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The Village at the Mouth of the River:
A Biography of Basil Fernando

Le Roy Robinson

Basil Fernando, an attorney, is a poet and short story writer. He was born in October 1944 at Palliyawatte, a village in Hendala, Wattala, Sri Lanka.

As a young boy he attended the village primary school. He attended high school at St. Anthony's College, Wattala, and St. Benedict's College, Kotahena.

In 1972 he graduated from the Faculty of Law, the University of Ceylon, Colombo.

Until December 1981 he was a teacher of English as a second language in the Sub-Department of English, Sri Jayawardenapura University, Nugegoda. In 1982 he began his legal practice.

In 1984 Basil Fernando started working as a human rights lawyer. He filed many writs of habeas corpus and handled other cases allegedly involving torture or extra-judicial killing by the security forces of his country.

In 1989 four of his immediate colleagues were killed within a period of six months, and he was warned by a police officer friendly to him that his safety could not be guaranteed.

In September 1989 he took up work as an appeals lawyer stationed in Hong Kong by the United Nations High Commissioner for Human Rights. He reviewed cases of Vietnamese refugees.

In 1992 he became a senior human rights officer in U. N. T. A. C. and is stationed in Thailand and Cambodia.
Basil Fernando readily admits that during his last two years at law school he did hardly any academic work at all.

He found the academic world of the time very unexciting. It was so unrelated to the sort of questions he was seeking answers for as a person coming from a fishing village like Palliyawatte.

What was expected of him at law school was to forget about himself and to acquire what was considered knowledge. This meant the learning of statutes and case law, mainly Sri Lankan, British and South African cases.

Basil’s initial reaction to the law as he found it in Sri Lanka was that it had to be radically reformed. The law and the legal system in Sri Lanka were “ridiculously inadequate”.

But most of the law school teachers and their students were very proud to be learning “that stuff”.

Feeling himself an outsider in that milieu, Fernando decided to be there as little as possible.

Among the things that Basil Fernando remembers from this time were the Corray Committee and the Nadaraja Committee.

Corray was a student leader in Vidyodaya University who belonged to the student wing of the Sri Lankan Communist Party. He was arrested by the secret police, but his party did nothing to get him released. After a few days his friends were very worried about him.

Basil heard about this from Laksman Jayasekera, a member of the Young Socialists, the youth wing of the Kamkaru Mawatha group.
Laksman Jayasekara is now a senior town planner attached to the Urban Development Authority of Sri Lanka and is also involved in the production of films.

Then, he was a very remarkable student leader.

After learning about the arrest of Corray, Basil Fernando called for the formation of a joint committee of all student groups to fight for the release of Corray.

Students responded "marvelously".

The R. C. L. was usually not respected much as it was considered to be sectarian. But on this occasion there was a difference. Soon there were posters on trees and walls around all the places near the Vidyodaya campus, and news of the campaign spread fast.

The call for the Corray's release also appeared in newspapers.

A meeting was organized at the campus at which even prominent trade union leaders were to speak.

Shortly after the meeting started there was a happy surprise. Corray himself appeared. He profusely thanked Laksman Jayasekara for his release.

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The Nadaraja Committee story is much more complex.

The body of a young man was found inside the toilet of the Wattala police station. The police alleged that the man had committed suicide. The post mortem was conducted inside the police station itself with very important police officers standing about the place.

When the matter was brought to the magistrate court of Wattala the magistrate, Plavian Perera, gave an open verdict.
This happened in 1976. It was a time when people were still shocked when a person died at a police station. Now police murders in Sri Lanka are something that everyone takes as a common occurrence.

The R. C. L. had a small group at Wattala. A young lawyer, Siri Nanayakkara, was supportive of this group. The R. C. L. was urged to take up this matter. Basil and his associates called for a joint committee to get an investigation into this matter.

Immediately there was a huge response. Many groups came to participate in this campaign. Posters were put up in many places. One creative young man drew a picture of a person hung by the neck. This picture attracted public attention and infuriated the police.

Basil was elected secretary of this committee. The committee received news that the police were trying to arrest the persons putting up the posters. Basil and his friends decided to put up the posters in the open, thus risking arrest. Four members of the committee including Basil were to put up posters while others were to watch from a distance and take the necessary steps to publicize the incident.

Basil and the others thought that by publicizing the incident they would be able to get more attention to the Nadaraja case.

As expected, while they were putting up posters, a police jeep came, and the four of them were arrested. They asked for the reason for their arrest. They did not get a reply but were pushed into the jeep and taken to the police station.

Inside the police station the policemen asked who was the leader of the four. Basil answered that he was. So the police began to question him.

The officer in charge of the police station was a man named Mahanama.
The questioning of Basil was done by one sergeant Mohideen.

Basil told his interrogator that he would not answer any question until he was told what the charges against him and his companions were.

