



From Law and the Environment to Environmental Law: A Founder's Recollections

By Thomas P. Alder



About the Author

Thomas P. Alder was a framer of the Environmental Law Institute's original articles of incorporation, the first ELI President (1970-73), and first Chairman of the ELI Board of Directors (1970-72). He would go on to serve as a member of the Board and the Board's Executive Committee until 1985. Throughout this time, he was also the President of the Public Law Education Institute, which, along with the Conservation Foundation, was one of the institutional co-founders of ELI. In this capacity, he was publisher and contributing editor of the *Selective Service Law Reporter*, the *Military Law Reporter*, and other publications that would serve as blue print for ELI's *Environmental Law Reporter*. Tom had earlier held staff positions in the House and Senate, worked as an organizer and counsel in grassroots campaigns, and served as staff director of the Hughes Commission, which was charged with recommending reforms in the presidential nominating process (1968-69). Tom is a graduate of Amherst College (1955) and Yale Law School (1961).



A Beginning Note

I took on this narrative of ELI's formation as a contribution to the 50th anniversary retrospective because I have saved several thousand pages of documents from the period that could help fill in our institutional memory. This may serve as a gateway to a more structured plan to define ELI's archives, but I do not want to suggest that any current staff and resources should now be turned in that direction. In view of the climate-planetary crisis and the scope of the challenges taken on by ELI, a prolonged gaze into the rear view mirror at this time would amount to distracted driving in heavy traffic.

The one caveat to continuing benign neglect is the fragility of ELI's documentary history. With the deaths of three of our founders and the most important early staff member (two of these losses untimely by any reckoning), we are losing access to records just as they might be preserved and presented by those who compiled them. Soon, all three remaining founders and the longest-serving president will be nearing or over 80. By any sensible reckoning, we do not have "world enough and time" to wait for a quieter period to define and fill out the scope of our archival record. The odds are against ever doing a perfect job in any event. It appears that uncatalogued records, considered "archival" by some definition, were lost in the custody of a commercial storage firm during an office relocation. Program staff might better identify the loss, but they could and should not be expected to restore it.

This leads to the wish that ELI's current leadership would soon resolve whether there is to be an archive or not, what its general scope should be, and what is now to be abandoned as forever lost. Then, the authors or their heirs might be asked to contribute to ELI by efforts ranging from collection and safe storage to more active steps in identifying and cataloging files. None of us are archivists, or, in all likelihood, experienced in formal records-retention systems, so the self-help route may lead to uneven results. This may be a factor in deciding that an ELI archive, like the library, is not necessary or affordable. Whatever the decision, it would be a fitting action to take in an anniversary year being celebrated with retrospectives and remembrances. I hope it is seriously considered.

1966-1968: Background Printouts From the Way-Back Machine

50 years out, it is fair to ask how ELI happened to be formed around a publishing project that was, on first look, just a new and more ambitious type of clearinghouse for legal information. To answer this from one founder's perspective, it helps to go back to the highly charged times of the mid to late 1960s and the influence of the civil rights and anti-war movements on the career choices of younger lawyers, most of them younger than I was.

As a congressional staff member and in the following years, I was involved in civil rights war on poverty projects and in opposition to the Vietnam war. I was counsel in 1965 to the first two hearings on the war held at the congressional district level. Shortly after, I became counsel to a community of displaced farmers in the Mississippi Delta who sought funding from the Office of Economic Opportunity for a self-help housing grant. The lesson learned from these two involvements was instructive and, for me, motivating. The district-level Vietnam hearings did succeed in further prompting the Senate Foreign Relations Committee to finally hold public hearings on the war. The OEO project was not so successful;

the president, increasingly dependent on the Mississippi senators for war support, acceded to their opposition to further OEO commitment to projects that they saw as having undesired political consequences. OEO staff-level approval of our proposal was reversed, and the project went unfunded.

With this disappointing turn of events, I was confirmed in the belief that the administration could not contain and soon end the war, and that it had lost the political ability to accomplish the aims of the Great Society initiatives. This was being said publicly and in an organized way by many in academia and some in the medical profession, but not by any similar segment of the American bar. Thinking this should and could be remedied, I briefly sought to develop a widely publicized open letter to the president from senior bar figures. The plan faltered when the indispensable lead author decided not to jeopardize the influence he felt he still had in his private access to the president.

Sobered by this setback, I realized that a better undertaking would be something more durable and explicitly law-oriented. One area where the bar's lack of engagement was sorely missing and undeniably consequential was the operation of the military draft, affecting thousands every month. Premised on the need for speed, simplicity, and leaving many decisions to local volunteer personnel, the system had become rife with inconsistent, too often arbitrary, practices. Lay draft counselors, usually faith-based, provided guidance in some parts of the country, but the limited scope of their involvement only underscored the need for professional legal assistance for registrants at the administrative and litigation level.

At this time, the bar's engagement with the draft issue was largely limited to criminal practice because the statute stipulated that a challenge to a classification before induction could only be raised as a defense to a criminal prosecution. This served to insulate the agency from corrective influences at the administrative level. That, in turn, was compounded by the agency's practice of asserting a national security exemption from the notice-and-comment requirements of the Administrative Procedure Act. Taken together, these policies led to a closed, unresponsive system and contributed greatly to the hostility and resistance that channeled opposition to the war toward Selective Service. It also meant that legitimate legal claims, raised necessarily as criminal defenses, were too easily stigmatized as draft dodging.

By the spring of 1967, I had developed the basic outline of a *Selective Service Law Reporter* project aimed at drawing more lawyers into the draft law field. The central premise was that a resourceful practice guide, combined with a reliable and complete source of current decisions and regulations, would overcome an attorney's natural reluctance to take on criminal cases in an unfamiliar area. The unstated assumption was that the draft law "field" would not generate much income to subscribers, so cost should be held down as a matter of design. In the same vein, it was intended to assure potential financial supporters that the project was based on an explicit and credible commitment to keeping costs down, and thus to pay more of its own way.

By mid-1967, I had begun to circulate the idea privately to former colleagues, one smaller foundation, and a few younger law faculty members. I was also introduced to

Charles Halpern by Marcus Raskin, a frequent colleague with whom I shared a common background in our legislative staff work. Marc described Charlie as a younger lawyer exploring public interest law as a vocation, and thought he might take an interest in what I was doing. It quickly developed that Charlie was already well along in assembling a personal network of faculty members and practitioners who were younger than I and were closer to the emerging core of the public interest law movement. This networking talent was an enormous boost for the breadth of support for the *Reporter* once it launched. Nearly one-third of the *Reporter's* editorial advisory committee came as a result of Charlie's solicitations. Charlie then served a term on the Board of the Public Law Education Institute (PLEI) our parent corporation, and later for a term as an ELI director.

The turning point in getting collegial support for the *Reporter* came at the time of the October 1967 March on the Pentagon. I was a volunteer member of the team of legal monitors formed to buffer possible confrontations. In the run-up to the event, I first met Brian Paddock, at the time a Georgetown law student and draft counselor. Brian later became an original member of the ELI advisory committee and has for decades been an environmental lawyer in Tennessee. My luck continued as Brian and I both met Michael Tigar, a trial attorney with Williams and Connolly who had been a prominent figure in the USC Free Speech Movement. Among his other academic writings by that time, he was the author of a journal article co-written by I. Michael Heyman, a future Smithsonian Secretary, PLEI editorial adviser, and lastly (in another confluence with PLEI), as an ELI board member.

