

From Institute to Institution

A half century ago, a group of concerned activists called for the creation of an organization to nurture a new field called “environmental law.” Advancing policy and legal process — and the professionalism of those sworn to uphold them — were then and remain today the key ingredients in ELI’s recipe for success



Bud Ward is editor of Yale *Climate Connections*. He was the founding editor of *The Environmental Forum* and ran the publication from 1982-86.

On January 1, 1970, President Richard M. Nixon ushered in what he hopefully called the Environmental Decade by signing the law we call NEPA. In the half century since, the system built up by the statutes that rolled out like clockwork following the National Environmental Policy Act’s stentorian expression of social commitment has expanded, evolved, and endured. NEPA made it the official policy of the U.S. government “to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.”

The system envisioned by NEPA’s expression of national will became a trusted and flexible body of law and rules, decisions and procedures, and relevant institutions designed to improve public health and conserve natural resources. Environmental professionals were involved in each and every step along this journey of discovery and response, both leading and following, and can take pride in their part of this huge national achievement, one whose success has been enthusiastically replicated worldwide.

The year leading up to the passage of NEPA was marked by a number of headline-making environmental events: the Santa Barbara oil spill, the flaming river in Cleveland, the deadly smogs in cities from Pittsburgh to Los Angeles. The United States then responded to the ecological degradation that so concerned its citizens through groundbreaking legislation setting national goals and priorities, a set of implementing regulations carefully drawn up by expert professionals to achieve the lawmakers’ targets, with resulting issues of process, outcome, and equity carefully considered by the courts. The result is what has come to be called (not always with admiration) the *administrative state*, with all three branches of government moving in a complicated tango in which it is often hard to see who has the lead — but which nonetheless has made huge progress in the last half century in what has of necessity morphed into a fight to save the planet.

Measured by the viewpoint of those who were present in the 1970s, the counterattack has been a real success — our rivers are cleaner, our air far healthier, our toxic waste dumps are getting cleaned up, and the bald eagle is no longer endangered. But the need for environmental protection, as new threats have emerged that were not readily visible when NEPA was passed, has grown over the same period and has never been greater. Using law as the

vehicle for response, the situation today calls for a new cadre of activist-professionals guided by the most advanced legal thinking, a model created 50 years ago when the first pollution statutes were still being debated in congressional committees.

Thus for our purposes, the story really starts just before the dawn of the Environmental Decade, in September 1969, when a group of 52 pioneers practicing in the new field of “environmental law”

a national center coordinating regional branches where talent could be systematically mustered.” The main idea was to start by founding an expert publication to report on developments in the new field and help organize the emerging new profession and its response to the environmental crisis that was so apparent in the late 1960s.

The United States at that time was just escaping from an exceptionally chaotic decade marked by the unpopular war in Vietnam, the struggle for civil rights and women’s liberation, and the assassinations of John and Robert Kennedy and Martin Luther King Jr. The environment thus arose as a movement of unity during a period of discord, and received support from both political parties, with the White House and the Congress vying to take the initiative.

Leading voices of concern in the Senate — in particular Wisconsin Democrat Gaylord Nelson, Maine Democrat Edmund S. Muskie, and Republicans like Vermont’s Robert Stafford — were focusing increased public and media attention on conservation issues. The president too recognized environmental protection as a political opportunity. Thus, as newspaper archives attest, the year 1969 was marked by numerous hearings, strategy sessions, and bill markups for what was to become the body of environmental law. NEPA became the first out of the gate.

The seminal vote enacting the groundbreaking statute took place on December 22 — a tally which occurred on the very same day that the mandate of the Airlie House meeting was realized via the incorporation of the Environmental Law Institute as a Section 501(c)(3) nonprofit educational and scientific organization under the U.S. tax code.

As the Institute has liked to say ever since, ELI and environmental law grew up together.

The Airlie House meeting thus took place in the political and public policy cauldron that characterized the late 1960s. It was organized under the auspices of the Conservation Foundation, a highly respected NGO, which set out to convene a group of lawyers, scientists, and other experts to debate “Law and the



— a neologism presented in quotes by the *New York Times* in reporting on the event — held an organizing meeting at the rural Airlie House conference center outside Warrenton, Virginia. Back then, no one had any way of imagining, let alone anticipating, the magnitude of what was about to happen: the formation, development, and evolution of what has clearly become one of America’s, and the world’s, most enduring and far-reaching social movements, plus the creation of that robust body of public servants, private counsel, and proper procedure known as environmental law, without the scare quotes.

What those pioneers meeting at Airlie House did know, however, was that it was necessary to track the new field and nurture it, and for this purpose they decided to create, as the *Times* reported, “a nationwide conservation legal organization . . . with

Environment: The Role of the Lawyer in Environmental Conservation.” From the vantage of today, the list of attendees, which included Ralph Nader and a score of other names that would also become famous, reads like a Who’s Who of the emerging new profession.

In words that 50 years later may strike some as both prescient and understated, CF’s Malcolm F. Baldwin, under the title of conference secretary, opened his invitation as follows: “The legal profession is at the threshold of broader and more effective environmental involvement. . . . The development of needed legal programs, doctrines, strategies and institutions has not kept up with public needs.” Pointing to the litigation legacy to date, Baldwin said, “Too few” of the small but increasing number of environmental court decisions “have been handled with fully adequate legal and scientific expertise.”

Pointing to a need for “stronger cooperation and coordination among conservation law interests if scarce resources and expertise are to be used effectively,” Baldwin emphasized that “the legal profession has a major responsibility for helping develop the improved approaches and mechanisms that can respond to this public need.”

In a post-conference publication, “Law and the Environment,” meeting managers noted “a striking absence of any attempt to define environmental law.” But in starting by accepting that “environmental decay was a hideous fact,” participants focused on “ways for the law to respond.” The response would, in turn, define the field. The participants attending the Airlie House meeting “generally accepted that by opening up and democratizing the legal process, at every level, environmental abuse could be curtailed,” in the newspaper account.

Illustrative of how embryonic the state of environmental law was just a half century ago, the meeting organizers asked, “Did an environmental crisis warrant radical legal reform and innovation, or was there time for evolutionary approaches?” According to the record of the meeting, some participants “endorsed the broad, swift remedy of a constitutional attack, a Supreme

Court appeal, and greater use of the courts’ equitable powers” in order to develop some new environmental doctrine of the law. Others preferred the philosophically more opaque strategy of mixing legislative and judicial remedies by taking what one participant called the “subliminal approach to court intervention.” Still others wondered if “radical changes” in the roles of courts, legislatures, and law schools “were feasible or desirable.”

Among “unresolved anxieties [that] permeated the discussion” was a fundamental pocketbook issue: “Can any public-interest lawyer, let alone an environmental lawyer, support himself by fees from clients who are likely to be just a cut above the indigent?” And how could professional standards forbidding fundraising and client seeking respond to the need to “combat powerful adversaries”? Lastly, they raised this concern: “Because environmental law is in such a primitive stage, even the most imaginative and industrious environmental lawyer may feel a general professional frustration at the doctrinal and procedural obstacles he must face.” The use of the masculine pronoun is no accident; sadly, only a handful of women and minorities were present at the foundational meeting.

So it was in that cauldron that the Airlie House conferees agreed to the establishment of a new nonprofit organization to manage and maintain an independent environmental law journal that would track and help form the new field, publishing the latest findings on protecting the environment through America’s legal system.

Among those attending the Airlie House meeting were three individuals who went on to be principal founders and organizers of the new institute. Fifty years later, those three founders — Thomas Alder, Craig Mathews, and James Moorman — continue to be active supporters. Alder at the time of the Airlie meeting was president of the nonprofit Public Law Education Institute — which was a crucial co-partner with ELI in the early days. Alder in a June 1973 letter called the PLEI-ELI relationship one of “parental involvement” including shared office space and resources. Just as PLEI was a model for the early ELI, its *Selective Service Law Reporter* and *Military Law Reporter* were models for what eventually became ELI’s *Environ-*

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Wetlands Efforts Meld Science and the Law

Wetlands conservation has been a signature program for ELI since its very first decade. In 1977, with support from the Fish & Wildlife Service, ELI convened the first National Wetland Symposium, bringing together 700 wetlands scientists, managers, lawyers, and conservationists. And for nearly 40 years following until the Institute regretfully pulled the plug for financial reasons, ELI's respected *National Wetlands Newsletter* served as the touchstone publication for the field, with influential and intensely practical articles on wetlands science, law, management, and governance.

In addition to NWN, ELI wetland books and reports have shaped the field in profound ways. Jon Kusler's *Our National Wetland Heritage: A Protection Guidebook*, released in 1983, was one of ELI's most-purchased books, and was succeeded by a well-regarded second edition in 1996 (with NWN Editor Teresa Opheim doing the update).

ELI's first-ever study of all the nation's wetland mitigation banks in 1993 became its most widely disseminated research report; it has led to a continuing series of influential studies on wetland banking and fee-based mitigation programs over the following 25 years.

The Institute's work during this period included creation of databases and inventories of these programs, led by Science Policy Analyst Jessica Wilkinson. ELI's pioneering work on compensatory mitigation influenced findings by a National Academy of Sciences panel that led to the 2008 Corps-EPA rule putting compensatory mechanisms on a firm scientific and legal footing.

Much of ELI's wetlands work has had a state and local focus, including studies of the likely impacts on state programs of changes in



Rebecca Kihlslinger
Senior Science and Policy
Analyst

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definitions of Waters of the United States under the federal Clean Water Act, which has come to be relied on by all parties.

ELI's numerous wetland and stream mitigation studies and training courses continue under the leadership of Senior Science and Policy Analyst Rebecca Kihlslinger, and the Institute continues to collaborate with states and academic organizations on restoration priority setting and the role of wetlands in climate adaptation, often with foundation support.

"As climate change and regulatory uncertainty threaten the protection of vital habitats," notes Kihlslinger, "the timely research and comprehensive training programs offered by ELI promote policies and innovative approaches that preserve wetlands function and maintain crucial ecosystem services for all communities."

In 1989, ELI launched a program to recognize excellence in wetlands conservation. The National Wetlands Awards, now in their 30th year, recognize individual achievement in landowner stewardship, science, governmental innovation, education, and other categories. Presented with modest support from federal wetlands agencies, and held on Capitol Hill,

this event celebrates the contributions of conservationists, teachers, and others. Keynote speakers have included the late Senator John McCain of Arizona and New Mexico Senator Tom Udall.

ELI's other work on water resources in the United States has focused on policy and regulatory gaps. In the early 1980s, Institute staff led by Tim Henderson produced work on state groundwater protection laws. In the 1990s and 2000s, ELI prepared comprehensive inventories of all state nonpoint source protection laws. In these same years the Institute worked on green infrastructure and ways to address older sewer systems.

More recently, ELI has aimed at connecting water quantity, water conservation, and water quality, including an influential partnership with the Alliance for Water Efficiency and River Network, known as Net Blue. Adam Schempp has directed a long-standing series of training courses and workshops for state regulators dealing with impaired waters, and related courses on data management and monitoring, with support from EPA. These intensive courses involve state-to-state peer learning and networking.

— James McElfish

mental Law Reporter. Thus prepared, Alder eased into the role of ELI's first president.

