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## Will California Law Apply to Hubbs-SeaWorld Research Institute's Offshore Aquaculture Demonstration Project? An Analysis of the Extraterritorial Application of State Aquaculture Laws

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## Remembering Luke Cole, 1962-2009

In these pages we pause to remember a mentor, a colleague and a friend, and to pay tribute to his many impressive achievements whether as attorney, teacher, leader or human being. This past June 6th, Luke Cole was killed in a car accident at Queen Elizabeth National Park, Uganda. I met Luke Cole only once, about a year ago, at an informal on-campus conference at U.C. Hastings. I was immediately impressed by his incredibly sharp mind, and also by his approachability as a human being. As you will gather from reading the following tributes, he is sorely missed by many. West-Northwest extends its sincere condolences to Luke's wife, Nancy Shelby, his family and his coworkers at the Center on Race, Poverty & the Environment in San Francisco, California and Delano, California.

*Editor*

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### **Luke Cole, Social Justice Visionary**

*Ingrid Brostrom*

*Marybelle Nzegwu\**

Luke W. Cole had the essence of a powerful man - he was brash, confident, and irrepressible. When each of us first met him, we were more than a little intimidated by his seeming superiority. Upon getting to know him, however, this initial impression was quickly dispelled. Luke used his larger-than-life persona and "macho law brain" to tirelessly work for social justice. He welcomed all like-minded folks into his inner circle, laughed with us, supported us and our visions and considered us his friends.

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\* The authors Ingrid Brostrom and Marybelle Nzegwu are Staff Attorneys at the Center on Race, Poverty & the Environment. Both earned their J.D. at U.C. Hastings and interned for CRPE during law school. Ms. Nzegwu took Luke Cole's first-year statutory class on Environmental Law.

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Luke accompanied his father on historical art expeditions in Africa while he was very young, an experience which enabled him to see extreme differences in social conditions and opportunity based on disparities in economic and racial privilege.<sup>1</sup> This likely provided the basis for his theories about social change, which manifested at a very early age. At his recent memorial, Luke's father Skip recounted that as a boy, Luke enlisted his brothers to help him block off a floor of the family house by declaring kid power. Even at that age, Luke recognized that the only way to remedy disparities in power was for the seemingly powerless to organize and take action.

Luke's vision for empowering the disenfranchised never abated. While at Harvard Law School, he challenged what he described as the institutional hegemony of law school culture which he felt excluded both minorities and women.<sup>2</sup> He co-published the *Reptile*, which exhorted students to liberate themselves "from the ideology of the bourgeoisie and the law, to establish [their] own political culture, to promote the unity of theory and praxis, . . . emphasizing the importance of intersubjective *zap*."<sup>3</sup> Luke cultivated "intersubjective *zap*" his entire life, bringing an endless diversity of people together to share experiences and understandings to counter those dictated by the controlling elite.

After law school, Luke sought a job that would allow him to combine his interests in social justice and the environment with legal action, but such a job did not seem to exist.<sup>4</sup> In California, Luke met Ralph Abascal, the long-time general counsel for the nonprofit California Rural Legal Assistance, who understood his vision. Ralph gave Luke a phone and a desk and helped him raise money to start an environmental project, which eventually became the Center on Race, Poverty & the Environment ("CRPE"), a law practice he molded to embrace his goals.<sup>5</sup> CRPE was established to fight disproportionate environmental pollution and achieve social justice by building individual capacity and community power.<sup>6</sup>

At CRPE, Luke established a new model for community lawyering. In Luke's model, lawyers work hand-in-hand with community organizers to establish "principled working relationships" with the community to encourage

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1. Program for San Francisco Memorial, Remembering and Celebrating the Life of Luke W. Cole 1962 -2009.

2. *1 Reptile 1* (1987).

3. *Id.*

4. Elaine Woo, *Luke Cole dies at 46, leading theorist, practitioner of environmental justice law*, L.A. Times, June 11, 2009.

5. *Id.*

6. Center on Race, Poverty & the Environment, About us, <http://www.crpe-ej.org> (last visited October 6, 2009).

collective action and community self-determination.<sup>7</sup> The model is based on the fundamental principal of the environmental justice movement: environmental decisions should be made at the community level and that people most affected by environmental hazards speak for themselves.

