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WILLIAM H. RODGERS, JR., AND ENVIRONMENTAL LAW: NEVER GIVE UP, KEEP ON GOING

John E. Bonine*

INTRODUCTION: THE RETURN OF THE SALMON

To celebrate the first forty years of Professor William H. Rodgers, Jr.'s career, his colleagues streamed up to Seattle for a symposium at the University of Washington, from locations near and far.¹ However, learning that something fishy was afoot, Professor Rodgers turned the planning for the symposium toward a broader purpose. Instead of allowing it to be a mere encomium to his career thus far, he used the availability of such a rich array of thinkers to nourish ideas for the protection of ecosystems like that of Puget Sound. One participant called the result an "intellectual potlatch"² for the community. In the

* Professor of Law, University of Oregon. I appreciate a large number of comments received on drafts of this article from various people mentioned herein, the information contributed by members of the ENVLAWPROFESSORS discussion list, the notes written by attendees at the April 20–21, 2007, symposium: "Of Salmon, the Sound and the Shifting Sands of Environmental Law—a National Perspective; with a Look Forward at the Career of Bill Rodgers and the Power of Ideas," and the research assistance of several of my law students: Alyssa Johl, Robert Kaiser, Genevieve La Blanc, Kevin Parks, and Paul Tassin. All e-mail messages cited herein are on file with the author.

1. Professor Michael Robinson-Dorn, Director of the University of Washington's Steve and Kathy Berman Environmental Law Clinic, led the effort—contacting colleagues, organizing them into a conference call to plan the event, and worrying over the endless details. Photographs of the event can be found online at <http://www.stormsphoto.com/gallery/2740206#146424554>. One young academic, who uses Professor Rodgers's books in his research, traveled all the way from Kenya for the symposium.

2. The participant commented, "Typical of your intellectual generosity is to give us this potlatch today—a gathering of friends—and a seed for the next 40 years of resource leadership." Handwritten note from Katherine Baril, faculty chair and Director of the Washington State University Community Learning Center in Port Townshend, WA, Apr. 20, 2007. In "potlatch" ceremonies, common before white encroachment in the Pacific Northwest, Indians would make gifts, often of salmon, to others. Some believe that the custom of potlatching with salmon asserted territorial claims to salmon-rich streams, and thereby protected them. When a tribe offered such gifts after a successful salmon harvest, the other tribes' acceptance implicitly acknowledged the first tribe's claim to superior rights on that stream. "Rather than self-aggrandizing oratory for its own sake, the chief's declarations served the important economic function of shaming his rivals into respecting established tribal claims." D. Bruce Johnsen, *The Si'lailo Redux*, 10 GREEN BAG 245, 255 (2007) (reviewing JOSEPH C. DUPRIS, KATHLEEN S. HILL & WILLIAM H. RODGERS, *THE SI'LAILO WAY*:

symposium and now in this volume, professors, lawyers, and other experts have given freely the riches of their knowledge and ideas involving the environment and its protection through law.

We must also talk of the young elder whom the symposium honored. Despite his best efforts to give the riches of the symposium to others, Professor Rodgers could not completely deflect the attention and recognition that was being paid to his own work and example. He was required to sit and listen as words of praise fell everywhere around him.³ While experts were speaking, comments were also coming in by e-mail and on pieces of paper circulated during the lectures. Who was the subject of this talking circle? This essay attempts to paint a picture of Professor Rodgers's contributions to environmental law and the impact he has had on the lives of others. He never gives up. He keeps on going, and he does so with humor and humanity.

1. WHO⁴ OR WHAT⁵ IS WILLIAM H. RODGERS, JR.?

Professor William H. Rodgers, Jr. sometimes seems like a primal force of nature. From his way with words, some may consider him as the William Shakespeare of environmental law.⁶ From his humor and humanity, it would be logical to label him the Will Rogers of environmental law.⁷ From his steadfast dedication to doing something

INDIANS, SALMON & LAW ON THE COLUMBIA RIVER (2006)).

3. And sit and listen, he did. For hours upon end. Professor Oliver Houck of Tulane University School of Law, at a party in Rodgers's home after the symposium, offered a toast to Professor Rodgers's stamina. He described his amazement that not once did Professor Rodgers budge from his front-row seat during the symposium to make a trip to the restroom. Houck recounted how he had moved to the front row, hoping to figure out Rodgers's secret. From his new vantage point, Houck was able to make a soft glance discreetly at Rodgers pant leg, trying to see whether perhaps a hose and bucket were connected, but he saw nothing. Houck ended his toast by proposing that, to enhance the attendance of symposia into the next century, it might be worthwhile to consider preservation measures, similar to the pickling of Einstein's brain, for his academic colleague.

4. Professor Rodgers likes to pose and answer questions like this. *See, e.g.*, William H. Rodgers, Jr., *The Most Creative Moments in the History of Environmental Law: The Who's*, 39 WASHBURN L.J. 1 (1999). Turn-about is fair play.

5. Compare William H. Rodgers, Jr., *The Most Creative Moments in the History of Environmental Law: "The What's"*, 2000 U. ILL. L. REV. 1.

6. Compare THE OXFORD SHAKESPEARE: THE COMPLETE WORKS OF WILLIAM SHAKESPEARE (Craig, W.J. ed., Oxford U. Press 1914). The book contains 1,350 pages.

7. Will Rogers (1879–1935), the "cowboy philosopher" (of Cherokee heritage) famously said, "There's no trick to being a humorist when you have the whole government working for you." He also said, "I don't make jokes, I just watch the government and report the facts." Bill Rodgers also watches the courts and reports the facts.

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about environmental degradation, he has even been labeled our Captain Planet.⁸ The science of mathematics can provide another view. If the pages of his books and articles⁹ were put end to end,¹⁰ they would reach 5.8 times as high as the Empire State Building,¹¹ would equal 6.7 Eiffel Towers,¹² and could just barely be matched by twelve Seattle Space Needles.¹³ In a comparison that is perhaps more apt, if laid horizontally and end-to-end, his pages would be as long as the behemoth Grand Coulee Dam plus almost the huge powerhouse at The Dalles Dam put together.¹⁴

Of course, numbers tell only a portion of the William Rodgers story. Unlike Grand Coulee Dam, which blocked passage of salmon to 1,000

8. See Richard Lazarus, *Bill Rodgers: Environmental Law's Captain Planet*, 82 Wash. L. Rev. 493 (2007).

9. Not considering his chapters in other people's books, Rodgers's books, articles, and supplements comprise at least 8,967 pages, nearly thrice the number of pages in the COLUMBIA ENCYCLOPEDIA, the English-speaking world's oldest, largest, single-volume general encyclopedia. Columbia University, Paul Lagasse, Lora Goldman, Archie Hobson, Susan R. Norton, COLUMBIA ENCYCLOPEDIA (6th ed., 2000) (3,048 pages). These 8,967 pages contain about 4 million words.

10. Since the average book or law review page is about 9.5 inches high, Rodgers's 8,967 pages, *supra* note 9, would extend about 7,098 feet if set one above the next—over 1.3 miles. *Calc.* WILLIAM H. RODGERS, JR., TREATISE ON ENVIRONMENTAL LAW (West Publishing Company 1986–1992) (2,868 pages) (plus 2006 pocket parts, vol. 1, 337 pages, vol. 2, 395 pages, vol. 3, 156 pages, vol. 4, 269 pages); HORNBOOK ON ENVIRONMENTAL LAW (West Publishing Company 2d ed. 1994) (1,023 pages) (plus 1999 pocket part, 369 pages); CASES AND MATERIALS ON ENERGY AND NATURAL RESOURCES LAW (West Publishing Company 2d ed.) (847 pages plus Teacher's Manual, 102 pages) (1983); WILLIAM H. RODGERS, JR., CORPORATE COUNTRY: A STATE SHAPED TO SUIT TECHNOLOGY (Rodale Press 1973) (299 pages); JOSEPH C. DUPRIS, KATHLEEN S. HILL, & WILLIAM H. RODGERS, JR., THE SI'LAILO WAY: INDIANS, SALMON AND LAW ON THE COLUMBIA RIVER (Carolina Academic Press 2006) (450 pages); ENVIRONMENTAL LAW IN INDIAN COUNTRY (Thomson West Publishing Company vol. 1 2005) (850 pages) plus page count by the author and assistant of 997 pages in fifty-one law review and other articles by Professor Rodgers, conducted on May 14–16, 2007. (Of interest to some future archaeologist might be the fact that the fifty-one articles contain 5,150 footnotes).

11. The Empire State Building is 373 meters or 1224 feet, not including its lightning rod. Empire State Building, Official Internet Site: http://www.esbnyc.com/tourism/tourism_facts.cfm?CFID=46899, (last visited June 30, 2007).

12. The Eiffel Tower reaches to 324 meters or 1,063 feet. Identity Card of the Eiffel Tower, <http://www.tour-eiffel.fr/teiffel/uk/documentation/chiffres/page/identite.html> (last visited June 30, 2007).

13. The Seattle Space Needle tops out at 184 meters or 604 feet. Space Needle Official Site: Fun Facts, www.spaceneedle.com/about/funfacts.asp (last visited June 30, 2007).

14. Grand Coulee Dam, one of the largest concrete structures in the world, is 5,223 feet long at its crest. U.S. Bureau of Reclamation, WA00262 - Grand Coulee Dam, <http://www.usbr.gov/dataweb/dams/wa00262.htm> (last visited June 30, 2007). The powerhouse at The Dalles Dam extends 2,089 feet across the Columbia River.

miles of fish habitat,¹⁵ and The Dalles Dam, which destroyed the most important Indian fishing location in the world, Celilo Falls,¹⁶ Professor Rodgers's works do not interfere with the forces of nature or harm peoples. Instead, they use the power of ideas in an attempt to help revitalize those forces, as well as the cultures of the peoples who depend upon them. Professor Rodgers's incisive wit,¹⁷ powers of sharp observation, and habit of speaking truth to power with a grin and a bite place his writing in a special class. Throughout the first forty years of his academic career, he has brought us insights from the fields of biology,¹⁸ evolutionary biology,¹⁹ geology,²⁰ mythology,²¹ architecture,²² psychology,²³ modern warfare,²⁴ decision theory,²⁵ legal theory,²⁶ and

15. When the Grand Coulee Dam was completed in 1941, it had no fish ladders and completely blocked all salmon migration upstream into Canada, Eastern Washington and Montana (more than 1,000 miles of salmon spawning habitat). *Special Report: In Defense of Salmon*, "Returning the Columbia's Salmon to Canada," CASCADIA TIMES, Spring 2007, at 13, available at <http://www.times.org/archives/2007/cascadia%20times%201a.pdf>. It was not only the fish that suffered. According to Andrew Gage, lawyer at the West Coast Environmental Law Association in Vancouver, British Columbia, "Grand Coulee destroyed the fishery of the indigenous peoples of the Upper Columbia who had historically depended upon that anadromous fishery for subsistence, livelihood and cultural purposes." *Id.* at 14.

16. See generally DUPRIS, HILL & RODGERS, *THE SI'LAILO WAY*, *supra* note 10.

17. See, e.g., William H. Rodgers, Jr., *A Hard Look at Vermont Yankee: Environmental Law Under Close Scrutiny*, 67 GEO. L.J. 699 (1979) (coining the term "soft glance" to describe the Supreme Court's failure to use the "hard look" doctrine in reviewing agency decisions under the National Environmental Policy Act).

18. William H. Rodgers, Jr., *Where Environmental Law and Biology Meet: Of Pandas' Thumbs, Statutory Sleepers, and Effective Law*, 65 U. COLO. L. REV. 25 (1993); *NEPA at Twenty: Mimicry and Recruitment in Environmental Law*, 20 ENVTL. LAW. 485 (1990).

