FOREWORD

ASHES AND THE PHOENIX

BY
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The following six excerpts are from my book manuscript (a memoir in progress) tentatively titled Crystallizing: The Accreditation Era of Northwestern School of Lewis & Clark Law School (1965–1974). *The excerpts focus on the first five or six years of the forty-year old* Environmental Law*. The segments, taken out of context, will be better understood with these background materials:*

1) My account of that era is a memoir. I lived the times as one of the five original faculty. The text, therefore, is written in first-person, from my witness and research.

2) The era began in 1965 when two venerable colleges merged—one a law school and the other a liberal arts and sciences school. Both traced their origins back to Oregon pioneer times in the 1800s. Joined, they became contractually titled Northwestern School of Law of Lewis and Clark College.

3) In spite of its veneration and strong acceptance in the bench and bar of Oregon, the law school had never bothered to become recognized by the two national law school accrediting agencies: the American Bar Association (ABA) and the American Association of Law Schools (AALS). Now, in 1966, the school began upon that quest.

4) Among many accrediting requirements was the need for building a law school complex. The law school and its evening education never had a home of its own. It had

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operated out of various rented quarters in downtown Portland. Having moved to the Lewis and Clark campus, the law school still did not have its own building complex. Nighttime law education was temporarily spread throughout the campus, once undergrad classes were put to bed. Schooling was conducted in chemistry, literature, and other liberal arts and sciences classrooms. The 7000-book law library was in the basement of a music hall. Law school headquarters were improvised in two residential homes owned by the college and shared by the language department. A law dean, associate dean, four professors, and three staff were officed in bedrooms, dining rooms, and kitchens. My office was the living room in one of the houses. The law school was quartered in that fashion for four years, in wait for the building of its Tryon Forest home, which was not completed until fall semester of 1970.

5) Lewis and Clark college trustees and administrators had a heavy hand in its new law school management. The trustees created a Standing Committee on the Operation of the Law School (SCOLS), composed mainly of trustees, Oregon Supreme Court justices, trial judges, prominent lawyers, and other dignitaries, plus the law school dean and one law professor. SCOLS formed subcommittees on law school admissions, buildings, budget, development, and other ad hoc matters. The small, newborn law faculty was at the threshold of law schooling and just beginning to peek at and squeeze into the business of operations. Paths were fated to cross.

It was in such humble settings that Environmental Law *was conceived, gestated, born, and christened. Here are the six excerpts:*

I.

The first stirrings on a prospective law review publication occurred in September 1968 during Dean Jack Cairn's administration and one year before Dean Hal Wren's arrival. A self-appointed student committee sought permission to publish a law review. They were not interested in doing a single symposium book. Instead, they recommended a regularly published, scholarly periodical of the traditional kind. They did the homework on prices and received two estimates from printers—a maximum of $519 for one issue of 2000–3000 copies. That low price, even for the year 1968, seemed naïve. The students realized that "we cannot expect to receive any financial aid from the school." So, they did not ask for a budget line. Rather, they proposed raising the money through the sale of published advertisements or donations from graduates. And there was the rub. Any efforts at fund-raising had to be coordinated with the college development office. Publication under college auspices had to pass muster through a

chain of command, beginning with the law school faculty and dean and ending with the trustees. A project run by fluctuating student bodies without permanent college personnel to provide advice, stability, and consistency was fated to bog down in the hierarchy. Nothing came of it.

As soon as Dean Wren arrived on campus in late July 1969, he renewed the effort and pushed for a student-operated, faculty-advised law periodical. A law school needed a forum—a soapbox from which to be heard—a voice that would reach beyond our scholastic cloister. That pedestal was classically a formal, scholarly law publication. Although accreditors did not list "law review" as a necessity, all accredited schools had such publications. Wren knew that it was a hallmark that would catch accreditor fancy. Accordingly, the dean appointed another committee of law students to hammer out some preliminaries. This appointment from within the echelons, unlike student self-anointment, was much more savory to those above.

Typical of his mercurial nature, the dean unwittingly picked for the committee chair a student who had failed legal writing. He rectified his selection by formalizing the qualifications for serving on such a committee. Knowing that the committee would likely evolve into the editorial board once publication was approved, he required that committee members be second- or third-year students (not fourth-year seniors) with the top five scholastic grade averages. This gently eliminated his initial chair candidate. The new committee members asked permission to make their own selection of a chair leader. Fully knowing that that selection would also become the selection of an editor in chief, the faculty approved. The student committee chose second-year student Ann Morgenstern from their ranks. Purportedly, they did so because she was the only one of them who did not have a daytime job. But the choice was much wiser than that, as evidenced by subsequent facts: She was to become the law school's first magna cum laude graduate and would serve as the founding editor in chief for the first two years—a tandem never to be duplicated in the law school's periodical history.

