Public Interest Environmental Law Conference, we collected environmental lawyers from eight other countries. They included Nicola Pain and Elena Kirillova from the EDO in Australia, Professor Ben Boer also from Australia, Rafael Asenjo of Chile, and others. At the end of the conference we met and decided that exchanging information needed in cases could reduce the isolation and threats that each lawyer could face in his or her own country. We started drafting a joint proposal for a new organization to be called the "Environmental Law Alliance Worldwide," or simply "E-LAW." The next month, during a speaking trip to the East Coast, I visited many of the major environmental organizations in Washington, D.C.—including the Environmental Defense Fund, Friends of the Earth, Public Citizen, the National Wildlife Federation, the Sierra Club Legal Defense Fund, and others. At each stop, I asked whether anyone else was helping public interest environmental lawyers in other countries network with one another. When the answer was predictably "No," I asked if the organization would write a letter endorsing our efforts to do so. All agreed. Professor Michael Axline, scientist Mary O'Brien, and I also collected letters from each of our partners in other countries that supported [*459] networking. Soon we had an impressive package that we started to shop around to different foundations. The proposal evolved as new partners were added over the next year. Finally, in Fall 1990, we heard from the W. Alton Jones Foundation that it decided to award us a major grant that would provide start-up funds for nine offices of E-LAW in different countries. The U.S. Office of E-LAW opened its doors in January 1991 in Eugene, Oregon.

C. Cross-Border Networking—An Early Case

Immediately after the PIELC in March 1989, Nicola Pain and I worked intensively with Meena Raman to help research her Asian Rare Earth case. After she left, we continued for some weeks to look for materials. For example, we looked into the extraction of rare metals from monazite sand and the accompanying dangers of pollution from radioactive thorium. But the most dramatic event occurred when Meena asked whether we could learn anything about a scientist

named Henry Wagner who was working as an advisor to the lawyers for the company. This man, she explained, sat with the lawyers in court and helped advise them on lines of testimony to pursue. She said that he was on the witness list, so he would eventually testify as well.

I started telephoning around and inquiring about Henry Wagner. An environmental lawyer at the Natural Resources Defense Council replied, "Oh, Henry! He's a case, I'll tell you. He was on the commission investigating events after the explosion at the Three Mile Island Nuclear Plant. I don't think he ever met an atom he didn't like." I was all ears. My colleague went on to say, "He is writing a book, you know." I asked, "Really?" My colleague explained, "Yes, he sent me a draft to look over." I held my breath. "But I was too busy, and so I sent it back to him." I exhaled. I asked whom else might have received a draft to review. I was told that a scientist at the Union of Concerned Scientists in Massachusetts might be worth calling. I found the number and reached the person whose name I had been given. "Oh, Henry's book? Yes, I have the draft around here somewhere. Let me look. Ah, here it is!" I asked the scientist what the book was about. "The title is *Living with Radiation*," n19 she replied. "Let me see what it is about. Ummm. The Preface has something about a case in Malaysia" I stopped her from reading. "Do you have a fax machine?" I asked. "Yes we do," she replied. "Well, we just bought one recently ourselves. Could you fax it to me?" "Which pages?" she asked. "The whole book." As I stood over the Clinic's fax machine and the pages came rolling out of it, I could not believe my eyes.

In a Prologue titled "The Tin Trial in Malaysia," n20 the author laid out what was happening in the Bukhit Mera case in Malaysia—the case filed by my colleague [*460] and her seniors, which had landed her in jail. The case threatened the peaceful use of radiation for medical research, the author wrote. As I read on, my eyes grew wide. The real danger to the world from radiation was not from nuclear power plants or radioactive waste; the real danger was from nuclear war. War springs from fear, the author continued. And, through the use of positron emission tomography (PET scans) that could reveal brain activities during different emotions, it might be possible to change the way people think and feel, banishing fear from the world. As soon as the 200 pages arrived on the Clinic's fax machine, I dialed the fax number at the Consumer Association of Penang in Malaysia, where Meena works, and started feeding the same pages back into our machine for transmission to Malaysia. Soon the entire book was in the hands of the lawyers fighting against the Asian Rare Earth Company.

In a later telephone call, I asked Ms. Raman if she was as stunned as I was by the book, particularly its suggestion of thought control through medical advances. She replied calmly, "That's not the best part. The author also reports on the testimony of a certain scientist at the trial." Why is that interesting, I asked. "Because the scientist hasn't yet testified!"

A later development in the case proved the value of cross-border networking for environmental cases even more. Toshiro Ueyanagi, a Japanese lawyer, went on a search for information about the extraction process being used by the Asian Rare Earth Company. In a library in Tokyo he found a book describing the process in detail. The author of the book, in fact, had become the manager of the plant in Malaysia. What he found in the book stunned him as well. He rushed the book to Malaysia, where the lawyers presented it to the plant manager as he was testifying.

"Read from this page, please," the lawyers asked the plant manager. The book was, of course, in Japanese, and the Malaysian lawyers would never have understood what it said, much less even found it without help from Japanese colleagues. The witness hesitated. The judge intervened, "Read the page out loud." The plant manager did so, and his words were translated, "This process is too dangerous to be used in Japan. We should move the factory abroad."

Later, at an All Asia Public Interest Environmental Law Conference in Sri Lanka, Toshiro described the moment as "the most important day of my life—except, of course, the day I married my wife." It was important also to the villagers in Malaysia. They won their case in the High Court and, although the Supreme Court of Malaysia overturned that ruling, Mitsubishi Chemical Industries Limited n21 ultimately pulled the plug on the project in 1994. n22 In terms of the future of environmental law, that sharing of information across borders became an inspiration for what an international network

could accomplish. Such [*461] a network would be based on local expertise and autonomy, linking together public interest lawyers who were completely dedicated to protecting the environment and human rights in their own countries.