The few police officers got together to peruse the Criminal Procedure Code to find out what the charges should be. They could find none. Someone said that charges could be filed under a new anti-terrorism act.

Basil had many arguments with his questioners, and he was told that was not a very intelligent way for him to behave inside a police station.

The police threatened to take Basil to a magistrate on the charge of refusing to cooperate with the police.

Meanwhile R. C. L. supporters had made many telephone calls to the police station inquiring about Basil and his companions. Some of the callers were prominent persons, including some cabinet ministers.

Mahanama, the officer in charge, informed them that they could go home and could take their posters with them.

Later Basil and his friends filed a private complaint in court against the police for illegal arrest. Five police officers, including Mahanama and one Hettiarrache, who had led the arresting officers, were called to court.

They found it humiliating when the judge told them that they could not wear their police uniforms when they appeared in court.

During this case, which was instituted at Wattala magistrate court, all lawyers, except Siri Nanayakkara, supported the police with the view of getting favors from the police in the future.

The case was later withdrawn by the attorney general of Sri Lanka, who had the power to withdraw any prosecution without giving any reason. What he did on this occasion, Basil says, was in fact an abuse of his power.
The Nadaraja campaign gained a lot of momentum and a public meeting was scheduled. A large crowd was expected.

At the last minute the police cancelled the committee's permit to use a loud speaker at this public gathering.

But the meeting took place. Nadaraja's wife sat on the stage with her one month old child.

During the campaign the committee had learned that Nadaraja was in fact beaten to death at the police station due to the instigation of his employer, who wanted to break the trade union of which Nadaraja was an organizer.

During the campaign the sales of Kamkuru Mawatha went up. Interviews with other persons harassed by the police were published in it and read with great interest. An interview with a dancer, Gene, who accused the police of trying to rape her, led to the paper being sold like hot kevum — like hot cakes.

Basil Fernando thinks that if the protests against the police at that time had been taken seriously and if restrictions had been placed on police behavior, the sort of massacres that later took place in Sri Lanka might not have happened.

In 1976 Basil Fernando went to England for a month long training course organized for various groups of Trotskyites. He had an opportunity to meet with leaders of many groups. He asked for a special meeting to discuss what he considered the difficulties of the Sri Lankan group.
He had this discussion with Cliff Slaughter, a British academic who was a prominent member of this particular section of the Fourth International. This discussion was treated with interest.

The American group, somewhat impressed by Basil’s contribution, shipped nine crates of books to Sri Lanka. With those books the R. C. L. started a book shop.

However, inside the R. C. L., tension was growing, particularly regarding the leadership of Kirthi Balasuriya, the general secretary.

Despite the friendship among them, Balasuriya was suspicious of Basil and the few others who enjoyed wide popularity. This suspicion was heightened when Balasuriya learned what Basil had said at the meeting in England.

This tension lasted until 1979 when a group led by Siri Nanayakkara and Basil challenged Balasuriya openly.

This group called itself the Group of Twenty One.

Basil says that most leftist groups are “vicious” when it comes to internal fights. This one was not different.

Kirthi Balasuriya published an article in Kamkaru Mawatha entitled “Renegade Basil Fernando”. The Group of Twenty One’s reply was not published.

News of this split reached England.

A special representative, Nick Beam, an Australian, was sent to Sri Lanka to reconcile the two groups. An agreement was reached between the two to continue this struggle more fairly. The Group of Twenty One could publish its differences. Balasuriya would reply. Then members of both groups would discuss the disagreements between them.

The Group of Twenty One members knew that Balasuriya would not
abide by this, but they agreed to try. They wrote a rather lengthy document. They handed it over to Balasuriya. He did not give it to his supporters. He did not write a reply, either.

Instead he convinced Mike Banda to write a letter to the Group of Twenty One asking them to return to R. C. L. unconditionally. Basil and his friends replied that everything in Balasuriya’s letter was factually mistaken.

Balasuriya did not reply.

The Group of Twenty One published their document as a booklet — and parted from R. C. L.

R. C. L. and the international committee underwent troubled times and disintegrated.

Mike Banda accused Geary Healy of committing rape on many young women in the party. That accusation was reported in headlines in some London tabloids.

Kirthi Balasuriya died a very disappointed man at the age of thirty nine. An American who attended Balasuriya’s funeral accused Banda and Healy of the worries that caused the untimely death.

Kamkaru Mawatha disappeared from circulation.

Basil Fernando had liked Kirthi Balasuriya as a friend.

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Wattala is situated between Colombo and the Katanayaka International Airport. The road connecting them is Negombo Road. The road runs through a number of towns on the seabelt where most of the people are Catholics. Among the middle class group in these towns there is an homogeneous culture.

These suburban towns are semi-urbanized, but the people have strong
local roots.

Having been educated in more affluent schools they have acquired some knowledge of English which they are very proud to exhibit.