The next step was to decide what kind of law periodical we wanted. On that subject, I recall an impromptu get-together in my living room office in the summer of 1969. Dean Wren, Professor Williamson, and I were conversing with Millard Ruud, the new ABA Advisory Consultant. He had made an unannounced stop on his reinspection tour of Pacific Northwest law schools. Conversation turned to our plan for a new law publication. Having been a founding editor of another law review in my student days, I mentioned that a traditional periodical, broad enough to cover all general law topics was in order. Ruud, however, suggested that we should specialize. His experience with the nation's law schools told him that it would be hard for us to compete in the general law arena. Uniqueness, he felt, would gain greater attention for an upstart school elbowing its way into the nationwide law review market. Eventually, a general law review might be enticing to authors and readers, but not until our recognition was firmly rooted. It made sense.

In order to put a distinctive face upon the school, Wren was the first to propose the environment as a special field that, as yet, had not received the full attention of legal education. Nationally, there were harbingers making

noise about this planet's over-population, litter, and misuse of air, water, and land. Among the most popular and prominent of that advance guard was Lady Bird Johnson, former First Lady of the United States. Professor Billy Williamson voiced a strong second to the dean's proposal. In the weeks ahead, the dean gave Williamson the job of faculty liaison to the student committee. The enthusiasm of Chair Morgenstern and her committee for an environmental topic sealed the nature of our new publication.

At a September 17, 1969 faculty meeting, Billy asked the faculty for input on a title to be given the new periodical. Should it be *Northwestern Law Review*? That was rejected because of the confusion with that other midwestern law school in Chicago that had titled itself back when it was, indeed, in the northwest part of the United States. Should it be *Lewis & Clark Law Journal*? That might upset our alumni and the Northwestern trustees in the Merger Agreement. Should it be *Northwestern School of Law of Lewis & Clark College Law Review*? Unwieldy, if not downright preposterous. Should the name reflect its topical specialty and disregard its origins? For example, should it be *Ecological Law Periodical* or *Environmental Law Quarterly*, instead of the traditional alma mater labeling?

I questioned why typical "handles" had to be used. Furthermore, why attach the traditional "Review" appellation? The contents of law school periodicals had ceased to be just *reviews* in the strict sense of that word. Rather they were more often "views"—original thinking about where the law should be. Why append the word "Journal?" Journals are daily or weekly news recordings. Why dangle the word "Quarterly" on a publication that most likely will appear only twice a year. Trade publishers do not title their printings with the obvious. It's not *Time Magazine* or *New Yorker Periodical* or *Washington Post Newspaper* or *Gone with the Wind Book*.

At the October 2 faculty meeting, after a couple of weeks of private discussions among faculty and editors, Williamson moved and the faculty approved the name, "Environmental Law." It would be the first law school periodical in the nation devoted to ecological concerns, and among the first to use a topical rather than a parental title. The launch was the first stroke in sketching our image as the nation's foremost environmental law school.

The now-accepted editorial board went straight to work. They were all evening students: Morgenstern, Jim McClurg, Ken Mistler, and Bob Petersen. They invited second-year evening students to serve as staff researchers and as the likely editorial successors: Gary Abbott, Doug Courson, Kurt Engelstad, Jim Gleeson, Don Hakala, Jim Hubler, Gary Susak, and Tim Titus. These were the midwives who gave our now nationally-known publication its first spanking.

They set an April 1970 deadline for publication of the first issue. They collaborated with student editors from other law schools. They sought leading national figures for authors: United States Supreme Court Justice William O. Douglas; U.S. Senators Edmund Muskie, Mark Hatfield, and Wayne Morse; consumer advocate Ralph Nader; and President Nixon. Second-year student, Joe Kershner, was named the Business Manager.

Kershner was typical of the evening profile law student—mature, married, family, and a job as a certified public accountant. In the mid-1950s, long before our law careers, Joe and I had served as soldiers in the same U.S. Army regiment company in Germany. Our wives were good friends and we socialized. It was awkward to find myself as Joe's professor. His presence in the classroom rows humbled me with reminders that teachers are not superiors, that they are just peers who have gone before, and that arrogance is a nosebleed from being too high and too mighty at the head of the class.