Brian and Mike were probably the most informed and motivated listeners I had yet encountered in Washington when discussing the impact of the *Reporter*. Their sustained enthusiasm was the last decisive factor in putting the *Selective Service Law Reporter* on its launch rails. Brian provided on-the-ground experience that neither Mike nor I had at the time. Mike had the combination of already-legendary skills as an attorney, coupled with the ability to think and write at lightning speed. Both were serious in their interest in playing a role in the project. Encouraged, I stepped up my own efforts to give it substance.

The immediate challenge was to build a legal and financial foundation that would allow Mike to work out a part-time leave of absence from Williams and Connolly. To reach that point, I drafted and circulated a new, expanded prospectus for the *Reporter*, setting out the need, the format, the organization, and budget in detail. I also drafted and filed incorporation papers for PLEI, which has been the shorthand acronym for the awkwardly-named Public Law Education Institute. Brian Paddock and Charlie Halpern joined me as initial directors.

Although I was not by any measure a known legal entrepreneur, I did have a modest reputation for innovation and follow-through. With this background, the prospectus, and personal visits to the donors, I was able to get early grant support from three smaller foundations. The prospect of attracting Michael Tigar as the first editor gave a sense of urgency to these approaches, and the commitments of support were quickly forthcoming.

Once initial funding was assured, Mike succeeded in getting Edward Bennett Williams to accept a part-time leave of absence for one year. Within a short time, we had

filled the other positions with committed and tireless staffers. Immediately, we announced the launch to target audiences and began to build up a collection of decisions and briefs for a document service that would be a place-holder while the first monthly issue of the *Reporter* was under development. This was a step we repeated with ELI two years later. Once this arrangement was in place, Mike began writing the *Practice Manual*, the centerpiece of *SSLR*. It would be published in three installments over the initial issues in early 1968.

There were unusual technical challenges in producing the *Reporter* in this way. The editorial design contemplated keeping control of the content until just before publication. Close cost control and savings were also cardinal requirements. These goals argued for in-house production right up to actual printing. Design considerations favored going to typesetting to create a minimum number of book-font pages with proportional letter spacing and justified lines. This would also make a better-looking and easier-to-read book. These decisions laid a groundwork for later undertaking the *Environmental Law Reporter*.

All of this was before the advent of digital work stations, usable fax service, and affordable dry-toner copying machines. Printed pages were composed from type-script columns pasted down by hand, photographed, and transferred to an etched or embossed surface that was the actual printing plate. The largest single challenge to cost control and tight deadlines was the typesetting step, which would conventionally be outsourced to a Linotype shop at considerable cost. Fortunately, I discovered that IBM was introducing an affordable impact-typesetting system based on the Selectric typewriter platform. We became early adopters, and relied on this system as the foundation of our editorial timeliness for the inaugural year and well into the next.

We began monthly publication of the *Selective Service Law Reporter* as a cumulative loose-leaf in early 1968. As the three sections of the *Practice Manual* unfolded, the impact of the *Reporter* began to show in concrete ways. The circulation grew to over 2,500 subscribers, second only to *Law Week* among loose-leaf publications at that time. This rapid adoption coincided with a Justice Department decision to sharply expand prosecutions of registrants. Dramatically, in the reporting year that followed, the increase in the number of new cases brought was matched by the increase in the number of cases the government lost. Some of these cases had undoubtedly been deferred because they were weak, but the *Reporter*, and especially the *Practice Manual*, were widely considered to be the decisive innovation that turned the tide against what was seen as politically tinged prosecutorial onslaught. In time, the federal courts, including the Supreme Court, took these challenges and rectified the worst elements of the system. Mike Tigar was frequently a counsel in these cases.

(In lieu of a footnote, this is a longer aside on PLEI as a precursor of ELI. I was the President during its corporate lifespan. PLEI published the *Selective Service Law Reporter* and its successor the *Military Law Reporter* for 24 years, sharing office space, library, and production functions with ELI for most of that time. PLEI was a substantial undertaking, involving a large amount of executive and editorial time on my part when I was also ELI President. Military law prosecutions constituted a majority of federal criminal cases. Related

veterans and civil law issues also fell within the scope of coverage. In common with *ELR*, some would involve sovereign immunity standing and toxic substances. The treatise that accompanied *MLR* in 1972 (*Justice and the Military*) is still widely relied on, and has gained a durable reputation as the leading 20th-century work in the field. PLEI had other, smaller publishing projects, and was the incubator or physical location for still others in the areas of veterans' rights, voting rights, press freedom, and police-community relations. Two former staff members in time became federal judges, and two served as departmental general counsel. The Institute ceased active operations in 1993, placing most of its published output in the public domain in digital form. This large collection is now accessed online through the Law Library Microform Consortium, an association of law school and other libraries. End of excursion.)

Several lessons learned from the *SSLR-MLR* experience would shape the approach I took in proposing a launch of the *ELR* project in 1969. The first was that a well-done and ambitious publication could convert a conventionally passive format into a vehicle for defining a field and educating a practicing bar. Second, a wholly professional publication was possible with a small production staff and limited budget for outside costs. Third, a credible business plan could be based on a commitment to limited and declining reliance on donor or foundation funding. This differed from the main public interest law firm model that was then emerging and theoretically made it easier under tax law for foundations to commit support. Fourth, aggressive reporting and editorial excellence could induce the "defensive" bar to subscribe to the *Reporter* as a matter of prudence, even though the publication might not be a welcome development from a self-interested perspective.

1969-1970: The Path to ELI

In early 1969, I was winding up a longer-than-expected period as the Staff Director of the Hughes Commission, a panel proposing reforms in the presidential nomination and selection process. Coming back full-time to PLEI and assessing its next steps, it was clear that this small organization was functionally capable of scaling up and expanding its range. It had moved offices to the once-handsome Dupont Circle building, which had devolved through neglect to a no-frills haven for low-budget nonprofits. Lacking in modern amenities, this location still had two distinct advantages for PLEI, and later, ELI. First, the office turnover rate meant that it was possible to easily and quickly expand space for new staff. Second, the presence of a resident phototypesetting facility using the latest computer-based input methods meant we could step up publishing technology and capacity with a small support staff and modest budget. Time-worn as it was, the Dupont Circle building served as home for both PLEI and ELI up to 1985, when it was vacated for renovation. ELI then took space in the revamped new quarters of Resources for the Future. PLEI stayed on at another Connecticut Avenue address that had been occupied by the World Wildlife Fund.

There were several motivating factors in deciding to launch an environmental law project from this base. My early involvement in the public interest law area had brought me in contact with a number of law students and recent graduates who sought a larger context for their careers than seemed likely in conventional practice at the time. Sometimes, this

was expressed as simple regret in missing the activism of the anti-war, civil rights wave of the mid-1960s. Increasingly, this was also articulated as a concern for environmental degradation in many forms and on the limits to development. From my perspective as a Yale Law graduate, the best-known of these responses was the banding together of a group of recent graduates who had joined to form what would become the Natural Resources Defense Council. The energy and commitment they represented clearly foreshadowed a developing legal movement that I felt drawn to and wanted to support.