In each town there are several lower rankings or sometimes middle ranking professions. The professions that have most social influence are doctors, lawyers and accountants.

The local roots of these professionals help them to communicate in ways culturally acceptable to the masses of people. An average local professional learns to establish a delicate balance between getting close to the people of the locality and keeping a safe distance.

The people find it difficult to understand that a profession is a form of private business.

The bottom layer of society in each locality is unable to afford the services of professionals though the fees of the local professionals are not exorbitant.

Most professionals have secret ways of helping their poorer clients. The purpose of the secrecy is to prevent more people from seeking free service.

One of the places where many professionals practice is the Wattala court.

The rural court of Wattala was transformed into a magistrates court in 1972.

When it was a rural court sessions were held only occasionally.

It was in a very desolate place. In front of the court now are a huge jumbuoo tree and a mango tree, giving it a remote and rural look.

The rural court had jurisdiction regarding only very small disputes — the theft of a fowl or of a bunch of bananas, a dispute over a fence,
leading to some sort of violence.

There were no strict procedures. The president of the court was expected to talk his way around, if possible, to achieve an agreement between the persons in conflict, or even to force one to submit under the threat of the serious repercussions that would follow if either party deviated from an agreement.

Rural people who did not know what these serious repercussions would be expected that the police would come and beat them up to impose the court order.

People who had serious disputes, whether civil or criminal, had to go to a court which was far away. This court was in Gampaha. There were complaints that the distance was too long.

As a result of these complaints, and the general acceptance of the idea that justice should become more accessible to local people, this rural court was raised to the status of a magistrate court with greater jurisdiction in criminal matters.

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The first magistrate of the court was a man named Silva, formerly a rural court judge who had worked in many parts of Sri Lanka. A former teacher at St. Anthony's College, he was a resident of Wattala. As the start of a new court entailed many administrative matters, Silva's knowledge of the locality was considered very useful. Where to keep the kassipu (a popular illicit liquor) until the time to destroy it. How to keep the case records safe from rain and rats. How to make sure security guards did not get drunk and did not sleep at night. These were the sort of problems that had to be solved by the new magistrate and the few court clerks who started
Basil Fernando has heard them saying that it was a very pleasurable experience to start the thing from scratch. The occasional stealing of a little kassipu by one court clerk or another was tolerated then, and later remembered as fun. All the court clerks did their part of the work with enthusiasm and that was what was important.

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The coming of a regular court added a new experience to Wattala and the neighboring towns and villages. Many people came to the court to watch the proceedings, particularly to see how witnesses were cross examined.

What happened in court often became the talking point in the market place, the toddy tavern, and even in homes.

One story that was often told was about an elderly teacher who was brought to court on the charge of drunken behavior in a public place. The place happened to be the residence of the magistrate himself which was situated close to an arrack tavern that had existed for a long time. The elderly teacher who was a frequent visitor to this tavern as well as to many others was popularly known as Master Ranasinghe (teachers were often referred to as “master”). He happened to be the first person in the Wattala area to have graduated from a university.

Master Ranasinghe had known the magistrate as a colleague during the time they had taught at St. Anthony’s College.

One day when Ranasinghe came to the arrack tavern he heard that the site of the tavern was going to be shifted as it was not nice to have a tavern just in front of the magistrate’s house.

Ranasinghe saw no logic in this. In his drunken mood he decided to go
and talk about this matter with his former colleague. Unfortunately for Ranasinghe the magistrate was not at home, and his son who was at home did not know that Ranasinghe was a friend of his father. Despite the absence of the magistrate Ranasinghe began to argue his case with a crowd that had gathered around him. His argument was that magistrates come and go but the tavern should remain. The magistrate’s son telephoned the police saying that there was some disturbance in front of the house. The police arrived and arrested Ranasinghe. The next day they produced him in court. The magistrate who had heard about this by then let his former colleague go with a mild reprimand.

The magistrate later changed his residence. The tavern still remains.

The first lawyers that came to practice in this court were proctors who were residents in adjacent areas. During this time the distinction between advocates and proctors still existed, more or less like that between solicitors and barristers during the colonial period.

Proctors made money mostly by writing title deeds. Therefore they knew the geography of the nearby localities. They knew the vasagam, the family names by which it was often possible to recognize where a person came from or a person’s caste.

Quite often the proctors were not very good practitioners in court craft. In more complicated cases they retained a counsel. The people often could not understand why they had to pay two lawyers, but some thought that it was better to have two than one.

One of the serious weaknesses of proctors in court cases was that they did not like to have a serious confrontation with the police who prosecuted
the cases. They liked a conciliatory approach, which often compromised the clients. It was a common thing to say that fighting with the police was like hitting one's head on kalu gal, granite, or literally, black stones.