Professor Williamson and student Kershner were given authority to negotiate a printing contract for the first issues of *Environmental Law* at no more than $8400. "Publication"—our reach to the public—was on its way. But it was a long reach for the biscuits. It was still the publication of an unaccredited school.

II.

In November 1970, the college brought Ralph Nader to the campus to speak to the undergraduate and law student bodies. He was then on the rise as a nationally prominent activist, watchdogging government and business intrusions into the interests of consumers. He was touring the nation's campuses in pursuit of an idea and sought to capitalize on the current wave of student energy and opposition to war, racial injustice, gender discrimination, environmental intrusion, and now his foe, consumer abusers. He urged his so-called "Nader Raiders" to organize into student public interest research groups—"SPIRGs," he called them. They were to be consumer activist chapters funded by college administered student fees. He saw our focus on *Environmental Law* as a connection to his consumer law interests.

Soon after the Nader stopover, confrontation was further fed by another visitor to our campus. The law school alumni association sponsored the appearance of William O. Douglas, Associate Justice of the Supreme Court of the United States. On December 22, 1970, he spoke to an audience of over 1000 at the college student union building—his topic: "The Future of Environmental Law." An ardent conservationist who had written numerous books on the subject, he applauded our school for having led the way in renewing the struggle for conserving nature under the modern banner of the "environmental movement."

When President Franklin D. Roosevelt appointed him to the Court in 1939, Douglas, at age 40, was the youngest Justice to ever serve on that distinguished bench. When he retired from the Court, five years after the visit to our campus, he had served longer (almost thirty-seven years) than any other United States justice in history. Three U.S. Presidents (FDR, Harry Truman, and Lyndon Johnson) had considered making Douglas their vice-presidential running mate.

Aside from his affinity for a school with his mutual concern for nature, there were other reasons that induced him to float his stick in an obscure eddy far from eastern currents and from rapids in the nation's capital. He had made his home in our backyard—the wilderness areas of the

Washington Cascade and Oregon Wallowa mountain ranges. In the spirit of former President Theodore Roosevelt, he was foremost an outdoorsman and adventurer, who described wilderness as "paradise . . . some far-off place of mystery" and wrote that without adventure, one "stays tethered by strings of doubt."

Another inducement for the Douglas visit was that his recent wife came from the Portland area. At age 72, he had entered this, his fourth marriage. Her years were nearly one-third of his. That difference in the "mix of winter and spring" was just one of many reasons to ignite his detractors. Indeed, his controversial stands in favor of civil rights, racial integration, and preservation of the wilderness, made him many critics. His article published in *Playboy* magazine did not help matters. Richard Posner, now a federal circuit judge, is said to have described Douglas as "uncollegial" and given to unwarranted absences from the Court.

Prior to the Douglas appearance, college President John Howard reported to our law faculty that he had letters from influential people opposing that appearance and recommended that we write those objectors and explain why Douglas was afforded our dais. The reason why seemed so obvious that any explanation would likely fall upon ears not given to listen. Need anyone be told that he was one of our nation's nine final interpreters of law and that our law school was a place of learning, not a place of listening to just the music already in us?

Nader and Douglas were on the same course. Both challenged established citadels—the only difference being that one was on the outside of the walls and the other was ensconced within. With that one-two punch of liberals, is it any wonder that our upstart law school received new attention—or should I say "tension"? Not only did we give both advocates our soapbox, we gave them our press. Both published articles in *Environmental Law*. As President Howard had requested, diplomacy was now needed to bring together the education of dreamers with those who make dreams possible.

On the evening before his speech, Justice Douglas met privately with our law faculty at Dean Wren's home. Justice Douglas had been a law professor at Columbia and Yale and was, therefore, relaxed in academic company. In my private chat with him, I found a kindred spirit. We talked of backpacking in the same wilderness areas and shared familiarity with the switchbacks, scree-scrambles, stream-crossings, wildflowers, snowfields, glaciers, crampons, ice-axes, and nights in the alpine and timberline around Justice Douglas's Goose Prairie home in the central Washington's Goat Rocks country, an area triangulated by Mount Rainier, Mount Adams, and Mount St. Helens. Our exchange of tales took us to hideaways in those central Cascades—places such as Dutch Miller Gap, Snoqualmie Pass, Snowgrass Flats, and the Enchantment Lakes. For those brief moments, over libations at the fireside of the Wren home, a U.S. Supreme Court Justice and a young law teacher, on separate trails, joined to hike together. I shall always remember it that way.