19. William H. Rodgers, Jr., *The Lesson of the Owl and the Crows: The Role of Deception in the Evolution of the Environmental Statutes*, 4 J. LAND USE & ENVTL. L. 377 (1989).

20. William H. Rodgers, Jr., *Defeating Environmental Law: The Geology of Legal Advantage*, 15 PACE ENVTL. L. REV. 1 (1997).

21. William H. Rodgers, Jr., *Deception, Self-Deception, and Mythology: The Law of Salmon in the Pacific Northwest*, 26 PAC. L.J. 821 (1995).

22. William H. Rodgers, Jr., *The Seven Statutory Wonders of U.S. Environmental Law: Origins and Morphology*, 27 LOY. L.A. L. REV. 1009 (1994).

23. William H. Rodgers, Jr., *Intuition, Altruism, and Spite: Justice as Justification*, in *THE SENSE OF JUSTICE: THE BIOLOGICAL FOUNDATIONS OF LAW* 163-86 (Roger D. Masters & Margaret Gruter eds., Sage Publications, Inc. 1992); *The Porcupine's Dilemma: Strategic and Psychological Uncertainty in the Face of Global Warming*, 9 ARIZ. J. INT'L & COMP. L. 267 (1992).

24. William H. Rodgers, Jr., *Guerilla Decisionmaking: Judicial Review of Risk Assessments*, 15 J. HAZ. MATERIALS 205 (1987).

25. William H. Rodgers, Jr., *Judicial Review of Risk Assessments: The Role of Decision Theory In Unscrambling the Benzene Decision*, 11 ENVTL. LAW. 301 (1981); *The Lesson of the Red Squirrel: Consensus and Betrayal in the Environmental Statutes*, 5 J. CONTEMP. HEALTH L. &

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philosophy.²⁷ What one colleague has termed his “marriage of passion and intellect”²⁸ has played an important part in creating a new and distinct body of learning and law.²⁹ As that body has grown from infancy into middle age, Professor Rodgers has acted as its playmate, its mentor, and its teacher. He has scolded it as a friendly uncle and showered it and its participants with what can only be called “love.”

Sometimes the love can be tough love. Richard Lazarus points us to a Rodgers critique of an opinion on dams by Judge Patricia Wald, U.S. Court of Appeals for the D.C. Circuit, whom many view as a progressive hero.³⁰ Rodgers began by describing Judge Wald as “[t]he strongest environmentalist to sit on the D.C. Circuit” and expressing admiration for her “beautiful essay” and “elegant expressions.” Then he observed that her ruling, upholding the EPA’s view that dams are not point sources, “did not help the fish. It did not help the Indians. Still, it was a fine and memorable legal moment.”³¹ Sometimes, Rodgers can’t restrain himself. Of certain distinctions made by Judge Alex Kozinski in an opinion for the U.S. Court of Appeals for the Ninth Circuit, Professor Rodgers coined the term “Kozinski distinctions” and wrote, “I am told that this judge, Kozinski, was one of the youngest ever honored with an appointment to a court of appeals. He should have gone to law school first.”³²

He is far more than a scholar with a sharp eye and sharp tongue. Professor Rodgers is a teacher in the best sense of the word. He enlightens as he entertains. He helps open minds to new possibilities. Professor Rodgers also puts his knowledge to practical use in the courtroom on behalf of those lacking justice,³³ on a fishing boat talking

POL’Y 161 (1989).

26. William H. Rodgers, Jr., *Building Theories of Judicial Review in Natural Resources Law*, 53 U. COLO. L. REV. 213 (1982).

27. William H. Rodgers, Jr., *The Natural Law of Administrative Law*, 48 MO. L. REV. 101 (1983); *The Sense of Justice and the Justice of Sense: Native Hawaiian Sovereignty and the Second “Trial of the Century”*, 71 WASH. L. REV. 379 (1996).

28. E-mail from Prof. Myrl Duncan, Washburn University School of Law, (May 1, 2007).

29. *But see* A. Dan Tarlock, *Is There a There There in Environmental Law?*, 19 FLA. ST. U. J. LAND USE & ENVTL. L. 213 (2004).

30. E-mail from Prof. Richard Lazarus, Georgetown University Law Center (May 3, 2007).

31. William H. Rodgers, Jr., *Defeating Environmental Law: The Geology of Legal Advantage*, 15 PACE ENVTL. L. REV. 1, 17 (1997).

32. William H. Rodgers, Jr., *Judicial Regrets and the Case of the Cushman Dam*, 35 ENVTL. L. 397, 402–03 (2005).

33. *See infra* notes 76–112

with working people,³⁴ or sitting, talking quietly, and consulting with tribal elders.

Most importantly, colleagues and friends remark often about Professor Rodgers's humility, his humanity, and his easy good humor, as well as his ability to inspire and his mentoring. He merits loyalty and respect as easily as he gives them to others. In an attempt to take his measure, a survey was conducted unbeknownst to him during the symposium. At 6:00 a.m. on the first morning of the symposium, a plan was hatched. Professor Rodgers's name was quietly removed from the e-mail discussion list, ENVLAWPROFESSORS.³⁵ A call went out for list members to comment about their personal experiences with Bill. The messages came back in a torrent—some of them about his professional work, but more about him as a person. As the symposium began, blank sheets quietly circulated through the room, allowing attendees to write their own comments and greetings, under the nose yet just out of the sight of Professor Rodgers. Between the e-mails and the hand-written notes, about 120 people responded in just a few hours. One professor sent a poem from her sojourn in Italy.³⁶ Another sent instructions to the author to transmit a bear hug.³⁷ Working into the evening on her own time and without Professor Rodgers's knowledge, Cynthia Fester, his secretary, combined them all into a keepsake book that we presented to him at the conclusion of the symposium.³⁸

34. *Tribal Collaborations: The Search for Common Ground*, FISH MATTERS (Northwest Fisheries Science Ctr., Seattle, WA), Fall 1999, at 8, available at <http://www.nwfsc.noaa.gov/publications/newsletters/fishmatters/nov1999.pdf>.

35. I established this discussion list in 1991 at a meeting of the Association of American Law Schools. Most participants teach in the United States, but others log in from dozens of countries around the world. The list, based at the University of Oregon's Environmental and Natural Resources Law Program, allows environmental law professors a simple way to talk with one another about the issues of the day, upcoming conferences, planning of courses, or whatever they choose. Actually, it was probably not necessary to remove him from the e-mail list. As often as not his secretary checks his e-mail, whereas Rodgers is a man devoted to communicating by letters and notes, the old-fashioned way.

36. E-mail message from Prof. Denise Antolini, University of Hawai'i Law School (Apr. 20, 2007).

37. Telephone message from Prof. Patrick McGinley, West Virginia University College of Law (Apr. 19, 2007).

38. His good judgment is evident in his choice of secretary. She wrote in her own note: "Professor Rodgers – I'm probably the luckiest one in your group of admirers because I get to work with you every day. And like everyone who has the pleasure of your acquaintance, I learn something from you every day . . . even on the days I don't see you. Because I know you are on the 'case,' I'm possessed of an optimism I would not otherwise have. I've looking forward to what tomorrow brings because your work is NEVER dull!" Hand-written note from Cynthia Fester, Prof.

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The hand-written notes and e-mail accolades can help us search for some answers about what spirit being it is that guides Professor Rodgers. At the outset, we are faced with the question whether to refer to him as “William” or “Bill”? To many, at a distance, he is “William Rodgers.” But as soon as someone comes to know him personally, Professor Rodgers becomes “Bill.” In an e-mail sent during the symposium, a professor from Massachusetts wrote:

I don't know Bill Rodgers. In fact, I think of him as William Rodgers . . . I have admired him from afar, and quoted him to all of my students, year after year, because he said, of the theory that in-situ mining is like picking an apple from a tree (and the tree therefore is not rendered solid waste), that the metaphor was “hardly compelling—how about attacking the trees with a bulldozer to get easy access to the hard-to-reach fruit at the top?”³⁹

At least we know that Professor William “Bill” Rodgers is not like a bulldozer. He is far more likely to be found watering the tree and encouraging others to do the same. This essay will look at the tree his career has helped grow, consider some comments by others who have sheltered under it, and take note of the many contributions that William H. “Bill” Rodgers, Jr. has made, professionally and personally, to fertilizing the field of environmental and natural resources law.

2. BILL RODGERS'S PRE-CAREER

William H. Rodgers, Jr., was born in 1939 to loving, well-educated parents living in Brockton, Massachusetts. His parents, William and Elva, were both teachers in the local schools. As related in a recent story about his background:

Rodgers's Secretary, Apr. 20, 2007. Other staff members appreciate him as well. A reference librarian wrote that Rodgers “consumes information, and is always on the lookout for more There is only one problem—we have to decipher his handwriting first!” Hand-written note by Nancy McMurrer, Reference Librarian, University of Washington Law School, Apr. 20, 2007.

39. E-mail from Prof. Rick Reibstein, Boston University (Apr. 20, 2007). The Wyoming Mining Association contends that in-situ mining for uranium is an “environmentally friendly mining process” that simply “revers[es] the natural processes which deposited the uranium.” Uranium In-situ Mining A Description, <http://www.wma-minelife.com/uranium/insitu/items002.htm> (last visited Sept. 11, 2007). It consists of drilling wells and injecting various solutions into the ground. See, e.g., Innovations: How Do They Do That? In Situ Mining, <http://www.copper.org/innovations/how/howdo2.htm> (last visited Sept. 11, 2007).

Growing up on a farm in Massachusetts, Rodgers said he has always been close to nature. The farm was “a swamp on one side with no end, woods on one end that had no end, and cow pastures on the other with no end. It was like heaven.”

When he was 10 years old, the farm was reclaimed so that a highway could be built, an influential event in Rodgers’s life. In law school, he realized he could use the law “to fix things.”⁴⁰

He graduated from Scarsdale High School in New York, as his father had taken on the job of Superintendent of the Scarsdale School District. In the summers, Bill would return to Massachusetts to work on his aunt and uncle’s pig farm just outside of Boston. Rodgers raised ducks—Silly and Sally were two of his favorites—and took care of the farm animals. He continues to feed birds in Seattle and reportedly dreams of having chickens to feed someday.⁴¹

Rodgers is also intensely competitive. In high school, he played football, basketball, and baseball, and had hopes of playing semi-pro baseball. At Harvard University, he played baseball and some football. Long a season-ticket holder of the University of Washington’s football and basketball teams, as well as those at Ballard High School in Seattle—where his son is a basketball coach—he also drops in on the Seattle Mariners and the local minor leagues with his adult children. His own early, crack-of-dawn work-outs have been described as “manic.”⁴² This is perhaps to be expected from someone who served in the Marine Corps Reserves while an undergraduate at Harvard, from which he graduated in 1962, and throughout law school at Columbia University, where he received his LL.B. in 1965. After law school, Rodgers competed for and won a clerkship to U.S. District Judge Fredrick van Pelt Bryan of New York.

In 1967, he accepted a teaching position at the University of Washington. Environmental law did not exist as a recognized field at the time – neither in the statute books, the courts, nor academia. The stirrings were beginning, but nothing had yet coalesced. Law is typically taught by dissecting legislation, picking apart case precedents, and commenting on what one finds. In 1967, however, the legislation

40. Shari Ireton, *Champion of the environment: Law school’s Bill Rodgers to be celebrated Earth Day weekend*, University Week (Apr. 19, 2007), available at <http://uwnews.washington.edu/ni/uweek/uweekarticle.asp?articleID=32236>.