Though proctors often were not good lawyers they were quite good as petition writers. They often wrote petitions, most of the time anonymous ones against the judges who displeased them, to higher authorities who dealt with judges’ promotions.

Proctors were also good at convincing their more ignorant clients that they in fact were doing them a very useful service. One way of doing this was to create the impression that they were on very favorable terms with judges.

A story that is often told is about two proctors who appeared for two parties in a case. One told his client that the magistrate was his uncle. The other, when he heard this, told his client, “Oh, don’t worry, I am the magistrate’s brother-in-law.” Neither had any such relationship to the magistrate.

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In the early 1970s one young lawyer brought a significant change to the Wattala court and raised its standing before the people.

Siri Nanayakkara, known as Nanayakkara Mahatthaya in the neighboring villages, was a young advocate fluent in Sinhala and determined to fight police abuses.

He was a colleague and close friend of Basil Fernando; they shared many court battles.

Siri Nanayakkara’s father was a school teacher who later became principal of a number of schools.
Siri belonged to the group that was then called the new intelligentsia — young graduates coming from preeminently rural backgrounds and fluent in the Sinhala language as against the older generation that used English.

The older generation people thought it convenient to believe that the use of Sinhala was some form of cultural deficiency. Any lawyer who dared to make his submissions in Sinhala was met with mocking looks, cynical laughter and humiliating comments from the older members of the bar.

That was how Siri Nanayakkara was at first received by the members of Wattala bar association.

But the young man was familiar with Pedagogy of the Oppressed and was determined to go his way. Within a very short time he had more clients than the older members, who, having failed to discourage him, began to envy him. Their envy continued for many long years.

The table around which lawyers sit in court is called the Bar Table. While the court continues proceedings, another life continues in murmurs and soft tones around the Bar Table. People talk about their private lives, about cricket (everyone is presumed to be familiar with the game), but mostly gossip, often in a very vicious way.

Lawyers often have first hand information about the affairs of society. This information is shared at the Bar Table.

In smaller courts, like the Wattale Court, there was another thing that influenced conversation. That was very harsh competition. This aspect of the legal profession has created the popular belief in Sri Lanka that law is a cut throat profession.

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The Wattala Court had jurisdiction over the police areas of Pamunu-
gama, part of Kandana, and Wattala. Each police station had different dates
for the hearing of cases initiated by each station. The head of each police sta-
tion was called the officer in charge. The holder of this post had enormous
social power in the area. Even in normal times most such officers in the Wat-
tala area were accused of abuse of power and corruption. During times of
acute social unrest as recently their real power increased. The people often
say that they are at the mercy of the police.

Another character that adds color to the magistrate’s court is the
lawyer’s clerk. These clerks are often referred to as touts. They often act as
intermediaries between the lawyers and the local people. The basis for this
mediation is the difficulty most uneducated people have of understanding
what is going on in court. Touts who have acquired some knowledge of
court procedures by watching court proceedings often become advisors to
the people for a favor such as a drink or a meal. Due to contacts they build
over years they also become middle men in real estate dealings. They find
many other ways of making a livelihood. Many a reform minded magistrate
has tried to subdue the influence of these clerks without success.

The chief actor in the magistrate’s court is the magistrate himself. He
is assisted in the open court by a tolkaya, an interpreter. The tolkaya calls
the names of parties during sessions and conveys various orders of the
magistrate to the parties convened often in a very loud voice. Most tolkaya
have ways of making a little money without necessarily being very corrupt.
Many have been accused of being corrupt.

A legendary figure in the legal profession, Dr. Colvin R. De Silva,
onece referred to the magistrate as the king pin in the criminal law system in
Sri Lanka. In fact, the power magistrates have within the jurisdiction of
their courts is very great.

In the actual exercise of this power they have to depend on the police. The police have successfully wrestled with the magistrates and have diminished their actual power.

Much of the real democracy of Sri Lanka would depend on a practical way of empowering the magistrates and disempowering the police.

During the 1980s when Basil Fernando used to frequent the Wattala magistrate's court, he came across many magistrates. Some treated lawyers like Siri Nanayakkara and Basil as a pain in the neck. Most of the magistrates were very defensive as they themselves did not have much experience in the practice of law. Otherwise, they were nice people. Some were even intellectuals.

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In court a lawyer often had to fight a hard battle to make a small point. For example, there was one magistrate who did not like the accused in traffic cases to plead not guilty. If they did, they were given bail higher than the fine if they pleaded guilty. If the fine for driving under the influence of alcohol was one thousand rupees the bail for people who pleaded not guilty would be set at two thousand rupees.