III. Some Varieties of Citizen Enforcement of Environmental Laws

The history of public interest environmental law around the world is not a story only of laws and cases. It is primarily a story of brave and creative individuals. A few examples will illustrate the kinds of people enforcing citizen's environmental rights on all continents.

A. Creating an Environmental Law NGO—Sri Lanka

The idea for a public interest environmental law firm in South Asia was the brainchild of Lalanath de Silva in Sri Lanka in 1981. Before he graduated from law school, he and a classmate created the Environmental Foundation, Ltd. Subsequently, in 1998 de Silva founded the Public Interest Law Foundation, combining environmental litigation with other public interest litigation.

Lalanath de Silva and Ravi Agama shared three passions as they neared the end of their university educations: tramping in the hills, enjoying the environment, and law. n23 Along with a science student (now a professor) named Aravinda de Silva, n24 the three school chums hiked the mountains of Sri Lanka, went bird-watching in the marshes, and marched in environmental protests in the city.

As a member of a local bird club, Aravinda was invited in early 1981 to a social party by the United States Consul in Colombo. Two famous ornithologists, 84-year old Salim Ali of the Bombay Natural History Society in India (known as the "Birdman of India") and 68-year old S. Dillon Ripley, Secretary of the Smithsonian Museum in Washington, D.C., arrived in Sri Lanka on a "collecting trip," n25 interested in obtaining specimens of endemic species for their museums. [*462] This struck Aravinda as odd, since local scientists had recently been denied permission to collect birds in the Sinharaja Forest. In an anteroom, Ripley proudly showed to Aravinda his collecting and storage equipment. n26 Aravinda noticed that the equipment included firearms—and everything was labeled "DPL" (diplomatic). The U.S. Embassy had helped get the equipment into the country.

Aravinda let his friends know and the group met with a senior official in the Department of Wildlife Conservation, who informed the scientists that they could not take Sri Lankan birds. The U.S. Embassy intervened and pressured the department into changing its position. When this information reached Lalanath and Ravi, they mounted a protest, including a demonstration with several colleagues at the U.S. Consul's residence on the day that the group was to set out on their collecting expedition, now accompanied by a wildlife officer. While the wildlife officer informed the scientists that the birds they coveted were endangered, Lalanath wrote to Sri Lanka's President, J.R. Jayawardene, and raised a ruckus in the news media. The President ordered an investigation, cancelled the license, and the two scientists were sent packing from Sri Lanka within a week. n27

The Bombay-Smithsonian affair gave the three young men a taste for making a difference. But they were training to be lawyers and scientists, so protesting seemed to be too limited an approach. A few weeks later, Aravinda de Silva went to a lecture by a lawyer from the Natural Resources Defense Council (NRDC) in the United States and picked up a brochure. He passed that on to the two law [*463] students, who were in their final year of law school. There was at that time no Internet, of course, and no easy way to get more information about this new concept—a public interest law firm, using the courts to protect the environment. But Lalanath kept turning the brochure over in his hands and in his mind, and a plan formed to try to set up what would be the first nonprofit public interest environmental law firm anywhere in South

Asia.

Before long, Lalanath was hunched over a battered old typewriter, drafting Articles of Incorporation for an organization. At first he and his colleagues proposed the name "Sri Lanka Natural Resources Defense Council," but the Companies Registry Office refused on the ground that "Defense" sounded like national defense and "Sri Lanka" sounded like an official government organization. Although the hearts of the trio wanted a name that demonstrated their pugnacity, their heads settled on "Environmental Foundation." Avoiding the long process for registering a nonprofit charity, they initially set it up as a limited stock public company: Environmental Foundation, Ltd. (EFL).ⁿ²⁸ They, and a few friends of each, contributed the equivalent of US \$5.00 as the initial share capital. (Ravi sold Chinese rolls to raise his portion.) With this legal shell, they functioned from Ravi's family home until he got married, and then they shifted to Ravi's new home.

Having established EFL, Lalanath and Ravi completed their studies, qualified as lawyers in 1982, and began practicing law. Amidst letter writing and publicity campaigns, as well as learning the ropes as junior lawyers, three years elapsed before they filed their first public interest environmental law case in court. In 1984, two years out of law school, Lalanath challenged the decision of the Director of the Department of Wildlife Conservation to withdraw 51 prosecutions against illegal squatters in the Gal Oya National Park.ⁿ²⁹ The squatters were felling trees and killing park animals.ⁿ³⁰ When local officials filed prosecutions as a prerequisite to eviction, the squatters complained to the ruling political party of which they were adherents and the Director sent a telegram ordering the prosecutions to be withdrawn.ⁿ³¹ (A copy of the telegram was slipped to Lalanath.) Working with senior counsel, L.A.T. Willams, Lalanath went to the Court of Appeals, seeking a stay order.ⁿ³² As Lalanath remembers it:

The presiding judge was Justice Priyantha Perera (later a judge of the Supreme Court). He asked many questions. One of them was "why can't you prosecute them yourself? If the Director wants to withdraw, how can we stop them?" That is when L.A.T. Willams cited extensively from Lord Denning's statements in British cases that the ordinary citizen cannot be expected to carry the burden of law [*464] enforcement through private prosecutions etc. Finally, after nearly an hour of arguing, the court issued notice and a stay of the withdrawal of prosecutions. Subsequently, the squatters pleaded guilty and were fined and evicted.ⁿ³³

Two years later, still without funding, EFL got its first hotly contested case. Ravi and Lalanath were looking through an official file and came across a letter from the Secretary to Sri Lanka's Prime Minister, to the Director of Coast Conservation. The letter said that it would be appreciated if the Director would grant a permit to Hettigoda Salt Industries (Pvt) Ltd. (Hettigoda), to build an 800-hectare (nearly 2,000-acre) saltern (evaporation ponds for salt production) in an area in southern Sri Lanka called the Karagan Lewaya (lagoon). This not only appeared to interfere with the statutory discretion of the Director, but involved an area that was a significant roosting ground for wintering migratory birds, a well-known flamingo site, and part of, or adjacent to, a wetland protected by the Ramsar Convention. Sri Lanka's Coast Conservation Act (CCA) required that developments "significantly" affecting the environment required an environmental impact assessment before decision. However, Hettigoda and the Director asserted that most of the Karagan Lagoon was not covered by the law.