41. E-mail from Janet Rodgers, (May 15, 2007).

42. All sports information from e-mail from Cynthia Fester (May 14, 2007).

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concerning pollution was little more than a motley collection of state laws along with a few halting attempts at federal regulation.⁴³ Legislation concerning natural resources primarily facilitated extraction from the Earth and its waters, not conservation.⁴⁴ Environmental cases were a rarity.⁴⁵

But change was in the air. Working in a legal system that was stacked against them, citizens and local governments had begun to file a small number of adventurous cases⁴⁶—beginning with a challenge to the spraying of DDT for the gypsy moth on Long Island in the late 1950s.⁴⁷

43. At the national level, a primitive Water Pollution Control Act had been passed by the U.S. Congress in 1948. Water Pollution Control Act of 1948, Pub. L. 845, 80th Congress, 2d Sess. 62 Stat. 1155 (1948). By the time of its 1965 and 1966 amendments (the Water Quality Act of 1965, Pub. L. 89-234, 79 Stat. 903 (1965) and Clean Water Restoration Act of 1966, Pub. L. 89-753, 80 Stat. 1246 (1966)), the federal water pollution legislation had proved itself wholly “inadequate in every vital aspect.” *EPA v. Cal. State Water Res. Control Bd.*, 426 U.S. 200, 203 (1976) (quoting S. REP. NO. 92-414, at 7 (1972)). The other major federal law, the Refuse Act of 1899, Mar. 3, 1899, ch. 425, § 13, 30 Stat. 1152 (1899), did not start to become an effective environmental law until President Nixon was forced to set up a permit program under the U.S. Army Corps of Engineers in 1970. Exec. Order No. 1,1574, 35 Fed. Reg. 19627 (Dec. 25, 1970). With regard to air pollution, a federal law calling for nothing but research on air pollution had been adopted by Congress in 1955, Air Pollution Control Act of 1955, Pub. L. 84-159, 69 Stat. 322 (1955). The Clean Air Act, Pub. L. No. 88-206, 77 Stat. 392 (1963), did no more than add the same ineffective and complicated enforcement procedure that was in the water pollution laws. Despite providing for the start of federal regulation of emissions from automobiles, Motor Vehicle Pollution Act of 1965, 89 Pub. L. No. 272, 79 Stat. 992 (1965), the program for stationary sources, somewhat strengthened by the Air Quality Act of 1967, 90 Pub. L. No. 148, 81 Stat. 485 (1967), did little to attack the growing problems. Similarly, a Solid Waste Act was passed, 89 Pub. L. No. 272, 79 Stat. 992 (1965), but it was ineffective.

44. Meanwhile, in terms of preservation of natural resources, Congress had adopted the Multiple-Use Sustained-Yield Act for the National Forests in 1960, Pub. L. No. 86-517, 74 Stat. 215 (1960), and finally passed the Wilderness Act in 1964, Pub. L. No. 88-577, 78 Stat. 890 (1964), but that was about it. Natural resources until the late 1960s, and even beyond, were governed by non-preservationist laws that have been dubbed the “lords of yesterday.” CHARLES WILKINSON, *CROSSING THE NEXT MERIDIAN* (Island Press 1992). In 1966, Congress had adopted section 4(f) of the Department of Transportation (DOT) Act of 1966, Pub. L. No. 89-670, 80 Stat. 931 (1966), but it did not really gain any power under the Supreme Court decision in *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402 (1971).

45. The few cases included *Georgia v. Tennessee Copper Co.*, 206 U.S. 230 (1907); *Georgia v. Tennessee Copper Co.*, 240 U.S. 650 (1916); and *New Jersey v. New York*, 283 U.S. 473 (1931).

46. Dan Tarlock has labeled them legal “guerilla” cases. A. Dan Tarlock, *The Future of Environmental “Rule of Law” Litigation*, 17 PACE ENVTL. L. REV. 237, 244 (2000).

47. *Murphy v. Benson*, 151 F. Supp. 786, 789 (E.D.N.Y. 1957); *Murphy v. Benson*, 164 F. Supp. 120 (E.D.N.Y. 1958). This may well be the first modern environmental case brought by citizens, despite the conventional wisdom that the *Storm King* case, *infra* note 49, started the field. Robert Cushman Murphy, a biologist who was Curator Emeritus of Birds at the American Museum of Natural History, was among a group of property owners who sued the New York Department of

In 1965, a few lawyers on both sides of the continent began venturing into court—to challenge plans to run overhead electrical transmission lines through a town and scenic rural landscape near Stanford University in California⁴⁸ and to object to licensing of a water reservoir on top of scenic Storm King Mountain in New York.⁴⁹ Soon lawyers were going to court to try to stop the spraying of DDT on Long Island for control of mosquitoes,⁵⁰ the building of highways in New York,⁵¹ and the construction of a ski resort on a scenic mountain in Massachusetts.⁵²

Agriculture. Among other theories, the plaintiffs challenged the statute authorizing the spraying as an unconstitutional delegation of legislative power. In rejecting that claim, the court also stated, “It would seem that the plaintiffs’ major complaint is of annoyance, rather than damage.” 164 F. Supp. at 126. A report of this case in the *New York Times* led scientist Rachel Carson to suggest to *New Yorker* editor William Shawn that he commission an article on it. Shawn asked her to write the article. The article was published in three parts. See Rachel Carson, *Reporter at Large; Silent Spring* (pts. 1, 2 & 3), THE NEW YORKER, June 16, 1962 at 35, THE NEW YORKER, June 23, 1962 at 31, THE NEW YORKER June 30, 1962 at 35. Meanwhile, the U.S. Supreme Court denied *certiorari*, but Justice William O. Douglas had the opportunity to write one of his first environmental dissents, arguing, “The alarms that many experts and responsible officials have raised about the perils of DDT underline the public importance of this case.” *Murphy v. Butler*, 362 U.S. 929, 934, n. 8 (1960) (Douglas, J., dissenting) (quoting at length from a 1959 letter that Rachel Carson wrote to the *Washington Post*).

48. *Maun v. United States*, 347 F.2d 970 (9th Cir. 1965) (requiring the Atomic Energy Commission to accede to local regulation of overhead transmission lines in a “scenic mountainside area” with “stands of redwood trees more than one hundred years old,” claimed by a Congressman to be “one of the loveliest areas of California and perhaps the Nation”). The Court of Appeals quoted Supreme Court language that had a strong environmental slant: “The concept of the public welfare is broad and inclusive. [...] The values it represents are *spiritual as well as physical, aesthetic as well as monetary*. It is within the power of the legislature to determine that the community should be *beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled*.” *Id.* at 977–78 (quoting *Berman v. Parker*, 348 U.S. 26, 33 (1954)) (emphasis added). The court also picked through various unrelated federal statutes to find references to preservation of “natural integrity,” providing for “recreational, conservation, and scenic areas,” and providing for “preservation of natural beauty” as examples of what Congress considered the public welfare to include. *Id.*

49. *Scenic Hudson Preservation Conf. v. F.P.C.*, 354 F.2d 608 (2d Cir. 1965) (commonly known as the *Storm King* case). Although widely considered the first modern environmental case, the *Storm King* case was decided in December 1965, seven months after the *Maun*, *supra* note 48. Nonetheless, it received much more publicity, at least on the East Coast.

50. *Yannacone v. Dennison*, 55 Misc. 2d 468, 285 N.Y.S.2d 476 (N.Y. Sup. Ct. 1967). The complaint stated that Carol A. Yannacone and others had a “right” to enjoy a clean environment. He also sued on behalf of “generations yet unborn.” *Sue the Bastards*, TIME, Oct. 18, 1971 at 54, available at <http://www.time.com/time/magazine/article/0,9171,910111,00.html>. The trial court dismissed the complaint, saying, “There is injury here, but that in part is something which is expected from the application of DDT.” *Yannacone*, 285 N.Y.S.2d at 480.

51. *Road Review League v. Boyd*, 270 F. Supp. 650 (S.D.N.Y. 1967).

52. Dan Levin, “Happy Anniversary, CLF!” 9 CONSERVATION MATTERS (Winter 2002–2003).

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Even lawyers for the government, under the leadership of Solicitor General Thurgood Marshall, started to get involved. In 1966, U.S. Supreme Court Justice William O. Douglas—who had grown up near the Cascade Mountains in Washington State—ruled that Standard Oil could not discharge liquid pollution into rivers without a permit governing “refuse” under a nineteenth century statute.⁵³ In 1967, Justice Douglas ruled that before licensing a hydroelectric dam in Hells Canyon, the Federal Power Commission must consider “public purposes,” “recreational purposes,” salmon and steelhead spawning, and effects on wildlife, among other things.⁵⁴

With such shifts in the law, soon to be understood as tectonic, the moment was ripe for a bright, young law professor to examine such creativity, develop his own ideas, and help construct a new field of law. At the time that Rodgers took up teaching duties in 1967, there were essentially no courses in environmental law,⁵⁵ no environmental law textbooks,⁵⁶ and only a few articles in academic law reviews.⁵⁷ Only one

53. *United States v. Standard Oil Co.*, 384 U.S. 224 (1966) (interpreting Rivers and Harbors Act of 1899). He wrote that “whatever may be said of the rule of strict construction, it cannot provide a substitute for common sense, precedent, and legislative history.” *Id.* at 225. Justice Douglas had ruled six years earlier that discharge of industrial solids by a factory also required a permit, although that ruling was based on actual obstruction of navigation. *United States v. Republic Steel Corp.*, 362 U.S. 482 (1960).

54. *Udall v. Fed. Power Comm’n*, 387 U.S. 428 (1967). The narrow holding was that the Federal Power Commission, in issuing a license for a private dam, had not adequately considered the alternative of a federal dam. *Id.* at 450.

55. Of course, courses in natural resources law were taught in schools in the Western states, but they rarely emphasized conservation. Indiana University offered The Law of Pollution Control, starting in 1966. E-mail from Prof. Julian Juergensmeyer, Georgia State University College of Law (Apr. 20, 2007). By the 1968–69 academic year, Harvard was offering a class titled Legal Problems of Environmental Quality and the State University of New York at Buffalo was offering Comparative Environmental Law. *LAW AND THE ENVIRONMENT* 332 (Malcolm Baldwin & James K. Page, Jr. eds., 1970). Soon, Professors David Currie, Frank Grad, Oscar Gray, Arnold Reitze, William Rodgers, Dan Tarlock, and several others were offering environmental law courses.

56. Oscar Gray of Maryland published *Cases and Materials on Environmental Law* in 1970. The next year, Frank Grad of Columbia published *Environmental Law: Sources and Problems*. By 1974, John Hanks, Dan Tarlock, and Eva Hanks brought out their *Cases and Materials on Environmental Law and Policy*.

57. The total for the decade before William Rodgers began teaching can be counted on one’s appendages. Little more can be found except Seymour C. Wagner, *Statutory Stream Pollution Control*, 100 U. PA. L. REV. 225 (1951); Note, *California’s Water Pollution Problem*, 3 STAN. L. REV. 649 (1951); N. William Hines, *Nor Any Drop to Drink: Public Regulation of Water Quality Part I: State Pollution Control Programs*, 52 IOWA L. REV. 186 (1966); *Part II: Interstate Arrangements for Pollution Control*, 52 IOWA L. REV. 432 (1966); and *Part III: The Federal Effort*, 52 IOWA L. REV. 799 (1967); Julian Juergensmeyer, *Control of Air Pollution Through the Assertion*

specialized academic journal existed, and it dealt only with natural resources and the western United States.⁵⁸ But the environment was becoming a hot legal issue—and even more, an intensely political one. The Sierra Club’s Executive Director, David Brower, had published full-page advertisements in the *New York Times* and *Washington Post* the previous year to prevent a dam from being built in the Grand Canyon—resulting in the loss of the Club’s tax exemption.⁵⁹ The first nonprofit, public interest environmental law firm was established in 1967.⁶⁰ Rodgers arrived in Seattle and, with others, made it up as he went along.⁶¹

3. A SNAPSHOT OF WILLIAM RODGERS’S ACADEMIC CAREER

William Rodgers’s academic career is co-extensive with the

of Private Rights, 1967 DUKE L.J. 1126 (1967); and A. Dan Tarlock, *Book Review: A Wilderness Bill of Rights, by William O. Douglas*, 19 STAN. L. REV. 895 (1967). A few more articles appeared in the following two years, but as Richard Lazarus has written, “Before 1970, environmental protection and pollution were not distinct categories of legal scholarship. Environmental law did not emerge as a distinct category of legal scholarship until approximately 1973.” Richard J. Lazarus, *Environmental Scholarship and the Harvard Difference*, 23 HARV. ENVTL. L. REV. 327, 341 (1999).