An important story the three founders share now, 50 years after Airlie House, is that back then conference participants for the first time got to personally meet lawyers and other professionals from around the country whom they previously had known only by reputation. They say the gathering opened the eyes of all to the fact that there were others who shared the same legal interests, passions — and concerns — from every region of the United States. But no one could have predicted the sweeping breadth and scope of the landmark federal environmental legislation and litigation that would come to so characterize the 1970s, let alone a parallel revolution in most of the states via the emergence of environmental federalism.

And no one could have charted the future successes of the nascent organization whose creation the Airlie House meeting fostered.

In looking back through the last five decades to evaluate what ELI was created *for* — basically, to collect and timely publish an ongoing compendium of natural resource and pollution control briefs and judicial opinions and, relatedly, provide independent expert analysis — and what it has *become*, the challenge is obvious. In fact, ELI and environmental law didn't just grow up together, they established a symbiosis, a mutual nurturing. Environmental law would still have been created and evolved over the years in the absence of an ELI; but the system would have taken more time to emplace and wouldn't work as well in practice. And people, from decisionmakers to ordinary citizens, would be less satisfied with the result.

Which clearly is not to suggest that ELI, with its steadfast commitment to nonpartisanship and independence and to research excellence, has been a major player with a highly visible role. It has not. Rather, one is reminded of the old TV commercial for BASF, which sells to other companies and not to consumers: "We don't make the products you buy; we make the products you buy work better."

In a similar vein, ELI hasn't been in the business of making the environmental bills that the House and Senate consider, then or now. Nor is it involved in the spate of litigation that began 50 years ago fol-

lowing enactment of the statutes (with one important exception, to be noted). There are praiseworthy organizations that do that critical work. What ELI does instead is something no other group can do, all of it evolved from the Airlie House mandate. The Institute researches pressing problems, tracks the field and provides a forum for robust discussion via seminars and publications, trains professionals from government, industry, law firms, journalism, and NGOs, and finally convenes its broad constituency of professionals representing all stakeholders to increase understanding and seek common-ground solutions to the world's most demanding environmental problems.

Fifty years on, ELI can best be described as a "one-of-a-kind environmental law think-and-do tank," in the carefully crafted words of its current annual report. The clever language reveals a key fact: ELI is not another for-or-against environmental advocacy interest group, and not a conventional D.C. policy analyst or consultancy — and certainly not a gun for hire. "We're neutral, but we're truthful," one former staffer likes to say.

From its rather humble beginnings on the sixth floor of the iconic Dupont Circle office building that was home to countless progressive nonprofit organizations in the last century, ELI published the first issue of its monthly loose-leaf service in January 1971. The initial issue of ELR included an authoritative and insightful monograph by Moorman outlining the shape of the road ahead for a comprehensive body of environmental law. That opening article set a standard for independent legal analysis and interpretation at that point, and perhaps still, unmatched by others.

For a fledgling environmental nonprofit, one would be hard to imagine a better bull market in which to get off the ground than the 1970s, a period of lawmaking unmatched since. From its bare-bones beginning with first-year total revenues of \$62,224 and five employees, ELI by the end of the decade qualified for what then Board Chairman David Sive and Executive Committee Chairman Mathews cited (unwittingly tracking the language of the *New York Times* story on Airlie House) as "a principal national center for objective, independent legal and policy research on environmental and natural resources

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A Convening Forum for All the Stakeholders

The challenges of a complex, interrelated globe demand the collective energy, insight, and innovation that only a broadly based group of practitioners can bring. After 50 years, the Institute's continued vitality is reflected in the spirit of those whom it regularly convenes to work out real-world solutions to humanity's pressing environmental problems.

The advent of the magazine you are reading helped to widen the Institute's constituency to a broader array of professionals, including not just the environmental bar but also agency policymakers, industry engineers, business and NGO government affairs specialists, academics, and citizen advocates. *The Environmental Forum* quickly became the source for discovering what the field was debating, who was making change, and what was happening on the ground — as well as for insightful policy proposals to consider going forward.

ELI simultaneously assumed a role of convening these constituencies, by creating a real-world interplay building on the *Forum's* ability to foster dialogue. Informal brown-bag discussions soon morphed into regular seminars and policy panels.

For almost four decades now, ELI Associates Seminars, as they came to be called, have drawn together the field's leading lights and practitioners in the trenches for lunch-hour and early-evening sessions. Professionals gather to network while debating the best ways to improve law, policy, and corporate management.

The next step was for ELI to engage with the private sector more deliberately. Business leaders badly need a venue for meeting not just with industry peers but a full spectrum of environmental professionals across sectoral lines, folks interested in effective outcomes and equi-



Erik Meyers

Director, Associates Programs (1982-2004)

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table process, not policy purism.

ELI's Corporate Associates Program, the first of the sector-focused networks formed by the Institute, quickly matured programmatically. Under the Institute's auspices, the program convened peer-to-peer discussions of new environmental, health, and safety approaches, including sustainability innovations, and introduced state and federal governmental leaders, academics, and public interest advocates to innovators from the business world.

At the same time, law firms were creating specialized environmental practice units to serve local, national, and even global clients. ELI was a natural home for attorneys in private practice, and the ELI Professional Associates Program was the result. Educational events with firms expanded the Institute's geographic reach, and enabled ELI to be present in locations around the country and at important international meetings.

Environmental professionals in citizens organizations grew up relying on ELI's legal resources, and were also interested in professional development and opportunities to work with other stakeholders, soon forming the ELI Public Interest Associates Program.

Government attorneys and man-

agers form the fourth leg of the professional platform for dialogue and networking that ELI has built, yet funding realities and government ethics mean that their participation is as individuals, not through an institutional affiliation.

The ELI Award is integral to forming the network of environmental professionals envisioned by the Institute. Created to recognize the field's heroes, the annual prize reminds practitioners, no matter their sector, why they were drawn to the field in the first place — as well as to highlight the many places where leadership is still needed.

Honoring EPA administrators and members of Congress, insightful jurists, prominent businessmen and women, leading law firm attorneys and academic thinkers, and environmental advocates, all leaders of the global sustainability movement, the ELI Award signifies the highest achievement in the protection of human health and natural resources.

As environmental law evolves from a focus on pollution control and resource conservation to an ever-widening lens encompassing sustainability, environmental justice, biodiversity protection, and climate stability, the Associates Programs will continue to evolve in response.

subjects.” It ended the decade with total annual revenues of \$1.5 million and more than 60 employees, with its newly created research division “now the largest and most important,” an early annual report said.

Corrected for inflation, ELI is funded at about the same level today and has a similarly sized staff. The die for an environmental legal resource of national scope and stature had been cast. But if anything, the Institute’s shape was just emerging — and has continually changed as the organization matured along with the field. To borrow from the language of science, ELI came to occupy a unique niche in the political ecosystem and has evolved over time to exploit that niche, as needs and opportunities have become apparent.

The 1970s saw a period of law-making in the field unmatched since. Along with three pillars of federal environmental and pollution control legislation — NEPA and the Clean Air and Clean Water acts — the country also saw passage of the Endangered Species Act, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, and the law known commonly as Superfund, plus a half dozen other statutes covering natural resources and pollution.

The courts, too, got into the act during that first decade and showed that the third branch is a critical one in administrative law. The D.C. Circuit decided *Calvert Cliffs Coordinating Committee v. AEC* in 1971, requiring full consideration of Environmental Impact Statements under NEPA, thereby enlivening the statute. Other decisions confirmed citizen standing to sue under the new pollution laws and, in the celebrated case pitting TVA against the endangered snail darter, confirmed that laws regulating governmental activity were legitimate expressions of public will and were enforceable by citizens, agencies, and the courts.

Alder and Mathews traded as part-time presidents until 1975, when ELI elevated Frederick R. Anderson, an engaging young lawyer of considerable intellect and will, from his position as ELR editor-in-chief to run the overall organization full-time. Under his leadership, that first decade wit-

nessed the Institute’s evolution from a scholarly publishing outfit to one whose core activity was research meant to advance the field. Not only would the outfit record developments in environmental protection, as per the Airlie House mandate — in addition, ELI would focus on what should be done to ensure effective environmental protection, with a sharp focus on policy and program implementation, by “systematically mustering talent,” to crib from the *New York Times* description of the organization envisioned at Airlie House. Anderson himself co-wrote in 1973 “NEPA and the Courts: A Legal Analysis of the National Environmental Policy Act,” which thus became ELI’s first research report, to be followed by literally hundreds of others over the past half century.

By the end of the 1970s, research reports, probing issues ranging from air and water pollution to land use, energy use, and toxic substances, accounted for nearly one third of ELI’s total revenues. The research division not only evaluated national problems

but also began to deal with international issues such as transboundary air pollution and multinational treaties. The organization established a publicly available research and reference library that grew in that first decade to more than 10,000 volumes and 250 subscriptions to periodicals. ELI soon became known worldwide as the authority on environmental protection.

To meet the needs of these growing activities, the staff grew beyond a sole focus on skilled public interest lawyers to also include journalists, business entrepreneurs, conference organizers, and others. Early on, the outfit recognized a need for training professionals and established an education division. In its first 10 years, ELI trained more than 7,500 people in sole- or co-sponsored conferences and programs. Its first such program was in 1970 in collaboration with the American Law Institute, a relationship which continues to this day, as well as the Smithsonian Institution.

The Institute soon became known as the expert organization on a variety of topics. An important example is wetlands. In 1977, with support from the Fish and Wildlife Service, ELI conducted what it called “the largest wetlands protection program ever held,” with conferees numbering more than

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Using Law to Rectify Environmental Injustices

In 1987, the United Church of Christ released “Toxic Wastes and Race in the United States,” a study documenting the close relationship between race and the siting of facilities handling hazardous materials. Two years later, Senior Attorney John Pendergrass was asked to help community members from the Baton Rouge area understand the rules relating to siting, handling, treatment, and disposal of hazardous waste in their region.

They were particularly concerned about what they saw as an unusually large number of chemical and waste disposal facilities located very close to their neighborhoods, and new health problems they were experiencing. Pendergrass joined them on a tour of several neighborhoods and observed facilities from the fence lines along with officials from the Louisiana attorney general’s office and the Department of Environmental Quality. At the time, this was seen as part of ELI’s mission to educate people about environmental law, but in hindsight was the start of its work on environmental justice: serving as an information resource to underserved communities.

In the mid-1990s, ELI launched a 12-year project, “Demystifying Environmental Law,” with funding from foundations and EPA. In partnership with the Southwest Network for Environmental and Social Justice, we developed a new model for training local leaders on environmental law and facilitated several workshops for communities in California, New Mexico, and Texas. In conjunction with the workshops, we created written materials sought by participants on how to work effectively with lawyers and on dealing with strategic lawsuits against public participation, so-called SLAPP suits. We also created a separate environmental law



Barry E. Hill
ELI Visiting Scholar

“A 1989 trip to work with citizens and officials in Louisiana was seen as part of ELI’s mission to educate people about environmental law, but in hindsight was the start of its work on environmental justice. Thirty years later, the Institute remains active in the cause.”

training program for environmental justice leaders on both sides of the Mexican border and developed the 2007 manual *Environmental Enforcement in the U.S./Mexico Border Region: A Community Guide to Enforcement in Texas and Chihuahua*.

In 2001, ELI published an in-depth study on using federal environmental laws to advance EJ goals, “Opportunities for Advancing Environmental Justice: An Analysis of U.S. EPA Statutory Authorities.” Building on this detailed report, we developed *A Citizen’s Guide to Using Federal Environmental Laws to Secure Environmental Justice*, and we partnered with the United Church of Christ Commission for Racial Justice and EPA’s Office of Environmental Justice to create a video to help communities learn about and use environmental laws effectively.