III.

During the 1971–72 academic year, our law review periodical, under new Editor in Chief Gary Abbott, published its third and fourth issues. The editorial board members were all evening students who had seen service in the two previous founding years. Amazingly, *Environmental Law* was receiving numerous, unsolicited manuscripts from across the nation—more offerings than could be published. From my previous experience as a founding student editor of another law review, I was surprised to see the extent of early, unsolicited attention given our fledgling publication. Older, more popular, and well-established law reviews of the east could count on unsolicited zeal for personal byline recognition in their renowned pages. But what was it that enticed authors to the newfound pages of an unknown law review of a temporarily accredited school in the far Pacific Northwest? It could not be personal ambition; it had to be genuine concern. An avenue had been opened for those with real care for our planet instead of the desire to impress their peers.

Those same deep concerns were also evidenced at the other end of the media pipeline. Many readers and libraries signed for continuing subscriptions at $6.00 per year. With that, our conduit to the nation was well on its way to paying for itself.

In the summer of 1971, *Environmental Law* received its first appellate court mention in the case of *State v. House*.[1] Oregon Supreme Court Justice Thomas H. Tongue, cited volume 1, page 278, of *Environmental Law* as research authority. Oddly enough, *House* was a homicide case and the text had nothing to do with our environment. Nevertheless, the citation became a milepost for *when* it was, not for *what* it was. It was a first. We celebrated with a champagne toast in the foyer of our new law library.

There were other small *Environmental Law* accomplishments in 1971. A professor at the University of Puget Sound was using our law review as an assigned text in his college class. We also took accomplishment from rivalry; contest came from the University of California Law School at Berkeley (Boalt Hall). They began their *Ecology Law Quarterly*. Competition was flattering and energizing. We were being followed by a well-established and worthy rival. Therein lies the irony of competition: Its challenges pull forward while pushed from behind. And therein lies the puzzle for Law: Enliven the challenge with success but somehow keep both the forward and the followers lively.

The law periodical was just the jewel in our environmental crown. There was more. A number of environmental elective courses began to pepper the curriculum. Likewise, the Northwest Environmental Defense Center (NEDC), a law school tenant, was pursuing demands upon the established order. The law school also received a $30,800 grant from the United States Department of Health, Education, and Welfare (HEW) for our environmental program. Spearheaded by the law review, the program was putting a face on the school.

[1] 260 Or. 138, 143 (1971).

When back in the summer of 1969, Dean Wren, ABA Consultant Ruud, Professor Williamson, and I had met in my living room office on upper campus to give the law school periodical an environmental focus, controversial issues unearthed by ecological study were not yet prominent. We were then in uncharted territory. But since then, politics and economics had mapped battlefields. Issues were drawn and sides taken. Critics called environmental study "environmentalism" and researchers became "environmentalists." Contest pitted environment against atomic energy, lumbering, industry, jobs, mining, the automobile, whaling, waste disposal, ranching, farming, irrigating, dam building, and other uses or abuses of land, air, and water. The law school tried to stay at center in those arenas in order to balance preservation and use of nature. But in a time of upheaval, equilibrium was difficult. By 1972, "divisiveness," not balance, became the key word.

IV.

In the 1972–73 academic year, concern with the environment continued to expand in the nation and especially in Oregon. As aforementioned, First Lady, Lady Bird Johnson, had established herself in the mid-1960s as a prominent campaigner for what she titled "the Beautification of America." Her agenda was a gentle form of attention to our planet. It called for planting flowers, banishing billboards, and reducing litter. In an enactment called the "Lady Bird Bill," Congress used $325 million to beautify federal highways. That kind of reform did not ruffle business spirits, but it did open doorways to more aggressive, intrusive action. On July 2, 1971, the Oregon legislature had enacted "The Bottle Bill"—an antilitter measure that was the first state statute in the United States to require a few pennies deposit on the recycling of certain beverage bottles and cans. The idea brought enormous resistance from processors and retailers as its precedent spread across the nation.