58. The *Land and Water Law Review* published its first issue in 1966, after appearing for twenty years as the *Wyoming Law Journal*. In the inaugural issue in 1966, Dean Frank Trelease announced that it would be devoted to the law of the development and conservation of western resources and the regulation of activities affecting them. *Preface*, 1 LAND AND WATER L. REV. 1 (1966). In 2001 it became the *Wyoming Law Review* in order to reflect better “the type of multi-subject, general interest our law review has become.” Editor’s Note, 1 WYO. L. REV. iv (2001). In its new form it has retained a “Land and Water Division” for some articles. I have omitted from this count the American Bar Association’s *Natural Resources Lawyer*, which started publication in 1968.

59. Sierra Club, “*Should we also flood the Sistine Chapel so tourists can get closer to the ceiling?*”, N.Y. TIMES, July 1966, reprinted in DAVID R. BROWER, FOR EARTH’S SAKE: THE LIFE AND TIMES OF DAVID BROWER 365–68 (1990). An earlier version, *Now Only You Can Save Grand Canyon From Being Flooded . . . For Profit*, appeared in the N.Y. TIMES, July 9, 1966, at L35 (late evening edition), and WASH. POST, July 9, 1966, at A9. DAVID R. BROWER, FOR EARTH’S SAKE: THE LIFE AND TIMES OF DAVID BROWER 366 (1990).

60. The Environmental Defense Fund (EDF) (recently renamed Environmental Defense) was established by public interest scientists who were battling DDT and private public interest lawyer Vincent Yannacone, after their 1966–67 lawsuit on Long Island. *See supra* note 50.

61. During his career so far, Rodgers has taught almost exclusively courses in environmental and natural resources law. Apart from Property and Torts, he has taught such classes as Environmental Law, Public Land Law, Energy and Natural Resources, Indian Law, Pollution Control, Law and Biology, Ocean and Coastal Law, International Environmental Law, and Environmental Law Seminars on topics such as Alaska, Hanford, The Duwamish and Puget Sound. *See* William H. Rodgers, *Résumé* (Winter 2006), available at <http://www.law.washington.edu/Directory/CV/Rodgers.pdf> (last visited Aug. 12, 2007).

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development of the field of environmental law. By the end of Professor Rodgers's first year of teaching, the environment was on everyone's mind. Congress passed the National Wild and Scenic Rivers Act⁶² and established Redwood National Park in California,⁶³ Garrett Hardin published his essay, "The Tragedy of the Commons,"⁶⁴ Paul Ehrlich published *The Population Bomb*, and Edward Abbey published his anthem, *Desert Solitaire*.⁶⁵ The following year, the Cuyahoga River burst into flames⁶⁶ and an oil well blew out off the Santa Barbara coast, spilling 235,000 gallons of oil and covering beaches with tar.⁶⁷ Citizens started to insist on action and to initiate their own. Congress adopted the National Environmental Policy Act of 1969,⁶⁸ and the Sierra Club filed a lawsuit to prevent the Walt Disney Company from putting a ski resort in Mineral King Valley.⁶⁹ As Rodgers's third year of classes was winding down, citizens became even more active. Twenty million of them poured into the streets, parks, and college campuses to create the first Earth Day.⁷⁰

Rodgers quickly rose through the ranks, spending just three years as an Assistant Professor and one as an Associate Professor before being named a full Professor at the end of his fourth year at the University of Washington. There, he worked to light a public interest fire in his law students. In teaching Equitable Remedies, he discussed filing lawsuits involving nerve gas shipments, student demonstrations, and landlord-tenant relations, as well as teaching an environmental seminar in which the class discussed problems such as noise pollution, water pollution, and field burning in Oregon. He also stepped forward outside the halls of academe to offer his services in environmental controversies large and

62. 90 Pub. L. 542, 82 Stat. 906 (1968).

63. 90 Pub. L. 545, 82 Stat. 931 (1968).

64. Garrett Hardin, *The Tragedy of the Commons*, 162 SCIENCE 1243 (1968).

65. PAUL R. EHRLICH, *THE POPULATION BOMB* (Ballantine Books 1968); EDWARD ABBEY, *DESERT SOLITAIRE: A SEASON IN THE WILDERNESS* (McGraw Hill 1968).

66. Ohio Historical Society, *Cuyahoga River Fire*, OHIO HISTORY CENTRAL: AN ONLINE ENCYCLOPEDIA OF OHIO HISTORY (2005), <http://www.ohiohistorycentral.org/entry.php?rec=1642>.

67. Paul S. Weiland, *Unfunded Environmental Mandates: Causes, Burdens, and Benefits*, 22 HARV. ENVTL. L. REV. 283, 286 (1998) (citing JOSEPH M. PETULLA, ENVIRONMENTAL PROTECTION IN THE UNITED STATES: INDUSTRY, AGENCIES, ENVIRONMENTALISTS 45 (1987)).

68. 91 Pub. L. 190, 83 Stat. 852 (1969).

69. *Sierra Club v. Hickel*, 1 ENVTL. L. REP. 20,010 (N.D. Cal. 1969).

70. Library of Congress, *Today in History: April 22, American Memory*, <http://memory.loc.gov/ammem/today/apr22.html> (last visited May 17, 2007).

small. He had obviously decided to be both an academic and a practicing lawyer in the service of the public interest.

Soon he found himself traveling to Washington, D.C., so much that he decided he wanted to be nearer the action of the early 1970s. Georgetown University Law Center offered him a visiting position, and quickly offered him a permanent position. Within a year-and-a-half at Georgetown University Law Center, he was teaching two lecture classes and a seminar in environmental law, and the law school announced that it would add a third class in environmental law.⁷¹ He also advised the fledgling Law Students in Court Clinic.⁷² By 1979, however, he decided to return to Seattle. The decision might not have been too difficult. He and his wife never sold their house alongside Puget Sound during the years that he sojourned in the East.⁷³ He rejoined the faculty of the University of Washington.

In the succeeding years, Professor Rodgers has spent time as a visiting professor at the University of Hawai'i, University of British Columbia, University of Florida, Arizona State University, University of Miami, and University of Maine, but he has always returned to Seattle. He has worked with the Association of American Law Schools (AALS),

71. Michael Blutrigh, *Bill Rodgers: Ecology Dynamo*, GEORGETOWN LAW CENTER LAW WEEKLY, 1974.

72. Gail Grossman, *Rodgers: The Wild West is Where He Wants to Be*, GEORGETOWN LAW CENTER LAW WEEKLY, Jan. 22, 1979, at 4; *infra* note 81. Among the reported cases is *United States v. Lightfoot*, 506 F.2d 238 (D.C. Cir. 1974), where a student lawyer was able to get one count of a criminal conviction overturned.

73. E-mail from Prof. Denis Binder, Chapman University School of Law (Apr. 20, 2007). Professor Rodgers's family deserves an article all their own. His wife, Janet, a returned Peace Corps Volunteer, serves as executive director of the Ballard High School Foundation. His son, Billy (William H. Rodgers III), is the Community Relations Basketball Outreach Manager for the Seattle SuperSonics (NBA) and Storm (WNBA) franchises, as well as a high school basketball coach. Daughter Andrea has chosen to follow in her father's footsteps as an environmental and public interest lawyer, now working for the Snoqualmie Tribe. Toxic torts lawyer and former professor at the University of Oregon Michael Axline has labeled her as Professor Rodgers's "greatest contribution to environmental law." Hand-written note from Michael D. Axline, Apr. 20, 2007. His devotion to his family has been long apparent. As a young law professor at Georgetown University Law Center, he was asked how he "balanced" his professional and family life. He replied, "In case of a conflict, my home life wins." GEORGETOWN LAW CENTER LAW WEEKLY, *A lot of labor in the best of all possible worlds*, Oct. 30, 1978, at 12, <http://www.law.washington.edu/courses/Rodgers/ShiftingSands/images/02.pdf>. His wife, Janet, wrote, "He continues sharing his time and knowledge with his children and is delighted his daughter is pursuing a career in law and his son in sports—his two passions. His sense of humor, his uncontrollable laughter, his cheerfulness, his optimism, his respect for others, his intellect and his love continue to be an inspiration to his family." E-mail from Janet Rodgers (May 15, 2007).

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the Rocky Mountain Mineral Law Foundation, and the American Bar Association to bring his knowledge and experience to a broad, nationwide audience, but he has always remained firmly rooted to his adopted home grounds and its people, in the Pacific Northwest. In the four decades since then, he has continued to push for justice with the persistence of a sea lion that has discovered a run of salmon or steelhead too good to pass up—or an anadromous fish seeking the place where it can give life to others.

William Rodgers holds an appointment as Stimson Bullitt Professor of Environmental Law at the University of Washington. Previously, he held the Bloedel Professorship, a five-year professorship at the University of Washington that rotates between departments of the University. When the professorship was assigned to the School of Law, the law faculty unanimously voted to award the honor to Professor Rodgers, impressed by his scholarly output as well as his renown as a teacher.

4. PASSION IN THE PURSUIT OF JUSTICE

From his first years of teaching, Professor Rodgers has passionately pursued justice for those most in need. He was put off by the prospect of a traditional academic life. “There aren’t any milestones in teaching,” he said in an interview with a Seattle magazine in 1970. “I guess the ones you are supposed to have are related to publishing, but to this day I don’t get any charge out of knowing that something I’ve written will appear in some obscure law review.”⁷⁴ He told the magazine, “One side or the other is always underrepresented, and this means that the steam rollers – the big corporations – generally prevail. You see this especially in the environmental field.”⁷⁵

Professor Rodgers has argued cases on environmental, energy, pollution, and treaty fishing matters before the U.S. Supreme Court, U.S. Courts of Appeals for the Fourth, Ninth, and D.C. Circuits, U.S. District Courts, and state courts and written numerous legal briefs, particularly in the first fifteen years of his career.⁷⁶ Some of his court cases bombed.⁷⁷

74. *Law*, SEATTLE MAGAZINE (SEATTLE TIMES), June 1970.

75. *Id.*

76. *See* Rodgers, *Résumé*, *supra* note 61,

77. *See, e.g.*, Rodgers v. FTC, 492 F.2d 228 (9th Cir. 1974) (rejecting pro se complaint filed by Professor Rodgers against misleading advertising in election campaign against bottle deposit bill); Lombardo v. Handler, 397 F. Supp. 792 (D.D.C. 1975) (rejecting suit against National Academy of

Others were far more successful,⁷⁸ and sometimes the result was a mixed bag.⁷⁹

Within two years of starting his academic career, he had joined in a lawsuit in 1969 against the U.S. Department of Agriculture to ban the insecticide DDT. In a *Time* magazine interview, he said that the government's foot-dragging by proposing a two-year phase-out of everything except "essential" uses of DDT was akin to the government's slowness in integrating public schools in the South:

"It looks like the old 'all deliberate speed' tactics," he says.