There were cases of people who had not committed an offense being charged by the police. In one such case one of Basil Fernando's clients, a young man, told him repeatedly that he was falsely charged. But he did not have two thousand rupees for his bail. This meant that he would be sent to remand prison until he provided the bail. The young man did not want that to happen. So it was necessary to keep the pleadings within the client's financial means and at the same time focus attention on what was going on.
When the case of Basil Fernando’s client was called, Basil told the magistrate that his client had been falsely charged and therefore pleaded not guilty. The judge was unhappy about this and immediately said that the bail was 2000 rupees. Basil then told the judge that his client did not have 2000 rupees and therefore had no alternative but to plead guilty. The magistrate felt slighted and said “This court does not accept a conditional plea” and therefore the man would be treated as having pleaded not guilty. Basil then told the judge: Since this court does not accept a conditional plea, my client pleads unconditionally. The magistrate was not happy about the matter. He did not change his ways.

Another such instance was Basil Fernando’s performance before a judge who did not like trials but liked settling disputes. Two groups of people had had a fight and in the course of time wanted to settle their dispute on the payment of money. But the party that paid the money did not want it to be written on a record that could be used against them in the future. The parties decided to inform the judge of this and if the judge did not agree they would go to trial. The judge agreed, but he did not want them to go to trial either. So he began to question the accused six men.

The first man told the judge that he wanted to go to trial. This angered the judge. Basil Fernando slightly nodded when this man answered. The judge noticed this and said to the stenographer: At this stage the court notices that Mr. Fernando is nodding. He is warned not to do so again. Everyone in the court watched very intently.

The judge questioned the second accused man, who answered the same way as the first. This time Basil nodded in a very noticeable way. The judge told the stenographer: This court notices Mr. Fernando nodding
again. He is warned for the second time not to do so.

When the third man answered the judge in the same way as the first two, Basil again performed his part in the court room drama in the same manner, nodding. The judge was furious by then and dictated to the stenographer in a louder voice: Mr. Fernando still nods. He is finally warned not to do so.

The fourth accused man and Basil did the same thing. When the judge tried to say something, another lawyer stood up and said, "Mr. Fernando may be nodding, sir, but I appear for the client".

There was a sudden outburst of laughter in the courtroom. People understood everything since everything had been said in Sinhala.

The judge did not like the episode, and did not learn anything from it either.

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The main tension in court came from the way the police did things.

Once a boy travelling in a long distance bus walked out when the bus stopped to permit passengers to have a short break. It was quite dark. Since there was no toilet the boy went behind a tree to answer the call of nature.

A policeman passing by saw the boy. He asked the boy where he was from. The boy mentioned the name of a far away village of which the policeman had never heard.

The policeman thought the boy was lying and took him to the Kandanna police station. There the boy was beaten up badly. He was kept in a cell there for about 20 days.

Police stations in Sri Lanka are overcrowded foul smelling places where one might find it very difficult to stay for only a few hours.
At the time many robberies had happened in the area around the police station. The police had not been able to arrest anyone for these robberies. The high ranking police officers would have blamed the officer in charge for inefficiency.

The officer in charge got over this problem by forcing this boy to sign a confession that he had committed all these robberies.

The boy was processed at the Wattala court with 23 charges of robbery against him. He pleaded guilty in all 23 cases. He was sentenced to prison for several years in each case.

Younger lawyers who were in court, including Basil Fernando, felt that something wrong had occurred. But there was hardly anything they could do.

When the boy was brought back to the prisoner's cell he began to wail loudly in lament. Other prisoners talked to the boy.

One of Fernando's clients who was waiting for his case to be called told Basil what had happened to the boy.

During a tea break a group of lawyers approached the magistrate and told him what had happened to the boy. Though the judge saw through what the police had done, it took quite an effort to convince him to allow the boy to withdraw his plea of guilt.

The boy's case was then called in court. Basil Fernando appeared in the boy's behalf. The plea was withdrawn.

The boy, however, was sent to remand prison pending trial.

The next day Basil Fernando sent a letter demand to the police officer threatening to sue him for damages.

The officer thereupon withdrew all but two charges.

The magistrate still did not release the boy on bail nor did he fix an im-
mediate trial.

After being in remand for a few months the boy pleaded guilty to two charges on the promise of receiving only a suspended sentence.

This way the magistrate tried to protect the police officer.

Basil Fernando was later told that if the boy had pleaded guilty to all charges the police officer would have received a promotion as a reward for finding the culprit who had committed the many unsolved crimes.

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There were adventurous police officers who did want to serve the cause of justice. But they often got into trouble with their superiors.

One such was a traffic police sergeant Wickramasinghe. He refused to take bribes. When he stopped people breaking traffic rules and asked for their driver’s licences they would often put money inside the license to stop him from arresting them. He would return the money and write a note on the license that the driver had attempted to bribe him.

He would also take a lot of trouble to investigate serious accidents.

But sometimes the officer in charge would take the side of the accused and would try to subvert the cases filed by the traffic officer.

One chief officer told Wickramasinghe that he was efficient and honest and therefore he did not want him at his police station.