ELI has also partnered with local environmental justice communities to address a variety of issues over the years. For example, our long-standing educational partnership in the Gulf of Mexico with local communities since the 2010 oil spill empowers environmental justice advocates and others to participate effectively in restoration and recovery processes. A multi-year

project in partnership with Alaska Native communities has sought to protect their offshore subsistence resources. And ELI worked with groups in New Jersey to help ensure that brownfields redevelopment improved public health while fostering new economic opportunities.

ELI Press has published four editions of the seminal textbook and handbook authored by visiting scholar Barry E. Hill. Entitled *Environmental Justice: Legal Theory and Practice*, it is used in law school classrooms and clinics throughout the country where environmental justice courses are taught, and where law students represent communities. *The Environmental Forum* and the *Environmental Law Reporter* have also published numerous environmental justice-related articles from a variety of academics, government officials, and practitioners in the field.

At present, the Institute is piloting a new digital technology educational effort that would advance understanding of environmental injustices and how they may be constructively addressed. And ELI has begun a research effort to identify best practices used by local governments and corporations in dealing with environmental justice issues.

700. And the following year, the Institute gave birth to its highly regarded *National Wetlands Newsletter*. ELI soon established itself as the key national wetlands information source.

Publications like ELR and NWN and various monographs were still the Institute's bread and butter in that first decade. Beyond its two periodicals, ELI published the first major environmental law treatise, *Federal Environmental Law*. It also collaborated with key independent printers such as West Publishing Company, Johns Hopkins University Press, Resources for the Future, MIT Press, and Indiana University Press to bring out books geared to professionals in the burgeoning new field.

By any reasonable measure, the feel-good environmental policy and political bipartisanship that had characterized so much of the 1970s took a sharp turn in the opposite direction in the 1980s — and ELI was forced to change itself in response, and not for the last time. President Ronald Reagan came into office in 1981 promising to “get the government off the backs of the people,” and he appointed sympathetic cabinet members, including Ann Gorsuch at EPA and James Watt at Interior. The new administration took a more critical and negative approach to the aggressive legislative and regulatory activism of the prior decade.

Not coincidentally, there were times in those earliest months of the 1980s when ELI's very survival appeared uncertain, as it tottered on the edge of bankruptcy. Management engaged aggressively in cost-cutting, shutting down under-performing programs and going all-out on fundraising. One vital decision during those trying times: fund the highly respected wetlands activities with general support. Another: increase efforts to strengthen board giving.

Facing major headwinds from external forces well beyond its control, ELI did what it has done throughout so much of its 50-year history: it turned more innovative, more entrepreneurial, and even more eager to capitalize on bottom-up, staff-driven initiatives and opportunities. In addition to hiring top-notch people and giving them the freedom to

grow, that is the secret sauce of ELI's success.

A key innovation that brought in new thinking and fresh funds was the creation in 1982 of the ELI Associates Programs — note the plural, which will be explained shortly. Associates were invited in from industry, from law firms, and from government and NGOs alike, plus universities, and through their dues injected fresh funding. To head the effort, ELI hired attorney (and later general counsel and vice president) Erik Meyers, who would manage the programs for more than 20 years.

The Associates Programs were the brainchild of ELI's second full-time president, J. William Futrell, a colorful, outspoken former leader of the Sierra Club and law school professor, who today characterizes the professional society as “the beginning of building financial support from members and contributors by identifying friends of the Institute.” To Meyers, it involved going beyond what had started as “a small following of ‘friends’” to “formalize the dialogue into regular seminars and policy discussions,” attracting the interest of “leading lights from the field.” Meyers notes that these early champions of the profession “served on the front lines of change and often took hostile and friendly fire — from public interest advocates and regulators on the outside to profits-first executives and old-school process engineers internally.”

Starting with the Corporate Associates Program involving businessmen and women, Meyers added a Professional Associates Program to bring in law firm attorneys and consultancies and a Public Interest Associates Program to nurture NGOs. And individual associates were also welcomed from all levels of government and from university faculties, at a discounted dues rate.

Lumping the programs together, the association soon matured into what has proven to be an attractive, popular smorgasbord of professional programming involving peer-to-peer exchanges on new environmental, health, and safety approaches. These activities attracted the attention and participation of a wide range of government officials, public interest advocates, journalists, educators, and business innovators. Without so much intending it as such, Futrell and Meyers had created environmental law's professional society.

The advent of the Associates Programs involved going beyond what had started as a small following of friends to formalize the dialogue while attracting the leading lights from the field

Educating Judges on the Basics and Nuances

In accepting the 1989 ELI Award, James L. Oakes, chief judge of the Second Circuit, challenged the Institute to close a gap in jurists' knowledge of the basics and the nuances of environmental law. ELI responded with a session the following spring at the Federal Judicial Center's "Workshop for Judges of the First and Third Circuits" in White Plains. Course faculty provided "an exploration and review of key areas of interest to federal judges in eastern states, with general overview and reference to legislative and interpretive dilemmas as well as noteworthy case law."

Over the next three years, ELI's Barry Breen then gave presentations on various aspects of environmental law to judges in eight appeals court circuits, and he then did the same for bankruptcy judges from all of the circuits.

At the same time, ELI developed programs for state judges. Most critical to their model is to consult in advance with those judges to determine their needs, preferred learning methods, and desired speakers. ELI has also found it important to consult attorneys in the jurisdiction to learn about cases on the horizon. This research informs ELI's agendas, faculties, and materials for the programs. With the sponsorship of the Flaschner Judicial Institute, ELI in 1991 held its first program for state court judges for judges from the six New England states.

Collaborations with Flaschner and the FJC made clear the importance of working with established organizations that focus on education for judges, a practice the Institute has followed since.

The success of the program created momentum, giving rise over the next few years to ELI workshops for judges from New Jersey, Ohio, Virginia, Florida, and for another regional program that covered Ari-



John Pendergrass
Director, Judicial Education
Program

"ELI has presented workshops on critical topics in the environmental field for more than 2,500 judges from 28 countries and, through participation in international and regional events, has reached far more jurists than those statistics would suggest."

zona, Colorado, New Mexico, Texas, and Utah. The latter resulted in an ELI handbook for state judicial educators to use in developing training for jurists, which was distributed by the State Judicial Institute to all 50 states. The subject matter varied by jurisdiction, but most covered hazardous waste cleanup, including the science, as that issue was heavily litigated in the 1990s.

During the early 1990s, some of ELI's international partners identified similar needs and asked the institute to expand the Judicial Education Program to include other countries. In response, ELI quickly adapted the methodology to add research into the legal and judicial systems of the different jurisdictions and also added substantive areas.

The first such program was for Russian judges and other officials, held in Washington in 1994. The following year was busy, with educational programs in Honduras, Ukraine, Brazil, and Florida. In addition to covering environmental law and science, the Brazilian judges asked ELI to cover environmental economics, which became another standard topic. Eventually, these courses have come to incorporate the latest advances in legal, scientific, public health, and economic thought, and allow interactive analy-

sis by participants and faculty.

In 2019, ELI's Judicial Education Program turned its focus back to the United States and to again working with the Federal Judicial Center. Paul Hanle, with extensive experience in science communication, and David van Hoogstraten, who had just left his position as director of federal environmental regulatory affairs at the energy company BP America, came to ELI with the idea of developing a training program for judges on the basics of climate science.

Their idea was a perfect fit with ELI's existing program and they were able to secure startup funding for the Climate Judiciary Project. The pilot program was held in June at Columbia in partnership with the FJC and the American Association for the Advancement of Science, both of which share ELI's sense of the need for judicial education in this area and the goal of providing such programs impartially and without ideological tilt.

Since its first program in 1990, ELI has developed and presented workshops on critical topics in the environmental field for more than 2,500 judges from 28 countries and, through participation in international and regional events, has reached far more jurists than those statistics would suggest.

Also in 1982, Futrell launched a monthly environmental policy journal. What he envisioned was a lively, feisty publication to engage and energize the new field and augment the essential but often dry analyses and reporting offered by ELR. He wanted a publication that would be read by decisionmakers and thus signal — and enhance and guide — a legal sea change in environmental policy. With an editorial emphasis on policy, politics, and importantly people — the distinctive personalities behind those activities — *The Environmental Forum* became a way of engaging the full network of environmental policy professionals, not just lawyers but scientists, engineers, economists, enforcers, risk assessors, etc., a group that encompassed experts in business, government, law firms, NGOs, and academia.

The *Forum* was launched as a monthly subscription publication, and it lasted four years in that format before the Institute had to pull the plug for financial reasons. But Futrell and Meyers still saw a need for a policy publication for the new profession, and in 1988 the *Forum* was relaunched as a bi-monthly magazine addressed to the members of the Institute's Associates Programs, a reinvention so typical of ELI: an artful combination of two ventures into a synergistic, symbiotic whole greater than the sum of its parts. Thus the *Forum* became the publication for professionals in environmental protection, a role it has succeeded in for more than 30 years.

Futrell had another key innovation, launching the ELI Award for career achievement in 1984, to be bestowed at a festive annual banquet that would constitute the yearly meeting of the growing profession. "The choice of awardees identifies ELI's values as an environmentalist organization," Futrell says in hindsight. The list of those honored in the 35 years since its creation is a veritable honor roll of environmental professionals including such widely admired individuals as attorneys David Sive and Joseph Sax, EPA Administrator William D. Ruckelshaus, Interior Secretary Stewart Udall, Secretary of State George P. Shultz, Senators Muskie, Stafford, George Mitchell, and John Chafee, businesswoman (and former EPA Administrator) Lisa Jackson of Apple, and jurists Patricia Wald, James Oakes, and Richard Arnold.

ELI lawyers and economists did groundbreaking research in the 1980s on natural resources damages under the Superfund law, helping to establish the Institute's policy chops

In another manner of serving the lawyers and other members on its roll, ELI became the obvious source for professional education. It joined with the American Law Institute and the American Bar Association to create continuing legal education courses, cementing the Institute's standing in the field as the expert on environmental law. The organization in 1986 initiated major research projects on codification of environmental law, with outside attorney Sheldon Novick writing a key 1986 treatise widely seen as a major work in the field. Frank Friedman, a highly experienced businessman, in 1988 published the first of nearly a dozen iterations of his *Practical Guide to Environmental Management*, a key volume, still updated regularly, and which helped secure ELI's standing among top corporate managers then and since.

ELI lawyers and economists, under the leadership of Roger Dower, did groundbreaking research in the early 1980s on natural resources damages under the Superfund law, helping to establish the Institute's policy chops. Then in 1984, ELI hired a former Pennsylvania assistant attorney general assigned to the state's Department of Environmental Resources, Elissa Parker, who a couple years later moved up to head the Research and Policy Division. Over more than three decades of work, Parker oversaw a burgeoning research program and went on to become recognized by ELI employees and volunteers as one of the single most respected and influential managers in the history of the organization. Dozens of today's professionals, constituting a global network, trace their careers to her recognition of their promise.