At this time, “environmental law” was essentially an aspirational concept intended to bind an aggregate of recognized legal regimes and common-law principles and remedies. Someone seeking to see it as a legal field of practice would have to consider the different realms or “silos,” like diverse statutory regimes, tort claims, property rights, common-law constraints of public and private activity, and fundamental issues like justiciability, standing, and compensable harms. How these challenges and possibilities appeared at the time is well-expressed by Gus Speth in his memoir *Angels by the River*, an excerpt of which is accessible in the September-October 2014 issue of *The Environmental Forum*.

Another motivating reality was the profusion of new, citizen-based cases challenging decisions and practices by government or corporate actors. These were civil actions with long time lines, so they would be finally decided long after the basic theory had been laid out in the pleadings and briefs. Plaintiffs’ filings at the outset of these cases were frequently innovating, with potentially great time value to other litigants. To distribute them, it would not be enough to expect them to be shared among those who already knew of each other, especially as new attorneys entering the field would be the most in need. The more effective response would be a service that collected the court filings of all sides, described them in detail, and made them universally available as photocopies. To appreciate the value of something this simple, it has to be remembered that there was no Internet or widespread digital transmission, and high-volume dry-process photocopiers were still quite rare.

I had little doubt that PLEI could launch and maintain a publication that would meet this goal. The larger question was whether PLEI at that time could go beyond a well-done digest-facsimile service to develop into something wider and deeper than a good but somewhat conventional publishing enterprise. This project would have to actively contribute to the evolution of environmental policy by trying to amalgamate or integrate the disparate statutory and common-law regimes in which environmental issues were being decided. The concrete near-term goal would be to “define” a theoretical field of “environmental law” in which bar members and students see themselves as “environmental lawyers.” The larger aim would be to give real substance to the category by sponsoring, conducting, and disseminating research with this goal always in mind.

I did not think that PLEI under my direction would alone be able to incubate an *ELR* that would meet these aspirations. My academic background in biological and earth sciences dated to the 1950s, and I had a narrow range of relevant working experience, mainly in water resource issues at the congressional and city level. In retrospect, my only post-graduate foray into what we would today call environmentalism was a 1958 Fulbright grant proposal, unfortunately withdrawn, to study sustainable technology transfer to developing agricultural economies in south Asia.

The Conservation Foundation Enters

It was evident that PLEI should try to seek a joint-venture relationship with an organization having deeper roots in environmental law or education. To do this, I began a search for new Washington colleagues. I shared my need for collaboration with Charles Halpern, who had left the PLEI board to join in developing plans for a public interest law project (CLASP) that would litigate directly several emerging fields of law. One member of this founding group was James Moorman, who had earlier left Wall Street practice to take a position in the Justice Department Lands Division, which he would eventually head as Assistant Attorney General. Jim's solid grounding in, and strategic grasp of, much federal environment law had been written out as a program for action that I thought was the strongest single element in the supporting documents for CLASP, their intriguing acronym for the Center for Law and Social Policy. Charlie had also mentioned my proposal for an environmental law reporter to Malcolm Baldwin, who was then the senior legal associate at the Conservation Foundation and had expressed an interest in the plan. I told Charlie that I would like to meet both Malcolm and Jim. Charlie contacted the others and arranged a lunch reservation for us to meet. That meeting, in mid-July 1969, began the involvement of Malcolm and the Conservation Foundation, and was a watershed event in bringing ELI and *ELR* into being.

The Conservation Foundation, like PLEI, warrants an excursion from this narrative. CF had been formed in 1948 as an affiliate of the New York Zoological Society, focusing principally on wildlife conservation. It was eventually absorbed by the World Wildlife Fund in the 1990s, but in 1969, it stood as a leading national organization supporting environmental education over an expanding range of subject areas. In mid-1969, it had until recently been directed by Russell Train, a highly regarded Washington attorney and former Tax Court judge. Train has been credited as the person who was most influential in persuading President Nixon to make environmental policy an early priority. He left CF after the January 1969 inaugural to play an important role in reorganizing the federal agencies with environmental missions and impacts. This left an unplanned vacancy in the presidency that was filled from the CF senior staff by Sidney Howe, who had been the CF director of conservation services until that time. Excursion over.

Throughout CF's presidential transition, from Train to Howe, Malcolm Baldwin had been planning a conference on environmental law to be held in the fall of 1969 under CF auspices. This would follow by three years another CF event captioned as Future Environments of North America that had brought together non-legal professionals with conservation interests and responsibility. The 1969 conference was to draw on a nationwide group of 40 academics and lawyers, and take place over two days in a retreat-like setting near Washington. The chosen venue, Airlie House, was a large country estate that had been purchased by a retired Air Force physician with the high-minded mission of creating a unique venue for meetings for strategic planning and constructive deliberation. It

was an ideal location for a retreat-like conference that would involve many out-of-town conferees.

Planning for the conference was well under way by mid-July. A steering committee, composed of Russell Train, three law professors, and two senior congressional branch staff members took the task of suggesting subjects for presentation and discussion. Interest in the conference was then spreading, causing Malcolm to loosen the original plan to limit participants from 40 and eventually increase it to over 60. There were to be four plenary sessions with no breakout groups, and the last session was to close the conference with a discussion of concrete recommendations that had emerged from earlier sessions.

At our mid-July meeting, Malcolm and I had agreed that a fitting capstone for this last session of the conference would be a statement of support for a new environmental law reporter. Both of us had already received inquiries suggesting or asking for such a reporter, some pointing to the *Selective Service Law Reporter* as a model. We expected to hear similar opinions expressed at the conference that might yield an endorsement as an upbeat finale to the conference. To move this along, Malcolm and I met with Sydney Howe, who, as CF President, would have to be engaged in any decision to launch a joint venture between PLEI and CF. Confessing that he was cautiously moving into his new position, Syd nonetheless agreed that CF would join with PLEI in underwriting an updated *ELR* prospectus in preparation for the conference. From that point forward, CF was fully engaged in supporting the enterprise.

With only 60 days remaining until the conference, we needed to begin immediately to work up a prospectus for the reporter. The prospectus I had done for *SSLR* was a good template for laying out the project design and making a case for funding, but it did not canvass the field of existing publications or in any way address the features of environmental law that were statute-based. Neither Malcolm nor I could commit enough time in August to research and draft the needed adaptation, even as a collaborative effort. Malcolm had a full plate orchestrating the conference and I was desk-bound with a backlog of other work.

Happily, in another stroke of luck, we learned that Bill Iverson, a recent Editor-in-Chief of the *Yale Law Journal*, was free for a one-month hiatus between the end of his clerkship and beginning work with ex-AG Ramsey Clark. Bill, who was a contemporary and friend of those in the Yale-NRDC group, agreed to dedicate August to the project. I was able to quickly raise one-half his salary from a small foundation, which Syd Howe then matched with CF funds. Going further, CF offered secretarial assistance and office space, which PLEI could only have provided later in the fall. This was a good arrangement; our two organizations were just a block apart and the CF library provided a more relevant research base for the prospectus than the law collections at PLEI.