Other Oregon enactments established land use planning by government regulation. A 1967 statute had made the full length of Oregon's ocean beach boundary a public easement. Another Oregon law outlawed the sale of cans with detachable, metal pull-tab openers. The 1971 "Bicycle Bill" earmarked one percent of Oregon transportation revenue to the development of cycle paths. All such measures began to paint Oregon as "pro-environment." This law school's curriculum and law review publication were swatches on that canvas.

Force begets resistance. College trustees and particularly the SCOLS budget subcommittee were beginning to question the law school's periodical publication. In the spring of 1973, Paul Boley and other members of the subcommittee wondered whether a more general law review should be published and whether the title *Environmental Law* should be eliminated. The subcommittee suggested that ecological articles could continue to be published but felt that a broader scope would open the publication to more kinds of scholarly discussion. The faculty ignored the recommendation. It would come again, a bit more forcibly, in the next academic year.

V.

In the fall semester of 1973–74, the AALS inspectors arrived. As Ruud predicted, they would be curious to know about our environmental curriculum and its cornerstone periodical: *Environmental Law*. How was that program being received by scholars? By lawmakers? By the press? By our alumni? By students and would-be students? And especially by our college hierarchy?

Two of the AALS Inspection Team, Professors Degnan and Vetter, were on the faculty of the University of California (Berkeley) Law School. As foresaid, that school had recently begun an environmental emphasis of its own. The inspectors were well aware of the impact that the environmental surge was having on private business, public policies, and the nation's campuses. Each year a mounting crunch of controversy surrounded that movement. We felt the pressure on our law campus in an early incident. Assistant Professor Jim Huffman was in his maiden year on the law faculty. Nevertheless, he was brash enough to turn his reserved car spot in the law school parking lot into a garden. He hauled in dirt atop the asphalt, boxed it off, and planted seeds and seedlings. Converting that islet back to its vegetative nature was his playful statement against the concreting of America to accommodate the stationing of internal combustion machines.

The demonstration, however, got much wider play than expected. It made national news. A local television reporter saw it as a good visual that pitted agriculture against car culture. The local broadcast, armed with pictures, pleased the national news service and its television viewers.

But back on the law school campus, Huffman meant nothing so strenuous by it. It came at a time when he sought Dean Fagg's signature on a grant proposal petitioning the Hill Foundation. The dean wanted the garden removed from the parking lot because "important folks" were unhappy with the publicity. The dean turned Jim's "request" into an exchange. He would sign the petition if Jim would rid the parking lot of its botany. On those terms, the deal was struck. It was not a difficult decision. After all, the garden was not doing so well in the shade of its forest benefactors. Furthermore, Jim was not an "environmentalist" in a growing connotation of that word. Rather, he was given to the libertarian notion of free market and commercial resolution of problems, not the government regulation that the environmental movement was spawning. In spite of the intellectual sparring of laissez-faire versus regulation, I have always felt that the real Jim Huffman was the playful rascal who ventured gardens in parking lots.

Be that as it may, in September 1973, we were alert to the murmurs of environmental discontent. In November, the rumblings were resurrected in the SCOLS budget subcommittee chaired by Justice Ralph Holman, an Associate Justice on the Oregon Supreme Court. As an alumnus of old Northwestern College of Law in downtown Portland and as a trustee of Lewis & Clark College, Holman urged that it was time for our law review to come away from its topical specialty and to change the *Environmental Law* name. The periodical needed a "format with a broader base," he said. *Environmental Law* was a title and perspective "too narrow for a first-class law review."

A few weeks later, the SCOLS budget subcommittee sought the law faculty's reactions to that revamping. The faculty simply ignored the solicitation, just as it had done in spring 1973. Then in May of 1974 the Holman idea was formally embraced by the entire SCOLS membership, particularly by SCOLS chairman Bill Swindells and by trustee Paul Boley, two of the law school's biggest supporters. That triumvirate of friends of the law school had been powerful in the accreditation pursuit. Their clout was not to be taken lightly.

SCOLS formally asked the faculty (for a third time) to take up the matter of the name change and direction of our law school periodical. This time the "request" was put in the form of specific action. SCOLS wanted the faculty to "empanel a committee to study whether or not it would be desirable" to make the change. It was put gently, yet with relentless purpose. SCOLS gave two reasons: The current name "tends to limit its subject matter and also identifies it in some minds with controversial issues." Backing up its "request," SCOLS designated five of its high-powered members to serve on that joint committee: Swindells, Boley, General Chester McCarty, law school alumni president Judge Phil Roth, and Oregon's U.S. Attorney Sid Lezak.