Looking back, one cannot help but notice a not-unusual cycle of funding expansions followed by periods of major contractions, in large part the result of the availability of substantial federal agency contracts and grants. To avoid a boom-to-bust cycle, Futrell and Parker moved to broaden the Institute's sources of revenue. When there was a substantial reduction in federal research funding under President Reagan, for example, ELI sharpened its attention on states and on environmental federalism, both through its research activities and its educational programs. The Institute found demand increasing among states for expert training and research assistance. With

Promoting Democracy, Sustainability Globally

The Institute's international programs began in the late 1980s as a response to a growing need by national governments across the Americas, Central and Eastern Europe, and the Middle East for assistance in drafting environmental laws and regulations and building government and civil society capacity to implement and enforce those laws.

In many of these countries environmental protection was becoming an entry point for more transparent, participatory, and accountable decisionmaking. Governments were willing to provide access to environmental information, even where broader transparency was lacking.

In Europe, countries emerging from communism were keen to address increasingly dire environmental problems in a democratic manner. At the same time, many countries throughout Latin America were transitioning from authoritarian governments, fostering stronger civil society engagement and adopting more open and transparency environmental decisionmaking.

At first, the Institute's international work was focused on responding to the needs of our partners, including governments, civil society organizations, and educational institutions. ELI helped newly democratic countries like Hungary and Poland and their local NGOs draft environmental laws, establish regulatory bodies, and build professional and institutional capacity. The Institute worked with local organizations to develop environmental regimes and with national governments to develop systems governing access to genetic resources and sharing the associated benefits.

Over the ensuing three decades, ELI developed programs in India,



Jessica Troell
Senior Attorney

"While ELI continues to have active programs in Africa, China, and the Americas, our efforts are increasingly oriented thematically. We engage with partners — both long-standing and new — across the world on a host of vital issues."

Africa, and China and has since worked with in-country partners and international organizations on every inhabited continent.

In the Middle East, ELI helped Palestine draft its framework environmental law and supported regulatory reforms and improved capacity in the water sector of Jordan. ELI pioneered developments in climate adaptation law in Kazakhstan. The Institute has worked in post-conflict Liberia to reform its forestry and environmental sectors to aid in the process of recovery and help set the country on the path of sustainable development.

Senior Attorney Jessica Troell summarizes where the Institute's International Program is today:

"While ELI continues to have active regional programs in Africa, China, and the Americas, our efforts are now also strategically oriented along thematic lines. We are engaging with partners to address the most pressing environmental governance issues around the world. These include supporting climate resilience, preserving freshwater and marine resources at national and transboundary levels, protecting the water rights of indigenous and local communities, promoting environmental peacebuilding, and counteracting growing threats to biodiversity."

As part of this work, the Institute has trained thousands of judges across 28 countries, working to understand their legal systems and incorporate the latest thinking among jurists from all over the globe.

The Institute also plays an important role in fostering exchange and learning globally among professionals not only in government but also in businesses, NGOs, law firms, and universities. Over the decades, ELI professionals and volunteers have worked in more than 90 countries, and trained more than 68,000 individuals from more than 170 countries. The Institute's international activities now account for half of the organization's programs.

After years of building local laws, institutions, and capacity, international attention is shifting to environmental rule of law: ensuring that the pollution and resource statutes and regulations have practical force in a country's legal system.

There are many dimensions to this new concept for lawyers to mull, with social, cultural, and economic aspects bringing in other professionals. As an institutional expert at synthesis and advanced thinking, ELI is well positioned to lead in this next phase of protecting our planet's ecosystem. — **Carl Bruch**

foundation support and some federal funding, ELI staff established what is today called the Center on State, Tribal, and Local Environmental Programs to help meet these needs. Among those activities, they trained state enforcement attorneys; provided criminal enforcement training for environmental lawyers; and provided resources on negotiation skills for state, EPA, and Department of Defense officials.

Late in the decade, ELI won key foundation grants and support from the U.S. Agency for International Development to work in Central and Eastern Europe and in Latin America. Those efforts were forerunners of an ambitious and wide-ranging series of international engagements that would increasingly characterize the Institute's work. With the collapse of communism in the late 1980s and the move to democracy in Latin American countries, ELI found itself as an expert, sophisticated actor on the international stage, one increasingly sought out for its unique expertise and style in consensus building.

Under Parker's leadership, the Institute established a formula for its overseas work: go where there is need; find an in-country partner, hopefully a legally oriented NGO; and work within the local legal system to address that need — to improve environmental protection. The Institute assisted its local partners by concentrating on legal and governance issues, including expertise on the U.S. experience, pro and con, and lessons that might apply to the host country. ELI attorneys also cooperated on drafting laws and ensuring that proper governance existed for successfully implementing and enforcing them. And the Institute trained a cadre of governmental, business, and civil society professionals in dealing with environmental protection. Staff became expert at finding and anticipating the necessary funding not only from federal agencies, but other sources as well, including foundations and international organizations and, eventually, individuals.

As the decade was drawing to a close, ELI was operating on several continents and was finding itself in a not totally unfamiliar pattern: its international work was complementing and fueling its domestic research program, and, though to a somewhat lesser

extent, vice versa. A bit of symbiosis that enabled the Institute to better exploit its ecological niche.

The growing public anxieties over the kinds of hazardous and toxic waste challenges that led to congressional passage of Superfund simultaneously led to years of continued support for ELI research efforts through funding from EPA and from the departments of Energy and of Defense in implementing that statute and addressing federal sites. Of particular note: The Senate and House committees on appropriations designated that a grant of up to \$500,000 be awarded for an evaluation of how the federal waste cleanup program was operating. ELI's scrappy research division was awarded that funding, and by the end of the 1980s, the Institute's research was generating roughly two-thirds of the organization's total budget.

During the course of the 1980s, ELI hired two young attorneys who would go on to have singular roles in the research division, becoming Parker's de facto deputies. James McElfish came aboard in 1986 from private practice after a stint at the Department of the Interior, and in time would be recognized as the intellectual pillar of the Institute, a post which he still occupies. He is a national authority on NEPA, wetlands mitigation, and mining, among other topics. In 1988, John "Jay" Pendergrass joined ELI from academia, after stints in private practice and Interior. He began on its Superfund work and eventually became head of the State Center,

where he remained until he was named vice president of programs and publications in 2015. Longtime readers surely know him from his 20 years as author of the *Forum's* "Around the States" column, which he established as must reading in agencies around the country.

ELI finished the decade with total annual revenues of \$3.8 million, more than twice what it reported in 1980. The award dinner produced \$81,930 in funding in its first year, growing to \$231,612 by the end of the 1980s. But at another level, the decade marked ELI's survival of its teen years, which often beset young NGOs that exhaust their initial funding and must reinvent themselves as needs for their services evolve. It also marked the beginning of ELI's hiring of — and equally importantly its retention of — highly qualified professional staff, many of them

Congress designated that a grant of up to \$500,000 be awarded for an evaluation of how the federal waste cleanup program was operating. ELI's scrappy research division was awarded that funding

Center Brings Support to the Frontline Troops

Environmental programs deployed below the national level, a concept known as environmental federalism, have been a key focus of ELI's work since the Institute was founded. What today is called the Center for State, Tribal, and Local Environmental Programs, however, was not formally established until 1986, with a grant from the Andrew W. Mellon Foundation. Over the years, the State Center has served as an umbrella for the myriad ELI programs and projects that involve subnational governments, both in the United States and overseas.

ELI's special focus on state, tribal, and local environmental programs reflects the essential role they play in implementing and enforcing federal environmental laws such as the Clean Air Act and Clean Water Act, in addition to their own laws, regulations, and policies. Key State Center objectives include fostering stronger state, tribal, and local environmental programs and supporting their role in environmental management and enforcement — through research, education, convenings, consultations, and publications.

For example, the State Center's research work includes numerous ELI signature "50-state studies" on topics that include brownfields, state laws on hazardous waste cleanup, and indoor air quality, as well as a multitude of reports and briefs over the last half century. In recent years, ELI's research has examined cutting-edge topics such as green infrastructure, environmental hazards at child care facilities, and floodplain acquisition and buyouts.

ELI also works on-the-ground at the local level helping cities to develop policies, ordinances, and other approaches to addressing environmental challenges. Since 2015, ELI has served as the project director for the Natural Resources Defense



Linda Breggin

Director, Center for State, Tribal, and Local Environmental Programs

"In an era of congressional gridlock, regulatory rollbacks, and reduced federal enforcement, state, tribal, and local governments have a critical gap-filling role to play in environmental protection."

Council's Nashville Food Waste Initiative — a pilot project that works with the city and a wide range of stakeholders to develop and implement a holistic food-waste strategy, one that serves as a model for other cities. Local projects include prevention of waste, recovery of surplus food, and recycling of scraps.

Farther afield, a promising project will examine the potential for Inuits living in Alaska and the Inuvialuit Settlement Region of Canada to manage resources important for food security.

To build the capacity of state and local officials to administer programs, the State Center's recent training efforts also have covered a wide range of topics — from wetlands in-lieu fee mitigation to Clean Water Act Total Maximum Daily Load programs. Earlier programs covered leaking storage tank rules, solid and hazardous waste enforcement, negotiating skills for Superfund settlements, enforcement of pretreatment requirements by publicly owned wastewater works, and combining cleanup orders under Superfund and the Resource Conservation and Recovery Act.

ELI's publications have provided resources for stakeholders, including *The Environmental Forum's* "Around the States" column written

by the director of the State Center for over 25 years. And topping off its decades-long efforts to support the effective functioning of cooperative federalism, ELI convened the Macbeth Dialogues and published the corresponding 2018 report on "Cooperative Federalism in the Modern Era."

According to John Pendergrass, who directed the State Center for more than twenty years starting in 1990, ELI has filled a critical niche over the decades with its research and convenings that focus on cooperative federalism — the defining feature of our environmental protection system. He anticipates that "ELI will continue to play this vital role — studying while supporting and fostering dialogue on the respective roles and responsibilities of federal, state, tribal, and local governments."

The work of ELI's State Center is particularly important today. In an era of congressional gridlock, regulatory rollbacks, and reduced federal enforcement, state, tribal, and local governments have a critical gap-filling role to play in environmental protection. Today, many states are taking the lead on environmental problems, and local governments are often on the frontlines of dealing with emerging environmental threats like climate change.

still with the organization, and its initial inroads into activities far beyond those imagined when it was conceived.

With the 1970s having been a time for ELI to define and refine its mission, the 1980s proved to be a time during which ELI would turn to entrepreneurial staff initiatives. Top managers eagerly and consistently gave high-quality staffers their entrepreneurial freedom, leading the organization to expand its horizons. All of which made the 1980s a time in which ELI secured a foundation as a global organization whose creative research, publications, and educational activities would define the field in the decades to follow.

The November/December 1994 issue of *The Environmental Forum* focused on NEPA's and ELI's 25th anniversary. Writing in that issue, ELR Editor-in-Chief Adam Babich concisely captured the essence of the time: "The first half of the 1990s has been a time of evolutionary movement, in contrast to the revolutionary changes of the 1970s . . . and the 1980s. . . . In the early to mid-1990s, Congress focused on incremental improvements to existing programs, extending and refining the major trends and theories of the preceding two decades. The courts continued to find new twists in the laws of the 1970s and 1980s, as litigation between regulated parties mushroomed."

ELI at that point had been chosen by U.S. AID for an institution-strengthening grant, including a retreat of the Institute's management team to another rural Virginia conference center. The intense, week-long, professionally facilitated session was incredibly productive, as managers wrestled with the major issues confronting an organization that was mature but still evolving.