Lalanath and a group of colleagues traveled to the area, about 150 miles southeast of Colombo, and spent three days in the blazing heat surveying the site. They discovered that the Karagan Lewaya was actually connected to the sea by an ancient channel, overgrown and not visible. Since the CCA extended the coastal zone to water bodies connected to the sea, Lalanath argued that the Director had a much larger "significance" decision to make than the Director was admitting. More importantly, Lalanath argued that the Director was not exercising his discretion according to law because the Prime Minister's office had dictated a decision to him.ⁿ³⁴

EFL persuaded senior advocate H.L. de Silva to take the case.ⁿ³⁵ He obtained a stay order (temporary injunction). The Prime Minister and his Secretary were reportedly outraged. Soon thereafter, lawyers for the Government filed in the

court a letter that they contended was the one from the Prime Minister's Secretary to the Director of Coast Conservation. It only requested that the Director consider granting a permit, and only if it would be consistent with the law. It was the EFL lawyers' turn to be outraged. Lalanath withdrew as junior legal counsel in the case, whereupon he and Ravi Algama swore out an affidavit of what they had read in the original letter in the files. They attached the handwritten notes that Ravi had taken while viewing the file. As a consequence, the Court refused to dissolve the stay and the case went into limbo for five years. During that time new EIA legislation was adopted, the Attorney General agreed that any such development of Karagan Lewaya would require an EIA, and the [*465] case was accordingly dropped. To this day, the lagoon remains free and migrating birds enjoy its amenities. n36

After EFL had managed to bring a few cases and was becoming known for its advocacy of environmental causes, it finally managed to attract some modest funding. As Lalanath de Silva remembers:

The first part time staffer (Mr. K Sinnatamby) was recruited in 1987 with a small grant from the Asia Foundation. Through his contacts we raised a large grant from NORAD in 1988 and set up office with a lawyer, scientists, administrator and office aide. I was EFL's Chairman then and we had no Executive Director. Prior to 1987 our funds were basically contributions (very small) from our own earnings as lawyers and from share sales (membership fees) from new members. They were not much. Voluntary efforts were the main source. n37

Lalanath continued to work on a volunteer basis, funding himself with private law work, as the staff lawyers began to put cases together. The next year he was offered a Hubert Humphrey Fellowship at the University of Washington in Seattle, which culminated in the award of an LL.M. His time in the United States gave him the opportunity to learn more about how public interest law was practiced in a country with a rich tradition in this legal area. In 1989, he also made contact with Professor Michael Axline and me in Eugene, Oregon. We invited him to participate in the proposal for an international alliance of public interest environmental lawyers and he happily agreed. Upon return to Sri Lanka in 1990, he became Executive Director of his group, EFL. Lalanath went to work in government for a stint and then established the Public Interest Law Foundation (PILF), an NGO working in the "areas of environment, women and children's rights, rights of the differently-abled, and good governance." n38

B. Litigating Alone-India

India has some of the world's most active public interest environmental lawyers. Many of them operate as individual lawyers, rather than as staff members in NGOs. Unlike the situation in parts of the world like Europe, where NGOs have sought and obtained special rights to go to court to protect the environment, as a means of overcoming restrictive rules on standing to sue-locus standi-lawyers in India are able to go to court with few concerns about standing. This is the result of tectonic shifts in the doctrine of locus standi. Two remarkable Justices of the Supreme Court of India, P.N. Bhagwati and Krishna Iyer, set off the earthquake. As Chief Justice of the Gujarat High Court in 1971, Bhagwati chaired a Legal Aid Committee. Iyer chaired an Expert Committee on Legal Aid [*466] for the Government of India in 1973. Each wrote reports about the need to improve access to justice for ordinary Indians. The two then comprised a Committee on Judicare that in 1977 recommended broadening legal standing to sue and public interest litigation. n39 Thereafter both were appointed to the Supreme Court of India and proceeded to set powerful forces into motion, which tumbled procedural obstacles. n40

In the India Supreme Court, Justices V. R. Krishna Iyer and Chinnappa Reddy rendered a decision in 1980, that citizens could bring suit before a magistrate to force their municipality, under the Criminal Procedure Code, to abate a public nuisance (open drains, sewage in the streets, etc.), that financial problems would not excuse the municipality from its duties, and that a magistrate had a mandatory duty to remove public nuisances. n41 The Justices remarked in their opinion that "the new social justice orientation" of the Constitution of India allowed members of the public to trigger the jurisdiction of a magistrate in such cases. n42 The judiciary, they wrote, "must be informed by the broader principle of

access to justice necessitated by the conditions of developing countries and obligated by Article 38 of the Constitution." n43

Among those who took advantage of this new approach to law in India were the founders of Lawyers Collective, initiated in Mumbai (Bombay), India, in 1981 with a broad public interest mission. Its mission came to include environmental law by 1985 with the occurrence of the Bhopal disaster. n44 In South India, the [*467] Goa Foundation was registered in 1986. n45 Through Norma Alvares, its legal adviser, the foundation filed writ petitions before the Bombay High Court, Panaji Bench and the Supreme Court of India from 1987 to the present, n46 starting with a petition that led to the cancellation of a lease for mining sand from Goa's sand dunes. n47