To encourage and guide the month's work, we created a steering committee composed of Malcolm, Jim Moorman, and myself, joined by Michael Schneiderman, an attorney who had been at the July luncheon and continued to be interested in the reporter project. This committee arguably offered more oversight than we needed, but it gave us a framework to then bring in members of the NRDC group in two editorial review sessions in

the course of August. This review had two goals: improving the draft in helpful ways and, importantly, signaling to the Ford Foundation and others that *ELR* and NRDC were being conceived of by the principals as mutually reinforcing and that neither would be a redundant use of foundation support.

Bill Iverson had to delay his start briefly to have minor surgery. Still, we held to the goal of finishing in August, then mailing a circulation version of the prospectus to the Airlie House invitees during the first week in September. Given the short time allowed to Bill, the final work was resourceful in canvassing existing publications and making the case for *ELR* as stimulus to the development of an environmental bar. It was more discursive than I thought it might be for submission to a foundation program officer, but that point had not been raised by others in the review meetings and I did not press it by belatedly wading in with still another edited version.

The Airlie House Conference Endorsement

The Airlie House conference has become a legendary milestone in the years that have intervened. In large measure, this reflects underlying foundation laid down by Malcolm's selection of invitees and panelists. Many of them were, or would soon become, leaders in environmental law development during the 1970s, as litigators, educators, or public interest law directors. For most, the conference was the first on a nationwide scale that identified environment law as the primary frame of reference for the discussion. In the end, the spirit of the event was as much a convocation of founding fathers as it was an educational enterprise.

In all three sessions, the explicit or latent focus was on litigation. The first, chaired by Joseph Sax, was keyed on a discussion of evidentiary issues in a conference paper by David Sive. In classic pedagogical form, it was structured as a case study—in this instance, the Santa Barbara oil spill litigation. The second session was a conceptually ambitious parade of six presentations ranging from standing to the prospect of recognizing an environmental right analogous to a vested property right. The third session returned to the fundamentals of legal education and practice, keyed on three papers, including Jim Moorman's solid piece. (A book was scheduled for later publication by a trade publishing house that would assemble these conference papers and some account of the proceedings. I do not have it in my records.)

The final session, on Sunday afternoon, was still set to conclude the conference by adopting written recommendations from the conferees and those proposals, principally *ELR*, that had been presented to the conference. We had added the prospect of an interim Digest-Facsimile service to our proposal to meet the interest being expressed in a document clearinghouse. There were no reservations or objections that I can recall to the endorsement of either *ELD* or *ELR*, and none had really been expected. The one troubling possibility might have been a concern that with *ELR* we would be launching a foundation-subsidized publication in an area where for-profit publishers might charge that it was unfair competition. In reality, the commercial publishers that had actually communicated with CF and PLEI had expressed disinterest or skepticism that such a reporter was workable, useful, or economically viable. This publishers' view would change later, but it had no currency

with the Airlie conferees in autumn 1969. Instead, we left Airlie with the conviction that most conferees would be subscribers in some fashion, and would probably be among the core of our initial contributors.

The Joint Venture Takes Shape

With the conference over, I proposed that we aim our efforts and organization and funding toward the goal of publishing *ELR* for an initial volume year to begin in 1970. This would repeat the *SSLR* experience and was an appealing target that reflected the sense of urgency conveyed by the conference endorsement. It was an overly optimistic aim from the beginning, but it did move Syd more quickly toward forming a joint project with PLEI. With this came a more active personal involvement on his part, usually following Malcolm's lead but increasingly acting for himself as CF's principal in the enterprise.

Syd's initial action was to put CF behind the project financially in two important ways. First, he authorized a separate bank account to receive and handle funds directed to the *ELR* project from CF and other sources. This served us well in handling start-up grants while IRS action was pending on our foundation status. Second, CF actively cultivated start-up support from two of its existing donors. One, a family foundation, which was advised by a D.C. attorney (who has requested anonymity), came after Malcolm and I met with him and laid out the proposal in the kind of detail that would suit an active practitioner. The second was a redirection of a general support grant to CF from the Carolyn Foundation. Carolyn was advised by the family of Anne Calabresi, the wife of Guido Calabresi, who was my law school classmate and one-time house mate. I had kept Guido aware of the project from the beginning in early 1969. He was a member of the initial *ELR* advisory committee, and later joined the ELI board for two terms.

With some start-up funding in hand, it fell to me to take the initiative on four steps needed to give substance to the Institute and the *Reporter*. As I saw it, these were: corporate organization; articulation of its program and purpose; staffing; and fundraising, beginning with a worked-out business plan. I decided that I could personally commit up to half-time as President for a period of three years. If we began publishing in 1970, this would carry the *Reporter* through the second volume year, and give some assurance that we had a stable first-generation staff. It would also be a sufficient operating experience to confirm the Institute's tax-specific status as a publicly supported Sec. 501(c)(3) organization.

This tax matter had become a significant issue in relieving our potential grantor foundations from a demanding "expenditure responsibility" obligation under the Internal Revenue Code. The nominal purpose of this rule was to hold the granting foundation accountable for the grantee's activities that were only an extension of the grantor's interests and did not garner some level of public support through revenues and fees. The required amount was one-third of all support. This "expenditure obligation" requirement was undergoing regulatory amendment and was something of a poison pill in the view of the larger, high-profile foundations, Ford among them. IRS Certification of ELI as an exempt grantee under this rule was to become a long-running process, finally becoming settled only in 1973. Tony Roisman, a staunch friend of *ELR* from the beginning, had been tax counsel on the initial filing, but after 1972, he was not engaged for some of the later documentation

requests. In the end, I spent an unexpected amount of time on drafting and tracking down these submissions.

Although we had decided on a joint PLEI-CF venture by late October, the matter of board size and membership was resolved only over the following months. My preference was for a small, active, board for the first three years—essentially an executive committee—and only later expansion to a board that would have larger purposes, such as fundraising and endorsement. As I saw it, if all initial board members had to commit time and attention more intensely, it would give the Institute a core of directors with the collective and individual experience to carry on in the event a key member or staffer were to leave. I thought this was a particular risk in the case of a prospective Editor-in-Chief, who, it was hoped, would soon become a leader in the field and might therefore become a candidate for early advancement.

Malcolm and Syd did not object to this debatable assessment, but they did want to look more widely in the D.C. area for potential directors who might have the time to dedicate and also offer a helpful level of notoriety. Malcolm sought out several prospects, and settled on Henry Diamond and Stewart Udall as people we should approach. Henry Diamond was by then well-known as Gov. Nelson Rockefeller's first New York Conservation Department director and an early leader in the field nationally. He had been an invitee to the Airlie House conference, and eventually served two terms on the ELI board. Stewart Udall had been Secretary of the Interior in the Johnson Administration and had remained in D.C. in private practice. Malcolm and I met with each of them, receiving strong endorsements, but, in the end, both declined due to the press of other commitments.