One outcome of the "Wakefield Retreat," as it became known, was the beginning of formal long-range planning. Another outcome, Futrell concludes decades later, is that ELI began to focus more clearly on board recruitment and involvement, on its mission statement, and on other internal changes too many to mention and too subtle to be obvious, but too important to neglect. ELI Board Chairman Grover Wrenn, a well-known safety and health professional, who was himself CEO of an environmental

services firm, led efforts to strengthen ELI's internal financial management systems and procedures. The Institute began to build a fund balance for the first time, evening out the waves and troughs of annual budgets that had characterized its first quarter century.

Like others across society — whether nonprofits, for-profits, governmental, academic, faith-based, etc. — ELI throughout the 1990s dealt with constant challenges to keep abreast of, and capitalize on, the quickly changing nature of work in the digital revolution. A critical development was successfully getting ELR on the Lexis and West Law services. Another

was Babich's initiatives in creating digital editions of ELI publications, including most importantly, ELR. Futrell has called that development "the most successful revenue generator" of his 23-year service as president. And in 1996, ELI launched www.eli.org. The fact that the domain name is only three letters indicates how early the Institute was in moving into social media, a leadership perch it still occupies.

Beyond the internal management and financial milestones marking ELI in the 1990s — however important they clearly were to the Institute's survival and progress — were the innovative inroads the organization was making on global environmental issues. As it worked with in-country legal NGO partners, ELI emphasized what came to be called capacity building, a broad category that includes assistance on drafting workable legal instruments attuned to on-the-ground needs. That meant fostering locally a profession of lawyers, jurists, scientists, engineers, economists, etc. — and educating them. The Institute also worked on the governance issues raised by environmental protection, including creating durable and flexible administrative institutions able to implement, and enforce, the statutes by being attuned to the local situation.

The pins on the worldwide map showing ELI research activities expanded throughout Europe, the formerly Soviet states, the Americas from top to bottom, and India, the Middle East, and Africa. Partners numbered in the dozens by the end of the decade, ranging from key NGOs to international bodies to the judiciaries and legislatures and environmental or resource agencies of many countries. Today, ELI's international activities now include work in China

The pins on the worldwide map showing ELI research activities expanded throughout Europe, the formerly Soviet states, the Americas from top to bottom, and India, the Middle East, and Africa

Making Indoors Greener, Healthier for People

Because we spend the vast majority of our time within buildings, and that is where pollutants can concentrate, most of our exposure to noxious substances occurs within housing, workplaces, schools, and commercial structures. For 30 years, ELI's indoor environments program has provided policy analysis and education to help reduce indoor exposures and create healthier, more sustainable buildings.

In the late 1980s, ELI Senior Attorney Paul Locke brought his background in law and public health to tackle the risk from indoor exposure to radon, an odorless gas responsible for more than 20,000 lung cancer deaths in the United States annually. Throughout the 1990s, the Institute carried out additional policy research and conducted outreach and education programs to spur action to test for and mitigate high radon levels in homes.

The following decade brought a considerable expansion of ELI's indoor environmental quality work, as science shed light on the health and productivity effects associated with pollutants in homes and workplaces. Along with that progress came advanced best practices for preventing and fixing problems ranging from dampness and mold to particulate matter.

Leveraging this progress, the Institute launched the Indoor Environments & Green Buildings Program in 2000, under the direction of Senior Attorney Tobie Bernstein. With funding from federal agencies and private foundations, the program set an ambitious goal: to reduce indoor exposures by advancing state and local policy in an evolving field spanning multiple areas of state and local authority — from health, education, and environment to building codes and facility licensing.



Tobie Bernstein

Indoor Environments &
Green Buildings Program

"Sound policies and programs for addressing indoor environmental issues are needed as communities experience a variety of climate-related conditions that may especially affect those with fewer economic resources and those whose age or health status makes them more susceptible."

One method: for more than twenty years, the program has brought together health officials from across the country for a unique workshop series focused on peer learning and facilitating ongoing communication and collaboration among state officials.

Protecting vulnerable populations has been a strong focus of the program. Children are particularly susceptible to the health effects of indoor pollutants, since their bodies are still developing and they have relatively higher rates of breathing and metabolism. ELI's 2003 report "Building Healthy, High Performance Schools" offered models for preventing problems in new schools as the field of green building was coming into its own. And the Institute's 2009 report "School Indoor Air Quality: State Policy Strategies for Maintaining Healthy Learning Environments" provided policy tools for improving existing facilities.

More recently, ELI launched a sustained effort addressing indoor environments for the youngest children, beginning with a 50-state study in 2015, "Reducing Environmental Exposures in Child Care Facilities: A Review of State Policy."

Rental housing poses unique challenges for state and local policymakers. With twice as many

renter-occupied households below the poverty line as is the case with owner-occupied households, renters are often powerless to fix indoor environmental quality problems and unable to find alternate housing.

ELI drew on staff with experience in legal aid practice to publish the 1994 report "Radon in Rental Housing," which importantly included an accompanying guidebook for tenants. Most recently, the Institute published the "Indoor Air Quality Guide for Tenants" to provide a starting point for renters to learn more about a wide range of common issues and the laws addressing those problems.

Sound policies and programs for addressing indoor environmental issues are increasingly needed as communities experience a variety of climate-related conditions — heat waves, droughts, intense storms and flooding, increased precipitation and humidity — that may especially affect those with lower economic resources and those whose age or health status makes them more susceptible to environmental stresses. ELI's 2016 report "Indoor Air Quality in Homes: State Policies for Improving Health Now and Addressing Future Risks in a Changing Climate" discusses policy strategies for addressing today's challenges.

as well, and involve activities in more than 90 countries across the world, and training of nearly 70,000 environmental professionals in nearly 100 countries. But that is getting ahead of the story of the Institute's developing global reach.

For the 1992 Rio Earth Summit, ELI organized a 14-person delegation composed of five staffers, five board members, and four visiting scholars from Latin America. "After Rio, ELI was better known abroad than in the U.S. as a major player," Futrell says today. Board members facilitated a valuable ELI alliance with the International Union for the Conservation of Nature, helping to bring the Institute's still-aborning research efforts' global standing. That status was enhanced when a few years later, a staff-led effort enabled ELI to join forces with the International Network for Environmental Compliance and Enforcement. ELI was already known for enforcement training in many venues. The INECE collaboration gave the Institute even greater worldwide standing and, after a hiatus, was reinstituted in 2016.

With a focus on what Senior Attorney Carl Bruch, director of international programs, calls "developing vibrant civil society engagement in environmental governance," the organization in the 1990s planted fertile seeds by which it now has moved into activities involving environmental peacebuilding, the globe's expansive ocean environment, and judicial training of lawyers "from all corners of the world." One key to those ELI activities, Bruch writes: "In many countries, environment has been a wedge issue to make governance more transparent, participatory, and accountable; governments were willing to provide access to environmental information, even while broader transparency was lacking."

One key event that helped cement ELI's standing in international environmental governance was the 1998 three-day symposium at the Smithsonian Institution on the Environmental Consequences of War. Speaking at the conference were two Nobel Peace Prize laureates, former Soviet President Mikhail Gorbachev and current Costa Rican President Oscar Arias. The event happened in the aftermath of the 1991 Gulf War, which created huge environmental problems when the retreating Iraqi army set oil wells on fire. That may have been illegal under international environmental law and the law of war, but both

bodies are weak and unenforceable when it comes to such acts, the conferees concluded at ELI's suggestion. The conference was run by Senior Attorney Jay Austin seconded by Bruch, and the two of them followed up by publishing a book on the topic with Cambridge University Press.

As have other leaders of ELI's international programs, Bruch credits former and current ELI top executives for helping provide the culture — and the financial underpinning — that has fertilized those activities. From the international program's start in the late 1980s and continuing since then, he says, ELI leadership "has continued to provide vision, raise funds, and support staff through good times and lean."

Notwithstanding the warranted attention above to the exceptional growth ELI experienced in its third decade on international activities, so too did it benefit from the entrepreneurial culture of the organization in terms of domestic work. The Institute ended its 30th year with total revenues of \$5.6 million and a staff level of 57. Compared with other national organizations litigating and lobbying on environmental law, ELI is certainly lean.

Fortunately, years of tight budgets and few employees has made the Institute efficient in the use of its own resources, enabling it consistently to punch above its weight and survive falls in the national economy.

The start of the new century, and of ELI's fourth decade, soon brought with it Futrell's retirement and the end of his 23 years as ELI's longest-serving president. He was succeeded in that office by one of the nation's most well-known and widely admired former government and corporate environmental managers, Leslie Carothers. Carothers brought to ELI her management experience. She had served as deputy administrator for EPA's Region I, as Connecticut's commissioner of environment, and as vice president of environment, health, and safety for United Technologies Corporation.

With that diverse professional background, including importantly experience in budgeting, business administration, and organizational leadership, Carothers stepped in and during a weak economy

With a focus on developing vibrant civil society engagement in environmental governance, ELI now has moved into activities involving environmental peacebuilding

Fostering Sustainable Land Use Decisions

The Institute's conservation work has a strong landscape-scale approach, with emphasis on connecting the latest science to improved management on the ground. That method is exemplified in two of ELI's most influential reports, each relied on by states and localities for more than a decade.

"Conservation Thresholds for Land Use Planners" is a 2003 publication translating the findings of 1,400 peer-reviewed papers into simple rubrics for use in setting buffer dimensions, determining viable habitat patch sizes, and avoiding fragmentation. The second report is "Planners' Guide to Wetland Buffers for Local Governments," a 2008 publication relied on by thousands of municipalities in evaluating options for local protection of these resources.

Throughout the 1990s and 2000s, ELI also engaged in state-based biodiversity conservation efforts, involving networks in the states and a partnership with the American Planning Association and the Doris Duke Charitable Foundation to identify ways for local governments and state programs to conserve their own resources.

Program staff found that using biodiversity conservation as a central goal brings in the full range of environmental concerns that can be addressed through legal and policy measures, making it a smart approach to what can otherwise seem to state governments as a bewildering set of issues.

In 1999-2001, ELI served as the representative of the natural environment on the APA's influential "Growing Smarter Legislative Guidebook," a multi-year effort to update planning laws across the United States. ELI's brief "Ten Things Wrong With Sprawl" has been used in courses and briefings to identify new ways of thinking



James McElfish
Senior Attorney

"Sprawl has brought with it many bad effects that policymakers may not fully realize in their land use planning decisions. One of the Institute's counterintuitive insights is that sprawl development actually reduces consumer choices."

about land use and development patterns. Sprawl has brought with it many bad effects that policymakers may not fully realize in their land use planning decisions. One of the Institute's counterintuitive insights is that sprawl development actually reduces consumer choices.

The Institute's work in conservation and land use decisionmaking includes ELI studies for the Chesapeake Bay Program on forest conservation and tax policies. These reports have helped inform conservation and policy decisions by the bay states, including via the launch of a website titled "Forests for the Bay."

The Institute's record of research-based publication has also produced key reference works, from Michael Bean's groundbreaking book *The Evolution of National Wildlife Law*, published in 1977, to James McElfish's 2004 *Nature-Friendly Ordinances*. For more than a decade in the 2000s, ELI published a seminal series of reports on the control of invasive species, focusing on state programs and opportunities, repeating and expanding on the template of its state biodiversity conservation work.

The Institute's efforts to make land use sustainable includes a focus on the effects of coal mining,

hard rock mining, wind facility siting, solar siting, and pipelines.