Environmental litigation and public interest environmental law firms have sprung up in several other parts of India as well. For example, T. Mohan and S. Devika work from Chennai (formerly Madras) in Tamil Nadu, combining a private practice with their main pro bono public interest focus. P.B. Sahasranaman began practicing as an advocate before the High Court in Kerala in 1987. n48 His litigation in the past ten years has included: cases preventing construction of hotels in the coastal zone and protecting mangroves throughout Kerala, blocking a hydroelectric dam in a sensitive natural area, and fighting against carbon black pollution. n49

The most famous of all is a remarkable lawyer named M.C. Mehta. After a man came up to him at a social reception, said that lawyers in India cared little for ordinary people or the environment, and asserted that the famed Taj Mahal had "marble cancer," Mehta visited this wonder of the world and started to research the effects of air pollution on its surface. He filed his first environmental case in 1984, seeking to protect the Taj from air pollution. He followed in 1985 with a case seeking to impose absolute liability on dangerous factories, n50 and his massive litigation obtaining multiple orders against companies to clean up the Ganges River. n51 In the same year he filed lawsuits involving air pollution from vehicles and stone crushing operations in Delhi. He persuaded the Supreme Court to appoint several expert commissions to report on problems and propose remedies, n52 to issue service on thousands of defendants through newspaper advertisements and subsequent "cleanup or shut down" orders to them, n53 and to [*468] require movie theaters, radio, and television to provide mass environmental education and to make it a compulsory subject in all schools and universities. n54

At the first All Asia Public Interest Environmental Law Conference, held in Nuraya Eliya, Sri Lanka, in 1991, M.C. Mehta participated. We had lugged a desktop computer up to the meeting site in the Kandy Hills from Colombo and I had installed an e-mail training program. We could not send messages out, but we could give these lawyers from across Asia the experience of typing e-mail and receiving messages from one another in the room. I worked to get M.C. to sit down at the computer. He never had one in his office. In fact, he had never touched one. I explained the basics to him. "M.C., now you have to put your fingers actually onto the keys," I said soothingly. He reached out, touched one, saw a letter suddenly appear on the monitor, and jumped backwards in surprise. I tried again a few months later. There was no luck, but M.C. did see the potential for computers and bought one for his secretary.

Another year went by. I was still working on Mehta at the 1993 Public Interest Environmental Law Conference in Oregon. We were sitting in the law school's computer lab and I suggested that he try to use e-mail again. He did so only to please me, not because of any real interest. I suggested that we check my e-mail, just to see what might have come in. On the screen a message somewhat like the following appeared:

Hi, Papa! How are you there in Oregon? Papa, how are the tigers in Oregon?

Papa, I think you were fooling me, and there aren't really any tigers in Oregon.

Papa, we can send them some of our tigers and then Oregon will have tigers too!

M.C. was transfixed by this miracle of communication from his 9 year-old daughter. "What do I do, John?" he asked. "Show me how to write back to her," he demanded. He became an extremely attentive student of electronic mail and banged out a loving reply.

The story did not end there. I had been trying for some months to get a notable Argentinian public interest lawyer, Dr. Alberto Kattan, to use e-mail, but my efforts had been largely fruitless. Then suddenly, starting in April of that year, Alberto became a prolific correspondent. I was amazed, but also perplexed. What had happened? During a visit to Alberto that summer I learned the cause of his new-found affection for e-mail. He told me, "John, I was standing behind M.C. that day in Eugene, when a message from his daughter arrived, and I saw what it meant to him, and how he could communicate back to her. I decided that this was not only a technology of business, but a technology of the heart."

The most successful public interest environmental lawyers are those whose encounters with issues are not only intellectual, but also emotional. It is clear that for M.C. Mehta the tragedies of environmental abuse play an important role in [*469] his motivations. In 1994, I visited an industrial zone near Hyderabad, India, with Mehta. We entered the industrial factory zone and drove past pharmaceutical companies, chemical plants, fertilizer plants, steel plants. We finally came to a large, black pool—a small lake, really—that was an unlined pit for toxic waste, the color of a moonless midnight. But there were more and more pits: fourteen in all, we were told. And they went down to sixty feet or more in depth. These toxic pits contaminated the groundwater for miles around.

We started to walk along the bank of one of the pits, snapping photographs. Suddenly the wind shifted and we had to stick our shirts over our noses to shield ourselves from the smell, and hurry quickly back to the road. I could only imagine the molecules of toxic substances that were entering my lungs. The people of the nearby village did not have to imagine such things, nor did we for long. We drove to a nearby village. A group of about 20 villagers was waiting for our arrival, which had been arranged by a local medical doctor-turned-activist. Over the course of an hour, the crowd grew and grew, people coming from their houses, bringing photographs and X-rays and children who could not walk. Someone brought a bottle of liquid to the table from one of the ponds. It was, as we had seen earlier, completely black. Then they brought a bottle of water from the wells that provide the water for the village. It was a disgusting gray. A young girl, about seven years old, put forward a puffy hand that was deformed from just putting it in the water. A man showed his leg, which had pink sores. A woman came up—or was it an old lady? She looked thin, like the pictures of starving children that periodically tug at the world's conscience during famines in parts of Africa. But her skin was wrinkled and her visage ancient. Her long arms dangled wanly at her side; her veins showed through the thin skin as blue. It turned out that she was thirty years old. She had no appetite, she explained, and was losing weight. She had been working at Industrial Castings. Another man came up; he had been getting a fever regularly for the last 18 months. Two old women and two young girls approached. They displayed their arms, with skin diseases. A man came up to the table where M.C. Mehta and I sat, pulled up his shirt, and showed wounds on his stomach from cancer.