Basil Fernando says it is not an exaggeration to say that initial acts of corruption on the part of police officers are due to the pressure of higher officers.

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When lawyers tried to fight against the police pressure they too got in-
to trouble.

Once when Basil Fernando was making submissions on behalf of a client one officer told him in open court: “If there is an emergency I know what to do to you”.

Emergency is a time when police have special powers.

Basil reported this matter to the magistrate at once. Despite other lawyers joining Basil in protest the magistrate ignored them.

On the afternoon of the same day when a senior lawyer from another court was present a number of lawyers made requests to the magistrate to record Basil’s complaint.

The magistrate initially tried to resist this by saying that Basil should go to the police station if he wished to make a complaint.

This drew laughter from the attorneys.

Later the magistrate agreed to allow Basil to make a statement to the court officer who took down the statement.

The matter was reported to the Sri Lanka bar association and received wide publicity in the press.

Attha, a very popular Sinhala newspaper, carried this news in a front page headline Police Arrogance Inside Court.

The then bar association president tried to discourage Basil and a few others who wanted to pursue this matter.

Among some senior officers who were helpful was the well known Sidath Sri Nandalochana.

Finally after exerting much pressure the bar association referred the matter to the court of appeal for a contempt proceeding on the officer who had made the threat. The appeals court did not hear this case.

Basil Fernando still does not know the reason.
Fernando says some cases were a daily reminder of the “weakness” of Sri Lankan culture.

He remembers with sadness two cases in which young girls were accused of killing their children.

In one case the girl was about sixteen. She had a boy friend. This was kept secret from her father, a man who had a very strong sense of shame. He was the owner of some meat stalls and a man of some means.

The girl got pregnant but had a premature natural abortion. She and her mother buried the foetus secretly.

When this came to the attention of the police, they exhumed the foetus for a post mortem. A doctor gave the verdict that it had been still born.

This notwithstanding the police filed a case against the girl for murder.

There was a special procedure for bail for murder suspects which took time. The girl was in jail for a few months.

The police wanted to use this case as a way to blackmail the family in order to get a bribe.

In the other case, a girl who was about seventeen was promised in marriage to an older man from a far away village.

The girl’s father was a rural man with a very strict sense of discipline as far as his daughter was concerned. The older man had been introduced to him by a mutual friend.

After a few months the older man stopped coming to visit the girl. The father went to look for him. To his dismay he discovered that the man
was already married. The very day the girl’s father visited the older man’s
village was the christening day of one of the man’s children.

The disappointed father told this story at his home.

He did not know that his daughter was already pregnant.

In a Catholic fishing village like Pallyawatte prejudices were very
strong in this kind of situation. A sense of shame was often imposed by very
harsh and unkind comments.

The girl gave birth to her child and then killed it. She spent many
years in prison.

Basil Fernando believes that with a little more enlightenment and
tolerance many such tragedies could have been prevented.

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Much of what happened in a magistrate’s court in Wattala and
elsewhere depended on the relationship that existed between the court and
the police. At Wattala as in other places this relationship was a tense one.

Police generally liked to bully the judges. When that failed they tended
to take revenge. Weaker magistrates gave in to the police pressure.

At such times the work of the lawyers was very difficult.

Some magistrates did try to maintain a working relationship and
sometimes they succeeded.

Police usually desired a tame magistrate.

The problems that one of these weak judges created resulted in many
petitions about him to the Judicial Service Commission.

The secretary of the commission visited the court one day to remove
about forty case records for examination.

Allegations against the judge ranged from corruption to abuse of
He had once advised a young lawyer Freddie Udawate that the way to succeed as a lawyer was to get on well with the police and not to fight them.

He is no longer a magistrate.

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Once a magistrate who was a little tough with the police was refused a vehicle to go home in during a curfew by the officer in charge. This happened when a curfew was suddenly declared while the court was in session. The magistrate sent his registrar to request protection on his way home. The police officer in charge, who had not been able to have his way in court, refused, saying “Let him look after his own protection”.

*****

Another way of teasing magistrates was by delaying the filing of complaints and other documents despite the court orders to do so. In such instances, magistrates would sometimes order a higher officer to come to court to explain the delays. The officers often would not come but filed another report saying they had been called to some other urgent duty.

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Such tensions between judges and policemen, says Basil Fernando, generally worked in favor of the lawyers who were good at “friendly negotiations” with the police. This meant little other than forms of corruption by which the police got their bribes and the lawyers got their fees.

On the other hand, the lawyers who did not do such things were punished in many ways. One way was for the police to object to the bail ap-
Applications filed by these lawyers on behalf of their clients who were in remand prisons on one pretext or another. The most common pretext was that the investigation was still continuing.

It was difficult to verify this.

Basil Fernando says that many such tactics are constantly applied in criminal courts in Sri Lanka with the view of transforming a criminal lawyer into a mediator on behalf of the police.