"Look, a person has a choice whether he wants to drink cyclamates or smoke cigarettes. With DDT we don't have a choice. It's everywhere in our food. Until we know for sure what the Government is planning, we will fight on."⁸⁰

The following year, he filed a lawsuit against shipment of nerve gases through Washington State to Oregon.⁸¹

He also used his legal skills in legislative and administrative processes. In 1970 he helped draft an initiative petition to ask voters to adopt a "bottle bill" for Washington State.⁸² The same year, he petitioned the Federal Communications Commission to mandate free television advertising in opposition to phosphate-containing detergents, which were polluting the nation's waterways.⁸³ He also took on the giant ASARCO Smelter in Tacoma, which was seeking a variance from air pollution standards, charging them with "shenanigans," "secretive"

Sciences to reveal information from closed-door meetings on feasibility of controls on motor vehicle emissions); *N. Anna Env'tl. Coal. v. U.S. Nuclear Regulatory Comm'n*, 533 F.2d 655 (D.C. Cir. 1976) (rejecting appeal against licensing of nuclear power plant).

78. See Indian fishing cases described in text at notes 100–106, *infra*.

79. See *Montgomery Env'tl. Coal. v. Costle*, 646 F.2d 568 (D.C. Cir. 1980) (a little bit of this, a little bit of that).

80. *Attack on DDT*, *TIME*, Nov. 21, 1969, available at <http://www.time.com/time/magazine/article/0,9171,841646,00.html>.

81. Associated Press, *States Lose First Round in Nerve Gas Battle*, *WALLA WALLA UNION-BULLETIN*, May 22, 1970, at 1.

82. He criticized supporters of an opposing "litter control act" for engaging in a "calculated campaign of deception," and in turn was labeled by them as being "either uninformed or misinformed." *Litter Law Backer Flays 265 Supporters*, *WALLA WALLA UNION-BULLETIN*, Oct. 1, 1970, at 10.

83. The basis for the petition was the same that led to the FCC mandating free advertisements against cigarettes. See *Banzhaf v. FCC*, 405 F.2d 1082 (D.C. Cir. 1968). His action earned the scorn of the Portland *Oregonian* newspaper, which said that "Mr. Rodgers and the FCC should have pity for the television viewers who can hardly absorb more ads, pro or con." *THE OREGONIAN*, also printed in the *WALLA WALLA UNION-BULLETIN*, Aug. 26, 1970, at 4.

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behavior, and being “one of the most obdurate and unrepentant of polluters.” The company was, he wrote to the government, “an outlaw and the biggest criminal in town.”⁸⁴ He was similarly forthright in his characterization of the government’s own efforts: “sloppy administration and bureaucratic backsliding,” “outright hypocrisy and deception,” and a civil lawsuit by the air pollution body a mere “pretense,” which gave the County Prosecutor “an excuse not to prosecute.”⁸⁵ He backed up his charges with documents, references to engineering analyses, and calculations.⁸⁶ Even before those arguments, the Chair of the University of Washington’s Department of Economics said, “Rodgers has single-handedly done more than anyone else in the state to solve environmental problems.”⁸⁷ One month later, he asked the Bonneville Power Administration to stop supplying electrical power to a pulp and paper mill in Washington State that was polluting the water.⁸⁸ He traveled to Washington, D.C., several times in 1971 and 1972 to testify and work for amendments to the Federal Water Pollution Control Act. He was in front of the Federal Trade Commission at a hearing on a proposed regulation requiring disclosure of harm to the environment from phosphates in detergents.⁸⁹

Among his clients was one of the protagonists in what were known as the “Fish Wars” of the late 1960s.⁹⁰ While, as Professor Rodgers pointed out, county prosecutors could not bring themselves to take on a corporation with over 500 violations recorded by the government’s own air pollution monitoring,⁹¹ they could take on a lone Indian, trying to catch fish guaranteed by treaty. At a political demonstration asserting

84. William H. Rodgers, Jr., Letter to Puget Sound Air Pollution Control Board (Dec. 21, 1970) (on file with author).

85. *Id.*

86. *Id.*

87. *Law, supra* note 74.

88. *Plant’s Power Cutoff Urged*, Associated Press, Jan. 25, 1971, TRI-CITY HERALD, at 17.

89. He called the detergent advertisers “skilled seducers of the public,” and said that “[s]oap warn is urged.” UNITED PRESS INTERNATIONAL, BUCKS COUNTY COURIER TIMES, Apr. 28, 1971, at 4. Furthermore, he accused them of “blackmail” for claiming that they would produce detergents without phosphates that were even more dangerous, and argued that advertising of phosphate detergents in cities where they had been banned could amount to “criminal solicitation.” “*Blackmail*”, Associated Press, Apr. 28, 1971, PASADENA STAR-NEWS, at A-2.

90. *See generally* CHARLES F. WILKINSON, MESSAGES FROM FRANK’S LANDING: A STORY OF SALMON, TREATIES, AND THE INDIAN WAY (2000).

91. *See* William H. Rodgers, Jr., Letter to Puget Sound Air Pollution Control Board, Dec. 21, 1970, on file with author, *supra* note 84.

traditional Indian fishing rights in 1968, Hank Adams had set a net to catch salmon and was arrested, charged, and convicted of violating Washington statutes. When Adams and other Indian leaders were in Washington, D.C., they met with Ralph Nader, looking for legal help. Nader and his colleagues were aware of Rodgers's activities in the Pacific Northwest and encouraged Adams to contact Rodgers.⁹² Rodgers agreed to take his case to the Supreme Court of Washington.⁹³ It was a foreshadowing of a lifetime of work to come on behalf of Indian peoples.

When he moved to Georgetown University Law Center in Washington, D.C., Rodgers continued to be a whirlwind of extracurricular activity. In his first two years there in the early 1970s, he testified over a dozen times before Congressional committees, seeking stronger environmental laws. He continued to litigate.⁹⁴ But he was no lone wolf. In every project, he involved his students, nudging them to investigate, litigate, testify, and write legislation.⁹⁵

He also kept his legal toe in Northwest waters. The fate of salmon and steelhead had clearly moved to the courthouses, out in what the Georgetown University Law Center newspaper called the "Wild West."⁹⁶ In 1974, U.S. District Judge George H. Boldt had issued a sweeping ruling, affirming that Indians had a historic treaty right to catch fifty percent of the Northwest salmon and steelhead runs.⁹⁷ But what if there were no fish to catch? While still in D.C., Professor Rodgers agreed to become the Puyallup Tribe's lawyer, signing a contract to represent them for one dollar per year, for ten years. (According to Billy Frank, Rodgers never collected his fee.⁹⁸) He

92. E-mail from Janet Rodgers (May 15, 2007).

93. Adams's conviction on one count had been overturned but on another count had been upheld. *State v. Adams*, 479 P.2d 148 (Wash. App. 1970). Rodgers petitioned for review in the Supreme Court of Washington but review was denied. *State v. Adams*, 78 Wash. 2d 997 (1971).

94. For example, he unsuccessfully asked a federal court to rule that corporate campaign activities violated the Federal Trade Commission Act. *Rodgers v. FTC*, 492 F.2d 228 (9th Cir. 1974).

95. *See supra* note 71.

96. *See supra* note 72.

97. *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974).

98. E-mail from Janet Rodgers (May 15, 2007). In his wife's words, "He lost some battles, but never gave up. He just always found a way around, a clever new strategy to try, an old law still on the books, always thinking outside of the box, creatively, and most importantly always using the law to find the solution and to get justice." *Id.*

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litigated before the Supreme Court of Washington, which ruled against his clients,⁹⁹ but persuaded the U.S. Supreme Court that tribal sovereign immunity prevented the State from exercising jurisdiction over the tribe on fishing matters.¹⁰⁰ He represented the tribe as intervener in a suit by the U.S. Department of Interior to place additional lands for the tribe in trust.¹⁰¹

Later, when he and his wife and their two young children decided it was time to return to his beloved Pacific Northwest in 1979, there was no doubt that he would continue his pursuit of justice in the courts and public spaces, not only through writing and teaching. Once he was back in Seattle, Professor Rodgers continued his litigation. In 1980, he persuaded a federal District Court to rule that the Indian treaty rights to fish included hatchery-bred fish,¹⁰² and that federal and state governments could not degrade fish habitat if it would harm the Indians' right to a moderate standard of living.¹⁰³ The court ruled:

The most fundamental prerequisite to exercising the right to take fish is the existence of fish to be taken. In order for salmon and steelhead trout to survive, specific environmental conditions must be present . . . [I]n the Twentieth Century the urbanization and intensive settlement of the area, the rapid development of water power, lumbering and irrigation and the pollution of the watersheds reduced the quality and amount of accessible spawning grounds Were this trend to continue, the right to take fish would eventually be reduced to the right to dip one's net into the water . . . and bring it out empty.¹⁰⁴

99. Dep't of Game v. Puyallup Tribe, Inc., 86 Wash. 2d 664, 548 P.2d 1058 (1976).

100. Puyallup Tribe v. Wash. Dep't of Game, 433 U.S. 165, 172–73 (1977). The Court ruled against the tribe on the question whether the state could regulate fishing on the reservation, prompting a strong dissent by Justices Brennan and Marshall. *Id.* at 179.

101. City of Tacoma v. Andrus, 457 F. Supp. 342 (D.D.C. 1978). Judge Gesell noted that the tribe was “not long ago on the verge of extinction” and praised the “heroic efforts of the Tribe, through its members, to improve itself.” *Id.* at 346. He commented: “The actors in these transactions are not wealthy individuals conniving ways to cheat the local government out of a tax dollar. They are not irresponsible illiterates creating disturbances and nonconforming structures in a downtown or industrial sector. They are self-respecting, and for that matter self-denying, people trying to preserve their tribe as a viable entity and to maintain themselves with a modicum of dignity and self-support.” *Id.* at 344–45.

102. See United States v. Washington, 506 F. Supp. 187 (W.D. Wash. 1980), *modified*, 694 F.2d 1374 (1982).

103. *Id.* at 203.

104. *Id.*

Some of Rodgers's cases have been successful and precedent-setting, such as a landmark case holding that fish are, indeed, fish.¹⁰⁵ In order to establish that the Indian treaty right to catch fish could not be limited by a state fish and game agency's rules allocating hatchery-bred fish only to non-Indians, Rodgers engaged in this cross-examination of a government official:

RODGERS: Does it have fins?

WITNESS: Yes.

RODGERS: Does it swim?

WITNESS: Yes.

RODGERS: Do people call it a fish?

WITNESS: Yes.¹⁰⁶

Recently, Professor Rodgers and his students turned to the impacts of corporate behavior on Native Alaskans. He uncovered an almost forgotten provision of the 1991 Exxon-Valdez lawsuit settlement, the "re-opener clause."¹⁰⁷ If this provision were triggered, Exxon would have to put up millions of dollars for additional restoration of Prince William Sound. A decision on whether the re-opener should be triggered was to be based on whether harms of consequence had subsequently occurred that had not been identified at the time of the original settlement.¹⁰⁸ He and his students traveled to Alaska, informed Native

105. See, e.g., *id.* ("the Court holds that hatchery fish are 'fish' within the meaning of the treaties' fishing clause" and thus Indian tribes have a treaty right to a portion of them).

106. Recounted orally during April 20–21 symposium. His incisive style is as present in oral argument as it is in his writing. According to a newspaper report, he argued, "If the state wants a difference between fish, they should invent a new river to put the new fish." Jerry Pugnetti, *Tribes Claims Hatchery Fish Rights—Steelhead issue in court*, THE TACOMA NEWS TRIBUNE, June 4, 1974, available at <http://yelmhistoryproject.com/Indians/articles/1974.html>.