An elder of the village came. His wife had had symptoms that ultimately ended in lung cancer. She had died. His brother's wife also died of lung cancer. The elder himself, in his life up until 51 years, had never had diseases. When the air pollution started in the past seven years, he went into fits and convulsions. Toxic epilepsy, they called it. Dr. Krishna Rao, the medical doctor-activist, said he had seen about fifteen cases of these fits in this village. The cause, he said, was because of the absence of oxygen in the air. During the meeting, another man came to the table. His entire central nervous system was affected. A young boy came and was seated on the table. The boy had healthy limbs, but was unable to walk. He had damage to his spinal cord from toxic pollution. Another man came, smiling shyly, and shaking, as if with Parkinson's Disease. He was quadriplegic, having no use of any limbs. He had been healthy three years back. He said he was 33-years old. He had been an agricultural laborer, fit to do all the [*470] heavy, physical work. In the last three years, he could do nothing. The industrial estate was set up in 1984, and three years elapsed before the pollution started, in 1987.

People went back to their houses, then brought X-rays and thrust them forward. A young boy of just six years of age (who has lived his entire life in the pollution), pulled up his shirt and showed external lesions; the doctor said that he was also suffering from lung lesions. His father stood behind him and showed his own X-rays, for he was also suffering. An old man of 60 years, who looked 80, wearing a turban, was dragged up to the table, unable to support himself at all. Another man came up and showed a leg disfigured with white lesions.

I was paralyzed with the emotions of the meeting, and could only gaze blankly out into the air after a while. Dr. Rao said that M.C. Mehta should speak. Mehta told them that their case was making its way through the Supreme Court of India. India's highest Court allows public-interest cases to be filed directly with that Court, because they involve a constitutional matter, protection of the right to life.

The village elder said that they had gone to the health department, and nothing had happened. A professor who works with the doctor assured them that they would win, and that there would be at least some monetary compensation. But it was obvious that there would never be adequate health compensation. And, unless polluters who would cause such harm to their fellow humans are put in jail or, better, chained alongside their waste pits for several years, there could be no moral compensation either.

The most heart-rending impression I received occurred when a man showed pictures of his wedding day. Dressed in colorful wedding finery, he and his bride had sat with bowed heads on a mat, covered with flowers. But he explained that during the ceremony, he went into convulsions from the pollution. The bride's relatives then beat him up, and the wedding ceremony stopped. He had toxic epilepsy. And now he was sad and all alone. At the end of the evening, he came up to our jeep before we left, and pressed three of the color photographs into our hands. We were to take these happy, but tragic pictures with us. I could say and do nothing, except fold my hands in the sign of respect that says, "Namaskar" but that meant, "You poor, poor soul."

Being a public-interest lawyer in the Third World requires not only courage and dedication but also, as I learned that day, a strong stomach. Some incredible lawyers like M.C. Mehta are battling, against all odds, to put an end to tragedies like this. But it will take years of their lives—indeed, the rest of their lives, and the further dedication of those who follow. In return they will receive jealous glances from other lawyers, snide remarks in the hallways, veiled or not-so-veiled threats, or offers of bribes to induce them to discontinue such work. What is worse, some will get threats, be faced with criminal charges, or subjected to actual violence. But they will also receive the satisfaction of giving hope to people. This is the reality of practicing public interest environmental law in much of the world.

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C. Courage and Crusades—Argentina

Latin America's history of public interest environmental law extends back to the early 1980s, when Alberto Kattan in Argentina filed lawsuits against the same military government that had tortured him, to protect penguins and dolphins. In Chile, Fernando Dougnac and a few others started environmental lawsuits in 1985. n55 The Peruvian Society for Environmental Law (SPDA) n56 opened its doors in 1986. Others followed, such as Corporacion de la Defensa de la Vida in Ecuador and Fundepublico in Colombia, both in 1988.

"I hope that I didn't disturb you during the night," said a sleepy-eyed Alberto Kattan, as we sat at the breakfast table in my house. The famous environmental law professor and human rights lawyer from Buenos Aires looked as if he could use some more sleep. He always looked as if he could use more sleep. He was, after all, a professor—a bit disheveled in his appearance, concerned more about the creativity of ideas than about how he dressed or looked.

"Well, I did hear some sounds," I said, diplomatically and a bit evasively. What I heard during the night in the bedroom adjoining mine were muffled moans, weak cries of protest. I tried to be casual, in case Alberto had nothing more that he wanted to say about this, but he did.

"It's the torture," he said, looking at me directly. "Every night, they are beating me again, breaking my wrists, putting electric shocks to my body. I live it again every night during my dreams." The torture started in 1978, when Dr. Kattan, a human rights lawyer and professor of law, was picked up by some men who came to his office and stuffed him into the back of a Ford Falcon.

In 1992, Mexican environmental and human rights lawyers greeted him at our Public Interest Law Conference in Oregon with tears in their eyes: "You are Alberto Kattan?!" they exclaimed with excitement when I introduced them to each other. "We worked for your release after you disappeared, after you became a desaparecido" one said. "All over Mexico and Latin America, we and other human rights lawyers lobbied for you. And now we meet!" There were many glasses of beer drunk together after that encounter. n57

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Professor Kattan's torture ended when President Jimmy Carter put enough pressure on the Argentine military to get him released and flown to a hospital in Seattle, Washington. At that time, President Carter told him, "Dr. Kattan, now that you are safe, we can bring your wife and children to the United States also, and you can start a new life." "Thank you, Mr. President," Alberto Kattan responded. "But when I well enough to travel, I will return. I am Argentine." It was difficult to pry information out of Alberto regarding these events. He never wanted others to talk of these things. "They are not important. I am not important," he would say.

Kattan did return to Argentina after recovering his health and while the military dictatorship was still in power, he filed a lawsuit against its plan to kill penguins. He had read in the newspapers that the government issued a permit to a Japanese company to make their skins into covers for golf clubs.