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Local people who become critics of the police often face very serious consequences.

Take the case of Chandrapala who was better known as Kottotuwa. He once gave evidence in an inquiry against a police sergeant. Some time afterwards he was arrested by two police officers. A few days later he was produced in court with a report that a Duppi Bomb was found in his possession.

A Duppi Bomb is a very small bomb made within a bottle.

When a person was brought to court under such a charge the magistrate had no jurisdiction to permit bail and the matter had to be referred to an appeals court. It usually took over six months to get such a case through.

In the case of Kottotuwa on close examination it was found that on the day he was arrested with allegedly a Duppi Bomb he was in fact in police custody. The case against him was completely fabricated. However, he was later convicted in court and sentenced to three years in prison. Perhaps he was not properly defended.

He returned home much disillusioned, a broken man.
Basil Fernando remembers that once a farmer from Anuradapura came to file a human rights application on behalf of his brother who was held in custody on the basis of a false report filed by the police.

This farmer was a tall handsome man in his thirties. His younger brother who was a strong man was once having a quarrel with a woman. The farmer felt that his brother might do some harm to this woman, so he informed the police. He thought that the police could settle the quarrel amicably and that no harm would come to either person.

But the policemen who went to the scene of the quarrel tried to assault the father’s brother and he fought back. He was arrested and taken to the Anaradapura police station.

After a few days he was produced in court charged with possession of a hand bomb so as to prevent the magistrate from granting him bail.

So the farmer went a long distance to consult Basil Fernando to make an application to appeals court. Basil did this but explained to the man that it would take a long time before his brother would be released. He looked very saddened. He went away promising to see Basil a few weeks later.

When the farmer did not return to see him after some time Basil Fernando made inquiries and learned the farmer had committed suicide. He felt that he had been responsible for the imprisonment of his brother because he had called the police to settle the dispute.

The public perceived the judges as ill paid civil servants. Most were considered corrupt though there were exceptions.
There was also an unfortunate tendency to tolerate police weakness as a result of poor pay. The attempt to impose discipline in a strong way on police was thought of as destroying their morale.

The police were aware of this and exploited it in every way.

To prosecute policemen was almost impossible.

Basil Fernando had filed some private complaints against policemen as well as several human rights appelations in which police officers were the respondents.

Though many people had grievances against the police very few came forward to make complaints because they felt there was very little chance of success. There was also the great possibility of their becoming victims of revenge.

Basil Fernando did whatever he could whenever he had a willing client. There were more such daring people in towns than in remote villages, though there were victims among villagers.

*****

The mentality of the villagers used to the harassments of the police was explained to Basil Fernando by a farmer from Tabutegama, a village near Anuradapura.

The farmer told Basil that when the officer in charge of the local police station shot a cow belonging to a farmer to treat fellow officers to dinner the farmer would take miris, red peppers, for the officer's wife to cook so as to show that the farmer had no real ill feeling against the officer for killing his cow.

If the officer felt that the farmer had such ill felling he would fear that the farmer would make a complaint. To prevent that the officer might in-
volve the farmer in some crime which might end in sending the farmer to jail.

In the consciousness of poor and powerless people there were many mechanisms developed over the centuries which enable them to make compromises in order to survive.

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Many people came to see Basil Fernando to complain that one of their family members was kept in a police station over the legally permissible 24 hour period.

There was no provision in Sri Lankan criminal procedure to help people like that. For habeus corpus applications people had to go to an appeals court in Colombo and that procedure took a long time.

Basil Fernando sometimes made applications under the provisions of the law which allowed magistrates to search the premises — in these cases the premises being police stations. Some sympathetic magistrates allowed such applications. In such instances police agreed to release people in many cases.

But in one case when the magistrate sent his registrar to inspect the premises the prisoner was hidden in some other place

*****

Things turned even worse during and after the violence of July 1983. For about two days there was a total breakdown of law in many towns in Sri Lanka. Wattala, Basil’s hometown area, was one of the worst places.

There was massive looting, burnings of houses and factories that
belonged to Tamils. Physical violence included murder.

According to Basil Fernando, police encouraged this violence, participated in it actively, and benefitted from it.

At one factory the police accepted large bribes to protect the place.
Then the mob was encouraged to attack the place.
The police then appeared and took the more valuable items from the place.

In another factory that had been burned the mob was carrying away the big money safe and two parties fought for its possession.

The police arrived and asked one party to take the safe to his house and to keep it on behalf of the officers.

Later the police went to collect their loot. They found they did not have the keys to open the safe. They fetched the man who had the key and opened the safe.

This story leaked. There were some inquiries about this incident.

*****

In the days following this violence of July 1983 searches were made for looted goods. Some were found in the homes of police officers.

A police officer was brought to court for non-summary proceedings (preliminary inquiries into serious crimes) on allegation of murder.