107. In March 1989, a drunken captain piloting a single-hulled oil tanker, the *Exxon Valdez*, loaded with sticky, gooey oil, hit a reef in the Alaska's Prince William Sound. It was the single largest oil spill in U.S. history. EPA, *Oil Program: Exxon Valdez*, <http://www.epa.gov/oilspill/exxon.htm> (last visited May 16, 2007).

108. The re-opener clause reads:

Notwithstanding any other provision of this Agreement, between September 1, 2002, and September 1, 2006, Exxon shall pay to the Governments such additional sums as are required for the performance of restoration projects in Prince William Sound and other areas affected by the Oil Spill to restore one or more populations, habitats or species which, as a result of the Oil Spill, have suffered a substantial loss or substantial decline in the areas affected by the Oil Spill; provided, however, that for a restoration project to qualify for payment under this paragraph the project must meet the following requirements:

(a) the cost of a restoration project must not be grossly disproportionate to the magnitude of the benefits anticipated from the remediation; and

(b) the injury to the affected population, habitat, or species could not reasonably have been known nor could it reasonably have been anticipated by any Trustee from any information in

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communities,¹⁰⁹ and published an article on the issue,¹¹⁰ all of which helped Alaskans push reluctant State and Federal governments into demanding almost \$92 million dollars from Exxon to remedy the continuing environmental damage.¹¹¹ The government now asserts that, according to a series of studies since 2001, the oil remaining in the intertidal areas of Prince William Sound has, among other effects, contaminated and affected the health of harlequin ducks, sea otters, and shellfish.¹¹²

5. THE SCHOLARSHIP OF WILLIAM RODGERS

Despite his rich history as a direct advocate for justice, Professor Rodgers is best known nationally for his academic work and his methods of engaging readers. In his scholarship, Professor Rodgers has channeled Crazy Horse,¹¹³ put himself in the mind of a czar,¹¹⁴ and played game show or party host.¹¹⁵ Although the titles of his early academic articles could put readers to sleep¹¹⁶ (including those in this Law Review¹¹⁷), his “impish good humor,”¹¹⁸ eagle-eyed powers of observation, and

the possession of or reasonably available to any trustee on the Effective Date.

[Consolidated] Agreement and Consent Decree, United States v. Exxon Corp., Nos. A91-081-083 CV ¶ 17 (D. Alaska, Oct. 9, 1991).

109. Robert McClure, *UW helps on Exxon Valdez Claim*, SEATTLE POST-INTELLIGENCER, May 2, 2006.

110. William H. Rodgers, Jr., *The Exxon Valdez Reopener: Natural Resources Damage Settlements and Roads Not Taken*, 22 ALASKA L. REV. 135 (Dec. 2005) (written with students in the 2005 Natural Resource Damages Seminar: J.B. Crosetto, C.A. Holley, T.C. Kade, J.H. Kaufman, C.M. Kostelec, K.A. Michael, R.J. Sandberg & J.L. Schorr).

111. Press Release, U.S. Dep’t of Justice, State of Alaska Dep’t of Law, United States and the State of Alaska Seeking Additional Funds From ExxonMobil For Continuing Natural Resource Damages Caused By 1989 Oil Spill (June 1, 2006) (on file with author).

112. *Id.*

113. William H. Rodgers, Jr., *The Tenth U.S. Supreme Court Justice (Crazy Horse, J.) and Dissents Not Written – The Environmental Term of 2003–04*, 34 ELR 11033 (2004).

114. William H. Rodgers, Jr., *What a Salmon Czar Might Hope For*, 74 WASH. L. REV. 511 (1999).

115. William H. Rodgers, Jr., *A Superfund Trivia Test: A Comment on the Complexity of the Environmental Laws*, 22 ENVTL. L. 417 (1992).

116. William H. Rodgers, Jr., *A Model Bill on the Reporting of Campaign Contributions and Expenditures*, 23 VAND. L. REV. 293 (1970); *Industrial Water Pollution and the Refuse Act: A Second Chance of Water Quality*, 119 U. PA. L. REV. 761 (1971).

117. William H. Rodgers, Jr., *The Washington State Thermal Power Plant Siting Act*, 47 WASH. L. REV. 8 (1972).

118. E-mail from Prof. Zygmunt Plater, Boston College Law School (Apr. 20, 2007).

willingness to pull the chain of the powerful were already on display in the titles and content of his less formal writings.¹¹⁹ The work that he turned out immediately was solid, constructive, practically useful, and voluminous. As an example, in just his first two-year run of publications, he published five academic articles, proposing model legislation to control campaign expenditures in elections,¹²⁰ describing the problems in dealing with persistent pesticides,¹²¹ proposing changes in water pollution legislation,¹²² critiquing state legislation on power plant siting,¹²³ and disclosing and critiquing excessive industrial influence in administrative policy-making.¹²⁴ Whether writing in academic or popular journals, Bill Rodgers brought an irreverence to the new field of environmental law that stopped readers in mid-stride, made their jaws drop, and caused their eyes to blink suddenly open.¹²⁵ For example, he has said this about how statutes lose their initial power over the years:

If we were to present the life cycle of a statute on a graph, I suspect the measure of its influence would decline over time, expressed as a downwards sloping curve. Information theory, like the physical entropy laws, suggests that the statutory message will become garbled and faint as it is transmitted over time. The trick, of course, is to identify the correct decay rate—or rate of rot—for a particular legislative product.¹²⁶

William Rodgers's writing shows no similar downward sloping graph and reveals only growth, not decay. One can follow the first forty years of his academic work by close attention to the footnotes contained

119. See, e.g., William H. Rodgers, Jr., *Industry Advisory Panels: Distorting Research by Closing the Doors*, published in symposium by the Practising Law Institute, New York (1970); *How to Pollute: Tacoma's Tall Stack*, THE NATION, May 11, 1970; *Ecology Denied: The Unmaking of a Majority*, WASHINGTON MONTHLY, Feb. 1971; *Boise Cascade: The One That Got Away*, WASHINGTON MONTHLY, Nov. 1972.

120. Rodgers, *Model Bill*, *supra* note 47.

121. William H. Rodgers, Jr., *The Persistent Problem of the Persistent Pesticides: A Lesson in Environmental Law*, 70 COLUM. L. REV. 567 (1970).

122. Rodgers, *Industrial Water Pollution*, *supra* note 47.

123. Rodgers, *The Washington State Thermal Power Plant Siting Act*, *supra* note 48.

124. William H. Rodgers, Jr., *The National Industrial Pollution Control Council: Advise or Collude*, 13 BOSTON COLLEGE IND. & COMM. L. REV. 719 (1972).

125. See, e.g., William H. Rodgers, Jr., *The Visionary Octopus*, THE NATION, Jan. 8, 1973 (discussing mergers among electrical utilities).

126. William H. Rodgers, Jr., *NEPA at Twenty: Mimicry and Recruitment in Environmental Law*, 20 ENVTL. L. 485 (1990).

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herein.¹²⁷ Yet much more scholarly output is obviously on tap. He has most recently launched the first volume of a new treatise series on environmental law in Indian Country,¹²⁸ and co-authored a legal, historical, and anthropological study of the sustainable fishing practices of Indian tribes and the persistence of their defense of their treaties with the United States.¹²⁹

The messages received in response to the e-mail request on April 20 indicate that Professor Rodgers's writing has helped mark a path for other environmental law professors. A well-known law professor from Missouri wrote, "Bill got me started, no question. His book taught me what I needed to know when I started teaching environmental law, and he has always been a wise and willing counselor."¹³⁰ Another from Kentucky noted "the wit and wisdom of the Environmental Law treatise. Whenever I teach the Environmental Law course, I encourage students to read the Rogers treatise for its depth of understanding and insight."¹³¹

Professor Rodgers's scholarship sometimes startles and always moves its readers. A professor in Alabama characterized it as "risk-taking and creative scholarship."¹³² A professor in Louisiana referred to Professor Rodgers's "magic pen," and thanked him "specifically for teaching me that it's OK to sprinkle owls, porcupines, and panda thumbs into the titles of serious articles and that academic writing – even in a heavy-weight treatise – can crackle with wit and the killer one-liner."¹³³ A professor from Oregon asserted that Professor Rodgers's "passion for his subject matter and for justice jumps off the page. I don't believe anyone has ever written a four-volume treatise that could be described as passionate, but Bill's masterwork can."¹³⁴ In a similar vein, a professor from Indiana wrote, "His treatise is a gem, like no other in any field;

127. See *supra* notes 2, 10, 17–27, 31–32, 110, 113–117, and 119–126, and *infra* notes 128 and 145.

128. WILLIAM H. RODGERS, JR., 1 ENVIRONMENTAL LAW IN INDIAN COUNTRY (2005) (with annual pocket part).

129. DUPRIS, HILL & RODGERS, THE SI'LAILO WAY, *supra* note 10.

130. E-mail from Prof. Daniel Mandelker, Washington University in St. Louis School of Law (Apr. 20, 2007).

131. E-mail from Prof. Michael P. Healy, University of Kentucky College of Law (Apr. 20, 2007).

132. E-mail from Prof. William Andreen, University of Alabama School of Law (Apr. 20, 2007).

133. E-mail from Prof. Robert R. M. Verchick, Loyola University New Orleans College of Law (Apr. 20, 2007).

134. E-mail from Prof. Michael Blumm, Lewis & Clark Law School (Apr. 20, 2007).

and, a law review article under his byline is always a sure thing for a lively read and stimulating analysis.”¹³⁵

6. WILLIAM RODGERS AS A TEACHER

Lawyers and professors alike comment on how Professor Rodgers’s classes are thought-provoking gems, sometimes including performance art. A professor from Virginia recalled a lecture twelve years ago and what happened when Rodgers began speaking.

The room went quiet. 200 law students drilled in to this modest, self-effacing man at the front, listening with rapt attention. I have never been so awed by one person’s command of an audience.¹³⁶

William Rodgers has always captured the attention of audiences, not just through the sheer force (and cleverness) of his words, but also through his willingness to embrace new approaches. A law professor originally from Florida and now in Georgia, who has taught for even longer than Professor Rodgers, found his techniques useful, writing that “your innovative teaching with the use of video clips was a breath of fresh air for those of us that had been teaching in the environmental law area for ‘centuries.’ I copied your approach and started enjoying my teaching again; so did the students.”¹³⁷ A former student in Washington State, who remembered class with Professor Rodgers a decade earlier, was more direct: “Thanks for showing the cane toad video in class. I look forward to teaching my kids with it, too. You are a special gift to the world.”¹³⁸

A current student noted his energy and creativity: “I know after law school I’ll approach things by asking, ‘What would Professor Rodgers do?’ Your out-of-the-box thinking and passion for the environment are an inspiration.”¹³⁹ His unpredictability and passion led another student to comment that he “usually specifies a certain topic early on . . . but then

135. E-mail from Prof. Robert Fischman, Indiana University School of Law-Bloomington (Apr. 20, 2007).

136. E-mail from Prof. Joel B. Eisen, University of Richmond School of Law (Apr. 20, 2007).

137. E-mail from Prof. Julian Juergensmeyer, Georgia State University College of Law (Apr. 20, 2007).

138. Hand-written note from Kristi Helgeson, University of Washington School of Law Class of 1997 (Apr. 20, 2007).

139. Hand-written note from Christina Richmond, University of Washington School of Law student (Apr. 20, 2007).

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completely changes the focus before the course begins, based on what he is currently excited about.”¹⁴⁰ A recent graduate thanked him “both for your classroom teaching as well as your life teaching. Your work continues through countless numbers of inspired students.”¹⁴¹

Some would contend that what sets Professor Rodgers apart is the style and joy of his classroom teaching. One established professor of environmental law can recall that she took Rodgers’s classes as a student because she and her friends had heard he was “cute.”¹⁴² Another professor who was a former student, referring to his boyish good looks, said Professor Rodgers “reminded us of Wendy’s little brother from Peter Pan!”¹⁴³ One might have thought instead of Puck.¹⁴⁴

More than one person has recalled Bill Rodgers’s tales of Hershel, the Sea Lion.¹⁴⁵ A professor from Wyoming paints the picture best:

As Bill told the story, Hershel had learned to do what sea lions

140. Marginal comment written during final editing of this article by Ashley Peck, University of Washington School of Law Class of 2007 (May 4, 2007).