When he went to court, the judge looked at him skeptically. "Dr. Kattan, you have filed this case to protect these penguins. Tell me: are these your penguins?" Alberto replied, "No they are not mine." The judge continued, "Have you ever seen these penguins?" "No, they are 800 kilometers away," Alberto replied. "Then by what right are you standing here in my court?" demanded the judge. Alberto fixed the judge with his professorial gaze: "They are part of the dominio publico and, under Roman law, every citizen has a duty to protect the dominio publico," Alberto replied again. "I am simply exercising my duty as a citizen to protect the dominio publico." Although he lost when he first tried the theory, he later won when he tried it again, in a case protecting dolphins. n58

Alberto Kattan was in Central America at a conference when he saw a billboard on the street advertising cigarettes to young women, with the slogan, "Your first cigarette is like your first bra." Alberto, whose own children were at an impressionable age, was outraged. He returned to Argentina with the resolve of finding a way to limit or ban tobacco advertising. Poring through statute books, his eyes lit up. It was illegal to advertise "toxic substances" on television in Argentina. He began a case to prove that cigarettes fell in that category. (He ultimately was successful.)

When Alberto Kattan learned that a giant hotel corporation planned to knock down one of the most architecturally famous mansions in Buenos Aires in order to put up a modern, high-rise hotel, Kattan went to court to block it with another of his creative legal ideas. "Anyone in the world can buy a painting by Van Gogh," he told the judge. "But nobody has the right to wrap fish in it." n59 He saved the historic mansion, and forced the corporation to design its hotel around the mansion, integrating the new and the old. When he took me to see the [*473] mansion in 1992, he said we could not go inside together. "The management is still angry with me, and the guards have instructions to prevent me from visiting."

Alberto Kattan was probably the most important and creative environmental lawyer in Latin America. His legacy to citizen access to the judicial systems in Latin America for enforcement of environmental rights is extraordinarily important. Alberto personally conceived of the idea of "acciones difusas" (diffuse, or popular, or people's legal actions). He persuaded the courts of Argentina to ban the use of the pesticides 2, 4, 5-T and 2, 4-D (Agent Orange).

In August 1993, I went to Argentina at Kattan's invitation to be a keynote speaker at a conference on environmental law that he was organizing. As I got off the airplane, however, his students, whom I had met in his office in July, met me. "Alberto is dead." He had died of heart failure. I could only think of the electric shocks that the torturers had administered to him fifteen years earlier. The conference went ahead, dedicated to Alberto.

One of Kattan's former students, Dr. Susana Castiglione, said at the conference that Alberto Kattan had taught her that "there are only two ways to live—by looking inside of yourself, or by looking outside of yourself" in order to serve others. He chose the latter. Susana said "Alberto never sold himself." He was offered many public posts and a lot of money to work for a law firm, but chose to remain free and independent from such institutions. (Of course, he was also offered money to stop his cases, and personal threats when the money didn't work, but he continued on.) He would accept no money for his public-interest cases. He would sit up late at night discussing philosophy. And he conveyed love to those around him. He could be a hard teacher, a demanding mentor. But he wanted people—particularly younger people—to reach further and further—intellectually and emotionally. Susana has quoted what he once said to her: "Alberto said that when you open your eyes it is a commitment. You can never close them again."

IV. Empowerment

Surveying the accomplishments of the lawyers mentioned here (and there are many more), questions tumble forth. Why do these lawyers follow such paths? Can others join them, if not full-time, then at least for a part of each week throughout their careers? How can public interest lawyers achieve financial sustainability?

How can young lawyers be encouraged to grow old in the pursuit of their goals, rather than leave this work when the demands of family and health require stronger incomes? Can we have a program of health insurance for them? Of retirement plans? Of education for their children?

Does public interest law have the potential to transform the law through transforming the judiciary? Can judges become part of the change itself, and by their decisions and actions encourage more public interest law?

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Can localism and networking meet the challenges of conducting citizen enforcement against odds that often seem to be overwhelming? Since "networking" seems like "overhead," are funders likely to provide adequate resources for such work?

These and other questions will have to be answered in the coming years if the worldwide public interest environmental law movement is to reach its full potential. For it to reach that potential will require tireless work. Yet the rewards to the planet, as well as to the lawyers involved, will be incalculable.

FOOTNOTES:

n1 Lothar G ndling, *Technical Assistance in Environmental Law and Institutional Development in Environment: Focus, Methodology, Resources* 28 (1998), Deutsche Gesellschaft f r Technische Zusammenarbeit (GTZ), available at <http://www.gtz.de/rioplus/dlpub/24e.pdf> (last visited Sept. 3, 2003).

n2 Thousands of government officials are engaged in enforcement in one way or another, including at least hundreds of government lawyers responsible for taking cases to court. A network exists to help them learn from one another. See *The International Network for Environmental Compliance & Enforcement (INECE)*, at <http://www.inece.org> (last visited Sept. 2, 2003). Of course, a large number of government lawyers also spend their time defending against claims by citizens that the government is the one violating environmental laws.

n3 The author is conducting a census of all public interest environmental lawyers in the United States. His preliminary data indicate 500 to 600. This includes "private public interest lawyers," as defined in John Bonine, *The New Private Public Interest Bar*, 1 *J. of Env. L. & Litig.* 1 (1987). A review of Martindale-Hubbell listings for lawyers who include the term "environmental law" in their listings as of November 2003 showed a total of 8,700.

n4 Cf. Nan Aron, *Liberty and Justice for All: Public Interest Law in the 1980s and Beyond* 3 (1989).

n5 The present author was co-founder in 1978 of the world's first Environmental Law Clinic, as a part of legal education, at the University of Oregon. It has been emulated in 29 other law schools in the United States and several other countries. Justice Murray Wilcox, now Justice of the High Court of Australia, wrote about it in 1992: I have visited [the Environmental Law Clinic]. It is excellent. It is run by two bright young law professors. . . . I would like to see our law schools follow the Oregon example. . . . Student representation might not be the best representation in the country; but it is likely to be better than none at all. The Hon. Justice Murray Wilcox, *Retrospect and Prospect, in Environmental Protection and Legal Change* 206, 229-30 (Tim Bonyhady ed., 1992).