Always undertaken in collaboration, and working across sectors, the Institute's research has influenced policymakers' understanding of energy and resource choices.

Development of state laws and policy options has been a central focus of ELI's land use programs, recognizing the substantial connections among state planning laws, economic development, state and local taxation, energy policy, emergency management, and natural resources. A great deal of this work has been place-based, particularly in the Chesapeake Bay region, the upper Midwest, the Southeast, and California.

With funding chiefly coming from foundations and conservation organizations, ELI researchers examine state and local innovations and opportunities to integrate science into decisionmaking. Recent work includes climate adaptation, mitigation options for pipelines and electric transmission, and protection of farmland and watersheds.

necessarily focused on shoring up general management, financial administration, and fundraising. She hired creative consultants to work with the staff in shaping what are now the Institute's mission statement and vision statement. On programmatic matters, she expanded existing ELI water quality research issues to also include water resources and supply, and systemic issues confronting the world's ocean environment. Under her leadership, the ELI Award began to recognize women as leaders, and professions beyond law.

Carothers, with her business background, would prove to be entrepreneurial. When fears arose about the environmental and health effects of nanotechnology, she and key staff like Senior Attorney Linda Breggin devised and promoted programs on how existing environmental laws could be used to take "precautionary steps" arising from risks associated with new and untested technologies. Relatedly, Carothers also worked with ELI staff to encourage nonpartisan dialogue on reform of the Toxic Substances Control Act. Looking back on that last activity, Carothers now says it "demonstrated substantial areas of agreement" that in 2016 led to passage of bipartisan amendments — the first of the major statutes to be reauthorized in 16 years.

Perhaps most importantly during that fourth decade, according to many current and former ELI employees, is that Carothers maintained the leadership style of her predecessors in that office in giving great discretion to ELI professional staff to use their own entrepreneurial interests and skills to develop new programs. As did Futrell before her, Carothers credits ELI's researchers for creative thinking, astute staff development, and fundraising expertise. One example she cites, insisting that she personally "did not play a major role in it but vigorously supported it": ELI's development of a vast source of information and expertise on "the role of natural resource conflicts in environmental peacebuilding." (She's candid in acknowledging that the program "ended up generating the worst cost overruns of my tenure," but adds, "it has been a very creative and ultimately fruitful initiative to understand and support successful approaches to conflict resolution.")

With ELI transitioning in the 2000s from being primarily a beneficiary of federal government

funding and a trainer on environmental legislation, Carothers and her top managers worked to increase foundation and board funding and to strengthen its overall educational activities. Facing some "significant operating losses," ELI went through a period of what Carothers calls "painful overhead staff cuts." Citing not only variable economic trends but also changing political winds, she points to the challenges posed by the severe financial recession a decade ago as presenting especially daunting challenges. "It is hard to revive an active environmental constituency when the economic pain is so wide and so deep, and still is," she now says. "Fortunately, ELI's finances held steady" even as "many larger green groups had to let people go. There may be some advantages of being so lean and mean."

Regarding ELI's professional staff then — and, for that matter, before and since — Carothers is in firm agreement with those who preceded and those who followed her as president: "Throughout ELI's history, the organization has attracted brilliant and creative young lawyers and wonderful research assistants right out of college who want to work for . . . an environmental organization like ELI," she says today. "And many

are explicit in wanting to work for one that tries to be objective in its analysis and presentation of legal conclusions and alternatives and follows the facts where they lead. I see no lessening in the caliber of people ELI attracts and am delighted that its staff is much more diverse in background and ethnicity than ever before."

ELI had started the first decade of the new millennium with total revenues of \$5.2 million, and ended that decade with total revenues of \$5.5 million. Given the financial headwinds the staff faced, that small increase is a significant victory.

But amid pages and pages of individual program descriptions — and what ELI staff fairly characterize as their "success stories" — one fascinating activity, unique in ELI's 50-year history, warrants special mention here. Perhaps better than any other single action, it illustrates the narrow window in which the organization has successfully managed

When fears arose about nanotechnology, ELI suggested that existing laws could be used to take "precautionary steps" arising from risks associated with new and untested scientific advances

Institute Aims for Sea Change in Degradation

In 2005, ELI President Leslie Carothers tasked staff professionals with addressing a concern she had about an environmental problem that was receiving little attention despite its severity and global impact — the degradation of the planet's ocean, which covers two thirds of the globe and is in deep distress. Depleted fish stocks, massive decline in coral reefs, loss of coastal habitats, rising seas, increasing temperatures, and ocean acidification are some of the most pressing problems that are only growing in severity.

In response to these myriad issues, the Institute adopted a wide-angle approach. Staff lawyers and scientists arrived at Marine Spatial Planning as a key tool to achieve ecosystem-based management and address the ocean stresses caused by humanity. More than 60 countries around the world now engage in MSP, with more coming on line every year.

The ELI Ocean Program became a leader in the law and governance of MSP, working on efforts in the United States as well as working with what are known as Small Island Developing States. Today, with support from the Waitt Institute and National Geographic's Pristine Seas Program, the ELI Ocean Program continues to focus on supporting the analysis of legal frameworks for MSP and the design of laws to operationalize plans.

Significant to the Ocean Program portfolio is the focus on restoration of the Gulf of Mexico as a result of one of history's largest global environmental disasters, the Deepwater Horizon oil spill. In partnership with the Walton Family Foundation, the Ocean Program has built and managed a major project to help gulf communities engage in the numerous public processes that aim to restore the



Kathryn Mengerink

Director, Ocean Program
(2005-2016)

"Only an organization with the expertise and networking and convening experience of ELI could work effectively in this legal space."

body of water and the people who depend on it.

This work has led to innovation in communicating law and policy to the public, tracking and sharing information, and working effectively with a large group of actors ranging from indigenous peoples to fishers to scientists to agency decision-makers. Only an organization with the expertise and networking and convening experience of ELI could work effectively in this legal space.

The Institute has had the invaluable opportunity to undertake a wide range of other projects in support of the planet's ocean environment.

For instance, ELI scientists and attorneys have supported the role and rights of Alaska Native communities in managing their ocean resources. The Institute has evaluated U.S. fisheries' compliance and enforcement systems and examined legal frameworks for deep seabed mining with a focus on addressing significant impacts. ELI has explored the potential to use environmental DNA in decisionmaking. The Institute has supported the National Oceanic and Atmospheric Administration in the design of social impact assessments for U.S. fisheries management. And ELI has designed legal guidance on managing marine debris.

Why "Ocean" and not "Oceans"? While we have many ocean basins, with romantic names and a deep history, the planetary ocean is one interconnected earth system that requires legal and governance systems that account for these connections. To that end, one of our initial projects focused on the design of governance systems for marine ecosystem-based management — a sprawling concept that calls for management of the ecosystem as a whole rather than concentrating on key species or habitats.

The globe-girdling ocean is the tie that binds these individual projects together. But more than that, it is the Ocean Program's participants, staff, and invaluable partners who share a vision of supporting communities and the marine environment, innovating in project design, and working as a cohesive team to advance ocean conservation using the laws on the books and implementing new measures that may be necessary.

to maintain its reputation for nonpartisan, but relevant, research on and engagement with critical environmental protection issues.

As described by long-time Senior Attorney Jay Austin, who today is ELR editor-in-chief, the story began in an austere setting, the kind not so readily associated with an important historical event: an abandoned sand and gravel pit near Chicago, site of the 2001 *SWANCC* case.

The seemingly legalistic and academic, but nonetheless critical, issue in question involved the constitutional breadth of the Commerce Clause as it might apply to “Waters of the United States,” the term of art defining the scope of the Clean Water Act. An important point to keep in mind is that U.S. courts, up through and including the Supreme Court, over the decades and in numerous decisions in effect have enshrined the Commerce Clause as a critical underpinning of federal regulation. As a result, constitutional challenges to statutes such as the Clean Air Act and Clean Water Act had gone nowhere. The Supreme Court’s 1981 upholding of the surface mining law was viewed by much of the legal community as in effect “closing the book” on challenges to the constitutionality of those laws based on Commerce Clause arguments. Before *SWANCC*, few claimants wasted their clients’ or courts’ time arguing otherwise. And those who made such arguments found them summarily dismissed.

The unprecedented action ELI took in January 2006 was to file with the Supreme Court an amicus brief in what was to become a landmark ruling, *Rapanos v. U.S.* involved two wetlands disputes and the scope of the Commerce Clause relative to Waters of the United States. From ELI’s perspective, that triggered a commitment-driven response: It dealt with wetlands, long an ELI area of emphasis and one on which it could rightly claim to be among the nation’s leading experts; and it dealt with the essential constitutional and legal basis for protecting the environment.

ELI’s Endangered Environmental Laws program was initiated in 2002 by President Futrell

with foundation funding and strong internal legal staff support. A year later, newly seated President Carothers inherited responsibility for seeking board support for an aggressive new program that included filing amicus briefs in selected cases raising “core constitutional issues . . . that could adversely affect the foundation of the nation’s environmental law system.” The board resolution authorizing such filings was adopted by a majority vote, but not without dissent. Several board members representing corporations objected to departing from ELI’s tradition of not participating in litigation of any kind, while a number of member law firms protested the prospect of ELI counsel potentially appearing in a case in opposition to their clients. “I had fences to mend after this decision,” Carothers says today.

But the choice of the wetlands cases and the brief filed in 2006 were not hard to defend. The array of issues presented made it a virtual slam-dunk for ELI’s first and only amicus brief (so far). “If ever there was a question on which ELI should intervene with an amicus brief,” Carothers has said, “this was the right one.”

She, Austin, and ELI staff attorneys Bruce Myers and Lisa Goldman worked with pro bono counsel from the law firm of WilmerHale to write the 30-page brief. “We burned some midnight oil together, and it was terrific fun,” Carothers says today. She describes the resulting brief as a “very scholarly analysis from the leading think tank on that particular set of issues.” ELI once again was able to exploit its unique legal niche and make a real impact on the legal environment.

Given the scope of the Supreme Court’s 2006 mixed decision in the *Rapanos* case, and given its raising issues at the heart of the Institute’s being and existence, Austin says, “It was indeed an important place for ELI to take a stand.” Years later, Institute lawyers then on the staff and since retired take pride in knowing that Justice Anthony Kennedy cited the Institute’s brief in his controlling opinion, and did so pointing not to a policy issue, but rather to a factual point relating to wetlands. Kennedy’s “significant nexus” legal test also echoed ELI’s discussion of what kinds of “functional connections” would help establish whether wetlands fall into the classification of Waters of the United States.

Perhaps better than any other single action, the amicus brief illustrates the narrow window in which ELI has successfully managed to maintain its reputation for nonpartisan but relevant research

When Laws Were Attacked, ELI Stepped Up

The Institute's dramatically named Endangered Environmental Laws Program was very much a product of the political, policy, and regulatory climate of the early 2000s — a response to the Rehnquist Court's "new federalism" decisions and the George W. Bush administration's regulatory rollbacks.

It also was as close as ELI in its first half-century has ever gotten to the advocacy world, though in our typically measured, thoroughly foot-noted fashion. In the words of then President Leslie Carothers, "We may not be an advocacy organization, but we can advocate for the results of our research."