At some time in this period, Craig Mathews was introduced to the project by Malcolm and Syd. Craig was a partner in a D.C. firm and Ohio native who had mounted a case against the Corps of Engineers in opposition to a dam that would have flooded a stretch of land in the Hocking Valley in southern Ohio. He had preceded me at Yale Law School by about four years, but I had been well aware of him for over a decade as the author of a law journal article on presidential executive agreements in foreign relations. I had written in this field in the late 1950s and had taken Craig's work as both a leading scholarly treatment and a point of departure. He had also been an attendee at the Airlie House conference. Once brought into the joint venture discussions, Craig played an increasingly active role in the steps that followed. He succeeded me in 1973 as President for two years and, by my calculation, served on the board longer than any early director.

Syd and I then agreed on a framework and time line for the board's first years. Each in his representative capacity would appoint directors to two seats, over which they would have exclusive power of appointment and replacement for a renewable term of one year. A fifth director would be chosen by the original four for a renewable one-year term. CF and PLEI would each have the capacity to appoint two additional directors for renewable terms, in equal number, at any time during the operation of the agreement. This arrangement was incorporated into the bylaws and formally adopted by the board in early 1970. It was extended twice, and formally terminated in 1973 by an exchange of correspondence between me and the then-acting president of CF.

Syd filled the CF seats with Craig and himself. I did likewise, with Jim Moorman designated as the second PLEI director. The four initial directors reached a formal consensus to bring on David Sive as the fifth member, making allowance for his New York location in scheduling D.C. board meetings. I then wrote David to present him with the nomination, which he accepted. Filling out the statutory offices, I became Chairman and President, and Malcolm joined as Secretary-Treasurer. My unusual dual-office role was adopted to reflect our perception of how the work would be done during the formative years and was not understood as a permanent feature of ELI's governance. The board divided the two posts in 1972, electing David as Chairman and reelecting me as President.

I formally filed articles of incorporation as a D.C. nonprofit corporation in Christmas week of 1969. These D.C. filings were typically brief and general in stating corporate purpose. I followed the PLEI charter closely because it was a relatively recent submission that had passed IRS muster as a tax-exempt organization without delay or difficulty. The three stated activities were: the conduct and sponsorship of research, a publishing function, and the conduct of classes, lectures, panels, and workshops. No further information was required by the Recorder of Deeds and the charter was promptly granted.

The Ford Foundation Extends Support

From the fall of 1969 through early 1970, I was focused on pursuing a three-year grant from the Ford Foundation and finding an editor for *ELR*. The first task was to prepare and set out a detailed budget to accompany the *ELR* prospectus in the grant request. In retrospect, this budget had one major flaw that undermined its several minor strengths and was to complicate ELI's program for two years and beyond. This was the assumption that as subsidized *ELR* constituency would be large enough to yield a subscription base that might in short order be over 1,000, or close to half the 2,500-plus subscribers to *SSLR*.

My projection was an overestimate and it had two lingering consequences. The first was that we had to ask for advances from the quarterly installments of the Ford grant on several occasions. The second was the impact this shortfall had on our pending tax status as a publicly-supported Sec. 501(c)(3) organization. Because we did not achieve the benchmark one-third public (i.e., revenue) support from subscriptions in our first year, we had to pursue an IRS ruling that one of our start-up grants was an "exceptional" grant that would be excluded from the denominator of the public support fraction. This opened up an ancillary IRS process, which was itself delayed when IRS lost track of its own file for several months. Our ruling was finally granted, but only two years after IRS had approved the basic 501(c)(3) filing. In the very long meantime, Ford had to consider the possibility, however remote, that it might be held to expenditure responsibility retrospectively for the first installments of the three-year grant. This was a small but persisting cloud on our otherwise-excellent relationship with the Ford Foundation.

We had always looked to the Ford Foundation as the likely source of our major funding. Ford was the first among the larger foundations to underwrite self-described public interest law organizations. At the time ELI was formed, the two most prominent or visible applicants in the D.C. area were the NRDC group and the Center for Law and Social Policy. Both were formed with the prospect of litigating in the area of environmental law—

NRDC in its own name and CLASP usually as counsel to specific plaintiffs.

We presented ELI to Ford as a different and complementary approach, initially centering on a print reference resource, *ELR*. The *Reporter* would have national scope and would both inform and promote an emerging environmental bar without specific clients or a declared policy objective. At the time, there was no other comparable applicant with this purpose, but I was concerned that Ford would not see *ELR* as a sufficiently powerful force for progress to give it a major grant. To my relief, in my first meeting with William Felling, the program officer then handling the application, I learned that McGeorge Bundy, the Foundation President, had shown an interest in *ELR* even before we had gone beyond the earliest stage of the application process. When I asked why, Felling said his understanding was that Bundy had known of the *Selective Service Law Reporter* and its influence and that he was impressed at the leverage a publication might have in an emerging area of law. This exchange confirmed to me that the confluence of PLEI and CF in our joint venture was already proving productive in ways that counted.

Bundy's support was tested a year later when the Bureau of National Affairs complained to him that Ford support of *ELR* allowed *ELR* to compete unfairly with BNA's own *Environment Reporter*. *ER* was a good publication, but very much in the mold of other BNA publications: an up-to-date and expensive source of decisions, regulations, and other outside material. Intended primarily for corporate subscribers, the world was certainly better for it, but it was not the forward-looking resource we intended *ELR* to be. Bundy's reply to BNA offered a statement of a larger principle of support for nonprofits impinging on the for-profit sector. In substance, it was that Ford would continue to fund publishing projects, like *ELR*, that meshed with its overall program when, in the Foundation's judgment, the existing alternatives did not meet the Foundation's goals.

Ford was in accord with the three-year time line and business plan presented in the proposed budget. In discussions, I did note that amounts for staff compensation assumed going rates for support personnel, but that professional salaries would not be competitive with for-profit employers. This was on the assumption that ELI positions would impart skills that would enhance personal capital, and that the outcome would be an "up and out" scenario for most professional staff members within two or three years. Like the projection of subscriber levels, this was not, on reflection, a very reliable expectation. After doubts were raised, I added a new budget item for salary contingencies, noting that our top salaries would still be below scale for the level of candidates we were seeking. Ford agreed with the change, but accepted the idea that the *ELR* editorships would involve short-term financial forbearance in exchange for work rewards and longer range financial gains. Most public interest law proposals at this time did not spell out a very different long-term business plan. Some years later, ex-Supreme Court Justice Arthur Goldberg did open up the issue by proposing that public interest law firms be seen as longtime employers and organized accordingly. In the 1980s, ELI began, I believe, to move in this direction in earnest.

Ford did ask for a supplemental presentation of ELI's plan for the first year for activities other than *ELR*. At the time, these included the interim Digest-Facsimile service that would stand in for *ELR* until an editor was chosen and working full time. This was supported by an earlier grant that was being held in trust by CF in anticipation of ELI's tax

exemption letter. I also proposed a summer internship program for two law students to do research in support of the *Reporter*, noting that this would be done only with additional support from other sources.