n6 Some may also argue that the category includes lawyers in corporate firms doing occasional work pro bono publico (for the good of the public) (which in South Asia, Africa, and Europe is often called work pro deo). For the purpose of this article, I will confine myself to lawyers for whom public interest environmental law or associated fields is their primary activity or *raison d' tre*, not an occasional voluntary extra.

n7 See Part III, *infra*.

n8 See Part II, *infra*.

n9 See <http://www.elaw.org> (last visited Sept. 2, 2003). Along with colleagues from nine countries, I co-founded this network in 1989-90, after trips through Africa, Asia, Australia, and the Americas. The operation of the network is described well in Jennifer M. Gleason & Bern A. Johnson, *Environmental Law Across Borders*, 10 *J. Env'tl. L. & Litig.* 67 (1995), and Mark L. Chernaik, *Empowering Environmental Lawyers Worldwide with Scientific Expertise*, 13 *J. Env'tl. L. & Litig.* 17 (1998).

n10 A description of a successful partnership may be found in David A. Wirth, *Legitimacy, Accountability, and Partnership: A Model for Advocacy on Third World Environmental Issues*, 100 *Yale L.J.* 2645 (1991).

n11 See <http://www.pielc.org/about.html> (last visited Sept. 2, 2003).

n12 *Id.*

n13 Author's recollection of industry memo.

n14 Among various histories of the Internet, one of the best is Gregory Gromov, *The Roads and Crossroads of Internet History*, at <http://www.netvalley.com/intval.html> (last visited Sept. 11, 2003).

n15 Or. *Envtl. Council v. Kunzman*, 817 F.2d 484 (9th Cir. 1987), aff'g 636 F. Supp. 632 (D. Or. 1986).

n16 This networking, in pre-Internet days, was carried out primarily through a hobbyists' network called Fidonet, which relied on the use of computers with modems contacting others nearby to pass on e-mail intended for others at great distances. See <http://www.gn.apc.org/anniversary/fido.html>.

n17 John Bonine, *Freedom of Information and Public Interest Environmental Litigation*, in *Global Development and Environment Crisis* (Penang, Malaysia, 1988).

n18 Paul Merrell & Carol Van Strum, *No Margin of Safety: Pollution in the Pulp and Paper Industry* (Greenpeace, 1988) (on file with author).

n19 Henry N. Wagner, Jr., M.D. & Linda E. Ketchum, *Living with Radiation: The Risk, The Promise* (1989).

n20 *Id.* at 5.

n21 *Now*, Mitsubishi Kasei Corp.

n22 For an overview of the litigation, see Ichihara, M. and Harding, A., *Human Rights, the Environment and Radioactive Waste: A Study of the Asian Rare Earth Case in Malaysia*, 4 *Rev. European Community and International Environmental Law* 1 (1995).

n23 Throughout a legal career spanning more than two decades, Lalanath also has composed, performed, and conducted classical music, including his *Requiem Orbis Terrarum* [Requiem for Earth], a symphony lamenting environmental loss. He has served as Conductor of the Sri Lanka Symphony Orchestra.

n24 Lalanath and Aravinda de Silva are not directly related. de Silva is a common name in Sri Lanka.

n25 Collecting bird specimens for museums requires killing the birds. The Birdman of India, Salim Ali, was skilled at this. He grew up in a family that hunted for sport. When, as a boy, he was given an airgun, he shot a sparrow with a curious yellow stripe on its neck. Unable to identify it, his uncle sent the boy to the Bombay Natural History Society to have it identified. Surrounded by hundreds of stuffed birds, his interest in ornithology was kindled. He later took up studies in the field and became an expert, roaming India for the Society without a salary, but with his expenses covered. For a short biography of Salim Ali, see Illa Viji, *Fact File: Salim Ali*, *Tribune*, Sept. 12, 1998, available at <http://www.tribuneindia.com/1998/98sep12/saturday/fact.htm> (last visited Sept. 4, 2003). His 10-volume *Handbook of the Birds of India and Pakistan: Together with Those of Bangladesh, Nepal, Bhutan and Sri Lanka* (Oxford), co-authored with Dillon Ripley, is the classic of the subcontinent. See [http://catalog.loc.gov/cgi-bin/Pwebrecon.cgi? Search Arg=handbook+of+the-birds+of+india+and+pakistan& Search Code=TATLL&PID=16539&SEQ=20040125190019&CNT=25&HIST=1](http://catalog.loc.gov/cgi-bin/Pwebrecon.cgi?Search_Arg=handbook+of+the-birds+of+india+and+pakistan&Search_Code=TATLL&PID=16539&SEQ=20040125190019&CNT=25&HIST=1) (last visited Jan. 24, 2004).

n26 This was not S. Dillon Ripley's first collecting trip to Sri Lanka (or Ceylon, as it was called under British rule). Ripley was an avid collector of birds and a good shot with a gun. The Smithsonian Museum's official history tells of an instance of his passionate collecting in the 1940s that embarrassed the British Viceroy of India: While in Ceylon, Ripley's passion for collecting may have caused him some momentary embarrassment. One evening, while shaving, he spied a rare green woodpecker, *Picus chlorolophus wells* [sic], that he wanted for his collection. Clad only in a towel, he rushed outside to shoot it, forgetting that Admiral Lord Louis Mountbatten, Supreme Allied Commander in Southeast Asia, was hosting a cocktail party just a hundred yards away. The blast from the gun caused Ripley's towel to fall off. Lord Mountbatten was less than pleased with Ripley's unconventional behavior and lack of attire, but Ripley was unfazed. *A Wind in the Attic*, *The Smithsonian*, at <http://www.150.si.edu/chap10/ten.htm> (last visited Sept. 2, 2003).

n27 EFL, *20 Years of Protecting Our Natural Heritage Through Law-The EFL Story* (2001) (on file with author). See also E-mail from Lalanath de Silva (Feb. 3, 2003) (on file with author).