By 2001, ELI attorneys realized that Supreme Court opinions in the SWANCC wetlands case and in non-environmental cases like *U.S. v. Lopez* and *U.S. v. Morrison* were chipping away at the Commerce Clause, the foundation of many federal statutes. ELI attorney Bradley Bobertz devised a detailed research and education agenda aimed at addressing this and other issues at the nexus of constitutional and environmental law, such as cooperative federalism, Article III standing, and Fifth Amendment takings.

With seed funding from the Packard and Hewlett foundations and input from a broad cross-section of advisors, ELI launched the EEL program in early 2002.

A key premise for the new program was that the Institute is uniquely qualified, through its decades of meticulous research and reputation for nonpartisan credibility, to defend the backbone of environmental law. Over the next six years, ELI honed that message and broke what for us was new ground, employing communications strategists, developing a program website, and publishing white papers, opinion pieces, and letters to the editor.



Jay Austin
Senior Attorney

"ELI's experience with the Endangered Environmental Laws Program and our 2006 amicus brief serves as a reminder that some of the most important influences on environmental law come from beyond the Institute's immediate sphere, and that ELI can help shape those too."

The Institute's 2004 study of judges' decisionmaking under the National Environmental Policy Act got prominent coverage in the *Washington Post*, and two program seminars were carried live on C-SPAN. To draw additional attention to the defense of environmental law, Carothers and I penned an op-ed for the *Christian Science Monitor* on the critical Supreme Court ruling in *Massachusetts v. EPA*, which required the agency to regulate greenhouse gas emissions.

Most importantly, in 2006 the Institute filed its first amicus brief in *Rapanos v. United States*, the follow-up case to SWANCC. The brief was cited in Justice Anthony Kennedy's controlling opinion.

Rapanos squarely challenged the scope of "Waters of the United States," the term of art governing Clean Water Act jurisdiction, and the scope of the Commerce Clause. "If ever there were a question on which ELI should intervene," according to Carothers, "this was the right one." On her recommendation and with board approval, the Institute entered the world of Supreme Court litigation. Staff worked long hours and received expert pro bono assistance from WilmerHale.

The resulting exposure from the brief did not come without contro-

versy and raised eyebrows over the entire approach. A few law firm and corporate members questioned specific work that touched on their interests. Carothers staunchly defended the actions as appropriate, a corrective to what were novel, even radical, legal arguments being advanced in the courts. Policy disputes aside, things like the Commerce Clause's applicability to environmental protection are bedrock, she told folks at the time. But following the 2008 election, there was (at least for a time) less need for this kind of action, funders lost interest, and the program wound down.

Viewed in hindsight, EEL in some ways seems quaint, dwelling on esoterica like the 11th Amendment that turned out not to have huge practical import. In other ways it seems ahead of its time, foreshadowing an even more turbulent era where constitutional arguments and the role of the courts are more crucial than ever.

At the very least, ELI's experience serves as a reminder that some of the most important influences on environmental law come from beyond the Institute's immediate sphere, and that ELI can help shape those too and in constructive ways.

Stay the course and full speed ahead best characterizes ELI as it entered its fifth decade. It did so with two new top executives succeeding the two immediately prior presidents whose combined 31 years as president had most shaped the Institute.

The texture, feel, culture, and character of ELI by 2010 were clearly set. The organization had in hand a wide range of domestic research, educational, publishing, and convening activities. A number of them by that time were pretty much baked in to the broader environmental legal community, and more and more also with environmental professionals beyond the bar. In addition, ELI's innovative, and in many ways unprecedented, international forays were not only breaking new ground but also becoming a standard component of international environmental education, training, and governance.

With Carothers concluding her eight-year tenure in 2011, prominent environmental attorney John C. Cruden was selected after a national search to be ELI's next president. Cruden at that point had served since 1995 as deputy assistant attorney general in the Environment and Natural Resources Division. An elected president of the District of Columbia Bar, the largest bar in the country, and a former chair of the American Bar Association's Section on Environment, Energy, and Resources, Cruden brought to ELI a national reputation. He says he took over the ELI responsibility with every expectation that he would serve until his eventual retirement. But a phone call came from Attorney General Eric Holder asking the experienced lawyer to return to head up ENRD and defend President Obama's Clean Power Plan in court. Cruden left ELI in January 2015.

Starting under Carothers and continuing under Cruden, ELI continued to build on the professional environmental management practices it had been cultivating since 2003. Those efforts involved continued oversight not only of ELI financial matters (its top financial staffer, long-serving Loretta Reinersmann, even managed to earn her CPA while working full-time for ELI) but also further development of existing programs and

even more emphasis on innovative environmental research and consulting work in foreign countries.

ELI during Cruden's three-and-one-half years as president remained fully supportive of its expanded international role and also opened new avenues for professional leadership and fundraising with the creation of an ELI Leadership Council, designed to appeal to leading outside environmental professionals. That effort involved holding regular functions, often in Washington, D.C., but also in Dallas, San Francisco, and New York City.

In addition to educational activities in Jordan and in the Dominican Republic for professionals there, ELI under Cruden's leadership did judicial training on environmental law for the Mexican Supreme Court — a significant marker of status for a very successful educational program.

In what some consider a significant break from its practice of avoiding attention, ELI in its fifth decade began to more regularly welcome media coverage. The organization, for instance, began to regularly hold book launches for its new publications. Cruden personally took and welcomed frequent phone calls from mainstream media outlets seeking his perspective on this or that break-

ing environmental issue.

With Cruden returning to public service, ELI once more turned to a veteran environmental lawyer for its president. In September 2015, Scott Fulton, a former general counsel and acting deputy administrator of the Environmental Protection Agency, took over. An internationally known expert on environmental governance and rule of law, Fulton brought with him experience in environmental enforcement with the Justice Department, and he had worked as head of EPA's Office of International Affairs.

Fulton speaks of his commitment to "making sure that ELI is adapting and modernizing in alignment with a rapidly changing world." Toward that end, the Institute undertook and completed an "ELI Vision 2021" strategic planning process that, among other things, led to a reorganization of staff into three areas: Development and Membership, Programs and Publications, and Finance and Administration. Fulton talks about wanting ELI to maintain its standing as a "nonadvocacy,

In what some consider a significant break from its practice of avoiding attention, ELI in its fifth decade began to more regularly welcome media coverage

Resource Management Betters Peacebuilding

The Institute's innovative environmental peacebuilding program integrates natural resource management with conflict prevention, mitigation, resolution, and recovery to build resilience in affected communities. Pioneered by ELI, this field of scholarship and practice now builds on decades of work by the Institute and others.

In the early 1990s, ELI led a diplomatic effort in the Gulf of Aqaba, bringing together Israelis, Egyptians, Jordanians, Saudis, and others to develop a regional vision for protecting the region's fragile environment. The collaboration was codified in the 1994 Israel-Jordan Peace Treaty.

Later in the decade, the Institute coordinated a global assessment of the state of legal, scientific, and economic approaches to addressing the environmental consequences of war. The research informed the United Nations Compensation Commission as it adjudicated environmental claims against Iraq for its illegal invasion and occupation of Kuwait in the 1990-91 Gulf War.

In 2004, ELI engaged with Liberia to reform its forestry sector. The UN Security Council had imposed sanctions on the nation's timber, and the Institute helped Liberia's government, civil society, and partner organizations develop a common vision and a revised legal framework to restore the country's forestry sector.

In the process, ELI introduced notice-and-comment rulemaking to Liberia (which is now a requirement for all forestry-related regulations), and then became involved in building the capacity of government, civil society, and communities to deal with environmental problems.

As a result of this work, ELI realized that operating in these conflict-affected settings differed substantially from that in other de-



Carl Bruch
Senior Attorney

"ELI has helped to create the new field of environmental peacebuilding. With partners around the world, we have initiated the leading means globally for people to learn about how to make environment a cause for peace, rather than conflict."

veloping countries, and furthermore that there was then little analysis about how conflict dynamics should shape assistance to those countries.

With UN Environment, the University of Tokyo, and McGill University in Canada, ELI led a global initiative to take stock of experiences in post-conflict peacebuilding and natural resource management. The ensuing 150 case studies and analyses in six edited books runs to 3,900 pages — an unprecedented body of knowledge on these issues.

ELI and UN Environment have since been incorporating their learning into operational guidance for United Nations bodies, the African Development Bank, and other institutions. That scholarship and experience also has informed ELI's technical assistance and capacity building in Lebanon, Timor-Leste, South Sudan, Sierra Leone, Myanmar, Colombia, Jordan, and other fragile and conflict-affected countries.

The ramping up of environmental peacebuilding in ELI's policy portfolio over the years eventually led to the development of an enduring conceptual and institutional framework that brings together people from varied disciplines and geographies. The Institute created

the Environmental Peacebuilding Knowledge Platform (environmentalpeacebuilding.org), the Environmental Peacebuilding Community of Practice (with more than 3,700 members globally), a biweekly *Environmental Peacebuilding Update* (now in its sixth year), and the Al Moumin Award and Distinguished Lecture for thought leadership in environmental peacebuilding.

More recently, the Institute supported the UN's International Law Commission in codifying international law protecting the environment in periods before, during, and after armed conflict. ELI staff briefed the UN Security Council.

And ELI and partners delivered a massive open online course on Environmental Security & Sustaining Peace, with 17,000 people from 176 countries enrolling in the course in 2018 and 2019. ELI and partners launched the Environmental Peacebuilding Association, a professional society with individual and institutional members in more than 55 countries. In October, the association convened the First International Conference on Environmental Peacebuilding, marking a pivot point as ELI and partners transition to a more integrated and enduring suite of efforts to learn, build capacity, and improve practice.

nonpartisan” group that “everybody in the environmental field can believe in.” He also accepts the characterization of ELI as being “center-progressive” on the ideological spectrum.

Under Fulton, ELI once again assumed leadership of the International Network for Environmental Compliance and Enforcement, involving more than 2,000 professionals from 150 countries, building on the Institute’s vast experience in training enforcers. And it launched a program with the government of China to “bolster good government and the rule of law.” It helped launch a means of building judicial capacity with the start of the Global Judicial Institute for the Environment. This activity also builds on one of ELI’s long-standing and universally regarded strengths: training the judiciary in the United States and in countries on all other continents. In total, ELI has trained 2,500 judges in 28 countries.

In addition to those critical offshore activities, ELI in 2018 reported working with local and regional interests and with various communities in Alabama, Florida, Louisiana, Mississippi, and Texas on restoration efforts resulting from the massive Deep-water Horizon oil spill in the Gulf of Mexico. It conducted research on co-digestion of food wastes at wastewater recovery facilities in nine different states. And it engaged in climate change and migration issues in three states; with enhanced Inuit self-governance of marine resources in Alaska; with efforts to reduce food waste in Nashville; and with capital infrastructure projects involving “green street” elements in public rights-of-way in seven mid-Atlantic states.

ELI in its 2018 annual report published a “Successes by the Numbers” graphic that provides a glimpse into some quantitative indicators of its activities in that year and up through that time. The Institute held 120 educational events, seminars, and webinars that year alone, involving, both online and in person, more than 6,400 individuals, with events held in nine different states and several countries. In total, to date ELI has trained 71,000 lawyers and environmental professionals representing 170 countries. And total revenues last year were \$6.2 million for a staff of just under 50 full-time individuals.

Through countless research programs, publications, educational events, and convenings of stakeholders — a number of them unquestionably innovative and imaginative — ELI clearly deserves its standing as profoundly multifaceted. To describe what ELI is has always been like the Indian fable of the five blind men and the elephant — this article thus ultimately fails to give the complete picture. The breadth and scope of its program activities is matched by the geographic scope of those initiatives, and any reasonably complete accounting would take a book to describe.