Luke saw the need to look beyond the unequal distributional outcomes - poor people of color being exposed to greater environmental hazards than wealthy white people - to the underlying social and institutional processes which produce them. The only way to counter structural inequities was to build community power. To build community power, Luke taught environmental justice advocates to challenge the status quo by understanding, confronting, and moving beyond the three great myths of white Americana: 1) Truth will set you free; 2) Government is on your side; and 3) We need a lawyer.<sup>8</sup>

Debunking the first myth, Luke recognized that having the right answer or the right piece of information will not win a particular environmental justice struggle. “[E]nvironmental justice issues are not about right and wrong. They are not struggles about what is the best thing to do in a particular situation. They are struggles about power.”<sup>9</sup> In response to the second myth, Luke pointed out that governments respond to power, and in environmental justice struggles, the most powerful interest is usually the polluter.<sup>10</sup> The imbalance of power means that, for communities seeking protection from pollution, the government often becomes the primary obstacle to achieving justice.<sup>11</sup>

Finally, despite being a lawyer and actively recruiting lawyers to the environmental justice movement, Luke argued that lawyers are not the means to achieving community power. Communities can benefit by working alongside attorneys, but bringing a lawsuit may take a struggle out of the community if the lawyer is in charge instead of the community.<sup>12</sup> In this way, a lawyer may disempower rather than empower the community group. Lawyers do have a role: we don’t drive the wagon, but we can ride shotgun.<sup>13</sup>

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7. Luke W. Cole, *Environmental Justice and the Three Great Myths of White Americana*, 3 *Hastings W.-Nw. J. Env'tl. L. & Pol'y* 449, 455 (1996).

8. *Id.* at 450.

9. *Id.* at 451.

10. *Id.* at 452.

11. *Id.* (To look at my own experience, the government has been on the wrong side of the fence - either as an active enemy or a passive obstacle - in every single case of the dozens of communities with which I have worked in the last seven years. The government is responsible for this maldistribution of environmental hazards.)

12. *Id.* at 455.

13. *Id.*

This idea led to CRPE's adoption of the adage "lawyers on tap, not on top."<sup>14</sup>

Under Luke's direction, CRPE has championed these values and successfully empowered communities across California and the United States. CRPE continues to follow the social justice principles that Luke developed throughout his lifetime and the example he set during twenty years of fighting for the empowerment of low-income communities and communities of color.

Luke's vision and legacy will not only continue at CRPE, but is embodied in the hundreds of students and interns that Luke taught, guided and mentored throughout his life. Luke knew that he would not always be at the forefront of the movement and joyfully cultivated the next generation of movement leaders. Today, many of his former students and interns are practicing law in the environmental and social justice movements, shaped in fundamental ways by the teachings of Luke Cole. We count ourselves in this category and can attest that Luke led a successful and inspirational life. His guidance, friendship and mentorship have had a profound impact on our lives, our work, and our commitment to communities in their quest for empowerment and justice.

To laugh often and much;  
To win the respect of intelligent people and the affection of children  
To earn the appreciation of honest critics and endure the betrayal of  
false friends  
To appreciate beauty;  
To find the best in others  
To leave the world a bit better, whether by a healthy child, a garden  
patch or a redeemed social condition  
To know even one life has breathed easier because you have lived  
This is to have succeeded.

- Bessie Anderson Stanley (1904)

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14. See Sofia Sarabia, *Environmental Justice and Community Lawyering: Successful Advocacy Strategies*, Legal Services of Northern California: The Race Equity Project, February 21, 2009, <http://lsnc.net/equity/2009/02/21/environmental-justice-and-community-lawyering-succesful-advocacy-strategies> (last visited October 6, 2009).

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## In memory of Luke Cole, teacher and visionary

Naomi Roht-Arriaza\*

I first heard Luke speak to a room full of law students. He was talking about his work in California's Central Valley, defending a town made up largely of Mexican immigrants who had been fighting a giant toxic waste disposal project. Luke was angry about the injustice, passionate about his work, but, above all, humble. He explained to the students that lawyers worked at the service of the community, and had to take their marching orders from their clients. This was sometimes messy and difficult, as the clients might have different ideas or might not know what to do. But, Luke said, shortcutting the process of community deliberation and leadership by imposing the lawyers' views and leadership was self-defeating. The idea was not to win a case but to empower the community. That way, even if the case lost, something was gained, and if the case won, there would be other battles that the community could more easily pursue.

The room was electrified. I could see light bulbs going off over people's heads right and left. Why hadn't most of their teachers talked about this kind of lawyering? How could they get involved? Luke patiently answered questions, encouraged, prodded, challenged. His views on the holistic nature of community lawyering influenced hundreds of students: those who worked with him, those who read his articles, those who heard him speak. Of course, other people said similar things. But Luke's combination of passion, good humor, and knowhow were unique.

Luke taught a seminar on environmental justice at Hastings for many years. For several of those years, he also taught first year students an introductory course on statutory interpretation and environmental law. Last year, he developed and taught for the first time a seminar in climate change law. I think he was moved to study and teach on climate by the work he did in Kivalina, an indigenous community in Alaska affected both by water quality issues stemming from mining tailings and by warming of the land and water that was destroying their way of life. Luke's reaction to the challenge of climate change was to study the science and the law, to figure out novel and creative legal strategies - but above all to work with the community to implement what *they* wanted to do, and give them the tools to do it.