The witnesses, however, did not come to court as they had fled either to the north or to other safe places.

After these events of July 1983 their fear was so great that people did not dare to come to court to give evidence against the police.

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The emergency powers that were given to the police during 1983 were never taken away. In fact, during the late 1980s these powers were increased in a very unconscionable way drawing very serious international criticism.

Basil Fernando says that under those circumstances the work of criminal lawyers became very much of a farce.

Strict laws took away the powers of the courts and strengthened the hands of the police in a way no liberal lawyer would have imagined.

In fact at one stage the police were encouraged to kill and were empowered to do so.

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From the mid-1980s bodies began to appear in the area surrounding Wattala.

The first incident was the discovery of the bodies of two teenage boys in a lonely field near Muthurajawela.

At the beginning there were many speculations about this.

The actual story emerged later. A family rival had gotten one of the boys killed to hurt his father who was working in the Middle East. The other boy, who was a friend, was killed to eliminate evidence.

There was no court case filed regarding these deaths.

After that bodies began to appear in large numbers on the roads and in the canals and rivers.

Some of the older lawyers did not show much moral indignation about this but most young lawyers did.

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An event that shocked the Sri Lanka legal profession as never before was the killing of a lawyer named Liyana Arrachi after he was arrested by the police. He was brutally assaulted and died in the hospital. The medical report showed that he had sustained over one hundred external injuries.

Lawyers rallied together in a manner that had not been witnessed before. They wanted to bring the body to the lawyers’ chambers at Colombo’s main court complex.

One influential lawyer, H. W. Jayawardene, the then President’s brother, prevented this. His comment: “Don’t transform the lawyers’ chambers into a funeral parlor”. This comment was quoted with anger by many lawyers.

The government got the military to take the body by air to Liyana Arrachi’s home.

Lawyers flew in great numbers to attend the funeral.

Soldiers and police kept heavy guard while a huge crowd paid last respects to the dead lawyer.

Later during a meeting of the bar association a resolution was passed to the effect that no lawyer would appear on behalf of any police officer in court until a proper inquiry was held into the lawyer’s death.

Basil Fernando says this was one of the greatest decisions the Sri Lanka bar association had ever made.

He feels proud to have voted in favor of this decision despite the criticism made by some to the effect that since lawyers must represent all clients this decision was unprofessional.

Fernando says exceptional circumstances call for exceptional remedies, and this was one.
The emotional impact this death caused on the legal profession in Sri Lanka still remains. Besides, Basil notes, there has been no real change in the situation.

Any lawyer who attends to complaints against the police by way of filing human rights applications or habeus corpus applications runs the risk of being assassinated, Basil adds.

The secret machinery that was evolved in the 1980s still exists intact, he says.

A lawyer who wrote to Basil in December 1992 speaks of what happened to him for supporting some habeus corpus applications in the court of appeals in Colombo. "I received a telephone call from an anonymous caller who reminded me in a threatening tone of the fate that befalls lawyers who are engaged in human rights cases and stated that it would be folly on my part to think that my lot was going to be different".

These threats have continued. "Initially I could not understand what the object of the threats was. It would appear now that those who were making the threatening calls were holding me responsible for the applications being set in motion and expecting me to undo what I am supposed to have done. The task I have been given is thus an impossible one".

This lawyer wrote to the Supreme Court and the bar association to ask for protection. As a result, the attorney general contacted the lawyer and offered police protection.

"It is ironical that I should have been offered police protection as police officers themselves are respondents in the cases I have filed".

This friend of Basil Fernando's adds: "In the context of what is hap-
pening in Sri Lanka today and what has happened in the not so distant past, it is far more dangerous to accept police protection than to be without it”.


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An incident that occurred on the second of September 1989 left an indelible mark on the villagers in Basil Fernando’s home neighborhood. Lionel, a man of 40, whose people have lived in the area for generations, was killed by a gunman alleged to be from the J. V. P. at about 2 A. M. This man was killed a few yards away from Basil’s house. A week later Basil left Sri Lanka.

He has expressed his reaction to this incident in a poem “Now I Believe in Rebirth”:

It was mid-night
Three years ago.

We woke.
Sound of a shot.
Voice of a man
. You.
Am … Oooo
More Shots
Silence.

We postponed our sleep
For next day.
But, next day, mid-night
You visited me
At first-sight, I was glad
Thinking you would see
I was sorry, for you.
As you turned to go away,
I realized, my pity was misplaced.
Contemptuously, you seemed to say
'Be sorry for yourself.'

Now, you come every night
Witty and charming sometimes
But, at the end
You leave with a loud laugh
Yes, a laugh at me.

I am sure now
You are alive.
And again and again
You will be reborn.

Every night, I feel
I should pass away too
And be reborn, again and again
Till I prove capable
Of winning your friendship,
Once more.