While our newest dean, Fred Fagg III, favored the study, he was the head of the faculty and knew the faculty's head. He could not let his leaning interfere with his leading. But he was involved in the Mountain States Legal Foundation and would one day become an executive in that Denver organization—a composition of property owners given to resource development and thus generally at odds with environmental regulation. And so, in that delicate role, the dean took a step forward without crossing the line. He sent a memo to the faculty reporting the formation of a SCOLS-faculty joint committee to explore the advisability of changing our periodical's course. The memo reported that Professor Williamson had agreed to serve on that committee and that student editors of the law review would also be asked. He also wrote that he intended to ask me, as faculty representative to SCOLS, to join. His memo ended by asking for faculty reactions.

Within two hours, he got Billy's written "reaction." It was hasty and not happy. Billy began by dispelling the notion that his agreement to be on the committee meant that he approved of its formation. "Quite the opposite is the case," he wrote. Then he went on to call the committee

> another unnecessary attempt to create animosity and division between the faculty and students on the one hand, and the trustees on the other. . . . [O]ur time can be better spent . . . than in constant self-defeating bitching and criticism on what earlier has been agreed upon. . . . [The committee] would make a decision that is only appropriate for the Board of Editors and the faculty to make . . . and would create further unnecessary hostility between a school and student body that is setting standards of excellence.

Billy also objected to my serving on the committee. While he had nothing but "the greatest respect for Ron, I have never explored his views about the law journal in any depth. . . . For all I know, . . . the Dean and Ron are opposed to the law review's present orientation. . . . The opposite may

also be true." Billy's ambivalence about my views may have been taken from the previously reported, long-ago conference that he and I had with Millard Ruud and Dean Wren back in the summer of 1969 in my living room office on Huddleston Lane. It was there that we first decided to found an environmental law review. I had initially proposed a general law review but eventually conceded the wisdom of a topical specialty. Since that time (almost five years before), much had changed, not the least of which was the magnitude of the environmental field itself and also the magnificence that *Environmental Law* was having on our image. I assured Billy that while my hopes for a general law review publication were still alive, they were on hold until the day when the two publications could stand together. *Environmental Law*'s success had solidified its seat. I further assured him that "any change in the law school's environmental headway would have to be over our two dead bodies."

Billy then said he had nothing against my membership on the committee. He explained that he simply objected to my appointment by the administration instead of by the faculty. "The person who represents the faculty should be chosen by the faculty," he wrote. Other faculty members agreed with Billy's point, albeit not necessarily with his bluntness.

It would not be pleasant for us to reject a request from friendly supporters like the Swindells-Boley-Holman trio, but that was what we did. Not only did the faculty oppose any change, it did not want to talk about it. The faculty refused to empanel any committee. The overwhelming vote was sixteen in favor of no need to study the issue, two opposed (Bill Knudsen and a student representative) and one abstained (Jay Folberg). Dean Fagg, as presider, casted no vote. Had he been called upon to vote, he would certainly have chosen to explore the matter further rather than take the tactless course of abrupt rejection.

The faculty's brusque behavior did not end there. A following motion put the faculty position in no uncertain terms: Moved that SCOLS "shall not *consider or recommend* on this matter because it infringes on academic freedom." I moved to change the words "consider or recommend" to the word "decide." We were being bold enough to cast refusal at a trustee committee, but we did not want to turn boldness into brashness by dictating that they could not so much as "ponder" or "suggest" on a name change. The motion as amended also passed by the same sixteen to two count.

Our strong message was another step in the staking of turf and a waning of the need for a trustee committee to oversee academic operations. As of 1973–74, the eighty-year history of the downtown Portland evening law school and now its eight-year history with Lewis and Clark College, had been controlled by proprietorship in the form of Gantenbein owners and college trustees and officers. Now, however, a permanent career faculty had matured enough to start taking charge of schooling. It was what AALS accreditors wanted to see.

All of that environmental development, however, was not there for the AALS Inspection Team in September 1973. But it waited in the shadows. What was questioned by some SCOLS members, probed by AALS inspectors,

and eschewed by the faculty was, "Had our environmental image became too one-sided?" Now that environment was a battleground, could we deflect the false notion that our schooling was partisan instead of scholarly detached? Were we preaching a return to nature like the earlier conservationist movement? Had we gone too green?