Luke understood profoundly the links between local and global action. He was one of the pioneers in the field of environmental justice law; indeed, he was one of the people who *invented* the field. He understood from the

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start that environmental justice issues also played out on an international scale: the export of toxic waste to Latino communities in the central valley was driven by the same forces as the export of toxic waste to Africa. Curbing the use of dangerous pesticides required action at the local and state, but also at the global level, since the pesticides migrated through ocean and air currents to places (like the Arctic) where they were never used, yet affected local health. He was involved in fighting for the people of Kivalina, but understood the profound connections between that fight and the need for generous adaptation funds and participatory planning for poor communities everywhere threatened by climate change.

Luke wasn't just an enthusiastic teacher and dedicated advocate, he was also a larger-than-life human being. He always had a laugh, a hug and a good story, usually based on some place he had just traveled to. He understood the need for balance between work and play, taking months off to travel, observe new birds and animals, and have fun with his family. Every year, he sent a photo montage of his exploits during the year, and the images of a grinning Luke in some strange situation will stay with me always. He was a fabulous colleague, a gifted teacher, a genuinely nice human being, and an example of how to live life to the fullest. I miss him terribly.

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## **Luke Cole**

*By Brian E. Gray\**

Luke Cole was a great man who also was a good man. Although only 46 at the time of his death last June, Luke was one of the elders of the environmental justice movement - a cause to which he dedicated his professional life. Just out of law school, Luke co-founded the Center on Race, Poverty, and the Environment with my friend and colleague Ralph Abascal, another good and great man who also passed away at too young an age. Over the next two decades, Luke and the other dedicated staff at the Center served as advocates for a diverse array of individuals who comprise America's poor, marginalized, and underrepresented communities.

Luke's efforts spared the citizens of Kettleman City in California's San

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Joaquin Valley, most of whom are Latino farm workers and their families, from the risks of living next door to a hazardous waste incinerator. On behalf of the residents of Kivalina, an Inupiat village in northwest Alaska, Luke negotiated a settlement that forced a zinc and lead mine to stop polluting the village's domestic water supplies. In a bold and creative lawsuit brought under the Civil Rights Act of 1964, Luke persuaded the U.S. District Court in New Jersey that the concentration of contaminated industrial sites - abandoned factories, chemical plants, waste treatment facilities, a petroleum coke transfer station, and a proposed concrete grinding plant - in the Waterfront South neighborhood of Camden, New Jersey constituted state-sanctioned racial discrimination against the African-American and Hispanic residents of the community. When he died, Luke was working to enjoin a cyanide leachate gold mine on the ancestral lands of the Timbisha Shoshone tribe in Death Valley.

Through these and many other cases, Luke not only created a new field of law; he also directed all of us who practice and teach environmental law to look closely at the people who are most affected by land use decisions, natural resources management, and environmental regulation (or lack thereof). By focusing our attention on the human factor in environmental policymaking, Luke reminded us that the laws that regulate material things - air emissions, water pollution, the manufacture and disposal of toxics, and land use - do so for the principal benefit of people. By living his professional life the way he did, Luke also demonstrated that the highest calling for any lawyer is to use one's skills to help make others' lives a little safer, healthier, and more dignified.

While I followed Luke's career from afar, I got to know him through his academic writings and his teaching. For many years, Luke taught environmental law here at Hastings as part of our first year statutory elective program. Luke inspired his students with his radiant creativity, his analytical rigor, and his guiding moral compass. I was an incidental beneficiary of his popularity as a teacher, because the high demand for Luke's classes kept the enrollment in my environmental law classes to a relative few. It was one of the great privileges of my professional life to share the podium with Luke.

The last time I saw Luke was at a November 2008 City Arts and Lectures interview with John Hodgman and Dave Eggers, which I attended with my wife Susan. I was seated behind a tall man, whose stature caused me to shift from side-to-side to see the speakers. This normally would have been an irritant, especially in light of the insights and humor and palpable rapport between the two men on stage. But the tall man in front of me was holding hands with the woman seated next to him and laughing and so relishing the evening's conversation that I could not begrudge him his better view. When the interview concluded, the couple stood up and I saw that it was Luke and his wife, Nancy. I had not seen Luke for a while, and so the four of us talked and talked until we were the last people in the auditorium



and an usher finally suggested that it was time for us to leave.

During the few minutes we had together, we caught up on most of our common interests. We compared notes on our classes. Luke told me about the Kivalina settlement and a new case against the oil companies for redress of the injuries to the Inupiat people from global warming. We talked about Luke's passion for photography and root beer. The four of us spoke of the joys and struggles of parenthood. We expressed our hopes for the new Administration. We discussed our recent travels - China, from which I had just returned, and (far more exotically) South America, Antarctica, Madagascar, South Africa, and Uganda, where Luke would visit on his upcoming sabbatical. As we parted, Luke took Nancy's hand in his and they gently nudged heads as they walked away. They were a couple visibly in love.

That evening will be my enduring memory of Luke, for it touched all of the qualities that made him a great and good man. Luke was a loving husband and father. He was an inspiring and generous teacher. He was a creative and courageous lawyer. He was an adventurer. And he was something of an eccentric. Of all the myriad aspects of life in which Luke excelled, though, he did one thing better than anyone else I know: He lived!