But that’s okay, because ELI is not so much known for its programs and activities as for its people, and that has been the blueprint for its success. All its presidents have had the same mantra: hire the best staff and give them the support and guidance they need to achieve their professional aspirations in advancing environmental protection. By all accounts, the organization has enjoyed not only a widely praised top tier of managers, but a group that has made ELI their life’s work, remaining as employees for decades. The Institute has also been blessed with a huge array of volunteers, from course faculty at one level to members of the board’s executive committee (a busy group) at the other extreme. And everyone has recognized that it is also people who are the Institute’s customers — programs always emphasize the human dimensions to environmental problems.

ELI’s “honest broker” stature, and its high level of success in maintaining that position, is often cited as having widespread staff respect and support. A former top staffer points to ELI’s having “a highly credible and appealing mainstream, independent brand in the field. The Institute is well positioned as a progressive voice that reaches out” to diverse interests and treats them “on equal footing.”

One long-time staff attorney summarizes ELI’s philosophy this way: the Institute is proudly pro-environmental protection, “but not pro or con on how that occurs.” Another characterizes its staff as being “militant generalists.” Program directors and managers are committed to empowering staff creativity and innovation. An ELI founder, looking

All ELI presidents have had the same mantra: hire the best staff and give them the guidance and support they need to achieve their professional aspirations in advancing environmental protection

Publications Track, and Educate, the Field

As did the professionals who had just put a man on the moon a few months earlier, the attorneys who founded the *Environmental Law Reporter* approached their efforts with creativity, energy, and the will to get things done. In those days, type had to be painstakingly set in hot metal, cases and materials were only available in physical form, and photocopiers were rare. The service eventually expanded to more than half a dozen red binders, which became the effective logo of ELR for decades.

While ELR enters its 50th volume year in January, the wall of binders is now a thing of the past. All 50 years of the service is offered online — more than 13,000 cases, 2,900 articles, and 5,000 guidance and policy documents, to name just a few of the items in ELR's massive collection.

When the first issue hit the streets, the National Environmental Policy Act was an infant and the Environmental Protection Agency had just been created the previous month. The alphabet of environmental acronyms we think of today — CWA, CAA, CERCLA, ESA, RCRA — unfolded only later, during the 1970s and 1980s. Thanks to the foresight of ELI's founders, the predecessors of today's ELR editorial staff were there from the very beginning, witnessing and reporting on an entirely new field of law. And it worked, too, with ELR's early successes providing ELI the resources to become the research and educational powerhouse of today.

As the needs of the environmental bar increased, the staff of ELR soon found themselves in the book publishing business, releasing "deskbooks" on a variety of statutes — huge, comprehensive volumes that became a must-have for practicing environmental attorneys then and now. Other titles focused



Rachel Jean-Baptiste
Associate Vice President
for Publications

"There has never been a shortage of topics to cover and uncover, be they proposals for addressing climate change, the pros and cons of market-based tools, implications of agricultural biotechnology, or legal impediments to raising backyard chickens."

on practical and cutting-edge issues alike. Now publishing books under the ELI Press imprint, ELR staff continue that work today.

Even as some of what we now consider the traditional environmental laws became more settled in the late 1990s and early 2000s, ELR continued to educate the bar while providing a space for environmental professionals to share new ideas and approaches to environmental law, policy, and regulation via the monthly *News & Analysis* legal journal.

There has never been a shortage of topics to cover and uncover, be they proposals for addressing climate change, the pros and cons of market-based tools, implications of agricultural biotechnology, or legal impediments to raising backyard chickens.

As the internet caused many publications to rethink and reshape their organizational structures, if not close up shop, times became tough for ELR as well. The publication transitioned from the red binders only in stages, first through the Lexis and Westlaw services, later in a CD-ROM edition, and only then onto the web. Maintaining a subscriber base was, is, and will always be a challenge for a niche publication like ELR, a service that was considered to be fundamental to

the viability of environmental law at the time of the Institute's founding — and it is still filling that role today. But the menu of options provided has changed considerably over the last half century.

And of course you are holding in your hands a copy of *The Environmental Forum*, whose 40th anniversary is coming soon. TEF is the magazine for professionals in all aspects of law, policy, and management in the environmental sphere, including not only attorneys but scientists, engineers, economists, and a bunch of other specialties in its broad ambit.

TEF was founded by respected journalist Bud Ward, a ground-breaker in covering environmental news. He edited the publication for its first four years, when it was in a monthly subscription format. Today, it is the bimonthly membership magazine of the ELI Associates Programs, which draw together the entire environmental profession.

Since Ward's day, TEF has continued to keep professionals abreast of the cutting-edge issues of tomorrow, filling his vision of a magazine that would be read by decisionmakers in Washington and statehouses around the nation as well as members of the business community and the environmental bar.

back on the organization as it nears its 50th anniversary, put it simply: “There’s never been any mediocrity at ELI.”

Staffers frequently comment that ELI throughout its history, if only sometimes by financial necessity and self-preservation, has been nimble and flexible, able to adapt quickly to changing policy, political, and economic winds and move into new substantive areas as needed. “We’re scrappy,” two staffers told me. Significantly, for those professionals whose resumes reference their previous employment with ELI (and there are hundreds of them), many have moved on to highly respected top-level public- and private-sector positions. They constitute a virtual Who’s Who of well-recognized environmental professionals, spanning numerous disciplines, philosophies, and positions of considerable stature and status. Many remain active as volunteers or participants in some form of ELI activities long after they have ended the employment relationship.

No organization, needless to say, is perfect, and ELI makes and deserves no claim of perfection. Some observers think it could have been doing a better job through much of its history — and in particular in its earlier decades — in telling its own story within and beyond the sphere of environmental lawyers and other professionals for whom interacting with ELI is part of the day’s work.

The Institute has never been headline-hungry, has seldom been the stuff of front-page news. That approach over many years was conscious and strategic, as the organization routinely did more to enable funders to wag their tails than ELI did in seeking media attention for itself. Nonetheless, there’s likely a middle ground for its communications and outreach efforts that could prove beneficial not only for ELI institutionally but also for the environmentally concerned public and policymakers alike.

The story the Institute has to say about how to improve humanity’s efforts to protect the environment is a tale worth telling, both informative on the past and instructive on the path ahead. Just ask the citizens in the Gulf of Mexico states whom ELI

helped in the aftermath of the Deepwater Horizon oil well blowout. Or the members of an indigenous community in Latin America affected by a proposed mine in their traditional lands. Or the EHS professional in an American corporation who needs help in working with agencies in maintaining compliance. Or the law firm attorney whose client wants credit for putting in place an environmental management system. Or the staff at a local litigating NGO who need expert legal analysis. Running through these achievements is a single continuous thread: the Institute’s proposals have usually — but not always — been more evolutionary than revolutionary.

Part of the ELI recipe is to start with existing legal and governance tools and work within the system. The exact ingredients and the manner in which they are added to the stew varies according to the need, drawn from ELI’s well-stocked quiver of legal tools.

Other modest shortcomings and minor imperfections no doubt exist, but ELI has proven itself through its first five decades as having the critical board and executive leadership skills essential to quickly adapt to changing times, and the strong and committed staff and expansive network of volunteers and participants — all involved in bringing legal tools to bear in the race to save the planet — to overcome any hurdles as they arise.

So much so that 50 years down the road, others almost surely will be writing about ELI’s 100th anniversary and the continuing progress by then in maintaining a healthy environment in a sustainable economy, in keeping with the Institute’s vision and mission. The rule of law, and the professionalism of the people sworn to uphold it, is certain to remain at the heart of ELI’s method and approach. So are informing citizens and policymakers — an approach established by NEPA exactly 50 years ago and central to ELI in the five decades since. And it is no understatement to say that the need for what only this Institute can do — to be “a national center . . . where talent could be systematically mustered,” as expressed in the *New York Times*’s account of ELI’s founding mandate by the Airlie House conferees 50 years ago — is the template for the coming half century as well. **TEF**

In its second half century, the rule of law, and the professionalism of the people sworn to uphold it, is certain to remain at the heart of ELI’s method and approach

Creating an Environmental Solution-Seeker

One of the defining societal and cultural features of the past several decades has been the rapid pace of innovation. It seems that almost daily a new life-changing idea is brought forward. Technologies that once seemed like science fiction are quickly becoming reality. Artificial intelligence promises to make our machines smarter, biotechnology is quickly revolutionizing the way we view food, the digital economy has changed our very conception of a marketplace. The list goes on.

Each of these innovations brings new environmental challenges. The possibility always exists, however, to transform challenge into opportunity. In 2016, ELI established the Technology, Innovation and the Environment Program to advance thinking along these new frontiers. In 2018, the TIE program was reimagined, transforming into the ELI Innovation Lab.

The Lab identifies new environmental opportunities by exploring technological and scientific breakthroughs, piloting novel solutions, and engaging passionate collaborators. Current initiatives span a wide swath of topics that promise to improve environmental performance into the future.

The Lab's active interest in the environmental impacts of next-generation technologies has led to the development of a global inventory of bioengineered products, a research collaboration on the digital economy, and a student partnership on 3D printing. The future looks bright from the Lab's perspective, and ELI staff are actively planning how to make that happen.

The Lab is equally focused on engaging the public as the nature of environmental problems and their solutions changes. For instance, the Lab recently established a citizen-science law-and-policy working



Kasantha Moodley
Manager, Innovation Lab

"ELI has an important role to play in ensuring that the breakthroughs in science, technology, and policy drive environmental progress rather than prevent it. The Innovation Lab places ELI at the forefront of a dynamic and multifaceted field."

group with Harvard's Law School to facilitate an understanding of the regulatory frameworks that influence the activities of citizen scientists and to determine the impact of citizen science on public and private governance.

Along similar lines, the Institute produced sustainability-focused materials for legal cannabis cultivators who experience a fragmented regulatory framework that makes compliance with environmental regulations difficult.

Strengthening environmental governance among networks of small businesses is of specific interest to the Lab, and we are starting locally. ELI is working with the DC Women Business Center to recognize female-owned businesses for their environmental ingenuity. This Environmental Entrepreneur of the Year award we hope will be the first of many to come locally and nationally.

The Institute is also working on building an understanding of complex problems like coastal resilience, ELI is promoting environmental literacy on this topic with an on-line video game.

The Lab keeps all these various policy pots bubbling while sharing the ideas and perspectives of change-makers through a podcast

series called *Environmental Disrupters*.

Through all this work, the ELI Innovation Lab promotes the entrepreneurial spirit that long has been at the heart of the Institute's methodology. In keeping with this theme, the Lab approaches funding as an opportunity to build partnerships and spearhead new collaborations. The Lab has received grants from the Alfred P. Sloan Foundation, tech giants Microsoft and Intel, and the Swedish Innovation Fund Blue AB to explore the implications and applications of blockchain and artificial intelligence.

As new opportunities arise, the Lab hopes to build on and grow new partnerships with like-minded environmental solution-seekers.

ELI has an important role to play in ensuring that the breakthroughs in science, technology, and policy drive environmental progress rather than prevent it. The Innovation Lab, leveraging the Institute's expertise and the creativity of everyday trailblazers, places ELI at the forefront of a dynamic and multifaceted field.