I added to the presentation two bimonthly newsletters for limited, largely academic, audiences. One would give the results of a canvassing of the editorial staff and the ELI community for suggestions on issues and approaches most needing research. The second would be a regular service, describing research already planned or in progress, the intended audiences, where and when it was to be published, and the contact information for the researcher or author. Either of these publications or a combination would, I thought, be a meaningful extension of *ELR's* purpose. I did not pursue them with other board members, and they never took root as formal projects in the busy months that followed. Ford never pressed to know what we had done with the idea.

The final activity we proposed for the first-year program was a gradual development of a stand-alone educational component, beginning with staff participation in the presentations offered by law schools, bar associations, and others, progressing to a full ELI sponsorship in later years. This did happen in the first year of operation, notably with *ELR* participation in the first ALI-ABA environmental law conference, held in D.C. with the cooperation of the Smithsonian Institution.

Several meetings and written exchanges with Ford followed this addendum to the proposal. The one change of consequence was to add another year to the grant duration to reflect the now-certain delay of *ELR's* first volume year to 1971. These changes coincidentally delayed the final application until we received our IRS exempt-organization letter. On receiving the letter, I called a board meeting to officially start operations and to accept a transfer of funds held in trust by CF and PLEI pending the IRS action. This all happened in the third and fourth week of May 1970, after which I sent the formal grant request to Ford. Ford's approval letter came within the following month.

Ford's assessment of the overall proposal was that the project was promising and the growth plan was reasonable. Its one condition imposed was that *ELR* should give priority to achieving financial stability within the grant period, and before ELI branched out in a way that would put the *Reporter* at risk. Ford also underscored the earlier condition that no funds from Ford's quarterly installments should be diverted to non-*Reporter* use. I agreed to these conditions, taking it as my responsibility as Chairman and President to follow through on the commitment. I was reminded of this several times in the three following years when we asked for partial installments in advance to cover temporary deficits. Administering the Ford grant over the next three years and assuring compliance with its terms involved a large part of my time.

Staffing Up

ELI began operations in mid-1970 with a capable support staff of two who had been recruited in the first instance by Malcolm. Their principal role was to collect pleadings, decisions, and other material for the facsimile service clearinghouse that would build *ELR*

from the bottom up. To accommodate them, I had notified the building management of an anticipated expansion plan and asked for first access rights on all suites sharing the 6th floor corridor with PLEI. By chance, this yielded an office two doors from PLEI. It marked the beginning of a long-running series of acquisitions that took over several thousand square feet of contiguous office space on the same floor, augmented by co-use of PLEI's lease of the Dupont Circle building penthouse. ELI offices eventually had to be extended by an additional lease off the floor for ELI's energy project, but we were surprisingly able to expand in some fashion as needed during the 15 years ELI and PLEI were based in the building.

From the Airlie House conference forward, our other most-important task was finding and enlisting an Editor-in-Chief. Once again, Malcolm played a helpful role in this, soliciting, vetting, and passing on a number of candidates and applicants. We initially sought out a small number of known attorneys and faculty members, and only later posted the position more widely through other contacts and organizations. Our first approach was to Bill Iverson, who in theory would have developed a good sense of the job in working on the prospectus. As we might have suspected, Bill was intent in keeping to his plan (and commitment) to join Ramsey Clark's practice. We moved on, aiming for nominally highly qualified candidates leaning toward those who had been law review editors. I traveled to New York, New Haven, and Cambridge to expand the search and explain the potential we saw for the editor's job. This produced a lot of enthusiasm for the project and promises of active cooperation, but no candidate on our short list who was willing or able to take the post as soon as the coming fall. Among the reasons for declining, other than the short notice, were: the onset of unexpected personal expenses, the inability to work beyond part time, the potential loss of supplemental benefits, and the risk that a shift in health insurance would end coverage of a family member's serious preexisting condition. I seemed at every turn to be encountering all possible variants of "yes, but. . ."

Walking away from one of our D.C. meetings at this juncture, I off-handedly suggested to Jim Moorman that this search had become discouraging and I wondered if I should turn it over to others. Jim replied bluntly (and memorably): "If you don't do it, it won't happen." As I recall, there was a brief pause, and then: "I have a friend from high school days who is here in Washington and is looking for a new job. He might be a good candidate. His name is Fred Anderson and I can let him know if you would like to meet him." In retrospect, that exchange with Jim was the most significant moment up to that date in the shaping of both the *Reporter* and the Institute as we know them today. (Craig has another memory of our first contact with Fred. He recalls meeting him briefly by prearrangement at Heathrow airport when Fred was still on his Marshall scholarship, and promptly calling back to urge we offer Fred the editorship. This may have been an exchange entirely with Jim, or I may have taken the call and treated the prospect as remote at the time because Fred was not in the country. Neither Jim nor I recall which.)

I asked Fred to join me for lunch, where I laid out the plan for *ELR* and the expectation that the editor would rapidly become a leading force in the development of environmental law as an identifiable field. Adding to the ELI prospectuses already submitted to Ford, I especially mentioned the exciting potential of NEPA litigation, which by this time had taken on an importance not clearly foreseen months earlier. Fred initially said

he wasn't sure he understood just what we hoped to do and how the editor would go beyond the role of synthesizing law developments as they occurred. In reply, I recounted our *SSLR* experience in essentially creating the field and drawing many subscribers in the process. I then asked him to consider that the editor's job could be more creative and influential than he might find possible as a junior faculty member writing for publication in existing law reviews. This was a harder sell than I had been making to others, especially in my recurring lapse into superlatives when predicting the prominence of the editor in the field.

Fred had brought his resume and two of his published articles for me to read. One, in an international journal of law and science, dealt with the uncertain legal liability of medical providers who made end-of-life decisions for patients who had already been started on life-sustaining treatments. The second was a three-part article in the *New Republic* critically examining the growing inadequacy of the prevailing fee-for-care medical system. Both were thoughtful, well-written for their respective audience, and dealt with issues that are still timely 50 years later.

We had a second meeting after Fred had a chance to think about the job and, I assumed, talked to Jim and others. I told him that I had been very impressed by what I had read and the range of his published articles. For a man not yet 29 who had taken a long post-graduate hiatus, it was a promising record of early achievement. Fred said he was interested in the job. I said I would like to offer it, and that I would move quickly to get the approval of other directors.

I asked Malcolm to arrange a meeting on short notice between Syd, himself, and Fred, which was held at CF. Syd then called me to say he was enthusiastic, and hoped Fred would accept. I cannot recall whether the board actually met to endorse the offer or whether I canvassed David Sive and the other members for approval. In either event, the sentiment was strongly affirmative.

Fred accepted with the understanding that he had a prior commitment to finish a report for the National Academy of Engineering, where he was a short-term staff associate. This would keep him from moving over to *ELR* until the late summer or early fall. The immediate consequence of this delay was that we could not plan to have Fred in place to edit and oversee the summer production of the *Environmental Law Digest*. We had committed to do this at the Airlie House conference and had already planned to staff it with our first summer interns. The interns had been recruited and selected, chiefly through Malcolm's effort, and we had also received specific new funding for their stipends.