n28 EFL's charter was subsequently amended to qualify it as a nonprofit.

n29 Chandi Patirana & Wathsala Patirana, *The Journey from Gal Oya to Eppawela 3* (2001), available at <http://www.efl.lk/paf/galoya.pdf>.

n30 *Id.*

n31 Patirana & Patirana, *supra* note 29, at 3.

n32 *Id.* (discussing EFL vs. Shelton Atapattu and Others, SC No.40/84).

n33 E-mail from Lalanath de Silva (Feb. 2, 2003) (on file with author).

n34 *Id.*

n35 Patirana & Patirana, *supra* note 29, at 3–4 (discussing EFL v. S.R. Samarasinghe and others, CA No. 555/87).

n36 E-mail from Lalanath de Silva (Feb. 2, 2003) (on file with author).

n37 *Id.*

n38 See Evans School, at <http://www.evans.washington.edu/alumni/contact/spring2001/articles/02.html> (last visited Aug. 28, 2003).

n39 Kailash Thakur, *Environmental Protection Law and Policy in India* 369 n.16 (1997) (referencing V.R. Krishna Iyer & P.N. Bhagwati, *Report on National Judicature: Equal Justice – Social Justice*, Ministry of Law, Justice and Company Affairs, Govt. of India, 61–67 (1977)).

n40 The seminal case sweeping away restricted notions of standing is considered to be the *Judges' Transfer Case*, *S. P. Gupta v. Union of India*, *AIR 1982 SC 149*, prior to the first environmental cases. The Court justified its loosened rules for legal standing on the ground that, without legal relief, people would resort to the "self-help" of the "lawless street." *Fertilizer Corp. Kamagar Union (Regd.) Sindri v. Union of India*, 1981 *AIR* 344, 355. A short history of the Court's procedural reforms, with documentary references, can be found in Shyam Divan & Armin Rosencranz, *Environmental Law and Policy in India* 135 (2d ed. 2001).

n41 *Ratlam Municipality v. Vardhichand*, *A.I.R. 1980 S.C. 1622, 1628*. See also Thakur, *supra* note 39, at 305 (discussing *Ratlam Municipality*, *A.I.R. 1980* at 1633). A decision the previous year upheld a magistrate's order to demolish a factory chimney emitting smoke alleged to be harmful to the community. Thakur, *supra* note 39, at 367 n.7 (discussing *Singh v. Sarup*, *A.I.R. 1979 S.C. 143*).

n42 *Ratlam Municipality*, *A.I.R. 1980* at 1628.

n43 *Id.*

n44 See <http://www.lawyerscollective.org> (last visited Aug. 3, 2003), for the Lawyers Collective website and description. After a massive explosion at Union Carbide's factory in Bhopal, India, released deadly methyl isocyanate gas and killed thousands, Indira Jaising of the Collective participated in the Commission of Enquiry set up by the Government of Madhya Pradesh and later brought suit to challenge the settlement between the Union of India and Union Carbide Corporation. The Collective also worked with the Goa Foundation on cases against hotels constructed within the 200-meter No-Development Zone, at <http://www.hri.ca/partners/lc/about/cases.shtml> (last visited Aug. 3, 2003). [f x

n45 G o a F o u n d a t i o n , a t <http://www.goacom.com/goafoundation> (last modified Dec. 6, 2002).

n46 See <http://www.goacom.com/goafoundation/pil.htm> (last visited Oct. 25, 2003). [f x

n47 G o a F o u n d a t i o n , a t <http://www.goacom.com/goafoundation> (last modified Dec. 6, 2002).

n48 See P.B. Sahasranaman, at <http://personal.vsnl.com/sahasram> (last visited Sept. 3, 2003).

n49 Id.

n50 *Mehta v. Union of India*, A.I.R. 1987 S.C. 1086, available at <http://www.elaw.org> (last modified Dec. 30, 2002). Various orders were issued in the case. *Mehta v. Union of India*, (1987) 1 S.C.C. 395; (1986) 2 S.C.C. 325; (1986) 2 S.C.C. 176.

n51 Among the first of numerous orders of the Supreme Court that he has obtained was *Mehta v. Union of India*, (1987) 4 S.C.C. 463.

n52 See <http://www.elaw.org/resources/text.asp?ID=1095> (last visited Jan. 24, 2004).

n53 *Mehta v. Union of India*, A.I.R. 1988 S.C. 1115 (Ganga Pollution Municipalities Case).

n54 *Mehta v. Union of India*, 1 SAELR 46.

n55 The "Lago Chungara Case" was among the first in Chile, in which a group of lawyers from Santiago filed suit to protect a lake high in the Andes. Humberto Plaza, J., *Comite de Desarrollo de Putre y CODEFF v. Ministro de Obras Publicas y otros (Recurso de Proteccion)*, Arica, Corte Suprema, Dec. 19, 1985, Rol. 824. The case is discussed in Heidi Montero, *Chile's Constitutional Approach to Environmental Rights* (1999) (unpublished paper on file with author), and Rafael Asenjo, *Innovative Environmental Litigation in Chile: The Case of Chanaral*, 2 *Geo. Int'l Envtl. L. Rev.* 99 (1989). According to Asenjo, this was the first time a Chilean court had ever reached the merits of an environmental case. Id.

n56 *Sociedad Peruana de Derecho Ambiental [Peruvian Soc'y of Envtl. Law]*, at <http://www.spda.org.pe> (last visited Sept. 3, 2003).

n57 In this and the following conversations recounted here, I rely on my memory. Therefore, the quotations are not exact.

n58 *Kattan v. Federal State (Secretary of Agriculture)* (1983). Alberto Kattan was granted the right to sue the Government of Argentina to challenge a permit that authorized a Japanese company to hunt and capture six dolphins (members of an endangered species) (on file with author).

n59 Interview with Albert Kattan (1992).