Professor Huffman, in his maiden year on the faculty, proposed a solution. Taking time away from the building of gardens in parking spaces, he pressed for the creation of a Natural Resources Law Institute (NRLI), whose emphasis would be on resource appropriation, which he said was the focus on the *over-* and *under*-utilization of the environment. Huffman pitched it in a written grant proposal:

> Natural Resource law is both part of and a prerequisite to a complete environmental program. Environmental law, as it has developed in recent years, is primarily that area of law devoted to correcting the abuse of our natural and human environment. Natural Resource law . . . comprehends the social rules under which we develop and utilize water, oil and gas, minerals, public lands, and our other natural resources.

In short, while granting that the two programs were joined at the hip, Huffman distinguished the two by use and abuse. Natural resource law would approach concerns from the perspective of how to employ resources, whereas environmental law had come to mean an approach from the perspective of how to preserve resources.

One might have ridiculed the distinction by likening it to the puzzle "at which rope end shall the noose be tied?" But beneath the scoffing laid serious policy issues about opportunity, commerce, and agenda played out between those who seek to take nature's bounties and those who seek to caretake them.

The NRLI proposal gained attention from both education and business. Both were in search of weight to counter the energy that was growing against mankind's appropriation or pollution of water, air, ores, trees, oil, wildlife, wilderness, and other earth rewards. Like dual advocacy at trials (a method with which lawyers were quite familiar) the tug of opposing forces was the better way to arrive at the truth that lay somewhere between unbridled misuse and an unproductive nonuse. The faculty gave Huffman's proposal a go-ahead. Initially, the school specialty was referred to as the Natural Resources and Environmental Law Program. But that title was destined to flip. It became the "Environmental and Natural Resources Program." Title tracing sometimes delivers its own message.

VI.

Now here in January 1974, we were celebrating the law school's full and permanent accreditation from the ABA and the AALS. The banquet was at the downtown Portland Benson Hotel. The dinner was fancy. The printed program read, "Champagne, Consommé, Chef Salad, Gourmet Dressing, Prime Rib of Beef, Peas Bourgeois, Fresh Fruit Chantilly Tart,"

and more champagne—all in capital letters and finesse. Attire was gown and black tie optional. . . .

The program treated the diners to remarks from President Howard and Dean Fagg, who both delivered the usual cordialities and expected gratitudes. Key addresses were presented by Professor Maurice Rosenberg, President of AALS, and by Justice Ralph Holman. . . . Rosenberg's comments were standard praise. He characterized our college and president and dean as having "dignity, charm, and sincerity," just as he (Rosenberg) abounded in dignity, charm and sincerity. As for the 128th law school to enter AALS, he said we had "well exceeded minimum standards" and had shown "unmistakable signs of forward movement, . . . vibrant, forceful support of alumni and friends, . . . [and a] superb setting and physical plant." He capped his praise with the prediction that we were "destined for the front ranks among law schools of America."

In contrast to Rosenburg's, Howard's, and Fagg's customary and cordial remarks, Holman's comments were challenging—even upsetting to some. His speech called for two name changes; one of which managed to disturb the older crowd of his fellow alumni and the other managed to irk the younger crowd of alumni. He urged that "Northwestern" be dropped from the law school name and that "Environmental" be dropped from the law review periodical name. That took the words "name dropping" to new and different depths. When it comes to the trauma of sudden shifting from old to new, the changing of names has to be the most violent of disruptions. I'm certain that if Congress should ever propose dropping, "United States" from "The United States of America," there would be so many secessions that no Civil War and no number of Lincolns could ever succeed in holding our borders together.

Nevertheless, Holman used the ceremonial banquet as an opportunity to urge removing "Northwestern" and "Environmental" from our store window. Had we not been in a dignified, celebratory mood for cheers, there might have been jeers. It would have made no difference: Holman had never been one to shy from candor or arousal. His arguments for renaming the school and periodical proceeded much as previously detailed.

But this was a red-letter day; and nothing, not even elocutions too blunt as in dull or too blunt as in brusque, could overcome the spirit of laughter, dance, balloons, toasts, and whatever else it was that sent everyone home with lucky stars to sleep on.

CONCLUSION

We know the rest of the story. National accreditation and modern usage have forced "Northwestern" to disappear from the "Lewis & Clark Law School" title, albeit not from the school's heritage. But the Holman polemic was only fifty percent fruitful. This fortieth anniversary is testament to the survival of the *Environmental Law* title and to its calling. A Phoenix arisen from these earliest ashes.