The *Environmental Law Digest* Launches ELI Publications

Luckily, Fred's late arrival did not put the *Digest* at serious risk; I had already designed the publication and written a short instruction guide for the potential editor. Through staff research, helped by Malcolm, we were garnering source materials from the courts and attorneys at an encouraging rate. I could certainly have planned to edit it entirely alone, but this would forgo the opportunity for Fred to have a chance to work with a small editorial staff and stay up with current cases. I asked him to try to hold out a few hours over

the summer to come to their office, down the hall from mine, to join me in reviewing what the interns had done. He agreed and was able to meet with the interns later in the summer and pass on the last stage of their work as his first involvement as editor.

In the meantime, with the arrival of the interns, we temporarily had a staff of four to work up the publication. Two were the first ELI employees. William Gillen, our research associate, was a nimble and competent man for all tasks who was the mainstay of *ELR*'s data-gathering. His co-worker was Jean Fisher, editorial secretary who was the first ELI staffer to hold that position. They were a good team but, predictably, too good to last in these roles beyond 1972.

The double internship paired Tom Champion from Colorado with Rodney Ficker from suburban Maryland, both enjoyable to work with. The three of us met for structured editorial sessions roughly twice a week and were able to keep the work moving along so that the internship experience never became a desperate sprint to meet the production deadline.

The single issue of the *Environmental Law Digest* was published in September 1970, representing the summer efforts of the two interns. Although it had extensive digests of cases and pleadings, it was billed as a document service because it offered mailed copies of the pleadings and decisions in pending or recent cases. These were organized according to a decimalized scheme that allowed easy reference to any case or document by its numerical designation. It also gave the names, addresses, and phone numbers of counsel on both sides, and the prices of each document from ELI. This was close to state-of-the-art at the time in ease of use and the amount of information available. The *Digest* was a subsidized offering and drew a large number of requests in the run-up to the first issue of *ELR*. Today's *ELR* handles much of this function—particularly full-text documents—as online offerings. The earlier volume years distributed them as printed documents, designed to be included in annual loose-leaf binders that would in time fill several linear feet of library shelving.

The *Digest* has survived as an interesting historical document because so many of the 50 cases that we chose for inclusion have become emblematic of the time. The editorial window closed in July 1970, late enough to include some early NEPA cases, along with claims under the full gamut of substantive federal statutes and some pleadings based on non-statutory claims. Issues of standing, compensable injury, implied right of civil action, and sovereign immunity were red threads in this collection. Plaintiffs included larger organizations like Sierra Club, EDF, The Wilderness Society, and the Izaak Walton League. Almost as often, the moving party was a citizens group or association, some formed in response to the proposed action. The projects in the balance were frequently legendary, including the North Slope pipeline, the Storm King pumped storage scheme, the Calvert Cliffs reactor cooling plan, the Agent Orange class action, and the agricultural DDT litigation. It is too much to say that *ELD* documented the chrysalis of today's more complex body of environmental law, but it still serves as a good freeze-frame image of environmental litigation at the outset of its phenomenal growth.

1971: *ELR* Begins Its First Year

In the few weeks before Fred formally joined the staff, much of my time went to scaling up the Institute's physical and administrative arrangements. Most of the production staff and equipment were shared with PLEI and required only expansion. This was also true of office space in the Dupont Circle building. Group health insurance was the only non-salary compensation in the budget and the addition of ELI staff to the existing group was the occasion for negotiating a shift to slightly better coverage. Outside these internal developments, my principal occupations were defining job roles and objectives, budgeting, dealing with the Internal Revenue Service, and our relationships with Ford and the three smaller foundations that were supporting us as we started up.

In this period, as the *Digest* went into wider circulation, there was a noticeable increase in the volume of new case submissions to ELI and in the requests for subscription information. We also sent flyers and *ELR* publication announcements to several short mailing lists. This was weighted heavily with law school and large firm libraries, which yielded a high number of early subscribers who reported that their copy was used on a cooperative basis. This pulled down our individual subscriber projections, which we assumed would be higher since those rates were more generously subsidized. By the time of *ELR*'s first issue, we had developed a good network of contributors and users, but a lagging base of paid subscribers.

When Fred came on, the table was largely set, but we still needed to fill two editorial positions: a managing and an associate editor. We agreed that I, as President, should formally make the appointments, but that I would let him develop candidates and would follow his recommendations unless there was a very serious reason not to. Fred's first two candidates had our joint support. In time, however, they did not mesh well with Fred's conception of their roles—one because he had too little editorial experience and the other because he had too much. Asking them to leave was, of course, painful, and it was a relief to us both that the staff that came on in the following year succeeded in these jobs.

The January 1971 issue of *ELR*, Volume 1, was published and distributed close to the target date. It carried a revised version of Jim Moorman's Airlie House paper, under the title: "Primer for the Practice of Federal Environmental Law." The preface to the article noted that ELI was also considering the feasibility of a full-scale practice manual (not just a "primer") for "environmental law," stated without limitation or further description. This notion was even then an artifact of an earlier unrealistic ambition of mine to repeat the *SSLR* experience. In time, *ELR* would probably have had to frequently revise such a publication, or mark it as obsolescent. Neither Fred nor I felt committed to pursuing this as a new undertaking while *ELR* was taking shape, and it was not put forward in later proposals by either of us.

Following the *SSLR* model, *ELR* had a managing and associate editor at the outset. By the second year, we had added an assistant editor, a circulation manager, and an editorial secretary. Additional support functions, particularly typesetting, involved staff shared with PLEI. The increased staff allowed the Editor-in-Chief some time to develop other related research and publishing projects that came to ELI because of the *Reporter*, and it gave us the beginnings of a research staff.

The first adjunct publication to be completed, as I recall, was a monograph on European wastewater treatment regimes with an emphasis on effluent charges. A much larger undertaking was an NSF-funded study of federal environmental law involving over 25 contributing authors and edited by two younger attorneys who joined the staff for the greater part of a year. The 1,000-plus-page compendium was published by West Publishing, and distributed widely with government assistance. This was ELI's first project to garner significant royalty-type revenue through relationships with government agencies and outside publishers.

A second outside commission, from Resources for the Future, was *NEPA and the Courts*, a sole-author book by Fred Anderson, drawing on his editorial experience in analyzing NEPA litigation. NEPA's immense and largely unforeseen impact made this an important publication at the time, and Fred was undoubtedly the best person in the field to have been the author.

In another extension by *ELR* staff, Grant Thompson, associate editor, headed a study of judicial performance in water resource conflicts. Grant then became the project director of a longer energy law project done in cooperation with Resources for the Future. Several later editorial staff members had similar extended careers at ELI.

As ELI began to grow out in 1971-1972, my time as the President went increasingly to intra-office matters, more in the manner of a conventional publisher and operations manager. This involved frequent budget reviews, foundation reports, taking ELI through a field audit by IRS, dealing with outside contractors, personnel issues, etc. I was spending more time in the engine room and less on the bridge. This went on for some time, prompting Fred to complain: "you are a play maker who sets up the play but then drifts back to mid-field." It was a fair comment; in concentrating on steering both ELI and PLEI (still a parent organization), I had lost close contact with the environmental law world at a time when ELI was poised to grow and needed better-informed leadership.