141. Hand-written note from Alyssa Vegter, University of Washington School of Law Class of 2006 (Apr. 20, 2007).

142. “In my third year of law school at Georgetown, I decided to take this strange class called Environmental Law. Hey, who knew back then? But I had heard that the course was really interesting and the professor was great—and cute. Sometimes I think, ‘Gosh, if the class had been terrible, I’d probably be a tax lawyer.’ Bill, I’m eternally grateful! PS—I know your classes are more interesting than ever, you are an even greater professor, and grey is cute.” E-mail from Prof. Ann Powers, Pace Law School (Apr. 20, 2007). Other students at Georgetown University Law Center ranked him as “second only to God and Prosser.” *A lot of labor in the best of all possible worlds*, *supra* note 73.

143. Hand-written note from Prof. Myrl Duncan, Washburn University School of Law (Apr. 20, 2007).

144. As Puck put it: “I am that merry wanderer of the night. I jest to Oberon, and make him smile.” William Shakespeare, *A Midsummer Night’s Dream*, act 2, sc. 1.

145. He has told the tale countless times. One student said she had heard the tale at least ten times “and it never gets old.” E-mail from Ashley Peck, University of Washington School of Law Class of 2007 (May 7, 2007). Rodgers sets the scene in this excerpt: “These troublesome sea lions who gathered at the Ballard Locks were given a name—‘Hershel’ was the moniker. In the early days, ‘Hershel’ was a generic name applied to several of the sea lions who enjoyed the steelhead diet available at the Locks. But one ‘Hershel’ soon emerged as the leader of the Hershels. He secured his reputation in the winter of 1993–94 when observers blamed him for consuming 60% of the dwindling steelhead run. He was given a name—Hondo, No. 17 by a biologist and longtime Boston Celtics fan and admirer of a great player from an earlier era, John Havlicek. Like the Havlicek of old, sea lion No.17 overwhelmed the defense set before him. Stopping him became a personal thing.” William H. Rodgers, Jr., *Defeating Environmental Law: The Geology Of Legal Advantage*, 15 PACE ENVTL. L. REV. 1 (2002); *see also* William H. Rodgers, Jr., *Deception, Self-Deception, and Myth: Evaluating Long-Term Environmental Settlements*, 29 U. RICH. L. REV. 567 (1995) (discussing pinniped-steelhead conflicts, or the “Hershel wars”).

do well even better—a certain fish ladder had become his favorite diner. He thwarted all efforts to keep him from chowing down on salmon [and steelhead] navigating the ladder.

Bill had us in stitches, describing how Hershel repeatedly outwitted the increasingly desperate efforts of Fish and Wildlife Service, the National Marine Fisheries Service, Bonneville Power officials, state game and fish folks, and who knows who else.

Eventually, they trapped and “transplanted” the troublesome (but protected) marine mammal to a remote location. Herschel beat his captors back to his prime feeding ground.

This, I decided, was the kind of teacher I wanted to be. The kind who not only knows her subject (the law and the facts), but can tell the story and engage her students. Bill became my hero. I continue to aspire to his youthfulness, his unending curiosity and creativity, and especially his power to engage—the greatest gift a teacher can have.¹⁴⁶

7. THE RODGERS EFFECT: MENTORING AND SUPPORT

Bill Rodgers seems to live in the spirit of another man with a similar name, Will Rogers. The cowboy philosopher used to say, “I never met a man I didn’t like.”¹⁴⁷ In the case of the lawyer philosopher, the tables seem to be turned. I never met a man or woman who didn’t like Bill Rodgers. Each person who meets the self-effacing but empathetic professor soon becomes his strongest admirer. Perhaps his mentoring comes from his family life. His wife, Janet, summarized how he has managed his life:

Bill truly enjoys being a father. He never missed one of his children’s games or school events and he coached basketball at the local Boys and Girls Club. He had the gift to stop whatever he was doing, read a book to the kids, shoot some hoops, help with school work, and then go right back to where he left off with his work. He never said “No, I do not have time.” He always made time.¹⁴⁸

146. E-mail from Prof. Deb Donahue, University of Wyoming College of Law (Apr. 20, 2007).

147. See, e.g., JOSEPH H. CARTER, NEVER MET A MAN I DIDN’T LIKE: THE LIFE AND WRITINGS OF WILL ROGERS (1991).

148. E-mail from Janet Rodgers (May 15, 2007).

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He also has always made time for the next generation of environmental lawyers and professors. In an e-mail sent at the time of the recent symposium, a law professor from California commented, “I echo those who salute Bill as a real Mensch. Bill encouraged me, like others, as a brand-new professor just starting to find my way in the field.”¹⁴⁹ But “Mensch” does not capture completely what is going on. Just as gravity exerts its effects quietly and subtly, and electromagnetic forces cause reactions out of our sight, there is another force in the universe with a powerful effect often noticed only in retrospect. Let us call it the “Rodgers Effect.”

Sometimes the Rodgers Effect occurs while a person is reading one of his publications. For example, an established, public interest lawyer remarked recently:

I’ve had his hornbook on my shelf since I took an environmental law class as an undergraduate at the University of Vermont in 1987. While I was already an environmental studies student, that class and his book gave me the idea of becoming an environmental lawyer for the first time. It came just in time too. It was my last semester of college and I had no clue what aspect of environmental protection I should pursue until I took that class and the light bulb went on!¹⁵⁰

Sometimes the effect is felt during law school classes:

In my second year [at Georgetown University Law Center] I was eligible to enroll in the school’s only environmental law course, taught by Bill, naturally, and there I was properly indoctrinated. At the time, Bill was fighting the licensing of a local nuke (“North Anna”) on a pro bono basis, a mantle that I picked up when they proposed to expand the plant’s waste storage capacity several years later.

His inspiration led me into a permanent career rut now spanning 30 years. Thanks largely to Bill, I am now thoroughly unemployable for anything but plaintiff’s environmental litigation. But what a glorious rut its been. It has made for a profoundly rewarding life, and I have Bill to thank more than anyone else.¹⁵¹

149. E-mail from Prof. Albert Lin, University of California at Davis School of Law.

150. E-mail from Matt Kenna, Western Environmental Law Center (Apr. 20, 2007).

151. E-mail from Jim Dougherty, Attorney (Apr. 20, 2007).

Still another observed the Rodgers Effect over lunch:

I had been out of law school for three years and still held the belief that law professors were in a world of their own, one in which I would never be able to partake, and that a professor would never befriend a mere student. I came to Washington to study for an LL.M.

About a month after classes began, he invited me and another LL.M. student out for lunch to get to know us better. I was surprised and quite a bit nervous. By then I had learned of his stature and reputation and feared I might sound like a blithering idiot. Much to my surprise, he made me feel totally at ease, as if I had known him for years. We discussed the law and life and law school—I can't remember the details, but I do remember knowing at that moment that I had made a friend as I watched many of the myths and stereotypes vanish before my eyes.¹⁵²

A private public interest lawyer from Vancouver, Washington, wrote:

Even though I was a little guy from nowhere, he was always genuinely happy to see me and interested in what I was doing. (Kind of . . . “what wild thing are you doing now”?) He even wrote up a settlement I did in one of his “Creative” Law Review articles. With him, it didn't matter who you were, what kind of connections you had, where you went to school, if you were doing something good for the environment . . . he cared about you and what you were doing.¹⁵³

Sometimes the Rodgers Effect takes place through the notes that he takes care to write by hand. Bill Rodgers is a voracious reader and a prolific note-sender. A professor from Texas said that he was “so pleased that he took the time to assist someone who was starting out. His comments, input, and later citations of my work gave me confidence that my ideas might really have some value in our world.”¹⁵⁴ A law professor in Oklahoma commented, “After my first publication, an efficient letter from Bill classed up my tenure file: ‘I learned from your article and will cite it.’”¹⁵⁵

Another from Indiana remarked,

152. E-mail from Prof. Casey Jarman, University of Hawai'i at Manoa, School of Law (Apr. 20, 2007).

153. E-mail from John Karpinski, Vancouver, Washington (Apr. 20, 2007).

154. E-mail from Prof. Victor B. Flatt, University of Houston Law Center (Apr. 20, 2007).

155. E-mail from Prof. Irma Russell, University of Tulsa College of Law (Apr. 20, 2007).

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I remember, many years ago, meeting you for the first time at a Rocky Mountain Mineral Law meeting in Portland, Oregon, shortly after I had published my first environmental law article. You said hello and followed it immediately with, 'I really liked your TSCA article.' It was a small thing, but a large kindness to a rookie. This was the kind of encouragement that young scholars are hungry for.¹⁵⁶

Each person who spoke at the Symposium in his honor received a handwritten note expressing appreciation, and making some comment or observation specific to the recipient.

The Rodgers Effect also occurs in personal encounters. As a professor from Arizona remarked, "Bill is a mentor to the mentors."¹⁵⁷ A law professor in Florida recalled, "Bill went out of his way to introduce himself to me when I was new and green in this profession, at my first Rocky Mountain Mineral Law Foundation conference."¹⁵⁸ Another also mentioned Rodgers's appearances at the Rocky Mountain Mineral Law Foundation bi-annual teachers' conferences: "Bill was warm, engaging, and inclusive of all of us, even though we were young, inexperienced, and without reputation. He helped to make our new careers fun and inviting."¹⁵⁹ A law professor from Florida wrote, "Bill treated me as an 'equal' and, indeed, as a friend, immediately after we met. In the very few instances where I might be one to know about a topic—like some of the more esoteric legislative history of SARA or how to pronounce Miccosukee—Bill called."¹⁶⁰ A law professor from Oregon who is new to academia, upon reading these comments by others, recalled how Bill Rodgers similarly encouraged her after a lecture she had delivered and resolved, "He has shown me something important about the role that we need to play as professors. I will try to follow his example as my career progresses."¹⁶¹

I felt the power of the Rodgers Effect myself more than twenty years ago. In the mid-1980s, I was asked to give a talk on teaching at an

156. E-mail from Prof. John Applegate, Indiana University School of Law-Bloomington (Apr. 20, 2007).

157. E-mail from Prof. Carol Rose, University of Arizona College of Law (Apr. 20, 2007).

158. E-mail from Prof. Robin Kundis Craig, Florida State University College of Law (Apr. 20, 2007).

159. E-mail from Prof. William Funk, Lewis & Clark Law School (Apr. 20, 2007).

160. E-mail from Prof. Alfred R. Light, St. Thomas University School of Law (Apr. 20, 2007).

161. Interview with Prof. Adell Amos, University of Oregon School of Law (May 8, 2007).

AALS training conference for environmental law teachers. As I flew across the county, looked out the airplane window, and admired this great land passing below, I began thinking about how fundamentally different our field was from commercial law, antitrust law, or real estate law. I got the notion that I might start by asking all the law professors at the conference to close their eyes and imagine they were taking that flight with me. I would speak not about what should be taught, or how it should be taught, but about why I was teaching in the first place.