1973: ELI Becomes Independent

My intended solution to this was to turn the ELI chairmanship over to a well-known figure in the field, and concentrate the 1972-1973 year on a transition to Fred as the successor President in 1973. At the 1972 mid-year meeting, a majority of the board preferred a change that was both more immediate and yet more gradual. As proposed by Jim Moorman, this would create a new position of Executive Director, who would still report to the President, but would have more freedom and apparent authority than the Editor-in-Chief in dealing with outside parties and intramural staffing matters. Jim's motion passed and Fred was appointed to this position for a one-year term. Consideration of his succession to the presidency in 1973 was mooted and postponed. David Sive was then selected as the new Chairman, and I was reelected President.

Following this meeting, we extended the reforms to the staff level by formalizing an operating committee that would meet regularly to coordinate the senior staff, including project directors, the editors, finance officers, and others as the need arose. I was a member of this committee, as was Craig Mathews. Although it was designed to serve staff concerns,

the composition of this committee had the fortuitous consequence of bringing Craig closer to the day-to-day operations. As a result, Craig was better-equipped to take over the presidency in 1973 when I stepped down as I had announced. Craig was elected President at that time and served two consecutive terms. He was succeeded in 1975 by Fred, who then became ELI's first full-time President. Fred held and expanded the position with great distinction until 1980, when he left for an academic position in Utah.

The 1972-1973 year also brought a close to ELI's status as a joint project of PLEI and CF. Both Syd and Malcom had left CF, although Syd remained on the ELI board. The remaining bonds with CF were cordial and mutually appreciative, but no longer really synergistic. The daily operational ties between PLEI and ELI were strong, but they, too, did not require the legal status as a joint venture. In early June 1973, after notifying board members, I initiated an exchange of termination letters with Arthur Davis, CF Vice-President and pro tem CEO, which was then memorialized by the board at its meeting later in the month.

The end of joint-venture status coincided with the beginning of a measured board expansion process that brought on genuinely interesting and stimulating colleagues for the original board members and helped enlarge ELI's identity as a research center. A catalog of ELI's research projects during Fred's tenure is beyond the scope of this account, but it was a truly impressive contribution to the law and policy developments in the field over the entire decade.

The measured pace of board expansion at this time reflected an endemic and not always helpful reluctance to quickly expand ELI's governing board and the nature of its support base. From the very beginning, Sydney Howe had urged us to consider founding an associates program, as CF had, to generate a fee-based source of funding. At first, this seemed to risk a dilution of the ELI mission that would redirect attention and resources while we were still working out the institutional personality. Through 1971, Syd was a lonely voice for the idea. Later, when the "brand" was better established, an associates program held some promise as a revenue source and a way for people to relate to ELI without distorting the larger mission. Still, we postponed the program for years out of diffidence or because of distraction. Once adopted, it thrived without evident compromise to any other Institute function. I am not sure Syd was ever given sufficient credit for his initiative and persistent support.

Our caution in scaling up the board was similar but more deliberate. Jim, Fred, and I at various times expressed concern about bringing on a significant number of corporate officers or directors in preference to attorneys, environmental scientists, or faculty members. This was the de facto policy as long as the list of these candidates was inexhaustibly deep. We did have one experience in which a well-known industry leader suggested that he would be interested in supporting ELI financially if the business community would be invited onto the board in unstated numbers. The veiled implication and our lack of confidence that such a change would bring constructive diversity helped sustain our indifference to enlisting business leaders. As President, Bill Futrell turned this around and confidently courted corporate membership and support. The ensuing results speak well for the change.

In 1973, *ELR* was still the mother ship for ELI as an institution, publishing monthly with a growing range of coverage and articles by editors and outside authors. As Ford support ended, it had neared its expected level of self-sufficiency through a high renewal rate and tiered price increases. This price structure relied on the high percentage of institutional and large firm subscribers and their relative insensitivity to price increases. There was an implicit abandonment of the original mission to serve the entry-level environmental attorney at all costs. Some effort was made to solicit a new and sustained source of subsidy support, but the aim of almost all funding requests was to fund new projects and general expenses. This shortcoming would be a small asterisk next to our “mission accomplished” claims for *ELR*.

As Fred had turned to research interests, the role of *ELR* Editor-in-Chief became defined more conventionally as a shorter-term position. Three other editors filled the position in the five years Fred was President. One, John Schulz, had been with PLEI as the editor of the *Military Law Reporter* and moved over to *ELR* in the same office corridor almost seamlessly. The other significant migration between PLEI and ELI brought Bill Straub to ELI in late 1992, after 14 years in PLEI editorial and support positions. He is at ELI to this day and his additional 27 years at ELI is, I believe, one of the very longest continuous tenures in the history of the Institutes.

Another large part of the story missing here is the record of accomplishments left by the staff members who came to and through the Institute during Fred Anderson’s 10 years as editor and President. Some are easily remembered because they are recognizable names today. Durwood Zaelke, David Doniger, and Michael Bean immediately come to mind, and there are others. The publications they participated in are only one part of their legacy. My own files on their work are too thin and uneven to begin to fill in the rest.

After I left the presidency in 1973, my own day-to-day role tapered off slowly through 1975, and more significantly after that. I remained on the board and executive committee until rotating off both in 1985. ELI and PLEI were still on the same office corridor during this time, and I had almost daily contact with staff members, both casually and with a purpose. The two institutes continued to share some support staff, office, and publishing technology, some library acquisitions, health insurance, and the like. There were also governance and editorial matters that brought me back into closer involvement, especially as an executive committee member. Otherwise, my frequent and usually friendly interactions with the staff meant that I was able to help with morale in several times of financial stress: this was possibly my most useful contribution as the emeritus founder in residence during those latter years.

The next major “era” in ELI history began in 1980 with the long presidency of Bill Futrell. Bill was on the ELI board when the recruitment of Fred’s successor began. The search was encumbered and greatly prolonged by the cacophony of staff voices and divergent preferences on the search committee. It was not a good time to be experimenting with participatory democracy in deciding on Institute leadership. My recollection is that Larry Moss, a long-time board member, was the key executive committee member in persuading Bill to move to Washington and take the job. What then followed will be

remembered as the Institute's coming of age, scaling up and out to largely define what it is today. I have many hundreds of documents from the 1980-1985 period, chiefly as an executive committee member, but my actual role in the major strategic decisions was intermittent and not large enough to narrate here with any authority. It is to be hoped that Bill and others render their own accounts of the period. I will be an expectant and eager reader.

A Closing Note

Calling up distant events and leafing through old files brings back vivid memories of the people who weave in and out of this narrative. It also sharpens the realization that some are now gone, and that this exercise is perhaps the last time the present writer will have occasion to pay respect for their contribution to ELI, and to their larger lives. I am closing with the names of eight who I know to have passed away, with gratitude for the experience of knowing them and working with them in different ways toward our shared goals.

Fredrick Anderson
Malcolm Baldwin
David Challinor
Sydney Howe

Phillip Reed
Joseph Sax
David Sive
Barbara Zaelke

Thomas Alder 10/2019