When I broached this approach to a friend beforehand, he promised not to speak to me again if I didn't take the chance.¹⁶² Nonetheless, it felt risky to be speaking to some of my elders and a large number of my betters in such a way, and when I addressed the law professors the next day, I told them so. Having done that, it was too late to turn back. I swallowed hard, asked them to close their eyes, and took off into the sky. After the flight, with eyes open once again, I led the professors on an imaginary raft trip in the wilderness with our students. I talked about how our students could inspire us, but how we were not presenting them with the full range of options for their careers. I talked about the polarization of the bar in the real world, dismissed the significance of *pro bono* activities in large law firms, asserted that private lawyers could do consistent public interest work only in small firms at the grassroots, and called for creating networks of such lawyers.¹⁶³ I argued to the law professors at the conference that our field is not characterized by special types of analysis and that our type of law is not a large chess game. It is instead an enterprise that is marked by a special quality of caring, courage, and heart.¹⁶⁴ At the end, I read from an impassioned speech once given by iconoclast Ed Abbey.¹⁶⁵

162. Conversation with Prof. Patrick McGinley, University of West Virginia College of Law, hotel room, Washington, D.C., Mar. 1986.

163. At the University of Oregon, we were in the process of building such a network with the Western Public Interest Environmental Law Conferences, which ultimately became national in scope. See website at <http://www.pielc.org>. A few years later, with colleagues from 9 other countries, we created an international network of public interest lawyers as well, the Environmental Law Alliance Worldwide. See website at <http://www.elaw.org>.

164. A version of the talk was later published as John E. Bonine, *The New Private Public Interest Bar*, 1 J. OF ENVTL. L. & LITIG. 1 (1987).

165. I read from the same speech at the end of my presentation in honor of Bill Rodgers at the symposium. In the late 1970s, Abbey made a speech to a meeting of environmental activists, ending by asking them to spend some times for themselves, cultivating their own humanity, enjoying what they were protecting:

One final paragraph of advice: do not burn yourself out. Be as I am—a reluctant

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Afterwards, I felt a bit awkward. Would the other professors tag me as some kind of weirdo? The other speakers carried on normally, perhaps silently embarrassed for me. But one person came up to me, shook my hand, and said “Keep taking risks, John.” That person was Bill Rodgers. That one remark of encouragement twenty years ago meant the world to me. I may have embarrassed myself before the strait-laced scholars of the profession, but Bill’s remark had the wisdom of Will Rogers, who once said, “Live your life so that whenever you lose, you win.”¹⁶⁶

8. THE RODGERS APPROACH: CIVILITY, GENEROSITY, AND PERSISTENCE

Those who have encountered Bill Rodgers always have a singular reaction. A professor from Texas wrote that Rodgers is “an example of industry, civility, intellectual generosity and honesty that stand out as a model. And he has made the environmental law community a better place to be.”¹⁶⁷ Another wrote of Rodgers: “He is truly modest and self-effacing in the very best sense—a person who carries his remarkable learning lightly, and immediately puts others at ease. I was also impressed by Bill’s exceptional integrity. He is honest to his core—absolutely trustworthy in all respects.”¹⁶⁸ From Colorado, a professor noted a unique physiological aspect of Rodgers: “His generous and welcoming spirit is captured for me in his capacity to smile with his

enthusiast . . . a part-time crusader, a half-hearted fanatic. Save the other half of yourselves and your lives for pleasure and adventure. It is not enough to fight for the land; it is even more important to enjoy it. While you can. While it is still there. So get out there and hunt and fish and mess around with your friends, ramble out yonder and explore the forests, encounter the grizz, climb the mountains, bag the peaks, run the rivers, breathe deep of that yet sweet and lucid air, sit quietly for a while and contemplate the precious stillness, the lovely, mysterious, and awesome space. Enjoy yourselves, keep the brain in your head and your head firmly attached to the body, the body active and alive, and I promise you this much; I promise you this one sweet victory over our enemies, over those desk-bound men and women with their hearts in a safe deposit box, and their eyes hypnotized by desk calculators. I promise you this: You will outlive the bastards.

THE EARTH SPEAKS 57 (Steve Van Matre and Bill Weiler, eds., 1983). Some believe the remarks were made at a conference in Vail, Colorado, in 1976. Others contend that they were spoken at a meeting in Missoula, Montana, in 1978.

166. Will Rogers Homepage, Will Rogers Says . . . : Notable Quotes, <http://www.willrogers.org> (last visited May 17, 2007).

167. E-mail from Prof. Gerald Torres, University of Texas at Austin School of Law (Apr. 20, 2007).

168. E-mail from Prof. Joel Mintz, Nova Southeastern University Law Center (Apr. 20, 2007).

eyes.”¹⁶⁹

Many have remarked on Rodgers’s legendary wry humor and brisk story-telling. A professor from Arizona recalled that when Rodgers taught there as a visitor, they took several trips together into the deserts and mountains. On one of the trips they observed numerous antelope jackrabbits (*Lepus alleni*). “The jackrabbits were amazing,” the professor wrote, “but Bill’s tales of them were much better.”¹⁷⁰

Another professor, from New York, remarked upon Bill Rodgers as “a living example of a special way of being an environmental law professor. He emanates an exuberant love not only of understanding, but of understanding in a way that helps both others and the world we will leave behind. It is a very special gift, even as we may struggle to fully receive it.”¹⁷¹ A professor from California agreed: “I hope I can someday come close to the grace and good humor with which you do your teaching, writing, and advocacy.”¹⁷²

Warmth and empathy were mentioned by others. A professor from Hawai’i wrote of a simple hug on the morning of September 11, 2001, as the World Trade Towers fell. “I don’t know if Bill remembers this, but it is a cherished memory of mine, of an admired colleague who became a comfort in a very dark hour.”¹⁷³ On a happier note, a professor in Delaware saw in Bill Rodgers a model of how to be an academic without being pretentious:

As a starry-eyed, new, green, law professor at the AALS meeting in the early 1990’s, there I was, standing alone during the field trip, feeling insecure and a bit overwhelmed by the cast of familiar names and gravitas, and lacking the courage to crash the multiple circles of conversation all around.

No doubt observing this, a generous soul I’d never met invited me to join the conversation he was having with a group of others bent on leaving a good impression, dropping names and events, infusing the conversation with their latest achievements. But not the kind one. He smiled, laughed, talked about movies, music

169. E-mail from Prof. Mark Squillace, University of Colorado Law School (Apr. 20, 2007).

170. E-mail from Prof. Joe Feller, Arizona State University College of Law (Apr. 20, 2007).

171. E-mail from Prof. Errol Meidinger, State University of New York at Buffalo Law School (Apr. 20, 2007).

172. Hand-written note from Prof. Holly Doremus, University of California at Davis School of Law (Apr. 20, 2007).

173. E-mail from Prof. Alison Rieser, University of Hawai’I at Manoa (Apr. 20, 2007).

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and family, and appeared both at ease and completely out of place. I thought he must be some famous law professor's "significant other."

It wasn't until next year's meeting of the AALS [Association of American Law Schools] when I saw him on a panel that I learned it was Bill Rodgers. Bill's example of civility left a lasting mark.¹⁷⁴

The works of William Rodgers speak for themselves, but his many admirers and friends also speak on his behalf, including those whose ancestors were on the land long before dams, guns, and hatcheries were invented.¹⁷⁵ The words "civility," "generosity," "humor," "wisdom," "creativity," and "hope" sparkle in the comments submitted on the occasion of celebrating Professor William Rodgers's first forty years.¹⁷⁶ Two words, typed and hand-written in note after note, stand out: "passion" and "inspiration."¹⁷⁷

Perhaps the quality of Bill Rodgers can be captured best not in the words of a professor, a lawyer, or a student, but in a note written at the Symposium by an activist—a well-known conservationist, who has

174. E-mail from Prof. James R. May, Widener University School of Law (Apr. 20, 2007).

175. Among them is a man who has fought and cried alongside Rodgers, traveled with him to Alaska, and welcomed his family into his own heart. He wrote, "It's been a life time with you and your family. I love all of you." Hand-written note from Billy Frank, Nisqually Indian Tribe (Apr. 20, 2007). Another wrote, "On behalf of your friends at the Nez Perce Tribe, thank you for your dedication, your support, and your humor." Handwritten note from Juniper Davis, Nez Perce Indian Tribe (Apr. 20, 2007). "The Creator blessed us with you. Here's to many more hours of laughter and learning." Hand-written note from Kathy Hill, Klamath, Modoc, Paiute Indian Tribes, and Joseph Dupris.

176. *See, e.g.*, hand-written notes, Apr. 20 and 21, 2007: "Always young, always insightful, always hopeful," Eugene (Bo) Bricklemyer, Port Townsend, Wash.; "You are the only law professor I know who would allow a poor geography student to coin the term 'hydrogeography,'" John Bower, Olympia, Wash.; "wisdom, sage advice, humor, and knowledge," John Hollowed, Olympia, Wash.; "Your last 40 years give us hope for the next 40," Dave Fluharty, Seattle (School of Marine Affairs); "Your tenacity, dedication, passion, and heartfelt support for Indian peoples, their struggles, and for the natural resources on which they depend is an inspiration for me, and I have no doubt, for many others," author unknown.

177. Hand-written notes agreed: "Wonderful inspiration and thoughtful model," Neil Proto, Washington, D.C.; "Thank you for the inspiration," Andrea Burkhart, Tacoma, Wash.; "Thanks for the support and inspiration," Jeff Schuster, Seattle, Wash.; "Your energy, creativity, wit, and optimism continue to inspire all of us. This is a more just place because of you," Catherine O'Neill, Seattle, Wash.; "You're an inspiration!" Kathy McGinnis, Seattle, Wash.; "Your enthusiasm, ingenuity and sustained commitment are an enormous inspiration to those of us who benefit from the charge you lead and who try to find our way along the trail you blazed," Patti Goldman, Seattle, Wash.; "As they say, we're all connected!" Kathy Len, Seattle Wash..

worked to protect the natural environment of Washington State for even longer than Rodgers. She wrote in her note to him: “You are among those who never give up. Keep on going as I know you will.”¹⁷⁸

Never give up. Keep on going.

That sounds like the behavior of a certain sea lion named Hershel. But even more, it sounds like the story of the wild salmon, the steelhead, and the Native peoples to whom Professor Rodgers has devoted much of his career. It is also a fair summary of the scholarship and teaching of William H. “Bill” Rodgers, Jr. so far.

Most importantly, in the minds of everyone who knows Professor Rodgers, has heard him lecture, or has read his works, it is a deeply held wish for decades to come. Never give up, Bill. Keep on going. A whole lot of your friends are depending on you.

178. Hand-written note from Polly Dyer, Seattle, Wash. (Apr. 20, 2007). A conservationist since the 1950s, she joined a select group of activists to form the North Cascades Conservation Council (NCCC) which fought to protect and preserve the wilderness area around Glacier Peak. Most environmentalists agree that without Dyer, the state map would look considerably different. A Seattle Times story in 1994 credited Dyer with “a leading role in the 1964 Wilderness Act, which preserved millions of acres throughout the nation—almost 10 percent of Washington’s land mass.” Roberta Greenwood, “Washington Women Fighting to Protect Our Environment,” *Seattle Woman Magazine* Apr. 2005, available at <http://www.seattlewomansmagazine.com/april05-1.htm> (last visited Aug. 12, 2007). Her sentiment about Professor Rodgers was expressed by others as well. “Bill – Hope you keep on keeping on for many more years.” Hand-written note from Wick Dufford, Seattle (Apr. 20, 2007).